

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Dorchester County

Honorable Perry M. Buckner, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

KEUNTE D. COBBS,

APPELLANT.

APPELLATE CASE NO. 2018-001599

RECORD ON APPEAL

LARA M. CAUDY  
Appellate Defender

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT

ALAN WILSON  
Attorney General

MARK FARTHING  
Assistant Attorney General  
Rembert Dennis Building  
1000 Assembly Street, Room 519  
Columbia, SC 29201  
(803) 734-3727

DAVID M. PASCOE, JR.  
Solicitor, First Judicial Circuit  
140 N. Main Street, Suite 102  
Summerville, SC 29483  
(843) 871-2640

ATTORNEYS FOR RESPONDENT

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| State of South Carolina | ) | Court of General Sessions |
|                         | ) | First Judicial Circuit    |
| County of Dorchester    | ) | Case No. 2016-GS-18-01266 |
|                         | ) | Case No. 2016-GS-18-01267 |
|                         | ) | Case No. 2016-GS-18-01269 |

The State of South Carolina,

Plaintiff,

-vs-

Transcript of Record

Keunte D. Cobbs,

Defendant.

December 14, 2017  
St. George, South Carolina

B E F O R E:

The Honorable Maite Murphy, Judge

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

Glenn Justis, Esquire  
Attorney for the Plaintiff

Ash Chisholm, Esquire  
Attorney for the Defendant

Krystal J. Smith  
Circuit Court Reporter

1 DECEMBER 14, 2017

2 (WHEREUPON, the proceedings began at 12:22 p.m.)

3 MR. JUSTIS: The State calls Keunte Cobbs.

4 Your Honor, standing before you is Mr. Keunte Cobbs.

5 He's charged on Indictments 2016-GS-18-1266, 1267, and 1269.

6 It's possession of a weapon during the commission of a

7 violent crime, murder, and attempted murder. (Oh, I'm sorry.

8 Sawed-off -- and also sawed-off -- possession of a sawed-off  
9 shotgun.

10 Those are what he's facing and they all stem essentially  
11 from one incident, Your Honor. And he's here today for a  
12 speedy trial motion.

13 He was arrested back it looks like in June, June 27<sup>th</sup> --  
14 28<sup>th</sup> of 2016, and he's been incarcerated since then. He  
15 doesn't have a bond, I believe, on the murder charge. He  
16 does have a bond, I think, of 50,000 surety and 15,000  
17 surety, two other bonds on the other charges, but nothing on  
18 the murder charge.

19 And I've been speaking with Mr. Chisholm about his case  
20 and everything, and the State has no problem with setting a  
21 January date for -- for -- for resolution of this case, if we  
22 can. I believe -- going through the evidence, I don't  
23 necessarily foresee any problems with, you know, being  
24 prepared to either try this case, plea, resolve it in some  
25 form or fashion in January. I would just ask for maybe the

1 second week of court in January, the week of the -- it's  
2 really the 16<sup>th</sup> because I think the 15<sup>th</sup> is Martin Luther King  
3 Day. So that week.

4 And if for some reason something comes up where we can't  
5 be ready, whether there's a witness issue or something like  
6 that, then the State would have no problem doing a bond  
7 hearing at that point in time. I think being incarcerated as  
8 long as he has, I think he'd be entitled to that, but we  
9 really don't have a problem with just consenting to -- to a  
10 speedy trial/bond that second week in January.

11 THE COURT: Mr. Chisholm, are you okay with that?

12 MR. CHISHOLM: Yes, Your Honor. I think we're on the  
13 same page. We can either try it or, you know, I guess we can  
14 take the bond issue as it comes if we don't try it, but that  
15 would be for the second week, January 15<sup>th</sup>, you said?

16 MR. JUSTIS: Correct. So we'll either resolve the case  
17 in some form or fashion. That's the -- by the first day of  
18 that second week or we can have a bond hearing.

19 MR. CHISHOLM: Okay.

20 THE COURT: That's what we'll do then.

21 MR. CHISHOLM: Thank you, Your Honor.

22 MR. JUSTIS: Thank you, Your Honor.

23 THE DEFENDANT: Thank you.

24 (WHEREUPON, the proceedings ended at 12:25 p.m.)

25 --- END REQUESTED TRANSCRIPT ---

1 STATE OF SOUTH CAROLINA

2 GENERAL SESSIONS COURT

3 COUNTY OF DORCHESTER COUNTY

4 -----x

5 STATE OF SOUTH CAROLINA, )

6 vs. )

Transcript of Record

2016-GS-18-01268

7 KEUNTE D. COBBS, )

8 Defendant. )

9 -----x

10 June 18, 2018

11 DEFENDANT'S MOTION TO AMEND BOND

12 B E F O R E:

13 The Honorable Maite Murphy, Presiding Judge

14  
15 A P P E A R A N C E S:

16 Michael E. Spears, Esq.  
Attorney for the Plaintiff

17  
18 Ashley Chisholm, Esq.  
Attorney for the Defendant

19  
20  
21  
22  
23  
24 Court Reporter: Hilda Jordan

25 Transcribed by: Bobbi Fisher, RPR, CET

## P R O C E E D I N G S

(Whereupon, the following proceeding commenced:)

MR. SPEARS: May it please the Court, Your Honor.

THE COURT: Yes, sir.

MR. SPEARS: Judge, standing before you is Keunte Cobbs. He is represented by Mr. Chisholm. He is present under four separate indictments: 2016-GS-18-1266, charging him with possession of a sawed-off shotgun; 1267, for murder; 1268 for attempted murder; and 1269 for possession of a weapon during the commission of a violent crime.

Judge, this is a motion by the defense to amend the bond. Briefly, some factual background on this case, these events occurred on June 5th. The State is alleging that defendant, in an IHOP within Dorchester County, actually shot a Mr. Brandon Mack and a Mr. Bradford Spells (ph). Mr. Mack later died of his injuries. He was hit with approximately seven to nine rounds from a gun. Mr. Spells received two rounds to him. He survived his injuries.

This event stemmed from the possibility of the defendant being robbed of a certain amount of money by one of the two victims, allegedly. Since then, the defendant was arrested on June 27th, 2016. He didn't retain counsel, Mr. Chisholm, until June 14th, 2017.

Judge, earlier, at the end of 2017, in December, this case was before Your Honor when Mr. Glen Justice was

1 prosecuting the matter in regards to a speedy trial motion by  
2 the defense. Your Honor, the order that was in the clerk's  
3 file states that, if the case was not tried during the week of  
4 January 16, then he shall receive a bond. The wording on it  
5 is about the defendant's motion for a speedy trial is granted,  
6 but the order later states that, if it's not tried, then he  
7 can revisit the bond situation.

8 That case was not tried in January, and on January 19th,  
9 the following order states that he was to receive a \$400,000  
10 surety bond for the charges against him. Following that,  
11 Judge, Mr. Justice no longer works at our office. The case  
12 has come to me. I have been in contact with Mr. Chisholm  
13 about my further investigation in this case. The victim's  
14 family is present today.

15 Judge, the State fully intends -- and has expressed this  
16 to everyone -- fully intends to try this case in August,  
17 whether it's the 20th or the 27th. I believe those are the  
18 two terms we have in August. I can double-check to make sure  
19 that I have got those, but either of the terms in August is  
20 when the State intends to call this for trial. We would  
21 consent to anything. We, obviously, don't have to consent to  
22 an order from the judge, but that's what we intend to do.

23 Because of that, we would request that the defendant's  
24 bond remain the same. He's only just now at the end of the  
25 six months from when he received the bond, and in two months,

1 the case is going to be called. Due to the nature of these  
2 charges and the danger to the community and letting him out  
3 for a simple two months before going to trial on attempted  
4 murder and murder, I would argue the potential for a risk of  
5 flight because of that.

6 The victim's family of Mr. Mack, the deceased victim,  
7 she -- his mom is present in the courtroom today and would  
8 like to address the Court at the appropriate time.

9 THE COURT: Yes, sir.

10 MR. SPEARS: Other than that, Your Honor, that would be  
11 the State's argument against the motion.

12 THE COURT: Mr. Chisholm?

13 MR. CHISHOLM: Thank you, Your Honor. May it please the  
14 Court. Did you want to hear from Mrs. Mack first or do you  
15 want me to go ahead?

16 THE COURT: You can go ahead and then I'll hear her.

17 MR. CHISHOLM: Okay. Thank you, Your Honor. And we came  
18 last week -- I believe it was last Wednesday and went before  
19 Judge Goodstein, and it was basically a motion to remove my  
20 speedy trial motion as well as reduce bond. And the order  
21 that the Solicitor referenced from December, it's worded that  
22 the speedy trial motion was granted.

23 But, at any rate, in reading through the State vs.  
24 Hunsberger case, which is 418 S.C. 335, it's become an issue,  
25 especially in this case, it mentions that, when the defendant



1 asserts a right to a speedy trial, when it's renewed. It was  
2 an issue in that case. So just to be safe, I wanted to have  
3 on that on the record that I am renewing that motion.

4 Mr. Cobbs is 36 years old. He is single. He has two  
5 children. He's a high school graduate. He's taken business  
6 classes at Trident Tech. He's worked as a club promotor.  
7 He's a painter. He's done flooring work. He's from the area.  
8 And our position would be that he's not a flight risk and he's  
9 not a danger to the community. He has been in since June 27  
10 of 2016, so he is right at almost exactly two years at this  
11 point he's been waiting for his trial.

12 It's an interesting case in that there's a shooting in an  
13 IHOP. There's video that catches some of the scene but not  
14 all of it. And particularly, since it's in a restroom, you  
15 don't have a video that shows exactly what happened. There's  
16 no forensic evidence that links Mr. Cobbs to the case. The  
17 victims in this case were asked at the hospital if they knew  
18 who shot them. They said they did not. And I think we can  
19 provide, you know, proof that they actually do know Mr. Cobbs.

20 When I was here before, when I asked for a bond before, a  
21 \$400,000 bond was granted in January, and since then, in  
22 reading this Hunsberger case, I have come across a statute  
23 which I believe would apply here. And I have provided a copy  
24 to Your Honor, and I believe to the Solicitor as well, which  
25 is S.C. Code 17-23-90. And this is a statute that's

1 referenced in the Hunsberger case, is kind of how it was  
2 brought to my attention. And the latter portion of which  
3 states, "If any persons committed as aforesaid upon his prayer  
4 of petition in open court the first week of the term to be  
5 brought to his trial, shall not be indicted and tried the  
6 second term after his commitment or, on his trial, shall be  
7 acquitted. He shall discharged from his imprisonment."

8 And the way they read that, Your Honor, is that, if you  
9 enter a request for a speedy trial, as Mr. Cobbs has done here  
10 back in December, if the case has not been tried to terms from  
11 that point, then he should be discharged from the jail. It's  
12 been more than two terms. It's been six or seven months at  
13 this point since he made that request.

14 And, Your Honor, I believe I have a copy of the  
15 Hunsberger case that I could pass up if you'd like and made  
16 reference to it.

17 THE COURT: I think I have a copy.

18 MR. CHISHOLM: You have a copy?

19 In my copy, it looks like, on page, I guess, 358, this is  
20 actually in the dissent of that case under Section C, the  
21 accused's assertion of the right to a speedy trial.

22 THE COURT: Where are you reading that?

23 MR. CHISHOLM: This is -- it says page 358. It's under  
24 Section C, "Accused assertion of the right to a speedy trial  
25 in the dissent." Yes, ma'am.

1 THE COURT: All right.

2 MR. CHISHOLM: Two or three sentences in, it says, in the  
3 parenthetical here, that, in that case, there's a denial of a  
4 speedy trial claim where this code section I'm referencing  
5 provided for release if not indicted and tried within a  
6 certain time frame, not dismissal of the charge.

7 Essentially, what's going on in, in prior cases, people  
8 have argued that this is -- this would be a basis for a motion  
9 to dismiss; that this 17-23-90 would provide an affidavit to  
10 have the case dismissed.

11 And what it's saying in this case as well as in State v.  
12 Campbell is that what this code does is it addresses whether  
13 someone should be granted bail in this situation where they  
14 have asserted their right to a speedy trial in a certain time  
15 frame, which I believe would be two terms of court past if  
16 their case has not been tried.

17 I think this case, along with the statute, makes it  
18 pretty clear that bail should be granted according to the law.  
19 I have got a copy of State v. Campbell, which I can pass up,  
20 Your Honor, which is the case that's referenced in Hunsberger.  
21 I figured there's a question as to what constitutes bail,  
22 because he did receive the \$400,000 bond back in January. But  
23 if you read this case, it's a pure (indiscernible) of opinion  
24 from -- looks like 1982 at 277 S.C. 408, State v. Campbell.  
25 If you read this, it basically lays out what that means. It

1 says the statute -- it's three paragraphs in, about halfway  
2 through. It says the statutory reference to discharge is  
3 interpreted as requiring the prisoner -- and then it's got  
4 quotations -- be as unrestrained as if upon his trial he was  
5 acquitted. And it says this phrase "merely in the case, the  
6 prisoner should be released without bail, not discharged from  
7 further prosecution," which is essentially what we're here  
8 asking for today, Your Honor. I guess the equivalent would be  
9 a personal recognizance bond per the statute.

10 MR. SPEARS: And, Your Honor, if I may.

11 THE COURT: Yes, sir.

12 MR. SPEARS: First and foremost, Judge, I mean, this has  
13 been quoted in the dissent of Hunsberger. The finding case  
14 law for Hunsberger would lead us to the potential for a --  
15 addressing these factors that Hunsberger has set forth in  
16 regards to a speedy trial if the State fails to try the case  
17 at a certain amount of time. If Hunsberger is activated, then  
18 the State is subject to these four points to determine  
19 prejudice to the defense.

20 This Campbell case, it's quoting an indictment that is  
21 based off of a case from, I believe, it said 1852 on the  
22 back -- 1892. I don't think it would apply here. I don't  
23 think that if a case is not indicted or tried by the second  
24 term thereafter someone requests a speedy trial, in modern  
25 standards, it's physically possible.

1       At this point in time, Judge, the State -- he has been  
2 granted a bond due to the failure of the State to try him  
3 within a certain amount of time determined by the judge. Even  
4 though he hasn't been able to make that bond, he has been  
5 granted one. At this point in time, the State is saying on  
6 the record that we will be going forward on this case in  
7 August. We are not displaying any sort of prejudice. It was  
8 simply further an investigation of gathering witnesses,  
9 finding information, getting further reports, particularly  
10 witnesses that are involved in this case. There is a witness  
11 in Florida that states the defendant actually admitted to her  
12 what happened on that day.

13       Hunsberger itself tells us that gathering a witness or  
14 trying to find a witness is a legitimate reason for a  
15 continuance on trial. If Your Honor orders us for a date  
16 certain in August, I just don't see how we -- any sort of  
17 prejudice is enough, even under Hunsberger. I mean, we are at  
18 the two-year mark right now. There are other cases on our  
19 docket that we are attempting to try. Multiple ones,  
20 actually. This is the sixth from the top.

21       I do not think that an old statute, based on an 1800  
22 case, referenced in the dissent of a recent case, warrants a  
23 PR bond in this situation when the State is willing to go  
24 forward and ready, and there's no display of prejudice or any  
25 sort of deliberate attempt to hamper the defense in regards to

1 the delay.

2 THE COURT: And I understand the victim wishes to be  
3 heard.

4 MR. CHISHOLM: Yes, Your Honor.

5 And may I respond, Your Honor, at the appropriate time?

6 THE COURT: Yes. You can go ahead and respond.

7 MR. CHISHOLM: Thank you, Your Honor. I'm quoting the  
8 State v. Hunsberger, you know, the dissent from that case, but  
9 that's a case -- the majority is basically writing about the  
10 denial of the right to a speedy trial. That is a motion I  
11 anticipate making in the future, a motion to dismiss based on  
12 this case. That's not what I'm doing here today.

13 In the dissent, the reason they're talking about that is  
14 because the judge is saying that the Court -- the appellate  
15 court rightfully rejected the right -- the dismissal based on  
16 the speedy trial right, and they said they did the right thing  
17 in that they granted a PR bond in that case to this guy in the  
18 Hunsberger case.

19 So that's why it's in here. She's saying they shouldn't  
20 have dismissed it. Here's what they should have done,  
21 according to the statute, is what they did. They granted him  
22 a personal recognizance bond.

23 You know, we're not at a point where we're getting to the  
24 factors that are discussed in Hunsberger because that all goes  
25 to the denial of a speedy trial. I'm simply bringing that up

1 because it references the statute. It's pretty on point with  
2 what the statute should mean.

3 And I do have family members here or friends and family  
4 of Mr. Cobbs that I neglected to mention would like to speak  
5 at the appropriate time, Your Honor, and I assume we could go  
6 forward.

7 THE COURT: Thank you, Mr. Spears.

8 Yes, ma'am.

9 MS. COBB: Good afternoon.

10 THE COURT: Tell me your name first.

11 MS. COBB: My name is Michele Cobb. I am the mother of  
12 the victim, Brandon Mack. Your Honor, I have suffered a  
13 tremendous loss. My son got murdered at the age of 22 years  
14 old, and since his death, I suffer with anxiety. I have  
15 countless sleepless nights. And the fact that the defense is  
16 living within close proximity of my mom and myself and he is  
17 aware of our address, I really don't feel safe. With him  
18 being released would be -- I feel like I would be at risk for  
19 my parents -- my family and myself would be at risk.

20 And I see nothing stopping him -- with the court being in  
21 August -- anything stopping him from being a flight risk,  
22 although his defense says that he's no -- he's not one. But  
23 it's -- I understand he has children that are going through  
24 different type of -- they suffer from a different type of  
25 instances, and I understand that, but his children can come

1 visit him. My son is buried, and I'll never see him again.  
2 He's not coming back.

3 So his release will cause me and my family, you know, a  
4 huge -- a huge issue for our safety and him -- I just don't  
5 feel that, with it being so close to the possible court  
6 hearing, that it would be -- you know, there's nothing keeping  
7 him from leaving. And, I mean, I'm sorry that what his  
8 children are suffering and, you know, may God be with them. I  
9 mean, bless their hearts; they didn't ask to be -- and they're  
10 innocent in the matter.

11 But like I said, my son, he's never coming back, and it's  
12 not -- my family is suffering is huge void. I mean, it's not  
13 fair to us.

14 THE COURT: Thank you.

15 Anything further from your side?

16 MR. SPEARS: Judge, just briefly. The defendant's record  
17 has a 2000 hit and run with property damage; a 2000 possession  
18 of a stolen vehicle, less than 5,000; 2001, possession of  
19 Schedule I or a cocaine first offense.

20 Judge -- and I have spoken with defense about this  
21 previously. There is a 2002 watercraft operator/failure to  
22 render aid with death that was timed served. It's an  
23 unfamiliar charge for the State's side on that.

24 A 2004 malicious injury to personal property; a 2007  
25 assault and battery of a high and aggravated nature; and a



1 2008 failure to stop for a blue light.

2 THE COURT: Any family wishing to speak?

3 MR. CHISHOLM: Yes, Your Honor. Mr. Cobbs' minister,  
4 Melvina Robinson, would like to address the Court.

5 MS. ROBINSON: Hello. Melvina Robinson.

6 THE COURT: Yes, ma'am.

7 MS. ROBINSON: I want to speak on behalf of Keunte Cobbs.  
8 I'm also a spiritual advisor with him, where they hang out at.  
9 I know the victim's mom, and I also knew him. I always saw  
10 goodness come from him. He always was a supporter for the  
11 neighborhood kids. I would, like, always pray with them when  
12 I saw them doing -- going towards the wrong way. So I feel  
13 like he won't be a flight if he is released, so he can support  
14 his daughter, who is going through also -- of her dad being in  
15 here.

16 Like I say, my condolence go out to her. But I lived in  
17 that neighborhood for seven years. I have seen things.  
18 Prayed. I walked the neighborhood. He's a good kid. I have  
19 known him almost over 20 years.

20 THE COURT: Thank you, ma'am.

21 MS. ROBINSON: Yes, you're welcome.

22 THE COURT: I'm certainly familiar with Mr. Cobbs' case  
23 because I do recall him coming for the original motion in  
24 which the Court did set the trial date for the week of January  
25 16th of 2018. In that order, it says motion for a speedy

1 trial. The Court does get a lot of form orders and it was the  
2 Court's intent to certainly to set the case for trial pursuant  
3 to Langford and not pursuant to Hunsberger in any way that  
4 dismissal should that case not be tried.

5 And I understand that the defense understands that.  
6 That's certainly not the motion here before the Court today.  
7 The defense has asserted its right to a speedy trial, and  
8 based upon it not being done and taking effect on January  
9 16th, 2018, I did set a bond on January 18th of '18.

10 I understand it's been six months, and considering all  
11 the factors relevant to whether or not to set a bond, I  
12 certainly understand your argument, Mr. Chisholm, and the  
13 dissent, but in looking at the factors that it was -- mainly  
14 the fact which I'm considering, certainly whether the delay  
15 would prejudice the accused and the time of the delay and the  
16 reason for the delay, I think it's important to still consider  
17 those factors and whether or not he's a flight risk and/or a  
18 danger to the community.

19 I did consider those things in setting the \$400,000 bond,  
20 and your bond for me to reconsider or to now set a PR bond on  
21 the matter on a case that will be tried in August.

22 MR. CHISHOLM: Yes, Your Honor.

23 THE COURT: Whatever the term of court is available in  
24 August, your motion is respectfully denied.

25 MR. CHISHOLM: Thank you, Your Honor.

State of South Carolina ) In the Court of General Sessions  
 ) First Judicial Circuit  
 County of Dorchester ) 2016-GS-18-01267 and -01268

State of South Carolina, )  
 ) Excerpt of  
 Plaintiff, )  
 ) Transcript of Record  
 )  
 vs. )  
 )  
 Keunte D. Cobbs, )  
 )  
 Defendant. )  
 )  
 )  
 )

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August 20 - 21, 2018

St. George, South Carolina

B e f o r e:

The Honorable Perry M. Buckner III, Judge

A p p e a r a n c e s:

Donald N. Sorenson, Esquire  
 Michael E. Spears, Esquire  
 Attorneys for the Plaintiff

Ashley Chisholm, Esquire  
 John M. Loy, Esquire  
 Attorneys for the Defendant

Bonnie H. Kelly, CVR  
 Circuit Court Reporter

1 (On the record at 4:26 p.m.)

2 THE COURT: All right. Ladies and gentlemen, if you  
3 give me your attention, we're now going to select a jury  
4 in the first case for trial.

5 Solicitor, call your first case.

6 MR. SPEARS: Thank you, Your Honor. May it please  
7 the Court. Judge, this is, in the matter of Keunte Cobbs.  
8 He is present under indictment Nos. 2016-GS-18-1267,  
9 charging him with murder; and 2016-GS-18-1268, charging  
10 him with attempted murder.

11 We are present and ready to go to trial, Your Honor.

12 THE COURT: Very well.

13 MR. SPEARS: May I approach?

14 THE COURT: Hand it to the Clerk for me, please.  
15 She'll hand it to me.

16 (Mr. Spears complies.)

17 THE COURT: Thank you.

18 THE COURT: Ladies and gentlemen, the State has  
19 called for trial the *State of South Carolina vs. Keunte*  
20 *Cobbs*. Mr. Cobbs is charged by these two pieces of paper,  
21 which I hold in my hand, which we call "indictments." The  
22 indictments are not evidence of any of the allegations  
23 contained therein. The indictments are simply the formal  
24 written instruments by which the case is brought into this  
25 court.

1 Keunte D. Cobbs, with the offense of murder. It is  
2 alleged in that indictment that this occurred in -- hold  
3 on one minute.

4 Counsel, approach.

5 (Bench Conference.)

6 THE COURT: This indictment alleges, ladies and  
7 gentlemen, that in Dorchester County, on or about June the  
8 5, 2016, with malice aforethought, the Defendant, Keunte  
9 D. Cobbs, did kill one Brandon Mack -- M-a-c-k -- by means  
10 of shooting the victim, and that the victim did die as  
11 proximate result thereof; and that this offense was in  
12 violation of the laws of the State of South Carolina.  
13 That is the allegation in the indictment.

14 In indictment 2016-GS-18-1268 -- it is an indictment  
15 for attempted murder, charging the Defendant, Keunte  
16 Cobbs, with that offense. It alleges that the Defendant,  
17 Keunte Cobbs, did, in Dorchester County, on or about June  
18 the 5, 2016, with the intent to kill, attempt to kill one  
19 Bradford Spells -- S-p-e-l-l-s -- with malice aforethought  
20 by shooting the victim twice; this offense, attempted  
21 murder, being in violation of the laws of the State of  
22 South Carolina.

23 I tell you about those indictments, which are only  
24 allegations at this point, in order to ask you this: Has  
25 any member of my jury panel heard about, read about, or

1       atrition, so please understand that.

2               We want you comfortable 'cause we want you -- all you  
3       have to do, ladies and gentlemen, is listen. Listen  
4       carefully to the evidence that's going to be presented  
5       during the trial of this case. Don't let your thoughts  
6       wander. Give strict attention to the evidence. And I'm  
7       going to talk to you about what constitutes evidence when  
8       you come back in the morning.

9               So we'll provide lunch for you. I hope everybody has  
10      a pleasant evening. Drive carefully. You're now excused  
11      for the day. Be in your jury room by 9:15.

12              (The jury exits at 5:54 p.m.)

13              THE COURT: All right. I have from Counsel in this  
14      case the following motions: A motion to suppress the  
15      identification of the Defendant, signed by Mr. Ash; dated  
16      August 20, 2018; based on an out-of-court identification  
17      procedure being unduly suggestive and asks for a *Neil vs.*  
18      *Biggers* hearing.

19              There's also a motion to exclude reference to other  
20      wrongful acts under *State vs. Lyle*.

21              There is a motion to sequester witnesses.

22              And there's a motion for dismissal under the speedy  
23      trial requirement. There's also, in my file folder, an  
24      order from Judge Murphy, dated December 14, 2017, granting  
25      the Defendant's motion for speedy trial.

1           There is also an order from Judge Murphy, dated  
2           January 19, 2018, in which bond was set for the Defendant;  
3           and that he be placed on GPS monitoring, no contact  
4           victims or contact of victim's family, and not allowed to  
5           go within one mile radius of the victim's residence.

6           And I believe -- and there was a motion, which I  
7           think I've already ruled on, to allow access to juror  
8           criminal history reports, which I understand have been  
9           provided to you for the striking of the jury 'cause I  
10          granted that motion; that correct, Mr. Chisholm?

11          MR. CHISHOLM: It is, Your Honor. I had a chance to  
12          look at it; and just so the record reflects, I turned it  
13          back over to the Solicitor's Office. It wasn't shared  
14          with anyone per our conversation earlier.

15          THE COURT: So you've returned the summaries to the  
16          Solicitor now?

17          MR. CHISHOLM: I have, Your Honor.

18          THE COURT: Very good. All right. Then I assume  
19          that motion is moot then. You agree?

20          MR. CHISHOLM: Yes, sir.

21          THE COURT: All right. Then let's take up the  
22          identification first. It's my understanding that y'all  
23          have an issue concerning an out-of-court identification.

24          MR. LOY: Your Honor, moments ago, before we went  
25          back on the record, the Solicitor suggested, as far as

1 courtroom, outside the presence of the jury.

2 She certainly demonstrated no lack of hesitancy in  
3 her certainty as to whether or not the person in the  
4 courtroom was also the person that she was told to be  
5 "Keith." She has described, on cross-examination, the  
6 length of time, both at the club and at the apartment,  
7 over two nights, that she was able to see it and Counsel  
8 was able to cross-examine as to lighting.

9 I find that the out-of-court identification is not  
10 unduly suggestive, and I will admit it into evidence in  
11 the trial of this case.

12 I will, however, charge the jury my identification  
13 charge, which includes that the burden is on the State of  
14 South Carolina to prove identification and that proof, of  
15 course, is beyond a reasonable doubt, and it extends to  
16 every element of the crime charged. And this specifically  
17 includes the burden of proving beyond a reasonable doubt  
18 the identity of the Defendant as the person who committed  
19 the crime.

20 And if, after examining the testimony, the jury has,  
21 and I will so charge them, a reasonable doubt as to the  
22 accuracy of the identification, I will charge the jury  
23 that they must find the Defendant not guilty as part of my  
24 identification charge.

25 All right. Let's now move to your speedy trial



1 motion, Mr. Chisholm. Happy to hear from you.

2 MR. CHISHOLM: Thank you, Your Honor. May it please  
3 the Court?

4 THE COURT: Yes, sir.

5 MR. CHISHOLM: And Your Honor, if I could, I -- I  
6 have emailed to you, as well as the Solicitor, a copy of  
7 my motion for dismissal; but if I could make a copy for  
8 Court's exhibit?

9 THE COURT: All right. Hold on a second. If it -- I  
10 assume what I've got in my notebook is your motion for  
11 dismissal, which is dated August 20, 2018. Is that what  
12 you're referring to?

13 MR. CHISHOLM: That's it, sir.

14 THE COURT: I already have copy.

15 MR. CHISHOLM: Okay.

16 THE COURT: Do you want to make an exhibit for the  
17 record?

18 MR. CHISHOLM: Yes, sir.

19 (Marked Court's Exhibit No. 1, motion document, for  
20 Biggers hearing.)

21 MR. CHISHOLM: Your Honor, I'm not exactly sure how  
22 you'd like me to proceed with this in that in the motion  
23 that I've provided, it lists a rough time line and a rough  
24 basis for my argument. I'm assuming the -- the State ---

25 THE COURT: I'm assuming we can agree on the date of

1 the arrest and the date of indictment. Can we not,  
2 Solicitor?

3 MR. SPEARS: Yes, Your Honor.

4 THE COURT: What are they?

5 MR. SPEARS: Your Honor, the date of arrest is June  
6 27, 2016, and he was indicted on these charges in  
7 September of 2016.

8 THE COURT: You agree with that, Counsel?

9 MR. CHISHOLM: Yes, sir.

10 THE COURT: All right. Go ahead.

11 MR. CHISHOLM: And the rough basis for my motion is  
12 in what you've already received. I'm not sure if you want  
13 go -- me to go ahead and argue it in full, or some of the  
14 things that I'll be arguing would be in response to the  
15 reasons the State ---

16 THE COURT: Let me hear it in full.

17 MR. CHISHOLM: Okay.

18 THE COURT: Tell me why you think you're entitled to  
19 dismissal, which you asked for, pursuant ---

20 MR. CHISHOLM: Yes, sir.

21 THE COURT: --- to the Doctrine of Speedy Trial,  
22 which comes from the Sixth Amendment right, Federal  
23 constitution Sixth Amendment.

24 MR. CHISHOLM: Yes, sir.

25 THE COURT: Although we have, I think it's Article

1 1, maybe Section 14 of the State constitution, which is  
2 similar to the Federal constitution.

3 MR. CHISHOLM: Yes, sir. Well, I believe that  
4 dismissal ---

5 THE COURT: When did you first exercise the  
6 Defendant's right to raise the issue of a speedy trial,  
7 Counsel?

8 MR. CHISHOLM: The motion was heard and granted  
9 December 14, 2017.

10 THE COURT: Was that the first time you raised it?

11 MR. CHISHOLM: That was the first time I raised it.

12 THE COURT: So December 14 of 2017?

13 MR. CHISHOLM: Yes, sir. I was only appointed in  
14 this case in June of 2017.

15 THE COURT: All right. So you got appointed in  
16 June, and you raised it for the first time in December of  
17 2017.

18 MR. CHISHOLM: That's correct, Your Honor.

19 THE COURT: And at that point your motion was  
20 granted by Judge Murphy?

21 MR. CHISHOLM: Yes, sir.

22 THE COURT: And trial was set for January; is that  
23 correct?

24 MR. CHISHOLM: That's correct, Your Honor.

25 THE COURT: And at that point, you were dealing with

1 a different solicitor in the Solicitor's Office than you  
2 were these people that are here today?

3 MR. CHISHOLM: That's correct, Your Honor.

4 THE COURT: And although trial was set for January,  
5 the person who was handling this case, as I understand it,  
6 left the Solicitor's Office in January of 2018; is that  
7 correct?

8 MR. CHISHOLM: I don't remember the exact date he  
9 left, but ---

10 THE COURT: I was told that by the Solicitor, in  
11 your presence, in my chambers earlier today.

12 MR. CHISHOLM: Yes, sir.

13 THE COURT: Do you dispute that date?

14 MR. CHISHOLM: I -- I don't recall what date it was.

15 THE COURT: You just don't know.

16 MR. CHISHOLM: It was roughly that time. I -- I  
17 tell you that. Yes, sir.

18 THE COURT: Roughly about that time. All right.  
19 And then the case was assigned to Mr. Spears upon the  
20 previous Solicitor leaving the office; is that correct?

21 MR. CHISHOLM: That's correct.

22 THE COURT: However, Judge Murphy signed another  
23 order setting bond on your client in January of '17, in  
24 the amount of \$400,000 with some conditions of bond; is  
25 that correct?

1 MR. CHISHOLM: That's correct, Your Honor. Now,  
2 what I can't tell you is that January 19, I can't recall  
3 if Solicitor Justis was still handling the case on that  
4 date or if that was Mr. Spears.

5 THE COURT: It doesn't say in her order, so I can't  
6 tell you from her order. Did you appear at that hearing,  
7 Mr. Spears?

8 MR. SPEARS: Your Honor, that was Mr. Justis.

9 THE COURT: He tells me that was Mr. Justis.

10 MR. CHISHOLM: Yes, sir.

11 THE COURT: So he was still here on --

12 MR. CHISHOLM: The date it was to be tried.

13 THE COURT: -- January 19th.

14 MR. CHISHOLM: Yes, sir.

15 THE COURT: And left sometime after that.

16 MR. CHISHOLM: Yes, sir.

17 THE COURT: All right. And Mr. Spears got the file.

18 MR. CHISHOLM: Yes, sir.

19 THE COURT: All right. Anything else?

20 MR. CHISHOLM: Oh. Yes, Your Honor. While I'm  
21 thinking about it, I believe the copy I passed up for a  
22 Court's exhibit did not contain the orders that you've  
23 referenced from Judge Murphy. If I could add that to --

24 THE COURT: Absolutely.

25 MR. CHISHOLM: -- the Court's exhibit.

1 THE COURT: I assume there's no objection to that.  
2 They're public record. You don't have to make them an  
3 exhibit. They're already in the Clerk's file.

4 MR. CHISHOLM: That's true.

5 THE COURT: Happy to do so for purposes of this  
6 hearing.

7 MR. CHISHOLM: Okay, Your Honor.

8 THE COURT: There are two of them. There's the  
9 order of -- the second one is the January 19th order, and  
10 the first one was December ---

11 MR. SORENSON: Fourteenth.

12 THE COURT: --- 14, 2017, and January the 19, 2018.

13 MR. CHISHOLM: Yes, sir. And I guess if I could  
14 start by going through the time line which we've covered  
15 most of it already.

16 June 27 of 2016, was the date of arrest. June 28,  
17 2016, Defendant was charged -- was served with a warrant  
18 for the possession of a sawed-off shotgun charge that the  
19 State is not going forward on today, but I've included  
20 that in my previous speedy trial motions.

21 I was appointed June 12 of 2017. The first speedy  
22 trial motion was heard December 14, 2017; and basically,  
23 the Solicitor said the case would be tried in January or  
24 they were going to reassess bond.

25 January 19, 2018 Solicitor Justis, who was the

1 original Solicitor on the case, was not prepared to try  
2 the case; and Judge Murphy set a \$400,000 bond, as you  
3 mentioned, that, obviously, the Defendant has not been  
4 able to make.

5 Subsequent to that, June 28 of 2018, we requested a  
6 personal recognizance bond and renewed our speedy trial  
7 request.

8 THE COURT: In front of who?

9 MR. CHISHOLM: Judge Murphy. And it was denied,  
10 Your Honor.

11 THE COURT: It was denied?

12 MR. CHISHOLM: Yes, sir. And basically, we  
13 requested the P.R. bond -- I thought I had the code  
14 written down, I apologize -- for the -- basically, the  
15 same code section that was referenced in the *Hunsberger*  
16 case.

17 But to start, Your Honor, obviously you have to look  
18 at whether there's a trigger for a speedy trial analysis,  
19 whether there's been presumptive prejudice, whether it's  
20 an unreasonable delay. In *Langford*, I believe the Court  
21 held that a 23-month delay was presumptively prejudicial,  
22 and that was, I guess, a 2012 case. And in this case it  
23 would be, I believe, just over 25 months since the date of  
24 arrest to today; 784 days, I guess it is.

25 So our position would be that this kind of delay

1 should trigger the speedy trial analysis.

2 Moving from there, we'd look at the *Barker* factors  
3 that have been outlined from *Wingo vs. Barker*. To analyze  
4 a speedy trial claim, first you would look at the length  
5 of delay and again, here that's 784 days.

6 Second, the reason for delay. The Defendant in this  
7 case has, at no point, requested a continuance or done  
8 anything along those lines that would delay the case on  
9 his end. He has, since my representation started,  
10 maintained he is ready for trial as soon as possible.

11 I think it's worth pointing out that many of the  
12 factors that were argued in the *Hunsberger* case aren't  
13 present in this case. In that case, they were talking  
14 about how it was a complex case. This one isn't, and Your  
15 Honor will see, I mean, as far as a murder case goes, it -  
16 --

17 THE COURT: Well, actually, that was the dispute in  
18 the *Hunsberger* case as to whether it was or was not  
19 complex between the descent ---

20 MR. CHISHOLM: Sure.

21 THE COURT: --- and majority opinion, Counsel. So I  
22 don't know that that was actually -- that -- it was  
23 decided, but it was a three -- I think it was a three/two  
24 decision, wasn't it?

25 MR. CHISHOLM: I believe it was, Your Honor. But --



1

-

2

THE COURT: Hold on a minute, and I'll tell you. I got it right here.

3

4

(Brief pause.)

5

6

THE COURT: Yes. Justice Toal desented and -- and joined by Justice Kittredge.

7

MR. CHISHOLM: Okay. And --

8

THE COURT: And it was three/two.

9

10

11

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16

MR. CHISHOLM: Our position would be this is not a complex case. I don't know if the State's going to argue that or not. I mean, obviously, as in *Hunsberger*, it's a very serious case. I mean, it's a serious charge, but it's not a complex set of evidence. This isn't like a -- the trial that's going on with Manafort right now where you've got complicated tax schemes to wade through. It's just not that kinda case.

17

18

19

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23

In *Hunsberger*, I believe the State originally claimed that they had multi-jurisdictional issues, as the Defendant was being tried in Georgia, being brought back to South Carolina, and that that was part of the reason for delay. In *Hunsberger* they were talking about the death penalty being an option and whether they were going to go forward with that.

24

25

These -- these issues aren't present in this case. There's been no discussion about the death penalty, there

1 is no multi-jurisdictional issue. And the Defendant in  
2 *Hunsberger* actually challenged extradition, and the Court  
3 kinda pointed that out and said that, you know, arguably,  
4 he prolonged the delay in the case by doing so.

5 In *Hunsberger*, as I told you before -- I do have the  
6 code section -- the Defendant made a motion for P.R. bond  
7 pursuant to *SC Code 17-23-90*, and that motion was granted  
8 in that case. And then, subsequent to the hold in  
9 Georgia, I believe, the Defendant was given, I believe, a  
10 personal recognizance bond. In this case, I made the  
11 exact same motion and it was denied.

12 And here's where I'm kinda having to anticipate what  
13 arguments they may make, Your Honor. To the extent the  
14 State may rely on missing witnesses -- you just heard from  
15 Ms. Sweed, she has been brought here from Texas -- I would  
16 ask the Court to inquire from the State, if that is their  
17 position that's one of the reasons for delay, to the  
18 efforts that were made to secure this witness, when they  
19 made the efforts.

20 I think it would be a different position if they got  
21 a witness that goes off the grid two months after arrest,  
22 and every month they're following up, doing this, trying  
23 to get this witness in place, versus if they're trying to  
24 find this witness 20 months into the case. So I guess we  
25 can hear from them on that.

1           Likewise, to the extent the State may rely on  
2           awaiting forensic services, results, blood analysis,  
3           ballistic's analysis, things we do have in this case, a  
4           lot of it wasn't sent off; but what was, I think the State  
5           can tell you some of it, the ballistic's evidence, was  
6           sent off in January of this year which would be right  
7           around or maybe even after the time that the case was  
8           supposed to be tried. After the speedy trial motion had  
9           already been made is when some of this evidence was sent  
10          of to SLED for testing.

11          So our position would be finding witnesses wouldn't  
12          be a reason in this case, the ballistics and the SLED  
13          analysis wouldn't be a reason in this case.

14          As for the change of counsel, you know, I told you  
15          I don't have an exact date that it changed hands; but you  
16          know, again, I can tell you, it happened around the 18-  
17          month period of his incarceration. And the State,  
18          ultimately, is held responsible for these kind of things.  
19          I mean, 18 months would be -- our position would be, 18  
20          months is more than enough time to get this case ready for  
21          trial and it hadn't been done at that point.

22          And as Your Honor's mentioned, I mean, with *Langford*  
23          and everything else, I mean, the State, they control the  
24          docket. They decide when to prepare the case, they decide  
25          when to try the case, when ---

1 THE COURT: They haven't ---

2 MR. CHISHOLM: --- to look for witnesses.

3 THE COURT: --- controlled the docket since  
4 *Langford*, Solicitor. That statute was held  
5 unconstitutional in *Langford*.

6 MR. CHISHOLM: Yeah.

7 THE COURT: So -- and --

8 MR. CHISHOLM: Yes, sir.

9 THE COURT: --- and *Langford* was in what year, 2000  
10 ---

11 MR. CHISHOLM: Twelve.

12 THE COURT: --- 12.

13 MR. CHISHOLM: Yes, sir. I don't know. I haven't  
14 seen a lot of difference between the docket before then  
15 and after.

16 THE COURT: I'll agree with you that we do not have  
17 a statewide general sessions procedure yet in place in  
18 South Carolina implementing the *Langford* decision;  
19 however, it is clear from the *Langford* decision that the  
20 statute which gave the Solicitor exclusive control over  
21 calling the docket in general sessions court was held to  
22 be unconstitutional as a violation of the separation of  
23 powers.

24 MR. CHISHOLM: Yes, sir. Which, you know, I don't  
25 know where that leaves us as far as, you know, calling

1 cases; but I can tell you I don't get the option to call  
2 the case. I mean, that much I can tell you. So --

3 THE COURT: But you certainly have the option of  
4 raising the speedy trial issue, which you did in December  
5 of 2017.

6 MR. CHISHOLM: Correct, Your Honor. So our position  
7 would be the reason for delay in this case would be  
8 entirely on the State.

9 THE COURT: That's up to them.

10 MR. CHISHOLM: Yes, sir.

11 THE COURT: Tell me why you think you're prejudiced  
12 by the delay.

13 MR. CHISHOLM: Okay. Your Honor, if I could get --  
14 I'm almost to that right now. Third factor is assertion  
15 of speedy trial rights, which we just went through. It's  
16 been asserted, I re-requested it.

17 After that, the fourth and final factor would be  
18 prejudice to the Defendant, and at this point, if I could  
19 call Mr. Cobbs to the stand to get into that.

20 THE COURT: Certainly. Come around and be sworn.

21 (The Defendant complies.)

22 THE CLERK: If you'll spell your name for the  
23 record.

24 THE WITNESS: K-e-u-n-t-e D-o-n-t-r-e-l-l; middle  
25 name, Dontrell; last name, Cobbs, C-o-b-b-s.

DIRECT EXAMINATION BY MR. CHISHOLM - KEUNTE COBBS 138

1 KEUNTE DONTRELL COBBS, having  
2 been first duly sworn, testifies as follows:

3 THE COURT: Direct examination, Solicitor [sic.]

4 MR. CHISHOLM: Thank you, Your Honor.

5 THE COURT: Your witness.

6 DIRECT EXAMINATION

7 BY MR. CHISHOLM:

8 Q Mr. Cobbs, how long have you been incarcerated  
9 awaiting trial?

10 A Monday -- this coming Monday, 27th, will be two  
11 years, two months exactly.

12 Q Okay. And I'd like to ask you some questions about  
13 the effects of -- that you've had in your life awaiting  
14 this trial.

15 A Okay.

16 Q Has this period of incarceration caused you any kind  
17 of anxiety?

18 A A great deal.

19 Q A great deal?

20 A Yes, sir.

21 Q Has it had any effect on your employment?

22 A Yes, sir. I ---

23 Q Can you describe that?

24 A Well, you know, I kinda like lost everything  
25 throughout the last two years. I no longer have my -- my

DIRECT EXAMINATION BY MR. CHISHOLM - KEUNTE COBBS 139  
1 house. My job's gone pretty much. Time out of my kids  
2 life, you know.

3 Q So you've lost your job, you've lost your home --

4 THE COURT: Counsel, don't testify for him. Now,  
5 ask questions.

6 MR. CHISHOLM: Okay.

7 THE COURT: Direct examination.

8 MR. CHISHOLM: Okay, Your Honor.

9 A Yes. I lost my job, I lost my house, I lost my  
10 cars, I lost my -- my life.

11 Q I understand. Has it had any effect on the  
12 immediate members of your family as well?

13 A Yes. My daughter contemplated suicide and she's  
14 going through extreme depression where they got her on  
15 this thing called "Prozac." And my son thinks I abandoned  
16 him or whatever. He -- his grandparents and his mom, they  
17 told him that I'm off working. So you know, he don't  
18 think that I'm incarcerated or whatever. She doesn't want  
19 him to know that I'm in. So they -- I sent them a card  
20 and let them know I love them and I would never abandon  
21 them or nothing, and hopefully I'll be home soon after all  
22 this is put behind me. So ...

23 Q Okay.

24 A Yeah. But it's been rough.

25 Q Is there anything else, any other effects you'd like

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1 to relay to the Court at this point?

2 A You know, it's kinda hard to explain, but I been  
3 staying strong. So by the grace of God, I'll be alright.

4 Q All right. Thank you, Mr. Cobbs.

5 THE COURT: Cross-examination?

6 MR. SORENSON: Very briefly, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. SORENSON:

9 Q Mr. Cobbs, you were arrested on June 28, 2016; Is  
10 that correct?

11 A I think the correct date is June 27, 2016.

12 Q Give -- give or take a day, I mean, that's ---

13 A Yes, sir.

14 Q --- right? Where were you working back then?

15 A I'm a club promoter.

16 Q Okay. When did you leave ---

17 A And I mean ---

18 Q You're a club promoter. You work for yourself?

19 A Upon my -- upon my incarceration, I worked at  
20 particular clubs around the area, and what I'd do is I  
21 would promote either the club or somebody would want to  
22 throw a birthday party; and then I would help them with  
23 the effects of that.

24 Q When did you lose that job, when you were arrested?

25 A Primarily being back here.



1 Q Uh-huh.

2 A You know, I would -- I had no -- no other source of  
3 income. I have friends of mine who have their own  
4 companies and -- Kenny's Painting Service and Imperial  
5 Floors and R.W. Cobble.

6 Q Okay.

7 A They hardwood floors, and I worked for them from  
8 time to time on call. So ...

9 Q Okay. But you -- you testified on direct  
10 examination that you -- that you -- one of the things that  
11 you've suffered is losing your job; is that correct?

12 A Yes.

13 Q And that -- what were you referring to when you  
14 testified to that?

15 A I was -- the club promotion.

16 Q Okay. When did you ---

17 A Yes, sir.

18 Q --- when did you lose that, when you were  
19 incarcerated back in June of 2016?

20 A Basically, yeah.

21 Q Okay. And you said you lost your house. Where were  
22 you living back then?

23 A 117 Barbara Drive.

24 Q Okay. And that was your home?

25 A Yes, sir, it was.

1 Q Okay. I mean, like, you owned that home or ---

2 A No, no, no.

3 Q --- rented it?

4 A No, no, sir. I was renting.

5 Q Okay.

6 A I'm sorry.

7 Q So I assume you lost that house as far as the rental  
8 on that back in June of 2016?

9 A Yes. Through the Spence Company. I don't know if  
10 it was June, but they gave me -- it should be documented  
11 in the Dorchester County's Office that I -- I got an  
12 eviction notice sometime thereafter.

13 Q Okay. So shortly ---

14 A June 27th.

15 Q --- shortly after you were arrested in June of 2016  
16 ---

17 A Yes, sir.

18 Q --- correct? Okay. And then you said you lost your  
19 cars also. What cars were those that you were referring  
20 to?

21 A I had a Lincoln Town Car.

22 Q Okay. And that Lincoln, was that a vehicle that you  
23 were making payments on? --

24 A No, I owned it.

25 Q You owned it?

1 A Yes.

2 Q Okay, so how did you lose that?

3 A Well, it got total loss and then I could've got it  
4 back from the insurance company, which I reported stolen.  
5 It got -- it got stolen and then I reported it stolen.

6 Then I coulda got it back from the insurance company, but  
7 -- with \$500, and I wasn't able to get that so... But --

8 Q So there's just one car that we're talking about?

9 A Yes, sir.

10 Q Okay. And when did that occur that it was stolen?

11 A April of 2016.

12 Q So it's prior to this incident. Prior to -- to your  
13 arrest.

14 A Yes, sir. It's here in Dorchester County as well.  
15 I have all of it documented.

16 Q Okay. I'm just a little confused. I mean, you  
17 testified that as a result of your incarceration you lost  
18 your car.

19 A Yeah.

20 Q But it had been stolen three months prior or two  
21 months prior?

22 A The -- the -- the guy who has my car told me -- I  
23 spoke with him. He told me he coulda gave me my car back  
24 from the insurance company. All I had to do was pay \$500.  
25 There was nothing wrong with the car really.

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1 Q Okay. But all -- your inability to get that car  
2 back though, yet again, that all would've occurred back in  
3 June, at the latest June/July of 2016 because you were  
4 arrested?

5 A Yeah. I got -- got arrested. Exactly. I mean, I  
6 had no source of income after arrest, basically ---

7 Q Gotcha.

8 A --- to pay for anything.

9 Q Okay. And you talked about your daughter's  
10 situation, and I'm sorry about that, that she'd suffered  
11 from some depression and contemplated suicide?

12 A Yes.

13 Q Was that back when you were arrested back in 2016?

14 A No, sir. That wasn't. That's -- this all was --  
15 came to me, probably -- maybe nine or ten months after my  
16 incarceration.

17 Q So -- so early part of 2017?

18 A Yeah. Yes, sir. I'm sorry.

19 Q Okay. No, no. That's fine.

20 MR. SORENSON: Beg The Court's indulgence.

21 (Brief pause.)

22 MR. SORENSON: That's all I have on this issue, Your  
23 Honor.

24 THE COURT: Very well. Redirect?

25 MR. CHISHOLM: No, Your Honor.

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1 THE COURT: You may step down.

2 (The witness complies.)

3 THE COURT: Take a seat, Counsel. Let me hear from  
4 the State.

5 MR. CHISHOLM: Your Honor, I was going to call  
6 another witness.

7 THE COURT: You have another witness?

8 MR. CHISHOLM: Yes, sir.

9 THE COURT: All right. Who is it?

10 MR. CHISHOLM: Detective Dwayne Peters.

11 THE COURT: Call your witness.

12 THE CLERK: If you'll place your left hand on the  
13 Bible and raise your right hand and state your name for  
14 the record.

15 THE WITNESS: Dwayne Robert Peters.

16 THE CLERK: If you'll spell your last name for the  
17 record.

18 THE WITNESS: P-e-t-e-r-s.

19 DWAYNE ROBERT PETERS, after  
20 having first been duly sworn testifies as follows:

21 THE COURT: State your full name, spell your last  
22 name for the court reporter.

23 THE WITNESS: Dwayne Robert Peters, P-e-t-e-r-s.

24 THE COURT: Your witness, Counsel. Direct  
25 examination.

DIRECT EXAMINATION BY MR. CHISHOLM - DWAYNE ROBERT PETER\$46

1 MR. CHISHOLM: Yes, sir.

2 DIRECT EXAMINATION

3 BY MR. CHISHOLM:

4 Q Detective Peters, can you please outline for the  
5 Court your involvement with this case?

6 A Basically, sometime -- and I don't know the exact  
7 month honestly -- of 2018, we were getting ready to -- Mr.  
8 Spears approached our office about assisting in an  
9 investigation since Detective Elmore was no longer with  
10 the Sheriff's Office. And I just basically took it over  
11 for him.

12 Q As the lead detective you say?

13 A Correct.

14 Q Okay. And as the lead detective, I'm assuming you  
15 had all -- access to all the records that were available -  
16 --

17 A Yes, sir.

18 Q --- prior to you taking it over?

19 A Yes, sir.

20 MR. CHISHOLM: And I'll try to condense this as much  
21 as possible, Your Honor.

22 Q Were you aware of any cell phones being seized in  
23 this case?

24 A Yes, I was.

25 Q How many cell phones were ---

DIRECT EXAMINATION BY MR. CHISHOLM - DWAYNE ROBERT PETER\$47

1 A There was three.

2 Q --- seized total? Three total?

3 A Yes.

4 Q Where were they seized from?

5 A Those were seized, according to the search warrant  
6 returned, from a hotel in the City of North Charleston. I  
7 don't have my notes, so I can't tell you the exact hotel.

8 Q Well, could you just lay out kinda what they were  
9 seized in conjunction with?

10 A It was at the time of the arrest of Mr. Cobbs.

11 Q Okay. So phones were taken at his arrest.

12 A Correct.

13 Q Are you aware of another phone being found in this  
14 case from the IHOP?

15 A Yes.

16 Q Okay. And were you able to determine whose phone  
17 that was?

18 A That was Mr. Spells'.

19 Q And that phone was seized, cosrrect?

20 A It was taken into evidence the day of the incident.

21 Q Was that phone ever forensically examined?

22 A Yes, it was.

23 Q Can you tell me why you would do that in this case?

24 A We actually wanted to see whose phone it -- I wanted  
25 to see whose phone it was and what information was on it.

DIRECT EXAMINATION BY MR. CHISHOLM - DWAYNE ROBERT PETER\$48

1 Q Did you want to see whether Mr. Spells had been  
2 communicating with Mr. Cobbs?

3 A I didn't know exactly whose phone it was, and so the  
4 main purpose is to find out whose phone it was and to see  
5 if there was actually any evidentiary value of it.

6 Q Upon determining whose phone it was, did you -- were  
7 you able to figure out, from the records, whether there  
8 was communication between the two parties?

9 A Yes. There was none.

10 Q There was none? And that's one of the things you  
11 were looking for after you figured out whose phone it was.

12 A Correct.

13 Q Okay. Now, this was Mr. Spells's phone -- I'm  
14 sorry, didn't mean to confuse you -- correct?

15 A That was Mr. Spells', yes.

16 Q The other three phones that were seized -- I believe  
17 you said during Mr. Cobb's arrest -- were those phones  
18 ever forensically examined?

19 A No, they weren't.

20 Q Can you please tell the Court why they were not  
21 examined?

22 A I don't know where they're at honestly. Detective  
23 Elmore had them, and I don't know where they're at.

24 Q So Detective Elmore had the phones, and you don't  
25 know where they're at?



CROSS-EXAMINATION BY MR. SORENSON - DWAYNE PETERS 149

1 A Correct.

2 Q Do you know when he lost the phones?

3 A No, I do not.

4 Q So you don't know if it's a month in versus last  
5 month?

6 A Correct.

7 Q Okay. And you have no idea what's on the phones?

8 A Correct.

9 Q If you were able to examine them, would you be  
10 looking for the same kind of information you looked for in  
11 Mr. Spells' phone?

12 A Yes, sir.

13 Q And you were unable to do that because the phones  
14 were lost; is that correct?

15 A Correct.

16 Q Thank you. I have no further questions.

17 THE COURT: Cross-examination?

18 MR. SORENSON: Just real briefly, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. SORENSON:

21 Q And -- and you testified, Detective Peters --  
22 Lieutenant Peters, that the phones -- the chain of custody  
23 indicated that -- that Detective Elmore was the -- the  
24 last person to be in custody of those?

25 A Yes, sir. He's the one that actually filled out the

CROSS-EXAMINATION BY MR. SPEARS - DWAYNE ROBERT PETERS150

1 chain of custody on it.

2 Q You've been unable to locate them anywhere. Is ---

3 A Correct.

4 Q --- that correct? When did -- when did he leave the  
5 Sheriff's Office?

6 A January -- it was at the end of the last of -- of  
7 the last election --

8 Q So it'd be January --

9 A -- of coroner's --

10 Q If he started in January of 2017, after ---

11 A I think -- I -- I believe so.

12 Q --- after Mr. Brothers was elected coroner, is ---

13 A Yes, sir.

14 Q --- that correct, in 2000 -- all right. So he -- he  
15 couldn't have just lost them within the last month; is  
16 that correct?

17 A Correct.

18 Q I mean, that would've been pre-January of 2017.

19 A Correct. I think he actually put in his notice in  
20 December.

21 Q Okay. So somewhere between June of 2016 and  
22 December of 2016, those phones went missing.

23 A Yes, sir.

24 Q You've never had them in your possession?

25 A No, sir.

REDIRECT EXAMINATION BY MR. CHISHOLM - DWAYNE PETERS 151

1 MR. SORENSON: That's all, Your Honor.

2 THE COURT: Redirect?

3 MR. CHISHOLM: Yes, sir, briefly.

4 RE-DIRECT EXAMINATION

5 BY MR. CHISHOLM:

6 Q When did you notice that the phones were missing?

7 A As -- when I -- when I pulled the case file to start  
8 going over it.

9 Q When would that be roughly?

10 A I'm going to give you -- it was this year.

11 Q This year?

12 A I don't know if it was March -- this year.

13 Q So that's ---

14 A I don't know if it was March or April --

15 Q Okay.

16 A -- but it was this year.

17 THE COURT: Of this year?

18 A Yes, sir.

19 Q March or April of this year. Prior to that, no one  
20 realized the phones were missing.

21 A Correct.

22 Q Thank you. I have no further questions.

23 THE COURT: Re-cross, limited to re-direct.

24 MR. SORENSON: No, sir.

25 THE COURT: You may step down.

1 THE WITNESS: Thank you, sir.

2 ((The witness complies.))

3 MR. CHISHOLM: Your Honor --

4 THE COURT: That's it, Counsel, unless you got  
5 another witness.

6 MR. CHISHOLM: I don't have ---

7 THE COURT: We'll hear from the State. I've heard  
8 your argument.

9 MR. CHISHOLM: Well, I was going to get into  
10 prejudice. It's one of the things you asked me.

11 THE COURT: Pardon?

12 MR. CHISHOLM: One of the things you asked me was  
13 what kind of prejudice has Mr. Cobb suffered.

14 THE COURT: Yes, sir. And you've answered that  
15 question. Take a seat.

16 Let me hear from you, Solicitor.

17 MR. SPEARS: Your Honor, in looking over the  
18 Defense's questions, I mean, basically in regards to the  
19 *Baker* [sic] factors. There's the amount of the delay ---

20 THE COURT: I agreed with Mr. Chisholm in that I  
21 believe that there is a basis upon which the Court should  
22 look at the *Barker* factors. And obviously there is a  
23 delay between the arrest here and the trial. So I think  
24 it meets threshold requirements for a speedy trial claim,  
25 and requires an analysis of the four *Barker* factors which

1 are: Length of delay, reason for the delay, the  
2 Defendant's assertion of his speedy trial right, and  
3 prejudice to the Defendant from the delay; all of which I  
4 inquired of Mr. Chisholm about and allowed him to put up  
5 testimony concerning what he thinks is the prejudice from  
6 the delay. So let me hear from you, Solicitor.

7 MR. SPEARS: Your Honor, in regards to the first  
8 Barker factor, the length of delay, the -- there's no  
9 argument for how long it's taken. We have older cases on  
10 our docket, but we can't argue with the amount of time.  
11 However, the -- the reason for the delay, the second  
12 Barker factor --

13 THE COURT: Well, let's first go back to the length  
14 of delay.

15 MR. SPEARS: Uh-huh.

16 THE COURT: Mr. Chisholm argues it's 20 -- did you  
17 tell me 23 or 25 months?

18 MR. CHISHOLM: Twenty-five. I believe it's 784  
19 days, Your Honor.

20 THE COURT: Twenty-five months or 784 days. You  
21 agree with that?

22 MR. SPEARS: I agree with that, Your Honor.

23 THE COURT: All right.

24 MR. SPEARS: Your Honor, initially, on the December  
25 -- when the first speedy trial motion was done, the order

1       itself ---

2           THE COURT: First raised in December of 2017,  
3       shortly after Mr. Chisholm became the attorney for the  
4       Defendant.

5           MR. SPEARS: Yes, Your Honor.

6           THE COURT: So less than a year ago.

7           MR. SPEARS: And also before that, Your Honor, the  
8       Defendant had spent an entire -- almost an entire year  
9       incarcerated without taking counsel, without hiring  
10      counsel or requesting a Public Defender. He had not  
11      received counsel at that point and time.

12          And also into the reasons for delay, Mr. Elmore left  
13      -- the lead investigator left during that year of 2017.  
14      Following in that -- following the initial speedy trial  
15      motion, there was also, at the beginning of January of  
16      2018, the snow storm in Charleston that actually did close  
17      down court for part of one of the weeks.

18          I know Mr. Justis was in charge of the case. I  
19      cannot personally testify as to some of the delays ---

20          THE COURT: Mr. Chisholm argued to me that Mr.  
21      Justis informed Judge Murphy that he was not prepared to  
22      go forward with the case when she signed the order of  
23      January 19th; is that correct, Mr. Spears?

24          MR. SPEARS: To my knowledge, Your Honor. I was not  
25      there for that hearing, but ---

1 THE COURT: Mr. Sorenson, were you in the courtroom  
2 when that occurred?

3 MR. SORENSON: I -- I would not have been, Your  
4 Honor. I could -- I can -- looking back, I think that was  
5 the end of our -- that -- the 19th, I looked on the  
6 calendar, is a Friday. So I would imagine was the last  
7 day of court or the last day of that two week term of  
8 court. I also believe it was Mr. Justis's last day in our  
9 office.

10 THE COURT: That was his last day as well?

11 MR. SORENSON: I -- I believe so 'cause he was  
12 supposed to be leaving the -- the 31st, and when he ended  
13 up leaving, I believe it was two weeks prior to that was  
14 his last day.

15 THE COURT: And when did your ---

16 MR. SORENSON: It was a Friday.

17 THE COURT: --- detective leave that was your chief  
18 detective?

19 MR. SPEARS: On this case? He left in -- January 3,  
20 2017, Your Honor.

21 THE COURT: January of 2017?

22 MR. SPEARS: '17, Your Honor.

23 THE COURT: All right.

24 MR. SPEARS: Judge --

25 THE COURT: When was it reassigned to someone after

1 that?

2 MR. SPEARS: The -- this case in our office was  
3 given to me the next week.

4 THE COURT: The week?

5 MR. SPEARS: January of -- the 23rd -- the week of  
6 January 23rd, Your Honor.

7 THE COURT: All right. So you're telling me that  
8 Mr. Justis left on the day that Judge Murphy set the bond,  
9 according to what Mr. Sorenson's telling me ---

10 MR. SPEARS: Entirely that day, Your Honor.

11 THE COURT: --- which was a Friday in January, and  
12 you were assigned the case the next week.

13 MR. SPEARS: Along with his entire docket. Yes.  
14 That's correct, Your Honor.

15 THE COURT: Along with Mr. Justis's entire docket?

16 MR. SPEARS: Yes, Your Honor.

17 THE COURT: All right. Go ahead.

18 MR. SPEARS: Judge, following that and looking  
19 through the case -- and Mr. Chisholm already broached on  
20 the material witness aspect. There's not just the one  
21 material witness. There is obviously Ms. Rachandra Sweed.  
22 We had evidence of this person, we had the statement from  
23 the investigator who was no longer in Dorchester County  
24 Sheriff's Office, and we attempted to find her. I had my  
25 investigator on it, her -- they had initially met her down



1 in Florida. She ended up being found in Texas --  
2 incarcerated in Texas. This was work put in by our office  
3 to do it. Furthermore, this was ---

4 THE COURT: You're referring to Ms. Williams now?

5 MR. SPEARS: No. Ms. Sweed, Your Honor.

6 THE COURT: Oh. Go ahead. 'Cause I was told she  
7 came from Texas as well, but ...

8 MR. SPEARS: No -- no, Your Honor. Ms. Sweed, who  
9 testified earlier at the other hearing, she was found in  
10 Texas..

11 THE COURT: All right.

12 MR. SPEARS: This was a shooting in an IHOP  
13 bathroom, Your Honor. There was multiple -- multiple  
14 witnesses that not all of them gave information to police  
15 officers. Time was spent trying to track down, by talking  
16 with the people whose information we did have, who else  
17 could be in that IHOP at that time. We were able to track  
18 down a number of them, not all of them.

19 On top of that, Your Honor, even before I had this  
20 case, the victim -- one of the victims who would've been  
21 an eye witness to the entire crime, Mr. Bradford Spells --  
22 who was in the bathroom when the crime happened -- we have  
23 been unable to locate and speak with. He refused to speak  
24 with the detectives initially, while he was in the  
25 hospital. He had been avoiding our office in regards to

1 that. We have not been able to talk with him about the  
2 case. He's a heavily material witness, and the attempts  
3 we've made to try to get in touch with him are added with  
4 the attempts in finding Ms. Sweed and the attempts of  
5 getting the other witnesses together.

6 Following that, the SLED ballistics report, that  
7 came back in regards to the shell casings found on the  
8 scene and -- and in regards to the guns found on the  
9 victims in this case, that didn't come back until March of  
10 2018.

11 There -- there was still evidence out there. There  
12 was still work to be done.

13 MR. CHISHOLM: Your Honor?

14 MR. SPEARS: There's a reason ---

15 THE COURT: Counsel, this is argument. Sit down.  
16 This is not testimony. I'm not taking objections. I'll  
17 listen to you. Just -- you don't interrupt him, just like  
18 I didn't let him interrupt you. Proceed.

19 MR. SPEARS: Judge, the -- following that, the --  
20 the preparation that was put together for this, the -- the  
21 -- the looking for the cell phones, Mr. Peters has already  
22 testified that when he got the case at Dorchester County  
23 Sheriff's Office, realized that there were three cell  
24 phones missing. That would actually take time. These are  
25 -- the gathering of evidence would be a substantial part

1 of the reason for delay on this case.

2 When Mr. Justis initially didn't try the case, he  
3 was provided with a bond, just like the December order  
4 said. It was, "Try the case or he gets a bond." And he  
5 was provided with a bond at that point, the next month  
6 when he was unable to try the case.

7 The hearing -- this came back before the Court in --  
8 I believe it was June, and the Defense requested a P.R.  
9 bond due to a statute quoted in the dissent of *Hunsberger*.  
10 The judge ---

11 THE COURT: Mr. Chisholm referenced a statute. Is  
12 that that old statute you talkin' about? 17-3-90?

13 MR. CHISHOLM: It is, Your Honor. It's an old one.

14 THE COURT: Yeah. There's a -- and I need to --  
15 there is a case on that. That statute was passed before  
16 we had the unified court system, before the Chief Justice  
17 set the terms of court. That's back when we had statutory  
18 terms of court, and there is a -- I can't remember if it's  
19 a -- it's a -- it's a -- I think it's a Supreme Court case  
20 'cause we didn't have the Court of Appeals in the 70's  
21 when it was decided, and -- which held that that statute  
22 did not require a P.R. bond because it referred only to  
23 statutory terms of court and not to the terms of court  
24 assigned by the Chief Justice, just so you'll know.  
25 That's the reason you don't see P.R. bonds now given on

1       that basis.

2               But I wondered if that was the statute you were  
3 referring to. Go ahead.

4               MR. SPEARS: Judge, following that, at the hearing  
5 that was done subsequent to him getting a bond, requesting  
6 a P.R. bond, the State, who -- it was myself in charge of  
7 the case at that point in time and I'd already expressed  
8 to the Defense on this, I had spoken to Mr. Peters on  
9 this, the plan was August. And it was expressed to the  
10 Court, on the record during that hearing, we're looking to  
11 try this trial in August. The -- we'll be ready for trial  
12 in August; and following that, some more investigation  
13 commenced.

14              I mean, we're -- we're here today even without the  
15 victim who saw the -- the assault happen in the bathroom.  
16 We're here today. We still haven't gotten the names of  
17 every individual who was in that IHOP at the time. We --  
18 we're here with the investigation that we could have done,  
19 but the reason for the delay, Judge, is just heavy  
20 investigation list.

21              This has been through two lead detectives and two  
22 assistant solicitors. Those have changed hands at  
23 separate times, and one of these changing of hands in the  
24 Solicitor's Office was very sudden. There wasn't an  
25 opportunity -- Mr. Justis went to hike the Appalachian

1 Trail. There wasn't an opportunity to speak with him  
2 about what he had done on the case thus far.

3 THE COURT: Mr. Justis and our former governor?

4 MR. SPEARS: He actually completed the trail, Your  
5 Honor.

6 So that would be the State's argument in regards to  
7 the reason for the delay on this.

8 THE COURT: All right.

9 MR. SPEARS: Following that, the final factor, the  
10 prejudice -- or I'm sorry, the Defendant's assertion of  
11 his right to a speedy trial, Your Honor ---

12 THE COURT: It wasn't asserted until December of  
13 2017.

14 MR. SPEARS: That's correct.

15 THE COURT: I'm aware of that, and I think y'all are  
16 stipulating to that. That was the first -- he's  
17 reasserted it subsequent to that, but that was the initial  
18 assertion of the right.

19 MR. SPEARS: Yes, Your Honor. And Judge, fourth  
20 factor, the prejudice to the Defendant. I mean, you --  
21 you've heard testimony in regards to this: No house, jobs  
22 gone, lost his car.

23 And then you heard on Mr. Sorenson's cross that all  
24 of those occurred at the time of the arrest. He lost his  
25 job when he was arrested. Couldn't make payments on his

1 house when he was arrested because it was a rental house.  
2 This wasn't due to the delay on this case.

3 Furthermore, looking at the *Hunsberger* case, the  
4 prejudice occurs (as read:) "... when the trial delay has  
5 weakened the accusability to raise specific defenses."  
6 We've only found more people who have been around this  
7 case in the investigation. There's no one missing now --  
8 or there's no one present -- or missing now that was  
9 present before on this case. All this investigation has  
10 produced more evidence, whether it's to the benefit of the  
11 State or the Defense, it has allowed for further  
12 examination into the facts on this.

13 They're not prejudiced like a 10-year delay where  
14 people's memories aren't fresh enough anymore. This is a  
15 two-year delay. It is one caused by changing of hands in  
16 two different departments, by heavy investigation. The --  
17 the charge itself might not be super complex. The  
18 investigation requires a lot of moving parts and of  
19 finding witnesses that have been detained in other states  
20 or finding out their names of them and what they have to  
21 say.

22 It takes time. The ballistics that was submitted to  
23 SLED takes time to come back. Judge, we would argue that  
24 the prejudice isn't there. It's produced more -- this  
25 just produced more evidence, the delay has.

1 THE COURT: Anything else, Mr. Spears?

2 MR. SPEARS: Nothing, Your Honor.

3 THE COURT: All right. Mr. Chisholm, you've been  
4 anxious now to interrupt him. Now's your time for reply.

5 MR. CHISHOLM: Thank you, Your Honor. And this kind  
6 of goes back to what I was saying earlier. I was going to  
7 ask if the Court could inquire as to dates of when all  
8 this happened 'cause, I mean, our position would be it  
9 certainly sounds like what happened in this case is there  
10 was a rush to look for this evidence, to find these  
11 witnesses, to track these people down as we approached  
12 trial. The original investigator, if I got the date  
13 right, left January of 2017; Detective Peters took over  
14 March/April, I think you said, of this year?

15 THE COURT: And -- and the right to speedy trial  
16 wasn't asserted in January of '17. It wasn't asserted  
17 until December of '17, at the end of the year.

18 MR. CHISHOLM: That's correct.

19 THE COURT: I understand that that was the date the  
20 detectives changed, but I actually think you're mixing up  
21 two factors there, but I don't think there's any dispute  
22 about the length of delay in this case. I think it's 25  
23 months or 783 days.

24 MR. CHISHOLM: Yes, sir.

25 THE COURT: There is a great dispute about the

1 reason for the delay. I don't think there's any dispute  
2 about your first assertion of your speedy trial right ---

3 MR. CHISHOLM: There's not.

4 THE COURT: --- which was December of 2017. So as  
5 to the four factors, two of which are really not in  
6 dispute --

7 MR. CHISHOLM: Correct.

8 THE COURT: -- one would be that the reason for the  
9 delay, the other's prejudice to the Defendant. I've  
10 listened to your testimony on that.

11 MR. CHISHOLM: Well, Your Honor, I was going to add  
12 to that, actually. I -- I'm sure you can probably ---

13 THE COURT: Well, you don't get to testify, Mr.  
14 Chisholm. You can argue if want to ---

15 MR. CHISHOLM: Well, I -- yes, sir.

16 THE COURT: --- but you don't testify in this case.

17 MR. CHISHOLM: And -- and I imagine you probably --  
18 well, hopefully, if I did my job, you saw where I was  
19 going with it when I was questioning Detective Peters ---

20 THE COURT: I know you want to testify, but ---

21 MR. CHISHOLM: Yes, sir.

22 THE COURT: --- but I'm not going to allow you do  
23 that and be a lawyer.

24 MR. CHISHOLM: Yes, sir.

25 My position would be the actual prejudice has been



1 shown in this case by the delay in trial, that these three  
2 cell phones, they wanted them for the same reason they  
3 wanted the one that Mr. Spells had: To see what kind of  
4 communications there were between the Defendant and  
5 between the alleged victims in the case.

6 Our position would be that there was exculpatory  
7 evidence on those phones in that they would not be able to  
8 show this type of communication. They did not discover  
9 that these phones were missing until a couple of months  
10 ago, and if they had tried the case and prepared it for  
11 trial at a reasonable time, they would've been able to  
12 find the phones as opposed to two years later.

