

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County

Honorable Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL JOE SMITH,

APPELLANT

APPELLATE CASE NO 2019-000536

RECORD ON APPEAL

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THE FOLLOWING DOCUMENTS ARE ON FILE WITH THIS COURT:

STATE'S EXHIBIT #76 (INTERVIEW ON DISK 2/9)
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State of South Carolina	)	Court of General Sessions
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2018-GS-21-01079
	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
Michael Joe Smith,	)	
	)	
Defendant.	)	
	)	

March 18-21, 2019
Florence, South Carolina

B E F O R E:

The Honorable Thomas A. Russo, Judge; and a jury

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

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Scott Floyd, Esquire
Christie Henderson, Esquire
Attorneys for the Defendant

Krystal J. Smith
Circuit Court Reporter

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19

20 COURT REPORTER LEGEND

21 dashes -- intentional or purposeful interruption
 22 or change in thought
 23 ellipses . . . trailing off
 24 [ph] phonetically written
 25 [sic] written as said

1 MARCH 18, 2019

2 (WHEREUPON, the proceedings began at 11:01 a.m.)

3 THE COURT: All right. Ladies and gentlemen, we're
4 ready to select our first jury. What we're going to do,
5 folks, is we're going to select a panel for our first case
6 and then, those that are not selected to be a part of this
7 panel, I'll send you over to courtroom 3B and then Judge
8 Seals will pull his jury. Okay?

9 So at this time, I would recognize Mr. White on behalf
10 of the State to call the first case for trial.

11 MR. WHITE: Thank you, Your Honor. At this time, the
12 State would call the case of the State versus Michael Smith,
13 Indictment 2018-GS-21-01079.

14 THE COURT: All right. Thank you, sir.

15 Ladies and gentlemen, you've heard the solicitor call
16 the first case to trial. It's the State of South Carolina
17 versus Michael Joe Smith under Indictment 2018-GS-21-1079.

18 Now, ladies and gentlemen, let me first explain what an
19 indictment is. An indictment is simply the document or the
20 piece of paper that brings this case into court. It is not
21 in any sense evidence in the case and it is not evidence of
22 any of the allegations that it contains. It's just the
23 formal document that brings the charge into court.

24 To this charge, Mr. Smith has pled not guilty and so
25 that plea of not guilty places upon the State the burden of

1 proving his guilt beyond a reasonable doubt, and it places
2 upon Mr. Smith the presumption of innocence.

3 Now, I am going to read to you what the allegations are
4 in this indictment, what the charge is. And I ask that you
5 listen carefully and then I'll have some questions that I'll
6 be asking you.

7 Mr. Smith is charged under this indictment with the
8 offense of murder, and the allegations related to that
9 offense are as follows.

10 That Michael Joe Smith did in Florence County on or
11 about February the 1st of 2017 willfully, feloniously and
12 intentionally kill the victim, Malcolm Kindred Kemmerlin,
13 with malice aforethought, either express or implied, by means
14 of shooting the victim, and the victim did die as a proximate
15 result thereof on or about February the 1st, 2017, in Florence
16 County, all in violation of Section 16-3-10 of the South
17 Carolina Code of Laws, 1976, as amended.

18 That is the charge or the allegations contained in this
19 indictment.

20 Is there any member of the jury panel who knows anything
21 about this case based on what I have just shared with you?
22 If so, please stand.

23 (WHEREUPON, there was no response.)

24 THE COURT: All right. Thank you. There are none.

25 Folks, I'm going to ask the attorneys to stand and

1 introduce themselves. If you would, listen carefully. I'll
2 start with the State.

3 MR. WHITE: Thank you, Judge.

4 Good morning, ladies and gentlemen. My name is Ryan
5 White. I work for the solicitor, Mr. Ed Clements, who is
6 seated to my left. Maybe, perhaps, working with me as well
7 during the course of the trial will be Deputy Solicitor Todd
8 Tucker. We all prosecute cases in Florence and Marion
9 County. Thank you.

10 THE COURT: Thank you, sir.

11 Ladies and gentlemen, is there any member of the jury
12 panel who is related by blood, connected by marriage, or who
13 has any close personal relationship with either Mr. White or
14 Mr. Tucker or who has ever been prosecuted or represented by
15 either one of those gentlemen? If so, please stand.

16 (WHEREUPON, there was no response.)

17 THE COURT: Thank you. There are none.

18 Mr. Floyd?

19 MR. FLOYD: Thank you, Your Honor.

20 I'm Scott Floyd and I represent Michael Smith.

21 Michael, I'm going to ask you to stand for just one
22 second.

23 And also during this trial, Christie Henderson will be
24 assisting me.

25 THE COURT: All right. Thank you, folks.

1 Ladies and gentlemen, is there any member of the jury
2 panel who is related by blood, connected by marriage, or who
3 has any close business or personal relationship with either
4 Mr. Floyd or Ms. Henderson or who has ever been represented
5 by either one of these attorneys? If so, please stand.

6 (WHEREUPON, there was no response.)

7 THE COURT: Thank you. There are none.

8 You've just met Mr. Smith. Is there any member of the
9 jury panel who is related by blood, connected by marriage or
10 who has any close business or personal relationship with Mr.
11 Michael Joe Smith? If so, please stand.

12 (WHEREUPON, there was no response.)

13 THE COURT: Thank you. There are none.

14 Now, folks, I'm going to call out a list of names.
15 These are folks who are possible or potential witnesses.
16 These are people who may or may not testify during the course
17 of this trial. I've asked the attorneys to list for me
18 anyone who may -- who may be a possible witness so that I can
19 go through these names with you.

20 That question that I just asked you as -- for example,
21 as it related to Mr. Smith, that is are you related by blood,
22 connected by marriage or have any close business or personal
23 relationship, that's the question I'll be asking as it
24 relates to these witnesses who -- whose names I'm going to
25 call out.

1 If I call out a name and that question applies to you
2 with regards to that person whose name I call out, I would
3 ask that you go ahead and stand when you hear the name
4 called. I have several names that I'm going to be calling
5 out and it may be -- so if you -- if you stand when you hear
6 a name, please continue to listen because I have several
7 names here and it may be that you know more than one of the
8 folks that I'm going to be calling -- the names that I'm
9 going to call out.

10 So listen carefully as I go through this list. And if
11 any of these witnesses are in court, I would just ask them to
12 stand and face the jury just for a moment and then you can
13 have a seat.

14 All right. The following individuals have been listed
15 as possible or potential witnesses who may appear during the
16 course of this trial.

17 Ben Price.

18 Tony Moore.

19 Pat O'Hara.

20 Andrew Clendenin.

21 Kathleen Streett.

22 Helen Cain.

23 Chase McDaniel.

24 Chris Neal.

25 Tracy Tolson.

1 Kipp Britt.
2 Garrett Hobgood.
3 Daniel Spencer.
4 Keith Von Lutcken.
5 Thomas Myers.
6 Ellen Riemer.
7 Chad Smith.
8 Sara Goodman.
9 Jared Castellani.
10 Roman Bennett.
11 Levi James.
12 Alisha Smith.
13 Craig Daniel Williams.
14 Debra Smith.

15 Is there any member the jury panel related by blood,
16 connected by marriage or have any close or business
17 relationship with any of those folks? I'm going to start
18 over here on this side.

19 Ma'am, if I could get your name, please?

20 JUROR NUMBER 36: Cathy Delung. Cathleen Delung. I'm
21 Juror 36.

22 THE COURT: All right.

23 JUROR NUMBER 36: I don't know how close it is, but I've
24 worked on several scenes with Keith Von Lutcken and Tracy
25 Tolson because I'm a member of a volunteer fire department.

1 THE COURT: All right. And, ma'am, the fact that you've
2 worked with those folks in your capacity as a volunteer fire
3 person, would that in any way affect your ability --

4 JUROR NUMBER 36: No, sir.

5 THE COURT: -- to give both the State and the defense a
6 fair trial?

7 JUROR NUMBER 36: No, sir.

8 THE COURT: Thank you very much. You may have a seat.
9 Ma'am, your name, please?

10 JUROR NUMBER 67: Tedra Harris.

11 THE COURT: All right.

12 JUROR NUMBER 67: Number 67.

13 THE COURT: All right. Ms. Harris, who on that list?

14 JUROR NUMBER 67: Chris Neal. His wife and I are good
15 friends. Our kids go to school together.

16 THE COURT: Okay.

17 JUROR NUMBER 67: Hang out personally.

18 THE COURT: All right. Now, if Mr. Neal were to appear
19 as a witness in this case, would your relationship with his
20 family -- would that in any way affect your ability to give
21 both the State and the defense a fair and impartial trial?

22 JUROR NUMBER 67: I would prefer not.

23 THE COURT: You think it would?

24 JUROR NUMBER 67: Yeah.

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

1 participation in this matter, but just stay with us, ma'am,
2 because it may be that you may -- you would be available for
3 the next case.

4 JUROR NUMBER 67: Okay.

5 THE COURT: Did you get that, Nicole?

6 THE CLERK: Yes, sir.

7 THE COURT: All right. I asked -- I asked you earlier
8 when we first started this case if you knew anything about
9 this case based on what I shared with you. No one stood, but
10 just to clarify my question, has anyone heard anything about
11 this case, whether you've heard it from another individual
12 personally or whether you saw it on social media or in the
13 news? If so, please stand.

14 (WHEREUPON, there was no response.)

15 THE COURT: Thank you.

16 JUROR NUMBER 36: Could I just ask a question?

17 THE COURT: Yes, ma'am.

18 JUROR NUMBER 36: The address maybe of the incident?
19 Are we allowed to know that?

20 THE COURT: I don't -- I don't know where it occurred.

21 MR. WHITE: Judge, may we approach for just a second?

22 THE COURT: Yeah.

23 (WHEREUPON, a bench conference was held in the presence
24 of the jury panel but out of the hearing of the jury
25 panel off the record, after which the proceedings

1 resumed as follows.)

2 THE COURT: It occurred -- the scene would have been
3 over at [REDACTED] Francis Marion Highway here in Florence.

4 JUROR NUMBER 36: Yes, sir.

5 THE COURT: Is that --

6 JUROR NUMBER 36: I believe my fire department may have
7 responded to that call.

8 THE COURT: All right. Do you think you may have been
9 one of the folks?

10 JUROR NUMBER 36: It was Windy Hill Fire Rescue. I -- I
11 don't think I was there, but I just want to be sure that --

12 THE COURT: Okay.

13 JUROR NUMBER 36: -- it doesn't come up later.

14 THE COURT: Well, as long as you weren't -- I don't
15 think it -- and you tell me if it would be a problem with
16 you.

17 JUROR NUMBER 36: Okay. Okay. If that's all you need
18 to know is that, no, sir, it won't be a problem. I just
19 didn't want someone to notice it later.

20 THE COURT: All right.

21 JUROR NUMBER 36: Okay.

22 THE COURT: If you didn't work the scene, I don't think
23 that would be an issue.

24 Is there any member of the jury panel who has ever
25 served in the military? If so, please stand.

1 (WHEREUPON, two people stood.)

2 THE COURT: And I'm going to start on the back row over
3 here and I'll work my way across. Okay?

4 Sir, your name, please?

5 JUROR NUMBER 24: Robert Cason.

6 THE COURT: All right.

7 JUROR NUMBER 24: Number 24.

8 THE COURT: Juror Number 24. Mr. Cason, the fact that
9 you are -- are you currently in the military or former?

10 JUROR NUMBER 24: Former.

11 THE COURT: All right. The fact that you formerly
12 served in the military, would that in any way affect your
13 ability to give both the State of the South Carolina and the
14 defendant at the bar a fair and impartial trial?

15 JUROR NUMBER 24: No, sir.

16 THE COURT: Thank you, sir. You may have a seat.

17 Sir, your name, please?

18 JUROR NUMBER 25: Rafael Castro, Number 25.

19 THE COURT: All right. And, Mr. Castro, the fact that
20 -- are you currently in the military or former?

21 JUROR NUMBER 25: Former.

22 THE COURT: The fact that you've had that experience of
23 serving in the military, would that in any way affect your
24 ability to give both the State and the defense a fair and
25 impartial trial?

1 JUROR NUMBER 25: No, Your Honor.

2 THE COURT: Thank you very much, sir. You may have a
3 seat.

4 Is there any member of the jury panel who is related to
5 or close or has a close relationship with any member or any
6 person who serves as a law enforcement officer, whether it's
7 here in Florence County or anywhere else? Either you are
8 either close friends or related to someone who works in law
9 enforcement. If so, please stand.

10 (WHEREUPON, several people stood.)

11 THE COURT: All right. And just so the record remains
12 clear, I'm going to have you give your name again.

13 JUROR NUMBER 36: I'm sorry.

14 THE COURT: That's okay.

15 JUROR NUMBER 36: I'm Cathy -- Cathleen Delung.

16 THE COURT: All right. Ms. Delung, the fact that you
17 have -- are any of your relatives serving in the law
18 enforcement?

19 JUROR NUMBER 36: Yes, sir. My brother is with the
20 Sheriff's Department. He works in this building. My nephew
21 is with the Sheriff's Department also.

22 THE COURT: All right. The fact that you have those
23 folks who both are related to you and as well as I'm sure you
24 have acquaintances who are in the law enforcement line of
25 work, would that in any way affect your ability to give both

1 the State and the defense a fair and impartial trial?

2 JUROR NUMBER 36: No, sir.

3 THE COURT: Thank you, ma'am. You may have a seat.

4 Ma'am, your name, please?

5 JUROR NUMBER 14: Beverly Bradham, Number 14.

6 THE COURT: Ms. Bradham, do you have any relatives or
7 friends?

8 JUROR NUMBER 14: I used to work with them years ago; so
9 I still have friends.

10 THE COURT: Okay. Ma'am, the fact that you have those
11 relationships, would that in any way affect your ability to
12 listen to the evidence in this case and give both the State
13 and the defense a fair and impartial trial?

14 JUROR NUMBER 14: No.

15 THE COURT: Thank you, ma'am. You may have a seat.

16 And, ma'am, your name, please?

17 JUROR NUMBER 114: Promise Gray, Number 114.

18 THE COURT: All right. What number was that, ma'am?

19 JUROR NUMBER 114: 114.

20 THE COURT: 114?

21 JUROR NUMBER 114: Right.

22 THE COURT: All right. And how did that question apply
23 to you, ma'am?

24 JUROR NUMBER 114: My friend is one.

25 THE COURT: Okay. The fact that you have a relationship

1 or a friendship with someone who is involved in law
2 enforcement, would that in any way affect your ability to
3 give both the State and the defense a fair and impartial
4 trial?

5 JUROR NUMBER 114: No.

6 THE COURT: Thank you, ma'am. You may have a seat.

7 All right. I'm going to start on the front here and
8 work my way back.

9 So, ma'am, your name, please?

10 JUROR NUMBER 65: Amber Hancock, Number 65.

11 THE COURT: All right. Ms. Hancock, how does that apply
12 to you, ma'am?

13 JUROR NUMBER 65: My aunt works in law enforcement.

14 THE COURT: All right. The fact that you have that
15 relationship in your family, would that in any way affect
16 your ability to give both the State and the defense a fair
17 and impartial trial?

18 JUROR NUMBER 65: No.

19 THE COURT: Thank you, ma'am. You may have a seat.

20 JUROR NUMBER 73: Kaileigh Hill, Number 74 [sic].

21 THE COURT: All right. Ms. Hill, how does that apply to
22 you, ma'am?

23 JUROR NUMBER 73: Close friends and related through
24 marriage.

25 THE COURT: All right. And the fact that you have those

1 relationships, ma'am, would that affect your ability to give
2 both sides a fair and impartial trial?

3 JUROR NUMBER 73: No, sir.

4 THE COURT: Thank you very much. You may have a seat.
5 Yes, ma'am?

6 JUROR NUMBER 10: Me?

7 THE COURT: Yes.

8 JUROR NUMBER 10: Number 10, Marcia Bazen.

9 THE COURT: All right. Ms. Bazen, how does that apply
10 to you, ma'am?

11 JUROR NUMBER 10: My husband works for the Florence
12 County --

13 THE COURT: All right.

14 JUROR NUMBER 10: -- Sheriff's Department.

15 THE COURT: The fact that your husband is in law
16 enforcement, would that in any way have any effect on your
17 ability to give both the State and the defense a fair and
18 impartial trial?

19 JUROR NUMBER 10: No, sir.

20 THE COURT: Thank you, ma'am. You may have a seat.
21 Ma'am, your name, please?

22 JUROR NUMBER 76: Tiffany Hunt, Number 76.

23 THE COURT: All right. Ms. Hunt, how does that apply to
24 you, ma'am?

25 JUROR NUMBER 76: I both have friends and relatives.

1 THE COURT: All right. And, Ms. Hunt, the fact that you
2 have those relationships, would that in any way affect your
3 ability to give both the State and the defense a fair and
4 impartial trial?

5 JUROR NUMBER 76: No, sir.

6 THE COURT: Thank you, ma'am. You may have a seat.

7 Sir, your name, please.

8 JUROR NUMBER 128: Kevin Patten, 128.

9 THE COURT: All right. Mr. Patten, how does that apply
10 to you, sir?

11 JUROR NUMBER 128: Just friends, Your Honor.

12 THE COURT: All right. And the fact that you have those
13 relationships, would that in any way affect your ability to
14 be fair and impartial?

15 JUROR NUMBER 128: No, sir.

16 THE COURT: Thank you, sir. You may have a seat.

17 Ma'am, your name, please?

18 JUROR NUMBER 95: Mary Llewellyn, Number 95.

19 THE COURT: All right. Ms. Llewellyn, how does that
20 apply to you, ma'am?

21 JUROR NUMBER 95: I have a nephew that works for the
22 Marion Police Department.

23 THE COURT: Would that affect your ability to give both
24 the State and the defense a fair and impartial trial, ma'am?

25 JUROR NUMBER 95: No, sir.

1 THE COURT: Thank you, ma'am. You may have a seat.

2 Is there any member of the jury panel who is -- whose
3 immediate family has ever been the victim of a crime? If so,
4 please stand.

5 (WHEREUPON, one person stood.)

6 THE COURT: All right. Sir, your name, please?

7 JUROR NUMBER 127: Jaykush Patel, 127.

8 THE COURT: All right. Mr. Patel, the fact that you've
9 had that experience in your family, would that in any way
10 affect your ability to give both the State and the defense a
11 fair and impartial trial?

12 JUROR NUMBER 127: No.

13 THE COURT: Thank you very much, sir. You may have a
14 seat.

15 Is there any member of the jury panel who has ever filed
16 a complaint or lawsuit against any branch of law enforcement?
17 If so, please stand.

18 (WHEREUPON, there was no response.)

19 THE COURT: Thank you. There are none.

20 Is there any member of the jury panel or any member of
21 your immediate family who has ever been employed by any city,
22 county, state or federal prosecutor's office, either
23 currently or in the past? If so, please stand.

24 (WHEREUPON, one person stood.)

25 THE COURT: All right. Ma'am, your name, please.

1 JUROR NUMBER 133: Cheryl Reinhard, 133.

2 THE COURT: All right. Ms. Reinhard, how does that
3 apply to you, ma'am?

4 JUROR NUMBER 133: My son was working for the State
5 Attorney General.

6 THE COURT: All right. He's no longer there?

7 JUROR NUMBER 133: He is no longer with the State
8 Attorney General.

9 THE COURT: Okay. But the fact that you've had that
10 experience with your son in that role, would that in any way
11 affect your ability to give both the State and the defense a
12 fair and impartial trial?

13 JUROR NUMBER 133: No, sir.

14 THE COURT: Thank you very much, ma'am. You may have a
15 seat.

16 Is there any member of the jury panel who has been a
17 contributor, either by way of financial means or in other
18 words giving of your money or by volunteering of your time,
19 ever been a contributor to either -- to any such
20 organization, for example, MADD, Mothers Against Drunk
21 Drivers, SADD, Students Against Drunk Drivers, CAV, Citizens
22 Against Violence, the Fraternal Order of Police, the South
23 Carolina Troopers Association, South Carolina Sheriff's
24 Association, any of those types of organizations, if you've
25 been a contributor, either by way of money and/or

1 volunteering of your time? If so, please stand.

2 (WHEREUPON, one person stood.)

3 THE COURT: Sir, your name, please.

4 JUROR NUMBER 86: Bradley Kennedy, Number 86.

5 THE COURT: All right. And, Mr. Kennedy, let me do
6 this. And I apologize. I probably should have said
7 something to you earlier. Because of your situation and what
8 we talked about earlier, I'm going to excuse you from
9 participation in this case.

10 JUROR NUMBER 86: All right.

11 THE COURT: But hang with us because you may be able to
12 participate in the second case.

13 JUROR NUMBER 86: All right.

14 THE COURT: Thank you, sir.

15 Anyone else?

16 THE COURT: Folks, you can tell as I've gone through
17 these questions, if they've applied to you, I've always
18 followed up the question with this comment or second
19 question. Would it in any way affect your ability to give
20 both the State and the defense a fair and impartial trial?

21 Anytime we come into this courtroom -- it doesn't matter
22 whether it's a criminal case or a civil case -- our
23 intention, our purpose, is to seat a panel that can listen to
24 the evidence that is presented, putting anything outside this
25 courtroom out of your way, listen to the evidence as it is

1 presented here in this courtroom, and base your consideration
2 solely upon the evidence that is presented here in this
3 courtroom, separate and apart from anything that may have
4 occurred outside this courtroom, focusing your attention on
5 the evidence here and making your decision based solely upon
6 the evidence as is presented here in this court, giving both
7 the State of South Carolina and the defendant at the bar a
8 fair and impartial hearing of that evidence. That's what we
9 try to do every time we pull a jury in this court.

10 Now, I could probably ask questions all afternoon to try
11 to determine whether or not there's some reason that you
12 might not be able to do that. Maybe the simplest thing to do
13 is to ask you.

14 Whether I've asked the question or not, is there any
15 member of the jury panel who believes that you would not be
16 able to give both the State and the defense a fair and
17 impartial trial if you were selected as a juror on this case?
18 If so, please stand.

19 (WHEREUPON, there was no response.)

20 THE COURT: Thank you. There are none.

21 Are there any other or any further questions or voir
22 dire from the State?

23 MR. WHITE: None on behalf of the State, Your Honor.

24 THE COURT: Anything further from the defense?

25 MR. FLOYD: Nothing further, Your Honor.

1 THE COURT: Okay. Ladies and gentlemen, let me explain
2 to you briefly how we go about selecting juries here in
3 General Sessions Court.

4 Madam Clerk is -- she's got on her computer this jury
5 list where it lists all of your names in alphabetical order.
6 She's going to do a couple keystrokes here and that computer
7 is going to take the list of names and it's going to
8 completely and randomly reorder that list.

9 So if I was on this panel and I'm Tommy Russo, Juror
10 Number 134, I may appear on this new list as Tommy Russo,
11 Juror 14. It doesn't have any rhyme or reason. It just
12 completely juggles your names up and puts out a new list.

13 So once she has done that, she's going to take that new
14 list and she's going to start at the top and she's going to
15 call the first name on that list. If your name is called, I
16 would ask you to please stand where you are.

17 She'll then look first to the State and she'll ask a
18 question to some -- to this effect. What say you for the
19 State? The State has two options. They can either excuse
20 you and, if they excuse you, you will have a seat, or they
21 can present you and, if they present you, you will just
22 remain standing.

23 She'll then ask of the defense the same question. What
24 say you for the defense? The defense has two options. They
25 can excuse you and, if they do, you'll have a seat. If they

1 seat you, you'll then come around and you'll have a seat in
2 the jury box.

3 And we'll go through that process until we've selected
4 our jury. Now, if you get selected and they have you come
5 around, please bring with you all of your belongings that you
6 brought into court because once you have a seat over here,
7 you won't be going back out into the -- into the panel.

8 All right. Are you ready?

9 THE CLERK: Yes, sir.

10 THE COURT: Is the State ready?

11 MR. WHITE: Yes, sir, Judge.

12 THE COURT: The defense?

13 MR. FLOYD: Yes, Your Honor.

14 THE COURT: All right. Five and ten?

15 MR. WHITE: Yes, sir.

16 MR. FLOYD: Yes, sir.

17 THE COURT: Okay. Ladies and gentlemen, we'll go ahead
18 and begin the jury selection process.

19 THE CLERK: Juror 127, Jakush Patel.

20 (WHEREUPON, an Asian/Middle Eastern male stood.)

21 THE CLERK: What say the State?

22 MR. WHITE: Please present Mr. Patel.

23 THE CLERK: What say the defendant?

24 MR. FLOYD: Please excuse the juror for the purposes of
25 this trial.

1 THE CLERK: You've been excused from this trial only,
2 sir. You may have a seat.
3 133, Cheryl Reinhard.
4 (WHEREUPON, a white female stood.)
5 THE CLERK: What say the State?
6 MR. WHITE: Please present Ms. Reinhard.
7 THE CLERK: What say the defendant?
8 MR. FLOYD: Please excuse the juror for purposes of this
9 trial.
10 THE CLERK: You've been excused from this trial only,
11 ma'am.
12 106, Lachelle McFadden.
13 (WHEREUPON, a black female stood.)
14 THE CLERK: What say the State?
15 MR. WHITE: Please present Ms. McFadden.
16 THE CLERK: What say the defendant?
17 MR. FLOYD: Please seat the juror.
18 THE CLERK: Ma'am, if you'll please come around and have
19 a seat in the jury box.
20 159, Carly White.
21 (WHEREUPON, a white female stood.)
22 THE CLERK: What say the State?
23 MR. WHITE: Please present Ms. White.
24 THE CLERK: What say the defendant?
25 MR. FLOYD: Please seat the juror.

1 THE CLERK: Ma'am, if you'll please come around and have
2 a seat in the jury box.
3 134, Gearl Roberts.
4 (WHEREUPON, a black male stood.)
5 THE CLERK: What say the State?
6 MR. WHITE: Please present Mr. Roberts.
7 THE CLERK: What say the defendant?
8 MR. FLOYD: Please seat the juror.
9 THE CLERK: Please come up and have a seat in the jury
10 box, sir.
11 Number 12, Brenton Black.
12 (WHEREUPON, a black male stood.)
13 THE CLERK: What say the State?
14 MR. WHITE: Please excuse Mr. Black.
15 THE CLERK: You've been excused from this trial only,
16 sir. You may have a seat.
17 23, Sarah Carter.
18 (WHEREUPON, a black female stood.)
19 THE CLERK: What say the State?
20 MR. WHITE: Please present Ms. Carter.
21 THE CLERK: What say the defendant?
22 MR. FLOYD: Please seat Ms. Carter.
23 THE CLERK: Please come up and have a seat in the jury
24 box, ma'am.
25 122, Julius Oyekan.

1 (WHEREUPON, a black male stood.)

2 THE CLERK: What say the State?

3 MR. WHITE: Please present Mr. Oyekan. My apologies for
4 the pronunciation.

5 THE CLERK: What say the defendant?

6 MR. FLOYD: Please seat the juror.

7 THE CLERK: Please come up and have a seat in the jury
8 box, sir.

9 95, Mary Llewellyn.

10 (WHEREUPON, a white female stood.)

11 THE CLERK: What say the State?

12 MR. WHITE: Please present Ms. Llewellyn.

13 THE CLERK: What say the defendant?

14 MR. FLOYD: Please excuse the juror for the purposes of
15 this trial.

16 THE CLERK: You've been excused from this trial only,
17 ma'am.

18 Number 80, Jeanette James.

19 (WHEREUPON, a black female stood.)

20 THE CLERK: What say the State?

21 MR. WHITE: Please excuse Ms. James.

22 THE CLERK: You've been excused from this trial only,
23 ma'am. You may have a seat.

24 64, Glenn Guthrie.

25 (WHEREUPON, a white male stood.)

1 THE CLERK: What say the State?

2 MR. WHITE: Please present Mr. Guthrie.

3 THE CLERK: What say the defendant?

4 MR. FLOYD: Please seat Mr. Guthrie.

5 THE CLERK: Please come up and have a seat in the jury
6 box, sir.

7 36, Cathleen Delung.

8 (WHEREUPON, a white female stood.)

9 THE CLERK: What say the State?

10 MR. WHITE: Please present Ms. Delung.

11 THE CLERK: What say the defendant?

12 MR. FLOYD: Please excuse the juror for purposes of this
13 trial.

14 THE CLERK: You've been excused from this trial only,
15 ma'am.

16 169, Scotty Yarborough.

17 (WHEREUPON, a white male stood.)

18 THE CLERK: What say the State?

19 MR. WHITE: Please present Mr. Yarborough.

20 THE CLERK: What say the defendant?

21 MR. FLOYD: Please seat Mr. Yarborough.

22 THE CLERK: Please come up and have a seat in the jury
23 box, sir.

24 138, Tracie Schoen.

25 (WHEREUPON, a white female stood.)

1 THE CLERK: What say the State?
2 MR. WHITE: Please present Ms. Schoen.
3 THE CLERK: What say the defendant?
4 MR. FLOYD: Please seat Ms. Schoen.
5 THE CLERK: Please come have a seat in the jury box,
6 ma'am.
7 55, Alexis Goggin.
8 (WHEREUPON, a white female stood.)
9 THE CLERK: What say the State?
10 MR. WHITE: Please present Ms. Goggin.
11 THE CLERK: What say the defendant?
12 MR. FLOYD: Please seat Ms. Goggin.
13 THE CLERK: Please have a seat in the jury box, ma'am.
14 40, Donnie Eaddy.
15 (WHEREUPON, a black male stood.)
16 THE CLERK: What say the State?
17 MR. WHITE: Please present Mr. Eaddy.
18 THE CLERK: What say the defendant?
19 MR. FLOYD: Please seat Mr. Eaddy.
20 THE CLERK: Please come up and have a seat in the jury
21 box, sir.
22 88, Edward King.
23 (WHEREUPON, a black male stood.)
24 THE CLERK: What say the State?
25 MR. WHITE: Please excuse Mr. King.

1 THE CLERK: You've been excused from this trial only,
2 sir.
3 89, Natalie Knight.
4 (WHEREUPON, a white female stood.)
5 THE CLERK: What say the State?
6 MR. WHITE: Please present Ms. Knight.
7 THE CLERK: What say the defendant?
8 MR. FLOYD: Please seat Ms. Knight.
9 THE CLERK: Please come up and have a seat in the jury
10 box, ma'am.
11 92, Robin Lehr.
12 (WHEREUPON, a white female stood.)
13 THE CLERK: What say the State?
14 MR. WHITE: Please present Ms. Lehr.
15 THE CLERK: What say the defendant?
16 MR. FLOYD: Please excuse the juror for purposes of this
17 trial.
18 THE CLERK: You've been excused from this trial only,
19 ma'am.
20 157, Stacie Watford.
21 (WHEREUPON, a white female stood.)
22 THE CLERK: What say the State?
23 MR. WHITE: Please present Ms. Watford.
24 THE CLERK: What say the defendant?
25 MR. FLOYD: Please excuse the juror for purposes of this

1 trial.

2 THE CLERK: You've been excused from this trial only,
3 ma'am.

4 59, Patricia Graulich.

5 (WHEREUPON, a white female stood.)

6 THE CLERK: What say the State?

7 MR. WHITE: Please present Ms. Graulich.

8 THE CLERK: What say the defendant?

9 MR. FLOYD: Please excuse the juror for purposes of this
10 trial.

11 THE CLERK: You've been excused from this trial only,
12 ma'am.

13 65, Amber Hancock.

14 (WHEREUPON, a white female stood.)

15 THE CLERK: What say the State?

16 MR. WHITE: Please present Ms. Hancock.

17 THE CLERK: What say the defendant?

18 MR. FLOYD: Please excuse the juror for purposes of this
19 trial.

20 THE CLERK: You've been excused from this trial only,
21 ma'am.

22 46, Angela Evans.

23 (WHEREUPON, a white female stood.)

24 THE CLERK: What say the State?

25 MR. WHITE: Please present Ms. Evans.

1 THE CLERK: What say the defendant?

2 MR. FLOYD: Please seat Ms. Evans.

3 THE CLERK: Please come around and have a seat in the
4 jury box, ma'am.

5 THE COURT: All right. We're going to do two
6 alternates. It will be one and two on each.

7 THE CLERK: 73, Kaileigh Hill.

8 (WHEREUPON, a white female stood.)

9 THE CLERK: What say the State?

10 MR. WHITE: Please present Ms. Hill.

11 THE CLERK: What say the defendant?

12 MR. FLOYD: Please excuse the juror for purposes of this
13 trial.

14 THE CLERK: You've been excused from this trial only,
15 ma'am.

16 70, James Harvey.

17 (WHEREUPON, a white male stood.)

18 THE CLERK: What say the State?

19 MR. WHITE: Please present Mr. Harvey.

20 THE CLERK: What say the defendant?

21 MR. FLOYD: Please seat Mr. Harvey.

22 THE CLERK: Please come around and have a seat in the
23 jury box, sir.

24 131, Jacob Powell.

25 (WHEREUPON, a white male stood.)

1 THE CLERK: What say the State?

2 MR. WHITE: Please present Mr. Powell.

3 THE CLERK: What say the defendant?

4 MR. FLOYD: Please seat Mr. Powell.

5 THE CLERK: Please come up and have a seat in the jury
6 box, sir.

7 THE COURT: All right. Are there any motions regarding
8 jury selection from the State?

9 MR. WHITE: None on behalf of the State, Judge.

10 THE COURT: Anything from the defense?

11 MR. FLOYD: None on behalf of the defense, Your Honor.

12 THE COURT: All right. Wayne?

13 THE DEPUTY: Yes, sir.

14 THE COURT: Do we need to send the jury over?

15 THE DEPUTY: Yes, sir.

16 THE COURT: Okay. All right. Ladies and gentlemen, if
17 you would, do me a favor. I'm going to send you on a hike
18 now. It's about -- I don't know -- 25 yards down the
19 hallway. When you leave out of here, take a right, go 25
20 yards, and go into courtroom 3-B. Judge Seals is there.
21 He's waiting on you and follow his instructions. Thank you.

22 (WHEREUPON, the jury panel was released and exited the
23 courtroom at 11:42 a.m.)

24 THE COURT: Guys, y'all --

25 (WHEREUPON, a bench conference was held in the presence

1 of the jury but out of the hearing of the jury off the
2 record, after which the proceedings resumed as follows.)

3 THE COURT: All right. Ladies and gentlemen, I was just
4 talking to the attorneys to get my -- our schedule squared
5 away.

6 What we're going to do is I'm going to excuse you in
7 just a moment and I'm going to excuse you for the balance of
8 the day. We have several pretrial matters that, if we can
9 take up these pretrial matters prior to getting started with
10 the trial, it will resolve a lot of evidentiary issues and
11 it'll make the trial go smoother and faster.

12 So we're going to deal with those evidentiary matters,
13 which is done outside your presence, and so I'm not going to
14 waste your day by having you sit back in the jury room. So
15 I'm going to excuse you for the balance of the day with this
16 instruction.

17 You are going to be the panel that is going to hear this
18 case and it is very important that you do everything within
19 your power to protect your ability to remain fair and
20 impartial. Probably a quick way of saying what I'm about to
21 tell you would be to say when you come back here tomorrow,
22 you should not know one other thing about this case than you
23 know right now.

24 In other words, I'm going to ask you to please don't
25 talk with anybody about the case. Don't allow anyone to talk

1 with you about the case. It's very important that you do
2 everything in your power to protect your ability to remain
3 fair and impartial, and in speaking to family, friends or
4 loved ones, saying something as innocent as, well, it's a
5 trial that involves a gentleman by the name of Michael Smith
6 or it's a trial involving a charge of murder, something of
7 that nature could possibly elicit a response that might
8 compromise your ability to be fair and impartial.

9 And so I would ask that you just -- if anyone tries --
10 and obviously, as you leave here and you go home, your close
11 friends or family, they'll be curious as to whether or not
12 you've been selected to be on a jury, and you can tell them
13 that you were selected and that you have to be back tomorrow,
14 but that's really where it needs to end.

15 They are going to want to know what kind of trial is it,
16 who does it involve, and you just have to tell them or ask
17 them be patient. I cannot talk to you about this case at
18 all, but when it's over, you can tell them everything they
19 want to know. You'll -- there will be no restrictions at
20 that point, but until that time, this restriction about not
21 talking about the case and not having conversation is going
22 to be in place.

23 Now, the other thing is this. We live in a day and age
24 where these things that we call telephones are really pocket
25 computers. If you've done any time on the Internet, you know

1 good and well that there's a huge amount of information out
2 there that's not accurate and not true. So -- and it's hard
3 to discern what's true, what's not true, what's accurate.

4 You are going to take an oath to try this case and base
5 this case solely upon the evidence presented in this trial.
6 It would be highly improper for you to try to do any
7 independent investigation or to go online and do any
8 independent searching. That would be highly improper. If
9 you were in a position that a jury was selected, you would
10 want that jury to decide your case based solely upon the
11 evidence that happened in that trial and not on something
12 crazy that might be floating out there on the Internet.

13 So please, just don't even consider those things. I
14 would encourage you just to really put this out of your mind.
15 You don't need to think about this case another moment other
16 than you need to be back tomorrow.

17 I'm going to ask you when you come back, if you would,
18 to come back and you'll have those badges with you. That
19 lets the security know that you're here for a trial and
20 they'll bring you up and they'll take you into your jury
21 room.

22 I'm going to excuse you in just a moment and I'm going
23 to ask -- Ann is going to take you back here and she's going
24 to show you the jury room. You'll get to go in, check that
25 out, and then as you leave, that'll kind of give you some

1 idea when you come back tomorrow where you need to come and
2 there will be some -- there will be someone to direct you
3 back here.

4 Now, so when you leave, if you can this evening, try to
5 get a good night's rest. There's countless studies that show
6 that our minds operate more efficiently and better when we're
7 well rested. So if you can get a good night's rest, please
8 do that.

9 Be back here at 9:30 in the morning and that means to be
10 in your jury room at 9:30. Okay? Don't be like my kids. If
11 I tell my kids we've got to be across town at 7 o'clock, they
12 think we're on time if we leave the house at 7 o'clock.
13 Okay? I need you in the jury room at 9:30. Okay? And we'll
14 -- and we'll get started once everyone has reconvened.

15 When you're in the jury room or when you're together as
16 a panel throughout the trial, that instruction to not talk
17 about the case, that follows throughout this case. You're
18 not to have any conversation about this trial, even amongst
19 yourselves, until everything is done and I tell you it's
20 appropriate. Okay? So you do not begin any deliberations
21 until you've heard the entire case. So if you would, just
22 follow that instruction throughout the trial.

23 So everyone else just remain seated.

24 Ladies and gentlemen, if you'll file out here, they'll
25 show you where that jury room is and then we'll see you back

1 here at 9:30 tomorrow morning.

2 (WHEREUPON, the jury exited the courtroom at 11:49 a.m.)

3 THE COURT: I don't know if there's anything that we
4 need to take up before lunch. Y'all tell me. If not, we'll
5 -- because it's seven minutes to twelve. I thought maybe we
6 would just go ahead and break for lunch and maybe start back
7 at 1:30.

8 MR. FLOYD: Yes, sir.

9 MR. WHITE: That sounds great, Judge.

10 THE COURT: Would that be okay?

11 MR. FLOYD: Yes, sir.

12 THE COURT: All right. Well, we'll do that. We'll be
13 at ease then until 12 -- excuse me -- 1:30 and we'll start
14 back at that time.

15 MR. FLOYD: Thank you, Your Honor.

16 MR. WHITE: Thank you, Judge.

17 THE COURT: All right.

18 (WHEREUPON, there was a break in the proceedings from
19 11:51 a.m. until 2:09 p.m., after which the proceedings
20 resumed as follows.)

21 THE COURT: All right. Mr. White?

22 MR. WHITE: Thank you, Judge. At this time, the State
23 feels it necessary to have a Jackson v. Denno hearing. We're
24 ready to proceed whenever the Court deems inappropriate.

25 THE COURT: All right. Mr. Floyd, is the defense ready

BEN PRICE - DIRECT BY MR. WHITE

1 to go forward on the Jackson v. Denno hearing?

2 MR. FLOYD: Yes, Your Honor.

3 THE COURT: All right. Yes, sir?

4 MR. WHITE: Thank you, Judge. At this time, the State
5 would call Inv. Ben Price to the stand.

6 THE COURT: All right. Inv. Price, if you'd please come
7 around to be sworn, sir. Right over here.

8 THE CLERK: Is the Bible there?

9 THE COURT: It is. It's there.

10 THE CLERK: Please place your left hand on the Bible and
11 raise your right hand. Do you swear the testimony you give
12 in this case to be the truth, the whole truth, and nothing
13 but the truth, so help you God?

14 THE WITNESS: I do.

15 THE CLERK: Please be seated and state your full name
16 for the record.

17 THE WITNESS: Robert Benjamin Price.

18 THE COURT: All right. Mr. White?

19 MR. WHITE: Thank you, Judge.

20 BEN PRICE, being first duly
21 sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. WHITE:

24 Q: Inv. Price, where are you employed?

25 A: The Florence County Sheriff's Office.

BEN PRICE - DIRECT BY MR. WHITE

1 Q: In what capacity are you employed?

2 A: I'm a criminal investigator.

3 Q: And in your capacity as criminal investigator, were you
4 involved in the investigation of Mike Smith?

5 A: Yes.

6 Q: Back in February of 2017, were you similarly employed?

7 A: Yes, I was.

8 Q: And did you subsequent to your investigation take
9 Michael Smith into custody?

10 A: Yes, I did.

11 Q: On what date did you take Mr. Smith into custody?

12 A: On February the 4th, 2017.

13 Q: And where was he when he was taken into custody?

14 A: In Myrtle Beach, South Carolina.

15 Q: And about what time of day was it?

16 A: Somewhere shortly after 2:00 p.m. in the afternoon.

17 Q: All right. Did you introduce yourself to him at that
18 time?

19 A: I did.

20 Q: Did you read to him or go over his Miranda rights?

21 A: I did.

22 Q: Did you go over his right to remain silent?

23 A: Yes.

24 Q: Did you go over the fact that anything he said could be
25 used against him in a court of law?

BEN PRICE - DIRECT BY MR. WHITE

1 A: Yes, I did.

2 Q: Did you go over the right to have a lawyer present
3 during questioning?

4 A: Yes.

5 Q: Did you go over all rights that you typically would go
6 over with a suspect in any -- any crime?

7 A: Yes.

8 Q: And what, if anything, happened at that point?

9 A: At that time in Myrtle Beach, Mr. Smith -- he did not
10 make any statements. He was in the passenger seat of Lt.
11 Tony Moore's pickup truck from the Sheriff's Office, his
12 patrol car, and he did not make any statements. We didn't
13 ask him any questions at that time while he was at the beach.

14 Q: Did you tell him that you wanted to conduct an interview
15 once you returned back to Florence?

16 A: Yes.

17 Q: And did you return back to Florence?

18 A: We did. We immediately returned. We left Myrtle Beach
19 and came straight back to Florence County in Effingham.

20 Q: All right. When you get back to Florence, did you
21 escort him inside the Law Enforcement Center?

22 A: Yes.

23 Q: Did he make any statements to you at that time?

24 A: Yes. He did make statements from the vehicle on our way
25 into the -- the building toward the interview room to where

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1 we ended that walk.

2 Q: And what did he say to you as you were walking into the
3 Law Enforcement Center?

4 A: He said that he had -- he wanted to talk about what had
5 happened. He specifically wanted to talk to the man's family
6 that this happened to to try to give them some peace about
7 what had happened. He had stated that he knew that he was
8 going to get life in prison anyways. That's roughly the
9 things that he was saying.

10 Q: And once in the Law Enforcement Center, where did you
11 take him at that point?

12 A: To one of our audio- and video-recorded interview rooms
13 that we have inside the Sheriff's Office.

14 MR. WHITE: May I approach, Judge?

15 THE COURT: Yes, sir.

16 BY MR. WHITE:

17 Q: Inv. Price, I'm going to show you what's been marked as
18 Court's Exhibit 1. If you could, tell me if you recognize
19 that disk?

20 A: I do. It appears to be a recording on DVD of the
21 interview. Well, not interview, but the interaction that we
22 had with Mr. Smith on February the 4th, 2017, in our interview
23 room in Florence County.

24 Q: Now, is this after he was Mirandized down at the beach?

25 A: That's correct, yes.

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1 MR. WHITE: Judge, at this time, I would ask permission
2 to publish that video.

3 THE COURT: Any objection?

4 MR. FLOYD: No objection, Your Honor.

5 THE COURT: All right.

6 (WHEREUPON, Court's Exhibit Number 1, videotaped
7 interview, was played in open court. Not transcribed
8 herein. After playing, the proceedings resumed as
9 follows.)

10 BY MR. WHITE:

11 Q: Inv. Price, was Michael Smith still under Miranda when
12 you escorted him into the Law Enforcement Center?

13 A: I would agree that he was.

14 Q: Now, are any of the statements that he made from the
15 time he exited the vehicle until the time he walked into the
16 Law Enforcement Center -- were any of those recorded?

17 A: They were not.

18 Q: And why not?

19 A: They were outside the interview room that has the audio-
20 and video-recording equipment, and I did not have any way to
21 record him walking from the vehicle inside the building.

22 Q: Now, were any of those statements in response to any
23 questioning or was he just talking?

24 A: He was just talking.

25 Q: And how about in the video that we just played? Any of

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1 the statements that he made, were those in response to
2 questioning or was he just talking?

3 A: In the beginning whenever Lt. Moore was in the room with
4 him, I was in the jail part of our building getting him some
5 different footwear because he was complaining whenever he got
6 out of the vehicle that his feet were hurting. So I don't
7 think that there were any questioning and, as soon as I
8 walked in, I tried to advise him of his Miranda rights again
9 so that he could sign the document under video and audio
10 recording, and that's when he let me know that he was tired.
11 He didn't want to answer any questions. He wanted to talk
12 another day, and so I ceased asking him questions.

13 Q: Did he, in fact, say that he wanted to speak with you
14 tomorrow?

15 A: He did.

16 Q: Now, at that time, did you cease questioning?

17 A: Yes. I didn't ask him anything else just so we could
18 get him back to the back because I think he wanted to get
19 something to eat and take a shower.

20 Q: Even though you ceased questioning, he continued to
21 talk?

22 A: Correct.

23 Q: Okay. Now, from the time you left the beach or from the
24 time you'd taken him into custody until the conclusion of
25 that video, did you make any threats?

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- 1 A: No.
- 2 Q: During that video, did he seem tired?
- 3 A: He did.
- 4 Q: Did he seem inebriated to you?
- 5 A: I wasn't sure if he was inebriated, if he was just
6 tired, but he didn't seem that he was fully about his wits at
7 the -- at the time when we were talking to him. So I didn't
8 feel comfortable trying to really do anything beyond,
9 especially when he said that he would rather not talk at that
10 time.
- 11 Q: And when did you continue questioning? When did you
12 bring him back to the interview room to speak with you again?
- 13 A: The next time that we went and got him and brought him
14 back up was on February the 9th, 2017.
- 15 Q: I'm going to show you what's been marked as Court's
16 Exhibit 2. If you could, tell me if you recognize that disk?
- 17 A: I do. It appears to be a DVD recording of the interview
18 on February the 9th, 2017, marked full interview.
- 19 Q: Now, during that interview or prior to you conducting
20 that interview, did you go over his Miranda rights again?
- 21 A: I did.
- 22 Q: And how did you go over them at this time?
- 23 A: I had a form that we used. It's a standard form that we
24 have. I explained his rights to him. He initialed beside
25 each one of those rights. There are seven lines. And he did

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1 sign the form stating that he did understand them and wished
2 to talk to us.

3 Q: I'm going to show you what's been marked as Court's
4 Exhibit 4. Is that the form you're referring to?

5 A: Yes, that's correct.

6 Q: Once he signed and waived each of those rights and
7 initialed each of those rights and then signed the form in
8 its entirety, at that time did you conduct an interview --

9 A: Yes.

10 Q: -- with him on that date?

11 A: Correct. Yes.

12 MR. WHITE: Judge, at this time, I would ask permission
13 to publish that interview.

14 THE COURT: All right, sir.

15 BY MR. WHITE:

16 Q: Before I get that queued up, Inv. Price, you mentioned
17 in the prior interview that you had some reservations about
18 his level of exhaustion and his possible -- the possibility
19 of him being inebriated. Did you have any of those
20 reservations five days later on the 9th?

21 A: I did not.

22 Q: Did he seem to be of clear mind?

23 A: He did.

24 MR. WHITE: And, Your Honor, with your permission -- Mr.
25 Smith enters the room at 6:32. With your permission, I will

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1 skip ahead.

2 THE COURT: All right.

3 (WHEREUPON, Court's Exhibit Number 2 was played in open
4 court for approximately 24 minutes. Not transcribed
5 herein. It was then stopped and the proceedings resumed
6 as follows.)

7 MR. WHITE: Judge, I just wanted to take a brief break.
8 The interview continues on, Your Honor, until an hour and 20
9 minutes.

10 THE COURT: Well, let me ask this. Any concerns or
11 objections regarding the voluntariness of the statement at
12 this point?

13 MR. FLOYD: Your Honor, I think we've got two different
14 sets of statements, and I certainly have some concerns about
15 the voluntariness of the initial statements he made when he
16 was coming back from Myrtle Beach.

17 THE COURT: Yeah. Just right now and I -- and we'll
18 reserve those.

19 MR. FLOYD: Certainly.

20 THE COURT: I'm talking about this one we're on now
21 because I know there's some parts in it that we need to talk
22 about.

23 MR. FLOYD: Yes, sir.

24 THE COURT: And so my suggestion would be that -- I'm
25 assuming you have those noted?

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1 MR. WHITE: Yes, sir.

2 THE COURT: And the times?

3 MR. WHITE: Yes, sir.

4 THE COURT: That we fast-forward to those parts that you
5 would have a concern about.

6 MR. FLOYD: Yes, Your Honor. And I mean I may have an
7 objection about the voluntariness of the entire statement,
8 but --

9 THE COURT: Sure.

10 MR. FLOYD: -- if you decide to let it in, then there
11 still are some concerns about parts of it.

12 MR. WHITE: Now, Judge, let me clarify. I think you're
13 referring to anything that may be objectionable. I think
14 what we're specifically referring to is the sentence and that
15 sort of thing. I do not have that specifically marked.

16 My position on that, Judge, is that any -- anytime that
17 the investigators respond to Mr. Smith and tell him the range
18 that I believe that should be redacted. However, any time
19 that he is saying what he can get, you know, that I'm going
20 to get life, you know, that sort of thing, I believe that's
21 consciousness of guilt.

22 And because it's not in response to their questioning, I
23 would like to see that come in, but I do agree with Mr. Floyd
24 anytime that it's brought up on behalf of the investigators
25 that we should go ahead and redact that portion, and I'm

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1 certainly happy to do so.

2 MR. FLOYD: And, Your Honor, just the statements that he
3 just makes about I know I'm going to get life or I know I'm
4 going to get 30 years or whatever, 30 to life, Your Honor, I
5 don't -- I don't think the witness can sit on the stand and
6 say that in the trial, well, I'm going to get 30 to life if I
7 get convicted. I mean I think that's objectionable and I
8 would just ask Your Honor to exclude it from the statement.

9 MR. WHITE: And, Judge, we're -- I'm sorry, Scott.

10 We're referring to -- and what we're talking about here,
11 Judge, is in three parts. There's the portion where he's
12 walking in from the vehicle to the Law Enforcement Center.
13 Then there's the portion on that very same day minutes later
14 that we just watched the recording, and then we're talking
15 about this recording that we're currently playing.

16 Judge, I do agree that as he's walking into the Law
17 Enforcement Center, Inv. Price should not testify to any type
18 of sentencing during that time as far as a range. You know,
19 anything that Ben is offering or Inv. Price is offering.

20 THE COURT: Even though Mr. Smith may have asked him.

21 MR. WHITE: That's correct.

22 THE COURT: All right.

23 MR. WHITE: Any statement like that, but I would -- I
24 think that he can testify as to anything that he says about
25 -- you know, I -- if he -- if he were saying -- Judge, if he

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1 were saying can I get life for this, you know, that would be
2 one thing, but it's not can I get life. It's I know I'm
3 going to get life for this.

4 You know, I'm sounding redundant now, but, Judge, I
5 believe that is just consciousness of guilt. I think that's
6 two different things. Inquiring as to sentencing range is
7 clearly objectionable, clearly improper. Stating I know I'm
8 going to be found guilty and get life --

9 THE COURT: Well, but I mean I'd have to go -- I guess
10 I'd have to go back and listen again. The way I heard that
11 was more in the form of a question because he said isn't this
12 -- isn't life the best I can do.

13 MR. WHITE: Yes, sir. And I am -- I'm referring -- and
14 I'm sorry. I need to piecemeal this thing. I'm referring to
15 the -- and I think that's what Scott was referring to
16 initially. This is the walk from the Law Enforcement Center
17 to -- to the -- that's not recorded. At that time, Inv.
18 Price would testify that he says I know I'm going to get life
19 for this. Now, I agree with you on the statement he's
20 asking, you know, isn't the best I can get is life.

21 THE COURT: And that's when Inv. Price says, no, that's
22 not -- that's not the only thing.

23 MR. WHITE: Right. It carries --

24 THE COURT: It carries 30 to life.

25 MR. WHITE: Yes, sir, Judge.

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1 THE COURT: Something like that.

2 MR. WHITE: Yes, sir, judge.

3 THE COURT: So you understand -- I mean you agree that
4 that's out?

5 MR. WHITE: Yes, sir, Judge.

6 THE COURT: So what you're referring to that you feel
7 should be allowed in is a statement that he made to Inv.
8 Price --

9 MR. WHITE: Yes, sir, Judge.

10 THE COURT: -- that's not on a tape that we've listened
11 to.

12 MR. WHITE: That's correct, Judge. But anytime he also
13 makes a similar statement -- I'm trying to discern the two.
14 Anytime he makes a similar statement on the recording,
15 anytime he says I know I'm going to get this for this act, I
16 think that shows consciousness of guilt. When he's inquiring
17 as to the sentencing range and there was a response to that
18 inquiry, I believe that is improper, but I am trying to
19 differentiate the two because I do believe they're -- they're
20 different.

21 THE COURT: All right. And were you referring to the
22 part that we listened to earlier?

23 MR. FLOYD: I was, Your Honor, and --

24 THE COURT: Because there was the part there that he
25 said I'll take 30 this week.

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1 MR. FLOYD: Right. I understand that.

2 THE COURT: And is that what you're referring to?

3 MR. FLOYD: I was referring to that, and I believe he
4 might make another reference to sentencing, possible
5 sentences he could get, in another place. I'm not sure
6 exactly where it is, but it may be on that tape. I mean I'd
7 have to go back and --

8 MR. WHITE: I believe so, Judge.

9 MR. FLOYD: -- mark the time on it that I --

10 MR. WHITE: And I can do that and I apologize to the
11 Court for not having that done. I do have it marked for
12 several different, you know, versions that he tells and
13 different things. I don't have those specifically earmarked,
14 other than that comment where he says, you know, can you help
15 me, can you do this, can you do attempted murder. I do have
16 that earmarked.

17 THE COURT: Well, I mean have you got the places marked
18 which are the questions that we need to resolve?

19 MR. WHITE: No, sir, I do not.

20 THE COURT: Well, are we just going to play the whole
21 thing until we get to something and then you bring it up?

22 MR. WHITE: I'm happy to do it however you want or we
23 can --

24 THE COURT: I would have been a lot happier if y'all
25 would have gone through this thing, an hour-and-a-half tape.

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1 This could have been gone through before today and you could
2 have marked the areas where the controversial or the
3 questionable things were. It's not very efficient for us to
4 sit here and listen to this thing.

5 MR. WHITE: Yes, sir. And that falls entirely on my
6 shoulders.

7 THE COURT: Well, Mr. Floyd -- if he's got some
8 objections, he could've done the same thing, you know.

9 MR. WHITE: Well, I'm happy to shoulder that burden,
10 Judge. What I can do is if the Court were to give me some
11 indication as to, you know, what you find objectionable and
12 what you don't, I would be happy to go in and take that out,
13 send that over to Scott.

14 THE COURT: I don't find anything objectionable. I
15 think Mr. Floyd has got some objections.

16 MR. WHITE: Yes, sir.

17 THE COURT: I think y'all need to get -- I'll tell you
18 what I think would be helpful and more expeditious than what
19 we're doing right now, and that is the two of y'all, with
20 this thing in hand, run through this thing and, Scott, you
21 bring out I have an issue here, I have an issue at 1:22, I
22 have an issue at 1:38, I have an issue.

23 MR. FLOYD: Yes, sir.

24 THE COURT: And then let's address those issues.

25 MR. WHITE: Yes, sir.

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1 THE COURT: Is that -- does that sound reasonable?

