

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Post Conviction Relief

RECEIVED

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Michael G. Nettles, Circuit Court Judge S.C. SUPREME COURT

Case No.: 2017-002269

Deonte Brown #361477,..... Petitioner,

vs.

State of South Carolina,Respondent.

APPENDIX

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STATE OF SOUTH CAROLINA	COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON	2013-GS-10-535
	2013-GS-10-536
	2013-GS-10-537

STATE OF SOUTH CAROLINA,)	
)	
Plaintiff,)	TRANSCRIPT OF RECORD
-vs-)	
)	September 15-19, 2014
DEONTE BROWN,)	
)	Charleston, South Carolina
Defendant.)	

B E F O R E:

The Honorable Roger M. Young, Sr., Judge, and a Jury.

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

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 Attorneys for the State

James Smiley, Esquire
 Laree Hensley, Esquire
 Attorney for the Defendant

Amanda K. Haffenden, RPR, CRR
 Circuit Court Reporter

	I N D E X				
	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
1					
2					
3	David Johnson	79	85	--	--
4	Erin Meyer	88	102	115	--
5	Mark Watson	119	132	136	137
6	Tyh'shka Catts	138	148	156	157
7	Montrell Butler	158	171	--	--
8	Lorenzo Brown	174	180	--	--
9	Chavis Heyward	184	194	--	--
10	Kenneth Barfield	199	206	207	--
11	Sinclair Heyward	207	217	--	--
12	Joseph West	222	227	--	--
13	Jesse McNeal	228	247	253	--
14	Dario Teran	255	262	268	269
15	Tiffany Smith	271	278	--	--
16	April Blodgett	282	293	302	307
17	Betty Butler	309	--	--	--
18	Samuel Stewart	313	323	--	--
19	Ira Parnell	324	335	--	--
20	Lee Tormos	338	345	--	--
21	Christina				
22	Moyer-Smith	350	365	--	--
23	Whitney Berry	384	398	--	--
24					
25					

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1 (September 15, 2014.)

2 THE COURT: While we're waiting for the panel
3 to come up, why don't I go over his right to testify.

4 Mr. Brown, are you Deonte Stephen Brown?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: We'll go over this later on. Go
7 ahead. Bring them in.

8 (In open court, jury panel present.)

9 Do we have everybody right now? Welcome,
10 folks. My name is Roger Young, and I'm one of the
11 presiding judges this week over a term of General
12 Sessions Court. General Sessions is just our big, fancy
13 word for criminal court. We're doing criminal court and
14 civil court this week.

15 I think you met Judge Jefferson doing
16 qualifications. She's doing Common Pleas, or civil
17 court, so if you're walking around and seeing those
18 television screens where it says somebody is holding
19 Court, well, General Sessions is criminal; Common Pleas,
20 civil.

21 So since you have made it through the cut,
22 you're qualified to be jurors. So we're going to draw a
23 jury now for the first case that we'll be trying this
24 week, and it's the case of the State versus Deonte
25 Stephen Brown, and so we're going to ask you some

1 questions when we begin here, none of which are designed
2 to pry into your personal affairs or to embarrass you in
3 any way, but there might be a time or two when there is a
4 question and you go, well, that might be a little bit
5 personal, and I don't want to stand up in front of a
6 group of strangers and discuss it.

7 I understand that, and I wouldn't ask, but I
8 have to insist that you don't just set there. Come
9 forward. We'll talk about it a little, discuss it out of
10 earshot of everybody if you want to, but our desire is
11 not to embarrass you or pry; we're just simply trying to
12 find 12 people that can take an oath and make their
13 decision based on what they hear in this courtroom; that
14 is, the evidence, and they will abide by law that I tell
15 them applies to this case.

16 If there is something in your background, if
17 there is something that might be able to prevent you from
18 taking that oath, we need to know about it, and it might
19 be something you might not want to discuss in front a
20 group of strangers. Please don't just set there. Please
21 come forward if it's something that you need to tell me
22 about.

23 All right? In the State of South Carolina,
24 when the State charges somebody with a crime, they have
25 one of two ways to bring a case to court. One way is you

1 have a judge sign an arrest warrant and they arrest the
2 person. When we have a General Sessions offense, the
3 solicitor brings the case before the grand jury and seeks
4 an indictment, and then if the person gets an indictment,
5 we have them brought forth for a trial.

6 Indictments are not evidence, all right? An
7 indictment does not create any presumption of guilt. The
8 fact that a person was arrested does not raise any sort
9 of inference or presumption that they are guilty of a
10 crime. That is never proper in South Carolina, or in any
11 state in this union, that a person is presumed to be
12 guilty just because they got arrested.

13 In fact, the opposite is true. They are
14 presumed to be innocent of the crime unless and until the
15 State presents enough evidence to convince 12 jurors that
16 they are guilty of this the charge beyond a reasonable
17 doubt, and I'll go into what a standard of proof of
18 beyond a reasonable doubt means a little bit later.

19 The concept of a grand jury indictment goes
20 back hundreds of years, literally hundreds of years. In
21 fact, in many cases, it's traced back to the Magna Carta
22 from England where the baron, the landlord or the
23 landowners, the barons in England 800 years ago, forced
24 King John to give Englishmen a certain number of limited
25 rights, due process is one of the biggest ones, the

1 ability to have somebody who is arrested by the State --
2 back then it was the king -- to have some sort of buffer
3 between just an open ability of the king to grab somebody
4 off the street and throw them in jail without them even
5 knowing what they're accused of, very often. It was one
6 of the many grievances that Englishmen had against the
7 king. As a matter of fact, we're celebrating the 800th
8 anniversary this year of the signing of Magna Carta, and
9 one of the things that we still have as a right as a
10 result of that is the concept of a grand jury.

11 The grand jury -- you're considered a petit
12 jury when you hear the actual case, but the grand jury
13 sets and hears enough evidence simply to determine
14 whether or not a crime has been committed and if there is
15 a possibility that a person who has been charged with it
16 might have done it. It's simply, as a practical matter,
17 a way of letting the defendant know what he's being
18 charged with, and it gives this Court jurisdiction to
19 hear the case.

20 Again, it's a charging instrument, the grand
21 jury, and not to be considered as evidence. It's simply
22 to let the defendant know what he's been charged with so
23 that he knows why he has to come to court. All right?

24 So, in this case, the State of South Carolina
25 has charged Mr. Deonte Stephen Brown with four charges,

1 and the four charges I'm going to read to you so that
2 you'll basically know what this case is about so that you
3 can -- it might be possibility that you're setting out
4 there and you know something about it because, again, our
5 aim for what we're going through for the next few minutes
6 is to simply find 12 people who don't know anything about
7 the case so that they won't have a preconception of what
8 the outcome ought to be, because, again, your oath that
9 you're going to take is you promise you will make your
10 decision based on what you hear in this courtroom and
11 this courtroom alone and that you will abide by the law
12 that I charge you.

13 So we need to weed out those people that know
14 something about the case, so that's why I'm reading you
15 what these indictments contain and letting you know what
16 these charges are.

17 Now, the first indictment is indictment
18 2013-GS-10-537, and it's the State of South Carolina
19 versus Deonte Stephen Brown, and it alleges that in
20 Charleston County -- and it's an indictment for murder,
21 all right? And it says that in Charleston County on or
22 about July 15th, 2012, with malice aforethought, Deonte
23 Stephen Brown did kill and murder Dontaye Reed by means
24 of shooting him and that Dontaye Reed did die in
25 Charleston County as a proximate result thereof on July

1 15th, 2012 in violation of 16-3-10 of the South Carolina
2 Code of Laws as amended.

3 The second indictment is 2013-GS-10-535, and
4 that's the State of South Carolina versus Deonte Stephen
5 Brown, and that is for attempted murder. That indictment
6 reads that in Charleston County, South Carolina, on or
7 about July 15, 2012, the defendant, Deonte Stephen Brown,
8 did and with intent to kill and malice aforethought
9 attempt to kill Quinton Alan. This is in violation of
10 Section 16-3-29 of the South Carolina Code of Laws as
11 amended.

12 And then the final indictment is
13 2013-GS-10-536, and it alleges -- it is for the crime of
14 possession of a firearm during the commission of a
15 violent crime, and it alleges that in Charleston County,
16 South Carolina, on or about July 15, 2012, the defendant,
17 Deonte Stephen Brown, did possess a handgun or visibly
18 display what appeared to be a handgun during the
19 commission or attempted commission of an attempted
20 murder, a violent crime. This is in violation of
21 16-23-490 of the South Carolina Code of Laws as amended.

22 Now, Mr. Brown pled not guilty to each of
23 these charges, and so it's incumbent upon the State to
24 provide him with a jury trial of 12 folks and to attempt
25 to prove to those 12 folks that he is guilty of these

1 charges beyond a reasonable doubt. Mr. Brown does not
2 have to prove he's innocent. The only thing that he has
3 to do is show up for trial, and he's done that. So he
4 sets there presumed to be not guilty of those charges,
5 and he does not have to prove that he's guilty, State has
6 to prove that he's guilty. All right? So that's where
7 we stand.

8 Does anybody know anything at all about this
9 case? If so, would you please stand. All right. I find
10 none.

11 Now, when the State of South Carolina charges
12 somebody with a crime -- in this state, we call our
13 prosecutors the solicitor, and the solicitor for our
14 circuit -- and our circuit is the Ninth Circuit, the
15 Ninth Judicial Circuit, which is Charleston and Berkeley
16 Counties -- the solicitor for our circuit is Scarlett
17 Wilson, and Ms. Wilson has designated two folks from her
18 office, Ms. Stephanie Linder and Ms. Jessica Baldwin, to
19 prosecute this case for her.

20 Would you two ladies stand and face the jury
21 panel. This is Ms. Linder on my left, your right. All
22 right? Is there any member of the jury panel who is
23 related by blood or marriage or acquainted in any way at
24 all with either Ms. Scarlett Wilson or Ms. Stephanie
25 Linder or Ms. Jessica Baldwin? If so, would you please

1 stand. All right.

2 Any member of the jury panel, either you or
3 an immediate family member, ever now or in the past
4 worked for the Ninth Circuit Solicitor's office?

5 Yes, your name?

6 A PROSPECTIVE JUROR: Brian Michel, 226. My
7 brother David Michel worked for the Ninth Circuit
8 Solicitor's office.

9 THE COURT: He did what?

10 THE DEFENDANT: He used to work with the
11 Ninth Circuit Solicitor's office.

12 THE COURT: How long ago was that?

13 A PROSPECTIVE JUROR: About ten years.

14 THE COURT: The fact that he used to work for
15 the solicitor's office, would that affect your ability in
16 any way in being fair and impartial to the State or to
17 the defendant?

18 A PROSPECTIVE JUROR: No, sir.

19 THE COURT: All right. Thank you. All
20 right. Now, Mr. Brown, would you stand? This is
21 Mr. Brown. Go ahead and face the jury. The gentleman in
22 white T-shirt is Mr. Deonte Stephen Brown.

23 Is there any member of the jury panel that's
24 related by blood or marriage or acquainted in any way
25 with Mr. Deonte Stephen Brown? If so, would you please

1 stand. Okay. I find none. He is represented by two
2 attorneys that are standing by him, Mr. Jim Smiley and
3 Ms. Laree Hensley.

4 Is there any member of the jury panel related
5 by blood or marriage or acquainted with either of these
6 two folks or perhaps you've been represented by them
7 before? If so, would you please stand. Okay. I find
8 none. You may be seated.

9 Now, I'm going to call out the names of some
10 of the folks who may be called as witnesses in this case.
11 There's a lot of names on this list, and I've been
12 assured that not all of them are going to be called, but
13 at this point, you pretty much cover your bases and put
14 down everybody that has anything to do with the case.

15 We have gone through this. We are going to
16 call out the names of these folks, and if you are related
17 by blood or marriage or you know them in any way or
18 acquainted in any way, would you please stand when I call
19 your name.

20 Christina Moyer-Smith, Charleston County
21 Sheriff's Office? I find none. Erin Meyer, Charleston
22 County Sheriff's Office? I find none. Edward Semlitsch
23 with the sheriff's office? I find none. William Martin
24 with the sheriff's office? I find none.

25 A PROSPECTIVE JUROR: I do know a Derek Boyd.

1 I'm Joseph Matutina, juror 212.

2 THE COURT: And you know Mr. Boyd?

3 A PROSPECTIVE JUROR: I believe so.

4 THE COURT: How do you know him?

5 A PROSPECTIVE JUROR: I went to high school
6 with him.

7 THE COURT: Do you think that would affect
8 your ability to be fair and impartial in this case,
9 either for or against the State or for or against the
10 defense if he's called as a witness?

11 A PROSPECTIVE JUROR: No, sir.

12 THE COURT: All right. Thank you.

13 Rita Avila, A-v-i-l-a, with the sheriff's
14 office? Kathy Kjellman with the sheriff's office? James
15 Milz, M-i-l-z, with the sheriff's office? Jason Riley
16 with the sheriff's office? Robert Bowen with the
17 sheriff's office?

18 Boy, I'm going to have a hard time with this
19 one, but I'm going to give it a whirl. Zulfiqar Khan,
20 Z-u-l-f-i-q-a-r, K-h-a-n? That's with the sheriff's
21 office. I find none.

22 David Johnson with the sheriff's office?
23 Mark Watson with the Sheriff's Office? I find none.
24 Michael Thompson with the sheriff's office? I find none.
25 Fletcher King with the sheriff's office? I find none.

1 Rob Colson with the sheriff's office? I find none.
2 Allen Ali with the sheriff's office? I find none. James
3 Perkins with the sheriff's office? I find none. Matthew
4 Downing with the sheriff's office? I find none.

5 Julius Alexander with the sheriff's office?
6 I find none. Angel Torres with the sheriff's office? I
7 find none. Whitney Berry with the sheriff's -- or with
8 SLED, I'm sorry, South Carolina Law Enforcement? I find
9 none. Samuel Stewart with SLED? I find none. Nikki
10 Perry-Hughes with SLED? I find none. Ila Simmons with
11 SLED? I find none. Jennifer Stoner with SLED? I find
12 none. Patricia Crooks with SLED? I find none. Doris
13 Yarbrough with SLED? I find none.

14 Amy Stephens with SLED? I find none.
15 Stephanie Stanley with SLED? I find none. Betty Butler
16 with SLED? I find none. Joe West with SLED? I find
17 none. Dr. Lee Tormos with Medical University of South
18 Carolina?

19 I find none. Ira Parnell? I find none.
20 Selena Kinard? I find none. Lauren Ryan? I find none.
21 Kelly Murphy? I find none. Charles Lawrence? I find
22 none. Kenny Barfield with the solicitor's office? Yes.
23 You're number 226?

24 A PROSPECTIVE JUROR: Yes, sir. I've known
25 Mr. Barfield for many years.

1 THE COURT: Would that affect your ability to
2 be fair and impartial in this case either for or against
3 the State or for or against the defense?

4 A PROSPECTIVE JUROR: No, Your Honor.

5 THE COURT: All right. Josh Cheney,
6 solicitor's office? I find none. Quinton Allen? I find
7 none. Thomas Brown? I find none. Quanesiha,
8 Q-u-a-n-e-s-i-h-a, Brown? I find none. Damon Simmons?
9 I find none. Brandon Hawthorne? I find none. Chavis
10 Heyward? I find none. Sha'Quavon Porter? I find none.
11 Troy Anderson? I find none. Sean Allen? I find none.
12 Shanelle Toomer? I find none. Shay Campbell? Nikki
13 McCray? I find none.

14 Victor Magwood? I find none. Santresa
15 Gordon? I find none. Ray Hayward? I find none.
16 Kenneth Anderson? I find none. Tiesha Hayward? I find
17 none. Montrell Butler? I find none. Lorenzo Brown? I
18 find none. Derrick Brown? I find none. Jessica Brooks?
19 I find none. Shalimar Brisbane? I find none.

20 Jabon Johnson? Jarelle Singleton? I find
21 none. Maurice Linen? I find none. Clarence Thompson?
22 I find none. Christopher Wright? I find none. Tiffany
23 Smith? I find none. Tyh'shka Catts? Jesse McNeal?
24 Sinclair Heyward? April Blodgett, B-l-o-d-g-e-t-t? I
25 find none. Wendy Patrick? I find none. Dario Teran? I

1 find none.

2 MS. LINDER: I have -- briefly, may
3 Mr. Smiley and I approach?

4 THE COURT: Yes.

5 (Discussion held at sidebar.)

6 THE COURT: All right. This incident took
7 place, as I said, on or about July 15th, 2012 in the
8 Hollywood area of Charleston County. Started at
9 Frazier's Club and took place at the Waffle House located
10 at 3565 Savannah Highway about 4 a.m.

11 Does anybody know anything about this case?
12 Does that ring a bell with anybody? Okay. All right. I
13 find none.

14 Yes, your name and number?

15 A PROSPECTIVE JUROR: I'm juror number 195,
16 Robyn Litchfield. I knew a Kenny Barfield from high
17 school just as an acquaintance, but he became a police
18 officer. I don't know if he's the same person that you
19 mentioned.

20 THE COURT: Okay. Would that affect your
21 ability to be fair and impartial either for or against
22 the State or for or against the defense if he is called
23 as a witness?

24 THE DEFENDANT: No, sir.

25 THE COURT: What's your number again?

1 A PROSPECTIVE JUROR: 195.

2 THE COURT: Okay. Thank you.

3 A PROSPECTIVE JUROR: Your Honor, Charles
4 Patrick, 266. I for some reason did not hear you say
5 Kenny Barfield, but I do know Kenny Barfield with the
6 police department. My wife and I have -- well, we have a
7 restaurant called Fish. He works part-time in security
8 for us, so I do know him, but it wouldn't affect my
9 judgment in this case.

10 THE COURT: What was your name and number
11 again?

12 A PROSPECTIVE JUROR: Charles Patrick, and
13 it's 266. One thing I should also mention is my son,
14 also Charles Patrick, while he was a law student interned
15 with the public defender's office. You asked about the
16 solicitor's office, but not about the public defender's
17 office. That wouldn't affect my judgment in this case
18 either. I just wanted to mention --

19 THE COURT: Okay. Thank you. Yes, your name
20 and number?

21 A PROSPECTIVE JUROR: Darlene Byrd, number
22 48.

23 THE COURT: Okay.

24 A PROSPECTIVE JUROR: I had a family member
25 work with Scarlett.

1 THE COURT: What did she do?

2 A PROSPECTIVE JUROR: Your ex-wife is my
3 sister.

4 THE COURT: Well, she doesn't anymore.

5 This is my former sister-in-law. I didn't
6 even recognize her setting over there. Okay. Would it
7 affect your ability to be fair and impartial against the
8 State or the defense?

9 A PROSPECTIVE JUROR: No.

10 THE COURT: All right. Anyone else?

11 Now, again, I asked you some of these
12 questions. Let me again say if you don't want to speak
13 about this out loud, you are welcome to come down and
14 speak to me more personally. We still have to put it on
15 the record and the lawyers have to listen in, but nobody
16 else has to, but is there any member of the jury panel,
17 either you or an immediate family member or close
18 personal friends, ever even been the victim of a violent
19 crime or ever been accused of a violent crime? If so,
20 would you please stand. Okay.

21 If anybody -- when I call you or recognize
22 you, you're welcome to come down, or you can stand there
23 and tell you. So let's start with the front row here,
24 so, ma'am, you want to come down.

25 THE BAILIFF: Number 81, Melissa Dimaggio.

1 THE COURT: Okay. What would you like to
2 tell us?

3 A PROSPECTIVE JUROR: I had -- my -- an uncle
4 killed his wife, and he was never convicted, and I don't
5 believe -- I don't believe in the system. I don't think
6 I would be a good one.

7 THE COURT: You don't think you would be fair
8 for either the State or the defense?

9 A PROSPECTIVE JUROR: I think it would be too
10 emotional.

11 THE COURT: Okay. Thank you. You can be
12 seated. Yes?

13 THE BAILIFF: Number 25.

14 A PROSPECTIVE JUROR: My name is Michael
15 Baumrind. About a year ago my family and I relocated to
16 New Jersey. On June 25th of this year, a young man, my
17 son's best friend, was brutally murdered in New Jersey in
18 Essex County. They're calling one of the four men a
19 domestic terrorist. If I had the opportunity -- well,
20 I'm not going -- they're watching a number of us because
21 they're afraid of what we'll do.

22 THE COURT: Do you think that would affect
23 your ability to be fair and impartial in this case?

24 A PROSPECTIVE JUROR: Absolutely. I'm sorry.

25 THE COURT: All right. Okay. Thank you.

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A PROSPECTIVE JUROR: Thank you.

THE BAILIFF: 175, 175.

A PROSPECTIVE JUROR: My cousin was murdered
in 2010.

THE COURT: Okay. And who is this again?

A PROSPECTIVE JUROR: I'm Olivia Jones.

THE COURT: Your cousin?

A PROSPECTIVE JUROR: Will Isles. It was in
Pittsburgh.

THE COURT: Do you think this would affect
your ability in this case to be fair and impartial either
for or against the State or for or against the defense?

A PROSPECTIVE JUROR: No.

THE COURT: Great. Thank you. Juror.

THE BAILIFF: Juror 80.

THE COURT: Yes, sir?

A PROSPECTIVE JUROR: I had a family member
family member charged with attempted murder.

THE COURT: Do you think that would affect
your ability to be fair and impartial in this case,
either for or against the State or for or against the
defense?

A PROSPECTIVE JUROR: No.

THE COURT: And this family member, is he
currently being prosecuted or was?

1 A PROSPECTIVE JUROR: No. He served on his
2 charges.

3 THE COURT: Was he convicted?

4 A PROSPECTIVE JUROR: Yeah.

5 THE COURT: How long ago would you say that
6 was?

7 A PROSPECTIVE JUROR: About six months ago.

8 THE COURT: Was he prosecuted by the State,
9 the solicitor's office?

10 A PROSPECTIVE JUROR: Yes.

11 THE COURT: The local one?

12 A PROSPECTIVE JUROR: Yeah.

13 THE COURT: It was Charleston?

14 A PROSPECTIVE JUROR: Yes.

15 THE COURT: What was his name?

16 A PROSPECTIVE JUROR: Alonzo Desaussure.

17 THE COURT: You don't think that would affect
18 your ability to be fair and impartial?

19 A PROSPECTIVE JUROR: No.

20 THE COURT: Okay. Thank you.

21 THE BAILIFF: 153.

22 THE COURT: Yes.

23 A PROSPECTIVE JUROR: 153, and I have been a
24 victim of domestic violence that included shooting
25 directed at me.

1 THE COURT: Do you think that would affect
2 your ability to be fair and impartial in this case,
3 either for or against the State or for or against the
4 defense?

5 A PROSPECTIVE JUROR: No, I don't.

6 THE COURT: Okay. Great. Thank you.

7 MR. SMILEY: Your Honor, may I inquire, was
8 that prosecuted --

9 A PROSPECTIVE JUROR: It was not in the State
10 of South Carolina.

11 THE COURT: All right.

12 THE BAILIFF: 191, 191.

13 THE COURT: Yes.

14 A PROSPECTIVE JUROR: I'm Nancy Langston. I
15 personally knew Marley Lion. I'm a good friend of his
16 mother's, Linda Page, who was murdered in Charleston,
17 West Ashley, and I can't say because I don't know the
18 details of this case, how it would affect me, but I'm
19 very anti-guns, and I feel that's the cause of Marley's
20 death, was access to guns.

21 THE COURT: Well, do you think that would
22 affect your ability to be fair and impartial in this
23 case, either for or against the State or for or against
24 the defendant?

25 A PROSPECTIVE JUROR: I do not know the facts

1 of this particular case, but it did have a really big
2 affect on me to see someone's child gunned down,
3 senseless death, just because they had guns.

4 THE COURT: Okay. All right. Thank you.

5 Okay. Is there anyone else? Yes. Do you
6 want to come down?

7 A PROSPECTIVE JUROR: I can just tell you
8 it's kind of a long walk.

9 THE COURT: Name and number?

10 A PROSPECTIVE JUROR: 312, Paula Schiffiano.
11 I have two friends, close friends, whose sons were both
12 17 and 20, shot in violent episodes and killed.

13 THE COURT: Do you think that would affect
14 your ability to be fair and impartial, either for or
15 against the State or for or against the defense?

16 A PROSPECTIVE JUROR: No, sir, I don't.

17 THE COURT: Okay. Thank you. Anyone else?
18 All right.

19 MR. SMILEY: Based on those questions, Your
20 Honor -- do you want to do it now?

21 THE COURT: We'll go over them at the end.
22 Hang on.

23 Any member of the jury panel, either you or
24 an immediate family member or personal friend, ever been
25 incarcerated and you didn't already just tell me about it

1 related to last few questions?

2 Has anyone ever been a witness in a civil or
3 a criminal case? If so, please stand.

4 If you would, give me your name and number
5 and just a little bit about it, criminal case, civil
6 case, what kind of case it was.

7 A PROSPECTIVE JUROR: My name is David
8 Benfield, number 30. It was a civil case involving a
9 debt collection. I was a witness.

10 THE COURT: Okay. Thank you. Yes?

11 A PROSPECTIVE JUROR: Yes, Your Honor. Roger
12 Madison, 204. It was a child custody case a year ago.

13 THE COURT: All right. Thank you. Yes, sir?

14 A PROSPECTIVE JUROR: Eric Wooten, 396. I
15 was working with PNC Bank, and I've testified on behalf
16 of the bank in a couple of master-in-equity cases.

17 THE COURT: All right. Thank you.

18 A PROSPECTIVE JUROR: Darlene Byrd, 48. I
19 was a witness for a divorce case.

20 THE COURT: Okay. Not mine, right? All
21 right.

22 A PROSPECTIVE JUROR: Rachel Reaves, 287. I
23 was a witness in my daughter's divorce case.

24 THE COURT: Thank you.

25 A PROSPECTIVE JUROR: I'm Robert Whitemore,

1 380. I've been a witness for civil lawsuits when I was a
2 banker.

3 THE COURT: Thank you.

4 A PROSPECTIVE JUROR: Judge, Tom Tolly,
5 number 351. I'm a practicing attorney, so I'm called
6 from time to time.

7 THE COURT: Thank you.

8 A PROSPECTIVE JUROR: I'm Charles Patrick,
9 266. I was a witness in a law firm split about 12 years
10 ago.

11 THE COURT: All right.

12 A PROSPECTIVE JUROR: I'm Linda Summey. I'm,
13 I think, 343. I was law enforcement for 30 years, my
14 previous career, so I've had many cases that were
15 criminal.

16 THE COURT: Okay. Thank you.

17 Any member of the jury panel, either you or
18 an immediate family member or a close personal friend,
19 ever had a criminal charge adjudicated or currently
20 pending with the Ninth Circuit Solicitor's Office and you
21 didn't tell us about it previously? No? All right.

22 Any member of the jury panel, either you or
23 an immediate family member or close personal friend, had
24 any contact with law enforcement officials that might
25 affect your view of law enforcement? If so, would you

1 please stand.

2 All right. Any member of the jury panel
3 don't think they could be a fair and impartial juror for
4 any reason at all? It might be that -- well, I'll tell
5 you what: Let me get back to that one for just one
6 second, cover a couple of them that might wade them out.

7 Any member of the jury panel, if you have
8 ever been, even now or formerly, a law enforcement
9 employee or have any immediate family members that might
10 have been employed by law enforcement agencies, either
11 inside of South Carolina or outside of South Carolina,
12 and you didn't already disclose it to us in a earlier
13 question? All right.

14 A PROSPECTIVE JUROR: 191. My sister was a
15 police officer.

16 THE COURT: Okay. Thank you.

17 A PROSPECTIVE JUROR: David Benfield, 30. My
18 father was a state sheriff in North Carolina long ago, 56
19 years.

20 THE COURT: What was your number again?

21 A PROSPECTIVE JUROR: 30.

22 THE COURT: Thank you. Yes?

23 A PROSPECTIVE JUROR: Sharon Burns, 44 is my
24 number, and I have a cousin who was a police detective in
25 New York City.

1 THE COURT: Thank you.

2 A PROSPECTIVE JUROR: Bill Hammersley, 129.
3 My father is a customs agent.

4 THE COURT: What was your number again?

5 A PROSPECTIVE JUROR: 129.

6 THE COURT: Yes, ma'am?

7 A PROSPECTIVE JUROR: 287, Rachel Reaves. I
8 have a brother that works at a prison in the state of
9 Arizona.

10 THE COURT: All right. Yes?

11 A PROSPECTIVE JUROR: Thank you, Judge. Tom
12 Tolly, number 351. I have a former brother-in-law in the
13 Anderson County Sheriff's Office, and I have a nephew
14 that is with Anderson County SWAT, sheriff's department.

15 THE COURT: Thank you.

16 A PROSPECTIVE JUROR: Harold Perry, number
17 271. I have a son that's a law enforcement, currently
18 with DNR, and previously with Darlington Police
19 Department.

20 A PROSPECTIVE JUROR: Brian Michel, 226. My
21 brother David Michel is a magistrate judge in Mount
22 Pleasant.

23 THE COURT: Anyone else? Any member of the
24 jury panel, either you or an immediate family member,
25 ever been a member of any victims' rights or law

1 enforcement organizations, such as Darkness to Light,
2 Citizens Against Violent Crime, People Against Rape,
3 Mothers Against Drunk Driving or any community or
4 neighborhood watch programs or any programs like that?
5 If so, would you please stand.

6 Your name and number, please.

7 A PROSPECTIVE JUROR: My name's Deborah
8 Moore, and my number is 243. My mother participates in
9 Darkness to Light.

10 THE COURT: All right. Yes?

11 A PROSPECTIVE JUROR: Faith Singleton, 326,
12 and I was a member of People Against Rape when I was in
13 school.

14 THE COURT: Okay. Yes?

15 A PROSPECTIVE JUROR: Linda Summey, 343. I
16 was a rape crisis counselor for Cobb County, Georgia, as
17 well as coordinating crime watch for law enforcement.

18 THE COURT: Thank you.

19 A PROSPECTIVE JUROR: Olivia Jones, 175. My
20 sister participated in the Darkness to Light and People
21 Against Rape.

22 THE COURT: What was your number again?

23 A PROSPECTIVE JUROR: 175.

24 A PROSPECTIVE JUROR: 191. I'm a teacher at
25 Ashley Hall, and we always see the Darkness to Light

1 training.

2 THE COURT: All right. Anyone else? Okay.

3 Now, anybody know of any reason why they
4 don't think that they could be a fair and impartial
5 juror, maybe something we covered, maybe something we
6 haven't covered?

7 Remember, I told you we're looking for 12
8 people who swear that they'll be able to take an oath
9 that says, in essence, I promise that I will make my
10 decision based on what I hear in this courtroom, nothing
11 else, not what people outside think, not what groups that
12 you belong to might think, but the evidence that you hear
13 in this courtroom, and you'll take that evidence and
14 you'll apply the law that I says applies to this.

15 It might be exactly what you think the law is
16 and ought to be, but it might not be either. You might
17 go, Well, I don't like the law. I think it ought to be
18 changed, but aside from that, you can put that aside, but
19 if you have some belief that you think, well, I don't
20 have to listen to what the judge says the law is. I can
21 apply what I think is the right thing to do.

22 I'm not going to try to change your mind.
23 You can believe whatever you want to believe, but I need
24 to know what your beliefs are if they conflict with
25 you're taking that oath. Some people have religious

1 objections to serving on a jury. I have heard a lot of
2 times where they say, well, there is a verse in the Bible
3 that says don't judge other people, and they don't feel
4 like they could serve on a jury because of that.

5 Some people belong to groups that say, you
6 know what? The whole legal system in the country is
7 screwed up, and if I ever get on a jury, I promise that I
8 am going to fix it by -- some people say automatically
9 convicting everybody, or some people have a belief that
10 you ought to not convict anybody.

11 Again, this is America. I'm not going to try
12 to sit here today and change your beliefs. You can
13 believe just about anything you want to, as far as I'm
14 concerned, as long as you're not advocating the violent
15 overthrow of the government. I don't care what you want
16 to believe in. That's not my job to try to change it,
17 but what I do need you to do is tell me if you have any
18 reason at all why in good conscience you don't think you
19 could be a fair and impartial juror, both to the State of
20 South Carolina and to Mr. Brown.

21 The State's entitled to a fair trial,
22 Mr. Brown's entitled to a fair trial, and if you don't
23 think you could be fair to both those parties, then I
24 need to know about it, or we at least need to have a
25 discussion about it. Okay?

1 So if anybody has any reason at all, could be
2 something I covered, could be something that I hadn't
3 thought about, because every week I hear something
4 different, but if anybody has any reason at all why they
5 don't think that they might be able to be a fair and
6 impartial juror and they didn't already discuss it with
7 me on one of these earlier questions, would you please
8 stand. And, again, you're welcome to come forward and
9 talk about it. Okay? If that applies to anyone, please
10 stand. Okay. I find none.

11 Okay. Let me have the lawyers up here for
12 just a second.

13 (The following discussion was held at
14 sidebar.)

15 THE COURT: Any challenges for cause.

16 MR. SMILEY: Number 81.

17 THE COURT: Okay.

18 MR. SMILEY: I believe it's 25, domestic
19 terrorist.

20 THE COURT: 25, same thing?

21 MR. SMILEY: Yes, sir. Number 80 is a
22 question for both myself and --

23 THE COURT: Family member --

24 MS. LINDER: -- convicted of attempted murder
25 six months ago by my office.

1 MR. SMILEY: I don't represent Alonzo, but I
2 represent a couple Desaussures right now, so out of an
3 abundance of caution --

4 THE COURT: Are you all right with that one?

5 MS. LINDER: That's fine.

6 THE COURT: Okay.

7 MR. SMILEY: I think -- 175, I didn't find
8 her for cause, so I skipped that.

9 THE COURT: 175?

10 MR. SMILEY: I was okay with that because
11 they said they could be fair and impartial.

12 THE COURT: Okay.

13 MR. SMILEY: 191, I believe, needs to be
14 excused. That's the Marley Lion --

15 THE COURT: 191, she had a lot of different
16 reason. She's the one that was very outspoken with
17 anything having to do with a gun.

18 MR. SMILEY: Right. That's the only ones I
19 think that -- the only other two that even come up were
20 153, she was the shooting victim of domestic violence,
21 but she said she could be fair, so I don't think I have a
22 reason to strike.

23 THE COURT: Or for cause, anyway.

24 MR. SMILEY: For cause.

25 THE COURT: So 81, 25, 80, and 191, are you

1 all right with those, Stephanie?

2 MS. LINDER: Yes.

3 THE COURT: Do you have any?

4 MS. LINDER: No additional.

5 THE COURT: Okay. Anything else?

6 MR. SMILEY: Double-checking, but I think
7 we're good to go.

8 THE COURT: Okay.

9 MR. SMILEY: Yes, sir. We're good.

10 (End of sidebar.)

11 THE COURT: Okay. The way we do this in
12 criminal court is a little bit different than we do this
13 in civil court. The way we do this in criminal court,
14 the clerk in a minute is going to call out your name and
15 number. If he calls out your name and number, take your
16 belongings with you, because if you get picked, you'll go
17 straight over and sit in the jury box.

18 So you come between those doors, you come
19 between the two tables here, stand in front of the
20 podium, and turn around and face back towards the back.
21 The State gets to say first whether or not to accept you
22 or to send you back. If the State is okay with you, it
23 passes to the defense, and the defense will say either
24 seat the juror or excuse the juror.

25 If both sides accept you, you go you go sit

1 in the jury box. If either of the two strike you, you go
2 back to your seat. We'll do that until we get 12 jurors,
3 and then we'll have two alternates. Don't get upset if
4 you don't get picked. You'll still get a chance to do
5 something else this week, I'm sure, because we're doing
6 civil cases as well, so you could be on the panel for
7 those cases.

8 So, Mr. Clerk, are you ready? Five strikes
9 and ten, two and one on the alternates. Anything from
10 the State before we begin?

11 MS. LINDER: Nothing from the State, Your
12 Honor.

13 THE COURT: From the defense? All right, Mr.
14 Clerk, whenever you're ready.

15 MR. SMILEY: Yes, sir.

16 THE CLERK: Like the judge said, if your name
17 is called, bring your belongings up to the podium, turn
18 and face the parties. I'll then ask the parties
19 questions, and I'll either direct you to find a seat in
20 the jury box or you can have a seat back in the audience.

21 Juror number 30, David Benfield.

22 (The juror, a white male, approaches.)

23 What say you for the State?

24 MS. LINDER: Please present this juror.

25 THE CLERK: What say you for the defendant?

1 MR. SMILEY: Please excuse Mr. Benfield.

2 THE CLERK: Mr. Benfield, please have a seat
3 back in the audience. You've been excused from the trial
4 of this case.

5 Juror number 195, Robyn Litchfield.

6 (The juror, a white female, approaches.)

7 What say you for the State?

8 MS. LINDER: Please present the juror.

9 THE CLERK: What say you for the defendant?

10 MR. SMILEY: Please excuse the juror.

11 THE CLERK: Ms. Litchfield, please have a
12 seat back in the audience. You've been excused from the
13 trial of this case.

14 Juror number 326, Faith Singleton.

15 (The juror, a black female, approaches.)

16 What say you for the State?

17 MS. LINDER: Please present the juror.

18 THE CLERK: What say you for the defendant?

19 MR. SMILEY: Please seat the juror.

20 THE CLERK: Please have a seat in the jury
21 box. You've been selected as a juror in this case.

22 Juror number 260, Leander Orr.

23 (The juror, a black female, approaches.)

24 What say you for the State?

25 MS. LINDER: Please present this juror.

1 THE CLERK: What say you for the defendant?

2 MR. SMILEY: Please seat Ms. Orr.

3 THE CLERK: Please have a seat in the jury
4 box. You've been selected as a juror in this case.

5 Juror number 388, Hunter Windham.

6 (The juror, a white male, approaches.)

7 THE CLERK: What say you for the State?

8 MS. LINDER: Please present the juror.

9 THE CLERK: What say you for the defense?

10 MR. SMILEY: Beg the Court's indulgence.

11 Please seat Mr. Windham.

12 THE CLERK: Mr. Windham, please have a seat
13 in the jury box. You've been selected as a juror in this
14 case.

15 Juror number 363, Renee Villaume.

16 (The juror, a white female, approaches.)

17 What say you for the State?

18 MS. LINDER: Please present the juror.

19 THE CLERK: What say you for the defendant?

20 MR. SMILEY: Please seat Ms. Villaume.

21 THE CLERK: Please have a seat in the jury
22 box. You've been selected as a juror in this case.

23 Juror number 330, Michelle Smith.

24 (The juror, a white female, approaches.)

25 What say you for the State?

1 MS. LINDER: Please seat the juror.

2 THE CLERK: What say you for the defendant?

3 MR. SMILEY: Please seat Ms. Smith.

4 THE CLERK: Please have a seat in the jury
5 box. You've been selected as a juror in this case.

6 Juror number 172, Judith Jones.

7 (The juror, a white female, approaches.)

8 What say you for the State?

9 MS. LINDER: Please present this juror.

10 THE CLERK: What say you for the defendant?

11 MR. SMILEY: Please excuse Ms. Jones.

12 THE CLERK: Ms. Jones, please have a seat
13 back in the audience. You've been excused from this
14 case.

15 That's three strikes for the defendant.

16 Juror number 156, Bryan Hunter.

17 (The juror, a white male, approaches.)

18 What say you for the State?

19 MS. LINDER: Beg the Court's indulgence.

20 Please excuse this juror.

21 THE CLERK: Please have a seat back in the
22 audience. You've been excused from the trial of this
23 case.

24 Juror number 44, Sharon Burns.

25 (The juror, a black female, approaches.)

1 What say you for the State?

2 MS. LINDER: Please present this juror.

3 THE CLERK: What say you for the defendant?

4 MR. SMILEY: Please seat Ms. Burns.

5 THE CLERK: Please have a seat in the jury

6 box. You've been selected as a juror in this case.

7 Juror number 344, Linda Summey.

8 (The juror, a white female, approaches.)

9 What say you for the State?

10 MS. LINDER: Please seat this juror.

11 THE CLERK: What say you for the defendant?

12 MR. SMILEY: Please excuse Ms. Summey.

13 THE CLERK: Please have a seat back in the

14 audience. You've been excused from the trial of this

15 case.

16 Juror number 398, Pamela Young.

17 (The juror, a black female, approaches.)

18 THE CLERK: What say you for the State?

19 MS. LINDER: Please seat this juror.

20 THE CLERK: What say you for the defendant?

21 MR. SMILEY: Please seat Ms. Young.

22 THE CLERK: Please have a seat in the jury

23 box. You've been selected for the trial of this case.

24 Juror number 229, Steven Miller.

25 (The juror, a white male, approaches.)

1 What say you for the State?

2 MS. LINDER: Please present the juror.

3 THE CLERK: What say you for the defendant?

4 MR. SMILEY: Beg the Court's indulgence.

5 Please seat Mr. Miller.

6 THE CLERK: Mr. Miller, please have a seat in
7 the jury box. You've been selected as a juror in this
8 case.

9 Juror number 284, David Price.

10 (The juror, a white male, approaches.)

11 THE CLERK: What say you for the State?

12 MS. LINDER: Please present this juror.

13 THE CLERK: What say you for the defendant?

14 MR. SMILEY: Please excuse Mr. Price.

15 THE CLERK: Please have a seat back in the
16 audience. You've been excused from the trial of this

17 case.

18 Juror number 196, Heather Lloyd.

19 (The juror, a white female, approaches.)

20 What say you for the State?

21 MS. LINDER: Please present this juror.

22 THE CLERK: What say you for the defendant?

23 MR. SMILEY: Please seat this juror.

24 THE CLERK: Ms. Lloyd, please have a seat in
25 the jury box. You've been selected as a juror in this

1 case.

2 Juror number 312, Paula Suzette Schiffiano.

3 (The juror, a white female, approaches.)

4 What say you for the State?

5 MS. LINDER: Please present this juror.

6 THE CLERK: What say you for the defendant?

7 MR. SMILEY: Please excuse Ms. Schiffiano.

8 THE CLERK: You may have a seat back in the
9 audience. You've been excused from the trial of this
10 case. That's six strikes for the defendant.

11 Juror number 266, Charles Patrick.

12 (The juror, a white male, approaches.)

13 What say you for the State?

14 MS. LINDER: Please present this juror.

15 THE CLERK: What say you for the defendant?

16 MR. SMILEY: Please seat Mr. Patrick.

17 THE CLERK: Please have a seat in the jury
18 box. You've been selected for the trial of this case.

19 Juror number 354, Yi Tsai.

20 (The juror, an Asian female, approaches.)

21 What say you for the State?

22 MS. LINDER: Please present this juror.

23 THE CLERK: What say you for the defendant?

24 MR. SMILEY: I'm not going to attempt the
25 last name. Please seat the juror.

1 THE CLERK: Please have a seat in the jury
2 box. You've been selected as a juror in this case.

3 Juror number 332, Thomas Smith.

4 (The juror, a white male, approaches.)

5 What say you for the State?

6 MS. LINDER: Please present this juror.

7 THE CLERK: What say you for the defendant?

8 MR. SMILEY: Please excuse Mr. Smith.

9 THE CLERK: Mr. Smith, please have a seat
10 back in the audience. You've been excused from the trial
11 of this case.

12 Juror number 174, Nathaniel Jones.

13 (The juror, a white male, approaches.)

14 What say you for the State?

15 MS. LINDER: Please present this juror.

16 THE CLERK: What say you for the State?

17 MR. SMILEY: Please excuse Mr. Jones.

18 THE CLERK: Mr. Jones, please have a seat
19 back in the audience. You've been excused from the trial
20 of this case.

21 Juror number 225, Gretchen Meyer.

22 (The juror, a white female, approaches.)

23 What say you for the State?

24 MS. LINDER: Please present this juror.

25 THE CLERK: What say you for the defendant?

1 MR. SMILEY: Please excuse Ms. Meyer.

2 THE CLERK: Please have a seat back in the
3 audience. You've been excused from the trial of this
4 case. That's nine strikes for the defendant.

5 Juror number 300, Alexander Robbins.

6 (The juror, a white male, approaches.)

7 What say you for the State?

8 MS. LINDER: Please excuse the juror.

9 THE CLERK: Please have a seat back in the
10 audience. You're excused from the trial of this case.

11 Juror number 351, Clarence Tolly.

12 (The juror, a white male, approaches.)

13 What say you for the State?

14 MS. LINDER: Beg the Court's indulgence.

15 Please present this juror.

16 THE COURT: What say you for the defendant?

17 MR. SMILEY: Beg the Court's indulgence.

18 Please excuse Mr. Tolly.

19 THE CLERK: Please have a seat back in the
20 audience. You've been excused from the trial of this
21 case.

22 Juror number 297, Judy Risher.

23 (The juror, a white female, approaches.)

24 What say you for the State?

25 MS. LINDER: Please present the juror.

1 THE CLERK: Any challenge from the defendant?

2 MR. SMILEY: No challenge. Please seat the
3 juror.

4 THE CLERK: Have a seat in the jury box.
5 You've been selected as a juror in this case.

6 Now picking for the first alternate.

7 MR. SMILEY: My understanding was one and two
8 per alternate?

9 THE COURT: Yes.

10 THE CLERK: Juror number 48, Darlene Byrd.

11 (The juror, a white female, approaches.)

12 What say you for the State?

13 MS. LINDER: Please present this juror.

14 THE CLERK: What say you for the defendant?

15 MR. SMILEY: Please seat Ms. Byrd.

16 THE CLERK: Please have a seat in the jury
17 box. You've been selected as a juror in this case.

18 Picking for the second alternate, juror
19 number 139, Carol Heinle.

20 (The juror, a white female, approaches.)

21 What say you for the State?

22 MS. LINDER: Beg the Court's indulgence.

23 Please present this juror.

24 THE CLERK: What say you for the defendant?

25 MR. SMILEY: Please present the juror.

1 THE CLERK: Please have a seat in the jury
2 box. You've been selected a juror in this case.

3 Judge, the jury has been selected and seated.

4 THE COURT: All right. Anything further from
5 the State?

6 MS. LINDER: Nothing from the State.

7 THE COURT: From the defense?

8 MR. SMILEY: No.

9 THE COURT: Folks, you are our jury now for
10 the case, and we are going to begin tomorrow morning. So
11 I'm going to send you right now with the bailiffs, and
12 they'll show you where you are to report tomorrow
13 morning. You don't go back to the courtroom, you go back
14 in the jury room behind the courtroom. So they'll show
15 you how to go in and out of the courtroom.

16 We'll start back at 9:30, so if y'all would
17 try to get here by 9:15, 9:20, that way can you talk for
18 a few minutes and get to know each other. I would like
19 to let the jury pick their foreperson, if you want, your
20 first attempt to make a group decision, and somebody may
21 want to do it and everybody else may not want to.

22 You don't get any extra pay to do it, but all
23 you have to do is handle the verdict at the end of the
24 thing. The only people who can't be the foreperson of
25 the jury are the two alternates, but anybody that wants

1 to be the jury foreperson. If you can't pick somebody,
2 I'll pick somebody.

3 Now, you don't know much about the case, but
4 these are standard instructions that I give you every
5 time we do take a break from the case, especially at the
6 end of the day. Don't talk about the case with anybody.
7 That includes other members of the jury panel or anybody
8 that approaches you to talk about the case.

9 Don't contact -- or don't talk to family
10 members about the case or your friends or neighbors or
11 your bartenders, whoever. Remember, tomorrow morning
12 when we start this thing off, I'm going to have you take
13 an oath, and it says I promise that I will make my
14 decision based on what I hear in this courtroom and the
15 law that the judge tells me, nothing else.

16 So it's not fair to these parties if you're
17 out being influenced by other people, and if they're even
18 just telling you about what you heard in here, that's
19 going to influence you, and that is an improper
20 influence. So out of a sense of fairness, really, is why
21 we have this rule, so don't talk about this case with
22 anybody.

23 Obviously, the first thing that's going to
24 happen is when you walk in the door and you have a family
25 member there, they're going to say, Hey, did you get

1 picked for a jury?

2 You're going to say, Yeah, I did. It's a
3 murder case, and beyond that, I don't know anything about
4 the case, and the judge told me I can't talk about the
5 case. So please abide by that. It presents a lot of
6 problems if you do, and you're violating a Court order,
7 and I got to deal with that, so let's just avoid that.

8 Now, other times, people, when they get on a
9 case, now that you're on it, you get invested in it, so
10 these days people get on the Internet. They want to
11 start looking up cases, see if there was anything in the
12 newspaper about this case, you know, doing things like
13 Googling and sometimes you get people that want to ride
14 out and look at the scene. Don't do that. If we need to
15 take you to the scene, we'll take you to the scene.
16 Court records and things like that are available online.
17 Don't do that.

18 Again, anything that you need to know to make
19 your decision at the end of the trial we'll tell you
20 about in this courtroom, and that's what you promised
21 that you'll make your decision on, not what your own
22 investigation found out, not what anybody else tells you
23 about it, and not anything you read in the newspaper,
24 stuff like that. But if you read the newspaper and
25 tomorrow morning you wake up and you find out, oh, this

1 goes is going on, please don't read the article.

2 That goes not only for tomorrow, but
3 throughout the week. It's just somebody writing about
4 somebody, and it may be stuff that you didn't know about.
5 So, again, improper influence. Another thing that we
6 have to talk to you about not doing now is putting stuff
7 on social media. Now, believe me, the reason why we're
8 doing this is because people do it. The first thing a
9 lot of people do is they'll go on Facebook or some other
10 one of these social media things and say, I'm on a jury,
11 and other people will want to comment or do things like
12 that.

13 Again, those are all improper, to do anything
14 like that, so don't post anything on Facebook or any
15 social media. Don't go on Twitter and start tweeting and
16 doing all those things. I know it sounds crazy, but
17 people do it, and that's not proper and I need to
18 instruct you firmly not to do anything like that this
19 week.

20 You'll have the opportunity to talk about
21 this case for the rest of your life once it's over with.
22 You can talk to anybody after the case is over with, read
23 anything, write anything to your heart's content after
24 this case is over with, but from now until the time you
25 come back with a verdict, it's just what you hear in this

1 courtroom is the only thing you need to have influencing
2 your mind.

3 So go with the bailiff now. We'll show you
4 where to report to tomorrow morning, and we'll get
5 started at 9:30. Thank you so much for your patience
6 today, and you're free to go after they show you where to
7 go.

8 (Jury dismissed.)

9
10 The clerk tells me they don't need you for
11 the rest of the cases today, so you're free to go for the
12 rest of the day. You don't have to come back after
13 lunch, so if you wanted to go hang around downtown, you
14 can. Today is your day. If you want it, you got it.

15 Now, there is a telephone number you have to
16 call after 6:00. That will tell you if you need to
17 report back tomorrow. It may just tell you to come back
18 tomorrow after 6:00. It keeps you from having to report
19 every day. If we don't need you, we don't want to
20 disrupt your life anymore.

21 All week long you don't have to do that.
22 Just call the telephone number after 6:00. Now, right up
23 until 6:00 sometimes they haven't posted a new message,
24 so call after 6:00. If you get a busy signal, keep
25 trying because there are a number of people that are

1 trying to call. Just call after 6:00 until you get the
2 message, and they'll tell you whether to report tomorrow
3 or just call back after 6:00.

4 Thank you so much for your patience.

5 (Jury panel dismissed.)

6 THE COURT: All right. Anything we need to
7 deal with before tomorrow morning?

8 MR. SMILEY: I don't believe so, Your Honor.
9 Pretrial wise --

10 THE COURT: We don't need to do Jackson Denno
11 or anything?

12 MR. SMILEY: All the issues we've agreed on,
13 for instance, Jackson v. Denno is my client made
14 in-custody statements, as I believe Ms. Linder's position
15 is she doesn't get to introduce my client's statements,
16 so given that, we don't need one.

17 THE COURT: Okay.

18 MR. SMILEY: We won't need one. There is a
19 multitude of IDs in this case, but my understanding is
20 she does not intend to use them up front, or, if she
21 does, we'll take it up as she goes, because literally
22 there is -- as many as I've ever seen in a case.

23 MS. LINDER: Judge, I don't intend to use any
24 photo lineups that were done by law enforcement, so no
25 hearing is needed.

1 MR. SMILEY: My point is we've covered them,
2 but they can change, Your Honor. There's three issues in
3 this case that is going to be sitting on the sidelines
4 that we just need to know about. The victim of the
5 attempted murder will not be here. He's in a hospital in
6 Georgia.

7 MS. LINDER: He is in a mental institution in
8 Florida now.

9 MR. SMILEY: He's in Florida, so --

10 THE COURT: He's unavailable.

11 MR. SMILEY: -- he's unavailable, but I think
12 we agreed through Crawford that he can't enter a
13 statement unless he meets some other steps. I don't
14 think it's going to come up, but it's going to be setting
15 on the sidelines in this case.

16 The next one is going to be the involvement
17 of ex-deputy Detective Charles Lawrence in this case. I
18 don't believe I can ask about the improprieties that he
19 had on the job, even though they come really close,
20 unless the door is open, so I'm going to be real careful
21 not to do anything with that unless the door is open, and
22 if I think the door is open before I go into it, I told
23 Ms. Linder we'll approach and talk about it, but that's
24 going to be sitting on the sidelines. We thought you
25 should be aware of that.

1 And then the third one that is sitting on the
2 sidelines in this case, the third party guilt is a
3 friend/acquaintance of Mr. Brown's is a fellow named
4 Derrick Brown. Little Scrappy, is how I know him. It's
5 his mother that was having relations with Detective
6 Lawrence who's involved in this case, and I have a good
7 faith argument that Scrappy is the shooter in this case.
8 I know -- he subsequently was charged in another case.

9 I am not going to cross any lines about
10 third-party guilt, but I'm going to be -- I have to walk
11 close to those lines, so I'm walking a tightrope. I
12 understand very clearly what I can and can't do, but it's
13 going to be sitting on the sidelines, Judge.

14 THE COURT: Okay.

15 MR. SMILEY: Fair enough? I know you don't
16 like it, but fair enough.

17 We're going to go over the evidence, the
18 exhibits ahead. I've agreed to some of the chain of
19 custody so we don't have to go through every single step
20 to shorten it up. The pictures, I think, we'll be able
21 to agree to ahead of time, so I think as far as that
22 goes, it's not going to be anything about that.

23 I'm trying to think if there is anything else
24 we need to cover. I think we pretty much agree on
25 things, but any of those can come undone at some point in

1 time, I guess is what I'm saying.

2 THE COURT: Okay.

3 MR. SMILEY: Fair enough? Not really.

4 THE COURT: All right. Mr. Brown, stand up a
5 second. We started to talk about this before. I want to
6 put this in your thought pattern now.

7 You're charged with murder, which has a
8 minimum 30 years. Life without parole is the maximum,
9 attempted murder, which is zero to 30 years, and
10 possession of a firearm during the commission of a
11 violent crime, I think that's an extra five.

12 As I told the jurors, you probably heard,
13 you're on trial, but you don't have to testify. You
14 don't have to prove your innocence. They have to prove
15 you're guilty. The only thing you got to do is show up
16 for trial, and you've done that, okay?

17 You can set there the whole trial and not say
18 a word. You can have Mr. Smiley call witnesses if you
19 want. He'll have the opportunity to cross-examine any
20 witnesses the State puts up. He can challenge the
21 admissibility of any evidence they offer.

22 At the same time, you don't have to offer any
23 witnesses. You don't have to put up any evidence, and,
24 most importantly, you don't have to testify if you don't
25 want to. You have the right to testify, but you also

1 have the right not to testify. If you decide you want to
2 testify, you will be placed under oath. Sometimes people
3 have prior convictions which the law says may be used to
4 introduce if it has -- if it's likely that that might
5 affect your ability -- or might affect the jurors'
6 outlook on whether or not you're telling the truth,
7 that's four impeachment purposes, is what we call that.

8 In other words, they say, Look, this person
9 got convicted of this kind of crime, and because they got
10 convicted of this kind of crime, it's likely that they're
11 going to get up on the witness stand and lie.

12 Now, I've read the pretrial briefs that the
13 State put in, and you have some prior convictions, but
14 they're not of the type that get allowed in for those
15 purposes, so at this point in the trial, I'm
16 understanding that the State is not going to try to put
17 in evidence of your prior convictions if you testify.
18 All right?

19 So that's really off the table, but I wanted
20 to let you know that. So this right to testify is your
21 right. It's not Mr. Smiley's right. He's your lawyer.
22 He's advising you on this, but you have, and I have,
23 everybody in this courtroom has, certain constitutional
24 rights that only we can exercise and only we can give up,
25 or waive. All right? The right to testify, the right to

1 put up evidence is yours and yours alone. You don't have
2 to decide at this moment if you want to testify or if you
3 even want to put up any evidence at all, call any
4 witnesses, but at some point in this trial, you likely
5 will have to make a decision as to whether or not you
6 want to testify, tell your side of the story to the jury.

7 You don't even have to tell me now if you
8 want to testify. I'm just letting you know that we're
9 going to have to revisit this or have this discussion
10 again before this trial is over with. All right?

11 So my advice to you at this point is you're
12 thinking about it. You got two lawyers here, very fine
13 lawyers. Talk it over with them. Get their advice. Ask
14 for their suggestions. If you got any family members or
15 anything like that, people whose opinions you value
16 greatly, you might want to run it past them, but at the
17 end of the day, it's your decision and your decision
18 alone, so talk to your lawyers.

19 See what they suggest. You all got a
20 strategy. Even if you plan to testify at this point, you
21 can change your mind or not, but even at this point, if
22 you don't plan to testify you, can change your mind and
23 testify. This is something that you and you alone will
24 have to decide further on down the road in this trial.

25 Do you understand that.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Any questions you want to ask me
3 about that?

4 THE DEFENDANT: No, sir.

5 THE COURT: All right. Good enough. We've
6 covered that.

7 Let's plan to meet here tomorrow morning a
8 little bit before 9:30, and we'll try to get started
9 before then. If anything comes up, let me know. Thanks.

10 (Recess taken.)

11 (September 16, 2014.)

12 THE COURT: All right. Folks, welcome.

13 Thank you for your patience. You would think today was a
14 Monday.

15 What normally takes about five minutes took
16 about 35 minutes, and there's just days where that
17 happens, and that had nothing to do with this trial. It
18 had to do with docket sounding for trials coming up in
19 another few weeks. We had a couple snafus, but we got it
20 worked out and we're all here. So.

21 99 percent of the time when I say we're going
22 to start at such and such a time, we do, and, trust me,
23 the last thing I want you to do is have you folks setting
24 around waiting on us to do something and have you brought
25 into court. My position is we're inconveniencing you

1 enough, and if you're here in this building, you need to
2 be in the courtroom to the extent that we can do that, so
3 I apologize for that delay, and hopefully we won't have
4 any more of them this week.

5 This case is expected to take the week, and
6 we'll probably be here till Friday, but I think if we all
7 work hard, we'll get it done by Friday, and there won't
8 be any need to be here next week or anything like that.
9 I know everybody wants to know how long they're going to
10 be here, but from what I have gathered from all the
11 parties, there is an excellent chance that we'll get it
12 all done this week.

13 So hopefully I didn't jinx it by saying that,
14 but that's the plan. So first thing we need to do is
15 have the clerk administer the oath to you, so, if you
16 would, stand and raise your right hand.

17 (Jury duly sworn.)

18 THE COURT: I want to give you a little
19 preview of what we'll be doing and some of the procedures
20 that we'll follow.

21 I understand, Mr. Patrick, you got elected to
22 be the foreperson. Congratulations there. We appreciate
23 it. We have some rules of procedure and some rules of
24 evidence, and I need to explain to you, we've got some --
25 everybody has got a function here in this courtroom,

1 whether you're a spectator or a party or a witness. I
2 recognize the vast majority have never served on a jury
3 before, and you pretty know from what you've seen on
4 TV or movies and that's about it. Some of you may have
5 served on a civil trial before, and if so, there's a
6 difference in some of the things we do in a civil and a
7 criminal case, so I just want to go over that with you,
8 and it might help you understand some of the things that
9 we do and why we do them.

10 This is a criminal case, as I told you. This
11 is the State of South Carolina versus Deonte Stephen
12 Brown, and you met Mr. Brown yesterday and his lawyer.
13 You met the prosecutors. The State of South Carolina has
14 charged Mr. Brown with murder, attempted murder, and
15 possession of a firearm during the commission of a
16 violent crime.

17 As I told you yesterday, he pled not guilty
18 to those charges, and so it is the State's burden to
19 prove to the 12 of you now that he is guilty of these
20 charges beyond a reasonable doubt.

21 He doesn't have to prove that he's innocent.
22 The only thing he's got to do is show up, and he's
23 setting right over there, so he's done all he has to do.
24 From this point on, the State has got to convince you
25 that he's guilty. He doesn't have to prove that he's

1 innocent.

2 That's an important constitutional right that
3 all of us have, not just Mr. Brown, you and I and
4 everybody that's a citizen of this country have that
5 right, so it's not one of those theoretical rights that
6 we talk about. It's a big deal. All right?

7 So the fact that he got charged with a crime
8 doesn't mean anything to you in your deliberations. In
9 the eyes of the law, he's setting over there right now
10 deemed to be not guilty of these charges. He doesn't
11 have to prove a thing. The State has to prove he's
12 guilty of these charges.

13 So just the fact that he got arrested
14 shouldn't enter into your mind at all during your
15 deliberations and your thought processes. The State
16 brings these charges under these documents that we called
17 an indictment, and as I told you yesterday, I don't want
18 to get into a long historical history lesson as to why we
19 have indictments, but the bottom line is, the indictments
20 are just charging documents. It lets him know what he's
21 charged with, and it gives this Court jurisdiction to
22 hear the case.

23 The only reason that I bring this up at this
24 point is to tell you that these three indictments are
25 going to go back in the jury room with you, but they're

1 not evidence. All right?

2 They're the only pieces of paper that are
3 going to go back in the jury room that are not evidence,
4 and the only reason they're going back is because on the
5 back of them is where the foreman writes the verdict.
6 Okay? So anything else that goes back with you when
7 you're deliberating is stuff that got put into evidence.

8 It's an important thing to remember. You, as
9 the jurors, are the judges of the facts, and there's
10 going to be disputed facts. It's up to you to decide how
11 to resolve them. You do things like judge the
12 credibility of witnesses, listen to what they say. Do
13 they have an interest, a bias, in the outcome of the
14 lawsuit? Does what they say make sense?

15 You use your common sense to decide things
16 like that, but you base that on evidence, and that's --
17 the oath that you just took, said, in essence, you
18 promise you will make your decision this week based on
19 the evidence that you hear in this courtroom and the law
20 that I tell you that applies to the facts.

21 As the jury, you're the judges of the facts,
22 and wherever there is a dispute in the facts, you resolve
23 it. I don't resolve the facts. I tell you what the law
24 is, and I make sure I preside over the trial and follow
25 our rules of procedure and our rules of evidence, but

1 whatever these folks say, if there is a difference
2 between what one witness says over another witness,
3 that's for you to resolve. I don't have an interest in
4 the outcome of this case any more than you do.

