

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County
Honorable Deadra L. Jefferson, Circuit Court Judge

THE STATE,

V.

ROBERT DAVID NOLEN,

APPELLANT

APPELLATE CASE NO 2019-000591

RECORD ON APPEAL

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RESPONDENT

SC Court of Appeals

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED MARCH 25-29, 2019.....	1
GUILTY PLEA HEARING	
TESTIMONY	
ROBERT DAVID NOLEN (IN CAMERA)	
Examination by the Court	12
MOTION TO SEVER.....	49
<u>JACKSON V. DENNO</u> HEARING.....	62
TESTIMONY	
ZACHARY WRIGHT (IN CAMERA)	
Direct Examination by Ms. Szymczynska-Sas	63
JAMES MCCLELLAN (IN CAMERA)	
Direct Examination by Ms. Szymczynska-Sas	68
JAMES GIEGER (IN CAMERA)	
Direct Examination by Ms. Szymczynska-Sas	74
KIRSTEN CHESNUT (IN CAMERA)	
Direct Examination by Ms. Szymczynska-Sas	80
JAMES MURRAY ELROD, III (IN CAMERA)	
Direct Examination by Ms. Szymczynska-Sas	86
RULING OF THE COURT ON MOTION TO SEVER	116
RULING OF THE COURT ON <u>JACKSON V. DENNO</u>	135
OPENING STATEMENT BY MS. SZYMCZYNSKA-SAS	141
OPENING STATEMENT BY MS. NORRIS	149
TESTIMONY	
TIMOTHY HAM	
Direct Examination by Ms. Szymczynska-Sas	155

Cross Examination by Ms. Norris.....	166
GARY STEVEN WASIELEWSKI	
Direct Examination by Ms. Szymczynska-Sas	168
Cross Examination by Ms. Norris.....	173
JAMES GEIGER	
Direct Examination by Ms. Szymczynska-Sas	175
Cross Examination by Ms. Norris.....	183
JAMES VANSANT	
Direct Examination by Ms. Szymczynska-Sas	185
Cross Examination by Ms. Norris.....	190
KEVIN MCGOWAN	
Direct Examination by Ms. Szymczynska-Sas	192
Cross Examination by Ms. Norris.....	217
Redirect Examination by Ms. Szymczynska-Sas.....	223
CORINTHIAN GREEN	
Direct Examination by Ms. Szymczynska-Sas	225
Cross Examination by Ms. Norris.....	232
Redirect Examination by Ms. Szymczynska-Sas.....	233
SUSAN ERIN PRESNELL	
Direct Examination by Mr. Alfaro.....	239
Cross Examination by Ms. Norris.....	266
Redirect Examination by Mr. Alfaro	275
DONALD SNEDEKER	
Direct Examination by Ms. Szymczynska-Sas	277
CRYSTAL SPENCE	
Direct Examination by Ms. Szymczynska-Sas	284
CHRISTINE CHESNUT	
Direct Examination by Ms. Szymczynska-Sas	290
Cross Examination by Ms. Norris.....	308
JESSICA LITCHFIELD	
Direct Examination by Ms. Szymczynska-Sas	332
Cross Examination by Ms. Norris.....	334
FRED ANDREW MAZYCK	
Direct Examination by Ms. Szymczynska-Sas	359
Cross Examination by Mr. Farber.....	388

Redirect Examination by Ms. Szymczynska-Sas.....	416
PROFFERED TESTIMONY	
FRED ANDREW MAZYCK (IN CAMERA)	
Direct Examination by Mr. Farber.....	420
TESTIMONY	
SHIRLEY WASHINGTON	
Direct Examination by Ms. Szymczynska-Sas	432
KEVIN MURPHY	
Direct Examination by Ms. Szymczynska-Sas	436
ZACHARY WRIGHT	
Direct Examination by Ms. Szymczynska-Sas	445
Cross Examination by Ms. Norris.....	455
JAMIE JOHNSON	
Direct Examination by Mr. Alfaro.....	461
Cross Examination by Ms. Norris.....	469
JENNIFER NATES	
Direct Examination by Mr. Alfaro.....	470
JASMINE RUIZ-YI	
Direct Examination by Mr. Alfaro.....	488
SAMUEL STEWART	
Direct Examination by Mr. Alfaro.....	495
MICHELLE EICHENMILLER	
Direct Examination by Mr. Alfaro.....	509
Cross Examination by Ms. Norris.....	519
Redirect Examination by Mr. Alfaro	525
JAMES MCCLELLAN	
Direct Examination by Ms. Szymczynska-Sas	545
Cross Examination by Ms. Norris.....	558
COLLOQUY WITH DEFENDANT REGARDING HIS RIGHT TO TESTIFY	563
TESTIMONY	
DANIEL KENDRICK WILSON	

Direct Examination by Ms. Szymczynska-Sas	582
Cross Examination by Ms. Norris.....	589
Redirect Examination by Ms. Szymczynska-Sas.....	593
JAMES WINFRED ELROD	
Direct Examination by Ms. Szymczynska-Sas	595
THE STATE RESTS	610
MOTION FOR DIRECTED VERDICT.....	611
RULING OF THE COURT	615
TESTIMONY	
ROBERT DAVID NOLEN	
Direct Examination by Ms. Norris.....	621
Cross Examination by Mr. Alfaro.....	689
THE DEFENSE RESTS	715
MOTION FOR DIRECTED VERDICT.....	716
RULING OF THE COURT	719
CLOSING ARGUMENT BY MS. SZYMCZYNSKA	738
CLOSING ARGUMENT BY MS. NORRIS.....	771
REPLY CLOSING ARGUMENT BY MS. SZYMCZYNSKA.....	785
CHARGE ON THE LAW	790
VERDICT	831
SENTENCING	850
INDICTMENTS AND SENTENCE SHEETS.....	854
DEFENDANT'S EXHIBIT #140 (FRED MAYZCK STATEMENT).....	875
DEFENDANT'S EXHIBIT #141 (TRANSCRIPT OF FRED MAZYCK INTERVIEW).....	876
CERTIFICATE OF COUNSEL	919

1 STATE OF SOUTH) GENERAL SESSIONS COURT
CAROLINA)
2) CASE NO. 2018-GS-08-00840;
COUNTY OF BERKELEY) 00841; 00842; 00843; 00844;
3 00890

4
5 STATE OF SOUTH)
CAROLINA,)
6 Plaintiff,) Transcript of Record
7 vs.)
8 ROBERT DAVID NOLEN,) Date: March 25 - 29,
9 Defendant.) 2019

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B E F O R E:

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The Honorable DEADRA JEFFERSON

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Denise J. Lauder, RPR

22

Ninth Judicial Circuit

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I N D E X

	Page
1	
2	
3 <u>ROBERT DAVID NOLEN</u>	12
4 EXAMINATION BY THE COURT	12
5 JURY QUALIFICATION	26
6 JURY SELECTION	92
7 <u>THE JURY SWORN</u>	116
8 <u>ZACHARY WRIGHT</u>	137
9 DIRECT EXAMINATION BY MS. SZYMCZYNSKA-SAS	137
10 <u>JAMES MCCLELLAN, III</u>	142
11 DIRECT EXAMINATION BY MS. SZYMCZYNSKA-SAS	142
12 <u>JAMES GEIGER</u>	148
13 DIRECT EXAMINATION BY MS. SZYMCZYNSKA-SAS	148
14 <u>KIRSTEN CHESNUT</u>	154
15 DIRECT EXAMINATION BY MS. SZYMCZYNSKA-SAS	155
16 <u>JAMES MURRAY ELROD, III</u>	160
17 DIRECT EXAMINATION BY MS. SZYMCZYNSKA-SAS	160
18 <u>TIMOTHY HAM</u>	243
19 DIRECT EXAMINATION BY MS. SZYMCZYNSKA-SAS	244
20 CROSS-EXAMINATION BY MS. NORRIS	254
21 <u>GARY STEVEN WASIELEWSKI</u>	255
22 DIRECT EXAMINATION BY MS. SZYMCZYNSKA-SAS	256
23 CROSS-EXAMINATION BY MS. NORRIS	260
24 <u>JAMES GEIGER</u>	263
25 DIRECT EXAMINATION BY MS. SAS	264

1	CROSS-EXAMINATION BY MS. NORRIS	271
2	<u>JAMES VANSANT</u>	273
3	DIRECT EXAMINATION BY MS. SZYMCZYNSKA-SAS	273
4	CROSS-EXAMINATION BY MS. NORRIS	278
5	<u>KEVIN MCGOWAN</u>	280
6	DIRECT EXAMINATION BY MS. SZYMCZYNSKA-SAS	280
7	CROSS-EXAMINATION BY MS. NORRIS	305
8	REDIRECT EXAMINATION BY MS. SZYMCZYNSKA-SAS	311
9	<u>CORINTHIAN GREEN</u>	313
10	DIRECT EXAMINATION BY MS. SZYMCZYNSKA-SAS	313
11	CROSS-EXAMINATION BY MS. NORRIS	319
12	REDIRECT EXAMINATION BY MS. SZYMCZYNSKA-SAS	321
13	<u>SUSAN ERIN PRESNELL, M.D.</u>	326
14	DIRECT EXAMINATION BY MR. ALFARO	327
15	CROSS-EXAMINATION BY MS. NORRIS	354
16	REDIRECT EXAMINATION BY MR. ALFARO	363
17	<u>DONALD SNEDEKER</u>	365
18	DIRECT EXAMINATION	365
19	BY MS. SZYMCZYNSKA-SAS	
20	<u>CRYSTAL SPENCE,</u>	372
21	DIRECT EXAMINATION BY MS. SZYMCZYNSKA-SAS	372
22	<u>CHRISTINE CHESNUT</u>	377
23	DIRECT EXAMINATION BY MS. SZYMCZYNSKA-SAS	378
24	CROSS-EXAMINATION BY MS. NORRIS	396
25	<u>JESSICA LITCHFIELD</u>	419

1	DIRECT EXAMINATION BY MS. SZYMCZYNSKA-SAS	420
2	CROSS-EXAMINATION BY MS. NORRIS	422
3	<u>FRED ANDREW MAZYCK</u>	446
4	DIRECT EXAMINATION BY MS. SZYMCZYNSKA-SAS	447
5	CROSS-EXAMINATION BY MR. FARBER	476
6	REDIRECT EXAMINATION BY MS. SZYMCZYNSKA-SAS	504
7	<u>FRED ANDREW MAZYCK</u>	507
8	PROFFERED TESTIMONY -DIRECT EXAMINATION	508
9	BY MR. FARBER	
10	<u>SHIRLEY WASHINGTON</u>	519
11	DIRECT EXAMINATION BY MS. SZYMCZYNSKA-SAS	519
12	<u>KEVIN MURPHY</u>	524
13	DIRECT EXAMINATION BY MS. SZYMCZYNSKA-SAS	524
14	<u>ZACHARY WRIGHT</u>	532
15	DIRECT EXAMINATION BY MS. SZYMCZYNSKA-SAS	533
16	CROSS-EXAMINATION BY MS. NORRIS	543
17	<u>JAMIE JOHNSON</u>	548
18	DIRECT EXAMINATION BY MR. ALFARO	549
19	CROSS-EXAMINATION BY MS. NORRIS	557
20	<u>JENNIFER NATES</u>	558
21	DIRECT EXAMINATION BY MR. ALFARO	558
22	<u>JASMINE RUIZ-YI</u>	576
23	DIRECT EXAMINATION BY MR. ALFARO	576
24	<u>SAMUEL STEWART</u>	583
25	DIRECT EXAMINATION BY MR. ALFARO	583

1	<u>MICHELLE EICHENMILLER</u>	596
2	DIRECT EXAMINATION BY MR. ALFARO	597
3	CROSS-EXAMINATION BY MS. NORRIS	607
4	REDIRECT EXAMINATION BY MR. ALFARO	613
5	<u>JAMES MCCLELLAN</u>	633
6	DIRECT EXAMINATION BY MS. SZYMCZYNSKA-SAS	633
7	CROSS-EXAMINATION BY MS. NORRIS	646
8	<u>ROBERT DAVID NOLEN</u>	651
9	EXAMINATION BY THE COURT	651
10	<u>DANIEL KENDRICK WILSON</u>	670
11	DIRECT EXAMINATION BY MS. SZYMCZYNSKA-SAS	670
12	CROSS-EXAMINATION BY MS. NORRIS	677
13	REDIRECT EXAMINATION BY MS. SZYMCZYNSKA-SAS	681
14	<u>JAMES WINFRED ELROD</u>	682
15	DIRECT EXAMINATION BY MS. SZYMCZYNSKA-SAS	683
16	<u>ROBERT DAVID NOLEN</u>	708
17	DIRECT EXAMINATION BY MS. NORRIS	709
18	CROSS-EXAMINATION BY MR. ALFARO	777
19	CLOSING BY MS. SAS	827
20	CLOSING ARGUMENT BY MS. NORRIS	859
21	CLOSING ARGUMENT BY MS. SAS	873
22	JURY CHARGE	877
23	VERDICT	921
24	SENTENCING	940
25	CERTIFICATE OF REPORTER	941

1	E X H I B I T S		
2		Page/Line	
3	DFT. EXH. 1 - 137, Photographs	8	5
4	DFT. EXH. 138, SCAR	323	23
5	DFT. EXH. 139, CAD report	424	1
6	DFT. EXH. 140, Copy of statement	486	7
7	DFT. EXH. 141, Copy of transcript of	494	2
8	interview		
9	COURT'S EXH. 2, DVD	142	13
10	COURT'S EXH. 1, DVD	137	9
11	COURT'S EXH. 4, Miranda form	160	13
12	STATE EXH. 1 - 72, 75, 79 - 136,	22	17
13	photographs, in evidence		
14	STATE EXH. 137-167 in evidence	197	4
15	STATE EXH. 137 - 167 in evidence	211	12
16	STATE EXH. 170 in evidence	808	10
17	DFT. EXH. 1 - 137, photographs in	22	19
18	evidence		
19	DFT. EXH. 138 in evidence	324	16
20	DFT. EXH. 142 in evidence	757	10
21			
22			
23			
24			
25			

1 (The following proceedings were had
2 3/25/2019, 9:04 a.m., State v. Robert David Nolen,
3 Berkeley County General Sessions
4 Court.)

5 (DFT. EXH. 1 - 137, Photographs, were
6 marked for identification.)

7 THE COURT: As I understand, Mr. Nolen
8 wants to enter a plea of guilty -- bear with me one
9 second -- on Indictment 2018-GS-08-1672, possession
10 of a firearm by a person convicted of a felony
11 offense; is that correct?

12 MS. NORRIS: Yes, Your Honor.

13 THE COURT: And are there any
14 recommendations or negotiations?

15 MS. NORRIS: No, ma'am.

16 THE COURT: Okay. And what is his
17 record, Ms. Sas?

18 MS. SZYMCHYNSKA-SAS: Court's
19 indulgence, Your Honor? Your Honor, Mr. Nolen has
20 a prior conviction which led him to not be able to
21 possess a firearm.

22 THE COURT: Yes, ma'am.

23 MS. SZYMCHYNSKA-SAS: That is a
24 conviction for a CDV HAN, and it's from October 7,
25 2004. He also has July 18, 2007, conviction for

1 obtaining goods by false pretenses.

2 THE COURT: I'm sorry, tell me the date
3 of that one again.

4 MS. SZYMCZYNSKA-SAS: July 18th of
5 2007.

6 THE COURT: Okay.

7 MS. SZYMCZYNSKA-SAS: And he also has a
8 fraudulent check, \$500 or less, and that conviction
9 is from September 2nd of 2004.

10 THE COURT: And I assume that's
11 magistrate court. Is that the extent of his
12 record?

13 MS. SZYMCZYNSKA-SAS: Yes, Your Honor.
14 He also has a public drunk from August 14th, 2002,
15 a CDV from February 22nd of 2000, and to my
16 knowledge, that is the extent of his convictions.

17 THE COURT: And, Ms. Norris, it's
18 correct that there are no recommendations or
19 negotiations regarding the plea he wishes to enter,
20 correct?

21 MS. SZYMCZYNSKA-SAS: Your Honor,
22 certainly, there's no recommendation. It's a
23 straight up plea.

24 THE COURT: Okay. Just to make you all
25 aware, Channel 4, ABC News, Fox 24 has requested a

1 camera, tripod, laptop and microphone. I assume
2 they need the laptop in conjunction with
3 broadcasting the proceedings.

4 Is Ms. Alexandra Savage here? Is
5 anybody from the newspapers here.

6 Can you call and see if they are
7 outside? I would appreciate it.

8 While we are waiting, as I understand
9 it, the State is going forward on Indictments
10 2018-GS-08-840, which is possession of a weapon
11 during the commission of a violent crime, 841 which
12 is murder, 842 which is murder, 843 murder, 844
13 threatening the life, person or family of a public
14 official, 890 attempted murder; is that correct?

15 MS. SZYMCZYNSKA-SAS: That's correct,
16 Your Honor.

17 THE COURT: Is that correct,
18 Ms. Norris?

19 MS. NORRIS: It is, Your Honor. There
20 is a motion to sever.

21 THE COURT: I'm aware of the motions,
22 but I need to make sure and be clear as to what
23 indictments the State was intending to proceed
24 upon.

25 Does your client wish to have a formal

1 arrangement, Ms. Norris?

2 MS. NORRIS: No, Your Honor.

3 THE COURT: Okay. Thank you.

4 And were any offers extended to
5 Mr. Nolan regarding the substantive offenses that
6 he will be -- that we will start the trial on?

7 MS. SZYMCZYNSKA-SAS: Your Honor, no
8 formal offers have been extended.

9 THE BAILIFF: No response, Your Honor.

10 THE COURT: I had a question about why
11 they needed a laptop because I didn't want any
12 tweeting or anything going on during the trial. So
13 when they return, I will find out exactly the
14 extent of why they needed a laptop and go from
15 there.

16 I'm inclined -- I'm going to let them
17 bring a camera if they'd like, tripod, and
18 microphone, but I need to know why we need a
19 laptop. So when they return I will get an answer
20 on that. I assume you have no exception to the
21 media being present. From the State?

22 MS. SZYMCZYNSKA-SAS: We would leave it
23 at the Court's discretion.

24 THE COURT: From the defense?

25 MS. NORRIS: Court's discretion.

1 THE COURT: Thank you very much.

2 They are still checking in the jurors
3 so while they do that we'll go ahead and do the
4 guilty plea and then see how many of the pretrial
5 motions we can work our way through until they let
6 us know they're ready to start jury qualifications.

7 Sir, stand for me please and raise your
8 right hand to be sworn.

9 ROBERT DAVID NOLEN,
10 being first duly sworn, testified as follows:

11 EXAMINATION

12 BY THE COURT:

13 Q. You can put it down.

14 State your name for the record.

15 A. Robert David Nolen.

16 Q. Nolen, how old are you?

17 A. Fifty.

18 Q. How far have you gone in school?

19 A. Graduated.

20 Q. What do you do for a living?

21 A. Concrete superintendent.

22 Q. Are you married?

23 A. Yes.

24 Q. How long have you been married?

25 A. We have been together 21 years.

1 Q. Do you have any minor children?
2 A. Minor, no.
3 Q. Do you have any emancipated children?
4 A. Yes.
5 Q. How old are they?
6 A. Eighteen and nineteen.
7 Q. Are you currently on probation or
8 parole?
9 A. No.
10 Q. Have you ever been treated for the
11 abuse of alcohol, drugs, or mental illness?
12 A. No, ma'am.
13 Q. Have you had any drugs, alcohol, or
14 medication in the last 72 hours?
15 A. Oh, yeah. I'm sorry.
16 Q. That's okay.
17 A. I went to a drug rehab in 2006.
18 Q. What was that for?
19 A. Cocaine.
20 Q. And did you finish the program?
21 A. Yes, ma'am.
22 Q. Did you go to any aftercare?
23 A. No, ma'am.
24 Q. Have you had any drugs, alcohol or,
25 medication in the last 72 hours?

1 A. No, ma'am.

2 Q. Are you aware of any physical,
3 emotional, or nervous problem that would keep you
4 from understanding where you are right now or what
5 you're doing?

6 A. No, ma'am.

7 Q. On the charge of possession of a
8 firearm by a person convicted of a violent offense,
9 how do you plea?

10 A. Guilty, Your Honor.

11 Q. Do you understand that that carries a
12 maximum of five years and a fine of \$2,000?

13 A. Yes, ma'am.

14 Q. I want you to listen carefully to the
15 facts.

16 THE COURT: Mrs. Sas?

17 MS. SZYMCZYNSKA-SAS: Thank you, Your
18 Honor. May it please the Court?

19 THE COURT: You're welcome. Yes,
20 ma'am.

21 MS. SZYMCZYNSKA-SAS: Your Honor, on
22 October 7, 2016, law enforcement responded to 228
23 Macio Road in Moncks Corner of Berkeley County
24 after the surviving victim and also this defendant
25 called 911. When they arrived, they observed two

1 victims in the back on the concrete and one inside
2 the porch.

3 The victim inside the porch was
4 deceased, as well as one of the victims on the
5 concrete. The victim that was still breathing was
6 Lance Kenyon, and this defendant was observed over
7 his body what appeared to be doing CPR.

8 At some point, Your Honor, when law
9 enforcement inquired as to where the suspect was,
10 he indicated that he was the suspect. He was taken
11 into custody, Your Honor. All of the victims on
12 the scene were shot with what the State alleges a
13 .22 rifle, which this defendant would have had in
14 his care and possession and would have used to kill
15 all the deceased victims.

16 Your Honor, based on his prior
17 conviction, he's prevented from possessing a
18 firearm. He also admitted during a recorded
19 interview with Detective Elrod the following day
20 that he was indeed in possession of those weapons
21 and he brought them with him to Lance Kenyon's
22 residence after he was -- he left his wife's house
23 due to a disagreement they had.

24 BY THE COURT:

25 Q. Sir, do you agree or disagree with the

1 facts to the extent regarding the possession of the
2 weapon? The rest of it is superfluous and not
3 relevant here.

4 A. I agree.

5 Q. Do you feel anything needs to be
6 changed or added to the facts?

7 A. No.

8 Q. Are you pleading guilty because you are
9 guilty?

10 A. Yes.

11 Q. Please listen carefully. When you
12 plead guilty, you give up your constitutional
13 rights. Those include your right to a jury trial.
14 At a jury trial you're entitled to a presumption
15 that you are innocent. The State has the burden of
16 proving your guilt beyond a reasonable doubt.

17 You would have the right to confront
18 and cross-examine the State's witnesses, call your
19 own witnesses, present any defenses that you may
20 have, challenge any statements that you may have
21 made, as well as remain silent, and your silence
22 cannot be used against you.

23 Do you understand your rights?

24 A. Yes.

25 Q. Do you understand that you are giving

1 up those rights?

2 A. Yes, ma'am.

3 Q. Do you understand that any firearm
4 involved in this will be confiscated?

5 A. Yes, ma'am.

6 Q. And forfeited?

7 A. Yes.

8 Q. Other than what I have been told, have
9 there been any plea negotiations worked out on your
10 behalf?

11 A. No.

12 Q. Have you been satisfied with your
13 attorney?

14 A. Yes.

15 Q. Has she answered all of your questions?

16 A. Yes, ma'am.

17 Q. Done everything that you asked or
18 expected?

19 A. Yes.

20 Q. Any complaints about her services?

21 A. No, ma'am.

22 Q. Has anyone promised you anything or
23 held out any hope of a reward to cause you to plead
24 guilty?

25 A. No, ma'am.

1 Q. Has anyone used threats, coercion,
2 force, pressure, intimidation or duress to cause
3 you to plead guilty?

4 A. No, ma'am.

5 Q. Are you pleading guilty freely and
6 voluntarily and of your own free will?

7 A. Yes.

8 Q. Have you understood my questions?

9 A. Yes, ma'am.

10 Q. Do you need to ask me about anything
11 we've been over?

12 A. No, ma'am.

13 Q. Have you been truthful in your answers?

14 A. Yes, ma'am.

15 Q. Do you understand that you have the
16 right to appeal this guilty plea and sentence of
17 the Court, but that you must do so in writing
18 within ten days of today?

19 A. Yes.

20 Q. Do you understand that if you cannot
21 afford counsel, counsel will be appointed to you at
22 no cost?

23 A. Yes.

24 THE COURT: I find there is a
25 substantial factual basis for the plea; that the

1 defendant has entered the plea freely, voluntarily,
2 knowingly, and intelligently; that he's had the
3 advice and assistance of counsel with whom he
4 indicated to the Court he's satisfied; and I will
5 accept the plea.

6 I'm inclined to defer sentencing.

7 Any exception from the State?

8 MS. SZYMCZYNSKA-SAS: No, Your Honor.

9 THE COURT: Any exception from the
10 defense?

11 MS. NORRIS: No, Your Honor.

12 THE COURT: Thank you very much. You
13 can take your seats.

14 I assume a lot of the witnesses you
15 will not be calling them, or are you going to call
16 all of them?

17 MS. SZYMCZYNSKA-SAS: That's correct,
18 Your Honor. Ms. Norris and I have entered into a
19 stipulation, which we would like to enter at an
20 appropriate time.

21 THE COURT: You can now if you would
22 like.

23 MS. SZYMCZYNSKA-SAS: She is not --
24 it's my understanding that she will not be
25 challenging the chain, and I think the evidence

1 list that is listed --

2 THE COURT: That would eliminate a lot
3 of witnesses.

4 MS. SZYMCZYNSKA-SAS: Yes, Your Honor.
5 It's 1 through 135, and we are going to stipulate
6 to all the chain that would be applicable to the
7 evidence, other than for the person who first
8 collected it and the person who actually analyzed
9 it.

10 Obviously, we have any additional
11 evidence during the trial that we would seek to
12 admit, we would consult with Ms. Norris.

13 As to the witnesses, Your Honor, I
14 believe at this time we anticipate calling about 23
15 of the witnesses on the list.

16 THE COURT: Ms. Norris, is that your
17 understanding of the stipulation?

18 MS. NORRIS: Yes, Your Honor.

19 THE COURT: Okay. My other question
20 is, have you agreed on any exhibits?

21 MS. NORRIS: We have certainly agreed
22 to most of them. There are photographs --

23 THE COURT: I just need to know the
24 numbers of the ones that you've agreed so we can go
25 ahead and admit them, and that eliminates a lot of

1 time.

2 The ones you don't agree on, you'll
3 have to make a contemporaneous objection.

4 What numbers have you agreed upon?

5 MS. NORRIS: We've agreed to 1 through
6 72. We object to --

7 THE COURT: I don't need to know the
8 objections until they seek to admit them.

9 MS. NORRIS: We agree on 75, 77 is ID
10 only, 78 is ID only, and we agree through 79
11 through 136.

12 THE COURT: Okay. And on the defense
13 side, what have you agreed to?

14 MS. SZYMCZYNSKA-SAS: Your Honor, I
15 believe the photographs that Ms. Norris has
16 presented to us that were stamped, I believe, 1
17 through 137. The State at this point doesn't have
18 any objection.

19 THE COURT: To any of them?

20 MS. SZYMCZYNSKA-SAS: No, Your Honor.
21 They were the photographs taken at the scene by law
22 enforcement.

23 THE COURT: That would be 1 through
24 137, correct?

25 MS. SZYMCZYNSKA-SAS: That's my

1 understanding.

2 MS. NORRIS: Yes, Your Honor.

3 THE COURT: So we can agree to admit
4 without objection Defendant's 1 through 137; is
5 that correct, Mrs. Sas?

6 MS. SZYMCZYNSKA-SAS: Yes, Your Honor.

7 THE COURT: And that's correct?

8 MS. NORRIS: Yes.

9 THE COURT: And as I understand it, you
10 all have agreed to State's 1 through 72, 75, and 79
11 through 136; is that accurate?

12 MS. NORRIS: Yes, Your Honor.

13 THE COURT: Ms. Sas, is that accurate?

14 MS. SZYMCZYNSKA-SAS: That's correct.

15 THE COURT: All of those will be
16 admitted without objection.

17 (STATE EXH. 1 - 72, 75, 79 - 136,
18 photographs, in evidence.)

19 (DFT. EXH. 1 - 137, photographs in
20 evidence.)

21 THE COURT: Now, the next thing I
22 wanted to ask. I thought I saw a motion to
23 sequester the witnesses.

24 MS. NORRIS: It's in our trial brief.

25 THE COURT: I knew I saw it somewhere.

1 I assume the State has no exception to sequestering
2 the witnesses, other than those mandated by
3 statute.

4 MS. SZYMCZYNSKA-SAS: Yes, Your Honor,
5 the victims and families and our case agent, Dan
6 Wilson.

7 MS. NORRIS: And, Your Honor, just so
8 you are aware, we had agreed also that our
9 investigator Kristy Gore could remain in the
10 courtroom. I don't anticipate her being a witness,
11 but she is on the list just in case.

12 THE COURT: Is that correct?

13 MS. SZYMCZYNSKA-SAS: Yes, Your Honor.
14 And I have not seen the list of
15 Ms. Norris's witnesses..

16 THE COURT: I have what was presented
17 or provided to me on Friday was a motion for
18 severance, a motion to exclude racially charged
19 evidence, a motion to suppress admission of jail
20 telephone calls and video recordings between the
21 defendant and his wife, a motion in -- motion in
22 limine to exclude any evidence relating to other
23 crimes, wrongs, or acts, a typical Lyle motion.

24 Any other motions that I'm overlooking?

25 MS. SZYMCZYNSKA-SAS: Your Honor, there

1 are motions from the State that were presented
2 earlier in the week, e-mailed on Thursday. I can
3 certainly provide --

4 THE COURT: I need copies of them.

5 MS. SZYMCZYNSKA-SAS: Certainly, Your
6 Honor.

7 THE COURT: You need to make sure that
8 you file your motions because e-mailing to me --
9 I'm not going to file them.

10 MS. SZYMCZYNSKA-SAS: Sure.

11 THE COURT: Most times, I don't print
12 them.

13 MS. SZYMCZYNSKA-SAS: May I approach?

14 THE COURT: Yes, ma'am.

15 MS. SZYMCZYNSKA-SAS: And these are not
16 the filed copies, Your Honor.

17 THE COURT: I just wanted to make sure
18 that you all know to make sure that you file them
19 so they can get them into the record.

20 We'll deal -- the only issues that I
21 plan to deal with pretrial is the motion for
22 severance, and we will deal with that after the
23 jury has been qualified and selected, just in the
24 interest of time.

25 And all of the other motions, as I

1 viewed them, deal with evidentiary issues that I'm
2 not inclined to rule on prior to the trial
3 starting. We have to take them up in camera and
4 create a proffer, and everybody would be cautioned
5 not to go into the matter until we have heard them
6 in camera and the Court can make a contemporaneous
7 ruling.

8 MS. NORRIS: Your Honor, just for
9 clarification, we also had a motion to suppress
10 jail telephone calls.

11 THE COURT: I have that. I read that
12 out.

13 MS. NORRIS: There's a motion to
14 exclude racially charged evidence.

15 THE COURT: I read that.

16 MS. NORRIS: Motion to exclude prior
17 bad acts --

18 THE COURT: Yep, got that.

19 MS. NORRIS: -- and severance, and
20 within the trial brief itself there are --

21 THE COURT: I have to look at that
22 again, there were several things. Most of them, as
23 I recall, were evidentiary in nature.

24 MS. NORRIS: Yes, Your Honor. The one
25 that is not evidentiary in nature, is our request

JURY QUALIFICATION

1 that all bench conferences --

2 THE COURT: I always record all bench
3 conferences. It's a moot issue.

4 MS. NORRIS: Thank you.

5 THE COURT: I'm not as trusting as
6 people's memory. The record is everybody's friend.
7 I don't talk to anyone without a court reporter
8 being present.

9 Anything else we need to deal with
10 before jury is brought in?

11 MS. SZYMZYNSKA-SAS: No, Your Honor.

12 THE COURT: From the defense?

13 MS. NORRIS: No, ma'am.

14 THE COURT: All right. See you all
15 shortly.

16 (Jury panel in, 10:43 a.m.)

17 (Jury panel was sworn and roll call was
18 taken.)

19 THE COURT: Morning, ladies and
20 gentlemen.

21 THE JURY PANEL: Morning.

22 THE COURT: I'm Deadra Jefferson. I'm
23 one of your resident circuit judges for the Ninth
24 Circuit, which is made up of Charleston and
25 Berkeley County. For those of you who do not know,

JURY SELECTION

1 with counsel regarding scheduling. During this
2 break, please do not discuss the case in any manner
3 whatsoever. Please don't speculate about what you
4 think it may or could be about.

5 During this break, the bailiffs are
6 going to take down your cell phone numbers in the
7 event that we need to contact you during any court
8 recesses. We appreciate your patience. Go with
9 the bailiffs, and we will let you know how we are
10 going to be proceeding for the remainder of the day
11 shortly. We appreciate your patience.

12 (Jury out, 12:43 p.m.)

13 THE COURT: Make sure that that door is
14 closed. I deliberately did not publish Indictment
15 2018-844 in light of the pending motion to sever.
16 And if I decide not to sever it, I will voir dire
17 the jury to make sure that no one has any personal
18 knowledge of the alleged facts and circumstances.

19 I'm a little hard-pressed to think that
20 they would since it's alleged that it took place
21 attendant to his arrest in the vehicle with the
22 officer.

23 Ms. Norris, do you by any chance have
24 -- I think I left your brief, the document that I
25 recalled reading, I think I inadvertently left

JURY SELECTION

1 that --

2 MS. NORRIS: May I approach?

3 THE COURT: -- in my office. If you
4 could accommodate me.

5 Are we going to have a Biggers hearing
6 of any type?

7 MS. NORRIS: A what, Your Honor?

8 THE COURT: Biggers, Neil v. Biggers,
9 ID? I would imagine not --

10 MS. NORRIS: No, Your Honor.

11 THE COURT: Are we going to need to
12 have a Jackson v. Denno?

13 MS. SZYMCZYNSKA-SAS: Yes, Your Honor.

14 THE COURT: And how many witnesses do
15 we have on that?

16 MS. SZYMCZYNSKA-SAS: Your Honor, we
17 have two officers that have recorded statements
18 inside the car: One that had a recorded interview
19 at the sheriff's office and then two others that
20 were involved in those on-the-scene interviews.

21 THE COURT: So that's four officers or
22 two?

23 MS. SZYMCZYNSKA-SAS: That would be
24 five, Your Honor.

25 THE COURT: And I assume that you

JURY SELECTION

1 agree, Ms. Norris, that there is a necessity of a
2 Jackson v. Denno?

3 MS. NORRIS: Yes, Your Honor.

4 THE COURT: What I think we should do
5 is hear the motion to sever prior. I think we can
6 dispose of that fairly -- unless you all anticipate
7 lengthy arguments on that. Do you?

8 MS. SZYMCZYNSKA-SAS: Not from the
9 State, Your Honor.

10 MS. NORRIS: Your Honor, Ms. Calvar is
11 going to argue this for us.

12 THE COURT: Does Mr. Mazyck -- I know
13 I'm skipping around. Does Mr. Mazyck have a
14 criminal history?

15 MS. SZYMCZYNSKA-SAS: Yes, Your Honor,
16 he does.

17 THE COURT: What is his record? It
18 wasn't attached to the motion.

19 MS. SZYMCZYNSKA-SAS: Mr. Mazyck has
20 possession with intent to distribute marijuana from
21 2001, possession of cocaine from 2001, he has what
22 appears to be two counts of PWID from 2012 --

23 THE COURT: Of what substance?

24 MS. SZYMCZYNSKA-SAS: Your Honor, it
25 appears to be marijuana, receiving stolen goods

JURY SELECTION

1 from 2007 --

2 THE COURT: Was that magistrate or
3 circuit?

4 MS. SZYMCZYNSKA-SAS: Your Honor, that
5 was \$5,000 or more, and he was on supervision for
6 that offense.

7 THE COURT: When was he released from
8 supervision?

9 MS. SZYMCZYNSKA-SAS: I don't have that
10 information.

11 THE COURT: What period of supervision
12 did he have?

13 MS. SZYMCZYNSKA-SAS: Three years
14 suspended to 18 months of probation.

15 THE COURT: And what date did he plead
16 guilty?

17 MS. SZYMCZYNSKA-SAS: Your Honor, he
18 was placed on probation February 13th of 2017, but
19 it does appear that he may have been violated July
20 18 of 2007, and he is shown to have entered South
21 Carolina Department of Corrections.

22 THE COURT: So when was he -- you have
23 no indication when he was released from probation?

24 MS. SZYMCZYNSKA-SAS: It appears he
25 would have been released from SCDC at some point

JURY SELECTION

1 after receiving credit for the three years. And I
2 can --

3 THE COURT: So it was revoked in full?
4 Sometimes we revoke part of it -- was he revoked in
5 full and his probation terminated, or was it only a
6 partial revocation?

7 MS. SZYMCZYNSKA-SAS: According to the
8 rap sheet, it looks like he first pled on
9 February 13, 2017; received the probationary
10 sentence, and he was shown July 18th to be taken to
11 custody to the Department of Corrections for the
12 same charge. And I can certainly inquire
13 additionally from probation office and see --

14 THE COURT: Yeah. I need to know
15 because it may have only been a partial revocation
16 and his probation could have been tolled. I need
17 to know the date he was released.

18 MS. SZYMCZYNSKA-SAS: I can certainly
19 contact Department of Corrections as well as
20 probation office.

21 THE COURT: Probation should be able to
22 look it up and tell you.

23 Ms. Norris, is there any portion of his
24 record that you would be seeking to impeach
25 Mr. Mazyck's credibility?

JURY SELECTION

1 MS. NORRIS: Yes, Your Honor.

2 Mr. Farber will address that for us.

3 MR. FARBER: Yes, Your Honor. The --
4 the impeachment, though, we're not going to seek to
5 impeach him on the prior convictions, Your Honor,
6 but --

7 THE COURT: So then it's the State
8 asking that his criminal history -- then that's a
9 moot issue.

10 MR. FARBER: It's not a moot issue for
11 the following reasons, Your Honor. He's a prior
12 convicted felon, and he's admitted to the State
13 that he was in possession of, in fact, a used
14 firearm.

15 THE COURT: Was he charged with that?
16 I don't see a conviction for that.

17 MR. FARBER: Correct, Your Honor. That
18 was the day of the offense, and we did intend to
19 cross-examine on -- it's a federal crime, Your
20 Honor, and we do intend to cross-examine him on
21 what representations were made to him about --

22 THE COURT: So it's not about a prior
23 crime impeachment. You're asking -- well, I guess
24 I'm trying to figure out how would the State be
25 able to offer to him any inducement if it were a

JURY SELECTION

1 federal crime because that would be a violation of
2 his federal probation, would it not?

3 MR. FARBER: Not federal probation. He
4 committed a federal crime violation.

5 THE COURT: But the State would not be
6 prosecuting that; the feds would.

7 MR. FARBER: That's correct, Your
8 Honor, but they could have made representations
9 about whether --

10 THE COURT: I think you need to inquire
11 of the State about that.

12 MR. FARBER: Yes, Your Honor, we have
13 and we have not gotten a response.

14 THE COURT: Did you make an inquiry of
15 the federal government to find out what they plan
16 to do?

17 MR. FARBER: I don't know whether the
18 federal government is aware of it. We made an
19 inquiry under --

20 THE COURT: So he's not been charged.

21 MR. FARBER: I don't know.

22 THE COURT: I'm a little confused as to
23 what you're saying he admitted. The allegations,
24 you can't use those to impeach somebody unless you
25 have some good faith argument that the State has

JURY SELECTION

1 offered him some inducement; otherwise, it becomes
2 character.

3 So I need to know exactly what it is
4 that you're seeking to impeach him on.

5 MR. FARBER: What we want to know is
6 what promises or representations the State has made
7 to him. He's got a motive, a bias with the State
8 to curry favor with the State.

9 THE COURT: Well, I don't know. You've
10 not told me anything -- I'm still lost as to what
11 you're saying he admitted to or didn't. I'm a
12 little -- I don't mean to seem thick, but I'm lost
13 as to what you're saying.

14 MR. FARBER: He admitted in the
15 interview with the State that he used and possessed
16 firearms on October 6th, 2017. The State -- that
17 admitting to law enforcement that he engaged in a
18 federal crime, that is information that the state
19 law enforcement could --

20 THE COURT: So why would that be a
21 federal crime?

22 MR. FARBER: Because it's a federal
23 crime under 18 U.S.C. 921(g) for a felon to be in
24 possession of a firearm.

25 THE COURT: What felony would that be?

JURY SELECTION

1 MR. FARBER: I believe it's his
2 possession with intent to distribute marijuana.

3 THE COURT: Is that a felony?

4 MR. FARBER: Yes.

5 THE COURT: Is that a felony, Ms. Sas?

6 MS. SZYMCZYNSKA-SAS: Your Honor, it
7 would be a felony.

8 THE COURT: And why haven't you all
9 answered his inquiry?

10 MS. SZYMCZYNSKA-SAS: Your Honor, there
11 was simply nothing to provide in discovery. I have
12 not had any conversations with Mr. Mazyck. I am a
13 State prosecutor, not federal court. About that
14 specific, you know, charge that he could have been
15 potentially charged or if he was charged. I have
16 no knowledge that he has been charged.

17 I inquired of Detective Wilson when
18 this inquiry came in. And he also indicated to me
19 that he's not aware of any conversations that they
20 would have had with ATF or any federal agency.

21 THE COURT: Absent you being able to
22 say that they would be in a posture to have offered
23 him anything, it's going to be off limits, but
24 you're going to have to inquire -- they're not in a
25 position to offer him anything on a federal crime.

JURY SELECTION

1 I've never known it to work that way.
2 He can testify here and substantially cooperate and
3 the federal government still prosecute him. I
4 don't think they particularly care one way or the
5 other. They're not going to do something to
6 benefit him if he had a gun and violated federal
7 statute, unless there's an agreement between the
8 State and the federal government.

9 And as an officer of the court,
10 Mrs. Sas has just indicated to me there is none.

11 MR. FARBER: Understood, Your Honor.
12 The issue I think we should be entitled to
13 cross-examine him on, he has a motive to curry
14 favor with the State --

15 THE COURT: You'd have to prove that
16 they have something to offer him. And so, absent a
17 good faith basis to say that, you're going to have
18 to show me a little bit more than that.

19 MR. FARBER: What I'm suggesting as the
20 something is the something is not picking up the
21 phone and calling ATF or calling their federal
22 counterparts.

23 THE COURT: I don't think they have any
24 duty to do that. I've never know them to do that.
25 Feds are pretty ardent in their prosecution with

JURY SELECTION

1 folks with guns. They have a special task force
2 last time I checked.

3 I don't know if it was disbanded after
4 -- looking at his face, I can't think of his name
5 -- our most recent US Attorney General, I don't
6 know if that task force is still in place, but
7 you're going to have to have some good faith basis
8 to ask that question.

9 And they've indicated to me that they
10 haven't offered him anything and not in a position
11 to offer him anything, and it's not my experience
12 that they have any influence across the street.

13 MR. FARBER: No, I understand, but the
14 issue is not so much what they have done as what is
15 in Mr. Mazyck's mind.

16 THE COURT: It has to be based on good
17 faith, that somehow he believed -- I may let you
18 create a proffer. I'm not certain how the
19 testimony is going to develop, but you can't just
20 say did you offer him something.

21 You have to have some good faith basis
22 that they're in a position to offer him something.
23 Based on my experience, they don't.

24 MR. FARBER: Your Honor, could I
25 inquire of him if he has a concern about that?

JURY SELECTION

1 THE COURT: I would let you do it in
2 camera, but not in front of the jury until I can
3 figure out whether he, in fact, has some good faith
4 basis. Whether you have some basis to believe --
5 first of all, there's not a pending charge. So
6 really there's nothing to offer.

7 And I don't -- I mean, I don't have a
8 problem creating a proffer on it, but I'm not going
9 to let you ask the jury about it until I get to the
10 bottom of what exactly is going on.

11 MR. FARBER: Thank you.

12 THE COURT: At this time, it's
13 speculative. I understand that there is -- there
14 is wide breadth and latitude in cross-examining a
15 witness as to potential prejudice and their
16 credibility, but you don't -- there are limits on
17 that and there are parameters on that.

18 And I haven't heard anything to this
19 point that convinces me that it would be
20 appropriate; but prior to going into it, make me
21 aware of it, and I will be glad to create a proffer
22 and hear the testimony in its context.

23 MR. FARBER: Thank you.

24 THE COURT: Do you plan to offer any
25 evidence of third-party guilt?

JURY SELECTION

1 MS. NORRIS: No, Your Honor. Not in
2 terms of the actual indicted offenses, no.

3 THE COURT: You confused me.

4 MS. NORRIS: We may allege that
5 Mr. Mazyck, himself, was involved in some crime
6 there. We may allege that another person picked up
7 out there might have been at the scene, but we are
8 not saying that --

9 THE COURT: Somebody else did it.

10 MS. NORRIS: -- that they shot anybody,
11 right.

12 THE COURT: Okay. All right. Who did
13 you tell me is handling the motion to sever?

14 MS. NORRIS: Ms. Calvar.

15 THE COURT: Can you spell your last
16 name for me?

17 MS. CALVAR: C-A-L-V-A-R.

18 THE COURT: Thank you. And your first
19 name?

20 MS. CALVAR: Cristina.

21 THE COURT: Give me an estimate of how
22 long you think it's going to take to argue this
23 motion.

24 MS. CALVAR: Probably seven minutes to
25 say what I have to say.

JURY SELECTION

1 MS. SZYMCZYNSKA-SAS: Maybe five, Your
2 Honor.

3 THE COURT: Okay. And then how long do
4 you think the Jackson v. Denno is going to take?

5 MS. SZYMCZYNSKA-SAS: In all candor
6 with the Court, I think it would probably be the
7 entire afternoon. There are three different videos
8 and they are lengthy.

9 THE COURT: I don't plan to have you
10 have the officer annotate a video for me. I'm
11 going to watch it myself.

12 MS. SZYMCZYNSKA-SAS: Your Honor,
13 there's the two-hour interview that is being taken
14 by Detective Elrod, and there is also two separate
15 in-car interviews, and I believe those total would
16 be about two hours.

17 THE COURT: All together?

18 MS. SZYMCZYNSKA-SAS: Yes, Your Honor.

19 THE COURT: Okay. But the testimony
20 itself, how long do you think that's going to take?

21 MS. SZYMCZYNSKA-SAS: Couple hours,
22 Your Honor.

23 THE COURT: And we need to eat. So
24 that will take us to -- I think it's safe to say
25 that we need to start in the morning with

JURY SELECTION

1 testimony. I'm thinking by the time we get done
2 with the motion, it will be at least 1:20, and then
3 we break for lunch, and then --

4 MR. ALFARO: Your Honor, I think
5 starting in the morning would be fine just for
6 everybody's purposes. The medical examiner,
7 Dr. Presnell, is only available tomorrow. We
8 scheduled her to come in the afternoon.

9 So in the event something happens and
10 we run long, we would like the Court to be aware
11 that's the only day she is available. So if we
12 could go past five, if necessary, to get her in;
13 other than that, we have no issue with starting in
14 the morning.

15 THE COURT: I don't have -- you know,
16 you all determine the order you call the witnesses
17 and, you know, I don't interfere with that; but I
18 would suggest, since it's spring break, you may
19 want to figure out in your head where you want to
20 call her, because I'm really not inclined to stay
21 long past five.

22 MR. ALFARO: That would be -- the issue
23 would be, we're planning to have her come to be the
24 first witness after lunch. I was just saying if
25 something unexpected in the morning where we don't

JURY SELECTION

1 start openings until 10:30 or something like
2 that --

3 THE COURT: Gosh, I hope not.

4 MR. ALFARO: Things happen, and I
5 didn't want it to be a last-minute thing where
6 we're bringing this to the Court's attention.

7 THE COURT: And I am going to do
8 everything to accommodate Dr. Presnell. I
9 understand that she has other scheduling issues.
10 Bring in the jury for me, please.

11 Any exception to swearing the jury?
12 From the State?

13 MS. SZYMCHYNSKA-SAS: No, Your Honor.

14 THE COURT: From the defense?

15 MS. NORRIS: No, Your Honor.

16 (Jury in, 1:08 p.m.)

17 THE COURT: You may be seated, ladies
18 and gentlemen. If you would stand for me and raise
19 your right hands to be sworn.

20 THE JURY,
21 being first duly sworn, testified as follows:

22 THE CLERK: Thank you. Please be
23 seated.

24 THE COURT: Ladies and gentlemen, you
25 have been selected for the case of the State of

1 South Carolina versus Robert David Nolen. I know
2 that it's lunchtime, and the attorneys and I still
3 have some matters of law to work through that will
4 take us the remainder of the afternoon.

5 So I'm going to excuse you for the
6 remainder of the day. You will return in the
7 morning at 9:30. During this break, please do not
8 discuss this case amongst yourselves or with anyone
9 else, and don't speculate what you think it may or
10 could be about.

11 You are strictly instructed that you
12 are not to read, watch, or listen to any media
13 accounts about this case. That includes anything
14 that could be found in the newspapers, heard on the
15 radio, television, or read on the Internet. And
16 you are strictly instructed not to do any
17 independent research of any type on the Internet.

18 Again, as the finders of the facts, you
19 are sworn to decide this case according to the
20 sworn testimony that you hear along with the other
21 evidence that will be introduced. So it's
22 absolutely essential that you maintain your
23 impartiality.

24 I know it might seem simple to have
25 general discussions, but by doing that you begin to

1 form impressions and opinions about the case. I
2 would ask that you strictly abide by that.

3 In addition, please have no contact
4 with anyone in or about the courthouse. We would
5 not want an innocent conversation to be observed
6 and misinterpreted. Please don't make any comments
7 regarding your jury service on any social
8 networking sites. That includes Facebook, Twitter,
9 IG, Snapchat -- I've lost track. There are too
10 many for me to remember.

11 You would be amazed at the people that
12 troll those sites during the day and call us and
13 let us know what you posted. And that's people who
14 are not on jury service. I know, it's amazing.
15 Wouldn't you think they'd have something else to do
16 like work, run errands, you know, something
17 productive?

18 There are people that are astute at
19 that, and I would hate to have to voir dire you
20 regarding what is really an innocent conversation
21 and have that misinterpreted.

22 I would ask that during jury service
23 you would refrain from posting of any type
24 regarding your jury service or otherwise. We would
25 not want an innocent comment to be misinterpreted.

1 I think I've covered everything. I
2 apologize, it's been a long morning, and it's been
3 long for you. We appreciate your time. We will
4 see you in the morning at 9:30. The bailiffs will
5 give you instructions as to how you will reenter
6 the courthouse, and they may even probably provide
7 some parking accommodations for you in the front of
8 the courthouse. And they'll give you some further
9 instructions regarding that.

10 I hope you have a great afternoon. See
11 you in the morning at 9:30.

12 (Jury out, 1:07 p.m.)

13 THE COURT: You all can take your
14 seats.

15 (Juror No. 110 in, 1:10 p.m.)

16 THE COURT: I need you to stand right
17 there.

18 Yes, sir, tell me your name and juror
19 number.

20 JUROR NO. 110: Justin McKenzie, 110.

21 THE COURT: Okay. And what is your
22 situation, sir?

23 JUROR NO. 110: My capacity at work is
24 just full right now.

25 THE COURT: And is there a reason you

1 did not disclose that when the Court asked that
2 question?

3 JUROR NO. 110: That particular
4 question I wasn't aware was something to be brought
5 forward.

6 THE COURT: It sounds like you're
7 always going to have that problem; is that correct?

8 JUROR NO. 110: I'm extremely busy
9 right now.

10 THE COURT: When you say right now, I
11 need you to define that.

12 JUROR NO. 110: The next three to
13 six months.

14 THE COURT: I guess I'm just trying to
15 -- did you not understand the question or did you
16 not understand jury service was for the week or --

17 JUROR NO. 110: Exactly.

18 THE COURT: Okay. What was your
19 understanding?

20 JUROR NO. 110: My understanding was
21 that whenever you asked those questions, I wasn't
22 under the impression that work capacity was to be a
23 part of those questions or part of that.

24 THE COURT: And you are an engineer at
25 Volvo; is that correct?

1 JUROR NO. 110: Correct.

2 THE COURT: Sounds like you will always
3 have that problem. I can't excuse you on that
4 basis, and I don't know that I would be able to
5 excuse you at this point because I've sworn the
6 panel.

7 I asked very specific questions that
8 were designed to elicit what you just indicated,
9 and you did not stand in response to them.

10 JUROR NO. 110: Understood.

11 THE COURT: So I will have to discuss
12 with -- because now we're in a bit of a precarious
13 situation with numbers, because there are certain
14 numbers required to accomplish what we need to
15 accomplish.

16 So if you would stand outside the door
17 with the bailiff, and please don't discuss anything
18 that you've discussed with the Court with your
19 fellow panel members.

20 (Juror out, 1:15 p.m.)

21 THE COURT: I'm inclined to require him
22 to remain. I think that I asked him very specific
23 questions designed to elicit work load and
24 otherwise. I'm going to try to be as articulate as
25 I can, because I'm a little leery.

1 My sense based on body language is that
2 he just doesn't want to be bothered this week, or
3 any other week, but I don't think that's a
4 sufficient reason to excuse him from panel.

5 Everybody is busy, everybody has work,
6 and I think he's always going to be busy. Volvo
7 just opened. They're always to be -- I don't know
8 there will ever be a convenient time. It has also
9 been my experience that once jurors are required to
10 honor their commitment and oath that they rise to
11 the level of doing what is required.

12 So while he may be reticent at this
13 point, I think he's going to do what he's required
14 to do.

15 Is there any exceptions to requiring
16 the juror to remain? From the State? Or not
17 excusing him I think is a better way of putting it.

18 MS. SZYMCZYNSKA-SAS: None from the
19 State.

20 THE COURT: From the defense?

21 MS. NORRIS: No, Your Honor.

22 (Juror No. 110 in, 1:18 p.m.)

23 THE COURT: Mr. McKenzie, while I'm
24 empathetic regarding your work obligation, under
25 the statute there is -- I guess there is no wiggle

1 room at this point for me to excuse you from the
2 panel.

3 If any emergent matters come up at
4 work, please make us aware of it and we will do all
5 that we can to accommodate you.

6 JUROR NO. 110: Okay. Thank you.

7 (Juror No. 110 out, 1:20 p.m.)

8 THE COURT: Any exceptions from the
9 State?

10 MS. SZYMCHYNSKA-SAS: No, Your Honor.

11 THE COURT: From the defense?

12 MS. NORRIS: No, Your Honor.

13 THE COURT: Ms. Calvar, you may
14 proceed. And please speak up so the court reporter
15 can take down everything that's being said.

16 MS. CALVAR: As you know, Your Honor,
17 Mr. Nolen moves to sever the charge of threatening
18 a public official.

19 THE COURT REPORTER: I can't hear you

20 --

21 MS. CALVAR: Mr. Nolen moves to sever
22 this charge of threatening a public official from
23 the other pending charges filed against him. The
24 charge of threatening a public official is based on
25 an isolated statement to law enforcement which

1 occurred after the commission of the other charges.

2 And those other charges are three
3 counts of murder, one count of attempted murder,
4 and possession of a weapon, which all took place at
5 the home of one of the decedents, Mr. Lance Kenyon.

6 The statement occurred after law
7 enforcement responded to Mr. Kenyon's home. After
8 law enforcement detained, arrested, and handcuffed
9 Mr. Nolen, placed him in the back seat of a police
10 car and then transported him to the detention
11 center.

12 It was only then at the conclusion of
13 that transport did he make the statement, I'm going
14 to shoot you in the head, which is the basis of
15 that charge.

16 In determining whether severance is
17 appropriate here, there are four factors to
18 consider, all of which establish that severance is
19 appropriate here.

20 The first factor, whether the charges
21 do arise out of a single chain of circumstances.
22 Here they do not.

23 The charge of threatening a public
24 official does not arise from a single uninterrupted
25 crime spree. As I just mentioned, the statement

1 made by Mr. Nolen took place after he had been
2 arrested, placed in police custody, and then
3 removed from the scene.

4 The involvement and interference from
5 law enforcement established that this charge arises
6 from separate and distinct circumstances. In fact,
7 the statement made by Mr. Nolen was solely in the
8 presence of law enforcement.

9 None of the officers were victims of
10 the other crimes, and none of the alleged victims
11 of the other charges observed Mr. Nolen making this
12 statement, which is the basis of the charge of
13 threatening a public official. Because, again, he
14 had been removed from the scene.

15 The contents itself of the statement
16 has nothing to do with the other pending charges
17 against Mr. Nolen.

18 The second factor, whether the charges
19 arise are of the same general nature. Courts
20 usually in determining whether charges are of the
21 general nature, they look to see if the charges are
22 interconnected.

23 Here the disconnect between the charge
24 of threatening a public official and the other
25 charges is clear; the intervening presence of law

1 enforcement and the removal of Mr. Nolen from the
2 scene establishes a disconnection.

3 The third factor, whether the charges
4 need to be proved by the same evidence. They do
5 not. The charge of threatening a public official
6 involved a different time period, a different
7 setting and even a different alleged victim. The
8 evidence here just does not overlap.

9 And the fourth and final factor is
10 whether defendant -- is whether Mr. Nolen's rights
11 will be jeopardized by trying the offenses
12 together. The prejudice here is pretty apparent.
13 Mr. Nolen's statement if introduced would only be
14 relevant to the charge of threatening a public
15 official. It would not be relevant to the other
16 charges against him.

17 And for these reasons severance is
18 appropriate.

19 THE COURT: Would the State like to
20 respond?

21 MS. SZYMCHYNSKA-SAS: Yes, Your Honor.

22 THE COURT: You may proceed.

23 MS. SZYMCHYNSKA-SAS: Your Honor, the
24 case that the defense is referencing in their
25 motion to sever deals with totally two different

1 allegations. It deals with two crimes of forgery
2 alleged to have happened in February and May of
3 1980.

4 Your Honor, I would bring the Court's
5 attention to the case of State versus Carter 324
6 S.C. 383 --

7 THE COURT: I'm sorry, say that one
8 more time.

9 MS. SZYMCZYNSKA-SAS: State versus
10 Carter, 324 S.C. 383, Court of Appeals 1996. Your
11 Honor, in that case the defendant was not entitled
12 to severance of charges and that specific charge
13 was actually threatening the life of a public
14 official.

15 Law enforcement was investigating that
16 case, an armed robbery where the defendant entered
17 a shop, held a knife, demanded money, and then ran
18 away. At some point law enforcement responded to
19 the scene and they were able to apprehend him.
20 During the apprehension, he threatened one of the
21 officers.

22 Your Honor, the facts in this case are
23 a little bit different; however, we are -- through
24 the testimony of the witnesses, we would call the
25 same witnesses to testify during these charges as

1 well as the threatening life of the public
2 official. So the testimony for the murder and
3 attempted murder, we would have to call the same
4 officers to testify.

5 Officer McClellan, who is the victim of
6 the threatening the life of a public official, was
7 on the scene. He was one of the K9s involved and
8 he also was one of the officers who followed the
9 defendant from the Macio Road location to the
10 Berkeley County Jail.

11 The defendant was arrested and placed
12 in custody shortly after 2:00. He was placed in
13 the back of the patrol car, after which time he was
14 transported to Berkeley County Jail by the
15 officers. It's not until they pulled into the bay
16 that he became upset that he was not being let out
17 and threatened to shoot the officer in the head.

18 Your Honor, the State would argue that
19 the offenses are similar in nature. He's
20 threatening to shoot the officer in the head after
21 just leaving a crime scene where three other
22 individuals were shot, and they were shot in the
23 head.

24 Your Honor, the other thing the State
25 would argue is that it shows the defendant's state

1 of mind. He certainly -- and it's relevant also
2 because -- not only to the state of mind, but also
3 to state being able to present the case that's not
4 fragmented under res gestae theory.

5 The officers -- the offenses are close
6 in time, Your Honor. It's not even two hours
7 before the defendant is placed into custody and
8 transported to the Berkeley County Jail.

9 Your Honor -- I think the whole
10 recording, Your Honor, if admitted by the Court
11 will show the defendant's state of mind from when
12 he was transported to the jail and what occurred
13 when he showed up at the jail. For those reasons,
14 Your Honor, we would ask that the State does not
15 sever the threatening the life of the public
16 official charge.

17 THE COURT: Any response from the
18 defense?

19 MS. CALVAR: Yes. While Ms. Sas
20 responded to -- identified one of the cases that
21 was cited in the defense motion, there are two
22 other cases that are pretty on point. One of them
23 is State versus Smith, 352 S.C. 342, and it was
24 Court of Appeals, South Carolina. Sorry, that was
25 the wrong case.

1 It is 322 S.C. 107, Supreme Court of
2 South Carolina, 1996. And in that case, the
3 Supreme Court found that it was an error to charge
4 the defendant of two offenses that occurred on the
5 same day. The first one was assault and battery of
6 a high and aggravated nature of a child, and the
7 second was a homicide by child abuse.

8 Both offenses had two different
9 victims. Again, they occurred on the same day and
10 the Court found that was improper.

11 It's unrelated to the two counts of
12 forgery that Ms. Sas mentioned in the State versus
13 Tate case. You know, it's still not been
14 established how these offenses rise out of the
15 single chain of circumstances. Again, he was
16 removed from the scene and --

17 THE COURT: How do you isolate the two?
18 Isn't it really a continuum of events? How is it
19 any different than when you arrest somebody and
20 them -- well, they resist arrest and then they get
21 in the officer's car and cuss the officer out and
22 threaten his life. What is the difference? Isn't
23 it sort of the same thing analogous factually?

24 It was not like he was arrested for
25 this separately and then told the police officer

1 what he intended to do. It's my understanding, and
2 please correct me if I'm inaccurate, because I'm a
3 little confused by the way you both presented what
4 happened, and it might just be it's a little past
5 lunch and I'm hungry and maybe I'm missing
6 something.

7 As I understand it, these incidents
8 happened, the police were called, they arrived,
9 certain things transpired, he was taken into
10 custody, and while on his way and being transported
11 is when he made these statements to the officer.