2 MR. WHITE: Absolutely.

3 MR. FLOYD: Yes, Your Honor.

4 THE COURT: And that's something you could do now. I
5 mean it's not --

6 MR. WHITE: Yes, sir.

7 THE COURT: And we'll just -- we'll just take a recess.
8 We'll let you do that and then we'll come back on the record
9 and then we'll address the areas where there -- there are
10 objections and we'll deal with the objections.

11 MR. WHITE: Sure, judge. And I'm not sure we've
12 completely concluded the voluntariness aspect of it. I'm not
13 sure how you want to -- we do have a witness on the stand,
14 Judge. I'm happy to --

15 THE COURT: Well, is there some concern? I mean
16 voluntariness I think we could discuss at this point unless
17 there's some objection that he was in there too long and it
18 was --

19 MR. FLOYD: Your Honor, when he was on -- when he was
20 brought back from the beach, I mean I have -- based on what's
21 been said so far, I mean I have some concerns that he was
22 inebriated and deprived of sleep. I mean he had been out
23 living in the woods for, I think, three days at that point,
24 two and a half or three days.

25 THE COURT: Oh, I get it.

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1 MR. FLOYD: I mean I have all -- certainly all those
2 concerns. I mean I'm not sure if he made any statements to
3 Inv. Price about how much he'd slept, you know, all that sort
4 of thing.

5 THE COURT: Well, I mean even on the tape, Inv. Price
6 expresses concern.

7 MR. WHITE: Judge --

8 THE COURT: You know.

9 MR. WHITE: And my response to that is that all those
10 statements aren't in response to questioning.

11 THE COURT: Okay. We are -- we are scattered here. I'm
12 not talking about those. I'm talking about what you showed
13 me on this tape.

14 MR. WHITE: Yes, sir.

15 THE COURT: On this tape, is that what you're referring
16 to, Mr. Floyd? On this tape, he comes in, not this one we're
17 looking at right now but the first one.

18 MR. FLOYD: The first one.

19 THE COURT: He comes in. Inv. Price had testified that
20 he had already Mirandized him down at the beach.

21 MR. WHITE: Correct.

22 THE COURT: Then they rode from the beach to Florence
23 and there was no questioning going on.

24 MR. WHITE: I believe he slept the entire time. That's
25 correct.

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1 THE COURT: And then they came in and then we picked up
2 with the video where he asked that his -- that the cuffs be
3 taken off and he be allowed to take his shoes off, that video
4 right there. That's what you're referring to?

5 MR. FLOYD: Correct.

6 THE COURT: And your objection to that whole video is
7 that he's -- by the officer's own testimony, something is
8 wrong with him.

9 MR. FLOYD: Correct.

10 THE COURT: Either he's inebriated or he's on drugs or
11 he's sleep deprived.

12 MR. FLOYD: Correct. Or a combination of those.

13 THE COURT: Or a combination of all of it.

14 MR. WHITE: I have -- I agree that Inv. Price, when he
15 gets him into the room, has a fear that he may be inebriated
16 and that he had just --

17 THE COURT: And he asked not the talk until tomorrow, I
18 think he said on the thing.

19 MR. WHITE: That's correct. And that's my point, Judge,
20 is that when they're walking into the Law Enforcement Center,
21 all those comments that he directs towards Inv. Price were
22 not in response to any questioning. And then when he gets
23 into the -- into the video, the first video we watched, he's
24 asking him do you want to just do this tomorrow and he says,
25 yeah, sure. And so he ceases questioning. At that point, I

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1 don't even believe he had asked any questions, but Mr. Smith
2 continues to speak.

3 THE COURT: But let me -- and this could be my fault.
4 This is where I may be zoned out or something. Have I heard
5 testimony from Inv. Price about comments made not in response
6 to questioning?

7 MR. WHITE: Yes, sir, Judge.

8 THE COURT: Well, we're going to have to go back over
9 that testimony because I don't recall hearing -- I don't
10 recall hearing that.

11 MR. WHITE: Yes, sir. I asked Inv. Price if on the way
12 into the Law Enforcement Center any of those comments were
13 made in response to questioning from Inv. Price, and he said
14 no. And I asked if it was just him talking and he said it
15 was. It was just him talking.

16 And then the video actually speaks for itself. Once he
17 says I just want to -- I'm tired, I just want to talk
18 tomorrow, Inv. Price ceases questioning. He stops. He says,
19 okay, fine. You can see him putting his stuff together and
20 he says, okay, we'll talk tomorrow, and Mr. Smith just begins
21 speaking. So that's clearly not in response to any
22 questioning.

23 I understand that there's maybe -- you know, there's a
24 suspicion that he's exhausted or that he may be inebriated,
25 but that only applies to whether or not he's questioning

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1 while he's in that state. If Mr. Smith is just speaking
2 without -- with not being in response to questioning, I think
3 that falls outside the purview of that particular analysis
4 and, for that reason, those -- I should be allowed to put in
5 those statements.

6 THE COURT: Okay. Mr. Floyd? So I think I'm
7 understanding the State's position is is that once Mr. Smith
8 has indicated he doesn't want to talk that day, Inv. Price
9 says, all right, that's fine.

10 MR. FLOYD: Yes, sir.

11 THE COURT: And doesn't ask him any more questions, but
12 he keeps talking. And so his position, I think, is that
13 chatter after that not in response to any questioning is
14 admissible because it's not pursuant to any line of
15 questioning from law enforcement.

16 MR. WHITE: And the same rationale for the walk from the
17 vehicle.

18 THE COURT: Right.

19 MR. WHITE: Yes, sir.

20 THE COURT: I mean I understand your position.

21 MR. WHITE: Yes, sir.

22 MR. FLOYD: Right. Yes, sir. And I understood what --
23 what he was getting at there, Your Honor, and I think he had
24 already been Mirandized before they ever got to the Law
25 Enforcement Center, if I recall. Is that --

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1 THE COURT: Right.

2 MR. WHITE: Yes.

3 THE COURT: But even if he hadn't been, their position
4 is it wasn't in response to any questioning. It was just --
5 it's kind of like the situation that we sometimes will hear
6 when they transport someone from the detention center to
7 Columbia for a hearing, for a mental health hearing or
8 whatever.

9 MR. WHITE: Correct.

10 THE COURT: And then on the way there, the person is in
11 the backseat just chattering.

12 MR. FLOYD: Yes, sir. I understand.

13 THE COURT: And that's -- I guess that's their position.

14 MR. FLOYD: Yes, sir.

15 THE COURT: And so unless you can tell me --

16 MR. FLOYD: Well, Your Honor, certainly, I mean
17 obviously we have concerns about whether or not he even
18 understood what he was saying.

19 THE COURT: And -- and that certainly will be wide open
20 to any cross-examination.

21 MR. FLOYD: Right. And those are my main concerns.

22 THE COURT: Okay.

23 MR. FLOYD: I'll just leave that in your discretion.

24 THE COURT: Okay. All right. Well, I would allow those
25 statements. I would allow those statements made not in

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1 response to any questioning, but simply just comments that
2 Mr. Smith made. I would allow that in.

3 Now, I'm not aware on that first tape we watched --

4 MR. WHITE: Yes, sir.

5 THE COURT: Is any of that on that tape?

6 MR. WHITE: There's no questioning about any -- anything
7 pertaining to the case from Inv. Price directed towards Mr.
8 Smith. It is all --

9 THE COURT: There's the -- there's the conversation
10 about the time that is associated with this charge.

11 MR. WHITE: Yeah. And the information about the bond
12 and that sort of thing.

13 THE COURT: Right.

14 MR. WHITE: It's really just that last little bit where
15 Inv. Price ceases communication really and questioning, and
16 he -- he continues to speak.

17 THE COURT: What are the comments that are made during
18 that time?

19 MR. WHITE: I can run back and play it, Judge.

20 THE COURT: Well, okay. That's fine. We're right --
21 that's not very long.

22 (WHEREUPON, Court's Exhibit Number 1 was partially
23 played in open court. Not transcribed herein. It was
24 then stopped and the proceedings resumed as follows.)

25 MR. WHITE: Judge, I believe it's from this point

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1 forward.

2 THE COURT: All right.

3 MR. WHITE: At least where we're concerned.

4 (WHEREUPON, Court's Exhibit Number 1 was partially
5 played in open court. Not transcribed herein. It was
6 then stopped and the proceedings resumed as follows.)

7 THE COURT: Is that it? I'm not sure what was said.

8 MR. WHITE: Judge, he says I know I'm going to get
9 hammered in court; so I just want to do the right thing for
10 the victim's family. I think that that shows consciousness
11 of guilt.

12 And another thing, Judge, it does in context of the
13 following investigation or interview, it shows that Inv.
14 Price is doing everything by the book. You know, if he says
15 he don't want to talk, you know, Inv. Price doesn't speak to
16 him. I think in build-up to the next interview, I think, you
17 know, that's important.

18 So twofold, I think that comment about I just want to do
19 what's right for the victim's family is consciousness of
20 guilt and it also sets a very important context for the
21 interview that follows. You know, Judge, a lot of times we
22 have trials and such things, you know, where we point out the
23 bad things law enforcement --

24 THE COURT: No.

25 MR. WHITE: -- does, but, you know, Inv. Price -- this

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1 shows -- it shows the jury, I mean, here's a guy just doing
2 it by the book and I -- you know, I think that's pivotal.
3 But, you know, in the forefront of my mind is that statement
4 about the victim and their family and doing right by them. I
5 think that's something the jury should be allowed to hear.

6 THE COURT: Yes, sir, Mr. Floyd?

7 MR. FLOYD: Your Honor, I'm not alleging Inv. Price did
8 --

9 MR. WHITE: Oh, no.

10 MR. FLOYD: -- anything wrong at all.

11 MR. WHITE: And I know, Scott.

12 THE COURT: I know.

13 MR. WHITE: That's not an issue.

14 MR. FLOYD: That's not an issue. I mean, certainly,
15 that's not what Jackson -- I mean, you know, I'm not trying
16 to say he --

17 THE COURT: I understand.

18 MR. FLOYD: -- did anything wrong, but, Your Honor,
19 certainly, I mean if he made these statements about I know
20 they're going to hammer me in court, I'm guilty of whatever,
21 I mean this is the ramblings of someone who doesn't know the
22 law. I mean those statements are just -- I mean they don't
23 mean anything. He doesn't know what the legal consequences
24 are.

25 THE COURT: I don't -- I don't disagree with that, but I

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1 don't know that --

2 MR. FLOYD: They are just --

3 THE COURT: -- they're objectionable to be omitted. I
4 think --

5 MR. FLOYD: Well, they're prejudicial and they don't
6 really -- I mean --

7 THE COURT: Well, people say things all the time that
8 are prejudicial.

9 MR. FLOYD: Well --

10 THE COURT: My question is are they in violation of --
11 of his rights.

12 MR. FLOYD: Right.

13 THE COURT: And they're -- they're not in response to
14 any questioning.

15 MR. FLOYD: Well -- and I understand, but I would just
16 say that the prejudicial effects, you know, outweigh any
17 probative value that they have. I mean they're just
18 ramblings. I mean I just don't think that they really mean
19 anything, whether he's guilty of the offense or not.

20 THE COURT: Okay.

21 MR. FLOYD: I mean he makes plenty of statements about
22 what actually happened.

23 THE COURT: When he's more lucid.

24 MR. FLOYD: Right. Sure.

25 THE COURT: In the second -- yeah.

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1 MR. FLOYD: Yeah.

2 THE COURT: Well -- and again, all that is subject to
3 being dealt with in argument and cross-examination.

4 MR. FLOYD: Right.

5 THE COURT: So the part you're wanting to get in is what
6 you just showed me?

7 MR. WHITE: That's correct, Judge.

8 THE COURT: Because the part that I heard earlier, early
9 on, with all that talk about I'll take 30 right now if you
10 give it to me, that -- all of that I have issues with and
11 that's not what you're trying to get in?

12 MR. WHITE: No, sir. That's correct, Judge.

13 THE COURT: Okay.

14 MR. WHITE: But he -- you know, Judge, if you were to
15 rule -- you know, it's basically three different statements,
16 as he's walking in, what we just played, and then the third
17 statement, I believe Scott Floyd and I can get together and
18 make sure that we're on the same page about what's coming in
19 and what's staying out.

20 The only determination that I think would be pertinent
21 to that endeavor is clearly I am in agreement with the Court
22 and Mr. Floyd that any statements made about a sentencing
23 range should come out, but any time, as he does walking from
24 the vehicle into the Law Enforcement Center, he says I know
25 I'm going to get life for this, you know, it's not about the

BEN PRICE - DIRECT BY MR. WHITE

1 sentence and the range at that point. That is a statement of
2 guilt. You know, I know that I'm going to get life implies
3 that I know that I am guilty, you know, and I --

4 THE COURT: Well, it may be -- it may be more I know if
5 they find me guilty, I'm going to get life.

6 MR. WHITE: And that brings up a good point. Then I
7 believe that should be an argument for the jury.

8 THE COURT: And that -- let me -- give me a second.

9 MR. WHITE: Yes, sir, Judge.

10 (WHEREUPON, there was a pause in the proceedings, after
11 which the proceedings resumed as follows.)

12 THE COURT: And I tell you I hate to plow over the same
13 ground, but, you know, I -- I don't -- I don't have in my
14 notes what those comments were. So I'm going to let you
15 redirect or go back and ask those questions of Inv. Price.

16 Of course, Scott, any cross-examination you want to do.

17 But I don't remember. I guess that's what I'm trying to
18 get at.

19 MR. WHITE: Yes, sir.

20 THE COURT: What are the exact -- what are the exact
21 statements you're wanting to get in and in what context were
22 they given?

23 MR. WHITE: Yes, sir.

24 THE COURT: So you -- I mean you can focus your -- your
25 questions on that and get -- we don't have to plow back over

BEN PRICE - DIRECT BY MR. WHITE

1 all of it, but just those statements, what was the scenario
2 and how were they said when they were said.

3 MR. WHITE: Yes, sir.

4 THE COURT: Okay.

5 BY MR. WHITE:

6 Q: Inv. Price, when was Michael Smith first Mirandized?

7 A: In Myrtle Beach whenever he was placed into Lt. Moore's
8 Sheriff's Office vehicle.

9 Q: And at what time were those Miranda warnings given?

10 A: It would have been shortly after 2 p.m. on the 4th.

11 Q: All right. At about what time did you arrive back at
12 the Law Enforcement Center?

13 A: I believe it was probably around 3:45, 3:50, in that
14 area. On video, it was closer to 4 o'clock.

15 Q: Now, did you tell him prior to leaving that you wished
16 to speak to him on the ride back or did you tell him you'd
17 rather wait until you got into an interview room?

18 A: I told him I'd like to speak to him once we arrived back
19 in Effingham where we could audio and video record an
20 interview with us talking.

21 Q: All right. Did you ask him any questions from the time
22 you Mirandized him until the time you got into an interview
23 room that would be pertinent to this case?

24 A: No, I did not.

25 Q: When he got out of the car at the Law Enforcement

BEN PRICE - DIRECT BY MR. WHITE

1 Center, did you escort him or help escort him into the Law
2 Enforcement Center?

3 A: Yes. I assisted.

4 Q: From the time that he got out of the car until the time
5 he went into the Law Enforcement Center, did you ask him any
6 questions?

7 A: I did not.

8 Q: What, if anything, did he say?

9 A: He was talking about that his feet hurt because his
10 boots were hurting his feet. He had asked if we could get
11 him some flip-flops they have in the jail, and he had -- he
12 had also made some statements about he wanted to talk to us
13 because there had been some -- a lot of rumors that he had
14 heard or seen or something and that he knew that he was going
15 to get life in prison and that he wanted to give peace to the
16 victim's family.

17 MR. WHITE: Judge, that would be the testimony during
18 that portion that I would like to elicit during trial.

19 THE COURT: Okay.

20 MR. WHITE: And it's still my position that that is
21 different. I understand Mr. Floyd's position as to, you
22 know, the response and letting him know a range and -- but
23 when he just -- when he's just speaking and he is making that
24 statement, I know I'm going to get life and the statement
25 about peace to the family, it's something I would like to

BEN PRICE - DIRECT BY MR. WHITE

1 bring out at trial, Judge.

2 THE COURT: Okay. And your position, obviously, is that
3 it's so prejudicial that it overrides any probative value?

4 MR. FLOYD: Yes, sir, Your Honor.

5 THE COURT: Okay. All right. So then we get here?

6 MR. WHITE: Yes, sir.

7 THE COURT: And then you want to -- you want to show
8 this tape?

9 MR. WHITE: Yes, sir.

10 THE COURT: Again, to show that -- that protocol was
11 followed.

12 MR. WHITE: And also -- and it's just for --

13 THE COURT: And then -- and then the statement is made.

14 MR. WHITE: Doing right by the family.

15 THE COURT: No questioning?

16 MR. WHITE: Yes, sir. Just -- and that -- that portion
17 is just from the time that Inv. Price enters until -- you
18 know, until the time that Michael Smith walks out.

19 THE COURT: All right. And then on the tape that we
20 were on --

21 MR. WHITE: Yes, sir.

22 THE COURT: The lengthy one.

23 MR. WHITE: Now, on that tape, I do believe it's
24 voluntary. You know, I don't think there's any question that
25 Inv. Price took the proper precautions in waiting to make

BEN PRICE - DIRECT BY MR. WHITE

1 sure, five days, but in that one there are two issues, the
2 first being the criminal history is discussed by Michael
3 Smith.

4 THE COURT: And I don't think there's any -- I mean --

5 MR. WHITE: We believe --

6 THE COURT: -- the objection is -- nobody objects to
7 that objection?

8 MR. WHITE: That's got to come out.

9 THE COURT: All right.

10 MR. WHITE: We'll take it out.

11 THE COURT: And then the other thing?

12 MR. WHITE: And then the other thing is it kind of goes
13 back to the issue we just discussed and we'll -- Scott Floyd
14 and I will go through and make sure, but I am of the position
15 that any time he says outright I know I'm going to get life
16 for this or I know I'm going to get this for this, I'd like
17 that to come in, but any time that they're discussing the
18 range as to what the sentence is, I believe that should come
19 out.

20 And I think that's the final issue that would be subject
21 to --

22 THE COURT: But, of course --

23 MR. WHITE: -- the Court's ruling.

24 THE COURT: I mean I'm assuming you object to any time
25 he talks about I'm going to get life for this as being --

BEN PRICE - DIRECT BY MR. WHITE

1 MR. FLOYD: Yes, sir.

2 THE COURT: -- objectionable?

3 MR. FLOYD: Yes, sir. For the same reason.

4 THE COURT: So does that appear throughout the long
5 tape?

6 MR. WHITE: You know, Judge --

7 THE COURT: Or do y'all need to look at it?

8 MR. WHITE: We need to look at it.

9 THE COURT: Go ahead and let's do that.

10 MR. WHITE: I think we can -- I think we can get
11 together on that.

12 THE COURT: Here, let me do that. Let me -- let me get
13 y'all to do that.

14 Now, let me ask you this, Mr. Floyd, with regards to
15 this second interview --

16 MR. FLOYD: Yes, sir.

17 THE COURT: -- that we were talking about, the one done
18 5 days later or 4 days later.

19 MR. FLOYD: Yes, sir.

20 THE COURT: All right. What is your objection as to the
21 voluntariness of that statement and the admissibility of that
22 statement?

23 MR. FLOYD: Your Honor, I would like to --

24 THE COURT: All right.

25 MR. FLOYD: -- possibly cross Inv. Price.

BEN PRICE - DIRECT BY MR. WHITE

1 THE COURT: Are you done with Inv. Price regarding the
2 taking of that statement? If you're not, I'll let you
3 finish.

4 MR. WHITE: I have four questions and I'll be done with
5 Inv. Price.

6 THE COURT: Go ahead.

7 BY MR. WHITE:

8 Q: Inv. Price, during this interview or, you know, either
9 recorded interviews, did you stop the interview at any time?

10 A: No, I did not.

11 Q: At any time -- you know, we're talking about three
12 different statements. Did you threaten him at any time?

13 A: No.

14 Q: Did you -- during those three statements, did you coerce
15 him at any time?

16 A: No.

17 Q: Did you promise him anything?

18 A: No, I did not.

19 Q: Was there anybody in the room with you during that
20 second interview while you -- while you conducted it?

21 A: The second one? You mean the lengthy one?

22 Q: Yes, sir.

23 A: Inv. Pat O'Hara was present in that interview.

24 Q: Okay.

25 MR. WHITE: Thank you, Inv. Price. Answer any questions

BEN PRICE - CROSS BY MR. FLOYD

1 defense counsel may have.

2 THE COURT: All right. Mr. Floyd?

3 MR. FLOYD: Thank you.

4 CROSS-EXAMINATION

5 BY MR. FLOYD:

6 Q: Inv. Price, as far as the -- excuse me -- second
7 interview you did on the 9th of February, 2017, did you have
8 any discussions with Mr. Smith, just private conversations
9 between you and him, in between your first interview and
10 then?

11 A: No, sir.

12 Q: You did not?

13 A: No, sir, I did not.

14 Q: Okay.

15 A: He'd go back to the jail in between those times.

16 Q: Okay. So did you ever discuss with him any charges that
17 may be brought against his spouse, Debra Smith?

18 A: I don't believe that I did. I don't believe we had a
19 conversation about anything with his spouse.

20 Q: Okay. I know she was mentioned on the -- in the
21 interview itself.

22 A: Correct.

23 Q: But prior to that you don't recall having any
24 conversations with him about any of that?

25 A: No, sir, I don't.

BEN PRICE - CROSS BY MR. FLOYD

1 Q: You didn't -- you didn't make any promises to him about
2 not prosecuting her or anything of that nature?

3 A: No, sir. I wouldn't have promised him anything about
4 that.

5 Q: Okay. And when you interviewed him on the 9th, that was,
6 I guess, five days after you took him into custody; is that
7 right?

8 A: Correct. Yes, sir.

9 Q: Okay. Did he appear to be -- I guess, as far as his
10 mental capacity and everything when you interviewed him the
11 second time, did he appear to be coherent --

12 A: He did.

13 Q: -- to you?

14 A: He was more talkative, more responsive, and seemed to be
15 coherent whenever I was talking to him.

16 Q: Okay. Now, were they holding him in suicide watch at
17 that time?

18 A: I believe at that time he was in what they call MAX-SEG.

19 Q: MAX-SEG?

20 A: During those times, which I've learned since they do is
21 a -- I guess an intake for the different types charges. The
22 jail has its own protocol. So he was there for a period of
23 time. I'm not sure the exact period of time, but I believe
24 he was still there during the interview.

25 Q: Okay. During the second interview?

BEN PRICE - CROSS BY MR. FLOYD

1 A: Yes, sir.

2 Q: You think he was still there?

3 A: Yes, sir.

4 Q: Okay. And as far as you know, he had -- he had been
5 given meals and drink and all that sort of thing?

6 A: Yes, sir. As far as I know.

7 Q: Okay. All right.

8 MR. FLOYD: I don't have any other questions. Thank
9 you, sir.

10 THE WITNESS: Yes, sir.

11 THE COURT: All right. Anything in redirect?

12 MR. WHITE: No redirect, Judge.

13 THE COURT: All right. Thank you very much, sir. You
14 may step down.

15 THE WITNESS: Thank you, Your Honor.

16 MR. WHITE: Your Honor, I am prepared to call Inv. Pat
17 O'Hara, who was also present during the final interview, the
18 one that we have queued up. Well, actually, the lengthy one,
19 but, Judge, you know, I believe that it kind of speaks for
20 itself. I think it's definitely voluntary. If Your Honor is
21 prepared to make a ruling as to the Jackson v. Denno, then I
22 think we can save some time by keeping Inv. O'Hara off the
23 stand.

24 THE COURT: Well, I don't want to waste his time, but I
25 appreciate you being here, Inv. O'Hara.

1 INV. O'HARA: Thank you, Your Honor.

2 THE COURT: Let me -- let me hear from Mr. Floyd.

3 MR. WHITE: Yes, sir, Judge.

4 THE COURT: And if I feel that something relevant is
5 brought forward, I'll allow you do that.

6 MR. WHITE: Yes, Judge.

7 THE COURT: Mr. Floyd?

8 MR. FLOYD: Yes, Your Honor.

9 THE COURT: Do you have anything you wish to put up with
10 regards to the -- all right. I'll hear from you with regards
11 to -- and again, keep in mind what we're dealing with right
12 now is simply the -- the admissibility of these. There's
13 still some objectionable matters that we will address that
14 may need to be redacted, but we're dealing with just the
15 admissibility of the videos themselves.

16 MR. FLOYD: The voluntariness?

17 THE COURT: The voluntariness. That's correct.

18 MR. FLOYD: Of both videos?

19 THE COURT: Of both videos.

20 MR. FLOYD: Okay. And, Your Honor, certainly on the
21 first video, my objection is is that I think certainly
22 there's evidence that any statement he made would not have
23 been voluntary at that time, the first one when he was
24 brought back from the beach.

25 I think the investigator as well had certainly concerns

1 that he was not capable of -- of giving an interview at that
2 point because of his mental state due to lack of sleep,
3 drugs, whatever, whatever the case may be, but so as far as
4 that statement, Your Honor, I would certainly object based on
5 just I just don't think it was a voluntary statement.

6 THE COURT: Okay.

7 MR. FLOYD: But, Your Honor, the second interview on the
8 9th, I just leave that to the Court's discretion, Your Honor.

9 THE COURT: All right. Of course, subject to any
10 redactions that need to be made.

11 MR. FLOYD: Yes, sir.

12 MR. WHITE: Yes, Judge.

13 THE COURT: I'm going to allow the -- let me -- let me
14 address the second first. I'm going to allow the second
15 interview into the record, subject to any redactions that
16 need to be made. I think -- I don't think there's any issue
17 regarding Mr. Smith's voluntariness or his ability to give a
18 statement at that point. That he appears to be lucid, well
19 rested, and I -- I don't think there's any concern regarding
20 that.

21 As to the first video, I'm going to -- I'm going to
22 allow the portion of the video in that deals with where Inv.
23 Price comes into the room to talk with Mr. Smith and there's
24 the colloquy that Mr. Smith indicates he doesn't feel up to
25 it and doesn't want to do it and then they don't do it and

1 allow that in through to the end of that because that's not
2 -- that's not a video of the statement -- of a statement
3 pursuant to Miranda because there wasn't one.

4 But I don't think it's any different than that of an
5 in-car camera that is on during transportation and someone is
6 just chatting. It's certainly subject to the concerns that
7 you had. It is certainly subject to cross-examination and
8 attack.

9 As a matter of fact, depending on how you view it, it
10 could be very beneficial to Mr. Smith's position that that is
11 babble and shouldn't be considered, but I don't think it's --
12 I don't think it's inadmissible I guess is what I'm saying
13 under that restricted -- not the portion where he first comes
14 in and I think Officer Moore is in there with him. Is it
15 Officer Moore who is in there with him initially?

16 MR. WHITE: Yes, Your Honor.

17 THE COURT: And there's that chatter going on. I don't
18 think that -- that doesn't comes in.

19 MR. WHITE: Okay.

20 THE COURT: But where Inv. Price enters the room, you
21 can start it at that point.

22 MR. WHITE: Yes, sir, Judge.

23 THE COURT: And I would -- my other suggestion would be
24 on that one, since we're open to redacting these things to
25 the relevant portions, is that once that ends and that

1 concludes, I think Officer Moore comes back in and they re-
2 put the cuffs back on Mr. Smith. I think you can end it
3 there.

4 MR. WHITE: Yes, sir. Sure.

5 THE COURT: And not put all that in.

6 MR. WHITE: Yes, sir.

7 THE COURT: All right. So that's as far as those.

8 Now, I know y'all -- is there anything else we need to
9 take up? Because I know y'all still need to get together to
10 go over this this afternoon --

11 MR. WHITE: The --

12 THE COURT: -- about the --

13 MR. WHITE: I'm sorry, Judge.

14 THE COURT: About the --

15 MR. WHITE: The voluntariness of the first statement.

16 THE COURT: No. The first statement -- the first -- and
17 now we're not on the video. We're just on a statement made.

18 MR. WHITE: Yes, sir.

19 THE COURT: I'm going to take some time to think about
20 that one.

21 MR. WHITE: Yes, sir, Judge.

22 THE COURT: And that's involving the two statements that
23 were made walking from the patrol vehicle into the detention
24 center.

25 MR. WHITE: Yes, sir, Judge.

1 THE COURT: All right.

2 MR. WHITE: And Mr. Floyd and I will get together on
3 redacting.

4 THE COURT: Okay.

5 MR. WHITE: And I'll make sure that it's --

6 THE COURT: Okay. And if you need me on that, I'll be
7 in the office.

8 MR. WHITE: Yes, sir.

9 THE COURT: I'm not going anywhere, but -- and then the
10 other -- the other issue?

11 MR. WHITE: Judge, it is the dying declaration. If
12 you'd like to --

13 THE COURT: The dying declaration?

14 MR. WHITE: If you'd like to hear from it, it would be
15 the State's position that, you know, we can certainly call
16 witnesses to provide the Court some context that would, you
17 know, better bolster the dying declaration coming in. I
18 think, in and of itself, it's an excited utterance and should
19 be allowed in under just that premise, Judge, and if you'd
20 like to hear it and issue a ruling, then --

21 THE COURT: And, of course, Mr. Floyd, you're familiar
22 with the --

23 MR. FLOYD: The 9-1-1.

24 THE COURT: -- 9-1-1?

25 MR. FLOYD: Yes, sir.

1 THE COURT: And the -- and the comment that apparently
2 or allegedly was made.

3 MR. FLOYD: And out of -- yes, sir. Well, I knew, Your
4 Honor, that the officer had questioned Mr. Kemmerlin,
5 according to the officer's report, and I was aware of the
6 statement through that report that he made.

7 THE COURT: Okay.

8 MR. FLOYD: Frankly, when I listen to the 9-1-1 tape, I
9 don't know if it was my speakers or what, but --

10 THE COURT: It's hard to hear.

11 MR. FLOYD: It wasn't clear to me he was saying what --
12 what they said. But, of course, you know, the person who
13 made the call laid the phone down. I think he went to answer
14 the door.

15 THE COURT: Yeah.

16 MR. FLOYD: And it was -- you know, there was some other
17 noise.

18 THE COURT: Chaotic.

19 MR. FLOYD: Right.

20 THE COURT: But the -- the statements as testified to in
21 the report were -- that were made by the victim, who then
22 subsequently died at that point.

23 MR. FLOYD: And, Your Honor, my understanding of the law
24 certainly is, you know --

25 THE COURT: Yeah.

1 MR. FLOYD: That any statement he made to that police
2 officer could --

3 THE COURT: I think so.

4 MR. FLOYD: -- certainly be testified to.

5 THE COURT: I think under that scenario and that fact
6 situation, that is a -- would come in under the hearsay
7 exception of a dying declaration.

8 MR. FLOYD: Correct.

9 THE COURT: So I would allow that in.

10 MR. WHITE: Okay. Very good, Judge. Thank you.

11 THE COURT: Now, if you -- if you need me on -- as you
12 deal with this stuff, I'll be here. I'll also be here, you
13 know, early in the morning. You know, I'll be -- I'll be
14 here by 8:30. So if y'all need me before this. Is there
15 anything we need to take up before then though?

16 MR. WHITE: I don't think so, Judge.

17 THE COURT: Okay. Just let me know.

18 MR. FLOYD: Yes, sir. I'll be here at 8:30.

19 THE COURT: Krystal, if you could be here before --
20 like, around 9 if we need to take up any --

21 THE COURT REPORTER: I'll be here at 8:30.

22 THE COURT: Okay. If you need to take up anything,
23 Krystal said she will be here at 8:30 as well. So --

24 MR. WHITE: Okay.

25 THE COURT: -- if you need us to take up something prior

1 to that, just I'll be in the office. Let me know.

2 MR. FLOYD: Yes, sir, Your Honor.

3 THE COURT: Okay.

4 MR. WHITE: Thank you very much.

5 THE COURT: All right. Thank you, folks.

6 (WHEREUPON, there was a break in the proceedings from
7 3:44 p.m. until 3:46 p.m., after which the proceedings
8 resumed as follows.)

9 THE COURT: Scott, do you -- I just thought while we're
10 here, Krystal here --

11 MR. FLOYD: Yes, sir.

12 THE COURT: -- that -- or we can do it -- would you
13 rather Mr. Smith be here? We're going to -- we're going to
14 draw the alternate that's going to be on the jury.

15 MR. FLOYD: I've already explained to him about that
16 situation. He's aware of it.

17 THE COURT: Okay. All right. So what we're going to do
18 now is we're going to -- Nicole is going to put their names
19 here and draw from them in this cup. I'm going to have
20 Bennett pull a name out and then it will either be Mr. Harvey
21 or Mr. Powell.

22 MR. FLOYD: Yes, sir.

23 THE COURT: Ask Bennett if he'll do the honors.

24 THE CLERK: Here you go, Judge.

25 THE COURT: He's efficient. Okay.

1 THE CLERK: Jacob Powell.

2 THE COURT: All right. That would be Juror Number 131.
3 Mr. Powell will be moved to the main panel and then we'll
4 proceed.

5 MR. FLOYD: Yes, sir.

6 THE COURT: All right.

7 MR. FLOYD: Thank you.

8 MR. WHITE: Thank you, Your Honor.

9 THE COURT: Thank you, folks.

10 (WHEREUPON, the proceedings adjourned for the day at
11 3:48 p.m.)

12 MARCH 19, 2019

13 (WHEREUPON, the proceedings resumed at 10:00 a.m.)

14 THE COURT: All right. Anything we need to take up from
15 the State before we get started?

16 MR. WHITE: Nothing on behalf of the State, Judge.

17 THE COURT: Anything from the defense?

18 MR. FLOYD: Nothing, Your Honor.

19 THE COURT: All right. Bring the jury in, please.

20 (WHEREUPON, the jury entered the courtroom at 10:02
21 a.m.)

22 THE COURT: All right. Good morning, ladies and
23 gentlemen. I hope everyone had a good evening and are ready
24 to get started and get to work today.

25 You'll notice -- you may notice that one of your members

1 is not present. We had to excuse Ms. Knight from
2 participation in this case. And the way the procedure works
3 for criminal matters when we have more than one alternate is
4 we put the alternates' names in a hat and pull a name out of
5 the hat.

6 So, Mr. Powell, you are now -- have been moved from
7 alternate status to the starting lineup. And you're fine to
8 remain there for right now, but just wanted to let you know
9 that.

10 And, Mr. Harvey, you'll maintain your status as an
11 alternate in case we need you.

12 It's not easy being an alternate in a -- in any type of
13 a trial because it's very important in this case Mr. Harvey
14 be present and listen to everything and be just as much
15 involved and engaged as any one of you because at any one
16 time if any -- if anyone here is unable to continue their
17 service, then you would have to step in that place and,
18 obviously, it's important that you know everything that the
19 main panel knows.

20 So, Mr. Powell, you are now part of the main panel, and
21 we're getting -- we're ready to proceed.

22 I've got a few preliminary remarks that I want to make
23 to you, but before I do that, I'm going to ask, if you would,
24 to give Madam Clerk your attention. She's going to place you
25 under your oath for your role as jurors in this trial.

1 THE CLERK: If all of you will please stand and raise
2 your right hand.

3 (WHEREUPON, the jurors complied.)

4 THE COURT: You shall well and truly try and a true
5 deliverance make between the State of South Carolina and the
6 defendant at the bar, whom you shall have in your charge, and
7 a true verdict render according to the law and evidence, so
8 help you God.

9 Please be seated.

10 (WHEREUPON, the jurors complied.)

11 THE COURT: All right. Ladies and gentlemen, we are
12 about to begin the trial of the case of the State of South
13 Carolina versus Michael Smith. That -- you heard the
14 preliminary matters and the allegations that Mr. Smith is
15 before the Court on, but I want to share a few things with
16 you before we get into the case itself.

17 I don't know how many of you have actually been on a --
18 been -- or served on a jury trial before. Most people's
19 experience with jury trials are the things that they've
20 watched on television or they've seen in the movies or what
21 they've read in books. Most individuals or laypeople don't
22 have the opportunity to sit in on an actual jury trial, such
23 as you're doing this week.

24 And as we know from those other experiences that I just
25 mentioned, they're always full of high drama and intense

1 action and riveting circumstances. That's Hollywood's way of
2 grabbing our attention and entertaining us. And while any of
3 those things could occur during the course of this trial, the
4 important thing to understand about this trial is this trial
5 is not for your entertainment.

6 This trial is a fundamental part of our democracy, and
7 unlike movies, books, and TV, this trial may proceed quickly.
8 It may be slow. It may be very deliberate. It may be
9 repetitive. There's any number of things that could go on,
10 but the important thing to know is that it's probably more
11 than likely going to be very different from what your
12 experience has been from TV, magazines, books or movies.

13 This courtroom is a place of honor that is dedicated to
14 the protection and to the preservation of citizens' rights
15 through what most people have called the greatest justice
16 system ever created. The attorneys that appear before you,
17 they are advocates for the parties that they represent, but
18 first and foremost, they are officers of the Court sworn to
19 uphold the integrity and the fairness of our judicial system.
20 You should expect them to be professional, competent, and
21 ethical in the performance of their duties.

22 Now, you've just taken an oath to try this case and to
23 reach a fair and a just verdict and you are also expected to
24 be professional, reasonable, and ethical in the performance
25 of your duties, and I have absolutely no doubt you'll do just

1 that. I want to thank you for your participation into our
2 system of justice here in Florence County.

3 I'm going to share a few things with you before I turn
4 it over to the attorneys. This is not a charge on the law,
5 but it is kind of a guidelines as to how the case is going to
6 go and maybe make it easier for you to follow along.

7 In this case, Mr. Smith is charged by the indictment
8 that I read to you yesterday and that was filed with this
9 Court. That indictment charges Mr. Smith with the crime of
10 murder. The elements of that crime I will explain to you
11 later.

12 But as I told you yesterday, the indictment is simply
13 the charge which brings this case into this court. It is not
14 in any sense evidence of any of the allegations that it
15 contains.

16 To that indictment, Mr. Smith has pled not guilty. That
17 plea of not guilty places the burden of proof upon the State
18 to prove each and every element of the indictment beyond a
19 reasonable doubt.

20 It will be your job, ladies and gentlemen, to determine
21 whether or not the State has met that burden. Your purpose
22 as jurors is to find and to determine the facts of this case.
23 You are the sole judges of the facts of this case. If at any
24 time I make any comment regarding the facts or the evidence,
25 you must disregard those comments because only you, the jury,

1 are allowed to decide what the true facts of this case are.

2 You are to determine those facts from the testimony as
3 you hear it here in this court and any other evidence that is
4 produced during the course of this trial. It is up to you to
5 determine what inferences that you feel are appropriate and
6 may be properly drawn from that evidence. It is especially
7 important that you perform your duty of determining the facts
8 diligently and conscientiously because ordinarily there is no
9 way for this Court to correct an erroneous determination of
10 facts by a jury.

11 Now, on the other hand but with equal emphasis, the same
12 law that makes you the judges of the facts makes me the judge
13 of the law. The law as given to you by the Court is the only
14 law that you may consider. You must accept it and you must
15 follow it, even though you may disagree with it.

16 I cannot tell you what I think about the facts of this
17 case and you're not allowed to disagree with me about what
18 the law is or what you think the law should be. Your job is
19 to take the law as I give it to you and apply it to the facts
20 as you find the facts from the evidence and the testimony and
21 the witnesses that are introduced during the course of this
22 trial.

23 Now, it is important that until I advise you to begin
24 your deliberations -- it is very important that you have no
25 conversation with anyone about this case, that you have no

1 discussions about this case with anyone. It is important
2 that throughout this trial that you keep an open mind and
3 that you do not decide any issue in this case until all of
4 the evidence has been presented, the attorneys have had an
5 opportunity to address you with their closing remarks, and I
6 have given you the instruction on the law. Only then would
7 it be appropriate for you to have any discussions or
8 deliberations regarding this case.

9 It will be your solemn responsibility to determine the
10 guilt or innocence of the defendant, and your verdict must be
11 based solely upon the evidence as it is presented during the
12 course of this trial and on the law as I give it to you at
13 the end of this case.

14 Now, in just a moment, I'm going to recognize the
15 solicitor for his opening statement. I don't know what he'll
16 share with you, but typically what you hear in an opening
17 statement is what the State intends to produce during the
18 course of the trial. It's typically something that discusses
19 what issues the State feels are appropriate and how they
20 intend to present their case.

21 Once they've concluded their opening remark, I'll then
22 recognize the attorneys for the defendant and they may make
23 an opening statement as well, although they're not required
24 to.

25 The thing that is very important for you to understand

1 is this. What the attorneys tell you in their opening
2 statements is not evidence. They are not under oath. They
3 are not testifying. What they are going to share with you is
4 merely their belief or their thoughts as to what they think
5 the evidence in this case may reveal.

6 The evidence in this case is going to be presented to
7 you by the testimony of witnesses who are placed under oath
8 and testify from the witness stand and then any other
9 exhibits that may come in during the course of this trial.

10 Now, during this trial, you may hear one of the
11 attorneys say something along these lines. Judge, we have a
12 matter of law we need to take up with the Court or, Your
13 Honor, may we approach the bench. If I can resolve a matter
14 of law up here at the bench, I will do that, but depending on
15 what the issue is, I may need to ask you to step back into
16 the jury room while I deal with a matter of law.

17 If I were to ask you to do that, the only reason I would
18 do that is, as I told you earlier, I'm not to have any
19 influence over you about the facts of this case. Well,
20 sometimes when I'm having to make a ruling on an issue of
21 law, it requires me to make a comment or make some remark
22 about the evidence or the testimony in connection with that
23 ruling. Well, to protect you from those comments, I may ask
24 you to step back into the jury room, allow me to resolve the
25 matter of law, and then bring you back out and we'll pick up

1 right where we left off.

2 In determining what the true facts are of this case, you
3 are going to have to decide whether or not the testimony of
4 the witnesses is believable. It will be my responsibility to
5 rule as a matter of law whether certain testimony is allowed
6 into evidence or not, but once testimony is allowed into this
7 case, whether or not you believe it is solely up for you to
8 decide.

9 In deciding whether to believe a witness, you have the
10 right to consider anything in this record that would help you
11 in determining the credibility or the believability of the
12 witnesses. You have the right to consider the interest of a
13 witness, the bias of any witness, the opportunity for the
14 witness to have seen the matters and the things about which
15 that witness testifies. You have the right to consider
16 anything in this record that will help you in making that
17 evaluation.

18 So that means it's very important that you pay close
19 attention to every witness that testifies. Listen carefully.
20 Observe the witness. Listen carefully to the attorneys, as
21 well as to the Court. Don't let your thoughts wander, but
22 pay strict attention to all of the evidence that is presented
23 so that at the end of the presentation of the evidence, after
24 the attorneys have had an opportunity to address you with
25 their closing remarks and I've given you the law, you will

1 then be in a position to go back into your jury room and to
2 begin your deliberations.

3 Now, before I turn it over to the attorneys for their
4 opening statements, let me first inquire from the State are
5 there any objections or exceptions to the Court's opening
6 remarks?

7 MR. WHITE: None on behalf of the State, Judge.

8 THE COURT: Anything from the defense?

9 MR. FLOYD: None for the defense, Your Honor.

10 THE COURT: All right. Thank you, sir.

11 Now, ladies and gentlemen, if you would, please give the
12 attorneys your undivided attention as they address you with
13 their opening remarks.

14 Mr. White?

15 MR. WHITE: Thank you, Judge. May it please the Court.

16 THE COURT: Yes, sir.

17 OPENING STATEMENT ON BEHALF OF THE STATE

18 MR. WHITE: Words. You know, it's been written that
19 words have energy and power with the ability to heal, to
20 help, to hinder, to harm, to humiliate, and to humble. In
21 short, words can do it all. Words have meaning. Words can
22 be powerful.

23 On February 1st, 2017, a man was murdered here in
24 Florence County. It happened right over on Francis Marion
25 Road. It's what brings us all here today.

1 That man was shot first in the back. The bullet went
2 through his right lung and exited the front of his chest.
3 Then he was shot again as he was attempting to flee, to
4 escape to safety. That shot hit him in the front. The
5 bullet passed through the right forearm and exited the right
6 forearm and re-entered the body where it then pierced his
7 liver, traveled through several loops of his intestine, where
8 it finally lodged in his left hip.

9 That man's name is Kenny Kemmerlin. He was 56 years
10 old. He was a husband. He was a father. He was a
11 grandfather. He was a friend.

12 Now, ladies and gentlemen, although he was pronounced
13 dead a short time after those gruesome injuries, you're going
14 to hear from him this morning. You're going to hear his
15 final words. You see, after he was shot, his good friend,
16 Craig Williams, called 9-1-1. Mr. Williams is going to take
17 that stand and you're going to hear from him. He's an
18 eyewitness to this murder and his words will be powerful.

19 That 9-1-1 call was recorded. It was recorded by
20 dispatch, and the final words of Kenny Kemmerlin are also
21 captured on that recording. And what is captured on that
22 recording, ladies and gentlemen, it does not happen every
23 day. It does not happen on every case, I can assure you.
24 But what is recorded on that call is Kenny Kemmerlin naming
25 his killer with his final words, and those final words will

1 be powerful.

2 Now, the killer fled the scene. He fled the scene of
3 the shooting and he went home. He got in a vehicle with his
4 wife. His wife drove him down to the beach, but on the way a
5 curious thing happened. The killer puts out his right hand
6 and he put it in the wife's face and he asked her do you
7 smell anything. He told her the smell was gunpowder. He
8 told her the smell was gunpowder from the gun he had just
9 used to shoot Kenny Kemmerlin.

10 That wife's words will be powerful. Her name is Debra
11 Smith. She's going to take that stand and you're going to
12 hear from her.

13 The killer evaded law enforcement for three days and,
14 ultimately, law enforcement caught up to him. They took him
15 into custody and he told investigators he wanted to confess.
16 So they brought him back to Florence from the beach, put him
17 in an interview room, and there he admitted to firing the
18 shots that killed Kenny Kemmerlin, and that interview was
19 recorded.

20 So the killer, you're going to hear from him. And when
21 you do, when you hear that recording, ladies and gentlemen, I
22 want you to pay attention to every word and, at the end of
23 this trial, I'm going to speak to you again. All right? I'm
24 going to break down those words. I'm going to point out some
25 inconsistencies for you, but I want you to hang on every word

1 because every word in this trial has meaning.

2 Words. Energy and power to help and to heal, to harm
3 and to hinder, to humiliate and to humble. And whether
4 you're using those words to heal or using those words to hurt
5 or humiliate, you know what? We all have one thing in
6 common, and that's that we hope to use our words tomorrow,
7 whether it be to socialize with friends, to communicate with
8 a spouse, to educate our children so they will learn from our
9 mistakes. Words are valuable, and there will be a lot of
10 valuable words throughout this trial, but none will be as
11 important as those you will speak, I guarantee you.

12 Judge Russo will hand you a verdict form at the end of
13 this case and on it will be your collective words. And
14 you'll pass it up first to the judge and then to the clerk
15 and then we will all hear from you, and your words will be
16 powerful and your words will have meaning and, ladies and
17 gentlemen, they'll be the final words uttered in this case.

18 On February 1st, 2017, with his final words, Kenny
19 Kemmerlin used them to name the man that shot him. That
20 man's name is Michael Smith. He's seated right over there
21 with his attorney. On February the 1st, 2017, Kenny Kemmerlin
22 used his final words to name Michael Smith as his killer and,
23 at the end of this case, I want you to use your final words
24 to find him guilty of murder.

25 THE COURT: Thank you, Mr. White.

1 Ms. Henderson?

2 MS. HENDERSON: May it please the Court.

3 THE COURT: Yes, ma'am.

4 MS. HENDERSON: Counsel.

5 OPENING STATEMENT ON BEHALF OF THE DEFENDANT

6 MS. HENDERSON: Ladies and gentlemen of the jury, good
7 morning. My name is Christy Henderson and I'm here with Mr.
8 Scott Floyd today on behalf of our client, Mr. Michael Smith.
9 You'll also see present in the courtroom members of his
10 family, including Ms. Shirley and Joe Smith, his grandparents
11 from Horry County. On behalf of the defense, we would like
12 to thank each and every one of you for serving here today and
13 for your invaluable time. Thank you.

14 Aesop once said every truth has two sides. It is as
15 well to look at both before we commit ourselves to either.

16 Ladies and gentlemen of the jury, today this is what I
17 ask each and every one of you all to do. Please listen to
18 the other side of the story.

19 We are here because Mr. Smith is accused of murdering
20 Mr. Kemmerlin. Mr. Kemmerlin's death is a horrific tragedy,
21 a horrific event, and no words can adequately convey the
22 depth of how sorry we are to his loved ones for their loss.

23 However, through the course of this trial, you will see
24 that the evidence just isn't there to sustain a conviction
25 against Mr. Smith. Mr. Smith is not guilty of the crime of

1 which he is charged.

2 I'm not trying to discredit the prosecution. I'm not
3 trying to discredit law enforcement. I'm certainly not
4 trying to discredit the family. I'm simply trying to show
5 the truth.

6 Before I talk with you about what I believe the truth to
7 be, I want to make one fact perfectly clear to each of you.
8 We do not contest the fact that Mr. Smith shot Mr. Kemmerlin.
9 You'll hear evidence discussing this. We agree this
10 happened.

11 That fact, however, is not the issue in this case. The
12 only issue here is whether Mr. Smith murdered Mr. Kemmerlin.
13 In other words, ladies and gentlemen, are the events that the
14 prosecution will tell you surrounding February the 1st, 2017,
15 true. We, the defense, do not believe that the prosecution
16 will be able to show you this.

17 This brings me to two important things. First, as Judge
18 Russo explained earlier to you, the State has the burden of
19 proof. This burden never shifts to the defendant. The
20 Constitution requires the State to prove each element of the
21 crime of which Mr. Smith is charged beyond a reasonable
22 doubt.

23 We, as the defense, do not have to prove a thing. You,
24 as the jury, do not have to convict unless you are satisfied
25 beyond a reasonable doubt that Mr. Smith is guilty.

1 Second is the presumption of innocence. Mr. Smith is
2 presumed innocent until proven guilty.

3 Ladies and gentlemen, your role in this world changed
4 just a few minutes ago when you stood up and took that oath.
5 You were asked to raise your hand and swear that you would
6 follow the law in this case. This sounds so easy, but this
7 very well might be the most important promise you make in
8 your life.

9 You see, after that indictment was read, after you heard
10 the prosecution's opening statement, you were saying this guy
11 must've been a little bit guilty or why are we taking up all
12 of his time, the judge's time, this Court's time. If you sit
13 here with any inkling whatsoever in your soul, in your heart,
14 in your conscience that Mr. Smith has done anything wrong,
15 then you are violating that very oath that you took minutes
16 ago. You have to presume he is innocent.

17 I ask you, ladies and gentlemen, at this time to
18 withhold your judgment until you have heard all of the
19 evidence from all of the witnesses. I am confident that upon
20 hearing all of the evidence you will render a verdict that is
21 fair, a verdict of not guilty. Thank you.

22 THE COURT: Thank you, Ms. Henderson.

23 All right. Mr. White, you may call your first witness.

24 MR. WHITE: Thank you, Judge. At this time, the State
25 calls Daniel Craig Williams.

DANIEL CRAIG WILLIAMS - DIRECT BY MR. WHITE

1 THE COURT: All right. Mr. Williams, if you'd please
2 come around to be sworn, sir.

3 THE CLERK: If you will, please step up there. Place
4 your left hand on the Bible and raise your right hand. Do
5 you swear the testimony you give in this case to be the
6 truth, the whole truth, and nothing but the truth, so help
7 you God?

8 THE WITNESS: I do.

9 THE CLERK: Please be seated and state your full name
10 for the record.

11 THE WITNESS: Hi. My name is Daniel Craig Williams.

12 DANIEL CRAIG WILLIAMS, being
13 first duly sworn testified as follows:

14 DIRECT EXAMINATION

15 BY MR. WHITE:

16 Q: Good morning, Mr. Williams. How are you doing?

17 A: I'm doing good.

18 Q: Mr. Williams, thanks for being here with us today.
19 Where do you live?

20 A: I live at [REDACTED] Francis Marion Road.

21 Q: All right. Are you a little bit nervous?

22 A: Yeah, I am.

23 Q: Don't worry. Just speak up clearly so we can hear you
24 and we'll get through it together. All right?

25 A: Okay.

DANIEL CRAIG WILLIAMS - DIRECT BY MR. WHITE

1 Q: Now, is that location -- is that in Florence County?

2 A: Yes, it is.

3 Q: And how about employment? Where do you work?

4 A: I work at Food Lion.

5 Q: And how long have you been working there?

6 A: I've been working there about three months now.

7 Q: And what do you do for Food Lion?

8 A: I'm a frozen food manager.

9 Q: Okay. Now, I understand you have some military service;

10 is that correct?

11 A: Yes, sir. Uh-huh.

12 Q: And what did you do in the military?

13 A: I was a forward observer, First Infantry Division,

14 Seventh Artillery.

15 Q: How long did you serve?

16 A: I served for three-and-a-half years, sir.

17 Q: And when was the last time you were in service?

18 A: 2010.

19 Q: Did you have any time overseas?

20 A: Yes, sir.

21 Q: Were you deployed?

22 A: Yes, sir. I served in Iraq.

23 Q: Now, you said forward observer. Can you tell us a

24 little bit about what that is?

25 A: Well, we -- we are the key people that go out and we

DANIEL CRAIG WILLIAMS - DIRECT BY MR. WHITE

1 sight the artillery for the artillery fire, and we call it in
2 and we give grid coordinates so the artillery, the cannon
3 people, can fire the cannons and hit the -- hit their
4 targets.

5 Q: Now, does that mean you had to spend some time behind
6 enemy lines?

7 A: Yes, it is. Uh-huh.

8 Q: And you said -- you mentioned sight. Do you have to
9 have good sight to be a forward observer?

10 A: Yeah, you do. Uh-huh.

11 Q: Not only have good sight, are you trained in observing?

12 A: Yes, we are.

13 Q: Are you trained in how to spot certain things?

14 A: Yes, we are.

15 Q: Are you trained in both day and night in your
16 observations?

17 A: Yes, sir.

18 Q: And what did you say your address was again?

19 A: [REDACTED] Francis Marion Road, Apartment [REDACTED].

20 Q: And on February the 1st, 2017, did an incident occur?

21 A: Yes, sir.

22 Q: The victim in this case, Mr. Kenny Kemmerlin, did you
23 know him?

24 A: Yes, I did. He was my best friend.

25 Q: Okay. How about the defendant in this case? Did you

DANIEL CRAIG WILLIAMS - DIRECT BY MR. WHITE

1 know him?

2 A: Yes, I did.

3 Q: How did the victim meet the defendant?

4 A: He met -- he met him through me because Michael Smith
5 had came to my house approximately a year before the
6 incident, maybe six -- maybe nine months to a year before the
7 incident and asked me did he know anywhere that he could get
8 anything from.

9 Q: And when you say anything?

10 A: Prescription medicines.

11 Q: Okay. Now, at various times, did Kenny Kimberlin sell
12 or trade prescription medication?

13 A: Yeah, he did.

14 Q: Did he sell to a lot of people?

15 A: No, he did not.

16 Q: Did -- would you classify him as a big-time drug dealer?

17 A: No. No, I would not.

18 Q: Would you say he traded prescription medications on a
19 small scale?

20 A: Yes, I would. Very small scale.

21 Q: All right. On February 1st, 2017, were you and Kenny
22 together that day?

23 A: Yes, we were.

24 Q: And what were you guys doing?

25 A: We had went to the -- to his job site first because I

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1 was helping him put a roof on his -- his river house. And we
2 then decided we weren't going to finish work that day and he
3 had taken me to the grocery store and helped me buy some
4 groceries and then taken me home.

5 Q: Is that something he did often?

6 A: Yes, he did. Uh-huh.

7 Q: And what I mean is taking you to buy groceries?

8 A: Yeah. Uh-huh.

9 Q: Did he take you any other places?

10 A: Well, he took me back and forth to work because he
11 always picked me up from work.

12 Q: Was he a good friend to you?

13 A: Yes, he was. He was a very good friend.

14 Q: Did Kenny then drop you back off at your house?

15 A: Yes, he did.

16 Q: At that point, did you hear from the defendant in this
17 case?

18 A: Yes, I did.

19 Q: All right. Could you tell us a little bit about that?

20 A: He called me up and he asked me if I knew where Kenny
21 was and I said, yeah, he's waiting to hear from you and --
22 because I knew that Michael Smith had owed him -- owed him
23 some money. And then I called Kenny and told him that
24 Michael had called me and that I think that they had -- they
25 talked then over the phone. And that's when Michael pulled

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1 up at my house a little bit later.