13 And I would -- my final thing I would add is, you  
14 know, the State seemed to argue that actual prejudice is  
15 required. I don't believe that's the case. I believe  
16 actual or presumptive prejudice can support a speedy trial  
17 claim, and with presumptive prejudice, aside from what Mr.  
18 Cobbs testified to, I believe the courts have held that  
19 just general anxiety in itself of being detained for this  
20 long, oppressive detention, would be cause for presumptive  
21 prejudice.

22 THE COURT: Thank you.

23 MR. CHISHOLM: Thank you.

24 THE COURT: I'm obviously not in a position yet to  
25 have heard the evidence in this case. So on the fourth

1 factor of -- of the *Barker* factors, it is some concern to  
2 me. I've listened to the Defendant testify to anxiety,  
3 I've listened to him testify of loss of car, loss of  
4 house, although it was certainly amplified by the cross-  
5 examination by the Solicitor as to when it occurred.

6 It appeared the car was taken before even the first  
7 arrest. It appears that the house was a rental and that  
8 he was in custody. So his arrest, not necessarily the  
9 delay occasioned the loss of the rental property.

10 There's no dispute here about the length of delay.  
11 There is -- the State argues, basically, and I think the  
12 Supreme Court has recognized, that collecting witnesses  
13 can be a legitimate reason for delay.

14 Now, Defendant argues that the cell phones -- I'm  
15 supposed to take judicial notice that it would somehow be  
16 exculpatory. However, I could also take judicial notice  
17 that it could be inculpatory as well as exculpatory.  
18 Frankly, the truth is, we don't know what's on any cell  
19 phone. It's an unknown; therefore, it's not going to be  
20 presented in the trial of this case.

21 It does me -- give me some concern, however, on the  
22 fourth factor, that I need to hear the evidence in order  
23 to determine whether or not I feel there was prejudice to  
24 the Defendant from this delay. I find that the length of  
25 delay requires me to look into the *Barker* factors.

1           The reason for the delay -- the State has given me a  
2 legitimate reason and that is collection of evidence,  
3 whether it be ballistic evidence or locating witnesses.  
4 We had a change of solicitors, we had a change of  
5 detectives. Obviously, the Defendant didn't assert his  
6 right to a speedy trial until December of '17. Since that  
7 time, the Defendant's been given a bond. He was denied a  
8 P.R. bond, but I think that was a correct ruling in light  
9 of the case.

10           (To law clerk) I'll have -- I have a file on that in  
11 my thing. I want you to get that case so I can give it to  
12 Mr. Chisholm and the Solicitor on that. It's in my -- I  
13 told y'all about that case, and I couldn't give you the  
14 quote on it.

15           My concern is that I might have to revisit this  
16 issue. Clearly, dismissal is one remedy that the Court  
17 could grant the speedy trial, if I felt, once I hear the  
18 evidence in this case. My view of it, from listening to a  
19 pre-trial argument, at this point I don't feel I'm con --  
20 been convinced that there's sufficient prejudice to the  
21 Defendant from the delay in order to dismiss the charges  
22 against the Defendant. However, I will be listening  
23 carefully to the evidence presented during this trial.

24           Your motion for dismissal is respectfully denied.

25           All right. Counsel, I will -- don't -- I've ruled

1 on your sequestration motion, and I don't think there's  
2 any dispute about any longer -- it was moot, your motion  
3 concerning the information, which I granted, for you to  
4 strike the jury. I think that's everything; is it not?

5 MR. CHISOLM: It is, Your Honor. I believe that's  
6 everything.

7 THE COURT: And I've worked poor old Donna and the  
8 Clerk until 7:30 at night since y'all wanted to hear all  
9 your motions after the jury was dismissed, even though you  
10 wanted to delay them 'til Wednesday.

11 Solicitor, I -- hopefully, you'll have the Defendant  
12 that's involved in that motion. He's in custody, I  
13 understand, so you'll have him here in the morning. I'm  
14 going to try to be here between 9 and 9:15 to start that  
15 hearing. I want y'all prepared to go at 9:30 in the  
16 morning.

17 And I will, Mr. Chisholm, be listening very  
18 carefully to your argument about whether or not there's  
19 prejudice from the lack of a cell phone in this case,  
20 which you claim that you want this Court to somehow find  
21 is exculpatory of your client, when, frankly, there's been  
22 no evidence to establish that for purposes of this  
23 hearing.

24 All right. I will look forward to seeing everyone  
25 in the morning. I want to thank you for your patience and

1 your time tonight. I realize that I worked you late and  
2 y'all aren't used to that, and you even get the Solicitor  
3 to agree to a different time schedule so you don't have to  
4 work late. I promise I won't keep you late unless the  
5 jury keeps us late for the rest of this week.

6 Thank you very much. Court's in recess until 9:15  
7 in the morning.

8 One more thing. The Solicitor and Defense Counsel  
9 wanted to put on the record, outside the presence of the  
10 jury -- the jury's not here -- an amendment to the  
11 indictment. Please do so at this time.

12 MR. SPEARS: Your Honor, in regards to the  
13 indictment for murder against Mr. Cobbs, it has been  
14 amended this most recent grand jury session, the date on -  
15 -

16 THE COURT: It's just the indictment for murder; is  
17 that correct?

18 MR. SPEARS: That is correct, Your Honor.

19 THE COURT: 2016 to 1267.

20 MR. SPEARS: Yes, Your Honor.

21 THE COURT: All right. Now I'm reading from the  
22 copy I have. This amended indictment reads (as read):  
23 "That in Dorchester County, on or about June 5, 2016, with  
24 malice aforethought, the Defendant, Keunte D. Cobbs, did  
25 kill one Brandon Mack by means of shooting the victim.

1 The victim did die as a proximate result thereof. This  
2 offense being in violation of the common law of South  
3 Carolina and Code Section 16-3-10." Is that the amended  
4 indictment?

5 MR. SPEARS: That is correct, Your Honor.

6 THE COURT: Any objection to the amendment, Counsel?

7 MR. CHISHOLM: No, Your Honor.

8 THE COURT: No objection. All right. The amendment  
9 is so ordered. That will be the -- that is the indictment  
10 I published to the jury. I called Counsel to the bench  
11 before I read any allegations of the indictment, and that  
12 is the indictment that I published to the jury and that's  
13 what we'll work off of for purposes of this case.

14 Thank you, very much. You're excused 'til 9:15 in  
15 the morning.

16 MR. SPEARS: Thank you, Your Honor.

17 MR. CHISHOLM: Thank you.

18 (Off the record at 7:39 p.m.)

19 DAY 2

20 (On the record at 9:26 a.m.)

21 THE COURT: All right. Let the record reflect the  
22 Defendant's present, as is counsel for the State and the  
23 Defendant.

24 I received, when I arrived this morning, a letter  
25 from Juror 138, who is Kimberley Murray, M-u-r-r-a-y. She

1 I've said to you if they have any objections or  
2 exceptions. Any exceptions or objections from the State?

3 MR. SORENSON: No, Your Honor.

4 THE COURT: From the Defendant?

5 MR. CHISHOLM: No, Your Honor.

6 THE COURT: Ladies and gentlemen, we will now begin  
7 the trial of the case. Please give the lawyers your  
8 careful attention.

9 Solicitor.

10 MR. SORENSON: Thank you. May it please The Court,  
11 Your Honor?

12 THE COURT: Yes, sir.

13 MR. SORENSON: Good morning, Mr. Foreman and ladies  
14 and gentlemen of the jury. Back on June the 5, 2016, 2:14  
15 in the morning, two young men by the name of Brandon Mack  
16 and Bradford Spells walked into the IHOP restaurant on  
17 Dorchester Road over in Summerville. 2:14 in the morning.  
18 They walked in, they headed straight in through the front  
19 doors and back to the Men's -- towards the Men's restroom.  
20 Less than 10 seconds later, a volley of gunshots go off in  
21 that restroom. The two of them are both shot.

22 I submit to you the evidence is going to prove in  
23 this case that that man right there, (indicates) Keunte  
24 Cobbs, fired those shots, shooting Bradford Spells in the  
25 abdomen, he ended up surviving; and shooting Brandon Mack

1 at least six times: The left side of his body, in the arm  
2 multiple times, into his abdomen, left leg, through his  
3 groin, into his right thigh. Mr. Mack died several days  
4 later at Trident Hospital as a result of those injuries.

5 I submit to you as a result of those actions that  
6 night, Mr. Cobbs has been charged, as you've now heard,  
7 with two offenses: Murder, the murder of Brandon Mack,  
8 and attempted murder dealing with Bradford spells.

9 Now, ladies and gentlemen, as you've been told by  
10 Judge Buckner, it's our responsibility, our job in this  
11 case as the State of South Carolina, to prove Mr. Cobb's  
12 guilt to you beyond a reasonable doubt. You'll notice  
13 that I said "beyond a reasonable doubt" not "beyond any  
14 doubt" not "beyond the shadow of a doubt" not "beyond any  
15 possible doubt." "Beyond a reasonable doubt."

16 So what does that mean? That means, ladies and  
17 gentlemen, at the end of this case, when you get back into  
18 your jury room and have an opportunity to deliberate, you  
19 have a chance, at that point in time, to look at all of  
20 the evidence. I'm going to talk a little bit about, in a  
21 few minutes, about what you're going to hear from this  
22 witness stand and some of the evidence that's going to be  
23 presented before you.

24 But ladies and gentlemen, when you get back there  
25 and you look at all that evidence, you judge it's



1       credibility, it's believability, you weigh that evidence.  
2       At the end of that and you're firmly convinced that we've  
3       proven Mr. Cobb's guilt to you, then you have a duty under  
4       your oath to find him guilty.

5               So how are we going to go about doing that? Well,  
6       we're going to do that by calling witnesses and presenting  
7       evidence.

8               I submit to you, ladies and gentlemen, this case  
9       comes down to two -- two simple questions, two simple  
10      questions. The first question -- you know, we know the  
11      two victims, Mr. Mack and Mr. Spells, were in that men's  
12      restroom. First question is: How many other people were  
13      in that restroom? Okay. That's question No. one.

14              When you answer question No. two, it's going to be:  
15      Is Keunte Cobbs the person that's wearing the red t-shirt?  
16      Okay? Remember those two questions. How many people were  
17      in the restroom, and was Keunte Cobbs the person that's  
18      wearing the red t-shirt?

19              As you can imagine, ladies and gentlemen, as I said  
20      in my -- at the outset, this happened in the -- in the  
21      IHOP restaurant. As you can probably imagine, there's not  
22      a video camera in the restroom in this case,  
23      unfortunately. It would've been great if there was, but  
24      that's just kind of -- kind of makes sense that you're not  
25      going to have cameras in restrooms.

1           So what do we have? We have a video system that's  
2 set up in the IHOP that shows basically the -- the whole  
3 rest of the restaurant. Shows the lobby when you come in,  
4 the restrooms are located right as you walk in the front  
5 door, you go straight past the hostess stand and the --  
6 and the counter where you pay, go right behind there.  
7 It's the only thing back behind there: The Women's Room  
8 and the Men's Room. The cameras that are set up that  
9 cover that lobby area, that cover the dining area, that  
10 cover the front door so you can see everybody that comes  
11 in and out of the restaurant.

12           I submit to you that you can see everybody that  
13 comes in and out of that -- those restrooms. Can't see  
14 them come out the door, but you can see when they come  
15 from the hallway where the two restrooms are the only  
16 thing that are located. Okay?

17           So that's the questions. Let's talk a little bit  
18 about what we're going to hear. You're going to  
19 ultimately hear when they processed the scene and kinda at  
20 the conclusion of all the evidence being gathered, that  
21 back in that Men's -- Men's restroom and around that Men's  
22 restroom, they find eight shell casings. They're all 9mm  
23 shell casings, and ultimately there are eight bullets that  
24 are collected. Some of them are collected from Mr. Mack  
25 when the autopsy's performed on him, others are collected

1 at the scene, and one's turned in by an employee after the  
2 fact. Okay. Eight shell casings, eight bullets. Eight  
3 9mm bullets.

4 You're ultimately going to hear that Mr. Mack had a  
5 gun on him. It's found in the ambulance. You're going to  
6 find that Mr. Smell -- Spells likely had a gun on him.  
7 There's a gun that's located in the bushes outside the  
8 IHOP where you're going to see him go on the video after  
9 he shot. What you're going to hear though is that neither  
10 one of those guns fired any of those bullets or any of  
11 those eight shell casings, and that the same gun fired the  
12 eight shell casings that are located at that scene. One  
13 gun being fired, and it's not the gun that either victim  
14 had. Okay. Kinda keep that in mind.

15 All right. So what else are we going to hear? The  
16 set. You're ultimately going to have the video. The  
17 video's going to show that about 2:12 in the morning, 2:12  
18 and 30-some-odd seconds, you see an individual, taller,  
19 bald, black male with a red t-shirt, get up from seated --  
20 where he was seated out in the dining area and go towards  
21 the front, and ultimately turn towards the restrooms.  
22 You're going to see moments after that a tall, black, male  
23 with a white t-shirt on who was seated with the red t-  
24 shirt man, get up and follow him, basically, towards the  
25 restrooms at 2:12 and 30 to 40 seconds.

1           You're also going to see where another customer  
2 comes in, goes into the restroom, comes out of the  
3 restroom between 2:13 and 2:14 in the morning, and goes  
4 and seats -- sits himself down out in the dining area with  
5 the rest of his party. And I submit to you you're going  
6 to see nobody else go towards that restroom.

7           You're going to ultimately see at 2:14 and 35  
8 seconds, I believe, Mr. Mack and Mr. Spells come walking  
9 in the front door of the IHOP. Mr. Mack is in front of  
10 Mr. Spells by a couple steps. You're going to see them go  
11 directly towards the restrooms. They go out of view at  
12 2:14 and 51 seconds. Nine seconds later you hear the  
13 first gunshot.

14          What's important is the only person -- the -- the  
15 person in the red shirt has not come back on the video.  
16 The person in the white shirt that was seated with him and  
17 went in the restroom is back in the video. Mr. Mack and  
18 Mr. Spells walk right by him as they go towards the  
19 restroom.

20          You're going to hear exactly at 2:15 in the morning  
21 a series of -- it's hard to tell on the video how many  
22 shots it is. I submit to you it's at least eight. It's  
23 in the span of four seconds. Moments after that, you see  
24 people -- at that first gunshot at 2:15 and 00 seconds,  
25 people start running out the IHOP. The handful of people

1       that are congregated, either waiting to be seated or  
2       waiting for takeout food right inside -- in that front  
3       lobby area -- you see the person in the white t-shirt walk  
4       out.

5               The only people you ever see after that that come  
6       from the restroom area are three people: You see Mr.  
7       Spells stumble out on the ground, you see the red t-  
8       shirted man go running and almost jump over him and come  
9       running out, and ultimately you see Mr. Mack come out.  
10      Red t-shirt guy goes out, takes a left, goes in the same  
11      direction as the guy that he was seated with in the white  
12      t-shirt in the IHOP. Mr. Mack, Mr. Spells go out and go  
13      down the right-hand side of the parking lot of the  
14      sidewalk, come back into view 30 seconds later. Mr. Mack  
15      is collapsing on the sidewalk, Mr. Spells collapses or  
16      sits down on a bench outside where EMS ends up finding  
17      them and treating the two of them.

18             You're going to have an opportunity to have the  
19      video to see during that time period nobody else comes  
20      from that restroom area. That's why I submit to you that  
21      first question that you need to answer is how many people  
22      were in that restroom. Two victims, the red shirt.

23             It comes down to, ladies and gentlemen, that --  
24      Judge talked a little about this -- just simple logic,  
25      simple common sense, almost simple math.

1           Then the question -- second question. What was the  
2           second question I said, you know, probably didn't make a  
3           whole lot of sense when -- when I said it to you  
4           initially, but is the Defendant the person  
5           that's in the red shirt?

6           But I submit to you the evidence going to -- the  
7           evidence is going to show that the person in the red shirt  
8           was the only person that could've fired those shots in  
9           that restroom. So obviously, we have to prove he's the  
10          man in the red shirt.

11          As I said, you're going to have the video from the  
12          IHOP. There's certain camera angles that are a little  
13          better than others as far as how clear they are. None of  
14          them are probably definitive enough where you could look  
15          at that IHOP video and say, "That's Mr. Cobbs in that  
16          video." Couple of the angles where its -- it's definitely  
17          very consistent and not a bad picture of him.

18          But we also have in this case some cell phone video  
19          from a customer that was seated at a table, basically  
20          behind where the person in that red shirt was seated.  
21          They were in there just goofing around, shooting spit  
22          balls at each other, and one of them happened to be  
23          filming it, filming their party, but they catch the person  
24          in the background on that video, the person in the red  
25          shirt. Has the same -- there's a -- there's an emblem on

1 the t-shirt here (indicates) and looks to be an American  
2 flag on the other -- other breast pocket. You can see it  
3 clear as day on that cell phone video. It is a very clear  
4 video. And I submit to you there's no question that that  
5 then is the same person, when you look at the IHOP video,  
6 that is the same person we're dealing with.

7 And you'll have pictures from that and you'll have  
8 that cell phone video, probably a picture from it, where  
9 you can see clear as day him sitting over there that it's  
10 Kuenté Cobbs in that red t-shirt.

11 And we also have, when they processed the scene,  
12 where you see him run out that door and go out the  
13 interior door heading towards the outside, where  
14 ultimately, when they processed that, they lift  
15 fingerprints off of that that end up matching these four  
16 fingerprints of Mr. Cobbs off of the inside of that  
17 interior door.

18 And then lastly you're going to hear from a young  
19 lady by -- who -- by the name of "Ms. Sweed" whose going  
20 to testify about some conversations that she had with the  
21 person -- with that man right there (indicates) prior to  
22 the incident and then the night after the incident where  
23 he admitted to her that he was the shooter, that Mr. Mack  
24 had stolen \$20,000 from him.

25 Ladies and gentlemen, motive isn't something that we

1 have to prove, but I submit to you \$20,000, people lose  
2 their lives for a whole lot more money -- less money than  
3 that every day.

4 Now, as His Honor told y'all, I'm going to kinda  
5 leave you with one kinda final -- final little thought.  
6 As His Honor, Judge Buckner, was telling you about a  
7 little while ago, just as he's the judge of the law, the  
8 twelve of you are ultimately the judges of the facts, you  
9 and you alone that can ultimately tell us what happened  
10 back on June the 5, 2016. As he told you, the way you do  
11 that is by basically judging the credibility, in other  
12 words, that's the believability of the evidence, the  
13 witnesses, and the physical evidence that's presented  
14 before you.

15 And you might be sitting there kind of wondering,  
16 you know, "What did I do to get myself into this this  
17 morning?" I imagine when you got that piece of paper in  
18 the mail a couple of weeks ago summonsing you for jury  
19 duty that this is probably not where you thought you were  
20 going to be on the morning of August 21, 2018.

21 You might be asking yourselves, "What" -- you know,  
22 "I didn't go to a class. Nobody sat down and gave me any  
23 training, a lesson on how to be a juror, how to fill this  
24 role that I'm being asked to do." I submit to you,  
25 whether you know it or not, this is something you've been



1 training for literally every day of your lives. What  
2 you're asked to do here in this courtroom, to judge the  
3 credibility or the believability of witnesses, that's  
4 something you do everyday whether you're dealing with your  
5 spouses, your co-workers, your children. It's the same  
6 things that go into determining whether those people are  
7 being truthful with you or forthright with you that you  
8 have to use here in the courtroom.

9 And I submit to you in this case, probably more so  
10 than most cases that we deal with, the most important  
11 thing that you didn't leave home with you, you brought  
12 with you yesterday, you brought with you this morning,  
13 you'll bring with you tomorrow, and ultimately probably  
14 Thursday when you have a chance to get back in that jury  
15 room and deliberate and decide this case is your good 'ole  
16 common sense. 'Cause, ladies and gentlemen, that's really  
17 what this case boils down to, remembering those two  
18 questions: How many people came out of that restroom  
19 after those gunshots, and whether the Defendant in this  
20 case, Keunte Cobbs, was the man in the red t-shirt. Thank  
21 you.

22 THE COURT: Counsel?

23 MR. LOY: Thank you, Your Honor. Please the Court?

24 THE COURT: Proceed.

25 MR. LOY: Good morning, ladies and gentlemen.

1 THE JURY: (In unison) Good morning.

2 MR. LOY: An awful lot of what the Solicitor told  
3 you -- Mr. Sorenson told you I don't disagree with. I  
4 will tell you that it's only in the rarest, really  
5 exceptional circumstances that we try the same case twice  
6 in the court of General Sessions. And that's to be  
7 expected, and it's for a wide variety of reasons.

8 But there are some principles that are some  
9 fundamental and so elemental that despite the differences  
10 in the trials that go forward, they apply in every single  
11 one. They apply to the same rate, to the same extent, and  
12 they're absolutely critical to the function of our system,  
13 exactly as Judge Buckner told you.

14 And the first of those, and probably the most  
15 critical one that we have, is what's called a "presumption  
16 of innocence." Now, Mr. Sorenson may have touched on it  
17 briefly and the Judge did also, and I know that every one  
18 of you -- I suspect every one of you has heard that --  
19 that term, that expression before, and -- and I think they  
20 made a movie about it and there was a book, *Presumption of*  
21 *Innocence* or *Presumed Innocent* or something like that.  
22 And we all think we know what it means and how to apply  
23 it. It means, "Okay. Sure, he's innocent until we hear  
24 what happened." But that's -- that's really not it.

25 And it's not as simple and it's not as easy as that

1 because there are those who would contend, and I think  
2 reflection would support that contention, that really the  
3 presumption of innocence in America and in life in general  
4 is a -- is a myth. What we actually have is a presumption  
5 of guilt and I'll tell you why I say that. It's very few,  
6 and there may be some, but it's very few people who will  
7 get up in the morning, read the newspaper, look across the  
8 top of it or over their coffee cup to their spouse or  
9 friend or somebody they work with and say, "Oh, someone  
10 has been arrested and charged with robbing that bank last  
11 Tuesday."

12 That's not what they say. What they say is -- they  
13 look up and they say, "The caught the guy. Remember that  
14 bank that got robbed? They caught the guy who did it."  
15 And it's -- it's -- it's natural, it's okay, and I'm  
16 certainly not passing judgement on anybody for that. In  
17 your normal day-to-day life that serves you well. Your  
18 instinct is to believe the system works and it gets it  
19 right every time.

20 Today, however, you've sworn an oath to set that  
21 natural tendency aside just -- just for this week. So  
22 wipe that out and go back to the blank slate when you look  
23 at the table over here and you see Mr. Cobbs. You don't  
24 decide to wait and see what the evidence shows. You don't  
25 decide, "Well, maybe, maybe not. I'm right on the line."

1 We'll see what happens here." No. You look at Mr. Cobbs,  
2 and you presume him completely innocent. You've heard  
3 nothing otherwise, he sits at the table untarnished,  
4 unscathed, an innocent person. So it's not, "Oh, they  
5 caught the guy" or "Oh, maybe" or "Oh, we'll wait and  
6 see." It's, "No." At this point we've heard nothing  
7 otherwise. He is an innocent man.

8 And there are very few times in your life that  
9 you're required to take an oath, and it's really only in  
10 the most important and critical -- the most major  
11 decisions of your life that -- that -- that you do that.  
12 This is one of those times. So please reflect on what  
13 I've told you and focus on that presumption of innocence  
14 because without it, the whole thing becomes a farce.

15 Now, what happens when you abide by your oath, when  
16 you apply that oath, and you presume the Defendant  
17 completely innocent? What it does is it puts the burden  
18 of proof over here on the State's table. You've also  
19 heard that -- and I think the same guy wrote that book,  
20 *Burden of Proof* -- but what it does, it puts the burden of  
21 proof on the State's table. And that's fair, that's  
22 right. That's as it should be. I mean, the Defendant, A,  
23 is presumed to be innocent today in here in this  
24 proceeding. The State is the one that has brought the  
25 charge, the State is the one that has prepared the

1 indictment that the Judge has noted. The State is the one  
2 that has picked those allegations. What it says in there,  
3 in those indictments, every single word is critical  
4 because that is what the State has promised you they'll  
5 prove.

6 And as a matter of fact, you saw when this case  
7 commenced, the Judge turned to this table and said, "Mr.  
8 Solicitor, call your next case." So they brought the  
9 charge, they prepared the indictments, they've accepted  
10 the responsibility, they've arrested and incarcerated Mr.  
11 Cobbs, and so the burden of proof is on them to prove the  
12 guilt of the Defendant and dispel that presumption of  
13 innocence and to do it beyond every reasonable doubt.

14 And when I say, "the burden of proof is on them,"  
15 what I mean is this: If Mr. Chisholm, Mr. Cobbs, and  
16 myself were to turn those three chairs and face the wall,  
17 don't ask a question, don't make an objection, "Waive  
18 arguments, Your Honor," and do nothing at all, the burden  
19 of proof remains exactly the same. With or without our  
20 participation, they have to prove guilt beyond any and  
21 every reasonable doubt. The Defense is never required to  
22 prove anything at all. And that is the fundamental  
23 principle -- those are the fundamental principles upon  
24 which this whole system operates.

25 Now, when I say "beyond a reasonable doubt," what I

1 mean is at the end of the trial, the State has to have  
2 presented enough evidence to convince you beyond a  
3 reasonable doubt of the guilt of the Defendant. And the  
4 judge will tell you beyond a reasonable doubt means beyond  
5 the kind of doubt that would cause you to hesitate to act.  
6 That's it.

7 Now, the State prepared these indictments. And what  
8 these indictments say is (as read): "Mr. Keunte Cobbs, on  
9 the date in question, with malice aforethought, shot and  
10 killed one man; and with malice aforethought, shot and  
11 wounded another." And that's what they've promised to  
12 prove, and they're not going to be able to do it.

13 Now, there was a giant witness list published  
14 earlier, you know, who knows anybody. Seemed like  
15 everybody in Summerville got named on it as a potential  
16 witness, and all of those people are not going to be  
17 called to testify. State goes first, they call their  
18 witnesses. They're not required to tell us, "We're  
19 calling this person or that person," or in what order.

20 But at least some of what I suspect you're going to  
21 hear is this: That on that particular night, Mr. Cobbs,  
22 or someone who looks an awful lot like Mr. Cobbs -- and I  
23 think they call him "The Red T-Shirt Man" -- but someone  
24 -- Mr. Cobbs or someone who looks a lot like Mr. Cobbs,  
25 was up in the IHOP, the International House of Pancakes in

1       Summerville on Dorchester Road, came in, sat down -- you  
2       can watch the video -- doesn't appear to be causing  
3       trouble.<sup>6</sup> He's not angry, he's not looking for anybody.  
4       He sits in there for awhile, he chats with some people. He  
5       flirts with a waitress, he orders some food. He's doing  
6       exactly what he's supposed to be doing at two o'clock in  
7       the morning at IHOP. After he's been in there for awhile,  
8       that person, Mr. Cobbs or somebody that looks an awful lot  
9       like him, gets up and heads in the direction of the  
10      bathroom and disappears from view.

11           Almost immediately when that happens, two other guys  
12      -- people the State is going to term as "victims" -- but  
13      two other guys, they come through the door just as soon as  
14      this occurs. As soon as this red t-shirt guy is isolated  
15      from the crowd, as soon as he's disappeared from view, two  
16      other guys come through the door. And two other guys come  
17      through the door, and they're both packing guns. And they  
18      don't stop at the hostess station, and they don't get a  
19      table, and they don't go to the bar, and they don't speak  
20      to anybody, they head straight for that hallway. They go  
21      in that hallway, they disappear from view.

22           Yeah. Something real bad happens. One shot, other  
23      one shot, neither are killed on the scene. So law  
24      enforcement has an opportunity to interview them later and  
25      ask them about what happened: "I got nothin' to say, sir.

1       Go away. Leave me alone. Don't know who did it, don't  
2       know what happened. I got nothin' to say."

3       Now, they're going to talk about this woman. Her  
4       name is "Ms. Sweed." And the judge talked to you about  
5       judging the credibility or the believability of witnesses.  
6       Now, I'll tell you, Ms. Sweed presents a problem for the  
7       State, for the investigation in this case because at this  
8       point, they're awfully hard-pressed to prove what happened  
9       in that bathroom. Something bad happened, but the order  
10      in which it happened, who did what, and how it all went  
11      down is pretty much a mystery other than you know that two  
12      guys packing guns come through the door when a red t-shirt  
13      guy was isolated from the crew, went in the bathroom, and  
14      gunfire broke out.

15      So then they develop some information from Ms.  
16      Sweed. Now, you're going to see Ms. Sweed. She's going  
17      to come in and testify, at least I believe that she'll  
18      come in and testify, and you'll have the opportunity to  
19      judge her credibility or her believability. Now, what  
20      she's going to tell you, I suspect, is that, "I was with a  
21      person named "Keith" -- not a person named "Keunte," but a  
22      person named "Keith." "Met him briefly in a parking lot  
23      at a bar, the -- the night that this shooting took place.  
24      Talked to him maybe five minutes or something like that,  
25      we exchanged telephone numbers, and said call me



1 tomorrow." This is two o'clock in the morning, something  
2 like that. "We'll get together some other time."

3 She'll tell you then that the next night she's at  
4 this bar, she doesn't remember the name of it, she doesn't  
5 remember where it is. She's got friends she was with.  
6 None of them have verified she was ever there, there's  
7 nothing else to support her contention. She was ever --  
8 met Mr. Cobbs or Keith; more or less, Mr. Cobbs.

9 But then the next night she'll say, "We exchanged  
10 some sort of telephone communication and we got together,  
11 we drank some tequila. I do suffer from psychiatric  
12 illness, and I was off my medications. We went to one bar  
13 for about five minutes, went to another one for about ten  
14 minutes. Then we went to some house and we talked and the  
15 person I was with dozed off, but he made an incriminating  
16 statement." That's it.

17 Now, she's a problem for the State because her --  
18 just her presentation is -- is poor. She is not a  
19 credible person, she's not a believable person. She's a  
20 person with some psychiatric illness who will tell you she  
21 was off her meds at the time, and her medications  
22 certainly help her maintain straight and even path. She  
23 likes to drink Patron. She was drinking tequila that  
24 night. She doesn't have friends to support that she was  
25 where she says she was. There's no cameras from the video

1 club to show that. There's simply nothing else to support  
2 anything that she says at all.

3 But the State and the police, they go all the way to  
4 Florida to interview her, and so they've got the chance to  
5 clean it up. She says she was with him. She says, "We  
6 made phone calls." She said, "We exchanged text  
7 messages." So when we go down here and we give her a  
8 photo lineup and we take her written statement, naturally,  
9 "Do you mind if we flip through your phone and look at  
10 those text messages?" We didn't hear about that. "Tell  
11 you what. Just give us your phone number so we can get  
12 those phone records, and we can establish those phone  
13 calls and show that the two of y'all were together." We  
14 didn't hear about that.

15 When Mr. Cobbs was arrested, and clearly he's been  
16 arrested, he was arrested in a hotel room in North  
17 Charleston; and three cell phones were seized from that  
18 room at the time of his arrest, and law enforcement will  
19 concede this. Three cell phones were seized from his room  
20 at the time of his arrest. So it certainly gave them the  
21 opportunity then to pull those phone records, find those  
22 text messages, and establish that tie to Ms. Sweed. Wait  
23 to hear about that, and wait to hear why you're not going  
24 to hear about that because after seizing these phones,  
25 marking them as evidence, tagging them as something

1 critical, understanding what they can prove and disprove,  
2 they lost them or so they say. They say they lost them.  
3 They can't show what's on them. They took them from us,  
4 so to speak, from Mr. Cobbs, and then they lost them. So  
5 that's what the evidence in this case is actually going to  
6 show.

7 Now, Mr. Sorenson wants to tell you there's two  
8 questions that are dispositive of this whole case: How  
9 many people were in the bathroom and who got shot, or  
10 something along those lines. I would submit to you  
11 there's some other questions you might want to consider.  
12 That's of two guys who got shot, how come neither one of  
13 them want to talk to law enforcement about what happened?  
14 "Go away." Refused to cooperate. Will not talk. How  
15 come? How come the guy who got shot and didn't die ain't  
16 coming in here to talk about what he did that night?  
17 Waiting to hear from him.

18 So there's one question. Another question might be  
19 how come, when law enforcement was down in Florida, they  
20 didn't do anything or if they did, they didn't uncover  
21 anything, that tended to support Ms. Sweed's story? How  
22 come there's not video surveillance from those bars? How  
23 come they don't have her friends she said she was with?  
24 How come there's nothing whatsoever to support her story  
25 and show anything, lend any degree of credibility to it?

1 So there's No. two.

2 Here's the third question: What happened to the  
3 phones? What was on them? Keep those in mind, too,  
4 during the course of the trial and during your  
5 deliberations, ladies and gentlemen. Thank you very much.

6 Thank you, Your Honor.

7 THE COURT: Call your first witness.

8 MR. SPEARS: Thank you, Your Honor. May it please  
9 the Court? State calls Justin Jenkins.

10 THE COURT: Counsel approach.

11 (Bench conference.)

12 THE COURT: Let the record reflect that I've  
13 inquired of the attorneys and they both tell me they  
14 complied with my previous order concerning sequestration  
15 of witnesses.

16 Please have the witness approach.

17 Madam Clerk, would you please swear the witness.

18 THE CLERK: Yes, sir.

19 JUSTIN JENKINS, having been  
20 first duly sworn, testifies as follows:

21 THE COURT: I want you to speak up so everybody down  
22 -- in my jury box can hear you and people in the courtroom  
23 can hear. That microphone's going to amplify your voice.

24 THE WITNESS: All right.

25 THE COURT: Let's begin by you stating your full

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1 name in the microphone, and spelling your last name for  
2 the Court Reporter.

3 THE WITNESS: Justin Randall Jenkins, J-e-n-k-i-n-s.

4 THE COURT: Very good. Your Witness, Counsel.

5 Direct examination.

6 MR. SPEARS: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MR. SPEARS:

9 Q Mr. Jenkins, where are you employed?

10 A Currently employed Professional Builder Supply.

11 Q And where were you employed back in 2016?

12 A Dorchester County Sheriff's Office.

13 Q How long did you work there?

14 A Approximately two years.

15 Q All right. And what were the nature of your duties  
16 while you were employed by the Dorchester County?

17 A I was assigned to the patrol division, night shift,  
18 team three. My duties was just to respond to any calls  
19 for service sent to me by dispatch. Any emergency calls.  
20 Just different things the nature of being a normal patrol  
21 officer.

22 Q Now, did you have an opportunity to respond to a  
23 call on June 5, 2016?

24 A I did.

25 Q And did you have an -- was that call -- where was

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1 that call?

2 A One of many, but that particular call would be at  
3 the IHOP on Dorchester Road.

4 Q What county is that in?

5 A It's in Dorchester County.

6 Q Mr. Jenkins, around what time did you respond to  
7 that?

8 A Approximately two o'clock in the morning.

9 Q Can you just describe to the jury the scene as you  
10 encountered it?

11 A Yes. Once I was dispatched to a call for service by  
12 Dorchester County Communications, I arrived on scene at  
13 the IHOP, where I observed numerous people outside and  
14 inside the restaurant. Upon arriving on scene, I observed  
15 two males, black males, out front. One was laying on a  
16 bench, one was laying behind the bench with two  
17 individuals assisting in giving patient care, which they  
18 had told me at that time that those two individuals had  
19 been shot.

20 Q And just for clarification purposes, what was the  
21 nature of the call that brought you ---

22 A The nature of the call was a shooting in progress.

23 Q Okay. What did you do after that?

24 A First, I verified that the individuals that were  
25 helping the victims were able to do so, were willing to

1 continue to do so, and I was waiting on my backup to get  
2 there. Maintained, to the best of my ability as -- being  
3 there by myself at the initial point, to control the crime  
4 scene to the best of my abilities.

5 Q Was there an active shooter at the scene?

6 A There was not when I pulled up.

7 Q When you back up arrived, what -- what happened  
8 after that?

9 A My back up, as well as some officers from  
10 Summerville, all arrived right about the same time.  
11 Myself and another officer went into the establishment and  
12 went through the entire restaurant to verify that there  
13 was no active persons shooting at the time and that there  
14 was no other victims.

15 Q All right. And when you went through the  
16 restaurant, did -- what did you see?

17 A Just patrons had been there. We kept going through,  
18 going through. We ended at the bathroom at the front of  
19 the establishment. Upon going into the bathrooms there,  
20 that's when we noticed that there was substantial amounts  
21 of blood and it appeared that that's where the incident  
22 had taken place.

23 Q And was it the male or the female bathroom?

24 A The male rest -- bathroom.

25 Q Were there any individuals in the bathroom when you

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1 got there?

2 A There was not.

3 Q Okay. Please answer any questions the Defense might  
4 have for you.

5 A Okay.

6 CROSS-EXAMINATION

7 BY MR. CHISHOLM:

8 Q Good morning, Mr. Jenkins.

9 A Morning.

10 Q Will be pretty brief, here. Were you the first  
11 officer to respond that night?

12 A I was.

13 Q And when you responded, did you speak to Mr. Mack or  
14 Mr. Spells, the people you identified as being shot?

15 A I did not.

16 Q You never asked them what happened or anything else?

17 A I looked over and verified that they were the  
18 victims and let the pair -- the patient care continue.

19 Q Okay. And from there, the bulk of the investigation  
20 in this case, you kinda handed off.

21 A Yes.

22 Q Thank you..

23 A Yes, sir.

24 MR. CHISHOLM: I have no further questions.

25 THE COURT: Redirect?



## CROSS-EXAMINATION BY MR. CHISHOLM - JUSTIN JENKINS 218

1 MR. SPEARS: No more questions, Your Honor.

2 THE COURT: As to this witness?

3 MR. SPEARS: As to this witness, Judge.

4 THE COURT: May he be excused, Mr. Spears?

5 MR. SPEARS: Yes, Your Honor.

6 THE COURT: Any objection?

7 MR. CHISHOLM: No, Your Honor.

8 THE COURT: You may step down, and you are excused  
9 from the trial of this case. You may leave the courtroom  
10 at this time.

11 THE WITNESS: Thank you, Your Honor.

12 (The witness exits the stand.)

13 THE COURT: Call your next witness.

14 MR. SPEARS: State calls Thomas Gathings.

15 THOMAS GATHINGS, after having  
16 first been duly sworn, testifies as follows:

17 THE COURT: Mr. Gathings?

18 THE WITNESS: Yes, sir.

19 THE COURT: I'm serving you some delicious  
20 Dorchester County water.

21 THE WITNESS: I really appreciate it.

22 THE COURT: Feel free to drink as much as you need.  
23 State your full name and spell your last name for the  
24 Court Reporter.

25 THE WITNESS: Thomas Jeffrey Gathings. And last

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1 name is G-a-t-h-i-n-g-s.

2 THE COURT: Your witness, Counsel. Direct  
3 examination.

4 MR. SPEARS: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY MR. SPEARS:

7 Q Mr. Gathings, where are you employed?

8 A I am the Director of Operations for IHOP.

9 Q And how long have you worked there?

10 A I've worked over a year.

11 Q Okay. And how long have you been in that position?

12 A Probably about four months with -- with this  
13 company.

14 Q Can you describe to the Court the nature of your  
15 duties as the Director of Operations?

16 A I oversee the daily operations for all -- all the  
17 IHOPS. I oversee -- I oversee nine of them.

18 Q All right. And what area are those IHOPS?

19 A I go all the way from Wilmington, North Carolina, to  
20 Walterboro, South Carolina.

21 Q Okay. Is Dorchester County in that area?

22 A Yes.

23 Q Okay. Now, when you say you "oversee the  
24 operations," what -- what does that entail?

25 A Pretty much everything. Deliveries, guest service,

1 food, you know, everything that you can think of that  
2 happens in a restaurant I would responsible for.

3 Q Okay. And do these IHOP'S that you oversee, do  
4 y'all have any security camera -- cameras?

5 A Yes.

6 Q And why do you keep security cameras in your IHOP'S?

7 A Mostly anything that causes a restaurant, like, a  
8 liability, if somebody slips, falls, somebody leaves  
9 without paying a check, power outages. Anything like that  
10 that causes a restaurant any kind of liability or a guest  
11 liability.

12 Q And the -- this footage from the security cameras,  
13 is it recorded?

14 A Yes.

15 Q Is -- is it always recorded or are some IHOP's  
16 without any?

17 A No. It's always recorded.

18 Q How is it recorded?

19 A Previously it was on a DVR and it would store it  
20 for, you know, 90 days. Now, currently, we've upgraded to  
21 a cloud. I don't know what that cloud is.

22 Q And if someone were to request footage of this,  
23 would you be an individual to provide that?

24 A Yes. I'd be the individual.

25 Q Now, I'm showing you what has been marked as State's

DIRECT EXAMINATION BY MR. SPEARS - THOMAS GATHINGS 221

1 Exhibit 59.

2 THE COURT: What number, Counsel?

3 MR. SPEARS: 59, Your Honor. May I approach the  
4 witness, Judge?

5 THE COURT: You may.

6 (Mr. Spears hands an exhibit to the witness.)

7 Q Do you recognize this?

8 A Yes.

9 Q All right. And how do you recognize this?

10 A It has my initials and the date on it.

11 Q Were you able to review the contents of that disc?

12 A Yes.

13 Q All right. And after you did so, did you place any  
14 markings on it?

15 A I put my initials and the date on it.

16 Q All right. What are the contents of that disc?

17 A I see my IHOP and -- on Dorchester Road. It's  
18 pretty clear that that's the restaurant. And then I see a  
19 lot of people and -- eating at my restaurant.

20 Q Uh-huh. And -- and how is it clear that it is your  
21 restaurant on Dorchester Road?

22 A From the layout -- No. one, the layout. All the  
23 IHOPs are different, so that one's very distinct. And No.  
24 two, on the camera, it has a store number; and that store  
25 number is specifically for each restaurant. And that

1 store number is 3242, and it says it on the camera.

2 Q And were you able to tell when this security camera  
3 is from?

4 A Yes. It is time and -- time and date stamped.

5 Q All right. And when is it from?

6 A I believe it's from June 5, 2016.

7 Q All right.

8 MR. SPEARS: Your Honor, at this time the State  
9 would request to enter State's 59 into evidence.

10 THE COURT: Any objection as to 59?

11 MR. CHISHOLM: No objection, Your Honor.

12 THE COURT: Ladies and Gentlemen of the jury,  
13 State's Exhibit No. 59 will be admitted into evidence in  
14 the trial of this case without objection.

15 State's 59 in evidence. You may publish to the  
16 jury.

17 MR. SPEARS: Thank you, Your Honor.

18 (State's Exhibit No. 59, CD, in evidence.)

19 (Brief pause.)

20 MR. SPEARS: Court's indulgence, Your Honor.  
21 Technical difficulty.

22 Q Now, Mr. Gathing, on this security camera footage,  
23 does it just show one part of the IHOP, or how many  
24 cameras do you recall there being?

25 A I believe there were 16 cameras.

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1 Q And the overall -- would it -- can you give a  
2 summation of what these cameras show us in the IHOP?

3 A Well, it shows, you know -- as far as where the  
4 cameras are?

5 Q Yes.

6 A Okay. There's a camera at the front door, there's a  
7 camera at the lobby, there's a camera that goes outside,  
8 there's three or four cameras in the main dining room; and  
9 then you have kitchen cameras that cover, like, the cook's  
10 line, the back door, you can look at the back entryway,  
11 and then you have some -- and then you have one in the  
12 office. And you have -- I think that's 16, somewhere in  
13 there. Covers the whole restaurant from inside and out.

14 Q And are -- how many of these cameras are equipped  
15 with audio or is there any audio?

16 A I think one, maybe two. I think the one at the  
17 front door maybe ---

18 Q All right.

19 A --- has audio.

20 Q And you say the layout of this IHOP is specific. Do  
21 you have any -- or do IHOPs not have the same layout?

22 A No. They are all different.

23 Q Okay. You say that in 2016, the footage was  
24 preserved on a DVR. How was that accessible in these  
25 IHOPs?

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1 A You could -- you could download it through a CD or a  
2 thumb drive.

3 Q So typically, if -- someone from law enforcement,  
4 who would they contact for aid in doing that?

5 A If -- if it happened now, it would be me.

6 Q Uh-huh.

7 A They could also contact our corporate office as  
8 well; but it would probably be me, and then I would go and  
9 download or turnover everything.

10 Q All right.

11 THE COURT: Counsel Approach.

12 (Bench conference.)

13 THE COURT: Mr. Foreman, ladies and gentlemen of the  
14 jury, I'm going to take my mid-morning break at this point  
15 so we can solve, obviously, our computer situation.

16 Please do not discuss the case. I'll be right back  
17 with you as soon as I can. Let you stretch your legs, use  
18 the restroom, and I'll let you know as soon as we're  
19 ready. Thank you. You may retire to your jury room at  
20 this time.

21 (The jury exits at 10:57 a.m.)

22 THE COURT: Mr. Gathing, you need -- you're in the  
23 middle of your testimony. Feel free to get up if you want  
24 to use the restroom, but do not discuss your testimony  
25 with anyone.

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1 THE WITNESS: Okay.

2 THE COURT: You're in the middle of your  
3 examination.

4 (Off the record at 10:57 a.m.)

5 (On the record at 11:06 a.m.)

6 THE COURT: State ready to proceed?

7 MR. SPEARS: Ready, Your Honor.

8 THE COURT: Defendant ready to proceed? We're  
9 waiting on your client. Take a seat, Mr. Loy. I'll get  
10 him here.

11 MR. LOY: Thank you, Your Honor.

12 (Brief pause.)

13 THE COURT: Defendant ready to proceed?

14 MR. CHISHOLM: Yes, Your Honor.

15 THE COURT: Bring us the jury, please.

16 (Brief pause.)

17 (Jury enters at 11:07 a.m.)

18 THE COURT: I remind you, Mr. Gathers [sic], you're  
19 still under oath.

20 Ladies and gentlemen, we're ready to proceed. Now,  
21 you'll note that there's a bigger screen to your right.  
22 I've tried to make sure the blinds are closed so you don't  
23 have a glare on the screen. You also have smaller screens  
24 in front of you in the jury box where you'll be able to  
25 view the exhibit.



1 Counsel, direct examination. Proceed.

2 MR. SPEARS: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY MR. SPEARS (Continues):

5 Q (Showing video) Mr. Gathers [sic], just for  
6 clarification, what -- what is this footage showing?

7 A That shows the IHOP on Dorchester Road.

8 Q And what was the time on the video?

9 A 2:14 a.m.

10 Q And the date?

11 A 6/5/2016.

12 Q Mr. -- Mr. Gathers [sic], can you -- you already  
13 gave us a idea of what these cameras are positioned in the  
14 HOP, can you just kinda go one by one on the top six and  
15 give us an idea of what we're looking at?

16 A Okay. Camera No. 1 in the top left corner is the  
17 entry to the front door. Camera No. 2 is the front  
18 counter directly in front of the front door. Camera 3 is  
19 to the right of camera No. 2, and that would be the front  
20 lobby.

21 Q And on camera 3 --

22 A Yes.

23 Q -- if you're coming into the front door --

24 A Uh-huh.

25 Q -- what would you be facing?

DIRECT EXAMINATION BY MR. SPEARS - THOMAS GATHINGS 227

1 A You would be in the top left corner of the -- of the  
2 screen, and you'd be facing the counter and the bathroom.

3 Q All right. And if you went to the left, where would  
4 you be facing?

5 A You would be facing the dining room.

6 Q All right. And camera No. 4, what are we looking at  
7 there?

8 A That is going to be the back side of the dining room  
9 on the left-hand side of the dining room. So where that  
10 camera basically is positioned is going to be looking  
11 towards camera 3.

12 Q Okay. So when you say, "It would be facing ..."  
13 Where are we facing on this again?

14 A You're going to be -- this camera's pointing towards  
15 the front door.

16 Q Uh-huh.

17 A So the front door and the front lobby is going to be  
18 in the kinda middle to the left top.

19 Q And you can push on that screen to mark --

20 A Oh. So right there (indicates) would be the front  
21 door.

22 Q All right.

23 A Rather, lobby. I'm sorry.

24 Q Now -- all right. And so it's at the top there.

25 You've already described this is the view of the front

1 door.

2 A Front door and the lobby, yes.

3 Q Right. And so what you were pointing at on the  
4 other view point, this is what 'you'd be looking at where  
5 you marked?

6 A You'd be seeing right in this -- yeah. Oh. You  
7 would see all this 'cause there's glass you can see over  
8 here by the front door, and you can also see the entry way  
9 into the dining room as well.

10 Q All right. Now, few more questions in regards to  
11 this. The -- 5 and 6, left dining, right dining. Can you  
12 just give us an orientation of where those are?

13 A All right. Camera 5, the left dining, that would be  
14 as soon as you walk in the lobby. If you look at camera  
15 3, where the glass is in the middle, it's -- you make,  
16 like, a u-turn, and that would be where you sit, right  
17 there. So basically, the -- on the left hand side of that  
18 camera, there's a window or a glass, and that's where the  
19 lobby is. You're right -- right -- right behind the lobby  
20 and guests.

21 Camera No. 6 is when you come in the dining room,  
22 you would take about four steps to your left and these  
23 would be all the tables you see.

24 Q All right. Now, No. 7, the glass dining area,  
25 where would that be?

DIRECT EXAMINATION BY MR. SPEARS - THOMAS GATHINGS 229

1 A That's in the very, very back of the restaurant.

2 Q Okay. Looking through cameras 8, 9, 10, 11, 12, and  
3 13 -- 8 through 14, what do these show?

4 A Those are all the -- what we -- what's called "the  
5 back of the house." You have the cook's line, the service  
6 line, the office, the break area, the backdoor, and the  
7 cooler and dry storage. This would be off limits to any  
8 guest.

9 Q Okay. Going back to camera 3 --

10 A Uh-huh.

11 Q -- if you're going into the area you described as  
12 "the back of the house," what direction would you go?

13 A You would come all the way to the right hand side of  
14 the screen --

15 Q Uh-huh.

16 A -- kinda like down in the right corner.

17 Q Uh-huh.

18 A Then you'd have to take another 90 degree turn.

19 Q Uh-huh.

20 A So you would be off camera. It's -- it's about five  
21 feet past the camera.

22 Q Okay. And the last two views, the 15 and 16.

23 A That is -- that is the outside of the back of the  
24 restaurant where we would exit to take our trash. So you  
25 got the back door, so you would see people coming and

1 going.

2 Q Okay.

3 A And then actually 16 is a camera right on top of the  
4 door so we can see anything, and we can also monitor our  
5 employees taking the -- you can see in the top left corner  
6 the dumpster and the trash so we could actually monitor if  
7 anything happened to them.

8 Q And in the area of 16, in the top left where you say  
9 the trash is, is there -- is that beside the building? If  
10 -- if you're going from right to left, towards the  
11 dumpster on 16, where would you be heading towards?

12 A You'd be heading towards the Tread Quarters that was  
13 next door.

14 Q Understood. All right.

15 (Video plays.)

16 Q And lastly, that front door area, if you go through  
17 those two doors right there (indicates), does that  
18 immediately take you outside?

19 A No. You have to go through another set of doors.

20 Q So there's two sets of doors --

21 A Yes.

22 Q -- before you get outside?

23 A Yes. That's kind of what we call the "vestibule."

24 Q Understood. Please answer any questions the Defense  
25 might have for you.

## CROSS-EXAMINATION BY MR. CHISHOLM - THOMAS GATHINGS 231

1 A Yes, sir.

2 THE COURT: Cross-examination.

3 MR. CHISHOLM: Thank you, Your Honor. Please the  
4 Court.

5 CROSS-EXAMINATION

6 BY MR. CHISHOLM:

7 Q I'm sorry, was it Mr. Gathers [sic] or Mr. Gathings?

8 A Gathings.

9 Q Gathings.

10 A Yeah.

11 Q Okay. I'll try to keep that right. And you are the  
12 Director of Operations for IHOP?

13 A Yes, sir.

14 Q And this is one of your stores.

15 A Yes, sir.

16 Q Okay. And you seem to be pretty familiar with the  
17 overall layout of the store.

18 A Yes, sir.

19 Q You've been in there a bunch of times I'd imagine?

20 A Probably over 50.

21 Q 50. Okay. Are you familiar with all the cameras,  
22 where they are in the store?

23 A Yes, sir.

24 Q Okay. I'd like to ask you a couple of questions  
25 about -- kinda what they just went through and kinda the

CROSS-EXAMINATION BY MR. CHISHOLM - THOMAS GATHINGS 232

1 camera angles, things of that nature.

2 (Using video of cameras) And -- now, the dining area  
3 of this store, on one side -- I don't know if you can  
4 catch it ...

5 MR. CHISHOLM: May I approach ---

6 THE COURT: You may.

7 MR. CHISHOLM: --- the monitor, Your Honor?

8 THE COURT: Don't block my jury's view. Stand up to  
9 the side so they can see.

10 MR. CHISHOLM: All right.

11 Q And this is the main dining area, I guess, and just  
12 different vantage points; is that correct?

13 A Yes. If you're pointing at No. 5, 6, and 7. Yeah.

14 Q Okay. Try this. (Indicates) This right here, this  
15 would be -- these are windows; is that correct?

16 A Yes. And that's in the very back of the restaurant.

17 Q Okay. Is there glass, pretty much, from the front  
18 to the back?

19 A There is glass -- goes around the building, but  
20 there's no glass in the back of the building.

21 Q Sure. But it's not, I guess, an enclosed restaurant  
22 where you can't see in? It's pretty open as far as that  
23 goes?

24 A Yeah. You can see in.

25 Q Okay. Now, I'd like to have to ask you about a

## CROSS-EXAMINATION BY MR. CHISHOLM - THOMAS GATHINGS 233

1 couple of these camera angles. (Indicates) What is this  
2 we're looking at right here?

3 A That is the front register, the -- you know, the  
4 counter.

5 Q Where people would pay their bills?

6 A Pay and check in, so they could get on the wait if  
7 there was a wait. Yes, sir.

8 Q Okay. (Indicates) And what is this right here,  
9 this area?

10 A That is the waiting -- the lobby where you would  
11 wait. As you can see, there's booths up there. So if the  
12 wait was really big, they could sit down and wait. And  
13 that's the host stand right there. That's where the host  
14 call your name and take you to your table.

15 Q Okay. So typically, when you walk in, you walk up  
16 here (indicates), check in?

17 A Either/or. Just depending on if the host was taking  
18 payment from somebody. She could take you there, or she  
19 could be behind the host stand --

20 Q Okay.

21 A -- he or she could be.

22 Q And this camera angle right here (indicates)--

23 A Um-hmm.

24 Q --- now, correct me if I'm wrong, but is this  
25 basically, if you were to look this way (indicates), you  
26 would see ---



CROSS-EXAMINATION BY MR. CHISHOLM - THOMAS GATHINGS 234

1 THE COURT: Identify the identification of angle for  
2 the record, counsel. Don't say, "This camera angle right  
3 here."

4 Q All right. This would be, I guess, camera angle 2.  
5 If you were to look at camera angle 2, it's not labeled on  
6 the top, the top second from left --

7 A Uh-huh.

8 Q And then you look at the top second -- third from  
9 left --

10 A Uh-huh.

11 Q -- camera angle 3, we can call it, would camera  
12 angel 3 be just off camera here from camera angle 2?

13 A Yes. Camera 2 is basically a spotlight camera  
14 because we're looking at the transactions and the money  
15 coming out the drawer. Camera 3 would be a little bit to  
16 the right of that and be facing more the door so we could  
17 see entry in the restaurant and out of the restaurant at  
18 the front door.

19 Q Okay. And would you agree with me that between  
20 these different camera angles, there are ceratin, I guess,  
21 I don't know the technical term, dead spots, so to speak,  
22 where you could see someone leave one camera angle and  
23 then re-enter another?

24 A Yes.

25 Q Okay. It's not a continuous, throughout without any  
26 break whatsoever?

## CROSS-EXAMINATION BY MR. CHISHOLM - THOMAS GATHINGS 235

1 A No, because the bathrooms are below camera 3 and ---

2 Q Yeah. Okay.

3 A --- there's some laws about bathroom's cameras.

4 Q If we look at camera angle 2 and camera angle 3,  
5 would the bathrooms be to the rear of camera angle 2 right  
6 here (indicates)?

7 A No -- yes, they would be. But camera angle 3 would  
8 be the entry way and at the bottom.

9 Q This right here (indicates).

10 A Yes. The bottom of that would be the walkway into  
11 the bathrooms.

12 Q Okay. And trying to figure out the way to visualize  
13 this. If you were to look at the door that's right behind  
14 you, and if we were to say this is the waitress station  
15 where you check in --

16 A Uh-huh.

17 Q -- would it be roughly similar in that there's a  
18 door, there's a hall behind this wall, and then the  
19 bathrooms would be on the other side of that wall?

20 A Well, there's no door. There's just a pass way.

21 THE COURT: Step back, Counsel.

22 A It's just a pass way. So the door would be gone,  
23 and there is a little, you know, five foot hallway, maybe  
24 three feet?

25 Q Uh-huh.

26 A And that's where we keep, like, highchairs and

CROSS-EXAMINATION BY MR. CHISHOLM - THOMAS GATHINGS 236

1 booster chairs. But Women's room, if you went through the  
2 pass way, would be straight through; and the Men's room  
3 would be a -- you would take a small turn, probably  
4 six/seven steps maybe tops, bathroom would be on your  
5 left.

6 Q Okay. And I probably phrased that poorly. I  
7 apologize. I don't mean that there's a door. I mean  
8 there's an opening?

9 A Yes.

10 Q And then the wall directly behind you, if we were in  
11 the restaurant, there's a hallway that leads to the Men's  
12 restroom.

13 A Correct. There's a hallway that goes left to right,  
14 and the bathroom door's going to be on the left.

15 Q And that hallway isn't actually captured anywhere on  
16 camera angel 2 or 3; is that correct?

17 A That is correct.

18 Q Okay. So we can't see anything back there.

19 A That is correct.

20 Q Okay.

21 MR. CHISHOLM: If I could have one moment.

22 (Brief pause.)

23 MR. CHISHOLM: Thank you. I have no further  
24 questions.

25 THE COURT: Redirect?

26 MR. SPEARS: Yes, Your Honor.

REDIRECT EXAMINATION BY MR. SPEARS - THOMAS GATHINGS 237

REDIRECT EXAMINATION

BY MR. SPEARS:

Q Going back to camera 3, now, if I'm -- if you look where I'm putting the mouse right there (indicates) where that individual is if you go down, where would that lead you to?

A That would lead you to -- through the pass through of the bathroom and to that little four to five foot hallway.

Q So the opening into that hallway..

A Yes.

Q At that opening, when you enter that threshold, just below there --

A Uh-huh.

Q -- could you go anywhere but the bathrooms?

A No.

Q Okay. So just -- if an individual is running from the top of 3 down past where the person in the white shirt is, with your knowledge of this building, would you be able to say where they were going?

A Yes.

Q Where?

A Well, if they're coming from the top to the gentleman --

Q Uh-huh.

A -- if they're coming from the top, they're coming

## REDIRECT EXAMINATION BY MR. SPEARS -- THOMAS GATHINGS 238

1 from the front door to the bathroom. If they're coming  
2 from the bottom, they'd be coming from the bathroom to the  
3 front door.

4 Q And if you came from the restrooms, would you be on  
5 this camera 3?

6 A Yes. Because you would have to come out -- you  
7 would have to come out of the -- of the pass way.

8 Q Okay.

9 A So you would see exiting or entering.

10 Q All right. And you said there are -- it's not a  
11 continuous shot of the whole thing. Can you just  
12 reiterate the purpose of the cameras in this IHOP.

13 A Again, any kind of liabilities. If a guest falls,  
14 if we have a service issue. Like camera 2, if somebody  
15 steals from the register. It's pretty much everything  
16 that puts the -- the restaurant at a liability, so we  
17 could review it, or you know, turn it over to any kind of  
18 insurance or law enforcement agents.

19 Q Uh-huh.

20 MR. SPEARS: Court's indulgence.

21 (Brief pause.)

22 MR. SPEARS: No more questions for this witness,  
23 Your Honor.

24 THE COURT: Re-cross limited to redirect.

25 MR. CHISHOLM: Thank you, Your Honor. This is just

RE-CROSS EXAMINATION BY MR. CHISHOLM - THOMAS GATHINGS239

1 for clarification.

2 RE-CROSS EXAMINATION

3 BY MR. CHISHOLM:

4 Q Looking at this same image, which I believe was  
5 angle 3 --

6 THE COURT: Speak up.

7 MR. CHISHOLM: Sir?

8 THE COURT: Speak up for the jury.

9 MR. CHISHOLM: Yes, sir.

10 Q Looking at this same camera angle, which I believe  
11 was No. 3, the Solicitor just asked you if someone went  
12 out of frame, I guess, towards the bottom of the image,  
13 would they be in the bathroom. Is it the case that you  
14 wouldn't be able to tell from the cameras you have in this  
15 restaurant if someone is standing in that entrance way, if  
16 someone's in the hall, if they're in the bathroom? You  
17 could say they're in that area, but you can't say where  
18 off camera they are from the -- from the cameras you have;  
19 is that correct?

20 A Okay. I can't say somebody's in the bathroom 'cause  
21 I don't have a camera in the bathroom. But below the  
22 camera, the screen, there's nothing there except the  
23 bathrooms.

24 Q Right.

25 A They could be in the doorway --

1 Q Uh-huh.

2 A -- per se.

3 Q Okay. That was my question. Thank you very much.

4 MR. CHISHOLM: I have no further questions.

5 THE COURT: As to this witness, Solicitor?

6 MR. SPEARS: May he please be excused, Your Honor?

7 THE COURT: Any objection?

8 MR. CHISHOLM: No, Your Honor.

9 THE COURT: All right. You may step down. You're  
10 excused from the trial of this case. You may leave the  
11 courtroom.

12 THE WITNESS: Thank you.

13 (The witness exits the stand.)

14 THE COURT: Call your next witness.

15 MR. SPEARS: Your Honor, the State calls Deputy  
16 Michael McKee.

17 MICHAEL MCKEE, having been first  
18 duly sworn, testifies as follows:

19 THE COURT: Good morning, Mr. McKee.

20 THE WITNESS: Good morning, sir.

21 THE COURT: If you would adjust that seat and the  
22 microphone to your height and your comfort, it's going to  
23 amplify your voice. I need you to speak up so everybody  
24 on my jury, these people on the ends of the jury box, can  
25 hear you. Begin by stating your name again and spelling

DIRECT EXAMINATION BY MR. SPEARS - MICHAEL MCKEE

241

1 it for the Court Reporter.

2 THE WITNESS: All right. Name's Michael McKee.  
3 Michael, M-i-c-h-a-e-l; last name, M-c-k-e-e.

4 THE COURT: Your witness, Counsel. Direct  
5 examination.

6 MR. SPEARS: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MR. SPEARS:

9 Q Mr. McKee, where are you employed?

10 A Dorchester County Sheriff's Office.

11 Q How long you been working there?

12 A I believe I'm going on four years now.

13 Q Okay. And can you just briefly give the jury an  
14 idea of the nature of your duties there?

15 A Currently I'm with the narcotics division as a  
16 detective. Basically, just target narcotic crimes.

17 Q Now, going back to the time of June 5, 2016, what  
18 were the -- what were your duties then?

19 A I was a patrol deputy. Basically responded to calls  
20 for service. That's pretty much it.

21 Q Did you have an opportunity to -- or did you respond  
22 to the IHOP on Dorchester Road?

23 A I did.

24 Q All right. And what brought you there?

25 A I was getting on shift. At the time, I was day



1 shift at -- at that time. We were told to go there to  
2 relieve the night shift that was initially called out to  
3 the IHOP.

4 When I got there on scene and -- the first time, I  
5 -- we just relieved some of the perimeter people that were  
6 holding the crime scene.

7 Q And you -- you say you were relieving the other  
8 shift. Around what time was that?

9 A Shift -- we -- we got on around 4:45. That's  
10 usually when -- so I'm guessing 4:45/5 o'clock.

11 Q Uh-huh. And when you went and relieved that shift,  
12 what did you do on the premises?

13 A I saw -- I observed where the crime scene tape was  
14 and never entered it, just took somebody's place on the  
15 outside, make sure -- and I believe it was to make sure no  
16 traffic was going in and out of the parking lot, and so I  
17 just stood there.

18 Q Did you recover anything from the premises?

19 A I got called out there a second time, and that's  
20 when I was told that there was a firearm in the -- after  
21 daylight, it got a little bright outside, and I believe  
22 they re-opened the IHOP.

23 Q Uh-huh.

24 A We received a call later saying that there was a  
25 firearm found at the front of the IHOP.

DIRECT EXAMINATION BY MR. SPEARS - MICHAEL MCKEE 243

1 Q Now, you say it was after daylight. Could you just  
2 give an approximate time?

3 A Maybe zero-700, 7 a.m.

4 Q All right. Now, where on this IHOP did you find  
5 this?

6 A Call came out that they found it near the sidewalk  
7 near some bushes. When I got on scene, I observed it in  
8 front -- in front of the IHOP, near some bushes next to  
9 the sidewalk.

10 Q Did you take any photos of it?

11 A I did.

12 Q All right.

13 MR. SPEARS: May I approach the witness, Your Honor?

14 THE COURT: You may.

15 (Mr. Spears hands photos to the witness.)

16 Q I'm showing you what's been marked as State's 53 and  
17 54. Can you tell me if you recognize these?

18 A Yes. I -- I took these photos when I arrived on  
19 scene.

20 Q And can you just describe what's in the photos?

21 A When I received the description where the gun was  
22 located, I observed where that gun was actually located.  
23 So I walked in, took pictures from the roadside, and took  
24 pictures of the bushes in front of the -- in front of the  
25 IHOP, and pictures of the gun next to the bush in front of

1 the IHOP.

2 Q Are these photos a fair and accurate representation  
3 of the scene as you saw it?

4 A They are.

5 MR. SPEARS: Your Honor, at this time I'd move to  
6 have 53 and 54 ---

7 THE COURT: As to State's 53 and 54, Counsel?

8 MR. CHISHOLM: No objection, Your Honor.

9 THE COURT: Ladies and gentlemen of the jury,  
10 State's Exhibits No. 53 and 54 will be admitted into  
11 evidence in the trial of this case without objection.

12 53 and 54 are into evidence. You may publish,  
13 Counsel.

14 MR. SPEARS: Thank you, Your Honor.

15 (State's Exhibits 53 and 54, photos, in evidence.)

16 Q Deputy, this is State's 53.

17 A Uh-huh.

18 Q Can you describe where -- just briefly, what is  
19 this?

20 A That's the front of the IHOP from the Dorchester  
21 Road side.

22 Q And where did you find this evidence?

23 A It was next to these -- one of these bushes that are  
24 over here in the front where you see this, I guess you  
25 would say -- some would say "burgundy car."

DIRECT EXAMINATION BY MR. SPEARS - MICHAEL MCKEE 245

1 Q You can touch that -- I'm sorry. You can touch the  
2 screen.

3 A Oh, okay. (Indicating) It was over here. Either  
4 one -- one of these bushes. Here, here, or here. I have  
5 more -- I took more pictures than -- than what's right  
6 here to give a more accurate representation, but it was  
7 next to one of those bushes.

8 Q All right. Now, this is followed by State's 54.

9 A Uh-huh.

10 Q And just describe this.

11 A This is one of the small bushes that was in front of  
12 the IHOP that I just mentioned. I believe, to the left,  
13 you see where one of those handicap poles were, the cement  
14 handicap pole? And the -- the firearm that I was called  
15 to recover is sitting right under the bush.

16 Q Was the firearm loaded?

17 A It was. I -- I do recall the magazine being in the  
18 weapon.

19 Q And do you recall how many rounds were in it?

20 A I -- I can't -- I -- I don't recall that.

21 Q All right.

22 MR. SPEARS: May I approach the witness, Your Honor?

23 THE COURT: Counsel approach.

24 (Bench conference.)

25 MR. SPEARS: May I approach the witness, Your Honor?

1 THE COURT: You may.

2 (Mr. Spears hands an exhibit to the witness.)

3 Q I'm showing you what had been labeled as State's 55.  
4 Without showing it to the jury, can you tell me if you  
5 recognize this?

6 A I do. It looks like the firearm that I recovered  
7 from the crime scene.

8 Q Has this firearm been altered in any way?

9 A It has not.

10 Q Is this the same firearm that you recovered from the  
11 scene?

12 A It is. It matches the same description and  
13 everything.

14 Q Is there -- on the front of that box, is there any  
15 sort of documentation of that?

16 A Yes. My name is on the chain of custody showing as  
17 the arresting officer, and my old badge number; and the  
18 date, the end time that I responded to the scene.

19 MR. SPEARS: Your Honor, at this time I'd request  
20 State's 55 into evidence.

21 THE COURT: As to 55, Counsel.

22 MR. CHISHOLM: No objection.

23 THE COURT: Ladies and gentlemen of the jury,  
24 State's Exhibit 55 will be admitted into evidence in the  
25 trial of this case. I'm informed by the attorneys that

DIRECT EXAMINATION BY MR. SPEARS - MICHAEL MCKEE 247

1 the weapon has been secured, so it cannot -- capable of  
2 being fired for your safety.

3 You may proceed. 55 in evidence. You may publish  
4 to the jury.

5 (State's Exhibit No. 55, firearm, in evidence.)

6 MR. SPEARS: May I approach the witness, Your Honor?

7 THE COURT: You may.

8 (Mr. Spears hands Exhibit No. 55 to the witness.)

9 Q Deputy, if you don't mind, there's a -- also, can  
10 you lift up that bag in that box there?

11 A Okay.

12 Q What's -- what's -- what are those?

13 A These are bullets.

14 Q Where do they come from?

15 A They come from a magazine of a weapon, or if you  
16 bought them ---

17 Q Okay. Were those bullets recovered from the  
18 magazine -- the bullets in -- that were in that magazine?

19 A Yes, sir.

20 Q All right. And could you just briefly show the jury  
21 the weapon in that box?

22 A Uh-huh.

23 (The witness complies.)

24 Q Thank you. Please answer any questions the Defense  
25 might have for you.

CROSS-EXAMINATION BY MR. CHISHOLM - MICHAEL MCKEE 248

1 THE COURT: Cross-examination.

2 MR. CHISHOLM: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. CHISHOLM:

5 Q Morning, Deputy.

6 A Morning.

7 Q So you responded to a call about a gun being found  
8 at this restaurant; is that correct?

9 A That's correct.

10 Q And you went out, and basically you documented what  
11 you've just shown, where you found the gun; is that  
12 correct?

13 A That's correct.

14 Q Do you recall when you found the gun, was there any  
15 blood or anything of evidentiary value on it that you  
16 could see?

17 A I, -- I can't -- I don't recall seeing any blood or  
18 anything on it.

19 Q Okay. And do you recall if the -- the weapon was  
20 loaded, one in the chamber, anything on those ---

21 A I can't remember if one was chambered, but I do  
22 remember that there was a magazine in the weapon with  
23 rounds.

24 Q Okay. Have you had a chance to look at your report?

25 A I -- I did. I -- I don't recall seeing the round in

CROSS-EXAMINATION BY MR. CHISHOLM - MICHAEL MCKEE 249

1 chamber. I scanned over it this morning.

2 Q Okay. You reviewed it this morning then?

3 A Uh-huh.

4 Q And this gun was reported stolen out of Summerville,  
5 it says in your report?

6 A I believe so. After running it through NCIC.

7 Q Did you ever follow up on that to see who it was  
8 stolen from, the circumstances, if the person could  
9 identify who took it, anything like that?

10 A No. If -- usually when something's reported stolen,  
11 we submit it back in -- we run it through NCIC. If we get  
12 the hit, or what we call a "hit," being that it was -- it  
13 might've been involved in a case earlier and the fact that  
14 it was stolen, it was admitted into evidence.

15 Q Okay.

16 A What happened with it after evidence, is ...

17 Q Okay. And this vantage point we were looking at in  
18 these two pictures, State's, I believe, 53 and 54, do you  
19 recall if these bushes -- are they to the left of the  
20 entrance if you're standing outside looking at the front  
21 door?

22 A If you're looking at the entrance, they are to the  
23 left.

24 Q Thank you.

25 MR. CHISHOLM: One moment.



1 (Brief pause.)

2 MR. CHISHOLM: I have no further questions, thank  
3 you.

4 THE COURT: Redirect?

5 MR. SPEARS: None, Your Honor.

6 THE COURT: As to this witness?

7 MR. SPEARS: May he be excused, Your Honor?

8 THE COURT: Any objection?

9 MR. CHISHOLM: None, Your Honor.

10 THE COURT: Mr. McKee, you may step down. You're  
11 excused from the trial of this case. You may leave the  
12 courtroom. Leave my exhibits here. You can take that  
13 good Dorchester water if you want to.

14 THE WITNESS: I appreciate it.

15 THE COURT: Thank you.

16 THE WITNESS: Thank you, Your Honor.

17 (The witness exits the stand.)

18 THE COURT: Call your next witness.

19 MR. SPEARS: State calls William Mandeville.

20 WILLIAM MANDEVILLE, having been  
21 first duly sworn, testifies as follows:

22 THE COURT: Adjust that microphone, if you need to,  
23 to your height.

24 THE WITNESS: Thank you, sir.

25 THE COURT: It's going to amplify your voice. And I

1 need you to speak up so everybody on the jury can hear  
2 you. All right?

3 THE WITNESS: Yes, sir.

4 THE COURT: State your full name again and spell it  
5 for the Court Reporter using the mic.

6 THE WITNESS: William Austin Mandeville.

7 THE COURT: Everybody hear him okay?

8 THE JURY: (In unison) Yes, sir.

9 THE COURT: Your witness, Counsel. Direct  
10 examination.

11 THE COURT REPORTER: Could he spell his last name,  
12 Your Honor? Spell his last name.

13 THE COURT: Spell your last name.

14 THE WITNESS: Yes, sir. M-a-n-d-e-v-i-l-l-e.

15 THE COURT: Your witness, Counsel. Direct  
16 examination.

17 MR. SORENSON: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MR. SORENSON:

20 Q Good morning, Mr. Mandeville. How are you?

21 A Good morning, sir. Well.

22 Q If you would please tell the jury where it is that  
23 you're currently employed?

24 A I am currently employed with Low Country EMS as a  
25 Paramedic Instructor.

DIRECT EXAMINATION BY MR. SORENSON - WILLIAM MANDEVILLE252

1 Q Okay. And how long have you been employed in that  
2 capacity?

3 A Just over two years.

4 Q Okay. And what are your -- what are your, kinda,  
5 current duties at this time?

6 A I teach paramedics. I'm also the Director of  
7 Education, so curriculum development for EMT's and other  
8 programs EMS related.