12 Is that how it transpired, or am I
13 incorrect?

14 MS. CALVAR: That is accurate.

15 THE COURT: And so tell me how it would
16 make sense to try it separately without making
17 reference as to how he came into custody? Would
18 that make sense? How else would you explain how he
19 came into custody without potentially prejudicing
20 his rights?

21 MS. CALVAR: Well, first of all, the
22 statement happens at the very end of the transport.

23 THE COURT: I don't know if that makes
24 a difference. It's all --

25 MS. CALVAR: Well, how he came into

1 custody is came into custody when he arrived on the
2 scene. He had been transported and he was removed
3 from the scene. I understand that the State wants
4 to put in this -- his state of mind.

5 There's a whole video that, you know,
6 there are other statements that Mr. Nolen had made
7 that don't necessarily refer to that statement that
8 is the basis of the charge. We're talking about
9 the end of the transport.

10 THE COURT: I don't think that it
11 matters whether it happened at the end or the
12 beginning. How long of a time are we talking about
13 from when he was arrested and when he got to the
14 detention center, or from when these incidents are
15 alleged to have taken place and when he arrived at
16 the detention center? What sort of a time frame
17 are we looking at? That was not made clear to me.

18 MS. CALVAR: I would have to check my
19 notes. I don't want to misrepresent. Can I check
20 my notes for clarification?

21 THE COURT: Sure.

22 MS. CALVAR: He was arrested, placed in
23 the police car, and -- at around 1:59 a.m. And he
24 sort of sat in the police car on the scene for a
25 good period of time, and it wasn't until an hour

1 later he was transported. So there is a point
2 where he was sitting there.

3 THE COURT: That's not unusual. I
4 still need to know the time frame. I think to make
5 a decision in an isolated way would be
6 inappropriate. I don't know how long it took. I
7 don't know when this was alleged to have happened.
8 I don't know when he was arrested. I don't know
9 when he was actually -- the time frame he was being
10 transported. All of that is germane to my
11 decision.

12 If there's some videos I need, I need
13 them. I also need the Jackson v. Denno video to
14 watch them in advance. If you have the originals,
15 it would be helpful if I could have those so I can
16 watch them. I think for me to make a decision
17 without watching them would not be prudent.

18 MS. SZYMCZYNSKA-SAS: Your Honor, if I
19 may, I have the videos I can provide to the Court.
20 Your Honor, the first video, the first call is
21 dispatched about 1:50.

22 THE COURT: A.m. or p.m.?

23 MS. SZYMCZYNSKA-SAS: A.m., Your Honor,
24 on the 7th. Your Honor, he is placed in the car, I
25 believe, about 2:00 in the morning. The first

1 video on the scene is about 23 minutes long -- I
2 believe, it's 23, 22; and the second video which
3 comes on and takes him to the jail is 49:08 minutes
4 long, but I believe some portion of it is when they
5 arrive at the jail and the video keeps running for
6 a few minutes.

7 THE COURT: As I understand it, the
8 alleged threat was made prior to arriving at the
9 jail.

10 MS. SZYMCZYNSKA-SAS: Yes. When the
11 police officers pulled into the bay, they were
12 waiting for the door to close. And then they took
13 Mr. Nolen out of the car and escorted him inside
14 the jail, but the video kept on going.

15 And I believe, Your Honor, it's about
16 -- and I'm just estimating, about ten minutes
17 possibly after he makes the threat that the video
18 still keeps continuing to record.

19 THE COURT: You're not seeking to
20 introduce anything after the threat as I understand
21 it.

22 MS. SZYMCZYNSKA-SAS: No, Your Honor.
23 And there is no other video other than the recorded
24 statement that afternoon with Detective Elrod that
25 we would seek to introduce.

1 THE COURT: Do I need anything further
2 in terms of argument, Ms. Calvar?

3 MS. CALVAR: No. The only factor I
4 would refer to the Court, again, which is discussed
5 in State versus Smith, is the prejudice prong here.
6 That statement here would prejudice and probably
7 have the jury rely on that -- that evidence when
8 referring and making a decision after the other
9 charges filed against him.

10 THE COURT: Why is it prejudicial?

11 MS. CALVAR: Well, the statement, I'm
12 going to shoot you in the head, when there are
13 three charges of murder and attempted murder, you
14 know.

15 THE COURT: He admits that he shot
16 them, correct? He just said it was self-defense,
17 right?

18 MS. NORRIS: That's correct, Your
19 Honor.

20 THE COURT: Uh-huh. So it really isn't
21 an issue that he committed the act. The issue is
22 the provocation or the motivation, correct?

23 MS. CALVAR: Correct, Your Honor.

24 THE COURT: Yeah. I'm going to watch
25 the video and then I'll make a decision. Anything

1 else further from the State?

2 MS. SZYMCZYNSKA-SAS: No, Your Honor.

3 THE COURT: All right. If you all
4 could get those videos to me, that would be
5 helpful. Once I get those, then I'll let you know
6 how long we'll be breaking for lunch.

7 (A recess transpired.)

8 THE COURT: State ready to proceed?

9 MS. SZYMCZYNSKA-SAS: Yes, Your Honor.

10 THE COURT: Defense ready to proceed?

11 MS. NORRIS: Yes.

12 THE COURT: And I apologize, guys, I
13 was having some technical difficulties.

14 Apparently, I don't know whether I need to download
15 a program -- either way I had to watch them on a
16 different machine, so I appreciate your patience.

17 State may proceed.

18 MS. SZYMCZYNSKA-SAS: Your Honor, the
19 State is ready to present testimony of the officers
20 who were on the scene regarding a variety of
21 statements. Would Your Honor like to go in any
22 particular order?

23 THE COURT: No.

24 MS. SZYMCZYNSKA-SAS: The State calls
25 Zachary Wright.

WRIGHT - DIRECT EXAM BY MS. SAS

1 THE COURT: These disks have other
2 things on them, and there should only be the things
3 that you tend to introduce. So you are going to
4 need to produce redacted copies of only the videos
5 that you are going to be introduced.

6 MS. SZYMCZYNSKA-SAS: And we will do
7 that, Your Honor.

8 THE COURT: Okay.

9 (DFT. 2 EXH. 1, DVD, was marked for
10 identification.)

11 ZACHARY WRIGHT,
12 being first duly sworn, testified as follows:

13 THE CLERK: Please have a seat. State
14 your full name, and spell your last for the record.

15 THE WITNESS: Deputy Zachary Wright,
16 W-R-I-G-H-T.

17 THE COURT: You may proceed.

18 MS. SZYMCZYNSKA-SAS: Thank you, Your
19 Honor.

20 THE COURT: You're welcome.

21 DIRECT EXAMINATION

22 BY MS. SZYMCZYNSKA-SAS:

23 Q. Where are you currently employed?

24 A. Berkeley County Sheriff's Office.

25 Q. And how long have you been employed

WRIGHT - DIRECT EXAM BY MS. SAS

1 there?

2 A. Since 2013.

3 Q. Okay. What did you do before?

4 A. I used to be a patrol deputy, and
5 before law enforcement I was in the military.

6 Q. And then after the military?

7 A. I joined with the sheriff's office with
8 a few small jobs in between.

9 Q. What is your current position and that
10 responsibility?

11 A. I'm attached to the K9 unit.

12 Q. Okay. And were you employed with the
13 Berkeley County Sheriff's Office in the same
14 capacity on October 7, 2016?

15 A. Yes, I was.

16 Q. Okay. And how did you become involved
17 in this case?

18 A. I responded when the call came out, and
19 my director -- my direct involvement with the case
20 was I'm responsible for the DVD which recorded part
21 of the defendant's utterances while he was
22 detained.

23 Q. So what did you do after arriving on
24 the scene?

25 A. I parked my marked patrol vehicle which

WRIGHT - DIRECT EXAM BY MS. SAS

1 had a DVD camera in it. I parked it behind
2 Corporal Green's Tahoe where the defendant was
3 detained. I did have a video camera that was
4 rolling. I continued the recording on that DVD,
5 and I placed my body mic inside Corporal Green's
6 vehicle.

7 Q. Okay. And who instructed you to place
8 the microphone in the car?

9 A. No one had instructed me to do that.

10 Q. Okay. And was the interaction and
11 statements that the defendant made in the patrol
12 car video and audio recorded then?

13 A. Yes, ma'am.

14 Q. Okay. And was that recording provided
15 to evidence?

16 A. Yes, ma'am.

17 Q. And how was it provided?

18 A. Through a chain of custody. I
19 retrieved it from my vehicle. It has a small box
20 up in the ceiling of the vehicle. I opened it up,
21 retrieved the DVD, uploaded it to our software
22 system and burned copies, submitted them to
23 forensics via a chain of custody.

24 Q. So would you have any ability to delete
25 any portion of the recording or change it in any

WRIGHT - DIRECT EXAM BY MS. SAS

1 way?

2 A. I do not, no.

3 Q. Is that why the CD contains multiple
4 videos?

5 A. Yes.

6 MS. SZYMCZYNSKA-SAS: Okay. Permission
7 to approach the witness, Your Honor?

8 THE COURT: You may.

9 BY MS. SZYMCZYNSKA-SAS:

10 Q. I'm going to show you what was
11 premarked initially as State's Exhibit 73. Do you
12 recognize what that is?

13 A. Yes, ma'am, I do.

14 Q. And what is it?

15 A. It's the DVD I turned into evidence.

16 Q. And how do you know that's the DVD from
17 October 7, 2016 from your car?

18 A. A few indicators; one is the case
19 number is from 2016 in the month of October, and
20 then I did review this DVD on 8/23/2018.

21 Q. Okay. And how do you know you reviewed
22 it?

23 A. I initialed it and dated it.

24 Q. Okay. And is that an accurate and full
25 recording of -- from your microphone on October 7,

WRIGHT - DIRECT EXAM BY MS. SAS

1 2016?

2 A. Yes.

3 MS. SZYMCZYNSKA-SAS: Okay. Your
4 Honor, at this time we would like to play Court's
5 Exhibit Number 1, for the purpose of this hearing?

6 THE COURT: I'm sorry, you would like
7 to do what?

8 MS. SZYMCZYNSKA-SAS: We would like
9 Court's Exhibit Number 1 to be a part of the
10 record.

11 THE COURT: It already is if it's
12 marked as a Court's Exhibit. But you will need to
13 substitute the redacted version if I grant your
14 motion.

15 MS. SZYMCZYNSKA-SAS: And, Your Honor,
16 we would do that if there would be any possible
17 redactions, we would then produce that video on a
18 separate CD.

19 THE COURT: Okay.

20 MS. SZYMCZYNSKA-SAS: No further
21 questions for this witness. Please answer any
22 questions that Ms. Norris may have.

23 THE COURT: Any questions for the
24 witness?

25 MR. FARBER: No questions.

MCCLELLAN - DIRECT EXAM BY MS. SAS

1 THE COURT: Any objection to the
2 witness being excused for the purposes of these
3 proceedings, subject to recall. From the State?

4 MS. SZYMCZYNSKA-SAS: No, Your Honor.

5 THE COURT: From the defense.

6 MR. FARBER: No, Your Honor.

7 THE COURT: Sir, you're excused,
8 subject to being recalled.

9 THE WITNESS: Yes, ma'am.

10 THE COURT: Call your next witness.

11 MS. SZYMCZYNSKA-SAS: The State calls
12 Officer James McClellan.

13 (DFT. 1 EXH. 2, DVD, was marked for
14 identification.)

15 JAMES MCCLELLAN, III,
16 being first duly sworn, testified as follows:

17 THE CLERK: Please have a seat. State
18 your full name, and spell your last for the record.

19 THE WITNESS: James Brailsford
20 McClellan, III, M-C-C-L-E-L-L-A-N.

21 THE COURT: You may proceed.

22 DIRECT EXAMINATION

23 BY MS. SZYMCZYNSKA-SAS:

24 Q. Please tell the Court where are you
25 currently employed?

MCCLELLAN - DIRECT EXAM BY MS. SAS

1 A. The Dorchester County Career Technology
2 Center.

3 Q. Okay. Where were you previously
4 employed?

5 A. Walmart.

6 Q. What about before Walmart?

7 A. Summerville Police Department.

8 Q. Before Summerville?

9 A. Berkeley County Sheriff's Office.

10 Q. Okay. How long were you with Berkeley
11 County Sheriff's Office?

12 A. A year, just over a year.

13 Q. Okay. And what was your position at
14 that time?

15 A. I was a K9 officer.

16 Q. So you were employed with Berkeley
17 County Sheriff's Office October 7, 2016?

18 A. Yes, ma'am.

19 Q. Okay. And were you involved in this
20 case that brings us here today?

21 A. Yes.

22 Q. Okay. And did -- how did you arrive on
23 the scene?

24 A. The call came out over dispatch and I
25 responded. Me not knowing the area and still being

MCCLELLAN - DIRECT EXAM BY MS. SAS

1 semi-new, I followed another deputy. I cannot tell
2 you who it was. We arrived at Macio Road.

3 Q. And were you alone in your patrol car?

4 A. Me and my K9.

5 Q. Is your patrol car equipped with video
6 and audio recording?

7 A. Yes, ma'am, it was.

8 Q. Okay. And at some point when you
9 arrived on the scene, did you have opportunity to
10 remove any of the recording equipment from your car
11 and place it anywhere else?

12 A. Yes. I took my body mic that we wear
13 on our vests, and I placed it in Corporal
14 Corinthian Green's police vehicle.

15 Q. Okay. And can you tell the Court at
16 which point that night that was?

17 A. Ma'am, I couldn't tell you how long it
18 had been. It had been after I had ran the track
19 and switched out with Corporal Wright. And when I
20 came back to the incident location, I parked my
21 cruiser in front of Corporal Green's and then took
22 my body mic and placed it in his passenger -- area
23 between the passenger seat and the cage in the
24 cruiser.

25 Q. At some point did you remove the mic

MCCLELLAN - DIRECT EXAM BY MS. SAS

1 from the car?

2 A. The mic was removed after we made it to
3 the Berkeley County Detention Center. I believe it
4 was after we had walked the suspect inside.

5 Q. And I'm going to show you what was
6 premarked as Court's 2. Do you recognize that CD?

7 A. Yes, ma'am.

8 Q. Can you tell me what it is?

9 A. It is the DVD from the recording system
10 inside my car.

11 Q. Okay. And how do you know that?

12 A. Because it's the same ones that I
13 always used to put in and take out.

14 Q. Is there anything else indicating it --

15 A. The case numbers -- my handwriting, the
16 case number and in-car video 1535. That's my
17 handwriting.

18 Q. Did you have a chance to review that
19 video?

20 A. I believe I reviewed it that night, but
21 I don't remember.

22 Q. Would that video that you -- how would
23 you have pulled it from the car?

24 A. When I would have gotten to where -- I
25 would have gotten back to the detective division, I

MCCLELLAN - DIRECT EXAM BY MS. SAS

1 hit stop, and then made sure to download it to the
2 DVD, pulled it out, placed my information on it and
3 then turned it over.

4 Q. Would you have any ability to delete
5 any footage off of it or add any footage?

6 A. No, ma'am, I didn't have the pass codes
7 for that.

8 Q. So what would you have done with the
9 video after you pulled it?

10 A. Placed it into evidence.

11 Q. Okay. And do you believe that the
12 video contained on this CD from the scene is the
13 accurate video of the statement of the defendant
14 that he made that night?

15 A. Yes.

16 Q. Okay. And were you present on the
17 scene and had any contact with the defendant that
18 night?

19 A. On the scene, I do not remember
20 speaking to the defendant. I had seen him.

21 Q. What about the jail?

22 A. The jail? Yes, ma'am. When we pulled
23 up to the jail is when he threatened my life,
24 ma'am.

25 Q. Okay. And when you say he threatened

MCCLELLAN - DIRECT EXAM BY MS. SAS

1 your life, can you tell the Court exactly what he
2 said?

3 A. He threatened to -- in my report it
4 says, and I want to make sure that I get the right
5 wording. If I didn't open the door he would shoot
6 me in the -- excuse me, Your Honor -- the fucking
7 head.

8 Q. And when did he make that statement?

9 A. While we were waiting to get my people
10 to escort him inside of the detention center.
11 While we were in the sally port area.

12 MS. SZYMCZYNSKA-SAS: No further
13 questions, Your Honor, for this witness.

14 THE COURT: Any questions for the
15 witness?

16 MR. FARBER: No questions, Your Honor.

17 THE COURT: Any objection to the
18 witness being excused, subject to recall? From the
19 State?

20 MS. SZYMCZYNSKA-SAS: Not from the
21 State.

22 THE COURT: From the defense?

23 MR. FARBER: No, Your Honor.

24 THE COURT: Sir, you're excused,
25 subject to being recalled.

GEIGER - DIRECT EXAM BY MS. SAS

1 You can leave those there. We will
2 take care of them.

3 Call your next witness.

4 MS. SZYMCZYNSKA-SAS: The State calls
5 Captain James Geiger.

6 JAMES GEIGER,

7 being first duly sworn, testified as follows:

8 THE CLERK: Please have a seat, state
9 your full name for the record, and spell your last
10 name.

11 THE WITNESS: James Geiger,
12 G-E-I-G-E-R.

13 THE COURT: You may proceed.

14 MS. SZYMCZYNSKA-SAS: Thank you, Your
15 Honor.

16 DIRECT EXAMINATION

17 BY MS. SZYMCZYNSKA-SAS:

18 Q. Captain, where are you currently
19 employed?

20 A. Berkeley County Sheriff's Office.

21 Q. How long have you been with the
22 sheriff's office?

23 A. Since '97.

24 Q. Okay. What did you do prior to working
25 with them?

GEIGER - DIRECT EXAM BY MS. SAS

1 A. I worked at Moncks Corner Police
2 Department.

3 Q. And what is your current job and
4 responsibilities at the sheriff's office?

5 A. Captain of patrol division, just
6 monitor and administrate the patrol division, K9
7 and Target 0 for the sheriff's office.

8 Q. And were you employed with Berkeley
9 County Sheriff's Office in the same capacity back
10 on October 7, 2016?

11 A. No, ma'am; I was a patrol lieutenant at
12 the time.

13 Q. Okay. And did you respond to 228 Macio
14 Road in reference to a shooting October 7, 2016?

15 A. Yes.

16 Q. Okay. And did you have an occasion to
17 come into contact with the defendant, Robert Nolen?

18 A. Yes, sir.

19 Q. Okay. And where did you come in
20 contact with him?

21 A. At the rear of the house.

22 Q. Okay. And what did you observe in the
23 back of the house?

24 A. When I came around the house, I
25 observed Mr. Nolen performing CPR and screaming

GEIGER - DIRECT EXAM BY MS. SAS

1 over the top of one of the victims.

2 THE COURT: I'm sorry, sir. Can you
3 pull that microphone to you? You sound a little
4 muffled.

5 If you could repeat that, I appreciate
6 it.

7 THE WITNESS: I came around the house
8 and I heard yelling and screaming at the backyard.
9 When I came around the back of the house, I
10 observed Mr. Nolen over one of the victims
11 performing CPR and yelling and screaming.

12 I went past him and located two more
13 victims. And he kept yelling at me to come back
14 and do CPR on this guy. And I asked him where is
15 the suspect. And his wording to me was, I'm the
16 fucking suspect.

17 BY MS. SZYMCZYNSKA-SAS:

18 Q. Okay. And what happened at that point?

19 A. We detained him and placed him in the
20 back of the patrol vehicle.

21 Q. Did you have any further interaction
22 with the defendant?

23 A. Yes, ma'am. We were still looking for
24 one more potential victim. Dispatcher had advised
25 there were four people, and the original caller was

GEIGER - DIRECT EXAM BY MS. SAS

1 still unlocated at this point and I was trying to
2 find out where this last person may have been. I
3 was concerned about where he might have been, if he
4 was injured or shot also.

5 Q. Did you know at that point that that
6 person was a victim?

7 A. The last person --

8 Q. Yes.

9 A. -- we were looking for? I didn't know.
10 I was -- I had been informed by dispatcher there
11 was one person unaccounted for.

12 Q. So what did you do after? Did you talk
13 to the defendant?

14 A. Yes, I did.

15 Q. Do you recall what questions you would
16 have asked him?

17 A. I was trying to calm him down. He was
18 extremely agitated at that point.

19 Q. Would your interaction with the
20 defendant have been recorded on Officer Wright's
21 video?

22 A. Yes, ma'am, I believe so.

23 Q. Okay. And do you remember why you were
24 asking the defendant questions in the back of the
25 patrol car?

GEIGER - DIRECT EXAM BY MS. SAS

1 A. I was trying to calm him down, trying
2 to figure out where the last guy was and see if I
3 had another victim or if he was somewhere else.

4 Q. Okay. And describe the scene at that
5 time when you arrived, when the defendant was in
6 the back of the patrol car.

7 A. At that point, we had a lot of officers
8 on scene. It was during a hurricane and we had
9 double shifts working, so there was a bunch people
10 out there, detectives, patrol officers out there.
11 It was a large number of officers on seen at that
12 time.

13 Q. Okay. And is this a rural area or --

14 A. Rural, yes, ma'am.

15 Q. Okay. Are there some residences in the
16 area?

17 A. Yes.

18 Q. Okay. And what did you know at that
19 point for sure from your observation of the crime
20 scene in the back?

21 A. We had three victims, two of which were
22 deceased. One I wasn't sure if he was still alive
23 or dead.

24 Q. Okay. You mentioned initially when you
25 responded to the back of the house you saw the

GEIGER - DIRECT EXAM BY MS. SAS

1 defendant performing CPR, correct?

2 A. Yes, ma'am.

3 Q. And when he made the statement to you
4 that he was suspect, was he in custody at that
5 point?

6 A. No.

7 Q. Was he cuffed?

8 A. At that point, yes, ma'am, we placed
9 him in handcuffs.

10 Q. After the statement?

11 A. Yes.

12 Q. But before statement was made, was he
13 detained?

14 A. No, ma'am. He was working on the guy
15 that had been shot. Wasn't sure who he was.

16 Q. So when you walked him to the car and
17 placed him in the patrol car, you're still trying
18 to figure out if he was telling the truth and he
19 was the suspect?

20 A. Trying to establish who he was. My
21 main concern at that point was I got another guy
22 unaccounted for. I have another potential victim
23 out here. I didn't know if I needed to be in the
24 woods looking for him.

25 According to dispatch, he had fled the

CHESNUT - DIRECT EXAM BY MS. SAS

1 scene. I didn't know if I had another injured
2 person out there. That was my minor concern at
3 that time.

4 MS. SZYMCZYNSKA-SAS: No additional
5 questions for this witness.

6 THE COURT: Any questions for the
7 witness?

8 MR. FARBER: No, Your Honor.

9 THE COURT: Any exception to the
10 witness being excused, subject to recall? From the
11 State?

12 MS. SZYMCZYNSKA-SAS: None from the
13 State.

14 THE COURT: From the defense?

15 MR. FARBER: No, Your Honor.

16 THE COURT: Sir, you're excused,
17 subject to being recalled.

18 THE WITNESS: Thank you.

19 THE COURT: Call your next witness.

20 MS. SZYMCZYNSKA-SAS: State calls
21 Kirsten Chesnut.

22 KIRSTEN CHESNUT,
23 being first duly sworn, testified as follows:

24 THE CLERK: Please have a state. State
25 your full name, and spell your last for the record.

CHESNUT - DIRECT EXAM BY MS. SAS

1 THE WITNESS: Kirsten Leigh Chesnut,
2 C-H-E-S-N-U-T.

3 THE COURT: You may proceed.

4 DIRECT EXAMINATION

5 BY MS. SZYMCZYNSKA-SAS:

6 Q. Where are you currently employed?

7 A. Berkeley County Government.

8 Q. What's your position with Berkeley
9 County Government?

10 A. Forensic tech.

11 Q. You're employed with the Berkeley
12 County Sheriff's Office?

13 A. Yes.

14 Q. How long have you been employed there?

15 A. Three years.

16 Q. And what are your job responsibilities?

17 A. Process crime scenes, evidence, log in
18 evidence, transport evidence to SLED.

19 Q. And were you employed with Berkeley
20 County Sheriff's Office in the same capacity
21 October 7, 2016?

22 A. Yes.

23 Q. Okay. And how did you become involved
24 in this case?

25 A. I was the on-call forensic tech for

CHESNUT - DIRECT EXAM BY MS. SAS

1 that night.

2 Q. Do you recall the time you arrived on
3 the scene approximately?

4 A. I don't recall.

5 Q. Okay. Would it help you to look at
6 your report to refresh your recollection?

7 A. Yes.

8 MS. SZYMCZYNSKA-SAS: Your Honor,
9 permission to approach the witness?

10 THE COURT: Yes.

11 THE WITNESS: I arrived on scene
12 2:47 a.m.

13 BY MS. SZYMCZYNSKA-SAS:

14 Q. And what did you do when you arrived on
15 the scene?

16 A. I spoke to Deputy Babson and he advised
17 me of the scene.

18 Q. And did you come in contact with the
19 defendant at some point?

20 A. Yes.

21 Q. Okay. Why was that?

22 A. I conducted a gunshot residue kit on
23 the defendant.

24 Q. Okay. And why was that?

25 A. Any time there's a shooting, we do a

CHESNUT - DIRECT EXAM BY MS. SAS

1 gunshot residue kit on any person involved.

2 Q. And did the defendant make any
3 statements to you at that time or any statements
4 that you overheard?

5 A. Yes.

6 Q. Okay. What statements did he make?

7 A. Mr. Nolen asked who all is dead. Is
8 Lance dead? And one of the deputies responded by
9 saying that Lance was on his way to the hospital.
10 And I heard Mr. Nolen saying, well, that's good. I
11 didn't mean to shoot Lance.

12 Q. Did he make any other statements?

13 A. During the GSR kit, I was dabbing his
14 hands, he stated, you'll find all kinds of powders
15 on me. I shot all of them motherfuckers.

16 Q. So explain during the GSR kits, you
17 said when you were putting powder on him, what else
18 goes into the GSR kit?

19 A. There's no powder. There are vials for
20 the left and the right hand. You open them and you
21 just dab each of the hands, the palm and the back
22 side.

23 Q. Okay. And so he made the second
24 statement that you just testified to that he shot
25 all of them after you dabbed his hands?

CHESNUT - DIRECT EXAM BY MS. SAS

1 A. In the process of me dabbing them,
2 while I was doing it.

3 Q. Okay. Did you ask him any specific
4 questions?

5 A. Yes.

6 Q. Okay. What questions did you ask him?

7 A. I asked him his name, his date of
8 birth, his occupation, if he was left-handed or
9 right-handed, had he washed his hands since the
10 incident and his activities between the time of the
11 incident and then.

12 Q. Okay. Was someone assisting you with
13 the GSR and the questions?

14 A. Yes.

15 Q. Who was that?

16 A. Carl Herring, Deputy Carl Herring.

17 Q. Okay. When you conducted the GSR kit,
18 what do you do with the kits?

19 A. After it's conducted?

20 Q. Yes.

21 A. After it's conducted, it's sealed. We
22 secure it into the county-issued patrol vehicle
23 until we leave the scene.

24 Q. And where does it go from there?

25 A. It goes to our forensic building and we

CHESNUT - DIRECT EXAM BY MS. SAS

1 log it into our program and then we put it on the
2 shelf.

3 Q. And, ultimately, with the GSR kit on
4 Mr. Nolen, where did it end up finally?

5 A. It ended up in a homicide box labeled
6 with what it was with all the other evidence for
7 the case.

8 Q. Okay. Was it ever transported to SLED
9 for analysis?

10 A. Yes.

11 Q. The questions that you were asking
12 about with the GSR kit, what's the purpose of
13 those?

14 A. Those are questions that come inside
15 the GSR kit that we get from SLED, and those are
16 the questions that we ask with any kit that is
17 conducted.

18 Q. For the purposes of SLED or you?

19 A. It's for SLED.

20 MS. SZYMCZYNSKA-SAS: No further
21 questions for this witness.

22 THE COURT: Any questions for the
23 witness?

24 MR. FARBER: No questions, Your Honor.

25 THE COURT: Any objection to the

ELROD - DIRECT EXAM BY MS. SAS

1 witness being excused, subject to recall? From the
2 State?

3 MS. SZYMCZYNSKA-SAS: None from the
4 State.

5 THE COURT: From the defense?

6 MR. FARBER: No, Your Honor.

7 THE COURT: Ma'am, you're excused,
8 subject to being recalled.

9 THE WITNESS: Thank you.

10 THE COURT: Call your next witness.

11 MS. SZYMCZYNSKA-SAS: State calls Trey
12 Elrod.

13 (DFT. 2 EXH. 4, Miranda form, was
14 marked for identification.)

15 JAMES MURRAY ELROD, III,
16 being first duly sworn, testified as follows:

17 THE CLERK: Please have a seat. State
18 your full name for the record, and spell your last
19 name.

20 THE WITNESS: My name is James Murray
21 Elrod, III, E-L-R-O-D.

22 THE COURT: You may proceed.

23 DIRECT EXAMINATION

24 BY MS. SZYMCZYNSKA-SAS:

25 Q. Where are you currently employed?

ELROD - DIRECT EXAM BY MS. SAS

1 A. Currently employed with the South
2 Carolina Law Enforcement Division.

3 Q. Where were you employed on October 7,
4 2016?

5 A. I was employed as a detective at
6 Berkeley County Sheriff's Office.

7 Q. Okay. And did you have an occasion to
8 become involved in the case against Mr. Nolen?

9 A. Yes, ma'am.

10 Q. Did you have an opportunity to speak to
11 Mr. Nolen at some point?

12 A. Yes, ma'am.

13 Q. Okay. When was that?

14 A. It was later on the incident day of the
15 7th. Along with another detective, I conducted the
16 audio-recorded interview at the CID office.

17 Q. Do you recall at what time that was in
18 the day?

19 A. It was -- it was in the afternoon,
20 somewhere around 4:40. Somewhere along there,
21 4:30. I don't remember the time.

22 Q. Who was present with you at that time?

23 A. Detective Jared Phillips.

24 Q. Would it help you to look at the
25 reports prepared at that time to refresh your

ELROD - DIRECT EXAM BY MS. SAS

1 recollection as to the times?

2 A. Yes, ma'am.

3 Q. Okay. I'm going to show you Officer
4 Phillips' report as well as Court's Exhibit 4.

5 A. Yes.

6 Q. Can you tell me what Court's Exhibit 4
7 is?

8 A. Yes, ma'am. That is the Miranda
9 Advisement form for the Berkeley County Sheriff's
10 Office, which is -- just has the Miranda and also
11 the information for the interview.

12 Q. Are there any notes on that form made
13 by you?

14 A. Yes, ma'am. The admin notes on the
15 side give the date and time to start and ending of
16 the interview. The interview was 7 October 2016
17 and it was going to be at 4:27 in the afternoon.

18 Q. Okay. That's the beginning of the
19 interview?

20 A. Yes.

21 Q. And does the date on that form indicate
22 2017?

23 A. Yes, it does. It's wrong.

24 Q. Okay. Is the date on the recorded
25 interview different?

ELROD - DIRECT EXAM BY MS. SAS

1 A. Yes. It's 2016.

2 Q. Okay. I'm going to show you what was
3 premarked Court's 3. Can you tell me what that is?

4 A. It's a copy of the IO recording of this
5 gentleman.

6 Q. How do you know that's what it is?

7 A. I reviewed this on March 11th of this
8 year, and I signed this copy.

9 Q. So to go back again, what time did you
10 make contact with the defendant at the jail?

11 A. We made contact with him at 4:10 in the
12 afternoon on 7th of October 2016.

13 Q. Okay. And what was the purpose of that
14 contact?

15 A. We were sent over there to inquire if
16 he wanted to talk with investigators about the
17 incident.

18 Q. Who was with you?

19 A. Detective Jared Phillips.

20 Q. Did the defendant want to talk to you?

21 A. Yes, he did.

22 Q. And did you meet with him at the jail
23 or at the sheriff's office?

24 A. We had him transported over to the
25 sheriff's office to the video --

ELROD - DIRECT EXAM BY MS. SAS

1 audio/video-recorded room for interviews by a
2 transport unit.

3 Q. And what time did the audio/video of
4 the defendant's statement start?

5 A. The interview started at 4:27.

6 Q. Okay. What time did it end?

7 A. It ended at 6:28.

8 Q. Who was present at the questioning at
9 the sheriff's office?

10 A. Myself and Detective Phillips.

11 Q. Okay. Do you know what time,
12 approximately, the defendant was taken into custody
13 the night before? Or would have been the same day
14 earlier in the morning?

15 A. It would have been the same date
16 earlier in the morning. I don't remember the exact
17 time. I don't believe it's in this supplement. I
18 wasn't present when he was taken into custody. I
19 believe it was around 2:00 in the morning.

20 Q. Okay. Do you know if he was
21 intoxicated when he was taken into custody?

22 A. He was.

23 Q. And is that because as an officer who
24 was interviewing him, you would have opportunity to
25 talk to the other officers on the scene?

ELROD - DIRECT EXAM BY MS. SAS

1 A. Yes. I was informed of his condition
2 when he was taken into custody by officers that
3 were on-scene when they had to take him in.

4 Q. So when you interviewed him, how many
5 hours, approximately, later was it?

6 A. Approximately 14 hours.

7 Q. Okay. At the time of the interview,
8 did he appear to be under influence of any alcohol
9 or drugs to the extent that it would impair his
10 ability to understand your questions?

11 A. No, ma'am.

12 Q. Okay. And did he appear to have any
13 physical or mental disability that would have
14 impaired his ability to understand what you were
15 asking him?

16 A. No, ma'am.

17 Q. Okay. And did he ever ask for food or
18 water or a break?

19 A. He did ask for water. We provided him
20 with multiple bottles of water during the
21 interview. He did take, I believe, one bathroom
22 break during the interview.

23 Q. Did you promise him anything in return
24 for making a statement or to talk to you?

25 A. No.

ELROD - DIRECT EXAM BY MS. SAS

1 Q. Did you coerce him in any way to making
2 a statement?

3 A. No, ma'am.

4 Q. And, to the best of your knowledge, was
5 the statement that the defendant gave you that day
6 was freely and voluntarily given?

7 A. Yes, it was.

8 Q. Okay. And was the defendant detained?

9 A. Yes.

10 Q. Okay. Was he already under arrest?
11 Had he been served with the warrant?

12 A. He hadn't been served at the time of
13 the interview.

14 Q. Was he advised why you wanted to
15 question him?

16 A. We told him we wanted to talk to him
17 about an incident. We had not advised him of his
18 charges.

19 Q. Okay. Did you advise him of his
20 constitutional rights pursuant to Miranda?

21 A. Yes, ma'am.

22 Q. And at which point in the questioning
23 did you advise him?

24 A. Before we started the interview.

25 That's what this form was used for. We do that at

ELROD - DIRECT EXAM BY MS. SAS

1 the beginning right after we announce the date and
2 time before we start any questioning.

3 Q. So would you do it in writing and
4 verbally?

5 A. Yes, ma'am. What we do is, I would
6 read off these individual Miranda rights, and as I
7 read each one, the defendant would initial next to
8 each one and also verbally say whether they
9 understood or not.

10 And then at the end they have a
11 statement on here that says, I read this Miranda
12 form. My signature below represents my
13 understanding of the contents within, and they sign
14 that saying they understood everything overall.

15 And then also there's a statement on
16 here saying they wish to -- they understand their
17 rights and they do want to talk to us. And they
18 sign that as well. And then myself and Detective
19 Phillips signed as witnesses for that.

20 Q. And did the defendant sign that form?

21 A. He did. He signed it in both places.

22 Q. Did he date it as well?

23 A. He did not.

24 Q. Did you date it?

25 A. The date is on here by myself and

ELROD - DIRECT EXAM BY MS. SAS

1 Detective Phillips.

2 Q. Okay. Did the defendant's answers to
3 your questions appear to be rational or was
4 emotional to give you any concern as to his ability
5 to understand his warnings or waive his rights?

6 A. He appeared to be able to understand
7 what we were asking him.

8 Q. Okay. And did he respond when you
9 asked him whether he wanted an attorney?

10 A. In the beginning?

11 Q. Yes.

12 A. He did not ask for an attorney.

13 Q. Okay. And how did he acknowledge that
14 he didn't want -- that he wanted to talk to you
15 about an attorney?

16 A. I believe it was -- it was towards the
17 end of the interview he acknowledged that he wanted
18 to speak to an attorney. And at that time, we
19 ceased asking him questions.

20 Q. Initially, when you went over his
21 rights, did he at any point ask that he wanted to
22 speak to an attorney?

23 A. No, ma'am, not then.

24 Q. How did you know he wanted to talk to
25 you?

ELROD - DIRECT EXAM BY MS. SAS

1 A. At the end of this statement, there's
2 -- this form, there's a statement that we have
3 everyone read. It says, I hereby understand the
4 above rights and would like to speak to an
5 investigator at this time.

6 When he reads that out, we ask him if
7 he wants to speak to us. And he said yes verbally
8 and also signs that statement on the form.

9 Q. Okay. Then he would have made
10 statement to you and those were audio and
11 video-recorded?

12 A. Yes, ma'am, they would be on this
13 video.

14 Q. At any point during the interview, did
15 he stop answering questions; do you recall?

16 A. Yes. About the two-hour mark or so, he
17 acknowledged that he would like to speak to an
18 attorney. And at that time, we did not ask any
19 more questions.

20 Q. Okay. You mentioned your prior
21 experience. You are were currently with SLED?

22 A. Yes.

23 Q. What did you do when you were at the
24 Berkeley County Sheriff's Office?

25 A. Of course, when I first started there I

1 was a patrolman, and then I moved to their DUI
2 enforcement team within a couple of years of
3 working there. I attended numerous classes on DUI
4 detection and also on drug impairment, and I went
5 through multiple certifications to include the drug
6 recognition program.

7 And so I have experience from that
8 position recognizing impairment in drivers and
9 suspects in general.

10 MS. SZYMCZYNSKA-SAS: No further
11 questions for this witness, Your Honor.

12 THE COURT: Any questions for the
13 witness?

14 MR. FARBER: No questions.

15 THE COURT: Any objection to the
16 witness being excused, subject to recall? From the
17 State?

18 MS. SZYMCZYNSKA-SAS: None from the
19 State.

20 THE COURT: From the defense?

21 MR. FARBER: No, Your Honor.

22 THE COURT: Sir, you're excused,
23 subject to being recalled.

24 THE WITNESS: Thank you.

25 THE COURT: You're welcome.

1 State may proceed.

2 MS. SZYMCZYNSKA-SAS: The State has no
3 further witnesses for the purpose of admissibility
4 of defendant's statement.

5 THE COURT: Any witnesses?

6 MR. FARBER: No, Your Honor.

7 THE COURT: Be glad to hear any
8 argument.

9 Well, does the defense have any
10 exception to the statements that the State seeks to
11 introduce?

12 MR. FARBER: Yes, Your Honor. And why
13 don't we start with the statements that were
14 recorded on the scene. So with respect to those,
15 they were the product of custodial interrogation
16 because Mr. Nolen was in custody.

17 THE COURT: How was he in custody?

18 MR. FARBER: He was arrested,
19 handcuffed and in custody.

20 THE COURT: Which -- I guess I'm
21 confused. Which statement are you referring to?

22 MR. FARBER: The statements at the
23 scene when he was in the backseat.

24 THE COURT: Well, there were several
25 statements he made at the scene.

1 MR. FARBER: The recorded statement
2 that is on --

3 THE COURT: Maybe a better way to do
4 this, the State needs to tell me each statement
5 they seek to introduce, and we will take them one
6 at a time. That might be the more organized way to
7 do it.

8 MS. SZYMCZYNSKA-SAS: Absolutely, Your
9 Honor.

10 THE COURT: You may proceed.

11 MS. SZYMCZYNSKA-SAS: Your Honor, the
12 State will seek to introduce the testimony of
13 multiple officers, one of them the Court has heard
14 on the stand, which was Officer Geiger. When law
15 enforcement arrived and approached the back of the
16 residence, they saw the defendant conducting the CP
17 -- what appeared to be CPR on the deceased victim,
18 Lance Kenyon.

19 At that point, they were trying to
20 locate a suspect. And they inquired of the
21 defendant, where is the suspect, to which he
22 replied --

23 THE COURT: I'm the bleeping suspect.

24 MS. SZYMCZYNSKA-SAS: Yes, Your Honor.

25 So that would be a statement that would

1 come in, I hope, through some of the officers. I
2 believe that some of the officers would also
3 testify that initially when they asked him where
4 the suspect was, he pointed to someone running in
5 the woods. And then when they asked him again, he
6 said I'm the suspect.

7 Your Honor, the following statements
8 would be when the defendant is --

9 THE COURT: I want to take them one at
10 a time. Is that the first statement that you would
11 be seeking to introduce?

12 MS. SZYMCZYNSKA-SAS: Yes, Your Honor.

13 THE COURT: Is there any exception from
14 the defense regarding that statement?

15 MR. FARBER: No, Your Honor.

16 THE COURT: Okay. So then we have a
17 nonissue with that. Okay. What was the next
18 statement?

19 MS. SZYMCZYNSKA-SAS: Your Honor, the
20 next statement would be when the defendant is
21 cuffed and placed in the back of the patrol car of
22 Officer Green following the statements he made at
23 the back of the house. He has an interaction on
24 the first video which would be the video from
25 Zachary Wright's microphone and camera.

1 That video has statements from the
2 defendant that he made to Officer Geiger who --
3 Captain Geiger, who testified here today, as well
4 as some of the statements he made to --

5 THE COURT: What is that statement that
6 you would be seeking to introduce?

7 MS. SZYMCZYNSKA-SAS: Yes, Your Honor.
8 The statement of -- from the recorded --
9 audio/video-recorded statement from Officer Zachary
10 Wright's car.

11 THE COURT: You need to say exactly
12 what it is you're seeking to introduce.

13 MS. SZYMCZYNSKA-SAS: Your Honor, the
14 entire statement from Officer Zachary Wright's car
15 that was audio and video recorded, as well as the
16 statement to which Kirsten Chesnut would testify
17 to.

18 And those will be the statements that
19 while she was doing the gun residue kit on the
20 defendant, he made the statement that he didn't
21 mean to shoot Lance Kenyon and that he shot all of
22 them explicit language, Your Honor, and that he
23 would have all sorts of powder on him.

24 THE COURT: Any exception to that
25 statement?

1 MR. FARBER: If I could have a moment,
2 Your Honor.

3 THE COURT: Uh-huh.

4 MR. FARBER: Not to those specific
5 questions, Your Honor -- that to those specific
6 statements.

7 THE COURT: So the first one we have no
8 objection to, which is him inculcating himself as
9 the suspect. That's without objection. And the
10 next would be the statement that he made to
11 Ms. Chesnut, who was the crime scene first
12 responder on call, who indicated that her responses
13 to his -- to her inquiries as required by the GSR
14 kit, you have no exception to those, correct?

15 MR. FARBER: Correct.

16 THE COURT: What's the next statement?

17 MS. SZYMCHYNSKA-SAS: Your Honor, so
18 the third statement would be the audio/video
19 recording from Zachary Wright's car, which would
20 have statements of Captain Geiger -- of the
21 interactions of Captain Geiger with the defendant.

22 THE COURT: And what -- I wasn't able
23 to -- that's one of my -- I'm going to be able to
24 watch it now that I figured it out, but give me in
25 a nutshell what it is that you are seeking to

1 introduce from that.

2 MS. SZYMCZYNSKA-SAS: Absolutely, Your
3 Honor. Your Honor, on that particular video,
4 initially Captain Geiger approaches the car and
5 asked the defendant some questions to try to
6 establish how many people were in the house, if
7 anybody is still out, if there is any guns. So he
8 asked him a specific list of questions which are
9 recorded, and defendant provides answers to those.

10 At some point after that, Officer
11 Geiger walks away and there are some other officers
12 that are standing around the car. And the
13 defendant is asking them questions about who is
14 still alive, if anyone is alive. And they at some
15 point respond to him that Lance Kenyon is alive.
16 And he makes statements regarding Lance Kenyon
17 being alive.

18 Some of them say that he's glad; some
19 of them say that he's not glad that he's alive.
20 And we would seek to admit all these statements the
21 defendant made in the back of the patrol car
22 recorded on Zachary Wright's microphone and video.

23 THE COURT: Any exception to those
24 statements?

25 MR. FARBER: Yes, Your Honor.

1 THE COURT: What's the basis of the
2 objection?

3 MR. FARBER: The objection is that he
4 was in custody at the time. I think if you listen
5 to the video -- when you listen to the video, you
6 will see it's custodial interrogation. I don't
7 think the characterization that these are just
8 questions that they're asking in order to determine
9 whether there is some other suspect running around
10 is an accurate characterization of the questions
11 that are asked.

12 And all of his comments that follow
13 that are in response to questions that have been
14 asked being prompted by law enforcement officers.

15 THE COURT: That doesn't in and of
16 itself make it inadmissible, does it? They can ask
17 certain questions without Mirandizing him because
18 they serve certain utilitarian purposes. Like
19 identity; whether someone else is hurt, whether
20 he's -- determine if he's in jeopardy or the
21 officers are in jeopardy, whether they need to make
22 further search in the wood line necessary, whether
23 somebody might be out there with a weapon.

24 I think all of those things
25 legitimately they can ask, correct? Because they

1 can either inculcate him or exculpate him, which --
2 in which instance it could eliminate as a suspect,
3 but I don't think that's really an issue because
4 he's already told them he shot them, right?

5 MR. FARBER: If they're asking him
6 questions about what happened, that is
7 interrogation.

8 THE COURT: Not necessarily. Our case
9 law doesn't support that outlook on it. It makes
10 some distinctions. There are certain questions the
11 officer can ask that are not in the nature of being
12 considered interrogation.

13 MR. FARBER: I agree with that, Your
14 Honor, but I don't think that's -- I don't think
15 that's the appropriate characterization to the
16 questions that were asked on the video. And I
17 don't think that's -- that that's in fact what the
18 officers were doing. At the time I think --

19 THE COURT: Tell me how he's prejudiced
20 when he's already told them that he's the one that
21 shot them. What difference does it make? Tell me
22 how he's prejudiced.

23 MR. FARBER: Well, Your Honor,
24 that's --

25 THE COURT: And tell me why it's not

1 relevant and tell me why he would have been
2 entitled to have been Mirandized.

3 MR. FARBER: He's entitled to be
4 Mirandized because he's in custody. The issue
5 isn't relevance.

6 THE COURT: Well, everything has to be
7 -- go through the relevance.

8 MR. FARBER: Yes. I can see why the
9 State can argue that they are, that the answers
10 would be relevant; but as to the extent that they
11 incriminate him, if they're the product of a
12 custodial interrogation when he's not Mirandized --

13 THE COURT: How do they incriminate
14 him?

15 MR. FARBER: Well, the State is using
16 them as evidence in the trial and as part of the
17 trial that's to incriminate. I don't know exactly
18 what arguments they intend to make about them;
19 we'll see that at trial.

20 THE COURT: Well, you have some idea or
21 you wouldn't be making the motion. So in your
22 perspective, how can he be incriminated by the
23 statements -- or the questions?

24 MR. FARBER: I think they are going to
25 use this evidence to indicate that he intentionally

1 shot and killed these people without provocation.

2 THE COURT: Any further argument
3 regarding the admissibility of the statement or the
4 questioning that took place in Officer Wright's
5 car?

6 MR. FARBER: Not from the defense.

7 THE COURT: Anything from the State?
8 And for what purpose are you seeking to admit the
9 statement?

10 MS. SZYMCHYNSKA-SAS: Your Honor,
11 certainly some of the answers -- we anticipate that
12 there's going to be some -- and I think that was
13 indicated in one of the other pretrial hearings,
14 that there's going to be some argument that there
15 were more people on the scene than were actually on
16 the scene.

17 We would argue, Your Honor, that
18 although the defendant was in custody, he was not
19 subject to interrogation. We would argue the
20 public safety exception, which makes it unnecessary
21 for them to give them the Miranda warning.

22 I think from the questions that Your
23 Honor would hear that Captain Geiger asked the
24 defendant, it was clear that they were trying to
25 establish how many people were there and how many

1 people are still missing, if anyone is injured
2 running through the woods.

3 At some point, Your Honor, after asking
4 just a few of the questions, Captain Geiger just
5 walks away. It's actually the defendant that gets
6 upset that Captain Geiger's walking away while he's
7 trying to tell him what he did.

8 Your Honor, the statements that were
9 made after that by the defendant were mostly him
10 asking questions of law enforcement about the state
11 of the other victims, and him constantly asking law
12 enforcement to loosen his cuffs and take the cuffs
13 off.

14 I think certainly the interaction with
15 the defendant and what he says in the back of the
16 patrol car, some of it to himself, it's relevant as
17 to the state of mind; but, again, we also
18 anticipate that the defense is going to argue there
19 were more people on the scene and in the back of
20 the house or in the house than actually indicated
21 by the defendant initially to law enforcement.

22 THE COURT: Say that last part.

23 MS. SZYMCZYNSKA-SAS: There were more
24 people in the house or just overall at the scene at
25 228 Macio than indicated by the defendant to law

1 enforcement initially.

2 THE COURT: Anything else further from
3 the defense?

4 MR. FARBER: No, Your Honor.

5 THE COURT: I will take that one under
6 advisement because I need to be able to watch the
7 video.

8 Which video -- which CD is that,
9 Ms. Sas?

10 MS. SZYMCZYNSKA-SAS: Your Honor, that
11 will be in Officer Zach Wright's.

12 THE COURT: I need to know which
13 exhibit.

14 MS. SZYMCZYNSKA-SAS: Yes, Your Honor.
15 Your Honor, I believe that would be Court's 1.

16 THE COURT: And which video?

17 MS. SZYMCZYNSKA-SAS: Your Honor, it's
18 the last video.

19 Your Honor, on the video you can see on
20 the bottom of the screen there's a K9 cage and you
21 can sort of hear the K9 barking, and on the top
22 view of the screen you can see Officer Green which
23 --

24 THE COURT: Is that the one where
25 they're asking him if he has anything on his shirt

1 and all that?

2 MS. SZYMCZYNSKA-SAS: Yes. There is
3 some questions, and you can tell the group of
4 officers that are surrounding the vehicle.

5 THE COURT: What is the next statement?

6 MS. SZYMCZYNSKA-SAS: Your Honor, the
7 next statement will be the statement of Kirsten
8 Chesnut from -- sorry, I believe we covered that
9 one.

10 THE COURT: We did.

11 MS. SZYMCZYNSKA-SAS: The next
12 statement would be the recorded audio and video
13 statement from officer -- former Officer James
14 McClellan's car that was recorded on his microphone
15 and video. And, Your Honor, that statement --

16 THE COURT: Which DVD is that statement
17 on?

18 MS. SZYMCZYNSKA-SAS: That would be
19 Court's 2.

20 THE COURT: And which view?

21 MS. SZYMCZYNSKA-SAS: It's the last
22 view, Your Honor.

23 THE COURT: You may continue.

24 MS. SZYMCZYNSKA-SAS: And on that
25 particular recording, there are the -- some of the

1 questions that were asked during the GSR. There's
2 also some additional interaction with the defendant
3 where he's asking to be uncuffed and asked for the
4 status of one of the victims. It's basically the
5 same repetitive things.

6 And, also, it shows the defendant being
7 transported from the scene by Officer Green to the
8 Hill-Finklea Detention Center. Officer McClellan
9 followed in his car so the view is at Officer
10 Green's car, but the mic was in Officer Green's car
11 so it recorded the statement that the defendant
12 made.

13 Specifically, Your Honor, the statement
14 that was made on arrival to the jail where the
15 defendant threatens James McClellan, to shoot him
16 in the head.

17 THE COURT: I assume that the defense
18 has an objection and that's part and parcel to the
19 severance?

20 MR. FARBER: Yes, Your Honor. Because
21 if those charges are severed that statement should
22 not come in. It would be highly prejudicial which
23 is part of the reason we say it needs to be
24 severed.

25 THE COURT: I will rule on that at the

1 time I move on the severance motion. If I sever
2 it, it's not relevant. If I don't sever it, then
3 it's going to come in, because it's the basis of
4 the element of the offense, which is the threat.

5 What's the next statement?

6 MS. SZYMCZYNSKA-SAS: Your Honor, the
7 last statement would be the recorded statement that
8 was completed on the same day later in the
9 afternoon, almost 14 hours later, by Detective
10 Elrod.

11 And that would be the statement that
12 was made post Miranda and was also audio and video
13 recorded. And that would be Court's 3.

14 (Off-the-record conference.)

15 THE COURT: Any exception to the
16 admissibility of the audio visual interrogation
17 post Miranda?

18 MR. FARBER: Yes, Your Honor. And the
19 basis for that is that it's our position that
20 Mr. Nolen was still so intoxicated from the
21 drinking that he had been doing --

22 THE COURT: Other than your
23 allegations, do you have any scientific proof of
24 that?

25 MR. FARBER: I'm going to identify what

1 I think the evidence is of that is, Your Honor, and
2 it's contained in the video itself. You will see
3 when you review it that there is reference to the
4 fact that the defendant was drinking from nine in
5 the morning until really the period when the
6 incident took place, which would have been between
7 one and two in the morning.

8 So that's 16 hours of essentially
9 continuous drinking as related in the video of
10 beer, Crown Royal, shots of vodka.

11 And in addition, I would ask Your Honor
12 in reviewing it to notice the defendant's speech,
13 which is slurred. And you can contrast with the
14 speech that you heard from the defendant this
15 morning in elocution --

16 THE COURT: I don't know what he
17 sounded like in 2016, and I am not going to attempt
18 -- a lot can happen in three years. I don't know
19 what he sounded like then. He's been in lock up.
20 I don't know if it was his habit to drink every
21 day. I don't know what his speech pattern was.

22 MR. FARBER: I think what is clear from
23 listening to the video and what you will see is the
24 speech is slurred during that video.

25 THE COURT: That's the basis of you

1 asking that it not be admitted?

2 MR. FARBER: Yes, Your Honor. That he
3 was not capable of giving a knowing, voluntary and
4 intelligent waiver of his Miranda rights.

5 THE COURT: Okay. State like to
6 respond?

7 MS. SZYMCHYNSKA-SAS: Yes, Your Honor.
8 Your Honor, you heard the testimony of Detective
9 Elrod. I believe he testified, he actually when he
10 was working for Berkeley County Sheriff's Office
11 was on the DUI task force.

12 He had a chance to observe the
13 defendant and stated to the Court that the
14 defendant did not appear to be under influence of
15 anything to the degree that it would impair his
16 ability to understand the questions and answer the
17 questions.

18 He also testified that the defendant
19 was drinking water. The interview lasted two
20 hours. There is no mention Your Honor can see it
21 on the video, the defendant's behavior does not
22 appear to be an intoxicated person. We will let
23 the Court judge it for itself.

24 I think the other thing, Your Honor, on
25 the video the defendant admits that he actually is

1 a drinker, and that's why he was actually moved out
2 of the residence because of the drinking problem.

3 So we would agree with the Court that
4 we can't really assess what one's ability is and
5 how fast one recovers. This interview was done --
6 I believe, the defendant is placed in custody on
7 the scene at 2:00 in the morning. This interview
8 is not done until 4:25, Your Honor, which is almost
9 14 hours after he was taken into custody.
10 Presumably he did not have anything to drink, to
11 our knowledge, up to 2:00 when he was taken into
12 custody.

13 THE COURT: Anything further?

14 MR. FARBER: No, Your Honor.

15 THE COURT: I'll take that under
16 advisement. I need to watch the statement. That
17 is only -- you told me that was the last video,
18 correct?

19 MS. SZYMCZYNSKA-SAS: Yes, Your Honor.

20 THE COURT: All right. Is there
21 anything else other than the severance that we need
22 to take up before we adjourn for the day? From the
23 State?

24 MS. SZYMCZYNSKA-SAS: No, Your Honor.

25 THE COURT: From the defense?

1 MR. FARBER: No, Your Honor, but I did
2 want to point out depending on how Your Honor rules
3 on the -- on the admissibility of, let's say, the
4 -- of these interviews, there are portions of them
5 that are subject to our other motions, such as our
6 motion to exclude evidence of other bad acts
7 because there are references to that.

8 THE COURT: Like what?

9 MR. FARBER: Well, there's -- part of
10 the two-hour interrogation of Mr. Nolen is about
11 other instances when he got into altercations when
12 drinking, and there is also interrogation of him of
13 his prior domestic violence conviction.

14 THE COURT: I would imagine that you
15 would redact that?

16 MS. SZYMCHYNSKA-SAS: Yes. And I had a
17 conversation with Ms. Norris this weekend that we
18 can compare the transcripts and agree to the
19 redactions. We have the ability to do that in our
20 office.

21 THE COURT: Yeah. I would suggest you
22 start working on the redactions in the event, so
23 that we won't be behind the eight ball of having to
24 expend that kind of time in the morning. So I
25 would suggest you all work on the redactions to

1 those videos and get those accomplished before we
2 begin or before they would be -- State would seek
3 to play them.

4 MR. FARBER: We will do that, Your
5 Honor. Thank you.

6 THE COURT: You're welcome.

7 Having considered the arguments in the
8 applicable case law and without reiterating the
9 elements to be considered in a motion for
10 severance, the Court denies the motion and finds
11 that the joinder of the offenses is appropriate in
12 it's discretion.

13 Considering that they are the same
14 general nature of character and, more importantly,
15 that they spring from the same series of events, or
16 transactions. It's almost in the nature of res
17 gestae; one thing happened after the other.

18 And, frankly, without the preceding
19 events, it would be very difficult to explain why
20 he was in a police car and why he would have
21 threatened the officer.

22 And it is also difficult for me to
23 discern how you would even try the threatening the
24 life of a public official without making reference
25 to the other charges, which in my estimation would

1 be far more prejudicial to him in severing it than
2 trying all of these offenses together, because you
3 could not isolate the previous offenses without
4 making reference to them to explain the inception
5 and character of the threat that he made to the
6 officer, or the motivation for the threat he made
7 to the officer.

8 They are clearly committed by the same
9 offender. I don't know -- the only thing that
10 would be similar or same, and I'm not really
11 certain whether threats were made because I've not
12 heard all of the evidence in this case regarding
13 the attempted murder, whether it entails threats or
14 whether it was simply the use of a deadly weapon,
15 and then we have complicating, for lack of a better
16 word, the Belcher issues where he will, I assume,
17 assert some level of self-defense.

18 And so I would anticipate that there
19 would not be any instructions on implied malice.
20 But I think that element of -- while -- because the
21 offenses he's charged with are murder, three
22 counts, attempted murder of Mr. Mazyck, and then
23 threatening the police officer and the possession
24 of a weapon during the commission of a violent
25 crime.

1 They arise out of a single chain of
2 circumstances, and I would supplement the record
3 with -- because my clerk and I as we watched the
4 video during lunch documented the exact time frame
5 as it went along.

6 It was represented to the Court it was
7 a long lapse of time. It really wasn't. It all
8 happened fairly contiguously, one right after the
9 other.

10 As I've indicated, it's more in the
11 nature of res gestae. They are proven by the same
12 evidence. To some extent, the only thing that
13 really -- of the same evidence would be -- the
14 common denominator would be the defendant as each
15 of the offenses have separate elements.

16 Certainly, the threat of a public
17 official officer arose out of these events and no
18 real right of the defendant has been prejudiced.
19 And, again, as I indicated I can't -- I really
20 can't discern any prejudice to him.

21 I think if you were to sever and try
22 it, it would be more prejudicial to him because the
23 State would have to make reference to these other
24 threats for the threat of the public official to
25 even make sense.

1 I don't know how you would isolate it
2 from the other charges, because why would he be in
3 a police car? Why would he be threatening an
4 officer? Why would he be having contact with law
5 enforcement? It just -- it really would not make
6 sense.

7 And the State has -- the defense has
8 argued that these are totally separate offenses. I
9 do not find that argument that persuasive nor
10 supported by the evidence.

11 State versus Carter is almost exactly
12 on point -- or is it State versus Simmons? State
13 versus Carter, which is 324 S.C. 383, 478 S.E.2d
14 86, which is the 1996 Court of Appeals decision, is
15 almost exactly on point factually analogously where
16 a defendant attempted to rob a shop at knife point.

17 He fled the scene into a wood line, the
18 officer apprehended him, and while he was on the
19 ground awaiting being processed, he threatened to
20 shoot the officer who apprehended him. And it's
21 probably as analogous as we're going to get to the
22 facts in terms of this case.

23 The other cases that were cited by the
24 defense, that being -- I think it's Smith that
25 deals with the homicide by child abuse is not

1 analogous, and I do not find it persuasive.

2 Again, all of these cases turn on the
3 facts and are discretionary, but this is more in
4 the nature of the -- at least the way it's
5 presented and the way I read it, it's really more
6 of a Crawford issue, because what he did is he
7 admitted to doing certain things against the other
8 child, did not admit to doing them to the second
9 child; differences in the elements of the offenses
10 and differences in the timeframe as well as how the
11 children were injured or subsequently died.

12 And as such, it could have been
13 mitigated against him where he admitted to doing
14 something to one child, but not admit doing it to
15 the other child. So I agree with the analysis in
16 that case, but I don't think it's factually
17 analogous to this case.

18 The State's motion is denied. They
19 will be tried together. When the jury returns in
20 the morning, I will read the elements of the
21 offense and this indictment will likewise be
22 charged, and I will voir dire them regarding it to
23 make sure that no one has any personal knowledge of
24 the alleged facts and circumstances of the case or
25 has any issues with it, and we will move forward.

1 Any exception to proceeding in that way
2 from the State?

3 MS. SZYMCZYNSKA-SAS: None from the
4 State.

5 THE COURT: From the defense?

6 MS. NORRIS: No, Your Honor.

7 THE COURT: All right. Now I'm going
8 to watch the video and then I will rule on the
9 other matters. For whatever reason, my computer
10 would not play it. It required me to download a
11 software and I can't do that. But it pulled right
12 up on my law clerk's.

13 You-all have a good evening. Please
14 make sure that the court reporter has all of the
15 exhibits and we will resume in the morning at 9:30.