2 Q: Okay. And Michael pulled up first?

3 A: Yes, he did. Uh-huh.

4 Q: Did Kenny pull up a short time thereafter?

5 A: Yes, he did. Uh-huh.

6 Q: And was your understanding that they were there --

7 A: To --

8 Q: -- in order for Michael to pay him some money he owed?

9 A: Uh-huh. Uh-huh.

10 Q: All right. And where were you when Michael pulled up?

11 A: I was standing outside of my apartment on the front

12 porch.

13 Q: Okay. And where were you when Kenny pulled up?

14 A: I was standing -- still standing outside.

15 Q: All right.

16 A: Because he pulled up right after Mike.

17 Q: Okay. And what did Mike do whenever Kenny pulled up?

18 A: He got out of his car and he said -- well, I'll just

19 talk to you in your car, to Kenny, because we don't need to

20 go in Craig's apartment.

21 Q: All right. Did Mike have anybody with him?

22 A: Yes, he did. He had one black male with him.

23 Q: Okay. And did you see Mike get in the car with Kenny?

24 A: Yes, I did.

25 Q: In what, you know, side of the car did he go?

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- 1 A: He got inside in the passenger-side front door.
- 2 Q: Okay. And you mentioned a black male?
- 3 A: Uh-huh.
- 4 Q: What side --
- 5 A: He got in the passenger-side rear door.
- 6 Q: Okay. And then what did you do?
- 7 A: I went inside because I was watching *Game of Thrones*. I
- 8 had ordered it.
- 9 Q: Good show?
- 10 A: Uh-huh.
- 11 Q: When Mike, the defendant in this case, is walking
- 12 towards Kenny's car --
- 13 A: Uh-huh.
- 14 Q: Did you see anything in his hands?
- 15 A: No, I did not.
- 16 Q: Okay. Now, you mentioned you went back inside?
- 17 A: Uh-huh.
- 18 Q: You were watching *Game of Thrones*; correct?
- 19 A: Uh-huh.
- 20 Q: Okay. Now, if you could, walk us through what happened
- 21 next?
- 22 A: Well, I heard something that sounded like somebody hit
- 23 my air condition. It was a big pow and I thought somebody
- 24 had ran into my air conditioner because it sticks out. My
- 25 recliner is here and my -- my window is here and my air

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1 conditioner is right here. So I stood up and then I heard
2 three more pows, pow pow pow, and that's when I noticed that
3 Kenny was coming around the front of his car and Mike was
4 retreating away back towards his car.

5 Q: And what did you understand was happening?

6 A: I noticed that Mike had a gun in his hand, yes.

7 Q: Okay. And did he shoot Kenny?

8 A: Yes, he did.

9 Q: And did you witness that?

10 A: I did not witness the shots going out of his gun and
11 into Kenny. No, I did not. But I could tell that it was him
12 because it was the pow pow pow and I looked outside and he
13 had the gun in his hand.

14 Q: Okay.

15 A: And it was smoking.

16 Q: And do you know for a fact how many shots were fired?

17 A: I think it was four.

18 Q: Okay. But you don't -- that's just what you heard?

19 A: Yeah, that's what I heard. Yeah. Uh-huh.

20 Q: All right. Now --

21 MR. WHITE: Judge, may I approach the witness for just a
22 second?

23 THE COURT: Yes, sir.

24 BY MR. WHITE:

25 Q: Now, Craig, I'm going to pull this dilapidated thing out

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1 and we'll try not to knock it over, but I'm going to get you,
2 if I can --

3 A: Uh-huh.

4 Q: In just a second, but first, I'm going to show you
5 what's been marked as State's Exhibit 1. If you could, tell
6 me do you recognize this diagram? You can stay seated for
7 now.

8 A: Okay. Yes, I do.

9 Q: Okay. And is this a fair and accurate depiction of your
10 residence?

11 A: Yes, it is.

12 MR. WHITE: Judge, at this time, I would move State's
13 Exhibit 1 into evidence.

14 THE COURT: All right.

15 MR. FLOYD: No objections, Your Honor.

16 THE COURT: Without objection, State's 1 is in evidence.
17 (WHEREUPON, State's Exhibit Number 1, large diagram of
18 residence of crime scene, was admitted into evidence.)

19 MR. WHITE: Can everybody see that all right?

20 All right. Mr. Williams, I'm going to ask you to step
21 down, if you don't mind. If you'll just come down here, Mr.
22 Williams.

23 (WHEREUPON, the witness complied.)

24 BY MR. WHITE:

25 Q: Now, if you could, just tell me is this an accurate

DANIEL CRAIG WILLIAMS - DIRECT BY MR. WHITE

1 layout of your house?

2 A: Yes, it is.

3 Q: All right. And this area here, what is that?

4 A: This is the other apartment. This is not my apartment.

5 This is my apartment right here.

6 Q: Okay.

7 A: It's ■.

8 Q: And is this a -- what kind of area is this?

9 A: This is the porch.

10 Q: All right. Is this covered?

11 A: Yes, it is. It's covered.

12 Q: And is this -- and it's marked dirt driveway. Is this

13 your driveway?

14 A: Yes, it is.

15 Q: All right. And whose vehicle is that?

16 A: That's Kenny's.

17 Q: Okay. Is that where he normally would park when he

18 would come to your house?

19 A: He would park either here or here, but Mike was parked

20 right here.

21 Q: All right. And I want -- if you could --

22 A: Uh-huh.

23 Q: Just mark where Mike was parked that day?

24 A: Mike was parked about right here.

25 Q: All right. If you could, around that X -- and just -- I

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1 know it's not a hundred percent accurate, but just mark a
2 square where you think the vehicle was.

3 (WHEREUPON, the witness complied.)

4 Q: All right. And now, Mr. Williams, if you could, point
5 out and mark with a circle the window that you witnessed this
6 out of.

7 A: It's right here.

8 Q: Okay. And just circle it for me.

9 (WHEREUPON, the witness complied.)

10 Q: All right. Now, when you looked out that window, if you
11 could, just mark to the best of your recollection where Kenny
12 was standing?

13 A: Kenny was about right here.

14 Q: Okay. Now, was he making his way --

15 A: Towards my front door.

16 Q: Okay. Now, when you look out the window, can you see a
17 gun clearly in Michael Smith's hands?

18 A: Yes, I can.

19 Q: All right. And where was Mike standing?

20 A: Mike was probably right here.

21 Q: All right. And at what point does Mike fire a shot?

22 A: I would assume that it was right before I looked out the
23 window.

24 Q: Okay.

25 A: Because there was three pops.

DANIEL CRAIG WILLIAMS - DIRECT BY MR. WHITE

1 Q: Okay.

2 A: There was a pop and then there was a second and there
3 was three more pops.

4 Q: All right. Now, in what direction was Kenny facing when
5 he was shot?

6 A: He was facing -- he was facing this way.

7 Q: Okay. All right.

8 A: Because he was running towards these steps to go up to
9 get in my apartment. He was trying to get away. He was
10 trying to flee.

11 Q: Okay. All right. And while Mike is firing, where is
12 the black male located?

13 A: He had gotten out of here and he was about right here.

14 Q: Okay. All right. Thank you very much, Mr. Williams.
15 You can have a seat. Okay?

16 (WHEREUPON, the witness complied.)

17 Q: Now, what, if anything, happened after the shot was
18 fired?

19 A: Kenny came to my door and I was opening the door right
20 then. He was beating on it at the same time that I was
21 pulling it open and he fell into my arms and I -- I tried to
22 give him first aid because that's what I was taught in the
23 Army. So I ran my arms -- my hands down his -- his -- his
24 body and I found the bullet wounds and then I called 9-1-1.

25 Q: Okay. Now, when you were checking him in an attempt to

DANIEL CRAIG WILLIAMS - DIRECT BY MR. WHITE

1 render first aid and to check for bullet wounds, did you feel
2 any weapons on him?
3 A: No, I did not.
4 Q: Did you know him to carry any weapons?
5 A: No, I did not.
6 Q: Did you have any weapons on you?
7 A: No, I did not.
8 Q: When Kenny falls in the door --
9 A: Uh-huh.
10 Q: You catch him; correct?
11 A: Uh-huh.
12 Q: What -- now, let me back up. The vehicle that you
13 marked here --
14 A: Uh-huh.
15 Q: The one that the defendant was in?
16 A: Uh-huh.
17 Q: What kind of vehicle was it?
18 A: It was a Ford, a Trailblazer.
19 Q: Okay. It was a Trailblazer?
20 A: A Trailblazer, yeah. Uh-huh.
21 Q: When you look out, when he falls in that door, where is
22 that Trailblazer?
23 A: It's -- it's still parked right there.
24 Q: Okay.
25 A: But it's starting -- it's starting to -- the doors are

DANIEL CRAIG WILLIAMS - DIRECT BY MR. WHITE

1 closing and he's pulling out.

2 Q: Okay. So he's taking off?

3 A: Yeah, he's taking off. Yeah.

4 Q: Now, when you walk inside and you go watch *Game of*

5 *Thrones* --

6 A: Uh-huh.

7 Q: About how long from the time that you walk inside until

8 the time that you hear the pop?

9 A: Two minutes.

10 Q: Two minutes?

11 A: Uh-huh.

12 Q: And you go straight to the window?

13 A: Uh-huh.

14 Q: And then about how long from the time you're looking out

15 the window until Kenny falls in the door?

16 A: 30 seconds.

17 Q: Okay.

18 A: 20 seconds, maybe.

19 Q: And then how long from the time that he fell in the door

20 to the time you see the Trailblazer?

21 A: It was -- it was instantaneous.

22 Q: Okay.

23 A: It was just -- you know.

24 Q: Okay. And you called 9-1-1; correct?

25 A: Yes, I did.

DANIEL CRAIG WILLIAMS - DIRECT BY MR. WHITE

1 Q: How long does it take before law enforcement arrives?

2 A: They were very quick. They were there within 3 -- 4
3 minutes, I'd say.

4 Q: Okay. And then does EMS arrive on scene after that?

5 A: Yeah, they did. They were about 10 minutes after that,
6 I'd say.

7 Q: Did they then pick Kenny up and transport him?

8 A: Yeah. Uh-huh.

9 MR. WHITE: I beg the Court's indulgence.

10 THE COURT: Yes, sir.

11 BY MR. WHITE:

12 Q: Just one last question.

13 A: Okay.

14 Q: Mr. Williams, when you see Kenny shot, could you tell
15 where he was shot at that time?

16 A: I could see it was somewhere in the abdomen area.

17 Q: Okay. So kind of in his front?

18 A: It was in the front, yeah.

19 Q: All right.

20 MR. WHITE: Thank you, Mr. Williams. I have nothing
21 further. Please answer any questions defense counsel may
22 have.

23 THE WITNESS: Okay. Thank you.

24 THE COURT: All right. Cross-exam?

25 MR. FLOYD: Thank you, Your Honor.

DANIEL CRAIG WILLIAMS - CROSS BY MR. FLOYD

CROSS-EXAMINATION

1
2 BY MR. FLOYD:

3 Q: Mr. Williams, when you made your 9-1-1 call, did you
4 mention actually witnessing anybody shoot a gun in that call?

5 A: I don't think I did, no.

6 Q: Okay. Now, you spoke to, obviously, police officers at
7 the scene; correct?

8 A: Uh-huh.

9 Q: Do you remember speaking to Inv. Helen Cain?

10 A: Uh-huh. Yes, sir.

11 Q: Do you remember her?

12 A: Yes.

13 Q: Okay. Do you remember telling her that -- that you
14 heard shots?

15 A: Uh-huh.

16 Q: Correct?

17 A: Uh-huh.

18 Q: You didn't tell her you saw anything other than Kenny
19 coming in your door, did you?

20 A: No, I did. I did tell her that I -- that I saw Mike
21 falling away with a gun in his hand.

22 Q: Okay. But you didn't tell her that you actually saw him
23 shooting a gun?

24 A: No, I did not. No. Huh-uh.

25 Q: Okay. And is that pretty much the same thing that you

DANIEL CRAIG WILLIAMS - CROSS BY MR. FLOYD

1 told Deputy Robinson? Do you remember talking to him?

2 A: Uh-huh.

3 Q: Did you tell him the same thing?

4 A: Yeah. Uh-huh.

5 Q: Okay. And so when the shots were actually fired, you

6 didn't see any of them?

7 A: No, I did not.

8 Q: Okay. So you don't really know where everybody was

9 situated when those shots were fired, do you?

10 A: No, I don't. Huh-uh.

11 Q: Okay. So that -- that's speculation on your part when

12 you say someone was in a certain place when those shots were

13 going off?

14 A: Well, I mean I saw the gun with the smoke coming out of

15 it in his hand.

16 Q: I understand, but you -- but that is speculation --

17 A: Yes, it is.

18 Q: -- when you say you know where somebody was when the

19 shots were actually --

20 A: Uh-huh.

21 Q: -- fired?

22 A: Uh-huh.

23 Q: Correct?

24 A: Yes, it is.

25 Q: Okay. Now, you said you were friends with Mr.

DANIEL CRAIG WILLIAMS - CROSS BY MR. FLOYD

1 Kemmerlin; is that correct?

2 A: Yes, I was.

3 Q: Okay. And how -- what was the nature of your
4 friendship? How did you meet?

5 A: Well, we met when he owned the tanning bed years
6 earlier, many years earlier, but then I befriended Marshall
7 Hilly, his nephew, a few -- a few years ago. And then we had
8 re-established our friendship after that because Marshall had
9 taken me by his house one time.

10 Q: Okay. So you had been friends for years; is that right?

11 A: Yeah. Uh-huh.

12 Q: And you considered him your best friend?

13 A: Yes, I did.

14 Q: Did you have any business relationship with him at all?

15 A: Well, I was helping him put the roof on his house and he
16 was paying me, yes.

17 Q: And you said you were aware of him selling some
18 prescription drugs?

19 A: Yes, I was.

20 Q: Is that correct?

21 A: Uh-huh.

22 Q: To the defendant?

23 A: Uh-huh.

24 Q: To Mr. -- Mr. Smith?

25 A: Yes, sir. Uh-huh.

DANIEL CRAIG WILLIAMS - CROSS BY MR. FLOYD

- 1 Q: And you were aware of that?
- 2 A: Yes, I was.
- 3 Q: Okay. Now, do you remember speaking to Inv. Ben Price?
- 4 A: Yes, I do.
- 5 Q: Okay. Do you remember him asking you if you knew what
- 6 kind of business they were discussing?
- 7 A: Yes, I do.
- 8 Q: Do you remember telling him you didn't know?
- 9 A: Yes, I do. I was trying not to throw Kenny under the
- 10 bus.
- 11 Q: Okay.
- 12 A: Because I didn't -- you know, it was pretty bad things
- 13 that had happened.
- 14 Q: But you admit you lied to Inv. Price?
- 15 A: Uh-huh.
- 16 Q: Correct?
- 17 A: Well, I mean I -- I just didn't bring it up.
- 18 Q: Well, you told him you didn't know what -- what kind of
- 19 business they were discussing, didn't you?
- 20 A: Yeah, I did.
- 21 Q: I mean that's what you said?
- 22 A: Uh-huh.
- 23 Q: Okay. But you did know?
- 24 A: Uh-huh.
- 25 Q: Correct?

DANIEL CRAIG WILLIAMS - CROSS BY MR. FLOYD

1 A: Yes, I did.

2 Q: Okay. And you, in fact, arranged that particular
3 meeting, did you not?

4 A: Well, yeah.

5 Q: You facilitated it?

6 A: I facilitated it, yeah. Uh-huh.

7 Q: Okay. Were you a witness to any prior meetings between
8 those two about that subject?

9 A: No. Huh-uh.

10 MR. FLOYD: I beg the indulgence of the Court, Your
11 Honor.

12 THE COURT: Yes, sir.

13 MR. FLOYD: Thank you. I don't have any further
14 questions. Thank you.

15 THE COURT: All right. Anything on redirect?

16 MR. WHITE: Yes, sir, Judge.

17 REDIRECT EXAMINATION

18 BY MR. WHITE:

19 Q: Mr. Williams, prior to when the defendant in this case,
20 Michael Smith, arrived at your house --

21 A: Uh-huh.

22 Q: When is the last time he was at your house?

23 A: Probably two days before that maybe.

24 Q: Okay.

25 A: Because he was looking for Kenny.

DANIEL CRAIG WILLIAMS - REDIRECT BY MR. WHITE

- 1 Q: He was looking for Kenny at that time?
- 2 A: Uh-huh.
- 3 Q: All right. Other than when he pulled up, you know,
- 4 right before the incident happened --
- 5 A: Uh-huh.
- 6 Q: Was he there at any time during that day other than that
- 7 point?
- 8 A: No, he was not. No. Huh-uh.
- 9 Q: Now, when you called 9-1-1, what was your emotional
- 10 state like at that time?
- 11 A: I was in shock.
- 12 Q: Okay.
- 13 A: I was very upset.
- 14 Q: When you spoke to law enforcement that evening --
- 15 A: Uh-huh.
- 16 Q: -- had the shock worn off?
- 17 A: No, it hadn't. No, not really.
- 18 Q: I mean has the shock been worn off still?
- 19 A: No, it hasn't. Huh-uh.
- 20 Q: Now, from the time that Michael Smith's vehicle arrives
- 21 until the time it pulls back down that driveway, how long
- 22 would you say all of that time?
- 23 A: 10 to 15 minutes.
- 24 Q: Okay. During that 10 to 15 minutes, did you see any
- 25 other person other than Michael Smith with a gun?

DANIEL CRAIG WILLIAMS - REDIRECT BY MR. WHITE

1 A: No, I did not.

2 Q: And did you testify earlier that you saw that gun

3 smoking?

4 A: Yes, I did.

5 Q: And you saw your friend, Kenny Kemmerlin, clearly in

6 duress?

7 A: Uh-huh.

8 Q: And from that and the shots that you heard --

9 A: Uh-huh.

10 Q: -- you assumed that the bullets came from that gun?

11 A: Yes, I did.

12 MR. WHITE: I beg the Court's indulgence.

13 THE COURT: Yes, sir.

14 MR. WHITE: Mr. Williams, I have nothing further. Thank

15 you very much.

16 THE WITNESS: Okay. Thank you.

17 THE COURT: Anything further?

18 MR. FLOYD: Nothing further, Your Honor.

19 THE COURT: Thank you very much. Thank you, sir.

20 THE WITNESS: Thank you.

21 THE COURT: You may step down.

22 You may call your next witness.

23 MR. WHITE: Thank you, Judge. At this time, the State

24 would call Levi James to the stand.

25 THE COURT: Mr. James, if you'd please come around to be

LEVI JAMES, JR. - DIRECT BY MR. WHITE

1 sworn, sir.

2 THE CLERK: Sir, if you will, please place your left
3 hand on the Bible and raise your right hand. Do you swear
4 the testimony you give in this case to be the truth, the
5 whole truth, and nothing but the truth, so help you God?

6 THE WITNESS: Yes.

7 THE CLERK: Please be seated and state your full name
8 for the record.

9 THE WITNESS: Levi James, Jr.

10 LEVI JAMES, JR., being first
11 duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. WHITE:

14 Q: Good morning, Mr. James. How are you doing?

15 Q: I'm doing well.

16 Q: If you could, tell us where are you employed?

17 A: Florence County Emergency Management.

18 Q: How long have you been employed there?

19 A: Three-and-a-half years now.

20 Q: And what do you do?

21 A: I'm the public information officer for Florence County
22 Emergency Management. Also, Florence County 9-1-1 is also a
23 division under us.

24 Q: Are you familiar through your work with 9-1-1 dispatch?

25 A: Yes.

LEVI JAMES, JR. - DIRECT BY MR. WHITE

1 Q: How are phone calls made and received at 9-1-1?

2 A: Once an incident deeming necessary to call 9-1-1, we
3 receive the call at our 9-1-1 center in Effingham and we CAD
4 the call. It comes with the time, date, who's calling, the
5 telephone number. With technology now, we can pretty much
6 pinpoint where you're at -- pretty much where you're at in
7 the building as well.

8 Q: Okay. Now, are those calls recorded?

9 A: Yes.

10 Q: And how are they recorded? What system are they
11 recorded on?

12 A: We have a Kelloran [ph] recording system stored in our
13 facility and it's stored for 90 to 120 days. If we don't
14 pull that recording off of our recording system, it's purged
15 from our systems due to the size of most files are too big to
16 store for long periods of time.

17 Q: Okay. Until that time, are they secure?

18 A: Yes.

19 Q: All right. Was a 9-1-1 call recorded in this case?

20 A: Yes.

21 Q: Was it secured and copied?

22 A: Yes.

23 Q: Okay. I'm going to show you --

24 MR. WHITE: Judge, may I approach the witness?

25 THE COURT: Yes, sir.

LEVI JAMES, JR. - DIRECT BY MR. WHITE

1 BY MR. WHITE:

2 Q: I'm going to show you what's been marked as State's
3 Exhibit 2. If you could, tell me do you recognize that disk?

4 A: Yes. It's one of our 9-1-1 recordings from our 9-1-1
5 center.

6 Q: Have you had an opportunity to review it?

7 A: Yes.

8 Q: And is it safe to say that there have been no
9 alterations or deletions since the last time that you
10 reviewed it?

11 A: None whatsoever.

12 MR. WHITE: Judge, at this time, I would move State's
13 Exhibit 2 into evidence.

14 THE COURT: Any objection?

15 MR. FLOYD: No objections, Your Honor.

16 THE COURT: All right. State's Exhibit 2 is in evidence
17 without objection.

18 (WHEREUPON, State's Exhibit Number 2, 9-1-1 call on
19 disk, was admitted into evidence.)

20 MR. WHITE: Judge, that is all that I have for this
21 witness.

22 Thank you, Mr. James.

23 THE COURT: Any questions for Mr. James?

24 MR. FLOYD: Your Honor, we don't any questions for this
25 witness.

TRACY TOLSON - DIRECT BY MR. WHITE

1 THE COURT: All right. Mr. James, thank you very much,
2 sir. You may step down.

3 Any objection to Mr. James being excused?

4 MR. FLOYD: No objection.

5 THE COURT: All right. You're free to go, sir.

6 THE WITNESS: Thank you.

7 MR. WHITE: Judge, at this time, the State would call
8 Officer Tracy Tolson.

9 THE COURT: All right. Officer Tolson, please come
10 around to be sworn, please.

11 THE CLERK: Ma'am, if you will, please place your left
12 hand on the Bible and raise your right hand. Do you swear
13 the testimony you give in this case to be the truth, the
14 whole truth, and nothing but the truth, so help you God?

15 THE WITNESS: I do.

16 THE CLERK: Please be seated and state your full name
17 for the record.

18 THE WITNESS: Tracy Tolson.

19 TRACY TOLSON, being first duly
20 sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. WHITE:

23 Q: Officer Tolson, where are you employed?

24 A: Francis Marion University Police Department.

25 Q: How long have you been employed there?

TRACY TOLSON - DIRECT BY MR. WHITE

- 1 A: I've been back there since November of 2009.
- 2 Q: Is it safe to say you've responded to a fair number of
3 calls since then?
- 4 A: Just a few.
- 5 Q: Now, February 1st, 2017, were you similarly employed?
- 6 A: Yes, I was.
- 7 Q: On that date, did you have occasion to respond to the
8 incident location in question here today?
- 9 A: Yes, I did.
- 10 Q: And do you recall the incident, the address where you
11 responded to?
- 12 A: I do.
- 13 Q: And what was that address?
- 14 A: [REDACTED] Francis Marion Road.
- 15 Q: And is that location in Florence County?
- 16 A: Yes, it is.
- 17 Q: Now, how were you dispatched to that location?
- 18 A: We have a radio channel that we operate on off of
19 campus, but we also have our county channel that operates
20 through Florence County 9-1-1. We often listen out for calls
21 in the immediate area and assist the Sheriff's Office with
22 those calls, and that's how I heard the call come out. They
23 advised that there had been a shooting down the road and put
24 it out to any available units that were close.
- 25 Q: Do you happen to recall at what time you were dispatched

TRACY TOLSON - DIRECT BY MR. WHITE

1 and what time you arrived?

2 A: I do not remember the exact time. I know it was
3 nighttime. It was already -- it was already dark.

4 Q: How long does it take you to get from your office to the
5 incident location?

6 A: Maybe 2 -- 3 minutes, if that.

7 Q: So is it fair to say you were there very quickly?

8 A: Yes, sir.

9 Q: Were you the first officer on scene?

10 A: Myself and another Francis Marion officer arrived pretty
11 much simultaneously.

12 Q: And what is that officer's name?

13 A: Kip Britt.

14 Q: And what did you find when you arrived on scene?

15 A: I arrived and pulled up directly in front of the
16 location. I observed a whitish-in-color vehicle parked just
17 to the left of the steps. I observed that the vehicle was
18 running and that the doors on the vehicle were open.

19 I could also see the -- it's a duplex. So both doors
20 were open to each apartment. If you're looking at the
21 apartment, the door to the right was open and there were no
22 lights on inside of that one. The apartment to the left was
23 open and you could see furniture inside and I could see
24 someone laying on the ground just inside the door.

25 Q: And that was the doorway on which apartment?

TRACY TOLSON - DIRECT BY MR. WHITE

1 A: If you're looking at it, it would be the apartment to
2 the left.

3 Q: I'm going to show you what's been entered into evidence
4 as State's Exhibit 1. Would that be the apartment here?

5 A: Correct.

6 Q: And is that an accurate depiction of where the vehicle
7 was when you arrived?

8 A: Yes, it is.

9 Q: Now, when you approached the door, the doorway to that
10 apartment, was there a person lying in the doorway?

11 A: Yes, there was.

12 Q: Were they injured?

13 A: Yes, they were.

14 Q: And could you tell the nature of the injury?

15 A: We had received information through 9-1-1 through
16 dispatch that there had been a shooting, and I could observe
17 blood about the person's -- about their person.

18 Q: What is your objective when you arrive on a scene such
19 as this?

20 A: The first thing we have to do is secure the scene.

21 Q: Okay. Did you do that?

22 A: Yes. Sgt. -- at the time he was a sergeant with us --
23 Britt and I arrived. A gentleman came walking out of -- I
24 think it's Apartment ■■■, if I read that correct. It was the
25 apartment on the left.

TRACY TOLSON - DIRECT BY MR. WHITE

1 And at the same time, a Probation and Parole agent is
2 also arriving on scene. We get that subject detained so we
3 can clear the threat. We knew there was someone on the
4 ground in the left apartment, but the apartment on the right
5 was an unknown for us because they were no lights inside.

6 So we immediately went into that apartment and cleared
7 it to make sure no one was inside. We came back out and then
8 we went into the apartment on the left and we had to clear it
9 to make sure no one was inside of that apartment other than
10 the person we saw laying on the ground just in the doorway.

11 Q: And the apartment where the person was laying on the
12 ground, did you clear that apartment?

13 A: Yes, we did.

14 Q: And when you're clearing an apartment, what are you
15 looking for?

16 A: People and weapons.

17 Q: Okay. Did you find any people or weapons?

18 A: I did not observe any weapons in plain view and the only
19 person that we located inside that apartment was the victim,
20 who was laying just inside the doorway.

21 Q: Now, you mentioned that Mr. Williams, who just
22 testified, was taken into custody. Was that a safety
23 precaution?

24 A: He was. He was -- and he was advised he was detained.
25 He was placed in handcuffs and sat down with Officer Bennett

TRACY TOLSON - DIRECT BY MR. WHITE

1 from Probation, Pardon and Parole watching him while we
2 cleared the residences.

3 Q: Okay. Now, when you arrive on scene, were you aware
4 that the 9-1-1 tape -- the 9-1-1 call was still being
5 conducted?

6 A: I wasn't. Mr. Williams did have a phone in his hand.
7 We instructed him to put the phone down so we could place his
8 hands behind his back and detain him, but I wasn't aware that
9 the phone call was still -- or the call was still going on.

10 Q: Do you recall where in relation to the victim's body
11 that the phone was laid down?

12 A: It was somewhere near the -- like, the threshold of the
13 door. I can't specifically say it was on the left side or
14 right side. Just he placed it somewhere near the threshold
15 of the door.

16 Q: Was it close to that victim laying -- laying there?

17 A: Very close.

18 Q: Okay. Now, did you have occasion to speak with the
19 victim?

20 A: I did.

21 Q: What was that conversation like? What, if anything, did
22 you ask him and what, if anything, did he tell you?

23 A: Once we cleared the apartment that he was laying in the
24 doorway, we came back and the first thing we did was radio
25 central dispatch advising the scene was secure. Until we

TRACY TOLSON - DIRECT BY MR. WHITE

1 tell them the scene is secure, no first aid can come in, no
2 firefighters as first responders or EMS.

3 So the first thing we did was tell them that the scene
4 was secure and to go ahead and let them roll in. I then
5 knelt down beside the victim, who was laying in the doorway,
6 and he told me he had been shot and I asked him if he knew
7 who shot him. And I can't exactly quote, but he said yes,
8 something along the lines of, Mike shot me, Michael Smith
9 shot me.

10 MR. WHITE: Judge, at this time, I'd ask permission to
11 publish the 9-1-1 call.

12 THE COURT: All right.

13 (WHEREUPON, State's Exhibit Number 2, 9-1-1 call on
14 disk, was played in open court. Not transcribed herein.
15 When the tape ended, the proceedings resumed as
16 follows.)

17 BY MR. WHITE:

18 Q: Officer Tolson, other than Mr. Williams and, of course,
19 Kenny Kemmerlin, are you the third voice we hear on that
20 tape?

21 A: I'm the only female voice you hear on the tape.

22 Q: Now, prior to your employment at Francis Marion, where
23 were you employed?

24 A: Florence County Sheriff's Office.

25 Q: And how long have you been a law enforcement officer?

TRACY TOLSON - DIRECT BY MR. WHITE

1 A: I'm in my 22nd year.

2 Q: Now, if you could, what was the state of the victim when
3 you arrived? Was he in physical distress?

4 A: Yes, he was. Right after the tape -- the 9-1-1 call
5 stops is when he started asking us for water and we told him
6 we couldn't give him water, that EMS was getting ready to
7 pull up, and he just kept saying I'm going to go, I'm going
8 to fade out. And I noticed that his face was starting to
9 turn, like, a grayish color. So I knew he was -- he was
10 bleeding pretty bad.

11 Q: Was he having trouble breathing?

12 A: He was starting to.

13 Q: How long after that tape ends does EMS arrive?

14 A: Within a minute or two. It wasn't very long.

15 Q: Okay. Did they immediately take him and put him in the
16 back of the ambulance?

17 A: They did what's unofficially called a scoop and run.
18 EMS pulled up at the same time first responders from Windy
19 Hill did. They all ran up pretty much at the same time and,
20 once they saw the condition, they literally just picked him
21 up, put him on the stretcher, and ran with him to the
22 ambulance.

23 Q: Now, a scoop and run, is that a phrase commonly used by
24 law enforcement?

25 A: Yes.

TRACY TOLSON - DIRECT BY MR. WHITE

1 Q: Is it commonly used by the fire department?

2 A: Yes, it is.

3 Q: Is it commonly used by EMS?

4 A: It is.

5 Q: All right. Short of arriving and the victim is dead on
6 arrival, is a scoop and run the next most severe?

7 A: Yes. It means that they literally need to get you in
8 the back of that ambulance so they can start working you and
9 get you to a medical care facility as fast as possible.

10 Q: So in your mind, it was a severe injury?

11 A: Yes.

12 Q: Now, what, if anything, did you tell the victim, Mr.
13 Kenny Kemmerlin, as he was being transported to the
14 ambulance?

15 A: He asked me not to let him die, and I told him he
16 wouldn't die.

17 Q: Will you ever do that again?

18 A: No. Never have since.

19 MR. WHITE: Officer Tolson, I really appreciate it.
20 Answer any questions the defense may have.

21 THE COURT: Cross-exam?

22 MR. FLOYD: Thank you.

23 CROSS-EXAMINATION

24 BY MR. FLOYD:

25 Q: Sgt. Tolson, you wrote a report and provided it to the

TRACY TOLSON - CROSS BY MR. FLOYD

- 1 Sheriff's Office after this event; is that correct?
- 2 A: Yes, sir, it is.
- 3 Q: Okay. When you arrived on the scene, you noticed the
- 4 Chevrolet Traverse; is that correct?
- 5 A: Yes, sir, I did.
- 6 Q: Okay. And when you arrived, all four doors were open on
- 7 that vehicle?
- 8 A: As I recall, yes, sir, they were.
- 9 Q: Okay. Is that what you put in your report?
- 10 A: Yes, sir, it is.
- 11 Q: Okay. And you made that shortly after the incident?
- 12 A: Yes, sir, I did.
- 13 Q: Okay. And when you spoke to or saw Mr. Craig Williams,
- 14 Daniel Craig Williams, where did you first see him? Was he
- 15 outside to meet you when you got there or was he inside?
- 16 A: He was just inside the doorway.
- 17 Q: Inside the doorway?
- 18 A: Yes, sir.
- 19 Q: So he had the door open?
- 20 A: Yes, sir. The door was open.
- 21 Q: When you got there?
- 22 A: Yes, sir.
- 23 Q: He was standing there?
- 24 A: Yes, sir.
- 25 Q: How did he appear as far as his clothes? Did he have

TRACY TOLSON - CROSS BY MR. FLOYD

1 blood on him or anything like that? Do you recall?

2 A: I don't. I don't specifically recall if he had any
3 blood on his clothing. I was more focused on getting the
4 scene safe at that point, sir.

5 Q: I understand. Did you interview him or anything of that
6 nature?

7 A: No, sir.

8 Q: Okay. And when you spoke to Mr. Kemmerlin, when he said
9 -- told you that Michael Smith shot him, did he say anything
10 else about the shooting other than Michael Smith shot him
11 that you recall?

12 A: No, sir, he did not.

13 Q: Okay. So there was no mention of where it happened or
14 the location?

15 A: No, sir.

16 Q: Okay. And when the Sheriff's Office arrived, you
17 basically briefed them on what you had observed and what you
18 did; is that correct?

19 A: Yes, sir. When the first highest-ranking supervisor
20 arrived from the Sheriff's Office, which was Lt. Hooks at
21 that time.

22 Q: Okay.

23 A: I immediately briefed him on what we saw, what we had
24 done up to that point, and asked him if he needed anything
25 further from us. Other than signing his crime log, he said

TRACY TOLSON - CROSS BY MR. FLOYD

1 he did not, and the scene was turned over to the Sheriff's
2 Office.

3 Q: And at that point, you departed the scene?

4 A: Yes, sir.

5 Q: All right.

6 MR. FLOYD: Thank you. I don't have any further
7 questions for you.

8 THE WITNESS: Thank you.

9 THE COURT: Anything on redirect?

10 MR. WHITE: No redirect, Judge.

11 THE COURT: Thank you very much, ma'am. You may step
12 down.

13 Any objection to Officer Tolson being excused?

14 MR. WHITE: None from the State, Judge.

15 THE COURT: All right. Thank you. You may call your
16 next witness.

17 MR. WHITE: Thank you, Judge. At this time, the State
18 would call Officer Britt to the stand.

19 THE COURT: All right.

20 THE CLERK: Sir, if you would, please place your left
21 hand on the Bible and raise your right hand. Do you swear
22 the testimony you give in this case to be the truth, the
23 whole truth, and nothing but the truth, so help you God?

24 THE WITNESS: I do.

25 THE CLERK: Please be seated and state your full name

KIPP BRITT - DIRECT BY MR. WHITE

1 for the record.

2 THE WITNESS: It's Kipp Mitchell Britt.

3 KIPP BRITT, being first duly sworn,
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. WHITE:

7 Q: Officer Britt, where are you employed?

8 A: South Carolina Highway Patrol.

9 Q: How long have you been employed there?

10 A: Just over a year.

11 Q: Now, back in February, where were you employed?

12 A: Francis Marion University.

13 Q: And on that date, did you have occasion to respond to
14 the incident location that's involved in this trial?

15 A: I did.

16 Q: Now, up until that point, how much experience had you
17 had in law enforcement?

18 A: 15-and-a-half years.

19 Q: Okay. And when you arrived on that date, February 1st,
20 2017, were you one of the first officers on scene?

21 A: Yes, sir.

22 Q: And if you could, walk us through what you found when
23 you arrived?

24 A: I approached the residence from the north side. There
25 was a Chevy Traverse parked there. I noticed all the doors

KIPP BRITT - DIRECT BY MR. WHITE

1 were open. I got out, exited my vehicle, and secured that
2 one. I linked up with Sgt. Tolson, who was coming in from
3 the north side -- I mean the west side. We linked up.

4 We seen the complainant, Mr. Williams, on the front
5 porch, and I could see Kenny sitting inside the door. I
6 recognized Kenny because I grew up in the area; so I knew who
7 he was.

8 And Sgt. Tolson and I approached the door at that point.
9 Agent Bennett with Probation and Parole -- he showed up and
10 secured Mr. Williams. We cleared the apartment to the right-
11 hand side. We came in, stepped over. I talked to Kenny,
12 stepped over him, and cleared that apartment. You can hear
13 on the tape -- you can hear we went through the apartment.
14 We kicked one of the back doors in to secure it. We come
15 back out to Kenny.

16 At the end of that recording, you hear me ask him again
17 who shot him and he said Michael Smith, but Smith got cut off
18 of the recording. At that point, I secured my weapon and
19 started to glove up to provide any medical help I could for
20 Kenny before EMS and stuff arrived. As soon as I was gloving
21 up, they arrived on scene.

22 Q: Now, when you secure a scene, I mean what are you
23 looking for?

24 A: Any kind of threats or weapons.

25 Q: Okay. Did you find any?

KIPP BRITT - DIRECT BY MR. WHITE

- 1 A: No, sir.
- 2 Q: Now, you mentioned -- now, can EMS or any other first
3 responders, fire department, can they come in before you
4 clear the scene?
- 5 A: No, sir. The scene has to be secured first.
- 6 Q: All right. Now, you mentioned you were -- you were
7 gloving up. Were you prepared to render aid?
- 8 A: Yes, sir.
- 9 Q: Why did you not render aid?
- 10 A: Because EMS arrived and they have a higher level of care
11 that I can provide.
- 12 Q: Okay. Officer Tolson described that situation in a
13 common phrase that law enforcement and EMS uses, a scoop and
14 go. Are you familiar with that?
- 15 A: Yes, sir.
- 16 Q: What's a scoop and go?
- 17 A: You've got to pick them up and get them to the hospital
18 as quick as you can. You've got to, like, go an hour, the
19 first hour to get them to emergency care, and he was an
20 extreme severe case.
- 21 Q: And short of a dead on arrival, is it the most severe?
- 22 A: Yes, sir, it is.
- 23 Q: Now, could your voice be heard on that 9-1-1 call?
- 24 A: Yes, sir.
- 25 Q: Is it -- does it come in at the end?

KIPP BRITT - DIRECT BY MR. WHITE

1 A: Yes, sir.

2 Q: All right. Once that 9-1-1 tape cuts off, what, if
3 anything, does the victim, Mr. Kenny Kemmerlin, say? What
4 are you asking him?

5 A: I mean he stated it was Michael Smith. He was stating
6 he needed some water, that he was fading out. I advised him
7 that he was going to be okay. At the time I thought he was,
8 and we talked for just a few more minutes about he couldn't
9 have anything to eat and all and that EMS was fixing to walk
10 through the door. They were just pulling up. I could see
11 them. And at that point, I handed him off to the EMS and
12 fire personnel.

13 Q: Did he make any comments other than I'm fading out that
14 suggested, you know, his mental state and what he thought the
15 severity of his own injuries were?

16 A: He just -- he just thought he was -- he had been shot
17 and he stated he'd been shot and that, you know, that Michael
18 Smith had shot him and, like I said, he was asking for water
19 and said that he felt like he was fading out fast. I was
20 trying to keep him calm as possible.

21 Q: Did he repeat this phrase I'm fading out?

22 A: He did. Several times.

23 Q: Now, as far as his physical state, clearly, was he in
24 distress?

25 A: Yes, sir, he was.

KIPP BRITT - DIRECT BY MR. WHITE

1 Q: And was he bleeding?

2 A: Yes, sir.

3 Q: Was he breathing very heavily?

4 A: He was real faint in breath. Yes, sir.

5 Q: All right. Now, once the scene is cleared and Mr.

6 Kemmerlin is transported to the hospital, Francis Marion --

7 they weren't -- you guys weren't the -- at that time the

8 investigating agency; is that correct?

9 A: Correct.

10 Q: You then turn the scene over to the investigating

11 agency?

12 A: Correct.

13 Q: Did you fill out reports in this?

14 A: Yes, sir, we did.

15 Q: Did you turn those over to the investigating agency?

16 A: Yes, sir.

17 Q: Other than that, you were responding on the scene and

18 filling out a report, is that the finality of your

19 involvement --

20 A: Yes, sir.

21 Q: -- in this case?

22 A: Yes, sir.

23 MR. WHITE: I beg the Court's indulgence.

24 THE COURT: Yes, sir.

25 MR. WHITE: Officer Britt, I have nothing further.

KIPP BRITT - CROSS BY MS. HENDERSON

1 Please answer any questions the defense may have.

2 THE COURT: Any cross?

3 CROSS-EXAMINATION

4 BY MS. HENDERSON:

5 Q: Officer Britt, you cleared the vehicle that was on
6 scene; correct.

7 A: Correct.

8 Q: And upon your arrival, all four doors were open;
9 correct?

10 A: As I can recollect, yes, ma'am.

11 Q: And Mr. Kemmerlin never expressed to you where he was
12 shot; correct?

13 A: No. I mean I could witness that he was shot in his arm.

14 Q: Sure. As far as the physical location --

15 A: Right.

16 Q: -- outside --

17 A: No, ma'am.

18 Q: -- you don't know where he was shot; correct?

19 A: No, ma'am.

20 MR. HENDERSON: I have no further questions. Thank you,
21 Judge.

22 THE COURT: All right. Anything further?

23 MR. WHITE: No redirect, Judge.

24 THE COURT: Thank you very much, sir. You may step
25 down.

1 Any objection to Officer Britt being excused?

2 MR. WHITE: No, sir, Judge.

3 MR. FLOYD: No objection.

4 THE COURT: Thank you, sir.

5 MR. WHITE: May we approach for just a moment?

6 THE COURT: We're going to -- we're going to take a
7 short break.

8 MR. WHITE: Okay.

9 THE COURT: Well, come on up.

10 MR. WHITE: It's scheduling.

11 (WHEREUPON, a bench conference was held in the presence
12 of the jury but out of the hearing of the jury off the
13 record, after which the proceedings resumed as follows.)

14 THE COURT: All right. Ladies and gentlemen, I'm going
15 to get you to step back into the jury room. If you need
16 anything, just let Ms. Ann know, but we're going to take a
17 short break. Please have no conversation about the case and
18 I'll get you back out shortly.

19 (WHEREUPON, the jury exited the courtroom at 11:28 a.m.)

20 THE COURT: All right. We'll take about 5 or 10
21 minutes.

22 MR. WHITE: Thank you, Judge.

23 (WHEREUPON, there was a break in the proceedings from
24 11:29 a.m. until 11:45 a.m., after which the proceedings
25 resumed as follows.)

1 THE COURT: Anything from the State before we get
2 started?

3 MR. WHITE: No, sir, Judge.

4 THE COURT: Anything from the defense before we get
5 started?

6 MR. FLOYD: Nothing further.

7 THE COURT: All right. Let's bring the jury in, please.

8 (WHEREUPON, the jury entered the courtroom at 11:46
9 a.m.)

10 THE COURT: All right. Ladies and gentlemen, I hope
11 everyone had a good break there and are ready to get started
12 back. I'll recognize Mr. White. If you recall, the State
13 was still on their case when we took that break, and I'll
14 recognize the State for their next witness.

15 MR. WHITE: Thank you, Judge. At this time, the State
16 would call Andrew Clendenin to the stand.

17 THE COURT: All right. Mr. Clendenin, if you'd please
18 come around to be sworn, sir.

19 THE CLERK: Sir, if you will, please place your left
20 hand on the Bible and raise your right hand. Do you swear
21 the testimony you give in this case to be the truth, the
22 whole truth, and nothing but the truth, so help you God?

23 THE WITNESS: I do.

24 THE CLERK: Please be seated and state your full name
25 for the record.

ANDREW CLENDENIN - DIRECT BY MR. WHITE

1 THE WITNESS: Andrew Robert Clendenin.

2 ANDREW CLENDENIN, being first duly
3 sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. WHITE:

6 Q: Officer Clendenin, where are you employed?

7 A: At the Florence County Sheriff's Office.

8 Q: About how long have you been employed there?

9 A: For 19 years.

10 Q: And what do you do at the Sheriff's Office?

11 A: I am a crime scene technician.

12 Q: And what all do you do as a crime scene technician?

13 What does that involve?

14 A: We document, collect, and preserve evidence until -- up
15 until court hearings.

16 Q: Now, have you been doing that for your entirety of your
17 career at the Sheriff's Office?

18 A: For the last 14 years I've been employed as a crime
19 scene investigator.

20 Q: Now, do you have advanced training? Do you have
21 continuing education in the field of forensics?

22 A: I do.

23 Q: Now, on February 1st, 2017, were you similarly employed?

24 A: Yes, I was.

25 Q: And you mentioned your role is to document and collect

ANDREW CLENDENIN - DIRECT BY MR. WHITE

- 1 evidence; correct?
- 2 A: That is correct.
- 3 Q: And did you arrive at the incident location involved
- 4 here today with that purpose in mind?
- 5 A: Yes, I was.
- 6 Q: Now, Officer Clendenin, was there another member of
- 7 forensics there with you when you arrived on scene?
- 8 A: Yes, they were.
- 9 Q: And what was that gentleman's name?
- 10 A: Cpl. Chase McDaniel.
- 11 Q: Now, had he just been hired at the Sheriff's Office?
- 12 A: Yes, he was.
- 13 Q: Are you aware of his prior experience?
- 14 A: Yes, I am.
- 15 Q: And what is that? Do you -- do you recall?
- 16 A: He was priorly [sic] employed with the Florence County
- 17 Sheriff's Office and then continued his law enforcement
- 18 career with the Darlington County Sheriff's Office and then
- 19 returned back to the Florence County Sheriff's Office.
- 20 Q: Do you know in what role and what capacity he was
- 21 employed at the Darlington County Sheriff's Office?
- 22 A: As an investigator.
- 23 Q: All right. When you both arrived on scene, was -- was
- 24 he new to forensics at the time?
- 25 A: Yes, he is. He was in training.

ANDREW CLENDENIN - DIRECT BY MR. WHITE

1 Q: Okay. Were you training him on scene?

2 A: Yes, I was.

3 Q: Now, this is kind of an obvious question, but is it more
4 beneficial to have two people working the job that you
5 usually do by yourself?

6 A: Yes, it is.

7 Q: All right. I'm going to show you what's been marked --
8 MR. WHITE: If I may, Judge?
9 THE COURT: Yes, sir.

10 BY MR. WHITE:

11 A: -- as State's Exhibit 3 through State's Exhibit 50. If
12 you could, Officer Clendenin, just take a look at those for
13 me. Okay?

14 (WHEREUPON, there was a pause in the proceedings, after
15 which the proceedings resumed as follows.)

16 BY MR. WHITE:

17 Q: Officer Clendenin, do you recognize those photographs?

18 A: I do.

19 Q: Did you take those photographs?

20 A: No, I did not.

21 Q: How do you recognize them?

22 A: I was on scene along with Chase McDaniel as he was
23 taking photographs.

24 Q: Did you essentially watch him take the photographs?

25 A: I pointed out which photographs to take.

ANDREW CLENDENIN - DIRECT BY MR. WHITE

1 Q: And are those photographs a fair and accurate depiction
2 of the crime scene as you documented it that evening?

3 A: Yes, it was.

4 MR. WHITE: Judge, at this time, I would move State's
5 Exhibit 3 through 50 into evidence, if I could.

6 MR. FLOYD: That's without objection.

7 THE COURT: All right. And the State and the defense
8 have already agreed that those -- to the admissibility of
9 those and so those are -- those items are in evidence without
10 objection. State's 3 through 50; correct?

11 MR. WHITE: Yes, sir, Judge.

12 THE COURT: All right.

13 (WHEREUPON, State's Exhibits Number 3 through 50,
14 photographs, were admitted into evidence.)

15 BY MR. WHITE:

16 Q: Officer Clendenin, I'm going to show you what's been
17 marked or entered into evidence as State's Exhibit 3. Is
18 this the incident location?

19 A: Apparently, my screen in not working.

20 MR. WHITE: Deputy Clerk, we need to -- we need to
21 provide Officer Clendenin a little vision over there.

22 THE COURT: In the jury box as well.

23 THE CLERK: I believe it's up.

24 THE COURT: Is it up? Okay.

25 MR. WHITE: Yes, Judge.

ANDREW CLENDENIN - DIRECT BY MR. WHITE

1 THE COURT: All right. The one on the end here is not
2 up?

3 THE CLERK: No.

4 THE COURT: Can you see the other one, sir? Okay. All
5 right. You need to get them to check that one on the end.

6 (WHEREUPON, there was a pause in the proceedings, after
7 which the proceedings resumed as follows.)

8 MR. WHITE: Let's do it the old school way, Judge.

9 THE COURT: The jury needs to see these photographs. I
10 suggest you get the officer to come look on your screen.

11 MR. WHITE: Sure. Okay.

12 Officer Clendenin, you can step down here.

13 THE COURT: And you can question him from there.

14 MR. WHITE: Okay. Sounds great, Judge.

15 MR. WHITE: Officer Clendenin, join me at the podium, if
16 you will.

17 (WHEREUPON, the witness complied.)

18 THE COURT: Is that screen on?

19 MR. WHITE: I am going to show it to him like that.
20 Yes, sir.

21 THE COURT: He can look at that.

22 MR. WHITE: Officer Clendenin, come around here and just
23 take a look at this screen for me, if you could.

24 BY MR. WHITE:

25 Q: I'll show you State's Exhibit 3. Is that the incident

ANDREW CLENDENIN - DIRECT BY MR. WHITE

1 location there?

2 A: Yes. It is a photograph of the front of the residence.

3 Q: All right. State's Exhibit 4 through 5, is this

4 documentation of the victim's vehicle?

5 A: That is correct. That is sitting in front of the

6 residence.

7 Q: State's Exhibit 6, same -- same question. Is that the

8 victim's?

9 A: Yes, it is. The driver-side seat of the victim's in the

10 front of the residence.

11 Q: Now, I noticed in the bottom of that photograph there is

12 a yellow one. What is that?

13 A: That is a yellow tower marker marking evidence.

14 Q: All right. And is that used in forensics to, in fact,

15 mark evidence and document it?

16 A: Yes, it is.

17 Q: And did you -- despite not taking the photographs here,

18 did you mark the evidence? Did you mark the markers?

19 A: I did. I placed the yellow tile markers up.

20 Q: Now, is this a photograph similar to the one I just

21 showed you but with the markers?

22 A: That is correct.

23 Q: All right. Here's a good shot of marker 1. Now, what

24 are you marking at that point.

25 A: At that mark, there were blood spattered on the frame of

ANDREW CLENDENIN - DIRECT BY MR. WHITE

1 the door.

2 THE COURT: Mr. White, as you refer to a photograph --

3 MR. WHITE: Yes, sir.

4 THE COURT: -- please use the number.

5 MR. WHITE: I will. Yes, sir.

6 THE COURT: So the court reporter can have a good
7 record.

8 MR. WHITE: That was State's Exhibit 8.

9 THE COURT: Now, this -- this monitor is working if you
10 want him to have --

11 MR. WHITE: Okay.

12 THE COURT: -- a seat.

13 MR. WHITE: That would be great. That would be a little
14 easier.

15 THE COURT: It was unplugged.

16 MR. WHITE: Simple solution.

17 THE COURT: We got our electrician on it.

18 (WHEREUPON, the witness returned to the witness stand.)

19 BY MR. WHITE:

20 Q: Now, I'm going to show you State's Exhibit 9. Is that a
21 close up of marker 1 indicating blood?

22 A: That is correct.

23 Q: I'm going to skip State's Exhibit 10. Well, I'll show
24 it. It's just a repetitive photograph; is that correct?

25 A: That is correct.

ANDREW CLENDENIN - DIRECT BY MR. WHITE

1 Q: State's Exhibit 2. Is that another marker showing
2 blood?

3 A: That is correct.

4 Q: State's Exhibit 3. Is that marking blood?

5 A: That is correct.

6 THE COURT: Now, hold on. Mr. White, put it back up.
7 That's State's 12.

8 MR. WHITE: Excuse me. State's Exhibit 12. The markers
9 are confusing me a little bit.

10 BY MR. WHITE:

11 Q: State's Exhibit 12 showing marker 3, is that showing
12 blood?

13 A: Yes.

14 Q: Now, State's Exhibit 13, is that showing blood as well?

15 A: Yes, it is.

16 Q: And where is this blood located on the vehicle?

17 A: On the driver's side door.

18 Q: Is that the inside of the driver's side door?

19 A: It is.

20 Q: State's Exhibit 14, is that blood on the outside of the
21 driver's side door?

22 A: Yes.

23 Q: Now, we're back on the ground with State's Exhibit 15.
24 Is that marker 4?

25 A: It is.

ANDREW CLENDENIN - DIRECT BY MR. WHITE

- 1 Q: Is that indicating more blood?
- 2 A: Yes, it is.
- 3 Q: State's Exhibit 16, marker 5, indicating more blood?
- 4 A: Yes, it is.
- 5 Q: State's Exhibit 17, is that marker 6?
- 6 A: It is.
- 7 Q: And what is that showing?
- 8 A: More blood.
- 9 Q: State's Exhibit 18, is that marker 7?
- 10 A: Yes. More blood.
- 11 Q: State's Exhibit 19, what is that showing?
- 12 A: Tower marker 8 marking more blood.
- 13 Q: State's Exhibit 20?
- 14 A: Tower marker 9 marking more blood.
- 15 Q: And again, you marked all those personally; correct?
- 16 A: Yes.
- 17 Q: I'm going to show you what's been marked and entered
- 18 into evidence as State's Exhibit 21. Is this a zoomed out --
- 19 I mean is this a photograph where you back up and you take a
- 20 count of the path that the blood trailed?
- 21 A: That is correct.
- 22 Q: All right. State's Exhibit 22, is that -- is that blood
- 23 there?
- 24 A: Yes, it is.
- 25 Q: And where is that located?

ANDREW CLENDENIN - DIRECT BY MR. WHITE

1 A: The front of the vehicle.

2 Q: Okay. And here's another photograph. Is that showing
3 -- another photograph showing the trail of the blood?

4 A: Yes, it is.

5 MR. WHITE: And I'm sorry. I apologize, Judge, and to
6 the court reporter. That's State's Exhibit 23.

7 BY MR. WHITE:

8 Q: Now, on State's Exhibit 24, is that roughly showing the
9 same thing?

10 A: It's showing the same thing, yeah.

11 Q: Now, State's Exhibit 25, are these the markers as they
12 progress around the vehicle?

13 A: Yes.

14 Q: Does State's Exhibit 8 mark blood?

15 A: Yes.

16 Q: Does State's Exhibit -- or excuse me -- marker 8 show
17 blood?

18 A: Yes.

19 Q: Does marker 9 show blood?

20 A: Yes.

21 Q: Does marker 10 show blood?

22 A: Yes.

23 MR. WHITE: Judge, I'd like to skip State's Exhibit 26
24 as repetitive.

25 BY MR. WHITE:

ANDREW CLENDENIN - DIRECT BY MR. WHITE

1 Q: State's Exhibit 27, does that show marker 10 and 11?
2 A: Yes.
3 Q: Are both of those markers marking blood?
4 A: Yes.
5 Q: State's Exhibit 28, what marker is that?
6 A: Marker number 10.
7 Q: And what is that marking?
8 A: Also indicating blood.
9 Q: State's Exhibit 29, what markers are shown there?
10 A: 11 through 16.
11 Q: Are all those marking blood?
12 A: Yes, they are.
13 Q: State's Exhibit 30, is that 11? Marker 11?
14 A: Marker 11 indicating blood.
15 Q: State's Exhibit 31, marker 12?
16 A: Tower marker number 12 indicating blood.
17 Q: And State's Exhibit 32. Now, are we going up the stairs
18 as we progress during this series of photographs?
19 A: Yes.
20 Q: Is that marker 13?
21 A: Marker 13 indicating blood.
22 Q: Is that on the brick stepway going up?
23 A: Going up onto the front porch.
24 Q: State's Exhibit 33, marker 14, is that on the steps
25 leading up?