9 Q Okay. And kinda what -- if you would, tell the jury  
10 a little bit what your training and experience is with  
11 regards to EMT's and paramedics.

12 A Sure. I've been a paramedic just over 10 years.  
13 I've worked several states: Georgia, Florida -- or excuse  
14 me -- North Carolina, Florida, and South Carolina. I've  
15 been teaching in EMS for the last five years. I hold a  
16 Master's Degree in EMS Education and EMS Management. And  
17 I've worked through all of those 10 years in teaching and  
18 performing EMS.

19 Q Okay. I want to turn your attention, if I could,  
20 Mr. Mandeville, back to June the 5 of 2016. Where --  
21 where and in what capacity were you employed at that time?

22 A I was a paramedic with Dorchester County EMS.

23 Q Okay. And did you have an occasion to respond out  
24 the of the morning of June the 5 of 2016 to the IHOP  
25 restaurant located on Dorchester Road?

DIRECT EXAMINATION BY MR. SORENSON - WILLIAM MANDEVILLE253

1 A Yes.

2 Q Okay. And describe for the jury kind of -- when you  
3 got out there, kinda what -- what was going on.

4 A We arrived on scene with multiple other responders  
5 from various agencies: Law enforcement, fire, and EMS.  
6 We arrived -- we were dispatched to a shooting, when we  
7 arrived to find two patients outside of the IHOP.

8 Q Okay. And describe, if you would, where they were  
9 located at outside the IHOP.

10 A I believe they were located right outside the front  
11 door.

12 Q Okay.

13 MR. SORENSON: May I approach the witness, Your  
14 Honor?

15 THE COURT: You may.

16 (Mr. Sorenson hands a photo to the witness.)

17 Q Let me show you what's been marked as State's  
18 Exhibit No. 3. Does that kinda show the area where they  
19 were located at?

20 A Yes.

21 Q Okay. That help you in kinda ---

22 A Yep. They were right -- right ---

23 Q --- kinda showing where they were at to the jury?

24 A --- right there at the front door. Yes, sir.

25 MR. SORENSON: Your Honor, at this time we would

DIRECT EXAMINATION BY MR. SORENSON - WILLIAM MANDEVILLE254

1 offer State's 3 into evidence.

2 MR. CHISHOLM: No objection, Your Honor.

3 THE COURT: Ladies and gentlemen of the jury,  
4 State's Exhibit No. 3 will be admitted into evidence in  
5 the trial of this case without objection. State's 3 into  
6 evidence, you may publish it.

7 (State's Exhibit No. 3, photo, in evidence.)

8 Q Mr. Mandeville, kinda describe for the jury -- and  
9 you can, with the screen in front of you, you can kind of  
10 touch the screen and it'll mark up there if -- if you --  
11 just kinda where -- kinda where the two patients were  
12 located at.

13 A Sure. (Indicating) One patient was located here on  
14 the ground. There's a bench that you can kind of see  
15 right here and was located on that side to the best of my  
16 recollection.

17 Q Okay. All right. So one on each side you said?

18 A (Indicating) One on the ground here.

19 Q Uh-huh.

20 A And then one on the bench.

21 Q Okay. All right. And ultimately -- tell the jury  
22 then what -- how many ambulances or -- or EMS vehicles  
23 responded to the scene?

24 A To the best of my recollection we had myself,  
25 another transport ambulance, and I believe a supervisor

DIRECT EXAMINATION BY MR. SORENSON - WILLIAM MANDEVILLE255

1 was en route, but I don't recall.

2 Q Okay. And tell the jury, then when you arrived at  
3 the scene then, what did you do?

4 A My job as the first -- because we were the first  
5 ambulance in -- was ultimately triage, to identify the  
6 patients, identify the most critical patients, and sort  
7 them for transport and care.

8 Q Okay. And were you able to determine was one of  
9 them in -- in worse shape than the other?

10 A One appeared -- the patient that we transported did  
11 appear to be, from an immediate triage standpoint, in  
12 worse condition.

13 Q Okay. And ultimately, what patient were you  
14 involved in transporting?

15 A We were transporting -- let me get his name just to  
16 make sure I have -- Brandon Mack --

17 Q Okay.

18 A -- was the patient we were transporting.

19 Q Okay. Now, did you have an opportunity to briefly  
20 interact with the other patient that was out there?

21 A There was no real formal interaction that occurred.  
22 A lot of chaos, a lot of screaming and yelling. No real  
23 formal conversation or interaction with anybody.

24 Q Okay. Did he -- did they both appear to be injured  
25 though?

DIRECT EXAMINATION BY MR. SORENSON - WILLIAM MANDEVILLE256

1 A Yes.

2 Q Okay. And ultimately -- so you testified that you  
3 transported or involved in the transport of Mr. Mack. Are  
4 you aware was the other individual also transported from -  
5 --

6 A He was transported ---

7 Q --- the scene?

8 A --- by another unit. Yes, sir.

9 Q Okay. All right. And tell the jury where -- where  
10 did y'all end up taking Mr. Mack?

11 A Mr. Mack was transported to Trident Hospital.

12 Q Okay. And was the other -- did the other ambulance  
13 transport the other individual to Trident also ---

14 A I'm not certain.

15 Q Okay. And if you would, describe then -- were you  
16 then involved in the care of Mr. Mack and basically out  
17 there at the scene, from the scene, to -- he was turned --  
18 until he was turned over at Trident Hospital?

19 A Very briefly because my initial -- as the initial  
20 arriving paramedic, my job was to sort patients and triage  
21 patients. Mr. Mack was handed off to my partner who was  
22 then loaded in the truck. I stayed with the other patient  
23 that was on scene and assisted loading that patient into  
24 the other unit. Once that was completed, I did ride in  
25 the back with Mr. Mack and my paramedic partner.

DIRECT EXAMINATION BY MR. SORENSON - WILLIAM MANDEVILLE257

1 Q Okay.

2 A But -- so my total amount of time caring for Mr.  
3 Mack was probably five to six minutes.

4 Q Okay. And if you would, kinda describe for the jury  
5 what -- what his condition was, kinda, from the scene to  
6 Trident Hospital.

7 Q Sure.

8 A The patient was, according to the report -- I'm  
9 seeing that I didn't narrate the report. That was written  
10 by my partner, Ms. Connick.

11 Stated in there, but as my recollection occurs, he  
12 was -- had multiple penetrating type injuries. He was in  
13 obvious discomfort, was not able to really be compliant  
14 with a lot of treatment, and we were unable to get a lot  
15 of vital signs established on him; and he started to  
16 deteriorate mildly before our arrival to Trident.

17 Q Okay. And he was -- one second. All right. And  
18 ultimately, when -- when you arrived at Trident Hospital,  
19 what was done with -- with Mr. Mack?

20 A Mr. Mack was transported inside on the stretcher to  
21 Trident Hospital. I remained behind in the ambulance  
22 because we had located a firearm in the back of the truck.

23 Q Okay. And that was going to be my next question.  
24 Ultimately, was something located in the -- in your  
25 ambulance, in the back of the ambulance?



DIRECT EXAMINATION BY MR. SORENSON - WILLIAM MANDEVILLE258

1 A Yes. There was a firearm.

2 Q Okay. And describe for the jury kinda how that came  
3 about you locating that.

4 A When the patient was in -- placed in the truck, we  
5 traditionally remove clothing so we can assess the patient  
6 more thoroughly. As we were gathering kinda the patient's  
7 belongings and -- and kinda pulling them back up on top of  
8 the patient, there's a stretcher mount in the back of the  
9 truck where the stretcher locks into place. A firearm was  
10 located beside the stretcher and in between the stretcher  
11 and the stretcher mount.

12 Q Okay. And what -- what did you then do with that  
13 firearm?

14 A That fire -- I removed the firearm from the  
15 stretcher and the stretcher mount, placed it on the bench  
16 seat. I stayed with the firearm and instructed my partner  
17 and the fire department personnel, who was driving us in,  
18 to take the patient inside.

19 Q Okay. And ultimately, was law enforcement contacted  
20 to come out and meet with you out there at Trident  
21 Hospital?

22 A Yes, they were.

23 Q Okay. And that weapon, did you have an opportunity  
24 to -- to do anything with that weapon prior to turning it  
25 over to law enforcement?

DIRECT EXAMINATION BY MR. SORENSON - WILLIAM MANDEVILLE259

1 A The weapon was loaded. I tried to release the clip  
2 and unload the weapon so I didn't have a loaded firearm in  
3 the back of the truck. Couldn't get the clip to  
4 disengage, so I essentially slid the weapon and racked the  
5 bullets out, and then the clip would disengage. Placed  
6 the bullets back in so it was no longer a live firearm,  
7 and placed it in the locked narcotics locker in the back  
8 of the truck.

9 Q Okay. And ultimately, did you turn that weapon over  
10 to -- to law enforcement that night at the ---

11 A Yes.

12 Q --- at -- at the hospital?

13 A Yes, sir. We remained on scene at Trident Hospital  
14 until we were met by a Sheriff's officer.

15 MR. SORENSON: May I approach the witness, Your  
16 Honor?

17 THE COURT: You may.

18 (Mr. Sorenson hands an exhibit to the witness.)

19 Q Mr. Mandeville, let me show you what's been marked  
20 as State's 56. Let's see if you recognize that item.

21 A The serial number matches the same serial number  
22 that was on the chain of custody --

23 Q Okay.

24 A -- so that's ...

25 Q Okay. You filled ---

DIRECT EXAMINATION BY MR. SORENSON - WILLIAM MANDEVILLE260

1 THE COURT: What number, Counsel?

2 MR. SORENSON: This would be State's 56.

3 Q All right. You filled out a chain of custody when  
4 you turned it over to the Sheriff's Office?

5 A I did. Yes, sir.

6 Q Okay.

7 MR. SORENSON: Your Honor, at this time we'd offer  
8 State's 56 into evidence.

9 THE COURT: As to State's 56?

10 MR. CHISHOLM: No objection, Your Honor.

11 THE COURT: Ladies and gentlemen of the jury,  
12 State's Exhibit No. 56 will be admitted into evidence in  
13 the trial of this case without objection. You may  
14 publish.

15 MR. SORENSON: Thank you, Your Honor.

16 (State's Exhibit No. 56, firearm, in evidence.)

17 Q Mr. Mandeville, so State's 56 would be that weapon  
18 right there?

19 A Yes, sir.

20 Q And it was loaded. You talked about the clip. Is  
21 that what you were referring to that's ---

22 A Yes, sir. I removed -- I removed the -- I tried to  
23 remove the magazine, but was unable to do so.

24 Q And there's one, two, three, six, seven, eight,  
25 nine, ten bullets? Does that them to ---

DIRECT EXAMINATION BY MR. SORENSON - WILLIAM MANDEVILLE261

1 A That seems appropriate ---

2 Q --- accurate ---

3 A --- yes, sir.

4 Q --- accurate with your recollection?

5 A Yes, sir.

6 Q And Mr. Mandeville, who -- was there anybody else  
7 besides you and your partner that was in the back of that  
8 ambulance besides the two of you and Mr. Mack?

9 A It's a possibility. We certainly had assistance from  
10 multiple members from multiple agencies on scene during  
11 the time. There would've been a brief period of time  
12 where there had been no one occupying the truck while I  
13 was getting out and triaging patients and loading Mr. Mack  
14 into the ambulance.

15 So I certainly can't state that there was  
16 definitively no one to ever enter there, but I don't  
17 recall every seeing anyone there.

18 Q And where the gun was located that you testified  
19 earlier, was that kind of consistent with it being with  
20 Mr. Mack's clothing?

21 A It was underneath his clothing. That would be the  
22 placement of where the weapon fell. Again, without seeing  
23 the weapon prior, it would make consistent sense to where  
24 it was located that it was on his person.

25 MR. SORENSON: Beg the Court's indulgence.

CROSS-EXAMINATION BY MR. CHISHOLM - MICHAEL MANDEVILLE 262

1           Thank you, Mr. Mandeville. Please answer any  
2 questions from Defense counsel.

3           THE COURT: Cross-examination?

4           MR. CHISHOLM: Thank you, Your Honor.

5                           CROSS-EXAMINATION

6 BY MR. CHISHOLM:

7 Q       Mr. Mandeville, I just have a few questions for you I  
8 believe.

9 A       Sure.

10 Q       The gun the Solicitor was just asking you about, it  
11 was found, I think you said, in Mr. Mack's clothing in the  
12 ambulance?

13 A       It was found in between the stretcher and the  
14 stretcher mount.

15 Q       Uh-huh.

16 A       It wasn't seen visibly until we moved his clothing  
17 around. His clothings [sic] was cut off.

18 Q       Okay. So while you can't say with any certainty  
19 somebody else didn't get into the ambulance, you're saying  
20 it's consistent with it being with his other belongings in  
21 there?

22 A       That's correct.

23 Q       Okay. And I believe you testified the gun was  
24 loaded?

25 A       That's correct.

CROSS-EXAMINATION BY MR. CHISHOLM - MICHAEL MANDEVILLE263

1 Q And that, I guess, it malfunctioned to some degree in  
2 that you couldn't get the -- the magazine to release?

3 A Whether it was malfunction or operator error, I  
4 couldn't personally get the mag to release, and I wasn't  
5 comfortable having a loaded firearm for an unknown period  
6 of time in the truck.

7 Q Do you recall if there was a round in the chamber  
8 when you got it?

9 A I don't.

10 Q Okay. And I know in some of these EMS reports  
11 sometimes you'll see that -- you're there to treat  
12 someone, correct?

13 A Correct.

14 Q You're not with law enforcement, you're not  
15 investigating a case per se, correct?

16 A That's correct.

17 Q But do you typically ask them or try to ask someone  
18 that's in your care in a situation like this kinda, "What  
19 happened? "Can you tell me what happened?" Do you try to  
20 do that?

21 A In stable patients, we do. It's part of history  
22 gathering and it's an important part of assessment and  
23 treatment. In patients that are critical, there's very  
24 little communication that often occurs, and that was the  
25 case here as well.

1           Unfortunately, Mr. Mack kept repeating statements, "I  
2   need oxygen. I need oxygen," for the first few minutes;  
3   and then as we were approaching Trident, as documented in  
4   the patient care report ---

5   Q     Sure.

6   A     --- he -- he kept stating, "I'm falling asleep."

7   Q     He was responding about his condition more than ---

8   A     Correct, correct.

9   Q     And you've -- you've got a copy of your narrative or  
10   you've seen it recently?

11   A     I have, yes, sir.

12   Q     And it's got in there (as read): "Mental State.  
13   Combative." Is that -- if that's accurate, was that in  
14   his response to you trying to treat him he was combative;  
15   or was it you were asking him what happened, and he was  
16   being combative about; that or do you recall? If you  
17   don't, that's fine.

18   A     I do vaguely recall. And this is -- this is a  
19   different term "combative" that we use in medicine as  
20   opposed to someone being -- wanting to fight. The  
21   combative is the resistance to treatment and lack of  
22   compliance with instruction, but it's common to see in  
23   patients with blood loss or that have been deprived from  
24   oxygen for any length of time.

25   Q     Sure.

CROSS-EXAMINATION BY MR. CHISHOLM - MICHAEL MANDEVILLE 265

1 A And that -- his demeanor was consistent with that.

2 Q Okay. That makes sense. And there was another EMS  
3 unit that arrived who treated the other person on the  
4 scene; is that correct?

5 A That's correct.

6 Q And do you recall who that was?

7 A The -- the unit or the other patient?

8 Q The unit. Who was in that other unit?

9 A I don't directly recall. I do -- I -- without being  
10 able to look at reports, no, I don't. I don't directly  
11 recall off the top of my head unfortunately.

12 Q Do you happen to know if the other unit asked the  
13 other person that was transported what had happened?

14 A I don't.

15 Q Okay. So we'd have to wait until they were put on  
16 the stand to hear from them?

17 A That is -- yes, that's correct.

18 Q Thank you.

19 MR. CHISHOLM: May I have one moment?

20 (Brief pause.)

21 MR. CHISHOLM: Thank you. I don't have any further  
22 questions.

23 THE COURT: Redirect.

24 MR. SORENSON: Just very briefly, Your Honor.

25 REDIRECT EXAMINATION



REDIRECT EXAMINATION BY MR SORENSON - MICHAEL MANDEVILLE266

1 BY MR. SORENSON:

2 Q And Mr. Mandeville, Mr. Chisholm had just asked you  
3 about the other unit. Steven Shaw, was he a paramedic at  
4 the time that ---

5 A Steven Shaw was a paramedic at the time.

6 Q And you talked about -- or Mr. Chisholm asked you  
7 about the description of Mr. Mack being combative, and you  
8 touched a little bit on that. Is there actually a term  
9 for that what you were seeing with him?

10 A It's -- it's a form of altered mental status. But  
11 the term that we use in medicine is he is exhibiting a  
12 combative type behavior, and that's -- that's known with  
13 hypoxic patients or -- and hypovolemic patients or blood  
14 loss and oxygen deprivation.

15 Q Thank you.

16 THE COURT: Re-cross limited to redirect.

17 MR. CHISHOLM: None, Your Honor.

18 THE COURT: As to this witness, Solicitor?

19 MR. SORENSON: No objection to him being excused.

20 THE COURT: Any objection?

21 MR. CHISHOLM: No, Your Honor.

22 THE COURT: Mr. Mandeville, you may step down.

23 You're excused from the trial of this case, and you may  
24 leave the courtroom.

25 THE WITNESS: Thank you, sir.

1 THE COURT: You're welcome. Take your notes, leave  
2 my exhibits.

3 (The witness exits the stand.)

4 THE COURT: Call your next witness.

5 MR. SPEARS: State calls Mohamad Amin Alabsa.

6 MOHAMAD ALABSA, having been first  
7 duly sworn, testifies as follows:

8 THE COURT: And you adjust that microphone, if you  
9 need to, to your height. It's going to amplify your  
10 voice, but I need you to speak up so everybody on the jury  
11 and in the courtroom can hear you.

12 THE WITNESS: Yes, sir.

13 THE COURT: I need you to begin by speaking up,  
14 stating your full name, and spelling your last name for  
15 the Court Reporter.

16 THE WITNESS: Okay. Mohamad Amin Alabsa, A-l-a-b-s-  
17 a.

18 THE COURT REPORTER: First name?

19 THE WITNESS: I'm sorry?

20 THE COURT REPORTER: First name?

21 THE COURT: Spell your first name, too.

22 THE WITNESS: Mohamad, M-o-h-a-m-a-d.

23 THE COURT: Very well. Speak up for me now.

24 THE WITNESS: Okay.

25 THE COURT: Your witness, Counsel. Direct  
26 examination.

1 MR. SPEARS: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. SPEARS:

4 Q Mr. Alabsa, where are you currently employed?

5 A I work for ABCO Chemical Company.

6 Q All right. Now, how long have you worked there?

7 A A year and eight months.

8 Q Where were you employed back in June of 2016?

9 A With IHOP.

10 Q And what was your position there?

11 A I was the TP of the operation.

12 Q All right. And could you just briefly explain to the  
13 jury some of what that job entailed?

14 A Pretty much oversee the entire operation.

15 Q Uh-huh. And when you say that, would -- were you  
16 confined to one IHOP or were there multiple IHOPs?

17 A I have multiple locations in multiple states

18 Q All right. Were any of those locations in South  
19 Carolina?

20 A I do have Walterboro, Dorchester, James Island,  
21 Florence, Myrtle Beach.

22 Q All right. Now, going back to June of 2016, did you  
23 turn in any evidence to the Sheriff's Office?

24 A Yes, I did.

25 Q Okay. And what did you bring to the Sheriff's

1 Office?

2 A I have no idea.

3 Q All right. Now --

4 MR. SPEARS: And Judge, I apologize. May I have this  
5 marked? This wasn't previously marked exhibit.

6 (Marked State's Exhibit No. 82, two projectiles.)

7 Q I'm showing you what's been marked as State's 82.

8 MR. SPEARS: May I approach the witness?

9 THE COURT: You may.

10 (Mr. Spears hands exhibit to the witness.)

11 Q Do you recognize this?

12 A Yes.

13 Q And what is this?

14 A Whatever I turned in. I had to fill a form and sign  
15 my name, information, my contact ---

16 Q Is that ---

17 A --- numbers.

18 Q Is that your signature, there?

19 A That is my signature.

20 Q Now, what's listed on there?

21 A I'm sorry?

22 Q What is listed on there that you turned in?

23 A (As read) One 9 millimeter large shell and brass  
24 project -- projectiles. Two of them.

25 Q Could you say that again?

1 A Two -- the brass projectiles.

2 Q All right.

3 MR. SPEARS: May I approach the witness, Judge?

4 THE COURT: You may.

5 MR. SPEARS: Your Honor, at this time, State would  
6 request State's 82 into evidence.

7 MR. CHISHOLM: No objection.

8 THE COURT: What number?

9 MR. SPEARS: 82, Your Honor.

10 THE COURT: State's Exhibit 82 is admitted into  
11 evidence in the trial of this case without objection.

12 (Marked State's Exhibit No. 82 in evidence.)

13 MR. SPEARS: May I publish, Your Honor?

14 THE COURT: You may.

15 (Mr. Spears shows exhibit to the jury.)

16 THE COURT: You might want to turn it, Counsel.

17 Q And again, Mr. Alabsa, is that your signature there?

18 A That is my signature.

19 Q Now, you can touch on that screen and it'll make a  
20 mark. Can you show where your signature is?

21 A (The witness complies.)

22 Q And above that, one last time. I apologize. Can you  
23 read what the items you turned in were?

24 A I'm sorry?

25 Q One last time -- and I apologize for asking you to

1 repeat it.

2 A That's okay.

3 Q Can you read what the items you turned in were?

4 A One 9 millimeter large shell. And that's one of  
5 them, and two of the brass projectiles.

6 Q All right. Now, I'm showing you what's been marked  
7 as State's 79 and 80. And for clarification, when you say  
8 the second thing, the brass projectile, now, is that an  
9 item number or is that an amount?

10 A Oh, I'm sorry. Item number.

11 Q All right. Now, I'm showing you what's been marked  
12 as State's 79 and 80. Do you recognize these?

13 A No, I do not.

14 Q The items that you turned in to the Sheriff's Office  
15 on that day, what -- what were they contained in?

16 A I really do not recall. I know the office, or Human  
17 Resources, called into the sides, our district manager;  
18 and then after the fact, they gave me the bag they said  
19 need to be turned in, and I came and turned it in since I  
20 live in that area closer to them from Florence.

21 Q And when you turned it in, obviously you signed this  
22 form ---

23 A I did.

24 Q --- here. Was [sic] the items opened up in front of  
25 you and shown so the detective knew what it was?

1 A Honestly, I do not recall.

2 Q Okay.

3 MR. SPEARS: Court's indulgence, Your Honor.

4 (Brief pause.)

5 MR. SPEARS: Please answer any questions the State  
6 might have for -- or the Defense might have for you.

7 THE COURT: Cross-examination.

8 MR. CHISHOLM: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. CHISHOLM:

11 Q It's Mr. Alabsa?

12 A Yes, sir.

13 Q Did you call the police and tell them, "I found  
14 evidence at the store?" How did this come about?

15 Q No, I did not. It was just at -- again, I do not  
16 recall whether I decide after the fact or at the office.  
17 While I was there, Ms. Donna Sweat, at our Human Resource  
18 -- Chris Morris is the District Manager, they said, "Hey,  
19 this needs to be turned in." And then I said, "Okay.  
20 Since I live in the area, I'll just take it there."

21 We were in the process of opening a new location, and  
22 I know they were busy. So I said, "I'll drop it." That's  
23 all really what I recall.

24 Q Okay. Do you know where this stuff was found?

25 A No, sir.

CROSS-EXAMINATION BY MR. CHISHOLM - MOHAMAD ALABSA 273

1 Q And it looks like you spoke with Detective Elmore on  
2 June 8, is what it says on the form. Does that sound  
3 correct?

4 A If it says so, yes. Probably it is correct.

5 Q Well, let me ask you this: These items, you handed  
6 them to a police officer at some point, and he spoke with  
7 you about the case?

8 A Again, I recall when I went to their office in one of  
9 those mobile office at the county -- I call them, set a  
10 time, I went there, introduce myself. I gave it to him,  
11 he got the form, I signed the form. Really I do not  
12 recall all the detail. I mean, that's all I recall.

13 Q Do you remember if he asked you any questions about  
14 where it was found or anything?

15 A No, sir.

16 Q You don't -- he didn't or you don't remember?

17 A I do not recall.

18 Q Okay. Do you remember if you gave him any kind of  
19 written -- did he take a statement, or anything or he just  
20 basically take it and say, "Thanks," and that was it?

21 A No, I think -- I do not really recall on my end.

22 There may be a conversation maybe with Chris Morris, who  
23 was the District Manager, or maybe Donna Swift, the Human  
24 Resource at that time, who were all called in at the scene  
25 as well as myself. And maybe there was a private



RE-DIRECT EXAMINATION BY MR. SPEARS - MOHAMAD ALABSA 274

1 conversation, and all I did -- all I went there to drop  
2 it. I did not have any private conversation or anything  
3 so forth.

4 Q It's safe to say you didn't know anything about where  
5 it was found or anything else. You were just asked to  
6 take it to the police?

7 A That's correct. I did say I would drop it.

8 Q Fair enough. Thank you. I have no further  
9 questions.

10 THE COURT: Redirect.

11 MR. SPEARS: Briefly, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. SPEARS:

14 Q Mr. Alabsa, as an employee of IHOP in the area, were  
15 you aware of an incident that occurred at one of the IHOPs  
16 in South Carolina?

17 A Can you repeat that question again, please?

18 Q Were you aware of an incident that had occurred on  
19 June 5, 2016, at an IHOP?

20 A If -- if that's related to same incident, yes, I was  
21 -- I was called in at that moment.

22 Q Could you repeat that? I'm sorry, I didn't quite  
23 understand.

24 A If it's related to the same incident, yes. Typically  
25 I get called for every incident, and this particular

1 incident I got called in, yes.

2 Q Had there been any other incidents between that time  
3 and when you turned in this evidence?

4 A No.

5 Q Okay.

6 MR. SPEARS: No more questions, Your Honor.

7 THE COURT: Re-cross limited to redirect.

8 MR. CHISHOLM: No, Your Honor.

9 THE COURT: As to this witness, Solicitor?

10 MR. SPEARS: Please excuse the witness, Your Honor.

11 THE COURT: Any objection?

12 MR. CHISHOLM: No, Your Honor.

13 THE COURT: You may step down, and you're excused.

14 Leave my exhibits here. You're excused from the trial of  
15 this case.

16 THE WITNESS: Yes, sir. Thank you.

17 (The witness exits the stand.)

18 THE COURT: Call your next witness.

19 MR. SORENSON: State calls Brandon Berg.

20 May we approach? May we approach, Your Honor, real  
21 quick?

22 THE COURT: Counsel approach.

23 (Bench conference.)

24 THE COURT: (To the clerk) Swear the witness.

25 BRANDON BERG, having been first

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1       duly sworn, testifies as follows:

2               THE COURT: Make yourself comfortable. Adjust that  
3       microphone to your height. All right. Now, you're  
4       comfortable and you got the chair situated?

5               THE WITNESS: Yes, sir.

6               THE COURT: State your full name, and spell your  
7       name, first and last, for my Court Reporter.

8               THE WITNESS: Brandon Dean Berg; B-r-a-n-d-o-n B-e-r-  
9       g.

10              THE COURT: Now, that microphone's going to amplify  
11       your voice, but I want to make sure, particularly these  
12       two ladies on the end of the jury row, speak up so they  
13       can hear you and the people in the courtroom can hear you,  
14       and my lawyers can hear you. You understand?

15              THE WITNESS: Yes, sir.

16              THE COURT: Thank you. Your witness, Solicitor.  
17       Direct examination.

18              MR. SORENSON: Thank you, Your Honor.

19                                      DIRECT EXAMINATION

20       BY MR. SORENSON:

21       Q       Sergeant Berg, if you would, please tell the jury  
22       where it is that you're employed.

23       A       I'm employed at the Dorchester County Sheriff's  
24       Office.

25       Q       Okay. And how long have you been with the Sheriff's

1 Office?

2 A About eight years.

3 Q Okay. And what are your current duties and  
4 responsibilities there?

5 A Currently -- currently assigned to the crime scene  
6 unit. I'm a supervisor within the unit, and also a latent  
7 print examiner.

8 Q Okay. And just kinda tell the jury kinda now, as a  
9 supervisor within the crime scene unit and a latent print  
10 examiner, what is your -- what does that kinda consist of  
11 you doing on a day-to-day basis?

12 A We respond out to crime scenes as needed. Our  
13 responsibility is to maintain those crime scenes, process  
14 and print any evidence that may be available, document  
15 that scene, photograph that scene, and then bring stuff  
16 back to the office.

17 We also process stuff turned in from deputies in our  
18 lab for the presence of latent prints. If we identify  
19 something it's turned in to me. At that point, I will  
20 analyze that print, determine if it's a quality or not to  
21 be compared against a known print.

22 Q Okay. And specifically, with regards to fingerprint  
23 collection, processing items for fingerprints, and -- and  
24 fingerprint comparisons, tell the jury a little bit about  
25 the training and experience that you have with regards to

1 those fields.

2 A I've had over 450 hours of forensic training, 160 of  
3 those being in latent prints. I've been involved with  
4 over 1100 -- or approximately 1100 cases with the  
5 Sheriff's Office. Approximately 600 comparisons I've done  
6 so far since I've been a full-time latent print examiner.

7 Q Okay. And is that basically, at this point in time,  
8 part of your day to day duties and -- and activities at  
9 the Sheriff's Office?

10 A The main part of my duty at this point is latent  
11 prints.

12 Q Okay.

13 MR. SORENSON: Your Honor, at this time we'd offer  
14 Sergeant Berg as an expert in the field of forensic -- of  
15 fingerprint analysis and comparison.

16 THE COURT: Counsel approach.

17 (Bench conference.)

18 THE COURT: Any objection as to qualifications?

19 MR. CHISHOLM: No, Your Honor.

20 THE COURT: (To the jury) Ladies and gentlemen,  
21 normally the law does not permit witnesses to get on the  
22 witness stand and give opinion testimony or conclusive  
23 testimony. An exception to this rule is for those rules  
24 -- or those witnesses who we call "expert witnesses" who,  
25 if qualified by the Court, are permitted to give an

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1 opinion.

2 You are to give any opinion the same weight as you  
3 would any other witness. You're not bound by any expert  
4 witness's testimony. You give it the weight you feel it  
5 should deserve.

6 In this case, this witness, Brandon Berg, with the  
7 Dorchester County Sheriff's Department -- in what field,  
8 Solicitor?

9 MR. SORESON: The fingerprint analysis and  
10 comparison.

11 THE COURT: Fingerprint analysis -- has been  
12 qualified, without objection from Counsel for Defendant,  
13 in fingerprint analysis and comparison.

14 You may proceed --

15 MR. SORENSON: Thank ---

16 THE COURT: -- without objection.

17 MR. SORENSON: Thank you, Your Honor.

18 BY MR. SORENSON:

19 Q All right. I'm going to get into fingerprints with  
20 you in a little while, okay, Sergeant? But let's talk --  
21 kind of initially want to deal with your responding out to  
22 the scene that night.

23 A Okay.

24 Q So -- so first of all, did you have an occasion to  
25 respond out to the Hi -- IHOP the morning of June the 5,

1 2016?

2 A I did.

3 Q Okay. What address was that that you responded to?

4 A It was 9976 Dorchester Road, located in Dorchester  
5 County.

6 Q Okay. What was the purpose of you responding out  
7 there that morning?

8 A I was called and advised that a shooting had occurred  
9 at that location.

10 Q Okay. And who did -- when you got out there, if you  
11 would, kinda describe the scene when you arrived out  
12 there.

13 A I met with Deputy Jenkins and Lieutenant Hill when I  
14 arrived on scene. They gave me a brief overview of -- of  
15 what we had. They advised me that a -- it appeared that a  
16 shooting had occurred in the bathroom -- the men's room of  
17 the IHOP.

18 I began observing the scene. I saw what appeared to  
19 be a blood trail at the front sidewalk of the -- of the  
20 business leading up into the business itself.

21 I entered in, observed what I had, as far as I  
22 observed blood spots in the -- what appeared to be blood  
23 spots in the main foyer area; and entered the mens'  
24 bathroom, saw what appeared to be additional blood spots,  
25 shell case -- spent cartridge casings and fired bullets.

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1 Q Okay. Now, when you arrived out there, were either  
2 of the -- either Mr. Spells or Mr. Mack, either of the  
3 shooting victims still on the scene?

4 A No.

5 Q All right. And did you then go about documenting and  
6 processing this scene?

7 A I did.

8 Q Okay. And as part of that, did you photograph the  
9 scene?

10 A I did. I -- I obtained initial photographs -- after  
11 I know what I have on the scene, I'll obtain those  
12 photographs overall throughout the scene for my initial  
13 documentation.

14 Q Okay. And ultimately, did you prepare any diagrams  
15 of -- of the -- of the area out there?

16 A I did.

17 Q Okay. And then, items of potential evidentiary  
18 value, were they collected?

19 A They were.

20 Q Okay. So you'd indicated you took photographs; is  
21 that correct?

22 A Yes, sir.

23 MR. SORENSON: Beg the Court's indulgence.

24 (Brief pause.)

25 MR. SORENSON: Let the record reflect, Your Honor,



1 I've shown Mr. Chisholm State's Exhibits 3 through 52.

2 THE COURT: Inclusive?

3 MR. SORENSON: Inclusive, yes, sir, 3 through 52.

4 THE COURT: Any objection?

5 MR. CHISHOLM: No, Your Honor.

6 THE COURT: Ladies and gentlemen of the jury, State's  
7 Exhibits -- he's going to have the witness identify it or  
8 we'll get him to identify it. Then I'll tell them.

9 MR. SORENSON: Yes, sir. May I approach, Your Honor?

10 (Mr. Sorenson hands exhibits to the witness.)

11 Q Let me show you, Sergeant Berg, State's -- what's  
12 been marked as State's 3 through 52.

13 A Yes, sir.

14 Q You can flip through those. Are those photographs  
15 that you took that night out there at the scene?

16 A Yes. Yes, they are.

17 Q Okay. That show the -- the scene that you -- you  
18 responded to and the evidence that was collected out  
19 there?

20 A Yes, it does.

21 Q Okay.

22 MR. SORENSON: At this time we'd offer them.

23 THE COURT: Ladies and gentlemen, State's Exhibits 3  
24 through 52, inclusive, are going to be admitted into  
25 evidence in the trial of this case without objection.

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1 State's 3 through 52 are now in evidence, you may publish  
2 to the jury.

3 (Marked State's Exhibits 3 through 52 in evidence.)

4 MR. SORENSON: Additionally, Your Honor, I've just  
5 shown Mr. Chisholm two diagrams, State's 57 and 58. May I  
6 approach and show them to the witness?

7 THE COURT: You may.

8 (Mr. Sorenson hands exhibits to the witness.)

9 Q Sergeant Berg, you'd indicated that you had prepared  
10 a diagram of the scene out there. Showing you State's  
11 Exhibit No. 57. Is that the diagram that you prepared?

12 A Yes, it is.

13 MR. SORENSON: All right. Your Honor, at this time  
14 we'd offer State's 57 into evidence.

15 THE COURT: As to 57, Mr. Chisholm?

16 MR. CHISHOLM: No objection, Your Honor.

17 THE COURT: Ladies and gentlemen, State's Exhibit No.  
18 57 will be admitted into evidence in the trial of this  
19 case without objection. You may publish to the jury.

20 (Marked State's Exhibit No. 57 in evidence.)

21 MR. SORENSON: Thank you.

22 Q And then, just real briefly, State's Exhibit No. 58,  
23 is that a blow-up of the bathroom part of State's Exhibit  
24 No. 57?

25 A This is.

1 Q Okay. And then ---

2 THE COURT: As to 58?

3 MR. CHISHOLM: No objection, Your Honor.

4 THE COURT: Ladies and gentlemen, State's Exhibit No.  
5 58 will be admitted into evidence in the trial of this  
6 case without objection. You may publish to the jury.

7 (State's Exhibit No. 58 in evidence.)

8 MR. SORENSON: Thank you, Your Honor.

9 (Brief pause.)

10 THE COURT: Can everybody on the jury see the easel?

11 THE JURY: (No audible response.)

12 THE COURT: How about that, Mr. Berg, can you see it?

13 THE WITNESS: Yes, sir.

14 Q All right. If I could get you, Sergeant, to  
15 initially kinda go through and -- and just describe  
16 briefly, kinda, what that diagram represents; and then I'm  
17 gonna go through the pictures and get you to kinda orient  
18 the jury as to where the -- what the pictures are showing.

19 A Yes, sir. This is a depiction, as I sketched it, of  
20 the business of the IHOP. The overall scene. (Indicates)  
21 This would indicate the parking lot in the front, this  
22 would indicate the trail I alluded to earlier leading up  
23 to it, and these are the front doors of the business.  
24 There's two sets of doors here: A outer entry/exit door,  
25 and an inner entry/exit door. And this is just an awning

1 over the top of the -- where you exit out.

2 (Indicates) Through here is a foyer where the  
3 receptionist is and where you pay. And through --  
4 straight through here is where you would find the Men's --  
5 Men's and Ladies' restrooms, and that's where I found the  
6 shell case -- the spent cartridge casings, most of the  
7 evidence regarding this case.

8 (Brief pause.)

9 Q All right. Sergeant Berg, showing you State's  
10 Exhibit No. 3, then kind of describe to the jury what  
11 you're seeing in State's 3?

12 A This is the awning area I spoke of just a second ago,  
13 this area right at the front of the -- the entry --  
14 entrance of IHOP.

15 Q Okay. And then State's Exhibit No. 4?

16 A This is a photograph I took. I just panned over and  
17 obtained another photograph to get -- to overlap my  
18 photographs of the front of the scene.

19 Q Okay. And State's Exhibit No. 5?

20 A That's an additional picture going further to the  
21 left of the building as I'm facing it.

22 Q Okay. When you describe seeing blood drops on the  
23 sidewalk, kind of -- is that area depicted on State's  
24 Exhibit No. 5?

25 A Yes, sir. (Indicates) This would be the sidewalk

1 area there in front of the building.

2 Q Okay. And did you ultimately put markers down ---

3 A I did.

4 Q --- in front of them?

5 A Yes, sir.

6 Q Let's go through some of the, kinda, overall pictures  
7 first here. I'm showing you State's Exhibit No. 6.

8 A Yes, sir. That would be the interior enter/exit door  
9 leading into the receptionist area.

10 Q Okay. And what do you see, kinda looking -- kinda  
11 looking through the doors, what's depicted inside there  
12 that you're seeing?

13 A You're seeing the podium where the hostess would  
14 stand, and also a counter to the right as you're facing  
15 it, where you would pay.

16 Q Okay. And then showing you State's Exhibit No. 8,  
17 you kinda moved inside those doors now?

18 A Yes, sir. I'd moved inside at that point and  
19 obtained another photograph.

20 Q Okay. Now, what is -- so I see you described kinda  
21 the counter to your right where -- I think you said that's  
22 where you go to pay?

23 A Yes, sir.

24 Q Okay. What is immediately to the left of that  
25 counter?

1 A It's the podium.

2 Q Well, in between the podium and that.

3 A That's the entry way into the rear where the  
4 restrooms are.

5 Q In that area, kinda show the jury on the diagram  
6 where that is depicted.

7 A (Indicating) That area's right here. So we're seeing  
8 the podium, or the reception desk, right here at the right  
9 of the picture; and then the entryway is right there,  
10 leading into where the restrooms are.

11 Q Okay. And is there anything else back there if you  
12 go through that, kind of -- if you go through up in here  
13 (indicates) is there anything else back there besides the  
14 restrooms that are depicted in your -- your diagram?

15 A No, sir.

16 Q Okay. I'm showing you State's Exhibit No. 7. What's  
17 in -- what's in State's 7?

18 A Oh, that is a shot that I just took. I basically  
19 walked into -- right in front of the entryway, where you'd  
20 go -- where the restrooms are, and turned around and  
21 obtained a photograph shooting back the other direction of  
22 the receptionist area.

23 Q So that's shooting back toward the ---

24 A Towards ---

25 Q --- talked about the interior exit doors?

1 A Yes, sir.

2 Q Is that correct?

3 A Yes, sir.

4 Q Okay. Then State's Exhibit No. 9? What did 9  
5 depict?

6 A That's another photograph of the receptionist area.  
7 Here you can see the podium on the left, the open area in  
8 the back was, again, where you would go through to go to  
9 the bathrooms.

10 Q All right. And State's Exhibit No. 10.

11 A That is another photograph of me as I entered in and  
12 turned around as I did before. This is another shot,  
13 however, further to my right as I'm standing there. So  
14 I'm taking the picture -- I'm standing here taking the  
15 picture this way (indicates), but instead of you getting  
16 the whole foyer area before I moved to the right in this  
17 situation.

18 Q Okay. And in State's Exhibit No. 10, Sergeant Berg,  
19 if I'm -- if I'm the person taking that photograph, if I  
20 go off to my right, would -- where am I going?

21 A The dining area.

22 Q And right behind me would be what?

23 A The entryway to the bathrooms.

24 Q And -- and then State's Exhibit No. 11?

25 A Those are the front doors to the bathrooms.

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1 Q So as you're facing the restrooms, which one is on my  
2 left?

3 A We've got the Women's restroom here on the left. I'm  
4 facing it standing here taking the photograph, and the  
5 Men's restroom is on the right.

6 Q Okay. I'm now showing you State's Exhibit No. 13.  
7 What is in State's Exhibit 13?

8 A That is a shot from the receptionists area into the  
9 entryway of the dining room.

10 Q Okay. All right. If I came out of the restrooms,  
11 walked straight out of the restrooms, which direction  
12 would that be? Would I have to turn to -- to --

13 A You'd have to turn to the right.

14 Q Okay. And then State's Exhibit No. 14.

15 A That is the overall photograph of the dining area. I  
16 entered the dining area through here (indicates), the  
17 entryway, and I began obtaining photographs.

18 Q All right. And I show you State's Exhibit 15. Is  
19 that another, kinda, of the dining area?

20 A Yes, sir. That's another picture of the dining area.

21 Q Okay. Now, you had testified earlier that -- about  
22 the -- observing what appeared to be blood spots on the  
23 sidewalk out in front of the IHOP?

24 A Yes, sir.

25 Q And about how far down the sidewalk did those --



1 those blood spots begin?

2 A Pretty much the entire length of the sidewalk.

3 Q I'm showing you State's Exhibit No. 16. Does that  
4 show kinda the area where they started?

5 A Yes, sir.

6 Q Okay. And kinda -- kinda -- kinda briefly, kinda  
7 point to where the blood spots started on there.

8 A Yes, sir. (Indicates) The -- this is a -- a can that  
9 I found on the scene and marked. The blood spots begin  
10 here at No. 2 and continue on the front of the sidewalk  
11 all the way to the front of the building here.

12 Q And did you ultimately put placards down, numbered  
13 placards, kinda, for the spots as you were going down the  
14 sidewalk?

15 A Yes, sir.

16 Q Okay. I'm showing you State's Exhibit No. 17. Does  
17 that show the first three of those placards?

18 A Yes, it does.

19 Q That would be what numbers?

20 A Two, three, and four. (Indicates) Two, three, and  
21 four here on the diagram.

22 Q And ultimately -- and just turn to, like, State's  
23 Exhibit No. 19, that shows what placard number?

24 A Placard No. 3. It's located here (indicates.)

25 Q Okay. And by the blood, is that -- that kinda what

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1 you're referring to?

2 A Yes, sir.

3 Q Okay. On each of those, how many placard numbers,  
4 kind of -- kind of, as you're going down the sidewalk, end  
5 up depicting --

6 A I ended up using 13 photo placards: 10 at the very  
7 front of the sidewalk, 11 to the side behind the bench,  
8 and 12 and 13 underneath the little over -- overhang area.

9 Q I'm going to kinda jump through to get to State's  
10 Exhibit No. 26. And that gonna bring us back out here,  
11 bring us to placard No. 10, I guess, in the front there?

12 A Yes, sir.

13 Q Okay. And what -- where is that located, then, on  
14 the diagram?

15 A (Indicates) It's located right at the front here of  
16 the pillar, the right of the entryway.

17 Q Okay. And ultimately, off to -- let me show you  
18 State's Exhibit No. 28. Kinda where is that area located?

19 A 28 is locate -- I'm sorry -- 11 is located just  
20 behind the bench. The bench is situated right as you  
21 enter the building, and that photo placard is behind that  
22 bench.

23 Q Okay. What is all that stuff that appears to be in  
24 the -- in the placard with -- with obviously what appears  
25 to be blood, but what's all the other stuff in your

1 experience?

2 A It appears to be left behind by EMS after they were  
3 treating the patient.

4 Q And you testified that on the -- the blood, kinda,  
5 where -- where did it either appear to kind of come from  
6 or be leading to?

7 A Yes, sir.

8 Q What -- where did -- where would we go from the  
9 outside there?

10 A From the outside -- are you -- you referring to from  
11 the front of the -- the entry way?

12 Q Yeah. Let me show you State's Exhibit No. 30. Is  
13 there anything depicted in State's Exhibit 30?

14 A Yes. That's the -- that's the doorway and you can  
15 see photo placard 14 on the inside of the sec -- of the  
16 initial entryway of ---

17 Q Okay. How about ---

18 A --- the business.

19 Q --- the actual door itself? Was there any blood on  
20 the door itself?

21 A Yes, sir. I used some adhesive scales and marked  
22 what appeared to be blood spots on the front door.

23 Q I'm showing you 30 -- State's 31. Does that depict  
24 -- depict that?

25 A Yes, it does.

1 Q I'm showing you State's Exhibit No. 35. What's on --  
2 what's depicted in 35?

3 A 35 is photo placards located on -- again, in the  
4 receptions area. You can see them here on my diagram, 16  
5 and then 18 there behind the podium.

6 Q Okay. What were -- what were those items?

7 A They were additional spots, red spots.

8 Q Okay. I'm showing you State's Exhibit No. 37.

9 A (Indicating) That was located here, on the -- this  
10 part of the receptionist's desk. Red stains again.

11 Q Okay.

12 A I placed an adhesive scale on that as well for  
13 photographing.

14 Q Now, ultimately let's kinda turn towards -- I'll show  
15 you. Hold on. Before we get to the bathrooms, let's get  
16 to State's Exhibit No. 38.

17 A Okay. This is photo placard No. 20. This is located  
18 directly in front of the Men's restroom.

19 Q That's the men's door in the top left-hand corner?

20 A Yes, sir.

21 Q All right. Now, you have an opportunity, ultimately,  
22 to then -- to process and -- and search the -- the Men's  
23 room?

24 A I did.

25 Q Okay. And I'm showing you State's Exhibit No. 58, I

1 believe it was. Is that just an enlargement of your Men's  
2 bathroom from 57?

3 A Yes, it is.

4 Q Now, describe for the jury, if you would kinda, when  
5 you went into the Men's room, what -- what you observed in  
6 the Men's room.

7 A Well, as soon as I opened up the door I could see on  
8 the floor various spots -- red stains. There appeared to  
9 be blood as well, spent cartridge casings, and fired  
10 bullets.

11 Q And how 'bout before we get into the restroom, did  
12 you notice is there any damage to the -- to the restroom  
13 door?

14 A I did.

15 Q Okay. And I'm showing you -- let's start with  
16 State's Exhibit No. 40. Describe for the jury what we're  
17 seeing there.

18 A That's where it appears a projectile went through the  
19 door there.

20 Q Okay. And describe for the jury, I mean, what kinda  
21 -- what part of the door is that?

22 A That's the edge of the entry door that would butt up  
23 to the door frame.

24 Q Okay. And when that impact was made, what -- what  
25 position would that door have had to have been in when

1 that impact was made to the door?

2 A Oh. It would've had to have been open at the time.

3 Q Okay. Any way to tell how far it was opened?

4 A No, sir.

5 Q And -- and that -- the -- all right. Looking at that  
6 photograph, the handle that I see, is that inside the  
7 bathroom or outside of the bathroom?

8 A That handle is inside the bathroom.

9 Q Okay. So you see the tile. I guess the tile out and  
10 on the left hand, that's out in the hallway basically?

11 A The -- yes. That's correct.

12 Q Okay. The white wall ---

13 A So basically --- yes, sir. Yeah, exactly.

14 (Indicating) The white wall would, say, be -- say, be  
15 here, and the tile we're seeing off to the left would be  
16 out here, and that's the door there --

17 Q Gotcha.

18 A -- depiction of the door.

19 Q Okay. All right. And then showing you State's  
20 Exhibit No. -- State's Exhibit No. 41. That show that --  
21 basically that same impact?

22 A Yes.

23 Q All right. Then State's Exhibit No. 39, what does 39  
24 show?

25 A 39 is the exit, what appears to be the exit of that

1 projectile; and another one marked with adhesive scale  
2 "E," and then adhesive scale "F" appears to be another --  
3 where another projectile went through the door.

4 Q Okay. So "E" is -- and "E" is on the right of that  
5 picture?

6 A Yes.

7 Q What -- what -- what did that match up with?

8 A The photograph that we just looked at, the projectile  
9 that would've entered into the side of that bathroom door.

10 Q All right. And then you indicated that "F," off to  
11 the left-hand side of the picture, is a -- appears to be a  
12 what?

13 A Where another projectile went through the door.

14 Q And then I'm showing you State's Exhibit No. 42.  
15 What's depicted in State's 42?

16 A 42 is the interior of the bathroom. I'm facing --  
17 the door -- the bathroom door is shut, and I'm standing on  
18 the inside. And I photograph -- I placed adhesive scale  
19 on the interior of where the other bullet appeared to --  
20 projectile had appeared to be going out. And then it  
21 looks like a -- could be a ricochet, with adhesive scale  
22 "H" on the side of the bathroom wall.

23 Q Now, you had testified that the -- the -- describe  
24 again for the jury what the -- kinda the bathroom floor  
25 situation looked like when you went in?

DIRECT EXAMINATION BY MR. SORENSON - BRANDON BERG 297

1 A There was quite a bit of what appeared to be blood on  
2 the floor, spent cartridge casings, and fired bullets  
3 throughout the floor.

4 Q Show you 43. Does that indicate some of the inside  
5 of that bathroom?

6 A Yes, sir.

7 Q Okay. Ultimately did you end up collecting several  
8 shell casings and/or projectiles from inside the restroom?

9 A I did.

10 Q And were those all documented in the photographs that  
11 you took?

12 A They were.

13 Q Let me back up and show you one I pulled out here.  
14 State's Exhibit No. 12. What is No. 12 showing?

15 A Exhibit No. 12 is a photograph I had took [sic.] I  
16 walked to the back of the -- towards the rear of he  
17 bathroom and turned around and took a photograph going out  
18 from the rear stall. So to the entry/exit door of the  
19 Men's room that you see at the end of the picture.

20 Q Okay. Is there a sink in that restroom?

21 A Yes. It's hidden behind this wall we see to the  
22 left. Right behind that is the sink area.

23 Q Okay. So if I walked straight at -- straight into  
24 that picture -- you see the -- the wet floor ---

25 A Yes, sir.



1 Q --- thing? If I pass that wet floor thing, which --  
2 where would the sink be?

3 A The sink would be on your left.

4 Q And ultimately, the -- the items that you found  
5 inside the restroom, did you collect those items?

6 A I did.

7 MR. SORENSON: Beg the Court's indulgence.

8 (Brief pause.)

9 MR. SORENSON: Let the record reflect I've shown Mr.  
10 Chisholm State's Exhibits 67 through 77. May I approach  
11 the witness?

12 THE COURT: 67 through 77?

13 MR. SORENSON: Yes, sir.

14 THE COURT: You may approach.

15 MR. SORENSON: Thank you.

16 (Mr. Sorenson hands exhibits to the witness.)

17 Q And Sergeant Berg, let me show you -- initially you  
18 had talked about collecting some shell casings in there?  
19 Let me show you State's 67 through 73 and ask you if you  
20 recognize those items.

21 A Okay.

22 A Yes, I do.

23 Q And what are those items?

24 A These are spent cartridge casings.

25 Q Okay. And where were they collected from?

DIRECT EXAMINATION BY MR. SORENSON - BRANDON BERG 299

1 A Inside the Men's restroom.

2 Q Okay. And do you note on them, kinda, which  
3 corresponding placard number they are collected from?

4 A I did.

5 MR. SORENSON: Your Honor, at this time we'd offer  
6 State's 67 through 73, I believe, into evidence.

7 THE COURT: 73?

8 MR. SORENSON: Yes, sir. I believe that was right,  
9 yes, sir.

10 THE COURT: As to 67 through 73?

11 MR. CHISHOLM: No objection.

12 THE COURT: Ladies and gentlemen of the jury, State's  
13 Exhibits 67 through 73, inclusive, will be admitted into  
14 evidence in the trial of this case without objection.

15 You may publish to the jury.

16 Mr. SORENSON: Thank you.

17 (State's Exhibit No.'s 67 through 73, cartridge  
18 casings, in evidence.)

19 Q All right. And then I think I handed up to you there  
20 -- I show you 74 through 77.

21 A Yes, sir.

22 Q You also indicate you had collected several  
23 projectiles from out there?

24 A Yes, sir.

25 Q Did you collect those items out there?

1 A I did.

2 MR. SORENSON: All right. Your Honor, at this time  
3 we'd offer 74 through 77 into evidence.

4 THE COURT: As to 74 through 77 inclusive?

5 MR. CHISHOLM: No objection.

6 THE COURT: Ladies and gentlemen of the jury, State's  
7 Exhibits 74 through 77, inclusive, will be admitted into  
8 evidence in the trial of this case without objection.

9 You may publish.

10 (State's Exhibit Nos. 74 through 77, projectiles, in  
11 evidence.)

12 MR. SORENSON: Thank you, Your Honor.

13 Q And did you document -- I think I'd asked you this  
14 already. Did you mark on there, kind of, which -- which  
15 placard each of those were found at?

16 A I did.

17 Q All right. And Your Honor, could I have -- would you  
18 be able to -- if I gave you three different color markers,  
19 be able to kinda use one of them to reference shell  
20 casings, one of them to reference bullets, and then the  
21 other one for, I believe you -- you -- one of those  
22 placards represents some blood spots?

23 A Okay. Yes, sir.

24 Q To -- to kinda differentiate on your diagram?

25 A Yes, sir.

DIRECT EXAMINATION BY MR. SORENSON - BRANDON BERG 301

1 MR. SORENSON: Any objection to that?

2 MR. CHISHOLM: None, Your Honor.

3 THE COURT: Identify the colors he's going to use ---

4 MR. SORENSON: Yes, sir.

5 THE COURT: --- for the record.

6 MR. SORENSON: Yes, sir.

7 Q If we could use blue for -- let you do cartridge  
8 casings first.

9 A Okay.

10 THE COURT: Any objection?

11 MR. CHISHOLM: No, Your Honor.

12 Q And if you could write, maybe, off to the side,  
13 "blue/cartridge casing" ---

14 A Yes, sir.

15 Q --- just so it's there on the diagram.

16 THE COURT: Ladies and gentlemen, let me know if  
17 anybody can't see. We'll rearrange if need be.

18 (The witness marks on the diagram.)

19 Q Then, let's see, if you would just -- the -- I  
20 believe you -- we've got seven cartridge casings that you  
21 collected. So if you would circle those seven cartridge  
22 casings.

23 -A Yes, sir.

24 (The witness complies.)

25 Q That's seven that you circled?

1 A Yes, sir.

2 Q Okay. Then if we could use -- how 'bout red for the  
3 projectiles.

4 A Projectiles?

5 (The witness complies.)

6 THE COURT: Speak up, now.

7 MR. SORENSON: I'm sorry... I'm sorry. The red for  
8 projectiles. I apologize.

9 THE COURT: Can everyone see? Mr. Chisholm, can you  
10 see?

11 MR. CHISHOLM: Yes, sir. I -- I'm fine.

12 Q Okay. That the four of them, I believe, that were  
13 collected?

14 A Yes, sir.

15 Q Is that correct?

16 A Yes, sir.

17 Q Okay. And it looks like there's two other kind of  
18 placard numbers on there, 21 and 28?

19 A Yes, sir.

20 Q What is 21?

21 A 21 is a suspected blood spot.

22 Q Okay. And I'm not going to -- I'm not going to get  
23 you to write that on there.

24 A Yes, sir.

25 Q And then ultimately placard No. 28, what does that

DIRECT EXAMINATION BY MR. SORENSON - BRANDON BERG 303

1 depict?

2 A 28 is a lanyard along -- along with a \$10 bill that I  
3 located on the -- the -- this is on top of the sink.

4 Q I'm showing you State's Exhibit, I'm sorry, 47. Is  
5 that -- that represent that?

6 A Yes, it does.

7 Q Okay. And was that lanyard -- was there anything  
8 attached to that?

9 A There was a key attached to it.

10 Q I'm going to ask you about that in a second. But  
11 also State's Exhibit No. 52, where is 52 kinda -- kinda  
12 located?

13 A 52 is the wall right next to the sink area.  
14 (Indicating) This would be this right here, and this is  
15 where the mirror is, directly in front of the sink.

16 Q You've indicated that lanyard with the key attached  
17 to it was collected?

18 A It was.

19 MR. SORENSON: May I approach the witness, Your  
20 Honor?

21 THE COURT: You may.

22 Q I'm going to show you what's been marked as State's  
23 Exhibit No. 66.

24 A Yes, sir.

25 Q Is that the lanyard and key that you just testified

1 about?

2 A It is.

3 MR. SORENSON: Your Honor, at this time we'd offer  
4 State's 56 into evidence. No, I'm sorry, what number was  
5 it?

6 THE COURT REPORTER: 66.

7 THE COURT: 66.

8 MR. SORENSON: 66.

9 THE COURT: As to State's 66?

10 MR. Chisholm: No objection.

11 THE COURT: Ladies and gentlemen of the jury, State's  
12 66 will be admitted into evidence in the trial of this  
13 case, without objection.

14 You may publish.

15 (State's Exhibit No. 66, lanyard and key, in  
16 evidence.)

17 MR. SORENSON: Thank you.

18 Q Now, with -- as to State's 66, and you testified it's  
19 a lanyard that you hang around your neck --

20 A Yes, sir.

21 Q -- with a key attached to it --

22 A Correct.

23 Q -- have you had an opportunity to figure out whose --  
24 to determine whose key this is?

25 A I did.

DIRECT EXAMINATION BY MR. SORENSON - BRANDON BERG 305

1 Q Okay. Whose key -- whose vehicle does this belong  
2 to?

3 A It belonged to Brandon Mack. I would -- had an  
4 opportunity to meet with his mother at the Solicitor's  
5 Office and tried the key on the vehicle, which it worked.

6 MR. CHISHOLM: Objection, Your Honor.

7 THE COURT: Just a moment. Yes, sir. Grounds?

8 MR. CHISHOLM: Hearsay.

9 THE COURT: Sustained. Don't refer to what someone  
10 else said.

11 MR. SORENSON: Right.

12 THE WITNESS: Okay.

13 MR. SORENSON: Okay.

14 MR. CHISHOLM: Your Honor, move to strike.

15 THE COURT: Ladies and gentlemen, please disregard  
16 any statement by a witness earlier concerning what another  
17 person said. Our rules do not permit you to testify to  
18 hearsay evidence. So please disregard that evidence.

19 MR. SORENSON: Okay.

20 THE COURT: Proceed.

21 MR. SORENSON: Thank you, Your Honor.

22 THE COURT: Ask a question. Rephrase it, please,  
23 without eliciting hearsay.

24 MR. SORENSON: Yes, sir.

25 BY MR. SORENSON:



1 Q Sergeant Berg, did you have an opportunity to meet  
2 with -- meet with somebody?

3 A Yes, sir.

4 Q Okay. Who was that that you met with?

5 A Brandon Mack's mother.

6 Q Okay. And did she have a vehicle with her?

7 A She did.

8 Q Okay. And did you have an opportunity to try this  
9 key to see if it started that vehicle?

10 A I did.

11 Q And did it?

12 A It did.

13 Q All right. Now, as part of your responding out  
14 there, did you have an opportunity to -- to make contact  
15 with anybody at -- with -- you know, as far as operations  
16 at IHOP that night or that morning?

17 A Yes, sir.

18 Q Okay. And as a result of that, did you obtain any  
19 video from them?

20 A I did.

21 Q And is that video from that early morning hours  
22 inside the IHOP?

23 A It is.

24 Q Okay. Now, ultimately -- I told you I'd get back to  
25 the fingerprints. Did you have an opportunity, Sergeant

DIRECT EXAMINATION BY MR. SORENSON - BRANDON BERG 307

1 Berg, ultimately to process anywhere out there for  
2 fingerprints?

3 A I did.

4 Q Okay. And describe for the jury where it was that  
5 you processed and how you go about -- how you went about  
6 doing that.

7 A I processed the entry and exit doors, both the sets  
8 at the front of the business, with black powder. It's  
9 common -- common to use black powder in an attempt to  
10 develop latent prints.

11 Q Okay. And ultimately were you able to develop any --  
12 any possible prints off of those doors?

13 A I did.

14 Q Okay. And how many different kinda print cards were  
15 you able to -- to develop off of those doors?

16 A Three print cards.

17 Q Okay.

18 MR. SORENSON: May I approach, Your Honor?

19 THE COURT: You may.

20 Q Sergeant, if I can show you what's been marked as  
21 State's 61, 62, and 63. Are those fingerprint lifts that  
22 you developed that day from those doors?

23 A They are.

24 Q Okay.

25 MR. SORENSON: Your Honor, at this time we'd offer

1       those three into evidence.

2               THE COURT: 61, 62, and 63?

3               MR. SORENSON: Yes, sir.

4               THE COURT: As to 61 through 63 inclusive?

5               MR. CHISHOLM: No objection.

6               THE COURT: Ladies and gentlemen, State's Exhibit 61,  
7       62, and 63 will be admitted into evidence in the trial of  
8       this case without objection.

9               You may publish.

10              (State's Exhibit No.'s 61 through 63, fingerprint  
11       cards, in evidence.)

12              MR. SORENSON: Thank you, Your Honor.

13       Q       All right. And I'm gonna -- I'm gonna get to each of  
14       these in a second, but ultimately, were you able to -- to  
15       -- after -- after lifting them, ultimately able to attempt  
16       to match them to see if any of them matched the Defendant  
17       in this case, Keunte Cobbs?

18       A       I did.

19       Q       Okay. And --

20              MR. SORENSON: May we approach real quick, Your  
21       Honor?

22              THE COURT: Certainly.

23              (Bench conference.)

24              THE COURT: Mr. Foreman, ladies and gentlemen of the  
25       jury, I'm advised that your lunch is going to be here in

DIRECT EXAMINATION BY MR. SORENSON - BRANDON BERG 312

1 enjoyed it.

2 Now, ladies and gentlemen, I've reminded Mr. Berg  
3 that he's still under oath. We're in the middle of his  
4 direct examination. We'll now continue with the testimony  
5 in the trial in this case.

6 I also want to remind you that we're going to stop  
7 early today. I worked these people, particularly my Court  
8 Reporter -- she's got an hour and what, Bonnie, ten  
9 minutes?

10 THE COURT REPORTER: Hour and fifteen minutes.

11 THE COURT: Hour and fifteen minute drive each way.  
12 She's traveling farther than anybody, and we have a Court  
13 Reporter shortage. You can imagine she didn't get home  
14 last night 'til probably almost nine o'clock. I didn't  
15 get home 'til after nine o'clock last night.

16 So we're going to stop early today. We're going to  
17 try to get as much work as we can done today. Thank you  
18 for your patience and your attention.

19 Direct examination.

20 MR. SORENSON: Thank you, Your Honor.

21 BY MR. SORENSON (Continues):

22 Q Sergeant Berg, I think we had left off talking about  
23 that you had lifted some fingerprints off of the -- the  
24 doors; is that correct?

25 A Yes.

DIRECT EXAMINATION BY MR. SORENSON - BRANDON BERG 313

1 Q And I believe 61 through 63, just to make sure I knew  
2 it right, I think they're right there in evidence.

3 THE COURT: 61, 62, and 63 are in evidence.

4 MR. SORENSON: Okay.

5 Q All right. Then I'm going to ...

6 MR. SORENSON: May I approach the witness, Your  
7 Honor?

8 THE COURT: You may.

9 And Bonnie, they actually put in 3 twice, didn't  
10 they?

11 THE COURT REPORTER: Yes, they did.

12 MR. SORENSON: Yeah. That's cause I had pulled it  
13 out.

14 THE COURT: 3 was already in evidence ---

15 MR. SORENSON: Yes, sir.

16 THE COURT: --- when they re-introduced it. All  
17 right.

18 MR. SORENSON: Yes, sir.

19 (Mr. Sorenson hands documents to the witness.)

20 Q All right. That's the three of them; is that  
21 correct?

22 A Yes, sir.

23 Q All right. Now, specifically, as to State's Exhibit  
24 No. 61, where was -- where was that -- those fingerprints  
25 lifted off of?

DIRECT EXAMINATION BY MR. SORENSON - BRANDON BERG 314

1 A The outer exterior door.

2 Q Okay. And is that listed on there "exterior exit  
3 door"?

4 A Exterior exit door. Yes.

5 Q Okay. And then -- and is that kind of your print  
6 card number? Is there a number to that one?

7 A Yes.

8 Q Which one is that?

9 A One.

10 Q Number 1?

11 A Uh-huh.

12 Q Okay. And then showing you State's Exhibit No. 62.

13 A Yes.

14 Q Where's that one lifted from?

15 A It's listed on the card as well (as read): "Right  
16 Interior Exit Door."

17 Q Okay. Right Interior Exit Door. So if I'm going out  
18 the doors --

19 A Yes, sir.

20 Q -- the interior set of doors, the right hand door.

21 A Exactly.

22 Q Is that right?

23 A Yes, sir.

24 Q And then lastly, what's been your Number 3; is that  
25 correct basically?

1 A Number 3. Yes.

2 Q It's State's No. 63. Where is that one located?

3 A That is the left interior exit door.

4 Q Okay. So yet again, interior exit. So I'm going out  
5 the door, the interior set of doors, the left-hand door.

6 A That's correct.

7 Q Is that correct?

8 A That's correct.

9 Q Okay. And ultimately, did you have an opportunity,  
10 and I may have asked you -- I think it's kinda where we  
11 left off -- to -- to compare these three sets of latent  
12 fingerprints to the Defendant in this case?

13 A I have.

14 Q Okay. And ultimately -- let's start off with -- with  
15 your card No. 1, State's 61. Were you able to -- to  
16 identify that to -- first of all, to the Defendant?

17 A No.

18 Q Okay. Were you able to ultimately -- ever been able  
19 to identify this one to anybody?

20 A No.

21 Q Okay. State's Exhibit No. 62, your No. 2 card, how  
22 'bout that one?

23 A That was not ID'd to the Defendant.

24 Q Okay. Been able to identify whose print -- handprint  
25 that is ---

DIRECT EXAMINATION BY MR. SORENSON - BRANDON BERG 316

1 A No.

2 Q --- at all?

3 A No.

4 Q All right. Now we'll turn to No. 63, your card No.  
5 3.

6 A Yes.

7 Q Okay. Who -- who were you able to identify as this  
8 set of fingerprints belonging to?

9 A Keunte Cobbs.

10 Q Okay. All right. And ultimately, show you -- and I  
11 think it's kinda where we left off -- State's Exhibit No.  
12 64.

13 A Yes.

14 Q You recognize that document?

15 A I do.

16 Q Okay. And is that a known set of the Defendant's  
17 fingerprints?

18 A That's a known set, yes.

19 Q Okay. And would that be what was used, then, to  
20 compare to these print -- latent prints?

21 A Yes.

22 Q All right.

23 MR. SORENSON: At this time we'd offer State's 64  
24 into evidence.

25 THE COURT: As to 64, I understand no objection.



DIRECT EXAMINATION BY MR. SORENSON - BRANDON BERG 317

1 MR. CHISHOLM: Correct, Your Honor.

2 THE COURT: Ladies and gentlemen, State's Exhibit No.  
3 64 will be admitted into evidence in the trial of this  
4 case without objection.

5 You may publish to the jury, 64 is now in evidence.

6 (State's Exhibit No. 64, Defendant's fingerprint  
7 card, in evidence.)

8 MR. SORENSON: Thank you, Your Honor.

9 Q All right. Now, ultimately, you had -- all right.  
10 And you testified a moment ago that State's Exhibit No. 63  
11 was the one that you identified to the Defendant?

12 A Yes.

13 Q Okay. And how many -- how many actual latent prints  
14 are located on State's Exhibit No. 63?

15 A Six.

16 Q Six. All right. And out of those six individual  
17 spots, what does that -- basically, in your experience,  
18 kinda looking at it, what does it appear to be?

19 A It appears to be a whole hand.

20 Q A whole hand?

21 A A whole left hand. Yes.

22 Q Okay. And where you able to identify all six of  
23 those impressions to the Defendant?

24 A No, sir.

25 Q Okay. How many of those six impressions were you

DIRECT EXAMINATION BY MR. SORENSON - BRANDON BERG 318

1       able to identify to the Defendant?

2       A       Four of the six.

3       Q       Okay. How 'bout the other two?

4       A       The other two were not of value for comparison.

5       Q       Okay. And explain what that means.

6       A       That means they're not -- there's not enough  
7       information in the ridge detail that's left behind to  
8       compare it to a known standard.

9       Q       Okay. All right. And ultimately, did you prepare  
10       kind of a little chart to use with the jury to kind of  
11       explain to them how you went about making the comparison?

12       A       Yes, I did.

13       Q       Okay. I'm showing you State's Exhibit No. 65. Is  
14       that the chart you prepared with regards to one of these  
15       prints?

16       A       Yes, it is.

17       Q       All right.

18               MR. SORENSON: At this -- this time we'd offer  
19       State's 65 into evidence.

20               THE COURT: As to 65?

21               MR. CHISHOLM: No objection.

22               THE COURT: Ladies and gentlemen of the jury, State's  
23       Exhibit No. 65 will be admitted into evidence in the trial  
24       of this case without objection.

25               65 is in evidence, you may publish.

DIRECT EXAMINATION BY MR. SORENSON - BRANDON BERG 319

1 (State's Exhibit No. 65, fingerprint diagram, in  
2 evidence.)

3 MR. SORENSON: Thank you, Your Honor.

4 Q Back up and go back to State's Exhibit No. 63. All  
5 right. Does that indicate -- that's the -- the back of  
6 State's 63?

7 A Yes, sir.

8 Q Is that correct?

9 A Yes, sir.

10 Q Does it have kind of the identifying information  
11 regarding this case and your name and so forth on it?

12 A Yes.

13 Q Okay. And does that also then indicate the -- where  
14 that print was basically approximately located from?

15 A Yes, it does.

16 Q Okay. And it was, again, before the exterior --  
17 interior exit door, left-hand side?

18 A Yes, sir.

19 Q And so the jury sees what we're talking about here --  
20 all right. So we've got five different numbers on there,  
21 is that correct, that you see: 3-2, 3-3, 3-4, 3-5, 3-6?

22 A Yes, sir. And then --

23 Q If I move it up a little bit, there's 3-1 at the  
24 bottom?

25 A Yes, sir.

DIRECT EXAMINATION BY MR. SORENSON - BRANDON BERG 320

1 Q Okay. What -- specifically as to -- let's kinda go  
2 through them. Kinda 3.1, what were the results of when  
3 you looked at 3.1?

4 A That was of no value.

5 Q Okay. How 'bout 3.2?

6 A 3.2 was no value as well.

7 Q Okay. And you had testified earlier that the other  
8 four of them then, 3-3, 3-4, 3-5, and 3-6, what were the  
9 results of those?

10 A 3-3 was identified as the left ring finger of Keunte  
11 Cobbs. 3.44 was identified as the left middle finger of  
12 Keunte Cobbs. 3.5 was identified as the left index, and  
13 the 3.6 was identified as the left thumb of Keunte Cobbs.

14 Q Consistent then with basically that portion of his  
15 hand?

16 A Yes.

17 Q Those four fingers?

18 A Yes, sir.

19 Q And showing you then State's Exhibit No. 36.

20 THE COURT: This is 65, Counsel?

21 MR. SORENSON: This is State's 65, yes, sir.

22 THE COURT: All right.

23 Q Yes, sir. All right. Explain to the jury what --  
24 I'm gonna try to get this kinda as large as I can here.  
25 Explain to the jury what we're doing here in State's

1 Exhibit No. 65?

2 A This is a one-on-one comparison of latent print 3.6  
3 with the known standard of the left thumb using Photoshop.  
4 After I'd made the ID, I went back and attempted to chart  
5 some of the minutia, as it's referred to, that I used to  
6 make the identification.

7 Q Okay. And explain to the jury kind of when you're --  
8 let's first of all, let's go back and talk just briefly  
9 about fingerprints. Does every person have fingerprints?

10 A Yes, they do.

11 Q Okay. And explain to the jury, are they, you know,  
12 unique from person to person or similar or ...

13 A They're -- they're unique person to person.

14 Q Okay. How 'bout -- so I have 10 fingers. How many  
15 different fingerprints will I have?

16 A You'll have 10 different fingerprints on your whole  
17 hands.

18 Q Okay. And my fingerprints, do they change as I get  
19 older?

20 A No.

21 Q So my fingerprints, back when I was 20 years old, are  
22 the same as I am -- as they are today?

23 A Yes.

24 Q Okay. All right. And tell the jury, then, when  
25 you're looking at -- when you have, in this case, you

DIRECT EXAMINATION BY MR. SORENSON - BRANDON BERG 322

1 know, some latent prints that you had lifted in this case  
2 off of a door, comparing them to a known print, what --  
3 what is it that you're looking at in -- in efforts to make  
4 a comparison?

