

Vol. II of III
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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

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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1 A Because I didn't want to do the robbing on
2 Marley Lion.

3 Q What were y'all doing when Marley was going
4 into the back of his car getting his pillow out?

5 A Looking through the white fence.

6 Q About when was it that y'all started talking
7 about robbing him? At which point?

8 A Right there.

9 Q Where was the Joe's money at that point?

10 A They have gone. They have ride off. I -- I
11 said I wasn't sure which car they got in, but I think
12 they already left.

13 (Video is played.)

14 Q (By Ms. Wilson) So at this point, at 3:36 on
15 the Mantek video, there's nobody out there but
16 Marley Lion; right?

17 A Yes, ma'am.

18 Q Why didn't y'all hit him then?

19 A Hesitation. I guess he was hesitating.

20 Q When this was happening around 3:36, 3:37,
21 where was Julius? Was he still with y'all?

22 A All of us was behind the fence.

23 Q All of you behind the fence?

24 A (Moves head up and down.)

25 Q At that point, had anybody been on the Joe's

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1 parking lot side of the white fence?
2 A Can you repeat that?
3 Q At this point, had any of you that night been
4 on the Joe's parking lot side of the white fence?
5 A On the other side?
6 Q On this side. On the side that Marley Lion's
7 on. Had y'all been over there yet?
8 A No. We were behind the white fence.
9 Q So Marley couldn't see you?
10 A No.
11 (Video is played.)
12 Q (By Ms. Wilson) Were y'all sitting back there
13 quietly, just watching?
14 A Yes, ma'am.
15 Q From where you were, could you tell if there
16 were any other people in the car with Marley?
17 A No, not at that time.
18 MS. WILSON: Your Honor, at this time, we need
19 to switch DVDs. We will go to 3:44, try to.
20 (Respite.)
21 Q (By Ms. Wilson) So at 3:44:20 on the video, do
22 you recognize that person?
23 A Yes, ma'am.
24 Q Who's that?
25 A That's Julius.

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1 Q What was he doing?
2 A Checking out the scene.
3 Q Did he come report what he saw?
4 A Yes, ma'am.
5 Q And that was at 3:44. And then we'll go to
6 3:56 on State's Exhibit --
7 MR. DURANT: One.
8 Q (By Ms. Wilson) -- 1, which is a 12-minute
9 gap. 3:44, where Julius was, and we're getting ready to
10 go to 3:56. What happened in that 12 minutes?
11 A Just sitting behind the fence.
12 Q Excuse me?
13 A Just chilling behind the white fence.
14 Q Who had the gun while you were chilling behind
15 the white fence?
16 A Deleston.
17 (Respite.)
18 Q (By Ms. Wilson) If you'll look at the video at
19 3:56:18, who is that?
20 A Deleston.
21 Q What's he got on?
22 A Striped-colored shirt.
23 Q What kind of shoes?
24 A White Willie Dee's.
25 (Video is played.)

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1 Q (By Ms. Wilson) Where did he go when he ran
2 just then?
3 A Headed towards the gravel part where we was at.
4 (Video is played.)
5 Q (By Ms. Wilson) If you look at that video,
6 Mr. Rivers, where were you when that happened?
7 A Standing on the gravel part.
8 Q Did you ever make eye contact with Marley Lion?
9 A No.
10 Q Do you know if he ever even saw you?
11 A No.
12 MS. WILSON: All right. Keep going.
13 (Video is played.)
14 MS. WILSON: That's all I have, your Honor.
15 THE COURT: Mr. Foreperson, this is a perfect
16 time to take a break. Do y'all wish to have a break
17 now? You can take it.
18 THE FOREPERSON: I think we're okay.
19 THE COURT: All right. Let me know if you need
20 any additional breaks.
21 Mr. Pennington.
22 MR. PENNINGTON: Ready to proceed.
23 If your Honor, please, I think I -- may I stay
24 here? I'm just going to move the podium.
25 THE COURT: However you are comfortable.

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1 MR. PENNINGTON: Thank you.

2 THE COURT: Thank you.

3 THE BAILIFF: The podium is blocking their view
4 of the Defendant.

5 THE COURT: Ladies and gentlemen of the jury,
6 sometimes it's because just the way the courtroom is
7 laid out, Mr. Pennington needs to be in a certain point
8 so that he is not blocking my view, your view of
9 anything, and that he has -- is standing back enough.
10 So we will try to make -- we're trying to make every
11 effort to accommodate all the issues, but sometimes we
12 can't accommodate views of everything in the courtroom.

13 MR. PENNINGTON: Maybe if I come a little bit
14 more forward, your Honor, because actually, it was close
15 to blocking my view of the witness. So I'm trying to
16 find a sweet spot.

17 THE COURT: I need you to go back just a little
18 bit because you're now blocking my view of the jury.
19 All right. That's perfect for me. Thank you.

20 MR. PENNINGTON: All right. There we go.
21 Thank you, your Honor.

22 **CROSS-EXAMINATION**

23 **BY MR. PENNINGTON:**

24 Q Mr. Rivers, you know Julius Brown; right?

25 A Yes, sir.

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1 Q And you know George Brown?

2 A Yes.

3 Q And George is Julius's cousin?

4 A Yes.

5 Q Okay. Now, you indicated in your -- through
6 your letter that you wrote, the first letter in August,
7 of -- well, I'll come back to that.

8 The Solicitor covered with you your record,
9 your criminal history; correct?

10 A Yes.

11 Q And so you were convicted in 2003 of assault
12 with intent to kill; correct?

13 A Yes.

14 Q And then in October of 2004, which was a
15 different date, you went back to court on a different
16 charge, and that charge was assault and battery of a
17 high and aggravated nature?

18 A Yes.

19 Q And you pled guilty to that charge?

20 A Yes.

21 Q Okay. And Solicitor mentioned that you went to
22 prison at that time for that charge; right?

23 A Yes.

24 Q And then you got out at some point between '04
25 and '08, but in '08 you got violated -- your probation

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1 was violated, and you were sent back to the penitentiary
2 a second time; correct?

3 A Yes.

4 Q And then in June of 2011, you were convicted of
5 possession of crack cocaine?

6 A Yes.

7 Q And in August of 2011, you also got convicted
8 of a charge of false information to police officers?

9 A Yes.

10 Q You essentially were lying to the police?

11 A Yes.

12 Q At that time in 2011?

13 A Yes.

14 Q And then in 2012, you pled guilty and got
15 sentenced for possession of crack cocaine, second
16 offense. That would have been February of 2012?

17 A Yes.

18 Q Okay. And you've testified that you got out of
19 jail two weeks before this incident?

20 A Yes.

21 Q You testified that, in effect, you had no
22 address; you were just staying with friends?

23 A Yes.

24 Q And so on your booking sheet that we showed you
25 a moment ago -- that the Solicitor put into evidence, it

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1 lists various addresses for you, doesn't it?

2 A Yes.

3 Q The date of the booking sheet is July 31st,
4 which was the day that you were arrested in this case?

5 A I was arrested July 30th.

6 Q Okay. And -- but the date that's reflected on
7 this form, which you might have not have ever really
8 studied, but the date on the photo is the next day, July
9 31st.

10 MR. PENNINGTON: May I approach, your Honor.

11 THE COURT: You may.

12 MR. PENNINGTON: Obviously, I already have. I
13 apologize.

14 (Document is handed to the witness.)

15 Q (By Mr. Pennington) Just take a look. Is that
16 correct?

17 A Yes.

18 Q Okay. And so on there, it lists other
19 addresses that you had, because you were -- you had a
20 daughter downtown, ■ Drake Street?

21 A Yes.

22 Q It mentions ■ White Oak Drive. Who stays on
23 White Oak?

24 A I don't -- I don't know nobody stay on ■.

25 Q Well, was it supposed to be ■ White Oak? Was

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1 that Dolores Brown's house?
2 A That's Dolores Brown's.
3 Q Okay. So you were staying there sometimes too;
4 right?
5 A No, I never stayed there.
6 Q But you hung out there?
7 A Yes.
8 Q Okay. With Julius?
9 A Yes.
10 Q And his family?
11 A Yes.
12 Q Okay. And since coming out, they became sort
13 of the people that you hung with; right?
14 A Yeah. I -- I raised up around them.
15 Q Okay. And you also mention an address at [REDACTED]
16 North Romney Street.
17 A That was my sister house at one time.
18 Q Okay. And then there's [REDACTED] Cashew, which is
19 Stephanie Brown's house?
20 A Yes.
21 Q You didn't have a key to Stephanie Brown's
22 house on Cashew?
23 A No.
24 Q In other words, you were just -- you would come
25 and knock and say, Can I crash here tonight?

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1 A Yes.

2 Q Okay. When you were arrested, at the beginning
3 of your arrest period on July 30th, do you remember that
4 you were taken to Lockwood station?

5 A Yes, I remember that.

6 Q That's the police station down where
7 Detective Osborne works, the gentleman that's sitting in
8 the blue tie right here that's at counsel table?

9 A Yes.

10 Q Do you remember talking to him that day?

11 A Yes.

12 Q And he, at the beginning, as you two talked --
13 you essentially told Detective Osborne that that whole
14 evening at Cashew Street -- and I'm talking now about
15 the 15th into the 16th of June, the night that
16 Marley Lion was murdered -- that you were essentially
17 drinking heavily; correct?

18 A Yes.

19 Q And obviously you were off smoking some pot
20 too?

21 A Yes.

22 Q Marijuana?

23 A Yes.

24 Q And that what you told Detective Osborne was,
25 is that you essentially drank and drank and passed out

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1 at Cashew Street, and that's what you could remember;

2 correct?

3 A Yes.

4 Q He didn't believe you, did he?

5 A I don't think so.

6 Q Well, in fact, he told you explicitly, didn't
7 he, that he believed Ryan Deleston was the killer and
8 that Ryan was trying to bring you into it. Isn't that
9 what he told you?

10 A I'm not sure. I can't remember, it was so long
11 ago.

12 Q Well, think back. Do you remember that -- that
13 at first it seemed like they really didn't have
14 anything, and he kept telling you again and again that
15 Ryan's talking about you and calling your name?

16 A Yes.

17 Q And he kept telling you that, didn't he?

18 A Yes.

19 Q And it really kind of got in your head, didn't
20 it? It made you a little nervous?

21 A Yeah, at that time.

22 Q And he kept saying, Look, man, this is your
23 opportunity, because he believed that Ryan was the
24 killer; right?

25 A I guess that's what he believed.

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1 Q Well, he told you. He told you that
2 explicitly. Didn't he say, Ryan's a liar, but he's
3 trying to set you up?

4 A Yeah, at that time he did say that.

5 Q Okay. He said that. And that worried you,
6 didn't it?

7 A Somewhat.

8 Q Okay. So by the end of the conversation, your
9 story had changed to where you admitted that you were
10 out there, but your version at that time was -- is that
11 you were just going for a walk. You weren't part of any
12 kind of robbery plan; right?

13 A Yeah, at that time, that's what I told him.

14 Q But that wasn't the truth. That was a lie,
15 wasn't it?

16 A Yeah, it was a lie.

17 Q Okay. Now, let's go back to earlier on
18 the -- the same day, but before what we just talked
19 about. You described that y'all got into George Brown's
20 Chevy Suburban; correct?

21 A Yes.

22 Q And George knew how to go downtown and do some
23 licks; right?

24 A Yeah.

25 Q And George had his secret compartment where he

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1 kept his pistol; right?

2 A Yes.

3 Q And this was a pistol you had seen before?

4 A Yes.

5 Q You were familiar with it?

6 A Yes.

7 Q And you -- that night, you've admitted that you

8 robbed a lady of her purse at about -- well, I mean, you

9 robbed a lady of her purse; correct?

10 A Yes, that night, but not on --

11 Q The same night?

12 A June 15th?

13 Q June 15th.

14 A Yes.

15 Q And into the early morning of the 16th, because

16 it was actually about 2:45 a.m. when the robbery went

17 down, wasn't it?

18 A Probably around that time.

19 Q Okay. And then on the way back downtown --

20 from downtown is when George drove you through the Joe's

21 parking lot?

22 A He drove through Joe's parking lot.

23 Q He didn't stop? He just drove through, like we

24 just saw in the video; right?

25 A Yeah.

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1 Q Now, the Solicitor had you read that letter
2 that you wrote in August. And that letter in August
3 said, essentially, you wanted a trial; right?

4 A Yes.

5 Q And in your communications, you were telling
6 her, in no uncertain terms, that you wanted a trial;
7 right?

8 A That I was going to trial, yes, I did tell her
9 that.

10 Q And that's because, really, in your heart of
11 hearts, your position here today is, is that you're
12 really not guilty of voluntary manslaughter? In your
13 really heart of hearts?

14 A Yeah. At that time -- at that time, I felt I
15 wasn't guilty, yeah, of nothing.

16 Q Well -- and even to this day, it's your
17 position that you were standing behind the fence, but
18 when the Joe's thing didn't materialize, when those
19 people left, you really didn't want anything to do with
20 anything more; right?

21 A Right.

22 Q That's your contention; right?

23 A Right.

24 Q That's what you want the jury to believe;
25 correct?

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1 A That's the truth.

2 Q Okay. So you just stood off to the side,

3 right, over by the gravel part?

4 A Around the time Marley Lion got shot?

5 Q Yeah.

6 A Yeah, I was by the gravel.

7 Q And I think you testified on Direct that you

8 have no more intentions to do a robbery?

9 A What? After the Joe's thing?

10 Q Uh-huh.

11 A Yeah.

12 Q And you also said that really Julius didn't

13 have any more intentions in doing a robbery; right?

14 A Correct.

15 Q And so you were kind of more of like just a

16 bystander?

17 A Yeah. Kind of like lost the spirit of, you

18 know, even being in that situation.

19 Q Okay. So you -- you were just merely present?

20 A Basically.

21 Q Okay. You really didn't have anything to do

22 with this murder, did you?

23 A With the murder -- yeah, I -- I was --

24 obviously, I did have something to do with it because I

25 was there.

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1 Q But you really didn't have any intent to see it
2 go through?

3 A No. My intention was not deceit. Why would
4 they shoot the white boy they shoot?

5 Q Aren't you saying that --

6 MS. WILSON: Objection, your Honor.

7 THE COURT: What's the basis?

8 MS. WILSON: He's putting words in his mouth.

9 He just told him what he was thinking and what he was
10 saying.

11 THE COURT: Overruled. You may continue.

12 MR. PENNINGTON: Thank you, your Honor.

13 Q (By Mr. Pennington) Isn't it fair to say that,
14 as far as this -- that you've already testified you
15 really didn't have any desire to go forward with a
16 second robbery; correct?

17 A What second robbery?

18 Q Of Mr. Lion.

19 A Well, yeah. My intention wasn't to rob
20 anybody.

21 Q You weren't down with that?

22 A No.

23 Q Okay. And so if you weren't down for the
24 robbery, then it was completely a surprise and
25 unforeseeable to you when the shooting occurred. You

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1 didn't see that coming, did you?

2 A No, I did not.

3 Q Okay. So, essentially, that was not
4 foreseeable. You did not see that coming?

5 A No. I didn't know he was going to do something
6 like that.

7 Q Okay. So, in effect, you're saying that it
8 really wasn't something a foreseeable consequence of,
9 when you first started out going down there to rob
10 Joe's?

11 A Repeat that.

12 Q So you're saying this really wasn't a
13 foreseeable kind of thing for you. It came as a
14 surprise; correct?

15 A Correct.

16 Q But the fact of the matter is, is that you
17 could have pled not guilty and had a trial today,
18 couldn't you?

19 A Yes, I could have.

20 Q You could have been sitting right here at this
21 table and pled not guilty. But you chose to plead
22 guilty to voluntary manslaughter, didn't you?

23 A Yes, I did.

24 Q Okay. And you pled guilty to voluntary
25 manslaughter because, as you told the Judge the day you

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1 pled guilty, you are guilty of voluntary manslaughter,
2 aren't you?

3 A Yes. The hands of one is hands of all.

4 Q Okay. So -- but what's changed is this: The
5 Solicitor said that you sent that second letter, that
6 second letter, describing that you'd had a change of
7 heart. That letter was sent September 11th, which would
8 have been about two weeks after the first letter, two
9 and a half weeks?

10 A Yeah, around -- something like that.

11 Q And you said, I do want the deal. I'm thinking
12 about my daughter and my life; right?

13 A Yes, I did.

14 Q And what you were also thinking about, weren't
15 you, that Julius Brown had just made a deal and was
16 going to testify against you?

17 A No, I was not thinking about that.

18 Q You weren't concerned that Julius was going to
19 come in and say what happened?

20 A No. I --

21 Q And say that you were down with this robbery?

22 A I was concerned about myself.

23 Q You were concerned about yourself?

24 A (Moves head up and down.)

25 Q Okay. And concerned about your daughter?

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1 A Yeah, of course.

2 Q You want to be with your daughter; right?

3 A Of course.

4 Q You love your daughter?

5 A Very much.

6 Q And you really don't want to go to the

7 penitentiary for this, do you?

8 A I know I'm going to the penitentiary.

9 Q But you don't want to?

10 A Nobody want to go to prison.

11 Q And you'd like to see that time cut as low as

12 it could be?

13 A Yes.

14 Q And so whereas before, you were looking at, if

15 you had been convicted of this murder of Marley Lion,

16 you were going to have to do no less than 30 years, day

17 for day; correct?

18 A Could be.

19 Q But as you know, the Judge has wide discretion

20 in murder cases. And if you had been convicted of

21 murdering, of shooting Marley Lion, you would have

22 gotten, perhaps, up to life in prison without the

23 possibility of parole; right?

24 A Repeat your question.

25 Q Well, murder carries between 30 and life,

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1 doesn't it?

2 A Yes. That what murder carry.

3 Q So you knew that?

4 A (Moves head up and down.)

5 Q Correct? Yes?

6 A Correct.

7 Q You have been talking about that with your

8 lawyer?

9 MS. WILSON: Objection, your Honor.

10 THE COURT: What's the basis?

11 MS. WILSON: Privilege.

12 THE COURT: Sustained.

13 Q (By Mr. Pennington) You had been thinking

14 about that a lot?

15 A About --

16 Q What you were facing on a murder charge?

17 A Yeah. Murder carry 30 to life.

18 Q Okay. You were also facing the attempted armed

19 robbery charge?

20 A Yes. I pled guilty to that.

21 Q And possession of a firearm during the course

22 of a violent crime?

23 A No.

24 Q They dropped that?

25 A Yes.

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1 Q So you were charged with the possession of a
2 firearm during the course of a violent crime, weren't
3 you?

4 A No, I was never -- I was never charged with
5 that. I was charged with possession of a firearm by a
6 convicted felon.

7 Q Okay. But they've dropped that; right?

8 A Yes.

9 Q So your deal is, is that you plead to voluntary
10 manslaughter, attempted armed robbery, and possession of
11 a firearm with an obliterated serial number?

12 A Correct.

13 Q But the best part of the deal is that, even
14 though you're pleading to those other two charges, you
15 can't get any extra time for that, right, because
16 the -- the max you can get is 30 years; right?

17 A Everything's concurrent. Yes, the max I can
18 get is 30 years.

19 Q Okay. Because the max on the manslaughter is
20 30 years at 85 percent; right?

21 A Correct.

22 Q The one thing we are clear on here is that you
23 don't always dress in all black, do you?

24 A Yes. The majority of the time, I got on all
25 black.

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1 Q Well, certainly, you weren't on July 17th,
2 2012, were you?

3 A I can't remember back to July 27 [sic].

4 Q Do you remember the day that you sold imitation
5 rock crack cocaine to an undercover officer?

6 A Yeah, I remember.

7 Q You're -- now, let's position this. This is
8 after the date that Marley Lion was shot to death. And
9 we're talking about in July, about two weeks before you
10 got arrested. Do you remember that date?

11 A You said July 17th. You said that was the day
12 after Marley got killed?

13 Q No, I'm not saying that. Let me back up.
14 Let's repeat. Marley was killed on the 16th of June,
15 wasn't he?

16 A Yes.

17 Q And so I'm now talking about July 17th; right?

18 A Uh-huh.

19 Q Two weeks or so, before you got arrested, which
20 would have been on the 30th.

21 A Yes.

22 Q And on that date, you got filmed in Ardmore,
23 didn't you?

24 A Filmed, as in?

25 Q Filmed, as in your picture taken.

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1 A By whom?

2 Q I'm asking you. Didn't you get filmed that

3 day?

4 A I don't know.

5 Q You sold imitation rock?

6 A I was selling that. Yeah, I did that.

7 Q Okay. And they took your picture that day,

8 didn't they?

9 A What? The police?

10 Q The police.

11 A I reckon they did. I didn't see them take no

12 picture.

13 Q Well, you were wearing a white T-shirt that

14 date, weren't you?

15 A I can't remember. That's far -- that's too far

16 back.

17 Q Would it refresh your recollection to take a

18 look at the picture?

19 A Yeah, it would.

20 MS. WILSON: Ashley.

21 (Document is shown to Ms. Wilson.)

22 (Document is handed to the witness.)

23 Q (By Mr. Pennington) And I'm not asking you a

24 question. I'm just giving you a chance to look at these

25 photographs. Here and then here and then here and then

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1 here, there.

2 (Respite.)

3 Q (By Mr. Pennington) All right. Do these
4 pictures help you remember more clearly that you were
5 not dressed in all black that day?

6 A Yeah, not that day.

7 Q You were wearing something that looks like a
8 white shirt?

9 A Yeah. That's a white T-shirt.

10 Q And that was July 17th?

11 A Yes, sir.

12 Q One more thing about your deal. You're not
13 going to get charged with that robbery that you did down
14 on Rutledge Avenue, are you?

15 A I don't know. That's something I -- the
16 solicitors --

17 Q So they have the say over that?

18 A Yes. I don't know what they going to do with
19 that.

20 Q Okay. And that could carry another ten
21 years -- minimum ten to 30; right?

22 A I reckon. I don't know.

23 Q Well, you know that armed robbery in this state
24 carries a minimum of ten years?

25 A Zero to 20.

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1 Q Armed robbery?

2 A Carries zero to 20, but a minimum of ten years.

3 Q Minimum of ten years. And that's at 85

4 percent?

5 A Yes.

6 Q So that means you have to do no less than eight

7 and a half years for that alone?

8 A Yeah, on ten years at 85.

9 Q And if you didn't behave yourself in the

10 penitentiary, you could have to do the whole ten; right?

11 A I guess that what they do.

12 Q Well, if they took your good time, then you

13 would have to max it out; right?

14 A You only get good time 65 percent.

15 Q I'm talking about an 85 percent case.

16 A Eighty-five percent, you ain't got no good

17 time.

18 Q Now, you identified what I think has been

19 marked as State's Exhibit 20, and you say that this is a

20 Willie Dee?

21 A Yes.

22 Q Okay. You were staying at Steph's house?

23 A Correct.

24 Q Stephanie Brown's house?

25 A Correct.

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1 Q Cashew Street?

2 And it's your testimony that that night after
3 this whole incident, you claim that Ryan went in and
4 washed with bleach, because you testified that you could
5 smell him; right?

6 A Yes.

7 Q And that after that, he was bare-chested. He
8 didn't have a shirt on?

9 A Correct.

10 Q And it's also your testimony that on the run
11 away, the flight away from --

12 (Respite.)

13 Q (By Mr. Pennington) I'm going to refer you to
14 what is State's Exhibit 7. Take a look at this just for
15 a second and see if you can get oriented as to, perhaps,
16 Savannah Highway and the Ardmore subdivision.

17 Do you recognize that?

18 A Yes.

19 Q Okay. And do you recognize that this area
20 right here is where we've been talking about where --
21 you have pled guilty to voluntary manslaughter of
22 Marley Lion right in this parking lot?

23 A Yes.

24 Q And, now, you described that on your pathway
25 out of there after the shooting, you did not run down

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1 Evergreen Street, did you?

2 A No.

3 Q In fact, you took a path that was through the
4 back of these houses on Balsam Street?

5 A Yes.

6 Q And you put yourself right there where this gun
7 is washed off and put under Jason's swimming pool;
8 right?

9 A You asked if I put myself there?

10 Q You were there; right?

11 A Yeah, I seen them do that.

12 Q Uh-huh. You weren't over here on Evergreen
13 Street. You were right there at the swimming pool where
14 the gun was hidden?

15 A Yeah.

16 Q Now, during this whole time frame that we're
17 talking about -- I'm going to go back to the time frame
18 where y'all are behind the fence -- looking at State's
19 4 right in this area, if you look straight down -- and I
20 can even bring it closer if it would help you. Let's
21 turn it this way. We want our jury to be able to see --
22 that this is the parking lot -- this is where Marley was
23 shot, wasn't he? Correct?

24 A Correct.

25 Q And you can see that white fence right here if

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1 you look straight down?

2 A Correct.

3 Q And it's your testimony that you went up to
4 this area and pretty much stayed behind that white fence
5 or way over here on this gravel part? The gravel is
6 this part over here where you can drive through the
7 parking lot and get to Yew Street?

8 A Yes.

9 Q All right. So in terms of who Marley would
10 have seen, it's your testimony that that night you never
11 came out from behind that white fence over into this
12 parking area that I'm pointing at?

13 A No.

14 Q Speak up a little louder.

15 A No.

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

18 THE COURT: Take your time.

19 (Respite.)

20 (Mr. Pennington speaks with Mr. Kozelski off
21 the record.)

22 MR. PENNINGTON: Your Honor, the only other
23 thing I would have would be to renew my request to
24 explore the other matters that we took up *in limine* that
25 I think the Court is familiar with and which, if

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1 necessary, I can review with the Court *in camera* again.

2 THE COURT: There's no need to review. I stand
3 by my initial rulings on the motions. Note your
4 exception to the ruling.

5 MR. PENNINGTON: Thank you very much, your
6 Honor. I have no further questions.

7 THE COURT: Redirect.

8 **REDIRECT EXAMINATION**

9 BY MS. WILSON:

10 Q Is that your Willie Dee? Is that your right
11 white Willie Dee right there?

12 A No, ma'am.

13 Q And when you were arrested in late July of
14 2012, you weren't living with Ryan anymore, were you?

15 A No.

16 Q You had moved out?

17 A Yes.

18 Q And when you were out there that night behind
19 that fence -- do you recognize this, State's 23?

20 A Yes.

21 Q What is that?

22 A That's the murder weapon.

23 Q Okay. And you said that at one point behind
24 that fence, Ryan Deleston handed you this gun?

25 A Yeah. He was trying to pass me the gun.

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1 Q Did you take the gun and go back to Cashew
2 Street?
3 A No.
4 Q What did you do with it?
5 A I gave the gun back to him.
6 Q You took this gun and put it back in his hands?
7 A Uh-huh, pushed it back in his hand.
8 Q So that he could do what?
9 A Rob Marley Lion.
10 Q And do you remember when you got arrested at
11 the end of July of 2012 and they took you into an
12 interview room? Do you remember that?
13 A Repeat that question.
14 Q Do you remember when you got arrested and
15 Detective Osborne took you into an interview room?
16 A Yes.
17 Q Do you remember that small room?
18 A Yes.
19 Q Kind of a blank room?
20 A Yes.
21 Q No camera like that in there? You don't
22 remember seeing a camera in there, do you?
23 A No.
24 Q You don't remember seeing a microphone in your
25 face, do you?

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1 A No.

2 Q You didn't know you were being recorded, did

3 you, at that time?

4 A No, not at that time.

5 Q Do you remember what you said when you were

6 left in that room by yourself at 5:33:15? Do you

7 remember what you said?

8 A I remember saying something like, I need to

9 talk to my daughter or something.

10 Q Would it refresh your recollection to see a

11 summary of what you said at 5:33 in the afternoon in

12 that room?

13 A Yes.

14 (Document is handed to the witness.)

15 Q (By Ms. Wilson) Remember that?

16 A Yes.

17 Q What was it you said when you were sitting back

18 in that room and you thought nobody was listening and

19 nobody was looking? What did you say?

20 A I said: Fuck him. He did shoot that

21 motherfucker.

22 MS. WILSON: That's all I have, your Honor.

23 THE COURT: Mr. Pennington.

24 MR. PENNINGTON: No further questions, your

25 Honor.

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1 THE COURT: Ladies and gentlemen, this is the
2 appropriate time for us to take our midmorning break.
3 Do not begin your deliberations. You may leave your
4 notepads right where you are.

5 Please rise for the jury.

6 (The jury is escorted from the courtroom at
7 11:02 a.m.)

8 THE COURT: Thank you. Be seated.

9 Is this witness excused?

10 MS. WILSON: Yes, ma'am.

11 THE COURT: Any objection?

12 MR. PENNINGTON: No, ma'am.

13 THE COURT: You may step down. You are
14 excused. Thank you.

15 (The witness steps down from the stand.)

16 Anything before we take our break, Ms. Wilson?

17 MS. WILSON: No, ma'am.

18 THE COURT: Mr. Pennington?

19 MR. PENNINGTON: No, your Honor.

20 THE COURT: Fifteen minutes. Just for my
21 scheduling, who's the next witness?

22 MR. DURANT: Rayshawn Milligan.

23 THE COURT: Thank you.

24 (A break was taken from 11:03 a.m. until
25 11:19 a.m., at which time the proceedings continue as

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1 follows:)

2 MR. BUTLER: Judge, may we approach?

3 THE COURT: Yes.

4 (Mr. Beattie Butler, Mr. Pennington, and

5 Mr. DuRant approach the bench for a discussion off the

6 record.)

7 (The Judge calls the videographer up to the

8 bench.)

9 THE COURT: All right. Anything before we

10 bring in the jury?

11 MS. WILSON: No, ma'am.

12 THE COURT: Mr. Pennington?

13 MR. PENNINGTON: Nothing further, your Honor.

14 (The jury is escorted into the courtroom at

15 11:23 a.m.)

16 THE BAILIFF: All jurors present, your Honor.

17 THE COURT: Thank you. Be seated.

18 Call your next witness.

19 MS. WILSON: Rayshawn Milligan.

20 (The oath is administered by the Deputy Clerk

21 of Court, and the witness answers as follows:)

22 THE WITNESS: Yes.

23 THE DEPUTY CLERK OF COURT: Sir, take your

24 seat. Sir, if you would, please state your first and

25 last name, spelling your last for the record.

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1 THE WITNESS: Rayshawn Milligan,
2 M-i-l-l-i-g-a-n.

3 THE COURT: All right. Sir, can you please
4 spell your first name as well?

5 THE WITNESS: R-a-y-s-h-a-w-n.

6 THE COURT: Thank you.

7 Ms. Wilson.

8 MS. WILSON: Thank you, your Honor.

9 **RAYSHAWN MILLIGAN,**

10 having been first duly sworn by the Deputy Clerk of
11 Court to tell the truth, the whole truth, and nothing
12 but the truth, was examined and testified upon his oath
13 as follows:

14 **DIRECT EXAMINATION**

15 **BY MS. WILSON:**

16 Q Rayshawn, you have a nickname?

17 A Yes, ma'am.

18 Q What's that?

19 A Duke.

20 Q Back in 2012, where did you live?

21 A North Charleston.

22 Q Is that where you grew up?

23 A No, ma'am.

24 Q Where did you grow up?

25 A In Ardmore.

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1 Q Who did you live with when you lived back in
2 Ardmore back then?
3 A With my mother.
4 Q All right. At some point, were you adopted or
5 did somebody else take you to raise?
6 A Yes, ma'am.
7 Q Who is that?
8 A At first, my grandmother.
9 Q And then who?
10 A And my grandfather.
11 Q Where did you live with your grandmother and
12 granddaddy?
13 A They wasn't together at the time.
14 Q Well, did they both live in Ardmore?
15 A No. Neither one of them.
16 Q How old were you when you lived with them, your
17 grandmomma and then your granddaddy?
18 A When I was with my grandmother, I was, like,
19 nine.
20 Q Okay. And then when did you go with your
21 granddaddy?
22 A Like, 13.
23 Q And did you stay with him until you moved out
24 on your own?
25 A Yes, ma'am.

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1 Q Was his last name Milligan?
2 A Yes, ma'am.
3 Q Now, you have a brother named Julius; is that
4 right?
5 A Yes, ma'am.
6 Q Did he grow up in the house with you and your
7 grandmomma and then your granddaddy?
8 A No, ma'am.
9 Q And how about Stephanie, she's your sister?
10 A Yes, ma'am.
11 Q And did she grow up in the same houses with
12 you?
13 A No, ma'am.
14 Q How old are you?
15 A Twenty-six.
16 Q And how much older than you is Julius?
17 A I think seven years.
18 Q Okay. How about Stephanie? Do you know how
19 many years older she is?
20 A Eight or nine.
21 Q And does Stephanie have a condition?
22 A Yes, ma'am.
23 Q What is that?
24 A She's a diabetic.
25 Q Does she have any --

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1 A Yeah.

2 Q -- complications from that diabetes?

3 A Yes, ma'am.

4 Q What are they?

5 A Her eye -- her eyes, she's blind, and her leg

6 been amputated.

7 Q But she wasn't blind her whole life; right?

8 A No, ma'am.

9 Q Can she see to get around her house?

10 A In the light, yeah.

11 Q Okay. How about to drive? Is she able to

12 drive?

13 A No, ma'am.

14 Q Can she cook for herself, things like that?

15 A Not really.

16 Q Okay. Do you know Stephanie's boyfriend, or

17 who her boyfriend was in 2012?

18 A Yes, ma'am.

19 Q Who's that?

20 A Ryan --

21 Q Ryan who?

22 A -- Deleston.

23 Q What's the last name?

24 A Deleston.

25 Q Do you see him here today?

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1 A Yes, ma'am.
2 Q Where is he?
3 A Right over here.
4 Q What's he got on?
5 A White shirt.
6 Q Does he have on a tie?
7 A No, ma'am.
8 MS. WILSON: Your Honor, please let the record
9 reflect he's identified the Defendant.
10 THE COURT: It will.
11 Q (By Ms. Wilson) Back in June of 2012, was Ryan
12 living with Stephanie?
13 A Yes, ma'am.
14 Q And where did they live?
15 A On Cashew.
16 Q They've been living together for a couple of
17 years?
18 A I'm not too sure. Like --
19 Q Did you go see them a lot and hang out there?
20 A Yeah. Every now and then.
21 Q You weren't over there every day?
22 A No.
23 Q Do you know the exact date that Ryan moved in
24 with her?
25 A No.

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1 Q Okay. But back in June of 2012, they were
2 living together?
3 A Yeah.
4 Q I want to take you to the night of June 15th
5 into the morning of June 16th, the night that
6 Marley Lion was killed. Do you remember that?
7 A Yes, ma'am.
8 Q And at any point on the night of June 15th, did
9 you have occasion to be at Stephanie and Ryan's?
10 A Yes, ma'am.
11 Q Tell the jury when you went and how you got
12 there.
13 A At first, I went to my mother's house, and then
14 I saw George Brown and Julius Brown going by to
15 Stephanie Brown, my sister's house. And then I left
16 from my mother's house down there to see what's up over
17 at -- to see what was up with them.
18 Q Okay. When you talk about going to your
19 momma's house, where did she live?
20 A White Oak.
21 Q Is that also in Ardmore?
22 A Yes, ma'am.
23 Q And you say you saw George. Is that Big
24 George?
25 A Yes, ma'am.

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1 Q And your brother, Julius?
2 A Yes, ma'am.
3 Q What were they riding in?
4 A George's black truck.
5 Q And is that how you got to Cashew?
6 A No, ma'am.
7 Q But you knew they were going over to Cashew?
8 A Yes, ma'am.
9 Q How did you get over to Cashew?
10 A Walked.
11 Q How long of a walk is that from your momma's to
12 Stephanie and Ryan's?
13 A About five minutes.
14 Q Okay.
15 A Not even.
16 Q And when you got over there -- well, let me ask
17 you this: You said you -- where were you living at that
18 point? Not with your momma; right?
19 A No, ma'am.
20 Q Where were you living?
21 A On Dogwood.
22 Q Where's Dogwood?
23 A Down 61.
24 Q All right. Who were you living with?
25 A My girlfriend.

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1 Q Who's that?
2 A April Foreman.
3 Q Is that April in the courtroom back there?
4 A Yes, ma'am.
5 Q So you had just been to visit your momma and
6 then go visit Ryan and Stephanie?
7 A Yes, ma'am.
8 Q Was your girlfriend happy about that?
9 A No, not really.
10 Q Okay. What'd y'all do over at Ryan and
11 Stephanie's?
12 A Drank, smoke, chill out.
13 Q Drink what?
14 A Beers.
15 Q Smoke what?
16 A Marijuana.
17 Q And I believe when you first were talked to by
18 the police back in August of 2012, you told them you
19 were pretty drunk that night. Were you?
20 A Yes, ma'am.
21 Q And that you didn't know anything because you
22 had been throwing up?
23 A Yes, ma'am.
24 Q Is that true?
25 A No, ma'am.

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1 Q What part wasn't true?
2 A Throwing up.
3 Q How about the part about you not knowing
4 anything, was that true?
5 A No, ma'am.
6 Q So y'all are over on Cashew, drinking, smoking.
7 At some point do you leave to go downtown?
8 A Yes, ma'am.
9 Q Okay. Tell the jury who left and how y'all
10 left.
11 A We got in George truck and went downtown.
12 Q All right. Who was driving?
13 A George.
14 Q And who else was in the car?
15 A Me, George Brown, Julius Brown,
16 Ryan Deleston Brown, Bryan Rivers, and me.
17 Q And where was Julius sitting?
18 A In the front.
19 Q Where were you sitting?
20 A In the back.
21 Q The way, way back?
22 A Yes, ma'am.
23 Q Where -- what about Julius and Ryan Deleston?
24 A Me and Bryan and --
25 Q I'm sorry. Bryan and Ryan, where were they?

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1 A They was in, like, the middle.
2 Q Did you know why you were all going downtown?
3 A We supposed to be going to a friend house.
4 Q To do what?
5 A Drink.
6 Q Well, what happened? Did y'all go there?
7 A No.
8 Q Why not?
9 A Because he called and said he was going on a
10 date with his wife.
11 Q When did that call come in?
12 A After we got downtown.
13 Q So did y'all head on back to West Ashley?
14 A Not exactly.
15 Q Well, what exactly did you do?
16 A George Brown was, like, he know where a lick
17 was at. And we ride around somewhere downtown, and we
18 end up on a dark street.
19 Q A dark street?
20 A Yes, ma'am.
21 Q Do you know if George had a gun?
22 A No, ma'am.
23 Q What happened on this dark street?
24 A We pulled over to the side, and Bryan Rivers
25 and Ryan Deleston get out.

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1 Q Yeah?

2 A And then --

3 Q Did you see what happened next?

4 A I saw when Bryan Rivers came back with a

5 pocketbook.

6 Q You didn't see what happened while he was gone?

7 A No.

8 Q You don't know what he did?

9 A No, ma'am.

10 Q Do you know what Ryan Deleston did?

11 A No, ma'am.

12 Q So after they get out of the car on this dark

13 street, the next thing you see is?

14 A Bryan Rivers coming back with a purse.

15 Q Did you see Ryan?

16 A No, ma'am.

17 Q When was the next time you saw Ryan?

18 A When we was leaving.

19 Q Leaving where?

20 A From off that street. And we saw Ryan. I

21 think he called and said he was by McDonald's.

22 Q Do you know who Ryan called?

23 A I think it was George.

24 Q Didn't call you?

25 A No.

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1 Q Well, after Ryan and Bryan got out to do this
2 lick, do you know if the police were called?
3 A No, ma'am.
4 Q Did you ever see any police?
5 A No, ma'am.
6 Q After George gets this call, did you see Ryan
7 again?
8 A Yes, ma'am.
9 Q And where?
10 A By McDonald's.
11 Q What happened at McDonald's?
12 A He got in the truck, and we went back to West
13 Ashley.
14 Q Do you know what was going on with the purse
15 that Bryan Rivers had stolen?
16 A No, ma'am.
17 Q Do you know if they went through it?
18 A Yes, ma'am, they went through it.
19 Q Who went through it?
20 A Bryan Rivers.
21 Q And who else? Anybody?
22 A Deleston.
23 Q Any cash in that purse?
24 A No, ma'am.
25 Q How do you know?

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1 A I don't.
2 Q Did you go through it?
3 A No, ma'am.
4 Q Did you hear them talking about it?
5 A Yes, ma'am.
6 Q Well, who said what about the purse?
7 A When Ryan Deleston get back in the car, he
8 asked anything was in it. And Bryan said, No, there
9 ain't nothing in it.
10 Q After that, when you're going back to West
11 Ashley, was there any more talk about doing robberies?
12 A Yeah.
13 Q What talk was that?
14 A Ride by Joe's and see if they was busy or not.
15 Q Who wanted to ride by Joe's?
16 A George Brown, Julius Brown, Ryan Deleston,
17 Bryan Rivers.
18 Q How about you?
19 A No. No, ma'am.
20 Q Did it matter to you if you went by Joe's or
21 not?
22 A No, ma'am.
23 Q Did y'all go by Joe's?
24 A Yes, ma'am.
25 Q And did anybody make any comments when you went

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1 by there?
2 A Yes, ma'am.
3 Q Who?
4 A George Brown --
5 Q What did George have to say?
6 A -- and Julius Brown.
7 Q George and Julius?
8 A Yes, ma'am.
9 Q What did they have to say?
10 A They're not busy.
11 Q Is that a good thing or a bad thing, if you
12 know?
13 A I guess it was a good thing.
14 Q Where did y'all go after you cut through Joe's?
15 A To Cashew.
16 Q Back to Ryan and Stephanie's?
17 A Yes, ma'am.
18 Q Well, I think I skipped something. When Bryan
19 got out of the car downtown to do the robbery, did he
20 have anything?
21 A He had a pocketbook.
22 Q No. Before he did the robbery, did he have
23 anything?
24 A Not that I know of.
25 Q You never saw a gun?

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1 A Not then, no, ma'am.

2 Q Okay. All right. So you're back at Cashew
3 after the purse and after riding through -- riding
4 through Joe's, get back to Cashew. What do you do this
5 time when you're back at Cashew?

6 A Stop, drink some more.

7 Q Smoke anymore?

8 A Yes, ma'am.

9 Q Did everybody hang out for the rest of the
10 night?

11 A Yes, ma'am, for awhile.

12 Q Okay. Did anybody leave?

13 A Yes, ma'am.

14 Q Who?

15 A Ryan Deleston, Julius Brown, and Bryan Rivers.

16 Q Did you know where they were going?

17 A Yes, ma'am.

18 Q How did you know?

19 A Because I heard them talking about it.

20 Q About what?

21 MR. PENNINGTON: Objection as to unattributed
22 hearsay.

23 THE COURT: Rephrase your question.

24 Q (By Ms. Wilson) Who did you hear talking about
25 where they were going, specifically?

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1 A Julius Brown, Ryan Deleston, and Bryan Rivers.
2 Q What did Ryan Deleston say about where they
3 were going, if you remember?
4 A I really don't remember.
5 Q Okay. Do you remember what Julius Brown said
6 about where they were going?
7 A I really don't know.
8 Q Okay. How about Bryan Rivers?
9 A Don't remember.
10 Q But the three of them were talking?
11 A Yes, ma'am.
12 Q And do you know if at that point any of the
13 three of them had a gun?
14 A Yes, ma'am.
15 Q And who had a gun?
16 A Ryan Deleston.
17 Q What gun did he have?
18 A George Brown one.
19 Q Where did he get it or how?
20 A I guess from George Brown.
21 Q Did you see George give him the gun?
22 A He got it out the car, out the truck.
23 Q Who did? Who?
24 A Ryan Deleston.
25 Q Did you see him get it out of the truck?

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1 A Yes, ma'am.
2 Q All right. When was that?
3 A Like, before they went.
4 Q What did he do with it after he got it?
5 A Put it on his hip.
6 Q What do you mean by that, when he put it on his
7 hip?
8 A Put it on -- put it on the side.
9 Q Do you remember what he had on that night?
10 A Yes, ma'am.
11 Q What was that?
12 A At first, he had on a white shirt --
13 Q Uh-huh.
14 A -- some blue pants and some white shoes.
15 Q Uh-huh. Did he change?
16 A Yes, ma'am.
17 Q Into what?
18 A A black shirt.
19 Q Did he change his shoes?
20 A No, ma'am.
21 Q When the three of them left, what did you and
22 George do?
23 A Stayed at the house.
24 Q Doing what?
25 A Sitting there.

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1 Q And were y'all sitting inside or outside?
2 A Sitting outside drinking a beer.
3 Q In the carport?
4 A Yes, ma'am.
5 Q Did y'all have any music on?
6 A Yes, ma'am.
7 Q Did you know of anything that happened -- could
8 you hear anything happen after the three of them left?
9 A No, ma'am.
10 Q Do you know about how long they were gone?
11 A About 15, 20 minutes.
12 Q And what happened when they got back?
13 A They were arguing.
14 Q Who was arguing?
15 A Ryan Deleston and Julius Brown and
16 Bryan Rivers.
17 Q Do you remember what Bryan Rivers said to
18 Ryan Deleston?
19 A You stupid. You shouldn't have shoot that guy.
20 Why you shoot that -- shoot that guy?
21 Q What did Julius Brown say to him?
22 A You -- same. Basically, the same thing. But
23 in curse --
24 Q In what?
25 A Curse words.

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1 Q What were those curse words? I know you might
2 not want to say it here, but they need to hear exactly
3 what he said.

4 A You dumb motherfucker. Why did you
5 shoot -- shoot the guy?

6 Q Who said that?

7 A Julius and Bryan -- Julius Brown and
8 Bryan Rivers.

9 Q Both of them?

10 A Yeah.

11 Q Did Ryan say anything?

12 A Yeah.

13 Q What did he say?

14 A He was, like, damn, that shit crazy. I know I
15 about to go to jail.

16 Q Did he stay out there with y'all?

17 A No, ma'am.

18 Q Where did he go?

19 A He went in the house.

20 Q Do you know what he did in the house?

21 A Yes, ma'am.

22 Q What?

23 A Changed his clothes.

24 Q And do you know what he did with his hands?

25 A Washed them.

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1 Q Why do you say that?

2 A Because he came out drying them off.

3 Q And when you say he changed his clothes, when

4 he came out this time, do you remember what he had on?

5 A He had on, like, shorts and a white shirt.

6 Q And did he and Julius stay at the house for the

7 rest of the night?

8 A No, ma'am.

9 Q Do you know where they went?

10 A They went back down the street.

11 Q Did you go with them?

12 A No, ma'am.

13 Q Do you know what they got while they were gone?

14 MR. PENNINGTON: Objection; hearsay, unless he

15 can -- has independent knowledge.

16 MS. WILSON: That's what I'm asking.

17 THE COURT: I'm going to overrule your

18 objection based upon hearsay to that particular

19 question.

20 You may answer. Do you need her to repeat it?

21 Do you need her to repeat her question?

22 THE WITNESS: Yes, ma'am.

23 THE COURT: Thank you.

24 Q (By Ms. Wilson) Did you see what they got when

25 they -- when they left?

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1 A They came back with -- with, I guess,
2 the -- well, they came back with the gun.
3 Q Okay. You said "I guess." Did you ever see
4 the gun?
5 A Yes, ma'am.
6 Q Okay. Well, when did you see it?
7 A When they came back.
8 Q What did they do with it?
9 A Tried to give it to George, and George Brown
10 was, like, I don't want that. It's yours now.
11 Q Who tried to give it to George?
12 A Deleston.
13 Q And George says what?
14 A I don't want that. It's yours now.
15 Q How was it -- you said that while -- while
16 Julius and Bryan and Ryan were gone, you didn't have any
17 idea that something had happened?
18 A No, ma'am.
19 Q What was it that gave you the clue that
20 something bad had happened?
21 A The way they had looked when they came back.
22 Q Okay. And then you saw them arguing?
23 A Yes, ma'am.
24 Q Do you know what happened with the gun? You
25 said he tried to give it to George. What happened with

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1 it?

2 A He wrapped it up and put it in, like, the
3 little closet in the back, like, the little storage
4 closet.

5 Q Do you know what it was wrapped up in?

6 A I think a towel.

7 Q And do you know what he -- what happened with
8 the purse and the gun -- with the purse and
9 Ryan Deleston's clothes?

10 A Got burn.

11 Q Who burned them?

12 A Ryan Deleston.

13 Q Do you know when he burned them?

14 A Right after he put the gun up.

15 Q But that night?

16 A Yes, ma'am, that night.

17 Q Do you know where he burned it?

18 A In the back of my sister's house,
19 Stephanie Brown.

20 Q On Cashew Street?

21 A On Cashew Street.

22 Q Did you go back there and watch him burn them?

23 A No, ma'am.

24 Q Well, how did you know that he did that?

25 A I could have smelled the smoke.

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1 Q Did you see him walk back there?

2 A Yes, ma'am.

3 Q What did it look like he had in his hands?

4 A Clothes.

5 Q All right. Rayshawn, we're going to play
6 State's Exhibit No. 1, which is going to be on that
7 screen behind you and that screen there.

8 MS. WILSON: Go to 3:44.

9 (Ms. Wilson speaks with Mr. DuRant off the
10 record.)

11 Q (By Ms. Wilson) While they're getting that set
12 up, when you mentioned that -- I think you said they
13 went to get the gun or they left, who left that night
14 after the robbery at -- at Joe's?

15 A Ryan Deleston and Julius Brown.

16 Q So at first, all three left?

17 A Yes, ma'am.

18 Q All three came back?

19 A Yes, ma'am.

20 Q Then later, just two left?

21 A Yes, ma'am.

22 Q And that was Ryan and Julius?

23 A Yes, ma'am.

24 Q Okay. And I think you said that the gun was
25 put in that storage room on the carport; right?

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1 A Yes, ma'am.

2 Q Who was the one who wrapped it up and put it
3 back there?

4 A Ryan.

5 Q After he tried to give it to who?

6 A George.

7 Q Do you know if, at some point later, Ryan did
8 give the gun to George?

9 A No, ma'am.

10 Q You never saw it again?

11 A No, ma'am.

12 MS. WILSON: All right. If we -- your Honor,
13 if we can play State's 1 at 3:44.

14 (Video is played.)

15 Q (By Ms. Wilson) Do you know who that is?

16 A Yes, ma'am.

17 Q Who is it?

18 A Julius Brown.

19 Q How do you know?

20 A I can tell by his walk --

21 Q You remember seeing him that night?

22 A -- and what he had on that night.

23 Q And what he had on that night?

24 A Yes, ma'am.

25 MS. WILSON: Okay. If we could go to 3:56:18.

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1 Q (By Ms. Wilson) And while they're getting
2 there --
3 MS. WILSON: Can you pause it?
4 Q (By Ms. Wilson) Do you know who that is?
5 A Yes, ma'am.
6 Q How do you know?
7 A Because I saw him before he went.
8 Q And? And what?
9 A What -- the clothes that he have on.
10 Q Let me ask you this: Between Julius and
11 Bryan Rivers and Ryan Deleston, who's bigger?
12 A Ryan Deleston.
13 Q And how tall are you?
14 A Five-two.
15 Q So you recognize those clothes?
16 A Yes, ma'am.
17 Q Now, after the gun was put up --
18 MS. WILSON: You can take that down.
19 Q (By Ms. Wilson) After the gun was put up and
20 everybody was still back at Cashew, did you stay there
21 for the rest of the night?
22 A Yes, ma'am.
23 Q Why?
24 A Because I asked George Brown to take me home,
25 but he says his taillights was out, and he didn't want

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1 to ride with his taillights being out.
2 Q Now, his taillights -- he didn't mind riding
3 downtown, did he?
4 A No, ma'am.
5 Q Was his taillights out then?
6 A No, ma'am.
7 Q Do you know when they went out?
8 A I guess when we get back to Cashew.
9 Q All right. So you wanted to go home. Why were
10 you ready to go home?
11 A Because of what had happened downtown.
12 Q What was going on with your girlfriend?
13 A And she was calling me and telling me that I
14 have to come home because she have to work in the
15 morning.
16 Q She wasn't too happy?
17 A Yes, ma'am.
18 Q Still not too happy?
19 A Yes, ma'am.
20 Q How late did you stay there?
21 A Until about 6:00.
22 Q 6:00 in the morning?
23 A Yes, ma'am.
24 Q Do you know how late everybody else stayed
25 there?

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1 A Until about 6:00.
2 Q How did Julius get home?
3 A George Brown.
4 Q And you got home with George?
5 A Yes, ma'am.
6 Q And Bryan Rivers, did he stay?
7 A Yes, ma'am.
8 Q Because that's where he was staying; right?
9 A Yes, ma'am.
10 (Ms. Wilson speaks with Mr. DuRant off the
11 record.)
12 MS. WILSON: Beg the Court's indulgence.
13 THE COURT: Take your time.
14 (Respite.)
15 (Ms. Wilson speaks with Mr. DuRant off the
16 record.)
17 MS. WILSON: That's all I have, your Honor.
18 THE COURT: Mr. Pennington.
19 MR. PENNINGTON: Please the Court, your
20 Honor.
21 **CROSS-EXAMINATION**
22 **BY MR. PENNINGTON:**
23 Q Mr. Milligan you go by the nickname "Duke"?
24 A Yes, sir.
25 Q You also go by -- people sometimes call you

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1 Rayshawn Brown, don't they?
2 A No, sir.
3 Q You're never referred to as Rayshawn
4 Brown Milligan?
5 A Yeah. That's my name.
6 Q Okay. So your name is Rayshawn Brown
7 Milligan?
8 A Yes, sir.
9 Q So you're a Brown?
10 A Yes, ma'am -- I mean, yes, sir.
11 Q That's all right. Is your mother Dolores?
12 A Yes, ma'am -- I mean, yes, sir.
13 Q That's all right. You're doing fine. Relax.
14 And so Dolores is Julius' momma?
15 A Yes, sir.
16 Q Julius is your brother, your older brother?
17 A Yes, sir.
18 Q Stephanie's your sister?
19 A Yes, sir.
20 Q She lives on Cashew?
21 A Yes, sir.
22 Q And you have children yourself, don't you?
23 A Yes, sir.
24 Q With April?
25 A Yes, sir.

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1 Q How many children do you have?
2 A Two.
3 Q You love those kids?
4 A Yes, sir.
5 Q You look after those kids sometimes, don't you?
6 A Yes, sir.
7 Q You're concerned about their future?
8 A Yes, sir.
9 Q Now, the story that you're giving us today was
10 not the story that you gave the day after your brother
11 was arrested. Do you remember being called in on August
12 the 1st of 2012 to the police station?
13 A Yes, sir.
14 Q And you talked to these detectives, these two
15 men sitting right here, Detective Burckhardt and
16 Detective Osborne from the City police?
17 A Yes, sir.
18 Q And you had a lengthy conversation with them,
19 didn't you?
20 A Yes, sir.
21 Q In that lengthy conversation, you told them
22 that at 3:00 a.m. you were drunk; right?
23 A Yes, sir.
24 Q And that when they asked you specifically to
25 focus in on key issues, like, did you see a gun, you

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1 told them that you didn't see a gun that night?

2 A Yes, sir.

3 Q And, in fact, you didn't hear any discussion
4 about a lick?

5 A Yes, sir.

6 Q You told the Detectives explicitly that you
7 couldn't remember the clothes that Ryan had on; right?

8 A Yes, sir.

9 Q And you told them, though, that you thought
10 that Bryan Rivers had on dark clothes, didn't you?

11 A No, sir.

12 Q Didn't -- on tape, you remember this -- in this
13 interview room that you were with the detectives?

14 A Yeah.

15 Q Don't you recall telling them, when they said,
16 Well, try to think. What kind of clothes did
17 Bryan Rivers have on? And you said, I think he had on
18 dark clothes?

19 A I don't really remember that.
20 (Respite.)

21 Q (By Mr. Pennington) It came after the part
22 where you were telling them that Julius was your
23 brother, and they told you that they were looking to see
24 if you had information that could help Julius?

25 A Yeah.

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1 Q And what you saw that night could be very
2 important?

3 A Yeah.

4 Q And that you kept trying to say, Look, I can't
5 remember anything that was said, but that you thought
6 Bryan had on dark clothes?

7 A I don't remember. I don't remember --

8 Q You don't remember?

9 A -- saying that.

10 Q Do you recall describing that Julius was
11 wearing slippers?

12 A Yeah.

13 Q So you remember that?

14 A Yeah.

15 Q You remember telling them that Julius had on a
16 white tank top?

17 A Yes, sir.

18 Q And you remember telling them that you're not
19 too sure about what Ryan was wearing?

20 A Yes, sir.

21 Q So you remember telling them that, but you
22 don't remember telling them that he had on dark clothes?

23 A Yes, sir.

24 Q Let's turn to -- you told the detectives
25 that -- well, Detective Osborne, who's the dark-haired

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1 man with glasses seated at counsel table, do you
2 remember him during that interview? He was there in
3 that interview?

4 A Yes, sir.

5 Q Do you remember how he kept asking you over and
6 over, if you didn't hear Ryan and Bryan talking about
7 their plans that night, and you said, No, I couldn't
8 remember?

9 A Yes, sir.

10 Q And he kept suggesting to you that it really
11 might help your brother, Julius, if you heard more of
12 what was said?

13 A Yes, sir.

14 Q Now, the one thing that we all agree on is that
15 you did get in the truck to go downtown, down to ride
16 around and look for a lick; right?

17 A I didn't -- I wasn't trying to go -- at a
18 friend's house downtown.

19 Q And you were in the truck where -- when George
20 started talking about doing a lick?

21 A Yes, sir.

22 Q But you honestly, honestly didn't have anything
23 to do with that?

24 A Yes, sir.

25 Q You were sort of just along for the ride, but

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1 you weren't down with any robbery?

2 A Yes, sir.

3 Q And you've not been charged with any robbery?

4 A Yes, sir.

5 Q But what you do know is that on that same night
6 at Marley Lion's murder, that Bryan Rivers got out and
7 came back with a purse?

8 A Yes, sir.

9 Q And that, after that, as y'all are headed back
10 to West Ashley, you pick up Ryan Deleston at the
11 McDonald's in the Crosstown?