ANDREW CLENDENIN - DIRECT BY MR. WHITE

- 1 A: It is.
- 2 Q: State's Exhibit 34, same question. Is that on the steps
- 3 leading up?
- 4 A: Tower marker 15 indicating blood up the front steps.
- 5 Q: Now, State's Exhibit 35, kind of change the consistency
- 6 hear from brick to carpet. Is this showing the threshold of
- 7 the doorway?
- 8 A: Yes, it does.
- 9 Q: Is that blood?
- 10 A: Yes, it is.
- 11 Q: State's Exhibit 36, is that blood?
- 12 A: Yes, it is.
- 13 Q: Is that on the post going up the steps?
- 14 A: Yes, it is.
- 15 Q: State's Exhibit 37, same question. Is that blood?
- 16 A: Yes, it is.
- 17 Q: Is that on the post going up the steps?
- 18 A: Yes.
- 19 Q: State's Exhibit 38, is that the same?
- 20 A: Same.
- 21 Q: State's Exhibit 39, is that the same and are you
- 22 measuring distance there?
- 23 A: Yes. We're placing a scale to show the measurement of
- 24 it.
- 25 Q: All right. State's Exhibit 40, what is this showing?

ANDREW CLENDENIN - DIRECT BY MR. WHITE

1 A: That is the outside skin of the front door.

2 Q: Is that blood?

3 A: Yes, it is.

4 Q: Is it believed that that is the door that the victim

5 fell into?

6 A: Yes, it is.

7 Q: State's Exhibit 41, what is this showing?

8 A: That shows the center section of the skin of the front

9 door.

10 Q: What's on the door there? Is that more blood?

11 A: It's more blood.

12 A: Is that a close-up photograph of the --

13 A: Yes.

14 Q: -- one we just showed? State's Exhibit 42, is that more

15 of the same?

16 A: More of the same.

17 Q: State's Exhibit 43, is that more -- more of the same of

18 the same door?

19 A: Same door.

20 Q: All right. Now, I want to back up to the other side of

21 the vehicle, State's Exhibit 44. When you arrive on scene,

22 were all four doors open?

23 A: Yes, they were.

24 Q: Is that how the vehicle sat as you documented it?

25 A: Yes, it is.

ANDREW CLENDENIN - DIRECT BY MR. WHITE

- 1 Q: Is that how the vehicle sat as you arrived on scene?
- 2 A: Yes, it is.
- 3 Q: State's Exhibit 45, is that just another photograph of
- 4 the same?
- 5 A: Yes, it is.
- 6 Q: Now, this appears to be prior to the markers, the tower
- 7 markers going down; correct?
- 8 A: That's correct.
- 9 Q: All right. I'm going to show you State's Exhibit 46.
- 10 Is this photograph of the inside of the vehicle?
- 11 A: That depicts the inside of the vehicle, yes.
- 12 Q: And I notice that the glove compartment -- compartment
- 13 -- excuse me -- is open. Was it open when you arrived on
- 14 scene?
- 15 A: Yes, it was.
- 16 Q: Was it open as you documented it?
- 17 A: Yes, it was.
- 18 Q: I'm going to show you State's Exhibit 47. What's
- 19 pictured there?
- 20 A: That is the passenger side front dash.
- 21 Q: All right.
- 22 A: Right underneath the windshield.
- 23 Q: And what is resting there on the passenger side dash?
- 24 A: A .40 caliber shell casing.
- 25 Q: State's Exhibit 48?

ANDREW CLENDENIN - DIRECT BY MR. WHITE

1 A: The same shell casing as seen before, just a different
2 angle on it, a photograph.

3 Q: And describe to us again where exactly that is on the --
4 on the vehicle? If you could, Officer Clendenin, could you
5 stand for just a moment and I want to ask you did you -- did
6 you complete this diagram?

7 A: Yes, I did. I -- I made that diagram.

8 Q: Now, if you could, point exactly where that shell casing
9 was recovered, where it sat?

10 A: It was found here on the dash right underneath the
11 windshield on the passenger side front.

12 Q: Okay. Very good. Thank you, Officer Clendenin. What,
13 if anything, did you do with that shell casing?

14 A: That was collected and taken back to the Florence County
15 Sheriff's Office, where it was eventually transferred to the
16 custody of the South Carolina Law Enforcement Forensic
17 Division.

18 Q: State's Exhibit 49, is that the back of the same
19 vehicle?

20 A: Yes.

21 Q: And then the same question, State's Exhibit 50, back of
22 the same vehicle?

23 A: Yes.

24 Q: All right. That vehicle, the victim's vehicle, what --
25 what, if anything, happened to it that evening?

ANDREW CLENDENIN - DIRECT BY MR. WHITE

1 A: That evening it was towed back to the Florence County
2 Sheriff's Office.

3 Q: Okay.

4 A: Into our impound facility.

5 Q: And is that securely stored there?

6 A: Yes, it is.

7 Q: Now, other than that shell casing and documenting that
8 blood and documenting the scene, were any other items
9 recovered from the scene of this incident?

10 A: I did do a GSR on the subject that was there at the
11 time.

12 Q: Tell me about that. Who -- what -- what was the name of
13 that subject?

14 A: Daniel Williams.

15 Q: Okay. And what is a GSR kit?

16 A: It's a gunshot residue kit.

17 Q: What is that kit? What will it tell you about?

18 A: I did both a presumptive and a regular test on Mr.
19 Williams.

20 Q: And what are you looking for when you're doing that
21 test?

22 A: I'm looking for the -- any kind of gunshot residue that
23 may be on his hands.

24 Q: And would that tell you whether or not a suspect has
25 fired a a gun?

ANDREW CLENDENIN - DIRECT BY MR. WHITE

- 1 A: Or in close proximity of a fired gun, yes.
- 2 Q: And you performed both -- you said a presumptive test?
- 3 A: Yes.
- 4 Q: And then just a regular gunshot residue test on Mr.
- 5 Williams; is that correct?
- 6 A: That's correct.
- 7 Q: And what were the results of that test?
- 8 A: Negative.
- 9 Q: And what does that mean?
- 10 A: That it tested negative to any kind of the three
- 11 components of gunshot residue.
- 12 Q: Does that mean that Mr. Williams did not fire a gun?
- 13 A: He has not fired a gun or in close proximity of a fired
- 14 gun.
- 15 Q: All right. After you left the scene, where did you go
- 16 next?
- 17 A: I left the scene and responded to McLeod Hospital at 555
- 18 East Cheves Street.
- 19 Q: And what were you -- what was the purpose of going to
- 20 the hospital?
- 21 A: I was advised that the victim was taken there.
- 22 Q: Are you going to the scene to do the same thing or to
- 23 the hospital to do the same thing you did on scene?
- 24 A: Yes. Documentation and collection of evidence.
- 25 Q: Did you document and collect evidence at that time?

ANDREW CLENDENIN - DIRECT BY MR. WHITE

- 1 A: Yes, I did.
- 2 Q: What evidence did you collect at the hospital?
- 3 A: I collected the victim's clothing, digital photographs
- 4 were taken of the victim, and I also proceeded to do a
- 5 gunshot residue kit on the victim.
- 6 Q: All right. What were the results of that gunshot
- 7 residue kit?
- 8 A: It was negative.
- 9 Q: Does that mean he did not fire a weapon?
- 10 A: He did not fire a weapon.
- 11 Q: All right. You mentioned you collected his clothes. On
- 12 -- in his clothes or on his clothes, was there a gun
- 13 recovered?
- 14 A: No, there was not.
- 15 Q: Okay. And back at the scene, were there any guns
- 16 recovered at the scene?
- 17 A: No, there was not.
- 18 Q: All right. I'm going to show you what's been marked --
- 19 MR. WHITE: If I may, Judge?
- 20 THE COURT: Yes, sir.
- 21 BY MR. WHITE:
- 22 Q: -- as State's Exhibit 51 through 57. If you could,
- 23 please tell me if you recognize those items?
- 24 A: I do recognize those items.
- 25 Q: Are they a fair and accurate depiction of the victim's

ANDREW CLENDENIN - DIRECT BY MR. WHITE

1 shirt that he was wearing on the incident date?

2 A: Yes, it is.

3 MR. WHITE: Judge, I'd move 51 through 57 into evidence.

4 THE COURT: Any objection?

5 MR. FLOYD: That's without objection.

6 THE COURT: All right. Without objection, 51 through
7 57.

8 (WHEREUPON, State's Exhibits Number 51 through 57,
9 photographs, were admitted into evidence.)

10 BY MR. WHITE:

11 Q: Officer Clendenin, I'm going to show you State's Exhibit
12 51. Now, was the shirt that you just looked at in the
13 photographs -- was that one of the pieces of clothing that
14 was recovered at the hospital?

15 A: Yes, it was.

16 Q: All right. Is that in there?

17 A: That is one of the pieces of clothing I collected, yes.

18 Q: Those yellow arrows, what are those marking?

19 A: Points to the projectile marks that went through the
20 shirt.

21 Q: Now, I noticed that the shirt is really cut up. Can you
22 tell us what's the reason for that?

23 A: That is done by medical staff, part of their life-saving
24 procedures to remove all clothing to get to start medical
25 treatment.

ANDREW CLENDENIN - DIRECT BY MR. WHITE

1 Q: Now, it looks like it's kind of pieced together the best
2 it can be. Was this photograph taken -- I mean obviously it
3 was taken after the cuts were done?

4 A: That's correct.

5 Q: And then the -- is it fair to say that it was pieced
6 back together as close to, you know, resembling a shirt as
7 one could?

8 A: As close as possible, yes.

9 Q: Now, I'm going to show you State's Exhibit 52. Does
10 that marker indicate an entry?

11 A: Yes.

12 MR. WHITE: Judge, I'm going to skip 53 as repetitive.

13 BY MR. WHITE:

14 Q: 54, is this marking another place where a bullet either
15 passed in or passed out of?

16 A: Yes.

17 MR. WHITE: I'm skipping 55 as repetitive.

18 BY MR. WHITE:

19 Q: 56, is this showing the back of the shirt?

20 A: Yes.

21 Q: Is that showing what you believe an entry?

22 A: It does, yes.

23 Q: Now, is this a close-up photograph of the entry?

24 A: Yes.

25 Q: All right. I'm going to show you -- and I'm going to

ANDREW CLENDENIN - DIRECT BY MR. WHITE

1 back up. I'm going to show you State's Exhibit 51 and then
2 56. 51, how does it appear that the blood is collecting on
3 the victim's shirt? Is it pooling --
4 A: It's coming --
5 Q: -- in one direction?
6 A: It's coming from a source and then being pulled
7 downwards.
8 Q: All right. How about 56? Where is the blood located on
9 56?
10 A: It looks like just below the right shoulder.
11 Q: Does it seem to be a significant amount of blood on the
12 shirt?
13 A: There was a large amount of blood on the shirt, yes.
14 Q: All right. There's two vehicles in question; correct?
15 There's the victim's vehicle; right?
16 A: Yes.
17 Q: And was it your testimony that that was taken to the
18 Sheriff's Office and securely located?
19 A: Yes.
20 Q: Now, how about another vehicle? Did you have occasion
21 to be involved in the documentation and collection of a
22 second vehicle?
23 A: Yes.
24 Q: Was there any blood located in that second vehicle?
25 A: No, there was not.

ANDREW CLENDENIN - DIRECT BY MR. WHITE

1 Q: And what was your understanding of the involvement of
2 that second vehicle in this case?

3 A: I understood that it was possibly the suspect's vehicle.

4 Q: Okay.

5 MR. WHITE: I beg the Court's indulgence.

6 THE COURT: Yes, sir.

7 BY MR. WHITE:

8 Q: You mentioned GSR; correct?

9 A: Uh-huh.

10 Q: And what does that stand for?

11 A: Gunshot residue.

12 Q: And you performed that test on the victim; is that
13 correct?

14 A: That is correct.

15 Q: And what were the results?

16 A: Negative.

17 Q: And does that mean that he did not fire a gun on the
18 incident date?

19 A: That's correct.

20 Q: Does it mean that he was not -- his hands; right? What
21 are you testing when you do that?

22 A: I only test the hands.

23 Q: All right. Does that mean that his hands were not in
24 close proximity to a gun when it was fired?

25 A: That's correct.

ANDREW CLENDENIN - CROSS BY MR. FLOYD

1 MR. WHITE: Judge, I have nothing further.
2 Please answer any questions the defense may have.
3 THE COURT: Cross-exam?
4 CROSS-EXAMINATION
5 BY MR. FLOYD:
6 Q: Officer Clendenin, how are you today?
7 A: I'm doing well.
8 Q: Good. You have a lot of photographs showing the -- what
9 you identified as blood on the -- on the ground around the
10 car?
11 A: Yes.
12 Q: And, of course, you searched for that under the
13 circumstances; right?
14 A: Yes, I did.
15 Q: Based on what was reported to you, that's one of the
16 things you look for; is that correct?
17 A: That's correct.
18 Q: Okay. But you also would have looked for shell casings;
19 correct?
20 A: That is correct.
21 Q: And you found one; is that right?
22 A: I found one. That's correct.
23 Q: That was inside of the vehicle; correct?
24 A: That is correct.
25 Q: All right. The victim's vehicle; is that correct?

ANDREW CLENDENIN - CROSS BY MR. FLOYD

- 1 A: Yes, sir.
- 2 Q: Or what you thought was the victim's vehicle?
- 3 A: Yes.
- 4 Q: That was the Traverse that was still there on the scene
- 5 when you got there?
- 6 A: Yes.
- 7 Q: Is that correct? That's where you found the shell
- 8 casing?
- 9 A: That is correct.
- 10 Q: Okay. And when you got there, all four doors were open?
- 11 A: That is correct.
- 12 Q: Okay. Did you search the grounds for shell casings as
- 13 well?
- 14 A: I did.
- 15 Q: Okay. And how did you do that? Was it just visual or
- 16 do you use a metal detector to sweep or how do you do that?
- 17 A: Visual at the time when we searched on the scene, yes.
- 18 Q: Visual at the time?
- 19 A: Yes, sir.
- 20 Q: Okay. But your vision was good enough to detect spots
- 21 of blood; is that correct?
- 22 A: Yes.
- 23 Q: Okay. And the only shell casing you found was inside of
- 24 the car?
- 25 A: That is correct.

ANDREW CLENDENIN - CROSS BY MR. FLOYD

- 1 Q: Okay. And did you -- did you sweep the whole yard?
- 2 A: Yes, I did.
- 3 Q: To look for shell casings?
- 4 A: Yes, I did.
- 5 Q: But you didn't see any?
- 6 A: No, I did not.
- 7 Q: Okay. Other than the one you found in the car?
- 8 A: That is correct.
- 9 Q: Okay. And certainly, if you had found multiple shell
- 10 casings, you would have marked those; correct?
- 11 A: That is correct.
- 12 Q: And you would've photographed them?
- 13 A: That is correct.
- 14 Q: And you would have bagged them and put them into
- 15 evidence; correct?
- 16 A: That is correct.
- 17 Q: Okay. Now, after your sweep of the scene -- well, let
- 18 me ask you this. Did you -- you went up on the front porch
- 19 of the residence where this incident occurred; correct?
- 20 A: Yes.
- 21 Q: Okay. You also swept there for shell casings; correct?
- 22 A: Yes.
- 23 Q: You didn't see any there either?
- 24 A: No, I did not.
- 25 Q: Okay. Did you actually go inside the residence?

ANDREW CLENDENIN - CROSS BY MR. FLOYD

- 1 A: I did.
- 2 Q: Okay. Did you find any -- any shell casings in there?
- 3 A: No, I did not.
- 4 Q: Okay. The day following, on February the 2nd, you went
- 5 to the impound lot where that Chevy Traverse was taken; is
- 6 that correct?
- 7 A: That is correct.
- 8 Q: Okay. And you dusted for fingerprints and swabbed for
- 9 DNA; is that correct?
- 10 A: That is correct.
- 11 Q: Okay. On that car; is that correct?
- 12 A: Yes. That's correct.
- 13 Q: And what did you do? Were you able to lift any prints
- 14 or take any DNA samples?
- 15 A: I took DNA samples, and the fingerprints that I
- 16 collected were insufficient for comparison.
- 17 Q: Okay. All right. Did you send any of that material off
- 18 anywhere to SLED?
- 19 A: I sent the DNA off to the South Carolina Law Enforcement
- 20 Forensic Division.
- 21 Q: Okay. All right. And was that the extent of what you
- 22 did in regards to that vehicle, the Chevrolet Traverse?
- 23 A: That is correct.
- 24 Q: Okay. Okay.
- 25 MR. FLOYD: I don't have any further questions. Thank

1 you very much.

2 THE WITNESS: Thank you.

3 THE COURT: All right. Anything on redirect?

4 MR. WHITE: No, sir, Judge.

5 THE COURT: Thank you very much, sir. You may step
6 down.

7 THE WITNESS: Thank you, sir.

8 (WHEREUPON, a bench conference was held in the presence
9 of the jury but out of the hearing of the jury off the
10 record, after which the proceedings resumed as follows.)

11 THE COURT: All right. Ladies and gentlemen, I was just
12 trying to get an idea for our scheduling purposes. We're
13 going to break for lunch at this time.

14 Now, when you leave, make sure that you keep in mind
15 your instructions to not talk with anyone about the case. Do
16 not allow anyone to talk with you about the case. I'd be
17 highly shocked if anyone tried to, but especially if when
18 you're around the courthouse you've got your yellow tag on.
19 That pretty much lets folks know that you're on a jury and
20 kind of makes you like a leper. People won't talk to you or
21 come around you.

22 But you're going to leave here and go have lunch. So
23 just if anyone does try to speak with you, I doubt they
24 would, but just let them know that you're a juror and you're
25 not allowed to talk about it. If they persist, then you let

1 me know who it is and we'll make sure that doesn't continue.
2 But just I always encourage jurors to take the lunch break to
3 let your minds rest and just go and enjoy the break.

4 I'm going to ask you to be back at 2 o'clock. That
5 gives you about an hour and 40 minutes I think for lunch. Be
6 back here at 2 o'clock and be in your jury room ready to go
7 and we'll resume when everyone returns.

8 So if everyone will please remain seated while the
9 members of the jury are excused. See you back at 2 o'clock.

10 (WHEREUPON, the jury exited the courtroom at 12:23 p.m.)

11 THE COURT: All right. Anything we need to take up
12 before we break for lunch?

13 MR. WHITE: Nothing from the State, Judge.

14 THE COURT: Anything, Scott? Anything?

15 MR. FLOYD: Nothing.

16 THE COURT: Okay. All right. Well, we'll then be at
17 ease until 2 o'clock.

18 MR. WHITE: Thank you, Judge.

19 (WHEREUPON, there was a break in the proceedings from
20 12:24 p.m. until 2:11 p.m., after which the proceedings
21 resumed as follows.)

22 THE COURT: All right. Is the State ready to proceed?

23 MR. WHITE: Yes, sir, Judge.

24 THE COURT: Is the defense ready?

25 MR. FLOYD: Yes, Your Honor.

1 THE COURT: All right.

2 MR. FLOYD: I'm sorry.

3 THE COURT: No problem. Let's bring the jury in,
4 please.

5 (WHEREUPON, the jury entered the courtroom at 2:12 p.m.)

6 THE COURT: All right. Ladies and gentlemen, welcome
7 back. I hope everyone had a good lunch break. If you
8 recall, we were on the State's case at the time this morning
9 when we broke for lunch, and we'll recognize Mr. White for
10 the State's next witness.

11 MR. WHITE: Thank you, Judge. At this time, the State
12 would call Dr. Ellen Riemer.

13 THE COURT: All right. Ma'am, if you'd come around to
14 the witness stand.

15 THE CLERK: Ma'am, if you would, please place your left
16 hand on the Bible and raise your right hand. Do you swear
17 the testimony you give in this case --

18 THE WITNESS: Correct place.

19 THE CLERK: Do you swear the testimony you give in this
20 case to be the truth, the whole truth, and nothing but the
21 truth, so help you God?

22 THE WITNESS: I do.

23 THE CLERK: Please be seated and state your full name
24 for the record.

25 THE WITNESS: My name is Dr. Ellen Riemer.

DR. ELLEN RIEMER - DIRECT BY MR. WHITE

1 DR. ELLEN RIEMER, being first duly
2 sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. WHITE:

5 Q: Thank you, Dr. Riemer, and good afternoon. Dr. Riemer,
6 where are you employed?

7 A: I'm employed at the Medical University of South
8 Carolina.

9 Q: And how long have you been employed there?

10 A: More than 10 years.

11 Q: And what do you do for MUSC?

12 A: I'm a forensic pathologist.

13 Q: And what all does that entail?

14 A: So a forensic pathologist -- forensic pathology is a
15 subspecialty of the field of medicine. So I'm a licensed
16 physician who performs autopsies on deceased individuals in
17 order to determine the cause and manner of death.

18 Q: And do you have to have any specialized training in
19 order to become a forensic pathologist?

20 A: Yes. So in addition to completing medical school, you
21 need to do a residency in general pathology, which I did.
22 That was a four-year residency and I did that at Columbia
23 Presbyterian Medical Center in New York City. And then a
24 subspecialty fellowship training after completing residency
25 in pathology in forensic pathology. So the subspecialty year

DR. ELLEN RIEMER - DIRECT BY MR. WHITE

1 is one year and that's following completion of the general
2 pathology training, and I did that at the Office of the Chief
3 Medical Examiner of the State of Maryland.

4 Q: Very good. Thank you. Dr. Riemer, on any given week in
5 your over ten-year career, how many autopsies would you say
6 you perform a month?

7 A: In the low 20s.

8 Q: Okay.

9 A: Per month.

10 Q: So --

11 A: So over 250 a year.

12 Q: Okay. Very good. Now, Dr. Riemer, have you ever
13 testified as an expert in the field of forensic pathology in
14 the past?

15 A: Yes, on multiple occasions.

16 Q: Do you recall about how many?

17 A: Probably upward of 200 times in South Carolina.

18 Q: Have you testified in both state court and in federal
19 court?

20 A: Well, I have testified in federal court in -- in North
21 Carolina. Before coming to MUSC, I was employed as a medical
22 examiner in North Carolina and there were some cases that
23 involved federal court. I don't think I've actually gone to
24 federal court to testify in South Carolina. I may be
25 mistaken, but I don't -- I don't recall that.

DR. ELLEN RIEMER - DIRECT BY MR. WHITE

1 Q: Okay. Thank you.

2 MR. WHITE: Judge, at this time, I would move that Dr.
3 Riemer be admitted as an expert in the field of forensic
4 pathology.

5 MR. FLOYD: No objection.

6 THE COURT: All right. Without objection, she is so
7 qualified.

8 BY MR. WHITE:

9 Q: Now, Dr. Riemer, I want to talk about an autopsy you
10 conducted on February 2nd, 2017, on the body of Malcolm K.
11 Kemmerlin. Do you recall?

12 A: Yes.

13 Q: And how was that body received in your department?

14 A: Well, the Florence County coroner, who is who basically
15 initiated the investigation, called our office and requested
16 that a forensic autopsy be performed. And I'm one of four or
17 five forensic pathologists on staff; so that was my day. So
18 I -- I did that case.

19 Q: And did you perform an examination of the body?

20 A: Yes, I did.

21 Q: Dr. Riemer, at this time --

22 MR. WHITE: Judge, if I may approach?

23 THE COURT: Yes, sir.

24 BY MR. WHITE:

25 Q: I'm going to show you what's been marked for

DR. ELLEN RIEMER - DIRECT BY MR. WHITE

1 identification purposes only as State's Exhibit 58 through
2 65. If you could, tell me do you recognize those
3 photographs?

4 A: Yes. These are all photographs and x-ray photographs
5 that were obtained at the autopsy of Mr. Kemmerlin.

6 Q: And are they a fair and accurate depiction of Mr.
7 Kemmerlin in your examination on February 2nd, 2017?

8 A: Yes.

9 Q: Have there been any alterations or deletions since the
10 last time you've seen those photographs?

11 A: No, there are not. There were none.

12 Q: Thank you. Thank you, Dr. Riemer.

13 MR. WHITE: Judge, at this time, I would move State's
14 Exhibit 58 through 65 into evidence.

15 MR. FLOYD: That's without objection.

16 THE COURT: All right. Without objection, that's 58
17 through 65?

18 MR. WHITE: Yes, sir, Judge.

19 THE COURT: All right.

20 (WHEREUPON, State's Exhibits Number 58 through 65,
21 photographs, were admitted into evidence.)

22 MR. WHITE: And permission to publish those?

23 THE COURT: Yes, sir.

24 MR. WHITE: Thank you.

25 BY MR. WHITE:

DR. ELLEN RIEMER - DIRECT BY MR. WHITE

1 Q: Now, Dr. Riemer, did you conduct this autopsy in the
2 same manner that you would conduct any autopsy that would
3 come into your office?

4 A: Yes. Every -- every autopsy gets a complete autopsy and
5 -- you know, and thorough autopsy.

6 Q: And what were your findings on this particular autopsy?

7 A: Okay. So Mr. Kemmerlin -- at the autopsy, I found that
8 there were three distinct gunshot wounds, one to the right
9 side of the chest, and that gunshot wound went through the
10 diaphragm, the liver, small bowel, which is your intestines,
11 and ended up in the left hip.

12 And then there was another gunshot wound that was to the
13 back which entered the right side of the back, went through
14 the right lung, and exited the front of the chest.

15 In addition, there was a gunshot wound to the right
16 forearm, which was a through-and-through gunshot wound and
17 went through the bone of the arm, and I believe it's most
18 likely that that gunshot wound continued and that that
19 gunshot wound to the right arm and the right side of the
20 front of the chest was from the same bullet. So after it
21 exited the right arm, it probably went into the right side of
22 the chest.

23 Q: So are you of the opinion that the totality of the
24 wounds, you know, in the photographs I'm about to show you
25 occurred from two projectiles?

DR. ELLEN RIEMER - DIRECT BY MR. WHITE

1 A: That's correct.

2 Q: I'm going to show you now State's Exhibit 58. Could you
3 tell me what injury that is?

4 A: Okay. So that's the entrance wound to the right
5 forearm, and you can see that there's a -- there's a -- I
6 don't know -- can the jury see this or what?

7 THE COURT: Yes, ma'am. They have monitors.

8 THE WITNESS: Oh, okay. Okay. Good.

9 BY MR. WHITE:

10 A: So you can see that there's a roundish defect on the
11 right forearm on the hairy side of the arm, and that has the
12 features of an entrance gunshot wound.

13 Q: Now -- okay. Thank you. I'm going to show you State's
14 Exhibit 59. Could you tell me --

15 A: Okay.

16 Q: -- what injury that is?

17 A: Yes. So that's the inside of the right forearm, you
18 know, the part without the hair, and that you can see it's a
19 very more irregular tearing, a torn kind of defect, and
20 that's characteristic of an exit wound. So we can see -- and
21 the one on the hairy part of the arm and the inside of the
22 arm -- they are connected and this is what we're looking at
23 now is the exit wound.

24 Q: Now, State's Exhibit 60, Dr. Riemer, if you could?

25 A: Okay. Okay. So what we're looking at here is an

DR. ELLEN RIEMER - DIRECT BY MR. WHITE

1 entrance wound on the right side of the chest, and that is a
2 little bit of an irregular entrance wound. It's not quite
3 round and it's got an irregular marginal abrasion, and that's
4 the entrance wound on the right side of the chest.

5 Q: And again, photographs 58 through 60, those three
6 injuries that I just showed you, is it your opinion that
7 those were caused by the same projectile?

8 A: Most likely.

9 Q: I'm going to show you State's Exhibit 61. Well,
10 actually, before I do that, I'm going to skip around just a
11 bit, Dr. Riemer. I'm going to show you State's Exhibit 63.
12 If you could, tell us what that is?

13 A: Okay. So that's an x-ray of the right forearm. So you
14 can see this is, like, the hand at the bottom with the hand
15 bones, and then our forearm has two bones in it and this
16 shows that the bullet actually fractured one of the bones in
17 the right forearm.

18 Q: Dr. Riemer, I'm going to show you 64 and then 65. But
19 first, before you tell us anything about that, is that the
20 projectile that entered at the right side?

21 A: Yes. So before I start cutting the body, when I see
22 that there's gunshot wounds and I see that there are gunshot
23 wounds to somebody, I always obtain x-rays of the body to
24 make sure. So it's kind of like a little GPS before you
25 start the autopsy so I know where I'm going to find bullets,

DR. ELLEN RIEMER - DIRECT BY MR. WHITE

1 and I want to make sure I get whatever bullets are still
2 remaining in him.

3 And so the one to the arm didn't have a bullet left in
4 it. That's why I did that x-ray. And this is an x-ray of
5 the hip area and this is a bullet that terminated actually in
6 this left hip bone. So it's the ischium, which is that flat
7 bone of your hip.

8 Q: Okay. And I'm going to show you State's Exhibit 65.
9 Can you tell us, please --

10 A: Okay.

11 Q: -- is that a side angle of the same thing?

12 A: Yes. So we do -- you know, because your body is three-
13 dimensional, if I just did a front to back, I wouldn't know
14 where it is, if it's closer to the front or the back. So by
15 getting x-rays from the side and the front, I can -- it's
16 like you're able to figure out exactly where it is. This
17 shows that the bullet is -- is kind of on the -- it's
18 actually in the bone. It's, like, kind of in the middle of
19 the hip.

20 Q: Okay. Thank you. Now, I have two more photographs to
21 show you, but before I do, could you tell us a little bit
22 more about where exactly -- I mean how far was it lodged in
23 the actual bone?

24 A: Well, I didn't -- I mean it was in the bone. I mean
25 that's not -- it's not uncommon because basically a bullet is

DR. ELLEN RIEMER - DIRECT BY MR. WHITE

1 going to travel through soft tissue very easily, but it's
2 going to encounter more resistance in the bone. I mean it's
3 kind of a flat -- it's a flat bone. So, you know, it was in
4 there. It's not -- I didn't measure how deep it was in the
5 bone.

6 Q: Yes, ma'am. Thank you, Dr. Riemer. Now, I'm going to
7 show you State's Exhibit 61 and then 62, and if you could
8 please tell us what that is there?

9 A: Okay. So this is a photograph of Mr. Kemmerlin's back,
10 and we can see that there's another gunshot wound on the
11 right side of the back. This is a different gunshot wound
12 than the one that we already saw. So this is an entrance
13 gunshot wound.

14 Q: And could you tell us the trajectory? I think you
15 already have, but just to make sure I'm covering it.

16 A: Yeah.

17 Q: What was the path? What did that bullet that I just
18 showed you, that wound, where all did the bullet travel once
19 it entered that -- that wound there?

20 A: Okay. That basically went from straight back to front.

21 Q: Okay.

22 A: So the exit wound is on the right side of the chest at
23 about -- about the same level.

24 Q: Okay. Very good. Now, I'm going to show you what I
25 believe is the exit wound of that same --

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1 A: Yes.

2 Q: -- shot.

3 A: So this is an exit wound, and this is -- you can see
4 it's on the right nipple. So it's kind of going straight
5 back to front.

6 Q: Okay.

7 A: And there were no bullets remaining in him because this
8 was a through-and-through shot, and we saw that there were no
9 bullets in the body.

10 Q: Okay. Very good. Now, of all the wounds that I just
11 showed you, did you see any stippling on the skin?

12 A: No, I did not.

13 Q: Now, could you tell us what is stippling?

14 A: Yes. Okay. So when a bullet leaves the barrel of a gun
15 and it's got to -- it leaves with a lot of energy, and the
16 way that happens is because there's gunpowder that's
17 basically burned and the explosion from the gunpowder forces
18 the bullet out of the barrel.

19 And so when a bullet starts to travel through the air,
20 there's some gunpowder that comes along with it. So if
21 somebody is shot at close range, we frequently see gunpowder
22 deposited on the person's skin. Okay? Gunpowder doesn't
23 travel that far, as far as a bullet does, but when we do see
24 some gunpowder in the form of stippling, then we can say that
25 the -- the person was shot from a pretty close range.

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1 But in this case, there was no stippling. So I don't --
2 can't say anything about the range except that there was an
3 absence of stippling.

4 Q: Can you testify as to the general principle of the range
5 that stippling tends to indicate?

6 A: Yes. So stippling -- you know, every gun is a little
7 bit different. So some guns that are made that have more
8 firepower can deposit stippling from a little further away,
9 and some are required to be very -- just within a few inches.
10 But for the most part, stippling is deposited when a gun is
11 fired within about two feet from the person.

12 Q: Thank you, Dr. Riemer. Now, Dr. Riemer, was a -- was
13 blood sent to SLED and a toxicology report requested in this
14 case?

15 A: Yes. So every person who is autopsied at -- in my
16 autopsy room always gets a full toxicology testing done. So
17 whether or not they died of drugs or if I already had a
18 gunshot -- a cause of death, which in this case wasn't --
19 you know, I didn't -- I didn't -- wasn't suspicious that
20 drugs were responsible for his death, but everybody gets a
21 full toxicology report. So what that means is that blood is
22 sent by me to the toxicology laboratory, in this case with
23 SLED, and the results came back completely negative for any
24 drugs or alcohol.

25 Q: Okay. So does that -- does that mean there was no

DR. ELLEN RIEMER - DIRECT BY MR. WHITE

1 remnants of drugs or alcohol in his blood at the time of the
2 autopsy?

3 A: That's correct.

4 Q: Was there any nicotine in his blood at the time?

5 A: No, no nicotine, no caffeine.

6 Q: Okay. Now, Dr. Riemer, based on your examination, were
7 you able to formulate an opinion as to the cause and the
8 manner of death in this case?

9 A: Yes.

10 Q: And what was that?

11 A: So I determined that Mr. Kemmerlin died of gunshot
12 wounds, two, in parentheses two, to chest. So there were
13 two gunshot wounds that killed him, one to the front of the
14 chest and one to the back of the chest, and the manner is
15 homicide.

16 Q: Okay. And when you say two gunshot wounds to the chest
17 -- and I'll just show you so the jury can also see. Dr.
18 Riemer, is this a gunshot wound to the chest?

19 A: Yes. So this is a gunshot wound to the chest that just
20 entered the back. Okay? So, you know, if I could've said a
21 gunshot wound to chest and back, you know, I could've said it
22 in different ways, but it's really the injuries that killed
23 him were inside the chest. So chest injuries.

24 Q: Thank you, Dr. Riemer.

25 MR. WHITE: Judge, I just beg the Court's indulgence for

DR. ELLEN RIEMER - DIRECT BY MR. WHITE

1 just a moment.

2 THE COURT: Yes, sir.

3 BY MR. WHITE:

4 Q: Dr. Riemer -- Dr. Riemer, what does homicide mean in
5 regards to manner of death?

6 A: Yes. So there are five possible manners of death.
7 Everybody has to have a manner assigned to their death.

8 So homicide by definition means death at the hands of
9 another.

10 Suicide would be death at your own hands.

11 Accident, you can figure that out if there's a car crash
12 or somebody would fall by accident and hit your head.

13 Then there's natural, so cancer or heart disease.

14 And then there's another category called undetermined.

15 And there are certain cases where after a complete autopsy
16 and thorough investigation, still the manner of death may not
17 be completely known.

18 Q: But in this case, to be clear, your opinion is that it
19 was a death at the hands of another?

20 A: Yes.

21 Q: Okay.

22 MR. WHITE: Thank you very much, Dr. Riemer. Please
23 answer any questions the defense may have.

24 THE COURT: All right. Cross-examination?

25 MR. FLOYD: Thank you, Your Honor.

DR. ELLEN RIEMER - CROSS BY MR. FLOYD

CROSS-EXAMINATION

1
2 BY MR. FLOYD:

3 Q: Hello, Dr. Riemer.

4 A: Hi.

5 Q: You were discussing stippling earlier. If someone is
6 wearing clothing, could that mask stippling to the skin if
7 the gunshot wound hits clothing?

8 A: Yeah. Well, sometimes clothing can absorb some of the
9 stippling. Frequently, lightweight clothing does not absorb
10 all of it, like a heavy parka might.

11 Q: But it can affect the amount of stippling and it can
12 mask part of it?

13 A: Yes. It's possible. Yes. If the clothing is thick
14 enough, it could.

15 Q: Okay. And you discussed a little earlier the term
16 homicide, and that's a medical definition, a homicide, that
17 you were giving; correct?

18 A: That's correct. That's not a legal conclusion. That
19 just means by definition it's death at the hands of another.
20 So it's a medical conclusion.

21 Q: Right. And that's not certainly not the same as the
22 legal term for murder?

23 A: That's correct.

24 Q: Right? Correct. Okay.

25 MR. FLOYD: Thank you very much.

1 THE WITNESS: Okay.

2 THE COURT: Anything further?

3 MR. white: Nothing further, Judge.

4 THE COURT: Thank you very much, Dr. Riemer.

5 THE WITNESS: Okay.

6 THE COURT: You may step down.

7 Any objection to Dr. Riemer being excused?

8 MR. WHITE: None on behalf of the State, Judge.

9 THE COURT: Mr. Floyd, any objection to Dr. Riemer being
10 excused?

11 MR. FLOYD: No objection, Your Honor.

12 THE COURT: All right. Thank you very much.

13 THE WITNESS: Thank you.

14 THE COURT: All right. You may call your next witness.

15 MR. WHITE: Judge, at this time, the State would call
16 Thomas Myers.

17 THE COURT: All right. Mr. Myers, please come around to
18 be sworn, sir.

19 THE CLERK: Sir, please place your left hand on the
20 Bible and raise your right hand. Do you swear the testimony
21 you give in this case to be the truth, the whole truth, and
22 nothing but the truth, so help you God?

23 THE WITNESS: I do.

24 THE CLERK: Please be seated and state your full name
25 for the record.

THOMAS MYERS - DIRECT BY MR. WHITE

1 THE WITNESS: Thomas Myers.

2 THOMAS MYERS, being first duly
3 sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. WHITE:

6 Q: Good afternoon, Mr. Myers. Where are you employed?

7 A: I'm currently employed with the Florence County
8 Coroner's Office as the deputy coroner.

9 Q: How long have you been employed there?

10 A: About three-and-a-half years.

11 Q: And what are your duties as deputy coroner?

12 A: As coroner, our duties are to investigate death of all
13 manners. Dr. Riemer mentioned the different types or manners
14 of death. We investigate all of those, whether it be
15 natural, homicide, anything that typically takes place
16 outside of the scope of a -- of a doctor's typical medical
17 setting.

18 Q: And is the objective of your investigation to discern
19 the cause and manner of death?

20 A: It is.

21 Q: Now, on February 1st, 2017, did you have occasion to be
22 dispatched to McLeod Hospital in regards to this particular
23 case?

24 A: I did. That -- that evening I was on call. There's --
25 we -- in our office, we carry a week of call. That happened

THOMAS MYERS - DIRECT BY MR. WHITE

1 to fall on my week. I was dispatched to McLeod ER and upon
2 arriving there met with investigators and nursing staff in
3 reference to this case.

4 Q: And what did you find upon your arrival?

5 A: I was directed to an ER room with a white male on a
6 hospital bed. I was given a little bit of background about
7 the occurrences as law enforcement believed that they had
8 taken place and began my examination of the body.

9 Q: Were you able to at some point ascertain the identity of
10 that male?

11 A: Yes. I was given that identity by law enforcement as
12 Malcolm Kenneth Kemmerlin.

13 Q: And then did you then conduct an examination of the
14 body?

15 A: Yes, I did.

16 Q: And what are you looking for when you are, you know,
17 going through that examination?

18 A: For -- for any body that -- any physical body that we
19 are examining, we are open to look for any signs of trauma,
20 anything that led them to be in the position that we're
21 examining them in at that point. So in addition to the
22 information given to me by law enforcement, I do my own
23 assessment of the body.

24 Upon examining Mr. Kemmerlin's body, I did observe a
25 few, more than one, gunshot wounds. And then from there

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1 overall, we look for any other trauma to the body. Clothing
2 description, if it applies, just to kind of give us a
3 baseline of what may have taken place in comparison to the
4 information we're gathering from law enforcement.

5 Q: When you arrived, was the clothing already removed from
6 the body at that point?

7 A: To my best recollection, I believe it was.

8 MR. WHITE: I beg the Court's indulgence.

9 THE COURT: Yes, sir.

10 BY MR. WHITE:

11 Q: Now, was there a good deal of blood present at that
12 time?

13 A: There was.

14 Q: Okay. And did you -- were you able to figure out as
15 best you could approximate time of death?

16 A: The information I was given by law enforcement was that
17 they believed that the shooting took place at approximately
18 1820 hours, which is 6:20 p.m., and then the matter of time
19 from -- from there I knew that he had arrived at -- I knew
20 what time he had arrived at the ER, my arrival time. It's
21 just a -- you know, checking, you know, verifying the times
22 at that point, but that was the time that law enforcement had
23 given me as far as a potential incident time.

24 Q: Now, in your role as deputy coroner and the Coroner's
25 Office in general, do you have occasion to work with MUSC and

THOMAS MYERS - DIRECT BY MR. WHITE

1 the Department of Pathology in scheduling autopsies?

2 A: We do. That's one role that falls under our
3 responsibility is to schedule an autopsy. Anytime we believe
4 that someone's life is taken by another, that's -- an autopsy
5 is ordered. Or any time that there is just unknown
6 circumstances that we don't directly have an answer to, we
7 reach out to them and request an autopsy be done.

8 Q: And was an autopsy scheduled in this case?

9 A: I did schedule one the evening that I was still at the
10 hospital. I was able to schedule that, which was scheduled
11 for the next day.

12 Q: Now, does the Department of Pathology then after their
13 autopsy issue you a report with their findings?

14 A: They do. Typically, a preliminary report comes by phone
15 call from the pathologist, and then we get an official report
16 whenever all their information gets completed, toxicology and
17 everything, all their findings.

18 Q: And the reports that came from Dr. Riemer and the
19 Department of Pathology, were they consistent with her
20 testimony here today?

21 A: Yes.

22 Q: Now, do you use the Department of Pathology's reports in
23 formulating your own report?

24 A: We do. We use that as a -- as a tool in the same way
25 that we use the information gathered by law enforcement, by

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1 EMS, by medical staff, medical records, whether it's a
2 natural death or homicide, suicide, anything like that. We
3 take all pieces into account. The pathology report is a --
4 is another tool that we use to make a full decision.

5 Q: Now, based on all of your findings, do you then -- do
6 you then determine cause and manner of death?

7 A: Yes, we do.

8 Q: And do you issue a death certificate based on those
9 findings?

10 A: The death certificate is issued usually before that just
11 for streamlining purposes for the family and the funeral
12 home. If the death certificate needs to be pending, it can.
13 We can always change that at a later date, but yeah, that's
14 when -- during that process is when the death certificate is
15 issued in conjunction with us and the funeral home.

16 Q: And was a cause and manner of death determined in this
17 case?

18 A: Yes, it was.

19 Q: And what was the cause and manner of death here?

20 A: The cause was determined to be two gunshot wounds to the
21 chest and the manner was determined to be homicide.

22 Q: Okay. Again, I'm just going to ask you briefly --

23 MR. WHITE: Judge, may I approach?

24 THE COURT: Yes, sir.

25 BY MR. WHITE:

THOMAS MYERS - DIRECT BY MR. WHITE

1 Q: Not to beat a dead horse here, Mr. Myers, but when you
2 say chest injury, is this a chest injury?

3 A: It is.

4 Q: Even though it's a wound to the back?

5 A: Yeah. The wound began in the back. The damage was done
6 within the chest, the organs and body parts within the chest.
7 So that makes it a chest injury.

8 Q: Okay. Now, Mr. Myers, what did you do prior to coming
9 on board with the Coroner's Office? Where were you employed?

10 A: I was employed with the Florence City Police Department
11 for a total of 12-and-a-half years. Nine of those was within
12 the crime scene unit.

13 Q: Okay. And what kind of things did you do and were you
14 responsible for day to day during those 12 years?

15 A: Day to day, overall police work was responding to calls
16 of service, report taking, report writing, evidence
17 preservation. More specifically in the crime scene realm, I
18 ended my career there as a supervisor of about five years,
19 and that was specifically evidence preservation, crime scene
20 information gathering and reconstruction, and a lot of
21 interpretation with my investigators, with patrol, with
22 witnesses.

23 Q: So is it fair to say you've seen a fair number of crime
24 scenes?

25 A: Very many crime scenes, and that was well outside of

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1 just death scenes. So it was a -- we investigated any number
2 of crime scenes.

3 Q: Have you received any specialized or advanced training
4 in regards to crime scene reconstruction and analysis?

5 A: I have. I received certification in crime scene
6 reconstruction, death investigation, homicide investigation,
7 child fatality investigation, blood pattern analysis, blood
8 pattern recognition, and crime scene photography.

9 Q: Thank you very much, Mr. Myers.

10 MR. WHITE: At this time, the State would move Mr. Myers
11 be admitted as an expert in the field of blood analysis and
12 crime scene reconstruction.

13 MR. FLOYD: I don't have any objection.

14 THE COURT: All right. Without objection.

15 BY MR. WHITE:

16 Q: Okay. Mr. Myers, I am going to show you a series of
17 photographs. Is your screen on there?

18 A: It is.

19 Q: Okay. I'm going to show you a series of photographs
20 indicating blood and what I'd like for you to do is tell the
21 jury -- well, first, what kind of blood patterns are there?

22 A: There are -- probably what we're most common with are
23 low velocity patterns, which would be a typical blood drop.
24 We cut our finger in the kitchen and it drops on the counter
25 or drops on the floor. I think that's primarily what we're

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1 used to seeing day in and day out. I say we as citizens, not
2 on the law enforcement or crime scene side.

3 But there's also transfers. Any time that a bloody item
4 touches something else, then that blood transfers over.

5 There's also cast-off, which is if the bloody item
6 doesn't touch it, but it maybe slings off. The blood slings
7 off of or casts off of that item onto a clean item. That's
8 called cast-off.

9 There's expiratory blood, which is typically coughed
10 out.

11 High velocity. Just a lot of times that indicates if
12 there's impact against an item, a wall, or a close-quarter
13 assault may have taken place.

14 Q: Okay. I'm going to show you several photographs here.
15 I just want you to tell me if it's -- what kind of patterns
16 you recognize in the blood. First is State's Exhibit 9.
17 What do we see here?

18 A: Those are going to be drops or low velocity -- low-
19 velocity patterns.

20 Q: Now, State's Exhibit 11?

21 A: That again is a drop.

22 Q: State's Exhibit 3 [sic]?

23 A: That's another drop.

24 Q: State's Exhibit 13?

25 A: My opinion is this is a drop that's been splashed. So

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1 it kind of sits the fence between a low-velocity drop and a
2 cast-off. The cast-off would have come from the drop of
3 blood hitting that surface. That looks like the inside of a
4 door, which is going to have an irregular surface. So just
5 it wouldn't have been an absorbent surface. So I believe
6 that that drop probably turned into a cast-off on its own.

7 Q: So the cast-off originated -- are you saying that the
8 cast-off originated from a drop?

9 A: That's right.

10 Q: State's Exhibit 14?

11 A: In front of the handle there, it looks -- that could be,
12 again, more of a drop I would say. It's got a slight cast-
13 off to it, but not a -- not a great amount. With just the
14 small amount of blood that's there, I would go more toward a
15 drop.

16 Q: State's Exhibit 4?

17 A: That's a drop in there beside that leaf.

18 MR. WHITE: And, Judge, I'm doing it again.

19 My apologies, Madam Court Reporter. State's Exhibit 15.
20 I said 4 there.

21 Again, Judge, my apologies.

22 BY MR. WHITE:

23 Q: State's Exhibit 15? I'm sorry, Mr. Myers.

24 A: That's a drop.

25 Q: State's Exhibit 16?

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- 1 A: That's a drop as well.
- 2 Q: State's Exhibit 17?
- 3 A: A little faint, but that looks like a drop.
- 4 Q: State's Exhibit 18?
- 5 A: Again, a drop.
- 6 Q: State's Exhibit 19?
- 7 A: It looks like there's a couple there, but that's still a
- 8 drop, low-velocity pattern.
- 9 Q: State's Exhibit 20, Mr. Myers?
- 10 A: Another low-velocity drop.
- 11 Q: State's Exhibit 22?
- 12 A: Again, with the irregular shape of the front bumper,
- 13 that looks like a drop. It could be on the verge of a cast-
- 14 off, but it looks very straight down. So I would -- I would
- 15 go for a drop on that, a low-velocity pattern.
- 16 Q: State's Exhibit 28?
- 17 A: A few of them there are mainly -- mainly low velocity.
- 18 Q: State's Exhibit 11?
- 19 A: That's a low-velocity drop. Exhibit 30.
- 20 Q: I swear. Thank you very much, Mr. Myers. State's
- 21 Exhibit 31? That's marker 12.
- 22 A: That one is going to be more of a cast-off. It's got a
- 23 directional pattern versus the other ones that are more
- 24 upward to straight drop. This has actually got a direction
- 25 to it.

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1 Q: Now, early -- earlier, you testified that State's
2 Exhibit 13 was likely a drop that created a cast-off pattern.
3 Do you recall that?

4 A: I do.

5 Q: Is this similar to State's Exhibit 13 or can you discern
6 a difference in the cast-off pattern?

7 A: The difference here is that there's -- there's not
8 another drop that this was created from. The other exhibit
9 was because of that surface the low-velocity drop created the
10 cast-off or the splash, a poor term. This would not have had
11 that opportunity. So this by itself is a -- is a cast-off.

12 Q: So the cast-off here, if I'm understanding you correct
13 -- correctly, Mr. Myers, would have occurred from something
14 other than a blood drop?

15 A: Or a blood drop with a different velocity. So possibly
16 a body part, a piece of clothing, some movement from whatever
17 is bleeding.

18 Q: Now, I asked you to point out if there were any -- the
19 patterns of blood that you see, but also, Mr. Myers, if you
20 see -- well, I'll ask you just directly. Do you see the
21 presence of more blood in this photograph than is present
22 previous to this?

23 A: There seems to be a few more -- a few more drops, but
24 they are -- I would -- I would suppose that they are as well
25 cast-off because of the direction that they've got.

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1 Q: Now, State's Exhibit 33?

2 A: Very similar to marker 13, the previous one, in that
3 there are multiple samples, multiple drops, but they've got a
4 directionality to them that I would -- I would lean towards
5 -- towards a cast-off.

6 Q: State's Exhibit 34?

7 A: This is definitely cast-off. You can see the lower
8 pattern has got some velocity behind it, meaning that it was
9 -- it had some speed traveling with it, whether it's slung
10 off of an item. There was something -- something different
11 in the last couple of markers here that took place. The --
12 the patterns of the -- the blood definitely appear different
13 here.

14 MR. WHITE: I beg the Court's indulgence for just a
15 moment.

16 THE COURT: Yes, sir.

17 BY MR. WHITE:

18 Q: Are you familiar with autopsy photographs --

19 A: Yes, sir.

20 Q: -- in this case, Mr. Myers?

21 A: Yes, sir.

22 Q: Are you familiar with the x-rays that got taken with the
23 autopsy?

24 A: Yes.

25 Q: I'm going to show you State's Exhibit 63. Is that a

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1 break that occurred from the shot to that right forearm?

2 A: As I understand it from the autopsy report, that is how
3 that took place, and that's consistent with -- with my
4 findings in the ER, my exam.

5 Q: I'm also going to show you State's Exhibit 58 and 59, if
6 I could, Mr. Myers. Is that the entry wound to the right
7 forearm?

8 A: It is the lateral, the outer side of the right forearm.

9 Q: Is that the exit wound?

10 A: It is, just -- just through the arm on the inside.

11 Q: Now, you know, given these three photographs and the
12 injuries that we know occurred to the right forearm, are you
13 of the opinion that it would have been difficult to keep that
14 right forearm, let's say, in this position?

15 A: Under control at any point would be difficult.

16 Q: Now, if a shot would've occurred here hitting the
17 forearm and breaking that bone and the arm dangled, would
18 that then create cast-off patterns?

19 A: It should.

20 Q: All right. I'm going to ask you this. You are aware
21 that there's two shots, you know, entry wounds, so to speak,
22 in this case?

23 A: Yes, sir.

24 Q: There's a front shot; correct?

25 A: There's a frontal side shot and a back injury.

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- 1 Q: Now -- and then there's a back shot. That's right. If
2 the back shot would've occurred first and then this injury
3 would've occurred at the markers when we begin to see cast-
4 off, would you then suspect that there would be more blood at
5 those markers?
- 6 A: Absolutely.
- 7 Q: Starting at marker 12, are there -- is there more blood
8 than there is prior?
- 9 A: There's more blood and a different pattern.
- 10 Q: Okay. Very good. State's Exhibit 35?
- 11 A: That appears to be just a low-velocity pattern, a drop.
- 12 Q: Now, 16 obviously goes up to the door, but I'm going to
13 back up a little bit to the post as you make your way up
14 those stairs, and that's State's Exhibit 36. If you could,
15 tell me what kind of blood do we see there?
- 16 A: I'm satisfied that that's cast-off. That looks like the
17 inside of the post, which means somebody would have to be on
18 this side to cast that blood off, which the -- I mean the
19 directionality would be fairly -- fairly straight on and
20 straight down with that post because there's no
21 directionality side, you know, front to back, side to side,
22 but there's, you know, definitely a drop, a low-velocity
23 pattern to it, but I think it would be more cast-off because
24 it's a vertical surface.
- 25 Q: Exhibit 37?

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1 A: That is what we call transfer. A bloody item touches
2 something that's not and gets that blood to it. That's the
3 post as well.

4 Q: Yes, sir. We're almost done, Mr. Myers. I appreciate
5 it. And then the door, State's Exhibit 40? Can you tell us
6 a little bit about that?

7 A: I can't -- I don't have a way to point, do I? To the
8 right of the doorknob, there's transfer.

9 Q: Okay.

10 A: This smearing, as you can imagine if you -- if something
11 is bloody and you touch a surface or lean in on it.

12 Q: So State's 41, is that what you're referring to?

13 A: That's it. That's it. That -- that causes that
14 transfer pattern. And then from that down lower, the lower
15 left of this -- of this picture back toward the entry side of
16 the door is going to be cast-off from this -- the bloody item
17 that's making this transfer, I would assume.

18 Q: Okay.

19 A: Go back to the other picture?

20 Q: State's Exhibit 42?

21 A: Yeah. That's going to be the cast-off there just
22 running, you know, from -- from whatever that bloody item is
23 touching that door.

24 Q: Okay. Now, based on the blood pattern as you just
25 reviewed it from marker 1 to 16, can you offer an opinion as

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1 to whether or not one -- at least one shot, one injury,
2 occurred outside of the vehicle?

3 A: I would certainly say at least one was outside the
4 vehicle because of the directionality change.

5 Q: All right. Now, I'm going to show you State's Exhibit
6 23, if you'll take a look at that briefly. I'll show you
7 that in conjunction with State's Exhibit 3 for context, and
8 then I'm going to ask you this. Were you in here when Dr.
9 Riemer testified that the bone -- excuse me -- the bullet
10 from that front shot eventually lodged in the bone of the
11 left hip?

12 A: Yes.

13 Q: Would that impact mobility?

14 A: It could, I think depending on the depth of the bullet
15 into the bone. I understand that the bone was not fractured
16 because of that.

17 Q: Okay. And how about the injuries that occurred to Mr.
18 Kemmerlin, his, you know, vital organs, from that same shot?
19 Would that have impacted mobility?

20 A: That shot as I understand went through a lung, a
21 diaphragm. That would have greatly hindered mobility. In
22 fact, just breathing through your -- while your -- I mean his
23 blood was -- as his lung was filling up with blood and then
24 trying to breathe through that and presumably move at the
25 same time would be the immobilizing factor there.

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1 Q: Does it seem unlikely given that particular injury to
2 the front -- well, let me rephrase. Would he have had
3 substantial difficulty making it from the driver's side door
4 all the way up those steps and in the door?

5 A: With the side injury you're asking?

6 Q: Yes, sir.

7 A: The injuries I've seen like that in the past, that seems
8 to be a long way to go from the driver door around.

9 Q: And now I'm going to ask you just a common-sense
10 question. Would it have been easier -- and you can see it in
11 here, Mr. Myers -- easier to make it from between markers 10
12 and 11 to the front door?

13 A: In my -- in my professional experience and the number of
14 shooting scenes that I've worked, that -- that distance is
15 more realistic for a shot to be taken that -- from into the
16 side of the chest wall through a lung and a diaphragm is
17 literally steps is what takes place there. So that would be
18 more likely as the -- near the front of the car or the corner
19 of the porch.

20 Q: Now, given what you just testified to, Mr. Myers, and
21 given your testimony about the addition of more blood and
22 cast-off patterns from markers, I think, 12 on, are you of
23 the opinion that this shot, front shot as we've been
24 describing it, occurred outside of the vehicle?

25 A: Yes. Certainly.

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1 Q: But there was blood inside the vehicle; correct? So
2 there had to have been a shot that occurred inside the
3 vehicle; is that correct?

4 A: There should have been while he was at least at the
5 driver's seat or in the process of exiting the vehicle, but
6 that's where I understand the blood to have started out is in
7 that doorstep.

