

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County
Thomas W. Cooper, Circuit Court Judge

THE STATE,

V.

RICKY LAMONT ESAW

APPELLANT

APPELLATE CASE NO. 2017-002213

RECORD ON APPEAL

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State of South Carolina
County of Lexington

Court of General Sessions

State	)	
	)	
	)	Transcript of Record
v.	)	2016-GS-32-00206
	)	2016-GS-32-00213
Ricky Lamont Esaw	)	2016-GS-32-00214
	)	2016-GS-32-00216
Defendant.	)	2016-GS-32-00217
	)	2016-GS-32-00218

October 16 - 19, 2017
Lexington, South Carolina

B E F O R E:

The Honorable Thomas W. Cooper, Judge; and a jury.

A P P E A R A N C E S:

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Jason Chehoski, Assist. Public Defender
Elizabeth Fullwood, Assist. Public Defender
Attorneys for the Defendant

Bethanie K. Creppon
Circuit Court Reporter

P R O C E E D I N G S

* * *

(The following proceedings were held October 16, 2017.)

THE COURT: Mr. Chehoski and Ms. Fullwood, in regard to your proposed voir dire, I will decline to ask questions 3, 4, 6, 7 and 10. I will ask the remaining questions or the import of those will be part of my general order. I'll make the requested voir dire a Court's record to preserve for appellate review. All right.

MR. CHEHOSKI: Thank you, Your Honor.

(Court's Exhibit No. 1 marked for identification.)

THE COURT: All right, folks. Are both sides ready to proceed to jury selection? Is the State ready?

MS. PATTERSON: The State is ready, Your Honor.

THE COURT: Is the Defense ready?

MR. CHEHOSKI: Yes, Your Honor.

THE COURT: All right. Ms. Patterson, you may call your case.

MS. PATTERSON: Thank you, Your Honor. May it please the Court. Indictment 2016-GS-32-206, the State of South Carolina vs. Ricky Lamont Esaw, possession of a weapon during the commission of a

1 violent crime; 213, attempted armed robbery; 214,
2 armed robbery; 216, attempted armed robbery; 217,
3 murder; 218, attempted murder.

4 THE COURT: Thank you.

5 Ladies and gentlemen, as you've just heard, the
6 State has called the case of The State vs. Ricky
7 Lamont Esaw. Mr. Esaw is charged in Indictment
8 No. 218 with attempted murder; that indictment
9 accuses Mr. Esaw, here in Lexington County, on or
10 about August 9th of 2015, whether acting alone or in
11 concert with Wilfred Pitts, attempting to kill
12 another person with malice aforethought, either
13 expressed or implied, by shooting the victim
14 Franklin Vasquez with a firearm in violation of the
15 law.

16 Indictment 217 charges Mr. Esaw with the crime
17 of murder. That indictment alleges that at the same
18 time and place here in Lexington County on August
19 9th of 2015, with malice aforethought, either
20 expressed or implied, Mr. Esaw shot the victim
21 Hector Vasquez and that he died as a result thereof,
22 in violation of the law.

23 Indictment 216 charges attempted armed robbery
24 and alleges that at the same time and place, the
25 defendant knowingly and willfully, while armed with

1 a deadly weapon, that is, a handgun, did attempt to
2 feloniously or wrongfully take from the person or
3 presence of Hector Vasquez by means of force or
4 intimidation or threats, goods or monies or a cell
5 phone with intent to steal those things in violation
6 of the law.

7 Indictment 214 charges armed robbery and
8 alleges that at the same time and place the
9 defendant knowingly and willfully, whether acting
10 alone or with Wilfred Pitts, and while armed with a
11 handgun, did feloniously take from the person or
12 presence of Rafael Izaguirre by means of force or
13 threats or intimidation a wallet and/or a cell phone
14 with the intent to steal those things in violation
15 of the law.

16 Indictment 213 charges attempted armed robbery
17 and alleges that at the same time and place the
18 defendant knowingly and willfully, while armed with
19 a handgun, did attempt to take from the person or
20 presence of Franklin Vasquez by means of force or
21 intimidation money and a cell phone in violation of
22 the law.

23 And Indictment 206 charges possession of a
24 weapon during the commission of a violent crime and
25 alleges that Mr. Esaw did in Lexington County on the

1 same date knowingly and willfully possess a firearm
2 during the commission or the attempted commission of
3 a crime of violence, that is, murder and armed
4 robbery, in violation of the law.

5 Ladies and gentlemen, let me tell you at the
6 outset that the indictments which I've just read to
7 you are not evidence, nor are they proof of the
8 charges that they contain. They're simply charging
9 documents, legal documents, that tell you or me or
10 anyone else who reads them what this case is all
11 about.

12 To the charges contained in these indictments,
13 Mr. Esaw has entered pleas of not guilty and has
14 asked for a jury trial at your hands. Mr. Esaw,
15 will you please stand and face the jury behind you.

16 (The defendant stands and faces the jury.)

17 THE COURT: Thank you. You can be seated.

18 Ladies and gentlemen, are any of you related by
19 blood or connected by marriage or friends or
20 business associates or casual acquaintances or
21 people who have any direct or indirect contact with
22 Mr. Ricky Lamont Esaw? If so, will you please
23 stand. Thank you.

24 Ladies and gentlemen, the indictment contains
25 the names of the alleged victims Hector Vasquez,

1 POTENTIAL JUROR: Previously. He works for
2 Cayce Public Safety now.

3 THE COURT: Okay. Thank you.
4 Yes, ma'am?

5 POTENTIAL JUROR: Juror No. 5 Kimberly Backman.
6 I previously worked at the South Carolina Department
7 of Public Safety and my daughter works for the South
8 Carolina Department of Natural Resources.

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

11 POTENTIAL JUROR: 182. My wife works for SLED
12 at the drug ID lab, and before that she worked in
13 the toxicology lab.

14 THE COURT: Thank you.
15 Yes, sir?

16 POTENTIAL JUROR: 63, Jason Hall. My father
17 used to be a police officer in Orangeburg County.

18 THE COURT: Okay. Thank you, sir.
19 Yes, sir, in the center, your name?

20 POTENTIAL JUROR: 24, Norris Bryant.

21 THE COURT: Mr. Bryant, tell me the relation
22 and the agency.

23 POTENTIAL JUROR: My wife works at the police
24 academy.

25 THE COURT: Okay. Thank you.

1 I'm going to allow the testimony, however, as
2 the Whaley case states, and I'm certain this expert
3 will not transgress in that regard, this witness can
4 give no opinion as to whether this particular
5 testimony of this eyewitness is accurate or not; it
6 can simply talk about the science of cross-racial
7 identification and what that has revealed. The
8 motion to suppress is respectfully denied. All
9 right.

10 MS. PATTERSON: Thank you, Your Honor.

11 THE COURT: Thank you-all.

12 All right. What do we have next?

13 MS. PATTERSON: Your Honor, we have our Neil v.
14 Biggers hearing.

15 THE COURT: Okay. Good. Go ahead.

16 MS. PATTERSON: The State calls Franklin
17 Vasquez.

18 FRANKLIN VASQUEZ

19 being first duly sworn, testified as follows:

20 THE WITNESS: I do.

21 THE CLERK: Have a seat, sir. Once you're
22 seated, state your name spelling your last, please.

23 THE WITNESS: My name is Franklin Vasquez,
24 V-A-S-Q-U-E-Z.

25 DIRECT EXAMINATION

1 BY MS. PATTERSON:

2 Q. How old are you?

3 A. I'm 19.

4 Q. And did you graduate from high school?

5 A. Yes, ma'am.

6 Q. When did you graduate?

7 A. Last year, 2016.

8 Q. Did you take a break after high -- before you
9 graduated?

10 A. No. I'm working with my uncle right now.

11 Q. And where were you supposed to graduate from
12 high school?

13 A. Airport High School.

14 Q. And you said you work with your uncle?

15 A. Yes, ma'am.

16 Q. And what type of work do you do?

17 A. Metal roofing.

18 Q. Now, have you ever testified in court before?

19 A. No, ma'am.

20 Q. You a little nervous?

21 A. Yeah, a little bit.

22 Q. Just relax take a deep breath.

23 Franklin, on August 9th of 2015, did you
24 witness an incident where your father was shot and
25 killed?

1 A. Yes, ma'am.

2 Q. And as a matter of fact, you too were a victim
3 in that crime; correct?

4 A. Yes, ma'am.

5 Q. And where did this take place?

6 A. [REDACTED]

7 Q. And what is that also known as?

8 A. Rolling Meadows.

9 Q. And do you remember what time of day that this
10 incident occurred?

11 A. Around nighttime.

12 Q. And can you tell the Court, what were you doing
13 right before this incident happened?

14 A. Earlier that day we went to Academy Sports to
15 get bookbags for my senior year. And I had to get
16 back to cut the grass for the baptism party that
17 they had. And then I had gotten dressed to go play
18 basketball up the street from where the party was
19 going on.

20 And then when it turned dark, I was walking
21 back with my friend from playing basketball to check
22 in with my dad. And when I checked in with my dad,
23 I went to the cooler and grabbed a drink and came
24 back to talk to him. Then all of a sudden, a black
25 four-door sedan came, passed by, and he said -- the

1 driver had the window down a little bit and he said
2 something. My dad turned around and he said, what?
3 And then the car stopped --

4 Q. Let me stop you for a second, Franklin. So you
5 had went and played basketball with your friends.
6 Who are those friends?

7 A. Nate and DeShaun.

8 Q. And where was your dad when you came back to
9 the check in?

10 A. He was at the white fence.

11 Q. Okay. And where is the white fence?

12 A. Right in front of the house where the big
13 baptism party was at.

14 Q. And where was this cooler that you went and got
15 a drink from?

16 A. Behind the house, right behind the white truck.

17 Q. And when you got back to your dad, how close to
18 you -- how close to you were -- how close were you
19 to your dad when you saw the car pull up?

20 A. Side by side. Basically it was, like, the
21 corner of the fence, and I was, like, in the middle,
22 like, right here, basically.

23 Q. And when did you first notice or get a look at
24 the person who got out of the car?

25 A. When he -- I got a good glance when he got the

1 car and pointed the gun at me and told me empty out
2 my pockets.

3 Q. And how close -- and I'm going to walk towards
4 you and you tell me to stop and let me know how
5 close you were when he got out of the car and
6 pointed the gun at you. Okay?

7 A. Okay.

8 Q. (Approaching the witness.)

9 A. He was, like, right there.

10 Q. Right here?

11 A. Yes, ma'am.

12 Q. And when he pointed the gun at you, were you
13 looking eye to eye?

14 A. Yes, ma'am.

15 Q. And did you have any problems seeing this
16 person?

17 A. No, ma'am.

18 Q. Now, you mentioned that it was nighttime. Was
19 it any light or anything out there?

20 A. Yes, ma'am.

21 Q. And what happened after -- did that person --
22 did you say anything back to that person?

23 A. I told him that I didn't have anything.

24 Q. And did he say anything back?

25 A. He repeated and told me to empty out my

1 pockets. And then that's when my ad jumped on front
2 of me and told him what was his problem. Then he
3 pointed the gun at my dad and told him to empty out
4 his pockets. And then my dad said he didn't have
5 anything. He tried to shoot the gun, but the gun
6 jammed, and then my dad hit him upside the head with
7 a beer bottle and they were struggling with the gun.

8 Q. When your dad and this person were struggling
9 for the gun -- again, I'm going to walk towards you
10 and you tell me when to stop. You let me know how
11 close you were when you -- to your dad and that
12 person when they were struggling for the gun.

13 A. Okay.

14 Q. (Approaching the witness.)

15 A. Like right there.

16 Q. And when they were struggling for the gun, what
17 position were they in?

18 A. They were on the floor wrestling for the gun.

19 Q. Okay. They were on the ground?

20 A. Yes, ma'am.

21 Q. And are you still able to see the person when
22 he's struggling on the ground with your dad?

23 A. Yes, ma'am.

24 Q. And did you have any close contact with the
25 person?

1 A. Yes, ma'am.

2 Q. At what point?

3 A. At first I was froze up and didn't know what to
4 do, but then I snapped out of it and I threw the
5 soda can at him and kicked him in the face. And
6 then that's when the bigger dude came around and
7 shot the gun through the passenger's side and the
8 bullet grazed me and hit the white truck. And I
9 jumped out -- jumped and ran inside to grab the
10 keys. And then I tried to chase him and then I came
11 back and got in my car and chased him in my car, but
12 it was too late.

13 Q. Let me stop you again. So when you threw the
14 soda bottle at this person and when you kicked him,
15 did you make contact with their body?

16 A. Yes, ma'am.

17 Q. Where did you kick them?

18 A. In the face.

19 Q. And, Franklin, how good was your eyesight?

20 A. It was pretty good.

21 Q. And how did this person look?

22 A. Just like him over there. (Indicating)

23 Q. Okay. And about how long was the incident?

24 A. It was, like, between five and ten minutes.

25 Q. And what were you focused on mainly during the

1 incident?

2 A. I was focused on the driver pointing the gun at
3 me and my dad.

4 Q. And you mentioned a second suspect.

5 A. Yes, ma'am.

6 Q. How did that suspect look?

7 A. From what I saw, he was bigger than the driver.

8 Q. Did you have much contact or interaction with
9 that person?

10 A. No, ma'am.

11 Q. And once it was over, again, what did the
12 suspect do?

13 A. They got in their car and left.

14 Q. And you said you left. Did you return to the
15 scene?

16 A. Yes, ma'am.

17 Q. When you returned to the scene, did you talk to
18 a police officer about what happened?

19 A. Yes, ma'am. I told him that there was two
20 people involved. And then he checked me to see if I
21 was okay and then he saw that I had a graze on my
22 upper right thigh, and I was immediately taken to
23 the hospital to get treated.

24 Q. And at the hospital did you talk to another
25 officer?

1 A. Yes, ma'am.

2 Q. And did you give him a statement?

3 A. Yes, ma'am.

4 Q. And were you still in the process of getting
5 treatment then?

6 A. Yes, ma'am.

7 Q. And did you give him a description of the
8 person who shot and killed your dad?

9 A. Yes, ma'am.

10 Q. And did you ever meet with Detective John
11 Moore?

12 A. Yes, ma'am.

13 Q. And would this have been after you got out of
14 the hospital?

15 A. Yes, ma'am.

16 Q. And do you remember where you were when you
17 talked to Detective John Moore?

18 A. At my uncle's house.

19 Q. Did you ever tell him about your ability to be
20 able to identify this person?

21 A. Yes, ma'am.

22 Q. What did you tell Detective John Moore?

23 A. I told him I'd be able to pick him out in an
24 instant.

25 Q. Okay.

1 (State's Exhibit Nos. 2 - 5 marked for
2 identification.)

3 BY MS. PATTERSON:

4 Q. Franklin, I'm going to show you what's been
5 marked for identification only as State's Exhibits 2
6 and 3. Do you recognize what's been marked as
7 State's Exhibits 2 and 3?

8 A. Yes, ma'am.

9 Q. And do these pictures appear to be the same
10 ones that Detective Moore showed you?

11 A. No, ma'am.

12 THE COURT: I'm sorry. Is that answer yes or
13 no?

14 THE WITNESS: Yes.

15 THE COURT: It is? Okay.

16 BY MS. PATTERSON:

17 Q. Did you make a selection out of those pictures?

18 A. No, ma'am.

19 Q. And why didn't you?

20 A. Because none of them looked like the guy I saw
21 that night.

22 Q. Now I'm going to show you what's been marked as
23 State's Exhibit No. 4. Do you recognize that --

24 A. Yes, ma'am.

25 Q. -- paper?

1 A. Yes, ma'am.

2 Q. How do you recognize that paper?

3 A. It has my signature and the date.

4 Q. And what date is that?

5 A. April 13th, 2015.

6 Q. What is it again?

7 A. April 13th, 2015.

8 Q. Does it say April?

9 A. I mean August.

10 Q. August what now?

11 A. August 13th, 2015.

12 Q. And is that paper -- is that the lineup
13 Detective Moore showed you?

14 A. Yes, ma'am.

15 Q. And when Detective Moore showed you that
16 picture, did those people in that picture have
17 similar physical features?

18 A. Yes, ma'am.

19 Q. Did Detective Moore tell you or suggest who you
20 should pick?

21 A. No, ma'am.

22 Q. Did you make a selection and an identification?

23 A. Yes, ma'am.

24 Q. And what number did you pick out?

25 A. Number 2.

1 Q. Did you indicate that somewhere else on the
2 paper too?

3 A. Yes, ma'am. At the bottom, I circled it.

4 Q. And then you signed it?

5 A. Yes, ma'am.

6 Q. And how were you able to make that selection?

7 A. His facial features. They were -- to me, the
8 facial features are the same as the guy that I saw
9 that night.

10 Q. And is that the guy that shot your father?

11 A. Yes, ma'am.

12 Q. And is that the guy that pointed the gun at
13 you?

14 A. Yes, ma'am.

15 Q. How long did it take you to make that
16 selection?

17 A. Not even a minute.

18 Q. Had you ever seen that person before the night
19 of the shooting?

20 A. No, ma'am.

21 Q. I'm going to show you what's been marked as
22 State's Exhibits No. 5. Do you recognize that
23 paper?

24 A. Yes, ma'am.

25 Q. Did Detective Moore show you that lineup as

1 well?

2 A. Yes, ma'am.

3 Q. And did you make an identification in that
4 lineup?

5 A. No, ma'am.

6 Q. Why didn't you?

7 A. Because I wasn't sure about second suspect.

8 Q. Why weren't you sure about the second suspect?

9 A. Because I was worried about the first one, the
10 one that had the gun pointed at me and my dad.

11 Q. Now, Franklin, at the time that you lived in
12 Rolling Meadows and this took place, you said you
13 were a rising senior at Airport High School?

14 A. Yes, ma'am.

15 Q. Did you go to school with any African-American
16 kids?

17 A. Yes, ma'am.

18 Q. Did you have any African-American friends?

19 A. Yes, ma'am.

20 Q. As a matter of fact, what race is Nate and
21 DeShaun who you played basketball with that day?

22 A. They're black.

23 Q. And did black kids live in your neighborhood?

24 A. Yes, ma'am.

25 MS. PATTERSON: I beg the Court's indulgence.

1 THE COURT: Yes, ma'am.

2 BY MS. PATTERSON:

3 Q. And, Franklin, do you see the same person in
4 this courtroom who shot and killed your father?

5 A. Yes, ma'am.

6 Q. And how are you able to recognize that person?

7 A. By his facial features. And he has the same
8 beard that he had when all that happened.

9 Q. And where do you see that person?

10 A. Over there. (Indicating)

11 Q. And what does he have on?

12 A. He has an orange jumpsuit.

13 Q. Thank you, Franklin. Please answer any
14 questions the Defense may have.

15 THE COURT: Ms. Fullwood, cross-examination?

16 MS. FULLWOOD: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. FULLWOOD:

19 Q. Good afternoon, Franklin. How are you doing?

20 A. Good. How are you?

21 Q. Fine, thanks.

22 Okay. You previously testified you went home
23 after playing basketball when it got dark?

24 A. Yes, ma'am.

25 Q. So y'all just couldn't see the net good enough

1 to play it anymore?

2 A. Yes, ma'am, because there wasn't a light post
3 near where the basketball goal was.

4 Q. Okay. So you go home and get your drink out of
5 the cooler?

6 A. Yeah.

7 Q. Now, you were describing to Ms. Patterson, if I
8 understood you correctly because you were making
9 hand gestures and I couldn't see, that this occurred
10 where the fences met together, the corner of the
11 fences?

12 A. Yes, ma'am.

13 Q. So it was the fences that kind of separated
14 your yard from the neighbor's?

15 A. The fence covered our yard with our neighbor's,
16 so basically shared the same link.

17 Q. Okay.

18 A. Yeah.

19 Q. But there was one corner that met like that --

20 A. Yeah.

21 Q. -- at a right angle? (Demonstrating)

22 A. Yeah. And -- yeah.

23 Q. Okay. So when this happened, were you standing
24 in somebody's yard or were you standing outside the
25 fence near the roadway?

1 A. Where the white truck was parked, I was
2 standing right there right beside it.

3 Q. Okay.

4 A. Yeah.

5 Q. Okay. And the white truck was parked in
6 between y'all's house and the neighbor's house?

7 A. No. It was in the driveway of the neighbor's
8 house.

9 Q. Okay.

10 A. Yeah.

11 Q. Okay. Is the driveway between the two houses?

12 A. Uh-huh.

13 Q. Okay. All right. And what kind of lighting
14 was there out there that would let you see?

15 A. The light post that's across the street.

16 Q. Okay. Now, that light post is sort of
17 catty-corner across the street?

18 A. Yeah. And there was some lighting also from
19 the porch too.

20 Q. A porch from which house?

21 A. From the neighbor's house where we were at --
22 where everybody was at.

23 Q. Okay. Well, wasn't that the back porch?

24 A. No. It was the front porch.

25 Q. It was the front porch?

1 A. Everybody was at the front.

2 Q. Okay.

3 A. Yeah.

4 Q. So there were people in the yard?

5 A. Yeah. People on the porch. And then when all
6 that happened, everybody ran inside.

7 Q. I see. Okay. So, initially, when this
8 incident began, there were other people outside?

9 A. Yeah. Yeah.

10 Q. Okay. But they just went on inside?

11 A. Yeah. Yes, ma'am.

12 Q. Okay. So you had the streetlight that was kind
13 of catty-corner from where y'all were; right?

14 A. Uh-huh.

15 Q. And it was on the opposite side of the road
16 than the side your house was on; right?

17 A. Yeah.

18 Q. And then you had some light from the neighbor's
19 porch. Can you tell us what kind of light that is?

20 A. No. I don't -- I didn't live there.

21 Q. Okay. Did they have a little porch with a
22 light on it or was it like one of those lights that
23 was beside your door so if somebody comes to your
24 house, you can turn it on and see who it is?

25 A. It was turned on the whole time. I really

1 didn't get a look at it. I didn't pay any attention
2 to it.

3 Q. You don't know if it was hung beside the door?

4 A. Huh-uh.

5 Q. Okay. But you say that house had a porch on
6 it?

7 A. Yes, ma'am.

8 Q. Can you describe the porch for me?

9 A. It was a wooden porch that's -- I don't know.
10 Like --

11 Q. I'm not trying to give you a hard time.

12 A. Yeah.

13 Q. But, you know, sometimes words mean different
14 things to different people. And I'm thinking the
15 porch could either be just a little bit wider than
16 the door, so when a visitor came, they would have a
17 place to stand while they were knocking on the
18 door.

19 A. Yeah. It's a wider -- it's a wide porch.

20 Yeah.

21 Q. Okay. Did it run the whole length of the house
22 or --

23 A. It was about halfway of the house. Yeah.

24 Q. Okay. Did it have a roof over it?

25 A. Yeah.

1 Q. Okay. Okay. Now -- so this happened about
2 9:00 at night; right?

3 A. Uh-huh.

4 Q. Okay. So the guy first says something to you;
5 right?

6 A. Uh-huh.

7 Q. And then he says something to your father?

8 A. Uh-huh.

9 Q. And your father says, no, I don't even have any
10 money or something?

11 A. Uh-huh.

12 Q. And is that --

13 THE COURT: Franklin, if I could get you to
14 please say yes or no, it makes it easier for the
15 court reporter --

16 THE WITNESS: Okay.

17 THE COURT: -- to get your response.

18 THE WITNESS: Yes, sir.

19 MS. FULLWOOD: I beg the Court's indulgence.

20 THE COURT: Okay.

21 BY MS. FULLWOOD:

22 Q. So at a certain point, your dad began to
23 struggle with the man?

24 A. Yes, ma'am.

25 Q. All right. And was -- did he jump on him and

1 throw him to the ground or did the struggle start
2 while they were both still on their feet or how did
3 it occur?

4 A. No. At first when my dad hit him with the beer
5 bottle, they were struggling on their feet. And
6 then they eventually fell to the ground onto the
7 pavement.

8 Q. Okay. So the struggle started because your dad
9 decided to defend himself and hit him with a bottle?

10 A. Yes, ma'am.

11 Q. And the bottle broke; correct?

12 A. Yes, ma'am.

13 Q. Okay. And was it pretty quick that they were
14 on the ground after that?

15 A. Yes, ma'am.

16 Q. And then -- then they were on the ground?

17 A. Yes, ma'am.

18 Q. Is that when he could hear the person trying to
19 shoot the gun but it wouldn't fire?

20 A. No, ma'am. That happened way before that.

21 When the -- the gun jammed -- when he tried to shoot
22 the gun and the gun jammed, that's when my dad
23 reacted and hit him with the bottle.

24 Q. Okay. I see.

25 A. Then when they were on the ground struggling,

1 they were struggling for the gun. And when I threw
2 the soda can at him and kicked him in the face,
3 that's when the gun went off.

4 Q. Okay. And you heard him rack the gun or
5 whatever you call it?

6 A. No. He --

7 Q. Slid the -- slide the gun?

8 A. Huh-uh.

9 Q. You didn't even hear that?

10 A. He just pulled the trigger, I guess.

11 Q. Just pulled it?

12 A. Yes, ma'am.

13 Q. Okay. And your soda can hit him where?

14 A. In the face.

15 Q. In the face?

16 A. Yes, ma'am.

17 Q. Did it pop the can or anything?

18 A. I don't know. I just threw it and then kicked
19 him in the face, and that's when I got grazed with
20 the bullet. And then I ran inside, grabbed the
21 keys, chased him, and then went back and grabbed my
22 car.

23 Q. Okay. Now, the man -- your father -- are you
24 trying to say the man that shot your father was also
25 the man that shot you?

1 A. No.

2 Q. Different man?

3 A. Different man, the bigger man.

4 Q. All right. And when your dad and the man were
5 on the ground, was one of them on top of the other
6 or were they side by side or how did that struggle
7 occur, to your recollection?

8 A. They were struggling for the gun.

9 Q. I know.

10 A. Yeah.

11 Q. But, I mean, was your dad on top of him or was
12 he on top of your dad? Were they punching each
13 other, or can you tell me?

14 A. I couldn't tell you because I was frozen up
15 when they were struggling. And I just snapped up
16 out of it and threw a soda can and kicked him in the
17 face.

18 Q. Okay. And then there was a shot and you got
19 shot?

20 A. Uh-huh.

21 Q. How many shots did you hear out there that
22 night?

23 A. Two.

24 Q. Two?

25 A. Yes, ma'am.

1 Q. Okay. And then they left and you went and got
2 your keys --

3 A. Got my keys.

4 Q. -- and followed them?

5 Okay. I know you've testified that you didn't
6 know these people.

7 A. Uh-huh.

8 Q. Okay. That night did you say anything that
9 made your mom believe that you did? Was there
10 anything going on like that?

11 A. No, ma'am.

12 Q. Okay. Eventually you came back, right, to
13 the --

14 A. Yes, ma'am.

15 Q. -- to your house? And that's because one of
16 the officers saw you and --

17 A. Yes, ma'am. And I took them to where
18 everything happened at.

19 Q. Okay.

20 A. And he asked me who was there, what happened,
21 and I told him there was two people involved. And
22 he started checking me to see if I was all right,
23 and I had a graze on my thigh and --

24 Q. Right. And --

25 A. -- they sent me to the hospital.

1 Q. Right. And one of the people you talked to
2 when you came back to your house was Officer Steen,
3 one of the first policemen that came; right?

4 A. Uh-huh.

5 Q. And you told him basically what you just
6 related: Two men did this, tried to rob you, and
7 then they saw that you were wounded, and they had
8 you taken to the hospital. Right?

9 A. Yes, ma'am.

10 Q. All right. And when you got to the hospital,
11 you talked to a different officer, didn't you?

12 A. Yes, ma'am.

13 Q. All right. And you told him, basically, about
14 the fight; right?

15 A. Yes, ma'am.

16 Q. And you didn't tell him anything about these
17 men's heights; right?

18 A. Later, yeah, I did tell them, like, one --

19 Q. Are you sure?

20 A. Yes, ma'am, because the driver was the same
21 size as my dad.

22 Q. Okay. You told him that?

23 A. Yes, ma'am.

24 Q. What about their weights?

25 A. No, not the weight.

1 Q. And you didn't tell anything about the
2 clothing; right?

3 A. No, ma'am.

4 Q. Or anything about any facial features they
5 might have had?

6 A. I did tell them about facial features.

7 Q. What did you tell them?

8 A. About the driver, that he had a beard and the
9 type of haircut he had.

10 Q. What type of haircut was that?

11 A. A fade haircut.

12 Q. A fade haircut?

13 A. Yes, ma'am.

14 Q. All right. And that night at the hospital you
15 gave -- you wrote down a statement of what happened;
16 right?

17 A. (Nonverbal response.)

18 Q. And in that statement you said that the men
19 pulled up in a gray car, didn't you?

20 A. Yes, ma'am.

21 Q. All right. And have you had a chance to look
22 at this statement leading up to today?

23 A. Yes, ma'am.

24 Q. Okay. So correct me if I'm wrong, but isn't
25 the only description of these two men's physical

1 characteristics the fact that the passenger driver
2 was a fat guy?

3 A. Yeah. Yeah.

4 Q. And then later on Detective Moore showed you
5 the lineups that you testified about. And this
6 thing happened to you on August 9; right?

7 A. Yes, ma'am.

8 Q. And it was, I believe, August 13 --

9 A. Yes, ma'am.

10 Q. -- when he showed it to you?

11 A. Yes, ma'am.

12 Q. Okay.

13 MS. FULLWOOD: I beg the Court's indulgence.

14 THE COURT: Yes, ma'am.

15 BY MS. FULLWOOD:

16 Q. Can you tell me what portion of your foot
17 connected with the man's face?

18 A. Like the -- where your toes are at, the upper
19 part of your foot.

20 Q. Up, like, your toe area?

21 A. Yeah.

22 Q. You want to show me?

23 A. Yeah. (Indicating)

24 Q. Okay. The top -- kind of the top --

25 A. Yeah.

1 Q. All 'right. But it did connect?

2 A. Uh-huh.

3 Q. Was it a pretty --

4 A. Yes, ma'am.

5 Q. Was it a pretty hard kick?

6 A. Yes, ma'am.

7 Q. Did he react to it?

8 A. I heard a grunt when I kicked him.

9 Q. Okay. Did you see any jewelry on any of these
10 men?

11 A. No, ma'am.

12 Q. Never did?

13 A. No, ma'am.

14 Q. Okay.

15 MS. FULLWOOD: No further questions, Your
16 Honor.

17 THE COURT: Thank you.

18 Redirect, Ms. Patterson?

19 MS. PATTERSON: Yes, sir, just briefly.

20 (State's Exhibit Nos. 6 and 7 marked for
21 identification.)

22 REDIRECT EXAMINATION

23 BY MS. PATTERSON:

24 Q. Franklin, I'm going to show you State's Exhibit

25 No. 6. Does that picture show the area that you and

1 your dad were when y'all were robbed and your dad
2 was shot?

3 A. Yes, ma'am.

4 Q. And can you see that porch in that picture that
5 you were describing to Ms. Fullwood?

6 A. Yes, ma'am.

7 Q. And does that porch have the light on?

8 A. Yes, ma'am.

9 Q. Okay. And I'm going to show you what's been
10 marked as State's Exhibit No. 7. And can you see
11 the area that you and your dad were when all this
12 happened?

13 A. No, ma'am. It was more this way a little, more
14 this side. (Indicating)

15 Q. I think you testified about being in front of
16 the truck.

17 A. Yes, ma'am.

18 Q. And was the truck next to anything else?

19 A. The white car.

20 Q. Okay. Is the white car --

21 A. And the white fence.

22 Q. Is the white car in that picture, State's
23 Exhibit No. 7?

24 A. Yes, ma'am.

25 Q. And what can you see in that picture?

1 A. Streetlight.

2 Q. Streetlights in that picture?

3 A. Yes, ma'am.

4 Q. And when you gave the law enforcement officer
5 the first statement, that's when you realized you
6 were shot and you needed to get treatment?

7 A. Yes, ma'am.

8 Q. And at the hospital when you gave the written
9 statement about the gray car, did you later talk to
10 Investigator Moore and give him another description
11 of the car?

12 A. Yes, ma'am. I said it was a dark color,
13 darkish, grayish color.

14 Q. And that's what you remember --

15 A. Yes, ma'am.

16 Q. -- it being dark color car?

17 A. Yes, ma'am.

18 Q. Did you also tell Detective Moore about the
19 shooter being about the same size as your dad?

20 A. Yes, ma'am.

21 Q. And did he ask you about your dad's height and
22 weight?

23 A. Yes, ma'am.

24 Q. And what did you tell him about your dad's
25 height and weight?

1 A. Five-seven, 160.

2 Q. And, again, at that time did you tell him you'd
3 be able to recognize this person if you saw him
4 again?

5 A. Yes, ma'am.

6 MS. PATTERSON: I beg the Court's indulgence.

7 Your Honor, that's all we have for this
8 witness.

9 THE COURT: All right. Thank you. You can
10 step down, Franklin.

11 Anything further?

12 MS. PATTERSON: Yes, sir, Your Honor.
13 Detective Creech.

14 THE COURT: Detective Creech, resume the stand
15 please, sir. You're still under oath.

16 MS. FULLWOOD: If it pleases the Court, Your
17 Honor, our client needed a quick break. If we
18 can --

19 THE COURT: All right. If it's real quick,
20 we'll just stay in place. How about that?

21 MS. FULLWOOD: Yes, sir.

22 THE COURT: When we finish this issue I'm going
23 to take a break for everybody else. But --

24 MS. FULLWOOD: Yes, sir.

25 (Brief pause in the proceedings.)

REDIRECT EXAMINATION

1

2

BY MS. MARTIN:

3

Q. You're still under oath. Were you involved in

4

a photo lineup that was provided to Franklin

5

Vasquez?

6

A. I was.

7

Q. And do you recall where this took place?

8

A. I do. It took place at [REDACTED]

9

10

Q. And were you present with Detective Moore when

11

he gave certain instructions to Franklin?

12

A. I was.

13

Q. And did Detective Moore tell him who to pick or

14

give him any indication whose photographs were

15

involved in the lineup?

16

A. He did not.

17

Q. If I can show you State's 5, is that the lineup

18

that was shown to Franklin Vasquez by you and

19

Detective Moore?

20

A. No, it's not.

21

Q. It's not? You're right.

22

If could show you what's been marked State's 4.

23

Was that a photo lineup that included Mr. Esaw that

24

was shown to the defendant -- excuse me, to the

25

victim Franklin Vasquez?

1 A. It is.

2 Q. And did Franklin -- were you present when he
3 view that lineup?

4 A. I was.

5 Q. And when he was shown that lineup, was his
6 family with him?

7 A. His mother was there, but she was separated
8 while we were providing lineup instructions and
9 displaying the lineup so there'd be no
10 cross-contamination.

11 Q. And when Franklin observed the lineup, did he
12 make an indication that he recognized someone?

13 A. He did.

14 Q. And did he indicate in writing on that lineup
15 who he recognized?

16 A. He did.

17 Q. How quick or long was it when he viewed the
18 lineup that he made this identification?

19 A. It was almost immediate.

20 Q. Okay. And did he indicate that that's the
21 person who shot his father?

22 A. He did make that indication.

23 MS. MARTIN: Nothing else, Your Honor.

24 THE COURT: Cross-examination?

25 MS. FULLWOOD: No questions, Your Honor.

1 THE COURT: You may step down. Thank you.

2 MS. MARTIN: Detective Moore.

3 THE COURT: Mr. Moore, you're still under oath.

4 Thank you.

5 DIRECT EXAMINATION

6 BY MS. MARTIN:

7 Q. Detective Moore, when did you first meet
8 Franklin Vasquez?

9 A. I met him the Monday after the incident.

10 Q. And was he already out of the hospital?

11 A. He was.

12 Q. And did he indicate to you in any way that he
13 was able to identify the shooter of his father?

14 A. He did. He did.

15 Q. How did he indicate this to you?

16 A. He said he'd never forget it.

17 Q. Was he able to give you a description of the
18 person that shot his dad?

19 A. He did. He did. He said it was about like his
20 father; weight, height, had a beard, thick beard, he
21 said.

22 Q. Did you show him a lineup on -- that involved
23 other suspects than Mr. Esaw?

24 A. I'm sorry. I didn't --

25 Q. Well, let me --

1 THE COURT: Just show it to him.

2 Q. Were these lineups presented to Franklin?

3 A. Yes, they were.

4 Q. And was he able to pick anyone out?

5 A. No, he wasn't.

6 Q. And is Ricky Esaw included in those photo
7 lineups?

8 A. No, he isn't.

9 Q. If I can show you State's 4, do you recognize
10 that lineup?

11 A. I do.

12 Q. And was that lineup presented to Franklin?

13 A. It was.

14 Q. And who else was y'all when you presented this?

15 A. Detective Creech, myself, and Detective
16 Sowards.

17 Q. Okay. And did you tell Franklin the names of
18 the individuals in the lineup or any identifying
19 information of the people?

20 A. No.

21 Q. And was he able to pick anyone out of that
22 lineup?

23 A. He did.

24 Q. How long did it take him upon viewing the
25 lineup before he identified anyone?

1 A. Immediately me picked out Ricky Esaw.

2 Q. What if anything did he say about Mr. Esaw's
3 involvement?

4 A. That he's the one that shot my dad.

5 Q. Did he hesitate in any way when looking at the
6 lineup?

7 A. No.

8 Q. What was his level of certainty?

9 A. A hundred percent.

10 Q. Was he able to pick out anyone else in the
11 other lineup, State's 4 -- State's 5?

12 A. I showed him a second one with Wilfred Pitts in
13 it and he could not -- was not sure.

14 Q. And did not pick anyone out?

15 A. Did not pick anybody out, no.

16 Q. Did you suggest to him who the suspect in the
17 lineup where he did pick out Mr. Esaw?

18 A. No.

19 Q. Did you tell him that you thought you had
20 shooter in the lineup?

21 A. Yes.

22 Q. Did you indicate to him which picture or which
23 photograph?

24 A. No.

25 Q. Did his mom -- she was present, wasn't she?

1 A. Away, yes.

2 Q. Did she influence him in any way?

3 A. No. We separated them.

4 MS. MARTIN: That's all I have, Your Honor.

5 THE COURT: Cross-examine?

6 CROSS-EXAMINATION

7 BY MR. CHEHOSKI:

8 Q. Were you able to get a description of the
9 clothing that the people involved in the incident
10 were wearing?

11 A. Well, he said it was dark.

12 Q. That's a no?

13 A. I'm sorry?

14 Q. Did you get a description of the clothing that
15 the assailants were wearing from Mr. Vasquez?

16 A. In his statement -- let me check. Hang on a
17 minute, counselor. I wasn't present when he wrote
18 the actual statement. No. I don't see any clothes
19 in the statement that he actually said.

20 Q. Okay. You did get an approximate height?

21 A. And weight. Yes, sir.

22 Q. And weight?

23 A. Yes, sir.

24 Q. And facial feature of a beard?

25 A. Right.

1 Q. Any other description of the assailant?

2 A. No, sir.

3 Q. And, of course, African-American?

4 A. Right.

5 Q. Now, you did not compile the photo lineup,
6 right?

7 A. I did not.

8 Q. You received that from either Brian Travis or
9 Beverly Smith?

10 A. Which one now? Which -- the one he picked out?

11 Q. Number 4, the one with Mr. Esaw in it.

12 A. Yes, that one.

13 Q. Okay. And after -- did you clear the lineup
14 with anyone before showing it to Mr. Vasquez?

15 A. I did. / I wanted to make sure that it looked
16 good and I showed one of the supervisors in major
17 crimes.

18 Q. All right. Is that your normal procedure?

19 A. I do sometime if I want to make sure.

20 Q. And did you notice that Mr. Esaw's picture is
21 lighter than the other five pictures?

22 A. No, I don't. In fact, number 5 looks lighter
23 than number 2.

24 Q. Let me see it, please. You're saying the skin
25 on number 5 looks lighter than number 2?

1 A. You said the picture was lighter.

2 Q. And the skin is lighter. Notice that the
3 skin -- Mr. Esaw's skin is lighter than the other
4 five pictures.

5 A. They all look basically the same to me. Except
6 when you mentioned that the picture was lighter, I
7 look at number 5, his actual picture is a little bit
8 lighter.

9 Q. You don't think Mr. Esaw's skin is lighter than
10 the other five?

11 A. No.

12 Q. And the procedure that you used in showing them
13 the lineups, is that your standard procedure as
14 well?

15 A. Yes.

16 Q. Is that the standard Lexington County
17 procedure?

18 A. That's what I do.

19 Q. It's what you do?

20 A. Yes, sir.

21 Q. Do other officers use a different method?

22 A. I'm not sure.

23 Q. Have you not been with other officers when they
24 did this --

25 A. I have.

1 Q. -- when they do a lineup?

2 A. I have. But each officer in their own way.

3 Q. Each officer's own way. There is no -- is it
4 your testimony that there is no standard procedure
5 outlined by Lexington County?

6 A. The procedure is that there's a six-man lineup
7 shown to a victim or a witness.

8 Q. And that's it?

9 A. (Nonverbal response.)

10 Q. And the lineup that you showed Mr. Vasquez,
11 State's No. 4, that was the only lineup that anybody
12 was ever identified?

13 A. On him?

14 Q. Let me --

15 A. Yeah, clarify.

16 Q. I'm sorry. I ask confusing questions.

17 You showed Mr. Vasquez several lineups?

18 A. Right.

19 Q. You showed Ms. Vasquez several lineups?

20 A. Yes.

21 Q. Mr. Vasquez was the only one who identified
22 someone?

23 A. Yes.

24 Q. And Mr. Vasquez only identified Mr. Esaw?

25 A. Correct.

1 Q. Okay. Didn't identify anybody else? And --

2 A. And that makes sense to me because he was right
3 there fighting with him.

4 Q. Understood.

5 MR. CHEHOSKI: One moment, please, Your Honor.

6 THE COURT: Yes, sir.

7 MS. PATTERSON: Your Honor, that's all the
8 State has for this issue --

9 MR. CHEHOSKI: Wait --

10 THE COURT: Well, let's see if the defense is
11 through first.

12 MS. PATTERSON: I'm sorry.

13 MR. CHEHOSKI: I have nothing further.

14 THE COURT: Okay. Detective Moore, you may
15 step down.

16 All right. And, Ms. Patterson, you said you
17 have no more evidence or testimony to offer in the
18 Neal vs. Biggers hearing, right?

19 MS. PATTERSON: That's correct, Your Honor.

20 THE COURT: Mr. Chehoski?

21 MR. CHEHOSKI: Yes, Your Honor. The Defense
22 calls Dr. Dawn McQuiston.

23 THE COURT: Should we take a break first?

24 MR. CHEHOSKI: That's not the worst idea, Your
25 Honor.

1 (Short break.)

2 DAWN MCQUISTON

3 being first duly sworn, testified as follows:

4 THE WITNESS: I do.

5 THE CLERK: Have a seat, ma'am. Once you're
6 seated, state your name spelling your last, please.

7 THE WITNESS: Dawn McQuiston,
8 M-C-Q-U-I-S-T-O-N.

9 DIRECT EXAMINATION

10 BY MR. CHEHOSKI:

11 Q. Dr. McQuiston, where do you currently work?

12 A. At Wofford College.

13 Q. How long have you been there?

14 A. About four and a half years.

15 Q. And what is your position there?

16 A. I'm an associate professor of psychology.

17 Q. How long have you been an associate professor?

18 A. Eight years, nine years.

19 Q. What is your educational background?

20 A. I have a bachelor's degree in psychology, a
21 master's degree in experimental psychology, and a
22 Ph.D. in experimental psychology.

23 Q. Where did you get those degrees?

24 A. I got my bachelor's degree at Eastern New
25 Mexico University and my master's and Ph.D. at the

1 University of Texas at El Paso.

2 Q. And what are your primary duties as a
3 professor?

4 A. I teach classes and I do research.

5 Q. And what is your general area of expertise?

6 A. Legal psychology.

7 Q. Do belong to any professional associations?

8 A. I do, yes.

9 Q. Which ones are those?

10 A. The American Psychology-Law Society, the
11 Society for Empirical Legal Studies, the Society for
12 Applied Research in Memory and Cognition.

13 Q. All right. And has any of your research ever
14 been published?

15 A. It has, yes.

16 Q. And before it's published, is it subject to
17 peer review?

18 A. Yes.

19 Q. And what is peer review?

20 A. Peer review is the process that scholars
21 undergo in order to have their research reviewed for
22 its quality. So it's reviewed by other scholars in
23 the field.

24 Q. All right. So what -- to be published after
25 being subject to peer review, what does that

1 generally mean?

2 A. Do you mean -- it has gone -- every paper
3 that's published has undergone peer review and has
4 been accepted.

5 Q. And to your knowledge how often does something
6 that's subject to peer review get rejected?

7 A. It depends on the journal. It could be
8 anywhere between 20-percent rejection rate to 80- or
9 90-percent rejection rate.

10 Q. Do you in turn conduct peer review studies on
11 other people's work?

12 A. Yes.

13 Q. And have you ever presented your research at
14 professional psychology conferences?

15 A. Yes.

16 Q. In the past have you ever been qualified as an
17 expert in eyewitness identification?

18 A. Yes.

19 Q. Do you know about how many times?

20 A. About 35 or 40 times.

21 MR. CHEHOSKI: Your Honor, at this time I'd
22 tender Dr. McQuiston as an expert in the field of
23 eyewitness identification and psychology.

24 THE COURT: All right.

25 Voir dire, Ms. Patterson?

1 VOIR DIRE EXAMINATION

2 BY MS. PATTERSON:

3 Q. Dr. McQuiston, have you ever published any
4 articles in relation to cross-racial identification?

5 A. I have, yes.

6 Q. And how many --

7 A. I think so. I'd have to look back.

8 Q. So you're not sure?

9 A. I'd have to go back and look at my CV. It
10 would be way in my early days, if so.

11 Q. About how long ago?

12 A. In the late '90s.

13 Q. And what kind of research have you done in
14 regarding cross-racial identification studies?

15 A. What kind of research have I done?

16 Q. Yes, ma'am.

17 A. Similar to colleagues in my field, looking at
18 the degree to which people are susceptible to the
19 cross-race effect under various conditions, maybe
20 lineup conditions, different stressful conditions.
21 Those are the general areas that people do research
22 in, in that area. So my research would be
23 consistent with that.24 Q. And you stated you've been qualified as an
25 expert 35 to 40 times?

1 A. Yes, ma'am.

2 Q. Were you qualified as an expert as it relates
3 to cross-racial identification issues?

4 A. Not necessarily specifically that. I've been
5 qualified as an expert in general having to do with
6 eyewitness memory. And the cross-race effect falls
7 under that broad umbrella, so I've testified many
8 times about the cross-race effect.

9 MS. PATTERSON: Thank you, Your Honor. No
10 further questions.

11 THE COURT: Dr. McQuiston, the cross-racial
12 component is just one of many components that goes
13 into the eyewitness identification; is that right?

14 THE WITNESS: That's correct.

15 THE COURT: Okay. Thank you.

16 Mr. Chehoski, go ahead.

17 MR. CHEHOSKI: Your Honor, is she qualified as
18 an expert?

19 THE COURT: Without objection, Dr. McQuiston is
20 so qualified as an expert in eyewitness
21 identification psychology.

22 CONTINUED DIRECT EXAMINATION

23 BY MR. CHEHOSKI:

24 Q. Dr. McQuiston, is there a general -- generally
25 accepted theory of how memory works?

1 A. There is, yes.

2 Q. Can you tell us about that?

3 A. Sure, sure. It goes back to the 1960s. It has
4 to do with the idea that memory does not work like a
5 videotape and, instead, information that we process
6 has to pass through a series of stages before making
7 it into long-term memory. And we think of memory
8 as -- or this theory asserts that memory is more
9 reconstructive than working like a videotape, like
10 some people might think.

11 Q. What do you mean by reconstructive?

12 A. So when we are processing an event, there are
13 often gaps in what we remember. There are several
14 stages through which information has to pass,
15 sensory memory which is all of the things that are
16 happening in the world around us at any given
17 moment, and then short-term memory where we can hold
18 information for only about 30 seconds. If we
19 rehears it, it may make it into long-term memory;
20 otherwise, it's forgotten.

21 And so there are these stages that information
22 has to pass through. And so we -- what we often end
23 up with are gaps in what we remember, and so we tend
24 to fill those gaps in with information from various
25 sources. So when it comes to the idea of memory

1 being reconstructive, our memory are often made up
2 of a lot of bits, things from the original events
3 plus, perhaps, things that we've heard or things
4 that people have told us. Rehearsing the event over
5 and over in our mind, we fill in those gaps with
6 other information.

7 Q. Can memories fade over time?

8 A. Yes. Memories fade over time.

9 Q. Do you know what the general -- generally
10 speaking, what a retention rate is from sensory
11 memory all the way to long-term memory?

12 A. There's no way of quantifying that, really.

13 Q. All right. What do scientists mean by the term
14 attention?

15 A. Attention is a mechanism by which we filter out
16 information that we don't need while focusing on the
17 task at hand, focusing on the information that we do
18 need.

19 Q. And how does that affect memory?

20 A. We can only later remember those things that we
21 attend to.

22 Q. And under what kind of circumstances would
23 people -- would someone fail to attend to something?

24 A. Attention is limited for one thing. We can
25 only attend to one thing at a time. So if there's a

1 lot going on in any given moment, we will often have
2 bad memory for all of them. And also, if we -- we
3 might fail to attend to something if we don't think
4 we're going to have to recall it later, if we don't
5 think we're going to need that information later.

6 Q. What do scientists mean by the term perception?

7 A. Perception is another one of these mechanisms
8 that helps us interact with the world, specifically
9 our senses. So if you think of things we see or
10 touch or smell or taste, perception is the process
11 by which we perceive or integrate information from
12 the senses. So here we'd be talking about visual
13 information, probably.

14 Q. And can people make errors in perception?

15 A. Yes.

16 Q. Is that something-- and are there things that
17 happen that influence the quality of information
18 that's perceived and -- are there things that
19 happen -- I'm sorry, that happen that influence the
20 quality of the information received that affect the
21 memory?

22 A. Yes, there can be.

23 Q. Okay. And, for example, I guess, would the
24 amount of time you have to experience the event,
25 would that affect the amount perceived with the

1 memory?

2 A. Yes.

3 Q. How --

4 A. It -- sorry. It certainly can. The amount of
5 time that you experience any event that --
6 obviously, the longer the amount of time, the more
7 information you'll get, therefore, the better your
8 memory will be.

9 Of course, on the flip side of that, if
10 something happens very quickly, the less information
11 you'll get, therefore, you might not have as good of
12 a memory for it later.

13 Q. Okay. And does the quality of the view that
14 you have during the event, does that affect your
15 memory?

16 A. It can, yes.

17 Q. All right. How about -- so in a situation
18 where it's dark outside, can that affect it?

19 A. It can. And it really does have to do with how
20 much information you're able to get. If it's dark
21 and you don't get a great view, if the circumstances
22 aren't optimal, the less information that you get,
23 the less available it will be to recall later.

24 Q. Is it normal to make mistakes in perception?

25 A. It is, yes.

1 Q. And is it something that would happen to just
2 about anyone?

3 A. Yes.

4 Q. I want to also talk to you now about stress and
5 how stress can experience the level of information.
6 Does heightened stress or fear affect eyewitness
7 identification?

8 A. It can, yes.

9 Q. How so?

10 A. It turns out there are a lot of studies that
11 show that at heightened levels of stress or fear or
12 physiological arousal, this can interfere with our
13 ability to properly process information. And if it
14 interferes with that ability, then you often aren't
15 able to recall information as well later. So it
16 interferes with our ability to accurately describe
17 an event, as well as recall information in order to
18 make an identification.

19 Q. Is there scientific research that examines the
20 effect of stress and eyewitness identification?

21 A. There is. There was what we call a
22 meta-analysis several years ago published by some
23 top researches in my field. And what that does --
24 it's a statistical way of combining several papers,
25 several articles, several studies that have been

1 done, dozens of studies that have been done, looking
2 at this effect of stress on memory. So it's a way
3 to come up with, say, an -- like, one average
4 result, so researchers tend to rely on
5 meta-analyses.

6 Q. And who that participated make up these
7 studies?

8 A. Sure. Adults over the age of 18, males and
9 females.

10 Q. And how are these studies generally conducted?

11 A. Typically someone would be exposed to a
12 stressful event, that would be one group, versus
13 another group who isn't. And then later they are
14 asked to make an identification, and those two
15 groups would be compared.

16 Q. What has generally been the results of these
17 meta-analyses?

18 A. Overall, in general, what is found is that
19 people who are exposed to a stressful event aren't
20 able to describe the event as well and they are not
21 as accurate in their identifications as the
22 nonstressed.

23 Q. And in your experience, do eyewitness experts
24 generally support these conclusions concerning
25 perception and memory and stress?

1 A. Yes.

2 Q. Is there a phenomenon called the cross-race
3 effect?

4 A. Yes.

5 Q. What does that refer to?

6 A. It refers to a person's -- or the idea that
7 people tend to not recognize people of other ethnic
8 groups as well as people of their own ethnic group.

9 Q. Does research demonstrate this?

10 A. It does, yes.

11 Q. What scientific research can you point to that
12 would support this conclusion?

13 A. There was another one of these meta-analyses
14 conducted in 2000 or published in 2001, again, top
15 scholars in my field, about 40 studies that all
16 looked at the cross-race effect. And so when you
17 look at -- the general results shows that many
18 ethnic groups are susceptible to the cross-race
19 effect, so people are -- tend to not be as accurate
20 when they're trying to recognize or identify a face
21 of a different ethnic group versus their own.

22 Q. And how does this phenomenon happen?

23 A. There are a lot of theories proposed in that
24 paper, but what it turns out, the one that seems to
25 receive the most support is the idea of contact,

1 what they call a contact hypothesis. So the more
2 contact you have with another ethnic group, the less
3 susceptible you would be to this effect.

4 Q. And has this found to be different among other
5 racial groups?

6 A. The finding is consistent among different
7 racial groups.

8 Q. All right. I mean, across whites --

9 A. Whites, blacks, Hispanics, cultures and
10 different ethnic groups in Europe. This has been
11 studied all over the world.

12 Q. And is the cross-race effect and the
13 conclusions surrounding that, is that generally
14 supported in the eyewitness expert identification
15 field?

16 A. Yes.

17 Q. All right. What I want to talk to you about
18 next is the length between confidence and accuracy.
19 Has that been studied?

20 A. It has extensively, yes.

21 Q. And what are scientists looking at in studying
22 this?

23 A. They're looking to see whether confidence --
24 the confidence that an eyewitness expresses along
25 with their identification is a reliable predictor of

1 eyewitness -- of their accuracy -- of eyewitness
2 accuracy.

3 Q. And what does that research generally find?

4 A. That research finds another meta-analysis
5 published in 1995; has found that, contrary to what
6 researchers thought up to that point, that -- and
7 what people think in general, that the relationship
8 between confidence and accuracy is only a moderate
9 relationship, meaning that confidence is not a
10 really strong predictor of accuracy.

11 Q. And why might that be?

12 A. The reason that researchers -- the reasons
13 they've expressed have to do with confidence is
14 malleable. You can modify a person's confidence. A
15 person's level of confidence in their identification
16 can change over time, can be influenced by other
17 people. There's a lot of reasons why confidence
18 itself can fluctuate.

19 Q. And do eyewitness experts, again, generally
20 support the conclusions between the relationship of
21 confidence and accuracy?

22 A. Yes.

23 Q. All right. Is there research that addresses
24 situations involving multiple perpetrators in a
25 case?

1 A. There is some research on that, yes.

2 Q. And what is the purpose of the research?

3 A. The purpose of those studies were to look at
4 whether the presence of multiple perpetrators during
5 a crime affects an eyewitness' ability to make an
6 accurate identification versus if there is one
7 perpetrator.

8 Q. Okay. And what does this research find?

9 A. It finds that when there are multiple -- when
10 there is more than one perpetrator, when there's
11 multiple, the rate of identification accuracy is
12 decreased.

13 Q. Okay. So when there are multiple perpetrators,
14 witness descriptions of all of them can suffer?

15 A. Yes, that as well. So identification accuracy
16 can suffer as well as the descriptions that
17 people -- that an eyewitness can give can suffer.

18 Q. And does that affect the likelihood of correct
19 identifications?

20 A. Yes. General identification accuracy
21 decreases.

22 Q. And why does this happen?

23 A. It's the idea -- it goes back to attention.
24 And when there's more than one perpetrator, a
25 witness has to divide his or her attention among

1 those people, so it could turn out that the memory
2 for both of them or all of them is going to suffer.

3 Q. All right. This case involves a photo lineup.
4 Are there national guidelines that discuss the
5 composing and administering of a lineup?

6 A. There are, yes.

7 Q. And has the National Academy of Sciences had
8 input on this as well?

9 A. They have recently, yeah.

10 Q. And what does this research say about
11 presenting a lineup?

12 A. One of -- they say many things. One of the
13 newest recommendations has to do with it's good
14 practice to use a blind procedure, meaning the
15 person administering the lineup doesn't know who the
16 suspect is in the lineup.

17 Q. Why is that important?

18 A. The idea there is so that you can avoid any
19 sort of nonverbal cues that people don't even know
20 that they're giving. There's a long history of
21 psychological research showing that people often can
22 give nonverbal cues without knowing it. Therefore,
23 in order to completely do away with any possibility
24 of any cues being given, that's what the basis for
25 that recommendation is.

1 Q. Are police departments adopting this procedure?

2 A. They are, yes.

3 Q. And, to your knowledge, was this procedure used
4 in this case?

5 MS. PATTERSON: Objection, Your Honor. We're
6 not talking about the identification in this case
7 specifically.

8 THE COURT: That's exactly right. And whether
9 this lineup goes to this jury is a matter for the
10 Court to determine in this case.

11 MR. CHEHOSKI: Yes, sir.

12 BY MR. CHEHOSKI:

13 Q. All right. Are there any difficulties in
14 assessing the reliability of in-court
15 identification?

16 A. Of an in-court identification?

17 Q. Yes.

18 A. There can be, yes.

19 Q. What are those?

20 A. The main one has to do with -- an in-court
21 identification will always be tainted by an earlier
22 identification that was made. So if an
23 identification was in the case -- in any case was
24 already made, it's only the first one that counts.
25 Any identification made after that, you can never

1 know how much influence the first identification has
2 on making that inquiry identification. So it's not
3 a fresh identification.

4 Q. What are encoding conditions?

5 A. By that -- that has to do with how well --
6 like, optimal conditions might be the person was
7 able to view the perpetrator for a good length of
8 time with bright lights, low stress. So it has to
9 do with the conditions under which the crime happens
10 or the scene is happening, so what the conditions
11 are when the eyewitness is processing the
12 information.

13 Q. All right. And what factors might hurt optimal
14 conditions?

15 A. Sure. Many of the things we've talked about.
16 If it's a quick situation, if it -- so if it happens
17 very quickly, if it happens to be dark outside, if
18 it's a very high-stress situation, if the
19 cross-race -- if it's a cross-race situation. So
20 many of those things will affect the encoding
21 conditions all together.

22 Q. All right.

23 MR. CHEHOSKI: One moment, please, Your Honor.

24 THE COURT: Yes, sir.

25 MR. CHEHOSKI: Thank you, Dr. McQuiston.

1 Please answer any question from Ms. Patterson.

2 THE COURT: Ms. Patterson, you may
3 cross-examine.

4 MS. PATTERSON: Thank you.

5 CROSS-EXAMINATION

6 BY MS. PATTERSON:

7 Q. Good afternoon, Dr. McQuiston.

8 A. Good afternoon.

9 Q. Wouldn't you agree that a person who has a
10 clear view, meaning they're eye to eye with that
11 person, and had ample opportunity to view the person
12 would be more apt to make a positive identification?