12 A Yes, sir.

13 Q Now, you have a relationship with Bryan Rivers,
14 don't you?

15 A I met him in school.

16 Q I'm not talking about back then. I'm talking
17 about now.

18 A Like friend?

19 Q Yeah.

20 A Yeah.

21 Q Okay. And you've visited him at the county
22 jail, haven't you?

23 A Yes, sir.

24 Q Since he's been locked up on this charge?

25 A Yes, sir.

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1 Q You went out of your way and went up and saw
2 him in April; right?
3 A Yes, sir.
4 Q April of this year, 2013?
5 A Yes, sir.
6 Q While this case was pending?
7 A Yes, sir.
8 MR. PENNINGTON: Court's indulgence a moment,
9 your Honor.
10 THE COURT: Take all your time.
11 (Respite.)
12 MR. PENNINGTON: I have no further questions,
13 your Honor.
14 THE COURT: Ms. Wilson.
15 **REDIRECT EXAMINATION**
16 **BY MS. WILSON:**
17 Q Rayshawn, Mr. Pennington asked you about your
18 interview with Detective Osborne after your brother was
19 arrested. Do you recall what you told the officers that
20 day about a fire or about things being burned?
21 A Yes, ma'am.
22 Q What did you tell him that day on the --
23 MR. PENNINGTON: Objection, your Honor. This
24 is beyond the scope of my Cross and -- beyond the scope.
25 THE COURT: Let her finish her question and

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1 then -- go ahead.

2 MS. WILSON: I'm asking what he was -- what he
3 told them on the day after he was arrested.
4 Mr. Pennington asked about that interview.

5 MR. PENNINGTON: But nothing about any kind of
6 fire or any --

7 MS. WILSON: Exactly.

8 THE COURT: All right. Counsel, do not argue
9 with each other. Overruled.

10 You may ask that question. You may need to
11 repeat it for the witness.

12 Q (By Ms. Wilson) On August 1st, the day after
13 Julius, your brother, was arrested, what did you tell
14 Detective Osborne about a fire?

15 A I was burning a box.

16 Q That you were?

17 A Yeah.

18 Q And what else? What else was burned?

19 A Leaves.

20 Q Okay.

21 A And, like, a cloth.

22 Q And what?

23 A Like, a cloth.

24 Q Okay. What about Ryan Deleston? What did you
25 tell them he burned?

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1 A They didn't ask me about what Ryan Deleston
2 burned.

3 Q And you mentioned that on -- Mr. Pennington
4 asked you about Deleston -- I'm sorry -- about your
5 visiting Julius and Bryan in jail. And you have,
6 haven't you?

7 A Yes, ma'am.

8 Q And you've visited Ryan Deleston in jail too?

9 A Yes, ma'am.

10 Q All three of them?

11 A Yes, ma'am.

12 Q Your friends?

13 A Yes, ma'am.

14 Q And back on August the 1st of 2012, when you
15 were interviewed by the police, who were you trying to
16 protect?

17 A All of them.

18 Q In what way? How were you going to protect
19 them?

20 A By not telling what I really knew.

21 Q Okay. And so when you talked to the police,
22 you held back?

23 A Yes, ma'am.

24 Q You told them about a fire?

25 A Yes, ma'am.

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1 Q And what about the gun? Do you remember
2 talking with them about the gun?
3 A Yes, ma'am.
4 Q And what did you tell them about the gun?
5 A I told that I saw that gun before.
6 Q And who had it when you saw it before? Who did
7 you tell?
8 A George Brown.
9 Q Okay. How about Ryan Deleston? Do you
10 remember telling them that you had seen him with it?
11 A Yes, ma'am.
12 Q All right. I'm going to show you State's 23.
13 Do you recognize that?
14 A Yes, ma'am.
15 Q Whose is that?
16 A George Brown's.
17 Q Who had it the last time you saw it?
18 A Ryan Deleston.
19 Q Okay. And when you last saw Ryan Deleston that
20 morning, did he have on a shirt?
21 A Yes, ma'am.
22 Q Okay. What color shirt?
23 A White.
24 Q What had happened to his other shirt?
25 A He burned it.

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1 Q And did you tell the police that on August the
2 1st?

3 A No, ma'am.

4 MS. WILSON: Beg the Court's indulgence.

5 THE COURT: Take your time.

6 Q (By Ms. Wilson) Rayshawn, do you deny telling
7 the police that you saw Ryan burning some clothes in the
8 backyard? Do you deny that?

9 MR. PENNINGTON: Objection; leading, your
10 Honor.

11 THE COURT: Overruled. You may answer.

12 A No, ma'am.

13 Q (By Ms. Wilson) You don't deny it?

14 A No, ma'am. I did told that he did burn his
15 clothes.

16 Q Okay. Well, you just told the jury a couple of
17 times that you didn't. I'm just trying to get it
18 straight. Do you recall telling them that?

19 A Yes, ma'am.

20 Q And when was it that you knew that he burned
21 some clothes?

22 A Later on that night.

23 Q Okay. What did he use to burn it?

24 A Lighter fluid.

25 Q You sound like you're asking. I don't know. I

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1 wasn't there.

2 A I'm telling you lighter fluid.

3 Q How do you know he used lighter fluid?

4 A I saw him got it.

5 Q And where did he go to do this?

6 A In the back of Stephanie Brown's house.

7 Q And you told them that on August 1st? Do you
8 remember?

9 A Yes, ma'am.

10 Q Are you sure? If you're not sure, it's okay.
11 I'm just --

12 A Not really.

13 Q You don't remember?

14 A No, ma'am.

15 Q Well, would it refresh your recollection to see
16 a summary of what you told them? Would that help you
17 remember if you saw a summary?

18 A Yes, ma'am.

19 (Document is handed to the witness.)

20 Q (By Ms. Wilson) Do you read okay? Can you
21 read?

22 A Yes, ma'am. Read it?

23 Q Okay. No, don't read it. I just need to know
24 if that refreshes your recollection of what you told the
25 police on August 1st, 2012.

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1 (Respite.)
2 A Yeah.
3 Q (By Ms. Wilson) Does that help you remember?
4 A Yes, ma'am.
5 Q Well, what did you tell them back
6 then?
7 A That Ryan was burning something in the
8 backyard.
9 MS. WILSON: That's all, your Honor.
10 THE COURT: Mr. Pennington.
11 **RECROSS-EXAMINATION**
12 **BY MR. PENNINGTON:**
13 Q And in that same moment, in that same
14 conversation, when you described that Ryan was burning
15 something in the back with sticks and leaves, you told
16 them he would -- you told the officers that he was not
17 wearing a shirt, didn't you?
18 A Yes, sir.
19 Q Now, in terms of this visit, isn't it the truth
20 that you've only had one visit with my client,
21 Ryan Deleston, at the county jail, and that was last
22 week, wasn't it?
23 A Yes, sir.
24 Q Because you took Stephanie Brown up there?
25 A Yes, sir.

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1 MR. PENNINGTON: That's all I have.

2 THE COURT: Is this witness excused?

3 MS. WILSON: Yes, ma'am.

4 THE COURT: Any objection?

5 MR. PENNINGTON: No objection, your Honor.

6 THE COURT: Mr. Milligan, you may step down.

7 You're free to remain with us, but you're also free to
8 leave.

9 Call your next witness. We're going to go
10 until about 12:30.

11 (The witness steps down from the stand.)

12 MS. WILSON: I didn't hear you. I'm sorry.

13 THE COURT: Call your next witness. We're
14 going to go to about 12:30.

15 MR. DURANT: State would call Frank Middleton.

16 MR. PENNINGTON: Your Honor, while waiting for
17 Mr. Middleton, I'll renew the objection that I imposed
18 earlier this morning in regards to the portion of the
19 testimony that we discussed this morning.

20 THE COURT: And for the record, my ruling has
21 not changed.

22 Mr. Middleton, please come forward and be
23 sworn.

24 MR. BUTLER: Your Honor, may we approach?

25 THE COURT: You may.

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1 (Mr. Butler, Mr. Pennington, and Mr. DuRant
2 approach the bench for a discussion off the record.)
3 THE COURT: You may continue.
4 MR. DURANT: Thank you, your Honor.
5 THE DEPUTY CLERK OF COURT: Please place your
6 left hand here and raise your right hand.
7 (The oath is administered by the Deputy Clerk
8 of Court, and the answers as follows:)
9 THE WITNESS: I do.
10 THE DEPUTY CLERK OF COURT: Thank you, sir.
11 You may take your seat. Sir, if you would, please,
12 spell [sic] your first and last name, spelling your last
13 for the record, once you sit.
14 THE WITNESS: Spell both?
15 THE DEPUTY CLERK OF COURT: Yes, sir. That
16 would be fine.
17 THE WITNESS: My name is Frank Middleton,
18 F-r-a-n-k M-i-d-d-l-e-t-o-n.
19 THE COURT: Mr. DuRant, your witness.
20 MR. DURANT: Thank you, your Honor.
21 **FRANK MIDDLETON,**
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 MR. DURANT:

3 Q Mr. Middleton, I know that you don't speak very
4 loudly, so I would ask you to use that microphone as
5 much as possible so the jury can hear you. Okay, sir?

6 A Yes, sir.

7 Q Thank you.

8 Could you tell our jury how old you are?

9 A I am 65 years old.

10 Q And what part of town are you from?

11 A West Ashley, Ardmore subdivision.

12 Q And how long have you been living in the
13 Ardmore area?

14 A From '69 until now.

15 Q That's 1969?

16 A Yes, sir.

17 Q So a good long time?

18 A Yes, sir.

19 Q And do you have a lengthy criminal record?

20 A Yes, sir, I do.

21 Q How many times have you been in prison?

22 A Three or four times.

23 Q Okay.

24 A Four. About four times.

25 Q Four times?

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1 A Yes, sir.

2 Q And do you know what periods of time those

3 cover?

4 A Sir?

5 Q Do you know what periods of time those cover?

6 A Yes, sir. They cover from '66, '74, '95, and

7 2001 to 2008.

8 Q Okay. So you've been in -- you've been in

9 prison four different times?

10 A Yes, sir, I have.

11 Q And the last time you were in prison was for a

12 conviction in 2001 for a strong-arm robbery; is that

13 correct?

14 A That is correct.

15 Q And how long did you do on that?

16 A Seven years and seven months.

17 Q You were actually sentenced to 15. You

18 actually served seven years and seven months; is that

19 correct?

20 A That's correct.

21 Q And where are you living right now?

22 A I've been being in Charleston County Detention

23 Center. I was living in Ardmore on Balsam Street.

24 Q But right now you're living in the Charleston

25 County Detention Center; correct?

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1 A That's correct.

2 Q And when did you go to the Charleston County
3 Detention Center?

4 A April 29th of 2012.

5 Q Okay. And why are you in the Charleston County
6 Detention Center?

7 A I am accused of committing an armed robbery.

8 Q And have you been in jail continuously since
9 April the 29th of 2012; is that correct?

10 A That's correct, sir.

11 Q So you were not even out on the street at the
12 time that Marley Lion was killed, which is the subject
13 of this trial?

14 A That's correct, sir.

15 Q And you have not been privy to any of the
16 street talk that goes on about who did what; is that
17 correct?

18 A That is correct.

19 Q Now, what did we promise you for you to testify
20 today?

21 A When I spoke with you, sir, you told me that
22 you could not make any deals or promises to me for
23 anything.

24 Q And -- but you're hoping for something, aren't
25 you?

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1 A Yes, sir, I am.

2 Q And what are you hoping for?

3 A Whatever leniency that I might can get.

4 Q Okay. Well, let's go back a little bit. You

5 said you went to prison in 2001. When did you get out

6 of prison?

7 A December the -- no. December 31st of 2008.

8 Q Okay. When you got out of prison in December

9 of 2008, where did you go to live?

10 A [REDACTED] Balsam Street in Ardmore.

11 Q Okay. And so you lived there between 2008 and

12 when you went back to prison in April of 2012; is that

13 correct?

14 A Yes, sir.

15 Q Okay. While you were living in Ardmore, did

16 you get to know this fellow here?

17 A Yes, sir, I do.

18 Q Who is that?

19 A That's Ryan.

20 Q Okay. And where did you -- when did you first

21 meet Ryan?

22 A I believe it was either in the late part of

23 2011, somewhere around 2012.

24 Q And that was when you were living in Ardmore;

25 is that correct?

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1 A That is correct.

2 Q And how often would you see Mr. Deleston during
3 the time you were living in Ardmore?

4 A Off and on for the whole week. We might run
5 into each other. Sometimes we might have conversation
6 with each other.

7 Q Did y'all hang out together on occasion?

8 A Somewhat, we did.

9 Q And how often would y'all hang out together on
10 a weekly basis?

11 A I'd say probably two or three days a week at
12 night.

13 Q Okay. And even when the times that you weren't
14 really hanging out together, how often would you see
15 him?

16 A We'd just see each other in passing about seven
17 days week, because where he lives, I would have to pass
18 where he live at.

19 Q Okay. So you basically saw him every day?

20 A That is correct.

21 Q Do you know his girlfriend?

22 A Yes, sir, I do.

23 Q And who was his girlfriend?

24 A Stephanie Brown.

25 Q And do you know where they lived on Cashew

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1 Street?

2 A I was locked up when they lived in Cashew

3 Street.

4 Q Okay. They lived at a different place before

5 they moved to Cashew; is that right?

6 A Yes, sir.

7 Q Okay. Now, I want to jump ahead to July the

8 4th of 2012. Do you recall meeting with a

9 Detective Kosarko with the Charleston Police Department?

10 A Yes, sir, I recall that.

11 Q Did you ask to see him, or did he come to see

12 you?

13 A I did not ask to see him, nor I did not call,

14 nor did I write to see him.

15 Q So how did it come that you came to see him

16 that day? How did he get in touch with you?

17 A He came to the county jail and asked to speak

18 with me, and I sat and talked with him. And he said

19 that the community that I lived in told him that I could

20 help.

21 MR. PENNINGTON: Objection, your Honor, to what

22 the community had told him. Hearsay.

23 THE COURT: Sustained. Rephrase your question.

24 Q (By Mr. DuRant) Did he come to you because you

25 were from Ardmore?

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1 A That's correct, sir.

2 Q Okay. Where did you talk to him at?

3 A I talked with him at the Charleston County
4 Detention Center. And about two hours later, he sent
5 and had me brought to the police department.

6 Q Okay. And when you got down to the police
7 department, what did he show you?

8 A He showed me the video of the shooting and
9 asked if I could identify the person in the video.

10 Q Okay. And how many times did he allow you to
11 see the video?

12 A I saw the video probably about five times. But
13 on my second showing of the video, I told him who I
14 thought the person was in the shooting. But to be sure
15 I relooked at it several times.

16 Q Okay. And after looking at it several times,
17 were you sure of who it was you saw on that video?

18 MR. PENNINGTON: Objection to leading, your
19 Honor.

20 THE COURT: Overruled.

21 A Yes, sir. I was -- I told him who I thought it
22 was.

23 Q (By Mr. DuRant) And who did you tell him you
24 thought it was?

25 A I told him that that was Ryan. And I also

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1 stated to him that. . .

2 Q And why did you -- why did you say that you
3 thought it was Ryan?

4 A Because of his briskness of how he approached
5 the vehicle and the stance that he had --

6 Q Okay.

7 A -- used.

8 MR. DURANT: Can we play 3:56?

9 And, Mr. Middleton, you can look on either one
10 of these screens right here.

11 And if you would, just stop it when he
12 approaches the car, Detective Osborne. And let it play
13 until he gets up to the car.

14 Q (By Mr. DuRant) Okay.

15 A Here, right there.

16 Q And that person on the right-hand side
17 approaching that white SUV, that's the person -- who did
18 you tell Detective Kosarko that was?

19 A I told them it was Ryan. I know I said that --
20 that's a guy that I know lived in Ardmore by the name of
21 Ryan.

22 Q Okay. Did you know his last name at the time?

23 A I know his last name, but I can't pronounce his
24 last name.

25 Q Okay. And did he end up showing you a picture?

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1 A Yes, sir, he did.
2 Q And you identified that picture as being the
3 Ryan you were talking about?
4 A Yes, sir.
5 Q And the picture you identified was a picture of
6 this man; is that correct?
7 A Yes, sir.
8 Q You know Bryan Rivers?
9 A Yes, sir, I do.
10 Q Okay. And how do you know Bryan Rivers?
11 A He and I were roommates for a short period at
12 the correctional institution.
13 Q Okay. And what is Bryan Rivers' nickname?
14 What does he go by?
15 A Little B.
16 Q And any possibility that could be Bryan Rivers?
17 A No, sir.
18 Q Why not?
19 A This person -- the person in the showing of the
20 video at the time was larger than Bryan and a little
21 taller than Bryan is.
22 Q Bryan is kind of skinny, isn't he?
23 A Yes, sir.
24 MR. PENNINGTON: Leading, your Honor. I
25 object.

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1 THE COURT: Watch your leading questions.
2 MR. DURANT: I have no further questions.
3 THE COURT: Thank you.
4 MR. DURANT: Hold on.
5 (Mr. DuRant speaks with Ms. Wilson off the
6 record.)
7 THE COURT: Anything further, Mr. DuRant?
8 MR. DURANT: No, ma'am.
9 THE COURT: Mr. Pennington?
10 MR. PENNINGTON: Please the Court.

CROSS-EXAMINATION

12 **BY MR. PENNINGTON:**

13 Q Mr. Middleton, you're not saying that -- when
14 you look at that video, that you can recognize the
15 person's face, are you?

16 A I'm saying that --

17 Q Just answer the question. Are you saying you
18 can recognize the person's face, yes or no?

19 A No, sir.

20 Q And you're not saying that you've recognized
21 the man's clothing in the video either, do you -- are
22 you?

23 A No, sir.

24 Q Now, when you told Detective Kosarko -- that
25 conversation was on July the 4th of last year, wasn't

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1 it?

2 A Yes, sir.

3 Q And he didn't then immediately then go swear
4 out a warrant and pick up Ryan Deleston on July 4th, did
5 he?

6 A I have no idea what he did, sir.

7 Q Well, the one thing that is certain is that
8 you're Bryan Rivers' roommate from prison?

9 A That is correct, sir.

10 Q Little B?

11 A Yes, sir.

12 Q Another thing that's certain is that on June
13 the 15th and 16th, you were locked up in the county
14 jail?

15 A Yes, sir, I was.

16 Q So you wouldn't have had an opportunity to see
17 Bryan Rivers rob a couple downtown that night?

18 A I have no idea, no knowledge of it.

19 Q So you wouldn't have had an opportunity to see
20 Bryan Rivers holding that same gun that night, robbing
21 someone; correct?

22 A That is correct.

23 Q Another thing that's certain is that when you
24 were in the community -- well, you said that you had
25 gotten to know Ryan from about November or December of

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1 2011 until you went to jail in April; right?

2 A Yes, sir.

3 Q And, of course, during that period of time, you

4 were also getting high; right?

5 A Yes, sir.

6 Q You smoked rock?

7 A Yes, sir, I did.

8 Q Now, the Solicitor raised this question about,

9 that you didn't -- there was no street talk that you

10 -- that came to your attention. Sir, you knew full

11 well, from the news media, that there had been this

12 slaying of Marley Lion, didn't you?

13 A Yes, sir, I did.

14 Q You knew that the police were eager to make an

15 arrest in that case?

16 A I didn't have no idea of them being eager to

17 make the arrest -- an arrest. I knew they were working

18 the case.

19 Q And that the community was eager to see the

20 person that did it caught; right?

21 A That I can't answer what the community would

22 say, sir.

23 Q You're not sure if the police were eager to

24 make an arrest?

25 A All I know is what I was told. I was asked if

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1 I could identify the person on the video.

2 Q Well, you remember that night, when
3 Detective Kosarko got you down there on July 4th. He
4 started out the conversation saying, You know the
5 gravity of this case, don't you?

6 A I don't recall all that, sir.

7 Q And that we have a grieving family here.
8 Remember him saying that?

9 A I believe I did hear him say that.

10 Q And when you went through the video, you
11 started naming people that you thought was the guy in
12 the white T-shirt that was walking by 11 minutes before,
13 didn't you?

14 A Yes, sir, I did.

15 Q You named a fellow named Big Boy, who's a
16 friend of Rafael Simmons?

17 A Yes, sir.

18 Q And that was wrong, wasn't it?

19 A Yes, sir.

20 Q And you named a guy -- you said that there was
21 a fellow about 30 years old, a black man from Melrose
22 who could have been that fellow walking by?

23 A That's correct, sir.

24 Q And that was wrong, wasn't it?

25 A Yes, sir, it was.

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1 Q Those identifications were incorrect?

2 A Yes, sir.

3 Q Turning to -- let's clarify a little bit.

4 You're not just in jail for armed robbery at this time,

5 are you?

6 A I'm charged with armed robbery, a gun by a

7 convicted felon, and eight shells of live ammo.

8 Q Okay. And you're also charged with the offense

9 of possessing a firearm during the course of a violent

10 crime?

11 A Yes, sir.

12 Q So on the armed robbery alone, you said that

13 you were -- you're presently 64 years old?

14 A Sixty-five, sir.

15 Q Now 65. You were 64 then, when you met with

16 the officer?

17 A That is correct.

18 Q And you were looking at an offense that, if

19 you're convicted of strong-arm robbery, you well know

20 that that's a minimum mandatory ten years; correct?

21 A I don't know roughly it's a mandatory of ten or

22 not. I know I can get some time for it.

23 Q You know you can get up to 30 years, don't you?

24 A Probably so.

25 Q And then on the possession of a firearm with a

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1 violent crime, that's a five-year consecutive, isn't it?

2 A I ain't never been in this situation to know
3 what that would carry.

4 Q Well, you know that you're in jail under a
5 quarter of a million dollar bond?

6 A Yes, sir.

7 Q And that you couldn't get out on bond?

8 A That is correct.

9 Q And it sure would be nice if the solicitors
10 could knock down that charge of armed robbery to
11 something like the strong-arm that you did before,
12 wouldn't it?

13 A It would be.

14 Q Because you know from your prior strong-arm
15 that that's not an 85 percent. That's a 65 percent.
16 You did seven years, seven months on your previous 15
17 for strong-arm; correct?

18 A Correct.

19 Q So there's a difference between a strong-arm
20 robbery conviction, because a strong-arm robbery is a
21 maximum of 15, isn't it?

22 A That is correct, sir.

23 Q And there's no 85 percent requirement, is
24 there?

25 A No, sir, there's not.

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1 Q And so at that end of your interview with
2 Detective Kosarko, after you had provided this
3 information, do you remember looking up at him and
4 saying, quote, What you going to try to do for me now?

5 A I don't remember asking him for anything,
6 because when we got to the station, he made it plain to
7 me that he could not promise me anything, but he would
8 appreciate my help. That -- I had no -- what was said
9 when we went down there.

10 Q You remember that when you asked him, What you
11 going to do for me? He said, Well, I can't promise you
12 anything right now, but I'll relay what you've done and
13 see what we'll do later?

14 A Sir, I do not remember asking him to do
15 anything for me. He made it plain, at the Charleston
16 County Detention Center on our first meeting, that he
17 could not do anything for me, not promise me anything,
18 but my help would be appreciated.

19 Q Well, you recall that he showed you the video
20 at 9:22 in the evening and that that went from about
21 9:22 to about 9:35 p.m.?

22 A Yes, sir, because he was talking to me and
23 telling me how much the family was grieving and that he
24 believed that I could help them. And I told him,
25 like -- like I said, I told him who I thought it was on

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1 the video. And to be honest with you, there's no doubt
2 in my mind that that's not Ryan.

3 Q Okay. I realize you're here to answer
4 questions, but you have to wait for me to ask. Okay?

5 A Yes, sir.

6 Q My question is: Do you recall, at 9:49, when
7 you asked the question, What are you going to try to do
8 for me? The answer you got was: I'll talk to my
9 sergeant. I don't know. That's something that we can
10 talk about down the road. That goes from the supervisor
11 to the Solicitor's Office? Do you recall that?

12 A I remember asking him if he could help me with
13 my bond, but, like I said, he had already told me he
14 couldn't make any promises to me as far as my charge
15 was.

16 Q Okay. So y'all were really just talking about
17 your bond at that time?

18 A We were not discussing my bond the whole time.
19 I think --

20 Q I'm talking about at the end, specifically at
21 the end.

22 A At the end -- at the end, I recall asking him
23 if he could help me get a bond reduction because I had
24 not been to a preliminary hearing yet on my charge. He
25 told me that he would have to speak with his supervisor

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1 on that. I do not recall asking him what he could do
2 for me on my charge.

3 Q Okay. Well, I didn't ask you about your
4 charge. I just asked you, Did you ask the question:
5 What are you going to try to do for me, question mark?

6 A Well, that's what I'm telling you. I don't
7 recall asking him that.

8 Q All right.

9 A I asked him what he could do for me on my --

10 Q But you're not saying you didn't say that,
11 because y'all did have a conversation about your bond?

12 A That's the only thing I talked to him about.

13 Q Because you were interested in getting your
14 bond cut?

15 A Yes, sir, I was.

16 Q You wanted to get out of jail before this case
17 went to court?

18 A Well, I mean, whether this came to court or
19 not, I was just trying to get out of jail.

20 Q That's what I'm saying. You'd like to get out
21 on bond?

22 A Yes, sir.

23 MR. PENNINGTON: Court's indulgence, your
24 Honor.

25 THE COURT: Take your time.

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1 (Mr. Pennington speaks with Mr. Kozelski off
2 the record.)

3 MR. PENNINGTON: Nothing further, your Honor.
4 Thank you.

5 THE COURT: Mr. DuRant.

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

7 THE COURT: Take your time.

8 **REDIRECT EXAMINATION**

9 **BY MR. DURANT:**

10 Q What did Detective Kosarko promise you?

11 A He didn't promise me anything.

12 Q What have we promised you?

13 A Y'all did not promise me anything.

14 Q And what did you tell Detective Kosarko on July
15 the 4th as to who the shooter was?

16 A I told him that it was Ryan. And, like I said,
17 I made it plain to him that there was no doubt in my
18 mind that person -- Deleston --

19 Q Who did you tell this jury today was the
20 shooter?

21 MR. PENNINGTON: Your Honor, this is not even
22 responsive to a question. This is just a soliloquy.

23 MR. DURANT: It is very responsive.

24 THE COURT: Over -- Counsel, you do not need to
25 argue with each other.

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1 MR. DURANT: Yes, ma'am.
2 THE COURT: Thank you.
3 Please rephrase your question so that he may
4 respond.
5 MR. DURANT: I have no further questions, your
6 Honor.
7 THE COURT: Mr. Pennington.
8 MR. PENNINGTON: No further questions. Thank
9 you.
10 THE COURT: Ladies and gentlemen, we have ended
11 exactly at 12:30 by my clock. That was a little --
12 little different. Please take your notepads with you.
13 The bailiffs will collect them. And it's an appropriate
14 time for lunch. Please be back at the jury room -- at
15 the jury room by 1:45, 1:45. Please remember all my
16 admonitions. Have a wonderful lunch.
17 Please rise for the jury.
18 Mr. Middleton, stay seated.
19 (The jury exits the courtroom at 12:30 p.m.)
20 THE COURT: Thank you. Be seated.
21 Is Mr. Middleton excused and free to be
22 returned back to his --
23 MR. DURANT: Yes. Yes, ma'am. We would ask
24 that he be so excused.
25 MR. PENNINGTON: No objection, your Honor.

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1 THE COURT: And, Mr. Butler, any objection?
2 MR. BUTLER: (Moves head from side to side.)
3 THE COURT: Mr. Middleton, thank you. You are
4 excused.
5 (The witness steps down from the stand.)
6 MS. WILSON: You asked about time, to let you
7 know kind of where we are. Do you want to talk about
8 that at the bench?
9 THE COURT: Yes, yes.
10 All right. We're down until 1:45.
11 Please approach. We're at ease. Thank you.
12 (A lunch break is taken from 12:32 p.m. until
13 1:50 p.m.; at which time, the proceedings continue as
14 follows:)
15 THE COURT: Thank you. Be seated.
16 All right. All the jurors have arrived.
17 Anything before we bring in the jury?
18 MS. WILSON: No, ma'am.
19 THE COURT: Mr. Pennington?
20 MR. PENNINGTON: The only thing that I will
21 mention is a housekeeping or warning, I suppose, to the
22 Court, as far as *in limine* matters. And this is going
23 to relate to whichever -- oh, I'm sorry.
24 MS. WILSON: It's all right.
25 MR. PENNINGTON: -- on Bobby Warthaw, it has

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1 occurred to me that we have what would be a 404(b) issue
2 again pop up, in that I take it that he is going to talk
3 about plans by Mr. Deleston to either swap the gun so he
4 can go do a robbery or looking for bullets to go do a
5 robbery in a conversation that's described to
6 Detective Burckhardt on June 27th. And I have to make
7 an objection, in that it's highly prejudicial. It
8 doesn't tend to prove anything particular about the
9 facts of this case. What it does do is, it's a
10 propensity-type evidence, I suppose, just general
11 propensity, although it's not particularly relevant to
12 show in this case the intent. The crime has already
13 occurred. So it's kind of a character attack as opposed
14 to a -- something that would show his intent.

15 So to give the Court a little bit of chance to
16 understand what I'm talking about, the conversation that
17 occurred would have been within 11 days after the
18 incident. Because 11 days after the incident,
19 Mr. Warthaw, the witness I'm referring to, contacts and
20 has a conversation with Detective Burckhardt, where he
21 describes that he has heard and talked to Mr. Deleston,
22 and Mr. Deleston is looking to sell a gun cheap. And
23 the -- in the alternative, he's looking to acquire
24 bullets or swap a gun that has no bullets, no
25 ammunition, for a gun that does have ammunition for the

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1 purpose of going and doing some unknown robbery, as I
2 understand the --

3 THE COURT: All right. Whose witness is that?

4 MR. DURANT: That's my witness, your Honor.

5 THE COURT: Mr. DuRant.

6 MR. DURANT: I can tell you what I intend to go
7 on to on that particular issue is, how did you find out
8 Deleston was trying to sell a gun? I believe the answer
9 to that he learned from Cuz, Theran Taylor. How did you
10 get in touch with Deleston? I think his Cuz gave him
11 Deleston's number or gave Deleston his number, and he
12 talked to him on the phone. I'm not going to ask him
13 anything about what was said in that conversation. The
14 only thing I'm going to ask is, do you remember how much
15 he wanted for the gun?

16 MR. PENNINGTON: Then we don't have a problem.

17 THE COURT: All right.

18 MR. DURANT: And that's all --

19 THE COURT: All right. There are no issues.

20 Counsel, please, we are running on a short time
21 frame. And I thought I made it clear, but let me just
22 make it clear again. If you have matters that need to
23 be taken up outside the jury, if you would have let me
24 know -- the jury is here, and we could have taken this
25 up. Now we're running into the time.

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1 Let's bring in the jury.
2 MR. PENNINGTON: That was my fault, your Honor.
3 I apologize.
4 THE COURT: Thank you.
5 Ms. Wilson, we may go until 6:00 today. Does
6 that work and accommodate your schedule? I know we had
7 talked about --
8 MS. WILSON: I believe it would.
9 THE COURT: -- the ending time. So I had
10 indicated we would stop at 5:00, but it is --
11 (The jury is escorted into the courtroom at
12 1:55 p.m.)
13 THE BAILIFF: All jurors present, your
14 Honor.
15 THE COURT: Thank you. Be seated.
16 All right. Call your next witness.
17 MR. DURANT: State would call Craig Kosarko.
18 (The oath is administered by the Deputy Clerk
19 of Court, and the witness answers as follows:)
20 THE WITNESS: I do.
21 THE DEPUTY CLERK OF COURT: Thank you, sir.
22 Take your seat. Sir, if you would, please, state
23 your first and last name, spelling your last for the
24 record.
25 THE WITNESS: First is Craig. Last name is

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1 Kosarko, K-o-s-a-r-k-o.

2 CRAIG KOSARKO,

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 Officer Kosarko, could you tell the jury where
10 you're employed?

11 A Charleston City Police Department.

12 Q And I believe you are now a sergeant in the
13 patrol division; is that correct?

14 A Yes, sir.

15 Q What were you doing back in June of 2012?

16 A I was assigned as a detective with the violent
17 crime unit up in central investigations.

18 Q In that capacity, did you have the occasion to
19 come into contact with the Defendant Ryan Deleston --

20 A Yes, sir.

21 Q -- on June 21st of 2012?

22 A Yes, sir.

23 Q Where?

24 A At [REDACTED] Cashew Street.

25 Q That's in Ardmore subdivision?

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1 A Yes, sir.

2 Q And I believe that was Mr. Deleston's
3 residence; is that correct?

4 A Correct.

5 Q Why? Why did you go talk to him?

6 A The -- the night of the shooting, Officer Vance
7 saw Mr. Deleston in the immediate area moments after the
8 shooting, and he hadn't been interviewed at that point.
9 So I was tasked by Sergeant Osborne to interview him.

10 Q And I believe you met him on -- originally met
11 with Stephanie Brown; is that correct?

12 A Yes, sir.

13 Q And how did you come to talk to Mr. Deleston?

14 A Mr. Deleston was inside. I asked Stephanie to
15 see if he'd come out and talk to me, and he did.

16 Q Okay. And this is about, roughly, a week after
17 the shooting, a little bit less?

18 A Yes, sir.

19 Q And what did you ask him about what he was
20 doing at the home the night of the shooting?

21 A I asked him what he was doing that night. He
22 said that he was at [REDACTED] Cashew Street with Julius Brown,
23 George Brown, and Bryan. He didn't know Bryan's last
24 name at the time. He said that later in the evening,
25 himself and -- he --

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1 Q This is the same Bryan that was actually living
2 there?

3 A Correct.

4 Q Okay. So he said what now?

5 A He said that later on that evening, he and
6 Julius decided to go to the gas station at Wappoo and
7 17. They wanted to ride bikes across 17. And so they
8 ended up walking to Dolores Brown's house, which is
9 located on White Oak -- it's about a block away -- to
10 get those bikes.

11 On the way over there, they -- Bryan -- or Ryan
12 heard the gunshots. They didn't think much of it
13 because they said -- he said that they were used to
14 hearing gunshots in that area, so they continued
15 walking. Once they arrived at Dolores' house, he told
16 me that an officer shined a flashlight on him, but they
17 were not stopped. The officers were with two other
18 parties at that time. They continued on. They got on
19 the bikes. They rode around a Chick-fil-A parking lot
20 and then returned back to Dolores', dropped off the
21 bikes, and walked back to Cashew Street.

22 Q Okay. So in essence, he denied having any
23 knowledge of the shooting; is that correct?

24 A That's correct.

25 Q And where was he when the shooting occurred, he

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1 said?

2 A He said he was walking on the street.

3 Q And who was he with?

4 A Julius Brown.

5 Q And -- let me see how I can do this. Can you

6 see this? And this is the State's Exhibit Number -- can

7 you get that number?

8 A Four.

9 Q State's Exhibit Number 4. Do you recognize

10 this aerial photograph?

11 A Yes.

12 Q This has previously been testified as Cashew

13 Street and this being Mr. Deleston's house; is that

14 correct?

15 A Yes.

16 Q What road is this?

17 A White Oak.

18 Q And do you know where on White Oak that

19 Dolores Brown lives, the house he was going to see?

20 A If I remember correctly, it's this house here.

21 Q Right there at the intersection of --

22 A White Oak and Evergreen.

23 Q -- White Oak and Evergreen?

24 A Yes.

25 Q Okay. So who was at the house initially?

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1 A It was Ryan, Julius Brown, as well as
2 George Brown and Bryan.

3 Q And where were Ryan -- I mean Bryan, Little B,
4 and George Brown? Where were they when he said he left
5 to go to his mother's house on White Oak?

6 A They remained at Cashew Street.

7 Q Okay. And where was he when he said that
8 they -- he and Julius heard the shots?

9 A They were somewhere on the street walking
10 towards Dolores', somewhere around --

11 Q In this one block right here?

12 A Right.

13 Q Okay. Now, moving on ahead just a little bit
14 to July 4 of 2012, what did you do relative to this case
15 on that date?

16 A I was working the weekends or the holiday
17 detective duty. I was tasked by Sergeant Osborne to
18 pick up Frank Middleton from the county jail.

19 Q And why were you tasked to pick up
20 Frank Middleton from the county jail?

21 A Well, at that time, with the case being
22 relatively new still, we're still looking for any leads
23 that were out there. Sergeant Osborne had a hunch that
24 the -- due to Frank's long ties -- long-term connection
25 with Ardmore, that he may know something or may have an

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1 idea of what was going on. So I went up and picked him
2 up.

3 Q Okay. And where did you take him?

4 A Back to the headquarters.

5 Q Now, he was in jail at that time, obviously; is
6 that correct?

7 A Yes, sir.

8 Q Do you know whether or not he was in jail at
9 the time that Marley Lion was murdered?

10 A He was.

11 Q And when you took him downtown, did you have
12 the occasion to show him any video?

13 A I did.

14 Q And what did you show him a video of?

15 A I showed him, initially, the video of the
16 person, the white shirt, walking across the parking lot.
17 After I showed him that, I showed him the video of the
18 actual shooting that took place.

19 Q Do you recall how many people that he said
20 could have been the guy in the white shirt?

21 A Three, maybe four.

22 Q Okay. How many people did he say were the one
23 that went to the car and shot?

24 A One.

25 Q And who was that person?

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1 A Ryan Deleston.

2 Q Would you please answer any questions that
3 Defense counsel may have for you?

4 A Yes, sir.

5 THE COURT: Mr. Pennington.

6 MR. PENNINGTON: Thank you, your Honor.

7 **CROSS-EXAMINATION**

8 **BY MR. PENNINGTON:**

9 Q Detective Kosarko, do you recall that toward
10 the end of that meeting you had with Frank Middleton on
11 July 4th in the evening --

12 A Uh-huh.

13 Q -- when he turned to you and said, quote: What
14 you going to try to do for me?

15 A I do.

16 Q Okay. He was looking for some sort of legal
17 help, either help with his bond or maybe with his
18 charges?

19 A Yes, sir.

20 Q Let's go back to the conversation that you
21 described with Ryan Deleston back on -- the June the
22 21st. This was a few days after the 16th. You're over
23 on Cashew. He was inside. You were talking with
24 Stephanie Brown; correct?

25 A Correct.

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1 Q He comes outside. It's a voluntary
2 conversation; correct?

3 A Correct.

4 Q And in that conversation, is it possible that
5 he said that actually he was on the porch of Cashew when
6 he heard the gunshots?

7 A He may have at the time, but I'm not sure.

8 Q Okay. Now, in terms of the overcall context of
9 how an investigation is done in this case, is it fair to
10 say that this homicide created a lot of attention and a
11 lot of work for the detective division at Charleston
12 police?

13 A Yes, sir.

14 Q And do you recall in the days immediately after
15 the shooting, that, in fact, there was a lot of press
16 attention to the fact that appeared this innocent victim
17 had been murdered at Famous Joe's?

18 A Yes.

19 Q And, in fact, there was even, I believe, the
20 chief of police and the mayor called for people to come
21 forward and provide information; do you recall that?

22 A I do.

23 Q There was talk of rewards, rewards for any
24 information that -- reliable information that leads to
25 an arrest; do you recall that?

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1 A Yes.

2 Q And that's part of the crime stoppers
3 program?

4 A Correct.

5 Q And you recall that, even in the community,
6 Representative Chip Limehouse and others were raising
7 money to add to the reward so that there could be added
8 incentive for people to come forward with information in
9 this case?

10 A Yeah. I don't recall that, but -- if that's
11 the case.

12 Q Okay. All right. Now, you've described that
13 you got tasked by -- it was Detective Osborne who asked
14 you to go and talk with Mr. Middleton and bring him in
15 the station; right?

16 A Yes, sir.

17 Q But before July the 4th, the name of
18 Ryan Deleston had come up in your investigation, hadn't
19 it?

20 A I believe so, yes.

21 Q And that came from an individual who -- well,
22 let me back up.

23 You as detectives work as a team. Y'all
24 exchange information, don't you?

25 A We do.

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1 Q And in this case, Detective Osborne and
2 Detective Burckhardt had a number of people that were
3 out doing field interviews and then you would exchange
4 what you got; right?

5 A Correct.

6 Q So around June the 27th, days before the
7 Frank Middleton interview, the city police, at least,
8 had been contacted by a Bobby Warthaw; right?

9 A Correct.

10 Q And Bobby Warthaw had said that he had been
11 contacted or had field contact with a guy named
12 Ryan Deleston, who wanted to sell a weapon, a pistol;
13 right?

14 A Okay.

15 Q Are you not sure about when that occurred?

16 A Well, I wasn't -- I wasn't part of that whole
17 scenario where Sergeant Osborne was dealing with
18 Bobby Warthaw.

19 Q Okay. Do y'all create reports that you can use
20 to refresh your memory about how the development of a
21 investigation goes?

22 A Yes.

23 Q Would that be helpful to you to perhaps help
24 you recall, before it turned into July, in June, when
25 this tip came in?

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1 A Sure.

2 (Document is handed to the witness.)

3 Q (By Mr. Pennington) Without describing it,
4 just giving you a chance to look at this document and
5 flip through and particularly with regard to where you
6 get to this paragraph and then on to this paragraph.
7 And once you've had a chance to review it, just let me
8 know.

9 (Respite.)

10 MR. DURANT: Counsel, do you mind letting me
11 know what he's looking at?

12 MR. PENNINGTON: Oh, I'm sorry. Certainly.
13 You can hold onto it. I'll just tell him.

14 (Mr. Pennington speaks with Mr. DuRant off the
15 record.)

16 THE WITNESS: Okay.

17 Q (By Mr. Pennington) All right. Does that
18 refresh you that around the end of June, June 27th,
19 before you met with Frank Middleton, that there was
20 somebody out in the community named Bobby Warthaw who
21 had let the police know that there was a Ryan Deleston
22 looking to sell a pistol?

23 A Yes.

24 Q And that really got the attention of this
25 investigation, didn't it?

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1 A It did.

2 Q So that information was at least known to

3 Bobby Warthaw at that time out in the community?

4 A Uh-huh.

5 Q Okay. And the reason that you understood that

6 it was important to have contact with Frank Middleton

7 was because he was someone that was -- had been involved

8 in the Melrose -- I mean -- Melrose -- the Ardmore

9 community for so long?

10 A Correct.

11 Q Knew lots of people?

12 A Yes.

13 Q Presumably would perhaps have his ear to the

14 ground, might have heard something?

15 A Exactly.

16 Q Even though he's in jail, he would have friends

17 that might have heard something?

18 A Perhaps.

19 MR. PENNINGTON: Court's indulgence, your

20 Honor.

21 THE COURT: Take your time.

22 (Mr. Pennington speaks with Ms. Kozelski off

23 the record.)

24 MR. PENNINGTON: Thank you. I have no further

25 questions.

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1 MR. DURANT: I have just one on Redirect.

2 REDIRECT EXAMINATION

3 BY MR. DURANT:

4 Q Is there any question that Mr. Middleton
5 was not out in the community at the time this thing
6 occurred?

7 A That's correct. He was in jail.

8 Q Mr. Warthaw wasn't in jail, was he?

9 A Correct.

10 MR. DURANT: Thank you.

11 THE COURT: Recross?

12 MR. PENNINGTON: No Recross, your Honor. Thank
13 you.

14 THE COURT: Is this witness excused?

15 MR. PENNINGTON: No objection.

16 MR. DURANT: No objection from us, your Honor.

17 THE COURT: You may step down. You are free to
18 go, but you may stay with us. Thank you.

19 THE WITNESS: Thank you.

20 (The witness steps down from the stand.)

21 THE COURT: Call your next witness.

22 MR. DURANT: State would call Rene Charles.

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

25 THE WITNESS: Yes, sir.

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1 THE DEPUTY CLERK OF COURT: Sir, if you would,
2 please, state your first and last name, spelling your
3 last for the record.

4 THE WITNESS: Okay. First name is Rene, last
5 name Charles, C-h-a-r-l-e-s.

6 RENE CHARLES,
7 having been first duly sworn by the Deputy Clerk of
8 Court to tell the truth, the whole truth, and nothing
9 but the truth, was examined and testified upon his oath
10 as follows:

11 DIRECT EXAMINATION

12 BY MR. DURANT:

13 Q Good afternoon, Mr. Charles.

14 A Yes, sir.

15 Q Where are you employed?

16 A I was born in the West Indies.

17 Q And where are you employed, sir?

18 A I'm employed with the City of Charleston Police
19 Department.

20 Q And what capacity are you employed by the City
21 of Charleston Police Department?

22 A I am a crime scene investigator.

23 Q And how long have you been doing that for the
24 Charleston Police Department?

25 A Fifteen years.

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1 Q And as a crime scene investigator for the
2 Charleston Police Department, did you have an
3 opportunity to participate or respond to the shooting
4 which occurred in the parking lot of 1662 Savannah
5 Highway on June 16th of 2012?

6 A Yes, sir, I did.

7 Q And what time did you arrive on the scene, sir?

8 A I arrived on the scene at 4:35 a.m., in the
9 morning.

10 Q A.m. or p.m.?

11 A A.m.

12 Q And upon arriving at the scene, who briefed you
13 on what had happened, what had taken place?

14 A Officer Robert Deal briefed me about the
15 shooting.

16 Q What did you observe upon arriving on the
17 scene?

18 A Upon arrival of the scene, I observed the
19 victim's car in the parking lot and the scene was
20 secured. And also, there were several CPD officers on
21 the scene.

22 Q And was the victim still on the scene when you
23 arrived?

24 A No, sir, he was not.

25 Q He had already been transported?

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1 A Yes, sir. Charleston County EMS transported
2 him.
3 Q Who did you notify?
4 A I notified my crime scene supervisor about the
5 shooting. That's --
6 Q And who was that?
7 A That's Officer Jennifer Wooley.
8 Q And did she respond as well?
9 A Yes, sir, she did.
10 Q And what did she do at the scene?
11 A She assist with the processing, with the
12 photographing, measurements.
13 Q And where was the victim's car located in the
14 parking lot?
15 A The victim's car was located in the parking lot
16 between the Famous Joe building and the Mantek building,
17 under the light pole.
18 Q And what was the condition of that vehicle?
19 A The condition of the vehicle, I observed one
20 bullet hole on the driver's side door frame and also the
21 rear --
22 Q At the top or the bottom of the car?
23 A The bottom of the car.
24 Q Okay.
25 A And also the rear driver's side door window was

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1 shattered.

2 Q Shattered?

3 A Broken glasses.

4 Q Okay. Any blood apparent?

5 A Yes, sir. I also observed a bloodstain on the
6 exterior driver rear side door just above the rear
7 driver.

8 Q And how about on the inside of the car? What
9 did you observe inside the car?

10 A Yes, sir. I also observed bloodstain on
11 the -- the back seat and also on the pillow.

12 Q And some broken glass, as well, I believe?

13 A Yes, sir. Broken glass, yes, sir.

14 Q What did you find on the ground immediately
15 adjacent to the car?

16 A On the ground, I -- I observed a black T-shirt,
17 the victim's cell phone, and then --

18 Q Both of those items were determined to belong
19 to the victim Marley Lion; is that correct?

20 A Yes, sir, that is correct.

21 Q And what else was located in the parking lot
22 that night?

23 A In the parking lot, I also located six fired
24 shell casings.

25 (Document is handed to the witness.)

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1 Q (By Mr. DuRant) Mr. Charles, I hand you what's
2 previously been marked as State's Exhibits 9, 10, 11,
3 12, 13, and 14, and ask if you recognize those items?
4 MR. PENNINGTON: If you can go by number,
5 Bruce.
6 MR. DURANT: You want to do them individually?
7 MR. PENNINGTON: Doesn't matter. Just refer to
8 them by number so we know what is going on.
9 MR. DURANT: Okay. Number 9 through 13.
10 THE WITNESS: Yes, sir.
11 MR. DURANT: Excuse me, 9 through 14.
12 Q (By Mr. DuRant) What are those?
13 A Yes, I know.
14 Q What are those?
15 A They are fired shell casings -- nine fired
16 shells -- nine-millimeter fired shell casings.
17 Q And what is the headstamp on those shell
18 casings?
19 A The headstamps, it's a nine-millimeters fired
20 shell casing -- excuse me -- SNB BRC.
21 Q Okay. Do you know what the BRC means?
22 A Yeah. BRC, it's a make, Browning purchase.
23 It's a make, company make.
24 Q Now, you obviously -- did you, obviously,
25 collected those into evidence; is that correct?

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1 A Yes, sir, I did.

2 Q And do those shell casings appear to be in
3 substantially the same condition now as when you
4 collected them on the June 16th of 2012?

5 A Yes, sir, they are.

6 MR. DURANT: Your Honor, at this time, we'd
7 offer 9 through 14 into evidence, if there's no
8 objection.

9 THE COURT: Any objection?

10 MR. PENNINGTON: No objection.

11 THE COURT: State's 9 through 14 into evidence
12 without objection.

13 (State's Exhibit Nos. 9 through 14 are admitted
14 into evidence.)

15 Q (By Mr. DuRant) What was eventually done with
16 those shell casings after you collected them?

17 A The fired shell casings were collected and then
18 submitted to Crime Scene Investigator Mary Phillips for
19 latents processing.

20 Q For what purpose?

21 A For latents processing.

22 Q For?

23 A For latents processing.

24 Q When you say "latents processing," are you
25 talking about seeing if there are any fingerprints on

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1 it?

2 A Yes, sir.

3 Q Okay. And then where did they go eventually?

4 Where were they analyzed?

5 A They end up going to SLED for further

6 investigation, further processing.

7 MR. DURANT: Okay. Your Honor, I think at this

8 time we would offer State's Exhibit Number 8, I believe

9 without objection.

10 MR. PENNINGTON: No objection, your Honor.

11 THE COURT: No objection?

12 MR. PENNINGTON: That's correct, your Honor.

13 THE COURT: State's 8 into evidence without

14 objection.

15 (State's Exhibit No. 8 is admitted into

16 evidence.)

17 Q (By Mr. DuRant) And, Mr. Charles, if you

18 would, what is State's Exhibit Number 8?

19 A That's the crime scene diagram.

20 Q Mr. Charles, this is a laser pointer. If you

21 need to refer to State's Exhibit Number 8, the red one

22 is the laser pointer. Got it?

23 A Yes, sir.

24 Q You had indicated that measurements were taken

25 that night. Are those measurements used in, basically,

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1 making these -- this crime scene diagram?

2 A Yes, sir, that is correct.

3 Q And, if you would, what is that marked as 101
4 on the crime -- first of all, where's the victim's car?

5 A The victim's car was located right there
6 between the Famous Joe's building and the Mantek
7 building.

8 Q Okay.

9 A The light pole was right -- that location right
10 there.

11 Q Okay. And what is number 101 on that diagram?

12 A Number 101, that's the victim's cell phone
13 right there.

14 Q And how about 102?

15 A 102, it's the victim's black T-shirt right
16 there.

17 Q And then how about 103, -4, -5, -6, -7, and -8?
18 What are all of those?

19 A 103, 104, 105, 106, 107, 108, they are all
20 fired shell casings, nine-millimeter fired shell
21 casings.

22 (Document is shown to Defense counsel.)

23 MR. DURANT: Your Honor, at this time -- excuse
24 the broken numbers. A couple of these have already been
25 put in. We would offer State's 37, 39, 40, 41, 42, 44,

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1 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 56, 57, I

2 believe without objection.

3 MR. PENNINGTON: That is correct, your Honor.

4 THE COURT: All right. Mr. Pennington, I can't
5 see you around that board.

6 MR. PENNINGTON: There are no objections, your
7 Honor.

8 THE COURT: No objection. The numbers listed,
9 State's 37, 39, 40, 41, 42, 44, 45, 46, 47, 48, 49, 50,
10 51, 52, 53, 54, 56, and 57 are in evidence without
11 objection.

12 (State's Exhibit Nos. 37, 39, 40, 41, 42, 44,
13 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 56, and 57 are
14 admitted into evidence.)

15 THE COURT: You may continue.

16 MR. DURANT: Thank you, your Honor.

17 Q (By Mr. DuRant) In starting with --

18 MS. WILSON: Hold up one second. Hold up.
19 Hold up.

20 (Ms. Wilson speaks with Mr. DuRant off the
21 record.)

22 Q (By Mr. DuRant) Can you see the screen over
23 here, sir?

24 A Yes, sir.

25 Q If you would -- we're just going to go through

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1 these State's Exhibits. If you would --

2 THE COURT: Mr. DuRant, could you please move
3 the placard?

4 MR. DURANT: Pardon me?

5 THE COURT: Can you please move your --

6 MR. DURANT: I can't -- do you mind if I move
7 it down, because I may need him to refer to --

8 THE COURT: All right. Thank you.

9 MR. DURANT: -- to the -- is that okay?

10 THE COURT: That's fine.

11 MR. DURANT: Thank you.

12 Could you put that in the slide show?

13 Q (By Mr. DuRant) And we'll just go through
14 these very quickly. What does that depict, sir? This
15 is State's Exhibit Number 37, I believe.

16 A That's the victim's vehicle parked in front of
17 Mantek building.

18 Q That's the Mantek building back behind?

19 A Yes.

20 Q Is that correct?

21 A Yes, sir.

22 Q Okay. And there appears to be a white fence
23 over there to the left. Do you know what's over behind
24 that fence?

25 A Behind the white fence, I believe it's a --

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1 it's a residence behind it.

2 Q Okay.

3 A The white fence.

4 Q Do you know if they're using that residence for

5 a day care or not?

6 A I'm not sure on that, sir.

7 Q Okay. Thirty-eight?

8 A That's the Famous Joe building. That's the

9 parking lot.

10 Q So that would be the view kind of -- Famous

11 Joe's is to the left; is that correct?

12 A Yes, sir. That's Famous Joe on the left, and

13 that's Mantek on the right.

14 Q Okay. Thirty-nine?

15 A That's the -- the front of Famous Joe building,

16 and that's the victim's vehicle parked underneath the

17 SCE&G light pole.

18 Q Forward it.

19 A That's the photographs of the area -- the

20 parking lot area showing the Famous Joe building, the

21 victim's vehicle.

22 Q And that would be kind of on the Yew Street

23 side looking back -- looking back toward the direction

24 of Five Guys?

25 A Five Guys and all the other businesses.

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1 Q Okay. The next photo, please.
2 A That's the photograph of the parking lot --
3 Q Okay.
4 A -- with the victim's vehicle parked.
5 Q Keep going, please. This would be State's --
6 A Here, that's the Mantek building on the left.
7 And that's the victim's vehicle parked. And also, you
8 can see the Famous Joe building on the -- on the
9 right-hand side.
10 Q Okay. What does that depict?
11 A That takes you to Yew Street. That's the
12 overall pictures showing direction, go towards Yew
13 Street.
14 Q That's kind of a cut-through over to Yew
15 Street?
16 A Yes, sir.
17 Q Is that kind of the view from the victim's
18 vehicle?
19 A Yes, sir, that the view from the victim's
20 vehicle.
21 Q Going towards Yew Street?
22 A Affirmative.
23 Q State's Exhibit 44?
24 A That's the victim's car. And as you can see,
25 the cell phone on the ground, the victim's black

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1 T-shirt, and also the broken rear driver's side window.

2 Q Okay. Forty-five?

3 A And that's the -- that's the close-up pictures
4 of the -- the exterior rear driver side window and also
5 the bloodstain on the -- on the door above -- over the
6 rear driver's side tire.

7 Q That's 46.

8 A That's the interior of the vehicle. And you
9 can see the pillow with the bloodstain on it.

10 Q I know it's hard to see, but you had mentioned
11 something about a -- this is going back to State's
12 Exhibit Number 45. You mentioned something about a
13 bullet hole. Can you --

14 A The bullet hole -- can I please stand?

15 Q Let me give you a pointer.

16 (Pointer is handed to the witness.)

17 A Thank you.

18 Q (By Mr. DuRant) Uh-huh.

19 A That's the location of the bullet hole right
20 underneath the exterior driver's side doorframe right
21 there.

22 Q Okay. State's Exhibit 46?

23 A That's the -- as you can see, the pillow inside
24 the vehicle on the back seat with the bloodstain. And
25 that's the --

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1 Q Shattered glass?
2 A -- broken shattered window.
3 Q Okay. Forty-seven?
4 A Forty-seven, that's the location of the shell
5 casings and also the black T-shirt -- or that's the
6 shell casing, fired shell casing, fired shell casings,
7 fired shell casings. Marked as item 107, that's fired
8 shell casings, fired shell casings.
9 Q Okay. Forty-eight?
10 A Forty-eight, that's evidence marker 1. That's
11 the cell phone, the victim's cell phone on the ground.
12 Q And that would equate to item 101 on your crime
13 scene diagram; is that correct?
14 A Yes, sir. Yes, that's correct.
15 Q Forty-nine?
16 A Forty-nine, that's the victim's T-shirt, black
17 T-shirt.
18 Q And once again, 10 -- that one corresponds with
19 102 on your crime scene diagram?
20 A 103 corresponds with 1 -- 103. That's fired
21 shell casings.
22 Q Okay. So that would be --
23 A On the crime scene diagram, that would be --
24 Q That would be this one right here; correct?
25 A Yes, sir. 103.

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1 Q Okay. Forty-nine, I believe?
2 A Forty-nine, that's one of -- that's evidence 4,
3 correspond to 104 on the crime scene diagram. That's
4 the fired shell casings.
5 Q That would be that one right there; is that
6 correct?
7 A Yes, sir.
8 Q Okay. Next one, 52?
9 A Fifty-two, it's evidence marker 5, correspond
10 to 105 in the crime scene diagram. That's a fired shell
11 casing.
12 Q Okay.
13 A 106, that's evidence marker 6, correspond to
14 106 in the crime scene diagram.
15 Q That one there?
16 A That would be fired shell casings.
17 Q Okay. And next item?
18 A Next item, it's evidence marker 7, correspond
19 to 107 in the crime scene diagram. That's also a fired
20 shell casings.
21 Q Okay. Next picture, please.
22 A Next picture, that's item 108, evidence marker
23 108. In the crime scene diagram, it's 108. It's also a
24 fired shell casings.
25 Q Okay. Next item, please.