5 A First off, evaluate the -- analyze the latent print  
6 to even determine if there's enough information in the  
7 ridge detail to make a comparison at all. Once I've done  
8 that, I'll take the set of known standards that I've been  
9 provided, and then conduct a thorough comparison of the  
10 known print and the latent print.

11 I'm looking for both agreement and disagreement on  
12 ridge flow, ridge structure, ridge width. Many different  
13 factors go into the fine detail of whether or not I'm  
14 going to ID that print or not.

15 Once a thorough analysis -- comparison is complete,  
16 I'll then identify whether or not that latent print came  
17 from the known source.

18 Q Okay. And ultimately, then, in which -- are you  
19 aware of which print this is that --

20 A Yes. This was 3.6, the left thumb.

21 Q Okay. And just kind of -- kind of explain to the  
22 jury kinda what they're seeing then, and -- and how --  
23 that you went about making an identification that you  
24 testified to this was Keunte Cobbs left thumb that was off  
25 of that door.

1 A That's correct. It's a chart of the comparison that  
2 I did. These -- each one of these letters point out a  
3 different level of what's referred to as "minutia." Those  
4 are where -- if you look at your fingerprints, you have  
5 these ridges that come up. It -- each one of those ridges  
6 can do different things that -- what's known as different  
7 details, minutia, or "Galton details." A single ridge can  
8 split off into two ridges which is known as a  
9 "bifurcation." A ridge can stop which is known as an  
10 "ending ridge." Those are some of the details that I  
11 would use to make my comparison.

12 Q Okay. And ultimately, in looking at it, how -- I  
13 mean, how many points of similarity did you find between  
14 these two?

15 A There were several that I've got listed here, up to  
16 letter "S."

17 Q Okay. All right. In your opinion, then, is that  
18 Keunte Cobbs left thumb print that -- that -- that was  
19 lifted off of that door?

20 A Yes.

21 Q All right. Now, you had testified earlier, Sergeant,  
22 that you had obtained a video from the IHOP from that  
23 night?

24 A Yes.

25 Q Did you have an opportunity to go back and look at

DIRECT EXAMINATION BY MR. SORENSON - BRANDON BERG 324

1 that video?

2 A I did.

3 Q Okay. And I want to show you ...

4 MR. SORENSON: May I approach the witness, Your  
5 Honor?

6 THE COURT: You may approach.

7 Q Show you State's Exhibit's 83 and 84. Do you  
8 recognize those as still photos from the video?

9 A I do.

10 Q Okay. And does those two stills kind of indicate  
11 anybody touching in the areas that you lifted latent  
12 prints off of those two doors?

13 A Yes, they do.

14 Q Okay.

15 MR. SORENSON: At this time -- at this time we'd  
16 offer State's 83 and 84 into evidence.

17 THE COURT: As to State's 83 and 84?

18 MR. CHISHOLM: No objection.

19 THE COURT: Ladies and gentlemen of the jury, State's  
20 Exhibits 83 and 84 will be admitted into evidence in the  
21 trial of this case without objection.

22 You may now publish to the jury.

23 (State's Exhibit Nos. 83 and 84, photos, in  
24 evidence.)

25 MR. SORENSON: Thank you, Your Honor.



1 Q And you have testified -- you testified about State's  
2 Exhibit No. 63, which is the one that you identified as  
3 matching -- four of the prints matching the Defendant's;  
4 is that correct?

5 A Yes.

6 Q Okay. Is that -- appear to be the area that  
7 individual in the red shirt is touching where that print  
8 was lifted off of?

9 A Yes, it appears to be.

10 Q And then you had spoke about State's Exhibit No. 1,  
11 the four, I guess there's five in -- prints -- latent  
12 prints on that?

13 A Yes.

14 Q And that was the -- on the exterior exit door on the  
15 left?

16 A Yes.

17 Q Is that correct? And have you ever been able to  
18 identify who that person was?

19 A No.

20 Q I show you State's Exhibit No. 84.

21 THE COURT: Wait a minute.

22 (Brief pause.)

23 THE COURT: One's not in evidence, Counsel.

24 MR. SORENSON: Oh -- oh, no. I'm sorry. It's not --  
25 it's not -- it's -- it's -- that's my fault, Your Honor.

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1 It's 61. It's his -- his latent imprint No. 1.

2 THE COURT: All right. Rephrase that question ---

3 MR. SORENSON: Yes, sir.

4 THE COURT: --- for the record.

5 MR. SORENSON: Yes, sir.

6 THE COURT: You said, "As to State's 1."

7 MR. SORENSON: Yes. I'm sorry.

8 Q State's Exhibit No. 61, which are your -- your latent  
9 impression No. 1?

10 A Correct.

11 Q All right. It is -- showing you now State's Exhibit  
12 No. 84. Does that show an individual touching the area on  
13 that door that you lifted those latent prints off of?

14 A Yes.

15 Q Okay. And again, to your knowledge, you have never  
16 been able to identify who that individual is?

17 A No.

18 Q I just got a couple more things to go over with you,  
19 Sergeant, and about done. Did you have an opportunity,  
20 several days after this, to -- to go down to the Medical  
21 University of South Carolina to their pathology division?

22 A I did.

23 Q Okay. And did you obtain any evidence from pathology  
24 with regards to this case?

25 A I did. I obtained evidence from their department.

DIRECT EXAMINATION BY MR. SORENSON - BRANDON BERG 327

1 which was -- I have it on this chain of custody sheet  
2 here. Appears to be 3 bullets recovered, one blood spot,  
3 and one CD of the autopsy images.

4 Q Okay.

5 MR. SORENSON: May I approach the witness?

6 THE COURT: You may.

7 Q Specifically, let me show you State's Exhibit No. 78.  
8 It -- are those the three bullets that you obtained in  
9 this case from MUSC Pathology?

10 A Yes, they are.

11 MR. SORENSON: All right. At this time we'd offer  
12 State's 78 into evidence.

13 THE COURT: As to 78?

14 MR. CHISHOLM: No objection.

15 THE COURT: Ladies and gentlemen of the jury, State's  
16 Exhibit No. 78 will be admitted into evidence in the trial  
17 of this case without objection.

18 You may publish.

19 (State's Exhibit No. 78, three bullets, in evidence.)

20 Q And Detective, it's got three different bullets in  
21 there sealed in this envelope?

22 A Yes.

23 Q All right. Now, were you aware also -- and the  
24 jury's already heard some testimony about this, but were  
25 you aware of a couple of handguns being turned into

DIRECT EXAMINATION BY MR. SORENSON - BRANDON BERG 328

1 evidence in this case?

2 A I have.

3 Q Okay. All right. And then, also, were you aware of  
4 a projectile and a shell casing being turned in by some --  
5 an employee with IHOP that was recovered sometime after --  
6 after the fact?

7 A I am.

8 Q Okay. And ...

9 MR. SORENSON: May I approach the witness, Your  
10 Honor?

11 THE COURT: You may.

12 Q I'm showing you State's Exhibit Nos. 79 and 80 are  
13 those -- those items that were -- that were turned in by  
14 -- by a IHOP employee.

15 A Yes.

16 Q Okay.

17 MR. SORENSON: Your Honor, at this time we'd offer  
18 State's 79 and 80 into ---

19 THE COURT: 79 and 80 are already in, aren't they,  
20 Bonnie?

21 THE COURT REPORTER: No, sir.

22 THE COURT: They're not?

23 MR. SORENSON: They're not, no.

24 THE COURT: I have them through -- I have them  
25 through Mr. Muhamad.

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1 MR. SORENSON: I -- I don't think they --

2 THE COURT REPORTER: He didn't offer them.

3 MR. SORENSON: Yeah. They didn't get actually 'cause  
4 he couldn't ---

5 THE COURT: Did not offer them.

6 MR. SORENSON: --- ID them.

7 THE COURT: As to -- excuse me. I have them down --  
8 79 and 80?

9 MR. CHISHOLM: No objection.

10 THE COURT: Ladies and gentlemen, as to State's  
11 Exhibits 79 and 80, they are admitted into evidence in the  
12 trial of this case without objection.

13 You may now publish to the jury.

14 (State's Exhibit Nos. 79 and 80, shell casings and  
15 projectile, in evidence.)

16 MR. SORENSON: Thank you, Your Honor.

17 Q And Sergeant Berg, ultimately, the --- the shell  
18 casings, the projectiles that you recovered out at the  
19 scene, the two handguns that were turned into evidence,  
20 and those two items we just talked about, the projectile  
21 and the shell casings, State's 79 and 80, what ultimately  
22 were done with all those items? They sent somewhere?

23 A They were sent up to SLED to be analyzed.

24 Q Okay. And as far as any testing done on those, that  
25 would've been done by the State Law Enforcement Division?

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1 A Correct.

2 MR. SORENSON: Beg the Court's indulgence one moment.

3 (Brief pause.)

4 MR. SORENSON: That will be all I have for the  
5 Sergeant, Your Honor.

6 THE COURT: Cross-examination.

7 MR. CHISHOLM: Thank you, Your Honor. Please the  
8 Court?

9 CROSS-EXAMINATION

10 BY MR. CHISHOLM:

11 Q Good afternoon, Mr. Berg.

12 A Good afternoon, sir.

13 Q Let's see. To start, this is Exhibit -- State's 57  
14 and 58 -- I believe those are in evidence --

15 A Yes, sir.

16 Q -- did you -- how did you create these?

17 A I used a paint application on my computer to make  
18 them.

19 Q Just like -- just paint that's on every computer,  
20 that program?

21 A Yes.

22 Q Okay. So it's not to scale or anything like that?

23 A It is not to scale, no.

24 Q Okay. I was just curious.

25 I'm gonna go a little out of order here, but while

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CROSS-EXAMINATION BY MR. CHISHOLM - BRANDON BERG 331

1 I'm thinking about it, I'm going to show you State's  
2 Exhibit No. 84 they just showed you a second ago. You  
3 said you were not able to identify the person that's  
4 touching the door in this picture; is that correct?

5 A That's correct.

6 Q What I wasn't clear on is did -- were you able to  
7 actually get a print and you just couldn't tie it to  
8 anyone, or could you not get a print from the hand on the  
9 door?

10 A The latent print card -- several of the prints, as I  
11 recall were of value, and they were not ID'd.

12 Q Okay. All right. And the Solicitor just asked you  
13 about a shell casing and a projectile that were turned  
14 into evidence after you went out that night.

15 A Yes, sir.

16 Q Do you know where these were found or how you missed  
17 them?

18 A I have no idea. Bullets do a lot of things after  
19 they've been fired. I don't have any idea where they were  
20 located. Same for shell casings as well. I -- I don't  
21 know -- don't know where they were located at.

22 Q And I'm assuming you looked from front to back, side  
23 to side in the bathroom pretty good, right?

24 A Yes.

25 Q Okay. And you don't have any information about where

I CROSS-EXAMINATION BY MR. CHISHOLM - BRANDON BERG 332

1 it was found or anything else.

2 A I do not.

3 Q Okay. I'm -- I didn't get your official title. I  
4 don't -- are you a Crime Scene Technician or ...

5 A I'm a Crime Scene Investigator.

6 Q Investigator?

7 A Also latent print examiner in the Sheriff's Office.

8 Q Okay. And you said you've been with the Sheriff's  
9 Office doing this kind of work roughly for how long?

10 A Four years.

11 Q Four Years. And your job in general -- I mean,  
12 potentially you can collect evidence that could lead you  
13 to a suspect and maybe explain some parts of what happened  
14 in a crime, that kind of thing?

15 A Correct.

16 Q And you look for evidence that might secure -- that  
17 might be able to point towards a particular suspect. You  
18 also look at evidence that could be exculpatory, meaning  
19 it can point against from the person that you're looking  
20 at as a suspect; is that correct?

21 A Correct.

22 Q Is it just as important to look for evidence that  
23 would exclude somebody from a crime as opposed to just  
24 evidence that ties to your suspect?

25 A Absolutely.



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CROSS-EXAMINATION BY MR. CHISHOLM - BRANDON BERG 333

1 Q Okay. And this is a murder case, but I know you said  
2 you're a latent print examiner. So I imagine you probably  
3 handle cases from larcenies, or you know, relatively lower  
4 level crimes on up to murder, right?

5 A Yes.

6 Q But when you get a murder case, I would imagine if  
7 you're going to look through something with more of a  
8 fine-tooth comb, it would be a murder case, I'm guessing?

9 A It would get pushed to the front of the line.

10 Q Okay. Now, when you're on a crime scene, do you have  
11 pretty wide discretion as to what you collect and what you  
12 notate? I mean, do they just turn it over and say, "Do  
13 your thing," or how does that work?

14 A More or less, the -- the responding deputies, it's  
15 their responsibility to secure the scene. Once I arrive  
16 on scene, yes, the scene is turned over to me and any CID  
17 members who may be on scene.

18 Q So essentially it's your forte to go in and look for  
19 the evidence, but if a detective points something out, of  
20 course, and says, "Hey, can you test this? I saw this.  
21 Will you take a look at that," you would do that as well?

22 A Yes.

23 Q Okay. And when you collect evidence, say, blood  
24 evidence like you got in this case, can you explain to the  
25 jury when you collect this evidence, where does it go from

I CROSS-EXAMINATION BY MR. CHISHOLM - BRANDON BERG 334

1 there?

2 A I would collect it using swabs. I would bring it  
3 back to our lab where it would be heat sealed. From  
4 there, if we do develop any, say, suspects, they could be  
5 sent off for a one-on-one comparison to SLED at a later  
6 time.

7 Q And I used blood as an example, but cartridge casings  
8 or whatever it may be that you collect on -- on scene, you  
9 take it into custody personally.

10 A Yes.

11 Q You take it, I'm assuming, back to your office?

12 A Yes.

13 Q And you put it into -- do you have an evidence room?

14 A We do have an evidence room, yes.

15 Q Are there, like, lockers set up so you can separate  
16 it by case? How does that work?

17 A Well, there are -- we have -- well, this case, as it  
18 turned out to be a homicide, that evidence is kept  
19 separately -- separately in a different vault. But yes,  
20 some -- different evidence needs to be separated from each  
21 other, but yes. It's all in a secured facility.

22 Q Okay. And is the room secure? And what I mean is,  
23 are there protocols in place to notate who enters a room,  
24 who leaves, whose coming and going, signing things in and  
25 out?

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CROSS-EXAMINATION BY MR. CHISHOLM - BRANDON BERG 335

1 A Yes.

2 Q All that's documented.

3 A Yes. Except -- well, not with our Crime Scene  
4 Investigators. Our evidence, any -- any person in Crime  
5 Scene, we don't sign into every single room that we walk  
6 in -- or any evidence room that we walk into.

7 We are required to -- anybody who would enter, even  
8 in crime scene, our office -- which we don't even have  
9 generally -- generally store evidence in -- people have to  
10 sign in if anybody enters that.

11 There's really no reason for anybody to enter the  
12 evidence room. If they did, they would be accompanied by  
13 a crime scene investigator. They'd have to sign in.

14 Q So like, let's say Detective Peters, if he got  
15 evidence from the scene of a crime and he was wanting to  
16 put it into evidence, you would have a record showing he  
17 came on this date, turned it in?

18 A Unless he turned it in outside of -- we have an  
19 evidence room downstairs where deputies can drop evidence  
20 after hours. So if you did it, say, in a scenario like  
21 that, we wouldn't have, like, when he did it. Like, he  
22 wouldn't have had to sign into Crime Scene, so to speak.

23 Q Can you explain to the jury why it's important to  
24 have an evidence room, why securing these things in this  
25 way is important as opposed to just -- if an officer finds

I CROSS-EXAMINATION BY MR. CHISHOLM - BRANDON BERG 336

1 something on scene and just puts it in their pocket and  
2 takes it home? Can you explain why it's important to  
3 secure this stuff like that?

4 A Absolutely. It -- it goes along with the integrity  
5 with -- of that evidence. It would be important for us to  
6 make sure that none of it's been tampered with, and it was  
7 -- it was in the same state as it was when we recovered it  
8 on scene as it was when it was finally analyzed.

9 Q And also keeps things from being lost, things of that  
10 nature?

11 A Yes.

12 Q If somebody doesn't turn evidence like this in --  
13 into the evidence room, are they not following protocol at  
14 that point then?

15 A We've had cases before where -- like, if -- if they  
16 want something as evidence, yes. They would need to turn  
17 it in to us. That way we can have record of it.

18 Q Okay. And I think you answered this, but if somebody  
19 has turned evidence in to you and then they say down the  
20 road, "Okay. I want to test this for DNA or hair  
21 follicles," whatever the case may be, they would come to  
22 you to sign the evidence out, and then it would get  
23 transported to SLED or wherever it's being tested; is that  
24 correct?

25 A No, sir. From there we would get the request. It

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1 would stay within our unit. At that time we would  
2 complete -- it's called a "packing slip." SLED needs to  
3 know the evidence is coming up there and why it's coming  
4 there. So we would have to fill out on the sheet that  
5 kind of information for them.

6 So from that point, we would personally take the  
7 evidence up to SLED, a member from the Crime Scene Unit,  
8 and then drop it off there in their evidence lockers.

9 Q Okay. So they would make the request, and you would  
10 actually facilitate getting it to where it needed to be  
11 tested?

12 A Yes.

13 Q Okay. I'd like to talk to you about the testing of  
14 evidence, you know, generally speaking. When you collect  
15 evidence, say it's fingerprints or blood, I -- I've --  
16 you've testified you do fingerprint analysis in-house, so  
17 to speak -- you do that yourself?

18 A Yes, sir.

19 Q But other types of evidence -- ballistics evidence,  
20 DNA, things of that nature -- can you kind of explain to  
21 me whose call it is to send that stuff off? Is that  
22 something -- when you secure evidence from the scene, do  
23 you do that automatically and say, "This could be useful.  
24 I need to test it"; or do you have a detective or someone  
25 that comes in after you and says, "Please send this and

I CROSS-EXAMINATION BY MR. CHISHOLM - BRANDON BERG 338

1 this off for this kind of testing"?

2 A We would initially send -- if we have, say, evidence  
3 that we'd say -- say a -- a firearm, so to speak, if we  
4 get that in, that's automatically going to go. If we end  
5 up with, say, DNA swabs, many times, generally, we'll wait  
6 and hear back from the detective. Usually we'll get with  
7 him, "What items would you like to go?"

8 Some items we can just send up initially without  
9 known standards; however, usually, if there's, say, been  
10 an arrest made in a case, SLED would like us to collect  
11 known standards first before those items are sent off.

12 Q Okay. So like with blood evidence, you or the lead  
13 detective, so to speak, could request it to be sent off  
14 for testing.

15 A Yes.

16 Q Okay. Does that vary case to case?

17 A It -- it can.

18 Q Okay.

19 A A lot of times, like, say in these cases, especially  
20 homicide cases, I'll call up to SLED and see how many  
21 items they will take, if any; and usually I'll -- we'll  
22 work it out with SLED on what they'll do for us.

23 Q Okay. But it doesn't just get sent off  
24 automatically? Somebody has to make the call, whether  
25 it's you or a detective or whoever.

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1 A Correct.

2 Q Okay. And in this case, you testified and we've seen  
3 the pictures, you did collect a lot of blood spot  
4 evidence, correct?

5 A Yes.

6 Q And what made you decide to collect this -- this  
7 blood? Why did you feel it was important to take the time  
8 to collect it as opposed to just taking pictures?

9 A Seeing as how it was a shooting incident, I -- I felt  
10 that it was important to know who was shot, who -- who --  
11 who bled that blood. That's the reason why I would  
12 collect the swabs.

13 Q Okay. So tell me if I'm getting this correctly.  
14 You're saying that blood can be important in a case like  
15 this. It can provide valuable evidence as to whose blood  
16 it was. In a case like this, we have two people that were  
17 shot, but --

18 A Yes.

19 Q -- there could be someone else's blood in there,  
20 depending on what happened in the bathroom, that kind of  
21 thing?

22 A Yes.

23 Q Okay. So it could -- it could be the alleged  
24 victim's or it could be the suspect, correct?

25 A Yes.

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1 Q Okay. And can you tell me how many blood samples you  
2 got in this case?

3 A I have to review my notes here. Let's see. So five  
4 through -- you want me to say specifically how many?

5 Q Just roughly's fine.

6 A Okay. It -- it appears I got somewhere in the -- in  
7 the neighborhood of around 15.

8 Q Okay. Okay. That -- that's fine for my purposes.

9 And you collect this blood for potential testing, I  
10 guess for -- you could test it for blood type, that kind  
11 of thing, but also for DNA analysis; is that right?

12 A Yes.

13 Q Okay. Was this evidence sent off for testing?

14 A I don't have the record of where it was. I don't  
15 know if I just don't have the paperwork in front of me or  
16 -- or not.

17 Q You don't know if it was sent off for testing?

18 A I -- I'm not sure. I -- I don't -- I -- we have sent  
19 some swabs up to SLED, but we haven't gotten analysis back  
20 yet.

21 Q Okay. Is that something you would've done or would a  
22 detective been able to do it with someone else or who  
23 would I be able to ask to see if it was sent off, I guess  
24 is what I'm getting at?

25 A I could review paperwork to see if it was sent off



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1 myself. I know we have sent swabs off. I know we have,  
2 but we haven't gotten the -- those results back from SLED  
3 yet.

4 Q Okay. Did Detective Elmore or any other lead  
5 detectives request that you send it off that you recall?

6 A Not that I recall, no.

7 Q Okay. And are you limited on how much evidence can  
8 you send off?

9 A Yes.

10 Q I mean, if you -- say 7 say you collect 10 guns in a  
11 case, is SLED going to say, "We'll only test 8," or how  
12 does that work?

13 A As far as guns go, I couldn't testify exactly as to  
14 what that number would be. I've never heard of them  
15 saying you can only send so much as far as that goes.

16 As far as swabs go that you collect on scene,  
17 generally, for -- say, a violent crime case like this,  
18 they'll take five swabs at a time. You can call up there  
19 and ask if -- okay, say, "Will you take more? And either  
20 they'll say yes or no.

21 Q Okay. But you don't know if any of that was done in  
22 this case, right?

23 A No, sir.

24 Q Okay. And I believe, from reading through your  
25 report, it looks like a pair of jeans were taken into

I CROSS-EXAMINATION BY MR. CHISHOLM - BRANDON BERG 342

1 evidence.

2 A Yes, sir.

3 Q Can you talk to me a little bit about why that might  
4 be important evidence in this case?

5 A We -- I assisted in the execution of a search warrant  
6 regarding this case. I believe is -- it was to try to  
7 identify, say, similar pants that were worn on the scene  
8 by a possible suspect. I was advised that -- if I could  
9 collect the evidence by Detective Elmore who was on scene.

10 Q So if you saw -- during execution of a search  
11 warrant, if you found clothing consistent what -- with  
12 what you see on the video tape, it could show blood  
13 splatter evidence, stuff of value for you that you could  
14 get tested; is that right?

15 A Possibly. Yes.

16 Q Okay. And these jeans were collected. Were they  
17 ever sent off to be tested?

18 A No, they weren't.

19 Q Was that your call or another detective or how did  
20 that work?

21 A I -- I looked at the jeans. I -- didn't appear any  
22 obvious signs of -- of say, blood spatter in them that  
23 would've been -- at the end of the day, I -- had Detective  
24 Elmore requested that I send them off, I would have.

25 Q But he never requested that?

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1 A No.

2 Q If someone fires a gun -- are you familiar with  
3 gunshot residue?

4 A I am.

5 Q Can you roughly explain to the jury what that is?

6 A It's particles that are emitted -- I'm not an expert  
7 on -- on guns or anything like that, but particles are  
8 emitted by every firearm when it's fired. Those can --  
9 those deposits can end up on your hands or on, say,  
10 clothing that you're wearing.

11 Q Okay. So if I fire a gun, it could -- it could leave  
12 residue on me or if a gun's fired at me, that kind of  
13 thing?

14 A True. Yes.

15 Q Were these jeans that were collected -- were they  
16 ever tested for gunshot residue?

17 A No.

18 Q Did Detective Elmore ever request that?

19 A No, sir. Generally, the -- from the information that  
20 I had received from SLED, say a gunshot residue kit, okay,  
21 that can only be taken or used by SLED from a person.  
22 They want us to collect those kits within six hours of an  
23 incident happening. So in this case it would've been  
24 later on regardless.

25 The -- I've also been advised by SLED that they --

I CROSS-EXAMINATION BY MR. CHISHOLM - BRANDON BERG 344

1 they can't even, say, prove that a person fired a gun  
2 based off gunshot residue. It only shows that a person  
3 was in the vicinity of a firearm when it was fired.

4 Q But this was never sent off. So we can't tell either  
5 way?

6 A We -- we couldn't tell, but they probably wouldn't  
7 have tested it anyway, sir.

8 Q Was a gunshot residue test ever done on either of the  
9 alleged victims in this case to see if you could find  
10 evidence that they might've fired a gun?

11 A No.

12 Q Okay. Was that ever requested from anyone?

13 A No, sir. Not that I'm aware.

14 Q Okay. All right. Next I'd like to talk to you about  
15 the cartridge casings and projectiles that were found in  
16 this case, or I guess, "bullets" you'd call them. Can you  
17 explain the different components of a cartridge? It might  
18 make more sense to the jury.

19 A As far as I can explain it, it's -- it's just the  
20 brass base of, say, a projectile, that would, say, house  
21 gunpowder. So when the strike face was struck by, say,  
22 the firing pin of a gun, it would release the projectile  
23 from it.

24 Q So a cartridge casing would be what holds the powder.  
25 The bullet is the projectile that comes out of the casing?

I

CROSS-EXAMINATION BY MR. CHISHOLM - BRANDON BERG 345

1 Is that --

2 A Yes. Yes, sir.

3 Q And looking through the evidence, it looks like some  
4 of the projectiles in this case are actually in pretty  
5 decent shape, all things considered. I mean, they still  
6 got smooth, flat, surfaces, that kind of thing. Would ---

7 A Yes.

8 Q --- you agree with that?

9 A I do.

10 Q You took photographs of these casings and  
11 projectiles, and obviously, you notated where they were  
12 located in your chart. We've gone through all that.

13 A Yes.

14 Q Did you ever request that these casings, or the  
15 projectiles, be tested for touch DNA?

16 A No, I didn't.

17 Q Did Detective Elmore ask -- ever ask you to do that?

18 A No.

19 Q Okay. And that's something you -- would you have to  
20 do that at SLED or you do that in house?

21 A I could swab them in house.

22 Q But as far as the testing.

23 A As far as the testing goes, yes, sir. Yeah. That  
24 would -- that would be done at SLED. Yes, sir.

25 Q So that was never requested.

I CROSS-EXAMINATION BY MR. CHISHOLM - BRANDON BERG 346

1 A Correct.

2 Q Did anyone ever request that you do a fingerprint  
3 analysis on the actual projectiles or the casings?

4 A I did fingerprint the casings. I don't believe, as I  
5 recall, finger -- fingerprinting the projectiles  
6 themselves. But I did process the casings for the  
7 presence of latent prints.

8 Q Okay. Did you get anything back from that analysis?

9 A I did see some ridge detail; however, they weren't of  
10 value.

11 Q Okay. Moving on. I'd like to ask you about some of  
12 the cell phone evidence that we've got in this case.  
13 Let's start here. Can you explain why cell phones might  
14 be important in a case like this?

15 A They could show communication, say, in a case like  
16 this, between, say, a victim and a defendant possibly.  
17 I'm not sure about all the ins and outs of what they can  
18 do as far as the location or whatever the case may be.

19 Q But depending on the phone, it can show where you  
20 are, who you're talking to, what you're talking about,  
21 that kind of thing?

22 A From what I understand, yes.

23 Q And that's the kind of thing you might be interested  
24 in, why you would take it into custody or ---

25 A Yes.

I

CROSS-EXAMINATION BY MR. CHISHOLM - BRANDON BERG 347

1 Q --- take it into evidence; is ---

2 A Correct.

3 Q --- that right?

4 A Correct.

5 Q And are you aware of a phone being found at the  
6 restaurant --

7 A Yes.

8 Q -- that night?

9 A Yes.

10 Q And was that phone -- are you aware of that -- an  
11 examination being done on that phone?

12 A Oh, no. Not that I'm aware.

13 Q You don't know that that was done?

14 A No, sir.

15 Q Okay. Whose call would that be?

16 A That would've been the -- the detective investigating  
17 the -- the case.

18 Q Okay. And this phone, is it still in evidence, I'm  
19 assuming?

20 A It is.

21 Q It's back at the -- it's back at the locker? And the  
22 cell phone that was found in the restaurant, do you know  
23 who put it into evidence?

24 A The -- if you're referring to the Alcatel cell phone,  
25 I collected that.

I. CROSS-EXAMINATION BY MR. CHISHOLM - BRANDON BERG 348

1 Q Okay.

2 THE COURT REPORTER: What kind of cell phone?

3 THE WITNESS: Alcatel. I'm sorry.

4 Q Okay. Are you aware of three other phones that were  
5 taken into evidence in this case upon the arrest of Mr.  
6 Cobbs?

7 A No.

8 Q You've never heard of that?

9 A No.

10 Q Okay. I have to check back through the report.

11 Your report mentions that you collected some DNA  
12 samples from items on the dinner table in this case, like  
13 a straw -- I'm assuming this is from a table where there  
14 might've been suspicion that the suspects were eating. Do  
15 you know if a DNA analysis was ever done on the  
16 silverware, straw, or whatever ---

17 A No.

18 Q --- was referenced?

19 A No, sir.

20 Q But you did get some, it just wasn't sent off for  
21 testing or ...

22 A I collected the straws which could just, say, be sent  
23 up to SLED on their own for -- for analysis.

24 Q Okay. And nobody ever requested that you do that?

25 A Correct.



I

CROSS-EXAMINATION BY MR. CHISHOLM - BRANDON BERG 349

1 Q Okay. And I guess you wanted to do that so you could  
2 figure out who was sitting at the table.

3 A That could be a piece of information. Yes.

4 Q Okay. And the -- the fingerprint evidence the  
5 Solicitor went through with you a minute ago -- he put up  
6 the diagrams and all that -- my understanding is that  
7 these were the prints that were taken off the front door.  
8 Interior or exterior, but they're all off the front door;  
9 is that correct?

10 A Yes, sir.

11 Q Did you at any point try to get fingerprints or touch  
12 DNA or anything else from the bathroom doors or the stalls  
13 in the bathroom?

14 A I had processed those. I actually contacted SLED  
15 about some of the swabs that I took from the doors. They  
16 advised since it was a community-type area, it wouldn't be  
17 able to test that for DNA being that there -- there's  
18 probably such a vast mixture of individuals.

19 Q What about fingerprints?

20 A As I recall, I believe I finger -- I dusted that area  
21 for fingerprints as well, but I didn't collect any latent  
22 prints as I recall from that area.

23 Q Okay. Did you recover any evidence in this case that  
24 would, forensically, I guess, through testing, link Mr.  
25 Cobbs to this bathroom or to this crime?

DIRECT EXAMINATION BY MR. SORENON - CHAD SMITH 350

1 A From the inside of the bathroom, no.

2 Q Okay. What about outside the bathroom? What I mean  
3 is -- I guess I should phrase that better. Fingerprints,  
4 DNA, blood, is there any kind of forensic evidence that  
5 ties him to this incident at all?

6 A All I can say is that we did locate the fingerprint  
7 on the door ---

8 Q And that was just ---

9 A --- to the ---

10 Q --- on the exit?

11 A Yes.

12 Q Okay.

13 MR. CHISHOLM: All right. If I could have one  
14 moment, Your Honor.

15 (Brief pause.)

16 THE COURT: Anything further, Counsel?

17 MR. CHISHOLM: If I could have one moment, Your  
18 Honor. I was just trying to ...

19 (Brief pause.)

20 MR. CHISHOLM: Thank you, Your Honor. I have no  
21 further questions.

22 THE COURT: Redirect?

23 MR. SORENSON: No, Your Honor.

24 THE COURT: As to the witness?

25 MR. SORENSON: I think he can be excused.

1 THE COURT: Any objection?

2 MR. CHISHOLM: No, Your Honor.

3 THE COURT: You may step down, Mr. Berg. You're  
4 excused from the trial of this case. You may leave the  
5 courtroom.

6 THE WITNESS: Thank you, Your Honor.

7 (The witness exits the stand.)

8 THE COURT: Call your next witness

9 MR. SORENSON: Call Chad Smith.

10 CHAD SMITH, having been first  
11 duly sworn, testifies as follows:

12 THE COURT: Say your full name and spell -- spell  
13 your last name for the Court Reporter.

14 THE WITNESS: Chad Smith, S-m-i-t-h.

15 MR. SORENSON: May it please The Court, Your Honor?

16 THE COURT: Your witness, Counsel.

17 MR. SORENSON: Thank you.

18 DIRECT EXAMINATION

19 BY MR. SORENSON:

20 Q Agent Smith, if you would, please tell the jury where  
21 it is that you're employed?

22 A Employed with The South Carolina Law Enforcement  
23 Division, which is commonly known as "SLED."  
24 Specifically, I work in the firearms department at SLED's  
25 forensic services laboratory in Columbia.

DIRECT EXAMINATION BY MR. SORENSON - CHAD SMITH 352

1 Q All right. And how long, first of all, have you been  
2 employed at SLED?

3 A It'll be 10 years in November.

4 Q Okay. And those 10 years, have they all been in the  
5 firearms department?

6 A Yes, sir.

7 Q Okay. And if you would, tell us a little bit about  
8 your -- your educational background and your training that  
9 you've had with regards to firearms.

10 A I attended Clemson University where I received a  
11 Bachelor's of Science degree in biological sciences.  
12 Then, when I started on at SLED, I started my training in  
13 -- in the firearms department as a firearm and tool mark  
14 Examiner.

15 This training period lasts between three to five  
16 years. It is supervised by the court-qualified examiners  
17 of the firearms department. It involves extensive reading  
18 and studying. There are multiple examinations and  
19 practical tests given during this period.

20 I also attended various classes and courses during my  
21 training period. Towards the end of the training, I was  
22 able to help the other examiners prepare their own case  
23 work. At the end of the training, I received a  
24 comprehensive, multi-part examination, which I  
25 successfully passed; and then I began to receive my own

1 case work.

2 Q All right. And ultimately, over the last 10 years,  
3 Mr. Smith, have you had an opportunity to testify in court  
4 regarding some of your findings in the lab at SLED?

5 A Yes, sir.

6 Q And been qualified as an expert in those occasions?

7 A Yes, sir.

8 Q About how many times has that occurred?

9 A About 45 times.

10 Q Okay.

11 MR. SORENSON: At this time we'd offer Agent Smith as  
12 an expert in the field of firearms.

13 THE COURT: Any objection as to qualifications?

14 MR. CHISHOLM: No, Your Honor.

15 THE COURT: Firearms examination.

16 MR. SORENSON: Thank you.

17 THE COURT: Ladies and gentlemen, recalling my  
18 earlier instruction to you concerning expert testimony,  
19 witness is qualified, firearms examination, without  
20 objection.

21 You may proceed, Counsel.

22 MR. SORENSON: Thank you.

23 Q Agent Smith, if you would, tell the jury a little bit  
24 about, with regards to firearms, what are some of the  
25 different sorts of analysis that you have at your disposal

1 out at SLED.

2 A Well, my primary responsibilities are the examination  
3 of firearms; ammunition; ammunition components, such as  
4 bullets and cartridge cases. I also do serial number  
5 restorations on firearms that have obliterated serial  
6 numbers. And I perform distance determination -- muzzle  
7 to target distance determination for shotgun pellets.

8 Q All right. And you talked a little bit about shell  
9 casings and bullets and projectiles. Can you explain to  
10 the jury what those are?

11 A Well, those are parts of a -- of a cartridge. A lot  
12 of people just call a unfired cartridge a "bullet" or  
13 refer to the whole round of ammunition as a "bullet." But  
14 technically, that's not correct.

15 A cartridge is the round of ammunition and it's made  
16 up of several parts. You've got what's known as the  
17 "cartridge case," which is actually the cylindrical object  
18 that holds the other -- contains the other parts of the  
19 cartridge. Inside the cartridge case is the gun powder,  
20 and then at the top is the projectile, usually the -- the  
21 bullet. And then at the bottom of the cartridge case is  
22 the primer, and that's what is struck by the firing pin in  
23 the firearm which ignites the gunpowder; and then that  
24 volume of gas is able to push the projectile down the  
25 barrel.

1 Q Okay. And can you briefly tell the jury the  
2 difference between a revolver and a semiautomatic handgun?

3 A Yeah. Those are the two basic types of handguns. A  
4 revolver -- if you ever watched any of the old western  
5 movies, a revolver does just that. It revolves in --  
6 inside the firearm. It is -- has multiple chambers which  
7 hold the cartridges. So every time -- there's specific  
8 types of revolvers, too. There's single action, double  
9 action. But basically every time that you want to fire a  
10 new cartridge, that cylinder has to turn so it's in line  
11 to fire the next cartridge.

12 A semiautomatic pistol has a magazine which is  
13 inserted, usually, into the -- the grip portion of the  
14 gun, and that's what holds the cartridges. And so what  
15 happens is every time you fire, it cycles the firearm, and  
16 then a new round is loaded ready for firing.

17 Q Okay. So the semiautomatic, when I pull the trigger,  
18 it -- you know, assuming it's operating properly, it's  
19 going to expel a bullet out of the muzzle.

20 A Yes, sir.

21 Q And the shell casing is going to do what -- the  
22 cartridge casing?

23 A Right. The cartridge case is extracted out of the  
24 chamber of the firearm, which is part of the -- the barrel  
25 itself, and then it is ejected out of the firearm. And

DIRECT EXAMINATION BY MR. SORENSON - CHAD SMITH 356

1 then on the slide, which is the top part, reciprocating  
2 part of the firearm, comes forward again, it takes --  
3 strips a new round off from the top of the magazine and  
4 into the chamber and it's ready for firing again.

5 Q Now, as opposed to a revolver, if I fire a revolver,  
6 obviously, yet again, the -- the bullet, if it's working  
7 properly, will come out the muzzle; is that correct?

8 A Yes, sir.

9 Q Where does that spent cartridge casing go?

10 A The cartridge case is retained inside the cylinder,  
11 and it's manually removed by the -- by the operator.

12 Q Okay. All right. Now, I want to turn your  
13 attention, if we could, to this case here, Agent Smith.  
14 Did you ultimately receive a couple of firearms that were  
15 submitted in this case?

16 A Yes, sir. I received two pistols.

17 MR. SORENSON: May I approach the witness, Your  
18 Honor?

19 THE COURT: You may.

20 Q I'm showing you State's Exhibit No. 55 and 56. Get  
21 you to look at those and see if those are the -- the  
22 firearms that were submitted.

23 A (To the jurors) And ladies and gentlemen, just to put  
24 your mind at ease, this firearm is safe to handle. It has  
25 a cable lock going through the action and there's no



1. cartridge -- or a fired cartridge case inside the chamber  
2. itself.

3. Yes, sir. State's Exhibit 55 is one of the -- the  
4. pistols I received. It is a Glock Model 27, semiautomatic  
5. pistol, which is a 9mm Luger caliber. It also has a  
6. magazine, and there were eight unfired cartridges  
7. submitted with the gun.

8. Again, this firearm is safe to handle with the cable  
9. lock going through the action and no cartridge case or  
10. cartridge in -- in the firearm itself.

11. And State's Exhibit 56 is the Smith & Wesson pistol I  
12. received. It is a 40 Smith & Wesson caliber. It --  
13. again, it was received with a magazine and 10 unfired  
14. cartridges.

15. Q And did you have an opportunity to test and make sure  
16. that both of those -- or whether both of those handguns  
17. were in working order?

18. A Yes, sir. I was able to examine and test fire both  
19. of them, and both of them were in proper working order.

20. Q Okay. Now, did you also have an opportunity to  
21. receive several other items in this case to -- to attempt  
22. to compare, not only to themselves, but also to those two  
23. firearms?

24. A Yes, sir.

25. Q Specifically, did you receive eight spent cartridge

DIRECT EXAMINATION BY MR. SORENSON - CHAD SMITH 358

1 casings?

2 A Yes, sir.

3 Q Okay. And that's going to be State's 67 -- 67  
4 through 73 and 80.

5 MR. SORENSON: May I approach the witness, Your  
6 Honor?

7 THE COURT: You may.

8 Q Let you look at those and see if you recognize those  
9 items, Agent Smith.

10 A Yes, sir. Those were the eight fired 9mm Luger  
11 caliber cartridge cases I received.

12 Q Okay. And did you have an opportunity, Agent Smith,  
13 with regards to those eight cartridge casings to,  
14 initially compare them, I guess, to each other to see  
15 whether the same firearm fired a portion of them or all  
16 eight of them?

17 A Yes, sir.

18 Q Okay.

19 A I was able to -- and the way we do this is we have a  
20 -- what's known as a "comparison microscope." And it's  
21 basically two microscopes that's connected by an optical  
22 bridge system, so we can look at two samples  
23 simultaneously and try to determine if the marks that  
24 we're looking for, those individual marks in nature,  
25 correspond with each other on each sample. And then, if

1 we can find enough of those individual marks, then we can  
2 try to determine if -- if those were actually fired by the  
3 same firearm.

4 Q Okay. And when dealing with a shell casing, what --  
5 what -- what is it that's leaving those individual  
6 markings on those cartridge casings?

7 A Well, there's several spots that we look at.  
8 Typically, the head stamp area, which is the -- the base  
9 of the cartridge case. Again, what I refer to as the --  
10 the "primer," which ignites the -- the cartridge, that's  
11 located at the head stamp area at the base of the  
12 cartridge.

13 So we're looking at marks that could be created by  
14 the firing pin itself on the primer, and we're also  
15 looking at marks that are created by the breech face,  
16 which is the supporting structure. When I talked about  
17 that slide earlier that goes back and forth on a  
18 semiautomatic pistol, it has what's known as a "breech  
19 face." And so that supports the rear of the cartridge,  
20 and it also has a hole in it for that firing pin to pass  
21 through and -- and strike the primer. So those are the  
22 two main portions of the cartridge case that we're looking  
23 at to look at those marks.

24 There could be marks around the exterior of the  
25 cartridge case body which could be caused from the

DIRECT EXAMINATION BY MR. SORENSON - CHAD SMITH 360

1 chamber, which is the -- the portion of the barrel that  
2 the cartridge goes into. We can also look at mechanism  
3 marks, those extractor and ejector marks. They're caused  
4 by the extractor pulling the cartridge case out of the  
5 chamber, and then the ejector is the -- the part of the  
6 firearm that ejects the fire -- spent cartridge case out  
7 of the -- of the firearm.

8 So all those can be used in conjunction with each  
9 other to -- to try to determine that they're fired by a  
10 particular firearm.

11 Q Okay. In this case, those -- those eight cartridge  
12 casings, what -- what caliber casings are they?

13 A 9mm Luger caliber.

14 Q Okay. And the 9mm, does that just describe,  
15 basically, the size of the -- of the --

16 A It ---

17 Q --- projectile or ...

18 A It refers to -- it's -- it's a cartridge designation.  
19 So that actually means the name of this cartridge with a  
20 bullet intact is a 9mm Luger caliber. There are different  
21 types of 9mm general calibers, but this specific is -- is  
22 a 9mm Luger.

23 Q Okay. So when you had an opportunity, then, to  
24 compare those eight items all to each other, what were the  
25 results of that?

DIRECT EXAMINATION BY MR. SORENSON - CHAD SMITH 361

1 A I was able to determine that -- that all of the  
2 cartridge cases I received, items 67 through 73 and -- and  
3 80, State's Exhibit items, were fired by the same firearm.

4 Q Okay. All right. Now, did you also have an  
5 opportunity, then, to compare those eight cartridge  
6 casings to the two firearms that were submitted into  
7 evidence?

8 A Yes, sir.

9 Q Okay. And what was the results of that comparison?

10 A I was able to determine that neither firearm, State's  
11 Exhibit 55 or 56, fired any of those cartridge cases.

12 Q Okay. And why -- specifically, let's start with  
13 State's Exhibit 55, which -- which was --

14 A 55 was the Glock 9mm.

15 Q Okay. Would that be the proper caliber to have fired  
16 those cartridge casings?

17 A Yes, sir. It's the proper caliber, but the markings  
18 on the cartridge cases are -- are not typical Glock --  
19 were not correspondent to what this would be marking.

20 Glock has a very particular firing pin, leaves a very  
21 particular firing pin impression on the cartridge case,  
22 and the markings that were on these fired cartridge cases  
23 were not Glock-like.

24 Q Okay. So you were able to exclude that State's  
25 Exhibit No. 55 from having fired those eight cartridge

DIRECT EXAMINATION BY MR. SORENSON - CHAD SMITH

362

1 casings?

2 A Yes, sir. That would be based on those class  
3 characteristics were -- were -- were different.

4 Q Okay. Now, how 'bout State's Exhibit No. -- I  
5 believe it's 56, would be the --

6 A 56 is the Smith & Wesson -- 40 Smith & Wesson  
7 caliber. I was able to exclude the 9mm cartridge cases  
8 based on, one, caliber. These cartridge cases would be  
9 the -- the wrong caliber for this particular firearm, and  
10 also the markings would be different as well.

11 Q Okay. So yet again, none of those were fired by  
12 State's 55 or 56 then?

13 A Correct.

14 Q Okay. All right. But in your opinion, all of them  
15 were fired by the same weapon?

16 A Yes, sir.

17 Q All right. Now, also in this case, did you have an  
18 opportunity to -- to have several -- several bullets or  
19 projectiles submitted also?

20 A Yes, sir. I also received eight fired bullets to  
21 examine.

22 MR. SORENSON: May I approach the witness?

23 THE COURT: You may.

24 Q I'm showing you State's Exhibit Nos. 78, 79, and then  
25 74 through 77. So it's, like, 74 through 79.

1 A Yes, sir. I recognize these as being the -- the  
2 eight bullets I received.

3 Q Okay. And now, just as you were able to do with the  
4 -- with the previously talked about eight spent cartridge  
5 casings, with bullets, are you also able to initially  
6 compare them to each other and then also compare them to,  
7 in this case, a particular firearm?

8 A Yes, sir. Yeah. What we're looking for on bullets  
9 is the rifling impressions. So inside the barrel, it's --  
10 it's called "rifling;" and what rifling does, in part, is  
11 spin on the projectile as it travels down the -- the  
12 barrel, and so it gives it more accuracy and velocity as  
13 it goes towards its target. So it's kind of like a  
14 professional quarterback throwing a football. He wants  
15 that nice, tight, spiral so he can hit his target. It's  
16 the same thing with the rifling.

17 Now, rifling can be either cut into the barrel or  
18 impressed into the barrel. And it -- and again, it's a --  
19 it's a spiral-type pattern and it's known as "lands and  
20 grooves." So the lands is the -- would be the top  
21 portion, and then the groove is the -- the cut or  
22 impressed portion. So it's the depressed portion. So  
23 you've got raised portions and then lower portions.

24 And so we're looking for the markings that's left by  
25 the rifling on the bullet to try to determine whether they

1 were fired by a particular firearm or not.

2 Q Okay. And specifically, as to the eight projectiles  
3 that you received, were you able to initially compare them  
4 to each other to see if they were fired by the same  
5 firearm?

6 A Yes, sir.

7 Q Okay. What were the results of that when you  
8 compared those eight projectiles?

9 A The results of those comparisons were inconclusive.  
10 So I couldn't tell if they were fired by one gun or -- or  
11 multiple firearms.

12 Q Okay. What's the -- what's the reasoning for that?

13 A For one, damage -- damage imparted onto the bullet,  
14 it can obscure those markings that we're looking for; or  
15 the -- the markings that's created by the barrel just --  
16 just didn't mark well. So -- so either case, can't really  
17 determine if they were fired by the same gun.

18 Q Okay. Is there anything that you were able to tell  
19 about those eight fired bullets as far as you talked  
20 about, kind of, the lands and grooves? Is there anything  
21 that you were able to tell about the eight of them?

22 A Yes, sir. I was able to determine that they were  
23 consistent with having six lands and grooves -- 'cause --  
24 cause the number of lands and grooves can differ per  
25 manufacturer of -- of guns. That's something that they



1 set. And it had right-hand twists because some firearms  
2 have left-hand twists or right-hand twists, and it also  
3 had conventional rifling.

4 So when I -- when I talk about the rifling, there's  
5 two types. There's polygonal and conventional.

6 Conventional, those lands and grooves have a --  
7 squared-off edges; but polygonal has rounded edges. So  
8 it's two very different types of rifling. And I was able  
9 to determine that these bullets were fired by a gun that  
10 had six lands and grooves, conventional rifling, with a  
11 right-hand twist.

12 Q And how 'bout -- were you able to tell anything  
13 regarding caliber of those?

14 A Yes, sir. They're most consistent with being a 9mm  
15 Luger caliber.

16 Q Okay. And that's the -- so would they have be --  
17 been consistent with bullets that would've come out of  
18 those other eight shell casings that we've talked about?

19 A Yes, sir.

20 Q Okay. All right. Now, ultimately, were you able,  
21 then, to take those eight projectiles, or eight fired  
22 bullets, and compare them to State's 55 and State's 56 and  
23 see if either one of those firearms fired any of those  
24 bullets?

25 A Yes, sir.

CROSS-EXAMINATION BY MR. CHISHOLM - CHAD SMITH 366

1 Q Okay. So if you would, kinda, address your findings,  
2 kinda, as to each gun.

3 A Well, State's Exhibit 56, which is the -- the 40  
4 Smith & Wesson caliber handgun, again, the -- the caliber  
5 would be the wrong caliber for this firearm. And also the  
6 -- I'm sorry. That -- that's based on caliber, but the  
7 item 55 Glock 9mm is the correct caliber for those  
8 bullets; however, the general rifling characteristics are  
9 wrong.

10 This firearm has polygonal rifling, whereas the fired  
11 bullets I received, again, had conventional rifling. So  
12 they could not have been fired by State's Exhibit 55.

13 Q So ultimately, at the end of the day, the eight  
14 casings that you examined and the eight bullets that you  
15 examined, your opinion is none of them were fired by  
16 either of those weapons?

17 A Correct.

18 MR. SORENSON: Beg the Court's indulgence.

19 Thank you, Agent Smith. Please answer any questions  
20 Mr. Chisholm may have.

21 THE COURT: Cross-examination.

22 MR. CHISHOLM: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. CHISHOLM:

25 Q Good afternoon, Mr. Smith.

1 A Good afternoon.

2 Q And what is your title?

3 A Forensic Scientist.

4 Q Forensic Scientist. Would you agree with me you can  
5 only base your analysis on the evidence that you receive  
6 in a case? The guns that are submitted, the projectiles,  
7 the casings, Your analysis is based on what you receive  
8 from the agency that's requesting an analysis?

9 A Correct.

10 Q And you're not in a position to be able to say what  
11 happened on a crime scene, how a scene unfolded, or  
12 anything like that based on what you receive; is that  
13 correct?

14 A No, sir. Typically, we don't really know what  
15 happened in -- at a scene unless there are specific  
16 questions that need to be asked that -- that we may read a  
17 incident report. But typically, we do not know the  
18 specifics.

19 Q And would you agree with me you wouldn't be able to  
20 tell if more shots were fired if cartridge casings weren't  
21 collected or bullets, I mean -- like, for example, if I  
22 was in this restroom and I shot with a revolver and the  
23 bullet itself wasn't collected, you would have no way of  
24 knowing based on what was submitted, correct?

25 A Correct.

CROSS-EXAMINATION BY MR. CHISHOLM - CHAD SMITH 368

1 Q Or same thing, if I shot a semiautomatic, but I  
2 picked up the shell casing, projectile wasn't found, you  
3 would have no way of knowing?

4 A Correct.

5 Q So you can't say how many guns were shot in there  
6 exactly. You can just analyze based on what they send to  
7 you.

8 A Correct.

9 Q Okay. And you can't tell, I mean, in a case like  
10 this, if somebody pulls a gun and doesn't shoot it. I  
11 mean, you can't tell any of that kind of stuff, right?

12 A No, sir.

13 Q Okay. You analyzed two different guns. You compared  
14 them to the projectiles as well as the cartridge casings,  
15 right?

16 A Correct.

17 Q Now, I'd like to talk to you briefly about that. I  
18 think I pretty much understand where you went there. You  
19 could, in part, eliminate the 40 Smith -- Smith & Wesson  
20 in this case based on the -- as far as the casings go,  
21 based on it being a different caliber? Is that what you  
22 said?

23 A Yes, sir. And -- and the markings.

24 Q As well as the markings.

25 A Yes, sir.

1 Q I was just curious, can you -- can you chamber a 9mm  
2 into a 40?

3 A You could if the extractor, (indicates) which is this  
4 part -- part right here, is able to hold that cartridge.  
5 If not, then the cartridge is too big, and it would just  
6 fall down the barrel. But you would know right away if --  
7 if a cartridge had been fired in a firearm not chambered  
8 for it, especially if it's -- if it's much larger, like  
9 the 40 compared to the 9mm -- 'cause the cartridge case  
10 would be bulged because it would have to expand to fill up  
11 that chamber area, and you would know something was -- was  
12 amiss.

13 Q So based on that and the, I think you said  
14 "identifying characteristics," you excluded the 40 as  
15 being the one that fired these 9mm casings?

16 A Yes, sir.

17 Q And you also eliminated the Glock based not on  
18 caliber, but these identifying marks; is that correct?

19 A The identifying marks, class characteristics. Again,  
20 the Glock has a very specific looking firing pin  
21 impression, and those particular cartridge casings did not  
22 have that. They had a totally different firing pin  
23 impression.

24 Q As part of your analysis for each of these weapons,  
25 the -- the 40 Smith & Wesson and the 9mm Glock, did you --

CROSS-EXAMINATION BY MR. CHISHOLM - CHAD SMITH 370

1 could you tell me what the capacity is for each one of  
2 them and if they were at full capacity when you received  
3 them, if they were loaded below capacity, so to speak.  
4 Could you tell me what you received?

5 A The Smith & Wesson pistol, item -- or State's Exhibit  
6 56, has a 14 round capacity. So fully loaded, you could  
7 have one in the chamber and one -- or 14 rounds in a -- in  
8 a magazine. So you could have a total capacity of the  
9 firearm itself, 15 rounds; and I received 10 cartridge  
10 case -- or 10 unfired cartridges with the firearm.

11 Q So is that consistent with one of two scenarios: The  
12 gun being fired at some point and expelling bullets so you  
13 don't have a full magazine, or maybe it wasn't loaded to  
14 capacity to begin with. Is that consistent with one of  
15 those ---

16 A Correct.

17 Q --- scenarios?

18 And the 9mm, I -- I believe in your report it  
19 mentioned there as a "Pearce extension." Can you explain  
20 what that is for the jury?

21 A Pardon? Oh. That's when the magazine itself --  
22 that's the portion -- this is called a "floor plate,"  
23 which is the -- the bottom portion of the magazine. Some  
24 magazines have an extension so that you're able to -- when  
25 it's fully inserted, you can rest your finger on there,

1 and that's all that that part is.

2 Q So it doesn't affect capacity, it's more ergonomics?

3 A Yes, sir. This particular one is just ergonomics.

4 They make one that are -- you can extend the capacity of a  
5 magazine, but this one was not made for that.

6 Q Okay. And could you tell me the capacity for that  
7 gun and what you received with it as far as cartridges?

8 A The capacity has a 10-round magazine. Again, you  
9 could put one in the chamber and have the magazine fully  
10 loaded to make the whole system 11 rounds. Then I  
11 received 8 unfired cartridges with this particular  
12 firearm.

13 Q So it was below capacity as well.

14 A Correct.

15 Q Okay. And now, I'd like to talk to you about the --  
16 the projectiles. I know you compared those to these two  
17 guns as well, and can you tell me again how you eliminated  
18 the 40 caliber gun? Is it based on the rifling  
19 characteristics as well as the caliber?

20 A Based on caliber and -- and the rifling. And I  
21 didn't mention that. And based on the -- the rifling  
22 itself. This particular firearm has five lands and  
23 grooves, so --

24 THE COURT: Refer to the exhibit number for the  
25 record.

CROSS-EXAMINATION BY MR. CHISHOLM - CHAD SMITH 372

1 A Yes, sir. Item 56. It has five lands and grooves,  
2 whereas the fired bullets had six lands and grooves. So  
3 it'd be impossible for those particular bullets to be  
4 fired from this firearm.

5 Q Okay. And the 9mm, you talked about polygonal  
6 rifling comes with Glocks typically?

7 A Yes, sir.

8 Q I'm assuming, as part of your analysis, you looked to  
9 see if there was an aftermarket barrel in the gun?

10 A Oh, correct. This is the -- the barrel that was  
11 submitted with the firearm. It's a factory barrel with --  
12 with a serial number as well that matches the -- the other  
13 portions of the firearm.

14 Q Okay. So when it comes to projectiles, fragments,  
15 that kind of thing, you say it's most consistent with a  
16 9mm; is that correct?

17 A Yes, sir.

18 Q And by saying "most consistent," is that a term of  
19 art, so to speak, in that it's more consistent with that  
20 than other things, but others are possible? Like -- like  
21 a 9mm Makarov or a 380 or a 38, I mean --

22 A Right. We -- we try to -- we can exclude certain  
23 calibers typically based on weight if it falls in that  
24 same general category. Nine millimeters is under a  
25 umbrella called "38 caliber."



1           So there's a lot of different 38 calibers which you  
2 just mentioned. You can have 38 Special, 357 Magnum, 9mm  
3 Makarov, 380 Auto. All of that is just a general,  
4 nominal, 38 caliber. So we can try to exclude certain  
5 ones that -- that we know we don't typically see of a  
6 certain weight and that sort of thing.

7           But again, the "most consistent with" means just  
8 that. It's most consistent with, but it -- it could be  
9 something else.

10          Q     So we can't say with certainty that the projectiles  
11 themselves are 9mm Luger rounds; is that correct?

12          A     Right.

13          Q     Okay. And from your testing, you also can't say  
14 whether these projectiles were fired from the same gun or  
15 more than one gun; is that correct?

16          A     That's correct.

17          Q     Okay. And I'd like to ask you a few more questions -  
18 - I'm almost done here -- about the actual testing that  
19 you do.

20               MR. CHISHOLM: May I approach the witness, Your  
21 Honor? May I approach?

22               THE COURT: You may.

23          Q     I'm showing you what's been marked as Defense Exhibit  
24 -- or Defendant's Exhibit 1, and I believe this was  
25 provided in discovery. When you were talking earlier

1 about doing microscopic comparisons between cartridge  
2 casings and that type of thing, is ---

3 A Yes, sir.

4 Q --- this an example of what you were talking about?

5 A Yes, sir.

6 Q And you're looking for certain types of markings that  
7 are -- is it usually created by some kind of imperfection  
8 in the manufacturing process, like burrs and things like  
9 that?

10 A Most of the time that's what we're looking at. When  
11 the firearm's being manufactured, the tools that are used  
12 to manufacture those specific parts leave -- leave marks.  
13 They're microscopic. Basically, again, imperfections.

14 Typically, they're scratches. We call them  
15 "striations," but those are -- can be totally random in  
16 nature and individual to that specific part. And so when  
17 a firearm fires a cartridge, it's those parts that  
18 interact with the cartridge case or the bullet, and that's  
19 the markings that we're looking at.

20 Q So, like, in the -- the exhibit I provided to you,  
21 basically you're looking at the markings from one image to  
22 see if they go over into the next image? Is that a --  
23 really probably a simple way to explain it, but to see if  
24 a continuation, it can match like a puzzle?

25 A That's correct.

REDIRECT EXAMINATION BY MR. SORENSON - CHAD SMITH 375

1 Q Okay. And I was looking at this. I mean, this image  
2 I provided, it -- I mean, it looks like it matches up to  
3 me, but you say there's no matches in this case; is that  
4 correct?

5 A This specific image is actually from a test fire of  
6 State's Exhibit 56 with cartridge cases that were  
7 submitted under another case that they asked to be  
8 compared.

9 Q So there's a match between this gun and another case?

10 A Yes..

11 Q Okay. And I assume you don't know anything beyond  
12 that? Just ---

13 MR. SORENSON: Your Honor ---

14 THE COURT: Just a moment. Counsel approach.

15 (Bench conference.)

16 THE COURT: You passing the witness?

17 MR. CHISHOLM: Yes, Your Honor. I'm finished.

18 THE COURT: Redirect?

19 MR. SORENSON: Just briefly, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. SORENSON:

22 Q Agent Smith, Mr. Chisholm just showed you a  
23 photograph up there, but that has nothing to do with this  
24 case; is that correct?

25 A No, sir. Other than, again, they wanted a firearm in

1 one case compared to some cartridge cases in another case.

2 Q Nothing to do with this case.

3 A No, sir.

4 Q All right. That's all I have.

5 THE COURT: Re-cross?

6 MR. CHISHOLM: No, Your Honor.

7 THE COURT: As to this witness?

8 MR. SORENSON: I have no objection to him being  
9 excused, Your Honor.

10 THE COURT: Any objection?

11 MR. CHISHOLM: No, Your Honor.

12 THE COURT: Okay. Chad, hold on one second.

13 Counsel, approach.

14 (Bench conference.)

15 (The witness exits the stand.)

16 THE COURT: The witness is excused. Call your next  
17 witness.

18 MR. SPEARS: State calls Alexandria Pulliam.

19 THE COURT: Come forward, please, and be sworn by the  
20 Clerk.

21 ALEXANDRIA PULLIAM, having been  
22 first duly sworn, testifies as follows:

23 THE COURT: Ms. Pulliam, you've got a little bit of  
24 weak voice, and I need you to speak up like I'm doing  
25 right now and this courtroom microphone is gonna amplify

DIRECT EXAMINATION BY MR. SPEARS - ALEXANDRIA PULLIAM377

1 your voice.

2 THE WITNESS: Okay.

3 THE COURT: But I need everybody on the jury to be  
4 able to hear you, and the people out in the courtroom. So  
5 please speak up for me. Okay?

6 THE WITNESS: Yes, sir.

7 THE COURT: Good. State your full name. Spell both  
8 your first and last name for the Court Reporter.

9 THE WITNESS: Alexandria Cassidy Pulliam.  
10 Alexandria's spelled A-l-e-x-a-n-d-r-i-a. Pulliam's P-u-  
11 l-l-i-a-m.

12 THE COURT: Your witness, Counsel. Direct  
13 examination.

14 MR. SPEARS: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MR. SPEARS:

17 Q Ms. Pulliam, are you employed?

18 A Not right now. No.

19 Q Are you in school?

20 A Yes, I am.

21 Q Where are you -- what are you in school for?

22 A Nursing.

23 Q Now, where do you live? What area do you live in?

24 A Upstate South Carolina.

25 Q Have you ever lived in the Dorchester area?

DIRECT EXAMINATION BY MR. SPEARS - ALEXANDRIA PULLIAM 378

1 A No, sir.

2 Q All right.. Have you ever visited the Dorchester  
3 Area?

4 A Yes, sir.

5 Q Let -- let's go back to the early morning hours of  
6 June 5, 2016. Where were you then?

7 A IHOP.

8 Q Where -- which IHOP?

9 A The IHOP on Dorchester Road.

10 Q Okay. Were you with anybody?

11 A Yes.

12 Q About how many people, including you, was your group?  
13 How many people were sitting in there?

14 A Four.

15 Q Okay. I'm showing you what's been marked as State's  
16 Exhibit 57.

17 MR. SPEARS: May I approach the witness, Your Honor?

18 THE COURT: You may.

19 A This has been previously entered as the outline of  
20 the ---

21 THE COURT: Speak up, now. Put your head down for  
22 her and talk.

23 MR. SPEARS: Apologize, Your Honor.

24 Q If this was an outline of that IHOP, could you show  
25 the jury about where you were in there? This was the

DIRECT EXAMINATION BY MR. SPEARS - ALEXANDRIA PULLIAM 379

1 dining area, where it's labeled right there. Here's your  
2 entrance.

3 A (Indicates) I was right here.

4 Q Ms. Pulliam, I am showing you what's been marked as  
5 State's Exhibit 60.

6 MR. SPEARS: May I approach the witness, Your Honor?

7 THE COURT: You may.

8 Q Do you recognize this?

9 A Yes, sir.

10 Q And how do you recognize it?

11 A You showed it to me earlier.

12 Q Are there any identifying marks on that video -- on  
13 that disc?

14 A My signature.

15 Q Okay. Have you had the opportunity to review the  
16 contents of that disc?

17 A Yes.

18 Q All right. Now, are the contents of that disc a fair  
19 and accurate representation of the events that you saw in  
20 that IHOP on July 5, 2016?

21 A Yes, sir.

22 Q Now, Ms. Pulliam, what's in that video?

23 A Me and some of my friends. We were playing, having a  
24 good time, and the Defendant had came [sic] in and was  
25 sitting behind us.

DIRECT EXAMINATION BY MR. SPEARS - ALEXANDRIA PULLIAM 380

1 Q All right. Now --

2 MR. SPEARS: Your Honor, at this time I'd request  
3 State's evidence 80 be put into -- State's Exhibit 80 be  
4 put into evidence.

5 THE COURT: What number?

6 THE WITNESS: 60.

7 MR. SPEARS: 60. I apologize, Your Honor.

8 MR. CHISHOLM: I have no objection.

9 THE COURT: Ladies and gentlemen, State's Exhibit 60  
10 will be admitted into evidence in the trial of this case  
11 without objection.

12 (State's Exhibit No. 60, video CD, in evidence.)

13 Q Ms. Pulliam --

14 MR. SPEARS: May I approach the witness, Judge?

15 THE COURT: You may.

16 Q I am also showing you what's been listed as State's  
17 Exhibit 81. Do you recognize that?

18 A I do.

19 Q What is that?

20 A That is a still shot from the video.

21 Q And is that still shot a fair and accurate  
22 representation of what you saw that night?

23 A Yes.

24 MR. SPEARS: Judge, at this point in time, I request  
25 State's 81.



1 THE COURT: As -- you want to see it?

2 MR. CHISHOLM: I'm good, Your Honor. No objection.

3 THE COURT: No objection?

4 State's Exhibit No. 81 will be admitted into evidence  
5 in the trial of this case without objection.

6 You may publish.

7 MR. SPEARS: Thank you, Your Honor.

8 (State's Exhibit No. 81, photo, in evidence.)

9 Q Ms. Pulliam, who is that on the -- the right side of  
10 that still?

11 A That'd be me.

12 Q That's you?

13 A Uh-huh.

14 Q And the individual in the red T-shirt there, was he  
15 there that night?

16 A Yes.

17 Q Is he in the courtroom today?

18 A Yes.

19 Q Could you point him out for the jury, please?

20 A (Indicating) That's him right there.

21 MR. SPEARS: Court's indulgence, Your Honor.

22 THE COURT: Anything further?

23 Q Please answer any questions the Defense might have  
24 for you.

25 A Okay.

1 THE COURT: Cross-examination?

2 MR. CHISHOLM: I have no questions for this witness,  
3 Judge.

4 THE COURT: As to this witness, Solicitor?

5 MR. SPEARS: No objection that she may be excused,  
6 Your Honor.

7 THE COURT: Any objection?

8 MR. CHISHOLM: None.

9 THE COURT: Very well. Ms. Pulliam, you may step  
10 down from the witness stand. You're excused from the  
11 trial of this case. You may leave the courtroom.

12 THE WITNESS: Okay. Thank you.

13 (The witness exits the stand.)

14 THE COURT: Mr. Foreman and ladies and gentlemen of  
15 the jury, I told you I was gonna get you home early today,  
16 and I'm gonna keep my word to you. I'm gonna ask you, if  
17 you would please, to be back in your jury room or the jury  
18 assembly room --

19 (To the Clerk) You want them in the jury assembly  
20 room in the morning?

21 COURT CLERK: (No audible response.)

22 THE COURT: -- jury assembly room where you first  
23 went this morning, so we can make sure we get your lunch  
24 menu tomorrow. Please be in your jury assembly room prior  
25 to 9:30 in the morning. We'll try to start as soon as we

STATE OF SOUTH CAROLINA ) IN THE GENERAL SESSIONS COURT  
COUNTY OF DORCHESTER ) FIRST JUDICIAL CIRCUIT

2016-GS-18-01268

State of South Carolina, )  
) )  
Plaintiff, )  
) )  
v. ) Transcript of Record  
) )  
Keunte D. Cobbs, )  
) )  
Defendant. )  
) )  
\_\_\_\_\_ )

August 22 - 23, 2018  
St. George, South Carolina

B E F O R E:

The Honorable Perry Buckner, Judge and a jury

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

Don Sorenson, Esquire  
Mike Spears, Esquire  
Attorney for the State

Ash Chisholm, Esquire  
John Loy, Esquire  
Attorney for the Defendant

Hilda M. Jordan, CVR-M  
Circuit Court Reporter

State v Cobbs      Hadley Harkins - Direct      8/22/18

7

1      your service on behalf of Dorchester County.

2      Call your next witness, counsel.

3              MR. SPEARS: Thank you, Your Honor. The State  
4      calls Hadley Harkins.

5              THE COURT: Counsel approach  
6      (Off the record bench conference with counsel and the  
7      Court.)

8              THE COURT: Swear the witness.

9                              (WHEREUPON, Hadley Harkins was  
10      sworn to tell the truth.)

11              THE COURT: State your full name and spell your  
12      first and last name for my court reporter, please.

13              THE WITNESS: Hadley Harkins, H-A-D-L-E-Y,  
14      Harkins, H-A-R-K-I-N-S.

15              THE COURT: Very good, Ms. Harkins.

16      Your witness, counsel, direct examination.

17              MR. SPEARS: Thank you, Your Honor.

18                              HADLEY HARKINS - DIRECT EXAMINATION

19      BY MR. SPEARS:

20      Q      Ms. Harkins, how old are you?

21      A      Eighteen.

22      Q      Eighteen. And where do you work?

23      A      (Inaudible) a restaurant.

24      Q      How long have you been working there?

25      A      A year and a half.

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8

1      Q      Now, let's go back to about 2016. Where did you work  
2 then?

3      A      IHOP.

4      Q      Which IHOP?

5      A      Dorchester Road.

6      Q      What was your job there?

7      A      I was a server.

8      Q      And can you just explain some of the nature of what you  
9 did there as a server?

10      A      Uh-huh. (Affirmative response) I waited on people, took  
11 their orders, carried the food out.

12      Q      All right. So let's go over to June 5th, 2016. Do you  
13 remember, were you working that day?

14      A      Yes, I was.

15      Q      Can you just describe to the jury some of the events  
16 that occurred that night?

17      A      Yeah. We were extremely busy after -- the bar-rush and  
18 just big line up and we was extremely busy. I was seating a  
19 table and gunshots -- gunshots just started going off and I  
20 just ran and got under the table.

21      Q      Around what time was that?

22      A      About 2:00.

23      Q      Okay. Now, you say you were seating a table?

24      A      Uh-huh. (Affirmative response)

25      Q      Where in the restaurant --

1 THE COURT: You need to say yes or no.

2 THE WITNESS: Yes, sir. Sorry.

3 BY MR. SPEARS:

4 Q Where in the restaurant were you?

5 A Up at the front end.

6 Q Okay. And where did you go run and hide?

7 A Under a booth, at the fourth booth The fourth booth in  
8 the restaurant.

9 Q Did you see anyone who might have fired the shots?

10 A Not that I remember. I don't remember seeing his face  
11 or anything.

12 Q You say you're at the hostess stand. How crowded was  
13 the area?

14 A Very crowded. There was probably about (inaudible)  
15 people up there at that time.

16 Q Is there any reason that area was specifically crowded?

17 A I think they were just waiting to be seated for the  
18 bar.

19 Q All right. Ms. Harkins, I'm going to show you what's  
20 been marked as State's 59 in evidence.

21 A Okay.

22 (Off the record discussion)

23 BY MR. SPEARS:

24 Q Now, could you just explain to the jury what we're  
25 looking at here.

State v Cobbs      Hadley Harkins - Direct      8/22/18

10

1                    THE COURT: Hold on. Can y'all see?

2                    MR. CHISHOLM: Yes, sir.

3                    THE COURT: Proceed?

4                    A     That is me right there up in the front.

5                    BY MR. CHISHOLM:

6                    Q     You say up in the front. What area of the IHOP is it?

7                    A     That's -- I would say that's part of the lobby.

8                    Q     And could you tell us what time this was?

9                    A     (Witness pauses)

10                   Q     If you'll look at the top --

11                   A     2:14.

12                   Q     And the date?

13                   A     June 5th.

14                   Q     Now, is this before or after you heard the gunshots?

15                   A     That's definitely before.

16                   Q     All right. And we're going to -- now, Ms. Harkins --

17                   MR. SPEARS: Judge, may I approach the screen by  
18                   the witness?

19                   THE COURT: You may. Just stand to the side so  
20                   the jury can see.

21                   MR. SPEARS: Yes, Your Honor.

22                   BY MR. SPEARS:

23                   Q     You said that that was you standing right there; is  
24                   that correct?

25                   A     Yes, sir.

State v Cobbs      Hadley Harkins - Direct      8/22/18      11

1      Q      ( And you went off in this direction.      Where were you  
2      going?

3      A      To seat the table.      That's where we were headed.

4      Q      So what was over in this direction?

5      A      Booths.

6      Q      Booths?

7      A      Uh-huh. (Affirmative response)

8      Q      All right.      Now, this individual in the red shirt, who  
9      came up from this direction --

10      A      Uh-huh. (Affirmative response)

11      Q      -- what direction was he coming from?

12      A      Definitely the bathroom.

13      Q      Now, there was -- is there any other place he could  
14      have gone by coming from that area?

15      A      No. That's the bathroom doors

16      Q      Over in that area?

17      A      Uh-huh. (Affirmative response)

18      Q      Now, if someone was walking around towards that door,  
19      would they be visible on this screen?

20      A      I don't know.

21      Q      You don't know that.      That's fine.      But when you went  
22      in this direction, you were going where?

23      A      To the -- to seat a table.

24      Q      All right.

25                      MR. SPEARS:      Court's indulgence, Your Honor.



1            Please answer any questions the Defense might have for  
2     you.

3            THE COURT: Cross-examination.

4            MR. CHISHOLM: Thank you, Your Honor.

5            HADLEY HARKINS - CROSS-EXAMINATION

6     BY MR. CHISHOLM:

7     Q     It's Ms. Harkins, correct?

8     A     Yes, sir.

9     Q     I was watching the same video. I believe it was  
10    State's 59 if I'm not mistaken. And it looks like prior to  
11    everybody running out, you're standing at that station up  
12    there in the middle of the screen; is that correct?