5 We went through this process yesterday,
6 choosing 12 people and two alternates that don't have a
7 dog in the fight, so to speak. We went through you don't
8 know the parties, you don't know anything about the case,
9 you don't, you know, have an interest in what it is,
10 other than you promised that you will listen to what is
11 presented in this courtroom.

12 Now, evidence is people getting up on that
13 witness stand, being placed under oath, and telling you
14 what they heard, they saw, they felt, they touched, they
15 smelt. That's evidence. All right? Documents that get
16 put into evidence, that's evidence. Pictures, it might
17 be a weapon. That sort of thing, those things are
18 evidence.

19 The lawyers getting up, that's not evidence.
20 When they say something, that's not to be considered by
21 you as evidence. They weren't witnesses. If they were
22 witnesses, they wouldn't be allowed to represent people
23 in this courtroom. They would be brought in, put under
24 oath, and they would tell you what they heard, they saw,
25 they touched, they felt, they smelt, that sort of thing.

1 So when the lawyers say something, don't consider that as
2 evidence.

3 When a lawyer asks a question to a witness,
4 that is not evidence. The answer to the question, that's
5 evidence. Okay? And the reason why I stress this is
6 because you're going to hear from the lawyers, probably
7 more than you hear from anybody else, because in a
8 minute, I turn it over to the State. They put their case
9 up first, and so you hear a lot of lawyers asking
10 questions and saying things like that, and so you might
11 the get lulled into going, Yeah, well, that's what the
12 lawyer said. That's what the lawyers said.

13 Lawyers are not testifying, and what they say
14 isn't to be considered by you as evidence. All right?
15 So keep that in mind.

16 You're judges of the facts. I'm the judge of
17 the law. So my job is two-fold: First is to preside
18 over the trial and make sure that both sides get a fair
19 trial. Remember, a lot of times I had to ask people,
20 well, you might know somebody or you might have had, you
21 know, some reason to stand up, but I said does that
22 affect your ability to be fair and impartial to both the
23 State and to the defense? Because the State of South
24 Carolina is entitled to a fair trial. Mr. Brown is
25 entitled to a fair trial, all right?

1 So my job is to make sure both sides get a
2 fair trial. To the extent it's possible, we try to not
3 make any mistakes because at the end of the day, if there
4 is any evidence at all to support your verdict, if it
5 goes up on appeal, they affirm the verdict, if there is
6 any evidence in the record to support what you guys
7 decide factually.

8 What normally happens if there is ever an
9 appeal from the case and they say somebody made a
10 mistake, it's on the judge; either the judge didn't do
11 something right along the way or I charged you
12 incorrectly on the law at the end of the trial, because
13 that's the other function that I have. Other than making
14 sure the trial follows the rules that we're supposed to
15 follow, I tell you what the law is.

16 He's charged with murder. I tell you what
17 the law is. I tell you what the law is on attempted
18 murder, and I tell you what the law is on possession of a
19 firearm. Those are substantiate law elements. I tell
20 you what those are.

21 There are some procedural rules that we make
22 sure we follow, and some preliminary -- you know, applies
23 to every kind of case sort of rules, but that's another
24 part of my job. So when we're going through a trial,
25 sometimes you'll hear lawyers stand up and say,

1 Objection.

2 Everybody has seen that on TV or a movie or
3 something like that, and everybody goes, Something is
4 getting ready to happen. That is what "objection" means.
5 It's kind of like a code word to the judge. Judge, it's
6 time for you to make a ruling here.

7 Now, we're not trying to hide anything from
8 you when we do that. That's not the whole purpose of
9 that. The purpose is to say, Judge, you need to make a
10 decision. The evidence that these folks have, that are
11 supposed to hear, is what we try -- what we call it
12 legally competent evidence. In other words, we've gone
13 through hundreds of years of trials to come up with a way
14 to get evidence to people in the best form that's
15 possible, all right? And we need to follow those rules
16 of evidence, and so I have to rule on whether something
17 that you're supposed to hear or maybe that somebody is
18 getting ready to say something that you're not supposed
19 to hear.

20 Most of the time, when somebody makes an
21 objection, one of the lawyers will say objection, I can
22 just rule on it, based on the context, okay, because I've
23 been doing this for a little while. Most of the time I
24 can pick it up, but sometimes I might have to say, I'll
25 have y'all come up here and tell me what it is -- what is

1 your basis for your objection, just out of your earshot,
2 because it really doesn't make a whole lot of sense to
3 let you hear something and then I have to say, well,
4 disregard that.

5 I mean, legally, I can do that, but it's kind
6 of hard to un-forget something that you weren't supposed
7 to hear, so we try to cut that down as much as we
8 possibly can. So I might have them come up here and tell
9 me exactly what their problem is on what is getting ready
10 to be said.

11 Sometimes I have to send you out of the room
12 so I can hear what a witness has to say, and then I can
13 make a decision as to whether or not it's proper for you
14 to hear it. Again, we're not trying to hide anything
15 from you. We're just trying to do this correctly,
16 because we just want to do it one time. Nobody wants to
17 try a case twice, especially after it gets up on appeal
18 after a couple of years.

19 So we're just trying to do it one time, do it
20 correctly. We're not trying to hide anything from you.
21 Most importantly, I don't want you to think the lawyers
22 are trying to hide anything from you. They're just doing
23 their job, so we just want to do this correctly one time,
24 so just bear with us through things like that.

25 Now, we got some procedural rules that we

1 follow, and they all flow from the fact that the State
2 has the burden of proof in this case. All right? As I
3 told you, Mr. Brown doesn't have to put up any evidence.
4 He doesn't want to testify, and this is important, and
5 I'll probably drill it into you more than one time.
6 Mr. Brown doesn't have to testify if he doesn't want to,
7 and that is a constitutional right that he has. If he
8 wants to, he can, but if he doesn't want to, he doesn't
9 have to, and you can't hold that against him while you're
10 deliberating your verdict, all right? Because he doesn't
11 have the burden of proof in this case, so I know the
12 temptation might be there for you to say, well, you know,
13 everybody needs to get up and testify.

14 Absolutely not. That is not the law, and as
15 part of your oath that you just took, you have to abide
16 by your oath, and I'm telling you, the law is, you don't
17 hold that against him if he doesn't testify when you're
18 deliberating, because that's a constitutional right.

19 And, again, it flows back from the State has
20 the burden of proof. So the State gets to call their
21 witnesses first, because they have to meet a certain
22 burden before I can even let you guys decide whether or
23 not to continue with the case. Beyond a reasonable doubt
24 is the burden of proof of evidence that they have to
25 present in order to convince you.

1 Now, you probably heard that word before,
2 beyond a reasonable doubt. All right? I'll bet every
3 single one of you have heard it. Either you were in a
4 jury trial before or, more likely, heard it from TV or
5 movie or maybe read it in a book or something like that,
6 but when you stop and think about it, you go, Well, I
7 don't know exactly what that means.

8 What does beyond a reasonable doubt mean?
9 Well, the law says basically you have to be firmly
10 convinced of the defendant's guilt in order to convict
11 him, and that's what beyond a reasonable doubt means.

12 So after the State has presented all the
13 evidence in order to convince -- or convict Mr. Brown,
14 after you've heard all the evidence, you have to be
15 firmly convinced he's guilty of this charge. That means
16 beyond a reasonable doubt, and if you're not firmly
17 convinced, the State hasn't met its burden of proof. You
18 have to acquit him or find him not guilty. It's that
19 simple because, again, he doesn't have to prove anything.
20 They have to prove it, so that's the burden of proof in
21 that.

22 Now, several of you are probably thinking,
23 All right. I still don't quite grasp it, because you're
24 visual learner. Most of us are, really. I see things
25 and I understand it a little bit better than when

1 somebody tells me something. So you've seen those scales
2 of justice where lady justice is out there holding the
3 two things in her hands like that and weighing things.
4 The scales of justice might help you understand that
5 concept of beyond a reasonable doubt a little bit easier.

6 In a civil case, which Judge Jefferson is
7 trying down the hall, in a civil case like that, the
8 person that brings the lawsuit is the plaintiff. The
9 person that gets sued is called the defendant, but the
10 plaintiff in a civil case has the burden of proof. They
11 have to prove what they've alleged in their complaint,
12 but the burden of proof in a civil case is only what we
13 call a preponderance of the evidence. Stated another
14 way, is whatever somebody is trying to prove more likely
15 true than not true, or, stated even another way, the
16 greater weight of the evidence.

17 Again, if you think you were confused before
18 I said that, you're probably even more confused now,
19 because those are three things that just -- lawyers
20 haggle over those words, and we've come up with that, but
21 I understand most of you probably are still struggling
22 with that concept, so it has to do with the scales.

23 We have a plaintiff in a civil case and a
24 defendant in a civil case, and those scales are even at
25 the beginning of the trial, all right? For the plaintiff

1 to meet their burden of proof in a civil case, they just
2 have to tip those scales, even if it's just a slight bit,
3 and they've met the burden of proof and they're entitled
4 to a verdict.

5 But if the scales are still even, or maybe
6 the jury feels like the defendant might be, you know,
7 entitled to a verdict, then they tip the scales that way.
8 The plaintiff hasn't met their burden of proof, and in a
9 civil case, that means the defense wins, but all the
10 plaintiff has to do in a civil case is just tip the
11 scales a little bit and they've met the burden of proof.
12 All right? That's a civil case.

13 That's not the rule in this kind of case. In
14 this kind of case, those scales start out even, but the
15 State, in order to meet that heavy burden of proof, has
16 to tip those scales quite a bit. All right? Civil case
17 is just a little tip, but in a criminal case like this,
18 it's a large amount that they have to meet that burden of
19 proof. It's a heavy burden of proof, but that's what the
20 law says the State has in a criminal case. So,
21 hopefully, that made it a little bit clearer, and,
22 remember, the State has the burden of proof. Mr. Brown
23 doesn't have any burden at all. Okay?

24 Now, because the State has the burden, they
25 get to call their witnesses first. That means they call

1 all the witnesses they want, and they get to ask the
2 questions first. And when the side calls a witness and
3 asks a question, we call that direct examination, but
4 Mr. Smiley will get to ask questions too. That's called
5 cross. Y'all have probably heard most of these phrases
6 before, but this is maybe the first time you've actually
7 seen them in action, all right?

8 So you have the side that calls the witness
9 ask questions first. That's direct examination, and then
10 the other side gets to ask questions. That's called
11 cross-examination, and then I allow just one follow-up
12 round of questions. So we have direct, cross, redirect,
13 recross, then we move on to the next witness, because I
14 assure you, not just speaking about these lawyers, but
15 lawyers in general will talk all day long, all right?
16 And they'll think of all the questions in the world, so I
17 just cut it off after two rounds, all right, and we move
18 on to the next witness.

19 So the State gets to call their witnesses
20 first. After they call all of their witnesses, Mr.
21 Brown, if he wants to call any, can, but, anyway, he may
22 just sit there and go, I don't want to call any
23 witnesses. He doesn't have to, and, again, you don't
24 hold it against him if he doesn't call any witnesses.

25 Now, the last thing I'm going to go over with

1 you is what we'll do next, and that is a procedural
2 thing. I let the lawyers come up and give you what we
3 call opening statements, all right? That's what I call
4 the Reader's Digest condensed version of case. It helps
5 you to hear the opening statement first so you'll have
6 some context of what you're going to be hearing because
7 if we didn't do this, you would hear bits and pieces.

8 Every witness is going to tell you something
9 different, a different part of what they saw, and so if
10 we did that and you waited till the end, you wouldn't
11 know exactly where we're going. So this is kind of like,
12 This is where we're headed, and you give them an opening
13 statement. Each side will get to do it.

14 Remember, it is just the lawyers up there
15 talking. What they say is not to be considered by you as
16 evidence, all right? It's just them talking.

17 Once they make their opening statements,
18 they'll go right into the presentation of the case.
19 State will get to call their witnesses first, so on.
20 When we're done with all the evidence, I'll let them come
21 back up. They make closing statements. At that point,
22 you've heard all the evidence, so they're going to
23 discuss the evidence that you heard. They know what the
24 law is I'm going to preview to you, so they're going to
25 argue, basically, and hope that you will render a verdict

1 on their side's behalf, all right?

2 And when they're finished with the opening
3 statements, I'll charge you on the law, tell you what the
4 law is that applies, and then you'll go back and consider
5 what your verdict will be. So we don't make any progress
6 in this trial if I do all the talking, so I'm going to
7 turn it over first to the State. Madame Solicitor, if
8 you're ready, you may make an opening statement.

9 MS. LINDER: Thank you, Your Honor. May it
10 please the Court: Good morning, ladies and gentlemen.

11 Life is about choice. Choices are decisions
12 to act, and all of our actions have consequences. The
13 defendant, Deonte Brown, has made a lot of choices in his
14 life, has made a lot of actions in his life, and you're
15 here today because of the consequences of his actions.

16 Back on July 14 of 2012, the defendant chose
17 to go to Frazier's Club with his friends out in the south
18 area of Charleston County. When Frazier's Club closed in
19 the early morning hours, about 4 a.m. on July the 15th,
20 the defendant chose to not end the night, to keep it
21 going. He chose to continue socializing, so a group of
22 people went to the Waffle House out on Savannah Highway
23 and Main Road. Upon arrival at the Waffle House, this
24 defendant chose to carry his drink from the club inside
25 with him to the Waffle House.

1 Once in the Waffle House, this defendant
2 chose to start picking on Quinton Allen, somebody who was
3 not part of his group, who was just sitting by the
4 windows saying nothing. When Quinton did not give a
5 reaction, this defendant chose to intensify things, chose
6 to get louder, chose to get in his face. Again, Quinton
7 did not react.

8 Some employees of the Waffle House and some
9 patrons of the Waffle House came over, tried to stop this
10 defendant's actions, tried to tell him -- tried to kick
11 him out of the Waffle House for his behavior. That
12 didn't stop him. This defendant made another choice. He
13 chose to go around the people who were trying to break
14 things up and throw that drink that he brought from
15 Frazier's in the face of Quinton Allen. That started
16 things. That started a scuffle.

17 The Waffle House patrons and the Waffle House
18 employees were trying to get the defendant out, trying to
19 kick the defendant out of the Waffle House, trying to
20 stop, trying to curb all the consequences of the
21 defendant's actions. This defendant chose not to go
22 along with that. He and some buddies jumped in, started
23 attacking Quinton Allen as they were being moved through
24 the Waffle House, being pushed toward the exit, being
25 forced to leave.

1 When the fight was finally over in the
2 doorway of the Waffle House, right at the exit, this
3 defendant chose to pull out a gun, and then this
4 defendant chose to start firing. He hit Quinton Allen in
5 the arm. Glass shattered. People started running. That
6 wasn't the last choice he made, though. He started
7 running through the parking lot, and then again he chose
8 to turn back toward the Waffle House, where all those
9 people were, where Quinton Allen was, and fire again.
10 This time Dontaye Reed was struck in the back and fell to
11 the ground and later died.

12 All the defendant's actions have
13 consequences, and one of the consequences is a legal one,
14 which is why we are all here today. This defendant,
15 Deonte Brown, is charged with the murder of Dontaye Reed,
16 the attempted murder of Quinton Allen, and possession of
17 a weapon during the commission of a violent crime, the
18 attempt murder and murder being both classified as
19 violent crimes.

20 I would ask that you pay attention during
21 this trial. I would ask that you listen, listen to all
22 of the choices that this defendant made, all of the acts
23 that this defendant did, and bear in mind, all the
24 consequences that his acts have had. At the end, I'm
25 going to come back and address you, and at that time I'm

1 going to be asking for you to come back with a verdict of
2 guilty.

3 Thank you.

4 THE COURT: Mr. Smiley?

5 MR. SMILEY: May it please the Court,
6 Ms. Linder: Yesterday I really didn't get a chance to
7 introduce myself. I'm Jim Smiley, and I'm a private
8 attorney here in Charleston County and a sole
9 practitioner. This is Ms. Laree Hensley. She has her
10 own sole practice, and for the last, gosh, 15, 20 years
11 we have had an agreement whenever I try a case she sits
12 in the second chair. Whenever she tries a case, I sit at
13 her second chair, so she's here to help me today doing
14 this case.

15 You can see the solicitor's office has a
16 whole lot of resources. They have 25 solicitors. They
17 have the police department; they have investigators.
18 You're going to see that as the evidence comes out.
19 Deonte's got me and Ms. Hensley, and I have the privilege
20 of representing -- stand up for me -- of representing
21 Deonte Stephen Brown.

22 He's a young man, was brought up in the south
23 part of Charleston, Hollywood area. He's here to answer
24 the charge that has been brought by the State. If things
25 were as simple as Ms. Linder said, we wouldn't be asking

1 you to be the judges of the facts. I agree with some of
2 the things she said. There is no doubt that there was an
3 argument inside the Waffle House that night. I think the
4 evidence will be clear on that.

5 She also just told you something, I think,
6 the evidence is going to be clear that as it escalated,
7 it became more than a verbal assault. It became a little
8 bit physical as they started to be pushed. They said the
9 fight was over, all right? Being in a verbal argument
10 and fisticuffs does not make you a murderer, and I think
11 the evidence in this case is going to establish that.

12 You're going to hear from a bunch of
13 witnesses. You're going to get an opportunity to see
14 what they saw, what they heard, how they relayed it, and
15 you get to judge what they saw and how they saw it. You
16 got to remember, and you'll see in the evidence, that
17 people's perceptions are all different, and so as you
18 hear it, see what was their ability to perceive. I think
19 common sense will help you with that.

20 Also, in this case you're going to have some
21 physical evidence, and I think the physical evidence --
22 one of the good things about physical evidence, it
23 doesn't change, is there are going to be videos. You're
24 going to get to see videos at the Waffle House from their
25 surveillance. You're going to be able to see the

1 argument that Deonte and Mr. Allen had, which right now,
2 I'll tell you, Mr. Brown was wrong for that argument. He
3 showed his butt that night. The evidence is going to
4 show that.

5 You get to look at physical evidence. You're
6 going to hear evidence from SLED. You're going to hear
7 from SLED about how the bullets match in this case.
8 You're also going to get to look at the lack of some
9 evidence and what was done and not done in this case, and
10 that's just as important, as the judge has told you, and
11 he's going to continue to tell you, and as I'm always
12 going to say, Mr. Brown doesn't have anything to prove.
13 That night he got into an argument with Mr. Allen, the
14 fight ended, and someone in the parking lot started
15 popping off shots, and you're going to hear about that.

16 Luckily, you'll be able to see some video.
17 You'll be able to determine did Deonte Brown pull out a
18 gun and shoot anybody? You're going to be able to see
19 that, or not see that. So at the end of this evidence,
20 at the end of this trial, there is only going to be one
21 verdict, and the verdict is on the murder of his friend
22 Dontaye Reed, Snoop, as he'll also be called, he got shot
23 in the back. No doubt that was an accident, but there's
24 going to be no proof that he shot him. There is going to
25 be no proof that he shot Quinton Allen.

1 There is going to be certainly proof, and
2 we'll be glad to say today, that we are guilty of the
3 simple assault that began in the Waffle House. So I ask
4 you to keep an open mind. Understand he has nothing to
5 proof. The State must meet their tremendous burden, and
6 when the evidence is done, there only can be one verdict,
7 and it will be not guilty of this charge.

8 Thank you.

9 THE COURT: All right. Madame Solicitor,
10 call your first witness.

11 MS. BALDWIN: Thank you, Your Honor. State
12 calls Deputy David Johnson.

13 ~~DAVID JOHNSON:~~

14 having been first duly sworn,
15 was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MS. BALDWIN:

18 Q. Good morning, Deputy.

19 A. Good morning.

20 Q. It seems pretty obvious, but what is your
21 occupation?

22 A. Deputy sheriff, Charleston County sheriff's
23 office.

24 Q. What were your duties there at the sheriff's
25 office?

1 A. Patrolling, traffic enforcement, calls for
2 service.

3 Q. And when you say calls for service, what do you
4 mean by that?

5 A. Any call that would go out, domestics -- anything
6 from domestic, shootings, anything that would indicate
7 for us to show up on the scene and to handle it.

8 Q. What was your position in July of 2012?

9 A. I was a deputy sheriff with the Charleston County
10 Sheriff's Office.

11 Q. Do you recall responding to an incident on July
12 15, 2012?

13 A. Yes, I do.

14 Q. And to where did you respond?

15 A. The address was 3505 Savannah Highway. It was the
16 Waffle House out at Main and 17.

17 Q. Is it 3505, 3565?

18 A. Correction. 3556.

19 Q. Is that in Charleston County?

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

21 Q. I'm going to show you what has been marked as
22 State's Exhibit 1 currently. Can you tell me what that
23 is.

24 A. It's an aerial view of the parking lot and several
25 businesses. Businesses to the far left would be Burger

—DAVID JOHNSON - DIRECT EXAMINATION—

1 King and the Waffle House, and there would be a
2 laundromat and a car wash.

3 MS. BALDWIN: Your Honor, at this time I
4 would like to have State's Exhibit 1 admitted.

5 MR. SMILEY: Without objection.

6 THE COURT: Admitted.

7 (Whereupon, State's Exhibit No. 1 was marked
8 for identification and admitted into evidence.)

9 BY MS. BALDWIN:

10 Q. Could you just point on the screen in front you
11 where the Waffle House is?

12 A. Right here (indicating).

13 Q. Did you touch the screen? If you touch the
14 screen, you should be able to -- there you go. Could you
15 show us on there where the Burger King is you're talking
16 about?

17 A. Burger King is right here (indicating).

18 Q. About what is the building on the other side?

19 A. Laundromat and a car wash.

20 Q. What did you do when you arrived at the Waffle
21 House?

22 A. I pulled in the parking lot and parked my vehicle
23 I was taking from the Main Road side.

24 Q. Where is the Main Road side?

25 A. It would be this road, right here. This is the

1 long ride. Main Road is actually that direction, came
2 from the Main Road side and pulled into the parking lot,
3 this direction.

4 Q. When you pulled into the parking lot, what did you
5 see?

6 A. There were a large amount of people in the parking
7 lot and a group -- they were pointing to a subject that
8 was on the ground. He was the first person I immediately
9 noticed on the ground, and I was able to walk over to
10 him.

11 I didn't identify him at that time, wasn't able to
12 identify him, but he was obviously in duress, had been
13 shot. He was laying on the first island in the parking
14 lot, closer to the building. It would be right here
15 (indicating)..

16 Q. Okay. Did you try to talk to him?

17 A. Yes, ma'am, I did. He was unresponsive. He
18 looked to be awake and he was gasping, looked like he was
19 trying to breathe but nothing was going in, nothing was
20 coming out.

21 His shirt was pulled up to his chest, and I
22 noticed that the projectile that looked like it came from
23 a bullet under his skin on the right side of his body. I
24 asked him several times, Can you talk? Can you tell me
25 who shot you? and he was unresponsive.

DAVID JOHNSON - DIRECT EXAMINATION

1 Q. Describe the scene as you arrived. You have sort
2 of -- were people calm?

3 A. No. There was a lot of yelling and screaming.
4 Usually between 3:30 and 4:00 in the morning, there are
5 several clubs that let out, and people converge on the
6 parking lot, anywhere from -- close to 50, 75 people that
7 pack the parking lot at the Waffle House. There was
8 everybody standing around, yelling, screaming. Somebody
9 said, That's my cousin. Help him, help him.

10 Unfortunately, at that point in time there was
11 really nothing I could do for him. I kept asking
12 everybody, did anybody see what happened? Did anybody
13 witness anything? There was nobody that wanted to
14 witness anything.

15 Q. About --

16 A. At that point in time, the other deputies also
17 arrived on the scene, and if anybody wanted to say
18 anything, it was a matter of clearing the scene and
19 maintaining the perimeter around the parking lot, keep
20 anybody else from coming in, and after we got the people
21 out who said they didn't see anything to exit the parking
22 lot.

23 Q. When you said you wanted to establish a perimeter,
24 why would you do that?

25 A. Basically, it's a crime scene. You preserve the

1 scene, keep people from trampling in and out, keep other
2 people from coming back into it.

3 Q. At the time of your arrival, were there still
4 people trampling in and out of that?

5 A. Yes. It took us a few minutes to clear the
6 parking lot. We were finally able to get the parking lot
7 completely cleared. There were a couple people standing
8 around stating that they had seen what happened. At that
9 point we handed them statements and just had them start
10 writing what they saw and who they saw and try to get a
11 description of who they saw shooting.

12 Q. About what time did you arrive?

13 A. I believe it was almost 4:15 in the morning.

14 Q. You're referring to a piece of paper there. What
15 is that you're referring to?

16 A. This here is a copy of my original report that I
17 submitted.

18 Q. Does that help refresh your recollection?

19 A. Yes, ma'am.

20 Q. Did you see anybody else injured at the scene?

21 A. There was another subject that was also shot. He
22 had a through-and-through in his arm and apparently a
23 small wound in his chest. At this time, I couldn't
24 recall if it was his left arm or right arm. We were
25 able -- he was able to go with EMS and they treated him.

DAVID JOHNSON - CROSS-EXAMINATION

1 Q. What was the State of the Waffle House itself?
2 Did you see -- did you observe anything about the
3 building?

4 A. The front entryway where the door was, the glass
5 was shattered. It had been shattered from being shot.
6 There was blood in the very front entryway. At that
7 point in time there were several workers in the Waffle
8 House that were the primary witnesses to this thing, and
9 basically that was it.

10 Q. Based on all these people yelling, what was your
11 understanding of what had happened?

12 MR. SMILEY: Objection, Your Honor.
13 Speculation.

14 THE COURT: Sustained.

15 MS. BALDWIN: Beg the Court's indulgence.

16 Deputy, I don't have any further questions
17 for you. Please answer any of Mr. Smiley's questions.

18 THE WITNESS: Thank you.

19 THE COURT: Mr. Smiley?

20 CROSS-EXAMINATION:

21 BY MR. SMILEY:

22 Q. Deputy Johnson, I'm Jim Smiley. I know it's been
23 a tough week. I'm going to keep this as short as I can.

24 Were you the first responding officer?

25 A. I was one. I believe there was one that was

1 almost right behind me.

2 Q. So you were right there, as close to being the
3 first --

4 A. Yes.

5 Q. Very good. And could you put that back up for me?
6 Savannah Highway runs parallel to State Road 10, right?

7 A. This is Savannah Highway, and this would be State
8 Road 10.

9 Q. Where the Burger King is, there is a light, and
10 that is Main Road that runs perpendicular, right?

11 A. Yes, sir.

12 Q. So there -- it's a real busy intersection during
13 the daytime. People taking a left on to Main Road,
14 correct? Well --

15 A. Normal traffic flow in and out of the
16 intersection.

17 Q. Absolutely. I'm just trying to establish about
18 where we are in the county, right?

19 A. Okay.

20 Q. And so when you came in there, you said that there
21 is 50 to 75 people, roughly, in the parking lot?

22 A. At that time in the parking lot. I just
23 referenced earlier in the night, there was usually --
24 that parking lot gets packed with 55, 60 people. After
25 we got there after the shooting, a lot of people had

1 already left. There was probably about 25 people in the
2 parking lot.

3 Q. And, of course, it was fairly chaotic?

4 A. Yes, sir.

5 Q. And, of course, your immediate job was to
6 determine who had been injured and then --

7 A. Yes, sir.

8 Q. And at that point, you secured the scene, correct?

9 A. Yes, sir.

10 Q. Did you go inside the Waffle House?

11 A. I believe I made entry in the Waffle House. One
12 of the females that was working that night, I believe her
13 foot was injured during -- being pushed, so I had to make
14 entry into the Waffle House, also make sure there was
15 nobody else in the Waffle House if the shooter may have
16 been hiding there.

17 Q. And the people who said they saw something, did
18 you hand them out the witness statements?

19 A. Yes, I did.

20 Q. And sort of go inside and sit down and write what
21 you saw?

22 A. Usually if they were in the Waffle House, we kind
23 of like get a -- consider move them to one section of the
24 Waffle House, preserving the scene, hand them out
25 statements. If they want to write out, they can write

1 out what they saw.

2 Q. So they were given statements fairly quickly after
3 this happened?

4 A. Yes, sir.

5 MR. SMILEY: Beg the Court's indulgence.

6 Thank you very much. I have nothing further.

7 THE COURT: Redirect?

8 MS. BALDWIN: No, Your Honor.

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

10 You're free to go. Thank you.

11 Next witness?

12 MS. LINDER: State calls Erin Meyer.

13 ERIN MEYER,

14 having been first duly sworn,

15 was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MS. LINDER:

18 Q. Good morning. Where are you employed?

19 A. Charleston County Sheriff's Office, in the
20 forensic units division.

21 Q. And how long have you been with law enforcement?

22 A. Law enforcement, 14 years. I've been in crime
23 scene and forensics for the last seven or eight.

24 Q. And can you tell the jury any background or
25 education or training that you have received through law

ERIN MEYER - DIRECT EXAMINATION

1 enforcement and specifically in forensics.

2 A. I have two bachelor's, one in psychology, and one
3 in criminal justice and in the last eight years, I've
4 been to numerous classes, processing fingerprints, DNA,
5 photography, everything you would need for crime scene
6 processing.

7 Q. What was your title back in July of 2012?

8 A. Forensics investigator.

9 Q. What are your duties at a crime scene?

10 A. One of our main duties is to process crime scenes.
11 The other is to locate and preserve evidence.

12 Q. And, generally speaking, in what ways do you
13 process a scene?

14 A. We photograph, we collect, we process for
15 fingerprints --

16 Q. Back on July 15 of 2012, in the early morning
17 hours, did you have the occasion to respond to Waffle
18 House at Savannah Highway and Main Road?

19 A. Yes, ma'am.

20 Q. And what was the purpose of you going to that
21 location?

22 A. I was called out to process a scene.

23 Q. And what did you do when you arrived on scene?

24 A. Traditionally, we arrive on scene, we meet with
25 the detectives, the officers that are on scene, and are

1 briefed of information that they may have to give to us.
2 They just provide us with information that may be
3 pertinent to the incident or the case, the investigation.

4 Q. And what was considered the scene of your interest
5 once you arrived there?

6 A. We have the Waffle House, the business inside and
7 out, the parking lot up to the adjacent building.

8 Q. And upon your arrival, what did you observe?

9 A. We had the officers that were there, arriving on
10 scene, had barrier tape, crime scene tape. We had some
11 cups in the parking lot, a few vehicles, some blood, some
12 broken glass.

13 Q. Did you take photographs when you went out to the
14 Waffle House?

15 A. Yes, ma'am.

16 Q. Did you take interior and exterior photographs?

17 A. Yes, ma'am.

18 Q. Was anyone else from the crime scene assisting?

19 A. Yes, Investigator Mark Watson.

20 Q. And did you end up searching the area for items?

21 A. Yes. Traditionally, we take overall photographs,
22 and then we'll do a search. In this particular case, we
23 did an online search through the parking lot.

24 We had people line up shoulder to shoulder and
25 walk through, attempting to locate evidence. Once it's

ERIN MEYER - DIRECT EXAMINATION

1 located, we'll assigned a placard to it, or a number or a
2 letter, and then it will get collected and processed, if
3 need be.

4 Q. Did you end up doing a diagram of your findings at
5 the scene?

6 A. No. I did not do a diagram at the scene.

7 Q. Can you kind of explain the reasons for diagram or
8 why or why not you didn't do one in this case.

9 A. Traditionally, we do diagrams when we know the
10 original location of a certain item of evidence. We'll
11 do measurements, and then we'll provide a diagram based
12 on those measurement.

13 In this particular case, we had a parking lot, and
14 a lot of things can get moved, and so it's not
15 traditional that we would measure something that we know
16 could have been moved throughout our scene, because it's
17 not its original location from the incident occurring.

18 We had cars. We had some cars pulling out. We
19 had some people walking through, so we couldn't identify
20 with that being the exact location of that.

21 Q. And were -- all the items collected on scene, did
22 they end up being submitted into evidence?

23 A. Yes. They're secured, transported, and taken to
24 the lab where we have them entered into evidence.

25 Q. Did you process any vehicles on the scene?

1 A. Yes. We processed two vehicles.

2 Q. And can you explain, just generally speaking, the
3 methods used to fingerprint vehicles that were used in
4 this case.

5 A. There's various different methods to use to
6 identify fingerprints and vehicles. One we use is black
7 powder, fine black powder, that we put on with a brush
8 that will help develop fingerprints if they're present.

9 The other one is kind of a liquid type substance
10 that we would use if the surface is wet. We used SPR,
11 which is small particle reagent, the liquid, and then we
12 also used a black powder.

13 Q. And was there an attempt to lift any prints from
14 the Waffle House building itself, the doors?

15 A. Yes. We processed the doors with black powder.

16 Q. When you were at the Waffle House, did you review
17 any surveillance footage while there?

18 A. Yes. When I arrived on scene, I was advised that
19 they did have surveillance video, but somebody was going
20 to need to come in and download it to a DVD. Initially
21 we watched it, and someone provided me with the
22 DVD later.

23 Q. That surveillance footage, did that include
24 multiple angles with multiple cameras at the Waffle
25 House?

ERIN MEYER - DIRECT EXAMINATION

1 A. Yes, ma'am.

2 Q. Was that video secured and later submitted into
3 evidence?

4 A. Yes, ma'am.

5 Q. Back at forensic services, did you swab the cups
6 that were collected for DNA?

7 A. Yes, ma'am.

8 Q. And can you explain -- I know it's not as exciting
9 and scientific as it sounds but can you explain the
10 swabbing process to the jury.

11 A. When we're swabbing for DNA, DNA comes in many
12 different forms. On the side of a cup, I'm generally
13 swabbing for somebody's saliva. We would take a sterile
14 swab and put saline around it and run it around the rim
15 of the cup in an attempt to collect saliva from the cup,
16 and we would submit that sample to a lab for analysis.

17 Q. And a couple of days after this incident, forensic
18 services, were you given a cellular phone by way of
19 consent search to pull videos from?

20 A. Yes. One of the detectives had brought the phone
21 down with the consent and asked for me to take those
22 videos off.

23 Q. Were you able to recover those two videos?

24 A. Yes, ma'am.

25 Q. And that was off the SD card?

1 A. I don't recall if it was off the SD card or off
2 the internal memory of the phone.

3 Q. But you recovered the two videos from the cellular
4 phone. Did you alter them in any way?

5 A. No, simply to put them on a DVD and then submitted
6 that DVD into evidence.

7 Q. And then -- also, this is days after the
8 incident -- did you receive a red shirt that, to your
9 understanding, belonged to the defendant in this case?

10 A. Yes, ma'am.

11 Q. And did you enter that into evidence?

12 A. It was actually submitted by detectives, but I did
13 validate it.

14 Q. At this time, I show you what's been marked as
15 State's Exhibit 31. Can you identify that?

16 A. Yes, ma'am. This is the red shirt.

17 Q. And is that the red shirt that you had received
18 and then validated and entered into evidence?

19 A. Yes.

20 Q. At this time, I'm going to show you what's marked
21 as State's Exhibit 2, if you could look at that. You
22 could put it out also. Do you recognize that disk?

23 A. Yes. This is the disk the videos were on that I
24 pulled off the phone.

25 Q. How do you recognize that disk?

ERIN MEYER - DIRECT EXAMINATION

1 A. That is my handwriting and my initials.

2 Q. State's Exhibit 3, if you can look at that,
3 please. Do you recognize that?

4 A. Yes. These are the videos that I recovered, or
5 were given to me on scene, surveillance videos.

6 Q. And I'm going to show you State's Exhibit 4
7 through 14, if you could please look at those. Do you
8 recognize those?

9 A. Yes, ma'am. These are photographs we took on
10 scene.

11 Q. And at this time, I'm going to show you State's
12 Exhibit 34. Do you recognize that?

13 A. Yes, ma'am.

14 Q. And what is that?

15 A. This is the projectile from the floor of the
16 Waffle House, inside the little foyer, the entryway.

17 MS. LINDER: Your Honor, at this time the
18 State would ask that State's Exhibit 2, 3, 4, 5, 6, 7, 8,
19 9, 10 11, 12, 13, 14 and 34 all be admitted into
20 evidence.

21 MR. SMILEY: Without objection.

22 THE COURT: Admitted.

23 (Whereupon, State's Exhibit Nos. 2, 3, 4, 5,
24 6, 7, 8, 9, 10, 11, 12, 13, 14 and 34 were marked for
25 identification and admitted into evidence.)

1 BY MS. LINDER:

2 Q. What I'm going to do is if you could look at that
3 scene in front of you, State's Exhibit 4, could you tell
4 the jury what that depicts.

5 A. This is a portion of the parking lot, the front
6 entry door to the Waffle House.

7 Q. And what are these two items up here?

8 A. Cameras.

9 Q. Okay. And can you see what this is?

10 A. That's one of the red cups we collected.

11 Q. And were these vehicles, vehicles that you
12 processed?

13 A. Yeah. Those are the two vehicles I was referring
14 to earlier that we processed.

15 Q. And State's Exhibit 5?

16 A. Different angle, entryway of the Waffle House.

17 Q. And can you explain what this is right here.

18 A. That's the entry door, and then you have a glass
19 window, a window pane next to it, and a large part of it
20 is on the ground next to the door.

21 Q. And what about this item here?

22 A. I'm looking at it at an angle. It's probably
23 another red cup.

24 Q. And State's Exhibit 6, what does this show?

25 A. Both the vehicles that we processed.

ERIN MEYER - DIRECT EXAMINATION

1 Q. State's 7, what does this show?

2 A. This is -- once you enter into the Waffle House
3 and to the right seating area.

4 Q. And where are these chairs located in the Waffle
5 House?

6 A. The windows behind them are the windows for the
7 parking lot, so the parking lot pictures that you just
8 had up.

9 Q. Okay. And so then these windows run along what
10 street?

11 A. That's going to be Savannah Highway, or the
12 Highway 17 side.

13 Q. State's Exhibit 8?

14 A. If you turn back the other direction, and the
15 parking lot is going to be on your left now.

16 Q. On this side (indicating)?

17 A. Yes, ma'am, and the foyer, the entryway, is right
18 there inside that door. There's more seating off to the
19 right.

20 Q. State's 9?

21 A. It's the red cup, one of the red cups inside the
22 scene, and that's the wall that faces the parking lot.

23 Q. And these are some of the chairs that we saw in
24 the earlier photo?

25 A. Yes, ma'am.

- 1 Q. State's 10? If you can tell me what --
- 2 A. That is the Savannah Highway side.
- 3 Q. And then around here?
- 4 A. The parking lot side.
- 5 Q. Okay. State's 11, what is here again?
- 6 A. Up to there is going to be the Savannah Highway
- 7 side.
- 8 Q. I know it seems redundant. I'm trying to get the
- 9 best view we can. State's 12, from what angle are you
- 10 taking this picture?
- 11 A. You've got the parking lot side on the left with
- 12 those chairs lined up against the wall.
- 13 Q. Uh-huh.
- 14 A. And then you got the foyer door, entry door, and
- 15 then you've got the additional seating, and then the
- 16 restaurant, kitchen, cook area; Savannah Highway is
- 17 behind me.
- 18 Q. State's 13? Now, what is this?
- 19 A. That's the entry door to the little foyer, the
- 20 little walk-through area, entry exit.
- 21 Q. And what is this?
- 22 A. Another red cup.
- 23 Q. And State's 14?
- 24 A. This is landscaping, island, or however you want
- 25 to call -- refer to it. This is where we were told the

ERIN MEYER - DIRECT EXAMINATION

1 victim was. Victim was not on the scene upon our
2 arrival. This is -- we were advised he was recovered
3 here, located here.

4 Q. Based on that information, you believed it was
5 important to photograph that?

6 A. Yes, ma'am. Yeah.

7 Q. And do you recall -- this is State's Exhibit 34
8 that's already been admitted into evidence. Do you
9 recall where you found this projectile at the Waffle
10 House?

11 A. It was on the floor in the foyer, the entryway
12 between the two doors. So inside that little entry, it
13 was on the floor.

14 Q. That we just saw all those pictures of?

15 A. Yes, ma'am.

16 MS. LINDER: Your Honor, at this time we
17 would seek to publish the portions of the video, of the
18 surveillance video, from the Waffle House.

19 THE COURT: Go right ahead.

20 MS. LINDER: And this is State's Exhibit 3.

21 BY MS. LINDER:

22 Q. We're just going to play some portions, and there
23 is no sound to this. We're going to start looking at
24 camera angle one, and we're going to fast forward the
25 time stamp. Can you read the time stamp at the top

1 left-hand corner?

2 A. Yes, ma'am.

3 Q. What does it say?

4 A. 0400.

5 Q. All right. We're going to move forward a bit.

6 Okay. Now we're going to look at a different
7 angle. This is camera number two angle.

8 All right. We'll start around there.

9 All right. We're just going to look at one
10 more angle, camera number six.

11 And those are all parts of the surveillance
12 video you had gotten from the Waffle House?

13 A. Yes, sir.

14 Q. At and at this time I'm going to show you what
15 we've already entered into evidence as State's Exhibit
16 No. 2, and these are -- have been previously testified to
17 as the cellphone video.

18 THE COURT: Why don't we do this: Why don't
19 we take a rest room break and come back and watch them.
20 Okay?

21 So, folks, let's take ten minutes to use the
22 rest room. Don't talk about the case with anybody.
23 Don't discuss witness demeanor or anything like that, and
24 we'll just have you back in ten minutes.

25 Thank you.

ERIN MEYER - DIRECT EXAMINATION

1 (Recess taken.)

2 (In open court, jury not present.)

3 MS. LINDER: Mr. Smiley approached me during
4 the break and said he had an issue during the break.

5 MR. SMILEY: I thought because she took
6 possession of them, but Mr. Lorenzo Brown actually took
7 them, and I thought he would be the one that presented
8 them, so I was trying to be -- because he's the one that
9 took them, she didn't take that video on the
10 surveillance.

11 It's on the machine, but I think to establish
12 a foundation, Mr. Brown has to say, This is the photos I
13 took from my cellphone and where he was. I know I said I
14 don't object, but I thought she was going to be --

15 THE COURT: You got this guy coming?

16 MS. LINDER: We have not decided if we're
17 going to call him or not. We're still kind of -- we have
18 a bunch of people who we may or may not call, kind of
19 depending on where things are going or how things are
20 proceeding.

21 THE COURT: Well, I know y'all had some sort
22 of agreement about admissibility, but if it's somebody's
23 cellphone, it's not the defendant's cellphone, you ought
24 to be able to lay the foundation for somebody to say
25 that.

ERIN MEYER - DIRECT EXAMINATION

1 MS. LINDER: We don't have any other
2 questions for Ms. Meyer. We'll go straight into cross.

3 THE COURT: How long are you going to be?

4 ~~MR. SMILEY: I'll be quite a while~~

5 THE COURT: When you say that, what do you
6 mean -- why don't you do your cross, and we'll break for
7 lunch.

8 MR. SMILEY: And there is going to be one
9 picture that I don't have printed out that I've got to
10 figure out how to get from my computer up there or ask if
11 the solicitor could display that one picture.

12 THE COURT: Which one? Is it one that you
13 have?

14 MS. LINDER: There is over 400 photos. I
15 only printed a handful. If he tells me the photograph, I
16 can put it on our computer.

17 MR. SMILEY: And I will get it from a
18 photocopy from that.

19 MS. LINDER: If we can just have a brief
20 moment, we'll just put it straight on the desktop, that
21 image.

22 MR. SMILEY: And I appreciate the State
23 helping me with that technological.

24 THE COURT: Okay. Let's bring the jury back
25 here.

ERIN MEYER - CROSS-EXAMINATION

1 (In open court, jury present.)

2 THE COURT: All right. You may resume.

3 MS. LINDER: There are no further questions
4 from the State. Please answer any questions Mr. Smiley
5 may have.

6 THE COURT: Cross?

7 CROSS-EXAMINATION

8 BY MR. SMILEY:

9 Q. Investigator Meyer, I think I've cross-examined
10 you before. My name is Jim Smiley. I represent Deonte
11 Brown.

12 Now, you got called out though this case at about
13 4:30 or so?

14 A. I think my report indicates I was notified at
15 4:45, 4:50 in the morning.

16 Q. And when you got there, I think you testified the
17 scene was already taped off?

18 A. Yes, sir.

19 Q. And secured, and you had a trainee, I guess, with
20 you, so y'all began. Your job is to collect evidence,
21 correct, to find evidence and collect it?

22 A. Yes, sir.

23 Q. So if another officer, for instance, saw something
24 he thought was important, he would make sure you came to
25 collect it. He didn't most of the time pick it up in a

1 scene or anything like that. You want to photograph it
2 first and then collect it, correct?

3 A. Correct.

4 Q. Now, you collected a bunch of different kind of
5 stuff at this scene, right?

6 A. Yes, sir.

7 Q. You had a bunch of different roles, actually.
8 First one was take pictures of everything, right? And
9 the pictures we've seen today were ones that you had
10 taken, right?

11 A. Yeah.

12 Q. Go ahead.

13 A. We play numerous roles, so whether one is first,
14 second, or third, I'm not sure that is of concern, but we
15 do take photographs, overall photographs of the scene,
16 documenting the location of items before we start
17 placarding them or collecting them, yes.

18 Q. So you took every conceivable picture you thought
19 could be useful in this case, right?

20 A. We attempt to. That is our intent.

21 Q. And it's times two in this case, because you had a
22 trainee taking pictures too.

23 A. Yes.

24 Q. So you took pictures, you gathered evidence
25 from -- that was located, such as the plastic cups. You

ERIN MEYER - CROSS-EXAMINATION

1 found a project -- well, a projectile was found that you
2 collected, right?

3 A. Yes, sir.

4 Q. Now, let me talk to you about that one since we're
5 on that topic.

6 I show you what's been entered as State's Exhibit
7 34, and that's a projectile, right?

8 A. Correct.

9 Q. Okay. And you collected that in this case.

10 A. Correct.

11 Q. All right. And I think it was inside the foyer?

12 A. Once you enter the front door to Waffle House from
13 the parking lot is what I'm called the foyer, the
14 entryway, prior to entering the door to the lobby.

15 Q. Let me see if I can find a picture to make sure --
16 I show you what's been entered as State's Exhibit No. 8.
17 Do you recognize that picture?

18 A. Yes, sir.

19 Q. And that shows the foyer?

20 A. Yes, sir.

21 Q. All right. I'm going to put it up on the big
22 screen for us. I'm not good at all this. And through
23 that door is the first door to go out, right?

24 A. The door right here is from the lobby of the
25 Waffle House into that foyer, and then there is a door to

1 the left that will take you to the parking lot.

2 Q. And you found that projectile in that space?

3 A. Yes, sir.

4 Q. ~~Actually, you found it close to that far wall?~~

5 A. I think it's closer to the back corner, the wall
6 back here on the right. I have to look back at all my
7 pictures to see if --

8 Q. You're looking straight through that door. The
9 projectile is inside -- back against that wall in the
10 corner?

11 A. Yes.

12 Q. And there was some blood around that projectile?

13 A. The projectile itself or on the floor, on the
14 wall?

15 Q. And/or both?

16 A. Yes.

17 Q. Now, the videos that we just looked at --

18 A. Yes, sir.

19 Q. -- your job in that was someone from the Waffle
20 House that knows the equipment put it on a DVD and then
21 gave it to you to put into evidence, correct?

22 A. Yes.

23 Q. And then while it hasn't been modified, later SLED
24 did some work on that video, right?

25 A. Yes, sir.

ERIN MEYER - CROSS-EXAMINATION

1 Q. And you brought it back in -- well, you
2 transported it. It got fixed in one form or another.
3 Then it came back down into evidence for y'all.

4 A. Yes.

5 Q. All right.

6 A. I can't testify as to what SLED did with it.

7 Q. I'm not asking you to. It was sent -- I'm just
8 asking --

9 A. I did not physically transport it. It was taken
10 by somebody else and brought back to us.

11 Q. However, you were aware it was sent to SLED for
12 some purpose?

13 A. Yes, sir, yes.

14 Q. Okay. Now, the pictures that we've seen today are
15 just a few of the multitude of pictures taken in this
16 case?

17 A. Yes.

18 Q. There are probably 200 or 300 pictures taken, if
19 not more. So -- I want to show you once more picture
20 that I believe you took, if you could put up No. 46 --
21 this is marked in the solicitor's discovery packet as No.
22 46. Did you take this picture?

23 A. Yes, sir.

24 Q. Okay. Do you know where you were standing when
25 you took this picture?

ERIN MEYER - CROSS-EXAMINATION

1 A. I need to go back -- my photograph shows a
2 transition of when I walked through.

3 Q. Would it refresh your memory to look at your
4 pictures?

5 A. Yes, please.

6 Q. If you don't mind, and what you're looking at is a
7 copy of all the thumbnails of your pictures?

8 A. Yes.

9 Q. Okay. Take your time. Were you standing in the
10 foyer looking out when you took that picture?

11 A. Is this enlarged?

12 Q. We can try to make it smaller. And,
13 unfortunately, I don't know that I'm technologically
14 savvy to make it smaller. That looks right.

15 A. Okay. I got it. I've got it. We go back and do
16 fine detailed photos at the end.

17 MR. SMILEY: And, Your Honor, I should have
18 said, if you'll mark this as Defense Exhibit 1, I'm going
19 to have it printed out.

20 (Whereupon, Defendant's Exhibit No. 1 was
21 marked for identification.)

22 BY MR. SMILEY:

23 Q. One of the ways I could tell it's from inside out,
24 and maybe it would help refresh your memory, it appears
25 to be the parking lot in the back of that shot?

ERIN MEYER - CROSS-EXAMINATION

1 A. Yes, sir. Yes. I'm standing inside the foyer,
2 photographing out.

3 Q. And that would be a picture of the spider pattern
4 of the glass breaking, of what's left of the glass?

5 A. Yeah, a spider web, yes, sir.

6 MR. SMILEY: At this time I would move
7 Defense Exhibit No. 1 into evidence.

8 MS. LINDER: Without objection.

9 THE COURT: It's admitted.

10 MR. SMILEY: Mr. Clerk is going to print a
11 copy and put into evidence.

12 (Whereupon, Defendant's Exhibit No. 1 was
13 admitted into evidence.)

14 BY MR. SMILEY:

15 Q. All right. So you collected a projectile. You
16 took pictures. You were later given a cellphone to
17 recover a couple videos from?

18 A. Yes, sir.

19 Q. As you got some other evidence, one of which is
20 this red shirt, as I'm showing you what has been marked
21 as State's Exhibit 31. Do you recognize this?

22 A. Yes, the packaging. It's still sealed.

23 Q. And that says it's Deonte Brown's red shirt?

24 A. Yes.

25 Q. So that was taken into evidence. And then later

ERIN MEYER - CROSS-EXAMINATION

1 it was sent up to SLED, wasn't it?

2 A. Correct.

3 Q. Did you do any paraffin or gunshot residue in this
4 case? Did you collect any?

5 A. Are you referencing the shirt or at all?

6 Q. In general.

7 A. I don't think I did any collection of any of the
8 kits themselves, and we would not have processed any
9 clothing. That would have been sent to SLED.

10 Q. You just take it and collect it, but there were
11 some gunshot residue kits done on this case, right?

12 A. Yes.

13 Q. And, for the jury, since they don't understand
14 what -- I surely didn't, until I did this job -- is when
15 I say a gunshot residue kit, will you explain to the jury
16 what that is.

17 A. Gunshot residue is something that is propelled
18 once a bullet, or a round, has been fired. It's
19 propelled outside of the firearm. It can travel on your
20 clothing, be on your hands, and we have kits that we use
21 with particle lift on them that will collect the particle
22 of the gunshot residue, and then we package them up and
23 SLED would do an analysis.

24 Q. If you think someone may or may not have shot a
25 gun that night, you might do a kit on them, right?

ERIN MEYER - CROSS-EXAMINATION

1 A. Correct.

2 Q. And those are sent off to SLED to be analyzed, and
3 the tests are done up there?

4 A. Yes.

5 Q. Same as the shirt and everything?

6 A. Yes.

7 Q. I'm going to put what has already been marked as
8 State's Exhibit 11 up. This picture is looking from the
9 parking lot back toward the far corner; is that fair?

10 A. Yes. My back would be to the parking lot side,
11 the Savannah Highway side.

12 Q. So that table back there in the corner is about as
13 far away from the front door as possible, that exit?

14 A. I didn't do measurements. I would think so.

15 Q. Okay. Were you asked to collect a firearm in this
16 case?

17 A. Was I asked to collect a firearm?

18 Q. Was a firearm found? Did you collect it?

19 A. ~~I didn't collect a firearm.~~

20 Q. All right. Oh, one of the things you collect are
21 shell casings, correct?

22 A. Correct.

23 Q. Did you collect any in this case?

24 A. I don't recall --

25 Q. If I told you, you didn't --

ERIN MEYER - CROSS-EXAMINATION

1 A. I don't recall there being any casings. I recall
2 there being projectiles.

3 Q. Projectile, the one you collected inside?

4 A. Correct.

5 Q. And was the only one found at the scene?

6 A. Inside the foyer, yes.

7 Q. Inside the foyer, right, and then later a
8 projectile was recovered, which I guess you would have
9 taken into evidence from the autopsy, correct?

10 A. Correct.

11 Q. But as far as casings go --

12 A. There were no casings --

13 Q. ~~No casings were found.~~ And you talked about it in
14 your direct, but when you get out there and you got the
15 scene, at some point y'all do a line search, and that is
16 a fairly big parking lot, right?

17 A. Correct.

18 Q. And a line search, and tell me if I'm wrong, is
19 where you and other officers line up, and they basically,
20 step by step, walk through the parking lot to see if
21 there is any evidence?

22 A. Yes, sir.

23 Q. And that line search would have gone from the
24 Waffle House all the way through the parking lot.

25 A. I think we lined up facing the front door, and I

ERIN MEYER - CROSS-EXAMINATION

1 think we ran from the curb over the island to the curb at
2 the other end of the parking lot.

3 Q. Okay.

4 A. And within a couple feet of each other.

5 Q. All right. And then you said you did a grid
6 search too?

7 A. A line search, a grid search --

8 Q. They're the same thing?

9 A. Correct.

10 Q. Okay. And when you did that grid search of the
11 parking lot, no other casings were found or anything like
12 that? I'm going to change my question. Hold on.

13 ~~If I told you no other casings were found, you~~
14 ~~would agree?~~

15 A. Correct.

16 Q. I'm not trying to trick you.

17 A. Correct. There were no casings in this.

18 Q. All right. Now, your job, I want to make sure, it
19 isn't to analyze evidence, it's to collect evidence, and
20 the form -- the function that you were performing at the
21 scene that night?

22 A. We are able to perform analysis on some things but
23 not others. DNA analysis has to go somewhere else;
24 GSR has to go somewhere else.

25 Q. GSR being gunshot residue?

1 A. I'm sorry. Gunshot residue, yes.

2 Q. You do fingerprint analysis, correct?

3 A. Correct. We do other analysis too, but in this
4 ~~case, yes, we were capable of doing fingerprints.~~

5 Q. Okay. And you did dust for prints in this case,
6 correct?

7 A. Yes, sir.

8 Q. And you also, in collecting evidence, I think you
9 said you got some DNA off the red cups or you attempted
10 to get it --

11 A. Yes. We collected in an attempt --

12 Q. You collected saliva off of the cups in an attempt
13 to get some DNA?

14 A. Correct, yes, sir.

15 Q. Or attempt to get some saliva that may contain
16 some DNA?

17 A. Yes, sir.

18 Q. Okay.

19 MR. SMILEY: Beg the Court's indulgence.

20 BY MR. SMILEY:

21 Q. Just a question that -- you know, me doing this, I
22 don't think about everything, but one more question.

23 You got out there, 4:45 to 5:00, somewhere -- you
24 went straight out to the scene?

25 A. Correct.

ERIN MEYER - REDIRECT EXAMINATION

1 Q. And you were out there for -- 'cause I can see
2 your pictures, and it's broad daylight by the time you
3 finished, fair enough?

4 A. It was 11:30 in the morning.

5 Q. That's a long time, five, six hours out there
6 collecting evidence, correct?

7 A. It's actually a short scene. Yes.

8 Q. To me, it was really long, okay? Did you make any
9 measurements of the parking lot?

10 A. Of the actual dynamics of the parking lot?

11 Q. Right.

12 A. No.

13 Q. So we don't know -- you did not make a distance
14 from the door to that island, the first island?

15 A. No.

16 MR. SMILEY: I appreciate it. Thank you.

17 THE COURT: Redirect?

18 MS. LINDER: Just briefly.

19 REDIRECT EXAMINATION

20 BY MS. LINDER:

21 Q. Mr. Smiley was asking you about the projectile,
22 State's Exhibit No. 34, and there is some question as to
23 where it was.

24 If there were -- if there are photographs taken of
25 this projectile, would it be taken where the projectile

1 was located?

2 A. Yes.

3 Q. And would that be a more accurate statement of
4 ~~where that projectile was located?~~

5 A. Correct.

6 Q. Also, Defense Exhibit No. 1, the picture of the
7 glass, can you say that a shot through the glass made all
8 the glass fall exactly how it appears in the photograph?
9 If you don't understand that, I can try to ask it
10 differently.

11 Are there other things that can make the spiderweb
12 glass fall?

13 A. Well, yeah. Once the projectile traveled through
14 the glass, it will lose its stability. You've got that
15 door next to it opening and closing, and both doors, in
16 fact, that are going to allow the glass -- the glass is
17 going to start falling out of the pane.

18 Q. And you had mentioned it initially in your direct
19 examination. I just want to be clear on it.

20 Mr. Smiley talked about no casings being located
21 at the scene. Is it possible for items such as tire
22 treads to pick up casings and, in essence, drive it away
23 from the scene or other items to --

24 MR. SMILEY: Objection, Your Honor. This
25 requires speculation.

ERIN MEYER - REDIRECT EXAMINATION

1 THE COURT: You got to lay a foundation for
2 that.

3 BY MS. LINDER:

4 Q. Can you describe what that scene was like when you
5 arrived on scene? Was the parking lot full of vehicles?
6 Was every parking spot occupied when you arrived on scene
7 at the Waffle House parking lot?

8 A. When I got there, no.

9 Q. And you collected and previously watched the
10 surveillance video of the Waffle House?

11 A. Yes, ma'am.

12 Q. Were there more or less vehicles in a surveillance
13 video than when you arrived?

14 A. Based on the video that I saw from officers'
15 vehicles, there were a lot of cars in that parking lot.

16 Q. And in your experience, in forensic services and
17 all these classes that you've done and your eight years
18 being with forensic services and your 14 years in law
19 enforcement, are there outside things that can affect the
20 integrity of the scene?

21 A. Yes. There -- if -- when you're dealing with
22 scenes that may be in parking lots or when there is
23 environmental factors and there is vehicles traveling
24 through my scene, there is EMS sometimes that have to get
25 in that -- I mean, like I was saying before, the reason

1 why we didn't do a diagram is we didn't know those items
2 for those pieces of evidence, those original locations,
3 because you've got so much interference, whether it be
4 ~~the environment, the weather, or whether it be vehicles~~
5 or just foot traffic. A lot of times the evidence that
6 we were expecting to find we don't, and we never do.

7 MS. LINDER: Beg the Court's indulgence.

8 I have nothing further.

9 THE COURT: Recross?

10 MR. SMILEY: No, sir. I'm done.

11 THE COURT: All right. You can step down.

12 Well, folks, why don't we just go ahead and
13 take our lunch break. It's almost 12:30, and if you
14 would, be back in the jury room at, say, a quarter to
15 2:00. We'll get started right back at that time.

16 So, again, you can go to lunch with anybody
17 you want to, including other members of the jury panel,
18 but please don't discuss the case with anyone. Don't
19 comment on evidence, witness demeanor, anything like
20 that. If anybody does try to talk to you about the case,
21 please report that back when you come. So see you back
22 at 1:45.

23 Thanks for your patience.

24 (In open court, jury not present.)

25 MS. LINDER: We would ask Ms. Meyer be

MARK WATSON - DIRECT EXAMINATION

1 excused.

2 MR. SMILEY: We have no problem with that.

3 THE COURT: Okay. See y'all at 1:45.

4 (Recess taken.)

5 A F T E R N O O N S E S S I O N

6 THE COURT: Got everybody? Got your next
7 witness ready? Let the record reflect the defendant is
8 in the courtroom. Bring the jury in.

9 (In open court, jury present.)

10 THE COURT: All right, folks. Welcome back.
11 We're going to now resume with the State calling their
12 next witness.

13 MS. LINDER: State calls Mark Watson.

14 MARK WATSON,

15 having been first duly sworn,

16 was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MS. LINDER:

19 Q. Good afternoon. Where are you employed?

20 A. I work for the Charleston County Sheriff's Office.

21 Q. How long have you been with law enforcement?

22 A. Almost 12 and a half years.

23 Q. Can you tell the jury a little bit about your
24 background or education or training you've received in
25 law enforcement.

MARK WATSON - DIRECT EXAMINATION

1 A. Yes, ma'am. I have a four-year degree from Old
2 Dominion University in Norfolk in criminal justice. I
3 have a minor in sociology. Spent five years in the Army
4 ~~been with the sheriff's office once I got out of the~~
5 Army. Started off on the road, patrol, and then came
6 down to the courthouse, worked for court security, and
7 then went to forensics a little over two years ago.
8 Since being in forensics, I've had training and
9 on-the-job training, nine weeks straight through, and
10 then after that, I've been through a class for blood
11 spatter analysis, marijuana analysis, first responder
12 photography. I think there is one more --
13 fingerprinting, for fingerprint recognition comparison.

14 Q. And where were you working and what capacity back
15 in July of 2012?

16 A. I was working as a forensics investigator.

17 Q. And what are your duties with crime scene or with
18 forensics?

19 A. In forensics we actually -- we wear a lot of hats
20 down there. We just don't do -- we do crime scenes. We
21 actually go out and process the scene, collect evidence,
22 photograph evidence, bring it back and process evidence.
23 While we're there, part of our duties are to preserve
24 evidence and anything that any other deputy turns in in
25 the process. If they collect evidence from a scene that

MARK WATSON - DIRECT EXAMINATION

1 we don't get called out to, they'll turn it in, and we'll
2 process it for them, cataloging it, securing it, doing
3 work orders for various agencies.

4 Q. And in what ways, generally speaking, do you go
5 through when you process a scene?

6 A. When you first get to the scene, you make sure
7 it's secured. That's one thing we like to see when we
8 get there because it helps us to know it hasn't been
9 trampled through a whole lot. Granted, before anyone
10 gets there, things can be trampled, the wind can blow and
11 rain and everything else can disturb it, obviously.

12 Somebody is always there preserving it, because
13 the responding deputy gets there and they'll secure it,
14 but over large scenes, it helps us a lot to -- helps us
15 to know we're working with is the way it was when we got
16 there.

17 Q. And on July 15th of 2012 in the early morning
18 hours, did you respond out to Waffle House on Savannah
19 Highway?

