

VOLUME I of II

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County

Honorable G. Thomas Cooper, Circuit Court Judge

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S.C. SUPREME COURT

DOMONEIK ANTWAN WASHINGTON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2019-000399

APPENDIX

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VOL. I OF II**STATE OF SOUTH CAROLINA****In The Court of Appeals**

APPEAL FROM CHARLESTON COUNTY**Deadra L. Jefferson, Circuit Court Judge**

THE STATE,**RESPONDENT,****V.****DOMONEIK ANTWAN WASHINGTON,****APPELLANT****APPELLATE CASE NO. 2013-001616**

RECORD ON APPEAL

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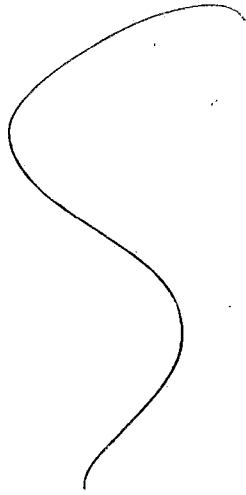
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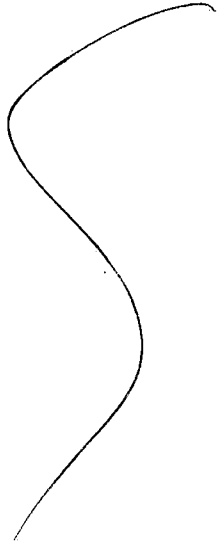
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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
STATE OF SOUTH CAROLINA,	)	CASE NO. 2011-GS-10-06881
	)	2011-GS-10-06882
PLAINTIFF,	)	2011-GS-10-06883
	)	
VS.	)	
	)	TRANSCRIPT OF RECORD
DOMONEIK WASHINGTON	)	
	)	
DEFENDANT.	)	
	)	

July 15, 16 and 17, 2013

Charleston, South Carolina

VOLUME I (OF III)

(Contains July 15 and portion of July 16, 2013)

B E F O R E:

The Honorable Deadra L. Jefferson, Judge; and a Jury.

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I N D E X

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(DW) - DENOTES DEFENSE WITNESS

(IC) - DENOTES IN CAMERA

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Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

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1 THE COURT: You may be seated. Good morning, ladies
2 and gentlemen.

3 POTENTIAL JURORS: Good morning (group response).

4 THE COURT: I am so happy to see everyone. I am Deadra
5 Jefferson. I am one of your resident circuit judges for the
6 Ninth Circuit.

7 The Ninth Circuit is made up of Charleston and Berkeley
8 counties. Our state is divided into judicial circuits. I
9 think there are 16 of them, although I might be wrong.

10 Our purpose this morning is to determine your general
11 eligibility to serve as jurors. Your jury service will
12 conclude on Friday.

13 We have two jury terms of civil court, one term of
14 civil nonjury court, as well as two terms of criminal court.
15 One is a jury term that I will be conducting, and one is a
16 nonjury that Judge McDonald will be handling. Judge Young
17 and Judge Houston will be hearing -- actually it is -- who
18 has nonjury?

19 THE CLERK: Harrington.

20 THE COURT: Judge Harrington. And Judge Harrington
21 will be holding nonjury court this week. Your jury service
22 will conclude on Friday.

23 We have three sources from which we select jurors.
24 That is if you are a licensed driver, if you have an ID card
25 from the Highway Department or you are a registered voter

1 then you are subject to jury service. We understand the
2 inconvenience that jury service poses both to your personal
3 and your professional lives, and we thank you for being here
4 with us this morning.

5 We hope that jury service will prove to be educational
6 for you and enjoyable. It is my sincere desire that you
7 learn that real court is nothing like Judge Judy, Judge Joe
8 Brown, People's Court, Judge Mathis. There are so many.

9 I was watching TV. I was off recently. And Gloria
10 Alred must have had a gavel that was as big as this podium.
11 And I thought -- I almost thought it was like a caricature.
12 Because for security reasons none of us have gavels. People
13 would throw them and use them and hit people. So it is kind
14 of sad that you have to think in those terms.

15 But I find those shows, just like everyone else,
16 incredibly entertaining. But they are nothing like the
17 actual court process.

18 So that it is my sincere desire that each of you has
19 the ability to serve on a jury this week so that it will be
20 educational and informative to you as to how the actual
21 court process operates and in some small measure instill
22 your faith in the system. And that system works because of
23 your willingness to participate in it.

24 As you look around the room there are some people that
25 you should familiarize yourself with. The bailiffs are

1 seated throughout the courtroom. If you all would stand and
2 sort of waive your hands.

3 (WHEREUPON, bailiffs complied.)

4 We have about 15 bailiffs. There are only three of
5 them here with us this morning. But you will have contact
6 continually with them during this process.

7 They are incredibly helpful. They are all retired, and
8 as far as I'm concerned donate their time to the system.
9 If you have a question or concern, they can help you remedy
10 most situations, give you answers, assist you.

11 But if they can't, they can get to a deputy clerk or
12 one of the judges very quickly to get a resolution to your
13 situation. So please avail yourself of their assistance.
14 Also there are deputies seated throughout the courtroom
15 whose responsibility it is to maintain security and decorum.

16 And also there are lawyers seated about the courtroom
17 who are observing the jury selection process so that they
18 can more effectively select the jury during that process.

19 Also seated to my immediate right is my court reporter
20 for this week. Each judge has a court reporter for whose
21 responsibility it is to take down the proceedings. This
22 week I have a mask reporter. You will see other reporters
23 that are using transcription machines.

24 Also seated immediately to her right and to your left
25 is my law clerk, Jenna Keiser. State of South Carolina is

1 very generous. They provide each judge with a lawyer
2 licensed to practice who assists us in moving cases
3 throughout the system and attending to our responsibilities.

4 And also seated immediately to her right is my JOBE
5 participant for the week, a young lawyer from the law school
6 who is observing the process.

7 We allow through the summer months and throughout the
8 year young lawyers who are enrolled in law school to come
9 and observe the process intimately so they can learn more
10 about the system outside of book knowledge.

11 As you know I have always said law school shows you
12 where to find it, not how to do it. So they are here with
13 us to learn more about the process.

14 Jury qualification is done in several stages. At the
15 end of this process I will share with you some general
16 guidelines for your service this week in an effort to make
17 you feel more comfortable in what I am certain are
18 unfamiliar surroundings.

19 The first part of that process was roll call where you
20 gave us certain information. The second part of the process
21 requires that I administer an oath to you. If you would
22 stand for me please and raise your right hands.

23 (WHEREUPON, the panel was duly sworn.)

24 THE COURT: Thank you, ladies and gentlemen. You may
25 be seated. There are certain questions that I need to ask

1 you. State law mandates that I ask each and every one of
2 these questions.

3 If a question applies to you, I need for you to stand
4 and in a loud and clear voice give us your name, your juror
5 number, and an answer to the question and remain standing
6 until the court has completed questioning you. I know that
7 some of the questions may seem intensely personal. It is
8 not our intention to embarrass you.

9 There will be a part at the end of the process where
10 you will be able to speak with me privately if there is any
11 question you do not want to answer openly in the presence of
12 your fellow jurors.

13 So I would ask that if there is any question you do not
14 feel comfortable answering in the presence of your fellow
15 jurors that you would make a mental note of it, come and
16 speak with me privately when I invite you to do so.

17 Because it is absolutely essential, ladies and
18 gentlemen, that we have accurate information consistent with
19 the oath that you have just taken -- with the oath that you
20 have just taken.

21 Again, state law requires that I ask each and every one
22 of these questions. And here are the questions regarding
23 your general eligibility to serve:

24 Is there any member of the panel not a citizen of the
25 United States? If so, please stand at this time.

1 (There was no response.)

2 Is there any member of the panel not now a citizen and
3 resident of Charleston County, State of South Carolina? If
4 so, please stand.

5 (There was no response.)

6 Is there any member of the panel unable to read, write,
7 speak or understand the English language? If so, please
8 stand at this time.

9 (There was no response.)

10 Does any of the panel -- member of the panel have less
11 than a sixth grade education or its equivalent? If so,
12 please stand at this time.

13 (There was no response.)

14 Is there any member of the panel incapable by reason of
15 mental or physical infirmity to render efficient service?

16 And again I know that is an intensely personal
17 question. If you wish to stand at this time, I would invite
18 you to do so.

19 However, if you do not feel comfortable, please make a
20 mental note to speak with me privately at the end of this
21 process.

22 Is there anyone that wishes to stand at this time?

23 PANEL MEMBER: Would you repeat the question, please.

24 THE COURT: Is there any member of the panel incapable
25 by reason of mental or physical infirmity that you feel

1 prevents you from being able to serve on jury duty?

2 PANEL MEMBER: I do.

3 THE COURT: Okay. Tell me your juror number, sir.

4 PANEL MEMBER: I forgot. I'm sorry.

5 THE COURT: Tell me your name.

6 PANEL MEMBER: David Montgomery.

7 THE COURT: Number 183. Sir, do you want to speak with
8 me in private? With the panel, or do you want to speak with
9 me privately?

10 PANEL MEMBER: I will speak with you privately.

11 THE COURT: All right. There will be a part at the end
12 of the process. And if you would just come forward when the
13 bailiffs invite you to do so.

14 PANEL MEMBER: Okay. Thank you.

15 THE COURT: You are welcome. Has any of the panel been
16 convicted by guilty plea or trial in a state and or federal
17 court of record of a crime punishable by imprisonment for
18 more than one year and their civil rights have not been
19 restored by a pardon or amnesty?

20 When we say a court of record we mean the circuit court
21 or federal court, not magistrates' court, municipal court or
22 city court.

23 When I say punishable by imprisonment for more than one
24 year that means that the maximum penalty for the offense was
25 a year and a day or more even though you may have received

1 probation.

2 And by pardon or amnesty I mean if you have applied to
3 the governor or to the federal government for a pardon which
4 would expunge your record or for amnesty which would have
5 the same effect.

6 I know again this is an intensely personal question.
7 And if you do not wish to speak with me publicly you can
8 just make a mental note to speak with me privately.

9 However, is there any member of the panel that feels
10 comfortable standing at this time? If so, please stand.

11 (There was no response.)

12 Is there any member of the panel, clerk of court,
13 deputy clerk of court, constable, sheriff, other
14 commissioned law-enforcement officer, probate judge, county
15 commissioner, magistrate or other county officer or any
16 person employed within the walls of the courthouse? If so,
17 please stand at this time.

18 (There was no response.)

19 THE COURT: Is there any member of the panel that has
20 previously served on jury duty in a court of record? That
21 means circuit court, not city court, magistrates' court, or
22 municipal court, during this calendar year which is 2013.
23 If so, please stand at this time.

24 (There was no response.)

25 Has any member of the panel served on the Charleston

1 County Grand Jury during the past several years? If so,
2 please stand at this time.

3 (There was no response.)

4 We will now move to exemptions. An exemption does not
5 mean that you are not qualified to serve. It simply means
6 in some instances you have the right to say I choose not to
7 serve or it gives the court the ability to transfer your
8 service to another term of court that works a little better
9 for you.

10 For example, those who are 65 years of age or older may
11 be exempted from jury service. You are not required to be
12 exempted. We would encourage you to remain with us if you
13 are inclined to do so. Because you represent a tremendous
14 pool for talent for jury service.

15 However, if you are 65 years of age or older and you
16 wish to be exempted I would ask that you stand at this time.

17 (There was no response.)

18 Another exemption concerns prior jury service. No one
19 is required to serve more than once every three calendar
20 years.

21 Therefore, if any member of the panel has served on
22 jury duty during the previous two calendar years, which
23 would be 2012 or 2011, in a court of record, meaning the
24 circuit court, not city court, magistrates' court or
25 municipal court, you may be exempted from this term of court

1 if you choose to exercise that exemption. If any of you
2 feels this applies, I would ask that you stand at this time.

3 (There was no response.)

4 The next involves those who would have a small child or
5 small children. Please listen carefully. This exemption
6 has several parts all of which must apply in order for you
7 to be exempted on this basis.

8 This exemption is for stay-at-home parents who are not
9 employed outside of the home who have children under a
10 certain age. So again, please listen carefully. It has
11 several parts all of which must apply.

12 Is there any member of the panel who has a small child
13 or small children under the age of seven and you have legal
14 custody of your child or children and you have their
15 principal care, custody and control, and you are unable to
16 make arrangements for their adequate care while performing
17 jury duty?

18 If all of these requirements apply to you, then you may
19 be exempted on this basis but only if all of these
20 requirements are present. If you feel that this applies, I
21 would ask that you stand at this time.

22 (There was no response.)

23 The next involves those who are -- may be employed with
24 the school or are working in some capacity with the school.
25 Is there any member of the panel who is a full-time student,

1 school teacher, school crossing guard, school bus driver or
2 serves in any other school-related function who is unable to
3 serve on jury duty this week as a result of that school
4 involvement?

5 If this applies, we will transfer you to another term
6 of court which will not conflict with your school
7 responsibilities. If you feel this applies, I would ask
8 that you stand at this time.

9 (There was no response.)

10 The next involves those who perform services for a
11 business, commercial or agricultural enterprise. And this
12 is really for those who are self-employed who are seasonal
13 type workers whose workload is busier during certain times
14 of the year than others, such as commercial fishermen,
15 certain types of agricultural work, just to give you an
16 example.

17 Is there any member of the panel who performs services
18 for a business, commercial or agricultural enterprise, whose
19 services are so essential to the operation of the enterprise
20 that the enterprise must close or cease to function if you
21 are required to perform jury duty?

22 If this applies, we would transfer you to a term which
23 where your workload would be lighter. If you feel this
24 applies, I would ask that you stand at this time.

25 (There was no response.)

1 Is there any member of the panel who is employed as a
2 guard with the Department of Corrections at a penitentiary?
3 If so, I would ask that you stand because state law provides
4 that you shall be exempted on this basis.

5 (There was no response.)

6 Is there any member of the panel who is the primary
7 caretaker of a person age 65 years of age or older or a
8 disabled person either of whom are unable to care for
9 himself or herself, could not be left unattended and you
10 cannot make alternate arrangements for their care?

11 This is for individuals who are the primary caregivers
12 of a person age 65 years of age or older or a disabled
13 person who is not employed outside the home and this is your
14 primary responsibility and you cannot make alternate
15 arrangements for their care while serving on jury duty and
16 they cannot be left unattended.

17 If you feel this applies, please stand at this time.

18 (WHEREUPON, panel member stood.)

19 THE COURT: Yes, ma'am, do you want to speak with me
20 privately or in front of the panel?

21 PANEL MEMBER: Privately.

22 THE COURT: Okay, tell me your jury number.

23 PANEL MEMBER: One-fifty.

24 THE COURT: Okay. Just remember to come forward when I
25 invite you to do so.

1 (WHEREUPON, panel member stood.)

2 Yes, sir, tell me your name and your juror number.

3 PANEL MEMBER: Two-fifty-two.

4 THE COURT: Okay. Sir, if you would just come forward
5 and speak with me privately.

6 Ladies and gentlemen, that concludes the statutory list
7 of qualifications and exemptions for service.

8 It may be that you are qualified and that no exemption
9 applies to you but the jury service this week would
10 constitute an extreme hardship upon you for a particular
11 reason.

12 I cannot permanently excuse a qualified juror from jury
13 service. But under extreme and compelling circumstances I
14 may excuse a juror from this term of court and transfer the
15 juror to another term of court. But this applies only to
16 those who have not been previously transferred.

17 Please recognize that general inconvenience is not a
18 sufficient basis to transfer you to another term of court.
19 To justify a transfer, service must constitute extreme
20 hardship upon you for a particular reason.

21 I will say in advance that if you have any appointments
22 that you have made in advance of court, either for yourself
23 or a family member, please make me aware of it because I can
24 make alternate arrangements for you to meet that obligation.

25 Ladies and gentlemen, this is now the opportunity for

1 those who did not respond earlier to personal questions that
2 were asked or any other question that was asked including
3 those who have a compelling reason to request a transfer of
4 your jury service to another week.

5 If any of the qualifications concerns you or if you
6 have question of concern about any of the qualifications as
7 they apply to you in your particular situation or if you
8 wish to seek -- or if you have a question about an exemption
9 or if you wish to seek a transfer to another term of court I
10 would ask that you stand in the aisles with the bailiffs.

11 That includes the individuals that indicated they
12 needed to speak with me privately which is Number 183,
13 Number 150, and Number 252.

14 I also need to see Juror Number 202, Number one -- 147,
15 Number 98, Number 94, and Number 277. If you would line up
16 as well.

17 THE BAILIFF: Juror Number 1.

18 THE COURT: Okay. Yes, sir.

19 PANEL MEMBER: Your Honor, I had a prior obligation on
20 Friday.

21 THE COURT: Okay, what is that?

22 PANEL MEMBER: In Nashville, Tennessee. I am supposed
23 to be attending a wedding.

24 THE COURT: Okay. And what time do you have to leave
25 Charleston?

1 PANEL MEMBER: I need to be out of Charleston by
2 Thursday night.

3 THE COURT: Okay. I will protect you for Friday. And
4 tell me your name and your juror number.

5 PANEL MEMBER: I am Dr. Abramczyk. A-B-R-A-M-C-Z-Y-K.

6 THE COURT: Okay.

7 PANEL MEMBER: And Juror Number 1.

8 THE COURT: Thank you, sir. You will be protected for
9 Friday.

10 PANEL MEMBER: I appreciate that.

11 THE COURT: You are welcome. Number 1 is protected for
12 Friday.

13 THE BAILIFF: Number 147.

14 THE COURT: Good morning, sir. How are you?

15 PANEL MEMBER: I'm fine.

16 THE COURT: Tell me your name and your juror number.

17 PANEL MEMBER: Daniel Kingsley, Number 147.

18 THE COURT: Bear with me one second. Let me make sure
19 you are not one of the people I was asking for. Yeah,
20 great. Okay. Sir, tell me -- Daniel Condon (ph) Kingsley?

21 PANEL MEMBER: Yes, ma'am.

22 THE COURT: Tell me your date of birth.

23 PANEL MEMBER: .

24 THE COURT: Seven twenty. Do you have a son that has
25 your same name?

1 PANEL MEMBER: No, ma'am. But I heard there is another
2 Daniel Kingsley. But our initials are different. His is a
3 "G" and mine is a "C".

4 THE COURT: Okay. What is your date of birth?

5 PANEL MEMBER: , Saturday.

6 THE COURT: That is your birth date. Let's see. And
7 you are Daniel Condon Kingsley?

8 PANEL MEMBER: Yes, ma'am.

9 THE COURT: Is that your Social Security number
10 (pointing)?

11 PANEL MEMBER: Yes.

12 THE COURT: Okay. Come up to the side for me. I just
13 don't want everybody ---

14 PANEL MEMBER: Oh, I'm sorry.

15 THE COURT: --- to hear what I am saying to you. But I
16 need the court reporter to hear. Were you convicted of DUI,
17 third offense?

18 PANEL MEMBER: Yes, I was.

19 THE COURT: Okay.

20 PANEL MEMBER: That was mid 80's.

21 THE COURT: Yeah, have you applied to the governor for
22 a pardon for amnesty to expunge you for this record?

23 PANEL MEMBER: It should.

24 THE COURT: Because it carries you more than a year.

25 PANEL MEMBER: It should be expunged.

1 THE COURT: Yeah, I think you would have to apply to do
2 that. So I would have to excuse you at this time and you
3 would be exempt. But you might want to check into it to get
4 it removed if you can.

5 PANEL MEMBER: Okay.

6 THE COURT: Okay. Thank you.

7 PANEL MEMBER: Come back? Call?

8 THE COURT: No, we will just send you another notice or
9 you can, just like I said, check into it. Okay, thank you,
10 sir.

11 THE COURT: Number 147 is exempt.

12 THE BAILIFF: Juror Number 269, Your Honor.

13 THE COURT: How are you today, sir?

14 PANEL MEMBER: Good morning. Fantastic.

15 THE COURT: Tell me your name and your juror number.

16 PANEL MEMBER: David Tice, 269.

17 THE COURT: Okay. And yes, sir?

18 PANEL MEMBER: I just needed a clarification. I have a
19 disorderly conduct 19 years ago, and I have no ---

20 THE COURT: Yes, ---

21 PANEL MEMBER: I have no idea what that ---

22 THE COURT: --- that is a magistrate's level. Thirty
23 days.

24 PANEL MEMBER: All right. Cool.

25 THE COURT: Thank you so much. Number 269 will remain

1 with us.

2 THE BAILIFF: Juror Number 150.

3 THE COURT: Yes, ma'am. Tell me your name and your
4 juror number.

5 PANEL MEMBER: Linda Knight, 150.

6 THE COURT: Yes, ma'am.

7 PANEL MEMBER: All right. My mother, I take care of.
8 And she broke her back, her spine. And we have to go
9 tomorrow -- not tomorrow, next week and get surgery done on
10 her spine in case and -- but she can't get up.

11 THE COURT: Are you employed outside of the home?

12 PANEL MEMBER: No.

13 THE COURT: Okay. So you stay at home with her
14 full-time?

15 PANEL MEMBER: I stay at home with her 24/7.

16 THE COURT: And how old is she?

17 PANEL MEMBER: My mom is 79.

18 THE COURT: Okay. What I will do is I can transfer
19 you. But what I need for you to do is just give an estimate
20 of, you know, if you think it is going to take a year for
21 your mom to get better or ---

22 PANEL MEMBER: It is probably going to take over ---

23 THE COURT: Yeah, just let us know that and we will
24 transfer you to the appropriate term of court. And I hope
25 she gets better.

1 PANEL MEMBER: Thank you. I appreciate it.

2 THE COURT: You are welcome. Number 150 is
3 transferred. Just see the people in the back where Mr.
4 Brown is standing and they will assist you.

5 THE BAILIFF: Juror Number 277.

6 THE COURT: Yes, sir, tell me your name and your juror
7 number.

8 PANEL MEMBER: Nicholas Wagner, 277.

9 THE COURT: Yes, sir. Let's see.

10 PANEL MEMBER: I am not sure why you needed to see me.

11 THE COURT: Yeah, tell me your birth date.

12 PANEL MEMBER:

13 THE COURT: Okay. And your full name?

14 PANEL MEMBER: Nicholas Stephen (ph) Wagner.

15 THE COURT: So your middle initial is not "R",
16 correct?

17 PANEL MEMBER: No, it is not.

18 THE COURT: I wonder why they have -- y'all have the
19 same birth date. That is very interesting. Is that your
20 Social Security number (pointing)?

21 PANEL MEMBER: No ma'am.

22 THE COURT: Okay. You are not the same person. Thank
23 you ---

24 PANEL MEMBER: Okay.

25 THE COURT: --- so much. Number 277 will remain with

1 us.

2 THE BAILIFF: Juror Number 86.

3 THE COURT: Yes, ma'am, tell me your name and your
4 juror number.

5 PANEL MEMBER: Number 86. My name is Nolie Futch.

6 THE COURT: Yes, ma'am.

7 PANEL MEMBER: And I'm -- we have -- vacation is
8 Thursday and Friday of this week.

9 THE COURT: Okay.

10 PANEL MEMBER: And when I called they just told me to
11 let you know.

12 THE COURT: I can protect you for Thursday and Friday.

13 PANEL MEMBER: Thank you.

14 THE COURT: You are welcome. Number 86 is protected
15 for Thursday and Friday.

16 THE BAILIFF: Juror Number 253.

17 THE COURT: Yes, sir, tell me your name and your juror
18 number.

19 PANEL MEMBER: I am Michael A. Singleton, 253.

20 THE COURT: Yes, sir.

21 PANEL MEMBER: Okay. What happened is I am working out
22 of Sumter. I was in an accident about three weeks ago. And
23 I missed a week out of that job. And right now I just can't
24 afford to miss any more days.

25 THE COURT: Well, I will give you the option. Have you

1 been transferred before?

2 PANEL MEMBER: No, ma'am.

3 THE COURT: Okay. I can transfer you or you can stay
4 with us and take the chance -- if you are not selected for
5 jury service you will be able to go to work every day.

6 PANEL MEMBER: Okay.

7 THE COURT: But I will give you the option. Which do
8 you want; do you want to be transferred and come back, or do
9 you want to run ---

10 PANEL MEMBER: Well ---

11 THE COURT: --- or do you want to take the chance?

12 PANEL MEMBER: I will take the gauntlet. I will take
13 the chance.

14 THE COURT: Okay. And get it out of the way?

15 PANEL MEMBER: Correct.

16 THE COURT: Number 253 will remain with us.

17 THE BAILIFF: Juror Number 183.

18 THE COURT: Give me your name and juror number, sir.

19 PANEL MEMBER: David Montgomery, Number 183.

20 THE COURT: Okay, yes, sir.

21 PANEL MEMBER: I would basically -- I went to the
22 urologist last week and I was diagnosed with kidney stones.

23 THE COURT: Okay.

24 PANEL MEMBER: So he wanted me to come back as soon as
25 possible this week.

1 THE COURT: What day ---
2 PANEL MEMBER: I was trying to come back today.
3 THE COURT: Okay. So you need to go to him today?
4 PANEL MEMBER: Not today. It is a little too late ---
5 THE COURT: Okay.
6 PANEL MEMBER: --- to schedule.
7 THE COURT: Okay.
8 PANEL MEMBER: So I plan on doing it tomorrow.
9 THE COURT: Do you want me to just protect you for
10 tomorrow?
11 PANEL MEMBER: Yes, ma'am.
12 THE COURT: I will just protect you for tomorrow and
13 then you keep us posted on what is going on with you.
14 PANEL MEMBER: Okay.
15 THE COURT: Okay.
16 PANEL MEMBER: And I will just bring a note that you
17 need from me?
18 THE COURT: Your word is sufficient, yeah, for me.
19 Just once you meet with him tomorrow let us know what your
20 situation is.
21 PANEL MEMBER: And what number do I call?
22 THE COURT: They will give you a card. And when we
23 break. The card. That is the one you need to call
24 (pointing).
25 PANEL MEMBER: Yeah.

1 THE COURT: And just let them know. Okay. And then if
2 you have any difficulty, if you have any additional
3 appointments, just let us know and then we will go from
4 there on what we need to do with you this week.

5 But if you think you can serve and you will be okay we
6 will just go ahead and let you get it out of the way.

7 PANEL MEMBER: Yeah, once I get that situated I think I
8 will ---

9 THE COURT: Because it is incredibly painful. I --
10 years ago.

11 PANEL MEMBER: Yeah.

12 THE COURT: So I empathize. I don't just empathize. I
13 sympathize. I have had them before. So I know how you
14 feel.

15 PANEL MEMBER: Stay ---

16 THE COURT: Just stay right here right now. When I
17 excuse everybody you can leave and you will be protected for
18 Tuesday.

19 PANEL MEMBER: Okay. Thank you.

20 THE COURT: You are welcome. Number 183 is protected
21 Tuesday.

22 THE BAILIFF: Juror Number 97.

23 THE COURT: Good morning, ma'am.

24 PANEL MEMBER: Good morning.

25 THE COURT: Tell me your name and your juror number.

1 PANEL MEMBER: Kathryn Gill, 97.

2 THE COURT: Yes, ma'am.

3 PANEL MEMBER: I have a job interview tomorrow.

4 THE COURT: Okay. I will certainly let you go to do
5 that.

6 PANEL MEMBER: Thank you.

7 THE COURT: Every -- in this economy that is important.
8 And it is Tuesday?

9 PANEL MEMBER: Yes.

10 THE COURT: Okay. I will protect you for Tuesday.

11 PANEL MEMBER: Thank you

12 THE COURT: You are welcome. Number 97 is protected
13 for Tuesday.

14 THE BAILIFF: Juror Number 252.

15 THE COURT: How are you doing this morning, sir? Tell
16 me your name and your juror number.

17 PANEL MEMBER: Two-five-two. Corey Singleton.

18 THE COURT: Okay. Were you convicted of possession of
19 cocaine and failure to stop for a blue light?

20 PANEL MEMBER: Yes.

21 THE COURT: Have you had your civil rights restored by
22 pardon or amnesty?

23 PANEL MEMBER: I'm not sure.

24 THE COURT: Did you apply to the governor for a pardon?

25 PANEL MEMBER: No.

1 THE COURT: Then, sir, you would be exempt. You might
2 want to check into that though ---

3 PANEL MEMBER: Okay.

4 THE COURT: --- to get your record expunged or to get
5 it ---

6 PANEL MEMBER: Oh, so I can get it expunged?

7 THE COURT: Well, not expunge- -- I don't know if you
8 can get it expunged. You might want to look into it. I
9 don't know what the situation was on your possession. But
10 you certainly might want to look into a pardon as well.

11 PANEL MEMBER: Okay.

12 THE COURT: Okay. Thank you, sir. You have a great
13 day. Number 252 is exempt.

14 THE BAILIFF: Juror Number 152.

15 THE COURT: Sir, tell us your name and your juror
16 number.

17 PANEL MEMBER: De'andre Lamar, and my juror number is
18 152.

19 THE COURT: Yes, sir.

20 PANEL MEMBER: I have a braces appointment tomorrow.

21 And I ---

22 THE COURT: What kind of appointment tomorrow?

23 PANEL MEMBER: For my braces.

24 THE COURT: Oh, okay. Been there. Done that.

25 PANEL MEMBER: And I have an appointment with my eye

1 glasses.

2 THE COURT: What day?

3 PANEL MEMBER: At Pearle Vision.

4 THE COURT: I mean what day?

5 PANEL MEMBER: Tomorrow.

6 THE COURT: So both ---

7 PANEL MEMBER: The same.

8 THE COURT: --- of your appointments are Tuesday? I

9 can protect you for Tuesday. Thank you, sir. Number 152 is

10 protected Tuesday.

11 THE BAILIFF: Juror Number 108.

12 THE COURT: Yes, sir. Tell me your name and your juror

13 number.

14 PANEL MEMBER: Forrest Hammond, 108.

15 THE COURT: Yes, sir.

16 PANEL MEMBER: I just wanted -- I didn't know if it

17 applies or not. But I have a history of mental illness with

18 depression and anxiety, and I can't really predict ---

19 THE COURT: Are you employed outside the home?

20 PANEL MEMBER: Yeah, but ---

21 THE COURT: What do you do for a living?

22 PANEL MEMBER: I stock.

23 THE COURT: And where do you ---

24 PANEL MEMBER: It is mostly social ---

25 THE COURT: Where ---

1 PANEL MEMBER: --- stuff.

2 THE COURT: Where do you work?

3 PANEL MEMBER: Harris Teeter.

4 THE COURT: Okay. And how long have you been employed
5 with them?

6 PANEL MEMBER: A couple of months.

7 THE COURT: Okay. What -- that doesn't make --
8 disqualify you?

9 PANEL MEMBER: Yeah, I just ---

10 THE COURT: We have a lot of people with that.

11 PANEL MEMBER: Yeah.

12 THE COURT: If you just let us know though if you run
13 into any difficulty or the situation causes you any undue
14 stress and we can address it.

15 PANEL MEMBER: All right. I just wanted to make
16 sure ---

17 THE COURT: Yeah, we don't want you uncomfortable as
18 well. Thank you, sir. Number 108 will remain with us.

19 PANEL MEMBER: Juror Number 15.

20 THE COURT: Good morning, sir. Tell me your name and
21 your juror number.

22 PANEL MEMBER: Charles Bickerstaff, Number 15.

23 THE COURT: Yes, sir

24 PANEL MEMBER: I have two questions.

25 THE COURT: Yes, sir.

1 PANEL MEMBER: I am willing to serve. When -- I now go
2 to Kingstree every Wednesday for my -- because they don't
3 have a urologist.

4 THE COURT: Okay.

5 PANEL MEMBER: So that is it. And another thing ---

6 THE COURT: Do you want me to just protect you for
7 Wednesday?

8 PANEL MEMBER: Wednesday. But the other thing is I
9 also go to the hospital. They don't have a gastrologist.
10 Emergency call. I can never predict it. As long as I can
11 have someone who could come get ---

12 THE COURT: Yes, absolutely we will accommodate you.

13 PANEL MEMBER: Okay.

14 THE COURT: And then I will protect you for Wednesday.

15 PANEL MEMBER: Okay, great.

16 THE COURT: And if you have something come up, some
17 emergent ---

18 PANEL MEMBER: Okay.

19 THE COURT: --- situation, you just make us aware of it
20 and we will accommodate you.

21 PANEL MEMBER: Okay. All right. Thank you.

22 THE COURT: You are welcome. Number 15 is protected
23 for Wednesday.

24 THE BAILIFF: Juror Number 259.

25 THE COURT: Good morning, sir. Tell me your name and

1 your juror number.

2 PANEL MEMBER: It is Andrew Steever, 259.

3 THE COURT: Yes, sir.

4 PANEL MEMBER: I have a small design installation
5 business. This is basically my busy season.

6 THE COURT: Okay.

7 PANEL MEMBER: I have several projects slated for this
8 week. I was wondering if I could request a transfer.

9 THE COURT: I could. And you could just pick a week
10 that isn't as busy for you.

11 PANEL MEMBER: Okay.

12 THE COURT: But we can only transfer you one time.

13 PANEL MEMBER: Okay. That is fine.

14 THE COURT: Just see the individuals in the back and
15 pick a week and then they will send you another notice.

16 PANEL MEMBER: Thank you.

17 THE COURT: Thank you, sir. Number 259 is transferred.

18 THE BAILIFF: Juror Number 297.

19 THE COURT: Ma'am, tell us your name and your juror
20 number.

21 PANEL MEMBER: Erin Yaden, 297.

22 THE COURT: Yes, ma'am.

23 PANEL MEMBER: I just have a doctor's appointment
24 Thursday.

25 THE COURT: I can protect you for Thursday.

1 PANEL MEMBER: All right. Thank you.

2 THE COURT: You are welcome. Number 297 is protected
3 Thursday.

4 THE COURT: I need to see Juror 202, 98, and 94. You
5 might want to look at your card to see what your number is.
6 Number 202.

7 I can't tell who this is. It doesn't have a name on
8 here. What is the name for 202? Are they certain this is
9 the right number? Because this doesn't have anybody's name
10 on it.

11 THE CLERK: Terry Parker

12 THE COURT: Yes. Terry Parker.

13 PANEL MEMBER: Right here.

14 THE COURT: Yes, sir, I need to see you. Bear with me
15 one second.

16 Lakisha Gilliard, Number 98. Jesus Gentile.

17 Sir, tell me your name and your juror number.

18 PANEL MEMBER: My name is Terry Parker.

19 THE COURT: Okay.

20 PANEL MEMBER: I believe the number is 202.

21 THE COURT: Okay. Sir, tell me your date of birth.

22 PANEL MEMBER:

23 THE COURT: Were you convicted of assault and battery
24 of a high and aggravated nature back in 1970?

25 PANEL MEMBER: Yes, ma'am.

1 THE COURT: Have you applied to the governor for a
2 pardon?

3 PANEL MEMBER: No, ma'am.

4 THE COURT: Okay. Sir, you will be exempt at this
5 time. But I would suggest you look into a pardon of your
6 record.

7 PANEL MEMBER: Okay.

8 THE COURT: Thank you so much. You have a great day.

9 PANEL MEMBER: Same to you.

10 THE COURT: Number 202 is exempt.

11 THE BAILIFF: Number 98.

12 THE COURT: How are you, ma'am?

13 PANEL MEMBER: I am well. How are you?

14 THE COURT: I'm doing good. Tell me your name and your
15 juror number.

16 PANEL MEMBER: Lekisha Gilliard, 98.

17 THE COURT: Okay. What is your date of birth?

18 PANEL MEMBER:

19 THE COURT: Okay. Six three of seventy-five. Were you
20 convicted of financial identity fraud?

21 PANEL MEMBER: That was in -- yes, ma'am.

22 THE COURT: Yeah, have you had a pardon ---

23 PANEL MEMBER: Yes, ma'am.

24 THE COURT: --- or applied for amnesty?

25 PANEL MEMBER: Uh-huh.

1 THE COURT: You were pardoned by the governor?
2 PANEL MEMBER: Uh-huh.
3 THE COURT: When did you get that pardon?
4 PANEL MEMBER: I am not sure. I can't remember.
5 THE COURT: What I need to do is I will transfer you
6 until you can provide us with proof of that.
7 PANEL MEMBER: Okay.
8 THE COURT: And then you need to double check and make
9 sure they have removed it from your record.
10 PANEL MEMBER: Okay.
11 THE COURT: Okay?
12 PANEL MEMBER: Yes, ma'am.
13 THE COURT: Thank you. Number 98 will be transferred.
14 THE BAILIFF: Mr. Gentile.
15 THE COURT: How are you today, sir?
16 PANEL MEMBER: How are you, ma'am?
17 THE COURT: Tell me your name and your juror number.
18 PANEL MEMBER: Ninety-four, Jesus Gentile.
19 THE COURT: Okay. And what is your date of birth?
20 PANEL MEMBER: .
21 THE COURT: Have you ever lived in Miami, Florida?
22 PANEL MEMBER: Yes, ma'am.
23 THE COURT: Have you ever gone by another name?
24 PANEL MEMBER: I am a Senior. But I have never used --
25 or the Junior.

1 THE COURT: Is that your son (pointing) by any chance?

2 PANEL MEMBER: No, that is me.

3 THE COURT: Okay.

4 PANEL MEMBER: I changed my name from Su-wan-ee (ph) to
5 Gentile.

6 THE COURT: Okay. Well, I didn't even know how to
7 pronounce that. Thank you so much.

8 PANEL MEMBER: You are welcome.

9 THE COURT: Is either one of these (pointing) your
10 Social Security number?

11 PANEL MEMBER: The one, the bottom.

12 THE COURT: Okay. Bear with me one second. I
13 apologize.

14 PANEL MEMBER: It was back ---

15 THE COURT: How old were you?

16 PANEL MEMBER: Nineteen, twenty I think.

17 THE COURT: Was it for burglary?

18 PANEL MEMBER: My brother. I was in the car at the
19 time.

20 THE COURT: Yeah. You know it is like guilt by
21 association.

22 PANEL MEMBER: I am familiar.

23 THE COURT: Yeah. Have you applied for a pardon? Have
24 you applied ---

25 PANEL MEMBER: I had it expunged.

1 THE COURT: Did you really?

2 PANEL MEMBER: Yes, ma'am.

3 THE COURT: Through the State of Florida?

4 PANEL MEMBER: Here.

5 THE COURT: Through here. And do you have those papers
6 or did you send everything to law -- to all the law
7 enforcement agencies?

8 PANEL MEMBER: Yeah, it doesn't appear on my record.

9 THE COURT: Well, when we pulled it, it still shows.

10 PANEL MEMBER: Right.

11 THE COURT: It shows from 9/26/91 conviction and that
12 you received probation for two years.

13 PANEL MEMBER: Years. That was released off.

14 THE COURT: Okay. So what I need you to do is just
15 double check your record and make sure they have expunged
16 it. And I will just transfer you in the interim to give you
17 time to take care of that.

18 PANEL MEMBER: Okay.

19 THE COURT: Okay. Thank you so much.

20 PANEL MEMBER: Dismissed?

21 THE COURT: Yes, sir. Have a great day. Number 94 is
22 transferred.

23 Thank you, ladies and gentlemen. The panel is now
24 qualified. Please permit me to share with you some general
25 guidelines for your jury service.

1 By order of the Chief Justice there can be no pagers,
2 cell phones, or other electronic devices in the on position
3 while you are in jury duty. That includes smartphones,
4 pagers, tablet, laptops or otherwise.

5 One, they are disruptive and distracting. The other is
6 that on all these devices you can now get access to the
7 Internet, and as the fact finders it is essential that you
8 only have the information available that is presented during
9 the course of the trial.

10 It is essential that you have no interaction with any
11 litigants, lawyers, or other potential witnesses in or about
12 the courthouse. So please don't have any contact with
13 anyone that does not have on a juror sticker.

14 Almost every inch of this building is recorded. As you
15 can see, there are cameras there (pointing). There are
16 cameras in the back. There are cameras in the snack bar.
17 There are cameras in the elevator. There are cameras
18 everywhere. So there goes our fallacy that we live in
19 anonymity.

20 Although most of these don't pick up what you say,
21 which is really what creates a lot of the confusion for us,
22 people make assumptions about innocent conversations.

23 People also take pictures on their cell phones. They
24 record things without you knowing they are doing it. So the
25 best practice is for you to just talk to folk that you know

1 have on a juror sticker. It just eliminates any other
2 confusion.

3 People tend to have a heightened sense of sensitivity
4 during litigation. They tend to assume the worst instead of
5 the best. So it is a better course if you follow that
6 action.

7 Also please do not make any comments regarding your
8 jury service on any social networking sites. That includes
9 Facebook, Instagram. I am trying to think of them all.
10 Twitter. There are so many of them now I have lost track.

11 But you would also be amazed at the busybodies who
12 during the course of the day look at all of these mediums
13 and often call our jury coordinator to say that you all have
14 made some comment regarding your status on any of these
15 mediums, people who are not on jury duty. Again, it is
16 amazing to me. I just don't have that much time. But
17 apparently there are some folk that do.

18 So even an innocent conversation could be so very
19 easily misinterpreted as you commenting on something you
20 have heard in court. So please again do not make any
21 comments regarding your -- or take any pictures in front of
22 the courthouse and say I am on jury duty and post it on
23 Instagram.

24 And I forget the new one. It is video something. I
25 just am technologically challenged. I've still got to pick

1 up a book.

2 So as you can tell, I am not well versed in all of
3 these mediums. I know they are out there. But more
4 importantly, other people do as well. And they can really
5 make a mountain out of a molehill. So I would ask that you
6 refrain from that as well.

7 We would ask that you be prompt. It is not fair when
8 we must delay the proceedings because someone is tardy. By
9 the same token, please note that there will be times - and I
10 am telling you in advance - during this process when you
11 will be waiting on us.

12 But know that when you are waiting, we are working. As
13 the fact finders we have to insulate you from and maintain
14 your impartiality regarding certain things.

15 So many times when we are discussing matters of law we
16 have to exclude you from that process so that you will not
17 be influenced by those matters. So know that if you arrive
18 and you have to wait on us it is because we are working.

19 By the same token, if you run into some difficulty in
20 arriving in the morning, you know, life happens. People
21 have flat tires. Children get sick. You know, emergencies
22 of a car. Please make us aware of it. Because we don't
23 want to be concerned about your safety when it is something,
24 you know, that has come up during the course of your day.

25 And in lots of instances we can render assistance. So

1 please let us know if some emergency occurs at home, work,
2 or otherwise so that we can again know your status as well
3 as render any assistance if possible on our part.

4 We will select a criminal jury this morning. We will
5 also be selecting probably two civil juries. This will be a
6 long day for you. I am just telling you in advance.

7 And that is because we try to get as much done today as
8 possible so that you know what to expect of your week and we
9 know what to expect of ours.

10 The old system required that we bring jurors to the
11 courthouse every day. And we found that to be an
12 inefficient waste of time for -- use of time for you as well
13 as for us.

14 So once we are able to pick as many jurors as possible
15 today that allows you then to some extent go on with your
16 week uninterrupted and you will only have to call the jury
17 information line after six o'clock each evening for
18 instructions.

19 And if we don't need you, we will let you know then so
20 that if you need to go to work you will have ample time to
21 go ahead and go to work if you would like or to do whatever
22 else you had planned for that day so that we don't occupy
23 your time being at the courthouse.

24 We thank you for your time and your attention. I am
25 going to turn you over to the competent hands of clerk

1 staff.

2 They will separate the panel and be sending a panel up
3 to my courtroom as well as to Judge Young and to probably
4 then to Judge Houston after both Judge Young and I have
5 selected panels.

6 I hope that y'all have a wonderful day. And again, I
7 hope this will be an informative and educational process for
8 you. Thank you.

9 (WHEREUPON, completion of jury qualification.)

10 (WHEREUPON, proceedings resumed July 15, 2013, at 12:12
11 p.m. in judge's courtroom in camera.)

12 THE COURT: All righty. Is there anything else we need
13 to deal with Mr. Washington before we bring the panel up and
14 go ahead and select a jury?

15 MS. PROCTOR: No, give it -- if you could just give us
16 a few minutes. Because I need to set everything up.

17 THE COURT: That is fine. Is he in custody?

18 MS. PROCTOR: He is in custody.

19 THE COURT: Could y'all go ahead and bring him out.
20 Well, I know y'all have got to switch out the other person
21 and bring out the other person.

22 (WHEREUPON, break was taken 12:13 to 12:15 p.m.)

23 THE COURT: Were there any deals offered to Mr.
24 Washington?

25 MS. PROCTOR: Yes, Your Honor, he was offered 18 years.

1 THE COURT: Okay. And what is his record?

2 MS. PROCTOR: Isn't that correct, he was offered 18?

3 MR. DURANT: He was offered 18 at one time.

4 THE COURT: How long ago was it?

5 MS. PROCTOR: Well, she just asked ---

6 THE COURT: I am asking for PCR purposes.

7 MS. PROCTOR: Right. I mean ---

8 THE COURT: Yeah, because I am going to question him
9 before we get started. How long ago was that?

10 MR. DURANT: Oh, I guess ---

11 MS. PROCTOR: It was maybe ---

12 MR. DURANT: It was back maybe 60 days ago when we were
13 trying to get that ---

14 MS. PROCTOR: Probably two to three months ago, yes.

15 THE COURT: And what is his record, Mr. DuRant? And
16 does he wish to have a formal arraignment?

17 (Clerk enters courtroom.)

18 THE COURT: Give me one second, please.

19 (Pause for court to confer with clerk.)

20 THE COURT: Are we going forward on all three
21 indictments, which is 2011-6881, attempted murder;
22 2011-6882, attempted murder; and 6883, attempted murder; is
23 that correct?

24 MR. DURANT: That is correct, Your Honor.

25 THE COURT: Okay. Do we have his record?

1 MR. DURANT: Yes, Your Honor.

2 THE COURT: If you could publish that for me, please.

3 MR. DURANT: It -- convictions just says it consists of
4 a possession of marijuana in 2005. It looks like resisting
5 arrest in 2005 and a possession of marijuana in 2006.

6 THE COURT: And there are -- there are no current
7 offers, correct?

8 MR. DURANT: No, there are none at this time.

9 THE COURT: Ms. Proctor, you represent Mr. Washington?

10 MS. PROCTOR: Yes, Your Honor, I do.

11 THE COURT: And who is assisting you in trial?

12 MS. PROCTOR: John Kozelski.

13 THE COURT: Okay. You are going to have to spell that
14 for me.

15 MR. KOZELSKI: K-O-Z-E-L-S-K-I.

16 THE COURT: Okay. And hopefully I won't butcher it.

17 MR. KOZELSKI: It's fine.

18 THE COURT: And if I do, I apologize in advance.

19 MS. PROCTOR: I do all the time.

20 THE COURT: Mr. DuRant, is there anyone that will be
21 assisting you in trial?

22 MR. DURANT: No. None -- none other than ---

23 THE COURT: Okay.

24 MR. DURANT: --- in the case my investigator will be
25 obviously in and out, Your Honor.

1 THE COURT: Now, Ms. Proctor, is it correct about 60
2 days ago the State made an offer to your client of 18 years?

3 MS. PROCTOR: Yes, Your Honor.

4 THE COURT: On all three charges I would assume
5 concurrent?

6 MS. PROCTOR: Yes, sir -- yes, Your Honor.

7 THE COURT: And is it correct that your client rejected
8 that offer?

9 MS. PROCTOR: Yes, Your Honor, that is ---

10 THE COURT: Did you fully explain the terms of the
11 offer to him?

12 MS. PROCTOR: Yes, Your Honor, we went all over it ---

13 THE COURT: And did he do that with or without your
14 advice?

15 MS. PROCTOR: I gave him my advice, but I did not tell
16 him how I thought he should plead. That is -- that ---

17 THE COURT: So you gave him the pros and cons and left
18 the ---

19 MS. PROCTOR: Yes.

20 THE COURT: --- decision ---

21 MS. PROCTOR: I told him exactly what the State would
22 introduce, what -- how the trial would go and the decision
23 was up to him.

24 THE COURT: And are you fully prepared for trial?

25 MS. PROCTOR: Yes, Your Honor, I am.

1 THE COURT: It is my understanding that this case was
2 previously on the trial docket and you were prepared to go
3 forward at that time as well?

4 MS. PROCTOR: Yes. Yes, ma'am.

5 THE COURT: Okay. Sir, please stand for me and raise
6 your right hand for the record.

7 (WHEREUPON, the witness was duly sworn.)

8 THE COURT: You can put your right hand down. Sir,
9 state your full name for the record.

10 MR. WASHINGTON: Domoneik Antwan Washington.

11 THE COURT: And is that A-N-T-W-A-N?

12 MR. WASHINGTON: Yes, ma'am.

13 THE COURT: Sir, how old are you?

14 MR. WASHINGTON: I am 27.

15 THE COURT: How far have you gone in school?

16 MR. WASHINGTON: The eleventh.

17 THE COURT: Do you have your GED?

18 MR. WASHINGTON: I was working on that. But they
19 stopped that -- the County.

20 THE COURT: So you do not have your GED, correct?

21 MR. WASHINGTON: Right.

22 THE COURT: Are you suffering from any mental
23 disabilities or under the influence of any drugs or alcohol?

24 MR. WASHINGTON: No, ma'am.

25 THE COURT: Did Ms. Proctor -- you were represented by

1 Ms. Proctor, correct?

2 MR. WASHINGTON: Yes, ma'am.

3 THE COURT: And about 60 days ago did she fully explain
4 to you the State's offer of 18 years on all of these charges
5 concurrent?

6 MR. WASHINGTON: Yes, ma'am.

7 THE COURT: Did you -- excuse me, did you understand
8 what she explained to you?

9 MR. WASHINGTON: Yes, ma'am.

10 THE COURT: Did you accept or reject the offer?

11 MR. WASHINGTON: I rejected it.

12 THE COURT: Did you do that freely and voluntarily and
13 of your own will?

14 MR. WASHINGTON: Yes, ma'am.

15 THE COURT: Did you feel anybody forced you, pressured
16 you, or in any way to cause you to reject that deal?

17 MR. WASHINGTON: No, ma'am.

18 THE COURT: Okay. Thank you so very much, sir. You
19 may be seated.

20 All righty. Are we ready to bring the panel in? Is
21 there anything else we need to take up before I bring the
22 panel up for jury selection?

23 MS. PROCTOR: Your Honor, I had -- did you -- do you
24 have my voir dire questions? I just wanted to make sure.
25 Because I know I e-mailed.

1 THE COURT: I have got witness list. I have got.
2 State's voir dire. Where is ---

3 MS. PROCTOR: I e-mailed it I think Friday afternoon.

4 THE COURT: Witness list. Oh, I do have your voir
5 dire.

6 And we will deal with all the motions after we have
7 selected the jury. How long will it take them to bring the
8 jury up?

9 THE CLERK: Five minutes.

10 THE COURT: Okay. We are going to bring the jury up
11 and they will be up in five minutes. While they are doing
12 that, I am going to walk down to my office right quick. And
13 by the time they bring them up I will be back.

14 (WHEREUPON, a break was taken at 12:15 a.m.)

15 (WHEREUPON, jury entered courtroom July 15, 2013, at
16 12:24 a.m.)

17 THE COURT: Ladies and gentlemen, we are going to
18 select a case for the State of South Carolina versus
19 Domoneik Antwan Washington.

20 Oh, do we have everybody or are we missing some people?
21 I apologize.

22 (Pause for remainder of jury panel to enter.)

23 THE COURT: Ladies and gentlemen, we are going to
24 select a jury for the State of South Carolina versus
25 Antwan -- I'm sorry, Domoneik Antwan Washington, Indictment

1 Numbers 2011-GS-10-6881, 6882, and 6883. Each are
2 indictments for attempted murder and they allege as follows:

3 That in Charleston County on March 30th, 2011, the
4 defendant, Domoneik Antwan Washington, with intent to kill
5 and malice of forethought, attempted to kill Antwan Davon
6 Wilson and also known as Brian Ravon Wilson, alleging a
7 violation of 16-3-29 of the code of laws; and that in
8 Charleston County, South Carolina, on or about March 30th,
9 2011, the defendant, Domoneik Antwan Washington, did with
10 intent to kill and malice of forethought attempt to kill
11 Ronald Cornell Bryant, III, alleging a violation of Code
12 Section 16-329; and that in Charleston County, South
13 Carolina, on or about March 30th, 2011, the defendant,
14 Domoneik Antwan Washington, did with intent to kill and
15 malice of forethought attempt to kill Edward Jerome
16 Wittrell, Jr., alleging a violation of Code Section 16-329
17 of the code of law as amended; and alleging each of these
18 actions to be against the peace and dignity of the State of
19 South Carolina.

20 Before we begin jury selection we are going to go
21 through a process that is called voir dire, which is simply
22 a legal term meaning that I am going to ask you some
23 questions so that the attorneys can more effectively
24 exercise their preemptory challenges.

25 If a question applies to you, please stand and in a

1 loud and clear voice give us your name, your juror number
2 and an answer to the question if applicable and remain
3 standing until the court has completed questioning you.

4 Before we begin that process I am going to have counsel
5 for the State to stand and introduce themselves, tell us the
6 names of the members of his office, and have counsel for the
7 defense to provide us with the same information, as well as
8 having the defendant stand and face the panel.

9 Mr. DuRant, you may proceed.

10 MR. DURANT: Thank you, Your Honor.

11 THE COURT: You are welcome.

12 MR. DURANT: My name is Bruce DuRant. I am the deputy
13 solicitor for Charleston and Berkeley counties. We
14 represent the State of South Carolina in this case. Seated
15 at the table with me is Derek Boyd. He is a detective with
16 the Charleston County Sheriff's Office. You may also see me
17 talking to occasionally my investigator, Matt Kason,
18 throughout the course of this trial.

19 The other lawyers in our office are of course the
20 elected solicitor, Scarlet Wilson, my boss. We also have
21 Marian Askins, Jessica Baldwin, Julie Cardillo, Natasha
22 Chisolm, Spencer Compton, Shannon Elliott, Emmanuel
23 Ferguson, Timmy Finch, Kelley Flynn, Meg Haley, Amy Harrell,
24 Debbie Herring-Lash, Culver Kidd, Chris Lietzoe, Stephanie
25 Linder, Lindsay McLain Byrd, Jennifer McCoy, Michael --

1 Elizabeth Riddle, Jennifer Shealy, Benjamin Chad Simpson,
2 Jim Stack, Randell Stoney, Gregory Voigt, Richard Waring,
3 Burns Wetmore, Tyler Whitaker and Tod Williams.

4 THE COURT: Ms. Proctor.

5 MS. PROCTOR: I am Lori Proctor. I am the public
6 defender for Charleston County. And sitting with me today
7 is another lawyer in my office, John Kozelski. This is --
8 we represent Domoneik Washington.

9 The other lawyers in our office, Ashley Pennington is
10 the chief circuit public defender for Charleston and
11 Berkeley County. We have Victoria Anderson, Karen Barker,
12 Beattie Butler, Charles Cochran, Michael Cooper, Tamara
13 Davorski (ph), Rhett Dunaway, Megan Ehrlich, Mary Ford,
14 Cantrell Frayer, Andrew Grimes, Patty Kennedy, King, Ben
15 Lewis, Luke Malloy, Christina Parnall, Alicia Penn, Mary
16 Ellen Rankin, Martha Kent Rooney, Ted Smith, Kelly Casasolar
17 (ph), Tim Taylor, and Sandra Gousley (ph).

18 THE COURT: Ladies and gentlemen, again if a question
19 applies to you, please stand and in a loud and clear voice
20 give us your name, your juror number, and an answer to the
21 question if applicable and remain standing until I have
22 completed questioning you.

23 Is there any member of the panel related by blood or
24 marriage to Domoneik Antwan Washington, Antwan Devon Wilson,
25 also known as Bryan Ravon Wilson, Ronald Cornell Bryant,

1 III, or Edward Jerome Wittrell, Jr.? If so, please stand at
2 this time.

3 (There was no response.)

4 THE COURT: Does any member of the panel have a close
5 personal, social, or business relationship with Domoneik
6 Antwan Washington, Antwan Devon Wilson, also known as Bryan
7 Ravon Wilson, Ronald Cornell Bryant, III, or Edward Jerome
8 Wittrell, Jr.? If so, please stand at this time.

9 (There was no response.)

10 The following are a list of potential witnesses. I
11 would ask that you listen very carefully:

12 Will Muirheid; Chris Pate; Diane Turner; Detective Ed
13 Semlitsch; Detective Kip Cooke; Derek Boyd; Alan Ali; Kathy
14 Kjellman; James Milz; Paul McManigal; all of the Charleston
15 County Sherrifs Office; James Heyward; Joe McKelvey, Jr.;
16 Equett Robinson; Laval Hazel; Stephanie -- how is that last
17 name pronounced; is that Bellaseato (ph) or Bellachico (ph)?

18 MR. DURANT: Bellachico (ph) I believe.

19 THE COURT: Bellachico (ph), spelled
20 B-E-L-L-A-C-I-C-C-O; Edwin Wittrell, Jr.; Akim Washington;
21 William Sellers; Ellen C. Riemer, MD; Salimah Williams -- or
22 Salimah, S-A-L-I-M-A-H; David Smith; Ervette Robinson;
23 Ronald C. Bryant; Ishmel Lemon; Don Manigault; Tezra
24 Washington; James Anderson; Kevin Bradwell; Corey Whaler;
25 Mia Wright; Initial Scott; Samuel Smith; Zaidee Trusdale;

1 Shawn Neco Walker; Suzann Cromer; Amy Stephens; Patricia
2 Cooks -- Crooks; Selena Kinard; Lisa Waananen; Ila Simmons;
3 all of the South Carolina Law Enforcement Division; Tezra
4 Washington; and Eowyn, E-O-W-Y-N, Corcrair of the Medical
5 University of South Carolina; and Dan Cross.

6 Is there any member of the panel related by blood or
7 marriage to any of the people that I have just listed or
8 does anyone have a close personal business or social
9 relationship with any of these individuals? If so, please
10 stand at this time.

11 (There was no response.)

12 THE COURT: Has any member of the panel ever been
13 represented by any of the attorneys involved in this case or
14 any of the lawyers in their offices? If so, please stand at
15 this time.

16 (There was no response.)

17 THE COURT: Is there any member of the panel related by
18 blood or marriage to or have a close personal or social
19 relationship with any of the attorneys involved in this case
20 or any of the lawyers in their offices? If so, please stand
21 at this time.

22 (There was no response.)

23 THE COURT: Is there any member of the panel related by
24 blood or marriage to have a close -- have a personal or
25 social relationship with anyone who is employed in the

1 office of the solicitor or the office of the public
2 defender? If so, please stand at this time.

3 (There was no response.)

4 THE COURT: Has any member of the panel formed or
5 expressed an opinion about any issue or matter involved in
6 this case? If so, please stand at this time.

7 (There was no response.)

8 THE COURT: Is there any member of the panel aware of
9 any bias or prejudice towards either the State or the
10 defense in this case? If so, please stand at this time.

11 (There was no response.)

12 THE COURT: Was there any member a member of the grand
13 jury which issued the indictments in this case? If so,
14 please stand at this time.

15 (There was no response.)

16 THE COURT: Is there any member of the panel who is a
17 member of or a contributor to any group which has as its
18 primary concern the promotion of law enforcement or victim's
19 rights? These groups would include but are not limited to
20 Mothers Against Drunk Driving, Students Against Drunk
21 Driving, People Against Rape, Citizens Against Violent
22 Crime, Citizens Advocating a Return to Decency and Ethics,
23 Parents Empowered To Save Teens, or any other type community
24 watch organization. If so, please stand at this time.

25 (There was no response.)

1 THE COURT: Is there any member of the panel who has
2 any moral, religious or philosophical beliefs that would
3 prevent you from sitting in judgment of a fellow human
4 being? If so, please stand at this time.

5 (There was no response.)

6 THE COURT: Is there any member of the panel who has
7 had what they were characterized as an unpleasant experience
8 with law enforcement such that it would affect your ability
9 to be fair and impartial to both the State and the defense?
10 If so, please stand at this time.

11 (There was no response.)

12 THE COURT: Has any member of the panel read, watched
13 or listened to any media accounts about this case? That
14 includes anything that could have been on radio, television,
15 Internet or in the newspaper. If so, please stand at this
16 time.

17 (There was no response.)

18 THE COURT: Is there any member of the panel who has
19 any personal knowledge of the alleged facts and
20 circumstances of this case? If so, please stand at this
21 time.

22 (There was no response.)

23 THE COURT: Is there any member of the panel - and
24 please listen carefully - not currently but who was formerly
25 employed by law enforcement? If so, please stand at this

1 time.

2 (There was no response.)

3 THE COURT: Is there any member of the panel who has
4 family members who are currently employed in law
5 enforcement? If so, please stand at this time.

6 (WHEREUPON, juror stood.)

7 THE COURT: Yes, sir, tell us your name and your juror
8 number?

9 JUROR: Eighty, Jonathan Fischer.

10 THE COURT: And do you know your juror number?

11 POTENTIAL JUROR: Eighty.

12 THE COURT: Okay. I'm sorry, sir. I didn't hear. I
13 apologize. And what member of your family is it?

14 POTENTIAL JUROR: Brother-in-law.

15 THE COURT: And what agency is it?

16 POTENTIAL JUROR: I think he is 31. Did you say what
17 agency? Charleston County.

18 THE COURT: Okay. If you would remain standing.

19 Yes, ma'am?

20 POTENTIAL JUROR: Juror Number 196, Michelle Norton.

21 THE COURT: Yes, ma'am.

22 POTENTIAL JUROR: My nephew is a Sheriff's Deputy in
23 Maryland, in the State of Maryland.

24 THE COURT: As result of these experiences do you both
25 feel that you could remain fair and impartial and render a

1 fair and impartial decision in this case based solely on the
2 evidence as it will be presented and on the law as the court
3 will instruct; Number 80- ---
4 POTENTIAL JUROR: Yes, ma'am.
5 THE COURT: Number 186 (sic) ---
6 POTENTIAL JUROR: Yes.
7 THE COURT: ... ninety-six. I apologize.
8 POTENTIAL JUROR: Yes.
9 THE COURT: Thank you. You may both be seated.
10 MS. PROCTOR: Your Honor?
11 THE COURT: Yes.
12 MS. PROCTOR: Since this is Charleston County could you
13 ask who his brother-in-law is. I just want to make sure ---
14 THE COURT: He said James Island.
15 Sir, what is your -- and I don't know, does James
16 Island have a separate police department? I am not sure.
17 POTENTIAL JUROR: I am not really sure about all that.
18 THE COURT: Okay.
19 POTENTIAL JUROR: It is Blaine Lawson.
20 THE COURT: Okay. Thank you, sir.
21 MS. PROCTOR: Thank you, Your Honor.
22 THE COURT: Is there any member of the panel who has
23 been the victim of a violent crime? If so, please stand at
24 this time.
25 (There was no response.)

1 THE COURT: Is there any member of the panel who has a
2 family member that has been a member of a violent crime? If
3 so, please stand at this time?

4 (WHEREUPON, juror stood.)

5 THE COURT: Yes, sir.

6 POTENTIAL JUROR: Kelvin Jones.

7 THE COURT: Yes, sir.

8 POTENTIAL JUROR: Juror Number 134.

9 THE COURT: And was it -- what family member was it,
10 sir?

11 POTENTIAL JUROR: My little brother. At the age of 15
12 got killed.

13 THE COURT: Sir, as a result of this experience do you
14 feel that you can remain fair and impartial?

15 POTENTIAL JUROR: No, I do not.

16 THE COURT: Okay. I will excuse you from the trial of
17 this case only. Thank you, sir, for your candor. You may
18 take your seat, sir.

19 POTENTIAL JUROR: Okay.

20 THE COURT: Is there any member of the panel who is a
21 member of or contributes to any group which has as its
22 primary concern either the -- any positions that are either
23 for or against gun ownership? If so, please stand at this
24 time.

25 (There was no response.)

1 THE COURT: Does any member of the panel know of any
2 reason whatsoever why he or she should not serve as a juror
3 on this case with particular emphasis being placed on your
4 ability to be fair and impartial to both the State and the
5 defense? If so, please stand at this time.

6 (There was no response.)

7 THE COURT: Is there any member of the panel who has
8 any moral, philosophical or religious opposition to the use
9 of guns? If so, please stand at this time.

10 (There was no response.)