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1 A That's the headstamps of the fired shell
2 casings, S&B nine-millimeters BRC.

3 Q And that was the same -- same headstamp on all
4 of the shell casings; is that correct?

5 A Yes, sir, they're all the same headstamps.

6 Q Thank you, sir. You may resume your seat.

7 (The witness resumes his seat.)

8 (Documents are shown to Defense counsel.)

9 MR. DURANT: Your Honor, at this time, we would
10 offer State's 69, 70, 71, 72, 73, 74, 75, and 76 into
11 evidence, I believe without objection.

12 MR. PENNINGTON: No objection, your Honor.

13 THE COURT: They are in evidence without
14 objection.

15 (State's Exhibit Nos. 69, 70, 71, 72, 73, 74,
16 75, and 76 are admitted into evidence.)

17 Q (By Mr. DuRant) And I'm going to start with a
18 couple of the photographs that are already in evidence.
19 But let me ask you this first: Also in connection with
20 this investigation, what was done with the victim's
21 vehicle after -- after you finished processing the crime
22 scene?

23 A The victim's vehicle was -- was stored to the
24 crime scene office on Wappoo Road for further
25 investigation.

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1 Q Now, moving ahead to July the 30th, did you
2 have the occasion to participate in the execution of the
3 search warrant at [REDACTED] Cashew Street in Ardmore
4 subdivision?

5 A Yes, sir, I did.

6 Q And during the execution of that warrant, did
7 you have the occasion to recover a white Nike shoe?

8 A Yes, sir, I did.

9 Q Do you recall from where?

10 A The Nike shoe was recovered at [REDACTED] Cashew
11 Street in the second bedroom floor in front of the
12 closet.

13 Q I hand you what's been marked as State's
14 Exhibit Number 20, I believe, which has been marked for
15 identification, and ask if you recognize that shoe?

16 A Yes, sir, I do.

17 Q And what is it?

18 A That's one Nike shoe. One white in color Nike
19 shoe.

20 Q Is that the shoe you collected on July 30th of
21 2012 at [REDACTED] Cashew Street?

22 A Yes, sir, it is.

23 Q And is it in substantially the same condition
24 now as when you collected it on that day?

25 A Yes, sir.

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1 MR. DURANT: Your Honor, at this time we would
2 offer State's 8, I believe, into evidence.

3 MR. PENNINGTON: No objection, your Honor.

4 THE COURT: State's 8 is already in. Are
5 you --

6 MR. DURANT: Oh. I thought it had just been
7 marked for identification before, so. . .

8 THE COURT: Are you talking -- the shoe?

9 MR. DURANT: The shoe, yes.

10 THE COURT: It's 20.

11 MR. DURANT: Oh, I'm sorry. My -- my mistake.

12 State's Exhibit 20 we would offer into
13 evidence.

14 THE COURT: And, Mr. Pennington, as to 20?

15 MR. PENNINGTON: May we have the Court's
16 indulgence.

17 THE COURT: Take your time.

18 MR. PENNINGTON: No objection, your Honor.

19 THE COURT: State's 20 into evidence without
20 objection.

21 (State's Exhibit No. 20 is admitted into
22 evidence.)

23 THE COURT: State's 8 is previously entered
24 without objection.

25 MR. DURANT: I apologize for the snafu with the

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1 numbers, Judge.

2 Q (By Mr. DuRant) What is the size of that shoe?

3 A It's a size 10, U.S. 10.

4 Q Getting back to State's 65 through 76 --

5 MR. DURANT: Can you put those up on the board?

6 Q (By Mr. DuRant) -- and just let me ask you a

7 few questions briefly about those.

8 MS. WILSON: 65 or 67?

9 MR. DURANT: Excuse me, 67.

10 Q (By Mr. DuRant) What is -- this is State's

11 Exhibit 67. What does it depict?

12 A That's the exterior of [REDACTED] Cashew. That's the

13 exterior of the residence.

14 Q And the door to the right, do you know what

15 that is?

16 A Right here?

17 Q Yes.

18 A That's the entrance of the living room area.

19 Q How about the other door to the left? Do you

20 know what that is?

21 A That's the storage room area entrance.

22 Q Storage -- utility room --

23 A Utility room.

24 Q -- or storage closet?

25 A Yes, sir.

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1 Q Okay. State's Exhibit 68?
2 A That's the kitchen table, the red hat on top of
3 the kitchen table, and that's --
4 Q And 69?
5 A That's a red hat on the kitchen table.
6 Q And 70?
7 A Still the red hat on the kitchen table.
8 Q Seventy-one?
9 A Seventy-one, that's -- that's the kitchen area.
10 That's the bleach, Pine-Sol, stove in the kitchen area.
11 Q Seventy-two?
12 A Seventy-two, that's the second bedroom. As you
13 can see, the white shoes in front of the closet.
14 Q That would be State's Exhibit -- what's now
15 been in evidence as State's Exhibit 20; is that correct?
16 A Yes, sir, that's correct.
17 Q And State's Exhibit 73?
18 A That's still a close-up of the white shoes.
19 Q Seventy-four?
20 A That's the white shoes with evidence marker
21 correspond to 106.
22 Q Seventy-five?
23 A Seventy-five, that's an envelope with
24 Mr. Ryan Deleston's name on it.
25 Q And what is the address on that envelope?

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1 A It's [REDACTED] Cashew Street.

2 Q And Number 76?

3 A That's a envelope with Mr. Ryan Deleston's name
4 on it from Roper St. Frances Hospital.

5 Q Also addressed to [REDACTED] Cashew; is that correct?

6 A Yes, [REDACTED] Cashew Street.

7 MR. DURANT: Thank you, sir. You can take your
8 seat.

9 Would you please answer any questions that
10 Mr. Pennington may have for you?

11 THE COURT: Mr. Pennington.

12 MR. PENNINGTON: Please the Court, your Honor.
13 If I may just have the Court's indulgence for just a
14 moment.

15 THE COURT: Take your time.

16 (Respite.)

17 **CROSS-EXAMINATION**

18 **BY MR. PENNINGTON:**

19 Q Officer Charles, you just finished going
20 through those photographs from [REDACTED] Cashew Street?

21 A Yes, sir.

22 Q Those photographs and that search warrant was
23 conducted on July 30th?

24 A Yes, sir, that is correct.

25 Q And so the homicide in this case was back on

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1 June the 16th?

2 A Yes, sir.

3 Q About six weeks before?

4 A Yes, sir, that's correct.

5 Q Okay. And do you know -- you work in the crime

6 scene area --

7 A Yes, sir.

8 Q -- for the city police?

9 A Yes, sir.

10 Q And so you're familiar with trying to preserve

11 items where, if there's a question about ownership,

12 things can be either swabbed or sent to SLED for DNA

13 testing?

14 A That is correct, yes, sir.

15 Q But the hat in this case was not sent for DNA

16 testing?

17 A I'm not aware of that. I wasn't asked to do

18 anything with the hat.

19 Q So it was not sent, as far as you know?

20 A As far as I know -- I don't know of -- no

21 knowledge on that.

22 Q Nor was the shoe?

23 A The shoe, as far as I know, was collected and

24 then placed into evidence.

25 Q Okay. But the shoe, as far as you know, was

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1 not sent for any kind of DNA testing?

2 A I'm not aware of that.

3 Q You're not aware that it was sent?

4 A Not aware that it was sent.

5 Q Okay. And when you went into the bedroom, the
6 second bedroom of that house, you just found the one
7 shoe sitting there?

8 A Yes, sir. It was the one shoe in the second
9 bedroom floor.

10 Q Okay. And there are other photographs that
11 were taken by the police department where the shoe is
12 actually moved to a different location, sitting up, like
13 on a table or something, but that's not where that shoe
14 was originally found. The shoe was originally found on
15 the floor by the other shoes in the photograph?

16 A Yeah. This particular shoe was found in the
17 second bedroom floor in front of the closet.

18 Q In front of a closet?

19 A Yes, sir.

20 Q It wasn't on a table?

21 A No, sir.

22 MR. PENNINGTON: May I have the Court's
23 indulgence, Judge?

24 THE COURT: Yes.

25 (Mr. Pennington speaks with Mr. DuRant off the

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1 record.)

2 MR. PENNINGTON: No further questions, your
3 Honor. Thank you.

4 THE COURT: Mr. DuRant.

5 MR. DURANT: I have nothing on Redirect, your
6 Honor.

7 THE COURT: Is this witness excused?

8 MR. PENNINGTON: No objection.

9 THE COURT: Sir, you may step down. You are
10 excused. Feel free to stay with us.

11 THE WITNESS: Thank you.

12 (The witness steps down from the stand.)

13 THE COURT: Call your next witness.

14 MR. DURANT: State would call Jeff Miller.

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

17 THE WITNESS: I do.

18 THE DEPUTY CLERK OF COURT: Thank you, sir.
19 You may take your seat. Sir, if you would, please,
20 state your first and last name, spelling your last for
21 the record.

22 THE WITNESS: Jeffery Miller, M-i-l-l-e-r.

23 **JEFFERY MILLER,**

24 having been first duly sworn by the Deputy Clerk of
25 Court to tell the truth, the whole truth, and nothing

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1 but the truth, was examined and testified upon his oath
2 as follows:

3 DIRECT EXAMINATION

4 BY MR. DURANT:

5 Q Where are you employed, Mr. Miller?

6 A Charleston Police Department.

7 Q And what do you do for the Charleston Police
8 Department?

9 A I'm a crime scene technician.

10 Q And how long have you been doing that for CPD?

11 A Crime scene, I've been 19 years.

12 Q And as a matter of fact, you've retired and
13 come back as a civilian employee; is that correct?

14 A Correct. This December I'll have a total of 28
15 years.

16 Q And in that capacity, did you have an
17 opportunity to process the car that belonged to the
18 victim, Marley Lion, in this case?

19 A Yes, I did.

20 Q And what kind of car was that?

21 A It was a Nissan.

22 Q Pathfinder?

23 A Yes.

24 Q And you processed that car on June the 16th, I
25 believe?

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1 A Correct.

2 Q Whereabouts?

3 A It's done in our bay at the crime scene office.

4 Q And prior to the processing of the victim's
5 vehicle, did you have the occasion to view the
6 surveillance video, the shooting in this case, that came
7 from the Mantek video system?

8 A Yes, I did.

9 Q And based upon your view of the video, what
10 portion of the car were you directing your attention to?

11 A The driver's side.

12 Q Now, did you attempt to take contact DNA swabs?

13 A Yes, I did.

14 Q And what is a contact DNA swab?

15 A A contact DNA swab, or it's also referred to as
16 touch DNA, is when somebody touches something, they may
17 leave behind skin cells. By you taking the swabs, we're
18 trying to lift those.

19 Q And what areas on the car did you swab?

20 A I did the door handles, and then I did one spot
21 on the driver's door.

22 Q Now, so you had five swabs altogether; is that
23 correct?

24 A Correct.

25 Q And I'm directing your attention to what is

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1 referenced in your report as reported swabs 401 and 402.
2 Where were those swabs?
3 A Those were the driver's door handle.
4 Q Okay. And how about swab 403?
5 A Those were from, I think, the passenger side
6 door handle.
7 Q Would you like to refer to your report?
8 A That was the spot on the driver's door.
9 Q Which spot on the driver's door?
10 A When I was developing the -- processing the
11 car, I saw what looked like a mark. It could have been
12 from somebody touching it or rubbing up against it. It
13 didn't look like anything like with a hand. Maybe with
14 an arm or even from clothing.
15 Q So your 401, 402, 403 -- 401 and 402 were from
16 the driver's door handle, and 403 was from the exterior
17 of the driver's door; is that correct?
18 A Yes.
19 Q And how about your 404? That came from the
20 underside of the left rear door handle; is that correct?
21 A Yes.
22 Q And 405, where did that come from?
23 A That was on the other side of the door handle.
24 Q Okay. So 404 and 405 came from the back door
25 handle. Everything else came from the driver's door;

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1 correct?

2 A Driver's door, yes.

3 Q Were those items sent to SLED for analysis?

4 A Yes, they were.

5 Q Was any DNA profile developed from your items,
6 404 or 405, from the rear door handle?

7 A No.

8 Q How about with regard to 403, the smudge you
9 think you swabbed on the driver's door, was there any
10 DNA profiled developed from that?

11 A No.

12 Q How about your 401 and 402 that came from the
13 driver's side door, the driver's door handle, what were
14 the results of that?

15 A There was a mixture of three individuals.

16 Q And who was the major contributor?

17 A A Katie Ridgway.

18 Q And who could not be ruled out as a second
19 contributor?

20 A The victim, Marley Lion.

21 Q Okay. And then there was what else there?

22 A Then there was some information about a Paige,
23 which I believe is the victim's mother.

24 Q She was excluded; is that correct?

25 A Yes.

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1 Q And do you know anything about whether there
2 was sufficient DNA for any analysis -- any further
3 analysis from these alleged --

4 MR. PENNINGTON: Objection; leading.

5 MR. DURANT: I'm sorry.

6 MR. PENNINGTON: We're now getting into a -- a
7 hearsay and sensitive issue. So I think --

8 THE COURT: Is your objection leading, hearsay?

9 MR. PENNINGTON: Both. Leading -- leading.

10 THE COURT: Rephrase that question. Thank you.

11 Q (By Mr. DuRant) What conclusion was drawn with
12 regard to the third person that was apparently in this
13 mixture?

14 A I'm not sure about that one.

15 Q Okay. Now, how about fingerprints? What
16 efforts did you to fingerprint the door?

17 A I processed the exterior of the doors.

18 Q And just briefly, how do you go about
19 recovering latent prints?

20 A Just a fingerprint brush is dipped in black
21 powder, and then it's applied to the surfaces, trying to
22 raise any ridge detail of the fingerprint.

23 Q And how many latent prints did you lift from
24 the exterior of the vehicle?

25 A A total was 15, but I got ten just from the

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1 driver's side.

2 Q And what was done with those latent lift cards
3 that you made?

4 A Those are turned over to a latent examiner.

5 Q And are you aware of whether or not those were
6 compared to our principals in the case, Ryan Deleston,
7 George Brown, Bryan Rivers, and Julius Brown?

8 A Yeah. There was a comparison request put in
9 for it.

10 Q And what was the result of that comparison?

11 A They were all negative.

12 Q Were you able to locate a bullet hole in that
13 vehicle?

14 A Yeah. There was a bullet hole in the center
15 part of the car down on the driver's side down at the
16 bottom.

17 Q What was the condition of the left rear
18 driver's side window?

19 A It was shattered. It was missing.

20 Q Did you -- could you find any locations on the
21 interior of the car which were indicative of a bullet
22 strike?

23 A No. I went through the interior of the car to
24 find no -- nothing in the seats or any of the plastic
25 indicating that a bullet had hit it.

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1 Q Were you able to recover the projectile from
2 the door -- the frame underneath the driver's side door?

3 A No. The bullet had gone actually into the
4 frame of the car, and trying to retrieve it would cause
5 considerable damage because I didn't have the tools for
6 it.

7 Q Basically, would have had to cut the car up to
8 get it out?

9 A That's correct.

10 Q And were you able to determine any kind of
11 trajectory from that shot?

12 A Yeah. Based on using trajectory rods, it
13 looked like it traveled at a 20-degree downward angle.

14 Q Did you take -- you took photographs; is that
15 correct?

16 A Yes, I did.

17 MR. DURANT: And -- your Honor, at this time,
18 we would offer State's 58 through 66, I believe without
19 objection.

20 MR. PENNINGTON: That's correct, your Honor.

21 THE COURT: State's 58 through 66 in evidence
22 without objection.

23 (State's Exhibit Nos. 58, 59, 60, 61, 62, 63,
24 64, 65, 66 are admitted into evidence.)

25 MR. DURANT: Could we have State's 58?

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1 Q (By Mr. DuRant) We'll go through these
2 briefly, Mr. Miller. If you would, just show what they
3 depict.
4 A That's the Nissan.
5 Q Do you have a pointer up there? Could you show
6 the jury the location of the bullet hole that's in the
7 frame?
8 A It's right -- right here.
9 Q Okay. State's 59, what does that depict?
10 A That's just more showing the back door and the
11 rear quarter panel of the car.
12 Q The condition of the driver's side rear window;
13 is that correct?
14 A Yes.
15 Q State's Exhibit 60?
16 A Just showing the broken glass in the car, and
17 it's a little bit of blood.
18 Q Okay. That would be which seat?
19 A That's going to be the left rear passenger
20 seat.
21 Q State's Exhibit 61?
22 A That's just showing more of the back seat.
23 Q What's that in the background there?
24 A That's a pillow.
25 Q State's Exhibit 62?

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1 A That's a photo showing the location of some of
2 the fingerprints I lifted.

3 Q That would appear to be 1, 2, 5, and 6; is that
4 correct?

5 A Yes.

6 Q And which door is that?

7 A That's the driver's door.

8 Q Okay. And the next one is State's Exhibit
9 Number 63?

10 A It still shows the fingerprint lifts and the
11 numbers on the driver's door. And then you can see one
12 of them is actually on the back door.

13 Q Okay. But right there near where the driver's
14 door comes to the back door; is that correct?

15 A Yes.

16 Q That's a new one. Seven and four are new.
17 They weren't on the other previous exhibit; correct?

18 A Right.

19 Q And then State's Exhibit 64, what does that
20 depict?

21 A That's the prints that were lifted from the
22 left rear door.

23 Q Okay. That would be 8, 9, and 10; is that
24 correct?

25 A Yes.

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1 Q I believe you previously testified that none of
2 those were linked to any of the Defendants involved in
3 this case?

4 A That's correct.

5 Q State's Exhibit 65?

6 A That's the photo showing the dowel rod in that
7 hole from the previous photo, in the direction the --

8 Q That is what we refer to as the 20 percent
9 trajectory?

10 A Yes.

11 Q And State's Exhibit 66?

12 A That's to show you the angle, that it was
13 slightly back toward the back of the car.

14 MR. DURANT: Court's indulgence?

15 THE COURT: Take your time.

16 (Mr. DuRant speaks with Ms. Wilson off the
17 record.)

18 (Document is shown to Defense counsel.)

19 Q (By Mr. DuRant) Mr. Miller, that same day,
20 July -- June 16th, did you have an opportunity to go to
21 the Medical University of South Carolina?

22 A Yes, I did.

23 Q For what purpose?

24 A To collect the items that were taken by the
25 medical examiner as evidence.

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1 Q I'm going to hand you what's previously marked
2 as State's Exhibits 15, 16, 17, 18, and 19, and ask if
3 you recognize those items?

4 (Documents are handed to the witness.)

5 A Yes, I do.

6 Q (By Mr. DuRant) What are they?

7 A These are the bullets that I picked up in
8 autopsy.

9 Q And those were the bullets that were removed
10 from whom?

11 A From the victim, Marley Lion.

12 Q By the medical examiner?

13 A Correct.

14 Q And where was the State's Exhibit 15 removed
15 from?

16 A From the lower part of his back.

17 Q State's Exhibit 15?

18 A Well, State's 15 is my number 911. I'm sorry.
19 His lateral chest wall.

20 Q State's Exhibit 16?

21 A His upper thigh.

22 Q State's Exhibit 17?

23 A His -- I don't know if I'm saying this
24 correctly. His iliac bone.

25 Q Left iliac bone?

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1 A Yes.

2 Q State's Exhibit 18?

3 A His right iliac f-o-s-s-a.

4 Q Fossa, that would be, I think.

5 How about State's Exhibit 19?

6 A That was the left perineum, lower back.

7 Q And do those projectiles appear to be in
8 substantially the same condition now as when you
9 collected them from the Medical University on
10 June 16th?

11 A Yes, they do.

12 MR. DURANT: Your Honor, at this time, we would
13 offer State's 15 through 19 into evidence, if there's no
14 objection.

15 MR. PENNINGTON: No objection, your Honor.

16 THE COURT: State's 15 through 19 into evidence
17 without objection.

18 (State's Exhibit Nos. 15, 16, 17, 18, and 19
19 are admitted into evidence.)

20 Q (By Mr. DuRant) Do you know what was done with
21 those projectiles eventually, sir?

22 A Yes. They were taken to SLED for analysis.

23 MR. DURANT: Would you please answer any
24 questions Mr. Pennington may have for you?

25 THE COURT: Mr. Pennington.

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1 MR. PENNINGTON: Thank you, your Honor.

2 CROSS-EXAMINATION

3 BY MR. PENNINGTON:

4 Q Mr. Miller, I first want us to start talking to
5 you about fingerprints for a moment. You have those
6 photographs that we were just looking at of the
7 exterior, what would be the driver's side of the Nissan,
8 where you were able to develop fingerprint evidence; is
9 that correct?

10 A Correct.

11 Q And the goal was to try to find any
12 fingerprints that would be linked to the suspects, the
13 ultimate purpose of being able to show who touched that
14 vehicle that might be linked in this case; right?

15 A Yes.

16 Q And so you were referring to the fact that they
17 had been submitted, and that another analyst in your
18 department had made comparisons with all the evidence
19 that you've collected; right?

20 A For the latent exams, yes.

21 Q For the latent exams. I'm talking about the
22 fingerprints. Latent exams are fingerprints; right?

23 A Yes.

24 Q Okay. And so there were what appears to be
25 from the driver's side exterior door, the

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1 driver's -- the exterior door of the driver, there were
2 at least four that possessed the quality and sufficient
3 detail to allow an identification to be made; correct?

4 A Yes.

5 Q And then on the rear door, there were at least
6 three lifts that were deemed to be of sufficient quality
7 and had sufficient detail to allow an identification; is
8 that correct?

9 A That's correct.

10 Q And so the examiner in your department,
11 Ms. Kerstein, did a comparison with Ryan Deleston, and
12 the result was that there was no match?

13 A That's correct, no match.

14 Q All right. There was also a comparison with
15 the other Defendants in this case, Julius Brown and
16 Bryan Rivers, and there was no match as well; correct?

17 A Correct.

18 Q So the fingerprint evidence really was a wash.
19 It didn't have any real significance?

20 A Correct.

21 Q Now, the DNA, there was a desire to see if
22 there could be any use of this new touch technology to
23 see if there could be residual cells left behind by the
24 perpetrator; right?

25 A That's correct.

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1 Q Because this new touch technology is so
2 powerful, it can take just a couple of cells and magnify
3 or amplify that so that you could get a DNA profile of
4 whoever left the cells?

5 A Yes.

6 Q And that's the purpose of doing this touch DNA
7 swab, to gather that and send it to SLED, who knows how
8 to do that kind of testing?

9 A Correct.

10 Q And in this case, of course, you used gloves,
11 because the goal here is to have it just suspect DNA.
12 So you don't want your cells to perhaps shed and be a
13 part of the examination; right?

14 A No, that's right.

15 Q And in this case, you've described that you
16 swabbed the front door handle, front and back; correct?

17 A Yeah. One sample is taken from the outside of
18 the door handle, and then the other sample is taken from
19 the underside.

20 Q You did the exact same thing again on what
21 would be the driver's side rear door handle; right?
22 Correct?

23 A Yes.

24 Q And so in the photograph, because this is a
25 Nissan Pathfinder SUV, the handle is not in the typical

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1 door handle by -- below the window, but it's actually up
2 on the side of the door up, up in the window region;
3 correct?

4 A Yes.

5 Q And then you also took a swab, a touch DNA
6 swab, at the driver's door exterior?

7 A Yes.

8 Q All right. And, obviously, you've
9 been -- you've been in touch with the SLED analyst,
10 Ms. Webb, who did that, because you were giving us some
11 of her results; right?

12 A Yes. I had a copy of the report.

13 Q Okay. And from what you learned from that
14 report -- you've given us information -- but I've asked
15 you to take another look at the chart that is attached
16 where it describes what testing was done. There's a
17 chart, looks like this, that has the profiles of
18 Mr. Lion, his mother, and Katie Ridgway that were
19 compared early on to driver's side door handle and
20 driver's side rear door handle.

21 Do you see that?

22 A Well, I have that chart, but I don't understand
23 that particular chart.

24 Q Okay. Well, what you -- what you see there, if
25 you look carefully, is that there is a profile that was

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1 developed. You described how you were reading those
2 reports, and you said that, where it says driver's side
3 door handle, there are a group of numbers all the way
4 across for that. Do you see that? Driver's side door
5 handle?

6 A Yes.

7 Q And is it fair to say that what the SLED agent
8 did is that she took the samples that you collected from
9 the top and bottom, combined them, and then developed a
10 profile of all the DNA that she found from that front
11 door handle?

12 A I'm not sure.

13 Q All right. With regard to the rear door
14 handle, there are no published numbers; correct?

15 A Correct.

16 Q And then with regard to the front door, the
17 exterior swab, there's no mention of that, is there, in
18 that chart?

19 A No.

20 Q And when you look at the summary of the report
21 that you were going through, they talk about item 3
22 being the swab of the exterior driver's door?

23 A Yes.

24 Q That, in fact, was not tested by SLED, was it?

25 MR. DURANT: I'm sorry. I didn't hear the

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1 question, Counsel.

2 Q (By Mr. Pennington) The swab of the exterior
3 driver's door was, in fact, not tested?

4 A Yeah. According to this chart, I don't see
5 three listed.

6 Q And then with regard to -- you gathered all
7 this information early on in the case. The case
8 occurred June 16th. You immediately did those swabs.
9 You didn't wait; right?

10 A You mean -- wait for what? To --

11 Q Well, when you brought the car into the bay,
12 you immediately went and did the swabs. You didn't wait
13 for days before doing the swabs?

14 A No. No. No. It was processed that day.

15 Q Yeah. The same day --

16 A Yeah.

17 Q -- which would have been June the 16th of 2012?

18 A Correct.

19 Q All right. Now, after the arrest of the -- the
20 suspects in this case, which was July 30th, sometime
21 thereafter, there were -- are buccal swabs taken from
22 each of them; correct?

23 A Yeah. I'm assuming so, yes.

24 Q A buccal swab is if you take a -- like a Q-Tip
25 or something akin to that and you rub the inside of

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1 someone's cheek --

2 A Cheek.

3 Q -- to gather what would be cells that could
4 then be submitted as a known source for developing a
5 profile of that individual; correct?

6 A Correct.

7 Q And the goal there is that you then compare
8 what would be a known sample of the suspect and compare
9 it to the profile that is already been developed on the
10 driver's side door handle?

11 A Yes.

12 Q And had they tested the exterior swab of the
13 front door, they could have made a comparison of it too?

14 A Are we referring to the one that's not
15 listed --

16 Q Right.

17 A -- the number 3?

18 Yes.

19 Q But in this case, there is no report of a test,
20 because no test was done of the suspects' DNA against
21 this -- these profiles; correct?

22 A I'm assuming that it was done. But according
23 to this chart, their names aren't listed.

24 Q Why do you assume it was done? Have you seen a
25 report that said it was done?

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1 A No. I'm just going by what's here. They're
2 not listed on this sheet.

3 Q Have you talked with Ms. Webb about that it was
4 not done?

5 A No. I don't talk to the SLED analysts about
6 the DNA.

7 Q Would it be standard -- well, let me back up.
8 Just so we know, you as -- what is your title
9 at the police crime lab or property lab?

10 A Crime scene technician.

11 Q Do you have standard reports that you use in
12 order to be able to document when new evidence comes in
13 on each case?

14 A Yes. It's all entered into a computer system.

15 Q It's a -- what's called a Charleston Police
16 Department property report?

17 A Yes, that could be it.

18 Q And it's coded by the case, and it describes
19 the nature of the evidence that -- when it's taken in?

20 A Correct.

21 Q On or about December 27th, 2012, did
22 Detective Burckhardt bring you the buccal swab of
23 Bryan Rivers?

24 A It's possible.

25 Q Would it refresh you to take a look at these

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1 kind of reports?

2 A Yes.

3 (Document is handed to the witness.)

4 A Well, according to this, Richard Burckhardt

5 collected and submitted it, and it was received by

6 Linda Wilson.

7 Q (By Mr. Pennington) Okay. That's your

8 department?

9 A Yes.

10 Q And so this is a record that would suggest that

11 there was a buccal swab taken for evidentiary purposes

12 from Bryan Rivers?

13 A Yes.

14 Q But you have no knowledge of whether it was

15 ever tested?

16 A That's correct. I don't know..

17 Q So we won't know if Bryan Rivers' profile would

18 have turned up on that door handle; correct?

19 A Correct.

20 Q And now, one of the other features about DNA

21 that's kind of important is that, while DNA can only

22 show the mathematical consistency -- let's say that I

23 left a skin cell and you had an unknown -- well, let me

24 back up.

25 Let's imagine, hypothetically, that you had an

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1 unknown and you had a profile. And then you -- it was
2 mine. And then you took my buccal swab, and you did a
3 comparison. Even if there was a perfect match, they
4 don't say that it's the same. They just say that it's
5 consistent to a very high degree of certainty based on
6 statistical analysis; right?

7 A Well, they do use the numbers, like, in the
8 millions. But I couldn't -- exactly how they word it.

9 Q Right. But the one thing that DNA -- even
10 though it cannot absolutely say with complete certainty
11 that it's the same person, one of the things that's
12 really good about DNA is that if DNA has even one
13 characteristic that's different than the unknown, it can
14 exclude someone. In other words, if the unknown DNA and
15 then you take someone else's, like mine, and I have
16 something that's uniquely different than that, that's an
17 exclusion. You can say with certainty that they don't
18 match; isn't that correct?

19 A I believe so, yes.

20 Q And so, in this case, we also don't know
21 whether or not -- had they run Ryan Deleston's DNA
22 against that door handle, whether he could have been
23 conclusively excluded from having been the persons
24 leaving that DNA? We don't know?

25 A Correct, we don't know.

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1 Q Among the things that were turned in to crime
2 scene was the video that was taken from the Mantek
3 Properties or at least a copy of the video; is that
4 correct?

5 A Yes.

6 Q And is it fair to say that part of the reason
7 that's done is to look for clues that might be contained
8 on the video?

9 A Yes.

10 Q And so if a suspect appears to be actually
11 leaning against an object, that would be a pretty good
12 reason to use the touch DNA technology to see if there
13 could be cells left behind?

14 A Yes.

15 Q And it doesn't require a whole lot of cells.
16 It can be just a couple cells that could yield a result,
17 a meaningful result?

18 A Well, I don't know what the quantity is of the
19 sample. That's totally up to a DNA analysis.

20 Q Well, what I'm saying is, using this touch
21 technology -- in the old days -- well, old days -- in
22 the '80s and '90s, you actually needed a fair amount of
23 biological material, didn't you?

24 A You needed blood.

25 Q Right. And now that's changed. Now just a

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1 couple cells is enough to get the PCR technology rolling
2 and amplify it to be able to make a meaningful
3 comparison?

4 A Correct.

5 MR. PENNINGTON: If I may just have the Court's
6 indulgence?

7 THE COURT: Take your time.

8 MR. PENNINGTON: No further questions, your
9 Honor.

10 **REDIRECT EXAMINATION**

11 **BY MR. DURANT:**

12 Q Do you have the DNA report with you, sir?

13 A Yes, I do.

14 Q May I see it?

15 (Document is handed to Mr. DuRant by the
16 witness.)

17 Q (By Mr. DuRant) You said that -- that the
18 State or SLED 3, which would be your swab of the -- the
19 smear on the driver's side door --

20 A Correct.

21 Q -- was not tested; is that correct?

22 A Well, I was looking at the chart.

23 Q What does it say on that report as to that
24 swab?

25 A On the results notes, it says that there was no

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1 human DNA detected.

2 Q So there's no human DNA detected on that swab?

3 A Right.

4 Q And it also says that there was no human DNA
5 detected from the rear door swabs; is that correct?

6 A That's items 4 and 5.

7 Q So basically, all we're talking about here is
8 the front door handle?

9 A That they did get something from, yes.

10 Q Do you have any indication that the assailant
11 touched the front door handle?

12 A No.

13 MR. DURANT: Thank you.

14 THE COURT: Mr. Pennington.

15 MR. PENNINGTON: Thank you, your Honor.

16 **RECROSS-EXAMINATION**

17 **BY MR. PENNINGTON:**

18 Q Have you actually talked to Amanda Webb at SLED
19 about her report?

20 A No.

21 Q So basically, you're just reading the report to
22 us?

23 A Yes. I was just provided a copy of it.

24 Q Would it shock you if you found out that the
25 language here that says, No human DNA was detected on

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1 item 3 is actually a reference to the fact that it was
2 not analyzed?

3 A That's something that they would have to
4 answer. I don't know.

5 MR. PENNINGTON: Okay. No further questions.

6 THE COURT: Is this witness excused? Is this
7 witness excused?

8 MR. DURANT: Yes, your Honor.

9 THE COURT: Any objection?

10 MR. PENNINGTON: No objection.

11 THE COURT: Ladies and gentlemen, it's an
12 appropriate time for us to take our mid-afternoon break.
13 Do not begin your deliberations. You may leave your
14 notepads in your chair.

15 Please rise for the jury.

16 (The jury is escorted from the courtroom at
17 3:15 p.m.)

18 THE COURT: Thank you. Be seated.

19 You are free to go.

20 THE WITNESS: Thank you.

21 (The witness steps down from the stand.)

22 THE COURT: Stay with us if you wish.

23 Anything before we take our break?

24 MR. PENNINGTON: No, your Honor.

25 THE COURT: From the State?

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1 MS. WILSON: No, ma'am.
2 MR. DURANT: No, ma'am.
3 THE COURT: All right. Just for my purposes,
4 who's our next witness?
5 MR. DURANT: I believe Richard Wiersma, your
6 Honor.
7 THE COURT: Fifteen minutes.
8 (A break is taken from 3:16 p.m. until
9 3:38 p.m., at which time the proceedings continue as
10 follows:)
11 THE COURT: All the jurors are able to stay
12 until 6:00. They're fine with that.
13 All right. Anything before we bring in the
14 jury?
15 MS. WILSON: No, ma'am.
16 MR. PENNINGTON: No, ma'am.
17 (The jury is escorted into the courtroom at
18 3:42 p.m.)
19 THE BAILIFF: Jurors are present, your Honor.
20 THE COURT: Thank you. Be seated.
21 Call your next witness.
22 MR. DURANT: The State would call
23 Richard Wiersma.
24 (The oath is administered by the Deputy Clerk
25 of Court, and the witness answers as follows:)

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1 THE WITNESS: I do.

2 THE DEPUTY CLERK OF COURT: Thank you, sir.

3 You may take your seat. Sir, if you will, please, state
4 your first and last name, spelling your last for the
5 record.

6 THE WITNESS: Richard Wiersma, W-i-e-r-s-m-a.

7 RICHARD WIERSMA,

8 having been first duly sworn by the Deputy Clerk of
9 Court to tell the truth, the whole truth, and nothing
10 but the truth, was examined and testified upon his oath
11 as follows:

12 DIRECT EXAMINATION

13 BY MR. DURANT:

14 Q Good afternoon. Could you tell our jury where
15 you're employed, sir?

16 A The City of Charleston Police Department.

17 Q And what do you do for the City of Charleston?

18 A I'm assigned with the crime scene unit.

19 Q And were you doing that same thing back in
20 2012, specifically on August 2 of 2012?

21 A Yes, I was.

22 Q In that capacity, did you have the occasion to
23 assist in serving a search warrant at [REDACTED] Cashew Street
24 on August the 2nd of 2012?

25 A Yes.

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1 Q And about what time was that, if you recall?

2 A I believe it was around 2:00 p.m.

3 Q And what was the purpose or object of that

4 search warrant?

5 A I believe detectives were looking for any

6 charred remains or evidence of a fire and any

7 accelerants that may have been used.

8 Q Okay. And were you able to discover any

9 evidence of a fire?

10 A Yes, I did.

11 Q Where?

12 A It was in the backyard of the residence behind

13 the left side of the house.

14 Q And how did you determine that there had been a

15 fire at that location?

16 A There was a -- an area of exposed dirt that was

17 surrounded by grass like the grass had been burned away.

18 And then in that dirt pile, there was charred remains of

19 items.

20 Q And what did you do with the charred remains

21 that you found?

22 A I collected them and placed them in a paper

23 bag.

24 Q Did you photograph that area also?

25 A Yes, I did.

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1 Q I hand you what's previously been marked as
2 State's Exhibit Number 32.

3 (Document is shown to the witness and to
4 Defense counsel.)

5 MR. DURANT: Your Honor, I'd offer State's 32,
6 I believe without objection.

7 THE COURT: Any objection?

8 MR. PENNINGTON: No objection, your Honor.

9 THE COURT: State's 32 into evidence without
10 objection.

11 (State's Exhibit No. 32 is admitted into
12 evidence.)

13 Q (By Mr. DuRant) And what is State's 32,
14 Mr. Wiersma?

15 A These are the charred remains that I collected
16 from the backyard.

17 Q And you -- did you take the photographs when
18 you went there as well?

19 A Yes, I did.

20 MR. DURANT: And, your Honor, at this time, we
21 would offer State's 77 through 83, I believe without
22 objection.

23 MR. PENNINGTON: That's correct.

24 THE COURT: State's 77 through 83 into evidence
25 without objection.

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1 (State's Exhibit Nos. 77, 78, 79, 80, 81, 82,
2 and 83 are admitted into evidence.)

3 MR. DURANT: And put State's 77 up, please.

4 MS. WILSON: Yep.

5 Q (By Mr. DuRant) Okay. Were you aware there
6 was another search warrant conducted at this same
7 location like two or three days previous?

8 A Yes, I was.

9 Q So this is the second time y'all went there; is
10 that correct?

11 A Yes, yes.

12 Q And what does State's 77 depict?

13 A This is a photo of the kitchen of the residence
14 on Cashew Street. It's in the corner by the sink and
15 the stove.

16 Q That's Clorox on the floor, I presume?

17 A Yes, sir, a bottle of the Clorox bleach.

18 Q State's 78?

19 A This is a photograph of one of the bedrooms in
20 the residence taken from the corner of the bedroom.
21 It's an overall picture.

22 Q Could you tell what that is on that stool
23 there?

24 A Yes. It's a -- it's a white Nike tennis shoe.

25 Q Can you tell if that's a left or a right?

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1 A I believe it's a right.

2 Q Okay. Appears to be a right.

3 State's Exhibit 20 is the left; is that
4 correct?

5 A Yes. Yes, sir.

6 Q Right in front of you?

7 A Yes, sir.

8 Q State's Exhibit Number 79?

9 A This is a photograph of the backyard of the
10 residence where the charred remains were found.

11 Q Okay. So on the other side of the house would
12 be what street?

13 A Would be Cashew Street.

14 Q So this is behind, looking back toward Cashew?

15 A Yes.

16 Q State's 80?

17 A This is another photograph of the same area,
18 just from a different angle.

19 Q Is the pointer up there, sir?

20 A Yes.

21 Q Could you point out where -- the location where
22 you collected the charred debris from?

23 A The charred debris was right in this area.

24 THE COURT: You may stand up if you need to.

25 THE WITNESS: Thank you.

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1 Q (By Mr. DuRant) State's Exhibit 81?
2 A It's a close-up of the charred area.
3 Q Eighty-two?
4 A Just another close-up.
5 Q And 83?
6 A Another close-up of the debris that was there.
7 Q Appears to be -- what does that appear to be in
8 the middle, perhaps?
9 A Yeah. Some kind of buckle or -- there's some
10 metal rings.
11 Q Okay. And did that -- this -- did that fire
12 appear to be fresh, I mean, within the last week or two?
13 A No --
14 MR. PENNINGTON: Objection, your Honor. Calls
15 for speculation.
16 THE COURT: Overruled.
17 Q (By Mr. DuRant) Did it appear to be a recent
18 fire?
19 A No, sir.
20 MR. DURANT: Your Honor, we request to pass
21 around State's Exhibit 32 to the jury.
22 THE COURT: You may -- you may approach the
23 foreperson.
24 (State's Exhibit 32 is published to the jury.)
25 THE COURT: Thank you.

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1 MR. DURANT: Can you answer any questions

2 Mr. Pennington may have for you?

3 THE WITNESS: Yes, sir.

4 THE COURT: Mr. Pennington.

5 MR. PENNINGTON: Thank you, your Honor.

6 CROSS-EXAMINATION

7 BY MR. PENNINGTON:

8 Q Officer, when you're using this term "burn
9 remains," let's make sure that we're absolutely clear.
10 We're talking about debris. We're not talking about
11 anything that would suggest that this is human remains
12 or anything like that?

13 A Correct.

14 Q It was debris of some unknown origin?

15 A Yes, sir. An object, yes.

16 Q Okay. And as far as your -- you said that it
17 did not appear to be recent. In terms of -- did you
18 conduct any kind of testing to try to date what month or
19 year that this occurred?

20 A No, sir.

21 Q And so it did not -- it did not appear to you
22 that it happened in the last, say, five to six days?

23 A It didn't appear so, no.

24 Q Okay. But it's really kind of impossible for
25 you to go back in time and say that, I know that this

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1 happened in the month of, say, July?

2 A Correct.

3 Q Or the month or June or the month of May. You
4 just don't know?

5 A No, sir.

6 Q Did you do any kind of comparison of those
7 objects to determine what those objects -- where they
8 came from?

9 A No.

10 MR. PENNINGTON: Thank you. That's all I have,
11 your Honor.

12 MR. DURANT: I just have one on Redirect.

13 **REDIRECT EXAMINATION**

14 **BY MR. DURANT:**

15 Q Are you aware of any tests that determines the
16 age of a fire?

17 A No.

18 MR. DURANT: Nothing further.

19 THE COURT: Mr. Pennington.

20 MR. PENNINGTON: No follow-up.

21 THE COURT: This witness excused, Mr. DuRant?

22 MR. DURANT: He is, your Honor.

23 MR. PENNINGTON: No objection, your Honor.

24 THE COURT: You are excused. Feel free to
25 remain with us, but you're also free to leave. Thank

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1 you.

2 (The witness steps down from the stand.)

3 THE COURT: Next witness.

4 MR. DURANT: State would call George Brown.

5 (The oath is administered by the Deputy Clerk

6 of Court, and the witness answers follows:)

7 THE WITNESS: Yes, sir.

8 THE DEPUTY CLERK OF COURT: Thank you, sir.

9 Take your seat. Sir, if you take your seat. State your
10 first and last name, spelling your last for the record.

11 THE WITNESS: George Brown, B-r-o-w-n.

12 THE COURT: Mr. DuRant.

13 MR. DURANT: Thank you, your Honor.

14 **GEORGE BROWN,**

15 having been first duly sworn by the Deputy Clerk of
16 Court to tell the truth, the whole truth, and nothing
17 but the truth, was examined and testified upon his oath
18 as follows:

19 **DIRECT EXAMINATION**

20 **BY MR. DURANT:**

21 Q Mr. Brown, how old are you?

22 A Twenty-eight years old.

23 Q How far did you go in school?

24 A Eleventh grade.

25 Q And when you were going to school, where did

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1 you go to school?
2 A West Ashley High School.
3 Q And how long has it been since you've been in
4 high school?
5 A Couple of years, since 2002.
6 Q Are you currently working?
7 A Yes, sir.
8 Q What are you doing right now?
9 A I work at Coastal Collision body shop.
10 Q And what kind of work have you done in the
11 past?
12 A Mechanic work and detailing.
13 Q What part of town are you from?
14 A The Ponderosa subdivision in West Ashley.
15 Q And where is the Ponderosa subdivision?
16 A Savannah Highway.
17 Q How far out Savannah Highway? What's it near?
18 A C. E. Williams Middle School.
19 Q So that's a good ways out; right?
20 A Yes, sir.
21 Q But you hang out a lot in Ardmore, don't you?
22 Why do you do that?
23 A Yes, sir.
24 Q Why?
25 A Just somewhere to hang out to drink.

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1 Q We'll get to that in a little bit. But who do
2 you know in Ardmore that you hang out and drink with?
3 A Bryan Rivers, Julius Brown, Rayshawn, and
4 Ryan Deleston.
5 Q Now, you've had a previous conviction for a
6 financial transaction card fraud; is that correct?
7 A Yes, sir.
8 Q That occurred in 2007?
9 A Yes, sir.
10 Q You still on probation and parole for that?
11 A No, sir.
12 Q And in this case, you were originally arrested
13 for accessory after the fact to murder; correct?
14 A Yes, sir.
15 Q And possession of a pistol with an obliterated
16 serial number?
17 A Yes, sir.
18 Q And that was related to the Marley Lion case,
19 the case we're trying here today; is that correct?
20 A Yes, sir. Yes, sir.
21 Q Those charges are still pending against you,
22 aren't they?
23 A Yes, sir.
24 Q And not only are they pending against you,
25 you've also been charged with some more offenses related

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1 to this incident, haven't you?

2 A Yes, sir.

3 Q And another incident that occurred just

4 previous to it?

5 A Yes, sir.

6 Q Do you recall what those are?

7 A Armed robbery.

8 Q Accessory before the fact to --

9 A Yes, sir. Armed robbery.

10 Q -- attempted armed robbery for Marley Lion's

11 case; correct?

12 A Yes, sir.

13 Q And you've also been arrested for accessory

14 before the fact of armed robbery --

15 A Yes, sir.

16 Q -- for the couple downtown that was robbed?

17 A Uh-huh.

18 Q We are going to talk about that a little bit.

19 more in a little bit. And all of those charges are

20 still pending against you?

21 A Yes, sir.

22 Q And you add up all those charges, it's a lot of

23 years, isn't it?

24 A Yes, sir.

25 Q Now, when you went to Ardmore, you said even

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1 though you lived in Ponderosa, you went to Ardmore a
2 good bit. Where did you generally go when you went to
3 Ardmore?

4 A On Cashew Street.

5 Q And who lived at Cashew Street?

6 A Stephanie Brown.

7 Q And who is Stephanie Brown?

8 A Julius' sister.

9 Q That would be Julius Brown?

10 A Yes, sir.

11 Q Is Stephanie the one -- is the one, I believe,
12 that's a diabetic and has sight --

13 A Yes, sir.

14 Q -- problems and a missing leg; correct?

15 A Yes, sir.

16 Q Was it unusual for y'all to hang out at her
17 house?

18 A No, sir.

19 Q Who was her boy?

20 A Ryan Deleston.

21 Q Who is Ryan Deleston?

22 A My Codefendant sitting right there.

23 Q What's he wearing?

24 A A white shirt.

25 Q Sitting at this table right here?

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1 A Yes, sir.
2 Q With a tie or without a tie?
3 A Without a tie.
4 Q Okay. And how long have you known
5 Ryan Deleston?
6 A About two months before the murder.
7 Q Now, you said you also hung out with
8 Julius Brown?
9 A Yes, sir.
10 Q And Rayshawn Miller?
11 A Yes, sir.
12 Q Who are they?
13 A Those are brothers of Stephanie Brown.
14 Q And who is older?
15 A Julius.
16 Q And which one are you closer to, Julius or
17 Rayshawn?
18 A Rayshawn.
19 Q What's Rayshawn's nickname?
20 A Duke.
21 Q And your last name is Brown, and their last
22 name is Brown. Are you related to them?
23 A No, sir.
24 Q There's no blood relationship there?
25 A No, sir.

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1 Q And when I say -- here it is.
2 Referring you to State's Exhibit 27, can you
3 see that?
4 A Yes, sir.
5 Q Can you see where Cashew Street is?
6 A Yes, sir.
7 Q And would you point out to the jury where
8 Stephanie and Ryan lived?
9 A This is a dead end there -- area.
10 Q That's a dead -- that's Evergreen and Cashew
11 going toward the parking lot?
12 A It's one house and then it's their house right
13 here.
14 Q The second house?
15 A Yes.
16 Q Not the house on the end, but the house right
17 next to it?
18 A Yes, sir.
19 Q Correct?
20 How do you know Little B?
21 A Friend of Rayshawn's. I met him when he got
22 out of prison.
23 Q And he got out of prison relatively recently?
24 A Yes, sir.
25 Q When this thing happened; right?

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1 A Yes, sir.

2 Q Had you just known him since he got out of
3 prison?

4 A Yes, sir.

5 Q So you'd only known him for a couple of weeks?

6 A Yes, sir.

7 Q Do you know where he was staying at the time?

8 A On Cashew Street.

9 Q Let's talk a little bit about Friday, June the
10 15th and going into the morning of Saturday, June the
11 16th. Where were you that night?

12 A Cashew Street.

13 Q How did you get over to Cashew Street?

14 A I drove my vehicle, a black Suburban.

15 Q And when you got over to Cashew Street that
16 night, do you recall about what time of the day it
17 was -- or the night it was when you got there?

18 A It just started getting dark. I'd say around
19 7:00, 7:30.

20 Q And who was over there when you got there?

21 A Julius Brown and Ryan -- Bryan Rivers and
22 Ryan Deleston and Rayshawn Milligan.

23 Q Okay. So Bryan Rivers was there?

24 A Yes, sir.

25 Q And?

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1 A Julius Brown.
2 Q Julius Brown.
3 A Ryan Deleston.
4 Q Ryan Deleston. And Rayshawn?
5 A Yes, sir.
6 Q How about Stephanie? Was she there?
7 A Yes. She was in the house.
8 Q And what were y'all doing?
9 A Drinking, listening to music.
10 Q And when you were drinking and listening to
11 music, were you inside or outside?
12 A Outside.
13 Q And I believe you were also smoking some weed
14 there that night?
15 A Yes, ma'am -- yes, sir.
16 Q How frequently did you hang out at Stephanie's
17 house?
18 A On a regular basis.
19 Q Now, at some point that night or early the next
20 morning, tell us about going downtown.
21 A We went downtown to a friend's house, and then
22 we talked about finding some people to rob.
23 Q And y'all were going to whose house initially?
24 A Horace Jones.
25 Q And what -- and -- but the real reason y'all

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1 were going down there was why?

2 A To rob somebody.

3 Q And who all went?

4 A Julius Brown, Bryan Rivers, Ryan Deleston,
5 Rayshawn Milligan, and me.

6 Q Everybody who was at Cashew except for
7 Stephanie; right?

8 A Yes, sir.

9 Q Where were -- how did y'all get down there?

10 A I drove my vehicle, black Suburban.

11 Q And. . .

12 MR. DURANT: Court's indulgence?

13 (Document is shown to Defense counsel.)

14 MR. DURANT: Madam Court Reporter, do you have
15 84 already in evidence?

16 THE COURT REPORTER: Yes.

17 MR. DURANT: Your Honor, at this time, I would
18 offer State's Exhibits 85, 86, and 87, I believe without
19 objection.

20 MR. PENNINGTON: That's correct, your Honor.

21 THE COURT: 85, 86, and 87 into evidence
22 without objection.

23 (State's Exhibits Nos. 85, 86, and 87 admitted
24 into evidence.)

25 Q (By Mr. DuRant) And I'd first like to show you

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1 State's Exhibits 85 -- 84 and 85, and ask if you can
2 identify -- this is State's Exhibit 84, State's Exhibit
3 85.

4 Whose vehicle is that?

5 A That's my vehicle.

6 Q As a matter of fact, a picture of that vehicle
7 was taken right out on the parking garage, wasn't it?

8 A Yes, sir.

9 Q Do you remember where everybody was in the car
10 when y'all went?

11 A Julius was in the front seat, and Ryan and
12 Bryan and Rayshawn was in the back seat.

13 Q Okay. And where all did y'all go downtown?

14 A By the College of Charleston on Market, the
15 Battery. Then we rode on Rutledge Street.

16 Q And what were y'all looking for?

17 A Mainly people who were drunk and under the
18 influence.

19 Q Why were y'all looking for people that were
20 drunk or under the influence?

21 A So we can rob them and get the money from them.

22 Q Are --

23 THE COURT: Mr. Brown, I'm going to need you to
24 speak loudly.

25 THE WITNESS: Yes, ma'am.

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1 THE COURT: Can you lean into the microphone?
2 THE WITNESS: Yes, ma'am.
3 THE COURT: Thank you.
4 MR. DURANT: Should I let him have this one
5 now?
6 THE COURT: Can you speak up?
7 THE WITNESS: Yeah, I can speak up.
8 THE COURT: All right. There he goes.
9 MR. DURANT: Okay.
10 THE COURT: Thank you.
11 MR. DURANT: These ladies and gentlemen have to
12 hear what you have to say. Okay, George? So if you
13 could speak up.
14 Q (By Mr. DuRant) Why were you looking for drunk
15 people?
16 A They said it was an easier target.
17 Q "They" being you and the rest of them?
18 A Yes, sir.
19 Q So you were a part of that; right?
20 A Yes, sir.
21 Q Did you have a gun at the time?
22 A Yes, sir.
23 Q And whose gun was it?
24 A My gun.
25 Q And where did you keep your gun?

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1 A Under the seat area on the floorboard.
2 Q Okay. I'd like you to refer your attention to
3 State's Exhibits 86. Do you recognize that photo?
4 A Yes, sir.
5 Q What is that a photo of?
6 A Inside my vehicle.
7 Q On the driver's side?
8 A Yes, sir, driver's side.
9 Q And driver's side floorboard, obviously?
10 A Yes, sir.
11 Q Since you got all those pedals there.
12 How about State's Exhibit 87?
13 A That's where the firearm was hidden.
14 Q Would you show the jury where you used to hide
15 your firearm in that car? You can use this pointer, and
16 you can stand up if you want.
17 A (Witness complies.)
18 Q Okay. Back -- is there a little depression
19 back in there?
20 A Yes, sir.
21 Q Can you see that when you got the gun back
22 there and all the insulation and stuff over that?
23 A No, sir.
24 Q Now, did anybody else in this group of friends
25 you were with have a car?

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1 A No, sir.

2 Q You were the only one with wheels?

3 A Yes, sir.

4 Q And just so there'll be no mistake, I'm going
5 to hand you what's State's Exhibit 23 in evidence.

6 (Document is handed to the witness.)

7 Q (By Mr. DuRant) And, if you would, tell us if
8 you recognize that.

9 A Yes, sir. It's my gun.

10 Q Where did you get that gun?

11 A I bought it off the street.

12 Q Who did you buy it from?

13 A Kid named Josh.

14 Q Where is Josh from?

15 A Out of the West Ashley area.

16 Q I believe he's now deceased, isn't he?

17 A Yes, sir.

18 Q Didn't you tell us that?

19 A Yes, sir.

20 Q Now, I notice -- where's the serial number on
21 that gun?

22 A Scratched off.

23 Q And was the serial number on it scratched off
24 on that gun when you bought it?

25 A Yes, sir.

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1 Q Okay. So we're back downtown, and y'all are
2 looking for drunk people to rob, preferably drunk
3 people. Tell us what happened around Rutledge Avenue.

4 A Ryan and Bryan got out of the vehicle and
5 started walking.

6 Q And why did they get out of the car and start
7 walking?

8 A So they can catch some couples walking down the
9 avenue.

10 Q Had y'all seen a couple walking down the road?

11 A No, sir. I didn't see the couple. They saw
12 the couple.

13 Q But that's why y'all stopped?

14 A Yes, sir.

15 Q And who got out of the car?

16 A Ryan Deleston and Bryan Rivers.

17 Q Okay. Who had your gun?

18 A Bryan Rivers.

19 Q And where did he get your gun?

20 A From me.

21 Q And where did you get your gun to give it to
22 Bryan Rivers?

23 A From out of that area right there, sir, where I
24 just showed you.

25 Q Now, who all stayed in the truck?

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1 A Julius Brown, Rayshawn, and myself.
2 Q And who came back to the truck?
3 A Bryan.
4 Q What did Bryan have when he came back to the
5 truck?
6 A A purse.
7 Q What kind of purse?
8 A A cream-colored purse.
9 Q Big purse, little purse?
10 A Big purse.
11 Q Light colored; dark colored?
12 A Light colored.
13 Q Where was Ryan Deleston? I thought you said
14 he'd gotten out too.
15 A Yeah. They started running, and they split up.
16 Q So he didn't come back to the car with Bryan?
17 A No, sir.
18 Q Where did you pick up Ryan?
19 A From McDonald's.
20 Q How did y'all know where he was -- he would be?
21 A He met up with Horace Jones, the house we went
22 to when we first went downtown.
23 Q I mean, how did y'all know where to pick up
24 Ryan?
25 A He called the cell phone.

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1 Q Okay. Whose cell phone did he call?
2 A Julius.
3 Q What was in the purse?
4 A Credit cards, papers.
5 Q How much cash?
6 A No cash.
7 Q When did y'all go through the purse?
8 A They went back through the purse when we got to
9 West Ashley.
10 Q Did they go through the purse before you got
11 back to West Ashley?
12 A No, sir. Not to my knowledge.
13 Q Why did y'all start talking about Joe's?
14 A Because they didn't find any cash in the purse.
15 Q Well, I guess they went through the purse
16 before they got back to Cashew?
17 A I didn't see anyone going through the purse
18 until we got to the gas station.
19 Q But y'all started talking about going to Joe's
20 before you got back to Cashew, didn't you?
21 A Yes, sir.
22 Q Who was talking about going to Joe's?
23 A Julius came up with the plan, and he was
24 speaking to Ryan and Bryan about it. And I was -- they
25 asked me to be the driver.

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1 Q Okay. And that occurred where?
2 A At the BP gas station.
3 Q And what gas station?
4 A Savannah Highway.
5 Q When did y'all go to the gas station?
6 A When we left from downtown.
7 Q So you went to the gas station?
8 A Yes, sir.
9 Q And then you went to the gas station to where?
10 A To Cashew -- well, first we went through Joe's
11 parking lot, then went to Cashew Street.
12 Q And why would you go through Joe's parking lot?
13 A Case the parking lot.
14 Q Okay. What were y'all looking for?
15 A They were looking to see if anyone else was at
16 Joe's.
17 Q Now, you've previously been shown a video of a
18 car riding through Famous Joe's parking lot at 3:09 on
19 the Mantek video, 3:09 their time. Have you seen that
20 video?
21 A No, sir.
22 Q Did you not see that in my office?
23 A Oh, yes, sir. When you showed it. Yes, sir.
24 Q Okay. Was that your car?
25 A Yes, sir.