8 Q: So if this shot occurs outside, what is the only other
9 shot that we have here?

10 A: The only other shot we have is into the back that exited
11 out the front.

12 MR. WHITE: I beg the Court's indulgence.

13 Okay. Thank you, Mr. Myers. Please answer any
14 questions the defense may have.

15 THE COURT: Cross?

16 CROSS-EXAMINATION

17 BY MS. HENDERSON:

18 Q: Mr. Myers, you conduct -- excuse me. You conducted the
19 examination of the victim at McLeod Hospital; correct?

20 A: That's correct.

21 Q: When you went into his room, he had already been
22 disrobed by law enforcement or the staff at McLeod; correct?

23 A: Either the staff or EMS typically.

24 Q: Okay. Moving on to blood splatter analysis -- and I
25 apologize. You're going to have to walk me through some of

THOMAS MYERS - CROSS BY MS. HENDERSON

1 this again because I'm a little slow. Can blood splatter
2 patterns differ from one individual to another?

3 A: No. It's spatter actually, and it's not -- spatter --
4 blood spatter is consistent. We don't individually hold our
5 own patterns.

6 Q: Okay. So it doesn't -- there's no -- blood type doesn't
7 play a role in blood spatter?

8 A: No.

9 Q: Okay. Can you explain to the Court again what pattern
10 you typically see in a gunshot wound?

11 A: It really depends on the -- the surrounding scene.
12 We've seen anywhere from high velocity if it's -- you know,
13 say, if they're in a -- in closed-in, close quarters, high
14 velocity is just something that the blood spots are moving
15 quickly when they stop and there's -- I mean anywhere from --
16 I would compare it to, say, a shotgun blast. There are --
17 you know, there's really no typical pattern that's -- that's
18 seen. It really does depend on the individual scene and the
19 location.

20 Q: Okay. Okay. And that pattern will differ based upon
21 what distance a bullet traveled; correct?

22 A: Absolutely. The distance, the angle, the closeness, the
23 proximity, and what's around the target, the victim.

24 Q: Okay. You testified that it was your opinion that at
25 least one shot occurred outside the vehicle because of the

THOMAS MYERS - CROSS BY MS. HENDERSON

1 directionality change; correct?

2 A: Of the patterns, correct.

3 Q: Okay. Could those directionality changes be impacted by
4 an individual's movement himself, stumbling, walking, those
5 sorts of movements?

6 A: It could.

7 Q: Okay. And you testified that the driver's side door
8 area had blood in it; correct?

9 A: That's according to the photos, yes.

10 MS. HENDERSON: May I have one moment, please, Your
11 Honor?

12 THE COURT: Yes, ma'am.

13 BY MS. HENDERSON:

14 Q: Mr. Myers, do you know the distance between the vehicle
15 at issue and the apartment at issue?

16 A: I do not.

17 Q: Okay. But you testified that that would've been a
18 difficult endeavor for the victim to do; correct?

19 A: Just based on what the photos look like.

20 MS. HENDERSON: Thank you, sir.

21 No further questions, Judge.

22 THE COURT: Okay. Anything on redirect?

23 MR. WHITE: No redirect, Judge.

24 THE COURT: All right. Thank you very much, Mr. Myers.
25 You may step down, sir.

1 Any objections to Mr. Myers being excused?

2 MR. WHITE: No. Absolutely not, Judge.

3 THE COURT: All right.

4 MR. FLOYD: No objection.

5 THE COURT: Thank you.

6 MR. WHITE: Judge, might we approach for just one
7 moment?

8 THE COURT: Yes.

9 (WHEREUPON, a bench conference was held in the presence
10 of the jury but out of the hearing of the jury off the
11 record, after which the proceedings resumed as follows.)

12 THE COURT: Ladies and gentlemen, in talking with the
13 attorneys, it looks like we're going to break a little early
14 today and pick up tomorrow where we've left off.

15 When you -- yesterday you didn't really know a whole lot
16 because we basically selected the jury and then you went
17 home. Obviously, you'll go home today and your family,
18 friends or loved ones may be curious or more than likely are
19 curious. Just ask them to be patient. Just let them know
20 that you're not allowed to discuss the case. You're not
21 allowed to talk about anything that occurred here today and
22 that you -- if they'll remain patient, you'll certainly fill
23 them in at the close of the case, but right now you're still
24 under your instructions to have no conversation about the
25 case.

1 Again, you know, my suggestion to you is to go home and
2 you can digest what you've heard here today, but it's
3 probably a good idea also to give your minds a break and just
4 relax and we'll start back in the morning. If you would,
5 please be here in your jury room by 9:30 and we'll get
6 started once everyone has reconvened.

7 Everyone please remain seated while the members of the
8 jury are excused.

9 We'll see you back here at 9:30, folks.

10 (WHEREUPON, the jury exited the courtroom at 3:14 p.m.)

11 THE COURT: Okay. Is there anything else we need to
12 deal with this afternoon from anybody?

13 MR. WHITE: Judge, I think there's -- there's nothing
14 from the State, Judge.

15 THE COURT: Okay. Scott?

16 MR. FLOYD: Nothing further, Your Honor.

17 THE COURT: All right. All right. Well, we'll -- we'll
18 then be in recess until 9:30 in the morning.

19 MR. WHITE: Yes, sir. Thank you, Judge.

20 THE COURT: Oh, if y'all have any -- I don't know if you
21 have any specific requests to charge that you want me to
22 consider. If you do, just if you'd email them to us. We're
23 kind of putting together a draft of the charges. So if
24 you've got something -- I mean we've got, you know, the
25 boilerplate stuff and we've got the standard murder-type

1 charges, but if you need anything specific, just let us know.
2 Okay?

3 MR. WHITE: Yes, sir. Thank you.

4 (WHEREUPON, the proceedings adjourned for the day at
5 3:15 p.m.)

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7 (WHEREUPON, the proceedings resumed at 9:57 a.m.)

8 THE COURT: All right. Anything that we need to take up
9 before we bring the jury out from the State?

10 MR. WHITE: None from the State, Judge.

11 THE COURT: From the defense? Anything before we start
12 back?

13 MR. FLOYD: Nothing further, Your Honor. I was -- I was
14 --

15 THE COURT: No, I -- let's bring the jury out, please.
16 And we're all okay on the prior record of the witness, I
17 guess?

18 MR. FLOYD: Yes, sir, Your Honor.

19 THE COURT: Okay.

20 (WHEREUPON, the jury entered the courtroom at 9:58 a.m.)

21 THE COURT: All right. Ladies and gentlemen, welcome
22 back. I hope everyone had a good evening and are ready to
23 start back to work today.

24 You understand or you remember or recall that when we
25 ended yesterday, the State was presenting their case, and

1 we'll pick up where we left off with yesterday's -- well,
2 recognizing the State for your next witness.

3 MR. WHITE: Thank you, Judge. At this time, the State
4 would call Debra Smith.

5 THE COURT: Ms. Smith, if you'd please come around to be
6 sworn? Is she in the courtroom? Nope.

7 MR. WHITE: She'll make her way in momentarily.

8 THE COURT: Yeah. Okay.

9 MR. WHITE: Oh, I'm sorry.

10 THE COURT: I don't know Debra Smith and that could have
11 been Debra Smith.

12 MR. WHITE: That was actually Chad Smith, Judge. My
13 apologies.

14 THE COURT: We're not going to -- we're not going to go
15 down that road.

16 (WHEREUPON, there was a pause in the proceedings until
17 the witness entered the courtroom, after which the
18 proceedings resumed as follows.)

19 THE CLERK: Ma'am, if you would, please step up to the
20 stand and place your left hand on the Bible and raise your
21 right hand.

22 THE WITNESS: Left hand? Yes, ma'am.

23 THE CLERK: Raise your right hand.

24 THE WITNESS: Oh, I'm sorry.

25 THE CLERK: Do you swear the testimony you give in this

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1 case to be the truth, the whole truth, and nothing but the
2 truth, so help you God?

3 THE WITNESS: Yes, ma'am.

4 THE CLERK: Please be seated and state your full name
5 for the record.

6 THE WITNESS: Yes, ma'am. My name is Debra Smith.

7 DEBRA SMITH, being first duly sworn,
8 testified as follows:

9 DIRECT EXAMINATION

10 BY MR. WHITE:

11 Q: Good morning, Ms. Smith.

12 A: Good morning.

13 Q: Are you doing all right this morning?

14 A: Yes, sir.

15 Q: A little bit nervous?

16 A: Yes, sir.

17 Q: Nothing to be nervous about. Make sure you speak up or
18 speak into the microphone and answer my questions. Okay?

19 A: Okay.

20 Q: Ms. Smith, how do you know the defendant in this case?

21 A: I'm married to him.

22 Q: And how long have y'all been married?

23 A: 16 years maybe.

24 Q: All right. Have you had some good times during your
25 marriage?

DEBRA SMITH - DIRECT BY MR. WHITE

- 1 A: Yes, sir.
- 2 Q: Have you had some rocky times during your marriage?
- 3 A: Yes, sir.
- 4 Q: Like all marriages?
- 5 A: All marriages are rocky.
- 6 Q: Now, are you aware about an incident that occurred
- 7 February 1st, 2017?
- 8 A: Yes, sir.
- 9 Q: Involving the defendant in this case? At that time,
- 10 where were you living?
- 11 A: [REDACTED] Liberty Chapel Road.
- 12 Q: Now, was the defendant living there with you at the
- 13 time?
- 14 A: Yes, sir.
- 15 Q: And during this particular time, would you describe that
- 16 as some of the good times or some of the rocky times?
- 17 A: Some of the rocky times.
- 18 Q: Now, on February 1st, 2017 -- well, let me back up a
- 19 little bit. Do you remember what day that was, day of the
- 20 week?
- 21 A: On a Wednesday.
- 22 Q: Okay. Prior to that, leading up to that date, were you
- 23 planning on staying in the home?
- 24 A: No, sir.
- 25 Q: What were your plans at that time?

DEBRA SMITH - DIRECT BY MR. WHITE

1 A: My plans were to go stay at my niece's, which I had
2 stayed there before for three or four months, and I was going
3 to go back and stay with her because it was just too -- it
4 was too much to handle.

5 Q: And where did she live?

6 A: At Surfside Beach.

7 Q: Okay. And when you say it was too much to handle, what
8 are you referring to?

9 A: Just the erratic behavior from Mike and all the drug
10 situation.

11 Q: And are you referring to rocky times?

12 A: Rocky times.

13 Q: Okay. So when you woke up on February 1st, 2017, were
14 you planning to leave at that time?

15 A: Yes, sir. I had already had my clothes in the car prior
16 to the weekend and I packed my other little clothes in a
17 basket.

18 Q: Okay. And you said your car. When you woke up that
19 morning, where was your car?

20 A: Well, Mike was taking my car. He was going to -- he
21 said he was going to go look for tools because the guy that
22 he was working for said he couldn't go to work without tools,
23 and he just left.

24 Q: Okay. Did he use your car often?

25 A: Oh, yes, sir.

DEBRA SMITH - DIRECT BY MR. WHITE

- 1 Q: Did he use your car like his car?
- 2 A: Oh, yes, sir.
- 3 Q: Did y'all share any other things in that similar way?
- 4 A: My phone.
- 5 Q: Okay. I want to talk about that phone. During this
- 6 time, the defendant, Mike, did he have his own phone?
- 7 A: No, sir. He sold his phone.
- 8 Q: Okay. Did he use your phone like his phone?
- 9 A: Yes, sir.
- 10 Q: Okay. Now, do you know the victim in this case?
- 11 A: I met him once. I didn't really know him.
- 12 Q: Okay. When you met him, was he polite to you?
- 13 A: Oh, yes, sir.
- 14 Q: Was he nice to you?
- 15 A: Nice.
- 16 Q: Did he threaten you in any way?
- 17 A: No, sir.
- 18 Q: Did you ever feel threatened in his presence?
- 19 A: No, sir.
- 20 Q: Prior to this incident which occurred on February 1st of
- 21 2017, had you ever heard Mike talk about the victim in this
- 22 case?
- 23 A: Yes, sir.
- 24 Q: And in what way did you hear him talk about him?
- 25 A: He always wanted to, like, get over on Kenny.

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1 MR. FLOYD: Your Honor, I object to hearsay.

2 MR. WHITE: I believe that is a statement by a party
3 opponent, Judge. I believe this is admissible.

4 THE COURT: Let me -- let me get y'all to step up here
5 real quick.

6 (WHEREUPON, a bench conference was held in the presence
7 of the jury but out of the hearing of the jury off the
8 record, after which the proceedings resumed as follows.)

9 THE COURT: I'll overrule the objection. I'm going to
10 allow it.

11 MR. WHITE: Okay.

12 BY MR. WHITE:

13 Q: Ms. Smith, now I just want you to testify. Now, when
14 you heard Mike talking about the victim, Kenny Kemmerlin,
15 when did this occur?

16 A: Well, it occurred several times, but he always would say
17 --

18 Q: Don't tell me. I'm just going to --

19 A: Okay.

20 Q: I'm going to lead you there.

21 A: I'm sorry.

22 Q: This happened on February 1st, 2017. These conversations
23 about Kenny that you overheard Mike talking about, when did
24 they occur?

25 A: About a couple weeks before this happened.

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- 1 Q: Okay. And when he made these comments, was he alone?
- 2 A: At one point, he wasn't.
- 3 Q: Okay. Was there a third party in the room?
- 4 A: Yes, sir.
- 5 Q: Okay. Now, even though there's a third party in the
- 6 room, I just want you to tell this jury only what Mike said.
- 7 A: Okay.
- 8 Q: If you could do that for us, that would be great.
- 9 A: What I could hear, Mike told the boy -- he said you go
- 10 to his house door and I'll break into his car because he
- 11 always said he kept medicine in there.
- 12 Q: Okay. Did you understand that to mean that he was
- 13 talking about the possibility of robbing the victim?
- 14 A: That's how I took it.
- 15 Q: Now, on February 1st, 2017, when you woke up, did you
- 16 testify that Mike took your car?
- 17 A: Yes, sir.
- 18 Q: Did you see him again later on that evening?
- 19 A: Yes, sir.
- 20 Q: Did he pull up in your car?
- 21 A: He did.
- 22 Q: Okay. Where were you?
- 23 A: I was in the house.
- 24 Q: Did he come inside?
- 25 A: He did.

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1 Q: Describe his behavior?

2 A: Sort of erratic, just real nervous, walking back and
3 forth.

4 Q: What, if anything, did he say to you at that point?

5 A: He told me -- he said I just saw Ra Ra shoot somebody,
6 shoot Kenny. I mean he just -- he was, like, I just saw -- I
7 just saw Ra Ra shoot Kenny.

8 Q: All right. Now, at that time, did you know who Ra Ra
9 was?

10 A: I knew he lived behind us, but I only ever met him once.

11 Q: All right. Did you ever hear Mike talk about Ra Ra?

12 A: Yes, sir.

13 Q: And what kind of things would he say about Ra Ra?

14 A: Talk about the bad things that he was capable of.

15 Q: Okay. Did he ever say that Ra Ra was someone he could
16 get a gun from?

17 A: I don't know if I've ever heard that, but they were
18 shooting one night, to my knowledge, I mean what I could
19 hear.

20 Q: Okay. Now, once Mike says that, what did you decide to
21 do?

22 A: I just -- I was going to get in my car and I was going
23 to leave. It was just real erratic in that house, just
24 crazy.

25 Q: Okay. And did you, in fact, leave?

DEBRA SMITH - DIRECT BY MR. WHITE

1 A: Yes, sir.

2 Q: Where -- where was Mike?

3 A: He got in the car with me.

4 Q: Okay. And where were you headed?

5 A: To the beach.

6 Q: And where were you seated in the car?

7 A: Driver's passenger -- driver's side.

8 Q: And where was Mike seated?

9 A: Passenger side.

10 Q: All right. Describe to us that -- that car ride to the

11 beach and what, if anything, he said to you?

12 A: Okay. We get about 30 -- 40 miles down the road and

13 Mike takes his hand and puts it over my face and he says

14 smell this. I had no clue what I'm smelling. It was

15 gunpowder. He wanted me to smell the gunpowder he said. He

16 said I had to do it. I had to shoot him. He was going to

17 hurt Ra Ra.

18 Q: And when he said I had to shoot him, who was he

19 referring to?

20 A: Kenny.

21 Q: Did he have a gun on him?

22 A: Yes, sir.

23 Q: How do you know?

24 A: He took it out from his pants and held it there and then

25 put it in my floorboard.

DEBRA SMITH - DIRECT BY MR. WHITE

1 Q: All right. Did you see it?

2 A: Yes, sir.

3 Q: Did he have anything else on him?

4 A: He had -- he had some pills and he put them in his hand

5 and he said I don't know what all I've got here.

6 Q: All right. Did he say anything else about those pills?

7 A: He just said that Ra Ra must've got more than he got.

8 Q: Okay. Now, you testified just a minute ago that he did

9 not have a phone at this time; correct?

10 A: No, he didn't have a phone.

11 Q: On the ride down there, did you discover he had a phone

12 on him?

13 A: Yes, sir.

14 Q: Okay. How did you discover he had a phone on him?

15 A: The phone rang.

16 Q: All right.

17 A: The phone rang.

18 Q: When it rang, where was it?

19 A: In his back pocket.

20 Q: Okay. What did he do?

21 A: He took it out and I asked him whose phone it was. He

22 said it must be Ra Ra's. He said, no, it's got to be Kenny's

23 and he took it and we were riding. Throw it out the window.

24 He was going to throw it out the window. So that's what he

25 did. He threw it out.

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1 Q: All right. And I'm just going to be clear. Are you
2 saying he said he was going to throw it out the window?

3 A: He did throw it out the window.

4 Q: He did throw it out the window?

5 A: Yes, sir.

6 Q: All right. Did he want to do anything with your phone?

7 A: Yeah. He wanted me to -- he wanted to throw mine out
8 the window. He wanted to tell me to tell if anybody asked
9 that something happened to it, something went wrong with it,
10 but I kept my phone.

11 Q: Now, once that happens, are you scared?

12 A: I don't know if I'm scared or just over my head. I
13 don't know what I am at that time.

14 Q: Okay. Now, where do you drive to down at the beach?

15 A: I drove to the Sea Mist Motel.

16 Q: Okay. Why did you go there?

17 A: That's where he wanted to get out at.

18 Q: He asked you to go there?

19 A: Yes, sir.

20 Q: All right. What happens when you pull up at the Sea
21 Mist?

22 A: We pull up and I park up under this tree and this guy is
23 walking by and he says, hey, man, come here a minute. Do you
24 want to buy a gun?

25 Q: Who says that? Who makes that statement?

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- 1 A: Mike says that to the guy.
- 2 Q: Okay. And he walks off?
- 3 A: The guy says, wait a minute, let me go talk to my peeps.
- 4 Q: All right.
- 5 A: And then he walks off.
- 6 Q: Okay. When Mike Smith walks away, was that the last
- 7 time you've seen him?
- 8 A: The last time I saw him.
- 9 Q: Until today in this courtroom?
- 10 A: Yes, sir.
- 11 Q: And is he, in fact, seated in the courtroom today?
- 12 A: Yes, sir. I don't see him. Oh, I could.
- 13 Q: Is that him?
- 14 A: Yes, sir. Yes, sir.
- 15 Q: Once you leave the Sea Mist, where do you go?
- 16 A: I go to my niece's house in Surfside.
- 17 Q: Okay. You go to sleep?
- 18 A: Not until late, late.
- 19 Q: You had trouble sleeping?
- 20 A: Yes, sir.
- 21 Q: What do you do when you wake up the next morning?
- 22 A: I get up. I'm going downstairs and I'm just thinking
- 23 about everything, and my son calls me and --
- 24 Q: Well, let's not get into what he would have told you.
- 25 Okay? That would be hearsay.

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1 A: Okay. Okay.

2 Q: All right?

3 A: I gotcha.

4 Q: But what, if anything, did you do --

5 A: I called the Sheriff's Department.

6 Q: -- once you got that phone call?

7 A: I called Ben Price.

8 Q: You called the Sheriff's Department?

9 A: Yes, sir.

10 Q: Okay. Now, what did you do next?

11 A: I got dressed and I rode all the way to Florence. I

12 went the back way toward John Gregg's store and down through

13 that way. I rode by the Sheriff's Department. I wanted to

14 stop, I really did, but then I just kept -- I come back to my

15 house where I was -- where I was living, and I just walked in

16 and looked around and then I just left and come back to the

17 beach.

18 Q: And why didn't you stop at the Sheriff's Office?

19 A: I was scared. I didn't know.

20 Q: And you go back to the house where you were living?

21 A: Yes, sir.

22 Q: Are you living there today?

23 A: No, sir.

24 Q: Okay. When you go into that home, how long did you

25 stay?

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1 A: Well, I got some stuff out my car and I went and put it
2 in the living room and I was leaning on my hood talking to my
3 niece on the phone and I noticed -- I said, oh, my God,
4 there's a --

5 Q: I'm not talking about -- I want to stop you. Okay?

6 A: Okay.

7 Q: All right. When you are in Florence, I'm talking about
8 that house. Okay?

9 A: Oh, I didn't stay but just a few minutes.

10 Q: Okay. And then did you -- and you stay in your niece's
11 house. Does that mean you drove back to the beach?

12 A: I drove back to the beach.

13 Q: Okay. When you get to the beach, what do you do?

14 A: I get some stuff out my car, I take it inside, put it in
15 the living room. I walk back outside to get some more and I
16 -- my niece calls me and I'm leaning on the hood and I see a
17 shell casing on, like, the vent below the windshield wipers
18 and I thought, oh, my God, there's a shell casing there.

19 Q: Okay.

20 MR. WHITE: Judge, may I approach?

21 THE COURT: Yes, sir.

22 BY MR. WHITE:

23 Q: Ms. Smith?

24 A: Yes.

25 Q: If I could, I'm going to show you what's marked for

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1 identification purposes only as Exhibit -- State's Exhibit 68
2 through 75. Okay?

3 A: Yes, sir.

4 Q: And if you'll just take a look at these photos? All
5 right? Just look through every one of them, but don't tell
6 me anything about them quite yet. Okay?

7 A: Yes, sir.

8 Q: Now, are you familiar with what's depicted in those
9 photographs?

10 A: Yes, sir.

11 Q: And do you recognize what's depicted in these
12 photographs?

13 A: Yes, sir.

14 Q: Now, is it -- is your vehicle shown in these
15 photographs?

16 A: Yes, sir.

17 Q: In this series of photographs? Is your niece's home
18 down at the beach shown in these photographs?

19 A: Yes, sir.

20 Q: Is the shell casing that was lodged in the cowling on
21 your car -- is that shown?

22 A: Yes, sir.

23 Q: Is it a fair and accurate depiction of, you know,
24 everything you described just now to the ladies and gentlemen
25 of the jury?

DEBRA SMITH - DIRECT BY MR. WHITE

1 A: Yes, sir.

2 Q: Okay.

3 MR. WHITE: Judge, at this time, I would move State's

4 Exhibit 68 through 75 into evidence.

5 THE COURT: Any objection?

6 MR. FLOYD: Your Honor, can I take a second look at

7 those?

8 THE COURT: Yes, sir. Absolutely.

9 MR. FLOYD: No objection, Your Honor.

10 THE COURT: All right. State's 68 through 75 are in

11 evidence without objection.

12 (WHEREUPON, State's Exhibits Number 68 through 75,

13 photographs, were admitted into evidence.)

14 MR. WHITE: Thank you, Judge.

15 BY MR. WHITE:

16 Q: All right. Ms. Smith, I'm going to show you what's been

17 marked as State's Exhibit 68. Okay? Tell me, you know, what

18 is shown in this picture. Okay? State's Exhibit 68. Is

19 that your niece's apartment?

20 A: Yes, sir.

21 Q: Which door is her door?

22 A: The one right beside my car.

23 Q: All right. And which one is your car?

24 A: The white Trailblazer.

25 Q: All right. Is that the vehicle that Mike took the

DEBRA SMITH - DIRECT BY MR. WHITE

- 1 morning of February 1st, 2017?
- 2 A: Yes, sir.
- 3 Q: All right. State's Exhibit 69. Is that a close-up of
- 4 your vehicle?
- 5 A: Yes, sir.
- 6 Q: That's your license plate?
- 7 A: Yes, sir.
- 8 Q: All right. State's Exhibit 70. Is that the front of
- 9 your vehicle?
- 10 A: Yes, sir.
- 11 Q: Do you see that shell casing anywhere?
- 12 A: Yes, sir.
- 13 Q: I'm going to show you a close-up, if I could, Ms. Smith.
- 14 I'm just going to keep zooming in. All right? State's
- 15 Exhibit 71, that little brass dot there?
- 16 A: I see.
- 17 Q: Is that the shell casing?
- 18 A: Yes, sir.
- 19 Q: All right. Now, this is a very close-up photograph.
- 20 Okay? State's Exhibit 72. Is that the shell casing?
- 21 A: Yes, sir.
- 22 Q: 73 is repetitive. This one is a little bit closer up.
- 23 State's Exhibit 74. Okay? I just want to verify that's the
- 24 same shell casing?
- 25 A: Yes, sir.

DEBRA SMITH - DIRECT BY MR. WHITE

1 Q: Okay. Thank you, Ms. Smith. Now, did law enforcement
2 come and retrieve that shell casing?

3 A: They did.

4 Q: All right. Did you talk to investigators at that time?

5 A: I did.

6 Q: All right. Did you -- did you tell law enforcement that
7 you would contact them if the defendant in this case, Mike
8 Smith, reached out to you?

9 A: I did, sir.

10 Q: All right. Did Mike Smith reach out to you?

11 A: He did.

12 Q: And did he tell you where he was?

13 A: He did.

14 Q: Was this several days later?

15 A: It was on the Saturday after the Wednesday.

16 Q: Do you recall what date that was?

17 A: The 4th.

18 Q: The 4th? All right. So you called law enforcement after
19 he called you?

20 A: Directly after he called me.

21 Q: Okay. And do you tell law enforcement where he is?

22 A: I did.

23 Q: I think I already asked you that. I'm sorry. And
24 because of that call and the information you gave, is law
25 enforcement able to place Mike Smith into custody?

DEBRA SMITH - DIRECT BY MR. WHITE

- 1 A: Yes, sir.
- 2 Q: Now, after he is -- Mike Smith -- placed into custody,
3 do you maintain contact with him?
- 4 A: Yes, sir.
- 5 Q: Why do you continue speaking with him?
- 6 A: Well, I just -- I love Mike. I mean I always wanted
7 good for Mike. It's just hard to cut it off.
- 8 Q: Okay. Now, I'm going to ask you a bit of a difficult
9 question. Ms. Smith, were you ultimately charged in
10 connection in your role for taking him down to the beach?
- 11 A: Yes, sir.
- 12 Q: All right. Did you get an attorney?
- 13 A: I did.
- 14 Q: Did he provide you a discovery packet?
- 15 A: Yes, sir.
- 16 Q: Does that discovery packet contain all the evidence in
17 this case?
- 18 A: Yes, sir.
- 19 Q: Up until that point, was Mike's version of this story
20 the only one that you had heard?
- 21 A: The only one.
- 22 Q: Once you got that discovery packet, were you aware then
23 of maybe an alternate version?
- 24 A: Yes, sir.
- 25 Q: At that point, do you cease contact with him?

DEBRA SMITH - DIRECT BY MR. WHITE

1 A: I don't. No, sir.

2 Q: And I want to make sure you understand my question.

3 From that point forward, have you ever spoken with him again?

4 A: Never.

5 Q: Now, I do want to bring up -- and I'm not trying to

6 embarrass you.

7 A: It's okay.

8 Q: I want to bring up one other issue. In 2014, do you

9 have a misdemeanor breach of trust conviction?

10 A: I do.

11 Q: Okay. I apologize.

12 A: Regretfully, I do.

13 Q: Okay.

14 MR. WHITE: Judge, I beg the Court's indulgence for just

15 a moment.

16 THE COURT: Yes, sir.

17 BY MR. WHITE:

18 Q: Now, Ms. Smith, just -- just a few more. I'm sorry.

19 A: That's all right.

20 Q: On February 1st during that time, was Mike working?

21 A: On that Monday, he went to work for this boss, but he

22 sold his tools; so he didn't have any tools to work with. So

23 he wasn't -- he wasn't working there.

24 Q: Now, during this time, I mean not only just February,

25 but really, you know --

DEBRA SMITH - DIRECT BY MR. WHITE

1 A: No, sir.

2 Q: -- six months prior, was his employment sporadic?

3 A: Very sporadic.

4 Q: Was he hard-pressed for cash?

5 A: Yes, sir.

6 Q: Did he ask you for cash on occasion?

7 A: Oh, yes, sir.

8 Q: Okay. All right. Now --

9 MR. WHITE: Judge, if I may I approach?

10 THE COURT: Yes, sir.

11 BY MR. WHITE:

12 Q: I'm going to show you -- I'm going to do it the same way

13 I did the other photographs. Okay, Ms. Smith? I'm going to

14 show you State's Exhibit 67. Okay? Just tell me do you

15 recognize what's shown in that photograph?

16 A: I do.

17 Q: Are you familiar with the item that's shown in that

18 photograph?

19 A: Yes, sir.

20 Q: Okay. Tell us what is shown in that photograph?

21 A: My phone and the case that my granddaughter had given me

22 to put on it.

23 Q: Okay. And does that photograph fairly and accurately

24 depict your cell phone as, you know, the last you saw it?

25 A: Yes, sir.

DEBRA SMITH - DIRECT BY MR. WHITE

1 Q: Okay.

2 MR. WHITE: Judge, I would move State's Exhibit 67 into
3 evidence.

4 THE COURT: Any objection?

5 MR. FLOYD: No objection.

6 THE COURT: State's 67 is in evidence without objection.

7 (WHEREUPON, State's Exhibit Number 67, photograph, was
8 admitted into evidence.)

9 MR. WHITE: Thank you, Judge.

10 BY MR. WHITE:

11 Q: I'm going to show you this photograph on the -- so the
12 jury can see it, Ms. Smith. Is that your phone?

13 A: Yes, sir.

14 Q: All right. Would you have any reason to have Kenny
15 Kemmerlin's contact in your phone?

16 A: No, sir.

17 Q: All right. Did you put that contact in your phone?

18 A: No, sir.

19 Q: Did you ever contact Kenny Kemmerlin on that phone?

20 A: No, sir.

21 Q: But you did testify that Mike used your phone quite
22 often?

23 A: Quite often. Yes, sir.

24 Q: And you think he put the contact in your phone?

25 A: He had to.

DEBRA SMITH - CROSS BY MR. FLOYD

1 MR. FLOYD: Your Honor, I object to speculation.

2 MR. WHITE: Yes, sir. Withdrawn.

3 THE COURT: Sustained.

4 MR. WHITE: I beg the Court's indulgence.

5 Ms. Smith, I have nothing further. Please answer any
6 questions the defense may have.

7 THE WITNESS: Yes, sir.

8 CROSS-EXAMINATION

9 BY MR. FLOYD:

10 Q: Good morning, Ms. Smith.

11 A: Good morning.

12 MR. FLOYD: I want to return this to its owner.

13 Q: Ms. Smith, you met with Ben Price on February the 3rd?

14 A: Yes, sir.

15 Q: Of 2017?

16 A: Yes, sir.

17 Q: Is that correct?

18 A: That's correct.

19 Q: And he was an investigator with the Florence County
20 Sheriff's Office at that time?

21 A: Yes, sir.

22 Q: Okay. And you spoke with him about these events on
23 February the 3rd?

24 A: Yes, sir.

25 Q: Is that correct?

DEBRA SMITH - CROSS BY MR. FLOYD

- 1 A: That's correct.
- 2 Q: Okay. The first place he spoke to you was at your
3 niece's house?
- 4 A: Yes, sir. That's correct.
- 5 Q: Is that correct? Was that the first time you met?
- 6 A: That's the first time.
- 7 Q: Okay. Initially when you spoke to him, did you tell him
8 that you hadn't seen Michael and you didn't know where he
9 was?
- 10 A: I did.
- 11 Q: And did you -- and did you also tell him that you never
12 drove him to the beach at all?
- 13 A: I did.
- 14 Q: Okay. But you continued to speak with him?
- 15 A: Yes, sir.
- 16 Q: I suppose. Is that correct?
- 17 A: Ben Price?
- 18 Q: Yes.
- 19 A: Yes, sir.
- 20 Q: And that was, I guess, during the same meeting. You
21 continued to speak to him even after you initially told him
22 you hadn't seen Mike?
- 23 A: I did.
- 24 Q: But then you told him that you had seen Mike; is that
25 right?

DEBRA SMITH - CROSS BY MR. FLOYD

- 1 A: That's correct.
- 2 Q: Okay. And then you told him that -- that you had, in
3 fact, driven him to the beach?
- 4 A: Yes, sir.
- 5 Q: Is that correct?
- 6 A: Yes, sir.
- 7 Q: Okay. But during that conversation on February the 3rd,
8 you didn't tell him what you just told us about him putting
9 his hands to your face, did you?
- 10 A: No, sir.
- 11 Q: And asking you to smell it?
- 12 A: I didn't tell him.
- 13 Q: And you didn't tell him during that conversation that
14 you had seen a gun?
- 15 A: I didn't tell him anything.
- 16 Q: You also didn't tell him during that conversation that
17 he'd thrown a phone out of the car?
- 18 A: No, sir.
- 19 Q: And you also didn't tell him during that conversation
20 what you just testified to a little earlier about hearing
21 Mike have a conversation about breaking into Mr. Kemmerlin's
22 house?
- 23 A: No, sir.
- 24 Q: Okay. You told him none of that?
- 25 A: No, sir.

DEBRA SMITH - CROSS BY MR. FLOYD

1 Q: Is that correct?

2 A: That's correct.

3 Q: Okay. So is it fair to say that you misled him then; is

4 that correct?

5 A: I was scared, but yes, sir.

6 Q: All right. And then subsequent to that conversation you

7 had with Mr. -- with Inv. Price, you had another interview

8 with him; is that correct?

9 A: Yes, sir.

10 Q: And do you recall approximately when that was?

11 A: I really don't. I really don't know the date.

12 Q: But it was -- it was after you were charged?

13 A: Yes, sir.

14 Q: Is that correct? And you had that interview where? At

15 your attorney's office?

16 A: Yes, sir.

17 Q: Is that right?

18 A: That's correct.

19 Q: Okay. And that particular interview was recorded, was

20 it not?

21 A: Yes, sir.

22 Q: And you were aware that it was recorded?

23 A: Yes, sir.

24 Q: Okay. And then you told him at that time during that

25 interview what you just shared with us about Mr. Smith

DEBRA SMITH - CROSS BY MR. FLOYD

- 1 putting his hands to your face; is that correct?
- 2 A: That's correct.
- 3 Q: And seeing a gun; is that correct?
- 4 A: Yes, sir. That's correct.
- 5 Q: And dropping him off at the Sea Mist Hotel?
- 6 A: That's correct.
- 7 Q: All that? Okay. But do you recall, Ms. Smith, telling
- 8 him about hearing Mike having a conversation a couple weeks
- 9 before this?
- 10 A: No, sir.
- 11 Q: About breaking into a house?
- 12 A: No, sir. There's some things that you get lodged in
- 13 your head and I just didn't remember it until then.
- 14 Q: So the first time that you've testified to that or given
- 15 that statement is today? Saying that you heard him have that
- 16 conversation?
- 17 A: Was that the first time? I'm sorry, sir. I didn't --
- 18 Q: Is this the first time you've ever made that statement
- 19 today?
- 20 A: No, sir.
- 21 Q: Okay. But you didn't tell Inv. Price about it --
- 22 A: Not the first time.
- 23 Q: -- during the first time or the second interview, did
- 24 you? In your lawyer's office?
- 25 A: That's correct.

DEBRA SMITH - CROSS BY MR. FLOYD

1 Q: Okay. And, of course, since your first interview, you
2 acknowledge that you received a discovery packet related to
3 your case?

4 A: Yes, sir.

5 Q: About all kinds of evidence in this case; is that
6 correct?

7 A: Right. Yes, sir.

8 Q: So you learned things about this case just by reading
9 that, didn't you?

10 A: Yes, sir.

11 Q: Now, you're charged with accessory after the fact; is
12 that correct?

13 A: That's correct.

14 Q: Okay. And have you had any discussions with the
15 prosecutor's office about receiving a plea deal --

16 A: Not a thing.

17 Q: -- for your testimony?

18 A: No, sir.

19 Q: Okay. Have you -- you've never discussed that with
20 anyone?

21 A: Never.

22 Q: Okay. And you don't have any hopes of receiving a plea
23 deal in this case?

24 A: Well, I hope for it. Of course, everybody does, but I
25 haven't been promised anything. I haven't even talked about

DEBRA SMITH - CROSS BY MR. FLOYD

1 it.

2 Q: Do you know you're facing up to 15 years in jail --

3 A: I do.

4 Q: -- on that charge?

5 A: I do.

6 Q: Now, you testified earlier you saw a shell casing on the
7 front of your car?

8 A: Yes, sir.

9 Q: You didn't call law enforcement there, did you?

10 A: No, sir.

11 Q: Okay. So when they showed up at your house, it was due
12 to other information they had; correct?

13 A: Yes, sir.

14 Q: It wasn't because you told them?

15 A: No, sir.

16 Q: Okay.

17 A: But I did call them.

18 Q: All right.

19 MR. FLOYD: Ms. Smith, thank you. I don't have any
20 further questions.

21 THE WITNESS: Yes, sir.

22 THE COURT: Anything on redirect?

23 MR. WHITE: Just briefly, Judge. Just briefly.

24 REDIRECT EXAMINATION

25 BY MR. WHITE:

DEBRA SMITH - REDIRECT BY MR. WHITE

1 Q: Ms. Smith, during the time that this all happened, were
2 you scared?

3 A: Yeah.

4 Q: Were you scared to death?

5 A: Yes, sir.

6 Q: Okay. Have you testified truthfully?

7 A: Oh, yes, sir.

8 Q: Okay. All right.

9 MR. WHITE: Thank you, Ms. Smith.

10 THE WITNESS: You're welcome.

11 THE COURT: Thank you very much, ma'am. You may step
12 down.

13 THE WITNESS: Thank you.

14 THE COURT: You may call your next witness.

15 MR. WHITE: Thank you, Judge. At this time, the State
16 would call Inv. Kathleen Streett to the stand.

17 THE COURT: All right. Come around to be sworn, please.

18 THE CLERK: Ma'am, if you'll please place your left hand
19 on the Bible and raise your right hand. Do you swear the
20 testimony you give in this case to be the truth, the whole
21 truth, and nothing but the truth, so help you God?

22 THE WITNESS: I do.

23 THE CLERK: Please be seated and state your full name
24 for the record.

25 THE WITNESS: My name is Kathleen Vargovchik -- V as in

KATHLEEN STREETT - DIRECT BY MR. WHITE

1 victory-a-r-g-o-v-c-h-i-k -- Streett, S-t-r-e-e-t-t.

2 MR. WHITE: Thank you very much.

3 KATHLEEN STREETT, being first duly
4 sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. WHITE:

7 Q: Inv. Streett, where are you employed?

8 A: Florence County Sheriff's Office.

9 Q: How long have you been employed there?

10 A: 22 years.

11 Q: And in what capacity are you currently employed?

12 A: I am the supervising lieutenant for the forensics and
13 crime scene division under CID.

14 Q: How long have you been in that role?

15 A: Since 2013, five years.

16 Q: Okay. So you were in that role on February 1st, 2017?

17 A: That's correct.

18 Q: What is -- can you tell us a little bit about what you
19 do on a day-to-day?

20 A: Well, there is a -- we have several different divisions
21 at the Sheriff's Office. We have the criminal investigations
22 division, which is comprised of our investigators that handle
23 property crimes, child abuse, any type of crime that needs
24 investigations that comes from patrol. Then you also have
25 the narcotics division, which is under CID, and you also have

KATHLEEN STREETT - DIRECT BY MR. WHITE

1 -- they do narcotics and vice investigations. And then you
2 have my division, which is forensics and crime scene, and we
3 report to one captain.

4 Q: Okay. Are you supporting the investigators during their
5 investigations?

6 A: That's correct. We have -- we have -- like, it's a team
7 that we use to work at the Sheriff's Office. At any one
8 given time, you might have an arson investigator and a
9 forensics investigator. If it's a burglary, you might have a
10 property crimes investigator and a forensics investigator.
11 The forensics team usually processes, collects the evidence,
12 and works in conjunction with the investigation or the
13 investigator on the actual investigation.

14 Q: Okay. Thank you. Now, did you have occasion to become
15 involved in this particular investigation?

16 A: I did.

17 Q: And when did you become involved first?

18 A: We also have a homicide team, which is a group of
19 investigators that work most of all the homicides, and I was
20 notified -- I talk with my hands. I apologize. I was
21 notified on the date of this incident that there had been a
22 shooting on Francis Marion Road and that they needed forensic
23 support out there.

24 So I got my guys rolling towards the scene and then I
25 also responded to the scene and there were the on-call

KATHLEEN STREETT - DIRECT BY MR. WHITE

1 investigator which originally responded, which was Helen
2 Cain. And then once we knew that the victim was deceased at
3 the hospital and it turned into a homicide investigation,
4 then we called out more investigators, which was Inv. Price
5 and Thomas McFadden.

6 Q: Now, when you say you and your guys roll out, when you
7 say your guys, who are you referring to?

8 A: Sgt. Clendenin. I think he testified yesterday. And
9 Chase McDaniel was one of my corporals.

10 Q: Are you -- is their role to collect and document
11 evidence?

12 A: That's correct.

13 Q: And your role on scene is to assist and supervise?

14 A: To supervise and also support them and also the
15 investigators that are on scene, another set of eyes
16 basically.

17 Q: Okay. I want to talk about shell casings. At the
18 scene, were there any shell casings recovered?

19 A: I believe that there were some recovered, at least one.

20 Q: Okay. And where was that particular shell casing
21 recovered from? Do you recall?

22 A: To my recollection, it was inside one of the vehicles.

23 Q: Okay. Did you -- were you involved and did you assist
24 in canvassing the area for any additional shell casings?

25 A: I did.

KATHLEEN STREETT - DIRECT BY MR. WHITE

1 Q: Now, after that night, when is the next time you become
2 involved in this investigation?

3 A: Apart from that night?

4 Q: Yes, ma'am?

5 A: The next morning.

6 Q: Okay. What did you do that morning?

7 A: The next morning -- I had been advised the night before
8 that the responding officers prior to the Sheriff's Office
9 units getting there were two Francis Marion University police
10 officers. So I went by Francis Marion University and got
11 them to pull the in-car video and whatever else they had and
12 also requested that they write statements to send to us of
13 what they did when they were there at the scene.

14 Q: And was all that evidence turned over to you?

15 A: Yes, it was.

16 Q: Okay. Did you go back by the scene at any point?

17 A: I did.

18 Q: That day?

19 A: I did.

20 Q: Okay.

21 A: Francis Marion is probably not even a couple of miles
22 away from where this incident occurred, which is right on my
23 way to work actually. So in the morning, I hit Francis
24 Marion and then I went right by the scene. So I stopped in
25 the daylight since it was dark the night before and re-walked

KATHLEEN STREETT - DIRECT BY MR. WHITE

1 the area where the shooting took place to just see if we
2 missed anything.

3 Q: Did you see any shell casings?

4 A: No, sir, I did not.

5 Q: Now, the victim's vehicle, where was it taken to?

6 A: That night from the scene, I called our rotation
7 wrecker, which we have a series of wrecker companies that tow
8 for us, and had one of them, the next up on rotation, respond
9 to the scene, load up the vehicle, and then I followed the
10 vehicle back to our impound facility in Effingham, which is
11 across the street from the office, and we secured it there.

12 Q: So you escorted the vehicle back?

13 A: I did.

14 Q: You made sure it was secure?

15 A: Yes, sir.

16 Q: Now, the suspect vehicle. That evening, were you made
17 aware of the make and model of the suspect vehicle?

18 A: Yes, that night.

19 Q: And what was the make and model of that vehicle?

20 A: I was told that it was a Chevy Trailblazer that was
21 white.

22 Q: Did you eventually come in contact with the suspect
23 vehicle?

24 A: Yes, sir.

25 Q: On what date was that?

KATHLEEN STREETT - DIRECT BY MR. WHITE

1 A: That would have been when it was towed back from Horry
2 County, which I believe was that -- hang on just a second.
3 That was on the 3rd.

4 Q: Now, prior to that vehicle being towed back, were you
5 made aware of anything that was recovered on the vehicle
6 while it was in Myrtle Beach?

7 A: That's correct. On the day of the 3rd, I knew that the
8 investigators and some of the people from the Marshall's Task
9 Force were at the beach looking for Mr. Smith and that they
10 had located what they thought was the suspect vehicle, and I
11 believe it was Inv. Price that called me and told me that it
12 appeared that there was a shell casing that might be related
13 to the actual shooting that had been lodged in an area on the
14 hood below the windshield of the Trailblazer.

15 And so I advised him to have it collected by Horry
16 County PD. They collected the evidence and put it in their
17 -- their evidence room so that it would be secured and then
18 we had a wrecker tow the vehicle. Horry County handled that
19 for us from the scene to their impound lot, and then I called
20 one of our wreckers here to pick it up from there impound lot
21 and bring it back to Florence and secure it at our lot.

22 Q: Now, have you ever seen this photograph here, Inv.
23 Streett?

24 A: That's -- yes, sir.

25 Q: Is it your understanding that that is the shell casing

KATHLEEN STREETT - DIRECT BY MR. WHITE

- 1 that was recovered?
- 2 A: Yes, sir.
- 3 Q: Okay. That shell casing, along with the shell casing
- 4 that was recovered from the crime scene, were they sent to
- 5 SLED?
- 6 A: They were.
- 7 Q: Were they sent to SLED together?
- 8 A: That I'm not sure of.
- 9 Q: Okay.
- 10 A: Sgt. Clendenin handled that.
- 11 Q: Okay. Would they have been processed together, analyzed
- 12 together?
- 13 A: I don't -- I'm not very familiar with how SLED does
- 14 their in-house processing. I'm not sure.
- 15 Q: Okay. Now, after that vehicle was towed back, when's
- 16 the next time you were involved in this investigation?
- 17 A: I obtained a search warrant for the processing and
- 18 searching of the vehicle, that one and the other Traverse.
- 19 Q: And I know you -- when you're processing or serving a
- 20 search warrant, what are you looking for?
- 21 A: It all depends on what -- what you have the vehicle for.
- 22 If you're -- if it's a drug case, you're usually looking for
- 23 drugs. If it's an assault case, you're -- and it happened
- 24 inside the vehicle, you're looking for blood, flesh, weapons,
- 25 you know, anything that would be related to an assault.

KATHLEEN STREETT - DIRECT BY MR. WHITE

1 Same thing with a shooting. You're looking for shell
2 casings, bullet holes, blood, you know, anything that could
3 possibly be related to a shooting.

4 Q: Okay. In the suspect vehicle, did you find any blood?

5 A: I was not present when it was searched.

6 Q: Okay. Are you aware of any blood being found?

7 A: On the suspect vehicle?

8 Q: Yes, ma'am.

9 A: I'm not aware of any.

10 Q: All right. After that vehicle was searched and
11 processed, when do you become involved in the next days of
12 the investigation?

13 A: Let's see. That would have been -- let's see here. Let
14 me get my dates. Just bear with me. I'm sorry. It was the
15 10th, Friday.

16 Q: Okay. On the 10th, had the defendant in this case
17 already been placed into custody?

18 A: That's correct.

19 Q: On the 10th, had an interview with him already been
20 conducted?

21 A: That's correct.

22 Q: Where do you go on the 10th?

23 A: On the 10th, we went back to Horry County. I had
24 received information from Inv. Price that the weapon had been
25 disposed of or somehow was in an area, a wooded area of Horry

KATHLEEN STREETT - DIRECT BY MR. WHITE

1 County. So we put a team together, Inv. O'Hara and his K-9,
2 some investigators, my forensics people, myself, and we went
3 down and did a sweeping search of the area that Mr. Smith had
4 said that he had hidden the gun.

5 Q: Okay. I'm going to show you, Inv. Streett, if I could,
6 what's been marked for identification as State's Exhibit 66,
7 if you'll bear with me for just a moment. Inv. Streett, do
8 you recognize this photograph?

9 MR. WHITE: Scott, let me show this to you.

10 BY MR. WHITE:

11 Q: Inv. Streett, do you recognize this photograph?

12 A: Yes, sir.

13 Q: I'm going to back it up so the jury can see it. And
14 what does this photograph depict?

15 A: That --

16 Q: What are we looking at here?

17 A: That depicts the area where Michael Smith stated that he
18 was at when he disposed of the firearm.

19 Q: And where exactly did he say he disposed of the firearm?

20 A: Along the intercoastal waterway in that wooded area.

21 Q: Okay. And did you -- you all went down there and
22 searched?

23 A: We did.

24 Q: Did you work with Myrtlewood Golf Club?

25 A: We did.

KATHLEEN STREETT - DIRECT BY MR. WHITE

1 Q: Did they assist you in your search for that -- that gun?

2 A: They certainly did.

3 Q: How expansive was that search?

4 A: It was pretty expansive. It took the entire afternoon

5 for us to do.

6 Q: So is it fair to say that you walked these grounds

7 thoroughly?

8 A: Yes.

9 MR. WHITE: Judge, at this time, I'd move State's

10 Exhibit 66 into evidence.

11 MR. FLOYD: No objection.

12 THE COURT: All right. State's 66 is in evidence

13 without objection.

14 (WHEREUPON, State's Exhibit Number 66, large map

15 photograph, was admitted into evidence.)

16 BY MR. WHITE:

17 Q: Now, you mentioned you had a K-9 with you on this

18 search?

19 A: There was a K-9 unit with us. Yes, sir.

20 Q: And which investigator is in charge of that K-9 unit?

21 A: Inv. Pat O'Hara.

22 Q: Although you conducted a thorough search, were you able

23 to find that gun?

24 A: No, sir.

25 Q: Did you take the defendant in this case with you on that

KATHLEEN STREETT - DIRECT BY MR. WHITE

1 search?

2 A: We did.

3 Q: And you were still unable to locate the gun?

4 A: That's correct.

5 Q: All right. We heard testimony just a bit ago that the

6 second individual who was on scene February 1st, 2017, went by

7 the name or nickname of Ra Ra. Were you able to or were

8 investigators able to ascertain the identity of this Ra Ra?

9 A: That's correct. They did.

10 Q: And were you able to figure out an address for Ra Ra?

11 A: They did.

12 Q: Did you serve or did you execute a search warrant on

13 that residence?

14 A: I participated in the execution of a search warrant --

15 Q: Okay.

16 A: -- at his residence.

17 Q: Did you find any blood?

18 A: Not to my knowledge.

19 Q: Did you find any guns?

20 A: Not to my knowledge, no.

21 Q: Did you find any bullets?

22 A: We did.

23 Q: Could you give us a rundown of those bullets?

24 A: We have Blazer 9 millimeter rounds. Do you want the

25 quantity also?

KATHLEEN STREETT - DIRECT BY MR. WHITE

1 Q: Please.

2 A: Two Blazer 9 millimeter rounds, a 12 Gauge shell box
3 with 14 Winchester eight-shot rounds, an empty box of
4 Winchester .45 auto, which didn't contain anything, a box of
5 Remington .45 with 18 rounds, eight rounds of Monarch .380
6 rounds, 21 9 millimeter rounds, a bag with one .32 caliber
7 round, 19 9 millimeter rounds that were by themselves, a
8 plastic bag with four .45 caliber rounds, three .22 caliber
9 rounds, five 9 millimeter rounds, one 9 millimeter round,
10 another .45 caliber round, a box of .40 caliber rounds
11 containing 25 rounds. And it looks like that's it.

12 Q: Did the defendant tell investigators what caliber gun he
13 had and that he had disposed of down at the beach?

14 A: If I recall correctly, I knew that we were looking for a
15 .40 caliber, but I'm not sure where that information came
16 from.

17 Q: Okay.

18 A: I can't testify to that.

19 MR. WHITE: Judge, I beg the Court's indulgence.

20 THE COURT: Yes, sir.

21 MR. WHITE: Thank you, Inv. Streett. I have nothing
22 further. Please answer any questions the defense may have.

23 THE COURT: All right. Cross-examine.

24 CROSS-EXAMINATION

25 BY MR. FLOYD:

KATHLEEN STREETT - CROSS BY MR. FLOYD

1 Q: Good morning. Lt. Streett, you say you actually went to
2 the scene on February 1st?
3 A: I did. Yes, sir.
4 Q: 2017?
5 A: Yes, sir.
6 Q: You were actually out there?
7 A: Yes, sir.
8 Q: Did you -- did you interview any witnesses or anything
9 of that nature while you were there?
10 A: The only person that I spoke to was Craig Williams.
11 Q: Okay. And -- but he was also interviewed by other folks
12 in your office, as far as you know?
13 A: He -- he had been spoken to by Inv. Helen Cain when she
14 first arrived there. When I was there, he was extremely
15 upset and I was a little bit concerned about his welfare,
16 number one, and that was the gist of our conversation
17 basically is how he was. And then he basically told me that
18 his friend had been shot and that's it. And I told him that
19 another investigator would be contacting him or, you know,
20 getting with him to get a formal statement.
21 Q: Now, any of the evidence that was collected in this case
22 or any case is ultimately you're responsible for that
23 evidence?
24 A: Yes, sir. The evidence room and the impound facility
25 fall under my -- my division.

KATHLEEN STREETT - CROSS BY MR. FLOYD

1 Q: Okay. So ultimately, all the evidence is eventually
2 turned over to you; is that correct?

3 A: That's correct. And we store it.

4 Q: Okay. And so you have a log of everything that was
5 turned in to you?

6 A: Yes, sir.

7 Q: Okay. In this particular case, did you receive any cash
8 that was retrieved from Mr. Kemmerlin's person?

9 A: Cash?

10 Q: Yes, ma'am.

11 A: I believe we did. Hang on just a second. Yes, sir. It
12 was \$1,222.87.

13 Q: And you received one shell casing initially; is that
14 correct? Or some days later?

15 A: That's correct.

16 Q: Okay. And all of the ammunition that you were
17 discussing earlier with Mr. White, the shotgun shells and so
18 forth, all of those were found in the person we've identified
19 as Ra Ra; is that correct?

20 A: That's correct. I believe it's Rasheem Thomas is his
21 given name.

22 Q: Okay. They were in his residence?

23 A: That's correct.

24 Q: Okay.

25 MR. FLOYD: Thank you. I don't have any further

CHAD SMITH - DIRECT BY MR. WHITE

1 questions.

2 THE COURT: Anything on redirect?

3 MR. WHITE: No redirect, Judge.

4 THE COURT: Thank you very much, ma'am.

5 THE WITNESS: Yes, sir.

6 THE COURT: You may step down.

7 MR. WHITE: Judge, at this time, the State would call
8 Chad Smith to the stand.

9 THE COURT: All right. Mr. Smith, please come around to
10 be sworn, sir.

11 THE CLERK: Sir, will you please place your left hand on
12 the Bible and raise your right hand? Do you swear the
13 testimony you give in this case to be the truth, the whole
14 truth, and nothing but the truth, so help you God?

15 THE WITNESS: I do.

16 THE CLERK: Please be seated and state your full name
17 for the record.

18 THE WITNESS: My name is Chad Morgan Smith.

19 CHAD SMITH, being first duly sworn,
20 testified as follows:

21 DIRECT EXAMINATION

22 BY MR. WHITE:

23 Q: Thank you, Mr. Smith, and good morning.

24 A: Good morning.

25 Q: Could you tell us where are you employed?

CHAD SMITH - DIRECT BY MR. WHITE

1 A: I'm employed with the South Carolina Law Enforcement
2 Division, which is commonly known as SLED. Specifically, I
3 work in the firearms department at SLED's forensic services
4 laboratory in Columbia.

5 Q: How long have you been working there?

6 A: Almost ten-and-a-half years.

7 Q: Have you performed a fair number of firearm
8 identification analysis?

9 A: Yes, sir.

10 Q: Have you had any advanced training or, you know,
11 subsequent training in that field?

12 A: Yes, sir. Well, first of all, we have to have a degree,
13 a four-year college degree, to be in the firearms
14 identification field at SLED. I attended Clemson University,
15 where I received a Bachelor of Science degree in biological
16 sciences.

17 Then when I came on board with SLED, I entered the
18 training program in the firearms department. It's an in-
19 house program, which is supervised by the court-qualified
20 examiners of the department. It lasts between 3 to 5 years.
21 There is extensive reading and studying during that time,
22 also multiple examinations and different kinds of tests.
23 I've attended various classes and seminars and continue to
24 attend those types of things.

25 Later in my training, I helped the other examiners

CHAD SMITH - DIRECT BY MR. WHITE

1 prepare their casework. And at the end of my training, I
2 received a comprehensive multipart examination, which I
3 successfully passed, and then I began to receive my own
4 casework.

5 Q: Have you testified as an expert in the field of firearm
6 analysis in the past?

7 A: Yes, sir.

8 Q: Do you recall about how many times?

9 A: Over 50 times.

10 MR. WHITE: Judge, at this time, the State would move
11 that Mr. Smith be qualified as an expert in the field of
12 firearm analysis.