11 THE COURT: Are there any additional questions from the
12 State?

13 MR. DURANT: No, ma'am.

14 THE COURT: From the defense?

15 MS. PROCTOR: Yes, Your Honor.

16 THE COURT: Tell me the number.

17 MS. PROCTOR: Three, four ---

18 THE COURT: Wait. Let me -- number three is overly
19 broad.

20 MS. PROCTOR: Four ---

21 THE COURT: And it also bears on the facts of this
22 case.

23 MS. PROCTOR: Four.

24 THE COURT: Four I have asked it as a modified. And
25 number five is cumulative to number four as well as number

1 six. They ask the same thing just a different way. I
2 combined the same question in one question.

3 MS. PROCTOR: Six and seven.

4 THE COURT: I just addressed six which I -- which is
5 cumulative to number four. And what I did was I combined
6 four, five, and six. I just structured it a different way.
7 I asked the same question.

8 And number seven is overly broad and I think it
9 is intrusive and does not bare upon any of the factors that
10 we seek to elicit pursuant to 14-7-1020.

11 I will note your exceptions for the record.

12 MS. PROCTOR: Thank you, Your Honor.

13 THE COURT: Anything further before we proceed with
14 jury selection, from the State?

15 MR. DURANT: No, ma'am.

16 THE COURT: From the defense?

17 MS. PROCTOR: No, ma'am.

18 THE COURT: Ladies and gentlemen, please listen
19 carefully. If your name is called, please come forward.

20 Who is going to demonstrate for me? Are you going to
21 do it? I thought you were ---

22 THE DEPUTY: I wasn't going to ---

23 THE COURT: Perfect. Johnny on the spot. Ladies and
24 gentlemen, if your name is called, please come forward as
25 the deputy just did.

1 Stand where he stood and turn back around facing the
2 jury panel until we either seat or excuse you as a juror.

3 For those who have to come from the inside of the
4 bench, please be courteous to your fellow jurors if they are
5 not selected and slide down so they don't have to climb over
6 you to return to their seat. We appreciate your
7 accommodation.

8 Again, please listen carefully until either we
9 either -- come stand as demonstrated and then either we will
10 either seat or excuse you as a juror.

11 And if you will give us a moment, we need to print some
12 random lists from our computer program and then we will be
13 able to proceed with that process. We appreciate your
14 patience.

15 MS. PROCTOR: Your Honor, five and five or ten?

16 THE COURT: Ten and five. I think.

17 MR. DURANT: Your Honor ---

18 THE COURT: Actually it is five and five. I apologize.
19 I was wrong. It is five and five.

20 THE CLERK: Ladies and gentlemen, when I call your
21 name, please come to the podium. Juror Number 8.

22 THE CLERK: What say you for the State?

23 MR. DURANT: Please present Mr. Atherton.

24 THE CLERK: What say you for the defendant?

25 MS. PROCTOR: Please seat the juror.

1 THE CLERK: Mr. Atherton, please have a seat in the
2 juror box.

3 Juror Number 268, Margaret Thomas. What say you for
4 the State?

5 MR. DURANT: Please present Ms. Thomas.

6 THE CLERK: What say you for the defendant?

7 MS. PROCTOR: Please excuse this juror.

8 THE CLERK: Ms. Thomas, please have a seat back in the
9 gallery.

10 Juror Number 253, Michael Singleton. What say you for
11 the State?

12 MR. DURANT: Please present Mr. Singleton.

13 THE CLERK: What say you for the defendant?

14 MS. PROCTOR: Please present this juror.

15 THE CLERK: Mr. Singleton, please have a seat in the
16 juror box.

17 THE CLERK: Juror Number 248, Michelle Simmons. What
18 say you for the State?

19 MR. DURANT: Please present Ms. Simmons.

20 THE CLERK: What say you for the defendant?

21 MS. PROCTOR: Please present this juror.

22 THE CLERK: Ms. Simmons, please have a seat in the
23 juror box.

24 Juror Number 88, Yardia Gadsden. What say you for the
25 State?

1 MR. DURANT: Please excuse Ms. Gadsden.

2 THE CLERK: Ms. Gadsden, please have a seat back in the
3 gallery.

4 Juror Number 271, Lynn Truluck. What say you for the
5 State?

6 MR. DURANT: Please present this juror.

7 THE CLERK: What say you for the defendant?

8 MS. PROCTOR: Please seat the juror.

9 THE CLERK: Ms. Truluck, please have a seat in the
10 juror box.

11 THE CLERK: Juror Number 207, Edward Penington. What
12 say you for the State?

13 MR. DURANT: Please present Mr. Penington.

14 THE CLERK: What say you for the defendant?

15 MS. PROCTOR: Court's indulgence.

16 THE COURT: Uh-huh.

17 MS. PROCTOR: Please excuse this juror.

18 THE CLERK: Please have a seat back in the gallery.

19 Juror Number 181, Joseph Mitchell. What say you for
20 the State?

21 MR. DURANT: Please present Mr. Mitchell.

22 THE CLERK: What say you for the defendant?

23 MS. PROCTOR: Please seat this juror.

24 THE CLERK: Mr. Mitchell, please, have a seat in the
25 jury box.

1 THE CLERK: Juror Number 10, Frederick Bailey. What
2 say you for the State?

3 MR. DURANT: Please excuse the juror.

4 THE CLERK: Mr. Bailey, please have a seat back in the
5 gallery.

6 Juror Number 273, Timothy Turek. What say you for the
7 State?

8 MR. DURANT: Please present Mr. Turek.

9 THE CLERK: What say you for the defendant?

10 MS. PROCTOR: Court's indulgence one moment, Your
11 Honor. Please excuse this juror.

12 THE CLERK: Mr. Turek, please have a seat back in the
13 gallery.

14 Three strikes for the defendant.

15 Juror Number 80, Fisher. What say you for the State?

16 MR. DURANT: Please present this juror.

17 THE CLERK: What say you for the defendant?

18 MS. PROCTOR: Your Honor, may we approach?

19 THE COURT: Uh-huh.

20 (WHEREUPON, bench conference was had.)

21 THE COURT: Proceed.

22 MS. PROCTOR: Court's indulgence.

23 Please excuse this juror.

24 THE CLERK: Mr. Fisher, please have a seat back in the
25 galley.

1 Juror Number 55, Michelle Collins. What say you for
2 the State?

3 MR. DURANT: Please present Ms. Collins.

4 THE CLERK: What say you for the defendant?

5 MS. PROCTOR: Please present Ms. Collins.

6 THE CLERK: Ms. Collins, please have a seat in the jury
7 box.

8 Juror Number 71, Antquenete Durant. I'm sorry, Juror
9 Number 71, Antquenete Durant. What say you for the State?

10 MR. DURANT: Please present Ms. Durant.

11 THE CLERK: What say you for the defendant?

12 MS. PROCTOR: Please present this juror.

13 THE CLERK: Ms. Durant, please have a seat in the jury
14 box.

15 Juror Number 7, Russel Arvidson. What say you for the
16 State?

17 MR. DURANT: Please present Mr. Arvidson.

18 THE CLERK: What say you for the defendant?

19 MS. PROCTOR: Please seat this juror.

20 THE CLERK: Mr. Arvidson, please have a seat in the
21 jury box.

22 Juror Number 258, Victoria Spearman.

23 MR. DURANT: What is the number, Madam Clerk?

24 THE CLERK: Two-fifty-eight. What say you for the
25 State?

1 MR. DURANT: Please excuse the juror.

2 THE CLERK: Ms. Spearman, please have a seat back in
3 the gallery.

4 Three strikes for the State.

5 Juror Number 291, Kelly White. What say you for the
6 State?

7 MR. DURANT: Please present Ms. White.

8 THE CLERK: What say you for the defendant?

9 MS. PROCTOR: Please seat the juror.

10 THE CLERK: Ms. White, please have a seat in the jury
11 box.

12 Juror Number 167, Vernoica Maskwell. What say you for
13 the State?

14 MR. DURANT: Please present Ms. Maskwell.

15 THE CLERK: What say you for the defendant?

16 MS. PROCTOR: Please seat the juror.

17 THE CLERK: Ms. Maskwell, please have a seat in the
18 jury box.

19 Juror Number 283, Isaac Washington. What say you for
20 the State?

21 MR. DURANT: Please present Mr. Washington.

22 THE CLERK: What say you for the defendant?

23 MS. PROCTOR: Please excuse the juror.

24 THE CLERK: Mr. Washington, please have a seat back in
25 the gallery.

1 The defense has exhausted its strikes.

2 Juror Number 90, Nicholas Galizia. What say you for
3 the State?

4 MR. DURANT: Please present this juror.

5 THE CLERK: Any challenges from the defendant?

6 MS. PROCTOR: No, Your - no.

7 THE CLERK: Mr. Galizia, please have a seat in the jury
8 box.

9 Juror Number 190, Kathryn Murray. What say you for the
10 State?

11 MR. DURANT: Please present this juror.

12 THE CLERK: Any challenges from the defendant?

13 MS. PROCTOR: No.

14 THE CLERK: Ms. Murray, please have a seat in the jury
15 box.

16 THE COURT: We will have two alternates. Strikes are
17 one and two.

18 THE CLERK: Now striking for the first alternate.

19 Juror Number 84, Jamicka French. What say you for the
20 State?

21 MR. DURANT: Please present Ms. French.

22 THE CLERK: What say you for the defendant?

23 MS. PROCTOR: Please seat the juror.

24 THE CLERK: Ms. French, please have a seat in the jury
25 box. You have been selected as an alternate.

1 Now striking for a second alternate. Juror Number 245,
2 Shemeh Shirbabadi.

3 THE CLERK: What say you for the State?

4 MR. DURANT: Please present the juror.

5 THE CLERK: What say you for the defendant?

6 MS. PROCTOR: Please seat the juror.

7 THE CLERK: Mr. Shirbabadi, please have a seat in the
8 jury box.

9 THE COURT: Are there any motions regarding the
10 selection of the jury, from the State?

11 MR. DURANT: No, ma'am.

12 THE COURT: From the defense?

13 MS. PROCTOR: No, Your Honor.

14 (Pause for discussion between court and clerk.)

15 THE COURT: Ladies and gentlemen, we appreciate your
16 patience. I have good news. You can be released for the
17 remainder of the day. I just need you to call the jury
18 information line after six o'clock this evening for further
19 instructions. We appreciate your patience. Have a
20 wonderful day. You are excused with the court's thanks.

21 (WHEREUPON, July 15, 2013, at 1:03 p.m., rest of juror
22 pool excused.)

23 THE COURT: Ladies and gentlemen, please stand and
24 raise your rights to be sworn by the clerk.)

25 (WHEREUPON, the jurors were duly sworn.)

1 THE COURT: Ladies and gentlemen, if you could just
2 indulge me -- take your seats. If you would just indulge us
3 for a few moments.

4 I need to briefly discuss some matters with the
5 attorneys so I can let you know how we will be proceeding
6 for the rest of the day.

7 We may have some matters of law that we need to take up
8 that may affect when we start after lunch. Because we are
9 going to break for lunch. I know y'all have had a very long
10 morning and I am certain you are hungry and want to eat some
11 lunch.

12 But if you can bear with me about five minutes I will
13 be able to give you a better indication of what we are going
14 to be doing for the remainder of the afternoon.

15 If you would go with the bailiffs for me. Please do
16 not discuss the case. Please do not speculate about what
17 you think it may or could be about. If you would go with
18 the bailiffs.

19 (WHEREUPON, jurors exited the courtroom July 15, 2013,
20 at 1:04 p.m.)

21 THE COURT: Okay. I would assume that we can agree to
22 sequester witnesses; is that correct?

23 MS. PROCTOR: I'm sorry, Judge. Yes.

24 THE COURT: From the State?

25 MR. DURANT: I have no objection, Your Honor.

1 THE COURT: And I assume it is your motions, so there's
2 no objections?

3 MS. PROCTOR: No object at all.

4 THE COURT: All right. Now what -- are there any prior
5 convictions the State would be seeking to use to impeach the
6 defendant's credibility?

7 MR. DURANT: I don't think anything that doesn't follow
8 within the rules.

9 THE COURT: I don't think so either. So that would be
10 a moot issue as well, correct?

11 MS. PROCTOR: Yes.

12 THE COURT: And note -- the ID we are going -- I'm
13 sorry, I can't talk today, y'all. I am sorry. We need to
14 have a Neil versus Biggers hearing, correct?

15 MS. PROCTOR: Yes, Your Honor.

16 MR. DURANT: It would be very brief, Your Honor.

17 THE COURT: How many witnesses does the State have?

18 MR. DURANT: Two. Probably talking about 15 minutes
19 total.

20 THE COURT: Okay. And how long will the defendant's
21 portion of that hearing be?

22 MS. PROCTOR: I think 15, 20 minutes probably.

23 THE COURT: Total?

24 MS. PROCTOR: Total. I think total probably total 20
25 minutes. We have two witnesses.

1 THE COURT: Do you plan on calling witnesses?

2 MS. PROCTOR: No, Your Honor.

3 THE COURT: Okay. So we need to have those two
4 officers. Now is there going to be any testimony concerning
5 two subsequent shootings on Folly Road and Highway 61?

6 MR. DURANT: We would hope so, Your Honor.

7 MS. PROCTOR: And we would hope not, Your Honor.
8 And that motion might take a while.

9 THE COURT: Yeah, we are not -- I'm not going to hear
10 that before we begin argument. What I need you all --
11 because I need to make a decision on that within the context
12 of the case. And so what I need for you all to do -- what
13 witnesses would that come up within, Mr. DuRant?

14 MR. DURANT: It is kind of -- the third one is no
15 problem. The second one is a bigger problem.

16 THE COURT: When you say the third what do you mean?

17 MR. DURANT: There was -- there was two -- three
18 different shootings that night.

19 THE COURT: Okay.

20 MR. DURANT: Three different shootings. There was one
21 at the Kangaroo. As that car was leaving the Kangaroo
22 another car chased it and shot at it killing ---

23 THE COURT: Oh, so you are saying ---

24 MR. DURANT: --- one of the occupants.

25 THE COURT: --- this third shooting was not an isolated

1 incident; ---

2 MR. DURANT: And then the third ---

3 THE COURT: --- it was a continuation from one ---

4 MR. DURANT: That second shooting was definitely a
5 continuation. And then the third should was actually a
6 continuation too because another car that was at the same
7 Kangaroo got shot up on 61.

8 THE COURT: All right. Let me ask a question. How
9 many of your witnesses does this testimony -- I mean in
10 other words who would you be eliciting this testimony from?
11 What ---

12 MR. DURANT: I would be eliciting it from the victim,
13 from the medical examiner, from ---

14 THE COURT: Why the medical examiner?

15 MS. PROCTOR: Wait, are you talking about for the
16 motion or for the trial?

17 THE COURT: I am going to create a proffer, so it would
18 be for the trial. We would take it up in camera. But I
19 need to know how many witnesses there -- or how many
20 witnesses this implicates so I can know how much I -- time I
21 need to allocate for it. Why would the medical examiner
22 have anything?

23 MS. PROCTOR: The victim is dead.

24 MR. DURANT: Your Honor, can I hand this up to ---

25 MS. PROCTOR: It is very ---

1 MR. DURANT: See, that is - that is the rub, Your Honor.

2 (WHEREUPON, document presented to the court.)

3 MR. DURANT: And please I apologize for the informal
4 aspect of that. But ---

5 THE COURT: Actually Shanda says I need glasses, so the
6 fact that she used big print is very much appreciated.

7 MR. DURANT: I use -- I use that for my benefit, Your
8 Honor.

9 THE COURT: Yeah, that will be our secret. You can't
10 tell I actually admitted that on the record.

11 MS. PROCTOR: And, Your Honor, there also -- not
12 butting in, but there is a video of actually the first
13 shooting that we would ask that you view.

14 THE COURT: Was that the Kangaroo?

15 MR. DURANT: Yeah.

16 MS. PROCTOR: Just before you make your decision.

17 THE COURT: Yeah, what we need to do though is the
18 problem that I have with motions in limine is that I am told
19 one thing and people testify to one thing and then we get to
20 trial and they testify to something else and then people
21 make strategic changes as the testimony develops and then we
22 have a whole different set of circumstances and I find
23 myself in a position of sometimes wanting to rule
24 consistently or differently than I ruled previously.

25 So I find the better way to do it would be that once we

1 approach any of these issues for Mr. DuRant, because I would
2 assume he would be the one eliciting testimony, would say
3 Your Honor we have a matter of law. I would then take up
4 the testimony both direct and cross-examination and then
5 rule on it. And then you have a proffer. And then ----

6 MS. PROCTOR: I don't ---

7 THE COURT: --- if I exclude it.

8 MS. PROCTOR: I don't mean to disagree with Your Honor.
9 But this case a minute ago with the last plea you said --
10 you made a comment Bruce and I laughed about gunshot at the
11 Okay ---

12 THE COURT: Shootout at the Okay Corral?

13 MS. PROCTOR: Your Honor, this is ---

14 THE COURT: There's a lot of those in Charleston.

15 MS. PROCTOR: This is the big shootout at the Okay
16 Corral. And it is going to affect every single witness
17 because the shooting, the car that was at -- I mean this is
18 really John's motion but the car that was shot at ends up
19 being shot at again and then so the first witness is going
20 to have ---

21 THE COURT: Well, then we are just going to have to
22 deal with it in that context. I am not going to rule on it
23 prior to trial because I am not going to be in the
24 unenviable position of needing to change my ruling because I
25 have heard something different than it was presented to me.

1 I just have had that experience too many times. The
2 witnesses say one thing in camera and then they say
3 something else in trial and then I am in a whole -- and then
4 y'all tell me one thing in camera and then you argue it
5 totally differently before the jury. I ---

6 MS. PROCTOR: Well, then we would just ask Bruce not
7 mention that the victim is dead, that there are two other
8 victims. I mean this is going to ---

9 MR. DURANT: See that's ---

10 MS. PROCTOR: See that's the problem ---

11 THE COURT: Well, it is -- it is indicted and the
12 indictment is a noticed document. And it is no surprise to
13 you that these people are dead. So ---

14 MS. PROCTOR: No, no, no. He didn't shoot them. That
15 is what is amazing. He died after somebody else shot him
16 two minutes later. This ---

17 THE COURT: In these indictments?

18 MS. PROCTOR: Yes, ma'am.

19 MR. DURANT: See, that is ---

20 MS. PROCTOR: Yes, ma'am.

21 MR. DURANT: --- that is the rub, Your Honor. We had a
22 shooting at the Kangaroo, okay.

23 THE COURT: Who died at the Kangaroo?

24 MR. DURANT: Nobody died at the Kangaroo.

25 THE COURT: Who was shot -- who shot at who at the

1 Kangaroo?

2 MR. DURANT: There was -- there was -- there's the
3 three people that are listed as victims in that ---

4 THE COURT: Were shot at at the Kangaroo?

5 MR. DURANT: They were shot at at the Kangaroo.
6 They ---

7 THE COURT: Who shot at them at the Kangaroo?

8 MR. DURANT: The defendant was identified as the person
9 who shot at them at the Kangaroo.

10 THE COURT: And then what happened ---

11 MR. DURANT: One of them was hit, the driver ---

12 THE COURT: Who ---

13 MR. DURANT: Antwan Wilson.

14 THE COURT: What is his name?

15 MR. DURANT: Antwan Wilson.

16 THE COURT: Okay.

17 MR. DURANT: He was the driver. The other two were not
18 hit there.

19 THE COURT: Okay.

20 MR. DURANT: As they left the Kangaroo they were
21 driving and went - turn left on Folly and were going to the
22 hospital for the guy to get treated, a gold Lincoln pickup
23 truck followed them and shot up their car.

24 THE COURT: Okay.

25 MR. DURANT: During this the -- Antwan Wilson who had

1 already been shot in the leg gets shot in the back of the
2 head.

3 THE COURT: And dies?

4 MR. DURANT: And dies.

5 THE COURT: Okay.

6 MR. DURANT: The car spins out. He hits a telephone
7 pole. The other two occupants of the car, Bryant and
8 Wittrell are also injured by that shooting.

9 THE COURT: Okay.

10 MR. DURANT: One's shot in the shoulder. One receives
11 a head wound.

12 THE COURT: Okay.

13 MR. DURANT: That happens right in front of another car
14 that was also at the Kangaroo. That car continues to go on
15 by. And then later on Highway 61 this same gold Lincoln
16 truck shoots that car up and it ends up disabled at the
17 Wappoo and Highway 61.

18 THE COURT: What was that defendant in this case
19 purportedly driving or riding in?

20 MR. DURANT: We don't -- that's the whole point, Your
21 Honor. We -- it is not our position that this defendant was
22 in the truck.

23 But I have to be able to explain to the jury how the
24 victim ended up dying and why this defendant is just being
25 charged with attempted murder and not murder. Because

1 otherwise all they are going to hear is that he ---

2 THE COURT: Oh, and then you have no person showing up
3 to say I was injured?

4 MR. DURANT: Right. And without that all you have got
5 is is ---

6 THE COURT: How are you prejudiced by that?

7 MS. PROCTOR: It is something ---

8 THE COURT: I would think -- I would think you would
9 want it all in because then you can say somebody else did
10 this, that your client didn't actually do it.

11 MS. PROCTOR: Well, unfortunately -- it is not my
12 argument.

13 MR. DURANT: Your Honor, we don't ---

14 THE COURT: Yeah, I am trying to discern what prejudice
15 there is. And it is a big part of res gestae.

16 MR. KOZELSKI: We essentially believe that this is an
17 attempt at a backdoor murder conviction. Because Domoneik
18 was originally charged with the murder ---

19 THE COURT: How could it be a backdoor murder
20 conviction when he is charged with attempted murder and
21 death is not an element of attempted murder and Mr. DuRant
22 just said I don't intend to say he, your client, killed him?

23 MR. KOZELSKI: Well, he was originally charged with the
24 murder.

25 THE COURT: The jury doesn't know that.

1 MR. KOZELSKI: It was ---

2 THE COURT: And I far as ---

3 MR. KOZELSKI: It was dismissed ---

4 THE COURT: --- I am concerned it didn't happen.

5 MR. KOZELSKI: Because there wasn't enough evidence.

6 And what we want to keep out is evidence that the same
7 victim as they are saying he attempted to shoot was later
8 found dead down the road.

9 THE COURT: They are going to say somebody else did it.
10 So how is your client prejudiced?

11 MS. PROCTOR: I don't think he is going to say somebody
12 else did it.

13 THE COURT: What are you going to say?

14 MR. KOZELSKI: They are not ---

15 MR. DURANT: And that's the whole ---

16 THE COURT: And that's a problem with a motion in
17 limine. I don't know what you are going to say. And I am
18 not ruling on what I don't know is going to develop.

19 MR. DURANT: And that is the whole rub exactly what --
20 what John says, Your Honor, is that he was originally
21 charged with murder because they didn't know what killed him
22 until they got the information back from the medical
23 examiner and determined that he was shot by two separate
24 weapons and it was the one that he was shot with on Folly
25 Road that actually killed him which was a 7.62 by 39

1 millimeter.

2 THE COURT: Are you alleging that that is -- you are
3 not alleging that that is the bullet from this defendant?

4 MR. DURANT: No, no. This -- we are alleging that this
5 defendant shot him with a nine millimeter bullet at the
6 Kangaroo. And that is borne out by the fact that a nine
7 millimeter bullet was removed from the victim's leg. A nine
8 millimeter bullet was found in the driver's side floorboard
9 of the car. And two nine millimeter projectiles were found
10 in the Kangaroo parking lot, all of which were fired by the
11 same weapon.

12 So it is pretty conclusive that that weapon and
13 that ---

14 THE COURT: But you don't have at any time intend to
15 say that this defendant killed ---

16 MR. DURANT: No. And I mean ---

17 THE COURT: Was the cause ---

18 MR. DURANT: --- as a matter of fact ---

19 THE COURT: --- of the death of this person ---

20 MR. DURANT: As a matter of fact I intend to argue the
21 contrary, Your Honor.

22 THE COURT: That he did not ---

23 MR. DURANT: That he did not kill him and that is --
24 that is why he is charged with attempted murder and not
25 murder.

1 THE COURT: So then ---

2 MR. DURANT: Because if you kind of take that ---

3 THE COURT: How is your client prejudiced?

4 MR. KOZELSKI: Well, if you are talking about res
5 gestae you are talking about whether or not that bringing in
6 the fact that this victim was murdered down the road is
7 necessary in order for them to prove ---

8 THE COURT: Yeah, because they don't have a victim to
9 come in and say that your client shot him. So it is
10 relevant.

11 MR. KOZELSKI: We can stipulate that the victim has
12 passed away ---

13 THE COURT: He is not required to do that.

14 MR. KOZELSKI: He is not required to do that. But --
15 but putting in the evidence of the murder that ---

16 THE COURT: I don't ---

17 MR. KOZELSKI: --- the same ---

18 THE COURT: I don't ---

19 MR. KOZELSKI: --- victim that he is attempting to
20 shoot ---

21 THE COURT: I really don't ---

22 MR. KOZELSKI: --- is murdered is going ---

23 THE COURT: --- to what extent ---

24 MR. KOZELSKI: --- to prejudice our client.

25 THE COURT: I don't really know to what extent

1 you would want to get into it. But it exculpates your
2 client. And I am at a real loss as to how it is prejudicial
3 to him at all.

4 MR. KOZELSKI: Well, I think it is the same victim that
5 he is accused of attempting to murder is later murdered down
6 the street.

7 THE COURT: Yeah, not by him.

8 MR. KOZELSKI: Well, they don't know that.

9 THE COURT: He is going to tell them that.

10 MR. KOZELSKI: There is certainly no evidence of that:
11 But ---

12 THE COURT: Unless he argues that your client did it.
13 Unless they are totally ---

14 MR. KOZELSKI: I think it is an inference that can be
15 drawn by the jury.

16 THE COURT: I think that is an illogical and circular
17 logic. I don't follow. It doesn't make sense to me. It
18 just seems exculpatory, not inculpatory to your client. The
19 State has the burden of proof and they are allowed to tell
20 the whole story. But I don't know. I have to hear it in
21 its context.

22 MR. KOZELSKI: Your Honor, I think this would be best
23 if you were actually able to watch the video. What they are
24 claiming that our defendant did, the attempted murder, is
25 captured on video. So evidence down the street doesn't need

1 to come in. It is not necessary for them ---

2 THE COURT: I don't know. And I want to hear it ---

3 MR. DURANT: If I may respond to that, Your Honor. The
4 reason that it is a problem is they and what they completely
5 ignore is that they are claiming self-defense, okay.

6 And what they are also not telling Your Honor is that
7 there was a gun found in the victim's car with five spent
8 shell casing. So what they want the jury to hear ---

9 THE COURT: What ---

10 MR. DURANT: --- is that there was just a shooting at
11 the Kangaroo and ah, ha, look what was in the victim's car,
12 they must -- he must have been acting in self-defense.

13 Which totally ignores the fact that there was a subsequent
14 shooting which would account for that -- that ---

15 THE COURT: What kind of gun was it?

16 MR. DURANT: It was a revolver, a .38 caliber Smith &
17 Wesson revolver. So it basically gives them -- what they
18 want is their cake and eat it too. They want to get that
19 evidence in concerning the gun.

20 And I would also note that all of the occupants of the
21 victim's vehicle have -- would have positive gunshot residue
22 tests. Without this second shooting in, all they have got
23 to do is say: Look, ladies and gentlemen, there was a
24 shooting at the Kangaroo; all those guys had GSR on them;
25 they had a gun in their car with five spent shell casing;

1 the only inference you can draw is that they shot at the
2 defendant at the Kangaroo.

3 THE COURT: I am standing by my previous instructions.
4 I am going to hear it in camera. I am not arguing this
5 motion now because I am not going to rule on it.

6 MS. PROCTOR: Okay.

7 THE COURT: So this is an exercise in futility. We are
8 wasting valuable time.

9 MS. PROCTOR: That is fine, Your Honor.

10 THE COURT: So the next thing that we need is there is
11 something about testimony of a Crip (ph) walk! Does the
12 State plan to produce any evidence of that type?

13 MR. DURANT: I have instructed Detective Boyd not to
14 refer to anything as a Crip Walk, Your Honor.

15 THE COURT: So then it is moot, correct?

16 MR. DURANT: I believe so.

17 THE COURT: All right. Let's see. Is it safe to say
18 we can have the jury come back at a quarter of 3:00 and we
19 start back at 2:15 or 2:30? ---

20 MS. PROCTOR: I -- I don't think ---

21 THE COURT: Do you need more time than that?

22 MS. PROCTOR: I would say the jury come back at 3:00.
23 I don't think we ---

24 THE COURT: And I start at 2:30?

25 MS. PROCTOR: With us at 2:30 and then the jury come

1 back. Do you think we can do it all ---

2 THE COURT: Well, you get 15 minutes. How much -- you
3 have got to tell me ---

4 MS. PROCTOR: Well, I thought we would want to ---

5 THE COURT: Oh, no. I have to hear their testimony.
6 I'm not hearing -- I am not going to hear anything about
7 subsequent or -- shootings without hearing it in this
8 context. I am not having two separate trials. Because
9 that's what we would end up doing.

10 MS. PROCTOR: Your Honor, I understand. But then it is
11 too late if Bruce in his opening goes ahead and talks about
12 it then ---

13 THE COURT: He can't talk about it because anything
14 that I told you is off-limits in limine then you don't talk
15 about it until the court has ruled on it.

16 And I don't see any prejudice to anybody with that
17 either. Because if I let it in, then you can talk about it.
18 And if I don't let it in, then there is not a bell that
19 needs to be in unring.

20 Because I assume the other victims are going to come in
21 and testify, identify your client. Are they going to
22 identify ---

23 MR. DURANT: No, we are going to have one victim -- we
24 are going to have one victim testify as to being shot at.

25 THE COURT: But he is not going to be able to

1 identify ---

2 MR. DURANT: He is not going to be able to ---

3 THE COURT: He is going to identify a car?

4 MR. DURANT: --- identify the defendant. We have
5 another witness. They have another witness that was in the
6 second car that got shot up that also saw the victim's car
7 get shot up that would be testifying concerning that.

8 And -- and also like I said, it is going to -- it is so
9 inextricably tied to the forensic evidence in this case such
10 as the bullets that were removed from the victim at the
11 autopsy, the shell casings, things of that nature; the gun
12 that was found in the victim's car.

13 I mean if they want to withdraw their self-defense
14 claims and not mention the gun in the car and not mention
15 the gunshot residue, then I don't see any problem with
16 trying it like they want to try it. But like I said, they
17 want to get in the good stuff and leave out the bad stuff.

18 MR. KOZELSKI: Your Honor, I ---

19 THE COURT: Y'all keep arguing something I've told you
20 I'm not taking argument on and I'm not going to rule on. So
21 again we are back to wasting valuable court time. And I am
22 not going to make a ruling until I have heard it all. So us
23 going back and forth is just eating up time.

24 So what we are going to do is break for lunch until
25 2:30. We will come back at 2:30 at which time I will hear

1 Biggers, Biggers motions which we anticipate will take 10 to
2 20 minutes. After which we will then begin trial.

3 Of course anything that the court has not ruled on
4 regarding the admissibility of certain evidence should not
5 be gone into by either side in opening arguments.

6 Is there any exception to us breaking for lunch as I
7 have suggested and resuming with the Biggers hearing; from
8 the State?

9 MR. DURANT: No, ma'am.

10 THE COURT: From the defense?

11 MS. PROCTOR: No, ma'am.

12 THE COURT: Please bring in the jury. And bring in Ms.
13 Talen. She is Number 55. She is the foreperson.

14 THE COURT: Make sure the alternates are sitting in the
15 appropriate seats for me, please. That would be Number 84
16 and 245 need to be seated in these last two seats. And then
17 the foreperson should be seated in the first seat which is
18 Number 55, Ms. Collins. But we'll do that after. It is not
19 that important.

20 (WHEREUPON, jury entered the courtroom July 15, 2013,
21 1:04 p.m.)

22 THE COURT: Ma'am, you can take your seat.

23 Ladies and gentlemen, we are going to break for lunch
24 until three o'clock. We have matters of law that we need to
25 then come back and hear some testimony so that we can deal

1 with those matters prior to resuming trial.

2 It would not make sense for y'all to be sitting in the
3 jury room while we are doing that. So I will allow you to
4 make better use of that time having a little longer lunch
5 break. We will resume at 3:00.

6 During the break please do not watch, read, or listen
7 to any media accounts about the case if there are any.
8 Don't do any independent research regarding any issue or
9 matter in this case on the Internet. Please do not have any
10 contact with anyone in or about the courthouse that does not
11 have a juror sticker on. Again, I would not want an
12 innocent comment to be misinterpreted.

13 You will come directly to your jury room and at the
14 time at 3:00 we anticipate beginning with the court's
15 opening instructions, opening argument, and then we will
16 probably get a couple maybe one or two witnesses in this
17 evening before we break at 5:00.

18 And I wanted you all to know for planning purposes I
19 try to break as close to 5:00 as possible recognizing that
20 you all have other obligations in the evening.

21 We appreciate your patience. Have a good lunch. We
22 will see you at three o'clock. If you would go with the
23 bailiffs, please.

24 (WHEREUPON, jury exited the courtroom.)

25 THE COURT: We will break until 2:30. If y'all have

1 any exhibits that need to be pre-marked, please let the
2 court reporter know because that helps her tremendously and
3 helps us move along a little faster. See y'all at 2:30.

4 (WHEREUPON, July 15, 2010, 1:05 p.m., lunch break was
5 taken.)

6 (WHEREUPON, proceedings resume in camera, July 15,
7 2013, at 2:36 p.m.)

8 THE COURT: Please proceed with calling your witness.

9 MR. DURANT: The State would call Kip Cooke.

10 (WHEREUPON, the witness was duly sworn.)

11 THE CLERK: State your full name and spell your last
12 name.

13 MR. COOKE: My name is Kip Cooke. Last name is
14 C-O-O-K-E.

15 THE COURT: You may proceed.

16 MR. DURANT: Thank you, Your Honor.

17 THE COURT: You are welcome.

18 (SERGEANT KIP COOKE, having
19 first been duly sworn, testified as follows:)

20 **DIRECT EXAMINATION (IC) - MR. DURANT OF SERGEANT KIP COOKE:**

21 Q. Would you please tell us where you are employed.

22 A. With the Charleston County Sheriff's Office.

23 Q. And how long have you been with the Charleston County
24 Sheriff's Office?

25 A. Since 2005.

1 Q. And what do you do for the Sheriff's Office currently?

2 A. I am currently the accreditations sergeant.

3 Q. And is that what you were doing back on March the 30th
4 of 2011?

5 A. No, sir.

6 Q. What were you doing at that time?

7 A. I was a detective in the criminal investigations
8 division.

9 Q. In that capacity did you have an occasion to meet with
10 a witness in this case named Equett Robinson?

11 A. Yes, sir.

12 Q. On March the 30th, of 2011?

13 A. Yes, sir.

14 Q. Where did you meet with her at?

15 A. At the criminal investigations division at the
16 Sheriff's Office.

17 Q. That is located over off of Rivers Avenue; is that
18 correct?

19 A. Pinehaven, yes, sir.

20 Q. And for what purpose were you meeting with her that
21 day?

22 A. I was asked to show her a photographic lineup.

23 Q. Okay. How many lineups did you have with you that day
24 to show?

25 A. I initially showed her one.

1 Q. And you then after that you showed her a second one, I
2 believe; is that correct?

3 A. Yes, sir.

4 Q. And who asked you to show these lineups to Ms.
5 Robinson?

6 A. Detective Boyd.

7 Q. He is the case agent?

8 A. Yes, sir.

9 Q. Did you have any other involvement in this case?

10 A. No, sir.

11 Q. Preparatory to showing the photographic lineup to Ms.
12 Robinson was there some paperwork that you used to go over
13 things with her?

14 A. Yes, sir, we have a photographic lineup advisement form
15 that we read to anyone that we are going to show a
16 photographic lineup to prior to showing them any photograph.

17 Q. Okay. I hand you what has previously been marked as
18 State's Exhibits Number 67 and 68 for identification. I ask
19 if you recognize those documents.

20 A. Yes, sir.

21 Q. What are those?

22 A. These are photographic lineups that I showed to Ms.
23 Robinson on March 30th, 2011.

24 Q. Okay. Two separate photographic lineups; is that
25 correct?

1 A. Yes, sir.

2 Q. And let's start with State's Exhibit Number 67. And
3 how do you know that those are the ones you sent -- you
4 showed to her?

5 A. Because I signed each one of them. So did she.

6 Q. And could you demonstrate to the judge what you did
7 with Ms. Robinson prior to showing her any of the
8 photographs in either of those photographic documents.

9 A. Prior to showing it obviously I filled out the portion
10 at the time with the OCA which I would have gotten from
11 Detective Boyd. The date, the time, the location that it
12 was -- that I was showing -- going to be showing the lineup
13 up to her at. Fill in the investigating deputy's name and
14 Ms. Robinson's name and her date of birth.

15 After that portion is done there are seven statements
16 here that we read -- or I read to Ms. Robinson. And after
17 reading them I ask if she understands and I would make her
18 initial beside each one showing that she understood.

19 Q. Okay. And did she do that in this case?

20 A. Yes, sir.

21 Q. And in what is State's Exhibit Number 67 what time did
22 you go over the instructions with Ms. Robinson regarding
23 that particular exhibit?

24 A. Fifteen forty-two.

25 Q. And whose initials appear before instructions one

1 through seven on that form?

2 A. Ms. Equett Robinson.

3 Q. And what did you do after going over those instructions
4 with Ms. Robinson and having her initial them?

5 A. Showed her a series of the six photographs.

6 Q. Okay. And was she able to make an identification out
7 of that first group of photographs you showed to her?

8 A. No, sir, she was not.

9 Q. And what did she write down on the comment section?

10 A. I don't see the guy that did the shooting.

11 Q. Okay. Now I notice that those photographic lineups
12 have some identifying information -- the photos have some
13 identifying information at the top of them. Was she allowed
14 to see any identifying information?

15 A. No, sir. These come from the detention center and we
16 fold the portion with any identifying information over so
17 that only the photograph is visible.

18 Q. Okay. Moving on to State's Exhibit Number 68 did you
19 do the -- go through the same procedure with that -- her on
20 that one?

21 A. Yes, sir.

22 Q. And what time did you show her that particular -- or go
23 over the instructions with her on that particular lineup?

24 A. Sixteen thirty-two.

25 Q. That would be 4:32 in the afternoon?

1 A. Yes, sir.

2 Q. And about 50 minutes after she was shown the first
3 lineup; is that correct?

4 A. Yes, sir.

5 Q. And whose initials appear on the instructions as you
6 gave them to her that day?

7 A. Ms. Robinson's.

8 Q. Did she indicate she understood the instructions?

9 A. Yes, sir.

10 Q. And what happened after you went over the instructions
11 with her and she indicated she understood them?

12 A. I showed her a series of six photographs ---

13 Q. Okay.

14 A. --- just like before.

15 Q. And at this time was she able to make an
16 identification?

17 A. Yes, sir, she was.

18 Q. And there's -- notice that there were six photographs,
19 separate photographs. Were those given to her in sequential
20 order?

21 A. Yes, sir, one at a time after the other.

22 Q. Once again was the identifying -- was she allowed to
23 see the identifying information at the top of the
24 photographs?

25 A. No, sir. It was folded.

1 Q. And was she able to make an identification?

2 A. Yes, sir.

3 Q. And which photograph did she pick out?

4 A. Domoneik Washington.

5 Q. And what did you have her do when she identified
6 Domoneik Washington?

7 A. I had her circle the photograph, initial it and put the
8 date and time beside that.

9 Q. Did you suggest to her in any way by words or conduct
10 who she should pick out in either of those two lineups?

11 A. No, sir.

12 Q. Did you even know who the targets were in either of
13 those two lineups?

14 A. No, sir.

15 Q. And would you describe her level of certainty at the
16 time that she picked out Mr. Washington.

17 A. She looked through all the photographs. Which within a
18 few seconds she said that's him.

19 Q. Okay. And did she exhibit any uncertainty to you at
20 all?

21 A. No, sir.

22 Q. And what did she write on the comment section of the --
23 of the identification at that point?

24 A. This is the guy I saw with the gun; he was shooting at
25 the guy driving the gold Impala.

1 Q. Okay.

2 MR. DURANT: Your Honor, State's 67 and 68.

3 THE COURT: Any exception? He is moving to admit the
4 documents.

5 MS. PROCTOR: Oh, I didn't know he was submitting them,
6 no ---

7 MR. DURANT: I am not really admitting them in to -- I
8 am just admitting them for purposes of this hearing.

9 MS. PROCTOR: Right.

10 MR. DURANT: I am not actually admitting them into
11 evidence right now.

12 THE COURT: Well, that goes without saying. We are
13 having an in camera hearing.

14 MS. PROCTOR: Right.

15 THE COURT: That is the only purpose they could be
16 admitted for.

17 MS. PROCTOR: Yes, no problem.

18 THE COURT: Is there any exception?

19 MS. PROCTOR: No, Your Honor.

20 THE COURT: Be marked and admitted for purposes of this
21 hearing, State's 67 and 68. And actually probably what we
22 need to do, Mr. DuRant, is -- do you have -- are these your
23 originals or do you have other copies?

24 MR. DURANT: Those are the originals, Your Honor. I do
25 have copies.

1 THE COURT: You probably need to have the copies marked
2 as Court's exhibits for purposes of this hearing and then
3 maintain your originals for purposes of the trial if -- if
4 the court deems they are admissible.

5 MR. DURANT: Okay.

6 THE COURT: Any further questions for the witness, from
7 the State?

8 MR. DURANT: No, Your Honor.

9 THE COURT: Be marked as court's exhibits. Give them
10 to the court reporter first.

11 MS. PROCTOR: Your Honor, may I look at the originals?

12 THE COURT: You can and then I need to give them back
13 to ---

14 MS. PROCTOR: Yes.

15 THE COURT: And then give those to the court reporter
16 to mark as exhibits.

17 (WHEREUPON, Court's Exhibit 1, lineup report, 3/30/11
18 at 15:42, was marked for identification.)

19 (WHEREUPON, Court's Exhibit 2, lineup report, 3/30/11
20 at 16:32, was marked for identification.)

21 THE COURT: You may proceed when you are ready.

22 MS. PROCTOR: Thank you.

23 THE COURT: You are welcome.

24 **CROSS-EXAMINATION (IC) - MS. PROCTOR OF SERGEANT KIP COOKE:**

25 Q. Is it detective, officer?

1 A. Sergeant.

2 Q. Sergeant. Sergeant Cooke. When you were told that --
3 somebody -- to do a lineup did you know at the time yourself
4 who the suspect was?

5 A. No, ma'am.

6 Q. And how -- what description were you given; did
7 somebody give you the pictures, these pictures; or did you
8 pick them out yourself?

9 A. The pictures were given to me. I had no part in
10 constructing it.

11 Q. And so because you said you showed two lineups. There
12 was first a set of six pictures, correct?

13 A. Yes, ma'am.

14 Q. And you showed those to Ms. Robinson and when you said
15 that she saw them individually did you ever lay them all six
16 out at one time or did you just hand her one at a time?

17 A. One at a time.

18 Q. And did she ever take the pictures and lay them out, or
19 the minute she saw somebody she would say yes or no?

20 A. She looked through them one at a time. In the second
21 lineup when she saw him she said that is him. And I made
22 sure that she went through all of them.

23 Q. And in the lineup did you know that whether or not she
24 said the person in these pictures would have a beard or not,
25 or you knew absolutely nothing about the description?

1 A. I did not. No, ma'am.

2 Q. And you said in the first group of pictures she picked
3 nobody out, correct?

4 A. Yes, ma'am.

5 Q. And in the second part -- in the second part she picked
6 somebody out?

7 A. Yes, ma'am.

8 Q. Did you ever do a report in this case or were you --
9 was your duty only to just show the photo lineup?

10 A. Just show the lineup.

11 Q. And do you know about how long -- because I notice I
12 think you gave one at 3:00 and maybe one at 4:30 or 5:00 -
13 how long each one took?

14 A. Just a few minutes each. I don't know the exact
15 amount.

16 Q. Were you -- do you know if Ms. Robinson was ever shown
17 a video of the crime scene before she picked out these
18 pictures?

19 A. I don't know, ma'am.

20 Q. But would -- you were with her. You never showed her
21 any video?

22 A. I did not. No, ma'am.

23 Q. And the only statement that you took from Ms. Robinson
24 was what she signed on the form ---

25 A. No, ma'am.

1 Q. --- when she -- that form that she initialed, correct,
2 and then she put I recognize this person, is that the
3 only -- you did not take a written statement from her?

4 A. No, yes, ma'am, we did -- after that I did take a
5 written statement at the investigating officer's request.

6 Q. Okay.

7 MS. PROCTOR: One moment, Your Honor.

8 BY MS. PROCTOR:

9 Q. And at that time did you show her the video?

10 A. I did not, no, ma'am.

11 Q. And were you supplied the questions to the statement
12 from Officer Boyd or Sergeant Boyd?

13 A. Yes, ma'am.

14 MS. PROCTOR: I have no further questions.

15 THE COURT: Any redirect of the witness?

16 MS. PROCTOR: No, Your Honor.

17 MR. DURANT: I have none, Your Honor.

18 THE COURT: Sir, you may step down. Does the State
19 have any further witnesses?

20 MR. DURANT: May I step -- stick my head outside ---

21 THE COURT: Sure.

22 MR. DURANT: --- and see if my witness is here. We
23 have one more, Your Honor.

24 THE COURT: Which witness is that? Who would that be,
25 Mr. DuRant?

1 MR. DURANT: Equett Robinson, Your Honor. E-Q-U-E-T-T.

2 THE COURT: Ma'am, if you would come forward to be
3 sworn.

4 (WHEREUPON, the witness was duly sworn.)

5 THE CLERK: Please be seated right here. State your
6 full name and spell your last name for the court
7 reporter.

8 MS. ROBINSON: My name is Equett Eliah (ph) Robinson,
9 R-O-B-I-N-S-O-N.

10 THE COURT: And please spell your first name to make
11 sure we have it accurate.

12 MS. ROBINSON: E-Q-U-E-T-T.

13 THE COURT: Thank you, ma'am. You may proceed.

14 MR. DURANT: Thank you, Your Honor.

15 THE COURT: You are welcome.

16 **DIRECT EXAMINATION (IC) - MR. DURANT OF EQUETT ROBINSON:**

17 Q. Good afternoon, Ms. Robinson.

18 A. Good afternoon.

19 Q. Could you tell the court where you worked on March the
20 30th of 2011.

21 A. Kangaroo gas station.

22 Q. And where was that Kangaroo gas station located?

23 A. Eighty-nine seven -- 897 Folly Road.

24 Q. And how long did you work at that particular Kangaroo
25 gas station?

- 1 A. For about a year to a year and a half.
- 2 Q. Okay. And do you know him (motioning)?
- 3 A. Yes.
- 4 Q. And how do you know him?
- 5 A. He used to come in almost every Saturday.
- 6 Q. And he did that for the whole year, year and a half
- 7 that you worked there?
- 8 A. Yes.
- 9 Q. He was a regular customer?
- 10 A. Yes.
- 11 Q. Had you ever had conversations with him?
- 12 A. A few.
- 13 Q. Okay. Had you ever checked his ID before?
- 14 A. Once.
- 15 Q. Did you remember his name?
- 16 A. No.
- 17 Q. Okay. But and when would he usually come into the
- 18 store?
- 19 A. Late at night after the clubs let out.
- 20 Q. And you were there the night that the shooting took
- 21 place; is that correct?
- 22 A. Yes, sir.
- 23 Q. And who did you see shooting at people in the gold
- 24 Impala that night?
- 25 A. The defendant.

1 Q. And is there any question in your mind that he was the
2 person that you saw shooting at the gold Impala?

3 A. No, sir.

4 Q. And if you would, let's just back up a little bit. And
5 when do you first remember seeing the defendant that night?

6 A. Outside in the parking lot in of the gas station.

7 Q. Okay. And you were working where, inside?

8 A. Yes, sir.

9 Q. There are windows to your left; is that correct?

10 A. Yes, sir.

11 Q. And that is a lit parking lot?

12 A. Yes, sir.

13 Q. Did he come all the way up to the door?

14 A. Yes, sir.

15 Q. And what did you think when he came up to the door?

16 A. I was going to charge him for the hotdog he stole when
17 he came before.

18 Q. Okay. Let's talk about that a little bit.

19 MS. PROCTOR: Excuse me. Can you move?

20 MR. DURANT: I'm sorry.

21 MS. PROCTOR: I can't see her.

22 MS. PROCTOR: I am sorry, with the podium right there.

23 Thank you. I can't hear what she is saying. Thanks.

24 MR. DURANT: Okay.

25 BY MR. DURANT:

1 Q. You said you were going to charge him for the hotdog
2 that he had -- hadn't paid for before; is that correct?

3 A. Right.

4 Q. Tell us about this. The night of the shooting was
5 early on Wednesday morning. When was the last time he had
6 been in the store?

7 A. That weekend before.

8 Q. Okay. The weekend before that Wednesday?

9 A. Right.

10 Q. And what had happened regarding this hotdog?

11 A. He took a hotdog and left without paying for it.

12 Q. Okay. And so the night of this shooting when you saw
13 him walk up to the door what did you say to yourself?

14 A. I was going to charge him for the hotdog.

15 Q. Did he ever come into the store?

16 A. No, sir.

17 Q. And why didn't he come into the store?

18 A. He began arguing with the guy in the gold Impala.

19 Q. And where was the gold Impala at?

20 A. It was parked pretty much almost between two pumps by
21 the front door.

22 Q. Okay. Parked in between the front door and the gas
23 pumps; ---

24 A. Right.

25 Q. --- is that correct?

1 A. Right.

2 Q. Could you tell if the car was actually up to a pump at
3 that point or waiting for a pump?

4 A. It wasn't.

5 Q. Okay. And he was arguing at the guys in the Impala?

6 A. Yes, sir.

7 Q. Okay. And then what happened?

8 A. And then he pretty much was doing some kind of dance in
9 the parking lot. And I heard a young lady yell that they
10 were about to fight. So that is when I went to try to hurry
11 up and lock the door so I could call the police.

12 Q. And what happened while you were there at the front
13 door?

14 A. Well, when I went to lock the front door I saw the
15 defendant come back from the left where the carwash is with
16 a gun in his hand.

17 Q. Okay. And did you hear any shots before you saw him
18 with the gun in hand?

19 A. Yes.

20 Q. And where did those shots come from?

21 A. From the left.

22 Q. Okay. Now if you are in the Kangaroo at the front door
23 looking toward Folly Road what is over to the left-hand
24 side?

25 A. Carwash.

1 Q. Okay. So the shots you heard initially came from the
2 carwash; is ---

3 A. Yes.

4 Q. --- that correct?

5 A. Yes.

6 Q. And then what did you see after you heard that initial
7 group of shots come from the carwash?

8 A. I saw him walking up to the gold Impala with a gun in
9 his hand.

10 Q. And what did he -- could you tell what the gun looked
11 like?

12 A. It was a small, black gun.

13 Q. And what did he do with the small, black gun?

14 A. He was shooting at the gold Impala.

15 Q. And could you tell how many people were in the gold
16 Impala at that point?

17 A. I just saw the one.

18 Q. Okay. And that one was standing where?

19 A. He was inside the gold Impala.

20 Q. Okay.

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

22 Q. Okay. Had he been in the driver's seat when the
23 shooting started or did he jump in the driver's seat after
24 the shooting started?

25 A. He jumped in the driver's seat after the shooting

1 started.

2 Q. Okay. And that is when the -- you saw the defendant
3 come up and start shooting at the car?

4 A. Right.

5 Q. Do you recall how close he got to the car?

6 A. Maybe about five feet away.

7 Q. Okay. And do you remember how many times he shot at
8 the car?

9 A. It was a lot.

10 Q. Okay. And what happened after he finished shooting at
11 the car?

12 A. He ran back towards the carwash.

13 Q. Now did you recognize him then?

14 A. I did recognize him.

15 Q. Okay. And as a matter of fact when the police came you
16 told them that you knew who he was, you just didn't know his
17 name; right?

18 A. Right.

19 Q. Now later that day did you have an opportunity to meet
20 with Detective Cooke, who testified earlier, at the
21 Charleston County Sheriff's Department?

22 A. Yes.

23 MR. DURANT: Your Honor, may I have those court's
24 exhibits?

25 THE COURT: Uh-huh.

1 MR. DURANT: And these are the ones marked State's, but
2 I will use those for purposes of this hearing if you don't
3 mind.

4 BY MR. DURANT:

5 Q. I hand you what has previously been marked as State's
6 Exhibits Number 67 ---

7 THE COURT: Actually let's find out what the
8 corresponding ---

9 MR. DURANT: Okay.

10 THE COURT: --- court exhibit is.

11 MR. DURANT: Maybe I will -- let me change those on
12 you.

13 THE COURT: You can leave them on the table on
14 just

15 (WHEREUPON, court's exhibits provided to Mr. DuRant.)

16 BY MR. DURANT:

17 Q. I hand you what has been marked as Court's Exhibits
18 Number 1 and 2 which appear to be copies of the original and
19 ask if you recognize those documents.

20 A. Yes.

21 Q. And how do you recognize those documents?

22 A. That is what the officer gave me to review before he
23 gave me the photos.

24 Q. Okay. And are those your initials that appear on the
25 face of both of those documents?

1 A. Yes, sir.

2 Q. Do you recall him going over those instructions with
3 you before him showing -- showed you those pictures?

4 A. Yes, sir.

5 Q. Did you understand those instructions?

6 A. Yes, sir.

7 Q. And it looks as though he showed you one -- went over
8 one of these I believe at -- what was the time, 15:42, about
9 3:42 in the afternoon. Were you able to identify anyone
10 from that photographic lineup?

11 A. No, sir.

12 Q. And why was that?

13 A. He wasn't in the first lineup.

14 Q. The shooter wasn't in that lineup; is that correct?

15 A. Right.

16 Q. And then he showed up another one, I believe it is
17 16:32 or something like that?

18 A. Yes, sir.

19 Q. And what did you do when he showed you those six
20 photographs?

21 A. I showed him that the guy was the shooter.

22 Q. Okay. And you circled the picture?

23 A. Right and initialed it.

24 Q. Okay. And initialed it. Is there any doubt in your
25 mind that that was the guy that you saw shooting at that

1 gold Impala that night?

2 A. No, sir.

3 Q. And you know him?

4 A. Yes, sir.

5 Q. And you told Detective Cooke that; is that correct?

6 A. Yes, sir.

7 Q. And what did you write down -- did he ask you to write
8 your comments on State -- on Court's Exhibit Number 2?

9 A. Yes, sir.

10 Q. And what did you write down in the comment section?

11 A. This is the guy that I saw with the gun. He was
12 shooting at the guy driving the gold Impala.

13 Q. Did Detective Cooke in any way coach you or urge you to
14 pick any particular picture over any other picture?

15 A. No, sir.

16 Q. And -- and did he suggest by conduct or words who you
17 should pick?

18 A. No, sir.

19 Q. Did he ever tell you that the guy that did the shooting
20 would even be in those photographs?

21 A. No, sir.

22 Q. Okay. Thank you. Could you please answer any
23 questions that Ms. Proctor may have.

24 THE COURT: You may proceed.

25 MS. PROCTOR: Thank you.

1 THE COURT: You are welcome.

2 CROSS-EXAMINATION (IC) - MS. PROCTOR OF EQUETT ROBINSON:

3 Q. Ms. Robinson, were you working alone that night?

4 A. Yes, ma'am.

5 Q. And at first when you started working it was pretty
6 slow, but around 2:30 probably after the club got out it
7 started getting very crowded; correct?

8 A. Right.

9 Q. And there were quite a few cars in the parking lot?

10 A. Right.

11 Q. And as a matter of fact, it went from maybe being no
12 cars to maybe there were five, six, seven cars in the
13 parking lot?

14 A. At first, right.

15 Q. And they were all making noise?

16 A. Right.

17 Q. And a lot of people coming in and out of the store?

18 A. Right.

19 Q. And you said that at one point you thought that a fight
20 was going to start?

21 A. Someone yelled out a fight was going to start.

22 Q. Was that their exact words, a fight is going to start;
23 is that what you heard?

24 A. She said they are about to fight. That was ---

25 Q. Okay. And that is when you decided to walk over to the

1 door?

2 A. Yes.

3 Q. Now before that did you see somebody in a white T-shirt
4 with black jeans that was -- that yelled out right at the
5 door, shoot mother fucker ---

6 A. No.

7 Q. --- while they were standing at the door?

8 A. No.

9 Q. And as you were going to the door people were still --
10 there were still people trying to come in; there were still
11 people trying to go out; correct?

12 A. Right.

13 Q. And you got the door locked; and at that time Mr.
14 Washington came up to the door, correct?

15 A. The door wasn't locked.

16 Q. But he came up to the door to come in, correct?

17 A. Right.

18 Q. And that is right at the time you were at the door
19 trying to lock the door?

20 A. No.

21 Q. It was not locked at that time; he could have come in?

22 A. Right.

23 Q. And when he was coming up to the door did you notice a
24 gun in his hand at that time?

25 A. No.

1 Q. And his hands were empty; he was trying to come into
2 the store, correct?

3 A. Right.

4 Q. And there was a lot of commotion going out -- going on
5 outside?

6 A. Right.

7 Q. And at that point you say he walked away, correct?

8 A. Right.

9 Q. And you were still standing at the door?

10 A. I wasn't at the door when he walked up.

11 Q. Okay. You are now though -- okay, he walked away; you
12 are not at the door at that point?

13 A. Right.

14 Q. Then you go to the door and that is when you hear
15 gunshots?

16 A. When I go to the door?

17 Q. Yes, when do you hear your first gunshot?

18 A. As I am walking around the counter.

19 Q. You hear a gunshot when you are walking around the
20 corner?

21 A. Yes.

22 Q. So as you are walking around the corner, there is a
23 gunshot and the door is still not locked and people are
24 still trying to come out and some are trying to come in?

25 A. When I heard the first gunshots, yes.

1 Q. Okay. And then you are bending down -- or you are
2 trying to get the door locked and people are still standing
3 all around the door?

4 A. It was a few.

5 Q. And you still -- how many gunshots have you heard by
6 then?

7 A. Three or four.

8 Q. Okay. And it is that time after three or four gunshots
9 you look up and you then see Mr. Washington shooting?

10 A. Yes.

11 Q. How many more gunshots did you hear after that; do you
12 remember? There were quite a few, correct?

13 A. To what I remember there was a lot.

14 Q. There could have been anywhere between 25 and 30
15 gunshots?

16 A. It could have been.

17 Q. Well, you remember hearing quite a few more?

18 A. Yes.

19 Q. And at that time everybody -- there are a lot of people
20 firing guns?

21 A. I don't -- no, I only saw him.

22 Q. Okay. But you heard other gunshots coming from
23 different directions?

24 A. No.

25 Q. You only heard one gun -- his gunshots?

1 A. Yes.

2 Q. But you said you just heard quite a few?

3 A. Yes, coming from his gun.

4 Q. And after the gunshots all the cars took off; everybody
5 split, correct?

6 A. After he ran off, yes.

7 Q. Well, everybody ran off; all the cars were pulling out
8 of the gas station; correct?

9 A. As -- yeah, he ran off, yes.

10 Q. Yes, and everybody was leaving though the gas station?

11 A. Yes.

12 Q. And at that time you and some women were still in the
13 store looking out of the window, correct?

14 A. Yes.

15 Q. And did you call 911 at that time?

16 A. Did I do what?

17 Q. Is that when you -- you did not call 911 at that time,
18 did you?

19 A. Immediately after ---

20 Q. Yes.

21 A. --- everybody pulled out?

22 Q. Yes.

23 A. Not at that moment.

24 Q. And as a matter of fact, some people after you opened
25 the door after the shooting some people still came in and

1 they were paying or buying some things; correct?

2 A. No, I was letting people out. And one girl refused to
3 leave until she paid for her items.

4 Q. Okay. So you still took their money; and you went back
5 to the cashier is what I am saying and rang up some items?

6 A. Yes.

7 Q. And it is at that time that you called 911?

8 A. Afterwards, yes.

9 Q. And when you called 911 you told them that somebody was
10 shooting and that he had on a white T-shirt and black jeans,
11 correct?

12 A. Yes.

13 Q. Now you gave a statement to the police. Was it the
14 next day?

15 A. The same day.

16 Q. Okay. And when was it that they showed you the video?
17 Did they show it to you before you gave your statement or
18 after you gave your statement?

19 A. The police didn't show me a video.

20 Q. You have never seen the video?

21 A. I have seen the video, but the police didn't show me
22 the video.

23 Q. Okay. Mr. DuRant showed you the video?

24 A. Yes.

25 Q. And you said that Mr. Washington had at one time walked

1 out without paying for a hotdog. Had he ever given you any
2 trouble before?

3 A. No.

4 Q. Had you ever had any problems with him?

5 A. No.

6 Q. And did you recognize anybody else out there that night
7 besides Mr. Washington?

8 A. Yes, a few.

9 Q. Pardon?

10 A. A few.

11 Q. Did you know them by name?

12 A. No.

13 MS. PROCTOR: Court's indulgence. I don't have any
14 further questions.

15 THE COURT: Any further questions of the witness?

16 MR. DURANT: No, Your Honor.

17 THE COURT: Ma'am, you may step down. Does the State
18 have any further witnesses?

19 MR. DURANT: No, Your Honor.

20 THE COURT: Does the defense have any witnesses?

21 MS. PROCTOR: No, Your, Honor.

22 THE COURT: I will be glad to hear argument if there is
23 any.

24 MS. PROCTOR: Court's indulgence one second.

25 THE COURT: Huh?

1 MS. PROCTOR: Just one second for court's indulgence.
2 Your Honor.

3 THE COURT: Yes, ma'am.

4 MS. PROCTOR: I have no -- nothing on the ID. But I
5 would ask that she not mention that he had stolen before
6 because I just think that is a prior bad act.

7 MR. DURANT: I think it goes directly to her identity
8 of him, Your Honor.

9 MS. PROCTOR: Well, Your Honor, she never called the
10 police. And I don't believe that would be clear and
11 convincing that she said -- the hotdog.

12 THE COURT: I don't think she has to. I think it goes
13 to her prior ability to identify him and why she would be
14 acutely aware that it was him and why it would have stuck
15 out in her mind.

16 I would give the jury instruction that they can't find
17 him guilty based on that prior bad act. And frankly, it is
18 so minimal in terms of stealing a hotdog I would image that
19 at some point -- if -- I just think that is something that
20 would be common in everyday. I don't know that that is
21 something that would draw a particular amount of prejudice
22 to him.

23 But in any event, any potential prejudice could be
24 cured by a curative instruction. Other than that, is there
25 any exception to the admissibility of the identification.

1 pursuant to Neil versus Biggers from the defendant?

2 MS. PROCTOR: No, Your Honor.

3 THE COURT: All right. Are y'all ready to start with
4 opening argument and instructions, from the State?

5 MR. DURANT: Yes, Your Honor.

6 THE COURT: From the defense?

7 MR KOZELSKI: Your Honor, can we ---

8 THE COURT: These will be marked as -- actually the
9 black -- yeah, the black and white ones need to go back to
10 the court reporter. I actually wanted the color ones, but I
11 don't need them now. Those will be marked and admitted as
12 to whatever the State's numbers are without objection.

13 (WHEREUPON, State's Exhibit Number 67, photo lineup
14 shown to Equett Robinson 3/30/11 @ 15:42, was marked for
15 identification.)

16 (WHEREUPON, State's Exhibit Number 67 was admitted into
17 evidence.)

18 (WHEREUPON, State's Exhibit Number 68, photo lineup
19 shown to Equett Robinson 3/30/11 @ 16:32, was marked for
20 identification.)

21 (WHEREUPON, State's Exhibit Number 68 was admitted into
22 evidence.)

23 THE COURT: Yes, sir?

24 MR. KOZELSKI: Your Honor, can we get a clarification
25 on your earlier ruling?

1 THE COURT: I haven't made any rulings on anything.

2 MR. KOZELSKI: Well, as far as withholding a ruling in
3 regards to our opening ---

4 THE COURT: I am not withholding a ruling. Because I
5 haven't heard any testimony upon which to make a rational,
6 reasoned, factual ruling with conclusions of law.

7 I have been very clear. We are going to take the
8 matter up in camera and everybody is not to mention it
9 during opening argument.

