

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable Brian M. Gibbons, Circuit Court Judge

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Oct 14 2020

S.C. SUPREME COURT

GERALD BERNARD HALTIWANGER, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2020-000361

APPENDIX

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1 A No, this did not -- I mean this did not contribute to
2 his death. He would still be alive today in my opinion if
3 he hadn't been shot.

4 Q Were you able to determine a cause of death in this
5 case?

6 A Yes, I was.

7 Q And what was that?

8 A Mr. Moti died -- I put the cause of death as a gunshot
9 wound to the right back flank region. Basically he bled to
10 death. He bled to death. They couldn't stop the bleeding,
11 because the bullet went in, went to the liver, went to the
12 small bowel and then it -- it exited and it hit, you know,
13 hit vessels in the liver. The liver is a very large organ
14 and basically he bled to death. He basically bled to
15 death. There was no way -- giving him packed red blood
16 cells did not help; he could not stop the bleeding, because
17 the wound was so severe.

18 Q And it was the gunshot wound.

19 A It was the gunshot wound that killed him, no question
20 about it.

21 Q And are you able to determine distances of gunshot
22 wounds when you do an autopsy?

23 A I am.

24 Q And were you able to do that in this case?

25 A I did.

1 Q Can you explain for the jury how you're able to
2 determine the distance?

3 A Sure. All right, so basically what happens here is
4 when you have a gun and you fire a weapon, the projectile
5 comes out but also what comes out of that is, you know,
6 soot, gunpowder, so when you have, for instance, a contact
7 -- when a gun, say, is right up to your body, the bullet
8 will come out, but also that dark brown soot-like material
9 will also come out. If you see that on the skin, you have
10 a contact gunshot wound. Now, when a gun, for instance, is
11 say up to maybe 18 inches away from your body, you can --
12 also what comes out is unburned gunpowder. Unburned
13 gunpowder comes out of the muzzle of the weapon, and that
14 is very course. It's almost like sand. So if that hits
15 your skin, that can cause a -- what they have as an
16 abrasion on your skin, a little scratch. Now, if you live
17 that heals, but sometimes if you die -- if you die, those
18 things are there at autopsy, so then I can say the gun was
19 an intermediate range away. If I don't see any of that on
20 a wound, again, greater than 18 inches, I call that a
21 distant range gunshot wound. So in this case I didn't see
22 any of that on his skin, and it appeared to be a distant
23 range gunshot wound to him.

24 Q And that's when it's greater than 18 inches away?

25 A Yes.

DR. BRADLEY MARCUS - CROSS BY MR. SAWYER

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1 Q And that was to the back?

2 A That was to the back, yes.

3 Q Can you determine -- and you're saying it's at least
4 18 inches away. Can you determine how far away it could
5 possibly be?

6 A No, not -- no, no, I can't. It's impossible.

7 Q And are you, in fact, the Chief Medical Examiner for
8 Richland County?

9 A Yes, I'm the Chief Medical Examiner at Richland
10 County.

11 MS. WALKER - Thank you, sir. I don't have any
12 more questions.

13 THE COURT - Cross examination.

14 MR. SAWYER - Thank you, Your Honor. May it
15 please the Court.

16 CROSS EXAMINATION

17 BY MR. SAWYER -

18 Q Dr. Marcus, when was it that you actually performed
19 this autopsy again? What was the date and time?

20 A August 27th, 2012, 8:30 a.m.

21 Q From your understanding that's approximately 24 hours
22 after the gunshot wound happened?

23 A I guess so. It says August 26th, 2012 he was
24 pronounced dead, but that -- that -- for some reason that
25 doesn't sound right. I -- generally I would do the autopsy

1 the next morning. Let me see what the report here says.
2 August 26. That actually might be a typographical error
3 there. Date of death -- that -- I'm not sure. Might want
4 to check that, because generally I wouldn't let a homicide
5 wait 24 hours. I'm going to be honest with you. I
6 wouldn't let the autopsy wait. I would probably do that
7 next day, so I have to -- I'd have to double-check the
8 date. That could be a typographical error. I'm not
9 totally sure, sir. All right.

10 Q Okay. But if he had not made it to the hospital til
11 that evening, the early morning hours, that will still be
12 within that 24 hour window of yours?

13 A Yes. Yes, generally -- yes, generally, it would've
14 been, but I -- I -- I'm willing to bet -- yes, actually it
15 is a typographical error here in the report, because on my
16 diagram, on my sticker here I have 8/26, so I apologize to
17 the Court regarding that. That is a typographical error
18 here. That is -- that should be August 26, because here on
19 my sticker that I made during the autopsy, I have the date
20 as the 26th.

21 Q Okay, so you actually performed it on August 26th at
22 8:30.

23 A Yes, at 8:30 a.m. That -- that is an error on my
24 part. I apologize.

1 Q Okay. All right, now I want to talk just a little bit
2 more about the gunshot wound and -- I don't know this from
3 a hole in the wall, so you've got to help me out here a
4 little bit. You talked about this abrasion. Can you kind
5 of describe it a little bit for me?

6 A Sure. I can -- if you don't mind, I can draw it.

7 Q Go for it.

8 A Can I step down?

9 MR. SAWYER - Your Honor, can he step down?

10 THE COURT - Yes.

11 A All right, so -- all right, so let's say that's what a
12 -- that's what a hole looks like in the body. All right?
13 Because the skin, you know, it's -- it's movable, when the
14 bullet goes, think of the skin moving in also, and what you
15 can get is a little bit of an abrasion around the gunshot
16 wound there, you get a little bit of abrasion right in
17 there. So basically -- it takes away some of the
18 superficial skin you have with the little subcutaneous
19 tissue underneath there, and that to me, when you have
20 that, you can have a -- that to me shows that it's an
21 entrance gunshot wound.

22 Q Is that a hundred percent all the time accurate?

23 A With me it is, yes.

24 Q Okay. With other pathologist maybe not ---

1 A It might be -- it might be -- might not be. It
2 depends on -- this is the way I was trained, so this is the
3 way I did it and basically on everything, you know, -- this
4 is the way -- this is the way I do it. It was very
5 circumferential, so that means that bullet was spinning
6 just like this perfectly when it struck the body.

7 Q Okay. Now, when you -- when you did this basically
8 the next morning, you didn't have any additional
9 information other than he was brought into the ER for a
10 gunshot wound. Is that correct?

11 A I had a -- I had the coroner's report. There was a --
12 you know, a -- maybe one or two, maybe three paragraph
13 summary of what -- what had happened there, yes.

14 Q Okay. And -- but that summary -- and I think I've
15 read through the report before -- essentially said that he
16 was shot from a distance of a car is basically the
17 information you were working off?

18 A Yes, sir.

19 Q Do you know -- do you have your report in front of
20 you?

21 A I've got my autopsy report, yes, sir.

22 Q Can you see in there if you received any other
23 information about the situation, anything like that?

24 A I -- I keep a very limited case summary on my report,
25 and then I -- I have a paragraph here that says for further

1 information please refer to the coroner's report, because I
2 try and keep it as simple as I can when I do my autopsy
3 report, because this really is describing the cause of
4 death. The coroner's report does the actual investigation
5 and the scene and then there's other reports from the
6 police and so forth that come out.

7 Q Okay. So you didn't know he was wearing that vest at
8 the time you did your autopsy, did you?

9 A No, I didn't know. I -- they might've told me, but I
10 can't recall. I don't know.

11 Q And that vest, would that have -- holes at all? (sic)

12 A Not from what I can tell. It looks like it went
13 through some thin nylon in my opinion. So in my opinion
14 probably not.

15 Q Okay. I mean that couldn't have caused any sort of
16 difference in the abrasions from one side or the other?

17 A In my opinion, no, because the abrasions -- they could
18 look a little different, but in my opinion, this is the way
19 the gunshot wound based on the way the wound track went
20 through the body and so forth.

21 Q Okay. Let's talk about aggressive resuscitation.
22 What is that exactly?

23 A Okay, so aggressive resuscitation means that basically
24 they -- they'll put as many IVS in as possible, because,
25 you know, in this case he had lost a lot of blood, so they

1 put a tube down, they're getting him to breathe, they're
2 giving lots of fluids, including fluids, they're giving
3 packed red blood cells to get -- to get his blood pressure
4 up and to maintain it and then the surgeon went in to go in
5 and try and stop the bleeding, because you have to -- it's
6 not going to help putting all these fluids in if you can't
7 stop the bleeding, because the fluid's just going to pour
8 right out again, so that's what -- and then they're just
9 aggressively resuscitating him, and they brought him to
10 surgery. That to my opinion is aggressive resuscitation.
11 If they hadn't brought him to surgery, they would've just
12 worked him in the ER, but in this case he had to try and
13 stop the bleeding.

14 Q Okay. Now, again, with aggressive resuscitation, when
15 he's in the ambulance, are they trying to do anything to
16 pack the wounds, stop the bleeding, anything like that?

17 A I'm going to guess they are. I've never ridden in an
18 ambulance, so I'm -- I'm guessing they're the ones that put
19 the tube in him to keep him breathing and so forth like
20 that. I don't know if they hang fluids -- they probably
21 will in the -- in the vehicle. They probably will hang
22 fluids and so forth and get things going, but they don't
23 have blood there, because they haven't done a cross-match
24 yet to see what blood is compatible, so I don't think they

1 gave him blood there. I have the records that shows that
2 they got blood from Richland Hospital.

3 Q Okay. Again, once they get to the ER, would they try
4 to again pack the wounds and keep the wounds -- keep them
5 from bleeding out?

6 A Yes.

7 Q And that would be both of these gunshot wounds they'd
8 be packing, they'd be ---

9 A That would be my understanding of it, yes, both of
10 them. But sometimes it might not -- that might not bleed
11 there. You know, might just bleed -- or in this case he --
12 the blood was in his abdominal peritoneal cavity which is
13 all around here and that can hold a lot of fluids, so
14 whether he was bleeding or not -- he might not have been
15 bleeding a lot, because the blood had somewhere to go here.
16 It's got cavity to fill. You understand? So he might not
17 have been bleeding a lot at all from right there, but he
18 was bleeding internally.

19 Q If I were to show you a shirt and say there was a
20 bunch of blood on the back of that, I mean that -- that
21 would be -- think he'd be bleeding out of one of the
22 wounds. Right?

23 A Yes, probably. You know, if he's laying on his back,
24 the blood is there, it's going to fall by gravity maybe out
25 of wound.

1 Q Okay. And again the -- your diagram there it shows
2 that the incision, the middle, that's where they actually -
3 - the surgeon went in to try to ---

4 A Yes.

5 Q --- do some sort of extraneous measures to try to keep
6 him alive.

7 A Yes, that's where Dr. Reeves went him, opened up his
8 entire abdomen and was starting to go in there and try and
9 find the bleeding and try and stop it and then he -- he
10 couldn't stop the bleeding, and they just closed the wound
11 to make everything neat.

12 Q Okay. And not to be crass I guess, but when they're
13 going in, they don't really care about neatness at that
14 point. They're just trying to get him open as quickly as
15 possible to try to help him as quickly ---

16 A Yes, that's correct. Sometimes they cut right through
17 the gunshot wound. Sometimes they do that. In this case
18 they didn't.

19 Q Okay. But that gunshot wound was almost directly
20 adjacent to where the cutting of him open was?

21 A That's correct.

22 Q Could that have affected on what you're calling the
23 exit wound, any sort of abrasion, stippling, anything like
24 that?

1 A It could've yes. It certainly could've but again you
2 take that into context of the whole autopsy.

3 Q Okay. If -- now, again, you're not gaining any
4 additional information until you make your findings.
5 Right?

6 A Yes.

7 Q Do you ever go back, listen to any police reports,
8 look at any other information that might help you to maybe
9 change your mind at all?

10 A Yes, if need be. You know, if need be, I would go
11 back, but in this case I was pretty sure this is what --
12 this is the way it happened.

13 Q Okay. If I were to tell you one of the police talked
14 to an eyewitness and the gentleman reported being shot in
15 the stomach, would that change your opinion at all?

16 A That could.

17 Q That could?

18 A That could.

19 Q Okay.

20 MR. SAWYER - Beg the Court's indulgence, briefly.

21 THE COURT - Okay.

22 Q And I'd ask again, if you were told that upon being
23 shot a gentleman fell backwards, would that change your
24 opinion as to what direction the bullet was coming from?

1 A It might not, no, because, you know, you could fall
2 backwards or forward.

3 Q Okay. But I mean just again, making it clear, there's
4 a possibility that that wound could've been the entrance
5 though in the front again maybe changed by surgeons just
6 excessive measures, or again if you were told that someone
7 said he said he was shot in the stomach, that could change
8 your opinion too?

9 A It could. It could.

10 MR. SAWYER - Okay. Thank you. Nothing further.

11 THE COURT - Re-direct?

12 MS. WALKER - Yes, Your Honor. Thank you.

13 THE COURT - (Indicating yes)

14 RE-DIRECT EXAMINATION

15 BY MS. WALKER -

16 Q Dr. Marcus, could he -- could Mr. Moti have survived
17 this gunshot wound?

18 A Unless you got kind of a shot like in the ER with a
19 surgeon standing by, in my opinion, no. My opinion is no.

20 Q And I want to show you what's been marked as State's
21 Exhibits 82 and 83.

22 MR. SAWYER - Your Honor, may we approach?

23 THE COURT - Okay.

1 (WHEREUPON, BENCH CONFERENCE WAS HELD IN THE
2 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
3 WHICH WAS NOT REPORTED.)

4 THE COURT - Ladies and gentlemen, there's a
5 matter that I must take up outside your presence,
6 therefore, I'm going to ask you to please step to your jury
7 room. Do not discuss this matter or allow anyone to
8 discuss it with you, and we'll be with you shortly.

9 (Jury exits the courtroom)

10 THE COURT - All right, let me ask this question
11 with regard to Dr. Marcus. Do you want him to step out
12 while we argue this particular motion?

13 MR. SAWYER - I guess -- I mean I think -- I guess
14 out of an abundance of caution we might as well, just in
15 case anything he heard may change ---

16 THE COURT - I understand. Dr. Marcus, I'm going
17 to ask you just to step outside. Don't go far though, and,
18 of course, do not discuss your testimony.

19 DR. MARCUS - I'm going to leave my papers here.

20 THE COURT - You're so kind. Thank you so much.
21 And we're not going to be long. We'll be very short.

22 (WHEREUPON, DR. MARCUS EXITS THE COURTROOM)

23 THE COURT - Yes, sir?

24 MR. SAWYER - Thank you, Your Honor. Of course,
25 my objection is just always whenever the State tries to

1 introduce any autopsy pictures, I think they're
2 prejudicial. I think by and large they're intended to
3 raise the passions of the jury, and I think they've got
4 clearly a competent coroner up there that I think that they
5 can get out whatever they need to just through his
6 testimony. He's already been pretty clear about what his
7 opinions are. I can't imagine he'd say anything different
8 than what he's already said and testified to when he sees
9 those pictures, and I don't see any purpose the pictures
10 serve other than to again with any autopsy pictures ---

11 THE COURT - All right. First of all, we need to
12 mark those two photos for identification purposes if they
13 haven't already been marked.

14 MS. WALKER - They are State's 82 and 83, Your
15 Honor.

16 THE COURT - Okay, they're at this point for
17 identification.

18 MS. WALKER - Yes, Your Honor.

19 THE COURT - All right, now, I want you to explain
20 to me why you believe now those photographs are needed.

21 MS. WALKER - Yes, Your Honor. I didn't go into
22 photographs on direct examination. We just talked about
23 those wounds.

24 THE COURT - Yes.

1 MS. WALKER - On cross examination, he was crossed
2 relatively intensively about whether or not the surgery
3 could've made the wounds appear different than they were,
4 whether the incision could've made the wounds appear
5 different than they were, whether -- if -- if his other
6 information he had could make him change his mind about
7 where -- or if the victim was shot in front or the back,
8 and he was trying to explain because of the way the wounds
9 appear to him, he could determine taking all of that into
10 consideration if it's an entry wound or exit wound, and I
11 think, Your Honor, the pictures will aid the jury in
12 understanding where he's coming from, so he's -- where --
13 how he gets that expert opinion so that he's not just kind
14 of making this stuff up. He says that the two are visually
15 different and the pictures illustrate that, Your Honor, and
16 I -- but for the cross examination about, could this change
17 your mind, could this have in any way distorted what the --
18 what the wounds look like if you had this -- you know, that
19 whole litany of questions that he went through, I don't
20 think that they would be relevant, but now that he did open
21 that door, Your Honor, I think that the pictures are
22 relevant in aiding the jury to understand the doctor's
23 opinion.

24 MR. SAWYER - And Your Honor I'd just ask what --
25 what can he say that'd be any different with those pictures

1 than without. They would just have -- to be able to show
2 what his examples are. He's been, you know, clearly very
3 competent at, you know, the area that he's testifying. I
4 just -- again, I can't see ---

5 THE COURT - I don't know. I might hear that
6 though before the jury does. What I may do is just hear
7 that testimony, because the door very well may have been
8 opened, so I ---

9 MS. WALKER - Do you want us to proffer the
10 testimony?

11 THE COURT - I do. Let's bring him in.

12 MS. WALKER - Can I go get him, Your Honor.

13 THE COURT - You may.

14 (WHEREUPON, DR. MARCUS ENTERS THE COURTROOM)

15 THE COURT - Dr. Marcus, they're going to ask you
16 some questions because I have to make a determination, so -
17 - Yes, ma'am?

18 MS. WALKER - Thank you, Your Honor.

19 PROFFERED EXAMINATION

20 BY MS. WALKER -

21 Q Dr. Marcus, you were asked a lot of questions on cross
22 examination about surgery changing what the entrance and
23 exit wounds looked like.

24 A Yes.

25 Q Do you remember?

1 A Yes, I recall.

2 Q And whether or not the suture that was used could
3 change what the entrance and exit wounds looked like?

4 A Yes.

5 Q Can I show you State's Exhibits 82 and 83?

6 A Yes.

7 Q Do you remember stating that the wounds are visually
8 different?

9 A Yes.

10 Q Do you recognize these pictures?

11 A Yes.

12 Q And would these pictures aid you in explaining the
13 visual difference to the jury?

14 A Yes. Yes, absolutely. They -- yes, these ---

15 Q And what is the visual difference, Dr. Marcus?

16 A Okay, so that you can look at this wound here -- okay
17 ---

18 THE COURT - And it is ---

19 A This is the entrance wound that I called -- it's very
20 ---

21 MS. WALKER - It's State's Exhibit 82.

22 THE COURT - Thank you.

23 A This wound is extremely circumferential, like very
24 round, and it's got a really nice abrasion next to it, very

1 nice abrasion. That to me looks like a textbook picture of
2 an entrance wound, textbook.

3 Q And State's Exhibit 83?

4 A Okay, this one here -- this one -- this wound has got
5 sort of a almost like a triangle to it, a triangle
6 appearance to it. And then part of the wound here got a
7 little of a -- little bit of an abrasion on there, but this
8 to me -- this to me from this wound here looks like the
9 bullet could've been tumbling out and, you know, or kind of
10 wobbling ever so little bit and -- and -- because that
11 looks like an exit wound to me.

12 Q And the suture that is here on State's Exhibit 83,
13 does that in any way affect your opinion about the entrance
14 or exit?

15 A No, no, because they look -- this -- again this --
16 this is the key wound here, this one right here. That to
17 me looks like an entrance wound.

18 Q And will this help you explain this to the jury?

19 A Yes, I have no problem doing that.

20 THE COURT - Cross examination?

21 MR. SAWYER - Your Honor, I just -- I think that
22 that's what'd he'd be offering, obviously no need for me to
23 cross examine him.

24 THE COURT - Okay. Now, does there exist a black
25 and white photograph of the photo showing the suture?

1 MS. WALKER - No, Your Honor. We have the color
2 photo and if I -- if Your Honor wants, I can show you the
3 picture that we decided not to show because they are
4 graphic, we chose on State's Exhibits 82 and 83 the ones
5 that don't have a lot of blood and guts and gore for that
6 reason, Your Honor.

7 THE COURT - I understand. All right, I think the
8 door has been opened. I think that the photographs will
9 assist; I think they're admissible, note the defense's
10 exception for the record, but I think that on re-direct
11 they are admissible. Let me just observe that with regards
12 the photograph which is Exhibit 80 the entrance wounds ---

13 MS. WALKER - It's Exhibit 82, Your Honor.

14 THE COURT - -- 82, although it is a photograph
15 that was taken commensurate with the autopsy, it is -- it
16 shows the entrance wound; it does not -- it's -- it does
17 not show an incision. It shows very little blood, and even
18 though it is -- it is a color photograph, it is -- it's a
19 photograph that I do not -- I would specifically find is
20 it's non-inflammatory. It is not inflammatory. It is as
21 conservative, if you will, an autopsy photograph as I have
22 ever seen. With regards to Exhibit ---

23 MS. WALKER - 83.

24 THE COURT - --- 83 ---

1 MS. WALKER - Would you like me to hand them up to
2 you, Your Honor?

3 THE COURT - No.

4 MS. WALKER - Okay.

5 THE COURT - Likewise, it -- while it does show an
6 incision, it is a closed incision and it does show a wound,
7 but again, there is very little blood that is shown. It is
8 very conservative with regards to an autopsy photograph and
9 it just -- it shows the wound; it does not show facial
10 features; it does not show any other part of the body other
11 than the specific -- it obviously was taken to show the
12 wound, which Dr. Marcus has testified is the exit wound.
13 There is the incision that is closed, and it also is
14 conservative an autopsy photograph as I have seen. While
15 it is obviously a preference that autopsy photo not be
16 shown if they're not necessary, these are very
17 conservative. The issue has become an issue and I have
18 heard Dr. Marcus's explanation about why these photographs
19 would be of assistance and would be exemplary to the jury
20 and must not call (sic) noting the exception of the defense
21 they took. Okay.

22 MS. WALKER - Thank you, Your Honor.

23 MR. SAWYER - Your Honor, could I just ask then on
24 on re-cross if I can -- I mean that we have testimony, we
25 have evidence that he said he was shot in the stomach, if I

1 can asked him point blank the victim said he was shot in
2 the stomach and see what his response to that is.

3 MS. WALKER - Well, I guess if we could talk about
4 what testimony that was.

5 MR. SAWYER - It was during Lamar Ray's statement
6 when we were cross-examining him, they asked him at one
7 point -- had the statement up there; he said I don't
8 remember saying that or him saying anything when I was
9 crossing him, he said I asked him where he was hit, and he
10 said in the stomach. It was in Lamar Ray's statement when
11 I was cross-examining him last night. He said I don't
12 remember hearing anything from Jimmy ---.

13 THE COURT - I don't remember hearing what?

14 MR. SAWYER - Anything from Jimmy.

15 MS. WALKER - I'm not sure that's the correct
16 characterization of the testimony, Your Honor. My
17 recollection from that was that the witness, you know, says
18 I didn't -- didn't see where he was shot. I don't know I
19 guess where that's coming from.

20 MR. SAWYER - It's from his written statement.

21 MS. WALKER - Well, I'm talking about his
22 testimony.

23 MR. SAWYER - I had asked him this specific point,
24 when he was being impeached, he said I don't remember
25 saying that -- saying that.

1 (Brief pause)

2 MR. SAWYER - Your Honor, I'd just add that I
3 think that I'd be able to elicit that as a statement anyway
4 under 804(D)(2) statement under the belief of impending
5 death when Mr. Moti said it and believed he was dying. I
6 think that that makes the availability of Mr. Moti -- cross
7 examiner have him here -- obviously whenever someone dies
8 we don't have him to be able to testify.

9 THE COURT - Well, let me tell you where I am with
10 it. That gentleman has -- that gentleman has already
11 testified where the state -- where he -- the statement of
12 the decedent is contained within the statement of a
13 witness. And this -- let me just tell you where I am.
14 There are evidentiary means for that statement to be in
15 evidence. That statement at this moment is not in
16 evidence. If that statement was in evidence, you
17 absolutely could ask this doctor that information. Now,
18 it's just not where we are from an evidentiary standpoint
19 at this moment. Now, having said that, you have options --
20 -

21 MR. SAWYER - Yes, Your Honor.

22 THE COURT - --- and so we are where we are, if
23 that makes sense.

24 MR. SAWYER - Absolutely.

1 THE COURT - And it may mean that you have to
2 recall witnesses.

3 MR. SAWYER - I'll be more than happy to do that.

4 THE COURT - And I don't mind telling you in
5 advance I'm going to let you do it. Okay? You understand
6 that? So come help.

7 (WHEREUPON, BENCH CONFERENCE WAS HELD WHICH WAS
8 NOT REPORTED.)

9 THE COURT - Dr. Marcus, I know we're keeping you
10 from many things you need to do, but we're going to take a
11 five minute break. It's known in Beaufort County as a
12 comfort break and if you would -- please don't. Are you
13 bringing me a note from the jury?

14 BAILIFF - No, ma'am.

15 THE COURT - Oh, I'm so excited. Would you tell
16 the jury that we're going to be about five minutes, that
17 we're just taking a comfort break and then we'll bring them
18 back out.

19 BAILIFF - Yes, ma'am.

20 THE COURT - We're going to take about five -- if
21 you need to take a comfort break, enjoy. Don't discuss
22 your testimony with anyone, but I think we know where we
23 are, and we're just going to take a very short comfort
24 break and that's all.

25 (Recess taken)

1 THE COURT - Okay. You're standing. That means
2 something.

3 MS. CAMPBELL - Over the break we've -- in the
4 recall versus (sic) the Ray is what we said, we have no
5 problem with him talk about it. We just needed a second
6 to confer. At the scene the victim was asked by Mr. Ray
7 where he was shot and he indicated that he was shot in the
8 stomach. Or where -- where was -- let me get the exact
9 language.

10 THE COURT - And then whatever was in the
11 statement is what would be asked?

12 MS. CAMPBELL - Yes.

13 THE COURT - Okay.

14 MS. CAMPBELL - And there's no question that the
15 victim was bleeding from the stomach; it said in the
16 stomach at that point when asked. So we have no problem
17 with that cross examination questioning. That would
18 eliminate a lot of other issues.

19 THE COURT - I understand.

20 MS. CAMPBELL - If that suits the Court.

21 THE COURT - Absolutely.

22 MS. CAMPBELL - Just to make things expeditious.
23 In addition to that, Your Honor, however, over the break
24 our victim witness person did approach us. The family here
25 of the victim is here. Apparently, yesterday they are

1 perceiving that they are being -- are being followed by
2 members of the defendant's family, specifically I believe
3 the man on the third row in the kind of grayish blue shirt
4 and are feeling somewhat intimidated. Last night they even
5 went so far we got deputies to escort our families to their
6 car because they didn't feel safe. I don't know what would
7 be appropriate by the Court, just to admonish people that
8 these are very heated, of course, highly charged -- this is
9 a highly charged case and I understand that, but that
10 anything that could be perceived incorrectly or any type of
11 perhaps trying to intimidate our family because there have
12 been requests for plea negotiations and such in this case,
13 we would just request that maybe everybody, both sides, be
14 admonished to just ---

15 THE COURT - Absolutely. It gets so -- you know
16 what, I would presume that you were telling me that that
17 hasn't occurred, and let me say this, let me just say this.
18 Having done this for 15 years, their emotions, I cannot
19 tell you how raw they are, both sides, both sides. There
20 are loved ones on both sides, and so some of the
21 responsibility for this concerns -- I got to tell you lie
22 with me, because normally what I do and I have not done and
23 so -- and it very well may be because when I addressed the
24 issues involving family, it was before family was here on
25 this side, and so some of this responsibility is with me.

1 What I would do is I'm just going to ask my bailiffs and my
2 security folks to just assist me that when we take our
3 breaks if -- and alternate families. Let one family leave,
4 and let the other family leave, and everybody just know
5 that the emotions are so amazingly raw and the most
6 innocent of conduct can be considered to be something that
7 is absolutely unintended. It happens. It happens. People
8 are -- we're human beings. Our emotions are raw. It's
9 heart-breaking for both sides and I know that. So what I'm
10 going to do is I'm going to ask for security folks to just
11 assist me. I normally do that. It is normally a practice
12 that I do, is that when there are breaks, if one family
13 would just wait and let the other family have the chance to
14 leave and then the next time, do it the other way. That
15 seems to work pretty well, and I just ask security and our
16 bailiffs to help in that regard and I will appreciate that
17 so very, very much. And again, some of that responsibility
18 truly does lye with me because normally I would do that as
19 a matter of course and I did not. I talked before we began
20 the trial about the fact that it is so raw and so
21 difficult, these particular cases on families and how we
22 would handle that, but I did not address that, so guys,
23 ladies, if y'all will help me, I would appreciate that so
24 very, very much. Okay. Wonderful. And I think then what
25 we will do, on our lunch break I would just ask that the

1 alleged victim's family leave first and these folks remain,
2 and then on afternoon break, we'll just flip it. Great.
3 Okay?

4 MS. WALKER - Thank you.

5 THE COURT - Thank you.

6 MR. SAWYER - I just want to be clear about what
7 exactly I'm saying to Dr. Bradley (sic) that your order for
8 me basically saying as a declarative statement the victim -
9 --

10 MS. CAMPBELL - He said the victim was asked where
11 he was hit and he said in his stomach.

12 MR. SAWYER - And that would -- you're fine with
13 me essentially leading him and making that as a declarative
14 statement to the ---

15 MS. CAMPBELL - You want -- I assuming you'll say,
16 are you aware that the victim was asked where he was hit
17 and he said in his stomach at the scene.

18 MR. SAWYER - That's ---

19 MS. CAMPBELL - It's the language that's in the
20 statement.

21 MR. SAWYER - Well, I understand it's the language
22 that's in the statement, but I already asked him that and
23 he said maybe. That's different than ---

24 THE COURT - No, he said possibly ---

25 MR. SAWYER - Yes, it's different than ---

1 THE COURT - --- was the term that he used. And
2 then you can -- then I would think you would ask him a
3 follow-up question. Right?

4 MR. SAWYER - Well, -- I mean I guess my
5 difference is that I'm saying -- I already asked him, would
6 it change your opinion if he said he was shot in the
7 stomach. Okay? And he already said yes it would. That's
8 different ---

9 THE COURT - It's possible.

10 MR. SAWYER - Yes. He said it could possibly
11 change my opinion. That's different than him having
12 affirmative evidence that told someone he was shot in the
13 stomach.

14 THE COURT - Okay.

15 MR. SAWYER - And I know that sounds semantics. I
16 can understand that, but I just want to make sure that I'm
17 divvying out the right words otherwise ---

18 THE COURT - All right, so what you want to be
19 able to say is something along the lines of the purposes of
20 my question I want you to assume that this statement was
21 made, and then he'll answer the question.

22 MS. CAMPBELL - I mean it's somewhat semantics.

23 THE COURT - It is semantics. In other words, you
24 want to depict the statement as not one that you're making
25 up but one that was, in fact, made.

1 MR. SAWYER - Correct.

2 THE COURT - And I think that Ms. Campbell is
3 saying ---

4 MS. CAMPBELL - We'll be glad to go through that -
5 ---

6 THE COURT - Do that.

7 MS. CAMPBELL - --- statement and bringing that
8 the victim when asked -- said he was shot -- he was hit in
9 the stomach. Those are the words.

10 MR. SAWYER - Okay.

11 THE COURT - Yes. She's ---

12 MS. CAMPBELL - We'll be glad to bring that out
13 and see if that affects his -- in any way, because he was -
14 - I mean he was bleeding from his stomach.

15 THE COURT - Okay. I got it.

16 MS. CAMPBELL - Yes, I mean he was.

17 THE COURT - You can do that.

18 MR. SAWYER - Okay.

19 THE COURT - Okay? Good. Thank you for that
20 cooperation, counsel. All right, anything else before we
21 bring the jury out? No? No? Yes.

22 (No response)

23 THE COURT - Jury. Doctor. Doctor.

24 (WHEREUPON, DR. MARCUS RETAKES THE STAND)

25 (Jury enters the courtroom)

1 BAILIFF - Jury panel is present, Judge.

2 THE COURT - Thank you so much. Re-direct?

3 MS. WALKER - Thank you, Your Honor.

4 THE COURT - Yes.

5 RE-DIRECT EXAMINATION

6 BY MS. WALKER -

7 Q Dr. Marcus, on cross examination you were asked
8 questions about whether or not the surgery could've changed
9 the appearance of the entry and exit wounds?

10 A It possibly could.

11 Q Did you take the surgery into consideration when you
12 were performing the autopsy?

13 A Absolutely.

14 Q And you said that the wounds themselves were visually
15 ---

16 A Pardon me?

17 Q I'm sorry. You said the wounds themselves are
18 visually different.

19 A Yes.

20 Q I want to show you what's been marked as State's
21 Exhibit 82 and 83 and ask you if you recognize these?

22 A I do recognize these.

23 Q And would they help aid you in your testimony in
24 explaining that visual difference to the ---

25 A Yes.

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1 Q --- to the jury? Thank you.

2 MS. WALKER - Your Honor, may -- at this point,
3 Your Honor, the State seeks to admit Exhibits 82 and 83
4 into evidence.

5 MR. SAWYER - Your Honor, we just renew our
6 objections.

7 THE COURT - Yes, very well. And I'll admit the
8 photographs on the basis stated earlier and they're
9 admitted.

10 MS. WALKER - Thank you, Your Honor. May the
11 witness step down?

12 THE COURT - He may.

13 MS. WALKER - Thank you.

14 (WHEREUPON, ITEMS MARKED INTO EVIDENCE AS STATE'S
15 EXHIBITS 82 AND 83.)

16 Q I want to show you State's Exhibit 82. Is this a --
17 is this an entry or exit wound?

18 A That's an entry wound.

19 THE COURT - And you're referring to ---

20 MS. WALKER - State's Exhibit 82.

21 THE COURT - Thank you.

22 Q And how can you tell?

23 A Okay, so -- so this is Mr. Moti's back right here.

24 Okay? It's kind of on the -- talking about in this region
25 right about here. Okay? And remember I talked about how

1 nice and neat that wound is? When you see that redness
2 around the wound, that's the abrasion. That's
3 circumferential around the wound. It's very neat, like the
4 bullet, like a bullet went right in it, very clean, bullet
5 was spinning in a high velocity struck him there. That, in
6 my opinion -- and I've been doing this 11 years -- that to
7 me is an entrance wound.

8 Q And on State's Exhibit 83, can you explain that wound?
9 And I guess this as well.

10 A Yes. So again Mr. Moti was brought to the operating
11 room emergently and the surgeon made an incision in his
12 abdomen right here to try and stop the bleeding. Okay? So
13 in this case, after the surgery he couldn't revive Mr.
14 Moti, the surgeon sutured the incision closed right here,
15 but just adjacent -- just near that wound is this gunshot
16 wound right here. Okay? This here to me has a typical
17 appearance of an exit wound. It's kind of irregular. It's
18 very, very irregular looking. Okay? There is a little bit
19 of an abrasion around it and you can get that. There are
20 certain circumstances you can get that in, you know, if
21 you're laying on the ground and you're shot and then exit
22 there, but in this case I -- now I know that Mr. Moti was
23 wearing that vest and to me that would -- that corresponds
24 to that because he's got an abrasion here and that zipper
25 was right -- right over here and pulling his skin very,

1 very, you know, tight so he can get an abrasion there in my
2 opinion based on that vest he was wearing. So to me this
3 looks like an exit wound. It's got the characteristics of
4 exit wound, because it's -- it's not as clean as the -- as
5 the other wound here.

6 Q On 82, State's 82.

7 A On 82. And again, I followed the wound track down and
8 it -- I just -- this to me looks like it appears to be an
9 exit wound. I can't really explain it any better. It just
10 comes from experience.

11 Q Thank you, sir. If you could take the witness stand.

12 (Whereupon, witness re-takes the stand)

13 Q And I think on cross examination I think you said --
14 described this as a textbook entrance wound?

15 A That to me would be -- you put that in a forensic
16 textbook as a classic entrance wound. It would fit in my
17 opinion.

18 Q Dr. Marcus, let's say the victim in this case after
19 being shot, when asked where he was hit, he said I've been
20 hit in the stomach, would that change your opinion about
21 which one of those was an entrance wound and which one of
22 those was an exit wound?

23 A No, it wouldn't. He certainly did sustain a gunshot
24 wound to the abdomen as we saw in the diagram and the
25 photos. So no that does not change my opinion here at all.

1 MS. WALKER - Thank you, Your Honor. I don't have
2 any further questions.

3 THE COURT - Cross examination.

4 MR. SAWYER - Thank you, Your Honor. May it
5 please the Court.

6 THE COURT - Yes.

7 RE-CROSS EXAMINATION

8 BY MR. SAWYER -

9 Q Just for that last question, Dr. Marcus, didn't I
10 already ask you that question once earlier about whether it
11 would change your opinion if he -- the victim reported he
12 had been shot in the stomach?

13 A I thought you said a witness reported he had been shot
14 in the stomach.

15 Q Yes, the victim as well.

16 A It's possible. It's possible.

17 Q Okay, you just said it wasn't.

18 MS. WALKER - Objection, Your Honor,
19 mischaracterizing the witness's statement.

20 THE COURT - Sustained.

21 Q So the victim reported to you he was shot in the
22 stomach, that doesn't change your opinion in the slightest.

23 A In this case, no it doesn't. Based on those pictures
24 -- I just was -- I was brought those photos and I'm looking
25 at them and I'm saying right now that those photos to me

1 look like a classic entrance and a classic exit wound in my
2 opinion.

3 Q Okay. Is it possible that both wounds -- have you
4 ever seen both wounds look like what you call an entrance
5 wound?

6 A In my years of experience I could probably say, yes, I
7 have, but I use other things to make my determination
8 there.

9 Q And what other things are those?

10 A For instance, if someone sustains multiple gunshot
11 wounds and there's bullets in the body, I can kind of --
12 that's how I have to distinguish what's an exit and what's
13 an exit based on the wound track and where the bullet's
14 found and so forth like that. It's -- it's kind of like a
15 science in there. It's like a big puzzle I'm solving when
16 I'm in the autopsy room trying to make sense at all the
17 holes in a body, so I use other tools. In this case I
18 didn't have any other tools. I had my -- the entrance
19 wound, the exit wound and what I saw on the body.

20 Q And what you saw on the body was just these two holes
21 and that's how you formed your entire opinion.

22 A That's how I formed my entire opinion, plus I used my
23 experience.

24 Q Okay. And again, looking at the suturing -- do you
25 have those pictures up here still?

1 A I don't have them, sir.

2 Q And this suturing, it's manipulated the skin on the
3 suturing. Correct?

4 A Yes, it's manipulated the skin. You know, you can see
5 that, you know, it's manipulated the skin ever so much, but
6 in this case we were lucky, the surgeon here did not suture
7 right through that wound, because that would've changed
8 things, but in this case he left it and he sutured there
9 and you can see it's a pretty gap there and then he went
10 over there, so in my opinion that to me is an exit wound
11 based on what I have.

12 Q And there's no way that those sutures could've changed
13 anything?

14 A Not these in my opinion.

15 Q Okay. And you didn't watch the surgery. Right?

16 A No, no, sir. I was -- no, I was home.

17 Q Okay, so you have no idea if that wound was changed
18 during surgery.

19 A I have no idea, no, sir. I do not know.

20 Q Okay. Okay, so just based on the evidence you got
21 essentially hours after this all took place, this is what
22 you're testifying ---

23 A That's ---

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1 Q Okay.

2 MR. SAWYER - All right. Thank you. Nothing
3 further.

4 THE COURT - All right. Is this witness free to
5 leave?

6 MS. WALKER - Yes, Your Honor.

7 THE COURT - Any objection?

8 MR. SAWYER - No, Your Honor.

9 THE COURT - Very well. You are free to go. Call
10 your next witness please.

11 MS. VRIESINGA - State calls Ila Simmons.

12 ILA SIMMONS, AFTER BEING FIRST DULY SWORN,

13 TESTIFIES AS FOLLOWS -

14 DEPUTY CLERK - Thank you. Please have a seat in
15 the witness stand and state your full name for the record
16 and please spell your first name.

17 MS. SIMMONS - My name is Ila Simmons, and my
18 first name is spelled I-l-a.

19 THE COURT - Your witness.

20 MS. VRIESINGA - Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY MS. VRIESINGA -

23 Q Hi, Ms. Simmons.

24 A Hello.

25 Q How are you doing?

1 A I'm well, and yourself?

2 Q Good. Where were you most recently employed?

3 A At the South Carolina Law Enforcement Division, also
4 known as SLED in the forensic services laboratory's trace
5 evidence department.

6 Q And how long did you work at SLED?

7 A Fourteen years.

8 Q Fourteen years. And what did you do for SLED?

9 A In the trace evidence department we analyze gunshot
10 residue, gunpowder residues. We perform comparisons of
11 glass, paint, fibers, as well as analyzing any arson
12 evidence that may come into the laboratory.

13 Q Can you tell us more specifically about the field of
14 trace evidence?

15 A Yes, ma'am. Basically trace evidence is anything that
16 can be collected at a scene in very small amounts. It's
17 generally things that are collected with swabs or sticky
18 tape or something like that that maybe the investigator
19 can't even see.

20 Q And please tell the jury about your background and
21 your education.

22 A I have a bachelor's of science degree in chemistry.
23 After completing that, I went to work at SLED where my
24 first three years there were spent looking with a qualified
25 SLED certified trace evidence examiner. During that time I

1 had to take written and practical examinations and complete
2 them with one hundred percent efficiency. After that I was
3 certified by SLED to be a trace evidence examiner, and each
4 year I had to take a proficiency test in every area of
5 trace evidence to remain a certified trace evidence
6 examiner.

7 Q So those were your continuing education classes?

8 A Yes, ma'am, and I also attended seminars. I'm a
9 member of the Association of Forensic Science, the Academy
10 of Forensic Science and I'm a member of the FBI's GSR
11 Symposium where they invite GSR analyst from around the
12 world to come to Quantico and discuss the standards and
13 practices that are put into place for analysis around the
14 world.

15 Q And have you been previously qualified as an expert?

16 A Yes, ma'am, I have.

17 Q Okay, what field?

18 A In the field of gunshot residue, trace evidence
19 examination in Civil, Federal and State Courts of South
20 Carolina over 250 times.

21 Q Over 250 times.

22 A Yes, ma'am.

23 MS. VRIESINGA - Your Honor, at this time I would
24 ask that the witness be qualified as an expert in trace
25 evidence.

1 THE COURT - Voir dire?

2 MS. DYAR - No, Your Honor.

3 THE COURT - All right, any objection?

4 MS. DYAR - None, Your Honor.

5 THE COURT - Very well. So qualified.

6 MS. VRIESINGA - Thank you, Your Honor.

7 Q Ms. Simmons, let me take you back to what you did on
8 the gunshot residue in Moti case. First of all, what is
9 gunshot residue?

10 A Gunshot residue, or GSR as it's sometimes called, is a
11 mixture of microscopic chemicals that come out of a gun
12 when it's discharged. It comes out in a cone-shaped cloud
13 and can get on anything in close proximity to the gun,
14 including the hands of the person shooting the gun. It is
15 made up primarily of lead, barium and antimony and that's
16 what we're looking for when we analyze the gunshot residue
17 collection kits.

18 Q So it's primarily created from gunshots?

19 A It is specifically. If we find a particle that is
20 spheroidal or round and it contains lead, barium and
21 antimony, there is no place else that has ever been found
22 to create particles like that except the discharge of a
23 gun.

24 Q And how would someone end up with GSR on them?

1 A They can discharge a firearm; they can touch the thing
2 that has gunshot residue on it or they can have a gun
3 discharged in close proximity to them.

4 Q And how long does the GSR stay on a person?

5 A On a living person's hands it won't remain longer than
6 six hours. If I were to shoot a gun at noon, by 6:00 p.m
7 just by natural interactions with my hands, gunshot residue
8 will not be left on my hands.

9 Q So you have to collect it within the six hours.

10 A Yes, ma'am.

11 Q Is it easily removed?

12 A Yes, it has the consistency of flour, so if you were
13 to wipe your hands on a rag, put your hands in and out of
14 your pockets, wash your hands, shower, this will all remove
15 gunshot residue.

16 Q Did you analyze the GSR in this case?

17 A Yes, ma'am, I did. I had -- received two kits for
18 analysis.

19 Q Okay. All right.

20 MS. VRIESINGA - Your Honor, may I approach the
21 witness?

22 THE COURT - You may.

23 Q And for the record, I'm going to show you what's
24 previously been entered into evidence as State's Exhibit
25 Number 57.

- 1 A Yes, ma'am.
- 2 Q Would you tell me what that is?
- 3 A This is a gunshot residue collection kit collected
- 4 from Jimmy Moti. It was marked with my unique
- 5 identification number. Every case that comes into the SLED
- 6 laboratory is given a unique identification number and each
- 7 piece of evidence in every case is given an item number, so
- 8 it is marked with that. It's also marked with my initials
- 9 and the date I received it to begin analysis.
- 10 Q Okay. And I know you've kind of already touched on
- 11 this, but how exactly do you collect the GSR?
- 12 A Gunshot residue is collected with a standardized kit
- 13 that is produced by companies that are qualified assured.
- 14 This particular kit was made by Tri-Tech Incorporated, and
- 15 it has a two-part kit. The first part is a double-sided
- 16 sticky tape with a handle that's dabbed like this over the
- 17 areas of the hands; a sample is collected from the palm of
- 18 the right hand, the back of the right hand, the palm of the
- 19 left hand and the back of the left hand. After that, these
- 20 are all sealed, put away and then two swabs are taken from
- 21 each area. They're just basic cotton swabs with a couple
- 22 of drops of dilute nitric acid and they're rubbed over the
- 23 same areas of the hands, sealed and put in the kit.
- 24 Q Do you remember the results here in this case?
- 25 A Yes, ma'am.

1 Q Okay, and what were those results?

2 A On this specific kit labeled as coming from Jimmy
3 Moti, no gunshot residue was found on any areas of the
4 hands that the samples were collected.

5 Q And they were again collected from both of his hands.
6 Correct?

7 A Yes, ma'am.

8 Q Were you also asked to examine the GSR kit from a
9 vehicle?

10 A Yes, ma'am.

11 MS. VRIESINGA - Again, may I approach?

12 THE COURT - You May.

13 MS. VRIESINGA - Thank you, Your Honor.

14 Q What I'm showing you now has been marked as State's
15 Exhibit 84. If you'd just tell me what that is?

16 A Yes, ma'am, this was the GSR kit that was submitted
17 from Amy Hickie.

18 Q Okay.

19 A It's also marked with our unique identification number
20 and item number and my initials.

21 Q So you do recognize that?

22 A Yes, ma'am, I do.

23 Q How do you insure that it's been packaged correctly?

24 A When we receive it, we always check to make sure that
25 the evidence is sealed. When someone brings -- in this

1 case, Richland County Sheriff's Department -- brought in
2 these samples, they bring them into our central log-in,
3 they are logged in to our computer system, and they are
4 sealed with a piece of tamper-resistant tape so that, as
5 you can see here, you can see exactly when the tape was put
6 on, the initials and the date, the initials of the
7 investigator that's bringing it in and the date in which
8 they seal it, and if you were to mess with this tape at
9 all, you can clearly tell that it's been tampered with, and
10 if that were the case, if it had been tampered with in any
11 way, it would not have been analyzed.

12 Q Did you analyze this sample?

13 A I attempted to analyze this kit, however, with the way
14 that the kit is made, our instrument was not capable of
15 analyzing it.

16 Q Okay, will you explain that a little bit more?

17 A Yes, ma'am. The double-sided sticky tape I was
18 talking about earlier is a black sticky tape, therefore,
19 when our instrument shoots a very strong beam of
20 electricity down onto the black sticky tape and can pick up
21 any particles that are present, these were just a piece of
22 aluminum with a little bit of adhesive on them, but when
23 the instrument would shoot the strong beam of electrons
24 down onto the aluminum, it caused a glare and the
25 instrument couldn't run, because it would be like shining a

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1 light at a black curtain, you're not going to get a glare
2 from it, but if you shine a flashlight onto a bright piece
3 of aluminum, it's going to flash back in your eyes and
4 cause a glare, and that's what happened with the
5 instrument, so the instrument couldn't analyze the samples.

6 Q Okay. Let me back a little bit. Where did you get
7 this -- this sample from?

8 A I got it from the central log-in area. It is a sealed
9 area that only our log-in technicians in the log-in
10 department have access to.

11 Q Okay. Okay. So you didn't actually analyze this
12 sample, because you were unable to do so.

13 A Yes, ma'am.

14 Q All right. Can GSR be rubbed off?

15 A Yes, ma'am, it can.

16 Q Okay. So if a gun was fired in a car that had been
17 cleaned or wiped down, would it necessarily have GSR on it?

18 A No, ma'am, not if it was wiped well. GSR can be wiped
19 off inanimate objects.

20 Q Okay.

21 MS. VRIESINGA - Your Honor, at this time the
22 State would seek to admit State's Exhibit Number 84 into
23 evidence.

24 THE COURT - Any objection?

25 MS. DYAR - None, Your Honor.

1 THE COURT - Thank you. Very well.

2 (WHEREUPON, ITEM MARKED INTO EVIDENCE AS STATE'S
3 EXHIBIT NUMBER 84.)

4 MS. VRIESINGA - Thank you, Your Honor. Beg the
5 Court's indulgence. (Pause) One follow-up question.

6 Q If we can go back to the first GSR kit that you did on
7 the victim, ---

8 A Yes, ma'am.

9 Q --- were the results consistent with the victim not
10 shooting a gun?

11 A Yes, ma'am.

12 MS. VRIESINGA - Okay. No further questions, Your
13 Honor.

14 THE COURT - Very well. Cross examination?

15 MS. DYAR - Thank you, Your Honor. May it please
16 the Court.

17 THE COURT - Yes. Yes.

18 CROSS EXAMINATION

19 BY MS. DYAR -

20 Q And you said that the GSR could be wiped off of hands
21 very easily. Right?

22 A Yes, ma'am.

23 Q Within six hours or so ---

24 A Yes, ma'am.

25 Q Okay. Now, say -- can it get on clothing?

1 A Yes, ma'am, it can.

2 Q Okay. And is it easier -- does it stay on clothing
3 longer than it would on someone's hands?

4 A Yes, ma'am, it can.

5 Q But you weren't given anything to test as far as
6 clothing material. Correct?

7 A No, ma'am.

8 Q And that would've been better in a case like this to
9 process given there was -- only his hands were tested.
10 Correct?

11 A Yes, from Jimmy Moti. In fact, if we were receive
12 clothing from someone who has sustained a gunshot wound, we
13 will not analyze them just because being in the vicinity of
14 a gun being discharged can get gunshot residue on the
15 clothing.

16 Q But it wasn't submitted at all.

17 A No.

18 Q And you said that GSR actually is the consistency of
19 flour?

20 A Yes, ma'am.

21 Q And what -- if there was GSR on someone's hand, what
22 could affect that coming off within a six-hour period?
23 Would possibly surgery ---

24 A Yes, if the hands were cleaned in some way, that can
25 remove gunshot residue.

1 Q And how long would GSR stay on clothing?

2 A It hasn't been timed. It can be indefinitely until
3 it's laundered in some way.

4 Q But nothing was submitted as far as clothing for you
5 to test.

6 A No, ma'am.

7 MS. DYAR - Nothing further.

8 THE COURT - Re-direct?

9 MS. VRIESINGA - Yes, Your Honor, just briefly.

10 THE COURT - All right.

11 RE-DIRECT EXAMINATION

12 BY MS. VRIESINGA -

13 Q Ms. Simmons, just one more question. As far as the
14 proximity, how close do you have to be to get GSR residue?

15 A If someone were discharging a gun, depending upon the
16 size and caliber of the handgun, usually with a handgun you
17 have to be within six feet to get gunshot residue on your
18 hands.

19 MS. VRIESINGA - Thank you. No further questions,
20 Your Honor.

21 THE COURT - Re-cross?

22 MS. DYAR - None, Your Honor.

23 THE COURT - Is this witness free to leave?

24 MS. VRIESINGA - Yes, Your Honor.

25 THE COURT - Any objection?

ZONDRA GILYARD - DIRECT BY MS. WALKER

535

1 MS. DYAR - None, Your Honor.

2 THE COURT - Very well. You are free to go. Call
3 your next witness, please.

4 MS. WALKER - Your Honor, the State calls Zondra
5 Gilyard.

6 ZONDRA GILYARD, AFTER BEING FIRST DULY SWORN,
7 TESTIFIES AS FOLLOWS -

8 DEPUTY CLERK - Thank you. Please have a seat in
9 the witness stand and state your full name for the record
10 and please spell your first and your last name, please.

11 MS. GILYARD - Yes, my name is Zondra Sherise
12 Gilyard.

13 DEPUTY CLERK - And would you spell that, please.

14 MS. GILYARD - Z-o-n-d-r-a G-i-l-y-a-r-d.

15 DEPUTY CLERK - Thank you.

16 THE COURT - Your witness.

17 MS. WALKER - Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MS. WALKER -

20 Q Ms. Gilyard, where do you live?

21 A I live in Allen Benedict Court.

22 Q In Allen Benedict Court?

23 A (Indicating yes)

24 Q How long have you lived there?

25 A About three years.

- 1 Q Who lives there with you?
- 2 A Me and my four children.
- 3 Q How old are they?
- 4 A Four, three, two and one.
- 5 Q What's their fathers' names?
- 6 A All of them?
- 7 Q Is one of them related to the defendant?
- 8 A Yes.
- 9 Q How old is that child?
- 10 A One.
- 11 Q Do you know Gerald Bernard Haltiwanger?
- 12 A Yes, I do.
- 13 Q How long have you known him?
- 14 A Now going on three years.
- 15 Q Did y'all live together at some point?
- 16 A Some point, yes.
- 17 Q Where did y'all live?
- 18 A In Allen Benedict Court.
- 19 Q Did y'all live there last summer, summer of 2012?
- 20 A Yes.
- 21 Q I want to take your attention back to August of 2012.
- 22 Were y'all living together at that point?
- 23 A Yes.
- 24 Q The defendant, how many brothers does he have? Do you
- 25 know?

- 1 A Right off hand it's about four, maybe five, I think.
- 2 Q What are their names?
- 3 A The ones that I know is Tyrobia Green, Terrell Vaughn
- 4 and Jonathan -- I don't know Jonathan's last name.
- 5 Q There's a Jonathan?
- 6 A Yes.
- 7 Q Just one Jonathan?
- 8 A Yes.
- 9 Q Did you know his brothers pretty well?
- 10 A Yes.
- 11 COURT REPORTER - She needs to speak up, Judge.
- 12 Q Just speak up so the court reporter can hear you.
- 13 Okay?
- 14 A All right.
- 15 Q And make sure everybody in the courtroom can hear you.
- 16 A Okay.
- 17 Q Did you know the brothers pretty well?
- 18 A Yes, I did.
- 19 Q Back in August of 2012, did you become aware of an
- 20 incident that happened at El Toro?
- 21 A After the fact, yes, I did.
- 22 Q Tell me how you became aware of that.
- 23 A Um, I guess that morning after it happened, that next
- 24 morning when he woke up I found out about it.
- 25 Q Did you see him that night?

- 1 A No.
- 2 Q Did he say anything to you about the incident?
- 3 A (No response)
- 4 Q Did the defendant say anything to you about what
5 happened at El Toro?
- 6 A Not at -- that night, no.
- 7 Q That morning when you woke up ---
- 8 A Yes.
- 9 Q What did he say?
- 10 A Um well, he just told me that he had gotten into an
11 altercation at the club, but he didn't go into detail at
12 that point.
- 13 Q At some point did he go into detail?
- 14 A Some of it, yes, he did.
- 15 Q Tell me what he told you.
- 16 A He told me that he got into an incident with the
17 bouncer at the club and um that one thing led to another
18 and he just -- he just started shooting.
- 19 Q That who started shooting?
- 20 A He did.
- 21 Q Did he tell you about the actual -- the first incident
22 that he got in before he started shooting?
- 23 A Somewhat, yes.
- 24 Q Tell me what he told you.

1 A That he went to the club; he approached the door, him
2 and his brothers, and I guess something happened with the
3 ID to where he couldn't get into the club, and the security
4 guard maced him.

5 Q Did he tell you where he maced him?

6 A Yes.

7 Q Where?

8 A He was walking away and he got maced in the back of
9 his shirt, because he asked me to smell his shirt and my
10 face went numb from the pepper spray that was on the back
11 of his shirt.

12 Q But it was in the back?

13 A Yes, it was in the back.

14 Q Could you see anything on him?

15 A It was red. The shirt was blue.

16 Q Was the spray ---

17 A Yes, and the spray was red.

18 Q He had on a baby blue shirt that night?

19 A Yes.

20 Q Did he tell you anything about anyone trying to hit
21 the bouncer?

22 A Um, yes.

23 Q What did he say about that?

24 A His younger brother, Trouble, did.

25 Q He has a younger brother named Trouble?

- 1 A Well, he -- Jonathan.
- 2 Q Jonathan? You call him Trouble sometimes?
- 3 A Yes.
- 4 Q Okay. What did he say happened when Trouble tried to
- 5 hit the bouncer?
- 6 A He just hit him once and I guess they walked away and
- 7 that's when they approached the gas station, I guess.
- 8 Q When who approached the gas station?
- 9 A Him and his brother, Trouble.
- 10 Q What did he say happened after they went to the gas
- 11 station?
- 12 A He told me that they -- I guess at some point they
- 13 separated and him and Terrell got into the car together,
- 14 and he told me that -- I guess at that point he was upset
- 15 and he was angry and he rolled down the window and he just
- 16 started shooting.
- 17 Q He shot because he was mad?
- 18 A I guess so.
- 19 Q Is that what he told you?
- 20 A I'm assuming that's what it was for. I mean he -- he
- 21 was just angry, because he had got maced for no reason.
- 22 Q That's what he told you.
- 23 A Yes.
- 24 Q And you're here under subpoena. Right?
- 25 A Yes.

1 Q After he told you about what happened -- was that all
2 he told you?

3 A At that point, yes.

4 Q Well, at any point, was that all he told you?

5 A Yes, pretty much.

6 Q Did you know what car he was driving that night?

7 A Yes.

8 Q What car was that?

9 A That was my car, the 1980 crown vic, ltd.

10 Q It was a 1980 crown vic?

11 A (Indicating yes)

12 Q What color is it?

13 A Black.

14 Q Do you know what happened to that car?

15 A No, I didn't until the next day. Well, matter of
16 fact, not even the next day. When they came and arrested
17 him a couple days later, they told me where the car was,
18 because I didn't know where it was.

19 Q And where was it?

20 A From my understanding it was at another lady named
21 Laquanda Issac's house.

22 Q Who's Laquanda Issac?

23 A A young lady -- another young lady that he was seeing.

24 Q Did you know about her before then?

25 A Somewhat, yes.

- 1 Q Was the car supposed to be at Laquanda Issac's house?
- 2 A They never told me where the car was. Nobody did.
- 3 Q Where was the car usually?
- 4 A Outside.
- 5 Q Outside your house?
- 6 A (Indicating yes)
- 7 Q So was it unusual for it to be at Laquanda's house?
- 8 A Very much so, yes.
- 9 Q Do you know what, if anything, Gerald or anyone else -
- 10 - or what do you call Gerald Haltiwanger?
- 11 A Berns.
- 12 Q Berns?
- 13 A (Indicating yes)
- 14 Q Do you know what, if anything, he did with that car?
- 15 A I don't understand the question.
- 16 Q Did he ever talk to you about doing anything with the
- 17 car after the shooting, other than taking it to Laquanda's
- 18 house?
- 19 A Well, he never told me where the car was going. He
- 20 never even left with the car, so ---
- 21 Q Who left with the car?
- 22 A Tyrobia.
- 23 Q Tyrobia is ---
- 24 A His brother.
- 25 Q His brother left with the car.