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1 Q And was that when you were driving through to
2 case Joe's?

3 A Yes, sir.

4 Q Now, after y'all rode through the parking lot,
5 where did you go?

6 A Back to Cashew Street.

7 Q And what happened when y'all got back to Cashew
8 Street?

9 A Ryan Deleston and Julius Brown and Bryan Rivers
10 were talking about going back up to rob Joe's before
11 they left.

12 Q And how about you? Were you going to go up
13 there with them?

14 A No, sir. They asked me to drive, and I told
15 them no.

16 Q Why didn't you drive?

17 A I didn't want to be seen.

18 Q You didn't care -- mind being seen downtown.
19 Why did you care about being seen all of the sudden?

20 A I didn't want to be any part of them robbing
21 Joe's.

22 Q So where did you stay?

23 A On Cashew Street.

24 Q And who stayed with you?

25 A Me and Rayshawn.

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1 Q Why didn't Rayshawn go?
2 A No reason. He just stayed with me.
3 Q Now, what did they do when you told them that
4 you weren't going to drive?
5 A They left on foot.
6 Q And do you know how far it is from Cashew up to
7 Famous Joe's?
8 A About two to three blocks.
9 Q Who had your gun when they left?
10 A Ryan Deleston.
11 Q And how did he get the gun?
12 A He had it since we got back to Cashew Street.
13 Q Well, I mean, did he get it from you?
14 A Yes, sir.
15 Q So did -- how did you get your gun back from
16 Bryan from the downtown robbery?
17 A I had got it back from him so I can hide it.
18 Q And you hid it in that same place?
19 A Yes, sir.
20 Q What happened with that gun when you got back
21 to Cashew Street?
22 A I took it out.
23 Q And you gave it to who?
24 A Ryan.
25 Q Ryan being -- just because I can't hear, let's

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1 refer to Bryan as "Little B" --

2 A Okay.

3 Q -- and Ryan as "Ryan Deleston."

4 Who did you give the gun to when you got back
5 to Cashew?

6 A Ryan Deleston.

7 Q Do you know where he had the gun?

8 A On his waistline.

9 Q Like, in his -- in his --

10 A Yes, sir.

11 Q -- belt?

12 A Yes, sir.

13 Q Now, after some period of time, who came back
14 to Cashew?

15 A Ryan Deleston, Little B, and Julius Brown.

16 Q They all came back pretty much together?

17 A Yes, sir.

18 Q And what happened when they got back to Cashew?

19 A Little B and Julius starting talking, and Ryan
20 went straight in the house.

21 Q What were Little B and Julius talking about?

22 A Saying, he's stupid. He didn't have to do that
23 shit.

24 Q What was their state of mind?

25 A What was whose state of mind?

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1 Q Julius and Bryan.
2 A Aggravated, frustrated at Ryan.
3 Q Happy, sad --
4 A Sad.
5 Q -- angry?
6 A Angry.
7 Q Now, you said Ryan went inside. Did he stay
8 inside?
9 A No, sir.
10 Q When he came back out, what was different?
11 A He changed his clothes, and he smelled like
12 bleach.
13 Q Do you remember anybody telling him to go wash
14 up?
15 A Yes, sir. Julius.
16 Q Did you end up seeing that gun again that night
17 after the shooting?
18 A Yes, sir.
19 Q And who had the gun?
20 A Ryan Deleston.
21 Q And what did he do with it?
22 A He set it on the arm of the couch.
23 Q And what did he do with it after he set it on
24 the arm of the couch?
25 A Put it in the storage room.

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1 Q And what did he put it in before he put it in
2 the storage room?
3 A A sock.
4 Q And when you say "storage room," where was the
5 storage room?
6 A On the carport -- on the back of the carport.
7 Q And when y'all say y'all were hanging out
8 outside, where do y'all hang out outside?
9 A On the carport.
10 Q What did you think when you heard these guys
11 saying he didn't have to do that?
12 A That he shot someone.
13 Q Why did you think he shot somebody?
14 A Because he came back and washed his hands.
15 They were talking.
16 Q Okay. So you gleaned that from what they were
17 saying?
18 A Yes, sir.
19 Q Had you and Duke heard the shots?
20 A No, sir.
21 Q Why not?
22 A We had music playing.
23 Q Pardon me?
24 A We were playing music.
25 Q Where? From a car? inside? what?

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1 A From the car.

2 Q Do you recall Ryan going anywhere after he

3 returned to Cashew?

4 A Yes, sir. Him and Julius went back down the

5 street.

6 Q Do you know why they went back down the street?

7 A He said he left his baseball cap.

8 Q Now, when they returned from that little

9 excursion, what did he do with his clothes?

10 A He burned it.

11 Q Where did he burn it?

12 A In the backyard.

13 Q And what was done with the purse that was taken

14 from the downtown robbery?

15 A They burned that also.

16 Q And how do you know?

17 A I walked back there to see what was going on,

18 and I saw it.

19 Q Okay. Went back there for what purpose?

20 A Originally, to use the restroom.

21 Q You could see where this stuff was being

22 burned?

23 A Yes, sir.

24 Q Now, how much longer did you end up staying

25 there that night?

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1 A Until the morning.
2 Q And why did you stay until the morning?
3 A Because I was intoxicated, and there was too
4 much police around there.
5 Q There were a bunch of police around there,
6 weren't there?
7 A Yes, sir.
8 Q Now, when you did leave, was it daylight or
9 still dark?
10 A Daylight.
11 Q And who left with you?
12 A Julius Brown and Rayshawn.
13 Q And where did you take Rayshawn?
14 A Home on 61.
15 Q And where did you take Julius?
16 A Home in North Charleston, Horizon Village.
17 Q And when did you find out that someone had
18 actually been killed at Famous Joe's?
19 A On the news that day.
20 MR. DURANT: Court's indulgence?
21 THE COURT: Take your time.
22 (Mr. DuRant speaks with Ms. Wilson off the
23 record.)
24 Q (By Mr. DuRant) Later on, did you have the
25 opportunity or have you had the opportunity to see the

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1 video of the shooting in this case?

2 A Yes, sir.

3 Q Did you see it back when it happened? I mean,

4 back near the time when the shooting happened?

5 A Yes, sir. On the news, yes, sir.

6 Q Okay. And you've also seen it several times

7 getting ready for trial, haven't you?

8 A Yes, sir.

9 Q Who is the shooter?

10 A Ryan Deleston.

11 Q How do you know that?

12 A I saw him on the footage.

13 Q And how do you know that was Ryan and not

14 Bryan?

15 A Ryan too skinny -- well, Bryan's too skinny,

16 and the person in the video looks stocky, more like

17 Ryan Deleston.

18 Q How about the clothing?

19 A Yes, sir, the clothing.

20 Q What about the clothing?

21 A That was the clothing Ryan had on when he left.

22 Q Do you recall what kind of shoes he had on?

23 A No, sir.

24 Q If you don't, that's fine.

25 You also -- when you watched the video, did you

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1 see the fellow in the white T-shirt who walked by the
2 truck?

3 A Yes, sir.

4 Q Who was that?

5 A Julius Brown.

6 Q We're going to play a portion of State's
7 Exhibit 1. And if you would, you can either look at it
8 behind you or over there, whichever is clearer.

9 (Video is played.)

10 MR. DURANT: Can you back that up? I don't
11 think he was looking. Can you back it up just a minute?

12 (Video is played.)

13 Q (By Mr. DuRant) And who is that person?

14 A Ryan Deleston.

15 Q And, once again, any possibility that that
16 could be Bryan, Little B?

17 A No, sir.

18 (Video is played.)

19 Q (By Mr. DuRant) And who is that shooting?

20 A Ryan Deleston.

21 Q Do you recall if Ryan said anything to you when
22 he came -- when they got back to Cashew that time?

23 A No, sir.

24 Q Okay. Let's move on a little bit. So I guess
25 when you left that morning, you took the gun with you;

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1 right?

2 A No, sir. The gun was left there at that

3 moment.

4 Q Why didn't you take the gun with you?

5 A Because Ryan had already hidden it.

6 Q And -- but that ain't the last time you saw

7 that gun?

8 A No, sir.

9 Q As a matter of fact, you got the gun back,

10 didn't you?

11 A Yes, sir.

12 Q Tell us about that.

13 A Me and Julius Brown went back over there.

14 Julius got the gun and carried it to his house.

15 Q Pardon me? I can't hear you.

16 A Julius Brown got the gun from Cashew Street,

17 and it was carried to his house in Horizon Village.

18 Q Where did he get it from Cashew Street?

19 A Out of the carport area.

20 Q Out of the room?

21 A Yeah. The closet area.

22 Q And how did he get back over to his house with

23 the gun?

24 A I was driving.

25 Q You took him home?

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1 A Yes, sir.
2 Q And when he got home, who got out of the car?
3 A He got out of the car.
4 Q And what did he get out of the car with?
5 A The gun.
6 Q Now, you tried to help get rid of that gun,
7 didn't you?
8 A Yes, sir.
9 Q And how did you try -- how did you help get rid
10 of that gun -- try to get rid of the gun?
11 A See if someone was going to purchase it.
12 Q Pardon?
13 A See if someone was going to purchase it, buy
14 it.
15 Q Did you find somebody that you thought was
16 going to purchase it?
17 A Yes, sir.
18 Q Who was that?
19 A A kid from up in the neighborhood, Ponderosa.
20 Q Out of what neighborhood?
21 A Ponderosa.
22 Q The neighborhood that you're from?
23 A Yes, sir.
24 Q And why didn't that sale go through?
25 A Because he knew where it was coming from, the

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1 Ardmore area, and he knew it was hot.

2 Q And so the sale fell through at that point?

3 A Yes, sir.

4 Q Did you ever get the gun back from Julius for
5 the purpose of selling it to this kid?

6 A Yes, sir.

7 Q And what happened when the sale didn't go
8 through?

9 A I carried it back to Julius.

10 Q Now, let's talk about July the 15th of 2012.
11 Who did you hear from about the gun that day?

12 A Ryan Deleston.

13 Q And how did you hear from Ryan?

14 A He called me on the cell phone.

15 Q And where were you?

16 A In Goose Creek.

17 Q And what did he want?

18 A He wanted me to bring the gun so he could sell
19 it.

20 Q Did he say he had somebody that was going to
21 buy the gun?

22 A Yes, sir.

23 Q What did you do?

24 A I went to Julius' house and got it from him and
25 carried it to him.

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1 Q And when you went over to Ardmore, how did you
2 go into Ardmore? Did you go down -- in the 17 side or
3 the 61 side?

4 A 61 side.

5 Q And who was at Cashew when you got there?

6 A Ryan Deleston and Stephanie Brown.

7 Q Who got the gun out of your truck?

8 A Ryan Deleston.

9 Q And did you give it to him or he get it out
10 himself?

11 A No, sir. He got it out himself.

12 Q Did he know where you kept the gun in the
13 truck?

14 A Yes, sir.

15 Q And what did you do?

16 A I walked in the house and carried
17 Stephanie Brown's cigarettes.

18 Q And where did Ryan go?

19 A He walked off and went around the corner.

20 Q Walked off which way? Here, I'll let you look
21 at State's 27 again. You see that?

22 A Yes.

23 Q This is Cashew Street here. Which way did he
24 walk?

25 A He walked off Cashew Street and went toward

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1 Evergreen Street.

2 Q And which way did he go when he got to

3 Evergreen?

4 A Toward the right.

5 Q So he went down this way on Evergreen?

6 A Yes, sir.

7 Q Okay. And where was he when you came back out

8 from -- did you just go give her cigarettes and come

9 right back out, or did you stay and talk?

10 A I was speaking with Stephanie, and when I came

11 out the house, he was walking back up in the yard.

12 Q Okay. Now, of course, what you've told this

13 jury today is the same thing that you told the police,

14 isn't it?

15 A No, sir.

16 Q When did the police first talk to you?

17 A July 30th.

18 Q And what did you tell them, if you remember?

19 A I don't remember everything, but I told them I

20 didn't know anything about it.

21 Q That's pretty much it. You said you didn't

22 know nothing about it?

23 A Yes, sir.

24 Q Correct?

25 A Yes, sir.

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1 Q Didn't know anything about the shooting, didn't
2 know anything about this gun?
3 A Yes, sir.
4 Q Right?
5 And was that the truth?
6 A No, sir.
7 Q How about the next day? What happened the next
8 day?
9 A They spoke to me.
10 Q Or was it that day?
11 A The next day?
12 Q Yeah. Was it -- was it that day or the next
13 day that you got arrested?
14 A The next day, the 31st.
15 Q 31st of July?
16 A Yes, sir.
17 Q And who did you talk to? I think the first
18 time you talked to Detective Osborne; is that right?
19 A Yes, sir.
20 Q And he's the one that said you didn't know
21 nothing about a gun?
22 A Yes, sir.
23 Q Do you remember who you talked to the second
24 time when -- on the 31st?
25 A Detective Williams, if I'm not mistaken.

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1 Q He was a -- a black detective?
2 A Yes, sir.
3 Q And, of course, you told him the truth?
4 A Yes, sir.
5 Q You did?
6 A Not complete truth, but I told him, you know,
7 more than I told Detective Osborne.
8 Q Well, if you told him anything, you told him
9 more than you told Detective Osborne?
10 A Yes, sir.
11 Q And do you remember what you told him?
12 A Not completely everything.
13 Q Do you remember if you told him about the fire?
14 A The fire?
15 Q Yeah. Burning of the clothes.
16 A Yes, sir, I told him about that part.
17 Q Do you remember if you told him about the --
18 him washing his hands off? Ryan, I'm talking about.
19 A I'm not going to lie and say I do say that.
20 Q Okay. Fact of the matter is, you told so -- so
21 many lies it's hard for you to kind of keep them
22 straight, isn't it?
23 A At first, yes, sir.
24 Q Okay. So you told him part of the truth then?
25 A Yes, sir.

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1 Q But not the whole truth?

2 A (Moves head up and down.)

3 Q How did that go for you?

4 A I got arrested.

5 Q You sure did. And what did you get arrested

6 for?

7 A Accessory after the fact of murder and
8 possession of a firearm with obliterated serial number.

9 Q And where did you go after you got arrested?

10 A Straight to jail.

11 Q And when you got to jail, you were booked;

12 correct?

13 A Yes, sir.

14 Q And --

15 (Document is shown to the witness and to

16 Defense counsel.)

17 Q (By Mr. DuRant) And they took a photograph of
18 you when you were booked? Correct?

19 A Yes, sir.

20 Q And I have -- I'll show you what's been marked
21 as State's Exhibit 34.

22 MR. DURANT: I would offer it, I believe,
23 without objection, your Honor.

24 MR. PENNINGTON: That's correct, your Honor.

25 THE COURT: State's Exhibit 34 into evidence

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1 without objection.

2 (State's Exhibit No. 34 admitted into
3 evidence.)

4 Q (By Mr. DuRant) And who is that fellow?

5 A That's me.

6 Q Okay. And is that how you looked July the 31st
7 of 2012?

8 A Yes, sir.

9 Q You look pretty clean-cut now. You didn't look
10 so clean-cut back then.

11 Why didn't you just tell them the truth to
12 begin with?

13 A I didn't want to put myself in the middle of
14 what they had going on or what was going on.

15 Q There were a bunch of reasons, weren't there?

16 A Yes, sir.

17 Q Who was at the top of the list?

18 A Julius.

19 Q No. Who was at the top of the list? Who were
20 you protecting more than anybody?

21 A Myself.

22 Q There you go.

23 How about the other guys? Why didn't you just
24 spill your guts about what they did?

25 A Because of Julius.

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1 Q Did you want to be a snitch?
2 A No, sir.
3 Q Why?
4 A Little -- it happened.
5 Q You've had that experience before, haven't you?
6 A Yes, sir.
7 Q Where somebody accused you of snitching?
8 A Yes, sir.
9 Q And what happened to you?
10 A I got shot.
11 MR. PENNINGTON: Objection; relevance, your
12 Honor.
13 THE COURT: Overruled.
14 Q (By Mr. DuRant) What happened to you?
15 A I got shot five times.
16 Q That has nothing to do with this case?
17 A No, sir.
18 Q It has nothing to do with Ryan Deleston?
19 A No, sir.
20 Q Correct?
21 But that was your experience?
22 A Yes, sir.
23 Q Now, moving ahead to January the 22nd of this
24 year.
25 (Document is shown to Defense counsel.)

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1 Q (By Mr. DuRant) Do you remember entering into
2 a proffer agreement with the Solicitor's Office?

3 A Yes, sir.

4 Q And at that time, did you have a lawyer?

5 A Yes, sir.

6 Q And is your lawyer here today?

7 A Yes, sir.

8 Q And what's your lawyer's name?

9 A Aaron Mayer.

10 Q That's him seated on the front row there?

11 A Yes, sir.

12 Q And he told you that we were interested in
13 talking to you?

14 A Yes, sir.

15 (Document is handed to the witness.)

16 Q (By Mr. DuRant) And State's Exhibit 22, with
17 the exception of this irrelevant stuff that's been
18 marked out on page 2, is that a copy of the proffer
19 agreement that you signed?

20 A Yes, sir.

21 MR. DURANT: Your Honor, we would offer State's
22 22 into evidence, I believe without objection.

23 MR. PENNINGTON: That's correct.

24 THE COURT: State's 22 into evidence without
25 objection.

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1 (State's Exhibit No. 22 is admitted into
2 evidence.)

3 Q (By Mr. DuRant) And what were you -- what
4 charges were you facing when you entered into that
5 proffer agreement?

6 A Accessory after the fact of murder and
7 possession of a firearm.

8 Q And what was your understanding of that proffer
9 agreement? What did you understand the proffer
10 agreement to do?

11 A That would help the situation out a little bit
12 better.

13 Q What were you required to do under the proffer
14 agreement?

15 A Be truthfully honest, and anything that I say
16 wouldn't be used against me.

17 Q That's pretty much what it says?

18 A Yes, sir.

19 Q That if you're truthful, then we can't use your
20 words against you?

21 A Yes, sir.

22 Q How did that work out for you?

23 A It didn't work out.

24 Q And why didn't it work out?

25 A Because I didn't tell you everything.

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1 Q No, you didn't. And, George, what was it that
2 you just didn't want to tell us about?
3 A That it was my gun.
4 Q Yeah. That was part of it.
5 A Yes, sir.
6 Q How about the downtown robbery?
7 A Yes, sir.
8 Q Did you tell us about that?
9 A No, sir.
10 Q How about Ryan, to case the parking lot? Did
11 you tell us about that?
12 A No, sir.
13 Q And then what happened when we found out you
14 were lying?
15 A The agreement was taken away.
16 Q And what happened then?
17 A I got two more charges.
18 Q And those are the accessory before the fact to
19 armed robbery and attempted armed robbery?
20 A Yes, sir.
21 Q And what have you been promised for your
22 testimony here today?
23 A Nothing.
24 Q You don't -- you're not protected by the
25 proffer anymore; right?

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1 A No. No, sir.

2 Q Everything that you've told us can be used
3 against you; right?

4 A Yes, sir.

5 Q So what are you hoping for?

6 A Things look better for me telling the truth.
7 today.

8 Q You're hoping for the best?

9 A Yes, sir.

10 Q But you got no immunity?

11 A No, sir.

12 Q Right?

13 And you know you're going to prison?

14 A Yes, sir.

15 Q Pardon?

16 A Yes, sir.

17 MR. DURANT: Court's indulgence.

18 THE COURT: Take your time.

19 MR. DURANT: Would you please answer any
20 questions that Mr. Pennington may have for you?

21 THE COURT: Mr. Pennington.

22 MR. PENNINGTON: Please the Court.

23 **CROSS-EXAMINATION**

24 **BY MR. PENNINGTON:**

25 Q Mr. Brown, we all agree here that after the

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1 murder of Marley Lion, your gun came back into your
2 possession again?
3 A No, sir.
4 Q Well, didn't you just testify that you and
5 Julius went back and picked it up?
6 A Yes, sir. I got it like a week later, but I
7 did not receive the gun that same night.
8 Q Okay. So a week later you and Julius went back
9 to get your gun; correct?
10 A Yes, sir.
11 Q And then took that gun to North Charleston?
12 A Yes, sir.
13 Q Because that's where Julius stayed?
14 A Yes, sir.
15 Q In Horizon Village?
16 A Yes, sir.
17 Q With his girlfriend?
18 A Uh-huh.
19 Q And when you nod, the court reporter --
20 A Yes, sir.
21 Q Thank you. That's good.
22 That's on Gullah Street?
23 A Sir?
24 Q Is that -- Horizon Village on Gullah Street?
25 A Yes, sir.

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1 Q Is that the address?
2 A Yes, sir.
3 Q And that's where the gun was kept --
4 A Yes, sir.
5 Q -- pretty much?
6 Unless you were in the midst of trying to turn
7 it yourself by selling it to someone in Ponderosa?
8 A Yes, sir.
9 Q And so there was -- you were interested in
10 getting rid of the gun, selling the gun?
11 A When I was asked, yes, sir.
12 Q Okay. So a fellow came up from Ponderosa and
13 says, Do you have a gun to sell?
14 A Well, not like -- not in that same way.
15 Q Not like that. You were looking to sell the
16 gun, weren't you?
17 A No, sir.
18 Q Didn't you want to get rid of that gun?
19 A Yes, sir.
20 Q Okay.
21 A But I wasn't asking around. I was asked.
22 Q Okay. And there was a period where you went to
23 North Charleston, got the gun, and then you hid it in
24 the woods near your home in Ponderosa?
25 A Yes, sir.

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1 Q You live on Corral Street down in Ponderosa?
2 A Yes, sir.
3 Q And then when that didn't work out, you
4 returned it back to Julius?
5 A Yes, sir.
6 Q You care about Julius?
7 A No, sir.
8 Q Julius is your friend?
9 A Yes, sir.
10 Q He's somebody that you were looking out for?
11 A Yes, sir.
12 Q And there are times where you've been referred
13 to as his cousin; is that right?
14 A Yes, sir.
15 Q But that's more of a -- kind of a loose
16 statement of affection rather than a blood-kin kind of
17 thing?
18 A Yes, sir.
19 Q But in some ways, he is close enough to be kind
20 of like family, isn't he?
21 A Not necessarily. Not necessarily.
22 Q Well, yes or no?
23 A No, sir.
24 Q He's not?
25 So when you were telling the Solicitor a moment

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1 ago that when you were thinking about who you were
2 protecting and you said Julius --

3 A And that's because of what could have happened
4 to me being shot, not because of family or anything.

5 Q Okay. Now, let's turn our attention to, well,
6 about a month after the murder of Marley. Okay?

7 A Yes, sir.

8 Q And we know that you went and got the gun from
9 Julius' and brought it to Ardmore to sell it; right?

10 A Yes, sir.

11 Q Ryan had called you and said that he thought he
12 had a buyer to help you get rid of the gun; right?

13 A He told me he had a buyer. He didn't say to
14 help me get rid of the gun, no, sir.

15 Q Well, it's your gun; correct?

16 A Yes, sir.

17 Q And so this wasn't the first conversation that
18 you had had with Ryan. There had been numerous
19 conversations for days before this, where Ryan had been
20 talked to by a guy named Bobby Warthaw about a purchase
21 of the gun?

22 A Yes, sir.

23 Q So there had been other times where it had been
24 clear that Mr. Warthaw was interested in getting the gun
25 from y'all or at least from Ryan?

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1 A First time I heard of that was on the 15th when
2 he actually got it from me. I never knew who it was
3 before.

4 Q So you didn't -- while you didn't know the name
5 Bobby Warthaw, you knew that Ryan had been approached
6 about a purchase, and he had a buyer in Ardmore?

7 A Yes, sir.

8 Q And there had been other occasions where you
9 had tried to get the gun and make the sale, but it had
10 fallen through?

11 A Actually, sir, that was the first time, when he
12 told me on the 15th, when I brought it. There wasn't
13 any time before that. That's when I also found out --

14 Q Had there been other dates where y'all talked
15 about doing it, but it didn't quite come together?

16 A We talked about me selling it prior to that,
17 but there was never any dates of him getting rid of it.

18 Q So you drove the gun in you secret compartment
19 to the Cashew Street address?

20 A Yes, sir.

21 Q And when you were arrested on -- actually, let
22 me back up.

23 On July 30th, you were asked to come to the ATF
24 offices to be interviewed by the City police; correct?

25 A Yes, sir.

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1 Q And you met with Detective Osborne?
2 A Yes, sir.
3 Q And --
4 A And a female officer.
5 Q I'm sorry?
6 A And a female detective also.
7 Q Right. A lady officer.
8 A Yes, sir.
9 Q Officer Glover?
10 A Yes, sir.
11 Q And you didn't tell them at that time that you
12 had been holding the gun -- that -- well, let me back
13 up.
14 They told you that the gun had been sold;
15 right?
16 A Yes, sir.
17 Q And they accused you of having some part in the
18 sale of that gun?
19 A I was told I was on surveillance handing the
20 gun over to Ryan.
21 Q Okay. Slow that down and say it one more time.
22 A I was told I was on surveillance handing the
23 firearm over to Ryan.
24 Q Okay. All right. And so all during that
25 interview on the 30th, you said, No, that's not true?

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1 A Well, I told them, if they have me on
2 surveillance, then it's true. But if they don't, it's
3 not true. I told them I was on surveillance pulling up
4 in the yard, but I was not on surveillance giving him
5 the firearm, because he grabbed it hisself [sic].
6 Q And so in effect, you were telling them that,
7 no, you didn't deliver a gun?
8 A In some sense, yes, sir.
9 Q Well, wasn't that the real meat and potatoes of
10 the conversation? They were accusing you of bringing
11 the gun, and you said, No, that's not true?
12 A Yes, sir.
13 Q You said you were bringing cigarettes to
14 Stephanie Brown?
15 A Yes, sir. I --
16 Q And you insisted over --
17 THE COURT: Please don't talk over each other.
18 MR. PENNINGTON: Excuse me. Excuse me.
19 Q (By Mr. Pennington) Go ahead and finish.
20 A Yes, I did carry cigarettes also.
21 Q And so you just skipped over the part about the
22 gun?
23 A Yes, sir.
24 Q Okay.
25 A As I stated before, I did lie the first day I

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1 was interviewed.

2 Q Okay. You weren't just by yourself, but you
3 had your father, who had taken you down there?

4 A Yes, sir.

5 Q Obviously the police didn't believe you, and so
6 you came back on July 31st with your father to be
7 re-interviewed?

8 A Yes, sir.

9 Q Correct?

10 Okay. And that was with Detective Williams and
11 Detective Glover again, the same lady, but a different
12 officer, a different male detective?

13 A Yes, sir.

14 Q And, again, you told them that you hadn't been
15 holding this gun; right?

16 A Yes, sir.

17 Q And you went so far as to bring your dad, and
18 your dad believed you, didn't he?

19 A Yes, sir.

20 Q And, in fact, your dad came with you and really
21 spoke up for you and said that he believed what you were
22 saying?

23 A That was before I started telling the truth.

24 Q Right. That was on July 31st --

25 A Yes, sir.

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1 Q -- when you brought your dad down?
2 A Yes, sir. He was with me on the 30th also.
3 Q But what you were really doing was that you
4 weren't telling the truth, were you?
5 A The first and the second day at first, yes,
6 sir.
7 Q You were lying to the police?
8 A Yes, sir.
9 Q And you lied to your father?
10 A Yes, sir.
11 (Respite.)
12 Q (By Mr. Pennington) Now, Julius is in trouble
13 in this case for his role in this murder, isn't he?
14 A Yes, sir.
15 Q And you were initially in trouble in this case
16 for what boils down to the fact that the police --
17 because you brought that gun to Cashew, as you now
18 admit, you were charged with accessory after the fact of
19 murder, meaning kind of being involved in a cover-up of
20 murder; right?
21 A Yes, sir.
22 Q And that, by itself, could carry up to 15 years
23 in the penitentiary?
24 A Yes, sir.
25 Q But you also had the charge of the fact that

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1 the gun that you owned had an obliterated serial number,
2 so that was another five years of exposure?

3 A Yes, sir.

4 Q Now you have new charges of, not accessory
5 after the fact of the Marley Lion murder, but accessory
6 before the fact; correct?

7 A Yes, sir.

8 Q And that can carry the same thing -- well,
9 actually, you're charged not with accessory before the
10 fact of a murder. You're charged with accessory before
11 the fact of the armed robbery -- attempted armed robbery
12 of Marley Lion; correct?

13 A Yes, sir.

14 Q So that can carry up to 20 years?

15 A Yes, sir.

16 Q Accessory before the fact of an attempted armed
17 robbery?

18 A Yes, sir.

19 Q Okay. And you're also charged with, now, the
20 accessory before the fact for supplying the gun in the
21 Rutledge Avenue armed robbery?

22 A Yes, sir.

23 Q And so that can carry and will carry no less
24 than ten years under the armed robbery statute; correct?

25 A Yes, sir.

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1 Q And that's not 85 -- that's not 65 percent
2 time. That's 85 percent time; correct?
3 A Yes, sir.
4 Q So as Mr. DuRant was questioning you, you don't
5 have a deal?
6 A No, sir, I don't.
7 Q In many respects, you're now at the mercy of
8 the prosecutors, aren't you?
9 A Yes, sir.
10 Q They decide the charge that you go to court
11 for; right?
12 A Yes, sir.
13 Q They can make you go to court on the charge of
14 armed robbery, and you've already admitted that you were
15 an accessory before the fact of armed robbery; correct?
16 A Yes, sir.
17 Q So, really, they're going to decide based on
18 how you do here today?
19 A Yes, sir.
20 Q One of the core truths of this case is, is that
21 you did not see Ryan Deleston rob that lady over on
22 Rutledge Avenue, did you?
23 A No, sir.
24 Q In fact, you picked up Ryan at the McDonald's
25 on the Crosstown?

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1 A Yes, sir.
2 Q By himself?
3 A Yes, sir.
4 Q No purse?
5 A No, sir.
6 Q And the other truth is, is that you've seen
7 this video, but you were not down there on Yew Street to
8 see who did what, were you?
9 A No, sir.
10 Q You did not actually see with your own eyes
11 down on Yew Street who shot this victim?
12 A Yes, sir.
13 Q You know what other people have told you about
14 it; correct?
15 A I know what I saw on the video.
16 Q You know what you saw in the video, and you
17 know what other people have told you?
18 A Yes, sir.
19 Q So when you see that arm sticking out in that
20 second part and say that you absolutely know that that's
21 Ryan Deleston --
22 A You can see the sleeve of the shirt, sir.
23 Q Oh, okay.
24 A That's how you know it's the same person.
25 Q I see.

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1 A And I looked at the video. I know it's the
2 same person, Ryan Deleston.
3 Q That night you were drinking?
4 A Yes, sir.
5 Q And smoking weed?
6 A Yes, sir.
7 Q Too drunk to get in the car and drive home
8 despite all the activity that had been going on?
9 A Actually, I wasn't. I was just trying to avoid
10 getting pulled over.
11 Q Okay.
12 A I wasn't intoxicated, but I wasn't too drunk to
13 drive, sir.
14 Q Well -- and you also had -- you -- the one
15 thing you did know is, is that you decided to stay right
16 there at Cashew?
17 A Yes, sir.
18 Q I'm going to go beyond the June 16th date and
19 go to about June 30th. This is still about the month
20 before you were arrested.
21 You went to a Brown family reunion, didn't you?
22 A Yes, sir.
23 Q Out at Edisto?
24 A Yes, sir.
25 Q Now, you know that -- you've already testified

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1 that Bryan essentially lives with, is boyfriend and
2 girlfriend with Stephanie Brown?

3 A Yes, sir.

4 Q And you witnessed Stephanie getting upset with
5 Ryan on that occasion and slapping him, didn't you?

6 A Yes, sir.

7 Q And as a consequence, there were words and Ryan
8 slapped Stephanie?

9 A No, sir, I didn't see that part.

10 Q You didn't see that part. Well, you saw
11 Little B. Little B was at that reunion too, wasn't he?

12 A Yes, sir.

13 Q And he jumped in on that. And there was a
14 little tussle between Bryan, Little B, and Ryan?

15 A Yes, sir.

16 Q And some hard words?

17 A Words that I didn't hear, sir. I was from a
18 distance.

19 Q Okay. Little B slapped Ryan?

20 A I didn't see who slapped who first. I saw when
21 him and Stephanie were arguing.

22 Q I'm talking about after the argument between
23 the man and the woman, I'm talking about Little B
24 slapping Ryan.

25 A Sir, I didn't see that part.

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1 Q Okay. The family was upset because they felt
2 that Ryan had been disrespecting Stephanie?

3 A Yes, sir.

4 Q And so even after the thing was done at Edisto,
5 when y'all went back to Ardmore, there was still hard
6 feelings between Little B and between Ryan?

7 A Yes, sir. They told Little B not to come back
8 over to the house.

9 Q In many ways, the Brown family felt that Ryan
10 was mooching off of Stephanie, didn't they?

11 A Yes, sir.

12 Q She got a check?

13 A Yes, sir.

14 Q And he didn't have a job?

15 A Yes, sir.

16 MR. PENNINGTON: If I may have the Court's
17 indulgence, your Honor?

18 THE COURT: Take your time.

19 Q (By Mr. Pennington) Let's absolutely be clear
20 about this business about you being shot five times
21 because someone accused you of being a snitch. That has
22 nothing to do with this case?

23 A No, sir.

24 Q When did that happen?

25 A 2010, 2011.

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1 Q Okay. That has nothing to do with
2 Ryan Deleston?
3 A No, sir.
4 Q It has nothing to do with Marley Lion?
5 A No, sir.
6 Q Okay.
7 (Mr. Pennington speaks with Mr. Kozelski off
8 the record.)
9 MR. PENNINGTON: Thank you, your Honor. No
10 further questions.
11 MR. DURANT: I have nothing further.
12 THE COURT: Is this witness excused?
13 MR. DURANT: Yes, your Honor.
14 THE COURT: Any objection?
15 MR. PENNINGTON: No objection, your Honor.
16 THE COURT: You may step down. You are free to
17 go, but you may stay with us. Thank you.
18 (The witness steps down from the stand.)
19 THE COURT: Call your next witness.
20 MR. DURANT: We call -- State would call
21 Bobby Warthaw, your Honor.
22 (The oath is administered by the Deputy Clerk
23 of Court, and the witness answers as follows:)
24 THE WITNESS: Yes, sir.
25 THE DEPUTY CLERK OF COURT: You may take your

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1 seat. And, sir, if you would, please, state your first
2 and last name, spelling your last for the record.

3 THE WITNESS: Bobby Warthaw, W-a-r-t-h-a-w.

4 THE COURT: Mr. DuRant.

5 MR. DURANT: Thank you, your Honor.

6 **BOBBY WARTHAW**

7 having been first duly sworn by the Deputy Clerk of
8 Court to tell the truth, the whole truth, and nothing
9 but the truth, was examined and testified upon his oath
10 as follows:

11 **DIRECT EXAMINATION**

12 **BY MR. DURANT:**

13 Q Good afternoon, Mr. Warthaw. I'm going to have
14 to ask if you -- here. Let's put this up here. I'm
15 going to have to ask you to speak up because people in
16 this jury have to hear what you have to say. Okay?

17 A Yes, sir.

18 Q Please speak in the microphone.

19 You don't want to be here today; right?

20 A No, sir.

21 THE COURT: I need you to speak up.

22 THE WITNESS: No, sir.

23 THE COURT: Thank you.

24 Q (By Mr. DuRant) And you're here because you've
25 been served a subpoena; correct?

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1 A Yes, sir.

2 Q How old are you?

3 A Twenty-five.

4 Q And how far did you go in school, Bobby?

5 A Tenth grade.

6 Q Are you working?

7 A No, sir.

8 Q What part of town are you from?

9 A Downtown.

10 Q Okay. Where do you hang out?

11 A In West Ashley.

12 Q Where in West Ashley?

13 A In Ardmore.

14 Q And why do you hang out at Ardmore?

15 A Friends of the family.

16 Q You have a family member -- some family and

17 friends that live in the area?

18 A Yes, sir.

19 Q You have a 2007 conviction of escape and

20 possession of cocaine base in Dorchester County; is that

21 correct?

22 A Yes, sir.

23 Q And I believe you currently have charges

24 pending with our office for distribution of crack,

25 distribution of crack in the proximity to a school, and

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1 possession of crack; is that correct?
2 A Yes, sir.
3 Q And you also have charges in Berkeley County
4 for B and E motor vehicle?
5 A Yes, sir.
6 Q Possession of burglary tools and a habitual
7 traffic offender?
8 A Yes, sir.
9 Q Those are all pending against you right now; is
10 that correct?
11 A Yes, sir.
12 Q Have you been promised anything for your
13 testimony here today?
14 A No, sir.
15 Q And as I think I've already pointed out, if you
16 had your druthers, you wouldn't be here testifying
17 today, would you?
18 A No, sir.
19 Q Now, directing your attention to July the 15th
20 of 2012, did you and your cousin, Chris Singleton,
21 assist the Charleston Police Department in acquiring a
22 pistol from this man right here?
23 A Yes, sir.
24 Q Why? Why did you get involved?
25 A The money.

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1 Q You heard there was some reward money; right?
2 A Yes, sir.
3 Q How did you find out that -- how do you know
4 this guy?
5 A Through a friend.
6 Q Okay. And how did you know he was selling a
7 gun?
8 A A friend.
9 Q And who was that friend?
10 A Theran.
11 Q Theran Taylor?
12 A Yes, sir.
13 Q What's his nickname?
14 A Carlton.
15 Q And how did you get in touch with Mr. Deleston?
16 A Through the phone.
17 Q Did Theran give you his phone number, or did
18 Theran give Deleston your phone number, or do you
19 remember?
20 A He gave me his number.
21 Q He gave you his number?
22 THE COURT: Mr. Warthaw, you're going to have
23 to speak up. Lean into the microphone.
24 Q (By Mr. DuRant) So he gave you Deleston's
25 number; correct?

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1 A Yes, sir.
2 Q And did you call him?
3 A Yes, sir.
4 Q And was he trying to sell a gun?
5 A Yes, sir.
6 Q Do you remember how much he wanted for the gun?
7 A Like \$80.
8 Q Is that unusual?
9 A Yes, sir.
10 Q Why?
11 A People sell it for higher.
12 Q The going rate for a piece out on the street is
13 higher than \$80?
14 A Yes, sir.
15 Q Now, how did you get in touch with the police
16 on June the 27th of 2012?
17 A Called them.
18 Q Who called them?
19 A Me.
20 Q And where did you meet him?
21 A By the car wash.
22 Q On Savannah Highway?
23 A Yes, sir.
24 Q And what did you tell him?
25 A That I had some information.

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1 Q About somebody who wanted to sell a gun from
2 Ardmore?

3 A Yes, sir.

4 Q And do you remember meeting with a
5 Detective Andre Jenkins a couple of days later, on June
6 the 27th, at the Charleston Police Department?

7 A Yes, sir.

8 Q And what were you talking to Detective Jenkins
9 about?

10 A Buying a gun.

11 Q And did the gun buy ever go down then?

12 A No, sir.

13 Q And why was that?

14 A I was arrested.

15 Q Okay. You weren't arrested on the 29th. Why
16 didn't it go down on the 29th? Who backed out?

17 A Me.

18 Q You backed out?

19 A Yes, sir.

20 Q Okay. So after that fell through, how did you
21 get back involved with CPD about buying this gun?

22 A They contacted me.

23 Q And where were you then?

24 A In jail.

25 Q You had gotten arrested; right?

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1 A Yes, sir.

2 Q Do you remember what you were arrested for?

3 A They say I missed court.

4 Q You went in on a bench warrant?

5 A Bench warrant.

6 Q Okay. Now, do you remember when you got locked

7 up on that bench warrant?

8 A No, sir.

9 Q Do you remember when you got out on that bench

10 warrant?

11 A No, sir.

12 Q Do you remember how you got out on that bench

13 warrant?

14 A Through the police.

15 Q Okay. What did you tell the police?

16 A That I'll help them.

17 Q That you'd help them if what?

18 A If I get released.

19 Q If they got you out of jail; correct?

20 A Yes, sir.

21 Q Is that true?

22 A Yes, sir.

23 Q And did they get you out of jail?

24 A Yes, sir.

25 Q Now, let's talk about July the 15th of 2012.

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1 How did you get in touch with Ryan Deleston that day
2 about buying the gun?
3 A I called him.
4 Q Called him on your cell phone?
5 A Yes, sir.
6 Q And who did you get to help you with buying the
7 gun that day?
8 A A friend of mine was going to help me.
9 Q Who was that friend?
10 A His name is Dollar.
11 Q Dollar?
12 A (Moves head up and down.)
13 Q And you -- did Dollar end up helping you?
14 A No, sir.
15 THE COURT: Mr. Warthaw, you are needing to
16 speak more loudly, please.
17 Q (By Mr. DuRant) And why didn't Dollar help
18 you?
19 A He had to baby-sit.
20 Q So who did you get to substitute for Dollar?
21 A My cousin, Chris.
22 Q That would be Chris Singleton?
23 A Yes, sir.
24 Q Now, who agreed to wear a wire?
25 A Chris.

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1 Q Why didn't you wear a wire?
2 A Because I didn't want to.
3 Q Now, when you met at CPD that day prior to
4 doing this, do you recall being searched?
5 A Yes, sir.
6 Q And was Chris searched?
7 A Yes, sir.
8 Q And whose car will y'all use?
9 A A friend of mine.
10 Q Do you remember what kind of car it was?
11 A A Ford Focus.
12 Q Do you remember what color it was?
13 A Brown.
14 Q And do you know whether or not the car was
15 searched by the police officers too?
16 A Yes, sir.
17 Q And that was done right before y'all got in it
18 to leave; correct?
19 A Yes, sir.
20 Q Now, when y'all left Charleston Police
21 Department, who drove?
22 A I did.
23 Q Who had the buy money?
24 A Chris.
25 Q How much buy money did y'all have?

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1 A Like \$200.
2 Q And why did you have \$200? I thought you said
3 he was going to sell it for 80 earlier. Tell me the
4 deal you worked up.
5 A I was going to get my cushion out.
6 Q Is that what you call a "cush"?
7 A Yes, sir.
8 Q So what was the deal you had with Deleston?
9 A That he just give me \$50 back.
10 Q Okay. So you were going to sell it for 200,
11 and then he was going to give you a \$50 kickback; right?
12 A Yes, sir.
13 Q And why did y'all do that?
14 A Just to make it look better.
15 Q Make it look legit?
16 A Yes, sir.
17 Q Now, when y'all left Charleston Police
18 Department, where did y'all go?
19 A Behind the school.
20 Q No. I'm not talking about later. I'm talking
21 about when you left downtown, where did you do?
22 A To Ardmore.
23 Q And where did you go in Ardmore?
24 A In the apartments in the back.
25 Q Okay. And do you know which streets those are

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1 where those apartments are?

2 A It's, like, Evergreen, Evergreen and Balsam.

3 Q Okay. And let's see. Referring to State's

4 Exhibit Number 27, you've never seen this before, but do

5 you recognize the area?

6 A Yes, sir.

7 Q And what is this area back here called at

8 the -- kind of the intersection of Evergreen and

9 Sequoia?

10 A The Hole --

11 Q It's called the Hole?

12 A Yes, sir.

13 Q And these are apartments?

14 A Yes, sir.

15 Q Are these apartments too?

16 A Yes, sir.

17 Q And which apartments did you park in?

18 A The top one.

19 Q The one up here at the top?

20 A Yes, sir.

21 Q Okay. Was that the plan for you to go there

22 before you left downtown?

23 A Yes. Yes, sir.

24 Q Now, when you got there, did you stay in the

25 car?

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1 A No, sir.

2 Q You ended up getting out of the car; correct?

3 A Yes, sir.

4 Q How about Chris? Where did -- did he stay in
5 the car, or did he get out?

6 A He stayed in.

7 Q And how did you get in touch with Deleston when
8 you got to the Ardmore area?

9 A I called him.

10 Q Now, when you talked to him, was there any time
11 during the day that you -- that he wanted to meet you
12 somewhere else when you talked to him?

13 A Yes, sir.

14 Q Where did he want to meet you at?

15 A At Piggly Wiggly on Savannah Highway.

16 Q And why did he -- wanted you to meet him at the
17 Piggly Wiggly on Savannah Highway?

18 A Because whoever was bringing it was scared to
19 come to Ardmore.

20 Q Okay. Who was bringing it?

21 A George.

22 Q Do you know George?

23 A Yes, sir.

24 Q How do you and George get along?

25 A We don't get along.

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1 Q You beefing with George?
2 A Yes, sir.
3 Q And what did you tell Deleston?
4 A That me and him don't get along.
5 Q And so you weren't going to meet him anywhere
6 else, right?
7 A Yes, sir.
8 Q Do you remember at some point before
9 Mr. Deleston getting there giving your cell phone to
10 somebody in the apartments right next to those?
11 A Yes, sir.
12 Q And do you recall why that was?
13 A Because my phone was going dead.
14 Q You left it with that guy to charge it up?
15 A Yes, sir.
16 Q Now, when Mr. Deleston showed up, where did
17 y'all go?
18 A To the car.
19 Q And where did you get in the car?
20 A The driver's seat.
21 Q And where did Mr. Deleston get in the car?
22 A Behind me.
23 Q The back seat behind the driver?
24 A Yes, sir.
25 Q And where was Chris in the car?

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1 A The passenger seat.
2 Q And what did he do after he got in the car?
3 Mr. Deleston, I mean.
4 A Gave us the weapon.
5 Q Do you recall where he was carrying it on him?
6 A No, sir.
7 Q And he gave y'all the gun?
8 A Yes, sir.
9 Q Who gave him the money?
10 A Chris.
11 Q How much money was given to him?
12 A \$200.
13 Q And what did you do with the gun after he
14 passed it up to y'all?
15 A Put it in -- Tahoe. Put it under the seat.
16 Q Put it under whose seat?
17 A The passenger seat.
18 Q And you were aware that the car was wired too;
19 correct?
20 A Yes, sir.
21 Q With audio and video?
22 A Yes, sir.
23 Q I want to show you what's been marked as
24 State's Exhibit 24 and ask if you recognize that DVD?
25 A Yes, sir.

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1 Q And how do you recognize it?
2 A I put the star on it.
3 Q You have a mark on there?
4 A Yes, sir.
5 Q And what was the date of that?
6 A On the 30th.
7 Q Of what month?
8 A September.
9 Q Of what year?
10 A 2013.
11 Q Okay. How about State's Exhibit Number 25?
12 A Yes, sir.
13 Q And that's also your mark?
14 A Yes, sir.
15 Q Okay. And you've had an opportunity to look at
16 both of these videos; is that correct?
17 A Yes, sir.
18 Q And do these videos accurately reflect the
19 transaction that went on in the Ford Focus when you sold
20 the Defendant the gun?
21 A Yes, Sir.
22 MR. DURANT: Your Honor, we would offer State's
23 24 and 25 into evidence at this time.
24 THE COURT: Any objection?
25 MR. PENNINGTON: No, your Honor, no objection.

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1 THE COURT: State's 24 and 25 into evidence
2 without objection.

3 (State's Exhibit Nos. 24 and 25 are admitted
4 into evidence.)

5 MR. DURANT: Permission to publish to the jury,
6 your Honor?

7 THE COURT: You may publish.

8 MR. DURANT: We may have some technical
9 problems, but we will --

10 THE COURT: I am not --

11 MR. DURANT: -- we will get them.

12 THE COURT: Ladies and gentlemen of the jury,
13 if you wish, while they're having -- getting it played,
14 if you wish to stand up and stretch. You've been
15 sitting for a little bit, but I told you we're going to
16 go until 6:00. Feel free to stand up and stretch.

17 (Respite.)

18 MR. DURANT: We may have to hook up this other
19 computer to play. It might be a good time to take a
20 five-minute break and let us work on it a sec. I mean,
21 we will continue to try.

22 THE COURT: All right. Ladies and gentlemen,
23 you may leave your notepads. We're going to take -- I'm
24 going to give you a break -- comfort break while they're
25 getting the technology set up, but we are not going to

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1 take a long break. All right?

2 Mr. Warthaw, stay seated.

3 Please rise for the jury.

4 (The jury is escorted from the courtroom at

5 5:17 p.m.)

6 (A break was taken from 5:17 p.m. until

7 5:27 p.m., at which time, the proceedings continue as

8 follows:)

9 THE COURT: Thank you. Be seated.

10 (The jury is escorted into the courtroom at

11 5:27.)

12 MR. DURANT: Permission to publish State's 24,

13 your Honor?

14 (Video is played.)

15 Q (By Mr. DuRant) Can you see that, Mr. Warthaw?

16 A Yes, sir.

17 THE COURT: The screen behind you, Mr. Warthaw.

18 Q (By Mr. DuRant) Who is that getting in the

19 car?

20 A That's me.

21 (Video is played.)

22 Q (By Mr. DuRant) Who is that getting into the

23 back seat?

24 A Him.

25 Q "Him" is who?

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1 A Ryan.

2 (Video is played.)

3 Q (By Mr. DuRant) Is that how the transaction
4 took place?

5 A Yes, sir.

6 MR. DURANT: This is State's 25, your Honor.

7 (State's Exhibit Number 25 is published to the
8 jury.)

9 (Video is played.)

10 Q (By Mr. DuRant) Who is that camera on?

11 A Me.

12 Q I mean, it's pointed at you, but who is the
13 camera physically on?

14 A Chris.

15 Q Okay. And who is that grabbing the towel right
16 there?

17 A Me.

18 (Video is played.)

19 Q (By Mr. DuRant) What is that?

20 A The gun.

21 (Video is played.)

22 Q (By Mr. DuRant) After y'all made that
23 purchase, was that -- who put the gun under the seat
24 there at the end?

25 A I did.

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1 Q Where did y'all go?
2 A Behind the middle school.
3 Q And that middle school was where? on what
4 street? Do you know?
5 A Off of Wappoo.
6 Q Do you remember what school that was?
7 A I can't remember.
8 Q Was that the plan to meet up there afterwards?
9 A Yes, sir.
10 Q And what happened when y'all got to the middle
11 school on Wappoo Road?
12 A Officer Jenkins drove our vehicle off -- we
13 switched vehicles.
14 Q So y'all got out of the vehicle, and
15 Detective Jenkins got in the vehicle y'all were driving;
16 correct?
17 A Yeah. Yes, sir.
18 Q And where did you go?
19 A To an unmarked car.
20 Q Pardon me?
21 A To a unmarked car.
22 Q You got -- you and Chris got in an unmarked
23 car. And where did they take y'all?
24 A On Wappoo to the substation.
25 Q Okay. There's a crime scene office over on

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1 Wappoo?

2 A Yes, sir.

3 Q And that's where the gun was recovered?

4 A Yes, sir.

5 Q And does this appear to be the gun y'all

6 recovered?

7 A Yes, sir.

8 Q Now, after they -- the police got the gun out

9 of the car at the crime scene office, where'd you go?

10 Did you go back to Ardmore?

11 A Yes, sir.

12 Q Why?

13 A To get my cut of the money.

14 Q Okay. And you did that because why?

15 A Because that was part of the plan.

16 Q Okay. You made it -- wanted to make it look

17 legit still; right?

18 A Yes, sir.

19 Q How much did you get back from Mr. Deleston?

20 A \$50.

21 Q And what did you end up doing with that \$50?

22 A Giving it back to the Detective.

23 Q Detective Osborne over here?

24 A Yes, sir.

25 Q It kind of irritated you too, didn't it?

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1 A Yes, sir.

2 Q Because why? You wanted that 50, didn't you?

3 You ended up getting paid for this?

4 A Yes, sir.

5 Q Do you remember how much police paid you? I'm

6 not talking about Crime Stoppers now, but do you

7 remember how much you got from the police?

8 A About \$200.

9 Q And do you remember how much you got from Crime

10 Stoppers?

11 A It was 13,000.

12 Q That was the reward money; right?

13 A Yes, sir.

14 Q Now, do you remember meeting with Detective

15 Osborne three days after this gun purchase, on July the

16 18th, down at the police department?

17 A Yes, sir.

18 Q And what did he want you to do?

19 A Call him.

20 Q Call who?

21 A Ryan.

22 Q And why did he want you to call Ryan?

23 A To ask him about the weapon.

24 Q What did he want you to ask him about the

25 weapon?

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1 A If it was hot or not.
2 Q And did you agree to do that?
3 A Yes, sir.
4 Q Where did you make the call from?
5 A From his office.
6 Q And was the call recorded?
7 A Yes, sir.
8 Q And you were aware that the call was being
9 recorded?
10 A Yes, sir.
11 Q I show you what's been marked as State's
12 Exhibit 21 for identification, ask if you recognize this
13 CD?
14 A Yes, sir.
15 Q And how do you recognize it?
16 A The star.
17 Q Your star and your date that you put on there?
18 A Yes, sir.
19 Q And this is a phone call, a recording of the
20 phone call you made to Mr. Deleston on July the 18th; is
21 that correct?
22 A Yes, sir.
23 Q And this is a true and exact copy of the phone
24 call you made to Mr. Deleston on the 18th of July?
25 A Yes, sir.

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1 MR. DURANT: Your Honor, at this time, we'd
2 offer State's 21 into evidence, if there's no objection.
3 MR. PENNINGTON: No objection.
4 THE COURT: State's 21 into evidence without
5 objection.
6 (State's Exhibit No. 21 is admitted into
7 evidence.)
8 Q (By Mr. DuRant) And you listened to this phone
9 call in our office, did you not?
10 A Yes, sir.
11 Q Several times? And in conjunction with the
12 clerical staff in our office, did you help prepare a
13 transcript?
14 A Yes, sir.
15 Q Of what is on this tape?
16 A Yes, sir.
17 Q And as a matter of fact, how do you know this
18 is it?
19 A Same star.
20 Q Is it your star and your date on the bottom of
21 this?
22 A Yes, sir.
23 Q And does this transcript accurately depict what
24 was said on this conversation to the best that you could
25 understand?

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1 A Yes, sir.

2 MR. DURANT: Court's indulgence for a
3 moment?

4 THE COURT: Yes, sir.

5 MR. DURANT: Your Honor, at this time, we
6 would offer State's 21, which is the DVD, and
7 State's 33, which is the transcript, I believe without
8 objection.

9 MR. PENNINGTON: That's right. That's correct,
10 your Honor.

11 THE COURT: State's 33, no objection?

12 MR. PENNINGTON: That's the transcript, I
13 believe.

14 THE COURT: Correct.

15 MR. PENNINGTON: That's correct.

16 THE COURT: State's 33 into evidence without
17 objection.

18 (State's Exhibit No. 33 is admitted into
19 evidence.)

20 MR. DURANT: And, your Honor, we've made copies
21 of the transcript for the jurors. If you don't mind,
22 may I pass them out before we publish State's 21?

23 THE COURT: You may hand them to the
24 foreperson.

25 (Document is handed to the jury foreperson.)

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1 (Respite.)
2 (Audio is played.)
3 Q (By Mr. DuRant) Whose voice is that on that
4 call?
5 A Me and his.
6 Q Yours and whose?
7 A Ryan.
8 Q And when you say "Ryan," you're talking about
9 who? This fellow here?
10 A Yes, sir.
11 Q Okay. And he's saying Little B to you?
12 A Yes, sir.
13 Q Is that your nickname too?
14 A Yes, sir.
15 Q There must be a bunch of Little Bs over
16 in Ardmore. How many Little Bs they got over there?
17 A Couple.
18 (Audio is played.)
19 Q (By Mr. DuRant) What is a tone?
20 A It's a gun.
21 (Audio is played.)
22 MR. DURANT: Would you please answer any
23 questions that Defense counsel has for you?
24 THE COURT: Mr. Pennington.
25 MR. PENNINGTON: Thank you, your Honor.

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Volume III of V -- Cross-Ex of Bobby Warthaw

1 CROSS-EXAMINATION

2 BY MR. PENNINGTON:

3 Q Mr. Warthaw, I'm going to turn your attention
4 to the night of June 15th, early morning hours of June
5 16th, when Marley Lion was murdered. Okay?

6 A (Moves head up and down.)

7 Q All right. And when you nod "yes," actually,
8 you have to help the court reporter by speaking up and
9 saying, Yes, I understand.

10 A Yes, sir.

11 Q Okay. Great. Thank you.

12 You were not at Famous Joe's that night, were
13 you?

14 A No, sir.

15 Q You were not on Yew Street that night at almost
16 four in the morning when Marley Lion was shot?

17 A No, sir.

18 Q You did not see who shot Marley Lion?

19 A No, sir.

20 Q But 11 days after the murder, you had heard
21 through Cuz that Ryan had a gun that he wanted to sell
22 cheap; is that right?

23 A Yes, sir.

24 Q And it was clear to you, in the conversations
25 that you had with Ryan between that period of time --

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1 between June 27th and when the sale went down on July
2 15th, which is over two weeks, it was clear to you that
3 this gun was not in his hands. He had -- he had
4 somebody else that was holding the gun; right?

5 A Yes, sir.

6 Q And so he had to make calls to get that gun?

7 A Yes, sir.

8 Q And over the period of time, you began to sort
9 out that the person he was calling was Big George?

10 A Yes, sir.

11 Q Who he would sometimes refer to as "Big Homie"?

12 A Yes, sir.

13 Q And Big George is someone who you had had a
14 history with?

15 A Yes, sir.

16 Q You and George -- I think you put it this way
17 to the police, that if you see him, you shoot at him,
18 and if he sees you, he shoots at you; is that right?

19 A No, sir.

20 Q Well, you remember when you met with -- the day
21 before the police got you out of jail, you were in
22 custody at the county jail, but they brought you down to
23 the Lockwood police department?

24 A Yes, sir.

25 Q And you sat down with Detective Osborne, who's

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1 the gentleman with the glasses and the blue tie?

2 A Yes, sir.

3 Q And y'all had a lengthy conversation that
4 night, didn't you?

5 A Yes, sir.

6 Q And you told him that you were beefing with
7 George?

8 A Yes, sir.

9 Q And it was serious beefing. It could be
10 violent beefing?

11 A Yes, sir.

12 Q All right. Before we get to that conversation
13 with Detective Osborne, which is in July, let's go back
14 to your first meeting with the City police. Okay?