10 MR. KOZELSKI: Your Honor, what I am clarifying is
11 is -- or where I am trying to understand is whether or not
12 Mr. DuRant is going to object to me mentioning self-defense
13 in my -- my opening.

14 THE COURT: I don't know. In what context are you
15 going to say it? I can't -- I am not clairvoyant. I don't
16 know what he is going to object to. And he has to make a
17 contemporaneous objection to preserve the record.

18 MR. DURANT: As far as going into things that were
19 found in the gold Impala, is that something I am going to
20 object?

21 THE COURT: It cuts both ways.

22 MR. KOZELSKI: Yeah, I will ---

23 THE COURT: You can move to exclude it. And I have not
24 ruled on it. And so neither one of you can make any
25 reference to it.

1 MR. KOZELSKI: I won't be mentioning anything.

2 THE COURT: All right. So everybody clear?

3 MR. KOZELSKI: Yes.

4 THE COURT: Let's take a quick restroom break and then
5 we will start. Because I don't plan to really stop again
6 probably for another hour and fifteen minutes. So refresh
7 yourselves if you need to.

8 (WHEREUPON, recess was taken, July 15, 2013, at
9 3:11 p.m.)

10 (WHEREUPON, proceedings resumed, July 15, 2013, at
11 3:18 p.m.)

12 THE COURT: Before we bring in the jury I need to
13 advise the entire gallery as well as the attorneys
14 participating in these proceedings all of your phones and
15 electronic devices should be turned off. Not silent. Off.

16 You are not supposed to be texting or having any other
17 electronics communication during court session. If you feel
18 the need to use your device you should leave the courtroom.

19 If the bailiff observes you texting, checking e-mail or
20 if your devices are on, they will be confiscated. They will
21 not be returned to you. If they go off, likewise they will
22 be taken from you. They will not be returned to you.

23 THE COURT: Have you got everybody? Please make sure
24 the foreperson comes in last, Number 55.

25 (WHEREUPON, jury enters, July 15, 2013, at 3:21 p.m.)

1 THE COURT: Ladies and gentlemen, you are being given
2 notebooks for the purposes of note taking. And I will give
3 you some instructions about that.

4 There is a white sticker on the front of each notepad.
5 Please write your juror number on that sticker so that you
6 will be able to readily identify which notepad begins (sic)
7 to you.

8 We are beginning the trial of the State of South
9 Carolina versus Domoneik Antwan Washington. Before the case
10 begins I am going to give you some preliminary instructions
11 so that you will know how we will be proceeding in the trial
12 of this case and you will know procedurally how a case is
13 conducted.

14 The first thing that will occur is the attorney for the
15 State will make an opening argument which will be followed
16 by an opening statement by the defense. Although the
17 defense is not required to make an opening statement.

18 These remarks, ladies and gentlemen, are not a charge
19 on the law. When you hear us use the term charge, charge
20 and instructions are interchangeable terms. Charge is a
21 legal terms of art that simply means instructions.

22 I will instruct you on the law applicable to this case
23 at the end of the trial before you retire to consider your
24 verdict.

25 As I have already indicated, this is merely a

1 procedure -- merely an explanation of the procedures that we
2 will follow in the trial of this case so you may better
3 understand what is happening.

4 The defendant is charged by three indictments filed in
5 this court with the crimes of attempted murder, the elements
6 of which I will explain to you later.

7 The indictments are simply the charge by which the
8 cases are brought into court. And they are not in any sense
9 evidence of any of the allegations they contain.

10 The defendant has pled not guilty to the indictments.
11 The State therefore has the burden of proving each and every
12 element of the indictments beyond a reasonable doubt.

13 And it will be your duty, ladies and gentlemen, to
14 decide whether the State has met that burden or not. Your
15 purpose as jurors is to find and determine the facts. You
16 are the sole judges of the facts in this case.

17 If at any time I make any comment regarding the facts,
18 you much disregard it. You are to determine the facts from
19 the testimony you hear and the other evidence introduced in
20 court.

21 It is up to you to determine the inferences which you
22 feel may be properly drawn from the evidence. It is
23 especially important that you perform your duty of
24 determining the facts diligently and conscientiously.
25 Because ordinarily there is no way to correct an erroneous

1 determination of facts made by a trial jury.

2 On the other hand and with equal emphasis, the same law
3 that makes you the judges of the facts makes me the judge of
4 the law.

5 The law as given by the court is the only law you may
6 consider. You must accept and follow it even though you may
7 disagree with it.

8 The court cannot tell you what the facts are and you
9 cannot disagree with the court about what the law is and
10 what the law should be.

11 Your responsibility, ladies and gentlemen, is to take
12 the law as I instruct it and apply it to the facts as you
13 find them from the testimony of the witnesses and any other
14 evidence that is introduced.

15 After doing that you will render a verdict, a true and
16 just verdict, under the solemn oath that you have taken as
17 jurors in this case.

18 Until I advise you to begin your deliberations you must
19 not discuss this case with anyone. That includes among
20 yourselves, with your fellow jurors, your friends, your
21 family members or anyone involved in the case.

22 After the case is submitted to you to deliberate you
23 must discuss it only in the jury room with your fellow
24 jurors.

25 The attorneys and the parties have been advised that

1 they should not speak with you at all. So if should you run
2 into them around the building, in the bathrooms, even in the
3 garage, the elevators, even at a local restaurant during
4 lunch and they don't speak with you, please don't think that
5 they are being untoward or unfriendly. They are simply
6 following the court's instructions.

7 During the trial do not read, watch, or listen to any
8 news reports about this case. That includes anything on the
9 radio, television, Internet, or in the newspaper.

10 And you are not allowed to do any independent research
11 on any issue or matter involved in this case on the
12 Internet. That includes going to look at locations on
13 MapQuest, driving by locations or looking up any other
14 subject matter that could be found on the Internet or
15 otherwise.

16 You must not consider anything that you may have heard
17 or read about this case outside the courtroom whether before
18 or during the trial.

19 It is essential that you keep an open mind and not
20 decide any issue in the case until all of the evidence has
21 been presented, the parties make their closing arguments,
22 and I instruct you on the law applicable to this case.

23 It is your solemn responsibility to determine the guilt
24 or innocence of the defendant. And your verdict must be
25 based solely on the evidence as it is presented to you in

1 this trial and on the law as I will instruct you during and
2 at the close of this trial.

3 In just a moment the solicitor will make an opening
4 statement in which he will argue to you or explain to you
5 what he believes the issues to be in this case. The
6 attorney for the defendant may also make an opening
7 statement, although they are not required to do so.

8 What the attorneys tell you during their opening
9 statements is not evidence. It is only their contention as
10 to what they believe the evidence in this case will show.

11 The evidence in this case will be presented to you by
12 the testimony of sworn witnesses from the witness stand and
13 other evidence that will be introduced.

14 From time to time during the trial you may hear one of
15 the attorneys say Your Honor I object. Just as in sports,
16 business, or any other structured activity there are certain
17 rules that we must obey in the presentation of evidence.
18 These rules ensure that you receive the most trustworthy and
19 reliable evidence available.

20 An objection is the procedure that an attorney uses to
21 call a possible violation of these rules to my attention as
22 the judge of this court.

23 And for this reason you should never hold an attorney's
24 objection against them nor should you conclude from the
25 court overruling or sustaining an objection that I favor one

1 side or the other.

2 Also from time to time you may hear one of the
3 attorneys say Your Honor we have a matter of law to discuss
4 or they may ask to approach the bench or I may ask them to
5 approach the bench. Or it might even be necessary for us to
6 exclude you from the courtroom for a short while while we
7 discuss matters of law.

8 The reason we do this is because you are the finders of
9 the facts. And sometimes when I'm discussing matters of law
10 with the attorneys it might be necessary for me to make some
11 comment about the facts in connection with ruling whether a
12 law applies or evidentiary rule or procedural rule.

13 And for this reason we exclude you from the courtroom
14 so that in no way will you be influenced by anything that
15 the court may say or do in connection with the facts of this
16 case.

17 In determining what the true facts are in this case you
18 must decide whether or not the testimony of a witness or
19 witnesses is believable.

20 It is my responsibility to rule as a matter of law as
21 to whether certain testimony is admissible at all or not.
22 But once it is admitted it is up to you to determine whether
23 you believe it or not.

24 In deciding whether to believe a witness you have the
25 right to consider the interest of any witness, the bias of

1 any witness, the prejudice of any witness, the opportunity
2 for the witness to have seen the matters and things about
3 which the witness may testify, and the way the witness acts
4 on the witness stand, something we commonly refer to as
5 demeanor.

6 You have a right to consider anything that is in the
7 record that will help you evaluate the testimony of the
8 witnesses.

9 That means, ladies and gentlemen, that you must pay
10 close attention to the witnesses, to observe them, to listen
11 to them and to pay close attention to the attorneys and the
12 court.

13 Although I know it can be very difficult, please do not
14 allow your thoughts to wonder. But give strict attention to
15 the testimony so at the end of the testimony, after the
16 arguments of the lawyers and the charge on the law given by
17 the court, you will then be in a position to determine what
18 the true facts are and apply the law to those facts and thus
19 render a true and just verdict in this case.

20 During this trial you will be allowed to take notes.
21 Note taking is a privilege that you may choose to exercise
22 or choose not to exercise.

23 Please do not feel you are required to take notes. Not
24 everyone finds note taking helpful to them. If you should
25 decide to take notes, please don't try to record everything

1 that is said. It is physically impossible.

2 The average speaker speaks at about 200 words a minute.
3 So as you could imagine, it would be virtually impossible
4 for you to take down verbatim what someone says.

5 And in addition to that, because you are the fact
6 finders it is absolutely essential that you rely on your
7 powers of observation.

8 So don't allow yourself to get so distracted with note
9 taking that it dilutes your ability to observe the witnesses
10 so that you can make the appropriate findings regarding
11 their credibility.

12 You may want to keep an outline of the main points that
13 are being made and the arguments that are being made so that
14 when you retire to deliberate this case you can allow your
15 notes to refresh your memory.

16 Please be reminded, ladies and gentlemen, that your
17 notes are for your specific and your individual purposes.
18 They are only to be used to refresh your own memory. They
19 are not to be shared with anyone else.

20 And I would remind you that your notes should not be
21 considered to be any more reliable than someone else's
22 memory. Their memory should be considered just as reliable
23 as notes that may have been taken by a fellow juror.

24 Also during breaks and recesses your notes will be left
25 in your seats. They will be secured during the evening

1 recess. And we do that to ensure that there is no
2 temptation to prematurely discuss anything you may have
3 heard by way of testimony or evidence that has been
4 introduced in the trial.

5 Madam Forelady, it is your responsibility to fill out
6 the verdict form. But I will give you further instructions
7 about that at the conclusion of the case.

8 Ladies and gentlemen, the foreperson is purely an
9 administrative function. That person does not have any
10 greater vote or voice than you do. They simply fill out the
11 verdict form and write out any questions the jury may have
12 during deliberations. It is a completely random process
13 that the court employs for that selection. So again, I
14 emphasize that they don't have any greater vote or voice
15 than you do.

16 In order to preserve everyone's right I am going to
17 allow counsel for the State as well as the defense to take
18 exception to anything that the court has said by way of
19 opening instruction.

20 From the State?

21 MR. DURANT: No, ma'am.

22 THE COURT: From the defense?

23 MS. PROCTOR: No, ma'am.

24 THE COURT: Okay. Mr. DuRant, you may proceed. And I
25 know that we allow people in and out of the gallery. But

1 because of the amount of people we have today if we could
2 minimize the amount of traffic in and out. It is a little
3 distracting. I appreciate you assisting me, Ms. Brown.

4 You may proceed, Mr. DuRant.

5 MR. DURANT: Your Honor, may we approach just one
6 second ---

7 THE COURT: Sure.

8 MR. DURANT: --- before we start?

9 THE COURT: Uh-huh.

10 (WHEREUPON, bench conference was had 3:32 p.m. to
11 3:33 p.m.)

12 THE COURT: All right. Ladies and gentlemen, I would
13 ask that you give counsel your undivided attention.

14 Mr. DuRant, you may proceed when you are ready.

15 MR. DURANT: Thank you, Your Honor.

16 THE COURT: You are welcome.

17 **OPENING BY MR. DURANT:**

18 Good afternoon, ladies and gentlemen. I have already
19 had the opportunity to introduce myself to you. And as the
20 judge has told you, it is incumbent upon me to present this
21 case on behalf of the State of South Carolina.

22 You are going to find this case to be the modern day
23 equivalent of a Wild West shootout. The only difference is
24 that it didn't happen at the Okay Corral at high noon. It
25 happened at the Kangaroo gas station and convenience store

OPENING BY MR. DURANT

1 over on James Island at the -- at the corner of Camp and
2 Folly Road at 2:45 on a Wednesday morning.

3 But the story doesn't really begin there. It begins at
4 a club over on James Island. It is on the Old Folly Road
5 that is called Creekside. A lot of people call it the Palm
6 Tree.

7 That night -- like I said, this was Tuesday night going
8 into Wednesday morning. There was a -- apparently a famous
9 rapper that was supposed to be over there named Lil Phat
10 that was from New Orleans and people from all over the area
11 had gone out to this particular club to see him.

12 Well, it never happened because before he -- because
13 before he even had the opportunity to perform, a fight broke
14 out at the club. And that fight involved some guys from
15 downtown Charleston.

16 And at least three of them were Edward Wittrell and
17 Ronald Bryant and Antwan Wilson who are the victims in this
18 case.

19 On the other side of the altercation was some guys from
20 James Island, the Westchester Subdivision, where Domoneik
21 Washington lives.

22 But it was just that it was a fight. There was no gun
23 play. Nothing like that. But it did end up closing down
24 the club, turning everybody out. And nobody actually even
25 got to see who they came to see. And this happened at

1 around 2:30 or 2:45 in the morning.

2 Well, you would think that on a weekday morning at 2:30
3 or 2:45 most people would just go home. Well, apparently
4 over on James Island that doesn't happen when the clubs left
5 out.

6 Apparently the Kangaroo at Camp and Folly is where the
7 after-party is. So most of the folks that were at this club
8 ended up over at the Kangaroo gas station after the club
9 closed down.

10 And you're going to see some surveillance video
11 throughout the course of this trial, probably to the point
12 that you are sick of seeing it.

13 And I think your initial impression will be upon seeing
14 it that you will be amazed how crowded this place was at
15 2:45 in the morning. There is not a parking place to be
16 had. There is not a place at the gas pump to be had. It
17 was rocking.

18 Well, in the middle of this drives up a gold Chevrolet
19 Impala. And inside that gold Chevrolet Impala were Antwan
20 Wilson and Edward Wittrell and Ronald Bryant, three of the
21 guys that had been involved in the fight at the club with
22 the James Island boys.

23 They had stopped to get some gas. But it was so
24 crowded they couldn't get up to the gas pump, so they were
25 just sitting there kind of in the parking lot between the

1 front of the store and the gas pumps waiting for a pump to
2 clear so they could pull in and get some gas.

3 About this time Domoneik Chip Washington shows up. You
4 will see this on video. He is not at all happy about these
5 folks being on his turf.

6 Because he comes walking across the screen with his
7 buddies. And the first thing he does when he notices that
8 these guys are over there in that gold Impala is he walks up
9 to the car and he starts beefing at them, starts arguing
10 with them.

11 And you will see this. This is all on video. Well,
12 after this initial contact it looks like he thinks better of
13 it and then he turns around and he walks away.

14 And you say well maybe -- maybe he has come to his
15 senses. And he goes up to the front door and he looks like
16 he is just about to go in. And then you can just see he
17 can't let it go. He just can't let it go.

18 So he turns around and he walks back out toward the car
19 in the parking lot and he is dancing around and he is
20 beating his chest and he is playing the big man and doing
21 everything he can to start some trouble.

22 But then you see he kind of walks off over toward the
23 left-hand side of the camera. You won't be able to see him
24 anymore. Over on that side the camera is at the front door
25 kind of looking out the parking lot over to the left-hand

1 side. The business adjacent to the Kangaroo is a carwash.
2 He kind of walks off the screen that way. Exit stage left.

3 Within a second, shots, gunshots, start ringing out
4 from the carwash side of the parking lot. There's a number
5 of shots. Bam, bam, bam, bam.

6 You can see the gold Impala on the screen. At the time
7 that the shots ring out, Antwan Wilson, the driver, he had
8 just been around to the other side of the car talking to
9 somebody. He was walking around and was just about to get
10 into the car when the shots rang out.

11 Edward Wittrell he had been in the back seat pass -- he
12 had been a backseat passenger and he had gotten out of the
13 car just before the shots rang out and was starting to walk
14 away when the shots rang out and he turns around and he gets
15 back in the car. And Ronald Bryant is in the car in the
16 back seat on the passenger's side.

17 Well, obviously when these shots ring out people are
18 running everywhere. You just see people scatter as normally
19 you would expect people to do under the circumstances.

20 And at about that point you see this man right here
21 (indicating), Domoneik Chip Washington, walk up to the car,
22 hand extended, semiautomatic pistol in his hand, and unload
23 it into the gold Chevrolet Impala containing Antwan Wilson
24 and Edward Wittrell and Ronald Bryant.

25 Luckily at that point the only one that was hit was

1 Antwan Wilson, the driver. He was hit in the leg. But
2 despite that, after the shooting stopped and the defendant
3 withdrew, he was able to get the car started. They took off
4 out of the parking lot, were headed back downtown with the
5 intention of going to the hospital.

6 From the surveillance video the sheriff's office was
7 able to identify the person that had done the shooting. And
8 as a result of that the defendant, Domoneik Chip Washington,
9 was arrested.

10 And the reason that we know that he did the shooting is
11 because there is a lady named Equett Robinson that worked at
12 the Kangaroo and knew him.

13 Didn't know his name. But she had been working there
14 about a year, year and a half. Seen him just about every
15 week for that year, year and a half that she worked there.

16 He usually came in every weekend after the clubs
17 closed. He was a regular customer. She saw him a bunch.
18 She talked to him. She had even carded him before but
19 didn't remember his name. And when the police get there
20 they -- you know, she says I mean I know who did it; I just
21 don't know his name.

22 Well, they get the surveillance video and from somebody
23 that was in the club that night they get the names of some
24 of the people that were out there that night and they put
25 Domoneik Washington in a photographic lineup and show it to

1 her that day and she picks him out. You know, that is him
2 right there; that is the shooter.

3 And as a result he is arrested and here we are today.
4 He has been charged with three counts of attempted murder
5 for trying to kill the three occupants of that gold
6 Chevrolet Impala.

7 And you will see -- and I am not trying to claim that
8 he was the only one out there shooting a gun that night. I
9 think you will find from the video that there were probably
10 25 or 30 shots fired out there that night, from at least
11 four different weapons.

12 But there was only one person out there that tried to
13 kill the folks in that 19 -- in that gold Chevrolet Impala.
14 And that was him.

15 And once you have heard the testimony in this case I'm
16 convinced that you will agree and find him guilty of all
17 three counts of attempted murder. Thank you.

18 THE COURT: Defense may proceed.

19 MR. KOZELSKI: Thank you, Your Honor. May it please
20 the court.

21 THE COURT: Yes, sir, you may proceed.

22 **OPENING BY MR. KOZELSKI:**

23 When I start thinking about this case I get angry and I
24 get confused. I am angry for the obvious reasons. There is
25 a shootout. A shootout like Mr. DuRant has told you, a

1 shootout at the Okay Corral right in the middle of Folly
2 Road.

3 Now many of us might have family members around this
4 area. Some of us might take Folly Road to go to and from
5 work. A great deal of people travel that road to go to
6 Charleston's most popular beach. It is a busy road and a
7 busy intersection.

8 The actions this night were reckless. And it upsets
9 me. But what also upsets me is that my client, Domoneik
10 Washington, is the only person sitting behind that table
11 defending himself for the actions that were taken that
12 night. You just heard 25, 30 shots. He's the only one
13 sitting behind that table. This is what is confusing.

14 Now Domoneik did shoot that night. There is no doubt
15 about that. But why did he shoot. The answer is simple.
16 He shot because somebody was shooting at him.

17 And like it or not if somebody shoots a gun at you, you
18 have an absolute right to shoot back as long as you are not
19 the first aggressor. As long as you don't bring about the
20 trouble and shoot the first shot, you can shoot back.

21 And we know that Domoneik didn't shoot the first shot.
22 We know, the State knows. But yet here we are. There are
23 other people shooting. Why weren't they arrested? That is
24 a question I want to know. And that is a question I hope
25 they answer for us during this trial.

1 It seems to me that the only thing that they are
2 concerned about is that they see Domoneik discharging his
3 gun on the video. It is a closed case. He is on there.

4 But what does the video actually tell us?
5 Unfortunately not a whole lot. That's not to say that it is
6 not an important piece of evidence. In fact, it is probably
7 the most important piece of evidence you're going to watch
8 during this trial.

9 And I encourage all of you to pay very close attention
10 to what is going on in that video and even at the end of
11 this trial when you go back to your jury rooms you are going
12 to be able to take that video back with you.

13 And no matter how many times you watch it from
14 different angles, on different speeds, it is not going to be
15 able to tell you the events that led up to this night. It
16 is not going to be able to reveal who shot the first shot.

17 What it shows is chaos. And about midway through that
18 chaos Domoneik can be seen running and shooting at a person
19 he believes is shooting at him.

20 This is natural law. Self-defense has always existed.
21 And it will continue to exist to preserve the most
22 fundamental aspect of our society, human life. Saving his
23 life was why Domoneik shot. Saving his life is why Domoneik
24 ran.

25 THE COURT: State may call its first witness.

1 MR. DURANT: Thank you, Your Honor.

2 THE COURT: You are welcome.

3 MR. DURANT: The State will call Will Muirhead.

4 (WHEREUPON, the witness was duly sworn.)

5 THE CLERK: State your full name and spell your last
6 name.

7 THE WITNESS: My name is Will Muirhead, and it is
8 spelled M-U-I-R-H-E-I-D.

9 THE COURT: You may proceed.

10 MR. DURANT: Thank you, Your Honor.

11 THE COURT: You are welcome.

12 **DIRECT EXAMINATION - MR. DURANT OF WILL MUIRHEID:**

13 Q Could you tell our jury where you are employed, sir.

14 A. I am employed with the Charleston County Sheriff's
15 Office.

16 Q. And what do you do -- what are your current duties?

17 A. Currently I am assigned to the detectives division.

18 Q. Is that what you were doing in March of 2011?

19 A. No, at that time I was assigned to as a patrol deputy.

20 Q. And in what area were you assigned as a patrol deputy?

21 A. Mainly James Island.

22 Q. In that capacity did you have the occasion to be
23 dispatched to 897 Folly Road on the early morning of March
24 30th of 2011?

25 A. Yes, I did.

1 Q. And what business is at that location?

2 A. It is a Kangaroo convenience and gas station at the
3 corner of Camp Road and Folly Road.

4 Q. In what county is that located?

5 A. That is in Charleston County.

6 Q. I hand you what has previously been marked as State's
7 Exhibit 96, I believe without ---

8 MR. DURANT: I would offer it I believe without
9 objection, Your Honor.

10 THE COURT: Please show it to counsel before ---

11 MR. DURANT: I have.

12 THE COURT: Is it without ---

13 MS. PROCTOR: Without objection.

14 THE COURT: --- objection? What number is it?

15 MS. PROCTOR: Ninety-six, Your Honor.

16 THE COURT: Marked and admitted without objection,
17 Number 96.

18 (WHEREUPON, State's Exhibit Number 96, aerial
19 photograph - Kangaroo, was marked for identification.)

20 (WHEREUPON, State's Exhibit Number 96 admitted into
21 evidence.)

22 BY MR. DURANT:

23 Q. Okay. I just wanted to take a second to orient the
24 jury as to what we are looking at here. Do you recognize
25 what that depicts, sir?

1 A. Yes, I do.

2 Q. What is that?

3 A. That is the Kangaroo station right there at the corner
4 of Camp and Folly Road.

5 Q. Okay. And that is an aerial photograph obviously; is
6 that correct?

7 A. Yes, it is.

8 Q. And if you would -- we can't use pointers because it
9 doesn't show up on that screen. But what is this road right
10 here (pointing)?

11 A. That is Folly Road.

12 Q. Okay. And what is this road that comes -- runs out
13 perpendicular to it right there (pointing)?

14 A. That is Camp Road.

15 Q. And what is this building right here (pointing)?

16 A. That is the Kangaroo convenience store.

17 Q. And this is basically the awning over the gas pumps and
18 all of that; is that correct?

19 A. Yes.

20 Q. What is business located over here (pointing)?

21 A. That is a carwash with several bays.

22 Q. Like one of those self-service things where you go
23 in ---

24 A. Yes, sir.

25 Q. --- and pull your car in the bay and wash it off

1 yourself?

2 A. Yes, sir.

3 Q. Okay. And going back this way (pointing) up to the top
4 or north, which direction is that?

5 A. That would be leaving from Folly Beach going towards
6 downtown Charleston.

7 Q. Okay. That would go to downtown Charleston or West
8 Ashley. And how about back the other way, where does Folly
9 go that way?

10 A. That would be going in the direction of Folly Beach.

11 Q. Okay. Thank you. What time did you arrive at the
12 Kangaroo?

13 A. It was approximately 2:55 in the morning.

14 Q. And this was a Wednesday morning I believe, correct?

15 A. Yes, sir.

16 Q. Were you the first deputy to arrive?

17 A. I arrived on the scene with several other deputies
18 approximately right around the same time.

19 Q. And where had you been before you were dispatched over
20 to the Kangaroo?

21 A. We were at the Creekside Club.

22 Q. And where is the Creekside Club?

23 A. The Creekside Club in reference to where the Kangaroo
24 is it would be going towards Folly Beach. It is at the
25 corner of Old Folly Road and Battery Island Road.

1 Q And what is at that location?

2 A It is a local club.

3 Q And did they have some sort of function going on that
4 night?

5 A. I don't believe it was a private function. But the
6 bar, slash, club was open. There were many people there.

7 Q Okay. And ended up having to close it down, didn't
8 they?

9 A. Yes, sir.

10 Q. And do you recall why that was?

11 A. There was some sort of altercation that was there. And
12 we were there to help the bouncers or the security that was
13 hired.

14 Q. Now when you got to the Kangaroo who did you talk to?

15 A. I talked to Ms. Equett Robinson who was the cashier
16 working at the time.

17 Q. And based upon your interview with her did you learn
18 what had occurred at the Kangaroo?

19 A. Yes.

20 Q. And were you aware of whether Ms. Robinson was a
21 witness or not to the shooting?

22 A. Yes.

23 Q. And was she or was she not?

24 A She was.

25 Q. Did she know the shooter?

1 A. She did not know the shooter's name, but did advise
2 that he was a regular customer.

3 Q. And what did you and Deputy Kjellman locate in the
4 parking lot?

5 A. There was multiple spent shell casings that had
6 obviously come from a firearm.

7 Q. Okay. Did you attempt to collect them at that point or
8 did you leave those for others?

9 A. No, sir, we left them where they were at to be
10 collected by our forensics unit.

11 Q. They were called out there that morning?

12 A. Yes, sir.

13 MR. DURANT: Your Honor, at this time we would offer
14 State's Exhibit Number 69.

15 THE COURT: Any objection?

16 MS. PROCTOR: No, Your Honor.

17 THE COURT: Marked and admitted without objection.
18 Make sure you show it to the court reporter.

19 (WHEREUPON, State's Exhibit Number 69, video on DVD,
20 was marked for identification.)

21 (WHEREUPON, State's Exhibit Number 69 was admitted into
22 evidence.)

23 MR. DURANT: Your Honor, permission to publish
24 State's 69 to the jury?

25 THE COURT: Any exception?

1 MS. PROCTOR: No, Your Honor.

2 THE COURT: You may proceed.

3 MR. DURANT: Your Honor, at this time this is State's
4 Number 69. We had requested to defense counsel we were
5 going to play the entire video at this time. Obviously we
6 are going to be referring back to it.

7 THE COURT: She is not objecting to you playing the
8 video. Proceed.

9 (WHEREUPON, video played.)

10 (WHEREUPON, video paused.)

11 BY MR. DURANT:

12 Q. Deputy Muirheid, I am going to briefly pause it here at
13 7:41. Did you have an opportunity to review this video with
14 Ms. Equett Robinson?

15 A Yes, I did.

16 Q. And while you were identifying or watching it with her
17 was she able to point out the person that she had observed
18 shooting?

19 A. Yes, she did.

20 Q. And is that person depicted on this at 7:41?

21 A. Yes, sir.

22 Q. Which one is that?

23 A. He is wearing a white T-shirt, light blue jeans, at the
24 trunk of the navy blue car there.

25 Q. This one right here (pointing)?

1 A Yes, sir.

2 Q. Okay. And the subject Impala that we are talking
3 about, that would be this vehicle here (pointing)?

4 A. Yes, sir.

5 Q. Okay. Thank you, sir.

6 (WHEREUPON, video played.)

7 (WHEREUPON, video paused.)

8 MR. DURANT: Your Honor, that is all I would want to
9 play right now. If there is anything else the defense would
10 like me to play later, I would be glad to do it. But I
11 think it is pretty ---

12 MS. PROCTOR: We are fine now, Your Honor.

13 THE COURT: You may proceed.

14 MR. DURANT: Thank you.

15 THE COURT: You are welcome.

16 MR. DURANT: I don't believe I have any other
17 questions. Would you please answer any questions defense
18 counsel may have for you.

19 THE COURT: Thank you. You may proceed.

20 MS. PROCTOR: Thank you.

21 **CROSS-EXAMINATION - MS. PROCTOR OF WILL MUIRHEID:**

22 Q. Officer, when you -- you said you were originally at
23 Creekside?

24 A. Yes, ma'am.

25 Q. And while you were enroute did you receive any calls

1 from dispatch on the description of a shooter?

2 A. I don't recall.

3 Q. And it took you approximately say a little over five
4 minutes to arrive at the scene, correct? Just from watching
5 I think from the video it took a while for y'all to get
6 there?

7 A. From where I was coming from, yes. But I believe it
8 was only one minute from when it was dispatched.

9 Q. Okay. But I am talking about from just from the video
10 we saw from the time that everybody dispersed to the time
11 you arrived?

12 A. Yes, ma'am.

13 Q. And during that time before any police officers were on
14 the scene I think the video showed us there were quite a few
15 cars coming in and out, correct?

16 A. Yes, ma'am.

17 Q. And there were still people trying to walk up to the
18 store ---

19 A. Yes, ma'am.

20 Q. --- to get in? And so there were still people around.
21 And when you arrived, besides Ms. Robinson out of all the
22 cars that were there, crews, did anybody stay to give you a
23 statement?

24 A. I don't recall if they were specifically already there.
25 I just remember taking several statements.

1 Q. That night at the Kangaroo gas station?

2 A. Yes.

3 Q. From several people?

4 A. Yes, ma'am. And you also talked to Ms. Robinson at
5 that time, correct?

6 A. Yes.

7 MS. PROCTOR: The court's indulgence.

8 THE COURT: Uh-huh.

9 MS. PROCTOR: Court's indulgence one moment.

10 THE COURT: Uh-huh.

11 BY MS. PROCTOR:

12 Q. Do you recall who you took a statement from that night
13 that night at the Kangaroo before you talked to Ms.
14 Robinson?

15 A I would -- I would need to see the copy of the report
16 and I would probably be able to help you out with that.

17 Q Would it surprise you if none of the statements that
18 you took that night were from the Kangaroo gas station
19 except ---

20 A. I'm sorry, I don't ---

21 Q. --- for Ms. Robinson?

22 A. --- understand.

23 Q. Okay. Thank you. I have no further questions.

24 THE COURT: Any redirect of the witness?

25 MR. DURANT: No, ma'am.

1 THE COURT: Any objection to the witness being excused,
2 from the State?

3 MR. DURANT: No, ma'am.

4 THE COURT: From the defense?

5 MS. PROCTOR: No, Your Honor.

6 THE COURT: Sir, you are excused.

7 THE WITNESS: Thank you, Your Honor.

8 THE COURT: You are welcome. Have a good day.

9 THE WITNESS: Thank you.

10 MR. DURANT: The State would call Equett Robinson.

11 (WHEREUPON, the witness was duly sworn.)

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

14 THE WITNESS: Equett Eliah (ph) Robinson,
15 R-O-B-I-N-S-O-N.

16 THE COURT: You may proceed.

17 MR. DURANT: Thank you, Your Honor.

18 THE COURT: You are welcome.

19 **DIRECT EXAMINATION - MR. DURANT OF EQUETT ROBINSON:**

20 Q Good afternoon. Could you please tell our jury how old
21 you are.

22 A. I'm sorry?

23 Q. How old are you?

24 A. I am 34.

25 Q. Okay. And if you would, I am going to ask you to kind

1 of talk into that microphone so we want to make sure the
2 jury hears everything you have to say today. Okay?

3 A. Okay.

4 Q. Are you married?

5 A. Yes.

6 Q. How long have you been married?

7 A. Twelve years.

8 Q. Do you have any kids?

9 A. Yes.

10 Q. How many children do you have?

11 A. Four.

12 Q. And how far did you go in school, Mr. Robinson?

13 A. I am currently still in school.

14 Q. Okay. You graduated from high school?

15 A. Yes.

16 Q. You are taking what kind of courses now?

17 A. Psychology courses.

18 Q. And are you currently employed?

19 A. Yes.

20 Q. Who do you work for?

21 A. Disability Board, Charleston County.

22 Q. And could you tell the jury where you were working on
23 March the 30th, 2011?

24 A. Kangaroo gas station.

25 Q. And could you tell them where the Kangaroo gas station

1 is located; what is the address?

2 A. 897 Folly Road.

3 Q. Do you remember when you left your employment with
4 Kangaroo?

5 A. Yes.

6 Q. When did you leave them?

7 A. About three years ago.

8 Q. Okay. Was it shortly after this incident?

9 A. Yes.

10 Q. Did this incident have anything to do with it?

11 A. Yes.

12 Q. And how did it factor into your decision to leave the
13 Kangaroo?

14 A. My husband made me leave.

15 Q. How long did you work for the Kangaroo?

16 A. About a year and a half.

17 Q. And where did you work -- which store did you work at
18 when you were working for the Kangaroo?

19 A. The one on Folly Road.

20 Q. And that is the one you worked the whole time up until
21 the time of this shooting, and I believe you were at another
22 store for just a couple of weeks; is that right?

23 A. Yes.

24 Q. Do you know him (pointing)?

25 A. Yes.

1 Q. How do you know him?

2 A. That is the guy who shot the guy -- at the guy in the
3 gold Impala.

4 Q. Okay. And prior to that even happening though how did
5 you know him; how did you come to know him?

6 A. He regularly came in the gas station.

7 Q. And that was the Kangaroo, correct?

8 A. Yes.

9 Q. How often would you see him?

10 A. Almost every Saturday night.

11 Q. And that was during the whole year, year and a half
12 that you worked there?

13 A. Yes.

14 Q. Ever had a conversation with him?

15 A. A few times.

16 Q. You've talked to him; he has talked to you?

17 A. Yes.

18 Q. Ever checked his ID?

19 A. Once.

20 Q. Did you remember what his name was?

21 A. No.

22 Q. But he had been a customer of yours for a good long
23 time?

24 A. Yes.

25 Q. Now the shooting in this case was on March the 30th,

1 early Wednesday morning. When was the last time you had
2 seen him prior to that?

3 A. The Saturday night before.

4 Q. And so that would be the Saturday before this
5 Wednesday?

6 A. Yes.

7 Q. And do you recall what time of the day or night it was?

8 A. It was after midnight.

9 Q. Okay. Is that when you would typically see him?

10 A. Yes.

11 Q. After the clubs closed down?

12 A. Yes.

13 Q. And was there anything about your meeting with him on
14 that Saturday that stuck out in your mind?

15 A. He stole a hotdog.

16 Q. And did you get a chance to run him down and ask him
17 for the money?

18 A. No.

19 Q. Now do you know if he lived on James Island?

20 A. I can only assume he did.

21 Q. And why did you assume that?

22 A. Because he would come in there every weekend.

23 Q. Okay. I want to talk a little bit about the shooting
24 now. Were you working that morning?

25 A. Yes.

1 Q. Were you the only employee there or were there other
2 employees there?

3 A. Just me.

4 Q. And was the business light or heavy that night?

5 A. Light.

6 Q. And did it stay that way?

7 A. No.

8 Q. And what happened; I mean is that unusual for it to get
9 that busy that late at night?

10 A. On a Wednesday, yes.

11 Q. Okay. That is not unusual on a weekend but it is
12 unusual for a Wednesday night?

13 A. Yes.

14 Q. Do you remember where the defendant was when you first
15 saw him?

16 A. In the parking lot.

17 Q. Okay. And what did you see him do; did you see him
18 walk up to the door?

19 A. Yes.

20 Q. And what did you think when you saw him walk up to the
21 door?

22 A. I was going to charge him for the hotdog.

23 Q. You were hoping he was going to come in?

24 A. Yes.

25 Q. Because you were going to charge him for the hotdog?

1 A. Yes.

2 Q. Did he come in?

3 A. No.

4 Q. And why didn't he come in?

5 A. He was arguing with the guy in the gold Impala.

6 Q. Okay. You saw him doing that?

7 A. I saw him exchanging words, yes.

8 Q. Okay. And then he I believe he walked away and walked
9 back up to the door, the front door; and then what did you
10 see him do?

11 A. He walked off.

12 Q. Okay. And what was he doing when he walked off?

13 A. He went to the gas -- excuse me, the carwash next door.

14 Q. Okay. Now as you are standing in the store looking out
15 would the carwash be to your left or to the right?

16 A. To the left.

17 Q. And he went walking off in that direction?

18 A. Yes.

19 Q. And what did you -- what happened next?

20 A. Then someone yelled out that they were going to fight.

21 Before he walked out someone yelled they were going to

22 fight. And when he walked off somebody yelled that he had a

23 gun. And then I heard a few shots fired. And then I saw

24 him walk up towards the gold Impala.

25 Q. Okay. Now you said you heard a few shots fired. Where

1 did those shots appear to be coming from to you?

2 A. From my left.

3 Q. Okay. Over towards the car -- from the carwash?

4 A. Yes.

5 Q. Did you hear any shots coming from the gold Impala at
6 all?

7 A. No.

8 Q. Did you see anybody in the gold -- in the gold Impala
9 with a gun?

10 A. No.

11 Q. Did you see anybody from the gold Impala shoot anybody?

12 A. No.

13 Q. And the shots that you heard, the initial shots that
14 you heard, were not coming from the direction of that car;
15 is that correct?

16 A. No.

17 Q. They were coming from which direction?

18 A. From the left.

19 Q. Okay. Now after you heard these shots you indicated
20 you saw somebody with a gun. Who did you see with a gun?

21 A. The defendant.

22 Q. And when you say the defendant you are talking about
23 Domoneik Washington here; is that correct?

24 A. Yes.

25 Q. And what did you see him do?

1 A. He walked up towards the gold Impala and fired some
2 shots.

3 Q. And do you remember how many shots he fired?

4 A. No. It was quite a bit.

5 Q. Could you remember what the gun looked like?

6 A. It was a small, black handgun.

7 Q. And what was -- did the guy -- how many guys did you
8 remember seeing in the -- at the Impala at that time?

9 A. Just one.

10 Q. What did you see him do?

11 A. He was in the driver's seat. And when he walked up
12 toward the car firing he pushed himself into the passenger's
13 side.

14 Q. Okay. He was like lying on the seat?

15 A. Yes.

16 Q. What did he look like he was trying to do?

17 A. He was trying to duck down.

18 Q. Did you see him get shot?

19 A. It appeared that I did.

20 Q. It appeared he got shot where?

21 A. In his thigh.

22 Q. And are you -- do you know the difference between a
23 revolver and a semi automatic?

24 A. Yes.

25 Q. Was Mr. Washington -- did Mr. Washington have a

1 revolver or a semi automatic?

2 A. A semi automatic.

3 Q. So what did you see him do after he finished shooting
4 at the guy in the car?

5 A. He ran back towards the carwash.

6 Q. Which would be back to your left, correct?

7 A. Yes.

8 Q. What did the guy in the Impala do?

9 A. He lifted up his head and paused for a second and then
10 he jumped back in the driver's side and shut the door and
11 took off out the parking lot on -- up Folly Road towards the
12 Connector.

13 Q. Okay. And you could see him in the car at that point.
14 Was there anybody else in the front seat with him?

15 A. No.

16 Q. Do you remember how many people in the back seat?

17 A. I didn't see anybody.

18 Q. Okay. And you say the car turned left going heading
19 back toward downtown; is that correct?

20 A. Yes.

21 Q. There were a lot of gunshots out there that night; is
22 that correct?

23 A. Yes.

24 Q. How many people did you see shooting a gun?

25 A. One.

- 1 Q. And that person is who?
- 2 A. The defendant.
- 3 Q. At any point did you see any or hear any shots coming
- 4 from the Impala?
- 5 A. No.
- 6 Q. Now who did you call after seeing the shooting?
- 7 A. 911.
- 8 Q. And you told -- reported the incident; is that correct?
- 9 A. Yes.
- 10 Q. And do you recall how long it took the police to get
- 11 there?
- 12 A. A few minutes.
- 13 Q. Do you remember Deputy Muirheid showing up, the guy
- 14 that testified just before you?
- 15 A. Yes.
- 16 Q. Okay. You told him what you had seen?
- 17 A. Yes.
- 18 Q. You told him that you had seen the shooter?
- 19 A. Yes.
- 20 Q. And you told him basically that you knew who the guy
- 21 was, you just didn't know his name; is that correct?
- 22 A. Yes.
- 23 Q. Is there a video surveillance system in that store?
- 24 A. Yes.
- 25 Q. Do you recall how many cameras they have in that video

1 surveillance system?

2 A. There are three -- four. Four cameras.

3 Q. Okay. Four to five. Do you know how many show the
4 outside?

5 A. One.

6 Q. And do those camera also have audio?

7 A. Just one.

8 Q. And which one is that?

9 A. The one behind the counter.

10 Q. That is the one right behind you where you stand?

11 A. Yes.

12 Q. And if you are going in that store if you go in the
13 front door your counter would be to the ---

14 A. Right.

15 Q. Right. And it kind of runs along that side of the
16 store; is that correct?

17 A. Right.

18 Q. At your register, so if I went in the front door of
19 that store and turned right I would be looking at you behind
20 your cash register; is ---

21 A. Yes.

22 Q. --- that correct? Okay. And that's where the
23 microphone is?

24 A. Yes.

25 Q. Do you remember going over -- or showing the deputy the

1 video that night?

2 A. Yes.

3 Q. And pointing out the shooter to him; is that correct?

4 A. Yes.

5 Q. Ms. Robinson, I want to show you a portion of State's
6 Exhibit Number 69.

7 (WHEREUPON, video played.)

8 (WHEREUPON, video stopped.)

9 Q. Ms. -- can you see this on your monitor up there?

10 A. Yes.

11 Q. Who is this person right here (pointing)?

12 A. The defendant.

13 Q. Okay. And he is wearing obviously at that point a
14 T-shirt and blue jeans; is that correct?

15 A. Yes.

16 (WHEREUPON, video played.)

17 (WHEREUPON, video stopped.)

18 Q. And up there when he was at the door is that when you
19 had first seen him?

20 A. No.

21 Q. Okay. You saw him when he walked up to the door?

22 A. Yes, when he was about to come in.

23 Q. Okay. That's when you said you were going to get your
24 money for your hotdog?

25 A. Yes.

1 Q. Okay.

2 (WHEREUPON, video played.)

3 (WHEREUPON, video stopped.)

4 Q. And this is him out here at this point, correct?

5 A. Yes.

6 Q. Is that what you were talking about when you said he
7 was arguing with the people in the car?

8 A. Yes.

9 (WHEREUPON, video played.)

10 (WHEREUPON, video stopped.)

11 Q. By that time do you know if you had already locked the
12 door?

13 A. No.

14 Q. Okay.

15 (WHEREUPON, video played.)

16 (WHEREUPON, video stopped.)

17 Q. Did you see him walking out toward the car like that?

18 A. Yes.

19 (WHEREUPON, video played.)

20 (WHEREUPON, video stopped.)

21 Q. Okay. That was the first shot you heard, correct?

22 A. Yes.

23 Q. And from which direction did that shot come from?

24 A. It sounded like the left.

25 Q. Okay. Over from the carwash side?

1 A. Yes..

2 (WHEREUPON, video played.)

3 (WHEREUPON, video stopped.)

4 Q. Okay.. I know it is hard to see. But who is this
5 person right here (pointing)?

6 A. The defendant.

7 Q. And when you say you saw him approach the car, shooting
8 into the car, that's what you were talking about?

9 A Yes.

10 Q. He is also wearing the white shirt and the blue jeans?

11 A. Yes.

12 Q. Any doubt in your mind?

13 A. No.

14 (WHEREUPON, video played.)

15 (WHEREUPON, video stopped.)

16 Q. Who is that saying he got shot, that boy in that car
17 right there?

18 A. Me.

19 (WHEREUPON, video played.)

20 (WHEREUPON, video stopped.)

21 MR. DURANT: Your Honor, we would offer State's 70 I
22 believe without objection.

23 MS. PROCTOR: Right.

24 THE COURT: Marked and admitted without objection.

25 (WHEREUPON, State's Exhibit Number 70, DVD Kangaroo

1 surveillance video, was marked for identification.)

2 (WHEREUPON, State's Exhibit Number 70 was admitted into
3 evidence.)

4 MR. DURANT: And we will play a portion of this as
5 well.

6 (WHEREUPON, video played.)

7 BY MR. DURANT:

8 Q. This is State's Number 70. I want to ask you a couple
9 of questions. You have seen this video before, correct?

10 A. Yes.

11 Q. And this would be the video from taken toward the front
12 door; is that correct?

13 A. Yes.

14 Q. Where are you?

15 A. Behind the counter.

16 THE COURT: Ma'am, could you speak directly into the
17 microphone.

18 BY MR. DURANT:

19 Q. So this would be you over here (pointing)?

20 A. Yes.

21 Q. Do you see where my curser is?

22 A. Yes, sir.

23 MR. DURANT: I am going to move this ahead about seven
24 minutes and thirty seconds.

25 (WHEREUPON, video stopped.)

1 BY MR. DURANT:

2 Q. Okay. Who is this fellow right here right outside the
3 door?

4 A. The defendant.

5 Q. Okay. Is that when you first saw him walking up?

6 A. Yes.

7 (WHEREUPON, video played.)

8 (WHEREUPON, video stopped.)

9 Q. And why did you come around to the door there?

10 A. Because someone yelled they were about to fight.

11 Q. Okay. And what were you intending to do?

12 A. Make everybody get out of the store so I could lock the
13 door.

14 Q. Okay. And you were going -- planning on calling the
15 police; is that correct?

16 A. Yes.

17 (WHEREUPON, video played.)

18 (WHEREUPON, video stopped.)

19 Q. Once again, who is this that was turned -- has returned
20 back in front of the doorway?

21 A. The defendant.

22 Q. You originally described him at one time I think on the
23 911 call as having black jeans on. Are -- were you correct
24 in that?

25 A. No.

1 Q. No question in your mind that this is the fellow that
2 you saw shoot, correct?

3 A. Right.

4 Q. And you agree that he does not have black jeans on?

5 A. Yes.

6 Q. So you were mistaken when you told that to the 911
7 operator?

8 A. Yes.

9 (WHEREUPON, video played.)

10 (WHEREUPON, video stopped.)

11 Q. Did you know those girls that were in the store with
12 you?

13 A. No.

14 Q. Okay. Had you seen them before or that was the first
15 time you had ever seen them?

16 A. That was the first time that I had ever seen them that
17 I remember.

18 Q. Okay. After you had got -- you were done at the
19 Kangaroo did you have an occasion to go to the Charleston
20 County Sheriff's Office?

21 A. Yes.

22 Q. That same day?

23 A. Yes.

24 Q. Do you remember how long you ended up having to stick
25 around the store?

1 A. Until about maybe 11 o'clock that morning.

2 Q. Okay. You ended up going over to the Sheriff's Office
3 that afternoon?

4 A. Yes.

5 Q. What did they want you to do?

6 A. Look at some photos.

7 Q. And do you recall looking at some photographs that day?

8 A. Yes.

9 Q. I believe you met with a Detective Cooke; is that
10 correct?

11 A. Yes.

12 Q. I hand you what has been marked as State's Exhibit
13 Number 67 and ask if you recognize that document.

14 A. Yes.

15 Q. What is that?

16 A. This is the first photo lineup they showed me.

17 Q. Okay. And that one is dated on March 30th of 2011 at
18 15 what?

19 A. Fifteen forty-two.

20 Q. Okay. So that is about 3:42 in the afternoon; is that
21 correct?

22 A. Yes.

23 Q. A bunch of stuff on the front page where -- and some
24 initials there. Are those your initials?

25 A. Yes.

1 Q. And did Detective Cooke go over all of those
2 instructions with you before he allowed you to see the
3 pictures?

4 A. Yes.

5 Q. Okay. And after he did that did he show you some
6 pictures?

7 A. Yes.

8 Q. And are those the pictures attached to State's Exhibit
9 Number 68 (sic)?

10 A. Yes.

11 Q. Okay. And were you able to make any kind of
12 identification of anybody from State's Exhibit Number 60 --
13 67?

14 A. No.

15 Q. Okay. And why is that?

16 A. He wasn't in the lineup.

17 Q. Okay.. You --

18 A. Nobody I recognized was in the lineup.

19 Q. The guy that you saw shooting wasn't in the lineup; ---

20 A. No.

21 Q. --- is that correct? And is that what you wrote?

22 A. Yes.

23 Q. What did you write down there?

24 A. I didn't see the guy that did the shooting.

25 Q. Okay. And then directing your attention to State's

1 Exhibit Number 68, that was shown to you about how much
2 later?

3 A. About an hour later.

4 Q. Okay. And what is the time on that?

5 A. Sixteen thirty-two.

6 Q. Okay. And once again he went over the instructions
7 with you?

8 A. Yes.

9 Q. And after he did that did -- did -- what did he do?

10 A. He showed me the photos, asked me if I saw the shooter.

11 Q. And what did you tell him?

12 A. Yes.

13 Q. And what did he tell you -- ask you to do when you saw
14 the shooter?

15 A. He asked me to circle the picture and initial and then
16 write the statement on the front.

17 Q. Okay. And is that what you did, you circled the
18 picture?

19 A. Yes.

20 Q. And whose picture did you circle?

21 A. The defendant.

22 Q. This fellow right here (pointing), correct?

23 A. Yes.

24 Q. And what did you write on the comment section?

25 A. This -- this is the guy I saw with a gun. He was

1 shooting at the guy driving the gold Impala.

2 Q. Okay. And did the detective at any point tell you who
3 to pick out in these photos?

4 A. No.

5 Q. Did he suggest to you in any way that -- who to pick
6 out?

7 A. No.

8 Q. Did you even tell you that the guy that was in -- did
9 the shooting would be in those photographs?

10 A. No.

11 Q. And you picked out that photograph why?

12 A. Because that is who did it.

13 MR. DURANT: Your Honor, we would offer 67, 68 if they
14 are not already in. I am not sure if they are in or not.

15 THE COURT: Marked and admitted without objection --
16 without objection.

17 (State's Exhibit Number 67 and State's Exhibit Number
18 68 were previously marked and admitted.)

19 MR. DURANT: Thank you, Ms. Robinson. Could you please
20 answer any questions that Ms. Proctor may have.

21 THE COURT: You may proceed.

22 MS. PROCTOR: Thank you, Your Honor.

23 THE COURT: You are welcome.

24 **CROSS-EXAMINATION - MS. PROCTOR OF MS. ROBINSON:**

25 Q. Ms. Robinson, you say that when you started out that

1 night it was a fairly slow -- not -- fairly slow night?

2 A. Yes.

3 Q. And then it started to get crowded?

4 A. Yes.

5 Q. And this was after probably a club had let out -- or
6 you didn't know why, but it was getting crowded?

7 A. Yes.

8 Q. And you were working alone that night, correct?

9 A. Yes.

10 Q. And at first there were a few cars, and in
11 approximately maybe five minutes a lot of cars started
12 coming in and out?

13 A. Yes.

14 Q. And there were so many cars that some cars couldn't
15 even find a place to park, correct?

16 A. Right.

17 Q. And there was a lot of noise; there were engines
18 revving?

19 A. Yes.

20 Q. And there also were a lot of people coming in and out
21 of the Kangaroo?

22 A. Yes.

23 Q. And there also -- I think you had music playing in
24 there?

25 A. Yes.

1 Q. And it was quite noisy, correct?

2 A. Yes.

3 Q. And you said at one time you saw somebody come up to
4 the door and you recognized Mr. Washington?

5 A. Yes.

6 Q. And he had on -- I think you identified him as somebody
7 in a white T-shirt and some light blue jeans -- blue jeans?

8 A. Black jeans?

9 Q. Blue.

10 A. Yes.

11 Q. In blue jeans?

12 A. Yeah, he was the one in the blue jeans.

13 Q. Blue jeans. Okay. And ---

14 (WHEREUPON, video played.)

15 (WHEREUPON, video stopped.)

16 Q. Now did you say that person -- never mind.

17 MS. PROCTOR: Go a little bit further.

18 (WHEREUPON, video played.)

19 (WHEREUPON, video stopped.)

20 BY MS. PROCTOR:

21 Q. And you say that is the first time that Mr. Washington
22 came up to the door, correct, that you saw him?

23 A. Yes.

24 Q. Okay.

25 MS. PROCTOR: Go a little further.

1 MR. DURANT: Just tell me when.

2 MS. PROCTOR: Just keep going.

3 (WHEREUPON, video played.)

4 (WHEREUPON, video stopped.)

5 MS. PROCTOR: Can you go back just a little bit.

6 (Mr. DuRant complied by stopping video.)

7 BY MS. PROCTOR:

8 Q. Did you -- the person that was standing in the door
9 when the door was opened, the person in the white T-shirt
10 and black jeans, did you hear ---

11 MR. DURANT: Are you talking about -- are you talking
12 about this guy?

13 MS. PROCTOR: No, outside the door. You have to go
14 back a little bit. Now go forward.

15 (WHEREUPON, video played.)

16 (WHEREUPON, video stopped.)

17 MS. PROCTOR: Stop.

18 (Mr. DuRant complied by stopping video.)

19 BY MS. PROCTOR:

20 Q. Do you hear the person with the sleeveless white
21 T-shirt and the black jeans, he is reaching in his pocket,
22 do you hear him when the door open yell shoot?

23 A. No.

24 (WHEREUPON, video played.)

25 (WHEREUPON, video stopped.)

1 Q. Do you hear that when you were in the store that day
2 when he is yelling shoot?

3 A. No.

4 Q. Okay.

5 (WHEREUPON, video played.)

6 (WHEREUPON, video stopped.)

7 Q. But it is that -- at that point that you decided to
8 come over and lock the door, correct?

9 A. Yes.

10 Q. And you are going over there now to lock it?

11 A. Yes.

12 MS. PROCTOR: Okay. Keep going.

13 (WHEREUPON, video played.)

14 (WHEREUPON, video stopped.)

15 MS. PROCTOR: Stop it.

16 (Mr. DuRant complied by stopping video.)

17 BY MS. PROCTOR:

18 Q. And right there I had asked you earlier at another
19 hearing if the door was locked when Mr. Washington came
20 back. And that is him at the door and the door is locked,
21 correct? As he was coming back into the store?

22 A. Yeah.

23 Q. And the door was locked when he was trying to get back
24 in?

25 A. He didn't try to get in.

1 Q. He just reached for the door handle?

2 A. I didn't see him.

3 Q. Well, the door is locked though; correct?

4 A. Yes.

5 Q. And when he was there he didn't have a gun in his hand?

6 A. No.

7 MS. PROCTOR: Okay. Keep going.

8 (WHEREUPON, video played.)

9 (WHEREUPON, video stopped.)

10 Q. Now the gentleman that's coming back with the white
11 T-shirt and the black jeans do you ever see him reach in his
12 back pocket?

13 A. No.

14 MS. PROCTOR: Okay. Keep going.

15 (WHEREUPON, video played.)

16 MS. PROCTOR: Pause.

17 (WHEREUPON, video stopped.)

18 BY MS. PROCTOR:

19 Q. So first there is the first shot and you are still
20 letting people out of the store, correct?

21 A. Yes.

22 MS. PROCTOR: Go some more.

23 (WHEREUPON, video played.)

24 MS. PROCTOR: Pause.

25 (WHEREUPON, video stopped.)

1 BY MS. PROCTOR:

2 Q. So there are quite a few more shots before you look out
3 the door, correct? You heard quite -- you heard some more
4 shots, correct?

5 A. Yes.

6 Q. And then after this you looked up and that is when you
7 see Mr. Washington?

8 A. Yes.

9 MS. PROCTOR: Go forward.

10 (WHEREUPON, video played.)

11 (WHEREUPON, video stopped.)

12 Q. And at this point you don't call 911?

13 A. No.

14 MS. PROCTOR: Okay. Keep going.

15 (WHEREUPON, video played.)

16 Q. Do you know if at any time yet anybody called 911?

17 A. I can't hear you.

18 (WHEREUPON, video stopped.)

19 THE COURT: Please repeat the question. I couldn't
20 hear it.

21 MS. PROCTOR: I'm sorry.

22 BY MS. PROCTOR:

23 Q. Had you called 911 yet?

24 A. No.

25 Q. Do you know if anybody in the store with you called

1 911?

2 A. I don't know.

3 Q. Okay.

4 MR. DURANT: Keep going?

5 MS. PROCTOR: Yes.

6 (WHEREUPON, video played.)

7 (WHEREUPON, video stopped.)

8 BY MS. PROCTOR:

9 Q. Had you called 911 yet?

10 A. No.

11 Q. Okay.

12 (WHEREUPON, video played.)

13 MS. PROCTOR: Stop.

14 (WHEREUPON, video stopped.)

15 BY MS. PROCTOR:

16 Q. And this is when you are calling 911?

17 A. Yes.

18 Q. And at this time when you tell -- give the police a
19 description you tell the person that was shooting had on a
20 white t-shirt and black jeans, correct?

21 A. Yes.

22 Q. And you said that you gave two statements to the
23 police. And it was the next day, correct?

24 A. No.

25 Q. You don't remember giving two different state -- two

1 statements?

2 A. It was the same day.

3 Q. Okay. It was the same day you gave two statements ---

4 A. Yes.

5 Q. --- the next day?

6 A. What do you mean the next day?

7 MR. DURANT: Actually it is was the same ---

8 BY MS. PROCTOR:

9 Q. I'm sorry, well, I mean the same date. This is night.

10 It was -- I am saying this was at night but it was the next
11 day; it was light outside?

12 A. Yes.

13 Q. Okay. It was like in the afternoon?

14 A. Yes.

15 Q. Okay. And when you gave your statement you told the
16 police when they asked you what kind of gun, you stated it
17 was black and small; correct?

18 A. Yes.

19 Q. And during the two statements you gave you never said
20 that it was a semi automatic, did you?

21 A. No.

22 Q. And when you called 911 and were giving the description
23 you said there was a shooter but you never said then it was
24 a semi automatic, did you?

25 A. No.

1 MS. PROCTOR: I have nothing further at this time.

2 THE COURT: Any redirect of the witness?

3 MR. DURANT: No, ma'am.

4 THE COURT: Any objection to witness being excused, ---

5 MR. DURANT: I would ---

6 THE COURT: --- from the State?

7 MR. DURANT: I would ask that Ms. Robinson be excused
8 for the State's case.

9 THE COURT: From the defense?

10 MS. PROCTOR: She may be excused, Your Honor.

11 THE COURT: Ma'am, you are excused. Madam Forelady,
12 ladies and gentlemen, we are going to take advantage of this
13 break in testimony and take our evening recess.

14 During the break please do not discuss the case among
15 yourselves or with anyone else. Please don't do any
16 independent research. That includes anything on the
17 Internet. And please do not watch, read, or listen to any
18 media accounts about this case.

19 We will resume in the morning at 9:30. You will come
20 directly to your jury room. And at that time we will resume
21 testimony.

22 I hope that you all have a good evening. I know today
23 has been a little long for you, but we appreciate your
24 patience. We will see you in the morning at 9:30.

25 And please don't have any contact with anyone in or

1 about the courthouse upon your return. And please leave
2 your notepads in your seats.

3 (WHEREUPON, the jury exited the courtroom.)

4 THE COURT: Is there anything before we break for the
5 evening, from the State?

6 MR. DURANT: No, Your Honor.

7 THE COURT: From the defense?

8 MS. PROCTOR: No, Your Honor.

9 THE COURT: Y'all have a good evening. I will see you
10 in the morning. Please make sure you mark any -- pre-mark
11 any exhibits if you have already agreed on them.

12 (WHEREUPON, recess July 15, 2013, at 5:02 p.m.)

13 (July 16, 2013 - Day 2)

14 (WHEREUPON, proceedings resumed July 16, 2013, at
15 9:52 a.m.)

16 THE COURT: You may be seated. Is the State ready to
17 proceed?

18 MR. DURANT: Yes, Your Honor.

19 THE COURT: Is defense ready to proceed?

20 MR. DURANT: Ah, I ---

21 THE COURT: You are saying ah, ---

22 MR. DURANT: --- believe ---

23 THE COURT: --- ah.

24 MR. DURANT: I believe that this -- that this would
25 probably be the point where we would need to go in camera.

1 THE COURT: What -- is there -- I need you to be more
2 specific than that.

3 MR. DURANT: With regard to our -- the issue on our
4 motion -- on the motion from yesterday concerning ---

5 THE COURT: I mean which witness are you getting ready
6 to call?

7 MR. DURANT: Edward Wittrell.

8 THE COURT: Are those going to be the first questions
9 you ask him?

10 MR. DURANT: I plan to get right to that, Your Honor,
11 so I won't have to break up his testimony.

12 THE COURT: So those will be the first questions you
13 ask him?

14 MR. DURANT: Well, I was going to gloss over -- I was
15 going to put him up in camera and just take him up to that
16 point and tell what happened after the shooting.

17 THE COURT: So how many questions would you be asking
18 him before we got to the point that we needed to hear in
19 camera?

20 MR. DURANT: Four or five. I mean ---

21 THE COURT: Oh, okay.

22 MR. DURANT: You know, I just -- like I said, I just --
23 I mean I will ask him more than that on direct. But I mean
24 when we are in front of the jury. But I just need to get
25 him to the point where they are shot at at the Kangaroo and

1 they leave. And I just want ---

2 THE COURT: What else are you going to ask him in front
3 of the jury that you don't plan to ask in camera; is any of
4 that going to be germane to my decision?

5 MR. DURANT: No. No, Your Honor. That would be all
6 stuff that led up to and what happened at the Kangaroo.
7 Okay. I am just trying to -- I want -- I want to get -- I
8 want to get to what happened -- because their objection is
9 to what happened after the Kangaroo.

10 THE COURT: Yeah, but I need to hear it all. I need --
11 I need to hear it in its context. If I could make a
12 decision based on just that ---

13 MR. DURANT: Well, I mean we can do that; but we are
14 going to have to stop his testimony in the middle.

15 THE COURT: That is fine.

16 MR. DURANT: And ---

17 THE COURT: Because I need to hear it in its context,
18 its full context. Because I don't want to in hindsight hear
19 something that you didn't ask him that might have changed my
20 decision.

21 MR. DURANT: Your ---

22 THE COURT: Because it is all factually driven.

23 MR. DURANT: Your -- your ---

24 THE COURT: Yeah.

25 MR. DURANT: It is your pleasure, Your Honor.

1 THE COURT: Yeah. I prefer to do it that way. And
2 then we will creating a proffer in the event that I exclude
3 the testimony.

4 MS. PROCTOR: Well

5 THE COURT: Yes?

6 MS. PROCTOR: Well, I just want to make sure that the
7 jury doesn't then think we are keeping something from
8 them ---

9 THE COURT: That really -- I think I have already
10 explained to them that we often have matters in camera.
11 That can't be my concern at this moment.

12 And I think I have already more than adequately
13 explained to them their parts of the procedure that deal
14 with matters of law that we don't want them influenced by
15 and that they will be excluded from.

16 Go ahead and get the jury for me.

17 THE COURT: Is Mr. Wittrell in custody?

18 MR. DURANT: No, ma'am.

19 THE COURT: Okay. Where is he then?

20 MR. DURANT: Right back there.

21 THE COURT: Okay. Mr. Wittrell, if you would go ahead
22 and come stand behind this blue chair.

23 (WHEREUPON, jurors returned to courtroom, July 16,
24 2013, 9:59 a.m.)