13 MR. FLOYD: I don't have any objection.

14 THE COURT: All right. Without objection, he's so
15 qualified.

16 BY MR. WHITE:

17 Q: Mr. Smith, did you have occasion to perform firearm
18 identification analysis and comparison of shell casings and a
19 bullet in this particular case?

20 A: Yes, sir, I did.

21 Q: What items of evidence did you receive in this case?

22 A: I received two fired .40 Smith & Wesson caliber
23 cartridge cases, as well as one fired bullet.

24 Q: And where did you receive -- who did you receive those
25 from?

CHAD SMITH - DIRECT BY MR. WHITE

1 A: Well, I received them from the evidence control
2 technician in our laboratory. They were submitted by
3 Florence County Sheriff's Office originally. What happens is
4 when evidence is brought to the laboratory, it is entered in
5 the evidence control department and it's stored there until
6 an examiner or a technician comes down and retrieves that
7 evidence and puts it into their own custody, and then they're
8 ready to begin the case or they can store it in their own
9 evidence locker.

10 Q: Now, how do you perform -- you know, what kind of steps
11 do you take in performing your analysis?

12 A: Well, in this particular case, since I had two cartridge
13 cases to compare to try to determine if they were fired by
14 one gun or possibly two separate firearms, what we use is
15 called a comparison microscope. It's basically two
16 microscopes that's connected by an optical bridge system so
17 you can look into it and you can compare two samples
18 simultaneously and look for microscopic markings that are
19 created by the firearm on the cartridge case during the
20 firing process. And what we're looking for are similarities
21 in those markings and try to determine if they were fired by
22 the same gun.

23 Q: Now, in this particular case, were those two shell
24 casings fired by the same gun?

25 A: Yes, sir.

CHAD SMITH - DIRECT BY MR. WHITE

1 Q: Now, you also performed an analysis on the fired bullet.
2 What were the results of that analysis?

3 A: Well, with a bullet, what we do is try to first
4 determine the possible caliber it is. We can do that by
5 measuring the diameter of it and we can weigh it and just
6 look for all the characteristics of it and try to determine
7 possibly what kind of caliber it is, and I was able to
8 determine that it was most consistent with being a bullet
9 loaded into some .40 Smith & Wesson caliber cartridges.

10 And also what we're looking for, since I don't have a
11 gun to actually compare it to, but I can look and see if
12 there's markings on that bullet and it will determine that,
13 well, if I did have a gun to compare it to, it may be
14 suitable for identification with that specific firearm and,
15 again, I can do that with the cartridge cases as well.

16 Going back to the bullet, what else I'm looking for is
17 rifling impressions on that bullet. And rifling is a
18 manufacturing process that manufacturers put in their barrels
19 to impart a spin or a rotational movement on a bullet as it
20 travels down that barrel. And how they do that is there's a
21 series of grooves that they put in the barrel itself, and so
22 it's a series of grooves that form a twisting pattern.

23 And so as the bullet is fired, it engages those grooves
24 and then it rotates as it travels down the barrel. So when
25 it exits the barrel, it gives it a lot more velocity and a

CHAD SMITH - DIRECT BY MR. WHITE

1 lot more accuracy. So it's kind of like a professional
2 football player quarterback wanting to throw a football in a
3 nice tight spiral to hit his target. So that's what the
4 rifling does.

5 And so we can look for the rifling impressions on a
6 bullet. We can count how many rifling impressions are on a
7 bullet because different manufacturers specify different
8 numbers of those -- of those grooves. And we also can
9 determine the twisting of that rotational pattern. Some
10 manufacturers like a left-hand twist, some like a right-hand
11 twist.

12 And so I was able to determine from that bullet it had
13 seven grooves on it with a left-hand twist. And so I can put
14 information gained from looking at a bullet into a database
15 to try to determine what possible firearms could have fired
16 out of that gun based on, again, the number of those grooves,
17 the direction of twist, et cetera.

18 I was able to determine that the only currently known
19 manufacturer of firearms with those rifling specifications is
20 Hi-Point firearms. So again, I put that in my report that
21 you're probably looking for a Hi-Point that fired that
22 bullet.

23 Q: Now, are you saying that you were able to identify a
24 Hi-Point firearm specifically on this case?

25 A: Correct. Bullet wise, that's the only known

CHAD SMITH - DIRECT BY MR. WHITE

1 manufacturer that we know of. That's not to say there's
2 something out there that could be -- have the same rifling
3 specifications, but that's the only one that we know of.

4 Cartridge case wise, those cartridge cases exhibited
5 characteristics of being fired by a Hi-Point firearm as well.
6 I can't definitively say they were fired by a Hi-Point only,
7 but one thing that the Hi-Point manufacturer does is sand or
8 has a little belt sander that they sand.

9 The slide on a pistol is basically the part that moves
10 back and forth and so when a firearm fires a cartridge, the
11 bullet goes down the barrel, the cartridge case pushes back
12 against the breech face, which is the part that supports that
13 cartridge during firing, and then that breech face is part of
14 the slide as well.

15 And so it's all under -- it's basically a machine and so
16 when it's fired, the cartridge -- the slide reciprocates
17 back. The cartridge case that has been fired is expelled out
18 of the gun as the bullet is going down the barrel, and then
19 the slide comes back forward and takes another round from the
20 magazine and chambers it and it's ready for firing again.

21 And so again what Hi-Point does to make identification,
22 our job, a little easier, is they go back and sand -- they
23 have a belt sander. They sand that breech face area so it
24 creates another set of unique markings on that gun. And so
25 that's how I can compare the cartridge cases. We're looking

CHAD SMITH - DIRECT BY MR. WHITE

1 for those unique markings created by the firearm itself. And
2 so again, those cartridge cases exhibited those
3 characteristics of having that sanded breech face.

4 Q: Now, that doesn't always happen in every case; correct?
5 I mean sometimes we get reports back and you list ten
6 possible guns; is that right?

7 A: Right. Bullet wise, again, some of those lists can be
8 quite long because manufacturers can share the same types of
9 rifling specifications. But again, the only one that we know
10 of that had the seven grooves with a left-hand twist would be
11 the Hi-Point.

12 Q: Okay. Now, on a Hi-Point .40 caliber handgun, can you
13 offer your expert opinion as to the trajectory that the shell
14 casing would take upon firing?

15 A: Typically, if the semiautomatic pistol, such as the Hi-
16 Point, is in proper working order and you're holding the
17 firearm in the proper position, which would mean that you've
18 got, you know, the grip here, holding it like this and it's
19 perpendicular to the ground level, then when you fire it,
20 that cartridge case is going to go somewhat up and out to the
21 right of the gun because the ejection port is on the right
22 side. So it kicks that shell casing or cartridge case out to
23 the right.

24 Q: Okay. Now, if you'll just bear with me for just a
25 second, I'm going to show you what's been marked and entered

CHAD SMITH - DIRECT BY MR. WHITE

1 into evidence as State's Exhibit 1. Now, if the gun is held
2 upright and with a Hi-Point having upward right-side
3 trajectory -- can you see that all right, Mr. Smith?

4 A: Yes, sir.

5 Q: If you imagine, Mr. Smith, this is a vehicle. All
6 right? Somewhere around here is the hood of that vehicle and
7 an individual were standing here and firing this way -- okay?
8 Would it be consistent that the trajectory could possibly
9 land that shell casing on the hood of that vehicle?

10 A: Yes, sir. It would be definitely possible. Again, once
11 that cartridge case leaves the gun in that trajectory
12 pattern, you know, up and to the right, it's basically
13 anybody's guess as to where it may land because depending on
14 the surface or, you know, if the ground is sloped or
15 something, but again, if it's -- if it's towards a vehicle,
16 it could definitely land on the vehicle.

17 Q: Okay. Thank you very much.

18 MR. WHITE: I beg the Court's indulgence.

19 THE COURT: Yes, sir.

20 MR. WHITE: Thank you, Mr. Smith. I appreciate it.

21 Please answer any questions the defense may have.

22 THE WITNESS: Yes, sir.

23 THE COURT: Cross-examination?

24 CROSS-EXAMINATION

25 BY MS. HENDERSON:

CHAD SMITH - CROSS BY MS. HENDERSON

1 Q: Mr. Smith, you said it's basically anyone's guess as to
2 where the -- as to the -- excuse me -- as to the trajectory
3 of where the shell casing could land; correct?

4 A: Where it may land, correct. Depending on -- again, once
5 it leaves the gun, you know, it could hit a surface, bounce
6 off of it or, if it lands on a surface that's sloped, it
7 could roll down or if there's individuals around, they could
8 kick the cartridge cases and end up in a certain area. So
9 really once it leaves the gun, you know, there are different
10 variables as to where a cartridge case could end up.

11 Q: Certainly. And that all is dependent as well on to
12 where the gun was fired from?

13 A: Correct.

14 MS. HENDERSON: Thank you, Judge. No further questions.

15 THE COURT: All right. Anything further?

16 MR. WHITE: Just briefly.

17 REDIRECT EXAMINATION

18 BY MR. WHITE:

19 Q: You know, you have, of course, factors come into play,
20 like if the gun is fired beside a wall; right? Then it would
21 kick to the left?

22 A: Correct.

23 Q: But if it's just fired regularly without any
24 obstruction, is it your testimony that it ejects upward and
25 to the right?

CHAD SMITH - REDIRECT BY MR. WHITE

1 A: Right. If the gun is in proper working order. Again,
2 it's not set in stone it has to go up and to the right, but
3 typically on semiautomatic pistols such as a Hi-Point, when
4 you fire it, that cartridge case is going to go slightly
5 upward, but out of the right side of the gun. And then, you
6 know, once it -- it's going to keep going until it hits
7 something.

8 Q: And again, if fired from here and this is the direction
9 of the bullet, here would be upward and to the right;
10 correct?

11 A: It appears so. It certainly could have impacted or
12 landed on whatever would be in that trajectory, in that range
13 of where the cartridge case would end up. And in this case,
14 if it was a vehicle, he could've landed on the vehicle.

15 MR. WHITE: Okay. Thank you very much.

16 I've got nothing further, Judge.

17 THE COURT: All right. Anything further?

18 MS. HENDERSON: Nothing further, Judge.

19 THE COURT: Thank you very much, sir. You may step
20 down.

21 THE WITNESS: Thank you, sir.

22 MR. WHITE: Judge, at this time, the State would request
23 a brief recess.

24 THE COURT: All right. Ladies and gentlemen, we're
25 going to just take a short recess. If you'll please when you

1 retire back to your jury room, if you need anything,
2 something to drink, snacks or whatever, just let Ms. Ann
3 know, but please have no conversation about the case and
4 we'll start back in about 5 or 10 minutes.

5 (WHEREUPON, the jury exited the courtroom at 11:12 a.m.)

6 THE COURT: All right. We'll be at ease then for a few
7 minutes.

8 MR. WHITE: Judge, just briefly, just for scheduling
9 purposes, I just wanted to let the Court know that the State
10 has two more witnesses, Inv. O'Hara and then Inv. Price. I
11 think the Court is well aware that Inv. Price will be
12 lengthy.

13 THE COURT: Yeah.

14 MR. WHITE: You know, I'm not sure exactly how long Inv.
15 O'Hara will take, but I just wanted to let the Court know.

16 THE COURT: What we'll do is we'll let you put up Inv.
17 O'Hara. We'll watch the clock and we'll see. If we're
18 around the noon time, we'll probably break for lunch.

19 MR. WHITE: Okay.

20 THE COURT: I know I usually go until about one, but
21 it's not going to matter today one way or the other. So
22 we'll just -- well, now, let me -- I'll tell you what we
23 might do.

24 We might let you put up Inv. Price after you do Inv.
25 O'Hara and let you get through some of your questioning that

1 doesn't involve the showing of the video. And then maybe
2 when you get to that point or when you're close to that
3 point, maybe recess at that time. And the reason I'm saying
4 that is the video is lengthy.

5 MR. WHITE: Yes, sir.

6 THE COURT: His testimony may be a little lengthy
7 leading into it and I don't see any reason to wear the jury
8 out all afternoon when we could maybe break it up a little
9 bit.

10 MR. WHITE: Sure.

11 THE COURT: That's just my thought.

12 MR. WHITE: Yeah, that -- yes, sir. That could work.
13 That would be fine.

14 THE COURT: We'll -- but we'll play it by ear.

15 MR. WHITE: Yes, sir.

16 THE COURT: Okay.

17 MR. WHITE: Okay.

18 THE COURT: We'll be flexible.

19 MR. WHITE: Thank you.

20 (WHEREUPON, there was a break in the proceedings from
21 11:14 a.m. until 11:34 a.m., after which the proceedings
22 resumed as follows.)

23 MR. WHITE: Your Honor?

24 THE COURT: Yes, sir.

25 MR. WHITE: If I may?

1 THE COURT: Yeah.

2 MR. WHITE: After just briefly speaking with Inv. Price
3 and how we're going to structure his testimony, it could be
4 that the -- after the interview is played, that portion could
5 be more lengthy than before, and I just want to bring that to
6 the Court's attention.

7 THE COURT: Okay.

8 MR. WHITE: For scheduling purposes.

9 THE COURT: All right. Well, what we may do then is
10 we'll just take that break midafternoon then. In other
11 words, we may put up Inv. O'Hara, get through that testimony,
12 break for lunch, come back, do Inv. Price's introduction to
13 the tape, play the tape, then take a short break before we
14 continue that testimony.

15 MR. WHITE: That sounds great. Yes, sir.

16 THE COURT: So okay. I told you we'd be flexible.

17 MR. WHITE: Yes, sir.

18 THE COURT: Are we ready to start back?

19 MR. WHITE: Yes, sir, Judge.

20 THE COURT: Is the defense ready to start back?

21 MR. FLOYD: Yes, Your Honor.

22 THE COURT: All right. Please bring the jury in.

23 (WHEREUPON, the jury entered the courtroom at 11:36
24 a.m.)

25 THE COURT: All right. The State may call your next

PAT O'HARA - DIRECT BY MR. WHITE

1 witness.

2 MR. WHITE: Thank you, Judge. At this time, the State
3 would call Inv. Pat O'Hara.

4 THE COURT: All right. Inv. O'Hara, please come around
5 to be sworn.

6 THE CLERK: Sir, if you will, please place your left
7 hand on the Bible and raise your right hand. Do you swear
8 the testimony you give in this case to be the truth, the
9 whole truth, and nothing but the truth, so help you God?

10 THE WITNESS: I do.

11 THE CLERK: Please be seated and state your full name
12 for the record.

13 THE WITNESS: Patrick James O'Hara.

14 PAT O'HARA, being first duly sworn,
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MR. WHITE:

18 Q: Inv. O'Hara, where are you employed?

19 A: I'm employed at the Florence County Sheriff's Office.

20 Q: Can you tell us about how long you've been working out
21 there?

22 A: I've been employed at the Sheriff's Office since 1999,
23 roughly 20 years. I started my career at a small agency in
24 Florence County called Pamplico Police Department in 1996.

25 Q: And how long have you been in investigations?

PAT O'HARA - DIRECT BY MR. WHITE

1 A: I've been in investigations since 2007.

2 Q: Is it fair to say you've conducted your fair share of
3 interviews?

4 A: I have. I started first in investigations as a property
5 investigator. In 2008, I turned over into arson
6 investigation, and in 2013 we implemented the bomb
7 investigation. So I now do not only arson, explosive
8 investigation, and auto theft investigation.

9 Q: Now, specifically when it comes to interviews, have you
10 had training in interviews and interview techniques?

11 A: I have extensive training in interview and interview
12 techniques since 2007.

13 Q: And what type of interview techniques are there out
14 there?

15 A: There's many being used right now. The best that we
16 have found, the latest class we have taken, is that you do an
17 interviewer and an observer. And as an observer, I'm there
18 just watching the person. As the person interviewing, which
19 would have been Inv. Price, is talking to somebody or talking
20 to the individual, I'm watching his body language. I'm
21 watching to see what he's doing as he's talking to him,
22 asking just routine questions, and then as we go into the
23 questions about the case, I'm watching to see what kind of
24 reaction the individual has.

25 Q: I want to ask you about a specific interview technique.

PAT O'HARA - DIRECT BY MR. WHITE

1 Is it common practice to agree with a suspect when you're
2 interviewing him?

3 A: Most of the time, we do. And what we're trying to do is
4 still elicit him to talk more, to give us more information.
5 So a lot of times we'll start agreeing with him because then
6 all of a sudden it will jog their memory some more, and we
7 have found that we've gotten more information from them.

8 Q: Do they feel more comfortable when you agree with them?

9 A: Sometimes they do, yes.

10 Q: Now, this interview that was conducted in this
11 particular case, were you the observer on that particular
12 interview?

13 A: In this interview, yes, I was the observer.

14 Q: And were you watching Mike Smith's body language at that
15 time?

16 A: I was.

17 Q: Now, several times -- well, let me back up. Was Mike
18 Smith Mirandized prior to being interviewed?

19 A: Mike Smith was Mirandized prior to any -- any
20 questioning.

21 Q: And who read him his Miranda rights?

22 A: Inv. Ben Price.

23 Q: And did he use a Miranda form?

24 A: He did, a standard form that we have at the Sheriff's
25 Department.

PAT O'HARA - DIRECT BY MR. WHITE

1 Q: Now, are you familiar with that form?

2 A: I am very familiar with that form.

3 Q: And did you see him fill out this particular form?

4 MR. WHITE: Judge, if I may?

5 THE COURT: Yes, sir.

6 BY MR. WHITE:

7 Q: I'm going to show you what's been marked for
8 identification as State's Exhibit 79. Could you tell me if
9 you recognize that form?

10 A: Yes, I do. This would be the form that we would use
11 before interviewing anybody. It's Florence County Sheriff's
12 Office with our letterhead at the top of it, Miranda
13 warnings, and it is signed by Mr. Smith, who printed his
14 name, and also a signature.

15 Q: Is that the form that was gone over with him prior to
16 conducting the interview?

17 A: Yes, it was.

18 Q: Does he initial and waive each right that you went over
19 with him or that Ben Price went over with him?

20 A: Yes, he did.

21 Q: Were you present when he did that?

22 A: Yes, I was present the whole time.

23 Q: Thank you very much.

24 MR. WHITE: Judge, at this time, the State would move
25 State's Exhibit 79 into evidence.

PAT O'HARA - DIRECT BY MR. WHITE

1 THE COURT: Any objection?

2 MR. FLOYD: No objection, Your Honor.

3 THE COURT: Without objection, State's 79 is in
4 evidence.

5 (WHEREUPON, State's Exhibit Number 79, Miranda form, was
6 admitted into evidence.)

7 BY MR. WHITE:

8 Q: Inv. O'Hara, I'm just going to show that to you, if you
9 don't mind. Now, that's the form; correct?

10 A: That is the form, correct.

11 Q: And, number one, it states you have the right to remain
12 silent. Is that his -- Mike Smith's initials beside that?

13 A: That's -- that's his initials. Yes, sir.

14 Q: And beside two, anything you say can and will be used
15 against you in a court of law, is that his initials beside
16 that?

17 A: That is his initials.

18 Q: And on down, you have the right to talk to a lawyer and
19 have him present with you while you are being questioned. Is
20 that his initials there?

21 A: It is.

22 Q: If you cannot afford to hire a lawyer, one will be
23 appointed to represent you before any questioning if you
24 wish. Is that his initials there?

25 A: It is.

PAT O'HARA - DIRECT BY MR. WHITE

1 Q: You can decide at any time to exercise these rights and
2 not answer any questions or make any statements. Is that his
3 initials there?

4 A: It is.

5 Q: And then he initialed that he understood and he wanted
6 to waive those rights?

7 A: Correct.

8 Q: Now, you mentioned that it's a common technique to agree
9 with the person to make them comfortable; is that right?

10 A: I did, yes. Correct.

11 Q: And did you do that in the particular case?

12 A: I did.

13 Q: Do you think that it was beneficial?

14 A: I did. While we were talking to Mr. Smith, he would
15 stop frequently. We brought him in something to drink, which
16 we would normally do if somebody requests coffee, water or
17 drink. We do try to help them out and try to bring that kind
18 of stuff in.

19 And while we were talking to Mr. Smith, he would
20 abruptly stop while he was talking to us and go to his coffee
21 and then started asking us a question. So at that time, yes,
22 we would start agreeing with him to get him to start talking
23 to us even more, to get rid of that break or that pause while
24 he was telling us something.

25 Q: Now, you said that you would have been the observer in

PAT O'HARA - DIRECT BY MR. WHITE

1 this particular interview?

2 A: I started off as the observer, yes.

3 Q: And what would Inv. Price's role have been?

4 A: He would have been the interviewer. He would've been

5 the lead investigator interviewing Mr. Smith.

6 Q: Now, in that role, is Inv. Price trying to build a

7 rapport with the suspect?

8 A: Yes, he is.

9 Q: For that reason, does he, you know, agree more often?

10 A: He does agree more often. I'm just sitting back

11 watching and, at some point, Mr. Smith looks at me and I

12 believe calls me a bulldog or says I'm ready to jump on him,

13 and it's not that. It's just by watching him, I've got a lot

14 of stuff that he's omitted and you can tell that he's lying

15 to us or being distrustful [sic] or just not telling us what

16 we need to know.

17 Q: Now, when you say he's thinking you're ready to jump on

18 him, were you polite the whole time?

19 A: Very much so.

20 Q: Do you ever raise your voice?

21 A: No, sir. I never raised my voice at him.

22 Q: Do you think the interview was successful?

23 A: I do.

24 Q: Okay. And when is the next that you become involved in

25 this particular investigation?

PAT O'HARA - DIRECT BY MR. WHITE

1 A: On February 10th, I was asked prior to that, a day or two
2 prior, to take my K-9, which is K-9 Atilla. She is an
3 explosive detection K-9 or short for bomb dog. She is able
4 to sniff 16 different odors all the way from black powder all
5 the way up to TNT and C-4, and I was asked to take her down
6 to Myrtle Beach with us.

7 Q: Now, has she, Atilla, ever been asked to recover murder
8 weapons before?

9 A: Yes. I've been asked by many agencies, Williamsburg
10 County and also Marlboro County, and her right now today she
11 has found seven weapons. Four of them have been used in
12 violent crimes, three have been used in murder.

13 Q: Do you think that's a pretty good record?

14 A: For the State of South Carolina, she is the only dog I
15 know to find four murder weapons.

16 Q: Good girl?

17 A: I think so.

18 Q: All right.

19 MR. WHITE: Inv. O'Hara, what I'm going to do now is
20 show you what's already been entered into evidence as State's
21 Exhibit 66 and what I'd like to do, Inv. O'Hara, is ask you,
22 if the judge is all right with it, to step down off the
23 witness stand --

24 THE COURT: Yeah.

25 MR. WHITE: -- and stand with me here beside this photo.

PAT O'HARA - DIRECT BY MR. WHITE

1 Judge, with your permission?

2 THE COURT: I would ask -- allow the investigator to
3 face the court reporter.

4 MR. WHITE: Sure.

5 THE WITNESS: Sure.

6 MR. WHITE: Absolutely.

7 THE COURT: Do you want to take that closer to the jury
8 box?

9 MR. WHITE: Yeah. Absolutely. There we go. All right.

10 BY MR. WHITE:

11 Q: Inv. O'Hara, what does this depict here?

12 A: This depicts the golf course where I was requested to
13 take K-9 Atilla to and search.

14 Q: Did you receive information during the interview we just
15 discussed that Mike Smith hid the gun somewhere in this
16 vicinity?

17 A: When I was talking to Mr. Smith, he advised me that he
18 had the gun and that it was at a housing complex tucked under
19 a tree or a bush. It wasn't later until it got brought to my
20 attention that it could be down here at Myrtlewood's golf
21 course on the intercoastal waterway.

22 Q: Now, did Mr. Smith accompany you, as well as other law
23 enforcement officers, down here to attempt to retrieve the
24 gun?

25 A: He did, yes.

PAT O'HARA - DIRECT BY MR. WHITE

1 Q: And where all did you and Atilla cover?

2 A: First, we met everybody. It's not on here, but we met
3 up at the Circle K where we met up with everybody and then as
4 information was given to us led us to the Myrtlewoods. We
5 then went to the clubhouse where we met up with everybody and
6 that's when Myrtlewoods gave us several golf carts because
7 they didn't want us driving all the vehicles on their golf
8 course, which I do understand. They did let me drive mine
9 because I did have the K-9 with me.

10 And at that time, we drove down. I drove down to this
11 area where there was a dock and a pump house and I parked my
12 vehicle right here, and we exited the vehicle and with Mr.
13 Smith we walked along this edge. This edge is actually a
14 cut-through to get you to the pump house back up to the main
15 course.

16 And so we walked this edge with him and the whole time
17 while we're walking this edge, we're asking Mr. Smith do you
18 see an area where you used to go in and out of the woods.
19 And somewhere right in the middle, he said I think this is
20 it. This is where I came, went in and out of the woods. And
21 at that time, they looked at me to develop a plan of how to
22 search this area because we searched from this little dock in
23 the -- in the edge of the intercoastal all the way back to
24 this opening, which is roughly over 200 yards.

25 Q: Now, you mentioned before that Atilla is pretty good at

PAT O'HARA - DIRECT BY MR. WHITE

1 finding weapons. Did she ultimately find one here?

2 A: She did not find one here. What we had to do is because
3 it was so large and I do recall it was actually kind of nice
4 that day, in the 70s, I had to break it up into two groups.
5 So I had block A and block B. And in block A, we searched
6 everything from where he said he went in back to the pump
7 house. She did not show any behavioral changes, nor did she
8 show any -- any alerts.

9 Q: Did that mean she, you know, wasn't picking up on it?

10 A: She wasn't picking up on the odor. Most firearms use
11 black powder or smokeless black powder, and that is one of
12 the things she is trained to look for and that is 90 percent
13 of what most manufacturers use to put the projectile, the
14 bullet, from the shell casing.

15 Q: If a gun had been present in the area where Michael
16 Smith took you or in the general vicinity of where he said
17 the gun was, would you expect her to pick up the scent?

18 A: Yes. Because from the day he -- from the day when he
19 says he dropped it until the day we went down there, I'm
20 still in a fine, very narrow window were the gun possibly is
21 still emitting an odor. So there is a very high probability
22 -- I'm sorry -- high probability that, yes, she would've
23 found the gun.

24 Q: Okay. Thank you very much.

25 (WHEREUPON, the witness returned to the stand.)

PAT O'HARA - DIRECT BY MR. WHITE

1 BY MR. WHITE:

2 Q: Now, that begs the question. Do you think the gun was
3 ever there?

4 A: No, sir, I do not.

5 MR. WHITE: I beg the Court's indulgence.

6 THE COURT: Yes, sir.

7 MR. WHITE: Thank you, Inv. O'Hara. I have nothing
8 further. Please answer any questions the defense may have.

9 THE COURT: Cross-exam.

10 CROSS-EXAMINATION

11 BY MS. HENDERSON:

12 Q: Inv. O'Hara, did you write up a report regarding any of
13 your findings?

14 A: I didn't because it was -- this incident was audio and
15 video recorded that I did not write up anything.

16 Q: Okay. And Mr. Smith was arrested on February the 4th;
17 correct?

18 A: Correct.

19 Q: And you went to Myrtle Beach on February the 10th --

20 A: Correct.

21 Q: -- to search for the gun?

22 A: Correct.

23 Q: Almost one week later?

24 A: Yes, ma'am.

25 MS. HENDERSON: Thank you, sir. No further questions.

PAT O'HARA - REDIRECT BY MR. WHITE

1 THE COURT: All right. Anything further?

2 MR. WHITE: Judge, just briefly.

3 REDIRECT EXAMINATION

4 BY MR. WHITE:

5 Q: Mr. Smith was arrested on February 4th. When did he tell
6 you that a gun was down at the beach?

7 A: The day we interviewed him, February the 9th.

8 Q: Okay. So the next day you took Atilla down there
9 searching?

10 A: Correct.

11 Q: Okay.

12 MR. WHITE: Thank you very much.

13 THE COURT: Thank you very much, sir. You may step
14 down.

15 All right. Ladies and gentlemen, the -- our -- the next
16 witness that the State has indicated they would be calling
17 might be a little -- might be a little more lengthy than --
18 than we need to start at -- at this time.

19 I think what we'll probably do is we'll break at this
20 time for lunch and then we'll start back after lunch with
21 that witness. I'm going to ask you, if you would, to be back
22 at 1:30; so that gives you a little over an hour and a half
23 for lunch.

24 Please continue to do everything within your power to
25 maintain your ability to remain fair and impartial and not be

1 influenced by anything outside this court. Have no
2 conversation with anyone. Do not allow anyone to talk with
3 you, and we'll start back at 1:30. So if everyone will
4 please remain seated, members of the jury, we'll see you back
5 here at 1:30.

6 (WHEREUPON, the jury exited the courtroom at 11:52 a.m.)

7 THE COURT: All right. Anything else we need to take up
8 before we break?

9 MR. WHITE: No, sir, Judge.

10 THE COURT: Anything from the defense?

11 MR. FLOYD: Nothing further, Your Honor.

12 THE COURT: All right.

13 MR. FLOYD: Thank you.

14 THE COURT: We'll be in recess then until 1:30, folks.

15 MR. WHITE: Thank you, Judge.

16 (WHEREUPON, there was a break in the proceedings from
17 11:53 a.m. until 1:49 p.m., after which the proceedings
18 resumed as follows.)

19 THE COURT: Is the State ready to proceed?

20 MR. WHITE: Yes, sir, Judge.

21 THE COURT: Is the defense ready?

22 MR. FLOYD: Yes, sir, Your Honor.

23 THE COURT: All right. Let's bring them out, please.

24 (WHEREUPON, the jury entered the courtroom at 1:50 p.m.)

25 THE COURT: All right. Ladies and gentlemen, welcome

BEN PRICE - DIRECT BY MR. WHITE

1 back. I hope everyone had a good break and are ready to
2 start back. We'll recognize Mr. White on behalf of the State
3 for your next witness.

4 MR. WHITE: Thank you, Judge. At this time, the State
5 would call Inv. Ben Price.

6 THE COURT: All right. Inv. Price, if you'd please come
7 around to be sworn, sir.

8 THE CLERK: Sir, if you will, please place your left
9 hand on the Bible and raise your right hand. Do you swear
10 the testimony you give in this case to be the truth, the
11 whole truth, and nothing but the truth, so help you God?

12 THE WITNESS: I do.

13 THE CLERK: Please be seated and state your full name
14 for the record.

15 THE WITNESS: Robert Benjamin Price.

16 BEN PRICE, being first duly sworn,
17 testified as follows:

18 DIRECT EXAMINATION

19 BY MR. WHITE:

20 Q: Good afternoon, Inv. Price. How are you doing?

21 A: Good.

22 Q: Inv. Price, where are you employed?

23 A: The Florence County Sheriff's Office.

24 Q: How long have you been employed there?

25 A: Since March of 2008.

BEN PRICE - DIRECT BY MR. WHITE

- 1 Q: And in what capacity are you currently employed?
- 2 A: I am a criminal investigator.
- 3 Q: And how long have you been in investigations?
- 4 A: Since 2012.
- 5 Q: Have you handled your fair share of murder cases?
- 6 A: Yes.
- 7 Q: Now, on February 1st, 2017, and throughout this
- 8 investigation, were you similarly employed?
- 9 A: Yes, I was.
- 10 Q: Are you the lead investigator on this particular case?
- 11 A: Yes. I was the lead investigator throughout the process
- 12 up until today.
- 13 Q: Now, when did you first become involved in this case?
- 14 A: It was the night of the incident on February the 1st,
- 15 2017. I was notified -- I believe it was by Lt. Streett --
- 16 of the incident. I was not on call for general on-call
- 17 investigations, but I was the on-call lead investigator if
- 18 there was a homicide to occur.
- 19 Q: Did you respond to the scene?
- 20 A: Yes, I did. I responded first to the scene at [REDACTED]
- 21 Francis Marion Road.
- 22 Q: And did you talk to the officers who were already on
- 23 scene?
- 24 A: Yes, I did.
- 25 Q: And were you aware that there was an eyewitness to this

BEN PRICE - DIRECT BY MR. WHITE

1 murder?

2 A: Yes, I was. I was made aware about Mr. Williams.

3 Q: Did you speak to Mr. Williams?

4 A: I did that night.

5 Q: Now, did you also go to the hospital that evening?

6 A: I did.

7 Q: Did you have occasion to observe the victim in this
8 case, Kenny Kemmerlin?

9 A: Yes, I did.

10 Q: Was he pronounced dead that evening?

11 A: Yes. By the time I had made it to the hospital, he had
12 already been pronounced.

13 Q: Did you have an opportunity to speak to the coroner,
14 Deputy Coroner Bo Myers?

15 A: I did. Mr. Myers did show up to McLeod Hospital after I
16 was on scene at the hospital and we did have occasion to
17 speak there at the hospital.

18 Q: Did you have an opportunity after this evening to review
19 all forensics -- forensic reports from the scene?

20 A: Yes. I have spoken with Lt. Streett, Sgt. Clendenin,
21 and Chase McDaniel about the forensics that were involved
22 with this.

23 Q: And Deputy Coroner Thomas Myers -- did you have an
24 opportunity to review his report?

25 A: I'm not seen his actual report, but I have talked with

BEN PRICE - DIRECT BY MR. WHITE

1 him.

2 Q: Are you aware of his findings?

3 A: Yes.

4 Q: And are you aware of the pathologist's findings in this
5 case?

6 A: I'm aware of the conclusion. I've not read her report
7 actually word for word.

8 Q: Now, after that night, when is the next time you become
9 involved in this investigation?

10 A: The next day. Well, throughout the night that this
11 happened on the 1st when we were given information that the
12 primary suspect was a Michael Joe Smith, we immediately
13 started to try to put that together and also try to figure
14 out where he may be, such as where he lives and places like
15 that, who he may know.

16 After that, the next day, myself and Inv. Thomas
17 McFadden did conduct an interview with Mr. Williams at the
18 incident location to speak with him about a little more in
19 depth to try to possibly get some more information because
20 Mr. Williams was still in shock that evening after the
21 events.

22 Q: Now, you said that Michael Smith, the defendant in this
23 case, became a suspect. At some point, did he become your
24 primary suspect?

25 A: Yes. That evening on the 1st, he did become our primary

BEN PRICE - DIRECT BY MR. WHITE

1 suspect. We were -- when I say we, myself and the other
2 investigators that were present became aware of a black male,
3 but we were not sure the identity of that male at the time,
4 but we did know that Mr. Kemmerlin as he was speaking to
5 officers and through the 9-1-1 tape did identify a Mike,
6 Michael Smith, and Mr. Williams did give us the same name.

7 Q: So you were aware that the victim in this case gave a
8 dying declaration naming Mike Smith as the man who shot him?

9 A: Correct.

10 Q: And you were aware that an eyewitness to this murder,
11 Craig Williams, also identified Mike Smith as the shooter?

12 A: That's correct.

13 Q: When was Mike Smith -- well, let me back up. You've had
14 an opportunity to review the forensics; correct?

15 A: Correct.

16 Q: Are you aware that a shell casing was recovered at the
17 scene of this incident?

18 A: Yes, I am.

19 Q: Are you aware from -- from where that shell casing was
20 recovered?

21 A: In the floorboard of the front passenger seat, I
22 believe.

23 Q: Now, I'm going to show you --

24 MR. WHITE: If I may, Judge?

25 THE COURT: Yes, sir.

BEN PRICE - DIRECT BY MR. WHITE

1 BY MR. WHITE:

2 Q: I'm going to show you what's been marked and entered
3 into evidence as State's Exhibit 47. Is that the shell
4 casing that was recovered?

5 A: I can't see anything.

6 MR. WHITE: Oh, I'm sorry. I apologize.

7 Nicole, can we flip that over real quick?

8 THE CLERK: What am I doing?

9 MR. WHITE: Flip it over to the overhead. Thank you.
10 My apologies.

11 BY MR. WHITE:

12 Q: I'm going to show you the shell casing that was
13 recovered from the inside of the victim's vehicle. Have you
14 seen this photograph?

15 A: Yes, I have.

16 Q: Now, where is that shell casing located?

17 A: That's up by the windshield. I previously thought that
18 it was in the floorboard, but --

19 Q: All right. Was that processed and sent off to SLED?

20 A: Yes.

21 Q: All right. Now, on February 4th, was Michael Smith taken
22 into custody?

23 A: Yes, he was.

24 Q: Now, prior to that, did you track down the suspect
25 vehicle?

BEN PRICE - DIRECT BY MR. WHITE

1 A: Yes. With the identification that it was a possible
2 Chevrolet Trailblazer that Mr. Williams had seen, through DMV
3 we found that Mr. Smith's wife, Debra, who lived at the same
4 address, she had a Chevrolet Trailblazer registered to her,
5 and we tracked the vehicle down that way.

6 Q: Now, were you on scene when the shell casing was
7 recovered from her vehicle?

8 A: That's the -- you're speaking about the one in the
9 cowl in front of the windshield?

10 Q: Correct.

11 A: Yes, I was.

12 Q: I going to show you what's been entered into evidence as
13 State's Exhibit 3 [sic]. Is that the shell casing?

14 A: Yes.

15 Q: Right there?

16 A: Yes. That's it.

17 Q: Now, was that recovered in your presence?

18 A: It was.

19 Q: Describe how that shell casing was actually sitting on
20 that vehicle?

21 A: It was -- behind the hood in front of the windshield is
22 a vent in-between the windshield wipers that's slotted, and
23 the shell casing -- it was -- the best way I can describe --
24 kind of wedged. The shell casing has a little lip at the
25 bottom of it where it's wider than the cylinder part that

BEN PRICE - DIRECT BY MR. WHITE

1 goes up that holds the bullet, and it was pretty much kind of
2 wedged in there with that lip just sitting there until the
3 forensics officer with Horry County was able to pretty much
4 pluck it out whenever he pulled it from the cowl.

5 Q: Now, was that shell casing also sent to SLED for
6 analysis?

7 A: Yes, it was.

8 Q: And are you aware of the results of that testing?

9 A: I was made aware that the shell casings -- the best that
10 that the SLED could match is that it came from the same gun,
11 even though we don't have a gun to compare it to, but it did.
12 Both shell casings came from the same gun or fired from the
13 same gun.

14 Q: Was there ultimately a projectile recovered in this
15 case?

16 A: Yes.

17 Q: And where was that recovered from?

18 A: I'm not sure exactly where. I do -- I believe it was
19 from Mr. Kemmerlin's body during the autopsy.

20 Q: Okay.

21 A: But I'm not sure exactly the technical terms of where
22 that would be.

23 Q: Okay. I'm going to show you what's been marked as ID
24 State's Exhibit 78. Without telling me much about that, just
25 tell me if you recognize that particular item?

BEN PRICE - DIRECT BY MR. WHITE

1 A: Yes. This is what SLED would have sent back that we
2 would've sent from the Sheriff's Office. Sgt. Clendenin
3 would've sent it to SLED. After they do their forensic
4 analysis, they would send it back to us, where we would hold
5 this.

6 Q: What are the contents of that envelope?

7 A: It is a -- described as it is, a deformed jacketed
8 projectile, one .40 caliber shell casing, and also one .40
9 caliber shell casing.

10 Q: Does that contain the three items that we just referred
11 to?

12 A: Yes.

13 Q: Has the seal been tampered with in any way?

14 A: It does not appear to be.

15 Q: All right.

16 MR. WHITE: Judge, at this time, I would move -- I
17 believe that's State's Exhibit 78 into evidence.

18 THE COURT: Any objection?

19 MR. FLOYD: No objection, Your Honor.

20 THE COURT: All right.

21 (WHEREUPON, State's Exhibit Number 78, two shell casings
22 and one bullet in an envelope, was admitted into
23 evidence.)

24 BY MR. WHITE:

25 Q: Inv. Price, if you could, would you open that up for us?

BEN PRICE - DIRECT BY MR. WHITE

- 1 A: Yes.
- 2 Q: All right. Thank you, Inv. Price. Now, I'm going to
3 show you first this particular shell casing. Could you tell
4 me where that one was recovered from?
- 5 A: This is the one that would have been recovered from Ms.
6 Debra Smith's vehicle down in Surfside Beach.
- 7 Q: And this is the -- this is the one that was lodged in
8 the cowling; is that correct?
- 9 A: Yes.
- 10 Q: And that kind of shows the lip, does it not?
- 11 A: Correct.
- 12 Q: And that lip is more clearly defined when you see it in
13 person, is it not?
- 14 A: Yes, it is.
- 15 Q: And it's that lip that actually was stuck down there?
- 16 A: Yes, sir.
- 17 Q: All right. And that second shell casing, would that be
18 the one that was recovered from the victim's vehicle?
- 19 A: Correct. The interior of Mr. Kemmerlin's vehicle.
- 20 Q: And then the projectile; correct?
- 21 A: Correct.
- 22 Q: Now, it was my mistake before I showed you that
23 photograph, State's Exhibit 47, after I asked you the
24 question. Now, Officer Clendenin testified that that was
25 recovered from the dash. Would that be correct?

BEN PRICE - DIRECT BY MR. WHITE

1 A: Correct.

2 Q: Now, you said floorboard before. Let me ask you this.
3 Since then, February 1st, 2017, have you processed a lot of
4 scenes?

5 A: Yes, I have.

6 Q: And that was my mistake for not showing -- not showing
7 you that beforehand. Now, Inv. Price, how did you, an
8 investigator from the Sheriff's Office, come in contact with
9 Michael Smith for the purposes of taking him into custody?

10 A: The night of the 3rd or actually the day of the 3rd of
11 February, myself, Capt. Brown with the Sheriff's Office and
12 Lt. Moore with the Sheriff's Office, we were down in Myrtle
13 Beach attempting to locate Mr. Smith based upon what Debra
14 Smith that given us where she had dropped him off. We were
15 unable to do so.

16 Lt. Moore had spoken to Debra, which he had asked her to
17 notify us if Mr. Smith had contacted her about picking him up
18 or any kind of contact. On the 4th around lunchtime, Ms.
19 Smith did call Lt. Moore and say that Michael had contacted
20 her and wanted her to pick him up from a gas station in
21 Myrtle Beach. Myself and Lt. Moore left Florence. We went
22 to Myrtle Beach and subsequently were able to take Mr. Smith
23 into custody.

24 Q: Now, when you -- so you were present when he was taken
25 into custody?

BEN PRICE - DIRECT BY MR. WHITE

- 1 A: Correct.
- 2 Q: Was he trying to speak to you at that time?
- 3 A: No, he was not. I was at the backside. It was a gas
4 station where he was sitting. Horry County deputies and Lt.
5 Moore approached the front of the gas station and I was
6 around the back of the gas station just in case he would have
7 run out the back somehow. After they placed him into
8 handcuffs and they put him in Lt. Moore's Sheriff's Office
9 vehicle, I then approached that vehicle to make contact with
10 Mr. Smith.
- 11 Q: When you made contact with him, did you Mirandize him?
- 12 A: I did. I introduced myself, my name, my rank, and then
13 I did advise him of his Miranda rights.
- 14 Q: That's, you know, like we hear on TV, the right to
15 remain silent and that sort of thing?
- 16 A: Yes, sir. That's correct.
- 17 Q: Even though you Mirandized him at that time, did you
18 have any intention of questioning right then and there down
19 at the beach?
- 20 A: I did not. We didn't have a way to record any kind of
21 statements that he would've made. So he was Mirandized. He
22 didn't say anything and I believe that's when they
23 transported him back to Florence County to Effingham.
- 24 Q: Did you tell him that once you got back that you would
25 speak to him if he -- if he wanted to?

BEN PRICE - DIRECT BY MR. WHITE

1 A: Yes, I did.

2 Q: All right. Did he go straight back to the Florence
3 County Sheriff's Office?

4 A: That's correct. We left there and went straight back.

5 Q: Did you go straight back to the Florence County
6 Sheriff's Office?

7 A: I did. I followed Lt. Moore's vehicle in my vehicle
8 until we got back.

9 Q: Did y'all pull in at the same time?

10 A: We did.

11 Q: Did you escort him into -- and him being Michael Smith,
12 the defendant in this case, did you escort him into the Law
13 Enforcement Center?

14 A: I did. Into the Law Enforcement Center from the secure
15 parking lot to an interview room, which is inside of the
16 Sheriff's Office, which has audio and video recording
17 capabilities.

18 Q: Now, on the way in from Sgt. Moore's car into the Law
19 Enforcement Center, did you ask him any questions?

20 A: No, I did not.

21 Q: Despite that, what, if anything, did he say to you?

22 MR. FLOYD: Your Honor, I renew my previous objection at
23 this time.

24 THE COURT: All right. It's certainly noted.

25 Overruled.

BEN PRICE - DIRECT BY MR. WHITE

1 BY MR. WHITE:

2 A: If you'd give me one second, please, because I have it.

3 Q: And you obviously documented the statement in your
4 report?

5 A: Correct. As we were walking in, Mr. Smith -- he had
6 stated to me that he had been hearing a lot of rumors about
7 what he had done and he wanted to set the record straight
8 about it. He said that the family -- the man's family could
9 have some peace. He had also stated that he knew he would
10 get life in prison for what he did and wasn't ever getting
11 out again.

12 Q: All right. Now, did you then take him inside?

13 A: Yes.

14 Q: And you mentioned that there is audio and video
15 recording capability?

16 A: That's correct.

17 Q: And you took him straight into that room with the audio
18 and video recording capability?

19 A: That's correct. He went straight in. Lt. Moore went
20 and sat with him, Mr. Smith, with his -- he had been walking
21 around for several days. He was complaining to us that his
22 feet hurt. His boots were hurting his feet. He had asked if
23 we could get him some flip-flops. So while Lt. Moore took
24 him straight to the interview room, I went back to the jail
25 side to get him some flip-flops so that his feet would feel

BEN PRICE - DIRECT BY MR. WHITE

1 possibly a little bit better.

2 Q: All right. I'm going to show you now what's been marked
3 for ID purposes only as State's Exhibit 77. If you could,
4 tell me if you recognize that disk?

5 A: Yes. This would be the recording on a DVD of the
6 interaction that we had on the 4th of February between myself,
7 Lt. Moore, and Mr. Smith.

8 Q: And have you had an opportunity to review it?

9 A: Yes.

10 Q: Now, aside and subject to court-ordered redactions, has
11 that been tampered with in any way?

12 A: No, sir, not to my knowledge.

13 Q: Okay.

14 MR. WHITE: Judge, at this time, the State would move
15 State's Exhibit 77 into evidence.

16 THE COURT: All right. Any objection to State's 77?

17 MR. FLOYD: No objection.

18 THE COURT: Without objection, State's 77.

19 (WHEREUPON, State's Exhibit Number 77, recorded
20 interview from 2/4/2017 on disk, was admitted into
21 evidence.)

22 MR. WHITE: Judge, I would ask permission to publish for
23 the jury.

24 THE COURT: Yes, sir.

25 (WHEREUPON, State's Exhibit Number 77 was played in open

BEN PRICE - DIRECT BY MR. WHITE

1 court. Not transcribed herein. When the tape ended,
2 the proceedings resumed as follows.)

3 MR. WHITE: Now, Inv. Price, what I'm going to do -- is
4 that microphone on?

5 THE WITNESS: I'm not sure.

6 MR. WHITE: Judge, do you mind if I run a test on that
7 real quick?

8 THE COURT: No. Go ahead.

9 MR. WHITE: And just speak into that, if you could.
10 Give me a test on that, Inv. Price.

11 THE WITNESS: Test.

12 MR. WHITE: All right.

13 BY MR. WHITE:

14 Q: Now, how long had Michael Smith been on the run?

15 A: Since the 1st of February and then that was the 4th. So
16 the night of the 1st until midday of the 4th.

17 Q: And did you understand that he had spent most of that
18 time, you know, out in that -- you know, outside with little
19 to eat and little to drink?

20 A: At that time, I really wasn't sure where he had been.
21 He just -- he looked tired. He looked -- he didn't -- he
22 just looked tired.

23 Q: And so you were in agreeance with his decision to
24 conduct the interview at a later date?

25 A: Absolutely.

BEN PRICE - DIRECT BY MR. WHITE

1 Q: As a matter of policy, you don't want to question
2 someone in that sort of state?

3 A: Correct. I didn't want to keep going. He asked to do
4 it another time. You know, I felt the need to wait and
5 respect those wishes.

6 Q: Now, did you conduct the interview the next day?

7 A: No, I did not.

8 Q: When did you conduct the interview?

9 A: It was done on February the 9th. It was five days after
10 that initial video on the 4th.

11 Q: Did you feel like that was sufficient time for him to
12 rest and recover?

13 A: Correct.

14 Q: Now, were you in here earlier when Inv. O'Hara testified
15 about the different types of interview techniques that are
16 used?

17 A: I was.

18 Q: Are you in agreement with his, you know, assessment of
19 those techniques?

20 A: Yes, sir, I am.

21 Q: The technique that he says was used in the February 9th
22 interview, are you -- do you agree that that's what you guys
23 employed?

24 A: Yes, sir.

25 Q: And does that mean that sometimes during that interview

BEN PRICE - DIRECT BY MR. WHITE

1 you agreed with the defendant in this case to make him feel
2 more comfortable?

3 A: Yes, sir. We would've done that.

4 Q: Okay. Now, I'm going to show you what's been marked as
5 State's Exhibit 76. Could you see if you recognize that for
6 me?

7 A: Yes, sir. It's a DVD of the recording on February the
8 9th, which would have been the interview with myself and Inv.
9 O'Hara and Mr. Smith.

10 MR. WHITE: At this time, I would move State's Exhibit
11 76 into evidence.

12 THE COURT: Any objection?

13 MR. FLOYD: No objection, Your Honor.

14 THE COURT: All right. Without objection, State's --
15 76, you said?

16 MR. WHITE: Yes, sir.

17 THE COURT: 76. Okay.

18 (WHEREUPON, State's Exhibit Number 76, recorded
19 interview from 2/9/2017 on disk, was admitted into
20 evidence.)

21 BY MR. WHITE:

22 Q: Now, other than court-ordered redactions, have there
23 been any deletions or alterations to that interview?

24 A: No, not that I'm aware of.

25 Q: All right.

BEN PRICE - DIRECT BY MR. WHITE

1 MR. WHITE: And before we play that interview, I am
2 going to ask the judge's permission to publish to the jury in
3 just a moment, Judge.

4 THE COURT: Yes, sir.

5 BY MR. WHITE:

6 Q: You know what, is this your Miranda form here? It's
7 already entered into evidence.

8 A: Yes, it is. This is the original that we signed on the
9 9th.

10 Q: Now, is that the same one Inv. O'Hara went over?

11 A: Yes, it is.

12 Q: All right. Has that got the initials MS, Michael Smith?

13 A: Correct.

14 Q: Did you view him initial each and every waiver of these
15 rights?

16 A: I did. He initialed them. He printed his name. He
17 signed his name, and my signature is under his signature as
18 the witness.

19 Q: And after he completed this form and after you verbally
20 went over all these rights with him, then did he agree to
21 speak with you?

22 A: Yes, he did.

23 MR. WHITE: Judge, at this time, I would ask permission
24 to publish that interview.

25 THE COURT: Yes, sir.

BEN PRICE - DIRECT BY MR. WHITE

1 (WHEREUPON, State's Exhibit Number 76, recorded
2 interview on disk, was published in open court. Not
3 transcribed herein. At the end of the recording, the
4 proceedings resumed as follows.)

5 THE COURT: All right. We're going to take a break at
6 this time.

7 MR. WHITE: Yes, sir.

8 THE COURT: Ladies and gentlemen, we're going to take a
9 short break and come back and we'll finish with this line of
10 questioning after that. Please continue to have no
11 conversation about the case and I'll bring you back out
12 shortly. Okay?

13 Everyone else please remain seated while the jury is
14 excused.

15 (WHEREUPON, the jury exited the courtroom at 3:20 p.m.)

16 THE COURT: All right. We'll just take a little bit of
17 a break.

18 Inv. Price, you're welcome to step down. Just don't
19 discuss your testimony with anybody.

20 THE WITNESS: Yes, sir, Your Honor.

21 THE COURT: Okay. All right. We'll start back in a few
22 minutes.

23 MR. WHITE: Thank you, Judge.

24 (WHEREUPON, there was a break in the proceedings from
25 3:21 p.m. until 3:42 p.m., after which the proceedings

BEN PRICE - DIRECT BY MR. WHITE

1 resumed as follows.)

2 THE COURT: All right, Ben. Are you ready?

3 THE WITNESS: Yes, sir, Your Honor.

4 THE COURT: Okay. All right. Is the State ready to
5 proceed?

6 MR. WHITE: Yes, sir, Judge.

7 THE COURT: Is the defense ready?

8 MR. FLOYD: Yes, Your Honor.

9 THE COURT: Okay. Let's bring the jury back in, please.
10 (WHEREUPON, the jury entered the courtroom at 3:43 p.m.)

11 THE COURT: All right. Ladies and gentlemen, we had
12 just gotten to the end of State's Exhibit 76, and Mr. -- or
13 Inv. Price is still on the witness stand.

14 Inv. Price, you're still under oath.

15 And, Mr. White, I'll allow you then to pick up with your
16 direct examination, sir.

17 MR. WHITE: Thank you very much, Judge.

18 BY MR. WHITE:

19 Q: Inv. Price, we left off listening to that confession of
20 the defendant; is that correct?

21 A: That's correct.

22 Q: And one of the last things I think we heard you say was
23 that you believed everything he said was adding up; is that
24 correct?

25 A: That's correct.

BEN PRICE - DIRECT BY MR. WHITE

1 Q: Do you believe everything he said was adding up?

2 A: No, I don't.

3 Q: All right. Let's go through it. Now, when you first
4 started that interview, he talks about a big-time drug dealer
5 in Darlington; is that right?

6 A: Yes, he does.

7 Q: And he discusses the victim in this case selling large
8 quantities of pills; is that right?

9 A: That's correct.

10 Q: Let me ask you this. Does the only evidence in this
11 case that the victim sold large quantities of pills come from
12 the defendant?

13 MR. FLOYD: Your Honor, I object to the relevance. I'm
14 not sure where this is going.

15 THE COURT: Well, I don't know either, but I'm going to
16 give him a little bit of leeway and see where it goes.
17 Overruled.

18 MR. WHITE: And I'll --

19 THE COURT: Go ahead.

20 MR. WHITE: I'll go again.

21 BY MR. WHITE:

22 Q: Inv. Price, is the only evidence -- the only time we
23 hear in this whole investigation that the victim sold large
24 quantities of pills, does that information come from the
25 defendant in this case?

BEN PRICE - DIRECT BY MR. WHITE

1 A: The only evidence that we were able to ascertain did
2 come from Mr. Smith.

3 Q: Now, did you follow up and look into whether there were
4 any pending -- pending cases in your narcotic division
5 related to the victim in this case?

6 A: Yes. I -- I checked in two locations. I checked
7 through our system. I ran the victim's name to see if he was
8 part of any pending cases as a victim or a suspect. I also
9 asked our narcotics division about his name to see if he was
10 the subject of any pending investigation through narcotics in
11 Florence County, which both came up as negative.

12 Q: Now, you are aware that, in the defendant's first
13 version of these events on that confession, he says that the
14 victim grabbed the gun; is that correct?

15 A: That's correct. He does say that.

16 Q: Are you also aware that Andrew Clendenin with the
17 Sheriff's Office performed a gunshot residue test on the
18 victim?

19 A: Yes, he did.

20 Q: Are you aware of the results of that gunshot residue
21 test?

22 A: Yes, I am.

23 Q: And what were they?

24 A: They were negative.

25 Q: Does that mean that the victim did not shoot a gun nor

BEN PRICE - DIRECT BY MR. WHITE

1 was he near a gun when one was shot?

2 A: I believe from Mr. Clendenin's testimony that it was not
3 consistent with firing a gun or being in front of a gun when
4 it fired with his hands.

5 Q: Now, I want to ask you about this -- this phrase that
6 the defendant says in his confession over and over. He says
7 that he keeps hearing from the victim and the victim says,
8 "New game, Mike." Now, how long have you been in
9 investigations?

10 A: Since 2012.

11 Q: In your time in investigations or really any time in
12 your life, have you ever heard new game used in a way that
13 would imply the person using it meant it to be threatening
14 murder?

15 A: Not specifically. I've never heard it meant to mean
16 that it was going to -- they were going to murder someone or
17 shoot them or harm them.

18 Q: All right. Now, you're also aware that the defendant in
19 this case makes several references to a threat against both
20 him and his wife?