15 A Yes, sir.

16 Q You met with the detective -- I believe you met
17 with Detective Burckhardt on June the 27th in a car near
18 a car wash; is that right?

19 A Yes, sir.

20 Q And in that conversation, which was also
21 recorded, you were discussing, and I think Detective
22 Burckhardt asked you, Well, tell me -- and I don't
23 remember if he called you Bobby or Little B, but he said
24 something like, So tell me, what's your interest in
25 -- in getting involved in this?

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1 Do you remember him asking you that?

2 A Yes, sir.

3 Q And the first thing you said was that you

4 wanted some help with your charges?

5 A No, sir.

6 Q Well, let's go back to, you had pending charges

7 in Charleston County; right?

8 A Yes, sir.

9 Q You had just been arrested for the sale of a

10 pistol on June the 2nd of that same month?

11 A No, sir.

12 Q No, sir?

13 A No, sir.

14 Q By the North Charleston Police Department?

15 A That was months before that, but that charge

16 got dropped before any of this even happened.

17 Q Okay. Bear with me just a moment.

18 MR. PENNINGTON: Court's indulgence.

19 THE COURT: Take your time.

20 (Respite.)

21 Q (By Mr. Pennington) Mr. Warthaw, are you

22 familiar with what's called a rap sheet?

23 A Yes, sir.

24 Q Okay. Could it refresh your recollection to

25 take a look at the document and see if it can refresh

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1 you on the date of that arrest by the North Charleston
2 Police for unlawful carrying of a weapon?

3 A Yes, sir.

4 (Document is handed to the witness.)

5 Q (By Mr. Pennington) Just take a look right
6 here. You can look at this document. I'm not asking
7 any questions. I'm just asking you to take a look at
8 this document. And particularly, I'd call your
9 attention to this particular part of the document. Take
10 your time, and let me know when you're ready for the
11 next question.

12 A Yes, sir.

13 Q You ready?

14 A Yes, sir.

15 Q Have you looked at it carefully?

16 A Yes, sir.

17 Q So there appears that there was -- well, I'm
18 not going to ask you to testify from the document. Does
19 that refresh your recollection that on June the 3rd, you
20 were charged with unlawful carrying of a pistol in North
21 Charleston?

22 A Yes, sir.

23 Q Okay. All right. And -- well, let me correct.
24 It's weapon. Maybe it wasn't a pistol. Was it
25 something else?

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1 A It was a weapon, a pistol.
2 Q It was a pistol?
3 A Yes, sir.
4 Q Okay. Thank you.
5 And also, six days later you were charged with
6 possession of cocaine. That would have been June the
7 8th; right?
8 A Yes, sir.
9 Q And that would, again, been the North
10 Charleston Police Department?
11 A Yes, sir.
12 Q And based on the earlier conviction that the
13 Solicitor went over from 2011, that would be a second
14 offense -- second drugs offense; right?
15 A Yes, sir.
16 Q So possession of cocaine, second, to carry up
17 to a maximum of five years in jail; is that correct?
18 A No, sir.
19 Q No?
20 A (Moves head from side to side.)
21 Q What does it carry?
22 A I mean, it was simple possession. So it was
23 really like a misdemeanor.
24 Q Simple possession of cocaine is a misdemeanor?
25 A That's right. I think so.

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1 Q You're going to a magistrate's court on cocaine
2 cases now?

3 A I mean, it's like -- I mean, it's not really no
4 time, really, off of that charge.

5 Q Well, let's go back to March of 2011, when
6 you -- you didn't go to magistrate's court to get put on
7 probation. You had to come to big court in 2011, to
8 this building, and appear in front of a Circuit Judge
9 like Judge Harrington; right?

10 A Yes, sir.

11 Q In fact, it's highly likely that when you came
12 in March of 2011, you walked right past this courtroom
13 and went to 4D, where they do plea court.

14 A Yes, sir.

15 Q You remember going up right next door here and
16 entering that plea to possession of cocaine in March of
17 2011?

18 A Yes, sir.

19 Q So that would make it a big court offense,
20 wouldn't it?

21 A Yes, sir.

22 Q And they hung two years over your head on that,
23 didn't they?

24 A I can't remember.

25 Q Well, you knew you were on 18 months of

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1 probation; right?

2 A Yes, sir.

3 Q And if you violated the probation, you did know

4 you were going to the penitentiary?

5 A Yes, sir.

6 Q For up to two years?

7 A Yes, sir.

8 Q In addition to those kind of new charges that

9 you had in June of 2012, you also had some charges from

10 December of 2010 that were still sort of hanging around,

11 didn't you?

12 A No, sir.

13 Q Didn't you have Charleston City Police charges

14 of possession with intent to distribute cocaine?

15 A I got off probation before I caught the

16 distribution charge.

17 Q Okay.

18 A So y'all got y'all's dates mixed up.

19 Q So you don't still have pending a possession

20 with intent to distribute cocaine right now?

21 A Yes, sir.

22 Q You do?

23 A (Moves head up and down.)

24 Q From 2010?

25 A Yes, sir.

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1 Q Okay. So there is still a pending charge from
2 2010?

3 A Yes, sir.

4 Q And for possession with intent to distribute
5 cocaine, second offense, that's what we call a serious
6 offense, isn't it?

7 A Yes, sir.

8 Q Because it carries from five to 30 years in the
9 penitentiary?

10 A Yes, sir.

11 Q And then there's another ten-year offense for a
12 charge of possession or distribution in the proximity of
13 a school?

14 A Yes, sir.

15 Q So when you sat down and talked with
16 Detective Burckhardt and Williams, one of the things
17 that was on your mind, at least a concern, was that you
18 had had a couple of recent arrests?

19 A No, sir.

20 Q Not at all?

21 A No, sir.

22 Q Okay. Well, you did also mention something
23 else that was on your mind, and that was money; correct?

24 A Yes, sir.

25 Q And they said that there was a reward that was

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1 potentially available for information that would lead to
2 the arrest of the person in this case?

3 A Yes, sir.

4 Q And that interested you?

5 A Yes, sir.

6 Q And so in -- sometime between --

7 MR. PENNINGTON: Court's indulgence, your
8 Honor.

9 Q (By Mr. Pennington) Sometime between the 29th
10 of June and July 12th, you were put in jail?

11 A Yes, sir.

12 Q That was for a bench warrant?

13 A Yes, sir.

14 Q And you said that they said that you missed
15 court?

16 A Yes, sir.

17 Q You wanted to get out of jail, didn't you?

18 A I mean, I didn't -- I didn't -- I didn't see
19 where I missed court at, because the warrant was
20 supposed to get rescinded because they didn't send my
21 paperwork to my address.

22 Q So it was a -- a court mistake --

23 A Yes, sir.

24 Q -- that you got locked up?

25 A Yes, sir.

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1 Q And you don't like jail, do you?

2 A No, sir.

3 Q You were eager to get out of jail?

4 A Yes, sir.

5 Q And also eager to get back to maybe having a
6 crack at this reward money?

7 A Yes, sir.

8 Q And so you talked with Detective Osborne, and
9 you actually raised -- I'm talking now of the other
10 gentleman, the other detective -- in July, while you
11 were at the Lockwood department, hoping to get your
12 bench warrant lifted. Do you recall that conversation?

13 A Yes, sir.

14 Q And do you remember telling him the words, "I
15 really want the money," and Osborne replying, "Well, the
16 money is not off the table"?

17 A Yes, sir.

18 Q Do you also recall that Detective Osborne told
19 you explicitly that, it was a little outside the
20 ordinary for the police to be getting people out of
21 jail? Do you remember him saying that he was going to
22 have to pull some strings, call the prosecutor or call
23 your lawyer to get you out of jail?

24 A Yes, sir.

25 Q And that they would have to come to a Circuit

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1 Court Judge to get this Circuit Court bench warrant
2 lifted up off of you?
3 A Yes, sir.
4 Q And he told you -- do you remember he told you
5 that -- that this really needed to go right, because he
6 would revoke your bond if this did not go right?
7 A No, sir.
8 Q He told you that if you didn't get the gun,
9 you'd have to go back to jail?
10 A Yes, sir.
11 Q Okay. And do you recall later in the
12 conversation that you gave him some advice about how to
13 solve the case?
14 A Yes, sir.
15 Q You told him, What you need to do is arrest
16 Little B -- and you didn't mean you. You meant
17 Bryan Rivers -- and tell Little B that Ryan is calling
18 his name, and that you knew that Bryan Rivers would say
19 Ryan Deleston did it?
20 A Yes, sir.
21 Q But the real truth of the matter is, is that
22 back on the day of the murder, you had been up in
23 Ardmore, hadn't you, earlier in the day?
24 A Yes, sir.
25 Q And the real truth of the matter is that you

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1 had been out there when Shawn Turner was doing a video
2 shoot?

3 A It was not -- yeah, it was that night, yes,
4 sir.

5 Q Okay. A video shoot is like we're going to do
6 a music video?

7 A Yes, sir.

8 Q But something weird happened that night; right?

9 A No, sir.

10 Q Well, Bryan Rivers was out there, wasn't he?

11 A Yes, sir.

12 Q And Bryan Rivers pulled the pistol and started
13 waving it around, and that upset everybody, didn't it?

14 A Yes, sir.

15 Q He was intoxicated and acting a little crazy?

16 A Yes, sir.

17 Q And you told the detective that he was wearing
18 a black shirt?

19 A Yes, sir.

20 Q And some Willie Dee's?

21 A Yes, sir.

22 Q Ryan Deleston was not at that photo shoot. It
23 was Little B that was at the photo shoot?

24 A Yes, sir.

25 Q With a gun?

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1 A Yes, sir.
2 Q The day of the murder?
3 A Yes, sir.
4 Q Once again, you were not out there that night
5 at four in the morning when Marley Lion was shot?
6 A No, sir.
7 Q You do not know who shot Marley Lion?
8 A No, sir.
9 MR. PENNINGTON: Court's indulgence, your
10 Honor.
11 No further questions.
12 MR. DURANT: I have just a couple on Redirect.
13 **REDIRECT EXAMINATION**
14 **BY MR. DURANT:**
15 Q Mr. Warthaw, you're a criminal; right?
16 A Yes, sir.
17 Q If you weren't a criminal, he wouldn't be
18 trying to sell you a gun, would he?
19 A Yes, sir.
20 Q And on that video, that was a gun that he
21 passed up front to you, wasn't it?
22 A Yes, sir.
23 Q And that was \$200 that y'all gave him for it,
24 wasn't it?
25 A Yes, sir.

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1 Q And that was on videotape; right?

2 A Yes, sir.

3 Q And that's true regardless of what your record
4 is, isn't it?

5 A Yes, sir.

6 Q And when you say, How do you know Little B
7 would call when he's -- were talking about -- he was
8 asking you about why Little B would call Ryan's name,
9 why would that be?

10 A Because they had said you would have just -- he
11 would have tell on him, basically.

12 Q He would tell on him; right?

13 A Yes, sir.

14 Q Because what was the word on the street?

15 MR. PENNINGTON: Objection, your Honor.

16 THE COURT: What's the basis?

17 MR. PENNINGTON: Hearsay. What is the word on
18 the street?

19 THE COURT: I heard what he said.

20 Rephrase that question.

21 MR. DURANT: Okay.

22 Q (By Mr. DuRant) So I'm asking you why would --
23 why would Little B mention his name?

24 MR. PENNINGTON: Objection to why Little B
25 would do anything. He's not qualified to say why

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1 Little B --

2 THE COURT: If he knows, Counsel, he may
3 answer.

4 MR. PENNINGTON: Then I'd ask that foundation
5 be laid for that question.

6 Q (By Mr. DuRant) If you know.

7 A I mean, I don't really understand what y'all --

8 Q I think the jury understands. Hold on.

9 Why did you give Detective Osborne that advice?

10 A Because they was saying them two been together
11 that night.

12 Q Uh-huh. And of the two of them, who was the
13 most -- be the most likely to get the truth out of?

14 MR. PENNINGTON: Objection, your Honor. That
15 calls for a conclusion well beyond this witness'
16 knowledge.

17 THE COURT: Sustained.

18 Counsel, I don't want speaking objections.

19 MR. PENNINGTON: I'm sorry.

20 THE COURT: Rephrase your question.

21 Q (By Mr. DuRant) And of the two -- you know
22 both of them. Of the two of them, who is he most likely
23 to get the truth out of?

24 MR. PENNINGTON: Objection, your Honor.

25 A Little B.

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1 MR. PENNINGTON: I'd ask that be stricken.

2 THE COURT: Ladies and gentlemen, I have
3 determined that that last response is not for your
4 consideration. Please, if you wrote it down, please
5 remove it from your notes.

6 That objection was sustained. You may --

7 MR. DURANT: I'm sorry. I'm sorry.

8 THE COURT: He answered fairly quickly on that
9 one, so --

10 MR. DURANT: Okay.

11 THE COURT: Counsel, if you would like to
12 rephrase or reask another question.

13 MR. DURANT: No, your Honor --

14 THE COURT: All right. Mr. Pennington.

15 MR. DURANT: -- just to -- I have some argument
16 is all, but we can do that later.

17 THE COURT: All right. Mr. Pennington.

18 MR. PENNINGTON: If I may have the Court's
19 indulgence?

20 THE COURT: Take your time.

21 MR. PENNINGTON: No further questions, your
22 Honor.

23 THE COURT: All right. Is this witness
24 excused?

25 MR. DURANT: May we approach, your Honor?

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1 THE COURT: You may.

2 (A discussion is held off the record.)

3 (All four attorneys approach the bench for a
4 discussion off the record.)

5 THE COURT: All right. Ladies and gentlemen, I
6 told you we'd stop at 6:00. We're fairly close. Please
7 remember all of my admonitions. We will break for the
8 evening hour. Do not discuss this case. Do not do any
9 independent research. I will also need -- if you'll
10 hand the bailiff the copy of your transcript before you
11 leave.

12 Again, ladies and gentlemen, please be in your
13 jury room at 9:15. We will begin promptly at 9:30 in
14 the morning. Please have a wonderful afternoon. I'll
15 see you in the morning at 9:15.

16 Please rise for the jury.

17 Mr. Warthaw, please stay seated.

18 (The jury is escorted from the courtroom at
19 6:06 p.m.)

20 THE COURT: Please be seated.

21 All right. Counsel, do we need to put any of
22 the last exchange on the record? I verified that I
23 think what -- at the bench conference, the distinction
24 was truth and talking, and I verified with the court
25 reporter.

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1 MR. DURANT: I think you're right about that,
2 your Honor, and I have nothing else to say about that.

3 THE COURT: All right. Thank you.

4 With that being said, is there anything I
5 want -- I indicated that I want to advise your client of
6 his right to testify. I will not ask for his answer
7 this evening, but I know we're getting fairly close to
8 what I anticipate the State will be resting, so I want
9 to give you as much time to advise your client.

10 If you'll please place the Defendant under
11 oath.

12 I'm sorry. Hold up one second.

13 Mr. Warthaw, you're so quiet over there. I
14 completely forgot. I am so sorry. You are free to go,
15 and my apologies. Thank you. Thank you for being so
16 kind and professional, courteous to the Court by not
17 yelling or anything like that to get my attention. I
18 appreciate it. Thank you. You're free to go.

19 (The witness steps down from the stand.)

20 THE COURT: All right. I apologize. I didn't
21 even see him sitting over there. He's so quiet. Please
22 continue.

23 (The oath is administered by the Deputy Clerk
24 of Court, and the Defendant answers as follows:)

25 THE DEFENDANT: I do.

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1 THE DEPUTY CLERK OF COURT: Thank you, sir.

2 THE COURT: Mr. Deleston, at this time I'm
3 going to explain to you certain of your rights. We
4 typically do this at the close of the State's case, but
5 there's been a lot of testimony over the past two days,
6 and I anticipate that there may be a point tomorrow that
7 the State will rest. And so I wanted you to have as
8 much time to go over these rights with your attorney.
9 Do you understand?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: If at any time you do not
12 understand anything that I explain to you or you need me
13 to explain anything in further detail, please let me
14 know. Do you understand?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: At some -- when I ask you these
17 questions, and it will not be tonight, but we will have
18 reached the stage in the trial where you're going to
19 need to make the decision what type of defense you're
20 going to present.

21 You have a right to claim the protections given
22 to you by the Fifth Amendment to the Constitution of the
23 United States. This Amendment states, in part, that no
24 person shall be compelled in any criminal case to be a
25 witness against himself. That means that you cannot be

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1 required to testify in this case. You have the right to
2 testify on your own behalf; however, no one can make
3 your testify. This is a personal right, and no one can
4 waive this right except for you.

5 If you decide to testify, you will be subject
6 to the same rules that govern the other witnesses and
7 you may be examined and cross-examined on any relevant
8 issue in this case.

9 In addition, if you have convictions involving
10 dishonesty or false statements or for crimes punishable
11 by imprisonment for more than one year, and I determine
12 that the probative value of admitting that evidence
13 outweighs its prejudicial affect to you, the Solicitor
14 will be able to introduce your record to attack your
15 credibility.

16 Mr. Pennington, we've already addressed which
17 convictions would be appropriate for impeachment; is
18 that correct?

19 MR. PENNINGTON: Yes, ma'am.

20 THE COURT: And, Solicitor Wilson, you agree
21 with that?

22 MS. WILSON: Yes, ma'am.

23 THE COURT: If you decide to testify, this
24 decision on your part must be freely, voluntarily, and
25 intelligently made, with the knowledge of the

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1 protections given to you by the Fifth Amendment and the
2 consequences of your decision to testify.

3 If you decide not to testify, I will instruct
4 the jurors that they cannot give the fact that you did
5 not testify any consideration whatsoever, and I will
6 instruct them there's to be absolutely no prejudice to
7 you because you did not testify. As a matter of fact, I
8 instruct the jurors that they are not to discuss the
9 fact that you did not testify in the jury room
10 whatsoever. It is left entirely up to you whether or
11 not you testify. You have the opportunity over this
12 evening hour and throughout tomorrow to discuss with
13 your attorney, either together or separately, your
14 family, your friends, or anyone else, but the final
15 decision is left entirely up to you.

16 Do you understand what I have explained to you?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Do you need for me to explain any
19 of these issues in further detail to you?

20 THE DEFENDANT: No, ma'am.

21 THE COURT: Do you understand what convictions
22 could be used against you if you decide to testify?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: You understand the instructions
25 that I will give to the jurors if you decide not to

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1 testify?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Have you had discussions with your
4 attorney regarding these issues?

5 THE DEFENDANT: Not yet.

6 THE COURT: Not yet? All right. Thank you.

7 Mr. Pennington, do you need for me to explain
8 anything further to your client regarding his right to
9 testify?

10 MR. PENNINGTON: I don't believe so, your
11 Honor. I believe that was a great -- a very thorough
12 explanation.

13 Obviously, in the run up to trial, there's been
14 discussions about the subject. Because he's in custody,
15 because we've been working very long hours, I would ask
16 for an opportunity to have -- we can start at 9:30
17 tomorrow. That way I'll have -- he will get here at
18 8:30. They'll bring him up here, and I would have a
19 chance to talk with him before we commence in the
20 morning, if that's all right.

21 THE COURT: Counsel, I could have him here
22 earlier than that if I instruct them to have him here;
23 correct?

24 MR. PENNINGTON: I think it would only be like
25 a 15-minute conversation. So I think we could work it

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1 in by 9:30 easily.

2 THE COURT: So if he is here no later than
3 8:30, you will have sufficient time in the morning; is
4 that correct?

5 MR. PENNINGTON: Yes, ma'am.

6 THE COURT: Anything further?

7 You may have a seat, Mr. Deleston. Thank you.

8 Is there anything further, Mr. Pennington?

9 MR. PENNINGTON: No, ma'am.

10 THE COURT: And just to give me some time frame
11 for tomorrow, we're going to start promptly at 9:30. We
12 will have a very short lunch break. So, please, each of
13 you plan accordingly. It's going to make for a very
14 long day for each of you. So please -- I would say pack
15 your PowerBar in your book bag. So make sure that you
16 have brought appropriate lunch as well.

17 How many witnesses do you anticipate? I will
18 not, of course, hold you to that. But how many more
19 witnesses do you anticipate.

20 MS. WILSON: We have nine left, your Honor, but
21 most of those, I think, will be short.

22 THE COURT: Do you anticipate that you will
23 rest tomorrow by 5:00?

24 MS. WILSON: It'll be close. But it does look
25 like we'll finish Friday for sure.

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Volume III of V -- Redirect Ex of Bobby Warthaw

1 THE COURT: And, again, Mr. Pennington, you had
2 indicated that you have witnesses, but, again, at that
3 time, I will not hold you to that. But just for
4 scheduling purposes, tomorrow and into Friday?

5 MR. PENNINGTON: I think that our case would be
6 very brief. I think if I call a witness -- of course,
7 we're going to have to discuss with my client about his
8 testimony. But any witness that I would present would
9 be -- take less than 45 minutes.

10 THE COURT: All right. Thank you.

11 All right. Have a wonderful evening. I will
12 see you in the morning. We'll begin at 9:30.

13 Again, please let me know -- I'm here. So if
14 there's something that arises that we need to address
15 before 9:30, so that the jurors aren't waiting. All
16 right. Thank you.

17 MS. WILSON: Thank you.

18 MR. PENNINGTON: Thank you, your Honor.

19 COURT IN ADJOURNMENT.

20 (The hearing of this cause adjourned for the
21 day at 6:14 p.m.)

22 (End of Volume III of V. Jury trial is
23 scheduled to reconvene tomorrow, October 10th, 2013,
24 at 9:30 a.m.)

25

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Jury Trial, October 9, 2013
Volume III of V -- Redirect Ex of Bobby Warthaw

REPORTER'S CERTIFICATE

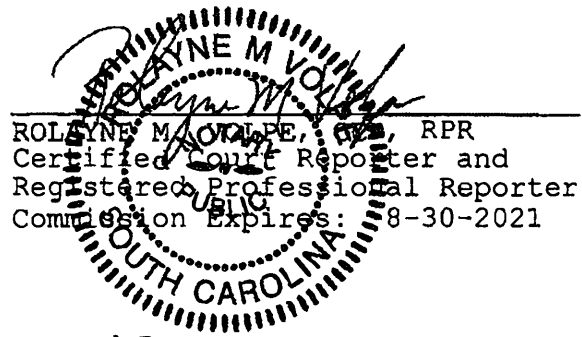
STATE OF SOUTH CAROLINA)
) ss.
COUNTY OF BERKELEY)

I, ROLAYNE M. VOLPE, Certified Court Reporter, CCR,
and Registered Professional Reporter, RPR, do hereby
certify that the transcript of the foregoing
proceedings, Volume III 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



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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
) 2011-GS-10-6363
Defendant.) 2011-GS-10-6364

TRANSCRIPT OF PROCEEDINGS
JURY TRIAL, VOLUME IV OF V
HEARD BEFORE JUDGE KRISTI LEA HARRINGTON
ON OCTOBER 10, 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 10, 2013
Volume IV of V

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1 The above-styled cause came on for hearing on
2 the 10th day of October, 2013, at 9:30 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 IV OF V

9 (The Defendant is present with his counsel.)

10 THE COURT: It's 9:30. Do we have a witness
11 that we can start with?

12 MS. WILSON: No, ma'am. The last time we
13 talked with him he was -- West Ashley. That was
14 probably 15 minutes ago. On his way, en route.

15 THE COURT: So this is your final witness?

16 MS. WILSON: It's not our final witness, but
17 we can't -- without messing up our order. We've done
18 pretty good to be on Thursday morning without having any
19 delays.

20 THE COURT: When did -- let's go ahead and talk
21 about the autopsy photos then.

22 MR. PENNINGTON: Good idea.

23 MS. WILSON: May we approach?

24 THE COURT: You may.

25 (Photos are handed to the Judge.)

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1 (Side-bar.)

2 THE COURT: Tell me why they should not come
3 in.

4 MR. PENNINGTON: I think there's a presumption
5 they don't come in. I think that they can create a
6 circumstance where -- again, we're dealing with a fact
7 pattern.

8 MS. WILSON: I can't see the screen. I'm sorry
9 to interrupt.

10 THE COURT: So tell me why they should come in.

11 MS. WILSON: Bruce's argument from -- from
12 three days ago with Officer Deal. I mean, it's a murder
13 case. This is the best evidence of what happened to
14 him.

15 MR. PENNINGTON: My feeling is, is that, having
16 met with the medical examiner, that there are diagrams
17 and there are ways to be selective to describe the cause
18 of death. We know beyond any doubt that there is no
19 causation question here. He was -- this is a simple
20 gunshot case. And as far as I'm aware, there's no issue
21 about angle trajectory, specifics that are going to have
22 any material value to this jury. What I am concerned
23 about is the fact that they are laypeople who have never
24 seen these kinds of photographs before. You have a
25 completely innocent victim, and every time I look at the

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1- pictures, they are shocking to me. And they are -- and
2 I've been doing this work for 30 years. So my sense is,
3 is that it's gilding the lily, but it's really a
4 prejudicial kind of scenario where laypeople are going
5 to be confronted with ugliness.

6 Now, I think it'd be helpful to go through
7 picture by picture, because, frankly, I think there
8 needs to be a justification. It's not a -- I'm going to
9 be objecting picture by picture.

10 MS. WILSON: If you're not inclined to let them
11 in, we'll use the diagrams.

12 THE COURT REPORTER: I'm sorry. Could you
13 repeat --

14 THE COURT: Order. Thank you.

15 While I am up on the bench, we are having a
16 bench conference. I don't mind you speaking quietly
17 amongst yourselves, but it is interfering with what --
18 our business up at the bench. Thank you.

19 (Discussion continues at the bench.)

20 MS. WILSON: I said to the Judge: If she's not
21 inclined to let them in, we'll use the diagrams.

22 THE COURT: I just wanted to let Ashley have
23 everything articulated on the record. I have found that
24 autopsy photos to be of a different nature than the
25 crime scene photos. I thought there was a definite

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1 reason to have those two crime scene photos admitted, 65
2 and 66 admitted. I do not see the necessity and find
3 that they are more prejudicial than probative. I don't
4 want to go through them one by one --

5 MR. PENNINGTON: Okay. Fair enough.

6 THE COURT: -- unless you need me to make a
7 ruling.

8 MR. PENNINGTON: No, ma'am. I think that's --
9 takes care of it.

10 MS. WILSON: Thank you, your Honor.

11 MR. PENNINGTON: Thank you, your Honor.

12 THE COURT: Thank you.

13 (End of discussion at the bench.)

14 THE COURT: Mr. Pennington, I understand your
15 client arrived at approximately 8:00 a.m. this morning;
16 is that correct?

17 MR. PENNINGTON: He did.

18 THE COURT: And do you need any additional time
19 while we have a few minutes to meet with him before we
20 begin?

21 MR. PENNINGTON: No, your Honor. I met with
22 him, thanks to the Court and the deputies. I appreciate
23 that very much. He and I, I think, have an
24 understanding. He has requested an opportunity briefly
25 to speak to his mother, who's been attending the trial.

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1 She's present in the courtroom. And I'm hoping that we
2 could prevail on the deputies to allow us to use the
3 attorney conference room during the lunch break or
4 whenever is convenient. But I don't think that would be
5 a lengthy conversation and -- whenever is convenient.

6 THE COURT: I will leave that up to security.
7 And if you can accomplish that, please do. If not,
8 please let me know, and we'll try to make other
9 arrangements.

10 All right. Ms. Wilson, anything before we
11 bring in the jury?

12 MS. WILSON: No, ma'am.

13 THE COURT: Mr. Pennington?

14 MR. PENNINGTON: No, ma'am.

15 THE COURT: All right. Let's bring in the
16 jury.

17 (The jury is escorted into the courtroom at
18 9:53 a.m.)

19 THE COURT: Thank you. Good morning, ladies
20 and gentlemen of the jury. Did you comply with all of
21 the instructions over the evening hour? Please raise
22 your right hand. Thank you.

23 All 15 jurors have complied with the Court's
24 instructions.

25 Thank you for your accommodations. We were

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1 having some technical difficulties. And so please give
2 your strict attention.

3 Ms. Wilson, call your next witness.

4 I'm sorry, Mr. DuRant.

5 MR. DURANT: Thank you, your Honor. The State
6 would call Christopher Singleton.

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

9 THE WITNESS: Yes.

10 THE DEPUTY CLERK OF COURT: Thank you, sir.
11 You may take your seat. Sir, please speak loudly and
12 clearly into that microphone whenever you respond to
13 your questions. And then, also, if you would, please
14 state your first and last name, spelling your last for
15 the record.

16 THE WITNESS: My name is Christopher Singleton,
17 S-i-n-g-l-e-t-o-n.

18 **CHRISTOPHER SINGLETON,**

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 Very good. We hear you well.

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1 What's your nickname, Chris?
2 A Little Chris.
3 Q And how old are you?
4 A Twenty-five.
5 Q How far did you go in school?
6 A I'm in college.
7 Q Okay. Where are you going to school now?
8 A Right now I go to Trident Tech, but I was going
9 to Voorhees College.
10 Q You're going to Voorhees College?
11 A Yeah. Right now -- I'm at Trident right now.
12 Q Oh. Okay. And what were you taking at Trident
13 Tech?
14 A Computer science.
15 Q Are you married?
16 A No.
17 Q Do you have any children?
18 A I have a little girl.
19 Q And what part of town are you from?
20 A I'm from West Ashley.
21 Q What part of West Ashley?
22 A Orange Grove.
23 Q Do you know Bobby Warthaw?
24 A Yeah.
25 Q What is your relationship with Bobby Warthaw?

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1 A That's my cousin.

2 Q Now, directing your attention to July the 15th

3 of 2012, did your cousin, Bobby Warthaw, ask you for

4 some help on something?

5 A Yes.

6 Q And what was that? What did he want you to

7 help him with?

8 A Getting a gun.

9 Q Buying a gun from somebody?

10 A Yeah.

11 Q And he had approached you about it and told you

12 about the situation?

13 A Yes.

14 Q Now, were you with Bobby when he -- at the

15 Charleston Police Department on July the 15th --

16 A Yes.

17 Q -- of 2012?

18 A Yes.

19 Q You went down there with him?

20 A Uh-huh.

21 Q Was the original plan for you to be involved?

22 A No.

23 Q Who was originally supposed to be involved?

24 A Our other friend.

25 Q And who was that?

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1 A I'm not really -- his name is Chris too, but
2 his name -- his nickname, Dollar. I don't know his real
3 name, like that.

4 Q And so when you were going down to the police
5 department with Bobby, your -- were you -- you were
6 going with the intention of helping him out at that
7 time?

8 A Yeah.

9 Q Okay. Because what happened to Dollar?

10 A He was busy at the time. He had --

11 Q And he got -- said he couldn't do it?

12 A Yeah.

13 Q So what did you -- what did you say?

14 A Bobby just asked me to do it. And, I mean,
15 well, we already been downtown, so he just asked me to
16 do it and I did it.

17 Q So you pretty much agreed, when you were down
18 at the police department, that you would help; is that
19 correct?

20 A Yes.

21 Q Now, after you agreed to help at the police
22 department, did you agree to wear a wire?

23 A Yes.

24 Q Were you searched prior to having that wire put
25 on?

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1 A Yes.

2 Q And, of course, when you were searched, you

3 didn't have a gun on you; did you?

4 A No.

5 Q If you'd had a gun on you, it would have been

6 found by the police, I would assume?

7 A Yeah.

8 Q Now, did you just wear audio recording or video

9 recorder or both?

10 A Both.

11 Q And who put that on you?

12 A The police. I don't know his name.

13 Q You don't know. One of the policemen?

14 A Yeah.

15 Q Whose car was being used?

16 A Bobby's friend.

17 Q And do you remember what kind of car it was?

18 A It was a Focus.

19 Q And do you remember what color it was?

20 A Tan.

21 Q Now, was the vehicle that y'all used searched

22 before y'all were allowed to get in?

23 A Yes.

24 Q Do you remember that -- being used to Dollar

25 (phonetic); didn't they?

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1 A Yeah, I believe so.
2 Q Now, when y'all left, who was driving?
3 A Bobby.
4 Q And where were you sitting in the car?
5 A In the passenger.
6 Q Who had the buy money?
7 A Me.
8 Q How much buy money did you have?
9 A \$200.
10 Q And where did you go when you left the police
11 department?
12 A Ardmore.
13 Q And where did you go in Ardmore?
14 A They called it the Hole.
15 Q And what is the Hole? What part of Ardmore is
16 the Hole?
17 A That's when -- where Evergreen and Balsam,
18 like, connect around the back.
19 Q On the back side where Sequoia is?
20 A Yeah.
21 Q And what's back in the Hole? What kind of
22 residences are back there?
23 A Section 8 apartments.
24 Q Two -- couple of different apartment complexes;
25 is that right?

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1 A Yeah.
2 Q Now, after y'all parked, did you stay in the
3 car?
4 A Yeah.
5 Q How about Bobby?
6 A He went outside the -- to meet him, I guess.
7 Yeah.
8 Q And now, when Bobby returned to the car, did he
9 return by himself?
10 A No.
11 Q Who was with him?
12 A I don't know his name, but --
13 Q Do you see the guy that was with him in the
14 courtroom today?
15 A Yeah.
16 Q Could you point him out to the jury?
17 A He's right there.
18 Q Would you describe what he's wearing?
19 A Black and white.
20 Q I'm talking about what is he wearing now.
21 Black and white?
22 A Yeah.
23 Q Is he the black gentleman sitting between the
24 two white gentlemen? How about that?
25 A Yeah.

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1 Q Okay. Now, when this fellow and Bobby returned
2 to the car, where did they get in the car?

3 A Bobby driver, and him -- him in the -- he was
4 in the back seat.

5 Q Back seat behind you or the back seat behind
6 Bobby?

7 A Behind Bobby.

8 Q And what did he do after he got in the car?

9 A He had the gun, and I bought it from him.

10 Q Do you remember where he pulled the gun out
11 from?

12 A I think his hip. I can't -- I don't know. I
13 think his hip, but I don't know.

14 Q Okay. And once he pulled the gun out and gave
15 it to y'all, what did you give him?

16 A I give him the money.

17 Q Did you try to talk him down a little bit?

18 A Yes.

19 Q And did he go for that?

20 A No.

21 Q Now, I want to play a portion of State's
22 Exhibit Number 24. You should be able to see it there
23 or there. And I may ask you a couple of questions.

24 (Video is played.)

25 Q (By Mr. DuRant) Who is that that just got in

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1 the car in the front seat?

2 A Bobby.

3 (Video is played.)

4 Q (By Mr. DuRant) And who is that?

5 A That's him.

6 Q The fellow you previously identified?

7 A Yeah.

8 THE COURT: Is that a yes?

9 THE WITNESS: Yes, ma'am.

10 THE COURT: Thank you.

11 (Video is played.)

12 Q (By Mr. DuRant) Can you tell what that is he's

13 got in his hand right there?

14 A I guess that's the gun.

15 Q Was it in something?

16 A No.

17 Q But you -- I mean, it came out of something,

18 but it -- was it in something originally --

19 A No.

20 Q -- or do you remember?

21 A I can't really remember. I know after I got

22 it, I put it in a towel.

23 Q When you say a towel, you're talking about this

24 towel right here up at the top? Didn't y'all bring that

25 towel with you?

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1 A Yeah.
2 (Video is played.)
3 Q (By Mr. DuRant) I'd also like to play you a
4 portion of State's Exhibit Number 25.
5 (Video is played.)
6 Q (By Mr. DuRant) Where is -- do you remember
7 where that camera was?
8 A That was on me.
9 Q On you? Do you know what kind of camera it
10 was? Was it -- where on you was it?
11 A On my chest.
12 Q Okay. It was like a button or something?
13 A Yeah, it was wrapped around my chest. And I
14 think he put the speaker between the -- between
15 the -- they had given me a shirt to put on.
16 Q Okay.
17 (Video is played.)
18 Q (By Mr. DuRant) Who's that in the driver's
19 seat?
20 A That's Bobby.
21 (Video is played.)
22 Q (By Mr. DuRant) What is that right there?
23 A That's the gun.
24 Q That's after it was handed to you by whom?
25 A Him.

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1 Q "Him," meaning who?
2 A That guy right --
3 Q This fellow you previously identified; right?
4 A Yeah. Uh-huh.
5 (Video is played.)
6 Q What did you ask him then?
7 A Do you want 180?
8 Q And he wasn't going for that?
9 A No.
10 (Video is played.)
11 Q (By Mr. DuRant) What was that that Bobby put
12 under your seat?
13 A The gun.
14 (Video is played.)
15 Q (By Mr. DuRant) Now, after y'all purchased the
16 gun from the Defendant, where did y'all drive to?
17 A We drive behind that middle school. We had met
18 up with them with the gun behind the middle school.
19 Q That's where y'all had planned to meet when
20 y'all talked about this at the police department;
21 correct?
22 A Yes.
23 Q And where was that school located?
24 A That's off of Wappoo Road, I think.
25 Q Okay. The old St. Andrews High School? Is

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1 that --
2 A Yeah.
3 Q And what happened there?
4 A Took everything off -- they grabbed -- they
5 took the gun.
6 Q Did they do that there or they do that later at
7 the crime scene office?
8 A Well, as a matter of fact, yeah, they did that
9 because -- and they took the car.
10 Q Okay.
11 A We drive in different cars, and one of the
12 policeman drove the car we was in to the crime scene.
13 Q Crime scene office. And they got the car
14 there?
15 A Yeah.
16 Q And then that's where they removed the wire
17 from you?
18 A Yeah.
19 Q And how much did you get paid?
20 A Thirteen grand. No, I didn't get paid 13
21 grand, but that was the thing.
22 Q Well, you're supposed to -- you got how --
23 first of all, I'm not talking about the Crime Stoppers.
24 How much did the police pay, if you remember?
25 A I think 200 -- I mean,

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1 200-and-something -- yeah, \$200.
2 Q Okay. And then there was some Crime Stoppers
3 reward money; right?
4 A Yeah.
5 Q And I believe the testimony yesterday was that
6 it was \$13,000?
7 A Yeah.
8 Q How much of that did you get?
9 A About 1,200.
10 Q How much were you supposed to get?
11 A Like four or three.
12 Q How --
13 A Four or three grand. Like, three grand --
14 \$3,000.
15 Q So you were supposed to get three grand?
16 A Yeah.
17 Q And you ended up getting about 1,200?
18 A Yeah.
19 Q Why?
20 A Because Bobby -- Bobby greedy, you know. He
21 was greedy. He took everything.
22 Q What are Willie Dee's?
23 A That's Air Force Ones.
24 Q And what color are Air Force Ones?
25 A Black and white.

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1 Q Black or white or black and white?

2 A Black and white.

3 Q It'd be either; right?

4 A Yeah.

5 MR. DURANT: Would you please answer any
6 questions that Defense counsel may have?

7 THE COURT: Mr. Pennington.

8 MR. PENNINGTON: Thank you, your Honor. May I
9 have the Court's indulgence?

10 THE COURT: Take your time.

11 MR. PENNINGTON: Thank you, your Honor. I
12 don't have any questions for Mr. Singleton.

13 THE COURT: All right. Is this witness
14 excused?

15 MR. DURANT: We would ask that he be excused,
16 your Honor.

17 THE COURT: Any objection?

18 MR. PENNINGTON: No objection, your Honor.

19 THE COURT: Mr. Singleton, you are free to step
20 down. Feel free to stay with us, but you're also free
21 to leave the courtroom. Thank you.

22 THE WITNESS: All right. Thank you.

23 (The witness steps down from the stand.)

24 THE COURT: Call your next witness.

25 MR. DURANT: The State would call Cheryl

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1 Fulton. Cheryl Fulton Turner, I should say.

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

4 THE WITNESS: I do.

5 THE DEPUTY CLERK OF COURT: Take your seat.

6 And, ma'am, if you would, please, state your first and
7 last name, spelling your last for the record.

8 THE WITNESS: Cheryl Turner, T-u-r-n-e-r.

9 THE COURT: Mr. DuRant, your witness.

10 MR. DURANT: Thank you, your Honor.

11 **CHERYL TURNER,**

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 her oath
15 as follows:

16 **DIRECT EXAMINATION**

17 **BY MR. DURANT:**

18 Q Good morning. Would you please tell the jury
19 where you're employed?

20 A Charleston Police Department.

21 Q And what do you do for the Charleston Police
22 Department?

23 A I'm a robbery detective.

24 Q How long have you been with CPD?

25 A About seven years now.

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1 Q And what were you doing for the police
2 department on July 15th of 2012?

3 A I was an investigator with the field
4 intelligence.

5 Q What is the field intelligence unit?

6 A What we do is, we assist the detectives by
7 gathering information from the field. We do
8 surveillance operations, controlled buy operations, find
9 information from various confidential informants.

10 Q Okay. In that capacity, did you have the
11 occasion to become involved in the controlled buy of a
12 pistol in Ardmore subdivision on July the 15th of 2012?

13 A I did.

14 Q And who were y'all attempting to buy a pistol
15 from?

16 A Ryan Deleston.

17 Q Where did y'all meet to go over the operation
18 of the plan?

19 A We met at CPD headquarters.

20 Q And later on, y'all were riding -- you were
21 riding with somebody. Who did you ride with that day?

22 A I was riding with Lieutenant Jenkins and
23 Investigator Phil Gee (phonetic).

24 Q Okay. And where is Detective Jenkins this
25 week?

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1 A He is on vacation right now.

2 Q Okay. And how about Detective Gee?

3 A He is on active military duty.

4 Q Now, how did you know what Deleston looked

5 like?

6 A I was familiar with Deleston, and

7 Lieutenant Jenkins was also familiar with him. We had

8 stopped him recently in the past. We also had

9 photographs --

10 Q Do you see Mr. Deleston in the courtroom today?

11 A Yes, I do.

12 Q And could you point him out to the jury?

13 A In the white shirt.

14 Q And sitting at counsel table over here?

15 A Yes.

16 Q The one without the tie on?

17 A Yes.

18 Q Okay. Now, how many informants did y'all use

19 in the controlled buy?

20 A We used two.

21 Q Did you know either of the informants?

22 A I knew one of them.

23 Q Which one?

24 A I knew Bobby Warthaw.

25 Q So you didn't know Christopher Singleton, the

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1 other one that helped him out?

2 A Not prior to this operation.

3 Q What kind of vehicle were they in?

4 A They were in a tan Ford Focus.

5 Q Was that a Charleston Police Department car, or
6 did they drive their car?

7 A It was not. It was their car.

8 Q Do you know whether that car was searched prior
9 to them being allowed to use it in this operation?

10 A It was searched. It was searched by
11 Lieutenant Jenkins and Detective Shealy.

12 Q And how was the vehicle searched?

13 A They both manually searched it by hand, and we
14 also had a K-9 unit come out and search it.

15 Q And no indication there was any weapon in the
16 car; correct?

17 A None.

18 Q Was the car wired?

19 A It was. It was wired with audio and visual.

20 Q And were either of the informants wired?

21 A Christopher Singleton was.

22 Q And do you know whether the two informants were
23 searched prior to being allowed to go on this operation?

24 A Yes. They were both searched prior to this by
25 Sergeant Jenkins.

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1 Q And when you're dealing with informants, why do
2 you search them and their car prior to doing a
3 controlled buy situation?

4 A So that we can make sure that they don't bring
5 in any contraband; in this case, so that the gun that we
6 were trying to purchase from Deleston wasn't being
7 brought in by our informants.

8 Q So you just wanted to make sure that they
9 didn't bring the gun themselves and they're allegedly
10 sold; correct?

11 A Correct.

12 Q How much money was -- the buy money was given
13 to the informants?

14 A We gave them \$200.

15 Q And who was that given to?

16 A Christopher Singleton.

17 Q And do y'all make a record of the kind of
18 money the money you give to them?

19 A Yeah. It's pretty it's pretty -- I'm sorry.
20 The currency is basically photocopied. We record those
21 serial numbers of each bill that we give the informants.

22 Q And when the informants left to make the buy,
23 were they followed?

24 A Yes, they were.

25 Q By whom?

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1 A I was in a car with Sergeant Jenkins and

2 Investigator Phil Gee, and in another car was

3 Detective Shealy and Sergeant Osborne.

4 Q Detective Osborne being right here; correct?

5 A Yes. And both of us -- both cars followed him.

6 Q And they were followed from downtown to where?

7 A To the Ardmore area. We went down 17 and made

8 a -- watched them make a right onto White Oak and make

9 another right onto Evergreen.

10 Q And they didn't make any stops in between;

11 correct?

12 A They did not.

13 Q Now, once y'all watched them -- once y'all

14 watched them make that turn onto Evergreen -- well, let

15 me just. . .

16 I'm going to refer you to State's Exhibit

17 Number 27, if you can see it. And do you recognize this

18 aerial photograph?

19 A Yes.

20 Q And I know that this doesn't cover too much

21 of -- this is -- what highway is that down here?

22 A This is Highway 17, Savannah Highway.

23 Q So you said you observed them -- you observed

24 them to what point?

25 A We watched them make a right onto White Oak and

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1 then make another right onto Evergreen.

2 Q Okay. And do you know where the undercover
3 officers were in the area of the buy?

4 A They were down at Sequoia and Evergreen Street.

5 Q In this apartment; is that correct?

6 A Correct.

7 Q This apartment building?

8 A Yes.

9 Q Okay. And to that point, they didn't make any
10 stops; correct?

11 A None.

12 Q And once y'all -- once y'all watched them turn
13 and make that right onto Evergreen, where did y'all go?

14 A We went to the Best Western parking lot. It's
15 off of 17. It's at the -- it's at the dead end of
16 Cashew Street.

17 Q Okay. And why did y'all go to that particular
18 location?

19 A We were set at the location to watch Deleston's
20 house.

21 Q And I guess I should have done this earlier,
22 but let me ask you a couple other questions. Could you
23 tell the jury what you observed at about 3:03 p.m.?

24 A We watched a black Suburban pull into the
25 driveway at Deleston's residence.

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1 Q Okay. And I show you what's previously been
2 marked as State's 84 in evidence. Does that appear to
3 be the type of vehicle --

4 A Yes.

5 Q -- that you saw pull in to Mr. Deleston's
6 residence?

7 A It is.

8 Q And referring back to State's Exhibit Number
9 27, would you please point out to the jury where y'all
10 were posted up during the surveillance operation?

11 A We were right here at the end of Cashew Street.

12 Q Okay. And there's a fence, I believe, there;
13 is that correct?

14 A It's a chain-link fence.

15 Q Okay. And also a few bushes, apparently. I
16 believe the testimony previously, that Mr. Deleston
17 lived in this unit; is that correct?

18 A Correct.

19 Q And you said you saw that -- the truck arrived
20 at about 3:03 p.m. What happened right after that, at
21 about 3:06 p.m.?

22 A We watched Deleston approach the vehicle. And
23 then after approaching the vehicle, he walked towards
24 Evergreen and made the right onto Evergreen towards
25 Sequoia Street.

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1 Q And do you recall what Mr. Deleston was wearing
2 at that time?

3 A He was wearing a white T-shirt, blue jean
4 shorts, and also had a tan baseball hat on.

5 (Document shown to Defense counsel.)

6 MR. DURANT: Your Honor, we would offer State's
7 Exhibit 90 into evidence.

8 MR. PENNINGTON: No objection, your Honor.

9 THE COURT: State's 90 into evidence without
10 objection.

11 (State's Exhibit Number 90 admitted into
12 evidence.)

13 Q (By Mr. DuRant) And does State's Exhibit 90
14 accurately reflect what you saw Mr. Deleston wearing at
15 the time of the gun buy?

16 A It does.

17 (Document is published to the jury.)

18 Q (By Mr. DuRant) Now, once you saw Mr. Deleston
19 walking way down Cashew and taking the right onto
20 Evergreen, what did y'all do?

21 A We notified Sergeant Robertson and Detective
22 Olson, who were at the fixed location, that they were
23 coming -- that he was coming their way.

24 Q Told them he was coming and what he was
25 wearing; correct?

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1 A Correct.

2 Q And how long did that black Suburban stay at
3 Deleston's house?

4 A He was there for approximately ten minutes.

5 Q And where did y'all go after the informants
6 completed the purchase of the weapon?

7 A We waited until the black Suburban left the
8 residence, and then we went up -- or down 17 further on
9 the right around to -- excuse me, onto Wappoo Road at
10 St. Andrews Middle School.

11 Q And why were y'all meeting at St. Andrews
12 Middle School?

13 A We had predetermined that location.

14 Q And do you know who inform -- followed the
15 informants to that location?

16 A Detective Shealy and Sergeant Osborne did.

17 Q And what happened at St. Andrews Middle School?

18 A We removed both confidential informants from
19 the vehicle. Sergeant Jenkins searched them. And after
20 that, he got into the car, and he drove the car down to
21 our crime scene office, which is on Wappoo Road.

22 MR. DURANT: Thank you very much. Could you
23 please answer any questions that Defense counsel has?

24 MR. PENNINGTON: May it please the Court, your
25 Honor?

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1 THE COURT: Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. PENNINGTON:

4 Q Officer Turner, you had been out and working in
5 this investigation for weeks before July 15th, hadn't
6 you?

7 A I was involved in the investigation, actively
8 investigating it. It was Sergeant Osborne and his
9 people.

10 Q Okay. The lead detectives were
11 Detectives Osborne and Detective Burckhardt?

12 A Yes.

13 Q Okay. And you had mentioned that you had
14 become familiar with the identity of my client,
15 Ryan Deleston, from a stop, but that was not a stop for
16 a criminal behavior, was it?

17 A It was not.

18 Q It was an attempt to ascertain his identity?

19 A We were familiarizing ourselves with the people
20 in the area.

21 Q Okay. Now, this was before the gun purchase?

22 A Correct.

23 Q All right. So the law enforcement had the gun
24 to initiate surveillance of my client's residence from
25 the days preceding July 15?

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1 A We did.

2 Q Okay. And then it ultimately culminated

3 that -- I believe you testified that Bobby Warthaw drove

4 from the City police station on Lockwood over to

5 Ardmore?

6 A Correct.

7 Q On the 15th?

8 A Correct.

9 Q And that would have been at -- he left about

10 2:31 in the afternoon?

11 A The exact time, I'd have to check my notes.

12 Q Do you have your notes there?

13 A I do.

14 Q Do you want to -- please feel free.

15 A We left the police department about 2:15 --

16 Q All right.

17 A -- in the afternoon.

18 Q So y'all left Lockwood downtown at 2:15, and it

19 was about 2:31 that he arrived at Evergreen and Sequoia?

20 A Correct.

21 Q Okay. And then there was about a 30-minute

22 wait until this Suburban arrived over on Cashew Street?

23 A Correct.

24 Q So the -- we're talking about that black truck

25 that the Solicitor just pointed out in that photograph;

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1 correct?

2 A Yes.

3 MR. PENNINGTON: Thank you. That's all the
4 questions that I have, your Honor.

5 THE COURT: Mr. DuRant.

6 MR. DURANT: Nothing on Redirect, your Honor.

7 THE COURT: Is this witness excused?

8 MR. DURANT: We would ask that she be excused.

9 THE COURT: Any objection?

10 MR. PENNINGTON: No objection, your Honor.

11 THE COURT: Ms. Turner, you may step down.
12 Feel free to remain with us. Thank you.

13 (The witness steps down from the stand.)

14 THE COURT: Call your next witness.

15 MR. DURANT: The State would call
16 Jeff Robertson.

17 MS. WILSON: Beg the Court's indulgence.

18 (Ms. Wilson speaks with Mr. Pennington off the
19 record.)

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

22 THE WITNESS: I do.

23 THE DEPUTY CLERK OF COURT: Thank you, sir.
24 You may take your seat.

25 MS. WILSON: Judge, may we approach briefly

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1 about scheduling?

2 THE COURT: You may.

3 (Mr. Pennington, Ms. Wilson, and Mr. Durant
4 approach the bench for a discussion off the record.)

5 THE COURT: Sir, if you'll state your full name
6 and please spell your last name.

7 THE WITNESS: My name is Jeffery M. Robertson,
8 R-o-b-e-r-t-s-o-n.

9 THE COURT: Thank you.

10 **JEFFREY M. ROBERTSON,**

11 having been first duly sworn by the Deputy Clerk of
12 Court to tell the truth, the whole truth, and nothing
13 but the truth, was examined and testified upon his oath
14 as follows:

15 **DIRECT EXAMINATION**

16 **BY MR. DURANT:**

17 Q Good morning.

18 A Good morning, sir.

19 Q Could you tell our jury where you're employed?

20 A I'm employed with the Charleston City Police
21 Department.

22 Q And how long have you been with the City police
23 department?

24 A Approximately 16 years.

25 Q And you don't look like your typical police

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1 officer. What do you do for them?

2 A Yes. I work in the special investigations
3 unit. We wear plain clothes, undercover --

4 Q Okay.

5 A -- covert operation and investigations.

6 Q And I understand.

7 And how long have you been doing that?

8 A Four and a half years.

9 Q Now, in that capacity, what unit are you with?

10 A Special investigation unit.

11 Q And what does the special investigations unit
12 do?

13 A We focus mainly on narcotics, but we also
14 participate in any -- any operation that requires police
15 officers who don't look like police officers, basically.
16 We do surveillance, covert operations, things of that
17 nature.

18 Q And in that capacity, and with regard to the
19 murder investigation involving Marley Lion, did you have
20 the occasion to work undercover on July the 15th of
21 2012?

22 A Yes, sir, I did.

23 Q And in what area were you working undercover?

24 A I was working in the area at the intersection
25 of Evergreen and Sequoia Street in West Ashley in the

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1 Ardmore subdivision.
2 Q And what is that area called?
3 A The Hole. Slang term is "the Hole."
4 Q Okay. And what is located -- where -- at the
5 Hole in the Ardmore subdivision?
6 A It's two apartment complexes, which are city
7 housing.
8 Q And do you frequently work in this area?
9 A Yes, sir.
10 Q Who were you working with that day?
11 A I was working with another detective, Detective
12 Bill Olson.
13 Q And at the time of the 15th, how long have
14 you -- had you been working undercover at that
15 particular area?
16 A Approximately two weeks.
17 Q And where were you located?
18 A We were located inside of [REDACTED] Sequoia Street,
19 Apartment [REDACTED].
20 Q And what was your cover?
21 A Our cover was as construction workers.
22 Q And I'll get to that in a second.
23 Now, was that an occupied apartment?
24 A No, sir. It was unoccupied and just completed
25 its renovation.

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1 Q And y'all were there under the guise that y'all
2 were renovating the apartment; is that correct?
3 A Yes, sir. We went in to carry tools and things
4 of that nature --
5 Q Okay.
6 A -- to look like we were working inside the
7 apartment.
8 Q I'd like to refer your -- your attention -- and
9 let me just do this. Make it easier.
10 (Mr. DuRant is setting up the easel.)
11 Q (By Mr. DuRant) Can you see that?
12 A Yes, sir.
13 Q Let me give you a laser pointer.
14 A Yes, sir.
15 Q Referring you to State's Exhibit 27, could you
16 show the jury where the Hole is?
17 A Approximately this area here.
18 Q And when you're saying "the Hole," you're --
19 there's -- where are the two apartment complexes that
20 you're talking about?
21 A The apartment complex that we were in was here.
22 Q Okay.
23 A And the other apartment complex is here.
24 That's [REDACTED] Sequoia.
25 Q Okay. And which -- which apartment were you in

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1 in that complex?

2 A We were in Apartment Unit Number ■, which is
3 right there.

4 Q That's the one closest to Sequoia Street?

5 A Yes, sir.

6 Q Okay. And where are the windows on that
7 apartment?

8 A There's windows on the front and back of the
9 apartment here and here, on the north and south sides of
10 the apartment.

11 Q So you had vision to this way and this way; is
12 that correct?

13 A Yes, sir. That's correct.

14 Q And what were you and your partner tasked to do
15 that day?

16 A We were tasked to conduct surveillance on a
17 controlled purchase of a firearm from the Defendant,
18 Ryan Deleston.

19 Q This would be Mr. Deleston over here; correct?

20 A Yes, sir.

21 Q What equipment did y'all have?

22 A We had cameras, both still pictures and video.
23 And we had a live audio feed that was transmitting the
24 ongoing conversation from the informant's vehicle.

25 Q Was one of the informants -- the car was wired;

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1 is that correct?

2 A The car was wired with the audio transmitter
3 that we could hear.

4 Q That was realtime transmission?

5 A That's correct.

6 Q Live transmissions. And why is that?

7 A So we could monitor the progress of the
8 transaction and also make sure of the safety of the
9 informants.

10 Q Okay. Now, if you would, could you tell the
11 jury what you saw happening about 2:30 p.m.?

12 A I observed the informants' vehicles drive down
13 Evergreen Street toward Sequoia and then make a
14 right-hand turn into the apartments around [REDACTED] Sequoia
15 Street.

16 Q Okay. And do you remember what kind of vehicle
17 the -- the informants were using?

18 A Tan Ford -- tan Ford Focus. Sorry.

19 Q And, if you would, could you just point out to
20 the jury, if you could -- I know it's kind of a far
21 shot, but -- where you saw them park the vehicle?

22 A Approximately this area.

23 Q In that parking lot?

24 A Yes, sir.

25 Q On the north side or the south side of the

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1 parking lot?

2 A It was on the north side of the parking lot.

3 Q Okay. And could you see the vehicle, where it
4 was parked?

5 A Yes, sir.

6 Q You had a clear view of it --

7 A Yes, sir.

8 Q -- from your location --

9 A Yes, sir.

10 Q -- at [REDACTED] Sequoia?

11 A Yes, sir.

12 Q And how did y'all know the car was about to get
13 there?

14 A We were informed by officers who had just seen
15 the informants leave, and they told us it was headed for
16 the area. Plus we began to hear the audio feed as it
17 got closer.

18 Q And y'all were in radio contact with everybody?

19 A Yes, sir. Yes, sir.

20 Q And how many people were in the informants'
21 vehicle?

22 A Two people.

23 Q And what happened after they parked?

24 A They parked, and I observed the driver, the
25 informant driver, get out of the vehicle and walk around

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1 the intersection of Evergreen and Sequoia.