25 THE BAILIFF: Jurors all present.

1 THE COURT: Thank you, ladies and gentlemen. I hope
2 you all had a pleasant evening. We are now going to resume
3 with the State's case. Mr. DuRant, you may call your next
4 witness.

5 MR. DURANT: The State would call Edward Wittrell.

6 THE COURT: Please swear the witness.

7 (WHEREUPON, the witness was duly sworn.)

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

10 THE WITNESS: Edward, W-I-T-T-R-E-L-L.

11 THE COURT: And pronounce your last name, sir.

12 MR. WITTRELL: Wittrell.

13 THE COURT: And is it Junior?

14 MR. WITTRELL: Yeah.

15 THE COURT: You may proceed.

16 MR. DURANT: Thank you, Your Honor.

17 THE COURT: You are welcome.

18 **DIRECT EXAMINATION - MR. DURANT OF EDWARD WITTRELL:**

19 Q. Mr. Wittrell, could you tell the jury how old you are.

20 A. Twenty-two.

21 Q. And how far did you go in school?

22 A. High school. Completed high school.

23 Q. When did you graduate from high school?

24 A. 2009.

25 Q. And where did you go to high school?

- 1 A. Burke.
- 2 Q. Are you going to school now?
- 3 A. Yes.
- 4 Q. Where are you going to school now?
- 5 A. James Island.
- 6 Q. And you are out for the summer right now; is that
- 7 correct?
- 8 A. Yeah.
- 9 Q. Are you working right now?
- 10 A. Yeah.
- 11 Q. Where are you working?
- 12 A. Red's Ice House in Mount Pleasant.
- 13 Q. And what are you taking in school now?
- 14 A. Business. Business management.
- 15 Q. Are you married?
- 16 A. No.
- 17 Q. Do you have any kids?
- 18 A. No.
- 19 Q. And I believe you are currently on probation for a
- 20 marijuana charge; is that correct?
- 21 A. Yeah.
- 22 Q. I want to talk about the shooting at the Kangaroo that
- 23 happened back in March of 2011. Do you remember that?
- 24 A. Yeah.
- 25 Q. You were there, right?

- 1 A. Yeah.
- 2 Q. And before you were at the Kangaroo that night where
- 3 had you been?
- 4 A. Went to Palm Tree.
- 5 Q. And what is the Palm Tree?
- 6 A. Club.
- 7 Q. And where is the Palm Tree?
- 8 A. James Island.
- 9 Q. And who did you go to Palm Tree with?
- 10 A. Me, Antwan, Ronnie, ---
- 11 Q. Okay.
- 12 A. --- and one of Antwan's friends.
- 13 Q. Antwan Wilson?
- 14 A. Yeah.
- 15 Q. He is -- is he related to you?
- 16 A. No, just my friend.
- 17 Q. He is a friend?
- 18 A. Yeah.
- 19 Q. And the other one was Ronald Bryant; is that correct?
- 20 A. Uh-huh.
- 21 Q. Are you related to Ronald?
- 22 A. No. No, sir.
- 23 Q. Pardon me?
- 24 A. No.
- 25 Q. Okay. And please make sure you talk into that

1 microphone so everybody over here can hear you, okay?

2 THE COURT: And sir, if you could also say yes or no.

3 It helps the court reporter.

4 THE WITNESS: All right.

5 THE COURT: Thank you. You may proceed, Mr. DuRant.

6 BY MR. DURANT:

7 Q. And what was going on at the Palm Tree that night; were
8 you celebrating anything?

9 A. Yeah, was celebrating my birthday.

10 Q. How did y'all get to the Palm Tree?

11 A. Antwan.

12 Q. Antwan?

13 A. Yeah.

14 Q. And so he was driving?

15 A. Yeah..

16 Q. And he was driving an Impala?

17 A. Yeah.

18 Q. Where are you and Antwan and Ronald from, what part of
19 the city?

20 A. Downtown.

21 Q. And while y'all were at the club was there some kind of
22 problem at the club?

23 A. Yeah, just a fight.

24 Q. There was a fight?

25 A. Yeah.

- 1 Q. Okay. And you were involved in the fight?
- 2 A. Yeah.
- 3 Q. And Ronald was involved in the fight?
- 4 A. Yeah, all of us.
- 5 Q. And Antwan too?
- 6 A. Just from
- 7 Q. Pardon me?
- 8 A. Just was a fight.
- 9 Q. Just a fight. But I mean the three of y'all were
10 involved in the fight; is that correct?
- 11 A. Yeah.
- 12 Q. And y'all were fighting some other guys?
- 13 A. Yeah. I don't know who.
- 14 Q. You don't know who they were?
- 15 A. (Witness nods head.)
- 16 Q. Do you remember what the fight was about?
- 17 A. Just over something -- foolishness.
- 18 Q. Over some foolishness?
- 19 A. It was like I don't really -- can't describe how -- why
20 it started.
- 21 Q. Okay. It was just a fistfight?
- 22 A. Yeah.
- 23 Q. Any weapons involved?
- 24 A. No.
- 25 Q. What happened after that fight broke out -- this

1 happened inside the club?

2 A. Yeah.

3 Q. What happened after this fight broke out inside the
4 club?

5 A. We go on down the street with the intention of getting
6 some gas.

7 Q. Okay. Did they close the club down?

8 A. Yeah, was -- yeah.

9 Q. And I need you to speak up.

10 A. Yes.

11 Q. It is hard to hear.

12 THE COURT REPORTER: If you could lean into the
13 microphone, sit up and lean into it.

14 BY MR. DURANT:

15 Q. So was the club closed down?

16 A. Yes.

17 Q. And y'all left?

18 A. Yeah. Yes.

19 Q. Who -- who all left in y'all's car?

20 A. Me, Antwan, Ronnie, and one of Antwan's friends.

21 Q. And one of Antwan's friends?

22 A. Yeah.

23 Q. And where did y'all go when you left the club?

24 A. Went to the Kangaroo.

25 Q. And that would be at the Kangaroo at Camp and Folly

- 1 Road; is that correct?
- 2 A. Yes.
- 3 Q. And why were y'all at the Kangaroo?
- 4 A. To get some gas.
- 5 Q. Now were y'all able to get to a gas pump?
- 6 A. No.
- 7 Q. Why?
- 8 A. Packed. Full.
- 9 Q. It was full?
- 10 A. Yeah.
- 11 Q. So what were y'all doing, just waiting for a pump?
- 12 A. Waiting for a pump.
- 13 Q. Okay. And what happened while y'all were at the
- 14 Kangaroo?
- 15 A. There was some shots.
- 16 Q. Okay. People were shooting at you?
- 17 A. I don't remember -- just -- I am intoxicated.
- 18 Q. Okay. I know you were intoxicated. Did Antwan get
- 19 shot?
- 20 A. Yeah, we went on our way back downtown.
- 21 Q. Huh?
- 22 A. Yeah.
- 23 Q. He got shot at the Kangaroo, correct?
- 24 A. Yeah, he got shot.
- 25 Q. Do you remember where he got shot?

1 A. Yeah, through his leg.

2 Q. I'm going to play for you some of State's Exhibit
3 Number 69 which I believe is in evidence. It should come up
4 on -- on the monitor in front of you.

5 (WHEREUPON, video played.)

6 BY MR. DURANT:

7 Q. Did you see that on the monitor?

8 A. Yeah.

9 Q. Do you recog- -- see my cursor?

10 A. Yeah.

11 Q. Do you recognize that car?

12 A. Oh, yeah.

13 Q. That is the car y'all arrived in?

14 A. Yeah.

15 Q. This guy that just got out of the back seat with the
16 black on, who is that?

17 A. I think that was me.

18 Q. You were wearing white that night, weren't you?

19 A. Oh, yeah. Now I remember.

20 Q. That was Ronald?

21 A. I think so. I don't even remember who that is.

22 MS. PROCTOR: Your Honor, I would ask that Bruce not --

23 Mr. DuRant not ---

24 MR. DURANT: I will stop ---

25 MS. PROCTOR: --- lead the witness.

1 (WHEREUPON, video stopped.)

2 MR. DURANT: I will stop it if I ask questions. How
3 about that?

4 THE COURT: Sustained. Leading. You may rephrase.

5 (WHEREUPON, video played.)

6 (WHEREUPON, video stopped.)

7 Q. Who is that in the -- driving the gold Impala?

8 A. That was Antwan.

9 (WHEREUPON, video played.)

10 (WHEREUPON, video stopped.)

11 Q. This person about to get into the back seat behind the
12 driver, who is that?

13 A. Oh, that is me right there.

14 Q. That is you?

15 A. Yeah, that is me.

16 (WHEREUPON, video played.)

17 (WHEREUPON, video stopped.)

18 Q. Do you remember this fellow right here coming up and
19 arguing with Antwan?

20 A. No.

21 (WHEREUPON, video played.)

22 (WHEREUPON, video stopped.)

23 Q. Okay. So who is this about -- at the driver's side?

24 A. That is Antwan.

25 Q. And who is this that just got out of the back seat?

1 A. Me.

2 (WHEREUPON, video played.)

3 (WHEREUPON, video stopped.)

4 Q. Do you remember seeing this guy out in front of you
5 shooting at the car?

6 MS. PROCTOR: Objection.

7 A. No.

8 MS. PROCTOR: Leading.

9 THE COURT: Sustained. Leading. Rephrase.

10 MR. DURANT: I understand the objection. But I don't
11 think I suggested the answer, Your Honor.

12 THE COURT: I didn't ask for argument. I ruled on the
13 objection.

14 BY MR. DURANT:

15 Q. Who is that -- who is that out in front of the car?

16 A. I don't know. I don't know who that was.

17 (WHEREUPON, video played.)

18 (WHEREUPON, video stopped.)

19 Q. Who was driving when y'all left?

20 A. Antwan.

21 Q. And who was in the back seat?

22 A. Me and Ronald.

23 Q. And what happened to the fourth guy that had actually
24 come to the gas station with y'all?

25 A. I guess he ran off.

1 Q. He got left there?

2 A. Yeah, he got left.

3 Q. Did you shoot at anybody at that gas station?

4 A. No.

5 Q. Did Antwan shoot at anybody at that gas station?

6 A. No.

7 Q. Did Ronald Bryant shoot at anybody at that gas station?

8 A. No.

9 MR. DURANT: Your Honor, at this point I believe we
10 have a matter of law we need to get into.

11 THE COURT: Madam Forelady, ladies and gentlemen, there
12 are -- there is a matter of law I need to take up with the
13 attorneys.

14 During the break please do not discuss the case and
15 please leave your notepads in your seats. We appreciate
16 your patience. If you will go with the bailiffs.

17 (WHEREUPON, the jury left the courtroom July 16, 2013,
18 at 10:12 a.m.)

19 THE COURT: You may proceed.

20 **DIRECT EXAMINATION (IC) - MR. DURANT OF MR. WITTRELL:**

21 Q. Now you just saw -- y'all pulled out of the parking lot
22 at the Kangaroo, correct?

23 A. Yeah.

24 Q. Which way did y'all turn when you got onto Folly, left
25 or right?

- 1 A. Left.
- 2 Q. And where were y'all headed when you turned left onto
- 3 Folly Road?
- 4 A. We were going to the hospital. Going downtown.
- 5 Q. Okay. And going where downtown?
- 6 A. To the hospital.
- 7 Q. And why were you going to the hospital?
- 8 A. Antwan had get shoot.
- 9 Q. Because Antwan had gotten shot?
- 10 A. Yeah.
- 11 Q. Okay. So what happened after y'all got on Folly Road
- 12 and turned left and were heading toward downtown?
- 13 A. Shots just started ringing out.
- 14 Q. Okay.
- 15 THE COURT: Sir, I can't hear you. I need you to
- 16 repeat your answer.
- 17 A. Say shots just started ringing out like somebody behind
- 18 us shoot.
- 19 Q. Somebody was shooting at you?
- 20 A. Yeah.
- 21 Q. Could you tell where that shooting was coming from?
- 22 A. Behind us.
- 23 Q. Okay. From a vehicle; from some sort of motor vehicle?
- 24 A. Yeah.
- 25 Q. And how far down the road did they chase y'all?

1 A. Probably like -- probably until after we passed the
2 exit.

3 Q. Okay. The exit for ---

4 A. Downtown.

5 Q. The James Island Connector?

6 A. Yeah.

7 Q. And what happened when y'all got to that area, the area
8 of James Island Connector?

9 A. We wrecked.

10 Q. And why did y'all wreck?

11 A. He had get shoot in the back of his head.

12 Q. Who?

13 A. Antwan had got shot.

14 Q. Antwan got shot where?

15 A. In his head.

16 Q. In the back of his head?

17 A. Yeah.

18 Q. And what happened after Antwan got shot in the back of
19 his head?

20 A. We wrecked.

21 Q. And do you remember what y'all hit?

22 A. No.

23 Q. Who else got shot?

24 A. I was shoot.

25 Q. Where did you get shot?

1 A. In my left shoulder.

2 Q. And who else got shot?

3 A. Ronald.

4 Q. Where did Ronald get shot?

5 A. In his head.

6 Q. Was Antwan dead?

7 A. Yeah.

8 Q. How were you and Ronald able to get out of the car?

9 A. We had to climb out the back window.

10 THE COURT REPORTER: I'm sorry?

11 A. We climbed out the back window.

12 Q. And from the time that y'all left the Kangaroo to
13 Antwan got killed had y'all been anywhere else or y'all just
14 drove straight down ---

15 A. Just straight down.

16 Q. --- Folly Road?

17 A. Yeah.

18 Q. So that happened almost immediately?

19 A. Say what?

20 Q. So it happened almost very quickly after y'all ---

21 A. Oh, yeah.

22 MS. PROCTOR: Objection. Leading.

23 THE COURT: We are in camera. I am going to give him
24 some latitude.

25 BY MR. DURANT:

1 Q. Now how did you get to the hospital?

2 A. EMS.

3 Q. And how long were you in the hospital?

4 A. Overnight.

5 Q. Were they able to remove the bullet, or is the bullet
6 still in you?

7 A. No, it is still in me.

8 Q. And how about Ronald do you know how long he was at the
9 hospital?

10 A. I'm not certain, but I think a couple of days.

11 Q. Okay. Now you are aware that there was a gun, a
12 revolver, found in that car that you were driving in; is
13 that correct?

14 A. Yeah.

15 Q. Whose gun was that?

16 A. I don't know whose gun it was.

17 Q. Do you know how it got there?

18 A. No.

19 Q. Did you shoot that gun that night?

20 A. No.

21 Q. Do you know whether or not anyone in your car shot a
22 gun that night?

23 A. No.

24 Q. Is it possible that someone in your car could have shot
25 a gun that night?

1 A. Not that I know of.

2 Q. Okay. What were you doing when this truck was
3 chasing -- or this vehicle was chasing you down Folly Road?

4 A. I had my head down.

5 Q. Head down where?

6 A. The back of the driver's seat trying to (motioning).

7 Q. Trying to what?

8 A. Trying to (motioning), you know.

9 Q. Just trying to duck or hide?

10 A. Yeah, duck. Yeah.

11 Q. Okay. And did you shoot anyone that night or shoot at
12 anyone that night?

13 A. No.

14 Q. Okay.

15 MR. DURANT: That is pretty much all I have, Your
16 Honor.

17 THE COURT: What is the objection?

18 MR. KOZELSKI: Your Honor, this is my motion. We are
19 going to object to the same basis of our -- in our memo.
20 That ---

21 THE COURT: I need you to articulate right now what is
22 the basis of your objection to this particular testimony.

23 MR. KOZELSKI: We don't believe it is relevant to any
24 matter in controversy as to whether or not Domoneik shot at
25 the Kangaroo gas station and attempted to murder them.

1 We think that this -- this testimony is further
2 prejudicial for the fact that these are the same people that
3 Mr. Washington is on trial for attempting the murder and
4 this is a mile down the street where Mr. Wilson was actually
5 murdered, by a different gun. So we don't really have any
6 questions because we don't see any relevance.

7 THE COURT: Well, if you want to create a proffer --
8 and I am glad you said that. Do you have any questions of
9 the witness?

10 MR. KOZELSKI: No, Your Honor.

11 THE COURT: Okay.

12 MS. PROCTOR: Not as far as this issue.

13 THE COURT: Is that the entirety of your argument?

14 MR. KOZELSKI: Your Honor, Mr. Wittrell just testified
15 that he was in the hospital for a number of days. We
16 haven't received any sort of medical testimony or documents
17 from the hospital attesting to ---

18 THE COURT: Doesn't have to. His lay testimony is
19 sufficient as to what he rationally perceived and he was in
20 the hospital. It is not -- even in a civil case he would be
21 able to testify that he had been in the hospital and how
22 much it cost him. He doesn't have to have a medical expert
23 to do that.

24 MR. KOZELSKI: Well, Your Honor, we stand by our
25 objection that this is not relevant. And even if it were

1 relevant, it is too prejudicial.

2 THE COURT: Mr. DuRant.

3 MR. DURANT: Your Honor, our position on this quite
4 frankly is res gestae. There is no way in the world the
5 jury can understand what is going on here without -- without
6 being able to hear this testimony.

7 As to it being prejudicial to the defendant there
8 certainly it just is not. There is no allegation out there
9 the defendant was associated with this vehicle from which --
10 from which was shooting at this car as it was going down the
11 road. And ---

12 THE COURT: I'm sorry, I didn't hear the last thing you
13 said.

14 MR. DURANT: Which there is no evidence that the
15 defendant was associated with this vehicle that was shooting
16 at the Impala as it was going down the road. And therefore
17 it is just not prejudicial to their client.

18 THE COURT: Tell me why you feel you need to present
19 it. That's why -- I need to know what it may -- what fact
20 of consequence does it make more or less probable as regards
21 to the charge and the State's burden of proving attempted
22 murder, the elements of attempted murder.

23 MR. DURANT: Court's indulgence for just a moment.

24 THE COURT: Uh-huh.

25 MR. DURANT: Your Honor, number one, I believe it is

1 necessary to explain why Antwan Wilson is not present in the
2 courtroom today.

3 Number two, I think it is essential for this jury to
4 understand why this defendant is being tried for attempted
5 murder as opposed to murder. Because he is obviously dead.
6 And he was obviously dead that morning.

7 I'm going to have to put the medical examiner up in
8 this case because there is evidence that is critical to the
9 case that was removed from him at the autopsy. So that the
10 jury is going to know that he is deceased.

11 THE COURT: Let me ask a question. And this may seem
12 overly simplistic. But the -- what you are trying to prove
13 is that -- well, in other words, if what you need to explain
14 is Mr. Antwan -- and I apologize for not recollecting his
15 last name. His absence, in other words that he was shot, it
16 is your contention that Mr. Washington shot Antwan and then
17 subsequently someone else ---

18 MR. DURANT: Killed him.

19 THE COURT: ---- shot him in the head and killed
20 him ---

21 MR. DURANT: Right.

22 THE COURT: --- and that is why he is not here to
23 testify?

24 MR. DURANT: Right.

25 THE COURT: I guess I am trying to figure out why are

1 the details of it germane to anything. The issue is he is
2 not here because he was shot by somebody else. So why are
3 any of the details of that really relevant? What does it
4 make more or less probable?

5 The issue is that he is dead; he is not here to
6 testify. And he is not here to testify because somebody
7 else shot him; the defendant didn't shoot him.

8 MR. DURANT: Well, I understand that, Your Honor.
9 But -- and that is pretty much all he said was somebody else
10 shot him.

11 I mean it is basically what -- I mean what he is
12 testifying to is basically what you said you had ---

13 THE COURT: Well, no, he is testifying ---

14 MR. DURANT: --- no problem with the jury
15 understanding.

16 THE COURT: What he is testifying to is superfluous
17 details about a chase and shooting and all this other stuff.
18 I mean him, whether they shot a gun or not is relevant
19 because I assume based on what the opening argument was that
20 there is going to be contention of self-defense.

21 MR. DURANT: Which is going to be ---

22 THE COURT: Which the State has to affirmatively
23 disprove.

24 MR. DURANT: Exactly.

25 THE COURT: So whether or not they shot and all that

1 stuff, all of that is relevant.

2 MR. DURANT: Right.

3 THE COURT: But ---

4 MR. DURANT: But ---

5 THE COURT: And them leaving to head downtown to the
6 hospital is relevant.

7 MR. DURANT: Uh-huh.

8 THE COURT: But shooting and all this other stuff I
9 guess I am just trying to figure out ---

10 MR. DURANT: If I may?

11 THE COURT: Yes. Why ---

12 MR. DURANT: I will tell -- I will tell you why.
13 Because they have -- or have indicated in their opening
14 statement that they are claiming self-defense.

15 THE COURT: Uh-huh.

16 MR. DURANT: Okay. In the car there was a revolver
17 with five spent shell casings.

18 THE COURT: Uh-huh.

19 MR. DURANT: Okay. They also are -- could put up
20 testimony from the trace examiner that all the people in
21 this car ---

22 THE COURT: Let me interrupt you one second. Are you
23 saying then that it is your contention that some -- that
24 the shooting of the shells was expended in this chase and
25 not ---

1 MR. DURANT: I am telling ---

2 THE COURT: --- at the gas station?

3 MR. DURANT: I am telling you it basically gives the
4 jury the false impression, the false impression ---

5 THE COURT: Well, no, my question is more direct than
6 that. Is the purpose that you are offering this testimony
7 to rebut self-defense; in other words ---

8 MR. DURANT: Exactly. To just ---

9 THE COURT: --- to say -- let me finish.

10 MR. DURANT: I'm sorry.

11 THE COURT: To say that the bullets were not shot at
12 the Kangaroo but they were shot in this ensuing chase?

13 MR. DURANT: Yes. It gives me the ability to argue
14 that to the jury. And -- and without that testimony the
15 only thing the jury is going to hear was that there was a
16 shooting at the Kangaroo, that their client is claiming
17 self-defense and they must have been shooting at the
18 Kangaroo because there is an empty gun in there with five
19 empty shell casings and they have gunshot residue on them.
20 Which completely ignores the fact that there was another
21 shooting right after this which could explain that. And the
22 burden is on me to disprove self-defense.

23 THE COURT: It is to disprove self-defense.

24 MR. KOZELSKI: Your Honor, Mr. DuRant is presuming a
25 lot here.

1 THE COURT: I think he is presuming accurately.
2 Because if you didn't argue that it would be ---

3 MR. KOZELSKI: We ---

4 THE COURT: I think that is a logical extension of the
5 argument.

6 MR. KOZELSKI: We argue ---

7 THE COURT: If there are spent gun shells in the car
8 you are going to argue they were shot at some time, that
9 somebody did some shooting.

10 MR. KOZELSKI: Your Honor, we don't need the gun in the
11 gold Impala. We are arguing a general ---

12 THE COURT: So you are going to ---

13 MR. KOZELSKI: --- theme ---

14 THE COURT: So you are going to tell me that you are
15 willing to stipulate that y'all aren't going to argue
16 anything about the gun and the spent gun shells in the car?

17 MR. DURANT: And if they are willing to do the same
18 thing about the gunshot residue we have got no issue.

19 MS. PROCTOR: If we are talking about these three
20 people with gunpowder residue, we will not -- that wasn't --
21 no.

22 THE COURT: Then what is your contention on
23 self-defense; what was he -- I guess I'm trying to
24 understand what your theory is.

25 MR. KOZELSKI: Our contention -- it was a general ---

1 MS. PROCTOR: If you saw the video, there were 25
2 shots. A lot of people were shooting. We've never said ---

3 THE COURT: I don't know that it was 25 shots.

4 MS. PROCTOR: It is.

5 THE COURT: I was ---

6 MS. PROCTOR: It is 27. We have slow-mo'd it.

7 THE COURT: I don't know, between the dinging of that
8 bell, door opening and -- it is so distracting.

9 MS. PROCTOR: We have -- 27. I think the solicitor
10 agrees to that. But we have never said that they shot at
11 the gas station. We didn't say that in our opening.

12 THE COURT: So ya'll are willing to stipulate then and
13 enter into a stipulation that can be read to the jury so
14 that there is no confusion about your contention that
15 Antwan, Ronald, and Edward did not shoot guns at the
16 Kangaroo and that you are not going to mention anything
17 about gunshot residue on their hands ---

18 MR. KOZELSKI: Well ---

19 THE COURT: --- or anything about a gun in their car
20 with spent shells?

21 MR. KOZELSKI: Well, Ronald Bryant is not testifying.
22 The other witness. And I don't know how ---

23 THE COURT: Well, I -- I don't know. But that is
24 not the issue. You -- there are three people in this
25 vehicle ---

1 MR. KOZELSKI: Well, I ---

2 THE COURT: --- and they are -- theoretically they are
3 on this video. And the video is in evidence. He doesn't
4 have to testify.

5 MR. KOZELSKI: Your Honor, exactly. And we don't
6 know -- I don't think we can stipulate to whether they shot
7 or not. It is not our contention ---

8 THE COURT: Well, now you are backtracking.

9 MR. KOZELSKI: They shot ---

10 THE COURT: You said one thing. Now you are saying
11 something else. You know, I -- in terms of strategy and how
12 y'all are going to try this case, I am not an advocate. My
13 only job is to make sure there is a level playing field.

14 And he is correct. I am not going to let you argue to
15 this jury that only gunshots happened at this Kangaroo if
16 they happened someplace else and there was alternate
17 theories as to when those guns -- that gun was shot.

18 Because the State has the burden of disapproving
19 self-defense. You have no burden. And I am not going to
20 hamstring them in presenting their case and then allow you
21 to argue a completely opposite theory when the case is done
22 and they can't present any testimony to refute self-defense.

23 MR. KOZELSKI: Your Honor, we are not arguing that the
24 gold shot -- shot him. I don't think it would be right for
25 us -- the gold car shot at Domoneik.

1 When we mentioned self-defense in our opening you were
2 saying that they -- as an explanation for why Mr. Washington
3 was shooting his gun in the first place, that people were
4 shooting at him, he was shooting in self-defense.

5 THE COURT: So you are not going to say these people
6 were shooting at him?

7 MR. KOZELSKI: No, Your Honor.

8 THE COURT: And you are saying that it couldn't be a
9 logical extension in this jury's mind that these people were
10 shooting at them -- the only way there couldn't be that
11 logical extension is if there is no mention of GSR and there
12 is no mention of the gun ---

13 MR. KOZELSKI: And ---

14 THE COURT: --- and there is no mention of the spent
15 shells.

16 MR. KOZELSKI: And we are not going to mention those.

17 MR. DURANT: Okay. I've got no problem with it.

18 THE COURT: Y'all work out a stipulation and then --
19 y'all talk. Work out a stipulation and we will go from
20 there.

21 MR. DURANT: I've got no problem with that. Because
22 that was my key concern was on the self-defense issue. I do
23 have one other issue ---

24 THE COURT: And then you all can work out a stipulation
25 that is the young man's death that y'all can stipulate that

1 he was killed in an incident ---

2 MR. DURANT: In an unrelated incident.

3 THE COURT: --- that happened -- yeah.

4 MS. PROCTOR: It has ---

5 THE COURT: An unrelated ---

6 MS. PROCTOR: --- been two years so.

7 THE COURT: --- subsequent incident.

8 MR. DURANT: And I think we can do that. The only
9 other issue is that I am going to have to put up the medical
10 examiner. I won't have to go into cause of death or
11 anything like that.

12 THE COURT: Huh-uh.

13 MR. DURANT: But -- but I do -- the gun that was
14 removed from his right leg -- I mean the bullet that was
15 removed from his right thigh I do need to get that into
16 evidence ---

17 THE COURT: Oh, I think that is totally appropriate.

18 MR. DURANT: --- because ---

19 MS. PROCTOR: Well, I will say there is an x-ray of a
20 bullet in his leg.

21 THE COURT: Yeah, but somebody has to ---

22 MS. PROCTOR: No, no, no, I agree to that. I am saying
23 we could stipulate to that. Because here is my problem:
24 What are you? I am a medical examiner. Well, hello.

25 MR. DURANT: Well, I wasn't ---

1 THE COURT: Well, she is going to have to ---

2 MR. DURANT: I was going to try ---

3 THE COURT: Doesn't necessarily have to testify -- she
4 can say she is a forensic ---

5 MR. DURANT: I was going to try to do it just as she
6 was a doctor.

7 MS. PROCTOR: Okay.

8 THE COURT: You can do it that way.

9 MR. KOZELSKI: Yeah.

10 MR. DURANT: Then I mean if we do that, then I don't
11 think we have an issue.

12 MS. PROCTOR: One moment.

13 THE COURT: Uh-huh.

14 (Counselors confer.)

15 MS. PROCTOR: Okay, Your Honor, what we could -- we are
16 ready to work out -- if you want to take a break we can
17 write a stipulation.

18 THE COURT: Yeah, I am waiting on ya'll to work ---

19 MS. PROCTOR: Oh.

20 THE COURT: Yeah.

21 MR. DURANT: Oh, okay.

22 THE COURT: Yeah. Sir, we appreciate your patience.

23 (Pause for counselors to confer.)

24 THE COURT: Are you still writing it?

25 MR. DURANT: Still writing it.

1 THE COURT: I just wanted to make sure you weren't
2 waiting on me.

3 (Counselors confer.)

4 MS. PROCTOR: Your Honor, if you like to see what we
5 have written.

6 THE COURT: Y'all can read it and we probably need to
7 have it typed up.

8 MR. DURANT: I would like to ---

9 MS. PROCTOR: We will type it up.

10 MR. DURANT: We would like to show it. But I would
11 like to show it to you because ---

12 THE COURT: Can I read your handwriting?

13 MR. DURANT: I tried to print, Your Honor. The
14 stipulation is what we would publish to the jury. The
15 agreement regards just asking questions regarding that.

16 (WHEREUPON, document presented to the court.)

17 THE COURT: Okay. Is that your full understanding of
18 the stipulation, Ms. Proctor?

19 MS. PROCTOR: Yes, Your Honor. And ---

20 THE COURT: And the agreement? I think that we can
21 just publish the agreement for the record and then y'all
22 type up the stipulations and make those joint exhibits.

23 MS. PROCTOR: No, because the agreement says there was
24 a crash. We are not getting into the crash because that is
25 after ---

1 MR. DURANT: She said just publish it for the record.

2 THE COURT: Publish it for the record. That is ---

3 MS. PROCTOR: Oh, I thought you said for the jury. I
4 apologize.

5 THE COURT: No, no, no, no. No.

6 MS. PROCTOR: Yes, Your Honor.

7 THE COURT: The stipulations I think need to be typed
8 up and then they would be marked as joint exhibits.

9 MS. PROCTOR: Yes, Your Honor.

10 THE COURT: The agreement is there will be no mention
11 by either party on direct or cross-examination or argument
12 of any weapon found in the gold Impala after the crash or
13 any positive gunshot residue tests performed on the
14 occupants of the gold Impala. Is that correct, from the
15 State?

16 MR. DURANT: That is correct, Your Honor.

17 THE COURT: And from the defense?

18 MS. PROCTOR: Yes, Your Honor. And I have also
19 explained that to Mr. Washington and he understands that and
20 he agrees to the stipulation and to the agreement.

21 THE COURT: Okay. Sir, is that accurate?

22 MR. WASHINGTON: Yes, ma'am.

23 THE COURT: Okay. You can take your seat.

24 And then you all just type up the stipulations and then
25 they will be marked as joint exhibits.

1 Do y'all want me to publish the stipulations?

2 MR. DURANT: You could publish the stipulation when
3 they ---

4 THE COURT: The -- well, no, I am not going to do it in
5 front ---

6 MR. DURANT: Okay.

7 THE COURT: --- of the jury. Just for the record so
8 that we are clear about language:

9 The parties agree that no one from the gold Impala shot
10 at the defendant, Domoneik Washington, at the Kangaroo in
11 the early morning of March 30th, 2011.

12 Parties agree that Antwan Wilson died from causes
13 unrelated to being shot at the Kangaroo and is not available
14 to testify.

15 Is that the extent of the stipulation?

16 MS. PROCTOR: Yes, Your Honor. And he also ---

17 MR. WASHINGTON: Yes, ma'am.

18 MS. PROCTOR: --- is in agreement for the record.

19 THE COURT: Is that correct, Mr. DuRant?

20 MR. DURANT: Yes, ma'am.

21 THE COURT: And then y'all just type those us and then
22 they will be marked as joint exhibits.

23 MS. PROCTOR: Yes, Your Honor.

24 THE COURT: Not the agreement but the ---

25 MR. DURANT: I will try ---

1 THE COURT: Because that's already been published for
2 the record.

3 MR. DURANT: I will try to get that done at lunch if it
4 is okay with the court.

5 THE COURT: Not a worry. All right. Are we ready to
6 proceed with the witness's testimony, from the State?

7 MS. PROCTOR: Can we take a two-minute break; is
8 that ---

9 THE COURT: Uh-huh.

10 (WHEREUPON, break taken July 16, 2013, 10:39 a.m.)

11 (WHEREUPON, resume July 16, 2013, 10:40 a.m.)

12 MS. PROCTOR: We are ready.

13 THE COURT: And so the questions then left to be asked
14 of the witness -- I mean I am not limited you. I don't know
15 what other questions ---

16 MR. DURANT: I'm not sure I need to ask him anything.
17 Do you ---

18 THE COURT: Well, that they left the Kangaroo and
19 headed towards the hospital.

20 MR. DURANT: That's what I wasn't sure of. Did I ---

21 THE COURT: I think you can ask that question.

22 MR. DURANT: I mean did I ask him that already?

23 THE COURT: No, you didn't. That was -- no, he didn't.
24 That started the in camera testimony.

25 MS. PROCTOR: The only thing -- the only thing I am

1 going to ask him when they come back was when y'all left the
2 Kangaroo where were y'all heading and why were you headed to
3 the hospital.

4 THE COURT: Yeah. That ---

5 MR. DURANT: And other than that. So you understand
6 this, Mr. Whittrell?

7 MR. WHITTRELL: Yeah.

8 MR. DURANT: Okay. I am just going to ask you where
9 you were going and why you were going to the hospital.
10 Okay.

11 And then I am not going to say anything else about what
12 happened after that, and you don't need to either.
13 Understood?

14 MR. WHITTRELL: Yeah.

15 THE COURT: Okay. Are you ready?

16 MR. DURANT: Yes, ma'am.

17 MS. PROCTOR: Yes, Your Honor.

18 THE COURT: Please bring in the jury, Mr. Robinson.

19 (WHEREUPON, jury enters courtroom July 15, 2013, at
20 10:44 a.m.)

21 THE COURT: Ladies and gentlemen, we appreciate your
22 patience. We will now resume the witness's testimony. You
23 may proceed, Mr. DuRant.

24 MR. DURANT: Thank you, Your Honor.

25 THE COURT: You are welcome.

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
STATE OF SOUTH CAROLINA,	)	CASE NO. 2011-GS-10-06881
	)	2011-GS-10-06882
PLAINTIFF,	)	2011-GS-10-06883
	)	
VS.	)	
	)	TRANSCRIPT OF RECORD
DOMONEIK WASHINGTON	)	
	)	
DEFENDANT.	)	
	)	

July 15, 16 and 17, 2013

Charleston, South Carolina

VOLUME II (OF III)
(Contains Remainder of July 16, 2013)

B E F O R E:

The Honorable Deadra L. Jefferson, Judge; and a Jury.

A P P E A R A N C E S:

D. Bruce DuRant, Esquire
For the State

Lorelle L. Proctor, Esquire
For the Defense

John J. Kozelski, III, Esquire
For the Defense

Phyllis Norton, CVR, Nationally Certified Verbatim Court Reporter

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1 RESUME DIRECT EXAMINATION BY MR. DURANT EDWARD WHITTRELL:

2 Q. After the shooting and -- when y'all drove off from the
3 Kangaroo which way did you turn, to the left or to the
4 right?

5 A. To the left.

6 Q. Okay. And where were y'all headed?

7 A. Downtown.

8 Q. And where downtown were y'all headed?

9 A. To the hospital.

10 Q. And why were y'all going to the hospital?

11 A. Because he had get shoot in the leg, Antwan.

12 Q. Because Antwan got shot in the leg?

13 A. Yeah.

14 MR. DURANT: Thank you. Could you please answer any
15 question that Ms. Proctor may have for you?

16 THE COURT: Any questions for the witness?

17 MS. PROCTOR: We have no questions.

18 THE COURT: Any objection to the witness being excused,
19 from the State?

20 MR. DURANT: No, ma'am.

21 THE COURT: From the defense?

22 MS. PROCTOR: No, Your Honor.

23 THE COURT: Sir, you are excused.

24 You may call your next witness. Who is the State's
25 next witness?

1 MR. DURANT: Ervette Robinson, Your Honor.

2 (WHEREUPON, the witness was duly sworn.)

3 THE CLERK: State your full name and spell your last
4 name.

5 THE WITNESS: Ervette Robinson, R-O-B-I-N-S-O-N.

6 THE COURT: You may proceed.

7 (ERVETTE ROBINSON, having first
8 been duly sworn, testified as follows:)

9 **DIRECT EXAMINATION - MR. DURANT OF ERVETTE ROBINSON:**

10 Q. Good morning, Ms. Robinson.

11 A. Good morning.

12 Q. And I would appreciate it if you keep talking into that
13 mic just like that, because we can hear you well. Okay?

14 A. Okay.

15 Q. Could you tell our jury how old you are?

16 A. Thirty-four.

17 Q. And where are you employed?

18 A. Dunkin Donuts.

19 Q. Okay. And what do you do at Dunkin Doughnuts?

20 A. Cashier.

21 Q. And do you have any kids?

22 A. Yes, sir.

23 Q. How many children do you have?

24 A. Two.

25 Q. And what are their ages?

1 A. Seventeen and eighteen.

2 Q. Okay. One is a boy and one is a girl, I believe; is
3 that correct?

4 A. Yes, sir.

5 Q. How far did you go in school?

6 A. Eleventh grade.

7 Q. And where did you go to school?

8 A. James Island High.

9 Q. Were you raised on James Island?

10 A. Uh-huh.

11 Q. Ms. Robinson, I would like to talk about the early
12 morning of March the 30th, 2011, the night of the shooting
13 at the Kangaroo Express. Were you present during that
14 shooting?

15 A. Uh-huh.

16 Q. And if you would, please answer yes or no. Because
17 this lady has got to take down what you say.

18 A. Yes, sir.

19 Q. And sometimes she doesn't know what an uh-huh is.

20 A. Yes, sir.

21 Q. Okay. Where had you been earlier that night?

22 A. Home.

23 Q. Okay. And before you went home where did you go -- I
24 mean after -- you left home. You went somewhere before you
25 went to the Kangaroo. Where was that?

- 1 A. At the Palm Tree Lounge.
- 2 Q. Okay. And do you remember what was going on at the
- 3 Palm Tree that night?
- 4 A. I think -- I believe it was a party some were having
- 5 out there.
- 6 Q. Okay. And who did you go to the club with?
- 7 A. A friend of mine and her girlfriend.
- 8 Q. Okay. And who is the friend of yours?
- 9 A. Zadie Trusdale.
- 10 Q. Okay. And who is her friend?
- 11 A. Shawn Walker.
- 12 Q. Okay. And whose car did y'all go in?
- 13 A. Shawn's car.
- 14 Q. Okay. Y'all met where and then went in Shawn's car?
- 15 A. We met at Zadie's house and then we left to go to the
- 16 club.
- 17 Q. Okay. What happened at the club?
- 18 A. An altercation broke out.
- 19 Q. Okay. And do you know what -- who the altercation was
- 20 between?
- 21 A. No, sir.
- 22 Q. Do you know what groups it was between?
- 23 A. No, sir.
- 24 Q. What happened at the -- what happened after the fight
- 25 broke out at the club?

1 A. We left and we were on the way home -- well, we had to
2 meet up at Zadio's house because my car was over there. But
3 we stopped at the Kangaroo gas station.

4 Q. Okay. And that would be the Kangaroo at Camp and Folly
5 Road?

6 A. Yes, sir.

7 Q. Where did y'all park when y'all first got to the
8 Kangaroo?

9 A. In the front. In the front door -- at the front door.

10 Q. Okay. And who was driving when y'all got to the
11 Kangaroo?

12 A. Shawn was driving.

13 Q. And you were sitting in the back seat?

14 A. Yes, sir.

15 Q. Who else was sitting up front with Shawn?

16 A. Zadio was.

17 Q. Okay. And at some point -- there is a videotape of
18 that at some point y'all moved -- y'all -- how did y'all
19 park; did y'all park head first ---

20 A. We pulled ---

21 Q. --- or back first?

22 A. We pulled in first.

23 Q. Okay. And was the car subsequently moved?

24 A. Yes.

25 Q. By whom?

1 A. By me.

2 Q. Okay. And why did y'all move the car?

3 A. Because they said to back up because we wanted to have
4 a way where we can leave out before it got packed, like we
5 wouldn't be jammed in like.

6 Q. Okay.

7 A. Yeah.

8 Q. Was there any concern that there might be some trouble
9 there?

10 A. No, sir, ---

11 Q. Okay.

12 A. --- not it might be that.

13 Q. Ms. Robinson, I'm going to play for you part of State's
14 Exhibit Number 69. Excuse me. It should appear on your
15 monitor there. And then I would like to ask you a few
16 questions.

17 (WHEREUPON, video played.)

18 (WHEREUPON, video stopped.)

19 Q. Okay. You see this car that just pulled in; this is
20 about it looks like 101 into the tape. Do you recognize
21 that vehicle?

22 A. Yes, sir.

23 Q. Okay. And what vehicle is that?

24 A. That is Shawn's car.

25 Q. Okay. And that's -- that is when y'all arrived at the

1 gas station; is that correct?

2 A. Yes, sir.

3 (WHEREUPON, video played.)

4 Q. Do you know any back in this car here or any of these
5 cars parked at the gas pumps?

6 A. No, sir.

7 Q. Okay. I'm going to fast forward it a little bit until
8 about 4.40. I'm sorry, let me back up a little bit. Okay.

9 (WHEREUPON, video stopped.)

10 Q. Okay. Who is this getting out of the back seat here?

11 A. That is me.

12 (WHEREUPON, video played.)

13 Q. Who is this getting out of the car?

14 A. Shawn.

15 Q. And who is this?

16 A. Shawn.

17 (WHEREUPON, video stopped.)

18 Q. Okay, I'm going to move it ahead just a little bit,
19 being 6.40.

20 (WHEREUPON, video played.)

21 Q. Do you remember this gold Impala arriving on the scene?

22 A. Not at the time.

23 (WHEREUPON, video stopped.)

24 Q. And who is this that just got out of the car you were
25 in?

1 A. Zadie.

2 Q. That is Zadie?

3 A. Yes, sir.

4 Q. And she is talking on the phone; is that correct?

5 A. Yes, sir.

6 Q. Do you know who she ---

7 MS. PROCTOR: Objection.

8 Q. --- is talking to?

9 MS. PROCTOR: Leading.

10 THE COURT: Sustained. Leading. Rephrase.

11 A. No, sir.

12 Q. Who was she talking to?

13 A. I don't know, sir.

14 (WHEREUPON, video played.)

15 (WHEREUPON, video stopped.)

16 Q. Do you remember -- who is that getting out of the
17 driver's side of the car you are in?

18 A. That is me, sir.

19 Q. Okay. And do you remember why you got out?

20 A. No, sir.

21 Q. Okay. Do you know these -- who these four people are?

22 A. No, not really.

23 (WHEREUPON, video played.)

24 Q. I will play it a little bit longer.

25 (WHEREUPON, video continues to play.)

1 (WHEREUPON, video stopped.)

2 Q. Okay. Who is that person you are talking to?

3 A. Where?

4 Q. You are right there (pointing). He is right there
5 (pointing). Who is that you are talking to?

6 A. Domoneik.

7 Q. Okay. That is Domoneik Washington, correct?

8 A. Yes, sir.

9 Q. Is he in the courtroom?

10 A. Yes, sir.

11 Q. Okay. And what was he doing when you were talking to
12 him?

13 A. He was yelling.

14 Q. At who?

15 A. I don't know who he was talking to, but I know he was
16 yelling.

17 Q. Okay. In what direction was he yelling? Let's look at
18 it again.

19 (WHEREUPON, video played.)

20 Q. This is Domoneik right here, correct (pointing)?

21 A. Yes, sir.

22 (WHEREUPON, video stopped.)

23 Q. Was he saying -- who was he saying something to out
24 there?

25 A. I ---

1 Q. What car were they in?

2 A. I don't know, sir, who he was talking to.

3 Q. What was he saying?

4 (WHEREUPON, video played.)

5 (WHEREUPON, video stopped.)

6 A. If I can recall if someone was looking for him or
7 something like -- to that matter.

8 (WHEREUPON, video played.)

9 (WHEREUPON, video stopped.)

10 Q. Why did you get out and talk to him?

11 A. Because I was trying to talk some sense into him like
12 chill out or whatever.

13 Q. Okay. And what was his state of mind?

14 MS. PROCTOR: Objection, Your Honor.

15 THE COURT: Sustained. Speculation. Lay the
16 appropriate foundation. She can describe what she
17 rationally perceived. But she can't know what was in his
18 mind.

19 BY MR. DURANT:

20 Q. What did you perceive him doing?

21 THE COURT: She has to describe exactly what she saw
22 him doing for it to be her rational perception.

23 A. Just yelling back and forth ---

24 Q. Okay.

25 A. --- at someone.

1 (WHEREUPON, video played.)

2 (WHEREUPON, video stopped.)

3 Q. Do you know where Domoneik Washington lives?

4 A. No, sir.

5 (WHEREUPON, video played.)

6 (WHEREUPON, video stopped.)

7 Q. It appears you're talking to him again there. What are
8 you saying to him?

9 A. I don't think I was talking to him right there -- right
10 then and there. There was somebody else on the other side
11 of him I was talking to.

12 (WHEREUPON, video played.)

13 (WHEREUPON, video stopped.)

14 Q. Okay. Were you able to see who started shooting?

15 A. No, sir.

16 Q. Okay.

17 A. I had my back turned.

18 Q. Okay. And that is you behind the car at that point?

19 A. Yes, sir.

20 Q. Okay. Could you please answer any questions that
21 defense counsel may have for you.

22 THE COURT: Any questions for the witness?

23 **CROSS-EXAMINATION - MS. PROCTOR OF ERVETTE ROBINSON:**

24 Q. Just now you said you were talking to somebody else,
25 you weren't talking to Domoneik. Who were you speaking

1 with?

2 A. I think -- I believe it was my cousin James.

3 Q. James? His last name, James Washington?

4 A. No, ma'am. His -- I believe his last name was

5 Q. James Heyward?

6 A. That's him.

7 MS. PROCTOR: Court's indulgence.

8 THE COURT: Uh-huh.

9 BY MS. PROCTOR:

10 Q. You said that somebody was looking for Domoneik?

11 A. Uh-huh.

12 Q. And were they calling him by name?

13 A. No, ma'am.

14 Q. Did you hear people out there yelling Chip, Chip?

15 A. Yes, ma'am.

16 Q. Thank you. No further questions.

17 THE COURT: Any redirect?

18 MR. DURANT: Just a second Your Honor.

19 THE COURT: Uh-huh.

20 **REDIRECT EXAMINATION - MR. DURANT OF ERVETTE ROBINSON:**

21 (WHEREUPON, video played.)

22 (WHEREUPON, video stopped.)

23 Q. This fellow right here is your cousin James Heyward; is
24 that correct?

25 A. Yes, sir.

1 (WHEREUPON, video played.)

2 (WHEREUPON, video stopped.)

3 Q. And this of course is Domoneik Washington you said?

4 MS. PROCTOR: Objection. Leading.

5 A. Yes ---

6 THE COURT: Sustained. Leading. Rephrase.

7 BY MR. DURANT:

8 Q. Who is this (pointing)?

9 A. Domoneik.

10 MR. DURANT: I have no further questions.

11 THE COURT: Any objection to the witness being
12 excused, ---

13 MS. PROCTOR: No, Your Honor.

14 THE COURT: --- from the State?

15 MR. DURANT: No, ma'am.

16 THE COURT: From the defense?

17 MS. PROCTOR: No, Your Honor.

18 THE COURT: Ma'am, you are excused.

19 MR. DURANT: The State would call ---

20 THE COURT: Wait.

21 MR. DURANT: --- Zadio Trusdale.

22 THE COURT: Wait one second for me, please. Madam

23 Forelady, ladies and gentlemen, we are going to take a brief
24 restroom break. During the break please do not discuss the
25 case and please leave your notepads in your seats. We will

1 be out about maybe -- well, however long it takes you all to
2 use the restroom and then we will resume testimony.

3 (WHEREUPON, jury exited courtroom and break taken
4 July 16, 2013, at 11:03 a.m.)

5 (WHEREUPON, resumed proceeding July 16, 2013, at 11:17
6 a.m.)

7 THE COURT: Go ahead and bring the witness in. Ma'am,
8 if you could go ahead and come up to the witness stand.

9 Are they outside? (addressing bailiff regarding jury).

10 THE BAILIFF: Yes.

11 THE COURT: You can go ahead and bring them in.

12 (WHEREUPON, the jury returned to the courtroom July 16,
13 2013, at 11:18 a.m.)

14 THE COURT: Ladies and gentlemen, I hope you enjoyed
15 your break. We will now resume testimony. The State may
16 call its next witness.

17 MR. DURANT: Thank you, Your Honor.

18 THE COURT: You are welcome.

19 MR. DURANT: The State would call Zadio Trusdale.

20 THE COURT: Please swear the witness.

21 (WHEREUPON, the witness was duly sworn.)

22 THE CLERK: Please state your full name and spell your
23 last name.

24 THE WITNESS: Zadio Trusdale, T-R-U-S-D-A-L-E.

25 THE COURT: It is T-R-U-S, no "e"?

1 THE WITNESS: No "e".

2 THE COURT: Okay. Thank you, ma'am.

3 You may proceed.

4 (ZADIE TRUSDALE, having first been
5 duly sworn, testified as follows:)

6 **DIRECT EXAMINATION - MR. DURANT OF ZADIE TRUSDALE:**

7 Q. Good afternoon -- or good morning, Ms. Trusdale. You
8 are here pursuant to a subpoena today, correct?

9 A. Uh-huh.

10 THE COURT: If you could say yes or no, ma'am.

11 A. Yes.

12 Q. And do you want to be here?

13 A. No.

14 Q. Are you nervous?

15 A. Yes.

16 Q. Okay. That is completely normal. Could you tell our
17 jury how old you are.

18 A. Thirty-eight.

19 Q. And how far did you go in school, Ms. Trusdale?

20 A. Finished school.

21 Q. And where did you finish school at?

22 A. Archdale downtown.

23 Q. Okay. And I believe you will be starting school in a
24 couple of months here; is that ---

25 A. Yeah, next month.

1 Q. Okay. Where are you going to school next month?

2 A. Trident Tech.

3 Q. And what are you going to be taking at Trident Tech?

4 A. Registered nurse.

5 Q. Are you currently employed?

6 A. Uh-huh.

7 Q. Where do you work now?

8 A. I work Sandpiper and I work the Savannah House. Med
9 tech and CNA.

10 Q. Okay. You are a med tech at where?

11 A. At Savannah House.

12 Q. And what do you do at Sandpiper?

13 A. CNA.

14 Q. That is a certified ---

15 A. Nursing assistant.

16 Q. --- nursing assistant? Okay. Do you have any kids?

17 A. Four.

18 Q. Okay. Let's talk about March the 30th of 2011 the
19 morning of the shooting at the Kangaroo.

20 A. Uh-huh.

21 Q. You remember that, don't you?

22 A. Uh-huh.

23 Q. And if you would, please say yes or no ---

24 A. Yes.

25 Q. --- because this lady has to take down what you say.

1 A. Okay. Yes.

2 Q. And where did you go prior to going to the Kangaroo
3 that morning?

4 A. To Palm Tree.

5 Q. And who did you go to the Palm Tree with?

6 A. Ervette and Shawn.

7 Q. Okay. That would be Ervette Robinson?

8 A. Uh-huh.

9 Q. That is the lady that just testified?

10 A. Yes.

11 Q. And Shawn Walker; ---

12 A. Yes.

13 Q. --- is that correct? And are you mostly friends with
14 Ervette or Shawn?

15 A. Both.

16 Q. Okay. Do you remember what was going on at the Palm
17 Tree that night?

18 A. I can't remember who was supposed to be it. Somebody
19 was supposed to be performing so we went out there.

20 Q. Okay. There was some sort of ---

21 A. Rapper.

22 Q. Rapper.

23 A. I can't remember who it was though.

24 Q. Okay. And how did y'all get to the club?

25 A. Shawn picked us up. She came and picked us up and took

- 1 us.
- 2 Q. Okay. And picked y'all up from where?
- 3 A. Plinner (ph) Road. My house.
- 4 Q. Your house?
- 5 A. Uh-huh.
- 6 Q. And then so Ervette came over to your house ---
- 7 A. Yes.
- 8 Q. --- and then Shawn picked both of y'all up?
- 9 A. Uh-huh.
- 10 Q. And what happened at the club that night?
- 11 A. A fight broke out. I wasn't really aware of who was in
- 12 a fight. But I saw my best friend's son get taken out the
- 13 club so that is what made me -- I went outside ---
- 14 Q. Okay. And who was ---
- 15 A. --- to find out what was going on.
- 16 Q. --- your best friend's son?
- 17 A. Ronald Bryant.
- 18 Q. Okay. And Ronald Bryant where did he used to live?
- 19 A. Downtown Rectory.
- 20 Q. Okay. He lived downtown?
- 21 A. Uh-huh.
- 22 Q. And did you know the folks he was with over there at
- 23 the club that night?
- 24 A. At first I wasn't sure who he was with until I got
- 25 outside.

1 Q. Okay. And after you got outside you -- did you
2 recognize the folks he was with?

3 A. I recognized one of the boys.

4 Q. What ---

5 A. I recognized one -- one of the boys he was with.

6 Q. Okay. And -- and do you know that guy's name?

7 A. Um, Pop.

8 Q. Okay. And Pop is a nickname for Antwan Wilson; is that
9 correct?

10 A. Yes. Uh-huh.

11 Q. Okay. And why was Ronald being taken out of the club?

12 A. I guess because he was involved in the fight.

13 Q. Okay.

14 A. And the bouncers was taking -- was escorted him out of
15 the front.

16 Q. Okay. So Ronald is not a James Island guy?

17 A. No.

18 Q. Are you from James Island?

19 A. Yes.

20 Q. And you have lived on -- you know -- were you raised on
21 James Island?

22 A. No, I was raised in New York but ---

23 Q. Okay. But you have lived in James Island ---

24 A. James Island since I came down. Uh-huh.

25 Q. And how long has that been?

1 A. Like 18 years now.

2 Q. Okay. And when you saw the bouncers taking Ronald out
3 what did you do?

4 A. Went behind him and was trying to figure out why was he
5 choking him out of the club.

6 Q. Okay. And did you talk to Ronald?

7 A. Yes.

8 Q. What were you trying to get Ronald to do?

9 A. To come in the car with me.

10 Q. Okay. And why did you want him to come in the car with
11 you?

12 A. Because he is from downtown. And it is James Island.

13 Q. Okay. And what difference does that make?

14 A. There's always a beef.

15 Q. There is always a beef between who?

16 A. Downtown and James Island.

17 Q. Who did Ronald leave with?

18 A. With Pop.

19 Q. Okay. So he didn't come with you?

20 A. No.

21 Q. And where did you and your girlfriends go after y'all
22 left the club?

23 A. To the gas station.

24 Q. And what gas station was that?

25 A. The Kangaroo.

1 Q. And that is the one at Camp and Folly Road?

2 A. Yes.

3 Q. Why did -- why did y'all go to The Kangaroo?

4 A. I have no idea why she went to the Kangaroo.

5 Q. Okay. Is that kind of a common place ---

6 A. That is a common ---

7 Q. --- place to go?

8 A. Yes.

9 Q. Okay. After clubs let out and stuff?

10 A. Yes.

11 Q. Do you know who Ronald had been beefing with at the
12 club?

13 A. I found out after, yeah.

14 Q. Who?

15 A. The defendant. The boys from Westchester.

16 Q. And what is Westchester?

17 A. Westchester is just another neighborhood on James
18 Island.

19 Q. Okay. Do you know the defendant, Domoneik Washington?

20 A. Yes.

21 Q. And what neighborhood is he from?

22 A. I guess Westchester.

23 Q. Do you know James Washington?

24 A. Yes.

25 Q. I think some people call him Jizzle maybe?

- 1 A. Yeah.
- 2 Q. Where is he from?
- 3 A. Westchester.
- 4 Q. Is he a friend of Domoneik's?
- 5 A. Yes.
- 6 Q. Okay. Do you know a guy named Ishmel Lemon?
- 7 A. Yes.
- 8 Q. Where is he from?
- 9 A. Westchester.
- 10 Q. And is he a friend of Domoneik's and James Washington?
- 11 A. Yes. I think they are all family. I am not sure.
- 12 Q. Okay.
- 13 A. That is what he said.
- 14 Q. Do you know a fellow named Javon Richardson or Jayvon
- 15 or Von?
- 16 A. Von, yes.
- 17 Q. Okay. Is he from Westchester?
- 18 A. Yes.
- 19 Q. Is he related to somebody that was in the car with you?
- 20 A. Shawn.
- 21 Q. Shawn Walker?
- 22 A. Uh-huh.
- 23 Q. Okay. Now when y'all got to the Kangaroo where did
- 24 y'all park?
- 25 A. In the front.

1 Q. Were you driving?

2 A. No, Shawn was driving.

3 Q. Okay. And you were where in the car?

4 A. In the passenger's seat.

5 Q. Okay. And what were you doing after y'all got in the
6 car and parked; were ya'll parked head in or backed in?

7 A. We was parked head in.

8 Q. Okay. And what were you doing in the car?

9 A. On the phone with Ronald's mom.

10 Q. Okay. And why were you talking to Ronald's mom?

11 A. To tell her to come get him because I couldn't get him
12 to go with me and I didn't know where he was at or what was
13 going to go down.

14 Q. So you are concerned ---

15 A. Yeah.

16 Q. --- for him?

17 A. Uh-huh.

18 Q. Now you've seen the video and the jury has seen the
19 video. At some time -- point ya'll moved -- the car is
20 moved around. Why is that?

21 A. When I saw the gas station getting crowded and it was
22 rowdy I told them -- I told them to turn the car around so
23 if something pop off we can be facing out to leave before it
24 even get to where it went to.

25 Q. Okay. So you were concerned that something might

1 happen?

2 A. I knew something was going to happen, yeah.

3 Q. Do you remember a gold Impala showing up at the
4 Kangaroo?

5 A. Yes.

6 Q. When did you realize who was in that gold Impala?

7 A. When they got out. As a matter of fact -- I don't --
8 not even when they get out. I think either Shawn or Ervette
9 said that looks like Bonnie's son right there.

10 Q. Okay. And this would be Ronald that you had seen at
11 the club?

12 A. Yeah.

13 Q. Is that correct?

14 A. Uh-huh.

15 Q. And his friends?

16 A. Uh-huh.

17 Q. And who showed up at the club from the Westchester
18 area?

19 A. Everybody.

20 Q. Okay. You know Domoneik Chip Washington, correct?

21 A. Uh-huh.

22 Q. Did he show up there?

23 A. Yeah.

24 Q. Javon, Shawn's cousin, did he show up?

25 A. Yeah.

- 1 Q. How about Ishmael Lemon?
- 2 A. Yeah.
- 3 Q. How about James Washington?
- 4 A. Yeah.
- 5 Q. Did they arrive together or separately?
- 6 A. Together.
- 7 Q. And this is Domoneik Washington here, correct?
- 8 A. Uh-huh. That was Chip, yeah.
- 9 Q. How long have you know him?
- 10 A. For --- my -- a long time for them. Years.
- 11 Q. A number of years?
- 12 A. Yeah.
- 13 Q. How about these other guys?
- 14 A. Same time. Years.
- 15 Q. Okay.
- 16 A. I don't associate with them.
- 17 Q. They are all -- they are all ---
- 18 A. Yeah, I just know them. Seeing them. That's it.
- 19 Q. Do you know where Domoneik Washington and the people he
- 20 was with parked, where they were parked?
- 21 A. I think at the carwash. I believe at the carwash.
- 22 Q. Okay. And the carwash ---
- 23 A. And that is where Shawn went at.
- 24 Q. Okay. And the carwash if you are like at the front
- 25 door of the Kangaroo looking Folly Road would it be to your

1 left or your right?

2 A. To your left.

3 Q. Okay. And what happened after Domoneik and the fellows
4 he got -- were with got to the Kangaroo; what did they do?

5 A. They were just acting real rowdy.

6 Q. Okay. And they were acting rowdy towards whom?

7 A. They were acting rowdy just period until they saw the
8 Impala came around and then they realized I guess that is
9 who they was fighting with or whatever. And that is when it
10 got crazy.

11 Q. Okay. And what did Domoneik do when you realized the
12 guys from the club were in the Impala?

13 A. He was like y'all mother fuckers looking for me or
14 some -- in that nature.

15 Q. And then what?

16 A. That -- he was just yelling -- it was just back and
17 forth beefing.

18 Q. Okay.

19 A. Just yelling.

20 Q. Okay. And he was saying what?

21 A. Y'all mother fuckers looking for me.

22 Q. And what did you did when you saw Domoneik confronting
23 the guys in the Impala; did you stay inside -- outside or go
24 inside?

25 A. I went inside the store.

- 1 Q. And ---
- 2 A. But I was still on the phone with Ronald's mom.
- 3 Q. Okay.
- 4 A. But I told the lady you need to call the police because
- 5 something is about to go down.
- 6 Q. Okay. You told the clerk that?
- 7 A. Yeah.
- 8 Q. Who came and got you out of the store?
- 9 A. Ervette. Because the lady had locked -- the clerk
- 10 locked me in the store.
- 11 Q. Okay. And what happened after you came back outside?
- 12 A. They was still fussing, still talking. And the next
- 13 thing you know gun shots start firing. That was a rap.
- 14 Q. And where did the shotguns come from?
- 15 A. I believe -- James shot up in the air first.
- 16 Q. James Washington?
- 17 A. Yeah.
- 18 Q. Okay. And then after that there were a bunch of gun
- 19 shots?
- 20 A. Yeah.
- 21 Q. And where -- do you remember where James was when he
- 22 shot up in the air?
- 23 A. On -- right by the gas station -- between the gas
- 24 station and carwash.
- 25 Q. Okay. And what did you do when James starting shooting

1 up in the air?

2 A. I hauled ass.

3 Q. That's -- that was a ---

4 A. Well, I'm sorry. Excuse me, Your Honor. I ran.

5 Q. I would have been right with you. And where -- where
6 did you run to?

7 A. I ran toward the WalGreen's. Because the police was
8 right there.

9 Q. Okay. Ms. Trusdale, I am going to play part of State's
10 Exhibit Number 69 to you and I am going to ask you some
11 questions as we go along if that will be okay. It should --
12 it should pop up right there on that monitor in front of
13 you.

14 (WHEREUPON, played video.)

15 (WHEREUPON, stopped video.)

16 Q. Okay. That car that just pulled in, do you recognize
17 that vehicle?

18 A. That is the car I was in.

19 Q. Okay. And who is this person right here sitting in the
20 front passenger seat?

21 A. Me.

22 Q. And at this point Shawn is driving and who is in the
23 back?

24 A. Ervette.

25 (WHEREUPON, played video.)

1 (WHEREUPON, stopped video.)

2 Q. What are you doing right now?

3 A. I am on the phone with Ronald's mom.

4 (WHEREUPON, played video.)

5 Q. Who is that that got out of the back?

6 A. Ervette.

7 Q. Do you know why they changed the drivers?

8 A. Because I told Shawn to back up and turn around. And
9 she said she -- she didn't know how.

10 (WHEREUPON, stopped video.)

11 Q. She is not good at backing?

12 A. Yeah, that is what she said.

13 Q. Okay.

14 (WHEREUPON, played video.)

15 (WHEREUPON, stopped video.)

16 Q. Okay. Did you notice that gold Impala when it pulled
17 into the parking lot?

18 A. No, I didn't notice it at first.

19 Q. Okay. And --

20 (WHEREUPON, played video.)

21 Q. -- I am going to jump ahead a couple of minutes.

22 (WHEREUPON, stopped video.)

23 Q. Okay. Did you notice the gold Impala when it pulled up
24 in front of the car that you were in?

25 A. No.

1 Q. Okay.

2 (WHEREUPON, played video.)

3 (WHEREUPON, stopped video.)