20 A. I did.

21 Q. And what did you respond to?

22 A. The initial call came out as a shooting call, but
23 when we got on scene, we learned the victim had passed.

24 Q. And when you first arrived on scene, what did you
25 do?

1 A. When I first arrived on scene, I think Erin got
2 there -- Deputy Meyers got there before I did. She had
3 already secured a video from one of the deputy's cars,
4 ~~but we walked the scene. When I say walk the scene, you~~
5 go through it and look for what is pertinent to you, look
6 for evidence and try to make sure this is there, this is
7 there, this is what I need to do, what I need to work
8 with, what I need to collect, what I'm going to do with
9 it once I collect it.

10 Q. What was considered the scene when you got there?

11 A. The Waffle House parking lot and the Waffle House
12 itself was, which we pretty much considered the scene.

13 Q. And when you had arrived on scene, what did you
14 observe?

15 A. When I first got there, I parked in the parking
16 lot where the laundromat is and I walked around the tape
17 because I didn't want to trample through the scene
18 myself. I don't like when people do that to my scene, so
19 I'm not going to do it my own scene.

20 We went and got briefed to the responding deputies
21 as to what had happened, and then we start started
22 looking, walking the scene. When we got there, I
23 remember there being a lot of -- several plastic
24 party-style cups. I don't like to use the term Solo cups
25 because it's not always Solo cups. There are different

MARK WATSON - DIRECT EXAMINATION

1 brands, but that type of cup.

2 There was a pair of scissors underneath a tree in
3 like a mulched in area where the victim had fallen, and
4 the scissors were consistent with the same style of
5 scissors that EMS used to cut clothes off. There was
6 some sputum right there. Someone had spit. It might
7 have been the victim. Hopefully it wasn't EMS, but
8 someone had spit there because you could see the spit.

9 The front window where the door was at was shot
10 out, shattered. There was blood on the sidewalk. There
11 was plastic cups in the parking lot. There was a little
12 bit of a blood trail leading from the front door toward
13 the left side of the building, and there were two
14 vehicles parked right in front of the doors.

15 Q. And when you went to Waffle House, the scene that
16 morning, did you take photographs?

17 A. I did.

18 Q. Did you take them inside and outside the Waffle
19 House?

20 A. Yes, ma'am.

21 Q. Did you take them with and without placards?

22 A. Yes.

23 Q. And can you tell the jury kind of the significance
24 of the placards.

25 A. I can. This is actually an example of the scene

MARK WATSON - DIRECT EXAMINATION

1 as far as placards, because, like I said, there were
2 several red cups, and to you or me, a red cup is a red
3 cup, and by the time you pick them all up and put them in
4 bags, you have to have a way to identify which red cup
5 came from what area. So placards are just little plastic
6 cards that we stick down that have numbers or letters on
7 them, and then we can say this is cup A and this is cup
8 B and this is cup C, or numbers. We use numbers also.
9 That way we can differentiate what's what.

10 Q. And along with the preliminary search that you've
11 discussed, did you do any other, more thorough search of
12 the scene?

13 A. Can you elaborate a little more.

14 Q. Did you, Investigator Meyer, the forensic services
15 team, or other people of the Charleston County Sheriff's
16 Office do an in-depth search of the parking lot area?

17 A. Yes, ma'am, we did. There were several deputies
18 on scene, and we did what is called a line search, where
19 everybody gets in a line and we all walk it at one time,
20 and if there is anything that they come across during
21 that path, they stop and say, Hey, can you look at this
22 for us?

23 And we determine yeah, it's pertinent or to the
24 investigation, or maybe it's not, and we started with
25 that line over the area -- in the parking lot where I

MARK WATSON - DIRECT EXAMINATION

1 parked at near the laundromat and walked toward the
2 Waffle House.

3 Q. I don't know if this helps at all, but if you look
4 at State's Exhibit 1, it will pop up in front of you, and
5 this has already been admitted into evidence. Does this
6 help you maybe be able to show the jury --

7 A. It does.

8 Q. -- where you parked and where you started that
9 line search?

10 A. Yes, ma'am, it does.

11 Q. Feel free to mark on that screen itself.

12 A. This is where I parked at, and when I got on
13 scene, there was tape here and here and another vehicle,
14 two or three vehicles, law enforcement vehicles, parked
15 in this area. And the only place -- there were two other
16 vehicles left in the parking lot, and they were -- figure
17 out where the front door is -- in this general area, and
18 those two vehicles were still there. The rest of the
19 parking lot was empty. We started -- we lined up here,
20 along this route, and then went in this direction.

21 Q. Okay. And along with processing -- sorry. I lost
22 my train of thought. Those two vehicles that you
23 mentioned that were parked by the front door, did you
24 process those vehicles?

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

1 Q. How did you process them?

2 A. We started out with just powder, fingerprint
3 powder, which is a dry substance, and we used that in
4 ~~order to start processing the vehicles. While we were~~
5 doing that, you could tell it was going to rain, so we
6 kind of hurried up and taped off what we had, put tape
7 over the things we were going to collect. That way if it
8 did rain before we could get them off the cars they were
9 at least protected, and then after it stopped raining, I
10 did a different technique, which is called small particle
11 reagent, or SPR, a two-step process.

12 It's basically fingerprint powder that's suspended
13 in solution and you spray it on a wet surface and then
14 you use a rinse right after it and it will rinse off the
15 excess spray, and then you can actually lift that print
16 with just tape, like we do normal prints.

17 Q. And did you process anything else on the scene for
18 fingerprints?

19 A. I did.

20 Q. What did you process?

21 A. I believe it was front doors, or the doors to the
22 Waffle House we fingerprinted.

23 Q. And then after you left the scene, did you ever go
24 to the medical university to collect any items?

25 A. I did. I actually went down to pick up items from

MARK WATSON - DIRECT EXAMINATION

1 the autopsy.

2 Q. And of the items that you collected from autopsy,
3 was one of those items described as a projectile?

4 A. Yes, ma'am.

5 Q. And then once you got back to forensic services,
6 this is a couple days later, after this happened, did you
7 end up processing any other items?

8 A. I believe I did most of the red cups. We
9 collected several red cups, and we used numbers when we
10 collected those that time, and I did a lot of
11 fingerprinting on red cups. I remember that. There was
12 a bunch of cups.

13 Q. At this time I'm going to hand you what is marked
14 as State's Exhibit 32. I'm also going to hand you
15 State's Exhibits 15 through 24. Just take your time to
16 look at all these.

17 A. I'm ready.

18 Q. Do you recognize this, State's Exhibit 32?

19 A. Yes, ma'am.

20 Q. And how do you recognize it?

21 A. That's actually one of the envelopes that were
22 supplied with the sheriff's office, something I've
23 actually put an item into it, and the label on there has
24 a description of the item and the number of -- the case
25 number and also says I've collected it from autopsy on

1 there, and I entered it into the computer.

2 Q. Thank you. And then State's Exhibit -- I'm sorry
3 to be up here again -- 15 through 24, do you recognize
4 these items?

5 A. I do.

6 Q. And how do you recognize these?

7 A. Those are photographs I took while I was on the
8 scene.

9 MS. LINDER: Your Honor, I would seek to
10 admit State's Exhibits 15 through 24.

11 MR. SMILEY: Without objection.

12 THE COURT: Admitted.

13 (Whereupon, State's Exhibit Nos. 15 through
14 24 were marked for identification and admitted into
15 evidence.)

16 BY MS. LINDER:

17 Q. Again I'm going to put them up on the screen, and,
18 again, if you could describe to the jury what you're
19 trying to photograph in these pictures you took, State's
20 Exhibit 15.

21 A. Exhibit 15 will be what we call an overall shot of
22 the scene. There's more to go along with this, but this
23 is just an overall -- what it is, which is the Waffle
24 House. It shows here this is kind of where the action
25 took place, and there would be numerous photographs that

MARK WATSON - DIRECT EXAMINATION

1 go along with just overall pictures. This is just one of
2 the overall pictures.

3 Q. And State's Exhibit 16, could you tell the jury

4 what you were taking a picture of in State's Exhibit 16.

5 A. This is showing the overall sidewalk. You have
6 the glass that shattered down here in the corner, and you
7 have blood here. You can see a little bit of a broken
8 window. That is where the glass came from.

9 Q. All right. And State's Exhibit 17?

10 A. Different angle. Again, it shows where the glass
11 is, and this is kind of an interesting shot, actually,
12 because residue to the breakage and the projectile
13 entered the glass through this area here, which caused it
14 to spiderweb and fall in and out. There is probably a
15 better angle of this where I could tell you about that.

16 Q. What is this here?

17 A. This is one of the numerous red cups that we saw,
18 and, here again, is the blood, and it's not really a good
19 shot of the sidewalk, but there was a trail of droplets
20 leading in this direction.

21 Q. Okay. And what is it we're seeing right back
22 here?

23 A. This is crime scene tape.

24 Q. Okay.

25 A. And that is where they would block off the parking

1 lot.

2 Q. And do you know what these items were --

3 A. Cameras. These were surveillance cameras.

4 ~~Q. Now, I'm going to have you look at State's Exhibit~~
5 18.

6 A. This is a shot of going into the Waffle House.
7 This is actually -- this is the outside of the Waffle
8 House. This is that little foyer area, and there is a
9 blood trail coming out to where that sidewalk had that
10 pool of blood. This is actually a projectile here.

11 Q. Okay. State's Exhibit 19?

12 A. It's a closer image of that projectile.

13 Q. And this projectile, to your knowledge, was
14 collected from the scene?

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

16 Q. And what is all this around here?

17 A. Broken glass.

18 Q. State's Exhibit 20.

19 A. This is actually that little foyer, vestibule
20 area. This is where that broken window was. This is the
21 front door, and this is the part that leading into the
22 restaurant of the Waffle House, and this is a blood trail
23 leading out.

24 Q. And State's Exhibit 21?

25 A. It's an interior shot of the restaurant, and,

MARK WATSON - DIRECT EXAMINATION

1 again, you got these red cups. There's two stacked in
2 each other right there.

3 Q. And what is this over here?

4 A. That's the area, like, this is the front door.

5 Q. Uh-huh.

6 A. Over in this area, general area, where that
7 projectile is, and there is the blood trail leading out.

8 Q. State's Exhibit 22?

9 A. That's a mulched in area I was talking about. You
10 can see the scissors here. I don't know if you can
11 see -- I can see where there was sputum, but there was
12 some kind of -- somebody coughed something up in that
13 mulched in area.

14 Q. And these two vehicles, any significance to those?

15 A. Yes, ma'am. Those were actually two vehicles that
16 we fingerprinted, and there is another red cup over here.

17 Q. State's Exhibit 23.

18 A. These are placards, what I was talking about,
19 numbers. This is actually numbering this -- because we
20 end up collecting a blood sample, or swab, from this
21 sidewalk, and this is just so we can identify this bloody
22 area as being placard number five. We did the same over
23 here with this cup here, marked the placard number four.

24 Q. And then, finally, State's Exhibit No. 24.

25 A. Again, there is five, six is the projectile.

~~MARK WATSON - CROSS-EXAMINATION~~

1 MS. LINDER: Beg the Court's indulgence.

2 I have no further questions. If you could,
3 answer anything Mr. Smiley may have.

4 ~~CROSS-EXAMINATION~~

5 BY MR. SMILEY:

6 Q. Just a couple, Investigator Watson.

7 We know each other, so I won't introduce myself.
8 This is Ms. Hensley and my client, Deonte Brown.

9 A. How are you doing, Jim?

10 Q. Let me ask you a couple questions. You were
11 working in concert with Detective Meyers?

12 A. I was. I was in training at the time. When I
13 talked about on-the-job training in forensics, maybe two
14 weeks, maybe a little bit more than that, I was kind a
15 shadow.

16 Q. Now we're two years later, so you've got a little
17 more experience than that?

18 A. Yes, sir.

19 Q. I'm going to show you a couple of your pictures.
20 I just want to ask you a couple questions.

21 A. That's fine.

22 Q. Just give me a second.

23 I'm going to show you what's been entered as
24 State's Exhibit 17, and you were just talking about that
25 earlier.

MARK WATSON - CROSS-EXAMINATION

1 A. Yes, sir.

2 Q. We can actually see what appears in your picture
3 to be where the bullet entered?

4 A. Yes, sir.

5 Q. It appears to be from the outside in?

6 A. Yes, sir.

7 Q. And you, in fact, found the projectile inside,
8 right?

9 A. We found a projectile inside, yes, sir.

10 Q. All right. And then I'm going to show you what's
11 been entered as State's 22, and this is that first
12 island, right --

13 A. Correct.

14 Q. -- away from the Waffle House, and that's the far
15 side of it?

16 A. It's closest to the Waffle House.

17 Q. Okay. I'm just doing bad English. Let me try
18 again.

19 A. Are we talking about the same things?

20 Q. We are. There are mulched islands in the parking
21 lot, correct?

22 A. Correct.

23 Q. From the Waffle House, this would be the one that
24 is closest?

25 A. Correct.

1 Q. And this picture looks from the far side of that
2 island back towards the Waffle House?

3 A. Yes, sir.

4 Q. ~~When you arrived, was there -- had Mr. Reed, had~~
5 he been transported?

6 A. He had been transported, yes, sir.

7 Q. Were you directed that this was the general area
8 that he was found?

9 A. Yes, sir.

10 Q. Okay. But you didn't actually see him?

11 A. No, I did not.

12 Q. Okay.

13 A. The only reason -- another reason I had believed
14 that that's where he was found is that there's these
15 medical scissors laying there.

16 Q. That wouldn't be there otherwise?

17 A. Correct.

18 Q. And from the circumstances, you were able to say
19 those are EMT scissor?

20 A. Yes, sir. Very common for those to have -- for an
21 EMT to that those kind of scissors.

22 Q. So when you say this is where somebody was laid
23 down, that EMS came and then you found a pair of
24 scissors, that circumstantially leads you to the
25 conclusion --

MARK WATSON - CROSS-EXAMINATION

1 A. Correct.

2 Q. -- that this must be EMT scissors, correct?

3 A. Yes, sir.

4 Q. All right. Now, I asked Investigator Meyer, but I
5 want to make sure I asked you. You did not find any
6 casings at the scene?

7 A. No, sir.

8 Q. All right. And one of the things that when you do
9 the grid search, the line walk, that would be something
10 common you were looking for, right?

11 A. Yes, sir. We look for anything from cigarette
12 butts to casings to blood droplets to anything that --
13 plastic cups. It could be anything, but when we do a
14 line search, we're looking for the minutest piece of
15 evidence that we can find.

16 Q. Right, and that's one way to make sure you don't
17 miss it, by lining everybody up and going through it one
18 at a time?

19 A. Yes, sir.

20 Q. So we can be fairly confident that if there had
21 been some casings in that parking lot when you walked it,
22 y'all would have found it?

23 A. I would hope so, sir.

24 Q. Okay.

25 MR. SMILEY: Beg the Court's indulgence.

MARK WATSON - REDIRECT EXAMINATION

1 That's all I have. Thank you.

2 THE COURT: Redirect?

3 REDIRECT EXAMINATION

4 BY MS. LINDER:

5 Q. Mr. Smiley was asking you about casings.

6 A. Yes, ma'am.

7 Q. Does every firearm give off -- I know I'm using
8 the wrong word, but give off a casing?

9 A. No, ma'am.

10 Q. Eject? And can you explain that?

11 A. There are firearms, ~~such as revolvers~~ or a lot of
12 single shot shotguns, where casings will be carried from
13 the scene with the firearm because they don't eject the
14 casing.

15 Q. And on scene before you arrive, is it possible
16 that --

17 MR. SMILEY: I'm going to object. It
18 requires speculation.

19 THE COURT: Well, I don't know what her
20 question is going to be, but it doesn't sound like you're
21 laying a foundation for a speculative --

22 BY MS. LINDER:

23 Q. In your training and experience, are there ever
24 outside sources or reasons why items are not as they were
25 at the moment of the incident?

MARK WATSON - RE-CROSS EXAMINATION

1 A. Yes, ma'am.

2 Q. And can you explain that.

3 A. There are things, like I said earlier, from wind

4 and rain and weather, people trampling through that,

5 people removing evidence prior to us arriving on scene to

6 secure evidence or secure the scene. Sometimes evidence

7 is removed.

8 MS. LINDER: I have nothing further. Thank
9 you.

10 THE COURT: Recross?

11 MR. SMILEY: Very briefly.

12 RE-CROSS-EXAMINATION

13 BY MR. SMILEY:

14 Q. Now, the scene was already secured when you got
15 there, correct?

16 A. Yes, sir.

17 Q. But you and Investigator Meyers were there fairly
18 shortly after the alleged incident happened, correct?

19 A. Yes, sir.

20 MR. SMILEY: All right. That's all I have.

21 THE COURT: You can step down. Do you need
22 him for anything else?

23 MS. LINDER: No. We would ask he be excused.
24 Thank you.

25 THE COURT: You're free to go. Thanks. Next

TYH'SHKA CATTS - DIRECT EXAMINATION

1 witness.

2 MS. BALDWIN: The State calls Tyh'Shka Catts.

3 TYH'SHKA CATTS,

4 ~~having been first duly sworn,~~

5 was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MS. BALDWIN:

8 Q. Tyh'Shka, just so the jury knows a little bit
9 about you, how old are you?

10 A. Thirty-five.

11 Q. Where are you currently living?

12 A. Ohio.

13 Q. Where in Ohio?

14 A. Columbus.

15 Q. Okay. Do you have any children?

16 A. Yes.

17 Q. How many children do you have?

18 A. Five.

19 Q. And are you from Ohio originally?

20 A. No, ma'am.

21 Q. Where are you from originally?

22 A. Poughkeepsie, New York.

23 Q. Just down in Charleston for the day to testify?

24 A. Yes, ma'am.

25 Q. Okay. Did you live in Charleston at some point?

TYH'SHKA CATTS - DIRECT EXAMINATION

- 1 A. Yes, ma'am.
- 2 Q. Okay. Were you living in Charleston in July of
3 2012?
- 4 A. Yes, ma'am.
- 5 Q. Where were you working then?
- 6 A. I was working at Burger King.
- 7 Q. And where was Burger King in relation to the
8 Waffle House incident that we're talking about today?
- 9 A. Right next door.
- 10 Q. Do you remember an incident that happened in July
11 of 2012 at the Waffle House?
- 12 A. Yes, ma'am.
- 13 Q. Okay. Where were you earlier in the evening?
- 14 A. I was at an after hours called Frazier's.
- 15 Q. Okay. Were you there with anybody else?
- 16 A. I met one of my co-workers there.
- 17 Q. And what is her name?
- 18 A. Santresa Gordon.
- 19 Q. Did anything happen at the after-party?
- 20 A. My truck got stuck in a ditch.
- 21 Q. Tell us about that. Your truck got stuck in a
22 ditch. Did anybody help you with that?
- 23 A. Yes, ma'am.
- 24 Q. And who helped you with that?
- 25 A. Well, Santresa and another guy had got me some

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1 help to get my truck out of the ditch, because a whole
2 bunch of people pulling and stuff.

3 Q. Did you know who the guy was that helped you?

4 A. No.

5 Q. Do you remember what he was wearing?

6 A. Yes.

7 Q. What was he wearing?

8 A. He had on a red shirt with some dark colored,
9 like, dark blue jeans and he had, like, the beginning
10 start of dreads in his hair.

11 Q. So after you got your car out of the ditch, where
12 did you go?

13 A. To the Waffle House.

14 Q. Did you go with anybody else?

15 A. No. I drove by myself.

16 Q. When you got to the Waffle House, what did you do?

17 A. "I sat outside for a couple minutes, because it
18 was -- I seen it was crowded. I sat outside, and when I
19 seen people coming out, I went inside, and then I sat
20 down and --

21 Q. And then what happened? What did you see?

22 A. When I sat down, I seen a guy -- there was one guy
23 just sitting in a chair, minding his own business, and
24 then I see the same guy that had on the red shirt and the
25 dark shorts with the dreads in his hair yelling in the

TYH'SHKA CATTS - DIRECT EXAMINATION

1 guy's face.

2 He was calling him -- excuse my language, calling
3 him bitches, and he was yelling in the guy's face,

4 saying, I'm from the country. Where you from?

5 Then he proceeded to keep on calling him bitches,
6 and then he was just -- kept yelling Red Top. I'm from
7 the country. Where you from, bitch?

8 Q. Do you know why he was yelling at him?

9 A. I guess maybe -- it was probably alcohol. I don't
10 know.

11 MR. SMILEY: Objection. Speculation.

12 THE COURT: You can't speculate, but if you
13 know, you can say, otherwise --

14 THE WITNESS: I apologize. No, I'm not sure.
15 Sorry.

16 BY MS. BALDWIN:

17 Q. So you're watching this argument taking place.
18 Did you know the guy that was sitting down that the guy
19 in the red shirt was yelling at?

20 A. No, ma'am.

21 Q. Did you know any people that were in the Waffle
22 House?

23 A. No.

24 Q. Did anything else happen besides the guy in the
25 red shirt yelling?

1 A. After, I guess, it got a bit intense, the guy that
2 worked there came out and was telling them that they
3 needed to stop or whatever, and he was trying to calm
4 everything down and stuff like that, and then the guy --

5 the guy that had on the white shirt that was sitting
6 down, minding his own business, the guy that worked there
7 was trying to escort both of them out.

8 And then the guy with the red shirt pulled out a
9 gun, and then after that, I just moved and I went
10 underneath the table.

11 Q. You said you went underneath the table?

12 A. Yes, ma'am.

13 Q. Went by yourself underneath the table?

14 A. No. There was a lady under there. I don't know
15 her name, though. There was a lady under the table.

16 Q. I'm going to put up on the screen for you,
17 Tyh'Shka, State's Exhibit 3. It's already been admitted
18 into evidence. This is the video, surveillance video.
19 Have you viewed that video previously in my office?

20 A. Yes, ma'am.

21 Q. Do you recognize this angle, Tyh'Shka?

22 A. Yes.

23 Q. I'm just having some technical difficulties.

24 All right. I know that is a little bit better.

25 It's a little more normal.

TYH'SHKA CATTS - DIRECT EXAMINATION

1 Tell us when you see yourself walk in. Are you in
2 yet, do you know?

3 A. No. I'm right there (indicating).

4 Q. Right where? You can actually touch that screen,
5 and that will put a little mark there.

6 A. Right there (indicating).

7 Q. That's you?

8 A. Yeah.

9 Q. Do you know that big guy in the striped shirt?

10 A. No, ma'am.

11 Q. Were y'all walking in together?

12 A. No.

13 Q. Just happened to --

14 A. Yes, just happened to be walking by.

15 Q. Just tell us when you see yourself.

16 A. Right there (indicating).

17 Q. What are you wearing?

18 A. I had on a one piece short set, one shoulder.

19 Q. Okay. I'm just going to pause it real quick. Who

20 is that guy in the red shirt that's at the bottom

21 right-hand corner?

22 A. That is the guy who was yelling in the other man's
23 face that he was from the country and calling him bitches
24 and stuff like that.

25 Q. Did you know his name?

TYH'SHKA CATTS - DIRECT EXAMINATION

- 1 A. No.
- 2 Q. And what are you doing while all this is going on?
- 3 A. Just watching, paying attention to my
- 4 surroundings.
- 5 Q. And what was the man in the red shirt doing?
- 6 A. Still yelling and cursing and stuff like that.
- 7 Q. What was going through your head?
- 8 A. I couldn't understand what was going on. It was
- 9 just all craziness to me.
- 10 Q. What is happening here?
- 11 A. That's when the guy that worked at the Waffle
- 12 House came out and was telling him to stop because this
- 13 guy wasn't -- the other guy wasn't bothering anybody.
- 14 Q. About how far away from all of this do you think
- 15 you were?
- 16 A. Like -- not even a foot. I was literally sitting
- 17 right there, so I wasn't so far.
- 18 Q. Closer than you and me right now?
- 19 A. Yes.
- 20 Q. How about now?
- 21 A. I would say, like, from here to about right here
- 22 (indicating).
- 23 Q. To right about here?
- 24 A. Yes.
- 25 Q. Okay. What's happening there?

TYH'SHKA CATTS - DIRECT EXAMINATION

1 A. That's when the guy had pulled out -- I don't know
2 if they were going to fight or whatever, but the guy
3 pulled out -- was getting ready to pull out the gun, and
4 soon after that, everyone just, like, scattered.

5 Q. Were things happening pretty quickly to you?

6 A. Uh-huh.

7 Q. Were you watching what was going on down --

8 A. Yeah. I was looking towards the door.

9 Q. Now, at what point did you get up?

10 A. When I heard a shot is when I got up.

11 Q. And then what are you doing there?

12 A. The couple that was sitting at the end, I got
13 under the same table they were under.

14 Q. And what was your state of mind when you heard the
15 shots go off?

16 A. I honestly -- I was scared, but, like, I don't
17 know.

18 Q. You said you were scared.

19 A. Yeah.

20 Q. Did it make you feel comfortable to have shots
21 ringing out?

22 A. No.

23 MS. BALDWIN: Beg the Court's indulgence.

24 BY MS. BALDWIN:

25 Q. Tyh'Shka, just tell us, who did you see had the

TYH'SHKA CATTS - DIRECT EXAMINATION

1 gun?

2 A. The guy that had on the red shirt and the dark
3 shorts with the dreads in his hair.

4 MS. BALDWIN: May I approach the witness,
5 Your Honor?

6 BY MS. BALDWIN:

7 Q. I'm going to show you State's 36 for ID. Do you
8 know what this is?

9 A. A 911 call?

10 Q. Did you call 911?

11 A. Yes, ma'am.

12 Q. Is this a recording of the 911 call you made?

13 A. Yes, ma'am.

14 Q. How do you know that?

15 A. I heard it.

16 Q. Did we have you initial it?

17 A. Yes, ma'am.

18 Q. And that's you on the 911 call?

19 A. Yes, ma'am.

20 MS. BALDWIN: At this point I would like to
21 ask that State's Exhibit 36 be admitted.

22 MR. SMILEY: Without objection.

23 THE COURT: All right. You may publish it.

24 (Whereupon, State's Exhibit No. 36 was marked
25 for identification and admitted into evidence.)

TYH'SHKA CATTS - DIRECT EXAMINATION

1 (Whereupon, the 911 call was played for the
2 jury.)

3 BY MS. BALDWIN:

4 Q. And that was you, Tyh'Shka?

5 A. Yes, ma'am.

6 Q. Okay.

7 MS. BALDWIN: Beg the Court's indulgence.

8 BY MS. BALDWIN:

9 Q. And just to clarify, the guy that you pointed out
10 in the video in the red shirt --

11 A. Yes, ma'am.

12 Q. -- that was the guy that helped you out earlier in
13 the evening?

14 A. Yeah. Yes, ma'am.

15 Q. So you had seen him before?

16 A. Yes, ma'am.

17 Q. You recognized him from the club that evening?

18 A. Yes, ma'am.

19 Q. And he was also the guy that you saw hold the gun?

20 A. Yes, ma'am.

21 Q. Okay.

22 MS. BALDWIN: I don't have any further
23 questions. Please answer any of Mr. Smiley's questions.

24 CROSS-EXAMINATION

25 BY MR. SMILEY:

TYH'SHKA CATTS - DIRECT EXAMINATION

1 Q. Ms. Catts, I'm Jim Smiley. This is Ms. Hensley,
2 and this is my client, Mr. Brown, okay?

3 A. Yes, sir.

4 Q. Now, you came in that night from the club. When
5 you got there, you said it was really crowded?

6 A. Yes, sir.

7 Q. Pretty chaotic before anything happened, was it?

8 A. Yes, sir.

9 Q. People were in and out in the parking lot,
10 everywhere, right?

11 A. Yes, sir.

12 Q. And, actually, when that first group comes out is
13 when you saw them, and would lighten up and you went in,
14 right?

15 A. Yes, sir.

16 Q. And the video pretty much shows exactly where you
17 were, right?

18 A. Yes, sir.

19 Q. Okay. The only thing it didn't show is what was
20 being said, right?

21 A. Yes, sir.

22 Q. Okay. The fellow with the red shirt on, his shirt
23 was open, right? It was unbuttoned?

24 A. It was unbuttoned, yes, sir.

25 Q. Hanging down, sort of like -- I don't know how to

TYH'SHKA CATTS - DIRECT EXAMINATION

1 explain it. It was open?

2 A. Yes.

3 Q. And he had on a pair of jeans.

4 A. Yes, sir.

5 Q. And so you were within a couple of feet, two or
6 three feet, from him, right?

7 A. Yes, sir.

8 Q. And you saw he was in the other gentleman's face
9 talking trash, right?

10 A. Yes, sir.

11 Q. And you had a pretty good view of that whole
12 thing, right?

13 A. Yes, sir.

14 Q. You didn't see a gun in his waistband, did you?

15 A. I seen the part of his shirt that was open. I
16 didn't see his waistband.

17 Q. Let me ask this: You say you saw him pull out the
18 gun?

19 A. Yes, sir.

20 Q. And he pulled it out of his waistband?

21 A. From the side.

22 Q. From his right side?

23 A. I don't remember which side. I just know it was
24 from the side.

25 Q. From the side?

TYH'SHKA CATTIS - DIRECT EXAMINATION

1 A. Yes.

2 Q. All right. And it would have appeared that it was
3 tucked into his pants, like, between the pants and the
4 skin or hip?

5 A. Yes, sir.

6 Q. Okay. Now, it's your testimony that from your
7 vantage point you were able to see him pull the gun out
8 from the right side, correct?

9 A. No. I said I didn't see the side.

10 Q. I'm not trying to trick you, Hon. I apologize.
11 You said you saw him pull a gun out from the side.

12 A. Yes.

13 Q. And that was at the point that the cook had come
14 around, the security guard was involved, and everybody
15 was moving towards the door, correct?

16 A. Yes.

17 Q. Okay. I just want to make sure that that's the
18 point that -- that gun, when you saw it, was it pulled
19 out before they went into that foyer area or after?

20 A. I honestly don't recall.

21 Q. And when you called 911, you were still under the
22 table, right?

23 A. Yes, sir.

24 Q. You didn't actually see anybody shoot a gun,
25 though, right?

TYH'SHKA CATTS - DIRECT EXAMINATION

1 A. No, sir, I didn't.

2 Q. Now, I'm going to turn on one of the videos, so
3 just give me a second.

4 While they're working on that, let me ask you
5 another question. How many shots did you hear?

6 A. Four or five.

7 Q. Four or five?

8 A. Yes, sir.

9 Q. If we could go to about 4:10, 4:11 when Ms. Catts
10 comes in. I appreciate your help. That would be great.

11 So when you were coming in, there was a huge
12 rush of other people going out, right?

13 A. Yes, sir.

14 Q. And then is it -- this is you coming in the door,
15 right?

16 A. Uh-huh.

17 Q. Behind the big gentleman, right?

18 A. Yes.

19 Q. It does look like you're together, but I
20 understand you weren't, and y'all sit at different
21 places. You sit at the end of that counter, right?

22 A. Yes, sir.

23 Q. And then this is the camera that is above you
24 looking down at the door?

25 A. Right. I believe so, I guess.

1 Q. Well, is that --

2 A. That's the door, yes.

3 Q. And you're sitting down, just to the right of this
4 camera?

5 A. Yes.

6 Q. And so, of course, your view is at eye level back
7 in that direction, right?

8 A. Yes.

9 Q. But, generally, the view, and you -- and, for the
10 record, it's State Exhibit 3 that is in evidence that I'm
11 showing to Ms. Catts, camera angle two.

12 Now, this whole time you're sitting down here
13 at the corner, right?

14 A. Yes, sir.

15 Q. And you can't see it, but the gentleman, or the
16 man in the red open shirt, is going at it with the fellow
17 minding his business, right?

18 A. Uh-huh.

19 Q. And the guy --

20 A. That's where the guy that worked there came out.

21 Q. And you saw the gun come out as they're going out,
22 right?

23 A. Uh-huh.

24 Q. Okay. And your view would have been at eye level
25 back towards the door, right?

TYH'SHKA CATTS - DIRECT EXAMINATION

1 A. Yes, sir.

2 Q. Because you didn't ever go towards the door. You
3 stood up, and when you heard the shot, you went under,
4 right?

5 A. Yes, sir.

6 Q. So you heard the shot but didn't see it, correct?

7 A. Yes, sir.

8 Q. If you could just stop that.

9 Now, afterwards, you stayed at the scene, right?

10 A. Uh-huh.

11 Q. And the police came?

12 A. Uh-huh.

13 Q. And they spoke to you briefly?

14 A. Yes, sir.

15 Q. And they gave you a witness statement, didn't
16 they?

17 A. Yes, sir.

18 Q. And so you and the couple that were back in the
19 corner and the employee that hurt her leg and another
20 lady all sat back in the corner and wrote your
21 statements, right?

22 A. I wrote my statement at the station.

23 Q. Okay.

24 A. I wrote something in the corner too, but I wrote
25 something at the station, yes.

1 Q. You did two statements, right?

2 A. Yes, yes. Sorry.

3 Q. Because that night, out at the Waffle House, you
4 ~~wrote something down on a witness statement.~~

5 A. Yes, sir.

6 Q. And later, you came in -- I believe you spoke with
7 Investigator Moir-Smith at a later time and gave another
8 statement; is that right?

9 A. That same morning, night; however, we were taken
10 {sic} down to the station, right there. I don't remember
11 the investigator that I spoke with.

12 Q. All right. I'm not doing very good. So I'm going
13 to break it into little pieces, okay? Sometimes I try to
14 ask too much at one time.

15 You were given a witness sheet when you were at
16 the scene, correct?

17 A. Yes.

18 Q. You sat in that back corner and wrote a statement,
19 correct?

20 A. Yes.

21 Q. Okay. Then when you got that, shortly after that,
22 you went down to the station?

23 A. Yes, sir.

24 Q. And you spoke with an investigator?

25 A. Uh-huh.

1 Q. And then they asked you to do a summary, another
2 summary, of what you saw?

3 } A. Yes, sir.

4 Q. Okay. And you were also shown a photo lineup,
5 right?

6 A. Yes, sir.

7 Q. And you were asked -- you were shown a series of
8 six photographs to see if you recognize anybody, right?

9 A. Yes, sir.

10 Q. And you weren't able to pick out anybody as being
11 the shooter, correct?

12 A. Correct.

13 MR. SMILEY: Beg the Court's indulgence.

14 BY MR. SMILEY:

15 Q. Just one more question, Ms. Catts.

16 You saw the weapon pulled out, and it was four or
17 five seconds later before you heard the shots, or the
18 first shot?

19 A. About that.

20 Q. Okay. It wasn't like the weapon came out and then
21 there was a shot. You saw a weapon come out, and then
22 some time, a few seconds later, then you heard it.

23 A. I'm sorry?

24 THE COURT: You just gave us a nod. I need
25 you to say your answer out loud.

TYH'SHKA CATTS - RECROSS EXAMINATION

1 THE WITNESS: Yes. I apologize.

2 THE COURT: All right. Thank you.

3 All right. Do you have any redirect?

4 MS. BALDWIN: Just briefly, Your Honor.

5 REDIRECT EXAMINATION

6 BY MS. BALDWIN:

7 Q. The person that you said pulled out the gun, the
8 person in the red shirt, was the red shirt easily
9 identifiable to you?

10 A. Yes.

11 Q. The shirt stuck out to you?

12 A. Yes.

13 Q. Did you see anybody else in the Waffle House with
14 a red shirt?

15 A. No. Everyone else had on, like, white T-shirts or
16 blue T-shirts. No one else had on a red shirt.

17 MS. BALDWIN: Court's indulgence.

18 I have no further questions.

19 ~~RECROSS EXAMINATION~~

20 BY MR. SMILEY:

21 Q. Are you trying to say that there was nobody with a
22 red shirt other than the fellow that you saw pull the gun
23 out in the Waffle House?

24 A. Not with -- yes.

25 Q. Nobody else had a red shirt on?

MONTRELL BUTLER - DIRECT EXAMINATION

1 A. I didn't see anyone else with a red shirt on.

2 Q. So if somebody else had a red shirt on, you would
3 just be mistaken?

4 A. No, I --

5 Q. Could I --

6 MR. SMILEY: That's all I have. Thank you.

7 THE WITNESS: Okay.

8 THE COURT: You can step down.

9 All right, folks. Why don't we take a
10 ten-minute rest room break.

11 Don't begin deliberations or discussions.
12 Please don't discuss testimony or anything with each
13 other, and we'll be back in about ten minutes.

14 (Recess taken.)

15 THE COURT: You got your next witness ready?

16 MS. LINDER: Yes.

17 THE COURT: Let the record reflect the
18 defendant is in the courtroom. Bring the jury in.

19 (In open court, jury present.)

20 THE COURT: All right. We will resume now
21 with the State calling their next witness.

22 MS. LINDER: The State calls Montrell
23 Butler.

24 MONTRELL BUTLER,

25 having been first duly sworn,

MONTRELL BUTLER - DIRECT EXAMINATION

1 was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MS. LINDER:

4 Q. Good afternoon, Mr. Butler. Where are you
5 originally from?

6 A. Pineland.

7 Q. Is that out in the southern area of Charleston
8 County?

9 A. Yeah, I guess so. Yeah.

10 Q. Is Pineland -- I'm trying to get the jury -- is it
11 close to Hollywood, part of Hollywood?

12 A. Uh-huh.

13 Q. And do you know why you're here today?

14 A. Yes, ma'am.

15 Q. Were you at the Waffle House back on -- in July
16 2012 on Savannah Highway?

17 A. Yes, ma'am.

18 Q. And where were you before you went to that Waffle
19 House?

20 A. Frazier's.

21 Q. And what is Frazier's?

22 A. A club in Davidson.

23 Q. And how did you get to Frazier's?

24 A. I rode with my friend.

25 Q. What kind of vehicle did you ride in?

MONTRELL BUTLER - DIRECT EXAMINATION

1 A. Buick.

2 Q. And who was in the car when you rode to Frazier's?

3 A. Me, Lorenzo, Quanesiha, and Thomas.

4 Q. And did anything out of the ordinary happen when
5 you were at Frazier's?

6 A. No, ma'am.

7 Q. And after Frazier's, how did you get to Waffle
8 House?

9 A. Same car.

10 Q. Same car. And who was in the car with you on the
11 way to Waffle House?

12 A. I think it was me, Lorenzo, Quanesiha, Thomas, and
13 Brandon.

14 Q. And do you remember where the white Buick got
15 parked in the parking lot?

16 A. On the left side.

17 Q. Does the left side mean toward Savannah Highway or
18 toward Burger King, or toward the back road?

19 A. Toward Savannah Highway.

20 Q. Where did you go when you got to the Waffle House?

21 A. Inside.

22 Q. When you were at the Waffle House that night, did
23 a fight happen a little bit after 4:00 in the morning?

24 A. Uh-huh.

25 Q. And did a shooting happen that night, again, a

1 little bit after 4:00?

2 A. Yes, ma'am.

3 Q. And did you leave the scene that night before the
4 police arrived?

5 A. No, ma'am.

6 Q. Did you give an interview with police that night?

7 A. No, ma'am.

8 Q. Can you tell the jury what happened a little more
9 specifically, what happened when you went inside the
10 Waffle House. What happened that night?

11 A. I was in the Waffle House, and about five minutes
12 out there a fight broke out.

13 Q. Who was in the fight?

14 A. It was Deonte Brown and some other guy and Derrick
15 Brown.

16 Q. Did you know the other guy that was in the fight
17 with Deonte Brown?

18 A. No.

19 Q. Do you remember what the other guy was wearing?

20 A. White.

21 Q. And do you remember what Deonte was wearing that
22 night?

23 A. Red.

24 Q. And how do you know Deonte?

25 A. In the schoolyard.

MONTRELL BUTLER - DIRECT EXAMINATION

1 Q. You went to school together?

2 A. (Nods head.)

3 Q. Is it fair to say you've known him a pretty fair
4 amount of time, over a year?

5 A. Uh-huh.

6 Q. And is Deonte in the courtroom?

7 A. Uh-huh.

8 Q. What is he wearing?

9 A. White.

10 Q. Can you be more specific? Where is he sitting?

11 A. Right there (indicating).

12 Q. So did you stay inside the Waffle House the whole
13 night?

14 A. No, ma'am.

15 Q. Why did you go outside the Waffle House?

16 A. I followed a girl.

17 Q. And were you inside the Waffle House when the
18 shooting happened?

19 A. No, ma'am.

20 Q. Where were you?

21 A. In the Buick.

22 Q. In the Buick?

23 A. Uh-huh.

24 Q. Were you sitting up in the Buick? Were you taking
25 cover in the Buick? How was it?

MONTRELL BUTLER - DIRECT EXAMINATION

1 A. I was sitting up, and when the shooting started, I
2 started ducking.

3 Q. Was there anybody else in the Buick with you?

4 A. Uh-huh.

5 Q. Who?

6 A. Quanesiha.

7 Q. All right. At this time, I'm going to show you a
8 video, and I'm going to have you go through -- it will
9 show up on the screen in front of you, and we'll play
10 some of it and pause some of it, and I'm just going to
11 ask you a couple of questions while we go through.

12 Now, who are those two guys entering right there?

13 A. Derrick and Deonte.

14 Q. And what is Derrick's last name?

15 A. Brown.

16 Q. And what is he wearing?

17 A. Black.

18 Q. Is that the individual holding the cup?

19 A. Uh-huh.

20 Q. And whose behind him?

21 A. Deonte.

22 Q. And is that Deonte who you said you went to school
23 with?

24 A. Uh-huh.

25 Q. And is it fair to say that Deonte is also from the

MONTRELL BUTLER - DIRECT EXAMINATION

1 general Hollywood area?

2 A. Uh-huh.

3 Q. And is it fair to say Derrick is from the

4 Hollywood area?

5 A. Yes, ma'am.

6 Q. Was Deonte at Frazier's earlier that night that
7 you're aware of?

8 A. Yeah.

9 Q. Those cups that Deonte and Derrick have, are those
10 from the Waffle House or where, or do you know?

11 A. From the club.

12 Q. They're from the club? And can you see who is
13 entering right now?

14 A. Yes, ma'am.

15 Q. Who is entering and what are they wearing?

16 A. Quanesiha and Chavis.

17 Q. Quanesiha, Quanesiha is a she?

18 A. Yeah.

19 Q. What is she wearing?

20 A. A dress.

21 Q. Is that the individual in the stripes?

22 A. Uh-huh.

23 Q. And who is the other person?

24 A. Chavis.

25 Q. And what's he wearing?

1 A. Blue, blue and white.

2 Q. And are they both also from the Hollywood area?

3 A. Yes, ma'am.

4 Q. And who is entering now?

5 A. That is Sinclair.

6 Q. Do you know Sinclair's last name?

7 A. Heyward.

8 Q. And is he also from the Hollywood area?

9 A. Uh-huh.

10 Q. All right. Now, I know there is a bunch of
11 people, but if you can tell me, when you see them, who
12 else is entering? And explain what they're wearing, or
13 if the hairstyle helps --

14 A. I see Lorenzo.

15 Q. What is Lorenzo's last name?

16 A. Brown.

17 Q. What is he wearing?

18 A. Black and white.

19 Q. Okay. If you touch that screen, it will light up,
20 so can you kind of circle where Lorenzo is.

21 Did you say Lorenzo is wearing white?

22 A. Black and white.

23 Q. Black and white? All right. And do you recognize
24 anybody else at this point?

25 A. I can't really see.

MONTRELL BUTLER - DIRECT EXAMINATION

- 1 Q. Do you recognize the individual on the far right
2 of the scene? It looks like braids or dreads to about
3 the shoulder?
- 4 A. Uh-huh.
- 5 Q. Who is that?
- 6 A. Dontaye.
- 7 Q. What is his last name?
- 8 A. Reed.
- 9 Q. And does he have a nickname?
- 10 A. Snoop.
- 11 Q. Is he also from the Hollywood area?
- 12 A. Uh-huh.
- 13 Q. Do you also recognize the fellow in the light gray
14 shirt, also on the left?
- 15 A. Uh-huh.
- 16 Q. Who is that?
- 17 A. Brandon.
- 18 Q. Is he also from the Hollywood area?
- 19 A. Yes, ma'am.
- 20 Q. Do you recognize the person standing right in
21 front of Brandon?
- 22 A. That's me.
- 23 Q. That is you? What were you wearing that night?
- 24 A. Blue shirt.
- 25 Q. Did it have some writing on the back of the shirt?

1 A. Uh-huh.

2 Q. All right. Go ahead.

3 What is going on in this area where y'all look
4 clumped together?

5 A. I think it was an argument.

6 Q. Do you see anybody on there with a red shirt
7 besides Deonte?

8 A. Yes.

9 Q. How many people aside from Deonte are wearing a
10 red shirt?

11 A. One.

12 Q. Okay. And where is he sitting?

13 A. At the counter.

14 Q. Do you know him?

15 A. Yeah, yes.

16 Q. Do you know his name? Are you friends, or you
17 just recognize --

18 A. I know him, but I don't really remember his name.

19 Q. Okay. We can go ahead.

20 Who is that fellow coming in with a hat and, it
21 looks like, a black shirt, white guy? Do you understand
22 what I'm saying, on the left side of the screen?

23 A. Yeah.

24 Q. All right. Is it typical for Waffle House to have
25 security out there?

MONTRELL BUTLER - DIRECT EXAMINATION

1 A. Yes, ma'am, sometimes.

2 Q. Do you remember what was happening right here? If
3 you don't, that's okay, if you know.

4 A. No.

5 Q. Okay. Is that a better picture of Lorenzo, black
6 T-shirt and white shorts?

7 A. Yes, ma'am.

8 Q. What is the security guard doing here, do you
9 remember?

10 A. They trying to break something up.

11 Q. Okay. And do you see yourself? Pause it, please.

12 Did you see yourself just now? You can rewind it.

13 Looking for 4:10, around 4:10 -- all right. And you said
14 you were in a dark blue shirt with some writing on it?

15 A. Uh-huh.

16 Q. Okay. I'm just going to play -- no, it's before
17 this. Do you see yourself?

18 A. Yes, ma'am.

19 Q. Where are you wandering?

20 A. I don't know.

21 Q. Just hanging out?

22 A. Yeah.

23 Q. Is that Chavis that is walking over to you, bluish
24 turquoise shirt on?

25 A. Uh-huh.

1 Q. Where are you going?

2 A. Over and coming back.

3 Q. Where are you going now?

4 A. Outside.

5 Q. Now, pause it, please. How many people are
6 wearing a red shirt at this point?

7 A. Two.

8 Q. And who is the person in the red shirt, like, to
9 the forefront of the screen, with -- it looks like white
10 stuff on the shoulders and holding the cup?

11 A. Deonte.

12 Q. And the other fellow is the guy you said you
13 recognized still sitting at that counter?

14 A. Yes, ma'am.

15 Q. Okay. Where is that guy from the counter going?

16 A. I don't know where he's going. Outside.

17 Q. He went outside?

18 A. Uh-huh.

19 Q. At this point you're still outside. Have you seen
20 yourself come back in?

21 A. No, ma'am.

22 Q. Have you seen yourself come back in at this point?

23 A. No, ma'am.

24 Q. Have you seen that fellow with the red shirt that
25 left come back in at this point?

MONTRELL BUTLER - DIRECT EXAMINATION

1 A. No.

2 Q. Okay. Pause it. All right.

3 Have you come back in that you've been able to
4 see?

5 A. Huh?

6 Q. Have you entered the Waffle House again since
7 you've been able to see?

8 A. No, ma'am.

9 Q. And can you see what Lorenzo is doing right here?

10 MR. SMILEY: Objection, Your Honor. He's
11 outside at this point in time. He doesn't have an
12 independent basis to say what's going on outside.

13 THE COURT: Maybe if he can't see, but if he
14 can see, he can tell what he saw.

15 MR. SMILEY: Yes, sir.

16 BY MS. LINDER:

17 Q. If you know, you can answer. If not, that's okay.

18 A. I said it's showing his back, so I can't see what
19 he's doing.

20 Q. I'm just going to briefly show you one other angle
21 of this, okay? All right. We're going to look at camera
22 six, and we're going to rewind it just a little bit and
23 have you talk about a couple of things.

24 All right. Is this the exterior of the Waffle
25 House?

1 A. Yes, ma'am.

2 Q. Have you previously watched these videos?

3 A. Yes, ma'am.

4 Q. Okay. We're going to play a little bit for you.

5 Who is that exiting, do you know?

6 A. I can't really see.

7 Q. What about that striped tunic, or dress?

8 A. Quanesiha.

9 Q. What about in front of that white SUV? It looks
10 like a dark shirt with writing on the back.

11 A. That's me.

12 Q. And earlier, you had said that you had gone
13 outside the Waffle House and you saw that on the video;
14 is that right?

15 A. Yes, ma'am.

16 Q. Okay. Tell me if you see yourself at all. And do
17 you see that white Buick in this video?

18 A. Yes, ma'am.

19 Q. Can you point that out? Can you touch that screen
20 and show that white Buick?

21 A. (Indicating.)

22 Q. And that's where you said earlier that it parked,
23 or was parked?

24 A. Yes, ma'am.

25 Q. Now, who is that girl with that striped tunic

MONTRELL BUTLER - CROSS-EXAMINATION

1 talking to at the top of the screen, top left, if you can
2 tell?

3 A. I think she's talking to me.

4 Q. Talking to you?

5 A. Uh-huh.

6 Q. Now, where are you going?

7 A. To the car.

8 Q. All right.

9 MS. LINDER: I have no further questions for
10 you, if you can answer anything the defense may have.

11 CROSS-EXAMINATION

12 BY MR. SMILEY:

13 Q. So that white Buick that you pointed out, that's
14 the car you and Quanesiha end up in?

15 A. Uh-huh.

16 Q. And were you in that car when the shots were
17 fired?

18 A. Yes, sir.

19 Q. And you were in the front driver's side?

20 A. I can't really remember.

21 Q. Were you in the front seat, were you --

22 A. I believe so. I think she was in the back.

23 Q. She was in the back, and that car is facing out
24 towards Savannah Highway?

25 A. Yes, sir.

1 Q. And y'all were sitting in the car?

2 A. Yes, sir.

3 Q. Okay. And you were in the Waffle House when
4 Scrappy got thrown out, right?

5 A. I think so. Can't remember.

6 Q. When the guard took him out, you don't remember?

7 A. I can't remember.

8 Q. And I guess Derrick Brown, he's also known as
9 Scrappy, right?

10 A. Yes, sir.

11 Q. And when you were in there and the fuss first
12 started, it got broken up, right?

13 A. Uh-huh.

14 Q. And it wasn't so much going on that you stayed to
15 watch, you and Quanesiha went out to the car, right?

16 A. Yes, sir.

17 Q. And in that parking lot, you saw a whole lot of
18 people in the parking lot. There were a lot of people in
19 the parking lot too?

20 A. Yes, sir.

21 Q. It's common -- see if you agree with me. Is it
22 common that after Frazier's closed down, lots of people
23 come to the Waffle House on the weekends?

24 A. Yes, sir.

25 Q. Now, Deonte, you saw him that night in the Waffle

MONTRELL BUTLER - CROSS-EXAMINATION

1 House, right?

2 A. Yes, sir.

3 Q. And he had on a red shirt with some epaulets and
4 stuff like that, and it was open, right?

5 A. Yes, sir.

6 Q. And he had on some jean pants, right, or jeans of
7 some sort, and they were loose, right?

8 A. Yes, sir.

9 Q. And the whole time he was -- while you were in the
10 Waffle House and he was in the Waffle House, you could
11 see him, right?

12 A. Yes, sir.

13 Q. Did you ever see him with a gun?

14 A. No, sir.

15 MR. SMILEY: That's all I got.

16 THE COURT: Redirect?

17 MS. LINDER: No redirect. Can this witness
18 please be excused?

19 THE COURT: You can step down. Do you need
20 him for anything?

21 MR. SMILEY: No, sir.

22 THE COURT: You're free to go. Next witness.

23 MS. BALDWIN: State calls Lorenzo Brown.

24 LORENZO BROWN,

25 having been first duly sworn,

LORENZO BROWN - DIRECT EXAMINATION

1 was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MS. BALDWIN:

4 Q. Lorenzo, where are you from?

5 A. Hollywood.

6 Q. How long have you lived there?

7 A. All my life.

8 Q. All your life. Do you know the defendant, Deonte
9 Brown?

10 A. Yes, ma'am.

11 Q. How do you know him?

12 A. School.

13 Q. You guys went to school together?

14 A. Yeah.

15 Q. Have you known him a long time? Y'all friendly?

16 A. Yeah.

17 Q. Is he in the courtroom today?

18 A. Yes, ma'am.

19 Q. Where is he sitting?

20 A. (Pointing.)

21 Q. Right there?

22 A. Yeah.

23 Q. Okay. What's he wearing?

24 A. White shirt.

25 Q. I'm going to bring you to the night of July 14,

LORENZO BROWN - DIRECT EXAMINATION

1 2012, into the early morning hours of July 15, 2012. Do
2 you remember an incident happening at the Waffle House
3 that night?

4 A. Yes, ma'am.

5 Q. Where had y'all been prior to the Waffle House?

6 A. Frazier's.

7 Q. Who did you go to Frazier's with?

8 A. I drove.

9 Q. You drove?

10 A. Yeah.

11 Q. What were you driving?

12 A. Buick.

13 Q. I just need you to speak up a little bit so that
14 lady can take down what you say, okay?

15 Did anybody ride with you in the Buick?

16 A. Yes, Montrell, Quanesiha, Brandon, and Thomas.

17 Q. And after Frazier's, you went over to the Waffle
18 House?

19 A. Yes, ma'am.

20 Q. And who drove over there?

21 A. Me.

22 Q. Okay. In which car?

23 A. Buick.

24 Q. And who rode with you over to the Waffle House?

25 A. Quanesiha, Thomas, Brandon, Montrell.

- 1 Q. What did you do when you got to the Waffle House?
- 2 A. Went in, sat down at the bar.
- 3 Q. Anything happen while you were there?
- 4 A. Yes. Got into a little argument.
- 5 Q. Who got into an argument?
- 6 A. Deonte and some guy.
- 7 Q. You don't know the guy?
- 8 A. No.
- 9 Q. Does Deonte go by any other name other than
- 10 Deonte?
- 11 A. Doesn't.
- 12 Q. Sometimes call him Deonte?
- 13 A. Yeah.
- 14 Q. Do you know what the argument was about?
- 15 A. Not really. It was a long time ago.
- 16 Q. It's been a long time?
- 17 A. Yeah.
- 18 Q. Do you remember giving a statement to the police
- 19 soon after this incident occurred?
- 20 A. Yeah.
- 21 Q. Do you remember telling them it was over -- the
- 22 argument was over a cigarette, you thought?
- 23 A. Yeah. There's a -- yeah.
- 24 Q. Was it just a verbal argument?
- 25 A. No.

LORENZO BROWN - DIRECT EXAMINATION

1 Q. What happened besides them just arguing?

2 A. They got into a little scuffle, you know.

3 Q. A scuffle?

4 A. Yeah.

5 Q. What happened with the scuffle?

6 A. They got into it for a little second. I said they
7 got into it for a little second in the Waffle House.

8 Q. Are you excited about being here today?

9 A. No, not really.

10 Q. Did we have to give you a subpoena to make sure
11 you came?

12 A. Yeah.

13 Q. So you heard a little scuffle. There was a
14 scuffle over by the doorway?

15 A. Uh-huh.

16 Q. When you say doorway of the Waffle House, what do
17 you mean?

18 A. The doors of the Waffle House, double doors.

19 Q. So near the outside?

20 A. Yeah.

21 Q. Do you remember when they were arguing, you
22 videotaping anything with your cellphone?

23 A. Yeah. Yes, ma'am.

24 Q. Okay. I'm going to show you what has been
25 admitted as State's Exhibit 2. Do you know what that is?

1 A. Yes, ma'am.

2 Q. What is that?

3 A. It's my video off my cellphone.

4 Q. How do you know that's it?

5 A. Because I initialed it.

6 Q. Okay. You viewed the video?

7 A. Yes, ma'am.

8 Q. Do you remember giving the -- telling the police
9 that you downloaded those videos?

10 A. Yes, ma'am.

11 MS. BALDWIN: Your Honor, at this time I
12 would like to publish State's Exhibit 2.

13 MR. SMILEY: ~~I have no objection.~~

14 THE COURT: It's admitted. You can publish
15 it.

16 BY MS. BALDWIN:

17 Q. ~~How many videos are there?~~

18 A. Two.

19 Q. That's real quick, huh? You're laughing. Whose
20 voice is that in the background?

21 A. Mine.

22 Q. Had you been drinking some at the club?

23 A. Yeah.

24 Q. A little relaxed. And who is that in the red
25 shirt?

LORENZO BROWN - DIRECT EXAMINATION

- 1 A. Deonte.
- 2 Q. Did you know who the guy in the white shirt was?
- 3 A. No.
- 4 Q. And sort of what was going on there?
- 5 A. I don't know. I don't know. I can't remember.
- 6 Q. Had that scuffle that you talked about happen yet?
- 7 A. No.
- 8 Q. Had that scuffle happened yet at that point?
- 9 A. No, ma'am.
- 10 Q. Who is that guy in the blue shirt --
- 11 A. In the blue shirt?
- 12 Q. Yeah.
- 13 A. Chavis.
- 14 Q. And who was the person in the red shirt?
- 15 A. Deonte.
- 16 Q. Was that usual for Deonte to be acting like that?
- 17 A. No.
- 18 Q. After the scuffle into the doorway, what happened?
- 19 A. They was fighting for a little second. I don't
- 20 know. There were some shots. I turned and ran back
- 21 behind the bar, like toward the side.
- 22 Q. Heard some shots, and you ran off to the side?
- 23 Could you see exactly what was going on?
- 24 A. A little bit.
- 25 Q. You could see fighting?

1 A. (Nods head.)

2 MS. BALDWIN: Beg the Court's indulgence. I
3 don't have any further questions for you.

4 ~~CROSS-EXAMINATION~~

5 BY MR. SMILEY:

6 Q. I am Jim Smiley. I represent Deonte, and this is
7 Ms. Hensley, who is my second chair, just so you know who
8 everybody is.

9 Y'all been at Frazier's that night, a whole bunch
10 of you?

11 A. Yes, sir.

12 Q. It wasn't like it was an organized thing; it was
13 just everybody went to the club?

14 A. Yes, sir.

15 Q. And is it fairly common after the club closes that
16 lots of people go to that Waffle House?

17 A. Yes, sir.

18 Q. And it was pretty crowded inside that night,
19 wasn't it?

20 A. Yes, sir.

21 Q. And there was people outside in the parking lot
22 too, right?

23 A. Yes, sir.

24 Q. It's not like everybody comes straight inside?

25 A. Yeah.

LORENZO BROWN - CROSS-EXAMINATION

1 Q. And you were sitting pretty close to Deonte and
2 the fellow when they got -- and the little scuffle,
3 right? Did you get a good view of Deonte, right? And
4 Deonte had on a red shirt, right, and it was open?

5 A. Yeah.

6 Q. And he had on blue jeans of some sort?

7 A. I don't remember.

8 Q. Do you remember if they were tight or loose?

9 A. No.

10 Q. Okay. But you could see the front of Deonte,
11 right?

12 A. Yeah.

13 Q. You didn't see a gun, did you?

14 A. No, sir.

15 Q. And when Deonte started acting a fool -- Deonte
16 looked pretty drunk there. Is that your observation?

17 A. Feeling good, probably.

18 Q. And he started ripping pretty hard there, didn't
19 he, talking a bunch of trash?

20 A. Yeah, a little bit.

21 Q. Did you see Deonte even hit the fellow?

22 A. No -- I can't recall.

23 Q. Let me ask you this, Lorenzo: You remember
24 Scrappy getting thrown out, right?

25 A. No.

LORENZO BROWN - CROSS-EXAMINATION

1 Q. You don't remember that? Okay. When -- did you
2 see Deonte throw a drink at the fellow?

3 A. I think so, I think -- yeah.

4 Q. Okay. And then at that point, the cook came
5 around from behind? Do you remember seeing that?

6 A. Who?

7 Q. The cook.

8 A. No.

9 Q. Okay. You don't remember seeing who was pushing
10 everybody towards the front of the Waffle House?

11 A. Huh-uh.

12 Q. Let me ask you some things I know you know. The
13 fight that you saw, it took place in that foyer area?

14 A. Yeah.

15 Q. And when I say foyer area, I mean outside the
16 inside door and inside the outside door, right?

17 A. Yeah.

18 Q. And that's where everybody was when you heard the
19 shot?

20 A. Yeah.

21 Q. When you hear the shot, you ducked, right?

22 A. Yeah. I turned and went back out of the way.

23 Q. Okay. At any point in the night, did you see
24 Deonte with a gun?

25 A. No, sir.

LORENZO BROWN - CROSS-EXAMINATION

1 MR. SMILEY: Beg the Court's indulgence.

2 BY MR. SMILEY:

3 Q. The camera, that's one of those things when you
4 saw it was going on, you thought it was funny?

5 A. Yes, sir.

6 Q. And I think you were holding out money at one
7 point in it, right?

8 A. Yes, sir.

9 Q. Because it was sort of silliness, right?

10 A. Yeah.

11 Q. Okay.

12 MR. SMILEY: That's all I got.

13 THE COURT: Redirect?

14 MS. BALDWIN: None, Your Honor.

15 THE COURT: You can step down. Anybody need
16 this witness any longer?

17 MS. BALDWIN: We're done with him, Your
18 Honor.

19 THE COURT: Do you need him, Mr. Smiley?

20 MR. SMILEY: No, sir.

21 THE COURT: You're free to go. Next witness.

22 MS. LINDER: State call Chavis Heyward.

23 CHAVIS HEYWARD,

24 having been first duly sworn,

25 was examined and testified as follows:

1 DIRECT EXAMINATION

2 BY MS. LINDER:

3 Q. Mr. Heyward, where are you from?

4 A. Hollywood.

5 Q. Hollywood?

6 A. Yes, ma'am.

7 Q. Do you know why you're here today?

8 A. Yes, ma'am.

9 Q. Are you happy about being here today?

10 A. No, ma'am.

11 Q. Were you served a subpoena for your appearance
12 here today?

13 A. Yes, ma'am.

14 Q. Do you currently work?

15 A. No, ma'am.

16 Q. Do you have an interest in music? Are you a
17 rapper?

18 A. Yes, ma'am.

19 Q. And what is your nickname?

20 A. CJ.

21 Q. CJ?

22 A. Yes, ma'am.

23 Q. Do you have any other nicknames for rapping or
24 just in general?

25 A. CJ.

CHAVIS HEYWARD - DIRECT EXAMINATION

1 Q. Were you at the Waffle House back in mid-July in
2 2012, on Savannah Highway?

3 A. Yes, ma'am.

4 Q. And that night, did a fight happen at the Waffle
5 House?

6 A. A fight?

7 Q. Did a verbal argument happen?

8 A. Yes, ma'am.

9 Q. Did that verbal argument ever escalate into some
10 punches being thrown?

11 A. I didn't see no punches get thrown.

12 Q. At some point that night at the Waffle House, did
13 a shooting take place?

14 A. Yes, ma'am.

15 Q. Before going to the Waffle House that night, I
16 want to take you back a couple of hours. Did you go to
17 Frazier's that night?