2 Q Okay. And did you observe the front passenger
3 ever get out of the vehicle?

4 A He never got out of the vehicle.

5 Q And what happened at about five until 3:00?

6 A I observed the informant walking to the
7 apartment complex at [REDACTED] Sequoia to the south -- south
8 side of our apartment, and he walked to Unit [REDACTED].

9 Q And you can just point the general location
10 where that is.

11 A Yes, sir. Be this area here.

12 Q Okay.

13 A He walked to Unit [REDACTED]. He knocked on the door,
14 made contact with a gentleman who was inside the
15 apartment, had a little bit of a conversation standing
16 right in front of the door, and he handed him a cell
17 phone. The occupant of the apartment went back into the
18 apartment, and the informant left the area. He never at
19 one time went inside the apartment. We never lost sight
20 of him.

21 Q Now, moving ahead about ten minutes to
22 3:05 p.m., what happened then?

23 A Sergeant Jenkins or, now, Lieutenant Jenkins,
24 radioed to me, saying that Defendant Deleston was
25 leaving Cashew Street, walking on Evergreen towards our

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1 location.

2 Q Okay. And did y'all pick him up on Evergreen
3 Street?

4 A We did.

5 Q Now, when you picked him up on Evergreen
6 Street, what did he do? Who did he -- who did he meet,
7 and where did he meet?

8 A We saw him walk straight down Evergreen to the
9 intersection of Sequoia, and he met with the informant,
10 who was waiting at that intersection.

11 Q And how did you know what he looked like?

12 A I'd been provided pictures prior to our
13 starting this entire operation. And I'd also seen him
14 in the area, both on foot and on a bicycle.

15 Q During your previous surveillance operations?

16 A Yes, sir.

17 Q So you knew what the subject looked like?

18 A That's correct.

19 Q Do you recall how he was dressed?

20 A He had on a white T-shirt, tan baseball cap,
21 light-colored blue jeans. He was smoking a cigarette
22 and talking on the cell phone.

23 Q And as a matter of fact, I believe -- let me
24 show you something.

25 I'd like to refer your attention to State's

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1 Exhibit 90. Is that how he appeared that day?

2 A Yes, sir.

3 Q As a matter of fact, y'all took that photo;

4 right?

5 A My partner, Detective Olson, did, yes, sir.

6 Q As he was walking to the gun buy; is that

7 correct?

8 A That's correct.

9 Q Now, where did he -- where did he meet

10 Mr. -- the informant?

11 A He met him at the intersection of Evergreen and

12 Sequoia just to -- basically, in the rear of the

13 apartment that we were in.

14 Q And where did they go?

15 A They walked straight down Sequoia and to the

16 informant vehicle.

17 Q And what happened when they got to the

18 informant vehicle?

19 A The informant got in the driver's seat, and

20 then Deleston got in the rear driver's seat.

21 Q And y'all were following the live audio at this

22 time?

23 A Yes, sir.

24 Q And so you could hear what was going on?

25 A We could hear some talk. It was very soft

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1 talk, so we couldn't tell exactly what was being said,
2 but we could tell that things were going smoothly.

3 Q Okay. And how long was Mr. Deleston in the
4 car?

5 A Approximately 45 seconds.

6 Q And what did he do when he got out of the car?

7 A He exited the car and walked straight down the
8 driveway to Sequoia Street, made a left, walked back to
9 Evergreen, and headed back to the direction of Cashew,
10 the same way he came in.

11 Q And where did the informants' car go?

12 A The informant backed out, made a left on
13 Sequoia, and then turned on Evergreen and headed back
14 towards White Oak. And as he was leaving, I heard on
15 our -- on the wire, I heard something to the affect of,
16 "we got it," which I assume is referring to the firearm.

17 Q Okay.

18 (Document is shown to Defense counsel.)

19 MR. DURANT: Your Honor, we would offer State's
20 88 and 89, I believe without objection.

21 THE COURT: Any objection, Mr. Pennington?

22 MR. PENNINGTON: No, your Honor, no objection.

23 THE COURT: State's 88 and 89 into evidence
24 without objection.

25 (State's Exhibit Nos. 88 and 89 are admitted)

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1 into evidence.)

2 Q (By Mr. DuRant) Like to refer you, first, to
3 State's Exhibit Number 88. What does that depict?

4 A That is the area of [REDACTED] -- [REDACTED] [REDACTED] Sequoia,
5 and of the --

6 Q What is this where my cursor is?

7 A That's the informant vehicle.

8 Q And that's roughly the view y'all had from
9 where you were situated at the apartment?

10 A That's correct.

11 Q State's 89, what does that depict?

12 A That depicts the informant getting out of the
13 vehicle and walking towards the intersection at
14 Evergreen and Sequoia.

15 Q And I believe 90 we've already gone through; is
16 that correct?

17 A Yes, sir.

18 Q Now, you indicated that there was also some
19 video taken?

20 A That's correct.

21 Q I show you what's been marked State's Exhibit
22 Number 26 and ask if you recognize that item and, if so,
23 how?

24 A Yes, sir, I do.

25 Q What is that?

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1 A That is a video that was taken by my partner of
2 the controlled buy.

3 Q And this was taken at the time of the buy; is
4 that correct?

5 A That's correct.

6 Q And how do you know this is that video?

7 A I reviewed it and initialed it as being that
8 video.

9 Q Okay. And does it fairly and accurately depict
10 the transaction as y'all observed from [REDACTED] Sequoia
11 Street --

12 A Yes, sir.

13 Q -- on July the 15th of 2012?

14 A Yes, sir, it does.

15 MR. DURANT: Your Honor, we would offer State's
16 26, if there's no objection.

17 MR. PENNINGTON: No objection, your Honor.

18 THE COURT: State's 26 into evidence without
19 objection.

20 (State's Exhibit No. 26 is admitted into
21 evidence.)

22 (Video is played.)

23 Q (By Mr. DuRant) Who is that?

24 A That's Defendant Deleston in the white T-shirt
25 and the informant wearing the tank top with the

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1 dreadlocks.

2 (Video is played.)

3 Q (By Mr. DuRant) How long did y'all remain at
4 that location after the transaction took place?

5 A Approximately an hour, hour and a half,
6 somewhere around there.

7 Q And what did you observe at about five minutes
8 after 4:00?

9 A I observed the informant vehicle drive back
10 into the area to [REDACTED] Sequoia. I observed the informant
11 get out, go back to Apartment [REDACTED], where he took the cell
12 phone to the first time, and he retrieved the cell phone
13 and then left.

14 MR. DURANT: Okay. Would you please answer any
15 questions that Mr. Pennington may have?

16 THE WITNESS: Yes, sir.

17 THE COURT: Mr. DuRant, will you take the board
18 down?

19 MR. DURANT: Yes, ma'am, I will. Sorry.

20 MR. PENNINGTON: And I have no questions, your
21 Honor.

22 THE COURT: Is this witness excused?

23 MR. PENNINGTON: As far as I'm concerned.

24 THE COURT: You may step down. Feel free to
25 remain with us, but you're also free to leave. Thank

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1 you.

2 THE WITNESS: Thank you.

3 (The witness steps down from the stand.)

4 THE COURT: Call your next witness.

5 MR. DURANT: State would call George Bradley.

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

8 THE WITNESS: I do, sir.

9 THE DEPUTY CLERK OF COURT: Thank you, sir.
10 Take your seat. Sir, if you would, please, state your
11 full name, spelling your last for the record.

12 THE WITNESS: George Bradley, B-r-a-d-l-e-y.

13 GEORGE BRADLEY,

14 having been first duly sworn by the Deputy Clerk of
15 Court to tell the truth, the whole truth, and nothing
16 but the truth, was examined and testified upon his oath
17 as follows:

18 DIRECT EXAMINATION

19 BY MR. DURANT:

20 Q Good morning, sir.

21 A Good morning.

22 Q Where are you employed?

23 A I'm employed with the Charleston Police
24 Department.

25 Q And for how long?

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1 A I've been there for 14 years now.

2 Q And what do you do for Charleston Police
3 Department now?

4 A I'm currently a sergeant in the administrative
5 division of the Team 4 office and also an assistant team
6 leader for our SWAT team.

7 Q As a member of the SWAT team, were you involved
8 in the controlled purchase of a handgun in Ardmore
9 subdivision on July the 15th of 2012?

10 A Yes, sir, I was.

11 Q And what was the role of the SWAT team in that?

12 A The day of the purchase, the SWAT team's
13 assignment was basically a security detail for the
14 informants that we were using at the time to make the
15 purchase. In the event that anything went wrong, we
16 were there to help -- assist with recovering the
17 informants and making sure that the area was safe.

18 Q Okay. And I'm assuming that y'all weren't
19 there in full paramilitary gear that you generally see
20 the SWAT team in; is that correct?

21 A No, sir, we weren't. We were in the standard
22 patrol uniform sitting outside the area. We had both
23 marked and unmarked vehicles in the area.

24 Q And were you able to monitor what was going on
25 with regard to the actual purchase of the weapon itself?

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- 1 A Yes, sir, I was.
- 2 Q Okay. And how were you able to do that?
- 3 A Through the radio communication with the
- 4 officers that were controlling the informants and the
- 5 radio traffic that we were talking back and forth so
- 6 everybody was aware of what was going on.
- 7 Q Now, after the sale had been completed, did you
- 8 happen to see a black Chevrolet Suburban leave the
- 9 Ardmore area?
- 10 A Yes, sir, I did.
- 11 Q And do you know how that vehicle happened to
- 12 get into the Ardmore area to begin with? What area did
- 13 it come from?
- 14 A From the information that we received, it came
- 15 in from what we considered the back side of Crull Drive
- 16 and coming into the back area of Ardmore.
- 17 Q That would be coming in from the 61 side as
- 18 opposed to Highway 17?
- 19 A That is correct.
- 20 Q Okay. And where did -- and after the sale had
- 21 been completed, where did you see this car?
- 22 A I observed the vehicle coming out of the
- 23 Ardmore neighborhood on White Oak Drive --
- 24 Q Uh-huh.
- 25 A -- approaching Savannah Highway in the area of

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1 Bessinger's.

2 Q And where were you at the time?

3 A I was sitting in an unmarked vehicle in the
4 parking lot of Bessinger's Barbecue there with a clear
5 view of the roadway.

6 Q And when you saw this vehicle, did you
7 recognize it?

8 A Yes, sir, I did.

9 Q And who did you recognize that vehicle as
10 belonging to?

11 A The vehicle belonged to George Brown.

12 Q And were you able to actually see the driver of
13 the vehicle?

14 A No, sir, I was not. Due to the tint on the
15 vehicle windows, I could not make a positive
16 identification.

17 Q So what did you do when you saw -- when you saw
18 the vehicle, where was it going? Which direction was it
19 headed?

20 A Going down White Oak Drive towards Savannah
21 Highway.

22 Q And what did you do when you saw the vehicle?

23 A Once the vehicle got past where we were parked,
24 we pulled in behind it and followed it to the light, and
25 I observed the tag on the vehicle, was able to run the

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1 tag.

2 Q And do you recall what the tag -- what the
3 tag -- who the tag came back to?

4 A The tag came back to George Brown, registered
5 to -- I believe it's [REDACTED] Corral Drive is the actual
6 address.

7 Q Okay. And did you know the informant used to
8 buy the gun in this case, Bobby Warthaw?

9 A Yes, sir, I do.

10 Q And, once again, after the gun sale, about an
11 hour after the gun sale, did you see him back in the
12 Ardmore area?

13 A Yes, sir, I did.

14 Q What did you see him do?

15 A We were back in the parking lot of Bessinger's.
16 I observed the vehicle come into the area of White Oak
17 and Evergreen, somewhere right there in that general
18 area. And I observed the subject walk up to the
19 vehicle.

20 Q And what did the -- was the subject wearing
21 when he walked up to the vehicle?

22 A He was a black male wearing a white shirt.
23 That's all we could see from our point of angle.

24 Q Could you see what was going on there?

25 A I could tell someone -- they were making some

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1 type of communication through the window, and that's all
2 we could observe.

3 Q Okay. Just want to refer you quickly to
4 State's Exhibit Number 27. You can remain seated, or I
5 can try to come around here.

6 A Sure.

7 Q And if you would, could you tell the
8 jury -- could you tell the jury where you were -- where
9 you were parked?

10 A Evergreen, White Oak, this is Savannah Highway.
11 This is Bessinger's barbecue. We were parked here on
12 the side of the building, basically, back over on the
13 corner right here.

14 Q And where did you see that black Suburban?

15 A The black Suburban came out. We picked it up
16 on White Oak Drive once it cleared the wood line here
17 approaching Savannah Highway.

18 Q And what did you do when you saw the Suburban?

19 A We basically left from this position, pulled
20 out of the back of Bessinger's, pulled in behind the
21 Suburban. It was stopped at the light at the time. Was
22 able to pull directly in behind the vehicle and get the
23 tag number.

24 Q That's when you ran the tag?

25 A That is correct.

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1 Q After you did that, where did you go?

2 A Once he circled and left, we basically circled
3 and pulled back into the parking lot and maintained our
4 position until we were told that everything was safe.

5 Q You had indicated earlier you saw the
6 informants' vehicle return. Where did you see it go?

7 A Sitting back in this area, we observed it
8 coming through here and -- basically in this area of
9 Evergreen and White Oak. We could see him, shy of
10 the tree line, basically pulled up right in through
11 there.

12 Q Okay. And where did this exchange take place
13 or transaction take place?

14 A Basically, in this area right through here.

15 Q Okay.

16 A I was able to pull up to see the car as it
17 pulled up.

18 Q All right. Referring you to State's
19 Exhibit 84, whose vehicle is that?

20 A That is George Brown's Suburban.

21 Q That's the car you saw out there the day after
22 the gun buy?

23 A That is correct.

24 MR. DURANT: Please answer any questions
25 Mr. Pennington may have for you.

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1 THE WITNESS: Yes, sir.
2 MR. PENNINGTON: Your Honor, I have no
3 questions for Officer Bradley.
4 THE COURT: Is this witness excused? Any
5 objections?
6 MR. PENNINGTON: No objection.
7 THE COURT: Mr. DuRant, any objection to this
8 witness being excused?
9 MR. DURANT: Not at all, your Honor.
10 THE COURT: Sergeant Bradley, you are free to
11 go. Feel free to remain with us, but you're also free
12 to leave the court. Thank you.
13 THE WITNESS: Thank you, your honor.
14 (The witness steps down from the stand.)
15 THE COURT: Call your next witness.
16 MR. DURANT: State would call Mary Phillips.
17 (The oath is administered by the Deputy Clerk
18 of Court, and the witness answers as follows:)
19 THE WITNESS: I do.
20 THE DEPUTY CLERK OF COURT: Ma'am, if you
21 would, please, state your first and last name, spelling
22 your last.
23 THE WITNESS: Mary Phillips, P-h-i-l-l-i-p-s.
24 THE COURT: Mr. DuRant.
25 MR. DURANT: Thank you, your Honor.

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1 **MARY PHILLIPS,**
2 having been first duly sworn by the Clerk of the Court
3 to tell the truth, the whole truth, and nothing but the
4 truth, was examined and testified upon her oath as
5 follows:

6 **DIRECT EXAMINATION**

7 **BY MR. DURANT:**

8 Q Where are you employed, Ms. Phillips?

9 A With the City of Charleston Police Department.

10 Q And in what capacity?

11 A I work in the crime scene unit as the latent
12 recovery specialist.

13 Q How long have you been with the Charleston
14 Police Department?

15 A It'll be seven years next month.

16 Q Okay. And how long have you been associated
17 with the crime scene office at Charleston Police
18 Department?

19 A The same amount of time, seven years.

20 Q The whole time; correct?

21 A Yes, sir.

22 Q In that capacity -- I just wanted to ask you,
23 on June 19th, did you have occasion to come into contact
24 with, I think, what's been State's Exhibit 9 through 14
25 in evidence? They appear to be six shell casings.

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1 A I did.
2 (Document is handed to the witness.)
3 Q (By Mr. DuRant) Let me show those to you.
4 A I did.
5 Q Okay. And that was on June 19?
6 A Yes, sir.
7 Q And from whom did you acquire possession of
8 those items?
9 A Rene Charles.
10 Q And for what purpose?
11 A I processed them for any possible latent
12 fingerprints.
13 Q Okay. And did you recover any latent
14 fingerprints?
15 A No, sir.
16 Q Well, why not? They always do on TV.
17 A Yes, sir. Unfortunately, the heat that
18 acquires when a gun is fired a lot of times will
19 disintegrate any of the oils or residue on the shell
20 casings, which is what we get the fingerprints from.
21 It's from the oils in your skin.
22 Q Have you ever gotten one off of a shell casing?
23 A Not off of a fired one, no, sir.
24 Q What method do you use to try anyway?
25 A Well, first, with any item, we look at it first

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1 before any processing just to see if there's anything we
2 can see. The next step would be to use what we call a
3 super glue chamber. It heats the super glue mix, kind
4 of like the fume within the chamber. The glue would
5 adhere to the oils that would be left when you touch
6 something. And then in order to see them better
7 visually, we add a powder on top of that.

8 Q And all of that was to no avail; correct?

9 A Correct.

10 Q As a matter of fact, y'all actually shipped
11 these things to England, right?

12 A We did.

13 Q Tell me about that.

14 A There's new technology in England with a
15 company called Consolite Forensics. They're the --
16 currently really the only technology in the world that's
17 been found to recover fingerprints off of fired shell
18 casings. We just don't have that ability here.

19 Q And did they have any luck?

20 A No, they did not.

21 Q Now, moving ahead to July the 15th of 2012, did
22 you have the occasion to respond to the crime scene
23 office on Wappoo Drive?

24 A I did.

25 Q And around what time?

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1 A Oh, I believe it was roughly around 3:30.
2 Q And for what purpose?
3 A I was called there to collect a gun out of a
4 vehicle.
5 Q Okay. And where was the pistol located?
6 A It was beneath the passenger seat inside the
7 vehicle, just inside the front passenger seat.
8 Q Okay. And what did you do upon locating the
9 pistol?
10 A Photographs were taken of the weapon where it
11 was located, and then it was collected.
12 Q Okay. And I hand you what's been marked as
13 State's Exhibit Number 23 in evidence and ask you to
14 examine that and tell us if, in fact, that is the pistol
15 you collected from the vehicle on July the 15th, 2012.
16 A It is.
17 Q And what is the make and model of that pistol?
18 A It is a Sig Sauer. It's a 9mm Kurz P232.
19 Q And could you determine what the serial number
20 was at the time you collected it?
21 A Yes. Well, at the time of collection, it was
22 obliterated. It was scratched off.
23 Q Okay. It'd been scratched off. And did y'all
24 make any efforts to recover the serial number?
25 A We did.

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1 Q And how do y'all do that?

2 A Serial number restoration, a lot of times
3 when -- when guns are made, they have to be stamped to a
4 certain depth. Sometimes you can just sand it a little
5 bit and the scratches will make them appear.

6 In this case, we sanded it a little. We used a
7 form of chemical etching that also help those numbers
8 come back up a little bit. And we used a process called
9 Magnaflux, which is a magnetic particle inspection which
10 uses little magnets to get down into the grooves that
11 are formed when the gun is initially stamped with a
12 serial number. And a lot of times if you apply a magnet
13 on the other side, the little particles will go into
14 those holes in the grooves from the original stamp, and
15 it allows you to see the numbers more clearly. It just
16 depends on how obliterated the numbers were and how deep
17 they went when they scratched them.

18 Q Now -- and were y'all successful in recovering
19 the serial number from this weapon?

20 A We were.

21 Q And what was the serial number?

22 A It was S275151.

23 MR. DURANT: Your Honor, we offer State's
24 Exhibit 91 through 99, I believe without objection.

25 THE COURT: Any objection?

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1 MR. PENNINGTON: No objection, your Honor.

2 THE COURT: State's 91 through 99 into evidence
3 without objection.

4 (State's Exhibit Nos. 91 through 99 are
5 admitted into evidence.)

6 Q (By Mr. DuRant) I just want to run through
7 these real quick. And we're going to start with State's
8 Exhibit Number 91. And if you would, just tell the jury
9 what this depicts.

10 A This is the interior of the vehicle in which
11 the gun was recovered from.

12 Q Okay. Moving on to 92.

13 A That would be -- the gun was wrapped in a towel
14 underneath the passenger seat, and that's the picture of
15 it as we saw it.

16 Q Ninety-three?

17 A That would be the gun once it was removed from
18 the towel and pulled out from beneath the seat.

19 Q Ninety-four?

20 A That is a close-up of the weapon.

21 Q Ninety-five?

22 A The other side of the weapon.

23 Q Ninety-six?

24 A That would be -- we take all of our close-up
25 pictures with a scale so we can determine them better.

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1 Q And what is that over to the actual right of
2 the gun?
3 A That would be the ammunition magazine.
4 Q That was in the gun at the time you recovered
5 it; is that right?
6 A Yes, sir.
7 Q Ninety-seven?
8 A That's a close-up of the scratch where the
9 serial number had been obliterated.
10 Q So this area right -- the area -- I can't
11 point.
12 A Yes.
13 Q Okay.
14 A Right where that, like, silver --
15 Q Right in the center, is what you're talking
16 about?
17 A Yes.
18 Q Pardon?
19 A Yes, sir.
20 Q That's where the serial number is generally
21 located?
22 A On that weapon, yes, it is.
23 Q Ninety-eight?
24 A Just another close-up of the markings on the
25 weapon.

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1 Q And that shows it being a 9mm Kurz; is that
2 correct?
3 A Yes, sir.
4 Q Do you know what 9mm Kurz is?
5 A No.
6 Q That's okay.
7 A Not well enough.
8 Q I just threw that out there. If you don't,
9 that's fine.
10 And 99?
11 A Another photograph of the markings on the
12 weapon.
13 Q And I know it's hard to see, but that indicates
14 it's a Sig Sauer, made in Germany, Model P232; correct?
15 A Yes, sir.
16 MR. DURANT: Please answer any questions that
17 Mr. Pennington may have for you.
18 THE WITNESS: Yes, sir.
19 THE COURT: Mr. Pennington.
20 MR. PENNINGTON: Thank you, your Honor. I have
21 no questions for Officer Phillips.
22 THE COURT: Any objection to this witness being
23 excused?
24 MR. PENNINGTON: Not at all, your Honor.
25 MR. DURANT: No, ma'am.

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1 THE COURT: You are free to go. Feel free to
2 stay with us. Thank you.

3 THE WITNESS: Thank you.

4 (The witness steps down from the stand.)

5 THE COURT: All right. Ladies and gentlemen,
6 we're going to take a short comfort break. Feel free
7 to leave your notepads right where they are. Please
8 remember all my admonitions. Please rise for the
9 jury.

10 (The jury is escorted from the courtroom at
11 11:06 a.m.)

12 THE COURT: Thank you. Be seated.

13 MS. WILSON: May I approach?

14 THE COURT: You may.

15 (Ms. Wilson and Mr. Pennington approach the
16 bench for an off-the-record discussion; at which time,
17 the proceedings continue as follows:)

18 THE COURT: We're going to take our comfort
19 break, but I'm going to -- you tell me when you're
20 ready.

21 MS. WILSON: Okay.

22 THE COURT: I'd prefer not to take the whole 15
23 minutes. Thank you. We're at ease.

24 (A break is taken from 11:08 a.m. until
25 11:23 a.m., at which time the proceedings continue as

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1 follows:)

2 THE COURT: Anything before we bring in the
3 jury?

4 MS. WILSON: No, ma'am.

5 MR. PENNINGTON: No, ma'am.

6 (The jury is escorted into the courtroom at
7 11:24 a.m.)

8 THE BAILIFF: All jurors present.

9 THE COURT: Thank you. Be seated. Call your
10 next witness.

11 MS. WILSON: Thank you, your Honor. State
12 calls David Osborne.

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

15 THE WITNESS: I do.

16 THE DEPUTY CLERK OF COURT: Thank you, sir.
17 You may take your seat. And, sir, if you will, please
18 state your first and last name, spelling your last for
19 the record.

20 THE WITNESS: David Osborne, O-s-b-o-r-n-e.

21 DAVID OSBORNE,

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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1 DIRECT EXAMINATION

2 BY MS. WILSON:

3 Q Detective Osborne, where are you employed?

4 A Charleston Police Department.

5 Q And what are your current duties there?

6 A I am the detective sergeant of the violent
7 crimes unit.

8 Q How long have you been with Charleston Police
9 Department?

10 A For 11 years.

11 Q Before that, did you work in law enforcement?

12 A I did.

13 Q And where was that?

14 A With the New Orleans Police Department.

15 Q Did you participate in the investigation of the
16 murder of Marley Lion?

17 A I did.

18 Q And what was your role in that investigation?

19 A The same as it is now, detective sergeant
20 violent crime unit.

21 Q Were you the only investigator working on this
22 case?

23 A No, I wasn't. We had numerous detectives from
24 multiple divisions within the department.

25 Q Is that unusual in a murder case, that you have

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1 multiple detectives?

2 A No, it's not. This case was a little bit
3 different, because, I mean, when you watched the video,
4 it's pretty clear that we didn't have a lot of
5 witnesses, and it really was one of those, you know,
6 who-done-it type of murder investigations. We had no
7 suspects.

8 Q Initially?

9 A Initially.

10 Q So let me ask you this: Initially, was
11 Ryan Deleston the sole focus of your investigation?

12 A No, not at all.

13 Q How about Julius Brown and Bryan Rivers? Were
14 they the sole focus initially?

15 A No.

16 Q Are you familiar with a guy named Frank
17 Middleton?

18 A Yes.

19 Q How are you familiar with Mr. Middleton?

20 A I was familiar with Mr. Middleton whenever he
21 got arrested for an armed robbery.

22 Q And he's the older gentleman or -- excuse me,
23 the older man who testified earlier this week?

24 A That's right.

25 Q Lengthy record?

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1 A He does.

2 Q And you knew where he was from; is that right?

3 A Yes. He was from Ardmore and had ties to
4 Ardmore.

5 Q And when Marley Lion was killed, did you have
6 any concern that Frank Middleton was the killer?

7 A No.

8 Q Why not?

9 A He was locked up. He was in jail at the time.

10 Q Now, as a result of what you knew about
11 Frank Middleton, what did you ask or task the detectives
12 working with you to do?

13 A I asked Detective Kosarko and Detective
14 Jonathan Lang (phonetic) -- they were on the night shift
15 at that time -- to go by the jail, talk to Frank and see
16 if he had any information, and more importantly, whether
17 he was willing to share that with us.

18 Q Okay. And at that point, had Ryan Deleston
19 come on your radar?

20 A Yes.

21 Q And tell the jury how it was that he first
22 became someone y'all were interested in.

23 A Well, firstly, he was seen by officers -- CPD
24 officers that were responding to the -- to the murder
25 that night. They saw him walking in the area of White

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1 Oak and Evergreen, which was only about two blocks from
2 the scene of the murder. So we had -- we put him -- or
3 these officers had put him out there on the scene on
4 that night.

5 Q And that night other men of that age were seen
6 in the neighborhood as well; is that right?

7 A That's correct.

8 Q And, in fact, I believe when Officer Vance saw
9 Mr. Deleston, he was talking with some other folks.

10 A We had -- there were four total of interest
11 initially. Derek Anderson, Maurice Simmons, those are
12 the two that you're referring to, and there was also a
13 Rafael Ward who was seen, along with Ryan Deleston.

14 Q And were those men interviewed down at the CPD
15 also?

16 A Yes, they were.

17 Q At some point?

18 A That's correct.

19 Q Okay. And around -- or on June 21st, which
20 would have been five days after the 16th --

21 A That's correct.

22 Q -- Ryan Deleston was interviewed?

23 A That's correct.

24 Q And as a result of his interview, did some
25 other folks become of interest?

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1 A Yes, they did. Ryan gave individuals as
2 alibis. Primarily, Julius Brown was his alibi, along
3 with George Brown and Bryan Rivers.

4 Q And George Brown was someone that y'all had
5 already started to talk to; is that right?

6 A That's correct.

7 Q Why was that?

8 A I had spoken to George at that point, because I
9 was working other cases in which George had come up.

10 Q Okay. So just by happenstance, you were
11 talking with George about other cases and sort of looped
12 in to talk with him about this?

13 A That's correct.

14 Q And then on the 21st, Ryan Deleston gives y'all
15 the names Julius Brown and Little B, or Bryan Rivers?

16 A That's correct.

17 Q As the people he was with that night?

18 A That's correct.

19 Q Now, in addition to that, did y'all look at
20 other people in the initial stages of the investigation?

21 A Early on it -- we were getting Crime Stopper
22 tips, so we interviewed numerous people as a result of
23 that. We were working with several different theories
24 early on. And, you know, we were canvassing the area.
25 One thing in particular that we had looked at was

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1 Marley's background. We started talking to people that
2 he knew to see if it was maybe an acquaintance. We --

3 Q How about Katie Ridgway, the girl that Marley
4 was with that night? Was there anything interesting or
5 concerning about her apartment complex?

6 A There was. Where Marley had dropped Katie off
7 just prior to being murdered -- Katie lives in an
8 apartment complex, and, coincidentally, right next to
9 Katie is a bunch of members from a "Blood" gang lived.
10 So we were thinking that maybe it was possible that when
11 Marley dropped off Katie, some of these member of the
12 Bloods followed Marley to the Famous Joe's and maybe
13 executed him in some sort of gang initiation.

14 So we ended up looking into that and executing
15 search warrants, making several arrests, but that didn't
16 pan out.

17 Q Several arrests unrelated to the murder?

18 A Right. Gun arrests, dope arrests, things like
19 that.

20 Q So that didn't pan out?

21 A No.

22 Q And you mentioned looking for witnesses. How
23 did y'all search for eyewitnesses of people who maybe
24 weren't on the video that we've all seen but were in the
25 area? What did y'all look for?

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1 A Basically, what we did was, we started
2 canvassing the businesses that were open at that time of
3 the night, you know, thinking maybe they might have saw
4 something unusual or suspicious. We also did multiple
5 canvasses in the Ardmore subdivision itself.

6 Q Let me ask you this: You've seen the video
7 that we played in court and which the jury is going to
8 have to play at their leisure. At one point -- and I
9 don't believe this has actually been shown -- after
10 Marley was shot, there is a white guy that goes through
11 the parking lot.

12 A Right.

13 Q Do you know who that was?

14 A I cannot recall his name, but I do know that we
15 interviewed him.

16 Q Phillip Teevan, does that sound right?

17 A That's correct.

18 Q And did he cooperate with police?

19 A He did.

20 Q Did he have any information about the shooting
21 itself?

22 A No, he didn't.

23 Q Okay. And during this interview,
24 Detective Osborne, did you and other detectives
25 interview people that you knew were criminals?

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1 A Yes, we did.

2 Q People that you knew had credibility issues and
3 bad records?

4 A Several.

5 Q Okay. Why was that?

6 A Well, our thought was, another possibility was
7 that if the individuals that did this come from the
8 Ardmore subdivision, then that's where we had to go to
9 try to figure out what happened. Normally, when you're
10 trying to talk to individuals that do have criminal
11 records, they're less than forthright or less than
12 willing to talk to us. But time and time again, we were
13 getting that, even in the criminal community, this was a
14 senseless murder, and they were willing to sit down with
15 us.

16 Q So you had a number of criminals that came in
17 and were interviewed?

18 A Yes.

19 Q Okay. And --

20 A People that normally it was difficult to get
21 them to come in. Let's put it that way.

22 Q You had white people coming in?

23 A Yes.

24 Q Black people coming in?

25 A Yeah.

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1 Q Both giving you tips because it was senseless
2 in their mind?

3 A That's right.

4 Q Now, also during this period, Detective, was
5 there a full-on search for video?

6 A Yes.

7 Q And we've seen the Mantek video.

8 A Right.

9 Q How long after the shooting was it that y'all
10 were able to get that video from Mr. Mantek and take a
11 look at it and realize it captured the execution?

12 A Mr. Mantek was out of town, but he was able to
13 give us a maintenance worker, and we ended up getting it
14 that morning, I would say, around ten o'clock.

15 Q Okay. And as a result of what was seen on the
16 video, did y'all also try to get videos from stations,
17 stores, Pep Boys, wherever, all up 17?

18 A We had a meeting with pretty much every
19 detective in Central. And our original goal was to try
20 to retrieve every video from every convenience store
21 that was open in West Ashley during that time frame.

22 Q What was one of the main things you were
23 looking for?

24 A The description of the shooter that we had from
25 the video.

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1 Q Which was?

2 A We had a general description. We were looking
3 at six-foot-tall, black male, broad shoulders, fit, and
4 he appeared to be wearing some sort of black shirt with
5 some horizontal stripe design on it.

6 Q So when y'all pulled the videos of the
7 stations, did you look for people with striped shirts
8 coming in?

9 A Yes, ma'am, we did.

10 Q Did you find any that fit what you saw on the
11 video?

12 A No, we didn't find anyone.

13 Q Now, regarding that video, did -- the video
14 from Mantek -- at some point, did you or your superiors
15 make a decision to release portions of the video to the
16 public?

17 A Yes, we did.

18 Q And why was that?

19 A Well, when you look at the video, we thought --
20 and also based on what Marley had said -- that there
21 were two suspects: One, the shooter, and we also
22 thought that individual walking through the parking lot
23 was casing the area. So our original thought was, we
24 would release just the shooter first, see if we could
25 develop some leads, some tips. And if that led us to

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1 the person that was casing the area, we thought that it
2 would be advantageous to us not to let him know that we
3 thought that he was casing the area. So after we
4 released the shooter, we just didn't get any tips that
5 led us to anything that would further the investigation.

6 Q And after you didn't get any tips on just the
7 shooter, you released what?

8 A Then we released the second part of the
9 individual walking through the parking lot.

10 Q The individual being?

11 A Julius Brown.

12 Q At that time, you didn't know it was Julius?

13 A At that time, we didn't know, no.

14 Q Now, we've played the video several times, and
15 the portion of the video that shows Marley when he pulls
16 in and he gets out and goes back in the back of his car,
17 moves his guitar at one point, gets his pillow out, and
18 gets in the back seat, all of those things that Marley
19 was doing, was that released to the public?

20 A No, it was not.

21 Q Never?

22 A Never.

23 Q Now, you mentioned that we have this video, you
24 have the shooting on video, but you still don't have a
25 suspect?

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1 A That's correct.

2 Q Did you or any others in your department do

3 anything to try to enhance this video to make it crystal

4 clear so you could see the face?

5 A We had sent it off to secret service and had

6 them try to enhance it.

7 Q Did you have any luck with that?

8 A No, they weren't able to improve the quality.

9 Q Have you never watched CSI?

10 A I have.

11 Q Do you not know that you can just enhance a

12 video to tell -- to see the whites of somebody's eyes?

13 A Would have been nice.

14 Q You weren't able to do that?

15 A No, we weren't.

16 Q But you tried.

17 All right. You mentioned that the suspect

18 that -- the general description you had was broad

19 shoulders, six feet, fit. After Ryan Deleston was a

20 suspect and he had been interviewed, and also, he

21 mentioned Julius Brown and Bryan Rivers, did you review

22 the video again with those guys in mind, Julius and

23 Bryan?

24 A We all did.

25 Q Okay. And how did Julius fit into the

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1 description of the shooter?

2 A He didn't match. I mean, we all viewed it. We
3 all agreed. We had met with Julius at that time.
4 Julius was about five-foot-five to five-foot-six.
5 The -- Marley's car had been measured -- or car just
6 like it. The -- not counting the roof rack, but the top
7 of the car was at five-foot-seven or -- I think it was
8 five-foot-six or five-foot-seven or maybe
9 five-foot-seven, five-foot-eight. But either way,
10 Julius was way too short. You can tell that the shooter
11 was much taller than the car's roof.

12 Q George Brown?

13 A George Brown was the right height, but George
14 was much bigger. I had already talked to George before.
15 I estimated George was close to 300, and our booking
16 records showed that he was 300 pounds, and that was just
17 too big.

18 Q And Bryan Rivers?

19 A Too skinny. Bryan's the right height or close
20 to it. I mean, I put Bryan like at five-foot-ten,
21 five-foot-eleven. That's what our booking records
22 showed. We thought the shooter would be right around
23 six foot, so that was good. The size was just off.
24 Bryan was about 150, 160, way too skinny. You could
25 tell that the shooter has broad shoulders. He's a big

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1 guy.

2 Q How about Ryan Deleston? How did he fit?

3 A He fit perfect. He was the right size. He was

4 the right height. And then you could tell with Bryan --

5 with Ryan that he was a big, fit guy.

6 Q And did you also -- I believe we've heard some

7 testimony from the crime scene folks -- try to get

8 fingerprints from Marley's car, the area around that

9 rear passenger door, to see if that would help out any?

10 A We did.

11 Q Any luck?

12 A No luck with the fingerprints.

13 Q How about DNA? We heard some talk about that

14 yesterday, and we'll hear some more today.

15 A Yeah, we didn't have any luck with the DNA. We

16 were told initially that the DNA came back to a female.

17 So we thought with --

18 Q Which DNA?

19 A The DNA recovered from the driver's side door

20 handle.

21 Q Front door handle?

22 A Front door handle.

23 Q Okay.

24 A So --

25 Q Let me ask this --

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1 MR. PENNINGTON: Your Honor, I'm going to
2 object to further hearsay from the DNA expert.

3 MS. WILSON: I can move on. She's coming.
4 She'll be here after lunch.

5 THE COURT: Thank you.

6 Q (By Ms. Wilson) You've seen that video how
7 many times?

8 A A number of times.

9 Q Does the shooter touch the front door handle?

10 A I don't believe he does.

11 Q The front drive -- the driver door handle?

12 A Right.

13 Q Okay. Now, at some point after the shooting,
14 did you believe there was a reason to think you might be
15 able to recover the murder weapon?

16 A Yes.

17 Q What made you think that?

18 A On June the 27th, we -- CPD received a phone
19 call from Bobby Warthaw. Bobby had indicated to us that
20 he believed that he had a -- that he would be able to
21 get in touch with an individual by the name of
22 Ryan Deleston to possibly purchase a gun that he thought
23 might be the murder weapon.

24 Q At that point, when you're getting that
25 information, did you know what kind of gun you were

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1 looking for?

2 A I did.

3 Q How did you know?

4 A We had -- we had had the ballistics recovered
5 from the murder scene, and we knew that we were looking
6 for a 9mm Kurz, which is a kind of peculiar, kind
7 of unusual gun. The shell casings say 9mm, but what
8 it actually is, it's -- that's an -- a European
9 measurement. An English equivalent would be like
10 a .380.

11 Q So before you had the weapon, you knew what the
12 murder weapon was?

13 A We knew the caliber, yes.

14 Q You knew the caliber. Okay.

15 All right. So tell the jury, from the
16 investigation perspective, how this gun buy proceeded.

17 A When -- when Bobby came in, he brought
18 Theran Taylor and Ryan Conyers (phonetic). Initially,
19 you know, when they told us what was --

20 MR. PENNINGTON: Objection to what they told,
21 your Honor.

22 MS. WILSON: Your Honor, it's not offered for
23 the proof --

24 THE COURT: Is there an exception?

25 MS. WILSON: It's not offered for the proof.

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1 This is -- for the truth. It's offered to show why they
2 did what they did in the investigation. In addition,
3 they've already testified and been cross-examined.

4 THE COURT: I'll allow it.

5 MR. PENNINGTON: Your Honor, I wasn't --

6 THE COURT: All right. Counsel, if you're
7 going to argue, please approach.

8 (Ms. Wilson and Mr. Pennington approach the
9 bench.)

10 (Side-bar, out of the hearing of the jury, as
11 follows:)

12 THE COURT: What is the --

13 MR. PENNINGTON: I'm not sure. But he's
14 throwing out all kinds of opinions and kind of
15 summarizations of hearsay. And what they're doing is
16 pulling a case together where there are loose ends.
17 Bobby never said -- he's already -- I should have
18 objected. He just testified that Bobby said that he
19 thought it was the murder weapon. Bobby didn't testify
20 to that yesterday. And so I'm getting increasingly
21 nervous that these summarizations contain content that
22 has not previously been testified to. So I think we
23 need to slow it down and be a little bit more cautious.

24 MS. WILSON: You know, again, when he's
25 testifying as to what they do, the reason they did all

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1 of this is because they thought it was the murder
2 weapon. It's not offered to prove --

3 MR. PENNINGTON: Sure.

4 MS. WILSON: -- that it's the murder weapon,
5 and we are going to prove it through other testimony
6 that it is. So I think it's --

7 MR. PENNINGTON: I don't have a problem with
8 that. My problem, your Honor, is only that his
9 characterizations are a bit sloppy, and I don't want
10 more hearsay or opinions coming in without some sort of
11 chance to object.

12 MS. WILSON: Okay. Well, I'll try to tighten
13 up some.

14 THE COURT: You can tighten up, and you'll just
15 object --

16 MR. PENNINGTON: I'll be objecting.

17 THE COURT: You'll be objecting.

18 MR. PENNINGTON: Right.

19 MS. WILSON: Thank you, Judge.

20 (End of side-bar.)

21 THE COURT: You may continue.

22 Q (By Ms. Wilson) Okay. So I believe you
23 mentioned that Bobby Warthaw had come to you?

24 A Yes.

25 Q And were you interested in using him as an

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1 informant?

2 A No, not at all.

3 Q Why not?

4 A We wanted to use -- well, Bobby had a criminal
5 record. So what we -- what we prefer to do was to have
6 Bobby be the middleman, and then we could use an
7 undercover officer, or UC, to actually make the gun buy.
8 That was what we tried --

9 Q UC is an undercover officer?

10 A Yes.

11 Q So your initial plan was to try to get an
12 undercover officer, police officer, involved in the gun
13 buy?

14 A That's what we wanted to do, right.

15 Q Why didn't that work?

16 A We set up an operation and we tried. Two days
17 after, he made -- he made contact with us on June the
18 27th. On June the 29th, we tried it. We had everything
19 set up, and Bobby was supposed to go try to make contact
20 with Ryan. But instead, Bobby drove through Ardmore and
21 never got out of his car.

22 Q He was leading you on?

23 A That's what we thought, yeah.

24 Q So at that point, was Bobby enthusiastic about
25 helping y'all?

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1 A No, he wasn't enthusiastic. And we weren't
2 sure that he was really trying to help us.

3 Q Okay. And after that first try that Bobby
4 really didn't try, what happened with Bobby?

5 A He stopped answering our phone calls for the
6 next couple of days. And then a few days later I
7 received word that he had been arrested.

8 Q For what?

9 A A bench warrant.

10 Q Did you cause that to happen?

11 A No, I did not.

12 Q So he gets arrested on a bench warrant.
13 Where's he put?

14 A He's in the Charleston County jail.

15 Q And after you found out that he had been
16 arrested and was in jail, what did you do?

17 A I went and interviewed him. I think the date
18 was on July the 11th.

19 Q For what?

20 A Well, I wanted to find out if Bobby had any
21 personal knowledge that might help further the
22 investigation. I wanted to find out what he was doing
23 that night, to get a statement from him concerning that.
24 I also thought that maybe I could try to broach the
25 topic of getting back trying to purchase the gun.

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1 Q Because now he's motivated; right?
2 A He's motivated.
3 Q Because?
4 A He's in jail and he wants out.
5 Q Did Bobby at first want to work with y'all
6 again on this attempt to buy the murder weapon?
7 A I don't know that he was really thrilled about
8 doing it, but he did like the idea of getting out of
9 jail.
10 Q Did he ask you about getting out of jail?
11 A He did.
12 Q And?
13 A I told him I'd have to look into that. I had
14 never done that before.
15 Q And what did you do? Who do you call?
16 A I called up Solicitor Greg Voigt. He works
17 with the Solicitor's Office. I ran it through him and
18 told him what we were trying to do, told him what Bobby
19 had said that he would do if he were -- you know, got
20 out of jail and asked if it was even possible.
21 Q To have the bench warrant lifted?
22 A Right.
23 Q So these weren't new charges that Bobby had.
24 It was a failure to appear or something like that on
25 some other charges?

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1 A That's correct.

2 Q And at some point, did Mr. Voigt lift that

3 bench warrant?

4 A He did.

5 Q And Bobby got out of jail?

6 A He did.

7 Q When was that?

8 A I believe it was on July the 12th. I think it

9 was the next day.

10 Q All right. And at that point, after Bobby got

11 out of jail, was he willing to work with y'all again?

12 A He was.

13 Q And what happened this second go-around working

14 with Bobby?

15 A So on July the 13th, he went back into the

16 Ardmore subdivision. And we had -- we had surveillance

17 units there the entire time. So on July the 13th, he

18 went back in there. He did park his car this time. He

19 did get out. He did make contact with individuals.

20 Q And did you -- at any point, because of the

21 past experience when Bobby just drove through and did

22 nothing, did you do anything to try to figure out

23 whether or not Bobby was for real this time and was

24 sincerely trying to do the gun buy?

25 A Well, I mean, the whole time that I was talking

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1 to Bobby, I did express to him on numerous occasions
2 that I had reservations on whether he was really trying.
3 The next day, on July the 14th, he had called me back.
4 And then he said that he thought that he could make it
5 happen that night. And, again, I told him that I was
6 having a hard time believing that he could make anything
7 happen at that point.

8 Q How did you feel about doing an operation at
9 night?

10 A When he told me that he could do it that night,
11 I told him that, you know, first of all, he hadn't given
12 me any opportunity or any warning that we could do it
13 that night. I didn't like that idea because it's going
14 to be dark. We had surveillance issues at dark, safety
15 issues at night. I asked him if he could try to arrange
16 it the following morning during the daytime.

17 Q Did you do anything as far as phone calls, or
18 did Bobby do anything as far as phone calls to show that
19 he was for real?

20 A So while he was on the phone with me, and I'm
21 expressing to him that I'm -- you know, I doubt that
22 he's going to be able to do this, he tells me that he
23 can prove it. And he said, I'll call him right now.

24 And I tried to tell him, No. Don't call him
25 now. Don't call him now.

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1 He said, No, no. I'll put you on three-way.

2 Listen.

3 And I'm -- before I --

4 Q Were you at the police station?

5 A No. I was off. I was at home watching a movie
6 at my family's house, my brother's house. And then he
7 made the phone call, so I had to run downstairs because
8 I was trying to get him to stop, but he had already did
9 it. And then the phone call is going on and I'm
10 listening.

11 Q Could you hear the call?

12 A I could.

13 Q And did it appear they were talking about doing
14 a buy, a sale?

15 A It did, yes.

16 Q And you didn't have your recorder with you at
17 that point?

18 A I did not have my recorder, no.

19 Q What happened the next day? Did y'all make
20 some arrangements?

21 A We did. After Bobby got off the phone, he told
22 me that he would call me back and arrange it for the
23 next day, so he did. So I called up our SWAT team, our
24 narcotics team, our field intelligence unit, several
25 other officers and had them meet me at the station the

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1 following morning, anticipating a phone call from Bobby.

2 Q And eventually did you hear from Bobby?

3 A I did.

4 Q Did he come up to the police station?

5 A He did come to the police station, yes.

6 Q At that point, did y'all make another call?

7 A Yes.

8 Q All right. And what was the number that was
9 called that time?

10 A It was (843) 926-7567.

11 Q And since that time, have you seen that number
12 again?

13 A Yes.

14 Q And who gave that number as their number?

15 A Ryan Deleston gave that as his number when he
16 was interviewed by Detective Kosarko. He also gave that
17 number whenever he was arrested on July 30th.

18 Q So that was the number that y'all called when
19 Bobby came in on this day?

20 A That's correct.

21 Q All right. And when -- when the call was
22 placed this time, you were at CPD. Did you record that
23 call?

24 A No, I didn't.

25 Q Why not?

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1 A It was still a little tenuous, the whole Bobby
2 situation. He didn't want to wear a wire. He didn't
3 want to do a lot of things that we asked him to do. So
4 I didn't want to push him and try to record it because I
5 thought he might just shut the whole thing down.

6 Q Did he let you overhear it?

7 A He did.

8 Q What was the substance of that call? Did you
9 take notes during the call?

10 A I did.

11 Q All right. And tell the jury what that was.

12 A Do you mind if I just look at my notes --

13 Q No. That's fine.

14 A Okay. So --

15 Q And this would have been on July 15th; is that
16 right?

17 A Yes, July 15th.

18 Q One day shy of one month?

19 A That's correct.

20 Q Okay.

21 A All right. So Bobby says, Hey, man, said he
22 want that thing -- hey, my man said he want that thing.

23 The male voice said, Okay. Where you at?

24 Bobby said, I got him with me now. I'll be
25 there in 30 minutes.

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1 The male said, All right, now, I ain't messing
2 around. You better be serious.

3 Bobby said, I got him with me now. We on the
4 way.

5 The male said, All right.

6 Q And since that time, have you had occasion to
7 hear Mr. Deleston's voice?

8 A I have.

9 Q And does his voice sound like the man that you
10 heard that day on the phone?

11 A Yeah. It sounded like the same guy.

12 Q Did y'all move forward with the gun buy?

13 A We did.

14 Q What happened?

15 A So around 2:30 that day, Bobby and Christopher
16 left in their car, and they went into the Hole, which is
17 in Ardmore. They were followed by Lieutenant Jenkins,
18 Detective Fulton, and Detective Gee. We were behind
19 them. I was in an unmarked car with a narcotics
20 detective, Detective Shealy.

21 Q Let me ask you this: Before all of that, did
22 somebody give them some money to make the purchase?

23 A I did. From CPD funds, I took \$200,
24 photocopied it before I gave it to them, and gave it to
25 Christopher.

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1 Q And the price was \$200; is that right?
2 A That's correct.
3 Q Was that the original price?
4 A No.
5 Q What was the original price?
6 A The original price that Ryan wanted for the gun
7 was \$80.
8 Q Did Bobby -- did that raise any red flags for
9 you or Bobby?
10 A It did, yes.
11 Q Now, if you could explain -- there's been a
12 little bit of the testimony -- the price went up to
13 \$200; right?
14 A That's correct.
15 Q And then there was something about Bobby was
16 going to get 50 bucks back?
17 A That's right.
18 Q What -- what did that have to do with the plan?
19 A That was Bobby's idea, which we thought was a
20 pretty good idea. Bobby said that we should bump it up
21 to 200, and then I would then go back to Ryan after the
22 deal and get
23 Q "I" being Bobby?
24 A "I" being Bobby. -- would then get \$50 back as
25 a kickback. He said that would make it look more real.

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1 Q Because you're ripping off the seller -- the
2 buyer?

3 A The buyer, right.

4 Q The buyer thinks the gun's 200, but the gun's
5 only 150. And so that's a thing between Bobby and the
6 seller?

7 A That's right. And what Bob -- and from Bobby's
8 perspective, he wouldn't be involved in this for
9 nothing. So it'd make it look more realistic to Ryan if
10 he got something out of it.

11 Q Speaking of Bobby's plan, what was Bobby's
12 original plan about how he would go do the gun buy for
13 y'all?

14 A So the original plan that Bobby presented to us
15 was, Bobby said that he, Ryan Conyers, and Theran Taylor
16 would be in the house. Okay? Then Ryan could bring the
17 gun, and then they would do the gun transaction inside
18 of a house. Then we could then come in, the police, as
19 he said, bust down the door and then beat up Ryan and
20 Bobby to make it look more real to Ryan.

21 Q Like a burglary/robbery-type thing?

22 A Like it was a burglary/robbery. But more
23 important, the police would then, like, literally beat
24 up Ryan Conyers and Bobby in front of Deleston to make
25 it more real.

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1 Q How did that sound to you?
2 A No, we weren't going to do that.
3 Q So y'all shift gears at this point?
4 A Right.
5 Q So you give him the money, you recorded it,
6 it's \$200, you followed Bobby and his cousin to do the
7 deal?
8 A That's correct.
9 Q Okay. And surveillance units -- we heard all
10 about that -- picked him up there as well?
11 A That's correct.
12 Q They didn't make any stops, pick up any guns on
13 the way?
14 A No. Straight to the Hole.
15 Q Okay. All right. You said straight to the
16 Hole; right?
17 A That's correct.
18 Q Just as an aside that we've seen maps galore,
19 about how far is the Hole from Famous Joe's, that
20 parking lot?
21 A It's about .3 miles.
22 Q Okay. And so Cashew Street is a little less
23 than that or right at about .3?
24 A Cashew's right at about .3. I guess the Hole
25 would be a little further, maybe .4 or something.

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1 Q Couple of blocks beyond Cashew?

2 A That's correct.

3 Q When the deal went down, were you able to see
4 it happen?

5 A No.

6 Q Other officers were tasked with doing that?

7 A That's correct.

8 Q When was the -- were you able to hear it, the
9 deal?

10 A No. Detective Shealy and I, we tried to get
11 behind a brick hindrance, which is just adjacent or a
12 little bit back of the Hole, thinking that we could hear
13 the transmission from there, but it was too scratchy,
14 and we really couldn't pick it out. So we just decided
15 to relocate to the Bessinger's, and then pick up Bobby
16 and Christopher as they were coming out.

17 Q But there were microphones in the car?

18 A That's correct.

19 Q Microphone on Chris Singleton?

20 A That's correct.

21 Q They didn't know whether or not you could hear
22 it?

23 A No, they didn't know.

24 Q They probably thought you could?

25 A Sure. I -- assumed that we could.

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- 1 Q When did you see Bobby again?
- 2 A When they came out, when they were driving the
3 Focus out of Evergreen and taking a left onto White Oak.
- 4 Q Where did y'all go?
- 5 A We got in behind them, and then we followed
6 them as they took a right from White Oak onto Savannah;
7 followed them all the way down to Wappoo, and hung a
8 right on Wappoo, and then went to the West Ashley Middle
9 School.
- 10 Q What happened at the middle school?
- 11 A At the middle school, they were searched again
12 by Lieutenant Jenkins. Lieutenant Jenkins took
13 possession of the car, drove it to the crime scene
14 office. Bobby and Christopher got in the car with me
15 and Shealy, and then we went to the crime scene office.
- 16 Q Do you know if Bobby ever went back and got his
17 \$50 supposed cut?
- 18 A He did.
- 19 Q And how do you know?
- 20 A Well, because we told him to go back in there.
21 And then after he did, he met me back at CPD station.
22 He then gave me the \$50 that Ryan had given to him. I
23 compared the \$50 serial numbers that he had to the 200
24 that we had given him before, and they matched.
- 25 Q And so just so we're clear, when you

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1 went -- before he went and got the \$50, he met y'all at
2 the school, y'all recovered the gun, he was searched,
3 didn't have any money on him?

4 A That's correct.

5 Q Went back down in the Ardmore area, then comes
6 to you. He's got 50 bucks?

7 A Right.

8 Q It matches the serial numbers?

9 A That's right.

10 Q Did y'all also pay Bobby and his cousin?

11 A They were both paid \$100 that day.

12 Q What about the 13,000 somebody gave him?

13 A That was through Crime Stoppers.

14 Q Is Crime Stoppers separate than the police
15 agencies?

16 A It is.

17 Q Is it a private organization or nonprofit?

18 A Yeah, nonprofit, private.

19 Q Do you know how it is they make the decision of
20 how much to give or who to give the money to?

21 A No --

22 MR. PENNINGTON: Objection to hearsay, your
23 Honor.

24 THE COURT: If he knows, he can answer.

25 THE WITNESS: No, I don't know.

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1 Q (By Ms. Wilson) Okay. At some time after this
2 buy on July 18th, I believe, did you have Bobby come
3 back in to make a telephone call?

4 A I did.

5 Q And what was the purpose of that?

6 A I asked Bobby to try to call Ryan and tell him
7 that he had learned that the gun was hot, had been used
8 in a crime.

9 Q This time did he let you record the call?

10 A He did.

11 Q All right. And was the same phone -- phone
12 number used to make this call as the previous calls?

13 A It was.

14 Q Or previous call.

15 And that's State's Exhibit 33, which was a
16 transcript of the tape that we heard yesterday?

17 A Yes, that's correct.

18 Q Okay. And Mr. Deleston didn't admit that the
19 gun had been used in a murder?

20 A No, he didn't.

21 Q At any point -- at any point after the gun was
22 recovered, was it sent off for testing?

23 A Yes.

24 Q And what was -- what did y'all ask SLED to
25 compare that gun to?

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1 A We asked SLED firearm experts to compare the
2 gun to shell casings recovered from the murder scene, as
3 well as projectiles recovered from Marley's body.

4 Q And was there a match?

5 A Yes. The gun that was purchased from Ryan was
6 the murder weapon.

7 Q Now, let's move ahead to July 30th. Were you
8 involved in the planning of the takedown and arrest of
9 the Defendants in this case?

10 A Yes, I was.

11 Q And what was the plan?

12 A At that time in the investigation, we had had
13 arrest warrants to charge Ryan Deleston with murder,
14 possession of a firearm by -- during commission of a
15 violent crime, possession of a firearm with an
16 obliterated serial number, and also attempted armed
17 robbery. We had an arrest warrant to charge
18 Julius Brown with obstruction of justice. He had lied
19 to us. He had provided a false alibi for Ryan. We also
20 had search warrants to search residences that Ryan had
21 either used or been seen coming out of: [REDACTED] Cashew, [REDACTED]
22 White Oak, as well as, I think, [REDACTED] Evergreen, which
23 was his mother's house.

24 Q Was that -- Cashew was the place where Ryan and
25 Stephanie lived; right?

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1 A That's correct.

2 Q Evergreen was Ryan's momma?

3 A That's correct.

4 Q And then the White Oak was at Stephanie and

5 Julius' momma?

6 A That's correct.

7 Q Okay.

8 A And I also wanted to talk to George Brown. We

9 didn't have any arrest warrants for him, but they had

10 all sort of used each other as alibis. So I figured if

11 one was involved, they all were. So I wanted to talk to

12 George as well.

13 Q Okay. And how did -- how did that operation

14 unfold, the takedown of the Defendants?