- 1 A Yes.
- 2 Q How long was the car gone you found out where it was?
- 3 A Um, the car was gone until the investigators found it.
- 4 Q At that point last summer, did Berns or Gerald
- 5 Haltiwanger, did the defendant have gold teeth?
- 6 A At some point, yes, he did.
- 7 Q And what kind of -- can you describe what they looked
- 8 like?
- 9 A They were -- they were all closed faced, just top and
- 10 bottom.
- 11 Q They were top and bottom gold teeth.
- 12 A (Indicating yes)
- 13 Q At some point did he have a conversation with you
- 14 about where those told teeth had gone the night after the
- 15 murder?
- 16 A No, they were usually on my dresser. He'd come home
- 17 and take them out and eat or whether. He just wore them
- 18 out.
- 19 Q Were they on your dresser after the murder?
- 20 A They were there the whole time.
- 21 Q They were always on your dresser.
- 22 A Yes.
- 23 Q So the police got them from your dresser.
- 24 A No, I gave them to them. They asked me for them. He
- 25 didn't have them. I had them. They were on my dresser.

1 Q Okay.

2 A Yes.

3 Q Where did you find them?

4 A I don't remember where they were. I was -- I happened
5 to be cleaning up the room after the police left my house.
6 They kind of left it in a mess, so as I was cleaning, I
7 found them at some point and I called the investigator,
8 because he had asked them about them and I gave them to
9 them.

10 Q Do you remember giving a statement to investigators?

11 A (Indicating yes)

12 Q Do you remember giving two statements?

13 A No.

14 Q How many statements do you remember giving?

15 A One.

16 MS. WALKER - Your Honor, may I approach the
17 witness?

18 THE COURT - You may.

19 MS. WALKER - Thank you.

20 Q Do you recognize this?

21 A Yes.

22 Q Is this -- what is this?

23 A That's the statements from Detective Lindler I want to
24 say.

25 Q And who gave it?

- 1 A What do you mean?
- 2 Q Who gave this -- who -- is this your statement?
- 3 A Yes.
- 4 Q Let me show you this. Do you recognize this?
- 5 A Yes, I think that was the day of, the day that they
- 6 came and got him.
- 7 Q Okay. So how many statements did you give?
- 8 A Okay, well, two.
- 9 Q Okay. And in the first statement did you tell them
- 10 everything that you just told me?
- 11 A I can't remember. I don't recall.
- 12 Q Take a look at it.
- 13 A (Witness complies) Okay.
- 14 Q Did you tell them in that first statement everything
- 15 that you told me?
- 16 A Yes.
- 17 Q I want you to look at this right here on page 3.
- 18 A Okay.
- 19 Q They asked you where Bernard had been the night
- 20 before.
- 21 A Do you mean to the club?
- 22 Q Did they ask you where he had been, if he told you
- 23 where he had been?
- 24 A No. I don't remember that, no.
- 25 Q Okay. This is your statement.

- 1 A Yes.
- 2 Q Is this your signature?
- 3 A Yes, it is.
- 4 Q Do you see this question?
- 5 A Yes.
- 6 Q Did they ask you where he had been, where he said he
- 7 had been the night before?
- 8 A Yes.
- 9 Q And what did you tell them?
- 10 A I told them no.
- 11 Q But now you're saying that he told you he had been at
- 12 El Toro and got into an altercation and shot the club up.
- 13 A No, that's not what I said. I said he told me that he
- 14 had got into an altercation. I didn't know which club he
- 15 went to, but he told me that he was going out, yes. I
- 16 didn't know where he went.
- 17 Q Okay. Did you tell the police officers the first time
- 18 they talked to you anything about that?
- 19 A About El Toro's?
- 20 Q Right.
- 21 A No.
- 22 Q About the altercation.
- 23 A No.
- 24 Q About him shooting at anyone.
- 25 A No.

1 Q The second time you talked to them ---

2 A Yes.

3 Q --- you gave them that information.

4 A Yes.

5 Q And you're saying that you found the gold teeth while
6 you were just -- somewhere around the room while you were
7 cleaning up?

8 A Yes.

9 Q And you remember giving that second statement to
10 police?

11 A Yes.

12 MS. WALKER - Your Honor, may I approach the
13 witness again?

14 THE COURT - You may.

15 Q I want to show you this.

16 A Okay.

17 Q Does that refresh your memory?

18 A Yes.

19 Q Where did you find the gold teeth?

20 A Okay, they were in the diaper bag.

21 Q Where in the diaper bag?

22 A They were in the bottom of the diaper bag. My son,
23 Gerald, his son, his things are in our room, so everything
24 was just in our room. Like I said, the police had left
25 everything in a mess, so ---

1 Q Were his gold teeth usually in the bottom of your
2 son's diaper bag?

3 A They weren't.

4 Q So that was uncommon.

5 A It was.

6 Q After he was arrested, did you have a series of phone
7 conversations with the defendant?

8 A I did.

9 Q Did he talk to you about getting rid of the gold
10 teeth?

11 A No.

12 Q Did he talk to you about getting rid of the gun?

13 A No.

14 Q Did he talk to you about getting rid of the car?

15 A No.

16 Q Did he talk to you about telling his brothers to hold
17 it?

18 A Hold what?

19 Q To hold -- did he say anything to you along the lines
20 of, tell my brothers I held it, so they need to hold it
21 too?

22 A No.

23 Q Do you know those jail phone calls are recorded?

24 A Yes.

1 Q But y'all never had any sort of conversation about
2 getting rid of anything?

3 A No.

4 Q Did he ever tell you about stashing the gold teeth?

5 A No.

6 Q And y'all never had those conversations in those
7 recorded jail phone calls.

8 A No.

9 Q The person who told you that he got mad and shot --
10 and shot out the car, do you see him in the courtroom?

11 A Yes.

12 Q Can you point him out for me?

13 A My son's father, Gerald Haltiwanger.

14 Q What's he wearing?

15 A The white shirt with the tie.

16 Q Sitting at the end of the table?

17 A Yes.

18 MS. WALKER - Thank you. Your Honor, may the
19 record reflect that the witness has identified the
20 defendant.

21 THE COURT - Very well.

22 MS. WALKER - I don't have any further questions.

23 THE COURT - Cross examination?

24 MR. SAWYER - Thank you, Your Honor. May it
25 please the Court.

1 THE COURT - Yes. Yes.

2 CROSS EXAMINATION

3 BY MR. SAWYER -

4 Q Zondra, how are you doing?

5 A I'm good.

6 Q Do you normally go by Zondra?

7 A Yes.

8 Q How long have you been with Bernard?

9 A Now, probably about two years.

10 Q Someone that you care very deeply about all these
11 years?

12 A Yes.

13 Q Okay. You have one son in common?

14 A Yes.

15 Q That's Gerald, Jr.?

16 A The III, yes.

17 Q Gerald the III.

18 A Yes.

19 Q How old is he now?

20 A He's one.

21 Q Let me just cover a couple of things the State asked
22 you about and I want to just talk a little about Bernard a
23 little bit. All those jail phone calls, those happened I
24 believe essentially the night right after he was arrested.
25 Right?

- 1 A Yes.
- 2 Q You having trouble remembering those from that distant
3 of a time away?
- 4 A Somewhat.
- 5 Q Do you remember crying a lot during those?
- 6 A Yes.
- 7 Q Do you remember Bernard crying a lot during those?
- 8 A Yes.
- 9 Q They were pretty emotional, weren't they?
- 10 A (No response)
- 11 Q And you think maybe just because the emotion that's
12 why -- the reason why you might not remember some of what
13 was going on?
- 14 A Yes, probably.
- 15 Q Do you remember him telling you about his going to
16 sell certain things? He kept making sure that he wanted
17 you to sell certain things?
- 18 A No, they misheard. He was getting our other car
19 fixed. He had some parts that he had just bought that was
20 in the trunk of the car that was getting fixed; he told me
21 to take the parts back, you know, to have extra money for
22 the house and, you know, for him and the phone and that's
23 what they got.
- 24 Q Okay. Making sure you got that money for yourself was
25 important to him?

- 1 A Yes.
- 2 Q And he talked about that several times I think over
3 the course of that ---
- 4 A Yes.
- 5 Q And this was all one night I think ---
- 6 A Yes.
- 7 Q -- when he called you back.
- 8 A Yes.
- 9 Q Called you back to back I want to say?
- 10 A Yes, we talked a lot.
- 11 Q When -- where was he when you woke up that next
12 morning on the 26th of August?
- 13 A He was in the bed with me.
- 14 Q He was in the bed with you?
- 15 A (No response)
- 16 Q What was his demeanor like?
- 17 A It was usual, but he didn't really sleep a lot that
18 night.
- 19 Q Was he -- do you remember -- you were with him
20 basically for about four days til he got arrested again?
21 Does that sound about right?
- 22 A Yes.
- 23 Q Did you see any of his brothers during that time at
24 all?
- 25 A Yes.

- 1 Q And just going along the line of the topic, do his
2 brothers all have gold teeth, too?
- 3 A Yes, all of them except for Tyrobia.
- 4 Q Okay. So all of them have gold teeth?
- 5 A (Indicating yes)
- 6 Q They all wear them regularly?
- 7 A Yes.
- 8 Q Just during those next four days, was he pretty upset
9 as ---
- 10 A Yes.
- 11 Q --- he more and more saw what was going on?
- 12 A Yes.
- 13 Q Never really happy or anything about ---
- 14 A No.
- 15 Q Okay. Did he ever cry at all?
- 16 A Yes.
- 17 Q How many -- a little or a lot?
- 18 A A lot. He was real emotional. He's not a violent
19 person so ---
- 20 Q Is he -- is he normally that -- is he normally sort of
21 -- I mean generally a really happy guy?
- 22 A Yes.
- 23 Q So this was just very out of character for him?
- 24 A It is.
- 25 Q Was he having trouble sleeping?

1 A Yes.

2 Q Was he having trouble eating?

3 A Yes.

4 Q That's something that you could tell affected him
5 differently than anything else that ever happened to him?

6 A Yes.

7 MR. SAWYER - Beg the Court's indulgence?

8 THE COURT - All right.

9 RE-DIRECT EXAMINATION

10 BY MS. WALKER -

11 Q You said that he's not a violent person?

12 MR. SAWYER - I said, beg the Court's indulgence.

13 MS. WALKER - Oh, I'm sorry. I thought you said
14 no further questions. I apologize.

15 MR. SAWYER - Thank you, Your Honor. No further
16 questions.

17 THE COURT - All right. Yes, now, re-direct.

18 MS. WALKER - I apologize, Your Honor.

19 THE COURT - No problem. No problem.

20 Q You said that he's not a violent person?

21 A (No response)

22 MS. WALKER - Your Honor, may be we approach?

23 THE COURT - You may.

24 COURT REPORTER - I didn't hear her response.

25 A Yes.

1 (WHEREUPON, BENCH CONFERENCE WAS HELD IN THE
2 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
3 WHICH WAS NOT REPORTED.)

4 Q On cross examination you said that you were having
5 trouble kind of remembering the details of those
6 conversations?

7 A Somewhat, yes.

8 Q But then you were able to give him details about car
9 parts and taking those back to ---

10 A That was the first conversation that we had.

11 Q That was the first conversation?

12 A Yes.

13 Q And you also talked about him wanting to get those
14 parts to you so that you -- so you could get some money.

15 A Yes.

16 Q Did y'all have any other conversations about things
17 that you might do to raise money during that time?

18 A Well, he told me that if I wasn't able to get my car
19 back, for me to just sell the rims off it. That was the
20 only other -- that and the parts to get the other car
21 fixed. That was it.

22 Q That's the only conversation that y'all had about
23 things that you were going to do to raise money?

24 A That I remember, yes.

1 Q And you said that you didn't know what happened to the
2 car, what he did with the car. Right?

3 A Correct.

4 Q But you do remember giving a statement to law
5 enforcement.

6 A Yes.

7 MS. WALKER - Your Honor, may I approach the
8 witness?

9 THE COURT - You may.

10 MS. WALKER - Thank you.

11 A Yes.

12 Q Does that refresh your memory?

13 A Yes.

14 Q What did he say that he had done with the car?

15 A The next day? After the car was gone?

16 Q Right.

17 A Because the car was at my house the whole night.

18 Well, the morning that he came home.

19 Q I'm confused.

20 A Okay. He came home late. It was the next day, the
21 next morning, early that morning. The car was there up
22 until daylight. Tyrobia took the car from the house.

23 Q Tyrobia is his brother.

24 A Correct.

25 Q Took the car from the house.

1 A He did. They didn't tell me where the car was going
2 or anything. Now, a couple hours later his brothers
3 returned to my house and they left and I called him and
4 asked him where he was going. He told me he was coming
5 back, he had to wipe the car down. Yes, I did say that.

6 Q And when you say him -- when you said you called him
7 and he said he was wiping the car down, who are you
8 referring to?

9 A I'm referring to my son's father.

10 Q The defendant.

11 A Yes.

12 Q And then you didn't see the car for several days.

13 A Correct.

14 Q And that was unusual.

15 A Correct.

16 Q And the gold teeth that were are the bottom of the
17 diaper bag, that was unusual.

18 A Yes.

19 MS. WALKER - Beg the Court's indulgence.

20 THE COURT - Yes.

21 MS. WALKER - Your Honor, can we approach one more
22 time. I apologize.

23 (WHEREUPON, BENCH CONFERENCE WAS HELD IN THE
24 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
25 WHICH WAS NOT REPORTED.)

1 THE COURT - All right. All right, as I
2 understand it, no further questions at this time with the
3 consent to opportunity to recall. Yes?

4 MS. WALKER - Yes, Your Honor.

5 THE COURT - Cross examination?

6 MR. SAWYER - None, Your Honor.

7 THE COURT - Very well. Yes, ma'am, you may come
8 down. At this point though you are not free to leave. All
9 right, and now call your next witness.

10 MS. VRIESINGA - State calls Investigator Rast.

11 BRANDON RAST, AFTER BEING FIRST DULY SWORN,

12 TESTIFIES AS FOLLOWS -

13 DEPUTY CLERK - Thank you. Please have a seat in
14 the witness stand and state your full name for the record
15 and please spell your last name.

16 MR. RAST - Brandon Rast, R-a-s-t.

17 THE COURT - Your witness.

18 MS. VRIESINGA - Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MS. VRIESINGA -

21 Q Hey, Investigator Rast.

22 A Hi.

23 Q Where do you work?

24 A Richland County Sheriff's Department.

25 Q And how long have you worked there?

1 A About nine and half years.

2 Q Okay. What do you do?

3 A I'm a criminal investigator with the criminal
4 investigation division.

5 Q Okay, will you tell us a little bit about your duties?

6 A Yes. Yes, we receive the incident reports that are
7 taken from the road, the line units. We continue the
8 investigations. We request processing of evidence; we
9 basically do the in-depth leg work that is involved with
10 prosecution of criminal cases.

11 Q Okay. I'm going to turn your attention back to the
12 end of August of last year. How did you become involved
13 with the case on that -- August 30th I believe is when you
14 became involved.

15 A I got a phone call from Sergeant Lindler, the sergeant
16 over CID or one of the sergeants in CID. We were working -
17 - he was working a case of a homicide that occurred at the
18 El Toro night club. He told me that there was a vehicle
19 that was possibly involved in the incident located at [REDACTED]
20 [REDACTED] and asked that I go out to that location and
21 look into that vehicle.

22 Q So did you go out to that location?

23 A I did.

24 Q And did you find a vehicle?

25 A We did.

1 Q Okay. What was that vehicle?

2 A It was a black crown victoria, older model.

3 Q And if you could just explain for the jury how you
4 ended up finding the vehicle?

5 A Yes, I drove past the location and saw that there was
6 a vehicle under a car cover. I could tell that the shape
7 of the vehicle under the car cover was consistent with an
8 older model crown victoria. I pulled into the -- into the
9 -- in front of the mobile home and made contact with a
10 young lady that was inside, explained why I was there, told
11 her that I -- that, you know, I'd to take a look at the
12 vehicle under the car cover and, you know, she -- so we
13 took the car -- I pulled the car cover back and saw that it
14 was black in color, older model, ford crown victoria and I
15 could peak in the window, we could see that it had a
16 burgundy interior which matched the description of what we
17 were looking for and spoke to her and told her that this
18 vehicle was believed to be, you know, involved in a crime,
19 and we had it towed.

20 Q Who was the young woman you spoke to?

21 A Spoke to Ms. Laquanda Shanika (phonetic) Issac.

22 Q Okay. Did she tell you who she was in relation to the
23 defendant?

24 A Yes, she said he was -- she was his girlfriend.

25 Q Okay, how long had they been dating?

1 A She mentioned that to me in her statement, if I may
2 refer to that. (Pause) She said since Valentine's Day of
3 that year, so would've been February 14th, 2012.

4 Q Okay. Other than the black crown vic that you found
5 in her back yard, was there anything else that you came
6 across?

7 A Yes. When I was inside -- when we were speaking about
8 the vehicle, about her relationship with Bernard, as she
9 referred to him, she -- I happened to notice sitting on the
10 same couch that I was sitting on at the end of the couch
11 there was a gun box, and I asked her about the gun box.

12 Q And what did she say about the gun box?

13 A She said the gun box had a .380 pistol in it that was
14 pink and black. She said that she no longer has the
15 pistol, that it had been stolen from her and I asked her if
16 she filed a police report about that gun being stolen; she
17 said she had.

18 Q Did she give you anything?

19 A Yes. When I -- when she said it was a .380, that, you
20 know, the gun box was there, she said that the gun was the
21 only thing that was missing. She gave me the .380 caliber
22 shell casing that comes with -- whenever you buy a gun
23 brand new, they include a spent shell casing, a test-fire
24 cartridge in a little envelope. She said that she still

1 had that, and so she gave me permission to collect that and
2 we took it with us.

3 MS. VRIESINGA - May I approach the witness?

4 THE COURT - You may.

5 MS. VRIESINGA - Thank you, Your Honor. (Pause)

6 Beg the Court's indulgence. No further questions, Your
7 Honor.

8 THE COURT - Very well. Cross examination?

9 MR. SAWYER - Thank you, Your Honor. May it
10 please the Court.

11 THE COURT - Yes.

12 CROSS EXAMINATION

13 BY MR. SAWYER -

14 Q Investigator Rast, again, what kind of car was this?

15 A The one that we found?

16 Q Yes.

17 A Is a older model black crown victoria.

18 Q And you served a search warrant on it?

19 A No, sir.

20 Q Okay.

21 A Not at the scene.

22 Q Okay. Did you have it towed?

23 A Yes, sir.

24 Q Just while we're on the topic, Ms. Issac, did she
25 happen to mention to you who had stolen that gun from her?

1 A She did actually. She gave me a name. Just give me
2 one moment. The name evades me. It's in her statement.
3 (Pause) She said that it was stolen by her ex-boyfriend
4 Antwon Adams.

5 Q Antwon Adams?

6 A They call him Twon.

7 MR. SAWYER - Thank you. Nothing further.

8 THE COURT - Re-direct?

9 MS. VRIESINGA - No, Your Honor. Nothing further.

10 THE COURT - All right, is this witness free to
11 leave?

12 (No response)

13 THE COURT - You are free to go.

14 MS. VRIESINGA - Yes.

15 THE COURT - All right, call your next witness
16 please.

17 MS. WALKER - Your Honor, the State re-calls
18 Zondra Gilyard.

19 MR. SAWYER - Your Honor, I think we might have to
20 take up a matter of law.

21 THE COURT - All right, let me see what time it
22 is. All right, ladies and gentlemen, there's a matter that
23 I must take up outside your presence, and it's a little
24 early for lunch, but this might take me just a few minutes,
25 so I think we'll go ahead and take lunch now so that I can

1 do the work that I must and not keep y'all waiting; you can
2 go have your lunch. We are going to start back at 1:30, at
3 1:30. Ladies and gentlemen, please be mindful, do not
4 discuss this matter or allow anyone to discuss it with you
5 over our lunch break. Leave your notebooks and pad. Don't
6 read; don't blog; don't listen to anything about this
7 matter. You must receive all of the information from which
8 you will make up your minds here in Court while Court is in
9 session. See you at 1:30. Thank you.

10 (Jury exits the courtroom)

11 THE COURT - Let counsel see what you have -- see
12 the information first.

13 MR. SAWYER - I've had a chance to ---

14 THE COURT - Okay. All right, let me frame the
15 issue as I understand it then you all -- I'll hear from
16 you. As I understand it during the testimony of the
17 witness, the question posed by counsel was, have you ever
18 known him to act like this. I gather shooting someone as I
19 understand it.

20 MR. SAWYER - Actually, Your Honor, I had said
21 Bernard's generally a pretty happy guy, isn't he? She said
22 yes. I said, so you'd never known him to act like this,
23 like he was acting; she had described him as being sad,
24 depressed, etcetera. That's what they're referring to.
25 That's what I remember asking her.

1 THE COURT - Oh, okay. Oh, it was the -- okay.
2 So your this was sad and depressed. All right. Rather
3 than as referred to in the opening statement. Okay.

4 MS. WALKER - Her response, Your Honor, though was
5 -- and I was confused, because I thought he was talking
6 about the shooting as well, which I guess why she was
7 answering the question the way she did, was, yes, because
8 he's not a violent person, and he is, so I think that they
9 opened the door to us being able to get that in with his
10 cross examination of the witness and her response that put
11 his peaceful nature in question.

12 THE COURT - I understand. Well, tell -- well,
13 first of all, I may have to re-hear the testimony. Tell me
14 what you would propose to ask her.

15 MS. WALKER - Your Honor, in May of 2009 there is
16 a CDV -- there's a CDV and an assault and battery of a high
17 and aggravated nature; his wife, not this lady, a different
18 woman -- he attacked his wife from behind and threw her to
19 the ground while she was holding their one year old son,
20 causing both the mother and the son to be injured at that
21 point. I think the witness said that they'd been dating
22 for quite some -- or a ---

23 THE COURT - A year? Three years?

24 MS. WALKER - Yes. That she --

1 THE COURT - I think she said she's known him now
2 for three years.

3 MS. WALKER - Three years.

4 THE COURT - Yes.

5 MS. WALKER - And that's one of them, Your Honor.
6 Then there's an additional CDV-HAN on the wife, that she
7 was attempting to contact a deputy at Region 4 substation;
8 he attacked her by slamming her to the ground and dragging
9 her across the ground and pavement causing extensive
10 burning and contusions to her. She was taken for
11 evaluations because they thought that her lip -- not her
12 lip -- her hip was fractured, and that's a -- the CDV-HAN,
13 Your Honor. So this witness says, you know, he's not a
14 violent person and there's some evidence to the contrary.

15 THE COURT - I understand.

16 MR. SAWYER - Sorry, Your Honor. I'm still just -
17 --

18 THE COURT - No, no, no, and I'm thinking -- I'm
19 not looking -- I'm actually thinking. I need to hear the
20 testimony at this point, and I hate to do that to you. I
21 just need to play that.

22 (WHEREUPON, TESTIMONY IS PLAYED FOR THE COURT
23 WHICH WAS NOT REPORTED.)

24 THE COURT - I'm listening.

1 MS. WALKER - Thank you, Your Honor. Under
2 404(A)(1) character of the accused, evidence of a pertinent
3 trait or character offered by an accused or by the
4 prosecution are but the same. They offered that that
5 information about him being a non-violent, peaceful person
6 was elicited by them on cross examination from the mother
7 of the defendant's child. The direct examination, Your
8 Honor, she talked about how he got mad that night and shot
9 up the club. They go into questions about how it affected
10 him and how he was so sad about it and how this had
11 affected it differently than anything else that's ever
12 happened and she answered all those questions, you know,
13 yes, he was sad, he -- this affected him differently, he
14 was crying, and in the context of all that, she puts out
15 there that he's not a violent person, which I think, Your
16 Honor, is, one, misleading to the jury if we have
17 information that says that that's not true, so I don't want
18 the jury to have this image of him as this non-violent
19 pacifist when we have information other than the murder
20 that that's untrue. And it was elicited -- we didn't go
21 into on direct examination -- improper for us to do so, but
22 once they elicit information about his peaceful character,
23 then I think, Your Honor, we can refute that under
24 404(A)(1).

25 THE COURT - I'm with you. Yes, sir?

1 MR. SAWYER - Your Honor, I'm just looking at the
2 notes that says when you're accused all this evidence of
3 his good character --- regarding specific ---

4 COURT REPORTER - I'm -- I'm having trouble
5 hearing ---

6 MR. SAWYER - I'm sorry. I'm reading while I'm
7 looking. Your Honor, I'm just looking over the notes of
8 the 2010 Rules of Evidence. Since that's identical to the
9 federal rules -- South Carolina law, when the accused
10 offers evidence of his good character regarding specific
11 character traits relevant to the crime charged, the State
12 may cross examine as to the acts relating to the traits
13 focused on the accused, so that's from -- looks like State
14 v. Major, 301, SC 181. So Judge, I'm reading that to say
15 as if were to say he was a peaceful person -- I didn't ask
16 a question asking specifically about his violent tendencies
17 or anything like that. I was just asking how he was that
18 day. She said he was sad. She brought it up on her own,
19 but again, she's not the accused, so I just don't see them
20 being able to get into traits of his specific conduct. We
21 don't even know if she knows about them. Also, too,
22 obviously my other concern is just reading through these --
23 it's a CDV, you know, and I just -- and I'm looking through
24 the incident reports and while they've been saying that she
25 didn't want to cooperate, she didn't want to be involved

1 with a lot of the process for this, you know, just in
2 practice, Judge, I'm always hesitant about CDV sort of
3 being able to be used or a CDV event when there's a lot of
4 recanting other things after the fact. All we got is just
5 what was reported the very day of. We don't know what was
6 actually said during the guilty plea. Again, the ABHAN is
7 because there was a child involved, because it's the old
8 ABHAN, so again that begets then do we have to start --
9 explain to the jury why this is an ABHAN, while it sounds
10 really bad but it's -- actually might not be that bad,
11 because if you use some sort of force. You understand
12 where I'm going.

13 THE COURT - Okay. Anything further?

14 MS. WALKER - Your Honor, well, I don't -- I don't
15 think the defendant has to get on the stand and say, I'm a
16 peaceful guy ---

17 THE COURT - You're correct.

18 MS. WALKER - Okay, that's -- that's it, Your
19 Honor. I think they've opened the door to it and I'd like
20 to recall Ms. Gilyard to flesh out those issues, because I
21 don't want the jury to be mislead by the testimony ---

22 THE COURT - I understand. All right, now and
23 this will be the ruling of the Court. It was not elicited
24 by the defense. The question is whether or not -- it
25 doesn't really have any -- whether he was weepy or not

1 weepy really doesn't have any relevance to this case as I
2 see it, but it wasn't objected to by the State, and it
3 wasn't elicited. She offered it. It just -- it's out
4 there. Now, it could've been objected to as being non-
5 responsive, because it was non-responsive, the statement
6 that -- when she blurted out, he was weeping because he's
7 not a violent person, so the -- her response was non-
8 responsive. Because it was non-responsive, then it was not
9 elicited by the defense. Because it was not elicited by
10 the defense, then the State would not then be allowed to
11 cross examine on specific acts. The specific acts, of
12 course, would be, you know, are you aware or do you know
13 that he pushed someone down, do you know that he pushed
14 someone down holding a child would be the act. Not -- it
15 would not invoke the conviction for that purpose, but the
16 act. And so it is the ruling of the Court that, in fact,
17 the testimony where she offers he's not a violent person
18 was not elicited by the defense. It was non-responsive and
19 on that basis I will not allow cross examination with
20 regards to specific act. Note exception thereto. All
21 right, now have we got anything else we can handle before
22 lunch?

23 MS. WALKER - Well, I don't want them to be
24 misled. I don't want the jurors to be misled. Is there a
25 curative instruction. You know, I didn't object at the

1 time, Your Honor, because I planned on talking to her about
2 the incidents of the conduct.

3 THE COURT - I understand.

4 MS. WALKER - Is there a curative instruction we
5 can get? I mean there's -- I don't want to use the lie,
6 but there's misinformation out that in front of the jury
7 that everybody in here knows to be misinformation. Is
8 there a way that we can make sure that they don't have a
9 false impression of what's going on.

10 THE COURT - No.

11 MS. WALKER - Okay.

12 THE COURT - I will not give a curative
13 instruction. In other words, because it was -- because it
14 was not objected to, it was not elicited by the defense, it
15 was non-responsive. It was -- could've been objected --
16 the whole line of questioning actually could've been
17 objected to by his weepiness. It wasn't; it was not
18 relevant; it could've been objected; it wasn't and
19 certainly wasn't elicited by the defense so respectfully I
20 will not give a curative instruction. It's just out there.
21 All right, anything else?

22 MS. WALKER - No, Your Honor.

23 THE COURT - All right, very well. From the
24 defense before we take lunch?

25 MR. SAWYER - No, Your Honor.

1 THE COURT - All right, now again I've not
2 received any charges. I'm sort of intrigued by your
3 comments yesterday that you're going to have these
4 intriguing charges, so when you get them I would like them.

5 MR. SAWYER - Yes, I'm still ---

6 THE COURT - As with the State.

7 MR. SAWYER - I'm still working on them, Judge. I
8 was busy with the jail phone calls last night.

9 THE COURT - No problem. No problem. All right,
10 and you have those, the jail stuff?

11 MR. SAWYER - Yes.

12 THE COURT - Okay, great. I'll see you guys at
13 1:30.

14 (Lunch recess)

15 THE COURT - All right. Yes?

16 MS. CAMPBELL - Your Honor, could you just give me
17 two seconds to find out why my victims aren't in here?

18 THE COURT - Sure.

19 MS. CAMPBELL - Thank you. (Pause) We don't know
20 where they are, Your Honor. We'll proceed.

21 THE COURT - All right. All right, very well.
22 Anything from the State before we bring the jury out?

23 MS. CAMPBELL - No, thank you.

24 THE COURT - All right from the defense?

25 MR. SAWYER - Nothing, Your Honor.

1 THE COURT - Very well. Let's have the jury. We
2 not all back yet?

3 BAILIFF - Missing four.

4 THE COURT - Four? We waiting on them. Just when
5 they get in, bring them on.

6 (Brief recess awaiting the jurors)

7 THE COURT - Bring them in.

8 (Jury enters the courtroom)

9 BAILIFF - Jury panel present.

10 THE COURT - Thank you so much. Ladies and
11 gentlemen, at this time we will now continue with the
12 State's case. Call your next witness.

13 MS. CAMPBELL - May it please the Court.

14 THE COURT - Yes.

15 MS. CAMPBELL - State will call Kristina Nuttry.

16 THE COURT - Oh, notes -- we need note pads.

17 BAILIFF - They're coming.

18 THE COURT - Note pads are coming. I do want to
19 wait a minute. Well, while the person's coming down, we
20 can -- yes, we'll swear her in and just not question until
21 we have pen and paper.

22 KRISTINA NUTTRY, AFTER BEING FIRST DULY SWORN,
23 TESTIFIES AS FOLLOWS -

1 DEPUTY CLERK - Thank you. Please have a seat in
2 the witness stand and state your full name for the record
3 and spell your first name.

4 MS. NUTTRY - Kristina Nuttry, K-r-i-s-t-I-n-a.

5 THE COURT - And spell your last name for us, too.
6 Please.

7 MS. NUTTRY - N-u-t-t-r-y.

8 THE COURT - Very well. Everybody's got their
9 note pads now? Everybody's getting them? Hold on one
10 second. This is awesome presiding juror conduct I would
11 just like to say. Okay, everyone has their ---

12 (JURORS AFFIRM)

13 THE COURT - Okay, wonderful. Yes, we may now
14 proceed.

15 MS. CAMPBELL - May it please the Court.

16 THE COURT - Yes.

17 DIRECT EXAMINATION

18 BY MS. CAMPBELL -

19 Q Ms. Nuttry, how old are you?

20 A Twenty-two.

21 Q And where do you currently live?

22 A In Boston, Massachusetts.

23 Q Can you get a little closer to that microphone? It's
24 hard to hear in here.

25 A In Boston, Massachusetts.

1 Q And how long have you been living in Boston,
2 Massachusetts?

3 A Since last -- the end of last January.

4 Q The end of last January?

5 A Yes, ma'am.

6 Q And where do you stay in Boston?

7 A At a shelter.

8 Q At a shelter?

9 A Yes, ma'am.

10 Q Back in August of last year, were you staying here in
11 the Columbia area?

12 A Yes, ma'am.

13 Q And where were you staying back in August of last
14 year?

15 A August of last year ---

16 Q Around the time all this happened we're getting ready
17 to talk about.

18 A I was staying -- residing with a family member.

19 Q A family member here?

20 A Yes, ma'am.

21 Q And do you know a young lady named Marquita Mobley?

22 A Yes, ma'am.

23 Q And how do you know Marquita?

- 1 Q I want to turn your attention to the evening of August
2 the 25th, that night. Do you remember that?
- 3 A Yes, ma'am.
- 4 Q And what were y'all doing that evening?
- 5 A Hanging out with friends.
- 6 Q And where were y'all hanging out?
- 7 A We were at our hotel room and we left to go to the
8 bar.
- 9 Q Do you remember the name of the hotel?
- 10 A The Red Roof.
- 11 Q The Red Roof Inn?
- 12 A Yes, ma'am. No, sorry. It was the Motel 6.
- 13 Q Motel -- do you know the ---
- 14 A No, Red Roof. Red Roof. Sorry. It was The Red Roof
15 Inn.
- 16 Q That evening did you all leave the hotel to go
17 somewhere, the motel?
- 18 A Yes, ma'am.
- 19 Q And where were y'all going?
- 20 A To El Toro's.
- 21 Q How were you getting that?
- 22 A We had walked over.
- 23 Q Who all was with you?
- 24 A Just me and Marquita.

1 Q And when you walked over to El Toro, what was your
2 intention? What were y'all planning on doing?

3 A Having a couple of drinks and just having fun hanging
4 out.

5 Q Once you got to El Toro -- was it a long walk?

6 A No. No, ma'am.

7 Q Once you got there, what happened?

8 A We got there and went to the entrance. I didn't have
9 my ID; I had lost it, so they wouldn't let us in.

10 Q You didn't have your ID?

11 A No.

12 Q You had lost it.

13 A Yes.

14 Q And did they ask for your ID?

15 A Yes, they did.

16 Q And were they rude when they wouldn't let you in?

17 A No.

18 Q And that was because you didn't have your ID?

19 A Yes, ma'am.

20 Q When you couldn't get in the El Toro, what did y'all
21 do?

22 A We proceeded to leave the premises and we had been
23 walking and a guy had offered us a ride and we had went to
24 the gas station.

- 1 Q Okay, let me back up a minute. Where were you walking
2 when the guy came up and offered y'all a ride?
- 3 A We was right like around the area, like right by El
4 Toro's.
- 5 Q Was it on the street?
- 6 A I believe so.
- 7 Q And at that point, do you remember what kind of
8 automobile the guy was driving when offered you a ride?
- 9 A A white truck.
- 10 Q A white truck?
- 11 A Yes, ma'am.
- 12 Q And did y'all get in with him?
- 13 A Yes, ma'am.
- 14 Q And where did you go?
- 15 A We drove to the gas station.
- 16 Q And where was the gas station located in relation to
17 the El Toro?
- 18 A Was to -- from the front of El Toro's it was to the
19 right.
- 20 Q To the right? Was it next door?
- 21 A Yes.
- 22 Q What happened when y'all pulled in at the gas station
23 next to El Toro?
- 24 A When we pulled in, Marquita got out the car, the
25 driver had got out of the car and went in the gas station.

- 1 Q The driver went in the gas station?
- 2 A Yes.
- 3 Q What was he going in there to do?
- 4 A To purchase beer.
- 5 Q And that was for y'all to drink?
- 6 A Yes.
- 7 Q And then what did you observe?
- 8 A I observed some commotion going on in like the area --
- 9 the parking lot of El Toro's. I had -- I seen some men
- 10 yelling and causing commotion. I had called one of the men
- 11 over and asked him what was wrong.
- 12 Q Okay, let me stop for a minute. You said you saw some
- 13 men.
- 14 A (Indicating yes)
- 15 Q Do you remember what generally they looked like?
- 16 A Black males. One was no more than six feet, baby blue
- 17 t-shirt, jean shorts, sneakers.
- 18 Q What kind of t-shirt?
- 19 A Baby blue.
- 20 Q Baby blue? And what did the other one look like that
- 21 you saw?
- 22 A He had dreads and was wearing I believe a red shirt.
- 23 Q And you said you saw them causing a commotion?
- 24 A Yes.
- 25 Q And what did you actually see them doing?

- 1 A Just basically, you know, hand motions in the air and
2 arguing, yelling out loud.
- 3 Q Do you remember what they were yelling?
- 4 A Basically, you trying me, not about that way, just,
5 you know, ---
- 6 Q You trying me ---
- 7 A -- just maybe - just basically like they're angry,
8 yelling out, they were mad.
- 9 Q Could you see anybody else with those two men?
- 10 A Just the security guard that was on duty.
- 11 Q The security guard?
- 12 A That was --
- 13 Q And was that the same security guard you'd seen
14 earlier that night?
- 15 A Yes.
- 16 Q It was?
- 17 A (No response)
- 18 Q And when you heard them yell something, what was the
19 first thing you heard them yell?
- 20 A You tried me.
- 21 Q You tried me?
- 22 A (No response)
- 23 Q And who are they yelling at?
- 24 A The security officer.
- 25 Q And then what else did you hear them yell?

- 1 A You're not about that life.
- 2 Q You're not about that life. And what was the security
- 3 guard doing?
- 4 A Basically continuing to, I guess, lead them off of the
- 5 premises and telling them to leave.
- 6 Q What happened next as you observed the men over there
- 7 -- what area were they in?
- 8 A The grass in between the two parking lots.
- 9 Q The grass in between the two parking lots?
- 10 A Yes, ma'am.
- 11 Q And did you observe anything else while they were in
- 12 that grassy area?
- 13 A The guy with the dreads had hit the office -- the
- 14 security officer from behind.
- 15 Q He hit him from behind?
- 16 A Yes, ma'am.
- 17 Q And what did he actually do to him?
- 18 A The officer proceeded to pull out his gun.
- 19 Q After he got hit from behind?
- 20 A Yes.
- 21 Q And which one hit him from behind?
- 22 A The guy with the dreads.
- 23 Q And where did he hit him?
- 24 A In the back of the head.
- 25 Q And that's when the security guard pulled out his gun?

- 1 A Yes, ma'am.
- 2 Q And at that point were the two men you saw with the
3 security guard still yelling?
- 4 A Yes, ma'am.
- 5 Q What were they saying?
- 6 A Basically you trying me, not about that life, that's
7 all that was repeated, was you're not about that life.
- 8 Q Did you see where they went next?
- 9 A Well, I had called over one of the men and asked him
10 what was the matter and he was saying that he was asked to
11 be removed from the club and wasn't being allowed back in,
12 expressing how he was maced by the officer and ---
- 13 Q Did he say whether or not he got maced in the face?
- 14 A He said he did not get maced in the face, that it was
15 in the back of the head.
- 16 Q And who was talking to you at this point?
- 17 A Well, the guy in the baby blue.
- 18 Q Guy in the baby blue?
- 19 A Yes, ma'am.
- 20 Q And where was the conversation taking place?
- 21 A In the gas station, at the gas station parking lot at
22 the truck.
- 23 Q At the truck?
- 24 A Yes, ma'am.
- 25 Q Were you in or out of the truck?

- 1 A I was inside.
- 2 Q Was the guy in or out of the truck?
- 3 A The guy was outside of the truck.
- 4 Q The one you were talking to?
- 5 A Yes.
- 6 Q And what did he say to you then?
- 7 A He was just basically saying how he's mad, he couldn't
- 8 get back in the club, he doesn't understand why, basically
- 9 just expressing that he was very upset about the situation.
- 10 Q And that's when he talked about getting maced?
- 11 A Yes.
- 12 Q But what did he say about when the guy maced?
- 13 A He was like he missed, my eyes ain't burning, my eyes
- 14 ain't red.
- 15 Q My eyes aren't burning, my eyes aren't red?
- 16 A Yes, ma'am.
- 17 Q What else did he say to you?
- 18 A He was basically just expressing, like same thing,
- 19 you're not about that life; he expressed that he was going
- 20 to light the place up.
- 21 Q He was going to light the place up?
- 22 A Yes.
- 23 Q And did he tell you to do anything?
- 24 A He told me to leave.
- 25 Q To leave?

- 1 A (Indicating yes)
- 2 Q This is the conversation you had with the guy in the
3 blue?
- 4 A Yes, ma'am.
- 5 Q Did you see where the other guy with dreads was?
- 6 A I believe still in the grassy area.
- 7 Q At that point what happened?
- 8 A Marquita and the driver got in the car, and I told
9 them like let's go. We turned out of the parking lot and
10 we reached about to the light, I heard rounds go off.
- 11 Q And when you say you heard rounds go off, what did you
12 hear?
- 13 A I heard gunshots.
- 14 Q And did you hear more than one?
- 15 A Yes, ma'am.
- 16 Q Could you tell where they were coming from?
- 17 A Yes, ma'am.
- 18 Q Prior to leaving, did you see the direction where
19 either the guy in the blue t-shirt or the guy with dreads
20 walking to?
- 21 A Just the parking lot.
- 22 Q Could you tell what kind of car the shooting was
23 coming from?
- 24 A It was -- there was two cars. There was the black car
25 and the white car.

- 1 Q There was a black car and white car?
- 2 A Yes, ma'am.
- 3 Q Could you tell which one the shots were coming from?
- 4 A No.
- 5 Q When you heard the shots, what did y'all do?
- 6 A We proceeded to keep on rolling away back to the
- 7 hotel.
- 8 Q Did you want to be involved?
- 9 A No, not at all. I was just trying to express to the
- 10 man that it's not worth it.
- 11 Q What did you say to him?
- 12 A I was just expressing to him that it wasn't worth it
- 13 to get in trouble and do years in jail and lose his freedom
- 14 over a place that he can just go back to at another time or
- 15 go to somewhere different.
- 16 Q And that's what you told him when you were talking to
- 17 him that night?
- 18 A Yes, ma'am.
- 19 Q Did you ever see any guns that night?
- 20 A No, ma'am.
- 21 Q Did you ever hear anybody talking about guns?
- 22 A I heard the two men talking about guns.
- 23 Q And what were they saying about the guns when they
- 24 were out there with you that night?

1 A They were just saying that they got something for
2 them, kept repeating they're not about that way.

3 Q Did they indicate where they had something for them?

4 A I don't remember.

5 Q Do you remember giving a statement? Well, let me
6 finish up. You went and went back to the hotel.

7 A Yes, ma'am.

8 Q Over the next several days, did the police make
9 contact with you?

10 A Yes, ma'am.

11 Q And when they made contact with you, did they actually
12 ask you questions about what you saw that night?

13 A Yes, ma'am.

14 Q And did you give them a statement?

15 A Yes, ma'am.

16 Q At a later time did they come back and talk to y'all
17 again?

18 A Yes, ma'am.

19 Q And what, if anything, did they say to you about you
20 telling the truth and being forthcoming?

21 A They just basically asked me to tell the truth on what
22 I saw and what I heard about the situation.

23 Q Did you want to be involved in this situation?

24 A Not at all. I was just trying to help somebody make a
25 better decision.

1 Q Why did you call them over to the car that -- or did
2 you know him before this?

3 A No, ma'am.

4 Q Why did you call him over to the car that night?

5 A Because I was under the influence of alcohol, and I'm
6 a friendly -- I'm actually a friendly person, and because I
7 didn't want to see somebody get in trouble.

8 Q And you tried to help him?

9 A Yes, ma'am.

10 Q And y'all had been drinking that night?

11 A Yes, ma'am.

12 Q But you know what you saw.

13 A Yes, ma'am.

14 Q At some point did officers actually show you some
15 photos?

16 A Yes, ma'am, they showed me a video.

17 Q A video?

18 A Yes, and showed me a line-up of photos, but I didn't
19 remember what the man exactly looked like, and I ended up
20 identifying the wrong person.

21 Q But you cooperated with the police.

22 A Yes, ma'am.

23 Q Do you remember giving a statement in this case to the
24 police?

25 A Yes, ma'am.

1 Q On the 27th, I believe, a couple days afterwards?

2 A Yes, ma'am.

3 Q And do you remember them asking you about -- them
4 asking you about guns and what they said about the guns?

5 A (No response)

6 Q Is that your statement?

7 MS. DYAR - Refresh her recollection first, Your
8 Honor.

9 MS. CAMPBELL - I have to ask her to identify it
10 first. Thank you.

11 Q Is this your statement?

12 A Am I reading the highlighted or am I reading ---

13 COURT REPORTER - She needs to speak up. I'm
14 having trouble hearing her.

15 MS. CAMPBELL - Okay.

16 Q Is that your signature at the bottom?

17 A Yes, ma'am.

18 Q And is this part of your statement?

19 A Yes, ma'am, that's what's on the paper.

20 Q And do you remember them ask -- will this help you
21 refresh your memory?

22 A Yes, ma'am, the highlighted area.

23 Q Okay, and does that help you?

24 A Yes, ma'am.

1 Q Do you remember what they were saying about the guns
2 that night?

3 A They're talking about them being located in the car.

4 Q They were located in the car?

5 A (No response)

6 Q And who said that?

7 A I couldn't -- I ---

8 Q When ---

9 A They were both saying it.

10 Q Both saying it. You also mentioned earlier that you
11 picked the wrong person. You remember telling them you
12 just weren't sure?

13 A I wasn't sure like which one it was, like I didn't
14 remember what the man's face looked like exactly.

15 Q Okay.

16 MS. CAMPBELL - Thank you. I have nothing
17 further.

18 THE COURT - Cross examination.

19 MS. DYAR - Thank you, Your Honor.

20 THE COURT - Yes.

21 CROSS EXAMINATION

22 BY MS. DYAR -

23 Q So, Ms. Nuttry, you're saying that the gentleman who
24 picked you and Ms. Marquita up from the street, he wasn't
25 in the car during this?

- 1 A No.
- 2 Q Ms. Marquita wasn't in the car as well?
- 3 A No, ma'am.
- 4 Q And you testified you actually saw the commotion? Did
- 5 you hear the commotion?
- 6 A Both.
- 7 Q Both. And at that time it was just the two men that
- 8 you saw, the person in the baby blue and then the gentleman
- 9 with the dreads?
- 10 A And the security guard.
- 11 Q And the security guard. And you said they're angry.
- 12 A Yes.
- 13 Q They're yelling.
- 14 A Yes, ma'am.
- 15 Q They're arguing.
- 16 A Yes, ma'am.
- 17 Q They're being escorted off the property?
- 18 A Yes, ma'am.
- 19 Q They make it all the way to the edge of the property?
- 20 A Yes, ma'am.
- 21 Q Into the gas station parking lot?
- 22 A Yes, ma'am.
- 23 Q And then that's when you called one of the gentleman
- 24 over?

1 A The gentleman in the baby blue I called him over from
2 the -- when he was in the grassy area.

3 Q Okay. And he tells you he's been maced in the back of
4 the head.

5 A Yes, ma'am.

6 Q And you don't see any signs on his face that he's been
7 -- that he's been maced?

8 A No, I ain't never seen a maced person before.

9 Q And again, he's mad.

10 A Yes.

11 Q He's telling you he's mad.

12 A Yes, ma'am.

13 Q And the other gentleman is still in the grassy area?
14 It's just the guy in the baby blue speaking with you?

15 A Yes, just the guy in the baby blue.

16 Q And you said you heard shots, more than one shot.

17 A Yes, ma'am.

18 Q And you can tell where they were coming from.

19 A Yes, ma'am.

20 Q Where -- can you tell me where they were coming from?

21 A From the right of me.

22 Q From the right of you. And this -- and where are you
23 guys at this point?

- 1 A Turning out of the parking lot, so if we're turning
2 out of the parking lot, we're going left; the shots are
3 coming from the right.
- 4 Q And where are you in the car?
- 5 A On the right -- back -- no left -- I'm behind the
6 driver in the passenger.
- 7 Q And you say you actually see two cars.
- 8 A Yes, ma'am.
- 9 Q At what point to you see those two cars?
- 10 A When I was turning left going out of the parking lot.
- 11 Q But you can't say which car the shots came from.
- 12 A No, ma'am.
- 13 Q Or who fired the shots.
- 14 A No, ma'am, I did not ---
- 15 Q You didn't see the shooter.
- 16 A No, I did not see the shooter.
- 17 Q And you gave a statement to law enforcement a couple
18 days later. Correct?
- 19 A Yes, ma'am.
- 20 Q Do you remember speaking to Investigator Jordan?
- 21 A Yes, ma'am.
- 22 Q He actually talked to you a couple times. Right?
- 23 A Yes, ma'am.
- 24 Q And that second time he expressed to you that it's
25 very important to tell the truth.

- 1 A Yes, ma'am.
- 2 Q He needed your cooperation.
- 3 A Yes, ma'am.
- 4 Q At that point he told you if you weren't telling the
- 5 truth that you could be arrested.
- 6 A Yes, ma'am.
- 7 Q That you could go to jail.
- 8 A Yes, ma'am.
- 9 Q And did you tell him that you were being truthful?
- 10 A Yes, ma'am.
- 11 Q But that night you and Ms. Marquita had been drinking.
- 12 A Yes, ma'am.
- 13 Q And going drugs?
- 14 A Smoking marijuana.
- 15 MS. DYAR - Beg the Court's indulgence.
- 16 THE COURT - Very well.
- 17 Q And at this point in the evening how much had you been
- 18 drinking?
- 19 A Not a lot.
- 20 Q What's not a lot?
- 21 A Maybe like one or two shots and a beer.
- 22 Q And again he -- he told you he didn't know why he had
- 23 been maced. Right?
- 24 A Said he was maced. I didn't ask him why.
- 25 Q And he got maced in the back.

1 A Yes, ma'am.

2 MS. DYAR - Nothing further, Your Honor.

3 THE COURT - All right, re-direct?

4 MS. CAMPBELL - No, ma'am.

5 THE COURT - And is this witness free to leave?

6 MS. CAMPBELL - Yes, Your Honor.

7 THE COURT - Any objection?

8 MS. DYAR - None, Your Honor.

9 THE COURT - Very well. You are free to go. All
10 right. Call your next witness, please.

11 MS. WALKER - Yes, Your Honor. The State calls
12 Chief David Wilson.

13 DAVID WILSON, AFTER BEING FIRST DULY SWORN,
14 TESTIFIES AS FOLLOWS -

15 DEPUTY CLERK - Thank you. Please have a seat in
16 the witness stand and state your full name for the record.

17 MR. WILSON - David Wilson.

18 THE COURT - Your witness.

19 MS. WALKER - Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY MS. WALKER -

22 Q Chief Wilson?

23 A Yes, ma'am.

24 Q Sir, where are you currently employed?

25 A The Richland County Sheriff's Department.

1 Q And how long have you been at the sheriff's
2 department?

3 A A little over 30 years.

4 Q Little over how long?

5 A Thirty years.

6 Q And what do you do at the sheriff's department?

7 A I'm the deputy chief in charge of the investigative
8 unit.

9 Q Can you tell us what, I guess what all that entails?

10 A All the criminal investigations done by the sheriff's
11 department. I've over the forensics labs, the crime scene
12 and the DNA chemistry labs as well as the evidence room and
13 archives.

14 Q And how long have you been the deputy chief?

15 A Sixteen years.

16 Q And do you on occasion get involved in particular
17 cases?

18 A Yes, ma'am

19 Q The murder that we're here for this week, did you
20 become involved in that case?

21 A I did.

22 Q Can you tell me how you became involved?

23 A I got a call from Sergeant Lindler on the morning of
24 August 26, 2012 about 7:30 that morning to brief me on the

1 case. We were short-handed and so I went in about 10:30
2 that morning and assisted in locating witnesses.

3 Q And did you guys -- do you guys have like an initial
4 debriefing when there's a case of this nature?

5 A Yes.

6 Q And did y'all do that in this case?

7 A Yes.

8 Q And when was that, sir?

9 A That would be the morning of the 26th.

10 Q And during that initial briefing, what information did
11 you have about this murder?

12 A Just the basic information, where it had occurred,
13 when it had occurred, who we knew that were potential
14 witnesses.

15 Q And did y'all have names at that point in time of
16 potential witnesses?

17 A We had some, yes.

18 Q And what was y'all's next step in terms of
19 investigating this case?

20 A Myself and another investigator went to Lexington and
21 picked up Lamar Ray who was a potential witness.

22 Q Who was that -- do you know who the other investigator
23 was?

24 A Josh Mauldin.

25 Q And did you speak with Lamar Ray?

1 A I spoke with him briefly on the way back from
2 Lexington, and then Josh Mauldin actually took a statement
3 from him.

4 Q Were you present when his statement was taken?

5 A No.

6 Q And did Mr. Ray have information pertinent to y'all's
7 investigation?

8 A He did.

9 Q After making contact with Mr. Ray, sir, can you tell
10 me what you did?

11 A I called Lieutenant Poole to have him come in to pull
12 some video for us. There was some video at the gas station
13 next door to where this club was that we wanted to have
14 pulled, so I called him in and had him come in to do that.
15 He is one of our technical services people.

16 Q Does he generally pull video tapes and things of that
17 nature?

18 A He does. Then I started looking -- he developed a
19 potential witness off a credit card receipt, and I tried to
20 locate that witness and that took several hours, checked
21 numerous addresses and with -- with no luck.

22 Q So at this point I guess are y'all just trying to
23 develop any lead y'all can as to who committed the murder?

24 A That is correct.

1 Q And the video tape, did that become important in your
2 investigation?

3 A It did.

4 Q Can you explain that to the jury?

5 A The video tape itself showed several people that were
6 running from the club area ---

7 MR. SAWYER - Objection, Your Honor. Truth of the
8 matter asserted.

9 (WHEREUPON, BENCH CONFERENCE WAS HELD IN THE
10 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
11 WHICH WAS NOT REPORTED.)

12 Q Chief, let me ask you this. You watched the video.

13 A I did.

14 Q And individuals on the video became pertinent in your
15 investigation.

16 A Yes.

17 Q Did you and members of your department then try to
18 make contact with those individuals?

19 A Yes.

20 Q And was that done?

21 A Yes.

22 Q After making contact with the individuals on that
23 video, what did y'all do or what did you do next in the
24 investigation?

1 A There are several things. I was constantly receiving
2 information. I received some information from uniform
3 officers that implicated a certain person as maybe having
4 some involvement in the homicide or having witnessed or
5 having known who did the homicide.

6 Q And who was that person?

7 A I have to find it here in my notes. That was about
8 2:15 in the morning. I received a call from Corporal
9 Fisher and he had given me the name of Larry Cornish, and
10 at that point are y'all still trying to track down
11 different leads?

12 A That's correct.

13 Q After receiving that information, can you tell the
14 jury how your investigation progressed?

15 A On the morning of the 28th we had received a
16 Crimestopper's tip ---

17 Q Don't tell me what was said in the Crimestopper's tip,
18 but did y'all get information about a possible shooter?

19 A We did.

20 Q And did y'all get location information about that
21 shooter?

22 A We did.

23 Q And other information that would prove pertinent to
24 the case.

1 A Other information that was verifiable through other
2 sources that matched up, yes.

3 Q So was the information in the Crimestopper's tip
4 corroborated by the other evidence?

5 A That is correct.

6 Q With that information, can you tell me what y'all did?

7 A Sergeant Lindler prepared a photo line-up of our
8 potential suspect.

9 Q And were those shown to witnesses?

10 A They were.

11 Q And were they able to corroborate the information in
12 the Crimestopper's tip?

13 A Yes, I actually met with Lamar Ray, and he was able to
14 pick out the defendant.

15 Q When you -- how many times did you meet with Mr. Ray?

16 A I met with him initially when we first got a
17 statement, and then I met with him to show him the line-up.

18 Q Can you describe his level of cooperation throughout
19 your investigation in terms of your dealing with him?

20 A He was cooperative but hesitant. He was somewhat
21 afraid to get involved. We had to encourage him to do his
22 civic duty.

23 Q Is that uncommon?

24 A No, it's not.

DAVID WILSON - DIRECT BY MS. WALKER

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1 Q And was Mr. Ray able to corroborate the information in
2 the Crimestopper's tip?

3 A He was.

4 Q After the Crimestopper's tip and the corroborating
5 evidence, what did y'all do?

6 A We put everything together. Sergeant Lindler got an
7 arrest warrant for the defendant and we started hunting the
8 defendant.

9 Q I'm sorry, what'd you say?

10 A We start hunting for the defendant.

11 Q And where did y'all go?

12 A The main place was [REDACTED], Allen Benedict
13 Court, which is right off of Hardin Street here in
14 Columbia.

15 Q Did y'all have -- did y'all know who lived at [REDACTED]?

16 A We did.

17 Q And who was that?

18 A His girlfriend and he also lived there as well.

19 Q Is that Zondra Gilyard?

20 A That is correct.

21 Q And what happened when y'all initially went to Allen
22 Benedict Court?

23 A Well, for the next 24 hours several of us rode by that
24 location. It's a project-type location. So we were
25 constantly riding by and see if we could see anybody moving

1 around the apartment, see -- looking for the cars that were
2 described in this incident.

3 Q And what car were you looking for at that point in
4 time?

5 A We were looking for two cars, a white car and a black
6 car. On the 29th at about 3:30 p.m., Investigator Jordan
7 spotted the defendant outside the apartment with some other
8 males. Myself and Sergeant Lindler responded from
9 headquarters. We had other units respond over there as
10 well.

11 Q And was contact made with the defendant at that time?

12 A It -- yes, ma'am.

13 Q And what was done?

14 A He was arrested.

15 Q After he was arrested, where was he taken?

16 A He was placed in my vehicle with Sergeant Lindler and
17 I talked to his girlfriend, Ms. Gilyard.

18 Q Did you ever make contact with his other girlfriend?

19 A No.

20 Q Where was he taken after being placed in your car?

21 A He was taken to the sheriff's department.

22 Q And when you made contact with his girlfriend, was she
23 cooperative in the investigation?

24 A She was cooperative but upset.

1 Q And once he got to the sheriff's department, do you
2 know what -- where exactly he went in the sheriff's
3 department?

4 A I believe he went to Sergeant Strange's office.

5 Q For what purpose, sir?

6 A To be interviewed.

7 Q And was he interviewed?

8 A Yes, he was.

9 Q Were you present for that interview?

10 A Not initially, no.

11 Q At some point did you go make contact with the
12 defendant during the interview?

13 A Later that night I interviewed -- at the time of his
14 initial interview one of his brothers was there at the
15 apartment and agreed to come back. He was curious and
16 asking questions about what we were doing and why his
17 brother had been arrested and he ---

18 Q Do you remember which brother that was?

19 A Terrell Vaughn. And I sat down and interviewed
20 Terrell Vaughn for several hours at which time -- there was
21 no probable cause at that point to arrest Terrell Vaughn so
22 I took him and dropped him off, and when I came back to the
23 department, Sergeant Lindler and Investigator Jordan were
24 waiting on transport for the defendant. They needed to

1 leave, so I sat with the defendant for a period of about an
2 hour talking with him about the case.

3 Q And did he share things about the case with you at
4 that point?

5 A We talked about the case. He didn't give me any
6 really pertinent information. He cried several times, very
7 emotional about things, wasn't very forthright.

8 Q And did you -- and was he then transported to the
9 jail?

10 A He was.

11 Q What did you do next in the investigation, sir?

12 A On the morning of the 30th I was listening to some jail
13 calls. Every phone call made out of our jail by inmates is
14 recorded and they're told it is recorded, and we had
15 Gilyard's number and so we pulled out all the calls coming
16 to that number.