13    A     Yes, sir.

14    Q     Where the X is. And your back was turned?

15    A     Uh-huh. (Affirmative response)

16           THE COURT: Yes or no.

17           THE WITNESS: Yes.

18     BY MR. CHISHOLM:

19     Q     And you're standing at the station with your back  
20     turned; is that correct?

21     A     Yes, sir.

22     Q     So were you paying attention to what was going on  
23     behind you at all?

24     A     No, sir.

25     Q     Did you see how many people were back there, what was

State v Cobbs Hadley Harkins - Cross

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13

1 going on?

2 A No.

3 Q Okay. Because directly off screen, just out of camera  
4 angle, there's kind of a hall that leads to the bathroom.  
5 You weren't paying attention back there?

6 A No, sir.

7 Q Thank you.

8 MR. CHISHOLM: I have no further questions.

9 THE COURT: Redirect?

10 MR. SPEARS: None, Your Honor.

11 THE COURT: As to this witness?

12 MR. SPEARS: May she please be excused?

13 THE COURT: Any objection counsel?

14 MR. CHISHOLM: None, Your Honor.

15 THE COURT: Ms. Harkins, you may step down from  
16 the witness stand. You're excused from the trial of this  
17 case. You may leave the courtroom.

18 THE WITNESS: Thank you.

19 THE COURT: Thank you.

20 Call your next witness.

21 MR. SPEARS: Thank you, Your Honor. The State  
22 calls Louis Colon.

23 THE COURT: Good morning to you.

24 THE WITNESS: Good morning.

25 THE COURT: I want you to adjust that microphone

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14

1 to your height. You don't have to get right on top of it.  
2 You've got to speak up like I'm doing. I want everybody on  
3 the jury to be able to hear you and the people out in the  
4 courtroom, the lawyers, everyone. So raise your voice a  
5 little bit and that microphone will amplify it. Please begin  
6 by stating your full name spelling your first and last name  
7 for my court reporter right down here.

8 THE WITNESS: My name is Louis R. Colon and it I  
9 L-O-U-I-S, my first name.

10 (WHEREUPON, Louis Colon was sworn  
11 to tell the truth)

12 THE COURT: And your last name?

13 THE WITNESS: C-O-L-O-N.

14 THE COURT: You've got a good voice.

15 Your witness, counsel, direct examination.

16 MR. SPEARS: Thank you, Your Honor.

17 LOUIS COLON - DIRECT EXAMINATION

18 BY MR. SPEARS:

19 Q Where are you from Mr. Colon?

20 A I reside in Summerville, South Carolina but I'm  
21 originally from Philadelphia.

22 Q How long have you lived in South Carolina?

23 A Since 2001, probably, 2001, 2002.

24 Q And what do you do for a living?

25 A I work for the department of defense.

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1      Q      How long have you worked there?

2      A      In my current position at the department of defense,  
3      about five years.

4      Q      Are you married?

5      A      No, sir.

6      Q      Mr. Colon, let's go back to June 5th, 2016. Where were  
7      you on that date?

8      A      Well, if that's the day of Friday, then I was at IHOP  
9      that evening.

10      Q      And around what time of day or morning were you there?

11      A      Approximately around 2:00 a.m.

12      Q      Were you there with anybody?

13      A      I was there with my girlfriend and my friends Laura and  
14      Josh.

15      Q      How many of y'all total?

16      A      Four. Four in our party.

17      Q      And just to give the jury some context, what brought  
18      you there?

19      A      Just been out with some friends for birthday drinks and  
20      then just decided to get something to eat before heading  
21      home.

22      Q      Can you just describe to the jury your experiences in  
23      that IHOP from the time you got there on?

24      A      Nothing seemed out of place really. Well, first coming  
25      in there was some bikers there on the front side sitting on

1 the bench. Walked in. It was pretty much just everybody,  
2 we just wanted to get something to eat. When I arrived I  
3 was like wanted go to the bathroom. I went to the bathroom.  
4 I'm not sure if somebody was in there before me or walked in  
5 with me or right after me, but pretty much went in the  
6 bathroom and walked right out and basically, as soon as I  
7 sat down, sounded like somebody was banging pots and pans.  
8 It was the gunshots and then pretty much everybody just  
9 ducks and cover.

10 Q What did you do after you heard the gunshots?

11 A Initially, everybody got down. The party I was with  
12 they weren't at the table. I ducked down, got my head under  
13 the table and I was trying to look out to make sure nobody  
14 was coming in, because I didn't know if was like an active  
15 shooter situation, just to make sure nobody was going to  
16 come in and shoot at us.

17 Q All right. Now, you say you went to the bathroom and  
18 you just briefly testified that you remember something about  
19 someone being there. Did you see any person there or -- I  
20 mean, just describe what happened in the bathroom?

21 A I went in. As I said, I'm not sure if it was a wait or  
22 anything, but I just kind of walked right in. I know  
23 somebody either walked in with me or right after me and  
24 that's pretty much it. Because I was -- at that time of  
25 night. I just wanted to get some food. It was a long day.

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17

1      Q      Mr. Colon, I'm going to show you what's been marked as  
2      State's 59. If you could move your attention to the screen?

3      Do you recognize anybody in this?

4      A      Yes. That is my party.

5      Q      All right. And who are you in this --

6      A      I am with the blue shirt.

7      Q      And you can tap on that screen and it'll -- let's see.  
8      All right. Now, right there, Mr. Colon, is that you?

9      A      Yeah.

10     Q      Where are you heading?

11     A      Right there, there's a bathroom.

12     Q      Okay. Now, Mr. Colon, you saw yourself go into the  
13     bathroom there. To your knowledge, have you exited yet?

14     A      I'm not sure if I had.

15     Q      And when you exited the bathroom, where did you go?

16     A      I went back to my table.

17     Q      Okay. And do you know where your table was in the  
18     IHOP?

19     A      As soon as you take a right into the IHOP, you have  
20     that very first row. I guess like it was the first booth on  
21     the right. I was on the opposite side maybe two to three  
22     booths down.

23                MR. SPEARS: Judge, may I approach the screen?

24                THE COURT: You may.

25                BY MR. SPEARS:

1 Q Now, Mr. Colon, we're going frame by frame on this.

2 A Okay.

3 Q Looking at the --

4 THE COURT: Use your monitor.

5 BY MR. SPEARS:

6 Q Looking at the bottom right of the screen, is that you  
7 there?

8 A Yes, sir.

9 Q And how can you tell?

10 A by my blue shirt.

11 Q Is that this area right here?

12 A Yes.

13 Q Now, where are you going and where are you coming from?

14 A I am coming from the bathroom and I am going back to my  
15 table.

16 Q Now, do you recognize this view, Mr. Colon?

17 A Yes.

18 Q Can you testify to that blue shirt right there?

19 A That is me.

20 Q All right. And you said that you were walking to your  
21 table; is that correct?

22 A Correct.

23 Q All right. And, again, just for clarification, how  
24 many people were in your group?

25 A Four.

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1      Q      And about how long after you sat down did you hear  
2      gunshots?

3      A      It almost seemed like it was almost instantaneously  
4      because as soon as I sat down basically -- we didn't even  
5      get a chance to order drinks, so we ordered drinks and we  
6      didn't get our drinks.

7                      MR. SPEARS: Court's indulgence, Your Honor.

8                      Please answer any questions the Defense might have for  
9      you.

10     A      Yes, sir.

11                      THE COURT: Cross-examination.

12                      MR. CHISHOLM: Thank you, Your Honor.

13                      LOUIS COLON - CROSS-EXAMINATION

14     BY MR. CHISHOLM:

15     Q      Good morning, Mr. Colon?

16     A      Good morning.

17     Q      And if I understood correctly, you are -- you'd been  
18      out for some birthday drinks and you and your party just  
19      went IHOP to get something to eat, kind of close the night  
20      out?

21     A      Yes, sir.

22     Q      And I think your testimony was when you got up to go to  
23      the bathroom, you don't recall if there was a wait, if  
24      there's people standing around or anything like that?

25     A      Correct.



1 Q Do you remember if there was any -- I'm not going to  
2 get graphic here. Were you checking stalls to see if  
3 anybody's in the bathroom or anything like that?

4 A No.

5 Q You pretty much go in, handle your business and leave?

6 A Correct.

7 Q On your way out, was it the same situation? You  
8 weren't taking note of who was in there and who wasn't in  
9 there, if there were people in the halls?

10 A No, sir. I know somebody came in before me or after me  
11 and that's pretty much the extent of it, so --

12 Q Do you know if they were still in there, if they left  
13 or were you not paying attention?

14 A No, I wasn't.

15 Q Thank you. I have no further questions.

16 THE COURT: Redirect?

17 MR. SPEARS: None, Your Honor.

18 THE COURT: As to the witness?

19 MR. SPEARS: May he be excused?

20 THE COURT: Any objection?

21 MR. CHISHOLM: No, Your Honor.

22 THE COURT: Mr. Colon, you may step down. You're  
23 excused from the trial of this case and you may leave the  
24 courtroom at this time.

25 THE WITNESS: Thank you, Your Honor.

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21

1 THE COURT: Thank you.

2 Call your next witness.

3 MR. SPEARS: Your Honor, the State calls Julie  
4 Creel.

5 THE COURT: Good morning, Ms. Creel.

6 THE WITNESS: Good morning.

7 THE COURT: That microphone's going to amplify  
8 your voice. I need you to speak up so the jury fully  
9 understands what you say, all right?

10 THE WITNESS: Yes, sir.

11 THE COURT: Just like you can hear me right now, I  
12 want you to speak up. You don't have to get right on top of  
13 it. Everybody wants to get real close to it. That'll blur  
14 you. Just speak up. It will amplify your voice. Would you  
15 begin by stating your full name, spelling your first and  
16 last name for the court reporter. Hilda is right here below  
17 you.

18 THE WITNESS: Julie Creel, J-U-L-I-E C-R-E-E-L.

19 (WHEREUPON, Julie Creel was sworn  
20 to tell the truth.)

21 THE COURT: Your witness, counsel, direct  
22 examination.

23 MR. SORENSON: Thank you, Your Honor.

24 JULIE CREEL - DIRECT EXAMINATION

25 BY MR. SPEARS:

1 Q Ms. Creel, where do you live?

2 A Ridgeville, South Carolina.

3 Q About how long have you lived there?

4 A I've lived in Ridgeville for the past three years but  
5 I've lived in the Summerville area my entire life.

6 Q Are you employed?

7 A No, sir.

8 Q Were you employed back in 2016?

9 A Yes, sir.

10 Q Where did you work?

11 A IHOP on Dorchester Road.

12 Q About how long did you work at that IHOP?

13 A Well, I'd say about four and a half, five years.

14 Q Now, were you working there on June 5th of 2016?

15 A Yes, sir, I was.

16 Q And can you tell the jury your memory of that night?

17 A I had came in late. I was supposed to be there at  
18 10:00. I didn't get there until right about 1:50. It was a  
19 normal night, and customers were starting to come in from  
20 the bar rush. Probably around 2:15, 2:20-ish I heard  
21 gunshots and I ran to the back.

22 Q That night did you have a specific section that you  
23 were working?

24 A Yes, sir.

25 Q And can you just explain to the jury what that means?

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23

1 A Your section is -- there's certain tables that you are  
2 allowed to wait on. The only way you're allowed to have a  
3 table is if it is in your section. If somebody else request  
4 you, they have to be in your section to take them.

5 Q Now, Ms. Creel, I'm going to show you what's been  
6 marked as State's Exhibit 57.

7 MR. SPEARS: May I go over there, Judge?

8 THE COURT: You may.

9 BY MR. SPEARS:

10 Q This is a layout of the IHOP, could you describe for  
11 the jury where your section was?

12 A I got to get a bearing of the store.

13 THE COURT: You got to speak up, ma'am, away from  
14 that microphone.

15 THE WITNESS: I'm just trying to get a visual --

16 THE COURT: I understand. Take your time.

17 THE WITNESS: -- of the --

18 THE COURT: Step over to it counsel so she can  
19 point and they can see.

20 A There's the front door. The front door's over here.  
21 And my section would have been that part of the dining room  
22 back here.

23 BY MR. SPEARS:

24 Q Now, Ms. Creel, I'm going to be showing you what's been  
25 marked as State's 59. If you'd turn your attention to the

1 screen, please.

2 A (Witness complies)

3 Q Can you describe to the jury what we're seeing here?

4 A This is the back part of our main dining room. My  
5 station would be these tables along this side of the wall.  
6 The one table for the back by itself and the booth behind  
7 it. And then the booth over here on this side and the booth  
8 behind it.

9 Q Now, can you see the timestamp on that?

10 A Us that the 2:08:21?

11 Q Yes, ma'am.

12 A Okay.

13 Q Looking at this section, over on the right-hand side,  
14 do you see an individual in a red shirt?

15 A Yes, sir.

16 Q Do you recognize that individual?

17 A Yes, sir, I do.

18 Q Now, how do you recognize that person?

19 A As a regular coming into the IHOP every weekend just  
20 about.

21 Q Did you serve that individual that night?

22 A I had made his drink but I had not gotten his order  
23 yet, no.

24 Q When you say you made his drink, do you recall what he  
25 had to drink?

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25

1 A He always gets a grapefruit juice to go cup. And he  
2 never eats. He always takes his meal home with him.

3 Q And you say you'd served him before. About how many  
4 times?

5 A At least forty or fifty times before.

6 Q Now, when would he normally come into the restaurant?

7 A After the bars would let out. He'd usually get there  
8 anywhere between 2:10, maybe 2:30-ish, somewhere in that  
9 time frame.

10 Q I'm going to be showing you what's been marked as  
11 State's 81.

12 Do you recognize that individual in the red shirt?

13 A Yes, sir. I do.

14 Q And is that the same individual in the security camera  
15 footage?

16 A Yes, sir. It is.

17 Q Now, Ms. Creel, if this person was a regular, did you  
18 know his name?

19 A I only knew him by Keith. I don't know if somebody was  
20 calling him Keith, if there was a conversation going on and  
21 I heard the name and I assumed that that was his name, so  
22 that's what I always called him was Keith.

23 Q And did he ever correct you?

24 A No. I'm not sure if he ever actually heard me call him  
25 Keith or not. Normally, when I would speak to him, I'd go

1 hi, what you getting today?

2 Q Now, Ms. Creel, do you recognize -- well, one moment.

3 A Yes, sir.

4 Q Do you recognize the images here, the locations in the

5 ---

6 A Yes, sir.

7 Q Ms. Creel, on the bottom right here, who are these  
8 individuals here in the bottom right image?

9 THE COURT: You can point --

10 MR. SPEARS: You can touch that screen.

11 THE COURT: Look on your screen, you can touch it  
12 and an arrow will come up.

13 THE WITNESS: Oh.

14 A We're talking about this picture here?

15 BY MR. SPEARS:

16 Q Yes, ma'am.

17 A Okay. This is me right here. This -- this is the  
18 Hell's Angels when they were leaving or fixing to leave, on  
19 their way out.

20 Q Okay. Now, looking at the bottom left screen, the one  
21 titled front-door area, is that that same individual?

22 A To the best of my knowledge, yes, it is.

23 Q Did you have anybody else in your section wearing a red  
24 tee shirt?

25 A No, sir.

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27

1 Q Now, at the top right screen there, can you get a  
2 better look?

3 A Yes, sir.

4 Q Are you able to determine who that was?

5 A Yes, sir.

6 Q And who was that?

7 A That is the gentleman that I know as Keith.

8 Q All right.

9 MR. SPEARS: Court's indulgence, Your Honor.

10 BY MR. SPEARS:

11 Q Ms. Creel, is the individual that you know as Keith  
12 present in the courtroom today?

13 A Yes, sir, he is.

14 Q Could you point him out for the jury, please?

15 A Sitting right over there.

16 MR. SPEARS: Court's indulgence, Judge.

17 Please answer any questions the Defense might have for  
18 you?

19 A Yes, sir.

20 THE COURT: Cross-examination.

21 MR. CHISHOLM: Thank you, Your Honor.

22 JULIE CREEL - CROSS-EXAMINATION

23 BY MR. CHISHOLM:

24 Q Good morning, Ms. Creel.

25 A Good morning.



1 Q How long you worked at the IHOP?

2 A I worked there for approximately four and a half to  
3 five years.

4 Q You see a lot of -- you work the -- I guess this late  
5 shift pretty often?

6 A Yes, sir. I did all of the shifts. I was putting in  
7 anywhere between seventy to eighty hours a week.

8 Q That's a lot?

9 A Not for me.

10 Q Do you have a good bit of, I guess, regular customers  
11 that come through --

12 A Yes, sir.

13 Q -- late night?

14 A Yes, sir.

15 Q Okay. So there's nothing unusual about that. You said  
16 you'd seen Mr. Cobbs or the person you identified as Mr.  
17 Cobbs here before; he was a regular customer?

18 A Yes, sir.

19 Q And I was trying to figure out -- I didn't quite hear  
20 what you were saying about you knew him as Keith. And you  
21 said something along the lines of you don't know if he told  
22 you that or if somebody -- you thought you heard somebody  
23 might have called him Keith or something? )

24 A I just heard -- conversation and I heard the name Keith  
25 being said. In my mind I put two and two together that was

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29

1 his name was Keith and that's just what I always called him.

2 Q So you just kind of figured that that was his name?

3 A Yeah, that was just me using an assumption.

4 Q It was based on what you overheard?

5 A Yes, sir.

6 Q And you said you never actually called him Keith?

7 A I don't think I actually called him Keith to his face.  
8 I think it was only just in reference when speaking of him  
9 afterwards --

10 Q Sure.

11 A -- or, you know, with friends of his, just speaking in  
12 reference and they knew who I was referring to, but I don't  
13 think I've ever verbally said it to him, himself.

14 Q Right. So if he didn't go by Keith, he wouldn't have  
15 had a chance to correct you?

16 A Right. He wouldn't have had a chance to correct me.

17 Q I understand?

18 A That's just what I've always called him. In my mind,  
19 forever he will always be Keith to me.

20 Q I understand. I understand. And can you describe, I  
21 mean, what was going on in your tables that night? Was  
22 everything pretty normal late night?

23 A Yes, sir. Just a regular, normal night. Nothing  
24 unusual.

25 Q Mr. Cobbs, he comes in there quite a bit. You guys

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Julie Creel - Cross

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30

1 have any kind of rapport? I mean, you joke around with each  
2 other?

3 A He's a wonderful guy. When I found out that they were  
4 saying that he was the one involved, I was completely  
5 dumbfounded. I had waited on this gentleman for like two  
6 years before, because I've never seen any kind of violence  
7 out of him or aggression. The biggest problem I've ever had  
8 was his steak just came out medium rare one day and he was  
9 like, oh, I can't take blood, biggest mistake that we had.

10 Q Other than that, you got -- sounds like you got along  
11 pretty well?

12 A Yes, sir. He's a great tipper. He likes to talk to  
13 everybody. He comes in. He'd talk for about fifteen,  
14 twenty minutes before he even got his first drink.

15 Q Cuts up, jokes around, that kind of thing?

16 A Yes, sir.

17 Q And was this night any different or was he his usual  
18 self?

19 A He was his usual self.

20 Q Okay. And that was for the entirety of your service  
21 with him that night?

22 A Yes, sir.

23 Q And you didn't actually see anything, what happened at  
24 the shooting?

25 A No, sir.

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1 Q And I'm sure they just went through this but I was  
2 taking notes. Where were you at the time the shots actually  
3 rang out?

4 A On this screen here, if you go a little farther over,  
5 there is an entrance to the --

6 THE COURT: Identify where you're pointing. When  
7 you say this scene here --

8 THE WITNESS: Oh.

9 THE COURT: Which panel, the bottom right?

10 THE WITNESS: The bottom right. Yes, sir.

11 A Over, a little farther over is the entrance for the  
12 dish pit and the kitchen area. And I was right in front of  
13 that door.

14 BY MR. CHISHOLM:

15 Q Okay. So at the time of the shooting or just before,  
16 I'm assuming you weren't paying much attention to the  
17 bathroom area and all of that?

18 A No, sir.

19 Q You were working.

20 MR. CHISHOLM: May we have one moment.

21 BY MR. CHISHOLM:

22 Q I do have one question. In your statement -- I don't  
23 know if you remember, it's been a couple years at this  
24 point. Do you remember putting in your statement something  
25 about a customer getting up that was angry?

1 A Right before, maybe around five -- I'm bad at  
2 estimating times -- but maybe about five or ten minutes  
3 before a lady had came over to the table where the Hell's  
4 Angels were and was telling one of the gentlemen that  
5 somebody had touched his bike.

6 Q All right.

7 A He got up. He went out and he came back in.

8 Q Okay.

9 A He was actually the big man that I high-fived in the  
10 video.

11 Q I understand. I saw that in your statement and I just  
12 wanted to clarify it. You weren't talking about Mr. Cobbs  
13 or anybody in his group?

14 A No, sir. No, sir. I don't know who touched the bike.  
15 I just know that a female came in, told one of the gentlemen  
16 that somebody touched his bike. He went out for a couple of  
17 minutes and came back in.

18 Q Okay. The guy in the white shirt, as the Solicitor has  
19 referred to him, that was eating with Mr. Cobbs, do you know  
20 him? Is he a regular?

21 A I don't remember who he was. He doesn't stand out in  
22 my mind so I don't think that he was a regular. He could  
23 have been in there and I just don't recall it.

24 Q Okay.

25 A There's a line -- you can kind of tell when that bar

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1 shuts down.

2 Q I understand. Okay. Thank you, Ms. Creel.

3 A Yes, sir.

4 Q We have no more questions.

5 THE COURT: Redirect?

6 MR. SPEARS: Yes, Your Honor, briefly.

7 THE COURT: Your witness.

8 MR. SPEARS: Yes, Your Honor.

9 JULIE CREEL - REDIRECT EXAMINATION

10 BY MR. SORENSON:

11 Q Ms. Creel, you say that you had referred to this  
12 individual as Keith a number of times. Had anyone ever  
13 corrected you about that?

14 A No, sir.

15 Q All right. And you say that he had come in multiple  
16 times. Did you know him outside the restaurant at all?

17 A No, sir.

18 Q Okay.

19 MR. SPEARS: Court's indulgence, Judge?

20 BY MR. SPEARS:

21 Q Now, when he typically comes in, is he usually by  
22 himself or does he have people with him?

23 A Sometimes he's by himself, sometimes he'll have another  
24 gentleman with him. Sometimes he'd have a female with him.

25 Q Had this individual in the white shirt ever been in

1 before?

2 A I cannot say. I don't remember his face. I don't  
3 remember if he'd been in there before. I don't remember who  
4 he came in with. I just remember that somebody sat down at  
5 the table with him.

6 Q And about how long was he at the table with this  
7 individual?

8 A They were at the table not very long together. Like I  
9 said, I'm bad about estimating times. I would say no more  
10 than five, ten minutes they were at the table.

11 Q Now, had they ordered anything at that point in time?

12 A No, sir. I know when he comes in, I automatically know  
13 to go ahead straight away and get the grapefruit juice for  
14 him. And then when he's ready to order, he lets me know  
15 what he's ordering. I had not spoken with the other  
16 gentleman at all.

17 Q Now, does he typically come in and not order anything?

18 A No, sir. He always orders. Every time he comes, he  
19 always gets something to eat.

20 Q And when did he leave your table?

21 A He'd been in the building maybe about ten, fifteen  
22 minutes. He sat down. I dropped his drink off at the table  
23 and I walked away. And when I came back out, he was gone.

24 MR. SPEARS: Court's indulgence, Judge. No more  
25 questions, Your Honor.

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1 THE COURT: Recross limited to redirect?

2 MR. CHISHOLM: None, Your Honor.

3 THE COURT: As to this witness, Solicitor?

4 MR. SPEARS: May she be excused, Your Honor.

5 THE COURT: Any objection?

6 MR. CHISHOLM: None, Your Honor.

7 THE COURT: Ms. Creel, you may step down from the  
8 witness stand. You're excused from the trial of this case  
9 and you may leave the courtroom.

10 THE WITNESS: Thank you.

11 THE COURT: Thank you.

12 Call your next witness?

13 MR. SPEARS: Your Honor, the State calls Rachandra  
14 Sweed.

15 MR. LOY: Your Honor, may we approach?

16 THE COURT: Yes, approach.

17 (Off the record bench conference with counsel and the  
18 Court.)

19 THE COURT: Just sit tight with me, ladies and  
20 gentlemen. I'll get to you.

21 (Off the record bench conference with counsel and the  
22 Court.)

23 THE COURT: Step back. Let's move along. Bring  
24 the witness for me, please and have her sworn.

25 (WHEREUPON, Rashandra Sweed is



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1 sworn to tell the truth)

2 THE COURT: Ms. Sweet, you have a meek voice so  
3 I'm going to ask you to speak up like I'm doing. That  
4 microphone will amplify, but I want you to speak up. You  
5 see my two ladies down there on the end of the row? I want  
6 them to be able to hear every word in the jury that you're  
7 saying. Do you understand?

8 THE WITNESS: Yes, sir.

9 THE COURT: All right. Now, I want you to begin  
10 by stating your first and last name and spelling both your  
11 first and your last name for my court reporter down there.

12 THE WITNESS: First name Rachandra, R-A-C-H-A-N-D-  
13 R-A-; last name, Sweed, S-W-E-E-D.

14 THE COURT: All right. Now keep speaking up like  
15 that. And you don't have to get right on top of that  
16 microphone, but I want to make sure they understand what  
17 you're saying.

18 Your witness, counsel. Direct examination.

19 MR. SPEARS: Thank you, Your Honor.

20 RACHANDRA SWEED - DIRECT EXAMINATION

21 BY MR. SPEARS:

22 Q Ms. Sweed, where are you from?

23 A Tampa, Florida.

24 Q Speak into the microphone just a little more.

25 A Tampa, Florida.

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1 Q And how long have you lived there?

2 A Over eighteen years.

3 Q Now, Ms. Sweed, let's go back to June 5th, 2016. Do  
4 you recall where you were then?

5 A Yes.

6 Q All right. Where?

7 A I was in Dorchester County, South Carolina.

8 Q Now what you brought you up to South Carolina?

9 A We was visiting with my friends.

10 Q Had you ever been in the area before?

11 A No, sir.

12 Q Okay. What did you and your friends do when you came  
13 to visit?

14 A Went to a couple of spots. One of them was the  
15 nightclub.

16 Q And so on June 5th, 2016, can you just describe to the  
17 jury the night, where y'all went?

18 A We went to a nightclub. I can't remember the name --  
19 but it was -- it was a small little nightclub.

20 Q And what happened that night?

21 A I was standing outside the nightclub and I met a  
22 gentleman by the name of Keith, which that's what he told me  
23 his name was, Keith.

24 Q And what were you doing standing outside of the  
25 nightclub?

1 A I was actually smoking a cigarette and I was upset  
2 about my shoes that I was wearing.

3 Q Why were you upset about your shoes?

4 A Because they were slippery.

5 Q Now, you say you met this individual. Where was he?

6 A He was inside a car, inside his car.

7 Q And where was his car?

8 A Parked in front of the door at the nightclub.

9 Q How did y'all start a conversation?

10 A He called me over to the car.

11 Q Okay. And what did y'all talk about?

12 A He asked me where I was from, what I was doing here.  
13 Did I want to go out to eat with them and so forth.

14 Q Where did he ask you to go?

15 A IHOP.

16 Q All right. And is that individual in the courtroom  
17 today?

18 A He is.

19 Q Can you point him out for the jury, please?

20 A He's sitting right over there.

21 Q All right. Now, did you see him again that night?

22 A No.

23 Q Did you see him again after that night?

24 A Yes.

25 Q When was that?

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1 A The next night, which would be Sunday night.

2 Q And how did y'all get in touch again?

3 A I called him.

4 Q Okay. And did y'all meet?

5 A Yes.

6 Q Where?

7 A At the same nightclub.

8 Q Just describe to the jury what went on that night?

9 What did y'all do at the club?

10 A I got in the car with him and we went to another club.

11 We couldn't stay at that club because he told me he was

12 headed to another club.

13 Q And what was that club's name again?

14 A (Inaudible)

15 Q All right. And do you remember much about that club?

16 A No, not really.

17 Q How long were you there?

18 A Probably ten minutes. Ten minutes, like.

19 Q And what did y'all do while you were there?

20 A We had a couple of drinks and we talked a little bit.

21 He talked -- he talked to the -- I think it was the D.J. or

22 something, but we just talk a little bit, had a couple of

23 drinks and left.

24 Q Where did you go?

25 A We went back to his house.

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1      Q      All right. Do you recall about how far away his house  
2      was? About how long it took to get there?

3      A      I'll say ten minutes.

4      Q      Now, what happened when you got to the house?

5      A      Upon getting out of the car, he handed me the keys and  
6      told me to go unlock the door. He was going to the trunk of  
7      the car --

8                      MR. LOY: Your Honor, I have an objection. We  
9      need to approach.

10                     THE COURT: Counsel, approach.

11      (Off the record bench conference with counsel and the  
12      Court.)

13                     THE COURT: Mr. Foreman, and ladies and gentlemen  
14      of the jury, a matter of law has come up and I need to take  
15      it up. I'm going to ask you if you'd please step to your  
16      jury room and I'll be right back with you in just a couple  
17      of moments. Please do not discuss the case.

18                                      (Jury out at 10:42 a.m.)

19                     THE COURT: Deputy, let me know when the door is  
20      shut?

21                     COURT SECURITY: Yes, sir. We're ready, Your  
22      Honor.

23                     THE COURT: All right. Let the record reflect  
24      that counsel for Defendant, Mr. Loy, approached the bench  
25      concerning what he anticipated to be a response from this

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1 This is direct examination. The witness is under oath.

2 MR. SPEARS: Thank you, Your Honor.

3 BY MR. SPEARS:

4 Q Ms. Sweed, when you were at his house, did y'all talk?

5 A Yes, we did.

6 Q Can you explain to the jury your conversation while you  
7 were there?

8 A I had mentioned that I was glad that I didn't go to the  
9 IHOP with him because of the shooting. And then he replied  
10 that it was him that did it.

11 Q Did he tell you why he did it?

12 A He said some -- a guy owed him a lot, around twenty  
13 thousand dollars.

14 Q Okay. Now, after y'all were in the house and having  
15 that conversation, can you explain to the jury just kind of  
16 how the night progressed there. What did y'all do when you  
17 were in the house?

18 A Just talked, watched TV. Pretty much, yeah. He dozed  
19 off pretty quickly though. After a while I decided to wake  
20 him up for I was ready to go. And when I woke him up, he  
21 yelled. He yelled at me. He cursed me out and told me he'd  
22 hurt me and kill me if I did that again.

23 MR. LOY: Your Honor, I have an objection as to  
24 relevance. It's prejudicial.

25 THE COURT: Overruled.

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1 BY MR. SPEARS:

2 Q When did you leave the house?

3 A It was about 6:00 or 7:00 in the morning, I believe.

4 Q And how did you leave?

5 A He took me.

6 Q Okay. And where did he take you?

7 A He took me to my friend house.

8 Q Okay. After this evening, that evening or that morning  
9 at that point, did you ever contact law enforcement?

10 A I did.

11 Q How did you do that?

12 A Through my friends phone.

13 Q Where were you when you did that?

14 A I was at the apartment.

15 Q All right. Now, did you ever meet with law  
16 enforcement?

17 A Yes, I did.

18 Q Where did you do that?

19 A At my home in Tampa, Florida.

20 Q And what jurisdiction of law enforcement did you meet  
21 with? Where was that law enforcement from?

22 A South Carolina.

23 Q Okay. Did you speak with them about anything?

24 A I did.

25 Q Okay. Now --

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1 MR. SPEARS: Your Honor, may I beg the Court's  
2 indulgence for a moment.

3 Your Honor, may I approach the witness?

4 THE COURT: You may.

5 BY MR. SPEARS:

6 Q Ms. Sweed, I'm going to be showing you what's been  
7 marked as State's Exhibit 2 for identification. Can you  
8 please tell me if you recognize this?

9 A Yes.

10 Q Can you look through the document?

11 A (Witness complies)

12 Q When you met law enforcement, did they provide you with  
13 a lineup?

14 A Yes.

15 Q Were you able to search through the entire lineup?

16 A I was.

17 Q Were you able to identify a person for which you're  
18 speaking about law enforcement with in that lineup?

19 A Yes.

20 Q Is State's Exhibit 2 a fair and accurate representation  
21 of that lineup that you were given?

22 A Yes.

23 Q Did you make any markings on that lineup when you had  
24 made your decision?

25 A Yes.



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1 Q What did you do?

2 A I wrote his name in the top right corner and I wrote a  
3 statement.

4 MR. SORENSON: Your Honor, at the this time the  
5 State would request State's Exhibit 2 to be entered into  
6 evidence.

7 THE COURT: Subject to my earlier ruling, is there  
8 anything additional? Other than what I've already rule on?

9 MR. LOY: No, Your Honor.

10 THE COURT: State's Exhibit No. 2 is admitted into  
11 evidence in the trial of this case over objection.

12 (State's Exhibit No. 2, photo  
13 lineup, was marked and entered)

14 THE COURT: Proceed.

15 MR. SPEARS: May I approach the witness, Judge?

16 THE COURT: You may.

17 BY MR. SPEARS:

18 Q Now, Ms. Sweed, I'm going to place this on the  
19 overhead.

20 THE COURT: If you look on your screen to the  
21 right and if you touch the screen you can put a marker up  
22 there so the jury can see what you're referring to if you  
23 need to touch it.

24 BY MR. SPEARS:

25 Q Now, Ms. Sweed, when you were presented with this

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1 lineup was it altogether -- was it stapled together or was  
2 it just open papers that you could search through?

3 A It was open papers.

4 Q Okay. Now, on this exhibit, is that your handwriting  
5 at the top right corner?

6 A Yes.

7 Q Is this the individual that you picked out of that  
8 lineup?

9 A Yes.

10 MR. SPEARS: The Court's indulgence, Your Honor.

11 BY MR. SPEARS:

12 Q Now, when you picked this individual out, you said you  
13 wrote on the back?

14 A Yes.

15 Q Is this your handwriting Ms. Sweed?

16 A Yes, it is.

17 Q Is this the statement that you wrote on there?

18 A Yes.

19 Q Can you see the statement on that?

20 A Yes.

21 Q What is that?

22 A January 10th, '16, 2016.

23 Q And is that your signature by it?

24 A Yes.

25 Q When you were picking out the individual from this

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1 lineup, did the detectives suggest or insinuate who might  
2 have been in that lineup?

3 A No.

4 Q Did they insinuate or did you have to look through the  
5 full document was --

6 MR. LOY: Objection, Your Honor. It's leading.

7 THE COURT: Sustained.

8 MR. SPEARS: All right, Judge.

9 THE COURT: Counsel, no leading. No testifying.  
10 Direct examination. The objection is sustained.

11 MR. SPEARS: Yes, Your Honor.

12 BY MR. SPEARS:

13 Q Ms. Sweed, moving on from the lineup, but -- last  
14 question about the lineup. Is that the individual that you  
15 met?

16 A Yes.

17 Q Okay. Now, Ms. Sweed, are you currently incarcerated?

18 A Yes, I am.

19 Q And where are you incarcerated?

20 A (Inaudible) County Detention Center (inaudible) Texas.

21 Q Now, what was the date of the alleged charge against  
22 you?

23 A January 13, 2017.

24 Q Now, after these events to which you're testifying?

25 A Yes.

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1 Q Were you promised anything for your testimony here  
2 today?

3 A No.

4 Q Please answer any questions the Defense might have for  
5 you.

6 RACHANDRA SWEED - CROSS-EXAMINATION

7 BY MR. LOY:

8 Q Good morning, Ms. Sweed.

9 A Good morning.

10 Q We talked the other morning. You recollect that,  
11 right?

12 A Yes, sir.

13 Q And Ms. Sweed the other morning you told me y'all had  
14 traveled up here from Florida, you and your friends; is that  
15 right?

16 A Yes, sir.

17 Q Who did you come with?

18 A My friend LaShandra.

19 Q I'm sorry. I'm having a hard time hearing you?

20 A One of my friend girls, LaShandra Smith.

21 Q LaShandra Smith. And is she from Florida also or was  
22 she a friend up here that you came to see?

23 A She's from Florida.

24 Q Did anyone else come with you or just the two of y'all?

25 A Just the two of us.

1 Q And when did you come?

2 A When did we come?

3 Q Yeah?

4 A On the 4th.

5 Q You came on the 4th?

6 A Yes, sir.

7 Q And you stated that was to visit with friends or family  
8 up here?

9 A Yes.

10 Q And was that a friend of yours or a friend of  
11 LaShandra's or both?

12 A A friend of LaShandra's.

13 Q And who is that person?

14 A I can't remember her name.

15 Q Do you remember where you stayed?

16 A No, I don't.

17 Q And did you have a -- did you stay in a hotel or  
18 anything on the way--

19 A We stayed in her house.

20 Q Okay. On the way up. It's a long drive from Tampa.  
21 Did y'all stop or stay anywhere along the way?

22 A No.

23 Q And I don't mean to get too deeply into your finances,  
24 but do you have a credit card or debit card or banking card  
25 like that?

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1 A Yes.

2 Q Did you use that document or that card while you were  
3 up here in South Carolina?

4 A Yes, I did.

5 Q And you came and you stayed with -- you said you don't  
6 remember the friends name?

7 A No, I don't remember her name.

8 Q Or where? But you stayed in her home. Were there  
9 other people in her home also?

10 A Yes.

11 Q And how many people were staying there do you recall?

12 A Three -- five.

13 Q Five? And your friend, LaShandra, y'all -- she drove  
14 or y'all took some sort of public transportation?

15 A She drove.

16 Q And what kind of car does she have?

17 A A Dodge.

18 Q And you'll recall I asked you the other day if you've  
19 ever been treated for any sort of psychological, psychiatric  
20 illness and you said that you had; is that right?

21 A Yes, sir.

22 Q Okay. You have a long-standing, a long-term diagnosis  
23 of a bipolar disorder; is that right?

24 A Yes, sir.

25 Q Also, you deal with a depressive disorder also, do you

1 not?

2 A Yes, I do.

3 Q And I don't mean to put you on the spot we've just got  
4 to go through the whole deal. But those disorders are  
5 helped or you are treated for those. You get treatment,  
6 right?

7 A Yes, I do.

8 Q And that treatment includes medication; is that right?

9 A Yes, it is.

10 Q Do you recall what sort of medications are prescribed  
11 to help you with those disadvantages?

12 A Yes.

13 Q And what are they?

14 A Depakote, Abilify and Trazadone.

15 Q Okay. And Depakote, do you know what that's for or is  
16 it just something that helps you?

17 A It's for seizures and it's for depression.

18 Q And Trazadone?

19 A It's an anti-depressant as well.

20 Q And Abilify is for your bipolar disorder?

21 A Uh-huh. (Affirmative response)

22 THE COURT: Say yes or no.

23 THE WITNESS: Yes.

24 BY MR. LOY:

25 Q And you've been diagnosed long-term so you've have

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1 these prescriptions for a long time; is that right?

2 A Yes.

3 Q And they're helpful to you. They help you when you  
4 take them, right?

5 A Yes.

6 Q At the time that you came to South Carolina you were  
7 just -- I'll say off meds. You were not taking medication;  
8 is that --

9 A I was not.

10 Q And do you recall how long you had been off meds?

11 A Maybe -- four or five months maybe.

12 Q Four or five months. And you're medicated today. You  
13 have those medications available to you even up here?

14 A Yes.

15 Q Now, you'd gotten here and you'd been here how many  
16 days before you went to the club that you don't remember --  
17 the first club that you went to?

18 A We got here on a 4th and we went out on the 5th.

19 Q Okay. So you got here on the 4th and on the 5th you  
20 went out. Do you recall what you did during the day on the  
21 5th?

22 A During that day?

23 Q Yes?

24 A I went and got my nails done.

25 Q Excuse me?



1 A I went and got my nails done.

2 Q And then you went to the club some time that evening.

3 Is that the first club y'all went to?

4 A Yes, sir.

5 Q And what club did you go to?

6 A I don't --

7 Q I'm sorry. I don't mean to cut you off. I recall you  
8 said you didn't --

9 THE COURT: Let her finish her answer.

10 A I don't remember the name of the name of the club.

11 BY MR. LOY:

12 Q I remember you said that earlier. Do you recall where  
13 it was?

14 A No, I don't.

15 Q What road it was on?

16 A I don't.

17 Q And who all went to the club with you that night?

18 A Me and my good friends.

19 Q Well, LaShandra was your friend?

20 A Uh-huh. (Affirmative response)

21 Q And y'all were staying with --

22 THE COURT: You have to say yes or no. Don't say  
23 uh-huh.

24 THE WITNESS: Yes.

25 BY MR. LOY:

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1      Q      Y'all were staying with LaShandra's friend?

2      A      Yes.

3      Q      Okay. Because I asked you that and you said you didn't  
4      know her. Who were the other two friends you had?

5      A      Her -- the friend's boyfriend and another friend of  
6      LaShandra. They met inside the club though.

7      Q      Okay. So who went to the club with you?

8      A      Me, LaShandra and her friend.

9      Q      Okay. And then in the club you were spending time with  
10     these other people also; is that right?

11     A      Uh-huh. (Affirmative response)

12                      THE COURT: Yes or no?

13                      THE WITNESS: Yes. Sorry.

14     BY MR. LOY:

15     Q      And you do like to drink? I mean, you're at the club.  
16     You do like to drink, right?

17     A      Yes.

18     Q      And do you recall about what time you got there?

19     A      A little after 11:00.

20     Q      A little after 11:00. And it was some time much later,  
21     around 2:00 or so that you say you were in the parking lot;  
22     is that correct?

23     A      Yes.

24     Q      And you're a tequila drinker as I recall; is that  
25     right?

1 A Yes.

2 Q Top shelf, Patron? You don't go mid-shift. I mean,  
3 Patron's a --

4 A Yeah, I like Patron.

5 Q And I think you said shots as well as mixed drinks?

6 A Yes.

7 Q And after you had been at the club since 11:00, at  
8 around 2:00 you say you were out front smoking a cigarette  
9 annoyed about your shoes; is that correct?

10 A Yes.

11 Q And someone spoke to you from a vehicle nearby?

12 A Yes.

13 Q And said hey, what are you doing or hello or something  
14 like that. And you walked over to the vehicle and you had  
15 an exchange, a conversation; is that right?

16 A Yes.

17 Q And in that brief exchange of conversation, you and  
18 this person exchanged telephone numbers; is that right?

19 A Correct.

20 Q Okay. And this person didn't get out of the car?

21 A No.

22 Q You don't know what kind of car it was?

23 A No.

24 Q Was there anyone else in the car with them?

25 A No.

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1      Q      But regardless, without getting out of the car with you  
2      at the window, y'all exchanged numbers and typed them in or  
3      something. And you indicated that you texted or spoke -- or  
4      tried to speak with him later that night; is that right?

5      A      Yes.

6      Q      But you didn't get a response?

7      A      I don't believe so.

8      Q      And the following evening you say you went back to this  
9      same club; is that right?

10     A      Uh-huh. Yes.

11     Q      And I'm a little unclear. You didn't just run into  
12     this person. You texted him or called him again, right?

13     A      Yeah.

14     Q      Okay. And said I'm back at this club if you still want  
15     to meet up or say hi, have a drink, something like that. Is  
16     that right?

17     A      Yeah.

18     Q      And do you recall if that was by text or by phone call?

19     A      Phone call.

20     Q      And y'all arranged to meet; is that right?

21     A      Yeah.

22     Q      And some time subsequent to that -- he didn't come into  
23     that club, did he? I mean, he just either texted you or  
24     called you and said I'm outside and you came out and got in  
25     the car and y'all drove away; is that right?

1 A Right.

2 Q Do you recall if that was a phone call or a text?

3 A I don't recall. I think it was a phone call.

4 Q But regardless, when it came in you knew who it was  
5 because it was the same number that you had exchanged with

6 --

7 A Yes.

8 Q It was the same number you had exchanged with the  
9 person the night before; is that right?

10 A Right.

11 Q So it came in to -- had you saved that number?

12 A Yes.

13 Q And you stated that then y'all got in the car and went  
14 directly to another club, Club Vegas or something like that;  
15 is that right?

16 A Yes.

17 Q Okay. Was that a long ride? Was it near?

18 A It was near.

19 Q And you went into the other club and you had a couple  
20 of drinks?

21 A Right.

22 Q But you were only there about five or ten minutes,  
23 right?

24 A Right.

25 Q Okay. That was Tequila, I take it. I mean, y'all --

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1 A (Nods head affirmatively)

2 THE COURT: You have to say yes or no?

3 THE WITNESS: Yes.

4 BY MR. LOY:

5 Q And subsequent to that, y'all went to this house. You  
6 said it was his house; is that right?

7 A Yeah. He told me it was his house.

8 Q And you said he had a key to the door; is that right?

9 A Yeah. He had it in his hand.

10 Q And you unlocked the door and y'all went in?

11 A Well, I unlocked the door with his key and went in.

12 Q Y'all went in?

13 A Yeah, we went in.

14 Q Some time subsequent to that while you were there, you  
15 decided to verify where you were or something like that; is  
16 that right?

17 A Right.

18 Q And were you able to do that?

19 A Yes.

20 Q Okay. Because you, in fact, gave law enforcement  
21 during your interview an address and said this is where we  
22 went; is that right?

23 A Right.

24 Q He said this was his home. We drove there. We went  
25 in. He seemed at home. It was his place; is that right?

1 A Right.

2 Q And this is the address?

3 A Right.

4 Q And then y'all, about how long were you there?

5 A I was there for a couple of hours, for some hours.

6 Q About how long were you there before he dozed off?

7 A Maybe an hour, hour and a half.

8 Q An hour and a half? And some time subsequent to that  
9 -- I mean, it doesn't matter. You say y'all talked and then  
10 he dozed off. That's fine. Regardless, some time later he  
11 woke up and this person you were with gave you a ride back  
12 to your friends house; is that right?

13 A Right.

14 Q Okay. At any point in time did your friends, the  
15 people you were with, did they see you with the person that  
16 you had spent the night with?

17 A Yes.

18 Q They did?

19 A They did.

20 Q And when was that?

21 A All my friends walked outside the club that night  
22 before.

23 Q And who was that?

24 A The girl that lived here.

25 Q Okay. The one you don't remember her name?

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1 A Uh-huh. (Affirmative response)

2 Q Now, hang one for one second.

3 MR. LOY: Your Honor, if I could have a moment.

4 Thank you.

5 BY MR. LOY:

6 Q When you went back to Florida -- oh, I'm sorry. There  
7 was something else I meant to ask you about. When you  
8 walked into LaShandra's friend's home that morning, do you  
9 recall anything that happened?

10 A Yeah.

11 Q What was that?

12 A They were reading the paper and it was talking about  
13 the IHOP incident and they wanted to know -- asked me was it  
14 the guy that I was with.

15 Q So that they were reading the paper when you got into  
16 the house?

17 A Uh-huh. Yes.

18 Q And just out of the blue they asked you is this the  
19 guy?

20 A (Nods head affirmatively)

21 Q It had been on the news?

22 A Yeah.

23 Q The picture was in the paper?

24 THE COURT: Hold on a second. Don't shake your  
25 head. You have to give a response. Let her answer before



1 you move to another question so the record's clear. Repeat  
2 your question for me counsel, please?

3 BY MR. LOY:

4 Q When you walked into the house, they were reading the  
5 paper?

6 A Yeah.

7 Q There was a picture of the Defendant in the paper?

8 A Yes.

9 Q They, not you said, is this the guy that you were with,  
10 yes?

11 A Yes.

12 Q And that was the first time that you told any one. Oh,  
13 yeah. I was with him. That's the guy?

14 A Yes.

15 Q Now, you went back to Florida shortly thereafter; is  
16 that right?

17 A Yes.

18 Q And you called law enforcement on your way back; is  
19 that right?

20 A Yes.

21 Q Do you recall where you were when you called them?

22 A Near Jacksonville.

23 Q I asked the question poorly. I don't mean were you in  
24 St. Pete or Savannah, I mean were you in a car, a bus, do  
25 you recall?

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1 A I was in a car.

2 Q You were in a car. Do you recall telling law  
3 enforcement you were on a Greyhound Bus? Can you recall  
4 telling anybody that?

5 A No.

6 Q That you were on a bus that you time that you made the  
7 call?

8 A Yes.

9 Q Okay. Regardless, you do recall that now?

10 A Yes.

11 Q Regardless, you went back to Florida and law  
12 enforcement came to you; is that right?

13 A Yes.

14 Q And you told them basically what you've told us here  
15 today; is that correct?

16 A Yes.

17 Q You told them I exchanged phone numbers with this  
18 person?

19 A Yes.

20 Q You gave them a phone number, yes?

21 A Yes.

22 Q You told them your phone number; is that right?

23 A Yes.

24 Q You said I exchanged text messages with this man; is  
25 that right?

1 A Ye.

2 Q Did law enforcement ask to look at your telephone?

3 A Yes.

4 Q And did they flip through your phone?

5 A I believe so, yes.

6 Q Okay. Looking for these text messages, I assume; is  
7 that right?

8 A Yes.

9 Q They would have still been there, right?

10 A Yes.

11 Q As well as looking through your call to see about the  
12 conversations between you and this person; is that right?

13 A Yes.

14 Q And you certainly didn't have nothing to hide, no  
15 reason to delete those; is that right?

16 A Right.

17 Q All right.

18 MR. LOY: One moment, if I could, Your Honor.

19 BY MR. LOY:

20 Q And Detective Elmore asked you to confirm the address  
21 where you said the person you met in the bar took you; is  
22 that right?

23 A Right.

24 Q And you told him what you've told us here today and how  
25 you knew that was the address; is that right?

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1 A Yes.

2 Q And did he ask you about your friends up here, their  
3 phone numbers, their address, how to get in touch with them?

4 A Yes.

5 Q And you gave them that information. You cooperated,  
6 right?

7 A (Nods head affirmatively)

8 THE COURT: You have to say yes.

9 THE WITNESS: Yes.

10 BY MR. LOY:

11 Q And did he ask about your friend LaShandra, how he  
12 could get in touch with her?

13 A Yes, I believe so.

14 Q And certainly you provided -- you answered all of his  
15 questions?

16 A Yes.

17 Q Cooperated every way you could, gave all the  
18 information you could to help the State of South Carolina  
19 with their investigation into this case?

20 A Yes.

21 Q Thank you.

22 THE COURT: Redirect?

23 MR. LOY: Your Honor, I'm sorry. I didn't mean to  
24 close. I just meant to thank --

25 THE COURT: Normally, thank you means I'm through.

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1      Are you through.

2                      MR. LOY:    No.

3      BY MR. LOY:

4      Q      Do you recall if you went to an apartment, a duplex or  
5      a single standing home when you left Club Vegas that night?

6      A      I believe it was a duplex.

7      Q      Thank you.

8                      THE COURT:    Are you through now?

9                      MR. LOY:    I am, Your Honor.    Thank you.

10                     THE COURT:    Redirect?

11                     MR. SORENSON:    Briefly, Your Honor.

12                     RACHANDRA SWEED - REDIRECT EXAMINATION

13      BY MR. SPEARS:

14      Q      Ms. Sweed, when you were testifying with Mr. Loy there,  
15      you said you didn't recall the location of the first club  
16      you went to --

17                     MR. LOY:    Objection, leading.

18                     MR. SPEARS:    I'll rephrase the question, Your  
19      Honor.

20                     THE COURT:    Rephrase it.

21      BY MR. SPEARS:

22      Q      Ms. Sweed, how well do you know the Summerville area?

23      A      Not well at all.

24      Q      How long were you in the Summerville area?

25      A      From the 4th up until the time we left.

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1 Q And had you ever been here before?

2 A No.

3 Q How did you get the address of the house he took you  
4 to?

5 A I turned on my location on my cell phone.

6 Q Were you able to see the numbers on the side of the  
7 house?

8 A No.

9 Q And lastly, when you got back to your house -- I'm  
10 sorry. Your friends that you were with that weekend, did  
11 you tell them about this individual that you had met?

12 A Uh-huh. Yes.

13 Q Did you tell them about your interaction the first  
14 night?

15 A They knew.

16 Q Okay. What did they know?

17 A That I was -- that I had met with him and the friend  
18 that met us there when she said that she --

19 MR. LOY: Objection, Your Honor.

20 THE COURT: Sustained. Don't refer to what  
21 someone else said. Objection is sustained. Tell us what  
22 you know of your own senses. Your eyesight but not what  
23 you've heard that someone else said unless I authorize you  
24 to do so.

25 THE WITNESS: All right.

1 THE COURT: Rephrase the question. Objection  
2 sustained.

3 BY MR. SPEARS:

4 Q What did you tell your friends about your conversation  
5 with this guy?

6 A I told them what the conversation consisted of and what  
7 his name was.

8 Q All right.

9 MR. SPEARS: The court's indulgence, Your Honor.  
10 No more questions, Your Honor.

11 THE COURT: You're done?

12 MR. SPEARS: Yes, Your Honor.

13 THE COURT: Recross limited to redirect?

14 MR. LOY: Thank you, no.

15 THE COURT: As to this witness counsel?

16 MR. SPEARS: Your Honor, may she be excused?

17 THE COURT: Any objection?

18 MR. LOY: None.

19 THE COURT: Ms. Sweed, you may step down and you  
20 are excused from the trial of this case. You may leave the  
21 courtroom at this time.

22 All right. Ladies and gentlemen, I'm going to take my  
23 mid-morning break at this point. I realize I sent you to  
24 the jury room earlier, but I want you a chance to use the  
25 restroom, stretch your legs if you need to. Do I have any

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1      and spell both your first and last name for my court  
2      reporter.

3                      THE WITNESS: Steven Shaw, S-T-E-V-E-N S-H-A-W.

4                      THE COURT: Your witness, counsel. Direct  
5      examination.

6                      MR. SORENSON: Thank you, Your Honor.

7                      STEVEN SHAW - DIRECT EXAMINATION

8      BY MR. SORENSON:

9      Q      Mr. Shaw, where are you employed?

10     A      Currently, I just work (inaudible) transport.

11     Q      And where were you employed back in 2016?

12     A      Dorchester Count EMS.

13     Q      How long did you work there?

14     A      Three years.

15     Q      And could you just describe to the court, what was your  
16      position there?

17     A      Paramedic crew chief.

18     Q      And what was some of the nature of your duties as a  
19      paramedic?

20     A      Treating and transporting and assisting sick and  
21      injured people.

22     Q      All right. Did you respond to a call on June 5th,  
23      2016?

24     A      Yes.

25     Q      Where was that call to?



1 A The IHOP.

2 Q And what was the nature of that call?

3 A Dispatched for a gunshot wound.

4 Q Can you describe to the jury the scene as you saw it  
5 when you got there?

6 A When we got there it was -- there was a lot of police  
7 officers there. They were beginning to tape off the area  
8 and it was kind of chaotic. The fire department was there.  
9 There was also another ambulance. I just got out of the  
10 ambulance and went to work.

11 Q And where were the individuals that you were working  
12 on?

13 A The one individual that I was working on, he was laying  
14 down on a park bench outside of the -- in the entrance of  
15 the restaurant.

16 Q When you got to that victim --

17 A Uh-huh. (Affirmative response)

18 Q -- how did you address his treatments?

19 A How did I address his treatment? The very first thing  
20 I wanted to do was get him on a -- you know, make sure he  
21 was -- the subject was breathing and he had a pulse. And I  
22 wanted to get him on the stretcher and then back to the  
23 ambulance where we have light and we could start treatment.

24 Q Were you able to identify any wounds on him?

25 A Right off the bat, I don't look for wounds. All I

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1     could see was blood.

2     Q     All right. In the progress of your treatment, did you  
3     identify any wounds on him?

4     A     Yes.

5     Q     And what did you identified?

6     A     I identified two punctures, one to the right flank,  
7     right below his waist line and one to his left lower flank.

8     Q     And when you say flank, where on his body?

9     A     His side.

10    Q     Okay. And you say -- was one of these wounds larger  
11    than the other one?

12    A     Yes, sir. The left one on the side was larger.

13    Q     Okay. Now, you say there's two punctures. Is it  
14    possible this could be an exit wound?

15    A     If I were to make -- with a educated guess, I would say  
16    that one's the entrance. The larger one was the exit wound.

17    Q     All right. Now, can you just describe the -- without  
18    saying anything that he told you, just the general attitude  
19    of the patient?

20    A     He was in pain. He was awake. He wasn't really saying  
21    what was going on.

22    Q     Was he still awake when he arrived at the hospital?

23    A     He was still but he was beginning to become altered.  
24    His level of consciousness was starting to decrease.

25    Q     And what hospital did you take him to?

1 A Charleston Medical Center.

2 Q Okay. And when you say his consciousness was starting  
3 to decrease, generally what would cause that?

4 A It could be a number of different reasons. And to be  
5 honest with you I have no clue what will cause it.

6 Q Okay. Okay. Was he losing blood in the ambulance?

7 A Initially he was. We were able to control the blood  
8 loss, external blood loss. As to internal blood loss, I  
9 have no idea.

10 Q All right.

11 MR. SPEARS: Court's indulgence, Your Honor.

12 BY MR. SPEARS:

13 Q Did you identify the patient?

14 A Yes, with his driver's license.

15 Q And what was his name?

16 A I couldn't remember. I don't remember, sir.

17 Q Was there a writing that you made as a result of this  
18 response?

19 A I wrote the run report, yes.

20 Q Would that help refresh your memory?

21 A I'm certain that it would.

22 MR. SPEARS: Your Honor, may I approach?

23 THE COURT: You may.

24 BY MR. SPEARS:

25 Q (Hands document to witness)

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1 A Thank you.

2 Q And can you tell us the name of the individual that you  
3 performed the service for?

4 A That would be a Mr. Bradford Campbell.

5 Q All right. Please answer any questions the Defense  
6 might have for you?

7 A Absolutely.

8 STEVEN SHAW - CROSS EXAMINATION

9 BY MR. CHISHOLM:

10 Q Good afternoon, Mr. Shaw.

11 A How are you?

12 Q And are you still with EMS or are you still a  
13 paramedic? I'm sorry.

14 A I am still a paramedic. I'm just not employed with  
15 Dorchester County no longer.

16 Q You've had a chance to look at your report and I'm  
17 going to ask you just a couple of questions about. And as  
18 the Solicitor did, if it would help to answer my questions  
19 about any of this, just let me know, okay?

20 A Yes, sir.

21 Q Do you recall what time you responded that night?

22 A I believe it was approximately 2:15.

23 Q Pretty early on?

24 A Yes, sir.

25 Q Right after the shooting. And it looks like --

1 obviously, you're there to care for someone that's been  
2 injured and get them going on that path. But in these cases  
3 a lot of time, do you also try to figure out what happened?  
4 You ask them what happened to you? What's going on, that  
5 kind of thing?

6 A Generally, yes.

7 Q Do you recall in your report that this patient was  
8 alert and conscious when you first got there?

9 A Yes.

10 Q You were able to speak with him?

11 A Yes, sir.

12 Q And you were able to ask him what happened?

13 A Yes, sir.

14 Q And was he cooperative with you?

15 A I would say to a degree uncooperative because he  
16 wouldn't provide any information as to what happened.

17 Q He wouldn't tell you what happened?

18 A He would not tell me what happened, but that's not  
19 uncommon.

20 Q Okay. And that didn't change throughout?

21 A No, sir.

22 Q He never told you anything on the way in?

23 A No, sir.

24 Q He wasn't interested in talking?

25 A From what I remember, he wasn't.

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1                    MR. CHISHOLM: If I could have one moment, Your  
2 Honor.

3                    Thank you. I have no further questions.

4                    THE COURT: Redirect?

5                    MR. SPEARS: Briefly, Your Honor.

6                    STEVEN SHAW - REDIRECT EXAMINATION

7 BY MR. SPEARS:

8 Q    Mr. Shaw, in regards to the time you were dispatched,  
9 would that be on your report?

10 A    Yes, sir.

11 Q    Can you tell me when you actually got to the scene?

12 A    We arrived on scene at 02:24. 24-hour -- 2:24 a.m.

13 Q    Okay. And when did you depart the scene?

14 A    We departed the scene at 2:30.

15                    MR. SPEARS: Court's indulgence, Your Honor.

16 BY MR. SPEARS:

17 Q    And when were you dispatched to the scene?

18 A    We were dispatched at 2:17.

19 Q    All right.

20                    MR. SPEARS: No more questions, Your Honor.

21                    THE COURT: Recross limited to redirect?

22                    MR. CHISHOLM: No, Your Honor.

23                    THE COURT: As to this witness, Solicitor?

24                    MR. SPEARS: May he be excused, Your Honor.

25                    THE COURT: Any objection?

1 MR. CHISHOLM: No, Your Honor.

2 THE COURT: Mr. Shaw, you may step down and you're  
3 excused from the trial of this case. If you'll give that  
4 document back to Mr. Spears right there. He handed it to  
5 you. And you're excused from the trial.

6 Call your next witness.

7 MR. SPEARS: Your Honor, the State calls Dr. Marie  
8 Tormos.

9 (WHEREUPON, Lee Marie Tormos was  
10 sworn to tell the truth)

11 THE COURT: Have a seat. Good afternoon.

12 THE WITNESS: Good afternoon.

13 THE COURT: That microphone is going to amplify  
14 your voice. You don't have to get right up next to it, but  
15 you need to speak up like I'm doing right now so my jury can  
16 hear you and the parties can hear you in the courtroom.  
17 Will you do that for you?

18 THE WITNESS: I will do that.

19 THE COURT: Please. My court reporter would like  
20 for you now to state your first and your last name and spell  
21 both your first and last names for the record.

22 THE WITNESS: My name is Lee, L-E-E, middle name  
23 Marie, Last name Tormos, T-O-R-M-O-S.

24 THE COURT: Your witness, counsel. Direct  
25 examination.

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1                    MR. SPEARS: Thank you, Your Honor.

2                    LEE MARIE TORMOS - DIRECT EXAMINATION

3 BY MR. SPEARS:

4 Q      Dr. Tormos, where are you employed?

5 A      I currently work at the Palm Beach County Medical  
6 Examiner's Office in Florida.

7 Q      And where were you employed in 2016?

8 A      In 2016, I was at MUSC in Charleston.

9 Q      And what was the nature of your employment there?

10 A      I was forensic pathologist at MUSC and I was also  
11 (inaudible)director.

12 Q      Now, how long were you employed there?

13 A      I was employed at MUSC from 2010 to 2017.

14 Q      And when did you leave -- well, no, I'm sorry.

15 A      That's all right.

16 Q      Can you please tell the court and the jury some of your  
17 educational background?

18 A      Absolutely. I am originally from Puerto Rico and I did  
19 my pre-med studies in Puerto Rico, followed by medical  
20 school, which is four years. And then I did my anatomical  
21 and clinical pathology in Puerto Rico. Then I worked as a  
22 medical examiner for two years in Puerto Rico and one year  
23 in private practice. In 2009 I moved to Charleston to  
24 complete my sub-speciality training in forensic pathology.  
25 And shortly after arriving they asked me to stay. So I did



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1      and I stayed for a total of seven years. During my time at  
2      MUSC I was the attending pathologist so my job was to teach  
3      resident and medical students and people their fellowships.  
4      By the time I left, there was a fellowship director as well.

5      Q      Now, have you had any specialized training for your  
6      career?

7      A      My specialized training is my sub-specialty in forensic  
8      pathology. I am board certified in anatomical and forensic  
9      pathology. I also keep up with my continuing medical  
10      education.

11      Q      And how many autopsies have you performed?

12      A      Over two thousand.

13      Q      Have you ever testified in general sessions court about  
14      an autopsy that you've performed?

15      A      Yes.

16      Q      And have you ever been qualified as an expert in  
17      general sessions?

18      A      Yes.

19              MR. SPEARS: Your Honor, at this time I would like  
20      to submit Dr. Tormos as an expert in forensic pathology.

21              THE COURT: Counsel, any objection as to  
22      qualifications?

23              MR. CHISHOLM: No, Your Honor.

24              THE COURT: Ladies and gentlemen of the jury,  
25      recalling my earlier instruction to you concerning expert

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1                      witnesses, this witness is qualified without objection in  
2                      the field of forensic pathology. You may proceed, counsel.

3                      MR. SPEARS: Thank you, Your Honor.

4                      BY MR. SPEARS:

5                      Q                      Dr. Tormos, did you have an opportunity to perform an  
6                      autopsy on a Brandon Mack?

7                      A                      Yes, I did.

8                      Q                      When did you perform that autopsy?

9                      A                      I performed the autopsy on June 10th, 2016 at 11:30 in  
10                      the morning.

11                      Q                      Can you go over the -- some of your findings during  
12                      that autopsy?

13                      A                      Absolutely.

14                      Q                      Actually, doctor --

15                      MR. SPEARS: And I apologize to the court. Let me  
16                      ask a different question, if it pleases the Court.

17                      BY MR. SPEARS:

18                      Q                      Doctor, I'm going to show you what's been marked as  
19                      State's Exhibit 87.

20                      MR. SPEARS: May I approach the witness, Your  
21                      Honor?

22                      THE COURT: You may.

23                      BY MR. SPEARS:

24                      Q                      Do you recognize this?

25                      A                      Yes. This is a diagram that I did during the autopsy

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1       marking down the position of the gunshot wounds I saw on the  
2       outside of the body.

3       Q       Doctor, is that diagram a fair and accurate  
4       representation of the diagram that you wrote during -- after  
5       your autopsy of Brandon Mack?

6       A       Yes, it is.

7               MR. SPEARS: Your Honor, may I submit it into  
8       evidence.

9               THE COURT: As to State's 87, counselor?

10              MR. CHISHOLM: No objection.

11              THE COURT: Ladies and gentlemen of the jury,  
12       State's Exhibit No. 87 will be admitted into evidence in the  
13       trial of this case without objection. You may publish to  
14       the jury.

15                                (State's Exhibit No. 87, diagram,  
16       was marked and entered)

17       BY MR. SPEARS:

18       Q       Now, Doctor, using this to help, can you describe to  
19       the jury your findings in your autopsy?

20       A       Absolutely. There are several gunshot wounds to the  
21       body. Is his touchscreen?

22              MR. SPEARS: Yes.

23              THE WITNESS: Okay.

24              THE COURT: You can touch it.

25              THE WITNESS: It'll light up, okay.

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1      A      The first wound that I am going to describe is the  
2      lethal wound; however, keep in mind that I cannot tell the  
3      order in which these gunshot wounds were sustained. So I'm  
4      just describe them top to bottom, but don't assume that they  
5      were sustained top to bottom, okay? The first wound is this  
6      wound, which starts here at Q and goes -- that's the back of  
7      the arm and it goes through the armpit and it enters the  
8      chest cavity, okay? That wound places the arm -- in order  
9      for the holes to line up, it places the arm sort of around  
10     uh -- I don't know, maybe a forty-five degree angle, maybe  
11     less. The shoulder is scrunched forward and the bullet  
12     enters the back of the arm, where the arm ended. In the  
13     back of the arm, it comes under the armpits and it re-enters  
14     the chest right at the armpit and it goes through a left  
15     lung, causing internal bleeding into the left chest cavity.

16     Q      And Doctor, which arm did that bullet go into?

17     A      The left. The left arm. So you can see here --  
18     discussing it at Q, it's kind of hard to visualize, because  
19     we're thinking a round human and put them in three  
20     dimensions, so the proportions can be a little off. But you  
21     can see that it goes in the back of the arm, out the armpit,  
22     in the other side of the armpit and enter the chest. And  
23     then it goes through the lung and it goes into the muscles  
24     of the back. And it's recovered in the muscles of the back.

25             The second one I'm going to describe is the gunshot

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1      wound to the forearm. Again, the diagram is an anatomical  
2      position, but the true placement for the trajectory still  
3      lining up is that the arm needs to be pretty much in front  
4      of the abdomen. And it goes through the back part of the  
5      arm. It does fracture the ulna, so it does fracture the  
6      smaller of the two bones in the forearm. It comes out of  
7      the medial aspect and then it goes into the abdomen. And,  
8      again, once it goes into the abdomen it really is muscular  
9      trajectory and the bullet is also recovered in the soft  
10     tissues of the back. So those are the first two.

11            There is a tangential wound to the scrotum, which given  
12     the fact that I wasn't able to examine the clothing, I am  
13     pretty sure that it just a graze wound in association with  
14     trajectory D to N. So this grazed wound to the scrotum  
15     actually is in a rightward direction and it grazes the  
16     scrotum right before entering the medial aspect of the right  
17     thigh. And the bullet comes out a little bit higher up in  
18     the hip, in the right hip. The trajectory of the  
19     (inaudible) is pretty parallel to the one that's higher up  
20     and it also goes right to left through the thigh.

21            Now, a potentially fatal gunshot wound and this one is  
22     the hardest one to delineate because he survived the initial  
23     shooting. He was taken to the hospital. He was surgically  
24     intervened and so I am seeing a lot of surgical artifact.  
25     For sure, I can tell you that this bullet entered the left

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1 thigh and is traveling upward through the soft tissues. It  
2 hits the spermatic cord in the groin and then it also enters  
3 the pelvis from the bottom up. And I can place that bullet  
4 via CT scan right around the left prostate area. And I have  
5 a contusion to the thigh that tells me that the bullet  
6 (inaudible) there. Now, there are two findings that I  
7 cannot say if they are associated to this trajectory or they  
8 are surgical artifact. One is a laceration to the  
9 (inaudible) and one is a laceration to the very edge of the  
10 liver. It can be due to this bullet traveling upward and  
11 then eventually falling back down right into the rectal area  
12 or it can be due to the doctors opening up the abdomen  
13 surgically and retracting the tissues, causing tears. So,  
14 again, I cannot tell you whether muscle tears and the  
15 lacerations to the liver that were surgically repaired were  
16 due to the doctors themselves or they were due to this  
17 trajectory.

18 The last one would be this trajectory that -- this is  
19 backwards, this is the left leg. So it's still, that  
20 trajectory towards the right. So all the shots are left to  
21 right. And this one just go through the calf in a left to  
22 right trajectory. Okay.

23 Q Doctor, you said all of these trajectories are left to  
24 right?

25 A All of them.

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1      Q      Briefly looking at the first top trajectory, you stated  
2      that it went through the left arm -- out the left arm and  
3      into the chest cavity?

4      A      Correct.

5      Q      How can you tell the difference between like an  
6      entrance and an exit wound?

7      A      Okay. When the bullet leave these muzzle of a weapon,  
8      it usually flies through the air pretty much the same way as  
9      a well-tossed football. So you'll see that it has some  
10     rotation, some spinning to it as it's traveling through the  
11     air. When the bullet hits the skin and hit any intermediate  
12     objects it leaves an abrasion color around the entrance.  
13     And this bullet in particular it leaves an abrasion  
14     entrance, then as it hit the tissues, it starts tumbling.  
15     Just like when a football hits the floor, it's no longer  
16     traveling in that spinning trajectory. It starts tumbling  
17     inside the tissue. So when it comes out it leaves lacerated  
18     irregular exits.

19     Q      Now, Doctor, looking at the two bullet wounds in the  
20     right thigh --

21     A      Uh-huh. (Affirmative response)

22     Q      -- you stated that those are still left to right?

23     A      Left to right because they're coming in the inner  
24     aspect of the right thigh and they're coming out the lateral  
25     aspect of the right thigh.

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1      Q      Now, when you're looking at the trajectory of bullet  
2      wounds in the body, are you able to determine the  
3      positioning of the body towards the bullet pathway?

4      A      I can only tell you how the muzzle of the weapon would  
5      line up. Pretty much, it's drawing a straight line. Now,  
6      when I describe a trajectory I am describing the trajectory  
7      in terms of the anatomic position. We use exactly what  
8      you're seeing here. Someone standing up straight with their  
9      palms facing forward. But when people are shot, they are  
10     not standing in an anatomic position. So that is why we  
11     have to think of how the body could move to have, for  
12     example, these outward deviation into the thigh. So you  
13     have to look at the scene and you have to look at the  
14     (inaudible) and figure out what positioning of the body  
15     explains why this bullet, even though it's right to left, is  
16     also traveling a little upward.

17     Q      Doctor, you stated that you can testify to the location  
18     of the muzzle of the firearm?

19     A      Uh-huh. (Affirmative response)

20     Q      What direction would the muzzle be to this individual  
21     when it comes to the highest two bullet holes?

22     A      Okay. So to get into consideration that by lining up  
23     the holes, I am able to tell the position of the left arm  
24     only. The left arm for the first one is slightly lifted and  
25     sort of scrunched forward to allow for lining up of the exit



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1      and reentry. However, because the bullet is traveling  
2      slightly downward -- if the bullets they were traveling  
3      horizontal to the ground, which is an assumption, then this  
4      person had to be leaning towards where the weapon is a  
5      little bit. And that's one thing, but we don't know whether  
6      the weapon is shooting horizontal to the ground, whether the  
7      shooter is higher up or lower on the ground. So you have to  
8      take everything into consideration. The top most trajectory  
9      has a slight, very slight downward trajectory to it, which  
10     could be explained if the person is leaning just a little  
11     bit towards the left.

12     Q      All right. And the two lower bullet trajectories, same  
13     question. Were you able to identify the direction of the  
14     muzzle?

15     A      Okay. Well, the one to the forearm that one is  
16     horizontal, completely horizontal. So the one to the  
17     forearm is just going, you know, kind of straight back. And  
18     then the muzzle is sort of in the 10:00 o'clock position in  
19     relation to the person. So that's the direction that it's  
20     coming in, into the arm and into the abdomen and is going in  
21     a straight line towards the back.