16 That will make -- before we leave. I
17 think it makes the other objection regarding the
18 statement moot, that being the threat. The
19 objection that -- I think I took that one under
20 advisement. My ruling on the severance makes it
21 moot because they can't meet the --

22 MR. FARBER: I'm sorry, Your Honor.

23 THE COURT: That's okay. You all made
24 an objection on the defendant's threat in the car,
25 and I took that under advisement. In light of the

1 ruling denying the severance, I think it makes that
2 moot.

3 MR. FARBER: Yes, Your Honor.

4 THE COURT: Because they couldn't prove
5 their case without the statement.

6 MR. FARBER: Yes, Your Honor.

7 THE COURT: That's the only element.
8 That's the only threat. Well, I mean, the officer
9 could testify to it, but it corroborates it.

10 All right. Carry on.

11 (These proceedings were recessed at
12 3:43 p.m., to be continued 3/26/19 @ 9:30 a.m.)

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1 (The following proceedings were had
2 3/26/19, 9:43 a.m., in re State v. Nolen, Berkeley
3 County General Sessions Court.)

4 (STATE EXH. 137-167 in evidence.)

5 THE COURT: 137 through 167 in
6 evidence, agreed to by counsel.

7 What program is the defendant's audio
8 video statement -- we're not -- the only thing
9 we've been able to pull up is the audio. We have
10 not been able to pull up the video, and I'm trying
11 to figure out what program you're using so that we
12 can -- because if I am having that problem, the
13 jury is going to have the same problem because the
14 laptop that they have is only supported by Windows
15 Media Player.

16 MS. SZYMCZYNSKA-SAS: Your Honor, the
17 program, I believe, comes on the CD. There's a
18 backup player, and it has to be opened through that
19 program.

20 THE COURT: Okay. We may need at a
21 break for you to show us how to do that so that I
22 can do more than sit and listen to the audio. So
23 I'm going to reserve making a decision on that
24 until I can actually observe the video of that
25 statement.

1 Now, I have another question. So
2 that's Court's Exhibit 3, which is his audio-video
3 statement. And then, now, my other question is
4 what portions of the in-car audio is the State
5 seeking to introduce regarding where the defendant
6 is questioned about his name, where he lives and
7 all that kind of stuff? How much is the State
8 seeking to introduce?

9 And, I'm sorry, you-all, I have a
10 little issue with my allergies this morning. I
11 apologize.

12 MS. SZYMCZYNSKA-SAS: Your Honor, we
13 were seeking to play the entire video. Ms. Norris
14 asked if we were in agreement to redact a portion,
15 I believe, that's maybe ten minutes long from 11:54
16 to 12:05 from that video.

17 THE COURT: And what's in that part?

18 MS. SZYMCZYNSKA-SAS: It's a statement
19 about the defendant doing coke, used to sell coke,
20 and then talking about crack.

21 THE COURT: And then talking about the
22 other people using -- having drugs? Or is that --

23 MS. SZYMCZYNSKA-SAS: It's just the
24 statement about him using drugs.

25 THE COURT: Okay. I think that would

1 be appropriate. The reason I asked the question is
2 because -- well, I guess I'm putting the cart a
3 little ahead of the horse. The defense objected to
4 the video, and the premise of their objection was
5 that he was in custody and had not been Mirandized
6 and that his statements were incriminatory, and
7 that he did not make them subject to being again
8 Mirandized.

9 I listened and watched the video.
10 While he was -- he was -- his freedom was
11 restrained, but it really was not as a suspect.
12 His freedom was restrained more, based on what the
13 officers were saying, for safety purposes until
14 they could ascertain what was going on in the
15 immediate vicinity of the event.

16 There's nothing wrong with them asking
17 his name, his date of birth, whether he was
18 left-handed or right-handed, whether he washed his
19 hands. All of those are the same -- are GSR
20 questions.

21 All of his statements were voluntary.
22 They were not subject to Miranda, and, frankly, all
23 of the -- most of what he says he initiates. It's
24 not in response to any interrogational question by
25 the police. They really are spontaneous statements

1 that he makes.

2 He beckons the police to speak to him.
3 They really stay neutral throughout the
4 conversation unless asked. And most of the time he
5 asked questions repeatedly, they ignore him, and
6 when he gets a little more belligerent about it,
7 then they provide answers to him.

8 But I don't have any problem with any
9 of the statements that were made except those that
10 indicate prior bad acts that are not the subject of
11 a conviction.

12 The other thing that concerns me is,
13 I'm trying to figure out why the whole thing would
14 be relevant. Because him murmuring to himself,
15 cussing to himself, asking for custody to be
16 loosened, I just don't see how any of that really
17 is relevant.

18 MS. SZYMCZYNSKA-SAS: Your Honor --

19 THE COURT: At some point it gets to be
20 a little, you know, repetitive.

21 MS. SZYMCZYNSKA-SAS: Yes, Your Honor.
22 And I think he makes statements in between those
23 things, and it's just for the redaction purposes
24 that --

25 THE COURT: Maybe I didn't hear them,

1 but tell me exactly what it is you're saying he
2 said in between those things.

3 MS. SZYMCZYNSKA-SAS: So, Your Honor,
4 he initially -- the questions that he -- when he is
5 having a conversation in the car with Officer
6 Geiger, who testified yesterday, and they're trying
7 to ascertain how many people were there --

8 THE COURT: Yeah, all that stuff. I'm
9 not talking about that. I'm talking about when
10 he's just in the back of the car rambling to
11 himself, like, how is any of that relevant?

12 MS. SZYMCZYNSKA-SAS: Your Honor, he's
13 asking officers multiple times throughout that
14 video about who is alive.

15 THE COURT: Yes, but he doesn't do that
16 the whole time. There are long stretches where
17 he's not doing that. And long is my word; it's not
18 really long in terms of the video. But there are
19 stretches where he's just mumbling and cussing to
20 himself and asking that the cuffs be loosened up,
21 and I just don't see how any of that's relevant.

22 MS. SZYMCZYNSKA-SAS: And, Your Honor,
23 there's certainly in between -- and I guess we
24 would be able to redact some of it, but at some
25 point it would get a little bit of a choppy

1 redaction here and there.

2 I mean, he is repetitive in the
3 statements about asking about when and making
4 comments about --

5 THE COURT: Those I don't have a
6 problem with because he initiates those. They are
7 not as a result of being interrogated; they are not
8 a result of him being asked questions by the
9 police. So those I don't have problems with, but
10 when he -- it just gets repetitive him asking for
11 the custody to be loosened, and I just am at a loss
12 as to what evidence --

13 MS. SZYMCZYNSKA-SAS: And, Your Honor,
14 we can certainly try to redact the portions where
15 he is talking about the cuffs and give that to
16 Ms. Norris to review.

17 MS. NORRIS: Your Honor, may I address
18 this as well?

19 THE COURT: Uh-huh.

20 MS. NORRIS: If Your Honor is going to
21 let in the first part and stuff about using
22 cocaine, we don't have any problem with just
23 playing it all and not going through the redaction
24 for that first one.

25 We do have a separate issue with the

1 second one.

2 THE COURT: Okay. When you say you
3 don't have a problem with the part coming in about
4 him saying he used cocaine --

5 MS. NORRIS: I do object to that part.

6 THE COURT: And I'm a little confused,
7 frankly, because some of it's muffled. Like, is he
8 saying I used cocaine that night, or is he saying I
9 used cocaine in the past?

10 And then he talks about -- I'm sorry, I
11 went too far ahead of my notes. He talks about
12 somebody selling drugs, pot, Adderall, Lance found
13 out two nights ago by -- all of that stuff I don't
14 think is problematic, and he initiates all of that.

15 MS. NORRIS: Yes.

16 MS. SZYMCZYNSKA-SAS: And he's talking
17 about the victims, Your Honor.

18 THE COURT: Yes. That's why I was
19 asking for clarity.

20 MS. SZYMCZYNSKA-SAS: But there is a
21 statement between 11:54 and 12:05, that he says he
22 used to do coke, and he used to sell coke. And
23 then he corrects himself to say, I don't mean --
24 crack.

25 THE COURT: Yeah, I don't think that's

1 a prior bad act that I -- I mean, how would that
2 have any evidentiary value?

3 MS. SZYMCZYNSKA-SAS: And, Your Honor,
4 and I was in agreement to redact that portion.

5 MS. NORRIS: That's the only part of
6 that first video that --

7 THE COURT: That you objected to?

8 MS. NORRIS: -- Officer Wright's that
9 we objected. The rest of it's fine.

10 THE COURT: All right. Then we've
11 resolved that issue.

12 What was the other objection you said
13 you had -- and you-all can redact that?

14 MS. SZYMCZYNSKA-SAS: Yes, Your Honor,
15 we're working on it right now.

16 THE COURT: Okay. And what was the
17 other? You said you had another issue with
18 something else?

19 MS. NORRIS: Not with that particular
20 video, other than our overall objection. Once
21 we're down to just the extractions, that's the only
22 thing in that video.

23 But the second video we have a separate
24 objection to.

25 THE COURT: Which -- what second video?

1 MS. NORRIS: The second video is
2 Officer McClellan's, the transport to the jail.

3 THE COURT: Yeah, I dealt with that
4 yesterday.

5 MS. NORRIS: You dealt with a portion
6 of our objection. There is --

7 THE COURT: And I think I might be
8 confused about the video, I'm sorry.

9 MS. NORRIS: We -- one of our motions
10 is to exclude racially charged evidence. Part --

11 THE COURT: I got that.

12 MS. NORRIS: -- part of the --

13 THE COURT: Yeah. And I think that's
14 the one I'm -- I think that's the video I'm talking
15 about right now. Maybe we're talking about
16 different videos.

17 MS. SZYMZYNSKA-SAS: Your Honor,
18 there's a video from Officer Wright's car, and
19 that's the one on which Officer Geiger asked the
20 questions. And then there's some comments about
21 Lance and the other victims.

22 Then there's Officer McClellan in the
23 car which starts with the GSR question --

24 THE COURT: That's the one I'm talking
25 about right now.

1 MS. SZYMCZYNSKA-SAS: -- and takes it
2 all the way to the jail.

3 THE COURT: Yes. Yeah, that's --
4 you-all confused me. That's the video I'm talking
5 about right now.

6 MS. SZYMCZYNSKA-SAS: So Officer
7 McClellan in the car has the racially charged
8 comments which the State is in agreement to redact,
9 Your Honor.

10 THE COURT: Okay. So absent those, do
11 you have any other objections, Ms. Norris?

12 MS. NORRIS: None other than what
13 you've already ruled on, Your Honor.

14 THE COURT: Okay. So then, now --
15 okay. Because you-all had me confused. So that
16 video -- you-all were talking about a totally
17 different video than I was. We're talking now
18 about a different video, which is from Officer --

19 MS. SZYMCZYNSKA-SAS: Your Honor, the
20 first video from Officer Wright should be Court's
21 1, is the video that starts with Officer Geiger,
22 some questions, and it ends because Officer Wright
23 pulls his car away. And that's the video on which
24 the defendant makes the comments about using --
25 used to use coke and sell coke.

1 THE COURT: Okay. I think that would
2 need to be redacted. Don't you agree?

3 MS. SZYMCZYNSKA-SAS: We're in the
4 process of redacting --

5 THE COURT: And that's the 11:54 to
6 12:05 portion of it?

7 MS. SZYMCZYNSKA-SAS: Your Honor, it
8 will be 11:54 through 12:05. And, Your Honor, if I
9 may cover the times on the second video from
10 Officer McClellan.

11 THE COURT: Uh-huh.

12 MS. SZYMCZYNSKA-SAS: That will be
13 28:48 through 30:02.

14 THE COURT: So, Ms. Norris, absent the
15 redaction about him -- a prior bad act, do you have
16 any other objections to Court's Number 1, which is
17 the first video?

18 MS. NORRIS: We did, Your Honor, but
19 you've already ruled on it.

20 THE COURT: All right. Now, I'm going
21 to have to wait to rule on his statement because I
22 need to be able to observe the video portion of it,
23 and for whatever reason, we're going to need --
24 yeah, we're going to need your assistance because I
25 wasn't able to pull that up.

1 Now, have you all done as I asked,
2 which is to isolate the portions that you seek to
3 introduce on separate CDs?

4 MS. SZYMCZYNSKA-SAS: Your Honor, Ms.
5 Norris has provided us with a transcript, and I
6 believe we're mostly in agreement with it, and
7 we'll be working on it today and will provide
8 copies.

9 THE COURT: Yeah. I just wanted to --
10 and you-all can remind me in the event that I don't
11 remember, that what we have marked are Court's
12 Exhibits and those are the videos in their entirety
13 for appellate purposes, and then we need to
14 substitute the ones that you've redacted as the
15 original 73, 74, and 76.

16 MS. SZYMCZYNSKA-SAS: Absolutely, Your
17 Honor.

18 THE COURT: And then 76 is the
19 statement, which would be -- well, I guess we could
20 wait until I actually get a chance to actually
21 watch it to see if any portions of that need to be
22 -- I mean, you can isolate it, but it's probably --
23 I would imagine -- did you-all talk about any
24 portions of that that needed to be redacted?

25 MS. SZYMCZYNSKA-SAS: Your Honor, would

1 that be Court's Exhibit 3?

2 THE COURT: Three, which is his audio
3 and video statement.

4 MS. SZYMCZYNSKA-SAS: Yes, Your Honor,
5 we have. Ms. Norris provided the times that she's
6 requesting to be redacted, and I believe we'll be
7 in agreement with.

8 THE COURT: And just preliminarily so
9 you all will know, I had the ability to listen to
10 the audio. I could not see the video, which did
11 not allow me the opportunity to observe Mr. Nolen;
12 however, based on what I was able to hear, he was
13 appropriately Mirandized.

14 He appropriately acknowledged the
15 receipt of his Miranda warnings and waiving them.
16 I did not detect in the audio any slurred speech.
17 He sounded cogent to me, oriented as to time and
18 place, and that he knew what he was talking about
19 and what he was doing and where he was.

20 He was very clear in any directives he
21 gave to the officers as he was speaking to them,
22 and I would have to find credible the testimony of
23 the officer who was there regarding him being
24 oriented and not being impaired.

25 There has been a statement by the

1 defense that he had been drinking and that he did
2 not -- potentially, he did not know where he was or
3 what he was doing. I do not find that particularly
4 persuasive. Of course, that's subject to me being
5 able to observe the video of the statement.

6 As we all know, different people have
7 different tolerances, different people metabolize
8 alcohol at different rates. I'm just not
9 particularly persuaded that he still would have
10 been under the influence of alcohol when -- when
11 that amount of time had lapsed, and it does not
12 appear from the audio he was.

13 But subject to me being able to review
14 the video portion of it -- but I give that to you
15 in advance so you all can go ahead and start
16 redacting the video portions of it for any parts of
17 it that you all can agree upon.

18 All right. Is there anything else we
19 need to take up before we begin with opening
20 arguments -- opening instructions?

21 MS. SZYMCZYNSKA-SAS: Your Honor --

22 THE COURT: Yes, ma'am.

23 MS. SZYMCZYNSKA-SAS: Just a couple of
24 things. Your Honor, we have provided additional
25 photographs from the autopsy. They're x-rays and

1 photographs of the bullet, and those are 137
2 through 167. They have been premarked, and it's my
3 understanding that based on us showing it to
4 defense that they would not object to those coming
5 in.

6 THE COURT: Is that correct, Ms.
7 Norris?

8 MS. NORRIS: That's correct.

9 THE COURT: So State's 137 through 167
10 will be marked and admitted without
11 objection.

12 (STATE EXH. 137 - 167 in evidence.)

13 MS. SZYMCZYNSKA-SAS: Thank you, Your
14 Honor. And, Your Honor, the other matter that
15 still remains not addressed is Mr. Mazyck's prior
16 criminal history. The Court has inquired --

17 THE COURT: I'm going to hear it in
18 camera.

19 MS. SZYMCZYNSKA-SAS: Okay.

20 THE COURT: I'm not inclined to allow
21 them to ask him about federal charges or any
22 federal involvement that doesn't have a good faith
23 basis to be asked, but I'm going to let them create
24 a proffer so I can hear it in its context.

25 MS. SZYMCZYNSKA-SAS: And the other

1 issue, Your Honor, was Your Honor had us inquire as
2 to when he was released from SCDC, and I have
3 provided that information.

4 THE COURT: Well, I would need to know
5 when he got off of probation, if that was still
6 involved. I just need to know when his confinement
7 ended.

8 MS. SZYMCZYNSKA-SAS: Your Honor, he
9 was released from probation. He had a revocation
10 hearing on that sentence before Judge Watson on
11 July 16 of 2017. At that time, Judge Watson
12 revoked and required Mr. Mazyck to serve the three
13 years.

14 THE COURT: Okay. So he would have
15 been -- his confinement would -- because he wasn't
16 released on community supervision.

17 MS. SZYMCZYNSKA-SAS: And the max-out
18 date, Your Honor, and I'll be happy to provide that
19 to the Court, and I've provided that to Ms. Norris,
20 based on what probation has printed for us would
21 have been the max-out and his release date of
22 January 5th, 2009.

23 THE COURT: That would be right at ten
24 years. And that was on the receiving of stolen
25 goods?

1 MS. SZYMCZYNSKA-SAS: That's correct,
2 Your Honor.

3 THE COURT: Because I had three years
4 suspended to 18 months. So the three years was
5 revoked?

6 MS. SZYMCZYNSKA-SAS: Yes, Your Honor.
7 According to this form, he appeared before Judge
8 Watson on July -- beg the Court's indulgence.

9 THE COURT: Was it 18th 2017?

10 MS. SZYMCZYNSKA-SAS: July 16 of 2007.
11 And at that point, it was revoked.

12 THE COURT: And then he was released on
13 January 5th of 2009.

14 MS. SZYMCZYNSKA-SAS: According to the
15 form I was provided by probation, yes, Your Honor.

16 THE COURT: I think I asked that
17 question because I wanted to know if it was within
18 the ten years, which would put it right at ten
19 years, January 5th of 2019. Well, January 6th of
20 2019.

21 Would you all be seeking to introduce
22 that? Did you all put them on notice that you plan
23 to try to use that to impeach him, or were you-all
24 not seeking to use any of his records to impeach
25 him?

1 MR. FARBER: That's correct.

2 THE COURT: I'm sorry, I used a double
3 negative. I apologize.

4 MR. FARBER: We were not -- we are not
5 seeking to impeach him based on his prior
6 convictions.

7 THE COURT: All right. Is there
8 anything else we need to take up before we begin?

9 MS. SZYMCZYNSKA-SAS: Nothing from the
10 State.

11 THE COURT: Anything from the defense?

12 MS. NORRIS: No, Your Honor.

13 THE COURT: Number 91 is the
14 foreperson.

15 All right. Are we ready to proceed
16 with opening instructions and opening arguments?
17 From the State?

18 MS. SZYMCZYNSKA-SAS: The State is
19 ready, Your Honor.

20 THE COURT: From the defense?

21 MS. NORRIS: Ready to proceed.

22 THE COURT: Please bring in the jury.

23 (Jury In, 10:03 a.m.)

24 BAILIFF: Jurors are all present and
25 seated, Your Honor.

OPENING STATEMENT BY MS. SAS

1 MS. SZYMCZYNSKA-SAS: None from the
2 State, Your Honor.

3 THE COURT: Any from the defense?

4 MS. NORRIS: No, Your Honor.

5 THE COURT: Ladies and gentlemen, I
6 would ask that you give counsel your undivided
7 attention. You may proceed.

8 MS. SZYMCZYNSKA-SAS: Thank you, Your
9 Honor.

10 THE COURT: You're welcome.

11 MS. SZYMCZYNSKA-SAS: Twenty-two
12 gunshot wounds, seventeen of them to the back of
13 the bodies. Three deceased men. One surviving
14 victim. One threatened officer. One defendant.
15 One murder weapon. One night. One trivial reason.
16 That's why we're here today.

17 On October 7th, 2016, Harry Gressette,
18 James Harrison, and Lance Kenyon lost their lives.
19 Harry, who was 52, was a business owner and a
20 concrete expert, if you wish. James was 62; he was
21 a construction superintendent. And Lance was 47.
22 He sold his own business to a larger firm that
23 bought him out and took a managing position in that
24 firm.

25 They were friends and they shared

OPENING STATEMENT BY MS. SAS

1 common interests, and they enjoyed hanging out
2 together.

3 On October 7th, 2016, it was a fall
4 day; Hurricane Matthew was coming. James and Harry
5 came to Lance's house. Now, Lance was the owner of
6 the house of 228 Macio Road in Berkeley County.
7 Harry and James were his friends. They arrived at
8 the residence -- Lance moved there a few months ago
9 with his dog Dixie and a few chickens that he had.

10 What you will hear this week on this
11 stand is what happened after they arrived to
12 Lance's house and how they lost their lives; but
13 you would also hear how Fred Mazyck, the surviving
14 victim, was able to save his.

15 So Fred was staying next door to
16 Lance's house on Macio. It was his mother's
17 residence. He was staying with her for a while.
18 With the hurricane coming, his mother was going out
19 of town, and he will tell you that Lance invited
20 him to come over and hang out.

21 You will hear that he came over
22 sometime in the morning hours; and him, the
23 defendant, and Lance, the owner of the house, were
24 shooting all day, some drinking involved. At some
25 point they went to the grocery store to pick up

OPENING STATEMENT BY MS. SAS

1 additional liquor, and at some point that night,
2 James and Harry arrived.

3 Now, you may not like all the choices
4 that Lance or Fred or even Harry and James made
5 that night. You will learn that at some point when
6 James and Harry arrived at the residence they had
7 interactions with Fred, the surviving victim, and
8 with the defendant.

9 Fred will describe to you the kind of
10 friends that James and Harry and Lance were and how
11 they used to pick on each other and what he
12 observed that evening. A normal group of guys.

13 The only thing about that evening that
14 was different is that this defendant was not a part
15 that group of Lance, Harry, and James. Fred was
16 watching a movie, and he'll tell you about that on
17 the stand. It was the defendant's idea, that you
18 will hear about, to go outside and shoot some more
19 guns.

20 So him, Harry, James, and Lance went
21 outside and left Fred inside to enjoy his movie on
22 the recliner in the living room, which Lance so
23 kindly moved for him so that he could watch this
24 movie closely.

25 At some point, Fred will tell you that

OPENING STATEMENT BY MS. SAS

1 he heard a shot; and the next thing he knew, he saw
2 the defendant standing in the living room with the
3 .22 rifle in his hand telling him that he shot
4 everybody outside, that he -- they were messing
5 with him and he was tired of it.

6 You will hear that the defendant fired
7 shots at Fred and hit the wall, and that Fred was
8 able to get away through the living room, run
9 outside through the front of the house. Even then,
10 the defendant was still shooting at him.

11 From this witness stand, Fred will tell
12 you that he hid at the front of the house until he
13 felt it was safe enough to make it through the
14 woods, an area that he was familiar with because he
15 lived there and his mom lived there.

16 He was able to run with no shoes to his
17 cousin's house, Tiki. And Tiki allowed him to use
18 her phone, and he called 911.

19 You will also hear from a dispatcher.
20 The dispatcher will tell you that this defendant
21 also called 911. Pay attention to the 911 call
22 times because they all come at, approximately, the
23 same time.

24 Due to the hurricane, most of the
25 Berkeley County Sheriff's Office was working a

OPENING STATEMENT BY MS. SAS

1 night shift. You will hear from some of the
2 officers that responded that night. What they will
3 describe to you is the scene on arrival, two
4 deceased victims and one barely breathing.

5 The deceased was Harry on the screened
6 porch in the back with one gunshot wound; James on
7 the concrete patio in the back with nine gunshot
8 wounds; and Lance, the owner of the house, further
9 on the patio past James with twelve gunshot wounds.

10 They will describe to you how they
11 didn't see any weapons near the people. They will
12 tell you that there were three weapons outside.
13 They will tell you that they located the .22 rifle
14 up front on the truck with the case. On the porch
15 perfectly stationed in the corner was another
16 weapon that belonged to Lance, and there was
17 another weapon on the patio behind a grill and some
18 other items on the wall.

19 You will see a lot of photographs. You
20 will get to see other physical evidence. The crime
21 scene unit from Berkeley County responded to the
22 scene. They would have marked each item and
23 photographed it, and you will be able to look at
24 those photographs.

25 Also, on the stand will be witnesses

OPENING STATEMENT BY MS. SAS

1 from SLED. Those are the people who are going to
2 analyze the firearms and the DNA evidence, which
3 included some blood droppings on the porch coming
4 from the steps leading to James Harrison's body.

5 Through the presentation of the State's
6 evidence this week we will argue that this
7 defendant on October 7, 2016, brutally murdered
8 three men, attempted to kill one, used the gun, and
9 then on the way to the jail, he gave statements to
10 law enforcement in the car and he was talking to
11 them. When he arrived at that bay, he told former
12 Officer McClellan that he will shoot him in the
13 head.

14 Most importantly, you will also hear
15 from the officers who arrived on that scene, and
16 when they asked where the suspect was, the
17 defendant told them, I'm the f'ing suspect.

18 Now, you will hear from the judge later
19 on about the law that you are to follow. And we
20 certainly defer to the Court, but I want to make
21 sure that you're familiar with the particular
22 charges of murder, attempted murder, possession of
23 a weapon during the commission of the crime, and
24 threatening lives.

25 So I wanted to briefly go over those

OPENING STATEMENT BY MS. SAS

1 elements that the State has the burden to prove.
2 And we accept that burden and we will meet that
3 burden.

4 Murder is a killing of a person with
5 malice aforethought, either express or implied.
6 The malice is a wrongful intent to injure another
7 and indicates a wicked or depraved spirit intent on
8 doing wrong. It is the doing of a wrongful act
9 intentionally and without just cause or excuse.

10 The possession of a weapon during the
11 commission of the violent crime charge; if a person
12 is in possession of a firearm, or visibly displays
13 what appears to be a firearm, or visibly displays a
14 knife during the commission of a violent crime,
15 he's guilty of that offense.

16 Now, a violent crime is a murder or an
17 attempted murder.

18 And the threatening the life of a
19 public official is knowingly and willfully
20 delivering, conveying to a public official any
21 letter or paper, writing, print, missive, document,
22 electronic communication -- or verbal, or
23 electronic communication which contains a threat to
24 take the life or to inflict harm upon the public
25 official.

OPENING STATEMENT BY MS. SAS

1 Now, a public official can mean an
2 elected or appointed official of the United States
3 or a state or of a county, municipality, or other
4 political subdivision of the state. And a police
5 officer is a public official within the meaning of
6 the statute because the officers are elected or
7 appointed to their positions.

8 The other charge is the attempted
9 murder. And that particular statute means that a
10 person with the intent to kill attempts to kill
11 another person with the malice aforethought, either
12 express or implied, and commits the offense of
13 attempted murder. And so it's the intent to kill.

14 Now, with all of the evidence that you
15 will see, the physical evidence and the evidentiary
16 testimony of the witnesses, there's going to be a
17 lot of details this week. And I ask you one thing:
18 It's to keep that common sense you brought with you
19 and don't lose the sight of the big picture.

20 Don't lose the sight of the 22 gunshot
21 wounds. Don't lose the sight of 17 of them being
22 to the back of their bodies. Don't lose sight of
23 three deceased men. Don't lose the sight of one
24 surviving victim, of one officer who was
25 threatened, of one defendant, one murder weapon,

OPENING STATEMENT BY MS. NORRIS

1 one night and one very trivial reason. Thank you.

2 THE COURT: Ms. Norris.

3 MS. NORRIS: May it please the Court?

4 THE COURT: Yes, ma'am.

5 MS. NORRIS: Solicitors. Good morning,
6 ladies and gentlemen.

7 Everything she just said is a roadmap
8 for you, but she has the burden of proof beyond a
9 reasonable doubt. So what she just said, I didn't
10 object to it. She's entitled to give you her
11 version, but I don't think that's going to be what
12 you conclude the actual facts are once you've heard
13 all the evidence.

14 Another very important American right,
15 South Carolina right, Berkeley County right, is
16 that that gentleman, Robert David Nolen, is
17 presumed to be innocent. He doesn't have to prove
18 anything. He can testify, he cannot testify. We
19 don't have to do a thing. They have to prove to
20 you beyond a reasonable doubt that he is guilty of
21 those offenses.

22 I've heard it said that the presumption
23 of innocence is sort of like a cloak or robe of
24 righteousness. So as you look at him during this
25 trial -- and there's going to be many points, you

OPENING STATEMENT BY MS. NORRIS

1 know, we all look around the room, and especially
2 the guy that's on trial, you're going to look at
3 him.

4 He is innocent up until you say
5 differently, and you don't get to deliberate on
6 that until the judge tells you it's time. He is
7 presumed innocent until all 12 of you agree
8 otherwise.

9 The Solicitor gave you her version of
10 the facts. I'm going to start with the threat to a
11 public official -- the alleged threat. You will
12 determine whether it actually was a threat that a
13 reasonable police officer would have been
14 threatened by is on audio. You can judge once you
15 see that evidence whether he's guilty or not. I
16 won't say anything more about that.

17 The other charges are obviously the
18 more serious here. The State wants you to find
19 that Robby Nolen killed three people and tried to
20 kill another. So what's the motive? They were
21 picking on him? He wasn't part of a group?

22 He was staying with Lance Kenyon. He's
23 clearly friends with him. It doesn't make sense.
24 What's the reason? Did he just all of a sudden --
25 because they weren't talking to him, picking on

OPENING STATEMENT BY MS. NORRIS

1 him, did he decide to take out three people and
2 kill them? Is that the reason? I submit not.

3 The State will tell you that it's
4 murder, an unlawful killing with malice
5 aforethought. I will tell you that it was a lawful
6 killing, self-defense. He was being threatened.
7 That's why this happened.

8 So in traditional terms, you know,
9 those of us that watch crime TV, there's often the
10 whodunit movie. This is not a whodunit. That man
11 shot and killed all three of those people. The
12 question for you will be murder or self-defense.

13 With the attempted murder charge, it's
14 very simple. There are two bullet holes in the
15 living room of the house where Fred Mazyck was.
16 It's going to come down to, was Robby Nolen, who's
17 just -- you heard her say -- just shot at least 22
18 times and hit his target out there in the dark, was
19 he trying to kill the man in the living room and
20 somehow missed that close, (indicating) or are
21 those bullet holes because he was -- some other
22 reason? That will be for you to decide.

23 There was a lot of drinking that day.
24 The three gentlemen who are deceased, I will tell
25 you and you'll hear evidence, and I don't say this

OPENING STATEMENT BY MS. NORRIS

1 to demean them or pick on them, it is -- there is
2 no other way to say it other than all three of them
3 had a number of drugs, two of them also had alcohol
4 in their system.

5 But when the police show up, there's no
6 drugs in the house. How do men have amphetamine
7 and at least one of them had marijuana in his
8 system, but there's no drugs. Where did it go? It
9 didn't go with him because the Solicitor told you
10 he called 911, was doing -- and you'll hear
11 evidence that he was doing CPR on Lance Kenyon.

12 He repeatedly says -- and you'll hear
13 this because some of it is audiotaped, some of it
14 the officers are going to testify to, some of it
15 you'll be able to hear. He kept asking, please, is
16 he dead.

17 He did not mean to kill Lance Kenyon.
18 He did; we don't deny that. He didn't mean to.
19 That's why he called 911. That's why he stayed on
20 the scene doing CPR. When the cops showed up,
21 you'll hear officers say he was begging us to
22 continue the CPR while they were cuffing him.

23 And I would ask you to pay attention to
24 the evidence. And the State is going to present a
25 lot of it. We've already got a lot of it admitted

OPENING STATEMENT BY MS. NORRIS

1 into evidence. That was one of the matters that
2 the judge allowed us to handle outside your
3 presence so it speeds things up. We've agreed.
4 You get to see all of this. And pay attention to
5 some of this evidence.

6 The State is going to tell you that
7 they picked up 25 shell casings from a .22 caliber
8 rifle. That's what Mr. Nolen was firing. Next to
9 one of the deceased, Mr. James Mark Harrison, there
10 are very close by a couple of fired 9-millimeter
11 shell casings. There's an unfired one that is just
12 less than a foot probably from his head.

13 There's no 9-millimeter. Where did it
14 go? Again, it didn't leave with him. So pay
15 attention to the evidence as it comes in.

16 You will also be told that right next
17 to Mr. Harry Gressette's head there is what is --
18 you will hear is a SCAR 17, which is essentially a
19 machine gun for anybody -- I know some of our
20 jurors have served in the military. For anybody
21 that's ever been in the military, it's similar to
22 an M60 machine gun.

23 In the old Rambo movies when he's
24 holding a machine gun and firing away, it's similar
25 to that. It's an assault weapon.

OPENING STATEMENT BY MS. NORRIS

1 Now, I do agree with the Solicitor to
2 one extent. As you hear the evidence and go
3 through this trial, you didn't leave your common
4 sense at the door. I grew up in the Blue Ridge
5 Mountains, and my grandmother always told me that
6 the first thing somebody says before they have time
7 to think about maybe I shouldn't have said that, or
8 somebody is asking questions, or their memory is
9 impaired, the first thing somebody says is
10 generally far truer and accurate than what they say
11 later.

12 So pay attention with each witness.
13 What's the first thing they said? What's the first
14 thing Fred Mazyck said when he called 911? What's
15 the first thing that he said?

16 And some of the police officers -- you
17 know, our police officers, they have a difficult
18 job. And aside from general law enforcement that
19 night, Hurricane Matthew was coming in, so they
20 were busy.

21 But police officers write reports when
22 things happen. They do that for a reason. Because
23 here we are two and a half years later and we're
24 coming to trial. They've had a whole lot of work
25 and a whole lot of time in between. If they'd

OPENING STATEMENT BY MS. NORRIS

1 written a report at the time, they could look at
2 it. Is that what they're going to say on the
3 witness stand? Pay attention. You're going to
4 find some differences there.

5 And I'm going to ask you, again, as we
6 go through this trial -- he's presumed innocent.
7 They have the burden of proof. Hold them to it.
8 Because at the end you're going to be told to
9 judge, have they proven beyond a reasonable doubt
10 that he committed three murders, attempted murder,
11 and threatening a public official? I submit that
12 you won't. Thank you.

13 THE COURT: You may call your first
14 witness.

15 MS. SZYMCZYNSKA-SAS: Thank you, Your
16 Honor.

17 THE COURT: You're welcome.

18 MS. SZYMCZYNSKA-SAS: The State calls
19 Timothy Ham.

20 TIMOTHY HAM,
21 being first duly sworn, testified as follows:

22 THE CLERK: Please be seated. State
23 your full name and spell your last name for the
24 record.

25 THE WITNESS: My name is Timothy Ham,

HAM - DIRECT EXAM BY MS. SAS

1 H-A-M.

2 THE COURT: You may proceed.

3 DIRECT EXAMINATION

4 BY MS. SZYMCHYNSKA-SAS:

5 Q. Officer Ham, where are you currently
6 employed?

7 A. Berkeley County Sheriff's Office.

8 Q. How long have you been with the
9 sheriff's office?

10 A. I've been here five and a half years.

11 Q. What did you do before working for the
12 sheriff's office?

13 A. I managed a hardware store for 15, and
14 was in the military prior to that.

15 Q. Okay. And were you employed with the
16 sheriff's office in the same capacity that you are
17 right now on October 7, 2016?

18 A. Yes, ma'am. I was on the community
19 action team for the sheriff's office at that time.

20 Q. Okay. What is the community action
21 team?

22 A. We just solve problems at a
23 neighborhood level rather than a county-wide level.

24 Q. Okay. And what is your position now?

25 A. I'm a detective.

HAM - DIRECT EXAM BY MS. SAS

1 Q. Okay. And how did you become involved
2 in the case which brings us here today?

3 A. I was working nights, and we were --
4 they had us set up because we were all around for
5 the hurricane. And I was set up actually around
6 this area and patrolling Pinopolis when this call
7 came out. And then I --

8 Q. When you say this area, what address
9 did you respond to?

10 A. Macio Road.

11 Q. Do you remember the specific address?

12 A. I'm --

13 Q. Did you prepare a report in this case?

14 A. I did. I did a supplement, yes, ma'am.

15 Q. Okay. Would it help you to look at
16 your report?

17 A. Sure.

18 Q. To look for the details?

19 MS. SZYMCZYNSKA-SAS: Permission to
20 approach, Your Honor?

21 THE COURT: Yes, ma'am.

22 BY MS. SZYMCZYNSKA-SAS:

23 Q. Just take a quick look, just make sure
24 not to read from the report. What would be the
25 address that you responded to?

HAM - DIRECT EXAM BY MS. SAS

1 A. 228 Macio Road.

2 Q. And what county is that in?

3 A. Berkeley County, Moncks Corner.

4 Q. And what did you do after arriving on
5 the scene?

6 A. I exited my vehicle and met up with
7 Deputy Wasielewski.

8 Q. Okay.

9 A. We were the first two on scene.

10 Q. And where did you park your car when
11 you arrived?

12 A. I parked it on Macio, just up a little
13 ways.

14 MS. SZYMCZYNSKA-SAS: Your Honor,
15 permission to approach the witness?

16 THE COURT: You may.

17 BY MS. SZYMCZYNSKA-SAS:

18 Q. I'm going to show you this map that I'm
19 going to show to the jury as well. Can you show
20 the jury where you were parked when you first
21 arrived?

22 A. I was parked around this area here.
23 (Indicating)

24 Q. Okay. And what did you do after
25 arriving?

HAM - DIRECT EXAM BY MS. SAS

1 A. I met up with Deputy Wasielewski, and
2 we decided I'd take one side of the house and he'd
3 take the other. And we started walking down the
4 driveway.

5 THE COURT: Is that marked as an
6 exhibit?

7 MS. SZYMCZYNSKA-SAS: Your Honor, it's
8 for demonstrative only, 168.

9 THE COURT: Marked 168 for ID only.
10 You may proceed.

11 BY MS. SZYMCZYNSKA-SAS:

12 Q. Which side of the house did you
13 approach?

14 A. I approached, when you're looking at
15 it, to the left.

16 Q. Okay. Did you make any observations
17 about the front of the residence?

18 A. There was a pickup truck parked on the
19 -- well, it was off of the driveway, kind of to the
20 left, and its flashers were going.

21 Q. Okay. I'm going to show you what has
22 been previously introduced as State's 93. Do you
23 recognize that?

24 A. Yes, ma'am, I do.

25 Q. Is that the pickup truck that you

HAM - DIRECT EXAM BY MS. SAS

1 referenced?

2 A. Yes, ma'am.

3 MS. SZYMCZYNSKA-SAS: Your Honor,

4 permission to publish 93 to the jury?

5 THE COURT: You may proceed.

6 BY MS. SZYMCZYNSKA-SAS:

7 Q. Is that the photograph behind you?

8 A. Yes, ma'am.

9 Q. And those are the flashing lights on
10 the truck on the left?

11 A. Yes, ma'am.

12 Q. So you approached, you said, on the
13 left of the house?

14 A. Yes, ma'am.

15 Q. Okay. And can you describe to the jury
16 what you saw when you were approaching the house?

17 A. I could hear somebody yelling in the
18 background. I walked up to the house. I -- it was
19 -- it came out as a shooting scene, so I pulled my
20 gun out and walked along the left-hand side of the
21 residence.

22 And like I said, I could hear somebody
23 yelling, counting real loud. And I just -- I --
24 like I said, I had my weapon out. I knew Wasi --
25 we call him Wasi -- he was coming around the

HAM - DIRECT EXAM BY MS. SAS

1 right-hand side, and I didn't want to, you know,
2 accidentally if we meet up, not flash him, like,
3 bring my gun across where he was.

4 So I went up along the side of the
5 building, and when I get to the end, I just, like,
6 do a quick peek around the corner.

7 Q. And what did you see?

8 A. I saw -- when I first looked, I saw
9 there was a body of a white male laying, like, in
10 the porch, like, right there by the steps.

11 Q. Did you observe anything else?

12 A. That was what I saw initially and I
13 called for EMS. And I did another quick peek --
14 because I couldn't see anything else, so I did
15 another quick peek.

16 And over by the hot tub -- there was a
17 hot tub out there -- there was another white male
18 laying on the ground not moving.

19 Q. Okay. I'm going to show what was
20 previously premarked and introduced as 84, 87, and
21 88, State's Exhibits. Do you recognize these
22 photographs?

23 A. Yes.

24 Q. Is that the scene that you arrived on?

25 A. Yes, ma'am.

HAM - DIRECT EXAM BY MS. SAS

1 MS. SZYMCZYNSKA-SAS: Permission to
2 publish to the jury, Your Honor, 84, 87, and 88.

3 THE COURT: You may proceed.

4 BY MS. SZYMCZYNSKA-SAS:

5 Q. Officer Ham --

6 A. Yes, ma'am.

7 Q. -- can you use this pointer on top and
8 show the jury which way you approached the house?

9 A. I came around this way.

10 THE COURT: I just need you to speak
11 up.

12 THE WITNESS: All right.

13 THE COURT: Thank you.

14 THE WITNESS: I came around this side
15 of the residence, right here, along the wall.
16 (Indicating)

17 BY MS. SZYMCZYNSKA-SAS:

18 Q. Okay. And 87. Which way would you
19 have come out?

20 A. I would have come out, like, right
21 around here (indicating), underneath the porch
22 area.

23 Q. Okay. Can we see 88? Right here? So
24 would that be the view that you had?

25 A. Yes, ma'am. I was -- I would have seen

HAM - DIRECT EXAM BY MS. SAS

1 it from this corner.

2 Q. Do you see any weapons in plain sight
3 when you approached from that angle?

4 A. Not -- not initially.

5 Q. Okay. Which weapons, if any, did you
6 see outside?

7 A. There was one, like, leaning up against
8 the wall here. And that was it out -- well, that
9 was it outside. There was a weapon here, under the
10 porch. (Indicating)

11 Q. I'm going to show you --

12 MS. SZYMCZYNSKA-SAS: Permission to
13 approach, Your Honor?

14 THE COURT: Yes.

15 BY MS. SZYMCZYNSKA-SAS:

16 Q. -- what has been introduced as State's
17 112 and 113. Is that the weapon that you
18 referenced --

19 A. Yes, ma'am, that was --

20 Q. -- a second ago?

21 A. -- that was on the porch, yes, ma'am.

22 Q. Okay. And was that the position that
23 it appeared to be when you entered the porch?

24 A. Yes.

25 MS. SZYMCZYNSKA-SAS: Permission to

HAM - DIRECT EXAM BY MS. SAS

1 publish 112 and 113?

2 THE COURT: You may proceed.

3 BY MS. SZYMCHYNSKA-SAS:

4 Q. Do you see that weapon in that picture?

5 Can you --

6 A. Yes, ma'am.

7 Q. -- see 113? What did you do after you
8 saw the defendant doing chest compressions?

9 A. We went into the residence and cleared
10 the residence for any threats.

11 Q. Okay. And what does that mean, cleared
12 for any threats?

13 A. We just went through the residence and
14 went to every place anybody could hide just to see
15 if -- see if we could find the threat.

16 Q. Did you find anyone in the house?

17 A. No, ma'am. No, nobody was in the
18 residence.

19 Q. And what did you do after clearing the
20 house?

21 A. I went back outside, and we had -- by
22 then everybody started arriving, and they were
23 walking around towards the wooded area.

24 Q. When you say everybody, who is it?

25 A. I'm sorry, responding officers.

HAM - DIRECT EXAM BY MS. SAS

1 Because once -- once we've taken -- come up on the
2 radio, then pretty much a lot of officers started
3 -- started arriving.

4 Q. Okay. Did you see Defendant Robert
5 Nolen?

6 A. Yes.

7 Q. Okay. What did you observe him doing?

8 A. He was doing chest compressions.

9 Q. Okay. And did you hear him make any
10 statement?

11 A. Yes. He kept asking us to do CPR.

12 Q. Did he say anything else?

13 A. We told him we're looking for the
14 shooter.

15 Q. And what was his response?

16 A. I am the fucking shooter. And then we
17 took him into custody.

18 MS. SZYMCZYNSKA-SAS: Court's
19 indulgence.

20 No further questions from this witness,
21 Your Honor.

22 THE COURT: Any questions for the
23 witness?

24 MS. NORRIS: May it please the Court?

25 THE COURT: Yes, ma'am.

HAM - CROSS EXAM BY MS. NORRIS

1 CROSS-EXAMINATION

2 BY MS. NORRIS:

3 Q. You said you're a detective now?

4 A. Yes, ma'am.

5 Q. Okay. So -- so the flashing lights
6 that you observed on the truck, is that what we
7 commonly think of as emergency lights?

8 A. Yes, ma'am, that's correct.

9 Q. And I believe you said that Mr. Nolen
10 -- you could hear him counting?

11 A. Yes, ma'am.

12 Q. Was it loud --

13 A. It was loud.

14 Q. -- one, two, three?

15 A. It was loud, yes, ma'am.

16 Q. So he clearly wasn't trying to hide
17 from you?

18 A. No, ma'am.

19 Q. And so as I understand it, he was doing
20 CPR?

21 A. Yes, ma'am.

22 Q. And when you took him into custody, he
23 was begging you to continue the CPR?

24 A. That I --

25 Q. Well, he was asking you to help?

HAM - CROSS EXAM BY MS. NORRIS

1 A. That was prior to us taking him into
2 custody, yes, ma'am.

3 MS. NORRIS: Okay. Thank you, sir. I
4 don't have anything further.

5 THE WITNESS: Yes, ma'am.

6 THE COURT: Any redirect?

7 MS. SZYMCZYNSKA-SAS: Not from the
8 State, Your Honor.

9 THE COURT: Any objection to the
10 witness being excused? From the State?

11 MS. SZYMCZYNSKA-SAS: Not from the
12 State, Your Honor.

13 THE COURT: From the defense?

14 MS. NORRIS: No, Your Honor.

15 THE COURT: Sir, you're excused.

16 THE WITNESS: Thank you.

17 THE COURT: You're welcome.

18 Call your next witness.

19 MS. SZYMCZYNSKA-SAS: The State calls
20 Officer Wasielewski.

21 GARY STEVEN WASIELEWSKI,
22 being first duly sworn, testified as follows:

23 THE CLERK: Please be seated. State
24 your full name, and spell your last name for the
25 record.

WASIELEWSKI - DIRECT EXAM BY MS. SAS

1 THE WITNESS: Gary Steven Wasielewski.

2 THE COURT: Spell your last name.

3 THE WITNESS: W-A-S-I-E-L-E-W-S-K-I.

4 THE COURT: Spell it one more time

5 because I think we misspelled it originally.

6 THE WITNESS: W-A-S-I-L -- I'm sorry.

7 THE COURT: That's okay.

8 THE WITNESS: W-A-S-I-E-L-E-W-S-K-I.

9 THE COURT: We left out one of the e's.

10 And is your Steven with a P-H or a V?

11 THE WITNESS: A V.

12 THE COURT: Thank you. You may

13 proceed.

14 DIRECT EXAMINATION

15 BY MS. SZYMCZYNSKA-SAS:

16 Q. Officer Wasielewski, I'm sorry if I'm
17 mispronouncing your name from the beginning.

18 A. That's okay.

19 Q. Can you please tell the jury where
20 you're currently employed?

21 A. Berkeley County Sheriff's Office.

22 Q. And how long have you been with the
23 sheriff's office?

24 A. Since August of 2015.

25 Q. And what did you do prior to working

WASIELEWSKI - DIRECT EXAM BY MS. SAS

1 with the sheriff's office?

2 A. I also worked as a reserve deputy for
3 about six years, and I did construction.

4 Q. Okay. And what's your current position
5 and your job responsibilities?

6 A. Corporal, and job responsibility is
7 patrol.

8 Q. Okay. And were you employed for
9 Berkeley County in the same capacity back in
10 October 7, 2016?

11 A. Yes, ma'am.

12 Q. And how did you become involved with
13 this case?

14 A. I was dispatched to the case.

15 Q. Do you recall the address that you were
16 dispatched to?

17 A. 228 Macio Road.

18 Q. Okay. And what county is that in?

19 A. Berkeley County.

20 Q. Okay. And what did you do after
21 arriving on the scene?

22 A. When we first arrived on the scene, we
23 heard somebody screaming, and we approached the
24 house, myself and Officer Ham. He went around the
25 left side, and I went around the right side.

WASIELEWSKI - DIRECT EXAM BY MS. SAS

1 Q. Okay. And what did you see?

2 A. At first I saw a person, who was later
3 described as -- or identified as the defendant, was
4 over another body, and he was doing what appeared
5 to be chest compressions and was screaming out the
6 numbers, counting.

7 Q. Okay. And did the defendant say
8 anything?

9 A. He was just asking for help; help me,
10 help me.

11 Q. Did you see any guns near the -- near
12 the body where the defendant was leaning over?

13 A. No, none at all near the body.

14 Q. Okay. And did he make any other
15 statements out in the back to you?

16 A. We asked where the shooter went, and he
17 said towards the woods.

18 Q. And what did you do after that?

19 A. We went in and cleared the house.

20 Q. Okay. And did you do anything else
21 after clearing the house?

22 A. No. We just cleared the house, and
23 then we went back outside. There were other
24 deputies behind us by the time we advanced forward.
25 So there was other deputies with that person.

WASIELEWSKI - DIRECT EXAM BY MS. SAS

1 Q. Okay. And did you hear the defendant
2 say anything else at any point after that?

3 A. When we were in the house -- when we
4 were in the house clearing the house and we're in
5 the first room, it sounded what appeared to be the
6 defendant saying -- screaming, I'm the fucking
7 shooter.

8 Q. Okay. I'm going to show you what has
9 been entered into evidence as State's 83 and 85.

10 MS. SZYMCZYNSKA-SAS: Permission to
11 approach?

12 THE COURT: Yes, ma'am.

13 BY MS. SZYMCZYNSKA-SAS:

14 Q. Are these the photographs of the scene
15 that night?

16 A. Yes.

17 Q. Okay.

18 A. This is the right side of the house
19 where I came around, and he was --

20 MS. SZYMCZYNSKA-SAS: Permission to
21 publish, Your Honor?

22 THE COURT: You may proceed.

23 BY MS. SZYMCZYNSKA-SAS:

24 Q. If you can turn around, Officer
25 Wasielewski, and there's a little -- if I can

WASIELEWSKI - DIRECT EXAM BY MS. SAS

1 approach -- and it has a red light on top. If you
2 can show the jury which way you would have
3 approached and where the defendant was located over
4 the body.

5 A. I came around this side of the house,
6 and right in here there was a -- is where the
7 defendant was over the body. (Indicating)

8 Q. Okay. Publishing the other photograph.
9 And from that perspective, can you show the jury?

10 A. I saw another body was over here, and
11 then we -- once the people got around to him, we
12 went in and cleared the house. Myself and Officer
13 Ham went in this back side, and there was another
14 body laying in this back side of this back room.

15 Q. Okay.

16 MS. SZYMCZYNSKA-SAS: The Court's
17 indulgence?

18 THE COURT: Yes, ma'am.

19 MS. SZYMCZYNSKA-SAS: No further
20 questions for this witness, Your Honor.

21 THE COURT: Any questions for the
22 witness?

23 MS. NORRIS: May it please the Court?

24 THE COURT: Yes, ma'am.

25 CROSS-EXAMINATION

WASIELEWSKI - CROSS EXAM BY MS. NORRIS

1 BY MS. NORRIS:

2 Q. If it's all right with you, I'm just
3 going to call you Corporal because I will butcher
4 your name --

5 A. That's fine.

6 Q. -- and I don't want to do that.

7 A. That's fine.

8 Q. All right. Corporal, so when you
9 become a police officer you have to go through
10 training, right?

11 A. Yes, ma'am.

12 Q. Do they call it a police academy?

13 A. Yes, ma'am.

14 Q. And as part of your training you learn
15 how to fill out a lot of paperwork?

16 A. Yes, ma'am.

17 Q. And you're taught to write down things
18 right after they happen in a report so that two and
19 a half years later you can come in and have it
20 before you, right?

21 A. Yes, ma'am.

22 Q. Okay. And did you actually do the
23 incident report in this case?

24 A. I did an initial report, yes.

25 Q. All right. Did you do a supplemental

WASIELEWSKI - CROSS EXAM BY MS. NORRIS

1 report?

2 A. No, ma'am, I don't believe so.

3 Q. Do you have a copy of the incident
4 report with you?

5 A. Not with me, no.

6 MS. NORRIS: May I approach, Your
7 Honor?

8 THE COURT: Yes, ma'am.

9 BY MS. NORRIS:

10 Q. Is that the report that you wrote back
11 close in time to October 7, 2016?

12 A. Yes, ma'am.

13 Q. All right. Where in there does it say
14 that this gentleman said the suspect ran off into
15 the woods?

16 A. No, ma'am, it doesn't.

17 Q. So, in essence, it just says you saw
18 three people with gunshots and one subject kneeling
19 on the ground, right?

20 A. Yes, ma'am.

21 Q. Okay. So everything else you just said
22 you didn't write down at the time?

23 A. No, ma'am.

24 Q. Okay.

25 MS. NORRIS: I don't have anything

1 further.

2 THE COURT: Any redirect of the
3 witness?

4 MS. SZYMCZYNSKA-SAS: Nothing from the
5 State, Your Honor.

6 THE COURT: Any objection to the
7 witness being excused? From the State?

8 MS. SZYMCZYNSKA-SAS: The witness can
9 be excused from the State.

10 THE COURT: From the defense?

11 MS. NORRIS: No objection.

12 THE COURT: Sir, you're excused. You
13 can just leave them right there. We'll get them.
14 You may proceed.

15 MS. SZYMCZYNSKA-SAS: The State calls
16 Captain James Geiger.

17 THE COURT: Is everyone comfortable, or
18 does anyone need a break?

19 JAMES GEIGER,
20 being first duly sworn, testified as follows:

21 THE CLERK: Please be seated. State
22 your full name, and spell your last name for the
23 record.

24 THE WITNESS: James Geiger,
25 G-E-I-G-E-R.

GEIGER - DIRECT EXAM BY MS. SAS

1 THE COURT: You may proceed.

2 DIRECT EXAMINATION

3 BY MS. SZYMCZYNSKA-SAS:

4 Q. Captain Geiger, where are you currently
5 employed?

6 A. Berkeley County Sheriff's Office.

7 Q. And how long have you been with the
8 sheriff's office?

9 A. Since 1997.

10 Q. What did you do prior to working at the
11 sheriff's office?

12 A. I worked at the Moncks Corner Police
13 Department.

14 Q. And what's your current position and
15 job responsibilities?

16 A. Captain of the patrol division. I'm
17 responsible for the patrol activities and
18 administration, along with K9 and Target Zero.

19 Q. What's Target Zero?

20 A. Our DUI team.

21 Q. And were you employed in the sheriff's
22 office in the same capacity back on October 7,
23 2016?

24 A. No, ma'am. I was a shift lieutenant at
25 that time.

GEIGER - DIRECT EXAM BY MS. SAS

1 Q. And how did you become involved in the
2 case which brings us here today?

3 A. The call was dispatched, it came
4 across, and I responded to it.

5 Q. Okay. What did you do after arriving
6 on the scene?

7 A. When I first got there, tried to
8 coordinate and get everybody together. It was
9 still an active shooter-type scenario. We didn't
10 know where the suspect was. So we tried to
11 coordinate and get everybody together so we -- you
12 know, tried to be as safe as possible.

13 Approached the house, me and a couple
14 of other officers -- I don't remember their names.
15 I don't remember who they were. We went around on
16 the right side of the house. We had heard somebody
17 screaming in the back yard, wasn't sure what was
18 going on there at the time.

19 So we -- I went around on the right
20 side of the house, saw the victim laying -- victim
21 on the ground and a guy working on him trying to do
22 CPR, which was Mr. Nolen, right there when we first
23 came around out by the air-conditioning unit.

24 Initially bypassed Mr. Nolen, didn't
25 seem like to be -- I didn't know he was a suspect

GEIGER - DIRECT EXAM BY MS. SAS

1 at the time. So I went past him and saw another
2 guy laying on the ground further -- further around
3 the house, and went and checked to see if we could
4 find a pulse on him and find out if he was still
5 alive or expired.

6 And Mr. Nolen was screaming, you know,
7 for us to do CPR on him and so on and so forth.
8 And, like I said, at the time I was still concerned
9 with where is the bad guy? You know, where is he
10 at? And, you know, I said, where is the suspect?
11 And he said -- pardon my language here -- I am the
12 fucking suspect.

13 So I told him I had to put him in
14 handcuffs, and a couple of guys came and took him
15 to the car, and I secured him in the back of the
16 patrol car. And after that, knowing that we had --
17 or, hopefully, had the shooter secured, we went
18 ahead and finished securing the house to see if
19 there was any other victims or anything in the
20 house, which there was.

21 Q. Okay. When you initially placed -- I'm
22 just going to kind of go back. When you placed
23 Mr. Nolen in the car, did you have any interactions
24 with him in the back of the patrol car?

25 A. Yes, ma'am, I spoke with him for a

GEIGER - DIRECT EXAM BY MS. SAS

1 little while.

2 Q. Okay. What was the purpose of this
3 interaction?

4 A. I still had a guy that we were missing.
5 According to our dispatcher, there were four --
6 four victims in this. We could only find three.
7 We were still looking for one other fellow that was
8 supposed to be running around or in the woods, or
9 hurt; we didn't know.

10 My main concern -- my only concern at
11 that point was I need to find this other guy and
12 make sure that he's still breathing. And if he is
13 hurt, get him help, find out where he's at. Just
14 make sure, you know, my -- my main concern was the
15 other victim at this -- at this point.

16 Q. Okay. What observations did you make
17 about the defendant in the back of the patrol car?

18 A. Intoxicated. He was very loud,
19 screaming and yelling.

20 Q. Okay.

21 A. Very upset.

22 Q. Okay. Can you describe to the jury at
23 that point, when he was back in the patrol car, how
24 is the scene looking at the house and outside of
25 the house on Macio Road?

GEIGER - DIRECT EXAM BY MS. SAS

1 A. By this point, once we have him secured
2 in the vehicle, the -- everybody is coming. This
3 happened to fall on the same timeframe that there
4 was a hurricane. I forget which one it was,
5 Matthew or something like that. And when we have a
6 situation like with a hurricane coming down, we all
7 do double shifts so everybody is out working.

8 And, of course, on a call of this
9 nature, everybody is coming. So by this time we
10 had quite a few officers on the scene. The
11 detectives are starting to arrive. It's organized
12 chaos is the best way I can describe it, because
13 you've got so many people doing so many different
14 things trying to secure it and do what's necessary
15 to protect the scene, do what's necessary to make
16 sure EMS can go back and check the -- check the
17 victims to make sure that they are actually expired
18 or render aid when they can render aid. So there's
19 a lot going on right at this point.

20 Q. Okay. I'm going to ask you a couple of
21 other questions. To your knowledge, were the
22 interactions with you and Mr. Nolen in the back of
23 that patrol car recorded?

24 A. I believe they were. I believe they
25 had a -- and at the time, I knew that some of our

GEIGER - DIRECT EXAM BY MS. SAS

1 cars are equipped with cameras in the back of them.
2 So I think he -- I felt confident that he was in
3 one of those vehicles.

4 Q. Okay. And do you recall what time,
5 approximately, you would have arrived on the
6 location of 228 Macio?

7 A. I don't have the exact time, no, ma'am.
8 I couldn't tell you exactly, but it was shortly
9 after the call came out. We got there pretty
10 quick.

11 Q. Okay. Would it be within what time
12 frame?

13 A. Of the call coming out?

14 Q. Yes.

15 A. This is -- I would have to venture a
16 guess because I don't know exactly.

17 Q. Would it help you to look at the CAD
18 report?

19 A. Yes, ma'am, that would really help me.

20 MS. SZYMCZYNSKA-SAS: Beg the Court's
21 indulgence?

22 THE COURT: Yes, ma'am.

23 MS. SZYMCZYNSKA-SAS: Permission to
24 approach the witness, Your Honor?

25 THE COURT: Yes.

GEIGER - DIRECT EXAM BY MS. SAS

1 BY MS. SZYMCZYNSKA-SAS:

2 Q. Look at that document. And can you
3 tell me if that's the CAD report from that night?

4 A. It appears to be, yes, ma'am.

5 Q. Okay. And do you see what time where
6 the initial responding officers arriving on the
7 scene?

8 A. On the scene --

9 MS. SZYMCZYNSKA-SAS: May I approach?

10 THE COURT: You may.

11 THE WITNESS: Yes. Please, point it
12 out to me because I'm having trouble locating
13 exactly where our times are.

14 BY MS. SZYMCZYNSKA-SAS:

15 Q. Okay. Do you see on top the dispatch
16 time and the -- and arrival time?

17 A. Yes, ma'am.

18 Q. What is the arrival time?

19 A. 1:59. 1:59, that would be a.m.

20 Q. Okay.

21 MS. SZYMCZYNSKA-SAS: The Court's
22 indulgence?

23 THE COURT: Yes, ma'am.

24 MS. SZYMCZYNSKA-SAS: No further
25 questions for this witness.

GEIGER - CROSS EXAM BY MS. NORRIS

1 THE COURT: Any questions for the
2 witness, Ms. Norris?

3 CROSS-EXAMINATION

4 BY MS. NORRIS:

5 Q. Captain Geiger, I believe you said that
6 Mr. Nolen was yelling and screaming?

7 A. Yes.

8 Q. And that was -- and I apologize for the
9 language -- I am the fucking suspect?

10 A. Yes, ma'am.

11 Q. And the rest of it was asking you-all
12 to continue CPR and to help Mr. Kenyon, right?

13 A. Not sure of the names of the people who
14 were deceased, I just -- I don't.

15 Q. He was asking you to help the one that
16 he was doing CPR --

17 A. If that's the one that he was doing --
18 yes, ma'am. Yes, ma'am.

19 MS. NORRIS: Thank you, sir. I don't
20 have anything further.

21 THE COURT: Anything -- any redirect?

22 MS. SZYMCHYNSKA-SAS: No, Your Honor.

23 THE COURT: Any objection to the
24 witness being excused? From the State?

25 MS. SZYMCHYNSKA-SAS: Not from the

1 State.

2 THE COURT: From the defense?

3 MS. NORRIS: No, Your Honor.

4 THE COURT: Sir, you're excused.

5 THE WITNESS: Thank you, ma'am.

6 THE COURT: You're welcome.

7 Mr. Foreman, ladies and gentlemen, you
8 all have been sitting for a little over an hour.
9 I'm going to give you a brief break to refresh
10 yourself.