17 Q Gilyard. That's Zondra Gilyard.

18 A Zondra -- Zondra Gilyard, yes, ma'am.

19 Q And was there information in those jail phone calls
20 that led you to believe that that defendant had been less
21 than truthful the day -- when he was interviewed?

22 A Absolutely.

23 Q At that point in time have y'all interviewed any of
24 his other brothers?

DAVID WILSON - DIRECT BY MS. WALKER

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1 A Yes, Terrell Vaughn and I don't know that we had the
2 names of the other brothers. I think we did at that point
3 from -- some of them from Terrell Vaughn, but we hadn't
4 interviewed them in any length at that point. When I
5 listened to the jail phone calls there was what I would
6 consider incriminating information on those jail phone
7 calls.

8 Q And those were the calls that were made on August 29th?

9 A That's correct.

10 MS. WALKER - Your Honor, I think at this point I
11 think through the stipulation, the State seeks to admit
12 Exhibit 87 into evidence.

13 THE COURT - Say that one more time.

14 MS. WALKER - State's Exhibit 87, Your Honor, I
15 think is admitted through stipulation?

16 MR. SAWYER - Yes, Your Honor, with ---

17 THE COURT - Very well.

18 MR. SAWYER - -- for purposes we discussed
19 earlier.

20 THE COURT - All right.

21 (WHEREUPON, ITEMS MARKED INTO EVIDENCE AS STATE'S
22 EXHIBIT NUMBER 87.)

23 MS. WALKER - Beg the Court's indulgence, Your
24 Honor. Chief Wilson, I'm going to play these phone calls.

25 (WHEREUPON, PHONE CALL IS PLAYED FOR THE JURY.)

1 Q And Chief, I just want to ask you a couple of
2 questions about that phone call. There was a -- and excuse
3 my language, sir -- there was a time in which the
4 statement, fuck, Terrell, was made. Who is Terrell?

5 A Terrell Vaughn, his brother.

6 Q And without telling me what Terrell said, did he give
7 you useful information in this case?

8 A No, not initially. He did later on after this phone
9 call.

10 Q And was Terrell eventually charged as one this
11 defendant's co-defendants?

12 A Yes, he was.

13 Q And what was he charged with?

14 A I believe it was accessory after the fact of murder.

15 Q There was another statement that I want to ask you
16 about, tell all my brothers I didn't say nothing. The
17 defendant's co-defendants, how many are they?

18 A There's three.

19 Q And are they in any way related to the defendant?

20 A They're all brothers.

21 MS. WALKER - There are two more calls.

22 (WHEREUPON, PHONE CALL IS PLAYED FOR THE JURY.)

23 Q Chief, were there things on that phone call that you
24 listened to that caused you concern?

1 A Yes, just basically a cover-up, trying to keep
2 everybody quiet.

3 Q And at that point did y'all know that gold teeth were
4 important in the case?

5 A Yes, and had been looking for them. But it's
6 important to note that on the first day when we pulled
7 these phone calls, I never got past the first phone call.
8 When I heard the conversation about the catergap (phonetic)
9 -- that is common language for a gun -- and talking about
10 getting rid of it, so I immediately stopped what I was
11 doing and called Sergeant Lindler and Investigator Jordan
12 and had him go back over and interview Zondra.

13 Q And did Zondra -- without tell me what she said, did
14 she give y'all pertinent information in the case?

15 A Absolutely.

16 Q And this is the last phone call, Chief.

17 (WHEREUPON, PHONE CALL IS PLAYED FOR THE JURY.)

18 Q Said after reviewing at least the first one while
19 y'all re-interviewed Zondra?

20 A After the first phone call and hearing what was on
21 that first phone call, I alerted Sergeant Lindler and
22 Investigator Jordan to the context of that phone call and
23 they went back out and interviewed Zondra.

24 Q And did y'all also make contact with, I guess, Tyrobia
25 Green, Terrell Vaughn and Jonathan Sterling?

1 A Well, as they were interviewing Zondra and called me
2 with an update that she had broken down and told the truth,
3 I went and got Terrell Vaughn.

4 Q And did you interview him?

5 A Absolutely.

6 Q And did he give you helpful information?

7 A Absolutely.

8 Q After those two interviews, did you think it was
9 pertinent to re-interview the defendant?

10 A Well, his other brothers were interviewed as well.

11 Q And that's Jonathan Sterling?

12 A Sterling and Tyrobia Green and they both gave
13 pertinent information as well.

14 Q And did you with, I guess, all that information re-
15 interview the defendant?

16 A Yes, Sergeant Lindler on the morning of the 31st, him
17 and Investigator Jordan were re-interviewing the defendant
18 in Sergeant Isenhoward's office. Investigator Jordan had
19 to leave due to a family matter, so I stepped in and
20 assisted Sergeant Lindler.

21 Q At what point did you step in to interview?

22 A It was after the Advice of Rights but before he
23 confessed.

24 MS. WALKER - Beg the Court's indulgence.

25 THE COURT - Okay.

DAVID WILSON - DIRECT BY MS. WALKER

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1 Q You said you were present for his confession?

2 A That's correct.

3 Q I want to show you what's been marked as State's
4 Exhibit 4 and ask you if you recognize this.

5 A That is the original statement taken from the
6 defendant that morning.

7 Q And this is your signature?

8 A That is correct. My signature is on all three pages
9 as well as Mr. Haltiwanger's and as well as Chris
10 Lindler's.

11 MS. WALKER - At this point, Your Honor, the State
12 seeks to admit Exhibit 4 into evidence.

13 MR. SAWYER - We'd just renew out objection.

14 THE COURT - Very well. Admitted over objection.

15 MS. WALKER - Thank you, Your Honor.

16 (WHEREUPON, ITEM MARKED AS STATE'S EXHIBITS
17 NUMBER 4.)

18 Q Chief Wilson, before I guess he actually gave that
19 statement, did you guys let him know of the additional
20 information that you had?

21 A We did. Sergeant Lindler was reading him excerpts of
22 all his brothers' statements as well as Zondra's statement
23 at that point. And as he got to Zondra's statement, he
24 said, that's enough, I'll tell you.

1 Q And y'all proceeded to take a written statement from
2 him?

3 A That's correct.

4 Q Chief, would you publish that statement to the jury?

5 A I will, and this is on one of our standard statement
6 forms. It's a statement of Gerald Bernard Haltiwanger,
7 Jr., [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], Columbia, South
8 Carolina, and it's got 29210, which I don't think is the
9 right zip code. I think that's going to be the zip code of
10 the club. It says Columbia, South Carolina, this 31st day
11 of May -- I'm sorry -- of August, at 1030 hours in the
12 presence of Investigator Sergeant C. Lindler of the
13 Richland County Sheriff's Department. I, Gerald Bernard
14 Haltiwanger, Jr. understand that have the right to remain
15 silent. Anything I say can be used against me in Court. I
16 have the right to talk to a lawyer for advice before you
17 ask me any questions and have a lawyer with me during any
18 questioning. If I cannot afford a lawyer, one will be
19 appointed for me before any questioning if I wish. If I
20 decide to answer questions now without a lawyer present, I
21 still have the right to stop answering at any time. I also
22 have the right to stop answering at any time until I talk
23 to a lawyer, do make the following statement. And it's in
24 a question and a answer format with Sergeant Lindler and D.
25 Wilson which is myself asking the questions and Mr.

DAVID WILSON - DIRECT BY MS. WALKER

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1 Haltiwanger giving the answers. The first question, is
2 there something you need to tell us that you didn't
3 Wednesday night; yes. I gave the security guard my
4 brother's ID. When I gave the man the ID, he looked at it
5 and said it wasn't me. He said that I needed to get out of
6 his face and that wasn't even my ID. I turned away and I
7 was talking junk. I was saying, fuck you, to the guard.
8 He started following me as I was walking to my car and then
9 he was like, put your hands on the car. Then I said, no.
10 I was about to leave. Then he pulled his gun out, and I
11 put my hands in the air and I turned my back to him. He
12 pulled the pepper spray out, and I saw him shaking the
13 spray, then he sprayed me in the head. The spray hit me in
14 the back of the head, then my brother, Trouble, came up and
15 hit the man in the head. He and I both ended up in the gas
16 station parking lot. This is when Trouble fell down. From
17 there we ran to our cars. Tyrobia had pulled my car up and
18 I ran and made him get out, and me and Terrell jumped in.
19 Tyrobia got in the car with Trouble. We left out of the
20 parking lot and I started shooting. No one else shot. I
21 even shot the door handle off the car. Question, where did
22 you go after that? I went to the XO Club with my brothers
23 and we stayed there for a minute. Who -- who is Trouble?
24 My little brother; his name is Jonathan Sterling. Did you
25 tell Zondra what happened? Yes, sir. How did you get your

1 brother's ID? We went to a party with him; he showed me
2 his two IDs. I crept (sic) one from him; I don't even know
3 if he remembers it or not; he was drunk. Then the
4 altercation broke out between me and Terrell and we came
5 back to Columbia after that. Where does Carlos live? Rock
6 Hill. What car did you drive to Rock Hill? The black Ltd.
7 What did you do with the car after Sunday -- Saturday
8 night? Tyrobia and Trouble took it to the country.
9 Question, did you wipe the car down? Yes, I wiped down --
10 everything down. I wiped it down with gas? What did you
11 do with the gun? I sold it to a guy from New York. I knew
12 he was from New York, because I met him in the store. He
13 had an accent. I sold it to him for three hundred dollars.
14 What kind of gun was it? It was a .40 caliber. It had P80
15 on the side and it was black and smaller than the Glock
16 that you have. How many shots did you fire? I don't even
17 remember. What did you do with the shell casings in the
18 car? I threw them in the river. Did Zondra help you in
19 any way? No. The only thing she knows is what I told her.
20 Did you see yourself on the news? Yes, I saw the video
21 from the gas station. I broke down crying; I didn't mean
22 to do it. Question, is there anything else you need to
23 tell us? I'm sorry for what happened; I was drunk and I
24 acted like an asshole. I'm sorry. And on the statement
25 form, it says, I've made this foregoing statement freely

1 and voluntarily without fear, threat, promise of reward or
2 hope of reward of any kind. It's got ---

3 Q Did he sign -- I'm sorry.

4 A It's got my signature and his signature. I signed it
5 as a witness and the next line says, this is to certify
6 I've read or have read to me the foregoing statement
7 consisting of three pages and a true copy has been given to
8 me on the 31st of August, 2012. Again, it's signed by the
9 defendant and it's notarized by Chris Lindler on all three
10 pages.

11 Q Were the defendant's three brothers -- you said they
12 were all charged?

13 A Yes.

14 Q With what charge?

15 A I believe they were all charged with the same charge
16 of accessory after the fact of murder.

17 Q I want to back up to one more thing. With Zondra
18 Gilyard, did you guys do a search at her house?

19 A We did.

20 Q And I want to show you what's been marked as State's
21 Exhibit 85 and ask you if you recognize this?

22 A I do. This is Consent to Search that I executed. I
23 wrote it out at the time of the defendant's arrest. It has
24 the date of August 29th, 2012, location, [REDACTED] Allen Benedict,
25 I Zondra Gilyard, do hereby consent to the search of my

1 premises and automobile without a search warrant by Wilson
2 and RCSD investigators with the Richland County Sheriff's
3 Department. These investigators are authorized by me to
4 take from my premises and/or automobile letters, papers,
5 materials or other property that they may desire.
6 Description of property to be searched, one .40 caliber gun
7 and clothing. I'm aware of any evidence obtained as a
8 result of the search can be used against me in a Court of
9 law. This written permission is being given by me to the
10 above-named investigators freely, voluntarily and without
11 threats or promises of any kind. It's signed by me and
12 Zondra Gilyard.

13 MS. WALKER - Your Honor, at this point we seek to
14 admit State's Exhibit 85 into evidence.

15 MR. SAWYER - Without objection.

16 THE COURT - Very well.

17 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
18 STATE'S EXHIBIT 85.)

19 MS. WALKER - Beg the Court's indulgence.

20 THE COURT - All right.

21 Q Sir, the man that told you he shot because he was
22 drunk and acting like an asshole, do you see him in the
23 courtroom?

24 A Yes.

25 Q Could you point him out for the jury?

DAVID WILSON - CROSS BY MR. SAWYER

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1 A It's the gentleman in the white shirt and the gray tie
2 sitting at defense table.

3 MS. WALKER - Your Honor, may the record reflect
4 he's identified the defendant?

5 THE COURT - Yes.

6 MS. WALKER - Thank you, Your Honor. I don't have
7 any further questions.

8 THE COURT - Cross examination?

9 MS. SAWYER - Thank you, Your Honor. May it
10 please the Court.

11 THE COURT - Yes.

12 CROSS EXAMINATION

13 BY MR. SAWYER -

14 Q Chief Wilson?

15 A Yes.

16 Q You said you've been working at Richland County for 30
17 years or as an officer for 30 years?

18 A I've been an officer for over 35 years; I've been with
19 Richland County for over 30.

20 Q And you're head of all the investigations at Richland
21 County?

22 A That's correct.

23 Q So Mr. Lindler and Mr. Jordan's boss basically?

24 A Yes.

1 Q And I guess just kind of looking through what your
2 investigation entailed, I guess at this point most of what
3 you do is sort at the office and just sort of help
4 coordinate an investigation. Is that correct?

5 A Pretty much. I mean there's a lot of things that I
6 end up doing throughout the day.

7 Q I just need you to speak for her so she can take it
8 down. All right, so basically the two real main pertinent
9 -- I mean you talked to a bunch a different people, but you
10 interviewed I think a Lamar Ray at one point. Is that
11 right?

12 A I did.

13 Q And you didn't actually engage in his interview. That
14 was an Investigator Mauldin. Right?

15 A That's correct.

16 Q Okay. Do you have your investigative report in front
17 of you?

18 A I do.

19 Q I think on page two about halfway down you actually
20 went and showed him a photo line-up?

21 A That's correct.

22 Q And that's where we had -- saw earlier -- that was the
23 photo line-up that he picked Bernard out of. Correct?

24 A That is correct.

DAVID WILSON - CROSS BY MR. SAWYER

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1 Q Did he describe what he thought Bernard was wearing
2 that day?

3 A Said a red shirt.

4 Q And he never mentioned to you that day that he had
5 seen the shooting take place.

6 A No, he did not.

7 Q Now, you -- you didn't speak with Bernard the first
8 time around when they took his first one. Correct?

9 A No.

10 Q Were you present during that interview?

11 A No.

12 Q You were just present, I guess, you said you were
13 waiting with him for about an hour for him to be picked up
14 and taken to the jail?

15 A I had come back from dropping Terrell Vaughn off and
16 Sergeant Lindler and Investigator Jordan needed to go out
17 and interview another witness. So I stepped in and sat
18 with him in the office and talked to him about the case
19 waiting on the transport.

20 Q Did you make any notations or record in any way that
21 conversation?

22 A Only what I have in my notes.

23 Q But you didn't really report down the hours worth --
24 the substance of what you talked about that day. Correct?

25 A No, it wasn't a whole lot of substance.

1 Q And then you came in a second time around when
2 Investigator Jordan had to leave, and you sat in on the
3 interview with Bernard?

4 A That's correct.

5 Q And you talked with him for a while to show him all
6 the evidence you said. Correct?

7 A Actually Sergeant Lindler did most of the talking. I
8 was pretty much there as a witness.

9 Q And then once he agreed to talk with you, you advised
10 him of his rights?

11 A He'd already been advised of his rights prior to me
12 entering the room.

13 Q All right. And that was at 10:00 o'clock a.m.

14 A Approximately, yes.

15 Q And then when you actually produced his statement,
16 that was at 10:30?

17 A I don't have it in front of me; that sounds right.

18 Q Refresh your recollection what you're just looking at?

19 A Yes, statement began at 10:30.

20 Q What do you mean by it began? That's when you started
21 taking or that's when you started writing it?

22 A That's when started writing it.

23 Q While you were writing it, you were still continuing
24 to speak with him about the case.

25 A That's correct.

1 Q And so it look longer than 10:30 before you're finally
2 done.

3 A Certainly. And Chris Lindler was actually typing it,
4 not myself.

5 Q Okay. Would you say it took another half an hour or
6 so?

7 A I don't recall. May have been as much as an hour,
8 hour and a half. I don't know.

9 Q About an hour to hour and a half you said?

10 A Possibly.

11 Q Would you -- rather than have you read it again, would
12 you believe me that what you read took you three minutes to
13 read?

14 A True.

15 Q So you basically -- there's a hour and a half worth of
16 interviews -- hour, hour and a half, and all that was
17 recorded was essentially three minutes worth of a
18 conversation.

19 A Well, it's -- you can read a lot quicker than you can
20 type and write down stuff.

21 Q Now, was Bernard given an opportunity to write his own
22 statement in his own words?

23 A No.

24 Q Bernard wasn't given an opportunity to use the
25 computer to write his own statements and words?

1 A No.

2 Q And do y'all audio or video record at Richland County?

3 A No.

4 Q Why is that?

5 A Number of reasons. The predominant reason is that the
6 process that we use with our forms, our Advice of Rights
7 and everything have stood the test of time for the last 35
8 years that I've been around. It has been accepted in every
9 Court that we've ever gone into, both State and Federal,
10 without problems. In addition, we have looked at various
11 technologies throughout the years and have not found one
12 reliable enough to service what we do. We take statements
13 and we take -- my investigators take thousands of
14 statements every month. We take statements in people's
15 homes, in their offices, in cars, in our offices, so it's
16 just not practical to carry around equipment like that.

17 Q Y'all don't have cell phones with video cameras?

18 A We do have cell phones.

19 Q And that would be able to take an audio and video
20 recording. Right?

21 A To some point, yes. I'm not sure they could do it for
22 two or three hours at a time that we do. I have spent as
23 much as six hours with a victim taking statements, so I
24 don't know.

DAVID WILSON - CROSS BY MR. SAWYER

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1 Q You've seen that there's video cameras out there that
2 can go -- record for much longer.

3 A Yes. There's also computers.

4 Q Computers -- that -- right. Computers can take
5 lengthy video and audio recordings. Right?

6 A Not that long.

7 Q You also -- don't you have a strict policy against
8 doing that as well at your precinct?

9 A We do. We don't allow it.

10 Q So your policy is you don't allow it?

11 A No. If you do it for one, we need to do it for all.

12 Q Now, you use other technology over the years. Right?
13 Started using DNA technology ---

14 A Absolutely.

15 Q But at this point in Richland County audio and video
16 is not proven enough technology for y'all?

17 A We have not found a system, and we have experimented
18 with many, many different systems that is reliable enough.

19 Q Well, the jail recorded those phone calls. Right?

20 A That's correct.

21 Q Wouldn't you consider that reliable?

22 A For the most part. It goes down from time to time.

23 MR. SAWYER - Beg the Court's indulgence briefly.

24 Nothing further.

25 THE COURT - Re-direct?

1 RE-DIRECT EXAMINATION

2 BY MS. WALKER -

3 Q Chief, once a defendant has given a statement, are
4 they allowed to read back over the statement?

5 A Absolutely, and that's one of the unique things.
6 They're allowed to read the statement and many, many times
7 we end up changing that statement because they read
8 something in that statement that they don't like, even
9 though that it is in their words as they're dictating it.
10 So we have many, many times -- not in this case, but in
11 many times we go back and change that statement to suit
12 them before they sign it, because it is what is going to
13 end up in Court.

14 Q Was Gerald Haltiwanger given the opportunity to read
15 over his statement?

16 A Not only was he given the opportunity, it was read
17 back to him by Sergeant Lindler.

18 Q And at that point in time he stood by that statement.

19 A That is correct.

20 MS. WALKER - Thank you, sir. I don't have any
21 further questions.

22 THE COURT - Re-cross?

23 MR. SAWYER - No, Your Honor.

24 THE COURT - Is this witness free to leave?

25 MS. WALKER - Yes, Your Honor.

HAROLD BOUKNIGHT - DIRECT BY MS. CAMPBELL

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1 THE COURT - Very well. Okay. Call your next
2 witness, please.

3 MS. CAMPBELL - State will call Investigator
4 Bouknight. Your Honor, he's outside.

5 THE COURT - Okay.

6 HAROLD BOUKNIGHT, AFTER BEING FIRST DULY SWORN,
7 TESTIFIES AS FOLLOWS -

8 DEPUTY CLERK - Thank you. Please have a seat in
9 the witness stand and state your full name for the record
10 and spell your last name.

11 MR. BOUKNIGHT - Investigator Harold Bouknight, B-
12 o-u-k-n-i-g-h-t.

13 DIRECT EXAMINATION

14 BY MS. CAMPBELL -

15 Q Investigator Bouknight, where are you employed?

16 A Richland County Sheriff's Department, crime scene
17 unit.

18 Q And as part of the crime scene unit, what do your
19 duties include?

20 A I respond to and process crime scenes. I process
21 vehicles from crime scenes, evidence collected from crime
22 scenes and supervise other crime scene investigators and
23 help them in the documentation, collection processing and
24 identification of evidence.

1 Q And can you tell this jury a little bit about your
2 education and training in crime scene investigation?

3 A Yes, ma'am. I have a two-year degree in criminal
4 justice from Midland's Technical College. I've been in law
5 enforcement for -- in January will be 17 years and been
6 with the crime scene unit for almost eight and a half
7 years. During that time I've completed our internal
8 training program which took about 18 months which consisted
9 of written and proficiency test in different areas of crime
10 scene investigation to include latent fingerprint
11 processing and collection, shooting incident
12 reconstruction, footwear, tire wear evidence, blood stain
13 pattern analysis and latent print comparisons. I've also
14 attended training classes and a 40 hour class in blood
15 stain analysis in crime scene reconstruction. I have 40
16 hour class in shooting incident reconstruction and also 24
17 hour class in crime scene reconstruction.

18 Q Have you been qualified before as an expert in the
19 field of crime scene investigation?

20 A Yes, ma'am.

21 MS. CAMPBELL - Your Honor, at this time we'd
22 offer him as an expert in crime scene investigation.

23 MR. SHARPE - No objection, Your Honor.

24 THE COURT - Very well.

1 Q So when did you first become involved in this
2 investigation?

3 A I became involved on the 31st of August.

4 Q Of last year?

5 A Yes, ma'am, 2012, I'm sorry.

6 Q And how did you become involved?

7 A I was notified by Sergeant Richards that there was a
8 vehicle in our garage that was secured in there, and I was
9 asked to execute a search warrant on the vehicle to search
10 for any evidence, gunshot residue or projectiles or
11 ammunition.

12 Q And again, where was the vehicle located when you
13 actually came in contact with it?

14 A We have a garage at our headquarters on Two Notch Road
15 that we can place vehicles in for processing where they're
16 out of the elements, out of the weather where we can get in
17 and do what we need to and they're secured, and the only
18 people that have access to it are people with keys to our
19 garage which are crime scene investigators and firearms
20 investigators.

21 Q So prior to your involvement, had the car actually
22 been towed to your headquarters to this garage you just
23 mentioned?

24 A Yes, ma'am, it had been towed in.

- 1 Q And prior to you doing any kind of search of the car,
2 was there a lawful search warrant in place?
- 3 A Yes, ma'am.
- 4 Q What time of day was it when you actually initiated
5 your search?
- 6 A 10:30 in the morning.
- 7 Q 10:30 in the morning?
- 8 A Yes, ma'am.
- 9 Q And again this was on the 31st of August?
- 10 A Yes, ma'am.
- 11 Q And what car were you actually searching that day?
- 12 A It was a 1980 Ford LTD black in color.
- 13 Q 1980 ---
- 14 A Yes, ma'am.
- 15 Q --- Ford LTD.
- 16 A Yes, ma'am.
- 17 Q And, again, what color is that car?
- 18 A Black.
- 19 Q And since this was your first involvement in the case,
20 what kind of evidence were you looking for inside that car?
- 21 A I had talked to Sergeant Lindler and we were looking
22 for basically evidence involving firearms, ammunition,
23 fired cartridge casings, gunshot residue, projectiles,
24 impact points, things like that.

1 Q Tell the jury, what, if anything, you observed when
2 you searched this car?

3 A Whenever I searched, the most revealing thing I saw
4 there was what appeared to be -- it was an impact point on
5 the passenger door. Calling it an impact point -- I can't
6 say that it was caused by a projectile, because none was
7 collected, but it entered from the passenger side interior
8 and exited out of the passenger side exterior, perforated
9 the door. Where the door handle would be is where it
10 exited, and I -- there I inserted a trajectory rod which we
11 can use to establish or show a possible projectile path.
12 And this one it was outward like I said and at a downward
13 angle.

14 Q When you say outward, would that be consistent with
15 having been fired from the interior of the car?

16 A Yes, ma'am.

17 Q And the bullet would've traveled from the interior of
18 the door to the outside.

19 MS. SHARPE - Objection, Your Honor, leading.

20 MS. CAMPBELL - I'll rephrase, Your Honor.

21 THE COURT - Very well.

22 Q How would the bullet have traveled?

23 A As I said before, the trajectory of the possible
24 projectile was from inside and hit the interior panel of
25 the door and exited out near the -- where the door handle -

1 - passenger door handle would've been. It was -- the
2 passenger door handle was missing, the exterior door
3 handle.

4 Q The -- which door handle was missing?

5 A Exterior door handle.

6 Q On the passenger's side?

7 A Yes, ma'am.

8 Q Did you take some photographs that day?

9 A Yes, ma'am, I did.

10 Q And memorialized what you found?

11 A Yes, ma'am.

12 Q And I want to show you what's been marked as State's
13 Exhibit 35 through 44 and first ask if you recognize those?

14 BAILIFF - Your Honor, we need a break.

15 THE COURT - Need a break? Not a problem. Not a
16 problem at all. Now, that we've had a break in the answer
17 we'll do that. We've got a juror that needs a break, so we
18 will take that now. If you can just start back where you
19 were maybe or a little bit before. Okay?

20 MS. CAMPBELL - Yes, ma'am.

21 THE COURT - Ladies and gentlemen, do not discuss
22 this matter or allow anyone to discuss it with you. We
23 will take about ten minutes. Very well.

24 (Jury exits the courtroom)

25 (Recess taken)

1 THE COURT - All right. Jury's coming in.

2 (Jury returns to the courtroom)

3 BAILIFF - Jury panel present, Judge.

4 THE COURT - Thank you. All right, yes, ma'am,
5 you may continue. Thank you. Yes. And I tell you, I know
6 there was a bit of a distraction, why don't we go back a
7 couple of question just to pick up.

8 MS. CAMPBELL - Trying to ---

9 THE COURT - Where was I?

10 Q Investigator Bouknight, you mentioned earlier that
11 there was what you referred to I believe as an impact point
12 in this car?

13 A Yes, ma'am, there was a -- what I determined to be an
14 entry impact point on the interior panel of the passenger
15 side door and it exited out of the passenger side door
16 where the door handle would be. That door handle was
17 missing. And I put a trajectory rod in there and it showed
18 that the trajectory was, like I said, out to in in a
19 downward angle and slightly front to back.

20 Q And at that point did you memorialize your findings as
21 far as this car is concerned?

22 A Yes, ma'am, I took photographs of the vehicle and the
23 impact point and with and without a scale and the
24 trajectory rod.

1 Q And before the break I handed you a series of
2 photographs I believe as 36 through 44?

3 A 35 through 44.

4 Q 35 through 44. Thank you, sir. Do you recognize
5 those photographs?

6 A Yes, ma'am.

7 Q And do those fairly and accurately depict your
8 findings that day?

9 A Yes, ma'am, they do.

10 MS. CAMPBELL - Your Honor, at this time we'd
11 offer State's Exhibits 35 through 44 into evidence.

12 THE COURT - Have you seen them?

13 MS. CAMPBELL - They've been provided in discovery
14 and there was no objection.

15 THE COURT - All right, yes.

16 MR. SHARPE - No objection, Your Honor.

17 MS. CAMPBELL - Thank you.

18 THE COURT - Very well.

19 (WHEREUPON, ITEMS MARKED INTO EVIDENCE AS STATE'S
20 EXHIBIT NUMBER 35 THROUGH 44.)

21 MS. CAMPBELL - Your Honor, may the witness step
22 down?

23 THE COURT - Yes.

24 Q I want to show you what's been marked as State's
25 Exhibit Number 35. What does that show?

1 A That's the driver's side of the ---

2 COURT REPORTER - He's going to need to speak up
3 and maybe stand over there so his back won't be to me.

4 Q If you can stand over here.

5 A It's the driver's side of the Ford LTD.

6 Q You mentioned earlier in your testimony that you
7 noticed an impact point to the passenger's side door I
8 believe?

9 A Yes, ma'am.

10 Q And I show you State's Exhibit Number 39 and 40 first.

11 A Yes, ma'am.

12 Q Do you recognize those?

13 A Yes, ma'am, these are the impact points -- or the
14 impact point in the passenger side door.

15 Q I show you State's Exhibit Number 38. What does that
16 show?

17 A That's the same impact point over the scaled marker.

18 Q And the marker just does what?

19 A Whenever we have something that we may want to look at
20 later and be able to tell a size of something, we have a
21 scaled marker and that way we can calibrate the photograph
22 and know that it's an actual size, so whenever we measure
23 in that photograph we get an accurate ---

1 Q You also mentioned the trajectory and a trajectory
2 rod. I show you State's Exhibits 36 and 37. Do you
3 recognize those?

4 A Yes, ma'am, that's ---

5 Q What does that show?

6 A --- the trajectory rod inserted into the perforated
7 impact points.

8 Q Once you have used the trajectory rods, did you do
9 anything to try to recover any possible items?

10 A I removed some pieces of the panel to look to see if
11 there were any fragments or a jacket from the projectile
12 that may have fallen inside the vehicle, and I did not
13 locate any.

14 Q Part of that -- on State's Exhibit 43, what does that
15 show?

16 A Looking at the trajectory rod that's from the
17 passenger side -- or the photograph was taken from the
18 driver's side looking at the passenger's side.

19 Q I want to show you State's Exhibit Numbers 41 and 42.
20 What does that show?

21 A That's the impact point, the exit on the passenger's
22 side door where the door handle would've been.

23 Q And where should the door handle have been on this
24 photograph?

25 A It should be connected right here on this mechanism.

- 1 Q And again is this the interior or the exterior of the
2 passenger door?
- 3 A It's the exterior.
- 4 Q Again, State's Exhibit 44. This has the one?
- 5 A Yes, ma'am, that's the same photograph, just with a
6 scaled marker.
- 7 Q Thank you, sir. Take a seat.
- 8 A (Witness complies)
- 9 Q In searching the car, were you able to locate any
10 shell casings?
- 11 A No, ma'am.
- 12 Q Did you also look for any possible projectiles?
- 13 A I did look and none were located.
- 14 Q What, if anything, did you do to the door after noting
15 the trajectory angle with the rod in searching for
16 projectiles?
- 17 A I removed a portion of the interior passenger door
18 panel.
- 19 Q And were you able to find anything in there?
- 20 A No, ma'am.
- 21 Q No projectiles.
- 22 A No projectiles and no fragments.
- 23 Q What, if any, other testing did you do on the car that
24 day?

1 A I collected a GSR kit first. We use -- we purchase
2 the kits pre-made and labeled from Tri-Tech Forensics, and
3 they had adhesive tabs on them and you dab them in the
4 suspected area and then they're sent to SLED for analysis.

5 Q And were those the ones you normally used?

6 A The ones that I -- after looking at them later, I
7 noticed that they were silver, and normally ours have a
8 black backing or black adhesive on it, and these did not.
9 There was one that had some black film on it, but they
10 didn't typically look like the ones we normally use, and if
11 the black adhesive had come off then they were defective,
12 something in the manufacturing process.

13 Q In this case -- you're familiar with some combustible
14 items such as gasoline?

15 A Yes, ma'am, I'm familiar.

16 Q And the sticky part on the tab, could that have been
17 affected if it had come in contact with gasoline?

18 A I don't know the composition of it, but I would say it
19 could be.

20 Q And is that the extent of your involvement in this
21 case?

22 A Yes, ma'am.

23 MS. CAMPBELL - Thank you. That's all I have.

24 THE COURT - Cross examination?

HAROLD BOUKNIGHT - CROSS BY MR. SHARPE

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1 MR. SHARPE - Thank you, Your Honor. May it
2 please the Court.

3 THE COURT - Yes.

4 MR. SHARPE - Just briefly.

5 CROSS EXAMINATION

6 BY MR. SHARPE -

7 Q You didn't test any DNA?

8 A No, sir.

9 Q And could you determine from where the shots were
10 fired?

11 A The only thing I could determine was that one possible
12 projectile path that -- was to the interior of the vehicle
13 ---

14 Q The passenger door?

15 A Yes, sir. That's the only one I could determine
16 anything from.

17 MR. SHARPE - Thank you. Nothing further.

18 THE COURT - All right, any re-direct?

19 MS. CAMPBELL - No, ma'am.

20 THE COURT - All right, is this witness free to
21 leave?

22 MS. CAMPBELL - (Indicating yes)

23 THE COURT - You are free to go. Any objection?

24 MR. SHARPE - No, Your Honor.

1 THE COURT - All right, call your next witness,
2 please.

3 MS. CAMPBELL - The State would call Sergeant
4 Lindler.

5 CHRIS LINDLER, AFTER BEING FIRST DULY SWORN,
6 TESTIFIES AS FOLLOWS -

7 DEPUTY CLERK - Thank you. Please have a seat in
8 the witness stand and state your full name for the record
9 and please spell your last name.

10 MR. LINDLER - Chris Lindler, L-i-n-d-l-e-r.

11 THE COURT - Your witness.

12 MS. CAMPBELL - Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MS. CAMPBELL -

15 Q Sergeant Lindler, where are you employed?

16 A I'm employed with the Richland County Sheriff's
17 Department.

18 Q What are your duties there include?

19 A I'm the major crime sergeant. We -- I supervise about
20 six other investigators and handle all of the major crimes
21 in the county which include criminal domestic violence, any
22 shootings and stabbings that we may have and any homicides
23 that may come up.

24 Q How did you become involved in the investigation of
25 this case?

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1 A I was on call the night of the 25th of August of 2012.

2 Q And when you say you were on call, explain that to the
3 jury.

4 A Once every seven weeks each sergeant takes a week of
5 call starting Thursday night at midnight and we follow that
6 through to the following Thursday night at midnight and I
7 have roughly five to six investigators at my disposal when
8 we're on call, so we can respond to anything that happens
9 after hours at the sheriff's department.

10 Q You respond to anything that happens?

11 A Pretty much what we're called for. Usually the road
12 will call us on more serious things, such as armed
13 robberies, of course, shootings and homicides.

14 Q I want to turn your attention to the early morning
15 hours of the 26th. Did you get notified that morning?

16 A I did, around 1:30.

17 Q And who notified you?

18 A The desk sergeant, which is pretty typical. If we
19 have a serious call to go out, he's going to call me first
20 and we're going to go from there.

21 Q Once you had gotten information from the desk
22 sergeant, what, if anything, did you do?

23 A I responded to the El Toro Grill & Bar on St. Andrews
24 Road, contacted Investigator Josh Mauldin in route. He and
25 I met over there about -- roughly about 2:10 that morning.

1 Q Around 2:10 that morning?

2 A Yes, ma'am.

3 Q Once you got to the restaurant that morning, what, if
4 anything, happened?

5 A Whenever I got over to the restaurant that morning, I
6 met with Yvonne Woods, and of course the responding
7 deputies, which I believe was Deputy Brunson. Yvonne Woods
8 would hand me an ID that belonged to a Carlos Brown.

9 Q I show you State's Exhibit Number 56 and first ask, do
10 you recognize that?

11 A I do.

12 Q Was that significant in this investigation?

13 A It was. It was an ID that was presented at the
14 doorway whenever the individuals were turned away from the
15 club.

16 Q And where had that ID been recovered from?

17 A It had been recovered from the security officer.

18 Q Security officer that was shot?

19 A Yes, ma'am.

20 Q Had any other items been recovered from the security
21 officer prior to him being taken by ambulance from the
22 scene?

23 A His vest, which included all of his tools, his
24 flashlight and his handcuffs, his taser and his service
25 weapon or his gun that he carried with him while he was ---

1 Q Where was his gun recovered from?

2 A It was recovered from the holster on this vest.

3 Q There at the scene who did you first make contact with
4 as far as possible witnesses?

5 A First made contact with Roberto Cordoba who was an
6 employee of the club that night. Roberto did not speak any
7 English, so we had to talk to him through an interpreter.

8 Q Let me back up. While you were there, did you learn
9 the identity of the victim in the case?

10 A We did. We learned the victim was a Jimmy Moti.

11 Q And when you're going to a scene such as this, be it a
12 restaurant, a bar, gas station or whatever, are you looking
13 for any type of evidence that may help you as far as what
14 may be recorded as what happened?

15 A Correct. When you go to a restaurant or a club or a
16 bar or any business, the first thing we look for is cameras
17 maybe on the outside of the business as well as the inside,
18 and when we got there that night after I made contact with
19 Investigator Woods from CSI and the initial responding
20 deputy, I took note of the cameras, and there were several
21 cameras on the outside as well as the inside of the El Toro
22 Club. Made contact inside the club with a Juan Macias who
23 was a manager or owner of the club at the time. I think he
24 was a club manager. They had some video, however, the
25 cameras at the front door entrance, as well as the one on

1 the inside facing the front door that the patrons enter
2 were not working. They were inoperable.

3 Q Did you learn of any other video that might become or
4 did become useful in this case?

5 A We did. The deputies that were on scene had stated
6 that the subjects or the suspects there that night may have
7 ended up over in the Gazbah parking lot. The Gazbah
8 typically has pretty good video and we went over there to
9 check, and they have multiple cameras from the inside of
10 the business as well as the outside.

11 Q That night did y'all make any arrangements in order to
12 retrieve some video from there?

13 A We did. I met with the -- I talked with the gentleman
14 behind the counter that night, and his name escapes me at
15 this point, and then we made -- he would make contact with
16 the manager of the store -- I believe his name was Bill --
17 who would agree to meet us the next morning and go through
18 the video with us at the times in question.

19 Q That evening, I believe you've already testified, you
20 made a contact with a Mr. Cordoba, Roberto Cordoba?
21 Correct?

22 A We did.

23 Q And you mentioned something about an interpreter?

24 A Right. He -- Roberto was unable to speak any English,
25 and what little bit he could speak was very broken to where

1 I couldn't understand him and where Investigator Mauldin
2 couldn't understand him, so we -- through an interpreter we
3 got him back to the sheriff's department and sat him down
4 with Investigator Mauldin and Investigator Salguero who was
5 employed by us who speaks Spanish.

6 Q And at that point -- you can't say what he said to
7 you, but was he able to give you at least some information?

8 A He was able to give us a description, yes, of some
9 things he saw that night.

10 Q That evening did you think it was prudent to go back
11 to the Gazbah?

12 A We did.

13 Q And what did you do when you got there?

14 A We went back to the Gazbah and re-looked at the video
15 again that night and notated some times down on the -- and
16 which cameras the times -- those times came from and also
17 watched as much of that video as we could when we went back
18 out there.

19 Q Later that morning did you return to headquarters?

20 A We did.

21 Q And what were you trying to do at that point?

22 A We wanted to try and make contact with Carlos Brown.
23 He's the individual that was on the ID that was given to
24 Jimmy that night at the club whenever the individuals were
25 trying to get in. We wanted to make contact with him, find

1 out if he knew -- (a) if he knew where his ID was, and (b)
2 if he still had it with him or knew what happened to it.

3 Q Who did you make contact with here locally?

4 A We made contact with his mother, went over by her
5 house; we located a possible address for him through
6 members ---

7 Q What city was that in?

8 A Here in -- it was here in Columbia, South Carolina; it
9 was off of Rocky Mount Road, off of Crane Church Road.

10 Q Yes. Once you made contact with his mother -- you
11 can't say what she said to you -- but then -- did you then
12 pursue him in another city?

13 A We did. We called -- found his number through various
14 database searches and were able to locate a possible number
15 for him and called him and actually spoke with him on the
16 telephone. I was in Chief Wilson's office when we spoke
17 with him on the telephone.

18 Q And what was his address?

19 A It was [REDACTED], and that's in Rock Hill,
20 South Carolina.

21 Q And you can't say what he said to you, but was he able
22 to give you information about his ID?

23 A Not much.

24 Q That day did you go back out to the Gazbah?

25 A We did.

1 Q And did you take anyone with you at that point?

2 A I did. I went back out there with Lieutenant Mike
3 Poole who's over our technical services division. He pulls
4 most of our video for us. Went back out there with Mike to
5 show him exactly which one of the video cameras we needed
6 and the ones I wanted him to pull the video from, and those
7 cameras were camera 25 which is a long shot on the side of
8 the building. The camera sits at the back of the Gazbah
9 and it shoots toward the front of the store. Camera 23,
10 which would be a camera that's located at the front of the
11 store where you can see the gas pumps out in front of the
12 camera, and then the other camera was a camera that's
13 located inside the store that's over -- kind of over the
14 gas register so you can see the patrons of the stores if
15 you will when they come up to pay for whatever they buy,
16 and then also shows the front door of the store.

17 Q I show you what's been marked as State's Exhibit
18 Number 78. Have you had an opportunity to review this
19 video?

20 A I have, many times.

21 Q And does that reflect some of the video at least that
22 was pulled that day ---

23 A It does.

24 Q --- that's relevant to this case?

25 A It is.

1 MS. CAMPBELL - Your Honor, at this time we'd
2 offer State's Exhibit 78 into evidence.

3 MR. SAWYER - No objection.

4 THE COURT - Very well. No objection.

5 (WHEREUPON, ITEM MARKED INTO EVIDENCE AS STATE'S
6 EXHIBIT NUMBER 78.)

7 MS. CAMPBELL - Your Honor, permission to publish
8 the video to the jury.

9 THE COURT - Very well.

10 MS. CAMPBELL - Just a second to set up. (Pause)
11 Your Honor, may the witness step down and I'll put him on
12 this side so hopefully -- and make him talk really loud.

13 THE COURT - Sounds great.

14 (WHEREUPON, VIDEO IS PLAYED FOR THE JURY.)

15 MS. CAMPBELL - Your Honor, would it be possible
16 to dim the lights for purposes ---

17 THE COURT - Absolutely. Especially if I knew
18 where ---

19 MS. CAMPBELL - Right behind you.

20 THE COURT - I get to do it. Oh, this is
21 exciting. Okay. It says off.

22 MS. CAMPBELL - There we do.

23 THE COURT - Is that good?

24 MS. CAMPBELL - That's perfect. Thank you.

25 Q What's this showing?

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1 A This is the long side of the building right here.

2 Q And what car is that that's significant in that?

3 A This is a white SUV. This belongs to Kevin Lee, Kevin

4 ---

5 MR. SAWYER - Objection, Your Honor.

6 THE COURT - Yes?

7 MR. SAWYER - May we approach?

8 (WHEREUPON, BENCH CONFERENCE WAS HELD IN THE
9 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
10 WHICH WAS NOT REPORTED.)

11 Q Investigator Lindler, let me back up before we go any
12 further. Based on your investigation, were you able to
13 determine who different people are in this video?

14 A Yes.

15 Q Specifically who the people were in the car?

16 A Yes.

17 Q As well as some who come across the parking lot.

18 A Yes.

19 Q Okay.

20 MS. CAMPBELL - Thank you, Your Honor.

21 Q Okay, you can go ahead now.

22 A All right. Again, this is the white car here in
23 question Mr. Lee gets out of, goes inside the store. These
24 are going to be some of the individuals from the
25 altercation here at the club.

1 MS. CAMPBELL - Can we stop this and start it over
2 since we've talking about it? Thank you.

3 Q What's that opening there?

4 A That would be door open of Kevin Lee's vehicle, the
5 white SUV. And you see the individuals pull over from the
6 club parking lot. The club's right back over here. You
7 can't see it on this video, but it's right up here in the
8 corner.

9 Q Who is that?

10 A That would be Mr. Kevin Lee. He gets out of the
11 vehicle, obviously looks over at these guys and then goes
12 inside the store. (Pause) As you can see these guys are
13 still up here on the corner of the property.

14 Q Are you able to see the victim in this case in this
15 video?

16 A You are not. (Pause) All right, at this point you
17 see an individual come walking over to the white vehicle.
18 He's going to walk over to the door of the vehicle here.

19 Q What's his description?

20 A Be a tall slender black male; he's got on a light --
21 looks like a white or a light blue shirt. And he's going
22 to be speaking to the occupants who are inside of that
23 vehicle, still inside of that vehicle, the occupants still
24 inside of that vehicle. And you can see them on a
25 different camera angle -- are going to be Marquita Mobley

1 and Kristina Nuttry, the two girls that have already
2 testified. And you can see he's carrying on a conversation
3 with them; he's talking to them; he's motioning -- hand-
4 gesturing, he's got his hat off; he's wiping his head. He
5 goes back across at this time to the parking lot of the El
6 Toro.

7 Q At any point in this video do you see the victim?

8 A At no point in any -- this video or any of the other
9 videos do you see the victim. (Pause) And as you can see,
10 several minutes pass from the time they are -- he's ejected
11 from the parking until he goes back over and gets in the
12 parking lot.

13 Q Do you know who the person crossing the parking lot is
14 now?

15 A Have no idea. This would be Mr. Lee coming back out
16 of the store with the items that he purchased, two beers.
17 He waves at the buys, I believe, there before they get
18 ready to leave and head out.

19 Q And the person that approached the car and had a
20 conversation with the girls, is he still there in the
21 parking lot?

22 A He is; he's right here. He never left the parking
23 lot.

24 Q Is the time reflected on the bottom of this?

25 A It is.

1 Q And what time is it right now?

2 A 2343 and 34 seconds, which in layman's terms, that's
3 11:43 p.m. The time down here is done in military time.

4 Q You see right there.

5 A This is still our same guy and here's another
6 individual in a red -- red shirt.

7 Q Where they going now?

8 A Based on the witness statements and in talking with
9 Ms. Mobley and Ms. Nuttry and Mr. Ray, they're heading back
10 to their cars at this point to get in their cars to leave
11 the parking lot of El Toro Club; their cars -- cars have
12 obviously been pulled up for them at this time, at some
13 point over here in the parking lot, somewhere in the
14 parking lot, they're getting ready to leave, as well as Mr.
15 Kevin Lee, along with Marquita Mobley and Ms. Nuttry still
16 in the white vehicle are leaving the gas station around the
17 same time.

18 Q And then as this continues, do you see them exit out
19 the front?

20 A You do.

21 Q In the white vehicle. That's Ms. Nuttry?

22 A Correct. You see this vehicle go out this exit right
23 here and make a left-hand turn.

24 Q And we're showing clips from these videos. A lot of
25 videos are on there too.

1 A Correct.

2 Q Okay. What time is it here?

3 A 2337 and 3 seconds and it's counting upwards, and that
4 -- again, that's 11:37 p.m.

5 Q And what do you see in this ---

6 A What you'll see in this video is at some point here,
7 Ms. Mobley will get out of the vehicle here on the front
8 passenger side and walk inside the store to tell Mr. Lee
9 whom she's riding with what she's heard the individual at
10 the door tell her and Ms. Nuttry.

11 Q And in this video are you able to see the person that
12 approached the car on the other side?

13 A You can't really see -- you can't see the person
14 approach the car on the other side, however you are able to
15 see one of the other individuals that is flushed out of the
16 El Toro parking lot come into the Gazbah parking lot and
17 fall down there by the gas pumps as he's trying to pull his
18 pants up. (Pause) Just a few more seconds here; you see
19 her get out of the car. (Pause) You see her moving around
20 in the car at this point. Right there. This will be Ms.
21 Mobley. She gets out of the car, exits and walks inside of
22 the business. And this will be after the individual has
23 approached the driver's side of the vehicle and has spoke
24 through the front driver's side window of the vehicle.
25 (Pause) You see Ms. Mobley come back and get in the

1 vehicle in approximately a minute, fifteen seconds after
2 she got out.

3 Q And then correspondingly would you have seen the
4 driver get in the other side?

5 A Correct, he would have. (Pause) And that's the end
6 of that video.

7 Q Of that clip.

8 A Of that clip.

9 Q There is a lot of video but it's the same. Right?

10 A Yes, it is. (Pause) All right, and this is the
11 inside of the store. Now, this video starts at 2332 and 45
12 seconds, or this clip does. And you won't see her come in
13 -- him nor her come in the store for several minutes.

14 (Pause) Right there. That's good. (Pause) The gentleman
15 in the green shirt that just walked in the door is the
16 gentleman that exited the vehicle on the first camera shot.
17 (Pause) This is Mr. Lee driving the white vehicle.

18 Q The white truck ---

19 A White SUV.

20 COURT REPORTER - Could y'all speak up? I'm
21 having trouble hearing you.

22 A This is Mr. Lee. He's the driver of the white vehicle
23 that we've seen on the first camera shot. And this is Ms.
24 Mobley. (Pause) She's coming in at this point to tell him
25 it's time to go because of what she's been told at the side

1 of the door over there about them getting ready to bust
2 some rounds. (Pause) And he exits the store at 2341 which
3 corresponds to the time on the other video -- that's all.

4 (WHEREUPON WITNESS RE-TAKES THE STAND.)

5 Q On a lot of those videos we saw, is the time
6 reflected?

7 A It is.

8 Q And in that -- in the time period when the person
9 approaches the car in the light blue shirt ---

10 A (Indicating yes) Yes, ma'am.

11 Q --- who was in the car first?

12 A The -- Marquita Mobley and Kristina Nuttry were in the
13 car.

14 Q And at some point when he's over there, who gets out
15 of the car?

16 A Marquita Mobley gets out of the front passenger seat.

17 Q And goes where?

18 A Inside the store.

19 Q And that's reflected on the times?

20 A It is.

21 Q And at this point you've got the video. Correct?

22 A We do have the video at this point.

23 Q And this is the first day of the investigation?

1 A This will be on Sunday. We pulled the video on Sunday
2 morning, which would've been approximately 10 to 12 hours
3 since we started the investigation. Yes, ma'am.

4 Q And at this point do you have anyone on the videos
5 identified?

6 A We do not have anybody identified. We pulled one
7 small clip off of those videos from the inside of the
8 store. We broke that video down kind of just like we broke
9 it down in here and put the video out to the news -- news
10 media in an effort to get some possible witnesses
11 identified, namely the gentleman in the lime-green shirt.

12 Q And when you say you put it out to media, explain that
13 to the jury.

14 A We ran that clip -- pulled that clip down and it's
15 given to our PIO officer which is Captain Chris Calvin or
16 Deputy Curtis Wilson and they would have taken that video
17 and they would have sent that video out to all the
18 respective news stations here in the Columbia area.

19 Q That same day did y'all make any attempts to interview
20 any of witnesses to what happened?

21 A We -- I don't know that we interviewed anybody else
22 that same day, that Sunday.

23 Q What about Lamar Ray?

24 A Investigator Mauldin and -- had Lamar come back in to
25 the sheriff's department that morning and Investigator

1 Mauldin took a statement from Mr. Ray that day. I was not
2 present for that statement.

3 Q And in this case when the shooting occurred, do you
4 know exactly how many people were out there in the El Toro
5 parking lot?

6 A There was a lot.

7 Q And do you know who, if any, saw anything that was
8 significant in this case?

9 A There were -- we don't know if anybody saw anything.
10 No witness names were given to us when we responded --
11 first initially responded out there that night. When I got
12 on the scene at 2:10 that morning, any possible witnesses
13 we had, other than the folks who worked there, were gone.

14 Q Is that unusual?

15 A That is not unusual. When you have a shooting and
16 shots are fired, especially at a heavily populated club or
17 gas station or wherever, people are going to scatter.
18 They're going to get out of there. They want to go. They
19 don't want to be around.

20 Q And before I get to the next day on August the 27th in
21 your investigation, at this point, do you have any suspects
22 in this case?

23 A We do not have any suspects in this case at this
24 point.

1 Q And have you even been able to identify anyone on the
2 video?

3 A We have not been able to identify anybody on the video
4 at this point.

5 Q The next morning on the 27th, was there a meeting?

6 A There was, 8:30 that morning we met in Chief Wilson's
7 office, myself and Tai Jordan, Chief Wilson and I believe
8 Linda Houck. I'm not sure who else was there. Linda is
9 one of our intel analyst and I believe Ms. Audra Linfert
10 was also in on that meeting. She's one of our intel
11 analyst.

12 Q And at that point was it determined who would actually
13 be working this case in addition to you?

14 A It would. Investigator Mauldin was pulled as the
15 secondary to the case; I would be the primary investigator
16 on it. We were short-handed at the time. We had other
17 investigators working other serious crimes, and
18 Investigator Tai Jordan was brought in to assist me that
19 morning.

20 Q That morning did you receive a phone call that
21 ultimately led you to some information that was important?

22 A We did. I received a phone call from Mr. Lee.

23 Q And based on your review of the video, was Mr. Lee out
24 there when the conversation was had with the person that
25 approached the vehicle.

1 A He was not ---

2 MR. SAWYER - Objection, Your Honor, leading.

3 THE COURT - Don't lead.

4 MS. CAMPBELL - Thank you.

5 Q Based on your review of the video, what were you able
6 to observe about Mr. Lee and where he was?

7 A Mr. Lee had gotten out of the vehicle and was inside
8 of the store before the individuals that spilled over from
9 the El Toro parking lot came up to the side of the vehicle
10 to start talking to the occupants that were still in the
11 vehicle.

12 Q That day did y'all talk to Mr. Lee?

13 A We did.

14 Q Was he able to give you -- you can't say what he said
15 -- but was he able to give you information that led you to
16 other witnesses that were significant?

17 A He was. He was helpful in that regard. Yes.

18 Q And as a result of this information, what did y'all
19 do?

20 A We -- Tai and I went out to the Red Roof Inn, spoke to
21 the manager there at the Red Roof Inn and were able to
22 locate the room that Ms. Mobley and Ms. Nuttry were in, and
23 I believe I was also able to pull a -- maybe a room receipt
24 with their name on it listing the room. We went up and
25 knocked on the door; both of them came to the room (sic)

1 and soon as I -- I saw Ms. Mobley come to the door, I told
2 Tai I recognized her from the video. We had watched the
3 video enough by that point, I could recognize her when she
4 came and answered the door. We explained to them who we
5 were, what we were there for, asked them if they would mind
6 coming with us back down to the sheriff's department to
7 assist us in our investigation.

8 Q And did they agree to come with you?

9 A They did.

10 Q And did y'all transport them back to headquarters.

11 A We did. They were transported in my vehicle back to
12 headquarters, both of them, with Investigator Jordan and
13 myself.

14 Q You mentioned a receipt that you got a copy of. I
15 show you what's been marked as State's Exhibit Number 88.
16 Do you recognize this?

17 A I do. That's the receipt from the Red Roof Inn, Room
18 Number 232 in Marquita Mobley's name.

19 MS. CAMPBELL - Your Honor, at this time, we'd
20 offer State's Exhibit 88.

21 MR. SAWYER - No objection.

22 THE COURT - All right, very well.

23 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
24 STATE'S EXHIBIT NUMBER 88.)

1 Q Once you transported them back to headquarters, did
2 you take statements?

3 A We did. I interviewed Ms. Mobley and talked with her
4 for a while; Investigator Jordan handled Ms. Nuttry.

5 Q Without saying what they said, were they able to give
6 you information that proved very significant in this case?

7 A They were able to give us a lot of helpful
8 information.

9 Q After you took statements from them, what happened?

10 A We carried them back over to the Red Roof Inn where we
11 had picked them up several hours prior, carried them back
12 over there and dropped them off. They were left with my
13 card with my office number on it and e-mail address, as
14 well as Investigator Jordan's, and we told them we may need
15 to be in contact with them again, if they moved from that
16 hotel room, to please give us a call and let us know where
17 they were going so we could keep in contact with them.

18 Q The next day did the investigation continue?

19 A It did. It continued the next day.

20 Q And again, at the end of the 27th -- end of the 27th,
21 were you able to identify anyone?

22 A We still had no suspects at the end of August the 27th,
23 2012.

24 Q That next morning did you receive any additional
25 information of significance?

1 A We did. We received two tips; we received an
2 anonymous tip just stating that the folks that were
3 involved in the shooting at El Toro went to Club Exclusive
4 to try and get in over there. I went in over there to try
5 and -- and I reviewed the video with the manager; I didn't
6 see any of the individuals that were shown on the video
7 that we just watched on that video. We received another
8 tip from Crimestoppers later that day.

9 Q And without saying what was in the tip, did it prove
10 significant in this investigation?

11 A It was very significant in this investigation.

12 Q Based on the information from the Crimestopper's tip,
13 what, if any, did you do?

14 A Started researching based on information that we had,
15 pulling driver's license photos, researching addresses. We
16 pulled the driver's license photo of one Mr. Gerald
17 Haltiwanger, Jr., and in that driver's license photo he was
18 smiling, as some of us do in our driver's license
19 photograph, and had a mouth with gold teeth, had gold teeth
20 in his mouth.

21 Q What about his physical characteristics, height,
22 weight, build?

23 A On your driver's license it has your height, your
24 weight; we could see all that through the DMV website
25 whenever we pull it up. And his physical characteristics

1 matched the individual that Ms. Mobley and Ms. Nuttry had
2 described to us a day earlier.

3 Q At that point did you request a line-up be prepared?

4 A We did. I contacted the Fusion Center at SLED.
5 Sometimes a line-up -- we do line-ups sometimes based off
6 of our jail database. Sometimes they're too difficult when
7 you have a certain number of characteristics, you're trying
8 to get in all those pictures in that line-up. SLED'S
9 Fusion Center has the ability to go through all driver's
10 license photographs and the folks out there do a really
11 good job of putting photographs together in a photographic
12 line-up and sending them back to us.

13 Q And were line-ups prepared in this case?

14 A Line-ups were prepared in this case.

15 Q And what was the purpose -- what's the purpose of
16 getting a photo line-up?

17 A You want to -- based on a physical description from
18 any eyewitness that you may have, they may recognize some
19 characteristics of that individual. They may recognize his
20 face, his hair, his nose, his ears, anything, and you want
21 to put six photographs in those line-ups that are similar.
22 In other words, you want the same characteristics. If they
23 have facial hair, you want all six folks to have facial
24 hair. If all six people have gold teeth in their driver's

1 license photograph, you want to make sure they have gold
2 teeth.

3 Q And was a line-up prepared in this case including the
4 Defendant, Gerald Bernard Haltiwanger?

5 A It was.

6 Q As the line-up was being prepared, did you go make
7 contact with any of the witnesses you had already talked
8 to?

9 A We did. We went back -- Tai and myself went back out
10 to the Red Roof Inn, located Ms. Mobley and Ms. Nuttry and
11 told them that we were in the process of putting together a
12 photographic line-up and if they would be so kind as to
13 accompany us back to headquarters to look at those
14 photographs.

15 Q And were photo line-ups shown to both Marquita and
16 Kristina?

17 A They were.

18 Q And were either of them able to identify the
19 defendant?

20 A Marquita was.

21 Q And did Kristina misidentify anybody or what happened?

22 A She didn't misidentify anybody. She couldn't -- she
23 couldn't pick anybody out of the photo line-up she was
24 shown, therefore, no -- no picture was circled, but she was

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1 shown a photographic line-up, but she picked -- she didn't
2 pick anybody.

3 Q That day did you also make arrangements to show Mr.
4 Ray a photographic line-up?

5 A We did. After confirming with Chief Wilson, Chief
6 Wilson stated that he would make contact with Mr. Ray and
7 he would go out and show Mr. Ray that photographic line-up.
8 Tai and I would go back to the club that night in an effort
9 to locate other additional witnesses, employees of the club
10 that were out there that night and had already given us
11 some statements.