4 Q. When did you realize that the guys were -- in the gold
5 Impala were the guys from downtown?

6 A. I can't remember if Shawn or Ervette said ---

7 Q. Okay.

8 A. --- that is Bonnie's son in that car.

9 MS. PROCTOR: Objection. Hearsay.

10 (WHEREUPON, played video.)

11 (WHEREUPON, stopped video.)

12 A. When they got out is when I realized that was them.

13 Q. Okay.

14 (WHEREUPON, played video.)

15 (WHEREUPON, stopped video.)

16 Q. Somebody got out dressed in black. At that point did
17 you recognize who that was?

18 A. I think that was Ronald.

19 Q. Okay.

20 (WHEREUPON, played video.)

21 (WHEREUPON, stopped video.)

22 Q. And who is this that just got out of the car?

23 A. That is me.

24 Q. Okay. And once again you appear to be on the phone.

25 And who were you on the phone with?

1 A. Ronald's mom.

2 (WHEREUPON, played video.)

3 (WHEREUPON, stopped video.)

4 Q. And who is this?

5 A. I think -- that is Chip?

6 Q. Uh-huh.

7 (WHEREUPON, played video.)

8 (WHEREUPON, stopped video.)

9 Q. And who is this behind him?

10 A. It looks like James. That is ---

11 (WHEREUPON, played video.)

12 A. --- Javon.

13 (WHEREUPON, stopped video.)

14 Q. That is Javon.

15 A. Uh-huh.

16 Q. And who is the one in the green?

17 A. That's Ishmel.

18 Q. And who is the one wearing the sleeveless T-shirt in
19 the back?

20 A. That is James.

21 (WHEREUPON, played video.)

22 (WHEREUPON, stopped video.)

23 Q. And I believe that is when you went into the store; is
24 that correct; why did you go in the store?

25 A. Because he had a gun. Chip had a gun.

1 (WHEREUPON, played video.)

2 (WHEREUPON, stopped video.)

3 Q. And who is this walking out toward the people in the
4 Impala?

5 (WHEREUPON, played video.)

6 A. Chip.

7 (WHEREUPON, stopped video.)

8 Q. And who is that that just came and got you out of the
9 store?

10 A. Ervette.

11 (WHEREUPON, played video.)

12 (WHEREUPON, stopped video.)

13 Q. This is you ---

14 A. Uh-huh.

15 Q. --- at this point?

16 A. Yes.

17 (WHEREUPON, played video.)

18 (WHEREUPON, stopped video.)

19 Q. And who is this once again with the ---

20 A. James.

21 Q. That is James Washington?

22 A. Uh-huh.

23 (WHEREUPON, played video.)

24 (WHEREUPON, stopped video.)

25 Q. Okay. And that shot that was fired first, who fired

1 that shot?

2 A. James.

3 Q. Did at any time did you see the people from this car
4 (pointing) shoot a gun?

5 A. No.

6 (WHEREUPON, played video.)

7 (WHEREUPON, stopped video.)

8 Q. Who is this running over this way (pointing)?

9 A. Me.

10 (WHEREUPON, played video.)

11 (WHEREUPON, stopped video.)

12 Q. Okay. I want to back this up and in just a second I
13 want to ask you something else I forgot to ask.

14 (WHEREUPON, played video.)

15 (WHEREUPON, stopped video.)

16 Q. So who is this once again (pointing)?

17 A. Chip.

18 (WHEREUPON, played video.)

19 (WHEREUPON, stopped video.)

20 Q. And who is this (pointing)?

21 A. James.

22 THE COURT: Please repeat that.

23 (WHEREUPON, played video.)

24 (WHEREUPON, stopped video.)

25 THE COURT: We couldn't hear you, ma'am. Please repeat

1 that.

2 A. James.

3 (WHEREUPON, played video.)

4 (WHEREUPON, stopped video.)

5 Q. And who is this (pointing)?

6 A. Ishmel.

7 Q. And who is this back here (pointing)?

8 A. That is Von.

9 Q. And can you tell ---

10 A. And Shawn pulling on him telling ---

11 Q. That is Shawn holding on to Von?

12 A. Uh-huh.

13 (WHEREUPON, played video.)

14 Q. Who is that laying behind y'all's car?

15 A. Ervette.

16 Q. Who is this getting out of the back seat?

17 A. Shawn.

18 (WHEREUPON, stopped video.)

19 Q. What is the relationship between Shawn and James
20 Washington?

21 A. I guess they are mixing.

22 Q. What do you mean they are mixed up?

23 A. They are mixing. They are together, separate. I don't
24 know. They are mixing.

25 Q. Okay.

1 A. I don't know.

2 Q. Okay.

3 (WHEREUPON, played video.)

4 (WHEREUPON, stopped video.)

5 Q. And who is this coming back to the car?

6 A. Me.

7 (WHEREUPON, played video.)

8 Q. And that is when y'all drive out ---

9 A. Uh-huh.

10 (WHEREUPON, stopped video.)

11 A. Yes.

12 Q. Thank you, Ms. Trusdale. That's all the questions I
13 have. Could you please answer any questions that Ms.
14 Proctor may have for you.

15 THE COURT: Recross-examination for the witness.

16 MS. PROCTOR: Thank you.

17 THE COURT: You are welcome.

18 **CROSS-EXAMINATION - MS. PROCTOR OF ZADIE TRUSDALE:**

19 Q. There were quite a few gunshots that night, weren't
20 there?

21 A. Uh-huh.

22 Q. And did you see anybody else with a gun?

23 A. Anybody else like who?

24 Q. Any other -- well, I wasn't out there. But did you see
25 any other gunfire?

1 A. No. You saw me running, right, when I heard the first
2 couple of shots; right?

3 Q. I did.

4 A. Uh-huh. I didn't stick around to see who else had a
5 gun. I ---

6 Q. But there were quite a few more gunshots you heard,
7 correct?

8 A. Yeah.

9 Q. And you said you ran to the Walgreen's?

10 A. Yeah.

11 Q. And there was an off-duty police officer?

12 A. Yeah. There was a county -- county car actually
13 sitting there.

14 Q. Okay. Did -- were you able to speak with him?

15 A. No, he ran.

16 Q. Oh, he ran also?

17 A. Yeah.

18 Q. He didn't go over ---

19 A. No.

20 Q. --- towards the gunshots?

21 A. He didn't go toward the gunshots. He ran.

22 Q. Okay. That's all the questions.

23 THE COURT: Any redirect?

24 MR. DURANT: No, ma'am. I would ask that Ms. Trusdale
25 be excused if there is no objection.

1 THE COURT: Any objection from the defense?

2 MS. PROCTOR: No, Your Honor.

3 THE COURT: Ma'am, you are excused.

4 THE WITNESS: All right. Thank you.

5 THE COURT: You are welcome.

6 You may call your next witness.

7 MR. DURANT: Thank you, Ms. Trusdale.

8 THE COURT: Who is the next witness?

9 MR. DURANT: I am going to switch a couple here.

10 The State would call Don Manigault.

11 THE COURT: Sir, if you would come forward to be sworn.

12 (WHEREUPON, the witness was duly sworn.)

13 THE CLERK: Please state your full name and spell your
14 last name.

15 THE WITNESS: My name is Don Manigault,

16 M-A-N-I-G-A-U-L-T.

17 THE COURT: You may proceed.

18 MR. DURANT: Thank you, Your Honor.

19 THE COURT: You are welcome.

20 (DON MANIGAULT, having first been
21 duly sworn, testified as follows:)

22 **DIRECT EXAMINATION - MR. DURANT OF DON MANIGAULT:**

23 Q. How old are you, Mr. Manigault?

24 A. Twenty-six.

25 Q. And how far did you go in school?

1 A. I graduated high school and did a little bit of Trident
2 but I never finished.

3 Q. Okay. And where did you graduate high school from?

4 A. West Ashley High.

5 Q. And are you currently employed?

6 A Yeah.

7 Q. Where are you working?

8 A. I work At Burger King, Mt. Pleasant.

9 Q. And where did you grow up, what area of town did you
10 grow up in?

11 A. West Ashley, Ravenel.

12 Q. Okay. I believe you were convicted of drug charges in
13 2009; is that correct?

14 A. Yes, sir.

15 Q. I want to talk to you about March the 30th, 2011, the
16 night of the shooting at the Kangaroo.

17 A. Yes, sir.

18 Q. Were you there that night?

19 A. Yes, sir.

20 Q. And who were you there with?

21 A. A couple of my friends. Scott from off of James
22 Island, a John Pendergrass, Laval Hazel and Joe McAllen.

23 Q. Okay. So it was Laval Hazel and John Pendergrass?

24 A. Uh-huh.

25 Q. And are those guys from West Ashley too?

- 1 A. No, sir, they are from James Island.
- 2 Q. And how did you get to know them? Because you are from
- 3 West Ashley and they are from James Island.
- 4 A. Oh, at the time I was dating their cousin.
- 5 Q. Okay. Dating whose cousin?
- 6 A. John Pendergrass and Joe McAllen's cousin.
- 7 Q. Okay.
- 8 A. In a relationship with her.
- 9 Q. Okay. So you got to know them ---
- 10 A. Through her.
- 11 Q. --- because you were dating her?
- 12 A. Uh-huh.
- 13 Q. Okay. Had you been -- had y'all been to the club that
- 14 night too?
- 15 A. Yes, sir, we was at the club.
- 16 Q. And what club was that?
- 17 A. Palm Tree Lounge.
- 18 Q. How did y'all get there?
- 19 A. We rode and -- we rode in John Pendergrass's car.
- 20 Q. And what kind of car was that?
- 21 A. It was a blue Lincoln.
- 22 Q. Okey doke. And who all went to the club originally
- 23 with y'all?
- 24 A. It was me, Laval Hazel, and Poppa John. I believe Jim
- 25 was with us too. But I am not too sure of that.

1 Q. He ended up with you at some point?

2 A. Yeah, exactly.

3 Q. Is that correct?

4 A. Uh-huh.

5 Q. And what happened at the club?

6 A. We was partying and I guess guys got -- some guys got
7 into some fights. Scrapping started happening and everyone
8 left out the club after that.

9 Q. Were you -- were you involved in a fight at the club?

10 A. No, sir, I wasn't involved with any fight at the club.

11 Q. Did you know who was involved in the fight at the club?

12 A. To be honest with you, no, not exactly. Because the
13 club was packed.

14 Q. Okay.

15 A. I mean I didn't even know who was fighting.

16 Q. It was ---

17 A. I knew a fight occurred because we all had to leave.

18 Q. Okay. And it was pretty crowded there that night?

19 A. Yeah, pretty -- pretty packed in there.

20 Q. And why did y'all have to leave?

21 A. Because a fight occurred.

22 Q. Okay. Did they ---

23 A. People started fighting and the club got empty. They
24 emptied the club after the fight -- the fight started.

25 Q. Okay. They pretty much closed the club down?

- 1 A. Uh-huh.
- 2 Q. And where did y'all -- where did y'all go after you
- 3 left the club?
- 4 A. We all went to the Kangaroo gas station.
- 5 Q. Okay. And you have an opportunity to view the video
- 6 tape or the surveillance tape of the shooting have you not,
- 7 sir?
- 8 A. Yes, sir, I have seen it.
- 9 Q. And this would be once again referring to State's
- 10 Exhibit Number 69. And it should show up on the monitor in
- 11 front of you.
- 12 A. Okay.
- 13 (WHEREUPON, played video.)
- 14 Q. Okay. Could you identify this car?
- 15 A. That is the car I was in.
- 16 Q. Okay.
- 17 A. Poppa John's car.
- 18 Q. Okay. And that would be John Pendergrass?
- 19 A. Yes, sir. I was in that car right there.
- 20 Q. Okay.
- 21 (WHEREUPON, played video.)
- 22 (WHEREUPON, stopped video.)
- 23 Q. And who all else -- do you remember how many people
- 24 were in that car at that time?
- 25 A. It was me, Poppa John, Joe, Black. And I think there

1 was one more other person.

2 Q. Some other guy was driving?

3 A. Yeah. I think it was one more other person.

4 Q. Okay. Do you remember his name?

5 A. For some reason I can't remember his name. To be
6 honest with you ---

7 Q. Okay. Did you really know him that well?

8 A. I didn't really know him that well, no. But the rest
9 of the guys I knew quite well.

10 Q. Okay.

11 A. Uh-huh.

12 Q. Okay. I'm going to move it ahead to 6.50.

13 (WHEREUPON, played video.)

14 Q. Do you remember ---

15 (WHEREUPON, stopped video.)

16 Q. Do you remember this car?

17 A. Yeah, that gold car?

18 Q. Right.

19 A. Yeah.

20 Q. Do you remember when it parked right in front of you?

21 A. Yeah, it was right by us. Yes, sir, I remember that.

22 Q. Okay. Did you know the people that were in that car?

23 A. I didn't know the people, but I think -- to tell you
24 the truth no, I didn't know. But I think one of the guys in
25 the -- in my -- in the car I was in was one of the people

1 that ---

2 Q. Okay.

3 A. Yeah.

4 Q. But you ---

5 A. I didn't know.

6 Q. You didn't know any of those people?

7 A. No, I didn't know none of them.

8 Q. Do you remember if any of -- you talked to any of them
9 or if any of them talked to y'all that night?

10 A. They might have talked to one of the other guys in the
11 car, but no one talked to me.

12 Q. Okay.

13 A. I didn't know them.

14 Q. How were they acting?

15 A. I mean they were pretty cool. Whatever. I mean they
16 ain't -- they ain't making no noise or nothing. At that
17 time they wasn't.

18 Q. Were they causing any problem to y'all?

19 A. No, they ain't causing us no problem.

20 (WHEREUPON, played video.)

21 (WHEREUPON, stopped video.)

22 Q. Mr. Manigault, this fellow, you can't see him very
23 well, appears to be wearing red back here (pointing); who is
24 that?

25 A. I am trying to look. It looks like my homeboy Black or

1 it was Laval Hazel. That is what it looks like.

2 Q. Were you wearing red that night?

3 A. It is so blurry you can't really see.

4 Q. Yeah, I know. You can't really see -- do you
5 remember ---

6 A. You can't even see.

7 Q. Do you remember if you were wearing red that ---

8 A. I can't -- I can't even remember what I was wearing
9 that night, man.

10 Q. Okay. That is fine.

11 A. That was a crazy night.

12 Q. If you can't remember, that's fine.

13 (WHEREUPON, played video.)

14 (WHEREUPON, stopped video.)

15 Q. Where were you sitting in that -- the car?

16 A. I was sitting in the back seat. Which side I was
17 sitting on, I can't tell you. But I was in the back seat.
18 I do remember that.

19 Q. Okay.

20 A. Because I remember ducking when we drove off.

21 (WHEREUPON, played video.)

22 (WHEREUPON, stopped video.)

23 Q. So you were present when that -- those initial
24 shots ---

25 A. Occurred, yeah. I was there in the car.

1 Q. Okay.

2 A. Uh-huh.

3 Q. Could you tell us whether or not any of those shots
4 came from this vehicle (pointing)?

5 A. No, you -- you can see everybody in that car trying to
6 jump in and leave. We are all trying to leave to go about
7 or do -- everybody is trying to hop in and leave.

8 Q. Okay. You ---

9 A. Trying to get shot.

10 Q. You didn't hear any shots coming from that car ---

11 A. No.

12 Q. --- or see anybody?

13 A. Ain't nobody been shooting from none of them because we
14 were trying to leave.

15 (WHEREUPON, played video.)

16 (WHEREUPON, stopped video.)

17 Q. And that is y'all driving off; is that correct?

18 A. Yeah, we done -- we done -- we done left.

19 Q. Okay.

20 (WHEREUPON, played video.)

21 (WHEREUPON, stopped video.)

22 Q. You can hear some shots in the background there,
23 correct, ---

24 A. Correct. Correct.

25 Q. --- at the end?

1 A. Uh-huh.

2 Q. Anybody in your car shoot?

3 A. Yeah, a guy in my car shot back. But he just -- we
4 were way over there like (motioning).

5 Q. Way over where; if you ---

6 A. I can't really ---

7 Q. I think ---

8 A. We were way up like way over there (motioning) on that
9 side of the parking lot trying to like ---

10 Q. Right over here (pointing)?

11 A. Right when we were about to leave and turn, a guy in my
12 car did a couple of shots back at them too.

13 Q. Shot at -- shot where?

14 A. He was shooting because he ---

15 Q. Shooting in the air?

16 A. Yeah, I don't really know where he was shooting because
17 I was ducking.

18 Q. Okay.

19 A. Crazy night. Crazy night.

20 Q. Okay.

21 A. Yeah.

22 Q. Thank you, Mr. Manigault. Could you please answer any
23 questions that Ms. Proctor may have for you.

24 THE COURT: Any cross-examination of the witness?

25 (Counselors confer regarding video equipment.)

1 CROSS-EXAMINATION - MR. KOZELSKI OF DON MANIGAULT:

2 Q Mr. Manigault, you are in the back seat of the green
3 Lincoln?

4 A. It is like one of those like tell you which color.
5 Sometimes in the light it looks blue. Sometimes in the
6 light it flips.

7 Q. Greenish blue?

8 A. Yeah.

9 Q. You don't know where you are sitting in the back seat?

10 A. I can't remember exactly where I was sitting in the
11 back seat, no, sir.

12 Q. Okay. But you know you are back there with Joe
13 McKelvey?

14 A. I am back there with Black and -- yeah, I believe Joe
15 is back there too.

16 Q. Black is Laval Hazel?

17 A. Uh-huh.

18 Q. He goes by Jay Black?

19 A. Yeah.

20 Q. Okay. And you hear the first shot go off?

21 A. Uh-huh.

22 Q. Do you see who shoots the first shot?

23 A. I didn't see who shot the first shot. To be honest, I
24 can't tell you exactly who shot the first shot.

25 Q. Okay. Do you know what direction it came from?

1 A I don't really know the direction it came from either.

2 Q. Okay. You just -- the car starts going?

3 A. Yeah. Yeah. No, I ain't -- I just be like you know.

4 Q. Okay. And you see Jay Black push Joe out of the way?

5 A. Jay -- I ain't see Jay Black push Joe out of the way.

6 What do you mean?

7 Q. Okay. You didn't see -- you saw Jay Black shoot out
8 the door?

9 A. That was -- that was way after the first shot went off.
10 That was after we done drove off, hit the corner and about
11 to turn on -- what is the name of that street -- on Camp
12 Road. He didn't start shooting until we was turning on Camp
13 Road. So ain't -- that was way after the first shot.

14 Q. Okay. So after you went onto Camp Road you went back
15 to A and E Projects?

16 A. Yeah. Yeah.

17 Q. And when you were back at the projects did you search
18 the car for shell casings?

19 A. No. I mean I didn't search -- I didn't search the car
20 for no shell casings or nothing like that. No.

21 Q. As far as you are aware did anybody check the car for
22 shell casings?

23 A. No. I mean no.

24 Q. Thank you. No further questions.

25 THE COURT: Any redirect?

1 MR. DURANT: No, ma'am. I would ask that Mr. Manigault
2 be excused.

3 THE COURT: Any exception from the defense?

4 MS. PROCTOR: None, Your Honor.

5 THE COURT: Sir, you are excused.

6 MR. DURANT: Thank you, sir.

7 THE COURT: You may call your next witness.

8 MR. DURANT: The State would call Laval Hazel.

9 (WHEREUPON, the witness was duly sworn.)

10 THE CLERK: Please state your full name and spell your
11 last name.

12 THE WITNESS: Laval Hazel, H-A-Z-E-L.

13 THE COURT: Sir, if you would have a seat and speak
14 directly into the microphone.

15 You may proceed.

16 MR. DURANT: Thank you, Your Honor.

17 THE COURT: You are welcome.

18 MR. DURANT: The court's indulgence.

19 (LAVAL HAZEL, having first been
20 duly sworn, testified as follows:)

21 **DIRECT EXAMINATION - BY MR. DURANT OF LAVAL HAZEL:**

22 Q. Good afternoon, Mr. Hazel. Could you please tell our
23 jury how old you are.

24 A. Twenty-six.

25 Q. And how far did you go in school?

1 A. Eleventh grade.

2 Q. Where did you go to school?

3 A. James Island.

4 Q. And obviously you are currently in South Carolina
5 Department of Corrections; is that correct?

6 A. Yeah.

7 Q. I believe serving years for cocaine charges; is
8 that ---

9 A. Yes, sir.

10 Q. --- true?

11 A. Yes, sir.

12 Q. Where did you grow up?

13 A. James Island.

14 Q. And I want to ask you about the March 30th, 2011, the
15 night of the shooting at the Kangaroo on James Island. You
16 were present at the time the shooting started; is that
17 correct?

18 A. Yeah.

19 Q. Where had you been earlier that night?

20 A. To the club.

21 Q. And what club was that?

22 A. Palm Tree.

23 Q. Who did you go with?

24 A. Me, John, and friend from his job.

25 Q. Okay. You, John, and a friend of John's from where?

- 1 A. His job where he work at.
- 2 Q. Okay. And John would be John who?
- 3 A. I don't know.
- 4 Q. Do you know his last name; would that be John
- 5 Pendergrass?
- 6 A. Yeah.
- 7 Q. Okay. And whose car were you in?
- 8 A. His sister's car.
- 9 Q. Okay. And what kind of car was that?
- 10 A. Lincoln Town Car.
- 11 Q. And do you remember what color it was?
- 12 A. Green.
- 13 Q. And do you remember who was supposed to be performing
- 14 at the club that night?
- 15 A. Rapper, Lil Phat.
- 16 Q. Lil Phat was the name of the rapper?
- 17 A. (Witness nods head.)
- 18 Q. And did you ever get a chance to see Lil Phat?
- 19 A. No.
- 20 Q. Why is that?
- 21 A. Because a fight broke out in the club.
- 22 Q. And who was involved in the fight?
- 23 A. I don't know.
- 24 Q. Do you know a fellow named Little Ron?
- 25 A. Yeah, I know Lil Ron.

1 Q. Would that be Ronald Bryant?

2 A. Yeah, I guess that is his name.

3 Q. Was he involved in the fight or do you -- at the club
4 or do you know?

5 A. I know he been involved in a fight.

6 Q. Okay. Did you find out later if he was involved in the
7 fight?

8 A. When I -- when I -- at the gas station when they
9 explained it to me.

10 Q. Okay. And when you say they were -- explained it to
11 you, who was explaining it to you?

12 A. I mean Antwan was explaining it to me.

13 Q. Antwan?

14 A. Yeah.

15 Q. Okay. And how do you know Antwan?

16 A. I did some time with him up the road.

17 Q. Okay. And did you know -- you said you know Little Ron
18 or Ronald Bryant. How did you -- how did you know Ronald
19 Bryant?

20 A. He grew up in my neighborhood.

21 Q. Okay. So he used to live on James Island ---

22 A. Yeah.

23 Q. --- a long time ago?

24 A. Yeah.

25 Q. And where does he live now? Or, you know ---

1 A. The last know residence he used to stay downtown. I
2 don't know where he stay at now.

3 Q. Okay. And did you know the guy that was -- the guy
4 that was with Antwan and ---

5 A. No.

6 Q. --- Ronald ---

7 A. No.

8 Q. Edward Wittrell would you have ever met him before?

9 A. No.

10 Q. Do you remember him being in the car there that night
11 though?

12 A. Yeah, he was in there.

13 Q. Okay. Now after the fight broke out at the club what
14 happened; did the club stay open?

15 A. No, county police come inside there and shut them down.

16 Q. And where did y'all go after they shut the club down?

17 A. The gas station.

18 Q. And who all went to the gas station with you; do you
19 know; was it the same three guys or did y'all pick you a
20 couple of other guys?

21 A. No, his cousin -- I'm not saying three. And his cousin
22 Joe and another dude he know named Don.

23 Q. Okay. So y'all picked up Joe McKelvey and Don from the
24 club and they went to the Kangaroo with you? You ---

25 A. Yeah.

1 Q. --- have to answer yes or no.

2 A. Yeah.

3 Q. Okay. So how many people were in that Town Car all
4 together?

5 A. Five.

6 Q. Okay. And where were you sitting?

7 A. I been in the back seat.

8 Q. Now do you remember while y'all were at the Kan- --
9 where were y'all parked at the Kangaroo?

10 A. One of the gas pumps.

11 Q. Okay. Do you remember a gold Impala showing up?

12 A. Yeah.

13 Q. Where did that gold Impala stop in relation to your car
14 or the car you were in?

15 A. Right in front of us.

16 Q. And when did you realize that you knew the guys in the
17 car?

18 A. When he get out the car and he come approached our car
19 and was standing outside of the car.

20 Q. Okay. Did you talk to anybody from the car?

21 A. I was talking to Antwan.

22 Q. Okay. Antwan cause you any problems?

23 A. No.

24 Q. Was he cordial? Was he argumentative to you or
25 anything like that?

1 A. No.

2 Q. Y'all were cool?

3 A. Yeah.

4 Q. How about anybody in his car, were they -- was anyone
5 in his car causing any problem?

6 A. No.

7 Q. And do you know whether those guys had been to the club
8 earlier?

9 A. Yeah, they had been inside it.

10 Q. Okay. And do you know who they had been fighting with
11 inside the club?

12 A. Huh-uh.

13 Q. Do you know -- do you know where the boys they were
14 fighting with were from?

15 A. He just say -- he just said a dude from Westchester.
16 He didn't give no names or nothing like that.

17 Q. Okay. Do you know if the guys you were with knew the
18 guys in the gold Impala?

19 A. No, I ain't too sure.

20 Q. Okay. Now were -- was anybody in your car beefing with
21 these guys from downtown?

22 A. No.

23 Q. Was anybody from downtown beefing with the guys in your
24 car?

25 A. No.

1 Q. Now what did you observe; did you see anybody walk up
2 to the gold Impala?

3 A. No, I ain't seen nobody walk up to the car.

4 Q. Okay. Did you hear anybody say anything to anybody in
5 the gold Impala?

6 A. I mean some dude -- somebody start arguing with them
7 more than any -- that is when Antwan stopped talking to me
8 and they when arguing -- I ain't paying attention to what
9 they were arguing about.

10 Q. Okay. And could you hear what the guy was saying to
11 Antwan?

12 A. Like something like y'all play or y'all are going to
13 pay. Something like that. I ain't really ---

14 Q. Y'all what?

15 A. Y'all -- y'all are going to pay or y'all are going
16 to -- y'all are going to play or something like that.

17 Q. Y'all are going to pay?

18 A. Yeah, one of the two.

19 Q. Okay. And he was saying that to who?

20 A. I guess either Antwan or to me. All them boys start
21 arguing. So I didn't know if he was saying it exactly to
22 Antwan or whoever been in the car.

23 Q. Okay. And what happened next?

24 A. Shots -- I mean after them boys start arguing for a
25 little while shots just start firing out.

1 Q. Shots from where?

2 A. It was like on the -- on the -- on the carwash side.

3 Q. Okay. Anybody shoot from the Impala?

4 A. Not to my knowledge.

5 Q. I mean you were standing right there, weren't you?

6 A. Yeah, I mean as soon as the shots going I dive in the
7 car and we speed off.

8 Q. Okay. No question that the first shots didn't come
9 from the Impala, right?

10 A. No, not to my knowledge, no.

11 Q. Did you see anybody shooting a gun that night?

12 A. No.

13 Q. Do you remember saying in your statement seeing the guy
14 walk off in a white T-shirt and shooting a gun?

15 A. Repeat that.

16 Q. Do you remember how many gunshots you heard initially
17 coming from the carwash?

18 A. Like four, four or five of them.

19 Q. Okay. And that is when y'all took off?

20 A. Yeah, we take off after we hear the gunshot.

21 Q. And if you would, I need you to watch that monitor up
22 there, Mr. Hazel. And I am going to ask you a couple
23 questions as we play part of State's Exhibit Number 69.

24 (WHEREUPON, video played.)

25 (WHEREUPON, video stopped.)

- 1 Q. Let me back that up a little bit.
- 2 (Counselors confer regarding playing video.)
- 3 (WHEREUPON, video played.)
- 4 Q. What is this car right here?
- 5 A. The car -- the Lincoln? The Lincoln.
- 6 (WHEREUPON, video stopped.)
- 7 Q. Okay. This car right here (pointing) was the car that
- 8 y'all came to the gas station in; is that correct?
- 9 A. Yeah.
- 10 (WHEREUPON, video played.)
- 11 (WHEREUPON, video stopped.)
- 12 Q. Who is in this car right here (pointing)?
- 13 A. The gold car?
- 14 Q. Yeah, the gold car.
- 15 A. Antwan, Lil Ron, and that other dude.
- 16 (WHEREUPON, video played.)
- 17 (WHEREUPON, video stopped.)
- 18 Q. Who is this guy right here (pointing)?
- 19 A. I don't know.
- 20 Q. Do you remember you said something about somebody
- 21 arguing with the guy in the car; is that the guy ---
- 22 A. It's the man he been arguing with. But I don't know
- 23 who that is.
- 24 Q. Okay. So that is the man he was arguing with; that is
- 25 who you were talking about?

1 A. Yeah.

2 Q. Okay.

3 (WHEREUPON, video played.)

4 (WHEREUPON, video stopped.)

5 Q. And do you remember what he was saying?

6 A Pay -- like y'all going to pay or y'all are going to
7 play or something like that. Something like that.

8 Q. Okay.

9 (WHEREUPON, video played.)

10 (WHEREUPON, video stopped.)

11 Q. Those first group of shots, where did they come from?

12 A. The carwash side.

13 Q. Okay. Over this way (pointing)?

14 A. Yeah.

15 Q. Okay.

16 (WHEREUPON, video played.)

17 (WHEREUPON, video stopped.)

18 Q. Did you see this fellow right here (pointing)?

19 A. I mean we are taking off. I didn't see him.

20 Q. Okay. So you are in this car (pointing), right?

21 A. Yeah, in that car, the Lincoln taking off.

22 (WHEREUPON, video played.)

23 (WHEREUPON, video stopped.)

24 Q. Do you know who was driving that gold Impala?

25 A. Antwan driving the gold Impala.

1 Q. Okay. Could you please answer any questions that Ms.
2 Proctor may have for you.

3 THE COURT: You may proceed.

4 **CROSS-EXAMINATION - MS. PROCTOR OF LAVAL HAZEL:**

5 Q. Mr. Hazel, you said you went to the club that night
6 with John Pendergrass and a friend of his?

7 A. Yes, ma'am.

8 Q. And was it just the three of you in the car on going to
9 the Palm Tree Lounge?

10 A. Yes, sir.

11 Q. And you said that at the Palm Tree Lounge a fight broke
12 out.

13 A. Yes, ma'am.

14 Q. And do you remember who was fighting at the Palm Tree
15 Lounge?

16 A. No, ma'am. I been on one side of the club and they
17 started on the other side. I didn't see who it been.

18 Q. And so you -- how long do you think you were in lounge
19 that -- the Palm Tree that night?

20 A. I been in there for like probably more than two hours.

21 Q. Okay. And after the fight started what happened?

22 A. It was two different fights. The first fight did break
23 up, and the second fight it break up and the police came
24 inside there and escorted everybody outside of the club.

25 Q. And do you remember who was fighting in the club?

1 A. No, ma'am.

2 Q. And you say that when you left there were some other
3 people that left with you in the car, correct?

4 A. Yes.

5 Q. And that car was, you were the blue Lincoln at that
6 time?

7 A. Green Lincoln.

8 Q. It was a green Lincoln?

9 A. Yeah.

10 Q. But it was John Pendergrass, correct, his friend Ron,
11 you, Joe McKelvey ---

12 A. And Don.

13 Q. And Don. And when you left where did you go?

14 A. We went to the gas station.

15 Q. And you went to the gas station you said to the
16 Kangaroo because you all were going to get some blunts at
17 that time, correct?

18 A. Yes, ma'am.

19 Q. And so at that time there is now five of you in the
20 car. Now when you were at the Kangaroo you said people were
21 yelling?

22 A. Yeah.

23 Q. And did you hear people yelling out the name Chip,
24 Chip; did you hear any of that?

25 A. No, I ain't hear that.

1 Q. And you say that while you were -- while you were there
2 you heard a gunshot?

3 A. Yes, ma'am.

4 Q. And how many gunshots do you think you heard?

5 A. I would say like four or five.

6 Q. And at that time you jumped in the car, correct?

7 A. Yes, ma'am.

8 Q. Now in this case do you remember talking to the police
9 officers? Did you go down to the police station?

10 A. No. I went to my lawyer's office. My lawyer got in
11 contact with the detective.

12 Q. Okay. So you went to the lawyer's office the next day?

13 A. No, after -- Joe McKelvey had talked to the detectives
14 first.

15 Q. Okay.

16 A. And after he talked to the detectives he said something
17 about I been shooting at the scene. So I went and go got a
18 lawyer and gave him the detective's name. Because they came
19 in my -- of my people's house and left a card saying they
20 were looking for me. But I been at work.

21 Q. So you didn't talk to the police until you went there
22 with your lawyer?

23 A. Yeah.

24 Q. And when you went to the police you gave them a
25 four-page statement, correct?

1 A. Yes, ma'am.

2 Q. And when you gave them the statement did you write out
3 your statement or did the police write it out?

4 A. He wrote the questions. And I wrote the answers.

5 Q. Okay. And after you gave your statement to the police
6 did you read what you wrote?

7 A. Yes, ma'am.

8 Q. And did the police officer have you sign it?

9 A. Yes, ma'am.

10 Q. And he asked you -- he read: I have read the foregoing
11 statement which has been freely and voluntarily made by me
12 and it is true and correct to the best of my knowledge; and
13 you signed that statement; correct?

14 A. Yes, ma'am.

15 Q. Now anywhere in your four-page statement did you tell
16 the police that you were shooting a gun that night?

17 A. No.

18 Q. And anywhere in that statement did you tell them that
19 after the shooting y'all were worried and went back to look
20 for some shell casing; did you tell the police that?

21 A. No.

22 Q. So you were in the -- with the police with your lawyer
23 and you never told the police you were shooting that night?

24 A. No.

25 Q. But you were shooting that night, weren't you?

1 A. No.

2 Q You never shot a gun that night?

3 A. No.

4 Q. You never had a gun in that car?

5 A. No.

6 Q. You never shot at the Kangaroo?

7 A. No.

8 Q. And you never went to look for any shell casings?

9 A. No.

10 Q. Thank you. I don't have any more questions.

11 THE COURT: Any redirect?

12 MR. DURANT: No, ma'am.

13 THE COURT: Any objection to the witness being excused,
14 from the State?

15 MR. DURANT: No, Your Honor.

16 THE COURT: From the defense?

17 MS. PROCTOR: No, Your Honor.

18 THE COURT: Sir, you are excused.

19 MR. DURANT: May we approach, Your Honor?

20 THE COURT: You may.

21 (WHEREUPON, bench conference held in camera as
22 follows:)

23 MR. DURANT: I think I have shortened my case because
24 of a ruling so I am not going to call ---

25 THE COURT: How many people are you not calling -- are

1 you calling ---

2 MR. DURANT: I will tell you who

3 (Pause to retrieve notes.)

4 MR. DURANT: I am going to call Alan Ali. He is a
5 detective, very briefly.

6 THE COURT: I couldn't hear you. Say that one more
7 time.

8 MR. DURANT: Alan Ali his name is.

9 THE COURT: Oh, yeah, Number 8.

10 MR. DURANT: Very briefly. I am going to call Kathy
11 Kjellman who is the crime scene girl and Suzann Cromer who
12 is the firearms person from SLED and Ellen Riemer who is the
13 girl -- the lady that removed the bullet from Mr. Wilson's
14 leg. And that's it.

15 THE COURT: So you are not calling any of these 21
16 through 27?

17 MR. DURANT: No.

18 THE COURT: You are not calling two through four?

19 MR. DURANT: No.

20 THE COURT: Or six?

21 MR. DURANT: No.

22 THE COURT: Or 10, 11, and 12?

23 MR. DURANT: No.

24 THE COURT: And you are not calling 28 or 29?

25 MR. DURANT: No.

1 THE COURT: Thirty-one or thirty-two?

2 MR. DURANT: Huh-uh.

3 THE COURT: Thirty-four through forty?

4 MR. DURANT: Correct.

5 THE COURT: Or 42?

6 MR. DURANT: Yes. Yes, it should be -- it should be
7 one, two -- I will have four witnesses after lunch probably
8 and one more left.

9 THE COURT: Are you still going to call anybody?

10 MS. PROCTOR: We just don't know right this second.

11 THE COURT: Well, Mr. Hazel has already been called.

12 MS. PROCTOR: Right.

13 THE COURT: So.

14 MS. PROCTOR: Most of those are his witnesses. I
15 don't -- we will have to ---

16 THE COURT: Muirhead has already been called.

17 MS. PROCTOR: Right.

18 THE COURT: Ms. Kjellman is going to be called. All
19 right.

20 MS. PROCTOR: Okay.

21 (End of in camera bench conference.)

22 THE COURT: Madam Forelady, ladies and gentlemen, we
23 are going to take advantage of this break in testimony to
24 take our lunch recess.

25 During the break please do not discuss the case in any

1 manner whatsoever. And please don't have any contact with
2 anyone in or about the courthouse when you return as well as
3 making any comments regarding your jury service on any
4 social networking sites or allowing yourselves to be exposed
5 to any media coverage about this case.

6 We are going to resume at 1:45 which gives you a little
7 over an hour and thirty minutes for lunch. And you will
8 return directly to your jury room at which time we will
9 resume testimony. Have a good lunch. Leave your notepads
10 in your seats, please.

11 (WHEREUPON, jury exited courtroom July 16, 2013, at
12 12:26 p.m.)

13 THE COURT: Anything before we break for lunch from the
14 State?

15 MR. DURANT: Nothing from the State, Your Honor.

16 THE COURT: From the defense?

17 MS. PROCTOR: Nothing Your Honor.

18 THE COURT: See y'all at quarter to 2:00. Have a good
19 lunch.

20 (WHEREUPON, recess for lunch July 16, 2013, at 12:28
21 p.m.)

22 (WHEREUPON, proceedings resumed after lunch July 16,
23 2013.)

24 THE COURT: Do you have your next witness?

25 MR. DURANT: I have one that I'm probably going to have

1 to call out of order because the one I was going to call
2 next. ---

3 THE COURT: Yes, because the jury is standing out in
4 the hallway.

5 MR. DURANT: Okay.

6 THE COURT: That is why I am asking. Are we ready or
7 do I need to send them back to the jury room? Are we ready
8 or do I need to send them back to the jury room?

9 MR. DURANT: No, that is all right. I will call my
10 witness out of order.

11 MS. PROCTOR: Are you calling Kjellman?

12 MR. DURANT: Yeah.

13 MS. PROCTOR: And during her testimony we are going to
14 have a matter to take up outside of the presence of the
15 jury.

16 THE COURT: Which is?

17 MS. PROCTOR: About a gun. Gun hole, bullet holes. On
18 Kjellman.

19 THE COURT: Bullet holes where?

20 MS. PROCTOR: In the car door out.

21 (Break for entry of different witness into courtroom.)

22 THE COURT: Are y'all ready?

23 MR. DURANT: Yes, Your Honor.

24 MS. PROCTOR: Yes, Your Honor.

25 THE COURT: Please bring in the jury.

1 (WHEREUPON, jury entered the courtroom July 16, 2013,
2 at 1:55 p.m.)

3 THE COURT: Ladies and gentlemen, I hope y'all had a
4 pleasant lunch. We will now resume testimony. The State
5 may call its next witness. You need to call the witness,
6 Mr. DuRant.

7 MR. DURANT: The State would call Alan Ali.

8 THE COURT: Please swear the witness.

9 (WHEREUPON, the witness was duly sworn.)

10 THE CLERK: State your full name and spell your last
11 name.

12 THE WITNESS: Yes. My name is Alan, A-L-A-N, middle
13 name Ismail, I-S-M-A-I-L; and my last name is Ali, A-L-I.

14 THE COURT: You may proceed.

15 MR. DURANT: Thank you, Your Honor.

16 (ALAN ISMAIL ALI, after having been
17 duly sworn, testified as follows:)

18 **DIRECT EXAMINATION - MR. DURANT OF ALAN ALI:**

19 Q. Would you tell our jury where you are employed.

20 A. Yes, sir. I work for the Charleston County Sheriff's
21 Office. And I am currently assigned to United States
22 Marshalls Service as a special deputy marshall.

23 Q. For what purpose, what task force?

24 A. For tracking down fugitives, sir. I have been assigned
25 there since 2007.

1 Q. Okay. So you were doing that back in 2011; is that
2 correct?

3 A. That is correct, sir.

4 Q. If I could pass to you -- were you tasked -- what were
5 you tasked with with regard to the defendant here, Domoneik
6 Washington?

7 A. I was tasked to locate and apprehend Mr. Domoneik
8 Washington.

9 Q. And where -- where is Mr. -- did Mr. Washington live in
10 Charleston?

11 A. From my understanding he lived on James Island, sir.

12 Q. Okay. In Westchester Subdivision?

13 A. Yes, sir, that would be correct, sir. Yes, sir.

14 Q. And why didn't you just go there and pick him up?

15 A. Because Mr. Washington was making himself unavailable.

16 Q. And did you attempt to locate him in the area?

17 A. Yes, sir. Several times on James Island, several times
18 on John's Island, in and around downtown Charleston, North
19 Charleston, and the surrounding areas.

20 Q. And were you able to locate him?

21 A. We located Mr. Domoneik Washington months later in
22 Danville, Virginia.

23 Q. And when did you locate him in Danville, Virginia?

24 A. Actually it was the day after my birthday. It was
25 2011.

1 Q. Okay. And where was he taken into custody at?

2 A. In Danville, Virginia, sir.

3 Q. And was returned back to Charleston County at that
4 time?

5 A. That's correct, sir. He was extradited back to South
6 Carolina, Charleston in particular.

7 Q. Thank you, sir. Could you please answer any questions
8 that defense may have for you.

9 THE COURT: Any questions for the witness?

10 **CROSS-EXAMINATION - MS. PROCTOR OF ALAN ALI:**

11 Q. And when you arrested him it was without incident,
12 correct?

13 A. It was without incident.

14 Q. Okay. Thank you.

15 THE COURT: Any redirect?

16 MR. DURANT: No, Your Honor.

17 THE COURT: Any objection to the witness being excused,
18 from the State?

19 MR. DURANT: No, Your Honor.

20 THE COURT: From the defense?

21 MS. PROCTOR: No, Your Honor.

22 THE COURT: Officer, you are excused.

23 You may call your next witness.

24 MR. DURANT: The State could call Kathy Kjellman.

25 (WHEREUPON, the witness was duly sworn.)

CROSS-EXAMINATION - MS. PROCTOR OF ALAN ALI

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

3 THE WITNESS: Kathy Kjellman. Last name is spelled
4 K-J-E-L-L-M-A-N.

5 MS. PROCTOR: Your Honor, may we approach one moment?

6 THE COURT: You may.

7 (WHEREUPON, bench conference was held in camera as
8 follows:)

9 MS. PROCTOR: We would just say before Mr. DuRant talks
10 to her about bullet holes in the car that we have a matter
11 outside of the presence. I don't want -- because he -- when
12 he ---

13 THE COURT: Are you going to ask about bullet holes?

14 MR. DURANT: Yes.

15 THE COURT: How quick is your testimony?

16 MR. DURANT: It is going to be -- it will be a while.
17 Probably two thirds of the way through maybe.

18 THE COURT: Where are the bullet holes?

19 MR. DURANT: The ones that I am interested in are the
20 three in the front driver's side door.

21 THE COURT: Of the gold ---

22 MR. DURANT: Of the gold Impala.

23 THE COURT: What is the basis of the objection?

24 MR. DURANT: Well ---

25 MR. DURANT: And the one through the windshield.

1 MS. PROCTOR: Because the cars wreck. From in the
2 wreck that was in the -- and we ---

3 THE COURT: She will know the difference between a
4 bullet hole and a cracked windshield.

5 MS. PROCTOR: No, no, no, no, no. The bullet holes in
6 the door. There were also an AK-47 shooting at the --
7 bullet holes in the door. There is no testimony that these
8 holes come from his gun. That is the problem. Because we
9 don't think they come ---

10 THE COURT: I don't think -- are you going to say they
11 came from his gun?

12 MR. DURANT: All I am going to ask her is to have her
13 identify. I might even show her the pictures.

14 THE COURT: And this would be ---

15 MR. DURANT: I plan on asking her because she has seen
16 the crime scene video. And then I am ---

17 THE COURT: Okay. We will take it up ---

18 MS. PROCTOR: Thank you.

19 MR. DURANT: Okay.

20 THE COURT: Just when you get to that point let me know
21 we have a matter of law.

22 (WHEREUPON, end of bench conference in camera.)

23 THE COURT: You may proceed.

24 **DIRECT EXAMINATION - MR. DURANT OF KATHY KJELLMAN:**

25 Q. Where are you employed, Ms. Kjellman?

- 1 A. Charleston County Sheriff's Office.
- 2 Q. And how long have you been with the Sheriff's Office?
- 3 A. Twelve years.
- 4 Q. What are your current duties?
- 5 A. I am a forensic services investigator.
- 6 Q. And how long have you been an investigator at the
- 7 forensic services unit at the Sheriff's Office?
- 8 A. Eight years.
- 9 Q. In that capacity did you have the occasion to become
- 10 involved in the investigation of the shooting at the
- 11 Kangaroo on March the 30th of 2011?
- 12 A. Yes, I did.
- 13 Q. What did you observe upon arriving at that location?
- 14 A. When I first arrived the parking lot was secured and
- 15 was roped off. The store was closed. And arriving deputies
- 16 had already marked several pieces of evidence that were in
- 17 the parking lot.
- 18 Q. And what did you do initially?
- 19 A. Photograph the scene overall.
- 20 Q. And were any shell casings located?
- 21 A. Yes.
- 22 Q. How about projectiles?
- 23 A. Did y'all do any additional searching for projectiles
- 24 and shell casings while you were there?
- 25 A. In an adjacent business next door which is a carwash we

1 searched that parking lot also but didn't find anything
2 there.

3 Q. Okay. And when you -- when you found something that
4 may be evidence what did you do?

5 A. I placed numbered, yellow numbered placards on them.

6 Q. Okay. And ---

7 (Counselors confer.)

8 THE COURT: Please approach. Approach. I said
9 approach.

10 (WHEREUPON, bench conference in camera was had as
11 follows:)

12 THE COURT: What was that y'all were ---

13 MR. DURANT: It is a crime scene diagram.

14 MR. DURANT: No, ---

15 THE COURT: Who created it?

16 MS. PROCTOR: --- but you -- McManigal.

17 MR. DURANT: McManigal. And I will have to call him.

18 THE COURT: Who is McManigal?

19 MS. PROCTOR: He is crime scene personnel -- you said
20 you were going to get into ---

21 THE COURT: Is she his supervisor?

22 MR. DURANT: No, he is her supervisor.

23 THE COURT: Then yeah.

24 THE COURT REPORTER: Excuse me, if you could take your
25 arm off the microphone. Okay. Thank you. Speak into it.

1 Just don't lean -- cover it. Speak into the microphone.

2 THE COURT: No, y'all can come close.

3 MS. PROCTOR: Okay.

4 THE COURT: She needs you to be close.

5 MS. PROCTOR: Oh, okay.

6 THE COURT: She just doesn't want your arm on it.

7 MR. DURANT: In that case we are going to have to take
8 a recess because it was my understanding that they were --
9 that they were agreeing to the admission -- to the admission
10 of this ---

11 THE COURT: Is that all she is going to testify to?

12 MR. DURANT: Huh? No, she has got ---

13 THE COURT: Yeah, you can talk to her about the rest of
14 it and then we will just skip over that exhibit.

15 MS. PROCTOR: I thought ---

16 THE COURT: And then you have them contact ---

17 MR. DURANT: I am going to have ---

18 THE COURT: --- McManigal. You are protected for
19 whatever sergeant ---

20 (Counselors confer.)

21 THE COURT: --- or whatever his title is.

22 MS. PROCTOR: I didn't know you weren't calling him.

23 MR. DURANT: No, I wasn't planning on calling him.

24 MS. PROCTOR: Well, then you said you agreed to it and
25 that is because I thought he was doing it.

1 MR. DURANT: Let me see if I can --- court's indulgence
2 for a moment?

3 THE COURT: Uh-huh.

4 (WHEREUPON, end of in camera bench conference.)

5 THE COURT: Are we ready to proceed? Are we ready to
6 proceed, from the State?

7 MR. DURANT: Your Honor, I am going to probably have
8 to ---

9 (Counselors confer.)

10 MR. DURANT: I am going to have to call -- to have this
11 witness testify ---

12 THE COURT: I don't -- yeah, I don't need you to
13 annotate what you are going to do. I just need to know if
14 you have questions ---

15 MR. DURANT: I just want the court to know that I need
16 to recall.

17 THE COURT: I understand what you need to do, but the
18 jury doesn't need to be privy to that. So we will deal with
19 that outside of the presence. But do you have further
20 questions for this witness?

21 MR. DURANT: Yes, I am going to have questions of this
22 witness.

23 THE COURT: Okay. Then you may proceed.

24 MR. DURANT: Your Honor, I believe we would offer
25 State's Exhibits 1 through 25 at this time without

1 objection.

2 THE COURT: Is that correct?

3 MS. PROCTOR: Correct, Your Honor.

4 THE COURT: State's 1 through -- I can't talk today.

5 One through twenty-five marked and admitted without
6 objection.

7 (WHEREUPON, State's Exhibit 1, photo - Kangaroo sign
8 Folly and Camp, was marked for identification.)

9 (WHEREUPON, State's Exhibit 1 was admitted into
10 evidence.)

11 (WHEREUPON, State's Exhibit 2, photo - Kangaroo left
12 side, was marked for identification.)

13 (WHEREUPON, State's Exhibit 2 was admitted into
14 evidence.)

15 (WHEREUPON, State's Exhibit 3, photo - Kangaroo gas
16 pumps, was marked for identification.)

17 (WHEREUPON, State's Exhibit 3 was admitted into
18 evidence.)

19 (WHEREUPON, State's Exhibit 4, photo - Kangaroo
20 Placards 2, 3, 4, 5, and 6, was marked for identification.)

21 (WHEREUPON, State's Exhibit 4 was admitted into
22 evidence.)

23 (WHEREUPON, State's Exhibit 5, photo - Kangaroo Placard
24 2, was marked for identification.)

25 (WHEREUPON, State's Exhibit 5 was admitted into

1 evidence.)

2 (WHEREUPON, State's Exhibit 6, photo - Kangaroo
3 Placard 3, was marked for identification.)

4 (WHEREUPON, State's Exhibit 6 was admitted into
5 evidence.)

6 (WHEREUPON, State's Exhibit 7, photo - Kangaroo
7 Placard 4, was marked for identification.)

8 (WHEREUPON, State's Exhibit 7 was admitted into
9 evidence.)

10 (WHEREUPON, State's Exhibit 8, photo - Kangaroo
11 Placard 5, was marked for identification.)

12 (WHEREUPON, State's Exhibit 8 was admitted into
13 evidence.)

14 (WHEREUPON, State's Exhibit 9, photo - Kangaroo
15 Placard 6, was marked for identification.)

16 (WHEREUPON, State's Exhibit 9 was admitted into
17 evidence.)

18 (WHEREUPON, State's Exhibit 10, photo - Kangaroo
19 Placards 7, 8, 11, 12 and 13, was marked for
20 identification.)

21 (WHEREUPON, State's Exhibit 10 was admitted into
22 evidence.)

23 (WHEREUPON, State's Exhibit 11, photo - Kangaroo
24 Placard 7, was marked for identification.)

25 (WHEREUPON, State's Exhibit 11 was admitted into

1 evidence.)

2 (WHEREUPON, State's Exhibit 12, photo - Kangaroo
3 Placard 8, was marked for identification.)

4 (WHEREUPON, State's Exhibit 12 was admitted into
5 evidence.)

6 (WHEREUPON, State's Exhibit 13, photo - Kangaroo
7 Placard 11, was marked for identification.)

8 (WHEREUPON, State's Exhibit 13 was admitted into
9 evidence.)

10 (WHEREUPON, State's Exhibit 14, photo - Kangaroo
11 Placard 12, was marked for identification.)

12 (WHEREUPON, State's Exhibit 14 was admitted into
13 evidence.)

14 (WHEREUPON, State's Exhibit 15, photo - Kangaroo
15 Placard 13, was marked for identification.)

16 (WHEREUPON, State's Exhibit 15 was admitted into
17 evidence.)

18 (WHEREUPON, State's Exhibit 16, photo - Kangaroo right
19 side Placard 14, was marked for identification.)

20 (WHEREUPON, State's Exhibit 16 was admitted into
21 evidence.)

22 (WHEREUPON, State's Exhibit 17, photo - Kangaroo
23 Placard 14, was marked for identification.)

24 (WHEREUPON, State's Exhibit 17 was admitted into
25 evidence.)

1 (WHEREUPON, State's Exhibit 18, photo - Kangaroo
2 placard 15, was marked for identification.)

3 (WHEREUPON, State's Exhibit 18 was admitted into
4 evidence.)

5 (WHEREUPON, State's Exhibit 19, photo - Kangaroo
6 Placard 15 close up, was marked for identification.)

7 (WHEREUPON, State's Exhibit 19 was admitted into
8 evidence.)

9 (WHEREUPON, State's Exhibit 20, photo - Kangaroo
10 Placard 18, was marked for identification.)

11 (WHEREUPON, State's Exhibit 20 was admitted into
12 evidence.)

13 (WHEREUPON, State's Exhibit 21, photo - Kangaroo
14 Placard 18 close up, was marked for identification.)

15 (WHEREUPON, State's Exhibit 21 was admitted into
16 evidence.)

17 (WHEREUPON, State's Exhibit 22, photo - Kangaroo
18 Placard 16, was marked for identification.)

19 (WHEREUPON, State's Exhibit 22 was admitted into
20 evidence.)

21 (WHEREUPON, State's Exhibit 23, photo - Kangaroo
22 Placard 16 close up, was marked for identification.)

23 (WHEREUPON, State's Exhibit 23 was admitted into
24 evidence.)

25 (WHEREUPON, State's Exhibit 24, photo - Kangaroo

1 Placard 19, was marked for identification.)

2 (WHEREUPON, State's Exhibit 24 was admitted into
3 evidence.)

4 (WHEREUPON, State's Exhibit 25, photo - Kangaroo
5 Placard 19 close up, was marked for identification.)

6 (WHEREUPON, State's Exhibit 25 was admitted into
7 evidence.)

8 BY MR. DURANT:

9 Q. First of all I have State's Exhibit 1, which apparent
10 is not on my Power Point. Could you just tell the jury what
11 that depicts.

12 A. It is the sign at the Kangaroo station at Camp and
13 Folly.

14 Q. Okay.

15 THE COURT: What number was that again, Mr. DuRant?

16 MR. DURANT: State's Exhibit Number 1, Your Honor.

17 THE COURT: Thank you, sir.

18 BY MR. DURANT:

19 Q. This is State's Exhibit Number 2 on the screen now.

20 What does that depict?

21 A. The parking lot of the Kangaroo.

22 Q. And that is looking at it kind of from which direction?

23 A. Kind of like -- in this picture I would have my back to
24 Folly Road.

25 Q. Okay. And what would be over to your left?

1 A. To my left would be Camp Road.

2 Q. State's Exhibit Number 3.

3 A. This picture is showing the parking lot of Kangaroo
4 again facing Camp Road and off to my left would be Folly
5 Road.

6 Q. Okay. So Folly Road would be over on this side; is
7 that correct?

8 A. Yes, sir.

9 Q. And Camp Road would be along that side; ---

10 A. Yes.

11 Q. --- is that correct? What would be behind you?

12 A. Behind me would be the carwash.

13 Q. State's Exhibit Number 4.

14 A. Behind me is going to be Camp Road. And off to my
15 right is going to be Folly Road. And directly in front of
16 me the brick building there is going to be the carwash.

17 Q. Okay. This is the carwash in the background over here?

18 A. Yes, sir.

19 Q. And what are Placards two, three, four, five, and six
20 here?

21 A. Two, three, four, and five are shell casings. And
22 Number 6 is a projectile.

23 Q. Okay. State's Exhibit Number 5, what does that depict?

24 A. That is a shell casing.

25 Q. I know it is kind of hard to tell, but is that where it

1 is located right there (pointing)?

2 A. Yes.

3 Q. Okay. And State's Exhibit Number 7?

4 A. That is another shell casing.

5 Q. State's Exhibit Number 8?

6 A. Another spent shell casing.

7 Q. State's Exhibit Number 9?

8 A. Shell casing.

9 Q. Okay. Those are kind of located in one little section
10 of the parking lot; is that correct?

11 A. Yes, sir.

12 Q. And what section of the parking lot is that?

13 A. That is going to be with the previous picture if you
14 remember is me with facing -- my back was to Camp Road. And
15 directly in front of me would have been the carwash.

16 Q. Okay. Do you recall what the caliber of those shell
17 casings were?

18 A. Each of those shell casings was a .380 shell casing
19 management -- manufactured by TulAmmo.

20 Q. Okay.

21 THE COURT: Could you spell that for the court
22 reporter.

23 A. T-L-U-A-M-M-O.

24 THE COURT: Thank you.

25 Q. T-U-L-A-M-M-O, isn't it?

1 A. Yes, sir.

2 Q. Okay.

3 A. My apologies.

4 Q. Now moving on to State's Exhibit Number 9.

5 A. That is a projectile.

6 Q. Okay. And that was located where in the parking lot?

7 A. It was right by one of the gas pumps but in the same
8 general area as the rest of the shell casings.

9 Q. Okay. State's Exhibit 10, what is that view?

10 A. That is -- let's see. Okay, that is the carwash
11 straight in front of me. My back again is to Camp Road.
12 And off to my right is Folly Road.

13 Q. Okay. And this appears to be Placard 7, 8. And do you
14 know the numbers of those three behind it?

15 A. It looks like 12, 13, and 14 back in the corner.

16 Q. State's Exhibit Number 11, what does that depict?

17 A. That is another projectile.

18 Q. Designated as Number 7; is that correct?

19 A. Yes.

20 Q. Okay. State's Exhibit Number 8 -- or excuse me,
21 State's Exhibit Number 12 showing Number 8.

22 A. It is a shell casing.

23 Q. State's Exhibit 12?

24 A. Shell casing.

25 Q. State's Exhibit 14?

1 A. Shell casing.

2 Q. State's Exhibit Number 15?

3 A. Shell casing.

4 Q. And where were those four shell casings located?

5 A. They were on the other side of the parking lot from the
6 previous group of shell casings where we just saw.

7 Q. And located where between the store and the gas pumps?

8 A. Yes, sir.

9 Q. Located where -- were they -- which side of the parking
10 lot were they on; were they located in -- on the side
11 between the store and the gas pumps or the side between the
12 gas pumps and the -- and the Folly Road?

13 A. Between the store and the gas pumps.

14 Q. Okay. Did you watch the surveillance video in this
15 case?

16 A. Yes, I did.

17 Q. And were they -- were -- were you able to see the
18 person shooting at the gold Impala in the surveillance
19 video?

20 A. Yes.

21 Q. And were the location of these shell casings consistent
22 with where that person was standing?

23 A. Yes.

24 Q. And what caliber were these four shell casings?

25 A. These are nine millimeter Blazer shell casings.

1 Q. State's Exhibit 16, do you know which number this shell
2 casing is right here (pointing)?

3 A. Fourteen.

4 Q. Okay. This would be a close-up, going on to State's
5 Exhibit Number 17, that would be a close up of State's
6 Exhibit 14?

7 A. And shell casing.

8 Q. State's Exhibit 18, once again that's -- what is the
9 direction of that photograph?

10 A. The direction is shooting the photograph towards Camp
11 Road. Folly Road would be on my left. And the store is on
12 my right.

13 Q. Okay. And State's Exhibit 15 is what?

14 A. Shell casing ---

15 Q. Or State's Exhibit 18 depicts Number 15 which is what?

16 A. Shell casing.

17 Q. Which is shown in State's Exhibit 19; is that correct?

18 A. Yes.

19 Q. State's Exhibit 20, what does that depict?

20 A. This photograph again is shot looking at Camp Road.
21 Folly Road is to my left. The store is on my right. And my
22 back is to the carwash. And Number 18 is another shell
23 casing.

24 Q. Okay. Which there is a close-up of in State's Exhibit
25 Number 21; is that correct?

1 A. Yes.

2 Q. And were those three; fourteen, fifteen, and eighteen;
3 were they located in the same area of the parking lot?

4 A. Yes, they were.

5 Q. And what area of the parking lot were they located in?

6 A. They were located in the furthest across the parking
7 lot toward the carwash.

8 Q. Okay. And they were further toward the carwash than
9 the nine millimeters were?

10 A. Yes.

11 Q. State's Exhibit 22?

12 A. This picture is depicting the carwash. It is between
13 because the gas pumps and Folly Road and looking toward Camp
14 Road. And again the carwash is behind me.

15 Q. Okay. And I know it is hard to see on this picture,
16 but can you see what is right in this area right here?

17 A. That is going to be Placard Number 16.

18 Q. Okay. And what was Placard Number 16?

19 A. A projectile.

20 Q. And that is shown in State's Exhibit Number 23?

21 A. Yes.

22 Q. Moving on to State's Exhibit 24 it appears to show --
23 what number is that placard?

24 A. Number 19.

25 Q. And that is from what perspective?

1 A My back is to the store. You are looking at Folly
2 Road. Camp Road is on my right. The carwash is on my left.

3 Q. Okay. And State's Exhibit Number 25?

4 A. That is a projectile.

5 Q. That is a close-up of Number 19 which was the picture
6 before, correct?

7 A. Yes.

8 MR. DURANT: Would you kill the screen for the time
9 being.

10 (Comply.)

11 MR. DURANT: Your Honor, at this time we would offer
12 State's 75, 76, 77 and 78 I believe without objection.

13 THE COURT: Is that correct?

14 MS. PROCTOR: Yes, Your Honor.

15 THE COURT: Marked and admitted without objection.

16 (WHEREUPON, State's Exhibit Number 75, TulAmmo .380
17 shell casing (placard 2), was marked for identification.)

18 (WHEREUPON, State's Exhibit Number 75 was admitted into
19 evidence.)

20 (WHEREUPON, State's Exhibit Number 76, TulAmmo .380
21 shell casing (placard 3), was marked for identification.)

22 (WHEREUPON, State's Exhibit Number 76 was admitted into
23 evidence.)

24 (WHEREUPON, State's Exhibit Number 77, TulAmmo .380
25 shell casing (placard 4), was marked for identification.)

1 (WHEREUPON, State's Exhibit Number 77 was admitted into
2 evidence.)

3 (WHEREUPON, State's Exhibit Number 78, TulAmmo .380
4 shell casing (placard 5), was marked for identification.)

5 (WHEREUPON, State's Exhibit Number 78 was admitted into
6 evidence.)

7 BY MR. DURANT:

8 Q. And if you would, Ms. Kjellman, just tell me what those
9 are (indicating).

10 A. These are four shell casings collected from the scene
11 at the Kangaroo at Camp and Folly.

12 Q. And which four are those?

13 A. These are the .380 TulAmmo shell casings.

14 Q. And referring back to State's Exhibit Number 2 I
15 believe it is -- excuse me, State's Exhibit Number 4.

16 MR. DURANT: Could we have it back on screen, please.

17 And can she -- can she mark that ---

18 THE CLERK: She can just touch the screen.

19 MR. DURANT: Huh?

20 THE CLERK: She can just touch the screen.

21 BY MR. DURANT:

22 Q. If you would, you can just mark that board if you
23 would. Could you just mark where those -- those shell
24 casings are.

25 A. On the screen here?

1 Q. On the screen.

2 A. These shell casings were two, three, four, and five.

3 Q. Okay. And those are the TulAmmo's; is that correct?

4 A. Yes, sir.

5 Q. Moving on to State's Exhibit Number 79.

6 THE COURT: Any objection?

7 MR. DURANT: We would offer 79.

8 MS. PROCTOR: Oh, no, Your Honor.

9 THE COURT: Marked and admitted without objection.

10 (WHEREUPON, State's Exhibit Number 79, projectile

11 (placard 6), was marked for identification.)

12 (WHEREUPON, State's Exhibit Number 79 was admitted into
13 evidence.)

14 BY MR. DURANT:

15 Q. Would you identify State's 79 and tell us where that is
16 located on the ---

17 A. This is a projectile that was labeled with Placard
18 Number 6. And that was located where the gas pumps, right
19 up in there (pointing and marking on screen). Oops.