18 A. Yes, ma'am.

19 Q. And at Frazier's, what vehicle did you ride in?
20 Or if you don't remember, that's fine.

21 A. I don't remember.

22 Q. Okay. Do you remember if you rode by yourself or
23 with other people to Frazier's?

24 A. No, ma'am.

25 Q. Do you remember what time you went to the Waffle

1 House after Frazier's?

2 A. No, ma'am, not exact time.

3 Q. Was it midnight, was it 8 a.m.? Do you have any
4 idea?

5 A. No, ma'am.

6 Q. And is it typical to go to the Waffle House after
7 the clubs close?

8 A. If you're hungry.

9 Q. When you went to the Waffle House that night, do
10 you remember where you parked?

11 A. No, ma'am.

12 Q. The verbal argument at the Waffle House, do you
13 remember who that was between?

14 A. If you show me, I can remember. That was, like,
15 two years ago. I can't remember.

16 Q. Would it help refresh your recollection of what
17 happened to watch the video?

18 A. If you want to show me the video, then, yeah, if I
19 can remember two years ago. Do you remember something
20 two years ago?

21 Q. I would just ask that you answer the question.
22 Would you like to watch the video? Would that help
23 refresh your recollection?

24 A. Yes, ma'am.

25 Q. All right. If you can look at the screen in front

CHAVIS HEYWARD - DIRECT EXAMINATION

1 of you, we're going to be watching it, pausing it along
2 the way.

3 Who were the two individuals that walked in, one
4 in the black shirt, one in the red shirt?

5 A. That's Derrick and --

6 Q. What is Derrick wearing?

7 A. Black T-shirt.

8 Q. And who is in red?

9 A. Deonte.

10 Q. And who is Deonte?

11 A. Right here. In the red shirt right there.

12 Q. And are they carrying something in their hands?

13 A. Yeah, cups.

14 Q. Are those cups from the Waffle House or are those
15 cups from Frazier's, do you know?

16 A. I don't know.

17 Q. And just now kind of watching that doorway to
18 enter, okay --

19 A. Uh-huh.

20 Q. -- who is that coming in?

21 A. I don't know. Oh, that's me. Yeah, in the blue
22 shirt.

23 Q. Can you see who is coming in in that white
24 T-shirt?

25 A. My little brother.

CHAVIS HEYWARD - DIRECT EXAMINATION

1 Q. What is his name?

2 A. Sinclair.

3 Q. Can you tell who all these people are? If you
4 can, tell me their names and what they're wearing.

5 A. Lorenzo in the black T-shirt.

6 Q. Okay.

7 A. Snoop.

8 Q. And what is Snoop wearing?

9 A. White T-shirt.

10 Q. Who is Snoop? What is his real name?

11 A. I don't know his real name.

12 Q. You know him as Snoop?

13 A. Yes, ma'am.

14 Q. Is he from the Hollywood area?

15 A. Yes, ma'am.

16 Q. Are most of these people from the Hollywood area?

17 A. Yes, ma'am.

18 Q. Okay. And underneath the weird letters and
19 symbols at the bottom of that video screen, is that you
20 in the blue shirt?

21 A. Yes, ma'am.

22 Q. Okay. If you look at the screen, we're going to
23 look at a different angle. We're going to go to camera
24 one. All right. Do you recognize the person in the red
25 shirt?

CHAVIS HEYWARD - DIRECT EXAMINATION

1 A. Yes, ma'am.

2 Q. Who is that?

3 A. It's Dontaye.

4 Q. Do you recognize the fellow sitting down with the
5 black shirt, white shorts, and dreads, turning toward the
6 counter now?

7 A. Where at?

8 Q. Sitting at the counter, on the front left side in
9 the black shirt. He'll turn around shortly. You can
10 keep watching.

11 A. I don't know everybody on this video, on this
12 camera. Why do you keep asking me the names? I don't
13 know all these people.

14 Q. Do you know the fellow in the white T-shirt
15 sitting along the wall that Deonte appears to be having
16 an exchange with?

17 A. No, ma'am.

18 Q. So you don't know him?

19 A. Where at? Right here, by the jukebox?

20 Q. Yes.

21 A. No, I don't.

22 Q. Okay. And what are you doing here? What are you
23 doing here?

24 A. Telling them to stop, I guess. Trying to break it
25 up.

1 Q. Trying to be the pacemaker?

2 A. Yes, ma'am.

3 Q. We're going to switch the angle. We're going to

4 flip to camera angle two.

5 Do you see yourself in this?

6 A. No, ma'am.

7 Q. Do you see yourself in the blue shirt in this one?

8 A. Yes, ma'am.

9 Q. Where are you? Point it out on the screen in
10 front of you, please.

11 A. (Indicating.)

12 Q. If you touch the screen in front of you, it will
13 show up. It's a touch screen.

14 A. All right.

15 Q. Keep watching. Where are you now, could you see?
16 If you just watch yourself on the screen, could you point
17 yourself out again?

18 A. (Indicating.)

19 Q. Just watch yourself, and if you can just kind of
20 tell us where you're moving. Is that you?

21 A. Yes, ma'am.

22 Q. Are you in the doorway? You're in between the two
23 doorways; is that correct?

24 A. No. I'm not in between two doorways. I'm in
25 between the door. I haven't make it all the way outside.

CHAVIS HEYWARD - DIRECT EXAMINATION

1 I couldn't make it all the way outside. I'm still
2 standing out right there.

3 Q. All right. Why couldn't you make it all the way
4 outside?

5 A. Gunshots.

6 Q. Where are you coming now?

7 A. Back in.

8 Q. Why are you coming back in?

9 A. Glass hit me.

10 Q. Glass hit you?

11 A. Yes, ma'am.

12 Q. Where did it hit you?

13 A. My neck.

14 Q. Did you see who shot that night?

15 A. No, ma'am.

16 Q. Did you see what the shooter was wearing that
17 night?

18 A. No, ma'am.

19 Q. Do you recall meeting in my office on August the
20 19th of this year with myself, Ms. Baldwin, and Kenny
21 Barfield, my investigator?

22 A. Yes, ma'am.

23 Q. And do you recall at that time having an interview
24 with us and going through this video?

25 A. Yes, ma'am.

1 Q. And at any time while you were at the solicitor's
2 office that day, did you indicate anything about the
3 shooter?

4 A. No, ma'am.

5 Q. Did you tell Investigator Barfield that the
6 shooter was wearing a red shirt?

7 MR. SMILEY: Objection, Your Honor. Asked
8 and answered.

9 THE WITNESS: I can answer that question.

10 MR. SMILEY: I would -- asked and answered,
11 Your Honor.

12 THE COURT: You asked a general question,
13 anything about the shooter. Then you ask specifically
14 about a red shirt. That's all right. Go ahead.

15 THE WITNESS: Answer the question?

16 BY MS. LINDER:

17 Q. Yes.

18 A. Now re-ask the question again.

19 Q. The question is, did you tell Investigator
20 Barfield back on August the 19th in the solicitor's
21 office that it was the guy in the red shirt who was the
22 shooter?

23 A. No, ma'am.

24 Q. And on September the 8th of this year --

25 A. Uh-huh.

CHAVIS HEYWARD - CROSS-EXAMINATION

1 Q. -- do you recall having a phone conversation with
2 Investigator Barfield from my office?

3 A. Yes, ma'am.

4 Q. During that phone conversation, do you recall
5 indicating to him the color shirt of the shooter?

6 A. No, ma'am.

7 Q. Chavis, you're from the Hollywood area, correct?

8 A. Yes, ma'am.

9 Q. And I believe you testified previously that you
10 know everybody on that video.

11 A. Yep.

12 Q. Does that include this defendant, Deonte Brown?

13 A. Yes, ma'am.

14 Q. Have you ever been in trouble with the law before?

15 A. Yes, ma'am.

16 Q. In 2011 were you convicted of a gun charge and two
17 drug charges?

18 A. Yes, ma'am.

19 MS. LINDER: I have no further questions.

20 MR. SMILEY: May it please the Court, Your
21 Honor?

22 THE COURT: Yes.

23 CROSS-EXAMINATION

24 BY MR. SMILEY:

25 Q. Chavis, I'm Jim Smiley. How are you? This is

1 Deonte Brown who I represent I know you know him, and
2 this is Ms. Hensley, my second chair, all right?

3 You and I have never spoken before, have we?

4 A. No, sir.

5 Q. That night everybody had been at the club having a
6 good time?

7 A. Yes, sir.

8 Q. And I think you testified that it's not unusual
9 afterwards to go to the Waffle House afterwards?

10 A. Yeah.

11 Q. If you're hungry, you go to the Waffle House,
12 right?

13 A. Yes, sir.

14 Q. And that night, there were a lot of people there,
15 right?

16 A. Yes, sir.

17 Q. Both inside and outside?

18 A. Uh-huh.

19 Q. And you saw Deonte inside the Waffle House that
20 night?

21 A. Yes, sir.

22 Q. And, I mean -- because I get Dontaye Snoop and
23 Deonte -- I mess them up, but Deonte Brown, my client,
24 you saw him inside the Waffle House, correct?

25 A. Yes, sir.

CHAVIS HEYWARD - CROSS-EXAMINATION

1 Q. And he was acting pretty foolish, wasn't he?

2 A. Yes, sir.

3 Q. And you saw he had a red shirt on, didn't you?

4 A. Yes, sir.

5 Q. And it was open?

6 A. Yes, sir.

7 Q. And he had on those jean pants, and they were
8 baggy and loose; is that fair to say?

9 A. Yes, sir.

10 Q. ~~Did you see him with a gun?~~

11 A. ~~No, sir.~~

12 Q. And you were right there next to him a good point
13 of that, right?

14 A. Yes, sir.

15 Q. Actually, at one point, you were trying to get him
16 to calm down when he was ripping and talking trash and
17 everything, weren't you?

18 A. Yes, sir.

19 Q. And then were you in the -- you were in the Waffle
20 House when the security guard threw Scrappy out, weren't
21 you?

22 A. I don't remember that.

23 Q. You do remember that?

24 A. No, sir.

25 Q. Okay. I'll leave it alone.

1 The point that the cook came from behind the
2 counter, do you remember that?

3 A. I mean, basically, I can't remember. Right now I
4 can't remember.

5 Q. I'm asking questions that I know you'll know the
6 answer to.

7 A. Right.

8 Q. When the fight, the pushing and shoving took
9 place, that was inside those doors that -- the foyer when
10 you come in, the outside door and the inside door?

11 A. Before?

12 Q. I call it a foyer.

13 A. Yeah.

14 Q. There is a set of doors?

15 A. The wall -- the door before the wall, before you
16 walk in the outside, before you go outside.

17 Q. Actually, I'm going to get a picture. It will be
18 easier, okay?

19 A. All right.

20 Q. Let me see which one is best.

21 I show you what's been put in as State's Exhibit
22 No. 8. That's the inside door to the foyer, right?

23 A. Yes, sir.

24 Q. Okay. And I'm going to show you what's been
25 marked as State's Exhibit 17, and that shows the outside

CHAVIS HEYWARD - CROSS-EXAMINATION

1 door, right?

2 A. Yes, sir.

3 Q. Now, the scuffle that took place, it took place

4 between the outside door and the inside door, right?

5 A. Outside door, I think.

6 Q. So you were right --

7 A. Where it happened at?

8 Q. Yeah.

9 A. Where that mirror broke at, the window broke at.

10 Q. Right. You were inside?

11 A. Yes, sir. I couldn't make it outside.

12 Q. When you heard the shots go off --

13 A. I ran back into Waffle House.

14 Q. You didn't see anybody shoot.

15 A. No, sir.

16 Q. Now, you didn't hang around and talk to the police
17 that night, did you?

18 A. No, sir.

19 Q. But you did talk with the police, right?

20 A. That night?

21 Q. Not that night, but later.

22 A. Yeah, a while back, like.

23 Q. And you told them what you knew, right?

24 A. Uh-huh.

25 Q. And then right before trial, Investigator Barfield

1 got you and started asking you some more questions?

2 A. Yes, sir.

3 Q. Okay. Did you write a statement any time right
4 before trial or anything?

5 A. No. I never write statements.

6 Q. Okay. I got you. And in your testimony, and
7 you're clear, that you didn't see anybody shoot anybody?

8 A. I didn't see nobody shoot nobody.

9 Q. All right.

10 MR. SMILEY: Thank you.

11 THE COURT: Redirect?

12 MS. LINDER: No redirect, Your Honor.

13 THE COURT: You can step down. Do you need
14 this witness anymore?

15 MS. LINDER: We would ask that he be
16 released.

17 THE COURT: Do you need him?

18 MR. SMILEY: No, sir.

19 THE COURT: You're free to go.

20 Next witness?

21 MS. LINDER: State calls Kenny Barfield.

22 ~~KENNY BARFIELD,~~

23 having been first duly sworn,

24 was examined and testified as follows:

25 DIRECT EXAMINATION

KENNETH BARFIELD - DIRECT EXAMINATION

1 BY MS. LINDER:

2 Q. Where do you work?

3 A. The solicitor's office, Ninth Circuit.

4 Q. Are you actually assigned as an investigator with
5 me as one of your attorneys?

6 A. I am.

7 Q. What do some of your duties include? Or, rather,
8 do some of your duties as an investigator with the
9 solicitor's office include assisting witnesses and
10 prepping for trial?

11 A. That's correct, yes, ma'am.

12 Q. And did you assist with prepping of witnesses and
13 setting up meetings with witnesses for this trial?

14 A. Yes, ma'am.

15 Q. And did that include a meeting back on August the
16 19th of this year?

17 A. That's correct.

18 Q. And did you set up a meeting with Chavis Heyward?

19 A. I did.

20 Q. And how did you set that meeting up?

21 A. By phone call, had him respond by phone and
22 confirm that he would on the 19th of that month come to
23 our office at a certain time.

24 Q. And who was present during the meeting with Chavis
25 Heyward that day?

1 A. Yourself and Jessica Baldwin.

2 Q. And you were present?

3 A. That's correct.

4 ~~Q. And during the meeting with Mr. Heyward, were the~~
5 events leading up to the shooting at the Waffle House
6 discussed?

7 A. Yes, ma'am. You had a conversation with
8 Mr. Heyward several minutes prior, then showed him the
9 video, which he then identified certain people in the
10 video as he did today on the stand.

11 More conversation went after that during, I guess,
12 the approximately 45 minutes or so that he was there in
13 our office.

14 ~~Q. And at any point in time from when he came to the~~
15 ~~solicitor's office voluntarily to meet with us to when he~~
16 ~~left the solicitor's office that day, did Chavis Heyward~~
17 ~~ever indicate to you that he saw who the shooter was?~~

18 A. Yes, ma'am.

19 Q. ~~And at any point that day, did Chavis Heyward~~
20 ~~indicate to you that he knew -- not just saw it, but knew~~
21 ~~the identity of the shooter?~~

22 A. He did.

23 Q. And can you please explain that.

24 A. During the conversation, Mr. Heyward was
25 becoming --

KENNETH BARFIELD - DIRECT EXAMINATION

1 MR. SMILEY: Objection, Your Honor. This is
2 hearsay.

3 MS. LINDER: Your Honor, I believe --

4 THE COURT: It's under 613(b).

5 BY MS. LINDER:

6 Q. Proceed, please.

7 A. During the conversation you were and Ms. Baldwin
8 had, I was an observer in the conference room with
9 Mr. Heyward. This conversation went on, and he was very
10 reluctant about giving any information because of being
11 in that area and was more or less being on the offensive,
12 as he was on the stand today, not identifying and hem-
13 hawing around about his involvement in the actual
14 incident itself.

15 After the interview we had, and speaking with
16 Mr. Heyward for a while, I escorted Mr. Heyward down the
17 hallway. We stopped before exiting the door in order to
18 get me past the parking garage to do so, and we were
19 waiting for Ms. Linder and Ms. Baldwin to finish up some
20 stuff they had before I let him go.

21 At that point, I talked to him. I said, Look,
22 Chavis, you can be a hard rear end if you want to, but I
23 can see you have a good heart because you tried to save
24 that young man that was shot inside that foyer. I said,
25 You were trying to break up that fight -- and he also

1 told me there was no reason to do what they did to him,
2 because that boy was not -- he was slow mentally and that
3 there was no reason for him to be picked on that night.

4 So when he was talking about that, I knew he was
5 concerned about what happened.

6 Q. And did you know this from all your training and
7 experience from law enforcement prior to coming into the
8 solicitor's office?

9 A. Yes, ma'am. I retired from the city of Charleston
10 in 2007 before coming on the job. I've been here seven
11 years since then.

12 Q. Please continue.

13 A. We continued talking, and I could see his demeanor
14 somewhat loosened up and I said, Look, you can act like a
15 thug if you want to in front of anybody that you want,
16 but I know you've got a heart, and I know you want to
17 help solve this situation and get this monkey off your
18 back.

19 At that time I said, Look, man, you don't have to
20 tell me the name of the individual that did the shooting,
21 but you tell me what color shirt he was wearing.

22 Q. And why did you mention to him that he didn't have
23 to tell you the name? Was that an issue before?

24 A. It was. He didn't want to give up a name who was
25 there because they were all friends and related somehow

KENNETH BARFIELD - DIRECT EXAMINATION

1 within this incident that happened, so everybody knew
2 everybody that was involved in this.

3 Q. So how did he end up responding to you?

4 A. I said, Again, Chavis, I said, Man, you don't have
5 to tell me who it was or give me a name. I said, What
6 color shirt was the shooter?

7 And he says, Red.

8 And I said, Thank you. I appreciate your
9 cooperation.

10 I then went back and wrote up a statement that I
11 had, my notes of that particular incident which I have in
12 front of me today, write what he told -- what
13 conversation I had with him and what he told me.

14 Q. Did you have a phone conversation with Chavis
15 Heyward on September the 8th of this year?

16 A. I did, yes, ma'am.

17 Q. And was that conversation -- was the intention
18 behind that conversation to assist me in the preparation
19 of this trial with scheduling for witnesses appearing in
20 court?

21 A. I did. Yes, ma'am, it was.

22 Q. And did you end up speaking to Chavis Heyward back
23 on September 8, which was a week ago?

24 A. Yes, ma'am. He answered the phone, and I had the
25 phone number where I called him where he answered.

1 Q. What happened when you talked to him on the phone
2 that day?

3 A. Chavis insisted he never said that about the red
4 shirt. Going back over my notes, he said Deonte -- I
5 told the defense lawyer that identified Deonte as the
6 shooter. He wanted to know why I did that.

7 I told him I did not tell him it was Deonte. I
8 told him in my statement that you told me it was the guy
9 wearing the red shirt that was the shooter.

10 He then told me that he never said that, that he
11 said -- that he said red shirt, not the black shirt was
12 the shooter. That's what he told me over the phone. He
13 again reiterated that it was the red shirt, not the black
14 shirt, is what he said his statement was to me the first
15 time we met.

16 Q. So with your 30 plus years of law enforcement with
17 the city of Charleston and the solicitor's office, you
18 had how many separate conversations with Chavis Heyward
19 about the identity of the shooter in this case?

20 A. Twice.

21 Q. And in either of those times when you talked to
22 Chavis Heyward, did he seem under the influence?

23 A. No.

24 Q. Did he seem confused?

25 A. No.

KENNETH BARFIELD - CROSS-EXAMINATION

1 Q. Did he seem uncertain?

2 A. No.

3 Q. And on August the 19th of 2014, did Chavis Heyward
4 identify the red shirt as the shooter?

5 A. He did.

6 Q. And on September the 8th, over the phone, did he
7 reiterate and identify the red shirt as the shooter?

8 A. Yes, ma'am.

9 Q. And during the conversations with Chavis Heyward,
10 did he show and explain to you where he was and how he
11 would have that perspective to see the shooter?

12 A. Yes. He identified in the interviews that you and
13 Ms. Baldwin had with him showing the video, he did point
14 out where he was at, who was there, who he knew during
15 the confrontation in the Waffle House leading to when
16 they came in the door to where the altercation had
17 started with Deonte Brown and the gentleman, the innocent
18 bystander, that was wounded, where the drink was thrown
19 in his face. He did identify everybody and clearly said
20 he was there and saw the whole thing.

21 MS. LINDER: I have no further questions.

22 Please answer any questions the defense may
23 have.

24 CROSS-EXAMINATION

25 BY MR. SMILEY:

KENNETH BARFIELD - REDIRECT EXAMINATION

1 Q. Chavis didn't write this down?

2 A. No, sir.

3 Q. It wasn't recorded?

4 A. No, sir.

5 Q. You were the only one present for this
6 conversation?

7 A. We were standing at the hallway exiting the
8 building, yes, sir.

9 MR. SMILEY: That's all I got.

10 THE COURT: Redirect?

11 ~~REDIRECT EXAMINATION~~

12 BY MS. LINDER:

13 Q. Before Mr. Heyward told you the information, when
14 yourself, Mr. Heyward, myself, and Ms. Baldwin were in
15 the interview room in our office, did Mr. Heyward
16 indicate, not identify, but indicate at that time
17 anything about law enforcement's identification of the
18 shooter in this case?

19 If that doesn't make sense, I can try to say it
20 better.

21 MR. SMILEY: It's beyond the scope of cross.

22 THE COURT: I'll sustain it on that ground.

23 MS. LINDER: Then I have nothing further.

24 THE COURT: You may step down.

25 THE WITNESS: Thank you.

SINCLAIR HEYWARD - DIRECT EXAMINATION

1 THE COURT: Next witness?

2 MS. LINDER: Sinclair Heyward.

3 ~~SINCLAIR HEYWARD,~~

4 having been first duly sworn,
5 was examined and testified as follows:

6 ~~DIRECT EXAMINATION~~

7 BY MS. LINDER:

8 Q. Good afternoon, Mr. Heyward. Where are you
9 originally from?

10 A. Ravenel, South Carolina.

11 Q. Where are you currently living?

12 A. Virginia.

13 Q. What are you doing in Virginia?

14 A. I'm in the Navy.

15 Q. You're in the Navy?

16 A. Yeah.

17 Q. And were you served a subpoena to come down here
18 today?

19 A. Yes.

20 Q. Do you know why you're here today? Do you know
21 you're here today to testify in a case?

22 A. Yeah.

23 Q. Were you at the Waffle House located at Savannah
24 Highway and Main Road back in mid-July in 2012?

25 A. Yes.

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- 1 Q. And where were you before -- where were you
2 hanging out before going to the Waffle House?
- 3 A. Frazier's.
- 4 Q. What is Frazier's?
- 5 A. Club.
- 6 Q. And what vehicle did you ride to Frazier's?
- 7 A. Thunderbird.
- 8 Q. Who was driving?
- 9 A. Me.
- 10 Q. Who was in the car with you?
- 11 A. Dontaye.
- 12 Q. Who is Dontaye?
- 13 A. My friend.
- 14 Q. What is Dontaye's last name?
- 15 A. Reed.
- 16 Q. And did Dontaye end up dying that night?
- 17 A. Yes.
- 18 Q. What was your relationship with Dontaye?
- 19 A. Best friend.
- 20 Q. He was your best friend?
- 21 A. Yeah.
- 22 Q. Did anything unusual or out of the ordinary happen
23 while y'all were at Frazier's?
- 24 A. No.
- 25 Q. At what point did you leave Frazier's and head to

SINCLAIR HEYWARD - DIRECT EXAMINATION

1 the Waffle House?

2 A. After the club closed. I don't know what time.

3 Q. After the club closed? And what vehicle did you

4 ride in to the Waffle House?

5 A. Thunderbird.

6 Q. And who was in the car?

7 A. Me and Dontaye.

8 Q. You and Dontaye?

9 A. Me, Dontaye, and Rell.

10 Q. And when you arrived at the Waffle House that
11 evening, do you recall where you parked?

12 A. At Waffle House?

13 Q. At the Waffle House?

14 A. Yeah.

15 Q. Where did you park?

16 A. By the tree.

17 Q. By what tree?

18 A. The tree, like --

19 Q. Keep talking.

20 A. The tree closest to, like, Frazier's, I guess --
21 not Frazier's, the Waffle House.

22 Q. All right. At this time I'm going to show you
23 State's Exhibit 1, okay, just to orient you to this.

24 This is State's Exhibit 1. It has already been
25 admitted into evidence and testified to. Do you

1 recognize what this is?

2 A. Parking lot of the Waffle House.

3 Q. Okay. And that screen in front of you is a touch
4 screen, so if you touch it or circle, it will show up.

5 Can you kind of point out where you were talking
6 about where you parked?

7 A. Right here.

8 Q. That's the tree you're talking about?

9 A. Yeah.

10 Q. All right. So when you got to Waffle House that
11 night, did you stay in the parking lot or did you go
12 inside?

13 A. Gone inside.

14 Q. And what happened when you went inside the Waffle
15 House? What were you doing?

16 A. Just sitting around, standing around.

17 Q. And is it a typical occurrence after the club
18 closes to maybe go to Waffle House?

19 A. Yeah.

20 Q. Did you go to the club a lot?

21 A. No.

22 Q. That night, the Waffle House, did a verbal
23 argument happen a little bit after 4:00 in the morning?

24 A. Yeah.

25 Q. And did a physical fight -- were punches thrown at

1 Waffle House that night?

2 A. I didn't really see the fight, but I guess, yeah.

3 Q. Did a shooting happen that night?

4 A. Yeah.

5 Q. Do you know if someone was shot that night?

6 A. Yeah.

7 Q. Do you know how many people were shot that night?

8 A. As far as I know -- I only know two.

9 Q. Do you know what the injuries were?

10 A. What you mean?

11 Q. The two people who were shot?

12 A. Yeah, I know them.

13 Q. Did they both die?

14 A. No, only one.

15 Q. And who was that?

16 A. Dontaye.

17 Q. And is that the same Dontaye that is your best
18 friend?

19 A. Yeah.

20 Q. And is that the same Dontaye that you rode in the
21 Thunderbird with to Frazier's?

22 A. Yes.

23 Q. And is that the same Dontaye that you rode from
24 Frazier's to the Waffle House with?

25 A. Yes.

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SINCLAIR HEYWARD - DIRECT EXAMINATION

1 Q. How long you had known Dontaye?

2 A. A long time, since elementary.

3 Q. Since elementary school?

4 A. Yeah.

5 Q. So in the Waffle House, can you explain to the
6 jury who was involved in the verbal argument that
7 occurred?

8 A. Deonte and some dude. I don't know him.

9 Q. And who is Deonte? What is his full name, if you
10 know it?

11 A. Deonte Brown.

12 Q. Do you remember what he was wearing that night?

13 A. Red shirt.

14 Q. And the fellow that he was in -- that he was
15 yelling at, or in an argument with, did you know him?

16 A. No.

17 Q. And did you see a physical fight or a tussle or
18 punches being thrown?

19 A. No.

20 Q. You didn't see that?

21 A. No.

22 Q. Where were you in the Waffle House during all
23 this?

24 A. Inside.

25 Q. Where inside?

SINCLAIR HEYWARD - DIRECT EXAMINATION

- 1 A. At the them little chairs right by the window.
- 2 Q. And did you hear gunshots?
- 3 A. Yes.
- 4 Q. Did you see who shot?
- 5 A. No.
- 6 Q. What did you do after the shooting?
- 7 A. Went outside.
- 8 Q. What did you do outside?
- 9 A. Went in my car. I saw Dontaye on the ground.
- 10 Q. Did you go to your best friend?
- 11 A. Yeah.
- 12 Q. Did you end up going to the hospital that night?
- 13 A. I went to the wrong hospital.
- 14 Q. You went to the wrong hospital?
- 15 A. Yeah. I went to the one in West Ashley.
- 16 Q. Okay. Okay. All right. At this time, I'm going
- 17 to show you just clips of a surveillance video that's
- 18 already been admitted into evidence and just ask you a
- 19 couple questions about it, okay?
- 20 A. All right.
- 21 Q. All right. Who is walking in in the white
- 22 T-shirt?
- 23 A. That's me.
- 24 Q. Okay. Who is in the red shirt that you're
- 25 standing behind?

1 A. Right here?

2 Q. Yeah.

3 A. Deonte.

4 Q. ~~Who is in that turquoise-blue shirt, kind of~~
5 walking towards you?

6 A. Chavis.

7 Q. Are you any relation to Chavis?

8 A. Yeah, brother.

9 Q. Chavis is your brother?

10 A. Yeah.

11 Q. All right. Keep playing. Do you recognize that
12 fellow with the white T-shirt and kind of braids to his
13 shoulders who is walking in, coming between you and
14 Chavis?

15 A. Yeah. Dontaye.

16 Q. That's Dontaye?

17 A. Yeah.

18 Q. Do you recognize that fellow with the dark shirt?
19 It looks like there is writing on it.

20 A. I can't see.

21 Q. Okay. There is a better angle. I'll point him
22 out to you, see if you know who that is.

23 A. All right.

24 Q. All right. If you can kind of see -- do you see
25 yourself here?

—SINCLAIR HEYWARD - DIRECT EXAMINATION—

- 1 A. Yeah.
- 2 Q. Where are you standing?
- 3 A. Right here (indicating).
- 4 Q. And who is next to you?
- 5 A. Dontaye.
- 6 Q. Y'all arrived together?
- 7 A. Yeah.
- 8 Q. Okay. Where are you going?
- 9 A. Going out there, I guess.
- 10 Q. Is that you standing in the doorway?
- 11 A. Yeah.
- 12 Q. I know it can be tough to tell, but if you can
- 13 make sure to speak into the microphone, this lady next to
- 14 you has to report everything.
- 15 Now, this guy in the red shirt at the counter, who
- 16 is that?
- 17 A. I don't know. I can't see.
- 18 Q. Okay. Where does he appear to be going?
- 19 A. Leaving out?
- 20 Q. Yes.
- 21 A. He's leaving out, I guess.
- 22 Q. Okay. Who is that coming out in the white
- 23 T-shirt?
- 24 A. That's me.
- 25 Q. And who did you just pass by? What girl is that

SINCLAIR HEYWARD - DIRECT EXAMINATION

1 that you walked behind?

2 A. I think that's Quanesiha.

3 Q. Okay. Do you recognize that fellow with the white
4 shirt and the black T-shirt who is leaning against the
5 counter toward the bottom of the screen, now bending
6 down? If you don't, that's okay.

7 A. Yeah. Lorenzo.

8 Q. Is he also from Hollywood?

9 A. Yeah.

10 Q. Who is that again in the blue shirt?

11 A. My brother.

12 Q. What's happening here? People just walking by
13 you? What happened?

14 A. Trying to stop the altercation, I guess.

15 Q. All right. Do you see where you are?

16 A. Yeah.

17 Q. Where are you?

18 A. (Indicating.)

19 Q. You didn't move. Did you get involved in trying
20 to break that up?

21 A. No.

22 Q. Where are you going now?

23 A. Over there.

24 Q. Are there people in between you and the exit door
25 to that Waffle House?

SINCLAIR HEYWARD - CROSS-EXAMINATION

1 A. Yeah.

2 Q. Where are you now? Are there a bunch of people in
3 that area between those two doors and going outside?

4 A. Yeah.

5 Q. Where did you go now?

6 A. (Indicating.)

7 Q. Are you bending down right there?

8 A. Yeah.

9 Q. Why are you bending down?

10 A. Somebody shot.

11 MS. LINDER: I don't have any other questions
12 for you, if you could answer anything Mr. Smiley may
13 have.

14 THE WITNESS: Yes, ma'am.

15 ~~CROSS-EXAMINATION~~

16 BY MR. SMILEY:

17 Q. Hey, Sinclair. Jim Smiley. I represent Deonte.
18 Ms. Hensley is the second chair.

19 How long have you been in the Navy?

20 A. A year-and-a-half.

21 Q. Well, thank you very much, because I am glad you
22 got in the Navy.

23 Back at that time, y'all had been in Frazier's
24 earlier that night; everybody drinking, partying, having
25 a good time?

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1 A. Yeah.

2 Q. At the Waffle House, when you got there, there was
3 lots of people at Waffle House, fair to say?

4 A. Yeah.

5 Q. And there were people both inside and outside in
6 the parking lot, right?

7 A. Yeah. People been outside, yeah.

8 Q. Well, after you -- after Frazier's closed, is it
9 fairly common to go to the Waffle House for a while
10 before you go home?

11 A. Yeah.

12 Q. And so it's sort of almost like a hangout, right?
13 Go get some food, hang out, and then go home?

14 A. Yeah.

15 Q. I'm not trying to put words in your mouth, but is
16 that fair to say?

17 A. Yeah. If you're hungry, you go to Waffle House.

18 Q. Got you. And that night, you saw Deonte acting
19 foolish inside, right?

20 A. Yeah.

21 Q. And you were standing right there, and Snoop and
22 Lorenzo and Deonte was right there, talking to trash to
23 that fellow, right?

24 A. Yeah.

25 Q. And then you saw the red shirt he had on?

SINCLAIR HEYWARD - CROSS-EXAMINATION

1 A. Yeah.

2 Q. And you noticed that it was open, right?

3 A. Yeah.

4 Q. And he had on a pair of blue jeans, something like
5 that?

6 A. Yeah.

7 Q. Some baggy jeans?

8 A. Yeah.

9 Q. You were able to see his waistband, right?

10 A. Yeah.

11 Q. Did you see him with a gun?

12 A. No.

13 Q. And your back was actually turned when the shot
14 went off, right?

15 A. When the shots went out, I turned around.

16 Q. And you didn't see the shot or where it came from?

17 A. No.

18 Q. Was everybody backed in that foyer still when that
19 shot went out? When I say that foyer, that's the inside
20 door going out and the inside door coming in. Were they
21 all backed in there?

22 A. Yeah.

23 Q. And when you went outside -- and your car was near
24 where Snoop was; is that right?

25 A. Yeah.

1 Q. And you could see that he had been hurt, right?

2 A. Yeah.

3 Q. And you spoke with the police a couple months
4 after that, right?

5 A. Yeah.

6 Q. And you gave them a statement, right?

7 A. Yeah.

8 Q. And you told them you didn't see who shot?

9 A. Yeah.

10 Q. And you tried to cooperate in any way you could,
11 right?

12 A. Yeah.

13 MR. SMILEY: Beg the Court's indulgence.

14 That's all I have, Your Honor.

15 THE COURT: Redirect?

16 MS. LINDER: No redirect, Your Honor. We
17 would ask that this witness be released.

18 THE COURT: Any objection?

19 MR. SMILEY: No objection. No objection.

20 THE COURT: You're free to go. Thank you.

21 MS. LINDER: Your Honor, if we may approach.

22 THE COURT: Yeah.

23 (Discussion held at sidebar.)

24 THE COURT: All right, folks. This looks
25 like a good place to break for the day, so I'm going to

1 send you home with the same instructions I did yesterday.

2 Don't talk to anybody about the case,
3 including other members of the jury panel. Don't begin
4 deliberations or discussions. Don't try to find out
5 anything about the case. What you need to know about
6 this case we'll present to you in this courtroom.

7 So don't post anything to social media, no
8 Facebook, no Twitter, whatever they call it. Just go
9 home and enjoy the evening. We're going to start back at
10 9:30 in the morning. Hopefully everything will go
11 smooth. I promise you this morning was an aberration,
12 but if you could get in a little bit before 9:30, our aim
13 is to start at 9:30.

14 All right? Thank you for your patience
15 today.

16 (Recess taken.)

17 (September 17, 2014.)

18 THE COURT: Is everybody ready? Let the
19 record reflect the defendant is in the courtroom.

20 (In open court, jury present.)

21 THE COURT: All right. Welcome back, folks.
22 We're going to start now with the State calling the next
23 witness.

24 Madame Solicitor, whenever you're ready.

25 MS. LINDER: Thank you, Your Honor. The

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1 State calls Joe West.

2 JOSEPH WEST,

3 having been first duly sworn,

4 was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MS. LINDER:

7 Q. Good morning.

8 A. Good morning.

9 Q. Where do you currently work?

10 A. I work as a senior agent at the South Carolina Law
11 Enforcement Division, which is commonly known as SLED.

12 My permanent assignment is the tech services unit. We
13 process and handle video, audio, electronic surveillance
14 needed for requesting agencies.

15 Q. And how long have you been employed by SLED?

16 A. I've been employed by SLED since '93; 23, 24
17 years.

18 Q. What agencies bring you videos?

19 A. With tech services, we more or less get videos
20 from crime scenes, convenience stores, malls, shopping
21 centers, what have you, where something has happened and
22 they have a video. The agency will bring it in. It may
23 be a city agency, county agency, state, or federal, and,
24 of course, our in-house people also bring videos in.

25 Q. And so do you enhance video?

JOSEPH WEST - DIRECT EXAMINATION

1 A. Well, that's what most people commonly call when
2 we process videos, the word "enhance". If you think
3 about it, we watch things on TV, and they have these
4 great computers that zooms in and it gets stuff.

5 That's not something we do. More or less, we're
6 able to process videos that some people can't because of
7 the nature that they play as a program. We make the
8 video playable on another format. We capture screen
9 shots, but the word "enhance", as far as adding something
10 or subtracting something from the image is not something
11 we do.

12 Q. So what things do you have the ability to kind of
13 tweak, I guess, from the screen shot you capture?

14 A. More or less, if you imagine a video, you've seen,
15 perhaps, on TV a surveillance video from a store. We're
16 taking that video, and we're either slowing it down with
17 the program, the software, we're slowing it down so you
18 can view it easier. Sometimes you see action easier if
19 it's slower.

20 We're capturing or freezing a particular image on
21 the screen to catch a person or an item or an incident
22 that occurs. The software allows us to place, as we've
23 seen before, like, a circle around faces or items or a
24 description somewhere on the video. More or less, we can
25 change the brightness, how bright you can see the

1 picture. We can zoom in to the picture as we view it or
2 as we freeze it and then provide still images for a
3 trial.

4 Q. When you get these videos from different agencies,
5 do you alter the video or change the actual video in any
6 fashion?

7 A. No, ma'am. The actual video itself, the software
8 that comes in -- in the old days, it would be a VHS tape.
9 We don't manipulate that software. We record as the
10 video plays with another program, so you're viewing the
11 program on the TV, the video from the surveillance
12 cameras, and you're recording that with the software, and
13 it's that recording made from the software that we do our
14 adjustments to the brightness and zooming.

15 Q. And how long does it take from this process of
16 going through a video?

17 A. You know, often what it is, we spend days on
18 videos sometimes trying capture images or to get exactly
19 what law enforcement wants in evidence. In some cases
20 it's something as simple as playing the video, capturing
21 four or five screen shots, providing a copy on to a CD
22 ROM, and out the door they go.

23 Q. Were you contacted by the Charleston Sheriff's
24 Office about some video in this case?

25 A. Yes, ma'am.

JOSEPH WEST - DIRECT EXAMINATION

1 Q. Back in July of 2012, were you brought a video to
2 kind of do what you do with it? I want to say enhance,
3 but I know that's not the right word.

4 A. Yes, ma'am. It was a Detective Lawrence that came
5 to SLED that day, and he had the video with him.

6 Q. At this time, I show you what's been marked as
7 State's Exhibit 25. Feel free to open that.

8 A. Thank you.

9 Q. Do you recognize that?

10 A. Yes, ma'am.

11 Q. How do you recognize it?

12 A. It has my handwriting and my initials on the front
13 of it.

14 Q. And is this the disk that you worked with back in
15 July of 2012?

16 A. Yes, ma'am. That was the disk created with the
17 enhanced pictures if, you will.

18 MS. LINDER: At this time, I would seek to
19 enter State's Exhibit 25 into evidence.

20 MR. SMILEY: Without objection.

21 THE COURT: Admitted. You can publish.

22 MS. LINDER: Thank you, Your Honor.

23 (Whereupon, State's Exhibit No. 25 was marked
24 for identification and admitted into evidence.)

25 BY MS. LINDER:

000226

1 Q. And at this time, I'm going to play the video, and
2 you can just see it on the screen in front of you, okay?

3 A. Yes, ma'am.

4 Q. Now, in this case, did you work on the exterior
5 camera angle?

6 A. Yes, ma'am.

7 Q. And did you do your brightness to the exterior
8 camera angle?

9 A. Yes, ma'am.

10 Q. And did you also have a separate recording slowing
11 down the exterior angle?

12 A. Yes, ma'am.

13 Q. All right. This first is the 100 percent speed
14 exterior camera angle.

15 (Whereupon, the video was played for the jury.)

16 BY MS. LINDER:

17 Q. And did you also slow down a version of the video?

18 A. Yes, ma'am.

19 Q. And to what percent did you do that?

20 A. 35 percent.

21 Q. And on this, is the brightness adjusted?

22 A. We changed the brightness on a few features.

23 Q. Like you were previously discussing, did you alter
24 the content on this video?

25 A. No, ma'am.

JOSEPH WEST - CROSS-EXAMINATION

1 MS. LINDER: Thank you.

2 I have no further questions for you, if you
3 can answer any questions Mr. Smiley may have.

4 THE WITNESS: Yes, ma'am.

5 CROSS-EXAMINATION

6 BY MR. SMILEY:

7 Q. So this is the best view you could get out of
8 this, in your estimation, correct?

9 A. Yes, sir.

10 Q. And so you take the original and try whatever
11 technique you can not to change the content -- it's not
12 Photoshopped, in other words?

13 A. No, sir.

14 Q. It's more of just adjusting what light conditions
15 you have to create as clear a picture as possible?

16 A. Yes, sir.

17 Q. Is it fair to say?

18 A. Yes, sir.

19 MR. SMILEY: That's all I got.

20 THE COURT: All right. Any redirect?

21 MS. LINDER: No redirect. We ask that this
22 witness be excused.

23 THE COURT: You're free to go. Thank you.

24 THE WITNESS: Good morning.

25 THE COURT: Next witness.

JESSE McNEAL - DIRECT EXAMINATION

1 MS. BALDWIN: State calls Jesse McNeal.

2 JESSE McNEAL,

3 having been first duly sworn,

4 was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MS. BALDWIN:

7 Q. Where are you from?

8 A. Johns Island, South Carolina.

9 Q. How long have you lived there?

10 A. All my life.

11 Q. How old are you?

12 A. Twenty-eight.

13 Q. Where do you currently work?

14 A. City of Charleston County maintenance authority.

15 Q. Are you wearing you union for work?

16 A. Yes, ma'am.

17 Q. How long have you worked there?

18 A. I just started about five months ago.

19 Q. Where did you work back in July of 2012?

20 A. Waffle House.

21 Q. Waffle House where?

22 A. Savannah Highway.

23 Q. I'm going to show you what's been marked as
24 State's Exhibit 26. Can you tell me what that is?

25 A. Waffle House.

JESSE McNEAL - DIRECT EXAMINATION

1 Q. It's the Waffle House?

2 A. It's the Waffle House.

3 Q. Is it a picture of the Waffle House?

4 A. No. It's the plans.

5 Q. Thank you.

6 MS. BALDWIN: At this time, I seek to admit
7 State's Exhibit 26 into evidence.

8 THE COURT: It's admitted.

9 (Whereupon, State's Exhibit No. 26 was marked
10 for identification and admitted into evidence.)

11 MR. SMILEY: Again, Your Honor, I don't
12 object. I just want to make sure to note it isn't to
13 scale. It certainly represents the Waffle House, but
14 they don't provide a scale or measurement, but I'm not
15 complaining.

16 MS. BALDWIN: Well, Your Honor, for the
17 record, it is to scale.

18 THE COURT: What's the scale?

19 MS. BALDWIN: That, I don't know, Your Honor,
20 but these are the original blueprints, it's our
21 understanding, from that Waffle House.

22 MR. SMILEY: Great. Your Honor, I'll keep my
23 mouth closed.

24 THE COURT: All right.

25 BY MS. BALDWIN:

1 Q. Jesse, could you sort of describe these different
2 areas? What is in here?

3 A. That's the high bar.

4 Q. And if you touch on that screen, you should be
5 able to mark on it.

6 A. That's the high bar, low bar.

7 Q. Where is the low bar? It didn't show up?

8 A. Right here, this area (indicating).

9 Q. Okay. And then what is over at this end?

10 A. That's more seating. That's the -- that's not the
11 office area, but some more seating -- you got them in
12 sections. This side is the office area, and this side is
13 stretch.

14 Q. Where's the stretch?

15 A. Over here (indicating), and this is the office.
16 That's what we call the sections seating.

17 Q. Oh, okay. So that area you just pointed out is
18 the office, but it's actually customer seating?

19 A. Yes. It's customer seating.

20 Q. Right back, here what is that?

21 A. The grill area.

22 Q. And when you worked at the Waffle House, what did
23 you do?

24 A. I was the grill operator.

25 Q. The customer area, the spot where all the

JESSE McNEAL - DIRECT EXAMINATION

1 customers were, was that a big area?

2 A. I mean, medium size, about regular size of a
3 Waffle House, I mean -- it's not really that bad, you
4 know.

5 Q. Do they vary that much?

6 A. Not really. A lot of Waffle Houses are basically
7 almost the same size. Some get a little bigger but not
8 much.

9 Q. And then just so the jury can see, what is here?

10 A. The entranceway.

11 Q. And here?

12 A. Bathrooms.

13 Q. How long had you worked at the Waffle House as of
14 July 2012?

15 A. July of 2012, I would say about three years, four
16 years. I would say about four years. I left for a year.

17 Q. Okay. I'm going to bring you to the night of July
18 14 into the morning of the 15th of 2012. Were you
19 working that night?

20 A. Yes, ma'am.

21 Q. What position were you working?

22 A. Grill operator.

23 Q. Okay. Do you remember an incident that happened?

24 A. Yeah, a shooting.

25 Q. A shooting happened?

1 A. Uh-huh.

2 Q. Tell us about that.

3 A. Well, I was cooking, and, you know, the club rush
4 came in. Everybody started piling in. I wasn't really

5 paying attention too much, but basically just cooking

6 people orders, but eventually an argument broke out

7 between my cousin, who I let sit in there some nights --

8 Q. Who is your cousin?

9 A. Quentin Allen.

10 Q. Okay. Tell us about your cousin. What was his
11 sort of personality, demeanor? What was his mental state
12 like?

13 A. I mean, he's a little challenged. You know, he's
14 kind of slow. He doesn't really register things like a
15 normal person would.

16 Q. Did Quentin really have a lot of places to stay?

17 A. No. He's homeless.

18 Q. Do you know where Quentin is now?

19 A. From information given to me, he's admitted --

20 MR. SMILEY: Objection, Your Honor. It's
21 hearsay.

22 THE COURT: You can tell us if you know.

23 THE WITNESS: Oh, I mean, he's in Florida, I
24 guess. That's as far as I know, in Florida.

25 BY MS. BALDWIN:

JESSE McNEAL - DIRECT EXAMINATION

1 Q. Have you really seen him at all since this
2 happened?

3 A. No. I saw him one time after that. I can't
4 recall the date, but I saw him for a brief moment, asked
5 him some questions, and after that, I didn't see him
6 again.

7 Q. Would Quentin come into the Waffle House often?

8 A. Yeah. He would come and sit down and chat. Since
9 he was homeless, I would give him some food and let him
10 drink and sit and talk with us.

11 Q. How about the guys that came in that night, the
12 club group, I guess?

13 A. Uh-huh.

14 Q. Did you recognize any of them?

15 A. What do you mean, do I recognize them?

16 Q. Like, do they come in there a lot?

17 A. Yeah. It's a normal crowd that comes in there.

18 Q. Okay. Would people come into the Waffle House
19 after the club quite a few times?

20 A. Uh-huh.

21 Q. So you said that they started -- somebody started
22 fighting with Quentin. What happened?

23 A. Starting fussing, arguing. From my understanding,
24 it was over a cigarette. I don't know. They started
25 fussing and fighting, and at that point -- once they

1 started fussing and I saw it start to escalate, I
2 basically came from behind the counter, try to intervene
3 a little bit.

4 Q. Why did you come from behind the counter? Wasn't
5 there a security guard there?

6 A. Yeah. I don't know what he was doing.

7 Q. Fair enough. So you came from behind the counter?
8 What was your intention when you came from behind the
9 counter?

10 A. To try to calm things down and maybe alleviate
11 some of the problems that was about to happen, because I
12 could see it escalating.

13 Q. And about where were you when you were watching
14 this happen? You can point it out on that diagram, if
15 you can.

16 A. When I actually saw them starting arguing and
17 started to come back, I was by the grill.

18 Q. Okay. And where were they?

19 A. Over here (indicating). My cousin was sitting
20 right here, and they were arguing with him right there.

21 Q. Okay. So what happened when you came from behind
22 the counter?

23 A. Well, they were still arguing and fussing. Once
24 they got around and they started pushing people, they
25 threw a drink in my cousin's face.

JESSE McNEAL - DIRECT EXAMINATION

1 Q. Who was this person that was arguing with your
2 cousin? Did you know him?

3 A. No. I didn't know him personally, but I seen him
4 regularly come into Waffle House.

5 Q. Do you recall what he was wearing, what he looked
6 like?

7 A. I can't recall what he was wearing, but, I mean, I
8 know what he looked like.

9 Q. When you said you were pushing people, what did
10 you mean by that?

11 A. Just trying to break it up, like, because once the
12 drink got thrown -- once they threw the drink in his
13 face, he saw red and was ready to fight over that.

14 Q. ~~Quentin was ready to fight?~~

15 A. Yeah.

16 Q. When you say he threw a drink in his face, what do
17 you mean? Was it water?

18 A. No, I mean -- we didn't serve that drink. I don't
19 know what was in the cup.

20 Q. Could you smell it at all?

21 A. Not really. I mean, it smelled kind of like
22 alcohol, but I can't really tell because everybody
23 smelled like alcohol.

24 Q. Everybody smelled like alcohol? So what happened
25 after he threw the drink?

1 A. That's when we got out of control, it was kind of
2 too much for me to handle. I was trying to push people
3 out of the way and break things up, but there was too
4 much people there, you know.

5 Q. Did the fight stay in that same spot?

6 A. No.

7 Q. Where did it go? Show me on that diagram.

8 A. It went from here to here, from where they started
9 at to here, and then to here and then in here
10 (indicating).

11 Q. Okay. And when you got to in there, into the
12 little vestibule area, what happened?

13 A. It was just punches thrown, punches thrown
14 everywhere, and once everybody actually -- once I
15 actually got it to the point where it was kind of broken
16 up and I started pushing my cousin back in, then the
17 glass shattered and the bullet came through the window
18 and they shot through the window.

19 Q. What was that whole fight like? Were people calm?

20 A. No.

21 Q. How many people were there? Were there a few
22 people or a lot?

23 A. There was a lot. There was a lot.

24 Q. What was your focus when you were in that little
25 vestibule area?

JESSE McNEAL - DIRECT EXAMINATION

1 A. Getting my cousin back in the store.

2 Q. What did you do after you heard the shots?

3 A. I ducked. I dropped down. I mean, I saw my

4 cousin got shot in the arm, you know, and he was

5 bleeding. And I was -- like, I was in shock, so I ducked

6 down and tried to figure out what was going on.

7 Q. And then what did you do?

8 A. Then after I ducked down and I saw he was shot,

9 then I stepped outside the door, and there was a white

10 truck parked right in front of the door. And I ducked

11 down behind that, and I wanted to go -- I tried to peek

12 around. Once I started to peek around, I heard a couple

13 more shots, and then I just stood behind the truck until

14 everything died down.

15 Q. I'm going to show you what's been admitted as

16 State's Exhibit 4.

17 A. That's the white truck right there.

18 Q. That's that white truck you were ducking down

19 behind?

20 A. Uh-huh.

21 Q. Jesse, we're going to bring up some surveillance

22 video that's State's Exhibit 3. I just want you to walk

23 me through it, as we -- do you know what we're looking

24 at?

25 A. Uh-huh.

1 Q. Okay. What are we looking at here?

2 A. That's my cousin. That's the guy that threw the
3 drink in his face.

4 Q. Okay. Could you hear what the guy was yelling?

5 A. No. I wasn't paying attention.

6 Q. At that point you weren't --

7 A. Not at that point, I wasn't paying attention.

8 Q. Why not?

9 A. Because I was cooking. There was a lot of people
10 in there.

11 Q. What made you realize things were escalating?

12 A. It was just a bunch and -- a bunch of unnecessary
13 noise and commotion going on from that side, and I just
14 keep glancing back and seeing them over there standing by
15 my cousin.

16 Q. And where are you in this shot?

17 A. I'm by the grill.

18 Q. Huh?

19 A. I said, I'm by the grill -- no, there I go, right
20 there. I'm sorry.

21 Q. Point yourself out for us.

22 A. Right there (indicating).

23 Q. Okay. And what are you doing here?

24 A. Just trying to calm the situation down, break it
25 up.

JESSE McNEAL - DIRECT EXAMINATION

1 Q. Do you remember what -- go ahead.

2 A. From what I heard --

3 MR. SMILEY: Objection.

4 THE WITNESS: -- they mistake my cousin for
5 being in the club.

6 MR. SMILEY: Hearsay, "what I heard".

7 BY MS. BALDWIN:

8 Q. Jesse, you can't say what you heard somebody --
9 somebody told you, okay? You just have to say what you
10 saw, okay?

11 A. Oh, I was telling them what I heard.

12 Q. What you heard the person yelling?

13 A. Yeah.

14 MR. SMILEY: Then I withdraw. I
15 misunderstood.

16 BY MS. BALDWIN:

17 Q. What was the person yelling?

18 A. They were mistaking him for being in the club,
19 getting them kicked out of the club or something of that
20 nature, but he's homeless. He got no business being in
21 the club. He wasn't at the club.

22 Q. Do you remember what that guy in the blue was
23 doing?

24 A. He was trying to -- he was trying to stop my
25 cousin from fighting, telling him, You don't want that,

000240

JESSE McNEAL - DIRECT EXAMINATION

1 you don't want that.

2 Q. You see what's going on here, Jesse? What's
3 happening?

4 A. A bunch of commotion. Everybody is arguing.

5 Q. Where are you? Can you see yourself in here?

6 A. I'm somewhere in the midst of all of this.

7 Q. Okay.

8 A. I think right here --

9 Q. Where are you? Right there? Okay. And then
10 where do you go?

11 A. Everybody started moving towards the door because
12 they were getting ready to fight. I'm just trying to go
13 in there and try to stop, because once my cousin is mad,
14 he's mad. He's ready to fight.

15 Q. Was he saying anything that you heard prior to the
16 drink being thrown in his face?

17 A. Something about a cigarette. Other than the fact
18 they mistake him for being in the club, they was arguing
19 over a cigarette.

20 Q. Was Quentin saying anything?

21 A. No. He was, like, it rolled over his shoulder
22 until the drink got thrown in his face.

23 Q. Where are you right now?

24 A. I'm inside the entranceway.

25 Q. Can you see yourself at all in there right now?

JESSE McNEAL - DIRECT EXAMINATION

1 A. (Indicating.)

2 Q. Ride in the middle of it all. And what were you
3 doing?

4 A. Trying to stop it. There was so much going on. I
5 was just trying to stop it and get people out of the
6 restaurant.

7 Q. When the gunshots went off, you said -- where --
8 do you recall where the guy who threw the drink was?

9 A. I can't recall that, no.

10 Q. And what did you do after the shots went off?

11 A. I mean, I just kind of dropped down and --

12 Q. And did what?

13 A. Once -- I looked up for a minute and I stepped
14 outside.

15 Q. Can you see yourself in the video?

16 A. Right here (indicating).

17 Q. Where is Quentin?

18 A. Right there.

19 Q. He's on the ground?

20 A. Uh-huh. He's still down.

21 Q. Give us just a moment, Jesse.

22 All right. What's this a shot of?

23 A. Outside, the parking lot, right in front of the
24 entranceway.

25 Q. Who is that person that's on the sidewalk?

000242

JESSE McNEAL - DIRECT EXAMINATION

1 A. Security guard.

2 Q. Where are you at this point? Are you inside or
3 outside?

4 A. I'm most likely inside. I'm not sure what part of
5 the video this is.

6 Q. Can you tell what's happening here?

7 A. That's the fight. Everybody is throwing punches
8 and yelling and arguing and all this commotion going on.

9 Q. And then what just happened?

10 A. Shot.

11 Q. And then where are you?

12 A. Right there (indicating).

13 Q. Point it out again? Okay. And did you see who,
14 if anybody besides your cousin, got shot?

15 A. No. I mean, afterwards, I saw a guy over this
16 side of the parking lot, holding his side.

17 Q. Do you remember giving a statement to police that
18 night?

19 A. Yeah, that morning.

20 Q. Do you remember giving them one at the police
21 station?

22 A. Uh-huh.

23 Q. Do you recall telling them that the person that
24 threw the cup of, I think, beer in your cousin's face was
25 five-seven to five-eight, dark skin, about 150 to 160

JESSE McNEAL - DIRECT EXAMINATION

1 pounds wearing a dark red T-shirt --

2 MR. SMILEY: Objection. Leading, Your Honor.

3 THE COURT: You can't just read from a

4 statement. You got to ask him -- if he says something
5 different, you can impeach him with it.

6 THE WITNESS: I don't remember.

7 BY MS. BALDWIN:

8 Q. Do you remember telling them what the shooter
9 looked like?

10 A. Yeah.

11 Q. I apologize, what the person who threw the cup of
12 beer looked like?

13 A. Yeah, I remember.

14 Q. What did that person look like?

15 A. Dark skin, about five-six, five-seven.

16 Q. What were they wearing?

17 A. A red shirt.

18 Q. Okay.

19 A. And black pants.

20 Q. Do you remember telling them about the end of the
21 fight, right before the shots?

22 A. Vaguely.

23 Q. Would it help you remember if you got a chance to
24 look at your statement?

25 A. Yeah.

1 Q. Okay.

2 MR. SMILEY: I don't object to refreshing his
3 memory.

4 THE COURT: All right.

5 BY MS. BALDWIN:

6 Q. Okay. Does that help you remember?

7 A. Yeah.

8 Q. What did you tell them about the end of the fight?

9 A. What do you mean?

10 Q. What did you tell them about trying to get your --
11 trying to break up the fight near the end, right before
12 the shots were fired?

13 A. After -- once the shots were fired, I saw a guy
14 holding his side, falling inside the parking lot.

15 Q. What were you trying to do with your cousin right
16 before the bullets were fired?

17 A. Push him back in the store, get him back in the
18 store, because nothing good was going to come out of
19 where he was going.

20 Q. And would it help you remember what you told the
21 police about what the guy who was swinging looked like if
22 you looked at the rest of your statement?

23 A. Yeah.

24 Q. Just take your time. Look through there.

25 What did you tell them about who was involved in

1 the fight?

2 A. What did I tell who?

3 Q. The police.

4 A. I told them what I saw. What do you mean? What
5 did I tell them?

6 Q. Who did you tell -- do you remember the police
7 asking you who was involved in the fight?

8 A. Uh-huh.

9 Q. Okay. And what did you tell them about who was
10 involved in the fight?

11 A. I just described the guys. I described what they
12 were wearing and their build.

13 Q. Okay. What were they wearing?

14 A. The one guy with the black pants, red T-shirt -- I
15 mean, not red T-shirt, red button down shirt with designs
16 on it, and another guy with dreadlocks, about six foot,
17 black short pants, white shirt.

18 MS. BALDWIN: Beg the Court's indulgence.

19 BY MS. BALDWIN:

20 Q. Jesse, just a couple more questions for you and
21 then I'll be done, okay?

22 A. Uh-huh.

23 Q. Do you recall telling the police about the end --
24 the stopping of the fight, whether or not the fight
25 stopped?

000246

JESSE McNEAL - DIRECT EXAMINATION

1 A. I mean, that was a while ago.

2 Q. Does your statement help you remember?

3 A. Yeah. I mean, it helps, but -- the stopping the
4 fight, I don't really understand what you're trying to
5 get at.

6 Q. Look right around the top of the second page.

7 MR. SMILEY: Your Honor, I object. If he's
8 using it to refresh his memory, it's fine --

9 THE COURT: Yeah. He's not allowed to just
10 testify from it.

11 MR. SMILEY: And I believe he's answered it
12 too, Your Honor.

13 THE COURT: Well, I think he answered it by
14 saying he didn't understand the question.

15 MR. SMILEY: Yes, sir.

16 THE COURT: So rephrase your question.

17 BY MS. BALDWIN:

18 Q. The fight progressed into the vestibule, correct?

19 A. Uh-huh.

20 Q. And prior to the shots going off, what were you
21 trying to do with Quentin?

22 A. Push him back in the store. Stop the fight and
23 push him back into the store.

24 Q. And then what happened?

25 A. And then the shot came through the window.

JESSIE McNEAL - CROSS-EXAMINATION

1 MS. BALDWIN: Court's indulgence.
2 That's all the questions I have.

3 ~~CROSS-EXAMINATION~~

4 BY MR. SMILEY:

5 Q. Hey, Jesse. I'm Jim Smiley. I represent Deonte
6 Brown. This is Ms. Hensley, my second chair, just so you
7 know who I am, okay?

8 Before the fight, do you remember the security
9 guard putting another fellow out that night?

10 A. No.

11 Q. You don't remember that. That's fine. By the
12 way, being a cook must be the hardest thing at 4:00 in
13 the morning. You got a lot going on, right?

14 A. I don't have a lot of time to pay attention to
15 what's going on.

16 Q. Most of the time you've got your back turned?

17 A. Right.

18 Q. And you get that same rush about every weekend?
19 After the club closes, everybody comes and hangs out
20 there and gets food?

21 A. Uh-huh.

22 Q. A lot of people there on a night like that?

23 A. Uh-huh.

24 Q. Inside and outside?

25 A. Yeah. I don't focus too much on outside.

1 Q. I understand. You got up close to Deonte, the
2 fellow in the red-shirt, and would you call the pants he
3 had on sort of the baggy ones that the fellows wear? Do
4 you remember?

5 A. I can't remember, no.

6 Q. You do know the shirt was unbuttoned, and it was
7 hanging out?

8 A. Uh-huh.

9 Q. And were you close to him when you came over to
10 sort of break up the fight?

11 A. Right.

12 Q. So you could see his waistband?

13 A. Yeah.

14 Q. You didn't see a gun, did you?

15 A. I mean, I wasn't paying attention like that, so, I
16 mean, I can't remember in detail, but --

17 Q. But if he had a gun right there in his
18 waistband --

19 A. I would see it, yeah.

20 Q. You would have seen it.

21 A. Uh-huh.

22 Q. And once your cousin understandably lost his
23 temper, he was ready to go after the fellow that threw
24 the drink in his face?

25 A. Uh-huh.

JESSIE McNEAL - CROSS-EXAMINATION

1 Q. And so everything, as it started going towards the
2 front, got pretty chaotic?

3 A. Yeah.

4 Q. And your cousin was throwing punches. There was
5 just more than two people throwing punches; it was chaos?

6 A. Yeah. There was a couple of them throwing
7 punches, because once my cousin got up and want to fight
8 and started to swing, it's just like everything broke
9 out.