15 A So the way we did it was, we had set up

16 surveillance and -- in that area. And the game plan

17 that he had, what we wanted to do was to send in -- set

18 up surveillance and then send in SWAT, narcotics,

19 whatever we needed to get into the area and then arrest

20 Ryan first.

21 After we had arrested Ryan, we wanted to back

22 everyone out. We didn't want to execute anymore arrest

23 warrants, anymore search warrants at that time. We were

24 going to wait two or three hours, then we were going to

25 come back in with SWAT, narcotics, full force again. We

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1 wanted to leave the impression --

2 Q Whether or not it was true, you wanted to leave
3 an impression?

4 A That's right. We don't know whether he's going
5 to talk to us or cooperate or not, but we wanted the
6 others to think that he had. So when we were to come
7 back in, we wanted everyone to think that he had talked
8 to us and he was cooperating, in hopes that that would
9 encourage the others to cooperate as well.

10 Q Did it work out as smoothly as you had hoped?

11 A Never does.

12 Q Okay. What happened?

13 A Well, I mean, it didn't work out that bad. But
14 Ryan had left, so he was out of Ardmore before we could
15 really get in there. He was in --

16 Q So the word -- you couldn't arrest him in
17 Ardmore, so the word wasn't just going to get out?

18 A It didn't get out like the way we wanted it to,
19 no. But what we were able to do was, once we arrested
20 Ryan, we brought him back in. We then flooded the area
21 after that. And then the game plan was to take either
22 Julius or Bryan Rivers, go back out, and then come back
23 in a couple of hours later.

24 Q And do the same thing there?

25 A And do the same thing then. Fortunately, when

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1 we went back in, Bryan and Julius were actually
2 together, or within close proximity, so we went ahead
3 and arrested them both at the same time.

4 Q And Bryan was initially arrested for what?

5 A Bryan was arrested -- because we were doing a
6 bunch of different operations at that time, trying to
7 drum up activity, trying to drum up leads. Bryan had
8 sold imitation or fake drugs to an undercover officer.

9 Q Did you tell him that's what he was arrested
10 for?

11 A No. When I brought him in, I did not inform
12 him of that.

13 Q Why not?

14 A Well, I thought that I could lead Bryan into
15 believing that he was in there in reference to the
16 murder. And sure enough, I mean, I -- Bryan never asked
17 what he was in there for. And that's what he thought
18 too. So I thought that -- what I wanted to tell Bryan
19 was that Ryan had already rolled on him and already
20 implicated him in the crime, in hopes that Bryan would
21 then point the finger at Ryan.

22 Q You mentioned that there were search warrants
23 being executed at the same time; is that right?

24 A That's right.

25 Q And that was on July 30th; right?

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1 A That's correct.

2 Q Okay. At that -- on the first round of search
3 warrants, did y'all have a reason to search for any kind
4 of burned-out area?

5 A No.

6 Q Were you searching in part for white Willie
7 Dee's, striped shirts?

8 A We did have that on there, yes.

9 Q So you were looking for those things?

10 A Right, yeah.

11 Q The second -- you did a second round of search
12 warrants; is that right?

13 A That's correct.

14 Q And was one of the reasons to look out for the
15 burned-out area?

16 A That's right.

17 Q And why was that?

18 A Because through our interview with Rayshawn
19 and, I believe, Julius too, there was talk that Ryan had
20 started a fire to destroy evidence on the night of the
21 murder. We didn't know that until we had spoken to
22 Julius and Rayshawn.

23 Q So that's on July 31st, which is now six weeks
24 after the murder?

25 A Yes, that's right.

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1 Q Now, you mentioned that you're bringing these
2 guys and hoping that each of them thinks the other is
3 rolling?

4 A That's right.

5 Q Describe to the jury -- I think they'll see --
6 but describe to the jury what your interview room is
7 like.

8 A I mean, it's, you know -- it's kind of a small
9 room. I mean, there's enough room for a few chairs in
10 there, a couple of individuals. But it's all white
11 walls, and then there's a table in there with a few
12 chairs.

13 Q Is it obvious that the room is wired for sound
14 and video?

15 A No.

16 Q Do you tell the people that you're interviewing
17 that they're being recorded?

18 A No.

19 Q And that's legal?

20 A Yes.

21 Q Happens every day?

22 A Right.

23 Q When you brought Bryan Rivers in that day, do
24 you recall what shoes he had on?

25 A I do.

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1 (Document is shown to the witness.)
2 Q (By Ms. Wilson) Show you State's Exhibit 109.
3 What are those?
4 A These are black Nike Air Force Ones.
5 Q And whose are those?
6 A Those are Bryan Rivers'.
7 Q How did you come to be in possession of them?
8 A He was wearing them at the time he was
9 arrested.
10 MS. WILSON: Your Honor, we'd offer State's
11 109.
12 MR. PENNINGTON: No objection.
13 MS. WILSON: And the bag that they belong in.
14 MR. PENNINGTON: No objection.
15 THE COURT: Is there an objection,
16 Mr. Pennington?
17 MR. PENNINGTON: There is no objection.
18 Q (By Ms. Wilson) Now --
19 THE COURT: Hold up. Hold up one second.
20 We're good. 109 has previously been admitted.
21 Q (By Ms. Wilson) Now, let me backtrack a minute
22 back to the video. You testified that it wasn't
23 released to the public, the video was not?
24 A Not in its entirety, no.
25 Q The part of Marley --

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1 A That's right. Right.

2 Q -- rearranging things?

3 When the Defendants were brought in, were they

4 shown the video?

5 A They were -- they were shown portions of it,

6 but they weren't shown that part that you're referring

7 to.

8 Q Which portion were they shown?

9 A They were shown the shooter. They were shown

10 the person that was walking through the parking lot.

11 Q But not the early part of Marley?

12 A That's right.

13 Q And how about the video of the gun buy? Were

14 any of them shown that?

15 A I don't know. I don't think so, but I don't

16 know.

17 Q Okay. Now, back in June of -- and July of

18 2012, were you aware of a robbery that had taken place

19 downtown around Rutledge Avenue an hour or so before

20 Marley was killed?

21 A I am aware of it now, yes.

22 Q Were you -- you personally aware of it back

23 then?

24 A I really don't remember. I mean, we were so

25 tied up with this, I don't think so, no.

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1 Q Did you or other detectives in your department
2 make a connection between the robbery that was downtown
3 and the Marley Lion murder?

4 A No, we hadn't.

5 Q And when was it that you were asked to look
6 into it to see if there was a connection?

7 A That was about a month, maybe two months ago.

8 Q Okay. And who asked you to look into it?

9 A Originally, it was Investigator Jeff Osburn,
10 who works for you at the Solicitor's Office.

11 Q And were you able to confirm or pull up that
12 there was a robbery in the Rutledge area that night
13 before Marley was killed?

14 A I was.

15 Q And were you able to confirm what the
16 description of the suspect who did that robbery was?

17 A Yes.

18 Q What was the BOLO, or what was the description
19 given of the suspect who robbed the couple downtown?

20 A I believe it was about five-foot, black male,
21 five-foot-ten or five-foot-eleven and 150, 160 pounds.

22 Q And what kind of clothing was the suspect
23 supposed to have been wearing?

24 A He -- I believe the female victim said that he
25 was wearing a brown shirt with khaki shorts.

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1 MR. PENNINGTON: Objection to hearsay.
2 Objection to hearsay.
3 MS. WILSON: It's not offered for the truth.
4 MR. PENNINGTON: Doesn't matter. It's still --
5 THE COURT: Counsel, may I add -- I told you
6 about speaking objections.
7 (Ms. Wilson and Mr. Pennington approach the
8 bench.)
9 (Side-bar, out of the hearing of the jury, as
10 follows:)
11 MS. WILSON: Not offered for the truth is not
12 hearsay.
13 MR. PENNINGTON: I think what we're getting
14 into is a description of what he was wearing that night
15 from the victims of that, who, as far as I know, have
16 not yet -- they're -- I don't know if they're going to
17 be called or not. They could be. So I think that the
18 relevance of this to the State's prosecution is to
19 establish that Bryan was wearing a certain outfit that
20 would be --
21 MS. WILSON: That's not what I'm offering.
22 It's not offered for the truth. Their description is
23 the brown T-shirt and khakis. He didn't have on a dark
24 brown T-shirt and khakis, and that's my point. The
25 victims are wrong.

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1 MR. PENNINGTON: Well, my problem is, is that I
2 realize that is her purpose, which is an innocent
3 purpose. But my concern is, is that the jury is capable
4 of misconstruing and not understanding and seeing this
5 as evidence that that night he's wearing khakis, which
6 would be disastrous and completely inconsistent with our
7 case. The other descriptors was that he was wearing
8 dark clothes. Everybody agrees he's wearing dark
9 clothes. I think this adds confusion and prejudice, and
10 it's based on hearsay. I don't understand how it's
11 relevant, and I don't think it's admissible.

12 THE COURT: I disagree. It's noted in --

13 MS. WILSON: If we get him here, we can get him
14 here.

15 (End of side-bar.)

16 THE COURT: All right. You may continue.

17 Q (By Ms. Wilson) And in the clothing -- you
18 said black male, five-ten to five-eleven. What was the
19 weight description given?

20 A 150 to 160.

21 Q And the clothing was?

22 A I think it was a tan shirt with khaki shorts.

23 Q Okay. And what was described as having been
24 stolen?

25 A It was a beige-colored purse with credit cards

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1 and a wallet.

2 Q And at that point, you said CPD had made no
3 connection?

4 A That's correct.

5 Q And back in June, up until a month or so ago,
6 did CPD draw any significance of a black SUV rolling
7 through the Famous Joe's parking lot at 3:09 in the
8 morning?

9 A No, we did not pick up on that.

10 (Document shown to Defense counsel.)

11 MS. WILSON: Your Honor, we'd offer, I believe
12 without objection, State's 106, which is a booking
13 report on George Brown; State's 107, a booking report on
14 Julius Brown; and State's 117, a booking report on
15 Ryan Deleston, I believe without objection.

16 THE COURT: Any objection?

17 MR. PENNINGTON: No objection, your Honor.

18 THE COURT: State's 106, 107, and 117 into
19 evidence without objection.

20 (State's Exhibit Nos. 106, 107, and 117 are
21 admitted into evidence.)

22 Q (By Ms. Wilson) And State's 106, the booking
23 report of George Brown?

24 A That's correct.

25 Q Height, weight?

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1 A George is listed at five-foot-ten, 300 pounds.

2 Q Julius Brown, State's 107?

3 A Julius is listed at five-foot-seven, 160
4 pounds.

5 Q And. . .

6 MS. WILSON: Can you tell me what number Bryan
7 Rivers is, his booking report? Never mind. I got it.

8 Q (By Ms. Wilson) State's 108, which was
9 previously admitted, Bryan Rivers' booking report, what
10 is his height and weight?

11 A He's listed at five-eleven, 162 pounds.

12 Q Okay. And the description of that robbery was
13 five-ten to five-eleven, 150 to 160?

14 A That's correct.

15 Q Right on?

16 A Right.

17 MR. PENNINGTON: I object again to that, your
18 Honor, and ask that it be stricken.

19 THE COURT: On what basis?

20 MR. PENNINGTON: Same grounds as previously
21 stated.

22 THE COURT: Overruled.

23 Q (By Ms. Wilson) State's 117, the booking
24 report of Ryan Deleston?

25 A He's listed six foot, 215 pounds.

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1 Q Forty-five-pound difference? Help me with my
2 math.
3 A That's correct, yeah.
4 Q 115 -- 215?
5 A 215 and 160; right?
6 Q Fifty-five pounds.
7 A Fifty-five.
8 Q Fifty-five-pound difference.
9 MS. WILSON: Beg the Court's indulgence.
10 MR. PENNINGTON: Your Honor, I have a matter of
11 law to take up with the Court.
12 THE COURT: Please approach.
13 (Ms. Wilson and Mr. Pennington approach the
14 bench.)
15 (Side-bar, out of the hearing of the jury, as
16 follows:)
17 MR. PENNINGTON: Your Honor --
18 THE COURT: Just for scheduling, how much
19 longer?
20 MS. WILSON: I'm done.
21 THE COURT: Okay.
22 MR. PENNINGTON: Your Honor, having heard the
23 testimony now, I renew my objection strenuously with
24 regard to this hearsay that was just tendered, which is
25 offered for the truth of the matter asserted, and it is

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1 directly contradictory to what we know from the other
2 witnesses. But beyond that, it is hearsay; in other
3 words, it's unreliable. And so what I am concerned
4 about is, is that they have offered tan shirt, khaki
5 shorts as to Bryan Rivers. The jury has heard it. It's
6 out there. It's hearsay. It's unreliable. It's
7 inaccurate. But the jury could rely on it.

8 Our theory of our case is that he was dressed
9 in all black that night. The facts are, is that I
10 believe now the jury could consider the fact that he's
11 not only smaller in stature, but that he is dressed
12 differently and, therefore -- and it's been repeated
13 several times, not just the height and weight -- if it
14 had been height and weight, I couldn't quarrel. But we
15 have witnesses who are not here, who have testified to
16 clothing descriptions that are inconsistent, and I
17 object, as it's highly prejudicial. And at this point,
18 I'd move for a mistrial.

19 MS. WILSON: First of all, we aren't offering
20 it -- the reason I was offering it -- and I think this
21 is a totally legitimate reason -- is, he's made a big
22 deal of Marley Lion's description of the two men who
23 robbed him or attempted to rob him, and has set out to
24 establish that Marley Lion gave his description. My
25 point is, the victims who have guns in their faces are

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1 often wrong.

2 Now, because I am not offering it for the
3 truth, I am prohibited from arguing it in closing
4 arguments that Bryan Rivers had on khakis that night. I
5 can't argue that. What I can argue is that victims are
6 wrong.

7 Now, the other option is --

8 MR. PENNINGTON: Well, would you -- could we
9 perhaps have a stipulation that the victims were wrong?

10 MS. WILSON: We could have a stipulation if I
11 don't get the victim in. I've got that victim. He can
12 come in and tell it himself. That might be a better
13 thing to do. I think it is something -- if we don't get
14 the other victim in, I will stipulate that I cannot
15 argue that Bryan Rivers had on khaki pants.

16 MR. PENNINGTON: Well, I get that. But what
17 I'd like is a stipulation that says that the victim was
18 mistaken about the clothing description.

19 MS. WILSON: No, I'm not doing that. That's --

20 THE COURT: Let's kind of focus in on
21 what's -- if you are giving the stipulation, then your
22 request for a mistrial is withdrawn?

23 MR. PENNINGTON: What I gather is, there's a
24 refusal for any stipulation as to the clothing being
25 inaccurate.

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1 THE COURT: Let's do this. You're done with
2 this witness?

3 MS. WILSON: Yes.

4 THE COURT: Lunch is here.

5 MS. WILSON: Okay.

6 THE COURT: How long -- how long do you need
7 for -- I need --

8 MR. PENNINGTON: For my cross?

9 THE COURT: Yes.

10 MR. PENNINGTON: I would say we're going to go
11 30 minutes.

12 THE COURT: I'm going to go ahead and let them
13 eat and then give them 30 minutes. Is that going to be
14 enough time for y'all to break?

15 MR. PENNINGTON: I can -- I can make that so.

16 MS. WILSON: If we have to be back at 1:00, you
17 cross for 30 minutes. Caplan will be here at 1:30.
18 Will that work?

19 MR. PENNINGTON: Uh-huh.

20 MS. WILSON: And then the stipulation -- if I
21 don't get the victim here, the stipulation that I would
22 be willing to do is that I am prohibited from arguing
23 Bryan Rivers wore khaki pants.

24 MR. PENNINGTON: That's the law. That's not a
25 concession. She can't argue things that aren't in

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1 evidence or for the truth of the matter asserted.

2 MS. WILSON: Right.

3 MR. PENNINGTON: My concern is, is that you've
4 got 12 jurors who are intelligent, taking notes. And if
5 I pick up on it, I have to assume that there's at least
6 one juror that's going, Holy cow. That dark-haired guy
7 was actually wearing a completely different outfit. He
8 couldn't have been the shooter in this case. It blows
9 my case out of the water, has been my view. It's
10 tremendously prejudicial.

11 MS. WILSON: You've had this information. You
12 have the same information as I have.

13 MR. PENNINGTON: We -- I realize that, but we
14 don't have a witness here saying it.

15 MS. WILSON: Well, I'll get him here. Let's
16 get him here.

17 THE COURT: I'm denying your request for a
18 mistrial at this time, but I wish for you to renew it at
19 the appropriate time. All right?

20 We're going to break for lunch. Thank you.

21 (End of side-bar.)

22 THE COURT: All right. Ladies and gentlemen --
23 Ms. Wilson, you are done with this witness?

24 MS. WILSON: Yes, ma'am.

25 THE COURT: Ladies and gentlemen, we're going

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1 to break for lunch. Your lunch is in the jury room with
2 you. I'm inclined to give you approximately 30 minutes
3 to eat your lunch. If you need any more time, if you'll
4 please just tell your foreperson, and the bailiff will
5 let me make appropriate arrangements.

6 Ladies and gentlemen, please remember all of my
7 admonitions. You're going to eat your lunch right up in
8 your jury room, and then we'll come back here. But
9 please do not begin your discussions or your
10 deliberations. You may take your notepads with you or
11 leave them in your chair. It is your choice at this
12 time. And we'll receive you back once you have finished
13 your lunch. Have a wonderful lunch. Thirty minutes.
14 We'll see you back in just a few moments.

15 (The jury is escorted from the courtroom at
16 12:23 p.m.)

17 THE COURT: All right. Thank you. Be seated.

18 All right. Detective, you know the drill.

19 THE WITNESS: I got it.

20 THE COURT: Can't discuss this case with
21 anyone.

22 Anything before we break?

23 MR. DURANT: Not from the State, your Honor.

24 MS. WILSON: No, ma'am.

25 MR. PENNINGTON: No, your Honor.

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1 THE COURT: Mr. Pennington, I will address that
2 matter when you -- I'll allow you to revisit that matter
3 at the bench at the appropriate time again. All right?

4 MR. PENNINGTON: Very good. Thank you, your
5 Honor.

6 THE COURT: I have 12:25, so please be back
7 here at 12:55.

8 MR. PENNINGTON: If your Honor, please, we had
9 talked -- and I don't know when you want to squeeze this
10 in. One of the things that we talked about also was a
11 opportunity for Mr. Deleston to communicate with his
12 mom --

13 COURT SECURITY OFFICER: Been taken care of.

14 MR. PENNINGTON: Pardon me?

15 COURT SECURITY OFFICER: Taken care of.

16 MR. PENNINGTON: Great. The trouble is, I'm
17 only one guy. And between getting lunch and doing that,
18 it's going to make it kind of tight. Can we go until
19 about, say, about 1:10?

20 THE COURT: You're going to need to make your
21 choice now as to whether you're going to talk or eat,
22 and then I'll --

23 MR. PENNINGTON: We can do the talk later, if
24 you prefer.

25 THE COURT: Okay. And I'll give you time at

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1 another break to -- to make that arrangement.

2 MR. PENNINGTON: That will be fine.

3 THE COURT: All right. Thank you.

4 (A lunch break is taken at 12:25 p.m. until
5 1:01 p.m.; at which time, the proceedings continue as
6 follows:)

7 THE BAILIFF: Jurors all present, your Honor.

8 THE COURT: Thank you. Please be seated.

9 Detective, I advise you you're still under
10 oath.

11 CROSS-EXAMINATION

12 BY MR. PENNINGTON:

13 Q Detective Osborne --

14 I'll let you finish your sip.

15 -- this case received a lot of news media
16 converge from the moment it occurred; didn't it?

17 A It did.

18 Q It was fairly clearly an innocent victim?

19 A Yes, sir.

20 Q And a very serious crime?

21 A Yes.

22 Q A very senseless crime from all appearances?

23 A Yes.

24 Q Right from the beginning?

25 A Yes.

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1 Q It even got the attention of Mayor Riley --

2 A It did.

3 Q -- who spoke publicly about seeking the
4 community's help to solve the crime?

5 A He did.

6 Q And it got the attention of your boss,
7 Chief Mullen?

8 A All the murders do.

9 Q And in this case in particular, there was a
10 press conference with Chief Mullen as well?

11 A There was.

12 Q And so you described it -- you were -- you had
13 a big role in managing the investigation?

14 A I did. I wasn't alone, but I did. The case
15 agent was Detective Burckhardt, he was a manager so to
16 speak; and my boss, Lieutenant Jack Weese (phonetic), I
17 would say us three sort of managed the case together.
18 There was a lot going on.

19 Q A lot going. But you were in a position where
20 you were close enough to the action that you're able to
21 come here today and testify about the key steps; is that
22 correct?

23 A That's correct.

24 Q And you describe, at the beginning of the case,
25 as far as the city police were concerned, there were no

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1 suspects?

2 A We weren't able to develop suspects right away,
3 no, sir.

4 Q So it became, as you said, the classic
5 who-done-it?

6 A Yeah. And when I say "suspects," I mean viable
7 suspects. We had suspects; we interviewed them and
8 eliminated them, but, yes, that's correct.

9 Q And you said, at the beginning of your Direct
10 testimony, that it's fair to say that Ryan Deleston was
11 certainly not the sole focus of this investigation?

12 A That's correct.

13 Q Now, let's go through the chronology a little
14 bit to reconstruct how this actually flowed. You
15 described that one of the reasons that Ryan came to your
16 attention in the process, was that Officer Vance had
17 been out at about 4:20 in the morning and had
18 encountered Ryan at [REDACTED] White Oak?

19 A The time, I'm not sure of. But yes.

20 Q Were you here when he testified?

21 A I thought you meant, would I know. No, I
22 didn't know that. But I did hear him say that, yes.

23 Q Okay. All right. And he described that he saw
24 him there in a white shirt --

25 A Yes.

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1 Q -- white tank top?

2 A I believe so, yes.

3 Q And he -- as a result of that information,
4 there was no arrest warrant that was drawn up that night
5 or in the days that immediately followed for Ryan, based
6 on him being over at Delores Brown's house?

7 A That's correct.

8 Q Now, two days past -- and I believe you skipped
9 a lead that came in. The city police was contacted by a
10 Leroy Townsend, who named Bryan Rivers as a suspect; is
11 that correct?

12 A It's not incorrect. It's not -- I mean,
13 there's more to it than that. But, yes, generally
14 speaking, yes.

15 Q So the name Bryan Rivers came up two days after
16 the murder?

17 A That's correct.

18 Q Okay. And so we now move forward about six
19 days, and that's when -- the next big break was when
20 Bobby Warthaw said that Ryan Deleston was out trying to
21 sell a pistol?

22 A That's right.

23 Q And that certainly got your attention?

24 A It did.

25 Q And so that became a focus. And you've

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1 described at length with the Solicitor how there were
2 attempts to make a buy. At first, he was excited;
3 correct?

4 A All right. So let me answer the first part.
5 It wasn't -- that wasn't all we were doing.

6 Q Well, I understand. I don't want to
7 mischaracterize that. I apologize for that.

8 A And the reason for that is, is because Bobby
9 told us that Ryan was selling a gun. I mean, Bobby
10 thought it was the murder weapon; we weren't convinced.
11 Even if Ryan was selling a gun, that doesn't mean he was
12 selling the murder weapon, so that doesn't help us with
13 our murder investigation. So we kept doing a lot of
14 other stuff tracking down the other Crime Stopper leads,
15 tracking down the other suspects. We were doing them
16 both together.

17 Q Right. And so that rocks along, but there's no
18 arrest warrant for Ryan Deleston at that point, based on
19 Bobby's intuition and the fact that he says that
20 Ryan Deleston might be able to sell a gun? There's no
21 arrest warrant for murder?

22 A That's right.

23 Q And so you go now to the beginning of July, and
24 that's when you indicate that you thought it would be
25 useful to have someone go visit Frank Middleton in the

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1 county jail?

2 A That's right.

3 Q And it wasn't because you thought that
4 Frank Middleton had had his ear to the ground out in the
5 community. It was because Frank has enough contacts in
6 the community that even inside the county jail, he would
7 be in a position to maybe get some intel?

8 A I felt that was a possibility, yes.

9 Q Okay. So with so many contacts -- you know, in
10 the jail, there's, like, phone usage; right?

11 A Right.

12 Q And people can go and make videoconference
13 visits, so a visitor can come and sign up and get on a
14 visit's list?

15 A That's right.

16 Q And then have a videoconference at the jail?

17 A Correct.

18 Q And so information does flow to and from the
19 street at the jail?

20 A That's right.

21 Q So we get to July 4th, and then we -- I want to
22 focus for a minute about this description question that
23 you raised. You described that my client is six foot
24 tall?

25 A That's correct.

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1 Q And according to the booking report that you
2 referred to for Bryan Rivers, he was reported on July
3 30th as being 5-11?
4 A That's correct.
5 Q So there's an inch difference?
6 A That's correct.
7 Q Okay. And -- but the key thing in your mind is
8 that as you looked at the video, the big key thing in
9 your mind is the shoulders?
10 A No.
11 Q Big shoulders?
12 A No. That's not the key thing. The key thing
13 to differentiate those two individuals would be the
14 size. Yes.
15 Q The size? The shoulder?
16 A Yes.
17 Q Okay. And you formed an opinion; didn't you?
18 A Not just me. We all looked at it, and we all
19 formed an opinion that the guy that did this was a
20 broad-shouldered individual, large-framed.
21 Q You're one of the managers in this case?
22 A I am.
23 Q And you formed an opinion?
24 A I did as well.
25 Q Okay. And so -- but let's go back now to

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1 the day of the crime when we were doing the CSI work.
2 The -- there were great pains taken to not just examine
3 Marley's truck there on the scene at Famous Joe's, but
4 it was also moved over to Wappoo Road, where you have a
5 crime scene office; correct?

6 A That's correct.

7 Q And the purpose there was to do the fingerprint
8 analysis that we've seen photographs of?

9 A Just -- well, that too. But to process the
10 vehicle in a more controlled environment.

11 Q Right. The idea is to not have stray evidence,
12 to be able to isolate things, and pick up the fine
13 points?

14 A Part of it, yes, sir.

15 Q So you described that -- in your canvassing,
16 you recognize that one of the most useful tools can be
17 surveillance videos?

18 A Correct.

19 Q And so you obtained the Mantek video, the one
20 that we've looked at of the shooting of Mr. Lion at
21 10:00 a.m. Saturday morning?

22 A About that. It might have been a little
23 earlier, but about that.

24 Q Okay. You still had the truck at that time?

25 A That's correct.

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1 Q Okay. And from the video, you can see that the
2 suspect approaches and then moves around and then leans
3 against the vehicle, can't you?

4 A That's tough to tell from my perspective what
5 type of contact he made from the vehicle. That's
6 certainly possible.

7 Q It is tough to tell, because all you're going
8 on is the same thing that we all look on when we look at
9 the video, isn't it?

10 A That's correct.

11 Q And so it's really hard to tell what was
12 touched?

13 A It's hard to tell exactly what areas he
14 touched. From my perspective and my belief, I do not
15 believe that he touched, like, the door handle, for
16 example.

17 Q Well, when you look at the video, there are
18 scenes in which he actually appears to be leaning on the
19 truck?

20 A I think.

21 Q The shooter is leaning on the truck?

22 A I think that might be fair, yeah.

23 Q Would it refresh you to take a look at a still?

24 A Sure. I'll look at it.

25 (Documents are handed to the witness.)

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1 A Listen, I mean, it's -- again, I would say
2 that's possible. But, I mean, he may not be touching
3 it. You know, that's tough to say.

4 Q Well, the nice thing about investigation work
5 is that we don't go off of our just guesses or hunches
6 or assumptions. We actually go out and we gather
7 evidence; right?

8 A That's correct.

9 Q And that's why there were pains taken to swab
10 the exterior of the truck?

11 A That's correct.

12 Q But nobody swabbed the exterior rear door?

13 A Which one?

14 Q The exterior, driver's side, rear door.

15 A No, I thought they did.

16 Q I'm not talking about the handles. I'm talking
17 about the exterior of the door. There was no swab of
18 the exterior, rear door, was there?

19 A There was.

20 Q Would it refresh you to take a look at the
21 report?

22 A That door window was swabbed; the door handle
23 was swabbed.

24 (Document is handed to the witness.)

25 A What am I looking at?

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1 Q Okay. Again, we're not -- I'm not asking a
2 question. But I'm pointing out --
3 MS. WILSON: Can I see what you are looking at?
4 MR. PENNINGTON: It's the DNA report from SLED.
5 THE COURT: Hold on one second. Let Ms. Wilson
6 get. . .
7 (Document is handed from the witness to
8 Ms. Wilson.)
9 (Document is handed back to the witness and
10 Ms. Wilson resumes her seat.)
11 Q (By Mr. Pennington) The description that we
12 have, that was provided to SLED, is that the driver's
13 door, exterior was swabbed; correct?
14 A Right. That's what I read off that, yeah.
15 Q And so as far as we know, there was not a swab
16 of the driver's side, rear door?
17 A Oh, no, I don't believe there was, no.
18 Q Okay. What was swabbed was the driver's side
19 rear door handle, front and back?
20 A That's correct.
21 Q And in that, they could not find DNA on the
22 handle?
23 A On which one? They did find DNA on the one
24 handle.
25 Q I'm sorry. On the rear handle?

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1 A That's correct.

2 Q Now, I'm going to turn fast-forward to July
3 30th, the day of arrest of my client, Mr. Deleston, and
4 you described that the police actually arrested him at
5 about -- it was Monday morning, July 30th, at about 8:30
6 in the morning?

7 A That's correct.

8 Q And that was as he was coming off of a CARTA
9 bus down near the market?

10 A That's correct.

11 Q Dressed in his Bubba Gump restaurant uniform?

12 A Correct.

13 Q Okay. And from there, he was taken to -- I
14 mean, to the Lockwood Boulevard Police Department?

15 A That's right.

16 Q These shoes, the black shoes that have been
17 referred to as, I believe, State's 109, those shoes were
18 not recovered from Bryan Rivers on June 16th, 2012, were
19 they?

20 A No.

21 Q They were recovered on July 30th, when he was
22 arrested, so that's six weeks later?

23 A Right. The day of his arrest.

24 Q In your experience as a detective, you're aware
25 that eyewitnesses often get facts incorrect?

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- 1 A That's correct.
- 2 Q They can be flawed or mistaken about clothing
- 3 descriptions?
- 4 A Correct.
- 5 Q They can even be flawed or mistaken about
- 6 heights?
- 7 A They can be.
- 8 Q Or mistaken about weights?
- 9 A They can be.
- 10 Q Okay. And that's why if you look at the
- 11 -- from your training at the academy and from your
- 12 knowledge as a sergeant investigator, you know that
- 13 mistaken eyewitness I.D. can often even be the greatest
- 14 source of false conviction?
- 15 A I don't know that from my experience, no.
- 16 Q All right. Now, when you described
- 17 Bobby Warthaw as tentative about what he wanted to do,
- 18 he certainly wasn't tentative about wanting some money
- 19 out of this?
- 20 A No, he was not.
- 21 Q And so he -- when you met with him on July
- 22 12th, weeks before -- well, actually, three days before
- 23 the buy, but weeks before the arrest, he was asking you
- 24 about the money?
- 25 A Oh, yes.

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1 Q And he gave you explicit advice on how you
2 might approach an interrogation with Little B; didn't
3 he? On tape?

4 A Yeah, I know it was recorded. I spoke to him
5 for quite a while. I can't remember everything that was
6 said. I do remember him telling me to go after Little B
7 because Little B would be likely to roll on Ryan.

8 Q That's right. What he said was: Is that, in
9 his opinion, what you needed to do is to tell Little B
10 that Ryan's saying that he's the shooter, and then, of
11 course, he would then turn it around and say that Ryan
12 is the shooter?

13 A Right.

14 Q And that's exactly what happened?

15 A We didn't need Bobby's advice for that. That's
16 a common police tactic.

17 Q Okay. You also had, on that same date, in that
18 same interview, Detective Osborne, the tip from Bobby
19 that he had seen a pistol in Bryan Rivers' hands the
20 same day of the murder?

21 A That's correct.

22 Q He had been out there at the Shawn Turner video
23 shoot?

24 A That's right.

25 Q And that Bryan was intoxicated and acting

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1 crazy?

2 A That's correct.

3 Q And was waiving a gun around. And that was
4 upsetting to Bobby and his friends?

5 A That's correct.

6 Q And he told you in that interview, that Bryan
7 was wearing a black shirt and Willie Dee's?

8 A I believe so.

9 Q And he told you explicitly that Ryan Deleston
10 was not present at that photo shoot?

11 A That's right.

12 Q That was the day of the murder?

13 A That's correct.

14 Q On August 1st, when you interviewed Rayshawn
15 Milligan -- this is the brother of Julius -- he
16 basically was saying to you, look, I was drunk, and I
17 just don't know or remember anything. Is that a fair
18 summary?

19 A That's correct.

20 Q And you stressed to him over and over, that it
21 might help your brother, Julius, if you were able to say
22 more about what was coming from the other people? Do
23 you remember that?

24 A What was said that night? That's correct.

25 Q That's right.

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1 A That's correct.

2 Q And you thought it might incentivize him if you
3 told him, Look, this could help your brother?

4 A Right.

5 Q Do you recall the day before, when you were
6 able to sit down with Bryan Rivers at the city police
7 department?

8 A On the 31st or the 30th?

9 Q I'm sorry. The 30th.

10 A Yes.

11 Q The day of the arrest?

12 A Yes.

13 Q In that videoconference room, or in the
14 interview room, that has video?

15 A On the 30th, yes.

16 Q On the 30th. You explicitly told Bryan that it
17 was your belief that Ryan was the killer?

18 A I did.

19 Q And you invited him over and over again to say,
20 Get on the team?

21 A Probably, yeah.

22 Q Get on board with these other fellows. Hang
23 Ryan. Is that what you said?

24 A Sounds like something I would say.

25 Q And at 6:59 that evening, you told him that you

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1 wanted everyone to roll on Deleston?

2 A Correct.

3 Q Either you get on board now, or you're going to
4 be in more trouble?

5 A Correct.

6 Q Because his story wasn't cutting it?

7 A Didn't make any sense.

8 Q The next day, even though you didn't get the
9 story that you were looking for because Bryan Rivers did
10 not say that he was involved or there; right?

11 A That's not exactly accurate. Bryan Rivers did
12 say he was there. Bryan Rivers didn't tell the whole
13 truth.

14 Q All right. Well, you brought him back the next
15 day, and you invited him again, that you wanted him to
16 be on board, to send Ryan up the river?

17 A I tried again the next day, yes.

18 Q About 4:19 in the afternoon on the 30th?

19 A To tell us the whole story. I tried it again,
20 yes.

21 Q So it's pretty clear to those guys what you
22 were looking for?

23 A The truth, yes.

24 Q Well, your truth is, is that you had decided
25 that Ryan Deleston was the shooter? You had an opinion?

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1 A I had more than that. I had a lot of opinions.
2 But what we wanted to get out of each one of them was
3 the truth. Not just that Ryan was the shooter or the
4 killer, but their involvement, as well; what they did to
5 contribute to Marley's death.

6 MR. PENNINGTON: If I may have the Court's
7 indulgence, your Honor?

8 THE COURT: Take your time.

9 (Mr. Pennington speaks with Mr. Kozelski off
10 the record.)

11 MR. PENNINGTON: Thank you, your Honor. I have
12 no further questions at this time.

13 THE COURT: Ms. Wilson.

14 MS. WILSON: Beg the Court's indulgence?

15 THE COURT: Take your time.

16 (Respite.)

17 **REDIRECT EXAMINATION**

18 BY MS. WILSON:

19 Q Detective Osborne, Mr. Pennington asked
20 you several questions about what was swabbed and all
21 that. On that video, does the shooter come up to the
22 front door and tug on that handle?

23 A No. You cannot see that.

24 Q And were you in charge on who swabbed what on
25 the vehicle?

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1 A No. I sat down with the crime scene Jeff
2 Miller, who was here earlier, we watched the video
3 together, and then Jeff made the determinations on what
4 to swab.
5 Q And did you decide what SLED would test or what
6 they wouldn't?
7 A No. In fact, we had several conversations with
8 SLED and -- I did personally -- requesting them to
9 analyze certain evidence and to do certain things and
10 ran into a lot of resistance with that.
11 Q And -- and this Bobby Warthaw deal again, SWAT
12 team is out there?
13 A Yes.
14 Q You've got people stationed in that apartment
15 building with video?
16 A Yes.
17 Q You've got plain clothes officers posing as
18 construction workers all around?
19 A Yes.
20 Q Were y'all nervous about that deal?
21 A Yes.
22 Q Was your liability high, high, high?
23 A Very high.
24 Q Was Bobby Warthaw possibly in danger?
25 A Yes.

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1 Q He was making a buy of possibly a loaded gun?
2 Didn't know? Right?
3 A From an individual we thought was the killer.
4 Q He put himself at great risk?
5 A He sure did.
6 Q And you mentioned that -- or Mr. Pennington
7 asked you about Bobby suggesting to you this tactic to
8 get Ryan -- get Bryan and Little B, and he'll roll?
9 A Right.
10 Q And you said common police tactic?
11 A Yes.
12 Q Tell the jury what you mean by that.
13 A That's really common. We have different
14 strategies that we use in the interview room. If you
15 have multiple defendants, you'll try to pit one
16 defendant against the other. You'll tell that
17 defendant, Hey, look, you know, he's telling us this,
18 he's telling us that, he's rolling on you, he's putting
19 it all on you. You try to encourage them to roll
20 backwards.
21 Q Do you tell one defendant the whole story that
22 another defendant is telling you?
23 A No.
24 Q Okay. When you say you -- you -- you go back
25 and forth, y'all have more than one interview room?

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1 A Right.

2 Q Do y'all sometimes tell them, Hey, so-and-so is
3 down the hall?

4 A Yes.

5 Q And do you tell them the story to feed you
6 back?

7 A No.

8 Q Okay. Well, tell the jury how it works.

9 A I mean, you don't ask leading questions, you
10 know. You'll say, Well, isn't it true y'all were trying
11 to rob Famous Joe's? And then, you know, try to
12 encourage certain things. I mean, we had a bunch of
13 different theories, but we didn't know exactly what
14 happened. Just, for example, we thought that it was
15 possible that maybe they had posted up on Famous Joe's
16 behind Famous Joe's. So I tried to tell them, Y'all
17 were sitting behind Famous Joe's; that's where y'all
18 were hanging out waiting for him, weren't you? And they
19 said no.

20 And you kind of gauge their reaction. If it's
21 a definite no, no, well, then you move on to another
22 theory in the hope to get a little bit of feedback, and
23 you kind of roll with that.

24 Q And you mentioned that Little B's story didn't
25 make sense?

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1 A At all.

2 Q Julius' story didn't make sense?

3 A Not at all.

4 Q Little B was telling you --

5 MR. PENNINGTON: Objection. Leading.

6 Q (By Ms. Wilson) What was Little B telling you?

7 THE COURT: Thank you.

8 THE WITNESS: All right. Little B's story --

9 initial story -- well, I mean, the first story was, I

10 was inside drunk and didn't go anywhere. Then it got to

11 the point to where he said -- and he's getting closer

12 and closer to putting himself at the scene. And the

13 last story that he ended up telling me was, that he just

14 happened to be walking down the road, minding his own

15 business, and then he observed Ryan shoot Marley. And

16 it just -- it didn't make any sense that they came from

17 the same location, from Cashew, and Ryan is in the

18 middle of doing a robbery, and we see Julius Brown on

19 the video, we know all three of them have put themselves

20 together using each other as alibis, and he just

21 happened to walk by a murder. It just didn't make any

22 sense.

23 Q (By Ms. Wilson) You didn't buy it?

24 A No.

25 Q And Julius, what was his claim about walking

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1 through the parking lot?

2 A All right. So Julius's last story was, yes,
3 Ryan is the killer. But what he said was, I was walking
4 through the parking lot to do a drug deal. But, yet, he
5 knew that Ryan was about ready to do -- Ryan and Bryan
6 were about ready to rob Famous Joe's. So I asked him, I
7 said, Well, Julius, that makes no sense at all. Why
8 would you pick a location for a drug deal in the same
9 parking lot if you know two individuals are about ready
10 to do a lick? And Julius really had no explanation for
11 that.

12 Then he said that when he went through the lot,
13 he went through Marley's car -- went by Marley's car,
14 then he said he waited there. But he was walking in the
15 neighborhood, and he said he just waited there. But he
16 wasn't involved in the robbery. I told him, I said,
17 Julius, that doesn't make any sense. If there were 12
18 minutes past from the time that Julius walked by the
19 car, if all you're doing is walking by, you would have
20 kept on walking and going home, especially since you
21 knew they were about ready to do a robbery. It just
22 didn't make any sense.

23 Q And you challenged him on that?

24 A I did.

25 Q And when Bryan Rivers came in, as

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1 Mr. Pennington asked, not on the day of the murder, but
2 the day he was arrested, he had on these shoes?

3 A Correct.

4 Q And what style of shoe is this?

5 A They're Nike Air Force One.

6 Q And what is the slang term for a Nike Air Force
7 One?

8 A Willie Dee's.

9 MS. WILSON: That's all, your Honor.

10 THE COURT: Mr. Pennington.

11 MR. PENNINGTON: Thank you, your Honor.

12 **RECROSS-EXAMINATION**

13 **BY MR. PENNINGTON:**

14 Q So, Detective Osborne, what I'm hearing you say
15 is that when you are interviewing people in those kinds
16 of settings, you often know that they're not going to be
17 telling you the truth at the beginning?

18 A You can almost count on it.

19 Q That's right. You know you're dealing with
20 liars?

21 A Correct.

22 Q And so your strategy is to try to get them to
23 come off of the story that they have been giving you and
24 give you a story that you believe is the truth?

25 A No. I try to get them to tell me the truth.

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1 Q Well, when you give people the answer and you
2 know they're liars, what better way to help someone
3 who's looking for a lie that would please you, than tell
4 them what the lie is supposed to be?

5 A If that were the case, they would have taken
6 several other opportunities that I gave to them. I
7 mean, I tried to tell them something like -- like I
8 said, that I thought they had posted up behind Famous
9 Joe's. They each had the opportunity to take that, but
10 all of them said, no, that wasn't true.

11 Q But, Detective, you're not naive, you know
12 about this code of silence, code of the street, don't
13 rat somebody out, that kind of thing. People are always
14 resistant in giving you information, aren't they?

15 A Not always.

16 Q Well, suspects in cases like this?

17 A Frequently.

18 Q Yes. And so when you finally boxed them in,
19 you fed the answer that you were looking for?

20 A What I thought had happened and -- and that's
21 what I told them. I said, Look, this is what it looks
22 like. It looks like this; it looks like that. They
23 didn't always take it.

24 MR. PENNINGTON: No further questions.

25 THE COURT: You may step down. Call your next

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1 witness.

2 MS. WILSON: Your Honor, we need to call a
3 witness out of order. We'd call Dr. Stanley Kaplan.
4 -- I mean, Michael Caplan.

5 Stanley Kaplan is the SAT guy, and I continue
6 to call him that.

7 (The oath is administered by the Deputy Clerk
8 of Court, and the witness as follows:)

9 THE WITNESS: I do.

10 THE DEPUTY CLERK OF COURT: Thank you, sir.
11 You may take your seat. State your first and last name
12 for the record, spelling your last name for the record.

13 THE WITNESS: Thank you. My name is Michael J.
14 Caplan. Last name is spelled C-a-p-l-a-n.

15 MICHAEL J. CAPLAN, M.D.,

16 having been first duly sworn by the Deputy Clerk of
17 Court to tell the truth, the whole truth, and nothing
18 but the truth, was examined and testified upon his oath
19 as follows:

20 DIRECT EXAMINATION

21 BY MS. WILSON:

22 Q Dr. Caplan, where are you employed?

23 A I'm employed at the Medical University of South
24 Carolina.

25 Q And how long have you been at MUSC?

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1 A I've been at MUSC on and off since 2004. I was
2 there from July, 2004 to 2008, then I left and came back
3 in January, 2011, and I've been there since then.

4 Q And are you a licensed physician in South
5 Carolina?

6 A Yes, I am.

7 Q And how long have you been practicing medicine?

8 A I've been practicing medicine since 1987, when
9 I received my M.D. degree.

10 Q And where did you receive that training?

11 A I received my medical training at the
12 University of Connecticut School of Medicine.

13 Q And can you outline your training for the
14 jury.

15 A Sure. After receiving my medical training
16 at University of Connecticut, I then went to do a
17 postgraduate training after medical school, in
18 pathology, which is a specialty that deals specifically
19 with how the human body responds to disease. And I did
20 that at the University of Michigan from 1987 until 1992.
21 Following that, I then did a one-year Fellowship in
22 forensic pathology. And forensic pathology is a
23 subspecialty that specifically uses the tools of
24 pathology to deal or resolve problems of the law or
25 public interest. And I did that Fellowship at the

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1 New York City office of the chief medical examiner from
2 1992 to 1993. I also did a year of training in
3 pediatric pathology, which studies diseases affecting
4 children, infants, and even unborn babies, fetuses; and
5 that was at the Children's Hospital, Pittsburgh, from
6 2003 to 2004. So that's the extent of my training.

7 Q And as a result of your training, have you had
8 occasion to perform autopsies?

9 A Yes, I have.

10 Q Do you have any idea how many autopsies you
11 have performed?

12 A Yes, I have a rough idea.

13 Q And what is that?

14 A I have either directly performed or supervised
15 somewhere between 22- and 2,400 autopsies.

16 Q Are you a member of any specialized groups or
17 associations in your field?

18 A Yes, I am.

19 Q And what are those?

20 A I am a member of the Society for Pediatric
21 Pathology; National Society, and also on the education
22 committee for that society; I've also been a member of
23 The Academy of Forensic Sciences; American Academy of
24 Forensic Sciences; and the National Association of
25 Medical Examiners in the past.

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1 Q Have you been qualified to testify as an expert
2 in the area of forensic pathology before?

3 A Yes, I have.

4 Q How many times and what courts? Roughly?

5 A Yeah. Roughly, I would say somewhere --
6 between deposition and trial testimony, somewhere
7 between 125 and 175, somewhere in there. And the courts
8 have included New York City, Queens County; Washtenaw
9 County, Michigan; Wilmington; and other counties in the
10 state of Delaware; and counties in -- multiple counties
11 in South Carolina, including Charleston, Berkeley,
12 Beaufort; and also some counties in Georgia as well.

13 MS. WILSON: Your Honor, at this time, we'd
14 offer Dr. Caplan as an expert in the field of forensic
15 pathology.

16 THE COURT: Any objection?

17 MR. PENNINGTON: No objection, your Honor.

18 THE COURT: Ladies and gentlemen, normally, a
19 person cannot give opinion testimony. Typically, when a
20 person testifies, they must testify as to either what
21 they saw, heard, or sensed by smell or something of that
22 nature. There is an exception in our law when someone
23 is qualified because of their education or experience,
24 they are permitted to give their opinion in certain
25 areas if the Court qualifies them that way. This

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1 witness will be qualified in the area of forensic
2 pathology to give opinion testimony in that area. That
3 does not mean that you must accept the opinion; it is
4 simply evidence for you to use in any way that you see
5 fit.

6 Ms. Wilson.

7 MS. WILSON: Thank you, your Honor.

8 (Document is shown to Defense counsel.)

9 MS. WILSON: Your Honor, at this time, we'd
10 offer, I believe without objection, State's 110, 111,
11 112, 113, 114, 115, and 116, which are sketches related
12 to the autopsy of Marley Lion.

13 THE COURT: Any objection?

14 MR. PENNINGTON: Not at all, your Honor.

15 THE COURT: State's 110 through 116 into
16 evidence without objection.

17 (State's Exhibit Nos. 110, 111, 112, 113, 114,
18 115, and 116 are admitted into evidence.)

19 MS. WILSON: Thank you, your Honor.

20 Q (By Ms. Wilson) Now, Dr. Caplan, while working
21 at MUSC, did you have occasion to perform an autopsy on
22 Marley Lion on the afternoon of June 16th, 2012?

23 A Yes. The only correction was that it began in
24 the morning and extended into the afternoon.

25 Q Okay. And what was Marley Lion's age at the

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1 time of autopsy?

2 A To my understanding, Marley Lion was 17 years
3 old.

4 Q What was his height?

5 A He was approximately six feet, three and a half
6 inches.

7 Q And weight?

8 A About 235 pounds.

9 Q And when you received Mr. Lion's body, how was
10 he clothed?

11 A He had some khaki pants that were underneath
12 him, he also had some boxer-style shorts that were also
13 underneath his body, and he also had socks of two
14 different colors on his right and left feet.

15 Q Now, his pants and his boxer shorts, had they
16 been cut --

17 A Yes.

18 Q -- as part of his treatment?

19 A Yes. That is my understanding.

20 Q And when you performed -- you performed an
21 external overview of the body; is that correct?

22 A That is correct.

23 Q And could you tell if he had undergone any sort
24 of medical treatment?

25 A Yes, I could.

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1 Q What were the most obvious things that you
2 could see in your examination that were evidence of his
3 treatment?

4 A The most obvious things were -- to begin with,
5 he had a breathing tube put down his mouth, what we call
6 an endotracheal tube. And then what was most obvious
7 after that was that he had a large incision that went
8 entirely across his chest, from basically one armpit to
9 the other and below the levels of the nipples. It's
10 what we call a thoracotomy incision, basically going all
11 the way across the chest. He also had other obvious
12 interventions that he had; where he had a tube that was
13 going into the chest cavity on the right side, and he
14 also had a site in the right groin where there had been
15 a cut down, meaning, an incision had been made to gain
16 access to the blood vessels to provide resuscitation for
17 him. There were other interventions, but those were the
18 most obvious that I saw.

19 Q And did the fact that he had undergone
20 treatment earlier that day affect your ability to
21 perform an autopsy?

22 A Not in my opinion.

23 Q Based on your further examination of Marley, do
24 you have an opinion, to a reasonable degree of medical
25 certainty, as to the manner and the cause of his death?

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1 A Yes, I do.

2 Q And what is that opinion?

3 A In my opinion, cause of death was a gunshot
4 wound to the chest with perforations or injuries of the
5 abdominal aorta, the spleen, and the liver. And the
6 manner of death, in my opinion, was homicide.

7 Q Now, Doctor, I'm going to show you State's
8 Exhibits 110 through 116. Have you had a chance to look
9 at these before?

10 A Yes, I have.

11 Q And would those exhibits that have been
12 admitted help you to explain to the jury the nature of
13 Marley's wounds and injuries?

14 A Yes, they would.

15 MS. WILSON: Okay. If we could start with
16 State's 110. Could we lower the lights just a little?

17 THE DEPUTY CLERK OF COURT: Yes, ma'am.

18 Q (By Ms. Wilson) Now, Doctor, we're at a little
19 bit of a disadvantage. We don't have the -- the Elmo
20 thing that you can draw on, and the laser pointer won't
21 show up on the TV. So I'm going to ask you to use this
22 old-timey thing right here.

23 A Sure. I can do that.

24 Q And if we'll start with State's Exhibit 110,
25 which is at the top, labeled GSW for gunshot wound and

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1 bullet number one and GSW number six. If you could
2 explain to the jury what State's 110 shows.

3 THE WITNESS: Your Honor, is it okay for me to
4 stand?

5 THE COURT: It is.

6 THE WITNESS: Okay. Thank you.

7 So what I'm showing here is this -- this
8 is a picture of a diagram of the decedent's body --
9 Marley Lion's body. And what we're seeing here is --
10 this red circle, that represents the approximate site of
11 the entrance gunshot wound that went to the left side of
12 Marley Lion's chest. So that would have been the
13 entrance wound. Right here, that represents, on the
14 back, on the right side of the back, the site where the
15 bullet that corresponded to this gunshot wound, where
16 that bullet was recovered at the time of the autopsy,
17 where I recovered it at the time of the autopsy. So
18 this would be the entrance wound, and that would be the
19 site of recovery and bullet.

20 And whenever we do an autopsy where we have
21 gunshot wounds, we always have to determine whether --
22 given an entrance, whether a bullet actually made an
23 exit through the body or whether it stayed in the body
24 where we recover it. So we try to follow the path of
25 the tract.

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1 So, again, this and this are the same wound
2 tract. That's number one. And we give these numbers --
3 arbitrary numbers, we're not specifying an order, but
4 just to keep ourselves organized, is why we do that.

5 Q (By Ms. Wilson) So you don't necessarily know
6 that -- although it's labeled as GSW 1, that that was
7 the first shot to Marley?

8 A That is correct.

9 Q Okay. And, faintly, just to the left of that
10 red circle is a yellow arrow. And is that the direction
11 of the -- of the wound tract?

12 A Yes. Yeah, that would roughly be the direction
13 of the wound tract, going across the body from left to
14 right, okay? Obviously going into the body cavities.
15 But, yeah, going from left to right and really not at
16 any upward or downward deviation. This entrance wound
17 was about 24 inches below the top of the head, and where
18 we recovered the bullet was about 24 and a half inches
19 below the top of the head. So very, very close. So,
20 yes, it did go across this way.

21 Q And was there -- let's look at the other wound
22 on the arm.

23 A So this wound that we're referring to as
24 gunshot wound number six, this is the only wound that
25 was a through-and-through, where there was -- I'm sorry.

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1 This was one of the -- one of the two wounds in the body
2 that was a through-and-through, meaning there was an
3 entrance and an exit. Okay? And these are very, very
4 close together. And so what we're looking at, we're
5 looking at the back of a foreman, a little bit below the
6 elbow process. And these two wounds, again, entrance
7 and exit, and very, very -- it is actually difficult to
8 tell what's entrance and what's exit. But they take a
9 very, very short path through the soft tissues in the
10 foreman. They don't strike bone or fracture a bone.
11 They take the short path through the soft tissues, and
12 then the bullet exits.

13 Q And those two wounds on the back of his
14 left foreman, same side of the body where you have
15 that -- that entrance wound at the chest; right?

16 A That's correct.

17 Q Would the entrance wounds on the foreman be
18 consistent if Marley had done like that?

19 A Yes. Yes. In my opinion, if he
20 had -- basically flexed his -- bent his foreman, then
21 the position of those wounds in the foreman would
22 approximately line up with the entrance wound that's on
23 the left side of the chest.

24 Q Now, so bullet path number one, gunshot wound
25 one, can you tell the jury what organs were affected in

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1 that path?

2 A Yes. So this path here went -- took a path in
3 the chest, it went in between the ninth and the tenth
4 ribs, and then it went just below the diaphragm, the big
5 muscle that helps us breathe; and then after it went
6 into the diaphragm -- through the diaphragm, then it
7 entered into the abdominal cavity. As it went across
8 the abdominal cavity, it cut some soft tissues, and then
9 the next major organ it entered was the spleen. So the
10 spleen was just underneath the rib cage between that
11 ninth and tenth rib.

12 After it went through the spleen, it then went
13 through the aorta, the major artery that takes blood to
14 all of our organs, and enters the aorta just between the
15 chest and the abdominal regions, but, technically, in
16 the abdominal cavities. So it went through the spleen,
17 it went through the aorta, and then the next organ it
18 went through was the liver.

19 And then after going through the liver, it then
20 went back through the right side of the diaphragm
21 muscle, but then it ended up stopping and lodging in one
22 of the muscles in the back of our body that goes to the
23 arm, and lies on the right side of the back, at about
24 the same level where the entrance was. So the spleen,
25 the abdominal aorta, and the liver were the three major

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1 organs that were injured in this path.

2 Q Dr. Caplan, was that the fatal wound?

3 A Yes. In my opinion, it was.

4 Q And did you notice any stippling or
5 pseudostippling?

6 A Yes, I -- I did -- I did not notice stippling.
7 I did notice pseudostippling. And -- can I elaborate?

8 Q Yes. Tell us what that is.

9 A Okay. So stippling -- the term that we use
10 stippling -- or tattooing is another term. Stippling
11 refers to any completely burned or unburned gunpowder
12 that actually rubs against the skin and forms tiny,
13 tiny, little pinpoint abrasions. It's very, very
14 uniform. And that's how we distinguish stippling. It
15 usually takes some distance from between where the gun
16 is fired and the body to produce that.

17 Now, there are things that can mimic stippling,
18 and those are called pseudostippling. So, for example,
19 if things like -- that break up, like glass or wood or
20 little particles of dirt, if those abrade the skin,
21 those can produce a pattern that can look like
22 stippling, except that they're not because those are not
23 as uniform: they have different sizes and different
24 shapes, and usually be -- the difference can usually be
25 discerned between true stippling and tattooing, or what

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1 we call pseudostippling. And, as I said, any object in
2 between the weapon and the skin of the victim could
3 potentially produce that pattern.

4 Q Like car glass window?

5 A Correct. That is one -- that is one object
6 that could produce that.

7 Q I'm going to show you State's Exhibit 35, which
8 has already been produced. Can you see the bullet on
9 there that you recovered?

10 A Yes, I can.

11 Q And that is -- that matches up with gunshot
12 wound one; is that correct?

13 A Correct. What you just showed me was -- was
14 the site of recovery of this gunshot wound, this bullet
15 right here.

16 MS. WILSON: Your Honor, again, if I can
17 publish this to the jury?

18 (Document is published to the jury.)

19 Q (By Ms. Wilson) And you said that was the
20 fatal wound?

21 A In my opinion, that was the fatal wound in this
22 case.

23 Q Okay. If we could move to State's Exhibit 111,
24 and that is gunshot wound and bullet number two.

25 A Correct. So this wound -- now we're looking at

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1 a view from the side of Marley Lion. And so we're
2 looking at the outer side of his left thigh. Okay?
3 Right here. This was -- so where I was saying that the
4 gunshot wound number one was about 24 inches below the
5 top of the head, just to make sure I remember this
6 correctly -- this was lower. This was about 38 inches
7 below the top of the head, so lower. And this bullet
8 took a path -- a very -- that instead of going into the
9 body cavities, this bullet actually remained in the soft
10 tissue.