22     Q      And now the L bullet wound?

23     A      Okay. The L bullet wound enters the left thigh and  
24     it's actually just above, just a smidge higher than I drew  
25     it on my diagram. And this one is traveling upward and then

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1        to the left. Now, you have to think that, again, people are  
2        in motion and not necessarily are the standing in an  
3        anatomic position, so there's two reasonings behind this:  
4        one, the person is to 11:00 o'clock or the 10:00 o'clock  
5        position. The muzzle is at a 10:00 o'clock position and  
6        lower and they're shooting from the gun, from the bottom up;  
7        or, the person has lifted up their leg and that also would  
8        account for the upward trajectory; or, they are seated on  
9        the floor and then someone is shooting down when they're on  
10       the floor. So there's multiple scenarios placed on what you  
11       see in the body. So you have to take into account that.  
12       And in generality the muzzle of the weapon is mostly kind of  
13       like the 10:00 o'clock position on the left. So they're all  
14       coming that way. And then you see it more slightly here and  
15       there they seem to be going kind of in the same direction.

16                MR. SPEARS: Court's indulgence, Your Honor.

17        BY MR. SPEARS:

18        Q        Now, Dr. Tormos, during the course of your autopsy did  
19        you recover any bullets out of the body?

20        A        I recovered three bullets.

21                MR. SPEARS: May I approach the witness, Your  
22        Honor.

23                THE COURT: You may.

24        BY MR. SPEARS:

25        Q        Doctor, do you recognize these?

1 THE COURT: Refer to the exhibit number for the  
2 record.

3 MR.. SPEARS: I apologize, Your Honor.

4 BY MR. SPEARS:

5 Q Do you recognize Exhibit 78?

6 A Yes, I do.

7 Q Now, what is that?

8 A It's the three bullets that were recovered from the  
9 decedent?.

10 Q And which of these bullet pathways were these bullets  
11 recovered from?

12 A Well, the bullet number one is the one that goes  
13 through the arm. It goes through the arm and doesn't hit  
14 bone. It goes through the arm. Again, it just into the  
15 muscle. So in the middle there is soft tissues and the  
16 bullet is pretty pristine. The second bullet that I  
17 recovered, I recovered in the right chest cavity. I think  
18 that is an artifact of resuscitation because there was no  
19 entrance to the chest cavity. It just was there. And,  
20 again, that is the one that went up the side and into the  
21 abdomen for the trajectory. And then the third one is the  
22 one that goes through the bone of the forearm and it also  
23 goes through (inaudible). Because that one hit bone twice,  
24 that bullet is flattened.

25 Q Now, Doctor, with these bullet pathways, how many

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1      pathways were you able to find on this individual?

2      A      Well, it would be -- assuming that the grazed one to  
3      the scrotum is connected to the adjacent trajectory through  
4      the side, it would be six.

5      Q      Now, Doctor, were you able to formulate a professional  
6      opinion as to whether these wounds were lethal?

7      A      Yes.

8      Q      And within a reasonable degree of medical certainty,  
9      were you able to come a conclusion as to the manner of  
10      death?

11      A      Yes.

12      Q      And what was that?

13      A      It's a homicide.

14                      MR. SPEARS: Court's indulgence, Your Honor.

15      BY MR. SPEARS:

16      Q      And what would be the cause of death?

17      A      The cause of death is the gunshot wounds to the torso.

18      Q      Please answer any questions the Defense might have for  
19      you.

20                      THE COURT: Cross-examination.

21                      MR. CHISHOLM: Thank you, Your Honor.

22                      LEE MARIE TORMOS - CROSS-EXAMINATION.

23      BY MR. CHISHOLM:

24      Q      Good afternoon, Doctor?

25      A      Hi.

1 Q And I guess I'll start -- the cause of death in this  
2 case, I'm a little bit confused. From reading the report it  
3 looks like Mr. Mack passed away after a surgery on his elbow  
4 area?

5 A That's correct?

6 Q Was it a complication from the surgery that caused the  
7 death?

8 A It was a complication for the treatment of his multiple  
9 gunshot wounds, yes.

10 Q But I was just curious how the surgery on the elbow  
11 would lead to the death, if you could answer that?

12 A He was not medically stable.

13 Q Okay. So that was -- I'm sorry.

14 A But he was not medically stable they did the surgery.  
15 He had a lot of organ damage secondary to blood loss?

16 Q Okay. So this was ongoing treatment, but the elbow  
17 might have had nothing to do with the actual cause of death;  
18 is that what you're saying?

19 A Can you repeat that?

20 Q The surgery on the elbow might have not been what  
21 caused the death. He was already heading that way to begin  
22 with?

23 A Everything is stemming from the treatment of his  
24 multiple gunshot wounds. The repair to the elbow is the  
25 repair from a fracture from the gunshot wound. So it was

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1      very difficult without the medical records available to  
2      determine exactly what the information was.

3      Q      Okay. I think I understand. And you've had a lot of  
4      training to be a pathologist -- I guess in the study of  
5      ballistics -- what happens when bullets enter the body, that  
6      kind of thing?

7      A      Yeah, that's one of the training of forensic  
8      pathologist.

9      Q      Okay. But for clarification and I think you spoke to  
10     this a little bit, despite, you know, all the education and  
11     the knowledge and the training that you have, you can't say  
12     exactly what happened at the shooting; is that correct? As  
13     far as -- in this case, this involves a shooting in a  
14     bathroom at the IHOP. From your examination, you wouldn't  
15     be able to tell what happened in the bathroom; is that  
16     correct?

17     A      I can only tell you about what has entered his body.

18     Q      Correct?

19     A      Yes.

20     Q      And that's what I'm getting at. You can see where the  
21     bullet entered, where it went, where it exited, but you have  
22     no idea what happened in there. You weren't there?

23     A      Yes.

24     Q      I've also heard that -- is it true that bullets kind of  
25     do weird things once they enter the body sometimes?

1 A Yes.

2 Q And that can be based on the clothing you're wearing,  
3 if it hits a bone or not, things it deflect off, organs I  
4 guess?

5 A Not organs, but they can deflect on bone and they love  
6 traveling through fat. So sometimes not exactly in a  
7 straight line.

8 Q I got you. And when you're looking at a case like this  
9 -- and I'm assuming it's easier for you to -- doing your  
10 work, you can a bullet path through the body probably fairly  
11 easily as opposed to figuring out trajectories of where a  
12 bullet came or entered a body?

13 A Can you repeat that?

14 Q Sure. When you get a case --

15 A Uh-huh. (Affirmative response)

16 Q -- and during the autopsy you can pretty well this is  
17 the entrance wound, this is the exit wound, if there is one.  
18 Here's the path of the bullet within the body.

19 A That's correct, yes.

20 Q But as far as -- I think the Solicitor's kind of  
21 touched on, I guess, angles of gunfire --

22 A Uh-huh. (Affirmative response)

23 Q -- is that tougher to do for you?

24 A It is very tough. Thankfully the bullets travel in a  
25 straight line, so it makes it a little bit more logical.

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1      But, you know, I'm only taking into consideration  
2      (inaudible) the scene (inaudible).

3      Q      And as far as the Solicitor was asking you about the  
4      muzzle, where it was in relation to the entrance wounds and  
5      that thing -- I mean, that's essentially speculation. Would  
6      you agree with me that you can say it's consistent with  
7      certain angles, but you can't tell exactly how it happened?

8      A      I pretty much can tell you where it was coming from  
9      based on lining up the holes.

10      Q      I'm sorry. I'm not explaining myself. Let's put it  
11      this way. I think I could probably rephrase it with an  
12      example. Someone was laying in front of me?

13      A      Yes.

14      Q      Their head away from me and they're laying on their  
15      back on the floor. If I shot them in the chest, you would  
16      have an entrance wound in the chest. And say in this  
17      example, say there's an exit wound in the back. And if I  
18      shot them from here, it would be an upward trajectory; is  
19      that correct?

20      A      Yes.

21      Q      If I was laying on my back -- which I never do -- but  
22      if I was laying on my back and someone was standing in front  
23      of me and I shot them in the chest, you would have an  
24      entrance wound in the chest, possibly an exit wound in the  
25      back. And that would also be an upwards trajectory; is that



1 correct?

2 A Absolutely, yes.

3 Q Okay. So it's hard to say exactly where people were --

4 A And that's why I'm saying I can only describe pretty  
5 much the general position of the muzzle or the weapon, but I  
6 cannot tell you the position of the people --

7 Q Right.

8 A -- holding the weapon. Absolutely not. That's what I  
9 was trying to convey.

10 Q And I think you did. And I just wanted to make sure  
11 that I had it right; didn't have it mixed up.

12 A Yes.

13 Q I'd like to ask you about toxicology in this case. Can  
14 you explain what toxicology is?

15 A Yes. Toxicology we draw blood from most autopsies, and  
16 in this particular case we did not do a toxicology because  
17 there was a survival. When we do toxicology we like to show  
18 the substance that that (inaudible) was not in someone's  
19 body at the time that the incident happened. Because there  
20 was a survival time of four days, when we did the autopsy,  
21 the samples that we would have drawn at that time would not  
22 reflect what was going on in the body four days prior. So  
23 in this particular case we did not do toxicology.

24 Q Okay. And as you just said, I mean, the toxicology  
25 report you'll be able to tell if someone was under the

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1      influence of alcohol, narcotics, that kind of the thing at  
2      the time --

3      A      Absolutely. Absolutely. We would have been able to  
4      say both what was there and what wasn't there. But in this  
5      case it had not value because we wouldn't be reflecting what  
6      was going on after blood transfusions and administration of  
7      fluids and administration of medications in the hospital.

8      Q      Do they typically take blood samples, whatever is taken  
9      for analysis, do they typically do that when someone gets to  
10     the hospital or is it typical that they would --

11     A      Yes.

12     Q      -- take the specimens four days later?

13     A      No. The moment someone goes in the hospital, most  
14     people get a basic labs drawn and those basic labs are  
15     usually provided if left-over.

16     Q      That wasn't done in this case?

17     A      There was left-over. They throw the samples away on  
18     the third day and he died on the fourth.

19     Q      So based on that, you would have no way to know whether  
20     he was -- had alcohol in his system, any kind of drugs or  
21     anything because it wasn't drawn?

22     A      It wasn't drawn because it couldn't be done, yes.. I  
23     have no way of knowing.

24     Q      I understand.

25                   MR. CHISHOLM: Okay. One moment, Your Honor.

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1 Q Thank you, Doctor. I don't have any more questions.

2 THE COURT: Redirect?

3 MR. SPEARS: Briefly, Judge.

4 LEE TORMOS - REDIRECT EXAMINATION

5 BY MR. SPEARS:

6 Q Very briefly, doctor, just to clarify a question I had  
7 in my mind. Looking at the bullet pathway in a person, can  
8 you tell the side of a person that the muzzle was on when  
9 the bullet entered them?

10 A Yes.

11 Q Okay. And on this autopsy, what side was that?

12 A The left side.

13 MR. SPEARS: No more questions, Your Honor.

14 THE COURT: Recross, limited to redirect?

15 MR. CHISHOLM: None, Your Honor.

16 THE COURT: As to this witness, Solicitor?

17 MR. SPEARS: Your Honor, may she be excused?

18 THE COURT: Any objection?

19 MR. CHISHOLM: No objection.

20 THE COURT: Doctor Tormos, you may step down and  
21 you're excused from the trial of this case and you may leave  
22 the witness stand.

23 THE WITNESS: Thank you.

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

25 THE COURT: Counsel approach.

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1                      THE COURT: You know what to do and when to do it?

2                      THE WITNESS: Yes, sir. Dwayne, D-W-A-Y-N-E

3 Robert Peters, P-E-T-E-R-S.

4                      THE COURT: Your witness counsel, direct  
5 examination. Please speak up for me?

6                      THE WITNESS: Yes, sir.

7                      MR. SORENSON: Thank you.

8                      DWAYNE PETERS - DIRECT EXAMINATION

9 BY MR. SORENSON:

10 Q Lieutenant Peters, if you would tell the jury where it  
11 is that you're employed?

12 A I'm employed by the Dorchester County Sheriff's Office.

13 Q And how long have you been with the sheriff's office?

14 A I started with the sheriff's office in May of 2008.

15 Q Okay. And do you have prior law enforcement experience  
16 prior to that?

17 A I do. I started my law enforcement career in March of  
18 1995. I started off at the Isle of Palms Police Department.  
19 In September of 1999, I joined the Summerville Police  
20 Department, and after that I went to Dorchester County  
21 Sheriff's Office.

22 Q Okay. And how about prior to starting your law  
23 enforcement career, what did you do prior to that?

24 A I was enlisted in the United States Marine Corps in  
25 1989, got out in '93. I got a job with the Isle of Palms.

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1 And then I re-enlisted in the United States Army as a  
2 special agent with the United States Army Criminal  
3 Investigative Division.

4 Q So you say that you're currently obviously now employed  
5 with the sheriff's office?

6 A Yes, sir.

7 Q In what capacity are you currently employed?

8 A I'm the detective over the general investigations unit,  
9 criminal investigative division sort of -- I guess,  
10 basically three different units. We have the crime scene  
11 unit, which Sergeant Byrd was a member of; the narcotics  
12 division, which investigates primarily drug crimes and then  
13 general investigations unit, which investigates everything  
14 else. And I'm in charge of the general investigations unit.

15 Q And let me ask you this. Is part of your career  
16 spanning all the way back to 1989 when you enlisted in the  
17 Marine Corp, did you become familiar with firearms during  
18 the course of your career?

19 A Yes, sir. I've had -- Probably have over a thousand  
20 hours of firearms training throughout the entire --

21 Q Carried a handgun throughout the vast majority of that  
22 time --

23 A Yes..

24 Q -- if not all of it?

25 A Correct.

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1            Q        Now, I'm going to turn your attention if I could,  
2            Lieutenant, back to June of 2016. In what capacity were you  
3            employed at that time?

4            A        I was the detective sergeant on the general  
5            investigations unit.

6            Q        So you were one of the supervisors at that time?

7            A        Correct.

8            Q        And tell the jury who, back in June of 2016, after this  
9            offense occurred on June the 5th, who was initially assigned  
10           as the lead investigator?

11           A        Detective Keith Elmore.

12           Q        Is Detective Elmore still with the sheriff's office?

13           A        No, sir. He left in -- let's see, December 2016. Since  
14           the last election in the coroner's office.

15           Q        And is he currently with the coroner's office?

16           A        Correct. He's the deputy chief coroner.

17           Q        All right. At some point in time, Lieutenant Peters  
18           did you ultimately kind of take over after he left?

19           A        I ended up taking over this case basically, I want to  
20           say February, March, April of this year, at some point in  
21           there.

22           Q        And were you familiar with the case prior to that?

23           A        I had knowledge of it. I had zero involvement in it  
24           prior to the time that I took over.

25           Q        All right. Let me ask when you kind of took over

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1        earlier, at the beginning of this year, you had an  
2        opportunity at that point in tie to kind of get yourself up  
3        to speed and go through the file?

4        A        Yes, sir.

5        Q        And the jury's heard some testimony earlier about some  
6        cellphones. Did you find some paperwork indicating that  
7        some cellphones were seized in this case from the motel  
8        where the Defendant was arrested?

9        A        Yes, sir. What happened was while going through the  
10       case file and seeing what was actually in it, I observed two  
11       chain of custodies. These chain of custodies were filled  
12       out in Detective Elmore's handwriting. It had three  
13       cellphones listed. None of the chains had Detective  
14       Elmore's signature on it. That's saying that he basically  
15       seized these items and there was no signature to the person  
16       that received them from Detective Elmore. So there's no  
17       record of where they went anywhere.

18       Q        And have you, as a result of that, attempted to locate  
19       those cellphones?

20       A        We checked everywhere we could. By the time I noticed,  
21       Detective Elmore was probably gone over a year. His desk  
22       was obviously reassigned and cleaned out. His vehicle has  
23       been cleaned. Crime scene unit checked their records and  
24       there's no, nothing.

25       Q        So this -- you have no idea where those phones are?

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1      A      No, sir. I don't know where the phones are.

2      Q      All right. And let me ask you, in kind of reviewing  
3      and going over the case, did you make any determinations  
4      about what evidence may have needed to be sent out the State  
5      Law Enforcement Division?

6      A      Yes, sir.

7      Q      And ultimately you're aware -- you've heard testimony  
8      about the ballistic, firearms evidence. Did that stuff get  
9      sent up there?

10     A      Yes, sir.

11     Q      How about any blood swabs from the scene, any of those  
12     sent up there?

13     A      I do remember some blood swabs were submitted in 2016.  
14     There's actually no record of them coming back. I  
15     determined, based on the video and the evidence that we  
16     recovered that -- and the information that I had, that there  
17     was no need. Two people were shot. Where Sergeant Byrd  
18     collected the blood samples were where the victims were.  
19     There's no -- any other indication that anybody else was  
20     bleeding or injured where these blood splatters or spots  
21     were collected at.

22     Q      And you heard testimony about the pictures in evidence  
23     about the blood on the sidewalk in front of IHOP?

24     A      Yes, sir. And it's corroborated by the video.

25     Q      Okay. That actually showed the two victims going in



1, that direction?

2 A Yes, sir.

3 Q Let me ask you this. Are you familiar as to some  
4 degree with your experience with firearms and as an  
5 investigator, with gunshot residue?

6 A I am.

7 Q Let me ask you. Do you guys receive any training about  
8 when you're allowed to collect gunshot residue from a  
9 suspect?

10 A SLED has told us that they will not test any gunshot  
11 residue collected after six hours.

12 Q So if he was arrested three weeks later, would there be  
13 any reason to do a gunshot residue test on --

14 A No, sir.

15 Q And how about with gunshot victims?

16 A A gunshot residue test is going to basically say that  
17 -- it doesn't give a, this person shot the gun. It's  
18 basically a test showing that that person was in close  
19 proximity of a weapon being fired. So, obviously, we know  
20 by the gunshot wounds, that the two victims were in close  
21 proximity of a firearm being fired.

22 Q Also they most likely had weapons on them?

23 A Yes, sir.

24 Q I'm going to ask you a couple of questions about Mr.  
25 Spells. Are you familiar with Bradford Spells?

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1      A      Yes, sir, I am.

2      Q      Okay. And let me ask you because the jury -- we heard  
3      earlier the EMT provided his name as Bradford Campbell; did  
4      you hear that?

5      A      Yes, sir, I do.

6      Q      Are you aware of what Mr. Spells' driver's license  
7      gives his name as?

8      A      Bradford Jordon Campbell Spells.

9      Q      Have you had an opportunity to view the surveillance  
10     video in this case?

11     A      Yes, sir.

12     Q      And you said that you were familiar with Mr. Spells.  
13     Did you recognize him on the video?

14     A      Yes, I did.

15     Q      And in your experience with Mr. Spells, has he been  
16     friendly and cooperative with law enforcement?

17     A      Mr. Spells has never been friendly or cooperative with  
18     law enforcement.

19     Q      To your knowledge in this case, has he ever been  
20     cooperative with law enforcement at all in this case?

21     A      Not at all. We've actually reached out through  
22     acquaintances to try to speak to him and every time has been  
23     denied.

24     Q      From your experience with Mr. Spells were you surprised  
25     that he was armed with a weapon that night?

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1 A Not at all.

2 Q Well, let me ask you -- while I'm talking about  
3 Bradford Spells, have you had an opportunity as part of your  
4 investigation to listen to and to monitor and listen some of  
5 the calls that the Defendant in this case, Mr. Cobbs, has  
6 made while he was at the Dorchester County Detention Center?

7 A Yes, sir, I have.

8 Q Okay. And on August the 3rd of this year is there a  
9 call that references, that talks about Mr. Spells and  
10 whether he'd be coming to court?

11 A Yes.

12 Q And have you -- that snippet of that call -- let me  
13 show you on State's Exhibit No. 86.

14 MR. SORENSON: May I approach the witness?

15 THE COURT: You may.

16 A Yes, it is.

17 MR. SORENSON: Your Honor, at this time we'd offer  
18 State's 86 into evidence.

19 THE COURT: As to State's 86?

20 MR. CHISHOLM: I'd ask the Court to note my  
21 previous objection, Your Honor.

22 THE COURT: Overruled. Only the portion of 86  
23 that I've enunciated on the record will be permitted into  
24 evidence.

25 MR. SORENSON: Yes, sir. And this snippet has

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1      • been provided to Defense counsel.

2                                      (State's Exhibit No. 86, audio  
3      recording, was marked and entered)

4                      MR. SORENSON: May I publish it, Your Honor.

5                      THE COURT: If it's consistent with my ruling?

6                      MR. SORENSON: Yes, sir, it is.

7                      THE COURT: You understand -- you've been  
8      provided?

9                      MR. CHISHOLM: I have, Your Honor.

10                     THE COURT: And you agree it's consistent?

11                     MR. CHISHOLM: Yes, sir.

12                     THE COURT: Very well.

13                                      (State's Exhibit No. 86 was played  
14      for the jury)

15      BY MR. SORENSON:

16      Q      Now, was this regards to him talking about Bradford  
17      Spells?

18      A      Yes, sir.

19      Q      And that was on August 3rd of this year?

20      A      That is correct.

21      Q      Is that the Defendant that we heard speaking?

22      A      It is.

23      Q      Now, in this case Detective Peters, have you had an  
24      opportunity to review the surveillance video from IHOP?

25      A      Yes, sir, I have.

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1      Q      And you've had an opportunity to kind of go through it  
2      frame by frame to see what's shown on that?

3      A      Yes, sir.

4              MR. SORENSON: May I approach the witness, Your  
5      Honor.

6                              (Off record discussion)

7              THE COURT: You may.

8      BY MR. SORENSON:

9      Q      Detective Peters, I'm showing you what's been marked as  
10      State's Exhibits No. 85 and 89 and ask you if you recognize  
11      those documents?

12      A      I do.

13      Q      And what are those documents?

14      A      This is a CD or a DVD or a PowerPoint presentation of  
15      the video. And this is printed-out stills from the video.

16      Q      Is that actually the PowerPoint presentation printed  
17      out, State's 89.

18      A      Yes, sir. Yes, that's right.

19      Q      And would that assist you in kind of going through and  
20      explaining to the jury kind of where people are located at,  
21      not only before but during and after the shooting?

22      A      Yes, sir.

23              MR. SORENSON: Your Honor, at this time we'd offer  
24      State's 85 and 89.

25              THE COURT: Any problem with 89 -- as to 85 and

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1      89?

2                    MR. CHISHOLM: No objection, Your Honor.

3                    THE COURT: Ladies and gentlemen of the jury,  
4      State's Exhibits No. 85 and 89 will be admitted into  
5      evidence in the trial of this case without objection. 85  
6      and 89 are into evidence. You may publish Solicitor.

7                                    (State's Exhibit No. 85, PowerPoint  
8      presentation, was marked and entered)

9                                    (State's Exhibit No. 89, Printout  
10     of PowerPoint presentation, was marked and entered)

11                   MR. SORENSON: Thank you, Your Honor.

12      BY MR. SORENSON:

13      Q      And just so we're clear 85 is the PowerPoint  
14      presentation on the disk and that's just a printout of; is  
15      that correct?

16      A      This is the printout; 89 is the printout.

17      Q      I guess while we're waiting for it to load, can you  
18      kind of explain to the jury what it is that the purpose of  
19      the PowerPoint is to hopefully illustrate for them?

20      A      This is going to show where people were at at the time  
21      of the shooting and during the shooting and where they're at  
22      during the four seconds of the eight to ten shots that you  
23      can hear on the video.

24      Q      Do you also take a look at the individuals that are in  
25      the immediate -- during the shooting and the immediate

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1      aftermath are leaving the IHOP?

2      A      Yes, sir.

3      Q      Were you able to kind of go back and figure out where  
4      they are --

5      A      Yes, sir.

6      Q      -- at the time of the shooting or prior to the  
7      shooting?

8      A      Right. Just prior or during the shooting.

9      Q      All right. So kind of starting with -- this is going  
10      to be the second side -- What's illustrated in this --

11      A      This is the photograph of the person in the red shirt  
12      and white shirt enter into the restaurant at 1:49:08 and at  
13      1:49:54 they're actually being seated in the back right area  
14      of the restaurant as on the slide to the right.

15      Q      Okay. You see both of those individuals initially take  
16      a seat back there?

17      A      Yes.

18      Q      Okay. Thank you. All right. Are you able to actually  
19      listen to the audio and determine when you hear the first  
20      shot and ultimately when the last shot is on the video?

21      A      Yes, sir. Yes, sir.

22      Q      All right. What's depicted then in State's --

23      A      The first shot is at 02:15. And then the last shot is  
24      at 02:15:04.

25      Q      And you're then kind of showing the lobby, I guess, at

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1      the time of the first shot and then the lobby of where  
2      people are located if they're still in the lobby at the time  
3      of the last shot?

4      A      Yes, sir. This is the front door area.

5      Q      Okay. All right. Now, ultimately as far as watching  
6      it in the next series of slides, what's going to be depicted  
7      kind of in the left-hand slide on the next --

8      A      The left-hand slide is where the shots heard, where  
9      the shots fired. And this is -- the right hand slide is  
10     where it starts transpiring.

11     Q      So like in this case you see on the left-hand side, how  
12     many people in that?

13     A      There's three.

14     Q      Okay. And what is the slide on the right then  
15     depicting?

16     A      That is when they're first -- this is right before --  
17     right when the shots are starting. These three individuals  
18     are actually walking in the front door. The slide on the  
19     left is the three individuals leaving at three seconds into  
20     the shots are being fired.

21     Q      All right. As a result of that, what would you be able  
22     to do as far as those three people --

23     A      (Inaudible).

24     Q      Okay. All right. And the next slide? The next slide  
25     is basically the same thing.



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1      Q      I see on the slide on the right, how many people are on  
2      the right?

3      A      There are four on the right. We've already talked  
4      about these three. If you look at the bottom right female  
5      ??? with the dress on her shoulder, the one in the middle  
6      and then a guy in a blue shirt. The one on the left --

7      Q      You circle them if you want?

8      A      Yeah. Right there.

9      Q      Okay. Do you see that individual in the left-hand  
10     slide?

11     A      In the left-hand slide, there she is right there.

12     Q      And then what were you able to do with that person?

13     A      That one's at 2:14:58, two seconds prior to the first  
14     shot. And that is actually right at the shot so that person  
15     is excluded also.

16     Q      Okay. All right. Slide number six. That shows kind  
17     of generally -- you have this guy?

18     A      I'm sorry. I'm really bad with colors. I thought Mr.  
19     Colon's shirt was green and he said blue.

20     Q      And is there a few more standing with him. I guess  
21     he's facing the camera --

22     A      There is a female right there.

23     Q      And those two individuals --

24     A      Those two individuals. And then there's one --

25     Q      I think those are the two --

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1      A      On the side.

2      Q      Yeah, I think those two on the side. So are those two  
3 people -- again, what time are they in they lobby?

4      A      This is right at the start of shooting. In fact, if  
5 you look at this person right here, that's when the first  
6 shot -- she's actually walking towards the dining room area.  
7 That first shot she turns directly around and starts walking  
8 -- or running towards the door. And then this is at 2:15:04  
9 when the last shot's fired.

10      Q      And the couple that are kind of -- I assume they're a  
11 couple, but the two that are standing side-by-side kind of  
12 in the middle of the picture on the right, are they depicted  
13 at 2:15:04 on the left-hand side?

14      A      There's one and that's -- Yes.

15      Q      Okay. Is that the two of them, I guess. The blue  
16 shirt, I guess. Is that right? The one in behind him?

17      A      Right here. Yes, these are all been excluded.

18      Q      As we're talking about it, let's make sure we telling  
19 the jury what we're talking about. These two people up here  
20 that we're talking about?

21      A      Right.

22      Q      Are they in the picture over here?

23      A      The one right here.

24      Q      Okay.

25      A      And then the one in the black.

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1      Q      Right behind him?

2      A      Right behind him.

3      Q      Got you. All right. You included that here. And the  
4 next slide? That's showing an individual kind of in the  
5 left --

6      A      That's that one. She's actually going in to at :49  
7 which is approximately eleven seconds. So she's actually  
8 tied up in the doorway, I guess. The double doors.

9      Q      Do you ever actually see her make it into the lobby?

10     A      She never actually made it into the lobby.

11     Q      Okay. All right. And so you marked her off, kind of  
12 next to the guy, kind of side-by-side with the gentleman in  
13 the light blue shirt?

14     A      Yes.

15     Q      All right. Turning to the next slide. The woman with  
16 a kind of a reddish colored shirt in that picture?

17     A      Right there?

18     Q      Is she --

19     A      And if you look right in here and there's an outline  
20 you can tell -- I believe that's last person that we saw.

21     Q      The next kind of behind then that lady in the red? You  
22 have -- with kind of arms up?

23     A      Right.

24     Q      Were you able to kind of follow him looking at the  
25 times when the shots are being fired where he's --

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1      A      He is right there.

2      Q      This is all -- in this initial kind of wave when people  
3      are going out -- are gunshots still going off during all of  
4      that?

5      A      Yes. This is actually at 2:15:03 and here it says  
6      2:15:04. So gunshots are still being fired.

7      Q      All right. And the next one is kind of woman in a  
8      black shirt?

9      A      I believe that's her right there.

10     Q      Kind of blackish shirt to the left of the --

11     A      Right in that general area.

12     Q      And at no time did you ever see her farther in the  
13     lobby?

14     A      No, sir. And this is once again at 2:15:03 and she's  
15     out the door at 2:15:05.

16     Q      All right. And the next one? A lady with a kind of  
17     sleeveless bluish outfit on?

18     A      She's -- because here's the one in the shirt coming out  
19     at 2:15:03. So she's in that whole general area.

20     Q      Ultimately, looking at this today, describe how the  
21     crowd kind of right inside, right inside that interior door  
22     or in between those two doors?

23     A      They're pushing. They were crowded in there waiting  
24     obviously to be seated or pay or stay. And once the  
25     gunshots, everybody's trying to mass exit and get out of the

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1      way. Everybody is running a different kind of way.

2      Q      Okay. All right. And then these two individuals?

3      A      Right there, right here, right here and right here.

4      2:15:01 and they're out the door at 2:15:07.

5      Q      All right. And the next slide.

6      A      This is the -- I've been calling him the whit shirt  
7      dude, that came in with the red-shirt person and seated on  
8      the right-hand side. He is actually outside the bathroom at  
9      2:15:03. And he's out the door at 2:15:09. He still walked  
10     out as shots were still being fired. And you notice one  
11     thing is I said he's walking out. He's not running out.

12     Q      All right. And then I'm also seeing another -- anybody  
13     else in that on the picture on the right?

14     A      Oh, yeah. This group right here, they're actually --  
15     as you see here on the right at least two people are  
16     actually getting up and they -- walking out.

17     Q      They're seated on the picture right during the shots  
18     were seated on the right --

19     A      That's it --

20     Q      Okay. All right. All right. Let's talk about -- this  
21     next series of slides, kind of deal with the individual in  
22     the red tee-shirt?

23     A      That's correct.

24     Q      Okay. And what are those showing?

25     A      This is the individual in the red tee shirt actually

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1      getting up from his table at 2:12:02 and walking towards the  
2      bathroom area. That is taken from the camera in the very  
3      back of the restaurant. Ms. Creel testified that's where  
4      the Hell's Angels was. This photo is of the right dining  
5      area is actually facing the back portion of the restaurant  
6      and he's actually walking towards the front of the  
7      restaurant is at 2:12:08.

8      Q      And do you see anything when looking at the red tee  
9      shirt, that individual's wearing, you see anything on it?

10     A      Right.

11     Q      What does that appear to be?

12     A      It looks like a flag.

13     Q      All right. Move on to the next -- all right. Looking  
14     initially, I guess, at the photograph on the right, is that  
15     the still shot that's in evidence from this --

16     A      It is.

17     Q      -- from Ms. Pulliam's cellphone?

18     A      It is.

19     Q      And do you notice anything about that red shirt in that  
20     photograph?

21     A      Here's the --

22     Q      Does it appear to be the same person?

23     A      It is.

24     Q      And then the photograph on the left in the slide is  
25     what?

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1      A      This is at 2:12:17 and here's the person in the red  
2      shirt getting ready to enter into the bathroom area.

3      Q      In the video, does that person turn kind of towards  
4      where the restrooms are located?

5      A      Correct. If you look right here, that's one of those  
6      caution wet signs that restaurants put out and businesses  
7      put out that shows the floor -- If you're looking at the  
8      overhead camera that covers the cash register, you can  
9      actually see that. So that's basically covering everything  
10     over here. So the only thing that's not visible was the  
11     entrance to the left.

12     Q      Okay. All right. Going back to this set of slides,  
13     what person does this deal with?

14     A      This is the person with the red tee shirt, right up  
15     here. And this is his friend that he walked in with in the  
16     white tee shirt. And here's the person in the white tee  
17     shirt who we've never identified walking into the restroom  
18     at 2:12:23.

19     Q      Now, is that before or after the red tee shirt?

20     A      That is after.

21     Q      All right. What is this slide?

22     A      This is the slide at 2:15:07 shots fired and concluded.  
23     Mr. Spells is right here on the ground and this is the red  
24     tee shirt person passing in the restroom area. And this  
25     right over here on the right-hand slide is him exiting the

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1 front door.

2 Q Okay. Let me ask you now so that you -- a couple of  
3 slides back you had shown where at 2:12 and :17 seconds we  
4 saw the individual in the red tee shirt, turning towards the  
5 restrooms; is that correct?

6 A Yes.

7 Q All right. And then in this slide here now at 2:15 and  
8 :07 seconds, he's back in view?

9 A That's correct.

10 Q Is he coming -- you can view in any of the cameras in  
11 that -- probably two -- almost three minutes. Two minutes  
12 and fifty seconds?

13 A Yes, sir. That's the first time we actually see him  
14 come out from that area.

15 Q All right. And -- all right. And you indicated the  
16 camera on the right is him going out the door then?

17 A That is correct.

18 Q Okay. And where is -- do you see anybody else in that  
19 camera shot?

20 A That is Mr. Spells?

21 Q On the ground right there?

22 A Correct.

23 Q Okay. All right. Moving on to 2:15:07. I'm going to  
24 go back at the -- These -- I'm going back when we're done  
25 with this and actually play this series for you so you can



1 talk about that, so I'm not going to worry too much about --  
2 So you can go on to the next one next? All right. And then  
3 what's noted in this one.

4 A Note the couple on the bench. There they are on the  
5 left-hand screen and the right-hand screen. The left-hand  
6 screen is 02:15 and :10 seconds. The right hand screen is  
7 02:15:11 seconds. Obviously, you had the person in the red  
8 tee shirt and the person that he came with, the person in  
9 the white tee shirt right there. And then both of them are  
10 this way, walking together, exiting.

11 Q And describe for the jury in the video, what is that  
12 couple right there at the bottom of those two stills? Kind  
13 of what is their reaction as it progresses.

14 A When the person in the red tee shirt comes out, he  
15 actually grabs her in a bear hug and gets her out of the  
16 way.

17 Q And ultimately you see the white tee shirt and the red  
18 tee shirt at the top on the right hand side. Do they end up  
19 going off in the same direction?

20 A They do.

21 Q All right. And then the next screen. And obviously  
22 this has a caption to it. And who is this depicting?

23 A This is Mr. Mack and that's Mr. Spells.

24 Q What time is it that they are entering the IHOP?

25 A They entered into the IHOP at 2:14:35.

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1      Q      And the screen on the right is showing what?

2      A      This is the last -- this is Mr. Mack heading into the  
3      restaurant area at 2:14:51. That's Mr. Spells and that is  
4      the -- unidentified white tee shirt person.

5      Q      All right. Is that -- when you see Mr. Mack and Mr.  
6      Spells kind of right in that screen on the right, I see him  
7      immediately after that. Do you ever see the one of them  
8      again until after the gunshots?

9      A      No, I don't think so. Well, you see Mr. Spells come  
10     out and gunshots.

11     Q      Right when --

12     A      And that --

13     Q      Got you. All right. Okay. All right. And what does  
14     this indicate there now?

15     A      This is Mr. Spells right here.

16     Q      Is that the first time after the gunshots that he is  
17     observed?

18     A      Yes. This is two seconds after the last gunshot. He's  
19     actually -- on a different camera angle you can actually see  
20     him before 2:15:06 on the register camera angle. But Mr.  
21     Spells is on the ground. If you notice right here and  
22     outside the unidentified white tee shirt is already -- he is  
23     almost out the door. And that's Mr. Spells right there at  
24     2:15:49.

25     Q      Okay. And who else is also in that one on the --

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1      A      Right here is Mr. Macks coming out of the restroom.

2      Q      Is that the first time he is seen kind of post-  
3      gunshots?

4      A      It is.

5      Q      Go to the next.

6      A      This is Mr. Spells. That's Mr. Mack they're coming out  
7      of at 2:15:26 they actually come out and walk towards -- if  
8      you're at the front door, towards the right and come back  
9      this way. Here's Mr. Spells. He's getting ready to get on  
10     his park bench and Mr. Mack is right there --

11     Q      And the areas, as we see the two of them in the screen  
12     shot on the left, do they ultimately end up walking out of  
13     view of the camera?

14     A      They do. They walk to the right, right where the  
15     deputies recovered --

16     Q      All right. The next one. The jury has seen this  
17     earlier, but does that show Mr. Colon that testified this  
18     morning?

19     A      Yes.

20     Q      Go to the men's room and then coming out of the men's  
21     room?

22     A      Yes. And he is the last person that comes or exits the  
23     restroom before the guy in the red shirt, the unidentified  
24     white tee shirt guy, Brandon Mack and Bradford Spells.

25     Q      All right. And let me ask you -- I'm kind of touching

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1      on that. You had an opportunity to kind of go back and you  
2      put a significant period of time in this video and watch it  
3      frame-by-frame?

4      A      Yes, sir. I actually started at when we received it.  
5      It was 1:47, I think is the initial time.

6      Q      And ultimately were you able to account for people that  
7      went in towards the restrooms?

8      A      Yes, sir. I accounted for everybody.

9      Q      And then at some point in time exiting the restrooms?

10     A      Yes, sir.

11     Q      And so prior to the gunshots, how many people are  
12     unaccounted for that have gone towards the restroom?

13     A      Nobody's unaccounted for because everybody's been  
14     accounted for.

15     Q      How many people at the time of the gunshots do you not  
16     know where they are because they've gone into the restrooms  
17     and not come out?

18     A      Three, Mr. Spells, Mr. Mack and the person wearing the  
19     red tee shirt.

20     Q      Okay. Then did you kind of continue going on to the  
21     next screen and then still kind of look at people when they  
22     exited, kind of after the victims?

23     A      Yes, sir.

24     Q      Still kind of go back to try to figure out where they  
25     were at the time of the shots?

1 A Yes, sir.

2 Q Okay. And is that what this next kind of series of  
3 slides?

4 A Yes, it is. The one on the right is the -- I'm going  
5 to say the Hell's Angels group because obviously -- he's  
6 right there. That's at 2:15:02. Obviously, the shots were  
7 starting already. And here he is at 2:15:32. He actually  
8 just -- he checks up on some people and actually tackled  
9 somebody right here while the shots are going and then walks  
10 outside.

11 Q Okay. These two individuals?

12 A Right there.

13 Q Did they ultimately -- do you see them earlier  
14 basically being seated by Ms. Hadley?

15 A Yes, sir.

16 Q Right prior to -- Prior to -- right prior to the  
17 shooting?

18 A Yes, sir.

19 Q All right. A couple of other people have popped up in  
20 this --

21 A This female is actually right here. That's the one  
22 that the biker tackled. This guy right here, he's been  
23 outside watching the bicycles -- the motorcycles. That's  
24 just one of the things that the motorcycle club actually  
25 does. They have a low-level member or one of the members to

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1       sit and make sure nothing happens to the bikes and that's  
2       him.

3       Q       He comes up from the parking lot as opposed to coming  
4       out of the restaurant?

5       A       Correct.

6       Q       Is that that same person that you just talked about on  
7       the left-hand side here?

8       A       Yes.

9       Q       Okay. Now, at some point in time does he go into the  
10       restaurant after the shooting?

11       A       He does.

12       Q       Okay. All right. And how about -- I think that's --  
13       All right. How about --

14       A       This individual right here is that individual right  
15       there.

16       Q       And then again that screen shot on the right is kind of  
17       right -- prior to the shots being fired?

18       A       Correct. It's at 2:14:59. And this is at 2:15:55.

19       Q       All right. Is there a female kind of in that picture?

20       A       Right there and right there. That's at 2:15:28 and  
21       2:15:54.

22       Q       Where does she come from?

23       A       She in the very back. She comes from the very back,  
24       along with the others.

25       Q       All right. I think that's the last one. Now, while

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1        Mr. Spears is getting the video lined back up, when you --  
2        and I think you touched on this. As to the guy that we see  
3        in the white tee shirt, have you ever been able to figure  
4        out who that is?

5        A        No, sir. We have not.

6        Q        At any point after -- you testified in the slide show  
7        that 2:15 and :04 seconds was the time of the last gunshot;  
8        is that correct?

9        A        Yes, sir.

10       Q        At any point in time do you see anybody coming from the  
11       area of the bathroom after that besides Mr. Spells at  
12       2:15:06, the guy in the red tee shirt at 2:15:07 or Mr. Mack  
13       at 2:15:14?

14       A        No, sir. I didn't.

15       Q        You've had a chance to look at that literally frame-by-  
16       frame?

17       A        Yes. Frame-by-frame and it was actually at --

18       Q        While he's loading that up, I'm just going to move on  
19       to just one other thing. You've been as the chief  
20       investigator now have been in the courtroom for the  
21       testimony?

22       A        Yes, sir, I have.

23       Q        Did you hear Ms. Sweed's testimony earlier about having  
24       see the photograph that weekend on the news about the  
25       homicide at the IHOP?

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1                      A                      Yes, sir.

2                      Q                      And are you aware through your investigation what  
3                      photograph CID released to the media to put on the news?

4                      A                      Yes, sir, I am.

5                      Q                      Is that one of the still shots from the --

6                      A                      It is.

7                                      MR. SORENSON:    May I approach the witness, Your  
8                      Honor?

9                                      THE COURT:    You may.

10                      BY MR. SORENSON:

11                      Q                      I'm showing you State's Exhibit 88.    Is that the screen  
12                      shot that was put on the news?

13                      A                      Yes, sir.    It is.

14                                      MR. SORENSON:    At this time we'd offer 88 into  
15                      evidence.

16                                      THE COURT:    As to 88?

17                                      MR. CHISHOLM:    No objection.

18                                      THE COURT:    Ladies and gentlemen of the jury,  
19                      State's Exhibit No. 88 will be admitted into evidence in the  
20                      trial of this case.    Without objection, State's 88 in.

21                                                                                      (State's Exhibit No. 88,  
22                      photograph, was marked and entered)

23                                      THE COURT:    You may publish.

24                                      MR. SORENSON:    Thank you, Your Honor.

25                      BY MR. SORENSON:



1 Q And that would show what?

2 A The red tee shirt and the white tee shirt walking into  
3 the IHOP at the same time.

4 Q It was released to the media, but who did you indicate  
5 that y'all were looking to figure out --

6 A Both of them.

7 Q Not specifically red tee shirt or white tee shirt?

8 A No.

9 Q I had shown you earlier -- you've got the PowerPoint up  
10 there? Looking at specifically that slide, those two slides  
11 right there?

12 A Yes, sir.

13 Q Were you ultimately were able to -- we're going to play  
14 the video of it in a second -- but from your experience  
15 dealing with law enforcement and dealing with firearms, were  
16 you able to making any determinations in looking at that  
17 little snippet?

18 A Yes, sir. Yes, sir.

19 Q And we'll play it first and then get you to describe to  
20 the jury what you see.

21 MR. SORENSON: All right. Now, go back and play  
22 that and just kind of do it frame-by-frame from the time the  
23 red tee shirt comes into view.

24 (Video played for the jury)

25 MR. SORENSON: All right. Pause it -- go back

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1      one. Go back one.

2      Q    Okay. Tell the jury in your experience in dealing with  
3      firearms what you noticed that was significant about that  
4      still shot right there?

5                THE WITNESS: Judge, may I stand?

6                THE COURT: You certainly may.

7      Counsel, can you see him?

8                MR. CHISHOLM: I can, Your Honor.

9                THE COURT: He's going to stand. I want to make  
10      sure that you can see him.

11               MR. CHISHOLM: I would have an objection.

12               THE COURT: Counsel approach.

13      (Off the record bench conference with counsel and the  
14      Court.)

15               THE COURT: Objection is overruled.

16               Hilda, remind me to make a record for you.

17               MR. SORENSON: Thank you. May it please the  
18      Court.

19               THE COURT: You may proceed.

20      BY MR. SORENSON:

21      Q    You had testified earlier -- at the beginning of your  
22      testimony, you were kind of going through your experience  
23      and your training with firearms?

24      A    Yes, sir.

25      Q    Okay. And you've been dealing with firearms for how

1      long in your career?

2      A      I'm going to say when I was seventeen. I'm not forty-  
3      seven years old so the past thirty years.

4      Q      And you've had, I believe you said thousands --

5      A      Thousands of hours.

6      Q      Tell the jury while you're observing this what -- what  
7      did you take out of that when you watched that red tee shirt  
8      guy in that bathroom.

9      A      Look at his arm right there --

10                THE COURT: You've got to speak up now.

11      A      Look at his arm right there.

12      Q      You may want to stand over --

13      A      When you're carrying in an appendage carry, basically  
14      right in here, this is what you do. There's no way -- you  
15      have to bend that arm like that, all right? When he's  
16      walking, he's walking with his arm like this and his left  
17      arm over like this. When you carry concealed, all right, in  
18      order to reholster, if you have a holster or carry it in  
19      your waistband, you've got to get your shirt up or you have  
20      to move your jacket out of the way. This is what we do in  
21      training that we practice with all the time. Move, shoot,  
22      move, communicate, holster. We're like this. And you will  
23      see him go out the window or go out the thing exactly like  
24      this. He's in a rush. More than likely he's not carrying -  
25      - has it in a holster, an inside the waist band holster, so

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1    it's not really secure. So he has to hold onto it so you  
2    don't lose the firearm.

3    Q    Do you need me to play it further?

4    A    Please. And if you can just slow it down to a four-  
5    speed.

6            MR. SORENSON: Okay.

7    A    if you see him, he's still -- most people don't run  
8    like that. Most people run with both arms swinging. He is  
9    moving very quickly and he has his arms just like this. And  
10   that is what we do.

11           MR. SORENSON: And I beg the Court's indulgence.

12   BY MR. SORENSON:

13   Q    Thank you, Lieutenant Peters. Please answer any  
14   questions Defendant's counsel has.

15           THE COURT: Cross-examination.

16           MR. CHISHOLM: Thank you, Your Honor.

17           DWAYNE PETERS - CROSS-EXAMINATION

18   BY MR. CHISHOLM:

19   Q    In your testimony just now --

20           THE COURT: Hold on a second. Are both of those  
21   in evidence?

22           MR. SORENSON: Yeah, they are.

23           THE COURT: Put them back in their jacket in case  
24   he wants to use it.

25           MR. SORENSON: Yes, sir. Yes, sir. I beg the

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1      Court's indulgence one second because there's two jackets up  
2      so I need to figured out which one is which.

3            I believe the Powerpoint is 85, I believe.

4            THE COURT: I just have 85 and 89 on what goes --

5            MR. SORENSON: Thank you. I apologize.

6            THE COURT: All right. Proceed.

7            MR. CHISHOLM: Thank you, Your Honor.

8      BY MR. CHISHOLM:

9      Q      These clips we were just watching, these stills, are  
10     you testifying you could see a gun in that?

11     A      No, not at all. I'm just basing my opinion on my  
12     experience.

13     Q      Are you testifying you can see a holster?

14     A      No. I just said that if you had an inside the  
15     waistband holster or carrying just inside without it.

16     Q      That's how police are trained?

17     A      That's how the military is trained for concealed carry.  
18     It's how law enforcement is trained for concealed carry,  
19     yes.

20     Q      Do you have reason to believe he has military or police  
21     training?

22     A      If you don't have the training, it's also common sense.

23     Q      So you just testified as a firearms expert with however  
24     many years experience, you can look at that picture. Can  
25     you see his hand?

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1      A      No, sir.

2      Q      You can't see his hand. You can't see a gun. You  
3      can't see a holster, but based on being a firearms expert,  
4      you can identify him as having a appendage carry holster?

5      A      I think I testified that it appears that he's doing  
6      what we would do if we were holstering a weapon.

7                      MR. CHISHOLM: May I --

8                      THE COURT: You may.

9      A      If you're carrying a firearm and you're moving very  
10     quickly and you're trying to holster or conceal a firearm --  
11     I'm not saying whether it's a holster or you have to do  
12     this. This is what your training, okay?

13             Yeah, if you're putting a -- there's no other way that  
14     you can actually stuff it down here without having your  
15     wrist and your elbow like that

16     Q      Well, I understand what you're saying. You're saying  
17     it's consistent with that?

18     A      Correct.

19     Q      But that still could be him doing that?

20     A      Or --

21     Q      Or it could be consistent with him running? Would you  
22     not agree with him running funny?

23     A      I could be but most people don't run like that.

24     Q      You haven't been qualified as an expert in running, I'm  
25     assuming?

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1      A      Well, I've been running since I was little and so --

2      Q      I got you. All right. And essentially you inherited  
3      this case and took over as lead investigator; is that  
4      correct?

5      A      That is correct.

6      Q      And you said -- I believe you said Detective Elmore  
7      left in December of 2016?

8      A      That is correct.

9      Q      And you took over the case when?

10     A      It was sometime this year. It was the beginning of the  
11     year. I don't know. I don't know if it was January,  
12     February, March, some time this year.

13     Q      Okay. And we've heard a lot about Detective Elmore.  
14     Is he in the courthouse this week?

15     A      No, sir.

16     Q      He hasn't been in the courthouse this week?

17     A      He has been in the courthouse.

18     Q      So he was available to testify as well?

19     A      He is.

20     Q      Okay. When you took over as lead investigator, I'm  
21     assuming you get access to the complete file?

22     A      Yes, sir.

23     Q      You can see what evidence was collected, what was sent  
24     off for testing?

25     A      Yes, sir.

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1      Q      You can see all the incident reports?

2      A      Yes, sir.

3      Q      All the detectives notes from Detective Elmore and  
4 anyone else?

5      A      Yes, sir.

6      Q      Basically, you get to look at the entire thing?

7      A      Yes, sir.

8      Q      And you incorporate that into your investigation?

9      A      Correct.

10     Q      You see where they went with that investigation, where  
11 you need to pick up, what they did right, what they did  
12 wrong?

13     A      Correct.

14     Q      And based on that you followed up on some things you  
15 said Detective Elmore hadn't done prior to him leaving the  
16 case? Ballistics testing, things of that nature?

17     A      Yes.

18     Q      Okay. And you've been sitting here -- I believe you've  
19 been here the whole trial, correct?

20     A      Yes, sir.

21     Q      You've heard all the testimony?

22     A      Yes, sir.

23     Q      Did you hear the second EMS driver testify, the  
24 paramedic --

25     A      Mr. Shaw.



1 Q -- that took Mr. Spells to the hospital?

2 A Yes.

3 Q Okay. And you heard his testimony that Mr. Spells  
4 wasn't cooperative when he asked him what happened?

5 A Yes, sir.

6 Q And he wouldn't tell him what happened. And you said  
7 -- I think the Solicitor asked you if you were surprised at  
8 that and you said he never cooperates?

9 A Correct.

10 Q You're referring to other cases that he doesn't  
11 cooperate?

12 A Mr. Spells has been involved in another incident, yes.

13 Q Okay. And he asked you if you'd be surprised to hear  
14 he's carrying a gun. You said not at all, I think?

15 A Not at all.

16 Q So you know of him to carry a gun in some other cases?

17 A Yes, sir.

18 Q Okay. So I'm guessing when you went through the file  
19 you read Detective Elmore's reports you weren't surprised to  
20 learn that when he talked to Mr. Spells and Mr. Mack, they  
21 didn't cooperate?

22 A Correct.

23 Q They wouldn't tell them what happened?

24 A Well, I believe at the time that he spoke to them they  
25 were at the hospital being treated.

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1      Q      The first time?

2      A      The first time.

3      Q      Yes. But you're aware from going through it that he  
4      went back the night after?

5      A      Yes.

6      Q      Or the day after, correct?

7      A      Yes.

8      Q      And he spoke to Mr. Mack and Mr. Spells?

9      A      Yes.

10     Q      And that's all in his notes. And you don't have  
11     anything in your file that would say that either one of them  
12     cooperated in any way in this case; is that correct?

13     A      Correct.

14     Q      Do you have any knowledge of whether he asked them  
15     about the stolen gun?

16     A      I have no knowledge of what was asked of them.

17     Q      Okay. And you don't know if he asked them what they  
18     were doing in the bathroom that night?

19     A      No.

20     Q      Okay. You don't have any idea because they wouldn't  
21     tell Detective Elmore about it?

22     A      Correct.

23     Q      And after that, after the day after the shooting, I  
24     guess you fast forward three or four days, from reading  
25     Detective Elmore's notes, he learns that Mr. Mack has passed

1 away, correct?

2 A Correct.

3 Q At that point, he goes back to the hospital is your  
4 understanding, to speak with Mr. Spells, correct?

5 A I'd actually have to read his notes.

6 Q I can get that for you.

7 MR. CHISHOLM: May I approach, Your Honor.

8 THE COURT: You may.

9 Counselor, speak up. If you're going to speak to the  
10 witness you've got to speak up where everybody can hear.

11 MR. CHISHOLM: Yes, sir. I was just directing  
12 Detective Peters to the portion that I was asking about.

13 BY MR. CHISHOLM:

14 Q Have you had a chance to read it, Detective?

15 A Approximately on June 9th, 2016 --

16 Q Detective, rather than you reading the words, do you  
17 see where he went back again three or four days after he  
18 initially spoke with him?

19 A Yes, sir.

20 Q And you don't have anything in there to indicate that  
21 he cooperated on that day at all either, correct?

22 A That's correct.

23 MR. CHISHOLM: May I approach?

24 THE COURT: You may.

25 BY MR. CHISHOLM:

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1      Q      So, with Mr. Spells he didn't cooperate with EMS  
2      initially right after the shooting; is that correct?

3      A      He didn't tell EMS what -- according to Mr. Shaw's  
4      testimony. He says that's not uncommon.

5      Q      Okay. And from your review of the case he didn't  
6      cooperate the day after the shooting or three or four days  
7      later?

8      A      Mr. Spells has not cooperated in this investigation.

9      Q      And from your review of the notes, did he refuse to  
10      look at a photo lineup in this case?

11      A      Yes, sir.

12      Q      Nothing to do with it?

13      A      (No verbal response)

14      Q      Okay. Have you personally tried to get in touch with  
15      Mr. Spells?

16      A      I have.

17      Q      Have you had any luck whatsoever?

18      A      No, sir.

19      Q      Do you think he realizes you're trying to get in touch  
20      with him?

21      A      I believe he has.

22      Q      And he's dodging you?

23      A      That is correct.

24      Q      Now, with that in mind, you've got two alleged victims.  
25      So neither one of them are willing to cooperate, actively

1 running from you. Does that cause you any concern about  
2 their possible behavior that night?

3 A Yes and no. And the reason why I say that, obviously  
4 Mr. Spells has, as I know that that's a concern with no but  
5 also because at the time that Detective Elmore went to go  
6 speak with them, they were actually receiving medical care  
7 and it's unknown on what their mental capacity at that point  
8 is, the medication, the treatment, I don't know.

9 Q Sure. But particularly Mr. Spells, the ongoing refusal  
10 to cooperate. Does that cause some level of concern for  
11 you?

12 A Yes, it does. I mean, obviously, not having the  
13 cooperation of a witness.

14 Q And I think -- or I guess what the Solicitor was  
15 getting at, when he was showing you these slides. He said,  
16 okay, here's -- you identified Mr. Spells and Mr. Mack  
17 facing the restaurant, going to the right. I think he asked  
18 you is that the direction of the bushes. Do you recall  
19 that?

20 A Yes.

21 Q In your investigation is it your opinion that Bradford  
22 Spells is the one that possessed that gun found in the  
23 bushes?

24 A I believe that Mr. Spells possessed the Glock 26; that  
25 is correct?

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1      Q      In the bushes?

2      A      Yes.

3      Q      And this is the gun that you heard the testimony it was  
4      reported stolen?

5      A      Correct.

6      Q      Did you ever followup to figure out if there was any  
7      connection between the theft and this case, as far as the  
8      identity of the person --

9      A      That gun was stolen in 2014 according to the  
10      Summerville Police Department.

11      Q      Okay. So you never went out there and spoke to the  
12      owner or anything like that?

13      A      No.

14      Q      All right. Now, I'd like to talk to you a little bit  
15      about the cellphones in this case. You're aware that one  
16      phone was found at the IHOP that night, correct?

17      A      Yes, sir.

18      Q      And were you able to determine whose phone that was?

19      A      That was Mr. Spells'.

20      Q      Bradford Spells' phone. And was there -- I don't know  
21      the proper term. Was there a phone dump on it and was the  
22      phone analyzed?

23      A      We analyzed it, yes. We forensically examined the  
24      cellphone.

25      Q      And when you do that, what kind of information can you

1 get?

2 A Phone logs, phone contacts. If it's a smart phone you  
3 can get emails. You can get your website history, basically  
4 any type of data that's on the phone. Sometimes we're able  
5 to pull deleted data and all that, text messages, so forth.

6 Q Is that something that Detective Elmore had requested  
7 or is that something you requested when you came on the  
8 case?

9 A I requested that for that cellphone.

10 Q And it's my understanding and correct me if I'm wrong,  
11 but you found no evidentiary value in that phone, nothing  
12 linking Mr. Cobbs to the case; is that correct?

13 A Correct.

14 Q You had no record of him calling Mr. Spells, texting or  
15 anything else?

16 A Correct.

17 Q There's no mention of him in the phone; is that  
18 correct?

19 A Correct.

20 Q And I'm assuming that's one of the reasons you wanted  
21 to look at the phone to see if these parties had been  
22 communicating, correct?

23 A Correct.

24 Q And the Solicitor's already brought it up, but you  
25 mentioned phone issues. Were you able to determine if Mr.

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1      Mack had a phone that day?

2      A      I don't know. I honestly, I have no idea if Mr. Mack  
3      had a phone.

4      Q      There's no notes to indicate that he did?

5      A      No, sir.

6      Q      Okay. And you are aware that three cellphones were  
7      seized from Mr. Cobbs at the point of his arrest; is that  
8      correct?

9      A      Yes, I am.

10     Q      And you talked about the phones, you were not able to  
11     put your hands on them; is that correct?

12     A      That is correct.

13     Q      And I'm assuming you'd want to see these phones for the  
14     same reason you wanted to look at Bradford Spells' phone to  
15     see what kind of communication was going on between the  
16     parties?

17     A      Correct.

18     Q      And be able to tell if these phones were contacting  
19     Bradford Spells or anyone -- or Ms. Sweed in this case.  
20     You've heard her testimony, correct?

21     A      Correct.

22     Q      You could look at his phones and see if she's calling  
23     this guy on these phones?

24     A      Possibly, yes.

25     Q      So that's one of the things you're interested in,



1     correct?

2     A     Correct.

3     Q     Was a phone dump ever done on these phones?

4     A     We have no idea where the phones are.

5     Q     Were you the person that discovered they were missing?

6     A     I brought it to peoples attention. I don't know if  
7     other people associated with this case before I received it  
8     knew about it.

9     Q     Do you recall when you noticed that they were missing?

10    A     What date?

11    Q     Uh-huh? (Affirmative response)

12    A     I honestly, I --

13    Q     Month?

14    A     It was close to the very beginning of when I received  
15    the case.

16    Q     Okay. Do you know who had the phones last?

17    A     According to the paperwork, Mr. Elmore.

18    Q     And usually in a case do you have an evidence log from  
19    when the phones were seized?

20    A     That's the chain of custody that I've already testified  
21    about. That Mr. Elmore had filled out. That's how we  
22    control and pass the evidence.

23    Q     But he put the three phones on the evidence log or you  
24    said it was blank?

25    A     What it is is you have a case number, defendant

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1      information or victim information. Then you have a  
2      description of the evidence. In this case it was listed  
3      item 1, cellphone such and such; item 2, cellphone such and  
4      such; item 3 cellphone such and such. And on the bottom you  
5      have places where you put the item number and then you print  
6      your name out, received from. So that would be the person  
7      who seized it is Detective Elmore in this case. He would  
8      print out his name, his organization and then sign it. When  
9      he turns it into the evidence custodian, or say he decided  
10     to turn it in for a forensic exam, whoever he turned it into  
11     would actually do the same thing. Received such and such,  
12     organization and then sign it. And then that's the chain of  
13     custody.

14     Q      And the point of that is so you can see exactly when  
15     there's a hand to hand transfer where the phone is logged,  
16     who's had it?

17     A      Correct.

18     Q      And you heard Sergeant Byrd's testimony earlier --  
19     yesterday, I believe it was. I asked him about these three  
20     phones and he had no idea what I was talking about?

21     A      That is correct.

22     Q      So based on that and Detective Elmore had on this  
23     evidence sheet, is that how you kind of deduced he had him  
24     last?

25     A      There's also a search warrant return. Each time we

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1      executed a search warrant we have to fill out an itemized  
2      receipt of the items that we seize. And Detective Elmore is  
3      the one who filled out the return.

4      Q      Okay. And Detective Elmore, I mean, could testify.  
5      He's been in the courthouse this week. Have you asked him  
6      about the phones?

7      A      He has no idea.

8      Q      He has no idea. Okay. Now, you're a detective.  
9      You've been doing this a long time. Is this something  
10      common in your office?

11      A      No, sir.

12      Q      I mean, do people in a case like this typically keep  
13      cellphones? Do they typically turn them into evidence?

14      A      Yes, sir.

15      Q      They don't keep them in their car or in their pockets  
16      or whatever?

17      A      We keep them for a small amount of time if we have to  
18      forensically examine them at our office, and then we turn  
19      them into evidence.

20      Q      So I imagine this does concern you then?

21      A      Extremely so.

22      Q      Now, you mentioned search warrants. Search warrants  
23      were executed at multiple locations in this case. Is that  
24      your understanding?

25      A      I believe there's two. One at the hotel room and then

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1      one at a residence.

2      Q      At a residence liked to Mr. Cobbs?

3      A      Correct..

4      Q      And typically in your search warrants do you include  
5      language that allow you to search the vehicles on the  
6      premises, that kind of thing?

7      A      Yes. It just depends on who types the search warrants.

8      Q      And I would imagine you executed these search warrants  
9      to look for evidence that would link him to this crime,  
10     correct?

11     A      Correct.

12     Q      I imagine you're looking for the weapon used in the  
13     crime?

14     A      Yes.

15     Q      Ammunition consistent with that weapon?

16     A      Yes.

17     Q      Or the clothes or this other stuff?

18     A      Yes, sir.

19     Q      Did you find any evidence at any of these locations in  
20     vehicles or anywhere else that ties Mr. Cobbs to the case?

21     A      There was none found on that search warrant, no.

22     Q      Okay. I'd like to talk to you about Ms. Sweed a little  
23     bit. The Solicitor asked you about her. You were here for  
24     her testimony. And you've read Detective Elmore's report?

25     A      Correct.

1     Q     And I believe you may have heard her say that Detective  
2     Elmore looked at her phone. She had texts and calls,  
3     whatnot on it and she let him look at her phone; do you  
4     recall that?

5     A     Yes, sir.

6     Q     In going through your file, do you see any evidence  
7     that he ever did this?

8     A     There's no mention of whatsoever.

9     Q     And detectives, you typically -- I mean, I don't know  
10    if this may be case-by-case, but do detectives typically  
11    keep kind of a worksheet that says called so and so witness  
12    on this date. I went to this location on this date, kind of  
13    itemizing what they're doing?

14    A     Yes.

15    Q     Did he do that in this case?

16    A     No, he did not.

17    Q     In a case like this where you've got Ms. Sweed -- and  
18    I'm assuming you'd want to corroborate what she's saying.  
19    In other words find out that she's telling you the truth.  
20    If you were the investigator at that point and you went to  
21    meet with her and she's telling you this and you looked at  
22    her phone, if there's items of evidentiary value on there,  
23    would you take pictures or otherwise memorialize it somehow?

24    A     If there's actually evidence on the phone, I'd actually  
25    take the phone.

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1      Q      You'd take it into custody?

2      A      Yes.

3      Q      Okay. And that wasn't done in this case?

4      A      That was not done.

5      Q      And if there was any corroborating evidence from that  
6      you'd expect it to be in the file or mentioned somewhere,  
7      correct?

8      A      Yes, sir.

9      Q      Do you know if Detective Elmore ever went to the bars  
10     that were -- Ms. Sweed said she went to. I know one of them  
11     she had trouble coming up with the name. The other one is  
12     Club Vegas. Do you know if he ever went out to those sites?

13     A      Not that I know of.

14     Q      Do you know if he talked to any witnesses out there?

15     A      I have no idea.

16     Q      You don't know if he looked at video surveillance or  
17     anything?

18     A      Correct.

19     Q      And you know Ms. Sweed gave Detective Elmore the number  
20     for the person that she was calling and texting, correct?

21     A      Yes, sir.

22     Q      Do you know if he ever looked into whose number --  
23     who's connected to that number through the phone carrier?

24     A      There's no record of it.

25     Q      It doesn't look like he did that or he didn't notate

1 it?

2 A Correct?

3 Q And do you know if he subpoenaed any carrier  
4 information for that number?

5 A There is no records of any search warrants for  
6 cellphones at all.

7 Q Do you have any kind of reason to believe that he spoke  
8 to any of the witness? Ms. Sweed, I believe her testimony  
9 was, she'd mentioned a couple of people -- I don't remember  
10 their names -- that one of them saw her with Mr. Cobbs she  
11 said?

12 A There's no record of that.

13 Q Okay. So Detective Elmore didn't do anything to fact  
14 check her story at all; is that correct?

15 A That is correct.

16 Q Except she mentioned that she went to an address with  
17 Mr. Cobbs, 208 Sandra Lane, I believe it is?

18 A Correct.

19 Q And from reading your reports, it looks like Detective  
20 Elmore did go to that address; is that correct?

21 A I'd actually have to look at that.

22 MR. CHISHOLM: May I approach, Your Honor.

23 THE COURT: You may.

24 BY MR. CHISHOLM:

25 Q Would it help if I was to show you a copy of that

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1      report?

2      A      Yes, sir.

3      Q      Those last two paragraphs should catch you up.

4      A      Okay.

5      Q      So does it appear to you Mr. Elmore did meet with the  
6      homeowner at that address?

7      A      Yes.

8      Q      And that would be Mr. Jake Black?

9      A      He has a residence there. He's not the homeowner.

10     Q      Okay. And is there anything in here that says when he  
11     went out to that address, the one she described, that he  
12     found corroborating evidence that she'd ever been there that  
13     night like she said?

14     A      There's no evidence.

15     Q      There's no evidence that she was ever there?

16     A      Correct.

17     Q      After speaking with the people who live there?

18     A      Correct..

19     Q      When he went to speak with Ms. Sweed in Florida, I  
20     believe it was, do you have anything in your file to  
21     indicate that he recorded that meeting?

22     A      There's no mention that he recorded it, no.

23     Q      From your understanding was the purpose of him going to  
24     Florida, was it to meet with her. I mean, he wasn't going  
25     on vacation. That was the whole point, correct?



1 A That was the whole point. Yes, sir.

2 Q He was going down there to get information from her?

3 A Yes.

4 Q Show her a lineup; is that correct?

5 A Correct.

6 Q Would you agree with me the best practice in that  
7 scenario if you were doing this, would be to record your  
8 conversation with Ms. Sweed so that the jurors and everyone  
9 else could hear exactly what she's saying?

10 A It would be the best practice and it's actually been  
11 instituted at -- I believe in 2016 detectives were not  
12 issued body cams yet. That has been since rectified.

13 Q So now the policy would be to record it.

14 A There's no official recording -- official sheriff's  
15 office policy. It's my policy that it's recorded, yes.

16 Q Okay. And even way back in 2016, I mean, there were  
17 other recording devices available, correct.

18 A That's correct.

19 Q And he just didn't do it in this case?

20 A That's correct.

21 Q I'd like to speak to you a little bit about the guy in  
22 the white shirt, as you refer to him?

23 A Yes, sir.

24 Q You said you never found out who he was?

25 A We don't know who he is.

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1      Q      Did you try to find out yourself or is that just based  
2      on Detective Elmore trying to find out who it was?

3      A      Well, the only lead that I have -- well, obviously  
4      there's two leads, the Defendant and fingerprints, because  
5      we do know that he --

6                      THE COURT:    Speak up for me now.

7                      THE WITNESS:    Sorry, sir.

8      A      There's just nothing that I could followup on.

9      BY MR. CHISHOLM:

10     Q      Okay.

11     A      The fingerprints that were lifted are obviously not in  
12     the AFIS system for us to get a match.

13     Q      Okay.    And you said you've watched this video, I think,  
14     frame-by-frame at one-eighth time?

15     A      Yes, sir.

16     Q      How many times have you watched it?

17     A      A lot.

18     Q      Okay.    When the man in the red shirt and the white  
19     shirt go to the restroom, the man in the white shirt comes  
20     back out on camera view; is that correct?

21     A      That is correct.

22     Q      And he's on camera as the two alleged victims approach  
23     that area, correct?

24     A      Yes.

25     Q      Do you recall watching on the video, and the jury will

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1      have the video, but do you recall seeing on the video as  
2      they pass and go by the camera, he turns and watches them  
3      and then follows behind off-camera himself; do you recall  
4      that?

5      A      Go right --

6      Q      Yes?

7      A      Yes.

8      Q      Did that cause you any kind of concern that he followed  
9      them back in there right before the shooting?

10     A      What do you mean concerned?

11     Q      Did that raise your suspicion of what his involvement  
12     or knowledge about the case?

13     A      It did. But then you also see during the gunshots, the  
14     several gunshots, that he's actually outside in full view,  
15     walking outside the door while the gunshots are going off.

16     Q      I understand and you pointed something out. You said  
17     that the guy in the white shirt, he just walked off. So  
18     everyone else runs; is that correct?

19     A      Correct.

20     Q      He's the only one that walks off her?

21     A      During the shooting, yes.

22     Q      Okay. Do you feel that Detective Elmore conducted a  
23     quality investigation in this case?

24     A      No, I do not.

25     Q      Do you feel like you were hamstrung to some degree by

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1      what he did and didn't do?

2      A      Yes, sir.

3              MR. CHISHOLM: May I have a moment, Your Honor?

4      Q      Thank you. I have no further questions.

5              THE COURT: Redirect?

6              MR. SORENSON: Briefly, Your Honor.

7                      DWAYNE PETERS - REDIRECT EXAMINATION

8      BY MR. SORENSON:

9      Q      Lieutenant Peters, we'll kind of go back a little bit  
10      in the questioning of Mr. Chisholm about the night of the  
11      incident when Detective Elmore went out to Trident Medical  
12      Center. What condition were the two, Mr. Spells and Mr.  
13      Mack in that night?

14      A      I don't think he could speak with Mr. Mack. I know Mr.  
15      Spells, obviously based on the testimony, was uncooperative  
16      but incoherent. He was I guess deteriorating, I guess.

17      Q      Did he also note in his report about the fact that they  
18      were both heavily medicated that night?

19      A      He did.

20      Q      Okay. And did he ever have an opportunity, Detective  
21      Elmore, to talk then to Mr. Mack?

22      A      I don't believe he did.

23      Q      Looking at his report?

24      A      I don't have the report.

25              MR. SORENSON: May I approach?

1                    THE COURT:    You may.

2        A        No, sir.

3        Q        Any reference anywhere in there to him being able to  
4        attempt to talk to Mr. Mack after that night, that initial  
5        night?

6        A        The next day he tried to but he was medicated.

7        Q        And then ultimately he finds out a couple of days later  
8        on the 9th that he's passed away that day; is that correct?

9        A        That is correct.

10       Q        All right.    And Mr. Chisholm asked you about some  
11       search warrants that were issued in this case; is that  
12       correct?

13       A        Yes.

14       Q        Looking for -- and I believe they were at the motel  
15       where the Defendant was arrested.    I think it was a LaQuinta  
16       Inn; is that correct?

17       A        Yes, sir.

18       Q        And then also a residence.    Where is that residence;  
19       what road that was even?

20       A        Barber Drive.

21       Q        What neighborhood is Barber Drive?

22       A        Greenhurst?

23       Q        Okay.    Are you aware of -- I'm showing you State's  
24       Exhibit No. 81 -- whether this red tee shirt was ever  
25       located anywhere?

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1      A      It was not.

2      Q      And that Sandra Lane, that information that was  
3      provided by Ms. Sweed, what neighborhood is that in?

4      A      That is (inaudible). Sandra Lane actually runs into  
5      Barber Drive.

6      Q      And let me -- do you know whether back in 2016 is there  
7      a Club Vegas or was there a Club Vegas?

8      A      I have no idea.

9      Q      If he had asked you, the last thing, kind of -- Mr.  
10      Chisholm had asked you a little bit about whether you  
11      thought it was suspicious the actions of the guy in the  
12      white tee shirt?

13      A      Yes.

14      Q      He's somebody else y'all are looking for; is that  
15      correct?

16      A      Yes.

17                      THE COURT: Refer to the exhibit for the record?

18                      MR. SORENSON: I'm sorry. I'm sorry. State's  
19      Exhibit No. 88.

20      BY MR. SORENSON:

21      Q      He's somebody you were looking for back then?

22      A      Yes, sir.

23      Q      And would still like to find, right?

24      A      Yes, sir.

25                      MR. SORENSON: That's all I have, Your Honor.

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1      Thank you.

2                      THE COURT: Recross limited to redirect?

3                      MR. CHISHOLM: Thank you, Your Honor.

4                      DWAYNE PETERS - RECROSS EXAMINATION

5      BY MR. CHISHOLM:

6      Q      This address on -- was it Barber Drive the Solicitor  
7      asked you about?

8      A      Yes, sir.

9      Q      Where a search warrant was executed?

10     A      Yes, sir.

11     Q      That's a single family residence; is that correct?

12     A      Yes, sir.

13     Q      Okay. It's not an apartment or a duplex?

14     A      Not that I know of. I've actually never been over  
15     there.

16     Q      And Sandra Lane, is that an apartment or a duplex?

17     A      No, that's a house.

18     Q      Thank you.

19                      MR. CHISHOLM: No further questions.

20                      THE COURT: As to this witness, he's going to  
21     remain with us.

22                      MR. SORENSON: Yes, sir.

23                      THE COURT: The portions of the report go back to  
24     Mr. --

25                      THE WITNESS: Yes, sir.

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1 THE COURT: They're not in evidence. They don't  
2 go to the court reporter. She'll get that for you. Just  
3 leave it right there.