10 Q. It was craziness.

11 A. Crazy, yeah.

12 Q. And it all got bunched into --

13 A. That small little area.

14 Q. It made it even harder, right?

15 A. Yeah.

16 Q. And you were, at that point, focussing on getting
17 your cousin back inside, right?

18 A. Uh-huh.

19 Q. And the fight started to let down as the glass
20 shattered?

21 A. Not -- yeah, I mean --

22 Q. There was still fighting?

23 A. They were still fighting, you know what I'm
24 saying, but we eventually got people outside the store.

25 Q. Okay.

1 A. And once we got -- once the last person walked out
2 the door --

3 Q. And then bang?

4 A. Bang.

5 Q. ~~You did not see who shot him?~~

6 A. No.

7 Q. You didn't -- you don't know whether that shot
8 came from five feet away or twenty feet away, do you?

9 A. No.

10 Q. When the glass shattered, that's when your cousin
11 reacted?

12 A. Uh-huh.

13 Q. And sort of bent down, and you were still standing
14 up, I think, at that point --

15 A. At that point, yeah. I stood up after the shot
16 was fired.

17 Q. And everybody started running, correct?

18 A. Uh-huh.

19 Q. And is it fair to say you thought about going into
20 the store but saw everybody was sort of down there, so
21 you and your cousin sort of went out to use --

22 A. Yeah. I saw the truck, and got behind it, yeah,
23 you know what I'm saying?

24 Q. And while you were ducked down, you heard another
25 shot?

JESSIE McNEAL - CROSS-EXAMINATION

1 A. Uh-huh.

2 Q. So you didn't see who shot that shot.

3 A. No. From the video, I mean -- when I heard the
4 shot, I, you know, tried to peek around the truck.

5 Q. And you told the police everything is on the
6 camera, right?

7 A. Yeah.

8 Q. And you heard multiple shots that not, not just
9 two. There were more shots than that, right?

10 A. Yeah. There was three or four of them.

11 Q. Okay. And you gave a statement to the police, the
12 one you refreshed your memory, that night, right?

13 A. That morning.

14 Q. Night, morning?

15 A. Uh-huh.

16 Q. But it's not like you came in months later. You
17 gave it --

18 A. No, once.

19 Q. And you actually sort of did it twice, right? You
20 gave them one there, and then you ended up going down to
21 the station with them?

22 A. Uh-huh.

23 Q. And they put you in an interview room, talked to
24 you again, and then asked you to summarize, basically,
25 what you had said again?

1 A. Uh-huh.

2 Q. And then so you gave them everything you knew?

3 A. Uh-huh.

4 Q. One of the things you did tell them, though, is
5 that the cameras would catch it?

6 A. Uh-huh.

7 Q. And you're saying uh-huh, which I do all the time,
8 but for the record, I'm bad about it, yes and no.

9 A. All right. Yes.

10 Q. Jesse, the front of your building -- y'all put
11 posters up on it, right?

12 A. Yes.

13 Q. And so the view from the inside to the outside is
14 not clear. I mean, you can see out, but not all the way
15 down. There is stuff in the way?

16 A. No. Certain windows got posters on them, specials
17 going.

18 Q. I got you. Simple question. They served you a
19 subpoena to be here today, right?

20 A. Yes.

21 Q. That is a process to be here in court. You've
22 always been cooperative with them, right?

23 A. Yes.

24 Q. It's not like you were trying to avoid court?

25 A. No.

JESSIE McNEAL - REDIRECT EXAMINATION

1 Q. It doesn't make anybody happy to have to come
2 here, but they still subpoenaed you, right?

3 A. Right.

4 MR. SMILEY: Beg the Court's indulgence.
5 That's all I have, Your Honor.

6 THE COURT: Redirect?

7 MS. BALDWIN: Briefly, Your Honor.

8 ~~REDIRECT EXAMINATION~~

9 BY MS. BALDWIN:

10 Q. Jesse, Mr. Smiley was ask you about the guy with
11 the red shirt and the shirt being open?

12 A. Uh-huh.

13 Q. ~~Was it open like this?~~

14 A. ~~No. Just open, like all the buttons was loose.~~

15 Q. ~~Okay. So if he had a gun, like, in his waistband~~
16 ~~in the back, would you have seen that?~~

17 A. ~~No.~~

18 Q. What about over here, would you have seen that?

19 A. No.

20 Q. Were you paying close attention to his waistband?

21 A. No.

22 Q. Who was your focus on?

23 A. My cousin.

24 MS. BALDWIN: Court's indulgence. Nothing
25 further, Your Honor.

DARIO TERAN - DIRECT EXAMINATION

1 MR. SMILEY: No questions.

2 THE COURT: All right. You can step down.
3 Why don't we take a morning rest room break and be back
4 in ten minutes. Again, don't begin deliberations or
5 discussions.

6 MR. SMILEY: And as far as I'm concerned,
7 Mr. McNeal can be excused.

8 THE COURT: Thank you. You're free to go.
9 (Recess taken.)

10 THE COURT: Got your next witness ready?

11 MS. BALDWIN: Yes, Your Honor.

12 THE COURT: Let the record reflect the
13 defendant is in the courtroom.

14 (In open court, jury present.)

15 THE COURT: All right. Call your next
16 witness.

17 MS. BALDWIN: Thank you, Your Honor. State
18 calls Dario Teran.

19 ~~DARIO TERAN,~~
20 having been first duly sworn,

21 was examined and testified as follows:

22 ~~DIRECT EXAMINATION~~

23 BY MS. BALDWIN:

24 Q. How are you doing?

25 A. Pretty good.

DARIO TERAN - DIRECT EXAMINATION

1 Q. Tell the jury just a little bit about yourself.

2 How old are you?

3 A. I'm 33. I work in West Ashley, and I am a parts
4 manager.

5 Q. Do you have any kids?

6 A. I have a 13-year-old.

7 Q. Who were you living with back in July 2012?

8 A. It was me and Wendy Patrick, my ex-fiancee, at
9 that time.

10 Q. Are you and Wendy together?

11 A. No, ma'am.

12 Q. I'll bring you to the early morning hours of July
13 15, 2012. Do you recall that?

14 A. Yes, ma'am.

15 Q. ~~What were you doing?~~

16 A. ~~Eating at Waffle House,~~ or trying to eat.

17 Q. How did you get to Waffle House?

18 A. I drove my Escalade.

19 Q. Did you go with anyone?

20 A. Yeah, me and Wendy.

21 Q. I'm going to show you State's Exhibit 26. That's
22 already been admitted into evidence. If you touch that
23 screen in front of you, it will make a little mark.

24 Do you recall where you were sitting?

25 A. Here (indicating).

1 Q. And you said you were trying to eat. Did anything
2 happen to stop that?

3 A. Yes. There was a fight first and there was a
4 couple gunshots.

5 Q. I'm sorry. Could you repeat that?

6 A. Argument first.

7 Q. Okay.

8 A. Between a crowd of people, and then I remember
9 seeing a flash from the left side of my vision and two
10 gunshots.

11 Q. How is your memory of that evening?

12 A. It's kind of blurry.

13 Q. It's kind of blurry?

14 A. Yes.

15 Q. Why is that?

16 A. Because I had an accident on a motorcycle.

17 Q. When did you have that accident on the motorcycle?

18 A. October 2012.

19 Q. Is your memory in general as good as it used to
20 be?

21 A. I remember most of it, but, you know, I have lost
22 memory since then.

23 Q. Do you recall giving a statement to the police
24 about this incident?

25 A. Yes, ma'am.

DARIO TERAN - DIRECT EXAMINATION

1 Q. Do you recall --

2 A. I remember writing one at North Charleston. I
3 thought I only wrote one that day, that night, that
4 morning.

5 Q. You don't recall writing two, or more than one?

6 A. No, just one.

7 Q. When you say you gave a statement at North
8 Charleston, what do you mean by that?

9 A. When I was in the office, the sheriff's office on
10 Rivers Avenue, where they took me in after the shootout,
11 me and Wendy.

12 Q. And you said your memory isn't very good about
13 that evening?

14 A. It's not 100 percent. ~~From what I remember, I~~
15 ~~remember seeing the flash on the left side, on my eyes,~~
16 ~~that night at the Waffle House.~~

17 Q. ~~Do you remember anybody in particular involved in~~
18 ~~a fight?~~

19 A. There were all black fellows.

20 Q. Do you remember telling the police in your
21 statement anything in particular about the person with
22 the --

23 MR. SMILEY: Objection, Your Honor.

24 THE WITNESS: No, ma'am.

25 THE COURT: What's your objection?

DARIO TERAN - DIRECT EXAMINATION

1 MR. SMILEY: He's asked and answered the
2 question -- the question has been asked and answered.
3 Now she's asking a leading question to follow up.

4 THE COURT: Sustained.

5 BY MS. BALDWIN:

6 Q. Would it refresh your recollection if you looked
7 over your statement as to what you told the police?

8 A. I think my statement would be better -- my -- the
9 statement I gave then, back then, would be better than
10 what I'm doing today.

11 MS. BALDWIN: Court's indulgence. Your
12 Honor, may we approach?

13 (Discussion held at sidebar.)

14 THE COURT: Let me send the jury out while we
15 discuss this.

16 (In open court, jury not present.)

17 MS. BALDWIN: My apologies Judge. It's 8035.

18 THE COURT: All right. And the statement you
19 have is a signed statement by him?

20 MS. BALDWIN: Yes, Your Honor, and I can
21 question him.

22 THE COURT: Can I see it?

23 MS. BALDWIN: Yes, sir.

24 THE COURT: All right. Mr. Teran, this is a
25 statement -- it's written on a memo form from the

DARIO TERAN - DIRECT EXAMINATION

1 Charleston County Sheriff's Office dated 7/15/12. Is
2 that your signature?

3 THE WITNESS: Yes, sir.

4 THE COURT: All right. Mr. Smiley?

5 MR. SMILEY: I believe it fits the exception,
6 Your Honor.

7 THE COURT: Well, it does appear to. You can
8 read it into the record. It doesn't go in as an exhibit,
9 unless Mr. Smiley offers it.

10 MR. SMILEY: Right.

11 MS. BALDWIN: Thank you, Your Honor.

12 THE COURT: All right? Under 8035.

13 MS. BALDWIN: I'll have it marked for
14 ID only.

15 THE COURT: I'm going to have the jury
16 brought back in, and she'll ask you, again, is that your
17 statement? Did you sign it? And then she'll -- I'll
18 allow you to read it to the jury. The document itself
19 does not come into evidence.

20 THE WITNESS: I have to read it in? Can she
21 read it instead?

22 MS. BALDWIN: I can read it.

23 THE WITNESS: With my language and my accent,
24 I don't feel comfortable.

25 MS. BALDWIN: I'll read it.

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1 THE COURT: Okay. Let's bring the jury in.
2 Lay the foundation for the date and it's his signature.

3 MS. BALDWIN: Yes, Your Honor.

4 THE COURT: You have laid the foundation that
5 he doesn't have a good memory of it because of the
6 motorcycle accident and head injury, was it?

7 THE WITNESS: (Nods head.)

8 (In open court, jury present.)

9 THE COURT: All right.

10 BY MS. BALDWIN:

11 Q. You said you do recall giving a statement to the
12 police at the police station?

13 A. Yes, ma'am.

14 (Whereupon, State's Exhibit No. 37 was marked
15 for identification.)

16 BY MS. BALDWIN:

17 Q. I'm going to show you what's been marked as
18 State's Exhibit 37 for ID. Can you tell me what that is?

19 A. It's my statement.

20 Q. And what is the date on the top of that page?

21 A. July 15, '12.

22 Q. Is your signature anywhere on that page?

23 A. Yes, ma'am. Right at the bottom.

24 Q. Down at the bottom?

25 A. Yes, ma'am.

DARIO TERAN - DIRECT EXAMINATION

1 Q. Thank you.

2 MS. BALDWIN: At this time, Your Honor, I
3 would like to read the statement.

4 THE COURT: All right. Folks, under our
5 rules, if somebody does not have a recollection of a
6 statement that they made because of where -- here, he
7 said he had a motorcycle accident. We don't normally let
8 prior statements like this come in.

9 We can for, like, earlier witnesses, if they
10 need to refresh their memory, they can look at it and
11 then tell you what their testimony is, based on that.
12 But because he states he had a motorcycle accident and it
13 affected his memory, he doesn't remember what he saw that
14 night, under those limited circumstances, our rules
15 permit that statement to be read to you.

16 It won't actually come into evidence, but I'm
17 going to allow the solicitor to now read that statement
18 to you.

19 MS. BALDWIN: Black male in red baseball
20 jersey start argument with a black male, white shirt,
21 claiming he was from the country. Stated I'm from 162,
22 and black male in red -- splash red cup at his face then
23 walked off. Male in white got up and followed male in
24 red to the door whose shot was fired. My fiancée and I
25 went under table for safety.

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DARIO TERAN - CROSS-EXAMINATION

1 There was another shot fired while we was
2 under the dinner table. Shooter was about five feet ten,
3 really skinny, with dreads, shoulder long, dark
4 complexion in red jersey.

5 Question: Can you describe the jersey?

6 Answer: Red baseball jersey, either Grays or
7 Cleveland.

8 Question: Did you see the first shot fired?

9 Answer: No, just the light from the gunshot.

10 Question: Who did you see fire the gun?

11 Answer: The guy with the red jersey is where

12 the blast came from. It was just the worker from Waffle
13 House that was trying to kick him out, in parentheses red
14 jersey and his cousin, which is the guy that got shot in
15 the arm wearing a white shirt.

16 Court's indulgence. Dario, I don't have any
17 more questions for you.

18 THE COURT: Mr. Smiley?

19 CROSS-EXAMINATION

20 BY MR. SMILEY:

21 Q. Mr. Teran, I'm Jim Smiley, and I represent Deonte
22 Brown, and Laree Hensley is the other lawyer that is
23 helping me.

24 Where are you from, Mr. Teran?

25 A. Venezuela.

DARIO TERAN - CROSS-EXAMINATION

1 Q. How long have you been here?

2 A. Since '93.

3 Q. That night you got to the Waffle House a little
4 bit before 4:00?

5 A. It was pretty late.

6 Q. Where had you been earlier?

7 A. At a friend's house.

8 Q. Okay. And you and Ms. Patrick went to the back
9 corner?

10 A. Yes, sir.

11 Q. If I could put up State's Exhibit 3, if I could
12 get a little help? I'm sorry to ask again. I know you
13 had a motorcycle accident?

14 A. Yes, sir.

15 Q. And I know your memory isn't as good as it was
16 back then. We're going to look at a video and ask you
17 some questions about it, all right?

18 A. Yes, sir.

19 Q. If I could get that one -- thank you. All right.
20 This shows that at about 4:00 -- and you're not there
21 yet. That's not you in the back corner there, is it?

22 A. No.

23 Q. Okay. Could we fast forward until -- now, is that
24 you in the back corner with Wendy? Can you tell?

25 A. I think so, yes.

1 Q. Okay. You're the guy in the white T-shirt?

2 A. Yes, sir.

3 Q. And that is Wendy that's sitting in the back
4 corner facing the door?

5 A. Yes, sir.

6 Q. And you're looking away from the door, right?

7 A. Yes, sir.

8 Q. And it looks like you've got your breakfast there,
9 right?

10 A. Yes, sir.

11 Q. And in relation to where the in and out door is,
12 is back over your left shoulder?

13 A. Yes, sir.

14 Q. Okay. If we can play it forward at regular
15 speed -- and so you're just minding your business at this
16 point, eating your breakfast, right?

17 A. Uh-huh.

18 Q. And I can see, because the commotion is going on,
19 you're looking over your shoulder from time to time?

20 A. I really don't remember.

21 Q. But you can see yourself in that corner?

22 A. Yes, sir, yeah.

23 Q. And you're in that far corner table, right?

24 A. Yes, sir.

25 Q. All right. And as this is going on, you're still

DARIO TERAN - CROSS-EXAMINATION

1 just minding your business and eating your breakfast and
2 looking over your shoulder from time to time, right?

3 A. Yes, sir.

4 Q. Now, in your statement, you said the fellow
5 slapped him or something, but --

6 A. I saw the red cup being thrown.

7 Q. Okay, threw a drink in his face. You didn't get
8 up at any point. You stayed seated in your chair back
9 there in the corner.

10 And there's a whole lot of commotion going on at
11 that door, isn't there?

12 A. Yes, sir.

13 Q. It looks like everybody is sort of moving around,
14 right, and you're sitting there, just sort of looking in
15 that direction?

16 A. Yes, sir.

17 Q. And then everybody comes rushing in, and you go
18 under the table. That's that first shot, right?

19 A. Yes, sir.

20 Q. And I think another lady actually comes under that
21 table with you, didn't she?

22 A. Yes.

23 Q. And y'all stayed there for a good while, didn't
24 you?

25 A. Yes, sir.

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1 Q. I don't blame you. You went under that table and
2 stayed there.

3 A. Yes, sir.

4 Q. ~~So the whole time you're -- and we can stop it.~~

5 The whole time you stay seated, right, in that
6 table while the fuss is going on and the commotion at the
7 door?

8 A. Yes, sir.

9 Q. And your testimony is you saw a flash?

10 A. Uh-huh.

11 Q. ~~Okay. You never actually saw a gun in the --~~

12 A. No.

13 Q. ~~-- man's hand?~~

14 A. No.

15 Q. All right. Because it's too far away and all
16 that?

17 A. Yeah.

18 Q. ~~And so you never actually saw a gun in the fellow~~
19 ~~with the red shirt's --~~

20 A. Yes, sir, that's correct.

21 Q. It's because of the fight and the way everything
22 was going, that is what you assumed, right?

23 A. Correct.

24 Q. Okay. And you gave the statement right
25 afterwards. They were handing out statement forms there

~~DARIO TERAN - REDIRECT-EXAMINATION~~

1 at the restaurant. Do you remember that?

2 A. From what I was told, I gave one there, and then I
3 gave a second one, which she just read to y'all at the
4 office.

5 Q. Right. And they showed you -- do you remember
6 looking at some pictures and photo lineups?

7 A. Yeah.

8 Q. And you couldn't pick anybody out?

9 A. Correct.

10 MR. SMILEY: Beg the Court's indulgence.

11 BY MR. SMILEY:

12 Q. You were subpoenaed to be here, right? They gave
13 you a subpoena?

14 A. Yes, sir.

15 Q. And you were cooperative?

16 A. Yes, sir.

17 Q. So it's not like you were trying to avoid it. You
18 got a subpoena, didn't you?

19 A. Yes, sir.

20 MR. SMILEY: That's all I have.

21 THE COURT: Redirect?

22 MS. BALDWIN: Court's indulgence.

23 ~~REDIRECT EXAMINATION~~

24 BY MS. BALDWIN:

25 Q. I just have a couple more questions for you.

1 Mr. Smiley just asked you -- he played that video.
2 You were sitting in that back corner, correct?

3 A. Yes, ma'am.

4 Q. Did you see how your body was turned?

5 A. Yes, ma'am.

6 Q. Were you watching what was going on?

7 A. I was paying attention to it, yeah.

8 Q. And you remember me just reading the statement?

9 A. Yes, ma'am.

10 Q. Your statement? And the police asked you, who did
11 you see fire the gun?

12 A. I don't remember that.

13 Q. Okay. And the statement I just read, you said the
14 guy with the red jersey?

15 A. I don't remember seeing a gun.

16 Q. Would you say that your statement is more accurate
17 than your memory now?

18 A. Yes, ma'am.

19 Q. Okay.

20 MS. BALDWIN: Court's indulgence. I don't
21 have any more questions.

22 MR. SMILEY: If I could, Your Honor, very --

23 THE COURT: Go ahead.

24 RECROSS-EXAMINATION

25 BY MR. SMILEY:

DARIO TERAN - RECROSS EXAMINATION

1 Q. And your testimony is, and you remember this part,
2 you didn't see a gun?

3 A. I just saw a flash. I don't remember --

4 MS. BALDWIN: Objection, Your Honor.

5 THE COURT: Overruled.

6 BY MR. SMILEY:

7 Q. You saw a flash?

8 A. Correct.

9 Q. The gentleman in the red shirt, you remember this,
10 he did not have a gun, correct?

11 A. I never -- from what I remember, I never saw a
12 gun.

13 Q. Okay.

14 A. Only a flash.

15 Q. And the question in your statement was: Did you
16 see the first shot fired?

17 And the answer was: No, just the light from the
18 gunshot. So you did not see a gun?

19 A. Correct.

20 Q. So the next question is: Who did you see fire the
21 gun?

22 And your answer was: The guy with the red jersey
23 is where the blast came from. It was just the worker in
24 the Waffle House that was trying to kick him and the red
25 jersey and his cousin who got shot in the arm.

1 You didn't actually know the cousin that night,
2 did you?

3 A. No.

4 Q. You gathered that information --

5 A. Correct.

6 Q. -- from the cook and all?

7 A. Correct.

8 Q. When y'all were standing around afterwards, right?

9 A. That's correct.

10 Q. Because, of course, you talked about it, right?

11 A. Yes, sir.

12 Q. All right. Just so we're clear, because it's
13 important, you at no point saw the fellow with the red
14 open shirt --

15 A. Correct.

16 Q. -- holding a gun, did you?

17 A. Correct. All I saw was the flash.

18 Q. All you saw was the flash?

19 A. Yes, sir.

20 Q. And there were a whole bunch of people over there,
21 right?

22 A. Yes, sir.

23 Q. And, also, your view toward that front door, there
24 is some posters that were up on the window, right?

25 A. I'm pretty sure.

TIFFANY SMITH - DIRECT EXAMINATION

1 MR. SMILEY: That's all I have.

2 THE COURT: You can step down. Call your
3 next witness.

4 MS. LINDER: State calls Tiffany Smith.

5 THE COURT: You're free to go. Thank you.

6 ~~TIFFANY SMITH,~~

7 having been first duly sworn,

8 was examined and testified as follows:

9 ~~DIRECT EXAMINATION~~

10 BY MS. LINDER:

11 Q. Good morning. Where are you from, generally?

12 A. Charleston.

13 Q. And did you receive a subpoena to be here today?

14 A. Yes.

15 Q. And are you excited about being here?

16 A. No.

17 Q. But you understand that you have to be here today.

18 A. Yes.

19 Q. Were you -- where were you working back in July of

20 2012?

21 A. Waffle House.

22 Q. Okay. And are you still working at the Waffle
23 House?

24 A. No.

25 Q. What are you doing now?

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- 1 A. PCA.
- 2 Q. Pardon me?
- 3 A. PCA.
- 4 Q. And what does that mean?
- 5 A. Personal care aid.
- 6 Q. Personal care aid. So it's the health care
- 7 industry?
- 8 A. Yes.
- 9 Q. And you help individuals who need assistance.
- 10 A. Yes.
- 11 Q. All right. Were you working at the Waffle House
- 12 the kind of overnight July 14th into July the 15th? Were
- 13 you working at the Waffle House down on Savannah Highway
- 14 and Main Road?
- 15 A. Yes.
- 16 Q. And do you remember what shift you were working?
- 17 A. Third shift.
- 18 Q. And what hours was the third shift?
- 19 A. From 9 p.m. to 7 a.m.
- 20 Q. And how long you had worked at Waffle House by the
- 21 time this occurred?
- 22 A. Well, I was working at that Waffle House for
- 23 about -- probably for a couple of months, just filling
- 24 in, because they needed extra people.
- 25 Q. And that night that you were working, did an

TIFFANY SMITH - DIRECT EXAMINATION

1 argument happen, a loud argument?

2 A. Yes.

3 Q. And did a physical fight happen? Were punches
4 thrown?

5 A. Yes.

6 Q. And, ultimately, did a shooting occur?

7 A. Yes.

8 Q. Did police respond to the scene that night?

9 A. Yes.

10 Q. And did you speak to police?

11 A. Yes.

12 Q. Did you speak to police at the Waffle House?

13 A. After everything --

14 Q. After everything?

15 A. Yes.

16 Q. And did you end up going to the police station and
17 writing a statement?

18 A. Yes.

19 Q. Do you remember what section you were working that
20 night, at the Waffle House?

21 A. It was on the right-hand side.

22 Q. Okay.

23 A. And half of the bar.

24 Q. Okay. I'm going to show you what's been marked as
25 State's Exhibit 11. Is this the area you're describing

1 when you say the right-hand side and half of the bar?

2 A. Yes.

3 Q. What happened at the Waffle House that night,
4 starting about 4:00 in the morning, 3:00 or 4:00?

5 A. Well, usually the kids get out the club around
6 that time, and it was really, really crowded. So our
7 security guard, he was there, and he was -- actually was
8 supposed to kind of not let so much people in at one
9 time.

10 Q. But he didn't do that?

11 A. He didn't do it.

12 Q. Okay.

13 A. So what I saw was the gentleman -- I don't know
14 the names, but the gentleman in the white T-shirt, he was
15 sitting by the jukebox, and the guy -- he was arguing,
16 and so the guy --

17 Q. Who was arguing with the guy in the white T-shirt?

18 A. The guy with the red shirt on.

19 Q. Okay.

20 A. And they're arguing, and then next minute you
21 know, the guy in the red, he threw a cup of, I guess,
22 liquor in his face, and they started fighting. The -- my
23 cook, the cook, came around the corner, trying to kind of
24 like break it up, and then they were fighting out the
25 door.

TIFFANY SMITH - DIRECT EXAMINATION

1 The guy in the red and a couple of his friends
2 were fighting out the door, and then a couple of seconds
3 later, I just saw the bullet came through the Waffle
4 House window. And then I went outside, and the guy in
5 the white shirt was shot in the arm, and there was
6 another guy that was deceased, like, by the tree, laying
7 flat on his stomach.

8 Q. When the guy in the red shirt was arguing with the
9 guy in the white T-shirt, sitting by the jukebox, did you
10 hear what words were being said at all?

11 A. No. I don't remember.

12 Q. Would it help refresh your recollection if you
13 looked at your statement that you had given to police
14 that night/morning?

15 A. Yes.

16 Q. Just before you look at it, is this -- does it
17 look like your statement?

18 A. Yes, it does.

19 Q. And is this your signature?

20 A. Yes.

21 Q. If you want to just go over your statement and see
22 if it refreshes your recollection of what you told the
23 police that night happened.

24 A. Do you want me to read it out or --

25 Q. No. Just read it to yourself and see if that

1 helps you remember, because my question to you is, do you
2 remember what the guy in the red shirt was saying toward
3 the person in the white shirt when he was sitting there?

4 A. Okay. This does refresh my memory. The boy in
5 red asked him, the boy in white, if he did --

6 MR. SMILEY: I would ask if she refreshes her
7 memory that she answer and not read the statement.

8 THE COURT: You can refresh your memory and
9 then answer the question, but don't just read the
10 statement as the answer to your question, okay?

11 BY MS. LINDER:

12 Q. To echo what the judge said, if you could read the
13 entirety of your statement, I believe there are couple
14 pages there, and if it helps, refresh your recollection
15 any time it's mentioned about what's happening to the guy
16 in the white shirt.

17 THE COURT: Okay. Take your time. Do you
18 need any more time?

19 BY MS. LINDER:

20 Q. What were all the different things being said to
21 the guy in the white shirt?

22 A. Well, back what I was saying, from reading my
23 statement, it kind of does refresh my memory. So the boy
24 in the red, he asked the boy for a cigarette, and the boy
25 in white said no.

TIFFANY SMITH - DIRECT EXAMINATION

1 Q. And did the boy in red say anything else to the
2 boy in white?

3 A. He started cursing, cursing the boy out. Like, he
4 got he started, like, saying something like the numbers,
5 I guess where he was from. I forgot what the numbers
6 were.

7 Q. Would it refresh you to look at your statement?

8 A. Yes, it was, like, 216, or 612.

9 Q. Okay. And do you recall if he was yelling or
10 whispering? I have a pretty loud voice, especially
11 compared to you, but do you know if he was yelling or
12 saying it nicely, the tone that you heard that night?

13 A. It was kind of like -- it wasn't loud, but it was
14 kind of like he was angry kind of, but not loud.

15 Q. And did you know the guy in the red shirt?

16 A. No.

17 Q. Did you know him personally?

18 A. (Shakes head.)

19 THE COURT: You need to say -- the court
20 reporter has to get your answer, and when you just shake
21 your head or nod your head, you can't put anything,
22 really, down, so you just need to say yes or no instead
23 of nodding or shaking. Okay?

24 THE WITNESS: Okay. No.

25 BY MS. LINDER:

1 Q. Did you know personally the guy in the red shirt?

2 A. I don't know him.

3 Q. Do you know personally the guy in the white

4 T-shirt?

5 A. No.

6 MS. LINDER: I don't have any other questions
7 for you, if you would answer any questions the defense
8 may have for you. Thank you.

9 ~~CROSS-EXAMINATION~~

10 BY MR. SMILEY:

11 Q. Ms. Smith, my name is Jim Smiley. I represent

12 Deonte Brown, and this is Ms. Hensley who works with me,
13 another attorney. Okay?

14 You were working that night, right?

15 A. Yes.

16 Q. And without labelling the sections -- but you had
17 that section, the back corner section?

18 A. Right.

19 Q. The one furthest away from the door?

20 A. Yeah.

21 Q. And so you were in that general vicinity --

22 A. Right.

23 Q. -- during that. And the argument was over by the
24 jukebox, right?

25 A. Exactly.

TIFFANY SMITH - CROSS-EXAMINATION

1 Q. And when Jesse came from around the corner and the
2 security guard came up, y'all started moving toward the
3 door, right?

4 A. Right.

5 Q. And at some point, a drink was thrown and the
6 fight or scuffle broke out?

7 A. Uh-huh.

8 Q. Now, you didn't go to the door, though, you stayed
9 back in?

10 A. I stayed back?

11 Q. All right. And you said you saw the bullet come
12 from the glass. Is it more accurate to say you saw the
13 glass shatter? I can't see a bullet.

14 A. What I saw was the shot came from the outside.

15 Q. Right?

16 A. Inside.

17 Q. Okay. So the shot came from the outside to the
18 inside, through the glass.

19 A. Yes.

20 Q. And when that happened, I guess you ducked down?

21 A. Yes.

22 Q. Did you go under the table too?

23 A. Yes.

24 Q. Okay. But the fellow that had the red shirt on,
25 the open one --

- 1 A. Uh-huh.
- 2 Q. -- you were pretty close to him, right?
- 3 A. Yes.
- 4 Q. Five, six feet during that time?
- 5 A. Yes.
- 6 Q. Okay. I promise I'm not trying to trick you. I'm
- 7 just trying to ask you a few questions to get it.
- 8 Now, he had an open shirt, right?
- 9 A. Uh-huh.
- 10 Q. And you remember he had on jeans of some sort?
- 11 A. I don't remember.
- 12 Q. That's fine. It's been years. It's been a while.
- 13 Do you remember if they were baggy or not?
- 14 A. No.
- 15 Q. Is it fair to say you didn't see a gun in his
- 16 waistband, though?
- 17 A. Huh-uh.
- 18 Q. As a matter of fact, you never saw a gun, did you?
- 19 A. No.
- 20 Q. All right. At no point did you see the fellow
- 21 with the red shirt on pull out a gun?
- 22 A. No.
- 23 Q. And the shot that came from the outside in, you
- 24 didn't see where it came from; you just know it came from
- 25 the outside?

TIFFANY SMITH - CROSS-EXAMINATION

1 A. Right.

2 Q. All right. Now, afterwards, then, the police are
3 outside staking everything off, and you stayed inside,
4 right?

5 A. Yes.

6 Q. Because, actually, I believe you and a couple of
7 customers and Jesse, and maybe another waitress, April,
8 that twisted her ankle --

9 A. Right.

10 Q. -- y'all sat in that back corner, right, sort of
11 hung out back there, because the deputies gave you some
12 statements?

13 A. Yes.

14 Q. So y'all discussed what had just happened, right?

15 A. Yes.

16 Q. Okay.

17 MR. SMILEY: Beg Court's indulgence.

18 BY MR. SMILEY:

19 Q. Oh, the video shows a little bit, but do you
20 remember from your view back in that corner, back in the
21 table in the back corner, when you look at the outside
22 and the front door area, it's not a clear view.

23 There's posters on the glass in some places. I'm
24 not saying you can't see out, but it's not like it's a
25 crystal clear view, would you agree with that?

TIFFANY SMITH - CROSS-EXAMINATION

1 A. Yes.

2 MR. SMILEY: That's all I've got, Your Honor.

3 THE COURT: Redirect?

4 MS. LINDER: No redirect, Your Honor.

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

6 Do we need her for anything else?

7 MR. SMILEY: No, sir.

8 THE COURT: You're free to go. Thank you.

9 Next witness?

10 MS. LINDER: State calls April Blodgett.

11 ~~APRIL BLODGETT,~~

12 having been first duly sworn,

13 was examined and testified as follows:

14 ~~DIRECT EXAMINATION~~

15 THE WITNESS: April Blodgett,

16 B-l-o-d-g-e-t-t.

17 BY MS. LINDER:

18 Q. And if you can make sure you speak up, this lady
19 that is right here is trying to record everything that is
20 being said. Not everybody is as loud as I am.

21 Where are you originally from?

22 A. New Jersey.

23 Q. How long have you been in South Carolina?

24 A. Almost 17 years.

25 Q. And do you know why you're here today?

APRIL BLODGETT - DIRECT EXAMINATION

1 A. Yes, ma'am.

2 Q. Were you at the Waffle House at 3565 Savannah
3 Highway back on July 14 and 15 of 2012?

4 A. Yes, ma'am.

5 Q. And in what capacity were you there? Were you
6 working? Were you eating?

7 A. I was working.

8 Q. And how long have you worked at Waffle House?

9 A. Almost five years.

10 Q. Okay. And what's your position at Waffle House?
11 What's your job title?

12 A. Currently?

13 Q. Yes.

14 A. I'm relief manager and a grill operator.

15 Q. And back in 2012, what were you doing at Waffle
16 House?

17 A. A salesperson.

18 Q. And do you remember what shift you worked that
19 night?

20 A. It was the third shift.

21 Q. And what hours is that shift?

22 A. 9 p.m. to 7 a.m.

23 Q. Do you still work at Waffle House?

24 A. Yes, ma'am.

25 Q. Do you still, did you still, work that 9:00 to

1 7:00 shift?

2 A. No, ma'am.

3 Q. That night when you went to work, what vehicle
4 were you driving?

5 A. A Ford Explorer.

6 Q. What color was it?

7 A. Burgundy.

8 Q. And do you remember where you parked when you went
9 to work that night?

10 A. In the front of the building.

11 Q. By the front doors?

12 A. Yes, ma'am.

13 Q. Do you remember what section you were assigned to
14 that night, if you were assigned a specific section?

15 A. I had from the register down to by the entryway.

16 Q. Okay. I'm going to show you what's marked as
17 State's Exhibit 13, and is this part of the section that
18 you were describing that you had?

19 A. Yes, ma'am.

20 Q. And I'm also going to show you State's Exhibit 7.
21 Is this a continuation of the section you described as
22 having?

23 A. Yes, ma'am.

24 Q. Where is the register? If you touch that screen
25 or circle it, it will show up.

APRIL BLODGETT - DIRECT EXAMINATION

1 A. It's right here (indicating).

2 Q. So the high top counter was yours.

3 A. Yes, ma'am.

4 Q. Okay. And I'm going to show you -- this is
5 State's Exhibit 26. Can you kind of color in here or
6 circle the area you were assigned to?

7 A. I had -- right here. I had this part right here
8 (indicating).

9 Q. All right. That night when you were working, did
10 an argument happen, some yelling happen?

11 A. Yes, ma'am.

12 Q. And did a fight happen? Were punches thrown?

13 A. Yes, ma'am.

14 Q. And, ultimately, did a shooting happen?

15 A. Yes, ma'am.

16 Q. Did police respond to the scene after that
17 happened?

18 A. Yes, ma'am.

19 Q. ~~And did you ever speak to police?~~

20 A. ~~Yes, ma'am.~~

21 Q. And did you stay at the Waffle House or did you go
22 to the police station? What did you do after everything
23 happened?

24 A. When I got back from the hospital, I was taken to
25 the police station.

1 Q. Okay. What did you do at the hospital?

2 A. I was injured that night.

3 Q. You were injured? How were you injured?

4 A. Somebody pushed me down and I sprained my knee.

5 Q. When you went to the hospital, did the -- what did
6 the doctors do?

7 A. They cleaned my cut up and they bandaged my knee,
8 put me on crutches.

9 Q. So you received crutches?

10 A. Yes, ma'am.

11 Q. Did you receive any pain medication?

12 A. Yes, ma'am.

13 Q. All right. Are you healing a little bit from that
14 now, hopefully?

15 A. Yes, ma'am.

16 Q. If you could just kind of tell the jury a little
17 bit about the specifics of that night, from starting, you
18 know, around 3:00, 4:00 in the morning.

19 A. We were just really busy. We were packed. We
20 were shorthanded, and a lot of other people started
21 coming in.

22 Q. You were shorthanded. Was it all the regular
23 people working at the Waffle House that night?

24 A. We were short one person.

25 Q. You were short one person, but everybody else were

APRIL BLODGETT - DIRECT EXAMINATION

1 regulars at that Waffle House?

2 A. Yes, ma'am.

3 Q. And did you have a security guard working that
4 night?

5 A. Yes, ma'am.

6 Q. Did he do a good job as a security guard?

7 A. No, sir.

8 MR. SMILEY: I would ask that she not lead.

9 THE COURT: All right.

10 BY MS. LINDER:

11 Q. ~~Can you explain what was happening, starting when~~
12 the crowd was coming in? What do you mean, the crowd was
13 coming in?

14 A. We have two separate crowds. We have the 2:00
15 crowd, and then we have a 4:00 crowd, and we were still
16 packed from the 2:00 crowd, and people were taking places
17 to sit when the 4:00 crowd came in. We tried to
18 tell security not to let anybody else in because we were
19 over capacity, but he didn't do that.

20 Q. And do you see -- from working at the Waffle House
21 for almost five years, do you see regular customers come
22 in, weekends or certain nights that you would work?

23 A. Yes, ma'am.

24 Q. Did you recognize some regulars that night when
25 you were working?

1 A. Yes, ma'am.

2 Q. And once the 4:00 crowd came in, what happened of
3 significance that night?

4 A. ~~There was an argument that led into some fighting.~~

5 Q. Who was in the argument?

6 A. There was one gentleman that started the argument
7 with another customer that was already in the restaurant
8 all night. They were arguing. I didn't hear all the
9 details of the argument.

10 Q. Can you describe what they were wearing, or where
11 they were located in the restaurant?

12 A. ~~The one gentleman had a red shirt on. He was~~
13 ~~sitting at the low counter, and then the other~~
14 ~~gentleman -- there was another gentleman that was sitting~~
15 ~~in the chair behind him against the wall that was sitting~~
16 ~~with one of our associates.~~

17 Q. All right. And so an argument started. Did that
18 argument ever escalate from just words?

19 A. It escalated -- once the drink got thrown into the
20 other guy's face --

21 Q. Who threw a drink?

22 A. ~~A gentleman in a red T-shirt, and then they~~
23 started arguing, and then there was a bunch of them and
24 they just started fighting.

25 Q. Did anybody try to break up the fight?

APRIL BLODGETT - DIRECT EXAMINATION

1 A. One of the associates was trying to help. His
2 cousin was one of the people involved.

3 Q. When you say associates, what do you mean?

4 A. One of my co-workers.

5 Q. Somebody that works at the Waffle House, when you
6 say associate?

7 A. Yes, ma'am.

8 Q. So somebody that works at the Waffle House came to
9 try to break up the fight?

10 A. Yes, ma'am.

11 Q. All right. And then can you explain kind of what
12 happened.

13 A. They were fighting, and it led up to where they
14 pushed him back by the little breezeway, and they were
15 fighting in there, and then when that outdoor opened is
16 when I saw a gun, and that's when I was starting to get
17 down and the shots were fired.

18 Q. So the outside door from Waffle House to outside
19 opened before the shots were fired?

20 A. Yes, ma'am.

21 Q. And you saw a gun be pulled?

22 A. I seen the gun. I don't know --

23 Q. Did you alert the police in any way?

24 A. Yes, ma'am.

25 Q. How did you alert the police?

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APRIL BLODGETT - DIRECT EXAMINATION

1 A. When they started fighting is when I hit the
2 silent alarm.

3 Q. There is a silent alarm at the Waffle House?

4 A. Yes, ma'am.

5 Q. Why did you hit the silent alarm?

6 A. From previous experiences.

7 Q. All right. At this time, I'm going to show you
8 part of the video from Waffle House, and I would like for
9 you to take us through and describe where you are and
10 kind of -- it will help the jury understand where you
11 were and what you were seeing, okay?

12 A. Yes, ma'am.

13 Q. Who is that girl with that white or pink hoody
14 that just walked out from behind the counter?

15 A. That's my co-worker.

16 Q. Co-worker. When you were talking about a guy in a
17 red shirt, which red shirt guy were you talking about?

18 A. That one (indicating).

19 Q. Okay. Do you recognize the guy in the white
20 T-shirt who is just sitting down by the jukebox? Do you
21 recognize any of these people as regulars?

22 A. Yes, ma'am. A lot of the them come in every
23 weekend.

24 Q. Can you see where the guy in the red shirt is that
25 you pointed out earlier?

APRIL BLODGETT - DIRECT EXAMINATION

1. A. Right there (indicating).

2. Q. And what area -- is that high counter or is that a
3 booth? What area is that where he's standing by?

4. A. That's the low counter.

5. Q. That's the low counter. And during all this time
6 when it gets really busy, were you going about your job
7 taking orders, or were you kind of stopping and watching
8 stuff? What were you doing?

9. A. No, I was still working.

10. Q. Do you serve drinks in those red cups?

11. A. No, ma'am. They're not allowed in the building.

12. Q. They're not allowed in the building?

13. A. No, ma'am.

14. Q. All right. We're going to flip from a different
15 angle and play it from here and keep asking some
16 different questions, okay?

17. A. Uh-huh.

18. Q. Do you see yourself?

19. A. I'm off camera now, but I just walked past. I'm
20 right there at the register.

21. Q. At the register?

22. A. Yes, ma'am.

23. Q. And what are you doing now in this video?

24. A. Taking my order.

25. Q. And are you facing out toward all the patrons at

1 Waffle House?

2 A. No. Right now I have my back to them.

3 Q. Were you facing out when you take their order?

4 A. No. I was facing them when I was taking the
5 order, but --

6 Q. Where are you located now? What tables are you
7 tending to?

8 A. It looks like I'm right there by the first booth.

9 Q. From that booth, if you're facing out toward the
10 booth from where you're standing, what else do you see?
11 What area of the restaurant do you see?

12 A. From the first booth, you see the first. From the
13 second booth, you see right out the doors.

14 Q. Where are you located?

15 A. I'm my way out. I already hit the alarm.

16 Q. Did you see the face of the person who fired the
17 shot that night?

18 A. No, ma'am.

19 Q. Did you see a gun?

20 A. I seen a gun.

21 Q. And did you see anything around a gun?

22 A. I just seen the sleeve.

23 Q. What sleeve?

24 A. A red sleeve.

25 Q. A red sleeve?

APRIL BLODGETT - CROSS- EXAMINATION

1 A. Yes, ma'am.

2 Q. And did you tell the police that night when you
3 wrote a statement that you saw a gun being held by
4 somebody with a red sleeve?

5 A. No, ma'am.

6 Q. And why not?

7 A. I didn't even recall everything that night.

8 Q. As you stated prior, did you receive any medicines
9 from doctors before giving your statement?

10 A. Yes, ma'am.

11 Q. Are you -- do you have any -- beg the Court's
12 indulgence.

13 I don't have anything further for you at this
14 time, if you answer anything Mr. Smiley may have.

15 THE COURT: Cross?

16 CROSS-EXAMINATION

17 BY MR. SMILEY:

18 Q. Good morning.

19 A. Hi.

20 Q. So your position in the Waffle House is usually
21 behind that counter, right?

22 A. Yes, sir.

23 Q. And that's where you were working that night,
24 right?

25 A. Yes, sir.

APRIL BLODGETT - CROSS- EXAMINATION

1 Q. Okay. Would you agree that it was two years ago,
2 a while ago, right? It's been a while, and that
3 typically we remember things better right after they
4 happen than two years later?

5 A. Yes, sir.

6 Q. Now, you didn't actually see the shot, did you?

7 A. No, sir.

8 Q. Actually, you wrote in your statement -- or that
9 statement you gave the next morning you didn't see who
10 was shooting, correct?

11 A. Correct.

12 Q. All right. And do you remember being shown a
13 photo lineup?

14 A. Yes, sir.

15 Q. They showed you a few, didn't they?

16 A. Yes, sir.

17 Q. You weren't able to pick out anybody as being the
18 person that shot the gun, correct?

19 A. Correct.

20 Q. Now, when that glass broke, you went down, right?

21 A. Yes.

22 Q. You did hit the alarm before the shot? It was
23 after the shot?

24 A. No, it was before.

25 Q. It was before, so you got -- you saw things were

APRIL BLODGETT - CROSS- EXAMINATION

1 winding up there, and you hit it and got out of the way,
2 right?

3 A. Yes.

4 Q. Okay. And I think you said there is an employee
5 exit, or employee area in the back part of the
6 restaurant, and is that where you were heading?

7 A. Yes, sir, out the back door.

8 Q. And one of the other employees or someone stumbled
9 on top of you, and that's how you hurt your knee?

10 A. I was pushed down.

11 Q. Pushed?

12 A. Uh-huh.

13 Q. After the police arrived and they put up the
14 yellow tape, you stayed in the restaurant for a while,
15 right?

16 A. Yes, sir.

17 Q. Because I think you went down to the far end and
18 had a seat for a while?

19 A. Yes, sir.

20 Q. And there was some customers that were in there
21 with you too, a couple of them?

22 A. Yes, sir.

23 Q. Two or three?

24 A. Yes, sir.

25 Q. And a couple of other employees were back there

1 too?

2 A. Yes, sir.

3 Q. And y'all sat there for a while until the EMT guys
4 could come see you and talk to you, right?

5 A. For the most part, I was like the last one left in
6 there. They had already taken everybody else out.

7 Q. Okay. My point is that y'all sat there, five or
8 six of you in a group, in the back corner for a while,
9 right?

10 A. Correct.

11 Q. And, of course, you talked about it, right?

12 A. Not really.

13 Q. People weren't saying what they saw?

14 A. No. Everybody was just checking on me at that
15 point in time.

16 Q. Okay. Got you. Now, it's recently that you
17 remember a red sleeve, right?

18 A. It's not recently, it's just recently that I
19 talked to them.

20 Q. Oh, okay. So it came back to you after a while,
21 right?

22 A. Yes, sir.

23 Q. Now, the fellow with the red shirt, it was
24 unbuttoned, right?

25 A. Correct.

APRIL BLODGETT - CROSS- EXAMINATION

1 Q. And he had on jeans? Did you recognize what he
2 had --

3 A. I don't recall.

4 Q. Do you remember if they were baggy or tight?

5 A. I don't recall.

6 Q. Okay. The red shirt, do you remember anything
7 about it?

8 A. It had some writing on it, but other than that,
9 no.

10 Q. Okay. It's pretty confusing and chaotic in there
11 that night, wasn't it?

12 A. Yes, sir.

13 Q. And when everybody was moving into that foyer
14 area, it was pretty crowded, wasn't it?

15 A. Yes, sir.

16 Q. That inside door that leads to the foyer, it has a
17 pane of glass in front of it, right?

18 A. Yes.

19 Q. And it has a poster on it?

20 A. Uh-huh.

21 Q. As a matter of fact -- I beg the Court's
22 indulgence.

23 First thing I'm going to put up is State's Exhibit
24 26, and I think you had looked at that a little bit
25 earlier in your testimony. And this spot right here,

1 that's the booth, the last booth, before you go into
2 y'all's walk areas; is that fair to say?

3 A. Yes, sir.

4 Q. All right. And this diagram can show the position
5 of that booth to the wall in front of it and then that
6 side door, correct?

7 A. Correct.

8 Q. Okay. And that's an accurate drawing of the
9 place, would you agree?

10 A. Yes.

11 Q. Okay. And when that scuffle was going on at the
12 front door, you were standing in front of that booth,
13 right? We could see that on the video, right?

14 A. Not the last booth.

15 Q. You're saying it wasn't the last booth?

16 A. No, sir. It was the second.

17 Q. You're saying it was the second booth.

18 A. Yes.

19 Q. Where is the buzzer or alarm you got to hit?
20 Where is it located?

21 A. There's five of them.

22 Q. Which one did you hit?

23 A. The one by the register.

24 Q. The one down here by the register?

25 A. Correct.

APRIL BLODGETT - CROSS- EXAMINATION

1 Q. I think in the video we could see it sometimes
2 down there.

3 A. You can't -- yeah, you can't see the thing, but --

4 Q. Okay. So when this scuffle started going on and
5 it got to that point, you walked down to the other
6 register and hit the button and then came back and got in
7 here, right?

8 A. I was already on the other end. After I hit the
9 silent alarm is when I was headed to go out the back
10 door.

11 Q. ~~So while that scuffle is going on, you went to the~~
12 ~~other end?~~

13 A. ~~I was already on the other end.~~

14 Q. So while the scuffle was going on you were already
15 down there by the register?

16 A. Correct.

17 Q. So that was your view of what was going on was
18 down by the register?

19 A. Before they got down to the door.

20 Q. Yeah?

21 A. Where he got to the doorway.

22 Q. Yeah?

23 A. I was already down there, and then they started
24 arguing. That's when I hit the silent alarm.

25 Q. Okay. So -- okay. Now, I'm going to show you

1 what is State's Exhibit 12. That gives you a pretty good
2 view of the front door, right?

3 A. Yes.

4 Q. And that is actually from about where that
5 register is, correct?

6 A. Correct.

7 Q. And from there, that would be your view to the
8 front door, correct?

9 A. Yes.

10 Q. And it had a poster up there on the left, near the
11 front door, correct?

12 A. Right in the front right there, yeah.

13 Q. All right. Beg the Court's indulgence.

14 This gun you say you saw, what color was it?

15 A. Black.

16 Q. It wasn't silver, though?

17 A. No. It was black.

18 Q. Was it a revolver or an automatic?

19 A. I don't know the difference.

20 Q. Okay. Now, you didn't put that in your statement,
21 though, that you saw a gun?

22 A. No.

23 Q. And that's important information, right?

24 A. Yes.

25 Q. As a matter of fact, you said -- did you see the

APRIL BLODGETT - CROSS- EXAMINATION

1 shooting? You put no, you didn't, and that was the
2 statement the day of, right?

3 A. Correct.

4 Q. Okay. Now, when you gave the statement, I'm sure
5 the policeman and you talked before you gave it, right?

6 A. I'm sorry?

7 Q. When you got to the station to give the statement,
8 you talked with the police, right?

9 A. I didn't talk to them till I got there.

10 Q. Excuse me?

11 A. I didn't talk to the police until I got to the
12 station, yeah.

13 Q. That's what I mean.

14 A. Yeah.

15 Q. And you knew what you were doing, right?

16 A. Yeah. I knew what I was doing.

17 Q. And you -- while you had had some pain medication,
18 you weren't incapacitated by any means, were you?

19 A. I was sleepy and a little out of it, but other
20 than that, I was fine.

21 Q. All right. And when you gave the statement, you
22 tried to put in all the information that would be
23 important that you can remember, right?

24 A. Yes.

25 MR. SMILEY: That's all I have.

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APRIL BLODGETT - REDIRECT EXAMINATION

1 THE COURT: Redirect?

2 MS. LINDER: Yes, Your Honor.

3 REDIRECT EXAMINATION

4 BY MS. LINDER:

5 Q. There's been a lot of questions about where you
6 were and posters and windows, so I'm going to hopefully
7 clear it up a little bit.

8 Your Honor, I believe the defense will agree to
9 what will be numbered as State's Exhibits 38 and 39,
10 which are two photographs from the scene.

11 MR. SMILEY: Without objection.

12 THE COURT: Admitted.

13 (Whereupon, State's Exhibit Nos. 38 and 39
14 were marked for identification and admitted into
15 evidence.)

16 BY MS. LINDER:

17 Q. Just if you look at that screen in front of you
18 again -- all right. You recognize this picture, ma'am?

19 A. Yes, ma'am.

20 Q. And sounds like a basic question: Will you point
21 out the front door? Mark on the front door on that
22 screen. Touch that screen, please, and mark on the front
23 door.

24 A. Right here (indicating).

25 Q. And what windows, if any, are on the exterior of

1 the building and part of that kind of foyer between the
2 two doors?

3 A. There's a mirror -- there is a glass here and
4 here.

5 Q. Okay. And are there posters blocking your vision
6 of that exterior door?

7 A. No, ma'am.

8 Q. Are there big posters blocking the window that
9 looks half busted out?

10 A. No. There's just -- it was our stickers on there.

11 Q. Okay.

12 A. Just right there in that little corner.

13 Q. The big window where the arrow was pointing, are
14 there big posters blocking that window?

15 A. No, ma'am.

16 Q. And if we're going to look at the other photo --
17 and can you explain where this is in the restaurant, what
18 this picture shows.

19 A. This is right there by the -- it shows the view
20 from the little breezeway right there inside the door.

21 Q. There's a lot of talk about where you were located
22 when the shooting happened, and I believe you testified
23 when Mr. Smiley asked you, you were behind the second
24 booth?

25 A. I was right there.

1 Q. You were right there.

2 A. Uh-huh.

3 Q. And are there posters not allowing us to see that
4 location?

5 A. Huh-uh.

6 Q. When the fellows were just fussing at each other,
7 where were they in the restaurant?

8 A. They started on the other side by the register.
9 They started fussing over there.

10 Q. And where were you when they were all fussing at
11 each other?

12 A. I was on that end.

13 Q. And when the shooting happened, where did that
14 happen in the restaurant, generally?

15 A. That was outside the building.

16 Q. Was that near the jukebox? Was that near the
17 register? Where did that happen?

18 A. By the front door.

19 Q. And where were you standing when the shooting
20 happened?

21 A. I was between the second and third booth, or first
22 and second, however you want to call it, in front of
23 there because I remember ducking down behind it.

24 Q. And do you recall if when you were -- when you did
25 a written statement for police after going to the

APRIL BLODGETT - REDIRECT EXAMINATION

1 hospital, do you recall if they asked you did you see a
2 gun?

3 A. I don't recall.

4 Q. Do you recall if they asked you did you see
5 clothing near a gun?

6 A. I don't recall.

7 Q. Would it help to look at your statement to see
8 about those questions? Would it help refresh your
9 recollection?

10 A. It might.

11 Q. If you can read this and see if you see any
12 questions about you seeing a gun or you seeing clothing
13 attached to a gun, if you see those anywhere.

14 MR. SMILEY: Can she just refresh her memory
15 and then ask her questions?

16 THE COURT: That's fine.

17 BY MS. LINDER:

18 Q. Just read your statement, please.

19 A. The whole thing?

20 Q. Just read it, and I'll ask you the questions.

21 Just read it to yourself. I was asking if you
22 remember -- I'm sorry, Ms. Blodgett.

23 To kind of backtrack, I was trying to ask you if
24 you remembered if the police specifically asked you,
25 point blank, did you see a gun that night, and if they

1 asked you, point blank, did you see clothing that was
2 then attached to the gun?

3 And so you're looking at your statement to see if
4 that refreshes your recollection if they specifically
5 asked you those questions.

6 A. No, ma'am.

7 Q. All right. Reading that statement doesn't refresh
8 you if those specific questions were asked?

9 A. Yes, ma'am.

10 Q. All right. Thank you. Did you see a gun that
11 night?

12 A. Yes, ma'am.

13 Q. And did you see a sleeve that was ultimately
14 holding the gun?

15 A. Yes, ma'am.

16 Q. What color was that sleeve?

17 A. Red.

18 MS. LINDER: Thank you. I have nothing
19 further.

20 THE COURT: Recross?

21 RECROSS-EXAMINATION

22 BY MR. SMILEY:

23 Q. When you gave your statement, the purpose was to
24 tell the police anything you know about that would be
25 important, correct?

APRIL BLODGETT - RECROSS EXAMINATION

1 A. Yes, sir.

2 Q. Seeing a gun would have been important, correct?

3 A. Yes, sir.

4 Q. And the clothing that the person that you saw
5 holding a gun would have been important, correct?

6 A. Yes.

7 Q. Okay. And they did ask you, did you see who was
8 shooting? Do you remember that in your statement?

9 A. Yes.

10 Q. And you put, Answer: No. Correct?

11 A. Correct.

12 MR. SMILEY: That's all I got.

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

14 Anybody need her for anything?

15 MS. LINDER: No, Judge.

16 THE COURT: You're free to go. Next witness?

17 MS. LINDER: Your Honor, if we may approach
18 for scheduling?

19 THE COURT: Sure.

20 (Discussion held at sidebar.)

21 THE COURT: Okay. Folks, we are at a break
22 point right now, and we have the next witnesses lined up
23 to come at 2:00, so I'll let you have a little bit longer
24 lunch today, and, if you could, be back in the jury room
25 a few minutes before 2:00. Our plan is to get started

1 right at 2:00.

2 So, again, you can go to lunch with anybody
3 you want to. Please don't talk about the case in any way
4 including commenting on witness demeanor, evidence, or
5 anything like that. If anybody does approach you to talk
6 about the case, please report that back to me when you
7 come back. Enjoy your lunch. See you at 2:00.

8 (Recess taken.)

9 A F T E R N O O N S E S S I O N

10 (In open court, jury not present.)

11 THE COURT: You got your witnesses ready?

12 MS. LINDER: Yes. They're all here.

13 THE COURT: Everybody ready?

14 MR. SMILEY: As ready as we'll ever be.

15 THE COURT: Let the record reflect defendant
16 is in the courtroom. Bring the jury in.

17 (In open court, jury present.)

18 THE COURT: All right. Welcome back, folks.
19 We're going to resume now with the State calling their
20 next witness.

21 MS. LINDER: State calls Betty Butler.

22 ~~BETTY BUTLER,~~

23 having been first duly sworn,
24 was examined and testified as follows:

25 DIRECT EXAMINATION

1 BY MS. LINDER:

2 Q. Good afternoon.

3 A. Good afternoon.

4 Q. Where are you presently employed?

5 A. I'm employed with the South Carolina Law
6 Enforcement Division, also known as SLED.

7 Q. And how long have you been with SLED?

8 A. Over 18 years.

9 Q. What is your position there?

10 A. I'm a forensic technician in the DNA case work
11 unit.

12 Q. What do your duties include at SLED?

13 A. As the forensic technician, we do a presumptive
14 test for blood, semen; we look for skin cells. We look
15 for hair, bodily fluids, or anything that could be of
16 interest to a particular case.

17 Q. As a forensic technician, when you're looking for
18 those items such as blood, semen, et cetera, where do you
19 receive the items that you then examine for those?

20 A. We receive the items from the evidence control
21 department.

22 Q. And are those items turned in to the evidence
23 control department by law enforcement agencies throughout
24 the state?

25 A. Yes, they do.

1 Q. Can you explain the process of how you go about
2 examining an item to look for blood.

3 A. When I receive a particular item, I check to make
4 ~~sure that all the seals is completely sealed before I~~
5 even check the items. Then I open up the items. I do a
6 visual of the items.

7 Sometimes you can see spots and sometimes you
8 can't. We use a clean swab where we put some fluid on
9 it, we swab that particular area, and we do a chemical
10 test. ~~If that particular test is positive, it turns~~
11 ~~pink, and that means I can swab it in, send it up to DNA~~
12 ~~for further testing because there's a possibility that~~
13 ~~blood is there.~~

14 Q. All right. And did you handle any items submitted
15 in this case L12-08586?

16 A. Yes, I did.

17 Q. ~~What item did you handle?~~

18 A. ~~SLED item No. 8 and 8.1.~~

19 Q. At this time I'm going to show you what's been
20 marked as State's Exhibit 34 and 35, if you can please
21 examine those items. Do you recognize those?

22 A. Yes, I do.

23 Q. And how do you recognize them?

24 A. They came in in this heat-sealed pouch. It has my
25 initials, the date. It has the SLED lab number

BETTY BUTLER - DIRECT EXAMINATION

1 L12-08586, item No. 8, and this is the 8.1.

2 MS. LINDER: And at this time, I would ask
3 State's Exhibit 34 and 35 be admitted into evidence.

4 MR. SMILEY: No objection.

5 THE COURT: Admitted.

6 (Whereupon, State's Exhibit No. was marked
7 for identification and admitted into evidence.)

8 BY MS. LINDER:

9 Q. When you received item 8, SLED item 8, what is
10 that described as?

11 A. Fired bullet projectile from Waffle House floor.

12 Q. And what did you do with item No. 8 when you
13 received it?

14 A. When I received item No. 8, the request was for
15 blood. I opened the item up. As I stated before, I used
16 a clean swab. I put a chemical on it, swab the area. I
17 used two swabs, swabbed one area, test one swab to see if
18 it was a possibility there was blood on it.

19 It turned pink, so what I did, I went back and I
20 swabbed the entire projectile and I let it dry. After it
21 dries, I put it into a coin envelope and seal that coin
22 envelope in the heat-sealed pouch and transfer it for
23 further testing.

24 Q. And State's Exhibit 35, already admitted into
25 evidence, is this the coin envelope that you were talking

SAMUEL STEWART - DIRECT EXAMINATION

1 about that you sealed and initialed?

2 A. That's it.

3 Q. And this, I believe you said, you sent for further
4 testing to the DNA department?

5 A. Yes.

6 MS. LINDER: I have no further questions for
7 you at this time, if you could answer anything the
8 defense may have.

9 MR. SMILEY: Ms. Butler, Jim Smiley. How are
10 you?

11 THE WITNESS: Fine, thank you.

12 MR. SMILEY: I don't have any further
13 questions for you. Thanks for coming down. I hope your
14 health is better.

15 THE WITNESS: Thanks.

16 THE COURT: All right. You can step down.
17 Call your next witness.

18 MS. LINDER: The State calls Samuel Stewart.

19 SAMUEL STEWART,

20 having been first duly sworn,
21 was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MS. LINDER:

24 Q. Good afternoon.

25 A. Good afternoon.

1 Q. Where are you employed?

2 A. I'm employed with the South Carolina Law
3 Enforcement Division, commonly known as SLED.

4 Q. And how long have you been with SLED?

5 A. I have been with SLED for two-and-a-half years
6 now.

7 Q. What is your title at SLED and what do your job
8 duties include?

9 A. I'm a forensic scientist assigned to the DNA case
10 department at SLED. I'm responsible for testing any
11 evidence and known standards for DNA, trying to determine
12 whether or not their DNA profile from the known standards
13 can be included or excluded as a possible contributor to
14 the DNA profile I developed from the evidence.

15 Q. Can you tell the jury a little bit about your
16 education and your training and your background.

17 A. No problem. I received my bachelor of science in
18 biology from Francis Marion University. I also received
19 in-house SLED training under other court-qualified
20 analysts for over a year-and-a-half where I could
21 successfully complete hundreds of practice samples, a
22 written exam, an oral exam a competency and mock trial
23 before I could be certified as an analyst.