11 During the break, please do not discuss
12 the case, and please leave your notepads in your
13 seats. I anticipate we'll be out about ten
14 minutes.

15 (Jury Out, 11:13 a.m.)

16 THE COURT: You may be seated. Is
17 there anything before we take a break? From the
18 State?

19 MS. SZYMCZYNSKA-SAS: Nothing from the
20 State, Your Honor.

21 THE COURT: From the defense?

22 MS. NORRIS: No, Your Honor.

23 THE COURT: Who's the State's next
24 witness going to be?

25 MS. SZYMCZYNSKA-SAS: Your Honor,

VANSANT - DIRECT EXAM BY MS. SAS

1 Officer Vansant.

2 THE COURT: V-A-N-Z-A-N-T?

3 MS. SZYMCZYNSKA-SAS: S-A-N-T.

4 THE COURT: S-A-N-T. All right. We'll
5 be out about 10 minutes.

6 MS. SZYMCZYNSKA-SAS: Your Honor, I
7 believe he's just outside of the courtroom.

8 THE COURT: Yeah. Go ahead and get him
9 so we don't have to wait.

10 (A recess transpired.)

11 (Jury In, 11:25 a.m.)

12 THE COURT: The State may proceed.

13 MS. SZYMCZYNSKA-SAS: The State calls
14 Officer James Vansant.

15 JAMES VANSANT,

16 being first duly sworn, testified as follows:

17 THE CLERK: Please be seated. State
18 your full name, and spell your last name for the
19 record.

20 THE WITNESS: My name is James, James
21 Vansant, V-A-N-S-A-N-T.

22 THE COURT: You may proceed.

23 DIRECT EXAMINATION

24 BY MS. SZYMCZYNSKA-SAS:

25 Q. Officer Vansant, where are you

VANSANT - DIRECT EXAM BY MS. SAS

1 currently employed?

2 A. Berkeley County Sheriff's Office.

3 Q. How long have you been with the
4 sheriff's office?

5 A. A little over three years.

6 Q. Okay. And what did you do prior to
7 working with the sheriff's office?

8 A. I was employed at North Charleston
9 Police Department.

10 Q. Okay. And what is your current job and
11 your job responsibilities?

12 A. I'm a detective assigned to the
13 Property Unit South, and I do motor vehicle thefts
14 and arson investigations.

15 Q. Okay. And were you employed with
16 Berkeley County in the same capacity on October 7,
17 2016?

18 A. I was employed, but in a different
19 capacity. I was a law enforcement officer. I was
20 assigned to the K9 Unit as traffic enforcement.

21 Q. And how did you become involved with
22 this case?

23 A. It was during the hurricane; we were
24 all working the streets. I say all. I was
25 assigned to the road, systems road units. The call

VANSANT - DIRECT EXAM BY MS. SAS

1 came out, I was in the area, and I responded along
2 with other deputies when the call -- that
3 responded.

4 Q. Okay. And what did you do after
5 arriving on the scene?

6 A. I arrived on the scene; there was some
7 other units there. I parked behind them, got out
8 of the -- my vehicle, went to the right side of the
9 house into the backyard.

10 Q. And what did you see in the backyard?

11 A. I saw a gentleman, the defendant, he
12 was doing CPR, chest compressions. He was yelling
13 out one, two, three, four. As I come around the
14 house, I'm able to see him physically doing this.

15 People are asking him -- other
16 deputies, they were asking him, who's the shooter?
17 Where is the shooter? And he stated the shooter
18 was in the woods or ran into the woods.

19 We turned; our backs were towards the
20 house; we're facing the wood line at this point.
21 As we're looking at the wood line, you know, we're
22 looking over it, someone is asking him descriptions
23 of the shooter. You know, who's the shooter?
24 Where is the shooter is still being asked of him.

25 And he yells out, I did it, I shot

VANSANT - DIRECT EXAM BY MS. SAS

1 them. Fuck it, I did it.

2 Q. And what did you do next?

3 A. At that time I came around -- once he
4 made that statement, there were plenty of deputies
5 there with him. I came around the house the same
6 way I initially entered from the right side to --
7 back to the front of the house.

8 As I'm walking back up there, there is
9 a pickup truck that was backed up. On that -- on
10 the hood of that pickup truck was a long rifle and
11 a gun case, so I stood there with it. I didn't
12 touch it. Just figured at that point we needed --
13 you know, the investigators are going to need it,
14 need to know it's there and deal with it.

15 Q. Okay. I'm going to show you what has
16 been entered into evidence as State's 94.

17 MS. SZYMCZYNSKA-SAS: Permission to
18 approach the witness?

19 THE COURT: Yes, ma'am.

20 BY MS. SZYMCZYNSKA-SAS:

21 Q. Is this the weapon you were
22 referencing?

23 A. Yes, ma'am, that's it.

24 Q. And is that the accurate positioning of
25 the weapon as you saw it?

VANSANT - DIRECT EXAM BY MS. SAS

1 A. That is, yes.

2 Q. Okay.

3 MS. SZYMCZYNSKA-SAS: Permission to
4 publish State's 94 --

5 THE COURT: You may proceed. I'm
6 sorry, I didn't mean to cut you off. You may
7 proceed.

8 MS. SZYMCZYNSKA-SAS: Permission to
9 approach the witness, Your Honor?

10 THE COURT: Yes, ma'am.

11 BY MS. SZYMCZYNSKA-SAS:

12 Q. I'm going to show you what has been
13 premarked as 169 for demonstrative purposes only.
14 I'll try to put it so the jury can see it and you
15 can see it. Do you recall, approximately -- here's
16 the clicker with the little red light -- where that
17 truck was located?

18 A. The truck was -- it was located in this
19 general area right here. (Indicating) There was,
20 uh --

21 Q. I know there's trees, so it would have
22 been underneath?

23 A. It was right next to them. There was a
24 -- right in this general area. It was -- there was
25 something parked beside it, a boat or a trailer or

VANSANT - CROSS EXAM BY MS. NORRIS

1 something like that was parked next to it. It was
2 in that general area.

3 Q. Okay. And did you at some point leave
4 the gun?

5 A. I did. Once the scene was secured, the
6 investigators had -- had the scene secured, the
7 crime scene tape was up, and crime scene log was
8 being completed. The weapon -- the scene was
9 turned over to them, along with the location of the
10 weapon.

11 MS. SZYMCZYNSKA-SAS: The Court's
12 indulgence?

13 THE COURT: Yes, ma'am.

14 MS. SZYMCZYNSKA-SAS: No further
15 questions for this witness, Your Honor.

16 THE COURT: Any questions for the
17 witness?

18 MS. NORRIS: May it please the Court?

19 THE COURT: Yes, ma'am, you may
20 proceed.

21 CROSS-EXAMINATION

22 BY MS. NORRIS:

23 Q. Detective Vansant, how long were you
24 with the North Charleston Police Department?

25 A. Ten -- almost ten years.

VANSANT - CROSS EXAM BY MS. NORRIS

1 Q. So counting that and Berkeley County,
2 you've been an officer about 13?

3 A. Yes, close to it.

4 Q. And at the beginning of that, did you
5 go to the police academy?

6 A. I did, yes, ma'am.

7 Q. And they teach -- teach you everything,
8 including how to fill out paperwork, correct?

9 A. To an extent.

10 Q. And you're taught that it's very
11 important to write reports about what happened,
12 what you observed, because you handle many, many
13 cases, right?

14 A. Okay. Sure.

15 Q. Did you do a report in this case?

16 A. I did not.

17 Q. So everything you just said you didn't
18 write down at the time?

19 A. I did not write this down, correct.

20 MS. NORRIS: All right. Thank you,
21 Detective.

22 THE COURT: Any redirect?

23 MS. SZYMCZYNSKA-SAS: No, Your Honor.

24 THE COURT: Any objection to the
25 witness being excused? From the State?

MCGOWAN - DIRECT EXAM BY MS. SAS

1 MS. SZYMCZYNSKA-SAS: Not from the
2 State.

3 THE COURT: From the defense?

4 MS. NORRIS: No, Your Honor.

5 THE COURT: Sir, you're excused.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: You're welcome. Call your
8 next witness.

9 MS. SZYMCZYNSKA-SAS: The State calls
10 Kevin McGowan.

11 KEVIN MCGOWAN,
12 being first duly sworn, testified as follows:

13 THE CLERK: Please be seated. State
14 your full name, and spell your last name for the
15 record.

16 THE WITNESS: Kevin McGowan,
17 M-C-G-O-W-A-N.

18 THE COURT: You may proceed.

19 MS. SZYMCZYNSKA-SAS: Thank you, Your
20 Honor.

21 THE COURT: You're welcome.

22 DIRECT EXAMINATION

23 BY MS. SZYMCZYNSKA-SAS:

24 Q. Mr. McGowan, where are you currently
25 employed?

MCGOWAN - DIRECT EXAM BY MS. SAS

1 A. Berkeley County Sheriff's Office.

2 Q. And how long have you been with the
3 sheriff's office?

4 A. Since September of 2016.

5 Q. And where did you work before?

6 A. Prior law enforcement experience, 1977
7 to '81, I was in the United States Air Force
8 Security Police. 1981 to 2010, I was with the City
9 of Charleston Police Department. I retired as a
10 sergeant and then went to the Charleston County
11 Aviation Authority Police for four years. Until
12 2015 to September of '16, I was an investigator
13 here at the sheriff's -- I mean, the Solicitor's
14 Office.

15 Q. And what is your current job and your
16 job responsibilities?

17 A. I work in the forensic division.

18 Q. Okay. And were you employed with them
19 in the same capacity on October 7, 2016?

20 A. Yes, ma'am.

21 Q. And how did you become involved with
22 this case?

23 A. I was notified by Lieutenant Alteri
24 that we had a triple homicide on Macio Street, and
25 I responded.

MCGOWAN - DIRECT EXAM BY MS. SAS

1 Q. And who is Lieutenant Alteri?

2 A. He's in charge of the forensic unit.

3 Q. And what time do you recall you arrived
4 on the scene?

5 A. He called me, it was about 2:00 in the
6 morning. I got there about 2:30.

7 Q. Okay. And what did you do after you
8 arrived on the scene?

9 A. He briefed me of what had happened,
10 that they were waiting --

11 MS. NORRIS: Objection to hearsay.

12 THE COURT: Please approach.

13 (Bench conference)

14 THE COURT: As I understand, he is
15 merely reciting the basis of why he was there in
16 the investigation. It's really not being offered
17 for the truth and it's allowable under the case
18 law.

19 MS. NORRIS: I understand, Your Honor,
20 but we've already heard the officers that testified
21 about --

22 THE COURT: I don't know what he's
23 going to say.

24 MS. SZYMCZYNSKA-SAS: He's going to say
25 --

MCGOWAN - DIRECT EXAM BY MS. SAS

1 THE COURT: And he's talking about the
2 forensic person and not the other officers. I
3 think it explains what he was doing.

4 Overruled.

5 (End of bench conference.)

6 THE COURT: You may proceed. The
7 objection is overruled.

8 BY MS. SZYMCZYNSKA-SAS:

9 Q. Officer McGowan, I think you indicated
10 that you were briefed by the officers on the scene.
11 And what happened after that?

12 A. He -- Lieutenant Alteri -- Alteri
13 advised me that we were waiting on a search warrant
14 to go inside the residence. So we -- Ms. Chestnut
15 was given the task of taking the photographs. When
16 we get on the scene, the lieutenant gives us
17 different duties to do.

18 She started taking exterior photographs
19 of the scene, the outside of the house. Once the
20 search warrant was secured and brought to the
21 residence, the forensic team, along with one of the
22 detectives, we do a walk-through first to find out,
23 you know, what the -- what needs to be collected
24 and identified and whatnot.

25 Then we go through, start labeling

MCGOWAN - DIRECT EXAM BY MS. SAS

1 items, advise the detectives what we have, and then
2 start collecting items.

3 Q. And did you prepare a diagram as a
4 result of your responding to the scene and working
5 the scene as a part of the crime scene unit?

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

7 Q. I'm going to show you what has been
8 entered into evidence as State's 80, 81, 82, and
9 79. Are these the diagrams that you prepared?

10 A. Yes, ma'am.

11 Q. What did you mark on the diagrams?

12 A. Any items that was deemed to be
13 collected as evidence was marked.

14 Q. And did you do anything else other than
15 the markings?

16 A. Well, once an item is identified and it
17 is photographed, we measure it and then it's
18 collected.

19 Q. What do you mean by measure it?

20 A. We do a triangulation method so in the
21 event that if you ever have to go back and recreate
22 a scene, you can use the measurements to put the
23 items back to where they were originally located.

24 Q. Okay. And did you also prepare a
25 report?

MCGOWAN - DIRECT EXAM BY MS. SAS

1 A. Yes, ma'am.

2 Q. Okay. And did you in your report
3 reference all the markers and --

4 A. Yes, ma'am. We do measuring points,
5 and we do a triangulation method, which is just a
6 straight line measurement.

7 Q. Okay. And what color are those markers
8 that you referenced?

9 A. Anything that I have on here that's
10 evidence -- I don't know if you can see it, the
11 coloring, but originally I just used a red number
12 for the evidence.

13 Q. What color would they be on the scene
14 when they were photographed?

15 A. Oh, it's a yellow marker that we have.

16 Q. Okay. I'm going to have you take us
17 through each of the diagrams that you prepared.

18 A. Sure.

19 MS. SZYMCZYNSKA-SAS: Permission to
20 approach the witness, Your Honor?

21 THE COURT: Yes, ma'am.

22 THE WITNESS: Would it be easier for me
23 to get up or --

24 MS. SZYMCZYNSKA-SAS: I'm going to give
25 you a pointer.

MCGOWAN - DIRECT EXAM BY MS. SAS

1 THE WITNESS: Okay.

2 MS. SZYMCZYNSKA-SAS: Whatever is
3 easier for you, as long as the court reporter can
4 hear you. And I want to make sure that you see it
5 and the jury sees it.

6 BY MS. SZYMCZYNSKA-SAS:

7 Q. Can you take us through this particular
8 diagram on the scene, and take us through --

9 A. Yeah. That is just an overhead of the
10 -- if you were looking straight down on the house,
11 kind of the rear of the house.

12 Q. And, Mr. McGowan, you can use this
13 clicker on the top; there's a little red pointer.

14 A. Oh, okay. Oh, cool. All right. This
15 is the back of the house, it's a porch. This is a
16 sidewalk area, the porch, the hot tub is here. I
17 used measuring point D here, C. A is a telephone
18 pole in the back yard, and B is the --

19 COURT REPORTER: I couldn't hear the
20 last part. B is what?

21 THE WITNESS: Oh, I'm sorry. B is the
22 far side of the house.

23 COURT REPORTER: Thank you.

24 THE WITNESS: Do you want me to go
25 through each one?

MCGOWAN - DIRECT EXAM BY MS. SAS

1 MS. SZYMCZYNSKA-SAS: Yes.

2 Permission to approach, Your Honor?

3 THE COURT: You may.

4 BY MS. SZYMCZYNSKA-SAS:

5 Q. That's State's 79 for demonstrative
6 only, the enlarged version. If you can take us
7 through that diagram.

8 A. Yes, ma'am. This is the -- another
9 aerial view of the house. This is the street out
10 here, if you were looking this way, the top of the
11 house, the front door. And this would be the side,
12 and if you kept walking around you would find the
13 hot tub in the back area. (Indicating)

14 There were several vehicles in the
15 front. There was a white Nissan pickup, a Ford
16 pickup, a white Chevy pickup, and a black Toyota
17 Tundra. There was a trailer with a boat on it, and
18 the sidewalk going around the side. (Indicating)

19 Those arrows indicate which way the car
20 was pointed. So this vehicle was backed in. These
21 are parked towards the house, and those were
22 pointing out.

23 Q. And can you take us through each of the
24 markers on the scene for this particular diagram?

25 A. In the front here, we have 30, 31, and

MCGOWAN - DIRECT EXAM BY MS. SAS

1 32.

2 Q. And what are these items?

3 A. Number 30 is a Ruger .22-caliber rifle,
4 and it is on the hood of this vehicle. Number 31
5 is a .22-caliber spent cartridge case, and 32 is
6 also another 32 -- I'm sorry -- .22-caliber
7 cartridge case --

8 Q. Okay.

9 A. -- spent casing.

10 Q. And I'm going to show you what has been
11 entered into evidence as State's 90, 91, 92. Are
12 these the photographs of the markers that you just
13 referenced?

14 A. Yes, ma'am.

15 Q. I'm sorry, that would be State's 90,
16 91, and 92.

17 A. 90, 91, and 92. Okay.

18 Q. And those are markers 31 and 32,
19 correct?

20 A. Uh-huh.

21 MS. SZYMCZYNSKA-SAS: Permission to
22 publish, Your Honor?

23 THE COURT: You may proceed.

24 BY MS. SZYMCZYNSKA-SAS:

25 Q. If you can point to the jury where that

MCGOWAN - DIRECT EXAM BY MS. SAS

1 particular marker is located.

2 A. That would be right there.

3 (Indicating)

4 Q. Okay. And what number marker is that?

5 A. 31.

6 Q. Okay. 91?

7 A. 31. Oh, sorry.

8 Q. Sorry. Publish 91. Is that another
9 view of that marker?

10 A. Yes, ma'am.

11 Q. Okay. And 92. Is that -- 32, can you
12 show the jury on your graph where that is located?

13 A. Right there. (Indicating)

14 Q. Okay. If we can go back --

15 MS. SZYMCZYNSKA-SAS: Permission to
16 approach, Your Honor?

17 THE COURT: You may.

18 BY MS. SZYMCZYNSKA-SAS:

19 Q. I want to go back to the back of the
20 residence. Can you take us through each of the
21 markers starting from the left to the right?

22 A. Number 1 is a 9-millimeter Ruger
23 cartridge case. Number 2 is another 9-millimeter
24 Ruger cartridge case. Number 3 is a 9-millimeter
25 live round, and all of the same stamps on it.

MCGOWAN - DIRECT EXAM BY MS. SAS

1 Number 4 is a .22-caliber cartridge case, as is
2 Number 5, which is underneath. That's why there's
3 a little dotted circle kind of underneath the porch
4 there. Number 6 is a -- I guess when EMS was
5 working on Mr. Kenyon, that was part of his
6 clothing. Number 7 is a -- back down here, is a
7 .22-caliber cartridge case. Number 8 is a
8 .22-caliber cartridge case as is Number 9 a
9 cartridge case, and those are all spent casings.
10 And Number 20 is another .22-caliber cartridge
11 case.

12 Q. Okay. I'm going to show you what has
13 been entered as State's Exhibits 108, 109, 115,
14 114, 116, 118 and 119.

15 THE COURT: Tell me those numbers
16 again, Ms. Szymczynska, I apologize.

17 MS. SZYMCZYNSKA-SAS: Okay. It's 108,
18 109, 115, 114, 116, 118, 119 -- I'm not sure -- the
19 Court's indulgence?

20 THE COURT: That's okay.

21 MS. SZYMCZYNSKA-SAS: Actually, Your
22 Honor, I will show them in a different order. I'm
23 sorry. I will withdraw these pictures at this
24 time.

25 BY MS. SZYMCZYNSKA-SAS:

MCGOWAN - DIRECT EXAM BY MS. SAS

1 Q. I'm going to show you what has been
2 marked as State's Exhibit and entered 110. Is this
3 the photograph of one of the markers?

4 A. Yes, ma'am.

5 Q. Which one is it?

6 A. Number 23.

7 Q. Okay. And show us on the diagram where
8 that's located.

9 A. 23, it should be right near the AC
10 unit.

11 Q. Okay. Can you publish --

12 MS. SZYMCZYNSKA-SAS: Permission to
13 publish, Your Honor, State's 23 -- State's 110.
14 The Court's indulgence, Your Honor?

15 THE COURT: Uh-huh.

16 BY MS. SZYMCZYNSKA-SAS:

17 Q. I'm going to show you what has been
18 entered as Exhibit 108.

19 MS. SZYMCZYNSKA-SAS: Permission to
20 approach, Your Honor?

21 THE COURT: Yes, ma'am.

22 BY MS. SZYMCZYNSKA-SAS:

23 Q. Can you tell us which markers are
24 referenced in that particular photograph?

25 A. The bottom is number 3, 4, 5, and you

MCGOWAN - DIRECT EXAM BY MS. SAS

1 can partially see 10.

2 Q. Okay. Can you show us where that's
3 located on the diagram?

4 A. Oh, I'm sorry, 3, 4, 5, and 10.

5 (Indicating)

6 MS. SZYMCZYNSKA-SAS: Permission to
7 publish 108, Your Honor?

8 THE COURT: You may proceed.

9 BY MS. SZYMCZYNSKA-SAS:

10 Q. Are those the 3, 4, 5?

11 A. Yes, ma'am.

12 Q. I'm going to show what has been entered
13 into evidence as State's 109.

14 MS. SZYMCZYNSKA-SAS: Permission to
15 approach, Your Honor?

16 THE COURT: Yes, ma'am.

17 BY MS. SZYMCZYNSKA-SAS:

18 Q. Is that another photograph of the
19 markers in the back?

20 A. Yes, ma'am, 7, 8, and 9.

21 Q. And can you show us where the markers
22 are located?

23 A. Seven and 8 and 9 (indicating), and
24 that's at the far end of the house as you turn in.

25 MS. SZYMCZYNSKA-SAS: Permission to

MCGOWAN - DIRECT EXAM BY MS. SAS

1 publish, Your Honor, 109?

2 THE COURT: You may proceed.

3 BY MS. SZYMCZYNSKA-SAS:

4 Q. And are those the photographs that you
5 just looked at?

6 A. Yes, ma'am.

7 Q. I'm going to draw your attention to the
8 other diagrams that you completed.

9 MS. SZYMCZYNSKA-SAS: Permission to
10 approach, Your Honor?

11 THE COURT: You may.

12 BY MS. SZYMCZYNSKA-SAS:

13 Q. Can you describe to the jury -- this is
14 State's Exhibit 81, and I'm going to enlarge for
15 demonstrative purposes only. Can you tell the jury
16 what is this a diagram of?

17 A. Yes, ma'am. This is the interior of
18 the house, or at least a portion of it. If you
19 were to come in through the back porch, you would
20 come in -- it's cut off, but that's part of the
21 kitchen, hallway. This is the foyer to the front
22 door. This is an opening into the living room
23 area, and there's a door that leads into the
24 garage.

25 This is just a top view of the outside

MCGOWAN - DIRECT EXAM BY MS. SAS

1 porch and just show that -- we'll put that in and
2 show the relationship in there where 31 was. And
3 this is the -- it's kind of a cutout of the wall, a
4 couple of bullet holes in it.

5 Think of it as a cardboard box. If you
6 would split it open to lay it flat, this would be
7 the bottom and that would be one of the sides, just
8 to show correlation to the wall. (Indicating)

9 Q. Thank you, Mr. McGowan. I'm going to
10 show you what has been entered into evidence as
11 State's 102 and 107.

12 MS. SZYMCZYNSKA-SAS: Permission to
13 approach?

14 THE COURT: Yes, ma'am.

15 BY MS. SZYMCZYNSKA-SAS:

16 Q. Can you tell us on that diagram which
17 specific markers do you have and what did you
18 locate at those locations?

19 A. It's 24, 25 and 26 and 27. Twenty-four
20 is a .22-caliber spent casing, as is Number 25.
21 And Number 26 is another casing, .22-caliber, and
22 this Number 27 is a magazine, a clear magazine that
23 was empty by the front door.

24 Q. Okay. And the photographs I just
25 showed you --

MCGOWAN - DIRECT EXAM BY MS. SAS

1 A. Yes, ma'am.

2 Q. -- State's 102 and 107, are those the
3 depiction of the markers?

4 A. Yes, ma'am.

5 MS. SZYMCZYNSKA-SAS: Permission to
6 publish?

7 THE COURT: You may proceed.

8 BY MS. SZYMCZYNSKA-SAS:

9 Q. 102. And can you describe in the
10 photograph what you can see?

11 A. Yeah. That's the case, and that's the
12 empty magazine.

13 Q. Okay. And where's the front door?

14 A. Right there.

15 Q. 107.

16 A. Those are the two spent casings, 24 and
17 25.

18 Q. And where is the entry to the living
19 room?

20 A. Right about there. (Indicating)

21 Q. Okay. And from the living room, what's
22 the next room over when you exit?

23 A. There is a door that leads into the
24 garage. If you go -- if you're standing towards
25 the wall, this way to your left is to the garage,

MCGOWAN - DIRECT EXAM BY MS. SAS

1 and to your right is back to the foyer/dining room
2 area. (Indicating)

3 MS. SZYMCZYNSKA-SAS: Permission to
4 approach, Your Honor?

5 THE COURT: Yes, ma'am.

6 BY MS. SZYMCZYNSKA-SAS:

7 Q. Okay. I'm going to show you the last
8 diagram, State's 82. This is enlarged for
9 demonstrative only. Can you tell the jury what is
10 this a diagram of?

11 A. If you go by -- these are the steps
12 that lead into the back porch area.

13 Q. If you can, take us through each of the
14 markers and let the jury know what item was located
15 at each location.

16 A. Start with Number 11, this is a couch.
17 And the majority will be all .22-caliber spent
18 casings; Number 11, 12, 13, 14, 15, 16, 17, 18, 19,
19 20, 21, 22, and 23, 24. These two here
20 (indicating) should be 29 and 28, were casings we
21 found when the body was moved, when the coroner
22 moved the body. And they're all .22 casings --
23 caliber casings.

24 Q. All the markers that you just showed to
25 the jury?

MCGOWAN - DIRECT EXAM BY MS. SAS

1 A. Yes, ma'am.

2 Q. I'm going to show you what has been
3 premarked and entered as State's 115, 114, 116,
4 118, 122, 121, 120, 117, 111, and 113. Can you
5 look at these photographs and tell me if these are
6 the photographs of the markers that would have been
7 placed on that back porch?

8 A. Did you want this one?

9 MS. SZYMCZYNSKA-SAS: Permission to
10 approach?

11 THE COURT: Yes, ma'am.

12 MS. SZYMCZYNSKA-SAS: Your Honor, I'm
13 going to withdraw Number 111.

14 THE COURT: Thank you. You mean
15 withdraw from publishing?

16 MS. SZYMCZYNSKA-SAS: From publishing,
17 Your Honor. It's been already entered.

18 THE COURT: Yes, ma'am. That's why --

19 THE WITNESS: I believe that's all of
20 them, yes, ma'am.

21 MS. SZYMCZYNSKA-SAS: Permission to
22 publish, Your Honor?

23 THE COURT: You may proceed.

24 BY MS. SZYMCZYNSKA-SAS:

25 Q. 114. And can you describe to the jury

MCGOWAN - DIRECT EXAM BY MS. SAS

1 where would be the entrance to the porch and the --
2 sort of the view from which --

3 A. The entrance -- this is probably
4 looking from the kitchen out into the porch.

5 Q. Okay. 115, what view is that?

6 A. That would probably be from the door --
7 from the porch looking in.

8 Q. 116. Where is that item located? Can
9 you show the jury?

10 A. 113? The far part of the room.

11 Q. Okay. 118?

12 A. Those two are up here on the couch.

13 Q. 113?

14 A. That's looking out towards the entrance
15 of the porch, and that's where the victim was
16 laying.

17 Q. 117?

18 A. That was -- we found that behind the
19 porch -- I mean, behind the couch.

20 Q. Can you show the jury on your diagram
21 where that was located?

22 A. (Complies)

23 Q. 120. And is that just another
24 picture --

25 A. Yes, that's just an overview. That was

MCGOWAN - DIRECT EXAM BY MS. SAS

1 probably done before any of the markers were put
2 out.

3 Q. And 121?

4 A. Looking in from the door -- of the
5 porch prior to any markers being put out.

6 Q. Okay. And 122?

7 A. That's just looking at the kitchen --
8 from the kitchen looking out. And there are
9 numerous bullet holes in the windows, which is
10 depicted in this part of the diagram here.

11 Q. What are those little white things put
12 out for?

13 A. Markers with scales on them so you can
14 zoom in on them and get the better measurements.

15 Q. Okay. Did you collect any of the
16 evidence from the scene?

17 A. No. Ms. Chestnut collected all those.

18 Q. Okay. And did you do anything else on
19 the scene other than assisting and what you've
20 already testified to?

21 A. No, ma'am, that was -- I was tasked
22 with doing the measurements and getting the -- what
23 I needed for the diagrams.

24 Q. Okay. And were you involved in any
25 point after initially responding to the scene and

MCGOWAN - DIRECT EXAM BY MS. SAS

1 collecting any additional evidence?

2 A. Yes, ma'am. We were notified by the
3 Solicitor's Office, and we responded back to the
4 residence on the 19th of March of last year at
5 about 4:10 in the afternoon. We met with the owner
6 of the residence, got a consent to go back into the
7 residence.

8 There was a back bedroom where there
9 was a claim that there was some blood on the wall
10 inside the closet. So we photographed it, and we
11 removed sections of the closet wall and sent it to
12 SLED for analysis, along with, I think, a gunshot
13 residue kit.

14 Q. Okay.

15 MS. SZYMCZYNSKA-SAS: Permission to
16 approach, Your Honor?

17 THE COURT: Yes, ma'am.

18 BY MS. SZYMCZYNSKA-SAS:

19 Q. I'm going to show you a few items, and
20 I know it's difficult to see, and they are marked
21 as State's 56. Can you tell me what those items
22 are?

23 A. Well, there's a chain of custody with
24 it -- yeah.

25 Q. This will be State's 55 and 56.

MCGOWAN - DIRECT EXAM BY MS. SAS

1 A. 53 and -- yes, ma'am, these are the
2 sections of the sheetrock wall that I took out of
3 the rear closet on the 19th, locked it into
4 evidence, and it was taken to SLED on the 28th.

5 Q. Okay. So once you collected them, what
6 would you have done with them? Because you took
7 them to evidence. How --

8 A. I took them to our office and packaged
9 them up to -- you know, so they can be transported
10 safely to SLED, and it's placed into the evidence
11 room. And then whoever takes it to SLED signs it
12 out and carries it up there.

13 Q. Would there be any ability with anyone
14 to tamper with any of the items before they took
15 them?

16 A. No, ma'am. No, ma'am, they were in a
17 secure area.

18 Q. And once they're placed in evidence,
19 you would not have any contact with these items,
20 correct?

21 A. No, ma'am. No, ma'am.

22 MS. SZYMCZYNSKA-SAS: The Court's
23 indulgence?

24 THE COURT: Yes, ma'am.

25 MS. SZYMCZYNSKA-SAS: Permission to

MCGOWAN - DIRECT EXAM BY MS. SAS

1 approach, Your Honor?

2 THE COURT: Yes, ma'am.

3 BY MS. SZYMCHYNSKA-SAS:

4 Q. I'm going to show you -- back to the
5 outside of the residence diagram. When you
6 prepared your report, did you notate in your
7 reports where the deceased, the victims were
8 located and who it was?

9 A. Yes, ma'am.

10 Q. Can you show the jury in your report in
11 your observations the scene where the bodies were
12 located?

13 A. The first victim was -- the first
14 victim was Mr. Harrison, and he was laying right
15 along here. His head would be right about here,
16 his feet towards this way, laying kind of like on
17 his side between the grass and where the concrete
18 meets. (Indicating)

19 The other victim would have been Mr.
20 Kenyon, and he was found -- if you want to pull the
21 other one up.

22 Q. Is that Mr. --

23 A. The one inside the porch.

24 Q. I'm sorry. Is that Mr. Kenyon? Can
25 you refer back to your report?

MCGOWAN - DIRECT EXAM BY MS. SAS

1 A. I have Mr. Harrison being outside,
2 here.

3 Q. Was there any other individual that you
4 saw on the scene outside?

5 A. No, not outside. No, ma'am.

6 Q. Okay. When you arrived, was EMS still
7 there?

8 A. No, ma'am.

9 Q. Okay. Were there any items left behind
10 from the other individual transported by EMS?

11 A. Yeah. I believe Number 6, there was a
12 pair of shorts that was cut off, and there was
13 numerous medical equipment that they used, but we
14 didn't -- we didn't collect those.

15 Q. Okay. And that victim, who would have
16 been the victim that would have been located?

17 A. The third victim?

18 Q. If I can reference you, point you to
19 line Number 9 from the bottom of your report.

20 A. Oh, I'm sorry. Okay. Mr. Kenyon was
21 the one that was transported, my apologies.

22 Q. So the remaining victims, where would
23 they have been located?

24 A. Mr. Gressette was inside, and
25 Mr. Harrison was there. (Indicating)

MCGOWAN - DIRECT EXAM BY MS. SAS

1 Q. And where was Mr. Gressette's body
2 located?

3 A. Mr. Gressette was the individual on the
4 porch.

5 Q. Okay. Can you also, in referencing
6 your report, let the jury know how many total spent
7 .22-caliber cartridges did you locate outside of
8 the residence and how many did you locate inside?

9 A. I'd have to count them up. I don't --

10 Q. Would it help you to look at the report
11 that we have in our office?

12 A. Well, it says down here at the bottom
13 -- I have 14 .22 caliber casings that were located
14 in the porch area. I don't know if I have the
15 number of the ones outside.

16 MS. SZYMCZYNSKA-SAS: Can I approach
17 the witness?

18 THE COURT: You may.

19 BY MS. SZYMCZYNSKA-SAS:

20 Q. This is the report that was provided to
21 our office. I believe it's a little bit of a
22 different format.

23 A. Yeah.

24 Q. Would you be able to, based on that
25 form, identify and count how many total spent

MCGOWAN - CROSS EXAM BY MS. NORRIS

1 cartridges, 22, were located and how many unspent?

2 It might require you to count them.

3 A. Yeah. Yeah. I was just -- all right.

4 Well, I know there were three 9 millimeters that we
5 found; two were spent and one was a live round, and
6 they were all in here.

7 So the spent .22 casings, 1, 2, 3, 4,
8 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18,
9 19, 20, 21, 22, 23, 24, 25, 26. 26.

10 Q. Was one of those unspent?

11 A. Yes, ma'am, in the firearm.

12 MS. SZYMCZYNSKA-SAS: No further
13 questions for this witness, Your Honor.

14 THE COURT: Any questions for the
15 witness?

16 CROSS-EXAMINATION

17 BY MS. NORRIS:

18 Q. I'm sorry, what was your current title
19 again?

20 A. Just forensics, crime scene tech.

21 Q. So you're not a sergeant or a --

22 A. My official title is corporal.

23 Q. Okay.

24 A. But Kevin is fine.

25 Q. No problem. Well, you're former

MCGOWAN - CROSS EXAM BY MS. NORRIS

1 military and I am too, so I want to get your rank
2 right.

3 A. Yes, ma'am.

4 Q. All right. Corporal McGowan, you came
5 in with a file there in front of you?

6 A. Uh-huh.

7 Q. May I ask what's in your file?

8 A. Just the -- just the original diagrams
9 I did, and this is a copy of my report --

10 Q. Okay.

11 A. -- from everything I did.

12 Q. And now -- so you've still got that?

13 A. Sure.

14 Q. Can you show me again on there where
15 the body outside was, Mr. Harrison?

16 A. He was right here. His head was
17 approximately here and his feet toward this way,
18 and kind of like on his side with his hand up over.
19 (Indicating)

20 Q. And Number 3 there, that would be right
21 near his head?

22 A. Yes, ma'am, close -- yeah.

23 Q. What was Number 3? The unfired
24 9-millimeter round?

25 A. I believe so. Yes, ma'am.

MCGOWAN - CROSS EXAM BY MS. NORRIS

1 Q. All right. And 1 and 2 are?

2 A. Were live -- were spent 9-millimeter
3 rounds.

4 Q. Okay. Did you find a 9-millimeter
5 there?

6 A. I didn't, no.

7 Q. Do you have in your report all the
8 evidence that was collected?

9 A. No, I don't. I just have what I --
10 what I've -- what I have.

11 Q. Okay. So you didn't process inside the
12 house yourself? PFC Chestnut did that?

13 A. Yes.

14 Q. Okay. And on your diagram there, what
15 is that right there? (Indicating)

16 A. Those are the steps that lead up into
17 the porch.

18 Q. Okay. So 1 and 2, the 9-millimeter
19 rounds are shell casings --

20 A. Uh-huh.

21 Q. -- they're fired, are right off the
22 porch?

23 A. Yes, ma'am.

24 Q. Okay. And this area over here --

25 A. Uh-huh.

MCGOWAN - CROSS EXAM BY MS. NORRIS

1 Q. -- those are the .22 shell casings --

2 A. Yes. Yes.

3 Q. -- 7, 8 and 9?

4 A. Yeah. Those are the only -- other than
5 .22, are those three right there. Everything else
6 was a .22.

7 Q. And that area that they're on, is that
8 concrete?

9 A. Yes, ma'am.

10 Q. Right there?

11 A. Yes, ma'am.

12 Q. Okay. And this out here would be the
13 grass?

14 A. Yes.

15 Q. All right. Did you measure how wide
16 that concrete is right there?

17 A. I don't know if I did or not. No, I
18 did not. But it's three feet, tops.

19 Q. Okay.

20 MS. NORRIS: May I approach, Your
21 Honor?

22 THE COURT: Yes, ma'am.

23 BY MS. NORRIS:

24 Q. I show you State's 82. And is that the
25 back porch area there?

MCGOWAN - CROSS EXAM BY MS. NORRIS

1 A. Yes, sir.

2 Q. Okay. And that collection right there,
3 is that --

4 A. Those are all .22 casings.

5 Q. Okay. And that line right there, you
6 didn't -- it's not numbered, but --

7 A. Right. I was going to, but the
8 lieutenant said not to worry about it. That's
9 where the rifle was.

10 Q. The SCAR 17 --

11 A. Yep.

12 Q. -- that we've seen in the pictures?

13 A. Yes, ma'am.

14 Q. And were any of those shell casings
15 underneath Mr. Gressette's body?

16 A. Just the two, and I have the broken
17 line that indicates it was underneath him.

18 Q. Okay. So --

19 A. His head was right around there.

20 Q. So after he was moved --

21 A. Yes.

22 Q. -- you were able to find those?

23 A. Yes.

24 Q. Okay. And that rifle that you drew on
25 there but somebody said don't worry about it, that

MCGOWAN - CROSS EXAM BY MS. NORRIS

1 was literally --

2 A. Well, it wasn't collected as evidence,
3 that's why.

4 Q. All right. But it was literally right
5 beside his head?

6 A. Oh, yes, ma'am.

7 Q. Okay. Now, when you went back out on,
8 I believe you said March 19th?

9 A. Yes, ma'am.

10 Q. Of 2018?

11 A. Uh-huh.

12 Q. Did you take photos outside then as
13 well?

14 A. Yeah, I believe we did.

15 Q. Let me show you what's previously been
16 admitted as Defendant's Exhibits 118 and 137.

17 MS. NORRIS: May I approach, Your
18 Honor?

19 THE COURT: You may.

20 BY MS. NORRIS:

21 Q. And ask if those are pictures you took,
22 or can you verify for us that that is what the
23 scene looked like later on?

24 A. I don't know if these are the ones that
25 I took because I remember it was a cloudy day.

MCGOWAN - CROSS EXAM BY MS. NORRIS

1 These are sunshine. But this is the back of the
2 house, yes, ma'am.

3 Q. Okay. And so at that point when you
4 went back out, everything had been moved out of the
5 house?

6 A. Oh, yes. Yes.

7 Q. And it was vacant?

8 A. Yes.

9 Q. But nothing about the house itself had
10 been changed?

11 A. No. No.

12 Q. Okay.

13 MS. NORRIS: May I have just a moment,
14 Your Honor?

15 THE COURT: Yes, ma'am.

16 MS. NORRIS: Thank you, Corporal. I
17 don't have any further questions.

18 THE WITNESS: Yes, ma'am.

19 THE COURT: Any further questions for
20 the witness?

21 MS. SZYMCZYNSKA-SAS: Yes, Your Honor,
22 just a couple.

23 THE COURT: You may proceed.

24 REDIRECT EXAMINATION

25 BY MS. SZYMCZYNSKA-SAS:

MCGOWAN - REDIRECT EXAM BY MS. SAS

1 Q. Mr. McGowan, you mentioned that some
2 items -- or the gun located on the porch was not
3 taken into evidence. Are some items taken for
4 safekeeping?

5 A. Yes, ma'am. Yeah. We don't --
6 whenever we're at a scene, if there's weapons
7 laying around, we don't leave them laying around
8 until someone else can come in and pick them up.

9 Q. And why would that gun on the porch not
10 be taken into evidence at least for safekeeping?

11 A. There were no cartridge cases that we
12 found. At least, that's what was explained by
13 Lieutenant Alteri, that it didn't appear to be
14 used, so we just kept it for safekeeping.

15 Q. And the other question I have for you
16 is about the photographs that you were just shown.
17 When you were at the house, you don't know exactly
18 what was changed about the house, or do you?

19 A. It didn't appear anything was changed;
20 it was just empty. Items were removed out of the
21 house. The owner said they were trying -- when all
22 this was over they were going to try and sell the
23 property.

24 Q. But the house wasn't the same as it was
25 on the date of the incident?

GREEN - DIRECT EXAM BY MS. SAS

1 A. Oh, no, no.

2 MS. SZYMCZYNSKA-SAS: Okay. No further
3 questions.

4 THE COURT: Any objection to the
5 witness being excused? From the State?

6 MS. SZYMCZYNSKA-SAS: None from the
7 State, Your Honor.

8 THE COURT: From the defense?

9 MS. NORRIS: No, Your Honor.

10 THE COURT: Sir, you're excused.

11 THE WITNESS: Thank you, ma'am.

12 THE COURT: You're welcome. The State
13 may call its next witness.

14 MS. SZYMCZYNSKA-SAS: The State calls
15 Officer Corinthian Green.

16 CORINTHIAN GREEN,
17 being first duly sworn, testified as follows:

18 THE CLERK: Please be seated. State
19 your name, and spell your last name for the record.

20 THE WITNESS: My full name is
21 Corinthian Green, last name Green like the color,
22 G-R-E-E-N.

23 THE COURT: You may proceed.

24 DIRECT EXAMINATION

25 BY MS. SZYMCZYNSKA-SAS:

GREEN - DIRECT EXAM BY MS. SAS

1 Q. Where are you currently employed,
2 Officer Green?

3 A. The Berkeley County Sheriff's Office.

4 Q. How long have you been with the
5 sheriff's office?

6 A. Four years, going on five, ma'am.

7 Q. And what's your current position and
8 job responsibilities?

9 A. I'm on the community action team for
10 Moncks Corner, on the bike team, FBI crisis
11 negotiator, and a couple of other titles.

12 Q. Okay. And were you employed at the
13 sheriff's office in the same capacity back on
14 October 7, 2016?

15 A. Yes, ma'am, I was.

16 Q. And how did you become involved in this
17 case that brings us here today?

18 A. I was originally dispatched to the
19 call. I was further out than the arriving units.

20 Q. Okay. And what observations did you
21 make when you arrived on the scene?

22 A. When I arrived on scene, there was
23 probably two or three other patrol cars there.
24 There was a vehicle in the driveway with flashers
25 on.

GREEN - DIRECT EXAM BY MS. SAS

1 Q. I'm going to show you what has been
2 entered into evidence as State's Number 93. Is
3 that the vehicle that you're referring to?

4 A. Yes, ma'am.

5 Q. And what did you do after seeing the
6 vehicle?

7 A. After seeing the vehicle, I proceeded
8 to the residence with other deputies.

9 Q. Okay.

10 A. Going in through the front door of the
11 residence.

12 Q. Okay. At any point did you have an
13 occasion to come into contact with the defendant?

14 A. Yes, ma'am.

15 Q. Okay. When was that?

16 A. It was in the rear of the house. Me
17 and a couple of other deputies -- Corporal Ham, we
18 were rounding back in search of the suspect, and in
19 the process -- of the defendant, excuse me. While
20 we were there, that's when we saw the defendant out
21 back.

22 Q. What was he doing?

23 A. He was giving CPR to someone that was
24 down on the ground.

25 Q. Okay. Did he say anything to you?

GREEN - DIRECT EXAM BY MS. SAS

1 A. The question was asked whenever we were
2 -- someone was asking him where the suspect at that
3 time was. And at that time he made a statement, I
4 am the suspect. And from there, we detained him at
5 that moment in time.

6 Q. Okay. What do you mean, we detained
7 him?

8 A. So detaining him, we placed him in
9 handcuffs at that moment in time until we secured
10 the whole scene.

11 Q. And what happened to the defendant, do
12 you know?

13 A. At that time, he was walked from behind
14 the house to the front of the house. My patrol car
15 was the closest one, and we proceeded to my patrol
16 vehicle and placed him in the rear of the patrol
17 vehicle.

18 Q. Okay. I'm going to show you what has
19 been marked as State's 168 for demonstrative
20 purposes only. Does that appear to be a map of the
21 area?

22 A. Yes.

23 Q. We have a little clicker here; the top
24 button is a red pointer. Can you point out to the
25 jury where your vehicle was located in reference to

GREEN - DIRECT EXAM BY MS. SAS

1 the residence at 228 Macio?

2 A. Right here (indicating) --

3 Q. Okay.

4 A. -- on the opposite side of the road.

5 It was on this side.

6 Q. All right. So he was placed in your

7 car. Was there an audio and video recording

8 already in your car?

9 A. Not at that time.

10 Q. Okay. At some point was there an audio

11 recording?

12 A. Yes, ma'am. There -- Corporal Wright

13 and then Corporal McClellan placed his in the

14 vehicle.

15 Q. You say placed. What did they place?

16 A. The microphone from their actual car

17 video system was placed in my vehicle, because I

18 currently didn't have one at that time.

19 Q. Okay. Did you at any point that night

20 leave the scene?

21 A. Yes, ma'am. When I transported the

22 defendant to the Hill-Finklea Detention Center.

23 Q. Okay. Who was in the car with you?

24 A. It was just me and the defendant.

25 Q. Okay. And when you arrived to the

GREEN - DIRECT EXAM BY MS. SAS

1 jail -- where's the jail located?

2 A. The jail is located right there behind
3 the courthouse.

4 Q. Okay. And what's the address for the
5 jail?

6 A. Two -- the same as here 2 -- 300
7 California Avenue.

8 Q. And what county is that in?

9 A. That's in Berkeley County.

10 Q. Okay. And when you arrived at the
11 jail, I believe that's -- what is that area called
12 when you first arrive?

13 A. The sally port.

14 Q. The sally port. What happened at the
15 sally port?

16 A. The sally port --

17 MS. NORRIS: Your Honor, please note
18 our continuing objection.

19 THE COURT: Noted and overruled.

20 THE WITNESS: Okay. Prior to going
21 into the sally port, we pulled up, the gates were
22 -- I had to wait on the gates to come up and
23 everything else like that.

24 The defendant was kind of uneasy at
25 that moment in time. I proceeded out of the.

GREEN - DIRECT EXAM BY MS. SAS

1 vehicle to speed the process along. Corporal
2 McClellan was right behind me during that transit
3 and another deputy to open the door. He was kind
4 of kicking the door and hitting the door trying to
5 get out of the vehicle.

6 BY MS. SZYMCZYNSKA-SAS:

7 Q. Did he make any statements?

8 A. Yes, ma'am.

9 Q. What did he say?

10 A. One of the statements was talking about
11 shooting Corporal McClellan whenever he finally
12 opened the vehicle door and got him out of the
13 vehicle.

14 Q. Okay. And, to your knowledge, would
15 that be recorded on that microphone?

16 A. Yes, ma'am.

17 Q. Okay.

18 MS. SZYMCZYNSKA-SAS: The Court's
19 indulgence?

20 THE COURT: Yes, ma'am.

21 MS. SZYMCZYNSKA-SAS: No further
22 questions for this witness.

23 THE COURT: Any questions for the
24 witness?

25 CROSS-EXAMINATION

GREEN - CROSS EXAM BY MS. NORRIS

1 BY MS. NORRIS:

2 Q. Corporal Green --

3 A. Yes, ma'am.

4 Q. You said that he was kicking the doors,
5 he wanted out of the car.

6 A. Yes, ma'am.

7 Q. And into the jail?

8 A. I'm not sure if it was into the jail.

9 Prior to that, we came off of Cooper Store Road, he
10 was a little irate at that time. From there, I had
11 to move faster towards the jail because he was
12 already out of the seatbelt and everything else.

13 From there, blue lights was activated
14 and I kind of expedited to the jail. That way
15 nothing -- the windows didn't get kicked out, no
16 damage, or even injured himself at any other time.

17 Whenever we got on this back street, he
18 was kicking a little bit more. Once we pulled into
19 the jail, he kind of calmed down, but he was still
20 kicking at that time the ground.

21 Q. But what he was saying was, let me out,
22 right? Do you recall that?

23 A. Yes, ma'am.

24 MS. NORRIS: Okay. That's all. Thank
25 you, sir.

GREEN - REDIRECT EXAM BY MS. SAS

1 THE COURT: Any redirect?

2 MS. SZYMCZYNSKA-SAS: Just one
3 question.

4 THE COURT: You may proceed.

5 REDIRECT EXAMINATION

6 BY MS. SZYMCZYNSKA-SAS:

7 Q. What was the reason you couldn't
8 immediately open the door for the defendant?

9 A. Oh, because whenever we go into the
10 sally port, there's a gate. Whenever the gate
11 opens up for vehicles to enter in, the sally port
12 must be closed before we open it up. That prevents
13 escape or anything from happening at that moment in
14 time.

15 MS. SZYMCZYNSKA-SAS: Thank you,
16 Corporal Green.

17 THE WITNESS: Yes, ma'am.

18 THE COURT: Any objection to the
19 witness being excused? From the state?

20 MS. SZYMCZYNSKA-SAS: Not from the
21 State.

22 THE COURT: From the defense?

23 MS. NORRIS: No, Your Honor.

24 THE COURT: Sir, you're excused.

25 THE WITNESS: Yes, ma'am.

1 THE COURT: Would counsel approach for
2 me?

3 (Bench conference.)

4 THE COURT: Mr. Foreman, ladies and
5 gentlemen, we anticipate the next witness might
6 take us beyond lunch, so we're going to take our
7 lunch recess. And we're going to break for an hour
8 and 15 minutes, which means -- it's about 12:24
9 now -- by the time you get out of the building,
10 it'll be 12:30. So we'll resume at a quarter of 2.

11 I have to count sometimes. One time I
12 sent a jury to lunch for two hours. And I was
13 waiting for them to come and my law clerk -- I was
14 pacing and I said, where's the jury? And she said,
15 well, you told them not to be back. I said, you
16 know I can't count. I have to count in my head.
17 So it would be 12:30 -- yes, it will be a quarter
18 to 2 when we return.

19 During the break, please do not discuss
20 the case in any manner whatsoever. Please don't
21 have any contact with anyone in or about the
22 courthouse. Again, we would not want an innocent
23 conversation misinterpreted.

24 And please do not read, watch, or
25 listen to any media accounts, if there are any, or

1 make any comments on or postings on any social
2 network sites. I hope you-all have a great lunch.
3 We'll see you at a quarter of 2.

4 Leave your notepads in your seats for
5 me.

6 (Jury Out, 12:25 p.m.)

7 THE COURT: You may be seated. Is
8 there anything we need to take up before we break
9 for lunch? From the State?

10 MS. SZYMCZYNSKA-SAS: Nothing from the
11 State.

12 THE COURT: From the defense?

13 MS. NORRIS: No, Your Honor.

14 THE COURT: And who's the next witness
15 going to be?

16 MS. SZYMCZYNSKA-SAS: Your Honor, I
17 believe it's going to be Dr. Presnell and then
18 Officer Chestnut.

19 THE COURT: All right. See you-all at
20 a quarter to 2. You can leave your stuff in your
21 seats.

22 (A recess transpired.)

23 (DFT. EXH. 138, SCAR, was marked for
24 identification.)

25 THE COURT: Is the State ready to

1 proceed?

2 MS. NORRIS: Your Honor, there is one
3 housekeeping matter.

4 THE COURT: Yes, ma'am.

5 MS. NORRIS: We've marked as
6 Defendant's Exhibit 138 the SCAR 17 weapon, which I
7 believe the State consents to going into evidence.

8 THE COURT: You said 138?

9 MS. NORRIS: Yes, Your Honor.

10 THE COURT: Any objection from the
11 State?

12 MS. SZYMCZYNSKA-SAS: No objection from
13 the State.

14 THE COURT: Marked and admitted without
15 objection.

16 (DFT. EXH. 138 in evidence.)

17 THE COURT: And I assume that the
18 ammunition is separated and there is the
19 appropriate lock on the --

20 MS. NORRIS: I understand from
21 ballistics --

22 THE COURT: Okay.

23 MS. NORRIS: -- that they have checked
24 to make sure the weapon is cleared. Is there a
25 particular procedure rather than me --

1 THE COURT: No, usually law
2 enforcement, they have the appropriate -- what's
3 the word I'm looking for -- safety device. We
4 don't want anybody trying to -- any experiments.
5 So usually there's a safety device on the trigger.

6 MS. SZYMCHYNSKA-SAS: There is on the
7 .22.

8 THE COURT: And usually the ammunition
9 is separate.

10 MS. NORRIS: And there is the other one
11 as well.

12 THE COURT: I don't need them.

13 MS. NORRIS: I just didn't want Your
14 Honor to get upset when we started pulling out
15 weapons.

16 THE COURT: No. I've been around too
17 long, I've seen too many. We still have two jurors
18 refreshing themselves, so as soon as they're ready
19 we'll resume. Is Dr. Presnell present?

20 MR. ALFARO: He is, Your Honor.

21 THE COURT: Do you want to go ahead and
22 bring her in the courtroom?

23 MR. ALFARO: She's in the courtroom.

24 THE COURT: Oh, I'm sorry, I didn't see
25 you.

1 (Off-the-record conference.)

2 THE COURT: I assume that all of the
3 exhibits Dr. Presnell will be utilizing have
4 already been marked and you-all have already
5 resolved that?

6 MR. ALFARO: Yes, Your Honor.

7 BAILIFF: Jury coming in.

8 (Jury in, 2:06 p.m.)

9 BAILIFF: Jurors are all present and
10 seated, Your Honor.

11 THE COURT: You may be seated. Ladies
12 and gentlemen, I hope you-all had a pleasant lunch.
13 We'll now resume testimony. The State may proceed.

14 MR. ALFARO: The State calls Dr. Erin
15 Presnell.

16 THE COURT: Dr. Presnell, if you would
17 come forward to be sworn.

18 SUSAN ERIN PRESNELL, M.D.,
19 being first duly sworn, testified as follows:

20 THE CLERK: Please be seated. State
21 your full name and spell your last name for the
22 record.

23 THE WITNESS: Good afternoon. My name
24 is Susan Erin Presnell, P-R-E-S-N-E-L-L.

25 THE COURT: You may proceed.

PRESNELL, M.D. - DIRECT EXAM BY MR. ALFARO

1 MR. ALFARO: Thank you, Your Honor.

2 THE COURT: You're welcome.

3 DIRECT EXAMINATION

4 BY MR. ALFARO:

5 Q. Dr. Presnell, could you tell the jury
6 what your current occupation is?

7 A. I'm a forensic pathologist. I work at
8 the Medical University in South Carolina down the
9 road in Charleston.

10 Q. And how long have you been with the
11 Medical University?

12 A. I've been there a very long time. I've
13 been on faculty since 1999, 20 years.

14 Q. And are you a licensed physician in the
15 state of South Carolina?

16 A. Yes.

17 Q. And could you tell us where you
18 received your medical training?

19 A. Well, after I finished undergraduate at
20 Clemson, I went to MUSC for medical school; and
21 after my medical school training, I chose the
22 specialty of pathology. I also did that at MUSC.

23 After general pathology training, I
24 decided to subspecialize in forensic pathology,
25 which I also did at MUSC, and then MUSC kept me.

PRESNELL, M.D. - DIRECT EXAM BY MR. ALFARO

1 So I did all of my medical training at MUSC.

2 Q. And what is your professional
3 experience in the field of forensic pathology?

4 A. Twenty years of doing forensic
5 autopsies.

6 Q. And could you tell us what the field of
7 forensic pathology consists of?

8 A. Well, I would say everyone is kind of
9 getting a little more familiar with what forensic
10 pathology is, but I like to break it down a little
11 more. Forensic pathology is a subspecialty of the
12 general field of pathology, and pathology is the
13 study of disease.

14 So your general pathologist is going to
15 diagnose disease. So if you go to your primary
16 care doctor and they do a biopsy or you go to a
17 surgeon and they take some tissue out, that goes to
18 the pathologist. Then they look at it and look for
19 cancer or infection, et cetera.

20 And so we -- we do that, but on a
21 broader scale. So instead of looking at a piece of
22 tissue, we're looking at a whole individual that
23 has passed. We're looking for disease, but we're
24 also looking at and evaluating trauma. And the
25 process that we do that is the autopsy, and then,

PRESNELL, M.D. - DIRECT EXAM BY MR. ALFARO

1 ultimately, the goal is to see -- the cause and
2 manner of death.

3 Q. And are you board certified in the area
4 of forensic pathology?

5 A. Yes, I am.

6 Q. And what are the requirements for board
7 certification in that field?

8 A. That you successfully complete your
9 training programs and then you pass the board test.

10 Q. Okay. And is that a national
11 certification?

12 A. It is.

13 Q. And you already mentioned that you
14 perform autopsies as part of your affiliation with
15 MUSC, and I know it's hard to do for 20 years, but
16 can you give us an approximation about how many
17 you've done roughly?

18 A. Over 3,000.

19 Q. And have you previously been qualified
20 as an expert witness in the area of forensic
21 pathology?

22 A. Yes.

23 Q. And, again, approximately how many
24 times?

25 A. Over 150.

PRESNELL, M.D. - DIRECT EXAM BY MR. ALFARO

1 Q. And would that include courts of record
2 in South Carolina?

3 A. That's in South Carolina, yes.

4 MR. ALFARO: Your Honor, at this time,
5 we would offer Dr. Presnell as an expert in the
6 field of forensic pathology.

7 THE COURT: Any questions
8 or objections?

9 MS. NORRIS: No questions, no
10 objections, Your Honor.

11 THE COURT: So admitted, without
12 objection. You may proceed.

13 BY MR. ALFARO:

14 Q. Dr. Presnell, have you had the
15 opportunity to review the files regarding the
16 autopsy -- autopsies of Lance Kenyon, James
17 Harrison, and Harry Gressette?

18 A. Yes, I have.

19 Q. And did you actually perform all three
20 of those autopsies?

21 A. No. I did the autopsy -- the autopsies
22 on Mr. Kenyon and Mr. Gressette; and my colleague,
23 Dr. Dick Batalis, did the autopsy on Mr. Harrison.

24 Q. And are you aware of where Dr. Batalis
25 is this week?

PRESNELL, M.D. - DIRECT EXAM BY MR. ALFARO

1 A. Batalis is on spring break with his
2 kids.

3 Q. Okay. And though you did not perform
4 that autopsy, have you reviewed the autopsy file --

5 A. Yes, I have.

6 Q. -- in that case?

7 A. Yes.

8 Q. And are you prepared to give opinion
9 and discuss the findings of that autopsy as well?

10 A. I am.

11 Q. Now, can you briefly tell us when a
12 body -- a body or bodies are brought to the Medical
13 University what the process is as far as
14 identifying and then doing the autopsy?

15 A. Well, so South Carolina is a coroner --
16 has a coroner, the coroner death investigation
17 system. The coroner is elected for each county.
18 Either the coroner or their deputy coroners will
19 respond to scenes and decide who gets an autopsy
20 and where that person will be autopsied.

21 So the identification process is
22 typically done by the coroner if the person's
23 identity is known, and then transportation is
24 arranged to our autopsy area at MUSC, and the body
25 is received by a mortuary which interacts with the

PRESNELL, M.D. - DIRECT EXAM BY MR. ALFARO

1 transport, labels the bags, the body bags.

2 And then when we retrieve the bags, we
3 use the identification that's on the bag to then
4 name the person and proceed with the autopsy.

5 Q. And were each of the three victims in
6 this case assigned a forensic autopsy number?

7 A. Right. So when we bring the decedent,
8 or deceased person, up to log them in for autopsy,
9 they each get their own unique autopsy number.

10 Q. And in this case was there some sort of
11 error as far as the name assigned to the body and
12 the autopsy number?

13 A. Yes. So of the three deceased people,
14 Mr. Kenyon is the one that came through the
15 hospital and came to us via hospital
16 identification, and subsequently identified by the
17 coroner, and then Mr. Harrison and Mr. Gressette
18 came to us with labeled body bags.

19 And we -- they each got their own
20 unique autopsy number. We did the autopsies, and
21 when the two persons went to the funeral home, the
22 funeral home recognized that the names were
23 switched.

24 So we updated -- the autopsy numbers
25 remained the same through all the cases, but the

PRESNELL, M.D. - DIRECT EXAM BY MR. ALFARO

1 two names were updated in our electronic medical
2 records so it properly reflects who was who.

3 Q. And at the time the autopsies on those
4 two were performed with the misidentified names,
5 were there photographs taken during the course of
6 that autopsy that would have the incorrect name on
7 them?

8 A. So the name -- the name -- the name was
9 updated. You know, fortunately, these were all in
10 a related -- related series of death, but I almost
11 look at it as an incorrect or misspelling of the
12 name, and we updated the name.

13 The autopsy number is used to take the
14 photographs. There is no name in the photographs.
15 So the autopsy number, again, remains with that
16 person. So the autopsy photographs are going to be
17 properly identified by the autopsy number.

18 Now, paperwork would have had to have
19 been changed and updated; it would still have the
20 same autopsy number, but we would have had to
21 change the name.