12 Q And you can't go into what they said, but did you make
13 contact with other people?

14 A We did.

15 Q The next day on the morning on the 29th, what, if
16 anything happened?

17 A We -- I obtained warrants for Gerald Bernard
18 Haltiwanger, Jr. for murder.

19 Q And at that point what information did you have about
20 where he may be staying?

21 A We had information he was staying at [REDACTED]
22 [REDACTED] with Zondra Gilyard.

23 Q And that day was there anyone sent out to that area
24 for a certain purpose?

1 A Investigator Jordan was sent out there to surveil. We
2 had been by on several previous occasions the night before
3 and the morning -- that same morning of. Tai went back out
4 there early that afternoon to just look to see anybody was
5 standing back out there or if there were -- if anybody --
6 if he saw anybody out there. As Tai pulled up, he called
7 me on the phone to let me know that the individual he
8 recognized as Gerald Haltiwanger was standing out in the
9 little -- just off of the -- I guess you would call it a
10 little patio or steps coming down from the apartment out
11 there with several other individuals.

12 Q Once Investigator Jordan spotted the defendant, what,
13 if anything, did he do and what did you do?

14 A Investigator Jordan stayed put where he was at. It's
15 not advantageous for Investigator Jordan to approach a
16 murder suspect on his own by himself, and we waited for
17 additional units. Myself and Chief Wilson responded over
18 there, as well as several units from our fugitive task
19 force, and before we got there, we kind of made a plan as
20 to who was going to go on what side of the building and
21 where we were going to pull up at, and Mr. Haltiwanger was
22 taken into custody without any problems.

23 Q At that point was contact made with Ms. Zondra
24 Gilyard?

25 A It was. Chief Wilson made contact with her inside.

1 Q Prior to any search of that residence being done, did
2 y'all obtain permission?

3 A We did. Chief Wilson obtained a consent to search
4 from her.

5 Q What, if anything, did you do at that point?

6 A I carried Mr. Haltiwanger back over to Chief Wilson's
7 vehicle, myself and Tai. I read -- I verbally -- I gave
8 him his rights.

9 Q At that point was he under arrest?

10 A He was under arrest at that point.

11 Q And he was in your custody.

12 A He was in our custody.

13 Q What's the purpose of giving someone their rights?
14 What are they referred to?

15 A They're referred to their Miranda warnings.

16 Q And what's the purpose of advising someone of their
17 Miranda warnings?

18 A So they'd know what they're entitled to, that they
19 have the right to remain silent and that they're entitled
20 to an attorney.

21 Q Specifically you said that first you went over his
22 rights with him prior right there at the vehicle?

23 A Yes, ma'am.

24 Q And did you do that verbally or in written form at
25 that point?

1 A Verbally at that point.

2 Q And can you explain to the jury exactly what rights
3 you went through with him verbally at that point?

4 A I told him he had the right to remain silent, that
5 anything he said can be used against him in Court, he had
6 the right to an attorney, if he could not afford one, one
7 will be appointed for him if he wished, that he had the
8 right to talk to an attorney at any time and that -- before
9 we asked him any questions, and he could have one with him
10 during the questioning, and he was told if he couldn't
11 afford one again one would be appointed for him, asked him
12 if he understood his rights, and he said that he did.

13 Q And at that point was he transported to headquarters?

14 A He was.

15 Q And did you talk to him any -- were you with him when
16 he was transported?

17 A I was with him when he was transported.

18 Q Did y'all try to talk about the case any during the
19 transported?

20 A No, we waited til we got back to headquarters.

21 Q Once you got back to headquarters, what happened?

22 A We sat him down in Sergeant Randy Strange's office.
23 At that point I gave him his Miranda warnings again for a
24 second time, this time in writing from an Advice of Rights
25 sheet that we use that we use with all defendants.

1 Q And I show you State's Exhibit 1 which you have in
2 your hand -- show it to you, is that the form that you used
3 that day?

4 A It is.

5 Q And the handwriting on the top of that form, whose
6 handwriting is that?

7 A It's my handwriting on top of the form.

8 Q There are checkmarks and things of that nature on that
9 form. Who did those?

10 A I did.

11 Q And finally there are several signatures at the
12 bottom. Whose signatures are at the bottom of that form?

13 A Gerald Haltiwanger signed it and I signed it on one of
14 the witness lines twice. One of -- each of those
15 signatures, his and mine are under his rights, him signing
16 them stating that he understood them; me signing them as a
17 witness to his signature, and then again on the bottom of
18 that form, he signed the waiver of his rights, and I signed
19 it again as a witness.

20 MS. CAMPBELL - Your Honor, at this time we'd
21 offer State's Exhibit Number 1 into evidence. It's Advice
22 of Rights form ---

23 THE COURT - Exhibit 1.

24 MR. SAWYER - Yes. Your Honor, I'd just renew my
25 earlier objection.

1 THE COURT - Very well. Overruled.

2 MS. CAMPBELL - Thank you, Your Honor.

3 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
4 STATE'S EXHIBIT NUMBER 1.)

5 Q Can you go through the rights as you went through them
6 with him that day?

7 A We did. I filled out his name at the top, place which
8 we were doing them at is 5623 Two Notch Road, the officers
9 present were Sergeant Lindler, which is myself, and
10 Investigator Jordan, notated the date which was 8/29 of
11 2012 and the time which was 1755 hours, and in regular time
12 that's 5:55 p.m. I placed the rights form in front of him
13 like this, turned it around so that he could see them; I
14 read the questions off as follows: Before we ask you any
15 questions, you must understand your rights. I checked that
16 box. You have the right to remain silent. I again checked
17 that box. Anything you say can be used against you in
18 Court. I checked that box. You have the right to talk to
19 a lawyer for advice before we ask him any questions and to
20 have a lawyer with you during any questioning. I checked
21 the box next to that. If you cannot afford a lawyer, one
22 will be appointed for you before any questioning if you
23 wish. That box was checked as well. If you decide to
24 answer questions now without a lawyer present, you still
25 have the right to stop answering at any time. You also

1 have the right to stop answering any time until you talk to
2 a lawyer. Mr. Haltiwanger signed that he understood them.
3 I signed as a witness. We went into the waiver of his
4 rights which again is located on the bottom. I read that
5 to him. It says, I've read the statement of my rights and
6 understand what my rights are; I'm willing to talk and
7 answer questions. I understand and know what I'm doing and
8 no promises have been made to me and no pressure or
9 coercion of any kind has been used against me. And on all
10 of my Advice of Rights forms I will underline promises,
11 pressure or coercion just so he may -- I can make sure he
12 knows exactly what all those mean.

13 Q And at that point did he indicate whether or not he
14 wanted to talk to you?

15 A He did. He signed -- signed the bottom of the form
16 waiving his rights, and I signed it as a witness and
17 Investigator Jordan was present.

18 Q So it was the three of you, Investigator Jordan, you
19 and the defendant.

20 A Yes, ma'am.

21 Q And once he had been advised of his rights, did he
22 agree to talk to you?

23 A He did.

24 Q Did you promise him anything?

25 A We did not promise him anything.

1 Q Did you use any threats?

2 A No, ma'am.

3 Q Any kind of force?

4 A No.

5 Q Did you deprive him of any creature comforts?

6 A None.

7 Q At any point did he invoke any of his rights?

8 A He did not.

9 Q And, in fact, in your experience as an investigator,
10 was he cooperative?

11 A He was cooperative, yes, ma'am.

12 Q Did he appear to be coherent and understand what you
13 were saying?

14 A He understood fully what we were talking about.

15 Q And at that point tell the jury how the statement was
16 taken.

17 A Investigator Jordan and myself talked with him in the
18 room there for a little while. As Investigator Jordan
19 testified earlier, before we -- we just don't dive in the
20 pointing fingers and asking questions of suspects.
21 Whenever we get them in, we try to get to know the people a
22 little bit, find out where he's from, where he was born at,
23 stuff about his family, stuff along those lines. Then we
24 start talking about the incident, where he was that night,
25 if he could tell us, if he was, you know, if he has an

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1 alibi, if he was somewhere different, and then we get into
2 -- we get into the brass tax of the situation. We sit down
3 and talk to them and kind of let them in on a little bit of
4 the evidence that we have hoping that they'll tell us their
5 involvement.

6 Q And again for the record, what date is this that you
7 advised him of his rights?

8 A That would've been on August the 29th of 2012.

9 Q At that time?

10 A 1755 hours, 5:55 p.m.

11 Q And State's Exhibit 2 which has already been published
12 for the jury, do you recognize that?

13 A I do.

14 Q And what is that?

15 A It is a -- the statement of Gerald Bernard Haltiwanger
16 taken by myself and Investigator Jordan and I would have
17 been the one to type the statement out, the questions and
18 the answers, and it's signed by Mr. Haltiwanger and
19 notarized by myself on all four pages ---

20 Q And ---

21 A --- as well as Mr. Jordan.

22 Q --- Investigator Lindler, at this point the only
23 person that's been identified is whom?

24 A Gerald Bernard Haltiwanger, Jr.

1 Q And what time do you actually start taking that
2 statement?

3 A 1900 hours, which is 7:00 p.m.

4 Q So approximately an hour later?

5 A About an hour and five minutes later, yes, ma'am.

6 Q The information that's in that, who did it come from?

7 A Gerald Bernard Haltiwanger, Jr.

8 Q And at that point, what, if any, information did you
9 provide to Mr. Haltiwanger about what you knew?

10 A We had told him about -- that we had had a
11 photographic line-up picked, that one of the witnesses out
12 there had picked him out of a photographic line-up, as a
13 matter of fact, several witnesses had picked him out of a
14 photographic line-up, we knew he was at the club that
15 night, and we knew that he had come up to the edge of the
16 vehicle over there in the Gazbah parking lot and talked to
17 two young ladies inside of a vehicle over there at the
18 Gazbah parking lot and that there was video of that
19 happening. He was made aware of all of that at that time.

20 Q Did you also ask him questions about his relationship
21 to Carlos Brown?

22 A We did. Asked him if knew a Carlos Brown and what his
23 relationship was to him, and actually asked him, I said do
24 you have a brother by the name of Carlos Brown, and I'm
25 going from my follow-up here, from my notes. He says, yes,

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1 he is not my real brother, but I call him my brother. He
2 and Terrell, my real brother, are brothers. Terrell and he
3 -- which is -- he's referring to Carlos -- have the same
4 father, so Terrell and Carlos have the same father.
5 Terrell and I, which is Gerald and Terrell, have the same
6 mother. Terrell and Carlos's father always treated me like
7 I was one of theirs.

8 Q As far as -- and at this point you don't have any DNA
9 results back, do you?

10 A No, ma'am.

11 Q And have you taken statements from any of his other
12 brothers that were involved that night?

13 A We -- Chief Wilson was talking with Terrell Vaughn at
14 this time while we were talking with Mr. Haltiwanger.

15 Q And that date on the -- is that the 29th?

16 A Yes, ma'am, the 29th.

17 Q Did Mr. Haltiwanger admit to participating in this in
18 any way?

19 A He did not.

20 Q Specifically did he say where he was?

21 A He stated that he was over at Benedict College talking
22 to some girls, which Benedict College is right across the
23 street from Allen Benedict Court.

24 Q At this point had you recovered the car that was
25 involved?

1 A We had not recovered any of the vehicles that were
2 involved, nor had we recovered the firearm that was
3 involved either.

4 Q Did you ever recover the firearm that was used in this
5 case?

6 A We have -- to this date we have never recovered the
7 firearm that was used in this case.

8 Q Did you reduce what he told you into a typewritten
9 form?

10 A We did.

11 Q And what, if any, opportunity did he have to review
12 that?

13 A At the end of that statement it was read back to him
14 to (sic) me. He was also given a copy of it to read
15 himself and he signed it after both of those -- having both
16 of those done he signed it that it was his statement.

17 Q And did your investigation stop at that point?

18 A No, it did not. We continued our investigation. As a
19 matter of fact, Investigator Jordan and myself left Mr.
20 Haltiwanger in the care of Chief Wilson, and we went out to
21 inter -- re-interview Ms. Zondra Gilyard based on some
22 other information we had found out. We went back over to
23 the house to talk with her.

24 Q And when was that, sir?

25 A That was later that evening.

1 Q At that point was she completely forthcoming?

2 A Not totally. She was a little bit more cooperative,
3 but not totally forthcoming.

4 Q I want to turn your attention to the morning of August
5 the 30th. Did some information come to your attention that
6 was significant?

7 A It did. Tai and I were out still following up on some
8 things, and Chief Wilson gave me a phone call wanting us to
9 proceed over to Zondra's apartment and talk to her in
10 reference to a white car that was -- some stuff was
11 possibly hidden in at a mechanic shop somewhere close by.

12 Q And specifically had he reviewed a phone call that you
13 later reviewed?

14 A He had.

15 Q And what was it in that phone call that was
16 significant that they were talking about? Who was on the
17 phone?

18 A They were -- there was a phone call between Zondra and
19 Mr. Haltiwanger and they referred to some items in the car
20 that he wanted her to get rid of most specifically a GAT
21 which is referred to by folks on the street -- street slang
22 -- GAT is a gun that's used by them all the time, folks on
23 the street.

24 Q At that point did y'all then make contact with Zondra
25 again?

1 A We did.

2 Q And without saying what she said, was she more
3 forthcoming finally at this time?

4 A She was.

5 Q Based on the information you were finally able to get
6 Zondra (sic) on the 30th, what happened? What did y'all do?

7 A We -- we talked with her a little bit further about
8 what, if anything, Gerald had told her the night that he
9 had gotten home from the club and where possibly the car
10 may have been. We also -- you said on the 30th. Correct?

11 Q Around the 30th?

12 A Yes.

13 Q Yes.

14 A Yes, we talked with her at length about if he had told
15 her anything, possibly who had maybe helped hide the car,
16 maybe where some of the brothers stayed at, stuff along
17 those lines, and she was extremely cooperative at this
18 point. She also turned over to us a set of gold teeth from
19 Mr. Haltiwanger. They were located in the bottom of a
20 diaper bag belonging to their young infant son.

21 Q In the bottom of what?

22 A Bottom a diaper bag.

23 Q I'm going to show you what's been marked as State's
24 Exhibit Number 51. Do you recognize that?

25 A I do.

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1 Q What are those two items, three items, actually?

2 A It's a phone, a green phone and a set of gold teeth,
3 top and bottoms.

4 Q And those were turned over to you by whom?

5 A By Zondra Gilyard.

6 Q And the gold teeth were recovered where?

7 A She retrieved them from a diaper bag located within
8 the residence.

9 MS. CAMPBELL - Your Honor, at this time we'd
10 offer State's Exhibit 51 into evidence.

11 MR. SAWYER - No objection.

12 THE COURT - Very well. Exhibit is in evidence
13 without objection.

14 (WHEREUPON ITEMS MARKED INTO EVIDENCE AS STATE'S
15 EXHIBIT NUMBER 51.)

16 Q And then it looks like you submitted these into
17 evidence the next day?

18 A I did.

19 Q Based on your information that you had gotten from
20 Zondra, did you want to make contact with some of the
21 defendant's brothers at this point?

22 A We did. We set out at that point to locate Mr.
23 Vaughn, Tyrobia Green and Jonathan Sterling, Jr. Tai went
24 out and located Jonathan Sterling at his place of
25 employment, and I'm not sure where that was at. Chief

1 Wilson had gone out to find Mr. Vaughn out off of Farrow
2 Road. Zondra told us he was probably over there with his
3 girlfriend and the Fugitive Team had helped us locate
4 Tyrobia Green at that point.

5 Q And were those three individuals interviewed that day?

6 A They were.

7 Q And as a result of their interviews as well as the
8 rest of the evidence in the case, were they ultimately
9 charged in this case?

10 A They were. All three were charged with accessory to
11 murder after the fact, and all three implicated their
12 brother, Gerald Haltiwanger, as the shooter.

13 MR. SAWYER - Your Honor, objection.

14 THE COURT - Sustained.

15 MR. SAWYER - Your Honor, may we approach?

16 THE COURT - Yes. Ladies and gentlemen, there's a
17 matter that I must take up outside your presence. Please
18 step to your jury room. Do not discuss this matter or
19 allow anyone to discuss it with you. We will be with you
20 shortly. Leave your notebooks and your pads too.

21 (Jury exits the courtroom)

22 THE COURT - The jury's out. Thanks. Yes, sir?

23 MR. SAWYER - Your Honor, at this point I'd move
24 for a mistrial. This is a bell that cannot be unrung. I
25 mean we have three witnesses that essentially cannot

1 testify because they -- one of their lawyer's has already
2 showed up saying that they're claiming the Fifth -- have no
3 ability to cross examine; I have no ability -- no ability
4 to explain their testimony to the jury, and the officer
5 just testified that all three of these brothers implicated
6 Bernard as the shooter.

7 THE COURT - And your objection is hearsay.

8 MR. SAWYER - Hearsay, Crawford, this was -
9 custodial, Davis, all of the above, Judge.

10 THE COURT - Okie-dokie.

11 MS. CAMPBELL - Your Honor, I would just point out
12 that this information that he was implicated has actually
13 brought out -- I mean in their opening statement the first
14 thing out of their mouth was that Gerald Haltiwanger was
15 the shooter in this case. That not necessarily opens the
16 door to this testimony, however, I believe at this point if
17 they're requesting a curative instruction we would have no
18 objection to that. I believe it can be cured. In addition
19 to that, Your Honor, they're the first ones to put out
20 there in their opening statement -- they opened the door
21 and under State versus -- what's that case? Dunlap? And
22 those cases, Your Honor, what may be inadmissible could
23 possibly become admissible; we did not intent to go that
24 far, Your Honor, however, we think at the very least a
25 curative instruction, especially since, you know, I don't

1 need to anticipate what his client is going to say, but
2 based on the opening statement and opening the door in
3 their opening statement, the first thing out of their mouth
4 was that this defendant was the shooter in this case. I do
5 not think that any kind of -- that the prejudice that may
6 be suffered by this would be overruled. Thank you.

7 THE COURT - What about that?

8 MR. SAWYER - Your Honor, I just -- I again -- you
9 know, this is the only ability -- the only statement that
10 we get for this case, so if you're trying to give a
11 curative instruction -- let me back up -- curative
12 instruction is just ridiculous. I mean at this point what
13 has been said has been said and it's very -- they're going
14 to know that all three of his brothers said he was the
15 shooter. All right. That evidence is not ---

16 THE COURT - Well, you said he was the shooter.

17 MR. SAWYER - I did say he -- Mr. Sharpe did say
18 he was the shooter ---

19 THE COURT - Yes.

20 MR. SAWYER - -- and I do appreciate that, but ---

21 THE COURT - Well, they're just agreeing. We do.
22 I mean ---

23 MR. SAWYER - I'm sorry?

24 THE COURT - I mean -- I mean here's the point. I
25 mean the point is -- is that the trial began -- the

1 absolute first statement I think that was made by counsel
2 was that, ladies and gentlemen, first thing I want to tell
3 you is that the defendant was the shooter and he shot the
4 alleged victim.

5 MR. SAWYER - Correct, Your Honor.

6 THE COURT - Right. So the statement of this
7 witness is that the three brothers implicated the
8 defendant.

9 MR. SAWYER - Correct, Your Honor.

10 THE COURT - All right. Which means -- implicated
11 means -- I mean -- the question what does that mean that
12 they implicated him? Well, I guess that's the question,
13 what does that mean. And if it means that the brothers
14 testified that -- that their brother shot the alleged
15 victim, that's just -- in other words, it is inadmissible
16 you're saying. I'm with you there. The question is, they
17 asked for a mistrial on that basis and you know the case
18 law indicates that that -- that that is a drastic remedy
19 and if I -- if we were in a situation where the -- the fact
20 that your client was the shooter was in dispute, I'd be
21 with you. What do I do now that, yes, it's -- I sustained
22 your objection, it's inadmissible hearsay -- my concern is
23 that you must tell me where the prejudice is where that was
24 the first statement that was made by your team in the

1 opening statements, that, in fact, your client was the
2 shooter of the alleged victim.

3 MR. SAWYER - Because, Your Honor, at this point,
4 as I said, we have no ability to put any context to that
5 statement.

6 THE COURT - To put any what?

7 MR. SAWYER - Context to those statements, Judge.
8 These three gentlemen all have a right not to testify.
9 Their lawyers, at least one of them, and from my
10 understanding, the other two were going forbid them from
11 testifying, because they are all charged by the State.
12 Now, the State if they want to get out any testimony from
13 them without him being the shooter and him shooting and
14 being involved with what happened that day, they can grant
15 absolute immunity to those three of course to testify; they
16 chose not to in this case. And what this leaves me with is
17 that the officers -- Investigator Lindler said this, I have
18 no ability to put any context this to before the jury, even
19 the shooter. Okay? Where was he from shooting? How was
20 he shooting? What happened before? What happened after?
21 Did you talk about this before? Did you talk about this
22 after? There's a lot more than just those simple three
23 words that I think prejudices Bernard from being able to
24 fully explore what the implications of that statement are.
25 Because right now all we're hearing is he is the shooter

1 and the jury's going to think, well, he just went out and
2 shot him. His brother is -- I'll tell you right now, a lot
3 of his statements have pretty good stuff that we will
4 likely use, but - claiming the Fifth, so we can't. So,
5 Judge, I'm kind of stuck with this statement coming out
6 without me having any ability to explain this statement to
7 the jury.

8 THE COURT - All right.

9 MR. SAWYER - Your Honor, if I just may supplement
10 briefly before you rule. There are actually factually
11 inaccurate statements as well. Jonathan Sterling says he
12 hears shots but he does not see who the shooter is. And
13 additionally, Tyrobia Green says did you see any shots
14 fired, no, I just heard them. Did they come from your car,
15 no. He didn't say where he saw the shots or heard the
16 shots or saw who was shooting. So the officer not only
17 just named all three of the brothers of people he
18 interviewed, but said all three of them identified Bernard
19 as the shooter. Your Honor, if I may approach and make
20 part of the record ---

21 THE COURT - Well, what he said, he implicated --
22 the term is implicated. And ---

23 MR. SAWYER - Well, I believe they said implicated
24 as being the shooter and in their statements, two of them
25 he said, I don't know who did the shooting.

1 THE COURT - (Pause) Well, here's what I'm going
2 to do. First thing I'm going to do is let the jury go. So
3 let me have the jury.

4 (Jury enters the courtroom)

5 BAILIFF - Jury is seated, Your Honor.

6 THE COURT - Thank you so much. Ladies and
7 gentlemen, the matter that I must attend is going to take
8 me a little bit longer. I don't want you to sit in your
9 jury room any longer, because it's 5:15, so in a moment I'm
10 about to let you go for the evening. We're going to begin
11 in the morning at -- we're going to start at 9:30 in the
12 morning, at 9:30. Ladies and gentlemen, of course, over
13 the balance of the evening, same admonitions. Y'all can
14 almost say it with me I would think at this point, do not
15 discuss this matter; don't allow anybody to talk about it
16 with you. Don't listen to anything; don't read anything
17 about this matter, radio, television, newspaper, internet.
18 You must receive all of the information from which you will
19 make up your minds here in Court while Court is in session.
20 Do not speak with this -- about this matter with your
21 fellow jurors or your family or friends or anyone that has
22 anything to do with it. Don't do any social media; don't
23 do any Columbo; don't go to the internet. Again, you have
24 to receive all of the information from which you will make
25 up your minds here in Court while Court is in session.

1 Have a very pleasant evening. I will see you in the
2 morning at 9:30. And leave your pads in your seats. Thank
3 you.

4 (Jury exits the courtroom at 5:15 p.m.)

5 THE COURT - All right, there are a couple of
6 issues that concern me. And I've looked at the statements
7 and obviously these statements have got to be marked as a
8 Court's Exhibit because I've looked at them. And what I'm
9 -- we'll argue this -- that's why I had the jury come back
10 at 9:30 because I need you all to argue it in the morning.
11 There are a couple of issues. The first issue is what is
12 the effect of the statement that the three brothers
13 implicated defendant. Based on the statements that I've
14 looked at, that isn't correct. Let me finish.
15 Secondly, the question is, what is the level of the --
16 really being -- what is the level of the prejudice since
17 that's been conceded, and the defense made a comment that
18 the statements are inadmissible. Maybe -- I don't know
19 that. I know that because they take the Fifth Amendment,
20 that in and of itself doesn't make them inadmissible, and
21 at least one of them I can make a pretty good argument is
22 admissible. Now, and then to look at the elements for that
23 reason, but -- but when declarants are unavailable there
24 are certain set of hearsay rules that apply to them, one of
25 which is I think applicable at least to the one that I

1 looked at for that purpose. So I don't know that -- I
2 don't know that the mere fact that you are informed that
3 these individuals are taking the Fifth Amendment that that
4 in and of itself makes the statements admissible on the
5 basis of hearsay. So I -- question is what -- to what
6 extent does that affect the issue, if at all of the
7 prejudice to -- to the defendant. I want everybody to take
8 a breath and we will argue that in the morning. And you
9 want to tell me something.

10 MS. CAMPBELL - Just briefly, Your Honor. I just
11 briefly reviewed the co-defendants statements.

12 THE COURT - Yes, sure. Yes.

13 MS. CAMPBELL - I think in -- used the word
14 implicate, he basically -- all three of them put Gerald
15 Haltiwanger as one of the people who participated in the
16 events of that night. And in the two statements, at least
17 both directly implicated him as the shooter, one refers to
18 him as bro -- did you see that?

19 THE COURT - Yes, I did.

20 MS. CAMPBELL - And then the other one I believe
21 Mr. Vaughn directly implicates him and then the other one
22 say he's just too scared to come forward at the time,
23 however, he does put him I believe -- and I could be mixing
24 up statements -- and I just point this out for your review
25 overnight -- as the one who was at the door with the ID I

1 believe, which obviously in the context of the information
2 is ---

3 THE COURT - Let me tell you exactly what my
4 concern is. My -- here it is. The only way that I think
5 it's prejudicial is if implication goes to murder. That's
6 my concern. That's -- I mean that's where my head is.
7 That's what my concern is, and so when I start thinking
8 about prejudice, what does that mean? What does the word
9 implicate mean? Implicate for what? And ---

10 MS. CAMPBELL - If it's just an implication as to
11 him being the shooter, that is admitted.

12 THE COURT - I know. I know. But that's not what
13 he said. Implicates the brother. That's where we get the
14 objection. That's where we are. And that literally is
15 where we are at this moment. Implicates the brother. And
16 it's that general term of implicates the -- he's your
17 witness, you're not going for shooting, you're going -- it
18 is your intention to prove murder. That is your duty. It
19 was your witness ---

20 MS. CAMPBELL - It was my intention to get that --
21 -

22 THE COURT - And so that's -- I mean that's -
23 that's what's rattling around in my head. Implication,
24 what does that mean? If -- if I leave it at implication,
25 if it stays at implication, implication for what? For the

1 shooter? For murder? What? Implication for what? Is --
2 you know, can you come forward and say, I'm a going to cure
3 it. Maybe. I don't know. But we're going to put some
4 time between now and the morning and we're going to talk
5 about that.

6 MS. CAMPBELL - Judge, do you have any problem if
7 I listen to that answer one more time.

8 THE COURT - No. Gracious, no, not at all, not at
9 all. And I've looked at the statements and again, I -- you
10 know, y'all had me jumping back into the rules of evidence
11 that I thought I knew and I do not believe when we are
12 looking, but I do not believe that the taking of the Fifth
13 Amendment means that any statements given are inadmissible.
14 That's just not correct. The fact that someone is taking
15 the Fifth Amendment makes him unavailable is a whole set of
16 rules that apply to that particular circumstance, because
17 that makes the witness unavailable. That was like a hint,
18 and so we'll just see you in the morning.

19 MR. SAWYER - Thank you, Judge.

20 THE COURT - Yes. I've about talked myself out of
21 it, so just giving y'all a hint. All right, I'll see you
22 in the morning at 9:00.

23 MR. SAWYER - Thank you, Judge.

24 THE COURT - Thank y'all so much.

1 (WHEREUPON, DOCUMENTS MARKED AS COURT'S EXHIBIT
2 NUMBER 3.)

3 (Court in recess for the day at 5:30 p.m.)
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SATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) FIFTH JUDICIAL CIRCUIT
 COUNTY OF RICHLAND) CASE NO.: 2012-GS-40-5298

STATE OF SOUTH CAROLINA)
)
 vs.) TRANSCRIPT OF RECORD
) DAY 4
 GERALD BERNARD HALTIWANGER) (688 - 850)

NOVEMBER 15, 2013
 COLUMBIA, SC

BEFORE THE HONORABLE DIANE GOODSTEIN

APPEARANCES:

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 COLUMBIA, SOUTH CAROLINA

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SHIRLEY BROOM
 16TH Circuit Court Reporter

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1 THE COURT - Please be seated. All right. Good
2 morning.

3 MS. WALKER - Good morning.

4 THE COURT - Now, I think that our record needs to
5 reflect that counsel last evening -- and were actually
6 wonderful -- and listened together -- listened to that part
7 of the testimony of the witness which I am so grateful and
8 then came and relayed to me what they heard. And as I
9 understand it, what was said was -- and I'm -- obviously
10 isn't verbatim -- but that the brothers implicated the
11 defendant as the shooter -- is as the shooter language, and
12 I didn't hear that. I didn't hear that. And so I'm so
13 grateful that counsel did that, and I appreciate so much
14 the defense's candor with the Court which I know you're
15 obligated to do, but I'm just grateful and thank you for
16 your honoring your ethical obligations, so that was
17 tremendous help to me. With that in mind I would
18 respectfully deny your motion for a mistrial. I understand
19 completely the basis for it. I certainly think it is well
20 placed and well made and appropriate motion for a mistrial,
21 but I believe that testimony goes no farther than simply
22 articulating the position that was taken in opening
23 statement by the defendant. My fear was -- my fear was --
24 my concern was that if I was left only with the implication

1 language, meaning that the brothers implicated the
2 defendant, that is what had me so concerned, because I was
3 -- I was concerned that that would lead and could lead the
4 jury to think implication without more could be implicated
5 him in the murder, because that's what the State's about.
6 That's what their burden is and that's what they're seeking
7 to prove. That's what concerned me. But hearing that
8 additional testimony that I missed -- and I don't know if I
9 missed it because -- I would like to say because you were
10 objecting, but I don't know that I can say that, but I did
11 miss that. So with that in mind, I am not concerned
12 because that is the position of the defense, and so I would
13 respectfully deny your motion for a mistrial. I understand
14 it. I note your exception to that, but I do believe that
15 the trial can go forward. Now, let me tell you all about
16 what we have done, because we have ordered lunch for the
17 jury, so we keep them here and go quickly. We will take a
18 break around 11:15, because I think -- I can get from here
19 to Court Administration in 15 minutes where I'm supposed to
20 be at 12:30, and then the moment that I'm finished I'm
21 coming back, and the moment that they are finished eating,
22 we will keep going. And with that in mind, I should've
23 brought sandwiches for all of y'all, but I don't want y'all
24 to get sick, because I'm not very domestic. I didn't want

1 you to get sick so -- but we would just try to keep our
2 lunches limited as we can.

3 MS. CAMPBELL - So, Judge, we'll be breaking at
4 11:15?

5 THE COURT - I'm sorry, 12:15. I'm sorry, 12:15.
6 12:15. Because I just need enough time to, you know, get
7 down, find a parking place and, you know, run up the front
8 steps which is not where you enter the building, because I
9 always go up the front steps where you don't enter the
10 building and make it to the door and think, why did I just
11 come up 400 steps knowing you don't come in the building
12 this way, but for some reason I feel compelled to always go
13 up the wrong steps. I'm sure I'll do it today. So I need
14 time to get up two flights of steps, because then I'll have
15 to go down those steps and go to the side -- so maybe we'll
16 go up the side -- All right, wonderful. Now, is the State
17 ready to proceed?

18 MS. CAMPBELL - State's ready, Your Honor.

19 THE COURT - And the defense?

20 MR. SAWYER - Your Honor, just a couple things
21 real quickly.

22 THE COURT - Yes.

23 MR. SAWYER - I did e-mail your law clerk and Ms.
24 Campbell our just preliminary jury -- cases basically that
25 we were going to rely on line last night.

1 THE COURT - Wonderful.

2 MR. SAWYER - She said she got them. She said
3 she's going to turn over any proposed jury instructions
4 prior to us breaking for lunch.

5 THE COURT - Great. So we'll we looking at those.
6 That's great.

7 MR. SAWYER - And oh I just reminded -- just the
8 State -- just state you did sustain my objection to it
9 being hearsay, so ---

10 THE COURT - Yes.

11 MR. SAWYER - So once we get this ball rolling
12 again, now, Judge, you jumping right back in that same line
13 of questioning.

14 THE COURT - Yes, yes. Yes.

15 MR. SAWYER - Otherwise, Judge, defense is ready
16 to proceed.

17 THE COURT - Wonderful. Okay. Oh, we have a
18 witness. We have everything. Let us have the jury. Oh,
19 one second. I'm so sorry. I need to tell you that I have
20 note, Dear Judge Goldstein, -- oh, I can fix this problem,
21 and it says, it's thank you for the cooperation, but we
22 have two jurors that are concerned about working over the
23 weekend. Due to the extensive nature of this trial, this
24 would be greatly appreciated, they want to work - excuse
25 for the weekend -- a work excuse would be appropriate for

1 this issue. I don't think that that's an issue that you
2 all need to be concerned about, but I do want you know that
3 I had that note and it says, P.S., can we please have new
4 parking -- they want a new parking area. I'm just going to
5 -- you know, if they need an excuse because of whatever,
6 I'm inclined to give it to jurors because they would know
7 if there was something that they were prepared for and
8 they're not prepared for it maybe over the weekend because
9 they've been here paying attention or whatever it is, I'm
10 inclined to give them whatever work excuse that they need
11 because I don't want them worrying about the weekend. I
12 want them here and focused here, so I'm going to tell them
13 I'm happy to provide whatever excuse that they feel that
14 they need. That's sort of where I am with jurors. I don't
15 want them distracted; I don't want them worrying. I want
16 them focused here. So I'm inclined to do that when they
17 asked for things like that, even though they're a little
18 unusual because I want their minds here. And with regards
19 to the new parking places, I'm going to say I'm going to
20 ask and then I'm just going to push that one to the side.

21 MS. CAMPBELL - And the other thing that might be
22 is we could also provide escorts -- it's the parking garage
23 across the street and there tend to be a lot of people that
24 are homeless and so that may be their concern, so I don't
25 know if defense counsel has a position on this, but you

1 might say that we could also provide escorts to their cars
2 which we've done before.

3 THE COURT.- Sure. Absolutely.

4 MR. SAWYER - This is -- that's what we normally
5 do when it's after 5:00 ---

6 MS. CAMPBELL - Especially if it's dark, because
7 there are people that are ---

8 THE COURT - I understand. I understand. I'll
9 tell them whatever we need to do, we will do. Just let me
10 know what the concerns are and we'll handle it. Okay.
11 Now, we'll have the jury. And we'll mark this as a Court's
12 Exhibit.

13 (WHEREUPON, DOCUMENT MARKED AS COURT'S EXHIBIT
14 NUMBER 4.)

15 (Jury returns to the courtroom)

16 BAILIFF - Jurors are seated, Your Honor.

17 THE COURT - Thank you so much and good morning,
18 ladies and gentlemen. I have the note; yes, I'm happy to
19 do the excuse and delighted to do that. I will write those
20 out or type them, so I'll get those by the end of the day.
21 With regards to the parking, whatever we need to do we will
22 do. If you can just give me a little bit of - just a
23 little more information what the concerns are, just write
24 those down for, I'll - whatever I need to do I'll know.
25 You know? I don't know what it is, but y'all just let me

1 know what I need to do. I'm from Dorchester County, so
2 there might be issues that I'm not aware of, because we
3 like to park in the field with the chickens and the cows.
4 Not really. We actually have pavement, um, in some places.
5 So y'all just let me know and I will do whatever we need to
6 do to make sure you to getting you - you have the type of
7 parking that you need, not a problem. So just give me a
8 little more information so I'll know what it is I need to
9 do and I'll be happy to do it. Now, ladies and gentlemen,
10 at this time, we will continue with the State's case and
11 the direct examination from Ms. Campbell.

12 MS. CAMPBELL - Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MS. CAMPBELL -

15 Q Investigator, just to refresh -- I'm going to take you
16 back -- we're still talking about events that happened on
17 August the 30th. Is that correct?

18 A Yes, ma'am.

19 Q That you and your investigators were - that day did
20 you make contact with a Larry Cornish?

21 A I did.

22 Q And what, if anything, did Mr. Cornish -- was Mr.
23 Cornish -- and who actually made contact with Mr. Cornish
24 that day?

1 A One of our other investigators from the sheriff's
2 department, a Ms. Green, Investigator Green.

3 Q And that day did you get Investigator Rast to get with
4 Mr. Cornish?

5 A I did. Once Larry Cornish showed up at the
6 headquarters there at the sheriff's department, I placed
7 him with Investigator Rast who testified earlier. He took
8 Investigator Rast down to Bluff Road and showed him where
9 the black Ford LTD was parked that was driven the night of
10 the incident.

11 Q Whose residence was that?

12 A That would've been Laquanda Issac I believe, if I'm
13 pronouncing that right, Laquanda Issac at [REDACTED].

14 Q And what was her relationship with the defendant?

15 A I understand they were boyfriend and girlfriend maybe.

16 Q At that point were any steps taken to remove the car
17 from her residence?

18 A It was. Investigator Rast asked her for permission to
19 look under the cover that was over the car. She granted
20 that with no problem. The car was towed away from there
21 and towed back to our shed at headquarters so it could be
22 processed.

23 Q What car was that, sir?

24 A It was a 1980 Ford LTD, two-door with a burgundy
25 interior.

1 Q That day were any search warrants obtained?

2 A Yes, ma'am, I typed out a search warrant for the car
3 and had it signed and turned that search warrant over to
4 Investigator Bouknight so the car could be processed for
5 any shell casings, any other trace evidence, GPR, GSR,
6 gunshot residue.

7 Q You had contact with Zondra Gilyard as well. Is that
8 correct?

9 A I did.

10 Q And what was her relationship to the defendant?

11 A They were dating at the time as well, and she is the
12 mover of his young son at that time which was just a few
13 months old.

14 Q And when making contact with her, did you get any
15 information from her about the car?

16 A I did. She handed - she gave me the title to the car.
17 I believe she had it with her in her purse when she was up
18 at headquarters.

19 Q I want to show you State's Exhibit Number 86. Do you
20 recognize that?

21 A I do.

22 Q And what is that, sir?

23 A It's a State of South Carolina Certificate of Title of
24 a vehicle. The vehicle listed on here is a 1980 Ford LTD;
25 the body style is a two-door. It was issued April the 17th

1 of 2012 and on the back of it, on the assignment of the
2 vehicle where it was sold to Ms. Gilyard from the previous
3 owner, Mr. Alexander Ferdick (phonetic) and Diane Ferdick,
4 Alexander Ferdick has signed it as the signature of the
5 seller and the Zondra Gilyard has signed it as the
6 signature of the buyer.

7 Q Is that dated on the transfer on the back?

8 A It is not dated.

9 Q Thank you.

10 MS. CAMPBELL - Your Honor, at this time we'd
11 offer State's Exhibit 86 into evidence.

12 MR. SAWYER - Without objection.

13 THE COURT - Very well, evidence marked.

14 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
15 STATE'S EXHIBIT NUMBER 86.)

16 Q Moving on to the next day, what, if anything, did
17 y'all feel was prudent to do at that point?

18 A We felt it was prudent to interview Mr. Haltiwanger
19 again. Investigator Jordan was sent down to the jail to
20 pick Mr. Haltiwanger up and bring him back up to
21 headquarters so we could interview him again based on some
22 other information we had learned the day prior.

23 Q And did y'all become aware of some phone calls from
24 the jail?

25 A We were.

1 Q Once he got back to headquarters with Investigator
2 Jordan ---

3 A Yes, ma'am.

4 Q --- what, if anything, did y'all do?

5 A Investigator Jordan and I read him his rights again
6 for the written form. I went down and checked them all off
7 like I did previously when we read him off the written
8 form. He signed that he understood them. He was also read
9 a waiver of those rights and he signed that he understood
10 those and I signed both of those as well.

11 Q I show you State's Exhibit Number 3. Do you recognize
12 that?

13 A I do.

14 Q Is that the form you used on the second interview with
15 the defendant?

16 A It is.

17 MS. CAMPBELL - Your Honor, at this time we're
18 offer State's Exhibit Number 3 into evidence.

19 MR. SAWYER - Without objection, Your Honor.

20 THE COURT - Very well.

21 (WHEREUPON, DOCUMENT WAS MARKED INTO EVIDENCE AS
22 STATE'S EXHIBIT NUMBER 3.)

23 Q And can you just briefly go through again how you read
24 him his rights on the second ---

1 A We read him his rights again and went down through all
2 of his rights, checked off each of them there before I read
3 them to him and did the same thing with the waiver of
4 rights down there and again I underlined promises, pressure
5 and coercion making sure that he understood what all three
6 of those meant again.

7 Q Once you went through his rights with him, did he
8 indicate whether or not he understood them?

9 A He did.

10 Q Did he indicate whether or not he wanted to talk?

11 A He did.

12 Q And you also had him sign off on the waiver?

13 A We did. He signed off on the waiver as well.

14 Q And on State's Exhibit Number 3 those are his
15 signatures on both of these places just like the first one?

16 A They are.

17 Q At any time when you were talking to him on the second
18 occasion, did you promise him anything?

19 A We did not.

20 Q Did you threaten him in any way?

21 A We did not.

22 Q Did you or Investigator Jordan or anyone -- Chief
23 Wilson use any kind of force to make him talk?

24 A We did not.

1 Q And, in fact, as your experience as an investigator,
2 was he voluntarily talking to y'all?

3 A He was.

4 Q And at any time did he invoke any of his rights?

5 A He did not.

6 Q Tell the jury basically how the conversation went that
7 day after he had been advised of his rights and chose to
8 waive.

9 A We -- myself and Chief Wilson started out with him
10 just talking to him, again, letting him know that we had
11 some additional information, that we had talked to all of
12 his brothers; we had talked to Zondra. He wanted us to
13 read some of their statements to him, so we started out
14 reading one of his brother's ---

15 Q Don't say what they said, but just ---

16 A We started out reading one of his brother's statements
17 and got ready to start on Zondra's statement, and he looked
18 at me and kind of ducked his head down. He got a little
19 emotional, and he said I've heard enough, I'll tell you
20 what happened.

21 Q And at that point did he then tell you about the
22 events of that night?

23 A He did. He -- he had started out telling us that he
24 had the ID -- his brother's ID, Carlos Brown's ID, that he
25 tried to present it to get into the club. When the

1 security guard wouldn't let him get into the club, he said
2 he started talking junk to the security guard, and he said
3 he told the guard, fuck you, as he turned around to walk
4 off, and that at some point in the parking lot he was told
5 by the guard to put his hands on the car, and one thing led
6 to another, Mr. Moti sprayed him with mace and he was at
7 some point moved over to the Gazbah parking lot where you
8 saw them running on the video over the Gazbah parking lot.
9 At some point during that verbal altercation between he and
10 Mr. Moti, he was -- Mr. Moti was struck in the back of the
11 head by one of the other brothers. And then from there he
12 would tell us that -- that he went over and spoke to the
13 girls in the car, that one of his other brothers went over
14 and got his car which is a black Ford LTD, pulled it up; he
15 made them get out, he gets in, pulls a gun, and as they're
16 pulling out of the parking lot at El Toro Club, he fires
17 across his brother's chest out of the passenger's side
18 window and door. He even tells me that he shot the door
19 handle off the car, which was referenced earlier in
20 Investigator Bouknight's testimony where the door handle
21 was missing off the car.

22 Q I show you what's been marked as State's Exhibit 4.
23 Does that contain relevant evidence about what he said
24 about that night?

25 A It does.

1 Q In it does he indicate what he did with the car after
2 the shooting?

3 A It does. I asked him on page 2 of his statement, what
4 car did you drive -- excuse me -- what did you do with the
5 car after Saturday night? He says, Tyrobia and Trouble
6 took it to the country. I asked him, I said, did you wipe
7 the car down? Yes, I wiped down everything; I wiped it
8 down with gas. I asked him what he did with the gun. He
9 says, I sold it to a guy from New York. I knew he -- I
10 knew he was from New York, because I met him in the store.
11 He had an accent. I sold him to him for three hundred
12 dollars. I asked him what kind of gun it was; he said it
13 was a -- it was a .40 and had P80 on the side of it; it was
14 black and smaller than the Glock that I had. I asked him
15 how many shots he fired. He said I don't even remember. I
16 asked him what he did -- what did you do with the shell
17 casings in the car; he says, I threw them in the river.

18 Q And did you ever recover the additional shell casings
19 in this case?

20 A We did not.

21 Q Did you ever recover the gun that was used in this
22 case?

23 A We did not.

24 Q Did he indicate what they did after the shooting that
25 night?

1 A He does. I asked him, where'd you go after they left
2 the club, after he fired out of the car. And he states
3 they went to the XO Club with my brothers, and he says, we
4 stayed there for a minute.

5 Q Where is the XO Club, sir?

6 A XO Club is at the 2700 block of Broad River. It's in
7 a litter strip mall there across from the Rush's on Broad
8 River, or it used to be. It's closed now.

9 Q At some point in the course of your investigation, did
10 you feel it was necessary to get what's known as a buccal
11 swab from the defendant?

12 A We did.

13 Q And I'm going to show you State's Exhibit Number 53.
14 Do you recognize that?

15 A I do. That's a buccal swab. Two buccal swabs were
16 obtained from Gerald Bernard Haltiwanger.

17 Q And in addition to that I show you what's been marked
18 as State's Exhibit 61. Do you recognize that?

19 A I do. That's a buccal swab from myself that I gave
20 back on the 27th of August, 2012.

21 Q And tell the jury why you needed a buccal swab from
22 the defendant.

23 A When I first arrived on the scene that Sunday morning
24 out on the scene, Investigator Woods handed me the ID that
25 was handed to Jimmy Moti, the guard. I did not have on

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1 latex gloves at the time. Even though I handled the ID by
2 the corners and the edges, I felt it was -- it was
3 necessary for me to give a buccal swab for elimination
4 purposes in case my DNA showed up on that ID card.

5 MS. CAMPBELL - Your Honor, at this time we'd
6 offer State's Exhibit Number 61 as well as 53 into
7 evidence.

8 THE COURT - Any objection?

9 MR. SAWYER - No objection.

10 THE COURT - Very well.

11 (WHEREUPON, DOCUMENTS MARKED INTO EVIDENCE AS
12 STATE'S EXHIBITS 61 AND 53.)

13 Q In this case there were certain items had been
14 requested to be tested for DNA. Is that correct?

15 A (No response)

16 Q There were certain items that were requested to be
17 tested for DNA?

18 A Yes, ma'am.

19 Q But you didn't get the actual gun from the victim
20 tested. Was there any -- explain that.

21 A The gun -- the gun from Mr. Moti came from a known
22 entity. We knew it was his gun; it was in his vest at the
23 time and in his holster, so we felt -- and there was no --
24 we had no witness statements. Nobody else saw anybody else
25 with a gun out there that night, therefore, it was no need

1 to have it tested for anybody's DNA. It was in his
2 possession.

3 Q The 9-1-1 call that originally came out that night,
4 who was that from originally?

5 A I believe there's a -- the same phone number that's on
6 the incident report, and we assumed it was from Mr. Moti,
7 the guard there.

8 Q What was it originally called in as?

9 A It was originally called in as a civil disturbance.

10 Q What does that mean?

11 A When a civil disturbance is called into dispatch,
12 they'll dispatch it out to the deputies and they'll usually
13 one, maybe two deputies out to a civil disturbance, and
14 that's usually an argument or something between parties at
15 a business. For example, you get somebody at a restaurant
16 who won't leave, who's arguing with the management and they
17 want them off the property. That's considered a civil
18 disturbance.

19 Q Later did the nature of this call change?

20 A It did. While in route the call changed from a civil
21 disturbance to shots fired and that the security guard at
22 the El Toro Club had been shot.

23 Q Let me ask you this. There's been talk about mace
24 being used by the victim in this case.

25 A Yes, ma'am.

1 Q Were y'all ever able to recover the mace?

2 A We were not. We never -- we were never able to find
3 the mace can that Mr. Moti had in his hand.

4 Q Is that unusual in a case such as this?

5 A No, ma'am, not with the number of people that were out
6 there that night, the number of cars that were in that
7 parking lot, no ma'am.

8 Q There's also been put into evidence a cell phone from
9 the defendant.

10 A Yes, ma'am.

11 Q Were you able track or trace a cell phone for him?

12 A No, none.

13 Q Why not?

14 A There was none on it. We weren't able to find
15 anything on it.

16 Q I want to show you two more items, State's Exhibit 79
17 and 80. Do you recognize these?

18 A Yes, ma'am. They're Mr. Moti's registered security
19 weapon's permit and a registered security concealed
20 weapon's permit, and it's his ID as a security officer for
21 the State of South Carolina.

22 MS. CAMPBELL - Your Honor, at this time we'd
23 offer 79 and 80 into evidence.

24 MR. SAWYER - Without objection.

25 THE COURT - Very well.

1 (WHEREUPON, DOCUMENTS MARKED INTO EVIDENCE AS
2 STATE'S EXHIBITS 79 AND 80.)

3 Q And do you know where these were recovered from?

4 A They were recovered from his person. I believe the
5 coroner's office recovered them out of his wallet from the
6 hospital that night.

7 Q And one states on the front that he is registered to
8 be what in the State of South Carolina?

9 A Is a registered security weapon's permit, he is a
10 security officer, Jimmy Moti, is a registered security
11 weapon's permit.

12 Q In addition to that is he also in the second one
13 registered to do what?

14 A He's registered as a security concealed weapon's
15 permit, so he's registered to carry a gun. What this means
16 is that he's registered as a -- when he's in uniform, he
17 can wear the gun on the outside of his uniform and this ID
18 card covers that. If he's doing plain clothes security,
19 which some of your private security companies do, this card
20 allows him in concealed clothing to have that gun
21 concealed; just as I may have mine concealed under my
22 sports coat, he would have his concealed under in some type
23 of manner.

24 Q And on the back of that card does it indicate what his
25 duties include ---

1 A It does.

2 Q --- as licensed by the State of South Carolina?

3 A Both cards read the same. And it says, this card is
4 issued per the South Carolina Code of Laws, Title 40,
5 Chapter 18 says that security officers shall have the
6 authority and arrest power given to sheriff deputies to
7 arrest a person violating or charged with violating a
8 criminal statute of this state but possess the powers of
9 arrest only on the property on which the officer is
10 employed. The second part of that reads, that the officers
11 are issued a security weapon's permit and may only carry a
12 firearm in open and fully exposed manner while in uniform.

13 Q That's good. It's on the back of the card.

14 A (Indicating yes)

15 Q And as far as -- and I show you some statutes -- as
16 far as presenting an ID that's not your own, is that
17 against the law in South Carolina?

18 A It is. It's unlawful to present an ID card or a
19 driver's license that's not your own. It's two separate
20 parts.

21 Q And you're an actual deputy sheriff?

22 A Yes, ma'am.

23 Q And you just happen to have the title of sergeant?

24 A Yes, ma'am.

1 Q And as a deputy sheriff, how are the security guards -
2 - does he have the same -- explain how his -- what he has
3 the right to do there on the property if he's employed as a
4 security ---

5 A He has the right to escort individuals that are
6 causing a problem off of that property. If he feels
7 threatened in any manner, he has the right to defend
8 himself, just as I would defend myself if I were escorting
9 that person off of that property. At any point in time if
10 he felt threatened, we have a force continuum that we go by
11 as sheriff's deputies that we're taught. You meet the
12 level of force you're given with the level of force that
13 you're receiving from whoever you're dealing with. If Mr.
14 Haltiwanger was not obeying commands from Mr. Moti that
15 night and he was escorting him from the property and he
16 turns on Mr. Moti at any point in time, Mr. Moti has
17 several different tools as you would say in his vest that
18 he can, use one of those being mace, which is a non-lethal
19 form to keep him off of him, and obviously he felt
20 threatened night by the verbal non-compliance of Mr.
21 Haltiwanger.

22 Q And Mr. Haltiwanger presenting someone else's ID in
23 order to gain entry into that club, is that against the
24 law?

25 A That's against the law.

1 Q I want to show you State's Exhibit Number 20. Do you
2 recognize that?

3 A I do. That's the front of the El Toro Club.

4 Q And these doors in the front, what are they made out
5 of?

6 A Glass.

7 Q And have you actually -- in the course of your
8 investigation, did you actually go inside?

9 A We did.

10 Q That front lobby area?

11 A We did.

12 Q And were you able to see outside from there?

13 A You could see clearly outside of those doors, out of
14 those windows on those doors, yes.

15 Q I want to show you what's been marked as State's
16 Exhibit Number 76. Do you recognize this?

17 A I do. It's an aerial shot of St. Andrews Road, I-26,
18 Burning Tree Road.

19 MS. CAMPBELL - Your Honor, at this time we'd
20 offer State's Exhibit 76 into evidence.

21 MR. SAWYER - I thought it already was, but no
22 objection.

23 MS. CAMPBELL - Thank you.

24 THE COURT - Very well.

1 (WHEREUPON, ITEM MARKED INTO EVIDENCE AS STATE'S
2 EXHIBIT NUMBER 76.

3 MS. CAMPBELL - Your Honor, may the witness step
4 down for just a moment?

5 THE COURT - Certainly.

6 Q If you'd come over on this side and talk up loudly so
7 ---

8 A Probably don't need the laser pointer on this one, but
9 we'll -- as you can see, this is I-26 going right here,
10 this is St. Andrews Road. This would be the Gazbah
11 station. This is the El Toro Club. This is Chuck-E-
12 Cheese, and this is the Red Roof Inn over here just across
13 the interstate, so it gives you kind of a relation to where
14 all the parties involved were at that night.

15 Q If I were going outbound on 26, is there an exit right
16 there?

17 A There is. You get on here ---

18 Q Going outbound.

19 A Outbound, you get on here and it puts you on ---

20 Q If I were coming out to ---

21 A And if you're coming -- and if you're coming up
22 outbound here to get on St. Andrews Road, you would exit
23 here and there's two separate turns you can use to get on
24 St. Andrews Road. One takes you to Burning Tree where you

1 can make a left and right turn. And the other one carries
2 you around to where you just merge onto St. Andrews Road.

3 Q And again, where is the Gazbah as seen on here?

4 A Here.

5 Q It's right here.

6 A Yes, ma'am.

7 Q And where is the El Toro?

8 A Right here.

9 Q And the Red Roof Inn that's been referred to, where is
10 it?

11 A Here.

12 Q Thank you.

13 (WHEREUPON, WITNESS RE-TAKES THE STAND)

14 Q The person that gave you the first statement denying
15 being there and then later gave you a second statement, Mr.
16 Hatliwanger, do you see him here in the courtroom?

17 A I do.

18 Q Can you identify him for the jury?

19 A He's in the white shirt with the gray striped tie
20 sitting next to counsel at the table.

21 Q Thank you.

22 MS. CAMPBELL - That's all I have, Your Honor.

23 THE COURT - All right, cross examination.

24 MR. SAWYER - Thank you, Your Honor. May it
25 please the Court.

1 THE COURT - Yes.

2 CROSS EXAMINATION

3 BY MR. SAWYER -

4 Q Hey, Mr. Lindler.

5 A Good morning, Mark.

6 Q I don't think I have a whole lot, but I just want to
7 start with -- Ms. Campbell kind of glossed over your
8 qualifications a little bit, can you just I mean go a
9 little bit more into a background of how you got from
10 graduated from high school to lead investigator for the
11 homicide division ---

12 A Sure. Sure. I graduated from Carolina with a
13 bachelor of science in criminal justice, been a law
14 enforcement officer or in some type of law enforcement for
15 seventeen and a half years. I've been employed with the
16 Richland County Sheriff's Department this past May was my
17 fifteenth year at the sheriff's department. I've been
18 sergeant for almost three years, and the last year I have
19 been the major crimes sergeant handling the assaults unit
20 there at the sheriff's department.

21 Q What sort of training qualification goes into you
22 after you've gotten your bachelor's of science to get to
23 where you are?

24 A Once you're hired -- back when I went through the
25 academy it was only an eight-week course. I believe now

1 it's a twelve-week course. You go through legals; you go
2 through certain classes in reference to criminal domestic
3 violence. You go through defensive tactics, driving,
4 shooting, all of those things that you would normally do in
5 your job.

6 Q Do you have to do, I guess what we call them, CLE's or
7 re-qualifications or anything like that?

8 A We re-qualify with our firearm every year. That's
9 mandated by law, and we also have to every three years or
10 every year we do -- we have in-service training at the
11 sheriff's department which is a week of training and
12 comprises about forty hours. That's what we need every
13 year to stay certified through the Criminal Justice
14 Academy.

15 Q So you've been pretty heavily trained up until this
16 point for doing what you were doing?

17 A I would say so, yes, sir.

18 Q You were notified you said about 1:30 in the morning
19 to go over to El Toro?

20 A Yes, sir, I was notified by the desk sergeant via
21 phone call.

22 Q When you arrived on scene had the parking lot pretty
23 much cleared out?

24 A It was pretty much clear by the time I got there, yes,
25 sir.

1 Q Now, you've been here this whole time. Brunson, I
2 know you encountered him as the responding officer there.
3 Correct?

4 A Correct.

5 Q Were there other just the other just field deputies
6 that arrived as well?

7 A Deputy Sullivan was over there at the time. He wasn't
8 actually in the parking lot. I believe he was over in the
9 Gazbah parking lot. There were other deputies out doing
10 other things, had other calls they were responding to. By
11 the time I got there, most of them had disbursed. Those
12 were the only two that I saw and had contact with.

13 Q But from your understanding there were multiple
14 deputies ---

15 A At some point, yes.

16 Q Well, might make it easier for you. Normally when
17 there's a shooting, you just don't have one or two
18 deputies. Correct?

19 A No.

20 Q How many do you normally send out there?

21 A Usually that shift that's working that evening, you'll
22 -- you'll -- anywhere from two to four, maybe five,
23 depending on whose on shift, whoever comes, whatever help's
24 needed as far as, you know, roping off the crime scene, if
25 they have -- if they have more people than, you know, one

1 or two people can handle, of course, you're going to have
2 more than one or two deputies.

3 Q So sort of a all hands on deck sort of scenario?

4 A Kind of, yes.

5 Q But again, by the time you got there it cleared out
6 and that's just a matter of you getting called, assigned,
7 getting physically from -- where were you at, Two Notch at
8 the time?

9 A No, I was at the house.

10 Q Okay. So you were at home ---

11 A I was home.

12 Q Waking up and driving all the way from your house to
13 there.

14 A Correct.

15 Q Was there another investigator that got there before
16 you?

17 A Investigator Rowe responded to the hospital I believe.
18 He was the -- he got the initial call for the shooting and
19 he went and did some follow-up at the hospital. I don't
20 think he was -- he was unable to speak with the victim at
21 the hospital at the time, and then once we found out that
22 he had perished at the hospital is when I was notified, and
23 myself and Investigator Mauldin would respond out to the
24 scene, and actually Josh and I got there at the same time.

1 We were both sitting next to each other at the stoplight on
2 St. Andrews Road.

3 Q And just briefly on Investigator Mauldin, he was -- I
4 guess he was involved with helping you for about a day?

5 A First -- that first morning up until we -- we quit
6 working on that Sunday. We worked through probably the
7 middle part of that afternoon from being up all night. We
8 went home to get some rest and that ceased his involvement
9 at that point.