20 Q. Without the big line?

21 A. Without the tail on it.

22 Q. Okay.

23 (Counselors confer.)

24 MS. PROCTOR: No objection.

25 THE COURT: What number is that?

1 MR. DURANT: State's Exhibit Number 80, Your Honor. I
2 believe without objection.

3 THE COURT: Number 80 marked and admitted without
4 objection.

5 (WHEREUPON, State's Exhibit Number 80 , projectile
6 (placard 7), was marked for identification.)

7 (WHEREUPON, State's Exhibit Number 80 was admitted
8 into evidence.)

9 A. This is another projectile collected from the parking
10 lot. It was labeled with Placard Number 7.

11 Q. And you can hit on your screen. It will clear your
12 previous marks.

13 A. Where is clear?

14 THE CLERK: Use the arrow.

15 MR. DURANT: Could you show her where the clear is.

16 THE CLERK: It is -- hit the arrow button on ---

17 THE WITNESS: The green arrow?

18 THE CLERK: Yes, ma'am. And then there is a button
19 that says clear. And you can put the arrow.

20 (Witness complied.)

21 BY MR. DURANT:

22 Q. And this is referring to State's Exhibit Number 10.

23 And if you could locate where State's Exhibit 80 is on
24 State's Exhibit Number 10.

25 A. The projectile is the Number 7 right down here at the

1 bottom.

2 Q. Okay.

3 MR. DURANT: This would be 81, 82, 83, 84.

4 THE COURT REPORTER: Is that ---

5 MR. DURANT: Offered I believe without objection.

6 (Clarify by court reporter of exhibit numbers being
7 offered.)

8 THE COURT: So 81 through 84?

9 MR. DURANT: Yes, ma'am.

10 THE COURT: Any exception?

11 MS. PROCTOR: No, Your Honor.

12 THE COURT: Marked and admitted without objection, 81
13 through 84.

14 (WHEREUPON, State's Exhibit Number 81, Blazer nine
15 millimeter shell casing (placard 8), was marked for
16 identification.)

17 (WHEREUPON, State's Exhibit Number 81 was admitted into
18 evidence.)

19 (WHEREUPON, State's Exhibit Number 82, Blazer nine
20 millimeter shell casing (placard 11), was marked for
21 identification.)

22 (WHEREUPON, State's Exhibit Number 82 was admitted into
23 evidence.)

24 (WHEREUPON, State's Exhibit Number 83, Blazer nine
25 millimeter shell casing (placard 12), was marked for

1 identification.)

2 (WHEREUPON, State's Exhibit Number 83 was admitted into
3 evidence.)

4 (WHEREUPON, State's Exhibit Number 84, Blazer nine
5 millimeter shell casing (placard 13), was marked for
6 identification.)

7 (WHEREUPON, State's Exhibit Number 84 was admitted into
8 evidence.)

9 Q. Do those four shell casings correspond to your
10 Placards 8, 11, 12, and 13?

11 A. Yes, they do.

12 Q. And could you locate on this -- on the State's Exhibit
13 Number 10 which placards those are?

14 A. Number 8, 13, 12, and 11.

15 Q. Okay. And those are all Blazer nine millimeter
16 shell -- shell casings; is that correct?

17 A. Yes, sir.

18 Q. And what is located right in this area to the left off
19 screen (pointing)?

20 A. The store is on that side.

21 Q. Okay. And how about on this side (pointing)?

22 A. The -- the gas pumps are over on that side.

23 Q. Okay. And back here once again is the carwash
24 (pointing)?

25 A. Yes, sir.

1 MR. DURANT: Your Honor, at this time we would offer
2 State's 85, 86 and 87.

3 THE COURT: Any objection?

4 MS. PROCTOR: No, Your Honor.

5 THE COURT: Marked and admitted without objection.

6 (WHEREUPON, State's Exhibit Number 85, GFL .380 shell
7 casing (placard 14), was marked for identification.)

8 (WHEREUPON, State's Exhibit Number 85 was admitted into
9 evidence.)

10 (WHEREUPON, State's Exhibit Number 86, GFL .380 shell
11 casing (placard 15), was marked for identification.)

12 (WHEREUPON, State's Exhibit Number 86 was admitted into
13 evidence.)

14 (WHEREUPON, State's Exhibit Number 87, GFL .380 shell
15 casing (placard 18, was marked for identification.)

16 (WHEREUPON, State's Exhibit Number 87 was admitted into
17 evidence.)

18 BY MR. DURANT:

19 Q. Okay. This would be State's Exhibit 16. If you would
20 clear it out.

21 (Witness complied.)

22 Q. State's Exhibit 16 could you show the jury where
23 Placard Number 14 is located?

24 A. Number 14 is located right there (pointing).

25 Q. Okay. And once again what is off to your right?

1 A. Off to my right would be the store. And beyond that is
2 Folly Road. To my left is the carwash. And excuse me, Camp
3 Road is on my left.

4 Q. Okay. And the carwash would be to the right?

5 A. Yes. And Folly Road is behind me.

6 Q. And 15?

7 A. Fifteen is right down here at the bottom (pointing).

8 Q. And 18?

9 A. Right there in the same circle (pointing). I just
10 drew ---

11 Q. Same circle?

12 A. Yep.

13 Q. And that would be on State's Exhibit Number 20. So
14 where were those shell casings located with relation to one
15 another?

16 A. They were way on the other side of the parking lot
17 closest to the carwash.

18 Q. And they were all what caliber?

19 A. They were all .380 caliber.

20 Q. And what manufacturing?

21 A. GFI.

22 MR. DURANT: Your Honor, at this time we would offer 88
23 and 89 I believe without objection.

24 MS. PROCTOR: No objection.

25 THE COURT: Marked and admitted without objection, 88

1 and 89)

2 (WHEREUPON, State's Exhibit Number 88, yellow jacket
3 from projectile (placard 16), was marked for
4 identification.)

5 (WHEREUPON, State's Exhibit Number 88 was admitted into
6 evidence.)

7 (WHEREUPON, State's Exhibit Number 89, projectile
8 (placard 19), was marked for identification.)

9 (WHEREUPON, State's Exhibit Number 89 was admitted into
10 evidence.)

11 BY MR. DURANT:

12 Q. And what is State's Exhibit Number 88?

13 A. It is a yellow jacket from a projectile. It was
14 labeled as a Number 16 on the pictures from earlier.

15 Q. Okay. And that was located where in the parking lot?

16 A. It was in the parking lot between the gas pumps and
17 Folly Road.

18 Q. And is that depicted in State's Exhibit Number 22?

19 A. Yeah. It would be kind of right here (pointing).

20 Q. Okay. And State's Exhibit Number 89?

21 A. This is another projectile that was labeled with a
22 Number 19 in the pictures from earlier.

23 Q. And that is picture -- depicted in State's Exhibit
24 Number 24?

25 A. Yes, right there in the (pointing)

1 Q. Okay. What was done with all of this evidence after it
2 was collected?

3 A. It was sent to the SLED firearms lab.

4 Q. Okay. Now that day did you have an opportunity to go
5 to MUSC and receive from -- some evidence from a Dr.

6 Riemer's office?

7 A. Yes.

8 (Counselors confer.)

9 MR. DURANT: Your Honor, at this time we would offer
10 State's Exhibit Number 92 I believe without objection.

11 MS. PROCTOR: That is correct.

12 THE COURT: Marked and admitted without objection. You
13 said it was 92?

14 MR. DURANT: Yes, ma'am.

15 (WHEREUPON, State's Exhibit Number 92, projectile from
16 right thigh, was marked for identification.)

17 (WHEREUPON, State's Exhibit Number 92 was admitted into
18 evidence.)

19 BY MR. DURANT:

20 Q. Is that the projectile that you picked up from Dr.
21 Riemer's office?

22 A. Yes, it is.

23 Q. And was that also sent to SLED?

24 A. Yes, it was.

25 MS. PROCTOR: Your Honor, we have a matter to take up

1 outside of the presence of the jury. ,

2 THE COURT: Madam Forelady, ladies and gentlemen, I
3 have a brief matter of law to take up with the attorneys.
4 During this break please do not discuss the case and please
5 leave your notepads in your seat.

6 (WHEREUPON, the jury exited the courtroom July 16,
7 2013, at 2:36 p.m.)

8 THE COURT: You may proceed.

9 **DIRECT EXAMINATION (IC) - MR. DURANT OF KATHY KJELLMAN:**

10 Q. Did -- moving ahead a little bit, did you have the
11 occasion to process the gold Impala that was the subject of
12 the shooting at the Kangaroo ---

13 A. Yes, I did.

14 Q. --- on March the 30th? And when did you do that?

15 A. When did I start this -- the search?

16 Q. When did you process that vehicle?

17 A. In the beginning of April. I would have to check my
18 notes for the exact date.

19 (Pause to review notes.)

20 A. I started the search on April 6th.

21 Q. Okay. And were you able to locate any bullet holes in
22 the gold Impala that were consistent from having coming from
23 the front end of the car ---

24 A. Yes.

25 Q. Or towards the front end of the car?

1 A. Yes.

2 Q. How many?

3 A. There was one in the windshield. And I believe there
4 was three in the door.

5 Q. Which door?

6 A. Driver's side door.

7 Q. Okay. And did you -- did you have the opportunity to
8 examine the surveillance video of the shooting at the
9 Kangaroo ---

10 A. Yes.

11 Q. --- which has now been introduced as State's Exhibit
12 Number 59?

13 A. Yes, I did.

14 Q. And were you able to observe someone shooting at that
15 car?

16 A. Yes.

17 Q. And were those four bullet holes you found consistent
18 with having come from the direction that that person was
19 shooting?

20 A. Yes.

21 Q. Also regarding that car I am going to hand you what has
22 been marked as State's Exhibit Number 93 and ask if you
23 recognize that item.

24 A. This is a projectile that I collected from the driver's
25 side floorboard in the Impala.

1 Q. Okay. And is it in substantially the same condition
2 now as it was when you collected?

3 A. Yes, sir.

4 Q. And that was sent to SLED with the rest of the evidence
5 in this case; is that correct?

6 A. Yes.

7 MR. DURANT: Your Honor, that would be pretty much it
8 with regard to what I was going to elicit.

9 THE COURT: What is the basis of the objection?

10 MR. KOZELSKI: Your Honor, the basis is the foundation
11 on which this evidence is based upon.

12 THE COURT: She is the crime scene investigator, isn't
13 she?

14 MR. KOZELSKI: Yes, Your Honor, she is. But there is
15 no evidence that -- to suggest that these bullets were made
16 by any particular weapon. That as we know outside of the
17 jury that there was a pursuing gun chase in which an AK-47
18 was used to shoot that gun -- to shoot that car off the
19 road.

20 THE COURT: There is no ---

21 MR. DURANT: The State hasn't heard ---

22 THE COURT: There is no testimony at this point that an
23 AK-47 made those bullet holes. The testimony is that she
24 observed the scene, she is the one who marshaled the scene,
25 that she has reviewed the video and the holes are consistent

1 with coming from the direction that she viewed the shots in
2 the video.

3 So foundation would not be a valid objection. Because
4 she has established -- at least he -- and he might need to
5 establish further her education, training, and experience to
6 be able to render such a lay opinion on that issue. But
7 that is easily remedied.

8 What you are talking about is the weight of the court
9 and the testimony, and that is a jury issue. And it is a
10 two-sided -- it is, you know, the blade cuts both ways. You
11 can't have it both ways. You can't have it not come in but
12 come in.

13 MR. KOZELSKI: We are not asking it for both ways, Your
14 Honor. What we are saying, if she can identify where those
15 shots were hit in the video then we would ---

16 THE COURT: She doesn't have to.

17 MR. KOZELSKI: --- be more than happy. But what they
18 are trying to do is say that the same caliber ---

19 THE COURT: An expert -- an expert is never there to
20 actually see something. An expert -- well, she is not an
21 expert.

22 But a lay person can opine as well based on their
23 rational perception if you can establish that they have
24 sufficient information that they rationally relied on to
25 make that leap.

1 If she -- I don't know if Ms. Kjellman has ever been
2 qualified as an expert. But based on having heard her
3 testify in many cases they probably could qualify her as an
4 expert.

5 But even if they didn't -- let's just do it both ways.
6 If they qualified her as an expert -- expert witnesses are
7 never there to personally see anything. It is always
8 conjecture and speculation on their part based on their
9 education, training, and experience and certain variables
10 that they evaluate to make certain opinions but within a
11 reasonable certainty.

12 As a lay person she could also testify that based on
13 her experience in the Police Department, based on her
14 marshaling of this scene, based on her collection of the
15 projectiles and the casings and her review of the video that
16 it is consistent with that.

17 But he would have -- you would have to lay the
18 appropriate foundation regarding her rational perception of
19 those events.

20 Now where the car was found really becomes irrelevant.
21 She wouldn't have been there when it took place. So as a
22 practical matter, she never could have been there to have
23 examined it right after it happened. Because the police are
24 rarely there when things take place. They are always there
25 after the fact.

1 So in my estimation unless you can -- is she going to
2 be able to testify as to -- and I don't know. Do different
3 bullets make different size bullet holes? I don't know ---

4 MR. DURANT: I am not even going to get into that, Your
5 Honor, because of fear of getting into -- the fact of the
6 matter is ---

7 THE COURT: Is there any testimony to support that
8 these other weapons could have made these bullet holes?

9 MR. DURANT: There is no testimony from us.

10 THE COURT: That is not my question.

11 MR. DURANT: I don't ---

12 THE COURT: Is there anything empirical objective that
13 would -- that would support that these bullet holes were
14 made by some other gun in this ensuing chase?

15 MR. DURANT: No.

16 MR. KOZELSKI: Your Honor, she just testified that
17 there were three .380 bullet shell casings that were on the
18 same side as these nine millimeter shell casings.

19 I don't understand how they -- how she can say that
20 they are from one gun as opposed to the other. That is the
21 foundation ---

22 THE COURT: Well, that is the kind of questions you
23 would ask her on cross-examination to ---

24 MR. KOZELSKI: Well, I just don't think there is any
25 foundation laid ---

1 THE COURT: --- question the credibility of her
2 testimony.

3 MR. KOZELSKI: I don't think there is any foundation
4 laid to suggest that she knows what bullets caused these
5 holes.

6 MR. DURANT: I didn't ask her that. All I asked her
7 was what direction did these bullets come from, did they
8 come from toward the front of the car or from -- toward the
9 rear of the car. That is all I asked her. If you want to
10 argue there were somebody -- there were .380's, that fine.

11 THE COURT: And frankly, there is no testimony that a
12 car has pulled up on the side of this car and shot during
13 the chase.

14 The testimony is that they were shot from the rear of
15 the vehicle during the chase. He said we were being
16 pursued, they were behind us, we heard the bullets behind
17 us. That is the only testimony in the record. There is no
18 testimony at this point that I have heard that says the car
19 pulled up on the side ---

20 MS. PROCTOR: Yes.

21 THE COURT: --- of this other car and shot. No, Mr.
22 Wittrell did not testify to that.

23 MS. PROCTOR: Oh, I am saying -- no, they ---

24 THE COURT: I don't know what else y'all know. I am
25 saying what I have heard up to this point.

1 MS. PROCTOR: True.

2 THE COURT: That is the only testimony.

3 MS. PROCTOR: That is because we kept that out.

4 THE COURT: No, he testified in camera fully as to the
5 chase. He never said anyone pulled up on the side of them.

6 He said: The bullets came from behind us. We were
7 being pursued. And I heard the shots from behind us. I
8 ducked behind the car seat.

9 He never said anybody pulled up on the side of them.

10 MS. PROCTOR: That is because he was ducked down.

11 THE COURT: If somebody was shooting from the side I
12 wouldn't be ducking down that way. I would be trying to get
13 under the floorboard of the car.

14 If somebody is shooting from this direction I am
15 ducking down so bullets are flying over my head instead of
16 into my body. That is not logical.

17 He did not testify that there was ever a car on the
18 side of them shooting into the side of this vehicle. He
19 testified that the bullets were coming from behind from the
20 rear of the vehicle. And that's the only testimony we have
21 to rely on in terms of the ensuing chase because no one else
22 has testified regarding it.

23 There has been no testimony that would support that
24 during the chase bullets were shot -- that -- because in
25 order for bullets to be at that position of the vehicle

1 the bullets -- the cars would have had to have been
2 side-by-side. Someone would have had to have been shooting
3 from that direction into that vehicle.

4 Well, I haven't heard any testimony to that ---

5 MS. PROCTOR: That is because we kept it out. That is
6 because we kept out ---

7 THE COURT: Kept it out for who? I heard that
8 testimony. The only people that didn't get to hear that was
9 the jury. Nothing has been kept from me. I have heard it
10 all. I could have made a decision.

11 MR. KOZELSKI: Your Honor, the facts of what she just
12 testified to show how they don't make sense they are saying
13 all four bullet holes came from the nine millimeter. And
14 there is a nine millimeter projectile right next to the
15 casings.

16 THE COURT: She is not saying where they came from.
17 She is simply saying that she watched the video, from her
18 perception of that video what she watched there were shots
19 that were fired from a particular direction that are
20 consistent with projectiles hitting a vehicle from a certain
21 perspective. She didn't say what kind of bullets went
22 into ---

23 MR. DURANT: And we are not ---

24 THE COURT: And she can't say what kind of bullets went
25 in there because she doesn't have the qualifications to do

1 it.

2 She can however say based on my experience in law
3 enforcement that the bullets came from a certain direction
4 and there are bullet holes in the car that are consistent
5 with that direction.

6 But she can't testify whether they were .380's, whether
7 they were .32 calibers or whether they were any other kind
8 of caliber.

9 Because I don't know that there's any way to really
10 tell -- I mean I guess I am sure there probably is a
11 firearms expert could say that. But we don't have a
12 firearms expert at least not at this point to say what is
13 consistent with -- or that they could.

14 But the bottom line is still there is no testimony in
15 the record during this chase that the cars were ever
16 parallel such that bullets could have been shot in that
17 direction. So I don't know that it really matters.

18 MS. PROCTOR: Let me ask this: Are you showing her the
19 pictures of the car?

20 MR. DURANT: No, you objected to the pictures.

21 MS. PROCTOR: Well, I didn't know if you -- that is
22 what we -- if you were going to show them.

23 MR. DURANT: No, I wasn't.

24 MS. PROCTOR: One moment, Your Honor, if I may.

25 (Counselors confer.)

1 MS. PROCTOR: Okay, Your Honor. We still object.

2 THE COURT: Well, you need to articulate the basis of
3 your objection so I can rule.

4 MR. KOZELSKI: Your Honor, we are still sticking with
5 that the lack of foundation and it would be speculation at
6 this point to suggest that this car was shot at this point.

7 THE COURT: Would you like to respond to the objection,
8 Mr. DuRant?

9 MR. DURANT: Your Honor, I think the evidence speaks
10 for itself. Although he has been trying to say that I'm
11 claiming that the nine millimeter -- those are nine
12 millimeter holes, that is not what the State's position is.

13 The State's position is that those four bullet holes
14 appear to be -- have originated going towards the front of
15 the car based upon her examination of the evidence at the
16 scene and the surveillance video that she observed.

17 And I'm assuming that she will be able to testify that
18 there are entrance wounds as opposed to exit wounds and why.

19 THE COURT: I need you to ask those questions as well
20 then.

21 MR. DURANT: Okay.

22 THE COURT: Because I need to hear them.

23 MR. DURANT: And ---

24 THE COURT: Ask -- ask exactly what you would be asking
25 her in the presence of the jury or what you would ask ---

1 MR. DURANT: I will try -- I will try, Your Honor.

2 THE COURT: Well, not exactly. But, you know,
3 generally.

4 MR. DURANT: Okay. Let me

5 BY MR. DURANT:

6 Q. You had the opportunity to process the Impala; is that
7 correct?

8 A. Yes, sir.

9 Q. During the course of your processing the Impala were
10 you able to discover any bullet holes in the car which
11 appear to have originated from -- from going towards the
12 front of the vehicle?

13 A. Yes.

14 Q. And where were those four bullet holes located?

15 A. Three were in the driver's door. One was in the
16 windshield.

17 Q. And how did you determine that those were -- and how
18 did you determine that those were entrance wounds as opposed
19 to exit wounds so to speak?

20 A. The three bullet holes that were in the door was I
21 would say it was an entrance wound because when the bullet
22 enters the car the metal is going to be pushed inward. As
23 opposed to the projectiles coming out of the car it is going
24 to be pushed outward.

25 Q. Okay. And how about the one through the windshield?

1 A. It would be the same thing. The glass and the
2 protective plastic within the windshield was pushed in
3 rather than out.

4 Q. Okay. Was there also with regard to the one in the
5 windshield was there also any mark on the dashboard that
6 would indicate that it was again an entrance wound as
7 opposed to an exit?

8 A. Yes, there appeared to be a ricochet on the dashboard
9 just beyond where that hole was in the windshield and
10 additionally in the top of the steering wheel.

11 Q. Okay. And -- and you have -- you have had an
12 opportunity to review the surveillance video in this case;
13 is that correct?

14 A. Yes, sir.

15 Q. And at the time of the shooting involved in this case
16 was the driver's side door open or closed?

17 A. In the video it was open.

18 Q. Okay. And so the outside of the driver's door would be
19 facing anyone that would be shooting from toward -- from
20 shooting towards the front of the car; is that correct?

21 A. Yes.

22 Q. Okay. And the four bullet holes that you found were
23 consistent with that?

24 A. Yes.

25 MR. DURANT: And do y'all have any problem with the one

1 she found in the floorboard, the actual projectile?

2 MS. PROCTOR: No.

3 MR. DURANT: That would be it on the issue of

4 THE COURT: You are going to in order to ask any -- you
5 never really went into her education, training and
6 experience, the length of time she has been with the
7 Department, what her responsibilities are, the scope of
8 those responsibilities, and her training and experience such
9 that her testimony could be based on her rational
10 perception.

11 Because I don't know that she has to be an expert to
12 testify as to this if it is within the ambit of what she
13 does every day as a crime scene investigator.

14 I don't have a problem with her if you can establish
15 that foundation with her discussing that there were three
16 holes, that they were entrance wounds based on the metal
17 going inward versus outward.

18 Now my concern is why -- the windshield I assume you
19 are talking about the rear windshield of the car?

20 MR. DURANT: No, I am talking about the windshield.

21 MR. DURANT: Front windshield.

22 THE COURT: Oh, is the back windshield called something
23 else? I always just called them windshields.

24 MS. PROCTOR: The back ---

25 THE COURT: Well, the front would be the windshield

1 because that shields the wind. So what is the rear window,
2 it is just the rear window?

3 MR. DURANT: No, just that there is -- we are just
4 talking -- there -- the rear windshield was shot out too.
5 But that wasn't from this.

6 THE COURT: But that -- was that -- she said that that
7 was a ricochet --

8 MR. DURANT: No, ---

9 THE COURT: --- from the dash.

10 MR. DURANT: --- she said -- I asked her how she could
11 determine, how she could determine that it was an entrance
12 wound. Because she said it went in and ricocheted off of
13 the front dashboard.

14 THE COURT: Yeah, that is what I just said.

15 MR. DURANT: Okay.

16 THE COURT: Uh-huh.

17 MR. DURANT: So that is how she told -- could tell it
18 originated from the front of the vehicle.

19 THE COURT: I am clear about that. Okay. I was
20 thinking something else. I was thinking back instead of
21 front.

22 I don't have a problem with her testifying if you can
23 establish the appropriate foundation. The fact that
24 projectile holes were found, whether they were inward or
25 outward. In other words, whether they originate from the

1 outside of the vehicle versus the inside of the vehicle.

2 But I do think she would require more specialized
3 training and experience to talk about trajectory, meaning
4 where bullets originate from.

5 And since there is no testimony regarding the chase,
6 that eliminates any argument that the bullets could have
7 originated from any other place.

8 MR. DURANT: I mean but ---

9 THE COURT: She is not qualified to testify about
10 bullet trajectory.

11 MR. DURANT: Well, I am asking ---

12 THE COURT: That would be like me saying I watched a
13 video and the bullets looked like they were coming from a
14 direction. I -- I am not qualified to do that. You have to
15 have specialized training to say where a bullet is coming
16 from.

17 MR. DURANT: And I am not really trying to get -- are
18 you talking about the trajectory through the vehicle, Your
19 Honor?

20 THE COURT: No, what you are saying is that she is
21 saying I watched the video and the bullet holes are
22 consistent with where I saw the bullet fire coming from in
23 the video.

24 You can argue that to the jury. It is in evidence.
25 But I don't think she can opine about that because there is

1 not a sufficient foundation for that testimony.

2 MR. DURANT: But you ---

3 THE COURT: But she can talk about bullet holes.

4 MR. DURANT: She can talk about bullet holes.

5 THE COURT: Uh-huh.

6 MR. DURANT: But -- but can she -- and I am just
7 trying -- I am not trying to be argumentative.

8 THE COURT: No, I wouldn't take ---

9 MR. DURANT: I am just trying to ---

10 THE COURT: I am not taking it that way.

11 MR. DURANT: I am just -- I am just trying to -- to --
12 to ---

13 THE COURT: To get clarity. I understand.

14 MR. DURANT: Get clarity on the terms of your ruling.
15 So she would be able to testify that she located ---

16 THE COURT: I need you to lay some foundation about her
17 education, training and experience, work -- and her work
18 history.

19 MR. DURANT: Okay.

20 THE COURT: And exactly what the scope of her
21 responsibilities are.

22 MR. DURANT: Okay.

23 THE COURT: And then you can ask her the rest of those
24 questions. But in terms of testifying that is this
25 consistent with what you saw in the video, I think you can

1 argue that to the jury but I don't think she can opine about
2 that. She doesn't -- unless I hear something different
3 about her education, training and experience ---

4 MR. DURANT: May I explore ---

5 THE COURT: --- that changes that opinion.

6 MR. DURANT: May I explore that a little bit?

7 THE COURT: Sure.

8 BY MR. DURANT:

9 Q. You have been a crime scene examiner for how long?

10 A. Eight years.

11 Q. And what training have you had in the -- in the field
12 of crime scene analysis and examination?

13 A. A lot of it. Most of it is on-the-job training.

14 Q. Okay. And in your training have you ever examined cars
15 that have been shot before?

16 A. Yes.

17 Q. On how many occasions?

18 A. Several.

19 Q. Okay. And with regard to a car that has been shot how
20 do you determine as a crime scene examiner whether a
21 particular shot to a car is an exit wound or an entrance
22 wound?

23 A. The entrance wound the metal on the vehicle would be
24 pushed in. And with an exit wound the metal on the vehicle
25 would be pushed outward.

1 Q. And how about a shot through glass how would you --
2 a -- the glass on a car like a windshield, for example, how
3 would you determine whether the shot was going into the car
4 or going out of the car?

5 A. A lot of it depends on where the glass is at, whether
6 it is inside or outside of the car. In this case the glass
7 was everywhere.

8 Q. Okay.

9 A. But there was a ricochet mark on the dashboard.

10 Q. Okay. Which was -- corresponded to that bullet hole in
11 the windshield?

12 A. Yes.

13 MR. DURANT: You know, other than that I don't really
14 know what to ask her, Your Honor.

15 THE COURT: I guess I -- I am trying to figure out what
16 you need clarity on. I said she -- you could ask her all
17 those questions.

18 MR. DURANT: Oh, okay. Well, I didn't -- I didn't
19 think that you were allowing me to.

20 THE COURT: No.

21 MR. DURANT: I mean I can argue ---

22 THE COURT: You can ask those questions. I don't have
23 a problem with that. She has sufficient education,
24 training, and experience to answer those questions based on
25 her rational perception and her years of experience. She

1 doesn't have to be qualified as an expert to do that.

2 MR. DURANT: Okay.

3 THE COURT: I don't have a problem with that. What I
4 said was her testifying that her watching the video that
5 what she watched was consistent with those bullet holes.

6 She doesn't have -- that takes a little -- you have to
7 really base that on some scientific methodology. And there
8 is none in the record.

9 MR. KOZELSKI: Your Honor, this -- and you touched upon
10 this and this it is - it's -- this is our problem is that it
11 turns her speculation into fact because ---

12 THE COURT: It is not speculation. It is based on her
13 educa- -- there is nothing ---

14 MS. PROCTOR: We don't know ---

15 THE COURT: --- mythical or mystical about knowing
16 whether something went in or out.

17 MR. KOZELSKI: We don't know whether those bullets
18 were -- were hit -- that car was struck at the Kangaroo.
19 And we can't ex- -- we can't say it was ---

20 THE COURT: Based on the testimony that is in the
21 record it wasn't -- didn't happen on the highway. There
22 is -- I went back and looked at my notes and my clerk looked
23 at her notes.

24 There is no testimony that there were bullets coming
25 this direction (motioning). There were bullets coming from

1 the back of the car forward is the only testimony I have to
2 rely on in making that decision.

3 MS. PROCTOR: We didn't -- I ---

4 MR. KOZELSKI: We ---

5 MS. PROCTOR: We didn't go into that.

6 THE COURT: That was your choice. You waived any
7 cross-examination of the witness. But he fully explored
8 what happened in the chase.

9 Mr. Wittrell fully described what happened ---

10 MS. PROCTOR: And he also ---

11 THE COURT: --- from when he left the Kangaroo.

12 MS. PROCTOR: He also said he was totally intoxicated
13 and ducked under the car and he didn't see who was standing
14 two feet in front of him. So ---

15 THE COURT: Two feet in front of him, I don't know what
16 you are talking about.

17 MS. PROCTOR: They're -- they're saying that he --
18 that he was standing in front of the car shooting. And he
19 didn't -- and Mr. Wittrell said ---

20 THE COURT: We are talking about beyond the Kangaroo.
21 I am ---

22 MS. PROCTOR: Right.

23 THE COURT: --- not talking about what ---

24 MS. PROCTOR: That's it.

25 THE COURT: --- happened after ---

1 MS. PROCTOR: He didn't see ---

2 THE COURT: --- the Kangaroo.

3 MS. PROCTOR: I agree, Your Honor. But if he didn't
4 see who is standing this far in front of him ---

5 THE COURT: That is a factual issue for you to argue to
6 the issue, a weight issue. But is not an admissibility
7 issue.

8 MS. PROCTOR: Right.

9 THE COURT: The issue is at this point this record is
10 devoid of any testimony that bullets were shot from a side
11 angle into this car in that chase.

12 The only testimony is that they left the Kangaroo, they
13 were headed to the hospital, at the time that they began to
14 leave he -- there was sounds which were consistent with
15 gunfire, somebody shooting from the rear of the vehicle
16 toward them. He ducked and then shortly after that the car
17 beyond the Connector crashed. That's the only testimony.

18 There is no testimony that a car pulled up on the side
19 of them and was shooting from this direction (motioning).

20 If there was, that would be different. Because then
21 there would be some testimony that the bullets could have
22 originated at that point. But there is no testimony of
23 that.

24 MS. PROCTOR: Well, we kept all that out. We would
25 have brought it in.

1 THE COURT: It doesn't -- you are not ---

2 MS. PROCTOR: I understand ---

3 THE COURT: There is -- whether the jury heard it or
4 not, I heard it. There is no testimony that the bullets
5 came from anyplace else but the back of vehicle.

6 So you are sort of -- can't muddy the water with me. I
7 am objective. I have listened to the entirety of his
8 testimony. If you want to recall him and you want to go
9 into it some more and find out, that is fine. That is your
10 prerogative.

11 But at this point I have to make a decision based on
12 the record that is before me. There is no testimony that
13 bullets came or originated during that chase from any place
14 but the back -- from the back, meaning following the car.

15 His actual testimony was: We left the Kangaroo,
16 headed to the hospital because Antwan was shot. We got on
17 Folly Road headed downtown. Shots started ringing out like
18 someone behind us was shooting from a motor vehicle. Chased
19 us until we exit -- until beyond the exit for the Connector
20 where we wrecked.

21 That is the only testimony. And that he got -- which
22 is consistent if I am ducking and I think bullets are coming
23 the first thing I am going to do is I am going to look
24 behind me to see what is going on. Then I am going to duck.

25 I don't -- there is no testimony about what direction

1 the bullet went into his shoulder. If a bullet went into
2 his shoulder from this direction (motioning), that is not
3 his shoulder; that is his arm. That is consistent with
4 bullets coming in either this direction (motioning) or that
5 direction (motioning) of the car.

6 If he is shot either here (motioning) or here
7 (motioning), that means either his body was facing the rear
8 of the vehicle or is facing -- either he was facing looking
9 back toward the back of the car or he was face -- with his
10 back toward the back of the car ducking.

11 So that is the only -- you can't shoot somebody in the
12 front or the back from the side.

13 MR. KOZELSKI: Your Honor, the car also spun out and
14 crashed. And we don't know if there were shots going on
15 while it was spinning out. I mean there's all sorts of
16 possibilities that we could speculate ---

17 THE COURT: Well, you can have it both ways. Either
18 you want to talk about post incidents or you don't. Either
19 you want to talk about the chase or you don't want to talk
20 about the chase. You can't have it both ways.

21 MR. DURANT: And at this point ---

22 THE COURT: So at this point I can only do what is -- I
23 can only make decisions based on the record that is before
24 me. And the only uncontroverted testimony at this moment is
25 that where the bullets originated from the back of the car.

1 There is no testimony they came from the side of the car.

2 So you need to make a strategic decision factually how
3 you want to pursue this as to whether you want to get in
4 information about this -- about this chase that happened
5 after the Kangaroo.

6 But I am not going to limit the State. You can't have
7 it both ways.

8 MR. KOZELSKI: We -- we might have to ---

9 THE COURT: It is -- it is one of these things where it
10 is all in or all out.

11 Oh, yeah, strategically when you are defending, you
12 have no burden of proof. But -- but they have a right to
13 fully present their case.

14 You cannot hamstring them about how they are going to
15 present the evidence and then take -- you can take whatever
16 posture you want. You don't have a burden of proof.

17 Factually you could sit in that -- at that table and
18 say nothing the entire trial. You don't have to say
19 anything. You have no burden of proof.

20 But they have the ability to make a full presentation
21 of the case. I have limited their presentation based on the
22 fact that we have come to the conclusion that nothing that
23 happened post-shooting at the Kangaroo is relevant or
24 germane to the elements of this offense. But you can't have
25 it both ways.

1 MR. KOZELSKI: I understand, Your Honor ---

2 THE COURT: It is unfortunately one of those situations
3 factually where you are either all in or you are all out.

4 MR. KOZELSKI: But this is ---

5 THE COURT: You are not going to be able to parse bits
6 and pieces of it. There is a demarcation line.

7 MR. KOZELSKI: This isn't factual. It is her
8 speculation. She is speculating that the car was hit from
9 this angle. And her speculation turns into fact when there
10 is no ---

11 THE COURT: Have you listened to the court's ruling. I
12 said she could not opine about the video and what direction
13 she thought the bullets were coming from.

14 MR. KOZELSKI: Well, she is saying that there are
15 bullet holes in ---

16 THE COURT: And that is supported ---

17 MR. KOZELSKI: --- the door ---

18 THE COURT: --- supported factually by what she
19 observed and what she investigated.

20 MR. KOZELSKI: And there is no other explanation ---

21 THE COURT: That is why you cross-examine her and say:
22 You don't know where the bullets came from, do you. You
23 don't know which bullets these holes originated from. You
24 don't know in what order they were shot. You have watched
25 the video, about 27, 25 shots; you don't know which came

1 first and which came last, do you?

2 That is how you effectively cross-examine a witness and
3 you dilute their testimony and then you ask the jury not to
4 give it any weight.

5 MR. KOZELSKI: I understand, Your Honor, ---

6 THE COURT: And I am certain you know how to do that.

7 MR. KOZELSKI: --- but they are still --- but they are
8 still there at the Kangaroo. And it's -- once they are
9 there we can't speculate that they were never there unless
10 we bring up this other testimony ---

11 THE COURT: You need to decide how you want it. Like I
12 said, you are in for a pound you are in for a penny. You
13 can't have it both ways. There is a demarcation line. I
14 have already ruled that you are not going to talk about -- I
15 got y'all to work it out ---

16 MR. DURANT: Yeah.

17 THE COURT: --- and come to a consensus about it that
18 there wasn't going to be any testimony beyond the Kangaroo
19 because you all said it wasn't relevant, it was extremely
20 prejudicial to your client. So I got the State to work
21 something out.

22 But you are not going to be able to limit them about
23 that is their theory. If they think a bullet hole happened
24 at the Kangaroo they are certainly allowed to pursue that
25 line of questioning and that theory.

1 Because frankly, nobody knows where the bullet holes
2 came from. None of us were there. We don't know in what
3 order they were shot.

4 We had -- even a doctor can't tell you when somebody is
5 shot twice almost in the same area of the body which bullet
6 came first.

7 Except sometimes they can because of the mode and
8 manner of death. You know, if you hit somebody's jugular
9 vein you can pretty much tell which bullet came first.
10 Because the person is going to bleed out in about 10, 20
11 seconds.

12 There are certain ranges of possibilities where a
13 medical examiner can opine about when they think -- or which
14 acts they thought took --

15 For example, this medical examiner could very clearly
16 say clearly the bullet in his leg came first because we know
17 he pretty much died instantly from the head wound. So the
18 leg ---

19 MR. KOZELSKI: Your Honor, she has ---

20 THE COURT: --- wound -- the leg wound couldn't have
21 come second because there are certain objective things we
22 know about tissue and decomposition and everything else we
23 know -- she would be able to tell whether that bullet came
24 in his leg before or after the head wound.

25 MR. KOZELSKI: Absolutely, Your Honor. And there is

1 nothing objective in this testimony that said that when
2 these bullets went in the car.

3 THE COURT: Doesn't have to be. It is their factual
4 theory. You can have a different factual theory. That is
5 why you are arguing both to the jury. And I am not going to
6 limit their theory of when they --

7 Because it is their theory that they believe the
8 bullets came at the Kangaroo. And they -- it is a valid
9 theory, and they can argue it. Because none of us know
10 which bullets came first.

11 You just have to decide whether you now want to get
12 into the chase and argue that there was an ensuing chase and
13 that these bullets could have come at another time.

14 Which I told you from the beginning I really don't see
15 how that prejudices your client.

16 MR. DURANT: Your Honor ---

17 THE COURT: In fact in some ways it is exculpatory.
18 But that is your ---

19 MR. DURANT: It prejudices us now. Because we tried
20 this entire case based upon that ruling and now we can't
21 change horses in the middle of the stream.

22 THE COURT: Yeah, you can. You can recall a witness if
23 you need to.

24 MR. DURANT: These -- those witnesses have already been
25 released from their subpoenas based ---

1 THE COURT: And I can make ---

2 MR. DURANT: Based ---

3 THE COURT: --- them come back.

4 MR. DURANT: Based upon your ruling.

5 THE COURT: I can make them come back if that is not --
6 you know, that is why we have deputies with subpoena powers
7 and that is why we can go pick folk up.

8 MR. DURANT: Good luck. Because I mean it took us a
9 long time to run them down. Good luck to you.

10 THE COURT: I -- you know, I mean you only have one
11 witness that you would really need to be talking about.

12 MR. DURANT: No, I have got ---

13 THE COURT: That is Mr. Wittrell.

14 THE COURT: I have got several more witnesses that I am
15 going to put up if we go that road.

16 THE COURT: Who are they?

17 MR. DURANT: Akim Washington, William Sellers ---

18 THE COURT: And you are saying you would have
19 difficulty finding all of them?

20 MR. DURANT: I am going to have to recall Edward
21 Wittrell. I am going to have the medical examiner. I am
22 going to have the medical examiner in here with a full
23 testimony concerning this guy getting shot in the head and
24 killed. I am going to have full testimony from this witness
25 concerning the gunshots in the back of the car that were

1 consistent with what Mr. Wittrell said.

2 You know, I have tried my whole case based upon the
3 court's ruling. And ---

4 THE COURT: Well, actually y'all came to a decision ---

5 MR. DURANT: Exactly, and I ---

6 THE COURT: --- and an agreement based on my guidance.

7 MR. DURANT: Exactly. And I think that they should be
8 held to that decision at this point.

9 THE COURT: I don't know that it really makes a
10 difference. I think you can effectively argue -- it doesn't
11 matter really whether you talk about the chase or you don't
12 talk about the chase.

13 Nobody knows where the bullets come -- came from. You
14 already have other people testifying that other folk were
15 out there shooting.

16 I don't know of any -- I don't even know a firearms
17 expert that could testify who shot first. So you could
18 easily -- there is -- this really is a weight argument, not
19 an admissibility argument.

20 And it is up to you -- it is your responsibility to
21 impeach the witness and to have the jury question the weight
22 accorded her testimony.

23 By I have been clear in my ruling that she will not be
24 testifying as to what direction she perceives the bullets
25 came from. She is not qualified to testify to that.

1 MS. PROCTOR: Your Honor ---

2 THE COURT: But she is clearly as a crime scene
3 investigator qualified to say that there are bullet holes in
4 a vehicle and whether they weren't in -- whether they
5 originated outside of the vehicle or whether they originated
6 from the inside the vehicle going out.

7 MR. KOZELSKI: I agree. I -- our only argument is as
8 to where.

9 MS. PROCTOR: Because I can't ---

10 THE COURT: She is not testifying as to where. She ---

11 MS. PROCTOR: She is saying they are happening right at
12 the Kangaroo. I'm sorry I pointed at that. She is saying
13 they came right at the Kangaroo. And that is what we can't
14 say but how do you know they didn't come ---

15 MR. DURANT: I don't have to put it in Kangaroo. I can
16 ask her were there ---

17 THE COURT: I don't recall her ever saying that except
18 in the context of the video which I have already said she
19 can't testify about.

20 So it seems to me we have been wasting a lot of time.

21 MS. PROCTOR: Okay, and one other thing. Did you say
22 that she could testify that the glass was shattered from the
23 bullet hole?

24 MR. DURANT: She ---

25 MS. PROCTOR: Because the glass was shattered ---

1 THE COURT: She has testified that there was a ricochet
2 and there was a bullet hole consistent with the bullet
3 ricocheting off the dashboard of the vehicle.

4 MS. PROCTOR: Okay ---

5 THE COURT: Which means that it originated outside of
6 the vehicle, not inside the vehicle.

7 MS. PROCTOR: Okay, because the glass shattered when
8 they hit the tree.

9 THE COURT: I don't think that that is her testimony.

10 MS. PROCTOR: Okay.

11 THE COURT: Her testimony ---

12 MS. PROCTOR: I'm just checking on that.

13 THE COURT: --- is about the fact that the bullet did
14 not originate -- the windshield bullet did not originate
15 from shooting inside of the car out but that a bullet
16 entered the car, ricocheted off the dashboard and then
17 exited the window.

18 And we don't know whether the windshield shattered when
19 the bullet hit it or whether it shattered when it hit the
20 car.

21 MS. PROCTOR: It shattered. It -- its ---

22 THE COURT: I am sure it was a degree of shattering.
23 But I've never known a bullet to hit a windshield -- if a
24 rock hits your windshield it is going to shatter, the way
25 they are built now.

1 If a rock hits the wrong side of your windshield within
2 a few minutes it is going to shatter. It is going to be in
3 a whole bunch of cracks.

4 So it is hard -- I am hard-pressed to think that a
5 bullet traveling at that rate of speed would not cause
6 some -- some cracking of the windshield.

7 I am also certain that subsequently when it hit a tree
8 or whatever it hit to stop it that it probably then
9 shattered especially if the car came in contact with a hard
10 object and then I would imagine became compressed in some
11 way and then became shattered.

12 I don't know that it is dispositive one way or the
13 other. She is only testifying about where the bullet --
14 that there is in fact a bullet hole and where it originated,
15 from a ricochet off the dashboard.

16 And I don't think anybody -- I don't know if any
17 firearms person -- you would have to have a trajectory
18 expert that could tell you where bullets came from.

19 And we have had those before based on sounds and all
20 that other kind -- I think there is somebody at SLED that is
21 qualified to do that.

22 At least years ago I know I had a case where it was
23 that convenient store over off of -- I don't know, Mr..
24 DuRant may have even tried that case.

25 Somebody shot -- anyway they were able to testify

1 about -- from the video based on the sound and the ricochet
2 of the bullet and the trajectory. And they were qualified
3 to testify to it.

4 But I -- we don't have anybody before us at that the
5 point that is qual- -- that has that technical expertise.

6 Let's take a quick restroom break and then we will
7 resume the witness's testimony.

8 Ms. Kjellman, you can -- you have been very patient.
9 We appreciate it. You can go to the restroom as well, but
10 please don't discuss your testimony with anyone.

11 THE WITNESS: Yes, ma'am.

12 (WHEREUPON, a break was taken July 16, 2013, at 3:16
13 p.m.)

14 (WHEREUPON, proceedings continued July 16, 2013, at
15 3:38 p.m. without jury.)

16 MS. PROCTOR: Your Honor, if you could give us one
17 minute. I would like to have him sign something.

18 THE COURT: Sure.

19 (Pause.)

20 THE BAILIFF: Are you ready for them, Judge?

21 THE COURT: Yes. Well, wait one second.

22 MS. PROCTOR: Just one second. We are signing
23 stipulations, Your Honor.

24 THE COURT: Why is the defendant signing stipulations?

25 MS. PROCTOR: The judge -- the solicitor asked me to.

1 MR. DURANT: I had them both sign.

2 MS. PROCTOR: He had both sign.

3 THE COURT: I think you might have him sign one that is
4 a court's exhibit. Are you worried about a PCR or
5 something?

6 MR. DURANT: Yes, Your Honor.

7 THE COURT: Yeah, sign -- have him sign one as a
8 court's exhibit. But the one that goes to the jury should
9 only be signed by counsel. And we will have that one marked
10 as a court's exhibit, and then you and Ms. Proctor can sign
11 the other one.

12 MR. DURANT: We will mark this one as a court's
13 exhibit, Your Honor.

14 THE COURT: That is fine.

15 MR. DURANT: This is the one signed by the defendant.

16 THE COURT: Just mark it as a court's exhibit.

17 MR. DURANT: That will be court's ---

18 THE COURT: And then the other will be marked as a
19 joint exhibit. And that would be the one you and Ms.
20 Proctor sign.

21 (WHEREUPON, Court's Exhibit 3, stipulation signed by
22 defendant, was marked for identification.)

23 THE COURT: And that will be marked as a joint State
24 and defense exhibit.

25 MR. DURANT: Your Honor, with regard to our agreement I

1 am just ---

2 THE COURT: That will be marked as a court's exhibit.

3 MR. DURANT: --- going to have that marked as court's
4 exhibit too, okay. And then we will publish the signed
5 stipulation.

6 THE COURT: It will be a joint exhibit.

7 MR. DURANT: Yes. That will be Court's 4.

8 (WHEREUPON, Court's 4, stipulation by attorneys, was
9 marked as a court's exhibit.)

10 MR. DURANT: Are you ready, Ms. Proctor?

11 MS. PROCTOR: Oh, I am ready. I'm sorry.

12 THE COURT: Was it already -- we need it back to have
13 it marked.

14 MS. PROCTOR: I don't have it. He has it. I don't
15 have it.

16 THE COURT: Mark it as a joint exhibit.

17 MR. DURANT: Okay. Now when you say joint exhibit,
18 what is that?

19 THE COURT: Defense and State exhibit.

20 MR. DURANT: Okay.

21 THE COURT: So it will say Joint Exhibit 1 because
22 there is only one joint exhibit.

23 (WHEREUPON, Joint State and Defense Exhibit 1,
24 stipulation, was marked for identification.)

25 (WHEREUPON, Joint State and Defense Exhibit 1 was

1 admitted into evidence.)

2 MR. DURANT: And I will publish that perhaps ---

3 THE COURT: When ---

4 MR. DURANT: --- right, when I rest I guess.

5 THE COURT: Whenever you want. Okay. We are ready?

6 MR. DURANT: Yes, Your Honor.

7 THE COURT: Defense ready?

8 MS. PROCTOR: Yes, Your Honor.

9 THE COURT: Please bring in the jury.

10 (WHEREUPON, the jury returned 3:39 p.m.)

11 THE COURT: Okay. Ladies and gentlemen, we appreciate

12 your patience as we dealt with those matters of law. We

13 will now resume the witness's testimony. You may proceed,

14 Mr. DuRant.

15 MR. DURANT: Thank you, Your Honor.

16 THE COURT: You are welcome.

17 **REDIRECT EXAMINATION - MR. DURANT OF KATHY KJELLMAN:**

18 Q. Investigator Kjellman, you have been a crime scene

19 investigator for how long?

20 A. Eight years.

21 Q. And what training have you had in that field?

22 A. A lot of it is on-the-job training.

23 Q. Okay. And you have been doing this continuously for

24 eight years; is that correct?

25 A. Yes, sir.

1 Q. And during that time have you ever had the opportunity
2 to examine vehicles that were -- had been shot by -- with
3 gunfire?

4 A. Yes, several times.

5 Q. Do you have any idea on how many occasions?

6 A. Honestly, I couldn't tell you. It has been a lot.

7 Q. A lot?

8 A. I never kept count.

9 Q. And as a crime scene investigator how do you determine
10 whether or not a gunshot to a car would be -- have come from
11 the outside or exited the vehicle?

12 A. If the projectile is shot into the car the metal on the
13 car is going to be folded inward. If the projectile came
14 through the car, was fired from inside, or passed all the
15 way through the car and exited the car the metal in turn
16 would have been pushed outward.

17 Q. Okay. And that makes sense because you have got this
18 big lump of lead in there, correct?

19 A. Yes, sir.

20 Q. How about like a car glass for example, how do you make
21 a determination then?

22 A. Sometimes you can figure out if it was an entrance or
23 an exit in the windshield. Because a front wheel --
24 windshield is going to have a plastic protective cover in
25 it. And that sometimes will be pushed in or be pushed out

1 just like as in metal in the car.

2 Q. Okay. And did you have the occasion to examine the
3 gold Chevrolet Impala that had been involved in the shooting
4 at the Kangaroo?

5 A. Yes.

6 Q. And that was on April the 5th I believe? Excuse me,
7 April the 6th?

8 A. April 6th, yes.

9 Q. Did you observe any bullet holes in the driver's side
10 front door of that vehicle?

11 A. Yes, I did.

12 Q. How many?

13 A. Three.

14 Q. And in your experience did those appear to have
15 originated from the outside of the car going into the car?

16 A. They originated from outside of the car.

17 Q. And why do you say that?

18 A. Because like I said, the metal on the door was pushed
19 inward.

20 Q. Okay. And how about the front windshield of the car,
21 were you able to observe what appeared to be a gunshot wound
22 to the windshield?

23 A. Yes.

24 Q. And did that apparently originate from the outside of
25 the car going into the car and how did you -- how did you

1 reach that conclusion?

2 A. That one appeared to have originated from outside the
3 car. And I based that one on a ricochet mark that was on
4 the dashboard just inside -- inside the car.

5 Q. Which corresponds -- corresponded to the bullet hole in
6 the windshield; is that correct?

7 A. Yes.

8 Q. And that would be the front windshield of the car?

9 A. Yes.

10 Q. And what did you locate in the driver's side floorboard
11 of that vehicle?

12 A. There was a projectile in that floorboard.

13 MR. DURANT: Your Honor, at this time we would offer
14 State's Exhibit Number 93. I believe without objection.

15 THE COURT: Any objection?

16 MS. PROCTOR: No, Your Honor.

17 THE COURT: Marked and admitted without objection.

18 (WHEREUPON, State's Exhibit Number 93, projectile from
19 driver's side floorboard - Impala, marked for
20 identification.)

21 (WHEREUPON, State's Exhibit Number 93 was admitted into
22 evidence.)

23 BY MR. DURANT:

24 Q. I will hand you what has been marked State's Exhibit
25 Number 93 and ask if you can tell what that is and where you

1 located it?

2 A. It is a projectile that was located on the driver's
3 side floorboard of Impala.

4 Q. Okay. And excuse me (cough). That with all of this
5 evidence that you have previously identified and has been
6 introduced into evidence was all that evidence taken to SLED
7 for examination?

8 A. Yes, it was.

9 MR. DURANT: Your Honor, that is all I have at this
10 time. And I will have to recall this witness briefly.

11 THE COURT: You may proceed.

12 **RECROSS-EXAMINATION - MS. PROCTOR OF KATHY KJELLMAN:**

13 Q. Detective Kjellman, when you get to a crime scene it is
14 best that it be preserved; is that not correct?

15 A. Yes.

16 Q. And it is good when a crime scene has been preserved as
17 close to the time of the incident that has happened,
18 correct?

19 A. Yes.

20 Q. And the reason for that is that you follow certain
21 procedures so that evidence can't be tampered with or can't
22 be moved, correct?

23 A. Yes.

24 Q. And basically the longer that a crime scene is left
25 without any preservation things can be touched or moved,

1 correct?

2 A. Sometimes, yes.

3 Q. And in this case it was a large area; it was a parking
4 lot?

5 A. Yes.

6 Q. And because it was -- it's also outside?

7 A. Yes, ma'am.

8 Q. And the night in question it was about four o'clock,
9 the night that you arrived, it was about 4:00 in the morning
10 by the time that you arrived on the scene?

11 A. Approximately, yes.

12 Q. And because it was -- because the crime scene was
13 outside were you told about cars that kept coming in and out
14 of the crime scene?

15 A. Of the parking lot of the Kangaroo?

16 Q. Yes.

17 A. No. When the deputies got there they roped off that
18 crime scene. Nobody was allowed in or out.

19 Q. Okay. But before they got there were you aware that it
20 was approximately five to seven minutes before -- from the
21 time of the shooting to the time where the officers were
22 able to mark it off that there were numerous cars coming in
23 and out?

24 A. Yes.

25 Q. And they also told you that quite a few people were

1 still walking up to the door and walking all around the
2 crime scene?

3 A. I don't recall being told that.

4 Q. And the reason this can be a problem, especially with
5 cars, if cars are coming in and out where shell casings are
6 or bullets or projectiles there is possibilities of them
7 being moved, run over, or damaged?

8 A. Yes.

9 Q. Now in your report you also mentioned that there were
10 three holes, three bullet holes in the canopy of the Circle
11 K; is that correct?

12 A. Yes.

13 Q. And you photographed those, correct?

14 A. Yes.

15 Q. But you said that you weren't able to get close-ups of
16 them because they were quite high?

17 A. Yes.

18 Q. And do you know if anybody ever got a ladder to go back
19 and check those bullet holes?

20 A. No.

21 Q. And so did anybody ever go back and that you know even
22 take out bullets that are still in there?

23 A. No.

24 Q. And just now you were saying there were bullet holes in
25 the Impala door. You have no idea, do you, when those

1 bullet holes got in there; do you?

2 A. I can't say a hundred percent when it happened, ma'am.

3 Q. And you don't know what type of bullet holes they are,
4 what kind of projectiles they are that went through there,
5 can you?

6 A. No.

7 MS. PROCTOR: No further questions.

8 THE COURT: Any redirect of the witness?

9 MR. DURANT: No, Your Honor.

10 THE COURT: Ma'am, you are excused subject to being
11 recalled.

12 MR. DURANT: The State would call Paul McManigal.

13 (WHEREUPON, the witness was duly sworn.)

14 THE CLERK: State your name and spell your last name.

15 MR. MCMANIGAL: Paul David McManigal,
16 M-C-M-A-N-I-G-A-L.

17 THE COURT: You may proceed.

18 **DIRECT EXAMINATION - MR. DURANT OF PAUL MCMANIGAL:**

19 Q. Good afternoon, Sergeant, McManigal. Could you please
20 tell our jury where you are employed.

21 A. I work for the Charleston County Sheriff's Office. I
22 am currently assigned to forensic services as a supervisor.

23 Q. Okay. And is that what you were doing on March the
24 30th of 2011?

25 A. Yes, sir.

1 Q. And in that capacity did you have the opportunity to
2 respond to the Kangaroo Convenience Store at the corner of
3 Camp and Folly?

4 A. Yes, sir.

5 Q. On March the 30th of 2011?

6 A. Yes, sir.

7 Q. That was in reference to a shooting?

8 A. Yes, it was.

9 Q. And Investigator Kjellman has just testified she works
10 for you. Is that correct?

11 A. She does.

12 Q. And you assisted her in processing the crime scene; is
13 that correct?

14 A. Yes, sir.

15 Q. Now were measurements taken at the time that the crime
16 scene was processed?

17 A. I'm sorry?

18 Q. Were measurements taken of the evidence that was
19 located in the parking lot at the time that the crime scene
20 was processed?

21 A. Yes, sir.

22 Q. Okay. And at my request did you prepare a crime scene
23 diagram which set forth the items located in the parking lot
24 which is a two-scale drawing?

25 A. I did.

1 Q. And I am going to have -- show you what has been marked
2 as State's Exhibit Number 95 and ask if you can recognize
3 that -- this poster.

4 A. Yes, sir, I made that.

5 Q. You actually made this poster; is that correct?

6 A. Yes, sir, I did.

7 Q. And does it fairly and accurately depict where the
8 evidence located with the placards at the crime scene were
9 located in the parking lot?

10 A. Yes, sir, it does.

11 Q. Okay.

12 MR. DURANT: Any objection, Ms. Proctor?

13 MR. KOZELSKI: No objection.

14 MR. DURANT: Okay. Your Honor, at this time we would
15 offer State's Exhibit Number 95 into evidence.

16 THE COURT: Number 95 marked and admitted without
17 objection.

18 (WHEREUPON, State's Exhibit Number 95, crime scene
19 diagram - Kangaroo - 1:80 scale, was marked for
20 identification.)

21 (WHEREUPON, State's Exhibit Number 95 was admitted into
22 evidence.)

23 BY MR. DURANT:

24 Q. Okay. And just the numbers over here they correspond
25 to what? The numbers over here on ---

1 A. The numbers in the diagram correspond to the numbers in
2 the chart ---

3 Q. Okay.

4 A. --- under the CCSO column.

5 Q. And that actually corresponds to the little placards
6 y'all put out, the little yellow placards ya'll put out when
7 you take pictures and stuff?

8 A. Yes, sir, when we find evidence at the scene we will
9 put placards out that have numbers or letters on them. And
10 we will take pictures of the evidence with those placards in
11 place and the number or letter on those placards then get
12 puts into our diagram.

13 Q. Okay. Also at my request did you have the opportunity
14 to prepare State's Exhibit Number 97?

15 A. Yes, sir, I did. It is a smaller version of the one
16 you just showed me.

17 Q. Okay. And basically it is just a half scale version of
18 the one that was just introduced into evidence; is that
19 correct?

20 A. I believe it was half scale. It is still to scale
21 though.

22 Q. Okay. This one -- this one appears to be one to
23 eighty?

24 A. Yes, sir.

25 Q. This one appears to be one to one-sixty?

1 A. Yes, sir.

2 Q. Okay. But other than that it is pretty much the same
3 diagram; is that correct?

4 A. Yes, sir, it is.

5 Q. Thank you.

6 MR. DURANT: I have no further questions. Could you
7 please answer anything that Mr. Proctor may have for you.

8 THE COURT: Any examination of the witness?

9 MR. KOZELSKI: Yes, Your Honor.

10 THE COURT: You may proceed.

11 **CROSS-EXAMINATION - MR. KOZELSKI OF PAUL MCMANIGAL:**

12 Q. Good afternoon, Sergeant McManigal. Sorry to drag you
13 out here. Just want to ask you a couple of questions about
14 what it -- what you do as a forensic services supervisor.

15 Obviously you oversee and manage the crime scene
16 investigations unit?

17 A. Yes, sir, I do.

18 Q. Okay. And that job is an important job?

19 A. Yes, sir, it is.

20 Q. Okay. You are also trained on what to do to protect
21 the scene when you arrive?

22 A. Yes, sir.

23 Q. And obviously the most important part of that is
24 gathering the evidence once you get there?

25 A. It is one of the important parts, yes, sir.

1 Q. Because you want to make sure that the evidence is
2 preserved?

3 A. Yes, sir.

4 Q. And you enjoy that part of your job?

5 A. Yes, sir.

6 Q. Okay. You even write a blog about it?

7 A. Yes, sir, I do.

8 Q. And that is a forum for forensic investigators to
9 discuss the constantly evolving techniques of crime scene
10 investigation?

11 A. Yes, sir, it is.

12 Q. Okay. I actually really enjoyed reading a lot of your
13 posts. And a lot of it is about employing techniques in the
14 field and many of the methods that you use are -- you create
15 yourself?

16 A. Yes, sir.

17 Q. And this is because in your view good CSI, crime scene
18 investigators, are the ones that can apply the methods that
19 they learn to a certain scenario but the really good CSI's
20 are the ones that think outside of the box?

21 A. I -- my opinion is that there's many techniques
22 available to us and there's many different preferences that
23 different investigators have, what works well for them and
24 their environment and their position. And I just like to
25 promote the exchange of those ideas.

1 Q. Well, this is what you like to see in when you train
2 new CSI's is that they think outside the box?

3 A. Yes, sir.

4 Q. And part of that is out of a need to find that one
5 identifying piece of evidence?

6 A. Well, hopefully more than one. But yes, sir.

7 Q. But ---

8 A. We like to crack a case, yes, sir.

9 Q. The either the bloody fingerprint or whatever it is you
10 may that identifies a suspect?

11 A. Yes, sir.

12 Q. And you've actually written a number of posts about
13 innovative methods of fingerprinting off of different types
14 of items?

15 A. Yes, sir.

16 Q. You have your more traditional methods like powder?

17 A. Fingerprint powder is the most common method to obtain
18 latent fingerprints, yes, sir.

19 Q. Okay. Ninhydrin?

20 A. Ninhydrin is a chemical that we use on porous surfaces
21 to develop fingerprints.

22 Q. Okay. What about small particle reagent?

23 A. Small particle reagent is basically the same as power
24 but it is suspended in water so that it can be sprayed onto
25 a wet vehicle. It doesn't work very well in my opinion.

1 Q. Okay. But there's Liquinox which is a silicone casting
2 agent?

3 A. No, Liquinox is a detergent and powder mix that we use
4 to get latent prints from the sticky side of Duct tape.

5 Q. Okay. It is like a caulk gun or ---

6 A. No, sir. That is microcell or acutrans.

7 Q. Okay.

8 A. There's different silicone casing materials.

9 Q. What about amido black?

10 A. Amido black is another chemical that we use to develop
11 latent stains that were left when the medium is in blood.

12 Q. So if a fingerprint was in blood?

13 A. Yes, sir. It stains blood purple.

14 Q. But even then it is still hard to pick up on the right
15 light source?

16 A. For which one?

17 Q. For the amido black?

18 A. Amido black not so much. There is a -- amido black it
19 presents itself very clearly as a purple print. The only
20 time we have problems is if it is on a dark-colored surface
21 that is similar in color to purple developed by the amido
22 black.

23 Q. You write an article about amido black photography?

24 A. Yes, sir.

25 Q. And creating your own method of capturing that print?

1 A. Yes, sir. And in normal circumstances amido black
2 presents itself very well. But there are certain
3 circumstances like I mentioned when it is on a similarly
4 colored surface that it is a little more difficult to bring
5 out in a photograph.

6 Q. And the way you did that is you took a Styrofoam cup
7 and you cut off the bottom of it?

8 A. Yes, sir, the one you are talking about was a bloody
9 fingerprint on the back of a rearview mirror that the
10 rearview mirror was textured plastic and it wasn't showing
11 up very well in the photographs. But by using oblique
12 lighting, which I used a Styrofoam cup, shown the light in
13 through the side of the cup to diffuse the light around the
14 fingerprint and it helped develop the print.

15 Q. And you can get prints off of Duct tape like you talked
16 earlier?

17 A. Yes, sir. Using the Liquinox method is one method of
18 getting fingerprints off of the sticky side of tape.

19 Q. And how about getting prints off of metal?

20 A. Prints off of metal usually we use powder. However, if
21 the metal itself is oxidized or rather porous in nature then
22 we will have to try a different -- different process.

23 Q. Probably one of the most fascinating ones that I read
24 was when you got a fingerprint off of cabbage.

25 A. Yes, sir.

1 Q. And I think you used cyanoacrylate dye?

2 A. Yeah, with the cabbage the normal chemicals we used for
3 fingerprints were causing the cabbage to wilt almost
4 instantly which changes the dimensions of the fingerprint.

5 In that case I was able to use cyanoacrylate which is
6 the chemical term for Superglue. Superglue will adhere to
7 the moisture in the fingerprint. And then I had to further
8 process it by adding a fluorescent dye. There is
9 fluorescent dye stains that will adhere to the Superglue so
10 that when you look at it under certain wave lengths of light
11 it makes a fingerprint glow.