22 Q. Okay. If I can, I'd like to direct you
23 to the autopsy of Lance Kenyon, which has the
24 forensic autopsy number of FA 16733. Did you have
25 occasion to perform the autopsy on Mr. Kenyon on

PRESNELL, M.D. - DIRECT EXAM BY MR. ALFARO

1 October 10th, 2016, approximately 9:00 a.m.?

2 A. Yes, I did.

3 Q. Okay. And can you tell the jury what
4 Mr. Kenyon's age, height, and weight were?

5 A. Well, at the time of the autopsy
6 Mr. Kenyon was 47, and he weighed approximately
7 230 pounds and was 77 inches, which is six feet,
8 five inches.

9 Q. And were you able to determine the
10 cause of death to a reasonable degree of medical
11 certainty?

12 A. Yes. Mr. Kenyon had multiple gunshot
13 wounds.

14 Q. And as part of your autopsy, do you
15 prepare diagrams which set forth the location of
16 the gunshot wounds and any other injuries that are
17 observed during the course of an autopsy?

18 A. Yes. It's typical during autopsies we
19 not only do photographs, but also do diagrams and
20 take notes so that we can put the autopsy report
21 together subsequent to the autopsy.

22 Q. And in advance of your testimony at
23 trial, did you also prepare a diagram to assist
24 presenting your findings to the jury?

25 A. Yes, I did.

PRESNELL, M.D. - DIRECT EXAM BY MR. ALFARO

1 Q. And I want to show you what has been
2 entered into evidence as State's Exhibits 123 and
3 124. Do you recognize those diagrams?

4 A. These are copies of the diagrams that I
5 made in preparation for court to demonstrate
6 Mr. Kenyon's injuries.

7 Q. And do they accurately reflect the
8 location of gunshot wounds and abrasions suffered
9 by the victim in this case, Mr. Kenyon?

10 A. Yes.

11 Q. And would referencing these diagrams
12 assist you in describing your findings for the
13 jury?

14 A. Yes, I think it would make it more
15 straightforward.

16 MR. ALFARO: Your Honor, at this time
17 we would like to publish State's 123.

18 THE COURT: You may proceed.

19 BY MR. ALFARO:

20 Q. On the screen behind you, using the
21 laser pointer, can you just kind of discuss for the
22 jury what your findings were for Mr. Kenyon?

23 A. So Mr. Kenyon has 12 gunshot wounds.
24 And what I did was, I made -- the orange dots are
25 his entrance gunshot wounds and then the dark areas

PRESNELL, M.D. - DIRECT EXAM BY MR. ALFARO

1 are areas where bullets exit. I'm missing one dark
2 area right here on the left side of the chest, but
3 we'll just start at the top and work through.

4 So he has a gunshot wound to his
5 forehead, the top of his head. The bullet goes in
6 through the brain, and we recovered the bullet
7 towards the back left of the brain. It's going
8 from his right to his left and back.

9 He also has a gunshot wound on the left
10 side of the body which is very superficial. So
11 this one goes in through the skin, in through the
12 chest muscle. And you see that black dot there and
13 the one on the neck? That's where the bullet
14 partially exits on that first larger black dot, and
15 then finally exits through the soft tissue on the
16 right side of the neck.

17 Gunshot to the head through the brain;
18 one to the chest, that's just soft tissue. This
19 one -- I made one an orange spot to the right side,
20 but there's -- the laser is not working. I don't
21 know if there's another one -- but there's an
22 orange spot on the right side of his abdomen.

23 And then if you look over here onto his
24 back, we have an additional three on the right back
25 and right side -- on his right -- and his right

PRESNELL, M.D. - DIRECT EXAM BY MR. ALFARO

1 side. So that's one, two, three, four.

2 (Indicating)

3 Q. This one might work a little better.

4 A. Thank you. All right. So one, two,
5 three, four to the right back and right side; six,
6 seven to the left back. These bullets all go into
7 the torso. They go through his right lung; they go
8 into the backbone; they go through the intestines;
9 and they go through the left kidney.

10 Now, one of those bullets actually
11 exits the left chest. That's the black dot that I
12 had left off. And we recovered an additional five
13 bullets from inside -- inside the torso area. So
14 it's one, two, three, four, five, six, seven,
15 eight.

16 And then we have four gunshot wounds to
17 the right arm. They're all centered on the, quote,
18 back of his right arm. The one at the top of the
19 right arm and the one at the right elbow area, the
20 two at the right elbow area, they go in and they
21 strike the humerus or the large bone in the right
22 upper arm and fracture it.

23 The one to the right forearm actually
24 just goes through soft tissue and exits the inside
25 part of the right forearm.

PRESNELL, M.D. - DIRECT EXAM BY MR. ALFARO

1 So we have a total of 12 gunshot
2 wounds; one to the head, the superficial one to the
3 left chest, the ones to -- the six to the right
4 side, right back, and left back, and the four to
5 the right arm.

6 Q. Now, if I can -- were there any signs
7 of -- well, let me ask you this question first.
8 Can you tell us what soot or stippling is?

9 A. Well, when we're evaluating gunshot
10 wounds, we're not just -- we are counting and
11 trying to find out how many and what's in and
12 what's out, but the other thing that we'll try to
13 see is if they have any marks around the entrance
14 gunshot wounds.

15 And so backing up just a moment, not to
16 make it -- to make it too simplified, but when you
17 think of a gun being fired, it's not just the
18 bullet that's coming out. It's also a poof of
19 smoke or soot, as well as some little, tiny -- just
20 like little, tiny grains of sand. That's gunpowder
21 which is what's used to power the bullet down the
22 chamber.

23 And so if the -- if a gun is close
24 enough to the skin, or let's say, for example, it
25 contacts -- it's right up against the skin and the

PRESNELL, M.D. - DIRECT EXAM BY MR. ALFARO

1 gun is fired, then around that entrance wound you
2 would see some soot in that position.

3 There'd be dark -- a dark substance
4 around that entrance wound. If the gun is pulled
5 back but it's still close, but it's not touching
6 you, you may or may not get the soot that comes and
7 deposits on the skin, but there's little grainy
8 sand-like particles that will fly forward as well
9 and strike the skin and cause little scratches.
10 That's called stippling.

11 So for us when we see soot, you would
12 think that that's a contact or interpret it as
13 such. If we saw an entrance hole and the little
14 scratches or stippling around it, we would consider
15 that a close-range gunshot wound, close but not
16 touching.

17 And then once a gun is far enough away,
18 neither the soot is going to reach the skin nor the
19 little particles of -- again, little particles of
20 the gunpowder; so you just have the entrance wound.
21 You won't have any soot or scratches or stippling
22 around the entrance wound.

23 And in this case, Mr. Kenyon actually
24 didn't come with any clothing. And I mention that
25 just because clothing could be what's considered an

PRESNELL, M.D. - DIRECT EXAM BY MR. ALFARO

1 intermediate target and could prevent the soot or
2 little gun particulates from reaching the skin; but
3 that being said, none of his gunshot wounds had any
4 soot that we could identify or the stippling marks.

5 Q. And so there were -- was there any
6 stippling on any of the 12 wounds?

7 A. No.

8 Q. Now, if I could just kind of go back to
9 the gunshot wound to Mr. Kenyon's head. How was
10 this wound categorized as far as descriptive, the
11 diagnosis related to that wound?

12 A. I don't know. I don't understand what
13 you're asking.

14 Q. In the -- if I can refer you to your
15 report, there's a diagnosis related to one gunshot
16 wound to the head?

17 A. Right. So in the autopsy report we
18 have a list of final diagnoses. So I listed out
19 the gunshot wounds and the injuries that were
20 associated with it.

21 And so for his gunshot wound to the
22 head, we have the disruption of the brain, as well
23 as skull fractures and bleeding associated with
24 that, and bleeding in multiple spots inside the
25 cranial vault, as well as on the scalp, et cetera.

PRESNELL, M.D. - DIRECT EXAM BY MR. ALFARO

1 Q. And related to these seven gunshot
2 wounds to the torso?

3 A. So the seven remaining -- keep in mind
4 one that's superficial is the one to the left
5 chest. The other six are related to disruption of
6 the right lung, the backbone, the colon or
7 intestines, the left kidney, and a lot of soft
8 tissue damage and hemorrhage associated with that.

9 Q. And I believe you testified that there
10 was a humerus fracture to the bone in the arm
11 related to the gunshot wounds to the right arm?

12 A. Right. So there's the four wounds to
13 the right arm, and three of the four struck the
14 humerus bone and fractured it.

15 Q. And are you aware of how many bullets
16 or fragments were recovered from Mr. Kenyon during
17 the course of the autopsy?

18 A. I believe eight.

19 Q. And are those items secured and
20 eventually turned over to law enforcement?

21 A. Yes. Law enforcement was in attendance
22 of the autopsy, so they were there and we were able
23 to transfer the evidence over at the end of the
24 autopsy.

25 So it would have gone to Corporal Jared

PRESNELL, M.D. - DIRECT EXAM BY MR. ALFARO

1 Phillips with the Berkeley County Sheriff's Office.

2 Q. And so those projectiles -- in addition
3 to the projectiles, is it also customary to obtain
4 a blood spot card from the subject of the autopsy?

5 A. It is. We'll take some blood and dry
6 it on a piece of filter paper for potential DNA use
7 if needed.

8 Q. Okay. I'm going to show you what's in
9 evidence as State's Exhibits 34, 35, 36, 37, 38,
10 39, 40, and 41. Do those appear to be the bullets
11 that would have been secured at autopsy and
12 transferred to Detective Phillips with the
13 sheriff's office?

14 A. Am I allowed to open it?

15 Q. Yes.

16 A. All right. Okay. So we have bullet --
17 we have bullets one, two, three, four, five, six,
18 seven, eight, and they are labeled with the autopsy
19 number and the decedent's name from the label, the
20 stickers that we generate at autopsy. So these
21 appear to have been -- the ones that were removed
22 at autopsy.

23 Q. Okay. And State's 54, you may have to
24 cut that open as well.

25 A. So I'm not exactly sure what this is.

PRESNELL, M.D. - DIRECT EXAM BY MR. ALFARO

1 Q. Okay.

2 A. I think it used to be a blood spot
3 card.

4 Q. Okay.

5 A. But right now it's a vial.

6 Q. Okay.

7 A. It says blood spot card on the evidence
8 sheet.

9 Q. Okay. And that would have also been
10 turned over to Detective Phillips by someone with
11 your office?

12 A. I will double check, but that is
13 protocol, yes. So the blood spot dried on a piece
14 of filter paper was also turned over to Detective
15 Phillips.

16 Q. Okay. Were both of those -- or the
17 bullets, as well as the blood spot card, were those
18 turned over by Ashley Woolridge? Do your records
19 indicate that?

20 A. Hold on while I get the big file. Yes,
21 Ashley Woolridge, who was our pathology assistant
22 at the time of the autopsies, is the one that
23 initially signed it over to the detective.

24 Q. Okay. And I'm going to show you
25 photographs which are in evidence as State's

PRESNELL, M.D. - DIRECT EXAM BY MR. ALFARO

1 Exhibits 155 through 162. If you could take a look
2 at those and then I'll ask you a couple questions
3 about that.

4 Do you recognize what's depicted in
5 those photographs?

6 A. Well, it certainly looks like my
7 handwriting. Like I said before, we take
8 photographs with the autopsy label, and there is
9 something, you know, might have removed the label,
10 but these correspond with the eight projectiles
11 that we recovered at the time of the autopsy.

12 Q. Okay. Do you still have State's 124 up
13 there? State's 123 that we had on the screen that
14 you were describing, those were just gunshot
15 wounds, correct?

16 A. Yes.

17 Q. And State's 124 that you prepared,
18 what's depicted on 124?

19 A. He also -- Mr. Kenyon also had a number
20 of abrasions or scrapes, mostly on his extremity,
21 some on his head. So I depicted that on a diagram
22 as well.

23 Q. Okay. If we can publish State's 124?

24 A. I just made them broad squares, but
25 these are depicting areas where there were scrapes

PRESNELL, M.D. - DIRECT EXAM BY MR. ALFARO

1 on his body. So, head, chest, back of the arms and
2 also the knees. And also the feet.

3 Q. Okay. And the locations marked in red
4 are just where there was some sort of abrasion or
5 scrape?

6 A. Right, yes.

7 Q. And as part of the autopsy of
8 Mr. Kenyon, was a toxicology exam also performed?

9 A. Yes. So it's just standard for
10 forensic cases to do toxicology on all of the
11 decedents. And in this case, he came back positive
12 for amphetamines, THC or marijuana, oxycodone,
13 oxymorphone, which is also an oxycodone metabolite,
14 and nicotine, and had a blood alcohol level of
15 .105.

16 Q. Okay. And based upon your findings and
17 your observations, were you able to determine what
18 the actual cause of death was for Mr. Kenyon?

19 A. Well, I attributed his most fatal
20 injury to the gunshot to the head, the cause of
21 death and contributory as all the other gunshot
22 wounds.

23 Q. And specifically related to -- related
24 to the gunshot wound to the head, how long -- are
25 you able to give an opinion as to how long someone

PRESNELL, M.D. - DIRECT EXAM BY MR. ALFARO

1 would be able to survive that type of injury?

2 A. Well, so survive and incapacitated are
3 two separate things. He likely was not -- he was
4 probably -- once the gunshot wound to the head
5 occurred, would have been incapacitated quickly.
6 Whether he survived several minutes after that or
7 not, I couldn't tell from the autopsy.

8 Q. Okay. And now if we can move on to the
9 autopsy of James Harrison. Now, is this the
10 autopsy that was performed by Dr. Batalis?

11 A. Yes.

12 Q. And, again, you've had the opportunity
13 to review the file of Mr. Harrison's autopsy and
14 are able to give opinions as to that?

15 A. Yes.

16 Q. And can you tell us what Mr. Harrison's
17 age, height, and weight were at the time of
18 autopsy?

19 A. All right. So Mr. Harrison was 203
20 pounds and 70 inches, which is 5 feet, 10 inches.

21 Q. And as part of your preparation for
22 testifying today, did you also prepare a diagram
23 related to Mr. Harrison depicting gunshot wounds
24 and abrasions?

25 A. I did.

PRESNELL, M.D. - DIRECT EXAM BY MR. ALFARO

1 Q. I'm going to show you what is in
2 evidence as State's Exhibit 125 that has forensic
3 autopsy number FA 16734.

4 A. Yes. This is autopsy 16734, which is
5 identified as Mr. Harrison. And this is a -- this
6 diagram is a copy of what I made for this -- in
7 preparation for today.

8 Q. Okay. If we can publish State's 125
9 for you to discuss with the jury.

10 A. All right. So in keeping with the same
11 scheme as before, the orange are the entrance
12 gunshot wounds. So we have a gunshot wound to the
13 back of the head. Now, this was very superficial.
14 It's going in right in the back of the head and
15 going towards his left and exiting that left spot
16 there. (Indicating) So it's -- it kind of skims
17 the back of the scalp.

18 These two we see off to the side
19 because it was hard -- it's on the side of the
20 neck, so there's not really a side of the neck on
21 the diagram. So we had two gunshot wounds to the
22 left side of the neck. They go in through -- they
23 go forward and up, and they are headed towards the
24 bottom of the right eye.

25 So these two black spots right there,

PRESNELL, M.D. - DIRECT EXAM BY MR. ALFARO

1 (indicating) are the exit wounds that are
2 associated with that. These didn't actually hit
3 anything vital. They did go through some facial
4 bones -- soft tissue and facial bones and caused
5 some facial fractures, but didn't hit anything
6 vital.

7 Similarly, this one to the lower neck
8 or upper back is also going forward into his right,
9 and it's going to enter -- it's going to exit the
10 right cheek. This area right here. (Indicating)

11 And so really this just goes through
12 the soft tissue of the neck -- and the muscles in
13 the neck and the face and exits that cheek area.

14 All right. So we have one, two, three,
15 four to the head and neck area with relatively
16 superficial or nonfatal injuries. And then we have
17 four to the right upper back. And these all go
18 into the torso and their paths intermingle.

19 The injuries that are sustained from
20 these gunshot wounds are disruption of the right
21 lung as it goes in through the right back, the
22 heart, the liver and stomach. And then we -- those
23 four bullets don't exit, and so those four bullets
24 are recovered from inside his body.

25 There was one in the liver and one in

PRESNELL, M.D. - DIRECT EXAM BY MR. ALFARO

1 the stomach, and it's here on the left side of the
2 body. And then we have another superficial gunshot
3 wound to the buttocks, the left buttock, that is
4 entering right here and exiting that long --
5 elongated black area.

6 The red mark on this side of the -- on
7 the right buttock is -- just corresponds with the
8 gunshot wound that kind of scrapes the right
9 buttock as it entered the left buttock and then
10 exited the left buttock.

11 So we have four, five, six, seven,
12 eight, nine gunshot wounds total.

13 Q. And you said that there were four
14 bullets recovered during the course of the autopsy?

15 A. Yes.

16 Q. And in this case, was there also a
17 blood spot card obtained from Mr. Harrison?

18 A. Yes, there was.

19 Q. And do your records indicate whether
20 those four bullets and the blood spot card were
21 also transferred to Detective Phillips by Ashley
22 Woolridge on the October 10th, 2016?

23 A. Yes. Ashley Woolridge also transferred
24 those items to Detective Phillips.

25 Q. Okay. And in Mr. Harrison's autopsy,

PRESNELL, M.D. - DIRECT EXAM BY MR. ALFARO

1 was the toxicology screening also performed?

2 A. Yes. And with Mr. Harrison, his blood
3 was positive for amphetamines; clonazepam which is
4 a benzodiazepine; alprazolam, which is hydrocodone;
5 and gabapentin, which is also known as Neurontin;
6 Tetrazepam, which is an antidepressant, and
7 caffeine. And he also had a blood alcohol level,
8 and his was .132.

9 Q. And based upon what you reviewed in the
10 autopsy file are you able to give an opinion to a
11 to a reasonable degree of medical certainty as to
12 the cause of death for Mr. Harrison?

13 A. Yes. So Dr. Batalis is a grouper, and
14 so he grouped together the gunshot wounds of the
15 head -- of the head, neck and trunk.

16 Q. And if we can move on to the autopsy of
17 Harry Gressette. Is the forensic autopsy number
18 related to -- or what is the number related to
19 Mr. Gressette?

20 A. FA 16735.

21 Q. Okay. And I'm going to show you what
22 is in evidence as State's 126. Do you recognize
23 that?

24 A. Again, the copy of a diagram that I
25 made in preparation for today.

PRESNELL, M.D. - DIRECT EXAM BY MR. ALFARO

1 Q. Okay. If we can publish 126?

2 A. So Mr. Gressette has one gunshot wound.
3 The gunshot wound you see is in the orange. It
4 enters the back of his head, the base of the skull,
5 and is aimed -- is traveling upward and forward
6 towards his right, and it does not exit. We
7 recovered the bullet inside of his brain.

8 He also has some abrasions on both of
9 his elbows and a bruise on his knee, his right
10 knee.

11 Q. And can you tell the jury what the
12 resultant damage was from the gunshot wound that
13 you observed?

14 A. Well, traveling on its path, it was --
15 it causes hemorrhage along the way. It went
16 through the cerebellum, which is the smaller brain
17 in the back, and the cerebrum, which is the larger
18 brain.

19 It caused some fracturing of the base
20 of skull and then hemorrhages along inside the
21 cranial vault, as well as on the scalp.

22 Q. Okay. And I forgot to ask you at the
23 beginning, can you tell us what the age, height,
24 and weight were for Mr. Gressette?

25 A. Yes. He is 200 -- approximately 205.

PRESNELL, M.D. - DIRECT EXAM BY MR. ALFARO

1 pounds and is 69.5 inches which is 5, 9 1/2.

2 Q. And was there any soot or stippling
3 present around that injury or that gunshot wound?

4 A. No, there was not.

5 Q. I'm going to show you -- and you said
6 that the bullet was recovered during the autopsy?

7 A. Yes.

8 Q. And could you tell us where it was
9 recovered from?

10 A. Inside the brain.

11 Q. Okay. And I'm going to make you go
12 back to the big file again.

13 A. I already pulled it out.

14 Q. Okay. Can you tell us if that bullet
15 along with a blood spot card for Mr. Gressette was
16 transferred from Medical University personnel to
17 Detective Phillips on October 10th, 2016?

18 A. Yes, it was. This time it was not
19 transferred by Ashley Woolridge, but by Dr.
20 Skipper, who was our forensic pathology
21 fellow-in-training. He worked with me on this
22 case.

23 Q. Okay. And was a toxicology report also
24 -- or a toxicology screening also performed on
25 Mr. Gressette?

PRESNELL, M.D. - DIRECT EXAM BY MR. ALFARO

1 A. Yes. And he is positive for
2 amphetamine, hydrocodone, caffeine, and nicotine,
3 and his alcohol is negative.

4 Q. And I know in one of the other
5 questions that I asked you, you said there was a
6 difference between survival and incapacitated. Are
7 you able to give an opinion as to either of those
8 regarding the gunshot wound suffered by
9 Mr. Gressette?

10 A. He was likely -- with the injury to the
11 head, he was likely incapacitated upon receiving
12 that injury.

13 Q. And you testified that the -- let's go
14 back to State's Exhibits 30 through 33. I'm going
15 to start with 30 through 33. Do those appear to be
16 bullets that were transferred as well during --
17 from after the autopsy?

18 A. Yes. So once again, the bullets
19 labeled bullet stomach, bullet left flank, bullet
20 liver, and bullet left chest wall with the autopsy
21 number FA 16734 which corresponds with
22 Mr. Harrison's body, again, with the autopsy number
23 from MUSC.

24 Q. And regarding State's 42, you don't
25 have to cut that one. If you can take a look at

PRESNELL, M.D. - CROSS EXAM BY MS. NORRIS

1 that and tell us if that is an item that was
2 transferred after autopsy.

3 A. Yes. So this is the deformed bullet
4 and some fragments we got from Mr. Gressette,
5 inside Mr. Gressette's head. It's labeled with his
6 autopsy number, I think, 16735.

7 MR. ALFARO: Okay. Thank you,
8 Dr. Presnell. Now please answer any questions that
9 the defense has.

10 THE COURT: Any questions for the
11 witness?

12 CROSS-EXAMINATION

13 BY MS. NORRIS:

14 Q. Good afternoon, Doctor. I don't think
15 I have too much, but starting with Mr. Kenyon --
16 well, first, let me ask you, the file that you've
17 been referring to up there, is that your original
18 autopsy file?

19 A. Yes. The one that I was checking for
20 the evidence transfer sheet.

21 Q. And so the only thing that has been
22 added, and correct me if I'm wrong, are the
23 diagrams that the Solicitor showed us that you
24 prepared --

25 A. Yes.

PRESNELL, M.D. - CROSS EXAM BY MS. NORRIS

1 Q. -- for today?

2 A. Yes.

3 Q. Okay. All right. So with respect to
4 Mr. Kenyon, as I understand it, you testified on
5 direct that with that head shot that he would have
6 been incapacitated fairly quickly; is that correct?

7 A. Yes, likely.

8 Q. But isn't it true that you can't say
9 that -- that he would have immediately fallen?

10 A. Right. He may -- he may not have -- he
11 also had some skull fractures. And the other
12 things here, with the other gunshot wounds, he may
13 not have been incapacitated immediately. And so if
14 the order, you know, the one to the head was later,
15 he may have sustained some gunshot wound injuries
16 and still have remained functional.

17 Q. Well, Doctor, my question, though, is,
18 regardless of the order, once he has got that
19 shot -- and as I understand, it's to the front
20 right of his head?

21 A. Yes, to the right forehead.

22 Q. And so my question is, because of
23 momentum or adrenalin or anything else, could he
24 have continued to move a few feet, or would he have
25 just dropped right there?

PRESNELL, M.D. - CROSS EXAM BY MS. NORRIS

1 A. He may have been able to move a few
2 feet.

3 Q. Okay. And I noticed in your autopsy
4 report that you took nail clippings from
5 Mr. Kenyon. Can you tell our jury why you take
6 nail clippings?

7 A. It's just a standard protocol in
8 potential homicide cases in case -- the idea is if
9 there is some type of altercation, that if it's a
10 close physical kind, there might be another
11 person's DNA underneath the fingernails of the
12 victim.

13 Q. And do you make the determination of
14 whether those nail clippings go off for DNA
15 testing, or is that the State that does that?

16 A. It is not us. We collect and transfer
17 to law enforcement for evaluation.

18 Q. And that's the same reason you collect
19 the blood sample just as a matter of routine?

20 A. It's standard. We collect blood
21 samples on everybody, regardless of the cause or
22 manner of death.

23 Q. Okay. And on the toxicology with
24 Mr. Kenyon specifically, you mentioned
25 amphetamines. What are amphetamines?

PRESNELL, M.D. - CROSS EXAM BY MS. NORRIS

1 A. Amphetamine is a type of stimulant. It
2 can be used medically to treat ADD, ADHD, same as
3 Adderall. And it also can be abused as well.

4 Q. And is one sample or one example of
5 amphetamine, if you will, crystal meth?

6 A. That might be, but that's
7 methamphetamine, which methamphetamine is a
8 metabolite of that, but, clearly, along the same
9 lines of drug type.

10 Q. So as I understand it, all you can tell
11 us from the toxicology there is amphetamine there,
12 but you don't know whether it was crystal meth or
13 whether it was Adderall or something along that
14 line?

15 A. Right. So I can't -- we can identify
16 it as amphetamine. It is not methamphetamine, but
17 it's -- if it is amphetamine, it could be Adderall
18 or it could be a prescribed drug.

19 Q. And in the toxicology report, there are
20 numbers listed for a therapeutic range. Can you
21 tell us what that is?

22 A. I believe it says up to 100 for --

23 Q. Well, before you get there, explain to
24 us just generally what therapeutic range means.

25 A. Well, when you're looking at different

PRESNELL, M.D. - CROSS EXAM BY MS. NORRIS

1 types of drugs, there's suggested therapeutic
2 ranges. You mean like what's the drug level that's
3 going to -- what level do you need the drug
4 concentration to be if somebody would like to
5 achieve a certain effect.

6 And then you can also -- as drug levels
7 increased, you could start to get toxic effects.
8 And then, certainly, if they increase even more you
9 can reach potentially fatal levels of drugs.

10 Q. And so is it fair to say that the
11 therapeutic range -- if my family doctor prescribes
12 a medication for me, the range that we would hope
13 to achieve in my blood sample would be a
14 therapeutic range?

15 A. Yes.

16 Q. And with respect to Mr. Kenyon, I
17 believe you said the therapeutic range on
18 amphetamine is 10 to 100?

19 A. Yeah. There -- there's -- depending on
20 the source, because they do vary, but I -- I think
21 it's safe to say up to 100.

22 Q. Well, is that the source that is listed
23 in your toxicology report?

24 A. The toxicology lab that analyzed this
25 person's blood cited it as 10 to 100 for

PRESNELL, M.D. - CROSS EXAM BY MS. NORRIS

1 therapeutic range.

2 Q. And Mr. Kenyon's range was 330?

3 A. His concentration was 330, yes.

4 Q. And THC, you mentioned that for
5 Mr. Kenyon, is that a derivative, if you will, of
6 marijuana?

7 A. That is marijuana.

8 Q. And you mentioned oxycodone. What is
9 that?

10 A. It's one of the opiate drugs.

11 Q. Is it also a narcotic painkiller?

12 A. Yes. It's one of the opiates which are
13 narcotics used for pain and can also be used.

14 Q. And oxymorphone, what is that?

15 A. Oxymorphone is another opiate. You can
16 actually get a prescription for it, but it's also a
17 metabolite of oxycodone.

18 Q. And the therapeutic range for that one
19 listed in the toxicology is 1 to 5?

20 A. Let's see. For oxycodone -- okay. For
21 oxymorphone the range is listed as 1 to 5.

22 Q. And his concentration was 18.3?

23 A. It is.

24 Q. And ethanol, is that basically blood
25 alcohol? If I was drinking beer or something,

PRESNELL, M.D. - CROSS EXAM BY MS. NORRIS

1 Mr. Harrison. Do you know the reason for that?

2 A. Yes. We had met in conference earlier
3 last week, and in this instance Mr. Harrison's
4 nails were so short down to the quick there wasn't
5 really any nails available for clipping.

6 Q. And Mr. Harrison's toxicology, and
7 correct me if I'm wrong, he had a range of 308 on
8 amphetamines --

9 A. Yes, 308 amphetamine.

10 Q. And, again, the range is 10 to 100
11 therapeutic?

12 A. Correct.

13 Q. And you mentioned benzodiazapine. What
14 is that?

15 A. That's like an anti-anxiety.

16 Q. Is that something along the lines of
17 Xanax?

18 A. Xanax. Alprazolam is just one of those
19 medications is -- is Xanax.

20 Q. And he also had hydrocodone?

21 A. Yes.

22 Q. At a concentration of 130?

23 A. Yes.

24 Q. I'm sorry, the court reporter can't
25 take down a head nod.

PRESNELL, M.D. - CROSS EXAM BY MS. NORRIS

1 A. I said yes.

2 Q. Oh, I'm sorry, I missed that. And the
3 range on that for therapeutic is 10 to 40?

4 A. Yes.

5 Q. Okay. And his ethanol was .132?

6 A. Yes.

7 Q. And Mr. Gressette, you did take nail
8 clippings from him, correct?

9 A. I'm trying to keep it all organized.

10 Q. I understand. Take your time.

11 A. Yes, I did.

12 Q. And in the toxicology, he had
13 amphetamines at a concentration of 460?

14 A. Yes, 460.

15 Q. And, again, the range -- therapeutic
16 range listed as 10 to 100, correct?

17 A. Correct.

18 Q. And he had hydrocodone. Again, that's
19 narcotic pain medication, correct?

20 A. Yes.

21 Q. And he had a concentration of 71.

22 A. He did.

23 Q. And it's a therapeutic range of 10 to
24 40 on that?

25 A. Correct.

PRESNELL, M.D. - REDIRECT EXAM BY MR. ALFARO

1 MS. NORRIS: All right, Doctor. I
2 don't think I have anything further. Thank you so
3 much.

4 THE COURT: Any redirect?

5 MR. ALFARO: Yes, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. ALFARO:

8 Q. Dr. Presnell, starting with Mr. Kenyon.
9 You were asked on cross-examination regarding
10 toxicology levels for some specific drugs related
11 to him, correct?

12 A. Uh-huh. Yes.

13 Q. And can you tell us what the medical
14 diagnosis was as to the cause of death?

15 A. So for Mr. Kenyon, I cited the gunshot
16 wound to the head with the brain disruption and
17 then contributed the other gunshot wounds to his
18 torso and his right arm.

19 Q. So it was the 12 gunshot wounds as
20 opposed to the toxicology?

21 A. Yes.

22 Q. And related to Mr. Harrison, you were
23 asked specifics as to the toxicology reports to
24 Mr. Harrison. Can you tell the jury what the
25 medical diagnosis was as to the cause of death for

PRESNELL, M.D. - REDIRECT EXAM BY MR. ALFARO

1 Mr. Harrison?

2 A. That was Dr. Batalis's case, and I
3 agree with him that the gunshot wounds to the head,
4 neck, and torso.

5 Q. So the nine gunshot wounds were deemed
6 by Dr. Batalis as the cause of death?

7 A. Yes.

8 Q. And for Mr. Gressette you were also
9 asked specifics as to toxicology results. And can
10 you tell the jury what the cause of death --
11 medical diagnosis was for Mr. Gressette?

12 A. The gunshot wound to the head.

13 MR. ALFARO: Thank you. No further
14 questions.

15 THE COURT: Any objections to the
16 witness being excused? From the State?

17 MR. ALFARO: No, Your Honor.

18 THE COURT: From the defense?

19 MS. NORRIS: No, Your Honor.

20 THE COURT: Doctor, you're excused.

21 THE WITNESS: Thank you.

22 THE COURT: You're welcome.

23 Call your next witness.

24 MS. SZYMCZYNSKA-SAS: The State calls
25 Don Snedeker.

SNEDEKER - DIRECT EXAM BY MS. SAS

1 DONALD SNEDEKER,

2 being first duly sworn, testified as follows:

3 THE CLERK: Please be seated. State
4 your full name, and spell your last name for the
5 record, please.

6 THE WITNESS: It's Donald Snedeker,
7 S-N-E-D-E-K-E-R.

8 THE COURT: You may proceed.

9 DIRECT EXAMINATION

10 BY MS. SZYMCZYNSKA-SAS:

11 Q. Mr. Snedeker, where are you currently
12 employed?

13 A. Berkeley County EMS.

14 Q. And how long have you been with
15 Berkeley County EMS?

16 A. Nine and a half years.

17 Q. Okay. And what's your current position
18 and your job responsibility?

19 A. Battalion chief, and I'm a
20 co-supervisor for a shift of 26 employees.

21 Q. Okay. And were you employed with them
22 in the same capacity back on October 7, 2016?

23 A. No, ma'am.

24 Q. What was your position back then?

25 A. I was a station captain.

SNEDEKER - DIRECT EXAM BY MS. SAS

1 Q. And how did you become involved in the
2 case which brings us here today?

3 A. My unit was dispatched to respond to
4 the case to pick up.

5 Q. And where did you respond to?

6 A. I know it was Macio Road. I don't know
7 the actual numerics. It should be in my report.

8 Q. Would it help for you to look at the
9 report in this case?

10 A. Yes, ma'am.

11 MS. SZYMCZYNSKA-SAS: Permission to
12 approach?

13 THE COURT: You may.

14 BY MS. SZYMCZYNSKA-SAS:

15 Q. Does this appear to be the reports that
16 you prepared?

17 A. Yes, ma'am.

18 Q. Do you remember the exact location
19 where you arrived to now?

20 A. It was --

21 Q. I believe it's on the first page.

22 A. 220 -- does that say 220 or -- 228
23 Macio Road.

24 Q. Okay. And what did you observe on
25 arrival at the scene?

SNEDEKER - DIRECT EXAM BY MS. SAS

1 A. Multiple sheriff's deputies on the
2 scene.

3 Q. When you arrived first on the scene
4 where would you have gone?

5 A. I started heading towards the house and
6 was directed to go to around the house to the back
7 of the residence by deputies on the scene.

8 Q. Okay. And what, if anything, did you
9 observe in the back of the residence?

10 A. I first came across one of three
11 patients.

12 Q. Okay. And who was the -- and what
13 would you have done when you came across the first
14 patient?

15 A. I started triage, which is just a quick
16 assessment to see if they're actually viable,
17 breathing, talking, and putting a red tag on them,
18 which indicates a critical patient.

19 Q. And did -- was anything else around the
20 patient that you observed?

21 A. Not at that time, no, ma'am.

22 Q. Okay. And what would you have done
23 next?

24 A. I went to the next patient.

25 Q. Okay. And where was that patient

SNEDEKER - DIRECT EXAM BY MS. SAS

1 located?

2 A. I believe, according to my report, it
3 was over by the back screened porch.

4 Q. Okay. And what would you have done
5 with that patient?

6 A. The same thing; assessed whether they
7 were breathing, pulse, anything like that.

8 Q. Okay. And did you find a pulse on that
9 patient?

10 A. No, ma'am. The patient was pulseless
11 and not breathing at the time.

12 Q. Okay. Was there another individual
13 located on the scene?

14 A. Yes, ma'am. My partner -- well, he was
15 there -- he went to the third patient.

16 Q. And who is your partner?

17 A. Matthew Bailey.

18 Q. And did he assess any of the
19 individuals?

20 A. The last patient, yes, ma'am.

21 Q. Okay. Do you recall where that last
22 patient was located?

23 A. On the screened porch.

24 Q. Okay. And do you recall what was the
25 assessment of that patient?

SNEDEKER - DIRECT EXAM BY MS. SAS

1 A. Pulseless, not breathing.

2 Q. And what did you do -- what did the two
3 of you do at that time?

4 A. We placed black tags on the two
5 patients and went to the first patient and began
6 providing treatment.

7 Q. Okay. Can you please tell the jury
8 what kind of treatment did you administer to that
9 first patient?

10 A. We did an EKG which monitors his heart.
11 We did -- we also had another -- our director was
12 also on scene assisting us at the time, and myself
13 and him did bilateral chest decompressions in case
14 of any tension pneumo, which is air in the lungs
15 and in the chest cavity to cause a -- I can't think
16 of it right now.

17 Q. You can explain it in the most simple
18 terms you can to the jury.

19 A. Basically, his -- if you get air in the
20 chest, it basically causes the lungs to collapse.
21 And we put needles inside of his chest to allow the
22 air to escape and to allow his lungs to inflate and
23 help him with his respiration.

24 Q. Did you do anything else on the scene?

25 A. I believe that's -- we did put a

SNEDEKER - DIRECT EXAM BY MS. SAS

1 C-collar on the patient to protect his spine and
2 put him on a backboard to carry him to the
3 stretcher, and also to protect any injuries that
4 may be to the spine that we could not see.

5 Q. Okay. And at some point -- did you do
6 anything else before leaving the scene?

7 A. In the back, by the time we got to the
8 ambulance, we started to try assessing him as far
9 as we got -- we tried IV lines; we put an airway in
10 him to actually breathe for him because he stopped
11 breathing completely; we began CPR because he lost
12 a pulse.

13 Q. Okay. Was that already in the
14 ambulance?

15 A. Yes, ma'am.

16 Q. Okay. And where were you transporting
17 him?

18 A. Trident.

19 Q. Okay. Can you sort of tell us
20 everything after that happened in the ambulance and
21 when you arrived at Trident?

22 A. We, basically, continued to breathe for
23 the patient. We did get pulses back for a brief
24 second, we stopped CPR, and then initiated CPR
25 again because he lost pulse a second time.

SNEDEKER - DIRECT EXAM BY MS. SAS

1 We called the hospital and they gave us
2 orders to stop resuscitative efforts. And then
3 they came back and said go ahead and continue after
4 we gave them more information, and just continue to
5 transport and provide basically ventilation and CPR
6 as needed for the patient.

7 Q. What was his condition on arrival to
8 Trident?

9 A. On arrival he was deceased, and we were
10 providing respirations and compressions.

11 MS. SZYMCZYNSKA-SAS: The Court's
12 indulgence?

13 THE COURT: Yes, ma'am.

14 MS. SZYMCZYNSKA-SAS: No further
15 questions from this witness.

16 THE COURT: Any questions for this
17 witness?

18 MS. NORRIS: Thank you, sir. I don't
19 have any questions.

20 THE COURT: Any exception to the
21 witness being excused? From the State?

22 MS. SZYMCZYNSKA-SAS: Nothing from the
23 State, Your Honor.

24 THE COURT: From the defense?

25 MS. NORRIS: No, Your Honor.

SPENCE - DIRECT EXAM BY MS. SAS

1 THE COURT: Sir, you're excused.

2 MS. SZYMCHYNSKA-SAS: The State calls
3 Crystal Spence.

4 CRYSTAL SPENCE,
5 being first duly sworn, testified as follows:

6 THE CLERK: Please be seated. State
7 your full name, and spell your last name for the
8 record.

9 THE WITNESS: Crystal Spence,
10 S-P-E-N-C-E.

11 THE COURT: You may proceed.

12 DIRECT EXAMINATION

13 BY MS. SZYMCHYNSKA-SAS:

14 Q. Ms. Spence, where are you currently
15 employed?

16 A. Berkeley County Sheriff's Office in the
17 forensic service unit.

18 Q. And how long have you been in the
19 forensic unit?

20 A. In 1997. I started at the jail and
21 transferred to the forensic unit in 2000.

22 Q. And what does the forensic unit do?

23 A. We process crime scenes; we process
24 evidence turned in by deputies and detectives; we
25 transport evidence to other agencies to be

SPENCE - DIRECT EXAM BY MS. SAS

1 processed; we maintain the evidence and disburse it
2 for court.

3 Q. Okay. And what kind of training and
4 experience would you have received to be able to
5 perform these tasks?

6 A. I took a crime scene investigation
7 class, law enforcement photography, latent print
8 examination at the South Carolina Criminal Justice
9 Academy, and I've had several classes at the
10 University of West Virginia.

11 Q. Okay. And did you get involved with
12 this case back on October 7, 2016?

13 A. Yes, I did.

14 Q. And how did you become involved with
15 it?

16 A. My lieutenant, Lieutenant Alteri,
17 called me and notified me and said we had a
18 shooting with several victims and to report to
19 Macio Road.

20 Q. Okay. And did you report to Macio
21 Road?

22 A. Yes, ma'am, I did.

23 Q. Okay. And what did you do on arrival?

24 A. We were waiting for a search warrant.
25 We got information on what we had, and once the

SPENCE - DIRECT EXAM BY MS. SAS

1 search warrant arrived on the scene, we went
2 through the crime scene to see what we had and what
3 we needed to process it.

4 And then forensic technician Chestnut
5 started with photographs.

6 Q. Okay. And what was your general role
7 on the scene?

8 A. Supervisor, helping collect evidence,
9 getting anything that we needed from the vehicle to
10 help with our job.

11 Q. Okay. What was -- did you conduct any
12 GSR kits on any of the victims on the scene?

13 A. Yes, I did.

14 Q. Okay. And do you recall who you
15 conducted the GSR kits on?

16 A. Mr. Harrison and Mr. Gressette.

17 Q. Okay. And do you remember where their
18 bodies were located?

19 A. Mr. Harrison was in the backyard on the
20 ground, and Mr. Gressette was on the porch.

21 Q. Okay. And tell the jury what is the
22 GSR kit?

23 A. The GSR kit is called a gunshot residue
24 kit. They are prepackaged and sealed kits that
25 have a questionnaire inside, a pair of powder-free

SPENCE - DIRECT EXAM BY MS. SAS

1 gloves, and four dabbers that we use to collect
2 GSR, gunshot residue, on the back and palms of each
3 hand.

4 Q. So can you sort of explain that step by
5 step how you perform a GSR kit?

6 A. We fill out the questionnaire first
7 with the information that either a living victim
8 gives us or the information that we get from the
9 detectives on a deceased victim. And then we use
10 the gloves that's inside the GSR kit, because it's
11 powder free, you don't want any powder on your
12 gloves or hands, and then you use the dabber and
13 you flatten out a hand and you just dab.

14 There's a sticky tape on the end of the
15 dabber, and you just pat it everywhere on the palm.
16 And then you get the one for the back of the hand
17 and you pat everywhere on the back of the hand.
18 And you put it back into the envelope with the
19 questionnaire and seal it.

20 Q. And is that what you would have done
21 for the two GSR kits collected for Mr. Harry
22 Gressette and Mr. James Harrison?

23 A. Yes, ma'am.

24 Q. And, to your knowledge, were their
25 bodies moved prior to you administering the GSR

SPENCE - DIRECT EXAM BY MS. SAS

1 kits?

2 A. No, they were not moved.

3 Q. How do you know that?

4 A. They were in the same position when we
5 first went back there to see what we had, and they
6 were in the same position when we did the GSR kits.

7 Q. Okay. I'm going to show you what has
8 been marked and entered into evidence State's 48
9 and 49.

10 MS. SZYMCZYNSKA-SAS: Permission to
11 approach?

12 THE COURT: Yes, ma'am.

13 BY MS. SZYMCZYNSKA-SAS:

14 Q. Can you look at these two items and
15 tell us if those are, indeed, the GSR kits from
16 Mr. James Harrison and Harry Gressette?

17 A. Yes, they are.

18 Q. And what would you have done with the
19 GSR kits that you collected?

20 A. They were sealed up and given to
21 forensic technician Chestnut to put with all the
22 evidence collected that night.

23 Q. Would there be any ability for anyone
24 to tamper with that evidence or --

25 A. No. They were sealed up.

SPENCE - DIRECT EXAM BY MS. SAS

1 Q. And you would have done the sealing?

2 A. Yes.

3 Q. Okay.

4 MS. SZYMCZYNSKA-SAS: The Court's
5 indulgence?

6 THE COURT: Yes, ma'am.

7 MS. SZYMCZYNSKA: No further questions
8 from this witness.

9 THE COURT: Any questions?

10 MS. NORRIS: Thank you, ma'am. I don't
11 have any questions.

12 THE COURT: Any objection to the
13 witness being excused? From the State?

14 MS. SZYMCZYNSKA-SAS: None from the
15 State, Your Honor.

16 THE COURT: From the defense?

17 MS. NORRIS: No, Your Honor.

18 THE COURT: Ma'am, you're excused.
19 Call your next witness.

20 CHRISTINE CHESNUT,
21 being first duly sworn, testified as follows:

22 THE CLERK: Please be seated. State
23 your name, and spell your last name for the record.

24 THE WITNESS: Christine Chesnut,
25 C-H-E-S-N-U-T.

CHESNUT - DIRECT EXAM BY MS. SAS

1 THE COURT: You may proceed.

2 MS. SZYMCZYNSKA-SAS: Thank you, Your
3 Honor.

4 THE COURT: You're welcome.

5 DIRECT EXAMINATION

6 BY MS. SZYMCZYNSKA-SAS:

7 Q. Good afternoon, Ms. Chesnut. Can you
8 tell the jury where are you currently employed?

9 A. Berkeley County Sheriff's Office.

10 Q. And how long have you been employed
11 there?

12 A. Three years.

13 Q. And what is your current job position
14 and your job responsibilities?

15 A. Forensic technician. My
16 responsibilities are to process crime scenes,
17 preserve the evidence, log in the evidence, and
18 transport it back and forth to SLED.

19 Q. Okay. And what kind of training have
20 you received in order to be in that position?

21 A. I received an investigation training
22 class, photography, fingerprinting, crime scene
23 processing, and limited duties from the South
24 Carolina Criminal Justice Academy.

25 Q. And did you have the same position back

CHESNUT - DIRECT EXAM BY MS. SAS

1 in October 7 of 2016?

2 A. Yes.

3 Q. And how did you become involved in this
4 case?

5 A. I was the on-call forensic technician
6 for that night.

7 Q. Okay. And did you have an occasion to
8 respond to 228 Macio Road?

9 A. I'm sorry, I didn't hear your question.

10 Q. Did you have an occasion to respond to
11 228 Macio Road?

12 A. Yes.

13 Q. Okay. And do you recall what time
14 approximately you arrived at the scene?

15 A. I arrived on scene at 2:47 a.m.

16 Q. Okay. And do you remember what you did
17 after you arrived on the scene?

18 A. I was met by Deputy Babson. He advised
19 me of the scene and what was going on. And then
20 shortly after that, Lieutenant Alteri arrived on
21 the scene, and I was -- I advised him of the scene
22 as well.

23 Q. Okay. What did you do after that?

24 A. After that, Lieutenant Alteri advised
25 me to go ahead and conduct a gunshot residue kit on

CHESNUT - DIRECT EXAM BY MS. SAS

1 the defendant.

2 Q. Okay. And for the jury, can you tell
3 them what a gunshot residue kit is?

4 A. It is a GSR kit. It tests for if you
5 have shot a firearm recently.

6 Q. All right. And do you recall -- you
7 made contact with the defendant?

8 A. Yes.

9 Q. Do you recall where he was located when
10 you made contact with him?

11 A. He was in the back of a patrol vehicle.

12 Q. Okay. And where was that vehicle
13 located?

14 A. It was in the street.

15 Q. Okay. Would that have been on Macio
16 Road?

17 A. Yes.

18 Q. Okay. And can you tell the jury what
19 you did in order to administer the GSR kit?

20 A. To conduct the GSR kit you first -- I
21 showed the defendant the kit. It comes sealed. I
22 showed it to him that it was sealed, and I had the
23 assistance of Deputy Carl Herring.

24 The kit comes with a questionnaire two
25 dabbers for each hand, gloves, and a seal. So I

CHESNUT - DIRECT EXAM BY MS. SAS

1 asked the defendant the questions in the GSR kit
2 before I dabbed his hands.

3 Q. Okay. Was someone else assisting you
4 with the GSR?

5 A. Yes. Carl Herring.

6 Q. Okay. And what was his role in it?

7 A. The defendant was being very
8 belligerent, and as I was asking the questions he
9 wasn't answering them. So Carl Herring would
10 repeat the same questions I was asking so that I
11 could get an answer to fill out the questionnaire.

12 Q. Okay. And what's the purpose of the
13 questionnaire? Is that for you?

14 A. No. The questionnaire comes in the GSR
15 kit already. The questionnaire is for SLED
16 purposes.

17 Q. Okay. And can you take us with --
18 after the questions, how exactly you went about
19 administering the physical gunshot residue kit?

20 A. So after the questions, we -- I take --
21 there's two dabbers for each; one for left back,
22 left palm; one for right back and right palm. I
23 take each of those and I do the left back and --
24 the left back of the hand and then the left palm
25 and then I seal it, and then I take the right and I

CHESNUT - DIRECT EXAM BY MS. SAS

1 do the right palm and the right back.

2 And then both of those go into the GSR
3 package, and it gets sealed.

4 Q. Okay. I'm going to show you what has
5 been marked as State's 51 and entered into
6 evidence.

7 MS. SZYMCZYNSKA-SAS: Permission to
8 approach, Your Honor?

9 THE COURT: Yes, ma'am.

10 BY MS. SZYMCZYNSKA-SAS:

11 Q. Is this the GSR kit that you took from
12 Mr. Robert Nolen?

13 A. Yes.

14 Q. Okay. How do you know that?

15 A. The chain of custody states it's the
16 GSR kit from Robert Nolen.

17 Q. And what would you have done after you
18 performed the kit?

19 A. After I performed the kit, it would
20 have been sealed into an envelope and secured into
21 my county-issued vehicle.

22 Q. And what would you have done with it
23 afterwards?

24 A. After the kit was secured in the
25 vehicle? After the kit was secured in the vehicle

CHESNUT - DIRECT EXAM BY MS. SAS

1 and we finish the scene, it would have been taken
2 back to our forensic building and secured behind a
3 locked door.

4 Q. Okay. When you came in contact with
5 the defendant in the back of the patrol car, did he
6 make any statements?

7 A. Yes.

8 Q. Okay. What statements did he make?

9 A. As I was getting the kit ready before
10 anything was performed, I heard the defendant ask
11 who all was dead to another deputy. And the deputy
12 responded by saying that someone had been
13 transported to the hospital and stated that it was
14 Mr. Lance Kenyon.

15 And the defendant responded by saying,
16 well, that's good, I didn't mean to kill Lance --
17 or, I'm sorry, I didn't meant to shoot Lance.

18 Q. Did he make any other statements to
19 you?

20 A. As I was performing the GSR kit on him
21 and dabbing his hands, the defendant stated:
22 You'll find all kinds of powders on me, I shot all
23 them motherfuckers.

24 Q. Was there anyone else there on the
25 crime scene with you?

CHESNUT - DIRECT EXAM BY MS. SAS

1 A. Yes. Lieutenant Alteri, Sergeant
2 Spence and Corporal McGowan with the forensic unit.

3 Q. Okay. After taking the GSR kit, what
4 did you do?

5 A. After the GSR kit, Sergeant Betts
6 arrived on scene with a search warrant, which was
7 necessary to search what was on the scene. I went
8 ahead and started taking overall photographs of the
9 exterior of the residence and the property.

10 Q. Okay. And you took those before the
11 search warrant arrived?

12 A. No. No. Once the search warrant was
13 on scene is when we began to -- or when I began to
14 take photographs.

15 Q. And those are on the inside and the
16 outside?

17 A. The initial photographs are just the
18 overall of the exterior, meaning we -- meaning I
19 took photographs of the front of the residence,
20 each side, and the back.

21 Q. Okay. What did you do after taking the
22 photographs?

23 A. After we took those, myself and the
24 rest of the forensic unit, we made entry into the
25 backyard where we located the two victims. We -- I

CHESNUT - DIRECT EXAM BY MS. SAS

1 photographed and did more overall photographs of
2 all the evidence; then myself and Sergeant Spence
3 entered the residence where I took overall
4 photographs as well in there.

5 And after everything was photographed,
6 we began to number each piece of evidence with
7 number markers.

8 Q. Okay. And how did those number markers
9 look?

10 A. The number markers are yellow. They
11 have a number on them, and the numbers are L-shape,
12 and they have -- it's like a measuring. So you can
13 measure as well as mark it.

14 Q. Okay. And what did you do after
15 marking all the photographs -- or all the items
16 with the markers?

17 A. After all the items were marked with
18 number markers, Sergeant Spence did the GSR kits on
19 the two victims while I was photographing the
20 number markers. Once those were done, we collected
21 the items that were marked with the numbers.

22 Q. All right. And did you keep track of
23 what each item was based on the marker?

24 A. Yes. So each item that was marked with
25 a number marker, we collect it and package it. And

CHESNUT - DIRECT EXAM BY MS. SAS

1 on that package we write the number marker and what
2 the package contained.

3 Q. Okay. And would that have been
4 something that you would have kept track on on some
5 kind of diagram or charts?

6 A. Yes. Those markers are used for a
7 crime scene drawing. We do laser measurements of
8 each number marker for the drawing.

9 Q. And who would have prepared this
10 diagram in this case?

11 A. Corporal McGowan did the drawing for
12 this case.

13 Q. And do you -- what would you have done
14 after you photographed the items and collected them
15 with the items?

16 A. After the items were collected and
17 photographed, we did a final walk-through. During
18 that final walk-through, I was advised by
19 Lieutenant Alteri that one of the deputies had
20 located two other pieces of evidence in front of
21 the residence.

22 So we marked those with the number
23 markers, photographed them, and collected them as
24 well.

25 Q. Okay. And what would you have done

CHESNUT - DIRECT EXAM BY MS. SAS

1 with all the items that you took into evidence?

2 A. After we left the scene?

3 Q. Yes. Where would you have taken them
4 from the scene?

5 A. We would have taken them to our
6 forensic building. They would have been packaged,
7 labeled, and put into a secure location behind a
8 locked door.

9 Q. The markers on the scene were yellow
10 markers. When you collected the evidence, did you
11 mark the individual cartridges that were collected
12 and any other evidence?

13 A. The markers stay down once we collect
14 the evidence, and that's how we do our measurements
15 and drawings. The markers are the last things that
16 we pick up.

17 Q. Is there something associated with the
18 particular item of evidence that you know that was
19 item number one when you collected it?

20 A. I'm not sure what you mean.

21 Q. Okay. I will maybe show you later and
22 it will make more sense.

23 I'm going to show you what has been
24 entered into evidence State's 86.

25 MS. SZYMCHYNSKA-SAS: Permission to

CHESNUT - DIRECT EXAM BY MS. SAS

1 approach?

2 THE COURT: Yes, ma'am.

3 BY MS. SZYMCZYNSKA-SAS:

4 Q. Was that one of the photographs you
5 would have taken on the scene?

6 A. Yes.

7 MS. SZYMCZYNSKA-SAS: Permission to
8 publish?

9 THE COURT: You may proceed.

10 BY MS. SZYMCZYNSKA-SAS:

11 Q. I'm going to show you an example of the
12 scene. Are you able to see that?

13 A. Uh-huh.

14 Q. Are you able to show us where that
15 photograph was -- what's the view of this
16 photograph, like where would you have been standing
17 and taking it? Which way?

18 A. So to take this photograph, I would
19 have been standing kind of back behind the AC unit
20 to get the overall picture here.

21 Q. Okay. And can you show us on the -- I
22 believe that's State's 80, which is for
23 demonstrative purposes only. Can you show us where
24 you would have been standing to take that
25 photograph?

CHESNUT - DIRECT EXAM BY MS. SAS

1 A. For this photograph?

2 Q. Yes.

3 A. I would have been somewhere around
4 here. (Indicating)

5 Q. Okay. And that's the AC unit depicted
6 in that photograph?

7 A. Yes.

8 Q. As for the items that you collected
9 from the scene, can you go over those items?

10 A. All -- everything that was collected?

11 Q. Sure. Would it help you to refresh
12 your recollection with a report?

13 A. Yes.

14 Q. Okay.

15 MS. SZYMCZYNSKA-SAS: Permission to
16 approach, Your Honor?

17 THE COURT: Yes, ma'am.

18 BY MS. SZYMCZYNSKA-SAS:

19 Q. Can you tell us how many cartridges
20 that are spent and unspent that you collected at
21 the scene?

22 A. Okay. I collected 25 of the
23 .22-caliber cartridge casings. I collected one
24 unspent 22-caliber cartridge. I collected two
25 9-millimeter cartridge casings, one 9-millimeter

CHESNUT - DIRECT EXAM BY MS. SAS

1 cartridge unspent, a Clear Creek magazine, a purple
2 and yellow Crown Royal bag containing .22-caliber
3 ammunition, one box of 300-count .22-caliber
4 ammunition -- there were only 295 in that box --
5 one tablet, a DNA swab of what happened to be blood
6 from the concrete in front of the back porch steps,
7 the GSR kit from Robert Nolen, Kyocera cell phone,
8 a black Samsung Galaxy, a black Kyocera cell phone,
9 and a black iPhone S with the OtterBox, GSR kit
10 from James Harrison and Harry Gressette, a Smith
11 and Wesson .38 revolver, a Springfield Armory Model
12 .45, a Savage Axis .243-caliber rifle, a Mossberg
13 12 gauge shotgun, and a Belgium Star 7.76-caliber,
14 and a Ruger Model .22-caliber rifle, clothing.

15 MS. SZYMCZYNSKA-SAS: Permission to
16 approach, Your Honor?

17 THE COURT: Yes, you may.

18 BY MS. SZYMCZYNSKA-SAS:

19 Q. I'm going to ask you what has been
20 marked and entered into evidence as State's 1
21 through 26.

22 A. Okay.

23 Q. If you can carefully go through these
24 items. Thank you. What are these items?

25 A. These are the .22-caliber cartridge

CHESNUT - DIRECT EXAM BY MS. SAS

1 casings.

2 Q. Okay. All of them, or are the
3 9-millimeter also in there?

4 A. There is also a 9-millimeter. Yes.
5 It's the .22 and the 9-millimeter.

6 Q. So those would be 1 through 26 and 24,
7 28, and 29?

8 A. Yes.

9 Q. Okay. And can you tell the jury --
10 there's what appears to be a white piece of paper
11 inside of it with the cartridges and the writing on
12 the inside. What is that writing indicative of?

13 A. So on these papers, these are what we
14 package the casings or small piece of evidence like
15 this in on a crime scene. We place it in here with
16 a number marker. That's what the big number is on
17 it.

18 That's so we know what number marker
19 that piece of evidence is, and then we write what
20 the piece of evidence is on it as well.

21 Q. Okay. And is the yellow marker number
22 also reflected on that?

23 A. Yes. The number marker is what the big
24 number is on the white envelope.

25 Q. So these numbers would correspond with

CHESNUT - DIRECT EXAM BY MS. SAS

1 the diagram of the crime scene and the markers on
2 the diagram?

3 A. Yes.

4 Q. Okay. I'm going to show you what has
5 been entered -- well, premarked as State's 45.

6 MS. SZYMCZYNSKA-SAS: Permission to
7 approach?

8 THE COURT: Yes, you may.

9 BY MS. SZYMCZYNSKA-SAS:

10 Q. What is that item?

11 A. This is the DNA swab of the
12 red-in-color substance appearing to be blood.

13 Q. Okay. And which location would that
14 have been taken from?

15 A. This was taken from the back porch, the
16 concrete in front of the back porch steps.

17 Q. Okay.

18 MS. SZYMCZYNSKA-SAS: The Court's
19 indulgence?

20 BY MS. SZYMCZYNSKA-SAS:

21 Q. And what would you have done -- how
22 would you have collected that sample?

23 A. So the swabs come prepackaged. We
24 would open up the package; because the red-in-color
25 substance was dried, you apply distilled water to

CHESNUT - DIRECT EXAM BY MS. SAS

1 it; and then you swab that area and it goes back
2 into a box that we seal with our initials, the
3 date, the case number; and then it goes into an
4 envelope sealed.

5 Q. And what would you have done with that
6 envelope, the sealed envelope?

7 A. Once the envelope is sealed, it was
8 secured into our county-issued vehicle.

9 Q. And after it was secured?

10 A. After it was secured, the evidence is
11 taken to our forensic building and put into a box
12 in a secured location behind a locked door.

13 Q. Okay. And how do you know that's the
14 item that you're talking about?

15 A. The chain of custody that I filled out
16 says DNA swab of what appears to be blood from the
17 concrete in front of the back porch steps. And I
18 recognize my handwriting on the envelope stating
19 that that's what it is.

20 Q. Okay. I'm going to show you what has
21 been marked and entered as State's Number 31.

22 MS. SZYMCZYNSKA-SAS: Permission to
23 approach, Your Honor?

24 THE COURT: Yes.

25 BY MS. SZYMCZYNSKA-SAS:

CHESNUT - DIRECT EXAM BY MS. SAS

1 Q. The best way to put this item -- can
2 you open up this item and tell me what that is, and
3 if that's one of the items you collected from the
4 scene?

5 A. Yes. This is the .22-caliber rifle
6 that I collected from the front of the residence.

7 Q. And I believe that might be item 44.
8 If you can look at the sticker, I just want to make
9 sure.

10 A. It's tagged 13, our tag is 13.

11 MS. SZYMCZYNSKA-SAS: Permission to
12 approach, Your Honor?

13 THE COURT: Yes, ma'am.

14 BY MS. SZYMCZYNSKA-SAS:

15 Q. Make sure --

16 A. Yes.

17 Q. -- State's Exhibit 44? And how do you
18 know that's the item collected from the scene?

19 A. I recognize this item because I'm the
20 one that collected it and, also, the chain of
21 custody states that that's what it is.

22 Q. Okay. And what is the item?

23 A. What is it?

24 Q. Yes.

25 A. It is a Ruger Model 1022 .22-caliber

CHESNUT - DIRECT EXAM BY MS. SAS

1 rifle.

2 Q. Okay. And can you take the item out of
3 the box and show it to the jury.

4 A. (Complies)

5 Q. Thank you. You can put it back in the
6 box.

7 And how would you have secured this
8 item, and where would you have taken it?

9 A. So this item would have been cleared on
10 scene to make sure that there were no ammo in the
11 firearm for officer safety. After that, it was
12 then wrapped in paper bags that we keep in our
13 evidence truck and was secured inside the vehicle.