13 A. An accurate identification? Is that what
14 you're asking?

15 Q. Yes.

16 A. Yes. And wouldn't you agree that a person who
17 actually has close contact with a person may be more
18 apt to make a correct identification?

19 Q. Can you describe what you mean by close
20 contact; meaning if they were, like, from where you
21 and I are?

22 A. Sure. Yes, I would agree.

23 Q. Okay. And wouldn't you agree that if a person
24 is attentively focused on something or someone for
25 five to ten minutes, that they will be able to make

1 a correct identification?

2 A. If that is the situation, yes.

3 Q. And in a lot of situations, stress is good for
4 people, isn't it?

5 A. It depends on the amount of stress, actually.

6 Q. Okay. And stress can sometimes heighten a
7 person's senses; correct?

8 A. It can up to a certain point, so yes. But at a
9 certain point stress gets to be too much and then
10 identification and other things can tend to fall
11 off.

12 Q. And I think you said that the people in most of
13 your studies were 18 or over. Do you have any
14 information about studies in teenagers 17 and under?

15 A. I'm not aware of research that has used
16 teenagers, probably for ethical reasons, in their
17 studies.

18 Q. And what about the proximity and time of a
19 person experiencing the traumatic event and doing a
20 photo lineup? Would that have any bearing on their
21 ability to make a positive identification?

22 A. It would, yes.

23 Q. And what would you agree to be a very late
24 timeframe in making that identification? Let's say
25 in this case the person -- well, let's say three

1 days after the event.

2 A. Sure. It's so hard to quantify that. There's
3 no research that points to any sort of exact numbers
4 like that. So the best that I could say is that --
5 we call that a retention interval, the time between
6 the event and the lineup, so the best that I can say
7 is the shorter that amount of time, the more
8 advantageous that is for the eyewitness in terms of
9 remembering; the longer that amount of time, there
10 would be a disadvantage. But I can't really
11 pinpoint it.

12 Q. Because everybody's memory is different --

13 A. That's right.

14 Q. -- correct?

15 A. Correct.

16 Q. And you talked about this cross-racial effect.
17 What if, for instance, a person has a great amount
18 of -- they're around the person -- they're around
19 that race -- they're exposed to that race a great
20 amount of time?

21 A. Right. So, like I was saying, the -- according
22 to this contact hypothesis, the idea is that if
23 you're around the other ethnic group a lot, that
24 decreases your risk to be susceptible to the -- to
25 that effect.

1 Q. So if a person goes to school with people of
2 that race, they live in a neighborhood with that
3 race, or they have friends of people of that race,
4 they would be more likely to be able to identify
5 someone in that race?

6 A. That's right.

7 Q. And in this situation where it's multiple
8 perpetrators, what if that person is primarily
9 focused on one perpetrator a great deal more than
10 the other perpetrator? Would their focus and
11 reliability of that identification be greater with
12 the person that they have more focus on?

13 A. I think that's hard to say. I think the idea
14 here is that it is tough to make -- it is tough to
15 focus on one person when there are multiple people
16 there. That's -- I think that's the idea behind
17 this research, that if there are multiple people, it
18 makes it really hard to be focusing just on any one
19 given thing.

20 Q. But what if that one person is the one that's
21 closer and has more contact and conversation with
22 the person who identifies them later?

23 A. I think that question is hard for me to give
24 any sort of definitive answer.

25 Q. That's fair.

1 And you talked about this in-court
2 identification and you stated that it's always
3 tainted. Is that a fair statement?

4 A. Yes.

5 Q. So you're saying there are no situations in
6 which a person can give an in-court identification
7 and it's accurate?

8 A. If there was already an identification made
9 before that, if there was any sort of identification
10 already made. So I'm assuming that that would be
11 the case, so any ID that follows that, in my
12 opinion, is unreliable.

13 Q. So if the person already made an identification
14 and identifies that person later in court, would
15 that be more likely to be accurate?

16 A. I wouldn't say it's an accuracy issue. That's
17 not the issue that I have with in-court
18 identifications.

19 Q. Would it be more likely to be tainted?

20 A. Yes.

21 Q. If they've already ID'd that person and later
22 identifies them, you say that's still tainted?

23 A. That later identification doesn't add any
24 information. And I -- my sense is that it has the
25 potential to give a jury a false sense of the weight

1 of the evidence, because that in-court ID doesn't
2 add anything in addition to an identification that
3 might have already been made.

4 Q. But it doesn't take anything away from that
5 identification, does it?

6 A. The one that was already made, you mean?

7 Q. Yes.

8 A. Right. Right.

9 Q. Okay.

10 MS. PATTERSON: I beg the Court's indulgence.

11 No further questions, Your Honor.

12 THE COURT: Redirect?

13 MR. CHEHOSKI: No redirect, Your Honor.

14 THE COURT: Thank you.

15 Doctor, you can step down. Thank you, ma'am.

16 All right. Mr. Chehoski, anything else from
17 the Defense?

18 MR. CHEHOSKI: No further witnesses, Your
19 Honor.

20 THE COURT: All right. Does the State wish to
21 offer any testimony in this regard before we go to
22 arguments?

23 MS. PATTERSON: No, sir, Your Honor.

24 THE COURT: All right.

25 Mr. Chehoski, let me hear from you.

1 MR. CHEHOSKI: Your Honor, I'd start with the
2 idea that this confrontation procedure was
3 suggestive.

4 As you heard in my cross-examination of
5 Detective Moore, I think that the skin tone and the
6 picture itself of Mr. Esaw is significantly lighter
7 than the other five pictures. If may approach?

8 THE COURT: Please.

9 MR. CHEHOSKI: And in starting with that
10 premise, not only is Mr. Esaw's photo significantly
11 lighter, it's also -- his placement is in the middle
12 of it, which would be the immediate -- I guess the
13 immediate eye contact or the immediate place where
14 anybody looking at it would first go.

15 Secondly, the procedure was not conducted --
16 was not done as a double-blind procedure. Detective
17 Moore had already encountered Mr. Esaw when
18 presenting with this lineup and was familiar with
19 the case, therefore any -- he was, therefore,
20 susceptible to any cues or suggestiveness that he
21 was done -- was done probably unintentionally.

22 I'm not here to try and say that Detective
23 Moore was conducting himself in an unethical way.
24 But, as Dr. McQuiston stated, when the person who is
25 conducting the procedure is involved in the

1 procedure, that enhances the likelihood of a
2 possible taint because of some possible cues,
3 whether verbal or nonverbal, a mistaken finger,
4 along those lines.

5 And then to determine whether or not --
6 according to the Neal v. Biggers factors, whether or
7 not the identification was sufficiently reliable,
8 Your Honor, the five factors are the opportunity to
9 view -- we already talked about the conditions. It
10 was dark out. There was -- it was dark out, the
11 incident did not last very long.

12 There was a lot of information from Mr. Vasquez
13 to absorb in a very short amount of time, and I
14 think that that means that there's a likelihood that
15 he did not absorb all of the information and was
16 filling in the gaps the best he could. The degree
17 of attention -- as Dr. McQuiston said, there were
18 multiple perpetrators here.

19 Mr. Vasquez himself was shot by the other
20 perpetrator. I think with multiple people holding
21 guns, given a high level of stress, multiple things
22 happening at the same time, his father being
23 involved in an altercation with the shooter and more
24 focused on helping his father, by his own testimony
25 that he froze and then snapped back into it before

1 he got into action -- Your Honor, the accuracy of
2 the prior description is really a black male with
3 some facial hair, roughly the same size as his
4 father. It's not detailed.

5 There's no detail, there is no talk about
6 appearance, there's no -- nothing about clothing,
7 shoes, eye color, or hairstyle. And so moving along
8 with that to the level of certainty, Dr. McQuiston
9 testified that the relationship between certainty
10 and accuracy is actually fairly weak. The -- just
11 merely being accurate has about as much of a chance
12 as something being remembered wrong as it does as
13 being accurate.

14 And, Your Honor, there's a tie between the
15 crime and the confrontation is a little more than
16 three days. Your Honor, things don't get into --
17 things get into long-term memory within the first
18 minute of the incident happening, between several
19 seconds from the sensory time and place to up to 30
20 seconds and a minute for short-term memory, and
21 anything that's retained is in the long-term memory.

22 Memories fade over time, Your Honor. And as
23 more time accrues to the next day to the next day,
24 that memory, again, has a tendency to become weaker.
25 Your Honor, based off this analysis and based off

1 the testimony of Dr. McQuiston and based off what I
2 feel is a tainted and a suggestive photo lineup and
3 going over the factors in Neal v. Biggers, Your
4 Honor, I have no choice but to conclude that this is
5 a tainted lineup. And I think that the in-court
6 identification should be ruled inadmissible.

7 THE COURT: All right. Mr. Chehoski, I don't
8 feel that the factors force me into the same choice
9 as they have forced you into. Let's start with the
10 lineup itself, the photo lineup. As I look at this
11 I see six African-American males with facial hair,
12 the same type of haircut, the same, generally,
13 facial features. The skin tone of number 2 is
14 perhaps somewhat lighter than some of the others;
15 conversely, skin tone of number 1 seems to be darker
16 than anybody else.

17 So if he's going to choose a light or a dark,
18 is -- if this was designed to point by skin tone
19 alone to one of these, I would suggest that he could
20 have just as easily picked out number 1 who is the
21 darkest one of the crowd. This happened at night,
22 limited light. It would seem like, perhaps, the
23 propensity would be to pick the one with the darkest
24 skin color to match the circumstances surrounding
25 it.

1 However, I find that that -- there are slight
2 variances, so much slight variances in the skin tone
3 of all these individuals. The fact that he was also
4 shown two other lineups with 12 other people in them
5 who did not contain the defendant and yet he did not
6 identify any of those folks out of any of those
7 lineups but did focus on this one in this
8 circumstance seems to weigh against the fact that
9 here was an inaccurate identification.

10 This is not like he picked one man out of six;
11 he picked one man out of 18. So that seems, in my
12 view, my limited view of this, to somewhat enhance
13 the accuracy of the identification. Now, the
14 opportunity to witness, we are, you know, six feet
15 away, perhaps, maybe eight feet away, whatever the
16 estimate that you would make on the distance as
17 Mr. Vasquez described the encounter, certainly in
18 any event, by any measurement, it was close enough
19 to get a very accurate view of the person that he
20 was confronted the degree of his attention.

21 The -- I don't know about you-all, but just
22 from my own common sense approach to this, with all
23 the scientific data thrown into the mix, and given
24 whatever weight we choose to give it or whatever
25 weight the jury would choose to give it, I'm not

1 sure that in three days I would forget the man who
2 shot my dad when I was within six feet of him when
3 he did it. I believe that that would -- that that
4 would tend to submit that.

5 One thing that Dr. McQuiston testified to was
6 that stress and these tests that are made by people
7 who observe things in a non-stressful environment as
8 opposed to those who observe things in a stressful
9 environment, that they're more likely to remember
10 those things if there's no stress involved because
11 they have cool reflection available to them.

12 But one thing that she did not say because no
13 one asked her was the fact that somebody who is not
14 under stress might be able to remember something
15 more accurately on a scientific basis than someone
16 who is under stress, does that render the
17 observation under stress unreliable? And that's not
18 what she said. She said one is more reliable than
19 the other.

20 The accuracy of a prior description, of course,
21 is really not a level here; that gets to the
22 in-court identification. And there's another point:
23 The point that she was making, obviously, is that
24 once you pick out somebody the first time, you're
25 more likely to pick them out the second time. And

1 that's exactly true. Nobody can argue with that.

2 But that does not -- as Ms. Patterson brought
3 out on cross-examination, that does not indicate
4 that the first identification was inaccurate, it
5 simply means that the second identification was
6 based on the first and not on an independent
7 start-over.

8 The length of time between the crime and the
9 confrontation: Three days. The whole question
10 about all of this is whether or not the
11 identification process by the lineup, primarily, has
12 been so tainted as to -- and so suggestive and so
13 conducive, as the language in the case says, to
14 irreparable mistaken identity that it denies the
15 defendant due process. And that's not the case here
16 at all.

17 This jury is going to be able to hear
18 Mr. Vasquez and what he saw and what he said and how
19 he remembered, they're going to be able to hear
20 about the identification from the lineup, and
21 they'll be able to hear from Dr. McQuiston. And
22 she's going to tell them the same thing she told us,
23 and they're going to be free to give all of that the
24 weight that they think it is entitled to receive.
25 But the motion to suppress the lineup and the

1 identification are respectfully denied.

2 All right. Now, we still got the matter of the
3 warrant, right?

4 MS. FULLWOOD: Yes, sir.

5 THE COURT: Okay. Let's move on to that.

6 Ms. Fullwood?

7 MS. FULLWOOD: Thank you, Your Honor.

8 To start off, Your Honor, we're asking to
9 suppress the fruits of a search warrant served on
10 August the 12th, 2016 [sic] and executed on that
11 same date at 166 Fair- -- I can hardly read it -- an
12 apartment.

13 THE COURT: Okay. I gotcha. And the date of
14 the warrant?

15 MS. FULLWOOD: August 12, 2015.

16 THE COURT: Okay.

17 MS. FULLWOOD: I guess to start, since I think
18 the Court is going to need to have access to the
19 warrant, I would like to have this marked as a
20 Defense exhibit for identification.

21 (Defendant's Exhibit No. 1 marked for
22 identification.)

23 MS. MARTIN: Your Honor, may I be sure we're
24 talking about the same one? I'm sure we are, I
25 just --

1 make their opening statements.

2 Ms. Martin?

3 MS. MARTIN: Thank you, Your Honor. May it
4 please the Court.

5 THE COURT: Yes, ma'am.

6 MS. MARTIN: Defense counsel.

7 Good morning, ladies and gentlemen. Judge
8 Cooper has given you an overview of what's going to
9 happen this week in the trial and how things are
10 going to progress. But certainly it's
11 understandable, you as new jurors, you might be
12 nervous, you might be apprehensive, you might be
13 concerned about making such a serious decision. And
14 that decision will come to you later this week.

15 Judge Cooper has told you and your jurors oath
16 has confirmed that you will base your verdict on the
17 evidence and the law. The evidence, as Judge Cooper
18 said, will come from the witness stand. There are
19 going to be witnesses who are going to tell you
20 under oath what they saw, what they heard, and what
21 they did. They're going to tell you how they became
22 involved in this case and what knowledge, what
23 particular knowledge, they have about the events
24 that have led us to this courtroom today. You're
25 going to have items in evidence; photographs, photo

1 lineup, witness statements. You're going to have
2 those that will also aid you in your decision in
3 reaching a verdict.

4 Now, as Judge Cooper has said, Ricky Esaw,
5 right now as you look at him, he's presumed
6 innocent. That is the law. Today, right now, on
7 trial, Ricky Esaw is presumed to be innocent.
8 Ladies and gentlemen, the State has the burden of
9 proof. That means the State must present to each
10 one of you proof beyond a reasonable doubt that he
11 is guilty as charged.

12 What is proof beyond a reasonable doubt? How
13 in the world can the State do that? And we're going
14 to do it, as we told you, by the evidence. But
15 please note, you don't have 100 percent convinced,
16 you don't have to be convinced beyond a shadow of a
17 doubt or beyond each and every doubt, you must be
18 convinced beyond any reasonable doubt. If you are
19 firmly convinced, then you will find Mr. Esaw
20 guilty.

21 Let's talk a little bit about the law. When
22 you came into this jury box here, you didn't leave
23 your common sense out there in the gallery. No.
24 No. You brought it with you. The law involved,
25 armed robbery, attempted armed robbery, what does

1 that mean? It's very similar. You know what it
2 means. It means that someone, while armed with a
3 deadly weapon, robbed or attempted to rob someone
4 else of their property.

5 The charge attempted murder and murder, what
6 does that mean? It means that someone killed
7 another with malice or attempted to kill another one
8 with malice, with a wicked heart, intent of
9 evildoing or wrongdoing. Possession of a weapon
10 during the commission of a violent crime, it's
11 exactly as it sounds: That the defendant had
12 possession of a deadly weapon during the commission
13 of a violent crime.

14 And Judge Cooper is going to tell you that
15 attempted armed robbery, armed robbery, attempted
16 murder, and murder are violent crimes. You're going
17 to other laws that exist about the hand of one is
18 the hand of all or accomplice liability; that if a
19 series of events are so interweaved and entangled
20 that there's no way to separate them, that that
21 course of conduct means that two people can be
22 charged with one act. And you're going to hear the
23 law about that. So that's the law, ladies and
24 gentlemen. You get to judge the credibility and
25 believability of witnesses.

1 Now, any time Ms. Patterson and I become
2 involved in a case like this, it's because a tragedy
3 has occurred. And the tragedy that we're here today
4 about involves the Vasquez family as they sit here
5 on the front row. You're going to meet this family.

6 You're going to meet Christy Vasquez. She's
7 going to tell you that in August of 2015, she lived
8 with her husband Hector, they'd been married 20
9 years, four children, the oldest being Franklin, and
10 three girls, and that on August 9th of 2015, they
11 were living at the Rolling Meadow apartments on
12 Charleston Highway here in Lexington County, and on
13 that Sunday afternoon, they'd gone back-to-school
14 shopping.

15 Franklin was about to start his senior year.
16 They'd gone to get bookbags and school supplies, and
17 then that afternoon, early evening, there was a
18 neighborhood party. Their neighbors had had a baby.
19 The baby was baptized or christened at church that
20 morning, and then the family was going to have a
21 get-together of family, friends, and neighbors. It
22 should have been a fun time, should have been a good
23 time, but it wasn't.

24 Franklin will tell you that he had been playing
25 basketball with some of his friends there at the

1 trailer park, that it had gotten dark, it was about
2 9:00 in the evening, and he went back to his house
3 and to the neighbor's house, and he came upon his
4 dad, Hector, who was walking with a friend, Rafael,
5 who is present today.

6 And Franklin will tell you that a car pulled
7 up. It was a dark-colored car, four doors, and two
8 black men got out and these men had handguns. The
9 chubby or fat one approached Raphael at the back of
10 the car, the other one, the driver of the car, got
11 out and approached him. And Franklin will tell you
12 that this man was saying give me your money, give me
13 your wallet, give me your cell phone. Franklin
14 tells this guy, I don't have anything.

15 Raphael, you'll find out, gave up his cell
16 phone and he gave up his wallet. Franklin will say
17 that his dad moved closer to the armed driver of the
18 car, placing himself more at risk in front of his
19 son, protecting his son, and his dad told this man
20 we don't have anything.

21 Franklin hears a click, the trigger has been
22 pulled on the gun, and Hector, at that point, knows
23 he needs to fight, uses a beer bottle and hits this
24 guy. They begin to struggle, they drop to the
25 ground. Hector [sic] sees this, he's right there.

1 He throws a soda can and tries to kick this person.
2 He sees his dad has been shot. There's blood
3 everywhere.

4 Christy, who has been inside, hears the
5 commotion and she comes running out. Christy
6 Vasquez comes running out. All she knows is that
7 her husband and child are out there and she wants to
8 get to them. She can see that Hector is bleeding,
9 he's on the ground. There's a man that she doesn't
10 know. A black man has his arms around her husband
11 and putting him on the ground. He holds the gun up
12 towards her and he says stop, don't come any closer,
13 I'll shoot you. She continues to come closer. He
14 tells her again, I'll shoot you. She doesn't care.
15 She's trying to get to her husband.

16 Then that man jumps into the driver's seat of
17 that car and they speed away. You're going to hear
18 from Christy about how she calls 911. You're going
19 to hear how she held her husband's head up so he
20 wouldn't choke on his own blood. You're going to
21 hear about the last conversation she ever had with
22 her husband.

23 The Sheriff's Department gets there quickly,
24 EMS gets there quickly. Franklin will tell you that
25 right before the car pulled off, the passenger, the

1 chubby one that had robbed Raphael, had gotten into
2 the passenger's seat of the car and he had leaned up
3 and fired out of the open car door, driver's side,
4 and he'd been shot. Franklin was treated and
5 released from Richland Memorial. But,
6 unfortunately, the good trauma surgeons there could
7 not save Hector. Hector Vasquez died, 45 years old.

8 Law enforcement begins an investigation. No
9 suspects. But, very quickly, Ricky Esaw and Wilfred
10 Pitts are named as suspects. And on the Wednesday
11 of that same week, August 12 of 2015, law
12 enforcement has their first contact with Mr. Pitts
13 and Mr. Esaw.

14 Mr. Pitts, when he robbed Raphael, the evidence
15 will bear out, had dropped a gold bracelet there at
16 the scene. His DNA is on that bracelet. Mr. Pitts,
17 when confronted by law enforcement, as most
18 criminals do, denied any knowledge, but he knew he
19 was a caught. And, ladies and gentlemen, you'll
20 hear how Mr. Pitts did tell law enforcement that
21 night, August 12th of 2015, that he had been
22 involved in this, that Ricky Esaw had been involved
23 in this, and that Ricky Esaw was the shooter; that
24 he wanted to talk to his mom and an attorney and he
25 would cooperate.

1 Ladies and gentlemen, you're going to meet
2 Wilfred Pitts. You're going to meet Ricky Esaw's
3 co-defendant. Co-defendant, what does that mean?
4 Well, that means he's charged with exactly the same
5 charges as Ricky Esaw. And he'll tell you that he
6 has no plea bargain with the State, he has no
7 agreement, that he is guilty, that he's going to
8 plead guilty, and he's going to tell you who did
9 what and who was involved.

10 Ladies and gentlemen, you're going to hear
11 about Ricky Esaw's statement to law enforcement,
12 things he told law enforcement on Friday, August
13 14th of 2015, about how, oh, no, I'm innocent, Pitts
14 ain't going to put all this on me, I was just the
15 driver, I was an accessory; no, no, that's the best
16 you got me on, I was an accessory.

17 And you're going to be able to read a statement
18 that Ricky Esaw wrote in his own hand of how he puts
19 himself there at the scene committing an armed
20 robbery, knowing that he is going with people who
21 are committing an armed robbery, and he's the
22 driver. And he says that, no, Mr. Pitts was the
23 actual shooter of Hector and there's somebody else
24 involved named AJ. And you're going to hear that.

25 You're going to hear that Ricky tried to

1 minimize what he did and say that, yeah, I knew what
2 we were going to do, that we were going to rob some
3 Mexicans, I sat there and watched it, there's a
4 shooting, they make it back in the car, I take them
5 away, and, oh yeah, I got \$50 for doing it, but I'm
6 innocent, so, law enforcement, y'all need to let me
7 go. Ladies and gentlemen, that didn't happen.

8 Mr. Pitts, as I said, will testify. Sometimes it
9 takes a criminal to help convict another criminal.

10 Let's bring this back to Franklin Vasquez. Do
11 you think Franklin Vasquez told law enforcement he
12 could identify the man that came towards him with a
13 handgun? He certainly did. Do you think Franklin
14 told law enforcement that he could identify the man
15 who fought with his dad? He did. Do you think
16 Franklin told law enforcement, if you catch the guy
17 and put him in a lineup, I can identify the man who
18 killed my dad? He did. August 14th of 2015,
19 Franklin did that, ladies and gentlemen, and he
20 identified Ricky Esaw, this man right here.

21 At the close of the case, ladies and gentlemen,
22 when you've heard the evidence, you've seen the
23 exhibits, you've been charged on the law that
24 applies in this case, you will be convinced beyond
25 any reasonable doubt that Ricky Esaw is guilty of

1 each one of those indictments. You will be
2 convinced beyond any reasonable doubt. And at that
3 point, you won't look at this man as an innocent
4 man, you'll look at him and you'll know he's guilty
5 and you'll look at him and you'll know that he's a
6 murderer. Thank you for your attention.

7 THE COURT: Thank you, Ms. Martin.

8 Mr. Chehoski?

9 MR. CHEHOSKI: Ladies and gentlemen, Hector
10 Vasquez is dead, and no one is here to speak bad
11 about his name or his character. He was a father,
12 he was a husband, and he was definitely loved by his
13 family. I am sorry for their loss. It is a
14 nightmare that they have to be here, and they
15 deserve our sympathy.

16 It is just as much a nightmare, however, to be
17 dragged in and accused of something that you didn't
18 do. And, ladies and gentlemen, that is Ricky Esaw's
19 nightmare. He's here, he's an innocent man. And
20 you here are who we are putting our faith in,
21 because when you're charged with something you
22 didn't do, you have to put your faith in a system
23 that our forefathers gave us, a system that Judge
24 Cooper yesterday told you was started over 800 years
25 ago. And today, in this courtroom, that means that

1 we're putting our faith in you.

2 And as you look around this courtroom, you can
3 see symbols of power everywhere, from our security
4 officers standing as the first line of defense, to
5 our prosecutors and our detectives who investigate
6 and prosecute the crimes, to the Judge in the black
7 robe who has the power and authority to hand down
8 sentences and declare people either guilty or not
9 guilty. And all of that pales in comparison to the
10 power that each one of you has.

11 I agree with much of what Ms. Martin said in
12 her opening. You did not leave your common sentence
13 in the gallery. Each one of you is unique. You
14 have your own individual experiences, your own
15 individual education, you know how things are
16 supposed to work, you have that sense. And by the
17 oath that you've taken, you have now assumed a duty
18 to try this case and ask your questions. Your vote
19 is powerful.

20 And if there are questions that you have, you
21 are entitled to have them answered to your
22 satisfaction before you give that power and give up
23 your vote. But especially if it's to something you
24 disagree with, you have a right to stand firm.

25 Ladies and gentlemen, there are going to be a

1 couple questions that we're going to ask you to
2 consider throughout this case. The first is, is
3 there evidence to support what the State is saying?
4 As you heard Ms. Martin say, there's going to be an
5 identification, there's going to be a co-defendant
6 testifying. And in the facts that they give you,
7 should you expect that there's some kind of
8 underlying independent evidence that will
9 corroborate that testimony? Please pay attention
10 and see if that's true. And then there's a second
11 question. And that question is, is there a real
12 chance that they got the wrong person?

13 Judge Cooper will give you the law at the end
14 of this case. I want you to pay close attention to
15 his definition and the law of reasonable doubt, and
16 then ask yourself the same question I just asked
17 you: Is there a real chance that they got the wrong
18 person? If your answer is yes to that question or
19 even maybe, then, by the oath you've taken, you must
20 vote not guilty and find Ricky Esaw innocent as he
21 still stands. Thank you.

22 THE COURT: Thank you, Mr. Chehoski.

23 Ladies, you may call your first witness,
24 Ms. Patterson, Ms. Martin.

25 MS. MARTIN: Your Honor, we'd call Christy

1 Vasquez.

2 THE COURT: Ms. Vasquez, come forward, please,
3 and be sworn.

4 CHRISTY VASQUEZ

5 being first duly sworn, testified as follows:

6 THE WITNESS: Yes, ma'am.

7 THE CLERK: Have a seat, please, ma'am. Once
8 you're seated, state your full name spelling your
9 last, please.

10 THE WITNESS: Christy Maria Herrera Vasquez,
11 V-A-S-Q-U-E-Z.

12 DIRECT EXAMINATION

13 BY MS. MARTIN:

14 Q. Ms. Vasquez, where were you born and raised?

15 A. Solomon County, Indiana.

16 Q. And are you married?

17 A. Yes, I am. I'm a widow, actually.

18 Q. And who were you married to?

19 A. Hector Vasquez.

20 Q. And do you remember when you first met Hector?

21 A. I was -- it was July 21st, 1996. I was 18
22 years old.

23 Q. And at the time he died, how long had y'all
24 been married?

25 A. Twenty years.

1 Q. And did y'all have children together?

2 A.. Yes, ma'am, we did.

3 Q. How many children?

4 A. Four.

5 Q. Are they here in court today?

6 A. Yes, ma'am, they are.

7 Q. Can you introduce them to us, please?

8 A. Franklin Vasquez is my oldest son, he's 19,
9 soon to be 20; my youngest daughter, which is
10 sitting right next to him, is Brenda Vasquez and
11 she's 12 years old, she'll be 13 next month; Claudia
12 Vasquez, she's sitting next to Brenda, she is 16;
13 and Vanessa Vasquez, she is 17, soon to be 18.

14 Q. Where were you and your family living in August
15 of 2015?

16 A. Rolling Meadows.

17 Q. And is that on Charleston Highway?

18 A. Yes, ma'am, it is.

19 Q. Do you know if that's in Lexington County?

20 A. It is in Lexington County.

21 Q. How did y'all end up in South Carolina?

22 A. My husband's job moved us here.

23 Q. Did Hector have family members here?

24 A. He had family members here. He was working
25 with his cousin at the time.

1 Q. And what kind of work did your husband do?

2 A. Metal roofing.

3 Q. And is Franklin following in those footsteps?

4 A. Yes, ma'am, he is.

5 Q. Now, if I may, I need to direct your attention

6 specifically to August 9th of 2015 on that Sunday.

7 Can you tell us what you remember about earlier in

8 that day, what y'all did?

9 A. We got up, kids said -- was running around the
10 trailer like normal, playing around, joking around.

11 Then we were talking about school because it was
12 going to be next week. The kids said, well, we need
13 bookbags and we need stuff for school. So my
14 husband said, okay, let's go and get you guys some
15 school supplies and get bookbags. And so everybody
16 got ready and we left and went to Academy Sports
17 near the mall in Lexington and we went and bought
18 bookbags for them.

19 Q. Did you have any plans for later that day?

20 A. Yes. We had a baptism party we had to go to.
21 And, actually, Franklin was actually supposed to mow
22 the neighbor's yard because the party was going to
23 be there, the after-party.

24 Q. And is this your neighbors that live next door
25 to you?

1 A. Yes, ma'am.

2 Q. Did Franklin cut the grass that afternoon?

3 A. Yes, he did.

4 Q. And this party was -- do you remember about
5 what time it started?

6 A. I want to say it was around like -- it started
7 around 2:00 or 3:00, somewhere around there.

8 Q. And did it go into the evening hours?

9 A. Yes, ma'am, it did.

10 Q. And was the party inside or outside or both?

11 A. It was -- actually, it was a little bit of
12 both, but mainly it was outside.

13 Q. And would the children have been in a backyard
14 area?

15 A. Yes, ma'am.

16 Q. And do you know what Franklin was doing that
17 evening?

18 A. As far as I know -- you talking about before?

19 Q. Yes.

20 A. When we got back from buying bookbags, Franklin
21 went -- and it was around 1:00, I believe it was,
22 and he went and started cutting grass. And after
23 that we was at the neighbor's house and we was
24 getting -- we was just sitting outside talking and
25 everything because really nobody had gotten there

1 yet because it was so early. And we just -- hanging
2 around and talking.

3 Q. Okay. All right. When did you first know or
4 what first alerted you to the fact that something
5 was wrong?

6 A. It was around -- it was around like -- I think
7 around 9:00 or 10:00 at night. Some guy ran into
8 the trailer. I was inside the trailer. I was
9 holding a baby and --

10 Q. Was this the baby of the baptism?

11 A. Yes, ma'am. It was the baby from -- my next
12 door neighbor's baby. It was her baby's baptism
13 party. And I heard gunshots. And as soon as I
14 heard gunshots, I handed the baby off to somebody, I
15 can't remember who it was, and I started walking to
16 the door. As I started walking to the door,
17 somebody walked into the trailer and said, nobody go
18 outside because they have guns, they're shooting.

19 Q. And what was your intention?

20 A. To go to my husband and my son because they was
21 outside.

22 Q. And did you leave this trailer?

23 A. I went outside.

24 Q. And what did you see?

25 A. As I walked outside and I saw my husband being

1 held by a black man and they were struggling --
2 struggling and slouched over, he had a hold of him
3 and --

4 Q. When you say him, who do you mean?

5 A. Hector, my husband.

6 Q. Okay.

7 A. I ran down the stairs and I started walking
8 towards him.

9 Q. What, if anything, was said?

10 A. There -- as soon as I started walking towards
11 them, I was told -- the black man told me, he said,
12 if you come any closer, I'll shoot you. I kept on
13 walking.

14 Q. And is it nighttime, obviously?

15 A. Yes, ma'am.

16 Q. Are there lights out there?

17 A. Yes. There's a light post at the -- it's like
18 at the corner of the road.

19 Q. Okay. And did your neighbor's light --
20 neighbor's house have any lights?

21 A. Yes, ma'am.

22 Q. And how close would you say you were to this
23 man who had a gun?

24 A. I came pretty close.

25 Q. And could you see Hector?

1 A. Yes, I could.

2 Q. And did you observe anything about his
3 injuries?

4 A. I saw that he was bleeding. I saw him -- blood
5 pouring down from his side.

6 Q. Did you see Franklin at that time?

7 A. I don't remember seeing him. All I was focused
8 on was him.

9 Q. Him being Hector?

10 A. Being my husband, yes.

11 Q. Did you see Raphael?

12 A. Yes.

13 Q. Did you see the car?

14 A. Yes, I did.

15 Q. Do you remember what kind of car?

16 A. It was a dark four-door sedan. I don't know
17 what make or what model it was.

18 Q. Do you recall if the driver's door was open or
19 closed?

20 A. It was open.

21 Q. Is there a white fence near your husband?

22 A. Yes.

23 Q. Okay. After you kept approaching the armed
24 gunman, what happened next?

25 A. Whenever I kept on approaching him, he just

1 kept on telling me you come any closer, I'll shoot
2 you. I kept on walking close to him, I was focused
3 on my husband, I didn't care.

4 Q. And did this man leave?

5 A. After he laid him down on the ground, yeah, he
6 left.

7 Q. And how did he leave?

8 A. He got in the driver's side of the car and
9 drove off.

10 Q. Did you see anyone else in the car?

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

12 Q. And how sure are you that this person who held
13 your husband got into the driver's seat?

14 A. I'm very sure. I saw him get in the driver's
15 side.

16 Q. After they pulled out, what did you do with
17 Hector?

18 A. Whenever they drove off, I got down on my
19 knees, I put him in my lap, and I told him not to
20 leave me because he had to help me take care of my
21 babies.

22 Q. Were any of your daughters out there with you?

23 A. Yes, one of them was, the oldest out of the
24 three girls.

25 Q. Did you call 911?

1 A. Yes, I did.

2 Q. Do you know what phone you used?

3 A. I used my phone.

4 Q. Did Hector still have his cell phone?

5 A. Yes, he did. I -- whenever I was looking -- I

6 was trying to dial 911. My phone wasn't working --

7 I couldn't get my phone to work properly, and I

8 started fighting, like, arguing with my phone

9 because it wouldn't work. After that, I reached

10 into his pocket, I got his cell phone out of his

11 pocket, and I gave it to my daughter to start

12 calling family and letting them know what happened.

13 Q. Did you try and put pressure on any of Hector's
14 wounds?

15 A. Yes, I did.

16 Q. And what was the purpose of you holding his
17 head?

18 A. I was holding his head up so he wouldn't choke
19 on his own blood.

20 MS. MARTIN: May I have this marked, please?

21 MS. FULLWOOD: Your Honor, we have a matter of
22 law.

23 THE COURT: About what?

24 MS. FULLWOOD: Would you like us to approach
25 the bench?

1 THE COURT: Yes.

2 (Sidebar conference.)

3 (State's Exhibit No. 8 marked for
4 identification.)

5 THE COURT: Madam Court Reporter, please note a
6 sidebar conference.

7 MS. MARTIN: Your Honor, may I approach the
8 witness?

9 THE COURT: Yes, ma'am.

10 DIRECT EXAMINATION

11 BY MS. MARTIN:

12 Q. I'll show you what's been marked as State's
13 Exhibit 8. Do you recognize this disc?

14 A. It's the 911 call.

15 Q. Does it have your initials on it?

16 A. Yes, it does.

17 Q. Have you heard it outside of court before
18 today?

19 A. Yes, I have.

20 Q. And does it fairly and accurately represent
21 what -- the phone call that you made to 911 that
22 night?

23 A. Yes, it does.

24 MS. MARTIN: Your Honor, we'd move to publish.

25 THE COURT: Subject to objection of defense

1 counsel. What's the number?

2 MS. MARTIN: State's 8.

3 THE COURT: Thank you.

4 (State's Exhibit No. 8 published to the jury.)

5 BY MS. MARTIN:

6 Q. Ms. Vasquez, on that 911, do you recognize your
7 voice?

8 A. Yes, ma'am.

9 Q. Did you recognize any other family members'
10 voices?

11 A. Yes.

12 Q. Who did you recognize?

13 A. My son.

14 Q. And did you hear your daughter who was there,
15 some of her cries?

16 A. Yes.

17 Q. And you were speaking Spanish. Who were you
18 speaking to?

19 A. To my husband.

20 Q. Did he answer you?

21 A. Yes, he did.

22 Q. What did he say?

23 A. He told me let him go. And I told him that I
24 couldn't because he had to help me finish raising my
25 kids; that we had always said that no matter what,

1 we'd raise our kids together. And he just told --
2 kept on telling me, just let me go.

3 Q. On that 911, I believe I heard you yelling at
4 Franklin. Did you yell at Franklin?

5 A. Yeah.

6 Q. Were you -- was there a reason you were yelling
7 at Franklin?

8 A. For him not to leave.

9 Q. Okay. And did Franklin, in fact, get your car?

10 A. Yes, he did.

11 Q. And did he leave there?

12 A. Yes, he did.

13 Q. About how long was he gone?

14 A. Probably not even five minutes.

15 Q. And when did you learn Franklin had been shot?

16 A. As -- whenever he was still there.

17 Q. And did you see blood on him?

18 A. Yes, I did.

19 Q. And did you believe it to be some type of
20 ricochet?

21 A. Yes, ma'am.

22 Q. Did you later find out that was not accurate?

23 A. Yes, ma'am.

24 Q. Did you meet with people from the sheriff's
25 department that night?

1 A. Yes.

2 Q. And did you give them a written statement that
3 night?

4 A. Yes, I did.

5 Q. When you're giving them this written statement,
6 where is Hector?

7 A. He's getting put in the ambulance to go to the
8 hospital.

9 Q. And where is Franklin?

10 A. He's getting seen also by the paramedics to go
11 to the hospital.

12 Q. And when you gave a written statement to law
13 enforcement, was it a full and complete statement?

14 A. It was not a -- I guess, the whole full one.
15 It was basically what I could write down because I
16 wanted to get to my husband at the hospital. I
17 wanted to be with him.

18 Q. And did they finally let you go to the
19 hospital?

20 A. After maybe, I think it was, about 30, 40
21 minutes, something like that.

22 Q. And when you got to the hospital -- do you
23 remember which hospital it was?

24 A. Richland hospital.

25 Q. When you got there, who did you check on first?

1 A. Whenever I got to the hospital, I took my
2 daughters up to the floor where my husband was at, I
3 found out where Franklin was at, I went back
4 downstairs to the ER part, and I went to go check on
5 Franklin.

6 Q. And after you checked on him, where did you go?

7 A. I went back upstairs.

8 Q. What, if anything, did you learn about Hector's
9 condition?

10 A. I had learned that he had passed away.

11 Q. And did you see Hector there at the hospital?

12 A. Yes, I did.

13 Q. And who was with you at that time?

14 A. His cousin.

15 Q. Now, do you remember the first time you met
16 this detective John Moore?

17 A. It was at his cousin's house.

18 Q. Whose cousin's house?

19 A. Hector's cousin's house.

20 Q. Would that be in Little Mountain?

21 A. Little Mountain, yes.

22 Q. Some people call that Newberry; is that right?

23 A. Yes.

24 Q. And would it have been the next morning?

25 A. Yes, ma'am.

1 Q. And did you indicate at that time that you
2 thought you could or could not identify the man that
3 you saw holding your husband with the gun?

4 A. I wasn't sure.

5 Q. And was Franklin there at that time as well?

6 A. Yes, ma'am.

7 Q. Did Franklin indicate to law enforcement that
8 he would be able to identify the person?

9 A. Yes, ma'am.

10 MS. FULLWOOD: Objection, Your Honor, hearsay.

11 THE COURT: I'll sustain the objection as to
12 hearsay, what Franklin said. Thank you.

13 BY MS. MARTIN:

14 Q. Did there come a time that Detective Moore
15 showed you some lineups?

16 A. Yes, ma'am.

17 MS. MARTIN: (Tenders documents to
18 Ms. Fullwood.)

19 MS. FULLWOOD: No objection, Your Honor.

20 THE COURT: Thank you. Without objection.

21 BY MS. MARTIN:

22 Q. I'll show you what's been marked State's 2 and
23 State's 3. Do you recognize these lineups?

24 A. Yes, ma'am.

25 Q. Were they shown to you by Detective Moore?

1 A. Yes, ma'am.

2 Q. Were you able to identify anyone in these
3 lineups?

4 A. No.

5 (State's Exhibit No. 9 marked for
6 identification.)

7 MS. MARTIN: (Tenders document to
8 Ms. Fullwood.)

9 MS. FULLWOOD: No objection.

10 BY MS. MARTIN:

11 Q. If I can show you what's been marked State's 9.
12 Do you recognize this document?

13 A. Yes, ma'am.

14 Q. And what is that document?

15 A. It's a lineup of black males, six of them. And
16 I put not sure on it because I was not sure of
17 who -- of anybody on there.

18 Q. And did you, in fact, sign the lineup?

19 A. Yes, ma'am, I signed it.

20 Q. And Detective Moore showed this to you?

21 A. Yes, ma'am.

22 Q. Were you present when Franklin looked at the
23 same lineups?

24 A. Yes, ma'am.

25 Q. Did you talk to Franklin or encourage him to

1 pick someone out or anything of that nature?

2 A. No, ma'am.

3 Q. Were you standing right there with Franklin
4 when he looked at those lineups?

5 A. No, ma'am.

6 Q. What were the instructions --

7 MS. MARTIN: Scratch that, Your Honor.

8 THE COURT: Thank you.

9 BY MS. MARTIN:

10 Q. Was Hector right-handed or left-handed?

11 A. He was right-handed.

12 Q. Where did Hector keep his wallet?

13 A. In his back right-hand pocket.

14 Q. And to this day have you found his wallet?

15 A. No, ma'am, we have not. I have asked law
16 enforcement about his wallet, I've asked Mr. Moore
17 about his wallet, and they've -- the answer they've
18 always given me is that they still have not found my
19 husband's wallet.

20 Q. Since this night back in 2015, have -- did
21 y'all move away?

22 A. Yes, ma'am.

23 Q. And where are you living now?

24 A. I live in Chrisman, Illinois.

25 Q. And Franklin, where is he living?

1 A. Franklin lives in Little Mountain.

2 Q. With your husband's family?

3 A. With his cousin, yes.

4 MS. MARTIN: I beg the Court's indulgence.

5 THE COURT: Yes, ma'am.

6 MS. MARTIN: Please answer any questions the
7 Defense may have.

8 THE COURT: Ms. Fullwood, you may
9 cross-examine.

10 MS. FULLWOOD: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MS. FULLWOOD:

13 Q. Good morning.

14 A. Good morning.

15 Q. Ms. Vasquez, when did you and your family move
16 to South Carolina?

17 A. We moved to South Carolina in April of 2013.

18 Q. Okay. Understandably that night, you were
19 distraught; correct?

20 A. Yes, ma'am.

21 Q. But you -- as you've told us, you did speak to
22 law enforcement for approximately 30 minutes before
23 you got to leave to go to the hospital; is that
24 right?

25 A. Yes, ma'am.

1 Q. Okay. And you talked with the officers; is
2 that right?

3 A. Yes, ma'am.

4 Q. And you wrote, in your own hand, a statement;
5 is that correct?

6 A. Yes, ma'am.

7 Q. Okay. Didn't your statement indicate that it
8 there was more than one robber involved?

9 A. There -- all I put in it that I recall is that
10 there was a black male and that there was one. I'm
11 not --

12 Q. Did you -- you've been down here because of
13 this trial; right?

14 A. Yes.

15 Q. Okay. And before today you've had a chance to
16 meet with Ms. Martin and Ms. Patterson, right, to
17 talk to them?

18 A. For the trial, yes.

19 Q. Okay. And have you had a chance to look at
20 your statement when you've been down here to refresh
21 your memory about what you wrote that night?

22 A. Yes.

23 Q. Okay. So tell me if this sounds right to you.
24 Did you write: A black man with a gun, he told me
25 that if he got any closer he was going to kill me.

1 And then they left and I saw my son had a shot burn
2 to his legs?

3 A. Yes, ma'am.

4 Q. Okay. So you used the words they at that time?

5 A. Yes, ma'am.

6 Q. All right. I don't think I have any further
7 questions. Thank you, ma'am.

8 THE COURT: Thank you.

9 Redirect, Ms. Martin?

10 MS. MARTIN: If I may approach the witness,
11 Your Honor?

12 THE COURT: Yes, ma'am.

13 (State's Exhibit No. 10 marked for
14 identification.)

15 REDIRECT EXAMINATION

16 BY MS. MARTIN:

17 Q. If I may show you what's been marked State's
18 10. Do you recognize this document?

19 A. Yes, ma'am.

20 Q. What is that?

21 A. The statement I made and I gave to the police
22 officer.

23 Q. Okay. And does it have every detail from that
24 evening on there?

25 A. It has just the basic stuff on there.

1 MS. MARTIN: Your Honor, we'd offer State's 10
2 into evidence.

3 THE COURT: Any objection?

4 MS. FULLWOOD: No objection, Your Honor.

5 THE COURT: Thank you. Without objection,
6 State's 10 in evidence.

7 (State's Exhibit No. 10 admitted into
8 evidence.)

9 MS. MARTIN: That's all we have, Your Honor.

10 THE COURT: Thank you.

11 You can step down, Ms. Vasquez. Thank you.

12 MS. PATTERSON: Your Honor, the State calls
13 Rafael Izaguirre.

14 THE COURT: Thank you.

15 Ladies and gentlemen, Mr. Izaguirre is going to
16 testify through a Court-approved and Court-certified
17 interpreter. English is not his first language, so,
18 therefore, we'll use an interpreter to get that
19 testimony preserved for you. Thank you.

20 (Interpreter sworn.)

21 RAFAEL IZAGUIRRE

22 being first duly sworn, testified as follows:

23 THE WITNESS: Yes.

24 THE CLERK: Have a seat right here, please,
25 sir. Once you're seated -- once he's seated, please

1 state your name for the record, please, sir.

2 THE WITNESS: Rafael Izaguirre,

3 I-Z-A-G-U-I-R-R-E.

4 DIRECT EXAMINATION

5 BY MS. PATTERSON:

6 Q. Rafael, on August 9th of 2015, where were you
7 living?

8 A. Rolling Meadows.

9 Q. Do you know Hector Vasquez?

10 A. Yes. I was there that afternoon with him at a
11 party that was there.

12 Q. And where was the party?

13 A. At the residential parking mobile home parking
14 park, there was a party there at Rolling Meadows.

15 Q. And would have this have been August 9th of
16 2015?

17 A. Yes.

18 Q. What were you and Hector doing on that day?

19 A. Well, we were there talking. It was getting
20 late or dark. People were there, but they were
21 already leaving, so we were just outside.

22 Q. And do you remember what happened right before
23 Hector got shot?

24 A. We were there, a black car approached. It was
25 a black car, had four doors. And two black men got

1 out of the car, each of them with a gun in their
2 hand, walked to each one of us and they asked us for
3 money. I reached out for my wallet, I was going to
4 give them the money. And they took the wallet and
5 then they also took my cell phone.

6 Q. How many people took these things from you?

7 A. To me, one, and the other one went toward
8 Hector.

9 Q. And were you on -- at the end of the car -- or
10 the front of the car or the end of the car -- the
11 back of the car? I'm sorry.

12 A. In the back.

13 Q. And where was Hector?

14 A. He was closer toward the front.

15 Q. Was anybody else with Hector?

16 A. At that time, it was just Hector and I that
17 were outside.

18 Q. At any time did anybody else -- do you know if
19 anybody else was with Hector?

20 A. When they took my wallet and my telephone, I
21 walked away from there, and then I didn't see
22 anything else.

23 Q. And after you walked away, did you see or hear
24 anything as you were walking away?

25 A. I heard the gunshots.

1 Q. And what did you do after you heard the
2 gunshots?

3 A. I only walked to my car and...

4 MS. PATTERSON: I beg the Court's indulgence.

5 (State's Exhibit No. 11 marked for
6 identification.)

7 BY MS. PATTERSON:

8 Q. I'm going to show you what's been marked as
9 State's Exhibit 11. Do you recognize this?

10 A. Yes.

11 Q. And how do you recognize this?

12 A. That's a telephone that I had from the AT&T
13 company.

14 Q. Okay. Does it look like the phone that the guy
15 took from you on August 9th?

16 A. Yes.

17 Q. Do you remember seeing Franklin out there?

18 A. Before this happened or...

19 Q. While this was happening, do you remember
20 seeing Franklin out there?

21 A. When I returned there to where Hector was, they
22 were all there, but Hector was already on the
23 ground.

24 Q. When the man was pointing the gun at you, do
25 you remember seeing Franklin out there then?

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1 A. No. When you're like that, you're frightened
2 and you don't -- you don't remember anything more.
3 I only remember that he was pointing the gun at me
4 and that he took my wallet and my phone.

5 Q. So were you mainly focused with the person that
6 was taking your wallet and your phone?

7 A. Yes. But it was very fast, it was something
8 very fast.

9 Q. Thank you. Please answer any questions the
10 Defense may have for you.

11 THE COURT: Mr. Chehoski, cross-examine?

12 CROSS-EXAMINATION

13 BY MR. CHEHOSKI:

14 Q. How many shots did you hear that night?

15 A. I don't recall well, but it was more than one
16 shot.

17 Q. Before this night, you knew who Franklin was?

18 A. Hector's wife?

19 Q. Hector's son.

20 A. Yes, I knew him.

21 Q. From before this night?

22 A. Yes.

23 Q. And you do not remember seeing him there that
24 night?

25 A. I saw him earlier in the day, but later at

1 night I saw him only after all of this was
2 happening.

3 Q. Thank you.

4 You did not meet with police after this
5 incident?

6 A. What date afterwards?

7 Q. In the week that followed this incident, did
8 you meet with police?

9 A. Someone went to my house to ask me, but I told
10 him that I had not recognized the cars of the...

11 Q. You did not recognize the car?

12 A. The faces.

13 THE INTERPRETER: Apologies. The interpreter
14 corrects, the faces.

15 Q. You did not recognize the faces?

16 A. Yes, that's true.

17 Q. And you did not recognize the gun?

18 A. No.

19 Q. Did you recognize the make of the car?

20 A. No. It was just a black car.

21 MR. CHEHOSKI: One moment, please, sir.

22 THE COURT: Yes, sir.

23 MR. CHEHOSKI: I have no further questions.

24 THE COURT: Thank you.

25 Redirect, Ms. Patterson?

1 MS. PATTERSON: Yes, sir, just briefly.

2 (State's Exhibit No. 12 marked for
3 identification.)

4 REDIRECT EXAMINATION

5 BY MS. PATTERSON:

6 Q. The defense attorney just asked you if you
7 talked to law enforcement that night. I'm going to
8 show you what's been marked as State's Exhibit 12.

9 Do you recognize that paper? Is that the statement
10 that you gave to law enforcement officers?

11 A. Yes.

12 Q. And was it given that night, on August 9th,
13 2015?

14 A. Yes.

15 Q. Does it look like it's been changed?

16 A. No.

17 MS. PATTERSON: Your Honor, at this time we
18 move State's Exhibit 12 into evidence.

19 MR. CHEHOSKI: No objection.

20 THE COURT: Without objection.

21 State's Exhibit 11 was the cell phone that was
22 mentioned and questioned about, but was ultimately
23 introduced into evidence. Is that not in evidence
24 without objection.

25 MS. PATTERSON: The cell phone, can we move it

1 in without objection?

2 MR. CHEHOSKI: We don't object.

3 MS. FULLWOOD: We don't object.

4 (State's Exhibit Nos. 11 and 12 admitted into
5 evidence.)

6 BY MS. PATTERSON:

7 Q. And can you read that statement? It's a brief
8 statement. Can you read that statement?

9 THE INTERPRETER: It's in English. I can read
10 it for him.

11 They pointed a gun at me and took my phone and
12 wallet, a small black car with two
13 African-Americans.

14 MS. PATTERSON: Thank you. No further
15 questions.

16 THE COURT: Any follow-up on those points,
17 Mr. Chehoski?

18 MR. CHEHOSKI: No, Your Honor.

19 THE COURT: You may step down.

20 MS. PATTERSON: Your Honor, we ask that this
21 witness be excused.

22 THE COURT: Without objection, Mr. Izaguirre is
23 excused.

24 Ladies and gentlemen, this is a good time for
25 us to take a morning recess. The next witness may

1 to the fact, immediately followed the fact, a
2 partial identification, as I recall it, perhaps of
3 the vehicle, and the entire res gestae of this event
4 was capsulated in that timeframe preserved in the
5 911 tape.

6 I note those objections and I would simply
7 renew my earlier rulings and allow it into evidence
8 for the reasons which I mentioned. Thank you.

9 All right. Folks, let's us have a recess now.
10 We'll start back in about ten minutes. Thank you.

11 (Brief recess.)

12 THE COURT: Are both sides ready for the jury?

13 MS. PATTERSON: The State is ready, Your Honor.

14 MS. FULLWOOD: Yes, Your Honor.

15 THE COURT: Thank you.

16 Bring the jury in, please.

17 (The jury enters the courtroom at 11:20 AM.)

18 THE COURT: Thank you, folks. We'll continue
19 now as the State continues to offer evidence in this
20 case.

21 Ms. Patterson?

22 MS. PATTERSON: Thank you, Your Honor. The
23 State calls Franklin Vasquez.

24 THE COURT: Mr. Vasquez, please come forward.

25 FRANKLIN VASQUEZ

1 being first duly sworn, testified as follows:

2 THE WITNESS: I do.

3 THE CLERK: Have a seat, sir. Once you're
4 seated, state your full name, spelling your last,
5 please.

6 THE WITNESS: My name is Franklin Vasquez,
7 V-A-S-Q-U-E-Z.

8 DIRECT EXAMINATION

9 BY MS. PATTERSON:

10 Q. Franklin, how old are you?

11 A. I'm 19.

12 Q. When is your birthday?

13 A. [REDACTED].

14 Q. And are you working now?

15 A. Yes, ma'am.

16 Q. And what kind of work are you doing?

17 A. Metal roofing with my uncle.

18 Q. Okay. Is it hard work?

19 A. Yes, ma'am.

20 Q. And when did you graduate high school?

21 A. Last year, 2016.

22 Q. And do you have any brothers or sisters?

23 A. Yes, ma'am, I got three sisters.

24 Q. Are you older or younger?

25 A. I'm the oldest.

1 Q. You're the oldest. And in August of 2015,
2 where were you living?

3 A. In Rolling Meadows, [REDACTED],
4 [REDACTED].

5 Q. And who lived there with you?

6 A. Me, my mom, my dad, and my three sisters.

7 Q. Did you have many friends who lived out there?

8 A. Yes, ma'am.

9 Q. And during this time, what high school were you
10 going to?

11 A. I was going to Airport High School.

12 Q. I think someone said earlier this would have
13 been your senior year?

14 A. Yes, ma'am.

15 Q. Do you and your friends like to hang out around
16 the house or around the neighborhood?

17 A. Yes, ma'am.

18 Q. What type of things do you like to do?

19 A. We would normally play basketball or I would go
20 outside and play soccer or go inside and play video
21 games, 2K or something like that.

22 Q. Let's go back to August 9th of 2015. Earlier
23 that day what had you and your family been doing?

24 A. Earlier that day we woke up and went to get
25 school supplies at Academy Sports. And I had to get

1 back to mow the lawn for my neighbor's baptism
2 party. And then we were -- when I finished mowing
3 the lawn, I asked my dad if I could go play
4 basketball up the street from where the party was
5 at. And I --

6 Q. Who were you going to play basketball with?

7 A. My friends Nate and DeShaun.

8 Q. And where was the party going to be?

9 A. Beside my house.

10 Q. So about what time did you finish playing
11 basketball?

12 A. Until it got dark, until we couldn't see
13 outside.

14 Q. Okay. And where did you go next?

15 A. I was heading home to go check in with my dad.

16 Q. And where was your dad?

17 A. On the corner of the white fence speaking to --
18 he was talking to Rafael.

19 Q. And whose house had the white fence?

20 A. Both of our houses shared the white fence,
21 basically.

22 Q. So this was your right next door neighbor?

23 A. Yes, ma'am.

24 Q. And you remember Mr. Rafael being there talking
25 with your dad?

1 A. Yes, ma'am.

2 Q. And what did you do after you checked in with
3 Dad?

4 A. I was going to the cooler to get something to
5 drink.

6 Q. Where was the cooler located?

7 A. It was behind the trailer, behind the white
8 truck too.

9 Q. And then what do you remember happening next,
10 Franklin?

11 A. When I got the drink out of the cooler, I was
12 wiping the soda can off with my shirt. And then all
13 of a sudden, a black car rolls by and he said
14 something and my dad said, what? The car stopped,
15 he put it in reverse -- put the car in reverse, and
16 got out. The driver came towards me, pointing the
17 gun at me, telling me to empty out my pockets, to
18 give him all what I had in my pockets. And then I
19 told him I didn't have anything and --

20 Q. Okay. Let me stop you for a second. You said
21 he said something. Who do you mean?

22 A. The driver.

23 Q. The driver?

24 A. Yes, ma'am.

25 Q. And what type of car was it?

1 A. It was a black four-door sedan.

2 Q. And at this point, where were you in relation
3 to your dad?

4 A. I was -- he was at the corner and I was, like,
5 right beside him.

6 Q. And you said the person got out of the car?

7 A. Yes, ma'am.

8 Q. Did anybody else get out of the car with him?

9 A. Yes, ma'am. The passenger.

10 Q. Okay. So explain to us how each of the people
11 got out of the car and where they went.

12 A. So, like, this is the car. The passenger came
13 out this way to where me and my dad was at and the
14 passenger came out this way to where Rafael was at.
15 (Demonstrating)

16 Q. You said the passenger came with you and your
17 dad?

18 A. No. The passenger went to Rafael, the driver
19 came towards me and my dad.

20 Q. Okay. And when he told you to empty out your
21 pockets, how close was he to you? And I'm going to
22 walk towards you and you tell me when to stop.

23 A. Like, right there.

24 Q. So he was this close to you?

25 A. Yes, ma'am.

1 Q. Did he have anything in his hands?

2 A. A gun.

3 Q. And what did he do with the gun?

4 A. He pointed it at me and told me to empty out my
5 pockets. And then my dad stepped in front of me and
6 he told him what was his problem. Then he pointed
7 the gun at my dad. He tried to shoot the gun, but
8 the gun jammed and --

9 Q. Okay. I'm going to stop you again. When he's
10 this close to you, are you looking eye-to-eye to
11 him?

12 A. Yes, ma'am.

13 Q. Are you able to see what he looks like?

14 A. Yes, ma'am.

15 Q. Now, you stated earlier it had gotten dark.
16 Were you still able to have visibility and see this
17 person?

18 A. Yes, ma'am.

19 Q. And then after you told him you didn't have
20 anything in your pockets, what happened?

21 A. My dad got in front of me and he told him what
22 was his problem. And then, like I said, he tried to
23 shoot the gun and the gun jammed. Then my dad hit
24 him with the beer bottle and they started struggling
25 for the gun. And then I froze up a little bit, and

1 then when I snapped out of it I grabbed my soda can,
2 when I saw they were struggling on the ground, and
3 threw it in his face and kicked him.