21 A: Yes.

22 Q: Were you able to corroborate that at all?

23 A: I wasn't. By going through the phone that Mr. Smith
24 would've had access to, which is Ms. Debra Smith's phone, we
25 weren't able to find any text messages that would have gone

BEN PRICE - DIRECT BY MR. WHITE

1 along with that statement and, of course, we were not able to
2 come across Mr. Kemmerlin's phone after it was thrown out of
3 the window to look on that to find out if that were the case.
4 Q: Now, Inv. Price, I'm going to ask -- I want to make sure
5 this is on. I'm going to make sure you --
6 A: I'm sorry. It got --
7 Q: That's all right.
8 A: -- turned off.
9 Q: Just speak up as loudly as you can to make sure we can
10 all hear you. I'm going to show you what's been entered into
11 evidence as State's Exhibit 67. Oh, I'm sorry. Rather than
12 mess with that, State's Exhibit 7. Now, is that the phone
13 you're referring to when you say Debra Smith's phone?
14 A: That's correct.
15 Q: Now, have you had an opportunity to review this
16 photograph?
17 A: Yes, I have.
18 Q: Is the telephone number on that contact in fact the
19 telephone number belonging to Kenny Kemmerlin?
20 A: Yes, it was.
21 Q: Did you -- are you aware of a search warrant that was
22 obtained and executed for the contents of that phone?
23 A: Yes, I am.
24 Q: Inside that phone, did you find any threatening text
25 messages?

BEN PRICE - DIRECT BY MR. WHITE

1 A: No, I did not.

2 Q: Did you find any text messages at all to Kenny
3 Kemmerlin?

4 A: No, I did not.

5 Q: Did you find any phone calls to Kenny Kemmerlin?

6 A: No, I did not.

7 Q: Now, the other phone is the one that was tossed out of
8 the window; correct?

9 A: That's correct.

10 Q: And was it his confession that that phone belonged to
11 Kenny Kemmerlin?

12 A: Yes, it was.

13 Q: Now, in that interview, you tell him that you think you
14 can obtain that phone's contents without retrieving the
15 phone; is that correct?

16 A: That's correct.

17 Q: Let me ask you this. Were you playing along a little
18 bit at that point?

19 A: A little bit. Based upon the type phone that Mr.
20 Kemmerlin owned, it would've been extremely difficult to
21 actually do that, to obtain any kind of text messages that
22 would have shown what Mr. Smith was claiming.

23 Q: Now, if you're able to retrieve a phone, is it much
24 easier to get into that phone and to get a search warrant and
25 obtain the contents?

BEN PRICE - DIRECT BY MR. WHITE

- 1 A: Specifically, an iPhone, yes.
- 2 Q: Now, specifically, an iPhone. Is it very difficult to
3 obtain the contents of that iPhone if the iPhone is not
4 recovered?
- 5 A: Yes, it is.
- 6 Q: A couple of times the defendant in this case says that
7 when he -- he, the victim, grabs the gun and without getting
8 any gunshot residue on him, he says the victim says you're
9 going to jail, you -- blank. Are you aware of that
10 statement?
- 11 A: From the confession?
- 12 Q: Yes, sir.
- 13 A: Yes, sir.
- 14 Q: Now, although you don't have any concrete evidence that
15 Kenny Kemmerlin was a large-time pill distributor, in your
16 time in investigations, have you ever heard of a big-time
17 drug dealer wanting to call law enforcement?
- 18 A: No. I would consider that pretty rare.
- 19 Q: Now, is it true that in the -- that Mike initially --
20 when Michael Smith, the defendant, tells you, you know, a
21 version of events, isn't it true his version places Ra Ra,
22 Rasheem, in the backseat of that vehicle?
- 23 A: Initially, yes.
- 24 Q: And then later on in the interview, is it true that Ra
25 Ra then during the incident is on the outside of the vehicle?

BEN PRICE - DIRECT BY MR. WHITE

- 1 A: That's what -- what Mr. Smith is saying.
- 2 Q: And then isn't it true that in the initial version, he
- 3 passes the gun from the back to the front to Michael?
- 4 A: Correct. In the beginning, the initial part of the
- 5 confession, he does.
- 6 Q: Now, isn't it true that later he says that he actually
- 7 arrived at the incident location with the gun on his person?
- 8 A: Correct. When -- when I'm out of the room and Inv.
- 9 O'Hara is talking to Mr. Smith, the version does change to
- 10 when he arrived, he had the firearm on him. It was given to
- 11 him before arriving at the location.
- 12 Q: Now, doesn't the defendant mention later when the
- 13 version changes that he and Ra Ra -- he, again, my apologies,
- 14 the victim in this case, Kenny Kemmerlin, that they -- Ra Ra
- 15 and Kenny tussle on the way out of the car?
- 16 A: Correct.
- 17 Q: And isn't it true that he says that Ra Ra had blood on
- 18 him when he gets into the car and they flee the scene?
- 19 A: Yes, that's correct.
- 20 Q: Are you aware of any blood that was recovered or
- 21 discovered rather in the suspect vehicle?
- 22 A: No. I'm not aware of any blood that was recovered or
- 23 seen in the suspect vehicle or on the suspect's side.
- 24 Q: All right. At one point, does the defendant begin to
- 25 talk about a Netspend card?

BEN PRICE - DIRECT BY MR. WHITE

1 A: Yes, he does.

2 Q: And does he begin to offer a new version that includes
3 visiting the incident location earlier in the day?

4 A: That's correct.

5 Q: Is he saying there that he trades essentially the
6 Netspend card for pills?

7 A: Yes, he does.

8 Q: But isn't it true that he says he doesn't get any pills,
9 but the defendant -- that the victim takes his Netspend card
10 and then makes a threat; is that right?

11 A: That's correct.

12 Q: I'm going to show you, if you don't mind --

13 MR. WHITE: And, Judge, if I may approach?

14 THE COURT: Yes, sir.

15 BY MR. WHITE:

16 Q: I'm going to show you what's been marked as State's
17 Exhibit 80. Let me make sure that sticker is on there. I'm
18 going to show you -- I'm going to set this right here. If
19 you could, tell us if you can look at that inventory log and
20 tell me if you recognize those particular items?

21 A: Yes, I do.

22 Q: Now, did you obtain those items when the defendant in
23 this case was placed into custody?

24 A: Yes. After they would have dressed him out in the back,
25 we would have obtained that from the jail side.

BEN PRICE - DIRECT BY MR. WHITE

1 Q: All right. Could you open that? Well, before you do --
2 MR. WHITE: Judge, I would move State's Exhibit 80 into
3 evidence.
4 THE COURT: Any objection, Mr. Floyd?
5 MR. FLOYD: No objection, Your Honor.
6 THE COURT: All right. Without objection.
7 (WHEREUPON, State's Exhibit Number 80, paper bag
8 containing clothing and items belonging to the
9 defendant, was admitted into evidence.)
10 BY MR. WHITE:
11 Q: Now, Inv. Price, if you'll pop that seal and open that
12 bag up? Are all items contained in that bag -- do they
13 belong to the defendant in this case?
14 A: Yes, sir, they would.
15 Q: See if you can't spot me a wallet in there, Inv. Price?
16 A: Yes. Is it okay if I pull it down a little?
17 Q: Yeah.
18 A: I'm trying to keep it in view of the --
19 Q: Yeah. I'll tell you what.
20 A: Do you want me to come down?
21 MR. WHITE: Judge, may Inv. Price step off the --
22 THE COURT: Yeah.
23 MR. WHITE: -- witness stand?
24 THE COURT: Just keep your voice up so the court
25 reporter can hear you.

BEN PRICE - DIRECT BY MR. WHITE

1 THE WITNESS: Yes, sir.

2 MR. WHITE: Hey, Inv. Price, hold on. I'll give you a
3 set of gloves. Here you go, buddy. Just throw those on.

4 (WHEREUPON, the witness complied.)

5 MR. WHITE: Very good.

6 BY MR. WHITE:

7 Q: Okay. See if there's a wallet in there, if you don't
8 mind, Inv. Price?

9 A: A brown wallet.

10 Q: All right. If you could, are there cards in that
11 wallet?

12 A: Yes, there are.

13 Q: See if you can find that Netspend card?

14 A: It's --

15 Q: If you would, just kind of to show it to the jury and
16 I'm going to ask you to step out here, Inv. Price, so
17 everyone can see it and, if you would, read the name that's
18 on that Netspend card?

19 A: It's a Netspend card ending in 5574, a Visa debit card,
20 with the name Michael J. Smith embossed on the front.

21 Q: Now, Inv. Price, is that the same Netspend card that the
22 defendant says the victim kept from him?

23 MR. FLOYD: Your Honor, that's speculation. I don't
24 know how he knows if it's the same card or not.

25 THE COURT: Sustained. I don't know that --

BEN PRICE - DIRECT BY MR. WHITE

1 MR. WHITE: Okay. All right. Well, I'll move on.

2 THE COURT: -- there's any testimony that it's that
3 card.

4 MR. WHITE: Oh, yeah. That's fine.

5 BY MR. WHITE:

6 Q: Is that a Netspend card?

7 A: Yes, it is.

8 Q: Is it in the name of Michael Smith?

9 A: Yes, it is.

10 Q: Does Michael Smith say that the victim in this case took
11 a Netspend card of his on the incident date?

12 A: Yes, he does.

13 Q: Okay. Thank you. If you'll just set that back down
14 there, Inv. Price, and fold it up as best you can. I think
15 we can just plop it right there.

16 A: Right here?

17 Q: Yeah. Thank you.

18 (WHEREUPON, the witness returned to the stand.)

19 MR. WHITE: I'd beg the Court's indulgence for just a
20 moment, Judge.

21 THE COURT: Yes, sir.

22 BY MR. WHITE:

23 Q: Did he ever mention that he had more than one Netspend
24 card?

25 A: I don't believe I remember hearing more than one.

BEN PRICE - DIRECT BY MR. WHITE

1 Q: All right. Now, I'm going to show you what's been
2 marked State's Exhibit 1. If you could, tell me if you
3 recognize this particular set?

4 THE COURT REPORTER: 81?

5 MR. WHITE: 81. Yes, ma'am.

6 BY MR. WHITE:

7 A: Yes. It's evidence submitted by Sgt. Clendenin. This
8 would be the clothing and property of the victim that was
9 taken from McLeod Hospital.

10 Q: Now --

11 MR. WHITE: Judge, I would admit State's Exhibit 81 into
12 evidence.

13 THE COURT: Any objection?

14 MR. FLOYD: I don't have any objection, Your Honor.

15 THE COURT: All right. Without objection.

16 (WHEREUPON, State's Exhibit Number 81, paper bag
17 containing clothing and items belonging to the victim,
18 was admitted into evidence.)

19 BY MR. WHITE:

20 Q: Is there a wallet in there?

21 A: It is not listed on the log sheet.

22 Q: Any Netspend cards in there, Inv. Price?

23 A: I do not see one listed on the log sheet.

24 MR. WHITE: I beg the Court's indulgence.

25 BY MR. WHITE:

BEN PRICE - DIRECT BY MR. WHITE

1 Q: All right. We're going to talk about the victim at the
2 scene, at the hospital, in his car. Did you ever find a
3 holster in any of his -- in his car or in those clothes? Is
4 there a holster listed in that evidence log?

5 A: No, sir. I never found a holster in any of the
6 investigation.

7 Q: Okay.

8 A: Belonging to the victim.

9 Q: Now, did you ever find a gun that could even conceivably
10 belong to the victim in this case?

11 A: No, I did not.

12 Q: Other than the shell casing that was recovered on the
13 dashboard of his car, did you ever find any bullets in his
14 vehicle?

15 A: No, I did not.

16 Q: Did you ever find any bullets on his person?

17 A: No, I did not.

18 Q: Any bullets in Craig's House?

19 A: No, we did not find any.

20 Q: Any guns in Craig's house?

21 A: No.

22 Q: All right.

23 MR. WHITE: Thank you, Inv. Price. I have nothing
24 further. Please answer the questions the defense may have.

25 THE WITNESS: Thank you.

BEN PRICE - CROSS BY MR. FLOYD

CROSS-EXAMINATION

1
2 BY MR. FLOYD:

3 Q: Inv. Price, you obtained a cell phone from Ms. Debra
4 Smith on what date?

5 A: I believe that Lt. Moore may have recovered that cell
6 phone from her, and I'm not sure the date that that was done.

7 Q: Okay. When -- was it when she was arrested?

8 A: I believe it was before she was arrested.

9 Q: Okay. But you didn't make contact with her until -- was
10 it the 4th of February when you made contact with her?

11 A: It would have been the -- the 3rd of February, I believe,
12 was the first date that I made contact with Ms. Debra.

13 Q: Okay. But you didn't take her phone from her then?

14 A: No.

15 Q: Is that correct?

16 A: We did not take her phone. We left her phone with her
17 in case Mr. Smith had the opportunity to contact her and we
18 were able to find him.

19 Q: So she had it for some days after this incident;
20 correct?

21 A: That would be correct.

22 Q: After she became aware of what happened; correct?

23 A: Yes, sir.

24 Q: Okay. And so you don't know if she deleted messages off
25 of that phone or not during that time, do you?

BEN PRICE - CROSS BY MR. FLOYD

1 A: She stated that she didn't mess with the phone, but I
2 mean we would have no way to confirm that.

3 Q: Well, she also gave you misleading and incorrect
4 statements in addition to just the telephone; correct? When
5 you first spoke to her?

6 A: In the beginning, yes, she did.

7 Q: Yeah. Okay. So you have no idea if she deleted phone
8 logs or anything else off of her phone?

9 A: I have nothing to show that she may or may not have.

10 Q: Now, you did receive information that Mr. Kemmerlin was
11 selling pills to the defendant, did you not?

12 A: From Mr. Williams. I did receive information from him
13 that that was the case, along with Mr. Smith.

14 Q: Okay. And, in fact, you asked Mr. Smith about that,
15 didn't you?

16 A: Yes, I did.

17 Q: In your -- in your questioning with him?

18 A: Yes, I did.

19 Q: Okay. So regardless of whether he was a, quote/unquote,
20 big-time drug dealer, he was a drug dealer; correct?

21 A: Mr. Kemmerlin did sell prescription pills from the best
22 that we could tell from -- from Mr. Smith and also Mr.
23 Williams.

24 Q: Now, the GSR test that you were questioned about, I
25 understand that you understood that the victim had a negative

BEN PRICE - CROSS BY MR. FLOYD

- 1 result on his hands; is that correct?
- 2 A: Yes, sir. That would be correct.
- 3 Q: But they only tested the hand; correct? For GSR?
- 4 A: Yes, sir. Just the hand area around it.
- 5 Q: And, of course, if a gun is fired at the moment and the
- 6 hand is not near it at that moment, the GSR might not be on
- 7 the hand; correct?
- 8 A: I'm sorry. I'm not --
- 9 Q: If a gun is fired and the hand is not near the gun at
- 10 that moment it's fired, there may not be GSR; correct?
- 11 A: That's possible, yes.
- 12 Q: Okay. Now, you interviewed Mr. Craig Williams. Was it
- 13 on the 2nd of February?
- 14 A: Yes, sir. It was on February --
- 15 Q: Is that right?
- 16 A: Yes, sir. February the 2nd.
- 17 Q: It was -- it was the day after the incident; is that
- 18 correct?
- 19 A: That's correct.
- 20 Q: Okay. And was that the only time that you interviewed
- 21 him?
- 22 A: Yes, sir. That's the only interview that I -- that I
- 23 gave to him.
- 24 Q: Okay. And -- and did you hear him testify in court?
- 25 A: Yes, I did.

BEN PRICE - CROSS BY MR. FLOYD

1 Q: Okay. And, of course, he made inconsistent statements
2 as well in court as opposed to what he told you; correct?

3 A: Correct. Versus the day after and what he said in here.

4 Q: Correct. And Ms. Debra Smith -- you interviewed her in
5 Myrtle Beach or in Surfside Beach or at her niece's house
6 near the coast; correct?

7 A: Yes, sir.

8 Q: Okay. And that was on the 3rd of February?

9 A: Yes, sir. That's correct.

10 Q: Is that correct? And then you interviewed her at a
11 later date; correct?

12 A: Yes, sir.

13 Q: At her attorney's office?

14 A: Yes, sir. In Marion.

15 Q: Okay. And how much time had elapsed between the first
16 and second interview? Do you recall?

17 A: 20 -- 21 months, maybe.

18 Q: So the second interview was fairly recent?

19 A: A few months ago. Yes, sir.

20 Q: Okay. And, of course, between the first interview and
21 the second interview, she gave you inconsistent statements as
22 well; correct?

23 A: Yes, sir. There were some inconsistencies from the
24 first to the second, and there were also inconsistencies the
25 first day, the first interview that we took, which we could

BEN PRICE - CROSS BY MR. FLOYD

1 tell that she was being untruthful and when confronted
2 specifically about not seeing him to actually then bringing
3 him down to the beach.

4 Q: Now, other than interviewing Ms. Smith and Mr. Williams,
5 Craig Williams, and Michael Smith, did you take any other
6 statements from anyone, any recorded statements or anything
7 of that nature?

8 A: Those are the only recorded statements that we took.
9 There was a recorded statement with Rasheem Thomas to where
10 he advised that he wanted to speak to his attorney, but just
11 to answer your question, that was recorded, but there was
12 nothing said.

13 Q: Okay. He exercised his right to counsel?

14 A: That's correct.

15 Q: And you terminated the interview?

16 A: Uh-huh.

17 Q: All right.

18 MR. FLOYD: Thank you so much, Inv. Price. I appreciate
19 it. No more -- no further questions.

20 THE WITNESS: Thank you, sir.

21 THE COURT: Anything on redirect?

22 MR. WHITE: Just briefly, Judge.

23 REDIRECT EXAMINATION

24 BY MR. WHITE:

25 Q: Now, Inv. Price, I think you did testify that Debra may

BEN PRICE - REDIRECT BY MR. WHITE

1 have been misleading or untruthful in the beginning?

2 A: That's correct.

3 Q: Was her misleading or untruthfulness -- was it
4 beneficial to the defendant in this case?

5 A: No, I don't believe that it was.

6 Q: Okay. Let me ask you this. The GSR -- I believe I
7 understood Mr. Floyd correctly. He asked you whether or not
8 if the -- if the victim's hands would have been away from the
9 gun, there may not have been GSR on it?

10 A: That's correct.

11 Q: And that is a true statement; right?

12 A: I believe so.

13 Q: But again, I'd like to reiterate that the defendant
14 testified that his hand was on the victim's wrist and he
15 snatched back and fired?

16 A: That's correct. In the confession, he does state that
17 his hand was on the gun and that the two shots were fired
18 while his hand would have been on the gun, which I would
19 believe would make it in proximity to the gun when it was
20 fired.

21 Q: But now, if his hands would have been away from the gun,
22 there would've been no GSR; right?

23 A: That's correct.

24 Q: Like, if he was turned and getting out of the vehicle,
25 there would be no GSR?

BEN PRICE - REDIRECT BY MR. WHITE

1 A: That would be correct.

2 Q: Last question. I know you've been up here a while, Inv.
3 Price. My apologies.

4 It's always the last one. Inv. Price, I'll show you
5 what's been entered into evidence as State's Exhibit 46.
6 Every time. State's Exhibit 46. I'm going to show it to the
7 jury. I'm going to show it to you. Do you recognize this
8 photo as the victim's vehicle?

9 A: Yes, I do.

10 Q: Is the glove compartment open?

11 A: Yes, it is.

12 Q: All right. Let me ask you this. Was a wallet belonging
13 to the victim in this case ever found?

14 A: I don't believe that it was.

15 MR. WHITE: Thank you, Inv. Price. I have nothing
16 further.

17 THE COURT: Anything further of this witness?

18 MR. FLOYD: I don't have anything further, Your Honor.

19 THE COURT: All right.

20 MR. FLOYD: Thank you.

21 THE COURT: Thank you very much, sir. You may step
22 down.

23 THE WITNESS: Thank you, Your Honor.

24 MR. WHITE: Judge, I beg the Court's indulgence for just
25 a moment.

1 THE COURT: Yes, sir.

2 MR. WHITE: Judge, at this time, the State would rest.

3 THE COURT: All right. Thank you very much, sir.

4 Ladies and gentlemen, the State has rested their case.

5 In every trial -- in every criminal trial that we try here,
6 at the close of the State's case I have to take up matters of
7 law with the attorneys before we go any further, and that's
8 probably going to take -- that's probably going to take me a
9 little bit of time. So we're going to adjourn for the
10 afternoon.

11 I would anticipate starting at 9:30 in the morning. So
12 please, if you would, be back then. And I know we haven't
13 started on time yet, but it's not -- it's a -- it's an
14 elusive target and we keep trying to hit it and I hope we can
15 do that in the morning. That has certainly been our goal
16 every time I've brought you back here. So I don't want you
17 to think I'm just messing with you about getting you here
18 earlier than you need to be. But if you would, be back at
19 9:30. I hope we'll be ready to go at that point.

20 Oh, and let me say it has not been through the fault of
21 any of these attorneys. It's other matters outside of this
22 case that typically tie me up in the morning.

23 Please continue to maintain your ability to remain fair
24 and impartial. Tell your family, friends, and loved ones to
25 stay patient. You're still not allowed to have any

1 conversation or talk about the case.

2 So with that in mind, I hope everyone, again, can get a
3 good night's rest and we will see you back here in the
4 morning at 9:30. If everyone will please remain seated and,
5 folks, we'll see you back here in the morning.

6 (WHEREUPON, the jury exited the courtroom at 4:18 p.m.)

7 THE COURT: All right. At this time, I'll take up any
8 motions at the close of the State's case.

9 MR. FLOYD: Yes, Your Honor. Your Honor, we would move
10 for a directed verdict on Count I of the indictment at this
11 time just based on the insufficiency of the evidence.

12 THE COURT: All right. I'm going to respectfully deny
13 the motion, Mr. Floyd. I think it's a factual issue for the
14 jury to decide and so I think it's appropriate for it to go
15 to them for their decisions regarding the evidence.

16 Have you and Ms. Henderson had an opportunity to talk
17 with Mr. Smith about the defense's case and his rights
18 regarding that?

19 MR. FLOYD: Yes, Your Honor.

20 THE COURT: Okay. I'm going to just review those with
21 him at this time.

22 Mr. Smith, if you would, please stand and let me talk to
23 you briefly.

24 (WHEREUPON, the defendant complied.)

25 THE COURT: Every person that comes into this court who

1 is charged with a criminal offense is presumed innocent, as I
2 instructed the jury when we began this trial, and that
3 presumption of innocence remains with you throughout this
4 case and throughout the deliberations, but you have the right
5 and every person charged with a criminal offense has the
6 right to either provide evidence in their defense, to testify
7 in their defense, or to present witnesses in their defense,
8 but they also have the right to remain silent.

9 I instructed the jury before we got started in my
10 preliminary remarks that the burden of proof is on the State
11 in a criminal trial to prove guilt. That you're not required
12 to prove anything and that is -- that is true. And so a
13 person has the right to remain silent and require the State
14 to meet that burden on their own.

15 You've talked with Mr. Floyd and Ms. Henderson about
16 this?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Okay. And what I'm going to do is I'm just
19 going to share a couple things with you and then I'm not
20 going to ask for your -- your final answer today because I
21 want to give you an opportunity to continue to talk with
22 them, if you need to, and we can get that information from
23 you tomorrow before we start back.

24 But -- and let me -- let me take a short pause here.
25 Does Mr. Smith have any criminal history that could be

1 subject to cross-examination?

2 MR. FLOYD: I believe so, Your Honor.

3 THE COURT: All right.

4 MR. WHITE: Yes, sir.

5 THE COURT: Have you got his --

6 MR. WHITE: Yes, sir.

7 THE COURT: -- record that we can look at?

8 MR. WHITE: Yes, sir.

9 THE COURT: Have y'all been able to come to some --

10 MR. FLOYD: Your Honor --

11 THE COURT: -- agreement as to what would and what would
12 not be subject to --

13 MR. FLOYD: I don't know that we've --

14 THE COURT: -- questioning?

15 MR. FLOYD: -- sat down and done that, Your Honor.

16 MR. WHITE: No, we haven't. We haven't looked over it,
17 Judge, together. He does have a significant criminal
18 history.

19 THE COURT: Well, what have you got in the last 10
20 years?

21 MR. WHITE: Judge, from 2009, we've got a criminal
22 domestic violence, first. Later in 2009, we've got a forgery
23 less than five. I think that's the same. Is that the same
24 offense?

25 (WHEREUPON, there was a pause in the proceedings as

1 counsel conferred, after which the proceedings resumed
2 as follows.)

3 MR. WHITE: Judge, then he's got an assault and battery,
4 third, in 2011, a traffic offense in 2012, use of vehicle
5 without permission in 2012, possession of meth or cocaine
6 base, and another forgery less than five. Judge, then in
7 2016, he has one -- two -- three -- six convictions for
8 fraudulent check and one for breach of trust.

9 He has some older convictions, Judge, but that's the
10 entirety of his record in the last 10 years.

11 THE COURT: Okay. The domestic violence, first, that's
12 a 30-day offense, is it not? Isn't that correct?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: What's the State's position on that? It
15 doesn't appear to me that it would fit under any argument
16 that that would be subject.

17 MR. WHITE: No, sir. I'm not. I'm sorry, Judge. I
18 agree.

19 THE COURT: All right. And assault and battery, third,
20 also is a 30-day offense. So that -- that -- I don't think
21 that would be subject.

22 Now, the forgery I believe would be and, you know, the
23 possession of meth I think would be. There may be others. I
24 was writing down and then I was looking at something else. I
25 don't know if I got them all.

1 MR. WHITE: And I believe --

2 THE COURT: Breach of trust.

3 MR. WHITE: And the fraudulent checks. I think that's
4 six counts.

5 THE COURT: Both of those would be.

6 MR. WHITE: Yes, sir.

7 THE COURT: Would that be it within the last 10 years?

8 MR. WHITE: He does have a record outside of 10 years,
9 Judge, but Mr. Floyd would -- I don't see any crimes of moral
10 turpitude.

11 THE COURT: All right.

12 MR. WHITE: I don't know if Scott had seen any.

13 THE COURT: Mr. Smith, the reason that we -- the reason
14 that we go over these is so that you can have this
15 information available to you as you make your decision as to
16 what you want to do, but the reason I mentioned these is the
17 State or your attorneys, either one, would be able -- if you
18 were to take the stand and testify, they would be able to
19 mention or ask you if you have, in fact, been convicted of
20 these offenses.

21 Now, I would not allow them to go into any details about
22 the offenses or any details about the -- any sentences that
23 you may have received. They would simply be able to ask you
24 whether or not you had a prior conviction for that offense.
25 Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay. If you were to take the stand, you
3 would obviously answer questions that your attorneys would
4 pose, but you would also be required to answer any questions
5 that the State's attorneys would pose. Do you understand
6 that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Okay. If you were to decide to remain
9 silent, if you were to decide that you were not going to
10 testify, I would instruct the jury. I have a charge
11 specifically for that purpose and basically what I would
12 instruct the jury is what I've already shared with you, and
13 that is that the burden of proof in this case is on the State
14 to prove guilt. They must prove each element of the crime
15 beyond a reasonable doubt, and that is their burden.

16 You are not required to prove anything and if you were
17 to choose to exercise your right to remain silent, I would
18 instruct the jury that they could not consider the fact that
19 you chose to remain silent. They could not consider that at
20 all in their deliberations as to your guilt or innocence.

21 As a matter of fact, I would take it a step further and
22 tell them that the fact that you chose to remain silent could
23 not even be discussed in the jury room. They're to give it
24 absolutely no consideration because the burden of proof is on
25 the State and not on you. Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay. Now, as I said, I'm sure you've
3 probably discussed that with your attorneys already and I
4 don't know if you've made a decision one way or the other,
5 but I'm going to -- I just wanted to bring these -- these
6 things to your attention and to allow you the opportunity
7 over the evening break to consider that decision.

8 And I'll -- I'll get your decision in the morning as to
9 what you have decided with regards to that. Okay?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right, sir. Thank you very much.

12 THE DEFENDANT: Thank you.

13 THE COURT: Mr. Floyd, I'm going to let you -- as you
14 discuss with Mr. Smith that decision, I'll let you advise him
15 as far as the order of final argument and what, if any,
16 significance that may or may not have.

17 MR. FLOYD: Yes, sir.

18 THE COURT: Okay. At this -- at this point, obviously,
19 there's the possibility of Mr. Smith, but other than Mr.
20 Smith, would you have anyone -- any other witnesses or any
21 other evidence to present?

22 MR. FLOYD: No other witnesses, Your Honor.

23 THE COURT: Okay. Well, I'll -- we'll wait until
24 tomorrow then to get your decision or Mr. Smith's decision.

25 Oh, and, Mr. Smith, you can just remain seated. One

1 thing I forgot to tell you, and this is important.

2 Any -- any time a person has to make a decision as to a
3 constitutional right, it's very important, and you've got two
4 outstanding attorneys. Both are excellent lawyers, very
5 intelligent folks, well-versed on the law, and they can give
6 you as much legal advice as they can possibly give and they
7 can give you their thoughts and their opinions. You can talk
8 with family members. They can give you thoughts and
9 opinions.

10 But the important thing to understand is when it comes
11 down to making that decision whether or not you are going to
12 testify or you are going to exercise your right to remain
13 silent, that -- that's where the rubber meets the road and
14 that decision has to come from you. Do you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You certainly would take under consideration
17 advice and counsel, but Mr. Floyd and Ms. Henderson -- they
18 may have thoughts and ideas about what you should do, but the
19 bottom line is no one can tell you what to do. That's got to
20 come from you. Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right, sir. Mr. Floyd, is there
23 anything else that -- is there anything we need to take up
24 before we adjourn for the afternoon? Now, I'm going to talk
25 with the lawyers off the record just about the charge and

1 stuff like that.

2 MR. FLOYD: Yes, sir.

3 THE COURT: And then in the morning, we'll certainly be
4 on the record when we can discuss that, but other than that,
5 is there anything else that we need to deal with?

6 MR. FLOYD: I don't have anything, Your Honor.

7 THE COURT: Okay. Anything from the State?

8 MR. WHITE: No, sir.

9 THE COURT: All right. Well, we'll be at ease then and
10 we'll start back at 9:30 in the morning here.

11 Regarding the charge, if y'all want to just come back
12 into chambers after you have a minute?

13 MR. WHITE: Yes, sir.

14 MR. FLOYD: Yes, sir.

15 THE COURT: And we'll just kind of go over that quickly
16 and see what it is that we've got.

17 MR. WHITE: Yes, sir, Judge.

18 (WHEREUPON, the proceedings adjourned for the day at
19 4:31 p.m.)

20 MARCH 21, 2019

21 (WHEREUPON, the proceedings resumed at 10:08 a.m.)

22 THE COURT: I'm sorry for the delay getting out here.
23 You know, we're supposed to pull a jury on that other case.
24 We had 32 jurors in the pool. I don't know if any more
25 showed. Only 16 have showed up. So anyway, I've been trying

1 to deal with that.

2 All right. All right. Mr. Floyd, have you and Ms.
3 Henderson had -- have you had time this morning to talk with
4 Mr. Smith and to decide whether or not the defense intends to
5 put up any evidence?

6 MR. FLOYD: Yes, Your Honor, we have.

7 THE COURT: All right. And what is that decision?

8 MR. FLOYD: Your Honor, we will not be putting up any
9 evidence.

10 THE COURT: All right.

11 Mr. Smith, if I could address you with regards to that?
12 We talked yesterday about your right to remain silent, as
13 well as your right to testify. Have you had enough time to
14 discuss that with your attorneys and to make your decision,
15 sir?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: And is Mr. Floyd correct that you will
18 exercise your right to remain silent?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And not testify?

21 THE DEFENDANT: Yes, sir. He is correct.

22 THE COURT: Okay. Mr. Smith, has that been your
23 decision, sir?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Has anyone forced you or coerced you in any

1 way to make that decision?

2 THE DEFENDANT: No, sir.

3 THE COURT: All right, sir. We'll certainly respect
4 that and honor your request to do that. So you may have a
5 seat.

6 (WHEREUPON, the defendant complied.)

7 THE COURT: We need to -- well, at this time, if -- if
8 the defense is going to be resting, Mr. Floyd, I think while
9 the jury is out why don't we go ahead and just allow you to
10 make any motions that you wish to make at the close of the
11 evidence and we'll make that record here now. And then when
12 the jury comes out, I'll then recognize you, allow you to
13 rest on the record in front of the jury, and then we'll move
14 into the closing arguments.

15 MR. FLOYD: Yes, sir, Your Honor.

16 THE COURT: So I'll recognize you at this time now for
17 your motions at the close of the evidence.

18 MR. FLOYD: Yes, sir, Your Honor. Your Honor, I would
19 just renew any objections previously made and also, Your
20 Honor, renew my motion for a directed verdict on the same
21 grounds as I raised earlier.

22 THE COURT: All right, sir. And as I said, I'm going to
23 respectfully deny that. I think it is a jury -- a factual
24 issue and so that is obviously the jury's province to rule on
25 factual issues. The Court simply rules on those legal

1 issues, and I think that there are factual issues that the
2 jury needs to resolve in this matter.

3 Now, we talked about the charge back earlier in the --
4 in chambers, and so right now -- and John is still finalizing
5 that charge, but all of the boilerplate language is there as
6 far as I talk about the presumption of innocence.

7 I talk about the burden of proof. That that is beyond
8 a reasonable doubt and that that burden is on the State.

9 We discuss the credibility and the believability of
10 witnesses and that that's the jury's decision to do that.

11 We discuss the fact that a statement has been entered
12 into evidence in this case which is purported to have been
13 made by the defendant and their role with regards to that and
14 that they are the final decision-makers as to whether or not
15 that statement was freely and voluntarily entered into.

16 I'll discuss with them the fact that Mr. Smith has
17 exercised his right to remain silent and how they are to give
18 that no consideration.

19 And then I have the charge on murder. It's a simple,
20 standard murder charge.

21 I've got language with regards to felony murder. Mr.
22 White, I'm going to tweak what you sent. I mean I think what
23 you sent is a -- is an accurate recitation of the law. I'm
24 going to tweak it a little bit.

25 I tried to -- and it could be that -- you know, I grew

1 up in Edgefield, a very simple existence, and I'm a very
2 simpleminded guy to some extent. I try -- when I do my
3 charge to a jury, I try to remember that I'm talking to
4 laypeople and not to trained attorneys. So I try to make it
5 a little bit more readable, I guess, but I'll show that to
6 both of you before we put anything in final form.

7 But right now, that's all I've got as far as -- I do not
8 have anything included regarding any lesser-included
9 offenses, and I'll be happy to hear from either the State or
10 the defense as to whether or not you feel that there should
11 be a consideration of any lesser-included offenses.

12 THE COURT: Anything from the State?

13 MR. WHITE: Judge, the State is fine with the charge as
14 stated.

15 THE COURT: All right. From the defense?

16 MR. FLOYD: Your Honor, I would request a charge on
17 voluntary manslaughter in this case.

18 THE COURT: All right.

19 MR. FLOYD: Of course, Your Honor, I would say that Mr.
20 Smith's statement I suppose put some evidence at least in
21 that he felt a threat and there was a subsequent sudden heat
22 of passion and the threat was sufficient legal provocation,
23 along with the overt act of reaching for the gun. Your
24 Honor, I would just request the charge of voluntary
25 manslaughter on that basis.

1 THE COURT: Okay. All right. Well, I've looked at all
2 of that and I didn't give y'all an answer yesterday because I
3 wanted to take more time and look into the law regarding
4 voluntary manslaughter and charging it as a lesser-included
5 offense. And as I look at the facts in this case, I don't --
6 I don't think they support that charge.

7 The testimony and the evidence in this record as to the
8 actual shooting from Mr. Smith himself tends to be that he
9 did not intend nor desire to kill anybody. That, he -- he
10 did not intend to actually -- even though he had the gun, he
11 did not intend to use it, and that the only thing that caused
12 the discharging was the victim grabbing a hold and -- or
13 grabbing for the gun and it discharging.

14 That -- none of that supports, in my opinion, the -- the
15 charge for voluntary manslaughter. So I'm going to note your
16 exception to the Court's ruling, but I won't charge -- I
17 won't be charging voluntary manslaughter under the facts of
18 this case.

19 Is there anything else that we need to take up?

20 MR. WHITE: Nothing on behalf of the State, Judge.

21 MR. FLOYD: Nothing further, Your Honor.

22 THE COURT: All right. As I said earlier, I'm going to
23 -- when we bring the jury out, I'm going to -- I'll recognize
24 you, Mr. Floyd, on behalf of the defense and allow you to
25 rest on the record. Then I'll have a few comments for the

1 jury and then we'll go into closing arguments.

2 And, again, reviewing the evidence that has been put
3 into the record here, I don't believe the defense has put
4 anything into evidence and, therefore, Mr. White, I will look
5 to the State to close in full and then allow the defense to
6 close.

7 All right. So what I'm going to do is we're going to
8 take a few minutes and I'm going to get the charge from John,
9 let y'all look over the part that I talked about, the felony
10 murder part that I talked about, and then we'll get started.
11 So just be at ease while we do that.

12 (WHEREUPON, there was a break in the proceedings from
13 10:18 a.m. until 10:33 a.m., after which the proceedings
14 resumed as follows.)

15 THE COURT: All right. Let me just -- he's putting that
16 charge in final form. Let me just tell you what I've done or
17 what I propose in the -- in the charge of murder. Toward the
18 end of that, what I have is -- and I think this is a correct
19 recitation of law.

20 If one intentionally kills another during the commission
21 of a felony, the law allows that you may infer the existence
22 of malice in that situation. If facts are proved beyond a
23 reasonable doubt that the shooting that resulted in the
24 victim's death occurred during the commission of a felony,
25 you may infer malice. This inference would simply be an

1 evidentiary fact to be taken into consideration by you, along
2 with all other evidence in this case, and you may give it
3 whatever weight that you decide it should receive.

4 MR. WHITE: Yes, sir. I'm fine with that.

5 THE COURT: Is that -- I think that's a correct
6 recitation of the law.

7 MR. FLOYD: Yes, Your Honor.

8 THE COURT: Okay. All right. Is the State ready then
9 to bring the jury out?

10 MR. WHITE: Judge, the only thing I need is Nicole. We
11 just need to do a quick sound check. I was searching for
12 her, but I didn't know if you were going allow the defense to
13 rest and go right into closing.

14 THE COURT: Well, I'm told -- yes, sir?

15 THE BAILIFF: Do you want me to bring them in?

16 THE COURT: No, no, no.

17 Well, I'm told I have --

18 MR. WHITE: Okay. Very good.

19 THE COURT: -- control.

20 MR. WHITE: Good deal.

21 THE COURT: We need to do a sound check though because
22 I'm not sure that I really do. All right.

23 (WHEREUPON, there was a pause in the proceedings for a
24 sound check, after which the proceedings resumed as
25 follows.)

1 THE COURT: Okay. All right. Anything? Anything else
2 that we need to deal with?

3 MR. WHITE: No, sir, Judge. Thank you.

4 THE COURT: All right. Anything from the defense before
5 we bring the jury out?

6 MR. FLOYD: Nothing further, Your Honor.

7 THE COURT: All right. Let's bring the jury out.

8 (WHEREUPON, the jury entered the courtroom at 10:37
9 a.m.)

10 THE COURT: Ms. Carter, can I get you to just step over
11 here for a minute? You're in big trouble. I'm just kidding.
12 I'm just kidding. You're fine. You just stand right there.
13 I'm going to make you the forelady of the jury. I'll tell
14 you what. Go have a seat in that very first chair. I'll
15 explain it all to you in just a minute. You don't have to
16 worry. You're wonderfully qualified to be the forelady.

17 THE FOREPERSON: Okay.

18 THE COURT: All right. Ladies and gentlemen of the
19 jury, welcome back. Let me first begin by telling you, you
20 know, as soon as I would have gotten you to not come until
21 10:00 or 10:30, we would have been ready to go at 9:30, but
22 this morning, we have another trial in courtroom 3B that was
23 supposed to start this morning and we instructed your
24 colleagues -- there was about 32 of your colleagues in the
25 jury pool that were supposed to report back today and they

1 were going to pull this other jury. Only 16 showed up, half.
2 So I've had to take some time this morning and we're
3 scrambling to find out where the other 16 are.

4 So I apologize that it's delayed us from getting
5 started, but that's kind of what's been going on. It's been
6 a little bit hectic. Again, nothing to do with these folks
7 or this trial. It's been other matters. I'm the chief
8 administrative judge for criminal court here in the 12th
9 Circuit and so I needed to address some of those matters.

10 I have asked Ms. Sarah Carter to serve as the forelady
11 of the jury, and let me just explain to you what the
12 foreperson does for a jury. Anytime you have a group of
13 folks that you're dealing with and working with, we've come
14 to find that it's -- it's always easier to deal with one
15 person on behalf of the entire panel.

16 In other words, if any time during your deliberations or
17 your work here, if you have any questions or anything that
18 you need to address to the Court, rather than deal with
19 everyone individually, we've found that it's just -- it's
20 much easier to deal with basically a representative of the
21 panel and, Ms. Carter, that would be your role.

22 You represent the jury panel and if there's any
23 questions or you have any questions for the Court, if you --
24 if you would just write out that question and pass it to me
25 or pass it to the bailiff and she'll -- she'll bring it to

1 me. Depending on what your question is, I may just write my
2 response and send it back to you or I may bring you in and
3 address you personally with it. But that's the main role of
4 the foreperson.

5 I will tell you in this case, as well as all cases that
6 are tried in this court, whatever verdict you reach, it must
7 be unanimous. You must all agree on the verdict. I tell you
8 that to say this. That means that every person's opinion or
9 vote carries the same weight as every other person. No one
10 individual's opinion or vote carries any more weight than
11 anyone else.

12 And so the foreperson, even though she is the liaison,
13 so to speak, for the jury panel, the representative of the
14 jury panel to the Court, her opinions, her vote, her thoughts
15 carry no more weight than anyone else.

16 You're all equal members of the jury. I always
17 encourage juries to listen carefully to everyone's thoughts
18 and opinions, and even if you feel the need, revisit your own
19 thoughts and opinions if you think you may be in error. But
20 listen to everyone as you go through the deliberation
21 process.

22 But anyway, Ms. Carter, thank you for being willing to
23 do that, and I'm going to have her serve as the forelady.

24 The other thing is I will send back with you into your
25 jury room when that time comes a verdict form and, whatever

1 verdict the jury reaches, you would then just fill out that
2 form and reflect what that verdict is.

3 Now, ladies and gentlemen, as I told you, I've had to
4 take up matters of law at the close of the State's case. If
5 you remember yesterday when we broke or adjourned for the
6 afternoon, the State had rested their case, and so that
7 required me to take up legal matters at the close of the
8 State's case before we go any further and -- and I've done
9 that.

10 During that -- during the taking up of those legal
11 matters, Mr. Floyd was kind enough to let me know that --
12 that the defense would be resting its case and -- and the
13 reason I appreciate that is I'm also charged with having to
14 take up matters of law at the close of all of the evidence.

15 And so rather than bring you out this morning, recognize
16 Mr. Floyd on behalf of the defense, and then have to send you
17 back out for me to take up those legal matters, he went ahead
18 and let me know ahead of time that that's what the defense
19 would be doing. And so we were able to go ahead and take up
20 those matters this morning before you came out.

21 So for the record, we were at the point of this trial
22 where the Court would recognize the defense and, at this
23 time, I'm going to do that and recognize Mr. Floyd on behalf
24 of the defense.

25 MR. FLOYD: Thank you, Your Honor. The defense rests.

1 THE COURT: All right. Thank you, sir.

2 And so because he was kind enough to inform me of that
3 decision before you came out, we went ahead and took up all
4 those legal matters and so we're ready now to proceed to the
5 next phase of the trial, and that is what is commonly
6 referred to as closing arguments.

7 This is the attorneys' opportunity, ladies and
8 gentlemen, to talk with you about what they believe the
9 evidence in this case has shown. It is important that you
10 understand, just as I told you about their opening statements
11 -- remember, I told you with regards to their opening
12 statements that they are not under oath and so what they tell
13 you in their opening statements is not evidence. The same
14 applies to their closing arguments. They are still not under
15 oath. They are still not testifying. The evidence in this
16 case is closed.

17 The evidence that you're going to have to decide this
18 case is the testimony from the witnesses that have testified
19 and the exhibits that were entered into evidence during the
20 course of the trial, and you will have these exhibits with
21 you in your jury room when you do retire to deliberate. But
22 that's the evidence in the case.

23 But this is their opportunity to argue to you what they
24 believe the evidence in this case has shown. So it's
25 important that you give them your close and undivided

1 attention as they -- as they do that.

2 Once they have concluded their closing remarks or
3 closing arguments, I will then give you the charge on the
4 law. And once you have that, you will then be in a position
5 then to step back into the jury room and begin your
6 deliberations.

7 So at this time, I'm going to recognize Mr. White on
8 behalf of the State for his closing argument.

9 MR. WHITE: Thank you, Judge. May it please the Court.

10 THE COURT: Yes, sir.

11 CLOSING ARGUMENT ON BEHALF OF THE STATE

12 MR. WHITE: Words. They can be powerful and they have
13 meaning, as I told you guys at the beginning of this trial,
14 and I think that came true. All those words you heard right
15 there and from up there and audio had meaning and some of
16 them, I think you would agree, were powerful.

17 Remember when Kenny Kemmerlin's best friend took that
18 stand and he described how his buddy died in his arms? That
19 was powerful. And then Officer Tolson took the stand and
20 that was powerful testimony. Words can be powerful and they
21 have meaning.

22 And all of the words that you heard throughout this
23 trial really mean one thing, ladies and gentlemen. That
24 February 1st, 2017, marked the day that Kenny Kemmerlin was
25 murdered by that man sitting right over there.

1 Now, ladies and gentlemen, murder, as it will be charged
2 to you, is defined as the willful, felonious killing of a
3 human being with malice aforethought, that malice being
4 either express malice or implied malice.

5 Now, malice is hatred or ill will, wrongful intent to
6 injure another person. All right?

7 Malice does not necessarily mean ill will toward the
8 individual injured but signifies rather a depraved or wicked
9 spirit intent on doing wrong. Now, this is important.
10 Malice may be conceived at the very moment the act occurs.
11 It can happen in an instant. In an instant, ladies and
12 gentlemen.

13 Now, there's two types of malice, express and implied.
14 Express malice is a deliberate intention to unlawfully take
15 the life of another. An example of that would be shooting a
16 man in the back. Okay? Examples of that would be knowing
17 that he's shot and waiting for him to come around that car
18 and then shoot him again in the front. All right? Those
19 would be examples of express malice.

20 Implied malice is when circumstances demonstrate a
21 wanton or reckless disregard of human life. Now, the law
22 says that when one intentionally kills another with a deadly
23 weapon, the implication of malice may arise. Now, what does
24 that mean? That means if somebody kills somebody with a
25 deadly weapon, you can find that there's malice. Okay? You

1 can imply malice, even if there is no express malice. But
2 again, no worries because express malice is present in this
3 case.

4 Another example of implied malice is the felony murder
5 rule we have here in South Carolina. It's prevalent across
6 this country.

7 Now, felony murder is if a homicide occurs during the
8 commission of a felony, malice may be inferred or implied.
9 All right? So if somebody kills somebody while they're
10 trying to commit a felony, you can imply malice.

11 But again, express malice is present here. So really,
12 we have both. That should make this decision easy. There is
13 express malice here. There is implied malice here.

14 Here's another important note. Just because the person
15 is not charged with a felony makes no difference. If you
16 find that a felony occurred and, while that felony was
17 occurring, a homicide also occurred, then you can imply
18 malice.

19 What felony are we talking about? Armed robbery.
20 Taking and carrying away of another person's property with
21 intent to deprive him of possession by use of force, threats,
22 or intimidation while armed with a deadly weapon.

23 We've got that here, ladies and gentlemen. We've got
24 that here by the defendant's own confession. Okay. He took
25 his cell phone. Right? He says he threw it out the window.

1 Well, he took his personal property away from him armed with
2 a deadly weapon. That's armed robbery. So that's felony
3 murder.

4 But we also have other evidence of armed robbery. Debra
5 Smith. You heard from her. That was tough testimony from
6 her. She said she loves Mike. All right? I think you can
7 see really why she would have misled law enforcement at the
8 beginning. This is her husband. You know, I don't know how
9 many of you are married, but if something like that happened
10 to your spouse, how long would it take before you felt
11 comfortable telling the truth, as powerful as that truth was.

12 And what did she say? She said he was talking about
13 robbing him in the weeks leading up to this. Okay? She said
14 that she heard Ra Ra and him shooting guns in the back in the
15 woods. Right?

16 You know, you heard from a lot of great investigators in
17 my opinion during this trial, but the Solicitor's Office has
18 investigators too and the one that works for the violent
19 crime unit, he often tells me when we're trying to find out
20 why -- you know, why something happened, he says anything
21 goes when everything's gone. And that's true, isn't it?

22 And what did Debra say? Their relationship at that time
23 was rocky. The defendant was strapped for cash, couldn't
24 find a job. The only job he could get, he needed tools for.
25 The tools he had, he sold to buy drugs. So for that reason

1 and many more, she was leaving. Everything he had was
2 slipping away. And when everything goes, what do you have?
3 So when he woke up on February 1st, 2017, he needed to make a
4 decision and he made one.

5 Now, this is not a whodunit, ladies and gentlemen. So
6 just get that out of your minds right now, if it hasn't
7 already left prior to this. We know the killer. All right?

8 How do we know? Three people say the defendant in this
9 case killed Kenny Kemmerlin. Who are they?

10 Craig Williams. Now, his testimony was powerful. We
11 don't have the gun here, ladies and gentlemen, because the
12 defendant did who knows what with it, but we do have a
13 smoking gun. Remember that testimony? He looked out that
14 window and he saw the gun smoking in the defendant's hand.
15 Powerful.

16 Kenny Kemmerlin's final words, powerful. All right?
17 And think about these two individuals, ladies and gentlemen.
18 How long did they have before they were on that phone to tell
19 who had shot Kenny Kemmerlin? A minute? I mean he was dying
20 fast. Right? The pathologist testified to that. He's hurt
21 bad. So in a matter of minutes, they're inside. They're on
22 that phone.

23 How long did Michael Smith have when he admitted the
24 same thing? He shot him. How long did he have? It happened
25 on February 1st. He was arrested on the 4th. All right?

1 He's hiding in the woods. He ditched the gun. He ditched
2 the cell phone. Okay? And then he doesn't want to talk on
3 the 4th, but he does want to talk. They bring him back on the
4 9th. Eight days to formulate whatever it is he's got to say
5 on that confession.

6 And I asked y'all, you know, when we first started, I
7 said listen to it. Okay? It's got meaning. That confession
8 has meaning, but you've got to decipher it. You've got to
9 interpret it.

10 Who else does he tell? Remember that smell of
11 gunpowder? That was powerful. The killer, Michael Smith,
12 confesses to his wife, and Debra says he initially says Ra Ra
13 shot Kenny.

14 You know, I found that curious. Why would he say that?
15 I think I know because I could judge from the things she was
16 saying if he would've come in that house, ladies and
17 gentlemen, and said, Debra, I just killed a man, there's no
18 way she was going to let him get in that car. There ain't no
19 way.

20 But once she's halfway down the highway, well, then he
21 comes out with it, doesn't he? In a gruesome way, he sticks
22 his hand in her face and confesses. Smell that. Smell the
23 gunpowder on my hand. I just shot Kenny Kemmerlin. He pulls
24 the gun out and puts it in the floorboard, takes the cell
25 phone and says it's Kenny's and throws it out the window.

1 Pulls out pills and says I don't think Kenny gave me -- or Ra
2 Ra gave me my fair share. That's another bit of evidence
3 that points to armed robbery, isn't it?

4 And then there's the confession. Now, when you listen
5 to his confession, you've got to use -- you've got to use
6 your common sense. You've also got to look at the forensics.
7 When you're listening to the things he says, you've got to
8 use your common sense and you've got to think about the
9 forensics because between the velvet lies, there's a truth as
10 hard as steel.

11 You know, I would almost bet my life that each and every
12 one of you know somebody who thinks they can talk their way
13 out of anything. I've got a few people on my mind right now.
14 One of them is my daughter. She thinks she can talk her way
15 out of anything. Okay?

16 But if you don't have anybody in mind, if you didn't
17 know anybody like that before the start of this trial, now
18 you do. He thinks he can talk his way out of anything and
19 you know how I first knew that was true is when Inv. Price
20 described the gruesome way in which Kenny Kemmerlin died.
21 Okay?

22 He described that front shot and what it did. My God, I
23 mean what did it do? It went through the forearm into the
24 body, pierced the liver, through the intestines, down to the
25 hip. I mean bad stuff. Right? And he's saying he did that.

1 Inv. Price is saying these are the consequences of your
2 actions and what does the defendant say?

3 (WHEREUPON, a video clip from a recorded interview was
4 played and then stopped. Not transcribed herein.)

5 MR. WHITE: That's his first story.

6 (WHEREUPON, a video clip from a recorded interview was
7 played and then stopped. Not transcribed herein.)

8 MR. WHITE: Threat made. They're in the car. He grabs
9 the gun and he tries to grab it out of the gun -- out of his
10 hand and it just goes off. Right? Y'all remember that.
11 Bang, bang. He didn't even know he was shot, he says. And
12 despite saying later, right, that he didn't -- he heard about
13 it on the news, he said he didn't even know he was shot. He
14 didn't know. He didn't see blood or anything. He didn't
15 hear him say ow. He didn't see blood or anything. How many
16 times does he say that? He didn't see blood or anything.

17 Second story.

18 (WHEREUPON, a video clip from a recorded interview was
19 played and then stopped. Not transcribed herein.)

20 MR. WHITE: All right. So first, Ra Ra is in the
21 backseat. Right? In the first door. He's here. Now, Ra Ra
22 is here. In a matter of minutes, he went from the backseat
23 inside the vehicle to outside the vehicle on the other side
24 of the passenger or the driver's side door at the glass and
25 claimed that the door was closed. Okay? Why was Ra Ra

1 there?

2 (WHEREUPON, a video clip from a recorded interview was
3 played and then stopped. Not transcribed herein.)

4 MR. WHITE: And then it changes again. Now, Ra Ra, who
5 went from the backseat to the outside, is now tussling with
6 the victim in this case, Kenny Kemmerlin, who we know is
7 bleeding profusely. Right? Tussling with him.

8 But in the suspect's car, no blood is recovered, is it?
9 There's no blood. So where does the blood go? I mean they
10 peeled out quick. He had time to take a shower before
11 getting in?

12 (WHEREUPON, a video clip from a recorded interview was
13 played and then stopped. Not transcribed herein.)

14 MR. WHITE: I hope you all caught that yesterday. I
15 didn't catch it when I first heard the confession. All
16 right? Now he adds a new layer saying the victim makes a
17 threat, but then he says he made a threat back. That wasn't
18 in his first story.

19 (WHEREUPON, a video clip from a recorded interview was
20 played and then stopped. Not transcribed herein.)

21 MR. WHITE: Okay. And then the observer, Inv. O'Hara,
22 he knows what's going on. Inv. Price does too. Inv. Price's
23 job is making him more comfortable, and the observer knows
24 he's skipping some stuff. He knows it.

25 (WHEREUPON, a video clip from a recorded interview was

1 played and then stopped. Not transcribed herein.)

2 MR. WHITE: So Inv. O'Hara catches it immediately. He
3 sees the discrepancy.

4 Now, if he's saying that the first story, he's in the
5 vehicle -- right? He's saying Ra Ra is in the backseat. He
6 says he passes him the gun from the backseat. Well, then he
7 changes his story and now Ra Ra is over here.

8 Inv. O'Hara catches it and he says how did that happen?
9 He passed it from the back or did he pass it across Kenny?

10 Inv. O'Hara gets into it and he catches it and he says, no, I
11 had it. I had it when I drove down that driveway. I had it
12 when I parked. It was in my waist as I exited that vehicle
13 and I got in this one.

14 (WHEREUPON, a video clip from a recorded interview was
15 played and then stopped. Not transcribed herein.)

16 MR. WHITE: More evidence of robbery. He admits Ra Ra
17 is rummaging through the car looking for cash, pills. All
18 right? He was too. How else would he get that cell phone?
19 How else would he end up with those pills riding down the
20 highway to the beach?

21 (WHEREUPON, a video clip from a recorded interview was
22 played and then stopped. Not transcribed herein.)

23 MR. WHITE: The Netspend card interested me. Okay?
24 There's only two things that can be true with that Netspend
25 card. All right? Either that story is made up or it's

1 further evidence of a robbery. Okay? Because he's saying
2 that earlier in the day he was entering into a trade for the
3 Netspend card to pay off the debt. But where's the Netspend
4 card? It's in his wallet. Right?

5 MR. FLOYD: Your Honor, I objected to that evidence
6 yesterday and you sustained it. It was about that he had a
7 Netspend card.

8 THE COURT: I sustained the objection that it was
9 speculation.

10 MR. FLOYD: Yes, sir.

11 THE COURT: As to what card that was.

12 MR. FLOYD: Yes, sir. You did.

13 THE COURT: So --

14 MR. WHITE: I apologize. I feel I'm arguing a
15 reasonable inference therefrom.

16 THE COURT: I think you can argue the inference you're
17 making, but, you know, the -- I think, if I'm not mistaken,
18 the objection was -- I think your question had to do with
19 that being the same card.