14 Q. And after securing the vehicle, what
15 would you have done to this item?

16 A. It would be taken to the forensic
17 building, put inside a box that looks like that,
18 and then secured behind a locked door.

19 Q. And do you recall where that item was
20 located on the scene?

21 A. The item was located in the front of
22 the residence on the hood of a black vehicle.

23 Q. I'm going to show you what has been
24 marked and entered as State's 43.

25 MS. SZYMCZYNSKA-SAS: Permission to

CHESNUT - CROSS EXAM BY MS. NORRIS

1 approach?

2 THE COURT: Yes.

3 BY MS. SZYMCZYNSKA-SAS:

4 Q. Can you tell me what the item is? You
5 may need to open the bag.

6 A. This is the clear plastic bag located
7 by the front door.

8 Q. Okay. And inside or outside of the
9 residence?

10 A. I don't recall.

11 Q. Okay. Would that have been also marked
12 on the diagram that was prepared?

13 A. Yes. It's number marker 27.

14 Q. Okay.

15 MS. SZYMCZYNSKA-SAS: The Court's
16 indulgence?

17 THE COURT: Yes, ma'am.

18 MS. SZYMCZYNSKA-SAS: No further
19 questions for this witness at this time.

20 THE COURT: Any cross-examination?

21 CROSS-EXAMINATION

22 BY MS. NORRIS:

23 Q. Is it Private First Class Chesnut?

24 A. Yes.

25 Q. If it's all right, I don't mean to

CHESNUT - CROSS EXAM BY MS. NORRIS

1 demote you, but I'm going to call you Miss.

2 A. Okay.

3 Q. It's a little easier to say. All
4 right. Ms. Chesnut, prior to working with
5 forensics, did you go to the police academy like
6 all the other officers do?

7 A. Yes.

8 Q. And you were taught there to document
9 what you do at the time to help you later on,
10 correct?

11 A. Not at the police academy, no.

12 Q. Okay. But somewhere along the way you
13 learned to write reports?

14 A. Yes.

15 Q. And, in fact, you did a very thorough
16 report in this case, correct?

17 A. Yes.

18 Q. And you've had the opportunity to look
19 at that?

20 A. Yes.

21 Q. All right. And you testified about
22 some statements that Mr. Nolen made to you that he
23 didn't mean to shoot Lance. You put that in your
24 report, correct?

25 A. Yes.

CHESNUT - CROSS EXAM BY MS. NORRIS

1 Q. And that you'd find gunpowder because
2 he shot all of them?

3 A. Yes.

4 Q. All right. Now, where in that report
5 does it say that Mr. Nolen was belligerent?

6 A. It doesn't.

7 Q. Okay. And I believe you testified that
8 you took the photographs out there?

9 A. Yes.

10 Q. Okay. Let me show you, ma'am --

11 MS. NORRIS: If I can approach, Your
12 Honor?

13 THE COURT: Yes, ma'am.

14 BY MS. NORRIS:

15 Q. -- what has been marked as Defense
16 Exhibits 1 through 17, and ask if you can verify
17 that you took those photographs.

18 A. Yes.

19 Q. Why don't you just hold on to those,
20 and we'll go through them in a little bit; but
21 before I get to that, do you have the magazine
22 still up there?

23 A. I do.

24 Q. And that magazine 43, I would assume,
25 goes in this weapon right here. That's where the

CHESNUT - CROSS EXAM BY MS. NORRIS

1 bullets come in?

2 A. I'm not an ammo expert.

3 Q. I'm just asking you -- in police
4 training you go through firearms training as well,
5 correct?

6 A. Yes. The magazine goes through the
7 gun.

8 Q. And so a -- I'm not asking you to be an
9 expert, but a magazine is just generally what you
10 put in the weapon that the bullets are contained?

11 A. Yes.

12 Q. All right. And you found that outside
13 of the weapon, you said, near the front door?

14 A. Yes.

15 Q. Okay. All right. And when you
16 collected this weapon, was there a magazine or a
17 clip in it?

18 A. I don't recall. I didn't clear the
19 firearm.

20 Q. Okay. And so have you seen a report
21 that says, I cleared this weapon?

22 A. No.

23 Q. So it may have had a magazine with 20
24 rounds or it may not have had a magazine at all for
25 all we know, right?

CHESNUT - CROSS EXAM BY MS. NORRIS

1 A. Could be.

2 Q. Okay. All right. All right. Ma'am --

3 MS. NORRIS: May I publish the
4 pictures, Your Honor?

5 THE COURT: Yes.

6 BY MS. NORRIS:

7 Q. I'm going to ask you about some of
8 these pictures if I can get -- and you can look at
9 the pictures there in front of you or on the
10 screen. That's just Defense Exhibit 1. And do you
11 document what time that you take the photos?

12 A. Yes.

13 Q. And what time was that?

14 A. 3:58.

15 Q. All right. And the next one, please.

16 And in this picture -- did you take this
17 picture where the emergency lights are flashing?

18 A. Yes.

19 Q. All right. And is that the front of
20 the house?

21 A. Yes.

22 Q. Number 3, please. Another picture view
23 of the front?

24 A. Uh-huh. Yes.

25 Q. Number 4. And tell us what that is.

CHESNUT - CROSS EXAM BY MS. NORRIS

1 A. This is the side of the house, left
2 side.

3 Q. All right. And so that's the front and
4 that's the back?

5 A. Yes.

6 Q. Next, please. This is Defense Exhibit 5.
7 Is that closer in to where you found the deceased?

8 A. I'm sorry?

9 Q. Is that closer in to where you found
10 the deceased back here?

11 A. Yes.

12 Q. All right. Number 6, please. And that
13 is another view. What is that right in there?

14 A. This is the Jacuzzi, the hot tub.

15 Q. Okay. And did you see -- did you find
16 a weapon right in here?

17 A. Yes.

18 Q. And did you collect that weapon?

19 A. We did. We collected that weapon for
20 safety.

21 Q. Next, please, Number 7. And is that
22 basically where you can see that right there?

23 A. Yes.

24 Q. All right. And that's from the
25 backyard looking at the back porch?

CHESNUT - CROSS EXAM BY MS. NORRIS

1 A. Yes.

2 Q. Okay. And Number 8, please. What is
3 this view of?

4 A. This is the view of the other side of
5 the house.

6 Q. So the back where all this happened is
7 back here?

8 A. Yes.

9 Q. All right. Number 9, please. And that
10 is from the side, the hot tub, Mr. Harrison. Is
11 that how you found him?

12 A. Yes.

13 Q. All right. Number 10, please. And did
14 you collect anything back in here?

15 A. No.

16 Q. Do you know what that is on the tree
17 right there?

18 A. It was shooting targets.

19 Q. And that's how you found it when you
20 arrived?

21 A. Yes.

22 Q. All right. And Number 11, please. And
23 that's a view of Mr. Gressette there, correct?

24 A. Yes.

25 Q. And Number 12, please. And is this the

CHESNUT - CROSS EXAM BY MS. NORRIS

1 back porch area?

2 A. Yes.

3 Q. Number 13. Another view of the back
4 porch?

5 A. Yes.

6 Q. Number 14. And what is this a view of?

7 A. This is the photo of making entrance
8 into the residence. That is the laundry room
9 before going into the kitchen on the left.

10 Q. All right. Number 15. And is that the
11 kitchen there you're talking about?

12 A. Yes.

13 Q. Number 16. And so, basically, as I
14 understand it, when you were walking through
15 initially, you were taking photographs as you went
16 through, correct?

17 A. We -- yes, we do. It's overall
18 photographs throughout the whole thing, yes.

19 Q. And this is how you found the kitchen?

20 A. Yes.

21 Q. And the refrigerator door was already
22 open there?

23 A. Yes, it was.

24 Q. All right. Number 17. Give us Number
25 18, please. I think it's a little closer. And

CHESNUT - CROSS EXAM BY MS. NORRIS

1 that is what?

2 A. That is a Crown Royal liquor bottle.

3 Q. Okay. And that was in the sink when
4 you arrived, correct?

5 A. It was, yes.

6 Q. You didn't move it or put it there?

7 A. No.

8 Q. All right. Number 19. Another view
9 there. Number 20 of the door. Number 20. And is
10 that the trash can in the kitchen?

11 A. Yes.

12 Q. And that's -- again, that's how you
13 found it?

14 A. Yes.

15 Q. And Number 21? And what is this view
16 here?

17 A. That is the table.

18 Q. The front door?

19 A. Yes, sorry. That's the table with the
20 front door to the right.

21 Q. All right. And was the front door open
22 when you arrived?

23 A. I don't recall.

24 Q. So you weren't the first person on the
25 scene?

CHESNUT - CROSS EXAM BY MS. NORRIS

1 A. No.

2 Q. Number 22, please. And what room is
3 this here?

4 A. This is the living room area.

5 Q. All right. Number 23, and that's at
6 the front door again. Is that where you found that
7 magazine?

8 A. Yes.

9 Q. All right. Number 24. Another of the
10 front door. Number 25. And can you tell what this
11 view is?

12 A. That view is of the kitchen to show
13 that we went around and then us going into the
14 hallway.

15 Q. So you were sort of standing at that
16 front door?

17 A. You would be able to see both, yes.

18 Q. Number 26. And is this the living room
19 area here?

20 A. Yes.

21 Q. All right. Number 27. Still the
22 living room?

23 A. Yes.

24 Q. Number 28. Number 29, still the living
25 room. And is that the living room as well?

CHESNUT - CROSS EXAM BY MS. NORRIS

1 A. Yes.

2 Q. Number 30. And what is this view here?

3 A. This is from the living room looking
4 out. It's the kitchen table to the left and then
5 the kitchen to the right, and the hallway straight
6 ahead.

7 Q. All right. And Number 31. And is that
8 in the living room area; do you recall?

9 A. This is in one of the rooms of -- yeah,
10 one of the rooms.

11 Q. Okay. Number 32. Number 33. Just a
12 closer view of that. Number 34. And can you tell
13 us what that is right there.

14 A. That is a cartridge casing.

15 Q. A .22 shell casing?

16 A. I think -- you can't tell by that
17 picture.

18 Q. Okay. Number 35. Another casing
19 there?

20 A. Yes.

21 Q. Number 36, a closer view. Number 37.
22 And what is this on the wall here?

23 A. Those are bullet holes.

24 Q. All right. And which room is this?

25 A. This is the living room.

CHESNUT - CROSS EXAM BY MS. NORRIS

1 Q. Okay. And that's sort of the edge of
2 the -- one of the chairs we were seeing earlier?

3 A. Yes.

4 Q. All right. Number 38, a closer view of
5 those holes. Number 39. And is this the hallway
6 going back to the bedrooms?

7 A. Yes.

8 Q. And did you process those rooms as
9 well?

10 A. I photographed those rooms.

11 Q. All right. Number 40, please. And is
12 this the first room that you saw?

13 A. Yes.

14 Q. Number 41. Number 42, please. Do you
15 know what this is down here?

16 A. A gun case.

17 Q. And how about this gray thing right
18 there?

19 A. I don't recall.

20 Q. Did you collect any weapons out of this
21 room?

22 A. Out of that room, no.

23 Q. Okay. Did you collect any evidence out
24 of this room?

25 A. I don't recall.

CHESNUT - CROSS EXAM BY MS. NORRIS

1 Q. Number 43, please. Number 44. Number
2 45. Number 46, this is still that same room,
3 correct?

4 A. Yes.

5 Q. All right. Do you know whose bedroom
6 this is?

7 A. This is the master bedroom.

8 Q. All right. Number 47. And, again, is
9 this how you found the room?

10 A. Yes.

11 Q. All right. And so you didn't touch
12 anything or move anything around?

13 A. Move anything in or out? We collected
14 firearms from this room.

15 Q. I'm sorry. When you took the pictures,
16 you had not collected anything out of there?

17 A. No.

18 Q. Number 48. And is that the closet to
19 that room we were just looking at?

20 A. Yes.

21 Q. All right. And did you collect
22 anything out of -- what is this right there?

23 A. That is a safe.

24 Q. Is that a gun case?

25 A. Yes.

CHESNUT - CROSS EXAM BY MS. NORRIS

1 Q. All right. Number 49. Actually, go
2 back to Number 48, please. In the bathroom there,
3 it appears the lid is off the back of the toilet.
4 You didn't move that either, correct?

5 A. No.

6 Q. All right. Number 49. A closer view.
7 Number 50. And is that near the bottom of the gun
8 case?

9 A. Yes.

10 Q. Number 51. Do you happen to know what
11 type rounds are in that?

12 A. I do not.

13 Q. Okay. Number 52, please. And all of
14 these items in the gun case there, you didn't place
15 any of those there, correct?

16 A. No.

17 Q. All right. Number 53. Number 54.
18 Number 55. We're still looking at the gun case.
19 Actually, go back to 54, please. These rounds up
20 here, do you happen to know what size they are?

21 A. No.

22 Q. Okay. Number 55. And is this the
23 nightstand in that master bedroom?

24 A. Yes.

25 Q. Number 56. Number 57. And is that a

CHESNUT - CROSS EXAM BY MS. NORRIS

1 wallet on the floor there?

2 A. I don't know.

3 Q. Okay. Number 58. Number 59, please.

4 Was that already on the bed when you found it?

5 A. Yes.

6 Q. Number 60. Mr. Kenyon's driver's
7 license?

8 A. Yes.

9 Q. Where did that come from? Was that
10 already laid out on the bed?

11 A. I don't recall.

12 Q. Number 61. All right. And after you
13 take the photographs, was it you that put these
14 markers down or Corporal McGowan?

15 A. Corporal McGowan put most of the
16 markers down, but I put some down as well.

17 Q. Okay. And that's what you put up there
18 so you can find, for example, there's a shell
19 casing right there?

20 A. Yes.

21 Q. And so you put all these numbers -- and
22 correct me if I'm wrong, you put all the numbers
23 and then you document where you pick up each thing
24 and you collect it for evidence?

25 A. Yes.

CHESNUT - CROSS EXAM BY MS. NORRIS

1 Q. And those numbers -- Corporal McGowan
2 testified earlier about these diagrams. That those
3 numbers correspond to that?

4 A. Yes.

5 Q. All right. Number 62, please. Number
6 63. Number 64. And so on this diagram, can you
7 tell --

8 MS. NORRIS: May I approach, Your
9 Honor?

10 THE COURT: Yes, ma'am.

11 BY MS. NORRIS:

12 Q. This is State's Exhibit 80. Do you see
13 your markers there for 2 and 3 in this picture?

14 A. Yes.

15 Q. All right. And so the body is
16 basically right in there?

17 A. Yes.

18 Q. Number 65, please. And the Solicitor,
19 I believe, handed you the -- or maybe she didn't.
20 I don't recall. You collected all of these shell
21 casings you've got pictures of, correct?

22 A. Yes.

23 Q. All right. And, to your knowledge,
24 they're in evidence here in the courtroom?

25 A. Yes.

CHESNUT - CROSS EXAM BY MS. NORRIS

1 Q. All right. Number 66, please. Number
2 67. And, again, all these pictures as you're
3 processing the scene out there as a forensic
4 scientist for the sheriff's office, you do this to
5 document exactly how you found it, correct?

6 A. Yes.

7 Q. All right. Number 68. And that
8 appears to be an unfired round?

9 A. Yes.

10 Q. And that's how you found it, correct?

11 A. Yes.

12 Q. You didn't put it there?

13 A. No.

14 Q. All right. Number 69. Just a closer
15 view. Number 70. All right. And do you recall
16 what these are on the -- is this the back porch?

17 A. That's the back porch area.

18 Q. And do you recall what was at each of
19 these markers?

20 A. There were .22-caliber cartridge
21 casings.

22 Q. Do you recall how many you found on
23 that back porch? About 14 of them?

24 A. Fourteen.

25 Q. 71, please. Just a closer view of one

CHESNUT - CROSS EXAM BY MS. NORRIS

1 of those. Exhibit 72. Number 73. Number 74.

2 Number 75. Number 76. And, again, this is how you
3 found it, correct?

4 A. Yes.

5 Q. Number 77. And what are those markers
6 up here? Are those also shell casings?

7 A. I can't tell by the photo.

8 Q. All right. Number 78.

9 A. Yes.

10 Q. Number 79, please? Number 80. Number
11 81. And that's on the love seat we were looking at
12 earlier?

13 A. Yes, it's at the top.

14 Q. All right. Number 82. And all of
15 these in here are .22-caliber casings, correct?

16 A. Yes.

17 Q. And that weapon right there, did you
18 collect that?

19 A. Yes.

20 Q. This has been admitted as Defense
21 Exhibit 138. Is that the weapon that you collected
22 there from that picture?

23 A. Yes.

24 Q. Number 83, please. Another shell
25 casing. Number 84. Number 85. Number 86. Number

CHESNUT - CROSS EXAM BY MS. NORRIS

1 87. All right. And is this back in the living
2 room?

3 A. Yes.

4 Q. All right. And these two markers here
5 are where you found shell casings?

6 A. Yes.

7 Q. And that appears to be the TV stand?

8 A. Yes.

9 Q. And so the couch, the bullet holes
10 would be sort of over here?

11 A. To the left, yes.

12 Q. All right. Number 88, please. Number
13 89. Number 90. Number 91. Number 92. All right.
14 And what is this right in here?

15 A. This is -- this is the area by the
16 front door and the table.

17 Q. All right. So that's the front door?

18 A. Yes.

19 Q. That's the table. And what is that
20 right there?

21 A. That is an unfired round.

22 Q. An unfired round. So nobody pulled the
23 trigger and so it's not just a little shell casing?

24 A. No. It's an unfired round.

25 Q. And that's the magazine that holds the

CHESNUT - CROSS EXAM BY MS. NORRIS

1 bullets?

2 A. Yes.

3 Q. All right. Number 93, please. And
4 that's the unfired round you were talking about?

5 A. Yes.

6 Q. Number 94. Number 95. And that's the
7 magazine?

8 A. Yes.

9 Q. Do you know how many rounds that
10 magazine holds?

11 A. No.

12 Q. Number 96. Number 97. And this is
13 Mr. Gressette, and there is that weapon I pulled
14 out a little while ago?

15 A. Yes.

16 Q. And Number 98. And what are these
17 markers on the windows here?

18 A. Those are to mark and measure the
19 bullet holes.

20 Q. Okay. And did you place those there?

21 A. Sergeant Spence did.

22 Q. Okay. And that's part of your
23 processing?

24 A. Yes.

25 Q. So where one of these little white

CHESNUT - CROSS EXAM BY MS. NORRIS

1 things is, there's a bullet hole right beside it?

2 A. Yes. It's an entry point, yes.

3 Q. Number 99. And that's just a close-up
4 of one of those, correct?

5 A. Yes.

6 Q. All right. Number 100. Number 101.
7 Number 102. 103. 104. 105. And all of these
8 windows are on the back porch area, correct?

9 A. Yes.

10 Q. 106. All right. And this is back in
11 the master bedroom?

12 A. Yes.

13 Q. All right. And this time it looks like
14 you've opened a drawer?

15 A. The detectives did, yes.

16 Q. Okay. So they opened the drawer, but
17 you took the photos?

18 A. Yes.

19 Q. All right. 107. 108. And did you
20 collect those weapons?

21 A. Yes.

22 Q. And Number 109. Number 110. And is
23 that where you found this rifle that I pulled out a
24 little while ago?

25 A. Yes.

CHESNUT - CROSS EXAM BY MS. NORRIS

1 Q. All right. And can you tell whether
2 there's a magazine in it?

3 A. No.

4 Q. You can't tell, or there's no magazine?

5 A. I can't tell.

6 Q. Okay. 111. And do you recall what
7 that is behind the rifle there?

8 A. It's the gun case.

9 Q. And I believe you mentioned some bags
10 that had unfired rounds in them?

11 A. Yes.

12 Q. Are those the bags that you were
13 talking about?

14 A. Yes.

15 Q. All right. Number 112. Number 113.
16 And is this the front porch area?

17 A. This is the front porch of the
18 residence, yes.

19 Q. All right. Number 114. And looks like
20 there's a marker down there. Number 115. Is that
21 a bullet casing?

22 A. That is a casing, yes.

23 Q. I'm sorry, a shell casing. I misspoke.
24 Thank you for correcting me. 116. 117. And I
25 believe that's all.

1 You can take it down, please.

2 MS. NORRIS: Give me just a moment,
3 please. Thank you, ma'am. I don't have any
4 further questions.

5 THE COURT: Any redirect?

6 MS. SZYMCZYNSKA-SAS: No, Your Honor.

7 THE COURT: Any objection to the
8 witness being excused? From the State?

9 MS. SZYMCZYNSKA-SAS: Not from the
10 State.

11 THE COURT: From the defense?

12 MS. NORRIS: No, Your Honor.

13 THE COURT: Ma'am, you're excused.

14 THE WITNESS: Thank you.

15 THE COURT: You're welcome.

16 Mr. Foreman, ladies and gentlemen, you
17 all have been sitting over an hour. I'm going to
18 give a brief comfort break.

19 During the break, please do not discuss
20 the case and please leave your notepads in your
21 seats. We should be out about ten minutes.

22 (Jury out, 3:05 p.m.)

23 THE COURT: You may be seated. We will
24 be at ease about ten minutes. Who's the State's
25 next witness?

1 MS. SZYMCZYNSKA-SAS: Your Honor, the
2 911 dispatcher. And can we approach?

3 THE COURT: Sure. What's the 911
4 dispatcher's name?

5 MS. SZYMCZYNSKA-SAS: Jessica
6 Litchfield.

7 (Jury in, 4:11 p.m.)

8 THE COURT: You may be seated. Ladies
9 and gentlemen, I hope you enjoyed your break.
10 We'll now resume testimony.

11 The State may proceed.

12 MS. SZYMCZYNSKA-SAS: The State calls
13 Jessica Litchfield.

14 JESSICA LITCHFIELD,
15 being first duly sworn, testified as follows:

16 THE CLERK: Please be seated. State
17 your full name, and spell your last name for the
18 record, please.

19 THE WITNESS: It's Jessica Lee
20 Litchfield, L-I-T-C-H-F-I-E-L-D.

21 THE COURT: And how is your middle name
22 spelled?

23 THE WITNESS: L-E-E.

24 THE COURT: Thank you. You may
25 proceed.

LITCHFIELD - DIRECT EXAM BY MS. SAS

1 MS. SZYMCZYNSKA-SAS: Thank you, Your
2 Honor.

3 THE COURT: You're welcome.

4 DIRECT EXAMINATION

5 BY MS. SZYMCZYNSKA-SAS:

6 Q. Ms. Litchfield, where are you currently
7 employed?

8 A. With Berkeley County Communication.

9 Q. And how long have you been employed
10 there?

11 A. Almost ten years.

12 Q. Okay. And what's your position there
13 and your job responsibilities?

14 A. I'm a 911 dispatcher.

15 Q. And what does that mean?

16 A. We take 911 calls and we do dispatch to
17 law enforcement, fire, and EMS.

18 Q. And do you keep records of the 911
19 calls as they come in?

20 A. We do.

21 Q. Okay. And what is that record called?

22 A. It's just the recording system we have
23 through the phones and the radio system.

24 Q. Is there a written report that's
25 prepared?

LITCHFIELD - DIRECT EXAM BY MS. SAS

1 A. They are all typed into the system.

2 Q. And is that report called a CAD report?

3 A. It is.

4 Q. Okay. And did you have an occasion to
5 take a 911 call on October 7, 2016?

6 A. I did.

7 MS. SZYMCZYNSKA-SAS: Permission to
8 approach, Your Honor?

9 THE COURT: Yes, ma'am.

10 BY MS. SZYMCZYNSKA-SAS:

11 Q. I show you a CAD incident report. Do
12 you recognize that report?

13 A. I do.

14 Q. Okay. And would you have taken the
15 call that's detailed in that report?

16 A. I did.

17 Q. And what date did you take the call?

18 A. October 7, 2016.

19 Q. Okay. What number did the call come
20 from?

21 A. It came in as a landline. He called
22 off his cell phone, later found that he was not
23 home, but he was heading back to his residence.

24 Q. The call that came from the landline,
25 what is the number?

LITCHFIELD - CROSS EXAM BY MS. NORRIS

1 A. It's (843) 761-1074.

2 Q. And what time did that call come in?

3 A. 1:48 a.m.

4 Q. And what was the caller's name?

5 A. Fred Mazyck.

6 MS. SZYMCZYNSKA-SAS: The Court's

7 indulgence?

8 THE COURT: Yes, ma'am.

9 BY MS. SZYMCZYNSKA-SAS:

10 Q. And, to your knowledge, was there a
11 second call that came in?

12 A. To my knowledge, yes.

13 Q. Okay. On the same day?

14 A. On the same day.

15 Q. In regards to the same incident?

16 A. Yes, ma'am.

17 Q. Okay.

18 MS. SZYMCZYNSKA-SAS: No further

19 questions for this witness.

20 THE COURT: Any questions for the
21 witness?

22 CROSS-EXAMINATION

23 BY MS. NORRIS:

24 Q. Okay. Ms. Litchfield, that report that
25 you were just looking at that documents the time

LITCHFIELD - CROSS EXAM BY MS. NORRIS

1 coming in, do you generate that report?

2 A. Yes, ma'am.

3 MS. NORRIS: And -- may I approach,
4 Your Honor?

5 THE COURT: Yes, ma'am.

6 BY MS. NORRIS:

7 Q. Let me hand you my copy and make sure
8 that you and I are looking at essentially the same
9 document.

10 A. Yes, ma'am.

11 Q. And what is that report called?

12 A. This is a CAD report.

13 MS. NORRIS: Your Honor, I'm going to
14 ask our court reporter to mark this as a defense
15 exhibit.

16 THE COURT: The CAD report? Any
17 exception?

18 MS. SZYMCZYNSKA-SAS: Your Honor, the
19 State would object.

20 THE COURT: It contains hearsay. It
21 can be marked for ID only. You can use it only to
22 refresh her recollection. The objection is
23 sustained unless you can establish the appropriate
24 foundation for the admissibility of the document.

25 Defense 139 for ID.

LITCHFIELD - CROSS EXAM BY MS. NORRIS

1 (DFT. EXH. 139, CAD report, was marked
2 for identification.)

3 BY MS. NORRIS:

4 Q. Ma'am, I'm going to hand you 139 for
5 identification, and I'm going to ask you about some
6 of the entries here. Is the person that inputs the
7 name of the caller, is that you?

8 A. It is, when the call comes in.

9 Q. So do you document the time, or do you
10 just do something in your system and the system
11 automatically says you picked up the phone at that
12 time?

13 A. The system does it automatically as
14 soon as we open the CAD.

15 Q. All right. And there's an entry there
16 on that page 1 of the CAD report that says, created
17 by 4478. Are you 4478?

18 A. Yes, ma'am.

19 Q. And it looks like, if you turn to page
20 3 -- I'm sorry, page 4 of your report in there, it
21 looks like there is a narrative by 4464. Do you
22 see that?

23 A. I do.

24 Q. Do you know who 4464 is?

25 A. It's another dispatcher.

LITCHFIELD - CROSS EXAM BY MS. NORRIS

1 Q. And so another dispatcher is taking
2 information at the same time you are? Or how does
3 that work?

4 A. When the call comes in, anybody can
5 answer the phone. So I was the initial caller --
6 the taker that took the call. Once it moves over
7 and gets CADed and sent to the appropriate console,
8 the dispatchers are running different radios.

9 So as that information is coming in,
10 those dispatchers are logging that information.

11 Q. All right. So at 2:25 a.m., 4464
12 dispatcher is entering information about a
13 Mr. Jeffrey Fernwell Simmons?

14 A. Yes, ma'am.

15 Q. And over on page 8 of your CAD report,
16 maybe about a third of the way down, 5436, is that
17 another dispatcher?

18 A. It is.

19 Q. And does that appear to be another 911
20 call related to this same incident?

21 A. It is.

22 Q. Okay. And the time on that is 2:50.
23 Do you know -- can you tell from this report
24 whether or not you -- whether or not that was
25 simply the time entered or whether it was the time

LITCHFIELD - CROSS EXAM BY MS. NORRIS

1 of the actual 911 call?

2 A. I wouldn't be able to answer that since
3 I wasn't -- I wasn't the dispatcher for it.

4 Q. Oh, somebody else entered this
5 information?

6 A. Yes, ma'am. Another dispatcher.

7 Q. And that 911 -- what is a 17? That
8 narrative --

9 A. A complainant. It's the complainant.

10 Q. All right. So it's, basically, the
11 person that calls?

12 A. Yes, ma'am.

13 Q. Item 17 that called in initially
14 requesting cops at 228 Moyer Road?

15 MS. SZYMCZYNSKA-SAS: Objection, Your
16 Honor.

17 THE COURT: Basis?

18 MS. SZYMCZYNSKA-SAS: A statement by
19 defendant is hearsay.

20 THE COURT: Hearsay, sustained. Unless
21 you can establish that she made the comment and she
22 wrote -- and even if she wrote it, you can only use
23 it to allow her to refresh her memory or to impeach
24 her if she answers inconsistently.

25 BY MS. NORRIS:

LITCHFIELD - CROSS EXAM BY MS. NORRIS

1 Q. And in the CAD report created there,
2 all of these numbers were various units responding?
3 Say, for example, it looks like the first one at
4 152 on page 11 says, BC 105. Do you know who or
5 what that is?

6 A. That is going to be the unit, the
7 deputy that arrived and dispatched from the call.
8 That dispatch is when they were sent to the call.

9 Q. And so every officer that responds
10 essentially when you say, go to this address, is
11 documented in here?

12 A. Yes, ma'am.

13 Q. And over at the end, is there a listing
14 there of who, for example, BC 105 is? Looks like
15 Graff?

16 A. Yes, ma'am.

17 Q. And looks like maybe 30 or so police
18 officers responded to this incident?

19 A. There were several numbers, yes, ma'am.

20 Q. I'm sorry?

21 A. There were several number of officers,
22 yes, ma'am.

23 MS. NORRIS: I don't have any further
24 questions.

25 THE COURT: Any redirect of the

1 witness?

2 MS. SZYMCZYNSKA-SAS: No further
3 questions from the State, Your Honor.

4 THE COURT: Any objection to the
5 witness being excused? From the State?

6 MS. SZYMCZYNSKA-SAS: Not from the
7 State, Your Honor.

8 THE COURT: From the defense? Any
9 objection to the witness being excused?

10 MS. NORRIS: None, Your Honor.

11 THE COURT: Ma'am, you're excused. If
12 you can leave those right there, we'll take care of
13 them.

14 Mr. Foreman, ladies and gentlemen, the
15 next witness we anticipate, after consulting with
16 counsel, will be rather lengthy and would take us
17 beyond 5:00. So we're going to take advantage of
18 this break and take our evening recess.

19 During the break, please do not discuss
20 this case among yourselves or with anyone else.
21 Please do not read, watch, or listen to any media
22 accounts or do any independent research of any type
23 on the Internet, or post to any social networking
24 sites.

25 You will follow the same procedure as

1 the bailiffs have directed. We'll bring you out
2 and we will begin as soon as everyone arrives at
3 9:30.

4 If you would leave your notepads in
5 your seats, we'll secure them during the break.
6 For your planning purposes, we've arranged to have
7 lunch delivered to you tomorrow, and we'll have an
8 abbreviated lunch break. So I tell you that for
9 your planning purposes.

10 I hope you all have a great evening.
11 We'll see you in the morning at 9:30.

12 (Jury out, 4:23 p.m.)

13 THE COURT: Is there anything before we
14 adjourn for the day? From the State?

15 MS. SZYMCZYNSKA-SAS: Nothing from the
16 State, Your Honor.

17 THE COURT: From the defense?

18 MS. NORRIS: No, Your Honor.

19 THE COURT: Does the State still plan
20 to play any of the jail recordings?

21 MS. SZYMCZYNSKA-SAS: Not at this time,
22 Your Honor.

23 THE COURT: Okay. All right. So then
24 that motion is moot?

25 MS. SZYMCZYNSKA-SAS: At this point,

1 Your Honor.

2 THE COURT: Okay. You-all have a good
3 evening. See you at 9:30. Please make sure that
4 we have those redacted videos, if possible, in the
5 morning so that they can be substituted for the
6 record.

7 MS. SZYMCZYNSKA-SAS: Yes, Your Honor.

8 (These proceedings were recessed at
9 3:37 p.m. to be continued 3/27/19 at 9:30 a.m.)

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1 (The following proceedings were held
2 March 27, 2019, 9:51 a.m., State v. Nolen.)

3 THE COURT: Good morning. Who is the
4 State's witness going to be? As I understood, it
5 was Mr. Mazyck?

6 MS. SZYMCZYNSKA-SAS: That is correct,
7 Your Honor.

8 THE COURT: Is Mr. Mazyck here and
9 ready to proceed?

10 MS. SZYMCZYNSKA-SAS: He is, Your
11 Honor.

12 THE COURT: And then who is your next
13 witness going to be after Mr. Mazyck?

14 MS. SZYMCZYNSKA-SAS: Ms. Shirley
15 Washington.

16 THE COURT: So you have several
17 witnesses before we would be dealing with the
18 video, correct?

19 MS. SZYMCZYNSKA-SAS: Your Honor, yes.

20 THE COURT: Okay. Why don't we -- and
21 as I understood it you all have redacted the
22 videos, correct?

23 MS. SZYMCZYNSKA-SAS: Your Honor, there
24 are three separate videos in question. So there's
25 videos for Officer McClellan, for Officer Wright,

1 who will also be here this morning. We have
2 redacted those, and we reviewed those redactions
3 with Ms. Norris this morning.

4 THE COURT: Okay.

5 MS. SZYMCZYNSKA-SAS: And the other
6 video is the defendant's statement that will be
7 presented through the testimony of Detective Elrod.

8 THE COURT: Uh-huh.

9 MS. SZYMCZYNSKA-SAS: We have redacted
10 those portions, but because it was an extensive
11 redaction, we have not had the opportunity to
12 review it with Ms. Norris to make sure that those
13 redactions are appropriate.

14 THE COURT: Okay.

15 MS. SZYMCZYNSKA-SAS: But we would also
16 be seeking a ruling from the Court in regards to
17 some of the disagreements that we have on the
18 redactions.

19 THE COURT: What disagreements do you
20 all have on the redactions?

21 MS. SZYMCZYNSKA-SAS: Your Honor, can I
22 approach?

23 THE COURT: Sure.

24 MS. SZYMCZYNSKA-SAS: Your Honor, this
25 particular sheet was prepared by Ms. Norris. The

1 highlighted portions are the ones that the State
2 would seek to still keep in the defendant's
3 statement, and I believe they just covered the last
4 portion of the interview.

5 THE COURT: What is your objection to
6 that portion of the transcript, Ms. Norris?

7 MS. NORRIS: Well, Your Honor, I assume
8 what she's talking about is at the end our
9 objection is that it's not Mr. Nolen's statement so
10 much as it's --

11 THE COURT: How would Mr. Nolen's
12 statements make any sense about the statement the
13 detective made? Otherwise, his statements would be
14 self-serving because they wouldn't make sense,
15 they'd be out of context.

16 MS. NORRIS: Well, Your Honor, I submit
17 that the detective's statements in this context are
18 self-serving, because he's giving his opinion that
19 he thinks Mr. Nolen is lying, which is not
20 Mr. Nolen's statement. It's the detective's.

21 THE COURT: It looks like regular
22 interrogation to me. When you are Mirandized and
23 you make a statement, and they tell you, I don't
24 think you're telling me the truth and I'm giving
25 you an opportunity to come clean and you haven't.

1 It's typical interrogation.

2 I don't see any part of it as being
3 objectionable, I don't see it as testimony, and if
4 you took it out, the rest of the statement would
5 make no sense. Although, I was having some
6 technical difficulties with the DVD, I was able to
7 listen to it in its entirety.

8 The only thing I was not able to see
9 was to observe the audio, and I -- I mean, the
10 video. And I stayed after court last night and I
11 watched it so that I had not just the benefit of
12 the audio, but the benefit of the video as well.

13 And I paid particular -- because you
14 all had given me a heads up, I paid particular
15 attention to that portion of it when that portion
16 of the tape -- the DVD -- I'm aging myself --

17 MS. NORRIS: I understand.

18 THE COURT: -- DVD. And, to me, it
19 looked and sounded like regular old interrogation
20 when the police -- you know, like good-cop,
21 bad-cop, except he was playing both roles.

22 MS. NORRIS: I understand. Just for
23 our record, may I ask Your Honor to mark that that
24 was just handed up to you as a Court's exhibit?

25 THE COURT: I think that you should

1 tell me the time frame of when it is because the
2 audio -- unless you all agree that this is an
3 accurate transcript of what it was, I think the
4 transcript speaks for itself, and it's not
5 inaudible. I think you can hear it very clearly
6 what is being said.

7 So I think you need to put the time
8 frames or the timestamps on the DVD, and then those
9 could be -- and then we can have that on the record
10 for appellate purposes.

11 MS. NORRIS: All right. Your Honor,
12 specifically, what we are objecting to that I
13 believe the State has left in --

14 THE COURT: And are you okay with him
15 saying: So you've been locked up before and every
16 time you get locked up you think it's because you
17 killed somebody? You don't have a problem with
18 that?

19 MS. NORRIS: No, I do object to that.

20 THE COURT: But you didn't highlight
21 that.

22 MS. SZYMCZYNSKA-SAS: Your Honor, the
23 un-highlighted portions are the --

24 THE COURT: Are what you took out?

25 MS. SZYMCZYNSKA-SAS: -- are the ones

1 that we're redacting, yes.

2 THE COURT: I got you.

3 MS. NORRIS: Your Honor, specifically,
4 I think the portions that we disagree on, we object
5 to 1 hour, 32 minutes, 22 seconds through 1:32:38.
6 That's the portion that Detective Elrod is talking:
7 I'm asking you because I wasn't out there, et
8 cetera.

9 We object to timestamp 1 hour,
10 57 minutes, 13 seconds through 1 hour 57:24
11 seconds. Again, it's Detective Elrod talking.

12 We object to timestamp 2 hours,
13 1 minute, 28 seconds through 2 hours, 2 minutes,
14 22 seconds. Again, it is primarily Detective
15 Elrod.

16 We object to the portion from 2 hours,
17 4 minutes, 14 seconds through 2 hours, 4 minutes,
18 47 seconds. Again, it is primarily Detective Elrod
19 talking.

20 THE COURT: And this what you've typed
21 up is misleading because you've left out -- well,
22 no, I apologize because I do see his responses.
23 I'm sorry. But I don't know that that's the
24 totality of his responses as my recollection of
25 what was being said, because there was a whole lot

1 more being said in response to what he said. It
2 wasn't as --

3 MS. NORRIS: I understand, Your Honor.
4 We weren't attempting to put -- I mean, I have an
5 actual transcript that we can mark for a court
6 exhibit.

7 THE COURT: I don't think that the --
8 that it's inaudible. I think you can hear that
9 tape very clearly and everything that's being said.
10 I don't think it's needs to be -- I don't think
11 that's necessary.

12 MS. NORRIS: I understand. I'm just
13 saying, we weren't trying to mislead the Court.

14 THE COURT: No. I didn't mean to imply
15 that. That was not my intention.

16 MS. NORRIS: And we object to the last
17 portion from 2 minutes -- 2 hours, 4 minutes, 57
18 seconds through the end.

19 THE COURT: And according to -- Ms.
20 Szymczynska-Sas, if I'm inaccurate, and, Ms.
21 Norris, correct me as well, all the other portions
22 that you objected to the State has removed those,
23 correct?

24 MS. SZYMCZYNSKA-SAS: That is correct,
25 Your Honor. We just have to review that with

1 Ms. Norris for accuracy.

2 THE COURT: Now, what are your --
3 because I see on here State objects to lines 1
4 through 8. What is that all about? Or did you all
5 work that out?

6 MS. SZYMCZYNSKA-SAS: Your Honor, at
7 the end, I believe the last portion that the
8 defense wanted to redact -- sorry -- to redact was
9 the third to last page. And I believe we discussed
10 the lines 1 through 8 yesterday, and I believe, and
11 I don't want to speak for Ms. Norris, that she
12 wasn't objecting to those staying in.

13 THE COURT: Is that correct,
14 Ms. Norris?

15 MS. NORRIS: Yes, Your Honor.

16 THE COURT: Okay. And then, I guess I
17 -- for my own clarity, when do you intend to -- the
18 redactions that you prepared, when does his -- when
19 do you stop the tape? I guess I'm making it more
20 difficult than it is.

21 MS. SZYMCZYNSKA-SAS: Your Honor,
22 unfortunately, how the redactions will be played
23 out is they will be in separate parts. So we would
24 have to play each video separately.

25 THE COURT: I'm talking about his --

1 talking about his statement. I'm not making
2 reference to --

3 MS. SZYMCZYNSKA-SAS: In his statement
4 though --

5 THE COURT: -- any other video.

6 MS. SZYMCZYNSKA-SAS: It wouldn't be
7 one continuous video. We would have multiple
8 videos, and I believe it would be about nine or ten
9 of them. We would play one video, play the next
10 one, play the next one.

11 And I believe how Ms. Norris and I have
12 discussed --

13 THE COURT: You mean nine videos of his
14 statement?

15 MS. SZYMCZYNSKA-SAS: Yes, Your Honor,
16 because we had to pull the redactions. And how Ms.
17 Norris and I have discussed presenting it to the
18 jury to ask Detective Elrod, that Ms. Norris and I
19 have agreed to play certain portions of the video,
20 and it was both -- by both parties' agreement.

21 THE COURT: By a stipulation.

22 MS. SZYMCZYNSKA-SAS: Yes.

23 THE COURT: Okay. Ms. Norris, is that
24 accurate?

25 MS. NORRIS: Yes, Your Honor.

1 THE COURT: But so other than what you
2 all just called to my attention, you've agreed on
3 everything else in terms of redactions?

4 MS. SZYMCZYNSKA-SAS: Yes, Your Honor.

5 THE COURT: What's the State's response
6 to, so that we can have a complete record of
7 Ms. Norris's objections, regarding Detective
8 Elrod's statements that she's published for the
9 record?

10 MS. SZYMCZYNSKA-SAS: And, Your Honor,
11 I would agree with THE COURT: Our argument is this
12 is an interviewing technique. Detective Elrod --
13 and I think the State can argue that too -- caught
14 the defendant in what he believes are some lies,
15 and we'll be able to show that too. Through the
16 interview he is trying to readdress that with the
17 defendant.

18 The defense would have the opportunity
19 to cross Detective Elrod on that if they wish to,
20 and certainly point out to the jury that those are
21 just his opinions of what is happening. But it's
22 an interview technique, and I think that's what he
23 would testify to.

24 THE COURT: Anything further from the
25 defense?

1 MS. NORRIS: No, Your Honor.

2 THE COURT: Okay. The request to
3 redact the portions that Ms. Norris has published
4 for the record is denied. There is no -- I can
5 find no support in the rules to exclude it. It is
6 relevant, it is probative.

7 I do not find that it is prejudicial to
8 the defendant. He was appropriately Mirandized.
9 He consented to speak with the police after
10 acknowledging his Miranda warnings. He was in the
11 middle of a colloquy with the detective, and what
12 the detective employed was ordinary -- just based
13 on my experience, ordinary interrogation
14 techniques.

15 I don't find anything inappropriate
16 about what he said. It's within his prerogative as
17 an officer to tell a suspect if he thinks he's not
18 telling him the truth. I do not find persuasive
19 the argument that because he said that, somehow
20 that bears greater weight with a jury.

21 Even if the statement comes in, the
22 Court's standard is the preponderance of the
23 evidence. The jury will still be instructed that
24 it's still ultimately their determination as to
25 whether the statement was made, whether it's

1 truthful, and what weight to give it. So -- and
2 that that is by the beyond a reasonable doubt
3 standard.

4 But in its totality, as I listened and
5 watched the audio and video of this interview, I do
6 not see anything that was inappropriate in his
7 questioning of Mr. Nor, nor are his statements
8 self-serving in any way. They're an interrogation
9 technique, and Mr. Nor -- I mean, Mr. Nolen, I'm
10 sorry. I keep mixing my N words.

11 MS. NORRIS: I understand.

12 THE COURT: Mr. Nolen had more than
13 adequate opportunity to respond, and he did in very
14 full responses to the detective, and in the depth
15 of his explanations regarding these -- these events
16 why we are here today.

17 Now, since we're already -- I was going
18 to wait to do this in the interest of time, but we
19 might as well go ahead and do it now so that you
20 all can have an opportunity to deal with the
21 redactions and be ready to deal with the video of
22 his statement.

23 I listened to the testimony of the
24 officer that was presented regarding Mr. Nolen's
25 statement. I find by a preponderance of the

1 evidence that it was freely and voluntarily given.

2 There has been an argument that he was
3 impaired, that his speech was slurred. I could
4 find no evidence supporting that in the statement.
5 He appears to me to be clearly oriented as to time
6 and place. He's aware of where he is.

7 He exhibits a great deal of dexterity
8 even to the ability to handle a bottle with -- a
9 slippery water bottle with cuffs on, even to the
10 point where he had the frame of mind to get paper
11 to wipe up the water that was beneath his feet
12 while he was being interrogated and after the
13 officers left the interrogation room.

14 I find no evidence in the record of any
15 slurred speech. Again, as I've indicated, based on
16 the video that I watched, he appeared to be cogent,
17 attentive. He even -- also, in terms of dexterity,
18 he was able to handle a clipboard without a table,
19 balance it on his leg and write acknowledging his
20 Miranda warnings and to initial those.

21 In addition to that, when he is
22 questioned by the police, he is able to give a
23 particularly detailed account and recollection of
24 the events that led up to the shots. He is quite
25 articulate in providing that statement, even down

1. to the amount of ammunition, how clips are put in,
2. when they were put in, and when weapons were
3. purchased and otherwise.

4. So I do not find any support from an
5. objective standpoint regarding looking at the video
6. and hearing the audio-video of his statement. And
7. I apologize if that's misleading because there is a
8. video of his statement that I was able to watch,
9. and I previously had listened to the audio of his
10. statement.

11. And while Mr. Nolen has a typical
12. southern accent, his speech pattern did not appear
13. to be impaired in any way. I found no evidence of
14. his slurring his words or otherwise. He clearly
15. knows who he's talking to, what's going on, and
16. when it becomes to a point in the interrogation
17. where he feels that he is not able to convince the
18. officers of his version of what happened, he is
19. very clear and adamant in seeking the advice of
20. counsel, and that's when the statement was
21. terminated.

22. So I find no support in the record
23. regarding suppression of his statement and,
24. ultimately, it will be up to the jury to determine
25. beyond a reasonable doubt whether, in fact, they

1 should give any weight to his -- his statement, but
2 I would assume that -- without going through every
3 single redaction, that anything that dealt with
4 prior bad acts and otherwise that you all redacted
5 all of those things.

6 I'm assuming that without me having to
7 go -- since you all gave me that summary and told
8 me you all agreed on all the redactions, and I
9 would assume Ms. Norris was astute enough to bring
10 all those things to your attention.

11 MS. SZYMCZYNSKA-SAS: Yes, Your Honor.
12 We based that off the list that Ms. Norris had
13 handed to us Tuesday.

14 THE COURT: All right. Are you ready
15 to proceed with Mr. -- with our next witness?

16 MS. SZYMCZYNSKA-SAS: Yes, Your Honor.

17 THE COURT: All right. Please bring in
18 the jury. I assume there was nothing else.

19 You got all the exhibits Ms. Denise?
20 They're all accounted for?

21 THE COURT REPORTER: Yes, Judge.

22 THE COURT: There were no new exhibits
23 that we needed to place into the record?

24 THE COURT REPORTER: No. No, ma'am.

25 (Jury In, 9:54 a.m.)

1 BAILIFF: All jurors present and
2 seated, Your Honor.

3 THE COURT: Thank you. You may be
4 seated. Ladies and gentlemen, we appreciate your
5 patience. We had a couple of matters of law we
6 needed to deal with this morning. So please know
7 we do not take your time for granted. I hope
8 everyone had a pleasant evening. The State may
9 resume its case.

10 MS. SZYMCZYNSKA-SAS: Thank you, Your
11 Honor.

12 THE COURT: You're welcome.

13 MS. SZYMCZYNSKA-SAS: The State calls
14 Fred Mazyck.

15 THE COURT: If the witness would come
16 forward and be sworn.

17 FRED ANDREW MAZYCK,
18 being first duly sworn, testified as follows:

19 THE CLERK: Please have a seat. State
20 your full name for the record and spell your last
21 name.

22 THE WITNESS: My name is Fred Andrew
23 Mazyck, M-A-Z-Y-C-K.

24 THE COURT: Sir, what was your middle
25 name?

MAZYCK - DIRECT EXAM BY MS. SAS

1 THE WITNESS: Andrew.

2 THE COURT: Okay. You may proceed.

3 MS. SZYMCZYNSKA-SAS: Thank you, Your
4 Honor.

5 DIRECT EXAMINATION

6 BY MS. SZYMCZYNSKA-SAS:

7 Q. Morning, Mr. Mazyck.

8 A. Morning.

9 Q. Is it okay if I call you Fred?

10 A. Yes.

11 Q. Fred, are you working anywhere right
12 now?

13 A. I'm helping, doing a little painting on
14 the side.

15 Q. And where are you living?

16 A. In Pineville.

17 Q. Okay. Do you live alone?

18 A. I live with my wife.

19 Q. How long have you been married?

20 A. Going on my first year in September.

21 Q. Okay. Where did you live back on
22 October 7, 2016?

23 A. At home with my mom.

24 Q. Okay. And what house was that? What's
25 the address?

MAZYCK - DIRECT EXAM BY MS. SAS

1 A. [REDACTED] Road.

2 Q. Did you know Lance Kenyon?

3 A. I met him the day after I came home to
4 stay with my mom.

5 Q. And when was that?

6 A. This was -- I'm not sure of the date.

7 Q. How long before the incident that
8 brings us here today?

9 A. About three months.

10 Q. Okay. And how did you get introduced
11 to Lance?

12 A. My mom talked good about him. He
13 helped her out around the house and helped her with
14 stuff. He did help her out.

15 Q. Did you hang out with Lance?

16 A. Yes, ma'am.

17 Q. Often?

18 A. Just about every day.

19 Q. Okay. Did you know the Defendant
20 Robert Nolen?

21 A. I knew him, didn't know too much about
22 him. I seen him walking around in the yard over at
23 Lance's house.

24 Q. Did you -- prior to this incident, did
25 you hang out with Robert Nolen?

MAZYCK - DIRECT EXAM BY MS. SAS

1 A. I hang out with Lance. I saw him like
2 in between when he came over to the house.

3 MS. SZYMCZYNSKA-SAS: Permission to
4 approach, Your Honor?

5 THE COURT: Yes, ma'am.

6 BY MS. SZYMCZYNSKA-SAS:

7 Q. I'm going to show you what was
8 premarked as State's 168 for demonstrative purposes
9 only. Can you use this clicker and show us where
10 your mom's house was located?

11 A. It would be --

12 Q. Can you see the map?

13 A. How do you turn the light on? It would
14 be right there -- right there. (Indicating)

15 Q. And where is Lance's house?

16 A. Right there.

17 Q. Okay. Thank you. Did you have an
18 occasion to be at Lance's house on October 7, 2016?

19 A. Yes. I stayed there with him...

20 THE COURT: I'm sorry, sir, we can't
21 hear you.

22 THE WITNESS: I stayed with him to ride
23 the storm out.

24 BY MS. SZYMCZYNSKA-SAS

25 Q. Okay. How did that come about?

MAZYCK - DIRECT EXAM BY MS. SAS

1 A. He asked me what I was doing. And I
2 said my mom was going out of town, and he invited
3 me to stay with him.

4 Q. Okay. What time did you go over to
5 Lance's?

6 A. It was that morning. Around 9:00 that
7 morning.

8 Q. And what did you do when you came over?

9 A. We ate breakfast.

10 Q. When you say we, who was there?

11 A. Me and Robert.

12 Q. Okay. Was Lance there?

13 A. Yes, Lance was. Me, Lance, and Robert.

14 Q. Okay. Did you have any conversations
15 with the defendant?

16 A. No. When I came, he was sitting down
17 and he was taking some meds.

18 Q. Okay. Did he say anything to you?

19 A. No. He said he didn't like the meds,
20 that's all he said to me.

21 Q. Did you know why he was at Lance's
22 house?

23 A. He was -- as far as I know, he was
24 staying up there. He was going through problems,
25 he had family problems, issues that he was dealing

MAZYCK - DIRECT EXAM BY MS. SAS

1 with, and Lance let him stay there.

2 Q. Okay. You had breakfast and you were
3 talking. What did you do after?

4 A. We hang out for awhile and we went
5 outside and we did...

6 THE COURT REPORTER: Say again.

7 THE WITNESS: Target practicing.

8 BY MS. SZYMCZYNSKA-SAS:

9 Q. And where were you target practicing?

10 A. In the backyard.

11 Q. Okay.

12 MS. SZYMCZYNSKA-SAS: Permission to
13 approach the witness, Your Honor?

14 THE COURT: Yes, ma'am.

15 BY MS. SZYMCZYNSKA-SAS:

16 Q. I'm going to show you what has been
17 premarked as State's 169 for demonstrative purposes
18 only. Can you show the jury with the pointer where
19 were you target practicing? Do you recognize the
20 photo?

21 A. Yes, ma'am. We had targets from here,
22 from there and one there, and we had one there, and
23 one up on the tree back up in the back.

24 Q. Okay. And I'm so assuming if you're
25 target practicing, do you have guns out there?

MAZYCK - DIRECT EXAM BY MS. SAS

1 A. Yes, ma'am.

2 Q. Okay. And what guns did you guys have
3 out there?

4 A. I'm not sure of the names of the guns.
5 We had probably a couple of them out.

6 Q. Okay. Do you remember specifically if
7 there were handguns or long guns?

8 A. There was a couple handguns, a rifle,
9 and I think a military gun.

10 Q. Okay. When you say a rifle, do you
11 remember what caliber rifle?

12 A. A 22 rifle.

13 Q. Okay. And you said there was a
14 military gun?

15 A. It was a green one.

16 Q. Okay. Do you remember how it looked?

17 A. Kind of long, it takes a clip, and it
18 sits on an A-frame stand.

19 Q. Okay. Where were you shooting that
20 gun?

21 A. In the backyard.

22 Q. Okay.

23 A. We had Robby's truck parked right over
24 here, (indicating) and we was using the tailgate of
25 the truck to use the target in the back.

MAZYCK - DIRECT EXAM BY MS. SAS

1 Q. Okay. So you were at the location
2 where you just pointed out to the map?

3 A. Yes, ma'am.

4 Q. Okay. And what happened after you were
5 shooting out in the backyard?

6 A. We shot for awhile, and after that we
7 said we were going to put it up. And before we
8 did, one of my family members came by and asked me
9 to give him a hand with his yard. So I left with
10 him on his four wheeler for a short period of time,
11 and then he brought me back.

12 And after that, we left and went into
13 town to buy stuff for the storm, to ride the storm
14 out.

15 Q. So what did -- when your family member
16 came to pick you up on the four wheeler, what were
17 you doing at that point and what was Lance and --

18 A. We was still shooting.

19 Q. Okay. So you left?

20 A. I left.

21 Q. And did you come back?

22 A. Yes, ma'am.

23 Q. And you said it was shortly after?

24 A. It was shortly after. About an hour
25 maybe.

MAZYCK - DIRECT EXAM BY MS. SAS

1 Q. Okay. And when you came back, what was
2 -- Lance and the defendant, what were they doing?

3 A. They were standing around, picking the
4 guns and everything up, and we was about to go to
5 town to buy stuff to ride the storm out.

6 Q. How did you know that they'd put the
7 guns up?

8 A. They was putting them up when I came
9 back.

10 Q. Okay. So you went to the store. What
11 time would that have been? Was this morning or
12 afternoon?

13 A. Late in the -- the middle morning,
14 probably around 11 or 12:00 maybe. I'm not sure.

15 Q. Okay. And who went to the store?

16 A. All three of us.

17 Q. Okay. And where did you go first?

18 A. We went to the grocery story first, and
19 then we stopped by a liquor store.

20 Q. Okay.

21 A. It was a person that Lance had knew.

22 Q. Okay. And what did you buy at the
23 grocery store?

24 A. Lance bought him some fireballs and
25 Robby had Crown Royal.

MAZYCK - DIRECT EXAM BY MS. SAS

1 Q. That's at the grocery store or the
2 liquor store?

3 A. The liquor store.

4 Q. What about the grocery store?

5 A. We just bought some meat and stuff and
6 some steaks and stuff to go on the grill.

7 Q. Okay. Did you ever return to 228 Macio
8 Road?

9 A. Yes. After we left, we came straight
10 back to the house.

11 Q. Okay. What did you do after coming
12 back to the house?

13 A. Well, we hang out, we drunk a little, I
14 mean, you know, and then we were watching movies.
15 And Lance got a phone call and he said -- he came
16 to me and said he got two people that was coming
17 over. And he was trying to tell me that he let
18 them know -- sometimes we joke around, and that was
19 just fine, you know. I can take a little joke or
20 whatever.

21 And then they came over and introduced
22 them to me. Robby came in there and wanted to go
23 back outside and shoot more guns. And they decided
24 to go out. And Lance asked me if I wanted to go
25 back out. And I tell him, no, because I wanted to

MAZYCK - DIRECT EXAM BY MS. SAS

1 stay in because I already was drinking a little
2 bit. I didn't want to mess with the guns when I
3 had been drinking.

4 So he told me to stay inside. He took
5 the chair and he turned the chair sideways so I can
6 get a good vision of the TV. And he said, when I
7 come back in, we're going to cook out on the grill
8 back there, and we're going shut up the rest of the
9 night.

10 So I laid back with that movie, and I
11 went to sleep, and I woke up to gunfire. And the
12 next thing I know I heard somebody come through the
13 kitchen, and it was him. He came in and he got off
14 two shots, and I got up off the chair and stuff.
15 And he told me that I just killed everybody
16 outside. I'm tired of them messing with me.

17 And I was talking to him, we were
18 talking back and forth. He be saying, I killed
19 everybody, I killed everybody. When I got to the
20 front door, the front door was open. And I think
21 the dog came through the house and startled him and
22 he turned away. And I ran out the front door.

23 And I heard another shot, and I stopped
24 in the treeline in front of the house. And he was
25 standing out there. And he went back in the house,

MAZYCK - DIRECT EXAM BY MS. SAS

1 and I ran through -- down the street and across to
2 my mom and my sister's and then yard. I went
3 through the woods, and I ran until I got to Tiki's
4 house, and I used her phone to call 911.

5 Q. Okay. Fred, I want to go back a little
6 bit to what you said. Okay. When the other two
7 individuals arrived --

8 A. Yes.

9 Q. -- have you ever met those two
10 individuals before?

11 A. No, that's my first time.

12 Q. Okay. Do you remember what their names
13 were?

14 A. No, not right offhand.

15 Q. Okay. Do you remember how they looked?

16 A. One was heavy, kind of heavysset, and
17 one was kind of slim and kind of tall. I think the
18 older guy was kind of slim and tall.

19 Q. Okay. And were they white males?

20 A. White.

21 Q. Okay. Do you recall what time in the
22 evening did they arrive?

23 A. They came that night, right at dark.

24 Q. Okay. And you said -- when they
25 arrived, where did they go in the house?

MAZYCK - DIRECT EXAM BY MS. SAS

1 A. They came in the living room where I
2 was at, and they was talking to me. Lance
3 introduced them to me, and he said a couple of
4 words, and that's when Robby came in and wanted to
5 go outside and shoot some more.

6 And he talked them into going outside,
7 and they all went outside through the kitchen in
8 the back.

9 Q. What kind of conversation did you --
10 were you a part of between the individuals that
11 arrived and Lance and this defendant in the living
12 room?

13 A. I mean, they came in, and they was
14 laughing and joking around and stuff, you know. It
15 was nothing really. And I got up, I shake their
16 hand, and he introduced me and --

17 Q. When you say they were joking around,
18 what were they joking around about?

19 A. I mean, man stuff.

20 Q. Okay.

21 A. I mean --

22 Q. What kind of stuff is that?

23 A. They talking about smaller privates. I
24 mean, it was man stuff, what guys joke about.

25 Q. Okay. Can you elaborate a little bit

MAZYCK - DIRECT EXAM BY MS. SAS

1 more on that?

2 A. There was something that was on TV, I
3 wasn't sure what it was, and they made a comment
4 about it. And one of them said, ain't nothing you
5 can do with that. You ain't working with nothing
6 up there, something like that, of that nature.

7 And they laughed and joked about it,
8 then they left and went outside. And that was the
9 last --

10 Q. Whose idea was it to go outside?

11 A. Robby's.

12 Q. And why were they going outside?

13 A. Robby wanted to target practice some
14 more. He wanted to go shoot guns.

15 Q. And you said you stayed behind?

16 A. I stayed behind.

17 Q. Why did you stay behind?

18 A. Because I'd had already a glass of
19 liquor, and I was already looking at a movie. And
20 I didn't want to go out there, you know, messing
21 with guns and drinking.

22 Q. What movie were you watching?

23 A. Django.

24 Q. Okay. You said you were watching the
25 movie -- and I'm going to show you some photographs

MAZYCK - DIRECT EXAM BY MS. SAS

1 that have been previously entered into evidence as
2 State's 97, 98, 99, 100, 103, and 104.

3 THE COURT: What was the first number
4 you said?

5 MS. SZYMCZYNSKA-SAS: 97. May I
6 approach, Your Honor?

7 THE COURT: Yes.

8 MS. SZYMCZYNSKA-SAS:

9 Q. Fred, can you take a look at these
10 photographs? And I'm going to have them put them
11 on the screen in the back. And I know you're soft
12 spoken, so just make sure when you turn around and
13 I ask you a question that you speak up or turn
14 around and speak into the microphone, okay?

15 MS. SZYMCZYNSKA-SAS: Permission to
16 publish, Your Honor?

17 THE COURT: Yes, ma'am, you may
18 proceed.

19 MS. SZYMCZYNSKA-SAS: State's 97.

20 BY MS. SZYMCZYNSKA-SAS:

21 Q. Fred, can you turn around and tell us
22 what is this view?

23 A. That's coming through the back porch
24 into the -- that's the laundry room, but just --
25 you go through there and you go into the kitchen.