4 THE COURT: Call your next witness?

5 MR. SORENSON: Your Honor, at this time, the State  
6 would rest.

7 THE COURT: Are there any matters of law that I  
8 need to take up at this time?

9 MR. CHISHOLM: There are, Your Honor.

10 THE COURT: Very well. Mr. Foreman and ladies and  
11 gentlemen of the jury, I'm going to ask if you'd step to  
12 your jury room. I need to take up a matter of law. Please  
13 do not discuss the case. I'll be back with you as quick as  
14 I can.

15 (Jury out at 3:29 p.m.)

16 THE COURT: Yes, sir.

17 MR. LOY: Thank you, Your Honor.

18 Your Honor, at this time the Defense would make a  
19 motion for directed verdict on both charges that are  
20 currently before the Court, both the indictments. I believe  
21 what the case has presented is solely a -- what the State  
22 has presented is solely a circumstantial case. As such, my  
23 understanding is not that they elect to argue a scintilla of  
24 evidence or any evidence whatsoever would be adequate to  
25 send it to the jury. But such substantial circumstantial



1 THE COURT: Thank you very much. You may return  
2 to your seat.

3 DEFENDANT COBBS: Thank you.

4 THE COURT: All right. I need to know now from  
5 you counsel, whether it be Mr. Loy or you, Mr. Chisholm,  
6 does the Defendant intend to introduce any evidence?

7 MR. CHISHOLM: No, Your Honor.

8 THE COURT: All right. Then I'm going to call the  
9 jury back. I'm going to let you rest in front of the jury,  
10 all right. There will be no reply testimony in this case  
11 because the Defendant hasn't put up any evidence. And the  
12 Defendant gets final argument in this case because the only  
13 exhibit was marked purely for identification, was not  
14 introduced into evidence, under State versus Beatty 2, which  
15 some people still seem to be debating about. But I don't  
16 think they -- I think it's pretty clear from the case. I  
17 will then go over -- I will then go over the entire charge  
18 with you so that you can be prepared for tomorrow morning.  
19 I'm going to excuse the jury and we'll do that in chambers  
20 after we rest. Do you understand?

21 MR. CHISHOLM: I do, Your Honor. I have just one  
22 question. I didn't know if you wanted to put on record when  
23 we approached the bar about my objection to Detective  
24 Peters?

25 THE COURT: Yep. It was during -- I'm trying to -

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1 overruled that objection. I'm making a record of it now. I  
2 felt he could give his interpretation because the jury got  
3 to see the video and decide for themselves. I will point  
4 out at this point, Mr. Chisholm was allowed to ask him,  
5 could you see his hands? No. Could you see a gun? No.  
6 Could his arm have just been in that fashion? And Mr.  
7 Peters admitted, yes, it was possible but his opinion was  
8 that he thought this was the way he would have been putting  
9 a weapon back into his waistband, based on his  
10 interpretation of the video. And I felt his experience  
11 allowed him to be able to give his opinion as to that. So  
12 that objection was overruled. Now we have a record.

13 Bring us the jury, please.

14 Take a seat, counsel.

15 (Jury in at 3:40 p.m.)

16 THE COURT: All right. Mr. Foreman, ladies and  
17 gentlemen of the jury, you've heard the evidence presented  
18 at this stage by the State. We will now hear from the  
19 Defendant.

20 You may call your first witness.

21 MR. CHISHOLM: Your Honor, at this time, the  
22 Defense rests.

23 THE COURT: Ladies and gentlemen of the jury, you  
24 have now heard all of the evidence in this case; however,  
25 you have not heard the closing arguments of the attorneys

1 need a break after the lawyers argue to you, I'll be happy  
2 to give you one before my charge is probably going to be  
3 about twenty-three minutes, something like that. Be happy  
4 to give you a break at that time. Thank you for your  
5 service and thank you for listening carefully to the  
6 evidence in this case.

7 MR. SORENSON: May it please the Court, Your  
8 Honor.

9 THE COURT: Proceed.

10 STATE'S CLOSING ARGUMENT

11 BY MR. SORENSON:

12 Good morning, Mr. Foreman, ladies and gentlemen of the  
13 jury. I'm going to start off by thanking you, thank you for  
14 your time. You really didn't have a choice in that matter,  
15 but more importantly the attention that you've given in this  
16 matter over the last several days. I'm positive you're  
17 going to give over to myself and Mr. Chisholm and Your Honor  
18 this morning, and then most importantly that I know you're  
19 going to give to this case when you get a chance to get back  
20 into your jury room and deliberate later this morning.

21 Now, as I told you on Tuesday this case boils down to  
22 two simple questions, two simple questions. How many people  
23 were in that restroom, that men's room at 2:15 in the  
24 morning, when that volley of gunshots erupted: And number  
25 two, is the Defendant the man in the red shirt? Two simple

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1 questions. And I submit to you, ladies and gentlemen, when  
2 you go through the evidence and I'm going to go through it  
3 with you this morning, the answer to that first question is  
4 three. Three. The answer to that second question is yes.  
5 You answer those questions that way, then I submit to you  
6 there is not mere reasonable doubt, there is no doubt who  
7 shot and ultimately killed Brandon Mack in that restaurant  
8 six times. Who shot Bradford Spells as soon as he ran out  
9 that restroom door that morning. No doubt.

10 Now, I'm going to start off by talking to you just very  
11 briefly about one of the legal principles that His Honor is  
12 going to kind of charge you on. In criminal cases there's  
13 two types of evidence that you hear, direct evidence where a  
14 witness comes in and testifies about something that they  
15 saw, something they heard, something they experienced with  
16 their senses. You've heard some of that in this case.  
17 Witnesses that were out there that testified about what was  
18 going on and what happened and gave reports of this incident  
19 out there. There's something else called circumstantial  
20 evidence and that's something that's real important in this  
21 case, so I want to talk to you about it. Circumstantial  
22 evidence, just like I said, direct evidence -- if I look  
23 outside and see it's raining outside and I testified that  
24 it's raining outside. I have perceived that with my own  
25 sense if I can see it. All right. Circumstantial evidence

1 is when you take a chain of facts and ultimately those chain  
2 of facts and circumstances when put together create another  
3 fact. By way of example, imagine you've had a room, okay? °  
4 You put an elephant -- it's kind of a silly example, but you  
5 put an elephant in that room and you put two mice in that  
6 room with the elephant. You put a big basket of peanuts in  
7 there. There's only one way in and one way out of that  
8 room. Close the door. You've got a surveillance camera set  
9 up that would capture and you'd be able to see if someone  
10 else went into that room, along with everything that's in  
11 there. Ten or fifteen seconds later, you go into that room  
12 the basket of peanuts is empty. But you didn't see who ate  
13 the peanuts. It's pretty easy to deduce who ate those  
14 peanuts. It's kind of a silly example. Keep that in mind  
15 because it applies directly to this case. All right.

16 So let's talk about the first question. The first  
17 question the number of people in the restroom at 2:15 in the  
18 morning. And you heard Mr. Gavins. He's the director of  
19 operations for IHOP that testified that basically the camera  
20 angle or basically showing the very back, into the restroom.  
21 And you heard him testify when we showed the video that one  
22 of those cameras was shooting down. We pull up the -- but  
23 there's a camera angle kind of free, was the way he  
24 described it, that you would see if a person went towards  
25 the restrooms or came from the restrooms in that camera

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1 angle. That's very important, okay? And we heard  
2 Lieutenant Peters' testimony and we had and you're going to  
3 have the surveillance video is in evidence if you want to  
4 watch it during your deliberations, you can let us know and  
5 we can bring you back out and let that be done. But you're  
6 going to have a bunch of the still photographs back there.  
7 But looking back, or think back to Lieutenant Peters'  
8 testimony that he took that video and literally went through  
9 it frame-by-frame, by frame, by frame. At the time of the  
10 shooting -- at the time of the shooting 2:15 and :00  
11 seconds, from that first shot you hear on the video. At  
12 that point in time I submit four people at that point in  
13 time that are unaccounted for. Four people -- and I'm going  
14 to play the video in a minute -- that have come either  
15 around the corner and gone towards the restrooms or come in  
16 from outside and gone towards the restrooms. The Defendant,  
17 the guy in the red shirt. I'll talk to you in a few minutes  
18 how we know that's the Defendant. The guy in the white tee  
19 shirt, Mr. Mack and Mr. Spells. You may be thinking well,  
20 wait a minute. That's four. You said the answer to your  
21 question is three. The guy in the white tee shirt is back  
22 in view. And when I play that in a minute, you're going to  
23 see he had come back into view here while the shots were  
24 being fired. Three people. Three people.. And furthermore,  
25 just to double check, he continued to watch it afterwards

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1 and ultimately accounted for every person, every person that  
2 ran out of that IHOP, that ran through the lobby after the  
3 shots were fired. And the fact that there were only three  
4 people, three individuals that came out of that restroom  
5 area after the shots. Bradford Spells at 2:15 and :06  
6 seconds. Six seconds after that shot is fired, two seconds  
7 after the last shot you hear. The man in the red shirt, a  
8 second later, jumping over him as Mr. Spells is on the  
9 floor. And ultimately, Mr. Mack seven seconds later at 2:15  
10 and :14 seconds. Nobody else came out of that restroom.  
11 Nobody else unaccounted for or going into the restroom and  
12 nobody else came out of the restroom. You know, maybe  
13 they're going to try to argue well, what if he came out and  
14 somehow snuck, you know, got down real low and snuck around  
15 the corner. We know from the testimony you'd come out into  
16 the dining room, up here. If you haven't, you're going to  
17 be seeing that again in the video. When you watch it, the  
18 only people you see at the time of the shooting -- if you  
19 remember you heard the young lady that was the hostess, Ms.  
20 Harkins, you're going to see her when I play this in a  
21 minute, as Ms. Harkins right here is getting ready to go  
22 seat a couple. And you're going to see them as the shots --  
23 that are walking down here when the shots -- at 2:15:00  
24 seconds and they come running. It's a party of two  
25 individuals in black shirts. They come running. There's

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1 not another single person you see come there. Not another  
2 single person you see come out of the restroom that goes  
3 through the lobby. And not a single unaccounted for person  
4 that when you look at the outside view, the top right-hand  
5 view going out the door.

6 Mike can you play it, please for me?

7 MR. SPEARS: (Plays video from IHOP for the jury)

8 MR. SORENSON: Thank you.

9 CLOSING ARGUMENT CONTINUED

10 BY MR. SORENSON:

11 And you're going to see this guy down here come up.  
12 He's one of the Hell's Angels guys with the -- he's got a  
13 black vest on with a red tee shirt on under it. You go  
14 back, he's over here. Back it up. This man right here and  
15 these two right there. So you account for him also. It's  
16 not possible, you know, for somebody to have snuck out and  
17 gone that way because you've got Mr. Spells creeping down  
18 over here and you've got that person that's walked up right  
19 beside him. There is absolutely doubt, no question that  
20 there were only three people in that restroom at 2:15 and  
21 :00 seconds in the morning. I said in my opening it would  
22 be simple, probably third-grade logic, third-grade math,  
23 simple common sense. All right.

24 So let's turn to the second question. Is the person --  
25 is the Defendant the person in the red shirt? And I submit



1 to you at this point in time that there's no doubt about  
2 that. You've got -- you have multiple still photographs  
3 that are in that -- in the little Powerpoint that was  
4 presented. We've got him walking in. We've got still  
5 photographs of him walking across the, walking across the  
6 dining area where you see as Lieutenant Peters, if you  
7 recall, pointed out. And you can see the American flag on  
8 his shirt. You know, thankfully in this case, because I  
9 mean none of those videos are super clear, where you can  
10 obviously see a general physical description. You can see a  
11 color, probably see a hairstyle. You could look at that and  
12 look at the Defendant and go well, it's consistent with Mr.  
13 Cobbs. Maybe that wouldn't be without a doubt. But  
14 thankfully, we have Ms. Pulliam's video, her cellphone video  
15 that was played, we watched the video, you know, ten minutes  
16 prior to this shooting. I submit to you there's no doubt  
17 that Mr. Cobbs, seated over there, there's no doubt that you  
18 see it in the shirt that the American flag, that's the same  
19 person. You can see that in the video. There's no doubt.  
20 On top of that you had Ms. Pulliam identify the Defendant as  
21 being the person that was in the IHOP with her the night  
22 that that cellphone video was shot. You have the waitress  
23 that dealt with him, Ms. Creel, Julie Creel. The waitress  
24 that testified she served him forty to fifty times. That  
25 he'd come in every weekend when he got done -- when the

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1 clubs got out, that ID'ed him that that's the person that  
2 was in there in the red shirt that night who I dropped a  
3 drink off for. And somebody else with him that I hadn't  
4 gotten around to taking any of their order, their food order  
5 yet. And he orders food every weekend when he came in  
6 there. She ID'ed him. Then you have Ms. Sweed, the lady  
7 that was in the jail uniform that had legal problems down in  
8 Texas now. The lady that identified him in that video as  
9 being the person that she had talked to regarding the IHOP.  
10 And we'll talk a little bit about her a little later on.  
11 And if you still got a question, you still got a question,  
12 just the kind of icing on the cake, when the guy in the red  
13 shirt's going out the door, pushes through that left-hand  
14 interior exit door, what did we get off of there? Keunte  
15 Cobbs left-hand print. I submit to you yet again, just like  
16 there was no doubt, no question how many people were in that  
17 restroom at 2:15 in the morning, there is no doubt and there  
18 is no question that that's Keunte Cobbs. That's him, the  
19 person who runs out, that jumps over Bradford Spells and  
20 runs out the door two minutes after those shots -- three  
21 seconds after those shots are fired, it's Keunte Cobbs.

22 That red shirt, I submit that -- you know, they did  
23 search a couple of places looking for things but the red  
24 shirt's never found anywhere. The motel that he's staying  
25 in. The house that they thought was his. The red shirt's

1 never found because, guess what, he's on the move. They're  
2 looking for him the day after. I'm sure Mr. Chisholm is  
3 going to get up here and say, but they still haven't proven  
4 that he shot, you know, the victims. And you know, he's in  
5 the restrooms. That's Keunte Cobbs. He ran out of the  
6 restroom just like everybody else ran away.

7 So let's talk about it, ladies and gentlemen, what I  
8 submit to you proves the answer to those first two questions  
9 but then obviously the ultimate issue that we're here for  
10 today in regards to who shot Brandon Mack and Bradford  
11 Spells. To do that we have to look at the time line. Look  
12 at the time line. At 1:49 in the morning Keunte Cobbs and  
13 the guy in the white tee shirt -- and I'm going to spend  
14 some time talking about him here in a few minutes -- they  
15 arrive at the IHOP. 1:49 and :51 seconds the two of them  
16 are being seated back in the dining area. 1:50 in the  
17 morning and :12 seconds, he goes to the restroom. He goes  
18 to the restroom. A minute or so later -- He's already gone  
19 to the bathroom, okay? 1:51 and 1:52. He sits down at  
20 1:52. He's there for the next twenty minutes. 1:52 in the  
21 morning, seated by the front window that allows him to look  
22 out on the Dorchester Road. See the entrance off of  
23 Dorchester Road to the IHOP, they're sitting there.  
24 Curiously, he gets back up now at 2:12 in the morning.  
25 Hasn't placed his order yet, gotten his drink. He goes back

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1 toward the restroom. Ten seconds later his buddy in the  
2 white tee shirt gets up also. 2:12:17 he's winding the  
3 corner, rounding the corner, going towards the restrooms.  
4 Six second later ??? comes right behind him. Comes right  
5 behind him looking back towards the entrance doors to the  
6 restaurant. 2:12:23 twelve seconds later, the two victims  
7 come walking in, come walking up. Mr. Mack in the blue  
8 ahead of Mr. Spells the way they are as they walk throughout  
9 the restaurant. 2:14 and 51 seconds, the two of them are  
10 right -- Mr. Mack is just leaving the view over towards the  
11 restroom. Mr. Spells a step or two behind him. The white  
12 tee-shirted guy is back in view. He's been out of view for  
13 maybe 20 seconds or so now? What's he doing up there?  
14 What's he doing up there? And Mr. Chisholm had asked  
15 Lieutenant Peters in questions yesterday about whether he  
16 had concerns about the white tee-shirt guy. Either that or  
17 he knew what was going on. Who was going to do what they  
18 were about to do. 2:15:00 the first shot is fired.  
19 2:15:03, you heard the testimony and saw the video. The  
20 shots lasted for four seconds. 2:15:04 is when you hear the  
21 last gunshot. The white tee shirt guy slowly walking,  
22 walking across the lot. We know he can't be the shooter.  
23 When the last shot is fired, the last shot you hear, he's  
24 almost out the door yet again, walking. Two seconds later,  
25 you see Bradford Spells come out on the floor, writhing

1 around on the floor, which is consistent with the blood  
2 that's found on the side of the desk there where you pay,  
3 near the register area. A second after that, the red tee-  
4 shirted guy, Keunte Cobbs comes running out, jumps over  
5 basically Bradford Spells and ultimately out the door. And  
6 he and his buddy walk off together. As I said, the time  
7 frame, the time line is utterly crucial in this case. I'm  
8 not sure if Mr. Chisholm is going to get up here and try to  
9 argue that, you know, there was some sort of altercation or  
10 confrontation or something that happened in that restroom.  
11 Obviously, you heard the testimony. I don't think there's  
12 any question at this point in time that both Mr. Mack and  
13 Mr. Spells had firearms on them. The evidence shows that  
14 neither one of those guns were fired. I submit to you  
15 neither one of them were even pulled out based on the fact  
16 that you see the two of them leaving and seconds later, Mr.  
17 Spells is on the floor. He doesn't have a gun in his hand.  
18 We're supposed to think that he has been shot and he's  
19 thought about tucking his gun back away before stumbling out  
20 of the restroom. Mr. Mack has been shot six times. And you  
21 can ultimately see in the video how he comes out initially.  
22 He's almost walking around like everything's fine, until he  
23 wanders around outside and end up basically just face-  
24 planted outside. That he has somehow put his gun back in.  
25 And how else do we know that that couldn't have happened?

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1 If you look at the time frame 2:14 and :51 seconds, 2:14 and  
2 :51 seconds is when we last see Mr. Mack in the video  
3 heading to the restroom. Mr. Spells is still a couple of  
4 steps behind him. He's a step or so behind him. They still  
5 have to go -- I mean, they're not in the restroom yet.  
6 They're right here. They've still got to go around the  
7 corner. The restrooms -- the measurements on here eight  
8 feet six inches across. So you're talking still a good  
9 fifteen feet that they have to walk before they're in the  
10 restroom. It's fifteen feet. Four or five more seconds.  
11 Four or five more seconds. There's not time for any sort of  
12 confrontation, altercation in that restroom.

13 What do we know about Mr. Mack? We know we find his  
14 keys, his car key, a ten dollar bill sitting on the counter.  
15 Think back to the pathologist, Dr. Tormos' testimony. The  
16 wounds to his upper body. The wounds I submit to you is  
17 still on his feet from being shot, consistent with an  
18 forward and at this angle. Consistent with somebody that  
19 has come into the restroom and gone up to that sink, the  
20 sink that's immediately to your right. All the shots come  
21 from the left into his body, all six of them from the left.  
22 Yet again, not consistent with somebody that would square  
23 off in an altercation or a confrontation with somebody.  
24 Consistent, I submit to you, ladies and gentlemen, with  
25 somebody who is laying in wait back in this bathroom. You

1 see him, these two guys, at least one Mr. Mack he has an  
2 issue with, pull into that parking lot and he is gone into  
3 that restroom. He's got his little sentinel outside. I  
4 don't know if he's out there -- because you know, like I  
5 said, remember it's twenty seconds from the time he goes out  
6 of view the white tee-shirt guy just pops back up. We don't  
7 even know if he actually went into the restroom or he just  
8 come a little -- far enough towards the restrooms and just  
9 out of view. Maybe making sure nobody else comes in the  
10 restroom. Or if the issue as Ms. Sweed told us that the  
11 person that he shot had stolen a bunch of money from him.  
12 That the issue was with Brandon Mack, maybe not Bradford  
13 Spells. And his job was to distract Mr. Spells, to either  
14 try to stop him, deter him, detain him, slow him down. And  
15 that's why he's still standing there. Because we know at  
16 least one of the shots, the door was open. I submit to you  
17 Mr. Spells hasn't even made it into that bathroom when those  
18 shots began ringing out. And that's why he's back out on  
19 the floor so quick.

20 Shell casings start in the back of the bathroom and go  
21 forward. Some are located towards the front of the  
22 bathroom. I submit to you consistent with somebody coming  
23 out of that back stall, ambushing this young man while he's  
24 standing at that sink. His left-hand side would be -- he  
25 was shot twice in the upper body. He was knocked down. If

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1 you remember, the bottom -- all the four lower wounds, from  
2 his groin area down were all traveling up. All traveling  
3 up, consistent with him being, at that point in time, on the  
4 ground. As you hear that barrage of shots as Mr. Cobbs make  
5 it from the back of that bathroom, past him. I submit to  
6 you, leaving him, leaving him laying on the ground with  
7 blood all over. Blood consistent there, up on the counter at  
8 the sink. Blood all over the floor. Probably jumped over  
9 him before he ran out and jumped over Mr. Spells.

10 Let's talk briefly about the white tee-shirted guy.  
11 Sixteen people, ladies and gentlemen. You have the stills  
12 of the Powerpoint presentation when shots rang out. Sixteen  
13 people, prior to that man right there ran out the front of  
14 that IHOP or went out, went out the front of that IHOP.  
15 Sixteen people. Only one of them weren't running. Only one  
16 of them wasn't running. That's the guy in the white tee-  
17 shirt.

18 Can you play that real quickly, Mike?

19 MR. SPEARS: Yes.

20 CLOSING ARGUMENT CONTINUED

21 BY MR. SORENSON:

22 Walking out. Walking out. Still walking. Everybody  
23 else is tearing out.

24 Stop it right there.

25 CLOSING ARGUMENT CONTINUED



1 BY MR. SORENSON:

2           Everybody else is tearing out. People look like  
3 they're falling down in the entryway. The white tee shirt  
4 guy doesn't. Why is that significant? There's no doubt  
5 that he comes in with him, seated with him, gets up and goes  
6 to the restroom with him, standing guard outside the  
7 restroom, I submit, for him. Why is he still standing  
8 there? If he's just went to go to the restroom -- if it's  
9 like husband and wife, boyfriend/girlfriend when you're  
10 waiting for your girlfriend to come out of the restroom.  
11 These are two guys. Why is he still standing there in the  
12 lobby? He's the closest person to that bathroom when those  
13 shots rang out, but yet he calmly walks out the door? He  
14 knows his buddy's in there. Is that the reaction of  
15 somebody that didn't have any idea what was going on? Would  
16 you be worried about that your friend shot in there? He's  
17 not worried about that because he knows what's going on in  
18 there. And I submit to you, ladies and gentlemen, that  
19 proves -- his action, the way he acted leaving that restroom  
20 or leaving that lobby, proves the premeditation, proves that  
21 there was some planning, proves that they were lying in wait  
22 to ambush Brandon Mack. All right. That the three of them  
23 had come out. We have talked about that earlier.

24           Let's talk about Mr. Spells' reaction, okay?

25           Let's see it again, Mike. Can you back it up a little

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1 bit, Mike?

2 CLOSING ARGUMENT CONTINUED

3 BY MR. SORENSON:

4 Mr. Spells, he comes out. You see him up here crawling  
5 around the corner, crawling, knocking over the wet floor  
6 sign. See he goes up the guy that I submit has just shot  
7 him. Where is he going? Right. If the shooter -- Stop it  
8 right there.

9 If the shooter has somehow made it into the dining  
10 room, why on earth is he going that way? He's going --  
11 getting away from the man who just shot him, getting away.

12 Keep going. All right. Play.

13 Hiding down. Now, his buddy, Mr. Mack comes out. By  
14 the time Mr. Mack is coming out, the Defendant, they're  
15 already in the parking lot. So at that point in time,  
16 they're good to go out. But then the two victims go out and  
17 then go out into the light. They were parked the other way.  
18 So they aren't going to their cars, they're going to get rid  
19 of Mr. Spells' gun, is where they're going. We know that  
20 now. And yet again, his actions, Bradford Spells proves who  
21 shot him. All right. And then to kind of top it all off --

22 Mike, go to the top right one. All right. All right.  
23 Go back. Go back. Stop it.

24 What this couple that comes out -- right here.

25 Stop it.

1        They're seated on the bench right inside. They're the  
2        last people basically before the Defendant and the white  
3        tee-shirt guy get up and go out. Everybody else is running.  
4        They get out the door and as the Defendant is coming out  
5        behind them, he's pulling the girl out of the way. Pulling  
6        the girl out of the way. Why would he be doing that? You  
7        know, if that were his vantage point now that he's looking  
8        back into that restaurant as they are coming out and he is  
9        turned back, looking that way. That guy with the red shirt  
10       coming out, as Lieutenant Peters described it, coming out of  
11       that restaurant, running like this. Now, it's not rocket  
12       science to figure out what's got to be going on. Because  
13       yet again, I submit to you we've proven beyond any doubt  
14       three people in the restroom, he's the red shirt guy. We've  
15       got an extra person firing guns. And he's tucking that gun  
16       in as he's running out. He sees it. That's why he's  
17       pulling him out of the way or pulling her out of the way. I  
18       submit to you nobody else came out of that restroom. And  
19       ultimately when you look at the time line, look at the --  
20       evidence that was found, there was nobody else that had the  
21       position, had the opportunity to fire those shots inside  
22       that restroom, other than Keunte Cobbs, no one.

23        Just like if you remember back, to my example that I  
24        gave you at the beginning, my circumstantial evidence. Just  
25        like in that example, there was a plausible, reasonable and

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1 I submit possible explanation to how those peanuts got  
2 eaten. In this case, ladies and gentlemen, I submit there  
3 is no other reasonable, plausible or possible -- we're not  
4 dealing with an invisible man -- as to how Brandon -- who  
5 and where Brandon Mack and Bradford Spells were shot.

6 I'm talking very briefly -- I'm about done -- about Ms.  
7 Sweed. Well, first of all about Mr. Spells. All right.  
8 One of the questions Mr. Loy asked yesterday is where --  
9 Where is Bradford Spells. We're not going to see -- or  
10 Tuesday -- Where is Bradford Spells? We're not going to see  
11 Bradford Spells. Well, we know that now. He's talked to  
12 him. I have the jail call where he said he's talked to him  
13 and more importantly them boys have done talked to me.  
14 Would be surprised if Bradford Spells wasn't going to come  
15 to court. One of them boys is that white tee-shirted guy  
16 that we haven't been able to identify. If he didn't shoot  
17 Brandon Mack and Bradford Spells then why would that be --  
18 we want Bradford Spells, I mean, we want the State to have  
19 him here, produce him.

20 Ms. Sweed. Ms. Sweed. We don't have to prove a  
21 motive. A lot of times we don't know why people do things  
22 they do. I told you in my opening, you know, people lose  
23 their lives for a whole lot less than twenty thousand  
24 dollars. Mr. Loy got up in his opening and kind of attacked  
25 Ms. Sweed's credibility, told you you're going to find her

1 not credible. Poor presentation. She's got mental health  
2 issues going on. And you're just not going to believe a  
3 word she says. You had an opportunity to judge her up here,  
4 ladies and gentlemen, to see her. What possible reason  
5 would that young lady have to lie about what she saw, you  
6 know? I don't know, you know. What possible reason? I  
7 mean, her legal troubles she's in now happened about seven  
8 months later. So I'm assuming she's not planning to --  
9 She was on her way back to Florida when she decides to call  
10 law enforcement because of what she knew about this case.  
11 She saw a grainy still on the television and knew that was  
12 the person that she had talked to that night that said he  
13 was going to IHOP and that she would see him the second  
14 night and he admitted to her that he did it. And how do we  
15 know she's telling the truth? First of all she says here's  
16 an address. We know GPS on your phone aren't always exact.  
17 And address that's in the same neighborhood that he lives  
18 in, but more importantly the name she gives. That he told  
19 her his name was Keith, the same name that the waitress, Ms.  
20 Creel, knew him by at the IHOP.

21 At the end of the day, ladies and gentlemen, and I'm  
22 sure that Mr. Chisholm is going to get up here and bash  
23 former Detective Elmore from the sheriff's office about how  
24 many things they could have done. The fact that the  
25 cellphones are lost. And, I mean, I concur with him on

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1 that. It's inexcusable how evidence that is collected in a  
2 case is ultimately lost and unaccounted for. At the end of  
3 the day, ladies and gentlemen, all of that to try to  
4 distract you from, I submit to you, that the evidence in  
5 this case. The video, the physical evidence found on the  
6 scene that supports that video. When you look at it ladies,  
7 as appropriate, then I submit to you there's no doubt.  
8 There's no doubt to the answers to the questions that I  
9 posed to you. There were three men in that men's room.  
10 Three men in that men's room at the time of the shooting.  
11 Two victims, our two victims. We know that their guns  
12 weren't fired. I mean, Mr. Mack didn't shoot himself. Mr.  
13 Spells was behind him, wouldn't have had an opportunity,  
14 even if he somehow -- if you could argue he was a shooter  
15 with a different gun, could have gotten farther into the  
16 restroom to have fired those shots and then come back past  
17 him. The impacts inside the restroom, the ones that impact  
18 the door and the wall are going through to out, not out to  
19 in. There's no doubt then that third person in the red tee  
20 shirt is Keunte Cobbs.

21 I submit to you when you look at the credible relevant  
22 evidence in this case only lead you to one conclusion. On  
23 June the 5th of 2016 at 2:15 in the morning, Keunte Cobbs  
24 ambushed Brandon Mack, shot him six times on his left side.  
25 I'm sure he felt at that point in time, left him for dead in

1 that bathroom on that floor. Then he shot Bradford Spells  
2 on purpose because he saw him peeping in, coming through the  
3 doorway. I believe Bradford Spells got hit with one of the  
4 shots that missed Mr. Mack when he was falling to the  
5 ground. I submit to you when you look at the evidence  
6 theirs is not doubt he's guilty of Brandon Mack's murder and  
7 he's guilty of shooting Bradford Spells whether he intended  
8 to kill him or as His Honor is going to charge you of a  
9 lesser offense of assault and battery of a high and  
10 aggravated nature. Thank you.

11 THE COURT: Mr. Chisholm.

12 MR. CHISHOLM: Thank you, Your Honor. May it  
13 please the Court.

14 THE COURT: Proceed.

15 DEFENSE'S CLOSING ARGUMENT

16 BY MR. CHISHOLM:

17 Good morning. Well, you guys, pretty much the end of  
18 the road is in sight for you. This trial is almost over.  
19 And it's been a fairly long trial. It's been a lot of  
20 testimony and a lot of it wasn't riveting, so I appreciate  
21 you guys paying attention. I'm going to finish with my  
22 closing argument here, then we're going to have the Judge  
23 charge you on the law, and after that, you guys get the  
24 case. What I'd like to remind you about is something that  
25 you heard from the very beginning of this case. When you

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1 enter your room to deliberate today after all this, what you  
2 have to do is keep in mind that you're not starting with the  
3 mind set well, we'll look at this case fifty/fifty and be  
4 fair and impartial because you are supposed to be impartial  
5 in this case. When you enter that room, before you discuss  
6 the evidence and testimony, you're supposed to say, they've  
7 got the wrong guy. He is presumed innocent. And that's  
8 what that means and it's one of the most important  
9 cornerstones of this entire criminal justice system that we  
10 have.

11 We as the Defense do not have the burden of proof in  
12 this case. We don't have to prove anything. I think Mr.  
13 Loy told you he didn't have to do an opening argument. I  
14 don't have to do this closing. We didn't have to question a  
15 single witness. We don't have to prove anything. Our  
16 system is smart enough to realize that usually it's  
17 impossible to prove you didn't do something. We don't have  
18 to carry that burden for that reason. The State, they have  
19 to prove this case to you beyond any and all reasonable  
20 doubt. That is their job. So in a few minutes when I'm  
21 talking to you about what some of the witnesses told us in  
22 this case by saying maybe this happened or could it have  
23 been this.. That's one thing. I don't have to prove  
24 anything. But when they get up here as Mr. Sorenson just  
25 did and said maybe this is what happened. Maybe that's what



1     happened. What he's doing is he's telegraphing you guys  
2     that they have no idea what happened in that bathroom, point  
3     blank. We've got all these stills. I didn't prepare a  
4     slide show for you. The main reason being, you're going to  
5     have the actual disk from the IHOP with all the camera  
6     angles. If you need to, you can watch the entire thing from  
7     beginning to end.

8             The Judge told you in the beginning of this case that  
9     what I'm telling you right now is argument. It's basically  
10    going over the evidence in the light that's most favorable  
11    to my side, just as the Solicitor's office did. So when  
12    they get up there and tell you, this is what you see. This  
13    is what happens on the video. This is that. That is their  
14    argument. That is them trying to shade things in a light  
15    most favorable to them. If you want to see what happens on  
16    the video and see if you can actually account for who's in  
17    there, that there's people in the men's room, the women's  
18    room, the rafters or whatever, the best way to do that would  
19    be for you to look at the video yourself, not just to take  
20    their word for it when they say our detective went through.  
21    it so trust us.

22            Now, in his opening Mr. Sorenson basically said there's  
23    really only two questions here. One of them is who was the  
24    man in the red shirt in this case. If you pay attention in  
25    Mr. Loy's opening, he told you who the man in the red shirt

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1 was. I think he phrased it, I think kind of tongue in cheek  
2 he said it was either Mr. Cobbs or somebody that looks an  
3 awful lot like him, hint hint. We're not here to say that  
4 he wasn't in that restaurant. And, you know, Ms. Creel told  
5 us he's in there quite a bit. That's not a crime. They've  
6 proven that he was in there. They've proven that he exited  
7 with fingerprints on the door. That tells us nothing about  
8 what happened in the restroom that night.

9 Mr. Loy also told you in his opening that they will  
10 fail to answer the one question that does matter in this  
11 case. What happened in the bathroom, the circumstances of  
12 the shooting. And sure, obviously you want to find out who  
13 committed the shooting, but you have to figure out what  
14 exactly happened in there, because Mr. Cobbs isn't charged  
15 with a shooting. He's charged with murder which goes beyond  
16 a shooting. Even if you really believe he's the shooter,  
17 with murder there's certain things I'll talk about here in a  
18 minute you have to find. There was malice aforethought,  
19 that it was an unlawful killing. It's not simply who was in  
20 the area of the bathroom.

21 Now, they have no idea what happened in this case and  
22 there's a couple of reasons for that, namely because the  
23 alleged victims in this case wouldn't tell them. And the  
24 Solicitor just got up and said you've heard this jail call.  
25 These guys, you know, Mr. Cobbs somehow intimidated them.

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1 That's why they're not here today. I'll tell you a secret.  
2 Mr. Cobbs has been in detention for about twenty-five  
3 months. They've been able to listen to every phone call  
4 he's ever made in that jail. If they got that call and  
5 they're telling you he's threatening these guys when he  
6 talked to them, where's the call when he's threatening them.  
7 Why don't they have that in there. Or, you know, they're  
8 suggesting, you know, you better not come testify. We have  
9 no idea what was said in that call. We don't know if it  
10 wasn't Mr. Cobbs talking to this guy saying why don't you  
11 come tell them the truth, that I wasn't involved in this?  
12 Why don't you clear my name. And Mr. Spells saying no,  
13 because I don't want to be involved. We don't know because  
14 they didn't provide that call to you.

15 From the very beginning ten, fifteen minutes into this  
16 case, the paramedic, Mr. Shaw, that testified came in. And  
17 he told you he treated Brandon Spells that night and he said  
18 obviously he wasn't in great shape, but he was response --  
19 he was coherent. Coherent enough that he could ask him,  
20 tell me what happened. Who shot you? What's going on here?  
21 Ten or fifteen minutes after the shooting, he was  
22 stonewalled. This guy would not cooperate, would not give  
23 him any information. Is that a result of this phone call  
24 ten minutes after this shooting?

25 Detective Elmore, who I don't take any pleasure in

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1     bashing, but I think I have to point out the deficiencies in  
2     the case, and ultimately, it's their responsibility anyway.  
3     Detective Elmore did the right thing, went to the hospital  
4     the night of the shooting to meet with these alleged  
5     victims, to get statements. When he got there, they were  
6     being treated. They're medicated. They're not in any  
7     condition to give a statement, so he does the right thing.  
8     He goes back the following day when they are in better shape  
9     to do so. And he speaks with both of them, Mr. Mack and Mr.  
10    Spell's. They didn't call him as a witness to testify so we  
11    don't know exactly what he asked these guys, but you can  
12    probably imagine what he asked them. Is that the guy that  
13    shot you? Who shot you? What happened in there? What were  
14    you doing in there? Why were you armed. And what did he  
15    get back? Crickets. Neither one of these guys would tell  
16    him anything about what happened in this case. Why do you  
17    think that might be?

18         A couple of days later Detective Elmore gets a call and  
19    says Mr. Mack has passed after the surgery that you heard  
20    about. So he decides, okay, maybe I'll give another crack  
21    and go and talk to Mr. Bradford Spells at the hospital,  
22    which incidentally, you'll notice the only time they had  
23    communication with Bradford Spells is when he's in the  
24    hospital, essentially held captive. That's the only time  
25    he's been able to talk to him. So they go back again. This

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1 will be third time somebody, either a paramedic or Detective  
2 Elmore's gone, sat down and said we're here to help.  
3 Because these guys obviously believe -- you've heard what he  
4 just said. These are just innocent guys, just happened to  
5 walk into the bathroom, minding their own business that  
6 night and got shot out of nowhere for no reason whatsoever.  
7 If that's the case, Detective Elmore goes in there with that  
8 mind set and says I'm here to help. Tell me what happened.  
9 Let's get the guys that did this, right? Well, what he get  
10 the third time he talks to Mr. Spells, more of the same.  
11 Get out of here. I ain't talking to you. That trip he also  
12 takes a photo lineup, take a look at these pictures. Please  
13 see if you can figure out and tell me who did this. He  
14 wouldn't look at the lineup.

15 They apparently want you to believe that's all from Mr.  
16 Cobbs making a phone call. I remind you all these visits  
17 with Mr. Spells are within the first four days of this case.  
18 Well, what do we know about Mr. Spells? Not a whole heck of  
19 a lot but what we do know, we heard from Detective Peters.  
20 He says he knows that Mr. Spells doesn't cooperate in any of  
21 his cases. How many cases he's had, there's no telling but  
22 this is what he always does. To suggest that a phone call  
23 is what scared him away from cooperating makes no sense. He  
24 never does. And the only other thing we know is he wasn't  
25 surprised at all to hear that he had a gun that night

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1 because he apparently always has a gun on him too. So their  
2 theory is apparently you've got these alleged victims that  
3 won't cooperate. It's just they're scared. They're scared,  
4 you know, just ordinary citizens that are worried and don't  
5 want to come to court. Do they sound like the squeamish  
6 type to you? And there's a problem-solving theory called  
7 Occam's Razor, which I think you can apply to this case  
8 where essentially if you're trying to find an answer to a  
9 question and you've got two explanations, usually the  
10 simplest answer is the correct one. The simplest answer to  
11 why they wouldn't cooperate in this case is that they didn't  
12 want to tell the police what had happened in that restroom  
13 that night, because what they would tell them would  
14 implicate them in what happened that night. That makes the  
15 most sense here. They didn't act like you would expect a  
16 normal victim to act because they weren't victims in this  
17 case.

18 The other reason we don't know what happened in there  
19 is because the State did a terrible job investigating this  
20 case. We talked about the blood evidence that was seized.  
21 We talked about the jeans from Mr. Cobbs and we talked about  
22 all the bullets, the projectiles, the fingerprints, the  
23 drinking straws off of the table where these guys were  
24 sitting. You know, they're going, oh, if only we could only  
25 find out who Mr. White shirt was. How about testing the

1 straw, you think there might be DNA on it? They apparently  
2 don't find that important because most of this evidence --  
3 they sent out the stuff for ballistics testing -- which I  
4 mean, realistically I'm not going to come in here and argue  
5 these guys walked in together to the restroom and shot each  
6 other like in the old west. That doesn't really tell you  
7 much. They got a fingerprint off the exit to the  
8 restaurant, which tells you that Mr. Cobbs left the  
9 restaurant, which also I'm not contesting. They don't have  
10 anything inside there because most of it, most of the  
11 evidence they collected, they just sat on it. It's still  
12 over in the evidence locker somewhere. And there's a reason  
13 they take this stuff into custody. I asked the crime scene  
14 guy, I said why not just take pictures of this stuff? Why  
15 do you actually take it into custody. Why do you want to  
16 get the blood instead of just showing where the blood was on  
17 the wall, that kind of thing. And he said for testing.  
18 They don't do any DNA testing in this. They don't do any  
19 gunshot residue testing in this. They don't get any kind of  
20 fingerprint evidence or anything from the bathroom. And the  
21 only explanation I've got is it's either incompetence or  
22 laziness, maybe a combination of both. The closest thing we  
23 got to an answer of why they didn't test this stuff came  
24 from Detective Peters when he was on the stand. He said,  
25 well, we know these guys were shot in the bathroom and we

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1 think Mr. Cobbs did it. And if they got shot in the  
2 bathroom, obviously all the blood in there is theirs. No,  
3 you have no idea what happened in the bathroom. You don't  
4 know if these guys were in there cut somebody, pistol  
5 whipped them or anything else. It's not like you can go in  
6 the bathroom and say all right, well, here's the guy's blood  
7 that got shot and that blood over there, that's green so we  
8 know that's from somebody else. No, that's why you collect  
9 the blood. That's why you test it to see if you can develop  
10 a suspect and show who else was in there. They wouldn't do  
11 any of that in this case.

12 I'm not going to go through every witness in this case  
13 because you guys were paying attention and I'm trying not to  
14 bore you. A lot of them I'm not even contradicting what  
15 they said, the ballistics guy that came and talked about the  
16 guns, who tells us they didn't use their guns on themselves,  
17 which I wasn't arguing anyway. The doctor said that Mr.  
18 Mack passed away from his injuries sustained from the  
19 gunshots. I agree. I'm not contesting that at all. You  
20 know, when they start talking about here's exactly what  
21 happened. You can tell where the bullets went in and all of  
22 that, I would object to that in that the Doctor told you  
23 from the stand that is pure speculation. And I don't know  
24 if you remember the example that I was trying to ask her,  
25 but you can have a situation where an aggressor is standing



1 over an innocent victim and firing a gun into them and  
2 you'll have a certain trajectory or you can have an innocent  
3 victim with a gun, pointing up at an aggressor and shooting  
4 them while they're standing up and you could have the exact  
5 same trajectory. It doesn't tell you anything. You can  
6 have the exact opposite scenario based on where these  
7 entrance wounds go.

8 Mr. Colon, the guy who used the restroom I guess is the  
9 best way to explain it. I'm not even sure why they called  
10 him. I mean, he said before all of this he went in the  
11 restroom. He couldn't tell you if there was anybody waiting  
12 in the hall or whether there wasn't. He went in the  
13 bathroom. He didn't check the stalls. He doesn't know if  
14 anybody else was in there. He used the restroom. He thinks  
15 somebody came in after but he doesn't know who. And he  
16 doesn't know if anybody was in the bathroom or in the hall  
17 when he left and that's about all we got from him.

18 The Solicitor mentioned Ms. Creel, the waitress that's  
19 seen Mr. Cobbs forty or fifty times. I think she's probably  
20 the most compelling witness in this case because she's the  
21 only one in the case that knows Mr. Cobbs. And they told  
22 you that she said his name is Keith, but that's not exactly  
23 what we got from the stand. What she said is she thought  
24 she'd heard somebody refer to him as Keith. So internally  
25 she figured he was Keith. She never asked him if that was

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1 his name. He never had a chance to correct it. So I don't  
2 think it's as represented. But what else did we get from  
3 her? She knows this guy pretty well and if you could judge  
4 from her demeanor you could tell, seems like she liked him.  
5 He would come into the restaurant. He would laugh, he would  
6 cut up. He was always in good spirits. He was a generous  
7 tipper. He'd come in order his grapefruit juice, get his  
8 food to go. He was a regular customer. And on this night,  
9 the night that the State is alleging he's plotting this  
10 masterful ambush in the bathroom, what is he doing right  
11 before he goes to the restroom, the same thing he always  
12 does. Hanging out at the table, not acting any different  
13 than he always does. That's from her. She waited on him  
14 that night.

15 Ms. Sweed, and you can judge her credibility for  
16 yourselves. But let's talk a little bit about what she  
17 tells them. She says I met this guy at a club. I met up  
18 with again the following night. We went back to his house  
19 after the bar closed to talk. While we were there he  
20 confessed to a shooting and then he dropped me off at my  
21 friend's house. That's roughly her story. And then she  
22 goes to her friend's house and they're all looking at the  
23 news or in the newspaper or on the TV, whatever it is, and  
24 they're saying hey, look at this guy. Is this the guy you  
25 were with? So the one thing we know is that before she ever

1 reported this she'd seen the images that had been sent to  
2 the news agencies and she'd seen the story of the shooting  
3 at the IHOP before she ever contacted law enforcement. And  
4 they don't do anything in this case to corroborate her  
5 story. Detective Elmore apparently just took her word as  
6 the gospel. Seems like the rest of them have as well,  
7 because what did she tell them? We went to one club the  
8 first night. We went to the same club the following night,  
9 then we went to Club Vegas. And you heard the questions, I  
10 mean, y'all know what clubs? No. Apparently they never  
11 looked into what clubs she went to. They never went to  
12 these clubs to see if there were witnesses that would say  
13 yeah, I saw her there. I saw her there with Keith. They  
14 never went to see if there was surveillance at these clubs.  
15 They didn't do anything. They didn't talk to any of the  
16 other witnesses that she provided. The person that gave her  
17 a ride up from Florida. Not a peep. They didn't talk to the  
18 people she was staying with. Or most importantly, you heard  
19 her testify that one of these friends at the club saw her  
20 with Keith. You think they might want to go talk to that  
21 person? Apparently not. She gives a phone number to  
22 Detective Elmore says here's Keith's number. We've been  
23 calling and texting each other. You know, setting up when  
24 we're going to meet up and all of this. Do they ever look  
25 in to who that phone number belongs to? No. Do they every

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1 try to get carrier records from Verizon or Sprint or whoever  
2 had it? No. It's pretty much ignore it and shove it aside.  
3 But I do think it's interesting that she testified Detective  
4 Elmore looked at her phone. Oh, yeah. He saw all of this.  
5 He saw all the text and all the calls. And understand, you  
6 probably think I'm being too tough on Detective Elmore here,  
7 but I don't think he's such a buffoon that if that was the  
8 case -- he went all the way down to Florida to interview her  
9 and she showed him all this evidence that would help his  
10 case, I find it hard to believe he wouldn't do exactly what  
11 Detective Peters said he would do, which is thank you. This  
12 is evidence. Or at the very least, here, I'm going to take  
13 some pictures of these texts. He doesn't do any of that.  
14 He doesn't even put anything in his report about ever  
15 looking at her phone. Now, does that make sense to you?  
16 You think he might have put that in there if that happened?  
17 I'd submit to you it's in there because that never happened.  
18 She never showed him her phone. And it's hard to say  
19 exactly what happened in this interview because we have no  
20 idea. And we have no idea because Detective Elmore got in  
21 his car, another fellow, drove all the way down to Florida  
22 for the sole purpose of interviewing this witness. And went  
23 down there to do this and they didn't record anything. This  
24 was 2016, not 1986. Do you think the sheriff's office has  
25 the capability to get them a camera? You'd better believe

1 it. You think he probably had his cellphone? Everybody has  
2 cellphones that can record these days. So it begs the  
3 question if you go down -- Detective Peters, I think, you  
4 know, agreed with me it'd be best practice to record an  
5 interview like this. He said they have to now with body  
6 cams. If you have the capability, it begs the question why  
7 wouldn't you record this conversation? If everything's on  
8 the up and up and as they're representing, wouldn't you want  
9 the jury to be able to see that? Wouldn't you want the jury  
10 to be able to see Detective Elmore wasn't suggesting  
11 anything to her about the case? Wouldn't you like to be  
12 able to see when he presented the photo lineup and how it  
13 went? If it went as the State would have you believe, which  
14 is, Ms. Sweed, please take a look at this stack of  
15 photographs. Only if you see the person involved, please  
16 identify them. But if you don't, it's just as important  
17 that you don't identify someone incorrectly. They want us  
18 to believe that. Without recording it, we don't know if it  
19 went like that or if it went like this. Ms. Sweed do you  
20 see the person that committed this crime? So ask yourselves  
21 why they wouldn't record that interview. The one thing  
22 Detective Elmore did to try to corroborate this story is  
23 this. She said I went to 208 Sandra Lane. I know it's that  
24 address because while I was there on my phone I got the GPS  
25 coordinate. He actually followed through on that. The one

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1 thing he followed through on turned out is entirely false.  
2 He talked to the guy that lived there and there's nothing to  
3 indicate that she was ever at that home. And there's  
4 nothing to indicate Mr. Cobbs was ever at that home. They  
5 searched the home that belongs to Mr. Cobbs, you think that  
6 they would have been able to corroborate her story and that  
7 it was his house like they're kind of suggesting? You think  
8 you might have heard some evidence of that? Not only that,  
9 these are two single-family homes I think Detective Peters  
10 agreed. Her testimony was she went to an apartment or in a  
11 duplex. So the one thing they double check was false. Her  
12 saying she gave all this stuff to Detective Elmore I would  
13 submit is false. And her story itself, what is it? I met a  
14 guy. He didn't get out of his car. I was just talking to  
15 him, exchanged numbers. I saw him the next night. We went  
16 to a club. We went home to talk. And according to her,  
17 this guy didn't know her from Adam. I mean, it was a  
18 complete stranger. When they got home he decided to go  
19 ahead and confess that he shot somebody at the IHOP the  
20 night before. Is that your leading pickup line these days?  
21 Does that make any sense? On what planet would anybody do  
22 that? Why would anyone do that? It made zero sense.

23 So what evidence do we have in this case? Well,  
24 there's nothing at all that ties Mr. Cobbs to being in the  
25 bathroom at the time of the shooting, much less in the

1 bathroom at all. There's no forensic evidence. They search  
2 -- they had access to his home, the hotel, the car, his  
3 person, obviously when they take him into custody. And what  
4 do they find that links him to this crime? Nothing. They  
5 don't find the weapon that's used. They don't ammunition.  
6 They don't find bloody clothes. They don't find anything at  
7 all that links him to this crime. One of the things they  
8 did do in this case is they collected a cellphone from  
9 Bradford Spells and he left it at the IHOP. They took it in  
10 and they did a phone dump, I like to call it, an analysis on  
11 his phone. And they wanted to do that to see if Mr. Spells  
12 had been talking Mr. Cobbs. Mr. Cobbs said hey Mr. Spells,  
13 come out to the IHOP if this was a grand ambush plan. And  
14 when they examined the phone, what did they find? Nothing.  
15 No communication from Mr. Cobbs on there. The other phones  
16 they got, I agree it's inexcusable that they lost them. I  
17 don't know how you lose three cellphones. I guess that's a  
18 question for them more than me. But when they lost those  
19 phones what they also lost was the opportunity for us to  
20 have these phones to show you that there wasn't  
21 communication between Mr. Cobbs and Ms. Sweed or Mr. Spells.  
22 And there's no evidence Brandon Mack ever had a phone.

23 So let's talk about their theory. I think their theory  
24 is this was an ambush. Mr. Cobbs, I think he said was lying  
25 in wait that night. How? There's no communication between

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1 the parties. Did he send a carrier pigeon to invite him to  
2 the restroom? Can he tell the future and know when people  
3 are going to show up at a restaurant? Did he go into the  
4 restroom and wait and just hope that these guys might happen  
5 to show up that night? There's no evidence whatsoever that  
6 this is an ambush. It makes zero sense. There's no  
7 communication between them. How would this be an ambush.  
8 And if you use your common sense, if this is his plan, if  
9 he's the shooter and he wants to shoot these guys, do you  
10 think he's going to lure them into a crowded restaurant that  
11 has cameras everywhere as opposed to say, the parking lot or  
12 really anywhere besides a crowded restaurant with cameras  
13 everywhere. Their theory, and that's the only one I've  
14 heard, makes zero sense.

15 So what do we know in this case? Well, we basically  
16 know what Mr. Loy told you in the beginning. You've got Mr.  
17 Spells and Mr. Mack go into this restaurant, both armed.  
18 One with a stolen gun, one with a gun apparently linked to  
19 another case. They make a beeline. They don't stop at the  
20 waitress station. They don't sit on the booth and wait for  
21 a table. They don't talk to anybody. And Mr. Sorenson kind  
22 of referred to, these two men go walk in and go straight to  
23 the bathroom together. When you watch this video, watch Mr.  
24 White shirt what he does. Because as soon as they go off  
25 camera in that area in the bathroom, he turns and watches



1 and then he follows. Whatever they're doing, it has his  
2 full attention. Seconds later, the shots ring out. They  
3 come running out of the restaurant and what does Mr. Spells  
4 do? He's not calling EMS, he's running outside to ditch his  
5 gun. This is their victim in this case.

6 Lastly, I'd like to talk to you about the State's  
7 burden of proof. And they have to prove this case beyond a  
8 reasonable doubt which is, you know, a pretty simple phrase  
9 and there's an easy definition. A doubt that would cause  
10 you to hesitate to act. But I think it helps sometimes to  
11 kind of try to illustrate what that means. If you envision  
12 on this side of the bar here absolute innocence, and this  
13 side, absolute guilt. It's rare that we're dealing with  
14 either one of those in a criminal trial. If there is  
15 absolute innocence you're not going to be on trial. So  
16 usually, you're in this gray area. But if you start at  
17 absolute innocence and you go towards guilt, you look at  
18 what the State has proven in the case. And if you come to  
19 the conclusion that they have proven nothing, absolutely  
20 nothing, obviously you return a verdict of not guilty. If  
21 you go through all the evidence and you say well, they've  
22 certainly raised some suspicions here and I think there's a  
23 decent chance this guy is guilty of a crime, but I've got a  
24 ton of questions, that's still not guilty. When you get  
25 here in the middle, this kind of fifty/fifty range, where

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1 you're saying maybe this guy's guilty or maybe he's not. In  
2 a civil case, my understanding is if one side tips the scale  
3 ever so slightly, fifty-one percent proved to forty-nine  
4 percent on the other side, they win. But in a criminal  
5 case, because the stakes are much higher, because we're  
6 talking about someone's freedom, it doesn't work in a case  
7 like this. If you find yourself saying I don't know, maybe  
8 he did. Maybe he didn't, that's also not guilty. And you  
9 keep going down the slide. You get to the point where you -  
10 - if you say to yourself I am absolutely convinced this guy  
11 committed this crime, but I have a reasonable doubt that  
12 causes me to say with absolute certainty. I have a single  
13 solitary doubt that makes me hesitate to act. In that  
14 scenario, you would also return a verdict of not guilty. To  
15 get a guilty verdict, what they have to do is get well  
16 beyond that, get somewhere in this area between that and  
17 absolute guilty to where you are convinced beyond a single  
18 reasonable doubt and that is a heavy burden for them to meet  
19 and it should be because the stakes are so high. What  
20 they're going to have to prove to you in this case isn't  
21 that Mr. Red shirt's in the bathroom and all this stuff  
22 you're hearing about. What they're going to have to show is  
23 that Mr. Cobbs is guilty of murder, attempted murder. And  
24 murder isn't defined, as I've told you earlier, simply as  
25 shooting someone. It's defined as -- the Judge will tell

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1 you. But I believe he's going to tell you that killing  
2 another person with malice aforethought. And malice will be  
3 defined for you and it says the intentional doing of a  
4 wrongful act without just cause or excuse and with an  
5 intention to inflict injury. Without just cause or excuse,  
6 which brings me back to the main point of this case. If  
7 they cannot prove to you what happened in that bathroom and  
8 they can't prove what the different parties in their did,  
9 then there's no way to look at this case and say anyone,  
10 whether it be Mr. Cobbs or anyone else, acted without just  
11 cause or excuse. So think about. And one thing I want you  
12 to ask yourself when you get back there, when you turn in  
13 your secret ballots or however you guys decide to do in  
14 deliberation, ask yourself, have they convinced what  
15 happened in that restroom? Have they convinced you of the  
16 circumstances of this shooting? If they haven't, I'd ask  
17 you to return a verdict of not guilty.

18 THE COURT: Mr. Foreman, and ladies and gentlemen  
19 of the jury, would you like to take a short break before I  
20 begin my charge?

21 MR. FOREMAN: Yes, sir.

22 THE COURT: All right. Please retire to your jury  
23 room. Please do not discuss the case. As soon as I know  
24 you've had time for your break, I'll bring you back.

25 (Jury out at 11:33 a.m.)

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1 (Jury in at 11:46 a.m.)

2 THE COURT: All right. Ladies and gentlemen. Mr.  
3 Foreman, ladies and gentlemen of the jury, it is now my duty  
4 to charge you on the law of this case. The State has  
5 charged the Defendant, Keunte Cobbs, in two indictments.  
6 One indictment is the charge of murder. That's indictment  
7 2016-01267; and, the other indictment is for attempted  
8 murder in indictment 2016-01268.

9 I remind you, first of all, that the fact that the  
10 Defendant was arrested, the fact the Defendant was charged,  
11 the fact that Defendant was indicted in this case, is not  
12 evidence in this case nor does it create any presumption or  
13 inference of guilt. An indictment, ladies and gentlemen, is  
14 simply, as I told you at the outset of this trial, the  
15 formal written instrument which contains the charges made  
16 against the Defendant. It is the formal document by which  
17 this Court, the Court of General Sessions, obtains  
18 jurisdiction or the power to hear the case.

19 Now, ladies and gentlemen, I remind you that during  
20 this trial you and I have had certain duties to perform. As  
21 the trial judge, it has been my responsibility to preside  
22 over the trial of the case. I also have the duty to rule on  
23 the admissibility of the evidence that's been offered during  
24 the trial of the case. You are to consider only the  
25 competent evidence before you. If there was any testimony

1 ordered stricken from the record in this case during the  
2 trial, you must disregard that testimony. You're to  
3 consider only the testimony, which has been presented from  
4 this witness stand, any exhibits which have been introduced  
5 into evidence and made a part of the record in this case,  
6 and if there were, any stipulations by counsel in this case.

7 I also have the additional duty, in addition to  
8 presiding over the trial and ruling on the admissibility of  
9 evidence, I have the additional duty to charge the law that  
10 applies to this case. As presiding judge, I'm the sole  
11 judge of the law and it is your duty as jurors, as I've told  
12 you at the outset, to apply the law exactly as I now state  
13 it to you. If any of you have any preconceived ideas or  
14 opinions about what the law is or what you feel the law  
15 ought to be and it does not agree with what I now tell you  
16 the law is, you must put aside any of your preconceived  
17 opinions as you took an oath and in that oath you said you  
18 would accept and you would apply the law exactly as I now  
19 state it to you. In every case tried in this courtroom  
20 before a jury, the jury becomes the sole and the exclusive  
21 judges of the facts in the case based on evidence introduced  
22 during the trial of the case. A trial judge, such as  
23 myself, cannot intimate, state, comment on or make any type  
24 of statement to a trial jury about the facts in a case.  
25 Since you, ladies and gentlemen of the jury, are the sole

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1 judges of the facts in this case, you are not to infer from  
2 anything that I've said during the progress of this trial,  
3 in ruling upon the admissibility of evidence or otherwise,  
4 or anything that I say now to you during this charge on the  
5 law, that I have any opinion whatsoever about the facts in  
6 this case. The law does not allow me to have an opinion  
7 about the facts in this case. This is a matter solely for  
8 you, ladies and gentlemen, the jury, to determine based on  
9 evidence introduced during the trial of the case. As jurors  
10 it is your duty, ladies and gentlemen, to determine the  
11 effect, the value, the weight and ultimately it will be your  
12 duty to determine the truth of the evidence presented during  
13 the trial of the case.

14 Necessarily, ladies and gentlemen, you will need to  
15 remember that the Defendant has pled not guilty to these two  
16 indictments. And that plea of not guilty places the burden  
17 on the State of South Carolina to prove the Defendant guilty  
18 beyond a reasonable doubt. A person charged with committing  
19 a criminal offense in South Carolina, ladies and gentlemen,  
20 is never required to prove himself or herself innocent. I  
21 charge you ladies and gentlemen that it is an important rule  
22 of the law that the Defendant in a criminal trial, such as  
23 the case here, no matter what the seriousness of the charge  
24 may be, will always be presumed to be innocent of the crime  
25 for which the indictment was issued, unless guilt has been

1 proven by evidence satisfying you of that guilt beyond a  
2 reasonable doubt. The presumption of innocence does not end  
3 when you begin your deliberations, but it accompanies the  
4 Defendant throughout the trial until you, the jury, reach a  
5 verdict of guilt based on evidence satisfying you of that  
6 guilt beyond a reasonable doubt. The presumption of  
7 innocence is not just a legal theory. It is not just a  
8 legal phrase. It is a substantial right to which every  
9 defendant is entitled, unless you, the jury, are satisfied  
10 from the evidence of the Defendant's guilt beyond a  
11 reasonable doubt.

12 Now what is a reasonable doubt in the law? A  
13 reasonable doubt is the kind of doubt to cause a reasonable  
14 person to hesitate to act. The State has the burden of  
15 proving the Defendant guilty beyond a reasonable doubt.  
16 Some of you may have served in the past as jurors in a civil  
17 case where you were told that it was only necessary to prove  
18 that a fact is more likely true than not true. We call that  
19 burden of proof in a civil case by a greater weight or the  
20 preponderance of the evidence. In a criminal case such as  
21 the case here, the State's proof must be more than that. It  
22 must be beyond a reasonable doubt. Proof beyond a  
23 reasonable doubt, ladies and gentlemen of the jury, leaves  
24 you firmly convinced of the Defendant's guilt. There are  
25 very few things in this world that we know with absolute

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1 certainty. And in criminal cases the law does not require  
2 proof that overcomes every possible doubt. If based on your  
3 consideration of the evidence you are firmly convinced that  
4 the Defendant is guilty of the crime charged, you must find  
5 the Defendant guilty. On the other hand if you think  
6 there's a real possibility that the Defendant is not guilty,  
7 you must give the Defendant the benefit of the doubt and  
8 find the Defendant not guilty.

9       There are two types of evidence that are generally  
10 presented during trial. Like many things in the law, ladies  
11 and gentlemen, we have names for those two types of  
12 evidence. We call the general types of evidence direct  
13 evidence and circumstantial evidence. Direct evidence is --  
14 directly proves the existence of a fact and does not require  
15 any deduction or inference such as an eyewitness to an  
16 event. You look at something, you see it, you testify about  
17 it. Direct evidence. Circumstantial evidence is proof of a  
18 chain of facts and circumstances indicating the existence of  
19 a fact. Crimes, ladies and gentlemen may be proven by  
20 circumstantial evidence. The law makes no distinction  
21 between the weight or the value to be given to either direct  
22 or circumstantial evidence. However, to the extent the  
23 State relies on circumstantial evidence, all the  
24 circumstances must be consistent with each other and when  
25 taken together point conclusively to the guilt of the



1 accused beyond a reasonable doubt. If these circumstances  
2 merely portray the Defendant's behavior as suspicious the  
3 proof has failed. The State has the burden of proving the  
4 Defendant guilty beyond a reasonable doubt. This burden  
5 rest with the State regardless of whether the State relies  
6 on direct evidence, circumstantial evidence, or some  
7 combination of the two.

8 As I told you, ladies and gentlemen, one of your jobs  
9 as jurors is necessarily you will have to determine the  
10 credibility, which simply means the believability of the  
11 witnesses who have testified during the trial of this case.  
12 It becomes your duty, ladies and gentlemen, as jurors to  
13 analyze, to evaluate and determine which evidence convinces  
14 you of its truth. In determining the believability of  
15 witnesses who have testified in this case, you may believe  
16 one witness over several witnesses or you may believe  
17 several witnesses over one witness. You may believe a part  
18 of a witness's testimony and reject the remaining part of  
19 the testimony of that same witness. You may believe the  
20 testimony of a witness in its entirety or you may reject the  
21 testimony of a witness in its entirety. You may consider  
22 whether any witness has exhibited to you any interest, any  
23 bias, any prejudice or other motive in this case. You may  
24 also consider what I told you we call the demeanor of the  
25 witness. The appearance, the manner of the witness while

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1 the witness is on the witness stand. Anything that is in  
2 evidence, ladies and gentlemen of the jury, you as a juror  
3 have the right to consider in passing upon the credibility  
4 or the believability of the witnesses who have testified  
5 during the trial of this case.

6 Now, ordinarily, ladies and gentlemen, our rules of  
7 evidence do not allow a witness to take the oath, sit down  
8 on that witness stand, look at you and say my opinion about  
9 this is so and so. We don't permit witnesses normally to  
10 testify to opinions, but an exception to this rule exists  
11 for witnesses that we call expert witness, a witness who, by  
12 education or experience, has become or claims to have become  
13 an expert in some art, science, or profession, they may give  
14 an opinion as to the subject the witness claims to be an  
15 expert in and they give the reasons for his or her opinion.  
16 You should consider any expert opinion by a witness and just  
17 like any other evidence in this case, you give it the weight  
18 you think as a jury it deserves. If you decide that an  
19 expert witness's opinion is not based on sufficient  
20 education or based on sufficient experience, or if you  
21 decide that the reasons given in support of the opinion are  
22 not sound or that the opinion is outweighed by other  
23 evidence, you may disregard any expert or any opinion  
24 entirely. An expert witness's opinion or testimony is to be  
25 given no greater weight than that of other witnesses simply

1 because the witness is an expert. And you do not have to  
2 accept an expert's opinion, even though it is  
3 uncontradicted.

4 I charge you ladies and gentlemen, that mere presence  
5 at the scene of a crime or when a crime occurred is not  
6 sufficient to prove someone guilty of a crime. The burden  
7 is on the State of South Carolina to prove every element of  
8 the crime charged. If you find after reviewing all the  
9 evidence that the State has proved the Defendant was only  
10 present at the scene of the crime, and that they have not  
11 proved beyond a reasonable doubt any other participation in  
12 the crime, then you must find the Defendant not guilty. The  
13 law is that proof at the scene of the crime or just proof of  
14 being present at the scene of the crime is not sufficient to  
15 find someone guilty.

16 Now, I instruct you and charge you ladies and  
17 gentlemen, that the fact that the Defendant did not testify  
18 is not a factor to be considered by you in any way in your  
19 deliberations and in your consideration on the question of  
20 the guilt or innocence of the Defendant. It must not be  
21 considered by you in any manner whatsoever. A defendant,  
22 ladies and gentlemen, every defendant in a criminal case,  
23 has the constitutional right to remain silent. And the  
24 assertion of this right must not be considered by you in  
25 your deliberations. I repeat, that under the oath which

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1 each of you took as jurors, you are to draw no conclusion  
2 whatsoever from the fact that the Defendant in this case did  
3 not testify. The fact that the Defendant did not testify  
4 should not even be discussed in your jury room. The burden  
5 of proof as I have stated to you is on the State of South  
6 Carolina. The Defendant is not required to prove his  
7 innocence. The burden of proof remains on the State to  
8 prove guilt beyond a reasonable doubt.

9 Now, ladies and gentlemen, I remind you that not only  
10 is the burden of proof in the trial of this case on the  
11 State, but the burden of proof beyond a reasonable doubt  
12 extends to every element of the crime charged and this  
13 specifically would include the burden of proving beyond a  
14 reasonable doubt the identity of the person or of the  
15 Defendant as the person who committed the crime.

16 Identification testimony, ladies and gentlemen, is an  
17 expression of belief or it can be an impression by a  
18 witness. You as a jury must determine the accuracy of the  
19 identification. You must determine the accuracy of the  
20 identification of the Defendant. You must consider the  
21 believability or credibility of any identification witness  
22 in the same way as any other witness. You must be  
23 satisfied, ladies and gentlemen of the jury, beyond a  
24 reasonable doubt of the accuracy of the identification of  
25 the Defendant before you may find the Defendant guilty. On

1 the other hand, after examining all the evidence in this  
2 case, if you have a reasonable doubt as to the accuracy of  
3 the identification, you must find the Defendant not guilty.

4 Now, as I told you ladies and gentlemen, in this case  
5 there are two indictments. The indictments allege different  
6 offenses, murder and attempted murder against the Defendant.  
7 So in one indictment Keunte Cobbs is charged in the  
8 indictment with murder of Brandon Mack. In the other  
9 indictment the Defendant, Keunte Cobbs is charged with  
10 attempted murder of Bradford Spells. Each charge is a  
11 separate and distinct offense and I'm going to define them  
12 for you. You must decide each charge separately on the  
13 evidence that's been presented during the trial of the case  
14 and on the law that I tell you applies to the charge. You  
15 will be asked to find the Defendant either guilty or not  
16 guilty on the charge of murder on one verdict form. You  
17 will also be asked to find the Defendant guilty or not  
18 guilty on the charge of attempted murder on another verdict  
19 form. If you find the Defendant not guilty of attempted  
20 murder in this case, then you may also then find the  
21 Defendant either guilty or not guilty of the lesser included  
22 offense of assault and battery of a high and aggravated  
23 nature. If you find the Defendant guilty of attempted  
24 murder in this case, then you cannot find the Defendant  
25 guilty of the lesser included offense of assault and battery

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1 of a high and aggravated nature. You will be asked to write  
2 a separate verdict. I will go over this with Mr. Foreman in  
3 my verdict form. On each -- let me make sure I've got it up  
4 here, Mr. Foreman. You'll be asked to write a separate  
5 verdict, as I've stated, on each on your verdict form  
6 following the instructions that I've also written for you on  
7 your verdict form consistent with what I've just told you,  
8 Mr. Foreman.

9 Now, in order to establish criminal liability, criminal  
10 intent is required. For example -- let me give you examples  
11 of criminal intent. That's the mental state required to be  
12 proven by the State for any type of crime. Examples of  
13 intent might be purpose, intent, knowledge, recklessness,  
14 criminal negligence, those are examples of criminal intent.  
15 Criminal intent must be proven by the State beyond a  
16 reasonable doubt. Criminal intent is always a matter that  
17 must be determined by the jury from the circumstances  
18 surrounding the situation based on evidence introduced  
19 during the trial of the case. Now, ladies and gentlemen,  
20 there is no way to prove intent to a mathematical certainty.  
21 There is no way, ladies and gentlemen, that medical science  
22 can dissect a person's brain and tell what that person had  
23 in mind. So the law says, ladies and gentlemen, that  
24 criminal intent may be inferred from the circumstances shown  
25 to have existed. This, ladies and gentlemen, is how you as

1 a jury make a determination of whether or not any element in  
2 a crime requiring intent was present. It is not necessary  
3 to prove intent by direct or positive evidence, but intent  
4 may be established by inference in the same way as any other  
5 fact, by taking into consideration the acts of the parties  
6 from the evidence, in all the facts and circumstances in the  
7 case, based on the evidence introduced during the trial of  
8 the case. Criminal intent is a mental state, a conscious  
9 wrongdoing. It is up to you, ladies and gentlemen of the  
10 jury, to determine what the Defendant intended to do based  
11 on the circumstances that have been shown to you that  
12 existed from evidence introduced during the trial of the  
13 case.

14 I'll now define the offenses for you. In one  
15 indictment the Defendant, Keunte Cobbs, is charged with the  
16 offense of murder. The State must prove for this offense  
17 beyond a reasonable doubt that the Defendant killed another  
18 person with malice aforethought. Malice is hatred, ill  
19 will, hostility towards another person. It is the  
20 intentional doing of a wrongful act without just cause or  
21 excuse and with an intent to inflict an injury or under  
22 circumstances that the law will infer an evil intent.  
23 Malice, aforethought, ladies and gentlemen, does not require  
24 that malice exist for any particular time before the act is  
25 committed. But malice is hatred, ill will or hostility

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1 towards another person. It must exist, ladies and  
2 gentlemen, in the mind of the Defendant just before and at  
3 the time the act was committed. Therefore, there must be a  
4 combination of the previous evil or hostile intent and the  
5 act itself. Malice aforethought may be expressed or  
6 inferred. These terms expressed or inferred do not mean  
7 different kinds of malice, different kinds of hatred, ill  
8 will or hostility towards another person. It is simply the  
9 manner in which malice may be shown to exist. That is,  
10 either by direct evidence or by inference from the facts and  
11 circumstances, which are proven based on evidence introduced  
12 during the trial of the case. Expressed malice, ladies and  
13 gentlemen, is shown when a person actually speaks words,  
14 which express hatred, hostility or ill will for another or  
15 when a person prepared beforehand to do the act, which was  
16 later accomplished. For example, lying in wait for a person  
17 or any other act of preparation going to show that the deed  
18 was within the Defendant's mind would be expressed malice.  
19 Malice may be inferred from conduct showing a total  
20 disregard for human life. Inferred malice may arise when  
21 the deed is done with a deadly weapon. A deadly weapon is  
22 any article, instrument or substance, which is likely to  
23 cause death or great bodily harm. Whether an instrument has  
24 been used as a deadly weapon depends on the evidence and  
25 facts and circumstances of each case based on evidence



1 introduced during the trial of the case. The law says that  
2 if one intentionally kills another with a deadly weapon, the  
3 implication of malice may arise. If facts are proven beyond  
4 a reasonable doubt sufficient to raise an inference of  
5 malice to your satisfaction, this inference would be simply  
6 an evidentiary fact to be taken into consideration by you,  
7 the jury, along with other evidence in the case. And you  
8 may give it such weight as you determine it should receive.  
9 And it can be rebutted by the evidence in this case based on  
10 your view of the evidence.