10 Q And that's when he was handed over to Investigator
11 Jordan?

12 A That Monday morning at 8:30 we have our initial
13 briefing as we'd gone into, and Investigator Jordan was
14 brought in at that time.

15 Q Now, you worked this case for about two days, but it
16 wasn't until essentially you got a tip involving Bernard
17 that you even knew who was involved. Correct?

18 A Correct.

19 Q And at that point you started looking at Bernard's
20 background. Correct?

21 A Correct, yes.

22 Q And eventually would go to interview him after picking
23 him up from Allen Benedict Court.

1 A We -- no, we had gotten several photo line-up picks,
2 and we obtained a warrant for him, and then we went to pick
3 him up from Allen Benedict Court.

4 Q And he was cooperative in being arrested the first
5 time?

6 A He was. He didn't give us any problems.

7 Q But in talking with him the first time he was clearly
8 trying to cover-up involvement?

9 A He was -- he was denying being there and he also
10 denied his involvement, which is not unusual.

11 Q So it's common whenever -- first encounters that
12 there's people you talk to aren't forthcoming?

13 A Usually when you've done something, you never want to
14 tell the police that you've done something.

15 Q Let me -- I might have gotten ahead of myself. Let's
16 go back to the scene at the El Toro. You found -- or maybe
17 it was when you visited the second time around -- you
18 remember getting two additional witnesses, an Elisha
19 Springs and Roberto Cordoba?

20 A Roberto Cordoba was there that first initial night.
21 We actually -- Investigator Mauldin through an interpreter
22 at the sheriff's department took a statement from Roberto
23 that night or that morning I should say. Once we got the
24 initial photo line-up picked on Mr. Haltiwanger -- we
25 didn't obtain warrants right away. We went out and got a

1 second line-up pick from Lamar Ray, and we went to the club
2 just to go back to follow-up with Mr. Cordoba to show him a
3 photo line-up as well, and ---

4 Q Can't really talk about what all went on ---

5 A Correct. Right. And while we were there, we were
6 approached by Ms. Springs.

7 Q Did she provide information as well?

8 A She did. She gave us a statement.

9 Q And you said the video at El Toro on the front wasn't
10 working?

11 A Correct.

12 Q Probably would've been helpful for all this, huh?

13 A It would've been extremely helpful.

14 Q From your understanding just from debriefing Brunson
15 all them, how many people do you think were at the club
16 that night when the shooting took place?

17 A Probably anywhere from 75 to 100.

18 Q All right, well, let's just kind of continue on. So
19 you talked to Bernard and eventually arrested him.

20 A We did.

21 Q And was it Chief Wilson who brought him down to
22 Richland or ---

23 A It was myself and Tai Jordan. Excuse me. It was
24 myself and Chief Wilson brought him back to headquarters,
25 because Tai was in a separate vehicle and then Tai and I

1 would eventually interview him in Sergeant Strange's
2 office.

3 Q That was the first time?

4 A That was the first time.

5 Q Okay. And you all talked I think you kind of
6 determined for about an hour or so?

7 A About an hour.

8 Q And you got that statement. And again he wasn't
9 allowed to write a statement down, was he?

10 A Correct, he was not.

11 Q He wasn't allowed to type it.

12 A Right. I typed it.

13 Q He wasn't allowed -- can't audio video record because
14 it's policy of sheriff's department ---

15 A Correct.

16 Q --- that you're not allowed to audio video record.

17 A Correct.

18 Q And then he spent some more time with Chief Wilson I
19 believe?

20 A He did. Tai and I went back out after we had spoken
21 with Gerald, and once we were done, we left him in the care
22 of Chief Wilson waiting on the paddy wagon to carry him
23 down to the jail, and we went back out to interview Zondra
24 at the house.

25 Q And interviewed Zondra twice, I believe?

1 A That night when we went back out there, yes, and then
2 the - that following morning after we had heard some of the
3 phone calls from the jail.

4 Q And then at that point, that was when you went and
5 picked Bernard up at jail again?

6 A We would re-interview Zondra on the 30th, I believe was
7 that Thursday morning, and once we learned what we learned
8 from her, we would talk to each of the brothers, and then
9 the following day, which was Friday morning, the 31st, we
10 went -- Investigator Jordan went down and picked up Gerald
11 from the jail.

12 Q And that conversation I believe lasted about an hour
13 and a half Chief Wilson said?

14 A Somewhere along in there, yes, give or take a few
15 minutes.

16 Q And you said earlier that basically as Gerald - he
17 kind of emotionally broke down a little bit?

18 A He did.

19 Q Okay. He was crying at that point?

20 A He was. He -- I mean he was visibly upset.

21 Q And that's when he gave you the second statement that
22 Chief Wilson read. Correct?

23 A He did.

24 Q And again, he couldn't write it himself?

25 A Correct.

1 Q He couldn't type it himself.

2 A Correct.

3 Q And you don't audio visual record it because it's
4 policy of sheriff's department not to do that.

5 A Correct.

6 Q You might have -- the buccal swab with DNA that helped
7 you identify Bernard as someone that could've hold the ID.

8 A Yes.

9 Q He willingly gave that to you. Right?

10 A He did. He did of his own free will, yes, he did.

11 Q The 9-1-1 phone call that you and Ms. Campbell were
12 talking about, did you ever actually check the number to
13 see who that went to?

14 A We did I believe. It comes back to - I'm not sure who
15 it comes back to.

16 MR. SAWYER - Beg the Court's indulgence briefly.

17 THE COURT - All right.

18 MR. SAWYER - Nothing further, Judge.

19 THE COURT - Re-direct?

20 MS. CAMPBELL - Just a few questions.

21 RE-DIRECT EXAMINATION

22 BY MS. CAMPBELL -

23 Q He asked you about the number of deputies that went
24 out there that night.

1 A Yes, ma'am.

2 Q And you mentioned Sullivan I believe and who's the ---

3 A Brunson.

4 Q Brunson, who testified?

5 A Yes, ma'am.

6 Q And were there any deputies during the course of your
7 investigations that had any additional information you
8 needed?

9 A None - none that I know that, and I know several of
10 them had wrote some follow-ups on some third page
11 supplementals, which are the long page of our incident
12 reports. I believe one of those was Corporal Fisher. He
13 was a corporal over that shift that night, and a few
14 others, but the only two that I saw out there that night
15 were Deputy Sullivan and Deputy Brunson.

16 Q And information including those follow-ups was
17 provided to you during the course of your investigation.

18 A It was.

19 Q So in your investigation, did you gather all the
20 pertinent information from the deputies at the scene?

21 A We did.

22 Q There at the scene that night was you and Investigator
23 Mauldin?

24 A It was.

25 Q And there at the scene were y'all working together?

1 A We were working together, yes.

2 Q He asked you specifically about two witnesses'
3 statements, a Mr. Cordoba and Ms. Springs?

4 A Yes, ma'am.

5 Q Did they actually witness the shooting?

6 A They didn't actually witness the shooting, no.

7 Q He asked you about the number of people in the parking
8 lot? Or at the club. Excuse me. He said the club. Do
9 you know how many of those actually were in the parking lot
10 that night?

11 A We do not know how many of those were in the parking
12 lot that night.

13 Q He asked you about taking a statement from the
14 defendant, the two statements, whether it was audio
15 recorded. In both statements as State's Exhibit 2 and 4,
16 was the defendant allowed to review those?

17 A He was. They were read to him, and he was allowed to
18 read over them and make any changes that he needed to make.

19 Q And the 9-1-1 call that went out originally, through
20 the course of your investigations, who made that initial
21 civil disturbance call?

22 A We believe it was Jimmy Moti.

23 MS. CAMPBELL - Beg the Court's indulgence.

24 THE COURT - All right.

1 MS. CAMPBELL - Thank you. I don't have anything
2 further.

3 THE COURT - Cross examination?

4 MR. SAWYER - Thank you, Your Honor. Just one
5 question.

6 THE COURT - Sure.

7 RE-CROSS EXAMINATION

8 BY MR. SAWYER -

9 Q Just from your investigation, no one else that you
10 talked to actually witnessed the actual shooting, I mean
11 the actual moment of shooting itself ---

12 A Other than ---

13 Q -- involving Bernard.

14 A Other than Ms. Mobley who said she witnessed them
15 shoot out of the car, I believe.

16 Q But no one actually saw Jimmy rather get shot other
17 than what Mr. Ray said later.

18 A Correct.

19 MS. CAMPBELL - Objection, Your Honor. We have a
20 matter of law. May I approach?

21 THE COURT - Sure.

22 (WHEREUPON, BENCH CONFERENCE WAS HELD IN THE
23 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
24 WHICH WAS NOT REPORTED.)

1 THE COURT - Ladies and gentlemen, I need you to
2 step to your jury room. Do not discuss this matter or
3 allow anyone to discuss it with you. We're not going to be
4 long, but if anybody needs to take a real quick comfort
5 break, you know, like go quick. And leave your note pads
6 and -- but y'all know that by now.

7 (Jury exits the courtroom)

8 THE COURT - Thank you so much. Ms. Campbell,
9 just so there's no question about the communication ---

10 MS. CAMPBELL - Your Honor, I just approached and
11 said at the bench that I had instructed this witness not to
12 talk about those matters which came up yesterday, the co-
13 defendants' statements. I don't think it's fair to him at
14 this point, because he's been instructed not to talk about
15 that under -- to go into ---

16 THE COURT - And you don't need to take off a
17 shock collar or anything like that, so that you would get
18 shocked if he started to do that ---

19 MS. CAMPBELL - And I think he was somewhat
20 worried about going back into those statements and ---

21 THE COURT - And what you wanted him to know if it
22 is elicited now he may respond.

23 MS. CAMPBELL - That the co-defendants actually
24 implicated him as the shooter and witnessed it and he can

1 respond now, but he didn't -- I would think after yesterday
2 I think he could.

3 THE COURT - Absolutely. You know about
4 sandbagging, and you know what that is, and that's not what
5 Ms. Campbell is saying at all, but she's saying if you're
6 asked -- you're now on cross examination and you are to
7 answer the response.

8 MR. LINDLER - Yes, ma'am.

9 THE COURT - And I don't think she needs to take
10 off like a, you know, shock collar or anything. Very well.
11 I'll tell you what, since the jury's out, I would like to
12 take a very short comfort break. How about y'all? Surely
13 somebody would need to. Yes? Oh, come on.

14 DEPUTY CLERK - Yes.

15 THE COURT - Thank you, Pat.

16 COURT REPORTER - Yes, yes.

17 THE COURT - Bless your heart. Of course, don't
18 discuss your testimony with anyone. We'll take literally
19 five minutes, because I know the jury wants to be able to
20 proceed, but we will take a short comfort break since we
21 can. All right.

22 (Recess taken)

23 THE COURT - Thank y'all so much and please be
24 seated. Y'all will be so delighted to know that I have
25 another note from our jurors. This one is a new one on me,

1 and I just -- I'll read it. I was running late yesterday,
2 and in my rush to arrive on time, I neglected to put my
3 juror's pass in my vehicle's window and was issued a
4 parking ticket. Is there anything that can be done? My
5 apologies. I would just like to say that this juror is
6 unique in my experience, because I've never had a juror ask
7 me to fix a parking ticket before, and I'm rather amazed.
8 We'll mark this as a Court's Exhibit. I don't think I'm
9 going to mark the parking violation as a Court's Exhibit.
10 I'm going to give it to Pat. I don't know -- I'm not in
11 the business of fixing tickets. I don't know what -- now,
12 anything else before we bring the jury out?

13 MS. CAMPBELL - Nothing, Your Honor.

14 MR. SAWYER - Nothing, Your Honor.

15 (Jury returns to the courtroom)

16 (WHEREUPON, NOTE IS MARKED AS COURT'S EXHIBIT
17 NUMBER 5.)

18 BAILIFF - Jurors are seated, Your Honor.

19 THE COURT - All right, with regards to the note,
20 we're checking on it. Now, at this time we will continue
21 with the State's case and cross examination.

22 MR. SAWYER - No further questions.

23 THE COURT - Very well. You may come down.

24 MS. CAMPBELL - Your Honor, I have a couple more
25 questions.

1 THE COURT - Oh, you do? All right.

2 MS. CAMPBELL - And may I approach on that issue
3 we just talked about?

4 THE COURT - Sure. Oh, okay, I was thinking that
5 was re-direct. I'm sorry.

6 (WHEREUPON, BENCH CONFERENCE WAS HELD IN THE
7 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
8 WHICH WAS NOT REPORTED.)

9 THE COURT - That was re-direct. Okay.

10 MS. CAMPBELL - Thank you, Your Honor. May it
11 please the Court.

12 THE COURT - Yes, ma'am.

13 MS. CAMPBELL - Thank you, Your Honor.

14 RE-DIRECT EXAMINATION

15 BY MS. CAMPBELL -

16 Q He asked you about who implicated him as the shooter.
17 Did you interview the -- and listen carefully to my
18 question and just answer my question. Did you interview
19 the co-defendants in this case?

20 A Some of them.

21 Q Were they all ---

22 A They were all ---

23 Q Were three co-defendants interviewed?

24 A Yes.

25 Q And what was their relationship to the defendant?

1 A They were brothers.

2 Q And did any -- and just answer yes or no. Did any of
3 those co-defendants implicate him as the shooter?

4 A Yes.

5 Q I want to show you what's been marked as State's
6 Exhibit Number 89. Do you recognize that?

7 A That's the incident report.

8 Q From ---

9 A From the Richland County Sheriff's Department.

10 Q Reflecting ---

11 A It would've been the response to the club that night.

12 Q The 9-1-1 -- the ---

13 A Yes, it would've been a 9-1-1 call.

14 Q Okay.

15 MS. CAMPBELL - Your Honor, at this time we'd
16 offer State's Exhibit 89.

17 MR. SAWYER - No objection.

18 THE COURT - Very well.

19 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
20 STATE'S EXHIBIT NUMBER 89.)

21 Q Is there phone number indicated on the front of that?

22 A It's 803-231-9553.

23 Q And finally, sir, have you seen the incident report in
24 this case?

25 A I have.

1 Q And does that list Mr. Moti's phone number?

2 A It listed as 231-9553.

3 MS. CAMPBELL - Thank you, sir. I don't have
4 anything further.

5 THE COURT - All right, re-cross?

6 MR. SAWYER - Nothing, Your Honor.

7 THE COURT - Now you may come down. Call your
8 next witness, please.

9 MS. WALKER - Your Honor, at this time the State
10 rest.

11 THE COURT - All right, very well. Ladies and
12 gentlemen, you have now heard all of the witnesses and
13 received the evidence which you will from the State -- in
14 the State's case in chief. That signifies to me that there
15 are matters which I must take up outside your presence.
16 All right, you feel like you're getting a little exercise
17 this morning. I must, therefore, ask you to please step to
18 your jury room. Leave your notebooks in your seats and
19 remember, do not discuss this matter or allow anyone to
20 discuss with you. We will be with you shortly.

21 (Jury exits the courtroom)

22 THE COURT - All right, the jury is out. Motions?

23 MS. DYAR - Yes, Your Honor. At this time we
24 would make a motion for a directed verdict. Viewing the
25 evidence in the light most favorable to the State, we ask

1 you for a directed verdict on murder. We don't think
2 there's been enough evidence presented to sustain a
3 conviction for murder at this time. They haven't proven
4 malice, either express or implied. The witnesses that
5 testified this week have all testified that Bernard was
6 angry; he was upset, um, that the heat of passion and that
7 was because he was maced in the back of the head and had a
8 gun pulled on him; that is legal provocation. Even if they
9 hadn't put up any of those witnesses, they would've had a
10 stronger case going forward, but that goes to his state of
11 mind that they just -- they haven't -- with those witnesses
12 testifying to that, at this point there is not enough for a
13 conviction on murder. From the beginning we've been
14 arguing Mens Rea in this case. There's been no evidence
15 presented of any cooling down period. It's all been that
16 he was mad; he was angry, and he was acting in the heat of
17 passion upon legal provocation. The witnesses that they
18 put up, Lamar Ray, Zondra Gilyard, Kristina Nuttry,
19 Marquita Mobley, they all testified this week that he was
20 mad, he was angry, he was maced and that -- and I believe
21 some -- that he had a gun pulled on him, there was a gun
22 pulled. That's it.

23 THE COURT - Very well. Thank you kindly. As you
24 know it is not the Court's position to weigh the evidence.
25 That is the matter for the jury. It is for the Court to

1 determine whether or not there is evidence on each and
2 every element of the offense from which the jury could make
3 a determination of murder and I find that there is evidence
4 on each and every element of the offense from which this
5 jury could make a determination of murder, and for that
6 reason I would respectfully deny your motion noting your
7 exception thereto. Now, are you ready to proceed?

8 MR. SAWYER - We are, Your Honor.

9 THE COURT - Very well. Now, I just ask your
10 assistance in this regard. Would you care for me to advise
11 your client now of his rights, do that at this point or
12 wait? I just want to hear from you about that.

13 MR. SAWYER - Your Honor, I just always feel
14 comfortable if you advise him and ---

15 THE COURT - Absolutely.

16 MR. SAWYER - -- and if we could just have a
17 minute to talk with him alone just to give him one last
18 chance to say yes or no ---

19 THE COURT - I like that. I like that too very
20 much. I like that procedure very, very much. I agree.
21 All right.

22 (Brief recess taken)

23 BAILIFF - Your Honor?

24 (WHEREUPON, A NOTE IS HANDED UP BY THE BAILIFF)

1 THE COURT - Tell them we will write the excuse
2 for tomorrow. (Pause)

3 (WHEREUPON, DOCUMENT MARKED AS COURT'S EXHIBIT
4 NUMBER 6.)

5 THE COURT - All right, Mr. Haltiwanger, would you
6 please stand for me and raise your right hand. And you are
7 Gerald Bernard Haltiwanger, Jr.?

8 MR. HALTIWANGER - Yes, ma'am.

9 (WHEREUPON, GERALD BERNARD HALTIWANGER, JR. IS
10 DULY SWORN BY THE COURT)

11 THE COURT - Thank you, Mr. Haltiwanger. You are
12 welcome to put your hand down. Now, Mr. Haltiwanger, I
13 have certain questions to ask of you and the first thing
14 that I want to tell you, if you do not understand my
15 question, please don't answer it, but let me know that you
16 don't understand my question, because there are many ways
17 to explain any one thing, so if you don't understand my
18 question, don't answer it. Okay?

19 MR. HALTIWANGER - Yes, ma'am.

20 THE COURT - All right. But do let me know that
21 you don't understand my question, and I will explain it in
22 a different way. Now, Mr. Haltiwanger, as you know at this
23 point the State has rested, and now is the time that I want
24 to explain to you certain of your rights. And, of course,
25 if you need me to go into any -- not only if you need me to

1 explain something in a different way, let me know, but if
2 you need me to go into more detail, I want you to let me
3 know that as well. Do you understand that?

4 MR. HALTIWANGER - Yes, ma'am.

5 THE COURT - Okay. We've reached the stage of the
6 trial where you may present your defense. You have the
7 right to claim the protections given to you by the Fifth
8 Amendment of the Constitution of the United States, which
9 states in part, no person shall be compelled in any
10 criminal case to be a witness against himself. That is in
11 the United States Constitution and South Carolina
12 Constitution also, but it's in the Federal Constitution.
13 What this means, Mr. Haltiwanger, is that you cannot -- you
14 cannot be required to testify in this case. You have the
15 right to testify on your own behalf, however, no one can
16 make you testify. This is a personal right and no one can
17 waive this right except you. Do you understand?

18 MR. HALTIWANGER - Yes, ma'am.

19 THE COURT - All right. In other words, this
20 belongs completely to you. This is your Fifth Amendment
21 right. If you choose to exercise it, that's your right.
22 If you choose to waive it, that's your right. Only you can
23 make that determination. Now, Mr. Haltiwanger, if you
24 decide to testify, you will be subject to the same rules
25 that govern other witnesses, and you may be examined and

1 cross examined on any relevant issue in this case. In
2 addition, if you had any convictions involving dishonesty
3 or false statement or for crimes punishable by imprisonment
4 for more than a year and this Court determines that the
5 probative value of the admitting this evidence outweighs
6 its prejudicial affect to you, the solicitor will be able
7 to introduce your record to attack your credibility. We'll
8 talk about that a little bit more. Okay? In other words,
9 if you have convictions on your record that involve
10 dishonesty -- larceny is such a conviction -- then the
11 State can cross examine you with regards to those
12 convictions, but only as it goes to your credibility,
13 meaning only as it goes to whether or not you are a
14 believable witness, are you telling the truth, not for any
15 other reason. Now, if you have convictions in which the
16 sentence is more than a year and they're not ten years old
17 or over ten years old and I make a determination that the
18 probative value of those convictions, again on the issue of
19 your credibility, are you believable or not, outweighs the
20 prejudicial affect to you, I presume that those
21 convictions, if they were to be mentioned to the jury, I
22 would presume that they would be prejudicial, so the
23 probative value's got to outweigh that prejudicial affect,
24 because I presume it's going to be prejudicial, then the
25 solicitor will be allowed to ask you about those

1 convictions but solely for the purpose of attacking what's
2 called your credibility, meaning only on the issue of
3 whether or not you're believable or not. It is my
4 understanding that you have convictions for assault and
5 battery.

6 MS. CAMPBELL - It's assault and battery of a high
7 and aggravated nature, burglary second and petty larceny.
8 There are other gun convictions and other criminal domestic
9 violence convictions which would not be subject.

10 THE COURT - I got you. The only one -- I'm going
11 to tell you, the only one you need to be concerned about
12 because of what's called 403, would be the burglary second
13 because of the larceny that's involved in that. Okay?

14 MR. SAWYER - And, Your Honor, if I may ---

15 THE COURT - Yes?

16 MR. SAWYER - --- I don't see a petty larceny
17 conviction on his record.

18 MS. CAMPBELL - And I apologize if I misstated.
19 We won't be going into that.

20 THE COURT - Okay. Okay. So you need to know
21 that.

22 MR. SAWYER - So would that still allow his
23 burglary conviction crime?

24 THE COURT - The -- is a prior ---

25 MS. CAMPBELL - We won't go into it.

1 THE COURT - No.

2 MR. SAWYER - Okay.

3 THE COURT - Burglary's not -- no ---

4 MS. CAMPBELL - Unless they open the door under
5 some other -- for purposes of impeachment under 609, we
6 will not be going into it.

7 THE COURT - Okay. You would leave that door
8 closed.

9 MR. SAWYER - It's not ---

10 THE COURT - I understand. Now, -- and we just --
11 even assuming arguendo if some door got opened, and even
12 if they came -- and even if that came in, the burglary
13 second conviction, even assuming that, it only comes in for
14 the purpose of what's called attacking your credibility,
15 meaning -- meaning it goes to whether you're truthful or
16 untruthful, not what's called propensity evidence. What's
17 propensity evidence means is because a person committed one
18 crime, they must've committed another. No. It would be
19 limited and I'm going to tell the jury that. If you decide
20 to testify, this decision on your part must, must, must be
21 freely, voluntarily and intelligently made. Now, -- and it
22 has to be made -- the determination has to be made with
23 you having the knowledge of the protections given to you by
24 the Fifth Amendment and understanding the consequences of
25 your decision to testify. Now, just for your information

1 purposes, if you decide not to testify, I will instruct the
2 jurors specifically that they cannot give the fact that you
3 did not testify any consideration whatsoever. In other
4 words, they cannot consider the fact that you chose not to
5 testify on the issue of whether you were guilty or not
6 guilty. And I will tell them that there is to be no
7 prejudice to you because you chose not to testify or you
8 did not testify. In fact, I'll tell the jury they can't
9 even discuss the fact that you didn't testify in the jury
10 room, that that's not an issue to even be discussed in the
11 jury room. Now -- and I go in and tell them the reason
12 they can't even talk about is because it doesn't have any
13 relevance on the issue of whether you are guilty or not
14 guilty but that's your right, and that it can't even be
15 discussed in the jury room, it being your decision not to
16 testify or the fact that you didn't testify. Your
17 decision, whether you wish to testify or you wish not to
18 testify is left entirely up to you. Of course, I want you
19 to talk to your lawyers. It's important that you talk to
20 your lawyers about that decision, and you can talk to your
21 family or your friends or anyone else whose judgment you
22 value in making this very, very important decision, but
23 it's so important that you know that at the end of the day,
24 Mr. Haltiwanger, the decision whether you wish to testify
25 or not testify, that decision at the end of the day, that

1 is your decision and only your decision. Do you
2 understand?

3 MR. HALTIWANGER - Yes, ma'am.

4 THE COURT - Do you have any questions about what
5 we've talked about?

6 MR. HALTIWANGER - No, ma'am.

7 THE COURT - Are you absolutely positively certain
8 you don't have any questions, because I'm here to answer
9 them as best I can.

10 MR. HALTIWANGER - Yes, ma'am.

11 THE COURT - Very well. Now, have you had an
12 opportunity to discuss with your attorneys -- I don't know
13 what -- I don't want to know what you talked about, but
14 have you had a chance to talk to them about whether you
15 want to testify or not?

16 MR. HALTIWANGER - Yes, ma'am.

17 THE COURT - Okay. Very well. Now, counsel, as I
18 understand it, y'all want to have just a little bit more
19 time to just go over with your client once more. Is that
20 right?

21 MR. SAWYER - Yes, Your Honor. Just I'd -- after
22 you instruct him, I think it's best for everyone ---

23 THE COURT - All right, I think it's great. So
24 y'all go do that. And then Mr. Sawyer, then you tell --

1 then you tell me whether he wishes to testify. Okay? All
2 right?

3 MR. SAWYER - Okay. Go downstairs, go into one of
4 the chambers over there?

5 THE COURT - I have no idea. Here comes the
6 answer. (Pause) And we're going to be at ease. Y'all be
7 at ease.

8 (Recess taken)

9 THE COURT - All right, thank you. And, Mr.
10 Sawyer, is Mr. Haltiwanger ready to make a determination
11 whether he wishes to testify or not testify?

12 MR. SAWYER - He is, Your Honor.

13 THE COURT - And what is -- all right, Mr.
14 Haltiwanger, what is your decision?

15 MR. HALTIWANGER - Yes, ma'am. Yes, ma'am, I
16 would like to testify.

17 THE COURT - Very well. Very well. All right,
18 let us have our jury, please.

19 MR. SAWYER - And, Judge, just one more ---

20 THE COURT - Everybody's -- yes.

21 DEPUTY - And, Judge, we have to put him on the
22 stand.

23 THE COURT - Yes, come up.

24 MR. SAWYER - And, Judge, we'd actually -- I'm
25 going to want him to come down and show some visuals. Is

1 there anyway we can have him unshackled during his
2 testimony?

3 MS. CAMPBELL - What?

4 THE COURT - And y'all have shackles? Y'all don't
5 have the restraints underneath his -

6 DEPUTY - We ---

7 THE COURT - You got it.

8 MS. CAMPBELL - Your Honor, we would request then
9 that the deputies be around him.

10 DEPUTY - Your Honor ---

11 THE COURT - Now, let me just -- let's everybody -
12 - you're going to be able to come down because you're going
13 to want him to be able to show the jury certain locations
14 and things from the photographs and the like?

15 MR. SAWYER - The photographs, the video, other
16 things like that.

17 THE COURT - Photographs and the video. Okay.
18 All right. We can do this right here in the area -- come
19 forward just a little bit. Right there. Okay, that will
20 be good. That will be the area that we will do that.
21 Okay?

22 MR. SAWYER - That's fine. If we can, we can just
23 go ahead and set it up now, so ---

24 THE COURT - Yes. That sounds great.

25 MR. SAWYER - --- we can get the places.

1 THE COURT - Do it.

2 MR. SAWYER - All right, thank you.

3 DEPUTY - Are you going to need the podium?

4 THE COURT - No.

5 (WHEREUPON, MR. HALTIWANGER TAKES THE STAND)

6 MR. SAWYER - Judge, what I was going to do is I
7 was going to have him stand right here.

8 THE COURT - Nope.

9 MR. SAWYER - Where would you like him to stand?

10 THE COURT - Okay, right there. See, because he
11 can walk right there and everyone can see.

12 MR. SAWYER - That's fine.

13 THE COURT - And we've got the laser pointers too.

14 MR. SAWYER - Yes, and that's ---

15 THE COURT - I want you to avail yourself of that.

16 MR. SAWYER - Yes, and we were going to; I was
17 just going to have him actually stand here.

18 THE COURT - He doesn't really need to stand
19 there. He can just ---

20 COURT REPORTER - And if he's got his back to me,
21 I'm probably not going to hear him very well.

22 THE COURT - If he ---

23 MS. CAMPBELL - Your Honor, if he's pointing
24 things out on the ---

1 THE COURT - Here's the way we're going to
2 proceed. When it comes to pointing things out on the
3 video, he's going to have a laser pointer. With a laser
4 pointer he's able to stand and he can point from exactly
5 where he is with a laser pointer. He doesn't need to come
6 down.

7 MR. SAWYER - Okay.

8 THE COURT - Okay? Now, with regards to the
9 photographs, that very well may be a different situation
10 because of the size of the photographs. He may need to
11 stand here and then move and stand so the other jurors can
12 see, but I want him in that area that I mentioned. Okay?

13 MR. SAWYER - Just to be clear, right here?

14 THE COURT - And to show those jurors in the back,
15 he may need to step up, step up a little bit, and then show
16 those jurors. Okay?

17 MR. SAWYER - So he ---

18 THE COURT - But that is our area.

19 MR. SAWYER - So if he comes down -- and, Bernard,
20 you see this? Just right here to here.

21 THE COURT - And that's the small photographs ---

22 MR. SAWYER - Okay.

23 THE COURT - Now, for the video, he can certainly
24 stand and use the laser pointer.

25 MR. SAWYER - Okay.

1 THE COURT - Okay?

2 MR. SAWYER - All right, that works.

3 MR. HALTIWANGER - Mark, can you turn it like a
4 little bit, just ---

5 MR. SAWYER - Yes, we can do that. That's ---

6 (WHEREUPON, DISCUSSION IS HELD BETWEEN THE COURT
7 AND THE DEPUTY CLERK WHICH WAS NOT REPORTED.)

8 (DISCUSSION IS HELD BETWEEN COUNSEL WHICH WAS NOT
9 REPORTED.)

10 MR. SAWYER - All right, Judge, I think we're
11 ready.

12 THE COURT - Fantastic. Now, let's have the jury.
13 And just for y'all -- one of you just grab a chair and just
14 so it doesn't look quite so ominous. Yes, there you go.
15 Just pull that chair up to right behind you. Grab a chair,
16 pull it up. Okay.

17 DEPUTY - No, no, no, Judge I love to stand. I
18 love to stand.

19 THE COURT - Okay.

20 (Jury enters the courtroom)

21 BAILIFF - Jury is seated, Your Honor.

22 THE COURT - Thank you so much. All right, ladies
23 and gentlemen, when we last left each other, I told you
24 that you had received all the information which you would
25 from the State and the State's case in chief, meaning

GERALD BERNARD HALTIWANGER - DIRECT BY MR. SAWYER

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1 you've heard the testimony and received exhibits from the
2 State in their case in chief. We now turn to the defense.
3 Call your first witness.

4 MR. SAYWER - Call Gerald Bernard Haltiwanger, Jr.

5 THE COURT - Very well. Pat's going to swear him
6 in.

7 GERALD BERNARD HALTIWANGER, AFTER BEING FIRST
8 DULY SWORN, TESTIFIES AS FOLLOWS -

9 DEPUTY CLERK - Thank you. Please state your full
10 name for the record and please spell your last name.

11 MR. HALTIWANGER - Gerald Bernard Haltiwanger,
12 Jr., H-a-l-t-i-w-a-n-g-e-r.

13 MR. SAWYER - Gerald, make sure you're leaning
14 forward talking into the mic. Okay?

15 MR. HALTIWANGER - Yes, sir.

16 DIRECT EXAMINATION

17 BY MR. SAWYER -

18 Q All right, what name do you go by?

19 A Bernard.

20 Q Okay. Bernard. Bernard, can you tell me how old you
21 are?

22 A 25.

23 Q How long have you been living in Columbia, Bernard?

24 A All my life, 25 years.

25 Q Where'd you go to high school?

- 1 A In Lower Richland High School.
- 2 Q How far'd you go through high school?
- 3 A Tenth grade.
- 4 Q What have you done for work?
- 5 A I worked at the museum for three years.
- 6 Q What'd you do at the museum?
- 7 A I was a janitor.
- 8 Q What happened with that job?
- 9 A I got laid off because of the budget cut.
- 10 Q What'd you do for work after that?
- 11 A I got a job at Columbia Farms.
- 12 Q And what does Columbia Farms do?
- 13 A Like they're like a chicken factory and I was cutting
- 14 shoulders.
- 15 Q So you were actually butchering the chicken?
- 16 A Yes, sir.
- 17 Q All right. You know why you're here.
- 18 A Yes, sir.
- 19 Q I just -- again to the night of August 25th. Well,
- 20 let's start with the day. How'd that day start out for
- 21 you?
- 22 A Well, me and my brothers, we woke up that morning, you
- 23 know, we hanging out; we decided to throw some meat on the
- 24 grill; threw some meat on the grill.
- 25 Q And what time of day was this?

- 1 A This is like around about 4:00, 5:00 o'clock.
- 2 Q In that evening?
- 3 A Yes, sir.
- 4 Q And what brothers were with you?
- 5 A Jonathan, Tyrobia and Terrell.
- 6 Q And so you decided to grill for dinner.
- 7 A Yes, sir.
- 8 Q Okay. What happened next?
- 9 A We started cooking on the grill. You know, we was
- 10 hanging out, had a few drinks and we decided we was going
- 11 to go out that night.
- 12 Q Okay. And about what time was this that you decided
- 13 to go out?
- 14 A It was like around 9:30.
- 15 Q Okay. Did y'all start getting ready?
- 16 A Yes, sir.
- 17 Q Did y'all get some sort of plan on what you were going
- 18 to do?
- 19 A Yes, sir.
- 20 Q What was that?
- 21 A Our originally (sic) plan was to go to Club Phenom,
- 22 which is known as XO by the title on the top of the door.
- 23 Q And what time do you think you left the house at?
- 24 A We left the house I'd say about 10:00 o'clock.
- 25 Q How'd y'all leave?

- 1 A In my black car, black Ltd crown vic.
- 2 Q Okay. Did you just take that car?
- 3 A Jonathan drove in his white crown vic.
- 4 Q Who rode with you?
- 5 A It was me and Terrell.
- 6 Q Who rode with Jonathan?
- 7 A Tyrobia was in the car with Jonathan when we left my
8 house.
- 9 Q Who drove that car?
- 10 A Jonathan.
- 11 Q Where'd y'all go -- where were you at that point?
- 12 What actual area of the city?
- 13 A We were at Allen Benedict Court.
- 14 Q Where'd you go from there?
- 15 A We left there and we went to pick up my home boy -- we
16 call him Cuz -- over on North Main.
- 17 Q Do you know Cuz's real name?
- 18 A We call him Bats, you know.
- 19 Q How long have you known him for?
- 20 A Known him for like -- I'm going to say two, three
21 years.
- 22 Q You've always called him Cuz, though?
- 23 A Yes, sir.
- 24 Q Whose car did he ride in?
- 25 A He rode in the car with Jonathan once we got there.

1 Q How long were you at Cuz's house?

2 A A quick, quick minute.

3 Q Where'd you go from there?

4 A We left there and we headed towards Broad River.

5 Q And this is from North Main towards Spartanburg?

6 A Towards Broad River.

7 Q What happened once you got onto Broad River?

8 A We started riding down Broad River. We was
9 approaching Phenom. We noticed there wasn't a crowd there
10 yet, so we decided to pass time and, you know, I kept
11 riding and we went to Club El Toro.

12 Q About what time do you think you got at Club El Toro?

13 A I'm going to say it was probably 10:30 or a little bit
14 after 10:30, somewhere up in there.

15 Q Are you certain on that time?

16 A Not really sure exactly, but I know it's got to be
17 somewhere in there.

18 Q Now, have you used one of these laser pointers before?

19 A Yes, sir.

20 MR. SAWYER - Just for the record I'm putting up
21 State's Exhibit 77.

22 Q Can you see this okay, Bernard?

23 A Yes, sir.

24 MR. SAWYER - Can everyone see this okay?

25 (Jurors indicating yes)

1 Q Bernard, just try pointing your laser pointer on there
2 just to see if we can ---

3 A (Witness complies)

4 Q Okay, good. Okay. So which direction do you come up
5 approaching Club El Toro?

6 A Came in the entrance right there.

7 Q Okay. And where is it that you parked your car?

8 A I parked my car like right about right there.

9 Q Okay. Where is it that Jonathan and -- or Jonathan
10 parked his car?

11 A In the back right -- like it's a fence back there. He
12 parked his car like back up in there.

13 Q So you were parked here.

14 A Yes, sir.

15 Q And they were parked somewhere right around here?

16 A Yes, sir.

17 Q All right. So after you parked, what happened?

18 A Terrell jumps out of the car -- as soon as Terrell
19 jumped out of the car, before Jonathan even actually
20 parked, Cuz backs -- you know, we call him Cuz -- he jumps
21 out like about in the front doorway of the club, so ---

22 Q Just -- I want to back you up a second. So you parked
23 and Terrell jumps out, goes in right away.

24 A Yes, sir.

25 Q Does Jonathan stop to let Cuz out?

- 1 A Yes, sir.
- 2 Q And he goes in.
- 3 A Yes, sir.
- 4 Q And Jonathan parks.
- 5 A Yes, sir.
- 6 Q So you parked your car.
- 7 A Yes, sir.
- 8 Q What'd you do next?
- 9 A When I parked my car, I was locking my car up -- you
- 10 know, I locked my car up, got out, put the alarm on, and I
- 11 started approaching the front doorway of the club. I
- 12 noticed I didn't have my ID in my pocket, so I figured it
- 13 probably slid out of my pocket, you know, because my seats
- 14 is low in my car, so I went back to my car to look for my
- 15 ID. I noticed I didn't have my ID.
- 16 Q Then checked your pockets.
- 17 A Yes, sir.
- 18 Q You didn't have any identification.
- 19 A No, sir.
- 20 Q Why'd you need that?
- 21 A To get in the club.
- 22 Q So what'd you do then?
- 23 A I walked back to my car and checked my car for my ID.
- 24 Q Okay. And what'd you find in your car?
- 25 A I found my brother Carlos Brown's ID.

1 Q How did you get Carlos's ID?

2 A I got Carlos's ID from when I went to Rock Hill when
3 he first came home to visit.

4 Q Why'd you take it from him?

5 A Because, you know, just -- it was more of a -- he
6 really supposed to -- like when we went down there, he was
7 supposed to go out with us, you know, but it never end up
8 happening, and he was -- showed it to me, and it was like,
9 yes, I got my driver's license, and I snatched it from him.
10 I was like, well, this ain't no driver's license, and he
11 just walked off, so I just put it in my pocket.

12 Q So you were going to try to use Carlos's ID to get in?

13 A Yes, sir.

14 Q How old were you at this point?

15 A 25.

16 Q When these events were happening, how old?

17 A 24.

18 Q So then what happened next?

19 A I gets Carlos's ID. I approached the door and I gave
20 the ID to Jimmy, which is the security guard.

21 Q If I can just back you up. Did you lock the car up
22 again?

23 A Yes, sir.

24 Q All right. You gave your ID to Jimmy.

1 A Yes, sir. And he looked at it; he looked at me; he
2 noticed it wasn't me, so he put the ID in his pocket, and
3 when he put the ID in his pocket, I pulled out my money and
4 was like, you know, man, I pay you extra money, you know,
5 just let me in the club; I'll pay you some extra money on
6 the side to, you know.

7 Q Now, had you been to this club before?

8 A Yes, sir, several times.

9 Q Have you interacted with Jimmy before?

10 A Yes, sir.

11 Q Okay. Why did you decide to try to give him extra
12 money?

13 A Because it done been like different occasions where
14 like either my brothers or someone's who's with us probably
15 done forgot, you know, their ID, and he'll let us give him
16 like a little twenty, thirty dollars, just to, you know,
17 let us slide past the door and we'll also pay the entry fee
18 once we get on the inside to go on the inside of the club.

19 Q Okay. How did Jimmy react to that?

20 A In a -- like once I like try to pay him the extra
21 money, like he got like in an aggressive tone, like, no,
22 didn't I tell you no ID, no entry of the club, then that's
23 when I was like, fuck that, you know, tell my peoples to
24 come on, I can go somewhere else and spend my money.

1 Q Now, talking about your peoples, were -- did -- you
2 had people in the club?

3 A Yes, sir.

4 Q Who was that?

5 A Terrell and Cuz.

6 Q So they had to get out for y'all to leave?

7 A Yes, sir.

8 Q What happened next?

9 A So at that moment when I said get my peoples, fuck
10 that, I'll go somewhere else and spend my money, he pulled
11 his weapon, he pulled his gun.

12 Q Just -- were you making any movements towards him?

13 A No, sir.

14 Q Were you acting aggressively toward him?

15 A No, sir.

16 Q All you did was cuss at him.

17 A Yes, sir.

18 Q And at that point he drew his firearm.

19 A Yes, sir.

20 Q Okay. What did he do with it?

21 A He pulled his firearm. As soon as he pulled it, he
22 cocked it back; he put a bullet in the chamber.

23 Q Okay.

- 1 A When he did that, I turned my back to him, put my
2 hands in the air and starting walking off. At that moment
3 ---
- 4 Q All right, so you got your back to him.
- 5 A Yes, sir.
- 6 Q You got your hands in the air.
- 7 A Yes, sir.
- 8 Q You started to walk away.
- 9 A Yes, sir.
- 10 Q Did you say anything at this point?
- 11 A You say what?
- 12 Q Are you saying anything at this point?
- 13 A Oh, I was basically -- you know, I'm telling him like
14 before I even actually really got a chance to say
15 something, he was like put your hands on the car.
- 16 Q Any car in particular?
- 17 A No, sir.
- 18 Q Just a car.
- 19 A Yes, sir.
- 20 Q And what'd you say?
- 21 A I told him, no, I'm about to leave.
- 22 Q How did Jimmy respond?
- 23 A Jimmy, he's -- at this moment he's following me
24 basically with the gun to my back.
- 25 Q How far between you and Jimmy were you do you think?

1 A It was -- probably right there. Like right there.

2 Q Okay, so you were like this?

3 A Yes, sir.

4 Q And get your laser pointer out if you would again,
5 Bernard. Show me where y'all are at this point.

6 A We're like -- that's the doorway. Right? So we're
7 walking like -- I walked like -- when I walked off, I
8 started walking, because it wasn't really no cars right
9 there, you know. So it was a car like right there, and it
10 was a car right there, but it was a open space in between,
11 you know, so I started walking like through the cars like
12 right there, you know.

13 Q Okay. So at this point you're walking forward with
14 your hands up.

15 A Yes, sir.

16 Q What does Jimmy say to you?

17 A Jimmy's -- like he's just -- he's pointing his gun at
18 me, and I'm telling him, like, fuck you, I know my rights,
19 all these cameras around here, what, you going to shoot me
20 in my back; that's what I'm telling Jimmy.

21 Q What are you saying that to Jimmy?

22 A I'm saying that to him, because I'm scared; I'm
23 terrified at the moment.

24 Q Okay. Were you surprised that he had pulled his gun
25 on you?

- 1 A Yes, sir.
- 2 Q So is Jimmy saying anything back to you at this point?
- 3 A He's -- he's not really saying nothing. It's just --
- 4 he's letting his actions speak for itself.
- 5 Q So you continued to walk forward.
- 6 A Yes, sir.
- 7 Q And something else happens at some point. Right?
- 8 A Yes, sir.
- 9 Q What happens next?
- 10 A Jimmy got the gun in his right hand, so after I told
- 11 him, fuck you, I know my rights, what, you going to shoot
- 12 me in my back, he pulls the mace with his left hand. When
- 13 he pulls the mace with his left hand, I'm walking away with
- 14 my hands in the air like this, but I'm looking at him in my
- 15 peripheral vision like this talking to him, you know, so I
- 16 see him pull the mace with his left hand, then he start
- 17 macing me in the back.
- 18 Q Okay. And this was just in reaction to you saying
- 19 what you said.
- 20 A Yes, sir.
- 21 Q Did you turn around?
- 22 A No, sir, I kept walking.
- 23 Q Did you make any movements towards him?
- 24 A No, sir.
- 25 Q You were just still walking toward the Gazbah.

- 1 A Yes, sir.
- 2 Q Okay. Where did the mace hit you?
- 3 A In the back of my head and the back of my shirt.
- 4 Q What did you do at that point?
- 5 A At that point I hear Jonathan say don't mace that man.
- 6 Q Now, who is Jonathan?
- 7 A My brother.
- 8 Q Okay. And again show the jury where is he parked at
- 9 this point?
- 10 A He was parked in the back.
- 11 Q Okay. Had you seen him -- up until this moment had
- 12 you seen him since you parked?
- 13 A When -- I seen him like when the incident first
- 14 happened, like started -- like, you know, I seen him and
- 15 Tyrobia just getting out of the car and like start walking,
- 16 walking up this way. You know, they was just taking their
- 17 time slowly walking up, you know, up towards the club.
- 18 Q Okay. And so, again, tell the jury what'd you hear
- 19 Jonathan say?
- 20 A I heard Jonathan say don't mace that man.
- 21 Q And this is as you're getting maced.
- 22 A Yes, sir.
- 23 Q Did you see what Jonathan did next?
- 24 A Only thing I know, I seen Jonathan come and hit Jimmy
- 25 upside the head.

1 Q Okay. Did you see what happened between the two of
2 them?

3 A Soon -- as soon as Jonathan hit him, the gun fell out
4 of the right hand of Jimmy, Jimmy hand.

5 Q Okay.

6 A Then Jimmy picks the gun up real fast and Jonathan
7 noticed that it's a gun now, you know, so Jonathan falls
8 back in the Exxon gas station parking lot.

9 Q Okay, let's pause right here. (Pause)

10 MS. CAMPBELL - You need help?

11 (WHEREUPON, DISCUSSION IS HELD BETWEEN COUNSEL
12 WHICH WAS NOT REPORTED.)

13 MR. SAWYER - And just let the record reflect at
14 this point we're about to replay State's Exhibit 78.

15 THE COURT - Okay. Thank you.

16 Q Bernard, can you just put your laser pointer out there
17 just to see if we can get a ---

18 MR. SAWYER - Can everyone see okay?

19 (Jurors indicating yes)

20 MR. SAWYER - Anyone need me to turn the lights
21 down?

22 (No response)

23 MR. HALTIWANGER - I might need you to, because
24 I'm a little ---

25 Q Okay. Want me to turn the lights down a little bit?

1 A Yes, sir.

2 THE COURT - Is that it?

3 MR. SAWYER - Okay, thank you, Judge..

4 THE COURT - How about that?

5 Q Can you see better, Bernard?

6 A Yes, sir.

7 THE COURT - Is that better? Can everybody see?

8 (Jurors indicting yes)

9 THE COURT - If you cannot raise both hands.

10 (No response)

11 THE COURT - Wonderful.

12 Q Would it help if we angled it a little more?

13 A Yes, sir.

14 THE COURT - Yes, I think our jurors can see. If

15 you can't -- if you can't see it over on this end, let us

16 know if we angle it. Can everybody see?

17 (Jurors indicating yes)

18 THE COURT - Yes.

19 MR. HALTIWANGER - Yes, sir. (sic)

20 THE COURT - And nothing's - boxes aren't blocking

21 anybody's ---

22 JUROR - No, ma'am.

23 Q Okay?

24 A Yes, sir.

25 Q All right, who are we seeing right now, Bernard?

- 1 A That's -- that's me and that's Jonathan.
- 2 Q Okay.
- 3 A And that's Jimmy right there.
- 4 MR. SAWYER - Pause that again. Play.
- 5 A Like -- you see right there? That's Jimmy.
- 6 Q Walking toward you right there.
- 7 A Yes, that's Jimmy.
- 8 Q Dressed all in black.
- 9 A Yes, sir.
- 10 Q Okay. You're making hand gestures.
- 11 A Yes, sir.
- 12 Q What are you saying to Jimmy?
- 13 A Jimmy -- now at this moment Jimmy's actually really
- 14 pointing this gun at me and my brother, and I'm standing in
- 15 between Jonathan which is right here, you know, and Jimmy's
- 16 right there. I'm telling Jimmy, please don't shoot, please
- 17 don't shoot, we about to go, please don't shoot.
- 18 Q Why are you saying please don't shoot?
- 19 A Because he's actually making threats now like I should
- 20 shoot your mother-fucking ass, if you come back on the
- 21 property I'll shoot.
- 22 Q Is Jonathan your little brother?
- 23 A Yes, sir.
- 24 Q How are you standing right now? Between you and
- 25 Jonathan?

1 A Basically I'm standing -- like I'm -- like really I'm
2 like blocking Jonathan. You know, I'm standing in front of
3 -- like actually -- you know, blocking like so if he was to
4 shoot, he wouldn't hit Jonathan you know.

5 MR. SAWYER - Pause it again.

6 Q What's happened with Jimmy at this point? Is he still
7 there?

8 A Jimmy's still right there in a rage talking, talking,
9 you know, junk. That's what I call it. He's talking junk.
10 And at that moment that's when one of the club managers
11 comes out there and grabs Jimmy.

12 Q And what did that club manager look like?

13 A It was -- he looked like a -- you know, Mexican or
14 something like that.

15 Q And what does he do?

16 A He grabs Jimmy and pulls -- like forced Jimmy back up
17 to the doorway of the club and like come on.

18 Q Jimmy still talking to you?

19 A Yes, sir.

20 Q What's he saying?

21 A I mean he's -- I can't really remember exact words he
22 was saying, but I know he was talking junk and like in the
23 -- you know, in a rage.

24 Q Does he have his weapon still drawn?

25 A Yes, sir, he still have his gun in this hand.

1 MR. SAWYER - Actually, can you rewind it just a
2 little bit? Hit play.

3 Q Is that Jimmy going away?

4 A Yes, sir, and the guy -- the manager of the club.

5 Q What are you two doing at this point?

6 A We're actually like -- because Tyrobia and -- Tyrobia
7 was right -- like right over here -- like -- Tyrobia's like
8 right here in the parking lot, and as Tyrobia's like right
9 over there in the parking lot, Cuz had done came out the
10 club, so we - throw my peoples like -- like our keys like
11 pull our car up.

12 Q Okay. All right. What are you doing there?

13 A I'm waiting on the curb, waiting on my car to pull up.

14 Q What was that hand gesture?

15 A I'm like, all right, whatever man, all right,
16 whatever.

17 Q So you're waiting on -- Cuz has come out.

18 A Yes, sir.

19 Q And Tyrobia has come out.

20 A Yes, sir.

21 Q And so you're waiting there.

22 A Yes, sir.

23 Q By yourself.

24 A Yes, sir.

25 Q What happens next?

1 A Then that's when I took my hat off, because, you know,
2 my neck started burning, and then it's these girls in this
3 truck called me to the truck.

4 MR. SAWYER - And pause -- stop right there.

5 Q What are you saying to them right now?

6 A At this moment the girl asked me, she's what's going
7 on, what happened. And now I got my hands like this, like
8 this man done pulled a gun on me and maced me for no
9 reason. That's what I'm actually telling her.

10 Q Okay. Are you complaining to the girls about what
11 happened?

12 A Yes, I keep expressing the fact that he pulled this
13 gun and maced me in the back for no reason and while I keep
14 saying that, the girls just saying, y'all just need to
15 leave, because they are not going to do nothing but call
16 the police. That's what they're saying.

17 Q What are you doing right now?

18 A I'm waiting on my car to be pulled up, and see at this
19 moment, like I told you, I gave Tyrobia my keys. I had
20 just got an alarm on my car, so the post battery -- the
21 post that's on top of the battery was loose, so, you know,
22 it -- I guess it had a bad connection, so it really
23 couldn't, you know, start the car right away, so Tyrobia --
24 I'm telling him, like really like lift the hood and just

1 try to twist it, tighten it up on the posts a little bit,
2 you know, enough so it can crank, so he did that.

3 Q And so you're just waiting for them to pull your car
4 around.

5 A Yes, sir.

6 Q And trying to explain to them how to get your car
7 started.

8 A Yes, sir.

9 Q Has he tried to start your car?

10 A Yes, he tried, but it wouldn't start at first.

11 Q Now, are you watching anyone else at the club at this
12 point?

13 A I -- I -- like I kept a eye on Jimmy really the whole
14 time, you know, because ---

15 Q And what's he doing?

16 A -- because the whole time he's pacing like back and
17 forth in the front of the club with his gun in his hand.

18 Q Is he on the phone?

19 A Yes, he's on the phone.

20 Q And you're still waiting on your car at this point.

21 A Yes, sir. There goes Jonathan. He's -- no, it ain't
22 Jonathan. That's -- see I didn't even notice that girl
23 walking past.

24 Q Remember that guy?

25 A Yes, sir.

1 Q What's he saying to you right now?

2 A He's asking me -- he like, you all right, man; I'm
3 like, yes, I'm all right, and he asked me do I need a ride;
4 I told him, no, I don't need a ride, I got my own car.

5 (Pause) There goes Jonathan again.

6 Q Jonathan's come back to you?

7 A Jonathan always like been in this area the whole time.
8 He never like actually really went to his car. He been in
9 that area right there the whole time. That's why at some
10 time you see me moving from here to there.

11 Q Okay. Where are you going now?

12 A At that moment we are running -- because our cars have
13 been pulled up and we are running, so -- because they
14 parked -- they parked like towards the entrance, right
15 there, entrance/exit, so we running through here like to
16 get in our car and go.

17 MR. SAWYER - We can ---

18 THE COURT - Okay. Great. Have you reached the
19 end of this ---

20 MR. SAWYER - Of the video, yes.

21 THE COURT - Of the video. Great. Okay. All
22 right, ladies and gentlemen, we're going to take our lunch
23 break now. We had planned yesterday to break it at this
24 point and we're going to take about an hour -- we're going
25 to take about an hour for lunch. That's why we brought it

1 in so we could be as efficient as we could regarding lunch.
2 Of course, during the lunch break please do not discuss
3 this matter or allow anyone to discuss it with you. I know
4 that there's someone that wanted to have possession of
5 their phone so they could check e-mails. I'm concerned
6 about that, but as long as you don't mind one of our
7 bailiffs observing what you are checking and observing
8 those communications, I will allow that, but you really
9 need to only respond to those matters which are of
10 considerable urgency, otherwise, I don't want you to be
11 doing that, but in any event, I'll certainly allow it in
12 that regard. And, again, remember during your lunch, do
13 not discuss this matter or allow anyone to discuss it with
14 you. And don't read anything or listen to anything or
15 communicate about this matter. Please leave your notebooks
16 in your seats. We're going to take -- we'll probably start
17 back -- we're breaking now because I have something that I
18 must attend, and so we'll actually be starting back right
19 at 1:00 -- probably 1:30 which gives you an hour and ten
20 minutes. Very well. Go to your jury room, please. Enjoy
21 your lunch.

22 (Jury exits the courtroom)

23 THE COURT - Great. Thank you. All right,
24 anything before we take our break. From the State?

25 (No response)

1 THE COURT - From the defense?

2 MR. SAWYER - No, Your Honor.

3 THE COURT - I'll see you all right back at 1:30.

4 (Lunch recess taken)

5 THE COURT - Thank you kindly. Please be seated

6 everyone. Anything from the State before we bring the jury
7 out?

8 MS. CAMPBELL - No, Your Honor.

9 THE COURT - From the defense?

10 MR. SAWYER - No thank you, Your Honor.

11 THE COURT - All right, very well. Let us have
12 our jury.

13 (Jury returns to the courtroom)

14 BAILIFF - Jury panel present, Judge, Your Honor.

15 THE COURT - Thank you so much. There you are.
16 You may continue.

17 MR. SAWYER - Thank you, Your Honor.

18 THE COURT - Yes.

19 MR. SAWYER - May it please the Court.

20 DIRECT EXAMINATION

21 BY MR. SAWYER (CONTD.) -

22 Q All right, Bernard, let's kind of back up a little
23 bit, just kind of start from back where we were. I think
24 we had just finished watching the video and you just
25 started to walk up the curb to get into your car.

1 A Yes, sir.

2 Q And again I'm just going to hold this up and use
3 State's Exhibit 77. Can you use that pointer again and
4 show me where your cars were parked?

5 A Where -- from the beginning?

6 Q No, once they had been pulled up by your brothers,
7 where were they parked?

8 A About right there.

9 Q Okay.

10 MS. CAMPBELL - I'm sorry, Your Honor. Can I see
11 that? I apologize.

12 Q Do it again, Bernard.

13 A About right there.

14 Q And who had pulled your car up?

15 A Tyrobia.

16 Q Who had pulled Jonathan's car up?

17 A Cuz.

18 Q Now, what happened as soon as Tyrobia pulled your car
19 up?

20 A As soon as Tyrobia pulled my car up, Tyrobia jumps out
21 of the car and at that same time while he's jumping out the
22 car I'm running to my car, and Jonathan's doing the same,
23 running to his car too.

24 Q Okay. And that was where we saw you going up?

25 A Yes, sir.

1 Q Okay. Then what happens?

2 A When I get in my car, Terrell also was in the
3 passenger seat too. So as soon as I got in my car, I
4 pulled up a little -- like a little bit at the enter/exit.

5 Q Okay. Just -- I don't need you ---

6 MS. SAWYER - Let's pull up State's 77 again if we
7 could again.

8 Q So which exit?

9 A I pulled it up right there, right exactly in front of
10 the road to the entry/exit.

11 Q All right. What'd you do once you pulled up to the
12 rail?

13 A I looked to the left, because you got cars coming up
14 the road.

15 Q Okay. Was traffic busy?

16 A Yes, sir.

17 Q About what time a night was this?

18 A This is like I'm going to say probably -- it's in
19 between I know close to about 11:00 o'clock, somewhere up
20 in there.

21 Q What happened after you looked to your left?

22 A I looked to the left; I seen a car coming, so I
23 couldn't pull out right then and there. As the car was
24 passing by, I look out my passenger window. When I look
25 out my passenger window I noticed Jimmy charging off the

1 porch where uh -- where he, you know, was pulled back up
2 to.

3 Q Was this the porch you're talking about?

4 A Yes, sir.

5 Q And he -- where would he start out at?

6 A He started off like -- he was like back by the door at
7 first, like from the time I got in the car, but when I
8 actually like looked when I pulled up to the entry/exit, he
9 was like jumping off the porch-way; he was jumping off.

10 Q What'd you see next?

11 A I see him pointing his gun at my car.

12 Q Okay. What was he doing as he was pointing his gun at
13 your car?

14 A Only thing I know I looked, I seen him jumping off the
15 porch pointing the gun at my car, so my reactions was I
16 just -- I say watch out, like watch out, watch out, and I
17 just was ducking, shooting out the window at the same time.

18 Q Okay. Where was your gun in your car?

19 A It's like -- my car has like bucket seats, so in the
20 middle it's no console or nothing and it was just sitting
21 right there in the middle, like laying on the floor.

22 Q Who were you saying watch out to?

23 A To my brother Terrell that was in the passenger's
24 seat.

25 Q And you said you just reacted?

1 A Yes, sir.

2 Q How were you feeling right then?

3 A I was scared; I was terrified. I thought he was going
4 to shoot, you know, my car, at my car and hit me and my
5 brother, either or, one or the other.

6 Q After you shot your gun, what'd you do next?

7 A After I shot, I turned -- like I was turning right on
8 St. Andrews; like when I was shooting and ducking at the
9 same time, I turned right on St. Andrews. I went up to
10 Club Phenom then.

11 Q Okay. How far was it between El Toro and the club?

12 A I'm going to say it was probably like from here to
13 like over there where, you know, where my family's sitting
14 at.