11 So it took a path through some of the tough
12 connective tissue, and then back over where the gluteal
13 muscles are, and then it actually rested in the back
14 muscles over here in the back. So it took a path that
15 goes from -- here's the arrow. It went from left to
16 right, it went from slightly front to back, and then it
17 went upward, because this was about 31 inches below the
18 top of the head. So this wound was associated only with
19 some bleeding in the soft tissues and no other major
20 injuries.

21 Q And you said "upward," so that would have meant
22 the bullet would either -- if he were standing upright,
23 the bullet would have been -- having to come up from the
24 floor?

25 A Correct.

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1 Q Or if he was laying over or moving away, the
2 bullet could have been coming from at an angle away?

3 A Correct. Correct. And so --

4 Q And it appeared to go up?

5 A Right. So when I use the term "upward," to
6 clarify, what I'm talking about is assuming that the
7 body is in what we call the anatomic position, where the
8 body is -- a person is standing and their palms are
9 faced out. So --

10 Q Just like that?

11 A Correct.

12 Q Those diagrams?

13 A Yeah, just like in these diagrams. Correct.

14 Q If we could go to State's 112.

15 Okay. That's gunshot wound and bullet three.

16 A Right. So now we're a little bit in front of
17 where we were on gunshot wound number two. And this
18 represents the entrance, right here, for number three.
19 This was sort of in -- in between the last -- the side
20 and the front of the thigh. It's what we call the
21 anterior lateral. It's right -- kind of between the
22 side and the front of the thigh. Pretty much at a
23 similar level to the last one that I just talked about.
24 This one, you could tell, had an upward path because
25 there was an abrasion. Okay? Where the skin was

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1 scraped below there, and the actual perforation of where
2 the bullet entered, was just a little slit on the top of
3 this abrasion. So this bullet took a path through the
4 skin, through the soft tissues, and then it actually
5 grazed the top of the hip bone -- in the front of the
6 hip bone, the site where some of the muscles that flex
7 our hip and our leg, our thigh. So this one basically
8 took a path going upward and slightly from right to
9 left.

10 Q Was that a fatal wound?

11 A This was not a fatal wound. This also was
12 associated only with some bleeding in the soft tissues
13 around where the path of the bullet was.

14 Q No doubt painful?

15 A Yes, in my opinion.

16 Q State's 113, gunshot wound and bullet number
17 four?

18 A So I had said that number six was
19 through-and-through, the one on the foreman. This is
20 another wound that entered the body, exited, but then it
21 re-entered, and so we recovered the bullet, because on
22 the second time it re-entered, it stayed in the body.
23 So this -- this wound right here was on the -- also on
24 kind of the front -- between the front and side of the
25 thigh. And this was the lowest wound of all. Those

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1 other wounds were up in here, around 38 inches below the
2 top of the head; whereas, this one was about 45 inches
3 below the top of the head.

4 So what this wound did -- what this tract did,
5 is that this took a very short path through the thigh,
6 but then what happened is, is that it -- it then exited
7 right in the groin crease, right near -- at the middle
8 of the groin crease, right near where the left side of
9 the scrotum is. And then it re-entered. And so --
10 meaning, that this hole where the exit was and this hole
11 here, matched up -- or approximated perfectly. And so
12 then it took a path through here and then actually went
13 right above the pubic bone that sits right here. So it
14 went in the front of the thigh, in the left side of the
15 scrotum, above the pubic bone, and then it actually took
16 a course from left to right. And we recovered this
17 bullet on the -- in the soft tissues of the right side
18 of the thigh. And as I said, this was about 45 inches
19 below the top of the head. And if I could just refer
20 for a second.

21 Q Okay.

22 A This was about 37 inches below the top of the
23 head. So this was clearly -- but slightly upward. But
24 this path that I'm showing you here is consistent with
25 the fact that this was an entry re-exit, re-entry, so

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1 the path would have changed.

2 Q How is it, then, that a bullet can seem to take
3 a circular path instead of a straight line?

4 A Well, there are a number of factors that
5 explain that, but one of them has to do with the
6 position of the body, and -- or the relative position of
7 the shooter. So, again, the simplest case is if
8 somebody is standing straight, or if a bullet is shot
9 completely at a 90-degree angle, then you can assume
10 it's going to take a straight shot through the body.
11 But if the body -- if that relationship between the
12 muzzle of the gun and the body is not in a straight
13 line, a 90-degree angle, and the body is in any kind of
14 contorted position, either bent or rotated somehow, then
15 that can cause any number of a variant -- or different
16 pathways to take place.

17 So -- and another thing that can affect it is,
18 if a bullet strikes bone, then that can also alter the
19 pattern here and -- now, in this particular case, if it
20 did hit bone, it didn't fracture any bone. I guess the
21 answer to that question is, really, because the body can
22 be in so many different positions at the time, it can
23 alter the path of a bullet when -- when the body is in
24 one of those contorted positions.

25 Q State's Exhibit 114, gunshot wound and bullet

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1 five, at bullet graze 7?

2 A Okay. So this -- now we're looking --
3 everything so far has been on the left side. Now we're
4 looking at the right side, and this is more in front of
5 the thigh. And this was a wound -- that entrance wound
6 right here was on the front of the thigh, and what
7 you're not seeing here is that -- I mentioned that there
8 was that large cut-down site where the -- where the
9 doctors had tried to find a blood vessel to be able to
10 resuscitate Marley Lion. So actually that cut-down site
11 was just above -- just above where this gunshot wound
12 was. Okay?

13 And what this wound did -- and this one, again,
14 was high -- this was also around 35 or 36 inches below
15 the top of the head. This one took a path through the
16 soft tissues of the groin here, but then what it did, it
17 went beneath a muscle that we call the soleus muscle,
18 which is a powerful muscle that helps us flex our thigh
19 or our hip. And it went underneath that muscle and
20 struck the hip bone there, and we recovered this bullet
21 right in that area. So this took a course going through
22 -- again, going through right here, just -- just below
23 the cut-down site, and then recovering it here.

24 And then this mark right here is what I call a
25 graze wound. And a graze wound is defined as a wound

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1 where there -- where the gun -- the bullet does not
2 penetrate the skin. So, basically, a graze wound is a
3 form of an abrasion, a rubbing or scraping of the skin.
4 But in this case, it was a very thin band consistent
5 with a gunshot wound. And, so, in my opinion, this
6 graze wound here, if -- if this surface was in contact
7 at any time with this surface --

8 Q Like this?

9 A Yes. So -- so if that -- if the thigh was
10 flexed, then as that bullet went in, it would have
11 allowed that to strike part of the skin of the bottom of
12 the abdomen there and produced that injury.

13 Q So one bullet created two injuries, you know,
14 at a bend? If it comes in like that, it's going to --
15 it entered the bottom part; right?

16 A Correct.

17 Q And abraded the top part?

18 A That's correct.

19 Q Or grazed the top part?

20 A But, again, bottom and top here are very, very
21 close together.

22 Q Okay. So of these wounds, there was one that
23 was fatal; is that correct?

24 A Yes. In my opinion, there was one that was
25 fatal, and that was the wound that injured the aorta,

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1 the spleen, and the liver.

2 Q Did Marley also have some contusions on his
3 face and head?

4 A Yes. Yes, he did.

5 Q Or lacerations?

6 A Yes. He had some other injuries on his head
7 and face.

8 Q State's 115. What does that represent?

9 A This right here, we're looking at the left
10 cheek or the -- the hard part of the cheek of
11 Marley Lion. And what this represents is an abrasion.
12 This was actually a scrape, where the skin was scraped
13 right across that part of the face right there. So I
14 call that an abrasion, scraping of the skin there.

15 Q Could that abrasion be consistent with a fall
16 on pavement or gravel, something like that?

17 A Yes. It could be consistent with a fall on any
18 surface because that's a protuberant part. That's a
19 part of the face that sticks out because it's right
20 against bone.

21 Q And State's 116. What does that represent?

22 A Here we have a -- three different injuries.
23 These two injuries here and here actually have very
24 smooth margins. Okay? So the skin wasn't abraded, but
25 it was cut, but very, very superficial. So these are

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1 what I would call sharp force injuries. They were not
2 abrasions, but due to a sharp object. This injury,
3 though, on the left side of the forehead, this was a
4 laceration in the middle, and that's what the light red
5 is. And a laceration is an actual tearing of the skin
6 and the tissues. And then surrounding that was abrasion
7 where the skin was rubbed around the laceration. And so
8 this is what I call a blunt force injury, because these
9 margins were rough and irregular.

10 Also, you could put a probe inside that wound,
11 and there was some separation of the tissues of the skin
12 and the bone in here where this happened. And so this
13 is what we call an abraded laceration. Basically
14 meaning, it's a tear with a scraping of the skin around
15 it.

16 Q It was a pretty big size, wasn't it?

17 A Yes. Yes. This was actually the -- the actual
18 laceration was about an inch long by about a
19 quarter-inch wide, and the abrasion around was about two
20 inches in diameter.

21 Q And, again, consistent with maybe a fall to
22 pavement?

23 A Yes. This would be consistent with -- again,
24 because that ridge of the forehead is protuberant, then
25 that would be consistent with any -- any fall that would

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1 be a part of the surface, it would be most likely to
2 strike that.

3 Q You can have a seat. We can turn the lights
4 back up.

5 (The witness resumes the witness stand.)

6 Q (By Ms. Wilson) Now, Doctor, I'm going to show
7 you what's already been introduced as State's 15, 16,
8 17, 18, and 19. Can you tell the jury what your role
9 was in collecting these projectiles?

10 A Yes. So all of these projectiles that you have
11 in front of me, these were projectiles that I recovered
12 in the course of following the tracts of all those
13 bullets that we've discussed. And so I recovered those
14 bullets, and then they were put in a safe place where
15 they could be identified, they were photographed, and
16 then they were put in individual envelopes, and they
17 were separate to indicate the specific site of the body
18 where they were recovered.

19 Q And then they were handed over to the
20 Charleston Police Department --

21 A Yes.

22 Q -- for further testing?

23 A That is correct. Charleston City police.

24 MS. WILSON: Dr. Caplan, thanks for coming in.
25 That's all I have.

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1 THE COURT: Mr. Pennington.
2 MR. PENNINGTON: Thank you, Dr. Caplan. I have
3 no questions.
4 THE COURT: Is this witness excused?
5 MS. WILSON: Please.
6 MR. PENNINGTON: No objection.
7 THE COURT: Dr. Caplan, you may step down.
8 Feel free to remain with us.
9 Y'all need a break?
10 THE FOREPERSON: No.
11 THE COURT: Do not begin your deliberations; do
12 not discuss this case amongst yourselves. Just let the
13 bailiff know when you're ready to return back.
14 Please rise.
15 THE FOREPERSON: No. We're good.
16 THE COURT: I saw one say yes. So this is an
17 appropriate time.
18 (The jury is escorted from the courtroom at
19 2:10 p.m.)
20 THE COURT: Thank you. Be seated.
21 Anything before we take a very short break?
22 MS. WILSON: No, ma'am.
23 MR. PENNINGTON: No, your Honor.
24 THE COURT: How many witnesses do you have
25 remaining?

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1 MR. DURANT: Four.

2 THE COURT: Does that include the video or not
3 include the video?

4 MR. DURANT: That includes the video.

5 THE COURT: Counsel, approach, just for
6 scheduling. We are at ease.

7 (A break is taken from 2:11 p.m. until
8 2:22 p.m.; at which time, the proceedings continue as
9 follows:)

10 THE COURT: Thank you. Be seated.
11 Anything before we bring in the jury? From the
12 State?

13 MS. WILSON: No, ma'am.

14 MR. PENNINGTON: No, your Honor.

15 THE COURT: All right. Let's bring in the
16 jury. Thank you.

17 (The jury is escorted into the courtroom at
18 2:23 p.m.)

19 THE BAILIFF: All jurors present.

20 THE COURT: Thank you.

21 Call your next witness.

22 MS. WILSON: We're a little out of order.

23 Trying to keep things moving. Chris McCandlish.

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

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1 THE WITNESS: I do.

2 THE COURTROOM DEPUTY CLERK: State your first
3 and last name for the record, spelling your last name
4 for the record.

5 THE WITNESS: My name is Chris McCandlish.
6 Last name is spelled M-c-C-a-n-d-l-i-s-h.

7 **CHRISTOPHER DEAN McCANDLISH,**

8 having been first duly sworn by the Deputy Clerk of
9 Court to tell the truth, the whole truth, and nothing
10 but the truth, was examined and testified upon his oath
11 as follows:

12 **DIRECT EXAMINATION**

13 **BY MS. WILSON:**

14 Q And how old are you, Chris?

15 A I am 25.

16 Q And do you live here in Charleston?

17 A Yes, ma'am.

18 Q What kind of work do you do?

19 A I work for a social media marketing company.

20 Q How long have you been living in Charleston?

21 A About three years.

22 Q I want to take you back to the early morning
23 hours of June 16th, 2012, between about 2:45 a.m. and
24 3:00 a.m.; do you remember that night?

25 A I recall.

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1 Q Okay. What were you doing that night, or those
2 early morning hours?

3 A I was walking back from a restaurant and bar
4 downtown.

5 Q What restaurant?

6 A Pane e Vino on Warren Street.

7 Q On Warren Street?

8 A Yes, ma'am.

9 Q Can you tell the jury some things that that is
10 around or what Warren is near?

11 A Well, Pane e Vino is near King Street. Warren
12 is between Radcliffe and Vanderhorst, I want to say.

13 Q So that's moving upper King across Calhoun;
14 right?

15 A Yeah. Upper King.

16 Q Okay.

17 A It doesn't cross Calhoun.

18 Q Right. Right.

19 A Right. Yeah.

20 Q But it's off upper King, I guess?

21 A Right.

22 Q And so you had been to the restaurant. Did you
23 have someone with you?

24 A Yeah, my girlfriend at the time.

25 Q No longer with her?

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1 A No.

2 Q Still friends?

3 A Yeah.

4 Q Okay. Good. After you left the bar, where
5 were y'all walking?

6 A We were walking back to my house.

7 Q Okay. And it was dark?

8 A Right.

9 Q And tell the jury what happened to you.

10 A We were coming back from downtown. I had
11 actually carried Lorna up part of the way because she
12 had kind of fallen earlier. And so I just picked her up
13 and carried her. So I had set her down when we arrived
14 at Rutledge Avenue. And I lived, at the time, at
15 Rutledge and Cannon, behind Fuel Restaurant, and I'd set
16 her down and --

17 Q Had Lorna had a big night?

18 A Yeah. Because she had some friends in town.

19 Q Okay. So you carried her part of the way, set
20 her down?

21 A Right.

22 Q All right.

23 A And we started walking back to my house. We
24 were almost there. And then I heard someone behind us.
25 I didn't feel threatened. I didn't feel like they were

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1 coming at us, just happened to hear someone behind us.
2 And she was on the road -- the street side of me at the
3 time, which was my right. We were walking north on the
4 left side of Rutledge, and I -- when I heard somebody
5 behind us, I just kind of -- instinctively just kind of
6 switched her to the other side of me. And as soon as I
7 got her to that side, we just -- you know, the guy was
8 in front of us with a gun, so. . .

9 Q What did the guy do?

10 A He told Lorna to give him her purse, which she
11 did. And then he told me to give him my wallet, and I
12 told him I did not have it.

13 Q Okay. What was he doing with the gun?

14 A Pointing it at us.

15 Q And what kind of voice was he using?

16 A Just, you know, louder than a whisper, but
17 not --

18 Q Was it matter of fact, or was he yelling at you
19 or --

20 A No. It was more just urging.

21 Q But you saw the gun?

22 A Yeah.

23 Q And you said Lorna gave the purse. You told
24 him you didn't have a wallet?

25 A Right.

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1 Q Was he by himself?

2 A To -- as far as I could tell.

3 Q You only saw one guy?

4 A Right.

5 Q And after Lorna gave the purse, did you see

6 which direction he ran?

7 A He ran off to my right.

8 Q Okay.

9 A So it seemed southeast.

10 Q Did you see where he went?

11 A I did not.

12 Q Did you hear anything after he ran off?

13 A I heard a car door.

14 Q Did you think that was him getting in a car?

15 A Yeah.

16 Q Did you try to spot the car to see where he was

17 going or --

18 A Yeah, I looked around. I didn't -- didn't see

19 anything moving, so. . .

20 Q Did y'all call the police?

21 A I did, yeah.

22 Q And did it take the police very long to get

23 there?

24 A No.

25 Q And did you have a description of what this

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1 robber looked like?

2 A Yes, ma'am.

3 Q And did you give that description to the
4 police?

5 A Yes, ma'am.

6 Q And what was that description?

7 A I said he was approximately, you know, probably
8 30s. I think I said late 20s, early 30s. I'm not
9 totally sure on that. And then I said he seemed to me
10 to be about, you know, 5-9, 5-10; 150 to 160 pounds;
11 short, afro-type hair.

12 Q What kind of build?

13 A You know, medium build. I mean, he was smaller
14 than I was, so. . .

15 Q Do you remember telling them that he had a thin
16 build?

17 A Yeah.

18 Q Okay. And what did you tell them about the
19 clothing he had on?

20 A Well, I told them that I thought he had, you
21 know, a -- a solid, darker-colored shirt, possibly
22 brown. I really didn't -- you know, I wasn't too sure
23 about the -- the clothes were the part that I wasn't --

24 Q It was dark?

25 A Right.

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1 Q It was a dark color?

2 A My impression was that it was a darker color,
3 solid, and that his pants were lighter than the shirt.

4 Q Did you tell him that he had on khaki pants?
5 Do you recall that?

6 A Yeah, I -- I guess I did.

7 MS. WILSON: That's all I have, your Honor.

8 THE COURT: Mr. Pennington.

9 MR. PENNINGTON: Please the Court, your Honor.

10 **CROSS-EXAMINATION**

11 **BY MR. PENNINGTON:**

12 Q Mr. McCandlish, you said you're 25 years old?

13 A Yes, sir.

14 Q How tall are you?

15 A Six feet.

16 Q And this was at 2:45 a.m. that we're talking
17 about?

18 A Yeah, approximately.

19 Q It was dark out?

20 A Uh-huh.

21 Q And you had been drinking too?

22 A Yeah, earlier in the night.

23 Q Okay. And you were -- your attention in some
24 ways was focused on Lorna, who was -- you were helping
25 home?

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1 A I mean, when -- before it happened.
2 Q That's what I'm talking about.
3 A Yeah.
4 Q And so you said that the assailant came up from
5 behind; correct?
6 A Uh-huh.
7 Q Okay. And I think you have to say either yes
8 or no for the court reporter.
9 A Yes.
10 Q She can't interpret this. Doesn't read well in
11 the transcript.
12 A Yes.
13 Q And describe the gun for me.
14 A It was a small, black -- seemed like a 9mm, but
15 I -- you know, that's was my impression.
16 Q Okay. You certainly knew he had a gun? You
17 could see he had a gun?
18 A Correct.
19 Q And that was frightening, I take it?
20 A No, it was endearing. Yes, it was frightening.
21 Q All right. You can make light of it now, but
22 it wasn't funny then, was it?
23 A No.
24 Q And you were worried?
25 A Yes.

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1 Q And so this assailant demanded your wallet and
2 her purse, and then he took off?

3 A Yes, sir.

4 Q And he ran what would be toward Calhoun Street?

5 A That -- that was my -- I mean, he took off
6 behind us, so that would point him towards Calhoun. I
7 couldn't follow him, so. . .

8 Q Okay. All right. And you've mentioned today
9 that you thought he had a dark shirt, but you couldn't
10 describe the color; correct?

11 A I -- you know, I mean, talking about it a year
12 later, I think if I said it was brown at the time, I
13 suppose at the time I thought that. So, yeah, I would
14 say, you know, brown. I was just -- what stands out
15 strongly is that it seemed, you know, darker, solid
16 shirt.

17 Q Obviously you were concerned about everything
18 that was going on. You weren't just sitting there
19 calmly taking notes of what was going on. You were
20 dealing with Lorna and this robbery?

21 A Right. Yeah. I mean, I was -- I guess. I
22 mean, I can't -- I don't know. All I know is I -- I
23 seemed to have taken pretty accurate notes, because
24 I -- you know, I described him physically pretty
25 -- pretty accurately, apparently, so. . .

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1 Q And that's based on information that you have
2 been told after the fact?

3 A Right.

4 Q You've been told -- you have been given
5 information that someone came forward and admitted doing
6 this robbery to you?

7 A Correct.

8 Q And so they gave you some confirmation that he
9 had a certain weight and height and build?

10 A Correct.

11 Q Okay. And so let's talk about -- you said a
12 moment ago that his pants, they seemed lighter to you;
13 correct?

14 A Yes.

15 Q All right. Now, did -- you're aware that Lorna
16 described dark pants?

17 MS. WILSON: Objection, your Honor. Hearsay.

18 THE COURT: Is there an exception?

19 Q (By Mr. Pennington) Did she describe, in your
20 presence, in the heat of the moment --

21 MS. WILSON: Objection. Hearsay.

22 Q (By Mr. Pennington) -- afterwards, the
23 description of the clothes she saw?

24 MR. PENNINGTON: That's my question.

25 THE COURT: Hold on one second.

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1 MR. PENNINGTON: Before you answer.
2 THE WITNESS: No.
3 THE COURT: Please don't answer that. Thank
4 you.
5 Ms. Wilson's objection was to hearsay. Is
6 there an exception?
7 MR. PENNINGTON: Excited utterance. Present
8 sense impression.
9 THE COURT: Rephrase that question.
10 MR. PENNINGTON: All right.
11 Q (By Mr. Pennington) In the aftermath of that
12 robbery, did Lorna describe to you the clothing that she
13 saw while she was still experiencing, sort of, the
14 trauma of the events that were going on?
15 A No.
16 Q Okay. You indicated to the police that night
17 that you thought that you had seen this offender before?
18 A I don't think I -- you know, I -- I think he --
19 he -- I think I said I possibly could have seen him in
20 the paper before.
21 Q Okay. So you described -- you told them, I
22 believe, in the police report, or something along the
23 lines of, that you had seen a picture of this particular
24 offender before, and you'd be able to identify him if
25 you saw him again?

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1 A I did -- yeah, I did feel like I would be able
2 to identify him.

3 Q Okay. But that didn't happen? You weren't
4 able to make an identification ultimately?

5 A I didn't have the opportunity, sir.

6 Q Okay. Were you -- and that's sort of my point.
7 No one brought you a photo array of the suspect before
8 you got the confirmation that someone had admitted? No
9 one brought you some pictures and asked you to make an
10 identification, did they?

11 A Not of them -- not of any of the current
12 suspects.

13 Q Okay. You only saw one person attempting to
14 rob you?

15 A Correct.

16 (Mr. Pennington speaks with Mr. Kozelski off
17 the record.)

18 MR. PENNINGTON: Thank you, your Honor. No
19 further questions.

20 THE COURT: Ms. Wilson?

21 MS. WILSON: No, ma'am.

22 THE COURT: Is this witness excused?

23 MS. WILSON: Please.

24 THE COURT: You may step down. Feel free to
25 remain with us, but you are excused and free to go.

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1 Thank you.

2 Call your next witness.

3 MR. DURANT: State would call Amanda Webb.

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

6 THE WITNESS: I do.

7 THE DEPUTY CLERK OF COURT: Thank you, ma'am.

8 You may take your seat. State your first and last name
9 for the record, spelling your last name for the record.

10 THE WITNESS: Amanda Webb, W-e-b-b.

11 AMANDA WEBB,

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 her oath
15 as follows:

16 DIRECT EXAMINATION

17 BY MR. DURANT:

18 Q Good afternoon, Ms. Webb.

19 A Good afternoon.

20 Q Could you tell our jury where you work.

21 A I work at the South Carolina State Law
22 Enforcement Division in the forensic's department, DNA
23 case work department.

24 Q And what do you do in the DNA case work
25 department?

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1 A I work any criminal case throughout the state
2 that has a DNA request on it.

3 Q And when you say in the DNA department, you're
4 a DNA analyst?

5 A Yes, that's correct.

6 Q You analyze DNA?

7 A Yes.

8 Q And if you would, could you relate to our
9 jurors what your educational background is?

10 A I have a Bachelor of Science in forensic
11 chemistry and a Master's of Science in forensic science.
12 And upon graduation, I started at SLED and did my
13 training at SLED and have been an independent casework
14 analyst for approximately five years.

15 Q Okay. And what is your -- what are your duties
16 at SLED? What do your duties consist of?

17 A When criminal cases are submitted and have a
18 DNA request, and also a body fluid identification
19 request, I will perform those analyses, and I will look
20 for body fluids. I could look for blood, semen, and
21 saliva. And also, if there's a DNA request, I try to
22 develop a DNA profile from an evidentiary item, and then
23 also known standards are submitted. And that's DNA
24 that's taken from a known individual, so we know whose
25 DNA it belongs to. So if a DNA profile is developed

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1 from an item of evidence, I can compare it to a known
2 person to see if it might match or not match or no
3 conclusive statement can be made.

4 Q And have those DNA analyses been primarily
5 in-house at SLED?

6 A Yes, it has.

7 Q And are you certified by SLED to conduct DNA
8 analysis?

9 A Yes, I am.

10 Q Have you previously been qualified as an expert
11 in DNA analysis in the courts in this state?

12 A Yes, I have.

13 Q Upon how many cases?

14 A About a dozen.

15 MR. DURANT: Your Honor, at this time, we'd
16 offer Ms. Webb as an expert in DNA analysis, if there's
17 no objection.

18 MR. PENNINGTON: No *voir dire* and no question,
19 your Honor.

20 THE COURT: She will be so qualified. You may
21 continue.

22 MR. DURANT: Thank you, your Honor.

23 Q (By Mr. DuRant) Let's talk about this case.
24 Your SLED Lab Number L12-07313. You originally received
25 some evidence from the Charleston County -- or

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1 Charleston City Police Department; is that correct?

2 A Yes, sir, it is.

3 Q And am I correct that that consisted of five
4 DNA swabs?

5 A Yes. That's right.

6 Q And known standards for Marley Lion, Elizabeth
7 Paige, and Katie Ridgway?

8 A Yes, that's correct.

9 Q Okay. And that was pursuant to a request from
10 the Charleston Police Department; is that correct?

11 A Yes, sir, a DNA analysis request.

12 Q Okay. And let's start with swabs four and
13 five, to begin with, which came from the exterior rear
14 door, side handle of the victim's car. What were the
15 results of your analysis of those two swabs?

16 A No DNA profile was developed from these swabs
17 from the exterior rear driver's door handle. And what
18 that means is that there wasn't enough DNA present to
19 get any information from -- from the analysis of the
20 swabs.

21 Q Okay. And that's why you did this little
22 chart, and you have DNA results for that as being a
23 dash, dash, dash, dash, dash, all the way across?

24 A Yes, that's correct. That means no result was
25 obtained.

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1 Q So no DNA profile developed from the rear
2 driver's side door handle?

3 A Yes, that's right.

4 Q Period. Okay. You have also what was your
5 Item No. 3, which was a swab of a spot on the driver's
6 door?

7 A Yes, sir.

8 Q Is that correct?

9 A (Moves head up and down.)

10 Q And tell us about the DNA profile you developed
11 from that particular item.

12 A No human DNA was detected on that item. And
13 the difference between that and no DNA developed, is
14 that in our testing, there's different phases, and one
15 of the phases is to find out how much DNA we have to
16 work with. That's an important part of the process
17 because I need to know how much DNA is there before I do
18 my final step of analysis, because there's a certain
19 amount of DNA that we target before we put on the final
20 step of the instrument, and so I need to know how much
21 DNA I'm working with essentially. And for this
22 particular item, the exterior of the driver's door on
23 this swab, when I quantitated to find out how much DNA
24 there was, it was determined that there was just no DNA
25 on that swab altogether; so, therefore, I knew that it

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1 would be fruitless to take it to the final step because
2 I wouldn't be able to develop a DNA profile.

3 Q Okay. So nothing from the rear door handle;
4 nothing from the swab of the spot on the driver's door?
5 How about the driver's door handle?

6 A Yes. The front driver's door handle, if you
7 make -- a DNA profile was developed from that, and it
8 was a mixture of at least three individuals. And a
9 mixture just means that there were multiple donors of
10 DNA. Meaning, in this case, there were at least three
11 people who came into contact with that door handle in
12 some form or another. And sometimes when you're looking
13 at mixtures, you can discern or sort of pull out an
14 individual, especially if you have known standards to
15 compare it to. And in this instance, I did have some
16 known standards that I ran and was able to discern some
17 individuals.

18 I found that the DNA profile developed from the
19 major contributor matches the DNA profile of Katie
20 Ridgway. And a major contributor is just someone who
21 donates more DNA or deposits more DNA on that item. So
22 she was the -- Katie Ridgway had placed more DNA on that
23 door handle.

24 And the probability of randomly selecting an
25 unrelated individual who would have had a DNA profile

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1 matching the major contributor is approximately 1 in 2.9
2 trillion. And also then comparing the minor
3 contributor, the person who had donated less DNA,
4 Marley Lion, couldn't be excluded as a minor contributor
5 to that item.

6 And then also, Elizabeth Paige's DNA was ran
7 as well, because that was another standard that was
8 submitted, and she was excluded as a contributor to the
9 mixture.

10 Q Now, sometime later, you received some other
11 evidence from Charleston Police Department relative to
12 this case; is that correct?

13 A Yes, that's correct.

14 Q And amongst that, did you receive buccal swabs
15 from Ryan Deleston, Julius Brown, and Bryan Rivers?

16 A Yes, that's correct.

17 Q Okay. And what were you asked to do?

18 A I was asked to run those and analyze those
19 standards and compare to any DNA profile developed from
20 the evidence.

21 Q Being swabs from the victim's car; is that
22 correct?

23 A Yes. That's correct.

24 Q And did you do that?

25 A I did not do that analysis.

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1 Q And why did you not do that?

2 A Well, after looking at this mixture, I was
3 able to attribute the DNA -- like I said, the major to
4 Katie Ridgway and then the minor to Marley Lion. And
5 then what DNA remained from a third person was an
6 insufficient amount of DNA to really do a comparison
7 against anyone else. So, therefore, I didn't analyze
8 the standard submitted, and those were returned to the
9 submitting agency.

10 Q What is contact DNA anyway?

11 A Contact DNA --

12 Q Or touch DNA?

13 A Touch DNA. Uh-huh. It's when a person just
14 comes into contact with an item, like, they place their
15 hand on something, or in this case, a door handle. You
16 know, you grab the door handle. And then what happens
17 is a transfer of skin cells. And your skin cells sort
18 of slough off, and they will get -- they will then be on
19 the item. And then if enough skin cells are deposited
20 on an item, then I can perform DNA analysis and
21 sometimes get a profile. A lot of times with touch DNA,
22 it's difficult to get a profile unless somebody's
23 handled an item for a long time or repetitively over
24 many uses.

25 Q Has SLED changed its policy recently on contact

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1 DNA?

2 A No, it hasn't.

3 Q Okay. So I believe earlier it was asked -- it

4 was stated that you could develop a DNA profile from a

5 single human cell, or epithelial cell; is that correct?

6 A No, that's not correct.

7 Q And how much DNA do you -- you also spoke

8 earlier about quantitative analysis. How much DNA do

9 you have to have to reliably develop a profile?

10 A We target about one nanogram of DNA, and that

11 equates to approximately 175 to 200 skin cells in this

12 instance.

13 Q Okay. But you were asked to -- to make a

14 comparison with the buccal swab from Rivers, Deleston,

15 and Brown; is that correct?

16 A Yes, I was.

17 Q And whose decision was it not to run the

18 analysis?

19 A That was my decision.

20 Q And that decision was based upon?

21 A That was based upon the little bit of

22 information I had. I didn't feel like it was enough

23 information to make a comparison.

24 Q And would that be -- certainly not enough to

25 include anyone; is that correct?

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1 A That's correct.

2 Q How about to exclude anyone?

3 A No, it wouldn't be possible.

4 MR. DURANT: Court's indulgence?

5 THE COURT: Take your time.

6 (Mr. DuRant speaks with Ms. Wilson off the
7 record.)

8 Q (By Mr. DuRant) And also something else about
9 DNA -- just one other question -- it is -- if you have
10 it, you can't tell when it was deposited; correct?

11 A That's correct. There's no -- no time stamp on
12 DNA.

13 MR. DURANT: Okay. Thank you very much.

14 THE COURT: Mr. Pennington?

15 MR. PENNINGTON: Please the Court, your Honor?

16 **CROSS-EXAMINATION**

17 **BY MR. PENNINGTON:**

18 Q Ms. Webb, you have been trained in the use of
19 touch DNA and developing touch DNA; is that correct?

20 A That's correct.

21 Q And this is a very powerful tool, in the sense
22 that it is -- it can yield results that we couldn't get
23 before when we needed larger samples of, like, blood.
24 You can amplify smaller samples; is that correct?

25 A Yes. Technology has progressed over the years

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1 to where we don't need as much DNA as years ago. We can
2 get profiles from less amounts.

3 Q In fact, there's a process called -- I believe
4 it's called PCR, where you amplify the DNA that you have
5 as a way -- you start with a small amount and then you
6 amplify it in order to be able to do the test?

7 A Yes, that's correct.

8 Q And so you're not restricted to just what you
9 start with, but you have a way of multiplying the size
10 of the amount of cell or the amount of tissue or
11 whatever the source is, through the PCR process;
12 correct?

13 A In a way. We're still restricted by starting
14 material. If there's still not enough there, only a
15 certain amount is able to amplify. So if it's still
16 less than the target DNA that we like to find, then it's
17 possible that even with the amplification, you might not
18 find anything useful.

19 Q You used that term "might." SLED's developed
20 some -- some cutoffs, some thresholds, that they like to
21 use as rules of thumb in order to control and manage the
22 workload you have to process; is that correct?

23 A Yes, that's correct.

24 Q And so if this case was important enough, you
25 have the ability to override that threshold limitation

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1 and go ahead and test the data; don't you?

2 A I --

3 Q You have that discretion?

4 A I can't override any protocol that we use.

5 Q Well, you have the ability -- if a test is
6 asked for, you have the ability to go ahead and do it
7 even if you haven't found, through your quantitative
8 tests, that you have the same sample that you would like
9 to have?

10 A If there is enough information to make a
11 comparison and there is a request, then the request --
12 the requests will be taken --

13 Q Honored?

14 A Yes, honored. Thank you.

15 Q Okay. And so in this instance, you didn't
16 communicate back to the Solicitor's Office and say, You
17 know what? We don't feel like we've got enough for a
18 threshold, so we won't do the test? It's just -- there
19 was no test; right?

20 A Well --

21 Q You didn't get permission not to test?

22 A Well, I -- when I looked at the data, and after
23 taking into consideration Katie Ridgway's DNA profile
24 and Marley Lion's profile, and when I looked at it, I
25 didn't think what was left over was really enough for a

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1 comparison, and that's when I expressed to the
2 Solicitor's Office that I didn't think it would be valid
3 to go ahead and continue testing any of the other
4 standards, and so that's when they were returned.

5 Q And so they agreed with you at that stage, that
6 you didn't have to do any more testing?

7 A Yes, uh-huh.

8 Q There was no further request on the part of the
9 State to go forward with the test, even though they had
10 known samples of the suspects that they could compare
11 against that standard -- against the unknowns; correct?

12 A They used my word, yes.

13 Q Okay. Well, the truth of the matter is, is
14 that you don't ever know what's going to come from a
15 test until you run the test? Isn't that what science is
16 based on?

17 A You don't know what's going to come from a test
18 on evidence items. You have a best guess -- like, if
19 it's a blood item, I would assume that it's probably
20 just one person's DNA profile. If it's something like a
21 door handle, we oftentimes find mixtures. I know that
22 from a known standard from a person, I will only get one
23 DNA profile. So I don't -- I don't know what -- what
24 can sometimes turn into evidence profiles until I test
25 it.

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1 Q And that's because you can't really see cells,
2 can you?

3 A No.

4 Q And you really can't see DNA?

5 A No.

6 Q The real analysis occurs doing the test, not
7 from the eyeballing the situation?

8 A Yes.

9 Q Correct?

10 A Yes, that's correct.

11 Q Okay. So in this instance, had you run the
12 test for the front door handle, where you did have DNA,
13 if my client has an allele, which is a part of DNA that
14 is inconsistent with the DNA that is on the door, you
15 would be able to say that that was not his DNA; correct?

16 A When there is enough information to compare,
17 yes.

18 Q Well, listen to my question now. My question
19 is: Obviously you can only test what you have. That's
20 a given. And so my question is, is if you took my
21 client's profile and you compare his known profile to
22 the known data that you have, you could at least exclude
23 him from that data if he has a differential allele?

24 A It's not quite as simple as just one different
25 allele. We have to take in consideration multiple

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1 locations. And there just wasn't -- there was only two
2 out of 16 locations here where there was anything really
3 left to compare. And with -- with touch DNA and low
4 level DNA, it's to be interpreted with caution. And,
5 in fact, in most of the time, it's just a matter of
6 it's -- it's insufficient for interpretation, and that's
7 the case here.

8 Q But we really don't know what data you would
9 have gotten because you didn't run the test; correct?

10 A I don't know what the standard profiles would
11 have been.

12 Q Okay. In the same way -- in the same way,
13 you don't know what the standard profile is for
14 Bryan Rivers?

15 A That's correct.

16 Q So you don't know how similar his DNA would be
17 to the known DNA that you developed from the front door
18 handle?

19 A That's correct.

20 Q In addition to that, I guess we're all human;
21 right? I mean, we all make mistakes, you would agree?

22 A Yes.

23 Q And so it's important to rely on the
24 data -- let the data speak for itself; you would agree?

25 A Absolutely.

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1 Q An example of a mistake would be, that when I
2 contacted you last week and I asked you about item
3 three, swabs from the exterior door, you looked at your
4 chart, and because it was not listed, item three was not
5 listed on the chart, you assumed that you had to run the
6 test, and that was a mistake, wasn't it?

7 A I don't remember the exact details of the
8 conversation. If I said it wasn't tested, then that was
9 a mistake, because it was -- there was a test performed
10 on it.

11 Q And another example can be -- of mistakes that
12 can occur, is that you were not, in this case, given the
13 opportunity to test any swabs from the exterior rear
14 door on the driver's side of this vehicle? In other
15 words, you had the door handles, front and back, of the
16 driver's side. You had the exterior driver's door swab,
17 but you were not submitted any swabs of the rear door,
18 were you?

19 A Yes, I was. That would be items four and five,
20 were the exterior of the rear driver's door handle.

21 Q Okay. Listen to my question. The door handle
22 we covered. I'm now asking you: Were you given an
23 opportunity to test any swabs from the exterior of the
24 door itself?

25 A Oh, the door itself. I'm sorry. I

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1 misunderstood. Not of the rear door. I believe I
2 retrieved from the front driver's door.

3 MR. PENNINGTON: Court's indulgence, your
4 Honor?

5 I have no further questions.

6 THE COURT: Redirect?

7 MS. WILSON: Beg the Court's indulgence?

8 THE COURT: Take your time.

9 MR. DURANT: I just have a couple, your Honor.

10 **REDIRECT EXAMINATION**

11 **BY MR. DURANT:**

12 Q Bottom line is, you didn't have enough DNA left
13 on those front door handles to --

14 MR. PENNINGTON: Objection to leading, your
15 Honor.

16 THE COURT: Rephrase your question.

17 Q (By Mr. DuRant) How much -- did you have
18 sufficient DNA on the front door handle to make a
19 reliable interpretation?

20 A No, I did not.

21 Q And was that communicated to us?

22 A Yes, I did.

23 Q And did we rely on your expertise?

24 A Yes, you did.

25 MR. DURANT: Thank you, ma'am.

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1 THE COURT: Mr. Pennington?

2 MR. PENNINGTON: No follow-up, your Honor.

3 THE COURT: Is this witness excused? Any
4 objection?

5 MR. PENNINGTON: No objection from me, your
6 Honor.

7 MR. DURANT: None from us, your Honor.

8 THE COURT: You are free to remain with us, but
9 you're also excused from the courtroom.

10 THE WITNESS: Thank you, your Honor.

11 THE COURT: Call your next witness.

12 MR. DURANT: State would call Suzann Cromer.

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

15 THE WITNESS: I do.

16 THE DEPUTY CLERK OF COURT: Thank you. You may
17 be seated. State your first and last name for the
18 record, spelling your last name for the record.

19 THE WITNESS: My name is Suzann Cromer,
20 C-r-o-m-e-r.

21 **SUZANN CROMER,**

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 her oath
25 as follows:

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DIRECT EXAMINATION

2 MR. DURANT:

3 Q Good afternoon, Ms. Cromer. Can you tell the
4 jury what you do for a living?

5 A I am a firearm and tool mark examiner for the
6 State of South Carolina. I'm employed by the South
7 Carolina Law Enforcement Division, commonly referred to
8 as SLED.

9 Q What is a firearm and tool mark examiner?

10 A What we do is look at ammunition components,
11 bullets, cartridge cases, shotgun shells to determine
12 whether they were fired by or loaded into and extracted
13 out of a specific weapon.

14 Q And you've been doing that for how long at
15 SLED?

16 A Thirteen and a half years.

17 Q And what is your training and education in the
18 area of firearms and tool mark examination?

19 A I have a bachelor's degree from Clemson
20 University. I did some graduate work at the University
21 of South Carolina in criminal justice. I did an
22 internship at the SLED laboratory while I was there. I
23 was hired on, and I completed SLED's in-house training
24 program for firearm and tool mark examiners. It is a
25 three- to five-year intense study program where we take

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1 written tests, oral tests, practical exercises. It's
2 more of an apprenticeship where we work closely with
3 those other firearms examiners and prep cases and work
4 cases with them. I have taken and attended seminars
5 through the Association of Firearm and Tool Mark
6 Examiners, which is an international organization for
7 our profession. I have taken classes through the South
8 Carolina chapter of the International Association of
9 Identification. I have taken classes with the Bureau
10 of Alcohol, Tobacco, and Firearms on serial number
11 restoration and Integrated Ballistic Identification
12 System.

13 Q And are you authorized by SLED to conduct
14 firearm examinations?

15 A Yes, I am.

16 Q Have you ever been qualified as an expert in
17 the field of firearms identification?

18 A Yes, sir, I have.

19 Q On how many occasions?

20 A Approximately 68 times.

21 Q And in what court?

22 A Federal court, state court, family court, and
23 coroner's inquest.

24 MR. DURANT: Your Honor, at this time, we'd
25 offer Ms. Cromer as an expert in the field of firearms

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1 identification.

2 THE COURT: Any objection?

3 MR. PENNINGTON: No objection.

4 THE COURT: She will be so qualified. You may
5 continue.

6 Q (By Mr. DuRant) Ms. Cromer, and, again, could
7 you please explain to our jury, in general terms, how
8 you go about determining whether a particular shell
9 casing or a particular projectile was fired from a
10 particular firearm.

11 A Okay. When I receive ammunition components,
12 what I do is, I look at them and I determine what
13 caliber it is, and on bullets, in particular, I look to
14 determine their general rifling characteristics. The
15 general rifling characteristics are the caliber of the
16 bullet and the type of rifling that is on it. There are
17 two different types of rifling, and rifling has
18 different number of lands and grooves.

19 And what rifling is, is rifling is put in the
20 gun barrel by the manufacturer to put the bullet into a
21 spin so it will go more accurately toward its target.
22 Very similar to a quarterback who throws the football,
23 he puts it into the tight spiral so it will go more
24 accurately. So that rifling is made up of lands and
25 grooves, raised and depressed areas, and you can have a

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1 different number of lands and grooves. So I look at
2 that. And then, it can spin to the left or to the
3 right, so I determine that.

4 I look at the suspect firearm that I'm given.
5 Right away, if it has different general rifling
6 characteristics, I know that I can rule that firearm
7 out. Say, if my evidence bullet had five right and my
8 gun is a six right, I know that that bullet was not
9 fired by that gun. But if it has the same general
10 rifling characteristics, what I will do is, I'll look at
11 the firearm, and then I'll shoot that firearm with
12 similar ammunition to what I received in the case into a
13 bullet recovery tank.

14 Now, at SLED, our department is on the second
15 floor of our laboratory, so that's where our tank
16 starts, and it goes all the way down to the first floor.
17 And we shoot into the water tank, because the water will
18 slow down the bullet without adding to or taking away
19 from any of the markings that are left by the firearm.

20 Then I'll take those test fires that I've
21 knowingly fired from that gun, and I go to my comparison
22 microscope. And it allows me to look at these two items
23 to each other. And what I'm doing is getting myself
24 familiar with how that firearm works, how it marks the
25 bullets, how it marks the cartridge cases. I'll -- once

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1 I finish comparing my tests, then I'll start looking at
2 my evidence versus my tests.

3 I'll render my conclusion. We render one of
4 four conclusions:

5 Positive. Yes, it's fired by this gun;

6 Negative. No, it was not;

7 Unsuitable. This piece of evidence is just too
8 damaged or does not have enough markings for me to
9 render a conclusion either way;

10 Or inclusive. I can't rule this gun out, but I
11 can't say it was him either. It's just not enough
12 marks.

13 Once I decide on a conclusion, I will find
14 another firearm examiner who will have to come behind me
15 and make -- agree with my conclusion before I'm allowed
16 to report that out.

17 Q Okay. And is that what you did in this case?

18 A Yes, it is.

19 Q And regarding this case, which I believe is
20 your SLED Lab Number L1207313, did you have the occasion
21 to receive some evidence from the Charleston Police
22 Department?

23 A Yes, sir, I did.

24 Q Okay. And let's start with, I believe, nine.
25 State's 9, 10, 11, 12, 13, and 14.

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1 (Handed to the witness.)

2 Q I'd like you to take a look at those and see if
3 you had an opportunity to examine those before.

4 (Respite.)

5 A Yes, sir. These were my items 14 through 19,
6 and they are all still in a sealed container with my
7 initials and seal date.

8 Q And those all appear to be shell casings; is
9 that correct?

10 A They are fired cartridge cases, yes.

11 Q Okay. And now I would like you to look at
12 State's Exhibit 15, 16, 17, 18, and 19.

13 (Handed to the witness.)

14 Q See if you had the opportunity to examine that
15 item before. Those items, I should say. Excuse me.

16 (Respite.)

17 A Yes, sir. State's Exhibits 15 through 19 were
18 my items 7, 9, 10, and 11. And, again, they're all
19 still in a sealed container with my initials and seal
20 date in two different locations.

21 Q Finally, I'd like you to take a look at
22 State's Exhibit Number 23 and see if you have had an
23 opportunity to examine that firearm.

24 (Handed to the witness.)

25 A What I'm doing is looking for my markings. I

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1 scribe firearms in three different locations.

2 Yes, sir. This was my item 20 in this case.

3 Q So those were all submitted to you by the

4 Charleston Police Department --

5 A Yes.

6 Q -- is that correct?

7 A Yes, sir, they were.

8 Q Let's start out with the shell casings. Your

9 State's Exhibit 9 through 14, your items 14 through -- 9

10 through 14, rather; your items 14 through 19. Can you

11 tell us who the manufacturer of those are?

12 A These were manufactured by a company called

13 Sellier & Beloit -- or it could be pronounced Sellier &

14 Beloit.

15 Q And what is the caliber?

16 A This is a .380 auto caliber cartridge case.

17 Q Well, if it's a .380 caliber cartridge case,

18 why does it say 9mm BR, period, C on the back?

19 A A 9mm, that's short for a 9mm Browning Corto.

20 That is just another name for a .380 auto. A .380 auto

21 has multiples names. You can call it 9 by 7mm; 9mm

22 Browning Corto; 9mm Kurz; it's all .380, though.

23 Q That's basically a -- a European designation,

24 the 9mm or Kurz; is that correct?

25 A That's correct.

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1 Q Now, in -- that's why I'm assuming that 9mm
2 Browning and Kurz is stamped upon State's Exhibit 23,
3 the firearm that you examined; is that correct?

4 A Yes, that is correct.

5 Q Now, you -- with regards to State's Exhibit 23,
6 the pistol, did you have an opportunity to test fire
7 that?

8 A Yes, sir, I did. I test fired this particular
9 firearm eight times.

10 Q Okay. And let's start out with the shell
11 casings. Did you have an opportunity to compare the
12 shell casings from the tested fired to the shell casings
13 that were submitted to you in this case, State's
14 Exhibits 9 through 14?

15 A Yes, sir, I did.

16 Q And what conclusion did you reach?

17 A I concluded that these cartridge cases were
18 fired by this firearm.

19 Q And how did you reach that conclusion?

20 A I based that on my -- on the breechface
21 markings on the cartridge cases and the chamber marks.

22 Q What is a breechface impression?

23 A The breechface is a part of the firearm, back
24 in here -- up here, where the head of the cartridge
25 rests during firing. The head of the cartridge is

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1 department, the head stamp, the numbers, and the primer
2 in it. And during the firing process, the firing pin
3 will come through the breechface, hit the primer, it
4 starts sparks, the sparks go through a flash hole,
5 lights the gunpowder, all that pressure is building
6 up, the pressure pushes the bullet down the barrel,
7 but it also pushes the cartridge case back into that
8 breechface, the firearm. So any imperfections that were
9 left by the manufacturing process can be imprinted on
10 the breechface of the cartridge case.

11 Q And what is a chamber mark?

12 A The chamber is the actual part of the firearm
13 that the cartridge sits in to be fired. So any
14 imperfections in that walls of those chambers can be
15 imprinted on the cartridge case body.

16 Q Okay. And based upon -- and this is a
17 microscopic examination; is that correct?

18 A Yes, that's correct.

19 Q You have, like, one of those double microscope
20 things that y'all use?

21 A My comparison microscope actually looks like
22 I'm looking through binoculars, but I have two stages, a
23 left and a right; and I usually always put evidence on
24 the left, my test on the right. And through those
25 binoculars, it allows me to look at the two items

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1 together at the same time.

2 Q Okay. And let's talk about the projectiles,
3 State's Exhibits 15 through 19, that were recovered from
4 the autopsy of the victim in this case. Did you have
5 the occasion to test those against the projectiles from
6 your test fire?

7 A Yes, I did.

8 Q And what conclusion did you reach with regard
9 to that?

10 A I concluded that all of these bullets, State's
11 Exhibits 15 through 19, were fired by this firearm.

12 Q State's Exhibit 23; is that correct?

13 A That is correct.

14 Q And how did you arrive at that conclusion?

15 A I based that on the individual identifying
16 characteristics in the rifling impressions. This
17 firearm had six right riflings; these bullets had six
18 right riflings. And what I'm looking at are those
19 individual markings that were made during the
20 manufacturing process, those individual imperfections
21 that were imprinted on these bullets.

22 Q Had you previously indicated that your work is
23 always checked by another examiner? Did that happen in
24 this case?

25 A Yes, sir, it was.

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1 Q And who was that?

2 A I actually had two different examiners look at
3 the bullets. Due to time constraints, when I received
4 the firearm, I was getting ready to go on vacation, so I
5 had one examiner previously confirm with me about all of
6 these bullets being fired by the same gun. And before I
7 went on vacation, I had another examiner look at it to
8 agree with me. And then I had a -- the original
9 examiner, when I got back from vacation, looked at all
10 of it again. So I had an agent, James Green, and my
11 retired Lieutenant Ira Parnell.

12 Q Okay. And Ira Parnell has been doing this
13 since Methuselah's days; right?

14 A He has 40-plus years of experience.

15 MR. DURANT: Thank you very much. Would you
16 please answer any questions that Mr. Pennington may
17 have?

18 THE COURT: Mr. Pennington?

19 MR. PENNINGTON: Thank you, your Honor.

20 **CROSS-EXAMINATION**

21 **BY MR. PENNINGTON:**

22 Q Agent Cromer, you wrote a report -- or, rather,
23 I suppose, an E-mail, reporting to the Charleston City
24 Police that you had been able to make a match of the
25 shell casings and the projectiles with the weapon, and

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1 that information -- let me strike that. You may not
2 have sent an E-mail at all.

3 A I don't believe I did that.

4 Q Let's start over. Let's completely start over.

5 Do you recall calling Judy Gordon at the Charleston
6 police on July 12th -- July 20th, 2012, to report that
7 you had had a positive match?

8 A Let me check my notes, please.

9 Q Sure.

10 A Yes, I do remember that.

11 Q So the date that you notified the Charleston
12 police was July 20th, 2012?

13 A That's correct.

14 Q So that would be ten days before the arrest in
15 this case?

16 A I do not know when the arrest took place.

17 Q Okay. The person you notified is the director
18 of forensic services, Judith Gordon?

19 A The person I talked to was Judy Gordon, from
20 Charleston Police Department.

21 MR. PENNINGTON: I have no further questions,
22 your Honor.

23 THE COURT: Mr. DuRant?

24 MR. DURANT: I have nothing on Redirect.

25 THE COURT: May this witness be excused?

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1 MR. DURANT: I would ask this witness be
2 excused, your Honor.

3 MR. PENNINGTON: No objection, your Honor.

4 THE COURT: You are excused but free to stay
5 with us, but you're also free to leave.

6 Call your next witness.

7 MR. DURANT: Your Honor, may I approach on
8 scheduling?

9 (All four attorneys approach the bench.)

10 THE COURT: All right. Ladies and gentlemen,
11 this is an appropriate time for us to take a break.

12 Mr. Foreperson, what I want you to inquire is
13 how late the jury wishes to stay this evening, and
14 there's one remaining video that we'll need to watch and
15 it's of considerable length. So I need to know how late
16 you wish to stay this evening. It must be a unanimous
17 decision by the jury as to how late they wish to stay.
18 And if we're to stay past 5:00, or you need to make
19 accommodating phone calls, feel free to do that at this
20 time.

21 Please rise for the jury.

22 (The jury is escorted from the courtroom at
23 3:22 p.m.)

24 THE COURT: Thank you. Be seated. We're at
25 ease.

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1 (A break is taken from 3:22 p.m. until
2 3:42 p.m.; at which time, the proceedings continue as
3 follows:)

4 THE COURT: All right. Let's bring in the
5 jury.

6 (The jury is escorted into the courtroom at
7 3:43 p.m.)

8 THE COURT: Mr. Pennington, I understand that
9 we are not set for the bench conference at this time, so
10 I will allow you to place everything on the record, your
11 continuing objection to my previous rulings and issues.

12 MR. PENNINGTON: Thank you very much, your
13 Honor.

14 MR. DURANT: Are you ready, your Honor?

15 THE COURT: I am. Thank you.

16 MR. DURANT: As a preliminary matter, your
17 Honor, at this time the State would offer State's 102
18 into evidence, I believe, without objection, which is a
19 timeline of the d.d. Peckers' surveillance video, which
20 was previously introduced into evidence, basically, just
21 showing the time frames of when various things occurred.

22 MR. PENNINGTON: No objection, your Honor.

23 THE COURT: State's 102 into evidence without
24 objection.

25 (State's Exhibit No. 102 is admitted into

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1 evidence.)

2 MR. DURANT: State would call Lamart Williams.

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

5 THE WITNESS: I affirm.

6 THE DEPUTY CLERK OF COURT: Have a seat. State
7 your first and last name for the record, spelling your
8 last name for the record.

9 THE WITNESS: S. Lamart Williams, W-i-l-l-
10 i-a-m-s.

11 S. LAMART WILLIAMS,

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 MR. DURANT:

18 Q Detective Williams, I'd like to ask you to
19 keep your voice up, because you can be a little bit
20 soft-spoken at times, and the jury needs to hear what
21 you have to say today. Okay?

22 A Yes.

23 Q Where are you employed?

24 A City of Charleston Police Department.

25 Q And how long have you been with the city of

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Volume IV of V, Direct Ex of S. Lamart Williams

1 Charleston Police Department?

2 A Eight and a half years. Total of 20 years of
3 law enforcement experience.

4 Q And where was your law enforcement experience
5 prior to coming to the CPD?

6 A Orangeburg County Sheriff's Department,
7 Columbia Police Department.

8 Q And what are your current duties at the
9 Charleston Police Department?

10 A Task force member with the Bureau of Alcohol,
11 Tobacco, and Firearms.

12 Q And you're assigned to that agency on a
13 temporary basis; is that correct?

14 A Yes, I am.

15 Q And before that, what were you doing at
16 Charleston City Police Department, and specifically back
17 on July the 30th of 2012?

18 A Member of the homicide violent crime division.

19 Q Now, in that capacity, did you have the
20 occasion to meet with the Defendant, Ryan Deleston, on
21 July 30th of 2012?

22 A Yes.

23 Q And about what time of day was that, sir?

24 A About 9:15 a.m.

25 Q And where did that take place?

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1 A City of Charleston Police Department, Lockwood
2 Boulevard.
3 Q And where in the actual police department did
4 you meet with Mr. Deleston?
5 A Central investigations, which is housed
6 upstairs at the police department.
7 Q There's an interview room up there?
8 A It is.
9 Q Those rooms are wired for audio and video, are
10 they not?
11 A Yes.
12 Q Is it apparent that they're wired for audio and
13 video?
14 A No, it's not apparent.
15 Q Now, when you met with Mr. Deleston on the 30th
16 of July, was he in custody?
17 A He was.
18 Q And why?
19 A We had a pending arrest warrant for possession
20 of a stolen firearm -- correction. -- possession of a
21 firearm with a obliterated serial number.
22 Q And that resulted from the controlled buy on
23 July the 15th; is that correct?
24 A That's correct.
25 Q And who was with you when you met with

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1 Mr. Deleston that morning?

2 A Detective Burckhardt.

3 Q Now, what did you do when the first -- the two
4 of you first went in there to meet him that morning?

5 A Detective Burckhardt introduced himself and I
6 to Mr. Deleston, and I then proceeded to get basic
7 information from him: name, date of birth, level of
8 education, phone numbers, and such.

9 Q Okay. Do you recall what his level of
10 education was?

11 A He said that he attended -- he obtained his
12 GED, and he was at the job corps, but I don't remember
13 what site.

14 Q All right. Was he advised of his Miranda
15 Rights?

16 A He was.

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

19 A Miranda card. That's what we typically use at
20 the police department.

21 Q I hand you what's been marked as State's
22 Exhibit 28 and ask if you recognize that item?

23 A I do.

24 Q And what is that?

25 A It's the Miranda warning card.

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