12 Q. And you use that technique a lot of times when nothing
13 else works?

14 A. Yes, sir.

15 Q. Okay. Sometimes when you respond to a shooting you
16 don't necessarily know where someone has been shot?

17 A. That's correct.

18 Q. So you use what is called a luminal?

19 A. Luminal will detect blood. Yes, sir.

20 Q. Yeah, a blood visualizing agent?

21 A. Correct.

22 Q. And CSI's use it because it reacts with the hemoglobin
23 in the blood?

24 A. That's correct.

25 Q. Causing it to illuminate or glow?

1 A. Illuminize, yes, sir.

2 Q. Okay. And you just spray that to a specific area?

3 A. Yes, sir.

4 Q. And that is what picks up traces of blood?

5 A. Yes, sir.

6 Q. And when it starts glowing you take pictures in a black
7 light setting?

8 A. I'm sorry?

9 Q. When it starts glowing do you take a picture in a black
10 light setting; is that ---

11 A. Luminal is very difficult to photograph. If you have
12 large stains -- let me start at the beginning. With luminal
13 there's different chemicals formulations. When you spray
14 it on an item if blood was present the luminal reacts with
15 the hemoglobin and causes it to glow, kind of like a glow
16 stick.

17 And if we have a fairly large amount of blood that we
18 spray, it will glow fairly brightly and we can use a camera
19 to photograph it.

20 But we have to have a very long shutter speed to
21 capture all of the light. It is kind of dim lit, dimly lit
22 chemical. So we have to open up the shutter for a long time
23 to let in the light to get a good picture of it.

24 And in some cases it actually helps to have a little
25 bit of an alternate light of a different color to help

1 visualize everything around the luminal.

2 The luminal will show up in the picture sometimes but
3 the rest of the background won't. So we will have to
4 overcome that with some photographic techniques.

5 Q. And so you -- you explore these different photographic
6 techniques?

7 A. Yes, sir.

8 Q. It is big in your field ---

9 A. Yes, sir.

10 Q. --- to use photography? You have written about best
11 camera settings to use and ---

12 A. Yes, sir.

13 Q. I think you also talk about photographing impressions
14 that are made in soft like say soil, soft surfaces, to get
15 tire tracks or something of that, a footprint?

16 A. I don't remember writing about that in particular. But
17 I might have, yes, sir.

18 Q. Okay. And when you have a footprint on the ground you
19 want to make sure that your camera is placed on a tripod
20 (sic) perpendicular to the ground with ---

21 A. Tripods are recommended. But not necessarily. The key
22 factors is to have the camera perpendicular to the ground
23 over the area you are trying to photograph.

24 Q. And part of the reason you want it perpendicular to the
25 ground is because of a particular photography phenomenon

1 called perspective - what is it - perspective distortion?

2 A. Yes, sir.

3 Q. Okay. And perspective distortion is a warping or a
4 transformation of an object in surrounding areas that
5 differs significantly from what the object would look like
6 in a normal photograph?

7 A. Correct.

8 Q. I'm just learning about this stuff. So if I say
9 something that is not correct, just correct me. And this
10 affects the relative scale of nearby and distant objects?

11 A. Yes, sir.

12 Q. And so it is influenced by two factors; mainly, the
13 angle of view by which the image is captured?

14 A. Yes, sir.

15 Q. And then the angle of view at which the photograph and
16 the subject is viewed?

17 A. Correct.

18 Q. Okay. And this can cause apparent relative distances
19 to differ from what you would expect?

20 A. That is correct.

21 Q. In other words, it is camera trick?

22 A. Yes, sir, it is.

23 Q. Now before you do all the fingerprinting you make sure
24 the scene is secure?

25 A. Correct.

1 Q. And part of that job in securing the scene is to make
2 the crime scene sketches?

3 A. Yes.

4 Q. Okay. There is the old-fashioned way of pencil and
5 some graph paper?

6 A. Yes, sir.

7 Q. But with the constant evolving technology you started
8 writing about three-dimensional representation?

9 A. Yes, sir.

10 Q. And when you started you were using a program called
11 Vista FX3?

12 A. That's correct.

13 Q. And that program had a lot of bugs in it?

14 A. It did.

15 Q. Later in 2007 you discover Google Sketch Up?

16 A. Yes, sir.

17 Q. And you found that program much easier to use?

18 A. I did, yes, sir.

19 Q. Without bugs?

20 A. Yes, sir. The Vista FX3 program was originally done
21 for traffic accident reconstruction and they tried to make a
22 module for crime scene investigation where we could do
23 diagrams, crime scenes in three dimensions.

24 But at that time when I went through that training the
25 program was very buggy. It crashed. It did not do what it

1 claimed to do.

2 Google Sketchup is a free program that does a

3 similar -- similar thing creating 3-D models.

4 Q. And I don't know if you created it or it is on your
5 page, but one of the 3-D models that you created of a gas
6 station, right?

7 A. Yes, sir.

8 Q. And this was back in 2007?

9 A. I believe it was.

10 Q. And you create those things for a juror because those
11 are the ultimate people that you have got to convince of
12 your findings?

13 A. Yes, sir.

14 Q. You even write a post about preparing for court?

15 A. Yes, sir.

16 Q. Because you have testified a lot?

17 A. Yes, sir, I have.

18 Q. In major trial?

19 A. Yes, sir.

20 Q. And one of the major things that you have learned over
21 the years is to tie up loose ends?

22 A. Yes, sir.

23 Q. It is easier to do than it is -- it is easier to
24 forget. So while you're looking for this holy grail of
25 evidence, this one identifying piece of evidence, you

1 collect a lot of other stuff along the way?

2 A. Yes, sir.

3 Q. The tire casting?

4 A. Yes, sir.

5 Q. The hair fiber?

6 A. Yes, sir.

7 Q. Maybe even a bunch of latent prints?

8 A. Yes, sir.

9 Q. The problem comes when you start working on another
10 crime scene before you tie up all the loose ends on one of
11 the other ones, correct?

12 A. That is probably the biggest distracter, yes.

13 Q. Well, you work hundreds of cases a year?

14 A. Yes, sir.

15 Q. And it is often years before you go to trial?

16 A. Yes, sir.

17 Q. So you want to make sure that you accurately document
18 all of your findings?

19 A. Yes, sir.

20 Q. So you can remember what you did if I stand up here and
21 ask you questions?

22 A. Yes, sir.

23 Q. Because your evidence can -- the evidence that you find
24 can set a person free?

25 A. It can, yes, sir.

1 Q. And it can also put somebody behind bars?

2 A. Yes, sir.

3 Q. So you still have to prove your case; even if -- you
4 put somebody initially behind bars you still have to put out
5 the evidence to -- to do that?

6 A. Yes, sir.

7 Q. Okay. And part of that is analyzing stuff that you
8 don't think really matters or other people would maybe not
9 think really matters?

10 A. Yes, sir.

11 Q. Because the last thing you want is someone like me in
12 the middle of trial asking you what you did with that?

13 A. That's correct.

14 Q. Because if you did a poor job that airtight evidence
15 goes out the window?

16 A. Yes, sir.

17 Q. But if could tell people like me all about the other
18 stuff even if you solve the case you look good in the
19 juror's eyes?

20 A. I believe so, yes, sir.

21 Q. And they will be more apt to believe you?

22 A. Yes, sir.

23 Q. I want to talk to you about some of the tests that you
24 did in this case. You first arrived at the Kangaroo gas
25 station with Investigator Kjellman?

1 A. Actually the first time I arrived I believe I arrived
2 by myself and established that it was secured and I moved
3 onto another scene and came back to the Kangaroo.

4 Q. Okay. And when you came back you were accompanied
5 by ---

6 A. Investigator Kjellman and Investigator Nelson.

7 Q. Okay. And you observed several casing in the parking
8 lot?

9 A. Yes, sir.

10 Q. And then you searched the adjacent parking lot?

11 A. Yes, sir.

12 Q. But you didn't find anything in the adjacent parking
13 lot?

14 A. Nothing in the adjacent parking lot, no, sir.

15 Q. Then you came back and you did a more thorough search?

16 A. Yes, sir.

17 Q. Any you located more projectiles and casings?

18 A. Yes, sir.

19 Q. You also observed three holes in the canopy above the
20 parking area?

21 A. Yes, sir.

22 Q. But you and Investigator Kjellman were not able to
23 reach it because of the height?

24 A. That's correct.

25 Q. And it could still contain holes or projectiles?

1 A. It is possible.

2 Q. Then you created the rough sketch?

3 A. That's correct.

4 Q. Right here (motioning). Okay. And you did that by
5 triangulating the positions of each piece of evidence?

6 A. We measured each piece of evidence from the corners of
7 the building.

8 Q. Okay. But you didn't do the holes in the canopy?

9 A. No, sir, I couldn't reach them.

10 Q. But say if you were to create a 3-D model you could see
11 holes in the canopy, right?

12 A. I'm sorry?

13 Q. If you created a 3-D model of the scene you can see
14 where the holes of the canopy were?

15 A. I would have to be able to measure them first.

16 Q. Okay. You can't measure using say like a laser
17 measurement or is that ---

18 A. I didn't have that at my disposal. We used a 300 yard
19 surveyor's tape measure.

20 Q. You didn't spray any luminal and see if there were any
21 traces of blood at the scene, did you?

22 A. No, sir.

23 Q. Okay. Now once you were back at your lab which one of
24 the many methods that we were talking about for
25 fingerprinting did you use to fingerprint the shell casing?

1 A. The shell casings, give me a moment. I am not sure.

2 (Pause for witness to review notes.)

3 A. It may take me a minute to find this information
4 because I was not the one that conducted the examination on
5 the casings.

6 MR. DURANT: If that's the case, Your Honor, I would
7 ask that the question be stricken if he didn't ---

8 THE COURT: Is there an objection?

9 MR. DURANT: Basis of speculative if he didn't ---

10 THE COURT: Approach. No speaking objections.

11 (WHEREUPON, bench conference in camera as follows:)

12 THE COURT: What he can establish is a business record.
13 He is a supervisor. But you would have to lay the
14 foundation for that to become admissible. You can't
15 speculate about somebody else's report and you can't read
16 somebody else report -- somebody else's report into the
17 record. They still have the right to cross-examine the
18 witness.

19 MR. KOZELSKI: I agree, Your Honor. But he has
20 testified that he is a supervisor. I am only asking
21 what ---

22 THE COURT: You still have to lay the appropriate ---

23 MR. KOZELSKI: --- what method ---

24 THE COURT: --- foundation for it to be admissible.

25 MR. KOZELSKI: Okay. If

1 THE COURT: What is the next question you want to ask?

2 MR. KOZELSKI: I just want to know what method of
3 fingerprinting he used. That's all.

4 MR. DURANT: And he already said he didn't ---

5 MS. PROCTOR: He didn't do it. So ---

6 MR. KOZELSKI: I thought he said he didn't know.

7 MR. DURANT: He said he didn't do it.

8 MR. KOZELSKI: Okay.

9 THE COURT: He said he didn't do it.

10 MS. PROCTOR: He said ---

11 THE COURT: But can say what method was utilized.

12 MR. KOZELSKI: Yeah.

13 THE COURT: But anything beyond that would be off
14 limits.

15 MR. KOZELSKI: That's fine. That's fine.

16 THE COURT: Because you need to talk to the person who
17 actually did the fingerprinting.

18 MR. KOZELSKI: That's fine.

19 (WHEREUPON, end of in camera bench conference.)

20 THE COURT: Proceed.

21 BY MR. KOZELSKI:

22 A. I don't have that information.

23 Q. So you don't know if fingerprinting was done?

24 A. I don't have any of that information.

25 Q. So there is all this evidence here that could have

1 proved my client's innocence but it was never tested?

2 A. I don't have any information.

3 Q. Thank you. No further questions.

4 THE COURT: Any redirect of the witness?

5 MR. DURANT: Just one.

6 THE COURT: You may proceed.

7 MR. DURANT: Or just a couple I should say.

8 **REDIRECT EXAMINATION - MR. DURANT OF PAUL MCMANIGAL:**

9 Q. You have been doing this for how long?

10 A. I have been with the Sheriff's Office for 25 years.

11 Q. How successful have you been lifting fingerprints from
12 spent shell casings?

13 A. I think I may have been successful once.

14 Q. In 26 years?

15 A. Twenty-five years, yes, sir.

16 Q. And why is that?

17 A. Well, the extreme heat caused by the explosion of
18 gunpowder heats up the shell casing and dries up any prints
19 that may have been on it.

20 Q. Because that is all a print is, isn't it; it is
21 moisture on something?

22 A. That is correct, sir.

23 Q. And once that gunpowder explodes there are no prints on
24 shell casings?

25 A. Very often, yes, sir.

1 Q. Except for one time in 26 years?

2 A Yes, sir.

3 MR. DURANT: Thank you.

4 THE COURT: Any objection to the witness being excused,
5 from the State?

6 MR. DURANT: No, Your Honor.

7 THE COURT: From the defense?

8 MR. KOZELSKI: No, Your Honor.

9 THE COURT: Sir, you are excused.

10 THE WITNESS: Thank you.

11 THE COURT: You are welcome. You may call your next
12 witness.

13 MR. DURANT: I would like to briefly recall Kathy
14 Kjellman.

15 THE COURT: Officer Kjellman, you can take the stand.
16 I will remind you that you still are under oath. Just state
17 your name once you are seated.

18 MR. DURANT: Your Honor, I may just have her come down
19 here (motioning) if it is all right with the court?

20 THE COURT: That's fine. Yes, ma'am.

21 THE WITNESS: My name is Kathy Kjellman.

22 THE COURT: Thank you.

23 MR. DURANT: Well, I take that back. I am going to let
24 you take your seat.

25 **REDIRECT EXAMINATION - MR. DURANT OF KATHY KJELLMAN:**

1 Q. Kathy, I'm showing you what has been marked as State's
2 Exhibit Number 97 for identification and which appears to
3 be -- or has been testified to as being the half-scale
4 version of State's Exhibit Number 95 which is in evidence.

5 You have observed this before, correct?

6 A. Yes.

7 Q. Okay. And if you would with regard -- and we didn't
8 get a chance to do this before, but with regard to the
9 evidence you collected I just want you to show to the jury
10 the location in the parking lot that some of those items
11 were collected.

12 And I'm going to start with State's 75, 76, ---

13 MS. PROCTOR: Your Honor, if he could use the big one
14 when they are doing it. Because I -- I can't see what he is
15 pointing to.

16 MR. DURANT: Well, she is going to have to come around
17 because I am going to have her mark it. And that one
18 (pointing) is in evidence and I can't mark it.

19 MS. PROCTOR: Okay. Well, then may I walk over there?

20 THE COURT: Uh-huh.

21 BY MR. DURANT:

22 Q. Okay. Now I would like to start with State's Exhibit
23 75, 76, 77 and 78 which you have previously testified as the
24 four TulAmmo .380 shell casings.

25 A. Yes.

1 Q. Designated by Placards 2, 3, 4 and 5. Could you please
2 circle those for the jury.

3 A. All four of them are located right here (pointing).

4 Q. Okay. And if you would, just mark that TulAmmo .380.
5 (Witness complied.)

6 Q. Thank you. And then I want to talk to you about you
7 mentioned four Blazer nine millimeter shell casings ---

8 A. Yes.

9 Q. --- which corresponded to Placards 8, 11, 12 and 13 on
10 the diagram designated as State's Exhibits 81, 82, 83 and
11 84. Could you show the jury where those were located.

12 A. Those four were located right here (pointing).

13 Q. Okay.

14 A. Mark it too?

15 Q. Mark those Blazer nine millimeter.

16 A. (Witness complied.)

17 Q. Okay. And you have seen the surveillance video in
18 this -- in this ----

19 A. Yes, sir.

20 Q. --- case. Where is that camera located on there; can
21 you give us a rough idea of where it is located? And if you
22 can't, that is fine too.

23 A. I can't remember exactly where that camera is located
24 at.

25 Q. Okay. And lastly I wanted to ask you about State's

1 Exhibits 84, 85 and 86 -- excuse me, 85, 86 and 87 which
2 cor- -- previously test- -- you previously testified were
3 corresponded to Placards 14, 15 and 18 and being GFI .380
4 shell casings.

5 Could you please circle those shell casings and label
6 it GFI .380.

7 A. One of the GFI shell casings in 14 right here
8 (pointing). And the other two are located down here
9 (pointing).

10 Q. Okay. And if you would, just GFI .380 beside those.

11 A. (Witness complied.)

12 Q. Okay. And I don't want you to mark anymore on this
13 but The --- on this diagram what is seven?

14 A. Number 7 is going to be a projectile.

15 Q. Okay. And what is 16?

16 A. Another projectile.

17 MR. DURANT: I think I am probably standing in the way
18 here.

19 Q. How about 19 right here (pointing)?

20 A. Nineteen is a projectile.

21 Q. Okay. And Number 6 which is over here (pointing)?

22 A. That is a projectile also.

23 Q. Okay, and you collected all of those as well; is that
24 correct?

25 A. Yes, I did.

1 Q. And those correspond to State's Exhibit 79, 80, 88 and
2 89, ---

3 A. Yes.

4 Q. --- correct? Thank you. I have no further questions.

5 MS. PROCTOR: I have no questions, Your Honor.

6 THE COURT: Any objection to the witness being excused,
7 from the State?

8 MR. DURANT: None from the State, Your Honor.

9 THE COURT: From the defense?

10 MS. PROCTOR: No, Your Honor.

11 THE COURT: Officer you are excused.

12 MR. DURANT: Your Honor, the State would call Suzann
13 Cromer.

14 (WHEREUPON, the witness was duly sworn.)

15 THE CLERK: State your full name and spell your last
16 name.

17 THE WITNESS: My name is Suzann Cromer, C-R-O-M-E-R.

18 THE COURT: You may proceed.

19 MR. DURANT: You are welcome.

20 **DIRECT EXAMINATION - MR. DURANT OF SUZANN CROMER:**

21 Q. Where are you employed, Ms. Cromer?

22 A. I am employed by the South Carolina Law Enforcement
23 Division commonly referred to as SLED.

24 Q. And how long have you been with SLED?

25 A. I have been with SLED about fourteen and a half years.

1 Q. And what do you do at SLED?

2 A. I am a firearm and tool mark examiner.

3 Q. Okay. And how long have you been doing that?

4 A. A little over 13 years.

5 Q. And if you could just tell us a little bit about what
6 firearm and tool mark examination entails.

7 A. What we do is what is called firearm's identification.
8 We look at ammunition components, bullets, cartridge cases,
9 shotgun shells to determine whether they were fired by or
10 loaded into and extracted out of a specific firearm.

11 If we do not have a specific firearm we can look at a
12 bullet and hopefully give the investigator a list of
13 possible guns that could have fired that bullet.

14 We also do serial number restoration. We do
15 destructional firearms. We do tool mark examinations, bolt
16 cutters on padlocks.

17 We do IBUS entry. IBUS is the integrated ballistic
18 identification system which is a digital database for
19 bullets and cartridge cases.

20 Q. Okay. And what is your educational background in that
21 area?

22 A. I have a bachelor's degree from Clemson University. I
23 did some work on my graduate program at the University of
24 South Carolina.

25 Upon getting hired from SLED I completed their in-house

1 training program which is a three to five year intense study
2 program where I studied under five court qualified firearm
3 and tool mark examiners.

4 We have to take written tests, oral tests, practical
5 exercises. It is more of an apprenticeship. We prepped and
6 we do the work for the firearm's examiners.

7 Upon completion of that, we have to take a
8 comprehensive final exam that is graded by our training
9 officer and our lieutenant before we can proceed to get our
10 own case work.

11 I have also -- sorry, sir.

12 Q. Go ahead.

13 A. I have also taken classes through the Association for
14 Firearm and Tool Mark Examiners which is an international
15 organization for our profession. They meet once a year to
16 discuss relevant issues to our profession. I've attended
17 several of those.

18 I've also taken some numerous workshops with them
19 including barrel making, gunshot residue, ethics. I have
20 also taken classes with the South Carolina chapter of the
21 International Association of Identification.

22 I have taken classes with the Bureau of Alcohol,
23 Tobacco, Firearm's and Explosives commonly referred to as
24 the ATF, on serial number restoration, and the integrated
25 ballistics identification system.

1 I've also attended numerous NIBIN which is the National
2 Integrated Ballistics Identification Network Users
3 Conference.

4 Q. Okay. Well, that is quite a bit. Are you authorized
5 by SLED to conduct firearm's identification?

6 A. Yes, sir, I am.

7 Q. And are you actually a member of any of those
8 organizations you previously testified to?

9 A. Yes, I am a regular member of AFTE, Association of
10 Firearm Toolmark Examiners. I am a member of the South
11 Carolina chapter of the International Association of
12 Identification. And I actually sit on the NIBIN ATF Users
13 Conference Board.

14 Q. And have you previously been qualified as an expert in
15 the area of firearm's identification?

16 A. Yes, sir, I have.

17 Q. On how many occasions?

18 A. Over 60 times.

19 Q. And in what courts?

20 A. Federal court, state court and one coroner inquest.

21 Q. Okay. At this time we would offer Ms. Cromer as an
22 expert in field of firearm's identification.

23 THE COURT: Any objections or questions?

24 MR. KOZELSKI: No objection, Your Honor.

25 THE COURT: You may proceed. Admitted without

1 objection.

2 MR. DURANT: Okay.

3 BY MR. DURANT:

4 Q. Ms. Cromer, I would like to start out with some shell
5 casings which had previously been marked as State's
6 Exhibits 81, 82, 83 and 84. And they have been identified
7 by the crime scene examiner as Blazer nine millimeter shell
8 casings. And I believe they would correspond with your SLED
9 Number 1, 2, 3 and 4.

10 A. Okay.

11 Q. I ask you if you have had the opportunity to examine
12 those.

13 A. What I'm doing is I am actually looking for where I
14 scribed on the evidence. These are my Items 1, 2, 3 and 4,
15 State's Exhibit 81, 82, 83 and 84. And as you can see, they
16 are still in a sealed container with my initials and seal
17 date.

18 Q. Okay. Those are all what; what is the make of those
19 spent shell casings?

20 A. These are all CCI Blazer nine millimeter Luger fired
21 cartridge cases.

22 Q. And what examination did you perform with regard to
23 those shell casings and what conclusion did you reach?

24 A. I do a microscopic examination on these which means I
25 look at them under my comparison microscope. Comparison

1 microscope allows me to look at two objects side-by-side.

2 I did that, and I determined that these four cartridge
3 cases were fired by the same firearm based on breech face
4 and firing pin shear markings.

5 Q. Okay. So those four shell casings all fired by the
6 same weapon?

7 A. Yes, sir.

8 Q. And those have previous been identified as the Blazer
9 nine millimeters?

10 A. Yes, sir.

11 Q. Next I would like to ask about State's Exhibit 75, 76,
12 77 and 78, your SLED Items 23, 24, 25 and 26. And I know
13 the jury is getting tired of all these numbers. I give
14 those items to you and ask if you recognize those items as
15 the ones that you examined?

16 A. State's Exhibit 75, 76, 77 and 78 are all my Items 23,
17 24, 25 and 26. And again, they are also in a sealed
18 contained with my initials and seal date.

19 Q. And what conclusion did you reach regarding the -- your
20 analysis of those items?

21 A. These first were all fired .380 auto caliber cartridge
22 cases, TulAmmo brand. And these were all fired by one
23 firearm.

24 Q. The same firearm; is that correct?

25 A. This was the same firearm.

1 Q. Okay. But not the same firearm that fired the nine
2 millimeters; is that correct?

3 A. No, this is a different -- this is ---

4 Q. Okay.

5 A. --- another.

6 Q. The testimony that those corresponded to these
7 TulAmmo's over here (pointing)?

8 A. Yes, sir, that is correct.

9 Q. Lastly I think in terms of shell casing I want to ask
10 you about 85, 86 and 87.

11 A. State's Exhibit 85, 86 and 87 is my Item Numbers 27, 28
12 and 29. And again, these are all still in sealed containers
13 with my initials and seal date.

14 Q. Okay. And what conclusion did you reach regarding the
15 examination of those items -- what is the make of those, by
16 the way?

17 A. These are Kirkee (ph) brand ammunition with the
18 headstamp GSL.

19 Q. Okay. And what conclusion did you reach regarding
20 those?

21 A. These .380 auto fired cartridge cases were fired by a
22 second .380 auto firearm.

23 Q. Okay. So a different .380 than fired the TulAmmo's?

24 A. That's correct.

25 Q. And would those also be from a different weapon than

1 fired the Blazer nine millimeter?

2 A. That is correct.

3 Q. Okay. I am going to hand you what's been marked as
4 State's Exhibit 80 and ask if you recognize that item.

5 A. State's Exhibit 80 is my Item 14. Again, it is still
6 in a sealed container with my initials and seal date.

7 Q. Okay. And what is in the description on that?

8 A. I'm sorry, could you clarify?

9 Q. The description on the box, the placard ---

10 A. It is --

11 Q. --- number.

12 A. I'm sorry. It is labeled as Number 7, Kangaroo
13 projectile.

14 Q. Okay. And which corresponds to Number 7 on this
15 diagram?

16 A. Yes, sir.

17 Q. How about State's Exhibit Number 88?

18 A. Again, I am just looking for where I have scribed
19 actually on the projectile, my item number, my lab number,
20 and my initials.

21 State's Exhibit 88 is my Item 15. Again, it is still
22 in sealed container with my initials and seal date.

23 Q. Okay. And that is described on the box as ...?

24 A. Sixteen jacket Kangaroo.

25 Q. Okay. Which correspond to Item Number 16 right here;

1 is that correct?

2 A. That is correct.

3 Q. State's Exhibit Number 92, what is that?

4 A. State's Exhibit Number 92 is my Item 12, still in a
5 sealed container with my initials and seal date.

6 Q. And what does that appear to be?

7 A. That appears to be a nominal .38 caliber fired bullet.

8 Q. Okay. And what is the description on the package for
9 that?

10 A. It is from the autopsy of Antwan Wilson. Deformed,
11 yellow, metal bullet from right thigh.

12 MS. PROCTOR: Your Honor, can we approach?

13 THE COURT: Uh-huh.

14 (WHEREUPON, bench conference in camera was had as
15 follows:)

16 MS. PROCTOR: We didn't plan our stipulations and she
17 is talking about autopsy.

18 MR. DURANT: You know, that was just a slip. I think
19 we need to walk -- run by it.

20 MS. PROCTOR: She just talked about autopsy.

21 THE COURT: I heard right hip.

22 MS. PROCTOR: No, she said it came from the autopsy.

23 THE COURT: I apologize. Sometimes it is hard for us
24 to hear. I have a fan.

25 MS. PROCTOR: Okay.

DIRECT EXAMINATION - MR. DURANT OF SUZANN CROMER

1 THE COURT: You see that (motioning). Really that is
2 why sometimes you hear me saying repeat it because that
3 really affects our ability to hear. I can just strike it if
4 you want me to.

5 MS. PROCTOR: And then either that or we can put in a
6 stipulation.

7 MR. DURANT: I just want to say it is a bullet from the
8 right thigh ---

9 MS. PROCTOR: Yeah.

10 THE COURT REPORTER: I'm sorry, I didn't hear what he
11 said.

12 THE COURT: A bullet from the right thigh.

13 MS. PROCTOR: Yeah.

14 MR. DURANT: Okay.

15 THE COURT: That is what I heard. But if she said
16 something more ---

17 MS. PROCTOR: She said autopsy so.

18 THE COURT: I mean it is up to you. I can mention it
19 or I -- we can ---

20 MS. PROCTOR: But here is ---

21 THE COURT: --- just gloss over it. I think me
22 mentioning it brings more attention to it.

23 MR. DURANT: I think so too.

24 MS. PROCTOR: Well, I think it is out of the bag but.

25 THE COURT: I think if I tell them to disregard it then

1 their question is going to be what happened and when was
2 there an autopsy. I think you might want to think about how
3 you want to handle it. It is up to you. I think ---

4 MR. DURANT: I would like to have a mistrial but.

5 THE COURT: You ain't going to get that. I will give
6 you a curative instruction. If you want one you need to
7 speak now or forever hold your peace.

8 (WHEREUPON, end of bench conference held in camera.)

9 THE COURT: Is there a request for curative instruction
10 or ---

11 MS. PROCTOR: No, no, Your Honor.

12 THE COURT: --- are we moving on? Okay. You may
13 proceed.

14 BY MR. DURANT:

15 Q. So 92 is a bullet from the right thigh of Antwan
16 Wilson?

17 A. Yes, sir. Okay.

18 Q. And 93 is in a box or was in a box, projectile driver's
19 side floorboard, Impala. Is that something that you
20 examined?

21 A. Yes, sir, State's Exhibit 93 is my Item 32.

22 Q. Now with regard to those four items I gave you, the
23 two -- the projectile jack -- two projectiles from the
24 Kangaroo parking lot, the projectile from the right leg of
25 Antwan Wilson and the projectile from the floorboard of the

1 Impala what analysis did you perform on those items?

2 A. What I did on these was what we call a GRC exam, a
3 general rifling characteristic exam. What I do is I weigh
4 these. I measure these. I try to determine their caliber.
5 And then I look at the actual rifling impressions that are
6 left on this bullet by passing through the gun barrel.

7 Rifling is what is put in a gun barrel to put rotary
8 motion on a bullet. Based similar to a quarterback who
9 throws a football, he wants to put it into a tight spiral so
10 it won't lob end over end.

11 And that is what the rifling does inside the gun
12 barrel. It puts that bullet into a spiral so it spins. And
13 you can have a different number of what we call lands and
14 grooves make up that -- that rifling.

15 I determined that all of these had six right rifling,
16 right meaning which way is it going to spin. And then I
17 moved to my microscopic examination.

18 Q. Okay. And based upon your GRC exam on those four
19 particular items what conclusion did you reach?

20 A. I concluded that all four of these bullets were fired
21 by one firearm.

22 Q. And the same firearm, correct?

23 A. That's correct.

24 Q. Now were you able to reach any conclusion regarding the
25 likely caliber of those four particular items?

1 A. I concluded that these were nominal .38.

2 Thirty-eight ---

3 Q. What -- go ahead.

4 A. I'm sorry.

5 Q. I'm sorry, I didn't mean to cut you off.

6 A. Thirty-eight caliber consists of many actual calibers.

7 So these could have been nine millimeter Luger, .38 special,
8 or .357 magnum.

9 They all are about the same diameter. They all are
10 about the same weight. And in this instance I couldn't
11 differentiate between which -- which one of those three it
12 could have been.

13 Q. Okay. So it's nominal .38 means it could have been a
14 38, nine millimeter, or 357?

15 A. That's correct.

16 Q. With regard to pistols could you explain to the jury
17 what the difference is between a revolver and a
18 semiautomatic pistol?

19 A. A revolver is kind of what you would see in a cowboy
20 movie. It has this round cylinder. And that round cylinder
21 has multiple holes in it that we call chambers that hold
22 individual rounds.

23 And usually it can have a hammer that you have to pull
24 back and pull the trigger to fire the gun if it a single
25 action revolver.

1 There are multiple types. There is single action,
2 double action where you can actually cock the hammer, pull
3 the trigger and it will fire -- I'm sorry, that is single
4 action. Or you can just pull the trigger and it will fire.

5 Like I said, it is usually what you would see in a
6 cowboy movie. It has that rotating cylinder that moves
7 around one firing pin.

8 A semiautomatic is what you commonly see in now movies.
9 It has a magazine which is a box that you can load your
10 cartridges into. You place the magazine into the magazine
11 well. You have a slide that you pull back to load one of
12 those cartridges.

13 And a semiautomatic when you pull the fire -- you pull
14 the trigger of the firearm it fires one round, will eject
15 that cartridge case and load another one with one pull of
16 the trigger.

17 Q Okay. And the key difference between the two is
18 revolvers do not eject their shell casings and
19 semiautomatics do; is ---

20 A That's ---

21 Q --- that is correct?

22 A That's correct.

23 Q Are .38 specials and .358 magnums typically fired by
24 revolvers or semiautomatic pistols?

25 A They are what we call typically revolver calibers.

1 Q. Just about most of them have the little, I don't know,
2 rim around the shell casing that keeps it from sliding in
3 the chamber of the cylinder; is that correct; which you
4 don't really have on a nine millimeter auto?

5 A. That's correct.

6 Q. Likewise, nine millimeter Lugers are they typically
7 ammunition for revolvers or semiautomatic pistols?

8 A. We mostly see nine millimeter Luger in pistols.

9 Q. So nine millimeter shell casings is more likely to have
10 been -- I mean a nine millimeter bullet is more likely to
11 have been fired by a semiautomatic than a revolver; correct?

12 A. That's correct.

13 Q. And according to your testimony this Item 7 and this
14 Item 16 which would correspond I believe to what on yours?

15 A. Item 7 would be State's Exhibit 80, my Item 14. And 16
16 would be State's Exhibit 88, my item 15.

17 Q. Okay. And if you would just circle those two items on
18 my -- my State's Exhibit there. And you can just label them
19 same weapon.

20 A. I'm sorry, sir, could you repeat that.

21 Q. Yeah, you can just label them same weapon.

22 A. (Witness complied.)

23 Q. Okay. And you had already said nominal .38 which could
24 be .38, nine millimeter, .357; correct?

25 A. That's correct.

1 Q. Okay. A couple of others I want to ask you about.
2 State's Exhibit Number 79 described as Item Number 6,
3 projectile, Kangaroo.

4 A. State's Exhibit 79 is my Item 13. Again, it is in a
5 sealed container with my initials and seal date.

6 Q. And what conclusion did you reach regarding your
7 Item 13, Placard Number 6?

8 A. My Item 13 was a .380 auto fired projectile.

9 Q. Okay. Which is different than a nine millimeter; is
10 that correct?

11 A. That's correct.

12 Q. And if you would, could you just circle Number 6 right
13 there and put .380.

14 A. (Witness complied.)

15 Q. And lastly State's Exhibit Number 89 described as
16 Number 19 projectile from Kangaroo, your item -- I can't
17 really read that but.

18 A. I'm sorry. This is my Item 16, State's Exhibit 89. It
19 is labeled Number 19, Kangaroo projectile.

20 Q. Okay. And what conclusion did you reach regarding
21 that?

22 A. This is a .25 auto caliber fired projectile.

23 Q. Okay. And if you would, just mark Number 19 as 25.

24 A. (Witness complied.)

25 Q. So based upon that, Ms. Cromer, would it be safe to say

1 that we are dealing with at least four different firearms
2 out there that night?

3 A. Yes, sir.

4 Q. Okay. Because you have already testified that this
5 group was one (pointing), correct?

6 A. Correct.

7 Q. This group was one (pointing)?

8 A. That's correct.

9 Q. This group was one (pointing)?

10 A. Uh-huh.

11 Q. Okay.

12 A. Yes, sir.

13 Q. These two (pointing) were fired by the same weapon
14 which could have been this weapon, correct?

15 A. That's correct.

16 Q. But not these (pointing) because these two were .380's,
17 right?

18 A. That's correct.

19 Q. Okay. And then you have .25 here that doesn't match
20 any of these shell casings; is that correct?

21 A. That is correct.

22 Q. And then you have a .380 which conceivably could have
23 come from this one -- these (pointing) or these (pointing)
24 but not this one (pointing); that is correct?

25 A. That is correct.

1 Q. Okay.

2 MR. DURANT: Your Honor, at this time we would offer
3 State's 97 into evidence.

4 THE COURT: Any objection?

5 MR. KOZELSKI: No objection, Your Honor.

6 THE COURT: Marked and admitted without objection.

7 (WHEREUPON, State's Exhibit Number 97, crime scene
8 diagram - Kangaroo - 1:160 scale, was marked for
9 identification.)

10 (WHEREUPON, State's Exhibit Number 97 was admitted into
11 evidence.)

12 MR. DURANT: I don't believe I have any additional
13 questions for Ms. Cromer.

14 THE COURT: Any examination of the witness?

15 MS. PROCTOR: Yes, Your Honor.

16 THE COURT: You may proceed.

17 MR. KOZELSKI: Yes, Your Honor.

18 THE COURT: You may proceed.

19 **CROSS-EXAMINATION - MR. KOZELSKI OF MS. CROMER:**

20 Q. Good afternoon, Agent Cromer. I had a bunch of
21 questions to ask you about guns, but I think you have
22 sufficiently answered them. So I am going to skip over it
23 and get to the good stuff.

24 Those projectiles that you listed as coming from the
25 same gun, that was a nominal 30 -- .38 caliber weapon?

1 A. Yes, sir.

2 Q. Okay. In your report you listed about 77 manufacturers
3 that could be potential manufacturers of that bullet, right?

4 A. That's correct.

5 Q. Okay. And you originally did your report on June 28,
6 2011?

7 A. Yes, sir.

8 Q. Okay. And then you did a supplement report on
9 December 5, 2011?

10 MR. DURANT: Your Honor, I believe we have a matter of
11 law we need to take up.

12 THE COURT: Please approach.

13 (WHEREUPON, a bench conference was held in camera as
14 follows:)

15 MR. DURANT: She had did -- done a supplement
16 indicating the same weapon that fired those Blazer nine
17 millimeters matched some shell casings that occurred in two
18 different crimes at different locations at different times.
19 One was earlier. One was in 2010. One was later in 2011 I
20 believe.

21 And basically if he is going into that I am just
22 arguing -- I'm objecting on the grounds of relevance.

23 THE COURT: Is that what you are going to do?

24 MR. KOZELSKI: I am simply getting -- there was another
25 item stamp on these nine millimeter Blazers --- (inaudible).

1 THE COURT REPORTER: I can't hear you. I can't hear
2 them unless they all talk into the microphone.

3 THE COURT: Slide down so everybody can hear.

4 THE COURT REPORTER: Share it.

5 THE COURT: I need you to share the microphone.

6 MR. KOZELSKI: I'm not going into any great detail in
7 this. We are only saying that the same Blazer nine
8 millimeter gun casings were hit on IBUS hit at a subsequent
9 time.

10 THE COURT: Why is it relevant?

11 MR. KOZELSKI: Well, because our defendant was in jail.
12 He was in custody.

13 MR. DURANT: Then -- then you have got to get into the
14 database.

15 THE COURT: He was on the run for a minute ---

16 MS. PROCTOR: No, but this was after ---

17 THE COURT: --- so they don't know where the gun ---

18 MR. KOZELSKI: This was October 13th.

19 THE COURT: It doesn't matter. He could have given
20 that gun to somebody else ---

21 MR. DURANT: Exactly.

22 THE COURT: --- in the meantime and then used it later.

23 MR. KOZELSKI: It is relevant that -- to the extent
24 that it is another gun being used ---

25 THE COURT: I am going to have to hear it.

1 (WHEREUPON, end of bench conference in camera.)

2 THE COURT: Madam Forelady, ladies and gentlemen, I
3 have a brief matter of law to take up. During this break,
4 please do not discuss the case. Please leave your notepads
5 in your seats. And take advantage of it to stretch your
6 legs.

7 We will finish this witness today. It may go a little
8 beyond 5:00, but I don't anticipate much beyond 5:00. If
9 anybody needs to make any phone calls, please let the
10 bailiffs know so you can do that.

11 (WHEREUPON, the jury exits the courtroom, July 16,
12 2013, at 4:54 p.m.)

13 THE COURT: Okay. We are going to take a brief recess
14 myself because I drank a bunch of water. Y'all do the same
15 thing and then we will resume with that line of questions.

16 MR. DURANT: Your Honor?

17 THE COURT: Yes, sir.

18 MR. DURANT: Before you go, I had Dr. Riemer who has
19 been here all afternoon. Is this going to be our last
20 witness? Am I safe to ---

21 THE COURT: Let me double check. Because we have
22 witnesses that have children.

23 MR. DURANT: Okay.

24 THE COURT: And I don't know if they have camps and
25 other things. Okay.

1 MR. DURANT: Okay. That' fine. I prefer to ---

2 THE COURT: They charge \$15 every minute or something
3 crazy down in the camp.

4 MR. DURANT: I would prefer to put her up today. But
5 if we are not, I am just going to ---

6 THE COURT: Yeah, we might have to call her back in the
7 morning. I try not to go too far beyond 5:00.

8 (WHEREUPON, break 4:55 p.m. to 5:07 p.m.)

9 THE COURT: I thought we needed to take up something,
10 the line of questions.

11 MR. DURANT: I think it was just a proffer, proffer the
12 testimony.

13 THE COURT: Yes, go ahead and ask the questions.

14 **DIRECT EXAMINATION (IC) - MR. KOZELSKI OF SUZANN CROMER:**

15 Q. Agent Cromer, on your supplement report dated
16 December 5th, 2011, your results were that Items 1
17 through 4 ---

18 THE COURT: I need you to speak up for me.

19 MR. KOZELSKI: Certainly.

20 Q. Your item -- Items 1 through 4 on this case came back
21 as a hit on IBIS related to another case?

22 A. They were found as a hit by Charleston County Sheriff's
23 Office IBIS Department.

24 Q. Meaning that the matching individual identifying
25 characteristics were found in both cases but fired from the

1 same gun?

2 A. That is correct. Items 1 through 4 in this case were
3 fired by several other cartridge cases in the -- in a
4 different lab number.

5 Q. Okay. And do you remember the incident date for that
6 specific lab number that it occurred?

7 A. No, sir, I don't.

8 Q. Okay. If I showed you a copy of your report would that
9 refresh your memory?

10 A. I have my report for this lab number in front of me.

11 Q. Uh-huh.

12 A. But it has this incident date on it, not the incident
13 that ---

14 Q. If I showed you a copy of your report from the incident
15 that you compared it to.

16 A. From L11 ---

17 Q. Yes.

18 A. One one ---

19 Q. Yes, if I showed you L11-11935.

20 A. That's correct. I would ---

21 Q. Would that refresh your memory?

22 A. Yes, it would.

23 (Pause to review.)

24 A. The incident date on the comparison case L11-11935 was
25 10/13/2011.

1 Q. Thank you.

2 MR. KOZELSKI: That's all, Your Honor.

3 THE COURT: What is the basis of the objection?

4 MR. DURANT: Relevance.

5 THE COURT: What fact or consequence does this
6 testimony make more or less probable?

7 MR. KOZELSKI: Your Honor, that he was not firing the
8 nine millimeter gun. That is not his gun. It is being
9 fired by somebody else while he is in jail.

10 THE COURT: I am still trying to figure out what fact
11 or consequence in this case that makes more or less probable
12 as to whether he shot a gun on that night.

13 MR. KOZELSKI: That is ---

14 THE COURT: They had ---

15 MR. KOZELSKI: They are claiming that this is his gun.
16 Guns ---

17 THE COURT: I haven't heard testimony to the effect. I
18 have heard that there are many different calibers of
19 casings.

20 MR. KOZELSKI: Yes.

21 THE COURT: I have not heard the State say any
22 particular gun belonged to your client, have they?

23 MR. KOZELSKI: I believe it's -- it has been said that
24 he was shooting a nine millimeter gun ---

25 THE COURT: It's been said that he had a gun. There

1 has been a description, but there has been no identification
2 of a caliber of gun, unless I missed something.

3 MR. KOZELSKI: Well ---

4 THE COURT: I heard the cashier testify about a small
5 gun. I have heard some other folk testify about him having
6 a gun in his hand. But I have not heard anybody identify
7 the caliber of the gun.

8 MR. KOZELSKI: Well, I think -- regardless it would
9 show that this particular gun was used on a different
10 occasion and it could rule out my client as a possible
11 suspect for that -- shooting that gun. And it is very
12 relevant in that regards.

13 THE COURT: I need to hear from the State in response
14 to this argument.

15 MR. DURANT: I think it would be relevant to show that
16 he was not involved in the October 13th of 2011 shooting for
17 sure if he was in jail at that time.

18 But it certainly is no proof that he was not involved
19 in the March 30th, 2011, shooting. Because he was not
20 apprehended right there. He was not apprehended until May
21 16th, six weeks later.

22 Those guns are the currency of the street, Your Honor.
23 There is no many -- no telling how many times that gun has
24 passed through hands before it was used again on October the
25 13th of 2011.

1 And just because that gun was used in a different crime
2 and a different location with unknown suspects has no
3 bearing whatsoever as to whether or not he was using a gun
4 at the Kangaroo on March 30th of 2011 even if it was the
5 same gun.

6 THE COURT: What gun are you all going to contend he
7 had and that he utilized in this event?

8 MR. DURANT: My contention is going to be that it is
9 more -- most likely that he had the nine millimeter based
10 upon the location of the shell casings in proximity of to
11 where he was firing the weapon.

12 THE COURT: What was the incident that occurred on
13 10/13/11?

14 MR. DURANT: What was it?

15 MR. KOZELSKI: It was surprisingly a similar situation
16 to this. It was a gun battle down I-26 in which there were
17 about fourteen of these nine millimeter casings found shot
18 at another car.

19 THE COURT: And we don't have any defendants in that
20 case?

21 MR. KOZELSKI: No, Your Honor.

22 MR. DURANT: No, Your Honor, nobody was ever arrested
23 nor identified as a suspect.

24 MR. KOZELSKI: And I am not planning on getting in --
25 anyway. And I think, Your Honor, if I may.

1 THE COURT: Uh-huh.

2 MR. KOZELSKI: It is a little disingenuous to say if
3 they were to catch somebody with this gun they wouldn't
4 prosecute them for this crime.

5 MR. DURANT: Absolutely wouldn't if they were captured
6 six months after the fact with that gun.

7 MR. KOZELSKI: Is that ---

8 MR. DURANT: That is proof of company.

9 THE COURT: I don't know what they would have done. I
10 am not clairvoyant. And that is really not the issue.

11 I asked that question because I wanted to know if he
12 knew the person that had the gun. I was just curious. If
13 it was any of the people that were alleged to have been in
14 that parking lot that night. That is the only reason I
15 asked that question.

16 MR. KOZELSKI: Yeah, we don't know.

17 THE COURT: And you -- I don't -- I am not at all sure
18 I would allow you to argue that it couldn't have been his
19 gun because somebody else used it in October of 2011.

20 MR. KOZELSKI: Well, I think that goes to the weight,
21 not the admissibility.

22 THE COURT: I don't know. I am going to have to think
23 about it. You are going to have to move on to your next
24 question.

25 MR. KOZELSKI: That's my last question, Your Honor.

1 THE COURT: Okay. Is there any redirect of the
2 witness?

3 MR. DURANT: Not at this time, Your Honor.

4 THE COURT: Okay. We will stand down for a few
5 moments. I need to think.

6 THE COURT: How long is your medical witness, Mr.
7 DuRant?

8 MR. DURANT: I am thinking five minutes, Your Honor.

9 THE COURT: Is this the doctor that removed the bullet?

10 MR. DURANT: This is the doctor that removed ---

11 THE COURT: How long is your cross-examination?

12 MS. PROCTOR: None.

13 THE COURT: Okay.

14 MS. PROCTOR: Wait.

15 THE COURT: She is still waiting -- or he is still
16 here?

17 MR. DURANT: Yes, she is still here.

18 THE COURT: Okay. We will try -- we will try to see if
19 we can ---

20 MR. DURANT: We can -- we can swap ---

21 THE COURT: We will try to see if we can do her today.

22 (Pause.)

23 THE COURT: I have thought about it. Since it is the
24 State's contention that the nine millimeter gun belonged to
25 the defendant and that he in fact discharged that particular

1 gun in the parking lot on that evening I am going to allow
2 defense counsel to question the witness regarding hits.

3 This incident occurred on March 30th of 2011.

4 MR. DURANT: Your Honor, you need to be aware if we are
5 going to tell them the background it also had hits before
6 this incident too.

7 MS. PROCTOR: I mean we can -- we can go into that if
8 we need. I just don't ---

9 THE COURT: It is up to you.

10 MR. DURANT: When he wasn't in jail.

11 THE COURT: But who did it -- but who did it hit back
12 to; did it tie into something ---

13 MR. DURANT: Just other incidents, shooting incidents
14 that, you know, where shell casings were recovered but no
15 gun was recovered and they -- and that is what IBIS is for.

16 That is all IBIS does is basically says that shell
17 casings from this scene match shell casings from that scene,
18 match shell casings from this scene.

19 THE COURT: And I think -- and before we -- y'all start
20 arguing again - because I have already heard argument - I am
21 going to allow him to ask the questions.

22 However, the things that you raise, Mr. DuRant, are
23 appropriately -- are appropriate on redirect to argue
24 weight, that that is the purpose of IBIS that -- is it
25 I-B-I-S -- what is -- what is that acronym?

1 MR. DURANT: Yes, IBIS.

2 THE COURT: I-B-I-S?

3 MR. DURANT: Yes, ma'am.

4 THE COURT: That -- you know, that the purpose for IBIS
5 is to identify -- but you know -- and then to -- I would
6 imagine an argument that you would explore that he -- you
7 know, he left the jurisdiction. He had -- had to be
8 recovered as a fugitive and we have no way of knowing what
9 happened to be gun in the meantime.

10 And that that, as you said, is the commerce of the
11 street, guns. And I think those are factual arguments that
12 you can make on both sides of the issue.

13 Now whether you bring up hits that happened prior to
14 this incident to that gun you would have to be able to tie
15 him to them in order for them to be admissible as prior bad
16 acts not the subject of a conviction.

17 And then I would have to have another hearing to
18 determine the admissibility of those. I don't think you can
19 just kind of raise those in that manner.

20 MR. KOZELSKI: Your Honor, the only reason we are not
21 talking about those is because we were never given that
22 material.

23 I had asked Detective Boyd for it, and we never got it
24 even though it was in his report. So we don't actually know
25 anything about that. And that's why I wasn't planning on

1 mentioning it.

2 THE COURT: Well, I have no way of knowing ---

3 MR. KOZELSKI: Right.

4 THE COURT: --- if he is tied to those other incidents
5 or not and where the gun was used. I have no clue.

6 THE COURT: All right. Are you ready?

7 MR. DURANT: Yes, ma'am.

8 THE COURT: Please bring in the jury.

9 (WHEREUPON, the jury returned to the courtroom July 16,
10 2013, at 5:22 p.m.)

11 THE COURT: Ladies and gentlemen, we will resume
12 cross-examination.

13 You may proceed.

14 MR. KOZELSKI: Thank you, Your Honor.

15 THE COURT: You are welcome.

16 **CROSS-EXAMINATION - MR. KOZELSKI OF MS. CROMER:**

17 A. Agent Cromer, we were talking about your supplemental
18 report in this case dated December 5th, 2011, before the
19 jury went out.

20 I want to talk to you a little bit about those results
21 that you had. In that report you found that Items 1 through
22 4, that is the Blazer nine millimeter shell casings, I think
23 7, 8, 13 -- no, 8, 13, 12 and 11 that you have up here.

24 A. Yes, sir.

25 Q. These Blazer nine millimeters.

1 A. Uh-huh.

2 Q. Those were microscopically compared to 14 other nine
3 millimeter Luger caliber cases in a subsequent case?

4 A. Yes, sir, they were.

5 Q. Okay. And so it was a match on IBIS?

6 A. We don't call it a match on IBIS.

7 Q. Okay.

8 A. We call it a potential hit. All it does is show us
9 something that looks good and we say it is a potential hit.
10 So then we actually have to have the evidence submitted to
11 us so I can do the microscopic comparison.

12 Q. Okay. And then you found that it was the same firearm?

13 A. Yes, I do.

14 Q. Okay. And do you remember the incident date for that
15 lab report?

16 A. I believe it was 10/13/2011. But I would need to see
17 the report again to just double check.

18 MR. KOZELSKI: Permission to approach.

19 (Document presented to witness.)

20 A. Yes, 10/13/2011.

21 MR. KOZELSKI: Thank you. No further questions.

22 THE COURT: Any redirect?

23 **REDIRECT EXAMINATION - MR. DURANT OF SUZANN CROMER:**

24 Q. So the gun used in the shooting at the Kangaroo was
25 used in a separate crime unrelated to this one six months

1 later?

2 A. That's -- this ---

3 Q. Maybe even over six months?

4 A. That's correct.

5 MR. KOZELSKI: Objection, Your Honor.

6 THE COURT: Basis?

7 MR. KOZELSKI: Speculation.

8 THE COURT: Please repeat the question.

9 MR. KOZELSKI: Speculation.

10 THE COURT: I didn't ask for you to repeat the
11 objection. I didn't ask for argument. I asked for him to
12 repeat the question.

13 MR. KOZELSKI: I'm sorry, Your Honor.

14 THE COURT: Y'all have to talk a little louder because
15 I am having real difficulty. Really some of it sounds like
16 mumbling. I apologize. I know I sound like my momma. But
17 I need you to speak up a little bit for me.

18 BY MR. DURANT:

19 Q. So the weapon, in your opinion, the weapon that was
20 used at the Kangaroo which fired those Blazer nine
21 millimeter rounds, the shell casings on March the 30th of
22 2011, was used in an unrelated crime on October the 13th of
23 2011?

24 A That's correct.

25 Q Okay. And let's see. That is April, May, June, July,

1 August, September, October, at least six and a half months;
2 is that fair to say; is that correct?

3 A. That's -- that's correct.

4 Q. Okay. Certainly no indication of who was using it on
5 March the 30th of 2011?

6 A. That's correct.

7 Q. Guns are the currency of the street, aren't they?

8 A. Yes, sir.

9 Q. Hot guns going around all the time?

10 MR. KOZELSKI: Objection, Your Honor.

11 THE COURT: Basis?

12 MR. KOZELSKI: Counsel is testifying.

13 THE COURT: You need to stand and speak addressing the
14 court. What is the basis of your objection?

15 MR. KOZELSKI: Counsel is testifying.

16 THE COURT: You need to rephrase the question.

17 BY MR. DURANT:

18 Q. In your experience are hot guns the currency of the
19 street?

20 A. Yes, sir.

21 Q. In your experience is it normal for someone that has
22 been involved in a crime where they have used a potential
23 firearm to keep that firearm?

24 A. No, sir, sometimes they are passed around.

25 Q. And sold?

1 A. Yes, sir.

2 Q. Or given away?

3 A. Yes, sir.

4 Q. Or thrown away?

5 A. Yes, sir.

6 Q. Thank you.

7 THE COURT: Any objection to the witness being excused,
8 from the State?

9 MR. DURANT: No, Your Honor.

10 THE COURT: From the defense?

11 MR. KOZELSKI: No, Your Honor.

12 THE COURT: Ma'am, you are excused.

13 THE WITNESS: Thank you, Your Honor.

14 MR. DURANT: Thank you, Ms. Cromer. I appreciate it.
15 Your Honor, if you ---

16 THE COURT: Give me one second. Madam Forelady, ladies
17 and gentlemen, we have one last brief witness that probably
18 we estimate will take about ten minutes so that she would
19 not have to return on tomorrow.

20 Would that pose any significant scheduling conflict for
21 any of you? If so, please raise your right hand. Please
22 don't feel bashful because you are here at our -- you know,
23 basically command. And I don't want to inconvenience
24 anyone.

25 So if that is going to pose a significant conflict for

1 anyone, I need you to speak up for me. Otherwise, we will
2 hear that witness.

3 Does anybody have any scheduling conflicts?

4 (No response.)

5 THE COURT: Okay. We appreciate you accommodating us.
6 You may call your next witness.

7 MR. DURANT: Thank you, Your Honor.

8 THE COURT: You are welcome.

9 MR. DURANT: The State will call Dr. Ellen Riemer.

10 (WHEREUPON, the witness was duly sworn.)

11 THE CLERK: If you would please state your full name
12 and spell your last name.

13 THE WITNESS: It is Ellen Riemer, R-I-E-M-E-R.

14 THE COURT: You may proceed.

15 MR. DURANT: Thank you, Your Honor.

16 THE COURT: You are welcome.

17 (ELLEN RIEMER, having first been
18 duly sworn, testified as follows:)

19 **DIRECT EXAMINATION - MR. DURANT OF ELLEN RIEMER:**

20 Q. You are a medical doctor; is that correct?

21 A. Yes.

22 Q. And you work at the Medical University of South
23 Carolina?

24 A. Yes, I do.

25 Q. In that capacity did you have an occasion to remove a

1 bullet from the right thigh of an Antwan Wilson on March the
2 30th of 2011?

3 A. Yes.

4 Q. And I hand you what has previously been marked as
5 State's Exhibit Number 92. That would be the bullet that
6 was removed from Mr. Wilson's right thigh; is that correct?

7 A. Yes.

8 Q. Okay. And you in turn turned this over to the
9 Charleston County Sheriff's Office; is that correct?

10 A. That's correct.

11 Q. And if you would, where was the entrance wound of
12 that -- that bullet wound to his right thigh?

13 A. The entrance was on the medial back of the right thigh.
14 So in other words, on the kind of inside of the upper right
15 thigh toward the back but on the inside.

16 Q. Okay. So -- so right thigh?

17 A. Yes.

18 Q. And when you say medial are you talking about this side
19 (pointing) ---

20 A. Yeah ---

21 Q. --- or this side (pointing) or ---

22 A. It is kind of ---

23 Q. --- this side?

24 A. --- between the legs on the inside of the right thigh
25 on the upper part of the thigh.

1 Q. Okay. The side closer toward the crotch?

2 A. Yes.

3 Q. Okay. And what was the trajectory of that -- of that
4 particular gunshot?

5 A. That one went from the decedent's left side to his
6 right side ---

7 THE COURT: Counsel, please approach for me. Madam
8 Forelady, ladies and gentlemen, I have a very brief matter
9 of law I need to take up with the attorneys.

10 And when I say brief I mean you are not going down the
11 hallway. I just need you all to step out into the hall with
12 the bailiff.

13 Please leave your notepads in your seats and as soon as
14 I am done we are going to bring you right back in.

15 (WHEREUPON, jury exited the courtroom July 16, 2013, at
16 5:32 p.m.)

17 THE COURT: Doctor, if you could please refer to Mr.
18 Antwan as just either by his name but not refer to him as
19 decedent.

20 THE WITNESS: That was an error.

21 THE COURT: And I know it was probably ---

22 THE WITNESS: Okay.

23 THE COURT: --- that is normally what you would say.

24 THE WITNESS: Yes. Right.

25 THE COURT: And so ---

26

1 THE WITNESS: I will just say ---

2 THE COURT: Yeah, because ---

3 THE WITNESS: --- individual.

4 THE COURT: The evidentiary the way ---

5 THE WITNESS: I understand.

6 THE COURT: --- that they have agreed to try it ---

7 THE WITNESS: I didn't even realize I said that.

8 THE COURT: Yeah. That's okay. I figured it was the
9 slip of the tongue.

10 Now that we've cleared that up is there any problem
11 with us proceeding in that manner, from the State?

12 MS. PROCTOR: Your Honor, that is twice that it has
13 happened.

14 THE COURT: Twice that what has happened?

15 MS. PROCTOR: That we said -- we already said autopsy.
16 The last witness ---

17 THE COURT: I gave you an opportunity for a curative
18 instruction ---

19 MS. PROCTOR: Right.

20 THE COURT: --- and you refused it. So ---

21 MS. PROCTOR: And now we have the second one. So at
22 this time I will make a motion for a mistrial.

23 THE COURT: It is denied. There is no basis for a
24 mistrial. If you would like a curative instruction I will
25 give one, as I gave you the option for a curative

26

1 instruction on autopsy.

2 I don't think it was deliberate. It was ---

3 MS. PROCTOR: No, I agree.

4 THE COURT: These witnesses in their capacity this is
5 what they normally testify to, and I think it was an
6 inadvertent slip of the tongue.

7 MS. PROCTOR: No, I agree.

8 THE COURT: And I gave you the option in those
9 instances, especially something of that slight natures, are
10 curative instruction. It is not for a mistrial.

11 So if you would like a curative instruction in this
12 instance I will give you -- I don't know that you
13 necessarily need one. Because you have a stipulation that
14 he died of unrelated causes. So the jury knows he is dead.
15 And I don't mean to sound insensitive by saying it that
16 flatly. But the jury knows that he has passed away.

17 So I really don't know that it is of any prejudicial
18 nature. I just want -- when I heard her say it I just
19 wanted to make -- I knew that -- what the parameters were,
20 and I didn't want it said again.

21 But I don't -- if you want a curative instruction, I
22 will give one. I don't know that it is necessary, because
23 he is a decedent. He is deceased. He is no longer with us.

24 MS. PROCTOR: Okay.

25 THE COURT: But if you would like one, I will give you

1 one.

2 MS. PROCTOR: I don't.

3 THE COURT: Okay.

4 (WHEREUPON, jury returned to the courtroom July 16,
5 2013, at 5:34 p.m.)

6 THE COURT: You may proceed.

7 MR. DURANT: Thank you, Your Honor.

8 THE COURT: I appreciate your patience, ladies and
9 gentlemen.

10 **CONTINUE DIRECT EXAMINATION - MR. DURANT OF ELLEN RIEMER:**

11 Q. I think -- I think you were -- had been talking about
12 or we had been talking about trajectory. You said the
13 entrance wound was on the inside of his right thigh. And
14 where did the bullet come to rest?

15 A. On behind the right femur which is the right thigh
16 bone.

17 Q. And I hand you what has previously been marked as
18 State's Exhibit Number 65.

19 MR. DURANT: Which I offer, Your Honor, I believe
20 without objection.

21 THE COURT: What number is that again?

22 MR. DURANT: Sixty-five.

23 THE COURT: Any objection?

24 MS. PROCTOR: No, Your Honor.

25 THE COURT: Number 65 marked and admitted without

1 objection.

2 (WHEREUPON, State's Exhibit Number 65, photo -
3 autopsy - x-ray of hips, was marked for identification.)

4 (WHEREUPON, State's Exhibit Number 65 was admitted into
5 evidence.)

6 BY MR. DURANT:

7 Q. And I am handing you State's Exhibit Number 65. Does
8 that accurately depict where the bullet came to rest in his
9 thigh?

10 A. Yes.

11 Q. Okay. So and the entrance -- so if he was -- if he was
12 standing as I am to you he would have been shot from this
13 side (motioning); is that correct?

14 A. From left to right.

15 Q. Okay. From my left to my right?

16 A. Correct.

17 Q. Okay. And I believe it was also a little bit upward or
18 downward did you say?

19 A. Slightly upward.

20 Q. Okay.

21 MS. PROCTER: We have no questions.

22 MR. DURANT: Your Honor, I would ask that the doctor be
23 excused.

24 THE COURT: Any exception from the defense?

25 MS. PROCTOR: No, Your Honor.

1 THE COURT: Doctor, you are excused.

2 THE WITNESS: Thank you. I have this exhibit.

3 THE COURT: You can just leave it right there. We will
4 take care of that.

5 MR. DURANT: You can just leave it right there. Thank
6 you very much, Doctor. Appreciate you coming. Sorry it
7 took so long.

8 THE WITNESS: Okay.

9 MR. DURANT: Your Honor, at this time the State would
10 offer to proffer the ---

11 THE COURT: You may proceed.

12 MR. DURANT: --- the stipulation to the jury that
13 counsel for the defense and the State have agreed to and
14 which has been marked as Joint Exhibit Number 1.

15 The parties -- and there are two items. Number one,
16 the parties agree that no one from the gold Impala shot at
17 the defendant, Domoneik Washington, at the Kangaroo on the
18 early morning of March the 30th of 2011.

19 Number two, the parties agree that Antwan Wilson died
20 from causes unrelated to being shot at the Kangaroo and is
21 not available to testify.

22 THE COURT: Madam Forelady -- actually, Mr. DuRant
23 and -- if y'all could approach for me.

24 (WHEREUPON, bench conference was had at 5:37 p.m. in
25 camera regarding scheduling.)

1 (WHEREUPON, end of bench conference.)

2 THE COURT: The State may proceed.

3 MR. DURANT: Your Honor, the State rests.

4 THE COURT: Madam Forelady, ladies and gentlemen, we
5 are going to take advantage of this break in testimony to
6 take our evening recess.

7 We will resume in the morning at 10 o'clock. There are
8 some matters of law that I need to take up with the
9 attorneys that will probably take us about 30 minutes before
10 we resume.

11 However, I anticipate that we will be having closing
12 argument and instruction when you return in the morning.
13 There might be some slight variation in that schedule, but
14 probably not very much.

15 During this break it is absolutely essential that you
16 have no discussion about this case among yourselves or with
17 anyone else, that you not do any independent research of any
18 type on the Internet or otherwise, and that you not read,
19 watch, or listen to any media accounts about this case.