4 That's when the gun went off. That's when the
5 passenger came around the passenger's seat and shot
6 through the car and the bullet grazed me. And then
7 I jumped and went inside to grab the keys. And when
8 I came back outside, they were driving off and I
9 was chasing them on foot. And then --

10 Q. Let me stop you again, Franklin. I'm sorry. I
11 want to get as much information as I can.

12 A. Uh-huh.

13 Q. So when your dad got in front of you, were you
14 able to still see the guy?

15 A. Yes, ma'am.

16 Q. And, again, how close were you to your dad and
17 the guy when they began struggling?

18 A. To about the same place where you were standing
19 the first time.

20 Q. Okay. And you're still able to have visibility
21 and see this person?

22 A. Yes, ma'am.

23 Q. And at any point -- when you made contact with
24 him with the soda and you kicked him in the face,
25 were you close contact to him?

1 A. Yes, ma'am.

2 Q. Did you actually connect with his face?

3 A. Yes, ma'am.

4 Q. You know what side of his face you --

5 A. No, ma'am.

6 Q. And where were you mainly focused on during
7 this incident?

8 A. The driver.

9 Q. And about how long would you say this incident
10 happened?

11 A. About, like, between five and ten minutes.

12 Q. And you say that you did freeze up?

13 A. Yes, ma'am.

14 Q. But were you able later to react?

15 A. Yes, ma'am.

16 Q. And at what point did you hear the gun go off?

17 A. When I threw the soda can and kicked the guy in
18 the face.

19 Q. And where was your dad when the gunshot went
20 off?

21 A. On the ground struggling with the driver.

22 Q. And what did you see next?

23 A. When I saw -- when I kicked him in the face and
24 he shot my dad, I saw the passenger came around the
25 car. And from the passenger's seat inside the car,

1 he shot the gun and it grazed me. And that's when I
2 ran inside and grabbed the keys and came --

3 Q. Why were you going inside to get the keys?

4 A. To try to chase the people that did that to my
5 father.

6 Q. And did you see this person get back in the car
7 that shot your father?

8 A. Yes, ma'am.

9' Q. And what side of the car did he get in?

10 A. The driver's side.

11 Q. And did he drive away?

12 A. Yes, ma'am.

13 Q. And did you see your mom come outside at any
14 point?

15 A. Yes, ma'am. When she came outside, I was
16 running inside to go get the keys.

17 Q. Did you say anything to your mom?

18 A. No, ma'am.

19 Q. Did you hear your mom?

20 A. Yes, ma'am. I heard her screaming at me
21 telling me to stay.

22 Q. Was that driver's side open or closed?

23 A. It was open.

24 Q. Now, did you see the person who shot you?

25 A. Yes, ma'am -- I mean, no, ma'am, I didn't. I

1 only saw the driver.

2 Q. But did you see where the shot came from?

3 A. Yes, ma'am.

4 Q. Where did it come from?

5 A. From the passenger's side.

6 Q. Now, although you didn't get a good look at
7 him --

8 A. Yeah, I didn't get a good look at the guy who
9 shot me.

10 Q. But did you notice any physical differences
11 between he and the driver?

12 A. The driver was smaller than the passenger. The
13 passenger was bigger than the driver.

14 Q. And were you able to drive away?

15 A. Like -- yes, ma'am. I was able to drive to
16 Phase II, which is like another part of Rolling
17 Meadows on the other side, and try to get my friend
18 to help me.

19 And then a cop car came by slowly and I waved
20 him down to tell him to help me. And he told me to
21 show him where this incident happened, then I took
22 him to where everything happened. He asked me who
23 did it and I told him it was two black males. And
24 then he started checking me to see if I was hurt and
25 he saw that I had a graze, and they sent me straight

1 to the hospital.

2 Q. So you returned back to the scene with the
3 officer?

4 A. Yes, ma'am.

5 Q. And you were able to tell him what happened?

6 A. Yes, ma'am.

7 Q. Now, was your statement full and complete?

8 A. Yes, ma'am.

9 Q. Then after you -- was it anything you were
10 missing out of your statement that you gave him?

11 A. The only thing was about the color of the car
12 about what I meant about gray was it was like a dark
13 gray, dark color.

14 Q. Because you still had to go to the --

15 MS. FULLWOOD: Objection, Your Honor, leading.

16 THE COURT: I'll sustain the objection.

17 BY MS. PATTERSON:

18 Q. Did you still need to get treatment?

19 A. Yes, ma'am.

20 Q. And what did you do after you talked to the
21 officer?

22 A. What do you mean by that?

23 Q. Did you -- after you talked to the officer and
24 gave them your statement, where did you go next?

25 A. I went -- I was -- I went home with my uncle.

1 Q. Did you ever go to the hospital?

2 A. Yes, ma'am.

3 Q. Okay. And was that before or after you gave
4 the officer the statement?

5 A. That was before.

6 Q. And when I say statement, I mean did you tell
7 the officer something?

8 A. Yes, ma'am.

9 Q. And then later on when you were at the
10 hospital --

11 MS. PATTERSON: I beg the Court's indulgence.

12 (State's Exhibit No. 13 marked for
13 identification.)

14 BY MS. PATTERSON:

15 Q. I'm going to show you what's been marked as
16 State's Exhibit No. 13 and ask you to take a look at
17 that paper. Do you recognize that?

18 A. Yes, ma'am.

19 Q. What is that?

20 A. It's a statement I wrote at the hospital.

21 Q. At the hospital?

22 A. Yes, ma'am.

23 Q. So at the hospital you gave a written
24 statement --

25 A. Yes, ma'am.

1 Q. -- is that correct?

2 A. Uh-huh.

3 Q. Does that look fairly and accurately like the
4 statement you gave him?

5 A. Yes, ma'am.

6 Q. Does it bear your signature?

7 A. Yes, ma'am, and the date.

8 MS. PATTERSON: Your Honor, at this time we
9 move State's Exhibit 13 into evidence.

10 MS. FULLWOOD: No objection, Your Honor.

11 THE COURT: Thank you. Without objection, 13
12 into evidence.

13 (State's Exhibit No. 13 admitted into
14 evidence.)

15 BY MS. PATTERSON:

16 Q. Now, you also gave officers a description of
17 the car; correct?

18 A. Yes, ma'am.

19 Q. And did you give them any other information
20 about the car?

21 A. All I said was about the car being gray. But
22 what I meant about that was about like a dark gray,
23 like I said, and about the taillights, like it was a
24 Toyota Corolla or Camry.

25 Q. Okay. And did you say anything else about the

1 tag?

2 A. No, ma'am.

3 (State's Exhibit No. 14 marked for
4 identification.)

5 MS. PATTERSON: (Tenders document to
6 Ms. Fullwood.)

7 MS. FULLWOOD: No objection, Your Honor.

8 THE COURT: Thank you.

9 BY MS. PATTERSON:

10 Q. I'm going to show you State's Exhibit No. 14
11 just for identification. Do you notice what's in
12 that photograph?

13 A. Yes, ma'am.

14 Q. And is that -- what's in that photograph?

15 A. It's the black car that I saw that night.

16 Q. Now, do you remember ever -- when you first met
17 Detective John Moore sitting right here?

18 A. Yes, ma'am.

19 Q. Where were you when you first met him?

20 A. I was at my uncle's house in Little Mountain.

21 Q. And did you talk to him about what happened the
22 previous night?

23 A. Yes, ma'am.

24 Q. Did you give him a description of the people?

25 A. Yes, ma'am.

1 Q. Did you give him a little more detail? ✓

2 A. All I said was he was about the same size and
3 build as my dad, and the other guy I didn't know
4 anything about. All I said was that he was bigger
5 than the driver.

6 Q. And when you say he was about the same size,
7 who were you referring to?

8 A. The driver.

9 Q. The driver. And is that the person who shot
10 your dad?

11 A. Yes, ma'am.

12 Q. And what was your dad's size?

13 A. He was five-seven, 160.

14 Q. And did you tell him anything about your
15 ability to be able to pick out the person if you saw
16 him again?

17 A. Yes, ma'am. I'd be able to pick him out in an
18 instant.

19 Q. And did you ever meet with Detective Moore in
20 order to look at a photo lineup?

21 A. Yes, ma'am.

22 MS. PATTERSON: (Tenders documents to
23 Ms. Fullwood.)

24 MS. FULLWOOD: Your Honor, nothing -- Your
25 Honor, nothing other than our previous motion

1 yesterday.

2 THE COURT: I understand. Thank you.

3 Subject then to previous motions heard and
4 argued yesterday, in evidence.

5 BY MS. PATTERSON:

6 Q. I'm going to show you State's Exhibits 2 and 3
7 together and ask you to take a look at this. Do you
8 recognize those pictures?

9 A. Yes, ma'am.

10 Q. And how do you recognize those pictures?

11 A. This is the lineup that Mr. Moore showed me the
12 first day.

13 Q. Okay. And did you make any kind of
14 identification on that day?

15 A. No, ma'am.

16 Q. And why not?

17 A. Because none of them looked like the man that
18 shot my dad that night.

19 MS. PATTERSON: Your Honor, I move State's
20 Exhibits 2 and 3 into evidence.

21 THE COURT: Subject to previous objections,
22 State's 2 and 3 in evidence.

23 (State's Exhibit Nos. 2 and 3 admitted into
24 evidence.)

25 BY MS. PATTERSON:

1 Q. I'm going to first show you State's Exhibit

2 No. 4. Do you recognize that paper?

3 A. Yes, ma'am.

4 Q. And how do you -- what do you recognize that to
5 be?

6 A. The lineup that Mr. Moore showed me later, like
7 a couple days later.

8 Q. And how do you know that that is the lineup
9 that you were shown?

10 A. Because I signed it and I dated it.

11 Q. And what was the date?

12 A. August 13th, 2015.

13 Q. So this would have been three, four days later
14 after the incident?

15 A. Yes, ma'am.

16 Q. And did you make a selection?

17 A. Yes, ma'am.

18 Q. And what number did you select?

19 A. Number 2.

20 Q. Okay. And why did you make that selection?

21 A. Because that was the man that I remembered from
22 that night.

23 Q. Did you have any problems making that
24 selection?

25 A. No, ma'am.

1 Q. How long did it take you to make that
2 selection?

3 A. Not even a minute.

4 Q. Did anybody tell you who you should pick?

5 A. No, ma'am. They told me to take my time, and
6 if I wasn't sure, then not to choose anybody.

7 Q. And is that the man that you saw that shot your
8 dad?

9 A. Yes, ma'am.

10 Q. And I'm going to show you State's Exhibit
11 No. 5. Do you recognize that paper?

12 A. Yes, ma'am.

13 Q. And what is it?

14 A. It's another lineup he show me the same day.

15 Q. And did you make an identification?

16 A. No, ma'am.

17 Q. Why not?

18 A. Because I wasn't sure about the passenger.

19 Q. Okay. And is your signature on that?

20 A. Yes, ma'am.

21 Q. Okay.

22 MS. PATTERSON: Your Honor, we move State's
23 Exhibits 4 and 5 into evidence.

24 THE COURT: Same objection?

25 MS. FULLWOOD: Yes, Your Honor.

1 THE COURT: Subject to same objection, in
2 evidence.

3 (State's Exhibit Nos. 4 and 5 admitted into
4 evidence.)

5 BY MS. PATTERSON:

6 Q. So you were able, without any doubt, to make
7 this identification of the person who shot your dad?

8 A. Yes, ma'am.

9 Q. What was -- what were you mainly focusing on
10 when this was going on?

11 A. I was focused -- like, as the incident happened
12 or as I was looking at the lineup?

13 Q. As the incident was happening.

14 A. I was focused on him, mainly on him, because he
15 had the gun pointed at me and my dad.

16 Q. And, Franklin, during this time you said you
17 were a student of Airport High School. Did you go
18 to school with black kids?

19 A. Yes, ma'am.

20 Q. Did you have friends who were black?

21 A. Yes, ma'am.

22 Q. Lived in your neighborhood?

23 A. Yes, ma'am.

24 Q. Nate and DeShaun, who you hung out with that
25 day, were they black?

1 A. Yes, ma'am.

2 MS. PATTERSON: (Tenders documents to
3 Ms. Fullwood.)

4 MS. FULLWOOD: Your Honor, may we have a
5 sidebar?

6 THE COURT: Yes, ma'am.

7 (Side bar conference.)

8 THE COURT: Ladies and gentlemen, sometimes we
9 have these sidebar conferences when we talk behind
10 your back, and the reason is we don't want to send
11 you out of the courtroom and into the jury room
12 while we take up a brief matter that really does not
13 involve your participation in it. It's a matter of
14 law.

15 So I always tell jurors that if you're curious
16 about what we're whispering about over there behind
17 your back, when your role as a juror in this case is
18 over, if you'll come to me and ask me what we were
19 talking about and if I can remember what we were
20 talking about, I'll be glad to tell you. Thank you.

21 These next exhibits will come in over
22 objections of defense counsel.

23 (State's Exhibit Nos. 15 and 16 marked for
24 identification and admitted into evidence.)

25

1 BY MS. PATTERSON:

2 Q. Franklin, I'm going to show you what's been
3 marked as State's Exhibits 15 and 16 and ask you to
4 take a look at it. Do you recognize who is in those
5 photographs?

6 A. Yes, ma'am.

7 Q. And who is in those photographs?

8 A. That's me.

9 Q. And is that the way you appeared on the night
10 of August 9th, 2015, when you were in the hospital?

11 A. Yes, ma'am.

12 Q. Does it look like it's been changed in any way?

13 A. No, ma'am.

14 MS. PATTERSON: Your Honor, at this time we
15 move State's Exhibits 15 and 16 into evidence.

16 THE COURT: Okay. Which is which?

17 MS. PATTERSON: 15 is the head shot, Your
18 Honor, and 16 is more of the leg shot.

19 THE COURT: Okay. Thank you. Subject to
20 objection, they're in. Thank you.

21 BY MS. PATTERSON:

22 Q. So, Franklin, these pictures show you at the
23 hospital being treated for the bullet graze to your
24 inner thigh?

25 A. Yes, ma'am.

1 Q. And you were released later on?

2 A. Yes, ma'am.

3 Q. So is this when you gave that written statement
4 when you were still undergoing treatment?

5 A. Yes, ma'am.

6 Q. I'm going to show you State's Exhibits 6 and
7 7 --

8 MS. PATTERSON: (Tenders documents to
9 Ms. Fullwood.)

10 MS. FULLWOOD: No objection, Your Honor.

11 THE COURT: Thank you.

12 BY MS. PATTERSON:

13 Q. I'm going to show you State's Exhibit 6. Do
14 you recognize the area in that photograph?

15 A. Yes, ma'am.

16 Q. And how do you recognize it?

17 A. That's where me and my dad was standing at that
18 night, right here in the corner in the middle of
19 this part of this fence right here. (Indicating)

20 Q. Okay. Does it look like it's been changed?
21 That's the way it appeared on August 9th, 2015?

22 A. Yes, ma'am.

23 Q. And what about number 7? Do you recognize that
24 area in that photograph?

25 A. Yes, ma'am.

1 Q. How do you recognize it?

2 A. That's the front part from where we were
3 standing at.

4 Q. Does it look like it's been changed in any way?

5 A. No, ma'am.

6 MS. PATTERSON: Your Honor, at this time we
7 move State's Exhibits 6 and 7 into evidence.

8 THE COURT: Without objection.

9 (State's Exhibit Nos. 6 and 7 admitted into
10 evidence.)

11 BY MS. PATTERSON:

12 Q. Franklin, what's in this photograph?

13 A. That's the place where we had the baptism party
14 at.

15 Q. Can you point it out with it the laser pointer?

16 A. (Complies.)

17 Q. Okay. And I know it's dark, but is the cooler
18 that you went to in that photograph?

19 A. Yes, ma'am.

20 Q. Where is it? Point it out.

21 A. Right there. (Indicating)

22 Q. And where had you gotten in this picture when
23 you saw the black car drive up?

24 A. Right there. My dad was right here and I was
25 right there. (Indicating)

1 Q. Okay. And do you notice something on the front
2 porch of that house?

3 A. Yes, ma'am.

4 Q. And what is it?

5 A. The light right there. (Indicating)

6 Q. And what do you remember about that truck in
7 that photograph?

8 A. The white truck?

9 Q. Uh-huh. Do you remember standing in front of
10 that white truck?

11 A. Yes, ma'am.

12 Q. And State's Exhibit No. 7 -- well, let me go
13 back to 6. State's Exhibit No. 7, what's next to
14 that white truck?

15 A. That white Honda right there. (Indicating)

16 Q. And in this photograph, can you see part of the
17 white truck?

18 A. Yes, ma'am.

19 Q. And the white Honda?

20 A. Yes, ma'am.

21 Q. Do you also see a streetlight in that
22 photograph?

23 A. Yes, ma'am.

24 Q. Where is it? Point it out.

25 A. (Complies.)

1 Q. Franklin, do you see the same man in this room
2 who killed your father?

3 A. Yes, ma'am.

4 Q. How are you able to recognize him?

5 A. His facial features and his beard that he had
6 the same day.

7 Q. And where do you see that person?

8 A. He's right over there.

9 MS. FULLWOOD: Your Honor, this would be
10 subject to our previous motion.

11 THE COURT: Subject to objection, yes. Thank
12 you.

13 Q. And where do you see this person?

14 A. Over there. (Indicating)

15 Q. And what does he have on?

16 A. A suit.

17 Q. Okay. /

18 MS. PATTERSON: Your Honor, let the record
19 reflect he's pointed out the defendant, Ricky Esaw.

20 THE COURT: Yes, ma'am.

21 MS. PATTERSON: Thank you, Franklin. Please
22 answer any questions the Defense may have.

23 THE COURT: Yes, ma'am, Ms. Fullwood?

24 MS. FULLWOOD: Thank you, Your Honor.

25 (Interruption in the proceedings.)

1 THE COURT: We haven't yet figured out where
2 that sound comes from. Every time somebody hits a
3 certain button, it does that. But there's no reason
4 to be alarmed.

5 MS. FULLWOOD: It's a bad sound.

6 THE COURT: It is. It's scary.

7 CROSS-EXAMINATION

8 BY MS. FULLWOOD:

9 Q. You stopped playing basketball with your
10 friends that night because it had gotten too dark to
11 see the hoop; is that right?

12 A. Yes.

13 Q. And were you playing at a court that was on the
14 grounds of the park?

15 A. Yes.

16 Q. All right. And when these men pulled up, they
17 pulled up, then reversed, and stopped; right?

18 A. Yes.

19 Q. Okay. Which person in the car was closest to
20 you and your dad and Rafael, the driver or the
21 passenger?

22 A. The driver was closest to -- came -- approached
23 to me and my dad. The passenger went to Rafael.

24 Q. Well, what I mean was, which part of the car
25 was closest to you guys, the driver's side or --

1 A. The driver's side.

2 Q. The driver's side?

3 A. Yes, ma'am.

4 Q. Okay. So they came up and one robbed Rafael
5 and the other one tried to rob you and your dad; is
6 that right?

7 A. Yes.

8 Q. All right. And he had a gun?

9 A. Yes.

10 Q. Do you know what kind of gun he had?

11 A. No, ma'am, I don't. I guessed because --

12 Q. Uh-huh.

13 A. -- I said it was a .9 millimeter.

14 Q. Okay. And why did you guess that?

15 A. It had similar features of a nine.

16 Q. Okay. You familiar with them then?

17 A. Yes, ma'am.

18 Q. All right. And could you tell for sure?

19 A. No, not really.

20 Q. Okay.

21 A. Like I said, I just guessed.

22 Q. Okay. And what color was it?

23 A. It was black.

24 Q. Okay. Now, I believe you testified at first
25 you just froze?

1 A. Yes.

2 Q. Because, obviously, you were getting robbed;
3 right?

4 A. Yes.

5 Q. All right. And then your dad started fighting
6 the man with the gun?

7 A. Yes, ma'am..

8 Q. All right. Do you know what that man was
9 wearing?

10 A. No.

11 Q. Okay. Do you know if he was wearing any
12 jewelry?

13 A. No.

14 Q. All right. Basically your dad and this man got
15 into a struggle; right?

16 A. Yes.

17 Q. And it ended up with your father breaking a
18 beer bottle over his head; right?

19 A. Yes.

20 Q. And that bottle burst?

21 A. Yes.

22 Q. Okay. And so is it right that eventually the
23 two of them got -- were struggling on the ground?

24 A. Yes.

25 Q. All right. While they were struggling and

1 fighting each other, were they saying anything to
2 each other?

3 A. No.

4 Q. Not a word passed between them or --

5 A. Not that I remember, no.

6 Q. No fussing or --

7 A. No.

8 Q. -- cussing like you might expect in a fight?

9 A. No.

10 Q. Okay. Now, you were pretty close to the house
11 with the party; right?

12 A. Yes.

13 Q. And there were people on the front porch of
14 that house; right?

15 A. Yes.

16 Q. Did any of those people see what was going on?

17 MS. PATTERSON: Objection; speculation.

18 THE COURT: I'll sustain that.

19 BY MS. FULLWOOD:

20 Q. Did any people on the porch come down to help
21 you, your dad, and Rafael?

22 A. No, ma'am. Nobody came inside -- they all went
23 inside because they were scared.

24 Q. Okay. So they went inside the house?

25 A. Yes, ma'am.

1 Q. All right. At that point is it fair to say
2 that you unfroze and you kind of kicked in to
3 action?

4 A. Yes, ma'am.

5 Q. Because your dad was down there on the ground.

6 A. Yes, ma'am.

7 Q. All right. And what you did was you threw your
8 Fanta can at this man fighting your dad?

9 A. Yes.

10 Q. And you burst that can when you threw it, that
11 hard; right?

12 A. I don't know if I burst it, but I threw it at
13 him and then I kicked him.

14 Q. Okay. And that kick connected --

15 A. Yes, ma'am.

16 Q. -- on his face?

17 A. Yes, ma'am.

18 Q. Okay. And didn't you testify that after the
19 gun went off and the man -- the driver was going to
20 leave, the passenger shot threw the car?

21 A. Yes, the passenger.

22 Q. So he was still in the car when he --

23 A. No. He was about to get in -- when he was
24 about to get in, he shot, and then he got in when
25 the bullet grazed me and hit the white truck.

1 Q. Well, did he shoot through --

2 A. He shot -- the passenger went to get in the
3 passenger's side, but before he got in, he shot from
4 the passenger's side. Both doors was open. He shot
5 through the passenger's side and the bullet grazed
6 me.

7 Q. Okay. Well, did he shoot over the car or did
8 he shoot --

9 A. Inside the car.

10 Q. He shot inside the car?

11 A. Yes.

12 Q. Okay. Okay. Once that had happened, the men
13 drove off. And then you drove off and came back;
14 right?

15 A. Yes.

16 Q. Okay. And at the scene you talked to Detective
17 Steen; right?

18 A. Yes.

19 Q. All right. And you told him some about what
20 happened?

21 A. Yes.

22 Q. All right. And is it correct that you told him
23 that the men were in a dark car?

24 A. Yes.

25 Q. All right. And is it correct that you didn't

1 give him a detailed description of the men?

2 A. Not until I spoke with Mr. Moore.

3 Q. Okay. Well, you talked to Detective Edmonson
4 while you were at the hospital; correct?

5 A. Yes.

6 Q. All right. And what you told him was that the
7 men were in a dark car; is that right?

8 A. Yes.

9 Q. And is it right to say that the only
10 description you gave to Detective Edmonson of the
11 two men was that the second guy was a fat black
12 male?

13 A. Yes.

14 Q. And that night you gave a written statement?

15 A. Yes, ma'am.

16 Q. And you wrote it yourself?

17 A. Yes.

18 Q. And nobody tried to tell you what to say?

19 A. No.

20 Q. All right. And in that statement you said the
21 car was gray, didn't you?

22 A. Yes. By gray I meant a dark color.

23 Q. Well, you didn't say dark gray, did you?

24 A. No, because I was getting assistance at the
25 time.

1 Q. But you didn't need stitches or anything like
2 that, did you?

3 A. No.

4 Q. Okay. And they didn't put you under anesthesia
5 or anything like that?

6 A. Not that I know of, no.

7 Q. Well, you were conscious the whole time; right?

8 A. Yeah.

9 Q. Yeah. Okay. And in the statement -- well, let
10 me -- do you still have that statement up there?

11 A. No. I don't have anything up here.

12 Q. Okay. Let me try to locate and give you -- let
13 me give you State's Exhibit 13, that's your
14 statement. Okay? And you've had a chance to look
15 at this statement and prepare for this trial today;
16 right?

17 A. Yes.

18 Q. Okay. And could you read us the last sentence
19 of the statement?

20 A. It says: Then the passenger driver had shot
21 his --

22 Q. No. The very last sentence.

23 A. Yeah. That is the last sentence.

24 Q. Oh, okay.

25 A. Then the passenger driver had shot gun inside

1 the car and it grazed me and hit the white truck.

2 The passenger driver was the fat guy.

3 Q. What exactly do you mean by the term passenger
4 driver?

5 A. I meant the passenger.

6 Q. Okay.

7 A. Yes.

8 Q. Okay. So the next day you talked to Detective
9 Moore; right?

10 A. Yes.

11 Q. Okay. And that's when you gave your most
12 detailed description?

13 A. Yes.

14 Q. And that was that the man who shot you and your
15 dad was similar in size and build to your dad?

16 A. Yes.

17 Q. Okay. And that was that he was about
18 five-seven and 160 pounds; is that right?

19 A. Yes.

20 Q. And that's your most detailed description; is
21 that right?

22 A. Yes. And he had a beard, yes.

23 Q. You told him he had a beard?

24 A. Yes.

25 Q. Okay. Now, when you talked to Detective Moore

1 again on the 13th, he showed you a couple of
2 different photo arrays; right?

3 A. Yes.

4 Q. And didn't he tell you the shooters are in
5 these photographs?

6 A. No.

7 Q. You sure about that?

8 A. Yes.

9 Q. Okay.

10 MS. FULLWOOD: I beg the Court's indulgence.

11 THE COURT: Yes, ma'am.

12 BY MS. FULLWOOD:

13 Q. Going back to your father hitting the guy with
14 the bottle --

15 A. Yes.

16 Q. -- you testified your dad is right-handed;
17 right?

18 A. Yes.

19 Q. So did he hit the man on the left side of the
20 head?

21 A. Yes.

22 Q. The top of the head, just right up there or --

23 A. On the side.

24 Q. On the side?

25 A. Yeah.

1 Q. Okay. Like --

2 A. Should have, because he swung like this.

3 (Demonstrating)

4 Q. Okay.

5 A. Yeah.

6 Q. So it should have caught him right like --

7 A. Yeah.

8 Q. -- between the forehead and cheeks?

9 A. Yes.

10 Q. Is that what you saw?

11 A. No, because I was frozen at the time.

12 Q. Okay. So you weren't looking at your dad and
13 the man at that point?

14 A. I was, but I was frozen. I saw him swing and
15 then hit him, and then that's when they were
16 struggling and that's when I snapped.

17 Q. Okay. So are you trying to say you're having
18 trouble remembering what you saw while you were
19 frozen?

20 A. No. No.

21 Q. Okay. But you just don't know where your dad
22 hit the man?

23 A. Yeah. I don't know where he hit him.

24 Q. Do you know what you were looking at then?

25 A. I was looking at the shooter.

1 Q. You were looking at --

2 A. Yeah. The driver was the shooter that shot my
3 dad. Yes.

4 Q. Were you looking at the gun then?

5 A. No. I was looking at the shooter, the guy.

6 Q. Okay. You were looking at the man?

7 A. Yes.

8 Q. Okay. But you didn't see what part of the head
9 your dad hit him on?

10 A. No.

11 Q. Okay. No further questions.

12 THE COURT: Thank you.

13 Redirect?

14 MS. PATTERSON: No, sir, Your Honor.

15 THE COURT: Thank you, Mr. Vasquez. You can
16 step down.

17 Ms. Patterson?

18 MS. PATTERSON: The State calls Branden Steen.

19 THE COURT: Mr. Steen, come up, please.

20 BRANDEN STEEN

21 being first duly sworn, testified as follows:

22 THE WITNESS: I do.

23 THE CLERK: Have a seat, sir. Once you're
24 seated, state your full name, spelling your last,
25 please.

1 THE WITNESS: Branden James Steen, S-T-E-E-N.

2 DIRECT EXAMINATION

3 BY MS. PATTERSON:

4 Q. And, Branden, what is your rank?

5 A. I'm a patrol deputy with the Lexington County
6 Sheriff's Department.

7 Q. And, Deputy Steen, how long have you worked
8 with Lexington County Sheriff's Department?

9 A. Approximately three and a half years.

10 Q. And were you on call the evening of August 9th,
11 2015?

12 A. Yes, ma'am.

13 Q. Did you get called out to [REDACTED]

14 [REDACTED]

15 A. Yes, ma'am.

16 Q. And what is at that location?

17 A. That is the Rolling Meadows mobile home park.

18 Q. Is that in Lexington County?

19 A. Yes, ma'am. That is in West Columbia area of
20 Lexington County.

21 Q. And what time did you get dispatched out?

22 A. I was dispatched at 9:19 p.m.

23 Q. And what time did you arrive?

24 A. I arrived on scene at 9:23 p.m.

25 Q. And what was the nature of the call?

1 A. What we first got when we first were dispatched
2 was a subject that had been -- had a gunshot wound.

3 Q. And when you got to the scene, can you kind of
4 describe what you saw.

5 A. Yes, ma'am. When I first arrived on scene, I
6 noticed a large group of people around a certain
7 area. I then started walking towards the area to
8 figure out what was going on.

9 Q. And when you got to the area, what caught your
10 attention?

11 A. When I first got to the area what caught my
12 attention was that there a Hispanic male lying on
13 the ground. That male was later identified as
14 Hector Vasquez. As I further approached Hector, I
15 noticed that he was bleeding from a gunshot wound in
16 the middle of his torso.

17 Q. What did you do as a result?

18 A. I immediately got gloves and started applying
19 pressure to the wound and had his family speak to
20 him to keep him conscious, keep him talking.

21 Q. And at this point, what was the demeanor of the
22 people around Hector?

23 A. Everybody around Hector was frantic, they were
24 scared, multiple ones were crying, basically telling
25 him you're going to be okay, you're going to be

1 okay, stay with us, just trying to keep talking to
2 him to keep him conscious.

3 Q. And did EMS ultimately arrive?

4 A. Yes, ma'am. EMS arrived a short time later.

5 Q. What did you do once EMS arrived?

6 A. When EMS arrived, Deputy Burnett and myself and
7 other deputies began setting up crime scene tape and
8 a crime scene log was established.

9 Q. And did you talk to someone named Franklin at
10 the scene?

11 A. Yes, ma'am, I did.

12 Q. And how long had you been at the scene before
13 you spoke with Franklin?

14 A. I'm not exactly sure of the exact time, ma'am.
15 The scene was chaotic, had a lot of moving pieces.
16 I was just trying to keep everybody safe, keep
17 control of Hector and everything there, so I'm not
18 sure of the exact time, ma'am.

19 Q. So did you talk to Franklin a great deal?

20 A. Not a whole lot, ma'am. I basically got just a
21 general statement from him. But I noticed that he
22 had been shot in the leg, he brought that to my
23 attention, and due to that I had EMS come for him
24 and get him out of there so he could be medically
25 treated.

1 Q. Okay. And did you also speak to someone named
2 Rafael?

3 A. Yes, ma'am, I did.

4 Q. And did you have to have assistance
5 translating?

6 A. I do not recall, ma'am.

7 Q. Okay. I'm going to show you what's already
8 been entered as State's Exhibit No. 6. Does this
9 picture show where you saw the body lying?

10 A. Yes, ma'am.

11 Q. Where did you see the body lying?

12 A. When I first approached Hector, he was lying
13 about right there. He was to the side of this
14 fence, kind of in between the truck right there.

15 (Indicating)

16 Q. Does this picture show where the ambulance may
17 have been parked?

18 A. If it was, it would be at the bottom corner
19 right here, if not a little farther off the screen,
20 so it may or may not. I know the ambulance was a
21 little bit farther over. (Indicating)

22 Q. It was further over which way?

23 A. Further over towards this corner. (Indicating)

24 (State's Exhibit No. 17 marked for
25 identification.)

1 Q. This might help you a little better. I'll show
2 you State's Exhibit 17 and ask you to take a rook at
3 this photograph.

4 MR. CHEHOSKI: Your Honor, no objection.

5 THE COURT: Thank you.

6 A. Okay. So --

7 Q. And I can put this picture up --

8 MS. PATTERSON: Your Honor, at this time,
9 State's Exhibit 17 into evidence.

10 THE COURT: Without objection.

11 (State's Exhibit No. 17 admitted into
12 evidence.)

13 BY MS. PATTERSON:

14 Q. Does this better reflect where you may have
15 seen the --

16 A. Yes, ma'am. The ambulance would have been
17 right there where the number 2 marker is.

18 Q. And in this picture, where was the body lying?

19 A. More over towards the truck, right around here.
20 (Indicating)

21 Q. And I'll show you what's been introduced as
22 State's Exhibit No. 7. I'll show it to you close-up
23 first so you can take a good look at it. In that
24 photograph do you see police cars and things of that
25 nature?

1 A. Yes, ma'am.

2 Q. And where are they?

3 A. A little bit farther off the scene.

4 Q. Okay. You described the scene as chaotic.

5 A. Yes, ma'am.

6 Q. Do you mean with people, cars or both or
7 something else?

8 A. At first, like I said, I was first on scene, it
9 was just a lot of keeping -- making sure the shooter
10 wasn't still there, making sure Hector was okay,
11 making sure everybody around was cool, calm,
12 collected, nobody went around destroying any
13 evidence or anything like that. So it was a lot of
14 moving pieces for me right there just by myself
15 until other units got there.

16 Q. And where do you see other police cars?

17 A. They are further off -- they are further
18 setting up the perimeter about right there.

19 (Indicating)

20 Q. And, Deputy Steen, these pictures that I showed
21 you, are they from that night, August 9th, 2015?

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

23 MS. PATTERSON: I beg the Court's indulgence.

24 THE COURT: Yes, ma'am.

25 MS. PATTERSON: Thank you, Deputy Steen.

1 Please answer any questions the defense counsel may
2 have.

3 THE COURT: Mr. Chehoski, cross-examine?

4 MR. CHEHOSKI: Thank you.

5 CROSS-EXAMINATION

6 BY MR. CHEHOSKI:

7 Q. You just spoke briefly with Franklin when you
8 arrived; correct?

9 A. Yes, sir.

10 Q. And you said you got a general statement from
11 him --

12 A. Yes, sir.

13 Q. -- of what happened?

14 And you documented that in your report?

15 A. Yes, sir.

16 Q. And when you document these reports, you
17 document them to be as complete as possible?

18 A. Yes, sir.

19 Q. And as accurate as possible?

20 A. Yes, sir.

21 Q. And as thorough as possible?

22 A. Yes, sir.

23 Q. And in your report you documented that -- let
24 me make sure I -- that Franklin said he and his
25 father were walking; correct?

1 A. Yes, sir.

2 Q. Okay. And that two African males approached
3 riding in a dark vehicle?

4 A. Yes, sir.

5 Q. Okay. Nothing about the car backing up; is
6 that correct? That's not in your report.

7 A. Yes, sir.

8 Q. Right. And also there you talked with other
9 people as well?

10 A. Yes, sir.

11 Q. And as many people as possible?

12 A. Yes, sir.

13 Q. To try to get as much information as possible?

14 A. Yes, sir.

15 Q. And at that point nobody was able to give you
16 any accurate -- an description of either suspect?

17 A. No. The basis that I got were the continual it
18 two African-American males.

19 Q. But no other description other than two
20 African-American males?

21 A. Yes, sir, that's correct.

22 Q. And no further description other than a dark
23 vehicle?

24 A. Yes, sir, that is correct.

25 Q. And no further description of the firearm?

1 A. Yes, sir, that is correct.

(2 Q. You also indicated that you discovered that
3 there was a -- there was broken glass in the
4 roadway?

5 A. Correct.

6 Q. And that broken glass would have come from a
7 bottle?

8 A. I can't speculate, but I would assume.

9 Q. Okay. Well, let's just -- was it dark broken
10 glass?

11 A. Yes, sir.

12 Q. All right. And you did not indicate though how
13 close to the body that was?

14 A. No, sir, not in my report.

15 Q. Do you remember how close to the body it was?

16 A. I can't say exactly, sir.

17 Q. Understood. I appreciate your honesty.

18 MR. CHEHOSKI: One moment, please, Your Honor.

19 THE COURT: Yes, sir.

20 BY MR. CHEHOSKI:

21 Q. Just a couple more. You -- being that this
22 was a -- there was a gunshot wound, you searched the
23 scene for shell casings?

24 A. Not at first. My first and most prominent
25 priority was to basically make sure the scene was

1 secure and provide medical attention to Hector.

2 Q. But at some point you did look -- you did
3 search the scene for shell casings?

4 A. Yes, sir, very briefly until I was put on
5 perimeter.

6 Q. And in that brief period, you did not find any
7 shell casings?

8 A. No, sir, I did not personally.

9 Q. And you were not the first one to find any
10 bracelets on the scene?

11 A. No, sir. That was Corporal Richardson who
12 brought that to my attention. The bracelet was
13 under the EMS bus.

14 Q. All right.

15 MR. CHEHOSKI: Nothing further..

16 THE COURT: Redirect?

17 REDIRECT EXAMINATION

18 BY MS. PATTERSON:

19 Q. Deputy Steen, I think you said earlier your
20 responsibilities was to secure the scene and make
21 sure that the injured person received treatment.

22 A. Yes, ma'am.

23 Q. And who took over the scene?

24 A. After me it was Corporal Richardson and then it
25 was Lexington County major crimes units.

1 Q. Major crimes. And that's where the detective
2 is normally assigned to the case?

3 A. Yes, ma'am.

4 Q. And do you know the role of the detective?

5 A. Basically gather statements on scene, gather
6 evidence to successfully prosecute, and determine if
7 crime has or hasn't committed and who committed the
8 crime.

9 Q. So would their role be a little greater than
10 yours?

11 A. Yes, ma'am.

12 Q. Thank you. No further questions.

13 THE COURT: You can step down. Thank you, sir.

14 MS. PATTERSON: Your Honor, may this witness be
15 excused?

16 MR. CHEHOSKI: Without objection.

17 THE COURT: Without objection, yes.

18 Ladies?

19 MS. MARTIN: Your Honor, we'd call April
20 Tutich, T-U-T-I-C-H.

21 THE COURT: Come forward, please, Ms. Tutich to
22 be sworn.

23 APRIL TUTICH

24 being first duly sworn, testified as follows:

25 THE WITNESS: Yes, ma'am.

1 THE CLERK: Have a seat, please, ma'am. Once
2 you're seated, state your full name and spell your
3 last, please.

4 THE WITNESS: April Tutich, T-U-T-I-C-H.

5 DIRECT EXAMINATION

6 BY MS. MARTIN:

7 Q. Ms. Tutich, where are you employed?

8 A. I'm a paramedic with the County of Lexington.

9 Q. How long have you been a paramedic?

10 A. I was certified in 2014.

11 Q. And are there different levels of EMS treatment
12 providers?

13 A. There are. Paramedics are advanced life
14 support care. We also have EMT intermediates and
15 basics.

16 Q. And is it shift work?

17 A. Yes, ma'am.

18 Q. And in -- if I can direct your attention back
19 to August 9th of 2015, were you working that
20 evening?

21 A. Yes, ma'am.

22 Q. Were you dispatched to a call?

23 A. I was.

24 Q. And did you end up at Rolling Meadows?

25 A. We did.

1 Q. And based on your review of your report, can
2 you tell us what time were you dispatched?

3 A. We were dispatched at 2119 and we arrived on
4 scene at 2131.

5 Q. All right. And that's what time, not in
6 military time?

7 A. I'm sorry. At 9:19 and 9:31.

8 Q. Okay. And when you got there, can you describe
9 the scene to us, please?

10 A. It was very hectic, there was a lot of
11 bystanders around. We did have one male patient on
12 the ground. We had a police officer holding
13 pressure to a wound on the anterior side of the
14 patient, on the front side. The patient did not
15 speak English, so our communication with him was
16 limited, but we understood that there had been a
17 gunshot. We didn't know why, but he was on the
18 ground, still responsive.

19 Q. Okay. And what exactly was his condition there
20 on the scene that night?

21 A. He was still responsive, he was alert,
22 obviously in pain, he wasn't moving much. They were
23 trying to hold him still. Any time we have an
24 injury like that to the torso, we don't want to move
25 them a lot in case there's any spinal damage.

1 Q. And did your records show who this patient was?

2 A. We obtained the name of Hector Vasquez.

3 Q. And you said he was still alert. Was he
4 conscious?

5 A. He was then. During our transport he would
6 kind of go in and out of consciousness. He didn't
7 lose pulses or -- he was maintaining his own airway
8 breathing.

9 Q. With injuries like this, did you move him into
10 your ambulance pretty quickly?

11 A. We did. We took precautions for his spine.
12 There's a procedure we use where we put him on a
13 board to keep everything as stable as we can. So we
14 pretty quickly got him on that, checked him briefly,
15 got him into the unit so we could get away from the
16 crowd that was on scene.

17 Q. And what treatments were you able to provide
18 for him there still at the scene?

19 A. Our protocol is we expose the body so we can
20 locate all the injury sites, make sure that we can
21 control all the bleeding that we can find, we
22 initiate IV access so we can start replenishing the
23 volume loss with a normal saline.

24 We don't keep blood products on the truck, so
25 we can't replace with blood, so we supplement with a

1 fluid, making sure his airway was intact. He was
2 breathing on his own. We check their lungs. Based
3 on where his injuries were, we had a high concern
4 that he might have had an injury to his right lung.
5 His lung sounds were good. He was maintaining his
6 own airway, we just provided him some supplemental
7 care.

8 Q. Do y'all have a protocol -- and y'all being
9 EMS. Do y'all have a protocol as to where gunshot
10 wound victims should be transported?

11 A. We do. As long as they're still breathing and
12 have a pulse, they're not in cardiac arrest, we
13 transport to the trauma center, which our closest
14 facility is Richland hospital.

15 Q. And was that decision made to transport Hector
16 to Richland Memorial?

17 A. Yes.

18 Q. And before you left that scene, what if
19 anything did you there on site at Rolling Meadows?

20 A. We placed him in spinal precaution, we
21 controlled as much bleeding as we could, we did
22 remove his clothing, which was left on scene, just
23 so that we could evaluate his body and make sure
24 there was not any other life-threatening injuries
25 that we could not see.

1 Q. And before transport, did you have occasion to
2 meet any other wounded people that evening?

3 A. I did check. My captain was on scene and my
4 partner that night was also another paramedic, so
5 once they had him in the truck and were assessing
6 him, I, as the crew chief, checked the scene to make
7 sure that there wasn't any other injured parties.

8 There was one young male who had some abrasions
9 on his inner thighs where they believe he had also
10 been struck by a bullet. He was ambulatory on
11 scene, walking around, he was stable, he was not
12 even bleeding. We had another unit coming to
13 transport him since the older gentleman was a
14 critical patient.

15 Q. All right. And that would have been Franklin
16 Vasquez?

17 A. I did not know his name. I was understood that
18 that was his son.

19 Q. During transport of Hector, what if anything
20 changed with his condition?

21 A. He remained fairly stable for us. He was kind
22 of in and out of consciousness. If we spoke to him,
23 we could get some stimulation. But, like I said,
24 with the language barrier, it was kind of harder
25 than just saying his name and trying to get him to

1 respond some.

2 He did become combative. He didn't want the
3 oxygen mask on his face. That's typically a sign of
4 the trauma hypoxia. It could be for various reasons
5 that they get combative like that.

6 Q. And were you surprised to find out that Hector
7 had died of his injuries?

8 A. It's not uncommon for us to see gunshot wounds
9 that are fatal. Based on where he was struck and
10 based on where we believed the exit and entry wounds
11 were, it's very hard to determine where that bullet
12 made impact internally with other organs, so usually
13 we have a high suspicion that those type patients
14 will not survive.

15 Q. Please answer any questions the Defense may
16 have.

17 A. Okay.

18 THE COURT: Ms. Fullwood?

19

20 CROSS-EXAMINATION

21 BY MS. FULLWOOD:

22 Q. Ma'am, can you tell us what you mean by the
23 word abrasion? Is there another more common word
24 for that term?

25 A. It kind of just looked more like a burn. It

1 went on the inside of both of his thighs.

2 Q. Sort of like a scrape?

3 A. A little more intense than that. You could
4 tell there was some trauma involved to it, but it
5 wasn't deep. It didn't really penetrate any of the
6 muscle or much beyond the skin.

7 Q. Thank you, ma'am.

8 A. Uh-huh.

9 MS. MARTIN: Your Honor, we'd ask that this
10 witness be excused.

11 THE COURT: Thank you. Without objection,
12 Ms. Tutich may be excused. Thank you.

13 How long do you anticipate your next witness
14 taking?

15 MS. MARTIN: Your Honor, we beg the Court's
16 indulgence.

17 THE COURT: Okay.

18 MS. PATTERSON: Maybe 20 minutes.

19 THE COURT: Okay. Let's try to get that in
20 before lunch.

21 MS. PATTERSON: Thank you.

22 THE COURT: Thank you.

23 MS. PATTERSON: Sergeant Miles Rawl.

24 THE COURT: Sergeant Rawl, come forward,
25 please, to be sworn.

1 MILES RAWL

2 being first duly sworn, testified as follows:

3 THE WITNESS: I do.

4 THE CLERK: Have a seat, please, sir. Once
5 you're seated, state your name spelling your last,
6 please.

7 THE WITNESS: Miles Rawl, R-A-W-L.

8 DIRECT EXAMINATION

9 BY MS. PATTERSON:

10 Q. Sergeant Rawl, where are you employed?

11 A. Lexington County Sheriff's Department.

12 Q. And how long have you been employed with
13 Lexington County Sheriff's Department?

14 A. Going on 11 years.

15 Q. And are you part of the major crimes division?

16 A. I am.

17 Q. How long have you been a part of major crimes?

18 A. I was a major crimes detective for two years
19 and I got promoted to sergeant, working on my third
20 year. So approximately three years total.

21 Q. And what are some of the crimes that are
22 investigated by major crimes detectives?

23 A. We work anything from homicides --, we work
24 crimes against persons. We work anything from
25 homicides, criminal sexual conduct, armed robberies,

1 basically crimes against -- violent, crimes against
2 persons.

3 Q. And on August 9th of 2015, did you respond to
4 [REDACTED]?

5 A. I did.

6 Q. And what type of call did you respond to?

7 A. It was an armed robbery shooting incident where
8 two victims had been shot.

9 Q. And did it take you long to get to the incident
10 location?

11 A. It was a Sunday night, so I was actually called
12 from my residence. So it took approximately 35 to
13 40 minutes for me to get there on scene.

14 Q. And when you got to the scene, were there
15 officers already there?

16 A. Yes, ma'am.

17 Q. And kind of describe the scene when you got
18 there.

19 A. Upon my arrival, the roadway had been taped
20 off. The area was busy, full of a lot of people,
21 police cars, other witnesses from the area, people
22 from the neighborhood. Upon my arrival, the
23 ambulances had already come and gotten both victims
24 that had been shot.

25 Q. And did you notice anything in particular, when

1 you got there, in the road?

2 A. Yes, ma'am. I did notice the -- it was a blood
3 spot in the middle of the roadway near the white
4 fence in that area and a broken beer bottle nearby.

5 Q. Okay. And were you able to find out later what
6 caused that blood stain in the roadway?

7 A. Yes. That's where the victim was laying when
8 he was shot.

9 Q. And you said you noticed broken glass near that
10 area as well?

11 A. I did.

12 Q. And did you notice anything else that caught
13 your attention?

14 A. I'm sorry. Can you be more specific?

15 Q. Did you notice anything else near the area
16 where the body had been laying?

17 A. It was a gold bracelet located in the roadway
18 approximately 10 to 15 feet from the -- a piece of a
19 gold bracelet 10 to 15 feet from where the victim
20 had been laying.

21 Q. Was any -- so do you have any knowledge of any
22 information that may have been collected at the
23 scene?

24 A. Yes, ma'am.

25 Q. And what did you -- what was collected?

1 A. I know the piece of gold bracelet was collected
2 along with the pieces of broken glass as well as a
3 phone that was located near the entrance of Rolling
4 Meadows Mobile Home Park.

5 (State's Exhibit Nos. 18, 19, 20 marked for
6 identification.)

7 Q. First, Sergeant Rawl, let me show you what's
8 introduced as State's Exhibit 17 and ask you to take
9 a look at it.

10 A. Okay.

11 Q. And do you see in that picture where the pool
12 of blood you described in the roadway was located?

13 A. Yes, ma'am.

14 Q. Okay. And do you also see in that picture
15 where the gold bracelet was located?

16 A. I do.

17 Q. Okay. And what's beside the gold bracelet in
18 that picture?

19 A. An evidence marker 2.

20 Q. Okay. And I'm going to show you State's
21 Exhibit 18, ask you to take a look at it. Do you
22 recognize what's in that photograph?

23 A. I do.

24 Q. And what's in that photograph?

25 A. The pieces of gold bracelet.

1 Q. Okay. And is that the -- just a close-up of
2 the other photograph when you talked about the
3 Marker No. 2?

4 A. Yes, ma'am.

5 Q. And does that fairly and accurately represent
6 the scene that night on August 9th, 2015?

7 A. It does.

8 MS. PATTERSON: Your Honor, at this time we
9 move State's Exhibit 17 -- 18 into evidence. I
10 apologize.

11 MR. CHEHOSKI: Without objection, Your Honor.

12 THE COURT: Without objection, State's 18 in
13 evidence.

14 (State's Exhibit No. 18 admitted into
15 evidence.)

16 BY MS. PATTERSON:

17 Q. And State's Exhibit 19, do you recognize what's
18 in that?

19 A. I do.

20 Q. And what is that?

21 A. The gold bracelet that was collected by CSI
22 that was packaged in a clear plastic container.

23 Q. Does that bracelet look like it's been changed
24 in any way?

25 A. It does not.

1 MS. PATTERSON: Your Honor, we move State's
2 Exhibit 19 into evidence.

3 MR. CHEHOSKI: No objection.

4 THE COURT: Thank you.

5 (State's Exhibit No. 19 admitted into
6 evidence.)

7 BY MS. PATTERSON:

8 Q. And State's Exhibit 20, do you recognize what's
9 in that photograph?

10 A. Yes, ma'am, I do.

11 Q. And what's in that photograph?

12 A. That is the phone that I located near the exit
13 of the -- or the entrance/exit of the Rolling
14 Meadows Mobile Home Park.

15 Q. And does that fairly and accurately represent
16 where you located that phone on August 9th, 2015?

17 A. It does.

18 MS. PATTERSON: Your Honor, we move State's
19 Exhibit 20 into evidence.

20 MR. CHEHOSKI: One moment, please, Your Honor.
21 Without objection.

22 THE COURT: Thank you.

23 (State's Exhibit No. 20 admitted into
24 evidence.)

25 BY MS. PATTERSON:

1 Q. State's Exhibit 17, and we've already seen this
2 picture earlier, can you point where the bracelet
3 was located?

4 A. Bracelet was located in the roadway right here
5 where the marker 2 is. You can see it in this area
6 in here.

7 Q. And, again, where did you find out, through
8 your investigation, the body was laying?

9 A. It is -- you can barely read the marker, but I
10 think it's A, which that's the bloodspot in the
11 roadway where the victim had been laying which is in
12 close proximity to the white fence.

13 Q. And 19, is that just a close-up of that
14 bracelet?

15 A. Yes, ma'am.

16 Q. Does it look like it's broken or together?

17 A. Looks broken.

18 Q. Is that just the way it was packaged into
19 evidence?

20 A. That's correct.

21 Q. And number 20, what is that?

22 A. That's the phone that I located after we pinged
23 the phone through using the phone company. It
24 kept -- the tower hit was 4941 Charleston Highway,
25 so we scoured the area and I was able to locate the

1 phone in the bushes at the exit.

2 Q. So was it still -- in comparison to where the
3 body and the bracelet and all that was found, how
4 far away was this phone found?

5 A. That was approximately, I would say, 100 yards,
6 if not more. You had to go down the road, take a
7 right, and then hang a left at a stop sign which
8 takes you to the exit of the mobile home park. And
9 it was actually located approximately 25 or 30 feet
10 or so from the stop sign, that Charleston Highway.

11 Q. So was it leaving the mobile home park that
12 you --

13 A. Yes, ma'am. It was actually on the right side,
14 which would be consistent with someone exiting the
15 vehicle; would be to the right, in that lane.

16 Q. And, Sergeant Rawl, I'm going to show you
17 what's been entered already as State's Exhibit 11.
18 Do you recognize that cell phone?

19 A. I do.

20 Q. And what cell phone is that?

21 A. This is the phone that I located in the bushes
22 at the mobile home park.

23 (State's Exhibit No. 21 marked for
24 identification.)

25 Q. And I'm going to hand you State's Exhibit 21,

1 ask you to take a look at that. Do you recognize
2 that package?

3 A. I do.

4 Q. And what do you recognize that package to be?

5 A. This is the evidence bag containing the
6 two-piece gold-in-color bracelet.

7 Q. And did you recover that or did you take
8 possession of that?

9 A. I did not.

10 Q. Were you there when that was recovered?

11 A. Yes, ma'am.

12 Q. Okay. And is your name on it as the case
13 agent?

14 A. Yes, ma'am.

15 Q. Okay. And does that fairly and accurately
16 represent the way it would have been packaged that
17 night?

18 A. That's correct.

19 MS. PATTERSON: Your Honor, we move State's
20 Exhibit 21 into evidence.

21 MR. CHEHOSKI: No objection.

22 THE COURT: Without objection, 21 in evidence.

23 (State's Exhibit No. 21 admitted into
24 evidence.)

25 BY MS. PATTERSON:

1 Q. Is that the bracelet located at the scene at
2 Rolling Meadows on August 9th 2015?

3 A. Yes, ma'am.

4 Q. Okay. Now, after this night, were you assigned
5 to this case?

6 A. No, ma'am, I was not.

7 Q. And do you know who was assigned to this case?

8 A. Yes, ma'am; my teammate Detective Moore.

9 Q. And what was your next involvement or
10 interaction with Detective Moore?

11 A. Basically the next day, we had a large major
12 crimes meeting concerning this case. At that point
13 in time our command staff decided to reassign this
14 case to Detective Moore based on the fact that I had
15 had a homicide earlier that week assigned to me in
16 Lexington County. And I basically briefed Detective
17 Moore on the information that I saw and gathered at
18 the crime scene that night.

19 Q. And what if anything did you and Detective
20 Moore do after that briefing?

21 A. After that briefing, Detective Moore wanted to
22 see the crime scene himself and I also wanted to go
23 back out there to see the crime scene in the
24 daylight, because it was basically at night when we
25 responded out, so he and I relocated back to the

1 crime scene to look around where he could physically
2 see it -- or later that afternoon.

3 Q. Was any bullet casings located?

4 A. No, ma'am.

5 Q. Based on your training and experience, did that
6 surprise you?

7 A. No, ma'am.

8 Q. Why not?

9 A. Basically it was a lot of traffic in and out of
10 that mobile home park prior to the crime scene being
11 locked down, as we call it; basically taped off and
12 roped off. You had, I know, at least two ambulances
13 that had rolled up to take care of the victims, you
14 also had police cars in that area as well trying to
15 secure the scene, you had a lot of foot traffic as
16 well with the party that was going on at 162, so it
17 was just a lot of activity going on in that area.

18 Q. And could that activity cause evidence to
19 disappear?

20 A. Absolutely.

21 Q. And did you assist Detective Moore with doing
22 any photo lineups?

23 A. Yes, ma'am, I did.

24 Q. And did you participate in one with Franklin
25 Vasquez?

1 A. I did.

2 Q. And how many did you participate -- sorry.

3 Scratch that.

4 That photo lineup, do you know if Franklin made
5 an identification?

6 A. He did not.

7 Q. And during that photo lineup, who was present?

8 A. Myself, Detective Moore, and Franklin.

9 Q. Did you try to suggest to him that the person
10 who did the shooting was in that photograph or in
11 that lineup?

12 A. We did not.

13 Q. And did you also -- were you also with
14 Detective Moore when he showed Christy Vasquez the
15 lineup?

16 A. I was.

17 Q. And did she make an identification?

18 A. She did not.

19 Q. And did you have any further involvement in
20 this case?

21 A. I did.

22 Q. I'm sorry?

23 A. Yes, ma'am, I did.

24 Q. And what did you do next?

25 A. The following day, Detective Moore and I -- or,

1 basically, a Crimestoppers tip came in. Detective
2 Moore had Intel run some information regarding two
3 possible suspects, at which time we responded to
4 Newberry County to attempt to locate one of the
5 suspects.

6 Q. And who was that suspect?

7 A. William Akiem Pitts, Jr.

8 MS. PATTERSON: I beg the Court's indulgence.

9 Thank you, Sergeant Rawl. Please answer any
10 questions the Defense may have.

11 THE COURT: Mr. Chehoski?

12 CROSS-EXAMINATION

13 BY MR. CHEHOSKI:

14 Q. Detective, do you know if any bullet jackets
15 were recover on the scene?

16 A. I'm sorry? Projectiles?

17 Q. Bullet jackets.

18 A. No, sir.

19 Q. You're not aware of any?

20 A. No, sir.

21 Q. What is the difference between a bullet jacket
22 and a casing?

23 A. The casing is the casing around the bullet
24 and -- I'm sorry. What are you asking?

25 Q. I was just noticing that there was a notation

1 of a bullet jacket being recovered and I was just
2 wondering if you were aware of that.

3 A. Was that the one out of the tire, I believe?

4 Q. No, sir, it was not.

5 A. Let me -- give me just a second.

6 Q. You didn't collect any casings or bullet
7 jackets, did you?

8 A. I did not. No, sir.

9 Q. You did not. And you were present at the scene
10 that night?

11 A. Yes, sir.

12 Q. And you were there while other evidence was
13 being collected?

14 A. That's correct.

15 Q. And while they were searching for brass
16 casings?

17 A. Yes, sir.

18 Q. Are brass casings and bullet jackets -- do you
19 think they're comparable?

20 A. Yes, sir.

21 Q. Okay. And were people -- did you see people
22 looking with metal detectors for any items that
23 might be projectiles and brass casings?

24 A. I did.

25 Q. And, to your knowledge, none was found?

1 A. That's correct.

2 Q. You also had a chance to speak with Christy
3 Vasquez?

4 A. Yes, sir, I did.

5 Q. And you were able to get a -- a description of
6 the shooter at that point; right?

7 A. That's correct.

8 Q. And you documented this in your report?

9 A. Yes, sir.

10 Q. And just making sure that when you do
11 document -- when you make documentations, you want
12 your documentations to be as complete as possible?