20 MR. WHITE: Yes, sir.

21 THE COURT: And that was an objection as to the
22 speculation and I sustained that because it may or may not be
23 the same card.

24 MR. WHITE: Yes, sir.

25 THE COURT: So that was -- you can argue what you want

1 to argue.

2 MR. WHITE: Yes, sir.

3 THE COURT: And you can certainly respond.

4 MR. WHITE: Okay. I'll explain that.

5 The defense says there's no evidence that that's the
6 exact same card. Okay? And the judge agrees and I agree.
7 All right?

8 But what I'm arguing is I mean there's no evidence -- he
9 never says on that that he had two cards, did he? He wants
10 to -- I mean he brings up -- he wants to talk about the
11 Netspend card. He never says, oh, by the way, when you're
12 looking, I mean I've got two. I mean, you know, I'll tell
13 you what. You do with that information what you will. All
14 right? But I think it's fair.

15 (WHEREUPON, a video clip from a recorded interview was
16 played and then stopped. Not transcribed herein.)

17 MR. WHITE: That's what I'm talking about. Nine days --
18 eight days he has to come up with his story. All right? It
19 changes all over the place.

20 Between the velvet lies is a truth that's hard as steel.
21 All right? It can be a hard pill to swallow.

22 What else does he say in that confession? He says Kenny
23 had a gun. There's no evidence Kenny had a gun. All right?
24 He says Craig had a gun. There's no evidence that Craig had
25 a gun.

1 Now, I'm not a gun owner. Okay? I'm not. I support
2 gun ownership. I do. I've got a lot of friends who are gun
3 owners and you know what they have? It's curious. They're
4 very proud of it. So they have holsters and they have
5 bullets and they have magazines. You know, they might have
6 *Gun and Ammo* laying around.

7 There's none of that. No holster. No bullets. No
8 magazines. No evidence that either of these men had a gun,
9 other than the confession of murder. Let's call it what it
10 is.

11 He says Kenny made a threat. Debra says Kenny was
12 polite, didn't she? She says she met him. He was nice as he
13 could be. She didn't feel threatened at all.

14 Kenny sells large quantity of pills. No evidence that
15 he did other than the confession of Michael Smith.

16 Now, listen, I'm not here advocating for prescription
17 drug use abuse, you know. If Kenny Kemmerlin was doing that
18 and I had evidence of it, me and him would've had to have a
19 talk. Okay? There's a drug trial going over here. Our
20 office, we prosecute drugs. Okay?

21 But it's never an excuse to kill somebody. I mean, come
22 on, how could it be? All right?

23 That man, if he was doing that, he needed to come talk
24 and have his day in court. Right? But he isn't going to
25 have his day in court and he didn't even make it home to his

1 wife.

2 He says Kenny tells me he's going to go to jail. Now, I
3 find that curious. Okay? I asked Inv. Price about it. I
4 mean he's been doing it a long time. Have you ever heard of
5 a big-time El Chapo drug dealer calling the law?

6 But there's another implication that I find very
7 interesting. It means that Kenny, if that's what he said,
8 you're going to go to jail, intended for everybody in that
9 vehicle to arrive safely back at home eventually. Right?
10 Because that's what law enforcement does. They merit that
11 stuff out. You know what you do is you make it home to your
12 wife and you get to talk to them again.

13 New game, Mike. You know, I've never -- I even Googled
14 it. I've never heard of that as code for murder.

15 He claims that he doesn't realize anyone was shot until
16 he sees the news, but he tells Debra he shot him. Right? He
17 says smell the gunpowder. He's on the way down, tosses out
18 the phone, got the pills, hides the gun or whatever he does
19 with the gun, admits to her, his wife, who initially misleads
20 law enforcement conceivably for his benefit, tells her all
21 about it. But he says he doesn't know that anybody was shot.
22 Man, the guy didn't say ow or nothing.

23 (WHEREUPON, a video clip from a recorded interview was
24 played and then stopped. Not transcribed herein.)

25 MR. WHITE: I think that sums it up really. Do as I

1 say, not as I do. If he were the dead man, he'd want the
2 murderer to go ahead and turn himself in and not run, but he
3 ran, he hid. All right? He got rid of the gun. That cell
4 phone he says is evidence, he got rid of that. That's the
5 whole thing. Do as I say, not as I do.

6 (WHEREUPON, a video clip from a recorded interview was
7 played and then stopped. Not transcribed herein.)

8 MR. WHITE: He says I'm the very source of it. Inv.
9 O'Hara says that's -- you've got to get right with it. He
10 knows he doesn't match the forensics. You've got to get
11 right with it. We're going to get right with you. All
12 right? He's got to get right with the facts, but what do the
13 facts show us?

14 On February 1st, 2017, a man named Kenny Kemmerlin was
15 shot in the back. The bullet entered his back, passed
16 through his right lung, and then exited the front of his
17 chest. Okay? Gruesome. The pathologist testified to it.

18 He was shot once in the back as he was exiting his
19 vehicle. If you look, that's the shell casing. If he's shot
20 in the back as he's exiting here, the gun here, the SLED
21 agent testified the trajectory would kick it upward and to
22 the right, which would mean it would land somewhere here. It
23 matches.

24 Then the blood. You heard from the blood expert, drops,
25 drops, drops. And when you get back there, look at this

1 picture and see if you can look it up. This is low on the
2 door, ladies and gentlemen. This is lower than most VIN
3 numbers are. All right? Now, he said there was some
4 castoff, but he said it's consistent with a drop. See, a
5 drop hits and usually it just drops, but sometimes it hits an
6 irregular surface and it creates a castoff. That's different
7 from castoff created from something other than a drop, like a
8 limp. More drops.

9 See what's written on the window? Love you. Now, you
10 know, if he were selling pills, yeah, he'd have to answer for
11 that. All right? Ladies and gentlemen, he had somebody at
12 home waiting for him. Okay? Somebody who was waiting at
13 home who had to hear his last words from the speakers.

14 Drop. Drop. Drop. Drop. Drop. Drop. Drop. That's
15 the pattern he took. It's a long way to walk with a hole
16 blown through your body.

17 Stop right there and I want you to note here this is
18 about where Craig says he's shot. Okay? If he's shot in the
19 front here and the shooter aims here, the bullet, upper right
20 trajectory, would land on the hood of that car. It made it
21 to the beach. It's like it was meant to be. You know?

22 That's where that car would have been. The shooter
23 here. Right upward trajectory. It makes sense. It matches.
24 The forensics tells a story. That's what they kept trying to
25 tell him.

1 There's the vehicle. There it is. You can imagine it
2 parked here. Here. Here with an upper right trajectory.

3 Now, notice -- notice that grate down under there.
4 That's where it's lodged in. Right? It's lodged in there
5 good. All right?

6 I was telling a lawyer in our office about how
7 incredible that is. I mean this case is -- you know, it's
8 got everything. The bullet, you know, it made it down there.
9 It was lodged in there. It was like it was meant to be. He
10 said, man, I've had leaves ride on my car for longer than
11 that. There it is. And you know what? This one matches
12 this one. Shot from the same gun.

13 And that's that front shot through the forearm, breaks
14 the bone, exits the forearm rough. I mean that's gruesome.
15 It enters the body. I mean this is where it really gets bad.
16 Isn't that amazing? I mean this is bad, this is when it
17 really gets bad. It lodges in the hip. I mean his body is
18 filling up with blood. It's hard for him to move. All
19 right? Every second is gruesome.

20 Drop. Now, we notice a change in the blood. Castoff.
21 Castoff. Okay? Consistent with what? Okay? He's seated.
22 All right? Imagine someone shows up for an armed robbery.
23 You know him. Hey, man, how are you going to get away with
24 this? Now, they're rifling through his car. Now, he makes
25 the bold decision to turn his back on a man with a gun, and

1 it cost him his life. He's shot in the back. He stands up.
2 He probably doesn't even realize it at that point.

3 Drops, drops, drops, drops, drops, drops. Eyewitness
4 sees it. Forward observer. He's trained in sight. He sees
5 the smoking gun. He sees the front shot. Everything lines
6 up. He's shot in the front. Then the pattern changes. He
7 makes his way up the steps. He collapses inside. Castoff
8 going up the steps. Blood smear.

9 (WHEREUPON, an audio clip from the 9-1-1 call was played
10 and then stopped. Not transcribed herein.)

11 MR. WHITE: I need help, please. Mike Smith shot me.
12 That's how it happened. Okay? It can't have happened this
13 way. All right? This way, the defendant's way, because he
14 was fighting for the gun. Right? That's how it happened.

15 What do we have? We have gunshot residue on the
16 victim's hands. All right? I mean if it happened his way,
17 there'd be stippling. All right? You heard the pathologist
18 testify about stippling. It's a mark that happens with the
19 gunpowder of a gun. If there's no mark, then it happened
20 outside of two feet. All right?

21 If it happened the way he described, there'd be
22 stippling, but there's no stippling because he's shot as he's
23 exiting his vehicle and the killer waits for him as he
24 stumbles around that car and then he shoots him again.
25 That's the kill shot. All because he turned his back on an

1 armed robbery.

2 He went there to commit an armed robbery, but he was
3 prepared to kill him. Okay? That's important. He went
4 there for an armed robbery, but the armed robbery was the
5 only option. All right? Some people go and they -- they go
6 to commit a crime and they might back out. There was no
7 backing out for him because anything goes when everything is
8 gone.

9 You've heard a lot of words, a lot of words from me.
10 I'm sure you guys are ready to get back there and deliberate.
11 All right? And I'm going to let you do it.

12 Words can be powerful. Words can have meaning. All
13 right? And with his final words from those speakers up there
14 up above, Kenny Kemmerlin named the man who murdered him.
15 That doesn't happen every day. All right? I told you that
16 before. It does not happen in every case. With his final
17 words, Kenny Kemmerlin named Michael Smith as his murderer.
18 All right?

19 And there's only one word I'm looking for from you guys.
20 All right? It's time to get right. Isn't that what Inv.
21 O'Hara said? There's only one thing that's sets it right.
22 One word is guilty. Thank you.

23 THE COURT: Thank you, Mr. White.

24 Mr. Floyd?

25 MR. FLOYD: May it please the Court, Your Honor.

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

MR. FLOYD: Good morning, ladies and gentlemen. I'm Scott Floyd and I represent Michael Smith, along with Ms. Henderson.

Y'all heard the statement that Michael Smith gave. And I'm going to move this out of my way a little bit here. I'm sorry. I don't want to bump into anything.

And essentially what that statement is is that he'd been receiving threats from a drug dealer about a drug debt. He met him to settle that debt. He was in the car. Another threat was made. He pulled a gun in response. There was a struggle and two shots went off in the car.

Now, the State says there's no way it could have happened that way and they give you an eyewitness or what they call an eyewitness, Daniel Craig Williams. Certainly, Mr. Williams witnessed some horrific things, but he was not an eyewitness to that shooting.

Mr. Williams was asked on that witness stand when you say -- you testified that Mr. Smith fired those shots on the outside of that car, you were just speculating, weren't you? Because you didn't see it. And he agreed. He didn't see the shots fired. He heard shots. He didn't see those shots. He might've seen Mr. Smith out of that car, but he didn't see Mr. Smith fire a gun out of that car.

You know, Mr. Williams is the one who facilitated this

1 meeting. He was -- he was facilitating drug deals and,
2 certainly, he witnessed a horrific thing, but what he did not
3 witness was the shooting itself. He's not an eyewitness to
4 this shooting. There is nothing that he said that
5 contradicts Michael Smith's statement.

6 You know, another interesting thing he says is he heard
7 four or five shots. And if Mr. Smith is standing there
8 firing a gun four or five times on the outside of that car,
9 my question is where are those four or five shell casings.
10 Where did they go? We know one was in the car and one was on
11 the other car. But where are the other two or three?

12 Certainly, forensics combed that yard, went over it with
13 a fine tooth, saw blood spatter. No problem in locating
14 that, but the shell casings that he claims should have been
15 there, they just weren't there.

16 Now, they also called, of course, Ms. Debra Smith and
17 they referred to her testimony and, for the first time ever,
18 in this courtroom she's the one who gave a story about
19 Michael Smith planning a robbery two or three weeks before
20 this happened.

21 Now, talking about changing stories, Ms. Smith was
22 interviewed on February the 4th, 2017, by Inv. Price. And at
23 that interview, she first told him, look, I never even took
24 Michael to the beach. I don't know what you're talking
25 about.

1 And then she changed her story that day and said, yeah,
2 I took him to the beach, but she never said anything during
3 that interview about Michael Smith holding his hand up and
4 saying smell the gunpowder on my hand from where I shot Mr.
5 Kemmerlin. She never said that. She never said anything
6 about seeing a gun. She never said anything about a
7 telephone. Michael Smith is the one who told him about the
8 telephone.

9 And then just a few months ago, Inv. Price says he
10 interviewed Ms. Smith again at her lawyer's office over in
11 Marion, and then she says all this stuff about smelling
12 gunpowder and seeing a gun and all of that, but guess what
13 she didn't say just a few months ago? She didn't say
14 anything about planning an armed robbery.

15 Now, she's had certainly a lot of time to think about it
16 and she's also had access to the discovery in this case, but
17 yet the first time she comes up with that story is yesterday
18 or the day before sitting on that witness stand. And this is
19 a lady that's got a criminal history for breach of trust,
20 which is a crime of dishonesty, and she's charged herself in
21 this very case. She's charged with accessory after the fact.
22 She's facing up to 15 years in prison.

23 Now, that witness has every reason to embellish and
24 change her story. There's a reason to doubt what she said.
25 There's a reason to doubt what Mr. Williams said.

1 Now, we've heard about the forensics. Mr. White just
2 did a fine job of going through that display and, of course,
3 he was referring in large part to Deputy Coroner Myers'
4 testimony when he was talking about blood spatter and how the
5 theory that Mr. -- how it supported the theory that Mr.
6 Kemmerlin must've been shot outside of that car because of
7 the change in the direction of the blood spatter.

8 That's -- that's the State's theory. But on cross-
9 examination, Mr. Myers also said that that direction of blood
10 spatter could have been changed as a result of the defendant
11 [sic] stumbling or changing direction, and that's a perfectly
12 reasonable explanation of that happening.

13 Now, certainly the State contends that, you know,
14 there's no way that Mr. Kemmerlin could've gotten out of that
15 car with the first shot coming through that arm and lodging
16 in his pelvis and making it to the house. If that had
17 happened in the car, there's just no way. That's their
18 contention and, therefore, he must've been shot in the back
19 in the car first and then shot through the front, but, you
20 know, Mr. Myers, when questioned about that, did admit that
21 that would depend on the distance from the car to the door
22 that he was running to.

23 And when I asked Mr. Myers if he knew the distance, he
24 said, no, I don't know the distance. So he gave an opinion
25 about that without the facts to back it up. I mean he

1 admitted that on the stand. He solved an equation without
2 the numbers to solve it with. There's a reason, every
3 reason, to doubt that forensic testimony.

4 And furthermore, Dr. Riemer, who is the pathologist who
5 came here and testified, what she says, if I recall her
6 testimony, that the first gunshot was to the right side of
7 the chest into the left hip, not the other way around. That
8 the second gunshot was to the back, right side, and exited
9 the chest.

10 And the State also says that, you know, well, there
11 can't -- the shot couldn't have occurred in the car because
12 there's no GSR. Well, you know, you can listen to Mike
13 Smith's statement. The testimony was if the victim's hand
14 wasn't on the gun or right at the gun, then there may not be
15 GSR. Well, Michael Smith says he yanked back and that's when
16 the shots happened. Perfectly reasonable explanation for no
17 GSR.

18 And there's another reasonable explanation for no
19 stippling on the clothes or on the skin on the gunshot wounds
20 because when Mr. Kemmerlin was examined, his clothes were
21 taken off. What did Dr. Riemer say, the pathologist, when I
22 asked her if clothes could affect stippling on the skin? She
23 said, yes, depending on the thickness of the clothes, it
24 could affect stippling on the skin. It might mask it. Well,
25 he certainly was wearing clothes. We saw it. It's a

1 reasonable explanation for that.

2 We have a shell casing that was found on this vehicle
3 that belonged to Mr. Smith's wife, and we know there was one
4 there from one shot and then there was another one from
5 another shot. Two shots, just like Michael Smith said. And
6 how did that shell casing get there? Well, the State says,
7 well, it has to be because he fired the gun outside.

8 Well, what did the firearms expert say yesterday? You
9 know, they eject up to the right. And if Mr. Smith was in
10 that car, certainly, that shell -- one shell casing we know
11 ejected up and to the right, hit the windshield, comes down
12 right there and there it stays.

13 Well, you know, it's not an unreasonable explanation to
14 say that that second gunshot could've ricocheted off that
15 window and landed on who? Landed right on the clothes of a
16 person -- of the person who was sitting in that seat right in
17 front of it, Mr. Smith, and he could it toted that bullet,
18 knowingly or unknowingly, on his clothes or his person when
19 he jumped in that car. He went from there to there. He
20 could have taken that casing with him.

21 It could have happened that way. It's a reasonable
22 explanation. And when there's a reasonable explanation,
23 there's a reasonable doubt.

24 And, you know, you saw clips of tapes here in the
25 courtroom from Mr. Smith's interview on February the 9th, and

1 you saw it it's in its entirety yesterday, as we all did.
2 And obviously, Mr. Smith, during this period of his life --
3 this was back in 2017 when this was done and he was a drug
4 addict. Okay? There's no hiding that fact. His wife
5 testified to it. Mr. Williams testified that he bought drugs
6 from Mr. Kemmerlin. We know he's a drug addict. He's using
7 drugs.

8 When he came in on February the 4th to the station to be
9 interviewed, that was the first clip that y'all saw yesterday
10 when he was wearing the black coat and the dark hat and the
11 black hat. You know, he was so disoriented, he was so out of
12 it, he was saying his ears were full, he was hallucinating.
13 He just couldn't talk.

14 And Mr. Smith -- and Mr. Price -- I'm sorry. Inv.
15 Price, you know, he thought that he wasn't in good shape to
16 continue an interview and he made the decision to terminate
17 it there. Okay? And, of course, that was the right decision
18 for him to make under the circumstances.

19 But that was the state Michael Smith's life was in. He
20 was confused. He was a drug addict and he was experiencing
21 things that drug addicts, unfortunately, experience.

22 And so whatever Mr. Smith's actions were, they may have
23 been motivated out of paranoia or from fear or threats. They
24 weren't -- they were not motivated out of malice
25 aforethought, and that's an element of murder and that's just

1 not present here in this case, and I would just ask that you
2 find the defendant not guilty.

3 Thank you very much.

4 THE COURT: Thank you Mr. Floyd.

5 (WHEREUPON, the Court exited the bench and approached
6 the jury box.)

7 CHARGE ON THE LAW

8 THE COURT: Ladies and gentlemen, during the trial, as I
9 told you before we got started -- does this turn? -- that you
10 are the judges of the facts and that the Court is the judge
11 of the law. So during the portion throughout the trial as
12 the facts have been presented to you, it's been appropriate
13 for me to be out of the way and just off to the side and let
14 that -- let that occur. You, as the factfinders.

15 But we've reached the portion of this trial where you
16 and I are in this together, you as the judges of the facts
17 and me as the judge of the law. So I feel it appropriate to
18 be down here with you and give you the law that is applicable
19 to this case. I am going to read this verbatim. I don't
20 want to leave anything out. I don't want to misquote
21 anything.

22 So, Madam Forelady and members of the jury, you have
23 heard the evidence and the arguments of both sides. I will
24 now explain to you the law which applies to this action.

25 The indictment charges the defendant, Michael Joe Smith,

1 with the offense of murder. I remind you the fact that the
2 defendant was arrested, charged, and indicted in this case is
3 not evidence in this case and it cannot be considered by you
4 as evidence of guilt in this case, nor does it create any
5 presumption or inference of guilt.

6 The indictment, as I told you earlier, is simply the
7 formal written instrument which contains the charge made
8 against the defendant. It is the formal document by which
9 this case is brought into this court.

10 To that indictment, Mr. Smith has pled not guilty, and
11 that plea puts the burden on the State to prove the defendant
12 guilty. A person charged with committing a criminal offense
13 in South Carolina is never required to prove him or herself
14 innocent.

15 I charge you that it is an important rule of law that a
16 defendant in a criminal trial, no matter what the seriousness
17 of the charge may be, will always be presumed to be innocent
18 of the crime for which the indictment was issued unless guilt
19 has been proven by evidence satisfying you of that guilt
20 beyond a reasonable doubt. This presumption of innocence
21 does not end when you begin your deliberations, but it
22 accompanies the defendant throughout the trial until you
23 reach a verdict of guilt based on evidence satisfying you of
24 that guilt beyond a reasonable doubt.

25 The presumption of innocence is not -- is not just a

1 mere legal theory. It is a -- it is not just a legal phrase,
2 but it is a substantial right to which every defendant is
3 entitled unless you, the jury, are satisfied from the
4 evidence of the defendant's guilt beyond a reasonable doubt.

5 So what is a reasonable doubt in the law? Some of you
6 may have served as jurors in civil cases where you were told
7 that it is only necessary to prove that a fact is more likely
8 true than not true, such as by the greater weight or the
9 preponderance of the evidence. In criminal cases, the
10 State's proof must be more powerful than that. It must be
11 beyond a reasonable doubt. Proof beyond a reasonable doubt
12 is proof that leaves you firmly convinced of the defendant's
13 guilt.

14 There are very few things in this world that we know
15 with absolute certainty and in criminal cases the law does
16 not require proof that overcomes every possible doubt. If,
17 based on your consideration of the evidence, you are firmly
18 convinced that the defendant is guilty of the crime charged,
19 you must find the defendant guilty. If, on the other hand,
20 you think there is a real possibility that the defendant is
21 not guilty, then you must give the defendant the benefit of
22 that doubt and find him not guilty.

23 I remind you that during this trial, you and I have
24 certain duties to perform. As the trial judge, it is my
25 responsibility to preside over the trial of this case and I

1 also have the duty to rule on the admissibility of the
2 evidence offered during this trial. You -- excuse me. I
3 have the additional duty to charge you the law that is
4 applicable to this case.

5 It is your duty as jurors to accept and to apply the law
6 as I now state it to you. If you already have any idea as to
7 what the law is or what the law ought to be and it does not
8 agree with what I now tell you the law is, you must abandon
9 your idea because you are sworn to accept the law and to
10 apply the law exactly as I state it to you.

11 As I told you at the start of the case, the jury is the
12 soul and the exclusive judge of the facts in a case. The law
13 does not allow me to have any opinion about the facts in this
14 case. This is a matter solely for you, the jury, to
15 determine.

16 Now, in determining the facts of this case, you will
17 have to evaluate the credibility or the believability of
18 witnesses. Credibility simply means believability. It
19 becomes your duty as jurors to analyze and to evaluate the
20 evidence and to determine which evidence convinces you of its
21 truth. You, the jury, can believe as much or as little of
22 each witness's testimony as you think is proper.

23 You, the jury, should assess the credibility of each
24 witness. You may consider whether any witness has exhibited
25 to you any interest, bias, prejudice, or other motive in this

1 case. You may also consider the appearance and the manner of
2 a witness while on the witness stand. You do not determine
3 the truth merely by counting the number of witnesses.

4 Now, there are two types of evidence which generally are
5 presented during a jury trial. There is direct evidence and
6 there's circumstantial evidence. Direct evidence is the
7 testimony of a person who claims to have actual knowledge of
8 a fact, such as an eyewitness. Circumstantial evidence is
9 proof of a chain of facts and circumstances which indicate
10 the existence of a fact.

11 Crimes may be proven by circumstantial evidence. The
12 law makes absolutely no distinction between the weight or
13 value to be given to either direct or circumstantial
14 evidence, nor is there any greater degree of certainty
15 required of circumstantial evidence than of direct evidence.

16 However, to the extent that the State does rely on
17 circumstantial evidence, all of the circumstances must be
18 consistent with each other and when taken together point
19 conclusively to the guilt of the accused beyond a reasonable
20 doubt. If these circumstances merely portray the defendant's
21 behavior as suspicious, then that proof has failed.

22 You should weigh all of the evidence in this case. The
23 State has the burden of proving the defendant guilty beyond a
24 reasonable doubt and this burden rests with the State
25 regardless of whether the State relies on direct evidence,

1 circumstantial evidence, or some combination of the two.

2 Now, the rules of evidence ordinarily do not allow or
3 permit witnesses to testify to opinions or conclusions.
4 There is an exception to this rule that exists for witnesses
5 that we call expert witnesses.

6 A witness who by education and experience has become an
7 expert in some art, science, or profession may state that
8 opinion as to the relevant and material matter in which that
9 witness claims to be an expert and may also state the reasons
10 given for that opinion.

11 You should consider any expert opinion received into
12 evidence in this case and, like any other evidence, give it
13 the weight that you think it deserves. An expert witness's
14 testimony is to be given no greater weight than that of any
15 other witness simply because the witness is an expert.

16 Further, you are not required to accept an expert's
17 opinion, even though it is not contradicted. You are allowed
18 to accept or reject any testimony that is in this record.

19 Now, there is a statement alleged to have been made by
20 the defendant that has been admitted into evidence in this
21 case. Now, while the Court has determined that the statement
22 is admissible, I instruct you that you make the ultimate
23 decision of whether or not the defendant made the statement.

24 If the defendant did make the statement, you, the jury,
25 must determine whether the statement was made by the

1 defendant voluntarily and of his own free will. This means
2 that the statement was not caused by pressure, force, fear,
3 threats, coercion or intimidation, or by hope or a promise of
4 leniency or a reward of any kind.

5 In determining whether the statement was voluntary, you
6 should consider both the characteristics of the defendant and
7 the details of the questioning. A defendant must be advised
8 of their constitutional rights, including but not limited to
9 the right to remain silent, that any statement could be used
10 against him in a court of law, the right to have a lawyer
11 present and that, if he could not afford a lawyer, a lawyer
12 would be appointed to represent him without any cost, and
13 that he could stop making a statement at any time.

14 You must carefully consider all of the surrounding
15 circumstances before you give any weight to an alleged
16 statement. The State has the burden of proving beyond a
17 reasonable doubt that the alleged statement was voluntary.
18 If you determine that it was, then you may give that
19 statement any further consideration that you deem proper.
20 If, however, you decide that the alleged statement was not
21 free and voluntary, then you should not consider the
22 statement at all.

23 Now, I instruct you and I emphasize that the fact that
24 the defendant, Michael Joe Smith, did not testify is not a
25 factor to be considered by you in any way in your

1 deliberations and in your consideration on the question of
2 guilt or innocence. It must not be considered by you in any
3 manner whatsoever.

4 A defendant has the constitutional right to remain
5 silent, and the assertion of this right must not be
6 considered by you in your deliberations. I repeat, under
7 your oath, you are to draw no conclusions whatsoever from the
8 fact that Mr. Smith did not testify in this case. The fact
9 that Mr. Smith did not testify should not even be discussed
10 in the jury room.

11 The burden of proof, as I have stated to you, is on the
12 State. A defendant is not required to prove his innocence.
13 The burden of proof remains on the State to prove guilt
14 beyond a reasonable doubt.

15 Now, Mr. Smith is charged with murder. The State must
16 prove beyond a reasonable doubt that the defendant killed
17 another person with malice aforethought.

18 Malice is hatred, ill will or hostility toward another
19 person. It is the intentional doing of a wrongful act
20 without just cause or excuse and with an intent to inflict an
21 injury or under circumstances that the law will infer an evil
22 intent.

23 Malice aforethought does not require that malice exist
24 for any particular time before the act is committed, but
25 malice must exist in the mind of the defendant just before

1 and at the time that the crime is committed. Therefore,
2 there must be a combination of the previous evil intent and
3 the act.

4 Malice aforethought may be express or implied or
5 inferred. These terms express and inferred do not mean
6 different kinds of malice, but merely the manner in which
7 malice may be shown to exist. Malice may be shown to exist
8 either by direct evidence or by inference from the facts and
9 circumstances which are proved.

10 Express malice is shown when a person speaks words which
11 express hatred or ill will toward another or when a person
12 prepared beforehand to do an act which was later
13 accomplished. For example, lying in wait for a person or any
14 other preparation going to show that the deed was within the
15 defendant's mind would be express malice.

16 Malice may be inferred from conduct showing a total
17 disregard for human life. Inferred malice may also arise
18 when the deed was done with a deadly weapon. A deadly weapon
19 is any article, instrument or substance which is likely to
20 cause death or great bodily harm. Whether an instrument has
21 been used as a deadly weapon depends on the facts and
22 circumstances of each case.

23 If one intentionally kills another during the commission
24 of a felony, the law allows that you may infer the existence
25 of malice in that situation. If facts are proved beyond a

1 reasonable doubt that the shooting that resulted in the
2 victim's death occurred during the commission of a felony,
3 you may infer malice. This inference would simply be an
4 evidentiary fact to be taken into consideration by you, along
5 with all other evidence in the case, and you may give it the
6 weight that you feel or you think it deserves.

7 Now, ladies and gentlemen, your verdict in this case, as
8 I've already told you, needs to be unanimous. In other
9 words, you must all agree on your verdict, whatever it is.

10 Your deliberations are secret. You will never have to
11 explain your verdict to anyone. Each of you must decide this
12 case for yourself, but only after fully considering the
13 evidence along with your fellow jurors. So you must discuss
14 this case with one another and try to reach an agreement.

15 While you're discussing the case, don't hesitate to re-
16 examine your own opinion and change your mind if you become
17 convinced that you were wrong, but don't give up your honest
18 or firmly held beliefs simply to be in agreement with
19 everyone else.

20 Now, I'm going to -- when you retire to your jury room,
21 as I told you earlier, you'll have the exhibits that came in
22 during the course of the trial. I will also send back a
23 verdict form along with the exhibits. It's a simple form.
24 It just has the caption of the case and there are two options
25 that you have to consider after reviewing and considering all

1 of the evidence.

2 And it's simply that we, the jury, either find the
3 defendant, Michael Joe Smith, either guilty of murder or not
4 guilty of murder. Those are the two verdict -- possible
5 forms of verdict, and they'll be on this verdict form.

6 Ms. Carter, you'll be in control of that and, whatever
7 verdict the jury decides on, you'll just mark the appropriate
8 space on the verdict form and sign that form.

9 Now, when you go back into your room to deliberate --
10 and I'm going to send you back in just a minute. There -- we
11 have the two videotapes. You'll have all of the evidence.
12 There's videotapes or disks, I guess.

13 We don't have any way to play them in the jury room, do
14 we?

15 MR. WHITE: I can arrange something. However you want
16 to do it, Judge.

17 THE COURT: Well, what I'm going to do is if you decide
18 that you want to watch either one of those disks and as much
19 as or as little as you want to watch, it's up to you, but if
20 you do decide you want that, if you'll just send me out a
21 note that you'd like to watch, just let me know and I'll just
22 refer to them as one and two, the first one is the short one
23 and the second one is the long one. Just send me a note and
24 let me know you want to watch, which one you want to watch,
25 and we'll set that up and make sure that we can do that. All

1 right?

2 Now, I'm going to send you back into your jury room, but
3 don't begin your deliberations just yet. I'm going to confer
4 with the attorneys to make sure that I've covered everything.
5 If there's anything I need to recharge you on or add or
6 delete, I'll bring you out and I'll do that, but if the
7 charge is good as is, then we'll collect all of this evidence
8 and we'll send it back into your jury room.

9 Your cue, Ms. Carter, to begin the deliberations is when
10 you receive the evidence. That'll be your cue to begin.

11 So until you get those items, don't begin your
12 deliberations. All right. If you'd step back and await
13 those items.

14 (WHEREUPON, the jury exited the courtroom at 11:59 a.m.)

15 THE COURT: Are there any objections or exceptions to
16 the charge from the State?

17 MR. WHITE: None on behalf of the State, Judge. My
18 apologies.

19 THE COURT: That's all right. Anything from the
20 defense?

21 MR. FLOYD: Your Honor, I suppose for the appellate
22 courts I need to renew my objection or exceptions about not
23 charging voluntary manslaughter.

24 THE COURT: Absolutely. Yes. Okay.

25 MR. FLOYD: Other than that, Your Honor, no exceptions.

1 THE COURT: All right. Well, I would certainly note
2 that exception regarding the Court not charging voluntary
3 manslaughter and have the record note that.

4 All right. Folks, if y'all could come up here with
5 Krystal and make sure that everything that's supposed to go
6 back is up here.

7 (WHEREUPON, there was a pause in the proceedings as the
8 evidence was checked, after which the proceedings
9 resumed as follows.)

10 THE COURT: So everything is ready to go. When Nicole
11 gets done, then we'll just send it back and tell them to go
12 ahead and begin their deliberations.

13 (WHEREUPON, the alternate juror was released off the
14 record.)

15 (WHEREUPON, jury deliberations began at 12:13 p.m.)

16 (WHEREUPON, there was a break in the proceedings from
17 12:13 p.m. until 2:16 p.m., after which the proceedings
18 resumed as follows.)

19 THE COURT: All right. Ladies and gentlemen, if I could
20 have everyone's attention?

21 I'm told that the jury has reached a verdict. I don't
22 know what that verdict is. I sit here just as you do. I
23 don't know what the verdict is, but I want to make these
24 comments before I bring the jury in and we receive their
25 verdict.

1 Whatever that verdict is, I -- and I tell folks this at
2 every case that I try, whether it's a criminal case or a
3 civil case, that the verdict of the jury needs to be received
4 in a professional way. In other words, I never -- I never
5 ask anyone to agree with a jury's verdict. Whether you agree
6 or disagree, that's your prerogative.

7 All I ask is that the verdict be received in a -- in a
8 professional way. That there be no outbursts, whether it be
9 outbursts of joy or sorrow. There needs -- and I'm not --
10 I'm not a robot and I don't expect y'all to be robots, and I
11 know people have emotions and they have feelings about --
12 about things, but I would ask that you control that.

13 If you don't think that you can control your emotions,
14 then you'd be better -- better off stepping outside and
15 letting somebody inform you later what the verdict is because
16 these folks have worked hard this week. Whether you agree or
17 disagree with their verdict, they're entitled to have it
18 received in a professional manner.

19 And so if there are any outbursts or anything of that
20 nature, then you're going to be held in contempt of court.
21 So -- and we don't want to do that. So let's -- let's please
22 try to do that.

23 Is the State ready to receive the jury's verdict?

24 MR. WHITE: Yes, sir, Your Honor.

25 THE COURT: Is the defense ready?

1 MR. FLOYD: Yes, Your Honor.

2 THE COURT: All right. If you'd ask the members of the
3 jury to join us, please.

4 (WHEREUPON, the jury entered the courtroom at 2:19 p.m.)

5 THE COURT: All right. Ms. Carter, has the jury reached
6 a unanimous verdict, ma'am?

7 THE FOREPERSON: Yes, sir, we have.

8 THE COURT: All right. I'm going to ask, if you would,
9 to pass that to Madam Clerk for me.

10 (WHEREUPON, the foreperson complied.)

11 THE COURT: Thank you. All right.

12 Madam Clerk, if you would, publish the jury -- jury's
13 verdict for me, ma'am.

14 VERDICT

15 THE CLERK: State of South Carolina, County of Florence,
16 in the Court of General Sessions, Twelfth Judicial Circuit.
17 Indictment Number 2018-GS-21-1079, State of South Carolina
18 versus Michael Joe Smith.

19 We, the jury, find the defendant guilty of murder.

20 Dated March 21st, 2019. Signed, Sarah Carter,
21 foreperson.

22 Members of the jury, if this is your verdict, please
23 raise your right hand.

24 (WHEREUPON, all jurors complied.)

25 THE CLERK: That's all.

1 THE COURT: All right. Thank you very much, ladies and
2 gentlemen.

3 Please let the record reflect that all members of the
4 jury have raised their right hand in accordance with the
5 verdict.

6 Folks, I want to thank you for your service. I know we
7 never got started on time each morning, but I hope your
8 service was as pleasant as jury service can be. We do try to
9 do whatever we can to keep -- to make you comfortable, and we
10 do understand how inconvenient it has been for you to be away
11 from your work and families during this time, but I want to
12 thank you for your service.

13 This does conclude your service for this week. Before
14 you leave here today, Ms. Bethea will meet you out in the
15 hall as you go back through to gather your belongings and
16 she'll have a work excuse for those of you who need one.
17 There will also be one in your check. They're going to mail
18 out the checks probably tomorrow and you'll have a work
19 excuse there.

20 Now, I do this for -- for all juries that -- in criminal
21 trials. I give you the option. It's up to you.

22 In just a -- in just a moment, we'll move to the
23 sentencing phase where I'll hear from the State and then I'll
24 hear from the defense with regards to the issue of
25 sentencing. The Court imposes the sentence.

1 You are more than welcome to stay and be here for that,
2 if you choose to. You're more than welcome also to leave, if
3 you are done. That -- I'm going to leave that up to you.

4 And I will tell you that I usually always have some
5 people stay, some people leave. So you're not doing anything
6 improper either way. That's solely up for you to decide
7 whether you want to stay or leave for sentencing purposes.

8 Are there any motions at this time from the defense?

9 MR. FLOYD: Yes, Your Honor.

10 THE COURT: Yes, sir.

11 MR. FLOYD: For the record, I would just renew all
12 previous objections and exceptions made and also renew my
13 motion for a directed verdict based on the grounds I
14 previously stated, Your Honor.

15 THE COURT: All right. Thank you, Mr. Floyd.

16 MR. FLOYD: Thank you.

17 THE COURT: And I'm going to -- I'm going to
18 respectfully deny that motion and, as I said earlier, I
19 certainly would note all your exceptions and your objections
20 throughout the trial. The motion for a directed verdict I
21 think was, in fact, a jury question and I think it was up for
22 the jury to decide that.

23 All right. Mr. White, is the State ready to proceed to
24 sentencing?

25 MR. WHITE: Yes, sir, Judge.

1 THE COURT: I'll be happy to hear from the State with
2 anything you'd like to share with the Court or if there's
3 anyone that wishes to address the Court.

4 MR. WHITE: I beg the Court's indulgence.

5 THE COURT: Ms. Bethea has brought it to my attention
6 that if there is anyone that would like to leave, maybe I
7 didn't make it clear that you're welcome -- you're certainly
8 welcome to leave. And if you would like to leave, you can go
9 now. You don't have to wait.

10 But if you want to stay, then, obviously, you remain
11 where you're at. Okay? I'm just afraid sometimes I don't
12 make that clear. Thank you, sir.

13 (WHEREUPON, the jurors remained seated.)

14 THE COURT: All right. Mr. White?

15 MR. WHITE: Yes, sir, Judge, and may it please the
16 Court.

17 I think you have heard all the facts, Your Honor.
18 Contrary to what the defendant has said in his statement, I
19 think the evidence suggests this is a cold-blooded murder.
20 Not only did it occur during the commission of a felony, but
21 the victim here was shot in the back. It seems that he -- he
22 waited as he rounded the car and then shot him as he's trying
23 to escape to safety.

24 Obviously, we're dealing with a range here of 30 to
25 life. On those facts alone, that would be at the upper end

1 of that range.

2 Judge, I think when you take into consideration, you
3 know, that statement, I think that he thinks that he
4 cooperated, but I see it completely differently. He -- he
5 failed at every stage to fully cooperate with the State.

6 Your Honor, that gun, that murder weapon, he and he
7 alone knows where that murder weapon is. He failed to turn
8 it over. He led law enforcement on a wild goose chase. He
9 expended countless resources in that endeavor. And that gun
10 is still out there and who knows whose hands it is currently
11 in.

12 Judge, you know, the victim's family -- they've been
13 here every day of this trial. They've been in constant
14 contact. You know, I think that there is, you know, some
15 evidence in the record that maybe this was over prescription
16 pills.

17 Judge, we've got this -- that somehow in this community
18 we've gotten to a place where, you know, people believe that
19 just because somebody is, you know -- and I'm not excusing
20 selling drugs or taking drugs, but somehow we've gotten off
21 the rails and people feel that just because they kill
22 somebody and that's going on that it's excused in some way,
23 that it should be pled down and, Judge, I'm ready to set the
24 record straight and steer our community in a different
25 direction and, because of that, I'd like for you to send a

1 message here today.

2 And turning to his record, Judge, he's got a 1995
3 burglary conviction and then, later, he receives another
4 burglary conviction, as well as a grand larceny, malicious
5 injury to property. It looks like he's received in the
6 Department of Corrections on a Y for all of those offenses.

7 '96, public drunkenness. Later on in '96, another
8 burglary conviction. He received a '97 parole revocation,
9 Judge, and he's received in the Department of Corrections on
10 that.

11 In 2009, a criminal domestic violence. 2010, a forgery
12 less than \$5,000. In 2010, he's taken into probation,
13 forgery less than \$5,000. 2011, assault and battery, third
14 degree. 2012, misdemeanor traffic offense. 2012, use of
15 vehicle without permission.

16 Judge, then he's convicted of a possession of a cocaine
17 base or meth and then another forgery. In 2014, arrested on
18 a burglary but received a non-conviction. Judge, and then
19 he's got several counts of fraudulent check. It looks like
20 six counts of fraudulent check in 2016.

21 Judge, furthermore, he was received into drug court
22 shortly before this incident. So he has received help for
23 his drug addiction. So he gets out and he gets right back on
24 drugs.

25 You know, he's heavily involved. He kills a man in cold

1 blood, Judge, and then wants to blame that man and say that
2 he's the one that is at fault.

3 You know, I can't imagine a more egregious set of
4 circumstances, Judge, and we would like for you to send a
5 message and give this man life.

6 THE COURT: All right. Thank you, Mr. White.

7 Mr. Floyd and/or Ms. Henderson, I'd be happy to hear
8 from either one of y'all. Certainly, if Mr. Smith would like
9 to address the Court, I'd be happy to hear from him. He's
10 not required to, but if he wishes too. And then if there's
11 anyone else that would like to address the Court, I'd be
12 happy to hear from anybody.

13 MR. FLOYD: Thank you, Your Honor.

14 Your Honor, I've been representing Mr. Smith since, I
15 guess, July of last year. Originally, Your Honor, he was
16 represented by Mr. Rick Jones in our office, and you know Mr.
17 Jones retired.

18 THE COURT: Yeah.

19 MR. FLOYD: And I took over the representation of Mr.
20 Smith.

21 Your Honor, I can only, you know, speak of my personal
22 knowledge of Mr. Smith as far as my time spent with him in
23 working with him and, certainly, during that time, Your
24 Honor, he was always very cordial and easy to work with. He
25 never was out of the way with me. He's been polite all

1 along. You know, that's the extent of my personal contact
2 with him is through this case.

3 Your Honor, prior to this, he did construction work. Of
4 course, I think he's married to Ms. Debra Smith for a fairly
5 long time, Your Honor. He's 41 years old now.

6 He did go through the drug court program. He graduated
7 and, tragically, he fell back into using drugs and, of
8 course, you know, not just in this case but in many cases, we
9 see the disastrous results of that activity.

10 THE COURT: Yeah.

11 MR. FLOYD: You know, it's heartbreaking, you know, not
12 just for Mr. Smith but certainly the victim's family in this
13 case and, certainly, I, you know, feel for them in every way,
14 Your Honor.

15 Your Honor, Mr. Smith has been in the detention center
16 for 776 days as of today, I believe. I think he was taken
17 into custody on the 4th of February of 2017, and I believe I
18 calculated that right.

19 But, Your Honor, we would just ask if you would just
20 extend as much mercy as you can.

21 Do you want to say anything?

22 Mr. Smith indicates that he doesn't want to speak, Your
23 Honor.

24 THE COURT: All right.

25 MR. FLOYD: His grandparents are present in the

1 courtroom, Your Honor, and I would like to check and see if
2 they would like to say anything --

3 THE COURT: Yes.

4 MR. FLOYD: -- on his behalf.

5 THE COURT: Sure. Absolutely.

6 MR. FLOYD: Your Honor, this is his grandfather.

7 THE COURT: All right, sir.

8 MR. JOE SMITH: I would like to say this.

9 THE COURT: Can I just get your name for the record,
10 please, sir?

11 MR. JOE SMITH: Joe McCoy Smith.

12 THE COURT: All right. Mr. Smith?

13 MR. JOE SMITH: I would like to say that this is a sad
14 situation for you to decide, and I have compassion for this
15 family and I have compassion for my grandson. He has been
16 through -- since he was a little boy about 4 or 5 years old,
17 he's been through it from pillar to post. His mother has
18 dropped him off at places and not come back to get him for
19 three or four weeks at a time.

20 We tried to adopt him and his mother wouldn't let us.
21 She was going to get us for kidnapping. We kept him four or
22 five different times. We adopted his sister, and my son is a
23 drug addict. He's -- now, he's clean and he's been clean a
24 while.

25 And I'm not blaming anybody for anything that he has

1 done. I know that we all make our choices in life, but we
2 kept Michael. For several different times, we had him and we
3 were going to keep him, and her mother -- his mother just
4 would not let us.

5 And we have been, you know, accused by her mother -- his
6 mother that if we tried to take him, she was going to get us
7 for kidnapping, but we went to Fayetteville one time and
8 picked him up. She had left him in Fayetteville and he was
9 about 8 years old then, and we went to Fayetteville and
10 picked him up that time and then she was going to get us for
11 kidnapping at that time.

12 And he has had a terrible life and I know he's done
13 wrong. We all have, but I would really appreciate it if you
14 would give him some mercy. He's not a bad man.

15 THE COURT: Thank you, sir.

16 All right. Anything else, Mr. Floyd?

17 MR. FLOYD: Nothing further, Your Honor.

18 THE COURT: Ladies and gentlemen, just -- Mr. White was
19 correct. Many of you out in the audience, I guess thankfully
20 as laypersons who don't work every day in the criminal
21 justice system, probably are maybe not aware as much as we
22 are in the system, but this is becoming so frequent.

23 First of all, we live in a day and age now where, for
24 whatever reason -- and I'm like Mr. White. He mentioned in
25 his closing remarks that -- I think that's when he mentioned

1 it. That, you know, he's all for, you know, the Second
2 Amendment and for gun rights. I am too, but it seems as that
3 we can't restrict that to legal use and we're starting to see
4 more and more and more people carrying guns illegally.

5 There was a time when I was growing up that if I was
6 with my wife and we were, for example, going to -- walking
7 through a parking lot to go to Target or something like that,
8 if a group of young folks was disrespectful to my wife, I
9 would step forward and say something. I've learned today
10 that you just need to be quiet and keep walking because as
11 soon as you -- as soon as you turn to say something, you're
12 looking down the barrel of a gun.

13 I don't know why. I'm sure there's a lot more to this
14 case than we've heard, why Mr. Smith felt it even necessary
15 to arm himself when he went to meet Mr. Kemmerlin.
16 Apparently, there was bad blood there. There had to have
17 been something.

18 And the one thing that never mixes is drugs and guns.
19 That is a recipe for disaster at every level, and it's
20 becoming more and more and more prevalent.

21 And that's what I was saying earlier is I'd like to tell
22 you that this is an unusual scenario, but it's not. It's all
23 too often that we -- we see these charges. Florence has
24 distinguished itself, not in a positive way, of really
25 starting to set a trend for murders. There's a lot that goes

1 on in our community that -- that we need to be more in tune
2 with.

3 I appreciate the elder Mr. Smith, what you had to say
4 about your grandson's life and the difficulties he's had, but
5 he's essentially led a life of crime. From 1995 up through
6 the present day, he has been in and out of the criminal
7 justice system.

8 Drug court -- folks, for those of you that don't know,
9 it's an outstanding program. It is probably the best drug
10 rehab or the best program there is for getting people --
11 helping people to get off drugs.

12 Mr. Smith -- it's not perfect and Mr. Smith is an
13 example of it not being perfect. He went through the program
14 and did successfully complete it, and I -- my -- I recognize
15 that as an achievement, Mr. Smith.

16 That's not -- I don't say that lightly. Drug court is
17 not easy to get through if you're an addict. It's incredibly
18 difficult and we tell people all the time don't -- don't ask
19 for drug court unless you're ready to get off drugs and ready
20 to really work hard because it's an intense program and it
21 takes years -- months and years to complete it.

22 But it's not perfect and I bring that up to say that to
23 the extent the system can try to help someone, we've given
24 Mr. Smith the best we have as far as help for drug treatment
25 and it just wasn't -- it just didn't work.

SENTENCE

THE COURT: On Indictment 2018-GS-21-1079, the sentence of the Court is that you're to be committed to the State Department of Corrections for the remainder of your natural life without the possibility of parole.

Good luck to you, sir.

(WHEREUPON, the defendant was removed from the courtroom.)

THE COURT: Ladies and gentlemen, again, I want to thank you for your service. It's not easy. Jury service is not easy. It's hard to see the results of what occurs at times, but I want to thank you because -- and it really doesn't matter what anyone else thinks because your -- your verdict is your verdict, but for what it's worth, I think you got it right. I think the evidence was rather overwhelming.

If any of -- if you have any questions about anything that is -- that you observed this week or that's gone on this week, I am more than -- my door is always open. I'm more than happy to answer any questions that you may have, but your service has been completed and I want to thank you again.

If you -- that -- you'll get that work excuse. If you need anything for your work above that excuse, you can have your employer call me and I can certainly vouch and verify for your whereabouts for the last four days.

1 But you have earned that exemption that I spoke about on
2 Monday when I went through the qualifications. State law
3 only requires that you serve on jury duty once every three
4 calendar years.

5 So if you do receive another summons -- excuse me. If
6 you do receive another summons for jury service here in this
7 Circuit Court, you can either -- the balance of this year or
8 2020 and 2021, you can be excused from that service if you
9 need to be, but I would tell you that it is just a -- it's an
10 exemption. It doesn't mean you're not qualified to serve.
11 So if you do receive another jury summons in the future and
12 you would like to serve, I would encourage you to do so.

13 But I want to thank you again and as far as this matter
14 for this case, court is adjourned for these purposes now.
15 I'll still be here if we have other matters we need to deal
16 with.

17 But, ladies and gentlemen, you are excused from service.
18 Thank you.

19 (WHEREUPON, the jury exited the courtroom.)

20 (WHEREUPON, the proceedings ended at 2:44 p.m.)

21

22 --- END REQUESTED TRANSCRIPT ---

23

24

25

**Florence Co. Judicial Center
RANDOM STRIKE SHEET**

JUDGE NAME : Russo Thomas A.
TRIAL TYPE : Criminal
PANEL ID : 2018GS2101079
COURTROOM 3A

DESCRIPTION : State VS Michael Joe Smith

Sorted by: Random Nbr
Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
1 Patel, Jaykush H	127	A	M	()	(✓)	()	
2 Reinhard, Cheryl B	133	W	F	()	(✓)	()	
3 Mcfadden, Lachelle D	106	B	F	()	()	()	1
4 White, Carly	159	W	F	()	()	()	2
5 Roberts, Gearl D	134	B	M	()	()	()	3
6 Black, Brenton M	12	B	M	(✓)	()	()	
7 Carter, Sarah L	23	B	F	()	()	()	4
8 Oyekan, Julius O	122	B	M	()	()	()	5
9 Llewellyn, Mary A	95	W	F	()	(✓)	()	
10 James, Jeanette G	80	B	F	(✓)	()	()	
11 Guthrie, Glenn D	64	W	M	()	()	()	6
12 Delung, Cathleen B	36	W	F	()	(✓)	()	
13 Yarborough, Scotty J	169	W	M	()	()	()	7
14 Schoen, Tracie B	138	W	F	()	()	()	8
15 Goggin, Alexis S	55	W	F	()	()	()	9
16 Eaddy, Donnie	40	B	M	()	()	()	10
17 King, Edward L	88	B	M	(✓)	()	()	
18 Knight, Natalie B	89	W	F	()	()	()	11
19 Lehr, Robin J	92	W	F	()	(✓)	()	
20 Watford, Stacie H	157	W	F	()	(✓)	()	
21 Graulich, Patricia N	59	W	F	()	(✓)	()	
22 Hancock, Amber N	65	W	F	()	(✓)	()	
23 Evans, Angela H	46	W	F	()	()	()	12
24 Hill, Kaileigh L	73	W	F	()	(✓)	()	

**Florence Co. Judicial Center
RANDOM STRIKE SHEET**

JUDGE NAME : Russo Thomas A.
TRIAL TYPE : Criminal
PANEL ID : 2018GS2101079
COURTROOM 3A

DESCRIPTION : State VS Michael Joe Smith

Sorted by: Random Nbr
Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
25 Harvey, James M	70	W	M	()	()	()	<u>act 1</u>
26 Powell, Jacob D	131	W	M	()	()	()	<u>act 2</u>
27 Sportiello, Ashley R	148	W	F	()	()	()	
28 Mcelveen, Glennis D	105	B	F	()	()	()	
29 Lynch, Portia R	100	W	F	()	()	()	
30 Mosley, Christian D	118	W	M	()	()	()	
31 Patten, Kevin C	128	W	M	()	()	()	
32 Atkinson, Joshua A	6	W	M	()	()	()	
33 Parker, Lacey A	123	W	F	()	()	()	
34 Hartfield, Larry B	69	B	M	()	()	()	
35 Black, Marvin L Sr.	13	B	M	()	()	()	
36 McGee, Stacey B	107	W	F	()	()	()	
37 Cason, Robert W	24	W	M	()	()	()	
38 Taylor, Schlevia D	151	B	F	()	()	()	
39 Lowery, Maurecsc A	96	B	M	()	()	()	
40 Filyaw, Harry L Jr.	47	W	M	()	()	()	

Total Number of Jurors: 40
** END OF REPORT **

State of South Carolina)
) Certificate
County of Florence)

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 407, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of General Sessions for Florence County, South Carolina, on the 18th through 21st days of March, 2019.

I do further certify that I am neither of kin, counsel,
nor interest to any party hereto.

s/Krystal J. Smith

Court Reporter

Florence, South Carolina

July 22, 2019

WITNESSES

Ben Price Florence County Sheriff

DOCKET NO. 2018-GS-21-01079

The State of South Carolina

County of

FLORENCE

CERTIFIED A TRUE COPY
 CLERK OF COURT G. J. G. S.
 FLORENCE COUNTY, S.C.

COURT OF GENERAL SESSIONS

June TERM 2018

John W. Holt, IV

ARREST WARRANT NUMBER

 2017A2110200087 2017A2110400051
 2017A2110400050

2017A2110400052

THE STATE

vs.

MICHAEL JOE SMITH

RASHEEM KEVIN THOMAS

DEBRA TURNER SMITH

DORIS POULOS O'HARA
 C.C.P. & G.S.
 FLORENCE COUNTY, SC

2018 JUN -7 PM 2:59

FILED

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 6-7-18

VERDICT

Indictment for

Murder

Murder

Accessory Before the Fact to a Felony

Accessory After the Fact

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)

INDICTMENT FOR
 Murder
 Murder
 Accessory Before the Fact to a Felony
 Accessory After the Fact

At a Court of General Sessions, convened on June 7 2018 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- MURDER

CDR: 0116 16-03-0010.0020

That Michael Joe Smith did in Florence County, on or about February 1, 2017, willfully, feloniously, and intentionally kill the victim, Malcolm Kindred Kemmerlin, with malice aforethought, either express or implied, by means of shooting the victim, and the victim did die as a proximate result thereof on or about February 1 2017 in Florence County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

COUNT TWO- MURDER

CDR: 0116 16-03-0010.0020

That Rasheem Kevin Thomas did in Florence County, on or about February 1, 2017, willfully, feloniously, and intentionally kill the victim, Malcolm Kindred Kemmerlin, with malice aforethought, either express or implied, by means of shooting the victim, and the victim did die as a proximate result thereof on or about February 1 2017 in Florence County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

COUNT THREE - ACCESSORY BEFORE THE FACT OF A FELONY

CDR: 0002 16-01-0040.0050

That Rasheem Kevin Thomas did in Florence County on or about February 1, 2017, advised or agreed with or urged or hired or in some way aided, counseled or encouraged the principal felon to commit the felony of Murder, but was not present when the crime was committed; in violation of the Common Law and Section 16-01-0040; S. C. Code of Laws, 1976, as amended.

COUNT FOUR- ACCESSORY AFTER THE FACT

CDR: 2413 16-01-0055

That Debra Turner Smith did in Florence on or about February 1, 2017, knowing of the commission and completion of the felony of Murder, by the principal felon, Michael Joe Smith, harbor or assist such felon after the fact with the intention of enabling the felon to escape detection or arrest or otherwise avoid the consequences of the crime, in violation of the crime of Accessory After the Fact in commission of the felony.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

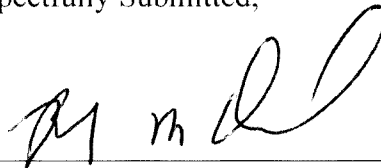


E.L. Clements, III
 TWELFTH CIRCUIT SOLICITOR

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,



Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 6th day of March, 2020.