20 Also, when you return to the courthouse please do not
21 have any contact with anyone in or about the courthouse.
22 Again, we would not want an innocent conversation observed
23 and misinterpreted.

24 If you would leave your notepads in your seats we will
25 secure them during the recess. And please don't make any

1 comments regarding your jury service on any social
2 networking sites.

3 We will see you in the morning at 10:00. Have a good
4 evening. And we appreciate you all letting us keep you past
5 5:00.

6 (WHEREUPON, the jury exits the courtroom July 16, 2013,
7 at 5:39 p.m.)

8 THE COURT: Okay. We have had a long day. So I think
9 it is better that we use our time in the morning. However,
10 what I think I may do in the interest of time is reserve
11 motions. And we will hear those in the morning.

12 But I am going to go ahead and question Mr. Washington
13 about his right to testify so that he can discuss that this
14 evening or first thing in the morning with his lawyers if he
15 has any further desire to talk with them.

16 Because my understanding you don't plan to call any
17 witnesses, correct?

18 MS. PROCTOR: That is ---

19 THE COURT: Other than if he were to testify; is that
20 correct?

21 MS. PROCTER: That is correct, Your Honor.

22 THE COURT: And his only record is for simple
23 possession of marijuana in 2005 and resisting arrest in 2005
24 and a simple possession of marijuana in 2006; is that
25 accurate?

1 MS. PROCTOR: That is correct.

2 THE COURT: None of which could be used against him for
3 impeachment; are we all in agreement on that?

4 MS. PROCTOR: Yes.

5 MR. KOZELSKI: Yes, sir -- yes, Your Honor.

6 THE COURT: Sir, please stand for me and raise your
7 right hand to be sworn.

8 (WHEREUPON, Domoneik Washington was duly sworn.)

9 THE COURT: You can put your right hand down. Sir,
10 state your full name for the record.

11 MR. WASHINGTON: Domoneik Antwan Washington.

12 THE COURT: I need you to speak up a little bit more
13 for me. I don't know if you heard me tell the lawyers,
14 there is a fan directly over my head. It really affects my
15 ability to hear. I don't mean to sound like I am hard of
16 hearing. But it is like a constant blowing noise. So I
17 need you to speak up.

18 And the court reporter also has one over her head. So
19 sometimes it makes it difficult for us to hear. So if you
20 could speak up as loud as you can for me I would appreciate
21 it.

22 **EXAMINATION - THE COURT OF DOMONEIK WASHINGTON:**

23 State your full name for the record.

24 MR. WASHINGTON: Domoneik Antwan Washington.

25 THE COURT: Mr. Washington, how old are you?

1 MR. WASHINGTON: Twenty-seven.

2 THE COURT: How far have you gone in school?

3 MR. WASHINGTON: Eleventh.

4 THE COURT: We have now reached the stage of the trial
5 where you may present your defense. Included in that is
6 your right to testify if you so desire.

7 But before you make any decision to testify there are
8 certain rights that I need to explain to you. Do you
9 understand?

10 MR. WASHINGTON: Yes, ma'am.

11 THE COURT: Do you understand that if there is anything
12 I say that you don't understand or that you need me to
13 explain in more detail, that you need to let me know that?

14 MR. WASHINGTON: Yes, ma'am.

15 THE COURT: Okay. Sir, we have now reached the stage
16 of the trial where you may present your defense. You have
17 the right to claim the protections given to you by the Fifth
18 Amendment to the Constitution of the United States.

19 This amendment states in part that no person shall be
20 compelled in any criminal case to be a witness against
21 himself.

22 This means that you cannot be required to testify in
23 this case. You have the right to testify; however, no one
24 can make you testify.

25 This is a personal right, and the only person that can

1 waive it is you. If you decide to testify you will be
2 subject to the same rules that govern other witnesses and
3 you may be examined and cross-examined on any relevant issue
4 in this case.

5 In addition, if you have any convictions involving
6 dishonesty or false statement or for crimes punishable by
7 imprisonment for more than one year and the court determines
8 that the probative value of admitting the evidence outweighs
9 its prejudicial effect to you the solicitor will be able to
10 introduce your record to attack your credibility.

11 But you understand that you have what we would call --
12 you don't have any impeachable defenses -- I mean crimes.
13 You understand that, correct; and I assume your lawyers have
14 already gone over that with you?

15 MR. WASHINGTON: Yes, ma'am.

16 THE COURT: Sir, if you decide to testify, this
17 decision on your part must be made freely ---

18 (Door briefly opened.)

19 Yeah, make sure none of the jurors are in the hall --
20 voluntarily and intelligently with knowledge of the
21 protections given to you by the Fifth Amendment and the
22 consequences of your decision to testify.

23 If you decide not to testify, I will instruct the jury
24 that they cannot give that fact any weight or consideration
25 whatsoever and there is to be absolutely no prejudice to you

1 because you did not testify.

2 In fact, I will instruct them that you have no burden
3 of proof, that you don't have to testify and the fact that
4 you did not testify could not be discussed in any manner
5 whatsoever in the deliberative process.

6 Sir, whether or not you decide to testify is a matter
7 left entirely up to you. You can speak with your family
8 members, your friends, your attorneys or anyone else. But
9 the final decision is yours.

10 Do you understand your rights as I have just explained
11 them to you?

12 MR. WASHINGTON: Yes, ma'am.

13 THE COURT: Do you need -- do you have any questions
14 about what I have just explained to you?

15 MR. WASHINGTON: No, ma'am.

16 THE COURT: I am going to give you -- I assume you have
17 already discussed with your lawyers whether you should or
18 should not testify, correct?

19 MR. WASHINGTON: Yes, ma'am.

20 THE COURT: And I am going to give you some time
21 overnight and then the morning to further talk with them.
22 Is that your desire?

23 MR. WASHINGTON: Yes, ma'am.

24 THE COURT: Okay. And then in the morning I will
25 resume questioning you. Do you understand?

1 MR. WASHINGTON: Yes, ma'am.

2 THE COURT: Okay. Now are there any -- you can take
3 your seat.

4 Does the State or the defense have any requests for
5 instructions that I need to look at over the evening?
6 Because I am not going to entertain any in the morning
7 because I am going to do my charge before I leave tonight.

8 And so I need the ability to look at anything before --
9 we will have a charge conference. I am not going to skip
10 over that.

11 But if there is something that requires me to read,
12 look up, or research I would like to be able to do that
13 tonight before I leave instead of having to do that in the
14 morning when I get here.

15 Is there anything out of the ordinary y'all plan to ask
16 for?

17 MR. DURANT: Are you -- are you going to be charging
18 lesser included, Your Honor?

19 THE COURT: I don't know if they have asked for any.
20 Are there any lesser included of attempted murder?

21 MR. DURANT: I think there could certainly -- yeah,
22 there's two, A-B-H-A-N and ---

23 THE COURT: I don't know, the new statute tends ---

24 MR. DURANT: --- and assault and battery third.

25 THE COURT: --- to enumerate what is considered a

1 lesser included. So does that statute say what the lesser
2 includeds of attempted murder are?

3 MR. DURANT: I think it says that all of them are. I
4 am not sure about attempted murder.

5 THE COURT: Yeah, because my experience ---

6 MR. DURANT: I know all the ---

7 THE COURT: --- of late with that statute is some of
8 it -- some of it -- parts of it enumerates what the lesser
9 includeds are, and some of it it does not. So I would have
10 to look at it again to see.

11 I don't know if they are asking for a lesser included.
12 Are y'all asking for a lesser included?

13 MR. DURANT: I think -- I think -- I think the issue
14 could be. Because basically the -- the attempted murder is
15 a specific intent of crime.

16 So a juror could certainly decide that there was no
17 specific intent to kill but might find that there was
18 assault and battery of a high and aggravated nature because
19 of ---

20 THE COURT: Well, I -- I am -- I am going to have a
21 charge conference. So I don't want to get into argument.

22 But I guess my question becomes -- first of all, I need
23 to look at the statute and see if under omnibus it -- or --
24 it says what the lesser includeds are. Which I am going
25 right now.

1 And then let's see here. Malice is --- and then I
2 would like to know if they are requesting any lesser
3 includeds. Are y'all requesting any less included ---

4 MS. PROCTOR: Your Honor, that ---

5 THE COURT: --- offenses be instructed?

6 MS. PROCTOR: That is what I am trying to explain to
7 him now what exactly they would be.

8 (Mr. Washington confers with counsel.)

9 THE COURT: A specific intent to kill is not an element
10 of attempted murder. I just wanted -- because you said a
11 specific intent crime. While it requires malice it does not
12 require a specific intent to kill.

13 MR. DURANT: Is that under the new statute, Your Honor;
14 because I didn't really know that ---

15 MS. PROCTOR: I know that -- it is so new that there
16 aren't many cases on this.

17 THE COURT: Yeah, but we have an instruction on it that
18 comes from the statute. And a specific intent to kill is
19 not an element of attempted murder.

20 MR. DURANT: Okay.

21 MR. DURANT: But there are no lesser includeds?

22 THE COURT: The statute does not enumerate any, so I
23 would have to employ the elements test to see. And, you
24 know, the elements test is whether all of the elements of
25 the lesser are included in the greater.

1 The elements of attempted armed -- I mean of attempted
2 murder are that -- the State has to prove beyond a
3 reasonable doubt that the defendant attempted to kill
4 another person with malice or forethought either express or
5 implied.

6 Of course we know the definition of malice which is
7 hatred, ill will or hostility. It is the intentional doing
8 of a wrongful act without just cause or excuse and with an
9 intent to inflict an injury or under circumstances that the
10 law will infer an evil intent.

11 Malice of forethought does not require that malice
12 exists for any particular time before the act is committed,
13 but malice must exist in the mind of the defendant just
14 before and at the time the act is committed; therefore,
15 there must be a combination of the previous evil intent and
16 the act.

17 Malice may be express or inferred. Of course those
18 terms do not mean different kinds of malice but merely the
19 manner in which they are shown to exist by direct evidence
20 or by inference from the facts and circumstances which are
21 proven.

22 Express malice is shown when a person speaks words
23 which express hatred or ill will for another or when the
24 person prepared beforehand to do the act which was later
25 accomplished, with the traditional example of a person lying

1 in wait for another.

2 Malice may be inferred from context showing a total
3 disregard for human life.

4 Now are you all planning to assert any defenses?
5 Because originally we heard some talk about self-defense.
6 But I haven't heard any testimony about self-defense.

7 A specific intent to kill is not an element of
8 attempted murder, but there must be a general intent to
9 commit serious bodily injury.

10 Intent means intending the result which actually
11 occurs, not accidentally or involuntarily. Intent may be
12 shown by acts and conduct of the defendant and other
13 circumstances from which you may naturally and reasonably
14 infer intent.

15 Evidence of the character of the act, the character of
16 the instrument used, the manner in which it was used, the
17 purpose to be accomplished, and the resulting wounds or
18 injuries may be considered in determining the intent with
19 which the act was committed.

20 Intent may be also inferred when it is demonstrated
21 that the defendant voluntarily and willfully commits an
22 act, the natural tendency of which is to destroy another's
23 life.

24 So then you would have to look at the elements test and
25 determine whether ABHAN has all of the elements, whether

1 attempted murder has all of the elements of ABHAN.

2 Because the greater offense has to have all of the
3 elements of the lesser offense. There are a lot of things
4 by common law that we used as lesser included. But we
5 can't -- with omnibus I think you have to strictly use the
6 elements test. I don't think you can just rely -- now that
7 the law has completely changed.

8 MR. DURANT: Yeah, I didn't realize -- quite frankly
9 this is the first attempted murder case I have tried since
10 they have changed the statute.

11 THE COURT: Yeah, the statute pretty much lays it out
12 for you.

13 MR. DURANT: And ---

14 MS. PROCTOR: So are you saying

15 THE COURT: Yeah, under -- under -- under 16-3600
16 assault and battery of a high and aggravated nature is a
17 lesser included of attempted murder as well as assault and
18 battery -- no, that is not what I need. As well as assault
19 and battery in the first degree.

20 (Pause.)

21 And assault and battery second degree and assault and
22 battery third degree.

23 So basically what they did was they codified assault
24 and battery with intent to kill as attempted murder. They
25 are just -- knocked everything back in under omnibus.

1 So are there going to be any requests for lesser
2 included offenses -- I guess we could really since it has
3 been codified there is no mystery to it. I don't really
4 have to do any real hard thinking about that. I mean ---

5 MS. PROCTOR: He is still deciding. He doesn't
6 understand, and I am trying to explain the new law so.

7 THE COURT: Are there any requests to charge that you
8 all need to submit to me before we adjourn for the evening,
9 from the State?

10 MR. DURANT: You know obviously at some point before we
11 argue, Your Honor, I need to know if we are going -- going
12 to be lesser included ---

13 THE COURT: Yeah, I'm just trying ---

14 MR. DURANT: --- charge.

15 THE COURT: Yeah.

16 MR. DURANT: And obviously I would like to know whether
17 or not the court was inclined to charge self-defense,
18 because I ---

19 THE COURT: There has been no testimony of
20 self-defense.

21 MR. DURANT: There has been no testimony that would
22 warrant ---

23 THE COURT: No statements ---

24 MR. DURANT: --- the charge.

25 THE COURT: --- or otherwise have been sub- -- so I

1 assume they are -- they have abandoned that.

2 MS. PROCTOR: Your Honor, if he is charged lesser
3 includeds would they be ABHAN, assault and battery first,
4 second, first ---

5 THE COURT: It would be whatever -- however the statute
6 enumerates it.

7 MS. PROCTOR: Because I thought that is what you just
8 were reading.

9 THE COURT: It says that all of them are lesser
10 includeds. But they would still have to be factually
11 supported by the record. I mean I would have to still look
12 at the elements of each one of those and see if the record
13 supports it.

14 MS. PROCTOR: We would ask for the -- we would ask for
15 the lesser included that apply.

16 (WHEREUPON, a restroom break was taken at 5:58 p.m. to
17 6:03 p.m.)

18 THE COURT: Let's see here. Assault and battery of a
19 high and aggravated nature has been codified 16-3600B which
20 is a person commits the offense of assault and battery of a
21 high and aggravated nature if the person unlawfully injures
22 another person and great bodily injury to another person
23 results or the act is accompanied by means likely to produce
24 death or great bodily injury.

25 Great bodily injury means bodily injury which causes a

1 substantial risk of death or which causes serious permanent
2 disfigurement or protracted loss of impairment of the
3 function of a bodily member or organ.

4 Assault and battery first degree is 16-3-600C. A
5 person commits the offense of assault and battery in the
6 first degree if the person unlawfully injures another person
7 and the act either involves nonconsensual touching of the
8 private parts of an adult either under or above clothing and
9 with lewd and lascivious intent or occurred during the
10 commission of a robbery, burglary, kidnapping or theft. And
11 then it defines private parts.

12 A person may also commit the offense of an assault and
13 battery in the first degree if the person unlawfully offers
14 or attempts to injure another person with the present
15 ability to do so and the act either is accomplished by means
16 likely to produce death or great bodily injury or occurred
17 during the commission of a robbery, burglary, kidnapping or
18 theft. And then it defines great bodily injury.

19 So the only part of that statute that would apply
20 factually to this case is a person who offers or attempts
21 to -- is the second part of the statute. Because the first
22 part doesn't apply. Because that is really basically lewd
23 act. During a robbery, burglary, kidnapping and theft.

24 The second part deals with offering to attempt -- offer
25 or attempt to injure another person with the present ability

1 to do so. And it is accomplished by means likely to produce
2 death or great bodily injury.

3 The rest of that would not be applicable, occurred
4 during the commission of a robbery, burglary, kidnapping or
5 theft. And then defining great bodily injury.

6 Assault and battery second which is Subsection D, a
7 person commits the offense of assault and battery in the
8 second degree if the person unlawfully injures another
9 person or offers or attempts to injure another person with
10 the present ability to do so and either moderate bodily
11 injury to another person results or moderate bodily injury
12 to another person could have resulted.

13 And then it deals with a nonconsensual touching which
14 would not be applicable. And then it defines moderate
15 bodily injury means physical injury requiring treatment to
16 an organ system of the body other than the skin, muscles and
17 connective tissues of the body except when there is
18 penetration of the skin, muscles and connective tissues that
19 require surgical repair of a complex nature or when
20 treatment of the injuries requires the use of regional or
21 general anesthesia. Private parts means -- and then it goes
22 into that.

23 So I am really not certain whether assault and battery
24 second would apply because it deals with moderate injury.

25 And then it defines for us what moderate injury means,

1 which basically excludes Mr. Wilson because clearly if he
2 had survived this he would have had to undergone general
3 anesthesia for the removal of the bullet ---

4 MS. PROCTOR: Well ---

5 THE COURT: --- or for the repair of the bullet. And
6 it clearly says where it has to go -- if it involves
7 connective tissue, etc., etc.

8 It can't be a penetration in other words for the
9 statute to apply. Assault and battery second. Injures
10 another person. Moderate bodily injury or moderate bodily
11 injury.

12 And it says moderate bodily injury is not an injury
13 where there is penetration of the skin, muscles and
14 connective tissues that requires surgical repair of a
15 complex nature or when treatment of the injuries requires
16 the use of regional or general anesthesia.

17 And if he had survived, clearly he would have needed
18 that.

19 MS. PROCTOR: Well, Mr. Wittrell still has his bullet.
20 And maybe he wouldn't have wanted it out.

21 THE COURT: Well, Mr. Wittrell says that his ---

22 MS. PROCTOR: He still has his in there. So maybe
23 Mr. ---

24 THE COURT: Mr. Wittrell's testimony is that your
25 client shot at him, not that any of the bullets hit him.

1 MS. PROCTOR: No, I know that. But I mean maybe ---

2 THE COURT: His testimony is that somebody else in
3 another vehicle shot him who he can't identify.

4 MS. PROCTOR: I am just saying that maybe just
5 because it goes into your skin doesn't mean you're taking --
6 getting ---

7 THE COURT: His ---

8 MS. PROCTOR: --- the bullet out.

9 THE COURT: He clearly was in a hospital, and I am sure
10 they used general anesthesia when they were poking around to
11 see what was going on with that bullet.

12 MS. PROCTOR: I think he was dead.

13 THE COURT: Oh, Mr. -- am I getting the people mixed
14 up; Mr. ---

15 MS. PROCTOR: No, I am saying ---

16 THE COURT: --- Wittrell is alive.

17 MS. PROCTOR: Mr. Wittrell is alive.

18 THE COURT: Yeah.

19 MS. PROCTOR: But he wanted -- his -- his bullet was
20 still in. I have another client in jail who still was shot
21 with a bullet and ---

22 THE COURT: Yeah, but when they poke around to see what
23 is going on they put you under general anesthesia. That --
24 it cannot be penetra- -- whether it is still in there or not
25 is not the issue.

1 Moderate means above skin. The statute is very clear.
2 There is nothing ambiguous about it. It says moderate
3 bodily injury means physical injury requiring treatment to
4 an organ system of the body other than the skin, muscles and
5 connective tissues of the body except when there is
6 penetration of the skin, muscles and connective tissue that
7 require surgical repair of a complex nature or when the
8 treatment of the injuries require the use of regional or
9 general anesthesia.

10 I am hard-pressed of that being applicable. Because
11 clearly it does not come within the definition of moderate
12 bodily injury.

13 Moderate bodily injury sounds like if somebody beats
14 you up and you need to get treatment. Because what they
15 are -- the treatment they are administering to you doesn't
16 require -- you are getting treatment to the body, to the
17 organ systems of the body, other than your skin, muscles and
18 connective tissue.

19 I don't know. It is an interesting definition. But I
20 think clearly there is an exclusion that would exclude
21 shooting.

22 And third degree which is a person commits the offense
23 of assault and battery in the third degree if the person
24 unlawfully injures another person or offers or attempts to
25 injure another person with a present ability to do so.

1 So I think third degree would -- that is basically
2 simple assault and battery. I think third degree probably
3 would apply. Second degree would not apply. Some portion
4 of first degree would apply. And ABHAN would apply.

5 So that would be 16-3-600B which is ABHAN, 16-3-600C
6 which is assault and battery first degree. Although
7 Subsection 1 of the statute would be inapplicable.

8 Subsection 2 would be applicable only to the extent
9 that it deals with death or great bodily injury. The
10 remaining part of that does not apply, which is occurred
11 during the commission of a robbery, burglary, or theft.

12 And then assault and battery second would not apply.
13 And then assault and battery third would apply. And that
14 second is 16-3-600D. And third is 16-3-600E.

15 Is there anything that I need to think about this
16 evening that y'all need me to think about in terms of a
17 charge conference?

18 MR. DURANT: Your Honor, my head already hurts just
19 from having to listen to that.

20 THE COURT: I'm sorry?

21 MR. DURANT: I said my head already hurts ---

22 THE COURT: My head is hurting too. And I am hungry.

23 MS. PROCTOR: Your Honor, so you were saying third --
24 can be third, first ---

25 THE COURT: And I think we are straining with third.

1 Because third is simple assault and battery which would
2 really then negate the use of a gun altogether.

3 Simple assault and battery is a threat of an assault
4 and carrying through with it with a battery. That could be
5 your fist. It could be a threat, say I am going to hit you
6 and then I act like I am going to hit you. That is an
7 assault and battery.

8 I mean I am hard-pressed on that. But I am willing to
9 make a concession and charge assault and battery third.

10 But I don't think second applies at all. Because it --
11 because it defines moderate injury. Clearly these are not
12 moderate injuries. Based on the definition of the statute.

13 So I need to know if there is anything -- are you all
14 requesting any of these lesser includeds, Ms. Proctor?

15 MS. PROCTOR: Yes, Your Honor.

16 THE COURT: Okay. And does the State have any
17 opposition to that that I need to think about?

18 MR. DURANT: I have an opposition to assault and
19 battery third degree, Your Honor.

20 THE COURT: Okay.

21 MS. PROCTOR: I think this is clearly not ---

22 THE COURT: I don't think simply assault and battery
23 applies in this case either. But I will think about it over
24 the evening.

25 MR. DURANT: It is clearly not a simple assault.

1 THE COURT: Is there any other request to charge that
2 would be out of the ordinary that I need to look out -- look
3 at this evening before I leave the office that y'all need to
4 make me aware of?

5 Because I don't like coming to court at 9:30 and having
6 stuff put in front of me that I have to study. That is not
7 fair to me, and that is not fair to y'all. And it is
8 certainly not fair to the jury.

9 MR. DURANT: The only -- the only thing that I might
10 bring up -- and once again -- but it depends on what they
11 argue, is accomplice liability. The hand of one, the hand
12 of all.

13 MS. PROCTOR: What?

14 THE COURT: What evidence is there of accomplice
15 liability?

16 MR. DURANT: Well, Zandie Trusdale basically
17 indicated -- basically indicated that the four of them
18 arrived together, James Washington, Domoneik Washington,
19 Javon Richardson, Ishmel Lemon, and also said that James
20 Washington was the one that started shooting by shooting up
21 in the air.

22 And so from that testimony there is some evidence
23 that -- and then they left together at the ---

24 THE COURT: Yeah, that is sort of mere presence. I
25 mean that is kind of tap dancing on the fine line.

1 MR. DURANT: Okay.

2 THE COURT: I mean I will think about it, but I just --
3 you would have to have some more evidence of a -- you don't
4 have to charge all of your co-conspirators. But there has
5 to be some evidence of an overact act to commit it.

6 Like if you could have been able to show that they were
7 at the club colluding and then they say, you know, we are
8 going to go over here and do this at this Kangaroo, that is
9 different.

10 But just saying that -- that is like saying if I am
11 riding in the car with somebody and they do something stupid
12 I am responsible for it. I mean to some extent you have got
13 to pick your company. But I mean ---

14 MR. DURANT: That's right.

15 THE COURT: --- you can't be responsible for
16 everything. You have to have some -- something that you
17 have agreed to do with them.

18 MR. DURANT: Okay.

19 THE COURT: In other words, you have to show some
20 evidence that they agreed to do what they did.

21 MR. DURANT: Well, you know, what worries me with James
22 Washington anyway is they were bringing out during testimony
23 that he was yelling to Domoneik shoot him.

24 THE COURT: Well, but there is nothing that
25 prevents ---

1 MR. DURANT: And ---

2 THE COURT: --- you from arguing that to the jury. It
3 is in evidence.

4 MR. DURANT: Yeah, and ---

5 THE COURT: But I don't think you need accomplice
6 liability for that. That is -- she said they were all out
7 there beefing. And we know that when men get in groups they
8 have a mob -- they develop a mob mentality. They tend to do
9 things they would not do if they were alone.

10 MR. DURANT: Are you talking about ---

11 THE COURT: And I don't think that is a ---

12 MR. DURANT: Are you talking about my sex, Your Honor?

13 THE COURT: I am. I read an article recently that said
14 y'all are not capable of making a matured, reasoned decision
15 until 35. That was a little startling. But that helped me
16 understand all the men in my family.

17 MR. DURANT: And maybe not in your family.

18 THE COURT: Just my nephews really. Because I swear
19 sometimes they are stuck on stupid. But anyway. I have to
20 just like close my mouth and be like supportive. Because I
21 swear some days I just want to say that. But they are going
22 through that, you know, bumpy age until they get to 35.
23 That is why I read that article to help me feel a little
24 better.

25 All righty. Anything else we need to take up before we

1 adjourn for the evening, from the State?

2 MS. PROCTOR: If so, I can't think of anything.

3 MR. DURANT: No, ma'am.

4 THE COURT: From the defense?

5 MR. DURANT: You said 9:30, right?

6 THE COURT: 9:30, yeah. And then I will resume
7 questioning him about whether he wants to testify or not and
8 then I will go ahead -- we will hear motions and then I am
9 going to question him about whether he wants to testify or
10 not. And then we will deal -- do charge conference. And
11 then I will let the defense rest and then we will be ready
12 to go into ---

13 We may just do all that and then we -- let y'all get
14 set up and then we will go ahead with closing argument.

15 MR. DURANT: Okay.

16 THE COURT: And we probably need to order lunch for the
17 jury tomorrow. Thank you.

18 Y'all have a good evening. Thanks for working late.

19 (WHEREUPON, recess was had at 6:15 p.m., July 16,
20 2013.)

21 (NOTE: END OF VOLUME II OF III)
22
23
24
25

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
STATE OF SOUTH CAROLINA,	)	CASE NO. 2011-GS-10-06881
	)	2011-GS-10-06882
PLAINTIFF,	)	2011-GS-10-06883
	)	
VS.	)	
	)	TRANSCRIPT OF RECORD
DOMONEIK WASHINGTON	)	
	)	
DEFENDANT.	)	

July 15, 16 and 17, 2013

Charleston, South Carolina

VOLUME III (OF III)
(Contains July 17, 2013)

B E F O R E:

The Honorable Deadra L. Jefferson, Judge; and a Jury.

A P P E A R A N C E S:

D. Bruce DuRant, Esquire
For the State

Lorelle L. Proctor, Esquire
For the Defense

John J. Kozelski, III, Esquire
For the Defense

1 VOLUME III - (July 16, 2013 - Day 3)

2 (WHEREUPON, proceeding resumed, July 16, 2013.)

3 THE COURT: The State has rested their case. Are there
4 any motions?

5 MS. PROCTOR: Yes, Your Honor. I'm sorry. At this
6 time the defense would make a motion for a directed verdict.

7 I know the court must view the evidence in the light
8 most favorable to the State and you are concerned with the
9 existence and non -- existence and nonexistence of evidence.

10 As far as the attempted murder charge on Ronald Bryant
11 there has been no testimony that Ronald Bryant except for
12 somebody saying I think maybe he jumped in the car that any
13 of these -- the bullets that were shot into the car were
14 near him, that he knew what was going on. We have had no
15 testimony from him. And I believe that that case should not
16 go to the jury.

17 As far as Edward Wittrell he took the stand and
18 basically testified he didn't see anybody shooting, he had
19 no idea what was going on. And he was not injured in this
20 case.

21 And as far as Antwan Wilson I would ask that the charge
22 go back to the jury just at the assault and battery of a
23 high and aggravated nature.

24 THE COURT: Mr. DuRant, would you like to respond?

25 MR. DURANT: Just very briefly, Your Honor, that I

1 believe the testimony showed that there were three occupants
2 of that car. We have an eye witness, at least one
3 eyewitness, that identified Mr. Washington as being the one
4 shooting rounds into that car.

5 I think in the light most favorable to State supports
6 count --- three counts ---

7 THE COURT: I can't hear you, Mr. DuRant.

8 MR. DURANT: I think in the light most favorable to the
9 State the evidence presented presents a jury question as to
10 all three of the occupants of that car.

11 THE COURT: The defendant is charged by three
12 indictments, 2011-GS-10-6881, 6882 and 6883, with the
13 offenses of attempted murder.

14 The putative victims on those cases and in indictment
15 6881 is Bryan Ravon Wilson also known -- well, Antwan Davon
16 Wilson also known as Bryan Ravon Wilson.

17 The testimony is that Mr. Wilson was shot in his leg --
18 or was wounded in his leg. The victim in Indictment 6882 is
19 Edward Jerome Wittrell, Jr. who testified and gave direct
20 testimony that bullets were shot -- well, that he was shot
21 at, that he was not injured.

22 And the third victim in Indictment 6883 is Ronald
23 Cornell Bryant, III. And there is testimony that he was an
24 occupant in the vehicle.

25 I am curious, where is Mr. Bryant and why didn't he

1 testify?

2 MR. DURANT: Mr. Bryant is in jail and has despite
3 numerous attempts never cooperated with the State.

4 THE COURT: So he just doesn't want to testify or
5 prosecute this case; it that what it amounts to?

6 MR. DURANT: He just doesn't want to testify.

7 THE COURT: Was there any attempt to bring him over
8 here and for the court to instruct him that he is required
9 to answer the questions?

10 MR. DURANT: He was brought over yesterday, Your Honor,
11 and we were advised by his attorney that -- or that he was
12 hostile and did not want to testify.

13 THE COURT: And was -- who is his attorney?

14 MR. DURANT: Andrew Grimes.

15 MS. PROCTOR: Your Honor, also while he was in jail
16 he -- when he was arrested for the charges he is in jail now
17 for, I think it is burg first and strong armed and an
18 assault, unluckily for Mr. Washington they put him in --
19 they put Mr. Bryant in the same cell with him and he beat
20 Mr. Washington up quite bad..

21 And so he has a charge against him now -- I mean he has
22 a charge pending. So I think as far as he is concerned he
23 did what he needed to do.

24 THE COURT: Oh, okay.

25 MR. DURANT: But if I may just in terms of the motion,

1 Your Honor, it would be our position that Mr. -- Mr. Bryant
2 does not have to testify to this to go to the jury.

3 THE COURT: What evidence is there that he was the
4 victim of an attempted murder, direct or circumstantial?

5 MR. DURANT: Well, the fact of the matter is, Judge, if
6 I were to shoot at a school bus full of people and I killed
7 somebody that I didn't know or doesn't -- didn't know ---

8 THE COURT: I agree with that analogy, ---

9 MR. DURANT: --- doesn't ---

10 THE COURT: --- but ---

11 MR. DURANT: --- excuse me from my conduct just because
12 I didn't know ---

13 THE COURT: But that wasn't my question. My question
14 is what direct or circumstantial evidence is there that he
15 was in the car or about the car and that Mr. Washington shot
16 at him; what witnesses support that testimony?

17 MR. DURANT: The -- the testimony of Edward Wittrell
18 indicated that he was in the back passenger -- that Mr.
19 Wittrell was in the back driver's side seat and Mr. Bryant
20 was in the back passenger seat at the time of the shooting
21 at the Kangaroo and they drove off and that Mr. Wilson was
22 the only occupant in the front seat and that is the same
23 position they were in when they drove off after the
24 shooting.

25 That is also corroborated by the video that is in

1 evidence that shows both of them having gotten into the car
2 prior to the shooting and -- and so there is ample evidence
3 if nothing else that this defendant fired numerous shots
4 into an occupied vehicle.

5 THE COURT: In order to establish attempted murder
6 pursuant to Code Section 16-329 the State must prove the
7 following elements beyond a reasonable doubt. That the
8 defendant attempted to kill another person with malice of
9 forethought either expressed or implied.

10 And malice may be shown from a conduct -- from conduct
11 showing a total disregard for human life as well as when a
12 deadly weapon is used.

13 Also a specific intent to kill is not an element of
14 attempted murder. There only must be a general intent to
15 commit serious bodily injury. And that can be proven by
16 evidence of the character of the act, the character of the
17 instrument used, the manner in which it was used, the
18 purpose to be accomplished, and the resulting wounds or
19 injuries.

20 It may also be demonstrated when the defendant
21 voluntarily and willfully commits an act, the natural
22 tendency of which is to destroy another's life.

23 In considering a motion for directed verdict the court
24 is required to view the evidence in the light most favorable
25 to the State.

1 The court is not the fact finder. It is not for me to
2 weigh evidence. I am only required to determine whether
3 there is direct or substantial circumstantial evidence
4 reasonably tending to prove the guilt of the accused.

5 The court is not required to find that the evidence
6 infers guilt to the exclusion of any other reasonable
7 hypothesis.

8 However, the court should grant a motion when the
9 evidence presented merely raises a suspicion of guilt.
10 Suspicion implies a belief or opinion as to guilt based upon
11 facts or circumstances not amounting to proof.

12 But again, the court is not required to find that the
13 evidence infers guilt to the exclusion of any other
14 reasonable hypothesis.

15 The motion for directed verdict is denied. There is
16 direct as well as substantial circumstantial evidence
17 reasonably tending to prove Mr. Washington's guilt.

18 And without expending the amount of time that would be
19 required to go through every single witness there are at
20 least -- well, even if I don't look at all of the direct
21 witnesses there is a direct witness in the testimony of the
22 cashier from the convenience store who testified that she
23 saw the defendant with a gun, that she saw him shoot at the
24 Impala.

25 It is not required that a person sustain injury in an

1 attempted murder case. The State is only required to prove
2 that the defendant attempted to kill another person with
3 malice of forethought expressed or implied.

4 So it is not dispositive as to whether any of these
5 gentlemen was actually injured. It is only dispositive as
6 whether there is direct or circumstantial evidence that the
7 defendant attempted to kill them with malice of forethought
8 either express or inferred.

9 You can hear on the video, in any event, the cashier
10 saying he's been shot. And then another person chimes in
11 and said no he wasn't. But again, that is not dispositive.

12 But there is direct testimony in light of her testimony
13 that she knew Mr. Washington, that he frequented the store,
14 that his identification was highlighted in her mind because
15 of the recent interaction she had had with him and that she
16 saw him with a weapon and she saw him shoot toward the gold
17 Impala.

18 In addition to that -- and I'm referring to the
19 testimony of Equett Robinson who was employed at the
20 Kangaroo. There is also direct testimony in Mr. Wittrell's
21 testimony that all three of the individuals were occupants
22 of the gold Impala; that being him, Mr. -- being himself,
23 meaning Mr. Wittrell, Mr. Bryant and Mr. Wilson.

24 And in addition to that there is the testimony of
25 Ervette Robinson who knew Mr. Bryant whose -- and actually I

1 think I may be getting the two confused. I think that is
2 Ms. Trusdale -- who was friends with Mr. Bryant's mother.
3 And she identified that he was in fact there and he was in
4 the vehicle. She saw a gun in Mr. Washington's hand.

5 She heard the shooting. She did not -- she said that
6 she -- I am not going to use her exact words, but the gist
7 of it was that she ran. And the video shows her hiding
8 under the rear bumper of the vehicle.

9 And also the testimony of Mr. Hazel who identified Mr.
10 Bryant as Little Ron and being present in the gold Impala at
11 the time of the shooting.

12 In addition to that, the video in and of itself is
13 sufficient direct and circumstantial evidence of the events
14 of the shooting.

15 And in addition to that there were eyewitnesses who
16 testified as to the identity of the occupants of the vehicle
17 as well as the individuals who were not occupants of the
18 vehicle who were in the vicinity of the vehicle and of some
19 tangential relation to this incident.

20 Based on the direct and circumstantial evidence in this
21 case, directed verdict would not be appropriate. The
22 arguments would go to the weight accorded the testimony and
23 any credibility or lack of credibility or weight and
24 certainly are factual arguments to be made to the fact
25 finder in the nature of the jury.

1 In this instance I don't think Mr. Bryant has to
2 testify that he was shot at. I think there is sufficient
3 direct and circumstantial evidence that he was there, that
4 he was involved in a beef with these individuals, that he
5 was an occupant of the vehicle, and that the gunshots were
6 directed at the occupants of the vehicle unlike a situation
7 where a person -- people are standing face-to-face and
8 someone shoots directly at an individual versus shooting at
9 the occupants of a vehicle and in light of the fact that
10 malice can be expressed or implied or inferred as we
11 normally use that term. Motion for directed verdict is
12 denied.

13 Now Mr. Washington, if you can stand up for me, please.
14 I will remind you you are still under oath. Have you had a
15 full opportunity to discuss this case and discuss whether
16 you should or should not testify with your lawyers?

17 MR. WASHINGTON: Yes, ma'am.

18 THE COURT: Do you need to speak with them any further
19 at this time?

20 MR. WASHINGTON: No, ma'am.

21 THE COURT: And sir, do you wish to testify or do you
22 not wish to testify?

23 MR. WASHINGTON: I wish not to.

24 THE COURT: You may take your seat. And Ms. Proctor,
25 have you fully explained to your client his right to

1 testify?

2 MS. PROCTOR: Yes, Your Honor, I have.

3 THE COURT: Okay. And do you believe he understood you
4 conversations with him?

5 MS. PROCTOR: Yes, Your Honor.

6 THE COURT: And is his answer correct that he does not
7 wish to testify?

8 MS. PROCTOR: Yes.

9 THE COURT: And do you feel that in any way he has been
10 forced not to testify, threatened or in any way not to
11 testify?

12 MS. PROCTOR: No, Your Honor.

13 THE COURT: Okay. Or coerced or cajoled in any way?

14 MS. PROCTOR: No, Your Honor.

15 THE COURT: And sir, if you could stand for me again.
16 I do need to ask those questions of you as well. Did anyone
17 force you not to testify?

18 MR. WASHINGTON: No, ma'am.

19 THE COURT: Is this your fully informed decision?

20 MR. WASHINGTON: Yes, ma'am.

21 THE COURT: Are you making this decision freely and
22 voluntarily and of your own will?

23 MR. WASHINGTON: Yes, ma'am.

24 THE COURT: Are you suffering from any mental
25 disabilities or under the influence of any drugs or alcohol?

1 MR. WASHINGTON: No, ma'am.

2 THE COURT: Did your lawyers threaten you in any way;
3 in other words, did they force you not to testify?

4 MR. WASHINGTON: No, ma'am.

5 THE COURT: Did they place you under any duress or try
6 to discourage you from testifying?

7 MR. WASHINGTON: No, ma'am.

8 THE COURT: Okay. You may take your seat.

9 (Pause for court.)

10 (Request for restroom break.)

11 THE COURT: Sure. Go right ahead.

12 (WHEREUPON, break 10:01 a.m. to 10:04 a.m.)

13 THE COURT: I will give the jury general instruction
14 how they are to judge and believe credibility.

15 I will also give them a general instruction regarding
16 expert witness testimony.

17 I will give them a general instruction that the prior
18 record of a witness is only to be used for their
19 credibility.

20 I will also instruct them that they have heard evidence
21 that the defendant was -- committed a bad act that was not
22 the subject of a conviction other than the one for which he
23 is now on trial.

24 MR. DURANT: I'm sorry, what ---

25 THE COURT: Prior bad act, stealing of the hotdog.

1 MS. PROCTOR: Oh, I forgot about the hotdog. I'm sorry.

2 THE COURT: That's okay. That they can only use --

3 well, that it is up to them to determine and conclude

4 whether the testimony is in fact true.

5 Since he did not testify I am not going to be giving

6 any instruction about the believability or credibility of

7 his testimony.

8 But I will instruct them that they must not consider

9 this prior -- this alleged prior bad act as any evidence of

10 his guilt on the charge we are trying today.

11 I am going to give a general instruction on direct and

12 circumstantial evidence, a general instruction on the charge

13 the rest of the indictment not being evidence as well as the

14 presumption of innocence.

15 I will instruct Victor versus Nebraska on reasonable

16 doubt.

17 I will then instruct the elements of attempted murder

18 which is 16-329.

19 I will be using the inferred malice instruction since

20 it is not excluded based on State versus Belcher.

21 I will only be instructing regarding the inference with

22 a weapon as there is no testimony that supports any of the

23 other -- you know, like fists, ordinary objects, toy guns or

24 anything like that, none of that is applicable so I would

25 not be instructing that.

1 I will however instruct them that if facts are proven
2 beyond a reasonable doubt sufficient to raise an inference
3 of malice to your satisfaction this inference would simply
4 be an evidentiary fact to be considered by you the jury
5 along with the other evidence in the case and you may give
6 it the weight you decide it should receive.

7 MR. DURANT: Your Honor, in terms of inferences will
8 you be charging the total disregard of human life?

9 THE COURT: Yes.

10 MR. DURANT: Okay.

11 THE COURT: I am only dealing with the Belcher
12 language. I only ---

13 MR. DURANT: Okay.

14 THE COURT: Because with self-defense you don't
15 instruct it. But where there is not self-defense you can
16 instruct it.

17 But I needed to highlight that it -- I am going to
18 instruct it simply an evidentiary fact, that I am not in any
19 way in the instruction saying it is something that they have
20 to consider.

21 I will instruct that included within the offense of
22 attempted murder is the lesser included offense of assault
23 and battery of a high and aggravated nature. And I will
24 instruct that that includes all of the elements of attempted
25 murder except malice of forethought.

1 And then I will instruct the elements of 16-3-600B.

2 Then I will instruct included within the offense of
3 attempted murder is also the lesser included offense of
4 assault and battery first degree.

5 And I will instruct the elements of 16-3-600C that are
6 applicable. I won't include any of the things about
7 nonconsensual touching and private parts because that is not
8 factually applicable to this case.

9 I will then give a general instructional on
10 identification which is that the State must prove
11 identification beyond a reasonable doubt.

12 I will also instruct regarding failure of the defendant
13 to testify which is that can't be discussed. He has no
14 burden of proof. I think we know what the standard language
15 of that is.

16 I will also give an instruction on multiple charges
17 which is that he has three separate indictments and the
18 State must prove each element of every indictment beyond a
19 reasonable doubt and that they are to consider each
20 indictment separately and independently based on the law and
21 that he may be convicted or acquitted on any or all of the
22 indictments.

23 And then I will instruct on the form of the verdict
24 which will have guilty of attempted murder or as to the
25 lesser included offense, lesser included offense assault --

1 assault and battery of a high and aggravated nature or as to
2 the lesser included offense assault and battery first degree
3 or not guilty.

4 Is there any exception to the charges proposed, from
5 the State?

6 MR. DURANT: Your Honor, ---

7 THE COURT: Oh, and I also will give a general
8 instruction as to what a stipulation is. But I am not going
9 to talk about your stipulation, because that would be an
10 impermissible comment on the facts.

11 MR. DURANT: That's -- that is quite all right.

12 THE COURT: But ---

13 MR. DURANT: That's on ---

14 THE COURT: And I got your e-mail this morning.

15 MR. DURANT: Okay.

16 THE COURT: I meant to address it. I have it with me.
17 And I saw that you copied Ms. Proctor on it.

18 But within my general instructions I will tell them
19 that you are to only -- you are to consider only the
20 testimony which has been presented from the witness stand
21 together with any exhibits which are being made a part of
22 the record in this case and stipulations of counsel made
23 into the record.

24 And I will instruct them that a stipulation is an
25 agreement between the parties and it requires no further

1 proof.

2 MR. DURANT: Okay. That's all I needed to know.

3 THE COURT: Okay. Is there anything further from the
4 State regarding the instructions?

5 MR. DURANT: No, ma'am.

6 THE COURT: Anything from the defense?

7 MS. PROCTOR: No, Your Honor.

8 THE COURT: Okay. I will give y'all -- how long do
9 y'all need to get set up for -- and if y'all will give me
10 one moment I am going to print the verdict form so you can
11 actually physically look at them. I wanted to make sure
12 before I printed them.

13 Give us a couple of seconds. I think she went to get
14 them from the printer.

15 While we are, however, waiting for the lawyers to get
16 set up, I will say to the gallery that everyone should have
17 their cell phones off, not on vibrate or silent. They
18 should be turned off.

19 By order of the Chief Justice there can be no
20 electronic devices in the courtroom. If the bailiffs see
21 anyone texting, checking e-mail or otherwise or you get any
22 phone calls during either by vibration or audibly your phone
23 will be taken from you and it will not be returned to you.
24 That includes the lawyers who are present in the gallery as
25 well. The order applies to you equally.

1 Also I would ask that during closing arguments that
2 there be no walking in and out of the courtroom. If you do
3 not feel that you can stay put, so to speak, during the
4 arguments I would ask that you go ahead and absent yourself
5 from the courtroom.

6 The gallery is very crowded. And normally it is not a
7 problem for people to go in and out of the courtroom. But
8 it is very destruct- -- very distracting to the jury when
9 there is a lot of movement and instead of paying attention
10 to the lawyers they pay attention to that door opening and
11 closing.

12 So in respect to counsel as they make their closing
13 arguments they need to be able to have the attention and the
14 acuity of the jury. So I am instructing the bailiffs that
15 there is not to be any movement in the gallery during
16 closing arguments unless, you know, it is an emergency or
17 somebody has to go to the bathroom certainly, you know, they
18 can go do that.

19 Okay. Now if counsel would approach you all can see
20 the verdict forms.

21 (Counselors approach bench.)

22 THE COURT: Any exceptions to the form of the verdict,
23 from the State?

24 MR. DURANT: No, ma'am.

25 THE COURT: From the defense?

1 MS. PROCTOR: No, Your Honor.

2 THE COURT: Okay. Y'all -- how long do y'all need to
3 get set up?

4 MS. PROCTOR: Maybe about 15 minutes.

5 THE COURT: Okay.

6 MS. PROCTOR: I will let -- we might need 20 minutes.
7 Something is the matter with the computer.

8 THE COURT: I hope it is not 20 because I have got a
9 jury that has been here since 9:30 -- well, about 9:35 in
10 there. We can only use donuts to entertain them so long.
11 We are -- we have also arranged for the jury's lunch to
12 be brought in at noon. So you all may want to make
13 arrangements for your lunch as well.

14 (WHEREUPON, break was had July 17, 2013, at 10:15 a.m.)

15 (WHEREUPON, proceedings resumed July 17, 2013, 10:31
16 a.m.)

17 THE COURT: Is the State ready to proceed?

18 MR. DURANT: Yes, Your Honor.

19 THE COURT: Is the defense ready to proceed?

20 MS. PROCTOR: Yes, Your Honor.

21 THE COURT: Have you all looked at all of the evidence
22 and made sure it was all in place?

23 MS. PROCTOR: I have not.

24 MR. DURANT: I have not checked it this morning, Your
25 Honor.

1 THE COURT: I need y'all to check for me before we get
2 started to make sure everything is in place.

3 (Counselors complied.)

4 THE COURT: Okay. Is all the evidence in place, from
5 the State?

6 MR. DURANT: It appears to be, Your Honor.

7 THE COURT: And the defense?

8 MS. PROCTOR: Yes, Your Honor.

9 THE COURT: Okay. Are we ready to proceed?

10 MR. DURANT: Yes, ma'am.

11 THE COURT: From the defense?

12 MS. PROCTOR: Yes, Your Honor.

13 THE COURT: Please bring in the jury.

14 (WHEREUPON, the jury entered the courtroom at 10:35
15 a.m.)

16 THE BAILIFF: All jurors are present, Your Honor.

17 THE COURT: Thank you. Ladies and gentlemen, I hope
18 you all had a pleasant evening.

19 I believe, Mr. DuRant, you have already rested;
20 correct?

21 MR. DURANT: That is correct, Your Honor.

22 THE COURT: The defense may proceed.

23 MS. PROCTOR: Your Honor, the defense rests.

24 THE COURT: Madam Forelady, ladies and gentlemen, both
25 the State and the defense have rested their cases.

1 We have now reached the stage of the trial where we
2 will have closing argument and the court's instructions on
3 the law.

4 I would ask that you give the attorneys your undivided
5 attention. We have ordered your lunch today and it should
6 arrive by noon.

7 You may proceed.

8 MR. DURANT: Thank you, Your Honor.

9 THE COURT: You are welcome.

10 **CLOSING BY MR. DURANT:**

11 Good morning, ladies and gentlemen. As you may recall,
12 we started off a couple of days ago with me standing up here
13 on behalf of the State and telling you that this man,
14 Domoneik Chip Washington, tried to kill Antwan Wilson and
15 Edward Witrell and Ronald Bryant as they sat in that gold
16 Impala in the parking lot of the Kangaroo convenience store
17 at 2:50 in the morning of March the 30th of 2011.

18 Defense counsel tells you that Mr. Washington was there
19 and he was acting in self-defense. You have now heard two
20 days of testimony in this case. And what you have not heard
21 is one shred of evidence indicating that this defendant was
22 acting in self-defense. Not one shred.

23 They have now entered into a stipulation which will go
24 back to you in the jury room where they have agreed that no
25 one from the gold Impala shot at the defendant, Domoneik

CLOSING BY MR. DURANT

1 Washington, at the Kangaroo that night.

2 That matter has been decided. It is not an issue for
3 you. Nor is self-defense an issue for you in this case. It
4 is out of the case. Forget about it. It is time to move
5 on.

6 So what you need to decide next is whether or not this
7 man, Domoneik Washington, was the one shooting the rounds
8 into that gold Impala. And all the evidence points to the
9 fact that he was.

10 And I would like to start out with Equett Robinson, the
11 clerk at the convenience store. The lady is the salt of the
12 earth. She is a rock. She is a hard worker. And she has no
13 ax to grind in this case.

14 She is not allied with the Westchester guys. She is
15 not allied with the downtown guys. She has got no reason to
16 come in here and tell you anything other than what she sat
17 there and observed that night. And on top of that, she
18 knows him.

19 You know, so often in a criminal case a witness will
20 have a very brief opportunity to view a crime involving
21 somebody they have never seen before in bad conditions and
22 try to identify somebody. That is not this case.

23 This is someone that she has known for a year to a year
24 and a half, the entire time that she worked at that store.
25 Saw him on a weekly basis. Just about every weekend he

1 would come in after the clubs closed.

2 She has talked to him. She has asked him for his
3 identification before. She told the police that night he is
4 a regular customer of mine, I just don't know his name.

5 When she is shown those photographic lineups that same
6 day, she is shown the first group. No, he is not there.
7 Showed the second group. Bingo. That is him, Domoneik
8 Washington.

9 And she identifies him as being the one that walked up
10 to the door and said yeah I saw him walking up. I was
11 paying attention to him because he was in here on Saturday
12 and took that hotdog without paying for it and I was going
13 to get the money. I was waiting for him to come in the
14 store.

15 But he didn't come in the store. And she says he
16 turned away and went out there and started arguing with
17 those guys in that gold Impala. He went to them.

18 She comes around. She is right there at the door.
19 You have seen it on the video when this whole thing goes
20 down.

21 She hears those initial shots coming from over at
22 the carwash. And obviously people are scattering and
23 ducking.

24 And then she starts looking. And what does she see.
25 She sees this guy that she has known for a year and a year

CLOSING BY MR. DURANT

1 and a half, walking up to that gold Impala semiautomatic
2 weapon in hand, bam, bam, bam, bam. She actually sees
3 Antwan Wilson get shot in the leg.

4 Then you have Ervette Robinson. She was the lady in
5 the striped shirt that dove behind the car as soon as the
6 shooting started. And it is true she did not see who
7 started shooting first because her back was turned.

8 But she is a James Island girl. And she knows him.
9 And she knows his name, Domoneik Chip Washington. And she
10 identifies herself and him on that video and him being the
11 one that walked up to that car and started this whole thing.

12 She got out -- I mean she was out of the car trying
13 to talk him down. And it looked like she may have
14 succeeded.

15 As he turns around and he walks back to the store you
16 can see -- I mean you can -- you can just see the wheels
17 turning in his head when he gets to that door. He just
18 can't let it go. He can't let it go.

19 And he turns around and he goes out walking back
20 toward that car. Dancing or taunting or whatever the heck
21 you want to call it. And she identifies him as being that
22 person.

23 Then you have another rock, Zadie Trusdale.
24 She has lived on James Island for 18 years. Not only
25 does she know him, she knows all of his buds from

1 Westchester; Javon Richardson, James Washington and Ishmel
2 Lemon.

3 She also knows at least one of the guys in the Impala,
4 Ronald Bryant, because it is her friend's son. She was at
5 the club and was aware that the guys from downtown had been
6 in a fight at the club with the guys from Westchester.

7 She is there when they are taking Ronald out. Goes
8 there and tries to get Ronald to come with her to get into
9 safety because she knows there is going to be problems
10 because of this downtown James Island thing.

11 When they go to the Kangaroo and they pull in headfirst
12 it is she that insists they turn the car around because she
13 is already worried that there is going to be a problem.

14 She is on the phone with Ronald's mother trying to get
15 her to come and get him so it won't be an issue. And then
16 Domoneik Washington and his crew show up and Zadie standing
17 outside of the car on the phone. And she knows there is
18 going to be a problem. She knows that, and she knows him.

19 She identified the people on the video. Domoneik
20 Washington was the one with the long t-shirt on with the
21 short sleeves. And then you have Javon Richardson who had
22 on the long-sleeved white dress shirt. You had Ishmel Lemon
23 who was wearing the green shirt and the khaki pants. And
24 you have James Washington who is wearing the black pants and
25 the sleeveless T-shirt. All four were wearing distinctive

CLOSING BY MR. DURANT

1 clothes or distinctive at least from one another.

2 She confirms that these guys are all friends or maybe
3 even related to one another and all being from the
4 Westchester neighborhood.

5 When Ervette comes and gets her out of the store --
6 because when she had seen them coming she ran in the store.
7 And that is when she told the clerk you need to call the
8 police.

9 Ervette comes and gets her out of the store just in
10 time for her to see Mr. big man walking out in front of the
11 car taunting, trying to start a problem.

12 She identifies his friend, James Washington, as being
13 the one that starts the shooting by shooting into the air
14 with his pistol.

15 Next you have the surveillance video. And I know that
16 I played that video until you are absolutely tired of
17 hearing the beep, beep, beep that goes on when that door
18 opens.

19 But it was a crucial piece of evidence in this case.
20 And the reason that it is a crucial piece of evidence is
21 because it corroborates everything that the witnesses have
22 said in this case.

23 And for that reason I'm going to make you watch it
24 again. Not the whole thing, but part of it anyway.

25 (WHEREUPON, played video.)

1 (WHEREUPON, stopped video.)

2 Okay, this is about 6:40 into the tape. Right here
3 with my cursor (pointing) that is the gold Impala. And you
4 will see it pull up and stop in front of that green Lincoln
5 Town Car.

6 (WHEREUPON, played video.)

7 (WHEREUPON, stopped video.)

8 Right over here (pointing) you can see Zadie. By this
9 time she has realized that Ronald Bryant is in this car
10 (pointing) and she is on the phone with Ronald's mother.
11 You can tell right there that she is worried.

12 (WHEREUPON, played video.)

13 You can tell by the way she was looking back toward the
14 parking lot.

15 (WHEREUPON, stopped video.)

16 Okay. This is about seven minutes and thirty seconds
17 into the tape. There are a bunch of things starting to
18 happen right here.

19 You've got Antwan Wilson who is still in the driver's
20 seat of this car. You have got Edward Wittrell right here
21 (pointing) that is about to get in the back seat. And right
22 there behind him is Ronald Bryant that is going to get into
23 the back seat of the other side of the car.

24 (WHEREUPON, played video.)

25 (WHEREUPON, stopped video.)

CLOSING BY MR. DURANT

1 At the same time we have this guy here that everyone
2 has identified as being the defendant, Domoneik Washington,
3 wearing the long T -- white T-shirt, sleeves down to the
4 elbows, and the blue jeans.

5 (WHEREUPON, played video.)

6 (WHEREUPON, stopped video.)

7 This is Javon Richardson. He is the one wearing the
8 dark pants and the long-sleeved white dress shirt.

9 (WHEREUPON, played video.)

10 (WHEREUPON, stopped video.)

11 This is Ishmel Lemon wearing the green shirt and hat
12 with the khaki's.

13 (WHEREUPON, played video.)

14 (WHEREUPON, stopped video.)

15 And last but certainly not least we have James
16 Washington. He is the one wearing the dark pants with the
17 sleeveless T-shirt on.

18 (WHEREUPON, played video.)

19 (WHEREUPON, stopped video.)

20 Right here you see Zadio running inside to tell the
21 clerk to call the police.

22 (WHEREUPON, played video.)

23 (WHEREUPON, stopped video.)

24 Two of his buds, Ishmel and Javon, they go down here
25 somewhere on this end of the parking lot. James Washington

1 hangs back seeing what is happening.

2 And what does Domoneik do? Domoneik could have just
3 gone into the store. That is not what Domoneik did.

4 (WHEREUPON, played video.)

5 (WHEREUPON, stopped video.)

6 He walks out there. Those guys are all in the car.

7 And he is trying to start a fight right there. He is not at
8 all happy with these guys being on his turf.

9 (WHEREUPON, played video.)

10 (WHEREUPON, stopped video.)

11 Ervette comes out, talks to him, tries to talk some
12 sense into him. It looks like, I don't know, he may be
13 flipping him off or something or other. But he does turn
14 around and walk away.

15 (WHEREUPON, played video.)

16 (WHEREUPON, stopped video.)

17 I don't know if you heard that. Somebody yelled his
18 name, Domoneik, right there at eight minutes.

19 (WHEREUPON, played video.)

20 (WHEREUPON, stopped video.)

21 He is still mouthing off at him as he is thinking about
22 going into the store.

23 (WHEREUPON, played video.)

24 (WHEREUPON, stopped video.)

25 I don't know what he is doing there. But it sure looks

CLOSING BY MR. DURANT

1 like he is taunting those people. Ervette once again it
2 looks like she is trying to talk him down.

3 (WHEREUPON, played video.)

4 (WHEREUPON, stopped video.)

5 And here come his buds back.

6 (WHEREUPON, played video.)

7 (WHEREUPON, stopped video.)

8 James Washington who looks likes he could be reaching
9 into his back pocket for a pistol right there.

10 (WHEREUPON, played video.)

11 (WHEREUPON, stopped video.)

12 Ishmel Lemon.

13 (WHEREUPON, played video.)

14 (WHEREUPON, stopped video.)

15 And this is Javon Richardson. And right here you will
16 see Antwan Wilson who had been over on this side of the car
17 talking to those folks.

18 (WHEREUPON, played video.)

19 (WHEREUPON, stopped video.)

20 And he starts to get back in the car. Edward Wittrell
21 just gets out the back door ---

22 (WHEREUPON, played video.)

23 (WHEREUPON, stopped video.)

24 --- when the shooting starts. Obviously nobody in that
25 car shot at anybody over there at the gas station. And so

1 Ervette she runs and got -- and jumps behind this car
2 (motioning).

3 You see Zadie. She is watching where the shots were
4 fired.

5 (WHEREUPON, played video.)

6 (WHEREUPON, stopped video.)

7 And there you have it confirming exactly what Ervette
8 Robinson told you. White T-shirt, sleeves to the elbows,
9 the blue jeans. He is the only one of that bunch dressed
10 like that. Arm extended, gun in hand, shooting into this
11 occupied vehicle.

12 This isn't the first shot. This is probably his third
13 or fourth. Door is open. Edward Wittrell and Bryant --
14 Ronald Bryant in the back seat. Antwan Wilson laid down on
15 the front seat afraid for his life.

16 (WHEREUPON, played video.)

17 (WHEREUPON, stopped video.)

18 There are a bunch of other shots. But they are all
19 after-the-fact. And I am pretty sure that Laval Hazel was
20 shooting out of this car (pointing) as it left because there
21 are those shell casings right there (pointing), those .380
22 shell casings.

23 But nobody is seen on -- in this video shooting at that
24 Impala but him.

25 (WHEREUPON, played video.)

CLOSING BY MR. DURANT

1 (WHEREUPON, stopped video.)

2 That is Ms. Robinson saying that -- she testified she
3 saw him get shot in the leg. That is what she is saying.
4 That is why you know when she took the stand and told you
5 that, she was telling you the truth.

6 And she said she saw him get shot in the leg when he
7 was shooting at the car.

8 (WHEREUPON, played video.)

9 (WHEREUPON, stopped video.)

10 And they drive off. The next reason we know it was
11 Domoneik Washington is because he ran. They identified him
12 as the shooter the same day. Took out warrants. He was
13 nowhere to be found.

14 He was nowhere to be found because he fled and went to
15 Danville and had to be tracked down by the United States
16 Marshall's Fugitive Task Force. Which he was. And he was
17 arrested six weeks after the fact.

18 Now I want to touch briefly on the forensic evidence in
19 this case. And I know that I sat here and bored you to
20 tears yesterday. And I apologize.

21 But that being said, there were some things that you
22 heard that I think were important in this case. And I want
23 to start out with the four Blazer nine millimeter shell
24 casings. These four right here (motioning), okay.

25 That video that you see basically is at this corner of

1 the building looking that way capturing these three gas
2 pumps (motioning). Not this one (motioning).

3 That green Town Car was parked at that pump (pointing).
4 The gold Impala was right in front of it facing that
5 direction (motioning). The defendant you see on the video
6 was standing in front of the car. And where are those four
7 nine millimeter shell casings? Right there where he's
8 standing.

9 Not over here (motioning). Those are completely off
10 the screen.

11 Right there (motioning) where he is standing is where
12 those four nine-millimeter shell casings were located.

13 And they were all fired by the same weapon. And all
14 located where the defendant was observed shooting into that
15 car.

16 The gold Impala there are three bullet holes in the
17 driver's door, one bullet hole in the windshield. All
18 entrance wounds so to speak.

19 In other words, they didn't come from the car out.
20 They were coming from the outside in. If you will notice on
21 that video the front door is open when the shooting is
22 occurring.

23 So all of the holes in that car are consistent with
24 that car being shot somewhere in the direction that the
25 defendant is seen standing in that video.

CLOSING BY MR. DURANT

1 These three GFL .380's right here (pointing), all fired
2 by the same gun. That is his buddy, James Washington. Bam,
3 bam, bam in the air with his little .380. We know that he
4 didn't shoot him because he wasn't hit by a .380. He was
5 hit by a nine.

6 And we also have the bullet holes in the canopy over
7 the gas pumps which corroborate what Ms. Trusdale said about
8 him shooting his gun up into the air. And those are the
9 first shots that you hear on the video. And there is more
10 than three.

11 I don't know what happened to all -- the rest of the
12 shell casings, but there are more that didn't get found.

13 This bullet here, Number 7 (motioning), and this bullet
14 here, Number 16 (motioning), those are spent projectiles.

15 The bullet that was removed from Antwan Wilson's right
16 thigh and the bullet that was recovered from the floorboard,
17 the driver's side floorboard, of that gold Impala were all
18 fired by the same gun and were all consistent with the nine
19 millimeter. And definitely fired by the same gun.

20 Consistent with nine millimeter ammunition and not .380.

21 And then you have the testimony of a doctor concerning
22 the trajectory of the wound in Mr. Wilson's leg; right leg,
23 back to front -- left to right rather, and slightly up.

24 And you will see on the video at all times when that
25 shooting started he was facing the car. So whoever shot him

1 shot him from the carwash side and not from the other side.

2 I'm going to talk to you a little bit about the law and
3 then I'm going to sit down. No, ladies and gentlemen, this
4 is not a case for self-defense.

5 This is not a whodunit. We know who did it. We know
6 that it was Domoneik Washington pumping rounds into that
7 gold Impala with his nine millimeter.

8 The only thing that you need to decide as a jury in
9 this case is to what was in his head and what was in his
10 heart when he did it.

11 He has been charged with three counts of attempted
12 murder. Attempted murder is simply defined as trying to
13 kill someone with malice of forethought expressed or
14 implied.

15 Malice is just what it sounds like, hatred, ill will,
16 and evil intent. Malice can be expressed. What expressed
17 malice is is an actual -- actually speaking words indicating
18 malice like you MF's are going to pay now. That is
19 expressed malice, ladies and gentlemen.

20 Malice can also be implied. You can infer malice. You
21 don't have to. But you can. From the use of a deadly
22 weapon.

23 You can infer malice from conduct that is so reckless
24 and done in complete disregard of human life such as
25 shooting into an occupied vehicle.