13 A. That's correct.

14 Q. And as accurate as possible?

15 A. Yes, sir.

16 Q. And as thorough as possible?

17 A. Yes, sir.

18 Q. And you documented in your report that the
19 shooter was described as a buff guy?

20 A. She could not tell buff guy at that point.

21 Q. All right. Is that --

22 A. But she did describe as a buff -- buffer guy.

23 Q. All right. And dressed in dark clothes?

24 A. Dressed in dark clothes, yes.

25 Q. Dressed nice in dark clothes; is that correct?

1 A. That's correct.

2 Q. All right. And when you got to the scene, the
3 bracelet was already in two pieces?

4 A. That's correct.

5 Q. You also noticed a broken beer bottle near the
6 bloodspot?

7 A. Correct.

8 Q. Did you measure how close the bottle was to the
9 bloodspot?

10 A. No, sir, I did not.

11 Q. Did you notice how close it was?

12 A. It was close in proximity, yes, sir; but, I
13 mean, as far as measurements, no, sir.

14 Q. Was it less than ten feet?

15 A. Yes, sir.

16 Q. Less than five feet?

17 A. I would actually have to refer to the photo to
18 better judge.

19 MR. CHEHOSKI: One moment, please, Your Honor.

20 THE COURT: Yes, sir.

21 BY MR. CHEHOSKI:

22 Q. I'm going to hand you State's Exhibit No. 6.
23 Can you tell me it that helps, please.

24 A. Yes, sir, it does.

25 Q. All right. May I put it up here? Do you still

1 have the laser pointer with you?

2 A. Yes, sir, I do.

3 Q. All right. And you stated before that the
4 bloodspot was pretty much next to --

5 A. Right there.

6 Q. Right there. Where is the glass in that
7 picture?

8 A. Over in this area. (Indicating)

9 Q. All right. Thank you.

10 One moment, please, Your Honor.

11 THE COURT: Yes, sir.

12 MR. CHEHOSKI: That's all I have. Thank you.

13 THE COURT: Redirect, Ms. Patterson?

14 MS. PATTERSON: Just briefly. (Tenders
15 documents to Mr. Chehoski.)

16 MR. CHEHOSKI: Your Honor, at this time I
17 object to this as outside the scope of cross.

18 THE COURT: All right. Let me look at them and
19 then I'll be able to rule on that.

20 The question was raised during
21 cross-examination about a bullet jacket being found
22 somewhere or a bullet -- I'm sure it's a jacket,
23 being found somewhere. The officer answered the
24 question, are you talking about in the tire? And
25 you said no. But I -- is that -- is this what

1 that's designed to try to clarify?

2 MS. PATTERSON: Yes, sir.

3 THE COURT: Okay. All right. I note the
4 objection respectfully overruled. Thank you.

5 (State's Exhibit Nos. 22, 23, and 24 marked for
6 identification.)

7 REDIRECT EXAMINATION

8 BY MS. PATTERSON:

9 Q. Sergeant Rawl, I'm going to show you what's
10 been marked as State's Exhibit 22. You recognize
11 what's in that photograph?

12 A. Yes, ma'am, I do.

13 Q. What's in that photograph?

14 A. That's the white-in-color Chevrolet truck that
15 was sitting beside the trailer that was struck by
16 one of the stray bullets.

17 Q. Does that fairly and accurately represent the
18 way it appeared on August 9th, 2015?

19 A. Yes, ma'am, it does.

20 MS. PATTERSON: Your Honor, at this time we
21 move State's Exhibit No. 22 into evidence.

22 THE COURT: Subject to objection by defense
23 counsel, State's 22 in evidence.

24 (State's Exhibit No. 22 admitted into
25 evidence.)

1 BY MS. PATTERSON:

2 Q. Sergeant Rawl, what's that red thing in the
3 picture?

4 A. That's what crime scene investigators put to
5 show the angle of the -- where the bullet had
6 entered the vehicle.

7 Q. And I'm going to show you State's Exhibit 23
8 and 24, ask you to take a look at it, and ask if you
9 recognize what's in those photographs.

10 A. Yes, ma'am. That is the tire from that vehicle
11 that was struck.

12 THE COURT: Which one is that?

13 THE WITNESS: 23.

14 THE COURT: Thank you.

15 BY MS. PATTERSON:

16 Q. And what is in photograph 24?

17 A. That is the projectile that was inside the
18 tire.

19 Q. Okay. And do those pictures fairly and
20 accurately represent the scene that night, August
21 9th, 2015?

22 A. Yes, ma'am.

23 MS. PATTERSON: Your Honor, at this time we
24 move State's Exhibit Nos. 23 and 24 into evidence.

25 THE COURT: Also subject to objection, in

1 evidence.

2 (State's Exhibit Nos. 23 and 24 admitted into
3 evidence.)

4 BY MS. PATTERSON:

5 Q. For the jurors' benefit, can you point out the
6 trajectory that crime scene investigation used to
7 show the path of the bullet.

8 A. Yes, ma'am. It's marked by the red object
9 there and it shows the angle coming sideways.

10 Q. And in photograph 23, what does that show?

11 A. Where the round went into the tire.

12 Q. And 24?

13 A. The projectile that was inside the tire.

14 Q. Thank you.

15 Your Honor, no further questions.

16 THE COURT: Thank you.

17 Any follow-up on those points, Mr. Chehoski?

18 MR. CHEHOSKI: Very briefly.

19 RE CROSS-EXAMINATION

20 BY MR. CHEHOSKI:

21 Q. In State's Exhibit 22, can you tell if that
22 bullet is entering in an upward or downward
23 trajectory?

24 A. No, sir, I cannot. I'm not an expert on that.

25 Q. Okay. And is the truck on level ground in this?

1 picture?

2 A. Yes, sir.

3 Q. All right. It's not on an incline, to the best
4 of your knowledge?

5 A. To the best of my knowledge, no, sir.

6 Q. I'll show you again State's Exhibit 6. Is this
7 the truck that -- the same truck that we're talking
8 about?

9 A. Yes, sir.

10 Q. Can you tell if that truck is on an incline?

11 A. It does not appear to be on an incline. No,
12 sir.

13 Q. Doesn't appear to be parked -- more parked
14 facing a -- facing the road but a little bit on a
15 decline?

16 A. It's a little bit on a decline from what I can
17 see to the left side due to the tire being deflated.

18 MR. CHEHOSKI: Nothing further, Your Honor.

19 THE COURT: Thank you.

20 MS. PATTERSON: Your Honor, may this witness be
21 excused?

22 MR. CHEHOSKI: No objection.

23 THE COURT: Sergeant, you may be excused.
24 Thank you.

25 Ladies and gentlemen, this, obviously, is a

1 MS. MARTIN: Thank you, Your Honor. We'd call
2 Dr. Janice Ross.

3 THE COURT: Dr. Ross, please come forward and
4 be sworn.

5 JANICE ROSS

6 being first duly sworn, testified as follows:

7 THE WITNESS: I do.

8 THE CLERK: Have a seat, Doctor. Once you're
9 seated, Doctor, spell your full name spelling your
10 last, please.

11 THE WITNESS: Janice Edwards Ross, R-O-S-S.

12 DIRECT EXAMINATION

13 BY MS. MARTIN:

14 Q. Dr. Ross, where are you employed?

15 A. Newberry Pathology Associates in Newberry,
16 South Carolina.

17 Q. And can you tell use about your educational
18 background..

19 A. Yes. I have a Bachelor's degree from the
20 University of South Carolina and my M.D. Doctorate
21 of Medicine from Upstate Medical Center in Syracuse,
22 New York where I did training in pathology.

23 Pathology is a discipline in medicine as opposed to
24 surgery or pediatrics where we learn how to diagnose
25 diseases by looking at tissue under the microscope

1 and by using the laboratory in the hospital. We
2 also learn to do an autopsy to find a cause of
3 death.

4 I did further training in forensic pathology
5 through medical examiners offices where we learned
6 to identify patterns of injury, document such
7 injuries, and take samples for toxicology, and
8 document evidence for the court of law.

9 MS. FULLWOOD: Your Honor, we would stipulate
10 to Dr. Ross' expertise in the field of forensic
11 pathology.

12 THE COURT: Thank you.

13 Do you accept that stipulation?

14 MS. MARTIN: Yes, Your Honor, we do.

15 THE COURT: Thank you. Dr. Ross is so
16 qualified.

17 MS. MARTIN: Thank you.

18 BY MS. MARTIN:

19 Q. Dr. Ross, as part of your duties, were you
20 called to work a case involving a patient named
21 Hector Vasquez?

22 A. Yes.

23 Q. Okay. And when did you meet Mr. Vasquez?

24 A. On August 10th, 2015.

25 Q. And your office is in Newberry; is that right?

1 A. Yes. And we do the autopsies in the morgue at
2 Newberry County Memorial Hospital.

3 Q. And did you, in fact, conduct an autopsy on
4 him?

5 A. Yes.

6 Q. And did you, in fact, prepare a report of your
7 findings?

8 A. Yes.

9 (State's Exhibit No. 25 marked for
10 identification.)

11 MS. MARTIN: Your Honor, may I approach the
12 witness?

13 THE COURT: Yes, ma'am.

14 BY MS. MARTIN:

15 Q. If I can show you what's been marked as State's
16 Exhibit 25.

17 A. Yes. This is my report from the autopsy.

18 Q. And does it document how you processed the body
19 and what your findings were?

20 A. Yes.

21 MS. MARTIN: Your Honor, I'd move that into
22 evidence.

23 THE COURT: Any objection?

24 MS. FULLWOOD: I do object, Your Honor. It
25 would only be cumulative to Dr. Ross' testimony.

1 We've stipulated that she's an expert. And the only
2 reason is it would be a bolstering type of process
3 device, et cetera. I would think there's no need
4 for that to be in evidence.

5 THE COURT: Respectfully overruled. I take it
6 the report, as well as her testimony, is going to
7 contain some rather detailed, perhaps technical,
8 information and some technical language and
9 knowledge that it might be difficult for this jury
10 to recall when it goes back into the jury room
11 whenever this trial is over. The report would
12 certainly be helpful for them in recalling that
13 information in such a way that they could --

14 MS. FULLWOOD: Your Honor, may we have a
15 sidebar?

16 THE COURT: Okay.

17 (Sidebar conference.)

18 (State's Exhibit No. 25 admitted into
19 evidence.)

20 BY MS. MARTIN:

21 Q. Dr. Ross, surely you've reviewed your report
22 prior to today?

23 A. Yes.

24 Q. And before you tell us what your final
25 diagnosis was, can you tell us how you first -- how

1 you came to the final diagnosis?

2 A. When we do an autopsy, the patient is brought
3 to us in the morgue at Newberry County Memorial
4 Hospital. We photograph the external body, and
5 then -- before we proceed with the internal
6 procedure and dissection. So when we had the
7 external -- we saw the external body. There was no
8 clothing other than -- but there was some medical
9 equipment.

10 And we could see that there was an entrance
11 gunshot wound in the right side. And there had been
12 surgery on this patient with a surgical incision
13 that was closed with sutures at the time of autopsy,
14 but it went from the chest all the way down to the
15 bottom of the abdomen.

16 Q. And, Dr. Ross, let me stop you right there. If
17 I can show you what's been marked as State's 27, do
18 you recognize this photograph?

19 A. Yes.

20 MS. MARTIN: Your Honor, I believe State's 27
21 is in evidence.

22 THE COURT: It is. Over objection of defense
23 counsel, it is in evidence. Thank you.

24 BY MS. MARTIN:

25 Q. Dr. Ross, if I publish this photograph to the

1 jurors, could you take a look at it and explain --
2 use it, maybe, to explain what you just told us?

3 A. Yes.

4 Q. Is that the condition of the body as you
5 received it in Newberry?

6 A. Yes. The -- this is the right side of the
7 body, the right arm. This is the entrance wound.
8 And this is the surgery -- the surgical wound that
9 goes from the top of the chest down to the bottom of
10 the abdomen.

11 And the surgeon went through the exit wound,
12 which was, I believe, right about there. Because
13 this was a gunshot wound, we did x-rays also to see
14 if there was any bullet or bullet fragments left in
15 the body, which we did not see.

16 Q. No bullet fragments; correct?

17 A. Correct.

18 Q. If I can show you what's been marked as State's
19 Exhibit 28 already in evidence. Can you identify
20 that photograph?

21 A. Yes. That's a close-up view of the entrance
22 wound of Hector Vasquez.

23 MS. MARTIN: Move to publish, Your Honor?

24 THE COURT: Also in evidence over objection of
25 defense counsel. Thank you.

1 BY MS. MARTIN:

2 Q. What can you tell us is documented in this
3 photograph?

4 A. The -- this is the entrance wound itself where
5 the bullet went in the skin, and surrounding it is
6 some abrasion. When a bullet goes into the skin, it
7 pushes the skin and it rubs against the skin,
8 calling -- what we call an abrasion.

9 There's also a partial imprint around here that
10 would -- is consistent with the end of the gun, the
11 muzzle itself. It's called a muzzle imprint.

12 (Indicating)

13 Q. And does that show what looks like soot? Would
14 that be a fair characterization?

15 A. Yes. A lot of this darkened area is soot.

16 Q. And what if anything would that tell you as to
17 how close the muzzle was to the body?

18 A. We're taking about range of the bullet. When a
19 bullet comes out of the end of a gun, so does powder
20 and soot. But the powder and soot only goes a
21 certain distance, whereas the bullet goes a lot
22 further.

23 If there's -- close range or near contact or
24 contact wound is where -- what this is, where we'd
25 have a little bit of soot and we have a muzzle

1 imprint. If it's an intermediate range wound such
2 that the gun is maybe two feet away, you might have
3 some powder imprints and some soot. But if it's
4 further than a couple feet, then it's a distant
5 range wound.

6 Q. And how is this wound characterized?

7 A. As contact or near contact.

8 Q. Can you tell us what injuries you observed,
9 internally to Mr. Vasquez?

10 A. Yes. The bullet went into the right chest;
11 didn't go through the lung, went just below the
12 lung, went through the diaphragm, which is a muscle,
13 thin muscle, that divides the chest cavity from the
14 abdomen, and then it went right straight across the
15 liver causing a large gaping wound in the liver
16 before it exited the upper stomach area.

17 Q. And in your report I see a mention of
18 hypovolemic shock. What is that?

19 A. Yes. That just means when you -- hypovolemia,
20 just decreased volume of blood. This patient lost a
21 lot of blood. When you have a laceration of the
22 liver like that, you're opening up, basically, lakes
23 of blood and small vessels that so there's a lot of
24 bleeding out. It doesn't bleed out of the -- it
25 bleeds out of the liver and into the abdomen. And

1 that's why the surgeons went in to try to close that
2 off, but there was just too much damage.

3 Q. And based on what you saw of Hector's injuries,
4 were you surprised that he died?

5 A. No, I was not.

6 Q. And after conducting your autopsy and
7 documenting what you found, were you able to tell us
8 what the probable cause and mechanism of death was
9 for Hector?

10 A. Yes. It's the hypovolemic shock due to the
11 laceration of the liver and due to the gunshot to
12 the chest.

13 Q. And did you determine a manner of death?

14 A. Yes.

15 MS. FULLWOOD: Objection, Your Honor. It goes
16 to the ultimate issue and basic province of the
17 jury.

18 THE COURT: All right. Thank you.
19 Respectfully overruled. I'll allow the testimony.
20 Thank you.

21 BY MS. MARTIN:

22 Q. You may answer the question: Were you able to
23 determine a manner of death?

24 A. Yes; homicide.

25 Q. Okay.

1 MS. MARTIN: Beg the Court's indulgence one
2 moment.

3 Please answer any questions the Defense may
4 have. Thank you.

5 THE COURT: Ms. Fullwood, you may
6 cross-examine.

7 CROSS-EXAMINATION

8 BY MS. FULLWOOD:

9 Q. Dr. Ross --

10 A. Yes.

11 Q. -- when you use the term homicide, is what
12 you're saying that what caused the death was the
13 actions of another person that killed them?

14 A. Victim, yes.

15 Q. Yes. Somebody else caused their death?

16 A. Correct.

17 Q. Thank you.

18 THE COURT: Redirect?

19 MS. MARTIN: No, Your Honor. May Dr. Ross be
20 excused?

21 THE COURT: Thank you. Certainly.

22 Dr. Ross, you're excused. Thank you for
23 coming.

24 MS. MARTIN: Your Honor, the State would call
25 Barry Sowards.

1 THE COURT: Mr. Sowards, come forward, please,
2 to be sworn.

3 BARRY SOWARDS

4 being first duly sworn, testified as follows:

5 THE WITNESS: I do.

6 THE CLERK: Have a seat, sir. Once you're
7 seated, state your full name spelling your last,
8 please.

9 THE WITNESS: My name is Barry Sowards,
10 S-O-W-A-R-D-S.

11 DIRECT EXAMINATION

12 BY MS. MARTIN:

13 Q. Detective Sowards, where are you employed?

14 A. At the Lexington County Sheriff's Office.

15 Q. And how long have you been employed there?

16 A. Approximately 19 years.

17 Q. And is that your entire career in law
18 enforcement?

19 A. It is not. It's 19 in total. It's four years
20 with the City of Columbia patrol unit and then the
21 rest with Lexington County.

22 Q. And what is your rank at the sheriff's
23 department?

24 A. Sergeant.

25 Q. Do you have experience working on the road, I

1 think you said?

2 A. Correct.

3 Q. Do you have experience working major crimes?

4 A. I do.

5 Q. And what other areas are you familiar with as
6 far as different divisions at the sheriff's
7 department?

8 A. I've worked the fugitive unit which I'm now in
9 charge of.

10 Q. And what is the fugitive unit?

11 A. The fugitive unit is the apprehension of people
12 who have warrants on them. We locate and apprehend
13 those individuals and take them to jail.

14 Q. Is it common for you to be called to work in on
15 a homicide?

16 A. It is. Many times I'll visit the major crimes
17 unit to see if they need assistance on their cases.

18 Q. And how did you get involved in this event from
19 August 9th of 2015?

20 A. That was a Monday morning. I showed up to work
21 right around 8:00, as I usually do, and went to the
22 major crimes suite at the Lexington County Sheriff's
23 Department. And they were short on some manpower,
24 and I assisted -- volunteered to assist on the
25 investigation.

1 Q. And who was the detective that actually ended
2 up running with the case?

3 A. Detective Moore.

4 Q. Right here?

5 A. Yes, seated right behind you.

6 Q. So what was one of the first duties you did
7 once you started to help Detective Moore?

8 A. There were a number of things that I was used
9 for; basically, to start running some leads down and
10 possible leads. One of the things that I did was
11 assist with our CAT team, which the CAT team is the
12 Community Action Team. They're the people that
13 are -- go into the neighborhoods and establish
14 contact with local communities.

15 Due that this was a Hispanic area, I got one of
16 the detectives off of the Community Action Team and
17 we developed a flyer in Spanish and started
18 distributing it throughout the area.

19 Q. And at the beginning of the case, were there
20 any known suspects?

21 A. No.

22 Q. And at some point were suspects developed?

23 A. Yes.

24 Q. And how did this come about, if you know?

25 A. I do. It was approximately Wednesday morning

1 around 2:29 a.m. I was informed -- I'm one of the
2 recipients of Crimestoppers, and it's a tip line
3 that comes in via email to my email. And it gave a
4 tip in reference to the crime that we're here for --

5 MS. FULLWOOD: Your Honor --

6 MR. CHEHOSKI: Your Honor, objection. This is
7 hearsay.

8 THE COURT: All right. The existence of the
9 tip is not hearsay; the content of it may very well
10 be.

11 MS. MARTIN: Your Honor, do we need a sidebar
12 at this moment?

13 THE COURT: I'll be glad to.

14 MS. MARTIN: Thank you, Your Honor.

15 THE COURT: I'm the only one here who doesn't
16 know what he's going to say next, so maybe I ought
17 to hear you.

18 (Sidebar conference.)

19 BY MS. MARTIN:

20 Q. As a result of any Crimestoppers tip, where did
21 your investigation lead you?

22 A. Based upon the tip, the investigation -- I
23 began to investigate particular information in the
24 tip that all led me to different law enforcement
25 programs and things like that, led me to Woodbine

1 Apartments in West Columbia.

2 Q. Okay. Well, let's back up a bit. Based on
3 your investigation, were you particularizing all of
4 your Intel on one people, two people, three people?

5 A. Two individuals in reference to this -- you
6 know, my investigation, based upon the tip.

7 Q. And did anyone at the sheriff's department
8 search social media for these people?

9 A. Yes. When I received the tip, I asked
10 Detective Travis, who is in our crime intelligence
11 unit, to begin to use social media to try to locate
12 individuals based upon the tip.

13 Q. And based upon the tip as well, before you
14 ended up in West Columbia, did you go anywhere else?

15 A. I did. At one point we were in Newberry.

16 Q. And when you say we, who went to Newberry?

17 A. It was Detective Moore and I and sergeant --
18 now Sergeant Miles Rawl.

19 Q. And in Newberry, who were you searching for?
20 What address and --

21 A. We responded to an address in Newberry in
22 reference to Wilfred Akiem Pitts. The address in
23 Newberry County -- I don't have it directly in front
24 of me.

25 Q. Was it an address associated with Mr. Pitts and

1 his family?

2 A. It is. It was -- we were going to
3 Ms. Catherine Pitts', Wilfred Akiem Pitts' mother's
4 house in Newberry County.

5 Q. And did you make contact with her?

6 A. We did.

7 Q. And did you advise her that you were looking
8 for her son?

9 A. I did.

10 Q. And did you leave your contact information?

11 A. Detective Moore and I both left our contact
12 information with our cell phones so she could get a
13 hold of us.

14 Q. Based on other Intel you received, you said you
15 ended up in West Columbia. Is that here in
16 Lexington County?

17 A. It is. It's Woodbine Apartments.

18 Q. And what information or what -- who were you
19 looking for at the Woodbine Apartments?

20 A. At that time I was looking for Mr. Ricky Esaw
21 at Unit 1 -- I'm sorry, Unit 49.

22 Q. And did you find Ricky Esaw on that day there?

23 A. I did not.

24 Q. Did you speak to any of his family that day?

25 A. I spoke with Ricky's brother Chris Esaw.

1 Q. Right there, that man? (Indicating) -

2 A. Yes, yes.

3 Q. Mr. -- that Mr. Esaw goes by a nickname?

4 A. He goes by Bam.

5 Q. And did you speak with the defendant's mother,
6 Patricia?

7 A. I did at the doorway of the residence and
8 inside the residence.

9 Q. Did you make any headway in finding Ricky Esaw
10 based on the conversations you had with Ricky's
11 family there at Woodbine?

12 A. Based upon the information and the
13 conversations that I had at that moment, I was able
14 to determine that Ricky Esaw lived with his
15 girlfriend and he -- it was described her name was
16 Net at the time and that -- and the type of vehicle
17 that he drove.

18 Q. Okay. And were you -- after you left West
19 Columbia, those apartments there, did you have any
20 other Intel that led you to some place or a work
21 history of Ricky Esaw?

22 A. Actually, what I did was I started to research
23 the history of Mr. Ricky Esaw, see if there was any
24 to history to find his location. And I was able to
25 determine that he was working at one point at

1 Palmetto Point Apartments which is located in
2 Lexington County off Lake Murray Boulevard. It's
3 now, I believe, called The Legends.

4 I knew an individual that worked up there on
5 the maintenance team and I called him up on the
6 phone and asked him if he knew Ricky Esaw and he
7 said he did.

8 Q. And based on that information, what did you do
9 next?

10 A. That -- based upon that information, it led us
11 to another apartment where Ricky was said to be
12 living with it the female known as Net. We came in
13 contact at the apartments off of Crossbow, I believe
14 it is, which is right off of Columbiana Drive, and
15 got in contact with the management team there.

16 The management team was able to provide me
17 with -- said that, yes, Net and Ricky did live
18 there, but they moved out two months prior. And she
19 was able to provide me with Net's real name which
20 was Luenetta Grayson.

21 I then took that information, ran it through
22 one of my databases, and was able to determine her
23 new address, which was on [REDACTED]
24 which is basically right in behind the Home Depot
25 just off Harbison Boulevard.

1 Q. And is that in Richland County or Lexington
2 County?

3 A. It's just in Richland County.

4 Q. And when you had Luenetta Grayson's full name,
5 did you search to see if she had any vehicles?

6 A. I did.

7 Q. And, based on that search of DMV records, what
8 did you learn?

9 A. I learned that Ms. Grayson actually had a
10 vehicle -- it was her mother's vehicle registered to
11 her mother out of Ridgeway, and that that vehicle
12 was a 2000 -- I believe a 2006 Toyota Corolla dark
13 in color, and that it was actually registered to the
14 mother. And through -- the investigation revealed
15 that Ms. Luenetta Grayson or Net was actually the
16 driver or keeper of the vehicle.

17 MS. MARTIN: (Tenders documents to
18 Mr. Chehoski.)

19 MR. CHEHOSKI: Without objection, Your Honor.

20 THE COURT: Thank you.

21 BY MS. MARTIN:

22 Q. If I can show you what's marked State's 29,
23 what does this show?

24 A. This is a picture of the back of Net's car, or
25 Luenetta Grayson, bearing her South Carolina tag

1 registered to that vehicle.

2 Q. If I can show you what's been mark State's 14,
3 what does this show?

4 A. This is Ms. Luenetta Grayson or Net's vehicle
5 after an impound sitting in the back lot of the
6 sheriff's department impound.

7 Q. And do you know if that car is still there?

8 A. It is.

9 THE COURT: 29 and 14 are in evidence without
10 objection.

11 (States' Exhibit Nos. 14 and 29 admitted into
12 evidence.)

13 (State's Exhibit No. 30 marked for
14 identification.)

15 BY MS. MARTIN:

16 Q. If I can show you what's been marked State's
17 30, do you recognize this photograph?

18 A. Yes, I do.

19 Q. What does it depict?

20 A. It's a depiction of the left rear quarter
21 panel, gas tank area, and wheel of Ms. Grayson's
22 vehicle that she drives, the Toyota Corolla.

23 MS. MARTIN: Your Honor, I'd move State's 30
24 into evidence.

25 MR. CHEHOSKI: Your Honor, I don't see the

1 relevance.

2 MS. MARTIN: It will become relevant, Your
3 Honor, with the next witness.

4 THE COURT: All right. I assume this is not
5 the last question that's going to be asked about
6 this.

7 MS. MARTIN: Correct.

8 THE COURT: All right.

9 MS. MARTIN: It is for this witness. But...

10 THE COURT: All right. I'll allow it in,
11 subject to being tied in with more relevance in the
12 future. Thank you.

13 (State's Exhibit No. 30 admitted into
14 evidence.)

15 BY MS. MARTIN:

16 Q. So once you ended up in Richland County, what
17 did you do?

18 A. When I was in Richland County, I was with
19 Detective Moore and Detective Andaloro. We had
20 responded to that address that I had indicated,
21 which was [REDACTED], and set up in the
22 area. I identified -- because I was an undercover
23 plain-clothes officer at the time. I walked into
24 the parking lot to identify what we believed was the
25 vehicle that I just identified in the pictures and I

1 took a picture of the tag and ran the tag and it
2 came back to Ms. Grayson, Net's mother.

3 At that point we realized what was going on,
4 that this was the exact place where Ricky lived with
5 Net, and I pulled offsite, made a few phone calls to
6 my Richland County counterparts --

7 Q. And did some Richland County officers meet with
8 you there?

9 A. Yes. They met with me alone offsite at the
10 Lowe's parking lot while Detective Andaloro and
11 Moore kept constant watch on the parking lot and the
12 apartment.

13 Q. And that same evening -- this is Wednesday
14 August 12th; is that correct?

15 A. That is correct.

16 Q. About what time of day was this?

17 A. It was in the evening when we first began,
18 probably around 7:00, 7:30 in the evening.

19 Q. And did you have occasion there in Richland
20 County to actually meet the defendant, Ricky Esaw?

21 A. I did.

22 Q. And was he, when you met him, inside or outside
23 of the apartment?

24 A. He was just standing inside the apartment,
25 right in the entryway of the apartment. I would

1 call it the foyer.

2 Q. And do you recall who, if anyone, was with
3 Ricky Esaw?

4 A. Ms. Grayson, Luenetta Grayson or Net, had
5 passed by me just outside the apartment in the
6 breezeway, a young lady by the name of -- everybody
7 called her Trell but it was Danitra Johnson, and
8 Mr. Wilfred Akiem Pitts.

9 Q. And when you met these four people, were
10 Mr. Pitts and Mr. Esaw separated or were they kept
11 together?

12 A. No, they were separated.

13 Q. And was Mr. Pitts arrested there at that time?

14 A. No, ma'am.

15 Q. And are you aware where Mr. Pitts was -- I
16 assume you were at the scene quite a while; is that
17 fair to say?

18 A. Yes.

19 Q. And do you know what was going on with
20 Mr. Pitts?

21 A. Mr. Pitts was brought over by Detective
22 Andaloro and myself. And at one point, you know,
23 Mr. Pitts was advised he was not under arrest, he
24 didn't have any handcuffs at that point. And I
25 asked him to do, if he would volunteer, a buccal

1 swab.

2 Q. And what was -- why were you interested in
3 getting a buccal swab from Mr. Pitts?

4 A. We wanted to obtain known DNA evidence with
5 evidence on the scene of the crime.

6 Q. And why was that important?

7 A. To have a comparison match between the two.

8 Q. And what items in evidence were you looking to
9 link to a suspect?

10 A. Specifically, we were very interested in the
11 bracelet found at the scene.

12 Q. And in your presence, did Mr. Pitts consent or
13 did he not consent to a buccal swab?

14 A. He volunteered a consent and did sign a consent
15 form.

16 Q. Okay. And at some point did you leave --

17 MS. MARTIN: I beg the Court's indulgence one
18 moment.

19 THE COURT: All right.

20 (State's Exhibit Nos. 31 and 32 marked for
21 identification.)

22 BY MS. MARTIN:

23 Q. If I can show you State's 31, do you recognize
24 this?

25 A. Yes, I do.

1 Q. And what does this show?

2 A. This is a picture of Ricky Esaw outside the
3 apartment with his eyes closed.

4 Q. And were you present when that photograph was
5 taken?

6 A. I was.

7 Q. And do you -- once again, what was the date
8 that photograph was taken?

9 A. This was actually the Wednesday night which
10 would have been the 12th of August of 2015.

11 MS. MARTIN: Your Honor, I'd move State's 31
12 into evidence.

13 MR. CHEHOSKI: Without objection.

14 THE COURT: Without objection, 31 in evidence.

15 (State's Exhibit No. 31 admitted into
16 evidence.)

17 BY MS. MARTIN:

18 Q. Is there anything unusual in that photograph
19 that you noted?

20 A. I did. In this photograph, there above his
21 left eye, which I would actually be pointing just to
22 give you a visual, right here, would indicate some
23 discoloration and swelling.

24 Q. And this would have been how many days after
25 the murder?

1 A. This would have been four days -- four days
2 after the murder.

3 Q. If I can show you State's 32, do you recognize
4 that photograph?

5 A. I do.

6 Q. And what does it depict?

7 A. This is Mr. Wilfred Akiem Pitts sitting on the
8 steps when I actually first encountered him, just
9 minutes after I first encountered him.

10 MS. MARTIN: Your Honor, I'd move that into
11 evidence as well.

12 MR. CHEHOSKI: Without objection.

13 THE COURT: Without objection, 32 in evidence.

14 (State's Exhibit No. 32 admitted into
15 evidence.)

16 BY MS. MARTIN:

17 Q. And it does show he's in handcuffs. Can you
18 explain that to us? If you said he was not under
19 arrest --

20 A. Absolutely. Whenever entry is made onto any
21 house, given the nature of what we do and the
22 violent propensity of folks in dealing with what we
23 do, everyone, or most everyone, at that point is
24 usually put in handcuffs until the scene is secure,
25 at which point they're taken out of handcuffs.

1 Q. Are you aware of Mr. Pitts meeting with
2 Detective Andaloro and Detective Moore at the
3 sheriff's department that same evening?

4 A. Yes, I am.

5 Q. Based on the conversation that Mr. Pitts and
6 those detectives were having, what did that lead you
7 to do?

8 A. It led me to respond to Mr. Pitts --
9 Mr. Wilfred Pitts' brother's house in Woodbine
10 Apartments as well to question his alibi.

11 Q. And what time of night would this have been?

12 A. It was right around midnight.

13 Q. And so you went back to Woodbine Apartments?

14 A. I did.

15 Q. And after speaking with Mr. Pitts' brother,
16 what did you do?

17 A. After speaking with Mr. Pitts' brother and his
18 wife, I called Detective Andaloro and Detective
19 Moore on the phone and advised him that his alibi
20 was -- was a lie.

21 Q. And then where did you go?

22 A. I responded back to the headquarters building
23 where Mr. Pitts was at and Detective Moore and
24 Detective Andaloro.

25 Q. At some point did -- well, let me ask you this:

1 Are you of equal rank to Detective Moore?

2 A. No. I'm Detective Moore's boss. But at the
3 time I was not Detective Moore's boss.

4 Q. Together was any decision made as far as if
5 Mr. Pitts was going to go home that night?

6 A. Yes.

7 Q. And what decision was made?

8 A. After the interviewing process, Detective Moore
9 and I got together as a team and we had decided to
10 make charges on Mr. Pitts for obstruction of
11 justice.

12 Q. And why were those charges made?

13 A. Well, those charges were made actually for two
14 reasons: One, because he lied about the
15 investigation itself, which was the reason why the
16 charges developed, and Mr. Pitts, throughout the
17 interview process, kept demonstrating behavior that
18 he was afraid. And it was of my opinion that if he
19 walked back out on the streets --

20 MR. CHEHOSKI: Objection, Your Honor;
21 speculation.

22 THE COURT: He testified that he thought he was
23 afraid. Apparently the next thing is he thought he
24 was a flight risk. Right?

25 MR. CHEHOSKI: Your Honor, he's giving

1 opinions. Again, he's speculating here.

2 THE COURT: Well, he's been asked to give his
3 reason for arresting him. He can give his reason,
4 of course; can he not?

5 MR. CHEHOSKI: Well, Your Honor, I mean, you
6 can't arrest somebody just because they're afraid.

7 THE COURT: No, no, can. He talks about that
8 he lied about the investigation, which is
9 obstruction of justice.

10 MR. CHEHOSKI: But that was just one. But the
11 second incident is outside -- is outside, really,
12 this corporal's authority as well.

13 THE COURT: I think he's got a right. If he
14 knows -- if he has reason to believe -- probable
15 cause to believe somebody has broken the law and if
16 he has reason to believe that he might flee, he
17 doesn't have to sit around and twiddle his thumbs
18 while the guy runs, he can do something about it,
19 subject to the process, of course. He's got to take
20 him and have a bond hearing and all that other
21 stuff.

22 MR. CHEHOSKI: Your Honor, maybe I misspoke.
23 What I was saying, he's testifying that he's
24 arresting Mr. Pitts because Mr. Pitts is afraid.

25 THE COURT: Well, you're right. Being afraid

1 in and of itself, of course, is not grounds for
2 arrest. That's right.

3 MR. CHEHOSKI: And again, Your Honor, that's
4 the basis of my objection.

5 THE COURT: All right. Well, insofar as the
6 officer gives that -- if he does, and I don't think
7 that he does -- as the only reason for locking him
8 up, then you're right, he can't do that.

9 But he testified earlier that he was going to
10 arrest him -- that he was going to place him under
11 arrest and -- and if he wanted to gill the lily, I
12 suppose he might have gone farther than he needed to
13 go. He really didn't need to do anything other than
14 say that he was going to arrest him for obstruction
15 of justice and leave it at that.

16 MR. CHEHOSKI: That's where -- that's -- it's
17 after that is the beginning of my objection.

18 THE COURT: Well, that's a good place to leave
19 it.

20 MS. MARTIN: We'll move on, Your Honor.

21 THE COURT: Thank you.

22 BY MS. MARTIN:

23 Q. Detective Sowards, during the course of this
24 investigation and you being at the sheriff's
25 department with Detective Moore, Detective Andaloro

1 and now, I guess, defendant Pitts, are you aware of
2 any change in what Mr. Pitts was saying happened at
3 Rolling Meadows? Don't tell us what he said, but
4 are you aware of any change in how he was telling
5 the story?

6 A. Yes.

7 Q. And at some point did he indicate that he was
8 involved in the murder?

9 A. He did.

10 Q. And this was done in your presence?

11 A. It was.

12 Q. And are you aware if he --

13 MR. CHEHOSKI: Your Honor, objection on
14 leading.

15 THE COURT: It probably is going to be. I
16 hadn't heard the question yet, but it does sound
17 like it probably is going to lead.

18 Can you rephrase that?

19 MS. MARTIN: Sure.

20 THE COURT: Thank you.

21 BY MS. MARTIN:

22 Q. Based on Mr. Pitts' change in statement, was a
23 decision -- or what kind of decision was made for
24 further followup with Mr. Pitts?

25 A. Mr. Pitts indicated to me and Detective Moore

1 and Andaloro that he had lied in his statement. He
2 did indicate to us that he wanted to tell us
3 everything, but he wanted to talk to his mother
4 first.

5 MR. CHEHOSKI: Objection, hearsay.

6 THE COURT: I'm sorry?

7 MR. CHEHOSKI: Objection to hearsay, Your
8 Honor.

9 THE COURT: He wanted to tell us everything and
10 that he wanted to talk to his mother first. Of
11 course, that's not offered for the proof of the
12 matter --

13 MS. MARTIN: Right.

14 THE COURT: -- asserted, that's simply offered
15 to show why they were doing what they were doing.
16 So it doesn't meet the hearsay rule, I'll allow it
17 in. Thank you.

18 BY MS. MARTIN:

19 Q. And when he requested to speak with his mom,
20 what did law enforcement do?

21 A. Law enforcement -- Detective Moore, actually,
22 responded -- was one of the detectives to respond
23 the next morning and get Mr. Wilfred Pitts' mother
24 and have her attend the interview.

25 Q. And is that something that's routinely done?

1 A. No.

2 Q. And were you part of the decision that was made
3 to do this, to go get the mom?

4 A. Yes, I was.

5 Q. Can you explain to us why y'all decided to go
6 get Ms. Pitts?

7 A. We felt it was probably the right thing to do
8 to get Mrs. Pitts involved into the conversation
9 because Wilfred Pitts felt comfortable around his
10 mother and we wanted to afford him that opportunity
11 to be comfortable and tell us the truth.

12 Q. You said before that you know where Ricky
13 Esaw's mom's home was -- apartment. Is that right?

14 A. Yes.

15 Q. And are you familiar with where the murder site
16 at Rolling Meadows was located?

17 A. Yes, I am.

18 Q. Do you have any idea the distance between those
19 two locations and the length of time it would take
20 to drive back and forth between the two?

21 A. Timewise, you're probably looking at somewhere
22 around 25 minutes from point A to point B.

23 Q. Okay. Did you have an occasion to meet
24 Franklin Vasquez and Christy Vasquez?

25 A. I did.

1 Q. And do you recall when you met them with
2 Detective Moore and Detective Creech?

3 A. I do. Detective Moore and Creech and I
4 responded to them, and that was on a Thursday, which
5 was the 13th of August. We responded up to
6 Newberry, I believe it was to an uncle's house.

7 Q. And what was the purpose of going there that
8 day?

9 A. It was to show a photo lineup that was
10 developed and ready to present.

11 Q. If I can show you what's been marked as State's
12 9.

13 A. Yes.

14 Q. Do you recall what that shows?

15 A. I see Ricky Esaw on this page here, number 3.

16 Q. And who was that lineup shown to?

17 A. Christy Herrera.

18 Q. And was she able to identify anyone?

19 A. No.

20 Q. And what was her demeanor that day?

21 A. Christy was -- it was the first and only time I
22 met Christy, and she seemed -- she was crying and
23 she was very upset. She was trying to gather her
24 emotions.

25 Q. If I can show you what's been marked as State's

1 4, can you identify that document?

2 A. I can.

3 Q. What does it show?

4 A. This also shows Ricky Esaw on the paper with
5 five other individuals.

6 Q. And are you aware who that was shown to?

7 A. Yes. It was shown to the son, Franklin.

8 Q. And was Franklin able to identify anyone in
9 that lineup?

10 A. He was. He identified Ricky Esaw on number 2.
11 And did it without hesitation, he went straight to
12 number 2.

13 Q. Okay.

14 MS. MARTIN: Your Honor, may I pass this lineup
15 around? I believe it's already in evidence.

16 THE COURT: Yes, ma'am. They're in evidence.

17 BY MS. MARTIN:

18 Q. If I can show you State's 5, can you recognize
19 that document?

20 A. This is Mr. Wilfred Akiem Pitts shown on number
21 3 with five other individuals, male individuals.

22 Q. And who was that lineup shown to?

23 A. Franklin Vasquez.

24 Q. And was he able to identify anyone?

25 A. No, ma'am, he wasn't.

1 Q. And did he sign that document?

2 A. He did.

3 Q. And what number did you say was Mr. Pitts?

4 A. Mr. Pitts is number 3 in that lineup.

5 Q. Were you present for the whole lineup process?

6 A. I was not.

7 Q. Okay. When you got there, had the lineup
8 process already started or where were you, if you
9 remember?

10 A. I came in on the tail end of the photo lineups.
11 Basically, the one you just shown me where Mr. Esaw
12 was indicated as number 2, that's the one I was
13 actually present for.

14 Q. Okay. After -- who actually served arrest
15 warrants on Ricky Esaw in regards to this case?

16 A. It was me.

17 Q. And what date were these warrants served on
18 Ricky Esaw?

19 A. I served the warrants on him Friday, the 14th
20 of August, 2015.

21 Q. And where did you serve these warrants on him?

22 A. At the Lexington County Detention Center.

23 Q. And when you say serve warrants, can you
24 explain to us what that really means?

25 A. Sure. With I serve a warrant to someone, I

1 make sure that the identifiers on the warrant are
2 correct, meaning name, date of birth, the physical
3 identifiers are correct, and then I'll read the
4 charge in this case, and then I'll read the body of
5 the warrant, basically the narrative of the warrant,
6 to the individual that I'm charging. And then I'll
7 sign the bottom of the paper of the date that I
8 serve it and I'll write my name on it as well, along
9 with the defendant's name.

10 Q. And were there multiple warrants in this case?

11 A. Yes.

12 Q. There's one for each charge or how does that
13 go?

14 A. Each element of the crime itself.

15 Q. Okay. And who, if anyone, was with you when
16 you served warrants on Mr. Esaw?

17 A. Detective Moore was with me when I served it.

18 Q. And what was Mr. Esaw's demeanor as you served
19 these warrants on him?

20 A. As I explained, in the service of a warrant you
21 read the identifiers, the charge, and then the
22 narrative. I had no sooner got through the charge
23 itself --

24 MR. CHEHOSKI: Your Honor, renew our previous
25 objection.

1 THE COURT: I'll note that. And subject to
2 previous objection, continue his testimony.

3 You can continue.

4 A. So as I got through the charge, Mr. Esaw became
5 really agitated and continued to interrupt me as I
6 attempted to run through the narrative of the
7 warrant, the body of the warrant. And he was very
8 agitated. And as I finished, I stopped him and
9 said, let me finish, let me finish reading the
10 warrant.

11 And as I did that, I finished reading the
12 warrant, he says, that wasn't me, I was just the
13 driver. He said, hell no, you ain't got nothing on
14 me, at best you got me for accessory. And I know
15 this because I wrote it down after he said it.

16 Q. Did he say anything else?

17 A. Right after he said that, he indicated to
18 Detective Moore and I that he wanted to talk to us
19 about it.

20 Q. Is this the only oral statement or am I missing
21 a sentence? I'm not sure.

22 A. You have to forgive me, my eyes aren't what
23 they used to be.

24 Q. That wasn't me, I was just the driver, hell no,
25 you ain't got me on nothing.

1 A. He said -- he said at the end -- he said, at
2 best you got me as accessory.

3 Q. Was this statement in response to any
4 questioning by you of Mr. Esaw?

5 A. No, ma'am. It was just an utterance predicated
6 by my reading the warning to Mr. Esaw.

7 Q. And did he indicate that he did want to be
8 interviewed by y'all?

9 A. Yes, he did.

10 Q. And were you involved in that interview
11 process?

12 A. I was not.

13 Q. And do you know who took over with Detective
14 Moore?

15 A. I believe that was going to be Detective Creech
16 and Detective Moore together.

17 Q. Let's back up a little bit. When did you first
18 meet Luenetta Grayson?

19 A. The first time I met Luenetta Grayson, she --
20 when -- bringing it back to [REDACTED], which
21 is the apartment right behind the Home Depot off
22 Harbison Boulevard, Luenetta Grayson was the first
23 person that came out of the apartment on the
24 breezeway when I was going to make contact with the
25 apartment. Luenetta had pretty much disappeared

1 from there and just kept walking, I guess.

2 Q. And so was she in custody that day?

3 A. No, she was not.

4 Q. Were any charges made against her on that
5 Wednesday, August 12th?

6 A. No.

7 (State's Exhibit No. 33 marked for
8 identification.)

9 Q. If I can show you what's been marked for ID
10 only as State's Exhibit 33, without telling us
11 what's on this CD, are you familiar with that CD?

12 A. Yes, I am.

13 Q. And based on your review of that CD, what did
14 you do -- or let me back up for a moment. Are your
15 initials on that CD?

16 A. Not this particular CD, no.

17 Q. Okay. But you have heard that CD?

18 A. Yes, I have.

19 Q. Based on your review of that CD, what did you
20 do?

21 A. The review of the CD, I got with Detective
22 Moore and we decided to make contact with Luenetta
23 Grayson or Net and bring her in to question her.

24 Q. And did that interview of Ms. Grayson happen?

25 A. It did.

1 Q. Do you know the date?

2 A. It was actually Monday, the 17th of August,
3 2015.

4 Q. Could it have been later?

5 A. We had a second interview, a second meeting,
6 which actually occurred on, I think, September 2nd
7 with Detective Moore.

8 Q. And were you present for that interview?

9 A. I was.

10 MS. MARTIN: Beg the Court's indulgence one
11 moment.

12 Please answer any questions the Defense may
13 have.

14 THE COURT: Cross-examine, Mr. Chehoski?

15 MR. CHEHOSKI: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. CHEHOSKI:

18 Q. You were the one who received the initial tip
19 that got you investigating Mr. Esaw?

20 A. That's correct, yes.

21 Q. All right. And without getting into the
22 substance of the tip, couple questions I want to ask
23 you about it. First, in that tip, did they get it
24 the date of the incident correct?

25 A. Are you referring to on the tip the date it

1 came in or the date it happened?

2 Q. The date the incident happened.

3 A. No.

4 Q. Did they get the location of the incident
5 correct?

6 A. I would have to review the tip to look at it.

7 Q. So would reviewing the tip refresh your memory?

8 A. Yes. Yes, it would. Absolutely.

9 MS. MARTIN: Your Honor, we don't object to the
10 whole tip coming in, if he's going to question him
11 about part of the tip.

12 THE COURT: I think he can ask specific
13 questions about the accuracy of a couple parts of
14 it, if he wants to. I'll let him do that.

15 Q. Is that the right tip?

16 A. Yes, it is.

17 Q. All right. Having read it, does that refresh
18 your memory?

19 A. Yes, it does.

20 Q. May I have it back, please?

21 All right. I'm going to repeat my question
22 now. Did they get the location of the incident
23 correct?

24 A. No, they did not.

25 Q. Did they get the name of the victim correct?

1 A. No, they did not.

2 Q. All right. As you're going through your
3 investigation, it is important to document all the
4 work that you're doing; is that correct?

5 A. Yes, it is.

6 Q. And in doing so, you draft and author reports
7 to do so?

8 A. Correct.

9 Q. All right. And it's important in those
10 reports, as you've known from your 19 years in law
11 enforcement, to be as complete as possible?

12 A. Correct.

13 Q. You don't want to leave anything untouched;
14 correct?

15 A. Sure, you try not to.

16 Q. All right. And you want to be as accurate as
17 possible?

18 A. Correct.

19 Q. You don't put anything in there that's false?

20 A. That's correct.

21 Q. And you want to be as thorough as possible?
22 You don't -- you want to get all of the information;
23 correct?

24 A. Correct.

25 Q. All right. And so in doing so, during the

1 course of your investigation prior to your initial
2 contact with Mr. Esaw, you met with several people
3 to document your contact with them; is that correct?

4 A. Yes.

5 Q. And one of those people was Christopher Esaw?

6 A. That's correct.

7 Q. In meeting -- when you first met with
8 Christopher Esaw, he actually identified himself as
9 Ricky Esaw; is that correct?

10 A. He did.

11 Q. All right. And then in talking with him, you
12 realized that that's not exactly who he was;
13 correct?

14 A. Yes. At first he identified him as -- he
15 identified himself as Ricky Esaw, and then he
16 said -- and then I said, good, that's -- you're the
17 guy I'm looking for. And then he changed his mind
18 and says, no, I'm Chris Esaw.

19 Q. Okay. And were you able to actually confirm
20 his identity?

21 A. Yes.

22 Q. And you said you were not involved in any of
23 the -- you were not involved in the composition of
24 any of the lineups?

25 A. No.

1 Q. Okay. So you wouldn't have occasion to have
2 put Mr. Christopher Esaw in a lineup?

3 A. No.

4 Q. I'm just making sure that we're on the same
5 page, now.

6 The -- in speaking with Mr. Esaw, you learned
7 that -- you asked what Ricky drove; correct?

8 A. I did.

9 Q. And you learned that that was a -- that was not
10 a black Toyota Corolla, he didn't own that car?

11 A. He didn't own it, no.

12 Q. No. He -- however, you did learn that his
13 girlfriend did own that car?

14 A. Yes -- well, actually, his girlfriend's mother
15 owns that car, technically.

16 Q. Well, it was registered to Luenetta; is that
17 right?

18 A. No. It was registered to Luenetta's mom.

19 Q. Okay.

20 A. Yes.

21 Q. But she drove -- it was -- she used it as her
22 primary vehicle?

23 A. Correct.

24 Q. Okay. I'm going to get there.

25 A. All right.

1 Q. And you document that as a newer model black
2 Toyota Corolla; is that right?

3 A. Yes.

4 Q. And then you also met with someone named Raina
5 Plowden?

6 A. Correct.

7 Q. And she was the property manager?

8 A. Raina was the property manager at then The
9 Legends apartments which used to be known as the
10 Palmetto Point Apartments.

11 Q. And it's now known as The Legends?

12 A. Correct.

13 Q. And, again, that was -- you documented your
14 interaction with her regarding the vehicle as a
15 newer model black Toyota Corolla?

16 A. I don't know if I actually said newer model,
17 but in the area, that could be -- what I'm referring
18 to as newer model is above 2000s, mid-2000s.

19 Q. Right. It's --

20 A. Open to interpretation, I guess is what I'm
21 saying.

22 Q. It is open to interpretation. But, again, your
23 phrasing was particularly a newer model?

24 A. I believe so, yes.

25 Q. And also in meeting with Sherman Rice, you got

1 that same information again: Newer model Toyota
2 Corolla, black?

3 A. I can't say that I actually said newer model,
4 but -- I don't know if I actually said newer model.

5 Q. All right. If you need to refer to your notes,
6 please let me know.

7 A. I do. All right. I see in here where it says
8 2005/2006 Toyota Corolla.

9 Q. That was the -- was that the information
10 gleaned from the tip?

11 A. Yes.

12 Q. Okay. And were you able to identify the year
13 of the model that Luenetta Grayson's mother's car
14 was?

15 A. After a while, yes, but not at the time.

16 Q. All right. And after a while, what you did
17 learn was that in the -- was that within two years
18 of that vehicle's model year?

19 A. I'll have to refer back to the impound on
20 exactly what year it was. 2009 Toyota Corolla.

21 Q. It was a 2009?

22 A. Correct.

23 Q. All right. And, Detective, what are ground
24 effects?

25 A. Ground effects are --

1 Q. In talking to a car -- talking in reference to
2 a car.

3 A. Ground effects typically are plastic in nature
4 that enhance the car's, I guess, looks.

5 Q. All right.

6 A. They're typically on the bottom of the car,
7 attached to it.

8 Q. Are they cosmetic in nature?

9 A. Yes. They -- I don't think they serve any --
10 maybe some aerodynamic purposes, but mostly
11 cosmetic.

12 MR. CHEHOSKI: One moment, please, Your Honor.

13 THE COURT: Okay.

14 MR. CHEHOSKI: I'm trying to find the --

15 BY MR. CHEHOSKI:

16 Q. And in talking about ground effects, have --
17 you had, in the course of your investigation, met
18 with some people who identified the car as having
19 found effects on it; correct?

20 A. I believe that was Sherman Rice --

21 Q. All right.

22 A. -- that said that.

23 Q. And I want to, again, make sure -- the ground
24 effects are kind of like decorations along the
25 bottom of the car?

1 A. That's correct.

2 Q. All right. Would they be of a different color
3 of the car, often, maybe?

4 A. Usually, no.

5 Q. No. All right. I just -- but they don't serve
6 any functional purpose?

7 A. Other than aerodynamic effects, most of it's
8 for cosmetic and looks.

9 Q. Again, they're along the side of the car?

10 A. Front and side.

11 Q. Front and side?

12 A. I'm not an automotive expert. But I'm guessing
13 that that's where people put them, for the most
14 part.

15 Q. I'm showing you State's Exhibit 30. If you
16 would, point to me where the ground effects are.

17 A. Right here.

18 Q. And that's the ground effects? That's not --

19 A. That's actually -- I'm not automotive expert,
20 but I do know that that's an add-on from the
21 factory. It's an actual -- something you can buy
22 that's an add-on.

23 Q. Okay. Again, me not being an expert either, I
24 thought they were just kind of decorations along the
25 side of the car kind of showing maybe some -- maybe

1 a stripe or something like that. It's not?

2 A. Decorations.

3 Q. Yeah.

4 A. That's what it is.

5 Q. All right. And moving on to the evening of
6 August 12th, you testified that you had -- you had
7 gotten consent and -- from Wilfred Pitts to get the
8 buccal swab?

9 A. Correct.

10 Q. And for the jury's information, what is a
11 buccal swab?

12 A. It's a buccal swab. The buccal swab is
13 basically a swab done on a long -- it looks like a
14 Q-Tip, but it only has one end with cotton on it.
15 And it's swabbed inside the person's mouth to get
16 saliva which is used for a DNA comparison or a
17 DNA -- just DNA.

18 Q. All right. And after you obtained the buccal
19 swab, what did you do with it?

20 A. I didn't do anything with it. It was a CSI
21 unit detective, Glen Ross, who did the buccal swab.
22 I'm not qualified to do that.

23 Q. All right. So you just got the consent for him
24 to take the swab?

25 A. It was myself and Detective Andaloro together

1 that did that.

2 Q. And then the CSI investigator was the one who
3 performed it?

4 A. That's correct.

5 Q. All right. Thank you.

6 And continuing on as -- it's your recollection
7 then that Detective Moore and Detective Andaloro got
8 a statement from Mr. Pitts?

9 A. Yes.

10 Q. All right. And acting upon the information got
11 in that statement, you went to meet with Mr. Pitts'
12 brother?

13 A. Yes, that's correct.

14 Q. And that was to get a -- to either confirm or
15 deny a -- information that was given in that
16 statement?

17 A. That's correct.

18 Q. And you learned that the information given was
19 incorrect?

20 A. Yes.

21 Q. And subsequent to that, you rode back to the
22 sheriff's department and you sat in the -- you sat
23 in, in Mr. Pitts' continuing interview?

24 A. That's correct.

25 Q. All right. And, again, you documented what was

1 said during that interview; is that correct?

2 A. Which part are you referring to? I know the
3 interview you're talking about, but --

4 Q. A couple of parts. Again, you were present
5 when Mr. Pitts indicated that his initial statement
6 was all a lie?

7 MS. MARTIN: Objection, Your Honor.

8 THE COURT: I'm sorry. Yes, ma'am.

9 MS. MARTIN: Your Honor, I think that we're
10 going to go far aground and be talking about what
11 actually Mr. Pitts said.

12 THE COURT: I'll sustain the objection as to
13 Pitts says as being hearsay.

14 Q. Okay. You wrote in this statement that
15 Pitts -- that was on the table, was that that
16 statement was a lie.

17 MS. MARTIN: Is there a question there, Your
18 Honor? I --

19 THE COURT: There is a question there. I
20 think he didn't -- he couldn't have passed Jeopardy
21 with it because he didn't put it in the form of a
22 question, but he meant for it to be a question.

23 MR. CHEHOSKI: May I rephrase?

24 THE COURT: Yes. Please do that.

25 BY MR. CHEHOSKI:

1 Q. You wrote in your report that the statement
2 that Pitts gave was -- that was on the table in
3 front of him was a lie.

4 A. Right.

5 Q. And at the time, Mr. Pitts was shown a picture
6 from his Facebook page of a bracelet --

7 A. Yes.

8 Q. -- of him wearing a bracelet?

9 A. Yes.

10 Q. Okay. And that was -- let me make sure I say
11 this right, that -- and then, again, it was
12 indicated that that was the bracelet at the scene,
13 the scene -- that bracelet that he was wearing in
14 that same Facebook picture was the same bracelet
15 that was recovered at the scene?

16 A. Are you asking me --

17 Q. Did you suggest to Mr. Pitts or was it
18 suggested to Mr. Pitts that the bracelet that was in
19 the Facebook picture was the same one that was found
20 at the scene August 9th at Rolling --

21 A. Yes, that was suggested.

22 Q. And then you wrote in your report that
23 Mr. Pitts advised that the bracelet was his.

24 A. That's correct.

25 Q. And that he had given it to Rick --

1 MS. MARTIN: Objection, Your Honor, once
2 again --

3 THE COURT: We're getting a whole lot of
4 hearsay in through this that is now going to the
5 truth of the matter asserted which makes it hearsay.
6 I will sustain the objection as to the last
7 statement.

8 MR. CHEHOSKI: One moment, please, Your Honor.

9 THE COURT: Okay.

10 BY MR. CHEHOSKI:

11 Q. Couple more questions, Sergeant Sowards, is,
12 you initially served the warrants on Mr. Esaw on
13 August 14th; is that correct?

14 A. Yes, that's correct.

15 Q. All right. That wasn't the only time you
16 served warrants on him; is that correct?

17 A. That's correct.

18 Q. You also served warrants on him in September?

19 A. I don't know the exact time.

20 Q. September 16th, does that sound right?

21 A. I don't know. I wish I could tell you.

22 Q. Do you remember what those warrants were for?

23 A. Not without documentation to say definitively
24 in front of me. I don't have that.

25 MS. MARTIN: Your Honor, I'd ask that he show

1 him the document he's referring to.

2 THE COURT: Right. If you've got a specific
3 question about a specific warrant, and you obviously
4 do, let him look at it.

5 MR. CHEHOSKI: May I approach?

6 THE COURT: Yes, sir.

7 BY MR. CHEHOSKI:

8 Q. (Tenders document to the witness.)

9 A. I'm sorry.

10 Q. We can't accuse you for being a human being.

11 A. This one says 9/16/2015. This is my
12 handwriting.

13 Q. And that's your signature?

14 A. That is my signature.

15 Q. Besides the date, is there anything about those
16 warrants that are different than what you originally
17 served Mr. Esaw with, to the best of your knowledge?

18 A. Without scanning, I'm not sure.

19 Q. All right. Are they the same charges?

20 A. The charges look appropriate, that's all I can
21 tell you right now. And this is my handwriting.

22 Q. The charges look the same, is that right, from
23 the previous time?

24 A. As far as I can tell. I'm not -- you have to
25 keep in mind I literally serve thousands of warrants

1 a year.

2 Q. I understand. And, again -- but to the best of
3 your knowledge, they look the same?

4 A. Yes.

5 Q. All right. Do you -- again, do you remember
6 why you served warrants the second time?

7 A. I don't recall, and I'd hate to speculate at
8 this point.

9 Q. And you weren't the one who swore them out?

10 A. No.

11 Q. All right.

12 MR. CHEHOSKI: Your Honor, I don't have any
13 questions at this time -- hold on one moment.
14 Pending on any redirect, I do have a motion
15 regarding excusing the witness.