15 Q From here to the -- the two different businesses are
16 that close?

17 A You say -- oh, no, the -- you say Club Phenom.
18 Phenom's is like driving-wise it's like -- actually like
19 three, four minutes away.

20 Q What happens once you get to Club Phenom?

21 A I pulls up; I parks my car. Me and Terrell jump out.
22 Then that's when, you know, Jonathan pulls up behinds me,
23 then I ask everybody, what's, y'all all right, y'all all
24 right. They was like yes; then I walk around to the

1 passenger side of my car looking for bullet holes, like,
2 you know, to make sure ---

3 Q Why were you looking for bullet holes?

4 A Just to make sure he hasn't shot my car up, you know.
5 And then we was looking for bullet holes; we haven't seen
6 none. So as -- you know, I was like, well, come on, let's
7 just go in for a quick minute, because really, we, you
8 know, we wasn't really in the mood no more to, you know, be
9 out there.

10 Q At that point had you thought you hit anyone?

11 A No, sir.

12 Q How long were you in Club Phenom for?

13 A I'd say for about thirty minutes to a hour.

14 Q What happened after that?

15 A After that I came out the club. I noticed Terrell,
16 because I had sent him to the car for something, but, you
17 know, I'm going to back up a little bit. When - from the
18 beginning where we checked the car for the bullet holes,
19 when Terrell end up shutting the door of my car, my door
20 handle fell off. So he was like, oh, yes, it is a bullet
21 hole, you know. So we looking at the car and the way the
22 bullet hole looked, it was like -- like it was a bullet
23 that came from, you know, the gun that I was shooting
24 because it was coming in the outward, you know, from the
25 outside, so I came outside though. Terrell was sitting in

1 my car. He had my door wide open, so, you know, I'm
2 guessing he's feeling good because he was drinking. We had
3 been drinking since earlier that day, you know, so I got to
4 check - checking his pockets and stuff. He's just sitting
5 in the car like this, you know.

6 Q Is he awake, asleep?

7 A He's actually like asleep.

8 Q What happens between y'all then?

9 A From then I was like, brother, tighten up, what you
10 doing, you just sitting out here with my car door open,
11 like I could've been anybody, I'm going through your
12 pockets all kind of stuff like that, you know, basically
13 being concerned about him.

14 Q What happens between y'all then?

15 A Then that's when he just, man, what the - what the
16 fuck you talking about, you know, I ain't doing that,
17 matter of fact, I'm about to go, and he just got out of the
18 car started walking down the street. So I was like, bro,
19 I'm not going to chase you tonight now, if you walk off,
20 I'm going to leave you now. So he walked off.

21 Q Where'd you go after that?

22 A I went home.

23 Q Where was that?

24 A Allen Benedict Court.

1 Q At that point did you start to hide the evidence in
2 this case?

3 A Yes, sir.

4 Q What'd you do with the car?

5 A I got Tyrobia to take the car down to one of my
6 girlfriend's house, and, you know, I came like probably
7 like a hour later and wiped the car down with gas.

8 Q What'd you do with the gun in this case?

9 A I sold it. I sold it to a guy from New York.

10 Q Did you to talk to any of your brothers about this?

11 A About selling the gun?

12 Q Just about this situation in general.

13 A No, sir.

14 Q Did you tell Zondra anything about this?

15 A Yes, sir.

16 Q Were you telling her to keep quiet about this?

17 A Yes, sir.

18 Q Did you call the police at any point about this?

19 A No, sir.

20 Q Any reason why?

21 A Yes, sir.

22 Q Why is that?

23 A Because I was scared, and, you know, as I grewed up it
24 was like I never would believe that the police would
25 believe what a person was telling them, you know.

1 Q At some point did you meet with Investigator Lindler
2 for a statement about August 29th, I believe it was?

3 A Yes, sir.

4 Q Did you lie to Investigator Lindler when you met with
5 him?

6 A Yes, sir.

7 Q Did you at some point go down to the county jail?

8 A Yes, sir.

9 Q Did you call your girlfriend?

10 A Yes, sir.

11 Q Were you telling her to hide evidence?

12 A I was telling her just to -- yes, yes.

13 MR. SAWYER - Beg the Court's indulgence briefly.

14 Q Let me back up a little bit, Bernard. When'd you
15 first learn that someone had died?

16 A The next morning.

17 Q And that's when you started to hide evidence?

18 A Yes, sir.

19 Q Let me -- do you remember going back to Investigator
20 Lindler's office a second time?

21 A Yes, sir.

22 Q Do you remember giving a statement to Investigator
23 Lindler a second time?

24 A Yes, sir.

1 Q Does this look like a copy of the statement that you
2 gave?

3 A Yes, sir.

4 Q Have you read over that statement before?

5 A Can you repeat the question?

6 Q You've read over that statement several times before.

7 A Yes, sir.

8 Q That first paragraph, what does it describe?

9 A It basically describe like what I was telling them
10 what happened that night.

11 Q Is it missing any information?

12 A Yes, sir.

13 Q What's it missing?

14 A It's missing the part where Jimmy pulled the gun out
15 before he even maced me.

16 Q Okay.

17 A And it's also missing what I told him -- I told the
18 women who was in the truck.

19 Q Okay.

20 A And it's also missing the part when I told them that
21 Jimmy never put his gun away and that he was charging off
22 the porch-way of the club pointing his gun at my car.

23 Q You told Investigator Lindler and Chief Wilson all
24 these things?

25 A Yes, sir.

1 Q Do you remember were you crying at the time?

2 A Yes, sir.

3 Q Were you upset at the time?

4 A Really upset.

5 Q Let's go to that last line on there near the last
6 page.

7 A Yes, sir.

8 Q What does that last sentence say?

9 A Is there anything else you need to tell us? I am
10 sorry for -- and I answered, I am sorry for what happened.
11 I was drunk and I acted like a asshole. I am sorry.

12 Q Is that the question Investigator Lindler asked you?

13 A No, sir.

14 Q What was the question Investigator Lindler ---

15 A The question was, this is -- this is your moment to
16 tell the family, you know, basically give the family
17 closure, so what do you have to tell the family?

18 Q And what do you remember telling him?

19 A Only thing I remember telling him is I was sorry,
20 telling him I'm sorry, and I can't remember exactly
21 everything else I told him, but I know I said I was sorry,
22 this is not my choice of vocabulary.

23 Q Do you remember signing that statement?

24 A Yes, sir.

1 Q Okay. Why'd you sign the statement if it wasn't what
2 you said?

3 A Because basically I just skim -- skimmed through it
4 real fast and I was just ready to go at the moment. You
5 know, I was ready to lay down, feeling -- feeling down
6 about a myself, you know, about the whole situation.

7 MR. SAWYER - Beg the Court's indulgence.

8 THE COURT - All right.

9 Q Just one other thing, Bernard. The interior of the
10 black Ford ---

11 A Yes, sir.

12 Q --- what color is it?

13 A It's blue.

14 MR. SAWYER - Nothing further, Judge.

15 THE COURT - Cross examination?

16 MS. CAMPBELL - Thank you, Your Honor.

17 THE COURT - Yes.

18 CROSS EXAMINATION

19 BY MS. CAMPBELL -

20 Q So essentially according to your testimony here today,
21 you're just a victim?

22 A Yes, ma'am, if that's what you -- if that's what you
23 chose to call it.

24 Q No, I don't want to put words in your mouth. You
25 explain to me ---

- 1 A Yes, yes, ma'am.
- 2 Q Would you agree with me that according to your
3 testimony here today, 13, 14 months later, you're a victim?
- 4 A Yes, ma'am.
- 5 Q Of circumstances.
- 6 A Yes, ma'am.
- 7 Q Why so many stories?
- 8 A It's not so many stories. It's like -- I just told
9 you what really happened.
- 10 Q For the first time.
- 11 A No, ma'am, the second time.
- 12 Q Let's go back to who you did tell what happened. What
13 about Tyrobia? Does he know what happened?
- 14 A About -- you talking about the whole thing? Like
15 really -- yes, ma'am.
- 16 Q And just so we can be straight, let me back up for a
17 minute. Where were you living at the time?
- 18 A Allen Benedict Court.
- 19 Q And who were you living there with?
- 20 A Zondra Gilyard.
- 21 Q And what was her relationship with you?
- 22 A My girlfriend/baby mama.
- 23 Q And y'all had a child together.
- 24 A Yes, ma'am.
- 25 Q And were y'all on good terms at the time?

1 A Yes, ma'am.

2 Q Do you remember why she packed your stuff up that day?

3 A She never packed her stuff up.

4 Q Not her stuff, your stuff.

5 A I mean, you know, we -- you know how it go, we just
6 get in altercations, but it wasn't nothing dealing with
7 this case or nothing.

8 Q And let's be straight. Even if y'all had a fight that
9 day and she packed your stuff up, y'all made up.

10 A I mean we -- we always -- basically we always we'll
11 have a little argument, but, you know, I might pack my
12 stuff like I'm about to go, but I really will never go
13 nowhere.

14 Q And the car that was involved in this, the black Ford,
15 whose car was that?

16 A It's originally mines, but since, you know, I have no
17 driver's license, I put my car in her name.

18 Q Okay. I was going to get to that about your ID that
19 night. What is your relationship with Jonathan Sterling?
20 And what's his nickname?

21 A Trouble.

22 Q Trouble. So if we're talking about Trouble, that's
23 Jonathan Sterling who was with you that night.

24 A Yes, ma'am.

25 Q And what is your relationship with him?

- 1 A My little brother.
- 2 Q And how are y'all related?
- 3 A Same mama.
- 4 Q Same mother?
- 5 A Yes, ma'am.
- 6 Q And then Terrell Vaughn, what is his relationship to
- 7 you?
- 8 A My brother.
- 9 Q And how are y'all related?
- 10 A Same mama.
- 11 Q And then Tyrobia Green, what is his relationship to
- 12 you?
- 13 A My brother.
- 14 Q And how are y'all related?
- 15 A Because like I look at his father as a father, too,
- 16 because he always helped raise me too when I was growing
- 17 up.
- 18 Q Okay, so this is -- they're all tight family.
- 19 A Yes, ma'am.
- 20 Q And then Carlos Brown, what is your relationship to
- 21 him?
- 22 A He's a brother, too.
- 23 Q And how are y'all related?
- 24 A The same way me and Tyrobia's related.
- 25 Q Through Carlos's father?

- 1 A Yes, ma'am.
- 2 Q Who's not really your father but kind of like that.
- 3 A Yes, ma'am.
- 4 Q Is Carlos Brown here today?
- 5 A No, ma'am.
- 6 Q And your relationship -- let's talk about to Lamar
- 7 Ray. Did you know Lamar Ray?
- 8 A No, ma'am.
- 9 Q So y'all didn't have any prior beef or any kind of
- 10 problem with each other?
- 11 A No, ma'am.
- 12 Q Okay. What about Ms. Mobley?
- 13 A No, ma'am, don't know her.
- 14 Q Had you ever met her before that night?
- 15 A No, ma'am.
- 16 Q Do you remember seeing her in the car that night?
- 17 A No, ma'am. You talking about seeing her in the truck?
- 18 Q In the truck. I'm sorry.
- 19 A I just really -- I haven't really -- I didn't pay them
- 20 no attention, so I really couldn't tell you like how they
- 21 actually really looked until they came and testified.
- 22 Q For the jury. Y'all didn't have any beef prior to
- 23 that night, did you?
- 24 A No, ma'am.
- 25 Q What about the gentleman that got out of the truck?

- 1 A The gentleman? I don't know him neither.
- 2 Q And finally what about Ms. Nuttry?
- 3 A Don't know her neither.
- 4 Q So she doesn't have any beef with you, does she?
- 5 A No, ma'am.
- 6 Q And like you said and pointed out on the video, they
- 7 were right there where everything was kind of happening.
- 8 A Yes, yes, ma'am.
- 9 Q No doubt about that.
- 10 A Yes, ma'am.
- 11 Q You also mentioned at one point about another woman
- 12 named -- where'd you stash the car?
- 13 A At Laquanda Issac house on Bluff Road.
- 14 Q On Bluff Road.
- 15 A Yes, ma'am.
- 16 Q And what is her relationship to you?
- 17 A My girlfriend also.
- 18 Q Do y'all have any children?
- 19 A No, ma'am.
- 20 Q Do you have any other children?
- 21 A You say do I have? Yes, I have two. I have two kids.
- 22 Q Okay. And where is your wife?
- 23 A My wife, she has an apartment in the Colonys.

1 Q You mentioned at the time you had a pretty good job at
2 Lower Richland. No, excuse me. You went to Lower Richland
3 High School. Right?

4 A Yes, ma'am.

5 Q And then you had a pretty good job at the museum for a
6 while?

7 A For three years.

8 Q When'd you get laid off from that?

9 A I can't exactly like give you an exact date or
10 something. I think it ---

11 Q Give me a year.

12 A Yes, a year. I can't really give you an exact, but I
13 know ---

14 Q Would it have been a long time before this happened or
15 a short time?

16 A I mean it's been a good many before this happened, you
17 know.

18 Q How long had you worked for the chicken factory?

19 A For like I'm going to say about seven months.

20 Q And on this night -- going back -- at the chicken
21 factory typically how many hours a week did you work?

22 A I know worked at least, I'm going to say between 40 or
23 a little over 40 hours a week.

24 Q And did you get paid by the hour?

25 A Yes, ma'am.

1 Q How much did you make an hour?

2 A It was almost ten dollars.

3 Q Almost ten dollars?

4 A Yes, ma'am.

5 Q And as a father of two children, you provided for
6 them.

7 A Yes, ma'am.

8 Q Take care of them?

9 A Yes, ma'am.

10 Q And as you stated or replied earlier, money was tight?

11 A Yes, ma'am.

12 Q But on that night y'all were cooking out.

13 A Yes, ma'am.

14 Q And where were you cooking out?

15 A Allen Benedict Court.

16 Q And who all was there?

17 A Me, Jonathan, Tyrobia and Terrell.

18 Q And you mentioned you were drinking.

19 A Yes, ma'am, we had a couple drinks.

20 Q Okay. When you say couple of drinks, what were you
21 drinking that night?

22 A Budweisers.

23 Q And how many did you have? Do you remember?

24 A Had like two or three.

1 Q Two or three. And what time'd y'all start grilling
2 out?

3 A We start grilling like around, say about 5:00 o'clock,
4 4:00 or 5:00 that afternoon.

5 Q Typical?

6 A Yes, ma'am.

7 Q What were y'all grilling that day?

8 A I mean just different kind of meats, like pork chop,
9 you know, little -- couple ribs and, you know, Zondra made
10 some potato salad and stuff like that.

11 Q And what night of the week was this?

12 A You say what?

13 Q What night of the week?

14 A I'm not sure of the exact night.

15 Q Okay. And so y'all are just cooking out having a good
16 time, and you had two to three beers I think?

17 A Yes, ma'am.

18 Q And that's all you drank that night.

19 A No, not all through the night, but ---

20 Q Okay, well, let me get to the rest of it. What else
21 did you have to drink that night?

22 A As, you know, we went out, when I got to Phenom, I had
23 got a little shot of liquor, you know, but ---

24 Q Well, did you go to Phenom before or after?

25 A After El Toro.

1 Q Okay. So prior to going to El Toro, your testimony to
2 this jury is you had two or three beers.

3 A Yes, ma'am.

4 Q And that was it.

5 A Yes, ma'am.

6 Q So you weren't drunk.

7 A No, ma'am.

8 Q Okay. Then you mentioned for the first time that you
9 started getting ready to go out and y'all's plan was to go
10 to Club Phenom.

11 A Yes, ma'am.

12 Q And that's XO.

13 A Yes, ma'am.

14 Q Most people know it by XO?

15 A I call it the XO because it's a big sign at the top
16 that says XO.

17 Q So when you put it in your statement, that was you
18 saying it was XO.

19 A Yes, ma'am.

20 Q Okay. And at that point your testimony here today in
21 November of 2013 is that y'all left in how many cars?

22 A Two.

23 Q Why'd y'all take two cars that night?

24 A Because Jonathan he stays in the country and like when
25 we go out, he might decide like he just might leave, and he

1 going to jump -- just leave -- he basically just going to
2 leave, well, bro I might go, because when we party, we
3 party.

4 Q And would you say y'all were partying that night?

5 A No, ma'am, we really didn't get to party.

6 Q Okay. And you said earlier at one point that you left
7 at 9:30, then you said you left at 10:00, but somewhere in
8 that range would you say?

9 A We left the house at 9:30.

10 Q Okay. So you left the house at 9:30.

11 A Yes, ma'am.

12 Q Don't want to get it wrong. And who was driving what
13 car?

14 A I was driving the black 1980 crown victoria and
15 Jonathan was driving a white crown victoria.

16 Q And where'd you go?

17 A We went to pick -- on North Main to pick up Cuz.

18 Q Does Cuz have a name?

19 A We call him Bats.

20 Q Bats?

21 A Yes, ma'am.

22 Q And this is the first time anybody's heard about Bats.
23 Where does Bats live?

24 A He actually stays in Ridgewood.

25 Q Ridgewood?

1 A Yes, ma'am.

2 Q And do you know an address, or could you take somebody
3 there?

4 A Yes, I could take someone there, but I don't know the
5 exact address.

6 Q Let me ask you this. When you were telling the police
7 all these details, was that another detail they left out
8 when you told them about him?

9 A You say what?

10 Q When you talked to the police about what happened that
11 night, did you tell them about Bats?

12 A No, ma'am.

13 Q Why not?

14 A Because he played -- really played -- he -- you know,
15 like basically when we left Phenom/XO he stayed there. You
16 know, he didn't have no parts in taking no car to the
17 country or none of that, so I felt like it was no need to
18 say his name.

19 Q And you don't know his name here today, according to
20 you.

21 A I mean, you know, Bats, Cuz. That's -- that's what I
22 call him. I don't know his government. (sic)

23 Q And you've known him for two or three years.

24 A Yes, ma'am, through my brother.

25 Q Which brother?

- 1 A Terrell.
- 2 Q You never talked to the police about him.
- 3 A No, ma'am.
- 4 Q And the police never went and talked to him that you
- 5 know of, did they?
- 6 A No, ma'am.
- 7 Q Because no one ever mentioned him.
- 8 A No, ma'am.
- 9 Q And why were you leaving him out of it?
- 10 A Because I felt like he played no part in the cover-up
- 11 and nothing like that.
- 12 Q At that point the five of y'all then leave North Main
- 13 Street. Right?
- 14 A Yes, ma'am.
- 15 Q And who's driving your car?
- 16 A I am.
- 17 Q Why were you driving if you don't have a license?
- 18 A I mean because I figure if I'm going to tear it up --
- 19 if someone's going to tear it up, it's going to be me,
- 20 because it's my car.
- 21 Q Okay. And then you mentioned that -- your testimony
- 22 was that you parked your car and put the alarm on and you
- 23 approached the front door.
- 24 A Yes, ma'am.

1 Q And at that time you figured out you didn't have --
2 what, your license?

3 A My ID, identification.

4 Q ID. Where was your ID?

5 A I thought it probably slid out my pocket and fell on
6 the floor, you know, in my car.

7 Q Did you find it later?

8 A No, still to this day I haven't found my ID.

9 Q Okay. So you didn't have your ID and it just happened
10 that night, but luckily you had Carlos's ID.

11 A When I looked in the car, I found -- I seen Carlos's
12 ID sitting in the ashtray.

13 Q When you mentioned that earlier you'd gone to Rock
14 Hill and there was an exchange and Carlos just happened to
15 give you his ID?

16 A No, I mentioned that when I went to Rock Hill, he
17 said, brother, look I got my driver's license, and I
18 grabbed it from him and I was like, brother, this ain't no
19 driver's license, and he was just tripping, and he walked
20 off, and I just put it in my pocket.

21 Q And your testimony here today is you just put it your
22 pocket?

23 A Yes, ma'am.

24 Q And then at some point you just happened -- well, let
25 me ask you this. What car were you driving that night?

1 A The same black car.

2 Q So what you put in your statement was wrong?

3 A The first statement -- the whole first statement was a
4 lie.

5 Q Okay, well, why did you lie about what car you drove
6 to Rock Hill to get the ID from Carlos?

7 A The whole first statement was a lie due to the fact
8 like I just said, as I was growing up, I always just felt
9 like the police always going to believe what they want to
10 believe.

11 Q Okay. So when you grabbed Carlos's ID -- and how long
12 before this was it that you took Carlos's ID?

13 A I really can't say.

14 Q Was it days or weeks or months, or do you remember?

15 A I know it was -- I know it was just past days. It
16 probably was like some weeks.

17 Q So on the day in question, you found Carlos's ID which
18 luckily was in your car.

19 A The day I what?

20 Q The date we're talking about, when this happened,
21 where was it in the car?

22 A It was in the ashtray.

23 Q Okay. Is that where you kept it, or it just happened
24 to be there? Did you know it was there or what?

1 A I'm guessing like when I noticed I still had his ID in
2 my pocket, I just set it -- set it there.

3 Q And Carlos didn't need his ID to get in a club or
4 anything like that.

5 A I'm not sure. Only thing I know, he had just came
6 home, so -- and I wasn't ---

7 Q He had just come home from where?

8 A From uh prison.

9 Q And at that point you decided to use Carlos's ID.

10 A You say at that point what?

11 Q When you went to the car and found the ID, you decided
12 to use it to get in.

13 A Yes, ma'am.

14 Q So when you went up to the door, you knew you were
15 using somebody else's ID, but you wanted to get in the
16 club.

17 A Yes, ma'am.

18 Q Well, let me ask you this. You talk about Mr. Moti
19 and that you've been in that club before.

20 A Yes, ma'am.

21 Q And on prior occasions he let you pay your way in.

22 A Yes, ma'am.

23 Q Is that because you didn't have your ID on those
24 occasions?

1 A I mean I wouldn't say me, because I have -- I normally
2 have my ID, but you know, sometimes my brothers or somebody
3 else who's with us might not have a ID.

4 Q Okay. So you were aware that it wasn't unusual if you
5 didn't have -- if someone didn't have their ID that you
6 could just pay Mr. Moti and he would let you in that club.

7 A Yes, ma'am.

8 Q And you'd seen that happen before.

9 A I done done it plenty of times with him.

10 Q And so when you walked up to that door, why did you
11 need somebody else's ID?

12 A Just to play off so -- just to make it look good for
13 the people that's around, because you got people that's
14 sitting on the deck right there ---

15 Q Okay.

16 A --- and they're watching, you know.

17 Q And then at that point you present an ID, and he says,
18 huh uh, it's not you.

19 A Yes, ma'am.

20 Q And it doesn't really look like you, does it?

21 A No, ma'am.

22 Q So at that point you do what everybody's always done,
23 you offered him money.

24 A (No response)

25 Q That was your testimony.

1 A Yes, ma'am.

2 Q How much did you offer him?

3 A I mean I really can't say how much I offered him, but
4 I know I offered him some money though.

5 Q Do you remember offering him a hundred dollars?

6 A I really can't say.

7 Q But that could be possible.

8 A I mean it could be, because I had a lot of money on
9 me.

10 Q Why did you have a lot of money on you?

11 A Because I figured it's mines.

12 Q So you offered him, let's say, a hundred dollars, and
13 for some reason on this occasion, this evil victim said no.
14 Is that your story?

15 A I ain't going to say I offered him a hundred dollars,
16 but I know when I offered him the money, he said no, and he
17 said in an aggressive tone, he was like, no, that's -- like
18 get out of my face, and he pulled his gun out.

19 Q In an aggressive tone?

20 A Yes, ma'am.

21 Q Is that your words?

22 A I mean I'm pretty sure anybody ---

23 Q Or are those the words you read somewhere?

1 A No, ma'am, this -- I'm pretty sure anybody who
2 would've been around would've said it was an aggressive
3 tone.

4 Q Well, there were other people around.

5 A And, you know ---

6 Q And at that point when he said no, did you go, come
7 on, bro, you do this all the time?

8 A I -- when he said no, I was like, man, come on, don't
9 act like that, you know, yes, I said that.

10 Q Because he had an aggressive tone?

11 A Who me?

12 Q No, he did, according to you.

13 A No, he did, but I'm saying I didn't have -- I was just
14 like, man, come on, don't act like that. He was like, no,
15 didn't I tell you, ---

16 Q So at that point ---

17 A --- no.

18 Q --- you're like surprised, because he's being
19 aggressive towards you.

20 A Yes, ma'am.

21 Q So at that point I believe you testified, you were
22 like, I've got money, I can spend it somewhere else,
23 because you had a lot of money that night, didn't you?

24 A Yes, yes, ma'am.

25 Q Did you tell him you had a lot of money that night?

- 1 A No, he seen it for ---
- 2 Q And he was missing out?
- 3 A He seen it for his own eyes.
- 4 Q How did he see it?
- 5 A Because when I made the offer, I pulled the money ---
- 6 Q Flashed.
- 7 A --- out. Yes, flashed.
- 8 Q Did you have a roll of money?
- 9 A Yes, ma'am.
- 10 Q And at that point you're flashing your roll of money
- 11 now in front of him?
- 12 A Yes, ma'am.
- 13 Q Offering him some amount of that money.
- 14 A Yes, ma'am.
- 15 Q And at that point he gets aggressive with you, and
- 16 you're offended or should be. Right?
- 17 A Yes, ma'am.
- 18 Q So at that point, according to your testimony, you're
- 19 like, I can go spend my money somewhere else.
- 20 A Yes, ma'am.
- 21 Q And at that point because he's being aggressive -- and
- 22 I believe your words were, you started walking -- you
- 23 feared for your life, terrified at that moment, surprised.
- 24 All that was going through your mind?
- 25 A Say what?

1 Q Do you remember testifying to that?

2 A Say it over again.

3 Q That at that point you start walking through the
4 parking lot, because you're fearful, you're terrified,
5 you're surprised. Those are some of the words I wrote
6 down.

7 A After I said what I said, I told him, go get my
8 peoples, which was Terrell and Bats ---

9 Q Okay.

10 A --- and tell them come on, I can ---

11 Q He was being aggressive. Right?

12 MR. SAWYER - Your Honor, can he finish answering
13 the question?

14 THE COURT - Yes, let him finish.

15 A I said, tell my peoples to come on, referring to
16 Terrell and Bats, ---

17 Q Who did you ---

18 A --- and ---

19 Q I'm sorry. Keep going.

20 A And referring to them I was like fuck it, just tell my
21 people to come on, I can go somewhere else and spend my
22 money.

23 Q Okay. And at that point though, are you in fear? Is
24 he being aggressive?

25 A At that point he pulls his gun out.

1 Q Okay. Well, let's get to that. So you didn't do
2 anything to provoke him, for him to then pull -- which is
3 the first time we've heard this -- your -- the gun out.

4 A No, ma'am. The only thing I did was try to offer him
5 cash.

6 Q And you don't have a raised voice.

7 A No, ma'am.

8 Q You weren't being aggressive towards him?

9 A No, ma'am.

10 Q And he just after turning you down for your generous
11 offer with your roll of cash, were -- you were willing to
12 leave. And that's what you told him. Right? I got -- I'm
13 going to leave; I just need my people.

14 A Can you repeat it again?

15 Q Is that what you told him, that you were ---

16 A Can you repeat it again.

17 Q --- going to leave? Do you understand? You can read
18 and write, can't you?

19 A Yes, ma'am.

20 MR. SAWYER - Your Honor, objection. Just being
21 argumentative at this point. Ask her to repeat her
22 question.

23 THE COURT - Overruled. You may proceed.

24 MS. CAMPBELL - Thank you.

25 Q You can read and write.

1 A Yes, ma'am.

2 Q And you can understand him.

3 A Yes, ma'am.

4 Q And at that point did you tell him you were going to
5 leave?

6 A After I put my hands up and he -- like once he pulled
7 the gun on me, I put my hands up.

8 Q Let's get before that. After you offered him the
9 money and he turned down your offer, and at that point you
10 said something about -- you just testified -- about needing
11 to get your brothers ---

12 A Yes, ma'am.

13 Q At that point were you backing off?

14 A Yes, ma'am.

15 Q Was he -- because -- your testimony was he's being
16 aggressive at this point.

17 A Yes, ma'am.

18 Q And he's still being aggressive. Right?

19 A Yes, ma'am.

20 Q So you're backing up.

21 A Yes, ma'am.

22 Q And so then out of the blue, he pulls a gun on you,
23 according to your testimony.

24 A He -- he pulls the gun when I tell him, fuck that, go
25 get my peoples, I'll go spend my money somewhere else.

- 1 Q That's when he pulls the gun on you.
- 2 A That's when he pulls the gun.
- 3 Q Were you walking towards him?
- 4 A No, ma'am.
- 5 Q Did you make any overt acts towards him?
- 6 A No, ma'am.
- 7 Q And that's all you said to him.
- 8 A That's all I said.
- 9 Q And according to your testimony here today in November
- 10 of 2013 he pulled his gun.
- 11 A Yes, ma'am.
- 12 Q And then, according to you, he cocked it.
- 13 A Yes, ma'am.
- 14 Q And that was even more intimidating, wasn't it?
- 15 A Yes, ma'am.
- 16 Q Because when you cock a gun, what does that do?
- 17 A It put a bullet into the chamber.
- 18 Q And do you recognize this gun?
- 19 A Do I recognize that gun? No, I don't recognize that
- 20 gun.
- 21 Q Does it look like the gun he had, similar?
- 22 A I really can't say it, because at -- that night at the
- 23 club when he pulled the gun out, you know, they got like
- 24 some light -- it's not white lights but it's like a

1 brownish color looking lights, so it was like it was shiny,
2 you know.

3 Q You've been looking at pictures? Okay. And at that
4 point he pulls out a gun though, and he cocks it, and how
5 do you cock a gun like this?

6 A Cock it from the top, like -- he cocked it like that.

7 Q Like that?

8 A Yes, ma'am.

9 Q That motion.

10 A Yes, ma'am.

11 Q And what does that do to a gun when you cock it like
12 that?

13 A It puts a bullet in the chamber.

14 Q And that's why you were more scared.

15 A Yes, ma'am.

16 Q And your testimony is there's no doubt, just like
17 everything else you're saying here today is the truth, that
18 he cocked this gun.

19 A Yes, ma'am.

20 Q So a bullet would've been in the chamber.

21 A Yes, ma'am.

22 Q And then you put your hands up. Right?

23 A Yes, ma'am.

24 Q Do you turn around, away from him?

25 A Yes, ma'am.

1 Q Why do you turn away from him at this point if he's
2 got a gun pointed at you?

3 A Because I'm scared; I'm trying to let him know that I
4 don't want no problems; I'm walking away.

5 Q But at that point you turned your back to him.

6 A Yes, ma'am.

7 Q And that's when he puts the gun to your head,
8 according to your testimony.

9 A No, I didn't say he put it to my head; I say he put it
10 to my back.

11 Q Excuse me. Puts the gun to your back.

12 A Yes, ma'am.

13 Q And you start walking in an open space.

14 A Yes, ma'am.

15 Q Through the car.

16 A Yes, ma'am.

17 Q And he's pointing the gun.

18 A Yes, ma'am.

19 Q And again, you're terrified, surprised at that moment.

20 A I'm terrified, scared.

21 Q Because again, you're the victim; you haven't done
22 anything wrong.

23 A Only thing I done wrong really was try to provide the
24 ID that wasn't me.

25 Q Okay.

1 A That's all I done wrong.

2 Q And at that point you talked in detail with your
3 lawyer about how Jimmy had the gun in his right hand.

4 MR. SAWYER - Objection. Oh, I'm sorry ---

5 THE COURT - All right.

6 Q Do you remember saying that to your lawyer today?

7 A Yes, ma'am.

8 Q And where are -- where are y'all walking across the
9 parking lot?

10 A We were walking ---

11 Q What area are you going towards?

12 A We were walking like towards the gas station.

13 Q Then what happens?

14 A He says, put your hands on the car; I said, no, I'm
15 about to leave. I still got my hands in the air, and after
16 I said that I was telling him, fuck you, I know my rights,
17 what you -- all these cameras around here, you can't shoot
18 me in the back. That's exactly what I said.

19 Q Where was Tyrobia?

20 A Tyrobia and Jonathan was walking up towards the club.

21 Q And where in the parking lot is it when he tells you
22 to put your hands on the car? Where are you?

23 A If you can show me a post -- you know, I can show -- I
24 can like point exactly to where you're talking about.

25 Q Will this help you? State's Exhibit 77?

- 1 A Yes, ma'am. I was like I'm going to say right over --
2 above here.
- 3 Q Right in there?
- 4 A Yes, ma'am.
- 5 Q So y'all have only walked a few steps.
- 6 A Yes, ma'am.
- 7 Q And at that point you tell him no.
- 8 A Yes, ma'am. I tell him, no, I'm about to leave.
- 9 Q So you weren't so scared you did what he told you to?
- 10 A Can you repeat the question?
- 11 Q You were not so scared that you did what he told you
12 to do. You didn't do what he told you to do.
- 13 A Oh, I was trying to get out of there. And to be
14 honest, I thought he was going to try -- try to run my
15 pockets.
- 16 Q Oh, this is new. Why did you think he was going to
17 try to run your pockets?
- 18 A Because he seen the wad of money.
- 19 Q Oh. You didn't testify to that on direct testimony?
- 20 A I mean ---
- 21 Q It wasn't good then?
- 22 A (No response)
- 23 Q Okay. So at this point he's got the gun in his right
24 hand. Right?
- 25 A Yes, ma'am.

- 1 Q And he's telling you to put your hands on the car.
- 2 A Yes, ma'am.
- 3 Q You told him no, you were about to leave.
- 4 A Yes, ma'am.
- 5 Q Does he continue to follow you with the gun?
- 6 A Yes, ma'am.
- 7 Q Jimmy's got the gun in his right hand.
- 8 A Yes, ma'am.
- 9 Q And then according to your testimony, what does he do?
- 10 A After I tell him, fuck you, I know my rights, you
- 11 can't shoot me in the back, that's when he pulls the mace
- 12 with the left hand.
- 13 Q With the left hand.
- 14 A Yes, ma'am.
- 15 Q And then what did he do with the mace?
- 16 A He maced me in the back.
- 17 Q He maced you in the back.
- 18 A Yes, ma'am.
- 19 Q And just to be clear for this jury, the mace didn't
- 20 get in your face, did it?
- 21 A No, ma'am.
- 22 Q And it didn't get in your eyes did it?
- 23 A No, ma'am.

1 Q So he's got this gun on you. According to your
2 testimony now is he may be trying to rob you, and he's
3 macing you in the back of the head?

4 A Yes, ma'am.

5 Q And he's not macing you in the back of the head
6 because you're jerking around or spinning at that point, is
7 he?

8 A No, ma'am.

9 Q What happened then?

10 A I mean after all that, you know, after he maced me,
11 that's when we fell over -- well, that's when I, you know,
12 like went into Exxon parking lot.

13 Q Okay. So now we have what's on the video tape.
14 Right?

15 A Yes, ma'am.

16 Q And that's when you get into the Exxon parking lot.

17 A And at the same time, that's when Jonathan comes and
18 hit him -- you know, hits him.

19 Q Okay. Do you see that on the video? You didn't point
20 that part out.

21 A You can't actually see Jonathan hit him in the video.

22 Q Because something's blocking him at that point.
23 Right?

24 A Yes. I guess it's the trees or something.

- 1 Q But you can see Jonathan come up and then run right --
2 -
3 A Yes, ma'am.
4 Q --- across --- that's in the video.
5 A (No response)
6 Q So did you actually see him get hit in the head?
7 A Yes, ma'am.
8 Q And at that point where's his gun?
9 A His gun had fell.
10 Q After he got hit in the head.
11 A Yes, ma'am.
12 Q So when Jonathan ran up to him and hit him in the head
13 he had the gun in his hand.
14 A Yes, ma'am.
15 Q And then the gun fell down, and he picked it right
16 back up according to you.
17 A Yes, ma'am.
18 Q And at that point, you're in the Exxon parking lot.
19 Right?
20 A Yes, ma'am.
21 Q Because you're over here in the parking lot, according
22 to the video, which the jury will have, and Jimmy's still
23 back over in the El Toro parking lot. Right?
24 A Yes, ma'am.
25 Q When Jonathan approaches him and hits him.

1 A Yes, ma'am.

2 Q And then you see Jonathan run right into the Exxon
3 parking lot too.

4 A Yes, ma'am.

5 Q And at that point you're still scared?

6 A Yes, ma'am, because at this point he's actually like -
7 - he's pointing the gun again, like at me and Jonathan, so
8 I'm basically standing to block Jonathan so if he was --
9 and I'm telling him, please don't shoot, please don't
10 shoot, we about to go.

11 Q Don't see him pointing the gun in that video.

12 A I mean you really can't see Jimmy. You can see his
13 shadow in the video out -- which way I pointed out.

14 Q So but you don't see a hand out like that or anything
15 like that. Was he more like this?

16 A You can see the same thing that y'all had showed.

17 Q And at that point, what's going through your mind?

18 A It's time to -- it's time to go. I been trying to
19 leave ever since, you know, he wouldn't let me in.

20 Q Well, at this point you just testified you're
21 concerned for the safety of your brother?

22 A Yes, I am. I'm scared.

23 Q You're concerned for your safety?

24 A Yes, ma'am.

25 Q So at this point do you run?

1 A At that point, as, you know, I'm waiting on my car to
2 be pulled up, because I didn't want to go back on the
3 property.

4 Q If he's still standing there with a gun pointed at
5 you, you said he was threatening?

6 A Yes, ma'am.

7 Q You didn't run ---

8 A No, ---

9 Q --- to hide?

10 A --- no, ma'am, I didn't run.

11 Q So you weren't that scared.

12 A I was scared.

13 Q But you didn't run?

14 A I mean ---

15 Q Your testimony here today ---

16 A Yes, I was -- you know ---

17 Q --- is you thought he was going to shoot you.

18 A I didn't run, no. Yes, I thought he was going to
19 shoot.

20 Q But you just stood there ---

21 A But I can't -- I can't just leave my brother sitting
22 there.

23 Q Well, does your brother know how to run?

24 A Yes, I'm pretty sure, but I'm not going to leave him
25 by his self.

- 1 Q But your brother doesn't run off either, does he?
- 2 A No, ma'am.
- 3 Q So this madman ---
- 4 A See at -- at that point it was a club manager who came
- 5 and like forced Jimmy back up to the doorway of the club.
- 6 Q Okay. That's your testimony.
- 7 A Yes, ma'am.
- 8 Q Do you remember in the several seconds -- and you can
- 9 look at the video prior to that that you're just standing
- 10 there while he's supposedly enraged threatening to shoot
- 11 you and you just stand there ---
- 12 A Yes, ma'am.
- 13 Q --- and so does your brother.
- 14 A Yes, ma'am, with my hands in the air telling him, no,
- 15 please, don't shoot, we about to go, please don't shoot, we
- 16 about to go.
- 17 Q And his intention was to get you off the property.
- 18 Right?
- 19 A Yes, ma'am.
- 20 Q So you were off his property.
- 21 A Yes, ma'am.
- 22 Q So at that point you ran inside and called the police.
- 23 A I ran inside? No, ma'am.
- 24 Q Why not?

1 A Because, you know, I don't have no phone on me, and
2 then it's like I'm scared. Like I -- I don't like police
3 to be honest.

4 Q I would agree with that. So you don't run and hide
5 behind a building or a car.

6 A No, ma'am.

7 Q And he's still out there and he's still got the gun
8 drawn.

9 A Yes, ma'am.

10 Q Because according to your testimony, even when that
11 manager comes over, this manager -- that's Mexican?

12 A Yes, he looked Mexican.

13 Q Do you remember seeing Mr. Ray out there that day?

14 A No, actually I really don't.

15 Q Okay. He's still got the gun drawn. Right?

16 A The Mexican guy came and forced Jimmy back up to the
17 club. He wasn't aiming the gun at no one, but he still had
18 the gun in his hand.

19 Q Because that's why you're still scared.

20 A At that moment it's like I'm just sitting there
21 waiting on my car to pull up.

22 Q When did you put your gun in the car, luckily?

23 A Like really it was just -- it was in there when I got
24 in there.

1 Q Well, when did you put your -- do you usually carry
2 your gun in your car?

3 A Yes, ma'am.

4 Q Is that the same car where you carry your children
5 around?

6 A When my kids are in the car with me -- they really --
7 well, I have two cars, so, you know, when my kids are in
8 the car, I really don't have it just laying around, nothing
9 like that.

10 Q Okay. Well, that night though, it just happened to be
11 laying between the seats, according to you here today.
12 Right?

13 A Yes, ma'am.

14 Q And luckily for you, you had that gun in your car.

15 A Yes, ma'am.

16 Q And did you know that it's not really so legal to
17 carry your gun in your car?

18 A What you mean?

19 Q It's illegal for you to have a gun.

20 A It's illegal for me to have a gun?

21 Q That's right.

22 A Yes, ma'am.

23 Q So then in the video -- which we do have that video,
24 don't we -- you can see you're still standing there in the
25 parking lot.

1 A Yes, ma'am.

2 Q And minutes go by.

3 A Yes, ma'am.

4 Q And you're still scared.

5 A Actually I'm -- I'm sitting there waiting on my car,
6 waiting on my property to pull up to the curb, so I
7 wouldn't have to go back on their property and get my car
8 myself.

9 Q Well, are you scared?

10 A I mean -- yes, I'm still shook up about the previous
11 incident, yes.

12 Q So all you want to do is get out of there.

13 A Yes, ma'am.

14 Q And you knew and you've said over and over you didn't
15 want to go back on the property.

16 A Yes, ma'am.

17 Q So why didn't you get Terrell when y'all had that
18 exchange to bring the car over to the gas station?

19 A See, when they pulled the car up, he automatically
20 just stopped and put the car in park and jumped out,
21 Tyrobia.

22 Q So you didn't tell Tyrobia to bring the car to the gas
23 station.

24 A No, ma'am.

25 Q But he knew what was going on that night, didn't he?

1 A Yes, ma'am.

2 Q So then once the car pulls up with your gun, you're
3 able to go back on the property.

4 A No, ma'am. It was actually like the car -- when they
5 pulled it up, it was at the -- basically close to the
6 entry/exit. That's why I basically just ran and jumped in
7 my car, you know, thinking I can just pull out and go.

8 Q And, in fact, that's what you did, wasn't it?

9 A Ma'am?

10 Q In fact, that's what you did.

11 A I didn't just pull out, because when I put the car in
12 drive and I pulled up a little bit exactly at the
13 entry/exit, a car was coming down the road.

14 Q Okay. So you're sitting there in the entry/exit.
15 Right?

16 A Yes, ma'am.

17 Q And at that point, is the other white car behind you?

18 A I think it, yes. Yes, ma'am.

19 Q And who all's in that car?

20 A Jonathan, Tyrobia and Cuz.

21 Q Cuz? And at that point you look to your left was your
22 testimony.

23 A Yes, ma'am.

24 Q So you're no longer that concerned about the bouncer.

25 A No, ma'am.

1 Q You aren't concerned about him at that point because
2 you didn't realize ---

3 A I mean I'm -- I'm still watching him, but I'm really
4 not concerned about him no more.

5 Q And then you look to your left and there's a car
6 coming.

7 A Yes, ma'am.

8 Q And then you look to your right.

9 A Yes, ma'am.

10 Q And according to your testimony only, that's when he
11 jumps off the porch.

12 A Yes, ma'am, pointing his gun at my car.

13 Q At your car.

14 A Yes, ma'am.

15 Q And then he shot at you?

16 A It was more of a reaction. I didn't know at that
17 time, but now after the incident I know is (sic) that he
18 didn't shoot.

19 Q And luckily you are so fast with your reflexes that
20 you were able to reach down, find the gun, put it in your
21 hand, aim it and shoot it.

22 A Yes, ma'am. It was right there. I didn't have to
23 find it.

24 Q And how many times did you shoot?

25 A I would say like, probably like three, four.

- 1 Q Three to four times?
- 2 A Yes, ma'am.
- 3 Q And then you pulled off. Right?
- 4 A Yes, ma'am.
- 5 Q And again you're terrified.
- 6 A Yes, ma'am, at that moment I am again.
- 7 Q And you didn't know, according to you, that you'd hit
- 8 anybody.
- 9 A No, ma'am.
- 10 Q And then you're able to make a right-hand turn and go
- 11 towards Club Phenom.
- 12 A Yes, ma'am.
- 13 Q So you turned into the direction where you were
- 14 terrified the person was coming at you.
- 15 A I mean it's all right there. It's all cluttered.
- 16 It's a busy road. You got cars going down; you got cars
- 17 going up.
- 18 Q And at that point y'all go to XO.
- 19 A Yes, ma'am.
- 20 Q And again, this has been a terrifying experience.
- 21 A Yes, ma'am.
- 22 Q But you don't like the police.
- 23 A No, ma'am.
- 24 Q So you didn't report anything to them about how
- 25 horribly victimized you were that night.

1 A No, ma'am.

2 Q And at that point you go to Club XO or Phenom,
3 whatever you want to call it.

4 A Yes, ma'am.

5 Q And y'all get out of the car.

6 A Yes, ma'am.

7 Q And then you check for bullet holes.

8 A Yes, ma'am.

9 Q And you're the one that actually shot off the handle
10 of the car.

11 A Yes, ma'am.

12 Q You know that now.

13 A Yes, ma'am.

14 Q And then y'all go in and you stay there for thirty
15 minutes to an hour.

16 A Yes, ma'am.

17 Q Then Terrell just leaves you for no apparent reason.

18 A No, he didn't just leave me for no reason. I told you
19 like when I came outside he was sitting in the car like
20 sleep and I went through his pockets and stuff just, you
21 know, messing with him, and then I like woke him up, like,
22 man, bro, wake up.

23 Q So you were just kind of messing with him like you
24 would with a brother.

25 A Yes, like ---

1 Q Like, you know, messing with him kind of ---

2 A Like wake up, bro. Like wake up, brother. If I
3 would've been anybody else, they -- you would've been got.

4 Q And then you got mad and stormed off?

5 A Yes, ma'am.

6 Q Because you'd been messing with him.

7 A Yes, ma'am.

8 Q Trying to be funny.

9 A I mean I was messing with him, but I also was mad due
10 to the fact that he's just sitting in my car with my car
11 door wide open like that.

12 Q Where was the gun while you were in Phenom?

13 A It was in the car.

14 Q You testified that you found out the next morning
15 somebody got killed?

16 A Yes, ma'am.

17 Q And at that point did you go to the police?

18 A No, ma'am.

19 Q But according to your testimony you were innocent.

20 A Yes, ma'am.

21 Q And there were plenty of people out there that saw
22 what happened.

23 A Yes, ma'am.

1 Q So knowing all that, didn't you think it was important
2 since someone had been killed and you'd been a victim to go
3 to the police?

4 A See I figure, like I told you before, I always felt
5 like the police is going to believe what they want to
6 believe, and I know even if I would've done that, I still
7 would've got locked up.

8 Q Why?

9 A Due to the fact that someone lost their life. They
10 are not just going to come and question me and then let me
11 go and say, well, yes, we -- you know, we know you shot
12 this guy, but we're going to let you go today.

13 Q But you didn't do anything wrong.

14 A No, ma'am.

15 Q And the witnesses would've known that and would've
16 supported you. Right?

17 A Yes, they probably would've support me, but, you know,
18 I figured it's a process that they got to do.

19 Q That morning do you remember what time you got home?

20 A I don't remember exactly what time I got home.

21 Q Do you remember it was around 3:00 o'clock in the
22 morning?

23 A It could've been. I'm not sure.

24 Q And that night did you wake up Zondra?

25 A Yes, ma'am.

1 Q Did you tell her what had happened to you and how
2 you'd been a victim?

3 A Yes, ma'am.

4 Q And did you tell her all the details you've told this
5 jury?

6 A Yes, ma'am.

7 Q And at that point y'all had some arguments but you're
8 still on good terms. Right?

9 A At that point it really, you know, we had some
10 arguments like earlier that day before -- basically due to
11 the fact that I wanted to go out and she don't like when I
12 go out.

13 Q But she wouldn't come in here to Court and lie about
14 what you told her, would she?

15 A No, ma'am.

16 Q And as soon as you found out someone was dead, you
17 started getting rid of the evidence.

18 A After I gathered myself together, yes, ma'am.

19 Q Why?

20 A Because ---

21 Q The evidence would exonerate you.

22 A I mean I never been in this situation before.

23 Q And luckily you found somebody to sell the gun to?

24 A Yes, ma'am.

25 Q Did you hear the jail phone calls?

1 A Yes, ma'am.

2 Q And just to be clear, the video -- today wasn't the
3 first time you've ever seen the video, was it?

4 A No, ma'am.

5 Q How many times have you looked at that video?

6 A I mean probably like -- other than today, probably
7 like once or twice.

8 Q You've only seen that video once or twice?

9 A Probably like twice, yes.

10 Q Did you have an opportunity to review all the
11 statements of the witnesses in this case?

12 A You talking about like before today?

13 Q (Indicating yes) Before this week.

14 A Yes, ma'am.

15 Q And did you review what all the forensic evidence
16 said?

17 A Yes, ma'am.

18 Q And did you review the photographs?

19 A Yes, ma'am.

20 Q So prior to you coming into Court and testifying to
21 any of this, you had an opportunity to see what all the
22 evidence is.

23 A Yes, ma'am.

24 Q Did you review your statement?

25 A Yes, ma'am.

1 Q And just to be clear, you gave two different
2 statements. You didn't go to the police, did you?

3 A Ma'am?

4 Q Did you go to the police or did they find you?

5 A They found me.

6 Q And, in fact, on the 29th around 6:00 o'clock in the
7 evening they took you to headquarters and advised you of
8 your rights?

9 A Yes, ma'am.

10 Q Did you understand those?

11 A Yes, ma'am.

12 Q And did you agree to talk to them?

13 A Actually really it was more of a -- like they sat me
14 down and was like more aggressive, you too, like they're
15 making all kind of faces, like, oh, you, you, you -- you
16 killed this man, this, that, you know, they are saying all
17 kind of stuff like that; either you're going to be a cold-
18 blooded killer or you're going to cooperate. They're
19 saying all kind of stuff like that.

20 Q And to be clear, on the first time when you talked,
21 you talked to Investigator Jordan?

22 A He was in the office and Sergeant Lindler was in the
23 office.

24 Q Well, did you understand what your rights were?

1 A Yes, ma'am, and even though I stated that, it still
2 was pressure behind.

3 Q So now your testimony is is you were pressured to talk
4 to them?

5 A Yes, ma'am.

6 Q So that you could deny ever doing anything?

7 A Yes, ma'am.

8 Q Well, let me ask you this. That day when they were
9 talking to you and pressuring you into talking, do you
10 remember them telling you that they had witnesses that
11 could pick you out and put you there?

12 A That first statement, no, they didn't tell me that.

13 Q Really?

14 A The first statement they didn't say nothing about they
15 had witnesses that point me out in no photo line-up or
16 nothing, no.

17 Q Do you remember talking to your girlfriend Zondra that
18 night on the phone?

19 A Yes, ma'am.

20 Q Do you remember the phone call that was played for
21 this jury where you talk about all they had?

22 A Yes, ma'am. That they spoke about they said they had
23 like witnesses that could point me out, but they didn't
24 actually present the paperwork showing me that people

1 pointed me out and stuff. Like basically they used that as
2 a, you know, trying to run gang on someone.

3 Q Trying to do what?

4 A Basically trying to like, you know, trick someone into
5 saying something.

6 Q Okay. But you weren't tricked were you?

7 A No, ma'am.

8 Q And, in fact, you told him you didn't have anything to
9 do with it.

10 A Yes, ma'am.

11 Q You were home. No, you weren't home. You were with
12 some girls from Benedict.

13 A I was at home and I was back and forth to Benedict
14 talking to girls.

15 Q So you admit that everything you said in this first
16 statement was what you told them?

17 A Yes, ma'am.

18 Q And that's the story you wanted to tell them at that
19 time.

20 A Yes, ma'am.

21 Q Because at that point all you thought they had was a
22 couple of witnesses picking you out.

23 A Yes, ma'am.

24 Q And as you told your girlfriend on the phone that
25 night, that ain't nothing.

1 A Yes, ma'am.

2 Q And do you remember talking to your girlfriend on the
3 phone? Did you know those phone calls were recorded?

4 A Yes, ma'am, that's why I was talking in codes like
5 that.

6 Q So you do admit you were talking in codes about
7 getting rid of evidence?

8 A Yes, ma'am.

9 Q So at that point it was still important to you to get
10 rid of evidence.

11 A Yes, ma'am.

12 Q Let me ask you this. Why didn't you tell them -- they
13 had you in custody, they said they had witnesses that put
14 you there. Why didn't you tell them this story then?

15 A Because they didn't provide the evidence. I figured
16 they didn't really have nothing, so if they would hold me
17 until the investigation was over with, and if they didn't
18 find nothing, they would let me go.

19 Q Well, if you're innocent like you've said here today,
20 why not just tell them that?

21 A Because then they would know that -- only thing I'm
22 thinking at the moment that I shot someone, and, you know,
23 they not going to believe what I say, so once they found
24 out that I shot someone, that's all they need.

25 Q And they found out.

1 A Yes, ma'am.

2 Q And then they brought you back a second time.

3 A Yes, ma'am.

4 Q And Investigator Jordan and Investigator Lindler
5 advised you of your rights again.

6 A Yes, ma'am.

7 Q Did you understand them?

8 A I mean yes, ma'am.

9 Q And you chose to talk to them.

10 A Through -- after -- after they presented the
11 statements from my family members, yes, ma'am.

12 Q And those would be your brothers.

13 A Yes, ma'am.

14 Q And what they said happened.

15 A Yes, ma'am.

16 Q And at that point you told them what you told Zondra?

17 A You say I told them what? I told Zondra.

18 Q Same thing you told Zondra.

19 A I mean I'm not sure exactly what Zondra said. I, you
20 know, ---

21 Q Were you in here for when Zondra testified?

22 MR. SAWYER - Objection, pitting witnesses.

23 THE COURT - I'm sorry?

24 MR. SAWYER - Pitting witnesses.

1 THE COURT - Pitting witnesses. Yes, don't pit
2 witnesses.

3 Q Do you remember what you told Zondra?

4 A I remember parts of what I told her. I can't remember
5 exactly word for word what I told Zondra.

6 Q Well, do you remember telling Zondra the exact same
7 thing that you have in your statement?

8 MR. SAWYER - Objection, Your Honor. Pitting
9 witnesses.

10 THE COURT - Overruled.

11 MS. CAMPBELL - Thank you.

12 A You say what again?

13 Q Do you remember telling Zondra the same sequence of
14 events that is in this statement, State's Exhibit 4?

15 A I told Zondra that and what they left out, yes, ma'am.

16 Q Do you know why she wouldn't have told the police
17 that?

18 A Do I -- do I what?

19 Q Did they read you Zondra's statement that day?

20 A Yes, ma'am.

21 Q Did you tell them that the parts you told her just
22 weren't in there?

23 A No, ma'am, only thing -- once they read Zondra's
24 statement, my brother's statement, I just was like that's

1 enough. So basically I gave them what they wanted. I
2 admitted to every -- you know, shooting and that was it.

3 Q So you admit that State's Exhibit 4 is what you told
4 them?

5 A Yes, ma'am.

6 Q So you didn't tell them the parts that you've added
7 here today.

8 A Yes, ma'am, I told them that. I told them the parts -
9 - I told them everything I testified today. I told them.

10 Q Which is according to you, the same thing you told
11 Zondra.

12 A Yes, ma'am.

13 Q But when they read you Zondra's statement, did you
14 tell them, oh, my God, she left out important parts?

15 A I ---

16 MR. SAWYER - Objection, asked and answered.

17 THE COURT - Very well. Overruled.

18 MS. CAMPBELL - Thank you.

19 Q What'd you tell them?

20 A I basically like cut them off in the middle of the
21 statement because basically had -- I had done heard enough,
22 so she -- they never really got through all the statement,
23 you know.

24 Q And since giving that statement, you've been allowed
25 to review all the evidence.

1 A Since giving that statement? Yes, ma'am.

2 Q And seen the video.

3 A Yes, ma'am.

4 Q And you're aware of what all the witnesses' statements
5 said.

6 A Yes, ma'am.

7 Q And today for the first time this is what you're
8 telling this jury.

9 A You say today what?

10 Q This is what you're telling this jury.

11 A I told the jury the same thing I said when I was
12 talking to the Ser -- investigators. I told them the same
13 thing today.

14 Q Why did you sign -- did you think this was important?

15 A At that moment I really didn't, because I just -- only
16 thing was -- I was -- I was down. I was crying. You know,
17 I was -- I was down and just crying. So I just was ready
18 to go back to the jail and lay down.

19 Q So you didn't think it was important to review the
20 statement?

21 A I mean I skammed (sic) through it, you know, and I
22 seen things that I stated, you know, so I figured
23 everything was there.

24 Q But the important parts were all that's left out.

1 A Yes. I guess -- I mean it's all important. I guess
2 if you want to call it that.

3 Q Since giving that statement, did you make some more
4 jail phone calls?

5 A Since giving what statement? That statement?

6 Q Statement to the police, but you say they left out the
7 most important parts.

8 A I made plenty phone calls, jail phone calls.

9 Q And have you had opportunity to review those?

10 A No, ma'am.

11 Q Do you remember on one of the phone calls talking to
12 Zondra about looking in a law book?

13 A Looking at a law book?

14 Q (Indicating yes) Do you remember telling her that?

15 A I mean keep going. I got to hear the -- more of it.

16 Q And you'd seen involuntarily manslaughter shit, some
17 shit like that?

18 A Yes.

19 Q That that don't carry ---

20 MR. SAWYER - Objection, Your Honor. Ms.
21 Campbell's testifying at this point.

22 THE COURT - Is the statement -- is this
23 particular statement in evidence?

24 MS. CAMPBELL - It is impeachment, Your Honor.
25 It's a telephone call he made and it's recorded, and it's

1 been turned over to the defense, and he's had the
2 opportunity to review it.

3 THE COURT - All right. And have you asked him is
4 that your statement?

5 MS. CAMPBELL - It's -- this is a transcript of
6 what it is. The actual telephone call itself is recorded.
7 I'm just asking him if he said this.

8 THE COURT - All right. Ask him did you make the
9 statement, then you can publish the statement. Did you
10 make this statement? And then you can publish ---

11 MS. CAMPBELL - Do you want me to read the
12 statement to him and ask him if he made it?

13 THE COURT - (Indicating yes)

14 Q Do you remember ---

15 MR. SAWYER - Your Honor, do you want her to read
16 it or let him read it first and then she can publish it?

17 (BENCH CONFERENCE WAS HELD IN THE PRESENCE OF THE
18 JURY BUT OUT OF THE HEARING OF THE JURY WHICH WAS NOT
19 REPORTED.)

20 Q And I'm going to ask you, did you make this statement?
21 Did you say, I was just looking at this dude's law book,
22 and I seen involuntary manslaughter shit, some shit like
23 that; they don't carry no more than five years. You see
24 what I'm saying? And I'm going to try to get the lawyers

1 stuck on that, so when I go to Court it will be anywhere
2 from zero to five.

3 A Yes, ma'am, I remember saying that.

4 Q Did you see it then go under the statute and it will
5 be all straight?

6 A Can you repeat it?

7 Q That even if you got convicted under that statute it
8 would be all straight.

9 A Yes, ma'am.

10 Q I wouldn't do the whole thing.

11 A Because -- the reason for me saying that because this
12 is basically like my understanding of involuntary
13 manslaughter is basically accident, you know, and this
14 wasn't meant to happen. This was planned or nothing, none
15 of that.