MAZYCK - DIRECT EXAM BY MS. SAS

1 Q. Okay. State's 97 -- I'm sorry, 98.

2 And what is this view?

3 A. This is the kitchen from the laundry
4 room.

5 Q. And what do you see in the right corner
6 of that photograph? Where does that take you?

7 A. That's the doorway going into the
8 hallway. You go back that way and you go straight
9 through, and that's the front door on the left
10 side. That's the living room where the TV and
11 stuff is at.

12 Q. Okay. Is that where you were located,
13 in the living room?

14 A. I was located in the room where the TV
15 was at.

16 Q. Okay. State's 100. And what is this a
17 view of?

18 A. That's the dining area. When you first
19 come through the kitchen, you go straight to the
20 front door right there. To the left is the living
21 room.

22 Q. And looking into the living room, which
23 side of the room would you have been sitting on,
24 the left or the right?

25 A. That far corner against the wall where

MAZYCK - DIRECT EXAM BY MS. SAS

1 the TV was at.

2 Q. Okay. Was there another sofa there?

3 A. There was a sofa there, but Lance had
4 shifted it over for me to see the TV.

5 Q. Okay. State's 103. Is that the sofa
6 you were referencing?

7 A. Right there, the recliner.

8 Q. The recliner?

9 A. Yes.

10 Q. And it's -- you say it's turned because
11 Lance turned it?

12 A. He turned it a little bit.

13 Q. Okay. State's 104. And is that the
14 TV?

15 A. Yes.

16 Q. Is it to the right or the left of the
17 recliner?

18 A. It was left of the recliner.

19 Q. If you're looking at that photograph,
20 where was the recliner?

21 A. The TV's there, that's the wall, where
22 the dining room table at, and the chair. I'm
23 sitting right there by the --

24 Q. On the left?

25 A. On the left side.

MAZYCK - DIRECT EXAM BY MS. SAS

1 Q. Okay. Can you go back to State's 100.

2 You said that you were on the recliner, right?

3 A. Uh-huh.

4 Q. And at some point you heard shots?

5 A. Yes.

6 Q. Okay. And what did you do after you
7 heard the shots?

8 A. Well, when I heard him coming in
9 through the kitchen, I was already halfway getting
10 up. I was already getting up off the chair when he
11 came into the thing. And he let off two shots and
12 I was getting off the chair.

13 Q. Were you up? Can you tell us what
14 position you were in?

15 A. I was halfway getting up off the chair.

16 Q. Okay. And where is it the first time
17 when you see the defendant?

18 A. He was coming on -- he was coming
19 around the corner of the wall, coming out of the
20 kitchen into the -- into the living room.

21 Q. Okay. And did he walk into the living
22 room?

23 A. Walked into the living room.

24 Q. Okay. And tell the jury what-- how
25 did he look?

MAZYCK - DIRECT EXAM BY MS. SAS

1 A. Like he was out of his mind. Like he
2 was out of his mind.

3 Q. And did he have anything with him?

4 A. He had the rifle.

5 Q. Okay. Can you describe the rifle?

6 A. It was brown, wood grain looking rifle.
7 It was a brown, wood grain looking rifle.

8 Q. Can you tell the jury, if you remember,
9 how he was holding the rifle?

10 A. He was holding it like that.

11 (Indicating)

12 Q. And what did he do after that?

13 A. I got up and I was talking to him. And
14 I didn't understand why he didn't pull the trigger
15 the third time; he'd already shot at me twice. And
16 he was just saying, I killed everybody in the yard,
17 I'm tired of them messing with me, I'm tired of
18 them messing with me.

19 And at that time I said, what you
20 talking about? I didn't do nothing to you, I'm in
21 the house. He said, I'm tired of them messing with
22 me. I'm tired of them messing with me. And at
23 that time, I was easing over to get out of the
24 living room to get to the front door. I got in
25 there where I could see the front door, the front

MAZYCK - DIRECT EXAM BY MS. SAS

1 door was wide open so I --

2 Q. And when you said you were easing out,
3 which way did you exit?

4 A. I eased up around the side of the wall
5 where the TV was on, and I came up through that way
6 and I backed out. As I turned around, the front
7 door was open.

8 Q. And where was he standing?

9 A. He was still standing in front of me
10 when I turned. He walked me all the way to the
11 front door.

12 Q. What was he doing with the rifle?

13 A. He had the gun still aimed.

14 Q. Okay. And you said you were talking to
15 him?

16 A. I was talking to him.

17 Q. And what was going through your head?

18 A. I wondering why I'm still living, I
19 mean.

20 Q. Okay. So you make it into the living
21 room --

22 A. Yes.

23 Q. -- and how did you say you were able to
24 get out?

25 A. Something came through -- I don't know

MAZYCK - DIRECT EXAM BY MS. SAS

1 if it was a dog or what. Something happened that
2 startled him, and he lowered the gun for a minute
3 and he turned. And when he turned, I ran off the
4 porch.

5 Q. Okay. Fred, can you turn around and
6 tell us what's in the middle of that photograph or
7 sort of to the left in the living room on the
8 floor?

9 MS. SZYMCZYNSKA-SAS: Your Honor,
10 permission to approach?

11 THE COURT: Uh-huh.

12 BY MS. SZYMCZYNSKA-SAS:

13 Q. Fred, what is this? (Indicating)

14 A. That's the dog bed.

15 Q. Okay. Did Lance have a dog?

16 A. Yes, he did.

17 Q. When you came into the -- sort of the
18 dining room, front area, you said you were able to
19 run for the door?

20 A. Uh-huh.

21 Q. What happened after you ran through the
22 front door?

23 A. I took off running and I heard a shot,
24 and at that time I was in the tree line. So I
25 stopped to see where he was. And he was still

MAZYCK - DIRECT EXAM BY MS. SAS

1 looking around on the porch. Then he stepped back
2 into the house, and that's when I took off again.
3 And I ran until I got to where I could make a phone
4 call.

5 Q. You said when you went out the door,
6 you heard shots --

7 A. I heard shots, one shot.

8 Q. One shot?

9 A. (Nodding head)

10 Q. Okay. Where did you stop in the front
11 yard?

12 MS. SZYMCZYNSKA-SAS: Permission to
13 approach, Your Honor?

14 THE COURT: You may.

15 THE WITNESS: You don't have the whole
16 picture on the map, but come out the front door --

17 MS. SZYMCZYNSKA-SAS:

18 Q. Can you make sure you speak up and --

19 A. You don't have the whole picture on the
20 map. When you come out the front door -- you come
21 out the front door, the treeline is right here.
22 And this treeline comes down a couple of foot
23 before it stops.

24 And then when you get in the area with
25 the lights off, you can't see nothing in that area.

MAZYCK - DIRECT EXAM BY MS. SAS

1 So I stopped right in that area.

2 Q. Why did you stop?

3 A. Because I know he couldn't see me in
4 the dark.

5 Q. How long were you in there?

6 A. I'm not quite sure how long.

7 Q. Okay. What did you do after that?

8 MS. SZYMCZYNSKA-SAS: Permission to
9 approach?

10 THE COURT: You may.

11 BY MS. SZYMCZYNSKA-SAS:

12 Q. You said you ran?

13 A. Yes, ma'am.

14 Q. Okay. Are you familiar with this area,
15 Fred?

16 A. I was born and raised in that area.

17 Q. Okay. So you're familiar with the
18 entire area --

19 A. Yes, ma'am.

20 Q. -- of Macio and Cooper Store?

21 A. Yes, ma'am.

22 Q. Okay. So do you recall which way you
23 ran?

24 A. Yes, ma'am.

25 Q. Okay. Can you sort of show us a

MAZYCK - DIRECT EXAM BY MS. SAS

1 general area where you would have run?

2 A. I came out here, and I came right in
3 this treeline, and stopped right here. And after I
4 figured out I was safe enough to run, I ran through
5 here, I came right through here, I come through
6 here, right through the back of my sister's house.
7 There's an old trailer sitting right there.

8 And I ran through the woods and come
9 through the back of the church yard. I came
10 through and I ran down the side of this canal and I
11 came up on the highway. And I ran a short distance
12 and I cut back in, and came in through their yard,
13 and come and jumped her fence, crossed over into my
14 aunt's yard and I ran through.

15 I knocked on the door and she didn't
16 answer. So I ran back into the highway and come
17 down and came to this door. And she answered the
18 door when I knocked, and she let me in and I called
19 911. (Indicating)

20 Q. And whose house did you go to? Was
21 that at [REDACTED]?

22 A. [REDACTED]. That's Tiki's house.

23 Q. Who's Tiki?

24 A. That's my first cousin.

25 Q. Okay.

MAZYCK - DIRECT EXAM BY MS. SAS

1 A. Tiki Simmons.

2 THE COURT REPORTER: Say again.

3 THE WITNESS: I think Simmons, if she's
4 not carrying her husbands's name. Simmons.

5 BY MS. SZYMCZYNSKA-SAS:

6 Q. But you know her by Tiki?

7 A. Tiki.

8 Q. Okay. And Tiki answered the door?

9 A. Yes, she did.

10 Q. Okay. And what happened after she
11 answered the door?

12 A. She let me in, and I told her what was
13 going on. She gave me the phone. She didn't have
14 any clothes on, so she had to go get dressed. And
15 after I called 911, I sat there and I talked to the
16 dispatcher. We talked back and forth, and then I
17 hang up with them, and I went out to the highway
18 because I saw the searchlights shining on the road.

19 When I went out on the highway, they
20 draw guns on me because they didn't know, I guess,
21 who the shooter was, or whatever. And I think she
22 called back, or whatever, and got them on the
23 dispatcher. They called them back and let them
24 know they had the surviving witness. And they took
25 me back down to where the scene happened at.

MAZYCK - DIRECT EXAM BY MS. SAS

1 Q. Okay. Fred, when you came to Tiki's
2 house, what were you wearing?

3 A. I had on my T-shirt, a pair of pants,
4 and socks.

5 Q. Okay. No shoes?

6 A. No shoes.

7 Q. Did you have your phone with you?

8 A. No phone.

9 Q. Did you have a phone at the time?

10 A. Yes, I did at the time.

11 Q. Where was your phone?

12 A. It was in the house. It was -- it was
13 acting up. He got it and said he could fix it.
14 And he was working on it trying to get it charged
15 for me. So he had the phone.

16 Q. When you say he --

17 A. Robert. (Indicating)

18 Q. You say when you got to Tiki's house
19 she let you use the phone?

20 A. Yes, she did.

21 Q. Okay. And you called 911?

22 A. Yes, I did.

23 Q. I'm going to show you what was
24 premarked as State's Exhibit 75.

25 MS. SZYMCZYNSKA-SAS: Permission to

MAZYCK - DIRECT EXAM BY MS. SAS

1 approach, Your Honor?

2 THE COURT: Yes, ma'am.

3 BY MS. SZYMCZYNSKA-SAS:

4 Q. Can you tell me if you recognize what
5 that is?

6 A. Yes. This is the 911 call to the
7 dispatcher.

8 Q. How do you know that?

9 A. Because I put my initials on it.

10 Q. Okay. Does that mean that you listened
11 to it?

12 A. Yes, ma'am, I listened to it.

13 Q. And that's your voice on the recording?

14 A. That's my voice on it.

15 Q. Okay. And is that a complete and
16 accurate recording of your 911 call?

17 A. Yes, ma'am.

18 Q. Has it been altered? No one deleted
19 anything?

20 A. No, ma'am.

21 MS. SZYMCZYNSKA-SAS: Your Honor,
22 permission to publish to the jury and enter into
23 evidence.

24 THE COURT: I think that's already
25 entered, isn't it?

MAZYCK - DIRECT EXAM BY MS. SAS

1 MS. SZYMCZYNSKA-SAS: I just want to
2 make sure, Your Honor.

3 THE COURT: It's already been entered.

4 MS. SZYMCZYNSKA-SAS: Permission to
5 approach?

6 THE COURT: Yes, ma'am. You may
7 proceed.

8 (911 call being played in open court.)

9 BY MS. SZYMCZYNSKA-SAS:

10 Q. Fred, I think you told us that after
11 calling you went outside and met with police?

12 A. Uh-huh.

13 Q. When did you meet with law enforcement?
14 When did you talk with them?

15 A. Right after I got off the phone with
16 the 911 dispatcher, and I was going to head back to
17 the house. And Tiki told me to stay there until,
18 you know, the police come. And I said, no, I'm
19 going to go ahead and go because I see the
20 searchlights shining on the highway. I said, I
21 know they down there.

22 So I left -- I left her house, and they
23 got me right there when I stepped into the highway.

24 Q. Okay. When you say they got you, what
25 did they do specifically --

MAZYCK - DIRECT EXAM BY MS. SAS

1 A. They pulled guns and told me to get
2 down on the road.

3 Q. And after that?

4 A. They asked about where the weapons and
5 stuff was. And I told them I wasn't the shooter, I
6 was the one that called. And I think she might
7 have called -- or somebody called, but somebody
8 came back across the street and described me to
9 them.

10 They asked them what I had on, and I --
11 they told them I had on -- they asked if I had on
12 any shoes. And they told them, no, I didn't have
13 none. And they told them that I was the witness.
14 Q. Okay. And did you ever go back that
15 night to 228 Macio Road?

16 A. No, ma'am.

17 Q. Did you that night talk to an officer
18 and give a statement?

19 A. Yes -- well, they brought me back to
20 the scene, but they didn't brought me onto the
21 yard. They kept me in the highway.

22 Q. Oh, okay.

23 A. Yeah.

24 Q. So when you say in the highway, can you
25 sort of show the jury where you would have been

MAZYCK - DIRECT EXAM BY MS. SAS

1 sitting? What kind of point of view you would have
2 had of the house and the yard?

3 A. They had me -- I was parked right
4 before you get to the driveway and get to the
5 house. (Indicating)

6 Q. So when you say highway, did you mean
7 Macio Road?

8 A. Macio Road.

9 Q. Okay. When you -- when you're sitting
10 in the car, do you remember did you give a written
11 statement?

12 A. I think I gave a written statement.

13 Q. And you talked to police?

14 A. I talked to the police.

15 Q. Okay. And what did you do after that?

16 A. I think they kept me in the car 'til --
17 they told me I couldn't get out of the car because
18 they -- I don't think they had located him yet.

19 Q. Okay. So you just sat in the car?

20 A. I sat in the -- they kept -- they took
21 me to the head of Macio Road, and they had me
22 sitting out there with the police officer in the
23 car.

24 Q. Okay.

25 MS. SZYMCHYNSKA-SAS: The Court's

MAZYCK - CROSS EXAM BY MR. FARBER

1. indulgence.

2. No further questions for this witness
3. at this time, Your Honor.

4. THE COURT: Any questions for the
5. witness?

6. MR. FARBER: Thank you, Your Honor.

7. THE COURT: You may proceed.

8. CROSS-EXAMINATION

9. BY MR. FARBER:

10. Q. Good morning, Mr. Mazyck.

11. A. Good morning.

12. Q. My name is Seth Farber. I'm one of the
13. lawyers representing Mr. Nolen. We have never met
14. before, have we?

15. A. No.

16. Q. And you've never met any of the other
17. of Mr. Nolen's lawyers before, have you?

18. A. No, I hadn't.

19. Q. Okay. But you know who we are; isn't
20. that right?

21. A. As of now, yes.

22. Q. Yes. Well, you've been sitting in this
23. trial, haven't you?

24. A. Yes.

25. Q. So you were here yesterday?

MAZYCK - CROSS EXAM BY MR. FARBER

1 A. Yes.

2 Q. During the opening statements?

3 A. Yes.

4 Q. And you heard the witness testimony
5 before this; isn't that right?

6 A. Uh-huh.

7 Q. Okay. And this testimony that you've
8 just given is not the first time you've talked
9 about the events that happened on October 6th and
10 into the night and morning of October 7th; isn't
11 that right?

12 A. With the lawyers and stuff. Maybe the
13 news I think, maybe.

14 Q. The news?

15 A. I think the news. They came and asked
16 what happened, so I --

17 Q. Did you give an interview to the news?

18 A. No, not an interview. No.

19 Q. Okay. But you spoke to, was it Harve
20 Jacobs, Live at 5 on TV?

21 A. I think Harve Jacobs, yes.

22 Q. And you spoke to -- you heard the
23 solicitor ask you, you spoke to law enforcement
24 officers just right after the events happened;
25 isn't that right?

MAZYCK - CROSS EXAM BY MR. FARBER

1 A. Uh-huh.

2 THE COURT: Sir, if you could say yes
3 or no.

4 THE WITNESS: Yes. Yes.

5 BY MR. FARBER:

6 Q. And in addition to that, the solicitor
7 didn't ask you about this, but you gave an
8 interview to two detectives later that day on the
9 7th; isn't that right?

10 A. I'm not sure.

11 Q. Detective Elrod and Detective Phillips,
12 they came, they picked you up and you went down to
13 them to their office?

14 A. Okay. Yes, sir, I remember that.

15 Q. You remember that?

16 A. Yes, sir.

17 Q. Okay. So they asked you at length
18 about everything that happened; isn't that right?

19 A. Yes, sir.

20 Q. Okay. And I gather -- do you still
21 have the exhibit that has that -- the tape of your
22 911 call in front of you?

23 A. No, sir.

24 MR. FARBER: Can I get that? Thank
25 you.

MAZYCK - CROSS EXAM BY MR. FARBER

1 Your Honor, may I approach?

2 THE COURT: You may.

3 BY MR. FARBER:

4 Q. So, Mr. Mazyck, I think you testified
5 that you recognize that because you put your
6 initials on that?

7 A. Yes, sir.

8 Q. Okay. When did you do that?

9 A. On the -- March the 26th.

10 Q. Okay. So on March 26th, were you --
11 were you meeting with the Solicitor?

12 A. Yes.

13 Q. Did she go over with you the questions
14 she was going to ask you?

15 A. Yes.

16 Q. How many times did you meet with the
17 solicitor and go over what your testimony was going
18 to be?

19 A. Once or twice, maybe.

20 Q. Okay. So you rehearsed what you just
21 said right now?

22 A. No.

23 Q. She told you the questions and you gave
24 your answers; is that what happened?

25 A. No, sir.

MAZYCK - CROSS EXAM BY MR. FARBER

1 Q. So she just talked?

2 A. We talked about the case. I mean, but
3 she didn't tell me what to say.

4 Q. Okay. Now, as I said, you've never met
5 with me or Ms. Norris --

6 A. No.

7 Q. -- or any of the other lawyers for
8 Mr. Nolen, right?

9 A. No. No, sir.

10 Q. Okay. But we asked to meet with you.
11 You're aware of that, aren't you?

12 A. Yes.

13 Q. Okay. And, in fact, an investigator
14 working with us contacted you and you said you
15 would meet with us. Do you remember that?

16 A. And I chose not to. I changed my mind.
17 I have a right to.

18 Q. Okay. So you decided you'd talk to the
19 solicitors, but that you wouldn't talk to us about
20 what happened?

21 A. I don't want nothing to do with Robert
22 at all, so I stayed away from that all together.
23 So I don't want to talk to her, I don't have to.
24 Plain and simple.

25 Q. I'm sorry?

MAZYCK - CROSS EXAM BY MR. FARBER

1 A. It's plain and simple.

2 Q. Okay. That 911 call that you made --

3 A. Yes.

4 Q. -- that was right after these events
5 happened?

6 A. Yes, it was.

7 Q. And in that call that we all just
8 listened to --

9 A. Yes.

10 Q. -- the first thing that happens is the
11 dispatcher gets on the line and you say your name;
12 isn't that right?

13 A. Uh-huh.

14 Q. Okay. And you tell the dispatcher what
15 happened; isn't that right?

16 A. Yes.

17 Q. And the very first thing that you say
18 on that call is, my neighbors just shot up, just
19 shot up each other; isn't that right?

20 A. Yes, I did, but you also listen to it
21 further, I also corrected myself. And I said,
22 Robert came in and told me he killed everybody.

23 Q. Well --

24 A. Well, what?

25 Q. Actually, what you say, Mr. Mazyck, is

MAZYCK - CROSS EXAM BY MR. FARBER

1 you go on and you say, they just shot up each other
2 out there?

3 A. Because I was -- I just came out of the
4 woods, I was running for my life, I wasn't
5 thinking. There was so many things going on in my
6 mind at the time so that was the first thing came
7 to my mind.

8 And later on down the road, I corrected
9 myself, and you listened to that as well as
10 everybody else in this courtroom. So don't try and
11 change my words up to defend your case.

12 Q. So your words -- the first thing that
13 came to your mind was to say that they shot at each
14 other and they're dead in the yard. That's the
15 first thing that came to your mind?

16 A. That's all that was in my mind at the
17 time, yes, it was.

18 Q. Okay. Now, you told the Solicitor you
19 also -- that you met with Detective Antwine?

20 A. Who is Antwine?

21 Q. I'm sorry, that you met with a law
22 enforcement officer. Was it a female officer in
23 the car with you?

24 A. Yeah. It's been a while. Yeah. Yeah,
25 it was.

MAZYCK - CROSS EXAM BY MR. FARBER

1 Q. Okay. And you gave a written
2 statement?

3 A. Yes, I did.

4 Q. To that officer?

5 A. Yes, I did.

6 Q. In your own handwriting; isn't that
7 right?

8 A. Yes, I did.

9 Q. Okay. Now, I'm going to ask you a few
10 things about that statement in a minute, but before
11 I do that I want to go over some of the things that
12 you testified to just a moment ago.

13 Now, I think you said that you were
14 drinking a little on the day when all this
15 happened; is that right?

16 A. Yes, I was.

17 Q. Okay. What time did you start
18 drinking?

19 A. I had a couple of beers earlier that
20 day.

21 Q. Were you drinking throughout the day?

22 A. Off and on.

23 Q. Off and on until -- and this was at
24 about midnight or so when the events happened, or
25 later?

MAZYCK - CROSS EXAM BY MR. FARBER

1 A. Give or take.

2 Q. Now, you testified that Mr. Nolen came
3 in and fired two shots. Is that what happened?

4 A. At me? Yes, he did.

5 Q. And it's your testimony that you
6 thought that he was shooting at you; is that
7 correct?

8 A. He did shoot at me.

9 Q. He didn't hit you, did he?

10 A. No, he didn't.

11 Q. Okay. So he had a rifle pointed at
12 you?

13 A. Yes, sir.

14 Q. And shot at you from how far away?

15 A. He -- I can't -- I'm not sure. He shot
16 as he was coming out of the kitchen.

17 Q. And he shot two times?

18 A. Right.

19 Q. And didn't hit you?

20 A. No.

21 Q. And then according to you, he's still
22 holding the rifle and he's talking to you?

23 A. Yes. After I got up and got real face
24 to face, we was talking. And he had the barrel
25 like this (indicating) aimed at me talking.

MAZYCK - CROSS EXAM BY MR. FARBER

1 Q. And it's your testimony that you sort
2 of eased your way --

3 A. Yeah. We was talking. We both were
4 walking, he was talking, and we eased right to the
5 front door. Yes, we did.

6 Q. And when he got distracted according to
7 you, you then --

8 A. I bolted out the front door.

9 Q. Bolted out the front door. Well, in
10 fact, Mr. Mazyck, isn't what happened is that he
11 was telling you to go call 911?

12 A. No, sir.

13 Q. And he wanted you to go call 911
14 because he was concerned about getting help for
15 people who were hurt?

16 A. That something I never heard of. I
17 never heard it.

18 Q. You never heard that?

19 A. No, sir.

20 Q. And he never said that, did he?

21 A. No, I didn't.

22 Q. Did he tell you to go call the police
23 at any time?

24 A. No. If he did, I didn't hear it.

25 MR. FARBER: Your Honor, can I get the

MAZYCK - CROSS EXAM BY MR. FARBER

1 document marked as the next exhibit, please?

2 THE COURT: You can have it marked for
3 ID to refresh his memory. It doesn't come in.

4 MR. FARBER: Well, for now --

5 THE COURT: ID only to refresh his
6 memory.

7 (DFT. EXH. 140, Copy of statement, was
8 marked for identification.)

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

11 BY MR. FARBER:

12 Q. Mr. Mazyck, I'm showing you a document
13 that's been marked as Exhibit 140.

14 A. Uh-huh.

15 Q. Is that a copy of your statement, Mr.
16 Mazyck? Your handwritten statement?

17 A. It seems to be, yes, sir.

18 Q. Okay. And you filled that out
19 yourself, didn't you?

20 A. Yes, it looks that way.

21 Q. And you did that while -- on
22 October 7th, while you were sitting in that police
23 car; isn't that right?

24 A. I believe, yes, sir.

25 Q. And, Mr. Mazyck, isn't it true that

MAZYCK - CROSS EXAM BY MR. FARBER

1 what you said in that statement was: I was invited
2 by Lance and Robby to stay for the storm, and we
3 were together since nine this morning.

4 A. Uh-huh.

5 THE COURT: Sir, if you can say yes or
6 no --

7 THE WITNESS: Yes, sir.

8 THE COURT: Thank you.

9 BY MR. FARBER:

10 Q. Robby was staying there for about a
11 month and a half because of spouse problems?

12 A. Yes, sir.

13 Q. They were shooting guns earlier that
14 day --

15 A. Uh-huh.

16 Q. -- and drinking. Isn't that right,
17 too?

18 A. Yes, sir.

19 Q. I was drinking too?

20 A. Uh-huh.

21 Q. Everything was fine?

22 A. Everything was fine.

23 Q. Okay. Lance had two more guests come
24 over, one was an older white male, and the other
25 was a little younger white male?

MAZYCK - CROSS EXAM BY MR. FARBER

1 A. Uh-huh.

2 Q. Started drinking again, and then Robby
3 said they were going back outside to shoot some
4 more. And then I went to sleep.

5 A. I had a drink. I poured a drink before
6 they went out. I had a second drink.

7 Q. Didn't you say in your statement that
8 they were going back outside to shoot some more?

9 A. Yeah.

10 Q. And then you said: Woke up to a
11 gunshot. Do you see that in your statement?

12 A. Uh-huh.

13 Q. Robby came in the house, said he shot
14 everybody. Is that right?

15 A. He shot everybody.

16 Q. Okay. You didn't believe him when he
17 said that, correct?

18 A. He had shot at me and I was out of it
19 and I didn't know what was going on. He was coming
20 off with it, and he kept saying that. And then
21 after then, everything that was going on, I tried
22 to get out of the house.

23 Q. Okay. What you said in your statement
24 that you wrote in your own handwriting right after
25 this happened was: Woke up to a gunshot, Robby

MAZYCK - CROSS EXAM BY MR. FARBER

1 came in the house and he shot everybody. I didn't
2 believe him. Isn't that right, Mr. Mazyck?

3 A. Yeah, that's the first -- I didn't know
4 what was going on. I mean, I heard the gunshots,
5 he came in through. Like I said, he took two shots
6 and everything. I didn't know what was going on at
7 the time. I had to say what was going. And he was
8 saying I shot everybody, I'm tired of everybody
9 messing with me.

10 Q. I'm just asking what's in your
11 statement.

12 A. Well, I'm telling you what it is.

13 Q. What does your statement say? Your
14 statement --

15 A. I --

16 Q. I'm sorry?

17 A. I said it.

18 Q. And you said, I didn't believe him --

19 A. I don't even see that on here on this
20 that we talking.

21 MR. FARBER: May I approach, Your
22 Honor?

23 THE COURT: You may.

24 THE WITNESS: Show me.

25 BY MR. FARBER:

MAZYCK - CROSS EXAM BY MR. FARBER

1 Q. Do you see right here where I'm
2 pointing? It says: Said he shot everybody. I
3 didn't believe him.

4 A. Okay. I see that now.

5 Q. Do you see that in your statement now?

6 A. I saw it.

7 Q. Okay. And then you said he shot at me
8 with the rifle two times, it was brown. Do you see
9 that?

10 A. Yes. But he shot at me first when he
11 came in.

12 Q. And then what's written after that, Mr.
13 Mazyck? Can you read that for the jury?

14 A. I ran through the woods and got to
15 Ms. Simmons' house and called the police.

16 Q. And what did you write right before
17 that?

18 MR. FARBER: Your Honor, may I
19 approach?

20 THE COURT: You may.

21 BY MR. FARBER:

22 Q. Mr. Mazyck, what did you write, right
23 here? Can you read that line for the jury, please?

24 A. He told me to leave and call the
25 police. I don't remember that.

MAZYCK - CROSS EXAM BY MR. FARBER

1 Q. You said, told me to leave and call the
2 police. That's what you wrote?

3 A. Yeah. I guess I did wrote it, but that
4 didn't happen that way.

5 Q. So what you wrote isn't what happened,
6 is that your testimony?

7 A. I don't know why I wrote that.

8 MR. FARBER: Your Honor, I offer this
9 as an exhibit.

10 MS. SZYMCZYNSKA-SAS: Your Honor, the
11 State would object to that.

12 THE COURT: The objection is sustained.
13 We'll take it up outside the jury's presence.

14 MR. FARBER: Thank you, Your Honor.

15 THE COURT: You may proceed.

16 MR. FARBER: Thank you, Your Honor.

17 THE COURT: You're welcome.

18 MR. FARBER: May I have a moment?

19 THE COURT: Sure.

20 BY MR. FARBER:

21 Q. Now, Mr. Mazyck, we were talking a few
22 minutes ago about the fact that there were a number
23 of statements that you have given about the events
24 that happened. And you recalled a minute ago you
25 gave a statement to Detectives Elrod and Phillips,

MAZYCK - CROSS EXAM BY MR. FARBER

1 right?

2 A. Yes.

3 Q. That was a video-taped statement,
4 correct?

5 A. I guess.

6 Q. Do you remember giving a statement to
7 them?

8 A. I think so. I'm not sure of the
9 people. I gave a statement to somebody. Probably.

10 Q. You don't remember the names, but you
11 remember that there were two law enforcement
12 officers who met with you the day after all this
13 happened?

14 A. Yes. Yes, sir.

15 Q. And you talked to them in detail about
16 what you said happened?

17 A. Yes.

18 Q. Okay. Do you remember that they video
19 taped that?

20 A. Not sure.

21 Q. So, now, I believe you testified on
22 direct examination that you heard a number of
23 gunshots; is that right?

24 A. I heard some gunshots.

25 Q. And that after that Mr. Nolen came

MAZYCK - CROSS EXAM BY MR. FARBER

1 running in; that's what you said?

2 A. After the gunshots, I got up after
3 awhile and -- I figured they was shooting because
4 they told me they was going out there to shoot. I
5 figured they was shooting.

6 So I laid back down and after a while,
7 I heard something come through the kitchen, and it
8 was him coming through the kitchen with the gun.

9 Q. You said after a while. How long of a
10 while?

11 A. Maybe a couple of seconds. Long enough
12 for me to lay back down and almost closed my eyes.

13 Q. But you heard multiple gunshots?

14 A. No, I heard shots. I can't say
15 multiple. I heard a bunch of shots.

16 Q. Just one, or more than one?

17 A. I heard more than one shot.

18 Q. Okay. So when you were being
19 interviewed by these detectives, you were asked --
20 do you recall being asked by Detective Phillips how
21 many shots you heard and saying I heard one shot?

22 A. If I did, I don't understand why I said
23 that, because it was more than one shot.

24 MR. FARBER: Your Honor, may I get
25 another exhibit marked just for

MAZYCK - CROSS EXAM BY MR. FARBER

1 identification?

2 (DFT. EXH. 141, Copy of transcript of
3 interview, was marked for identification.)

4 THE COURT: 141, ID only.

5 BY MR. FARBER:

6 Q. I'm going to show you what's been
7 marked for identification as Defendant's 141, which
8 I'll represent to you is a transcript that the
9 State prepared of your interview.

10 MR. FARBER: And may I approach, Your
11 Honor?

12 THE COURT: You may.

13 BY MR. FARBER:

14 Q. And I'm going to ask you if this
15 refreshes your recollection at all about some
16 portions of that interview. So, Mr. Mazyck, take a
17 look at --

18 MR. FARBER: May I approach again, Your
19 Honor?

20 THE COURT: You may.

21 BY MR. FARBER:

22 Q. I'm going to direct your attention to
23 page 5 and direct your attention to lines 9 through
24 15 and ask you to read that to yourself.

25 Mr. Mazyck, let me know when you've --

MAZYCK - CROSS EXAM BY MR. FARBER

1 A. Okay.

2 Q. Have you read that now, Mr. Mazyck?

3 A. Uh-huh.

4 Q. Okay. So does that refresh your
5 recollection that Detective Phillips asked you how
6 many shots had you heard, and you said I heard one
7 shot?

8 A. Yeah. And I, also, said I heard one
9 shot. And I said -- I mean, I heard more than, but
10 I heard one -- let me see -- shot more than one --

11 Q. You said he shot more than that, but I
12 only heard one shot.

13 A. I heard more than one shot.

14 Q. That's not what you told those
15 officers?

16 A. Well, I don't understand why I told
17 them that. I had a lot of stuff going through my
18 head at the time and dealing with a lot. So I
19 don't know why I said that, but I heard more than
20 one shot.

21 Q. So what you said then wasn't right?

22 A. No, it wasn't.

23 Q. Is that your testimony?

24 A. No, it wasn't.

25 Q. Now, you did some shooting that day as

MAZYCK - CROSS EXAM BY MR. FARBER

1 well, earlier in the day?

2 A. Yeah.

3 Q. And do you remember the officers asked
4 you a bunch of questions about what Mr. Nolen was
5 wearing; do you recall that?

6 A. Talking about Lance?

7 Q. No, Mr. Nolen. They asked you what he
8 was wearing, what kind of shirt he had on?

9 A. Oh, yes.

10 Q. Do you remember that?

11 A. Yes.

12 Q. Okay. And you told them when they
13 asked you about that that you were drinking so you
14 might have been mistaken in your description. Do
15 you remember that?

16 A. Yes.

17 Q. Okay. Now, I asked you some questions
18 a few minutes ago about the statement that you
19 wrote in your own handwriting for the detective
20 while you were sitting in the police car where in
21 that statement you said Mr. Nolen told you to go
22 call the police. Okay.

23 Now, you were asked about this by those
24 detectives as well, weren't you?

25 A. I don't recall.

MAZYCK - CROSS EXAM BY MR. FARBER

1 Q. Well --

2 MR. FARBER: May I approach, Your
3 Honor?

4 THE COURT: You may.

5 BY MR. FARBER:

6 Q. I'm going to direct your attention now
7 to page 27 of this transcript that the State
8 prepared of your interview that morning. And I'm
9 going to ask you to review what's in lines 2
10 through 6 on page 27, and see if that refreshes
11 your recollection.

12 A. Okay, sir.

13 Q. Okay. So now that you've read that,
14 Mr. Mazyck, do you remember that what you told
15 those officers in that video-taped interview was
16 that Mr. Nolen said I killed everybody, I killed
17 everybody, and he told me that you better call the
18 police. Right? That's what you told them?

19 A. I see that.

20 Q. The second time you told the police
21 that, right?

22 A. Yes, sir.

23 Q. Okay. And your response to them was,
24 how am I going to call the police when I ain't got
25 no phone; isn't that right?

MAZYCK - CROSS EXAM BY MR. FARBER

1 A. I remember it now.

2 Q. Now you remember that?

3 A. Yes, sir.

4 Q. Okay.

5 A. I remember it.

6 Q. Okay.

7 A. I remember.

8 MR. FARBER: May I approach, Your

9 Honor?

10 THE COURT: You may.

11 THE WITNESS: I remember.

12 MR. FARBER: Thank you.

13 THE WITNESS: Yeah, I remember.

14 BY MR. FARBER:

15 Q. And, in fact, what happened,

16 Mr. Mazyck, was Mr. Nolen came running in, told you
17 that he'd shot these people, told you to go call
18 the police, and you didn't believe him, right?

19 A. No. He shot first and came in.

20 Q. Well, isn't it true, Mr. Mazyck, that
21 he shot to get your attention because you weren't
22 going to go call the police?

23 A. I don't know why he shot. He's the
24 only one that can tell you that. I don't know why
25 he shot. He can tell you that one. I can't answer

MAZYCK - CROSS EXAM BY MR. FARBER

1 for him.

2 Q. Well, he didn't -- he didn't hit you
3 with either of those shots, did he?

4 A. It doesn't make no difference. He shot
5 at me, regardless.

6 Q. So now, Mr. Mazyck, he still had that
7 gun in his hand; isn't that right?

8 A. Yes.

9 Q. And what you told the police when they
10 spoke to you that morning is you didn't understand
11 why he never pulled the trigger --

12 A. Yes --

13 Q. -- the third time to shoot you?

14 A. Yes, I did.

15 Q. And, in fact, you said, I gave him all
16 the reason in the world to pull the trigger.

17 A. Because I was standing there still
18 talking to him, we was talking face to face. If
19 you want you to kill somebody, you going to pull
20 the trigger and be done with it, I mean, plain and
21 simple.

22 If you done killed three in the yard,
23 why not finish me off if you're going to take two
24 shots at me?

25 Q. So he could have killed you if he'd

MAZYCK - CROSS EXAM BY MR. FARBER

1 wanted to?

2 A. Yeah. Ask him why he didn't?

3 Q. But he didn't, did he?

4 A. I say it was because of God.

5 Q. And what he did instead was he told you
6 to go run and call the police, right?

7 A. I didn't wrote that at first, but then
8 with this and everything, I think we did have a
9 conversation back then in the house.

10 Q. Now you remember that?

11 A. I think something that sort of --

12 Q. The State didn't show you that when you
13 were meeting with them?

14 A. No.

15 Q. They didn't go over any of this with
16 you?

17 A. No, I didn't see that.

18 Q. Okay. So he told you to go run and
19 call the police and you did, right?

20 A. I left running for my life. Like I
21 said, I wasn't thinking none of that what he said
22 or none of that. The man shot at me twice, he done
23 killed everybody in the yard. The only thing I was
24 thinking about was getting away from him and
25 getting some help.

MAZYCK - CROSS EXAM BY MR. FARBER

1 Q. You were afraid for your life, but --

2 A. He done shot at me twice --

3 Q. But you did go call the police?

4 A. Yes, I did.

5 Q. Okay. And you called 911, right?

6 A. Yes, I did.

7 Q. So he told you to call police, you
8 called police, you called 911, and that's how the
9 police came to the house, right?

10 A. I guess that's how, if nobody else
11 called, but I know I did.

12 Q. Right. And I think you said you were
13 afraid of Mr. Nolen?

14 A. Yes, I was. Why wouldn't I be?

15 Q. Okay. Didn't you tell the 911 operator
16 you were going to go back outside, back towards
17 your house?

18 A. Towards my house. Yes, sir, I was.

19 Q. And so --

20 MR. FARBER: May I approach, Your
21 Honor?

22 THE COURT: You may.

23 BY MR. FARBER:

24 Q. So you were at Cooper Store Road over
25 here? (Indicating)

MAZYCK - CROSS EXAM BY MR. FARBER

1 A. Yeah.

2 Q. Right?

3 A. Uh-huh.

4 Q. And the last you saw of Mr. Nolen was
5 over here? (Indicating)

6 A. Uh-huh.

7 Q. Right?

8 A. Yes.

9 Q. And your house is over here?

10 (Indicating)

11 A. Right there, uh-huh.

12 Q. So you were going to head back over
13 towards where Mr. Nolen was?

14 A. I was going back to my house, or my
15 sister's house.

16 Q. Because you weren't afraid of Mr.
17 Nolen, because he's the one who told you to go call
18 the police?

19 A. No. The police was already on their
20 way. I don't scare easy, sir.

21 MR. FARBER: May I have a moment, Your
22 Honor?

23 THE COURT: Yes, sir.

24 BY MR. FARBER:

25 Q. By the way, Mr. Mazyck, I think you

MAZYCK - CROSS EXAM BY MR. FARBER

1 testified first you tried to go to your aunt's
2 house and then eventually the house you went to was
3 your cousin?

4 A. Uh-huh.

5 Q. You need to say yes or no.

6 A. Yes, sir.

7 Q. Do you have a lot of relatives who live
8 in that area?

9 A. Yes, I do.

10 Q. Okay. Do you have some relatives in
11 the Long Ridge Fire Department?

12 A. Yes, I do.

13 Q. Did any of them respond that night?

14 A. I don't remember.

15 Q. You're related to Jeffrey Simmons?

16 A. Yes, I am.

17 Q. He's your cousin?

18 A. Yes..

19 Q. Is that right?

20 A. Yes, sir.

21 Q. Okay.

22 MR. FARBER: One moment, Your Honor.

23 THE COURT: Yes, sir.

24 MR. FARBER: No further questions, Your
25 Honor?

MAZYCK - REDIRECT EXAM BY MS. SAS

1 THE COURT: Any redirect of the
2 witness?

3 MS. SZYMCZYNSKA-SAS: Just one
4 question.

5 THE COURT: You may proceed.

6 MR. FARBER: If I can just have a
7 moment to get out of Ms. Sas's way.

8 THE COURT: Take your time.

9 REDIRECT EXAMINATION

10 BY MS. SZYMCZYNSKA-SAS:

11 Q. Isn't it true that you called 911
12 because you were being shot at as you were running
13 out of the house?

14 A. Yes, ma'am.

15 Q. Not because the defendant told you to
16 call 911?

17 A. Yes, ma'am.

18 MS. SZYMCZYNSKA-SAS: No further
19 questions..

20 THE COURT: Sir, you may step down.
21 Who is the State's next witness?

22 MS. SZYMCZYNSKA-SAS: Your Honor, the
23 State calls Shirley Washington.

24 (Bench conference)

25 MR. FARBER: Your Honor, on the

1 statement that we offered, it's a prior
2 inconsistent statement.

3 THE COURT: It is hearsay and you can
4 only use it to impeach him. I stand by my previous
5 ruling. You already read it into the record. I
6 don't know how you're prejudiced. And they didn't
7 object, which they should have and i would have
8 sustained it.

9 MR. FARBER: Well, I think it should go
10 back to the jury, Your Honor. And I think under
11 the rule, prior inconsistent statements are not
12 hearsay.

13 THE COURT: I don't agree with you that
14 it's a prior inconsistent statement, and it's
15 standard black letter precedent in this state that
16 those statements do not go back. I don't know who
17 wrote it, you didn't establish the foundation that
18 he even actually gave it. I'm really not clear
19 whether he recited it to the police and their
20 interpretation of it, you cross examined him on it
21 vigorously and you read almost the entire statement
22 into the record.

23 The objection is overruled -- is
24 overruled and noted for the record.

25 MR. FARBER: Your Honor, I think you

1 mean you sustain the objection.

2 THE COURT: I'm sorry. No. Whose -- I
3 apologize. You all, I hate allergy medicine. It
4 really robs you of any capacity to be as clear as
5 you would like to be. You have been patient and I
6 appreciate it.

7 The State's objection is sustained.

8 MR. FARBER: Thank you, Your Honor.

9 THE COURT: You're welcome. Now, wait.
10 While you're up here, let me ask you another
11 question. Did you want to create a proffer
12 regarding the thing or are you now waving it and
13 you don't intend to pursue it?

14 MR. FARBER: I would like an
15 opportunity to put that on the record.

16 THE COURT: Well, either you're going
17 to create a proffer or you're not.

18 MR. FARBER: Yes.

19 THE COURT: I've already heard argument
20 on it. Okay.

21 (End of bench conference.)

22 THE COURT: Mr. Foreman, ladies and
23 gentlemen, I need to take up a brief matter of law
24 with counsel.

25 (Jury out, 10:19 a.m.)

1 THE COURT: You may be seated. Mr.
2 Mazyck, if you could retake the stand for me, sir.
3 I'll remind you you're still under oath.

4 MS. SZYMCZYNSKA-SAS: Your Honor --

5 THE COURT: Did he leave the building?

6 MS. SZYMCZYNSKA-SAS: Your Honor, he
7 indicated to me that he needed to leave after his
8 testimony today.

9 THE COURT: You need to find him. Do
10 you all have a cell number?

11 MS. SZYMCZYNSKA-SAS: We have his cell
12 phone number. We're trying --

13 THE COURT: He couldn't have gotten out
14 of the building that quick, could he?

15 MR. ALFARO: He's coming in now, Your
16 Honor.

17 THE COURT: Sir, if you could retake
18 the stand for me. I remind you that you're still
19 under oath. You may proceed.

20 MR. FARBER: Thank you.

21 THE COURT: You're welcome.

22 Sir, state your name for the record.

23 THE WITNESS: Fred Mazyck.

24 FRED ANDREW MAZYCK,

25 being previously duly sworn, testified as follows:

MAZYCK PROFFERED TESTIMONY

1 PROFFERED TESTIMONY -DIRECT EXAMINATION

2 BY MR. FARBER:

3 Q. Mr. Mazyck, you've been convicted of a
4 felony before; is that correct?

5 A. Yeah.

6 Q. Okay. And you testified before when
7 the jury was in here about the fact that you were
8 firing a gun on October 6th?

9 A. Yeah, that's right.

10 Q. Okay. Do you understand it's a
11 violation of federal law for you to possess a
12 firearm?

13 A. I guess.

14 Q. And you understand that that's a crime
15 that you could be sent to prison for up to ten
16 years?

17 A. Okay.

18 Q. Did the solicitor discuss that with you
19 at all?

20 A. Huh-uh.

21 THE COURT: I can't hear you, sir.

22 THE WITNESS: No.

23 BY MR. FARBER:

24 Q. Okay. Are you concerned that the
25 solicitor might decide to provide that information

MAZYCK PROFFERED TESTIMONY

1 to federal law enforcement?

2 A. If it is, it is what it is. I'm here
3 for Lance --

4 Q. I'm sorry?

5 A. I'm here for Lance. I'm not worrying
6 about nothing else.

7 Q. Are you concerned about the fact that
8 if the solicitor's office is unhappy with your
9 cooperation, that they might decide to provide that
10 -- the information that you're a felon in
11 possession of a firearm to federal law enforcement?

12 A. It's fine.

13 Q. That doesn't bother you at all?

14 A. No. Ain't nothing I can change about
15 it. I don't worry about things I can't change.

16 MR. FARBER: No further questions, Your
17 Honor.

18 THE COURT: Ms. Sas, any
19 cross-examination?

20 MS. SZYMCHYNSKA-SAS: No, Your Honor,
21 nothing from the State.

22 THE COURT: And what is the -- does the
23 State object to this line of testimony, or does it
24 consent?

25 MS. SZYMCHYNSKA-SAS: Your Honor, we

1 would object in front of the jury.

2 THE COURT: What's the basis of the
3 objection?

4 MS. SZYMCZYNSKA-SAS: Your Honor,
5 there's -- it's a prior bad act. It speaks -- it
6 speculates. We've never had a conversation. I
7 think there was testimony from Mr. Mazyck that he
8 never had a conversation with us about it, that I
9 didn't say anything to him, that he wasn't really
10 given any promises. He's saying what he's saying
11 because he wants to say it.

12 I think the only reason -- I mean, it's
13 purely speculative. There's nothing to show that
14 there has been any conversations about it with our
15 office or with anyone else through this proffer.

16 THE COURT: Anything else from the
17 defense?

18 MR. FARBER: Well, yes, Your Honor. I
19 mean, he testified he was aware that the conduct
20 that he's done constitutes a federal crime and is
21 punishable by a term of imprisonment, and he --
22 that means that he's got a motive to curry favor
23 with the prosecution.

24 And I think that's fair to bring out in
25 front of the jury, and it's for the jury to judge

1 the credibility, his denials that that's
2 influencing his testimony.

3 THE COURT: Anything further from the
4 State?

5 MS. SZYMCZYNSKA-SAS: The Court's
6 indulgence.

7 Your Honor, in addition to what we've
8 already placed on the record, we would say this is
9 improper character evidence. There is no evidence
10 of prior discussions. It's purely speculative.
11 Whether or not it's something that Mr. Mazyck might
12 be concerned about, I don't believe that comes in
13 in front of the jury, Your Honor.

14 THE COURT: The objection to the
15 testimony is sustained. While there is wide
16 latitude in cross-examination and on the
17 credibility of witnesses because it is always
18 usually germane in a case, the credibility and
19 believability of a witness, the Court still is
20 vested with the discretion to determine whether, in
21 fact, the testimony is probative, whether it will
22 assist the trier of fact on the credibility
23 determination, and whether it ventures, as Ms. Sas
24 has indicated, into the area of improper character
25 evidence and weight all of those other factors.

1 South Carolina case law is very clear
2 on the issue, again, in terms of cross examination,
3 and while wide latitude is given in
4 cross-examination, the Court is not restrained from
5 limiting the scope of cross-examination.

6 And while the defendant is, in fact,
7 entitled to confront those witnesses against him
8 and to -- or them -- and to inquire into that
9 person's credibility and believability, the Court
10 still retains the jurisdiction to impose reasonable
11 limits on the scope of cross-examination.

12 The Court would find that before I can
13 limit the defense's right to engage in
14 cross-examination to show bias on the part of the
15 witness, the record must clearly show that the
16 cross-examination is inappropriate. Under these
17 circumstances, I'm at a loss as to how the
18 defendant can establish that he has been unfairly
19 prejudiced by any limitation in the testimony.

20 Under these circumstances everything
21 that has been raised is speculative. I'm at a loss
22 as to how this witness would ever be charged with
23 -- under a federal statute regarding this issue,
24 especially in light of the fact that what was
25 raised earlier by the defense was the defendant's

1 state of mind regarding the issues and that somehow
2 he felt he was in jeopardy in some way, and it's
3 very clear from his testimony that he doesn't feel
4 he's in jeopardy.

5 It's clear from the solicitor's
6 statements, although I'm not going to make her a
7 witness in this, that he's not in any
8 particularized jeopardy. And at this point, I
9 really wouldn't even know how the federal
10 government would prove such a case against him to
11 even place him in jeopardy.

12 I find credible his testimony that he's
13 never discussed it with the solicitor's office, but
14 even more importantly and I think germane to the
15 issue is what has been raised, which, in particular
16 the question, what if they are unhappy with your
17 testimony. What if?

18 Those are a lot of ifs and speculation
19 that are not grounded in good faith or in actual
20 facts. Of course, if he had a State charge that
21 would bear on bias or prejudice, or if he felt in
22 some way the State could give him some level of
23 favor in dismissing a charge or giving him
24 favorable treatment in sentencing, I think that the
25 line of questioning would be completely relevant.

1 If, in fact, he was charged with
2 something, or if there was a specter of him being
3 charged with something, the line of questioning
4 would be completely open to discussion and would be
5 appropriate. But under these circumstances and
6 under these set of facts, it is not an appropriate
7 line of inquiry, and the Court is limiting
8 cross-examination in that regard.

9 There is absolutely no evidence that
10 the State under these circumstances has any
11 influence with the federal government, that they
12 would have any ability to make any deals on the
13 federal government's behalf even if they were to
14 decide to prosecute him, and even more importantly,
15 there's no indication that the State has ever
16 turned this evidence over to the federal government
17 for prosecution.

18 And this case has been pending since
19 October 7th of 2016. And, certainly, if something
20 was going to happen, if there was to be some
21 movement, it would have happened long before now.
22 And the witness testified that he has not been
23 offered anything in return for testifying, that he
24 was doing it because he is here for Lance, and I'm
25 quoting what he said.

1 In essence, parenthetically that he's
2 just doing what is right and, also, is prosecuting
3 what he feels to be his own rights as regards his
4 testimony that he -- that the defendant in this
5 case attempted to take his -- at least acted in a
6 way that was consistent to take his life, that
7 being the use of a weapon shooting in his
8 direction.

9 And I would find there is sufficient
10 evidence in the record, based on the vigorous
11 cross-examination of the witness, for the defendant
12 to argue any deficits in this witness's credibility
13 and, thereby, he's not prejudiced by this
14 limitation in the cross-examination.

15 In addition to that, the defense has
16 failed to establish that -- or demonstrate any link
17 between any potential pending federal
18 investigation. In fact, they've not established
19 that there is any pending federal investigation and
20 that that in any way has affected his testimony in
21 this case, or that any type federal investigation
22 would be remotely related to the crimes at issue in
23 this case.

24 In addition, they failed to establish
25 that the State on any good faith basis has any

1 authority to negotiate a deal with a witness in
2 regard to any figurative or potential -- I can't
3 even say potential federal charges because they
4 don't exist; therefore, I find that he's failed to
5 show any bias as to how any theoretical
6 investigation would influence this witness's
7 testimony in this case, and the objection is
8 sustained.

9 And that is based on State versus
10 Mizell, State versus Gilliam, and State versus
11 Shark, and the State versus -- I said that. Okay.

12 Thank you, sir. Have a good day. I
13 appreciate you come back to accommodate us.

14 MS. LITTLEJOHN: What was that last
15 case, Your Honor?

16 THE COURT: I don't remember. State
17 versus Gilliam. I didn't mean to say State versus
18 Shark.

19 And the plethora of other precedents
20 that exist. In the interest of time, I do not have
21 -- or the necessity to look up and state for the
22 purposes of the record to sustain the ruling.

23 And we had a bench conference regarding
24 the admissibility of the witness's statements that
25 were purported to have been made to the police.

1 The Court sustained the objection by
2 the State pursuant to 613(b) which deals with
3 inconsistent statements. Unlike the federal rule,
4 our rules are very clear in how you establish and
5 how you use what is purported to be an inconsistent
6 statement.

7 The defense sought to introduce the
8 entirety of the defendant's statements which would
9 be improper in light of what else could have been
10 contained in the statement that would not have been
11 classified as a prior inconsistent statement.

12 The rules are very clear that a prior
13 inconsistent statement may be admitted as
14 substantive evidence when the declarant testifies
15 at trial and is subject to cross-examination;
16 however, there are prerequisites to the
17 admissibility of the statement.

18 One is that the proper foundation must
19 be laid, which I have found it was not. It was
20 partially provided, but not completely done as
21 required by the rules; however, the State did not
22 object to the use of it to impeach the witness, and
23 I allowed the impeachment of the witness.

24 As appropriate, he must be advised as
25 to the substance of the statement, when it was

1 made, who it was made to, and also whether, in
2 fact, he created the statement or whether his
3 statements were made to a third party and recorded
4 for purposes of using it for impeachment.

5 The person must be asked the exact same
6 question, must be given the opportunity to admit or
7 refute the statement and explain the statement.
8 The testimony as presented by Mr. Mazyck, there are
9 other portions in the statement that he pointed to
10 where he, in fact, did make consistent statements
11 consistent with his testimony.

12 He was able to admit or refute the
13 statement; however, as I indicated at the bench
14 conference, I can discern no prejudice to the
15 defendant because counsel then embarked on reading
16 the entirety of his statement into the record.

17 Now, are we ready with your next
18 witness?

19 MS. NORRIS: Your Honor, may we have
20 just a brief bathroom break?

21 THE COURT: Sure. This is an opportune
22 time to do it.

23 (A recess transpired.)

24 THE COURT: Is the State ready to
25 proceed?

WASHINGTON - DIRECT EXAM BY MS. SAS

1 MS. SZYMCZYNSKA-SAS: Yes, Your Honor.

2 THE COURT: Is the defense ready to
3 proceed?

4 MR. FARBER: Yes, Your Honor.

5 THE COURT: All right. Please bring in
6 the jury.

7 (Jury In, 11:41 a.m.)

8 THE COURT: The State may call their
9 next witness.

10 MS. SZYMCZYNSKA-SAS: Thank you. The
11 State calls Shirley Washington.

12 THE COURT: If the witness will come
13 forward and be sworn.

14 SHIRLEY WASHINGTON,
15 being first duly sworn, testified as follows:

16 THE CLERK: Please be seated. State
17 your full name and spell your last name for the
18 record.

19 THE WITNESS: Shirley Washington,
20 W-A-S-H-I-N-G-T-O-N.

21 THE COURT: You may proceed.

22 MS. SZYMCZYNSKA-SAS: Thank you, Your
23 Honor.

24 THE COURT: You're welcome.

25 DIRECT EXAMINATION

WASHINGTON - DIRECT EXAM BY MS. SAS

1 BY MS. SZYMCZYNSKA-SAS:

2 Q. Ms. Washington, do people sometimes
3 call you by a nickname?

4 A. Yes, ma'am.

5 Q. And what is that?

6 A. Tiki.

7 Q. Okay. Ms. Washington, where are you
8 currently employed?

9 A. CR Bosch.

10 Q. How long have you been employed there?

11 A. Twenty-three years.

12 Q. And where do you reside?

13 A. [REDACTED] Road.

14 Q. Okay.

15 MS. SZYMCZYNSKA-SAS: Permission to
16 approach the witness, Your Honor?

17 THE COURT: Yes, ma'am.

18 BY MS. SZYMCZYNSKA-SAS:

19 Q. Before you on your left is what's been
20 premarked as State's 168 for demonstrative only.
21 There is a little pointer here with the red button.
22 Can you show the jury on the map where that is
23 located, [REDACTED] Road? If you press
24 right here, you can point out on the map.

25 A. Here.

WASHINGTON - DIRECT EXAM BY MS. SAS

1 Q. Yes, ma'am.

2 A. (Indicating)

3 Q. Is that your house?

4 A. Yes, ma'am.

5 Q. Okay. Did you reside there on
6 October 7, 2016?

7 A. Yes, ma'am.

8 Q. And who lived with you at the time?

9 A. Me and my two sons.

10 Q. Okay. Were they present in the house
11 that day?

12 A. Yes, ma'am.

13 Q. Okay. Did you -- do you know Fred
14 Mazyck?

15 A. Yes, ma'am.

16 Q. Okay. And who is he to you?

17 A. Cousin.

18 Q. Okay. And did you come in contact with
19 Fred Mazyck on October 7th, 2016?

20 A. Yes, ma'am.

21 Q. And when was that?

22 A. Around about 1:50 a.m.

23 Q. Okay. What did you -- what happened
24 that evening or that night?

25 A. I heard a knock at the door, and I

WASHINGTON - DIRECT EXAM BY MS. SAS

1. asked who was it. And he said Fred. And I said
2. Fred who. And he said Fred Mazyck. So I proceeded
3. to open the door, and I looked, and it was him.

4. Q. And did you make any observation about
5. Fred when he came to your door?

6. A. No. I just looked at him, and he asked
7. me if he could use the phone to call the police.
8. And he said the guy that lived next door to my mom,
9. his friend shot and killed him. And I said okay.
10. And I asked him, I said, where is the
11. guy. And he said he's somewhere. And I said,
12. okay, come on in. And I give him the phone, and he
13. called the police.

14. Q. Okay. What phone did you let him use?

15. A. My house phone.

16. Q. And do you remember what that number
17. is?

18. A. (843) 761-1074.

19. Q. Okay. And do you remember what Fred
20. was wearing?

21. A. I know he had on blue jeans and white
22. socks with no shoes.

23. Q. Okay. Did you make any other
24. observations about Fred?

25. A. No.

WASHINGTON - DIRECT EXAM BY MS. SAS

1 Q. Okay. What happened after he called
2 911?

3 A. He sat down to my dining room table,
4 but at that point I was scared too because he said
5 the guy was out in the woods or somewhere. So I
6 told him to sit down. And I said, when Berkley
7 County come through, I say, we will hear them.

8 And we heard when Berkley County come
9 through, and I told him that was them. And about
10 -- he sit probably about three to five minutes, and
11 then he got up, and I walked him to the door.

12 And when I walked him to the door,
13 Berkeley County was probably about 17 to 20 feet
14 from my house. And I could see the lights and
15 stuff.

16 And Fred walked out, and when he got in
17 the road, he throw his hands up like this.
18 (Indicating) And I shut the door.

19 Q. Okay.

20 MS. SZYMCHYNSKA-SAS: No further
21 questions for this witness.

22 THE COURT: Any questions for the
23 witness?

24 MR. FARBER: No questions, Your Honor.

25 THE COURT: Any objection to the

MURPHY - DIRECT EXAM BY MS. SAS

1 witness being excused? From the State?

2 MS. SZYMCZYNSKA-SAS: None from the
3 State, Your Honor.

4 THE COURT: From the defense?

5 MR. FARBER: No, Your Honor.

6 THE COURT: Ma'am, you're excused.

7 THE WITNESS: Thank you.

8 THE COURT: Call your next witness.

9 MS. SZYMCZYNSKA-SAS: The State calls
10 Kevin Murphy.

11 KEVIN MURPHY,
12 being first duly sworn, testified as follows:

13 THE CLERK: Please be seated. State
14 your full name, and spell your last name for the
15 record.

16 THE WITNESS: Kevin Murphy,
17 M-U-R-P-H-Y.

18 THE COURT: You may proceed.

19 DIRECT EXAMINATION

20 BY MS. SZYMCZYNSKA-SAS:

21 Q. Mr. Murphy, where are you currently
22 employed?

23 A. Currently with the Dorchester County
24 Sheriff's Office, part-time.

25 Q. Okay. And what do you do for the

MURPHY - DIRECT EXAM BY MS. SAS

1 Dorchester County Sheriff's Office?

2 A. I do cellular phone extractions and
3 assist them as they need me.

4 Q. Okay. What kind of training did you
5 receive to do that job?

6 A. I have two certifications with
7 Cellebrite, which is the software and hardware we
8 use for cellular phone extractions.

9 Q. What did you do before working for
10 Dorchester County?

11 A. I was a lieutenant with the Berkeley
12 County Sheriff's Office.

13 Q. Okay. When did you leave the Berkeley
14 County Sheriff's Office?

15 A. I retired in December 31st of last
16 year.

17 Q. Okay. How long were you with Berkeley
18 County before then?

19 A. Sixteen years.

20 Q. Okay. How did you become involved in
21 the case which brings us here today?

22 A. I do cellular phone extractions, and
23 they would have brought me cell phones that they
24 needed extractions done on. That would -- that's
25 my involvement.

MURPHY - DIRECT EXAM BY MS. SAS

1 Q. Okay. Did you have an occasion to
2 examine a phone that was provided to you, a Samsung
3 G900T?

4 A. Yes. It would be more specific with
5 the identification of it, but I did have one during
6 that case.

7 Q. Okay. What would refresh your
8 recollection?

9 A. The supplemental that I did as a result
10 of the extraction would have the exact information
11 on the exact phone. It's called the unique
12 identifier, something that's only unique to that
13 device.