16 THE COURT: All right. Any further questions,
17 Ms. Martin?

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

19 THE COURT: Okay.

20 Folks, I take back my invitation to tell you
21 what we're talking about. There's no way in the
22 world I could remember all this stuff.

23 (Sidebar conference.)

24 THE COURT: All right. Madam Court Reporter,
25 note a sidebar conference. We'll take it up out of

1 the presence of the jury. Thank you.

2 REDIRECT EXAMINATION

3 BY MS. MARTIN:

4 Q. Detective Sowards, this Crimestoppers tip that
5 we've talked about, is that something maintained by
6 the sheriff's department?

7 A. No, it is not.

8 Q. And the information learned from Crimestoppers,
9 is that something that's available to the general
10 public?

11 A. No; it's protected.

12 Q. And you've said that the date and location of
13 the homicide in one of the tips was not proper or
14 was not in regards to our incident. Is that true?

15 A. That -- many times Crimestoppers tips come
16 out -- there's different ways that they can be
17 entered. Sometimes they can entered electronically
18 or they can be entered on the phone as an anonymous
19 tip. So there is -- there's always a possibility
20 that a date is entered wrong on a Crimestoppers tip.
21 You really don't know.

22 Q. When you received this tip, I think you said,
23 at 2:35 --

24 A. It was approximately 2:29, 2:27 on Wednesday
25 morning, a.m.

1 Q. Okay. And what, precisely, did that tip give
2 you information about?

3 A. It basically gave me a starting point for the
4 investigation to develop suspects.

5 Q. And did the tip itself name any particular
6 suspects?

7 A. It did, via social media monikers, in that it
8 said specifically Facebook information on King Pitts
9 and then backslash Ricky Esaw, one word.

10 Q. And did the tip involve a particular type of
11 crime?

12 A. It did. The tip came out, which was why it --
13 it came out to my attention as is in reference to a
14 shooting that shot and killed an individual.

15 Q. Okay. Is there a difference between a tip and
16 a witness statement?

17 A. Sure.

18 Q. Okay. And based on your tip, that led you to
19 Mr. Esaw; correct?

20 A. Yes.

21 MS. MARTIN: That's all we have of this
22 witness, Your Honor.

23 THE COURT: Thank you.

24 I'll let you follow up on that point,
25 Mr. Chehoski.

1 MR. CHEHOSKI: Just one.

2 RECROSS-EXAMINATION

3 BY MR. CHEHOSKI:

4 Q. The tipster specifically stated that they did
5 not know their names; is that correct?

6 A. It says does not know the names, but the
7 Facebook information is King Pitts backslash Ricky
8 Esaw, one word.

9 Q. All right.

10 MR. CHEHOSKI: Your Honor, that's the only
11 question we -- we ask that Sergeant Sowards be
12 available for further cross-examination in the
13 future, if the need arises.

14 THE COURT: All right. I will not release
15 him from his -- or have him available to be
16 recalled. I'm not sure what his other duties are
17 outside of this, but I'll allow him to be recalled
18 by you.

19 MR. CHEHOSKI: Thank you.

20 THE COURT: Okay.

21 All right. Ms. Martin, you get the last word.
22 He's your witness.

23 MS. MARTIN: That's all I have for him, Your
24 Honor.

25 THE COURT: Thank you, Mr. Sowards. You can

1 that's better than having to work later, later in
2 the week. So that's what we're trying to get done.
3 But I'm not going to waste any more time. We're
4 going to get to that witness and start to work on it
5 right now.

6 Ms. Martin?

7 MS. MARTIN: Thank you, Your Honor. Your
8 Honor, we'd call Adam Creech.

9 THE COURT: Mr. Creech, come forward to be
10 sworn.

11 ANTHONY ADAM CREECH

12 being first duly sworn, testified as follows:

13 THE WITNESS: I swear.

14 THE CLERK: Have a seat, sir. Once you're
15 seated, state your full name spelling your last,
16 please.

17 THE WITNESS: My name is Detective Anthony Adam
18 Creech. Creech is spelled C-R-E-E-C-H.

19

20

21 DIRECT EXAMINATION

22 BY MS. MARTIN:

23 Q. And, Detective Creech, where are you employed?

24 A. I'm employed with the Lexington County
25 Sheriff's Department.

1 Q. And how long have you been with them?

2 A. I've worked for the sheriff's department for
3 eight years and two months.

4 Q. And what is your rank?

5 A. I'm a detective with our major crimes unit.

6 Q. And were you working at the sheriff's
7 department in August of 2015?

8 A. I was.

9 Q. Can you tell us how you became involved in this
10 case?

11 A. I became involved in this case shortly after
12 the fact. This original incident occurred August
13 9th of 2015. It's typical with our homicide
14 investigations we'll have a mass unit briefing the
15 following business day where they tell us what's
16 going on, they make a bullet list, that way if
17 there's any other work that needs to be done,
18 there's additional people to help with that.

19 We had that briefing on August 11th of 2015.
20 My involvement was pretty minimal but, at the time,
21 I did make note that they mentioned a gold-colored
22 bracelet had been recovered at the original crime
23 scene.

24 Q. And at some point during the course of your
25 investigation were you made aware of any

1 Crimestoppers tip information?

2 A. I was. That would have been August 11th. The
3 following day, August 12th, I was made aware of a
4 Crimestoppers tip which indicated two possible
5 suspects on this case with the names -- on Facebook
6 under the names Ricky Esaw and King Pitts.

7 I was able to find King Pitts pretty easy on
8 Facebook because it's a pretty unique name and
9 there's not a whole lot of King Pitts on Facebook.
10 We were able to further confirm that this was the
11 correct account because under King Pitts' publically
12 viewable friends on Facebook, Ricky Esaw was
13 present.

14 Q. Did you notice anything else in that
15 information in regards to Mr. Pitts' information on
16 Facebook?

17 A. I did. So it was numerous pictures of
18 Mr. Pitts on Facebook. He was wearing very distinct
19 gold jewelry that looked very similar to the picture
20 I had seen from August 11th.

21 Q. Okay. Were you involved in meeting the victims
22 Franklin Vasquez and Christy Vasquez?

23 A. I was.

24 Q. And do you recall when you met them?

25 A. I do. On August 13th, which would have been

1 the day after that, I got involved with assisting
2 Detective Moore further. He and I responded to [REDACTED]
3 [REDACTED] where we met with Franklin
4 Vasquez and his mother Christy Herrera and we showed
5 them photo lineups.

6 Q. Do you recall who was present during this
7 lineup procedure?

8 A. I do. Myself, Detective Moore, and fugitive
9 detective Sergeant Sowards.

10 Q. And just in general, are you familiar with how
11 lineups are generated?

12 A. I am.

13 Q. Can you tell us just a little bit about that
14 procedure in general?

15 A. So the generation of lineups, we submit a
16 request to our Intel unit and they'll either operate
17 on existing photos derived from either South
18 Carolina DMV or corrections photos, depending on
19 what's available.

20 Q. And not in regard to our case here, but are you
21 familiar with who requested these lineups?

22 A. Who requested these lineups in this case, I
23 couldn't say.

24 Q. And were you present when Detective Moore
25 presented the lineups to the witnesses?

1 A. I was.

2 Q. And are you -- or do you remember which victim
3 he showed the lineups to first?

4 A. I do. He showed the lineups first to Franklin.

5 Q. And when Franklin was shown the lineup, were
6 you present there with them?

7 A. I was.

8 Q. Was his mom, Christy, involved in Franklin
9 viewing the lineup?

10 A. She was not because we want to keep them sight
11 and sound separated so one wouldn't influence the
12 other's selection.

13 Q. And did you see Franklin view the lineup?

14 A. I did.

15 Q. If I can show you what's been marked State's 4.
16 Do you know what that lineup shows?

17 A. I do.

18 Q. Can you please tell us?

19 A. Yes. This was the first lineup shown to
20 Franklin Vasquez in which he picked Picture No. 2
21 indicating that that was the person who shot his
22 father, and that would be Ricky Esaw.

23 Q. And did it take Franklin long to observe that
24 lineup before he picked?

25 A. It didn't. He made that selection virtually

1 immediately.

2 Q. And were you present when he signed that
3 lineup?

4 A. I was.

5 Q. If I can show you State's 5, do you recognize
6 that lineup?

7 A. I do.

8 Q. What does it show?

9 A. This would be the lineup with Akiem Pitts.

10 Q. And was that shown to Franklin Vasquez?

11 A. It was.

12 Q. And did he identify anyone?

13 A. He did not. He wasn't able to make a selection
14 because he said he didn't have as much interaction
15 with that person.

16 Q. State's 9, what is that lineup of?

17 A. This would be additional lineup with Ricky
18 Esaw's picture in it which was presented to Christy
19 Herrera.

20 Q. And was Christy able to identify anyone?

21 A. She was not able to make a selection. She said
22 she didn't have as close of an interaction as her
23 son did.

24 Q. And what was Christy's demeanor that day, if
25 you recall?

1 A. She was extremely upset at the time, still
2 dealing with the grief over what happened.

3 Q. And were you present at the time with Detective
4 Moore when instructions were given to Franklin and
5 then to Christy about how to conduct the -- or how
6 to view the photographic lineup?

7 A. I was.

8 Q. And did you or anyone in your presence tell
9 Franklin Vasquez who was in the lineup?

10 MS. FULLWOOD: Your Honor, objection. It's
11 leading and testimonial. She can ask him what he
12 said in relation to it, I think, but not put words
13 in his mouth.

14 THE COURT: Well, if the question doesn't
15 necessarily suggest the answer, it's not leading.
16 The answer to many questions is going to be yes or
17 no without being suggestive about a question itself.
18 Rephrase it again or say it again because I --

19 MS. MARTIN: Yes, sir.

20 BY MS. MARTIN:

21 Q. Were instructions given to Franklin and Christy
22 about the lineup procedure?

23 A. They were.

24 Q. And what instructions were given to them?

25 A. As is typical policy and procedure when we

1 present photo lineups, they're a six-person photo
2 lineup; typically black and white, as they were in
3 this case. When we present a photo lineup to an
4 individual, we expressly indicate the person that
5 we're looking to identify may or may not be present
6 in that photo lineup, and we impress upon somebody
7 that if they are not able to make a selection or
8 they don't feel like they see the person that
9 they're looking for, we tell them not to make a
10 selection unless they're certain, and then we
11 typically ask for a level of certainty after the
12 fact as well, just to further shorten that up.

13 Q. And were those instructions given to Franklin
14 and also to Christy?

15 A. They were.

16 Q. And what was Franklin's level of certainty?

17 MS. FULLWOOD: Objection, Your Honor; that's
18 subjective.

19 THE COURT: You can ask him if there was any
20 hesitation or anything like that or how long it took
21 him. I think he's already said that, so --

22 MS. MARTIN: He has, Your Honor.

23 BY MS. MARTIN:

24 Q. Did you tell or anyone in your presence suggest
25 the names of anybody that were in the lineup?

1 A. No. We made no suggestions of the names of
2 Ricky Esaw or Akiem Pitts or anyone else present in
3 the lineup and we made no indications whatsoever
4 that the persons we were seeking would be in that
5 lineup.

6 And even after they make a selection, we don't
7 tell them at the time whether they made the correct
8 selection. It's just kind of a blind -- we don't
9 show it to them when we give them the instructions,
10 we show it to them, they make a selection, and we
11 take it back. And you kind of got to keep a good
12 poker face; you can't tell them whether they got it
13 right or got it wrong.

14 Q. And after this lineup procedure, what else if
15 anything did you work on with this case?

16 A. So the next involvement I had in this case was
17 on August 14th when I was contacted by Detective
18 Moore once more to assist him in interviewing Ricky
19 Esaw.

20 Q. Before we get to that, if I can direct your
21 attention back to August 13th. Did you have any
22 involvement with the co-defendant Wilfred Pitts?

23 A. I did have involvement some with Wilfred Pitts.

24 Q. And what was your involvement with that?

25 A. My involvement with Mr. Pitts was fairly

1 minimal. I was asked to escort Mr. Pitts from the
2 Lexington County Detention Center booking area to an
3 interview room, to sit by with him until he could be
4 interviewed by Detective Moore and Detective
5 Andaloro. I didn't discuss the case with Mr. Pitts
6 because it wasn't my place to. I just basically
7 kept him company for a few minutes until they came
8 and took over with a formal interview.

9 Q. And did you have an opportunity to meet anyone
10 else involved with Mr. Pitts?

11 A. Yes. Mr. Pitts' mother was brought from
12 Newberry. She was allowed to speak with him. When
13 she spoke with him, it kind of concluded the
14 interview, and then I helped Detective Moore escort
15 Ms. Pitts back to her address in Newberry. And this
16 would have been directly before we then went to [REDACTED]

17 [REDACTED].

18 Q. So it was before the lineups?

19 A. It was.

20 Q. So you first met Ricky Esaw when?

21 A. I first met Ricky Esaw August 14th.

22 Q. And under what circumstances did you meet
23 Mr. Esaw back in August of 2015?

24 A. He was in the Lexington County Detention Center
25 and I had been contacted by Detective Moore to

1 assist in interviewing him.

2 Q. And where would an interview with Mr. Esaw have
3 taken place?

4 A. So we initially met with him in booking. It
5 was my understanding he wanted to talk with us. We
6 confirmed together that he did want to speak with
7 us, so we then signed him out from booking -- it's
8 just a standard procedure -- so that the jail would
9 know where he was at, and then we escorted him to an
10 interview room over at the sheriff's department.

11 Q. And in that interview room, was the interview
12 recorded, either audiotaped or videotaped?

13 A. No. The interview was not recorded in line
14 with departmental policy. We don't have a policy
15 against it, but we don't really have a policy that
16 says to automatically record interviews either.

17 Q. If I can show you State's Exhibit 1, are you
18 familiar with that document?

19 A. I am familiar with this document.

20 Q. And can you tell us what it pertains to?

21 A. Yes. This would be the written statement that
22 Ricky Esaw provided to myself and Detective Moore on
23 August 14th, 2015.

24 Q. Was Mr. Esaw provided any rights?

25 A. He was. As with the standard procedure under

1 the law with any questioning or interrogation of the
2 person in custody who's not free to leave, Mr. Esaw
3 was read his Miranda rights, which he waived. And
4 he did that verbally but then he also did that in
5 writing. His rights are in writing here and next to
6 each of these lines are his initials to acknowledge
7 that he understood those rights.

8 Q. Did anyone else initial those rights?

9 A. They did. This is not actually normal
10 practice, but I think it was -- I like the way he
11 did it in this case. Detective Moore also put his
12 initials next to each right to indicate reading
13 those rights.

14 Q. And were you present when those rights were
15 read?

16 A. I was.

17 Q. And after those rights were given, what did
18 Mr. Esaw say or do?

19 A. Mr. Esaw said that he wanted -- he was not
20 going to let Wilfred Pitts, quote, put this all on
21 me, end quote. And said he was going to tell his
22 side of the story.

23 Q. Did you make notes of what Mr. Esaw said that
24 day?

25 A. I did.

1 Q. After Mr. Esaw said this, did he waive his
2 rights?

3 A. He had actually waived his rights before saying
4 that. And then he proceeded to tell us his side of
5 the story, for lack of better words.

6 Q. And what did Mr. Esaw tell y'all that day?

7 A. So he went on to tell us -- and, of course,
8 with these kind of situations, he knows what he's
9 being charged with. We asked him to go back to
10 whatever they feel is a relevant point.

11 Mr. Esaw told us that earlier on August 9th,
12 2015, he was at a birthday party for his niece in
13 West Columbia, and he said Wilfred Pitts or Akiem
14 Pitts -- you might hear me say those names
15 interchangeably -- was at the party as well with an
16 individual that Ricky identified as AJ driving a
17 black car.

18 He said -- he went on to tell us that he was
19 hanging out with his brother Chris, this would be
20 Ricky's brother, when he says he was approached by
21 AJ and Wilfred who asked him to help them with
22 something in Rolling Meadows. And he said that AJ
23 claimed to have just sold some marijuana to some
24 Hispanics in Rolling Meadows trailer park and they
25 said that they had seen these individuals with a

1 quantity of cash.

2 Ricky says he was approached about being a
3 driver so that they could then go rob these
4 individuals and take their money. According to
5 Ricky, he said that he had been told that the
6 Hispanic individuals were having a party in front of
7 their trailer.

8 He then told us that he agreed to drive AJ and
9 Wilfred down there and that their intention was to
10 commit an armed robbery. He described how he'd get;
11 he said they drove down Charleston Highway to
12 Rolling Meadows, they drove into Rolling Meadows and
13 they stopped in front of the trailer park.

14 Ricky then told us that he let AJ and Wilfred
15 out of the vehicle, at which time he said he drove
16 right up to the trailer. And this was kind of
17 interesting in light of the lineup, I thought,
18 because --

19 MS. FULLWOOD: Objection to the
20 editorializing --

21 THE COURT: I'll sustain that. Yes. You can
22 define his statements as to what the statement was.
23 Thank you.

24 MS. FULLWOOD: Move to strike, Your Honor.

25 THE COURT: Whatever he was going to say is

1 stricken. I don't know what he was going to say.

2 Okay. Go ahead.

3 A. So the next thing Ricky told us was that he
4 knew people at the party had saw his face because he
5 had been underneath the streetlights and he had been
6 close to everybody. He then told us the next thing
7 he knew, he heard gunshots and he saw AJ and Wilfred
8 run back to the car.

9 He said that AJ told him that Wilfred had shot
10 somebody and he said he had seen Wilfred fighting
11 with somebody when he heard a gun go off. He then
12 said he saw Wilfred fighting with a Hispanic male
13 and he heard Wilfred tell the man, son, I'm going to
14 shoot your ass -- and that's a quote -- before then
15 shooting at the son.

16 Ricky said that they then fled in the vehicle,
17 which he was driving, at which time they threw away
18 a cell phone that they had stolen during the robbery
19 out a window. While telling me this -- or us this,
20 because Detective Moore was present, Ricky said,
21 quote, I'm innocent, at best I'm an accessory, end
22 quote. And he followed this by, I know I'm an
23 accessory.

24 He then went on to say that the guns that had
25 been used in this incident were a .9 millimeter and

1 .40 caliber handguns. He described AJ as having the
2 .9 millimeter and Wilfred as having the .40 caliber.
3 He was real specific to describe what Wilfred had
4 done in the incident, but when it came to describing
5 how AJ interacted or what AJ did or didn't do, he
6 couldn't really describe anything. In following the
7 incident, he said he was given \$50 for his
8 involvement and went his separate way.

9 We asked him some more about AJ. Ricky went on
10 to describe AJ as a bi-racial brown-skinned male
11 approximately 23 years old. He gave us a height and
12 weight; he said he was about five-eight, 135 to 140
13 pounds. He said he'd been in the Lexington County
14 Detention Center earlier in 2015 for an related
15 murder charge.

16 He said the guy had a street name that was
17 possibly T-Rex or T-Mac. These seemed like some
18 pretty identifiable traits. He said he drove a
19 black Nissan. He went on to change this later to
20 say it was a black Lincoln.

21 After he tells us all this -- and it's a pretty
22 lengthy story, I've been sitting here telling it in
23 a bit of a summary -- we then asked him to provide a
24 written statement. And that's pretty normal
25 procedure when we're doing interview on a case,

1 especially on a big case like this. You want to
2 give them the chance to say everything, make sure
3 they've told you everything they want to tell you so
4 that way when they come to writing their statement,
5 it's easier to make sure that they get everything
6 into their statement.

7 Q. And did Ricky Esaw reduce his oral statement to
8 writing?

9 A. He did. He then provided us the seven-page
10 statement that's State's Exhibit 1.

11 Q. And were you present during this entire oral
12 statement and written statement?

13 A. I was.

14 Q. And did you or anyone in your presence make any
15 threats towards Mr. Esaw?

16 A. No.

17 Q. Did you or Detective Moore make promises to
18 Mr. Esaw?

19 A. No, we did not.

20 Q. Did you coerce him in any way?

21 A. We did not.

22 Q. Did you make any specific threats towards his
23 loved ones?

24 A. We made no threats whatsoever to anybody.

25 Q. After Mr. Esaw provided a written statement,

1 was there any other question-and-answer session with
2 Mr. Esaw?

3 A. So after Mr. Esaw provided his statement about
4 the events I just told you guys about, he felt like
5 we were going to recall the charges against him
6 because he was just the driver, according to his
7 testimony. We told him that wasn't going to be the
8 case. He got a little upset with us that we weren't
9 going to recall the charges.

10 It seemed what did arise is whether he was the
11 shooter or not the shooter, he made himself a
12 principal to what occurred because he said he was
13 the driver, he knew they were going to commit an
14 armed robbery, he had his role in that, and then
15 after the fact, he continued his role. So at that
16 point it was the hand of one, the hand of all.

17 MS. FULLWOOD: Your Honor, I'm going to object
18 to this.

19 THE COURT: I'll sustain the objection as to
20 the statement of the law. That's totally a matter
21 for the Court's determination.

22 MS. MARTIN: Your Honor, may I approach the
23 witness?

24 THE COURT: Yes, ma'am.

25 BY MS. MARTIN:

1 Q. If I could have back State's 1. Pages 2
2 through 7 of State's 1, if there is a Q, do you know
3 who wrote that part?

4 A. So the way this statement works, we give a
5 person we're interviewing a chance to kind of just
6 write what they -- kind of freeform their side of
7 the story. And a lot of times when people tell you
8 a story and then you ask them to write it down,
9 they're not near as detailed.

10 So what'll happen is they'll write their
11 initial -- beginning of their statement, which in
12 this case would be page 1, and then on page 2 we'd
13 start with a question-and-answer format where one of
14 the detectives present is going to write a Q for
15 question and then they're going to write the
16 question next to that.

17 In this case, Detective Moore handled all the
18 questions on this form, and that would be Detective
19 Moore's handwriting.

20 Q. And if there's an A and then writing, whose
21 writing would that be?

22 A. So the A would be in Detective Moore's writing
23 just indicating where Mr. Esaw would begin his
24 answer to the said question, and then the questions
25 are all written in Mr. Esaw's handwriting.

1 THE COURT: The questions are written in
2 Mr. Esaw's handwriting?

3 THE WITNESS: I mean, I'm sorry, the answers.

4 THE COURT: Thank you.

5 BY MS. MARTIN:

6 Q. As followup to Mr. Esaw's statement, were you
7 able to find an AJ?

8 A. No. So as we were getting this information
9 during the interview, I was relaying that
10 information to Sergeant Sowards and Lieutenant
11 Prestigiacomo to see if they could find anybody.
12 When we concluded the interview, I had made my own
13 efforts. We've got a pretty sophisticated in-house
14 report management system that's really great for
15 searching partial information and partial
16 identifiers.

17 Using everything he'd told us about AJ, the
18 prior incarceration, the description, I looked
19 pretty decently and I couldn't find anybody who
20 matched all those details.

21 Q. Please answer any questions the Defense may
22 have.

23 THE COURT: Ms. Fullwood?

24 MS. FULLWOOD: Thank you, Your Honor.

25 CROSS-EXAMINATION

1 BY MS. FULLWOOD:

2 Q. Good afternoon, Officer Creech.

3 A. Good afternoon.

4 Q. Okay. So you knew about this gold bracelet;
5 correct?

6 A. Correct.

7 Q. Have they shown you pictures of it or anything?

8 A. I believe I had seen pictures of it on August
9 11th, yes.

10 Q. Okay. So you knew what it looked like. And it
11 was real easy for you to find Mr. Pitts' Facebook
12 page; right?

13 A. Yes, because he was under the name King Pitts,
14 P-I-T-T-S. It's not real common.

15 Q. Correct. Correct. And he had a lot of
16 pictures of himself on that page, didn't he?

17 A. I seem to recall he did, yes.

18 Q. Yeah. And as you've already testified to, he
19 wore jewelry in a lot of those pictures, didn't he?

20 A. Yes. He wore real distinct-looking gold
21 jewelry in a lot of those pictures.

22 Q. I mean, a lot of jewelry; right?

23 A. Yes.

24 Q. Not just -- and we're not just talking like a
25 man's watch or something, are we? Necklaces,

1 bracelets --

2 A. I seem to recall there were necklaces. I --
3 the bracelets in particular are what we were
4 focusing on.

5 Q. And, in fact, in some of those pictures he had
6 a gold grill in his mouth, didn't he?

7 A. That, I can't remember offhand.

8 Q. Okay. Okay. Now, on the 13th of August of
9 2015, you went with Mr. Moore and Mr. Sowards over
10 to Newberry to talk with the Vasquezes; correct?

11 A. Yes, I did.

12 Q. And Franklin picked a picture; correct?

13 A. He did.

14 Q. And then Mrs. Vasquez didn't because she told
15 y'all she didn't have as close an interaction with
16 either of the men out that there that night;
17 correct?

18 A. That is correct.

19 Q. All right. And after you had dealt with both
20 of those individuals, the Vasquezes, isn't it
21 correct that Detective Moore told them the person
22 Franklin selected is now in custody?

23 A. I believe he may have indicated that. That was
24 not -- would not have been a detail I would have
25 been as focused on. So he may have had some

1 interaction with them that I didn't take note of.

2 Q. Weren't they really happy after that happened,
3 after they got that information? Do you remember
4 them being --

5 A. I remember her being very emotional. I'll be
6 honest, it would be appropriate for me to testify
7 about something I didn't take good notes about.

8 Q. All right. You don't dispute that that
9 happened though?

10 A. I'm not saying it couldn't have happened, I
11 just can't tell you I distinctly remember it.

12 Q. All right. Concerning interviewing your
13 suspects, is it the policy of the Sheriff's
14 Department concerning recording statements that
15 there is no policy, basically?

16 A. Yes. There's not really a clear -- it's not
17 really clear policy one way or the other. They
18 don't really give us equipment to do anything which
19 makes it, therefore, hard to decide you're going to
20 record statements and whether it's audio or video.
21 That's something they're working to actually
22 implement. Of course this was back in 2015, now
23 it's 2017, and we're trying to get on board. Of
24 course there's a lot of policy and technology issues
25 with that that they're working through.

1 Q. Now, you're not trying to tell the jury that in
2 the entire sheriff's department there's absolutely
3 no recording technology that even has been available
4 for decades? You're not trying to tell them that?

5 A. I can speak for myself that I didn't have
6 anything department-issued and the interview rooms
7 we use to do not have recording ability.

8 Q. But somewhere in the department there should be
9 some device that can do that; right?

10 A. I can't speak for all the equipment in the
11 sheriff's department. But, again, we don't -- is it
12 standard procedure and is it secondary, just an
13 assisting investigator it wouldn't be my decision to
14 locate and make a decision to record this interview.

15 Q. Because some investigators do choose to do
16 that, do they not?

17 A. I'd say it happens occasionally, but it's
18 probably more the exception than the rule at this
19 point.

20 Q. But it does happen?

21 A. It does happen occasionally.

22 Q. And when it does, obviously those investigators
23 have had access to equipment to do it with; right?

24 A. Yes. And I know in some of those cases it's
25 been personally owned. I don't know of any specific

1 cases where it's been Department-issued equipment.

2 Q. But you don't know that it's not either;
3 correct?

4 A. I don't know. I can't speak for everybody.

5 Q. Okay. Now, in this case it wasn't your
6 decision to make, was it?

7 A. It wouldn't have been my decision to make in
8 this case either way.

9 Q. That would have been Detective Moore's decision
10 to make; correct?

11 A. That is correct.

12 MS. MARTIN: No further questions.

13 THE COURT: Thank you.

14 Redirect?

15 MS. MARTIN: No, Your Honor. We'd ask that he
16 be excused.

17 THE COURT: Detective Creech, you can step down
18 and be excused. Thank you.

19 Okay. Folks, this is the perfect time to stop
20 for the day. Thank you for your patience in working
21 with us throughout the day. We have more work to
22 do, so I ask that you to be back in the morning at
23 9:30 and we'll start back again.

24 I remind you again not to talk about this case
25 among yourselves when you get back in the jury room

1 might occur in the upcoming testimony that we can
2 anticipate by dealing with those matters outside of
3 your presence.

4 We've done that today, and that's the reason
5 why we're about 15 minutes late in getting you out
6 here. I'm sorry about that. But what we have done,
7 I think, will facilitate the presentation of the
8 case before you in a more smooth manner. The State
9 now will continue to offer evidence and testimony in
10 this case.

11 Ms. Martin?

12 MS. MARTIN: Thank you, Your Honor. We'd call
13 Luenetta Grayson.

14 THE COURT: It's obvious to you by now, ladies
15 and gentlemen; the witnesses are always sequestered;
16 that is, they are kept out of the courtroom while
17 other witnesses are testifying. And that's done to
18 preserve the integrity of everybody's testimony so
19 that no one testifies on the basis of what somebody
20 else has already said. Thank you.

21 Ms. Grayson, come forward, please, and be
22 sworn.

23 LUENETTA GRAYSON

24 being first duly sworn, testified as follows:

25 THE WITNESS: I do.

1 THE CLERK: Have a seat, please, ma'am. Once
2 you're seated, state your full name spelling your
3 last, please.

4 THE WITNESS: First name is Luenetta, last name
5 is Grayson, G-R-A-Y-S-O-N.

6 DIRECT EXAMINATION

7 BY MS. MARTIN:

8 Q. Ms. Grayson, where are you employed?

9 A. South Carolina Mentor.

10 Q. And how long have you been with them?

11 A. I've been with them for three years.

12 Q. And where do you live?

13 A. I live in Harbison Lakes.

14 Q. And that's in Richland County?

15 A. Yes, it is.

16 Q. And what kind of education level do you have?

17 A. I have a Bachelor's from the University of
18 South Carolina and a Master's from Webster
19 University.

20 Q. And do you know the defendant, Ricky Esaw?

21 A. Yes.

22 Q. And how do you know him?

23 A. We were once involved in a relationship.

24 Q. And do you know about what time period you
25 started dating him?

1 A. November of 2015.

2 Q. And does he have a nickname?

3 A. Yes.

4 Q. And what is that nickname?

5 A. Silk.

6 Q. And at some point did y'all live together?

7 A. We did.

8 Q. And do you know the time period that y'all
9 lived together?

10 A. Probably from January 2016, maybe December
11 2015.

12 Q. And I think a minute ago you might have said
13 2015 was when you started dating, November.

14 A. Correct.

15 Q. Okay. Could it have been November of 2014?

16 A. 2014, no.

17 Q. If this incident happened August of 2015 --

18 A. Oh, correct, correct, correct. That's right.
19 It would have been 2014.

20 Q. Okay. All right. And since that time, have
21 you had contact with the defendant?

22 A. I have.

23 Q. And are you still in a dating relationship with
24 him?

25 A. No.

1 Q. And during the time period that you were with
2 him, did you get to know his family?

3 A. I did.

4 Q. And what's his mother's name?

5 A. Patricia.

6 Q. And did you know his brother?

7 A. I did.

8 Q. And do you know where they lived during that
9 time period?

10 A. Yes.

11 Q. Where was that?

12 A. They lived at Woodbine Apartments.

13 Q. And did you have occasion to visit there --

14 A. I did.

15 Q. -- back during 2015?

16 A. Yes.

17 Q. Do you know a man named Wilfred Akiem Pitts?

18 A. Yes.

19 Q. And how do you know him?

20 A. I know him as he's a friend to Ricky.

21 Q. And did Mr. Pitts spend a lot of time at your
22 home or your apartment?

23 A. He has. Uh-huh.

24 Q. If I can direct your attention to Wednesday,
25 August 12th of 2015, did anything very out of the

1 ordinary happen that Wednesday?

2 A. Law enforcement came to the home.

3 Q. Okay. Were there Lexington County officers?

4 A. Yes.

5 Q. Were there Richland County officers?

6 A. Yes.

7 Q. And were you taken into custody or arrested
8 that day?

9 A. No.

10 Q. If I can show you what's been marked in
11 evidence as State's Exhibit 32, do you recognize the
12 person in that photo?

13 A. I do.

14 Q. And who is that?

15 A. That is Wilfred Pitts.

16 Q. And is that how he looked on the night that the
17 law enforcement came to your apartment?

18 A. Yes.

19 Q. If I can show you State's 31 that's in
20 evidence, do you recognize that person?

21 A. Yes.

22 Q. And who is that?

23 A. That is Ricky Esaw.

24 Q. Is that how he looked on the night of
25 Wednesday, August 12th of 2015?

1 A. Yes.

2 Q. What kind of car did you have back in August of
3 2015?

4 A. I had a black Toyota Corolla.

5 Q. And was the car in your name or someone else's
6 name?

7 A. No. It was in my mother's name.

8 Q. If I can show you State's 14, do you recognize
9 this photo?

10 A. I do.

11 Q. And what is that?

12 A. It's a picture of my car.

13 MS. MARTIN: Your Honor, I think this is the
14 only photo that might not be in evidence. We would
15 move it in.

16 THE COURT: Thank you. State's 14 in evidence.

17 BY MS. MARTIN:

18 Q. If I can show you State's 29, do you recognize
19 that?

20 A. I do.

21 Q. And what is that?

22 A. It's a photograph of back of my car with the
23 license plate showing.

24 Q. If I can show you what's already in evidence as
25 State's 30, do you recognize that photograph?

1 A. I do.

2 Q. What does it show?

3 A. It shows the rear end of my car, and there's a
4 scratch on the gasoline area where the gasoline is.

5 MS. MARTIN: Your Honor, move to publish this
6 picture.

7 THE COURT: Without objection -- well, I
8 believe that was objected to, but it came in over
9 objection.

10 MS. MARTIN: Right.

11 BY MS. MARTIN:

12 Q. You said there's a scratch over the gas tank
13 area.

14 A. Uh-huh.

15 Q. Had there been something on your car?

16 A. There was. There was a USC decal.

17 Q. And do you know how long a USC decal been on
18 your car?

19 A. Probably about two years.

20 Q. And in the photograph, is there a decal?

21 A. It is not.

22 Q. And when did you first realize the decal was
23 gone?

24 A. When I saw the photograph.

25 Q. Do you know where your car is at this time?

1 A. It should be at the sheriff's department.

2 Q. Okay. After that Wednesday night when law
3 enforcement was at your home, did there come a time
4 you were interviewed by the Lexington County
5 Sheriff's Department?

6 A. Yes. I was interviewed on the Monday after the
7 incident occurred.

8 Q. And did you come here?

9 A. I went to the sheriff's department.

10 Q. And were you under arrest?

11 A. No, I was not.

12 Q. And did you answer questions for law
13 enforcement?

14 A. I did.

15 Q. And did you give a written statement to law
16 enforcement?

17 A. Yes, I did.

18 Q. And have you had an opportunity to review that
19 written statement prior to today?

20 A. Yes.

21 Q. On that Monday, August 17th, would that have
22 been before or after Ricky was arrested?

23 A. When what would have been?

24 Q. The statement to law enforcement.

25 A. It was after.

1 Q. And what did you tell law enforcement, if you
2 remember, or you can just tell us, what do you
3 remember about Sunday, August 9th of 2015?

4 A. We were at a party at his mother's house.

5 Q. And where did his mom live again?

6 A. Woodbine Apartments.

7 Q. And what kind of party was it?

8 A. It was a birthday party for his niece.

9 Q. And what time of day was the party?

10 A. It was in the afternoon, early afternoon.

11 Q. And who all went to the party with you?

12 A. It was Ricky, Cain, Jeremy, who is Ricky's son,
13 and myself.

14 Q. And how did y'all get to the party?

15 A. In my car.

16 Q. And was that usual or unusual to be in your
17 vehicle?

18 A. It was usual.

19 Q. And did Ricky have a car at that time?

20 A. No. He had a car, but it was in the shop.

21 Q. And did Ricky drive your car?

22 A. Yes.

23 Q. Often or --

24 A. He drove often.

25 Q. Okay. And was Ricky working back August 9th of

1 2015?

2 A. No, he was not.

3 Q. Do you remember who all was at the birthday
4 party?

5 A. It was Ricky's sister, his brother-in-law, his
6 brother, his mom, his son, Mr. Pitts was there,
7 another girl named Patricia, maybe a couple other
8 people I didn't know.

9 Q. Did you ever know anyone named AJ?

10 A. Yes.

11 Q. Do you know what AJ's real name was?

12 A. No.

13 Q. Did he live in that area, if you know?

14 A. Once upon a time, he did.

15 Q. And was he at that birthday party?

16 A. No, he was not.

17 Q. What were y'all doing at the birthday party --
18 well, let me ask, was it an inside or an outside
19 party or can you tell us about that?

20 A. They had a cookout, so we were outside briefly.
21 We did play cards together for a brief period and
22 then I went inside the home.

23 Q. And why did you go inside?

24 A. I had to do some work for work.

25 Q. And what did that work involve?

1 A. It was dictation of some notes that I had to
2 complete.

3 Q. And do you know if Ricky left the party?

4 A. He -- I know for sure that he did leave on two
5 occasions.

6 Q. Can you tell us about that and how you know
7 this?

8 A. One occasion he went to the store, he retrieved
9 some meat to put on it the grill, and on the second
10 occasion, he went to the neighborhood store --

11 Q. Okay. And --

12 A. -- convenience store.

13 Q. -- did you go with him?

14 A. No.

15 Q. And do you know how -- what vehicle he took?

16 A. Mine.

17 Q. And did he have your keys during this time
18 period?

19 A. My keys were in the kitchen area and they were
20 on the counter.

21 Q. And do you know if he left any other times?

22 A. It's a possibility he could have, but I was not
23 sure because I was inside the home in the living
24 room area.

25 Q. Do you know if King Pitts was with him the two

1 times you know he left?

2 A. Yes, he was.

3 Q. Do you have any idea how long he was gone the
4 two times you're aware he left?

5 A. He maybe was gone maybe about 15 or 20 minutes.

6 Q. And how long did you stay at the party?

7 A. We left about 10:00 p.m.

8 Q. Okay. And at the time y'all left, were you
9 inside or outside before that?

10 A. I was inside.

11 Q. And how long do you think you'd been working on
12 your dictation?

13 A. Probably about three hours because I had quite
14 a few to complete.

15 Q. And do you know what Ricky was doing during
16 that three-hour time period?

17 A. No.

18 Q. After the party, who left together? Who left
19 with you?

20 A. Ricky, Kiem or Mr. Pitts, myself, and Jeremy.

21 Q. Did any other -- how old was Jeremy? Let me
22 ask that.

23 A. He was four.

24 Q. Did he have some kind of carrying bag that
25 y'all kept with him?

1 A. Yes.

2 Q. Can you describe it for us?

3 A. It has a cartoon character on it and it was
4 blue and white.

5 Q. Okay. After you left the party, did anything
6 happen that evening?

7 A. No. I went inside my bedroom, finished my
8 work, and Mr. Pitts and Ricky were in the living
9 room area.

10 Q. And did you go to work Monday?

11 A. Yes.

12 Q. And do you know what was happening during the
13 day when you weren't there?

14 A. No.

15 Q. Do you know if he had your car that day?

16 A. No. I had my car that day.

17 Q. And do you remember anything about that
18 Tuesday? Did anything unusual happen?

19 A. No. I went to work on Tuesday as well.

20 Q. Okay. Did -- are you -- do you recall if
21 Mr. Esaw and Mr. Pitts had haircuts that week?

22 A. They did have haircuts, they did.

23 Q. And direct your attention back to that
24 Wednesday, can you tell us what you did on that
25 Wednesday?

1 A. That Wednesday we went to his cousin's house
2 and --

3 Q. Let me interrupt you. Who is his cousin?

4 A. Sherika.

5 Q. And where did she live?

6 A. She lived off of Bush River Road.

7 Q. Okay. When you say his cousin, Ricky's cousin?

8 A. Yes, Ricky's cousin.

9 Q. Okay. And when y'all went there, what did
10 y'all do?

11 A. We were there for a brief period, then I took
12 Jeremy to EdVenture. And after -- we stayed at
13 EdVenture for a few hours, then I came back to
14 Sherika's home.

15 Q. Okay. And who all was at Sherika's then at
16 that time?

17 A. Who was there?

18 Q. Yes.

19 A. Ricky was there, Mr. Pitts was there, Sherika
20 was there, and I think his cousin -- another one of
21 his cousins was there as well.

22 Q. What's her name?

23 A. Danitra.

24 Q. And had -- where had Mr. Pitts been all during
25 that week, as far as you know?

1 A. He was at our home.

2 Q. Did he spend every night with y'all?

3 A. During that timeframe, yes.

4 Q. Was he basically living with y'all?

5 A. Sometimes he would stay there and then
6 sometimes he was at his brother's, so in between.

7 Q. Do you know what the age difference is between
8 King Pitts and Ricky Esaw?

9 A. Probably about 15 years.

10 Q. And who's older?

11 A. Ricky is.

12 Q. Okay. When did you learn exactly what Ricky
13 Esaw had been charged with?

14 A. When -- when -- after they posted his bond.
15 And that's when I found out that he couldn't get out
16 from Richland County.

17 Q. Okay. And let me ask you this: In your
18 conversations with Ricky, have y'all discussed this
19 murder and armed robbery?

20 A. No.

21 Q. And has he ever admitted to you that he was
22 involved in this?

23 A. No.

24 Q. And if he had admitted this to you, what would
25 you have done?

1 A. That would have been the end of our
2 relationship.

3 Q. Have you ever seen Mr. Esaw with a gun or with
4 bullets?

5 A. I have seen bullets in the home, but I've never
6 seen a gun.

7 Q. And were the bullets yours?

8 A. No.

9 Q. If I can show you what's been marked State's
10 33, do you recognize this disc?

11 A. Yes.

12 Q. And have you listened to what's on the disc?

13 A. Yes.

14 Q. And whose voices are on the disc?

15 A. Ricky and myself.

16 MS. MARTIN: Your Honor, I'd move to put
17 State's 33 in evidence.

18 THE COURT: Over objection of defense counsel,
19 State's 33 is in evidence.

20 MS. MARTIN: Move to publish, Your Honor.

21 THE COURT: ' Yes, ma'am.

22 (State's Exhibit No. 33 published to his Honor
23 and the jury.)

24 BY MS. MARTIN:

25 Q. Ms. Grayson, after hearing that phone call

1 there, what was Ricky asking you to do?

2 A. To get rid of a bag.

3 Q. What kind of bag?

4 A. It was a green and white bag.

5 Q. And did you get rid of this green and white
6 bag?

7 A. No.

8 Q. And what, if anything, did you do after this
9 conversation about the bag?

10 A. I informed his relatives of what he told me and
11 I told him that I wasn't coming to see him anymore.

12 Q. Did you have a conversation with law
13 enforcement about this phone call?

14 A. Yes.

15 Q. Do you remember when that was?

16 A. It was September 2nd.

17 Q. And did you give them any other information
18 about this phone call or any knowledge about the
19 green bag?

20 A. No.

21 Q. Ms. Grayson, why are you here in court today?

22 A. Because I was subpoenaed.

23 Q. Please answer any questions the Defense may
24 have.

25 \ THE COURT: Ms. Fullwood?

1 MS. FULLWOOD: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MS. FULLWOOD:

4 Q. Good morning, Ms. Grayson.

5 A. Good morning.

6 Q. Let's talk about August 9th, the day you went
7 to the party. Okay?

8 A. Okay.

9 Q. What was Ricky wearing that day?

10 A. A white shirt and khaki pants.

11 Q. All right. Was he wearing any jewelry?

12 A. No.

13 Q. Did he normally wear jewelry?

14 A. No. He just owned a watch.

15 Q. Okay. How about Pitts?

16 A. Yes, he was.

17 Q. What kind of jewelry did he wear?

18 A. He had some rings and a bracelet.

19 Q. All right. So, to your knowledge, Ricky left
20 the party two times?

21 A. Yes.

22 Q. Okay. And the first was to go to the grocery
23 store to get meat?

24 A. Yes.

25 Q. All right. And he came back a short time after

1 that?

2 A. Yes.

3 Q. And he had meat; correct?

4 A. Correct.

5 Q. All right. And do you know what time of the
6 day that was?

7 A. It probably was about maybe 4:30, 5:00 --

8 Q. All right.

9 A. -- maybe a little sooner.

10 Q. All right. And the second time he went to the
11 store, what time was that?

12 A. Maybe 6:00.

13 Q. Okay. And did he come back with the items that
14 he was supposed to come back with?

15 A. Yes.

16 Q. Okay. And I guess at that point you were still
17 participating in the party, playing the cards and --

18 A. Yes.

19 Q. -- eating the food?

20 A. Yes.

21 Q. All right. What time did you go inside to
22 finish your work?

23 A. Probably maybe like 7:00, 7:15, 7:30.

24 Q. Okay. You had some dictation to do?

25 A. Yes.

1 Q. All right. And I take it you have a pretty
2 demanding job?

3 A. Yes.

4 Q. And you have to --

5 A. I have to write notes daily.

6 Q. And you have to work even though it's not work
7 hours sometimes?

8 A. Correct.

9 Q. All right. You had a lot of your work notes in
10 the car that you haven't gotten back; right?

11 A. Yes.

12 Q. All right. In fact, they were all over the
13 car?

14 A. Yes.

15 Q. Pretty much?

16 A. Yes.

17 Q. Okay. And your car hadn't been cleaned or
18 washed or vacuumed out or wiped down between the day
19 of the party and the day the police seized it, had
20 it?

21 A. Not to my knowledge.

22 Q. All right. Well, if your stuff is still in
23 there, they probably hadn't; right?

24 A. I mean, it's a possibility. You could have
25 washed the outside and not done anything with the

1 inside.

2 Q. Well, I'm talking about the inside.

3 A. Oh. Well, no. My things were still in the
4 inside.

5 Q. Okay. You didn't notice that your car had been
6 cleaned up; right?

7 A. No.

8 Q. Okay. Now, when you went inside to do your
9 work, you went in the living room?

10 A. Yes.

11 Q. All right. And is that a one- or two-level
12 apartment his mom lives in?

13 A. Two levels.

14 Q. All right. The living room, I would assume, is
15 downstairs?

16 A. It is.

17 Q. Okay. And is the kitchen adjacent to the
18 living room?

19 A. Yes.

20 Q. And your car keys were on the counter?

21 A. Yes.

22 Q. All right. But you don't -- you just don't
23 know whether or not your car was used after that; is
24 that correct?

25 A. Correct, because you can't see from the living

1 room area into the kitchen area.

2 Q. Right. Okay. So Ricky comes and asks you to
3 be ready to leave the party about 10:00?

4 A. Yes.

5 Q. All right. And were his clothes clean?

6 A. They were.

7 Q. Did he have blood on his clothes?

8 A. No.

9 Q. All right. Was he sweaty or --

10 A. No.

11 Q. Okay. Did you see any marks or injuries on
12 him?

13 A. I did not.

14 Q. All right. And you left the party between
15 10:00 and whenever?

16 A. At 10:00.

17 Q. About how long does it take you to get to your
18 house?

19 A. About 20 minutes.

20 Q. A 20-minute drive? And you say Kiem was with
21 you --

22 A. He was.

23 Q. -- from that night until the 12th?

24 A. Yes.

25 Q. Okay. And it was sort of business as usual,

1 no -- nothing unusual about either man's conduct
2 that you noticed?

3 A. No, not that I noticed.

4 Q. Okay.

5 MS. FULLWOOD: I beg the Court's indulgence.
6 Thank you. That's all the questions I have.

7 THE COURT: Ms. Martin, any redirect?

8 MS. MARTIN: No, Your Honor. We'd ask this
9 witness be excused.

10 THE COURT: Ms. Grayson, you may step down and
11 be excused. Thank you for coming.

12 Ms. Martin?

13 MS. MARTIN: Your Honor, we'd call Detective
14 John Moore.

15 THE COURT: Mr. Moore, come and be sworn,
16 please.

17 JOHN MOORE

18 being first duly sworn, testified as follows:

19 THE WITNESS: I do.

20 THE CLERK: Have a seat, sir. Once you're
21 seated, state your full name spelling your last,
22 please.

23 THE WITNESS: John Moore, M-O-O-R-E.

24 DIRECT EXAMINATION

25 BY MS. MARTIN:

1 Q. Detective Moore, where are you employed?

2 A. I'm employed with the Lexington County
3 Sheriff's Office.

4 Q. And how long have you been working here in
5 Lexington County?

6 A. About 14 years.

7 Q. And were you involved in law enforcement before
8 you came to Lexington?

9 A. I was. I worked 20 years in Orangeburg County.

10 Q. So, total, how long in law enforcement?

11 A. This is my 34th year, might be going on my
12 35th, something like that.

13 Q. And what kinds of cases do you work?

14 A. I work major crime cases, anything from vicious
15 assault to homicide.

16 Q. Have you worked drug cases?

17 A. Oh, yes. Yes.

18 Q. Have you worked criminal sexual conduct cases?

19 A. Yes, ma'am, I have.

20 Q. Is there any kind of trial or major case crime
21 that you have not investigated?

22 A. I don't think so.

23 Q. Have you been involved in many trials?

24 A. Quite a few.

25 Q. Okay. And do you remember back in August of

1 2015 the homicide or the death of Hector Vasquez at
2 Rolling Meadows?

3 A. Yes, ma'am, I do.

4 Q. Can you tell us how you first got involved in
5 investigating this particular case?

6 A. Yes, ma'am. That -- the 10th, which was a
7 Monday morning, I was coming -- worked the --
8 started the normal day of work. That week prior, I
9 was on vacation, so I wasn't at work. And Monday,
10 when I came in, doing my normal thing, getting on
11 the computer, one of the supervisors told me that
12 there was a homicide last night and for you to sit
13 in on it.

14 Q. And who did you meet with to talk about the
15 case?

16 A. I met with most of the supervisors at the
17 sheriff's office and Detective Rawl who was on the
18 case that night. He was still coming in to brief
19 the detective major crime unit. When you have a
20 homicide or a major crime the night before, it's
21 kind of like an all-hands-on-deck; we get all the
22 detectives together and brief -- get briefed on it.

23 Q. Okay. So to be clear, you had not gone to the
24 scene that evening?

25 A. No, ma'am. I was still scheduled on vacation

1 that day.

2 Q. Okay. When you first got with Detective Rawl,
3 what did y'all do?

4 A. When I first found out that I was going to be
5 appointed lead on this case, I wanted to know
6 everything about the scene, what he collected,
7 photographs any evidence of the case, the
8 photographs of the scenery, and I did talk to Keith
9 Sprinkle who is our CSI guy, crime scene.
10 investigator, asked him did he have anything, what
11 did he see with the case.

12 I wanted to know all about it before we got
13 started. And, obviously, Detective Rawl was out
14 that whole night, so he was exhausted, so I wanted
15 to get him home as soon as I could get all his
16 information from him.

17 Q. Do you remember when you first met Franklin and
18 Christy?

19 A. I do.

20 Q. When was that?

21 A. That was that Monday. I wanted to go and
22 interview them as well.

23 Q. And at that time did you learn anything new
24 from Franklin or Christy?

25 A. I did. The one thing I've learned with

1 Franklin is that he told me the perpetrators, one of
2 them that he realized was exactly he knew he fought
3 with and he kicked him and he hit him and he was
4 fighting with his father.

5 I said, give me a general description of him.
6 And he said, about my father's height. And the
7 way -- and that he could recognize him because of
8 his face features of him and that he has -- he was
9 on him, he was fighting with him, and trying to get
10 him off of his dad.

11 Q. And what about Christy?

12 A. Ms. Vasquez, she was very upset, very
13 distraught. Every time I had a meeting with her,
14 she was just crying, which rightfully so, she was
15 involved in a horrible scene. And some people are
16 strong and some people break down. Most of the time
17 when I came to her, she cried and she was very
18 upset.

19 Q. If I can show you what's been marked as State's
20 2 and 3 that are in evidence, if you can recognize
21 these documents.

22 A. Yes, ma'am.

23 Q. Can you tell us what those documents -- what
24 was the purpose of those?

25 A. These are photograph of lineup that I showed

1 both Christy and Franklin.

2 Q. And do they -- were they able to identify
3 anyone in those lineups?

4 A. No, ma'am, they was not.

5 Q. Okay. After they had looked at those lineups,
6 do you remember what was the next investigative tool
7 that y'all used?

8 A. Well, we used several tools and stuff in that
9 nature, because I'm running different ways. Let me
10 give you an example. We was collecting the
11 photographs, I was making case jackets. I got --
12 since it was a Hispanic family and the community of
13 Hispanics, we put out a poster that I got with our
14 CAT team, which is a community-organized team, and
15 put it in Spanish for them to have a meeting with
16 that neighborhood; anybody seen anything, hear
17 anything, say something. And that's exactly what we
18 did at that point.

19 I also left there and we canvassed -- went back
20 to the crime scene and canvassed the neighborhood.
21 It's daylight, I want to see the scene, I want to
22 talk to the people in the neighborhood, I want to
23 knock on doors, and I want to see if anybody has
24 seen anything, knew anything, that would say
25 something personally to me.

1 Q. Did you learn anything through that?

2 A. No, ma'am. Most people didn't answer the door,
3 didn't see anything, if I talked to them. So...

4 Q. And do you recall how Barry Sowards became
5 involved in this investigation?

6 A. That week that I asked Barry -- I asked for
7 Barry because supervisors asked me to take the lead
8 on it. And all of our detectives -- we had a busy
9 week that week, and all of them was out and running
10 on things, so we was actually shorthanded.

11 I asked if I could get Barry and the fugitive
12 team to run with me on it along with Detective Rawl
13 and anybody else I could pick up to help do
14 odd-and-end things because we're doing so many
15 things at one time, trying to jump ahead of the game
16 on this.

17 Q. Do you remember what was the first real lead
18 that came to you?

19 A. Detective Sowards called me Wednesday morning
20 early and said he had received a lead from
21 Crimestoppers.

22 Q. And based on that lead, what did y'all do?

23 A. Just like with leads we get from Crimestoppers
24 on every case, we got to work it. We work it to see
25 if it will pan out. Some of them pan out, some of

1 them don't. We started working this lead right
2 away.

3 Q. And based on that, what, if anything, did you
4 learn?

5 A. I learned of the suspects' names.

6 Q. Okay. And what were the names?

7 A. The names that was on the lead was King Pitts,
8 slash, Ricky Esaw.

9 Q. Okay. And did you have anything to do with any
10 Facebook investigation?

11 A. Only thing I -- I got a hold of Detective
12 Creech and I said please start me search warrants
13 for this for the information on Facebook on each and
14 every one of these individuals. Also, I got
15 searching their names with our Intel unit, which is
16 Sergeant Travis from Intel.

17 Q. And after doing that, did you and any other
18 officers make a trip?

19 A. We did. We made a trip to Newberry County.

20 Q. Who went to Newberry?

21 A. That day, it was Barry Sowards and Detective
22 Rawl and I.

23 Q. And why were you going to Newberry?

24 A. We was trying to locate Wilfred Akiem Pitts,
25 known as King Pitts.

1 Q. And did you find Mr. Pitts there in Newberry?

2 A. No.

3 Q. Did you meet anybody else there in Newberry?

4 A. We went to his address that's located on his
5 South Carolina driver's license, which was his
6 mother's house.

7 Q. And did y'all meet and talk to her?

8 A. We did.

9 Q. Did you leave your contact information there?

10 A. I gave her all my information. She said she
11 hadn't seen him, and I gave her my name and number
12 for her to get in contact with him to get in contact
13 with me.

14 Q. After Newberry, what was the next area you
15 investigated?

16 A. After Newberry, I came back to the office.
17 Again, I met with CSI Sprinkle to try to get this
18 processed, get the evidence processed, and Detective
19 Sowards was headed to the second address on there
20 which was the apartment complex in West Columbia,
21 which would be Esaw's address.

22 Q. Okay. And so in West Columbia, do you remember
23 where y'all went?

24 A. Well, I made contact with Detective Sprinkle,
25 we got that done, and I met with Barry Sowards and

1 Detective Rawl down at Esaw's mother's house.

2 Q. And that's in West Columbia?

3 A. That's in West Columbia, yeah, Woodbine
4 Apartments.

5 Q. Did y'all find Ricky Esaw there?

6 A. When we went to the house, we found Chris Esaw.
7 When asked him his name at first when he was coming
8 out of the house, he said his name was Ricky.

9 Q. And that's his brother that's been here this
10 week?

11 A. Yes, ma'am.

12 Q. Okay. And did you meet anyone else in Ricky's
13 family?

14 A. I actually went with Barry Sowards and we
15 talked to who we later found out it was Chris
16 instead of Ricky. We went ahead and cuffed and
17 detained him and was trying to get all of his
18 identifications to run him. That's what I was
19 doing. Detective Sowards left and went and talked
20 to the mother.

21 Q. Okay. And did y'all anywhere else to look for,
22 Ricky after meeting with his mom and brother?

23 A. Yes. We had a girlfriend's name, Net.

24 Q. Okay. And what was next in your investigation?

25 A. When we started looking, we started trying to

1 research Ricky with Net. And we found out that the
2 apartment complex, which is up in Columbia, we went
3 to that apartment complex, which is -- I think they
4 called it -- it was Palmetto Point, that Ricky Esaw
5 had worked or did some work there. And we contacted
6 the maintenance person that -- there that would know
7 him.

8 Q. Okay. And based on conversations there, did
9 you learn any new information?

10 A. We did. We learned that Ricky was driving a
11 black Toyota Corolla and we -- he said that he moved
12 somewhere into the -- moved out of the apartment
13 complex.

14 Q. And did you find out anything else about Net?

15 A. We found out her Net's full name.

16 Q. And after you found out Net's full name, did
17 y'all search for her cars --

18 MR. CHEHOSKI: Objection; leading, Your Honor.

19 THE COURT: Yes, sir?

20 MR. CHEHOSKI: Objection to leading questions,
21 Your Honor.

22 THE COURT: It is leading, but I think it's
23 moving -- 611 allows leading questions in areas like
24 this just to move things along. I'll note the
25 objection, but I'll allow it under Rule 611. Thank

1 you.

2 MR. CHEHOSKI: Thank you.

3 A. Barry Sowards started doing a search of the
4 driver's license with her. And we got her license
5 and it showed a new apartment complex that she was
6 living in and it was the Crossbow Apartment Complex.
7 We went to that address and found out that she had
8 just left there. The management told us she had
9 just left. We did further research on it and found
10 that she had put her name on a power bill at Water
11 Edge Apartment Complex.

12 Q. And is that in Lexington County or Richland
13 County?

14 A. That's in Richland County.

15 Q. And because it was in Richland County, what, if
16 anything, did y'all do?

17 A. We notified Richland County to come with us on
18 that. We don't like crossing jurisdiction lines
19 unless we have somebody with us. It's just common
20 practice.

21 Q. And where are we in the timeline as far as what
22 day?

23 A. We're at that Wednesday the 12th. We started
24 early morning Wednesday the 12th. And about that
25 time, we was probably late afternoon.

1 Q. Okay. And did there come an occasion that you
2 actually did meet Ricky Esaw?

3 A. I did.

4 Q. Can you tell us about that, please?

5 A. Once we got to the Water Edge Apartment Complex
6 and found that -- her address, we circled -- and let
7 me back up just a second. I drive an unmarked
8 Crown, which I consider marked. It's an unmarked
9 Crown though. Detective Sergeant Barry Sowards, who
10 was working for the fugitives and he's got an
11 unmarked, so we send Barry to circle the parking lot
12 looking for any Toyota that's black in her apartment
13 complex. And we came up with her car, and it came
14 back registered to her mother, that was parked right
15 at her apartment complex, her apartment that she was
16 staying in.

17 Q. And after her car -- Net's car was located
18 there, did you see Ricky Esaw?

19 A. I did.

20 Q. How did y'all come upon Mr. Esaw?

21 A. The plan on this one was that we was going to
22 surround the building and I was going to maintain
23 the car. I didn't want the car to leave. Barry
24 Sowards led the Richland County guys up to the
25 house, and they encountered Ricky Esaw at the door.