16 Q You were doing more research, because you talked on a
17 different phone call about involuntary manslaughter or
18 manslaughter, and you said that as long as everybody said
19 that man tried me, you know what I'm saying, but we got to
20 do what we got to do with it. I got to try my best, you
21 know what I'm saying. To convince the lawyer to get the
22 jury convinced to that.

23 A Yes, ma'am. Basically to make sure my lawyer's doing
24 his appropriate job by defending me. Yes, ma'am.

25 Q The phrase, you tried me, do you know what that means?

1 A Ma'am?

2 Q You tried me.

3 A What about those words?

4 Q Do you know what those words mean?

5 A Yes, ma'am.

6 Q And what does it mean when someone says, you ain't
7 about that life?

8 A I guess just, you know, or whatever, like you trying
9 to infiltrate something that you're not.

10 MS. CAMPBELL - Beg the Court's indulgence.

11 THE COURT - All right.

12 MS. CAMPBELL - Thank you.

13 THE COURT - All right, re-direct?

14 MR. SAWYER - Thank you, Your Honor. May it
15 please the Court.

16 THE COURT - Yes.

17 RE-DIRECT EXAMINATION

18 BY MR. SAWYER -

19 Q Bernard, ---

20 A Yes, sir.

21 Q --- we've known each other for about ten and a half
22 months now, haven't we?

23 A Yes, sir.

24 Q What's my job?

25 A To defend me.

1 Q What have I been doing this whole time?

2 A Defending me.

3 Q Well, have I gone over all the evidence with you?

4 A Sir?

5 Q Have I gone over all the evidence with you?

6 A Yes, sir.

7 Q And that's my job.

8 A Yes, sir.

9 Q Have I shown you all the witness and evidence?

10 A Yes, sir.

11 Q And that's my job.

12 A Yes, sir.

13 Q Have I gone over the video with you?

14 A Yes, sir.

15 Q Because that's my job.

16 A Yes, sir.

17 Q So all this evidence you saw because I was doing my
18 job.

19 A Yes, sir.

20 MR. SAWYER - Nothing further.

21 THE COURT - Re-cross?

22 MS. CAMPBELL - No, ma'am.

23 THE COURT - All right. Ladies and gentlemen,

24 we're going to now take our afternoon break, take about 15

1 minutes. Please step to your jury room. Do not discuss
2 this matter or allow anyone to discuss it with you.

3 (Jury exits the courtroom)

4 THE COURT - All right, how many more witnesses?

5 MR. SAWYER - That's all.

6 THE COURT - Okay. Is there going to be any reply
7 rebuttal?

8 MS. CAMPBELL - If any, very, very brief. We're
9 checking on the location of the people right now. Very
10 brief.

11 THE COURT - Okay. So you'll know hopefully after
12 the break?

13 MS. CAMPBELL - We're checking on ETA right now.
14 We didn't know what he was going to say. I mean ---

15 THE COURT - I'm with you. All right, y'all come
16 -- when y'all figure it out, y'all come in chambers and let
17 me know.

18 (Recess taken)

19 THE COURT - And so do we have an update?

20 MS. CAMPBELL - We're checking on it. I think our
21 witness is right outside.

22 THE COURT - Good. All right, now, at this point,
23 motions?

24 MR. SAWYER - Well, we haven't rested ---

25 MS. CAMPBELL - Did you rest?

1 MR. SAWYER - --- yet.

2 THE COURT - Off the record? You can rest on the
3 record.

4 MR. SAWYER - Okay. Judge, the only motion we'd
5 just make - we're talking reference to the rebuttal
6 witnesses. I think this witness should've been called in
7 ---

8 COURT REPORTER - I'm having trouble hearing him.
9 I'm sorry.

10 MR. SAWYER - Sorry. I think this is a witness
11 that should've been called during the main part of their
12 testimony. They asked multiple officers about the status
13 of the gun, and I just feel like at this point they just
14 forgot to do it, and now they're just trying to clean it
15 up, and it should've been something they anticipated and it
16 should've been anticipated during direct of their case.

17 THE COURT - Thank you so much. I do believe that
18 there was new -- that the testimony of the defendant --
19 it's certainly elucidated an issue that I think that the
20 State is entitled to meet, and that is the interaction
21 between the alleged victim and the defendant, and I would
22 not limit their ability to call witnesses in reply, just
23 simply that they're entitled to do that, and so I certainly
24 will allow it. Now, let me ask you this question. Are

1 there any -- in that there will be reply, I don't know that
2 you need to make motions now but do it anyway.

3 MR. SAWYER - Just ---

4 THE COURT - Since you've rested.

5 MR. SAWYER - Oh. Your Honor, I just renew all my
6 previous objections and motions and exception to what you
7 previously ruled including our directed verdict, including
8 our Denno hearing, including Neil/Biggers hearing and
9 including our mistrial motion.

10 THE COURT - Thank you ever so kindly, and I would
11 respectfully deny your motion -- and I should say motions -
12 on the same basis and certainly note your exception
13 thereto. All right, let me have the jury, please. And
14 come witness -- there she is. Okay. Yes.

15 MR. SAWYER - Your Honor, I might want to voir
16 dire her first just to see what her testimony is before we
17 put get her up there.

18 THE COURT - Okay, was she not listed as a
19 witness?

20 MS. CAMPBELL - Yes, ma'am. She's already
21 testified.

22 THE COURT - And she's testified?

23 MR. SAWYER - Yes, but she's testifying ---

24 MS. CAMPBELL - All we're going to ask her is
25 where she found ---

1 MR. SAWYER - Something new, I just want to know -
2 --

3 THE COURT - Hold on a second. Could I please
4 have her proffer?

5 MS. WALKER - Yes, Your Honor. The State calls
6 Patricia Labbe.

7 THE COURT - And you can proffer.

8 MS. WALKER - Oh, you don't want me to -- you want
9 me to tell -- you want me to tell you about her. I'm
10 sorry. I apologize, Your Honor. I misunderstand. She's
11 going to say that when she got there, she was going to
12 unzip the vest that's in evidence off of the victim in the
13 case, that there was a gun and we think that it was
14 holstered.

15 THE COURT - Okay. And that would be the --
16 you're not going anywhere else other than that. That's -
17 that would be what you would propose to ask.

18 MS. WALKER - That's the extent of my questions,
19 Your Honor.

20 THE COURT - You said that better than I. Thank
21 you. Okay.

22 MS. WALKER - Sorry.

23 THE COURT - Very well. Noting your exception.

24 MR. SAWYER - Yes, Your Honor.

25 THE COURT - Now, let's have the jury.

PATRICIA LABBE - DIRECT BY MS. WALKER

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1 (Jury returns to the courtroom)

2 BAILIFF - Jury is seated, Your Honor.

3 THE COURT - Thank you so much. Thank you so
4 much.

5 MR. SAWYER - Your Honor, at this point the
6 defense rest.

7 THE COURT - Very well. Now, ladies and
8 gentlemen, you have heard the witnesses on behalf of
9 defense. We will now turn to the solicitors and see
10 whether or not there will be any reply rebuttal.

11 MS. WALKER - Yes, Your Honor, we have one
12 witness.

13 THE COURT - Very well. Call your witness.

14 MS. WALKER - The State calls Patricia Labbe.

15 THE COURT - And I was going to say if you will
16 recall you have already been sworn in this matter.

17 PATRICIA LABBE, AFTER BEING PREVIOUSLY SWORN
18 TESTIFIES AS FOLLOWS -

19 THE COURT - And going to do when she states her
20 name again for our record.

21 MS. LABBE - My name is Patricia Labbe.

22 THE COURT - Thank you so much.

23 DIRECT EXAMINATION

24 BY MS. WALKER -

25 Q Oh, I'm sorry. Ms. Labbe, I mispronounced your name.

1 You work for EMS?

2 A Yes, ma'am, I work for Richland County EMS.

3 Q And you responded to the El Toro on the night of this
4 incident?

5 A Yes.

6 Q Did the victim have on a vest when you got there?

7 A Yes, he did.

8 Q Was there a gun with the vest?

9 A Yes, there was.

10 Q Can you describe for the jury where the gun was?

11 A The gun was holstered in the vest, and I zipped off
12 the vest.

13 MS. WALKER - Thank you. I don't have any further
14 questions.

15 THE COURT - Cross examination?

16 MR. SAWYER - Thank you, Your Honor. May it
17 please the Court.

18 THE COURT - Yes.

19 CROSS EXAMINATION

20 BY MR. SAWYER -

21 Q Just briefly, Ms. Labbe. Do you remember what date
22 this happened on?

23 A I know it was in August of last year.

24 Q Okay. Do you remember where it was?

25 A Yes, on St. Andrews Road at the El Toro.

- 1 Q Okay. And have you responded to gunshot wound victims
2 since then?
- 3 A Yes, I have.
- 4 Q How many do you think?
- 5 A I think it's been two since then.
- 6 Q Just two since then?
- 7 A Since then, yes.
- 8 Q Okay. This is about a year ago?
- 9 A Approximately a year ago, yes.
- 10 Q Okay. And you're absolutely certain that's where you
11 found the gun that night?
- 12 A Yes.
- 13 Q Was the taser with it too?
- 14 A I believe it was all still in the vest.
- 15 Q Okay. But you don't remember if the taser was with
16 it?
- 17 A I -- the taser was with the vest.
- 18 Q Okay. Where was it in the vest?
- 19 A I'm not sure. It was on the vest. I remember zipping
20 off the vest and those two items were there.
- 21 Q Okay. Where was the gun?
- 22 A It was holstered on the vest.
- 23 Q So actually on the vest itself.
- 24 A Yes.
- 25 Q So as part of the vest.

1 A I believe, yes.

2 MR. SAWYER - Okay. Nothing further.

3 THE COURT - All right, re-direct?

4 MS. WALKER - None, Your Honor.

5 THE COURT - All right, and is this witness free
6 to leave?

7 MS. WALKER - Yes, Your Honor.

8 THE COURT - Any objection?

9 MR. SAWYER - No, Your Honor.

10 THE COURT - Very well. You are free to go. All
11 right. Any additional witnesses?

12 MS. WALKER - No, Your Honor, no witnesses.

13 THE COURT - Very well. All right. Ladies and
14 gentlemen, you have now heard all of the witnesses and
15 received all of the evidence which you will in this case.
16 What remains for us are the arguments of counsel and my
17 charge or instruction on the law. Now, we're not going to
18 do that today, because there are matters that I must tend
19 to outside your presence and then if we were to do that
20 then argue and then charge, you would get this case
21 probably -- I don't know -- probably close to 7:00 o'clock
22 and that's not appropriate. So we're going to begin on
23 Monday morning. Now, ladies and gentlemen, I need to again
24 admonish you that you must not discuss this matter or allow
25 anyone to discuss it with you. I know that the curiosity

1 -- perhaps someone at home or wherever you may have seen
2 folks -- it's hightened, particularly at this point, but
3 you must hold firm and not discuss this matter or allow
4 them to discuss it with you. In fact, if I were you, I'd
5 put it on the Judge. I wouldn't let anybody get upset with
6 me; I'd blame it on the Judge which is perfectly
7 appropriate. I will share with you that when you have been
8 discharged from your service on this jury, and again there
9 will be no question in your minds when that time has come
10 because I've talked to you about it, and I've talked to you
11 about what you can discuss, what you can discuss and we'll
12 go through that, but until that time you must not discuss
13 this matter, you must not let anyone discuss it with you,
14 and again to include your fellow jurors. I will tell you
15 specifically when you may discuss this matter with your
16 fellow jurors, when you may begin your deliberations and
17 that time has not come. You have not heard the arguments
18 of counsel and you have not heard my charge on the law.
19 Now, ladies and gentlemen, don't me tempted to do any sort
20 of Columbo, any sort of investigation. Don't go to the
21 internet; don't be looking up things with regards to this
22 matter. Ladies and gentlemen, don't even look up a
23 definition. Again, you have to, you must receive all the
24 information from which you which you will make up your mind
25 here in Court while Court is in session. Now, I don't mind

1 sharing with you -- I know you're going a little bit
2 earlier -- not a lot, but a little bit earlier than we've
3 been concluding in the afternoon, but when you leave,
4 there's work that remains to be done that we will be
5 working on to prepare for you for Monday morning. When you
6 return on Monday morning, you will hear the arguments of
7 counsel. You will hear my charge or instruction on the
8 law, and then you will receive this case for your
9 deliberations. Now, ladies and gentlemen, I want each and
10 every one of you to know that I have observed that you have
11 been so attentive to these matters. You've been riveted.
12 You really have -- you've done what I've asked you to do
13 when we began, and that is to give to these attorneys, to
14 give to these witnesses your undivided attention, and for
15 that I am so grateful. Now, I'm going to tell you to rest
16 your minds over the weekend. Put this down. Go back to
17 your lives and do your things. I know that there are a
18 couple of excuses that folks want and I'm going to do those
19 and happy to do that, but what I'm going to ask you to do
20 is to rest. You know, when you -- even though physically
21 sitting doesn't tire you, the kind of attention that you've
22 been giving and the kind of concentration that you have
23 been giving to these matters is exhausting, so don't be
24 surprised if you find yourself very, very tired over the
25 weekend, hence my encouragement for you is to rest, put

1 these matters aside, go back to doing your normal daily
2 activities and rest your mind. Monday will be plenty of
3 time to pick these matters back up, hear the arguments of
4 counsel, my charge on the law and then at that point when
5 you are so instructed, then you will begin your
6 deliberations. Ladies and gentlemen, again I don't know if
7 there will be any kind of publicity about this particular
8 matter. I want you to anticipate that there is so that you
9 will be very careful not to listen to, read anything about
10 this matter, and that, of course, is the radio, the
11 television, the newspaper and the internet. Don't do any
12 Columbo; don't do any research; don't blog; don't do any
13 social networking about this particular matter for the
14 reasons that we've talked about already. We're going to
15 begin on Monday morning at 9:30, at 9:30. And again when
16 you arrive on Monday I will set forth for you then how the
17 closing arguments will be and so you'll know how we'll be
18 proceeding with closing arguments and then I will go over
19 the charge on the law to you. Ladies and gentlemen, have a
20 wonderful weekend. Those -- oh, and, Pat, were you able to
21 speak with our jurors about the parking?

22 MS. PAT - I have everything here.

23 THE COURT - You've got it all together?

24 MS. PAT - Yes, ma'am.

1 THE COURT - Wonderful. Now, how about our folks
2 for the weekend, because I was going to do something
3 individual? Do I need to still do that?

4 DEPUTY CLERK - Probably do.

5 THE COURT - I'm doing it. Is there a place where
6 we can print it?

7 DEPUTY CLERK - I can.

8 THE COURT - You got it? Those two folks if
9 you'll just stay in your jury room, give me about five
10 minutes; I'm doing that now. But I understand we have our
11 parking situation under control, and somebody -- y'all got
12 things to do. Have a wonderful weekend. I'll see you
13 Monday.

14 (Jury exits the courtroom)

15 (WHEREUPON, DISCUSSION IS HELD BETWEEN THE COURT
16 AND THE COURT REPORTER REGARDING COURT'S EXHIBITS; COURT'S
17 EXHIBITS MARKED AS COURT'S EXHIBITS 7 AND 8.)

18 THE COURT - Counsel, what I'm going to ask you to
19 do is -- I wanted to have an informal charge conference, if
20 y'all can give me a little bit of time in that regard, and
21 I want to encourage y'all to please take time to look at
22 the juror notes if you wish. There are things like the
23 parking that I mentioned and somebody wants an excuse, and
24 somebody wanted me to know that they had an appointment in
25 Charlotte. Somebody else had a personal family engagement

1 at 6:00 o'clock. I mean please feel free to look at them.
2 There's nothing earth-shattering in them. I want you to
3 feel free to look at that, but if we could have an informal
4 charge conference as soon as I'm finished with the two
5 excuses, and y'all just come on in chambers, that'll be
6 wonderful, and then we'll be adjourned until Monday morning
7 at about 9:15. Other than motions -- let's get those done.
8 More motions.

9 MR. SAWYER - Your Honor, at this point I'd again
10 renew all my prior objections and motions including that
11 for a mistrial, exception to your rulings on my Denno
12 hearing, your ---

13 THE COURT - And on the Biggers.

14 MR. SAWYER - --- Biggers hearings -- thank you --
15 and any other motions you may have denied during the course
16 of this trial.

17 THE COURT - Thank you so kindly, and I would
18 respectfully deny your motion on the previously stated
19 basis and thank you for that, noting your exception
20 thereto. Okay.

21 (COURT IN RECESS FOR THE WEEK AT 4:00 P.M.)
22
23
24

SATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) FIFTH JUDICIAL CIRCUIT
 COUNTY OF RICHLAND) CASE NO.: 2012-GS-40-5298

STATE OF SOUTH CAROLINA)
)
 vs.) TRANSCRIPT OF RECORD
) DAY 5
 GERALD BERNARD HALTIWANGER) (851 - 989)

NOVEMBER 18, 2013
 COLUMBIA, SC

BEFORE THE HONORABLE DIANE GOODSTEIN
 DEANDRE G. BENJAMIN

APPEARANCES:

LUCK CAMPBELL, ASSISTANT SOLICITOR
 COLUMBIA, SOUTH CAROLINA

MEGAN WALKER, ASSISTANT SOLICITOR
 COLUMBIA, SOUTH CAROLINA

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1 THE COURT - Thank you so much, and please be
2 seated. All right, now, I understand there's been some
3 communication between the State and the bailiffs, a little
4 bit in advance, which is great, about people coming and
5 going during closings, and I don't blame y'all during your
6 closings. I don't like it when people come and go, because
7 every time the door opens and somebody moves, the jurors
8 are distracted, so I'm with you guys a hundred percent, so
9 I think that's absolutely appropriate. What we will do is
10 we will stop -- well, there's a natural -- a little bit of
11 preparation that goes on in between closings and so that'll
12 give people time to come and go, so we can just let folks
13 come and go in between the closings, but as the closings
14 begin everybody's got to sit, and certainly during the
15 charge everybody's got to be seated. Now, that does not go
16 for family. Family, if you all feel yourselves becoming
17 overwhelmed, you certainly may take your leave and then
18 just come on back when you're together. That doesn't apply
19 to family, but it does to everyone else. Now, anything
20 before we have our closings? Yes, ma'am, Ms. Campbell?

21 MS. CAMPBELL - And I missed this on Friday when
22 we were doing our charge conference. The only thing I
23 would do is in the part where you do malice, express or
24 inferred ---

1 THE COURT - Yes.

2 MS. CAMPBELL - -- and we take out all the
3 language about the gun which is appropriate ---

4 THE COURT - Exactly. Exactly.

5 MS. CAMPBELL - But in the new charge, it's
6 understanding from the Supreme Court that we now have
7 access to which really helps us, the verbiage now that just
8 - that talks about inference, it's just malice may be
9 inferred from conduct showing a total disregard for human
10 life, and just to balance that paragraph and that's the
11 extent of what we would request.

12 THE COURT - I do -- oh, okay, but that was in the
13 one that you had.

14 MS. CAMPBELL - I didn't see it in the one that I
15 got from you, Judge.

16 THE COURT - That's because I had yours tucked in.

17 MS. CAMPBELL - Oh, okay. But -- and it's just
18 this one more line, that the balance ---

19 THE COURT - Yes.

20 MS. CAMPBELL - --- because we talked about ---

21 THE COURT - Let me hold that just to be sure I've
22 got it, but what I -- what I did in mine, is I just put it
23 on the -- I took yours and just sat it on a piece of paper
24 so I would pick that up. So -- so ---

1 MS. CAMPBELL - So you're going to charge mine on
2 showing total disregard for ---

3 THE COURT - Here it is. May be inferred from
4 conduct showing total disregard for life -- yes -- for
5 human life. Yes, yes.

6 MS. CAMPBELL - Thank you.

7 THE COURT - Yes. All right, anything from the
8 defense?

9 MR. SAWYER - Yes, Your Honor.

10 THE COURT - All right.

11 MR. SAWYER - I actually just formerly over this
12 weekend -- we were just saying a little earlier about --
13 sick this whole weekend, so that's everything we had
14 requested to charge. I gave the State a copy of it. That
15 was everything I wanted. I e-mailed your law clerk --
16 formalized request to charge.

17 THE COURT - Okay. All right, well, I'm not going
18 to stop now post -- that's why we had the charge conference
19 on Friday afternoon. I'm not going to stop now. We're
20 going to go on with closings, and as you know you're
21 required to object in any event during the -- after the
22 charge is delivered in any event, so I'll be looking at
23 these.

1 MR. SAWYER - Your Honor, the only thing you had
2 asked us to argue today was regarding the status of Mr.
3 Moti as a SLED security guard.

4 THE COURT - Yes.

5 MR. SAWYER - We had gotten into that a little bit
6 on Friday ---

7 THE COURT - Yes.

8 MR. SAWYER - -- said save it til Monday.

9 THE COURT - Yes.

10 MR. SAWYER - At this point I'd like to be able to
11 argue that.

12 THE COURT - Yes.

13 MR. SAWYER - And, Judge, what our argument simply
14 is is that -- and have you actually had an opportunity to
15 look at the statute regarding the SLED security guard and
16 all those issues of what actually ---

17 THE COURT - Yes.

18 MR. SAWYER - --- makes a -- someone who's a SLED
19 security guard, an actual SLED security guard ---

20 THE COURT - Right.

21 MR. SAWYER - -- because I've got copies of all it
22 right here.

23 THE COURT - Okay. And as I understand it, your
24 concern is there was -- the credentials were shown, meaning

1 the identification cards, but you -- it was your opinion
2 that there needed to be more. Right?

3 MR. SAWYER - Yes, Your Honor. We didn't, of
4 course, object at the time because I assumed they were
5 going to call additional witnesses from his actual
6 business, etcetera, etcetera. Judge, if you'll look,
7 there's two -- there's two main ways - I mean let's start
8 with the premise basically that when SLED created a
9 security guard with a SLED permit. Okay.

10 THE COURT - (Indicating Yes)

11 MR. SAWYER - Their intent was never to just allow
12 anyone with a security guard just to say, hey, I worked a
13 tailgate this weekend as an armed security guard, you know.
14 I assume they wanted something more than just you get to
15 kind of freelance wherever you want to. If you look at the
16 legislation, I think it's pretty clear from the face that's
17 what it comes down to. There's two ways where basically
18 you can be able to operate as a security guard on a
19 property. There's 40-18-60 -- and do you guys have copies
20 of this?

21 Ms. WALKER - (Indicating yes)

22 MR. SAWYER - Okay. There's 40-18-60 and that's a
23 proprietary security business license. Essentially that's
24 -- my reading of that is that if I were running the El Toro
25 Club and I wanted to hire a permanent security guard with a

1 weapon and with arrest powers on the property, I'd be
2 allowed to do that, but what I'd have to do is go through
3 all these various steps and you can read in the statute
4 where the corporation must designate who the applicant is;
5 they have to do all these various things for the
6 application. They have all the requirements for granting
7 the license and basically -- then once they do that, upon
8 receipt of the license, the licensee must post and display
9 at all times the license in conspicuous locations at place
10 of business, authorize the license of those persons
11 performing the duties of security guard. Going too fast?

12 COURT REPORTER - (Indicating yes)

13 MR. SAWYER - And each location company property
14 owned by the licensee -- and this is down (e) on the second
15 page. It's a one year application they must renew. They
16 have to have employment records made available and, of
17 course, you're exempted if it's either law enforcement
18 which is generally what we see, is that it's someone whose
19 Richland County or City of Columbia is getting extra pay
20 off duty. They're allowed to just go and work whenever you
21 want to. Okay? In this case Mr. Moti would not fall under
22 that category. Or if they're unarmed which he wasn't in
23 this case. So, Your Honor, without any testimony from the
24 El Toro Club and the owner saying that they have engaged

1 for a proprietary security license, I don't believe that
2 he'd qualified under that.

3 THE COURT - Let me see the Exhibit. Let me see
4 the license.

5 (Exhibits handed up to the Court.)

6 MS. CAMPBELL - That would be 79 and 80, Your
7 Honor.

8 THE COURT - Thank you, very much. (Pause) All
9 right, very well. Yes, sir? Anything else?

10 MR. SAWYER - And, Your Honor, I'd just continue
11 to argue, without them having any testimony from the
12 property owner saying they had displayed that we have a
13 valid security guard here among other things and that Jimmy
14 Moti was him, they would've qualified under that. I think
15 the State would argue that he's a contract security guard
16 under Black Ops, and, Your Honor, if you're looking at
17 that, that's at statute 40-18-50, where it says contract
18 security business license. In there you have to among
19 other things in Section D (10) have had two years of law
20 enforcement experience before you're granted the ability to
21 contract your own services out yourself as a security guard
22 qualified under here. In this case the State didn't
23 introduce his actual SLED application. They gave me a copy
24 of it and probably could've introduced it but they chose
25 not to. And that's a fully separate application for those

1 licenses. I'll tell you that his employment experience
2 from what I remember was construction work and for pensions
3 funds. So he never had the requisite two years of law
4 enforcement experience that would be required to grant him
5 a security -- contract security business license under this
6 particular statute and that will -- once someone is
7 qualified as a contract security business licensee, they
8 can continue to hire on other contract security SLED people
9 without the requisite two years experience, but again, what
10 must be done is when you're applying to do this, you have
11 post a bond; they have to be able to furnish SLED with
12 basically their mission statement, basically when we're
13 asking for this license and we're asking to hire on
14 additional security guards, we have to say we want to hire
15 on for the purposes of being armed or having arrest powers
16 for all these various issues for them then to be able to
17 hire on additional SLED certified secondary we'll call them
18 security guards. And, again, Judge, plus they have to
19 engage in some sort of contract with the El Toro saying
20 that we engage to hire other security guards to perform
21 these duties nor allow them to be there. Judge, at this
22 point to the State could've called anyone from Black Ops
23 which they had on their witness list, could've called I
24 think Jesus Macias was the owner or main club manager which
25 they had on the witness list of the El Toro at the time

1 which could've testified to this. They didn't call them
2 either. Judge, just obviously with any jury charges, there
3 has to be any evidence in there that they've proven that
4 this person was a SLED security guard and they had the
5 witnesses. They had them listed. They called them last
6 week I believe in a prior trial, but they just didn't in
7 this one, and without that, other than him being a SLED
8 security guard, which I mean -- bringing (sic) is, they
9 haven't made the showing that he was authorized to engage
10 in his -- basically his abilities at the El Toro at that
11 specific time.

12 THE COURT - Okay. Very well. Anything from the
13 State?

14 MS. CAMPBELL - Your Honor, that information that
15 we did get out through the course of this investigation.
16 Investigator Lindler testified at length without objection
17 to his rights and what his duties were that night.

18 THE COURT - And it's reflected on his license.

19 MS. CAMPBELL - And it's reflected on his license.

20 THE COURT - And I don't think there's any
21 question, but based upon the testimony of the defendant,
22 that certainly the defendant understood and believed him to
23 be a security officer. I think he's got a license which
24 certainly indicates that he was a security -- a South
25 Carolina Security Officer, registered to have a -- or the

1 security permit weapon's permit, as well as a security
2 concealed weapon's permit, and the powers enumerated on his
3 licenser certainly indicate the ability to arrest and I
4 think that that absolutely has been made -- has come out in
5 the testimony in the trial and I -- and certainly has been
6 no objection to any of it, so I'm going to allow the charge
7 with regards to the definition of a security officer as
8 submitted by the State and note your exception thereto.

9 MR. SAWYER - And, Your Honor, I just again argue
10 that the issue at hand isn't whether or not is a SLED
11 security guard. The issue is whether he was authorized to
12 work as a SLED security guard there that particular day.
13 There is no testimony. Investigator Lindler testified to
14 the fact that he was SLED security guard, that he had these
15 rights and he knew what his rights were, which is
16 absolutely true.

17 THE COURT - Got you.

18 MR. SAWYER - But there was ---

19 THE COURT - How about -- I'm satisfied that when
20 you look at the testimony as a whole, particularly Mr. Ray
21 who was also working at the same time, he talks about the
22 fact that they were both working. Now you want to get into
23 without any objection that he wasn't authorized. There
24 isn't anything in this record that indicates to me --
25 anything other than -- I mean that he was authorized. I

1 mean you want to see if there's a permit in the window? I
2 mean that very well may violate -- that very well may
3 violate some of the requirements of the State, but all the
4 evidence that's in this case both with the officer and with
5 this co-worker and with the licenser and from the defendant
6 is replete that this gentleman, the alleged victim, was
7 working as a security officer; he is duly licensed to work
8 as a security officer. His co-worker talks about the fact
9 of what their duties were that particular evening, what he
10 was doing, what the co-worker was doing, and at this point
11 not to explain to the jury what the security officer's --
12 what the statutory provision is verse a security officer at
13 this point is almost nonsensical to me when it's been in
14 this case without objection. It's replete. It's been
15 throughout the case without challenge, without objection.

16 MR. SAWYER - Well, and, Your Honor, I never
17 challenged it because, again, I was waiting for them to
18 finish off ---

19 THE COURT - Okay, I got it.

20 MR. SAWYER - -- introducing all this evidence.

21 THE COURT - I got it. I got your objection and
22 note your exception thereto.

23 MR. SAWYER - Well, then, Your Honor, I would ask
24 additionally -- looking at it over the weekend, but if

1 you're going to do that, will you charge also under State
2 v. Lindler ---

3 THE COURT - Yes.

4 MR. SAWYER - --- have a copy for the State ---

5 (DISCUSSION IS HELD BETWEEN COUNSEL WHICH WAS NOT
6 REPORTED.)

7 MR. SAWYER - Your Honor, in Lindler, who is
8 actually a State Trooper in that particular case, that they
9 held you're allowed to -- it's manslaughter, not murder.
10 If you're basically using excessive force -- or that
11 basically if you're using excessive force, there's rights
12 that you have do not apply, and that's what we'd ask that
13 Your Honor charge, because I do think that is part of the
14 record ---

15 THE COURT - I understand.

16 MR. SAWYER - --- that there might've been
17 excessive force.

18 THE COURT - I understand.

19 MS. CAMPBELL - I'm not aware of any arrest that
20 was attempted in an unlawful manner according to even the
21 defendant's own testimony. He was merely escorting him off
22 the property, and I would say that this is a comment on the
23 facts.

24 MR. SAWYER - Your Honor, if you're commenting
25 that he has the right -- all these rights, I think that's a

1 comment on the facts as well. You're going to comment and
2 say he has the right to do that and we can't respond by
3 saying he can't do that in an excessive manner, I think
4 that's -- probably -- I mean Mr. Haltiwanger would have the
5 right to be able to argue he was being escorted off and
6 then he was pepper-sprayed which we would argue would be
7 excessive when he was freely walking off as everyone
8 agrees.

9 THE COURT - All right, I think it's -- I'm going
10 to charge it. I'm going to charge it because I think that,
11 although it is controverted, it is your client's testimony
12 that (a) he was pepper-sprayed and (b) that the alleged
13 victim, Mr. Moti, pulled a weapon, and I'll charge it on
14 that basis.

15 MR. SAWYER - Okay. And, Your Honor, the only
16 other charge we'd ask for -- obviously, we've given you all
17 of these. The only other charge I think -- I think it's
18 appropriate in all these cases now -- Supreme Court figures
19 it out, as Ms. Campbell has brought up to me is the
20 Protection of Persons and Property's Act. I think at this
21 point in the State we have two self-defense statutes. We
22 have what was the old self-defense statute which is purely
23 by case law, and we have this new self-defense statute
24 that's been created by the legislature. Obviously I had
25 two cases on that, basically, Isaac and Duncan. At this

1 point the legislature has not ruled anymore. Now, this is
2 an affirmative defense -- prosecution. This doesn't change
3 the fact that it is now the law of the land, is the law in
4 self-defense and I believe it's appropriate to charge that
5 as well, at least until we've been told by the legislature
6 the old one isn't effective or the new one is valid,
7 because again, just because you might not grant immunity on
8 the judicial end, even though we didn't move for it, I
9 don't think we have to. I think we still have a chance to
10 submit that self-defense as well to the jury to let them
11 decide if that's a valid self-defense argument.

12 THE COURT - (Pause) What part of the statute do
13 you want charged?

14 MR. SAWYER - Well, if you want to just cut it out
15 to -- I mean you have (a) which is the coming in to the
16 car, which if you believe that someone's trying to get into
17 your car or you're in danger, you're allowed to use self-
18 defense, or you have the (c) section which is where if
19 you're doing anything illegal at that particular time, not
20 engaging unlawful purpose, then someone comes and attacks
21 you, then you're allowed to use valid legal force.

22 THE COURT - You need to go to the specific
23 section of the statute, because I don't believe that -- and
24 there's not any evidence in this case that would apply to
25 the stand your ground in your car.

1 MR. SAWYER - Well, -- and, Your Honor, if you
2 want to rule that way I understand that, but I think
3 clearly the (C) section allows that if you're ---

4 THE COURT - Well, read it to me.

5 MS. CAMPBELL - Your Honor, if he wants Castle
6 that's a hearing before ---

7 THE COURT - I know it is.

8 MS. CAMPBELL - -- it's really not a statute.

9 THE COURT - I know it is.

10 MS. CAMPBELL - There's no law that allows that to
11 be charged -- and even the cases talk about how it's
12 different from self-defense, how self-defense is
13 appropriate at trial and how Castle is appropriate in a
14 pre-trial hearing, because then he would have -- because it
15 makes him immune from ---

16 THE COURT - And ---

17 MS. CAMPBELL - It can't come in during the trial
18 of the case and I said that, and he knows it.

19 MR. SAWYER - And, Your Honor, I just don't think
20 that they've actually said it. No one's asked for it as a
21 jury charge yet. And, Your Honor, I'm sorry, the (C)
22 section is not engaging lawful activities ---

23 THE COURT - Oh, whoa, whoa, slow down.

24 MR. SAWYER - Sorry. A person who was engaged in
25 an unlawful activity who was attacked in another place who

1 has the right to be including but not limited to his place
2 of business, has no duty to retreat and has the right to
3 stand his ground -- force -- including deadly force if he
4 reasonably believes it is necessary to prevent death or
5 great bodily injury to himself or another person or to
6 prevent the commission of a violent crime as defined in 16-
7 160.

8 THE COURT - I don't believe -- let me just say
9 this. I don't believe that -- let me -- let me try to
10 explain in this regard. I'm not going to charge the
11 statute, and let me tell you why. Because that's going to
12 stand the law on its head for this reason. I don't know
13 how to tell this jury what self-defense is and tell the
14 jury that the State has the duty to disprove that self-
15 defense occurred and then cite that statute that looks an
16 awful lot like self-defense and say you have the burden to
17 prove that by the greater weight or the preponderance of
18 the evidence and then you have immunity from prosecution
19 which you should've already had but you didn't ask for, nor
20 do you have at this point. Effectively, the statute that -
21 - that you're referring to is going -- if I charge it, then
22 I'm going to do what the Supreme Court has said time and
23 again I must not do, and that is burden-shift, and I'm
24 going to burden-shift on self-defense, because the charges
25 are so similar that the mere fact that the State gives the

1 ability of someone under very unique circumstances under
2 self-defense immunity from prosecution then doesn't allow a
3 Court to go inject that statute into a charge and shift the
4 burden, which is exactly what I would be doing. I think
5 that would be error and I'm not going to do that. The
6 language is so -- is so close. It wasn't requested. It is
7 abso -- we now know -- we now know. I used to think I
8 could do that at directed verdict stage, but boy did I
9 learn differently that it must be ruled, if you're asking
10 for immunity, which is what -- which is the remedy -- that
11 must occur prior to any trial, and that's loud and clear
12 now by the case law. I don't think that substantively that
13 self-defense abrogates anything that's in the statute. I
14 think it burden-shifts if I charge it at this point and I'm
15 not going to do that. Noting your exception thereto.

16 MR. SAWYER - Thank you, Your Honor. And just --
17 finally, it wasn't until this weekend while I was looking
18 through your charges again, the old King charge ---

19 THE COURT - Yes.

20 MR. SAWYER - --- I understand you -- and
21 everything since said that we don't really need a charge on
22 King which if there's two greater and lesser, they said now
23 -- you know, what you charge on reasonable doubt should
24 cover it. I just didn't see anything in your charge on
25 reasonable doubt to actually say, if you can't decide

1 between the greater and the lesser, you have to go with the
2 lesser of the two offenses. That's the King charge -- gone
3 on forever. I don't think it's ever been overruled. They
4 just said the new instructions on reasonable doubt should
5 cover it, so we'd just ask that you at least put something
6 similar to the language in the King charge, that if you
7 can't decide between murder and manslaughter or if you're
8 torn simply between them, you have to go with the lesser
9 included.

10 THE COURT - Do you have one that you want me to
11 look at or did you pass one up specifically?

12 MR. SAWYER - I can, Judge. There was one that
13 was actually in the jury instructions I gave you.

14 THE COURT - Okay, then I'll look at it.

15 MR. SAWYER - State v. Chaulk I believe is what it
16 was.

17 THE COURT - Okay, great. I'll look at it.

18 (Pause) There it is. I've got it. Okay. Okay. Great.

19 MR. SAWYER - Thank you, Judge.

20 THE COURT - Yes, ma'am, anything further?

21 MS. CAMPBELL - Your Honor, the only thing I'd
22 just hand to the defendant at this point is under State vs.
23 Rogers as far as opening on the law, we are allowed to open
24 on the law but we can use illustrations from the facts, and
25 I would just hand that law to defense. We're required to

1 mention the law in opening, however we are also allowed to
2 talk about facts.

3 THE COURT - Sure.

4 MS. CAMPBELL - Thank you.

5 MR. SAWYER - And, Your Honor, just as our office
6 has been lately, we'd still object if there is a difference
7 between mentioning the facts and two closings which our
8 contention has been for a while now that essentially the
9 State can get two closings under this. They have
10 essentially gotten to go through their entire closing, all
11 this, quote, unquote piece mill illustrations during the
12 first half and then going through the whole shebang again.
13 Your Honor, we'd just argue that they get -- other than
14 their illustrations, and then that I think there's a very
15 fine line between illustrations and actually being able to
16 close again. Your Honor, I'd argue that then they
17 essentially get two closings. They get to make their case
18 twice to the jury, not arguing that they waive their second
19 closing if they go into the facts too heavily at the first
20 closing.

21 THE COURT - Okay.

22 MS. CAMPBELL - Do you have anything to support
23 that position? No? Thank you.

24 MR. SAWYER - And, Your Honor, I'd say it's my
25 client's Fifth Amendment due process right.

1 THE COURT - Okay. Okay. All right, very well.

2 All right. Anything else? No, no?

3 MR. SAWYER - Nothing from us, Judge.

4 THE COURT - Thank you. We already have a note.

5 And let me just -- I'm going to share with you all the way
6 that we're going to be proceeding. We're going to do --
7 we're going to have lunch for our jurors, and -- all right,
8 this is one of the jurors that says they are supposed to be
9 compensated forty dollars per day according to the website
10 and wanted to know why they're getting ten dollars a day
11 and then there's a complaint about that. So I'll make that
12 Court's Exhibit. Now, let me tell you that there is -- we
13 will do the argument and we will do the charge, but I have
14 a -- my child is being sworn in as a member of the Bar
15 today. I'm not going to miss that. I've only been waiting
16 for this for 25 years. I'm not going to miss it. So my
17 plan is hopefully that the jury will have this case by then
18 and if there are questions that occur during the period I
19 will get back -- if I need to go back and forth I will do
20 that, but I'm going to need some cooperation from you, but
21 I am not going to miss that. Very well. Let's have the
22 jury. Oh, and who's going to open? How are y'all going to
23 do your arguments?

24 MS. CAMPBELL - I'll be opening, Your Honor.

1 THE COURT - Okay, very well, and you will do the
2 rebuttal?

3 MS. CAMPBELL - We haven't decided.

4 THE COURT - I'll just say one of the solicitors.

5 MS. CAMPBELL - Either Ms. Walker or I will do the
6 rebuttal.

7 THE COURT - You got both?

8 MS. CAMPBELL - I may have. We haven't decided.
9 We're both prepared to do rebuttal.

10 THE COURT - I just put solicitors, one of the
11 solicitors, how about that? All right, and you're going to
12 do it. Right?

13 MR. SAWYER - Yes, Your Honor.

14 THE COURT - Very well. Thank you so much. All
15 right, we can have the jury.

16 (Jury returns to the courtroom)

17 BAILIFF - Jury is seated, Your Honor.

18 THE COURT - Wonderful. Good morning, ladies and
19 gentlemen, and I certainly hope that you had a very
20 pleasant weekend. I want to tell you a little bit about
21 how we are going to be proceeding. You are first going to
22 hear from one of the solicitors in their opening -- their
23 closing argument and then you're going to hear from Mr.
24 Sawyer in his closing argument on behalf of the Defendant,
25 Mr. Haltiwanger, and then you're going to hear rebuttal

1 reply argument from the State from one of the solicitors.
2 That will then conclude the closing arguments. Then
3 there's going to be a very short break and it's going to be
4 self explanatory at that point, and then I will deliver the
5 charge or the instruction on the law to you and then there
6 will be another very short break which I will explain when
7 we reach that point, and then, ladies and gentlemen, you
8 are going to receive this case for your deliberations.
9 Ladies and gentlemen, at this time I ask that you please
10 draw close as we listen to closing arguments.

11 MS. CAMPBELL - May it please the Court.

12 THE COURT - Yes, ma'am.

13 MS. CAMPBELL - Good morning. The first thing I
14 want to do on behalf of the State of South Carolina, the
15 citizens of Richland County and the family of Jimmy Moti is
16 to thank you for your service in this case. I know when
17 you showed up last week on Tuesday, you might've tried to
18 figure out what kind of case you might sit on, would it be
19 a wreck case, would it be an insurance problem, would it be
20 a criminal case, maybe a stolen car, but as you've had to
21 listen to some rather graphic testimony over the last week,
22 each and every one of you has paid close attention, and on
23 behalf of the family, the citizens, we thank you. Now, as
24 the Judge has just told you, I have this opportunity to
25 address you briefly about the law and some of the facts in

1 the case, and then you will hear from defense counsel and
2 then we will have the opportunity to get up here and talk
3 to you again in more detail. Now, as you listen and as I
4 talk about the law, remember, ultimately, once you hear
5 from all of us, the Judge will charge you what the law is,
6 and you take the law as the Judge tells you it is. If I
7 misquote or mischaracterize, it is not intentional on my
8 part. You take it as the Judge gives it to you. And while
9 we're talking about that, this Judge may be the most
10 gracious Judge on the bench, but she runs a tight ship, so
11 listen carefully to what she instructs you the law is in
12 this case and the law is that you must apply to these
13 facts. And in that same vein, if either side
14 mischaracterizes what the facts are, you remember them,
15 because the roles in this courtroom are very well defined,
16 and very simply it is the role and the duty of the
17 prosecution to seek justice, to bring forth all relevant
18 evidence before you that is admissible for your
19 consideration, because you must determine what happened
20 that night. The role of the defense is very simple, to
21 defend his client. But what the role of the Judge is to
22 determine what evidence is admissible and that you can hear
23 in your consideration. But very simply, ladies and
24 gentlemen, the most important role in this courtroom is
25 yours. Each of you individually and then once the 12 of

1 you get back there, collectively, you must decide what
2 happened, what the facts are, that you must then take the
3 law as the Judge gives it to you and apply to those facts
4 what happened last April. Now, you've heard all the
5 evidence you can consider. What is evidence? As the Judge
6 has told you, evidence is the testimony, the sworn
7 testimony taken from this witness stand. It's not
8 questions by attorneys. It's not a fishing expedition,
9 innuendo, conjecture, speculation or in some cases just
10 pure wishful thinking. That is not evidence. The evidence
11 is the physical exhibits that will go back with you to the
12 jury room and the testimony. Now, I want to apologize if
13 over the last week if we have done anything to offend you
14 in anyway. At times my questioning has been clumsy,
15 inartful, not very efficient at times. You've had to sit
16 here questions after questions that may not sound so good.
17 You have seen evidence that wasn't admissible, later is
18 admissible, for different reasons. And you've had to be
19 sent in and out of this courtroom on multiple occasions.
20 Please, please, don't hold that against the family of Jimmy
21 Moti.

22 MR. SAWYER - Objection, Your Honor. May we
23 approach?

24 THE COURT - Sure.

1 (WHEREUPON, BENCH CONFERENCE WAS HELD IN THE
2 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
3 WHICH WAS NOT REPORTED.)

4 MS. CAMPBELL - Please don't hold it against the
5 family, against the State. Now criminal cases are somewhat
6 unique, because in criminal cases the defendant has the
7 right, as he should, to confront each and every witness
8 against him. Each and every witness has to appear before
9 you. You've heard references to statements; you've heard
10 references to reports issued by the pathologist, reports
11 issued by the DNA people. All of that is not admissible,
12 because the defendant has the right to confront each and
13 every witness, and the reason for that is very simple.
14 It's in our constitution. You have to have the ability to
15 judge the credibility of each and every witness. And that
16 is the reason. You haven't heard about any video-taped
17 depositions; you haven't heard about any depositions of any
18 sort that come before you. The only exception to that is
19 statements by the defendant, and those are before you for
20 your consideration, and I'll get back to those in a minute,
21 but that's the reason you've heard references to reports by
22 police officers, by the doctor, pathologist and things of
23 that nature, and that's the reason those aren't admissible,
24 because you must have the opportunity to observe each and
25 every witness and to judge their credibility separately.

1 Now the burden of proof is on the State of South Carolina
2 to prove this defendant's guilt beyond a reasonable doubt.
3 That is the highest level of proof in any Court as it
4 should be. And I submit, ladies and gentlemen, in this
5 case with these facts in this courtroom, that is a burden
6 the State welcomes, perhaps more than any other case. What
7 is reasonable doubt? The Judge will instruct you, a
8 reasonable doubt, very simply, probably the simplest
9 definition, is the type of doubt that makes a reasonable
10 person hesitate to act. And listen carefully to the Judge
11 as she instructs you on the law, because repeatedly
12 throughout when she's talking about different legal
13 theories in this case, she will instruct you using the
14 words reasonable, what a reasonable person would do, and
15 that is very important, because it's not what an
16 unreasonable person would do. It's only what a reasonable
17 person would do. And listening to her instruct you on the
18 various parts of the law, listen to her talking about
19 people of ordinary firmness and conviction, things of that
20 nature. Now, reasonable doubt has been defined by our
21 Courts in the following manner: What is reasonable doubt?
22 Proof beyond a reasonable doubt is proof that leaves you
23 firmly convinced of the defendant's guilt. There are very
24 few things in the world that we know with absolute
25 certainty, and in criminal cases the law does not require

1 proof that overcomes every possible doubt. If, based on
2 your consideration of the evidence, you are firmly
3 convinced -- remember, firmly convinced of the defendant is
4 guilty of the crime charged, you must find him guilty. If
5 on the other hand, you think there is a real possibility he
6 is not guilty, you must give him the benefit of the doubt
7 and find him not guilty. Proof beyond a reasonable doubt
8 is proof that leaves you firmly convinced of the
9 defendant's guilt. Even in criminal cases the law says
10 there are very few things in this world that we know with
11 absolute certainty, and criminal law does not require proof
12 that overcomes every possible doubt. However, ladies and
13 gentlemen, in this courtroom with these facts, I submit
14 that we have proof that overcomes every possible doubt as
15 far as the defendant's guilt in this case. Now, there are
16 two -- there's one indictment, excuse me, that is going
17 back before you. There is one charge in this case. The
18 defendant is charged with murder. Listen carefully as the
19 Judge charges you about the definition of murder, because
20 to be the most heinous crime or at least one of them that
21 any person can commit, it perhaps has the shortest
22 definition. In our code murder is defined as the killing
23 of any person with malice aforethought, either expressed or
24 inferred. And sometimes you'll hear the word implied.
25 Those are kind of interchangeable. What does that mean?

1 Killing of another person with malice aforethought either
2 express or inferred. And listen carefully as the Judge
3 goes through her thing on murder. You will not hear her
4 talk about how to find someone guilty of murder in our
5 State under our definitions that there must be
6 premeditation. You will not hear her say that in order to
7 find someone guilty of murder in our State their must be
8 motive. However, in this case, ladies and gentlemen, I
9 submit there are both. Those are not elements of murder.
10 So what are the elements of murder as the Judge will charge
11 you? The killing of another with malice. What is malice?
12 Malice is hatred, ill will or hostility towards another
13 person. It is the intentional doing of a wrongful act
14 without just cause or excuse and with an intent to inflict
15 an injury or under circumstances that the law will infer an
16 evil intent. And the law goes a little bit further
17 invading that. The easiest way to think of malice, I
18 always use the word malicious. Malicious comes, the base
19 of that is malice. Was the person acting maliciously? And
20 I submit, ladies and gentlemen, in this case when you are
21 ejected from trying to illegally enter a business with a
22 false ID, when you will not leave and ultimately upon
23 leaving you wait, you tell people I'm going to shoot it up,
24 pre-medication? You need to get out of here. When you
25 then get somebody to bring your car around and then you

1 spray the front of the business where the person who
2 lawfully ejected you is standing and shoot him in the back.
3 It doesn't get any more malicious. Malice aforethought
4 maybe be express or inferred. The terms express and
5 inferred do not mean different kinds of malice, but merely
6 the manner in which malice may be shown to exist. That is
7 either by direct evidence or by inference from the facts
8 and circumstances which are proved. Express malice is
9 shown when a person speaks words which express hatred or
10 ill will for another or when a person prepared beforehand
11 to do the act which was later accomplished, for example,
12 lying in wait for a person or any other acts of preparation
13 going to show that the deed was within the defendant's mind
14 would be express malice. Malice may be inferred from
15 conduct showing a total disregard for human life, a total
16 disregard for human life. What does the term aforethought
17 mean? Listen carefully what the Judge tells you. Malice
18 aforethought does not require that malice exist at any
19 particular time before the act is committed. Malice must
20 exist in the mind of the defendant just before and at the
21 time of the act is committed, therefore, there must be a
22 combination of the previous evil intent and the act. What
23 was in his mind at the time? I'm going to shoot the place
24 up? Was he angry? You see him on the video. You don't
25 even have to listen to the witnesses. Evil intent? Now,

1 the Judge will also instruct you, if you find that the
2 State has not proven the elements of murder, which I submit
3 we have, then you may consider a lesser included offense
4 which you've referred to (sic) -- you've heard in the
5 testimony -- of manslaughter. What is manslaughter? The
6 State must prove beyond a reasonable doubt that the
7 defendant took the life of another in the sudden heat of
8 passion based upon sufficient legal provocation. And this
9 part is important. Both heat of passion and sufficient
10 provocation -- sufficient legal provocation must be present
11 at the time of the killing to constitute voluntary
12 manslaughter. In order to find this defendant guilty of
13 the lesser included offense, you must find that he didn't
14 act with malice, that we failed to prove that. You must
15 find that both heat of passion and sufficient legal
16 provocation. And you think about that. Jimmy Moti was
17 doing his job. He did what he needed to do to eject people
18 that weren't obeying the laws on the property he had the
19 right to be on, that he's (sic) responsibility it was to
20 protect. He ejected them lawfully. He's on the phone with
21 9-1-1 trying to do the right thing. What legal provocation
22 -- what legal provocation did he do, because it must be -
23 and I'll read this to you in a minute -- it must be
24 something he did that would justify reducing his crime.
25 Sudden heat of passion may for a time affect a person's

1 self-control and temporarily disturb a person's reason.
2 The sudden heat of passion must be the type that would make
3 an ordinary person unable to fully reflect on his actions
4 and would produce an uncontrollable impulse to do violence,
5 uncontrollable impulse to do violence. There wasn't an
6 impulse. He had to wait several minutes for the car to get
7 around so he could line it up on the street there at the
8 entrance to get the shot he needed. Further, sufficient
9 legal provocation must be the type that would make a person
10 of ordinary reason -- remember, I asked you to remember
11 those words, reasonable, ordinary reason, and caution,
12 become enraged and to lose control temporarily. So there
13 must be something that Jimmy Moti did that would push this
14 man so far that he had no control. Involuntary
15 intoxication, ladies and gentlemen, is not a defense. I'll
16 get back to that. The provocation needed for voluntary
17 manslaughter must come from some act of or related to the
18 victim. He was doing his job. He acted lawfully. That
19 does not excuse his actions in order to give him the
20 benefit of the lesser included offense. It goes further.
21 Even if he were to think Jimmy Moti said something to him
22 as he testified to on this day -- words alone, however
23 vulgar or insulting are not enough to be legal provocation
24 where death is caused by the use of a deadly weapon. The
25 words must be accompanied by some overt threatening act

1 which could've produced the heat of passion, not a legal
2 act, a threatening act, illegal. The exercise of a legal
3 right no matter how offensive it is to another is never
4 sufficient legal provocation for voluntary manslaughter.
5 And let me repeat that. The exercise of a legal right, no
6 matter how offensive it may have been to him, it wasn't
7 offensive to the other people protected on the property, is
8 never sufficient legal provocation for voluntary
9 manslaughter. Further, the law goes, and listen as the
10 Judge tells, if the heat of passion had cooled or if there
11 was enough time between the provocation, if any, for the --
12 and the killing for the passion of a reasonable person to
13 cool, the killing would not be voluntary manslaughter in
14 deciding whether a reasonable person would've had enough
15 time to cool off, you should consider all the circumstances
16 surrounding the killing. You may consider the nature of
17 the provocation, if any, the defendant's mental and
18 physical state and the circumstances and relationships
19 between the parties. I submit, ladies and gentlemen, there
20 is no legal provocation, and even if there had been, which
21 there is not on these facts in this case, he had more than
22 enough time to gather his wits and to leave voluntarily.
23 Now, the Judge will also instruct you on self-defense.
24 Listen to the defendant's testimony. In his car, luckily
25 he had his illegal weapon right there next to him. He

1 looked up and saw the defendant running towards him and
2 reacting. He's raised self-defense. The following
3 elements are required to establish self-defense and that
4 the burden -- let me clear. When I'm talking, the burden
5 of proof is on the State to disprove self-defense, but all
6 we have to disprove, although I submit we'll disprove all
7 three of them, is one element of self-defense, because once
8 we disprove one element of self-defense, he no longer gets
9 the benefit. If you were to believe him, he must be,
10 number one, without fault. There's no way conceivable,
11 even under his latest version of events, his latest
12 version, that he is without fault. Even if you were to try
13 and believe his latest version that he was in imminent
14 danger, according to his latest version, Jimmy Moti is
15 across the parking lot. And finally, what's known as the
16 duty to retreat. He had no other way to avoid the danger.
17 And let me talk to you briefly about those and what the
18 Judge will charge you on self-defense. Number one, first
19 the defendant must be without fault in bringing on the
20 difficulty. Under any version, any of his stories, by his
21 own admission, he is at fault. It was his choice to go to
22 that restaurant; it was his choice to use a fake ID; it was
23 his choice to become enraged when he was getting ejected
24 for doing any unlawful act; it was his choice to get into
25 his car and it was his choice to pull his illegal gun. The

1 defendant must be without fault in bringing on the
2 difficulty. The defendant's conduct was the type which was
3 reasonably calculated to and did provoke a deadly assault,
4 the defendant would be at fault in bringing on the
5 difficulty and would not be entitled to an acquittal based
6 on self-defense. He must be without fault. I submit,
7 ladies and gentlemen, that element alone has been
8 disproved, not by the State, by the defendant's own
9 testimony. And it goes further. He must prove he was in
10 imminent danger. The second element of self-defense is the
11 defendant was actually in imminent danger of death or
12 serious bodily injury. And by no means, self-defense can
13 exchange (sic) if he's defending someone else, but
14 according to him, he's only defending himself at that
15 point, well, depending on the story. That the defendant
16 actually believed he or she was in imminent danger of death
17 or serious bodily injury. If the defendant was actually in
18 imminent danger, it must be shown that the circumstances
19 would've warranted a person of ordinary firmness and
20 courage -- again, those words I'm referring to -- to strike
21 the fatal blow to prevent death or serious bodily injury.
22 If the defendant believed he or she was in imminent death -
23 - danger of death or serious bodily injury, it must be
24 shown that a reasonable prudent person of ordinary firmness
25 and courage would've had the same belief. In deciding

1 whether the defendant actually was or believed he or she
2 was in imminent danger or death or serious bodily injury,
3 you should consider all the facts and circumstances
4 surrounding the crime, including the physical condition and
5 characteristics of the defendant and the victim. Was he in
6 imminent danger? Even if you were to believe that he
7 thought he was in imminent danger -- because he has the
8 right to act on appearances -- the Judge will tell you
9 that. The law goes further. He had no other way to avoid
10 danger. There is a duty to retreat. That's how it's
11 commonly referred to. The final element of self-defense is
12 that the defendant had no other probable way to avoid the
13 danger of death or serious bodily injury than to act as the
14 defendant did in this particular instance. The defendant
15 has a duty to retreat. The defendant had no duty to
16 retreat if by doing so the danger of being killed or
17 suffering serious bodily injury would increase. I submit,
18 ladies and gentlemen, self-defense disproved by the State -
19 - pick an element. Even if you were to believe -- which I
20 will get back to credibility in a minute -- this latest
21 story that he came up with and his latest version -- a
22 person cannot be required to make an exact calculation as
23 to the degree or amount of force which may be needed to

1 or serious bodily harm. The force used in self-defense
2 does not have to be limited to the degree or amount of
3 force used by the victim. The defendant has a right to use
4 so much force as appeared to be necessary for complete self
5 protection in which a person of ordinary reason and
6 firmness would've believed to be needed to prevent death or
7 serious bodily harm. I submit, ladies and gentlemen, the
8 State has disproved self-defense. What the State has
9 proven is that this is a killing that occurred with malice
10 aforethought. Now, there are two types of evidence you can
11 consider. There is direct evidence and circumstantial
12 evidence. With direct evidence, it's typically eyewitness
13 testimony and you have some of that here, because in this
14 case it may have been a little bit confusing at first,
15 because as the Judge told you earlier, we have to put up
16 our cases in pieces, who saw what. In this case nobody saw
17 actually everything from beginning to end. They saw
18 different pieces of what happened, so that's why at times
19 it's perhaps presented a little bit jumbled. Eyewitness
20 testimony, and I'll get back to it, and they're going to
21 get up here and they're going to talk about how you can't
22 believe a word that Marquita Mobley or Katrina (sic) Nuttry
23 told you, because they're prostitutes. Suddenly their
24 illegal acts make them not believable, but I submit, ladies
25 and gentlemen, in judging credibility, what do they have to

1 gain or lose? Think about it. They're just two people and
2 they don't want to be involved. They don't have any bias
3 or prejudice against this man, but what is telling is their
4 actions and what they said happened are absolutely
5 corroborated by the one video we do have, the video from
6 the gas station, because you see the conversation when the
7 two girls were in the car. You can even see the times when
8 Ms. Mobley gets out and goes in to get the guy that's
9 buying beer inside. She even looks out the window. She's
10 not looking out to see what's going on. She's looking out
11 to see if the shooting's started that he talked about.
12 Direct evidence, eyewitness testimony. Were they
13 corroborated by the other's testimony? The Judge will
14 charge you there are two types of evidence. Direct
15 evidence directly proves the existence of a fact and does
16 not require reduction. Circumstantial evidence is proof
17 of the chain of facts and circumstances indicating the
18 existence of the facts. Crimes may be proven by
19 circumstantial evidence, and the law makes no distinction
20 between the weight or value to be given to either direct or
21 circumstantial. In this case, ladies and gentlemen, the
22 majority of the testimony is direct. What is indirect
23 evidence or circumstantial evidence? That can be
24 considered like the DNA evidence, the fact that the card,
25 Carlos Brown's card was recovered, that when they ran the

1 DNA, the defendant's DNA profile was found on that card, so
2 therefore that is the circumstantial evidence that perhaps
3 at some point at least he had touched that card that was
4 presented that caused this whole set of events to happen
5 that night. Those are the distinctions between
6 circumstantial evidence. And listen carefully to the Judge
7 as she talks about that. Now, the Judge will also instruct
8 you that one of the things you must determine is
9 identification. She will go through a series of things,
10 whether a person had an ability to observe somebody.
11 You've heard about some photo line-ups in this case.
12 Whether they could see what they said they saw, whether
13 anything was obstructing their view, what the lighting was
14 like and things of that nature. In this case, however,
15 identification's not a super big issue, because the
16 defendant -- the defense says he was the shooter, so
17 identification is not the issue it could've been. You also
18 will hear about voluntary statements, because you must
19 determine and you can consider -- and it's very important
20 in this case the statements by the defendant -- and in
21 learning in this and we'll talk to you more about this
22 about how his stories evolved. In determining whether the
23 statement is voluntary -- and those are going to the two
24 written statements you have and then you consider his
25 testimony -- you should consider both the characteristics

1 of the defendant and the details of the questioning. Some
2 of the facts you may consider are the age of the defendant,
3 the defendant's education or lack of education, his mental
4 ability or capacity, his IQ or intelligence, his background
5 and environment. You heard me asking questions about
6 whether he could read or write. I did not mean to be
7 insulting with those. That's just to prove that, in fact,
8 he was able to review the information that was given to
9 him, that he understood what was going on and that he could
10 read and write. You can consider the place and length of
11 detention, the nature of the questioning and finally, and
12 perhaps most importantly, the Judge will instruct you on
13 the advice of rights, whether or not he was advised of his
14 rights, whether or not the police officers in this case did
15 their job, and I submit, ladies and gentlemen, in this case
16 they jumped through every hoop they're supposed to, as they
17 should every time. There is no doubt, and the defendant
18 even acknowledged that he was advised of his rights, the
19 right to remain silent, that any statement could be used
20 against him in a Court of law, the right to have a lawyer
21 present, that if he -- she could not afford a lawyer, a
22 lawyer would be appointed to represent him without any
23 cost, and that he could stop making a statement at any
24 time. Those are some of the factors you need to consider
25 and listen to the Judge as she instructs you on that. Now,

1 in every case the State must prove the defendant acted with
2 criminal intent. What is criminal intent? The simplest
3 way to define, as the Judge will tell you, is it's
4 basically a conscious wrongdoing on the part of the
5 defendant. The law recognizes that we can't sit there and
6 dissect a person's brain to try to figure out to some
7 mathematical certainly exactly what he was thinking at the
8 time, so you're allowed to look at the facts and the
9 circumstances surrounding his actions at the time. And I
10 submit, ladies and gentlemen, there is no more criminal
11 intent than in this case. You've also heard from a number
12 of witnesses that were qualified as expert witnesses. The
13 Judge will tell you, expert witnesses, because of some
14 training or because of some specialized education, are able
15 to get up and give opinions. Lay witnesses, such as
16 myself, cannot get up there and just give you opinions
17 about what happened, but because of their training, same
18 with the DNA, the pathologist, because of his training with
19 the gunshot wound, which ends up being very important in
20 this case, what is an entrance wound, what is an exit
21 wound; there is no doubt that he suffered a wound to is
22 abdomen and a wound to his back. Those people are trained
23 and are able to give you opinions because of their
24 training. And remember that. And the Judge will tell you
25 that you consider their credibility the same way you do

1 anyone else. And the last thing I want to take the
2 opportunity to talk to you about a little bit right now is
3 credibility, believability, because that's what this case
4 boils down to. The Judge will instruct you. You can
5 believe all of what a witness says, none of what a witness
6 says or some of what a witness says. You can believe one
7 witness against many or many against one. When considering
8 credibility, consider their demeanor on the stand, were
9 they forthright or hesitant, has their story changed. If
10 it has changed, is there a reason it has changed. You can
11 consider whether their testimony or the evidence is
12 corroborated by the other evidence or not corroborated.
13 You can consider whether their testimony has been
14 consistent or has it evolved. Those are factors you must
15 consider, and I beg you to judge credibility in this case,
16 because either there is a grand conspiracy between the
17 police, Ms. Nuttry, Ms. Mobley, Lamar Ray, the EMS worker,
18 the pathologist or he's guilty of murder. Thank you.