14 MS. SZYMCZYNSKA-SAS: Permission to
15 approach the witness?

16 THE COURT: You may.

17 BY MS. SZYMCZYNSKA-SAS:

18 Q. Is that a report that you would have
19 prepared August 13th of 2018?

20 A. Yes.

21 Q. And does it reference the Samsung
22 G900T?

23 A. Yes. With a specific serial number,
24 yes, ma'am.

25 Q. I'm going to show you what has been

MURPHY - DIRECT EXAM BY MS. SAS

1 marked -- premarked ID only as State's 128.

2 MS. SZYMCZYNSKA-SAS: Permission to
3 approach?

4 THE COURT: You may.

5 BY MS. SZYMCZYNSKA-SAS:

6 Q. Do you recognize that disk?

7 A. Yes, I do.

8 Q. And what is it?

9 A. It is the forensic report on that
10 device that you had mentioned with the serial
11 number ending in 9 DYP, which I reviewed on the --
12 again, on the 12th of March of this year and
13 initialed the same.

14 Q. Okay. And how did you come into
15 possession of that Samsung G900T phone?

16 A. It would have been brought to me with a
17 -- with a search warrant for -- to examine it. The
18 detective -- the case detective would bring me the
19 device they need -- actually, I mean, I could have
20 also -- you know, I don't know who brought it
21 exactly to me.

22 You'd have to check the chain of
23 custody sheet to see exactly how I got it, but,
24 typically, the detective would bring me the device
25 and a search warrant for the device.

MURPHY - DIRECT EXAM BY MS. SAS

1 Q. Okay. And when you examined that CD,
2 were you able to pull, based on our request, an
3 extraction report?

4 A. Yes. We extracted the data from the
5 report, specific data.

6 MS. SZYMCZYNSKA-SAS: May I approach
7 witness, Your Honor?

8 Q. I'm going to show you what has been
9 marked and I believe entered already into evidence
10 as State's 72. Is that the report that was
11 extracted from the CD that I just showed you?

12 A. Yes, ma'am.

13 Q. Okay. And did you extract that report
14 yourself?

15 A. I did.

16 Q. Okay. And how does the extraction
17 process work?

18 A. The extraction process with regard to
19 what's on this report?

20 Q. Yes.

21 A. Okay. So I had extracted data from the
22 device which is contained in this disk. And then,
23 basically, you go through the data that was
24 extracted from the device and mark pertinent data,
25 and then you create this pdf report.

MURPHY - DIRECT EXAM BY MS. SAS

1 Q. And the initial extraction, the
2 complete extraction of the phone data on that CD,
3 what kind of extraction was that?

4 A. I think that one was a -- I think that
5 was a physical extraction from -- I'd have to
6 actually see it. I believe it was a physical
7 extraction, but I'd have to actually look at the
8 front page of the digital report to see that, but I
9 believe it was a physical extraction.

10 Q. What does a physical extraction mean?

11 A. A physical extraction is the best
12 extraction you can get. And, basically, it's
13 making a copy of -- a digital copy of the phone.
14 Computers have hard drives, phones have chips. So
15 you'd be making a bit -- for all intents and
16 purposes, making a bit per bit copy, including
17 unallocated space where there is nothing, of
18 everything that's on that chip. You're making a
19 copy of it.

20 Q. Okay. And the report you pulled,
21 State's 72, did it contain any information in
22 regards to who the Samsung G9000 would have
23 belonged to?

24 A. Yeah. The phone indicated that -- the
25 name under the owner account was Robby Nolen.

MURPHY - DIRECT EXAM BY MS. SAS

1 Q. And what did you base that on?

2 A. The information on the phone, which is
3 contained on the phone, which is normally entered
4 by the person who owned the phone. They would put
5 that information in there.

6 Q. Okay. Does the report also contain
7 phone calls that were made on October 7, 2016?

8 A. We extracted --

9 Q. Does it show two phone calls?

10 A. Two phone calls, correct.

11 Q. Okay. And can you tell jury the times
12 for those two phone calls?

13 A. Yes. Both of them were on the 7th of
14 October 2016. The first one was 1:47:29, and that
15 would have been Daylight Savings Time, and the
16 second one was at 1:51:55 a.m.

17 Q. Okay. And you mentioned the time. Is
18 that time indicative of the time zone of the caller
19 or of the recipient of the call? What is that
20 based on?

21 A. It's indicative of the network that the
22 phone is on, so wherever the phone is located.

23 Q. Okay. So the location of the phone?

24 A. Correct.

25 Q. Okay. And what number would the phone

1 calls -- what number did they go to?

2 A. They were both outgoing calls to 911.

3 MS. SZYMCZYNSKA-SAS: No further
4 questions for this witness.

5 THE COURT: Any questions for the
6 witness?

7 MS. NORRIS: Thank you, Mr. Murphy. No
8 questions.

9 THE COURT: Any objection to the
10 witness being excused? From the State?

11 MS. SZYMCZYNSKA-SAS: None from the
12 State, Your Honor.

13 THE COURT: From the defense?

14 MS. NORRIS: No, Your Honor.

15 THE COURT: Sir, you're excused. If
16 you could just leave that right there for us, we'll
17 take care of it.

18 THE WITNESS: Yes, ma'am. Thank you.

19 THE COURT: You're welcome. Call your
20 next witness.

21 MS. SZYMCZYNSKA-SAS: Your Honor, can
22 we approach?

23 THE COURT: Sure.

24 (Bench conference)

25 THE COURT: Yes, ma'am.

1 MS. SZYMCZYNSKA-SAS: It's just for
2 scheduling. I just wanted to make sure the Court
3 was aware, the next two witnesses we have we're
4 presenting a video. One of them the video is 24
5 minutes long, plus the testimony, and the second
6 one the video is at least 40 minutes long, plus the
7 testimony.

8 THE COURT: I have to wing it. He's
9 going to get lunch, and whenever he gets it is when
10 I'm going to break.

11 MS. SZYMCZYNSKA-SAS: Okay. I just
12 wanted to make sure the Court was aware.

13 THE COURT: He's going to pick it up at
14 12:30, so whenever he gets back is when I'm going
15 to break.

16 MS. SZYMCZYNSKA-SAS: Okay.

17 (End of bench conference.)

18 THE COURT: You may proceed.

19 MS. SZYMCZYNSKA-SAS: The State calls
20 Officer Zachary Wright.

21 ZACHARY WRIGHT,
22 being first duly sworn, testified as follows:

23 THE CLERK: Please be seated. State
24 your full name and spell your last name for the
25 record.

WRIGHT - DIRECT EXAM BY MS. SAS

1 THE WITNESS: Deputy Zachary Wright,
2 Wright is W-R-I-G-H-T.

3 THE COURT: You may proceed.

4 MS. SZYMCZYNSKA-SAS: Thank you, Your
5 Honor.

6 THE COURT: You're welcome.

7 DIRECT EXAMINATION

8 BY MS. SZYMCZYNSKA-SAS:

9 Q. Officer Wright, where are you currently
10 employed?

11 A. The Berkley County Sheriff's Office.

12 Q. And how long have you been with the
13 sheriff's office?

14 A. Just about six years.

15 Q. Okay. What did you do before coming to
16 the sheriff's office?

17 A. I was active duty Marine, and then a
18 small odd job in between that and joining the
19 sheriff's office.

20 Q. Okay. And what is your current
21 position with the sheriff's office?

22 A. I'm currently with the K9 team.

23 Q. Okay. And what does that mean?

24 A. I handle a dual purpose utility dog.

25 He's trained in apprehension, drug detection, and

WRIGHT - DIRECT EXAM BY MS. SAS

1 tracking.

2 Q. And are you and your K9 certified?

3 A. Yes, we are.

4 Q. And what does that mean?

5 A. Every year we're required to do a
6 series of tests and a bunch of different behaviors
7 and talents for the dogs. They include narcotic
8 detection, tracking, article search, apprehension
9 or aggression, and a few other things as well.

10 Q. Okay. And were you employed with the
11 sheriff's office in the same capacity on October 7,
12 2016?

13 A. Yes, ma'am, I was.

14 Q. Okay. And were you and your dog
15 certified at that time?

16 A. Yes, we were.

17 Q. Were you certified to run track?

18 A. Yes, ma'am.

19 Q. Okay. How did you become involved in
20 this case?

21 A. The call came out for the situation,
22 and I responded. I initially pulled up behind
23 Corporal Green. My vehicle was positioned behind
24 his, and at that point, the defendant was detained.

25 I utilized my car camera which had

WRIGHT - DIRECT EXAM BY MS. SAS

1 audio and video recording to capture the vehicle in
2 front of me with the defendant in it.

3 Q. Okay. And you said that you arrived
4 because you were dispatched to the scene. Was that
5 228 Macio Road?

6 A. That's correct, yes, ma'am.

7 Q. Okay. And you just indicated that you
8 pulled behind Officer Green's car.

9 MS. SZYMCZYNSKA-SAS: Permission to
10 approach, Your Honor?

11 THE COURT: You may.

12 BY MS. SZYMCZYNSKA-SAS:

13 Q. You have a little pointer here with the
14 red little -- right there. Can you point on the
15 map to show the jury where, approximately, Officer
16 Green's car would have been located and your car?

17 A. Yes, ma'am. That's the incident
18 location. We were just slightly before it, closer
19 to Cooper Store Road. (Indicating)

20 Q. Would that be the left side of the
21 road, right there?

22 A. Yes, ma'am. We were parked on the
23 opposite side.

24 Q. Okay. And you said that you -- what
25 did you -- what kind of equipment you had in your

WRIGHT - DIRECT EXAM BY MS. SAS

1 car?

2 A. I had a camera that's equipped with
3 audio- and video-recording capabilities.

4 Q. And how does it record the audio?

5 A. I have a body mic that would attach to
6 my belt.

7 Q. Okay. And what did you do with that
8 body mic?

9 A. I removed that body mic from my belt,
10 and I put it inside of Corporal Green's car.

11 Q. Okay. And where was the defendant
12 seated?

13 A. He was seated in the rear of that
14 vehicle.

15 Q. Okay. So was the interaction with the
16 defendant recorded on your audio and video
17 recording?

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

19 Q. Okay. And was that recording then
20 provided to the evidence?

21 A. Yes, it was.

22 Q. Okay. How did you take that recording
23 out of your car?

24 A. It's under lock and key. So I opened
25 it and I took the DVD out, and I submitted it for

WRIGHT - DIRECT EXAM BY MS. SAS

1 evidence after making a copy of it.

2 Q. Okay. And isn't it true that there
3 were multiple videos on that recording from your
4 previous interactions with other people that day?

5 A. Yes, ma'am.

6 Q. And based on the agreement that the
7 defense and I have reached, we extracted the
8 recording from this incident in two parts and
9 placed it on this CD, which I'm about to show you.

10 A. Yes, ma'am.

11 Q. Okay.

12 MS. SZYMCZYNSKA-SAS: And that will be,
13 Your Honor, State's Exhibit 73.

14 Permission to approach.

15 THE COURT: You may.

16 MS. NORRIS: Your Honor, just for the
17 record, we do have a continuing objection from
18 prior to trial.

19 THE COURT: Noted, and the Court relies
20 on its previous rulings and findings of fact and
21 conclusions of law placed contemporaneously on the
22 record.

23 BY MS. SZYMCZYNSKA-SAS:

24 Q. And what is that CD marked as? What
25 does it say?

WRIGHT - DIRECT EXAM BY MS. SAS

1 A. This is State's Exhibit 73. It's
2 marked as Footage from Wright.

3 MS. SZYMCZYNSKA-SAS: Your Honor,
4 permission to publish?

5 THE COURT: You may proceed. You do
6 not object to the stipulation you entered into with
7 Ms. Sas, correct?

8 MS. NORRIS: No, Your Honor. I was
9 just renewing our previous motion.

10 THE COURT: I'm just trying to clarify
11 the difference between the original motion and the
12 redactions that you agreed to.

13 MS. NORRIS: I do not object to the
14 redactions.

15 THE COURT: All right. Thank you. You
16 may proceed.

17 (CD played in open court, 12:02 p.m.)

18 BY MS. SZYMCZYNSKA-SAS:

19 Q. Officer Wright, at some point in the
20 video, was that your car pulling away?

21 A. Yes, ma'am.

22 Q. Okay. And why was your car pulling
23 away?

24 A. Deputy Ham retrieved that vehicle
25 thinking that he was getting Deputy McClellan's

WRIGHT - DIRECT EXAM BY MS. SAS

1 vehicle. Deputy McClellan had run a track and his
2 dog was tired, which was where I was going relieve
3 him. He thought he was getting Deputy McClellan's
4 video -- or, I'm sorry, vehicle to go get the dog
5 and give the dog a break.

6 Q. Okay. So after you placed the
7 microphone in the car, what did you do after that?

8 A. Deputy McClellan got on the radio and
9 advised that his dog, K9 Luke, was tired, and that
10 he needed a relief dog to try to take over the
11 track. So I went to Deputy McClellan with my dog.

12 Q. And where did you respond to?

13 A. If I may point to it on the map.

14 Q. Absolutely. Let me move that for you.

15 MS. SZYMCZYNSKA-SAS: Permission to
16 approach?

17 THE COURT: Yes, ma'am.

18 THE WITNESS: Based on the walkthrough
19 that we did last weekend, there's a church right
20 there. (Indicating) And it was in this area that
21 I met with Deputy McClellan and deployed K9 Ky.

22 BY MS. SZYMCZYNSKA-SAS:

23 Q. Where did you point the church was?

24 A. The church was the building with the
25 green roof? Or was it the blue roof?

WRIGHT - DIRECT EXAM BY MS. SAS

1 Q. Is it possible that the church was the
2 blue?

3 A. Yes. Yes, I'm sorry. So the church
4 was the blue roof. So we deployed K9 Ky. I met
5 with Deputy McClellan who had K9 Luke, and we
6 deployed K9 Ky in this area, and began track.

7 Q. Okay. When you say you deployed your
8 K9, can you describe to the jury what you first do
9 when you arrived on the scene at that particular
10 location on Cooper Store Road?

11 A. Yes, ma'am. So when I walk my dog out
12 of the car, he comes out on a flat wide collar.
13 I'll bring him to the area where he needs to start
14 tracking, and I'll transition him to a body
15 harness, which puts less stress on the dog and it
16 keeps the dog from getting tired quicker.

17 So what'll happen is I'll down my dog
18 and I'll switch the lease from the flat collar to
19 the harness, and I'll give him the tracking
20 command, which in this case is Such. Tell him to
21 Such. And I'll do a big ring around the area of
22 where Deputy McClellan just came from to try to put
23 him in a less contaminated environment.

24 When I met with Deputy McClellan, he
25 had been standing there a short period of time so

WRIGHT - DIRECT EXAM BY MS. SAS

1 his human odor can kind of disperse. If you think
2 about an overflowing sink, the water is going to
3 disperse out. So the odor can have the same
4 effect.

5 So I try to go wider than that area
6 with my dog so that I can make sure that my dog is
7 on the human odor that I want him to track.

8 Q. Okay. So do you know whose odor you're
9 tracking?

10 A. I do not know. Tracks are only
11 reasonable suspicion.

12 Q. Okay. And where did the track take
13 you?

14 A. If I may again?

15 Q. Sure.

16 A. So if I started in this area, my track
17 went that way towards Black Top Road, away from the
18 time crime scene. (Indicating)

19 Q. Okay. And when you say you were
20 tracking human odor, were there other people there
21 on the scene, other officers?

22 A. From where I deployed?

23 Q. Yes.

24 A. Just the cover officers that were
25 present with Deputy McClellan who transitioned and

WRIGHT - DIRECT EXAM BY MS. SAS

1 covered me.

2 Q. And can you explain to the jury more
3 how was that human odor being tracked? Like what
4 does the dog pick up?

5 A. Yes, ma'am. There's three things that
6 our dogs track: Ground disturbance, grass
7 breaking, dirt that gets scuffed up. Human odor,
8 our primary odor, is just your skin cells and
9 whatnot, and then secondary odors, that's your
10 deodorants or lotions, things that, you know,
11 products that you might use for hygiene. Those --
12 all of those odors are left on the ground, and my
13 dog is trained to pick up those odors.

14 And what he'll do is he will bracket
15 down the road. So he will move in a leftward
16 fashion. When he loses that particular scent, all
17 those three odors, he'll track back to the right.
18 And it's called bracketing; he'll just work the
19 scent all the way down the road.

20 Q. And if there were two individuals on
21 that road, what kind of odor does your K9 pick up?
22 Both odors?

23 A. He'll go with the strongest human odor.

24 Q. Okay.

25 MS. SZYMCZYNSKA-SAS: The Court's

WRIGHT - CROSS EXAM BY MS. NORRIS

1 indulgence?

2 THE COURT: Uh-huh.

3 MS. SZYMCZYNSKA-SAS: No further
4 questions.

5 THE COURT: Any questions for the
6 witness?

7 CROSS-EXAMINATION

8 BY MS. NORRIS:

9 Q. Deputy Wright, are you familiar with
10 the general area surrounding what is on the map
11 there?

12 A. Yes, ma'am.

13 Q. And from [REDACTED] Road on
14 there, about how far down is the intersection of
15 Cooper Store and Black Top?

16 A. Three quarters of a mile or so, if I
17 had to guess.

18 MS. NORRIS: Okay. All right. I don't
19 have anything further. Thank you, sir.

20 THE COURT: Any redirect?

21 MS. SZYMCZYNSKA-SAS: No further
22 questions for the witness.

23 THE COURT: Any objection to the
24 witness being excused? From the State?

25 MS. SZYMCZYNSKA-SAS: None from the

1 State, Your Honor.

2 THE COURT: From the defense?

3 MS. NORRIS: No, Your Honor.

4 THE COURT: Sir, you're excused.

5 THE WITNESS: Thank you, Your Honor.

6 THE COURT: You're welcome.

7 Mr. Foreman, ladies and gentlemen, we
8 are going to take advantage of this break for you
9 all to have lunch. The bailiffs have already set
10 it up in your jury room. I anticipate that we will
11 be out maybe 30, 45 minutes.

12 During the break, please do not discuss
13 the case amongst yourselves or with anyone else.
14 Please leave your notepads in your seats. If you
15 need to go to your car to make any phone calls or
16 otherwise, let the bailiffs know, and they will
17 allow you to do that.

18 Likewise, if you'd like to get some air
19 after you eat, you're welcome to do that as well.
20 I just need you to return to your jury room by
21 1:15. If you would go with the bailiff. Please
22 leave your notepads in your seat.

23 (Jury out, 12:31 p.m.)

24 THE COURT: You may be seated. Who's
25 the State's next witness?

1 MS. SZYMCZYNSKA-SAS: Your Honor, we
2 have one more officer to call, Officer McCellan,
3 with two videos which are a total of about
4 40 minutes in length, as well as the SLED
5 witnesses, and Detective Wilson.

6 THE COURT: What time did you all tell
7 them -- the SLED witnesses to be here?

8 MR. ALFARO: Well, we initially told
9 them 1:00, and then we moved them up to 12:30.

10 THE COURT: That's fine. Then that
11 will give them a chance to eat in case they
12 haven't, or if there's traffic, but I wanted to
13 give you all enough time to eat. Thirty minutes is
14 fine for the jury, but I would assume that you all
15 need to get something to eat as well.

16 So we'll resume at 1:15; however, I
17 would like to see the redacted videos so I can make
18 sure they are what I contemplated.

19 MS. SZYMCZYNSKA-SAS: And, Your Honor,
20 we will get with Ms. Norris right now and make sure
21 those are the redactions that we agreed on.

22 THE COURT: So you all need to look at
23 them first?

24 MS. SZYMCZYNSKA-SAS: Yes, Your Honor.

25 THE COURT: That's fine, and then just

1 send them on back to me once you all have looked at
2 them.

3 MS. SZYMCZYNSKA-SAS: We absolutely
4 will, Your Honor.

5 THE COURT: Okay. Thank you all so
6 much. Have a good lunch.

7 MR. FARBER: Thank you, Your Honor.

8 THE COURT: You're welcome.

9 (A luncheon recess transpired.)

10 THE COURT: Is the State ready to
11 proceed?

12 MS. SZYMCZYNSKA-SAS: Yes, Your Honor.

13 THE COURT: Is the defense ready to
14 proceed?

15 MS. NORRIS: Yes, Your Honor.

16 THE COURT: Who is the State's next
17 witness?

18 MR. ALFARO: Jamie Johnson, Your Honor.

19 THE COURT: That's with SLED, right?

20 MR. ALFARO: Formerly with SLED.

21 THE COURT: Formerly. All right.

22 Please bring in the jury.

23 Ask them to close that door right quick
24 for a second. I need to do something right quick
25 while I'm thinking about it. They can stand in the

1 hallway.

2 Okay. I just need to place on the
3 record that at lunchtime, I allowed -- well, I told
4 you all that I would let the jury walk around and
5 do what they wanted to do. They were not
6 sequestered or otherwise. And just out of an
7 abundance of caution, because I have a clerk who is
8 conscientious -- that's the word I was looking
9 for --

10 THE CLERK: I appreciate it.

11 THE COURT: -- she was leaving for
12 lunch as well, and she and Ms. Bar inadvertently
13 were on the elevator together. She has disclosed
14 to me, and I have no reason to doubt Ms. Linda, she
15 and I have been together a long time, she's never
16 been dishonest with me, that she and Ms. Bar had no
17 conversation other than to exchange pleasantries.

18 And I just needed to make sure that was
19 on the record so that it didn't come back at a
20 later time when memories were hazy as to what took
21 place. I don't think I had any duty to disclose
22 it, but I just did it out of an abundance of
23 caution because, as I've indicated, the jury was
24 not sequestered.

25 Ms. Linda is not precluded in any way

1 from exchanging pleasantries with a juror, but I
2 just wanted to make sure everybody was aware of it.

3 Any exceptions from the State?

4 MS. SZYMCZYNSKA-SAS: None from the
5 State, Your Honor.

6 THE COURT: From the defense?

7 MS. NORRIS: No, Your Honor.

8 THE COURT: You can get the jury for
9 me.

10 And, Ms. Linda, was I accurate?

11 THE CLERK: Yes, ma'am.

12 (Jury in, 1:27 p.m.)

13 THE COURT: You all may be seated.

14 Ladies and gentlemen, I hope you all
15 had a good lunch. I hope it's warmed up a little
16 bit outside, at least the sun is shining, and I
17 hope you all got a little air.

18 We're now going to resume with the
19 State's testimony. You may call your next witness.

20 MS. ALFARO: The State calls Jamie
21 Johnson.

22 THE COURT: Please swear the witness.

23 JAMIE JOHNSON,

24 being first duly sworn, testified as follows:

25 THE CLERK: Please be seated. State

JOHNSON - DIRECT EXAM BY MR. ALFARO

1 your full name and spell your last name for the
2 record.

3 THE WITNESS: My name is Jamie Johnson,
4 J-A-M-I-E, J-O-H-N-S-O-N.

5 THE COURT: You may proceed.

6 MR. ALFARO: Thank you, Your Honor.

7 THE COURT: You're welcome.

8 DIRECT EXAMINATION

9 BY MR. ALFARO:

10 Q. Ms. Johnson, would you tell us where
11 you currently work?

12 A. I currently work for the Lexington
13 County Sheriff's Department.

14 Q. And how long have you been with
15 Lexington County?

16 A. Approximately, a year and a half.

17 Q. And prior to starting with Lexington
18 County, where were you employed?

19 A. I was employed then with the South
20 Carolina Law Enforcement Division, or SLED.

21 Q. And how long were you with SLED?

22 A. Five years.

23 Q. And what was your job description and
24 your responsibilities while you were working at
25 SLED?

JOHNSON - DIRECT EXAM BY MR. ALFARO

1 A. At SLED I was an agent in the crime
2 scene unit, and at that time we would respond
3 throughout the state to assist SLED as well as
4 local law enforcement agencies.

5 Q. And did you have the opportunity to --
6 well, let me ask you this: Were you working in
7 that capacity on February 9th, 2017?

8 A. Yes, I was.

9 Q. And in that capacity, were you asked to
10 assist in an investigation that had been previously
11 conducted by the Berkeley County Sheriff's Office
12 regarding a shooting that took place on
13 October 7th, 2016?

14 A. Yes.

15 Q. And did you -- you did not originally
16 respond to the initial incident on October 7th,
17 2016, did you?

18 A. No, I did not.

19 Q. Did you respond to that location on
20 February 9th, 2017?

21 A. Yes, that's correct.

22 Q. And how did you come to be asked to
23 respond to that location?

24 A. We were requested by the solicitor's
25 office at the time to come down and do a crime

JOHNSON - DIRECT EXAM BY MR. ALFARO

1 scene reconstruction.

2 Q. And did you bring any other agents or
3 personnel with you at the time you came down here?

4 A. I did. I brought Agent Nick Sprouce
5 and Lieutenant Kukilla Wallace at the time.

6 Q. And were they working in the same unit
7 that you were at that time?

8 A. Yes, they were.

9 Q. And prior to responding to the Macio
10 Road location, did you have opportunity to review
11 the initial investigation and any evidence that had
12 been previously collected?

13 A. Yes, we did.

14 Q. And does reviewing, or did reviewing
15 that information assist you in your role in this
16 follow-up investigation?

17 A. Yes.

18 Q. And as part of that review of the file,
19 were you made familiar or did you become familiar
20 with where shell casings and other evidence had
21 been marked and collected on the night of the
22 shooting?

23 A. Yes, that's correct.

24 Q. And can you tell the jury what you did
25 when you responded to the scene?

JOHNSON - DIRECT EXAM BY MR. ALFARO

1 A. When we responded to -- out to Macio
2 Road, we started off by just taking overall
3 midrange and close-up photographs of the scene just
4 to sort of document what it looked like and how it
5 differed from the actual night of the shooting.

6 After that, we went inside to the
7 residence, took some additional pictures inside as
8 well. The residence had been almost entirely
9 cleaned out of items that were inside. We took
10 some measurements and just tried to see what
11 evidence was still present in February.

12 Q. And do you recall what time you arrived
13 at the residence?

14 A. We arrived at, approximately,
15 10:32 a.m.

16 Q. And as part of your walkthrough and
17 review of the scene, did you have the opportunity
18 to collect any evidence at the scene?

19 A. Yes, I did.

20 Q. And can you tell us what that was and
21 where it was collected from?

22 A. There was a room located inside the
23 residence that I refer to in my notes as the green
24 room. It has lime green walls. There were three
25 separate areas in there which I referred to as

JOHNSON - DIRECT EXAM BY MR. ALFARO

1 stain areas one, two, and three. Two were present
2 on a wall, one was present on the exterior of the
3 door, and all three areas presented to be suspected
4 blood. So those three areas were swabbed.

5 Q. And do you recall which area of the
6 house this green room was located in?

7 A. Give me just a moment. The north side
8 of the residence across from the kitchen, I
9 believe.

10 Q. And you said that you identified three
11 stained areas; is that correct?

12 A. That's correct.

13 Q. And what did you -- why did you believe
14 those may have some significance?

15 A. Just from my experience in dealing with
16 blood at crime scenes, visually they appeared to
17 look like blood. I actually used a chemical called
18 phenolphthalein to presumptively test whether or
19 not the stains were blood. And all three of them
20 did test presumptive positive for blood.

21 Q. And I'm not going to try to pronounce
22 what you just pronounced, but can you tell us the
23 process that you used to apply that or to use that
24 chemical?

25 A. Sure. In this case, all three stains

JOHNSON - DIRECT EXAM BY MR. ALFARO

1 were dry. We have two swabs that come in a
2 package. The package is opened. Each swab is
3 wetted with water -- or deionized water, excuse me,
4 in this case.

5 The stained areas are swabbed
6 separately, and then you add two different
7 solutions to the end of the swabs. The first
8 solution is the phenolphthalein reagent itself,
9 followed by hydrogen peroxide. If the swabs turned
10 a bright pink immediately upon the application of
11 the liquids, it's therefore presumptive positive
12 for blood.

13 Q. Okay. And after going through that
14 process, did you secure and collect those three
15 swabs?

16 A. Yes, I did.

17 Q. And what did you ultimately do with
18 those swabs?

19 A. Those swabs were then transported in my
20 crime scene vehicle back to the SLED forensic
21 services laboratory, and they were logged in and
22 submitted to our DNA department.

23 Q. I'm going to show you what I believe is
24 in evidence as State's 69, 70, and 71. The
25 corresponding SLED numbers are 51, 52, and 53. If

JOHNSON - DIRECT EXAM BY MR. ALFARO

1 you can look at that -- those items and tell me if
2 you recognize those. You can cut it open if it's
3 not already open.

4 A. All right. Yes, I recognize these.

5 Q. And do you recognize those as the swabs
6 you collected that day?

7 A. Yes, they are.

8 Q. Now, did you have an opportunity to
9 look on the back porch area of the residence?

10 A. Yes, I did.

11 Q. I'm going to show you what is in
12 evidence as State's Exhibits 120, 121, and 122, and
13 ask you if you recognize what's depicted in those
14 photographs.

15 A. Yes, I do.

16 Q. And, specifically, I'm going to put
17 State's 122 on the screen behind you. Using this
18 pointer, the red button there --

19 A. Uh-huh.

20 Q. -- if you can tell jury what
21 observations, if any, you made regarding what's
22 depicted in State's 122?

23 A. Sure. This was a photograph that I
24 believe was originally taken by Berkeley County
25 Sheriff's Office. What we're looking at here are

JOHNSON - DIRECT EXAM BY MR. ALFARO

1 bullet defects that are marked by Berkeley County
2 Sheriff's Office with their -- I guess their scale
3 tape, six different bullet defects.

4 And when we returned back down to the
5 scene in February, we again saw the bullet defects
6 and marked them with our own scale tape. And so we
7 have one, two, three, four, five, and six.

8 (Indicating)

9 Q. Okay. So you indicated earlier that
10 the house had been cleaned out prior to -- or
11 between the time of the shooting and the time that
12 you went back to the scene.

13 A. That's correct.

14 Q. Had the holes that are depicted in that
15 picture been repaired?

16 A. No. The holes are still there.

17 Q. Okay. And what observations, if any,
18 did you make regarding each of those holes?

19 A. With all six of the bullet defects, the
20 single observation that I made in regards to all of
21 them is that they were fired from the inside of the
22 porch to the outside.

23 MR. ALFARO: All right. Thank you.
24 Please answer any questions that the defense may
25 have for you.

JOHNSON - DIRECT EXAM BY MR. ALFARO

1 THE COURT: Any cross examination of
2 the witness?

3 CROSS-EXAMINATION

4 BY MS. NORRIS:

5 Q. Ms. Johnson, the presumptive test for
6 blood that you do, that can't tell you when the
7 blood was placed there, correct?

8 A. That's correct.

9 Q. So it could have been there a day, it
10 could have been there two years?

11 A. Absolutely, yes.

12 MS. NORRIS: Thank you, ma'am.

13 THE COURT: Any redirect?

14 MR. ALFARO: No, Your Honor.

15 THE COURT: Any objection to the
16 witness being excused? From the State?

17 MR. ALFARO: No.

18 THE COURT: From the defense?

19 MS. NORRIS: No, Your Honor.

20 THE COURT: Ma'am, you're excused.

21 THE WITNESS: Thank you very much.

22 THE COURT: You're welcome. Call your
23 next witness.

24 MR. ALFARO: The State calls Jennifer
25 Nates.

NATES - DIRECT EXAM BY MR. ALFARO

1 JENNIFER NATES,

2 being first duly sworn, testified as follows:

3 THE CLERK: Please be seated. State
4 your full name, and spell your last name for the
5 record.

6 THE WITNESS: Jennifer Nates,
7 N-A-T-E-S.

8 THE COURT: You may proceed.

9 MR. ALFARO: Thank you, Your Honor.

10 THE COURT: You're welcome.

11 DIRECT EXAMINATION

12 BY MR. ALFARO:

13 Q. Could you tell us where you currently
14 work?

15 A. I work for the South Carolina Law
16 Enforcement Division in the trace evidence section
17 of the Forensic Laboratory.

18 Q. And what is your job title?

19 A. I am the lieutenant over the trace
20 evidence section, which essentially means I just
21 supervise the day-to-day activities in addition to
22 performing casework.

23 Q. And how long have you been with SLED?

24 A. It will be 22 years this fall.

25 Q. And have you been a forensic scientist

NATES - DIRECT EXAM BY MR. ALFARO

1 in the trace department at SLED that entire time?

2 A. No. My first year at SLED I was a
3 forensic scientist in the drug analysis department.

4 Q. And when did you move over to trace?

5 A. I moved to trace in November of 1998.

6 Q. And could you tell the jury a little
7 bit about your educational background?

8 A. I received a bachelor's of science
9 degree in chemistry from a small state school in
10 California, Pennsylvania. It's called California
11 University of Pennsylvania.

12 Once I received my degree, I performed
13 an internship at SLED in the trace evidence section
14 and decided that was the career path that I wanted
15 to take. I was then hired into the drug analysis
16 department where I began their training program.

17 I successfully completed that, attended
18 the police academy, and then began taking drug and
19 poison cases for, approximately, eight months. At
20 that point there was an opening in the trace
21 evidence section, and I requested a transfer to
22 that department. It was granted, and I then began
23 the training program in that department.

24 That training can last from three to
25 six years. Once you're in the training program,

NATES - DIRECT EXAM BY MR. ALFARO

1 you do an apprenticeship with the lieutenant and
2 the senior analyst. It's a -- you watch them do
3 cases, you learn how to use the instrumentations
4 used in those cases, you take outside courses and
5 classes based on the instrumentation that will be
6 used, the type of analyses that you will perform,
7 and how you can report evidence. I also took
8 competency tests after each area of analysis in
9 which I was deemed competent.

10 Once the training was completed, I then
11 began taking casework in the trace evidence field.

12 Q. And are you able to give us an
13 approximation as to how many cases you've handled
14 in this -- in trace evidence since taking on this
15 role?

16 A. The cases are broken up into different
17 areas. I've probably analyzed -- in gunshot
18 residue analysis, well over a thousand. Fire
19 debris, paint, fiberglass cases, there's probably
20 at a thousand or a little less.

21 Q. And in addition to kind of the training
22 that you just summarized, do you have continuing
23 education requirements in this field?

24 A. We don't have continuing education
25 requirements, but each year in the laboratory we

NATES - DIRECT EXAM BY MR. ALFARO

1 are required to take what is called a proficiency
2 test. It is issued by an outside provider in each
3 area of analyses that we perform casework.

4 We have to successfully complete this
5 proficiency test in order to stay what is called
6 competent in the area in order to still receive
7 cases.

8 Q. And have you at any time been qualified
9 as an expert in the area of forensic trace analysis
10 specifically related to gunshot residue?

11 A. I have been.

12 Q. Approximately, how many times?

13 A. I have testified in the area of gunshot
14 residue and the other areas of trace evidence 134
15 times.

16 Q. And of those 134 times, are some or all
17 of those in the circuit courts of South Carolina?

18 A. Circuit courts, federal courts, and a
19 magistrate court in New Mexico.

20 MR. ALFARO: Your Honor, at this time,
21 we would offer the witness as an expert in forensic
22 trace evidence analysis.

23 THE COURT: Any objections or
24 questions?

25 MS. NORRIS: No questions, no

NATES - DIRECT EXAM BY MR. ALFARO

1 objections.

2 THE COURT: Admitted without objection.

3 BY MR. ALFARO:

4 Q. Now, you indicated that as part of your
5 duties you do have occasion to perform analysis of
6 gunshot residue kits, correct?

7 A. That is correct.

8 Q. And can you tell the jury a little bit
9 about what -- first of all, what a gunshot residue
10 kit is and what the analysis of that entails?

11 A. A gunshot residue kit is a collection
12 kit that the State Law Division provides to
13 agencies within the state to aid in their
14 collection of gunshot residue. Gunshot residue is
15 considered the residue that is formed when a
16 firearm is discharged.

17 So when a firearm is discharged, this
18 residue can deposit on your hands and in close
19 proximity to you. The kit is the means of
20 collecting any type of residue that is present on
21 the hand. The kit will -- the current kit has two
22 particle lifts in them. It's a small vial that has
23 a light adhesive on it. You dab it on each area of
24 the hand.

25 This will pick up any residue that is

NATES - DIRECT EXAM BY MR. ALFARO

1 potentially present. The kits are then sealed and
2 submitted to our agency for analysis.

3 Q. And does the presence of gunshot
4 residue automatically mean that the person has
5 indeed fired a gun?

6 A. It does not. When gunshot residue is
7 found, it can mean one of three things. It can
8 mean that person discharged a firearm. It can mean
9 they were in the vicinity for the discharge of the
10 firearm. If I fire a weapon here, you potentially
11 could have GSR on your hand from being close to me
12 during that discharge.

13 It also could mean that that person
14 handled an object that had gunshot residue present
15 on it.

16 Q. And, conversely, does the absence of
17 gunshot residue mean a person did not fire a gun?

18 A. It does not. Gunshot residue is very
19 fragile. If you wash your hands thoroughly, you
20 can remove that residue once its deposited. You
21 can clasp your hands together, that can remove the
22 residue. A handshake within someone can remove the
23 residue.

24 Hands in and out of the pockets --
25 anything your hands come in contact with can

NATES - DIRECT EXAM BY MR. ALFARO

1 potentially remove that residue. So I can fire a
2 gun and three hours later there may be no residue
3 left to indicate that I did fire a firearm.

4 Q. And regarding SLED lab number L1616181,
5 the lab number involved in this case, did you have
6 the occasion to analyze gunshot residue kits
7 related specifically to this case?

8 A. I analyzed several GSR kits from this
9 case.

10 Q. I'm going to start you with what is in
11 evidence as State's Exhibit 47 and 51, which the
12 corresponding SLED numbers that you may have in
13 your reports. State's 47 is SLED 5 and State's 51
14 is SLED 14.

15 If you could take a look at those two
16 exhibits and let us know if you recognize what's
17 contained in there. There are scissors up there if
18 you need to open it.

19 A. So these are the containers that the
20 evidence was submitted to our laboratory in. Each
21 case that is submitted to the laboratory will be
22 assigned an individual -- what is called a lab
23 number. It starts with an L, it has the year, and
24 then a sequential number for each case that comes
25 in that year.

NATES - DIRECT EXAM BY MR. ALFARO

1 In this case, this is this case
2 L1616181, and this is item number 14. And it has
3 my initials and date on the outer container, the
4 GSR is contained inside.

5 This one is not the GSR kit. This is a
6 buccal swab. So this is not my evidence.

7 Q. Okay. We'll look for the one for
8 Mr. Simmons' GSR kit.

9 Now, you said you recognized SLED 14,
10 which is State's 51, that's before you?

11 A. Yes, it is State's 51.

12 Q. And is that the label of the GSR kit
13 for Robert Nolen?

14 A. Item No. 14 was one GSR from Robert
15 David Nolen.

16 Q. Okay. And did you come into contact
17 with that item on February 19, 2018?

18 A. I did. When I take evidence into my
19 custody, I will initial it with the date so that I
20 know when I took it into my custody.

21 Q. And did you perform an analysis on that
22 item?

23 A. I did.

24 Q. And prior to your analysis, was the
25 item properly packaged and labeled?

NATES - DIRECT EXAM, BY MR. ALFARO

1 A. It was. There was no indication that
2 it was not the original.

3 Q. And can you tell us how you went about
4 performing the analysis of that item?

5 A. When we receive the GSR kit, we will
6 open the kit, make certain that the outer envelope
7 is sealed and initialed to show that there was no
8 tampering with the evidence once it was submitted
9 and when we received it.

10 Inside there will be a GSR kit. We'll
11 also check the seal on the actual GSR kit and
12 verify that the name written on the outside of the
13 GSR kit matches what the item was submitted as from
14 that agency to make sure there wasn't a mixup with
15 the items or the kit.

16 We open the kit and there is an
17 information sheet within each kit. This
18 information sheet is filled out by the officer who
19 collected the GSR kit. It will include the
20 officer's name and possibly badge number, the time
21 and date of the collection, the time and date of
22 the incident, and the name of the person they are
23 collecting the kit from, whether or not that person
24 is deceased or living, and any known activities
25 they may have done from the time of the shooting to

NATES - DIRECT EXAM BY MR. ALFARO

1 the time of the collection.

2 We verify all the information is
3 correct. We visually look at the GSR kit, look at
4 the particle lift. If there is a lot of dirt or
5 debris on those particle lifts or blood, we have to
6 perform an additional step to cover the particle
7 lift in a white layer of carbon so that it can be
8 analyzed on the instrument. If it's heavily coated
9 in blood, the instrument isn't able to perform the
10 analysis.

11 After that is done, we will do a
12 sequence on the instrument. The instrument is
13 called a scanning electron microscope, and it
14 consists of a large chamber that will be under
15 vacuum. We will load our samples onto the sample
16 tray, document where each sample is loaded and what
17 number it corresponds to, set up all the quality
18 parameters on the instrument so that it is told
19 where to go for each sample and what type of
20 analysis to perform on that sample, and then the
21 instrument is set to run overnight.

22 We will -- the analyst will come in the
23 next day and the instrument will be categorized,
24 any metallic particles present on the particle
25 lift. So the analyst will look at them and say,

NATES - DIRECT EXAM BY MR. ALFARO

1 okay, there were 15 particles the instrument
2 classified as gunshot residue. We have to go back
3 and verify that's what it was.

4 So we will relocate each particle that
5 we need to look at for that analysis, take an x-ray
6 of the particles and determine what it's made of.
7 Once we do this, we print pictures of it, generate
8 the report, and send our report for a technical
9 review to make sure that another analyst agrees
10 with our findings.

11 Q. Okay. And what were your findings
12 related to that GSR kit?

13 A. On Item 14, which was the GSR kit from
14 Robert David Nolen, I find particles characteristic
15 of gunshot primer residue.

16 Q. And did you prepare a report detailing
17 the findings related to that item?

18 A. I did.

19 Q. And was that prepared on March 6th,
20 2018?

21 A. The report was approved on March 6th.
22 It may have been approved a day or two earlier, and
23 then it has to go through a technical review
24 process. The date on the report is the date that
25 it's approved by the technical reviewer.

NATES - DIRECT EXAM BY MR. ALFARO

1 Q. Okay. And can you tell the jury what
2 the results were that you listed on your report
3 related to that item?

4 A. In the GSR kit from Robert David Nolen,
5 particles characteristic of gunshot primer residue
6 were found. In general, particles characteristic
7 of gunshot primer residue are microscopic molten
8 particles that contain the elements lead, barium,
9 and antimony.

10 Gunshot primer residue can come from
11 discharging a firearm, being in the vicinity to the
12 discharge of a firearm, or coming into contact with
13 a surface that has gunshot primer residue on it.

14 Q. And I'm going to show you what is
15 marked as State's Exhibit 46. I'm going to show
16 you State's Exhibit 46, which I believe is SLED 5,
17 and ask if you recognize that item?

18 A. Yes. This is lab number L1616181,
19 which is Item No. 5, and it shows my initials and
20 date when I received it, and it contains a GSR kit
21 from Jeffrey Simmons. And that is what the
22 packaging for the GSR kit is.

23 Q. And when you received that item, was it
24 properly packaged and sealed?

25 A. It was.

NATES - DIRECT EXAM BY MR. ALFARO

1 Q. And were there any indications that the
2 items inside had been tampered with?

3 A. No.

4 Q. And did you go through the same process
5 for analyzing that item?

6 A. I did.

7 Q. And what were your findings related to
8 State's 46?

9 A. On Item No. 5, which was the GSR kit
10 from Jeffrey Fernwell Simmons, there were no
11 particles characteristic of gunshot primer residue
12 collected, which means I did not find any particles
13 characteristic of GSR on the particle lift
14 submitted from this kit.

15 Q. And you covered a little bit of this
16 earlier in your testimony, but the report that is
17 dated March 6th, 2018, that shows that results of
18 no particles characteristic of gunshot primer
19 residue detected for Jeffrey Simmons, it also has
20 some more information contained in your report; is
21 that correct?

22 A. It does.

23 Q. And could you tell the jury what sort
24 of explanation or what other information is
25 contained in your report?

NATES - DIRECT EXAM BY MR. ALFARO

1 A. We have several bullet points that we
2 include with our negative reports. It's not all
3 inclusive, but it does list some reasons why a kit
4 could be negative. In this case the report reads:
5 No particles characteristic of gunshot primer
6 residue detected. The absence of the primer
7 residue on the hands is consistent with, but not
8 limited to the following scenario.

9 The individual not having discharged a
10 firearm, four to six hours passing between firing
11 and sampling, normal physical activity between
12 firing and sampling, the individual washing their
13 hands, wiping their hands, or sweating profusely,
14 the individual wearing gloves during the discharge
15 of the firearm, excessive blood or debris on the
16 hands, environmental factors, including wind and
17 rain. The ammunition discharge was lead-free,
18 non-toxic or some 22-caliber rim fire ammunition
19 not producing particles characteristic of a
20 conventional gunshot primer residue, and the
21 firearm not producing primer residue on the hands
22 when discharged.

23 Q. So the information that's listed in the
24 report, those are essentially possibilities or
25 possible explanations; it's not a directly --

NATES - DIRECT EXAM BY MR. ALFARO

1 directly correlated to any facts or evidence
2 related to this specific case?

3 A. No. Those results are on every
4 negative result that we report.

5 Q. And subsequent to the completion of
6 your March -- your report dated March 6th, 2018,
7 did you also have the opportunity to come into
8 contact with additional GSR kits under that same
9 lab number?

10 A. I did.

11 Q. I'm going to show you what is in
12 evidence as State's 48, State's 49, and State's 50.
13 State's 48 is -- corresponds to SLED number 78,
14 State's 49 corresponds to SLED 77, and State's 50
15 corresponds to SLED item 79.

16 If you can take a look at those
17 exhibits, and whichever -- after you've had a
18 chance to review them, whichever order you want to
19 discuss is fine.

20 A. All right. State's Exhibit 49 was
21 SLED's lab number 77, and I can identify it again
22 with my initials and the date on which I opened the
23 evidence. State's Exhibit 48 is SLED item number
24 78, and State's Exhibit 50 is SLED item 79.

25 Q. Okay. Now, regarding State's 48, which

NATES - DIRECT EXAM BY MR. ALFARO

1 I believe is described as a GSR kit from James Mark
2 Harrison; is that correct? SLED 78?

3 A. SLED 78 is the GSR from James Harrison.

4 Q. Okay. And can you tell us if -- when
5 you received all three of those items, were they
6 all properly packaged and sealed?

7 A. They were.

8 Q. Any indication that any of those items
9 have been tampered with?

10 A. No.

11 Q. And did you have the opportunity to
12 perform analysis on all three of those kits?

13 A. I did.

14 Q. And let's start with State's 48, the
15 GSR kit of James Harrison, SLED 78. Can you tell
16 us what your findings were related to that item?

17 A. Item 78 was the GSR kit from James
18 Harrison. Particles characteristic of gunshot
19 primer residue were found. Would you like me to
20 read the entire result?

21 Q. Yes, please.

22 A. In general, particles characteristic of
23 gunshot primer residue are microscopic molten
24 particles that contain the elements lead, barium,
25 and antimony. Gunshot primer residue can come from

NATES - DIRECT EXAM BY MR. ALFARO

1 being in the vicinity to the discharge of a firearm
2 to include sustaining a gunshot wound, discharging
3 a firearm, or coming into contact with a surface
4 that has gunshot primer residue on it.

5 No information can be provided as to
6 the likelihood of any of these scenarios.

7 Q. And regarding State's 49, which is SLED
8 77, the gunshot residue kit from Harry Lee
9 Gressette?

10 A. Item 77, the GSR kit from Harry Lee
11 Gressette. Particles characteristic of gunshot
12 primer residue were found. In general, particles
13 characteristic of gunshot primer residue are
14 microscopic molten particles that contain the
15 elements lead, barium, and antimony. Gunshot
16 primer residue can come from being in the vicinity
17 to the discharge of a firearm to include sustaining
18 a gunshot wound, discharging a firearm, or coming
19 into contact with a surface that has gunshot primer
20 residue on it.

21 No information can be provided as to
22 the likelihood of any of these scenarios.

23 Q. And, finally, regarding State's 50,
24 SLED 79, the gunshot residue kit of Lance Kenyon?

25 A. Item 79, the GSR kit from Lance Donovan

NATES - DIRECT EXAM BY MR. ALFARO

1 Kenyon. Particles characteristic of gunshot primer
2 residue were found. In general, particles
3 characteristic of gunshot primer residue are
4 microscopic molten particles that contain the
5 elements lead, barium, and antimony. Gunshot
6 primer residue can come from being in the vicinity
7 to the discharge of a firearm to include sustaining
8 a gunshot wound, discharging a firearm, or coming
9 into contact with a surface that has gunshot primer
10 residue on it.

11 No information can be provided as to
12 the likelihood of any of these scenarios.

13 Q. So based upon your report, you could
14 find gunshot residue if someone was -- received a
15 gunshot wound?

16 A. We expect to find it on the majority of
17 the people that sustain a gunshot wound.

18 MR. ALFARO: Okay. Thank you. Please
19 answer any questions that the defense may have.

20 THE COURT: Any questions for the
21 witness?

22 MS. NORRIS: No questions. Thank you,
23 ma'am.

24 THE COURT: Any objection to the
25 witness being excused? From the State?

RUIZ-YI - DIRECT EXAM BY MR. ALFARO

1 MR. ALFARO: No, Your Honor.

2 THE COURT: From the defense?

3 MS. NORRIS: No objection.

4 THE COURT: Ma'am, you're excused.

5 THE WITNESS: Thank you.

6 THE COURT: You're welcome. Call your
7 next witness.

8 MR. ALFARO: The State calls Jasmine
9 Ruiz-Yi.

10 JASMINE RUIZ-YI,
11 being first duly sworn, testified as follows:

12 THE CLERK: Please be seated. State
13 your full name, and spell your last name for the
14 record.

15 THE WITNESS: My name is Jasmine
16 Ruiz-Yi, R-U-I-Z hyphen Y-I.

17 THE COURT: You may proceed.

18 MR. ALFARO: Thank you.

19 THE COURT: You're welcome.

20 DIRECT EXAMINATION

21 BY MR. ALFARO:

22 Q. Could you tell us where you work?

23 A. I'm employed at the South Carolina Law
24 Enforcement Division.

25 Q. And what do you do at the South

RUIZ-YI - DIRECT EXAM BY MR. ALFARO

1 Carolina Law Enforcement Division?

2 A. I'm a forensic serologist.

3 Q. And is that contained within the --

4 what department of SLED is that considered?

5 A. That is part of the DNA department.

6 Q. And have you been a forensic serologist
7 during your entire time with SLED?

8 A. That is correct.

9 Q. And can you tell us a little bit about
10 your educational background?

11 A. I graduated from Clemson University
12 with a bachelor's of science in genetics and a
13 minor in biochemistry.

14 Q. And could you tell us what type of
15 training you've received in the field of forensic
16 serology?

17 A. Upon my employment at SLED, I undertook
18 the in-house training where I shadowed a court
19 qualified forensic serologist and learned
20 laboratory procedure and protocol. I was given
21 training samples which are pre-made swabs and
22 cuttings to practice testing with, after which I
23 was then allowed to do supervised casework under my
24 trainer, during which I worked actual cases under
25 her guidance.

RUIZ-YI - DIRECT EXAM BY MR. ALFARO

1 After that period of time, I was then
2 given a competency test which included all aspects
3 of being a forensic serologist, including written
4 report exam, oral tests on laboratory procedure and
5 testing, a mock court, and report writing.

6 Q. And are you now certified by SLED to
7 perform forensic serology analysis?

8 A. I am.

9 Q. And how long have you actually been
10 handling cases for SLED in that capacity?

11 A. I would say a little over two years.

12 Q. And in those two years, roughly, how
13 many cases have you handled?

14 A. I would say hundreds by this point.

15 Q. And have you previously or at any time
16 been qualified as an expert in the area of forensic
17 serology?

18 A. I have.

19 Q. And how many times?

20 A. Once.

21 Q. And which court was that?

22 A. I believe Horry County.

23 MR. ALFARO: And, Your Honor, at this
24 time, we would offer the witness as an expert in
25 forensic serology analysis.

RUIZ-YI - DIRECT EXAM BY MR. ALFARO

1 THE COURT: Any objections or
2 questions?

3 MS. NORRIS: No, Your Honor.

4 THE COURT: Without objection, so
5 admitted. You may proceed.

6 BY MR. ALFARO:

7 Q. In general terms, can you explain to us
8 what the field of forensic serology analysis
9 entails?

10 A. Forensic serology is body fluid
11 identification which includes blood, semen, and
12 saliva. Part of my duties, other than blood
13 identification, is to process large items of
14 evidence for possible DNA.

15 Q. And did you have the opportunity to
16 perform such analysis in SLED lab number L1616181?

17 A. I did.

18 Q. And did you come into contact with that
19 evidence on March 28, 2018, from Jeffrey Crooks?

20 A. Yes.

21 Q. I show you what's in evidence as
22 State's Exhibit 55 and 56, and ask you if you --
23 they're taped together so -- see if you recognize
24 the packaging as these items that you came into
25 contact with on that day.

RUIZ-YI - DIRECT EXAM BY MR. ALFARO

1 A. Yes, they are.

2 Q. Okay. And are you able to tell us what
3 State's 50 -- 55 is on top, we'll start with that
4 -- what State's 55, SLED 74 is?

5 A. It is a sheetrock piece from the back
6 of the closet in neon green room.

7 Q. And State's 56, which is SLED 75, what
8 is that in the bottom box?

9 A. It is also a sheetrock piece from the
10 left side of closet in the neon green room.

11 Q. And I'm going to also show you what is
12 in evidence as State's Exhibit 57. Do you
13 recognize that?

14 A. I do.

15 Q. And can you tell us what that item is?

16 A. These are swabs from the sheetrock
17 piece from the left side of closet in neon green
18 room.

19 Q. And you said that you received 55 and
20 56, the two big boxes, from Jeffrey Crooks. How
21 did you -- how did you come into possession of or
22 create State's 57?

23 A. I created what we call a sub-item off
24 of the main item. So I took sterile swabs and I
25 swabbed the area of interest, and then I put it

RUIZ-YI - DIRECT EXAM BY MR. ALFARO

1 into an envelope, sealed that, initialed and dated
2 it, placed it into this heat-sealed pouch, and then
3 from there it was given to the DNA analyst.

4 Q. Okay. So 50 -- the two big boxes,
5 State's 55 and State's 56, were sealed when you
6 received them. Any evidence that they had been
7 tampered with?

8 A. That is correct. They were sealed and
9 did not appear to be tampered with.

10 Q. And then you, yourself created the
11 swabs which are State's -- or the swab which is
12 State's 57?

13 A. That is correct.

14 Q. Okay. And did you perform any analysis
15 on State's 55, 56, or 57?

16 A. I tested the sheetrock pieces for
17 blood.

18 Q. Okay. And did you prepare reports
19 detailing your findings which is dated March 30th
20 of 2018?

21 A. I did.

22 Q. And beginning with the sheetrock piece
23 from -- what you described as from back of closet
24 in neon green room, which is SLED 74, State's 55,
25 what findings, if any, did you come to from your

RUIZ-YI - DIRECT EXAM BY MR. ALFARO

1 analysis?

2 A. The result was the presumptive testing
3 for blood was negative.

4 Q. And regarding the swab that you created
5 State's 57 or SLED 75.1, is that the item you said
6 that the presumptive testing was positive?

7 A. That is correct.

8 Q. And as a result of that presumptive
9 testing, you sent that on to the DNA section for
10 further analysis?

11 A. That is correct.

12 Q. And is that the normal protocol and
13 procedure?

14 A. Yes, sir.

15 MR. ALFARO: Okay. Thank you. Please
16 answer any questions that the defense may have.

17 THE COURT: Any questions for the
18 witness?

19 MS. NORRIS: No questions. Thank you,
20 ma'am.

21 THE COURT: Any objection to the
22 witness being excused? From the State?

23 MR. ALFARO: No, Your Honor.

24 THE COURT: From the defense?

25 MS. NORRIS: No, Your Honor.

STEWART - DIRECT EXAM BY MR. ALFARO

1 THE COURT: You're excused.

2 THE WITNESS: Thank you.

3 THE COURT: You're welcome. Call your
4 next witness.

5 MR. ALFARO: The State calls Samuel
6 Stewart.

7 SAMUEL STEWART,
8 being first duly sworn, testified as follows:

9 THE CLERK: Please be seated. State
10 your full name, and spell your last name for the
11 record.

12 THE WITNESS: Samuel Adam Stewart,
13 S-T-E-W-A-R-T.

14 THE COURT: You may proceed.

15 DIRECT EXAMINATION

16 BY MR. ALFARO:

17 Q. Can you tell us where you work?

18 A. I work for the South Carolina Law
19 Enforcement Division, commonly known as SLED.

20 Q. And what -- in what capacity?

21 A. I'm a forensic scientist assigned to
22 the DNA casework department.

23 Q. And how long have you been employed by
24 SLED?

25 A. Seven years.

STEWART - DIRECT EXAM BY MR. ALFARO

1 Q. And have you been in the DNA lab that
2 entire time?

3 A. Yes, I have.

4 Q. And can you tell us what your
5 educational background is?

6 A. I received my bachelor'S of science in
7 biology from Francis Marion University. I also
8 received in-house SLED training under other court
9 qualified analysts.

10 Q. And could you tell us a little bit more
11 about that additional training you received in the
12 field of DNA analysis?

13 A. Yes. Under the other court qualified
14 analysts, I had to pass a written exam, an oral
15 exam, a competency, and a mock trial before I was
16 deemed competent as a DNA analyst. That training
17 took approximately a year and a half.

18 Q. And when did you start -- first start
19 handling DNA analysis on your own at SLED?

20 A. I believe May of 2013.

21 Q. And since that time, how many cases
22 have you handled?

23 A. Hundreds.

24 Q. Hundreds. And have you previously been
25 qualified as an expert in the area of the DNA

STEWART - DIRECT EXAM BY MR. ALFARO

1 analysis?

2 A. Yes, I have.

3 Q. Approximately, how many times?

4 A. Twenty-six.

5 Q. And are those -- any of those 26 times
6 include state courts here in South Carolina?

7 A. Yes, they did.

8 MR. ALFARO: Your Honor, at this time,
9 we would offer the witness as an expert in forensic
10 DNA analysis.

11 THE COURT: Any objections or
12 questions?

13 MS. NORRIS: No, Your Honor.

14 THE COURT: So admitted, without
15 objection. You may proceed.

16 BY MR. ALFARO:

17 Q. Could you tell us a little bit about
18 what the field of forensic DNA analysis entails?

19 A. Well, DNA stands for deoxyribonucleic
20 acid. It is a genetic material that is found in
21 every individual and is responsible for certain
22 traits such as eye color. DNA is contained in
23 chromosomes which are found in every cell in the
24 body excluding red blood cells.

25 We get half of our chromosomes from our

STEWARD - DIRECT EXAM BY MR. ALFARO

1 mother and the other half from our father. Of
2 those chromosomes, as DNA analysts, we target
3 certain locations known as STRs. That stands for
4 short tandem repeats.

5 And we look at 21 of those different
6 STR locations that are found in the chromosomes to
7 develop a known DNA profile, and we use that DNA
8 profile to identify one individual from another,
9 excluding identical twins.

10 Q. Okay. And you said excluding identical
11 twins. Other than identical twins, does anyone
12 else share the same DNA?

13 A. No, they do not.

14 Q. And how do you go about developing a
15 DNA profile?

16 A. We have a process. Usually, the DNA we
17 get comes in a swab or a cutting. We extract it
18 from that item, we add a chemical solution to it,
19 allow it to sit, and then we are able to put it in
20 our instrument to extract it and quantify it to
21 find out exactly how much DNA we have.

22 Based on that, we dilute it or
23 concentrate it to get within a certain range. Once
24 in that range, then we can run another instrument
25 and that will give us the DNA profile that we can

STEWARD - DIRECT EXAM BY MR. ALFARO

1 use for comparison purposes.

2 Q. Okay. Now, related to SLED lab number
3 L1616181, did you have the occasion to come into
4 contact or receive some evidence from a Charlotte
5 Pitts on 12/11/2017?

6 A. Yes, I did.

7 Q. And can you tell us who Ms. Pitts is?

8 A. She is the forensic technician that
9 works in our evidence control department. That's
10 the department that intakes all the evidence that
11 is delivered to us for testing.

12 Q. So when law enforcement agencies bring
13 evidence to SLED, it filters its way through and
14 eventually ends up with you?

15 A. That is correct. It stays in our
16 evidence control vault until the analyst is
17 assigned to that case.

18 Q. And in the process of being moved from
19 person to person and location to location, do you
20 all keep tabs on who comes into contact with each
21 item?

22 A. Yes, we have a chain of custody.

23 Q. And is -- prior to performing any
24 analysis, do you take any steps or make any
25 observations to ensure that the items have not been

STEWARD - DIRECT EXAM BY MR. ALFARO

1 tampered with?

2 A. Yes, we do. Every evidence that comes
3 into the SLED is kept within a heat sealed pouch.
4 That heat sealed pouch can be opened and closed,
5 but it has to be signed by an analyst before that.
6 So we want to make sure that the pouch is closed
7 and secure before any testing is done.

8 Q. Okay. And for the items that you
9 received in relation to this case, were each of the
10 items properly packaged and labeled?

11 A. Yes, they were.

12 Q. Any indication that any of the items
13 had been tampered with?

14 A. If that was the case, I would not have
15 proceeded with any testing.

16 Q. Okay. I'm going to show you several
17 items. I'm going to show you State's 45, which
18 corresponds to SLED 4; State's 47, which
19 corresponds to SLED 6; State's 54 -- or -- 54,
20 which correlates to SLED 7; State's 52, which
21 correlates to SLED 8; and State's 53, which
22 correlates to SLED 13, and ask you if you can take
23 a look at the packaging itself and let us know if
24 you recognize those items as items you came into
25 contact with during this case.