1 Q. If I can show you State's 29, is that the car
2 you're talking about?

3 A. Yes, ma'am. This is the car that I maintained
4 control of from the time we went to get to the
5 house.

6 Q. When you first met Mr. Esaw, who was with him?

7 A. We had Mr. Esaw, Pitts was there, and Net and
8 Johnson girl -- I just forget her first name. I
9 know we call her Trell, but it's something else.

10 Q. And were photographs taken of Ricky Esaw and
11 King Pitts that evening?

12 A. It was.

13 Q. If I can show you State's 32, do you recognize
14 that photograph?

15 A. This is Wilfred Akiem Pitts or King Pitts.

16 Q. And is that how he looked that evening?

17 A. That's how he looked.

18 Q. If I can show you State's 31, do you recognize
19 that?

20 A. That is the defendant, Ricky Esaw.

21 Q. Is there anything unusual or anything to note
22 in that photograph?

23 A. Just looks like he's got some swelling to me on
24 his eye, his left eye.

25 Q. Back to the car, do you know what was done with

1 Net's car that was over in Richland County at that
2 time?

3 A. Yes; I had it impounded.

4 Q. And what does that mean?

5 A. We took custody of the car, towed it from her
6 residence to the sheriff's office impoundment lot.
7 Once it was impound, we put it inside -- they got a
8 garage there, inside the impoundment garage. I
9 wanted to maintain the custody of that vehicle in a
10 locked and secured place.

11 Q. And was that car ever searched?

12 A. Yes, it was.

13 Q. Did y'all find anything of value related to
14 this crime?

15 A. Nothing related to the crime.

16 Q. So on that Wednesday night, do you recall what
17 was done with Mr. Pitts?

18 A. Mr. Pitts was my main concern on this night.
19 And I got Mr. Pitts away from the rest of the crowd.
20 Barry Sowards and them was in what I call
21 SWAT-outfit-type gear and Detective Andaloro and
22 myself was the only two guys in suits. And I
23 maintained Pitts from their custody into mine and
24 Detective Andaloro's custody at my car.

25 Q. Was he under arrest at that time?

1 A. Actually, no; I took the handcuffs off of him.

2 Q. And did you tell him anything about why y'all
3 were speaking with him?

4 A. We was telling him we was interviewing him for
5 a murder-robbery.

6 Q. And did you tell him anything else about the
7 particulars of the crime?

8 A. We told him that we had a lead on him and that
9 we was here to investigate his activity on this date
10 of the crime.

11 Q. Did you tell had him about any evidence
12 collected from the crime scene where the homicide
13 was?

14 A. After we started and got into it, yes.

15 Q. And did you offer to take a buccal swab from
16 the defendant Pitts?

17 A. My goal was to get a swab him from.

18 Q. And was that done?

19 A. And it was.

20 Q. And was there a match to Mr. Pitts and the
21 bracelet.

22 A. It was later a match from the bracelet on the
23 scene, positive match DNA to King Pitts.

24 Q. And any other DNA matches to Mr. Pitts?

25 A. Yes. One of the victims, Rafael, that Pitts

1 took his phone and wallet, the phone was found right
2 outside the trailer park where it was tossed out the
3 window. And the DNA came back to a positive hit on
4 Wilfred Akiem Pitts.

5 Q. If I can show you State's 11.

6 A. Yes, ma'am.

7 Q. Is this the phone you're talking about?

8 A. It's absolutely.

9 Q. After -- about how long do you think Mr. Pitts
10 was with you and Detective Andaloro?

11 A. He was with us probably four hours.

12 Q. And in your 34 years of investigating crimes
13 and law enforcement experience, is it common or
14 uncommon for defendants to lie when first confronted
15 by law enforcement?

16 A. Yeah. It's -- they'll change or change up with
17 something on a statement, they don't give you half
18 the truth. I mean, you got to basically work it out
19 of them.

20 Q. At some points -- at some point did y'all leave
21 the scene there in Richland County?

22 A. We did.

23 Q. And where did y'all go?

24 A. Went back to headquarters to the interview room
25 at Lexington County Sheriff's Office.

1 Q. Okay. And what was the purpose of that?

2 A. We had been out on scene for a while, and we
3 just wanted to get him back to sit down and have
4 something to eat, a drink, and continue with our
5 conversation.

6 Q. And what was -- based on the conversation that
7 you and Andaloro were having with Mr. Pitts, what
8 was Mr. Sowards doing, if you know?

9 A. Mr. Pitts gave me his events of that afternoon
10 on Sunday of the homicide, and I followed up on his
11 events by calling Detective Sowards to follow his
12 alibi, and we went to his alibi witnesses to
13 confront them.

14 Q. And did Mr. Pitts' alibi check out?

15 A. No, it did not check out. I don't believe
16 that -- because as late at night it was, he thought
17 we wouldn't go and check -- wake people up and check
18 on his alibi, and we did.

19 Q. And are you aware if Mr. Pitts' cooperation
20 changed?

21 A. He did. Once we checked out his alibi and
22 found out that he was absolutely not telling the
23 truth about this, his whole demeanor changed.

24 Q. Was there a decision made to place him under
25 arrest? And I'm talking about Mr. Pitts.

1 A. Yes.

2 Q. And what was he arrested for?

3 A. Obstruction of justice.

4 Q. And what was the basis for that?

5 A. Giving a false statement to law enforcement.

6 Q. And any other conversations with Mr. Pitts that
7 evening that led you out of the county again?

8 A. Yes.

9 Q. Can you tell us about that?

10 A. He made the statement to us that he was there
11 and said that Mr. Esaw was there with him and that
12 if I -- if he could talk to his mother, he'd feel
13 better and want to continue on.

14 Q. And after he asked for his mom, what did you
15 do?

16 A. It was real early in the morning at that time,
17 I'm thinking 6:00 -- 5:30, 6:00 a.m. And I went out
18 and discussed this with Detective Sowards and I said
19 I think we need to get his mother.

20 Q. Is that common practice or uncommon practice?

21 A. I normally don't go get somebody's mother to
22 come and talk to them. But I felt at this time he
23 wanted his mother, he trusts his mother's decision,
24 and he was involved in a violent crime. I wanted --
25 if it made him feel better, I wanted him to have his

1 mother to talk to.

2 Q. And did y'all go get his mom?

3 A. I did.

4 Q. Okay. And do you remember who was with you?

5 A. Went to get his mother that morning. I know it
6 was Creech and I.

7 Q. Okay. And --

8 A. Detective Creech. I'm sorry.

9 Q. -- did you get -- did you allow his mom to meet
10 with Mr. Pitts?

11 A. I allowed his mom and Mr. Pitts to talk in a
12 private room.

13 Q. And after that conversation between them, did
14 you take any other statements from Mr. Pitts at that
15 time?

16 A. His mother came out -- and I already explained
17 to the mother that he was involved in something that
18 night of August 9th and I wanted him to tell her
19 what his involvement is. And when she came out of
20 that room, she looked at me and said, Detective
21 Moore, I think my son needs a lawyer.

22 Q. And did you cease the interview at that time?

23 A. I stopped the interview at that time.

24 Q. All right. After this, I think that brings us
25 maybe to Thursday. Do you recall if you had another

1 occasion to meet with Christy and Franklin?

2 A. I did.

3 Q. Can you tell us what was the purpose of this
4 meeting?

5 A. I had our Intel unit to do up a six-man lineup
6 photograph of Ricky Esaw and Wilfred Akiem Pitts,
7 and threw me up a lineup and I was going to go back
8 to the family and show them that lineup that
9 Thursday morning.

10 Q. Okay. Can you tell us how a lineup procedure
11 is done and how it was done in this case?

12 A. Yes. Our procedure with lineups is we do a
13 six-man lineup. And I think we already showed it to
14 the jury, it's of -- this particular six-man lineup
15 of Esaw, it's a black male about his size in height
16 and weight, about the haircut in parts and beard.
17 And we do them in black and white so there's no
18 color or anything that would change up of anybody.

19 We produce it. And this particular lineup, I
20 knew I wanted to be absolutely correct, so one of
21 the supervisors at the sheriff's office came in
22 Intel and asked me how the case was going. I told
23 him doing pretty good, I wanted him to look at the
24 lineup, and with his eyes is there any problems with
25 the lineup, and he said, no, everything looked good

1 with both sets of lineups.

2 Q. And when you went to meet Christy and Franklin,
3 do you remember where y'all were?

4 A. We went to Aiken County on Wagon Wheel Road --
5 School -- Wagon Wheel Road. And I believe it's the
6 uncle's house.

7 Q. And who was with you?

8 A. That particular morning it was Detective
9 Creech, myself, and Barry Sowards.

10 Q. Okay.

11 A. And Detective Creech -- I'd like to make out a
12 point here: Detective Creech went with us. We
13 carried the mama back, Pitts' mother back, who lived
14 in Newberry, and then we went over to the family's
15 house.

16 Q. Okay. And when you met with Christy and
17 Franklin, do you remember who showed the lineups
18 first to?

19 A. Yes. I showed the lineup first to Franklin.

20 Q. Okay. And is there some reason you picked
21 Franklin over Christy or --

22 A. No. No.

23 Q. And what instructions did you give Franklin?

24 A. Usually, I try to keep everything routine. I
25 try to do everything routine when it comes to

1 showing photo lineups, taking statements.
2 Everything I do is routine so I know when I come to
3 court or if I have to tell somebody, it's exactly
4 right and the same every time.

5 On victims, I like to talk to them just for a
6 minute. And then before I show them the lineup, I
7 want to tell them a couple things, is take your
8 time, close your eyes, picture the incident, and
9 then when you're ready, open them and point at -- or
10 see the lineup, and that your defendant may -- or
11 suspect may or may not be on this lineup.

12 Q. Are those the instructions you gave Franklin?

13 A. I did.

14 Q. If I can show you State's 4 that's in evidence,
15 do you recognize that?

16 A. I do. This is the lineup of Ricky Esaw.

17 Q. And is that -- was that shown to Franklin?

18 A. It was.

19 Q. And did Franklin pick anyone?

20 A. Once he opened his eyes, he immediately went to
21 number 2 and picked Ricky Esaw.

22 Q. And did he sign in writing on that?

23 A. Signed it, dated it, and he turned it back to
24 me.

25 Q. If I can show you State's 5, do you recognize

1 that?

2 A. I do.

3 Q. And what is that?

4 A. This is the lineup with King Pitts in it. And
5 this lineup is a little bit -- we got bigger males
6 in it because he was a lot bigger than Esaw.

7 Q. And did Franklin pick anyone out of that
8 lineup?

9 A. He could not recognize anybody out of that
10 lineup.

11 Q. And if I can show you State's 9, do you
12 recognize that?

13 A. Yes.

14 Q. What is that?

15 A. Another picture of lineup with Ricky Esaw in it
16 that we showed Christy, the mom.

17 MS. MARTIN: And, Your Honor, I think we've
18 neglected to put this is, but we would put in
19 State's 9.

20 THE COURT: Any objection?

21 MR. CHEHOSKI: Your Honor, if it's -- subject
22 to prior objections.

23 THE COURT: Yes. I understand. Subject to
24 prior objections, State's 9 in evidence.

25 (State's Exhibit No. 9 admitted into evidence.)

1 BY MS. MARTIN:

2 Q. And was Christy ever able to pick anyone out?

3 A. No. She wasn't sure.

4 Q. And what was her demeanor?

5 A. Once again, every time I met with Christy, she
6 was just upset, and rightfully so. She just lost
7 her husband and she has four children --

8 MR. CHEHOSKI: Objection to the commentary.

9 THE COURT: I'll sustain the objection. The
10 question was --

11 THE WITNESS: Okay.

12 THE COURT: -- her demeanor. He said she was
13 upset, that answers the question.

14 MS. MARTIN: Yes. Thank you.

15 BY MS. MARTIN:

16 Q. Was there any interaction between Christy and
17 Franklin during their each viewing of the lineup?

18 A. No. I separated them both because I didn't
19 want one to overhear the other one or overhear the
20 instructions I was giving.

21 Q. And at any point did you tell the family any
22 other information in regards to people being in
23 custody?

24 A. After we done our photo lineup and the family
25 was coming back out -- because I made Christy go in

1 the house during Franklin's lineup and we done it
2 outside underneath the carport and then vice versa.
3 Once they came back out, I told them -- in fact,
4 they told me that -- I believe that that day, if my
5 memory served me correct, that they was burying
6 their father and that they was getting ready to go.

7 And I said, well, I have both of your suspects
8 in custody and I was getting warrants on them for
9 the murder of their dad and their husband.

10 Q. Okay. Is there a reason you told them that at
11 that particular time?

12 A. Because they was -- on lineups, when we show
13 lineup, it's kind of a policy -- it is a policy that
14 we don't give them any information that they do
15 right, wrong, or indifferent. And the reason that
16 we do that is because we don't want victims going to
17 hunt their perpetrator or looking for their guy or
18 might even know their guy.

19 But this particular case, I already have them
20 in jail, and because they're victims of violent
21 crime, I had to tell them that their perpetrators
22 are locked up and that we're getting warrants on
23 them and when is the bond hearing, because they have
24 the right to attend bond hearings on these people.

25 Q. On Friday -- if I can direct your attention to

1 Friday, August 14th, what, in regards to this case,
2 was done on that day?

3 A. On August 14th, the warrants was being served
4 on Mr. Pitts and Mr. Esaw.

5 Q. Okay. And when you say warrants served on
6 Mr. Esaw, were you involved in that process?

7 A. I was.

8 Q. And was anyone else with you during the --

9 A. Detective Sowards was with me.

10 Q. And we've heard some talk about two different
11 sets of warrants. Are you aware of that situation?

12 A. I am. I am.

13 Q. And is there an explanation?

14 A. Yes, ma'am, there is.

15 Q. Can you tell us why Mr. Esaw had two different
16 sets of warrants?

17 A. When the first original warrants was signed on
18 both Esaw and Pitts, they was served on them at the
19 jail. And the jail runs the original copies to the
20 magistrate's office and magistrate's office, once
21 they're done with them, transmit them to the clerk
22 of court here in this courthouse and sends the hard
23 copies or the original through mail, whether it's
24 inhouse mail or through the US Postal Office, I'm
25 not sure which way. And Clerk of Court notified us

1 that they did not receive those warrants -- those
2 particular warrants.

3 Q. So were an additional set of warrants served on
4 Mr. Esaw sometime in September?

5 A. It was. And I made up the same exact warrant
6 for each charge and we served those, the second set,
7 on both him and Pitts.

8 Q. Okay. On that Friday, where were warrants
9 served on Mr. Esaw?

10 A. On Mr. Esaw, the warrants were served at the
11 jail, Lexington County.

12 Q. Okay. And how are warrants served?

13 A. Warrants are served basically that we identify
14 ourselves to whoever we're serving the warrants to, we
15 make sure that the identifier is on the warrants,
16 name, date of birth, address, social security
17 number, is all the same --

18 Q. And --

19 A. -- then we read the top charge, what's on the
20 warrant at the top, and then the body of the
21 warrant, the affidavit. We read the affidavit to
22 them.

23 Q. And was this done in your presence with
24 Mr. Esaw?

25 A. It was.

1 Q. And what, if any, reaction did Mr. Esaw have?

2 A. Mr. Esaw was very upset during --

3 MR. CHEHOSKI: Renewing our prior objections.

4 THE COURT: Okay. I'll overrule the objection
5 to the extent he talks about Mr. Esaw's response in
6 this particular case. I think we've dealt with this
7 in several other hearings.

8 MS. MARTIN: Yes, sir.

9 THE COURT: So I'll allow that. Go ahead.

10 MS. MARTIN: Thank you.

11 BY MS. MARTIN:

12 Q. What was Mr. Esaw saying, if anything?

13 A. Like I said, he would not calm down to get the
14 warrants read to him. Had finally calmed him down,
15 and once we got the warrants read to him, he said
16 that wasn't me, I was just the driver, hell no you
17 ain't got nothing on me, okay, at the best, I may be
18 an accessory, I'm not going to let them put this rap
19 on me.

20 Q. Was that in response to any questioning by you
21 and Detective Sowards?

22 A. No.

23 Q. And after the warrants were read, what happened
24 next?

25 A. I asked him did he want to tell his side of the

1 story.

2 Q. And what was his response?

3 A. Yes, I do.

4 Q. And based on that, what did you do?

5 A. We had to sign him out of the jail, so I got
6 Detective Sowards to start the process of signing
7 him out and his process of handcuffing him,
8 restraining him. And I called Detective Creech to
9 get me an interview room so we can have an interview
10 room to take him to.

11 Q. And where is the interview room located?

12 A. It's at the sheriff's office, which is -- the
13 jail and the sheriff's office is connected;
14 sheriff's office at front, jail at rear.

15 Q. And was Detective Sowards involved in the
16 interview process in any way?

17 A. No. He helped me transport him. With that
18 type of charges, we try to run two detectives to
19 transport him to the interview room.

20 Q. And --

21 A. And I asked Adam Creech, Detective Creech, to
22 set up with me in the interview room.

23 Q. Okay. The interview room at the sheriff's
24 department is it formatted for videotaping or
25 audiotaping?

1 A. No, ma'am, it's not set up for that.

2 Q. And was any interview with Mr. Esaw videotaped
3 or audiotaped?

4 A. No, ma'am.

5 Q. Okay. And whose decision was that to not do
6 that?

7 A. The decision normally goes with the detective
8 that's running the case, which would have been me.
9 And I normally have a recorder that I put in on the
10 table for this, but since I was off on vacation and
11 I was running, I come back to that recorder at my
12 desk and it's not charged, not working.

13 Q. Was that recorder sheriff's department or
14 personal?

15 A. That's my personal recorder.

16 Q. Okay. And what was the first thing you did in
17 the interview room?

18 A. It's basically the same thing I do to every
19 suspect that I interview, is I read a statement of
20 rights to them. And, basically, I get their name,
21 identifying myself to them, getting their address,
22 their cell phone number, their age, whether they can
23 read and write. And some people think that's silly,
24 why would you have something read or write on, but
25 you want to know their education level and if they

1 can read and write. And then I read them their
2 Miranda rights.

3 Q. If I may approach you and show you State's 1
4 that's been marked for identification.

5 A. Yes, ma'am.

6 Q. Do you recognize this?

7 A. Yes, ma'am. This is Ricky Lamont Esaw's
8 statement that he gave to me on August 14th.

9 Q. Does it contain the rights that you read to
10 him?

11 A. It does.

12 Q. And how do you know that you read them off that
13 sheet?

14 A. Right here where it gives the Miranda rights --

15 MR. CHEHOSKI: Objection, Your Honor; this is
16 not in evidence.

17 BY MS. MARTIN:

18 Q. Right. Don't hold it up yet.

19 THE COURT: Thank you.

20 A. Okay. When I give him his Miranda -- excuse
21 me. When I give him his Miranda rights, I go with,
22 number 1, you have the right to remain silent. And
23 there's a blank next to it and he initials it and I
24 sign it at the number 1. That's standard practice
25 what I do. Other detectives might not do that, but

1 I always want to know that I read him his rights.

2 Two, anything I say can and will be used
3 against you in a court of law. Do you understand
4 that, Mr. Esaw? He initialed it. I initialed by 2.
5 Three, you have the right to talk to a lawyer for
6 advice before any questions and have him or her
7 present with you during any questions. Do you
8 understand that? He indicated yes. I signed beside
9 him.

10 If you have no money for lawyer fees, the court
11 will appoint one to represent you without cost. Do
12 you understand that? He did, and I initialed. If I
13 decide to answer questions at any time now without a
14 lawyer present, I will still have the right to stop
15 answering questions at any time. I also have the
16 right to stop answering questions at any time until
17 I talk to a lawyer. Do you understand that? He did
18 and did.

19 I said, at this time, after reading your
20 statement of my rights, do you understand what my
21 rights are? He did. I said, would you like to make
22 a statement to me? At this point, he's going to
23 tell me yes or no. I put the paper down and I put
24 my pen down, and I sit back and I want to hear what
25 he's got to say.

1 Q. And did he appear to understand the rights as
2 you read them to him?

3 A. Oh, yes, ma'am.

4 Q. And did he appear to be impaired in any way on
5 that Friday?

6 A. No, ma'am. That was two days after
7 incarceration. No.

8 Q. And did he indicate that he wanted to talk?

9 A. He wanted to tell his side of the story.

10 Q. Did he ever ask for an attorney like Mr. Pitts?

11 A. No.

12 Q. Were you ever alone with him in the interview
13 room?

14 A. No. Every interview, no matter who it is, we
15 always have two major crime detectives.

16 Q. And who was the one in there with y'all?

17 A. Detective Adam Creech.

18 Q. Okay. Did you make any threats to him?

19 A. No.

20 Q. Did you make threats to his family or loved
21 ones?

22 A. No.

23 Q. Did you promise him any leniency if he would
24 give a statement?

25 A. None.

1 Q. And did he, in fact, give a statement to you?

2 A. He did.

3 Q. And did he give an oral statement or a written
4 statement?

5 A. He gave both, oral and written.

6 Q. Can you tell us about his oral statement?

7 A. His oral statement is that he was telling us
8 about going to the party and that he met up with AJ
9 there at the party and Pitts, and that AJ wanted to
10 go rob, what he said, some Mexicans over at a
11 trailer park in West Columbia.

12 Q. Okay. Do you recall anything else he may have
13 said?

14 A. That -- during his oral statement, he said that
15 AJ sold marijuana to Mexicans and the Mexicans had
16 money and he wanted to go get them with their money.

17 Q. Did he express any concern that he may be
18 recognized?

19 A. He said he was recognized by the street lamp
20 that night.

21 Q. After he made an oral statement, did he give
22 any other statements?

23 A. He just gave the oral statement that he was the
24 driver and he gave me a written statement to that
25 fact that he was driving the car.

1 Q. Okay. And on State's 1 that's for ID only, is
2 that a record of the written statement Mr. Esaw
3 gave?

4 A. It is.

5 Q. And how many pages is it?

6 A. It is 1 through 7, I believe.

7 MS. MARTIN: Your Honor, at this point, we'd
8 move State's 1 into evidence.

9 THE COURT: Subject to previous objection,
10 State's 1 in evidence.

11 MS. MARTIN: I beg the Court's indulgence one
12 moment.

13 Your Honor, may we approach?

14 THE COURT: Yes, ma'am.

15 (Sidebar conference.)

16 THE COURT: Madam Court Reporter, please note a
17 sidebar and we'll memorialize our conversation
18 outside of the presence of the jury.

19 (State's Exhibit No. 34 marked for
20 identification.)

21 MS. MARTIN: Your Honor, may I approach the
22 witness?

23 THE COURT: Yes, ma'am.

24 BY MS. MARTIN:

25 Q. If I can show you State's 34, can you take a

1 moment, Detective Moore, and flip through this
2 chart?

3 THE COURT: This is State's 34 for ID only;
4 right?

5 MS. MARTIN: ID only, yes, sir.

6 THE COURT: All right.

7 BY MS. MARTIN:

8 Q. What is this document?

9 A. This is Ricky Lamont Esaw, his statement.

10 Q. And is it similar or dissimilar to State's 1
11 that is now in evidence?

12 A. It's exact.

13 MS. MARTIN: Your Honor, I'd ask that this
14 witness be allowed to come down.

15 THE COURT: All right. This is, of course,
16 subject to objection by defense counsel. And,
17 Detective Moore, step down and if you'll stand on
18 the other side of the easel and face in the
19 direction of the court reporter when you're
20 testifying about that, please.

21 THE WITNESS: Okay.

22 THE COURT: Thank you.

23 BY MS. MARTIN:

24 Q. If you could, explain to us the top part of
25 that document.

1 A. This is the date -- the Lexington County
2 Sheriff's Department Statement Form. This is that
3 date, the place is the Lexington County Sheriff's
4 Department, and the time of 12:56 p.m.

5 Q. And are your initials on that statement?

6 A. They are.

7 Q. And where are they? If you could, point them
8 out to us.

9 A. Right here. (Indicating)

10 Q. And that's a laser pointer?

11 A. Oh, I'm sorry. There you go.

12 Q. And did Ricky Esaw write on that document?

13 A. He did. That's his initials and that's his
14 writing. (Indicating)

15 Q. Detective Moore, can you please tell us or read
16 to us the that is statement written there -- and
17 who's writing is that, first of all?

18 A. This is Ricky Esaw's writing.

19 Q. Okay.

20 A. And he said: They came to get me from my mom's
21 house telling me they need a driver, so I drove the
22 Nissan black headed to Rolling Meadows because they
23 had some Mexicans to get. So I drive them down
24 there and when they got out there, they pulled their
25 guns out on the Mexican. Pitts was fighting with

1 one, then he shot him. When they got into the car,
2 AJ asked him why did he shoot him. He said that he
3 was coming at the gun, so he shot him. When Pitts
4 did that, he came back to West Columbia and I went
5 back to my mom's house. This is page 2 of the
6 statement.

7 Q. What are the Q and As?

8 A. Q is the question I'm writing.

9 Q. And what is the A?

10 A. A is his answer --

11 Q. That he --

12 A. -- with his initials.

13 Q. Okay.

14 A. Each one is initialed by him.

15 Q. Can you read it to us, please.

16 A. Sure.

17 Question: Who is AJ?

18 Answer: I just know him -- well, I just know
19 he because in West Columbia at his girl's house
20 three doors down from the last house was shot up
21 before.

22 What he was telling me was AJ's house was shot
23 up before and his door had bullet holes in it.

24 Question: What type of vehicle does AJ drive?

25 Answer: Black Nissan Sentra.

1 Question: Who came up with the plan to rob the
2 Mexicans?

3 Answer: AJ because he just sold them some weed
4 and he came back to West Columbia and said they had
5 a lot of money.

6 Q. Question?

7 A. Question: Who asked you to go?

8 Answer: Pitts and AJ.

9 Whose car did you drive?

10 Black Nissan Sentra.

11 When you pulled into the trailer park, give me
12 directions.

13 We made a right at the stop sign and the
14 trailer was, made the next right, that's when AJ
15 said there they are -- or there they go.

16 Q. If I can interrupt you for one second here,
17 those directions, would those be accurate as to what
18 you learned as to --

19 A. Rolling Meadows, right.

20 Q. And where the victims were?

21 A. Yes, ma'am.

22 Q. Question on page 3.

23 A. Page 3 is: What type of gun was in their
24 possession?

25 His answer: Semi-pistol .9 and .40.

1 Who had the .9 and who had the .40?

2 AJ had the .9, Pitts had the .40.

3 How did they carry the weapons -- or how did
4 they -- and I was getting tired, I put care instead
5 of carry.

6 AJ told me to stop the car and they jumped out
7 with the guns.

8 Who was the Mexicans fighting with when the gun
9 went off?

10 Pitts.

11 How many times did Pitts fire the weapon?

12 Three times. His answer is three times. Just
13 before the shots, he was fighting with the man, then
14 I heard the shot and then the man fell to the ground
15 and his son came over and Pitts shot him.

16 Question: Did Pitts tell the second man
17 anything before he shot him?

18 Answer: The young man came in to help the
19 older man -- I'm trying to keep this on -- when he
20 told him he would shoot him.

21 Question: What happened after he told him
22 that?

23 Answer: I heard two more gun shots.

24 Did you get out of the car? Never.

25 Was anyone hurt? And I'm talking any one of

1 them.

2 No.

3 Question: When you left, where did you go?

4 Woodbine Apartments, 49.

5 How much money did you receive for the robbery?

6 Pitts gave me \$50.

7 Question: Was there any cell phones taken?

8 Yes -- answer: Yes, but AJ threw them out the
9 window.

10 What did AJ and Pitts say once they got back
11 into the car with you?

12 Q. Page 5.

13 A. Page 5. Question: Nothing. It's actually
14 answer.

15 What did they do with the guns?

16 Don't know.

17 Did AJ and Pitts drive off together?

18 Yes.

19 Did you see any brass casings on the ground or
20 in your car?

21 His answer: No.

22 Did Pitts have any blood on him? And describe
23 the clothes they were wearing.

24 Don't know. They had on black pants and a
25 white T-shirt.

1 What was you wearing?

2 Blue shorts and blue and white polo.

3 Did AJ get out of the car? Where was he
4 standing?

5 I don't think.' I just saw Pitts and the guy.

6 Q. Page 6.

7 A. Have you talked to Pitts or AJ about the
8 shooting since it happened?

9 Answer: Yes. He said that the police was
10 looking for him and that he came to my house.

11 And I like -- and this is always -- I'm trying
12 to keep this pointer going -- to my house.

13 Have you told anyone else about what happened?

14 No.

15 Did you hear anything on the news?

16 Yeah. Y'all crazy ass shot them. And I told
17 them the only thing I did was drive.

18 This jewelry that I'm showing you, who owns it?

19 Pitts owns it, told me he just got it Friday.

20 Is this your statement and complete truth?

21 Yes.

22 Are you willing to take a polygraph?

23 Yes.

24 Q. Page 7.

25 A. Tell me what Pitts said about the gold

1 bracelet.

2 He lost it and I told him that's on him.

3 Q. You can have a seat.

4 After the written statement, what, if anything,
5 did Mr. Esaw say or do?

6 A. He fully expected to go home.

7 Q. And did y'all release him?

8 A. No.

9 Q. Okay. Did law enforcement ever search for an
10 AJ?

11 A. Yes.

12 Q. And did you ever find one?

13 A. At that point we search our database for the
14 information that we have for AJ, which is a male,
15 mixed Caucasian-black, light tone. And we had
16 nothing of an AJ of that nature and no tattoos that
17 we could find that he knew of or anything of that
18 nature.

19 Q. And since that time, are you aware if we found
20 an AJ?

21 A. We have.

22 Q. Okay. And does this person fit the
23 description -- physical description given by
24 Franklin?

25 A. No.

1 Q. Can you tell us, during the course of your
2 investigation, what the heights, weights, and skin
3 tones of the individuals are?

4 A. King Pitts is six foot, 250 pounds. He's a
5 bulky, heavier-set guy. Ricky Esaw is probably
6 five-ten, 175, and AJ that we discovered is
7 five-six, 150.

8 Q. Okay. And are you aware of any other forensic
9 evidence that has yielded any results that we can
10 bring into court today?

11 A. No. We -- the glass, I think, was mentioned on
12 the scene, the broken beer bottles and stuff, we
13 sent off to have tested and have not had positive
14 results for DNA.

15 Q. In your 34 years of law enforcement, is it
16 common or uncommon to use one defendant to testify
17 against a co-defendant?

18 A. Most of our trials we do have another
19 co-defendant testify against a defendant.

20 Q. And are you aware of any plea bargains that
21 have been made with Mr. Pitts?

22 A. None.

23 Q. Do you think you would know if there were any?

24 A. Being it the case agent, I would.

25 Q. Did you or anybody from law enforcement ever go

1 back and re-interview Mr. Pitts and get a written
2 statement from him?

3 A. No, ma'am. He asked -- his mom asked for an
4 attorney for him, and we've never went back to
5 question him or never ask him anything.

6 Q. And do you know when he received an attorney?

7 A. That night -- or that day. Should have been
8 early morning. And his mom had a family attorney
9 that she was going to make contact with.

10 Q. And during the course of this investigation,
11 did you meet with Net Grayson?

12 A. Yes.

13 Q. And did she give you a written statement as to
14 what was happening on that Sunday of the event?

15 A. Luenetta Grayson, she gave me a -- I met with
16 her after the arrest. Our arrest was on the 12th,
17 Wednesday the 12th, and we met with her on Monday
18 morning -- I'm sorry, Monday afternoon on August
19 17th.

20 Q. And did you have an occasion to meet with her
21 again?

22 A. I did. I met with her again on September 2nd.

23 Q. And what was the purpose of that meeting?

24 A. Because we learned about the tapes between her
25 and Ricky Esaw about the bags. I want ed to know

1 more about what she knew about the green and white
2 Nike bag and what was contained in it.

3 Q. And did you ever learn any more through her
4 about the green Nike bag?

5 A. No. She said she didn't know at that point.

6 Q. And can you identify Ricky Esaw, the man you
7 interviewed and the man wrote that statement?

8 A. Him, sitting right over there with his
9 counselors. (Indicating)

10 MS. MARTIN: One moment, Your Honor.

11 BY MS. MARTIN:

12 Q. Just for clarification purposes, I think you
13 said that Mr. Esaw had said he wasn't going to let
14 them put all this on him. Can you check your notes,
15 please, and see what the exact quote was?

16 A. He said I'm innocent -- wait a minute. I'm
17 sorry. That's the statement one. Let me go to the
18 jail one.

19 At the jail, yes. He said: That was not me, I
20 was just driving, hell no you ain't got me on
21 nothing, okay, at best you got me as accessory. And
22 then at the end of the statement it says -- I asked
23 him did he want to talk to me. He said: Yeah. I'm
24 not taking that rap.

25 Q. Anything else at the conclusion of the oral or

1 written statement?

2 A. Only thing in that as his statement part of it,
3 he once again said to us at the interview that I'm
4 innocent, at best I'm accessory, and then he
5 followed right back with that saying I know I'm an
6 accessory.

7 Q. Please answer any questions of the Defense.

8 THE COURT: Ladies and gentlemen, we're going
9 to take our morning recess. We try not to interrupt
10 the direct and cross-examination of a single
11 witness, but, obviously, we have to be guided by
12 common sense and human tolerance, and you-all have
13 been sitting there for a while. We're going to take
14 the morning recess. We'll get you back out here at
15 20 of the hour and we'll resume the
16 cross-examination of Detective Moore at that time.
17 Please remember not to talk about this case among
18 yourselves while you're in the jury room. Thank
19 you.

20 (The jury exits the courtroom at 11:19 a.m.)

21 THE COURT: Detective Moore, of course you can
22 step down during your recess, but, as you know,
23 you're not allowed to discuss your testimony while
24 you're off the stand. Thank you.

25 All right. Folks, we do have the matter of the

1 THE COURT: All right. Okay. We'll put that
2 in the mix. We'll just work until we get all those
3 people who have testify in.

4 All right. Bring the jury in, please.

5 (The jury enters the courtroom at 11:44 AM.)

6 THE COURT: Ladies and gentlemen, we continue
7 now with the cross-examination of Detective Moore.

8 Mr. Chehoski?

9 MR. CHEHOSKI: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. CHEHOSKI:

12 Q. I want to start, Investigator Moore, with the
13 anonymous tip that came in that really put you on
14 the track with this investigation. That tip came in
15 approximately 2:29; is that right?

16 A. Yes, sir. It came in about 2:29 Wednesday
17 morning.

18 Q. And the tip only identified Mr. Pitts and
19 Mr. Esaw by their Facebook names?

20 A. That's right.

21 Q. They didn't know -- actually, the tip said they
22 didn't know their real names; right?

23 A. Right.

24 Q. And the tip said the crime that -- the crime
25 occurred on -- on August 11th?

1 A. The date was a little off.

2 Q. The date was a little off. It didn't say it
3 happened at Rolling Meadows apartment?

4 A. No.

5 Q. Or Rolling Meadows mobile home park.

6 A. Mobile home park.

7 Q. And it also said the victim's name was Alonzo;
8 correct?

9 A. Correct.

10 Q. So the only thing -- I just want to, again,
11 make sure that's what we're starting with.

12 And prior to that, you're trying to gather as
13 much information as you can.

14 A. Yes, sir. That's correct.

15 Q. And in doing so, you're going to any place that
16 might have information?

17 A. Following leads, whichever way they come in.

18 Q. Either following leads or possibly, by your own
19 hard-work initiative, developing your own leads?

20 A. Right.

21 Q. And one of the places that you went was the
22 Rolling Meadows convenience Pitt Stop?

23 A. Right.

24 Q. And through working with them, you were able to
25 obtain some surveillance footage?

1 A. Yes, sir.

2 Q. And in that surveillance footage, you looked at
3 the footage of August 9th?

4 A. Seen before the actual -- I was looking for any
5 car coming in there might be getting something, gas
6 or something, that particular type of car, and
7 individuals that might have been driving the car or
8 passengers in the car.

9 Q. Right. And anything that, again, might match
10 the information you already had?

11 A. Correct.

12 Q. Right. And in your reports, you did indicate
13 that you saw a black Toyota Corolla or a car that
14 might be a Toyota Corolla?

15 A. Might be, because you really couldn't -- their
16 video just wouldn't show clearly the type of
17 vehicle.

18 Q. Again, by the color and the size of the car, it
19 fit that description?

20 A. Looked like it. Yes, sir.

21 Q. And you said this particular car was seen -- or
22 particular car like it was seen frequently?

23 A. Right.

24 Q. And possibly even circling it?

25 A. That sometimes we saw cars circling.

1 Q. Right. And, again, you looked at this -- and
2 this car was circling beginning on October 9th at
3 4:36 in the afternoon?

4 A. I believe so.

5 Q. And continuing all the way up until 9:09. And,
6 again, that's right around the time of the incident;
7 correct?

8 A. Yes, sir.

9 Q. All right. And even at one point the car did
10 beside the store and two individuals got out of it?

11 A. That's correct.

12 Q. And those two individuals generally fit the
13 description of what you were looking for?

14 A. It's a general description.

15 Q. Right. Again -- and that's all you had at the
16 time; right? You were never able to identify the
17 occupants of the vehicle?

18 A. Never.

19 Q. You were never able to identify the tag of that
20 vehicle?

21 A. No.

22 Q. All right. And, in fact, you did take photos
23 of those individuals to Mr. Vasquez; right?

24 A. Just looking for anything that might --
25 anything that they might recognize that could lead

1 us into a direction.

2 Q. All right. And you did take pictures to
3 Mr. Vasquez?

4 A. Yes.

5 Q. And he was not able to make an identification?

6 A. No, sir.

7 Q. All right. I want to move on now to the day of
8 August 12th and your initial encounter with
9 Christopher Esaw.

10 A. Yes, sir.

11 Q. And you met him on the 12th?

12 A. Yes, sir.

13 Q. You met him at Woodbine Apartments?

14 A. Yes, sir.

15 Q. At Apartment 49; right?

16 A. Yes, sir.

17 Q. And that is the same address that you had on
18 file for Mr. Esaw?

19 A. Same address. They're brothers.

20 Q. They're brothers. And actually, again, you
21 testified earlier that Mr. Esaw actually identified
22 himself as Ricky Esaw.

23 A. As Ricky.

24 Q. Okay. That --

25 A. And I detained him at that point. But he just

1 seemed a little bigger. And from the driver's
2 license photograph I had of him, it didn't seem like
3 the same fellow to me.

4 Q. Okay. And do you know what Christopher Esaw's
5 height and weight is?

6 A. He was -- he seemed to be a little taller than
7 Ricky and a little bit heavier. And I don't
8 remember what his actual -- when we ran it, what his
9 actual height and weight was.

10 Q. And it looked like, according to his records,
11 it was about five-eight was his height.

12 A. No. I was thinking a little bit taller.

13 But --

14 Q. All right. A little bit taller?

15 A. Because I'm five-ten and I'm looking at him at
16 height -- or just a little bit above me.

17 Q. All right. I want to kind of get back in --
18 because this kind of leads into one of things
19 that -- when you spoke with Mr. Vasquez, you said
20 that the assailant was about the same size as his
21 father.

22 A. Yes. That's --

23 Q. And his father was described as about
24 five-seven and about 160.

25 A. Right.

1 Q. And you testified earlier that Ricky was about
2 five-ten and 175.

3 A. Correct.

4 Q. I just want to make sure of that.

5 So moving along now and moving along to later
6 in the day when you first encountered Mr. Esaw,
7 you -- what was the address of where you encountered
8 him?

9 A. Mr. Esaw?

10 Q. Yes.

11 A. We was at the apartments, 100 -- I got the
12 address on him. Just give me a second, please.

13 Q. Take your time.

14 A. [REDACTED]

15 Q. And I think you testified on direct that the --
16 that was the apartment complex -- was that Cross
17 Meadow? Is that what you said?

18 A. Say that again.

19 Q. I think you testified on direct that the name
20 of the apartment complex was Cross Meadow.

21 A. No.

22 Q. That's not correct?

23 A. No.

24 Q. All right. What's the name of the apartment
25 complex?

1 A. Water Edge, I believe it is.

2 Q. Waters Edge?

3 A. Right.

4 Q. Right.

5 A. I believe it is Waters Edge. I'm not real
6 familiar because that's Richland County stuff.

7 Q. And I understand it's not -- outside your
8 general jurisdiction.

9 A. That's right.

10 Q. But that wasn't the Lakes at Harbison; you sure
11 about that?

12 A. It might be Lakes at Harbison.

13 Q. I gotcha now.

14 And in -- as I was preparing for this moment, I
15 looked through your reports. And as I've spoken
16 with other officers, you've seen that, we make sure
17 that when you do your reports, you're documenting
18 all the information that you're gathering.

19 A. That's right.

20 Q. For several reasons; one of which is you --
21 several months or years later, you may have to come
22 back and --

23 A. We might be here on like this day.

24 Q. Might be here on like this day.

25 A. Right.

1 Q. So you want your reports to be as complete as
2 possible; correct? You don't want to -- you don't
3 want to leave anything out?

4 A. Try not to.

5 Q. Yeah, exactly. You want to cover all your
6 bases?

7 A. And get all the facts.

8 Q. And you want to be as accurate as possible,
9 which means you don't want to get -- you want to get
10 everything correct; correct?

11 A. We try. Everything -- the notes, the
12 dictation, everything is done at the best of our
13 ability. Yes, sir.

14 Q. And you want to be as thorough as possible. So
15 if there's stuff that needs to be probed further,
16 you want to get down to that; correct?

17 A. Try to, yes, sir.

18 Q. Now, when you initially -- when you met with
19 Esaw the first time, was he armed with a weapon?

20 A. No.

21 Q. In fact, no gun -- no gun has ever been
22 recovered for this incident?

23 A. No gun has ever been recovered, any gun.

24 Q. No gun. And there's not going to be any gun in
25 evidence on this table?

1 A. Right.

2 Q. In your report you also -- there's no
3 indication in your reports that you noticed any
4 bruises on Mr. Esaw --

5 A. Uh-huh.

6 Q. -- correct? There's no indication that you
7 noticed scars on Mr. Esaw?

8 A. Right.

9 Q. Or any scratches?

10 A. Right.

11 Q. Or any injuries whatsoever?

12 A. It looked like the side of his face was swollen
13 when I glanced at him.

14 Q. Again, but that's also not up in your report as
15 well; right?

16 A. Okay. That's fair.

17 Q. There's no indication of any swelling.

18 A. That's fair. I'm just giving you my personal
19 observations.

20 Q. And I'm, again, trying to remind you that
21 that's not in the report.

22 A. Okay. I'm fair with that.

23 Q. This is --

24 A. That's why we take photographs and stuff like
25 that.

1 Q. Exactly. And you also testified that one of
2 your -- one of your goals in dealing with Mr. Pitts
3 was to get a buccal swab.

4 A. When I was at their apartments that night, I
5 had a lot of movement and working parts; one is the
6 arrest team, one is recovery team, one is the
7 interview. My goal was to interview King Pitts that
8 night.

9 Q. And, if possible, to get a swab from him?

10 A. And that's one of my goals. Yes.

11 Q. Right. And at no point did you get a swab from
12 Mr. Esaw?

13 A. No, sir.

14 Q. All right.

15 A. When I took them and separated them apart, I
16 put Mr. Pitts in my car. I uncuffed him in the
17 parking lot and put him in my car.

18 Q. All right. But at no point between August 12th
19 of 2015 --

20 A. Did I ever go --

21 THE COURT: Let him finish, please, sir.

22 Q. At no point between then and today did you ever
23 get a swab from Mr. Esaw?

24 A. No, sir, I didn't.

25 Q. Because I want to kind of go in that direction

1 now --

2 A. Okay.

3 Q. -- and in talking about some of the evidence
4 that was processed. And you talked about meeting
5 with CSI Sprinkle to process that evidence?

6 A. Right.

7 Q. And that evidence included some broken glass?

8 A. Yes, sir.

9 Q. Some cans of soda?

10 A. Yes, sir.

11 Q. And some beer bottles?

12 A. And the bracelet.

13 Q. And the bracelet?

14 A. Yes, sir.

15 Q. All right. And also there were swabs taken at
16 the scene to look for -- again, for possible DNA;
17 right? And also later on, when Ms. Green's car was
18 impounded, you processed that as well?

19 A. Yes, sir.

20 Q. Okay. We've already seen that you took
21 pictures of it. And you also did swabs on that car?

22 A. Yes, sir.

23 Q. All right. And to your -- and did Investigator
24 Sprinkle give that evidence to you?

25 A. It was -- everything is turned in. He

1 maintains evidence and where it's shipped to for
2 what type of analysis for --

3 Q. And also -- I'm sorry to interrupt. But, also,
4 you were involved in discussions of where to send
5 the evidence?

6 A. Right.

7 Q. Okay.

8 A. I had to get -- for cases where we're going to
9 send evidence and I need the return on it quickly, I
10 got to get permission from my upper command, because
11 when we send it to the Richland County lab, it's a
12 charge on how quick to get it back and the money
13 involved in it.

14 Q. Okay. So in order to send something to
15 Richland County, you need to get authorization from
16 your superiors?

17 A. Yes, sir.

18 Q. And in this case, you actually had information
19 sent to -- or evidence sent to Richland County?

20 A. Yes, sir.

21 Q. And you received the reports back from that?

22 A. I did.

23 Q. And you received reports that there was DNA
24 collected from the bracelet?

25 A. Right.

1 Q. And there was DNA collected from the beer.
2 bottles?

3 A. Right.

4 Q. And there was DNA collected from the soda cans?

5 A. Right.

6 Q. And there was DNA collected from the broken
7 glass?

8 A. They attempted to get the DNA on all those
9 items.

10 Q. Right. And there was actually DNA collected?

11 A. Actually positive on the bracelet and the cell
12 phone that was thrown out the window.

13 Q. Yes. But that DNA that was collected did not
14 come back to Mr. Esaw?

15 A. No.

16 Q. Okay. And that --

17 A. Came back to King Pitts.

18 Q. Right. Only to King Pitts but not to Mr. Esaw?

19 A. That's correct.

20 Q. Now, you're aware that there is a DNA database
21 that exists in this country and in this state?

22 A. Right.

23 Q. And there are people who are required by law to
24 submit samples to that database?

25 A. Right.

1 MR. CHEHOSKI: Your Honor, may I have one
2 moment?

3 THE COURT: Yes, sir.

4 BY MR. CHEHOSKI:

5 Q. Before I go back into that database, you did
6 receive a report from Richland County?

7 A. Yes, sir.

8 MS. MARTIN: Your Honor, I'd object at this
9 point. May we have a sidebar?

10 (Sidebar conference.)

11 THE COURT: You folks are having a hard time
12 believing we're saving time over there; right?

13 All right. You may continue. Thank you.

14 BY MR. CHEHOSKI:

15 Q. All right. And you say that you're aware of
16 the items that were submitted?

17 A. Yes, sir.

18 Q. And you did receive a report back?

19 A. Yes, sir, I did.

20 Q. And you did receive -- and there was nothing
21 that indicated to you that there was a -- a match to
22 Mr. Esaw?

23 A. No match to Mr. Esaw.

24 Q. Or in any known DNA database that you're aware
25 of?

1 A. That I'm aware of. There was no match to
2 Mr. Esaw with the items that I sent in.

3 Q. All right. Now you -- you did recover a --
4 you're aware that a projectile was recovered from
5 the scene?

6 A. Yes.

7 Q. All right. And there's been -- but that has
8 not been submitted for any analysis?

9 A. The projectile from which part?

10 Q. The one that was located in the tire of the
11 truck.

12 A. No. No.

13 Q. Okay. Now, you already mentioned, regarding
14 Mr. Pitts, that he willingly gave a DNA sample.

15 A. Yes, he did.

16 Q. He consented to your department getting a
17 sample from him?

18 A. That's correct. Yes, sir, Counselor.

19 Q. And in your initial interview -- and reminding
20 you that you were -- your primary goal on that night
21 was to speak with Mr. Pitts; correct?

22 A. Yes, sir.

23 Q. And he spoke to you -- was that in your car?

24 A. Yes, sir.

25 Q. And that was alongside Detective Andaloro?

1 A. Yes, sir.

2 Q. All right. And --

3 A. Once again with that, I put Andaloro in charge
4 with him, getting statements started up because I
5 had an active scene I was still working.

6 Q. Active scene you were still working. And,
7 again, it's the policy of the major crime units to
8 have two major crime detectives taking statements?

9 A. Yes, sir.

10 Q. And that was -- it was at that moment that he
11 had given an alibi?

12 A. Right.

13 Q. All right. And as the lead investigator, you
14 directed Detective Sowards to go check that out?

15 A. Yes, sir.

16 Q. All right. And as your investigation
17 continued, Mr. Pitts accompanied you back to the
18 sheriff's department?

19 A. He did. He did.

20 Q. Okay. And at that point you confronted him
21 with a picture of him from Facebook?

22 A. Yes, sir.

23 Q. And it was a picture of him wearing a bracelet?

24 A. The gold bracelet. Yep.

25 Q. And you -- your belief that it was the same

1 bracelet that is now State's Exhibit No. 21?

2 A. My belief is that he wears gold bracelets --

3 Q. Right.

4 A. -- and that's what we found on the scene.

5 Q. You found a gold bracelet on the scene --

6 A. Right.

7 Q. -- you saw a picture of him wearing a gold
8 bracelet --

9 A. Right.

10 Q. -- and you confronted him with those two pieces
11 of information?

12 A. Right.

13 Q. And you told him that the bracelet itself is
14 being processed for DNA and it was being
15 fingerprints and that it would back to him; correct?

16 A. I told him that we was processing fingerprints
17 and DNA to that bracelet.

18 Q. And you told him that it was going to come back
19 to him?

20 A. I refer to my notes with him.

21 MR. CHEHOSKI: May I approach?

22 THE COURT: Sure.

23 BY MR. CHEHOSKI:

24 Q. Have you found it yet?

25 A. Yes, I just found it. Yes. I told him in the

1 room that that DNA will come back to you.

2 Q. And, actually, what's interesting about that is
3 you use an exclamation point on that.

4 A. Yeah.

5 Q. That was a forceful point.

6 A. I told him it would.

7 Q. And to the extent you felt it appropriate to
8 use an exclamation point; not to be a grammar Nazi,
9 just using what the common term is. Right?

10 All right. Moving along now, I want to go to
11 the photo lineup procedure. All right. And you did
12 not actually compile the photo lineup; is that
13 correct?

14 A. No. I have our intel unit.

15 Q. The intel unit. Fair enough. And your -- you
16 tell them what the -- which suspect you want, and
17 they compile the lineup based off that?

18 A. Off the photograph of the suspect. Right.

19 Q. Right. And you got the -- you got the lineups
20 back and then you cleared it with your supervisor;
21 correct?

22 A. I showed him to get a second set of eyes to
23 make sure everything looked good to him.

24 Q. All right. And you did that prior to going to
25 see --

1 A. Yes.

2 Q. -- Mr. Vasquez and Ms. Vasquez?

3 A. Yes.

4 Q. Okay. Pointing you to State's Exhibit 4 now,
5 this was the lineup that you gave Mr. Vasquez;
6 correct?

7 A. That is, yes, sir.

8 Q. And he's in Position No. 2?

9 A. Yes.

10 Q. And Position No. 2 is on the top row in this --

11 A. Yes, sir.

12 Q. -- in the center?

13 A. Yes.

14 Q. And you did not notice that Mr. Esaw's skin
15 tone is lighter than the other five pictures?

16 A. I don't -- no, sir. I don't see that. Like I
17 said, number 5 looks -- is light.

18 Q. I'm talking about the skin tone, not the
19 background.

20 A. They're black-and-white pictures.

21 Q. Right.

22 A. So I -- to me, it doesn't.

23 Q. All right. In that black-and-white there's
24 also a million shades of gray.

25 A. I'm just telling you I don't see it, sir.

1 Q. All right. All right. And you were the one
2 who presented these lineups?

3 A. Yes, sir.

4 Q. And you were aware of where Mr. Esaw was in
5 each of the lineups?

6 A. Yes, sir.

7 Q. This wasn't a double-blind proceeding --
8 procedure?

9 A. Excuse me? Say that again.

10 Q. Do you know what a double-blind procedure is?

11 A. No. Fill me in on that.

12 Q. All right. That's where the tester and the
13 tested are both on equal footing as to the contents
14 of the test.

15 A. Okay. I see where you're going.

16 Q. So in this case, if you -- this is your case
17 and you're developing the suspects and you're
18 presenting the lineup. You did have an investigator
19 who was not involved -- not involved in the
20 investigation present the lineup; correct?

21 A. Right.

22 Q. And you did not have an investigator who was
23 not aware of the suspects and their position in a
24 lineup; correct?

25 A. Right.

1 Q. All right. And -- because sometimes you don't
2 want to give away what your intentions are; correct?

3 MS. MARTIN: Your Honor, is there a question?

4 THE COURT: I think it was a question.

5 Mr. Chehoski raises his eyebrows when he has a
6 question, same as a question mark.

7 BY MR. CHEHOSKI:

8 Q. All right. And -- all right. But in
9 presenting -- you need to be careful that you're not
10 giving any tells as to who you want them to pick?

11 A. I am very careful of that.

12 Q. Right. But to go even further, you can use
13 somebody who doesn't know who the suspect is?

14 A. This particular case, it was limited at this,
15 point with the detectives because of all of the
16 hours we were working at the time. I know --
17 obviously I know who the defendant is. I set up the
18 lineup and I set up the pictures. Everybody that
19 was with me working this case could go on there.
20 And I do the deliverance of the photograph to the
21 witnesses all the same.

22 Q. And I understand that. And, again, it's just
23 one extra level of precaution to keep you from
24 inadvertently showing your hand, if you will,
25 correct, that this would be --

1 A. I disagree with that. I mean, I show somebody
2 photographs and I don't give any indications. I
3 give the exact same order each and every time.

4 Q. I believe you do. And, again, what I -- but
5 in -- when you present it with someone who doesn't
6 know what the contents are, that adds one layer of
7 protection; correct?

8 A. I just think what you're trying to tell me is
9 that getting somebody off the street to deliver this
10 is not good for me --

11 Q. Or somebody --

12 A. -- at that point. You know what I'm saying --

13 Q. Or somebody else --

14 A. I need somebody in law enforcement to give this
15 photograph. On this particular day, everybody that
16 was there was on the case we're working.

17 Q. I mean, there are hundreds of people who work
18 in the sheriff's department; correct?

19 A. There's hundreds of people that are assigned to
20 every different walk of life in that department.

21 Could I get somebody to go to Aiken, South Carolina
22 out of Lexington to produce a photo lineup? No,
23 sir. I couldn't get a traffic unit -- I wouldn't be
24 able to get a patrol unit, nothing of that nature.

25 I had detectives only that went with me to go out of

1 our jurisdiction on that to Aiken.

2 Q. Thank you. Moving on to Mr. Esaw's statement,
3 when trying to get a statement, you want the truth;
4 right?

5 A. Yes. I seek for the truth on every statement.

6 Q. The whole truth; correct?

7 A. Yes, sir.

8 Q. And nothing but the truth; correct?

9 A. Yes, sir.

10 Q. All right. And there's -- in Mr. -- now, you
11 stated before that you wanted to record this
12 statement?

13 A. I want to record it?

14 Q. You wanted to record --

15 A. Oh, record, yes. Yes. I wanted -- as a rule
16 with me on cases that's huge -- and we get assigned
17 a lot of cases. But a huge case, I'd like to have
18 my recorder involved. And because I was on vacation
19 a week before -- and when I checked my desk, the
20 recorder was dead.

21 Q. Okay. And there's no other recorder --

22 A. It plugs up and recharges. And you mentioned
23 about batteries. I don't even know if the thing
24 takes a battery. I know it does the charging part
25 of it.

1 Q. And you don't know how long the charging takes?

2 A. It usually takes a while.

3 Q. All right. And there's no other recorders in
4 the entirety of the Lexington County Sheriff's
5 Department?

6 A. I asked Detective Creech did he have his
7 recorder with him and he didn't either.

8 Q. Thank you. And you said you wanted to get
9 the -- you said you wanted to get the truth and the
10 whole truth and nothing but the truth --

11 A. Every time I go to get a statement from a
12 witness, that's my goal. Yes, sir.

13 Q. All right. There is nothing in his statement
14 about how he got to the -- how he got to the mobile
15 home park; correct?

16 A. Nothing in his statement.

17 Q. Correct.

18 A. Said they used a -- what he said was a black
19 Nissan.

20 Q. Okay. Yeah. But he didn't give you the
21 directions of which roads he took to get there?
22 That's not in the statement.

23 A. He said he made a right at the stop sign in
24 the -- turned into the trailer park, made a right at
25 the stop sign, then made the next right when OJ

1 said -- excuse me, AJ said there -- said there they
2 go right there.

3 Q. All right. And there's nothing in his
4 statement about the victim's wife coming out of the
5 trailer?

6 A. Nothing in his statement, no.

7 Q. Nothing in his statement about Pitts
8 threatening to shoot the wife?

9 A. He said Pitts was telling a younger man that he
10 would shoot him.

11 Q. And there's nothing in the statement about the
12 younger man throwing a can of soda in his face or
13 throwing a can in his face?

14 A. No.

15 Q. Nothing in his statement about him getting
16 kicked in the face?

17 A. Nothing from him. He was just the driver,
18 according to his statement.

19 Q. All right. And you just heard that Pitts only
20 made the threat to the younger man?

21 A. Yes.

22 Q. All right. All right.

23 A. And that he received \$50 cash for being the
24 driver of the car.

25 Q. And that \$50 was never recovered; right?

1 A. No, sir.

2 MR. CHEHOSKI: One moment, please, Your Honor.

3 THE COURT: Yes, sir.

4 MR. CHEHOSKI: Thank you. That's all the
5 questions I have at this time.

6 THE COURT: Redirect?

7 MS. MARTIN: Two questions, Your Honor.

8 REDIRECT EXAMINATION

9 BY MS. MARTIN:

10 Q. As far as the projectile that was recovered
11 from the tire, is there a reason that was not
12 submitted for testing?

13 A. I was looking for touch DNA, and I'm thinking
14 it hit a tire and I didn't realize that -- I didn't
15 believe that it would go to any touch DNA.

16 Q. And if a gun had been recovered in regards to
17 this case, would that have changed or influenced
18 your decision?

19 A. If a gun was recovered that I can match with
20 ballistics to that gun, that would have changed the
21 whole outlook on the evidence.

22 Q. And in your 34 years' experience, do you have
23 any idea how many photo lineup procedures you've
24 done?

25 A. A lot. A lot.

1 Q. And in regards to this particular procedure
2 done with Franklin and Christy, did you follow
3 Lexington County Sheriff's Department procedure?

4 A. I did.

5 Q. Okay. Do you feel like you gave any tells to
6 Franklin or --

7 A. Absolutely not. Absolutely not.

8 MS. MARTIN: Your Honor, that's all we have.

9 THE COURT: All right. Thank you.

10 You can step down, Mr. Moore.

11 THE WITNESS: Thank you.

12 THE COURT: How long will your next witness
13 take?

14 MS. MARTIN: Ten minutes.

15 THE COURT: All right. You got ten.

16 MS. MARTIN: Thank you, Judge.

17 The State calls Arthur Gene Evans.

18 THE COURT: Mr. Evans, come forward, please,
19 and be sworn.

20 (State's Exhibit No. 35 marked for
21 identification.)

22 ARTHUR GENE EVANS, JR.

23 being first duly sworn, testified as follows:

24 THE WITNESS: Yes, ma'am.

25 THE CLERK: Be seated, sir. Once you're

1 seated, state your full name spelling your last.