24 Q. And approximately how many times have you tested
25 items to see about the presence of DNA?

1 A. Over hundreds, maybe close to thousands.

2 MS. LINDER: Your Honor, at this time I would
3 ask that Samuel Stewart be qualified as an expert in the
4 field of DNA analysis.

5 THE COURT: Do you wish to voir dire the
6 witness?

7 MR. SMILEY: No, sir.

8 THE COURT: Okay. Folks, normally when
9 people testify, I told you they come up and they tell you
10 what they heard, they saw, they felt, they touched, they
11 smelt, that sort of thing.

12 We don't normally let people come up and tell
13 you what their opinion is about evidence, all right? The
14 law says, though, that when somebody because of training
15 or expertise or, you know, education in some field,
16 experience rises to the level of being an expert in that
17 field, then they're allowed to come into court and not
18 only tell you what their observations were, but they can
19 also give you their opinion about what the evidence is
20 and give you the basis for that opinion.

21 Now, this witness has now been qualified as
22 an expert in the field of DNA analysis, and he's going to
23 be able to give you his opinion and testing and result.
24 You decide how much weight to give his testimony. The
25 fact that he's been qualified as an expert does not

SAMUEL STEWART - DIRECT EXAMINATION

1 require you to automatically give him greater weight than
2 you would any other testimony in the trial.

3 You decide how much weight his testimony
4 ~~deserves based on all of the evidence that y'all hear~~
5 throughout the case, okay? You may continue.

6 BY MS. LINDER:

7 Q. Mr. Stewart, did you receive any evidence in this
8 case, SLED lab no. L12-08586?

9 A. Yes, I did.

10 Q. And what items did you receive?

11 A. If I can refer to my work?

12 Q. Yes.

13 A. I received item 6, which is a buccal swab from
14 Deonte Brown; item 8.1, which was a swab from a fired
15 projectile; item 9, which was a swab collected from the
16 rim of a red cup; item 11, which was dried bloodstains
17 collected from Dontaye Reed; and item 12, which was a
18 buccal swab from Quentin Allen.

19 Q. When you received these swabs for analysis, did
20 any of them appear to be tampered with?

21 A. No, they did not.

22 Q. If they had appeared to be tampered with, would
23 you have continued on with that analysis?

24 A. No, I would not.

25 Q. Is that part of SLED procedure?

000316

1 A. Yes, it is.

2 Q. At this time I'm going to show you -- at this
3 time, I'll show you what has been marked as State's
4 Exhibits 33 and 35. You can look at those two items.

5 Are these items two of the items that you received
6 to do analysis on in this case?

7 A. Yes, they are.

8 MS. LINDER: At this time I would ask to
9 admit these two items into evidence.

10 MR. SMILEY: No objection.

11 THE COURT: Admitted.

12 (Whereupon, State's Exhibit No. 33 was marked
13 for identification and admitted into evidence.)

14 BY MS. LINDER:

15 Q. And two items that I showed you, item No. 6 and --
16 I apologize, item No. 12 and 8.1, what were those two
17 items?

18 A. Item 8.1 was a swab from the fired projectile, and
19 item 12 was the buccal swab from Quentin Allen.

20 Q. And can you briefly describe in layman's terms the
21 analysis that you performed on those two items to the
22 jury.

23 A. No problem. First, I will explain, DNA stands for
24 deoxyribonucleic acid. It is a genetic material found in
25 every person and is responsible for certain traits like

1 our eye and our hair color.

2 What we do is target certain locations -- well,
3 DNA is contained in chromosomes, which are found in every
4 cell in the human body, excluding red blood cells. We
5 receive half of our chromosomes from our mother and the
6 other half from our father, and we target certain
7 locations on your chromosomes, known as STRs known as
8 short tandem repeats.

9 And what we do is we compile 16 different
10 STR locations that are found on various chromosomes
11 within your body to develop what is known as a DNA
12 profile, which we use to identify a person from another
13 person, excluding identical twins.

14 Q. And as a result of your examination in this case,
15 did you create a report?

16 A. Yes, we did.

17 Q. Is that part of SLED's procedure?

18 A. Yes, it is.

19 Q. At this time I'm going to show you what has been
20 marked as State's Exhibit 27. Can you tell me if you
21 recognize this?

22 A. Yes. This is the report that I issued in this
23 case.

24 Q. And this is the report that you completed per SLED
25 procedure?

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SAMUEL STEWART - DIRECT EXAMINATION

1 A. Yes, it is.

2 MS. LINDER: At this time, I would ask
3 State's Exhibit 27 be admitted into evidence.

4 MR. SMILEY: No objection, Your Honor.

5 THE COURT: It's admitted.

6 (Whereupon, State's Exhibit No. 27 was marked
7 for identification and admitted into evidence.)

8 BY MS. LINDER:

9 Q. Now, when you make analyses, you start with a
10 standard; is that right?

11 A. Well, actually, I start with the evidence first.

12 Q. Okay.

13 A. I start with the evidence first, and I take that
14 to process, and then I make sure to clean my area and
15 start with the standards next. This is to prevent any
16 cross-contamination that could happen.

17 Q. What is a standard?

18 A. A standard is either a cheek swab that we take
19 from an individual or blood, and we use that as your DNA
20 profile to identify you.

21 Q. And in this case, when you get -- in this case and
22 other cases, when you get standards in, how do you
23 develop a DNA profile from that?

24 A. Usually we will take a cutting from that swab or
25 that dried blood standard, and we take it through our

1 different processes of DNA analysis. And what we do is
2 we develop those 16 different STR locations, and we place
3 those in a chart to identify that individual.

4 ~~Q. All right. And at this time, I'm going to show~~
5 you the third page of State's Exhibit 27. It's going to
6 show up on that screen right in front of you. Okay. And
7 can you explain what this chart is to the jury?

8 A. Yes. This chart is the DNA profiles for all the
9 pieces of evidence that I received in this case.

10 Q. All right. And for item number 6 in this case --
11 I'm sorry. I apologize. Item number 12, buccal swab
12 from Quentin Allen, is the buccal swab the cheek or is
13 the buccal swab the blood?

14 A. The buccal swab is the cheek.

15 Q. And so if you look at this in the chart, item
16 No. 12, can you explain what all of these numbers are all
17 the way across?

18 A. No problem. Like I said, you receive half your
19 DNA from your mother and half from your father.
20 Depending upon that location, you will receive a number
21 donated by each parent. Each location could be
22 heterozygous or homozygous.

23 Homozygous means that your parents donated that
24 same number to you. Heterozygous means that your mother
25 donated one number and your father donated another, so

1 that's why there would be one number at one location or
2 two numbers at each location.

3 Q. So for Quentin Allen, item number 12, right here,
4 when it's just that single number 12, was that the homo
5 or heterozygous?

6 A. That's the homozygous.

7 Q. And that means what exactly again?

8 A. It means both his mother and his father donated a
9 chromosome to him at that location.

10 Q. Okay. And scooting just down that, now it's 13
11 now it's 17, is that homo or heterozygous?

12 A. That would be considered heterozygous.

13 Q. And where do each of those numbers come from?

14 A. One of those numbers came from his mother, and the
15 other one came from his father.

16 Q. And item 8.1 in this case, swabs from a fired
17 projectile, were you able to develop a profile out of
18 those swabs?

19 A. Yes, I was.

20 Q. And is a profile developed from 8.1 reflected on
21 this chart?

22 A. Yes, it is.

23 Q. And feel free -- if you touch it with your finger
24 or draw an arrow, it will show up on that screen in front
25 of you. Can you show the jury where the results from the

SAMUEL STEWART - DIRECT EXAMINATION

1 profile from 8.1 is?

2 A. Yes, right here. This is 8.1(indicating). You
3 want me to draw all the way across?

4 Q. No, that's fine, that's fine. So the numbers that
5 we see in 8.1, are these similarly collected to the
6 Quentin Allen numbers we just went over?

7 A. Yes. Do you want me to read from my report?

8 Q. Yes.

9 A. The DNA profile developed from item 8.1 matches
10 the DNA profile of Quentin Allen. Probability of
11 randomly selecting an unrelated individual having a DNA
12 profile matching this item is approximately 1 in 790
13 quintillion.

14 Q. So how many people are in the world's population?

15 A. Probably 7 billion?

16 Q. 7 billion?

17 A. That's correct.

18 Q. And you said which two items were a match?

19 A. Item 8.1 and item 12.

20 Q. And that was one in how many?

21 A. One in 790 quintillion.

22 Q. Quintillion?

23 A. That is correct.

24 Q. Do you have any idea how many zeros is in that?

25 A. It's 790 with 18 zeros behind it.

1 Q. So if we look at the chart, can you show us on
2 this chart what you did in comparing the two profiles to
3 determine they were a match?

4 A. I'm looking at correspondence between a location
5 to see whether or not the numbers that are from the
6 evidence match with anybody from a known standard, and at
7 every location here between 8.1 and 12, I have the
8 numbers corresponded with one another.

9 Q. For DAS-1179, what was your finding at that
10 STR for Quentin Allen?

11 A. That would be a 12.

12 Q. And what about the swab from the fired projectile?

13 A. That would also be a 12.

14 Q. And for DD-2111, what was the finding for Quentin
15 Allen?

16 A. 32, 31.2.

17 Q. And what was the finding for the swab from the
18 fired projectile for that same STR?

19 A. That was also 31, 31.2.

20 Q. And going across the chart, do the numbers match
21 between those two samples as you go through the 16 STRs?

22 A. Yes, they do.

23 Q. In layman's terms -- these numbers are a little
24 over me. From your analysis, what can you say was
25 located on the fired projectile?

SAMUEL STEWART - CROSS-EXAMINATION

1 A. With scientific reasoning, I can say that the DNA
2 profile developed from the fired -- from the swab from
3 the fired projectile matches the DNA profile of Quentin
4 Allen.

5 Q. ~~So Quentin Allen's DNA is on that projectile?~~

6 A. Yes. I can say that with scientific certainty.

7 MS. LINDER: I don't have any other questions
8 for this witness, if you can answer anything the defense
9 may have.

10 THE COURT: Any questions?

11 CROSS-EXAMINATION

12 BY MR. SMILEY:

13 Q. Did you get a subpoena to come here?

14 A. Yes, I did.

15 Q. And that's basically how you get called to court,
16 right? You get subpoenaed in every case?

17 A. Not every case.

18 Q. Well, the majority of time?

19 A. Yes, I get a subpoena.

20 Q. Okay.

21 MR. SMILEY: Thank you. That's all I have.

22 THE COURT: Any redirect?

23 MS. LINDER: No redirect, Judge.

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

25 MS. LINDER: And, Judge, is it okay to

1 release this witness?

2 THE COURT: Certainly. You're free to go.

3 THE WITNESS: Thank you.

4 THE COURT: Next witness?

5 MS. LINDER: State calls Ira Parnell.

6 ~~IRA PARNELL,~~

7 having been first duly sworn,

8 was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MS. LINDER:

11 Q. Good afternoon.

12 A. Good afternoon.

13 Q. Are you retired?

14 A. I am.

15 Q. Happily?

16 A. I'm getting used to it, yes, ma'am.

17 Q. Where are you retired from?

18 A. From SLED, State Law Enforcement Division.

19 Q. And how long were you with SLED?

20 A. Forty-one years and ten months.

21 Q. What was your job when you were at SLED?

22 A. I was assigned to the firearms and tool mark

23 identification laboratory at SLED headquarters in

24 Columbia.

25 Q. And what did your duties entail as being part of

IRA PARNELL - DIRECT EXAMINATION

1 the firearm and tool markings?

2 A. Examining evidence related to firearms,
3 specifically fired bullets, fired cartridge cases,
4 ~~firearms themselves, and, on the tool mark side, bolt~~
5 cutters, pliers, wrenches, anything -- any tool that can
6 make a mark or leave a damaged area at a crime scene. We
7 would compare those marks from the crime scene to the
8 tools themselves.

9 Q. And can you tell the jury a little bit about your
10 educational background and training.

11 A. Yes. I graduated from University of South
12 Carolina with a degree in the area of criminal justice.
13 I say the area of criminal justice because there was no
14 criminal justice degree at that time. It was called a
15 bachelor of general studies with an emphasis on criminal
16 justice.

17 I'm a graduate of the FBI National Academy in
18 Quantico, Virginia and, of course, our state academy, and
19 I've attended countless seminars put on by the
20 Association of Firearm and Tool Mark Examiners, which is
21 an international organization of firearm and tool mark
22 examiners, which we get together once a year for a
23 week-long seminar to discuss the latest developments in
24 firearm and tool mark identification, probably conducted
25 many hundreds of thousands of individual comparisons

1 using a forensic microscope, and testified approximately
2 645 times as an expert in this area.

3 Q. And have you been declared an expert in state and
4 federal court before?

5 A. Yes, ma'am.

6 Q. In South Carolina and other states?

7 A. Yes, ma'am.

8 MS. LINDER: Your Honor, at this time the
9 State would request that he be declared an expert in the
10 field of firearms and tool mark identification.

11 MR. SMILEY: No objection, Your Honor.

12 THE COURT: All right. Folks, the same
13 instructions that I gave you a minute ago on the previous
14 expert who was a witness will also apply to this witness
15 who has been qualified as an expert in the field of
16 firearms and tool mark identifications.

17 You decide how much weight to give his
18 testimony based on all of the evidence that you will hear
19 throughout the trial. You're not required to give his
20 testimony any greater weight simply because he's called
21 as a witness.

22 You may continue.

23 MS. LINDER: Thank you.

24 BY MS. LINDER:

25 Q. Did you receive any evidence in this case SLED lab

1 number L12-08586?

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

3 Q. What items did you receive?

4 A. ~~I received two fired bullets.~~

5 Q. And do you know what SLED item numbers those are?

6 A. SLED item No. 8 and SLED item No. 10.

7 Q. And when you received these items, did they
8 appear -- did the packaging appear to be tampered with in
9 any way?

10 A. No, ma'am. The evidence seal was intact as I
11 received them.

12 Q. At this time I'm going to show you what has been
13 marked as State's Exhibit No. 34 and State's Exhibit
14 No. 32. Do you recognize these items?

15 A. Yes, ma'am, I do. State's Exhibits 32 and 34 all
16 bear my case number, specimen number, and initials, and I
17 seal these up myself after I completed my examination.

18 MS. LINDER: At this time State would offer
19 into evidence State's Exhibit 32 and 34.

20 MR. SMILEY: I thought they were in, but no
21 objection.

22 THE COURT: All right. Admitted.

23

24 (Whereupon, State's Exhibit No. 32 was marked
25 for identification and admitted into evidence.)

1 BY MS. LINDER:

2 Q. Can you briefly explain in layman's terms to the
3 jury what you do when you receive an item and as you're
4 beginning to do your analysis.

5 A. Well, I could use these items, in this case
6 State's Exhibits 32 and 34, as examples. As we receive
7 evidence, the submitting agency or submitting person
8 brings the evidence items to what we call our evidence
9 intake area, and they store the evidence until one of us
10 goes down and picks it up.

11 Once we pick up the evidence, we examine the seals
12 to be sure that all the open areas of the evidence is
13 taped up and it's secured and hasn't been tampered with.
14 Once we establish that fact, we receive and take custody
15 of the evidence, and, in this case, I would take them
16 upstairs. We took them upstairs to the firearms
17 department, to my office area, and the evidence area.

18 We then open the evidence, photograph it,
19 photograph, actually, prior to opening it, showing the
20 seals are intact, open the evidence, examine the items of
21 evidence, first to see if there's any trace evidence, any
22 fibers or blood or any other type of evidence on there
23 that needs to be taken off before we start handling it
24 and dislodge that.

25 That being done, we then microscopically look at

1 the outer surface of these bullets, State's Exhibits 32
2 and 34, for any striated markings, first of all to
3 determine if it is good enough or in good enough
4 condition to do an examination on. In this case, the
5 case of State's Exhibits 32 and 34, they were both
6 sufficiently marked and in good enough condition that I
7 can microscopically compare them. I then compare them
8 with each other microscopically and made a conclusion
9 from there.

10 Q. And the conclusions that you made, after your
11 analysis was done, did you memorialize that in any sort
12 of report?

13 A. I did. I produced a formal report for -- to give
14 to the submitter.

15 Q. At this time, I show you what has been marked as
16 State's Exhibit 28. Do you recognize that?

17 A. Yes, ma'am, I do. This is a copy of the formal
18 report submitted to the submitter in this case.

19 MS. LINDER: And at this time, I would seek
20 to enter State's Exhibit 28 into evidence.

21 MR. SMILEY: I don't object, but one caveat,
22 if we could approach, Your Honor.

23 (Discussion held at sidebar.)

24 (Whereupon, State's Exhibit No. 28 was marked
25 for identification and admitted into evidence.)

1 BY MS. LINDER:

2 Q. Based on your analysis of items 8 and 10 in this
3 case, what was your determination?

4 A. ~~Based on the agreement of individual identifying~~
5 ~~characteristics on the outer surfaces on State's Exhibits~~
6 ~~32 and 34, my items 8 and 10, I concluded, based on my~~
7 ~~experience and training in the experiments I conducted,~~
8 ~~that these two bullets were fired by the same firearm.~~

9 Q. And can you explain to the jury, explain fully,
10 how you go about doing a comparison. What exactly are
11 you looking at?

12 A. To do that, we have to back up just a little bit.
13 When a firearm is manufactured, particularly one that has
14 rifling in the barrel, such as the one that fired State's
15 Exhibits 32 and 34, a lot of tooling, a lot of
16 manufacturing processes go on. Not to get into too great
17 a detail, but there are processes which remove metal from
18 the inside of the barrel in a regular pattern. This is
19 called rifling.

20 It is also done in a particular direction of
21 twist; in other words, it makes the bullet spiral when it
22 comes out of the barrel, much like a quarterback throwing
23 a football. If the football is spiralling tightly, it
24 goes straighter and farther. Same way with a bullet. If
25 it's spinning tightly, then it goes straighter and

1 farther.

2 It can go either left or right. The twist is put
3 into the barrel, depending on the manufacturer. The
4 ~~first thing that they do is drill a hole in the steel~~
5 barrel and then they apply the rifling and then it's
6 polished and it's fitted to the gun.

7 In the case of a revolver, which is what I think
8 fired these two bullets, the barrel is fitted to that one
9 gun and it can't be removed normally.

10 So during that manufacturing process, the
11 drilling, the cutting of the rifling, and all the other
12 processes that are done impart certain individual
13 markings, or certain individual characteristics, to the
14 inside of that barrel. When a bullet is fired through
15 that barrel, it acquires those individual random
16 unintentional characteristics on its outer surfaces, and
17 they usually don't change much. It changes a little from
18 a brand new gun from, say, one that's been fired 50
19 times.

20 Once it's settled in, then the markings are pretty
21 well consistent, and if the bullet is not too badly
22 damaged, then by microscopically comparing these
23 imperfections that are impressed into the outside of the
24 bullet, then you can determine whether or not a
25 particular bullet was fired in a particular gun or, in

1 this case, whether the same gun fired both bullets.

2 These marks appearing in linear fashion. They're
3 random, they're unintentional, but they're quite
4 distinct, and the gun has its own signature. So in this

5 case I microscopically compared State's Exhibits 32 and
6 34 for the presence or absence of these agreeing
7 individual characteristics. I found sufficient agreement
8 between these two bullets to conclude, based on my
9 experience and training, that they were both fired
10 through or down the same gun barrel.

11 Q. And, specifically, what calibers do you have down
12 in your conclusions?

13 A. These were consistent with being a 38 caliber.
14 This is a designation based on convenience, because the
15 actual diameter of the bullet was .357 thousandths of an
16 inch. Since there already was a 38, and then when they
17 made the 357 Magnum, they had to come up with some other
18 thing to call it, so they called it a 357 and a 38, 38.

19 There are a number of different calibers in the 38
20 class, but these bullets were most consistent with being
21 a 38 special caliber.

22 Q. And that caliber -- is that caliber possible to
23 exist in a revolver?

24 A. Yes, ma'am. It's most likely going to be a
25 revolver.

1 Q. And for those who are not familiar with guns,
2 what's the difference between a semi-automatic and a
3 revolver?

4 A. ~~A semi-automatic, which is what most everybody~~
5 sees on TV, is a firearm that generally loads with a
6 magazine or a clip into the grip of the gun. And when
7 you pull the slide back and release it, it loads, and
8 each time you pull the trigger, it fires, extracts and
9 ejects the fired cartridge case and reloads a fresh
10 cartridge ready to fire up until the capacity of the gun
11 and it shoots itself empty, but it fires one time with
12 each pull of the trigger.

13 A revolver, on the other hand, has what we call a
14 cylinder. It has a round device, or in the middle of the
15 gun, it's a cylinder that has several chambers within
16 that cylinder, and it revolves, or turns in a circle,
17 each time the trigger is pulled. In a double-action
18 mode, when you just pull the trigger, the inner workings
19 of the gun rotate the cylinder until it locks behind the
20 hammer.

21 The hammer falls, fires, and nothing else happens
22 until you release the trigger and pull the trigger again
23 or cock it manually. So the revolver part of it is the
24 turning in a circle of the cylinder itself during the
25 firing process, and that happens strictly manually. The

1 gun does not do it by itself.

2 Q. And do cartridge casings get ejected from a
3 revolver?

4 A. No, ma'am. They stay in the chamber until -- at
5 such time either a screw is removed or a semi-latch is
6 pushed and the cartridge cases are dumped out by
7 somebody.

8 Q. And is it possible to compare a firearm itself
9 with the markings and identifications from projectiles
10 and see if those items match?

11 A. Yes, ma'am.

12 Q. And were you given a firearm in this case?

13 A. No, ma'am. I didn't receive a gun in this case.

14 Q. So did you do any testing on a firearm in this
15 case?

16 A. No, ma'am.

17 Q. But you were able to decide and to conclude
18 through your training and experience and examination that
19 what, about items 8 and item 10, SLED items 8 and 10?

20 A. They were both consistent with being 38 special
21 caliber, that they were both consistent in construction;
22 in other words, the bullet looked alike. They were made
23 the same way. They were fired in probably a revolver
24 that had five lands and grooves with a right direction
25 twist, and, again, they were both fired by the same gun,

IRA PARNELL - CROSS-EXAMINATION

1 and if I had a gun that were in good enough condition,
2 then I could have possibly matched that gun to these
3 bullets.

4 ~~MS. LINDER: I don't have any other questions~~
5 for you. If you could, answer anything the defense would
6 have.

7 THE COURT: Cross?

8 CROSS-EXAMINATION

9 BY MR. SMILEY:

10 Q. Mr. Parnell, Jim Smiley. I think we've met a few
11 times before. I understand we're at the end of the line
12 for you but you finally get to enjoy retirement. I wish
13 I would be seeing it one day soon, but I don't think so.

14 Let me ask you a couple questions.

15 A. Go ahead.

16 Q. You can say with a reasonable degree of scientific
17 certainty those two bullets came from the same gun?

18 A. That's correct.

19 Q. Now, can you also say with a reasonable degree of
20 scientific certainty that it's a revolver or it most
21 likely would -- there is a difference, don't you agree?

22 A. I do. The only caveat to that, Mr. Smiley, is I'm
23 unaware of another type of firearm other than a revolver
24 with the number of lands and grooves, the physical
25 characteristics that both these bullets, State's 32 and

1 34, possess. There may be something out there that I'm
2 not aware of, but I'm fairly certain they were both fired
3 out of a revolver.

4 Q. Fair enough. That answers my questions. You
5 didn't have the revolver part in your report, but I think
6 we got it cleared up now, so with a reasonable degree of
7 scientific certainty is both bullets came from the same
8 gun, and most likely that gun was a revolver?

9 A. That's correct.

10 Q. All right. Now -- we'll just stop there. I think
11 that's enough today. Thank you very much.

12 THE WITNESS: You're welcome.

13 THE COURT: Redirect?

14 MS. LINDER: No redirect, Your Honor.

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

16 THE WITNESS: Thank you.

17 THE COURT: Next witness?

18 MS. LINDER: Your Honor, if we may approach
19 briefly.

20 THE COURT: Uh-huh.

21 (Discussion held at sidebar.)

22 THE COURT: Our next witness is a pathologist
23 who should be arriving very shortly but hasn't gotten
24 here yet, so we're going to take a break while we wait
25 for him or her, and as soon as he or she gets here, we'll

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1 call you back in.

2 If anybody needs to take a smoke break, you
3 can do that. Again, don't talk about the case, comment
4 on any witnesses or any evidence or anything like that,
5 and we'll have you back here just as soon as this witness
6 arrives.

7 Thank you.

8 (Recess taken.)

9 THE COURT: All right. Got everybody back?
10 Let the record reflect the defendant is in the courtroom.
11 Bring the jury back in.

12 (In open court, jury present.)

13 THE COURT: All right. Be seated. Okay,
14 folks. We'll resume now with the State calling their
15 next witness.

16 MS. LINDER: State calls Dr. Lee Tormos.

17 LEE TORMOS,

18 having been first duly sworn,
19 was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MS. LINDER:

22 Q. Good afternoon. What is your occupation?

23 A. I'm a forensic pathologist at MUSC.

24 Q. And what is forensic pathology?

25 A. Forensic pathology is a subspecialty in medicine

1 that deals with how injury causes death.

2 Q. And can you tell the jury about your education and
3 training, please.

4 A. Absolutely. I am a doctor by profession. I went
5 to the University of Puerto Rico where I did my
6 undergraduate degree and got a bachelor's in science. I
7 went to medical school in Puerto Rico where I got my
8 medical doctor degree. Then I did a specialty in
9 anatomic and clinical pathology at the University of
10 Puerto Rico. I worked for a few years before coming to
11 the Medical University of South Carolina, or MUSC. I
12 completed my subspecialty training in forensic pathology.

13 Q. And do you belong to any medical or scientific
14 groups or associations?

15 A. Yes, I do. I belong to the National Association
16 of Medical Examiners, which is a group of forensic
17 pathologists that get together nationwide, and I also
18 belong to the AAB, because in my spare time, other than
19 forensic pathology, I do transfusion medicine at MUSC, so
20 that has to do with the transfusion of blood and stem
21 cell transplants.

22 Q. And can you explain your duties as a forensic
23 pathologist at MUSC.

24 A. As a forensic pathologist, my main duties are to
25 do autopsies on deceased people to identify why and how

1 they died.

2 Q. And approximately how many autopsies have you been
3 involved in?

4 A. Over 1,000 autopsies.

5 Q. Have you ever been declared an expert in court
6 before?

7 A. Yes, ma'am.

8 MS. LINDER: And, Your Honor, at this time we
9 move to admit Dr. Tormos as an expert in the field of
10 forensic pathology.

11 MR. SMILEY: Without objection.

12 THE COURT: All right, folks. Same
13 instructions I gave you about earlier expert witnesses
14 apply to this witness as well who has now been qualified
15 as an expert in the field of forensic pathology.

16 She'll be able to testify in the form of an
17 opinion. You decide how much weight you give her
18 testimony based on all of the evidence that you'll hear
19 throughout the trial.

20 Thank you. Go ahead.

21 BY MS. LINDER:

22 Q. Can you explain to the jury, just generally
23 speaking, what happens during an autopsy?

24 A. During an autopsy, the decedent's body is brought
25 to the autopsy room where the person is laid on the

1 table, and we proceed to do an external examination
2 noting any evidence of injury, disease, identifying marks
3 and scars and such, and then we proceed to do a surgical
4 incision and an internal examination to note the changes
5 associated with normal aging or with trauma to the body
6 that may have led to the death.

7 Q. And approximately how long does an autopsy take to
8 perform?

9 A. The average autopsy takes anywhere between two and
10 four hours; however, a complicated autopsy may last up to
11 days.

12 Q. Did you have an occasion to perform an autopsy in
13 this case on the victim, Dontaye Reed?

14 A. Yes, I did.

15 Q. And where did you conduct that autopsy?

16 A. I conducted that autopsy at the Medical University
17 of South Carolina, autopsy suite, on July 15, 2012.

18 Q. And can you tell the jury about what you learned
19 of the decedent during the external examination?

20 A. Okay. The external examination showed me that
21 this is a young man that appears the stated age of 19
22 years. He is of the black race. He is almost six feet
23 tall. He's five-eleven and weighs 120 pounds, so he has
24 a slim build.

25 His hair is in dreadlocks that are about a foot

LEE TORMOS - DIRECT EXAMINATION

1 long. He does have some facial hair, and other than a
2 couple tattoos, there are no significant marks and scars
3 on his body except for the evidence of injury.

4 Q. And based on this particular autopsy, within the
5 bounds of scientific and medical certainty, have you
6 formed an expert opinion concerning the cause of death?

7 A. Yes. The cause of death is a gunshot wound to the
8 back.

9 Q. And have you determined a manner of death?

10 A. The manner of death is a homicide.

11 Q. And can you describe the gunshot wound in this
12 case to the jury, please.

13 A. Yes. The gunshot wound is to the back, to the
14 left flank, so right around the waistline, a little bit
15 higher up to the left flank, and it's relatively small
16 and round.

17 As we examined the body on the outside, we could
18 tell where the bullet was. The bullet was actually seen
19 as a little bump overlying the border of the ribcage on
20 the right side. That is the only external evidence of
21 injury.

22 Q. And as part of the autopsy workup, do you take
23 X-rays and take photographs and do diagrams?

24 A. Yes, we do.

25 Q. And did you do that in this case?

1 A. We always do.

2 Q. At this time I'm going to show you what's been
3 marked as State's Exhibit 29. Do you recognize that?

4 A. This is an image of the X-ray that we took at
5 autopsy.

6 Q. Okay. And does this fairly and accurately depict
7 the X-ray that you took during the autopsy of Dontaye
8 Reed?

9 A. Yes.

10 MS. LINDER: At this time I would seek to
11 admit State's Exhibit 29 into evidence.

12 MR. SMILEY: ~~Without objection.~~

13 THE COURT: Admitted.

14 (Whereupon, State's Exhibit No. 29 was marked
15 for identification and admitted into evidence.)

16 BY MS. LINDER:

17 Q. If you can please explain to the jury what this
18 image is.

19 A. This is an image of the chest X-ray. As you can
20 see, right down the center is the spinal column, or the
21 vertebral column, as you may know it, and you can see the
22 outlines of the ribs on either side. Okay?

23 The entrance was to the left side of the body.
24 See the L over here? That is the left side. The
25 entrance is right around here, and then the bullet

LEE TORMOS - DIRECT EXAMINATION

1 traveled left to right slightly upward and slightly
2 anterior in this direction, and in its path it perforated
3 the skin, the subcutaneous tissues, the muscles in the
4 back that help hold you up, the big muscles of the back.

5 It lacerated the aorta, which caused bleeding. It
6 perforated the stomach, pancreas, the liver. It hit the
7 seventh rib. So your ribcage would go like this
8 anteriorly. It hit this edge of the ribcage, and that's
9 where it stopped, right under the skin. That's why we
10 could see it on external examination.

11 So if you draw a line from the nipple, it's
12 immediately below the nipple right at the edge of the rib
13 cage where it entered on the left flank.

14 Q. And did you end up removing this item?

15 A. Yes. That bullet, I wrote over it. Yes, I did,
16 removed the bullet during the course of the autopsy.

17 Q. At this time I'll show you what has been marked as
18 State's Exhibit 30. Do you recognize that?

19 A. This is the bullet that we removed from Dontaye
20 Reed.

21 MS. LINDER: At this time, Your Honor, I seek
22 to admit State's Exhibit 30 into evidence.

23 MR. SMILEY: Without objection.

24 THE COURT: Admitted.

25 (Whereupon, State's Exhibit No. 30 was marked

1 for identification and admitted into evidence.)

2 BY MS. LINDER:

3 Q. And can you please tell the jury what this is.

4 A. ~~That is the bullet that we recovered during the~~
5 course of the autopsy.

6 Q. And what is this down here? Why is this in the
7 photograph?

8 A. That is a ruler so that you have a scale with
9 which to compare the size.

10 Q. And after collecting this bullet and other items,
11 did you turn over those items to law enforcement?

12 A. Yes, I did. The bullet, along with the shorts,
13 underwear, personal effects, fingernail clippings, full
14 scalp hair, and a CD with images from the autopsy was
15 transferred to Mr. Mark E. Watson of the Charleston
16 County Sheriff's Office.

17 Q. And based on your training and experience in the
18 autopsy done on Dontaye Reed, the cause of death was
19 what?

20 A. The cause of death is a gunshot wound to the back.

21 MS. LINDER: I have no further questions.
22 Please answer anything the defense may have.

23 ~~CROSS-EXAMINATION~~

24 BY MR. SMILEY:

25 Q. Doctor, just a few things.

LEE TORMOS - CROSS-EXAMINATION

1 A. Yes.

2 Q. And one of the things you do after the autopsy is
3 create a report, correct?

4 A. Yes.

5 Q. And in creating that report, you gathered
6 information from not just the body, but information from
7 the coroner?

8 A. Yes.

9 Q. From any information officers might give you and
10 all of that, right?

11 A. Uh-huh.

12 Q. And one of the things you do before you get to
13 your findings is you put in your understanding of the
14 case history, right?

15 A. Yes.

16 Q. Okay. And in this case, on the first page of your
17 report, you have the case history, and in that it was
18 reported to you that at the scene there were at least
19 three casings found?

20 A. Yes.

21 Q. Now, casings, in this case, you take that to be
22 the part of the bullet that is left behind once it's
23 shot, correct?

24 A. Yes.

25 Q. We'll keep it as nontechnical as possible. Now,

1 I'm going to use myself as a dummy, dummy probably being
2 the best word for it, and I'm going to take my coat off
3 just to see if I can talk my way through this a little
4 bit.

5 So he was shot in the left flank, somewhere around
6 in here, correct?

7 A. Yes.

8 Q. And it's a small hole, right?

9 A. It's a small hole, yes.

10 Q. And from that bullet entrance wound, you can tell
11 a couple of things, one of which is the relative distance
12 of how far the firearm was away, right?

13 A. Absolutely.

14 Q. You could either tell -- it falls in either one of
15 three categories, right, correct?

16 A. That is correct. You would have a muscle imprint.

17 Q. Second would be a close shot.

18 A. Uh-huh.

19 Q. Or, third, a distant shot, correct?

20 A. Uh-huh.

21 Q. And in this case -- well, and in determining that,
22 one of the things you're looking at is if there's a burn
23 print on the wound, or if it's a contact wound, you might
24 actually see some gasification inside, correct?

25 A. That is correct.

1 Q. If it's close, you're going to see powder burns,
2 right?

3 A. Yes.

4 Q. Because -- and not anything real specialized, but
5 in general, when a firearm fires, it shoots out particles
6 of gunpowder, correct?

7 A. That is correct.

8 Q. And so if it was a close wound, you would see
9 what's -- and I can't pronounce the word very well,
10 stippling?

11 A. Stippling.

12 Q. Or burn marks in close proximity to the wound?

13 A. Yes.

14 Q. So if it's further away than a few feet, we'll
15 keep it at that, it becomes a distance, and you can't
16 tell the distance away, correct?

17 A. You can't tell if it's three feet or thirty feet.

18 Q. Exactly. And in this case, it's that last
19 category, the distance one, correct?

20 A. ~~On the skin, I don't have any evidence that it was~~
21 close; however, I did not get the shirt to examine,
22 therefore, I don't know if there is some soot on the
23 shirt that may have been left there.

24 Q. From your examination of the body, however, it
25 appears to be a distant wound?

1 A. Yes, it does.

2 Q. All right. And this bullet wasn't from back to
3 front, it was more a back -- from left to right, back to
4 front, if that makes sense?

5 A. And slightly upward.

6 Q. I was getting ready to get to that. And it
7 started here and ended up here, correct, and up near
8 the --

9 A. It's at the border of the ribcage, right at the
10 border.

11 Q. Okay.

12 A. So it's only a couple of inches difference in the
13 upward, so it's very slightly upward, but it is going
14 left to right and to the front and slightly upward.

15 Q. Okay. That helps a lot. Now, we know that it's
16 the gunshot that caused the death, but the bullet itself
17 hit some vital areas as it traveled through the body,
18 correct?

19 A. Absolutely.

20 Q. And I think one of the things you reported is that
21 it had hit the aorta?

22 A. Yes.

23 Q. And the pancreas and what have you, and any one of
24 those by themselves could have been fatal; is that fair
25 to say?

LEE TORMOS - CROSS-EXAMINATION

1 A. Not any one of those. The aorta laceration is the
2 most fatal. The pancreas and stomach, if treated at the
3 hospital, may be survivable if there are no complications
4 such as infection, and the liver has a lot of morbidity
5 associated with it, but the most fatal injury is when it
6 lacerated the aorta because it caused bleeding into the
7 abdominal cavity.

8 Q. And while we know the instrument of death was a
9 bullet, the cause of death would have been bleeding to
10 death?

11 A. The mechanism, what is called mechanism of death,
12 the mechanism of death is the hemorrhage bleeding into
13 the abdomen.

14 MR. SMILEY: Thank you. I have no further
15 questions.

16 THE COURT: Redirect?

17 MS. LINDER: I have no redirect.

18 THE COURT: Thank you. You may step down.
19 Next witness?

20 MS. BALDWIN: State calls Christina
21 Moyer-Smith.

22 CHRISTINA MOYER-SMITH,

23 having been first duly sworn,
24 was examined and testified as follows:

25 DIRECT EXAMINATION

1 BY MS. BALDWIN:

2 Q. Detective, where are you employed?

3 A. Charleston County sheriff's office.

4 Q. And in what position?

5 A. I'm an investigator.

6 Q. What does that mean?

7 A. I'm a detective. I investigate major violent
8 crimes.

9 Q. Did you receive any training to do that?

10 A. Yes. I completed the South Carolina Criminal
11 Justice Academy. I've also completed detective one with
12 the South Carolina Criminal Justice Academy. I also have
13 on-the-job training as well as numerous interview
14 trainings that I've had and other trainings that they
15 provide us with.

16 Q. How long have you been employed with the Sheriff's
17 Office?

18 A. Twenty years.

19 Q. And what was your position there back in July of
20 2012?

21 A. I was an investigator, just transferred into the
22 major violent crimes unit.

23 Q. How did you become involved in this case?

24 A. On the day of the incident, I was on call, and I
25 was called out by my supervisor and he had me respond to

1 MUSC.

2 Q. And what did you do when you got to MUSC?

3 A. Once I arrived at MUSC -- well, prior to arriving
4 at MUSC, my supervisor advised me that there was an
5 individual down there with a gunshot wound and another
6 individual that had arrived at the scene -- had arrived
7 at MUSC who was deceased. I made contact with Quentin
8 Allen. He was the one with the gunshot wound to his arm.

9 Q. And you briefly mentioned it, but how did
10 Mr. Allen appear?

11 A. He was -- he appeared to be kind of shocked, still
12 kind of numb from the moment, a little bit angry because
13 of what happened, and, I guess, could not believe that he
14 had just been shot.

15 Q. Did you observe any injuries on him?

16 A. Yes. He had a gunshot wound that was through one
17 part of his arm, left arm, went all the way through, and
18 then he had a small laceration on the interior between
19 the arm and his chest wall and he also had a laceration
20 over his eye.

21 Q. Did he tell you what happened?

22 MR. SMILEY: Objection.

23 (Discussion held at sidebar.)

24 BY MS. BALDWIN:

25 Q. Did you interview Mr. Allen?

1 A. Yes, I did.

2 Q. Okay. As a result of your interview, what did you
3 do? Did you do anything else at MUSC prior -- after
4 speaking with him?

5 A. Okay. While we were there, I also collected what
6 y'all heard about earlier as the GSR kit. I completed a
7 GSR kit while I was there.

8 Q. Did you do anything else at MUSC?

9 A. I then spoke with Ms. Heyward. She is the mother
10 of Dontaye Reed.

11 Q. As a result of your conversation with her, what
12 did you do?

13 A. I spoke with her and she had given me some
14 information that an individual was possibly involved --

15 MR. SMILEY: Objection, Your Honor. Hearsay.

16 THE COURT: Sustained.

17 BY MS. BALDWIN:

18 Q. Just say what you did as a result of that
19 investigation.

20 A. As a result of that investigation, I went back to
21 our headquarters, and the information I received from
22 her, I proceeded to look through a database to attempt to
23 identify an individual that was possibly involved.

24 Q. Did you, in fact, identify that individual?

25 A. Yes, I did.

CHRISTINA MOYER-SMITH - DIRECT EXAMINATION

1 Q. And who was that person?

2 A. It was Deonte Brown.

3 Q. What else was done during the course of the
4 investigation?

5 A. One I arrived back to our headquarters, there were
6 multiple employees there, other people that were at the
7 Waffle House, and they were being interviewed by other
8 detectives.

9 Q. Okay. What else was done? Did crime scene
10 respond?

11 A. I apologize.

12 MR. SMILEY: And, Your Honor, it appears
13 she's referring to notes --

14 THE WITNESS: It's my report.

15 MR. SMILEY: Well --

16 THE COURT: Well, you don't just get to read
17 the -- if you need them to refresh your recollection, but
18 don't just look down at them and testify.

19 THE WITNESS: I apologize.

20 BY MS. BALDWIN:

21 Q. Did crime scene get involved?

22 A. Yes. They responded to the Waffle House. I
23 responded to the hospital and then to CID, our
24 headquarters, and while I was doing the other part of the
25 investigation with obtaining as much information about

1 the possible suspect, crime scene was out at the scene
2 collecting evidence.

3 Q. You mentioned you collected a GSR kit from
4 Mr. Allen. Were any other GSR kits collected?

5 A. Another detective had collected a GSR kit from
6 Dontaye Reed.

7 Q. Who?

8 A. Deonte Reed -- Dontaye Reed, I apologize.

9 Q. What is your understanding of what the scene was
10 like?

11 A. I was able to kind of observe the scene through
12 some of the surveillance video that was there but also
13 information that was passed from other detectives that it
14 was very chaotic at the time that the initial deputies
15 arrived on scene.

16 Q. What other evidence was collected? Was any video
17 collected?

18 A. Yes. The surveillance video was collected from
19 the Waffle House.

20 Q. Any other video besides the surveillance video?

21 A. I spoke with a Lorenzo Brown, and he had some
22 video on his cellphone that I had copied and entered into
23 evidence.

24 Q. What was done with that video when it was
25 collected from Waffle House?

CHRISTINA MOYER-SMITH - DIRECT EXAMINATION

1 A. That video as was taken to SLED, and SLED
2 brightened it up, or enhanced the video, the exterior
3 video, so we could attempt to see a little bit better at
4 the scene.

5 Q. Have you viewed that video?

6 A. Yes, ma'am, I have.

7 Q. Did you view what video with any other -- anybody
8 else?

9 A. I mean, other detectives were there. They also
10 reviewed it, and also some of the individuals that had
11 testified prior also had looked at the video to help us
12 identify individuals in the video.

13 Q. Besides speaking with Mr. Allen and collecting the
14 GSR kit, did you do anything else with him?

15 A. Yes. I later got a buccal swab from him. It's
16 the DNA collection. It's where we take a sterile Q-tip
17 and swab the interior of his cheek and swab the DNA so we
18 could have that compared to blood that was left at the
19 scene.

20 Q. I'm going to show you what's been marked as
21 State's Exhibit 33. What is that?

22 A. That's the DNA collection kit.

23 Q. That was performed on him?

24 A. On Quentin Allen.

25 MS. BALDWIN: Your Honor, at this time we

1 seek to admit State's 33 into evidence.

2 MR. SMILEY: No objection.

3 THE COURT: Admitted.

4 BY MS. BALDWIN:

5 Q. What did you do with that buccal swab once you
6 swabbed Quentin's mouth?

7 A. I had it placed into evidence.

8 Q. At the secure facility?

9 A. Yes, ma'am.

10 Q. Based on the statements, the interviews that were
11 done with Mr. Allen as well as other witnesses and as
12 well as the rest of the investigation, what was done?

13 A. From that point, through all the information that
14 we gathered, a warrant was then obtained for the arrest
15 of Deonte Brown.

16 Q. Was he subsequently arrested?

17 A. Yes. He was arrested on the 16th.

18 Q. Of which month?

19 A. July.

20 Q. What was he wearing when he was arrested?

21 A. He was wearing the same clothing that we were able
22 to identify in the video.

23 Q. What was done with that clothing?

24 A. It was collected and placed into evidence.

25 Q. I'm going to show you State's 31. Can you tell me

1 what that is.

2 A. This is a red shirt that was collected from Deonte
3 Brown.

4 Q. By whom?

5 A. By myself.

6 MS. BALDWIN: At this time we seek to admit
7 State's 31.

8 MR. SMILEY: Without objection.

9 THE COURT: Admitted.

10 (Whereupon, State's Exhibit No. 31 was marked
11 for identification and admitted into evidence.)

12 BY MS. BALDWIN:

13 Q. If you could open that up, you say -- and what is
14 that?

15 A. That is the red shirt I collected from Mr. Brown.

16 Q. And what did that shirt look like in terms of what
17 we saw on the video?

18 A. It looks like -- I apologize. It looks like the
19 shirt that you could see on the video.

20 MS. BALDWIN: Do you need that?

21 MR. SMILEY: I'm going to need it tomorrow.

22 Just leave it out. That's fine.

23 BY MS. BALDWIN:

24 Q. And Detective Moyer-Smith, when you collect a
25 piece of evidence and package it, do you know what date

1 and time it's collected?

2 A. We document what date and time it's collected.

3 Q. And when was this shirt collected?

4 A. It was collected, I believe, on the 16th, around
5 4:00 something in the afternoon. I would have to refer
6 back to the time, if possible.

7 Q. Would it be documented on the bag that you package
8 it in?

9 A. Yes.

10 Q. Would that help -- you don't remember?

11 A. Yeah. It says it's 1600 hours.

12 Q. On which date?

13 A. On the 16th, July 16th of 2012.

14 Q. You mentioned -- we've spoken about and played it
15 during the trial, the surveillance video from the Waffle
16 House.

17 A. Correct.

18 Q. You've reviewed this video?

19 A. Numerous times.

20 Q. Could you guess how many?

21 A. Twenty, twenty plus.

22 Q. You've reviewed statements and reports in this
23 case?

24 A. Yes.

25 Q. Did you watch the video with people familiar with

1 the parties in the video?

2 A. Yes. Like I said a few minutes ago, I watched it
3 with individuals that were at the scene. We would let
4 some of the eyewitnesses take a look at the video so they
5 could help us identify some of the individuals.

6 When we were attempting to identify some of the
7 folks inside the video, sometimes it's very difficult
8 when you don't have a community that is willing to help
9 you. Some of the individuals that are in there, when you
10 ask them to come in and assist you, they're not willing
11 to because it's such a close-knit community. They
12 obviously they don't want to give you the information of
13 somebody else because they don't want that person, I
14 guess, to be upset with them.

15 Q. Even though you didn't receive full cooperation,
16 are you familiar with several parties on the video?

17 A. I am now, not at the time. I was not familiar
18 with them. That's not a jurisdiction that I normally
19 work. I don't work our south district jurisdiction. I
20 work our West Ashley district, so with the assistance of
21 some of the individuals that were willing to help us
22 identify folks, it made my job a little easier.

23 Q. We're going to put State's Exhibit 3 up on the
24 screen, the video.

25 MR. SMILEY: May we approach, Your Honor?

1 (Discussion held at sidebar.)

2 THE COURT: Let me send the jury out. Let me
3 send y'all out while we discuss this for a minute.

4 (In open court, jury not present.)

5 THE COURT: What do you intend to offer this
6 witness for at this point?

7 MS. BALDWIN: It's the State's position that
8 she has viewed the video several times. This is part of
9 the investigatory process. It was part of her and other
10 officers' reviewing this video that caused them to
11 develop Mr. Brown as a suspect and subsequently draw up
12 the arrest warrants for him, so I think she can talk
13 about this, is what I'm seeing. This is the reason why
14 we made the arrest.

15 THE COURT: Well, she's already stated she
16 developed that and had him arrested. I'm trying to
17 figure out what she would add -- what is probative about
18 her testimony if all she's doing is describing -- I'm
19 afraid she might start putting in her opinions about
20 things that other people have told her.

21 We have had half the people that were in that
22 restaurant that night come in. They were there. They
23 described what they saw because they were there. I don't
24 really know what is probative to have her come back and
25 kind of give commentary now about what's going on.

CHRISTINA MOYER-SMITH - DIRECT EXAMINATION

1 MS. BALDWIN: Your Honor, I don't believe the
2 warrant for the murder was drafted until after the
3 SLED-enhanced version was provided to the Sheriff's
4 Office. We haven't heard any testimony about what about
5 that version made them then draft this warrant for
6 murder, and I believe she could explain that. She could
7 talk about that --

8 THE COURT: I believe Mr. Smiley is
9 challenging the sufficiency of the arrest warrant. I
10 just don't see where it's probative to have her come in
11 and give us commentary as to what she's seen on a video
12 that we have now seen probably at least two dozen times,
13 so I'm not going to allow you to do that.

14 All right? Do you have anything else you
15 need from her?

16 MS. BALDWIN: Beg the Court's indulgence.
17 We'll have a few more questions for her.

18 THE COURT: All right. Bring the jury back
19 in.

20 (In open court, jury present.)

21 THE COURT: All right. You may continue with
22 your questioning of the witness.

23 BY MS. BALDWIN:

24 Q. Thank you, Your Honor.

25 You have mentioned that the surveillance video was

CHRISTINA MOYER-SMITH - DIRECT EXAMINATION

1 sent to SLED?

2 A. Yes, ma'am.

3 Q. For what purpose again?

4 A. It was to enhance the video, or to lighten it up

5 so that we would be able to see the exterior video a
6 little bit clearer.

7 Q. Was anything else done to it besides lightening
8 it?

9 A. Not to my knowledge.

10 Q. Based on --

11 A. It was slowed down. I do remember that, that I
12 believe they slowed it down to a different percentage so
13 we see it move a little slower than what it was.

14 Q. Did that enhancement aid in the investigation?

15 A. Yes, it did.

16 Q. As a result of that enhancement, did you do
17 anything else in your investigation?

18 A. My belief -- just through -- we were just able to
19 identify folks in the video and to basically identify
20 people that were on the exterior, once it was slowed down
21 a little bit. From when they were going from full speed
22 or regular speed on the interior to the outside, we were
23 able to slow down the video a little bit.

24 Q. What, if anything else, were you able to identify
25 once you received the enhancement back?

CHRISTINA MOYER-SMITH - DIRECT EXAMINATION

1 A. Once we received -- once we got that back, there
2 was also -- there is also a point in the video where you
3 can --

4 MR. SMILEY: Objection, Your Honor.

5 THE COURT: Isn't this what we played this
6 morning?

7 MR. SMILEY: Yes, sir.

8 THE COURT: This just got played this
9 morning, right?

10 MS. BALDWIN: Yes, sir.

11 THE COURT: And the guy that did this, he
12 didn't say anything, right?

13 MS. BALDWIN: I don't believe so, sir.

14 THE COURT: I'm not -- again, based on what
15 we're talking about, the point is having her tell us what
16 she saw in that. She wasn't there, and she only saw it
17 after the fact.

18 MS. BALDWIN: May we approach, Your Honor?

19 THE COURT: Yeah.

20 (Discussion held at sidebar.)

21 BY MS. BALDWIN:

22 Q. As a result of what you saw on that video, did you
23 draft any additional warrants?

24 A. Not from the video. The additional warrant was
25 drafted after we received information back from SLED.

1 Q. Which information was that?

2 A. The letter that we received from SLED that
3 connected the DNA that was located -- I don't want to say
4 DNA. The projectile that was found inside the foyer
5 matched the projectile that was found in the decedent's
6 body.

7 Q. And in your understanding, where was the victim,
8 Dontaye Reed, located when the police arrived on the
9 scene?

10 A. In the parking lot, around that median, that prior
11 testimony showed the median where there was a small tree
12 right there.

13 Q. And the projectile recovered from him and the
14 projectile matched --

15 A. The one that was found in the foyer.

16 Q. Is when did you what?

17 A. And that is when we drafted the murder warrant.

18 MS. BALDWIN: Court's indulgence.

19 I don't have any further questions. Please
20 answer any of Mr. Smiley's.

21 CROSS-EXAMINATION

22 BY MR. SMILEY:

23 Q. Let me make sure I get this clear. You drafted
24 the murder warrant after you got back the SLED results
25 from the DNA.

1 A. Yes, sir.

2 MR. SMILEY: Beg the Court's indulgence.

3 BY MR. SMILEY:

4 Q. Now you drafted a warrant for murder on Deonte
5 Brown sometime August of 2012?

6 A. Yes, sir.

7 Q. And I'm not trying to hold you exactly right, but
8 I'm going to show you what's been entered as State's
9 Exhibit No. 27. That's the DNA report of Mr. Stewart
10 that came and testified?

11 A. Yes, sir.

12 Q. And is it not dated January 10th, 2014? Is that
13 correct?

14 A. Yes, sir.

15 Q. All right. Now, let me ask you another question
16 in another area.

17 In this case you came in contact with Mr. Brown,
18 correct? And if you need to review your notes, let me
19 just stop for a minute and let you review.

20 A. Yeah, if you don't mind.

21 Q. I don't mind at all. And, Your Honor, if you
22 would, allow her to read the letter and refresh her
23 memory.

24 Okay? Now, you came in contact with my client,
25 Deonte Brown, on July 16th or 15th?

1 A. July 16th.

2 Q. He heard he was wanted and turned himself into
3 Task Force Officer Alley?

4 A. Yes, sir.

5 Q. And Task Force Officer Alley got in touch with you
6 and made arrangements for him to be brought over to CID?

7 A. Yes, sir.

8 Q. When Deonte got to CID, you immediately read him
9 his Miranda warnings, right?

10 MS. BALDWIN: Objection, Your Honor. May we
11 approach?

12 (Discussion held at sidebar.)

13 Let me send the jury back out.

14 (In open court, jury not present.)

15 THE COURT: All right. Mr. Smiley, what do
16 you want to ask this witness?

17 MR. SMILEY: I'm going -- I intended on
18 asking a series of questions about what he did, not what
19 she said.

20 THE COURT: Just on our sidebar, for the
21 record, you did state you wanted to ask if he said,
22 presumably, I didn't say that.

23 And I just want to put it down for the record
24 that's not hear -- I mean, that is hearsay because it's
25 exculpatory, not inculpatory, and in order to come in as

CHRISTINA MOYER-SMITH - CROSS-EXAMINATION

1 not hearsay under 801(d)2, it would have to be offered
2 against him, and that would be a self-serving statement.

3 MR. SMILEY: I understand that. I want to
4 ask about her participation, not what he said.

5 THE COURT: All right. Let's go through what
6 you want to go through so we don't bring the jury in.

7 BY MR. SMILEY:

8 Q. Now, Investigator Smith -- or is it detective?

9 A. Smith is fine, Detective Smith is fine.

10 Q. Detective -- because I know people do that. I
11 don't want you to think I'm being degrading by that
12 because I really want to call you the right way.

13 Investigator Smith, you had an opportunity to sit
14 down with Deonte Brown with Detective Lawrence, correct?

15 A. Yes.

16 Q. And in that you questioned Mr. Brown, correct?

17 A. Correct.

18 Q. And that interview lasted for an hour or more?

19 A. Yes, sir.

20 Q. Okay. And during that interview, both you and
21 Detective Lawrence brought a lot of pressure to bear on
22 Mr. Brown in your questioning. Would you agree with
23 that?

24 A. Can you -- I mean, what -- can you explain that?

25 Q. I'll break it down into smaller questions.

1 Did you, in fact, tell him information that wasn't
2 true; for instance, that you saw him with a gun?

3 A. I don't recall saying that. I would have to --

4 Q. Okay. If --

5 MR. SMILEY: And that's where I was going to
6 get to, Your Honor, quite frankly, is they're using it as
7 impeachment for that part, because if you reviewed it --
8 well, that would be my first question, Your Honor. Then
9 I would ask --

10 THE COURT: Your first question being what?
11 It got a little disjointed there.

12 BY MR. SMILEY:

13 Q. My first question, did you in fact tell Mr. Brown
14 some untruths when you were questioning him, one of which
15 would be that you had looked at the video and seen him
16 with a gun?

17 THE COURT: But there's been no evidence that
18 he made a statement for her to be impeached on. So
19 that's the hoop you got to get through first, is for her,
20 for instance, to say, I asked him a question and he
21 confessed. All right? That would be your first thing
22 that you have to get on, and then you have to impeach and
23 say you made some untruth statements to get him to
24 confess to that, but so far I haven't heard anything that
25 he made any inculpatory statement.

CHRISTINA MOYER-SMITH - CROSS-EXAMINATION

1 MR. SMILEY: Even when he felt like he was
2 being lied to, pressured and intimidated and otherwise,
3 he would not confess, and that's what I'm trying to get
4 to, quite frankly.

5 THE COURT: I know where you want to go, and
6 the problem with it is those are either -- they're
7 statements, either verbal or nonverbal statements, that
8 are inculpatory, or exculpatory, and you can't get those
9 in through a third person. They would be hearsay, all
10 right? Because you want to get her to, in essence, say
11 he said, I didn't do it. All right?

12 So that's hearsay because he is here and he's
13 not testifying. Those are out of court statements you're
14 trying to get in through her, to get his out-of-court
15 statement that he didn't do it in through her.

16 MR. SMILEY: I don't disagree with you.

17 THE COURT: All right. That's hearsay. So
18 in order for it to come in as not hearsay under 801(d)2,
19 it has to be a statement that's against him, inculpatory
20 material, so you can't get in an inculpatory material --

21 MR. SMILEY: Yes, sir, and I guess what I'm
22 trying to say is while his exculpatory stuff is important
23 to me, of course, what I'm trying --

24 THE COURT: If he wants to exculpate himself
25 by a statement, he's got to get up on the stand and do

1 it.

2 MR. SMILEY: We're going to get to that, but
3 what I want to get to when I have this person on the
4 stand, Your Honor, is I'm trying to get into the mode of
5 interrogation versus what he says.

6 THE COURT: Yeah, but you're trying to
7 impeach him before he gets on the stand, or bolster him.

8 MR. SMILEY: I'm trying to impeach.

9 THE COURT: You want to impeach her before
10 he's testified to anything.

11 THE WITNESS: Thank you. I appreciate that.

12 THE COURT: I'll allow you to -- after he
13 testifies, you can recall her. I don't even know if you
14 can recall her to bolster him because the only way you
15 can get an extrinsic statement would be if somebody said
16 something different, but that's down the road.

17 ~~But right now what you're trying to do is get~~
18 ~~in his out-of-court statement that he didn't do it and he~~
19 ~~maintained I didn't do it and he told her I didn't do it,~~
20 ~~through her, and that's hearsay, and you can't do that.~~

21 MR. SMILEY: Yes, sir.

22 THE COURT: I so rule.

23 MR. SMILEY: I understand, sir.

24 THE COURT: All right. Do we need to go
25 through anything else with this witness before I --

CHRISTINA MOYER-SMITH - CROSS-EXAMINATION

1 MR. SMILEY: I have more questions for this
2 witness. I'm trying to figure out where I should pick up
3 and move on, because I understand your ruling.

4 THE COURT: Okay. Well, is there anything,
5 so I don't have to keep running the jury in or out, that
6 we might want to address, if possible? Where do you want
7 to go next?

8 MR. SMILEY: We'll go to collection of the
9 shirt and the phone through him. Okay?

10 THE COURT: All right. Bring the jury in.

11 (In open court, jury present.)

12 BY MR. SMILEY:

13 Q. So when you came in contact with Mr. Brown on July
14 the 16th, you testified you collected his red shirt.

15 A. Yes, sir.

16 Q. Okay. And you also took into evidence the pants
17 he had on that day?

18 A. Yes, sir, the clothing he was wearing.

19 Q. And you packaged them and put them into evidence,
20 and I think they were sent off to SLED?

21 A. Yes, sir.

22 Q. You testified on directed the community was not
23 very helpful. Who would not cooperate with you?

24 A. Initially, some of the first witnesses that were
25 called were uncooperative in the beginning.

1 Q. And those would be ones that came and testified
2 today or the day before? They weren't initially
3 cooperative with you?

4 A. Yes, sir.

5 Q. At what time did you get out to the scene at the
6 Waffle House?

7 A. ~~I never went to the Waffle House.~~ My response was
8 directly to MUSC and then headquarters.

9 Q. It's down at MUSC you had said you had seen -- you
10 actually saw the wounds on Quentin Allen?

11 A. Yes, sir.

12 Q. Did you take any photographs?

13 A. No, sir.

14 Q. Did you direct CSI -- sorry, and it's a bad thing
15 to do because it's not really the same, I know, but the
16 forensic people, collection people, at any point did you
17 have them photograph the injury?

18 A. No, sir.

19 Q. I know you're not a doctor, and I'm not going to
20 ask any technical questions. That wound, from what you
21 can tell, went into the front part of the arm?

22 A. Yes, sir.

23 Q. And exited the back part of the arm?

24 A. Yes, sir.

25 Q. They call it a through-and-through?

CHRISTINA MOYER-SMITH - CROSS-EXAMINATION

1 A. That's correct.

2 Q. And they didn't -- so we don't get technical,
3 small holes, both sides?

4 A. Yes, sir.

5 Q. He wasn't in a cast like he had broke a bone.

6 A. No, sir.

7 Q. So it didn't appear the bullet had hit a bone.

8 A. No, sir.

9 Q. And then he had a trench --

10 A. Small mark, like maybe the bullet went through,
11 and, like, a graze mark on the interior.

12 Q. Right. So the assumption, using, like, deduction
13 or circumstantial evidence, would be that the bullet
14 traveled from the front to the back and then scraped his
15 chest and then ended up on the ground inside the
16 vestibule?

17 A. Yes.

18 Q. Did you have an opportunity to talk to the
19 security guard, Mr. Thompson?

20 A. No, sir. One of other investigators spoke with
21 him.

22 Q. Now, Mr. Thompson was not one that was
23 uncooperative. He was cooperative with y'all, correct?

24 A. I believe he gave a statement, yes, sir.

25 Q. And the secure officer, Thompson, he had a gun,

1 right?

2 MS. BALDWIN: Objection, Your Honor.

3 THE COURT: What is your objection?

4 MS. BALDWIN: Speculation.

5 MR. SMILEY: I said yes or no. I'll ask a
6 pre --

7 BY MR. SMILEY:

8 Q. Do you know whether the officer had a gun that
9 night?

10 A. I believe that --

11 Q. If you done, it's okay.

12 A. I know one of the other investigators spoke with
13 him and did say that he had a gun and counted the rounds
14 and stuff that he had and --

15 Q. That's what I was getting to.

16 A. ~~His gun was not used at the scene.~~

17 Q. ~~Thank you. He didn't pull out his gun. It wasn't~~
18 ~~fired?~~

19 A. No, sir.

20 Q. And I guess I should have asked you this, at the
21 beginning of this. I'm asking you questions from all
22 over the place.

23 You're the case officer in this case, right?

24 A. Yes, sir.

25 Q. And in a chaotic case like this, you're trying to

CHRISTINA MOYER-SMITH - CROSS-EXAMINATION

1 pull everything together?