11 I charge you ladies and gentlemen that Keunte Cobbs,  
12 the Defendant, is charged in a second indictment with the  
13 offense of attempted murder. In order to prove this crime,  
14 the State must prove that the Defendant attempted to kill  
15 another person with malice aforethought. For this crime, it  
16 requires a specific intent to kill another person with  
17 malice aforethought. Malice imports evil, hostility,  
18 wickedness. It springs from depravity. A depraved spirit,  
19 a heart devoid of social duty and fatally bent on mischief.  
20 It involves hatred, ill will or hostility towards another  
21 person. It is the intentional doing of a wrongful act  
22 without just cause or excuse and with an intent to kill the  
23 person. Malice, a forethought does not require that malice  
24 exist for any particular time before the act is committed,  
25 but malice must exist in the mind of the Defendant just

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1 before and at the time the act is committed. Therefore,  
2 there must be a combination of this previous evil intent or  
3 malice and the act itself. Intent means intending the  
4 result which actually occurs, not something that occurs  
5 accidentally or involuntarily.

6 Attempted murder then is the attempt to kill a person  
7 with expressed malice or more completely defined, attempted  
8 murder is the performance of an act or acts, which tend but  
9 fail to kill a human being when such acts are done with  
10 expressed malice, mainly with the deliberate intention  
11 unlawfully to kill. If you find that the State has failed  
12 to prove beyond a reasonable doubt that the Defendant  
13 committed attempted murder, you may consider then whether  
14 the State has proven beyond a reasonable doubt that the  
15 Defendant committed the offense of assault and battery of a  
16 high and aggravated nature. This is a lesser included  
17 offense Of the indicted charge of attempted murder. So  
18 included within the offense of attempted is the lesser  
19 included offense of assault and battery of a high and  
20 aggravated nature.

21 To prove assault and battery of a high and aggravated  
22 nature, the State must prove beyond a reasonable doubt that  
23 the Defendant unlawfully injured another person and great  
24 bodily harm or great bodily injury to another person  
25 resulted. Or the act was accomplished by means likely to

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1 produce death or great bodily injury. Great bodily injury  
2 means bodily injury which causes a substantial risk of death  
3 or which causes serious permanent disfigurement or  
4 protracted loss or impairment of the function of a bodily  
5 member of a bodily organ.

6 Now, Mr. Foreman, I told you I would prepare a verdict  
7 form for you. Pay absolutely no attention to the order in  
8 which we wrote the forms of verdict. We obviously had to  
9 write one before the other. So the order has no  
10 significance whatsoever. On your verdict form I styled it  
11 State of South Carolina, County of Dorchester in the Court  
12 of General Sessions, which is this court, criminal court. I  
13 put the State of South Carolina versus Keunte D. Cobbs,  
14 Defendant. I put the indictment numbers and I wrote  
15 verdict. On your first form of verdict, Mr. Foreman, ladies  
16 and gentlemen, under question one I wrote that we, the jury,  
17 by unanimous consent find the Defendant Keunte D. Cobbs, in  
18 indictment number 2016-GS-18- -- GS means General Sessions;  
19 18 means Dorchester County and -01267 in the first form of  
20 verdict under that indictment, which is the indictment for  
21 murder is guilty of murder of Brandon Mack. If that be your  
22 form of verdict, Mr. Foreman, you would check on the like  
23 for the entire jury by that form of verdict. Under question  
24 one, we, the jury, by unanimous consent find the Defendant,  
25 Keunte D. Cobbs in indictment number 2016-01267, the second

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1 form of verdict is not guilty of the murder of Brandon Mack.  
2 If that be your form of verdict, ladies and gentlemen, Mr.  
3 Foreman, you would check on the line beside the form of  
4 verdict. You must find one form of verdict or the other.  
5 You cannot check both. Either guilty or not guilty of  
6 murder under question one of Brandon Mack. Question two on  
7 your verdict form. We, the jury, by unanimous consent find  
8 the Defendant, Keunte D. Cobbs, in indictment number 2016-  
9 GS-18-1268, and that first form of verdict -- this is the  
10 indictment for attempted murder -- would be guilty of  
11 attempted murder of Bradford Spells. If that be your  
12 verdict, Mr. Foreman, you would check on the line beside  
13 that form of verdict for the entire jury. The second form  
14 of verdict under question two is not guilty of attempted  
15 murder of Bradford Spells. If that be your form of verdict,  
16 you would check on the line beside that form of verdict,  
17 Mr. Foreman, for the entire jury. You must find one form of  
18 verdict or the other for question two, either guilty or not  
19 guilty. Then I wrote you instructions at the bottom, which  
20 I've already covered with you. If you find the Defendant  
21 guilty of attempted murder of Bradford Spells in indictment  
22 2016-1268, then you don't have to answer question three,  
23 which is the lesser included offense of assault and battery  
24 of a high and aggravated nature. However, if you find the  
25 Defendant not guilty of attempted murder of Bradford Spells

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1 in indictment 2016-1268, you must answer question three.

2 Question three is we, the jury, by unanimous consent find

3 the Defendant, Keunte D. Cobbs, the first form of verdict

4 under the lesser included offenses is guilty of assault and

5 battery of a high and aggravated nature. If that be your

6 form of verdict, you would check on the line beside that

7 form of verdict. Second form of verdict under question

8 three is not guilty of assault and battery of a high and

9 aggravated nature of Bradford Spells. If that be your form

10 of verdict, you would check on the line beside that form of

11 verdict. If you reach question three because you found the

12 Defendant not guilty in question two, you must find one form

13 of verdict or the other in question three, either guilty or

14 not guilty. You cannot check both. Once you have filled

15 out your verdict form, Mr. Foreman, you will then -- for the

16 jury, you will then sign your name on the line where it says

17 foreperson and you will fill in today's date. I've already

18 put in St. George, South Carolina and August (blank) 2018.

19 So you will indicate your findings by checking the

20 appropriate lines for the entire jury and you will certify

21 your findings by your signature on the verdict form. When

22 you have reached a verdict, you will knock on the jury room

23 door and inform the bailiff you have reached a verdict.

24 Now, whatever you write on my verdict form that I'm going to

25 give you, along with all the exhibits, which have been

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1 introduced into evidence during the trial of the case,  
2 whatever you write on the verdict form, my law clerk, David,  
3 is going to write the same words on the indictments in this  
4 case for both murder and attempted murder. So he's going to  
5 want to see you before you leave the courtroom after your  
6 verdict is published.

7 Now, ladies and gentlemen, your verdict must be  
8 unanimous. That is, it must be the verdict of each and  
9 every one of you. All twelve of you must agree on a  
10 verdict. Now, there are some exhibits that require -- I'm  
11 going to send all the exhibits back, but you can't view all  
12 of them in your jury room because you need the equipment  
13 that's out here. If you want to view an exhibit again, just  
14 knock on the jury room door, tell the bailiff what you want  
15 to look at. They're labeled so you can look at them and  
16 decide if you wanted to view it again and that'll be fine.  
17 We'll be happy to display it for you with the equipment out  
18 here, since you don't have that equipment back in your jury  
19 room.

20 Now, Mr. Foreman, and ladies and gentlemen of the jury,  
21 I've now charged you on the law in order to help guide you  
22 to a fair and just result in this case. You're the judges  
23 of the facts in this case. And based on your determination  
24 of the facts in this case and the law as I've explained it  
25 to you, you're soon going to begin your deliberations.

1 I'm going to remind you that each of you were selected  
2 as fair and impartial jurors. You took an oath in which you  
3 said I will fairly and impartially fulfil my duty. I will  
4 fairly and impartially fulfil my duties. So you need to  
5 fairly and impartially determine the facts in this case  
6 based on evidence introduced during the trial of this case.  
7 And when you do that, no one can criticize your verdict.

8 You're to decide this case solely on the evidence that  
9 you've either heard or seen during this trial. That is,  
10 witnesses who have testified from this witness stand, any  
11 exhibits which have been introduced into evidence or if  
12 there were any stipulations. You would also disregard  
13 anything that I ordered stricken from the record. You must  
14 decide the issues in this case, ladies and gentlemen without  
15 any bias, without any prejudice for or against any person.  
16 You cannot allow yourself to be governed by public opinion  
17 or emotion or any other arbitrary factor that is not in  
18 evidence during the trial of this case. Both the Defendant  
19 and the State of South Carolina have the absolute right to  
20 expect that each of you on this jury will carefully,  
21 impartially, and fairly consider all of the evidence in this  
22 case and that you will follow the law as I've instructed you  
23 to be in reaching your verdict in this case.

24 Now, Mr. Foreman and ladies and gentlemen of the jury,  
25 I'm going to ask you at this point to retire to your jury

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1 room. Do not begin your deliberations. I might have to  
2 call you back for some brief additional instruction. When  
3 it is time for you to begin your deliberation, I will have  
4 my bailiff take in the verdict form and bring you in all the  
5 exhibits, which have been introduced into evidence during  
6 the trial of this case. So you will have the verdict form  
7 and the exhibits in your jury room and I will have the  
8 bailiff instruct you that you may then commence your  
9 deliberations. My alternate jurors, please remain with me  
10 in the courtroom. Members of the jury, please retire to  
11 your jury room and await further instructions from me by the  
12 bailiff.

13 (Jury out at 12:24 p.m.)

14 THE COURT: No one became ill or for some valid  
15 reason could not continue, but I want to thank you on behalf  
16 of Dorchester County for your service. This includes your  
17 service. Do both of you have all your belongings? Nobody  
18 left their pocketbook in their jury room.

19 THE JUROR: I did.

20 THE COURT: Tell her what kind of pocketbook so  
21 she can -- I can't let you go back in the jury room now, but  
22 she'll get it for you.

23 Go get her pocketbook for her. Wait a minute. You've  
24 got to know what kind. What color?

25 THE JUROR: (Inaudible)



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1 the court reporter has all the exhibits?

2 MR. SORENSON: Yes, sir.

3 THE COURT: Does the State have any objections to  
4 my bailiff taking the verdict form and the exhibits into the  
5 jury and telling the jury they may now commence their  
6 deliberations?

7 MR. SORENSON: No, Your Honor.

8 THE COURT: Is the Defendant satisfied that the  
9 court reporter has all the exhibits?

10 MR. CHISHOLM: Yes, Your Honor.

11 THE COURT: Does the Defendant have any objections  
12 to the bailiff taking the verdict form, which you previously  
13 approved, and the exhibits into the jury room and telling  
14 the jury they may now commence their deliberations?

15 MR. CHISHOLM: No objection.

16 THE COURT: Very well. Who's taking it?

17 OFFICER SMITH: We'll take it.

18 COURT REPORTER: Evidence and verdict form to the  
19 jury at 12:34 p.m.

20 (Jury deliberating at 12:34 p.m.)

21 (Court in recess awaiting jury  
22 verdict)

23 (Court in session for jury question  
24 at 2:18 p.m.)

25 THE COURT: The bailiff is sending my law clerk --

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1 From the State of South Carolina.

2 MR. SORENSON: No, sir.

3 THE COURT: From the Defendant?

4 MR. CHISHOLM: None, Your Honor.

5 THE COURT: Very well. We'll be at ease while  
6 we're await the jury's verdict.

7 (Court in recess at 3:05 p.m.)

8 (Court in session for jury question  
9 at 3:48 p.m.)

10 THE COURT: Counsel in the case we're trying  
11 please approach the bench.

12 (Off the record bench conference with counsel and the  
13 Court.)

14 THE COURT: Hilda, this will be Court's Exhibit  
15 No. 4.

16 COURT REPORTER: It's a jury note.

17 THE COURT: It is. No. 4?

18 COURT REPORTER: Yes, sir.

19 THE COURT: All right. I received that  
20 approximately -- handed to me while I was doing the last  
21 motion, approximately 3:35.

22 I've advised the attorneys in this case the contents of  
23 the note. We're making it a Court's Exhibit. I've told  
24 them that if we don't have a verdict by 4:00 -- they'll have  
25 been in the jury room actually deliberating about 4 hours

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1 and 15 minutes at that point. It will be my intention to  
2 give the jury an Allen Charge at 4:00. No one has any  
3 objection to that and we're making the jury's note, that  
4 they are not likely to reach a unanimous verdict a part of  
5 the record as a Court's Exhibit without objection. Is that  
6 correct from the State?

7 MR. SORENSON: Yes, sir.

8 THE COURT: Correct from the Defendant?

9 MR. CHISHOLM: Yes, sir.

10 COURT REPORTER: Judge, the correction. It would  
11 be Court's Exhibit No. 3.

12 THE COURT: Excuse me. It's going to be Court's  
13 Exhibit No. 3 and not Court's Exhibit No. 4.

14 (Court's Exhibit No. 3, jury note,  
15 was marked)

16 MR. LOY: And Your Honor, I'd like to bring the  
17 Defendant in and put that on the record.

18 THE COURT: You want put it on the record.

19 MR. LOY: Your Honor, I think he's entitled to be  
20 here. He's on trial for murder.

21 THE COURT: Well, since you've raised it now, Mr.  
22 Loy we're going to have to. Bring in the Defendant.

23 MR. LOY: Thank you, Your Honor.

24 (Defendant enters courtroom)

25 THE COURT: Let the record reflect that all the

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1 attorneys are present and now the Defendant is present at  
2 the request of Mr. Loy.

3 I received a note at approximately 3:35 or 3:40, while  
4 I was hearing a bond motion, from the jury. It states it  
5 does not seem likely that we will reach a unanimous decision  
6 on question one of the verdict form. I called the attorneys  
7 to the bench at approximately 3:50 and advised them of the  
8 note and brought the Defendant out so he would be aware of  
9 the contents of the note. It's my intention if we don't  
10 reach or have a verdict by 4:00, I'm going to bring the jury  
11 back and give them an Allen Charge, which the lawyers tell  
12 me they have no objection and I've making the juror's note  
13 concerning their status Court's Exhibit No. 3 for this  
14 trial.

15 Do you understand, Mr. Cobbs, everything I've said?

16 DEFENDANT COBBS: Yes, sir.

17 THE COURT: Very good. All right. Mr. Loy, your  
18 client's now been informed of everything. We would have  
19 told him anyway, but I want to make sure he knows verbatim.

20 (Court at ease)

21 THE COURT: All right. It's 4:00, no verdict.  
22 Bring us the jury, please ma'am.

23 THE BAILIFF: Yes, sir.

24 (Jury in at 4:03 p.m.)

25 THE COURT: Mr. Foreman, I received your note.

1 Ladies and gentlemen he stated in his note that you've been  
2 unable to agree on a verdict in this case. As I instructed  
3 you earlier, the verdict of the jury must be unanimous.  
4 When a matter is in dispute, it isn't always easy for even  
5 two people to agree. So when twelve people must agree, it  
6 becomes even more difficult. In most cases, ladies and  
7 gentlemen, absolute certainty cannot be reached nor can  
8 absolute certainty be expected. However, you have a duty to  
9 make every reasonable effort to reach a unanimous verdict.  
10 In doing this, ladies and gentlemen, you should consult with  
11 one another, express your own views and listen to the  
12 opinions of your fellow jurors. Tell each other how you  
13 feel and why you feel that way. Discuss your differences  
14 with open minds. Although the verdict of the jury must be  
15 unanimous, ladies and gentlemen, every one of you has the  
16 right to your own opinion. The verdict you agree to must be  
17 your own verdict. The result of your own convictions and  
18 you should not give up firmly held beliefs merely to be in  
19 agreement with your fellow jurors. The majority should  
20 consider the minority's position. And the minority should  
21 consider the majority position. You should carefully  
22 consider and respect the opinions of each other and  
23 reevaluate your position for reasonableness, for correctness  
24 and impartiality. You must lay aside all outside matters  
25 and reexamine the questions before you based on the law and

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1 the evidence in this case. If you do not agree on a verdict  
2 in this case, I must declare a mistrial. In that case it  
3 does not mean anybody wins. It just means that at some  
4 future time I will try this case with some other jury,  
5 sitting where each of you are now sitting. The same  
6 participants will come and the same lawyers will ask  
7 basically the same questions and get basically the same  
8 answers and we will go through the whole process again. You  
9 were selected in the same manner and from the same source as  
10 any future jury will be selected. And there's no reason for  
11 me to suppose that the case will ever be submitted to twelve  
12 more intelligent or twelve more impartial or twelve more  
13 conscientious or twelve more competent jurors than each of  
14 you. Or that more or clearer evidence will be produced on  
15 one side or the other in this case. I, therefore, ask you  
16 to return to your deliberations at this time. Thank you  
17 very much.

18 (Jury out at 4:12 p.m.)

19 THE COURT: An exceptions or additions to the  
20 Court's comments to the jury?

21 From the State of South Carolina?

22 MR. SORENSON: No, sir.

23 THE COURT: From the Defendant?

24 MR. CHISHOLM: No, sir.

25 THE COURT: Very well.

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1 (Court in recess at 4:12 waiting  
2 jury verdict)

3 (Court in session for jury question  
4 at 5:05 p.m.)

5 THE COURT: Let the record reflect when I was  
6 taking the last plea a few minutes ago, I called the lawyers  
7 in chambers. I received another note from the jury. We are  
8 still unable to come to a unanimous consent on question one  
9 of the verdict form. I've read that to the lawyers and I  
10 want to make that Court's Exhibit No. 4.

11 (Court's Exhibit No. 4, jury note,  
12 was marked)

13 THE COURT: Any questions, Solicitor?

14 MR. SORENSON: No, sir.

15 THE COURT: Defense counsel?

16 MR. CHISHOLM: No, Your Honor.

17 THE COURT: I advised Defense counsel it was my  
18 intention to bring the jury back out in light of the second  
19 note. I will advise the jury in light of the code section  
20 which I gave them, 14-7-1330, I will advise the jury first  
21 of all, have you been able to reach a verdict on any of the  
22 indictments? Yes or no. And I understand from your note  
23 you've been unable to reach a verdict on question one or  
24 unanimous consent on question one. I will ask them whether  
25 or not they feel like that if they continue to deliberate,

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1 further deliberations would be beneficial. If they tell me  
2 they cannot, then obviously our code section provides that  
3 when a jury returns a second time without having agreed on a  
4 verdict, the trial judge cannot send the jurors out again  
5 without their consent unless the jurors ask for a further  
6 explanation of law. And I'll no choice in this matter but  
7 to declare a mistrial. Does that accurately state what  
8 occurred in chambers?

9 Insofar as the State is concerned?

10 MR. SORENSON: Yes, sir.

11 THE COURT: Insofar as Defense counsel is  
12 concerned?

13 MR. CHISHOLM: Yes, sir.

14 THE COURT: Bring us the jury, please?

15 THE BAILIFF: Yes, sir.

16 (Jury in at 5:06 p.m.)

17 THE COURT: Mr. Foreman, has the jury been able to  
18 reach a verdict on any of the indictments submitted?

19 MR. FOREMAN: Yes, sir.

20 THE COURT: You have?

21 MR. FOREMAN: Yes, sir.

22 THE COURT: So you have answered question two and  
23 three, if necessary?

24 MR. FOREMAN: Yes, sir.

25 THE COURT: But you've been unable to reach a



1 verdict as to question one?

2 MR. FOREMAN: Yes, sir.

3 THE COURT: All right. And I'm asking whether or  
4 not, Mr. Foreman, you feel like continued deliberation would  
5 result in a verdict on question one on the indictment?

6 MR. FOREMAN: I do not believe that.

7 THE COURT: You do not believe that?

8 MR. FOREMAN: I do not believe that.

9 THE COURT: All right. But you have been able to  
10 -- and you've filled out the verdict form as to questions  
11 two and three?

12 MR. FOREMAN: Yes, sir.

13 THE COURT: Very well. Madam Clerk, would you get  
14 the verdict form from the Foreman?

15 Did you bring it out with you?

16 THE FOREMAN: No, they told us not to bring  
17 anything.

18 THE COURT: Okay. All right. Would you please go  
19 get the exhibits and the verdict form and I'll let the jury  
20 stay right here.

21 THE BAILIFF: You want the exhibits and the  
22 verdict form?

23 THE COURT: The verdict form and the exhibits.

24 THE BAILIFF: Yes, sir.

25 THE COURT: Mr. Foreman, and ladies and gentlemen

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1 of the jury, as to question one, since you've been unable to  
2 reach a verdict as to question one, which is the indictment  
3 for murder, because your Foreperson tells me he does not  
4 think continued deliberations would be beneficial, I have no  
5 choice now but to declare a mistrial as to that indictment.  
6 And, as I told you exactly what would occur with a mistrial,  
7 I will now publish your verdicts as to the remaining  
8 questions.

9 Have you signed the verdict form yet?

10 THE FOREMAN: I have not signed it.

11 THE COURT: I'm going to ask you to do so since  
12 you've reached a verdict.

13 THE BAILIFF: We need for him to come and get it  
14 because they had it all over the place.

15 THE COURT: All right. Ladies and gentlemen,  
16 would you all please retire to the jury room so we can get  
17 all the exhibits and verdict form and the Foreman can sign.

18 (Jury out at 5:07 p.m.)

19 (Jury in at 5:10 p.m.)

20 THE COURT: Is that all the exhibits?

21 THE BAILIFF: Uh-huh. (Affirmative response)

22 THE COURT: Defendant please rise with counsel.

23 I have declared a mistrial on indictment 2016- -- I've  
24 declared a mistrial on indictment 2016-GS-18-1267. The jury  
25 has not filled out any verdict on the verdict form on that.

1 So a mistrial has been declared.

2 Question two on the indictment. We, the jury, by  
3 unanimous consent find the Defendant, Keunte D. Cobbs, in  
4 indictment number 2016-GS-18-1268 not guilty of attempted  
5 murder of Bradford Spells.

6 Question three. We, the jury, by unanimous consent  
7 find the Defendant, Keunte D. Cobbs, guilty of assault and  
8 battery of a high and aggravated nature of Bradford Spells.

9 Ladies and gentlemen of the jury, if that be your  
10 verdict as published by the Court, would you please indicate  
11 by raising your right hand?

12 (All jurors raised their right  
13 hand)

14 THE COURT: Let the record reflect, Hilda, twelve  
15 hands were raised.

16 Anything from the Defendant before I dismiss this jury?

17 MR. CHISHOLM: No, Your Honor.

18 THE COURT: Ladies and gentlemen, on behalf of  
19 Dorchester County and -- please be seated.

20 On behalf of Dorchester County and this Court, I want  
21 to thank you for your service. This concludes your service  
22 for the week. You will be receiving that exorbitant check  
23 that I told you about, twenty-five dollars per day. I  
24 especially want to thank Ms. Murray because she gave up  
25 working this week to serve on a jury and I very much

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1 please come around for sentencing.

2 MR. SORENSON: May I approach, Your Honor. May I  
3 approach?

4 THE COURT: Absolutely.

5 MR. SORENSON: I am not a hundred percent sure  
6 I'll have to look -- serious -- but not --

7 THE COURT: Now, that I'm not sure of. So I think  
8 we're going to have to involve Mr. Chisholm in that  
9 discussion. Please come up.

10 (Off the record bench conference with counsel and the  
11 Court.)

12 THE COURT: All right. Solicitor, the jury has  
13 found Mr. Cobbs guilty of the offense of assault and battery  
14 of a high and aggravated nature. I'll be happy now to hear  
15 from you?

16 MR. SORENSON: Yes, sir. May it please the Court,  
17 Your Honor.

18 THE COURT: Yes, sir.

19 MR. SORENSON: I'll start off as to Mr. Cobbs'  
20 prior record that he has going back to 2002, a hit and run  
21 with property damage and possession of a stolen motor  
22 vehicle; 2002, also a possession of -- possession with  
23 intent to distribute cocaine conviction; as from 2004,  
24 malicious injury to personal property; 2006, assault and  
25 battery of a high and aggravated nature. That would have

1 been under the old common law assault and battery of a high  
2 and aggravated nature.

3 THE COURT: Not the statutory?

4 MR. SORENSON: Not with the statutory. So it's a  
5 little different than what we have with him convicted of  
6 today. And then 2008, a failure to stop for blue lights and  
7 sirens. And that looks like the extent of his prior record,  
8 Your Honor.

9 As far as further comments from the State, I mean,  
10 obviously the victim in this matter that he's been convicted  
11 of is Mr. Spells who Your Honor has heard --

12 THE COURT: Was completely uncooperative.

13 MR. SORENSON: And I would reiterate Lieutenant  
14 Peters' comments. I have dealt with Mr. Spells on multiple  
15 cases and he's had issues with law enforcement for many  
16 years and a dislike for law enforcement for various reasons.

17 THE COURT: I think the jury heard the evidence  
18 that he was unwilling to discuss the events either with EMS  
19 or with any member of law enforcement in this case?

20 MR. SORENSON: With anything. We've been actively  
21 hunting him for the last several months now. He's out on  
22 bond for some drug charges in Richland County and we've been  
23 unable to put our hands on him. So needless to say there's  
24 no victim impact evidence from his standpoint. I would  
25 point out, I guess, from the State's standpoint, Your Honor,

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1 is that as Your Honor is aware from hearing the evidence,  
2 watching the video, I mean, this was a shooting that  
3 occurred. I mean, there were at least eight shots fired in  
4 that restroom. Some of them had traveled, as you saw from  
5 the photographs, actually into the door. Therefore, in the  
6 direction of -- and basically where, as you saw from the  
7 video, there were dozens and dozens of people in that IHOP,  
8 despite the fact that it was 2:15 in the morning. I mean,  
9 there was a significant number of people that this man's  
10 actions put at risk that morning. And as a result of that,  
11 we think he needs to be punished harshly for that.

12 Obviously, we're going to now regroup and we're looking  
13 at retrying him on the murder, the murder case. But as far  
14 as this charge, I mean, his actions -- obviously, this  
15 jury's convicted him of shooting Mr. Spells, of not having  
16 that expressed intent to try to kill him. And that I'm sure  
17 probably played into the fact that he only got hit one time.  
18 But I'm sure it probably played into guessing a little bit  
19 by the fact that he, you know, basically had pretty much not  
20 even gotten into the restroom when he was shot. But those  
21 actions that involve that, I do feel like put a whole lot of  
22 totally innocent people at risk that night. And that he  
23 needs to be held accountable for that.

24 THE COURT: Is there any member here from Mr.  
25 Spells' family that wishes to address the Court?

1           MR. SORENSON: There is not. We have members of  
2 Mr. Mack's family and obviously I think they're aware of the  
3 fact that we're still going to have to deal with the charge  
4 that -- their child's --

5           THE COURT: Realize that's for another day --

6           MR. SORENSON: Yes, sir.

7           THE COURT: -- in light of the jury being unable  
8 to reach a verdict.

9           MR. SORENSON: Yes, sir.

10          THE COURT: Anything else from the State?

11          MR. SORENSON: I was looking to see if Detective  
12 Peters wanted to say anything, but I don't know where he  
13 went to. So that would be all from the State, Your Honor.

14          THE COURT: All right. Mr. Chisholm, I requested  
15 that you do this before I hear from you. Have you advised  
16 your client of the maximum penalty for assault and battery  
17 of a high and aggravated nature. You agree it's twenty  
18 years?

19          MR. CHISHOLM: Yes, sir.

20          THE COURT: You've also advised your client that  
21 assault and battery of a high and aggravated nature is both  
22 violent and serious? Because it is violent your client  
23 would need to understand that he would have to serve every  
24 day of any sentence or day for day of any sentence I might  
25 impose. Does he understand that?

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1 MR. CHISHOLM: Yes, sir.

2 THE COURT: Because it is serious, it means it's a  
3 strike. If he were ultimately to be convicted in the future  
4 of a combination of either serious or most serious offenses,  
5 under the laws of the State of South Carolina, he could, if  
6 so convicted in the future, face the possibility of life in  
7 imprisonment without any possibility of parole. Have you  
8 advised him of that as well?

9 MR. CHISHOLM: I have.

10 THE COURT: Are there any other direct  
11 consequences of this conviction that I have failed to  
12 mention that you have advised your client?

13 MR. CHISHOLM: None that I can think of, Your  
14 Honor.

15 THE COURT: Very well. I'm happy now to hear from  
16 you in mitigation, Mr. Chisholm.

17 MR. CHISHOLM: Thank you, Your Honor. Mr. Cobbs  
18 is thirty-seven years. He has a -- well, he's almost  
19 thirty-seven years old. He has a twelve-year-old daughter,  
20 an eleven-year-old son. And I think you basically heard  
21 when he spoke from the witness stand earlier in pretrial  
22 motions, the effect all of this has had on them. And  
23 obviously, a lot of people have suffered in this case. I  
24 think most of what I will present to you in mitigation  
25 you've heard during the trial. I would ask you to show any



1 mercy you feel you can show in this case.

2 I believe Mr. Cobbs sister, Melvina Robinson is present  
3 and would like to address Your Honor.

4 THE COURT: I'd be happy to hear from you.

5 Yes, ma'am. If you'd come right up to the microphone.  
6 If you'd state your name for the record, please?

7 MS. ROBINSON: Hi. My name is Minister Melvina  
8 Robinson. I'm not just his -- I'm his play sister. He was  
9 raised up around me.

10 THE COURT: You're not his blood sister? You're  
11 his play sister.

12 MS. ROBINSON: No, I'm not his blood sister. I'm  
13 his play sister, but I'm also -- I'm a village that mends,  
14 you know, a situation like this. Growing up, I watched him  
15 grow from a young person until a young man now. And he is  
16 -- I mean, he's a loving guy. I can say he has a young  
17 girl, or a daughter. She's twelve years old. I've had like  
18 community activities and when I needed help Keunte was  
19 always there to help me. I asked him many times just to  
20 support whatever I went out to do. He always was there. He  
21 has business out in the areas. We have done that together.  
22 He's just not just a father. He's a companion to other  
23 needs of the community as well.

24 THE COURT: All right. Thank you very much for  
25 sharing your thoughts with me.

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1 MS. ROBINSON: Yes, sir.

2 THE COURT: Anyone else.

3 Mr. Chisholm?

4 MR. CHISHOLM: Nothing further, Your Honor.

5 THE COURT: All right. Anything from you before I  
6 hear from your client?

7 MR. CHISHOLM: No, sir.

8 THE COURT: Is there anything you would like to  
9 tell me Mr. Cobbs prior to sentencing, I'll be happy to hear  
10 from you. You can step over to the microphone?

11 DEFENDANT COBBS: Yes, sir, Your Honor. I just  
12 wanted to say that I'm truly sorry. I hate to use the word  
13 sorry. I want to apologize to you for coming in front of  
14 you for these offenses. Back in 2006 when I caught my last  
15 offense I made a promise to myself and my kids that, you  
16 know, I would try to stay out of these situations, to  
17 dedicate my life to raising them the right way and get my  
18 life together. So it's kind of hard for me right now. You  
19 know, I've got a lot of emotions running and stuff like  
20 that, but I would ask please have -- show mercy on me. I  
21 have a daughter who's going through a depression like I told  
22 you in the pretrial motions and all. She contemplated  
23 suicide behind, I guess me incarcerated and telling her I'm  
24 coming home, you know. I have a son that feels I abandoned  
25 him, which I would never do but he thinks I'm off working.

1 And I just wanted to say I apologize once again. Thank you  
2 and God bless you and the jurors.

3 THE COURT: Let me say this, Mr. Cobbs. I can  
4 well understand why the jury struggled. You're charged with  
5 murder. Apparently they also, because they listened to my  
6 charge on the law, they felt like that the State had not  
7 proven attempted murder and found you guilty of the lesser  
8 included offense, assault and battery of a high and  
9 aggravated nature. I also have to take into -- and I  
10 certainly understand that verdict because there was clear  
11 evidence here Mr. Cobbs. Ms. Sweed testified that you told  
12 her you committed the shooting. So it was not just, as I  
13 pointed out to the lawyers during the trial, a  
14 circumstantial case because her credibility was also at  
15 issue here in the trial of this case and she was subject to  
16 cross-examination. I have to consider your prior record  
17 when I fashion a sentence. I also have to consider the fact  
18 that there were a number of people who had absolutely  
19 nothing to do with this incident, who could have been  
20 injured by the events that the jury has found you guilty of  
21 in the International House of Pancakes on Dorchester Road  
22 back in 2016. All of those factors have to be considered.  
23 I understand that you have children, but I also have to  
24 understand that the jury has spoken as to your guilt on  
25 assault and battery of a high and aggravated nature.

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1           On indictment 2016-GS-18-1268, the State versus Keunte  
2 D. Cobbs, the sentence of the Court is Defendant is  
3 committed to the state department of corrections for a term  
4 of eighteen years. The Defendant is being given credit for  
5 time served pursuant to South Carolina Code Section 24-13-  
6 40. That is to be calculated and applied by the department  
7 of corrections. Good luck to you, sir..

8           MR. CHISHOLM: Thank you, Your Honor.

9           THE COURT: Now, Mr. Foreman, and ladies and  
10 gentlemen of the jury, the Defendant has been in custody for  
11 over two years. He will be given credit by the department  
12 of corrections for that on my sentence. All right. He is  
13 going to serve a sentence of eighteen years. It is a  
14 violent offense, which means he's going to serve at least  
15 eight-five percent of my sentence with credit for the time  
16 served. All right. It is also -- you heard me ask his  
17 lawyer if he'd been advised it is a serious offense. That  
18 means that if he's to be convicted in the future of either a  
19 serious or most serious offense, he could, if so convicted  
20 in the future and his lawyer advised him of that. Mr.  
21 Chisholm acknowledged that, he could face the possibility of  
22 punishment of life imprisonment without any possibility of  
23 any parole if he were so convicted. Obviously, sentencing  
24 is the Court's province, not yours. I have to take into  
25 consideration his prior record and I have to take into

1 consideration that you felt he was guilty and what could  
2 have occurred in that International House of Pancakes. As  
3 the Solicitor pointed out, innocent people could easily have  
4 been hurt that night. It's a miracle that they were not  
5 hurt that night. All of those factors have to be taken into  
6 consideration for sentencing. This trial has now been  
7 completed.

8 The indictment for murder, because I've declared a  
9 mistrial, the Solicitor will have to decide when they can  
10 dispose of that at a future time. That will be another  
11 trial at a future date. I can't comment to you on that at  
12 this time. But on behalf of this Court and the County of  
13 Dorchester, I want to thank you for your service. And was  
14 hoping I could do with you -- the State for sentencing is I  
15 come down off this bench that they make me sit on and shake  
16 your hand because I appreciate your service. Thank you very  
17 much. Thank you, sir, very much. Thank you very much for  
18 your service. Thank you, sir. Thank you, ma'am, for your  
19 service. Thank you for your service. Thank you very much  
20 for your service. I appreciate it.

21 Now, if anybody needs a work excuse they're downstairs  
22 in the clerks office. We're going to mail you your check at  
23 the address we mailed your summons to. So you're going to  
24 be getting a check. Everybody understand that? Anybody  
25 have any questions or problems they want to ask me? The

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1 last thing I'm say, because you were here this week, you're  
2 now exempt from jury service for three years if the computer  
3 were to select you if you choose to claim your exemption.  
4 But thank you for your service. You're now excused and you  
5 may leave the courtroom at this time. Thank you very much.

6 (Jury out at 5:38 p.m.)

7 (This proceeding was concluded)  
8  
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JAIL W/I SCDC

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF GENERAL SESSIONS

FIRST JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

ORDER OF APPOINTMENT OF LEGAL

VS.

COUNSEL FOR INDIGENT DEFENDANT

Defendant: Keunte Cobbs

SSN#

Age: 35 Birthdate: [REDACTED] Race/Sex: B/M Date of Arrest: June 27, 2016 ?Address: [REDACTED] (Mother - Tangeia Matthews)

Address

Address/Friend or Relative

City: Ladson State: SC Zip: 29456City: [REDACTED] State: [REDACTED] Zip: [REDACTED]Telephone: (843) 343-3519 (Michael - Dad) Telephone: (843) 270-5447 (Tangia - mom)Offense: MurderMagistrate: \_\_\_\_\_ Warrant No.: 2016A1810360547Bond: \$ No bond Type: Signature Recog Property Bondsman: \_\_\_\_\_Offense: Att Murder 2016A1810360548Magistrate: \_\_\_\_\_ Warrant No.: 2017A1810360549Bond: \$ No bond Type: Signature Recog Property Bondsman: \_\_\_\_\_Offense: Possession of weapon during violent crimeMagistrate: \_\_\_\_\_ Warrant No.: 2016A1810360549Bond: \$ \$5000 ?? Type: Signature Recog Property Bondsman: \_\_\_\_\_

→ Possession of a saved off shotgun also ? 2016A1810360549

The defendant contends that he is indigent and in need of services of an attorney as contemplated by law.

THEREFORE, Ash Chisholm Attorney at Law,  
is appointed as counsel for the defendant.

This 12th day of June at 3:20 (am - pm)

White - Clerk of Court  
Green - Attorney  
Canary - Criminal Justice Coordinator  
Pink - Solicitor  
Goldend - Defendant

Criminal Justice Coordinator

6/12/17 - Appointed by Judge Goodstein

Att. murder victim  
Bradford Spells - MW

17-975

|                         |   |                                    |
|-------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF GENERAL SESSIONS   |
| COUNTY OF DORCHESTER    | ) | THE FIRST JUDICIAL CIRCUIT         |
| STATE OF SOUTH CAROLINA | ) |                                    |
| Plaintiff,              | ) | <b>Warrant/Indictment Nos.:</b>    |
|                         | ) | 2016a1810300321; 2016a1810300547;  |
|                         | ) | 2016a1810300548; 2016a1810300549   |
|                         | ) | Weapons / Articles regulating use, |
|                         | ) | possession of machine guns, sawn   |
|                         | ) | off shotguns, rifles; Murder /     |
|                         | ) | Murder; Assault / Attempted        |
|                         | ) | Murder; Weapons / Poss. weapon     |
|                         | ) | during violent crime               |
|                         | ) | <b>MOTION FOR DISCOVERY</b>        |
| v.                      | ) | <b>AND INSPECTION</b>              |
|                         | ) | (Rule 5 and Rule 6)                |
| KEUNTE DONTRELL COBBS,  | ) |                                    |
| Defendant.              | ) |                                    |

**NOW COMES** the Defendant by and through his undersigned counsel of record, pursuant to **Rule 5** of the Rules of Criminal Practice in the Circuit Court, and moves the prosecution to permit Defendant to inspect and copy or photograph, including but not limited to, the following, the expressed provision that the duty of disclosure be a continuing one in the event that any such materials come into existence or become available after the initial disclosures:

(a) Any written or recorded statements made by the Defendant or copies thereof, within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the Attorney for the Prosecution;

(b) The substance of any oral statements which the Prosecution intends to offer into evidence of the trial made by Defendant, whether before or after arrest, in response to interrogation by any person then known by Defendant to be a Prosecution State agent;

(c) A copy of Defendant's prior driving and or criminal record,

2017 JUN 19 AM 11:15  
CLERK OF COURT  
DORCHESTER COUNTY



if any, as is within the possession, custody, or control of the Prosecution, the existence of which is known, or by the exercise of due diligence may become known to the Attorney for the Prosecution;

(d) All books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are in the possession, custody, or control of the Prosecution, and which are material to the defense, or are intended for use by the Prosecution as evidence in chief at the trial, or were obtained from or belonging to the Defendant;

(e) All results of reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are in the possession, custody, or control of the Prosecution, including any blood alcohol tests or other tests which were conducted by the State, the existence of which are known, or by the exercise of due diligence may become known, to the Attorney for the Prosecution, and which are material to the preparation of the defense or are intended for use by the Prosecution as evidence in chief at the trial; and

(f) The statement of any witness or prospective Prosecution witness, the existence of which is known, or by the exercise of due diligence may become known, to the Attorney for the Prosecution.

(g) Any and all audio and/or video recordings in the custody of the Prosecution, or may come into the possession of the Prosecution; including, but not limited to:

(1) interviews of victim(s), defendant(s), witnesses and/or any other party related in any way to the matter at hand;

(2) surveillance footage of any type and/or format related

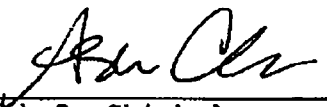
to this case or investigation;

(3) any "dash-cam" footage or any other recorded footage.

Defendant further moves that compliance with the foregoing request be made within ten days from the service of this motion, and upon failure of the Prosecution to so comply, Defendant will move before the Presiding Judge of this Circuit by Notice and Motion, for an Order prohibiting the Prosecution from introducing at trial evidence not disclosed, and if the foregoing is denied, an Order permitting the discovery and inspection requested, or a continuance of the trial, or other such Order as the Court in its discretion deems just under the circumstances. For the purposes of this motion, Defendant asserts that any item requested in paragraphs (a), (b), (c), (d), (e), (f) and (g) above is material to the preparation of the defense in this case.

Additionally, pursuant to Rule 6 of the South Carolina Rules of Criminal Procedure, Defendant objects to the introduction of any chemist's or analyst's report and demands the appearance, in Court of all chemists or analysts, as well as all persons within the chain of custody.

Respectfully submitted,

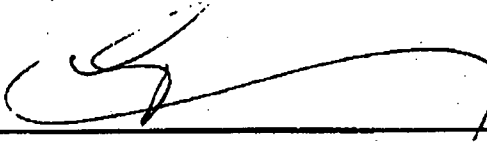
By: 

Ash D. Chisholm  
Assistant Public Defender  
107 West 6th North Street  
Summerville, SC 29483  
Attorney for Defendant  
(843) 821-9800

Summerville, South Carolina  
This 14th day of June, 2017.

**CERTIFICATE OF SERVICE**

The undersigned certifies that the pleading or paper to which this certificate is affixed was served on Glenn Justis, Esquire, Assistant Solicitor, First Circuit Solicitor's Office, 140 North Main Street, Suite 102, Summerville, South Carolina, 29483 by either depositing a copy of same, enclosed in a first class, postage paid wrapper, properly addressed, in a post office or official depository under the exclusive care and custody of the United Postal Service or via the Dorchester County Courier this 14th day of June, 2017.



RECEIVED  
CLERK OF COURT  
DORCHESTER COUNTY

2017 JUN 19 AM 11:46

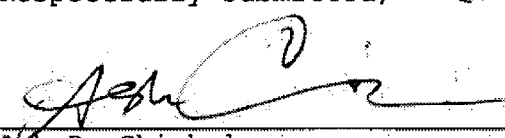
REC'D

|                         |   |                                   |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF GENERAL SESSIONS  |
|                         | ) | THE FIRST JUDICIAL CIRCUIT        |
| COUNTY OF DORCHESTER    | ) |                                   |
|                         | ) | <b>Warrant/Indictment Nos.:</b>   |
| STATE OF SOUTH CAROLINA | ) | 2016a1810300321; 2016a1810300547; |
|                         | ) | 2016a1810300548; 2016a1810300549  |
| Plaintiff,              | ) |                                   |
| V.                      | ) |                                   |
| KEUNTE DONTRELL COBBS,  | ) | <b>MOTION FOR SPEEDY TRIAL</b>    |
|                         | ) |                                   |
|                         | ) |                                   |
| Defendant.              | ) |                                   |

FILED-RECORDED  
2017 DEC 15 PM 4:19  
CLERK OF COURT  
DORCHESTER COUNTY

The Defendant, by and through his undersigned attorney, should show this Honorable Court:

1. That the Defendant is presently awaiting trial on the charge of Weapons/Articles regulating use, possession of machine guns, sawn off shotguns, rifles; Murder; Assault/Attempted Murder; Weapons / Poss. weapon during violent crime, brought against the Defendant by the State of South Carolina;
2. That the Defendant is informed and believe that he is entitled to a speedy trial and does hereby demand such, as provided in the Sixth Amendment in the United States Constitution and Article 1, Section 9 of the South Carolina Constitution.

Respectfully submitted, 

Ash D. Chisholm  
Assistant Public Defender  
107 W. 6th North Street  
Summerville, SC 29483  
(843) 821-9800 Office  
(843) 871-0523 Facsimile  
ATTORNEY FOR DEFENDANT

Summerville, South Carolina  
This 13th day of December, 2017.

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER

STATE OF SOUTH CAROLINA,

v.

KEUNTE DONTRELL COBBS,

IN THE COURT OF GENERAL SESSIONS  
THE FIRST JUDICIAL CIRCUIT

WARRANT NO.: 2016a1810300321;  
2016a1810300547; 2016a1810300548;  
2016a1810300549

ORDER

FILED-RECORDED  
**12-14-2017**  
Cheryl Graham  
Clerk of Court  
Dorchester County

THIS MATTER is before me pursuant to the Defendant's Motion for Speedy trial. The Defendant is presently incarcerated on Warrant Nos.: 2016A1810300321; 2016A1810300547; 2016A1810300548; 2016A1810300549. After careful consideration of this matter, I hereby grant the motion for speedy trial and find that if the trial is not scheduled during the week of January 16, 2018, bond shall be revisited; and

IT IS SO ORDERED!

  
PRESIDING JUDGE OF THE COURT  
OF GENERAL SESSIONS FOR THE  
FIRST JUDICIAL CIRCUIT

St. George, South Carolina  
This 14 of December, 2017.

FILED-RECORDED

01-18-18

Cheryl Graham  
Clerk of Court  
Dorchester CountyTHE COURT OF GENERAL SESSIONS  
THE FIRST JUDICIAL CIRCUITSTATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER

STATE OF SOUTH CAROLINA,

v.

KEUNTE DONTRELL COBBS,

WARRANT NO.: 2016a1810300321;  
2016a1810300547; 2016a1810300548;  
2016a1810300549

ORDER

THIS MATTER is before me pursuant to the Defendant's Motion to Set Bond. The Defendant is presently incarcerated on a Weapons/Articles Regulating Use, Possession Of Machine Guns, Sawed Off Shotguns, Rifles; Weapons/Poss. Weapon During Violent Crime; Warrant Nos.: 2016A1810300321; 2016A1810300549 with a \$65,000.00 surety bond and Murder; Assault/Attempted Murder; Warrant Nos.: 2016A1810300547; 2016A1810300548; with no bond set. After careful consideration of this matter, I find that the Defendant's bonds shall be consolidated and set at a \$400,000.00 surety bond; and,

FURTHER, Defendant must be placed on GPS monitoring, and must have no contact with victims and victims' family and he is not allowed to go within a 1 mile radius of the victims' residence;

IT IS SO ORDERED!

*Wante' Mung*  
PRESIDING JUDGE OF THE COURT  
OF GENERAL SESSIONS FOR THE  
FIRST JUDICIAL CIRCUIT

St. George, South Carolina  
This 19 of January, 2018.

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

STATE OF SOUTH CAROLINA

Plaintiff,

v.

KEUNTE DONTRELL COBBS,

Defendant.

IN THE COURT OF GENERAL SESSIONS  
THE FIRST JUDICIAL CIRCUIT

Warrant/Indictment Nos.:

2016a1810300321; 2016a1810300547;  
2016a1810300548; 2016a1810300549

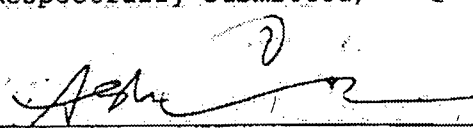
MOTION FOR SPEEDY TRIAL

2017 DEC 15 PM 4:19  
CLERK OF COURT  
DORCHESTER COUNTY

The Defendant, by and through his undersigned attorney, would show  
this Honorable Court:

1. That the Defendant is presently awaiting trial on the charge of Weapons/Articles regulating use, possession of machine guns, sawn off shotguns, rifles; Murder; Assault/Attempted Murder; Weapons / Poss. weapon during violent crime, brought against the Defendant by the State of South Carolina;
2. That the Defendant is informed and believe that he is entitled to a speedy trial and does hereby demand such, as provided in the Sixth Amendment in the United States Constitution and Article 1, Section 9 of the South Carolina Constitution.

Respectfully submitted, &lt;

  
 Ash D. Chisholm  
 Assistant Public Defender  
 107 W. 6th North Street  
 Summerville, SC 29483  
 (843) 821-9800 Office  
 (843) 871-0523 Facsimile  
 ATTORNEY FOR DEFENDANT

Summerville, South Carolina  
 This 13th day of December, 2017.

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER

) IN THE COURT OF GENERAL SESSIONS  
) THE FIRST JUDICIAL CIRCUIT  
)

STATE OF SOUTH CAROLINA  
Plaintiff,

) **Warrant/Indictment Nos.:**  
) 2016a1810300321; 2016a1810300547;  
) 2016a1810300548; 2016a1810300549  
) Weapons / Articles Regulating Use,  
) Possession Of Machine Guns, Saw  
) Off Shotguns, Rifles; Murder /  
) Murder; Assault / Attempted  
) Murder; Weapons / Poss. Weapon  
) During Violent Crime, If Not Also  
) Sentenced To Life Without Parole  
) Or Death  
)

v.

BOND MOTION

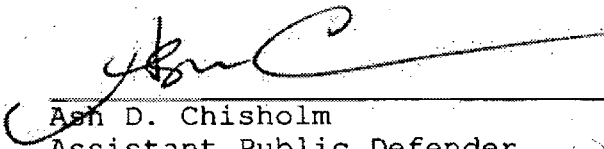
KEUNTE DONTRELL COBBS,  
Defendant.

FILED-RECORDED  
2018 JUN -8 PM 3:58  
CLERK OF COURT  
DORCHESTER COUNTY

FILED-RECORDED

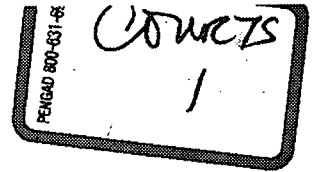
YOU WILL please take notice that the undersigned will move on behalf of the Defendant for an Order setting, reducing, and consolidating the Defendant's bond[s] on the 11th day of June, 2018, or as soon thereafter as the matter may be heard.

Respectfully submitted,

  
Ash D. Chisholm  
Assistant Public Defender  
107 West 6th North Street  
Summerville, SC 29483  
Attorney for Defendant  
(843) 821-9800

Summerville, South Carolina  
This 6th day of June, 2018.





|                               |   |                                   |
|-------------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA       | ) | IN THE COURT OF GENERAL SESSIONS  |
|                               | ) | THE FIRST JUDICIAL CIRCUIT        |
| COUNTY OF DORCHESTER          | ) |                                   |
|                               | ) | <b>Warrant/Indictment Nos.:</b>   |
| STATE OF SOUTH CAROLINA       | ) | 2016a1810300321; 2016a1810300547; |
|                               | ) | 2016a1810300548; 2016a1810300549  |
| Plaintiff,                    | ) |                                   |
| V.                            | ) |                                   |
|                               | ) |                                   |
| <b>KEUNTE DONTRELL COBBS,</b> | ) | <b>MOTION FOR DISMISSAL</b>       |
|                               | ) |                                   |
|                               | ) |                                   |
|                               | ) |                                   |
| Defendant.                    | ) |                                   |
|                               | ) |                                   |

---

Comes now the The Defendant, Keunte Cobbs by and through his attorney, Ash Chisholm, on a motion to dismiss the above-listed indictments for Possession of a Sawed-off Shotgun, Murder, Attempted Murder and Possession of a Weapon During the Commission of a Violent Crime due to a violation of Defendant's right to a speedy trial.

In State v. Hunsberger, our Supreme Court reiterated that Defendants are entitled to a speedy and public trial. State v. Hunsberger, 418 S.C. 335 at 342 (2016) (citing U.S. Const amend. VI and S.C. Const. art. I § 14). The court was clear that the remedy for a speedy trial violation is dismissal of the charges. Id. at 342.

Hunsberger states "to trigger a speedy trial analysis, the accused must allege that the interval between accusation and trial has crossed the threshold dividing ordinary from 'presumptively

prejudicial" delay, since, by definition, he cannot complain that the government has denied him a 'speedy' trial if it has, in fact, prosecuted his case with ordinary promptness." *Hunsberger*, 418 S.C. at 342, 343. It was held in *State v. Langford* that a twenty-three month delay was presumptively prejudicial. *State v. Langford*, 400 S.C. 421 at 442-443 (2012).

Hunsberger instructs that upon a finding of presumptive prejudice, a court must look to the following factors to determine whether a Defendant's right to a speedy trial has been denied: (1) length of delay; (2) the reason for the delay; (3) the accused's assertion of his right to a speedy trial; and (4) whether the delay prejudiced the accused. *Hunsberger*, 418 S.C. at 343.

In this case, Defendant was arrested June 27, 2016 and charged with Murder, Attempted Murder and Possession of a Weapon During a Violent Crime. Defendant was subsequently served an outstanding warrant for Possession of a Sawed-off Shotgun on June 28, 2016. Defendant has remained in custody since June 27, 2016, a period of over twenty-five months (787 days as of August 20, 2018.)

Defense counsel was appointed on June 12, 2017. Defendant has not requested a continuance in this case at any point of his incarceration.

A speedy trial motion was heard by the Honorable Judge Maite Murphy on December 14, 2017. Judge Murphy's order stated that the motion for a speedy trial was granted and that if the trial wasn't

scheduled during the week of January 16, 2018, bond would be revisited (see: enclosed order.) This case was not called to trial during the week of January 16, 2018 and on January 19, 2018, the Honorable Judge Maite Murphy granted Defendant a \$400,000 surety bond (see: enclosed.) Defendant has remained unable to secure his release with this bond.

On June 18, 2018, the Honorable Judge Maite Murphy heard a Defense motion to grant a personal recognizance bond pursuant to S.C. Code §17-23-90 and a renewal of Defense motion for a speedy trial. These motions were denied.

Defendant argues that he has asserted his right to a speedy trial, that he has not caused any delays in his case and that his twenty-five month delay prior to trial is presumptively prejudicial and he is entitled to above-requested relief.

Respectfully submitted,



---

Ash D. Chisholm  
Assistant Public Defender  
107 W. 6th North Street  
Summerville, SC 29483  
(843) 821-9800 Office  
(843) 871-0523 Facsimile  
ATTORNEY FOR DEFENDANT

Summerville, South Carolina  
This 20th day of August, 2018.

## ARREST WARRANT

2016A1810300321

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Dorchester

THE STATE

against

Keunte D Cobbs

Address: 117 Barbara Dr

Ladson, SC 29456-4861

Phone

SSN

Sex: M

Race: B

Height: 6

3

Weight: 215

DL State: SC

DL R:

DOB:

Agency ORI #: SC0180200

Prosecuting Agency: Summerville Police Department

Prosecuting Officer: Robert Barrineau - 8835

Offense: Weapons / Articles regulating use, possession of machine guns, sawn off shotguns, rifles

Offense Code: 0552

Code/Ordinance Sec: 23-31-0330

This warrant is CERTIFIED FOR SERVICE in the

☐ County/☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

## RETURN

A copy of this arrest warrant was delivered to defendant

on

Keunte D. Cobbs  
1735 06/28/2016

Signature of Constable/Law Enforcement Officer

## RETURN WARRANT TO:

General Sessions  
5200 E. Jim Bilton Blvd.  
St. George, SC 29477

ORIGINAL

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ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Dorchester

Personally appeared before me the affiant Robert Barrineau

being duly sworn deposes and says that defendant Keunte D Cobbs

did within this county and state on or about 3/2/2016

State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Dorchester

in the following particulars:

DESCRIPTION OF OFFENSE: Weapons / Articles regulating use, possession of machine guns, sawn off shotguns, rifles

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts.

On March 02, 2016 Detectives with the Dorchester County Sheriff's/Summerville PD Metro Narcotics Unit, executed a search warrant at, 117 Barbara Drive, located in the County of Dorchester. During the execution of the search warrant, Detectives located in the closet of the master bedroom, Remington 12 gauge shotgun, (model #870 and serial #C976438A). The shotgun barrel and the stock had been sawed-off. Detectives also located multiple pieces of paperwork bearing the Defendant's name, Keunte Cobbs, in the closet next to the firearm. Also some of the paperwork is bearing the Defendant's name was also addressed to 117 Barbara Drive. Detective Barrineau met with a Confidential Informant to identify the Defendant from a SLED Photo Line-up. The CI positively identified the Defendant from the SLED Photo line-up. The Affiant believes from his training and experience, the sawed-off shotgun belongs to the Defendant. This being in violation of S.C. State Statue 23-31-0330.

Signature of Affiant

R. Barrineau

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Dorchester

Affiant's Address 300 West 2Nd North Street  
Summerville, SC 29483-

Affiant's Telephone (843)871-2463

## ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 3/2/2016

defendant Keunte D Cobbs

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Dorchester

) as set forth below.

DESCRIPTION OF OFFENSE: Weapons / Articles regulating use, possession of machine guns, sawn off shotguns, rifles

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me on 4/12/2016

Signature of Issuing Judge  
Peter Brandt Shelbourne

Judge Code: 7175

(L.S.)

Judge's Address Troy Knight Judicial Complex  
Summerville, SC 29483-4707

Judge's Telephone (843)832-0370

Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by  
S.C. Attorney General  
April 21, 2003  
SCCA 618

## ARREST WARRANT

2016A1810300547

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Dorchester

THE STATE

against

Keunte D Cobbs

Address: 208 Sandra Lane

Summerville, SC 29483-

Phone: SSN: Sex: M Race: B Height: 6 3 Weight: 215DL State: SC DL #: DOB: Agency ORI #: SC0180000Prosecuting Agency: Dorchester County SheriffProsecuting Officer: Keith Elmore - 0668Offense: Murder / MurderOffense Code: 0116Code/Ordinance Sec: 16-03-0010

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be

dealt with according to the law.

(L.S.)

Signature of Judge

Date:

## RETURN

A copy of this arrest warrant was delivered to

defendant Keunte Cobbson 6/27/16

Signature of Constable or other authorized officer

RETURN WARRANT TO:

General Sessions

5200 E. Jim Bilton Blvd.

St. George, SC 29477

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Dorchester

Personally appeared before me the affiant Keith Elmorebeing duly sworn deposes and says that defendant Keunte D Cobbsdid within this county and state on or about 6/9/2016State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Dorchester)

the following particulars:

DESCRIPTION OF OFFENSE: Murder / Murder

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

June 9, 2016 at approximately 4pm, while at Trident Hospital Brannon Mack died, from gunshot wounds he received on June 5, 2016; while at 9978 Dorchester Rd, Summerville, SC, county of Dorchester. KEUNTE COBBS AKA "KEY", AKA "KEITH", shot Brannon Mack 7-9 times while inside the IHOP bathroom. Cobbs was identified by Det. Mosier from a witness's cell phone video inside of the IHOP. June 10, 2016 a witness provided a written statement stating that "KEITH", admitted to doing the shooting at the IHOP because the victim robbed him of \$20,000. The witness also positively identified Keunte Cobbs as "KEITH" from a SLED photo array.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Dorchester

Affiant's Address 100 Sears StreetSaint George, SC 29477-

Affiant's Telephone

## ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 6/9/2016 defendant Keunte D Cobbs

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Dorchester) as set forth below:DESCRIPTION OF OFFENSE: Murder / Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me on 6/13/2016

Signature of Issuing Judge

Peter Brandt Shelbourne

Judge Code: 7175Judge's Address Troy Knight Judicial ComplexSummerville, SC 29483-4707Judge's Telephone (843)832-0370Issuing Court ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

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Form Approved by  
S.C. Attorney General  
April 21, 2009  
SCA 119

## ARREST WARRANT

2016A1810300548

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Dorchester

THE STATE

against

Keunte D Cobbs

Address: 208 Sandra Lane

Summerville, SC 29483-

Phone:

SSN:

Sex: M

Race: B

Height: 6

3

Weight: 215

DL State: SC

DL #:

DOB:

Agency ORI #: SC0180000

Prosecuting Agency: Dorchester County Sheriff

Prosecuting Officer: Keith Elmore - 0668

Offense: Murder / Attempted Murder

Offense Code: 3410

Code/Ordinance Sec: 16-03-0029

This warrant is CERTIFIED FOR SERVICE in the

☐ County/☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

## RETURN

A copy of this arrest warrant was delivered to defendant on

Keunte Cobbs  
6/27/16

Signature of Constable/Law Enforcement Officer

## RETURN WARRANT TO:

General Sessions  
5200 E. Jim Bilton Blvd.  
St. George, SC 29477

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Dorchester

Personally appeared before me the affiant Keith Elmore

being duly sworn deposes and says that defendant Keunte D Cobbs

did within this county and state on or about 6/5/2016

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

Dorchester

in the following particulars:

DESCRIPTION OF OFFENSE: Murder / Attempted Murder

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

June 5, 2016 at approximately 0215hours while at 9978 Dorchester Rd Summerville, SC, county of Dorchester, KEUNTE COBBS, AKA "KEY", AKA "KEITH", shot Bradford Spells twice in the stomach. Facts are while in the bathroom of the IHOP restaurant Keunte shot Bradford spells twice after shooting Brannon Mack 7-9 times. Keunte was positively identified from a witness's cell phone video by Det. Mosier. June 10, 2016 a witness provided a written statement stating that "KEITH", admitted to doing the shooting at the IHOP because the victim robbed him of \$20,000. The witness also positively identified Keunte Cobbs as "KEITH" from a SLED photo array.

Signature of Affiant

Det. Keith P. Elmore

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Dorchester

Affiant's Address 100 Sears Street

Saint George, SC 29477-

Affiant's Telephone

## ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 6/5/2016 defendant Keunte D Cobbs

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Dorchester

) as set forth below:

DESCRIPTION OF OFFENSE: Murder / Attempted Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable. Sworn to and subscribed before me on 6/13/2016

Signature of Issuing Judge

Peter Brandt Shalbourne

Judge Code: 7175

Judge's Address Troy Knight Judicial Complex

Summerville, SC 29483-4707

Judge's Telephone (843)832-0370

Issuing Court

☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ARREST WARRANT

2016A1810300549

STATE OF SOUTH CAROLINA  
☒ County/ ☐ Municipality of  
 Dorchester

THE STATE  
 against  
 Keunte D Cobbs  
 Address: 208 Sandra Lane  
 Summerville, SC 29483-  
 Phone: SSN:   
 Sex: M Race: B Height: 6 3 Weight: 215  
 DL State: SC DL #:   
 DOB:   
 Agency ORI #: SC0180000  
 Prosecuting Agency: Dorchester County Sheriff  
 Prosecuting Officer: Keith Elmore - 0668  
 Offense: Weapons / Possession of weapon during violent  
 crime, if not also sentenced to life without parole  
 Offense Code: 0549  
 Code/Ordinance Sec: 16-23-0490

This warrant is CERTIFIED FOR SERVICE in the  
☐ County/ ☐ Municipality of  
 The accused  
 is to be arrested and brought before me to be  
 dealt with according to the law.

(P.S.)  
 Signature of Judge

Date:

RETURN  
 A copy of this arrest warrant was delivered to  
 defendant on Keunte D Cobbs  
6/5/2016  
 Signature of Constable Law Enforcement Officer

RETURN WARRANT TO:  
 General Sessions  
 5200 E. Jim Bilton Blvd.  
 St. George, SC 29477

ORIGINAL ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of  
 Dorchester

Personally appeared before me the affiant Keith Elmore  
 being duly sworn deposes and says that defendant Keunte D Cobbs  
 did within this county and state on or about 6/5/2016  
 State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Dorchester)  
 do the following particulars:

DESCRIPTION OF OFFENSE: Weapons / Possession of weapon during violent crime, if not also sentenced to life without parole or death

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

June 5, 2016 at approximately 0215 hours while at 9978 Dorchester Rd Summerville, SC, county of Dorchester, KEUNTE COBBS, AKA "KEY", AKA "KEITH", while armed with a handgun shot Bradford Spells and Brannon Mack. Facts are while in the bathroom of the IHOP restaurant Keunte shot Bradford spells twice and Brannon Mack 7-9 times. June 9, 2016 Brannon Mack died from the gunshot wounds. Keunte was positively identified from a witness's cell phone video by Det. Mosier. June 10, 2016 a witness provided a written statement stating that AKA "KEITH", admitted to doing the shooting at the IHOP because the victim robbed him of \$20,000. The witness also positively identified Keunte Cobbs as AKA "KEITH" from a SLED photo array.

STATE OF SOUTH CAROLINA  
☒ County/ ☐ Municipality of  
 Dorchester

Affiant's Address 100 Sears Street  
Saint George, SC 29477-  
 Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that  
 on or about 6/5/2016 defendant Keunte D Cobbs  
 did violate the criminal laws of the State of South Carolina (or ordinance of  
☒ County/ ☐ Municipality of Dorchester) as set forth below:

DESCRIPTION OF OFFENSE: Weapons / Possession of weapon during violent crime, if not also sentenced to life without parole or death

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.  
 Sworn to and subscribed before me  
 on 6/13/2016

Signature of Judge  
 Peter Brandt Shabourne  
 Judge Code: 7775

ORIGINAL ORIGINAL

AFFIDAVIT

ORIGINAL

Not approved by  
 S.C. Attorney General  
 April 21, 2003  
 SCCA-378

Judge's Address Troy Knight Judicial Complex  
Summerville, SC 29483-4707  
 Judge's Telephone (843)832-0370

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL ORIGINAL ORIGINAL

**WITNESSES**

Robert Barrineau

Summerville Police Department  
16-001024**ARREST WARRANT NUMBER**

✓ 2016A1810300321

Arrested: June 30, 2016

**ACTION OF GRAND JURY***James A. Miller*  
Foreperson of Grand Jury  
Date: March 8, 2018**VERDICT**Foreperson of Petit Jury  
Date:

DOCKET NO. 2016GS18-1266

**The State of South Carolina**  
County of DORCHESTER**COURT OF GENERAL SESSIONS**

March 12, 2018 TERM

**THE STATE**  
vs.

Keunte D Cobbs

**Indictment for**Articles Regulating Use, Possession of  
Machine Guns, Sawed off Shotguns,  
Rifles

SC Code: 23-31-330

After being fully advised as to my legal  
rights, I hereby waive presentment to the  
Grand Jury.

Defendant

I  
hereby appear in my own proper person  
and plead guilty to the within indictment or  
to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED - RECORD  
2018 MAR - 8 PM 12:55  
CLERK OF COURT  
DORCHESTER COUNTY



STATE OF SOUTH CAROLINA

INDICTMENT

COUNTY OF DORCHESTER

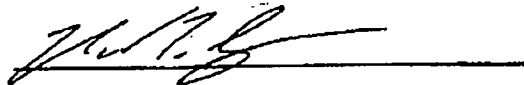
2016GS18-1266

As a Court of General Sessions, convened on March 8, 2018 the Grand Jurors of DORCHESTER County present upon their oath:

**ARTICLES REGULATING USE, POSSESSION OF MACHINE GUNS, SAWN OFF  
SHOTGUNS, RIFLES**

That in Dorchester County, South Carolina, on or about March 2, 2016, the Defendant, Keunte D Cobbs, did unlawfully store, keep, possess, or permit another to store, keep or possess a machine gun or firearm commonly known as a machine gun, military firearm, sawed-off shotgun, or sawed-off rifle with a barrel less than 18 inches in length and/or an overall length of less than 26 inches long. This offense in violation of Section 16-23-230 of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Michael Spears, Solicitor

AMENDED

DOCKET NO. 2016GS18-1267

**The State of South Carolina**  
**County of DORCHESTER**

**COURT OF GENERAL SESSIONS**

**August 20th 2018 TERM**

**THE STATE**  
**vs.**

**Keunte D Cobbs**

**Indictment for**

**Murder**

**SC Code: 16-3-10**

**WITNESSES**

**Keith Elmore**

**Dorchester County Sheriff**

**16-005645**

**ARREST WARRANT NUMBER**

**2016A1810300547**

**Arrested: June 28, 2016**

**ACTION OF GRAND JURY**

**TRUE BILL**

*Jan C. Smith*  
**Foreperson of Grand Jury**  
**Date: August 16th 2018**

**VERDICT**

**Foreperson of Petit Jury**  
**Date:**

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I \_\_\_\_\_  
hereby appear in my own proper person  
and plead guilty to the within indictment or  
to

Defendant

Witness:

**C.C.C. PLS. AND G.S.**

FILED-RECORDED  
2018 AUG 16 PM 12:05  
CLERK OF COURT  
DORCHESTER COUNTY

AMENDED

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER

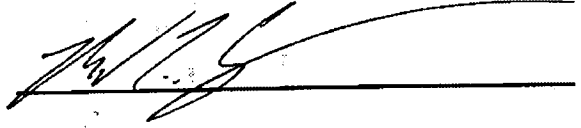
INDICTMENT  
2016GS18-1267

As a Court of General Sessions, convened on August 16th 2018 the Grand Jurors of DORCHESTER County present upon their oath:

**MURDER**

That in Dorchester County on or about June 5, 2016, with malice aforethought, the defendant, Keunte D Cobbs did kill one Brannon Mack by means of shooting the victim. The victim did die as a proximate result thereof. This offense being in violation of the Common Law and Section 16-3-10, of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
Michael Spears, Solicitor

**WITNESSES**

Keith Elmore

Dorchester County Sheriff  
16-005645

**ARREST WARRANT NUMBER**  
2016A1810300548

Arrested: June 28, 2016

**ACTION OF GRAND JURY**

TRUE BILL

Foreperson of Grand Jury  
Date: September 1, 2016

**VERDICT**

Guilty of Assault and  
Battery of a High and  
Aggravated Nature

Foreperson of Petit Jury

Date: 8/23/2018

RANDY D. EUDY

DOCKET NO. 2016GS18-1268

**The State of South Carolina**  
County of DORCHESTER

**COURT OF GENERAL SESSIONS**

September 6, 2016 TERM

**THE STATE**  
vs.

Keunte D Cobbs

**Indictment for**  
**Attempted Murder**

SC Code: 16-3-29

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED - RECORDED  
2016 SEP - 1 PM 2:49  
CHERYL DALLAM  
CLERK OF COURT  
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA

INDICTMENT

COUNTY OF DORCHESTER

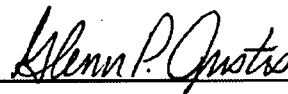
2016GS18-1268

As a Court of General Sessions, convened on September 1, 2016 the Grand Jurors of DORCHESTER County present upon their oath:

**ATTEMPTED MURDER**

In that the defendant, Keunte D Cobbs, did in Dorchester County on or about June 5, 2016 with the intent to kill, attempt to kill one Bradford Spells with malice aforethought by shooting the victim twice. This offense being in violation of Section 16-3-29 of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Glenn P. Justis, Solicitor

**WITNESSES**

Keith Elmore

Dorchester County Sheriff  
16-005645**ARREST WARRANT NUMBER**

2016A1810300549

Arrested: June 28, 2016

**ACTION OF GRAND JURY**

TRUE BILL

Foreperson of Grand Jury  
Date: September 1, 2016**VERDICT**Foreperson of Petit Jury  
Date:

DOCKET NO. 2016GS18-1269

**The State of South Carolina**  
County of DORCHESTER**COURT OF GENERAL SESSIONS**

September 6, 2016 TERM

THE STATE  
vs.

Keunte D Cobbs

**Indictment for**Possession of a Firearm or Knife During  
the Commission of a Violent Crime

SC Code: 16-23-490

After being fully advised as to my legal  
rights, I hereby waive presentment to the  
Grand Jury.

Defendant

I  
hereby appear in my own proper person  
and plead guilty to the within indictment or  
to

Defendant

Witness:

C.C.C. PLS. AND G.S.

2016 SEP -1 PM 2:48  
CLERK OF COURT  
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER

INDICTMENT  
2016GS18-1269

As a Court of General Sessions, convened on September 1, 2016 the Grand Jurors of DORCHESTER County present upon their oath:

**POSSESSION OF A FIREARM OR KNIFE DURING THE COMMISSION OF A  
VIOLENT CRIME**

That in Dorchester on or about June 5, 2016, the defendant, Keunte D Cobbs, did visibly display or have in his possession a pistol during the commission of a violent crime as defined by Section 16-1-60, Code of Laws of South Carolina, 1976, as amended, to wit: murder and/or attempted murder, thereby violating Section 16-23-490, Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

A handwritten signature in cursive script, reading "Glenn P. Justis", is written over a horizontal line.

Glenn P. Justis, Solicitor

## STATE OF SOUTH CAROLINA

## IN THE COURT OF GENERAL SESSIONS

519

COUNTY OF Dorchester  
 STATE VS.  
Keunte D Cobbs

AKA:

Race: BLACK Sex: M Age: 36DOB: [REDACTED] SS# [REDACTED]Address: 208 Sandra LaneCity, State, Zip: Summerville, SC 29483DL#: [REDACTED] SID#: [REDACTED]\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was  
 TO: Assault / Assault and Battery of a High and Aggravated Nature

INDICTMENT/CASE#: 2016GS18-1268A/W#: 2016A1810300548Date of Offense: 6/5/2016S.C. Code § : 16-3-29CDR Code #: 3410

## SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-3-600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature] 102370  
Solicitor SC Bar#

Defendant

[Signature] 76426  
Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,  
 for a determinate term of 18 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
 and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
 of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of  
 probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the SCDOC.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic  
 Violence) to ship, transport, possess, or receive a firearm or ammunition.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

Payment Terms: \_\_\_\_\_

☐ Set by SCDPPPS

Recipient: \_\_\_\_\_

|                                     |         |        |
|-------------------------------------|---------|--------|
| *Fine:                              |         | \$     |
| § 14-1-206 (Assessments 107.5 %)    |         | \$     |
| § 14-1-211(A)(1) (Conv. Surcharge)  | \$100   | \$ 100 |
| § 14-1-211(A)(2) (DUI Surcharge)    | \$100   | \$     |
| § 56-5-2995 (DUI Assessment)        | \$12    | \$     |
| § 56-1-286 (DUI Breath Test)        | \$25    | \$     |
| Proviso (Public Def/Probation)      | \$500   | \$     |
| § 14-1-212 (Law Enforce. Funding)   | \$25    | \$ 25  |
| § 14-1-213 (Drug Court Surcharge)   | \$150   | \$     |
| § 50-21-114 (BUI Breath Test Fee)   | \$50    | \$     |
| § 56-5-2942(J) (Vehicle Assessment) | \$40/ea | \$     |

3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter: [Signature]

SCCA/217 (04/2018)

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly  
pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: \_\_\_\_\_

☐ Appointed PD or appointed other counsel,  
 Proviso requires \$500 be paid to Clerk  
 during probation and shall be collected before  
 any other fees.

Presiding Judge

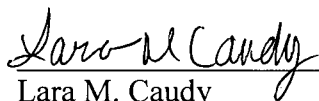
Judge Code: 2122Sentence Date: 8/23/18



## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Lara M. Caudy  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 20th day of February, 2020.

RECEIVED  
FEB 20 2020  
SC Court of Appeals