2 THE WITNESS: My name is Arthur Gene Evans, Jr.
3 Evans is E-V-A-N-S.

4 DIRECT EXAMINATION

5 BY MS. MARTIN:

6 Q. And, Mr. Evans, do you have a nickname?

7 A. AJ.

8 Q. Okay. And where are you living now?

9 A. In Allendale.

10 Q. Are you locked up?

11 A. Yes, ma'am.

12 Q. And are you a convicted felon?

13 A. Yes, ma'am.

14 Q. And you've been convicted of drugs; is that
15 accurate?

16 A. Yes, ma'am.

17 Q. Do you know this defendant, Ricky Esaw?

18 A. Yes, ma'am.

19 Q. And how do you know him?

20 A. We used to stay in the same neighborhood.

21 Q. And what neighborhood was that?

22 A. Woodbine Apartments.

23 Q. Is that in West Columbia?

24 A. Yes, ma'am.

25 Q. How long did you know Ricky?

- 1 A. Roughly a year, year and a half.
- 2 Q. And did he have a nickname?
- 3 A. Yes, ma'am.
- 4 Q. What did you know him by?
- 5 A. Silk.
- 6 Q. And did you know someone named King Pitts?
- 7 A. Yes, ma'am.
- 8 Q. And how did you know him?
- 9 A. I met him through Silk.
- 10 Q. And if you had to say you knew one better than
- 11 the other, which one would that have been?
- 12 A. Silk.
- 13 Q. And how did you -- you met Kiem through Silk?
- 14 A. Yes, ma'am.
- 15 Q. And back in 2015, where were you living?
- 16 A. In Woodbine Apartments.
- 17 Q. And who did you live with?
- 18 A. My girlfriend.
- 19 Q. What is her name?
- 20 A. Courtney Sutton.
- 21 Q. Did you have a car back then?
- 22 A. No, ma'am.
- 23 Q. Did she have a car back then?
- 24 A. Yes, ma'am.
- 25 Q. What kind of car was it?

1 A. Suzuki Reno.

2 Q. If I can show you what's been marked as State's
3 35, does this car look familiar?

4 A. Yes, ma'am.

5 Q. And how is it familiar to you?

6 A. That's exactly what Courtney car looked like.

7 Q. And did you drive that car?

8 A. Yes, ma'am.

9 MS. MARTIN: Your Honor, I'd move State's 35
10 into evidence.

11 THE COURT: Any objection?

12 MR. CHEHOSKI: Your Honor, I object because
13 it's -- can we have quick sidebar?

14 THE COURT: How about we just do this right
15 across the rail right here?

16 MR. CHEHOSKI: Okay. May we approach?

17 THE COURT: Yes, sir. Come on up.

18 (Sidebar conference.)

19 (State's Exhibit No. 35 admitted into
20 evidence.)

21 BY MR. CHEHOSKI:

22 Q. And to be clear, is State's 35 a picture of
23 Courtney's car or a picture of the kind of car she
24 had?

25 A. It's a -- it's the same kind of car.

1 Q. Okay. Same make and model?

2 A. Yes, ma'am.

3 Q. Okay. In August of 2015 did you become aware
4 that Ricky Esaw had been arrested for these crimes?

5 A. Yes, ma'am.

6 Q. And can you tell us how you became aware of
7 that and what you did during that time period?

8 A. Well, his brother told me that he was arrested.

9 Q. Okay.

10 A. And, you know, I later seen it on the news.
11 But, you know, the day -- the day that I believe
12 that he was arrested for these crimes, I -- you
13 know, as I said before, we stayed in the same
14 neighborhood. So, you know, I was in the house and
15 I seen a whole lot of activity going on, like the
16 cars passing by, and it was the police. So, you
17 know, I peeked out and I went out to look, see what
18 was going on, and --

19 Q. What did you see out there in the apartment
20 complex?

21 A. I seen the police by his mama house. So, you
22 know, quite naturally, you know, I called him and I
23 asked him, I was like, what's -- you know, the
24 police around your house, what's going on? And he
25 was like -- he told me --

1 MR. CHEHOSKI: Objection; hearsay.

2 THE COURT: This is not being offered for the
3 truth of the matter asserted. I think it's just to
4 show the state of things at the time, not
5 necessarily the truth of what he's saying. Go
6 ahead.

7 BY MS. MARTIN:

8 Q. You may answer.

9 A. Yeah.

10 Q. Why did you call -- why did you call Mr. Esaw?

11 A. Because I seen the police at his mama house.

12 Q. Okay. And did you make him aware law
13 enforcement was there?

14 A. Yes, ma'am.

15 Q. Okay. And are you aware of any type of DNA
16 national database?

17 A. I've heard of it.

18 Q. Okay. Do you think your DNA is in this
19 database?

20 A. I'm a convicted felon, you know. I've been to
21 SCDC, so...

22 Q. So what does that mean to you?

23 A. It should be. Yes, ma'am.

24 Q. Okay.

25 MS. MARTIN: Beg the Court's indulgence one

1 moment.

2 THE COURT: Okay.

3 MS. MARTIN: I'm looking for State's 1, Your

4 Honor..

5 BY MS. MARTIN:

6 Q. If I can show you what's in evidence as State's

7 1. Can you read okay?

8 A. Yes, ma'am.

9 Q. And can you take a glance at that document?

10 A. You want me to look at everything?

11 Q. You can just flip through it. Do you recognize
12 it?

13 A. Yes, ma'am.

14 Q. Have you ever seen it before?

15 A. Yeah. You showed it to me last week.

16 Q. Okay. And it says that you're involved in an
17 armed robbery and a murder; is that true?

18 A. Yes, ma'am.

19 MR. CHEHOSKI: Objection, Your Honor.

20 THE COURT: Regarding?

21 MR. CHEHOSKI: Your Honor, I object to -- this
22 is outside his personal knowledge. He only knows it
23 because he's seen it before. This is --

24 THE COURT: I think the question is -- of
25 course he can look at it to see -- I think the

1 question, ultimately, is not going to be what it
2 says so much. That's in evidence. Everybody knows
3 that by now.

4 MS. MARTIN: Right.

5 THE COURT: The question is whether or not it's
6 a true statement. That's what she's getting at.
7 Okay.

8 BY MS. MARTIN:

9 Q. And --

10 MR. CHEHOSKI: Your Honor, may we approach?

11 THE COURT: Okay.

12 (Sidebar conference.)

13 BY MS. MARTIN:

14 Q. Mr. Felder, after reviewing that statement --
15 I'm sorry. Mr. Evans, after reviewing that
16 statement that says you're involved in something at
17 Rolling Meadows, is that true?

18 A. No, ma'am.

19 Q. Were you at Rolling Meadows on August 9th of
20 2015?

21 A. No, ma'am.

22 Q. Had you gone there with King Pitts and Ricky
23 Esaw?

24 A. No, ma'am.

25 Q. And did you ever go off with Ricky Esaw and

1 King Pitts?

2 A. No, ma'am.

3 Q. What is your height?

4 A. Roughly five-six.

5 Q. And about how much do you weigh?

6 A. At the current time I weigh 150.

7 Q. Okay. And as far as your skin tone, would you
8 say it's light? dark? medium?

9 A. Light skin.

10 MS. MARTIN: I beg the Court's indulgence one
11 moment.

12 THE COURT: Okay.

13 MS. MARTIN: Please answer any questions the
14 Defense may have.

15 THE COURT: Mr. Chehoski, cross-examine?

16 CROSS-EXAMINATION

17 BY MR. CHEHOSKI:

18 Q. In August of 2015, how much did you weigh?

19 A. Probably about 135.

20 Q. 135. And just -- I hate to do this to you.
21 But in 2015, you were convicted of a felony
22 involving drugs?

23 A. Yes, sir.

24 Q. All right. And in 2011 you were convicted of a
25 misdemeanor involving stolen goods?

1 A. Yes, sir.

2 MR. CHEHOSKI: Nothing further.

3 THE COURT: Thank you.

4 Redirect?

5 MS. MARTIN: No, sir. We ask that the witness
6 be excused, Your Honor.

7 THE COURT: Thank you.

8 Mr. Evans, you can step down. Thank you.

9 Ladies, is this a good time to take a break,
10 given what our afternoon schedule will be like?

11 MS. MARTIN: Yes, Your Honor, perfect time.

12 THE COURT: Ladies and gentlemen, we're going
13 to take our lunch recess at this time. I ask that
14 you be back in the jury room at 2:00. I have
15 another matter that has been assigned to me to
16 dispose of early this afternoon that is not related
17 to this case in any way whatsoever, and they've
18 scheduled that for 1:30 and we'll finish 2:00.

19 But that's the reason why you'll get an hour
20 and a half and we'll get not quite an hour, to
21 dispose of that. I just wanted to let you know what
22 our schedule is. We'll be prepared to resume the
23 trial of this case at 2:00. Please remember not to
24 talk about this case among yourselves or with
25 anybody else during the lunch hour. Thank you.

1 continuing to offer testimony and evidence.

2 MS. PATTERSON: At this time, Your Honor, the
3 State calls Wilfred Pitts, Jr.

4 THE COURT: Mr. Pitts, come around, please, to
5 be sworn.

6 WILFRED PITTS, JR.

7 being first duly sworn, testified as follows:

8 THE WITNESS: Yes, ma'am.

9 THE CLERK: Have a seat. Once you're seated,
10 state your full name spelling your last on the
11 record.

12 DIRECT EXAMINATION

13 BY MS. PATTERSON:

14 Q. Please state your full name and spell your last
15 name for the record.

16 A. Wilfred Pitts, P-I-T-T-S.

17 Q. And, Mr. Pitts, how old are you?

18 A. Twenty-seven.

19 Q. And, Mr. Pitts, you're charged with some
20 serious crimes, aren't you?

21 A. Yes, ma'am.

22 Q. What are you charged with?

23 A. Murder, attempted murder, three armed
24 robberies, obstruction of justice.

25 Q. Do you also have a possession of a weapon

1 charge?

2 A. Yes, ma'am.

3 Q. And you'll admit you're facing a lot of time;
4 correct?

5 A. Yes, ma'am.

6 Q. And you're represented by an attorney on your
7 charges?

8 A. Yes, ma'am.

9 Q. Is your attorney John Shupper?

10 A. Yes, ma'am.

11 Q. Is he sitting here in the courtroom with you?

12 A. Yes, ma'am.

13 Q. And also in the courtroom, is your family here?

14 A. Yes, ma'am.

15 Q. And who is here?

16 A. My brother, my mother, my father, and my uncle.

17 Q. And they're sitting back here in the courtroom.

18 And have you and your attorney met with me and
19 Ms. Martin in my office?

20 A. Yes, ma'am.

21 Q. And did we threaten you to be here to testify
22 today?

23 A. No, ma'am.

24 Q. Did we offer you any promises, any leniency --

25 A. No, ma'am.

1 Q. -- any offers?

2 A. No, ma'am.

3 Q. And what do you intend on doing with your
4 charges?

5 A. Plead guilty.

6 Q. And why do you intend on pleading guilty?

7 A. It's the right thing to do.

8 Q. Do you know the defendant, Ricky Esaw?

9 A. Yes, ma'am.

10 Q. Think he has a nickname. What do you call him?

11 A. Silk.

12 Q. And how long have you known Ricky?

13 A. About three years.

14 Q. And how did y'all meet?

15 A. Woodbine Apartments in West Columbia.

16 Q. Did you live in Woodbine Apartments?

17 A. Yes, ma'am, on and off.

18 Q. And when you weren't living in Woodbine, where
19 did you live?

20 A. In Newberry.

21 Q. And in 2015, would you have considered him a
22 friend?

23 A. Yes, ma'am.

24 Q. As a matter of fact, you were close with Ricky
25 and his family; correct?

1 A. Yes, ma'am.

2 Q. You hung out with him often?

3 A. Yes, ma'am.

4 Q. I think you even told me that sometimes you
5 would call his mom Mom, wouldn't you?

6 A. Yes, ma'am.

7 Q. Now let's go back to Sunday, August 9th of
8 2015. Were you with Ricky Esaw that day?

9 A. Yes, ma'am.

10 Q. And about what time did you get with Ricky?

11 A. Like 12:00 or 1:00.

12 Q. And where did you get with Ricky?

13 A. He came to pick me up from Newberry.

14 Q. And where did y'all go?

15 A. To Danitra's cousin house.

16 Q. And who is Danitra?

17 A. His cousin.

18 Q. And did y'all go anywhere else on that day?

19 A. We went and took Danitra to work and then we
20 went to his mother's house.

21 Q. And who went to Ricky's mom's house with y'all?

22 A. Me, him, Net, and his son.

23 Q. And what's his son's name?

24 A. Jeremy.

25 Q. And where did Ricky's mom live?

1 A. West Columbia, Woodbine Apartments.

2 Q. And how did y'all get there?

3 A. Net's car.

4 Q. What kind of car did Net have?

5 A. A Toyota.

6 Q. What color was the car?

7 A. Black.

8 Q. What were y'all going to Ricky's mom's house
9 for?

10 A. His niece birthday party.

11 Q. And who was at the party?

12 A. Ricky, me, his brother Bam, his mother, his
13 sister and her kids, Net, a girl named Patricia,
14 Skip, DJ, and Jeremy, my brother and his kids and
15 his wife.

16 Q. And at any point did you leave Ricky's mom's
17 house?

18 A. Yes, ma'am.

19 Q. And who did you leave with?

20 A. Ricky.

21 Q. And how many times did you and Ricky leave the
22 house that day?

23 A. Maybe three.

24 Q. And the first time y'all left, who left with
25 you and Ricky, if anyone?

1 A. The first time was just me and him.

2 Q. And where did y'all go?

3 A. To Danitra's job to get her food stamp card to
4 put some more meat on the grill.

5 Q. And after y'all got her card, what did y'all
6 do?

7 A. We took it back and came back to Woodbine
8 Apartments.

9 Q. Did y'all go to the store?

10 A. Yes.

11 Q. When y'all got back to the apartment, did y'all
12 ever leave again?

13 A. Yes, ma'am. We went to the store and got some
14 beer.

15 Q. And who left with you that time?

16 A. Ricky and Rashad.

17 Q. And how are y'all -- what are y'all riding in?

18 A. Net's car.

19 Q. And who is driving?

20 A. Ricky.

21 Q. And after y'all went to the store with Rashad,
22 where did y'all go?

23 A. We came back to the apartment.

24 Q. And do you recall about what time of the day it
25 was at this point?

1 A. No, ma'am.

2 Q. And did you ever leave again? Did you leave
3 Ricky's mom's house again?

4 A. Yes, ma'am.

5 Q. And who did you leave with?

6 A. Ricky.

7 Q. And where were you and Ricky going?

8 A. Supposed to been going to get some beer.

9 Q. Did y'all go to the store to get the beer?

10 A. No, ma'am.

11 Q. Where did y'all go instead?

12 A. To the -- a trailer park past the dog food
13 plant.

14 Q. Did y'all go anywhere else?

15 A. Yeah. We went to Rolling Meadows.

16 Q. Now, were you familiar with Rolling Meadows?

17 A. No, ma'am.

18 Q. And when y'all went to Rolling Meadows, can you
19 tell us how y'all entered?

20 A. We made a left into Rolling Meadows, we kept
21 straight, and made the second right, then we made
22 another right.

23 Q. Did y'all talk to anybody in Rolling Meadows or
24 anything?

25 A. Ricky did.

1 Q. Do you know who he talked to?

2 A. No, ma'am.

3 Q. Did you get out the car?

4 A. No, ma'am -- well, yes, ma'am. I got out the
5 car to use the bathroom and he told me to get back
6 in the car, we was going to go by the store.

7 Q. Did y'all make it to the store?

8 A. No, ma'am.

9 Q. Can you tell us what happened next?

10 A. We turned left on this road and we seen the
11 family out there having a party. And then we rode
12 around and Ricky say he was going to get they ass
13 and I told him to take me back to Woodbine.

14 Q. Now, when Ricky said he was going to get their
15 ass, did you know what he was talking about?

16 A. I guess he was talking about robbing them.

17 Q. And what was your reaction?

18 A. Take me -- I told him take me back to woodbine.

19 Q. And what did he say?

20 A. Basically he wasn't going to take me back,
21 would I help him.

22 Q. So what did you do next or what happened next?

23 A. He pulled a gun from up under the seat and he
24 reached in the backseat and pulled out another gun
25 and gave it to me.

1 Q. And had you seen Ricky with guns before?

2 A. Yes, ma'am.

3 Q. When?

4 A. Like, two weeks before.

5 Q. And where were y'all at?

6 A. In Woodbine.

7 Q. And do you know what type of guns these were?

8 A. Not really, no, ma'am. Automatics.

9 Q. And what had y'all been doing with those guns
10 at Woodbine?

11 A. We went on a back road and shot one of them.

12 Q. And where did Ricky keep those guns?

13 A. In a black and green Nike bag.

14 Q. Now, when Ricky handed you the gun on August
15 9th of 2015, what, if anything, did he say to you?

16 A. Say again.

17 Q. Did he say anything to you as he was passing
18 you the gun?

19 A. He told me to get the man farthest to the left
20 and he had the other ones.

21 Q. Now, can you tell us how -- how did y'all
22 approach these people? How was the car positioned?

23 A. The car was positioned like it was exiting back
24 out and he jumped out the car first and then I
25 jumped out and went around the car and went to the

1 other man.

2 Q. And so did y'all leave the doors open?

3 A. Yes, ma'am.

4 Q. Now, when you say you went around the car, did
5 you -- what part of the car were you around, the
6 front or the back?

7 A. The back.

8 Q. And do you go and rob the man?

9 A. Yes, ma'am.

10 Q. Do you point your gun at the man?

11 A. Yes, ma'am.

12 Q. And what, if anything, you say to the man?

13 A. I said nothing.

14 Q. Which hand are you holding your gun in?

15 A. Right.

16 Q. And what are you doing with the other hand?

17 A. Grabbing at his wallet and his phone.

18 Q. When you're robbing that -- do you like to wear
19 jewelry?

20 A. Yes, ma'am.

21 Q. Did you have on jewelry this day?

22 A. Yes, ma'am.

23 Q. And as you're robbing this man, does anything
24 happen to any of your jewelry?

25 A. My jewelry fell off.

1 Q. What kind of jewelry?

2 A. My bracelet.

3 Q. Can you kind of describe that bracelet?

4 A. Yes, ma'am.

5 Q. I'm going to show you what's been entered into
6 evidence and ask you if you recognize it.

7 A. Yes, ma'am.

8 Q. What is that?

9 A. My bracelet.

10 Q. Is that the bracelet you were wearing on August
11 9th of 2015 --

12 A. Yes, ma'am.

13 Q. -- when you were robbing that man with Ricky
14 Esaw?

15 A. Yes, ma'am.

16 Q. Did you realize that bracelet had fell off?

17 A. Yes, ma'am.

18 Q. Did you try to pick it up?

19 A. No, ma'am.

20 Q. Why not?

21 A. Because I heard a gunshot.

22 Q. And when you heard the gunshot, what did you
23 do?

24 A. I turned and ran to the car and jumped in the
25 passenger seat.

1 Q. Is that where you'd been sitting all along?

2 A. Yes, ma'am.

3 Q. And when you got back in the passenger seat,
4 what, if anything, did you see Ricky doing?

5 A. I seen him crouched down at the back -- the
6 back where -- the driver back seat, I seen him
7 crouched down.

8 Q. And what were you thinking at this point?

9 A. That he was hurt.

10 Q. So what did you do as a result?

11 A. I fired a warning shot into the truck and then
12 I fired at the young man.

13 Q. Now, other firing that gun towards them, did
14 you have any contact with that young man?

15 A. No, ma'am.

16 Q. And why did you, again, fire that shot?

17 A. Because I was scared that Ricky was hurt.

18 Q. So after you fired that shot, what happened --
19 or those two shots, what happened?

20 A. Ricky got up and got in the car and we left.

21 Q. Now, when Ricky got in the car, did you notice
22 he was bleeding or anything?

23 A. No, ma'am. But I noticed that his face was
24 swollen.

25 Q. And as y'all are -- how did y'all exit the

1 Rolling Meadows mobile home park?

2 A. We drove straight, we made a right, and then
3 made a left out.

4 Q. And as y'all are leaving out of the mobile home
5 park, what, if anything, did you do with anything
6 you took from the man?

7 A. I threw a cell phone out the window.

8 Q. And what happened to the guns?

9 A. I put the gun in the middle console and I don't
10 know exactly what happened to them after that.

11 Q. So you never saw the guns again after that?

12 A. No, ma'am.

13 Q. Did you say anything to Ricky as y'all are
14 leaving?

15 A. No, ma'am.

16 Q. Did he say anything to you?

17 A. No, ma'am.

18 Q. Why did you agree to participate in this with
19 Ricky?

20 A. I was scared.

21 Q. And where did y'all go next?

22 A. We went to Woodbine Apartments.

23 Q. And when y'all got to Woodbine, what did y'all
24 do?

25 A. We took off our white T-shirts and threw it in

1 the dumpster.

2 Q. And whose idea was this?

3 A. Ricky's.

4 Q. Did Ricky ask you to do anything else?

5 A. Told me to go in my brother house and get a
6 razor to take the sticker off the gas tank of Net's
7 car off.

8 Q. And did you do that?

9 A. Yes, ma'am.

10 Q. Why did you agree to do that?

11 A. Because I was scared.

12 Q. And did y'all, in fact, get the sticker off the
13 car?

14 A. Yes, ma'am.

15 Q. And what happened next?

16 A. He drove around to the back of his mother's
17 house and Net and Jeremy came out the house, and we
18 left and went to his house.

19 Q. And when you say his house, where was he
20 living?

21 A. Net's house.

22 Q. And do you know where Net's house was located?

23 A. Harbison Lakes.

24 Q. When y'all got back to Net's house, what did
25 y'all do?

1 A. We washed our hands with ammonia and bleach to
2 get the gunpowder residue off.

3 Q. And whose idea was that?

4 A. Ricky's.

5 Q. What did y'all do for the rest of the evening?

6 A. I laid in the living room and went to sleep.

7 Q. Did y'all ever discuss what happened?

8 A. No, ma'am.

9 Q. So the next day, where did you go?

10 A. We went to go get haircuts.

11 Q. So are you still with Ricky on the next day?

12 A. Yes, ma'am.

13 Q. And y'all went and got haircuts?

14 A. Yes, ma'am.

15 Q. And who paid for the haircuts?

16 A. Ricky.

17 Q. Does Ricky typically pay for your haircut?

18 A. No, ma'am.

19 Q. Did you ever try to leave Ricky's sight or go
20 anywhere without Ricky?

21 A. No, ma'am.

22 Q. Why not?

23 A. I was scared.

24 Q. And what was you scared of?

25 A. He would have did something to me or my family

1 that stayed in Woodbine.

2 Q. And at some point you found out that the man in
3 the robbery had died?

4 A. Yes, ma'am.

5 Q. And when did you find that out?

6 A. I found out everything when they went to my
7 mom's house and his mom's house at the same time on
8 Wednesday.

9 Q. And what was your reaction when you found this
10 out?

11 A. Devastated.

12 Q. Did you ever download something on Ricky's
13 phone?

14 A. Yeah, the WLTX app.

15 Q. And why did you do this?

16 A. So we can find out if anyone died or anyone got
17 hurt that night.

18 Q. And did you do that voluntarily or did he ask
19 you to?

20 A. He asked me.

21 Q. And at some point y'all found out -- you found
22 out that the police had went to Ricky's mom's house,
23 didn't you?

24 A. Yes, ma'am.

25 Q. Do you remember where you were when you found

1 this out?

2 A. Shericka's house.

3 Q. And who was with you at Shericka's house?

4 A. Shericka, Ricky, Net, Shericka two kids, his
5 Aunt Debbie, Danitra, and me.

6 Q. And how did you find out that they were at
7 Ricky's mom's house?

8 A. AJ called and told him and then his mother
9 called and told him.

10 Q. And what was Ricky's reaction when he found
11 this out?

12 A. He went around the house and threw up.

13 Q. Where did y'all go after leaving Shericka's
14 house?

15 A. We went to Net's house.

16 Q. Do you remember when the police came to Net's
17 house?

18 A. Yes, ma'am.

19 Q. What were y'all doing?

20 A. They was about to go get something to eat and I
21 was about to use the bathroom.

22 Q. And when you say they, who was all there?

23 A. Danitra, Net, and Ricky.

24 Q. And do you remember speaking to John Moore on
25 that night?

1 A. Yes, ma'am.

2 Q. And I think there was another detective, Joe
3 Andalaro, with him.

4 A. Yes, ma'am.

5 Q. In fact, I think you wrote a statement for
6 them, didn't you?

7 A. Yes, ma'am.

8 Q. And was everything in that statement true?

9 A. No, ma'am.

10 Q. And what did you lie about in that statement?

11 A. Almost everything.

12 Q. Did you tell them about an alibi?

13 A. Yes, ma'am.

14 Q. Was that a lie?

15 A. Yes, ma'am.

16 Q. Did you -- what did you tell them about the
17 bracelet?

18 A. I told them that I let Ricky hold it.

19 Q. And was that a lie?

20 A. Yes, ma'am.

21 Q. And what did you tell them about seeing Ricky
22 with a gun, if anything?

23 A. I told them I never seen him with a gun.

24 Q. Was that a lie?

25 A. Yes, ma'am.

1 Q. And what did you tell them about you having
2 access to a gun or handling a gun?

3 A. I told them I didn't have one.

4 Q. Was that a lie?

5 A. Yes, ma'am.

6 Q. In fact, what did you tell them about where you
7 were or who you were with?

8 A. I told them I was at my brother house.

9 Q. And why did you say you were with your brother?

10 A. Because I didn't want to tell on Ricky.

11 Q. So you thought to involve your brother?

12 A. Yes, ma'am, so it can be an alibi for me. I
13 thought he was going to lie for me.

14 Q. Now, at any time that night did you want to
15 tell law enforcement anything different?

16 A. Yes, ma'am.

17 Q. And what did you want to tell them?

18 A. I wanted to tell them the truth, but I was
19 scared.

20 Q. And did you let them know about you and Ricky's
21 involvement in the crime that night?

22 A. Yeah.

23 Q. But did you give them a lot of details?

24 A. No, ma'am.

25 Q. Why not?

1 A. Because I was scared for my family.

2 Q. Did you ever ask to speak to anybody in your
3 family?

4 A. Yes, ma'am.

5 Q. Who did you ask to speak to?

6 A. My mother.

7 Q. Did they allow you to speak to your mother?

8 A. Yes, ma'am, the next day.

9 Q. And after you spoke to your mom, did you give
10 them any more details?

11 A. No, ma'am.

12 Q. Why not?

13 A. Because we wanted to get a lawyer.

14 Q. Now, on that night, you did agree to give them
15 your DNA sample, didn't you?

16 A. Yes, ma'am.

17 Q. And why did you agree to give them that?

18 A. Because I knew they were going to find out that
19 the bracelet was mine.

20 Q. And how -- because you remember you left the
21 bracelet there?

22 A. Yes, ma'am.

23 (State's Exhibit Nos. 36 and 37 marked for
24 identification)

25 Q. I'm going to show you a couple pictures. First

1 of all, I'm going to show you what's been marked as
2 State's Exhibit 36 and 37 and ask you to take a look
3 at those photographs and ask you if you recognize
4 what's --

5 MR. CHEHOSKI: Your Honor, there's no
6 objection.

7 THE COURT: Thank you. Without objection, 36
8 and 37.

9 (State's Exhibit Nos. 36 and 37 admitted into
10 evidence.)

11 BY MS. PATTERSON:

12 Q. And, Mr. Pitts, what's in this photograph?

13 THE COURT: What number is that, please?

14 MS. PATTERSON: State's Exhibit 30.

15 A. Danitra -- not Danitra. Net's car.

16 Q. And is that the car that you and Ricky were
17 riding in that night when y'all committed these
18 crimes?

19 A. Yes, ma'am.

20 Q. And do you see where the decal may have been
21 that y'all scraped off?

22 A. Yes, ma'am.

23 Q. Can you use the pointer and point to it?

24 A. Right there. (Indicating)

25 Q. Who is that in that photograph?

1 A. That's me.

2 Q. And is that the way you looked the night that
3 you were arrested when law enforcement came to Net's
4 house --

5 A. Yes, ma'am.

6 Q. -- when you were taken into custody?

7 A. Yes, ma'am.

8 THE COURT: What number, please, ma'am?

9 MS. PATTERSON: State's Exhibit 32. I
10 apologize.

11 BY MS. PATTERSON:

12 Q. Are you a little bigger in that picture?

13 A. Yes, ma'am.

14 Q. You've lost some weight?

15 A. Yes, ma'am.

16 Q. How much weight have you lost?

17 A. About 20, 30 pounds.

18 Q. I'm going to show you State's Exhibit 31. Do
19 you recognize who is in that photograph?

20 A. Yes, ma'am.

21 Q. Who is that?

22 A. Ricky.

23 Q. And is that the way Ricky appeared that night
24 law enforcement came to Net's house?

25 A. Yes, ma'am.

1 Q. And you stated earlier you noticed some
2 swelling on his face. Do you remember which side of
3 his face?

4 A. Left side.

5 Q. And this was three or four days after the
6 robbery?

7 A. Yes, ma'am.

8 Q. And I'm going to show you State's Exhibit 36.
9 Do you recognize what's in that photograph?

10 A. Yes, ma'am.

11 Q. And what's in that photograph that you
12 recognize?

13 A. The Woodbine Apartments.

14 Q. And can you see in this photograph where your
15 brother lived?

16 A. Yes, ma'am.

17 Q. Can you point it out?

18 A. Right there. (Indicting)

19 Q. And is that the residence that you went in to
20 get the razor that night?

21 A. Yes, ma'am.

22 Q. And where was Ricky parked when y'all pulled
23 in?

24 A. Right there. (Indicating)

25 Q. And where were y'all when y'all scraped off

1 that decal?

2 A. In the same spot.

3 Q. And does that photograph show where y'all may
4 have dumped your shirts?

5 A. In that dumpster.

6 Q. And whose idea again was that?

7 A. Ricky's.

8 Q. And I'm going to show you State's Exhibit 37.

9 Do you see the dumpster in that photograph?

10 A. Yes, ma'am.

11 Q. And after y'all got rid of your clothing, where
12 did you go?

13 A. He went around the apartment area in the car
14 and I jumped over this fence and that fence and went
15 right here to the back door to the house and got in
16 the car. (Indicating)

17 Q. And why did you jump over those fences?

18 A. Because I was smoking a cigarette.

19 Q. Did you know how old Ricky was?

20 A. Yes, ma'am.

21 Q. How old was Ricky back in 2015?

22 A. Forty.

23 Q. And how old were you?

24 A. Twenty-five.

25 Q. Now, through your attorney Mr. Shupper, have

1 you had the opportunity to look at Ricky Esaw's
2 written statement?

3 A. Yes, ma'am.

4 Q. And I'm just going to hand this up to you.

5 THE COURT: State's No. 1?

6 MS. PATTERSON: Yes, sir, Your Honor.

7 THE COURT: Thank you.

8 BY MS. PATTERSON:

9 Q. And since you were there and had knowledge of
10 all this, I'm just going to ask you about Mr. Esaw's
11 statement just a little bit. On page 1 of his
12 statement, Mr. Esaw said: They came to get me from
13 my mom's house telling me they needed a driver, so I
14 drove the Nissan black headed to Rolling Meadows
15 because they had some Mexicans to get. So I drive
16 them down there and when they got out they pulled
17 their guns out on the Mexicans. Pitts was fighting
18 with one and he shot him. When they got in the car
19 AJ asked him why he shot him.

20 Do you know an AJ?

21 A. Yes, ma'am.

22 Q. And how do you know AJ?

23 A. From Woodbine Apartments.

24 Q. And would you have considered AJ a friend?

25 A. No, ma'am.

1 Q. Did you get along with AJ?

2 A. No, ma'am.

3 Q. Was AJ with you and Ricky Esaw on August 9th,
4 2015?

5 A. No, ma'am.

6 Q. Can you take your attention to page 2 of
7 Mr. Esaw's statement: Who came up with the plan to
8 rob the Mexicans?

9 AJ.

10 Is that true?

11 A. False.

12 Q. Who came up with the plan to rob these people?

13 A. Ricky.

14 Q. And can you take your attention to page 3 of
15 Mr. Esaw's statement. Third question: How did they
16 carry the weapons?

17 AJ told me to stop the car.

18 Again, who had the weapons?

19 A. Ricky.

20 Q. And the next question: Who was Mexican
21 fighting with when gun went off?

22 A. Ricky.

23 Q. How many times did Pitts fire the weapon?

24 He says three times; is that true?

25 A. False.

1 Q. How many times did you fire the weapon?

2 A. Twice.

3 Q. And how many times did Esaw fire the weapon?

4 A. Once.

5 Q. Let me take your attention to page 4 of his
6 statement. When it was asked, did you get out of
7 the car, he said never, is that true?

8 A. False.

9 Q. Did he get out of the car?

10 A. Yes, ma'am.

11 Q. Last -- were there any cell phones taken?

12 Yes. But AJ threw it out the window.

13 Is that true?

14 A. False.

15 Q. Who threw it out the window?

16 A. I did.

17 Q. And what did AJ or Pitts -- excuse me. Take
18 your attention to page 5 of the statement: Did AJ
19 and Pitts drive off together?

20 Yes.

21 Is that true?

22 A. False.

23 Q. Who did you leave Woodbine Apartments with that
24 night?

25 A. Net, Ricky, and Jeremy.

1 Q. Akiem, who shot the man in the leg at Rolling
2 Meadows on August 9th, 2016 [sic]?

3 A. I did.

4 Q. Who was with you?

5 A. Ricky.

6 Q. Who shot the man who died?

7 A. Ricky.

8 Q. Is Ricky Esaw in this court today?

9 A. Yes, ma'am.

10 Q. Can you point him out?

11 A. Right there. (Indicating)

12 Q. What does he have on?

13 A. A suit.

14 MS. PATTERSON: Your Honor, let the record
15 reflect he's pointed out the defendant, Ricky Esaw.

16 THE COURT: Yes, ma'am.

17 BY MS. PATTERSON:

18 Q. Are you scared of Ricky?

19 A. Yes, ma'am.

20 Q. Were you scared then?

21 A. Yes, ma'am.

22 Q. Are you scared today?

23 A. Yes, ma'am.

24 Q. Then why are you here?

25 A. To give the family some closure to what really

1 happened.

2 Q. Whose family?

3 A. The Vasquez family and my family.

4 MS. PATTERSON: I beg the Court's indulgence.

5 Thank you, Akiem. Please answer any questions
6 the Defense may have.

7 THE COURT: Mr. Chehoski, cross-examine?

8 MR. CHEHOSKI: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. CHEHOSKI:

11 Q. Mr. Pitts, you testified that you haven't been
12 offered anything in exchange for your testimony
13 today; is that correct?

14 A. Yes, sir.

15 Q. And you've also testified that you're facing
16 charges of murder and attempted murder, and armed
17 robbery --

18 A. Yes, sir.

19 Q. -- and a gun charge --

20 A. Yes, sir.

21 Q. -- and obstruction of justice charge. Correct?

22 A. Yes, sir.

23 Q. You also testified you're also facing a lot of
24 time.

25 A. Yes, sir.

1 Q. Facing a possible life sentence?

2 A. Yes, sir.

3 Q. And you said you haven't been offered anything.

4 A. No, sir.

5 Q. You haven't pled guilty yet either, have you?

6 A. No, sir.

7 Q. You haven't been in front of a judge yet.

8 A. No, sir.

9 Q. You haven't been sentenced yet.

10 A. No, sir.

11 Q. That's going to take time -- take place
12 sometime in the future?

13 A. Yes, sir.

14 Q. And the State can still make an offer then;
15 right?

16 A. Maybe.

17 Q. All right. And that's why -- you're saying
18 that's why you're here today?

19 A. I'm here today to tell the truth to the family.

20 Q. You've had other opportunities to tell the
21 truth, haven't you?

22 A. Yes, sir.

23 Q. In fact, you -- the first time you had an
24 opportunity to tell the truth was on August 12th,
25 2015; is that correct?

1 A. That's false.

2 Q. That's false?

3 A. August 12th? We got locked up -- August 12th,
4 if that's when he wrote the statement, yeah.

5 Q. That's when you wrote your first statement.

6 A. Yeah.

7 Q. And you had the opportunity to tell the truth
8 then.

9 A. Yeah.

10 Q. And the first time when you gave that statement
11 you were speaking to Mr. Moore here; right?

12 A. Yes, sir.

13 Q. Who's seated at the State table; correct?

14 A. Yes, sir.

15 Q. And you were in a police car with him.

16 A. Yes, sir.

17 Q. Along with Detective Andaloro.

18 A. Yes, sir.

19 Q. All right. And at that time, your first
20 opportunity to tell the truth, you told them that
21 you were not with Ricky.

22 A. Yes, sir.

23 Q. You told them that you did not hold a gun.

24 A. Yes, sir.

25 Q. You told them that you never seen Ricky with a

1 gun.

2 A. Yes, sir.

3 Q. You told them that you were at your brother's
4 house.

5 A. Yes, sir.

6 Q. You told them that you were at your brother's
7 house passed out; correct?

8 A. Yes, sir.

9 Q. You told them that you were passed out on the
10 couch; correct?

11 A. Yes, sir.

12 Q. And that you were passed out on the couch from
13 drinking all day.

14 A. Yes, sir.

15 Q. You said that you never pointed a gun at
16 anyone.

17 A. Yes, sir.

18 Q. You had another chance to tell the truth later
19 on that night and into the next morning; correct?

20 A. Yes, sir.

21 Q. When you accompanied the -- Detective Moore to
22 the sheriff's department.

23 A. Yes, sir.

24 Q. And at that point you had learned that they
25 could prove that you had lied.

1 A. Yes, sir.

2 Q. Right. That they had spoken to your brother.

3 A. Yes, sir.

4 Q. And you were told that they were not -- that he
5 was not with you.

6 A. Yes, sir.

7 Q. And at that point they also showed you a
8 picture of a bracelet.

9 A. Yes, sir.

10 Q. And it was a picture of a bracelet -- of you
11 wearing that bracelet.

12 A. Yes, sir.

13 Q. And that picture was from Facebook.

14 A. Yes, sir.

15 Q. And at that point you said the bracelet was
16 yours.

17 A. Yes, sir.

18 Q. You also said you gave the bracelet to Ricky;
19 correct?

20 A. Yes, sir. But that's not the same bracelet.

21 Q. It's not the same bracelet, but you said that
22 the bracelet was yours.

23 A. Yeah.

24 Q. And you said you gave it to Ricky.

25 A. Yeah.

1 Q. And then you had said that Ricky always carries
2 a gun.

3 A. Yep.

4 Q. And this was after previously saying that you
5 never seen him carry a gun; correct?

6 A. Yes, sir.

7 Q. And he said he carries a gun in the open;
8 right?

9 A. Yes, sir.

10 Q. Okay. And then at that point you told Sergeant
11 Sowards that it was Ricky and two other guys;
12 correct?

13 A. No, sir.

14 Q. You never said that?

15 A. No, sir.

16 Q. And you never told Detective Andaloro that you
17 were at the scene but didn't do anything?

18 A. Yes, sir.

19 Q. And then you said that you didn't shoot a gun.

20 A. Yes, sir.

21 Q. You told him that?

22 A. Yes, sir.

23 Q. All right. Now you're saying that it was all
24 Rick; correct?

25 A. I had some part in it too.

1 Q. You had some part in it, but it was his idea.

2 A. Yes, sir.

3 Q. It was his guns.

4 A. Yes, sir.

5 Q. And they were in his bag.

6 A. Yes, sir.

7 Q. And that you're just doing this because you're
8 scared.

9 A. Yes, sir.

10 Q. And you're scared now.

11 A. Yes, sir.

12 Q. In August, how tall were you?

13 A. Six foot.

14 Q. How tall is Ricky?

15 A. Five-ten, five-eleven.

16 Q. All right. And how much did you weigh?

17 A. About 250.

18 Q. And how much did he weigh?

19 A. Way less than me.

20 Q. Way less than you. So you're taller than
21 him --

22 A. Uh-huh.

23 Q. -- and you're bigger than him?

24 A. Uh-huh.

25 Q. And you're younger than him --

1 A. Uh-huh.

2 Q. -- by about, what, 15 years?

3 A. Yes, sir.

4 Q. All right. In your statement and in what
5 you've told us, you haven't mentioned anything about
6 hearing a bottle break, have you?

7 A. No, sir.

8 Q. And you haven't mentioned anything about the
9 young man throwing a can of soda or kicking someone
10 in the face, have you?

11 A. No, sir.

12 Q. And you haven't mentioned seeing the wife
13 outside, have you?

14 A. No, sir.

15 Q. Or hearing anyone threaten her, have you?

16 A. No, sir.

17 Q. And so now your testimony today is that you
18 shot the gun twice?

19 A. Yes, sir.

20 Q. You shot one warning shot at the truck.

21 A. Yes, sir.

22 Q. And then you shot the young man.

23 A. Yes, sir.

24 Q. The young man who is in this courtroom;
25 correct?

1 A. I'm not sure.

2 Q. Not sure. You didn't get a good look at him?

3 A. No, sir.

4 Q. You just fired at anybody?

5 A. Huh?

6 Q. You just shot your gun at anybody?

7 A. Yes, sir.

8 Q. At any point in time in the next few days, did
9 you ask to leave?

10 A. No.

11 Q. Did -- at any point in time in the next few
12 days, did Ricky forcibly keep you by his side?

13 A. Not really.

14 Q. Not really. At any point in time did you give
15 Ricky \$50?

16 A. No, sir.

17 Q. Did you keep the wallet?

18 A. No, sir.

19 Q. This is the wallet that you took; right?

20 A. The wallet I took, I gave it to Ricky.

21 Q. This is the first time you're testifying to
22 that case, isn't it, to that fact?

23 A. Huh?

24 Q. First time you're testifying to that fact,
25 isn't it?

1 A. Uh-huh.

2 Q. You didn't testify to that on direct, did you?

3 A. Huh?

4 Q. You did not say that on direct, did you, that
5 you gave the wallet to Ricky?

6 A. No.

7 MR. CHEHOSKI: One moment, please.

8 THE COURT: Okay.

9 BY MR. CHEHOSKI:

10 Q. This is the first time you've told anybody this
11 version of events; isn't that true?

12 A. Yes, sir.

13 Q. All right. And you're -- again, we've already
14 gone over this, but you're facing a murder charge;
15 right?

16 A. Yes, sir.

17 Q. And you know that carries 30 to life; right?

18 A. Yes, sir.

19 Q. And you're facing an attempted murder charge.

20 A. Yes, sir.

21 Q. And you know that carries zero to 30 --

22 MS. PATTERSON: Objection, Your Honor. He
23 cannot comment about the penalty of these charges.

24 THE COURT: He can raise the issues of his
25 jeopardy. He can't talk about his own client's

1 sentence. Right.

2 Go ahead.

3 MR. CHEHOSKI: I can talk about how much time
4 he's facing; correct?

5 THE COURT: And you already have and he's
6 answered the question.

7 MR. CHEHOSKI: All right.

8 BY MR. CHEHOSKI:

9 Q. And you're facing charges of armed robbery?

10 A. Yes, sir.

11 Q. And you know how much time that carries.

12 A. Yes, sir.

13 Q. Ten to 30; right?

14 A. Yes, sir.

15 Q. And again -- and you've had multiple times to
16 tell this story to the police; correct?

17 A. Yes, sir.

18 Q. And this is the first time you're doing so.

19 A. Yes, sir.

20 MR. CHEHOSKI: Nothing further.

21 THE COURT: Thank you.

22 Ms. Patterson, redirect?

23 MS. PATTERSON: Just briefly.

24 REDIRECT EXAMINATION

25 BY MS. PATTERSON:

1 Q. Mr. Pitts, on the occasions you met with me and
2 Ms. Martin, was Investigator Moore there?

3 A. Huh?

4 Q. Was Investigator Moore present when you met
5 with me and Ms. Martin in our office?

6 A. Yes, ma'am.

7 Q. And during those meetings, did you tell us
8 about what you've testified to today?

9 A. Yes, ma'am.

10 Q. So you have told this version to law
11 enforcement prior to today?

12 A. Yes, ma'am.

13 Q. And on direct, did I ask you anything about a
14 wallet?

15 A. Yes, ma'am.

16 Q. Did I ask you a while ago -- I meant, did I ask
17 you in court what did you do with the wallet?

18 A. No, ma'am.

19 Q. Okay. So what happened to the wallet?

20 A. The wallet, I gave it to Esaw, Ricky.

21 Q. And Ricky picked you up from Newberry; correct?

22 A. Yes, ma'am.

23 Q. And did you have a car in Columbia that you
24 could have just left?

25 A. No, ma'am.

1 Q. And let me just show you to make sure we have
2 your location during all this. I'm going to show
3 you what's been entered as State's Exhibit 17 and
4 just ask you to take a look at that. Do you see the
5 bracelet that you left behind in that picture?

6 A. Yes, ma'am.

7 Q. And what is beside that bracelet?

8 A. A number 2.

9 Q. And so is that the area that you were when you
10 were committing the robbery on the man?

11 A. Yes, ma'am.

12 Q. And did you notice what was going on on the
13 other side of the car with Ricky and the people that
14 he was robbing?

15 A. No, ma'am.

16 Q. So you don't know if anybody came over on that
17 side -- out the house on that side --

18 MR. CHEHOSKI: Objection; leading.

19 THE COURT: I'll sustain the objection.

20 BY MS. PATTERSON:

21 Q. So did you see anybody on that side of the car?

22 A. When I first -- when we first rode up, yeah, I
23 seen people standing over there. But once I got the
24 dude wallet and my bracelet came off, I heard a
25 gunshot and I ran to the car and ain't see nothing.

1 MS. PATTERSON: No further questions, Your
2 Honor.

3 THE COURT: Thank you.

4 Any followup on those brief points?

5 RE CROSS-EXAMINATION

6 BY MR. CHEHOSKI:

7 Q. Mr. Pitts, when is the first time that you told
8 this version of events?

9 A. To the solicitors, like, maybe a month ago, I
10 think.

11 Q. Thank you.

12 THE COURT: Ms. Patterson, you got the last
13 word.

14 MS. PATTERSON: No further questions, Your
15 Honor.

16 THE COURT: Thank you.

17 Mr. Pitts, you can step down.

18 MS. PATTERSON: We ask that this witness be
19 excused.

20 THE COURT: Certainly.

21 MS. PATTERSON: Your Honor, may we approach?

22 THE COURT: Yes, ma'am.

23 (Sidebar conference.)

24 MS. PATTERSON: Your Honor, at this time, the
25 State rests.

1 MR. CHEHOSKI: Thank you, Your Honor. The
2 Defense recalls Detective Barry Sowards.

3 THE COURT: Detective Sowards, please.

4 THE CLERK: Still under oath, Your Honor?

5 THE COURT: Yes, ma'am.

6 Detective, come forward, please, sir, and
7 resume the stand. You're still under oath.

8 DIRECT EXAMINATION

9 BY MR. CHEHOSKI:

10 Q. Good afternoon, Detective.

11 A. Good afternoon.

12 Q. You all settled in there?

13 A. I believe so.

14 Q. All right. I wanted to ask you about when you
15 sat in with -- on the interview with Wilfred Pitts.
16 And I spoke to you yesterday about -- again, about
17 your recording habits, about being complete and
18 accurate and thorough; is that right?

19 A. That's correct.

20 Q. And, therefore, you don't want to write -- you
21 don't want to report any -- put down anything in
22 your report, excuse me, that didn't actually happen
23 or wasn't actually said; right?

24 A. That's correct.

25 Q. And you were with Mr. Pitts in the late-night

1 hours and early-morning hours of August 12th of 2015
2 to August 13th, 2015; is that correct?

3 A. Yes, that's correct.

4 Q. All right. And you were in the interview room
5 with Mr. Pitts; correct?

6 A. Yes.

7 Q. And also in the interview room was Detective
8 Moore; correct?

9 A. Yes.

10 Q. And Detective Andaloro?

11 A. Correct.

12 Q. All right. And you took notes of that meeting;
13 correct?

14 A. Yes.

15 Q. And in those notes you advised -- you wrote
16 down that Mr. Pitts knew about the shooting?

17 A. Yes, that's correct.

18 Q. And he knew about the shooting and it was Ricky
19 Esaw and two other guys from Woodbine Apartments?

20 A. Yes, that's correct.

21 Q. All right. And that he didn't want to rat them
22 out?

23 A. Correct.

24 Q. And that he didn't want to rat them out because
25 of fear of retaliation from them?

1 A. Yes.

2 Q. And you did not get the names of those other
3 two people?

4 A. No.

5 Q. And, also, there was nothing in your report --
6 you didn't write anything in your report about
7 noticing any injuries to Mr. Esaw?

8 A. I don't believe I did.

9 Q. No. You didn't notice any -- you didn't write
10 down that you noticed any scratches?

11 A. That's correct. I don't believe I did.

12 Q. Or cuts? You didn't notice any cuts?

13 A. Correct.

14 Q. Or bruises?

15 A. I didn't indicate that on the report, no.

16 Q. And, again, you do your best to be complete and
17 accurate and thorough?

18 A. Sure. We try to do the best we can.

19 Q. Thank you. One moment, please. Thank you,
20 Detective Sowards.

21 THE COURT: Any cross, ladies?

22 MS. MARTIN: Yes, please.

23 CROSS-EXAMINATION

24 BY MS. MARTIN:

25 Q. During this interview with defendant Pitts, was

1 this during the same time he was giving an alibi?

2 A. It was right at the same time, yes.

3 Q. And is this during the time period when he said
4 the bracelet wasn't his?

5 A. That's correct.

6 Q. And is this during the same time period when he
7 said that actually Ricky was wearing the bracelet?

8 A. Yes, it was.

9 Q. Would it be fair to say this was the time when
10 Mr. Pitts was telling lots of lies?

11 A. Yes.

12 Q. Okay. And have you been present with Mr. Pitts
13 when he's told -- scratch that.

14 Before today, have you heard Mr. Pitts admit
15 that he shot Franklin?

16 A. Yes.

17 Q. And before today, have you heard Mr. Pitts say
18 Ricky Esaw shot Hector?

19 A. Yes.

20 MS. MARTIN: That's all I have, Your Honor.

21 THE COURT: Thank you.

22 Redirect, Mr. Chehoski?

23 REDIRECT EXAMINATION

24 BY MR. CHEHOSKI:

25 Q. You heard Mr. Pitts say that he shot Franklin

1 back then in 2015?

2 A. No.

3 Q. Did you hear him say that in 2016?

4 A. No.

5 Q. All right. And I just want to get one more
6 thing, that this was -- you were the one who refuted
7 Mr. Pitts' alibi; correct?

8 A. That's correct.

9 Q. And you had already refuted his alibi when you
10 heard him give this statement; correct?

11 A. Correct.

12 Q. And you had already called Detective Moore to
13 confirm that you refuted his alibi before you saw
14 him give this statement; correct?

15 MS. MARTIN: Your Honor, this is direct -- or
16 redirect. He's leading.

17 / THE COURT: Well, the timing of it, the
18 question you asked was, had he heard Mr. Pitts
19 before today admit these things. And I think what
20 Mr. Chehoski is doing is trying to set up a more
21 finite time limit on those things.

22 Is that right?

23 MR. CHEHOSKI: Correct.

24 THE COURT: You can do that.

25 BY MR. CHEHOSKI:

1 Q. Do you need me to repeat the question?

2 A. Would you, please?

3 Q. Okay. And, again, this was -- you had already
4 called Detective Moore to tell him that his alibi
5 was a lie?

6 A. Yes, that's correct.

7 Q. And it was after that that you returned to
8 Lexington County Sheriff to sit in the interview
9 room?

10 A. Correct.

11 Q. And it wasn't at that time that he admitted to
12 shooting Franklin; correct?

13 A. No, sir.

14 Q. Okay. And it wasn't at any time last year that
15 he admitted to shooting Franklin --

16 THE COURT: That's been asked and answered.

17 MR. CHEHOSKI: Nothing further, Your Honor.

18 THE COURT: Thank you.

19 Detective, you can step down. Thank you.

20 MR. CHEHOSKI: No objection to him being
21 excused at this time, Your Honor.

22 THE COURT: You're free to go back to work.
23 Thank you.

24 MR. CHEHOSKI: Your Honor, I want to make sure
25 our next witness is here, Dawn McQuiston.

1 THE COURT: All right. Do we know that she's
2 in the building?

3 MR. CHEHOSKI: I haven't been told that, Your
4 Honor.

5 MS. FULLWOOD: I'll go look for her, Your
6 Honor.

7 (Brief pause in the proceedings.)

8 MS. FULLWOOD: She's in the elevator.

9 THE COURT: In the elevator. That's good.
10 We'll wait.

11 MR. CHEHOSKI: Thanks for your patience.

12 THE COURT: Our next witness is Dr. Dawn
13 McQuiston. She's here from Wofford College. She's
14 here and on the elevator.

15 (Brief pause in the proceedings.)

16 THE COURT: Maybe taking the stairs?

17 MR. CHEHOSKI: Sometimes it's a slow elevator,
18 Your Honor.

19 THE COURT: Come forward, please, ma'am, to be
20 sworn. You do know how to make an entrance.

21 DAWN MCQUISTON

22 being first duly sworn, testified as follows:

23 THE WITNESS: Yes.

24 THE CLERK: Have a seat, please, ma'am. Once
25 you're seated, state your full name spelling your

1 last, please.

2 THE WITNESS: It's Dawn McQuiston,
3 M-C-Q-U-I-S-T-O-N.

4 DIRECT EXAMINATION

5 BY MR. CHEHOSKI:

6 Q. Good afternoon, Doctor.

7 A. Good afternoon.

8 Q. Where are you currently employed?

9 A. At Wofford College in Spartanburg.

10 Q. And what is your job there?

11 A. I'm an associate professor of psychology.

12 Q. All right. Tell us a little bit about your
13 background and education, please.

14 A. Sure. I have a bachelor's degree in psychology
15 from Eastern New Mexico University, a master's
16 degree and Ph.D. in experimental psychology from the
17 University of Texas at El Paso.

18 Q. And what does your faculty position consist of?

19 A. I teach classes and I do research.

20 Q. And what is your field of expertise?

21 A. My general area is legal psychology or the
22 intersection of psychology and law.

23 Q. Do you belong to any professional
24 organizations?

25 A. I do; the American Psychology Law Society,

1 which is the flagship organization for people who do
2 research in psychology and law, the Society for
3 Applied Research in Memory and Cognition, and the
4 Society for Empirical Legal Studies.

5 Q. Have you ever had any of your research
6 published?

7 A. I have, yes.

8 Q. And have you ever had any of your published
9 research subject to peer review?

10 A. It all has been. Yes.

11 Q. And what does that mean that your research has
12 been subject to peer review?

13 MS. PATTERSON: Your Honor, we won't object to
14 her expertise.

15 THE COURT: All right. In what field do you
16 wish to qualify her?

17 MR. CHEHOSKI: That's what I was about to --
18 the field of eyewitness -- I guess eyewitness
19 identification or eyewitness testimony.

20 THE COURT: All right. Without objection then,
21 Dr. McQuiston is so qualified in the field of
22 eyewitness -- the psychology of eyewitness
23 testimony. Right?

24 MR. CHEHOSKI: Thank you.

25 THE COURT: All right.

1 BY MR. CHEHOSKI:

2 Q. Dr. McQuiston, can you tell the jury how -- is
3 there a generally accepted theory of how memory
4 works?

5 A. Yes. Back in the -- it goes back to the 1960s.
6 A couple of psychologists, Atkinson and Shiffrin,
7 they proposed this idea that has carried to nowadays
8 that memory doesn't work like a videotape, instead
9 information has to -- information that you process
10 has to pass through a series of stages in order to
11 make it into long-term memory or to have it actually
12 form a memory.

13 So there are three stages that information must
14 pass through: Sensory memory, short-term memory,
15 and long-term memory.

16 Q. Can you tell us about the sensory memory stage,
17 please?

18 A. So sensory memory is everything that's going on
19 around you at one time. And you can only really
20 hold onto that information for a matter of seconds
21 before it's lost. And you're really -- in that
22 moment, you're -- that mechanism is filtering out
23 information you don't need, trying to hang onto
24 information that you do need, so then any
25 information that you hang onto then can make it into

1 short-term memory.

2 Short-term memory, you can hold onto that
3 information for about 30 seconds, and you really are
4 only going to hang onto it if you rehearse it and
5 rehearse it and rehearse it. It's similar to the
6 days we had to memorize phone numbers; someone would
7 tell you a phone number and you had to memorize it
8 until you could write it down, you had to rehearse
9 it and rehearse it, and if you didn't, it was gone.
10 So it's gone in 30 seconds if you don't -- roughly,
11 if you don't do that.

12 If you rehearse it rehears it and hang onto it,
13 then it has the opportunity to move into the last
14 stage which is, of course, long-term memory. Those
15 memories, researchers say, are accessible forever.

16 Q. Does memory work like a photograph or a
17 videotape?

18 A. It doesn't. And that's what common knowledge
19 is, I think. But, in fact, memory does not work
20 like a videotape. Instead, we actually -- the way
21 we all remember things is there's always gaps in
22 what you remember, and we tend to fill in those gaps
23 later on with lots of information that we get from
24 various sources, from other people or from what we
25 hear on the news or on TV, from talking to others,

1 or even from rehearsing things in your own head you
2 can fill in information in.

3 So because of that, we tend to think of memory
4 as being more reconstructive than anything. You're
5 reconstructing things into one thing.

6 Q. All right. Do memory -- do memories tend to
7 fade over time?

8 A. They do.

9 Q. They do. Can they fade over a period of days?

10 A. They can. And there's a lot of variability in
11 that. But, in general, memories tend to fade over
12 time.

13 Q. What do scientists mean by the term attention?

14 A. Attention is a mechanism by which it acts as a
15 filter and it filters out irrelevant information so
16 that you're able to focus on whatever the task at
17 hand is.

18 Q. And how does attention affect memory?

19 A. We can only later remember the things that we
20 have attended to.

21 Q. Under what kind of circumstances would someone
22 fail to attend to some important thing?

23 A. So because there's a lot going on -- in any
24 given moment there's a lot going on around you and
25 attention is limited. We can only really attend to

1 one thing at a time, and so it will be at the cost
2 of other things.

3 And then also, if you don't think that you're
4 going to need something later, if you don't think
5 there's any reason to hang onto information to use
6 later, you may not attend to it.

7 Q. What do scientists mean by the term
8 perception?

9 A. Perception is another mechanism that we use to
10 process information, specifically the idea of
11 perception is to process sensory information, so
12 anything coming in through the senses; vision,
13 hearing, touch, taste, smell, those things. So
14 that's what perception is, how we interpret
15 information that comes in through the senses.

16 Q. How does that affect memory?

17 A. In terms of how does perception affect memory?

18 Q. Yes.

19 A. There's a lot of things that we -- a lot of
20 mistakes we can make in terms of things we think
21 we're perceiving in the right way that we may not
22 be.

23 Q. Are there things that would influence the
24 quality of information that is being perceived or
25 attended to that would affect the memory?

1 A. There can be, yes.

2 Q. For example, would the amount of time that
3 someone has to perceive, would that affect memory?

4 A. Yes. The amount of time that someone has can
5 certainly affect -- it will affect how much
6 information you get. And how much information you
7 get will certainly influence what you remember
8 later.

9 Q. Also, would your -- how about would light --
10 the light you're -- the light under which you're
11 perceiving, would that affect it?