2 A. Yes, sir.

3 Q. Hard job, I know, especially in a case like this.

4 I got you. The scene was pretty trampled, right? Even
5 though you didn't go to the scene, from what you gather
6 from your people, it was a mess out there?

7 A. That's correct.

8 Q. Not all of that community that failed to cooperate
9 with you. In fact, Lorenzo Brown that testified, he got
10 in contact with you fairly quickly that he had a video,
11 right? You collected that video fairly early on?

12 A. Yes. He didn't just come forward. We had some of
13 our investigators or detectives that know the area, know
14 the folks, go out and ask him to come in once we
15 identified him on the video, on the surveillance video.

16 Q. So from looking at the surveillance video, were
17 you able to determine he took a video with his camera?

18 A. That's correct.

19 Q. All right. That makes perfect sense. So that's
20 how you knew to ask him, if he had the video.

21 A. That's correct.

22 Q. And then he consented and let you have it?

23 A. That's correct.

24 Q. So he wasn't as good a citizen as I thought he was.

25 A. He sure didn't call up and say, Look at what I

1 got.

2 Q. But he didn't erase it, either?

3 A. No, sir.

4 MR. SMILEY: I beg the Court's indulgence.
5 I got nothing else, Your Honor. Thank you
6 very much.

7 THE COURT: Redirect?

8 MS. BALDWIN: Beg the Court's indulgence.
9 We have no further questions, Your Honor.

10 THE COURT: Any further witnesses?

11 ~~MS. BALDWIN: State rests.~~

12 THE COURT: All right.

13 Well, folks, I'm going to break for today.
14 We've got some legal things that we have to take up, and
15 then we'll start with the defense's witnesses tomorrow
16 morning.

17 What time did you tell me you had your first
18 witness?

19 MR. SMILEY: We changed her now. She will be
20 here at 9:30.

21 THE COURT: So let's go ahead and retire for
22 the evening.

23 Again, you've heard all of the State's
24 evidence now, but it's still not proper for you to begin
25 your deliberations because you haven't heard all of them

1 yet, so don't discuss the case with anyone, including
2 each other.

3 Don't visit the crime scene. Don't go
4 looking on the Internet for anything. Don't post
5 anything to social media. Just go home and enjoy the
6 evening, and we will see you back tomorrow morning at
7 9:30. Okay? Thank you for your patience today.

8 (In open court, jury not present.)

9 MR. SMILEY: Your Honor, I need to make a
10 motion for directed verdict, first to the murder case.
11 In establishing the murder, that would be that of Dontaye
12 Reed, they have not established by any evidence that
13 Mr. Brown in fact shot Mr. Reed, Mr. Reed being the
14 gentleman that was found in the parking lot that was
15 later deceased at MUSC.

16 Even in the light of most favorable to the
17 State they've refused to establish any evidence as to
18 that point, Your Honor.

19 As to the attempted murder, that being with
20 Mr. Quentin Allen, I would make a directed verdict that
21 while there is some evidence that's been testified to as
22 to Mr. Brown having the gun, there is not anyone who
23 testified they saw Mr. Brown fire the weapon that
24 allegedly struck Mr. Allen, and therefore I would make a
25 motion for directed verdict as to that charge.

1 And subsequently as to the possession of a
2 weapon during the commission of a violent crime, the
3 other two failed, and certainly there would be no one
4 establishing he fired the gun; therefore, it couldn't
5 have been a crime of violence, and it would fall by the
6 wayside also.

7 I don't believe there has been any objections
8 or anything that I made that I need to protect at this
9 point of the trial, sir, so I just have the directed
10 verdict motion.

11 THE COURT: What is the State's response?

12 MS. LINDER: Your Honor, the State's position
13 is that for a directed verdict, in looking at the case in
14 the light most favorable to the State of all the evidence
15 that's been presented thus far and in looking at the
16 elements of murder, attempted murder, and possession of a
17 weapon during the commission of a violent crime, for both
18 the murder and attempted murder, we are -- the State
19 submits both of those things were done, committed by way
20 of utilizing a firearm, and both attempted murder and
21 murder are classified as violent crimes according to our
22 code.

23 So we have had testimony from Dr. Tormos that
24 Dontaye Reed was shot in the -- mid-range, in the back,
25 and that was the cause of his death. We have the

1 projectile from Mr. Reed, according to the SLED experts.
2 Daniel Stewart has a projectile located at the scene, had
3 DNA on it, and another individual testified that both of
4 those came from the same weapon.

5 So we believe that we have shown that both
6 individuals who were injured were injured by the same
7 weapon. We've had multiple people testify and identify
8 that individual in the red shirt that was open with the
9 epaulets on his shoulders and whatnot. That shirt has
10 been entered into evidence, that that individual wearing
11 that was, in fact, the defendant, Deonte Brown.

12 We also had numerous people identify that
13 that individual in that red shirt was the individual with
14 the gun. The gun was fired and ended up causing the
15 injury, and I believe we've satisfied, in the light most
16 favorable to the State, all the elements of those crimes,
17 and including the video I know we have played many times,
18 but there's never enough times to watch that video, and I
19 believe that the video, with the jury being able to
20 examine the video as many times as they want with a
21 laptop close to them, they can actually see much more as
22 far as where people are located and other items.

23 And I think the video, coupled with the
24 testimony, which has all been entered into evidence, gets
25 us past the directed verdict stage.

1 THE COURT: Do you want to respond?

2 MR. SMILEY: Your Honor, a couple. In the
3 light most favorable to the State, they've established --
4 their testimony has established that that there is people
5 that saw a gentleman with the red shirt with the gun.
6 That's the light more favorable. Not one single person
7 testified that they saw Mr. Brown fire that gun. We've
8 had people testify that they saw a gun. We know there
9 were more than -- the testimony is also established, Your
10 Honor, there was more than one gun out, that multiple
11 shots were heard.

12 Also, the DNA that was found on the bullet --
13 well, I'll agree in the light most favorable to the
14 State, is that DNA was placed on the bullet when it
15 passed through Mr. Allen. There was also tons of blood
16 in that foyer; however, I don't believe they've shown the
17 ID. They have not produced any evidence to show that
18 Mr. Brown fired the gun that went into Mr. Allen, and
19 therefore -- since it's allegedly the same bullet from --
20 two bullets from the same gun, established through a
21 theory of transferred intent that there was a second shot
22 that was aimed for Mr. Allen that struck Mr. Reed,
23 there's been no testimony to that effect.

24 MS. LINDER: Very brief response to that,
25 Judge. I agree that there's not been testimony an

1 individual saw Mr. Brown's finger squeeze the trigger;
2 however, I think that that's -- I don't think that that's
3 required, to have a witness say that they saw an

4 individual squeeze the trigger of a gun when we have
5 individuals who say they saw him with a gun.

6 There's been no other testimony or exhibits
7 or evidence that has shown anyone else with a gun. There
8 has been nothing else to indicate that there was more
9 than one firearm at the scene. There has been none of
10 that, and I believe that we have shown enough in the
11 light most favorable to the State that indeed the
12 defendant was the individual in the red shirt. He was
13 the only individual in the red shirt at the time of the
14 shooting who was present, that he was handling and had a
15 firearm, and all the things that I previously had stated,
16 Your Honor.

17 THE COURT: Well, I suppose one of the most
18 remarkable things about this case is I've never had a
19 case with this many different video cameras and angles of
20 the incident that took place and there being no
21 conclusive proof as to who the shooter was, along with
22 this many people in close proximity of an actual shooting
23 with no one being willing to identify who the shooter
24 was.

25 So there is no direct evidence that the

1 defendant was the shooter. It's all circumstantial
2 evidence, and the circumstantial evidence standard is
3 substantial circumstantial evidence, and here is what I
4 have written down as the circumstantial evidence that the
5 defendant was the shooter: First, that the defendant was
6 wearing a red jersey and that he was being pushed out the
7 door at the time that shots were fired.

8 Second: Chris Heyward told Investigator
9 Barfield that the guy wearing the red shirt was the
10 shooter. He denied that on direct and cross, but his
11 statement came in under 613(b). Not the strongest
12 evidence in the world, but it is evidence.

13 Then Dario Teran, he said that the guy
14 wearing the red shirt was the shooter. Now, that came in
15 under 8035, purported recollection, because he stated,
16 well, he couldn't really remember due to a motorcycle
17 accident, which he suffered a head injury.

18 So that statement in, and that's what the
19 statement said. He acknowledged on cross-examination
20 that he may not have seen that, anything more than the
21 flash, but, nevertheless, his statement did indicate that
22 he said that at the time the guy wearing the red jersey
23 was the shooter.

24 The next item, the fourth item, is April
25 Blodgett, the waitress, said that she now remembers

1 seeing the gun come out of a red sleeve. Didn't remember
2 it at the time or didn't tell anybody at the time, but
3 she remembers it now. That was her testimony.

4 Then there is the fact that there were a
5 number of people in that foyer area, but it wasn't an
6 unlimited number of people, and the defendant was the
7 only one in that foyer area that I could tell who was
8 wearing a red jersey, and he was present in the foyer
9 area when the shots were fired.

10 That is a chain of circumstantial evidence.
11 It's not the strongest circumstantial evidence case I've
12 ever seen, but, in my opinion, it is enough to get you
13 past the directed verdict at this time, so your motions
14 are denied.

15 MR. SMILEY: Thank you, Your Honor.

16 THE COURT: So we're ready to go in the
17 morning with your witnesses?

18 MR. SMILEY: Definitely.

19 THE COURT: Okay. Well, let me revisit with
20 the lawyers in the back for just a minute before we break
21 for the day; otherwise, I'll see everybody at 9:30 in the
22 morning.

23 (Recess taken.)

24 (September 18, 2014.)

25 THE COURT: Let the record reflect the

WHITNEY BERRY - DIRECT EXAMINATION

1 defendant is in the courtroom. Bring the jury in.

2 (In open court, jury present.)

3 THE COURT: All right, folks. Welcome back.

4 We have heard all the State's evidence now
5 yesterday, so we will begin this morning with the defense
6 calling their first witness.

7 MR. SMILEY: Defense calls Whitney Berry.

8 WHITNEY BERRY,

9 having been first duly sworn,

10 was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. SMILEY:

13 Q. Ms. Berry, Jim Smiley. We met a few minutes ago.
14 Could you tell the jury what is your occupation.

15 A. I am a forensic scientist working in the trace
16 evidence lab for the South Carolina Law Enforcement
17 Division, more commonly known as SLED.

18 Q. Okay. Before we get any further, let's start to
19 break that down.

20 First, SLED, is that the main office where a bunch
21 of scientists -- part of which where a bunch of
22 scientists analyze evidence?

23 A. Yes. I work in the forensics building, which is
24 that part of SLED.

25 Q. Let's talk about what trace evidence means and

WHITNEY BERRY - DIRECT EXAMINATION

1 being a trace evidence analyst. Would you tell the jury
2 what that is, in general.

3 A. In general, trace evidence is any kind of
4 microscopic evidence you would need to use some sort of
5 extra instrument to see. So it could be something as
6 simple as using a magnifying glass to look at a fiber to
7 see what color it might be or something as advanced as
8 using a scanning electron microscope to see what a
9 particle is composed of and anywhere in between.

10 In our department, we analyze gunshot residue, we
11 analyze fibers, paint, glass, explosives, fire debris,
12 duct tape, and bank dye.

13 Q. When it blows up on the money, right?

14 A. Pardon?

15 Q. Bank dye, when it blows up on the money?

16 A. Yes.

17 Q. So you're really like -- I always call y'all the
18 CSI people. Well, it's not like it is on TV. You're
19 about as close as I'm going to get, right?

20 A. To some extent.

21 Q. All right. Now, would you tell the jury your
22 educational background.

23 A. I have a bachelor's of science from the University
24 of South Carolina. I was hired by SLED in 2013, so I've
25 been working there for about a year-and-a-half now.

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1 Since I began at SLED in the trace evidence
2 department, I have completed SLED's in-house training
3 program for gunshot residue analysis. This was a
4 nine-month training program that included reading journal
5 articles, books, different studies that have been done on
6 GSR, as well as doing hands-on practical tests, written
7 tests, on the theory of the instrument and how it
8 operates, learning how do maintenance on the instrument
9 and troubleshoot it as well as doing extensive sampling
10 for clothing and working on case work underneath the
11 supervision of the qualified analyst.

12 Q. And you've testified as an expert?

13 A. Yes. I've testified as an expert in gunshot
14 residue.

15 Q. Okay. And so you're one of the State's experts,
16 right, quote, unquote? You work for the state, right?

17 A. I wouldn't necessarily say that, if you're
18 referring to working for one side over the other.

19 Q. Oh, that's not what I'm talking -- you're employed
20 by the State of South Carolina.

21 A. I'm employed by the State of South Carolina.

22 Q. I'm not in any way indicating your analysis would
23 be slanted one way or the other. I'm just saying, as
24 working for the State of South Carolina, you're held out
25 as an expert in law enforcement, correct?

WHITNEY BERRY - DIRECT EXAMINATION

1 A. Yes, correct.

2 Q. Before I do that, let's talk about gunshot
3 residue. You're an expert. In your training, you've
4 done gunshot residue analysis, correct?

5 A. Yes.

6 MR. SMILEY: At this time, I would ask that
7 she be qualified as an expert in gunshot residue
8 analysis.

9 MS. BALDWIN: No objection, Your Honor.

10 THE COURT: All right, folks. Recall I gave
11 you yesterday instructions about expert witnesses. This
12 witness has been qualified as an expert in the field of
13 gunshot residue. You decide how much evidence to -- or
14 how much weight to give her testimony based on all of the
15 evidence that you'll hear throughout the trial.

16 BY MR. SMILEY:

17 Q. Now, we'll start talking about, what is gunshot
18 residue?

19 A. Gunshot residue is everything that comes out of
20 the muzzle of a gun when it's discharged. This includes
21 primer residue, which is composed of three elements:
22 Lead, barium, and antimony. It's also composed of rust,
23 grease, dirt, and everything else that you can imagine
24 that could come out the barrel of a gun.

25 Q. So when a gun is fired, it puts off a cloud of

WHITNEY BERRY - DIRECT EXAMINATION

1 these metals and chemicals or what have you?

2 A. Yes. When a gun is discharged, a small cloud
3 comes out of either the ejection port on a semi-automatic
4 or out of the cylinder gap on a revolver.

5 The small cloud would typically engulf the hands,
6 if one was holding a gun, and anything nearby. The rest,
7 and the majority of the gunshot residue, would follow the
8 path of the projectile or the bullet towards its intended
9 target.

10 Q. My question is, if a gun is fired, is it possible
11 to find residue on clothing?

12 A. It is possible to find residue on clothing, as
13 clothing would be something in the near vicinity to the
14 discharging firearm.

15 Q. You said if it was a revolver that the particles
16 that come backwards come from the gap between the
17 cylinder?

18 A. Uh-huh.

19 Q. And the cylinder being the round thing that holds
20 the bullets, right?

21 A. Yes.

22 Q. And the gap -- and there is a plate that keeps
23 those bullets in the cylinders, correct, in the gun?

24 A. That's a little bit outside of my realm of
25 expertise.

WHITNEY BERRY - DIRECT EXAMINATION

1 Q. That's fair enough. But, needless to say, is the
2 particles come back out of that opening, correct?

3 A. Yes, it can.

4 Q. Okay. Now, is it fair to say that particles stay
5 or attach longer to certain surfaces?

6 A. When a gun is fired and the particles come out,
7 these particles are microscopic. Approximately 100 of
8 these particles could fit across the diameter of one of
9 your hairs, so it's very, very, very tiny. We're talking
10 about between one and ten microns in size.

11 These particles are formed when the gun is fired
12 and everything in the primer capsule super heats to make
13 everything go down that gun range. So when that happens,
14 the high heat and pressure that it's under causes all
15 these particles to melt together, and they come out in
16 tiny little spheres, essentially, ideally.

17 They come out in tiny little spheres, and these
18 spheres and molten metal will land on anything that is in
19 the vicinity of the discharged firearm. So that could be
20 your hands; that could be getting embedded or clinging to
21 your clothes; that can be it landing on the table or the
22 floor or your shoes, anything that is within the area.

23 Q. Let me ask you this question, and hopefully I'm
24 not asking something that is a stretch. Gunpowder
25 residue would stay on the clothing longer than hands? Is

1 that fair to say?

2 A. Yeah, that would be fair to say.

3 Q. And so if it comes on your hands, if you wash your

4 hands or wipe them on another surface or what have you,
5 those particles come off, correct, or just fall off?

6 A. They do all have the potential to fall off. As
7 far as hands go, it's generally accepted in the
8 scientific community that you won't find GSR on
9 somebody's hands after about four to six hours.

10 With clothing, it's a little different, because
11 clothing isn't sweating. Clothing isn't moving around.
12 You can expect to find GSR on clothing longer than you
13 can expect to find it on hands. It can stay there pretty
14 much indefinitely until it's removed by something, such
15 as laundry. That would be a good example of how you get
16 it off.

17 Q. All right. Let's talk about this case, all right?
18 And in this case you received a bunch of items, but I
19 want to focus on two items, all right? In this case you
20 received a red shirt, and let me tell you what ID number
21 that is. And --

22 A. 7.

23 Q. You're faster than I am. So you received item 7,
24 and see if can you recognize it. Will it have any
25 markings on it for you?

WHITNEY BERRY - DIRECT EXAMINATION

1 A. Yes.

2 Q. Okay. This one has been put in evidence. Can you
3 tell when you examined that? You can pull it out if you
4 like. I'm going to pull it out, so whatever makes it
5 easier for you. Since you're putting them on, I'll put
6 them on.

7 A. For me it's out of habit.

8 Q. I know it is.

9 A. All right. So on this item, what I've got is the
10 SLED tamper evidence tape with my initials and date for
11 the date that I sealed it up, which was 7/10/14. Right
12 here where it's torn, I can see I wrote the unique lab
13 identification number. Every case that's logged into
14 SLED gets one of these numbers, so for this case it was
15 L128586. It also has the item number, which is item No.
16 7 as it was logged into SLED, and again my initials and
17 the date that I wrote that on there.

18 Q. Okay. So you do recognize it?

19 A. I do recognize it. The butcher paper, again, has
20 all the identification; again, the SLED identifying
21 number, my identification number, the initials, and the
22 date.

23 Also, inside the collar I've also written the SLED
24 identifying number, the item number, my initials, and the
25 date, so I did initial this item.

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1 Q. All right. Let me talk to you -- when this comes
2 to SLED, I put a glove on my hand and picked it up with
3 the other.

4 When this comes to SLED, is the first thing you
5 got to do is see if there is any trace evidence that can
6 be collected? Or tell me how it gets processed.

7 A. When clothing comes into SLED for analysis, for a
8 GSR, the very first thing we do is we check the requests
9 on it, make sure that if it has a DNA request on it we go
10 through a few extra precautions to not potentially
11 cross-contaminate with DNA.

12 Q. Stop. Talk about what cross-contaminate with DNA
13 means, because I have no clue.

14 A. What we do is we have a room in the back of the
15 trace evidence lab where we clean out a table, we put
16 down some white butcher paper, very similar to that, and
17 we lay the clothing out.

18 In the case of something that also has got a DNA
19 request on it, we go a little extra further and we put on
20 a face mask so that in case someone sneezes, coughs, et
21 cetera, there is no chance for any DNA to end up on
22 someone else's clothing. This is a protection for
23 everybody involved.

24 My DNA is actually in the database at SLED so that
25 if unknown female DNA came up on that clothing, they

WHITNEY BERRY - DIRECT EXAMINATION

1 could search and say, Well, she was working on this last;
2 oh, yes, this matches her, but at the same time we don't
3 want that to happen, ideally.

4 In this specific case, there was no DNA request on
5 this, so I processed it per normal, just by putting the
6 butcher paper down and then pulling the clothing out and
7 then I began my -- or my collection from there.

8 Q. Okay. Talk about the collection.

9 A. ~~To collect GSR off of clothing, or off of~~
10 ~~anything, really, you use what's called a particle lift.~~
11 ~~A particle lift is a tiny, aluminum stub that you put~~
12 ~~double-sided tape on it, so in our case, it's~~
13 ~~double-sided tape with a carbon background so that when~~
14 ~~it's being scanned, everything bright, essentially, will~~
15 ~~pop.~~

16 The instrument that I use -- I'm sure everybody
17 here has had an X-ray before, or seen an X-ray. The
18 instrument I use takes an X-ray of particles I'm looking
19 at, so, ideally, everything I'm looking for should be
20 very, very bright on a black background. Very similar if
21 you went to go have an X-ray. Your bones show up more
22 white on the black background than anything else. So --

23 Q. All right. So you collected or attempted to
24 collect from the shirt.

25 A. On a shirt, I would make up the particle lifts

1 myself, and then I would collect from four areas on the
2 short-sleeved shirt: It would be the right sleeve, the
3 left sleeve, and then the right and left chest areas.

4 Q. All right. So here, here, here, here
5 (indicating).

6 A. Uh-huh.

7 Q. Okay. So you attempted to collect it. Then you
8 analyze it, correct?

9 A. Yes.

10 Q. Okay. How do you analyze it?

11 A. I put it on a scanning electron microscope that
12 has an energy dispersive X-ray detector on it. It sounds
13 really complicated, but it's not as scary as it sounds.

14 That just means I take the particle lifts and I
15 put them in an instrument, and then I put that instrument
16 under vacuum to hold everything in place, and then an
17 electron beam shoots down on to the sample, and it just
18 moves across the sample, back and forth like a snake, and
19 detects any sort of particulate matter that might be on
20 there.

21 I did an X-ray spectrum. That tells me what it's
22 composed of when it hits something, so --

23 Q. So, in this case, you took those four samples, put
24 them under this super duper microscope, and looked for
25 traces of gunpowder residue, right?

WHITNEY BERRY - DIRECT EXAMINATION

1 A. Yes. We were looking for molten particles of
2 gunshot residue.

3 Q. Did you find any?

4 A. I did not find any gunshot residue on this shirt.

5 Q. You also were given a second piece of evidence,
6 which was a pair of pants, correct?

7 A. Yes.

8 Q. And I believe that's your item 5, correct?

9 A. Yes.

10 Q. And you did the same kind of collection and
11 analysis on the pants, right?

12 A. Yes.

13 Q. And those pants, I think, in your item five say
14 they were pants collected from Deonte Brown?

15 A. On my report, it says one pair of black jean
16 shorts with white stitching said to belong to Deonte
17 Brown.

18 Q. So you did the same thing on that. Now, on a pair
19 of jean shorts, do you still take four samples?

20 A. On pants, we take two samples.

21 Q. Where would they come from, in general?

22 A. They come from what we consider the left front and
23 the right front, so if you think of a pair of pants
24 laying flat on a table, you go from the waistband to
25 about the mid-thigh, and that would be the front area of

1 one side.

2 Q. All right. So you get two samples there, and then
3 you put those under the super duper microscope?

4 A. Uh-huh.

5 Q. Did you find any gunshot residue on the pants?

6 A. No, I did not.

7 Q. Now, of course, I would like to then say that
8 proves that the person wearing those clothes didn't fire
9 a gun, but that's not true.

10 A. No.

11 Q. Okay. It's fair to say, though, that if one fires
12 a gun, there's a probability, or a likelihood, that
13 gunshot residue would be on the clothes at the time of
14 firing?

15 A. Yes. It is fair to say that gunshot residue would
16 potentially land on the clothes, yes.

17 Q. Okay. While it doesn't exclude a person as
18 shooting a gun, it certainly does not include them?

19 MS. BALDWIN: Object to leading.

20 THE COURT: Overruled.

21 BY MR. SMILEY:

22 Q. Is that fair to say?

23 A. Can I have an explanation to that answer?

24 Q. You can tell them whatever you want. I certainly
25 want you to testify to what the findings say.

WHITNEY BERRY - DIRECT EXAMINATION

1 A. With clothing, we can't really put a time stamp on
2 when gunshot residue was deposited. On a living person,
3 we can say within four to six hours they were around a
4 gun that was fired.

5 We can't say they were the shooter. We can't say
6 if they were shot. We can't say if they came behind
7 somebody and ran their hands all over the table and
8 that's how it got on there. We can just say it's there.

9 The same with clothing. We can say it was there,
10 but I can't tell you when it got there, and I can't tell
11 you how it got there, all I can tell you is it's there.

12 Clothing will hold GSR indefinitely.

13 If you go hunting one season, you hang your
14 favorite hunting coat up in the closet without washing
15 it, there's a good chance you're going to have gunshot
16 residue on that hunting coat at the beginning of the next
17 season, having not even shot it.

18 Q. Last couple of things here. You in this case
19 created a report, right? If I could have that marked as
20 Defense Exhibit 2, and I'm going to show you your report
21 and see if you recognize it.

22 Is this the report you prepared for this case, or
23 a copy of the report in this case?

24 A. Let me just check.

25 Q. Yes, ma'am.

WHITNEY BERRY - CROSS-EXAMINATION

1 A. Yes. This is a copy of my report.

2 MR. SMILEY: Your Honor, may we approach?

3 (Discussion held at sidebar.)

4 MR. SMILEY: At this time, Your Honor, I
5 would move State's {sic} Exhibit 2 into evidence.

6 MS. LINDER: No objection.

7 THE COURT: Admitted.

8 (Whereupon, Defendant's Exhibit No. 2 was
9 marked for identification and admitted into evidence.)

10 MR. SMILEY: Ms. Berry, I appreciate you
11 coming to testify. I think the State might have some
12 questions for you now. Thank you.

13 THE COURT: Cross?

14 MS. BALDWIN: Briefly, Your Honor.

15 CROSS-EXAMINATION

16 BY MS. BALDWIN:

17 Q. Good morning, Ms. Berry.

18 A. Good morning.

19 Q. Just a couple quick questions about your report.

20 You mentioned about reasons why there couldn't be
21 any GSR on clothing, and you say laundering is one?

22 A. Yes.

23 Q. Could environmental factors also come into play?

24 A. Yes.

25 Q. What sort of environmental factors?

WHITNEY BERRY - CROSS-EXAMINATION

1 A. Because gunshot residue is so fine, if you imagine
2 maybe having flour on your hands in the kitchen, every
3 time you touch something, that flour comes off, and
4 that's very similar to how transfer happens with GSR.
5 You have something very fine, and every time you touch
6 something, just a little bit can come off, so the same
7 can happen with clothing.

8 If you have your clothing and it's raining or,
9 perhaps, the wind is blowing really hard, just like with
10 flour on your hands, there is the potential that some of
11 that could get removed. If you touch something with your
12 clothing, for example, I guess if you went up and gave
13 somebody a hug, it will be the same as with hands and a
14 handshake. You would have the potential to remove a
15 little bit of GSR every time you did something like that.

16 MS. BALDWIN: Beg the Court's indulgence. I
17 don't have any more questions for you.

18 Thank you.

19 THE COURT: Redirect?

20 MR. SMILEY: No, sir, Your Honor, and I had
21 subpoenaed her. Can she be released?

22 THE COURT: Okay. You're free to go. Thank
23 you.

24 THE WITNESS: Thank you.

25 THE COURT: Okay, folks. We need to take

1 about a ten-minute break right here right now before we
2 call the next witness, so go back to the jury room and do
3 not begin deliberations or discussions. We'll have you
4 back in just a few minutes.

5 (In open court, jury not present.)

6 THE COURT: Okay. You needed a few minutes
7 to talk with Mr. Brown, so let's take five, and I'll be
8 back in a few minutes and see what your decision is.

9 (Recess taken.)

10 MR. SMILEY: Your Honor, after talking with
11 my client at great length last night and this morning,
12 he's decided that he does not wish to testify.

13 THE COURT: Okay. Well, let me just review
14 that conversation we had the other day. Mr. Brown, stand
15 up for a second.

16 I guess it was maybe Monday or Tuesday we
17 talked and I told you, you have the right to testify,
18 call witnesses. You also have the right to not testify,
19 and I told you at that time you should consult with your
20 lawyer, but, ultimately, this is a constitutional right
21 that you have, and therefore only you can make that final
22 decision and it's yours to act upon or to waive.

23 Your lawyer has just told me that you've
24 decided that you do not want to testify; is that correct?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right. And this is your
2 decision and your decision alone?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay. All right. Thank you very
5 much.

6 MR. SMILEY: The defense will be resting,
7 Your Honor.

8 THE COURT: Okay.

9 MR. SMILEY: And then I guess I'll do my
10 motions, because Ms. Linder and I talked. We need to go
11 over jury charges. I don't have any to submit, but I
12 would like to see what you're going to charge before
13 closing, and it sort of caught me and Ms. Linder a little
14 off guard about how long our case was going to take this
15 morning. She asked if it was okay if we have a little
16 break before closing.

17 THE COURT: I'm going to bring them in, tell
18 them we're resting, tell them we need about a half hour
19 or so --

20 MR. SMILEY: Just to get things set up.

21 THE COURT: So I'll let you rest on the
22 record, and then I'll send them out and you can renew
23 your motions at that time and we'll talk about jury
24 charges. All right? Bring the jury in.

25 (In open court, jury present.)

1 THE COURT: All right. Defense want to call
2 any more witnesses?

3 MR. SMILEY: Your Honor, at this time the
4 defense rests.

5 THE COURT: All right. Is the State going to
6 have anything in reply?

7 MS. LINDER: Nothing in reply.

8 THE COURT: Okay. Folks, you've heard all of
9 the evidence that is going to be presented to you in this
10 case now, so the next phase of the trial is to have the
11 closing arguments, and then I'll charge you on the law.

12 So we need to take about a 30-minute break
13 right now so that I can go over some legal matters with
14 the lawyers, get the jury charges finalized, and then
15 we'll bring you back in for closing arguments and the
16 charge on the law, so I'll send you back.

17 While you've heard all the evidence now, it's
18 still improper to begin deliberations or commenting upon
19 the witnesses or discussing the case in any manner, so
20 just be patient with us. We'll probably be 30 minutes at
21 the max, and we'll bring you back in here.

22 The clerk is going to go ahead and take your
23 lunch orders. We'll get you a lunch, so that after we
24 have the charge and everything, then we will have your
25 lunch for you while you begin your deliberations. Okay?

1 So see you back in a few minutes.

2 (In open court, jury not present.)

3 THE COURT: Okay. Mr. Smiley?

4 MR. SMILEY: And, Your Honor, I'll keep it
5 brief because they're basically the same arguments I made
6 yesterday.

7 We've had since then one additional piece of
8 information, or one witness, and so I'm going to renew my
9 motions for directed verdict in that I don't believe the
10 State has presented substantial circumstantial evidence
11 in which to take this to the jury. At most, it's raised
12 suspicion, and I don't believe there has been enough
13 competent evidence in which this jury could find my
14 client guilty, even looking at the evidence in the light
15 most favorable to the State, so I renew my motions and
16 I'll get you my charges.

17 THE COURT: Madame Solicitor?

18 MS. LINDER: Thank you, Your Honor. May it
19 please the Court: Just as Mr. Smiley said, the only
20 additional thing for the Court to consider this time is
21 Whitney Berry's testimony, and in her testimony, she said
22 that her results show that the defendant -- or the
23 clothes that were collected and later tested, said to be
24 worn by the defendant at the time of the incident, showed
25 that he was not in the vicinity of the shooting. Your

1 Honor, I would submit to you that we know from the video
2 he was in the vicinity of the shooting.

3 Also, she stated there were multiple other
4 factors that could be the reason why something would come
5 back as negative. Rain -- we heard testimony from the
6 State's case from crime scene that it was raining when
7 they arrived on scene. That could affect it.

8 Also, there are other environmental factors,
9 other factors she said such as hugging, touching,
10 laundering, and the items were not collected until 36
11 hours after the shooting itself happened, so we would ask
12 in the light most favorable to the State that the
13 defense's witness does not change anything, and we still
14 believe that this case should go to the jury.

15 Thank you.

16 THE COURT: Well, as I said yesterday, it's a
17 circumstantial evidence case as to the identity of who
18 the shooter was, and there is really nothing new been
19 added to that. The evidence that was presented this
20 morning was favorable to the defense, but it doesn't
21 completely exclude him from having been the shooter.

22 I go back to -- there is no question he was
23 there. There's no question he was wearing a red jersey.
24 There was evidence there was somebody else wearing a red
25 shirt, but it was more in line with a T-shirt, and

1 everyone identified the defendant as wearing the red
2 jersey, and he clearly was the person that was the one
3 that instigated the scuffle that led to everybody being
4 pushed out the door, and he was clearly present in that
5 immediate vicinity when the gunfire went off.

6 So when you add that -- while nobody
7 positively identified him as being the shooter, he was
8 positively identified as wearing the red jersey as
9 opposed to being the guy that wore the red T-shirt, and
10 we have those three additional items that were presented
11 in the State's case where Mr. Heyward told Investigator
12 Barfield that the guy wearing the red jersey was the
13 shooter, Dario Teran's testimony was the guy wearing the
14 red jersey was shooter, and April Blodgett said she saw
15 the gun coming out of a red sleeve.

16 Not the strongest circumstantial evidence
17 case in the world, but it's enough, I think, to show the
18 connection of events from which there is an inference
19 that the defendant was the shooter, and I find that it
20 rises to the level of substantial. That gets us past
21 directed verdict.

22 So let's talk about what we're going to
23 charge the jury on. What are you asking for, Mr. Smiley?

24 MR. SMILEY: I've talked with my client, I've
25 talked to Ms. Hensley, I looked at it, and I'm not asking

1 for lesser included.

2 THE COURT: You're just going straight up
3 murder and attempted?

4 MR. SMILEY: Yes, sir. We had a discussion
5 in chambers yesterday about voluntary, and I'm in
6 agreement with his -- the evidence is fairly undisputed
7 that the provocation that began the series of events was
8 started by my client, and I would submit it was the
9 verbal -- the verbal words, but more than that was the
10 throwing of the drink on his face.

11 So I don't know -- given all of that, I don't
12 think I can ask for a voluntary instruction, because
13 there's not any other -- there's not a stop and a start
14 where there's another provocation that comes up, so I
15 talked to him about that, explained it to him. I don't
16 believe that we're entitled to one at this point, Your
17 Honor, so I'm not requesting it.

18 I've tried to see under any circumstances
19 that involuntary may apply to Mr. Reed's death. I can't
20 put him -- even taking things in the light favorable to
21 the State, looking at it, I can't put him in a legal
22 position where to find he had the gun and fired it, so I
23 can't ask for that.

24 As to the attempted murder, pretty much the
25 same analysis comes from it. I thought about you could

1 find that he was not the shooter but was guilty of the
2 original assault, Your Honor, but that's really, I don't
3 believe, lesser included of murder, so it had to be
4 alleged here.

5 So I can't ask for that, which I would like,
6 but I'm just trying to put it together, so I can't
7 request it there, Your Honor. So I think it's murder or
8 nothing. Attempted murder, or nothing, possession of a
9 weapon, or nothing.

10 THE COURT: You're not asking for a
11 self-defense or accident?

12 MR. SMILEY: No, sir. I hadn't alleged
13 self-defense at any point in the trial, so I don't
14 believe the facts would support self-defense.

15 THE COURT: All right.

16 MR. SMILEY: So I have no jury charge request
17 at this point. I would like to see your general charge,
18 but at this point, I don't believe there is anything
19 specifically I need to ask for.

20 THE COURT: All right. Madame Solicitor?

21 MS. LINDER: Your Honor, I believe your
22 general charge will cover pretty much everything, but we
23 would request a transferred intent to put in there.
24 That's the only additional request we have.

25 THE COURT: Transferred intent, what -- how

1 does that apply?

2 MS. LINDER: Your Honor, I would say
3 transferred intent implies, with our version of the
4 facts, as Mr. Brown is in the parking lot, he turns
5 around and fired back toward where his initial target,
6 Quentin Allen, was, toward the Waffle House where there
7 were a lot of people, and then he -- that intent that he
8 had to pull the trigger and injure Quentin Allen was
9 transferred to Dontaye Reed as he hit Dontaye Reed in his
10 back.

11 ~~There has been testimony that they all knew~~
12 ~~each other. They were all friends. I don't think there~~
13 ~~has been any testimony that he was necessarily the~~
14 ~~intended target, but it was his intentional act, and that~~
15 ~~intent transfers to the deceased victim, Dontaye Reed.~~

16 MR. SMILEY: There has actually been no
17 evidence about Mr. Deonte Brown firing back and hitting
18 Mr. Reed when he was aiming to Mr. Allen.

19 Your Honor, also, if you'll read the
20 indictment, it doesn't allege that in the indictment
21 either.

22 MS. LINDER: And, Your Honor, just to answer
23 that, or to respond to that, I don't think it needs to be
24 alleged in the indictment necessarily, and I would say
25 there is evidence of that. We've got the video. There

1 are jurors going back there pushing play and pause and
2 fast forward, for a long time, most likely, and I believe
3 that when they watch the video, they will see, on the
4 exterior video, Deonte Brown turning around, back toward
5 the Waffle House, firing his weapon, and you see a muzzle
6 flash go off, and then immediately thereafter Dontaye
7 Reed falls to the ground.

8 So I do believe that there is evidence in the
9 video of that transferred intent.

10 THE COURT: So you're saying it was his
11 intent to kill --

12 MR. SMILEY: Quentin Allen.

13 THE COURT: Quentin? Is that his name?

14 MS. LINDER: Yes.

15 THE COURT: Okay. All right.

16 MS. LINDER: Your Honor, also on the video
17 you see at that time Quentin Allen is out of the
18 restaurant and standing on the sidewalk. So it's not
19 that he went back into the restaurant, he's out, on the
20 sidewalk, closer to where the defendant was.

21 THE COURT: This is what I'm going to charge:
22 If the defendant, with malice aforethought, attempts to
23 kill another person but by mistake injures or kills a
24 different person, the defendant still has the intent to
25 kill. Intent to kill is merely transferred from the

1 original person the defendant attempted to kill to the
2 actual person killed or injured. All right?

3 All right. He's going to go get those
4 copies. How long do you think you'll need? You get to
5 open and close. Do you want to just close?

6 MS. LINDER: Open on the law, I'll say, would
7 be about five minutes; the closing, about 30.

8 MR. SMILEY: Thirty to forty-five.

9 THE COURT: Okay.

10 MR. SMILEY: At the most.

11 THE COURT: All right. Well, as soon as he
12 gives you those, I'll give you a few minutes to study
13 this, short, sweet -- does anybody have a problem with me
14 giving a copy of the instructions to the jury?

15 MR. SMILEY: No, sir.

16 THE COURT: No, sir, you're okay with that?

17 MR. SMILEY: Yes, sir. I'm okay with that,
18 and the only thing I should is I understand you're going
19 to give the transferred intent. I don't believe there
20 has been any evidence submitted about the intent, that
21 second shot was intended for Quentin Allen to kill him.

22 THE COURT: All right.

23 MR. SMILEY: I don't think it's been
24 established, so I just want to make my exception for the
25 record, and, also, I don't believe, that it was mentioned

1 in the indictment whatsoever.

2 Thank you.

3 THE COURT: All right. Noted for the record,
4 your objection.

5 I notice one change in here. Defendant did
6 not testify, so we'll add that. Let me send this to you.
7 You can put it on there. Look at the first page, you are
8 the judges of the fact. You determine the weight,
9 credibility of the witnesses, whether or not they have a
10 bias, prejudice, judge appearance and demeanor, that's
11 the credibility charge.

12 MS. HENSLEY: The charge we're asking for,
13 Your Honor, the charge that talks about credibility being
14 believability.

15 THE COURT: Well, that's -- where are you
16 getting this from? It's the same thing. Where is Jim?

17 MS. HENSLEY: He's getting ready for the
18 closing, but I guess we need Jessica too. It says
19 necessarily you must determine the credibility of the
20 witnesses who have testified in this case. Credibility
21 simply means believability. It becomes your duty as
22 jurors to analyze and evaluate the evidence and determine
23 which evidence convinces you of its truth.

24 In determining believability of witnesses who
25 have testified in this case, you can believe one witness

1 over several witnesses or several witnesses over one
2 witness.

3 That's the charge we're asking for. You want
4 me to keep reading it? What we're asking for is because
5 it's more extensive about you could believe one witness
6 over several witnesses.

7 THE COURT: You got that.

8 MS. HENSLEY: You may believe part of the
9 testimony of a witness and reject the remaining part of a
10 witness.

11 THE COURT: I got that. It's right there,
12 top of page two.

13 MS. HENSLEY: Okay. I understand.

14 THE COURT: All right. Other than that,
15 everybody was all right with it? They just want one
16 point taken out? All right. Okay. Anything further
17 from the State?

18 MS. LINDER: Nothing further, and, Your Honor
19 for the record, we reviewed the verdict form and jury
20 charges that were given to us, and we don't have any
21 objection with that.

22 THE COURT: I'm not sending the verdict forms
23 since there is no lesser included, so I'm going to have
24 them write on the back of the indictment.

25 MR. SMILEY: So we're not using it?

1 THE COURT: Correct. Are you okay with
2 everything on the charges, other than what you objected
3 to in there?

4 MR. SMILEY: Yes, sir.

5 THE COURT: Okay. All right. Well, let's
6 bring the jury in then.

7 (In open court, jury present.)

8 THE COURT: All right, folks. Welcome back.
9 We are now into the final phase of the trial in which the
10 lawyers will get up and make their closing arguments and
11 ~~then I will charge you on the law, so let me reiterate.~~

12 What the lawyers are now going to do is
13 review the evidence that you heard. They are not
14 testifying. They weren't witnesses, so what they say is
15 not to be considered as evidence. They are simply
16 reviewing the evidence that you heard, and then they
17 will, of course, review the law that I tell you -- that I
18 will be telling you in an attempt to persuade you to
19 render a verdict on their client's behalf.

20 Or rules of procedure provide that since the
21 State has the burden of proof they get to open and close.
22 In a criminal case like this, the State opens on the law,
23 which is just a little five minute "this is what the law
24 is", then you'll hear from Mr. Smiley, and then the
25 solicitor will be closing in full. After that, I'll then

1 charge you on the law.

2 So, Madame Solicitor, if you're ready, you
3 may begin.

4 MS. BALDWIN: Thank you, Your Honor.

5 Good morning, ladies and gentlemen. Just on
6 behalf of the State of South Carolina, I want to thank
7 you all for your service. I know it's not the most fun
8 job in the world, but without you all we wouldn't be able
9 to do our job, so we really appreciate it.

10 The defendant in this case is charged with
11 murder, first of all, and the judge will instruct you on
12 the law. If anything I say differs from what the judge
13 says, you should follow what he says.

14 To prove murder, the State must prove that
15 there was the unlawful killing of a person with malice
16 aforethought. Malice aforethought can either be
17 expressed or implied. They're just sort of different
18 ways in which malice is shown. Express malice can be
19 shown when a person speaks words or shows ill will toward
20 another human being. Malice may be inferred, however,
21 from conduct showing a total disregard for human life.

22 The judge will also talk to you about
23 transferred intent. That is, if the defendant, with
24 malice aforethought, attempts to kill another person but
25 by mistake injures or kills a different person, the

1 defendant still has that intent to kill. The intent to
2 till is merely transferred from the original person the
3 defendant attempted to kill to the actual person killed
4 or injured.

5 Basically, if you find that somebody was
6 trying to kill one person but instead they killed
7 somebody else, that still can be murder.

8 The defendant is also charged with attempted
9 murder. As you can see up there, attempted murder is a
10 person who, with intent to kill, attempts to kill another
11 person with malice aforethought, which we just talked
12 about, either expressed or implied, they're guilty then
13 of attempted murder.

14 Lastly, the defendant is charged with
15 possession of a weapon during the commission of a violent
16 crime, and that's basically what it sounds like. If
17 we've proven that the defendant possessed or visibly
18 displayed a firearm during the commission of a violent
19 crime, and both murder and attempted murder are violent
20 crimes, then he is guilty of possession of a pistol
21 during the commission of a violent crime.

22 The judge will also talk to you about direct
23 versus circumstantial evidence, two types of evidence
24 that are presented during a trial. Just remember that no
25 greater weight can be given to one versus the other.

1 Lastly, and maybe most importantly, the judge
2 will instruct you on reasonable doubt. Reasonable
3 doubt -- to prove our case beyond a reasonable doubt, we
4 have to prove -- give you proof that leaves you firmly
5 convinced of the defendant's guilt.

6 Now, that doesn't mean beyond all doubt, or
7 beyond any doubt. If it was beyond any doubt, there
8 would be a witness in this trial instead of in the jury
9 box where you are, but it's just proof that leaves you
10 firmly convinced.

11 Once again, I would like to thank you for
12 your service. I hope you have a lovely day.

13 THE COURT: Mr. Smiley?

14 ~~MR. SMILEY:~~ I told you in the beginning that
15 this case was going to have some testimony. I want y'all
16 to be able to look at it and see what they said, how they
17 said it, where they saw, what they saw, when they saw it,
18 use common sense to apply it, and I also told you in
19 openings that when somebody perceives an event, it's not
20 like it's a photograph that never changes.

21 Memories and perceptions change over time.
22 Perceptions may not be accurate, but it's their
23 perception. If it turned out it wasn't that way doesn't
24 make them a liar, it just means their perception was
25 incorrect, but I also told you, physical evidence does

1 not change. Physical evidence doesn't lie. Physical
2 evidence doesn't improve over time, even though the SLED
3 agent improved one piece of physical evidence, but he
4 didn't change it.

5 Also, physical evidence -- don't forget, it
6 is what it is. We're very fortunate in this case to have
7 video that you can, as jurors, see what went on that
8 night. You have a view from six different cameras of the
9 area, and you also have a cellphone video of a small part
10 of what went on. That's not changing. You will be able
11 to look at that, all right?

12 Now, I've been fairly -- as a general rule, I
13 love trying cases. That's why I became a lawyer, and as
14 I try a case, if I seem lighthearted, what have you,
15 please understand, this is a very, very serious matter,
16 and I am taking it very seriously. This is the most
17 important day of Deonte Stephen Brown's life. He is
18 counting on y'all, and he knows you will uphold the oath
19 that you took in the beginning, to be fair and impartial
20 jurors.

21 And I've watched y'all, just like you've
22 watched me during the trial, and I thank you for being so
23 attentive and to paying attention and taking an oath. I
24 have no doubt that your collective conscience will come
25 to the right result in this case.

1 So, understand, I'm having a conversation
2 with you, and it's my closing argument. I'm certainly
3 not going to point out everything in this case that came
4 up from the witness stand. I just couldn't possibly do
5 it. Y'all have 12 minds, I have one, so if I miss
6 something, it doesn't mean I didn't think it was
7 important, I'm just having a conversation with you here
8 today about what I believe they haven't proved.

9 Now, not one person under oath on that stand
10 testified Deonte Brown fired a gun that night, not one
11 person. There is no evidence to that. The video, and

12 I'm going -- I know you have already seen the video a
13 bunch of times. I'm going to show it one more time, and
14 I'm going to show two angles, and I want to talk about a
15 couple of things.

16 What I think the video says, what I think it
17 says, all right, is I can't speculate about things that
18 weren't testified to, and I'll tell you a story, and I'm
19 sure Ms. Linder is going to look at it and tell you a
20 story, but the facts that were testified to with that
21 video is what it is, all right?

22 You'll understand as this all wraps up
23 exactly what I'm talking about. People were identified
24 in the video, right? People weren't identified in the
25 video. I could point out people and say, that guy could

1 be the shooter. That could be so-and-so, you know, but
2 the evidence came from here, and the evidence has been
3 submitted as a video for y'all to watch.

4 Also, I told you at the beginning to look for
5 the evidence, but look what's not given, because they
6 have the burden, you know? And as a defense attorney, I
7 always worry that when I say they've got the burden that
8 you think that I'm somehow not playing fair or -- that's
9 their job, to prove it beyond a reasonable doubt. It's
10 why our system works; otherwise, we wouldn't need y'all.

11 They have a burden, and it is a heavy burden, so that
12 innocent people don't go to prison. They don't lose
13 their liberty.

14 Now, Jesse McNeal was right there in the
15 foyer, and two other important people were with him too,
16 Quentin Allen and the security guard. The security guard
17 was the most quasi law enforcement guy on the scene. You
18 didn't hear from him. Understand that if anything they
19 say would have been helpful to their burden, he would
20 have testified.

21 I've been accused of hiding the ball for 20
22 years. I'm going to tell you, I ain't hiding any ball.
23 I called the State's witness, the SLED agent, to show you
24 about the clothes, that there wasn't anything on them.
25 Didn't hide it from you. I wanted you to know that,

1 well, that was 36 hours afterwards before they collected
2 the clothes, so, you know, it wouldn't have it on there.

3 And she told you, it could stay on there

4 indefinitely. If you were -- if you shot somebody, would
5 you come to the police station 36 hours later, wearing
6 the same clothes you had on? If you're an 18-year-old
7 kid, you might if -- like, my kid sleeps forever. If you
8 went home, slept off the drunk, got up and was told that
9 you were needed at the police station, you wouldn't hide
10 anything. You just came into the police station.

11 ~~They collected the clothes. According to~~
12 ~~their theory, he didn't fire just once, he fired twice,~~
13 ~~and there is not a spec of collective gunshot residue on~~
14 ~~this clothing.~~

15 You can say, Oh, he washed it.

16 You know, the clothes are the clothes. You
17 have the evidence. You can't guess. Now, if you would
18 show the video, the interior view, I think it's camera
19 two, and I just want to talk about a few things, and bear
20 with me while we go through it. I'll try to not stop it
21 and go through, but if you could keep on -- thank you,
22 thank you, I'll tell you when -- we just start playing
23 from here, and this is about ten minutes beforehand.

24 And I'm not going to make it run completely,
25 but I keep asking about the red shirt, all right? And

1 there is a guy sitting there with a red shirt. Montrell
2 said he knew the guy, but he couldn't remember his name,
3 and in a little bit, you're going to see he gets up and
4 walks outside.

5 Now, we don't know if he left. We don't know
6 if he stayed there, but to just say there wasn't anybody
7 with a red shirt other than Deonte Brown is just not
8 true, because there is. You're looking at him.

9 This Waffle House seems, on the weekends, to
10 have a couple of rushes. It's when the bars close down
11 at 2:00, and I think they've testified, Ms. April

12 Blodgett testified, they get a rush that comes in, and
13 then it clears out. And then about 4:00 when the other
14 set of social clubs close, they get another thing.

15 When I was in high school, on Friday nights
16 after football games, the only place out to hang out in
17 Mount Pleasant was the Burger King so people would be
18 inside and people would be outside, hanging around before
19 they went home, and I'm going to suggest that that is
20 pretty much what goes on here.

21 If we could fast forward, detectives -- and
22 thank you very much, Detective Smith, for helping me.
23 It's hard when the evidence works with their computers,
24 and I'm not computer savvy. It puts them at an advantage
25 and I appreciate they're kind enough to help me.

1 If you would go forward until the group
2 starts coming in, that would be good. We'll play from
3 there. We're about 7 minutes after 4:00. Deonte is
4 coming in with the red shirt and the cups. I guess
5 they're coming in from Frazier's, and you can see
6 Mr. Heyward is coming in. It would have been identified,
7 all right, so when I point to the video now and say there
8 is Chavis Heyward, that's because he's been identified.
9 Let's not be guessing.

10 You also see Sinclair Heyward, the guy that's
11 ~~in the Navy now, in the white shirt, so you see the group~~
12 of fellows. You see Dontaye Reed, the young gentleman
13 that got killed, he's coming in. You see Derrick Brown
14 come in and gets thrown out, Scrappy. You see the other
15 gentleman, Montrell, that came in, so you see everybody
16 coming in, and I'm calling their names as I point them
17 out there because there has been evidence from the stand
18 to show that's where they were, okay?

19 It looks like a pretty busy place, and, like
20 I said, Jesse is back there cooking. He's got a hard
21 job. See the security guard? He's right there in the
22 middle of it, and what I want you to see here in a second
23 is what the security guard does. All right? And this
24 isn't speculation. I think you can tell pretty clear
25 what's going on.

1 There's an event that's going to happen here,
2 which is Deonte talking trash to the fellow, Quentin
3 Allen, but also the security guard is doing something
4 here. So he comes over and he starts escorting
5 somebody -- he's pointing out -- do you see him pointing
6 out? And as these gentlemen are going out, you see
7 Ms. Catts come in. You see that other fellow in the red
8 shirt by Lorenzo Brown? I believe that's Sinclair that
9 was identified, and you see Deonte come back in.

10 Now, could you freeze it right in there? It
11 didn't matter exactly. I just want to talk.

12 I made a big deal out of this for a reason.
13 Deonte Brown's shirt is open, all right, the entire time.
14 He has a pair of jean shorts on which, when you watch the
15 video, you're going to see him pulling up, that are
16 loose.

17 If he had a gun, where is he going to keep
18 it? Where is he going to hide it? It is loose on him.
19 The shirt is wide open. His pants are falling down. I
20 submit to you, a gun, the way he was moving around and
21 jumping around, would have bounced off that floor.

22 I asked everybody, did you see a gun?
23 Everybody had a really good view that was on the stand.
24 They were close there. Not a person testified to that.

25 You can play it. Thank you, Detective.

1 You see the fellow, the other fellow with the
2 red shirt, he heads out to the parking lot. Now, this
3 camera angle is basically above where Ms. Catts was
4 sitting at the end of the bar over there, looking back at
5 the door, so I'm going to submit to you that this view is
6 very similar to her view, if not a little better because
7 it's elevated.

8 When you're in the jury room, you'll be able
9 to look at this video any way you need, from any angle,
10 any way. It's evidence. It's for y'all to look at, and
11 you can see Deonte. You can see his open shirt. You can
12 see as he's being pushed out.

13 Can you see a gun? No, because if you could,
14 you can be sure -- we're slowing it down. The SLED agent
15 tried to manipulate the video. When I say manipulate, I
16 don't mean that in a bad way, but you can see the fight
17 breaking out in between all those people in the doorway.

18 You can tell the shot has gone off. You can
19 see Jesse. You can tell when the second shot went off.
20 You can also see when Ms. April Blodgett -- and if I'm
21 mispronouncing her name, forgive me -- was in this thing.

22 She went down to the register and hit the
23 panic button and then got out of there, and I suggest to
24 you -- you'll be able to see her position and the
25 opportunity to see someone with a gun, and when I asked

1 her on the stand, did you see Deonte Brown with a gun,
2 shoot a gun? She said no.

3 She says her recollection is that she saw --
4 her perception is that she saw a gun and a red sleeve.
5 These are really short sleeves, by the way, but that's
6 what she says she saw. I'm not calling her a liar. I'm
7 just saying her perceptions are mistaken. We've got a
8 fellow jumping around, acting like a fool, and he did in
9 there, who gets in a fight, pushing and shoving match.
10 The other people jump in too. The assumption is wrong
11 that he must be the shooter.

12 Also, when Ms. Catts is sitting where she's
13 sitting before the shot, you have Sinclair Heyward
14 standing in the same place, right, the guy in the Navy?
15 He was leaning up against the thing. Why didn't he see
16 this? And he has all the incentive in the world. It's
17 his friend out there who got killed. He said he didn't
18 see it.

19 Now, if you could change the view of the
20 interior, looking back to the back door -- forgive me.
21 This one -- and I want to see after the shooting. All
22 right. This is the camera angle back into the back
23 corner. That's where Ms. Catts, Mr. Teran went under the
24 table and Mr. Teran's girlfriend went under the table
25 afterwards. You can see him standing up now, and if you

1 could just pause that, we'll let it play for a little
2 bit.

3 That's where Ms. Catts called 911 from, and
4 Ms. Catts conveys some information that she didn't see,
5 even right then. This is what I mean by perception. She
6 says there is someone that's dead outside. She didn't
7 see that. She had gotten that information from being
8 around others, talking about the event, which is normal.
9 Everybody is gathered back there, and you talk about it.

10 There's Ms. Tiffany Smith. She came and
11 testified. She didn't see anything, but you'll see
12 everybody stays back in that corner for quite some time.

13 I'm not saying they're getting together to
14 make up a story. That's not what I'm saying at all. I'm
15 just saying, if you see an event and you sit down, it's
16 just normal that the picture changes, that your
17 perceptions are bent by that experience or talking about
18 things together.

19 There's Jesse. Now, by the way, as you
20 see -- that's where Mr. Teran was during the whole event
21 with his back turned. What was his ability to really
22 see? What was his view to see anything? And when I
23 asked him about it, Did you actually see the fellow with
24 the red shirt open with a gun?

25 He said, No, I saw a flash. I understand

1 that, because -- but when asked here, it's not, I
2 couldn't remember. When he was asked in court, even
3 though he's had a motorcycle accident, he said, I didn't
4 see it, the gun.

5 The girlfriend back there in the corner had
6 just as good a view, if not better, than Mr. Teran. I
7 would have liked to have heard from her. You would have
8 if she would have helped the State, and you can see the
9 EMS people came in to talk with the waitress there. And
10 I don't know what medication she was on. I can tell when
11 she gave a statement that this insinuation that her
12 memory got better because she was on medication that day,
13 I don't think that is fair.

14 You don't know what medicine she was on. I
15 don't know what medication she was taking. There wasn't
16 any evidence presented to that effect, and I can promise
17 you a law enforcement officer wouldn't let someone who
18 wasn't capable be mistaken, and we all know memory is
19 better afterwards than two years later. She agreed with
20 that. You see them getting their statements and sitting
21 back there to fill out their statements.

22 Now, if you could go to the outside video, I
23 think that's number six, and I'm -- I promise you, I'll
24 keep it as short as I can on the videos. It's hard to do
25 from here, because I want to tell you all kinds of

1 things. I wish they would let me and Ms. Linder go back
2 there in the room with you so we can talk with you the
3 whole time, but that's not how it works in deliberation,
4 and if we can go back pre -- that would be fine.

5 Now, this video, the SLED agent came in and
6 slowed down, sped up, lightened it, darkened it to try to
7 get as good a view as possible. This one isn't actually
8 the one that's enhanced, but you'll have those back there
9 too because I can promise you, if they can find a framed
10 section of this that showed Mr. Brown firing a weapon and
11 he could be identified, they would have been up here.

12 It's not evidence to just point at it now and
13 say that's who it is. The testimony came from here.
14 Keep going. Back up just a hair. A little more.

15 You see a fellow coming out. You see another
16 fellow coming out. You see the security guard has come
17 out. Look at the security guard here. He's concerned
18 about something. It's me speculating, all right? And I
19 can't tell you what it is, but watch him. And I'm not
20 going to narrate this part. This is for y'all to look
21 at.

22 I don't know that I need to speculate more
23 than y'all can about who's who and what's what. I can
24 tell you this: If there was someone holding a gun and
25 firing it, you would have seen it, and if they could have

1 been identified, they would have been identified.

2 You see the fellow going between the two
3 cars? That could easily have been Deonte. You see
4 there's a flash back there, and a guy gets shot. If you
5 ran between the two cars, that couldn't be Dontaye.
6 Y'all look at it. I'm not going to point at it and say,
7 This person is this person and that person is that
8 person. There wasn't any testimony who was who in the
9 parking lot. It's pure speculation.

10 Thank you very much.

11 Just a couple more things about perception.

12 Mr. Teran talked about a Braves jersey or Cleveland
13 jersey. It's his perception. He wasn't lying. He was
14 mistaken. We see things or we think we see things, and
15 that's what we remember. Our perceptions are changed as
16 we interact with people and as time goes by, and so that
17 information, while it's important, is certainly not
18 foolproof.

19 Now, Ms. Catts, she says she saw a gun.
20 Y'all would be able to determine whether she had the
21 ability to see a gun. She did not see Deonte Brown fire
22 a weapon, but she did say she saw a gun. You have
23 Mr. Teran who believed he saw a shot but when we further
24 inquired said he did not see Mr. Brown fire a weapon.
25 It's important, but he did, at least, bring something up.

000430.

1 Now, Chavis Heyward was right there at the
2 door, right? He came in and he testified, under oath,
3 and he was asked directly, Did you see who fired the gun?

4 No.

5 Did you see it?

6 And he very clearly stated, under oath, no.

7 Now, they want to say he's covering up -- I
8 don't know the motive for covering up, but they brought
9 up Investigator Barfield and said he told me in the hall
10 it was the guy in the red was the shooter.

11 That is important information. Mr. Heyward
12 had been down and met with the two -- I mean, the two
13 solicitors and the investigator that day. He had met the
14 police earlier, because he had said that is when he's
15 walking out, after he's already said, No, I didn't see
16 it, didn't see it.

17 He has a change of heart, supposedly, after
18 the heart-to-heart with Investigator Barfield and said,
19 It's the guy in the red shirt, but I'm not calling names.

20 Now, that's important information. It's not
21 recorded anywhere. I'm not saying Detective Barfield is
22 lying. I wouldn't accuse him of that. I respect him
23 very much. I believe that communication is a problem
24 here, and there was a simple way to solve it.

25 To say, Who, Chavis? That's important.

1 Please come back in. We need to write that down. You
2 just told me that. Take five minutes, or, if you
3 couldn't get him to do that -- because you heard what
4 happened in this building. There's security everywhere.
5 See if you have it on tape, something.

6 I mean, that's their best piece of
7 information, and they can't get it recorded, and I don't
8 get it. How about trying again? As he's told you now,
9 did he do a phone call? Let's get it on tape. Let's
10 bring him in to get competent evidence, competent
11 evidence.

12 Jesse McNeal said something -- and I know I
13 jump around a little bit. Jesse McNeal said something
14 about the first shot that I think is important. He
15 didn't see it. He had his back turned, but I asked him,
16 could he tell how far away that shot was? Was it close
17 or far away?

18 And he said he couldn't tell. I think that's
19 significant, or common sense. A 38 goes off right next
20 to you, you know it's right next to you. My point is, we
21 don't know where that first shot came from. We don't
22 know whether it came from the scrum, right there at the
23 door. We don't know if it came from the back of the
24 Explorer, right out there, or further back. We know that
25 it came from the outside in because of the way the window

1 shattered. And through common sense, if you look at it,
2 it looks as if it had to be a right to left kind of shot.

3 That's about all you can tell. You can't

4 tell distance. I wish we could. We know it's not on the
5 video, because we can't see it and identify anybody
6 shooting the first shot.

7 The second shot, you will see a flash on that
8 video, and then you see Mr. Reed fall down. You cannot
9 identify who is behind that gun. It is pure speculation.
10 If they could have identified it, it would have been done
11 from this witness stand. I just got a couple more things

12 and then I'm going to sit down.

13 Beg your indulgence. Just a second. Let me
14 check in to see if there is anything I forgot.

15 I'm going to tell you something, and it's
16 important. I hope you will listen. You cannot find the
17 defendant guilty based on suspicion, conjecture,
18 speculation, no matter how strong it is. You can't.

19 I conviction in this case can only be based
20 upon proof beyond a reasonable doubt. If it doesn't come
21 to that standard, you must find Mr. Brown not guilty, and
22 I'm going to suggest it's not even a close call.