12 A. Sure. Anything that might interfere with your
13 ability to take in information, so how good the
14 lighting is, if the lighting is dim, that's going to
15 be less information available; if it's great
16 lighting, that will be more information available.
17 So whatever the information that is available, that
18 will certainly influence how much you'll remember
19 later.

20 Q. All right. And is it common that people would
21 make mistakes in perceiving events?

22 A. Yes. Yes.

23 Q. Can that happen to anybody?

24 A. Yes.

25 Q. And what impact does stress have on memory?

1 A. Stress can have -- under different
2 circumstances, stress can have a negative effect on
3 memory.

4 Q. All right. Does -- and does heightened stress
5 or fear affect that?

6 A. Sure. So when you're under any sort of
7 heightened stress, extreme fear, anything that is
8 physiologically arousing, can interfere with the
9 ability to form memories.

10 Q. Is there scientific research out there that has
11 examined the effect of stress on memory?

12 A. Yes. There's specifically -- there's been a
13 lot of research looking at how stress influences
14 memory in general. But specifically eyewitness
15 memory, there's been many studies and they were put
16 together in what researchers call a meta-analysis,
17 and that paper, that article, was published.

18 And what that is, it's a statistical technique
19 used to combine the results of lots of studies into
20 one paper. So this meta-analysis was published
21 several years ago that combined the results of
22 dozens of studies looking at the impact of stress on
23 memory.

24 Q. Who participated in these studies?

25 A. It's all adults over 18, males, females.

1 Q. Did people under the age of 18 participate in
2 these studies?

3 A. Typically not.

4 Q. Why not?

5 A. Usually for ethical reasons, researchers are
6 using people over the age of 18.

7 Q. Okay. And how are these studies that examine
8 stress generally conducted?

9 A. So these studies involve inducing stress in
10 some way. So studies have looked at various ways of
11 inducing stress, so some sort of threatening object
12 or threatening situation to try and induce that kind
13 of state physically and mentally.

14 And so you'd have a group that is undergoing
15 some kind of stressful event or frightening event
16 and then another group of people who are not, and
17 then you test everybody to see how well they
18 remember certain things.

19 Q. And what were those results of those studies?

20 A. And so you generally find that the people in
21 the heightened stress group don't remember things as
22 well. They tend to not be able to describe events
23 and people as well as the nonstressed group and they
24 tend to make more mistakes in their identification
25 of other people than the nonstressed group.

1 Q. All right. Is there something called the
2 cross-race effect?

3 A. There is, yes.

4 Q. Is that also called the own-race bias?

5 A. Yes.

6 Q. And what does that refer to?

7 A. That is a phenomenon that eyewitness
8 researchers have been studying for years, and so
9 lots of research looking at this. It is this
10 phenomenon in which people tend to not be as
11 accurate when they are attempting to recognize or
12 identify a face, a person, that is of a different
13 race or ethnic group than their own.

14 Q. Is there research that demonstrates this?

15 A. There is years of research. Again, it all came
16 together in another meta-analysis published several
17 years ago combining dozens of studies that were
18 done.

19 Q. Can you tell the how this phenomenon happens?

20 A. There are a number of theories that researchers
21 have posed to explain why this happens. But the one
22 theory that seems to have gained the most support by
23 researchers is what they call the contact
24 hypothesis. And what this means is that people who
25 have less contact with other -- with another group

1 seem to be -- over their lives, seem to be more
2 susceptible to making those mistakes.

3 Q. All right. Has this found to occur within
4 different racial groups?

5 A. Yes. This is something that has been studied
6 with various ethnic groups all over the world. And
7 it's a pretty consistent finding.

8 Q. And is it generally supported in the academic
9 field?

10 A. Yes.

11 Q. All right. I also want to talk to you about
12 another event -- not event, but factor that might
13 impact accuracy, and that is involving multiple
14 perpetrators. Is there research that addresses
15 situations with multiple perpetrators instead of
16 just one?

17 A. There is. There have been several studies that
18 have looked at how an eyewitness is able to give
19 information after an event when there have been
20 multiple perpetrators involved as opposed to one.

21 Q. What is the purpose of that?

22 A. The purpose is to look at how accurate people
23 are, if there happens to be any difference in how
24 accurate -- in accuracy rates, depending on the
25 number of perpetrators.

1 Q. What has that research generally shown?

2 A. So the research generally shows that
3 identification accuracy suffers when there are
4 multiple people involved in the crime as opposed to
5 one. Identification accuracy suffers and the
6 descriptions that people give also tend to suffer.

7 Q. And so when there are multiple perpetrators,
8 does that affect the description of just one or all
9 of them?

10 A. It can affect the description of all of them.
11 And the idea here is that a witness must divide his
12 or her attention when there's multiple people and
13 multiple things happening. Of course -- and I
14 talked about attention, that we can really only
15 attend to one thing at a time. That's how this
16 mechanism works for all of us. And so it's the idea
17 of having to try to divide your attention between
18 people. That's why it will all suffer, typically.

19 Q. Have research -- have there been research on
20 the relationship between confidence and accuracy?

21 A. Yes.

22 Q. And what has that research shown?

23 A. So that's another thing that eyewitness
24 researchers have looked at is when someone makes an
25 identification and then is asked how confident he or

1 she is in that identification, so looking at how
2 related those two are.

3 So many studies, again, put together in a
4 meta-analysis, and what this shows is there isn't as
5 strong of a relationship as one would think between
6 confidence and accuracy, meaning that confidence is
7 not a really good, really strong predictor of
8 accuracy; it's not really terrible either, it's
9 somewhere in the middle.

10 Q. Why is that? Why is the relationship so weak?

11 A. Researchers think it's weak because confidence
12 can fluctuate over time. People's confidence in
13 what they think they saw, what they think happened,
14 how great their memory was, how -- anything.
15 Confidence can change over time based on feedback
16 that you were given, based on thinking about the
17 event over and over again, discussing it with your
18 friend. Confidence can certainly fluctuate over
19 time. So it disrupts the relationship between
20 confidence and accuracy.

21 Q. And do eyewitness experts generally support the
22 conclusions concerning the relationship between
23 accuracy and confidence?

24 A. Yes.

25 Q. Okay. Have there been national guidelines that

1 discuss the composing and administering of
2 photographic lineups?

3 A. There have been, yes.

4 Q. Do you know what those guidelines are?

5 A. Well, it's lots of guidelines. But it was a
6 document that was published by the Department of
7 Justice back in 1998, distributed to '99 to all law
8 enforcement agencies in the country, and it
9 discussed how to -- best practices for putting
10 together a lineup, administering a lineup,
11 interviewing witnesses, first responders, so lots of
12 things.

13 Q. Okay. And what do these documents say about
14 presenting a lineup?

15 A. They say lots of things about presenting a
16 lineup. Is there something specific --

17 Q. What do they say about a double-blind
18 procedure?

19 A. So a blind or double-blind procedure -- you
20 might have heard that in medical -- it's used a lot
21 in medical research. That idea is that it's good
22 practice to present a lineup, the person presenting
23 the lineup does not know who the person in the
24 lineup is -- which person is the suspect.

25 So the reason to -- the reason behind that is

1 decades of psychological -- purely psychological
2 research shows that we all can give nonverbal cues
3 that we're totally unaware of in lots of situations.
4 So this is in order to prevent that, that it is good
5 practice, just to make sure there's no cues
6 unknowingly given to a witness who is looking at a
7 lineup and attempting to make an identification.

8 Q. Is it an attempt to prevent bias?

9 A. Sure. Yes.

10 Q. Or is it -- or could there be come cues that
11 the investigator might not even be aware of?

12 A. That's exactly the idea, yes.

13 Q. And do you know if police departments across
14 the country have started adopting this procedure?

15 A. There are several that have started to adopt
16 this, yes.

17 Q. Okay. And are there any difficulties that
18 would arise from a lineup identification,
19 transferring that into an in-court identification?

20 A. Sure. I think that in-court identifications
21 are tough to assess in terms of their reliability,
22 because if you think about the purpose of a lineup,
23 the purpose of a lineup is similar to a
24 multiple-choice test, it's in order to screen out
25 someone who doesn't know the answer. If you know

1 the answer, you should be able to pick the right
2 answer amongst a bunch of wrong answers.

3 So a lineup, that's the same theory; to protect
4 from a witness who may not have a great memory. So
5 an in-court identification doesn't offer that kind
6 of protection, for one thing. So that's one reason
7 that that's a -- it's tough to assess how reliable
8 that might be. Secondly, everyone in the courtroom
9 knows where the defendant is sitting, so that can
10 also be part of the issue.

11 Q. All right. Just kind of wrapping up here, when
12 assessing the reliability of memory here, would a
13 high-stress event affect that memory?

14 A. It can, yes.

15 Q. And would a dark environment affect that
16 memory?

17 A. It certainly can.

18 Q. Would a cross-race effect affect that memory?

19 A. It can, yes.

20 Q. And also depending -- and the presence of
21 multiple perpetrators, could that affect that
22 memory?

23 A. It can.

24 MR. CHEHOSKI: Just one moment, please, Your
25 Honor.

1 THE COURT: Yes, sir.

2 MR. CHEHOSKI: Please answer any questions from
3 the State counsel.

4 THE COURT: Ms. Patterson, cross-examine?

5 CROSS-EXAMINATION

6 BY MS. PATTERSON:

7 Q. You're not here to comment on the specific
8 lineup in this case, are you?

9 A. That's right.

10 Q. As a matter of fact, you were not there when
11 that lineup was given, so you can't comment on the
12 manner in which the police officer gave that lineup,
13 can you?

14 A. That's right.

15 Q. And you don't have any law enforcement training
16 or experience, do you?

17 A. No.

18 Q. And you've never presented a photo lineup to
19 anybody; correct?

20 A. Only in a research scenario.

21 Q. So it wasn't a real scenario where these people
22 may have witnessed anything violent?

23 A. That's right.

24 Q. And you've never met the person in this case
25 who identified the suspect, have you?

1 A. No.

2 Q. So you don't know anything about his life
3 experiences or his ability to recall, do you?

4 A. No.

5 Q. And you mention these studies. What kind of
6 situations were these people presented in which they
7 had to identify the perpetrator?

8 A. Well, there's all kinds of different situations
9 because we're talking about decades of eyewitness
10 research, so literally thousands of studies. And so
11 do you have a specific question?

12 Q. Would that have included someone who may have
13 witnessed their parent being killed?

14 A. Probably not.

15 Q. And you mention these studies -- the
16 participants in these studies are adults 18 or over;
17 correct?

18 A. Right.

19 Q. So there have been no studies dealing with
20 people 17 and younger; right?

21 A. There are certainly studies that I know of
22 involving how well children remember events and
23 whether the memory of children differs from that of
24 adults. I think the idea is that the theories that
25 apply to how memory works with all these things that

1 I described with adults certainly apply to teenagers
2 as well.

3 Q. And you would agree people recall things
4 differently; correct?

5 A. Sure. Yes.

6 Q. And people deal under stressful situations
7 differently; right?

8 A. Sure.

9 Q. So some people may be able to recall things
10 just perfectly under a stressful situation; correct?

11 A. Some people.

12 Q. And, in fact, I think in psychology there's a
13 response called fight or flight that helps people
14 react to stressful situations, isn't there?

15 A. That's right.

16 Q. And would you agree that a person who has clear
17 view and close contact, let's say from you to me,
18 would be more likely attentive to the situation
19 that's going on; right?

20 A. I certainly think that there are lots of
21 factors you have to consider, but certainly I would
22 agree that those -- the proximity matters,
23 certainly.

24 Q. And that person would be more likely to give a
25 reliable identification; correct?

1 A. Based on proximity, you mean, or -- because I
2 think there are a lot of factors involved, like I've
3 described.

4 Q. Would that be a factor that would --

5 A. Proximity is certainly a factor, yes.

6 Q. Okay. And also with the amount of time that
7 they're attentive to that situation, would that also
8 be a factor that may help render their
9 identification reliable?

10 A. Amount of time, yes.

11 Q. And you've testified that the accuracy level
12 decreases when there are multiple perpetrators;
13 correct?

14 A. It can. Not all the time, but it can.

15 Q. So not all the time?

16 A. Right.

17 Q. And what about in situations where that person
18 may be focused primarily on one perpetrator?

19 A. I think that what's -- one of the things that's
20 hard about assessing is that these are mechanisms
21 that are happening without having much control over
22 them. And so I think it's hard for me to comment
23 about how much someone might have been attending to
24 one thing or another thing or another thing.

25 Q. Now, do these studies also include situations

1 when the perpetrator admitted to being at the scene?

2 A. Generally, the types of studies I'm talking
3 about are identifications of people who -- a witness
4 who has never seen before. Is that getting to your
5 question?

6 Q. And I think you spoke about -- on direct
7 examination about this cross-racial effect or
8 own-race bias identification. Right?

9 A. Yes.

10 Q. Now, what about a situation where a person has
11 frequent exposure to the race to which the person
12 they identified is included?

13 A. Right. So like I was describing before, this
14 idea of the contact hypothesis, researchers tend to
15 agree that the more contact someone has with a
16 different ethnic group, the less susceptible they
17 might be to the own-race bias or the cross-race
18 effect.

19 Q. So if they have friends, neighbors, classmates,
20 of that race of the person they identified, they're
21 more likely to make a more accurate identification?

22 A. Probably.

23 Q. And what about the accuracy of a person's photo
24 lineup identification that's given, like, within
25 days of the event?

1 A. Right. So we'd called that the retention
2 interval, the time between the event and the lineup.
3 Obviously, it's good practice, if possible, to make
4 that time delay be as short -- and there are lots of
5 factors that can play into that in a case.

6 But because memory tends to fade over time
7 naturally, the shorter that retention interval the
8 better in terms of being able to remember details
9 better.

10 Q. And would you consider a three-to-four-day
11 timeframe a short retention period?

12 A. It's actually hard for me to quantify that
13 because research doesn't necessarily pinpoint how
14 many days or hours would be in a good range or a not
15 good range. So I think I probably can't necessarily
16 comment on that.

17 Q. So what about if during that three-to-four-day
18 time period this person is repeatedly retelling this
19 stressful event? Would that be what you, I think,
20 referred to as rehearsing?

21 A. It could be. It could be. And it's hard to
22 say because people's telling of an event can differ
23 over time and -- or not. So I think that's an
24 individual thing that I wouldn't be able to comment
25 on over all.

1 Q. And you talked about the way that law
2 enforcement presents photo lineups. And I think you
3 admitted earlier you have no law enforcement
4 experience; correct?

5 A. Correct.

6 Q. And you talked about in-court identification
7 usually doesn't add anything to the photo
8 identification?

9 A. Right.

10 Q. And -- but would you agree that it also doesn't
11 take away anything from the photo identification?

12 A. Yeah, I agree with that.

13 Q. Okay. And, Dr. McQuiston, how much do you get
14 paid by the Defense for your testimony?

15 A. I get paid \$300 an hour.

16 Q. And do you get paid travel?

17 A. I do.

18 Q. Per mile?

19 A. I do.

20 Q. And how many days have you been here to testify
21 for the Defense?

22 A. This is the second day.

23 MS. PATTERSON: No further questions.

24 THE COURT: Thank you.

25 Mr. Chehoski, redirect?

1 REDIRECT EXAMINATION

2 BY MR. CHEHOSKI:

3 Q. Are you aware of something called weapon focus?

4 A. I am.

5 Q. And what does that mean?

6 MS. MARTIN: Objection, Your Honor; outside the
7 scope.

8 THE COURT: How does that fit in with the --

9 MR. CHEHOSKI: Your Honor, again, it would go
10 to the retention that was asked about on cross.11 THE COURT: Okay. If it's a part of what was
12 asked about on cross, she can't go into it.

13 MR. CHEHOSKI: What's that?

14 THE COURT: If she can tie it to what she
15 testified about earlier --16 MR. CHEHOSKI: I think it was tied, again, to
17 what was discussed about as far as retention
18 intervals.19 THE COURT: Well, let's see if the doctor can
20 tie it.

21 MR. CHEHOSKI: Okay.

22 THE WITNESS: Can you repeat the question?

23 BY MR. CHEHOSKI:

24 Q. What is weapon focus?

25 A. Weapon focus is a term that refers to the idea

1 that when a perpetrator has a weapon during an
2 event, the witness -- the witness's eyes are drawn
3 to it, that you spend -- the witness would be really
4 focusing on that weapon at the expense of being able
5 to attend to the other information happening.

6 Q. And even if someone is, say, this close away,
7 can that affect the person's -- the person's
8 perception?

9 A. Yes.

10 Q. All right. And when talking about, again,
11 amount of time, how are people -- how does that
12 stress and all the other factors that we've talked
13 about affect the people's estimation of that?

14 A. Can you rephrase that?

15 Q. All right. When talking about -- again, I'm
16 talking about, again, amount of time in describing
17 an event --

18 A. Right.

19 Q. -- do the stress of -- do the factors of stress
20 and own-race bias and all the other factors we
21 talked about, does that impact someone's -- a
22 person's perception about how long something
23 happened?

24 A. It certainly can. And people tend to be
25 notoriously bad at estimating things like time and

1 speed and height and weight. And people are often
2 not good at those things.

3 Q. Do they tend to overestimate or underestimate?

4 A. I can't say for sure.

5 MR. CHEHOSKI: Nothing further.

6 THE COURT: Thank you.

7 Any follow-up Ms. Patterson?

8 MS. PATTERSON: No, sir, Your Honor.

9 THE COURT: Thank you, Doctor McQuiston. You
10 may step down and you're excused. Have a safe trip
11 back.

12 MR. CHEHOSKI: One moment, please.

13 THE COURT: Okay.

14 MR. CHEHOSKI: Your Honor, at this time, the
15 Defense rests.

16 THE COURT: Ladies and gentlemen, you've now
17 heard all of the evidence and testimony that you'll
18 hear in the trial of this case. You've yet to hear
19 the final arguments that the lawyers will present
20 and the charge on the law which I will give you
21 after that has been done.

22 Obviously, the hour of the time the day is such
23 that we're not going to enter into that exercise at
24 this late hour, but we will start tomorrow at 9:30.
25 So I'm going to ask that you be in your jury room

1 left off was -- and I meant to encompass all prior
2 motions and objections that were made during the
3 State's case in chief and any violations of the
4 federal and state constitution and appropriate
5 provisions to the Fifth, Sixth, and Fourteenth
6 Amendment and Article 1, Sections 3 and 10 of the
7 State Constitution.

8 THE COURT: Thank you. I think my rulings have
9 encompassed the concerns expressed by those bodies
10 of law, although it certainly didn't mention as
11 such. And so I accept that the record is complete
12 in that regard.

13 Folks, I wanted to get the notebook because I
14 put my charges in that and I wanted to go over the I
15 wanted to go over the proposed charges and then ask
16 you-all about any additional charges or exceptions
17 to those. Folks, let me review proposed charges
18 that I think are appropriate in this case. And, as
19 I said, I'll be glad to hear exceptions or requested
20 additions from you.

21 My standard felony charge contains the
22 reasonable doubt definition from Victor vs. Nebraska
23 or State vs. Darby. I've tried cases with some of
24 you-all before. And that's the definition of firmly
25 convinced or real possibility, the two sides of that

1 coin. You are free to argue or discuss any
2 reasonable doubt definition that our Supreme Court
3 has adopted, I just did not want you to be led down
4 the path of telling the jury that the Judge is going
5 to tell you that a reasonable doubt is a doubt that
6 causes a reasonable person to hesitate to act. I'm
7 not going to tell them that. I'm going to use the
8 Victor vs. Nebraska. I'll charge the fact that the
9 defendant did not testify.

10 On the credibility of witnesses, I'll charge
11 expert witnesses and the conviction or crime by a
12 witness, the standard murder charge, of course, with
13 the definition of malice, the armed robbery charge,
14 the attempt charge, which applies to the armed
15 robbery and the murder, possession of a weapon
16 during the commission of a violent crime, the
17 elements of that, the aiding and abetting or the act
18 of one -- the hand of one becomes the hand of all;
19 the identification charge from Telfair and from Neil
20 vs. Biggers, substantial evidence charge.

21 Folks, I think that that's -- that all that I
22 can think of. I'll be glad to be educated further
23 by any of you--all or take any exceptions to any of
24 those proposed charges. From the State?

25 MS. MARTIN: Your Honor, may I see your

1 substantial evidence charge for a moment?

2 THE COURT: Circumstantial evidence?

3 MS. MARTIN: Oh, okay. We thought you said
4 substantial. And I'm were like, I don't know what
5 that id.

6 THE COURT: Did I say that? Circumstantial.

7 MS. MARTIN: Thank you. Yes, sir. I am
8 familiar with that.

9 THE COURT: Okay. I tell you what, I may have
10 said that because I've been conditioned over the
11 years. One of the most unfortunate adjectives --
12 or, actually, adverbs that has slid into our case
13 law over the years in the directed verdict motion is
14 substantial circumstantial evidence, which is a
15 contradiction in terms, when we think about it, in
16 saying, well, I'm not concerned about the weight of
17 the evidence, only its existence.

18 And when a charge is to circumstantial evidence
19 to say, circumstantial evidence is good evidence,
20 provided it beats the test of the law, and the law
21 doesn't require a greater degree of proof of
22 circumstantial than it does of direct evidence, but
23 yet when we say substantial circumstantial evidence,
24 it just throws those things out of whack. So I may
25 have said substantial, but I didn't mean to. And I

1 take it -- I try to slide that concern of mine into
2 the record.

3 As a former English teacher, I recognize that
4 adjectives and adverbs have meaning. And we're
5 supposed to give the meaning, and when the meaning
6 is contrary to the law, it upsets me. Our Court of
7 Appeals got real confused a couple years ago and it
8 started kicking out cases because the judge failed
9 to grant a directed verdict when there was only a
10 little bit of circumstantial evidence. So, anyway,
11 there we go. That's a CLE free of charge.

12 MS. FULLWOOD: How many credits do we get?

13 THE COURT: I don't believe anybody could -- I
14 don't believe I could get the Court of Appeals or
15 the Supreme Court to approve you for a single
16 minute. But other than that, as long as I don't
17 charge substantial evidence, Ms. Martin?

18 MS. MARTIN: I don't think we have anything
19 else, Your Honor.

20 THE COURT: All right. Mr. Chehoski?

21 MR. CHEHOSKI: Yes, Your Honor. We're going to
22 request a jury instruction that was derived from the
23 New Jersey case of State vs. Cromedy that can be
24 found at 158 NJ 12 -- 112 and at 727 A. 2d 457.
25 It's a 1999 case where the court had approved the

1 following language, and we're going to ask that --
2 this is the language that we ask the Court to adopt:

3 When a witness who is a member of one race
4 identifies a member who is of another race, we see
5 that there has been a cross-racial identification.
6 You may consider, if you think it is appropriate to
7 do so, whether the cross-racial nature of the
8 identification has affected the accuracy of the
9 witness' original perception and/or accuracy of the
10 subsequent identification.

11 THE COURT: Okay. Do you know whether or not
12 the New Jersey law allows a judge to charge on the
13 facts?

14 MR. CHEHOSKI: I would imagine it does.

15 THE COURT: It does.

16 MR. CHEHOSKI: Okay.

17 THE COURT: Do you know whether or not the
18 South Carolina law allows a judge to charge on the
19 facts?

20 MR. CHEHOSKI: It does, doesn't it?

21 MS. MARTIN: It does not.

22 THE COURT: It does not. I'll be glad for you
23 to make a copy of that as a Court's exhibit and --

24 MR. CHEHOSKI: I'll do that in the morning.

25 Thank you.

1 THE COURT: Anything else?

2 MR. CHEHOSKI: As far as jury selection -- jury
3 charges, Your Honor, no.

4 THE COURT: My view of the cases, the verdict
5 forms as to each of these charges will be either
6 guilty or not guilty under the theory of the case
7 and the evidence that's been presented. I'll be
8 glad to hear --

9 MR. CHEHOSKI: That is correct, Your Honor. At
10 this time though, I would also like to make a
11 request under State vs. Beaty. It's a 2016 case
12 that has not yet been published that upon request --
13 I'm sorry. I want to make sure I have the language
14 correct, so please allow me to read.

15 THE COURT: Okay.

16 MR. CHEHOSKI: That -- the holding is that in a
17 criminal trial where the party with the middle
18 argument requests -- in this case it would be the
19 Defense -- the party request -- we request of the
20 party with the right to first and last closing
21 arguments must open in full on law and the facts,
22 and in reply may respond -- may respond to the other
23 party's argument but may not raise new matter.

24 THE COURT: Right. Exactly. Of course
25 petition for rehearing has been granted in Beaty, it

1 morning. Have a good evening.

2 (Trial in recess for the evening at 4:22 PM.)

3 (The following proceedings were held October
4 19, 2017.)

5 THE COURT: Are both sides ready for the jury?

6 MS. PATTERSON: The State is ready, Your Honor.

7 MR. CHEHOSKI: The Defense is ready.. I just
8 wanted to note for the record that I have provided
9 the Court with a written copy of the jury that
10 instruction that the Defense had requested yesterday
11 and we'd request that it be made a Court's Exhibit.

12 (Court's Exhibit No. 2 marked for
13 identification.)

14 THE COURT: It is a Court's exhibit, so it's
15 preserved for appellate review, if that should be
16 necessary.

17 MR. CHEHOSKI: Otherwise, the Defense is ready.

18 THE COURT: All right. Thank you.

19 Ms. Patterson, you'll begin and then,
20 Mr. Chehoski, you'll reply, and then, Ms. Patterson,
21 you're reply, and then I'll instruct the jury, as
22 indicated yesterday.

23 MS. PATTERSON: Yes, sir.

24 THE COURT: All right. Bring us the jury,
25 please.

1 watched you as you have done that, and we appreciate
2 that. You understand the seriousness of the case
3 and you've given it the attention that it deserves.
4 I ask that you give that same attention now to the
5 lawyers as they present their final arguments.

6 Thank you.

7 Ms. Patterson?

8 MS. PATTERSON: Thank you, Your Honor. May it
9 please the Court.

10 THE COURT: Yes, ma'am.

11 MS. PATTERSON: Defense counsels.

12 Good morning, ladies and gentlemen. This case
13 is about choices; bad choices, senseless choices,
14 deadly choices. On August 9th, 2015, the Vasquez
15 family, their lives were shattered. And why?
16 Because that man, the defendant, Ricky Esaw, made
17 bad choices, he made senseless choices, he made
18 deadly choices.

19 Now, the Judge will instruct you later on about
20 the elements of the offenses that we, as the State,
21 bear the burden of proving. He will charge you
22 about the elements of murder, attempted murder,
23 armed robbery, attempted armed robbery, possession
24 of a weapon during the commission of a violent
25 crime. But right now, it's my opportunity to give

1 you the elements and to explain to you how we are
2 certain that we have met our burden of proof.

3 The defendant is charged with murder. Murder,
4 under our South Carolina statute, is the killing of
5 a person with malice aforethought either expressed
6 or implied. We submit to you Hector Vasquez was
7 unfortunately gunned down on August 9th, 2015. You
8 heard Dr. Ross talk about his death. We have met
9 this burden.

10 With malice aforethought ether expressed or
11 implied. That means that the malice can either be
12 spoken or it can be implied through the actions of
13 someone. And we submit to you that the defendant,
14 through his actions and his words in telling the
15 co-defendant we're going to get those people, we've
16 met that burden with malice.

17 Attempted murder is defined under our code, a
18 person with intent to kill attempts to kill another
19 person with malice aforethought either expressed or
20 implied. We submit to you that this attempt was
21 towards Franklin when he was shot by co-defendant
22 Wilfred Pitts.

23 The defendant is also charged with armed
24 robbery and attempted armed robbery. It's a
25 robbery, the talking of someone's property. The

1 defendant, through his accomplice Wilfred Pitts,
2 they took property belonging to Rafael Izaguirre.
3 Armed with a pistol or deadly weapon, the defendant
4 provided Wilfred Pitts with that gun.

5 Attempted armed robbery. This is what the
6 defendant himself, as he attempted to take property
7 from Franklin and Hector, he attempted to commit
8 armed robbery and he was armed with a gun. Again,
9 robbery is just the larceny from the person or
10 immediate presence of another in violence -- by
11 violence. Intimidation or by putting a person in
12 fear. We've all -- we've met that. We've talked
13 about that over and over through the testimony of
14 Franklin and Rafael.

15 The defendant is also charged with possession
16 of a weapon during the commission of a violent
17 crime. Possession of a firearm during the
18 commission of that murder and that robbery or an
19 attempt, that attempted murder or that attempted
20 armed robbery, of a violent crime. We've met that
21 burden.

22 Now, the Judge will also instruct you, under
23 South Carolina law there is something called
24 accomplice liability or what we refer to as the hand
25 of one is the hand of all. A person who has

1 knowledge of the principal's criminal conduct and is
2 present at the scene and his presence is such as to
3 show he has associated himself with and participated
4 in the criminal undertaking.

5 Now, we talked about the defendant's statement,
6 and I'll get to that later on in my argument. But
7 even if you were to only believe his statement, he's
8 guilty under this principle of law. He knew that
9 they were going to commit a robbery, he drove them
10 there, he drove them away, and he took \$50. So even
11 if you just believe his story, which I submit to you
12 is not really what happened, but even if you just
13 believe his story, he's guilty under this theory,
14 hand of one, hand of all. And also with the actions
15 that Mr. Pitts committed, he's guilty under this
16 theory.

17 The Judge will also instruct you about
18 reasonable doubt. Now, the State must prove all of
19 these elements beyond a reasonable doubt. Now,
20 reasonable doubt is not beyond all doubt. There are
21 few things we know with absolute certainty. The law
22 doesn't require us to do that, it only must leave
23 you firmly convinced. And we submit to you that
24 we've met that burden of proof.

25 Now, before I get into the witnesses -- and as

1 the Judge said, I know you paid attention. But this
2 is my opportunity to go over the key points of our
3 witnesses and how their testimony has aided us in
4 proving all of these elements. But the first thing
5 I want to do, I just want to go ahead and talk about
6 what the Defense put up just so we can go ahead and
7 put those distractions away, because I submit to you
8 that's all they were, distractions.

9 They recalled Detective Barry Sowards to get
10 him to talk about that Mr. Pitts told him that on
11 that night that they finally caught up with these
12 two, that it was Esaw and two other guys. Well,
13 Mr. Pitts admitted he was lying that night; he
14 wanted to tell the truth, but he wanted to talk to
15 his mom and to an attorney first. Distraction.

16 They put up Dr. Dawn McQuiston, an expert in
17 the field of psychology and eyewitness testimony.
18 She referred to studies, talked about the studies,
19 participants were over the age of 18. Franklin was
20 17. Her studies did include suspects who had
21 admitted to being at the scene, like our defendant,
22 and they didn't involve people who had actually
23 witnessed violent offenses.

24 She didn't really say anything unusual, things
25 common sense might tell us. Yeah, people's memories

1 are different, people recall things differently
2 based on their perception, the timeframe, just based
3 on a lot of things. But she also said she couldn't
4 comment on Franklin's identification in this case.
5 She never met that young man, she doesn't know
6 anything about his life experiences, she wasn't
7 present when Detective Moore presented the lineup,
8 she doesn't know the manner it was presented. She
9 can't speak to that.

10 And I know when I was questioning Franklin
11 about his friends, his classmates, you were probably
12 wondering why is she making race an issue? Because
13 I knew they were going to call the doctor and I knew
14 they were going to make race an issue. It's not a
15 factor, it's a distraction. Franklin went to school
16 with black kids, black kids lived in his
17 neighborhood, he just hung around to black kids
18 before this tragic event occurred. It's a nonissue.
19 There's nothing wrong with his identification.

20 Now, what she also admitted was that she was
21 getting paid \$300 an hour plus mileage. I'm sure
22 they met with her before testifying. She drove from
23 Spartanburg, two days of testifying, a meeting,
24 driving from Spartanburg. I can't count that high,
25 that's why I went to law school. But I assure you

1 that's a lot of money.

2 The issuance of the new warrants, that didn't
3 have anything to do with this. That was a
4 technicality beyond Investigator Moore's control.
5 He straightened it out and they -- this -- the
6 warrants that he was ultimately served are the ones
7 he's ultimately on trial for.

8 Now, the Judge is going to instruct you later
9 about using common sense. You don't have to leave
10 it at the door, you take it back there in the jury
11 room when you're deliberating. You heard the
12 witnesses. You evaluate their credibility, their
13 believability.

14 And let's start with Christy Vasquez. Married
15 to Hector 20 years, four children. She heard those
16 gunshots and she raced outside. She didn't care
17 about that man at the door, she knew her husband and
18 her son was out there. And what did she encounter?
19 Her husband being laid on the ground after being
20 shot.

21 That person also threatened her with a gun, but
22 her attention was on her husband as he lied there
23 dying. She didn't get a good look at him, she
24 didn't lie to investigators, she couldn't make an
25 identification. She called 911 while trying to

1 console her husband, trying to keep Franklin there.
2 It was so much going on. You heard the 911 tape,
3 you heard the chaos, you heard the panic.

4 But she did tell law enforcement that she saw
5 two black males in a dark-colored four-door sedan.

6 Rafael. They were at the neighbor's party,
7 baptism, it was a fun time, a good time. He was
8 there with his friend Hector hanging out. He also
9 testified about seeing a dark-colored car, two guys
10 jumped out, he had more interaction with one, the
11 bigger one, than he did the other one. However, he
12 said, you know, he wasn't able to make an
13 identification because he just complied, he gave
14 over his property, he started walking when he heard
15 gunshot. His phone was later recovered at the exit
16 leaving Rolling Meadows trailer park.

17 Franklin, 17 years old, just a kid. You heard
18 him. He's a little taller, but he's still a kid.
19 He had to witness this tragic event. Playing
20 basketball with his friends, school shopping with
21 his family, neighbor's party, cut the grass, fun
22 times that turned tragic. Checked in with his dad
23 because it was getting dark, got a drink from the
24 cooler.

25 And you'll get to take these pictures back

1 there and you can look at them and you can evaluate
2 the witnesses' stories. You can even see a cooler
3 on the side of the house. He didn't go far. He
4 didn't come back far when the most awful event of
5 his life occurred. That dark-colored car with those
6 two black guys jumped out, one approached him, he
7 said I don't have anything. But that wasn't enough.
8 The man pointed the gun, tried to fire the gun, and
9 his dad stepped in, a struggle ensued. Franklin was
10 still close to this person.

11 He said, yeah, he froze, but he snapped out of
12 it, he saw what was going on, and he went to try to
13 aid his father. He got close enough to this person
14 to throw a soda can and kick him in the face on the
15 left side. Then he hears the gun go off and the
16 person jumps in the driver's side of that open door
17 and leaves. But not before his accomplice, who was
18 Mr. Pitts, jumps in the passenger's side, where he
19 was sitting, and fires two shots, one hitting
20 Franklin in his inner thigh.

21 Dr. Ross' testimony supports Franklin's version
22 of events. The entrance was located on the side,
23 there was a muzzle imprint which indicates close
24 contact. It fits. And you heard Franklin testify,
25 yes, he gave statements that night, he gave

1 statements at the hospital when he was undergoing
2 treatment, but this was just a kid who just
3 witnessed his father being murdered, who needed
4 treatment himself. And he responded to the
5 questions posed to him.

6 But the next day he met with Detective Moore,
7 he gave more information: The man who shot my
8 father was about the same size as my father,
9 five-seven, 160 pounds. And also ensured him he
10 could identify this person in a photo lineup. He
11 remembers the beard. And three days after the
12 killing, he does just that.

13 Franklin gave a statement under these
14 conditions that night. He participates in a photo
15 lineup. The first one, he didn't see him. I said,
16 why you didn't pick anybody? I didn't see him in
17 this lineup. This, he identified number 2 who is
18 the defendant, Ricky Esaw. This is who he
19 identified, one out of 12 people. It's nothing
20 wrong with this photo lineup, it's nothing wrong
21 with the way it was presented. Without hesitation,
22 Franklin was able to identify his father's killer.

23 Now, he didn't make an identification on the
24 one that contained Wilfred Pitts. And it makes
25 sense, he didn't have that much contact with this

1 person. And he was not afraid to say I don't see
2 him, I don't know, I'm not sure.

3 He was able to identify the car. He said it
4 was a sedan. He didn't say anything about it being
5 a hatchback, which is what AJ girlfriend's car was.
6 Now, there was some discussion about, yeah, he said
7 it was gray. He said, I meant it was a dark-colored
8 car.

9 There was nothing wrong with the lighting out
10 there, it was dark, but there was a streetlight,
11 there was a porch light. I mean, a party was going
12 on, I'm sure they weren't standing out there, in
13 complete darkness. And you can look at some of
14 these pictures and you can see the porch light; got
15 pictures you can see the streetlight. It was a
16 party going on, it was light out there.

17 Now, you had heard from Deputy Steen,
18 responding officer, you heard from Detective Miles
19 Rawl who was there on scene, you heard about the
20 chaos, you heard about all the vehicle traffic, all
21 the foot traffic. So it wouldn't be surprising if
22 bullets or other evidence may have gotten carried
23 away inadvertently.

24 But they did locate a bracelet which would
25 later help prove who was involved. A bracelet that

1 Wilfred Pitts later said is mine. It was mine, I
2 dropped it; I remember dropping it, but I couldn't
3 pick it up; didn't pick it up, had to get back in
4 that car, heard a gunshot, didn't know if it was
5 Esaw. Marker two shows where that bracelet is
6 located, and that location is important because it's
7 away from the body. This is where the body was
8 lying. It's away from the body. It was over here
9 because that's where he encountered Rafael
10 Izaguirre. And that's just a close-up of it.

11 The phone was located that Rafael said was his.
12 It was located in the shrubbery, again, exiting
13 Rolling Meadows on the side where Pitts would have
14 been sitting as the passenger.

15 Now, major crimes, this is the division that is
16 responsible for violent crimes against people. They
17 deal with all types of things. They were swamped.
18 And although these officers were working multiple
19 violent crimes and multiple hours, they pulled it
20 together, all hands on deck. They followed lead
21 upon lead upon lead, they worked hours upon hours.

22 Time was of the essence, again, using all kinds
23 of investigating tools, including Crimestoppers.
24 And they tried to make a big deal because this
25 Crimestoppers tip came in and it had the wrong date

1 of the killing, it had the wrong name of the victim.
2 That doesn't matter. It was a tip, it was an
3 investigative tool. Crimestoppers is not even
4 maintained by it the sheriff's department.

5 These officers have no way of knowing who
6 calls. The calls are anonymous. They have no way
7 of interviewing this person. It's not a sworn
8 statement, doesn't give the same weight as a written
9 statement from a witness. However, what did this
10 tip do? It gave us a name, it gave us a starting
11 point, and it led us to Alfred Pitts' Facebook
12 showing him wearing jewelry of a similar nature that
13 was found at the scene.

14 It led to Ricky Esaw who just happened to be
15 one of Wilfred Pitts' Facebook friends. It led to
16 Woodbine where they saw the car that fit the
17 description of the car used that night. It led to
18 finding Wilfred Pitts and the defendant, Ricky Esaw,
19 who would later give statements about their
20 involvement, admitting that they were where, which
21 led to Franklin picking one out of 12, the
22 defendant, as the shooter of his father. It wasn't
23 a fruitless tip. Don't let that distract you.

24 And Detective Sowards, Detective Moore, they
25 worked this case. They used their resources to

1 locate these people once they followed through with
2 this tip. They served warrants, they got
3 statements, they sorted through Pitts' supposed
4 alibi. They got statements, they made multiple
5 trips interviewing people. In fact, Detective
6 Moore, along with Detective Creech, got the
7 defendant's statement. This was all good work, good
8 police work, it was done with integrity. Don't let
9 them call it into question.

10 Even when talking with Wilfred Pitts, he wanted
11 to talk and he told you that he wanted to talk that
12 night. And he started to talk; he lied, but he knew
13 he was caught because he knew he had left that
14 bracelet. He gave his buccal swab. But he wanted
15 to talk to his mom first who told him to get a
16 lawyer, and then all communication has to stop. But
17 once he got a lawyer, they got with our office, us
18 lawyers, and we talked. So don't fault law
19 enforcement for not following up. After he lawyered
20 up, they had to stop.

21 And Defense may say something about Esaw not
22 having a cut because he got hit in the head with a
23 bottle. We don't even know what area of the head he
24 got hit with; may have been the top, may have been
25 the back, may not have left a cut. There was no

1 testimony about him being cut or bleeding. Pitts
2 didn't say it, Franklin didn't say it, Luenetta
3 didn't say it, there was no evidence of that. And
4 just because a person is at the scene doesn't mean
5 we're going to find DNA. This isn't television, it
6 doesn't happen all the time.

7 But what we did see when Pitts was arrested, he
8 did have a bruise over that left eye that's still
9 visible three days after he was kicked in the face
10 by Franklin. Now, Pitts did say that he saw
11 swelling on Esaw's face as well. Luenetta didn't
12 see it, but that's the area of the eye you really
13 see if it's closed, as shown in this picture. She
14 may not have just seen it.

15 And you heard from Luenetta Grayson, her and
16 the defendant dating about ten months. She said
17 Esaw and Pitts were always together, they were
18 together this day at her house, they all left there
19 together to go to Esaw's mom's house for a party.
20 She knew they left together at least twice; once to
21 the store to get some meat, came back, came back
22 together, left again in her car with the defendant
23 driving to get something from the convenience store,
24 came back; they could have left again, her keys were
25 on the counter, she was in the living room.

1 But what she also told you is they all left
2 that house together that night, went back to her
3 house, Pitts was there with Esaw, she went to work
4 the next day, they were there together that
5 Wednesday when law enforcement came.

6 She also told you about her car. She told you
7 about her education. She went to USC, over two
8 years had a Gamecock decal on her gas tank. All of
9 a sudden, it was gone. And she didn't even notice
10 it was gone because it had been there so long, just
11 not something she would notice. Why the sudden
12 urgency to get rid of that decal? You know why?
13 Because the way Esaw parked that car, he was afraid
14 that someone would identify the car by that decal.

15 She talked about she found some bullets in her
16 apartment that wasn't hers. And we played for you
17 this call, this conversation between the two. And
18 you'll have this back in the jury room. Listen to
19 it. Listen to it over and over and over. Did you
20 handle it? Did you have the chance to handle it?
21 Talking about the black and green Nike bag. Hear
22 his desperation pleading with Net to get rid of the
23 bag.

24 What was so important in that bag that she
25 needed to get rid of? I submit to you it was the

1 guns that were used that night in that robbery and
2 that murder. She didn't want to get involved. She
3 has a good job, she has a master's degree. She told
4 his family about the bag and she also told them she
5 was never going to visit him again. They're no
6 longer in a relationship. Listen to this. Pitts
7 told you what he saw in that bag. He seen those
8 guns in that bag weeks prior.

9 And at the beginning of her opening, Ms. Martin
10 told you sometimes it takes a criminal to convict a
11 criminal. Sometimes we have to call people who have
12 pending charges. It doesn't make their case less
13 credible, especially when their testimony fits in
14 with the evidence and other testimony.

15 And here we call AJ, Arthur Evans. Yes, he's
16 in the department of corrections right now for drug
17 charges, but we had to call him because Esaw put his
18 name in it. He testified he only knew Pitts through
19 the defendant, Esaw; knew Esaw as Silk, knew him
20 better; said he didn't even really like Pitts, and
21 they certainly never went anywhere together and
22 certainly not Rolling Meadows.

23 And y'all saw AJ, he doesn't look anything like
24 the defendant, and certainly not in 2015 when he
25 weighed 135 pounds. Shorter, skin is lighter, frame

1 is much smaller. He said he saw the police at
2 Silk's house, he's the one that called him and told
3 him. And what did he get instead? He got blamed,
4 he got put into this. He said, I wasn't there. Net
5 said AJ wasn't even at the party. Pitts said AJ
6 wasn't at the party. Esaw, again, is trying to put
7 off blame.

8 Pitts, he didn't want to be here. He got the
9 same charges. He has no deals, he has no offers, it
10 was no threats against him to testify. He said he
11 wanted to give the Vasquez family closure, he wanted
12 to give his family closure. He's represented by an
13 attorney. And his family was here, his mama, his
14 daddy, his uncle, his brother, and they had to
15 listen to him admit to what he and Esaw did on
16 August 9th, 2015. He had to tell it to his mama.

17 You heard him, he's going to prison for a long
18 time, he knows it. But he also told you he's not
19 going to have a trial, he's going to own up to what
20 he did. He admitted to not telling law enforcement.
21 Once again, he admitted that. Don't let that be a
22 distraction. But he wanted to talk to his mom again
23 who told him, son, you need a lawyer.

24 Now, he told you their roles. His story is
25 consistent with Franklin's, it's consistent with

1 where that bracelet was laying, where the body was
2 laying, where the witnesses said the participants
3 went, one jumped back in the driver's seat, that's
4 the smaller one, the bigger one in the passenger's
5 side. His story is consistent.

6 Look where the cell phone that he admitted to
7 throwing out, it's on the passenger's side as you're
8 exiting. Look who's always hanging around each
9 other, Esaw and Pitts. Look at their differences in
10 sizes and look at the descriptions testified to by
11 the witnesses.

12 He downloaded the app on Esaw's phone because
13 he wanted to keep track. And Esaw [sic] told y'all
14 he found out something on the news. Admitted seeing
15 Esaw with guns, he was scared of him, carried them
16 in that green and white Nike bag, they just went
17 shooting weeks before at Woodbine Apartments. Got
18 back to Woodbine Apartments where they scrape that
19 decal off and they threw their shirts in that
20 dumpster.

21 Much bigger than Esaw. He's still bigger even
22 though he's lost 20 to 30 pounds. And he's also
23 much younger, 15-year age difference. What an
24 unlikely friendship. Who do you think is the leader
25 and who do you think is the follower? He didn't

1 have are a car to leave. Ricky picked him up in
2 Newberry. He didn't really want to leave him, he
3 was kind of scared, said he's still cared. But just
4 listen to his testimony. It fits with what
5 everybody else is saying. It fits with where the
6 evidence was found.

7 And the defendant's statement, let's get to
8 this. And you'll have this in the jury room, you'll
9 have the much smaller version. But, as I stated,
10 even if you just believe his story, he's guilty.
11 Because what does he say? They came to get me from
12 my mom's house, they needed a driver, I drove the
13 Nissan back to Rolling Meadows because they had some
14 Mexicans to get.

15 He drove. He talks about other people doing
16 the things that he did. Who came up with the plan?
17 AJ, he said, but Pitts told you that wasn't true.
18 He talks about the direction that they went into the
19 trailer park. He's giving information only a person
20 who was there would know.

21 He even talks about the guns, even talks about
22 how many times he heard gunshots. And it was three,
23 he shot once and Pitts shot twice, one hit Franklin
24 and one went into the truck's radiator. Says he
25 never got out the car, but also remember the

1 statements that he gave orally to law enforcement
2 talking about, but I know they saw my face because
3 of the lighting and because I was close up.

4 When did you -- where did you -- when you left,
5 where did you go? He drove them away. So even if
6 you believe this, he drove them away. How much
7 money was received? \$50. So even if you believe
8 his statement, he got \$50. He knew what was going
9 to happen, drive them there, drove them away, \$50,
10 hand of one, hand of all.

11 There are a lot of things worth living for,
12 there are a few things worth dying for, but there is
13 nothing worth killing for. On August 9th, 2015,
14 Hector Vasquez had so much to live for. He'd been
15 married to Christy 20 years, four beautiful
16 children. He just moved here to work with his
17 family in their roofing company. And there were
18 things worth dying for: His 17-year-old son
19 Franklin. And he jumped in when he saw that man
20 pointing that gun at his son.

21 And there is nothing worth killing for. But
22 you know what? He did. He killed Hector Vasquez.
23 He attempted to rob Franklin and Hector, and he set
24 it in motion for Wilfred Pitts to rob Rafael
25 Izaguirre and attempt to murder Franklin. We have

1 proved all of this beyond a reasonable doubt, and I
2 ask that you find the defendant, Ricky Esaw, guilty
3 of murder, attempted murder, armed robbery,
4 attempted armed robbery two counts, and possession
5 of a weapon during the commission of a violent
6 crime. I appreciate your attention. Thank you.

7 THE COURT: Thank you, Ms. Patterson.

8 Ms. Patterson, if you'll take a moment to remove
9 some of these things before Mr. Chehoski begins his
10 argument. Thank you.

11 MS. PATTERSON: Yes, sir.

12 THE COURT: Thank you, ladies.

13 Mr. Chehoski?

14 MR. CHEHOSKI: Thank you, Your Honor. May it
15 please the Court.

16 THE COURT: Yes, sir.

17 MR. CHEHOSKI: I'm just going to try to talk
18 and you a minute. Please bear with me. This
19 morning I woke up with a song in my head, that old
20 Schoolhouse Rock song, Three is the Magic Number. I
21 don't know why. Maybe it was because I was thinking
22 about what I'm about to do here. But it seems to me
23 that it's actually kind of apt.

24 The State is relying on, essentially, three
25 things, and that would be Mr. Pitts' testimony,

1 Mr. Esaw's statement, and Mr. Vasquez's
2 identification. And these three things are big
3 things, flashy things, they are things that give the
4 appearance of both being powerful and conclusive,
5 and they are things that we used to think are
6 ironclad.

7 We, on the other hand, are not relying on those
8 flashy things, but foundational matters that strike
9 to the heart and that support what the State should
10 be presenting, and it's the absence of DNA that are
11 at the scene that belongs to Ricky Esaw, the absence
12 of DNA in the car that belonged to Hector Vasquez,
13 and the absence of any injury to Ricky Esaw
14 following that incident.

15 Now, these three things, again, are at the
16 foundation of the State, and without them the
17 State's case just rests on shifting sand. And I
18 want to first talk about Pitts' testimony, because
19 he lied a lot and he had a reason to lie. I was
20 tempted even, at some point during his testimony, to
21 ask him, well, were you lying then or are you lying
22 now, but it wouldn't have made a difference because
23 the answer is, yes, he lied then, he's lying now,
24 and he has a reason to.

25 He lied first to just try to absolve himself of

1 any responsibility. I wasn't even there, I was with
2 my brother. And then that fell apart and he was
3 like, well, maybe I was involved, I gave the
4 bracelet to Ricky, but it was him and two other guys
5 at Woodbine Apartment. But as the DNA shows that he
6 was there, and now it's, well, maybe if I testify
7 and tell the State what they want to hear and match
8 it all together with their story, I'll get some kind
9 of deal, maybe not now but maybe later.

10 He had a reason to lie because he's trying to
11 save his skin. There was really only one thing that
12 I believed about his testimony yesterday --

13 MS. MARTIN: Objection, Your Honor.

14 THE COURT: I'll sustain the objection as to
15 the attorney's belief or non-belief. Okay.

16 MR. CHEHOSKI: He said he was scared and when
17 he's scared he lies. He was scared when the police
18 picked him up, he was scared when they took him to
19 the sheriff's department. Both of those times that
20 he was scared, he lied.

21 He also said he was scared of Ricky even though
22 he was four inches taller and 70 pounds heavier, 15
23 years younger, at the peak of his physical strength.
24 He wasn't being held against his will, he wasn't
25 being forcibly restrained, he wasn't even told that

1 he couldn't go anywhere. Yeah, he was lying because
2 he knew they had him, his DNA was there. His was
3 the only DNA that was there.

4 Now, DNA seems like it could be a sneaky
5 subject here because the State didn't really talk
6 about it that much. And -- but it's important.
7 It's important because it gives conclusive evidence
8 that supports their story and their theory and their
9 theme.

10 And in that, you have a right to question that
11 because they picked up evidence that should have had
12 it with a soda can that was thrown with the force
13 that it was thrown and a beer bottle swung with
14 enough force to shatter it, to break on someone's
15 skin. That's going to leave DNA. And they looked
16 for it, they swabbed for it, and they didn't come
17 back with anything that matches to Ricky Esaw.

18 They also took the car, looking for something
19 there. The only thing you heard about the car or
20 the inside of the car is they processed it. I
21 submit to you they swabbed it, they treated for it.
22 You did not hear one mention in any testimony of any
23 blood in that car, of any DNA in that car that
24 belongs to either Ricky Esaw or Hector Vasquez, you
25 did not have anything that connects that car

1 scientifically to that scene. And that's because it
2 probably wasn't there.

3 There's also -- if -- given with what we know
4 has happened and what the testimony says, if Ricky
5 didn't leave anything at the scene of the crime and
6 nothing from the scene of the crime went with Ricky,
7 again, with a beer bottle being broken over his
8 head, with getting a can of soda thrown at
9 significant force into his face and being kicked in
10 the face with just as much if not more force, that's
11 going to leave a mark.

12 And all this time you -- I'm sure you're sick
13 of me asking questions about police officers being
14 complete with their documents and accurate with
15 their reports and thorough with their writings.
16 Because that is what good investigators do, like
17 John Moore and like Barry Sowards, that they
18 document everything that they see, everything that
19 they hear, everything that they do. And with good
20 investigators, if they don't write it down, it
21 likely didn't happen. Not one person, police or
22 otherwise, could testify that they saw any marks,
23 any scrapes, any bruise s.

24 In fact, the most independent witness to take
25 that stand, Luenetta Grayson, who was in an intimate

1 relationship, sharing a bed with Ricky, with him
2 less than an hour after this happening, didn't
3 notice a thing. She's not in a relationship with
4 him anymore. Regardless of your verdict, she's
5 going to live her life without Ricky. She has no
6 stake in this, no reason to try and cover up. And
7 what did she tell you? I didn't see a thing. That
8 is powerful. Didn't notice anything wrong with the
9 clothes, anything, nothing from that.

10 And, unfortunately, this brings us to the
11 statement, what the State told about what Ricky told
12 police. And we already know there is inaccuracies
13 in it, talks about AJ being there or black Sentra
14 and AJ testifying it's not there. But look at that
15 statement closely. For someone to have a front row
16 seat to that, there's an awful lot missing.

17 There is no mention of Ms. Vasquez coming out
18 or of anybody pointing the gun at her and
19 threatening her or of Franklin acting as he did,
20 throwing the can of soda and kicking him in the
21 face. For all that is missing from that statement,
22 it really looks like Ricky is just taking the police
23 narrative, trying to tell them what they want to
24 hear, and hopefully they'll leave him alone.

25 And I submit to you that's what happened, he's

1 just telling them a story. I think this is what
2 happened, this is probably what you want to hear.
3 It's just not credible and there's a reason to
4 question it. There's a reason to question it
5 because it wasn't recorded.

6 Here we are in 2017. We'll go back to 2015.
7 We're more than eight years after the first iPhone
8 that puts recording capabilities in the pocket of
9 any person. And digital recorders, I checked on
10 Amazon last night, they're selling for less than
11 \$50, available. And they're telling you with all
12 the vast resources and the budget of the Lexington
13 County Sheriff's Department, they didn't have one
14 available or the one they wanted to use was dead.
15 Is that a compelling excuse for you?

16 What's even more striking is that John Moore
17 wanted -- he wanted to record it. He's a good
18 detective, he knows that hearing the voice and
19 hearing the words is going to be much more powerful
20 than just pen to paper. But if you hear it, you
21 know it's him. And his recorder is dead.
22 There's -- you can't wait 15 minutes to get -- or
23 five minutes to charge it up, bring it over, plug it
24 in, and then get it running for the interview? You
25 got to ask yourself, does that carry water? I don't

1 think it does.

2 Also, I want to talk about, again, Franklin
3 Vasquez. He's both sympathetic, he was poised on
4 the stand. And just because he was those
5 characteristics doesn't mean we can't question it.
6 We have something to question him about. And this
7 ties in with what Dr. McQuiston said, because with
8 all that is going on, with the likelihood of gaps
9 being there between a high-stress moment in the dark
10 with multiple perpetrators carrying guns and the
11 cross-race effect or the own-racial bias, all of
12 those are going to impact how well you perceive
13 something.

14 And with what was going on, Franklin said he
15 froze, and then he finally snapped out of it. And
16 in that moment of frozen, are you perceiving
17 something or are you just in shock like, what's
18 happening? It's not meshing, and that's a reason to
19 question his testimony. And then add the height of
20 that emotion, the height of that, and come to with
21 the investigator working the case who knows who the
22 victim is but knows who the alleged perpetrator is,
23 puts him front and center in the lineup with lighter
24 skin than everything, and that opens the door for a
25 problematic identification.

1 I don't blame him. He's doing the best he can.
2 Like Ms. Patterson said, he's a kid, he just lost
3 his father. My heart goes out to him. That doesn't
4 mean we can just give him a pass, we have to
5 question. And those questions need to be answered:
6 Is this something we can trust? Is there something
7 that we can question? Does it bring us into a
8 shadow of doubt? Do we have a reason to doubt?
9 And, yes, there is. With all of what they have, we
10 have a reason to question it, we have a reason to
11 doubt it, and that is why I stand before you asking
12 you to ask those questions, to resolve your doubts.

13 As I said you can't give Mr. Pitts any benefit
14 of the doubt. All the benefit of the doubt goes to
15 Ricky. That's his right. He's the one on trial;
16 he's presumed innocent, he gets the benefit of your
17 doubt, no one else. So, again, I'm asking you,
18 resolve your doubts, resolve them in the favor of
19 Ricky Esaw, find him not guilty. Thank you.

20 THE COURT: Thank you, Mr. Chehoski.

21 Ms. Patterson?

22 MS. PATTERSON: Yes, sir, Your Honor. Thank
23 you.

24 Now is my chance to redirect your attention to
25 what we did prove, what we did have. Forget about

1 all those distractions he brought about. Again,
2 there was nothing in the testimony about the
3 defendant bleeding. There was testimony about a lot
4 of foot traffic, things could have been carried
5 away. His DNA may not have been at the scene, but
6 it doesn't mean he wasn't there.

7 If Franklin Vasquez was essentially just
8 picking out the person in the middle, why didn't he
9 make a selection on this one and pick out this
10 person? There's nothing wrong with this lineup.
11 His skin is not that lighter than anybody else's,
12 same physical features. Franklin talked about a
13 beard. Detective Moore didn't even generate this.
14 He talked about the process in which these people
15 are selected with similar characteristics.

16 The investigators did document good. They
17 documented so well they remembered the defendant
18 making these statements: That wasn't me. I was
19 just the driver. Hell no, you ain't got me on
20 nothing. Oh, at best, you got me on accessory.
21 They documented it. He was there, he admitted to
22 being there. They got rid of the shirt, so Luënetta
23 may not have seen anything if it was on it.

24 His statement, he talked about it not having
25 anything about Christy. Why would he mention that?

1 Why would he mention victimizing somebody else by
2 pointing a gun at them? It's seven pages. This is
3 a lot of stuff.. He understood his rights. He said
4 he wanted to talk. And it does mention something
5 about Franklin, but he refers to him as the younger
6 man. Read his statement, you'll have it back there.
7 And Luenetta, she's busy doing dictation, she had a
8 lot to do. She went straight upstairs and went to
9 work when she got back.

10 There's no Lexington County Sheriff's
11 Department policy about recording. There's no
12 Department-issued recording devices. Again, seven
13 pages. The officers didn't feed him any
14 information. They couldn't even get through reading
15 the warrants before he was interrupting them talking
16 about it wasn't me. They didn't feed him
17 information; he had the information, enough
18 information for seven pages, because he was there.

19 Now, the doctor who talked about
20 identification -- cross-racial issues and
21 identification, she also agreed there's something
22 fright [sic] or flight. It means when a person is
23 in a stressful situation, they react to help them
24 survive, and that's what Franklin did. He was
25 frozen for a second, but he snapped out of it. And