23 This isn't a guessing game. You can't do
24 anybody else's job. You can't fill in the blanks. This
25 is a purely circumstantial case. There isn't any direct

1 evidence, as I keep pointing out, and last thing. I did
2 a little thing about circumstantial evidence with one of
3 the crime scene investigators, about you take fact A, the
4 fact there was a person laying on the ground, the fact
5 that the EMT's came, the fact that he knows what an EMT's
6 scissors look like, so when they found those scissors,
7 those set of circumstances led him to this conclusion
8 that those were the EMT's scissors. That is sort of
9 following the chain of circumstantial evidence.

10 As you apply that in this case, following the
11 circumstances, is all of the things that are relied upon
12 to establish a fact have to be wholly consistent. That
13 means they all have to be there. If it's not there, you
14 can't make the jump with this.

15 If something else that could be or couldn't
16 be points another direction, you can't say that. In
17 other words, A plus B plus C equals a fact. If C is not
18 there, you can't go A plus B equals the fact. You have
19 to have all of the circumstances, but by the same token,
20 if A plus B plus C equals the fact, if there is another
21 fact, like another D, there could be another solution to
22 it, you can't say they've proved it.

23 I know it's real confusing, and the judge is
24 going to give you the charge on circumstantial evidence,
25 but you can't do their job for them. You're the finders

1 of the facts.

2 It's been my pleasure to try this case in
3 front of you. I appreciate it. Mr. Brown has all the
4 faith in the world that y'all are doing a very hard job,
5 and bring back the only verdict the evidence can support:
6 Not guilty.

7 Thank you.

8 THE COURT: Madame Solicitor?

9 MS. LINDER: Thank you, Your Honor. May it
10 please the Court:

11 ~~I came and I talked to you in the beginning~~
12 of this case and told you that life is a series of
13 choices, and the choice is a decision to act and actions
14 all have consequences. Once of the consequences of the
15 defendant Deonte Brown's actions is being here today.

16 First, I just want to briefly touch on what
17 this case is and what this case is not. I would submit
18 to you that items where the defense points as a lack of
19 evidence is not a lack of evidence, it just merely
20 doesn't move the ball, so to speak, and it's also not a
21 lack of evidence, but it's subtle, or it's not
22 definitive, which is why you have the toughest job out
23 there, which is deciding what the facts are, what you
24 believe and what you don't believe from the stand, what
25 you believe and what you don't believe from the exhibits.

1 That's up to you. You get to decide every single one of
2 those things.

3 This case is a whodunit; who had the gun, who
4 shot the gun. This case is about ID. That's what the
5 case is about. You know, you heard on testimony the
6 crime scene took hundreds of photos. I think maybe 20
7 were entered, but I submit to you, whether 20 or 200 or
8 2,000 were entered, those photos were taken hours after
9 this incident, and no one was left on scene.

10 Adding all those photos into this case would
11 ~~just take your time and mine, and it wouldn't help you~~
12 decide who had the gun, who pulled the trigger. This is
13 a whodunit.

14 Crime scene talked about a lot of processing.
15 They printed the Explorer; they printed the Escalade;
16 they printed the doors of the Waffle House; they printed
17 the red cups. DNA swabs were taken from the red cups,
18 all of that science stuff that even I myself am hooked on
19 TV shows that are all about it. But, again, at the end
20 of the day, does any of that show you, does any of that
21 move the ball?

22 ~~There is testimony that the trucks belonged~~
23 to April Blodgett and Dario Teran. There was no
24 testimony that the person was in the truck when they
25 fired the gun. Who the prints came back to, does that

1 tell you who was there at the time and pulled the
2 trigger? Who was there at the time and shot the gun and
3 had the gun?

4 I would submit to you that that
5 information -- while it is good, it was a complete
6 investigation -- doesn't help you as deciders of the
7 facts of what happened at that moment. This is a
8 whodunit, so I think in thinking about that, it's
9 important to go back and look at and consider everything
10 that you've been sitting through and watching the past
11 couple of days.

12 First, I'd like to take you kind of through
13 the witnesses, and then I'm going to take you through
14 some of the exhibits.

15 First person you heard from was David Johnson
16 from the sheriff's office. He's a patrol guy. He showed
17 up on scene. He responded about 4:15 in the morning to
18 the Waffle House. He said there were lots of people. He
19 said people were leaving everywhere. People were all
20 over the scene.

21 He was trying to prevent people, I think he
22 said, from trampling through the scene, so he was just
23 trying to get people out and secure this scene the best
24 way he could, as that first responder that day.

25 He also -- we got a map with him, and he

1 showed you where the Waffle House was. Then you heard
2 from the two crime scene individuals, Erin Meyer and Mark
3 Watson, also from the sheriff's office. They told you
4 there's two full jobs at a crime scene.

5 I keep calling it a crime scene. The
6 sheriff's office calls it forensic services. They
7 search, they photograph, they collect, and they process.
8 They told you about this line grid search, shoulder to
9 shoulder, walking through the parking lot, looking for
10 evidence. They told you that they did not find any
11 casings which is consistent with a revolver.

12 They also told you that other things can
13 affect what is left, or maybe carried away from the
14 scene. They told you about a projectile that was located
15 and collected, that projectile in the foyer doorway of
16 the Waffle House. They told you about taking all the
17 photographs, all of them without placards. Only a
18 handful of them had placards, You saw some, and they told
19 you it wasn't to tell you where the item was, it was more
20 or less to document and catalog and number and itemize
21 everything.

22 And they also told you that they didn't do a
23 diagram in this case, and that was for many reasons, but
24 they didn't have measurements in a diagram, and it
25 ultimately came down to, and this is me paraphrasing it,

1 to the integrity of the scene.

2 I believe Ms. Meyer talked said trampling,
3 the same word as Johnson did, and they were saying how
4 from the information that they had received in their
5 training and experience, with the number of people moving
6 about, again, they didn't do that.

7 They also told you about printing and about
8 swabbing and about collecting items, collecting the
9 DVD from the Waffle House that has been just central to
10 this case, and I'm sure it will be central to your
11 deliberations, and it's probably going to be a long
12 process of playing and rewinding and fast forwarding and
13 playing and pausing and everything back there for you,
14 but you'll have all that back there with you.

15 Their other job is to preserve evidence.
16 They preserve evidence such as the cellphone videos that
17 were taken of off Lorenzo's phone. They preserve
18 evidence such as the red shirt, such as the projectile
19 that was collected from the autopsy from Dontaye Reed's
20 fallen body.

21 Next you heard from a bunch of what we
22 lawyers call lay witnesses. You heard from Tyh'Shka
23 Catts. She said she first saw the defendant at
24 Frazier's. Frazier's is a club, social establishment,
25 and she first saw him because her car was in a ditch and

1 she needed some help, and then when she got to Waffle
2 House alone, she walked in there, and she told you of how
3 the guy in the shorts was minding his business.

4 He was not responding. That same guy, the
5 guy with the red shirt and dark shorts, was yelling,
6 Bitches and he was ripping the country. She described
7 his yelling as intense.

8 She then told you of how a worker walked over
9 and tried to calm it down, tried to escort him out. She
10 also told you that that guy, that same guy in the red,
11 pulled out a gun. Then she told you that there were four
12 to five shots total she heard. You heard testimony about
13 four to five shots heard. She then told you that she
14 ducked for cover, absolutely, and then she called 911.

15 You then heard from Montrell Butler. You
16 heard from Mr. Butler who is from Hollywood, as were most
17 of the people that night hanging out. He told you how he
18 arrived in that white Buick, Lorenzo, Quaney, Brandon.

19 It was parked facing 17. All that is shown on the video.

20 Shortly after his arrival, he tells you how
21 he went inside, and he said he was inside during the
22 argument, and then he showed you how he went outside. He
23 went outside. He was outside, and then he went to the
24 car, and he said he was in the front seat of that car,
25 facing 17, when everything happened. He ID'd a bunch of

1 people in the film, people who he knew, people who he saw
2 that night.

3 Lorenzo Brown then testified. He told you a
4 lot of what Montrell told you. He came in the Buick with
5 the same friends, told you where they parked. He seemed
6 to, when he was on the stand -- and you can look at
7 people's demeanors. He talked about a little scuffle,
8 and then when asked about a fight, he said there was a
9 fight for a little sec, and then he chuckled some.

10 Ultimately, after law enforcement reviewed
11 the video, they were able to confront him with him taping
12 the fight, so they retrieved the videos from his phone.
13 He told you that he ran toward the door and then ran off
14 to the side and then there were shots.

15 I submit to you that that isn't the correct
16 order, and I submit to you you should watch that video.
17 Check that order. Check that order. He ran toward the
18 door, and then he ran off to the side and then the shots.
19 I submit to you that he turned before other people did.

20 You then heard from Chavis Heyward. You
21 heard Chavis Heyward from when he entered the double
22 doors to when he sat up there. It's up to you to decide
23 what to read into, if anything, his behavior. You saw
24 his demeanor, his tone, his willingness to answer
25 questions when he was being asked on the stand, and you

1 heard from him on the stand denying having not one, but
2 two conversations with my office.

3 He was a little friendlier, in my opinion,
4 and ultimately that is for you to decide. On cross, and
5 at that time, from the stand, he acknowledged that there
6 was a scuffle and that that scuffle, it went from pushing
7 and shoving in the foyer, and then he said it moved
8 outside, and then he said he was standing where the
9 broken window was. You can watch that video. You can
10 see him actually trying to be peaceful in the whole
11 thing.

12 After Mr. Heyward, you heard from
13 Investigator Barfield; Investigator Barfield, 37 years of
14 law enforcement experience, worked for the city of
15 Charleston for 30 years, retired, working at my office
16 for seven. Investigator Barfield told you that Chavis
17 Heyward identified to him on more than one occasion that
18 the shooter, not the guy holding the gun, but the shooter
19 was the guy in the red shirt. He came in voluntarily on
20 August the 19th to my office. After maybe 45 minutes
21 total, Investigator Barfield testified, he confessed to
22 seeing the shooter.

23 Then last week, when being called about, Hey,
24 you got to show up at this time, Investigator Barfield
25 told you that Chavis Heyward brought up that, Hey, I

1 didn't you a name. I told you the red shirt. I did not
2 tell you a name.

3 So he acknowledged, again, weeks apart, that
4 it was the red shirt shooting, and as far as it being
5 recorded, Investigator Barfield testified that
6 immediately after both of those instances, weeks apart,
7 he wrote reports to that effect.

8 You then heard from Sinclair. He's in the
9 Navy. He's living in Virginia, he told you. He told you
10 how his best friend, Dontaye Reed, was murdered. He told
11 you how he picked up Dontaye in his Thunderbird. They
12 went to Frazier's, and then they went to Waffle House.
13 He told you when he went to Waffle House, he was hanging
14 out with his best friend right by that window. He
15 watched the video, and he identified what he saw that
16 night.

17 Again, he didn't identify what he saw when
18 watching it later in court, while watching it later with
19 me, while watching later. These people are telling you
20 what they saw that night. We have a video here. You get
21 to look. You get to see from lots of different angles
22 what happened.

23 So you heard from Joe West, very briefly,
24 about how exciting it would be if he could take a really
25 bright license plate and make it really crystal clear so

1 we can ID plates. That's not how it works. You take a
2 screen shot, and I have it in my head it acts like a
3 television. You have little knobs underneath your
4 TV where you can do, like, brightness.

5 There's not a whole heck of a lot you can do
6 to it, but he did what he could do, slowed it down and he
7 adjusted the brightness, and you'll have those videos
8 back there with you too. Play them, play them ad
9 nauseam, whatever you need to see it.

10 You heard from Jesse McNeal. He told you
11 about the diagram. He told you the Waffle House is,
12 quote, not that big inside. He explained the club rush
13 came in, 3:00 to 4:00, and he told you a little something
14 that other people didn't: He told you that that argument
15 that started this whole thing started with his cousin,
16 Quentin Allen.

17 He told you that Quentin, these were his
18 words, was slow and was challenged, and he had been
19 admitted in Florida. Those were his words that he
20 testified to. He told you that there was a fuss and he
21 saw it was escalating, so he came from behind. He was
22 trying to calm and alleviate the situation, and he said
23 he was just pushing and trying to get everybody out,
24 headed toward the door.

25 And then he told you that he got everybody

1 out, and then he was getting his cousin back in, and
2 that's when a bullet went through the window. He told
3 you this whole thing was unnecessary. He pointed out at
4 certain points -- I had three different times that he
5 pointed out what was happening and who was where. He
6 told you the last person walked out the door, and BAM.
7 He also testified there were three to four shots,
8 multiple shots.

9 Tiffany Smith testified, and she didn't
10 really add a whole lot, quite frankly, in my opinion, as
11 far as trying to advance my version of the facts. But
12 she did say that everyone went out the door, and a couple
13 of seconds later there, was a bullet through the window.

14 You heard from April Blodgett. She explained
15 that she hit the silent alarm, and she was sitting at the
16 second booth. You're see where she was sitting, the
17 second booth, and her perspective of how she was able to
18 see. She said she saw a red sleeve and a gun.

19 Dario told you that he had that motorcycle
20 accident. His memory wasn't very good, so you were able
21 to hear read into the record his statement that he gave
22 police, and, in that statement, he says that it was a
23 black male in a red jersey who -- he said the shooter was
24 five-ten in the red jersey.

25 He said, Who fired the gun?

1 Red jersey.

2 You then heard from Betty Butler who talked
3 about swabbing the projectile. You heard about Samuel

4 Stewart, or from Samuel Stewart, the DNA guy. He talked
5 about how the projectile found in the foyer was swabbed
6 by Betty, and then he created a profile of the 16 STRs
7 and then he took the projectile from the body of Dontaye
8 Reed and compared them, and -- oh, I'm sorry. I'm
9 talking about the wrong person.

10 Samuel Stewart talked about the swab from the
11 projectile and then the buccal swab, that sterile swab
12 from inside the mouth, cheek swab, and compared those
13 two, and it was Quentin Allen, the slow, challenged guy
14 in the white T-shirt, whose DNA was on that projectile
15 right in that foyer. I submit to you that makes sense.

16 It was Ira Parnell, who's loving life being
17 retired from over 40 years with SLED, he talked about --
18 compared the two projectiles. He said those two
19 projectiles -- and you have his report. You can read the
20 his report up there.

21 Those two projectiles, with the rifling and
22 the twists and the grooves, both of those were fired out
23 of the same gun. The same gun equals bullet with Quentin
24 Allen's DNA; same gun, bullet from Dontaye Reed's body.

25 He also went further and told you how the 357

1 Magnum 38 special revolver and there are no casings that
2 ever get ejected with that.

3 You heard from Dr. Tormos, and she explained
4 there is a gunshot wound to the back left flank of
5 Dontaye Reed. She told you that, you know, he appeared
6 to be, aside from the gunshot wound, you know,
7 well-nourished, 19-year-old black male who seemed in line
8 with everything else. She told you that that gunshot
9 wound in the back is what killed him.

10 You then heard from Investigator Moyer-Smith.
11 She told you about the investigation, but, ultimately,
12 she didn't go on too long, because, as I stated to you
13 earlier, this is a whodunit. The witnesses and the video
14 tell the story. She wasn't there.

15 She told you how she progressed in her
16 investigation. She interviewed Quentin. He was shot; he
17 was numb, he was angry. It was a through-and-through
18 shot and a chest graze. She said as a result of that
19 interview and other things, she got warrants for
20 attempted murder and possession of a weapon during the
21 commission of a violent crime.

22 She told you that she kept on working. She
23 kept collecting evidence, interviewing people, getting
24 stuff sent to SLED. She was able to collect the
25 defendant's shirt. There's written on the stickers what

1 time everything was done.

2 Shooting was 4 a.m., or 4:13, I think,
3 exactly on July 15th in the morning. The shirt was
4 collected at 4 p.m. the 16th. It's 36 hours later. It's
5 a day and a half later, but she collected it. She did a
6 buccal swab. You know, she did all sorts of things.

7 And then she also told you that after doing
8 all of this and getting some preliminary results back
9 from SLED, getting the bullet results back -- you have
10 those reports; you see all the dates -- that at that time
11 she elected that she thought it was time to get the
12 murder warrant.

13 Today you heard from Whitney Berry. You
14 know, I think Whitney is lovely, and when you listen to
15 her on the stand, she explains and she specified that a
16 small cloud comes out when a gun is fired. And she said
17 that cloud engulfs the hands and then follows the path
18 downrange toward the target.

19 So I guess I'll do it this way: Engulfs the
20 hand and follows the path downrange toward the target.
21 That's where it is. The cloud comes out and goes that
22 way. That's what she testified to.

23 She also told you that after four to six
24 hours they don't even bother testing for GSR on hands,
25 and, as you know, the interview that happened and all of

1 this was 36 hours later. There was no GSR done on the
2 hands. That was 36 hours later.

3 She told you there is no GSR found on that
4 shirt, but what does that mean? If you look at her
5 report, and you'll have this back there with you, and her
6 result -- it's actually a paragraph. It's not just no
7 GSR. It's a paragraph.

8 She says in there that there are no particles
9 consistent with gunshot residue located on the shirt.
10 She then goes further to say that that means he was not
11 in the vicinity of a gun being fired.

12 You know, it's up to you for how much you
13 weigh an expert's testimony. I would submit to you that
14 the video and everybody else shows he was in the vicinity
15 of a shot being fired. The question is, did he pull the
16 trigger?

17 She also talked about the ways that it can
18 come off of clothing; the rain or wind. You heard from
19 crime scene that, you know, like, within an hour of
20 getting out there, it started raining --

21 MR. SMILEY: Objection, Your Honor. That's
22 arguing a fact not in evidence.

23 THE COURT: Sustained. There was no evidence
24 as to when the rain began and ended.

25 MS. LINDER: You heard from crime scene that

1 while they were on the scene, it was raining.

2 MR. SMILEY: Objection, Your Honor. Fact not
3 in evidence.

4 MS. LINDER: Erin Meyer testified to that
5 fact.

6 THE COURT: I think he said it rained while
7 he was there. His earlier objection is when it began and
8 when it ended, so overruled on this one.

9 MS. LINDER: Many reasons why GSR is not
10 there, environmental; Whitney Berry told you rain and
11 wind. You heard about it raining that day.

12 She also told you about hugging and touching.
13 I don't know how much touching you have to do or how
14 close of a hug or how long of a hug or how many hugs, but
15 there are ways to get GSR off of your clothes, and then
16 the big one, laundry, laundry. Out all night, get home,
17 dirty clothes, put in hamper. Laundry cleans things
18 right up.

19 So those are the people that you heard from,
20 and now I'd like to talk to you about some of the
21 exhibits that there are. You know, you are the judges of
22 the facts, and it's up to you to decide who to believe
23 and what to believe. It's up to you to decide what is on
24 the video and what evidence means and what evidence does
25 not mean. The ultimate decision is yours.

1 Similar to Mr. Smiley, I'm going to show you
2 certain moments of the video, and it will ultimately be
3 up to you to decide what it shows; however, I will argue
4 to you based on the testimony and other items on the
5 video.

6 First of all -- and I urge you to go back
7 there and look. I'm going to tell you some times. I
8 urge you to write them down. They may not be important
9 to you. Like I said, it's up to you.

10 MR. SMILEY: Objection, Your Honor. This is
11 frames from the video. That hasn't been put in evidence.

12 THE COURT: These are just for demonstrative
13 purposes. They won't go back. They weren't in evidence.
14 For demonstrative purposes, she can show them now.

15 MS. LINDER: This is from 4:11 -- and I'm
16 looking at the time in the top left corner of all these.
17 It says it's 4:11:07:683, so it's broken down to more
18 than just a second. And in this photo, as you heard
19 testified to, you see, I would argue, the defendant, the
20 red shirt with the fancy shoulder stuff, the cup, and you
21 see the other guy in the red shirt.

22 At 4:11:10:355, here, which is less than
23 three seconds later from the previous photograph, you see
24 the defendant with the fancy stuff on his shoulders on
25 this red shirt holding a cup, and this chair is now

1 empty. This chair is now empty, three seconds later.

2 Three seconds after that, at 4:11:12:121, you
3 see a shirt, a red T-shirt. At 4:11:17:534, this is

4 right after that, and these were showing people exiting
5 the Waffle House. And now what we see, at 4:12:11:435 --
6 and, again, these are all on that video. I just paused
7 it because I'm not the master of a laptop.

8 I would argue here that you see the defendant
9 in the red shirt with the fancy shoulders. You see
10 Chavis Heyward, and people were telling you what was
11 happening also. You see the cook, Jesse, trying to break
12 up the fight, and then right here, well, you see that's
13 Tyh'Shka Catts, staring, and right back here, you see a
14 turned head of Dario looking. He told you he kept
15 turning around to watch what was happening.

16 This photograph, this still picture out of
17 that video that you guys all have and will have back
18 there with you, from 4:12:16:152, so less than five
19 seconds after that last one, the defendant, fancy red
20 shirt, stuff on his shoulder, throwing a cup at Quentin.
21 Peacemaker Chavis, Cook Jesse, Tyh'Shka -- look where
22 she's looking. You got Dario. Look where he's checking
23 out. All right?

24 On this photograph, which is from outside,
25 this is from 4:12:45:496, so that number's up here. In

1 this picture, as Montrell pointed out to you when he was
2 on the stand -- and these are all chronological that I'm
3 showing you -- he pointed out that this is him. He's in
4 the dark shirt with the white writing on the back,
5 heading toward that white Buick, the white Buick that he
6 pointed out to you facing 17.

7 Eleven seconds later -- I'm sorry. I just
8 told you this is chronological. This is not. Here we're
9 at 4:12:56, 4:12:56, so this is -- if I'm doing my math
10 correct, which I could be totally wrong, this is ten
11 seconds after we just saw Montrell, as he told you,
12 heading toward that Buick, and in this photograph, Chavis
13 even pointed out, that's him. That's Chavis in the
14 foyer, going in there, still trying to be the peacemaker.

15 Four seconds later, at 4:13 -- and it's
16 pixilated, yes. At 4:13:262, if you look here and you
17 watch that video, I would submit to you that it looks
18 pretty cleared out. That you see a hat facing forward of
19 Jesse, you see a blue shirt of Chavis, and then you see a
20 white T-shirt of Quentin. That's it. 4:13, that's all
21 that's left in there.

22 Here we have at 4:13:01, one second later.
23 Again, I urge you to watch this and you to make the final
24 decision. At this point, again, it's cleared out in the
25 foyer, and you've had Jesse and Chavis in here telling

1 you who was where.

2 Jesse, the bill of his Waffle House hat is
3 turned back toward the white T-shirted Quentin and blue
4 T-shirt or turquoise-shirted Chavis, focussed on his
5 cousin Quentin. 4:13:02:496, again, this is one second
6 later, if you look in that same foyer area, still pretty
7 cleared out, and I urge you to go back, look at this
8 video. Look at it before; look at it now.

9 Bill of the hat, Jesse, facing back. Jesse
10 told you he was focussed on his cousin, trying to get his
11 cousin inside the Waffle House, trying to get his cousin
12 to safety, and you see that turquoise shirt and that chin
13 growth, hair, stubble, beard, however you want to call
14 it, facing out of Chavis.

15 And then here we have 4:13:03:371. It's the
16 same thing. It's one second later; 13, three people left
17 in the foyer. 13:01, three people in the foyer; Jesse
18 looking at his cousin. 13:02, three people in the foyer,
19 Jesse looking at his cousin; Chavis looking out. 13:03,
20 three people in the foyer, Jesse's looking toward his
21 cousin -- the bill of that hat, the bill of that hat,
22 right there, blue shirt, I would submit to you. Again,
23 you watch it. You decide. You decide the facts.

24 This video is evidence. You decide the
25 weight of the evidence. You decide what this evidence

1 tells you about what happened.

2 This one is at 4:13:04:262, so one second
3 later; again, we got the three people in the foyer, but,
4 more interestingly, I would submit, we got this fellow.
5 Lorenzo Brown identified himself in this video to you
6 multiple times. He had the braids to his shoulder. He
7 was wearing white shorts and a black shirt. If you look
8 at this previous picture, two pictures ago, as he told
9 you, he ran up there and he was watching. He was
10 watching, but then you look here, oh, he's turning
11 around.

12 Remember, I told you I agreed that the video
13 reflects what he says. In his testimony, he said he went
14 out there toward the door, and then he turned around and
15 ran to the side and then he heard the shots. He is
16 turning around and running to the side, I would submit to
17 you, at 4:13:04:262. It's kind of weird, though. No one
18 else was reacting, and at 4:13 -- and, unfortunately,
19 those cameras just miss a chunk. At 4:13:04:887 -- and
20 this is the SLED video, pause it, use it -- this is the
21 same second that Lorenzo is turning away to run, you see
22 what I would argue to you, although you decide, an
23 individual in a fancy shirt and little white stuff on his
24 shoulder coming out of that door, outside.

25 At 4:13:05:199, so less than half a second

1 after that last one, you see the same three standing in
2 the foyer, but, more importantly, we're looking at him.
3 This is Lorenzo. This is Lorenzo. He told you what he
4 did. He told you what happened from the stand.

5 Here he is a second earlier, turning; people
6 standing, standing. He's not just turning, he's running
7 and ducking. I urge you to track, coming out the door,
8 who goes around here and who doesn't.

9 And at 4:13:12, which is six seconds --
10 4:13:12:048, six seconds after the one I just showed you,
11 there's no one running here anymore. People have gone
12 this way, and through testimony you heard the victim in
13 the white T-shirt, who ended up falling in the mulch, and
14 I would ask you to go back and pause it and look at it
15 and make a determination of what is that? What is that
16 light? What is this shirt? Where are these shorts? And
17 then you'll see Dontaye Reed fall to the ground.

18 You know, I told you this case is about the
19 defendant, it's about the choices the defendant made, his
20 actions. He decided to go to Frazier's. He decided to
21 go to Waffle House. He decided to bring that cup into
22 the Waffle House. He decided to start an argument, and
23 he decided to throw that cup to escalate it.

24 You know, he then ended up being kicked out.
25 It took some time, not as slow as fractions of seconds.

1 time, but it took a little time, but he was kicked out.
2 He was shoved out, getting out of that Waffle House. He
3 was out of the Waffle House, and then shots were fired.

4 Shots were fired, and then he ran, other
5 people ran, and then, I submit to you -- and the video is
6 the evidence and the video shows, I submit, that he
7 turned back around toward the Waffle House, toward all
8 the people, and fired again, firing outside of the Waffle
9 House in the beginning, hit Quentin Allen, firing back at
10 the Waffle House from the parking lot, struck and killed
11 Dontaye Reed.

12 I ask you to go back and review and look at
13 this. This case is a whodunit. The video shows. You
14 are the deciders of the facts. You are the ones who get
15 to decide what it shows. I would ask at the end that you
16 come back with three verdicts of guilty: For the murder
17 of Dontaye Reed, the attempted murder of Quentin Allen,
18 and I would ask for a guilty on possession of a weapon
19 during the commission of a violent crime.

20 Oh, I'm sorry. One more thing. I've had
21 this on me the whole time. It's a good thing it's not a
22 38 special.

23 THE COURT: Are you finished?

24 MS. LINDER: Yes, Judge.

25 THE COURT: Okay. All right.

1 Well, folks, you've heard now the arguments,
2 and so it is my duty to charge you on the law that
3 applies to the facts of this case.

4 I told you at the beginning of the trial,
5 you've got duties. I've got duties. Everybody in the
6 courtroom, basically, has a role here, and part of my job
7 as the trial judge is to preside over the trial of the
8 case, rule on things like procedure, admissibility of
9 evidence, things like that.

10 You're the judges of the facts. You consider
11 only the evidence before you that was presented in this
12 courtroom. Evidence is what people told you from the
13 witness stand, photographs, documents, physical items,
14 things like that.

15 My job also is to charge you on the law that
16 applies to the facts of this case. It's your duty under
17 the oath that you took at the beginning of the trial to
18 accept the law as I now charge it to you. If you think
19 you have some idea of what the law is or what it ought to
20 be and it does not agree with what I now charge you that
21 it is, you have to forget that idea because you are sworn
22 under your oath to accept the law as I now charge you.

23 As judges of the facts, you alone are the
24 judges of the facts. I have nothing to do with the facts
25 of this case. You, the jury, decide what facts to

1 believe. Believability, credibility, those are all
2 things within your purview. You decide how much weight
3 to give the testimony of a witness, how much credibility
4 to give the testimony of a witness. You decide whether
5 or not a witness has a prejudice, a bias, or an interest
6 in the outcome of the lawsuit.

7 You can judge things like appearance or
8 demeanor on the witness stand and the reasonableness of a
9 statement. You're not bound to decide this case based on
10 the number of witnesses that a side produces. You can
11 believe one witness over many or many over one. You can
12 accept all of a witness's statement or you can reject it
13 entirely.

14 You can accept part of a witness's statement
15 and reject part of it, and so if you reject part of it,
16 you can still accept the remainder of a witness's
17 testimony. I also talked to you during the trial about
18 expert witnesses, and those are people that -- I told you
19 we don't normally let people come in and give you their
20 opinion about evidence, but we make an exception for
21 expert witnesses, and those are people who, because of
22 their training and education and experience in the field,
23 rise to the level of expertise, and we allow them to come
24 in and give their opinion and state the reasons for their
25 opinion.

1 You can give an expert witness as much or as
2 little weight as you think it deserves. If you don't
3 think it's based on sufficient education or experience or
4 you conclude the expert's opinion is not sound or maybe
5 it's outweighed by other evidence in the case, you can
6 disregard it entirely.

7 You're not compelled to blindly accept an
8 expert's testimony. You have the right to consider that
9 testimony in light of all of the circumstances and all of
10 the other evidence that you heard in the trial and give
11 it such weight, if any, that you think it's entitled to.

12 Now, some of these things I have gone over
13 with you, but I want to go over with you one more time,
14 and I want to remind you, like I told you at the
15 beginning of the trial, the fact that the defendant got
16 arrested, charged, and indicted in this case is not
17 evidence in this case. It cannot be considered by you as
18 evidence of guilt. It doesn't create any presumption or
19 inference of guilt.

20 An indictment is simply a formal written
21 instrument that contains the charge against the defendant
22 and lets him know what he's charged with, and it gives
23 this Court jurisdiction to hear the trial. I also talked
24 to you at the beginning of the trial about whether or not
25 the defendant might testify, and I told you then that he

1 may or he may not, and in this case, he chose not to.

2 I instruct you now, and I emphasize, the fact
3 that the defendant did not testify is not a factor to be
4 considered by you in any way during your deliberations.

5 You must not consider it at all while you are considering
6 the question of guilt or innocence of the defendant. You
7 shouldn't consider it in any manner whatsoever in your
8 deliberations.

9 A defendant has a constitutional right to
10 remain silent, and the assertion of this right must not
11 be considered by you in any manner during your
12 deliberations. I repeat, under your oath that you took,
13 you are to draw no conclusion whatsoever from the fact
14 that the defendant did not testify in this case. The
15 fact that the defendant did not testify should not even
16 be discussed in the jury room.

17 The burden of proof, as I stated to you, is
18 on the State. The defendant is not required to prove
19 that he is innocent. The burden of proof remains on the
20 State to prove guilt beyond a reasonable doubt. The
21 defendant was indicted and he pled not guilty. That plea
22 of not guilty therefore cast the burden of proof upon the
23 State to prove the defendant is guilty beyond a
24 reasonable doubt.

25 As I told you, a person who's charged with a

1 crime in this case is never required to prove himself
2 innocent. This is an important rule of law in this
3 country. A defendant in a criminal trial is always
4 presumed to be innocent of the crime for which he is
5 indicted unless and until guilt has been proven by
6 evidence satisfying you of that guilt beyond a reasonable
7 doubt.

8 This presumption of innocence is not just a
9 mere legal theory. This isn't just one of those phrases
10 that we talk about in law school. This is a substantial
11 constitutional right to which every defendant is
12 entitled. This presumption of innocence accompanies the
13 defendant from the time he is charged, throughout the
14 trial, unless and until you reach a verdict based on
15 guilt satisfying you of that guilt beyond a reasonable
16 doubt.

17 So I've emphasized the State has the burden
18 of proving guilt beyond a reasonable doubt. As I told
19 you at the beginning of trial, some of you might have
20 served as a juror in a civil case where you were told it
21 was only necessary to prove that a fact is more likely
22 true than not true, such as greater weight of the
23 evidence, or preponderance of the evidence it's sometimes
24 called.

25 In criminal cases, however, the State's proof

1 must be more powerful than that. It must be beyond a
2 reasonable doubt. Proof beyond a reasonable doubt is
3 proof that leaves you firmly convinced of the defendant's
4 guilt. There are very few things in this world that we
5 know with absolute certainty, and in criminal cases, the
6 law does not require proof that overcomes every possible
7 doubt.

8 If, based on your consideration of the
9 evidence you are firmly convinced that the defendant is
10 guilty of the crime charged, then you must find the
11 defendant guilty. On the other hand, if you think there
12 is a real possibility that the defendant is not guilty,
13 then you must give the defendant the benefit of the doubt
14 and find him not guilty.

15 Now, there are two types of evidence that get
16 presented during a trial: There's direct evidence and
17 there's circumstantial evidence. Direct evidence is
18 evidence that directly proves the existence of a fact.
19 It does not require deduction. Circumstantial evidence
20 is proof of a chain of facts and circumstances that
21 indicate the existence of a fact.

22 Crimes can be proved by circumstantial
23 evidence, and the law makes no distinction between weight
24 or value to be given to either direct or circumstantial
25 evidence; however, to the extent the State relies on

1 circumstantial evidence, all of the circumstances must be
2 consistent with each other and, when taken together,
3 point conclusively to the guilt of the accused beyond a
4 reasonable doubt.

5 If these circumstances merely portray the
6 defendant's behavior as suspicious, then the proof has
7 failed. The State has the burden of proving the
8 defendant guilty beyond a reasonable doubt, and this
9 burden rests upon the State, regardless of whether the
10 State relies on direct evidence, circumstantial evidence,
11 or some combination of the two.

12 Now, I'm going to go over with you the
13 elements of the substantive charges that he is charged
14 with, and the first charge that I'm going to go over with
15 you is for murder.

16 He's charged with murder in violation of
17 Section 16-3-10 of the South Carolina Code of Laws. In
18 order to prove that a defendant is guilty of murder, the
19 State must prove beyond a reasonable doubt that the
20 defendant killed another person with malice aforethought.

21 Malice is hatred, ill will, or hostility
22 toward another person. It's an intentional doing of a
23 wrongful act without just cause or excuse and with an
24 intent to inflict an injury or under other circumstances
25 that the law will infer an evil intent.

1 Now, I see some of y'all are taking notes,
2 and that's fine if that is comfortable for you, but I'm
3 going to send a copy of these charges back with you so
4 you can just listen along if you want. All right?

5 Now, malice aforethought does not require
6 that malice exists for any particular time before the act
7 is committed. The malice must exist in the mind of the
8 defendant just before and at the time the act is
9 committed; therefore, there must be a combination of
10 previous evil intent and the act.

11 Malice aforethought may be express or
12 inferred. These terms, express and inferred, do not mean
13 different kinds of malice, but merely the manner in which
14 malice may be shown to exist; that is, either by direct
15 evidence or by inference from the facts and circumstances
16 which are proved.

17 Express malice is shown when a person speaks
18 words which express hatred or ill will toward another or
19 when the person prepared beforehand to do the act which
20 was later accomplished. For example, lying in wait for a
21 person or any other acts of preparation that show the
22 deed was in the defendant's mind would be expressed
23 malice. Malice may be inferred from conduct showing a
24 total disregard for human life.

25 If the defendant with malice aforethought

1 attempts to kill another person but by mistake injures or
2 kills a different person, the defendant still has the
3 intent to kill. The intent to kill is merely transferred
4 from the original person the defendant attempted to kill
5 to the actual person killed or injured.

6 Now, the section charge that the defendant is
7 facing is attempted murder, and that's in violation of
8 Section 16-3-29 of the South Carolina Code of Laws. In
9 order to prove attempted murder, the State must prove
10 that the defendant, with the intent to kill, attempted to
11 kill another person with malice aforethought, either
12 express or implied.

13 Again, malice is hatred, ill will, or
14 hostility towards another person. It's the intentional
15 doing of a wrongful act without just cause or excuse and
16 with an intent to inflict an injury or under the
17 circumstances that the law will infer evil intent. Also,
18 again, malice aforethought does not require malice exists
19 for any particular time before the act is committed, but
20 malice must exist in the mind of the defendant just
21 before and at the time the act is committed.

22 Therefore, there must be a combination of the
23 previous evil intent and the act. Again, just like with
24 murder, malice aforethought may be express or implied,
25 and these terms express or implied, again, do not mean

1 different types of malice, but merely the manner in which
2 malice may be shown to exist; that is, either by direct
3 evidence or inference from the facts and circumstances
4 which are proved.

5 Express malice is shown when the person
6 speaks words which express hatred or ill will for another
7 or when the person prepared beforehand to do the act
8 which was later accomplished. For example, lying in wait
9 for a person or any other acts of preparation going to
10 show the deed was within defendant's mind would be
11 express malice.

12 The facts are proved beyond a reasonable
13 doubt sufficient to raise an inference of malice to your
14 satisfaction. This inference would simply be an
15 evidentiary fact to be considered by you, the jury, along
16 with the other evidence in this, case and you may give it
17 the weight you decide it should receive.

18 An intent to kill is an element of attempted
19 murder. In the context of an attempted crime, specific
20 intent means the defendant intended to complete the acts
21 comprising the underlying offense. Intent does not mean
22 accidentally or involuntarily. Intent may be shown by
23 acts and conduct of the defendant and other circumstances
24 from which you may naturally and reasonably infer intent.

25 Evidence of the character of the act, the

1 character of the instrument used, the manner in which it
2 was used, the purpose to be accomplished, and the
3 resulting wounds or injuries must be considered in
4 determining the intent with which the act was committed.
5 Intent may also be inferred when it is demonstrates that
6 the defendant voluntarily and willfully commits an act,
7 the natural tendency of which is to destroy another's
8 life.

9 The third and final charge the defendant was
10 indicted for is possession of a firearm during the
11 commission of a violent crime, and this is in violation
12 of Section 16-23-480 of the South Carolina Code of Laws.
13 In order to prove that charge, the State must prove
14 beyond a reasonable doubt that the defendant was in
15 possession of a firearm or visibly displayed what
16 appeared to be a firearm during the commission of a
17 violent crime.

18 A firearm means any machine gun, automatic
19 rifle, revolver, pistol, or a weapon which is designed to
20 or may be readily converted to dispel a projectile. In
21 order to find the defendant guilty of possession of a
22 weapon during the commission of a violent crime, you must
23 first find the defendant guilty of either committing a
24 violent crime or attempting to commit a violent crime.

25 I charge you that murder and attempted murder

1 are both violent crimes under South Carolina law. The
2 State must prove beyond a reasonable doubt that the
3 weapon further advanced or helped in the commission of
4 the crime.

5 I charge you that in determining your verdict
6 of guilty or not guilty, you cannot consider any possible
7 penalty for any particular crime. Punishment for the
8 crime is a matter for me to determine and should never be
9 considered by you in any way whatsoever in arriving at a
10 verdict of guilty or not guilty. You cannot find a
11 defendant guilty based on suspicion, conjecture or
12 speculation, no matter how strong. A conviction can only
13 be based upon proof of guilt beyond a reasonable doubt.
14 If proof does not meet that standard, you must find the
15 defendant not guilty. Finally, your verdict must be
16 unanimous; that is, of course, all 12 jurors must agree
17 on what the verdict is.

18 Now, folks, I'm going to send you back to the
19 jury room. Don't begin your deliberations just yet,
20 because there's a couple of little formalities we have to
21 go through. First, I have to give the lawyers the
22 opportunity to say if I misspoke something, which has
23 happened on occasion, and I'll bring you back in, tell
24 you what I misspoke, and correct it.

25 Once I send the evidence back, along with the

1 indictments and the jury charges, I'll tell the bailiff
2 to tell you it's okay to begin your deliberations, but
3 don't begin your deliberations until the bailiff tells
4 you to.

5 Now, Mr. Foreman, you, of course, conduct the
6 deliberations, but the other thing that you do to earn
7 your pay as foreman of the jury is on the back of the
8 indictments you will see, right underneath where the red
9 stamp says true bill, there's a word that says verdict.
10 You can't see it from here, but, trust me, that's what it
11 says.

12 There's two possible verdicts on each of
13 these indictments: Guilty or not guilty. Whatever the
14 jury unanimously decides, you write that down, sign it,
15 date it. Once you have reached a unanimous verdict on
16 all three of these, then you let the bailiff know you've
17 reached a verdict.

18 Now, these videos, if you want to watch them,
19 you're welcome to watch them. We will have to bring the
20 laptop in and have the person instruct one of you on how
21 to do it, and I understand this is kind of special
22 software that they have, but the bottom line is, I can't
23 have anybody in that jury room while y'all are
24 deliberating or talking. So he or she will instruct you
25 on how to use it, do it, move to another one, but if you

1 run into a problem, just let us know. We'll bring the
2 technician back in, get it straight for you, but then he
3 or she will have to leave because nobody can be in there
4 while you're deliberating. Okay?

5 On the other hand, if you prefer, we can
6 bring y'all back in here and watch it, if you would
7 rather do it that way, but, obviously, you couldn't do
8 any -- you couldn't discuss anything while you're in our
9 presence, but you could be here as well. All right?

10 So go back. Don't begin deliberations.
11 Hopefully your lunches should be here, so, again, just
12 hang on a minute before you begin your deliberations and
13 I send the evidence back with you.

14 All right? Thank you. Actually, leave your
15 notebooks at this point.

16 (In open court, jury not present.)

17 THE COURT: Anything from the State?

18 MS. LINDER: Nothing from the State.

19 THE COURT: From the defense?

20 MR. SMILEY: Other than the previous noted
21 exception, no.

22 THE COURT: Okay. Is all the evidence ready?

23 MR. SMILEY: I want to double-check, but yes,
24 sir.

25 THE COURT: Okay.

1 MS. LINDER: And, Your Honor, I didn't
2 know --

3 THE COURT: How about that redacted --

4 MR. SMILEY: We switched it out, yes.

5 THE COURT: Okay. Good.

6 MS. LINDER: And, Judge, I didn't know if we
7 should -- all of the disks that we put on one, so
8 anything that was not admitted off it, if we can hold our
9 exhibits out, like the different videos, and then just
10 have the one trial disk just go back.

11 An example is the SLED disk has a bunch of
12 other things on it that were not admitted.

13 THE COURT: Okay.

14 MR. SMILEY: And so there is one disk.

15 THE COURT: There is one disk that has all of
16 these on it and nothing else?

17 MS. LINDER: Correct.

18 THE COURT: Good. That will be fine.

19 MS. LINDER: And we have instructions that
20 are halfway typed up, we just need to finish typing up,
21 so that Mike can help -- or whatever technician can help
22 as far as the player is concerned.

23 THE COURT: Okay. Go ahead and pull the two
24 alternates out.

25 I've discharged the two alternates.

1 (Whereupon, Court's Exhibit No. 4 was marked
2 for identification.)

3 (Whereupon, at 1:15 p.m., jury begins
4 deliberations.)

5 (Whereupon, at 4:40 p.m., judge receives a
6 note from the jury.)

7 (In open court, jury not present.)

8 THE COURT: Okay. The jury said they haven't
9 reached a verdict, but they would like to return
10 tomorrow. They're tired. They don't think they can
11 reach a verdict this afternoon.

12 Is that okay?

13 MS. LINDER: Yes, Judge.

14 MR. SMILEY: My preference is for them to
15 keep going, but if that's what the jury asked for, I
16 don't think I can tell them no. I prefer they just go
17 ahead and say not guilty and let's go home now.

18 THE COURT: Okay. Bring them in.

19 MR. SMILEY: The alternates being released, I
20 just don't want --

21 THE COURT: I'm going to tell them not to
22 call the alternates or not to talk to them.

23 MR. SMILEY: I understand, but just at this
24 late stage, if something happens, we won't have an
25 alternate left.

1 THE COURT: I understand that. You know, the
2 law says you have to discharge them once you submit it,
3 so not much I can do if somebody doesn't show up at this
4 point.

5 MR. SMILEY: I understand, but it worries me
6 when they leave and come back that somebody could be in a
7 car accident, somebody gets sick, we won't have an
8 alternate anymore.

9 THE COURT: We could always agree to go with
10 11. Bring them in. All right. We'll bring an alternate
11 in and tell them to start all over.

12 (Whereupon, Court's Exhibit No. 1 was marked
13 for identification.)

14 (In open court, jury present.)

15 THE COURT: All right. Mr. Foreman, I've got
16 your note. It says you all would like to continue your
17 deliberations in the morning. We have agreed that's
18 fine. What I would like to do is give y'all instructions
19 to cease your deliberations.

20 I know it's a different thing to say don't
21 think about the case anymore, but, really, you don't
22 deliberate anymore. You don't talk to each other
23 anymore. Don't call each other. Don't call the
24 alternates either. If you got a call from the
25 alternates, exchanged phone numbers, that sort of thing,

1 don't talk to the alternates, so just go home and relax
2 this evening. Don't talk to anybody about the case, of
3 course, including other members of the jury panel.

4 Don't put anything on social media or
5 anything about Twitter or any of those things that I've
6 been admonishing you about all week long.

7 If you would, report back tomorrow morning at
8 9:30. When you get to the jury room, don't start
9 deliberating until everybody is here or I send word with
10 the bailiff they'll tell me when everybody is here.
11 Okay?

12 Thank you so much for your hard work today,
13 and we will see you tomorrow morning at 9:30.

14 (Jury recessed.)

15 (September 19, 2014.)

16 THE COURT: Let the record reflect the
17 defendant is in the courtroom.

18 (In open court, jury present.)

19 THE COURT: All right. Well, welcome back,
20 folks. I just wanted to, for the record, put that
21 everybody is in attendance and that I'm instructing you
22 you can go back and resume your deliberations.

23 Now, take as much time as you want. We're
24 here all day, and after, say, an hour or so, around
25 11:00, if it looks like you're going to be here for a

1 while, just let us know, and we will provide you with
2 lunch. So take your time, and you can go back and resume
3 your deliberations now.

4 Thank you.

5 (Whereupon, the jury resumes deliberations.)

6 THE COURT: Okay. Don't wander off too far.

7 (Recess taken.)

8 THE COURT: Let the record reflect the
9 defendant is in the courtroom. Got a note from the jury
10 that says the jury would like for the court reporter to
11 read us the testimony of Quanesiha Catts and Officer
12 Kenneth Barfield.

13 So what I usually do is just have the court
14 reporter go down there, or just play it or read it,
15 depending on what they want. They just got their lunch.
16 I'll bring the foreman in, tell them that that's what
17 they'll do, unless they want to come back in here and do
18 it, and just send her down. I instruct her not to talk
19 to the jury and just play it.

20 MR. SMILEY: And they don't deliberate --

21 THE COURT: They are not to discuss it.

22 Okay? Bring the foreman down here.

23 (Whereupon, Court's Exhibit No. 2 was marked
24 for identification.)

25 Mr. Foreman, I got your message. What I

1 usually do is have the court reporter go down take her
2 equipment, and she can either read the it for you
3 verbatim, or she can play the transcript back, rather
4 than -- unless they want to come back here. Do you have
5 a preference?

6 THE FOREPERSON: They just want to hear the
7 testimony again, and whatever is more convenient for the
8 court reporter. I didn't know if she needed to read it
9 or whether or not she could play it.

10 THE COURT: I'll send her down once she gets
11 her stuff together, and she'll either play it or read it,
12 and you're in charge, so don't have any discussions while
13 she's in the room.

14 She'll play it back as many times as you want
15 and any sections and once she's done, then she'll leave,
16 and then can you resume your deliberations. Okay?

17 THE FOREPERSON: We'll be done with lunch in
18 about five to ten minutes.

19 THE COURT: Okay. Thank you so much.

20 (Recess taken.)

21 THE COURT: All right. I understand we have
22 a verdict, so let the record reflect the defendant is in
23 the courtroom. Bring the jury in.

24 (Whereupon, at 3:20 p.m., in open court, jury
25 present.)

1 THE COURT: All right. Mr. Foreman, I
2 understand the jury has reached a verdict?

3 THE FOREPERSON: Yes, Your Honor.

4 THE COURT: Is it unanimous as to all three?

5 THE FOREPERSON: It is, Your Honor.

6 THE COURT: All right. Will you hand it to
7 the bailiff, please.

8 All right. Defendant will rise. Indictment
9 2013-GS-10-100537, State versus Deonte Stephen Brown,
10 indictment for murder, the verdict of the jury is guilty;
11 on indictment 2013-GS-10-535, indictment for attempted
12 murder, the verdict of the jury is guilty; and indictment
13 2013-GS-10-535, indictment for possession of a firearm
14 during the commission of a violent crime, verdict is
15 guilty.

16 If, in fact, this is your verdict, would you
17 please indicate that by raising your right hand?

18 Let the record reflect all the jurors have
19 raised their right hands. Mr. Smiley, do you wish to
20 have the jury polled?

21 MR. SMILEY: I do, Your Honor.

22 THE COURT: Will you poll the jury.

23 THE CLERK: Yes, sir.

24 (Whereupon, the jury was polled and all
25 jurors indicated their agreement with the verdicts.)

1 Your Honor, the jury has been polled, and the
2 verdict stands.

3 THE COURT: All right. Well, folks, I want
4 to thank you for your jury service this week.

5 It's been an extraordinary week, very
6 difficult trial. You know, I run into people all the
7 time at grocery stores and out in the public sometimes
8 and they go, Hey, I was on your jury a couple years ago,
9 and I really enjoyed it. I learned a lot that week about
10 the way the system works, about the jury trials.

11 And most of them -- almost every one of them,
12 to me, have said, I enjoyed it. I learned a lot. And
13 then they usually ask, Did we do the right thing?

14 And, you know, my answer is, Of course you
15 did the right thing. You showed up and you did your
16 service.

17 And you folks took this very, very seriously.
18 This was a difficult case. There is -- you know, first
19 of all, sometimes -- you get these more doing civil
20 cases. You might get a little wreck case or you might
21 get some contract dispute case or something along those
22 lines. You know, there's no -- the stakes aren't as high
23 and they're not as interesting, but it's important for
24 those folks, nonetheless. It's their day in court. They
25 weren't able to resolve it.

1 But then you get into cases on the criminal
2 side where, you know, people have been accused of crimes,
3 and then the cases like where people have been accused of
4 the most serious crimes you can really be accused of, and
5 those are difficult cases. This was an extraordinarily
6 difficult case. You should be worn out just -- y'all
7 listened all week long.

8 The lawyers did a tremendous job presenting
9 this case. I really don't know personally what I would
10 have done, and that's not to say I agree or disagree. I
11 kind of have maybe a little bit more of sort of, an
12 academic approach to it because I have to do this every
13 week so it would just wear me out to get emotionally
14 invested in a case.

15 I look at it and go, You know, what? The
16 system worked. We had 12 people that came through,
17 picking 12 disinterested people. Part of my job is not
18 only presiding, like I told you, but I also kind of keep
19 an eye out for you folks to see if everybody is awake and
20 paying attention, and then, you know, I kind of get a gut
21 feel as to whether or not you're taking jury
22 deliberations seriously.

23 I've had cases where, you know, the trial
24 might last 45 minutes and the jury will be out three
25 hours and you're wondering, What are they possibly

1 talking about back there? We're not going to get them
2 lunch.

3 But then you get other cases where, you know,
4 you have a difficult case and they might be out an hour.
5 Well, the evidence, you know, is pretty clearcut on some
6 of those, but this was a difficult case. I don't blame
7 y'all for taking a long time, and, obviously, it's taken
8 its toll on you emotionally to arrive at a verdict, and
9 so you should be exhausted. It's been a long week, first
10 of all, and it's been a difficult case for you to decide,
11 and I just want you to know that.

12 I thank you for your service. The State of
13 South Carolina thanks you for your service. When you
14 look back on this over time, you know, you'll think about
15 this a lot, and you're free to talk to anybody about it
16 now. I've been telling you all week long you can't talk
17 to anybody. You can if you want to now, and sometimes,
18 in fact, you even hear from the lawyers that they like to
19 call up and talk to jurors afterwards to see -- you know,
20 it helps them do their next case, and that's fine to talk
21 to somebody now if you want to.

22 You don't have to if you don't want to, but
23 you can. And if you don't want to talk to them about it
24 and they bug you, you call me, and I'll make sure it
25 stops, but I've never had that problem with lawyers.

1 But, you know, you look back on service -- and I can't
2 remember if I said this or not, because I usually tell
3 people this when I qualify the jury, and I didn't qualify
4 the jury this week.

5 Most of the time when people get their jury
6 notice, their first reaction is, Oh, man, I would like to
7 be on a jury some day, but this just isn't a good time.

8 And then they get here, and then they find
9 out when they got on a jury and they really do get
10 invested in it, and they really want to do a good job.
11 You folks clearly worked at it and worked hard as jurors
12 this week, and it's hard to explain that to somebody, I
13 know, and the only people that can really identify with
14 it is people that have done it now, like you have.

15 But, you know, people look at that jury
16 notice and they go, I don't want to do that. Well, it's
17 a responsibility of citizenship, it's a duty of
18 citizenship, and that's why you probably show up, but,
19 you know, all over the world there are people that are
20 arrested for crimes or have disputes and they don't have
21 the right to a jury trial, and they wish they did.

22 There are very few countries in the world in
23 which somebody is accused by the government of committing
24 a crime and they have a right to pick 12 people off the
25 street and decide what the outcome of the case is.

1 That's a rare thing. We take it for granted because we
2 do it every week, week in, week out, and we'll do it
3 again next week and the week after that, so we take it
4 for granted. But it's very special, what y'all have done
5 this week, and I hope you will keep that in mind, and I
6 hope that you will also think of jury service in the
7 future not so much as a burden or responsibility, but it
8 was a privilege to serve on a jury. It really is a
9 privilege to serve on a jury, and I hope that you'll
10 think of it that way on, because you participated in your
11 government and your government worked because people like
12 you show up.

13 And, you know, we have those three branches of
14 government: Legislative, executive, judicial. Well,
15 this is the judicial branch, and you guys were a big part
16 of it. So you did your service, and we thank you for it.
17 Couldn't ask anything more out of 12 people, so I want to
18 thank you for your service.

19 It's been a long, hard week, and you're free
20 to go. If you remember from the qualification on Monday,
21 you are now disqualified for the rest of the year from
22 being on a jury, but you are also excused from further
23 service for three additional years. But, remember, you
24 can still do it, if you want, if you get called for a
25 jury, and I hope that you'll come away feeling better

1 about the system and so not only do we count on people to
2 show up, but we count on people to go back out and talk
3 to other people and say, You know, I served on a jury and
4 I'm glad I did.

5 And Mr. Patrick will probably tell you,
6 lawyers are dying to get on a jury. They're always
7 trying to figure out what y'all are trying to do back
8 there. He's had a rare opportunity because most lawyers
9 don't get to serve on a jury. He got a rare opportunity,
10 and I'm sure he'll be sharing that with his fellow
11 lawyers, and he's probably learned a lot too this week.

12 But you got to do something special, and I
13 appreciate your hard work, so y'all are free to go.
14 Thank you for your service.

15 (Jury dismissed.)

16 THE COURT: All right. Well, is there
17 anything further from -- Mr. Smiley, you might have some
18 motions that you want to make?

19 MR. SMILEY: Yes, sir, and I don't believe I
20 have anything to add except for my motions for a new
21 trial, Your Honor, would be based on the same arguments
22 that I made at the close of the State's evidence, at the
23 close of what I presented.

24 The only thing additional is I did make an
25 exception to the transferred intent when I didn't believe

1 it conformed to the evidence as it was submitted and that
2 it wasn't included in the indictment, and so,
3 procedurally, I know I'm required to renew my motions,
4 Your Honor, and I do that at this time.

5 THE COURT: I do believe you have covered
6 direct.

7 MR. SMILEY: Thank you.

8 THE COURT: And your motions are denied.

9 MR. SMILEY: Yes, sir.

10 THE COURT: All right.

11 Madame Solicitor, what would you like to say
12 before sentencing?

13 MS. LINDER: Your Honor, would like to say,
14 and then I have -- Quinton Allen's mother could not be
15 here. She has typed up a short paragraph about this that
16 I've given to the defense, and I would like to give it to
17 you and I would like to have the opportunity for some of
18 Dontaye Reed's family to speak to you.

19 As far as my words on it, Your Honor heard
20 the case. Deonte Brown's priors, as a juvenile, he had
21 disturbing schools, and possession of marijuana in 2009;
22 in 2012 he got an unlawful carrying of a pistol
23 conviction. It was less than three months after that gun
24 conviction, while on probation supervision, that this
25 happened.

1 Your Honor, this has been a tough week and a
2 long week; however, I think it's important to note that
3 this defendant started everything that night. It could
4 have stopped anywhere along the way, and it didn't. He
5 could have left. Anything else could have happened.

6 He fired multiple times at a group of people,
7 and we're, quite frankly, lucky that more people didn't
8 die. I think that this act that night and that morning
9 was unnecessary, and it was just senseless, and I would
10 ask that the sentence reflect that.

11 Your Honor, if I may pass up this -- this is
12 from Ms. Sylvia Shepherd, who is Quentin Allen's mother.
13 And after you read that, Your Honor, when you're done
14 with that, I have Dontaye Reed's aunt.

15 THE COURT: All right. I will have this made
16 part of the record.

17 (Whereupon, Court's Exhibit No. 3 was marked
18 for identification.)

19 MS. LINDER: And, Your Honor, before I
20 forget, these are the sentencing sheets.

21 Your Honor, Jocelyn Reed is the aunt of the
22 deceased, Dontaye Reed, in this case, and she would like
23 to address the Court on behalf of the family.

24 THE COURT: Yes, ma'am. What would you like
25 to tell me?

1 THE WITNESS: Good afternoon, Your Honor. We
2 are the Reed, Heyward, Johnson and Toomer family of the
3 late Dontaye Reed. He was gunned down by the suspect on
4 July 15th, 2012.

5 The family is asking for the maximum for
6 justice. Even though people will quote, you in the wrong
7 place at the wrong time, Dontaye was just where the Lord
8 wanted him to be. The suspect had in mind when he put
9 that weapon in his possession and was to hurt someone, it
10 just happened to be our son, grandson, nephew, uncle and
11 cousin.

12 Dontaye was the youngest son of his parents;
13 also, the youngest grandson, nephew, uncle of this
14 family. Our grandfather would always say, you do the
15 crime, you got to do the time, an eye for an eye. We got
16 death. They still got life. We have to visit the
17 graveyard where there is no life. They can visit
18 Mr. Brown at whatever facility you send him to serve his
19 time.

20 All the family have of Dontaye is his fond
21 memories, pictures, and that ruthless smile he always
22 wear when he's with the family, and that's from our
23 family.

24 THE COURT: Thank you.

25 THE WITNESS: You're welcome.

1 THE COURT: Anything further from the State?

2 MS. LINDER: Nothing further, Your Honor.

3 THE COURT: Mr. Smiley?

4 MR. SMILEY: Yes, sir, Your Honor, and I
5 apologize. His mother got upset and left.

6 THE COURT: It's understandable.

7 MR. SMILEY: I talked to her beforehand, and
8 I just don't think she could contain herself.

9 Your Honor, I do consider it a privilege that
10 I represented Deonte Brown. He is a very articulate,
11 well-spoken, and thoughtful young man. He's not dumb by
12 any means. He's not discourteous. He has handled
13 himself in my representation of him from the very
14 beginning with more class than I think sometimes that
15 even I could.

16 He has maintained his innocence from day one.
17 He respects the jury's verdict. He does not understand
18 it, but he respects it. He maintains he did not fire
19 that shot, any of those shots, that day. I told him I
20 would make sure that you understand that. That's his
21 position and has been throughout.

22 I would ask you, in light of the fact he had
23 only a misdemeanor conviction and record, the fact that
24 he is young, 21 years old at this point in time -- he's
25 been incarcerated since the date of arrest, July 16,

1 2012. His life is forever changed.

2 I respect what the Reed family said.

3 Mr. Brown has always felt badly that it happened that
4 night. He knows that the ball started rolling when he
5 showed his behind, and for that, he feels great
6 responsibility. He considered Dontaye Reed, Snoop, to be
7 his friend; has felt that way, still feels that way.

8 Your Honor, I'm going to ask you for a
9 30-year sentence. I know it's day for day. He and I in
10 preparing this case talked about what a 30-year sentence
11 really meant, and I told him that he wouldn't be out of
12 prison, if you would give him the minimum sentence, until
13 he's my age.

14 And I have done a lot of living between 21
15 and 51, and I could not imagine what it would be like to
16 be in prison for that long. I would hope you won't give
17 him a life without parole, because the events of that
18 night were senseless, no matter what. It is, I hope,
19 distinguishable in some ways that a malice of a wicked
20 hard takes on many forms, according to the jury, firing
21 that gun and not understanding the repercussions of
22 firing the gun versus the ill will and cold bloodedness
23 in tracking someone down and firing at them.

24 Your Honor, I know he wants to address you,
25 and he wants to -- I told him that he could say whatever

1 he would like as long as it's respectful, and he's always
2 been respectful, so I ask you to give him an opportunity
3 to address you, and I believe that's all I have at this
4 time.

5 THE COURT: Mr. Brown, would you like to say
6 anything?

7 MR. SMILEY: Stand up.

8 THE DEFENDANT: Your Honor, even though I
9 know they found me guilty, Mr. Reed was one of my best
10 friends, and sooner or later, the truth will come out.
11 Out of the dark comes in the light. I trust in the name
12 of God it will happen. Even though I got found guilty,
13 the truth will come out sooner or later.

14 THE COURT: All right.

15 When I first started this job, I talked to a
16 judge who had been around for a while and, I said, What's
17 the hardest part of this job?

18 Without hesitation, he said, Sentencing young
19 people to jail.

20 He was right. It still is the hardest part
21 of the job. People do things when they're young that
22 make no sense to anybody. I don't even think it makes
23 sense to young people at the time. It's just the vast
24 majority of us, when we do stupid things when we're
25 young, we don't get caught, and they don't rise to the

1 level of shooting somebody.

2 I don't know what was going through your
3 head. You were acting up, started this whole thing,
4 getting in the face of a guy, alcohol, youth,
5 testosterone, bad combination, but things start, and they
6 have consequences, and the jury found you guilty.

7 This was a very difficult case from an
8 evidentiary standpoint, but I do agree with the jury's
9 verdict on this. I don't have any doubt in my mind that
10 you were guilty of it. The question is, what's an
11 appropriate sentence for a 21-year-old, 18 years old at
12 the time, who committed this crime?

13 You have certainly forfeited the right to
14 walk the streets as a free person. I'm going to go short
15 on giving you a life without parole sentence. I'm going
16 to give you 50 years, though, on the murder charge, 30
17 years on the attempted murder, and 5 on the weapons
18 charge. They'll all run concurrent. You'll get credit
19 for the time served, so some day, maybe it will hit you
20 what you've done.

21 Good luck to you.

22 MR. SMILEY: Thank you, Your Honor.

23 - - -

24 (Whereupon, the proceedings were concluded.)

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