19 THE COURT - Thank you. Mr. Sawyer?

20 MR. SAWYER - Thank you, Your Honor. May it
21 please the Court.

22 THE COURT - Yes.

23 MR. SAWYER - Good morning, ladies and gentlemen.

24 I apologize. I'm under the weather today, so if y'all
25 can't hear me, just please one of y'all just kind of raise

1 your hand a little bit and let me know. Obviously what
2 I've got to say is very important, so I want to make sure
3 that you get them. Okay? All right. What we started here
4 with when Zachary Brunson got to the scene was someone who
5 was deceased. And as the officers all got there, they
6 started with investigating into it. And once Investigator
7 Lindler got there, they made one decision, that he was
8 murdered and we're going to charge someone with murder, and
9 that's it. That was the complete end of the discussion,
10 and that was a complete end of the investigation in the
11 case in response to whether something else could've
12 happened. They decided we are charging whoever this is
13 with murder and let's just only investigate the facts that
14 support our side. And, ladies and gentlemen, I would say
15 to you that that's where we are, is that the only thing the
16 State did in this case was try to prove murder. Now,
17 obviously when Investigation Lindler -- who did do a great
18 job in this case -- got to the crime scene, they're trying
19 to figure out who, who, who, who, who, who. And that was a
20 big part of this case. But once they got to who, that was
21 it. Ladies and gentlemen, I would say that this case is
22 not about who, but it's about how, how did all this happen.
23 Now, Mr. Sharpe over here told you -- it was Wednesday of
24 last week -- Bernard was the shooter, and you've known this
25 this entire time. And let me just emphasize to you all the

1 witnesses the State has called. We have Mr. Ray; we have
2 Ms. Gilyard; we have Ms. Nuttry; we have Ms. Mobley; we
3 have Mr. -- Dr. Marcus; we have Ms. -- EMS worker -- I
4 believe her name was Labbe, Mr. Barron; we have Mr. Collins
5 who did the gun work; we had Investigator Rast who went out
6 to go look at the car; we have Investigator Jordan who was
7 with Investigator Lindler; we have Mr. Bouknight who was
8 also processing the car; we have Chief Wilson; we have
9 Investigator Woods, Investigator Lindler; we have
10 Investigator Polis; we have Deputy Brunson and we have Ila
11 Simmons; 17 witnesses the State called. Okay? Now, let's
12 just look at some of these. Mr. Barron, DNA, was all for
13 identification purposes; Investigator Collins with a gun,
14 all for identification purposes; Investigator Bouknight,
15 again processing the car for DNA and such, all for
16 identification purposes; Yvonne Woods, other than
17 collecting the evidence at the scene, a lot of what she was
18 supposed to be looking into, for identification purposes;
19 Investigator Polis who processed more evidence, for
20 identification purposes; Investigator Simmons who was
21 doing gunshot residue, again for identification purposes.
22 So now we're down to these witnesses here and we'll talk
23 about these witnesses a little more. But my point remains,
24 all those witnesses were here to prove Bernard did it,
25 which y'all already knew. Now, you heard -- our question

1 here is about how, how did this all happen. Ladies and
2 gentlemen of the jury, you're the ones who are deciding the
3 facts today. Okay? Whatever I say and whatever Ms.
4 Campbell says really doesn't mean a hill of beans at the
5 end of the day, because you all are deciding the facts.
6 That's your job here, is you guys get to pick how this
7 happened. You guys get to decide how all this happened.
8 So I'd ask you -- you've heard a couple of different
9 stories of the how. What'd I'd ask you, ladies and
10 gentlemen, is that in my opinion, Bernard's story is the
11 only one that makes sense that happened. Bernard's story
12 is the only accounting of the events that can make sense
13 from the start to finish. Bernard told you about every
14 single little event that happened and put it into context.
15 And when Ms. Campbell cross examined him, Bernard again
16 told you the same thing, didn't he? And she went after him
17 pretty hard and he said the same thing he did the first
18 time around. Now, let's just kind of get back to his story
19 that night. As he said, they started out that evening,
20 went out with his brothers, decided -- after a while
21 cooking some food decided to go out, and after they had
22 went by one club, they decided to go to the El Toro Club,
23 and at that point as he said, all they were looking was
24 just to go out, have a decent time and have a couple
25 drinks. That was their intent going up there that day.

1 One of his brothers ran him (sic), the other two -- or two
2 brothers and their friends were all parking, so Bernard
3 approached the door alone. Now, as he approached the door,
4 as he said, he explained to you, he made this big deal
5 about the ID. He told you exactly what happened with the
6 ID. He said I forgot mine; I was hoping -- I was 24 years
7 old; I was hoping they'd just look the other way and they'd
8 let me in. So he went and found his brother, Carlos's ID
9 and came back there again. Said, hey, you know, I've been
10 here before, I look like I'm 21, here's an ID, 21, can you
11 let me in? The guard said no. Said, well, look I've got a
12 little bit of extra money, you've let me in before by
13 letting me pay a little bit of extra money to let me get
14 in. Now, I can't explain to you why the reaction was, what
15 happened that night. Bernard couldn't either, but he said
16 at that point some sort of argument where the bouncer, as
17 he said, starting getting aggressive at that point, and he
18 said you need to leave. And this was one undisputed fact I
19 believe the State can't say otherwise. Bernard started to
20 leave. And I think that's important to remember, ladies
21 and gentlemen of the jury, is that everyone agreed he
22 turned around and started walking away when he was told to
23 walk away. Everyone agreed with that. Lamar Ray agreed,
24 and actually I guess that was really all they put up to say
25 what happened that night from the door to the side. But

1 Bernard agreed too. He started walking away. He was
2 leaving after he was told it was time to leave. Now, as
3 he's walking away, at some point Bernard says he said
4 something; Lamar Ray says he said something; they didn't
5 really -- can't really tell you what he said other than
6 what Bernard told you, that the response to just yelling
7 something backwards was to get maced. Now, we're not
8 making a big deal about this, but he just said words I'm
9 not going to repeat which weren't very kind, but
10 nonetheless said them over his shoulder as he's walking
11 away; the response at this point was to be maced. And this
12 person's walking off the property; you're getting them to
13 walk off the property and this guard's response is to mace
14 him in the back of the head. Now, they're going to make a
15 big deal too about his brother coming to punch Mr. Moti.
16 And, ladies and gentlemen of the jury, I will tell you, if
17 I'm watching my brother ---

18 MS. WALKER - Objection, Your Honor. Defense
19 counsel is stating his opinion about what he would do in a
20 similar situation.

21 THE COURT - Sustained.

22 MR. SAWYER - As Bernard says, he's walking away
23 at this point and his brother seen Bernard getting pepper-
24 sprayed, maced in the back of the head for seemingly no
25 reason, comes to his defense, hits the guy, then one --

1 both of them -- both of them run into the parking lot and
2 you actually even see his brother tumble once they get into
3 the parking lot. Now, at this point we're at the video,
4 and you're going to have the opportunity to look at the
5 video. You're going to have an opportunity to look at all
6 of this evidence over and over again. But watch both of
7 these videos quite a bit. Number one, with the video what
8 I find interesting is that when you're watching this, one
9 thing Investigator Lindler said when we were looking at the
10 video the first time, you can't see Jimmy Moti in this at
11 all. Then y'all watched it when Bernard pointed out, you
12 can see him standing right there. You see him standing
13 right there at the edge of the parking for quite a
14 substantial amount of time once they're already ejected to
15 (sic) the property. Now, Bernard told you what he said was
16 going on. He said the guy was yelling at him, had his gun
17 drawn, was threatening his younger brother; he was standing
18 in front of his younger brother trying to protect him. And
19 again, watch the video. You can see everything that he
20 said happened. Now, at this point you see them both
21 waiting there, waiting for them to pull their cars around,
22 making a big deal that this is premeditated, but my
23 opinion, they're doing something ---

24 MS. WALKER - Objection, Your Honor. He's stating
25 his opinion again.

1 THE COURT - Sustained.

2 MR. SAWYER - They're pulling them around, and
3 they're waiting there patiently for their two cars to be
4 pulled around so they can go on their way. All right? And
5 you see them waiting there, hanging out. As Bernard said,
6 just waiting for their cars to come around, yelling at his
7 brother, trying to get him to get the car started, because
8 he couldn't get the car started, waiting. Now, you do see
9 him approach that car, and you see him talk to these two
10 women in there. Now, I don't know why their testimony was
11 so divergent. I don't know why it was all over the place,
12 but to be bluntly honest, I can understand exactly what was
13 going on in talking to Ms. Mobley and Ms. Nuttry, because
14 their stories were very much different from one another,
15 and I'll get back to that a little later, but Bernard said
16 he's -- they called him over, asked him what was going on,
17 and he told them what was going on, said, hey, this guy was
18 -- maced me in the back of the head, had a gun to me, was
19 afraid he was going to shoot, and then he walked away and
20 then waited again a while longer for the cars to be pulled
21 around. And the last thing you see in that video was them,
22 not cutting back across, but cutting -- I'll call it north
23 in the video, at least upwards towards St. Andrews to go
24 get in those cars so they can drive off. Now, once they
25 get in the car, Bernard says he's sitting behind the wheel

1 -- and y'all are residents of Richland County; y'all get to
2 use your everyday experience and purposes; I'm sure y'all
3 have been on St. Andrews before. Y'all know what St.
4 Andrews is like. It's a busy road. It's 10:30, 11:00
5 o'clock at night. He looks to his left; he says there's a
6 bunch of traffic coming. He looks to his right and he says
7 at that point all of a sudden he sees Jimmy jump down off
8 of there, his gun which was already out, come at him, gun
9 drawn. He says it is that point he's terrified and he
10 reacts. Okay? Now, let me -- we kind of just barely
11 showed y'all what all Mr. Moti had on him that night.
12 Ladies and gentlemen of the jury, I'll tell you, I'd be
13 terrified myself.

14 MS. WALKER - Objection, Your Honor. He's
15 repeatedly stating his opinion.

16 THE COURT - Sustained.

17 MR. SAWYER - We have an all black tactical vest
18 here. We have -- looks like some sort of nightstick. And
19 again, this is coming back with y'all. So y'all get to do
20 what I'm doing here, and I'd encourage you to do this.
21 Some sort of nightstick. I assume this might've been where
22 his pepper-spray was. And other items basically -- and a
23 holster right here for the taser. This is where the taser
24 goes. That's important too. Dressed all in black, too,
25 remember, with this vest on. And then -- that's -- combat

1 knife as well, and a holster. Additionally, his weapon --
2 these are some of the bullets. I think the clips are still
3 sitting in there. That's what is testified to, three clips
4 with 33 rounds each of -- again, David Collins said was
5 bullets meant to cause the most amount of damage to a human
6 being made possible. Undisputed, his job that night was to
7 check IDs, perhaps to search people and to deny them
8 entrance to the door. He was armed with mace and a
9 nightstick, combat knife, a taser, a .40 caliber weapon
10 with hollow point bullets, 33 of rounds. No wonder Bernard
11 was terrified that night. And I'll just add, Ms. Campbell
12 mentioned something about being able -- he was engaging in
13 an illegal act. Well, you're also getting an instruction
14 that if excessive force is being used, it's no longer
15 illegal act, and in this case, ladies and gentlemen, I
16 think that's what we are, is that excessive force was well
17 used in this case. They could've just let Bernard keep
18 walking and that would be it, but just have (sic) keep
19 going, and I believe Mr. Moti kept provoking him, and
20 that's why we're here. Now, let me talk to you about self-
21 defense. You heard the elements of self-defense, but
22 unlike what Ms. Campbell said about criminal intent which
23 is kind of what you were thinking at a time (sic), self-
24 defense is not a state of mind. It's a set of hurdles the
25 State has to overcome before you can say it wasn't in self-

1 defense. So right now the State has to prove beyond a
2 reasonable doubt to you that this was not in self-defense.
3 Now, let's look at the elements of self-defense. We've
4 got, ladies and gentlemen, at this point when he gets in
5 the car and he's driving off, I don't think he's done
6 anything frugal actually the whole night. We haven't heard
7 any testimony about him doing anything frugal. At this
8 point he's getting in his car. We've got imminent danger.
9 Bernard testifies he's leaping off, coming at him with a
10 gun. As Ms. Campbell said he has a right to protect
11 himself and family members. His brother Terrell was
12 sitting in the car next to him and said that he has a duty
13 to retreat. You see the picture. He's turning out on St.
14 Andrews; there's traffic coming. For one he felt like he
15 couldn't turn. For two, even if he had turned, he'd be
16 turning into where Jimmy was standing that day, into where
17 someone with their gun drawn would be able to shoot at you
18 easy. Ladies and gentlemen, I think we meet self-defense
19 in this case. Again, if you're undecided -- and the Judge
20 is going to instruct you between self-defense, murder and
21 manslaughter, -- if you can't pick any of three, you've got
22 to go with self-defense; again, it's their burden to
23 disprove all these elements, but let's say you agree with
24 Ms. Campbell and that this isn't self-defense. Even
25 according to Bernard's story it's still manslaughter.

1 You've got illegal provocation. This gentleman pointed the
2 gun at him, and then you've got heat of passion. You heard
3 him, he said he was terrified. Ladies and gentleman, I'd
4 submit to you that heat of passion includes fear, includes
5 being terrified, includes being -- having this gentleman
6 coming at you all night long, then finally does it one more
7 time and you're terrified and you just react. Again,
8 Bernard's story fits manslaughter. Now, they're, of
9 course, going to try to disprove Bernard's story. Okay?
10 Ladies and gentlemen, what I'd ask you is -- all we've got
11 here saying what happened that day with their one witness -
12 - the only the State put up was Lamar Ray's testimony, and
13 that's it. No one else they put up to go over the how, but
14 they could've and that's important. You heard that there
15 was at least four other responding officers on the scene.
16 Not just Zachary Brunson, four other individuals, any of
17 which could've found other witnesses, any of which could've
18 been able to look at the scene, describe the scene, write
19 what the scene was down. The State didn't put up any of
20 those witnesses. Additionally, you have two eyewitnesses
21 that Investigator Lindler told you were there and saw what
22 happened, Roberto Cordoba and Elisha Springs. And the
23 State didn't call those two either. Now, -- and let me
24 just -- let me add this part in here, too, because Ms.
25 Campbell made a big deal about when he was sitting there on

1 the stand about how he's had all this time to look over his
2 evidence. I'd like just to make it clear to you like
3 Bernard said. It's his right to do that. It's his right
4 to review all this evidence from the minute he's arrested
5 until now. It's his constitutional right to do that. And
6 to act like that he's doing something malicious and looking
7 at what the State's using to prosecute him is is just
8 wrong. Now, they're making a big deal about the gun being
9 in the holster, the gun was holstered. Okay? Now, the
10 only witness that I heard the State present about where the
11 gun was prior to the shooting is Lamar Ray. Lamar Ray said
12 he was on the phone with his gun drawn. That's the State's
13 witness, and that's what Bernard said too. He had his gun
14 out; the gun was drawn. They didn't present any other
15 testimony of anything other than this. Then something
16 happens in between, because we don't have any testimony
17 about what happened until basically EMS gets up there, and
18 then from there everyone keeps saying it's in the vest,
19 it's in the vest, it's in the vest. Ladies and gentlemen,
20 look in that vest. There's no way for it to have been in
21 that vest. It wasn't in that leg holster. And the stuff -
22 - the taser in here -- ladies and gentlemen, this is a gun
23 holster. You heard nothing about this holster the entire
24 time. Didn't hear about EMS taking something off his leg,
25 because it straps to your leg. Didn't hear them taking

1 nothing about that coming off his leg. Didn't hear nothing
2 about it being in the holster, nothing. Could've called
3 all those other responding officers to tell you where it
4 was, but they didn't. Oh, and one other thing, too. One
5 of the ways they could've disproven what I'm saying right
6 now, is you heard that DNA expert get up there, and that
7 DNA expert said, oh, we did DNA on that gun. You heard how
8 well he was able to find the ID. They tested that gun for
9 DNA. Jimmy Moti's DNA was the only DNA that was on there.
10 I would have a very good argument about that. But you
11 heard, he said they never asked to have it tested. Now,
12 let's talk about this all shot in the back. You heard a
13 lot of expert witnesses, and generally most of the experts
14 I cross examined, all of them were willing to admit, we're
15 pretty sure, we're almost certain, we're kind of sure. Dr.
16 Marcus was a hundred percent certain. Now, the Judge is
17 going to say there are certain -- there's nothing that's
18 ever certain in life. I agree with that -- gives you
19 instruction on that. Dr. Marcus was a hundred percent
20 certain. I just -- I can't trust anyone that says ---

21 MS. WALKER - Objection, Your Honor. This is his
22 opinion ---

23 THE COURT - Sustained.

24 MR. SAWYER - Because a hundred percent certain,
25 not eighty percent, not ninety percent, one hundred percent

1 I can't be wrong. Now, number one, you heard they were
2 basically contractors, contracted out by the State. He
3 didn't work for the State; he had his own corporation and
4 they get paid for a case, so you're going to talk about
5 what certain interest -- interested (sic) these witnesses
6 might have? One of them is monetary interest. Dr. Marcus
7 has monetary interest in prosecuting these cases and being
8 able to have autopsies done for the State. So that's one
9 thing to consider. Number two, as I said, he was a hundred
10 percent certain. The DNA expert got up here and I think we
11 wrote it on the board at that point, ninety-seven point
12 four nine percent. That's not a hundred percent. That's
13 pretty close to a hundred percent, but even he said there
14 was some margin for error in there. And even when I gave
15 him some different possibilities of what that little
16 percentage could be if they were related, he said
17 absolutely, that falls in that percentage, because this
18 expert gave you opinion and it's just that, the hundred
19 percent from Dr. Marcus, no room for error. Again, too,
20 the only facts he knew at the time was that it was a
21 gunshot wound. And when he wrote his report and when he
22 testified from his report, all he knew is that it was a
23 gunshot wound and that was all. He didn't know the caliber
24 of the bullet; he didn't know the distance; he didn't know
25 if Mr. Moti was wearing his vest, and he didn't know what

1 any other witness statement -- that's what I said -- as to
2 where he was shot. So he formed this entire opinion
3 without any of these other facts and then admitted, oh,
4 didn't go back and reform my opinion after that, because
5 I'm a hundred percent certain. And when I asked him, too,
6 do you -- victim said he was shot in the stomach, did that
7 change your opinion. And you can re-listen to his
8 testimony, too. The first time around he said, yes, that
9 can change my opinion. Second time around he said, no, no
10 change at all, no change at all, same opinion. He actually
11 contradicts himself up there. And finally he said that
12 this vest couldn't have any affect on it and -- these
13 pictures -- no, I'm not going to go through all this.
14 Y'all will have the pictures when you get back there, but
15 look at those pictures. He says that there is this
16 abrasion on it, it's very clear. Then he looks at the
17 other picture which he calls the exit wound, and he says,
18 well, there's a bit of an abrasion mark right here, but it
19 could've come from the vest, from the vest being sinched
20 (sic) up against him. The vest was on the back too. He
21 had no response to that either. You heard nothing about
22 the bullet's internal path, where it came, as it came in
23 and exited. Had no testimony about where the bullet went
24 inside, because he said it was tumbling around but he never
25 said actually looked inside to check and see. And then

1 finally he talks about no affect from what's called
2 aggressive resuscitation -- okay -- that there could be
3 absolutely no affect from surgeons working on him for hours
4 to change these at all. Y'all get to look at the pictures
5 and where that stitch wound is and decide if there's no way
6 it could've affected it. The State's witness said he fell
7 backward, said he was shot in the stomach, said he was
8 facing the car. That's what the State's witnesses
9 testified to. Dr. Bradley Marcus was a hundred percent
10 certain. Now, the State's going to get up there and try to
11 - they've tried to disprove or have issues with Bernard's
12 two statements. Now, statement number one, Bernard was as
13 honest as little anybody could be. What'd he say to you?
14 He said I died. I didn't want to get arrested and I lied,
15 because that first statement he admitted, I was lying to
16 police, didn't want to be arrested, so that first
17 statement, shwep, (phonetic) tear it up, toss it. That
18 second statement though he did say there was a lot of what
19 they talked about that was not in there. That second
20 statement, what'd he say? He said that there was a lot in
21 there, especially the key parts that support -- the key
22 parts from his perspective were not in there. While
23 Investigator Lindler did a great job, there's the one part
24 that I take exception with him and Chief Wilson and
25 Investigator Jordan is recording these statements. Because

1 Bernard said what he said is what he actually said.
2 Investigator Lindler and Investigator Wilson says that what
3 he actually said. But do you know how you can tell for
4 certain? There was no audio/visual recording. Don't audio
5 and visual record that statement. They'll describe
6 approximately Jordan met with him for an hour and ten
7 minutes. Investigator -- Chief Wilson met with them for an
8 hour and Chief Wilson and Lindler met with them an hour and
9 a half. That's three and a half hours. And both of them
10 are reading through statement that lasted seven minutes.
11 Even if you were to double that to fourteen minutes, it's
12 still three hours and sixteen minutes of conversation that
13 y'all didn't hear. I mean Chief Wilson said no reliable
14 technology to record a statement in the last 35 years.
15 That's since 1978 that there's no reliable technology to
16 record a statement. But I'll tell you one thing, you heard
17 them all testify we have a strict policy not to do that,
18 have a strict policy not to let them write them themselves,
19 a strict policy not to let Bernard type it himself and a
20 strict policy not to audio and visual record them. Think
21 about that. Now, they'll spend a lot of time, too, talking
22 about this cover-up. Okay? Everything that happened after
23 the events trying to make Bernard seem like a bad person.
24 What'd he tell you when he got there? I tried to cover
25 this up. He answered every one of my questions and every

1 one of Ms. Campbell's questions. Yes, sir, yes, ma'am, I
2 did it; I tried to cover that all up. That is meant to
3 distract you from what happened, because none of it
4 matters. None of that cover-up matters, because all that
5 matters is what happened that night. All the rest of this
6 -- Investigator Rast also called just for the cover-up.
7 None of the cover-up matters because it doesn't have to do
8 with it, but we spent a lot of time on that cover-up. Jail
9 phone calls? A lot on the cover-up, too. What'd Bernard
10 say? Yes, you heard me speaking in code. He was bluntly
11 honest with you about all that. So let's just ignore the
12 cover-up, because it doesn't matter about what happened on
13 the night of August 25th. You know, they made a big deal,
14 too, about -- if you look at the State's version, I would
15 still suggest this is manslaughter. Let's just ignore
16 Bernard's testimony completely, which is what the State's
17 telling you to do. You heard he was sprayed with pepper-
18 spray and a gun drawn on him once he was leaving or left.
19 Ladies and gentlemen, I would argue that's illegal
20 provocation. I would argue is acting in excessive force
21 which the Judge will instruct you, so he was not exercising
22 legal right at that point. And all the State's witnesses,
23 Marquita, Kristina, Zondra and Lamar Ray which I believe
24 nicknamed Rachet or Racket all said he was angry, angry,
25 angry, angry, angry, angry, angry. All of them said that

1 over and over and over again. So I'd say the State did a
2 good job proving voluntary manslaughter to you as well.
3 Now, the State has to disprove manslaughter. Again, if you
4 have a question in your mind between manslaughter and
5 murder, go with manslaughter. The Judge is going to
6 instruct you on that. They have to disprove manslaughter
7 as well, self-defense and manslaughter, have to disprove
8 both of those. Now, they're trying to prove malice. Okay?
9 Let you read malice, let you see what malice was. How are
10 they going to prove malice in this case? Okay. I think
11 there's two ways they're trying to prove it. They're
12 trying to prove it with Marquita and they're trying to
13 prove it with Kristina. Okay? Now, Marquita's testimony
14 was all over the place. She couldn't even get the interior
15 of the car color right, swore it was burgundy. But I will
16 tell you this, y'all saw that video. Y'all saw her walking
17 in there on that video. Watch her on that video and you
18 tell me if that's actions and response of a person who was
19 terrified for their life. Because I saw a woman who was
20 laughing, saw a woman who was grabbing onto this other
21 gentleman, was patting him, was having a good time, who was
22 pointing outside, laughing about what they just saw out
23 there. Watch it again and tell me if that's someone who's
24 terrified, and I think that right there contradicts what
25 she said. And Kristina Nuttry, she came in from Boston,

1 Massachusetts, all the way down here to Columbia, South
2 Carolina just to contradict the testimony of Marquita. She
3 said there was no way Marquita could've been in that car at
4 that point to hear all this. So these two witnesses the
5 State called directly contradict one another, directly.
6 Let me talk to you a little bit about reasonable doubt.
7 The State continues to -- reasonable doubt, reasonable
8 doubt, reasonable doubt. It's not reasonable doubt; it's
9 beyond a reasonable doubt, and let's make this clear and
10 make sure y'all remember it. It's not just if you have a
11 reasonable doubt in your head. You have to take all
12 reasonable doubts and be beyond that before you can have
13 conviction. Okay? So it's not just reasonable doubt; it's
14 beyond a reasonable doubt. Now, these legal terms are
15 problematic. So I'll have to try to -- you know, I'm sure
16 people watching football this weekend. What's the --
17 what's the standard for overturning video replay? Clear
18 and convincing evidence. That's after you watch the video,
19 you've seen clear and convincing evidence on there. Even
20 if we can look at it, even if we can split -- over knees
21 down (sic) -- suppose -- oh, that wasn't a catch made. You
22 have to see more than that. Those referees have to see
23 beyond that to be able to overturn a play in football.
24 That's a good example of reasonable doubt. Y'all -- if you
25 don't watch football, another good example I'd say would

1 be, you wake up in the morning and go to the fridge, got a
2 gallon a milk, and today is the 18th. Today's the 18th. And
3 you look at that milk, and it said that it expired on the
4 17th. Okay? And you just take that milk and chug out of
5 it, it should still be good. All right? It's only a day
6 over. But, no, you cap it and you smell it. The reason
7 why you smell it is because you have some doubt, and that's
8 again reasonable doubt. That smell, even though you know
9 it's probably good, that little extra bit, that's what they
10 have to get past. Okay? Now, I've once heard a saying
11 that defense attorney's trying to muddle up the water.
12 Okay? But the truth is a shiny silver coin that's sitting
13 at the bottom of the puddle at the bottom of a river bed.

14 COURT REPORTER - I'm having trouble hearing him,
15 Judge.

16 MR. SAWYER - Sorry. Excuse me. Better? The
17 truth is a shiny silver coin sitting at the bottom of a
18 river bed, and what we're trying to do is get out hands in
19 there and kick all this mud up and muddy up the water.
20 Ladies and gentlemen, I'd say the State's been trying to do
21 this this whole case. I'd say that the silver coin is what
22 Bernard told you. And all they've been trying to do is try
23 to cover-up, is trying to with witnesses that don't make
24 sense, just generally trying to confuse you and play on
25 your emotions to what this charge carries, and y'all swore

1 an oath to get rid of all that and pay attention to the
2 truth, and in this case I'd say the truth is that shiny
3 silver coin and the truth is Bernard's testimony. Don't
4 let the State muddy up the waters for you. And I believe
5 once y'all get back there and deliberate for a while, you
6 will find Bernard not guilty. Thank you.

7 THE COURT - Thank you, Mr. Sawyer. On behalf of
8 the State?

9 MS. WALKER - Thank you, Your Honor. May it
10 please the Court.

11 THE COURT - Yes, ma'am.

12 MS. WALKER - Good morning. Are you finished with
13 this?

14 MR. SAWYER - Yes. Do you need help with it?

15 MS. WALKER - No, I'll take of it.

16 MR. SAWYER - Sorry. Thank you.

17 MS. WALKER - As I was getting prepared for this
18 case I started looking at the evidence, the witness
19 statements, the defendant's confession and I started to try
20 to figure out what the defense was going to be. How do you
21 defend this case? What is the defense when multiple people
22 pick your client out of a line-up as the shooter in a
23 drive-by shooting? What's the defense when your client's
24 own baby's mother comes in and says he confessed to me?
25 What's the defense when your client's DNA is found on the

1 identity card, falsely used by the defendant to try to
2 illegally enter a nightclub? What's the defense when your
3 client himself confesses to murder? What's the defense?
4 How do you defend a case with such overwhelming evidence?
5 And honestly, ladies and gentlemen, to be honest with you I
6 was at a loss, until Pat Sharpe came up here and he gave
7 his opening statement last Tuesday. And then I realized
8 that the defense was to garner a little sympathy for Mr.
9 Haltiwanger by telling everybody that it's Mr. Sharpe's
10 first trial and then attack Luck Campbell for her 25 years
11 of service. Because when the law isn't on your side and
12 when the facts aren't on your side, attack Luck Campbell,
13 because maybe, just maybe, all of you will be so busy
14 looking for tricks to fall out of her sleeve, that you will
15 forget all about the murderer sitting at the table with Pat
16 Sharpe. But luckily, ladies and gentlemen, your job is to
17 evaluate the facts. As Judges say over and over, you are
18 not here to reward any friends or punish any enemies. You
19 are here to evaluate the facts. You're not here to reward
20 Mr. Sharpe for his first trial, congratulations; you're not
21 here to punish Ms. Campbell because she's been doing this
22 for the people of Richland County for 25 years. Your job
23 is to evaluate the facts, and the facts are what I want to
24 talk to you about. The facts, ladies and gentlemen, are
25 presented through the physical evidence that you will have

1 with you, as well as the testimony from the witnesses. And
2 there are several witnesses who came forward and I want to
3 talk to you about all of them, but there's some things that
4 quite frankly we agree with the defense about. August 25th,
5 2012, the defendant was in his car on St. Andrews Road when
6 he shot out of his car several times and one of those
7 bullets struck and killed 42 year old Jimmy Moti. We all
8 agree to that. What the defense wants to do is make a
9 drive-by shooting -- the first drive-by shooting in the
10 history of the United States of America be done in self-
11 defense. They want to make a drive-by shooting either
12 voluntary manslaughter or self-defense, whichever one they
13 can get you to buy, because remember what the defendant
14 said he has to do is to get his attorney convinced to tell
15 you guys it's manslaughter. Remember that phone call when
16 she cross examined him about it and he said, yes, I said
17 that. That's what they want you to do. The first drive-by
18 shooting to be done in self-defense. It's creative.

19 MR. SAWYER - Objection, Your Honor, facts not in
20 evidence. Facts not in evidence.

21 THE COURT - Overruled. You may proceed.

22 MS. WALKER - Thank you, Your Honor. And in order
23 to prove murder to you, we brought forward several
24 witnesses, Marquita Mobley and Kristina Nuttry. Marquita
25 Mobley and Kristina Nuttry, they both testified, and they

1 told you that they were staying at the Red Roof Inn, that
2 they decided to go to El Toro, and when they walked up and
3 they presented the ID, they realized Kristina Nuttry didn't
4 have her ID, and Jimmy, he was respectful and he was polite
5 and he told them that they couldn't get in, and then those
6 two people did what reasonable people do in a situation
7 like that. They decided to do something else that night.
8 They left, and as they were walking down the street, they
9 ran into a man who gave them a ride home, and that's the
10 man you saw in the video in that green t-shirt. They ran
11 into a man who gave them a ride home. They went to the Red
12 Roof Inn, hung out for about 15 more minutes and then they
13 left, and they went back towards El Toro to that Gazbah
14 parking lot, and that is when they said -- they told you
15 what they saw. And he's right. Mr. Sawyer was right about
16 one thing. Kristina Nuttry said Marquita Mobley wasn't in
17 the car. She got confused. You can look at the video and
18 you can see the time in which that door opens and she goes
19 inside. It's about a minute, maybe 50 seconds after the
20 defendant walks over and starts talking through that car
21 window. These two strangers, these two women who have no
22 dog in this fight, who don't know the defendant at all, no
23 bone to pick with him according to his own testimony, that
24 he told them he had been tried. They tried me. He tried
25 me, but he's not about that life. And when Ms. Campbell

1 asked him what he meant by he's not about that life, he
2 meant he was trying to infiltrate somebody he didn't know
3 anything about. He wasn't going to be tried. He wasn't
4 going to be disrespected. He wasn't going to be
5 embarrassed in front of his brothers because he wasn't
6 allowed to pay his way into the club, that he was mad, and
7 these two strangers tried to calm him down. They told him,
8 it's not worth it, go somewhere else, because they're going
9 to call the cops on you. They couldn't calm him down. He
10 told them what he was going to do. I'm going to -- I think
11 he said, let -- let these rounds fly, I'm going to shoot
12 them rounds were his words. Self-defense? He says I'm
13 going to go shoot the club up and then he goes and shoots
14 the club up. There's no self-defense. That's not
15 voluntary manslaughter. That's not the sudden heat of
16 passion. The sudden heat of passion would've been if he'd
17 walked in and I guess he saw either his wife or his baby's
18 mother or his girlfriend pick any of the three of them,
19 maybe in the throws of passion with another man and he lost
20 it and couldn't take it anymore and shot one of them. This
21 is a premeditated murder. He'd been disrespected by Jimmy
22 Moti, and he told them, I'm going to shoot the club up, and
23 then he went and shot the club up. Remember what Marquita
24 Mobley and Kristina Nuttry said. Two women who do not know
25 him who have no reason to come in here and make up stories

1 about him. Stories which if you remember are corroborated
2 by the defendant's statement, the second statement he gave
3 to Chief Wilson and Sergeant Lindler. Remember their
4 testimony. And Lamar Ray, remember when Lamar Ray, he came
5 in, he's the one that kept calling Jimmy Moti, Jimbo. He
6 said that the defendant approached the club, tried to get
7 in with an ID and he was turned away. And then Mr. Sawyer
8 told you everybody agrees that he had just started to walk
9 away peacefully. That is not the truth. Because remember
10 what Lamar Ray said. He said he was racket. He remembered
11 him. He was turned up. He was racket. He had become
12 boisterous and loud. And at that point, unlike he had to
13 do with Kristina and Maquita, at that point when the
14 defendant became so boisterous and so insistent upon
15 getting in and said F-you to the people standing out there,
16 Jimmy Moti did what he is absolutely authorized to do under
17 the law. He tried to eject the defendant and his racket
18 behavior from the nightclub, because under the laws of this
19 State, a person who is registered or licensed under this
20 chapter and was hired or employed to provide security
21 services on specific property is granted the authority and
22 arrest power given to sheriff's deputies. He had the same
23 power, the same rights as a sheriff's deputy that night.
24 The security officer may arrest a person violating or
25 charged with violating a criminal statute in this State but

1 possesses the powers of arrest only on the property on
2 which he is employed. The fake ID, the disorderly conduct.
3 He had the power to eject the defendant from the property,
4 and that's what he was doing. And then according to Lamar
5 Ray, Marquita Mobley and Kristina Nuttry, as he's walking
6 him out, defendant becomes boisterous; there's some sort of
7 confrontation and the defendant is maced in the back of the
8 back. The defendant testified it had no affect on him; it
9 hit him in the back. It didn't get in his eyes; he was
10 fine. And upon seeing this, his little brother, Trouble,
11 punches Jimmy Moti in the back of the head, at which point
12 according to Lamar Ray, Kristina Nuttry and Marquita
13 Mobley, after being assaulted from behind after trying to
14 deal with the boisterous defendant that he had in front of
15 him, that's when he pulls his gun. There's no death march
16 as the defendant wants you to believe where he's being -- a
17 gun is pointed at the back as he's marched off the
18 property. He pulls the gun after the defendant's little
19 brother, Trouble, punches him in the back of the head. But
20 remember one thing -- I want y'all to remember this. Do
21 y'all remember the defendant's testimony when he said, not
22 only did he pull the gun but he racked. Y'all remember
23 that? Sometimes when you're -- when you're trying to
24 change your story and you're trying to evolve to help you
25 out to get you out of something, your story can change. It

1 can just become too good. The lie can become too good to
2 you and you take it too far, which is what the defendant
3 did in this case. Remember, he said he racked it, and
4 that's when he got scared; that's when he got terrified,
5 because now there was a bullet in the chamber. Because I
6 want to (sic) have this with you. It's State's Exhibits
7 25. It was the threat of firearm, that was the victim's
8 and a magazine with 11 unfired .40 caliber cartridges.
9 This was the magazine that was recovered from Jimmy Moti's
10 gun that night. If you see on it, it has 11, which is the
11 number of bullets this holds. All 11 were found in here.
12 There was not a bullet in the chamber, because the gun was
13 never a threat. The lie got too good to him. He took it
14 too far, and it can be disproven. And all of those unfired
15 rounds are in this envelope. Remember Lamar said that
16 after he saw that he went down there and he told them that
17 -- that they weren't going to jump on Jimbo, that the
18 defendant and his brother got onto the Exxon, the Gazbah
19 parking lot, and you see that on the video. And he said he
20 turned and started walking away, as did Jimbo, and as he's
21 turning and walking away he hears gunshots; he sees -- he
22 sees Jimmy Moti down; someone's yelling, they're shooting,
23 they're shooting, and he looks over and he sees out of that
24 black car the defendant firing shots. He told you he saw
25 that, and he was very honest with you when he told you he

1 did not initially tell law enforcement that he saw the
2 shooting. He told them that he saw a person and pointed
3 that person out as the defendant, but he didn't tell them
4 that he initially saw the shooting, because he was afraid.
5 Who can blame him? He just saw the defendant shoot a man
6 because he didn't get into a club. What would the
7 defendant do to the person who pointed him out as the
8 shooter? Who wouldn't be afraid under those circumstances.
9 But he came here; he told you what he saw, and what he saw
10 just happens to be corroborated by Marquita Mobley,
11 Kristina Nuttry and the defendant's own statement, as well
12 as the forensic evidence in this case, because luckily in
13 this case we're not asking you to just go off of eyewitness
14 accounts. We're asking you to look at all of the evidence,
15 because those eyewitness accounts were corroborated by the
16 expert testimony in this case. Ila Simmons? She was the
17 GSR expert who testified about how GSR gets on people's
18 hands. The defendant left, sped off, because remember that
19 night he's not jumping up and down talking about self-
20 defense or sudden heat of passion; he's getting out of
21 there. He just committed a crime. He's leaving. So his
22 hands weren't suitable for GSR testing but the victim's
23 were, and there was no gunshot residue on the victim's
24 hands, but she also testified that if he had been within
25 six feet of the defendant when he fired those fatal shots,

1 she would expect GSR to be on his hands, and he wasn't. He
2 was like across the parking lot when he was shot in the
3 back, and I'll get to that in a second. There was David
4 Collins, ballistics expert. He testified about the
5 projectiles that they were able to recover, that those
6 projectiles were fired from the same gun, not the victim's
7 gun, and that the shell casings, while consistent with
8 those projectiles, can't be an exact match, because the
9 shell casings were damaged as they were run over on St.
10 Andrews Road. John Barron who testified that the
11 defendant's DNA was on that identity card that was used to
12 try to get into the club. Harold Bouknight, he was the one
13 who processed the car and talk about the trajectory path of
14 the bullet from inside of the car to outside of the car,
15 how the door handle was shot off, which is corroborated by
16 the defendant's statement when he says I shot so many times
17 I even shot the door handle off. Yvonne Woods, she came in
18 and she processed the scene and she was the one who
19 collected this gun and the magazine with the 11 unfired
20 cartridge rounds in it. Kristen Polis who attended the
21 autopsy. And Dr. Bradley Marcus, the chief pathologist for
22 Richland County who now they have in on their conspiracy to
23 frame that guy because of some monetary gain. Dr. Marcus
24 testified, and he talked to you about entry wounds and exit
25 wounds, and at the time I didn't understand why we were

1 making such a big deal about it, because it's pretty
2 straight forward, but I didn't know that the defendant was
3 going to talk about the victim charging at him, which is
4 why they need it to be an entry wound to the stomach. He
5 talked about this being a textbook entry wound in the
6 defendant -- in the victim's back. He talked about when
7 the gun is fired and that bullet comes, it's spiraling out
8 of the gun at a very high rate of speed, and that the first
9 thing it hits it's going to drill a hole, a circular hole
10 into that. Look at that hole. Textbook in the back, that
11 circular round hole. And then he -- Mr. Sawyer got up here
12 and said that Dr. Marcus didn't testify about the path that
13 the bullet took inside, but that's just not true. Remember
14 he talked about it piercing the liver and how many veins
15 and arteries there are in the liver and how much he would
16 begin to bleed, because the liver is a large, large organ.
17 So he did talk about that and how as that bullet tore
18 through Jimmy Moti from his back to his front, as it hit
19 different organs it began to tumble. And instead of having
20 that same really like motion, it begins to tumble, lose
21 speed and becomes irregular, which is what makes this
22 triangular-like exit wound. Remember that. Take these
23 pictures back there with you and see if what Dr. Marcus
24 said just actually makes a whole lot of common sense much
25 less expert testimony. But then Mr. Sawyer questioned him

1 about, well, what if the victim said he was hit in the
2 stomach, would that change your opinion? Well maybe. But
3 he was hit in the stomach; he had an entry wound and an
4 exit wound; when he put his hand down as he took his last
5 breath before he died on the concrete of that parking lot,
6 he's bleeding from the stomach. It makes sense that he
7 thought he was hit in the stomach, but remember the expert
8 testimony. Entry wound to the back, exit wound in the
9 stomach, which is problematic for the defense, because that
10 means that he simply wasn't charging at the defendant when
11 this happened. You heard from three investigators in this
12 case, Investigator Tai Jordan, Sergeant Chris Lindler and
13 Chief David Wilson. Investigator Jordan talked about going
14 to Allen Benedict Court, seeing the defendant, radioing in,
15 they swarm on him, they take him in without incident, they
16 read him his rights and he gives a statement.

17 MS. WALKER - Beg the Court's indulgence.

18 THE COURT - Yes.

19 MS. WALKER - Remember this Advice of Rights --
20 and you'll have both of them back there with you. This is
21 the first one from the first statement. He's giving them;
22 he waives them, signed his name. And then in that first
23 statement, the statement that Mr. Sawyer told you to throw
24 away -- can y'all see this?

25 (Jurors indicating yes)

1 MS. WALKER - He acknowledges having his brother,
2 Carlos Brown. He's not my real brother, but I call him my
3 brother; he and Terrell, my real brother, are brothers.
4 Terrell and I have the same father -- Terrell and he have
5 the same father; Terrell and I have the same mother.
6 Terrell and Carlos's father always treated me like I was
7 one of theirs. Did you go to a party a couple of weeks ago
8 where Carlos lives? Yes, sir. He just got out of prison
9 and I'd not seen my brother in several years; I wanted to
10 see him. Did you drive to the party? Yes, I drove a
11 little toyota; it was a crack rental. I didn't want to lie
12 to you; my car was in the shop. Because at this point in
13 time he doesn't want them to know about the black car he
14 has. That's why he talks about driving the little toyota.
15 He's even willing to go so far as to be some sort of a drug
16 dealer and say it's a crack rental, because hiding that car
17 and his possession of that car is so important to him.
18 Don't just throw away the first statement. Look at what he
19 intentionally leaves out, how he changes his statement, how
20 the statements evolve as he gets more and more information
21 about the case. Who was with you? It was me and Terrell.
22 We went down there to see him. How long did y'all stay?
23 We stayed a little while and there was an altercation and
24 we left. Have you spoken to Carlos since? I've spoken to
25 him once. He told me the police was coming to get him

1 about some homicide. He said he didn't know what was going
2 on. He knew. He knew why the police were coming to talk
3 to him about a homicide, because he used his ID to get into
4 the club. Did you pick up his ID while you were up there?
5 No. Because he can't be connected to that ID. He would
6 rather blame it on his brother or his half brother --
7 Terrell's brother, his brother's brother. Did you know if
8 anyone did? No. Where were you this past Saturday? At
9 home and back and forth to Benedict talking with girls.
10 Because he cannot put himself at that point at the scene.
11 He doesn't think they have enough information on him, so
12 he's just denying everything. Which one? Terrell, Tyrobia
13 and Larry Cornish stopped by for a little while. Larry's
14 not my brother but he's always out there. What were you
15 wearing Saturday night? A t-shirt and basketball shorts.
16 Does one of your brothers have a white crown vic? Yes,
17 Jonathan Sterling the III has one. It looks like a new
18 model, but you can tell it has age on it. He's wanting to
19 talk about Jonathan Sterling the III's white crown vic,
20 because that still doesn't tie him to the murder, and he's
21 still lying about that black crown vic and talking about
22 some sort of toyota he was driving. Was he with you
23 Saturday night? No. Lie. Who is Jon Sterling, the III's
24 father? Jon Sterling, Jr. and Jon the III have the same
25 father. He is also Terrell and Carlos's father. His name

1 is Jon Sterling. Did you go to any club on St. Andrews
2 Road and Broad River? No, sir. Did your brothers? No,
3 they were with me. Did you try and present that ID, an ID
4 that wasn't yours at a club on Saturday night? No. Did
5 you get into an altercation?

6 THE COURT - You're going to have to slow down a
7 little bit.

8 MS. WALKER - Oh, I'm so sorry, Your Honor.

9 THE COURT - That's all right.

10 MS. WALKER - Sorry. Did you get into an
11 altercation at a club Saturday night? No. And at this
12 point wouldn't his have been the perfect point to tell him
13 about the fact that he was marched around at gunpoint, that
14 somebody tried to run his pockets. But nope, no
15 altercation at all; everything's fine. Did you fire any
16 shots out of a car Saturday night? No. Were you at an
17 Exxon gas station next to Club El Toro Saturday night
18 talking to two girls? No. Were you in the Broad River
19 Road area anywhere Saturday night? No. Is everything you
20 told me the truth? Yes. Are you willing to take a
21 polygraph as it pertains to this statement? No. Now, I
22 don't blame him for that one. That polygraph's going to
23 mess him up. Then -- that statement was taken by Tai
24 Jordan and Sergeant Lindler. Tai Jordan's been doing this
25 for 13 years; Chris Lindler's been doing it for 17 and ½.

1 And then Chief Wilson testified. He's been doing this for
2 35 years, and he talked about that last statement, that
3 statement that the defendant gives after the law
4 enforcement officers listen to those jail phone calls he
5 made. Those three phones calls you'll have back there with
6 you where he's trying to do a cover-up. They want you to
7 ignore the cover-up, because the cover-up doesn't make any
8 sense if the shooting was done in self-defense. Who covers
9 up a shooting in self-defense? So after he's trying to get
10 everybody to hold him -- remember what he said? Tell my
11 brothers to hold it, because I held it. Well, wouldn't his
12 brothers speaking up help him if the man was charging at
13 them with a gun? Wouldn't his brothers telling police
14 officers that help him? But, no, he wants them to hold it.
15 He wants them to hold it because that never happened. And
16 they listened to those jail phone calls and when (sic) they
17 go and they interview Zondra again. And Zondra came in
18 here and she testified. She was reluctant; she was
19 hesitant. She didn't want to be here, but after a certain
20 number of questions, she said, yes, he told me what
21 happened. He told me that he got angry, that the man made
22 him mad and that he shot him. He didn't tell her anything
23 about the man charging at her with the gun. He didn't tell
24 her anything about the man pointing the gun at him. He
25 told her that Trouble punched the man in the back of the

1 head and the man drew his weapon. The story that he tells
2 her and the story that she tells police officers are the
3 same story that he says in that second statement. And
4 after doing that, they go out and they interview his
5 brothers, who didn't hold it, who talked to law enforcement
6 officers. And when they get that information they confront
7 the defendant, because people didn't hold it. They told
8 what they knew. At that point, remember, he said I've had
9 enough, I'll tell you what happened, and he signed that
10 Interrogation and Advice of Right's form again, agreed to
11 speak with them; they checked each one, checked the last
12 one where he waived his rights and he talked to them. And
13 this statement he says, is there something you want to tell
14 us that you didn't Wednesday night? Yes, I gave the
15 security guard my brother's ID; when I gave the man the ID
16 he looked at it and said it wasn't me; he said I need to
17 get out of his face and that it wasn't even my ID. I
18 turned away and I was talking junk. So even he admits that
19 he wasn't just going peacefully, despite what his lawyer
20 just told you. I was saying -- excuse my language -- I
21 would say, fuck you, to the guard. He started following me
22 and I was walking to the car, and then he was like, put
23 your hands on the car, and then I said, no; I was about to
24 leave. Then he pulled his gun out, I put my hands on the
25 air (sic) and I turned my back to him, he pulled the pepper

1 spray out and I saw him shaking the spray, then he sprayed
2 me in the head. The spray hit me in the back of the head.
3 Then my brother Trouble came up and hit the man in the
4 head. He and I both ended up in the gas station parking
5 lot, and that's when Trouble fell down; from there we ran
6 to our cars. Tyrobia had pulled my car up and I ran and
7 made him get out and me and Terrell jumped in. Tyrobia got
8 in the car with Trouble; we left out of the parking lot,
9 and I started shooting. We left out of the parking lot and
10 I started shooting. Nowhere in the statement it says he
11 talk about the man charging at him with a gun. That didn't
12 become relevant until later and I'll tell you why in a
13 second. I even shot the door handle. Where did you go? I
14 went to the XO Club with my brothers. We stayed there for
15 a minute. Who is Trouble? My little brother. His name is
16 Jonathan Sterling. Did you tell Zondra what happened?
17 Yes, sir. How did you get your brother's ID? When we went
18 to the party with him, he showed me his two IDs; I crept
19 (sic) one from him. I don't even know if he remembers or
20 not; he was drunk; then the altercation broke out between
21 me and Terrell; we came back to Columbia after that. Where
22 does Carlos live? Rock Hill. What car did you drive to
23 Rock Hill? The black Ltd. Different from that first
24 statement where he had the toyota. What did you do with
25 the car after Saturday night? Tyrobia and Trouble took it

1 to the country. Did you wipe the car down? Yes, I --
2 yes, I wiped down everything; I wiped it down with gas.
3 This is a whole lot of trouble to cover up a shooting that
4 he had to do in self-defense because a man was charging at
5 him with a gun. What did you do with the gun? I sold it
6 to a guy from New York; I knew he was from New York,
7 because I met him at the store; he had an accent. I sold
8 it to him for three hundred dollars. What kind of gun was
9 it? It was a .40; it had P80 on the side of it; it was
10 black and smaller than the Glock you have. How many shots
11 did you fire? I don't even remember. What did you do with
12 the shell casings in the car? I threw them in the river.
13 Did Zondra help you in any way? No, only thing she knows
14 is what I told her. Did you see yourself on the news?
15 Yes; I saw the video from the gas station; I broke down
16 crying; I didn't mean to do it. Is there anything else you
17 need to tell us? I'm sorry for what happened; I was drunk
18 and I acted like an asshole; I am sorry. He has so little
19 value for Jimmy Moti that he thinks taking his life is
20 nothing more than a drunken asshole moment. I am sorry for
21 what happened; I was drunk and I acted like an asshole.
22 Not, I was afraid; not, I was terrified; not, the man was
23 running at me with a gun; I was drunk and acted like an
24 asshole. Now, on Friday he came up here and he testified
25 and he gave you a whole different version of events. There

1 was a lot added to it. And over the weekend I was trying
2 to figure out what would make him change his story that
3 much. Do you remember that phone call that Ms. Campbell
4 crossed him about, which he said that he read the law
5 books, he read up on the law? He knew that he had to have
6 something in there that changed it from a cold-blooded
7 murder, which it was, to either self-defense or voluntary
8 manslaughter, whichever you guys are willing to buy and let
9 him off the hook for. And that's when he starts talking
10 about people running at him with guns, about being marched
11 through the parking lot, about the gun being cocked, which
12 we now know is certainly not true. That's when those
13 stories -- that's when that started to evolve, to evolve to
14 help him get out of trouble for what he had done. And the
15 thing that struck me, is that after being terrified, after
16 having a gun pulled on him and cocked, after someone
17 shooting at him or charging at him with a gun -- I'm sorry,
18 not shooting at him -- charging at him with a gun, he was
19 so terrified, he was so horrified that he didn't go to
20 police, because he says he doesn't like the police, but it
21 didn't even make him say, you know what, maybe tonight's
22 just not my night, I'm going to go home; I've already been
23 held at gunpoint, I'm going to go home. He's so terrified
24 that he goes to the strip club for three hours. Does that
25 make sense? Does that fly in the face of common sense? He

1 went to go celebrate. He decided what he was going to do
2 when he told the girls, Marquita, that he was going --
3 Marquita and Kristina, that he was going to go shoot up the
4 strip -- the um -- the El Toro, and then he achieved his
5 goal and then he went to go celebrate at the strip club.

6 MR. SAWYER - Objection, Your Honor, opinion --
7 evidence.

8 THE COURT - Overruled. You may proceed.

9 MS. WALKER - Thank you, Your Honor. He went to
10 go celebrate at the strip club, and stayed there for an
11 additional three hours. But when he comes in here and he
12 talks to you, he creates this whole new elaborate set of
13 facts, because in order for him to get off for being held
14 responsible for what he did, you guys have to believe this
15 new set of facts; you have to believe what he said Friday.
16 And in order for you to believe what he said Friday, you
17 have to believe that Chris Lindler and Chief Wilson, who
18 has been doing this longer than I've been alive, are
19 willing to put their careers on the line to frame, not the
20 governor, not a congressman, not a legislature, but to
21 frame who? That's what you have to believe in order to
22 believe the defendant's testimony. Mr. Sawyer wants you to
23 believe that his latest set of facts, what he told you
24 Friday, is the shining star at the bottom of a muddy pool.
25 And in order to find him not guilty, you have to believe

1 that. You have to believe that there was a grand
2 conspiracy to frame Gerald Bernard Haltiwanger, Jr. of
3 murder that started with Investigator Jordan, Chief Wilson
4 and Sergeant Lindler, and that not only did they have this
5 conspiracy to frame him by leaving things out of his
6 statement and making him look bad, but that they then went
7 and got two prostitutes, because that's always who you want
8 to bring in on the conspiracy to come in and talk about
9 what the defendant said and did that night. But then not
10 only did they stop there, but they were able to turn his
11 baby's mother and she came in and she was in on the
12 conspiracy. That's what you have to believe in order to
13 find him not guilty. Please, I beg you, judge this case on
14 credibility, the credibility of the witnesses and the
15 credibility of the evidence. Was the evidence
16 corroborated? And finally, after getting Chief Wilson,
17 Sergeant Lindler, Investigator Jordan, Marquita Mobley,
18 Kristina Nuttry, Zondra Gilyard, they went and got the EMS
19 lady to testify that the gun was holstered. Because if the
20 gun was holstered, he certainly wasn't charging anybody.
21 Here is the gun's holster, right here on the vest. It's
22 not here despite how much they want it to be. This is
23 where the taser goes. This is where the gun was holstered,
24 right here on this vest. And this is where Patricia Labbe
25 said she found it. And then they got, I guess, Dr. Marcus

1 in for good measure to say that the entry wound was to the
2 back. All of these things, all of this effort went into
3 framing him, and I'll bet you -- I'll bet you it's Ms.
4 Campbell's idea, because she's tricky like that. That's
5 what you have to believe in order to find him not guilty.
6 Please, please, judge this case on credibility, on
7 corroboration of evidence. Once you do that, you will find
8 this defendant guilty of the murder of Jimmy Moti. Thank
9 you.

10 THE COURT - Thank you. All right, ladies and
11 gentlemen, who needs to take a comfort break?

12 (Jurors indicating yes)

13 THE COURT - I figured that. Ladies and
14 gentlemen, you have not heard my charge on the law, you are
15 not prepared to deliberate, therefore, no not discuss this
16 matter or allow anyone to discuss it with you, but here's
17 what we're going to do. Y'all are to take your comfort
18 break. When everybody's had their comfort break, then
19 knock on the door and return. We will await you, and then
20 I will deliver the charge to you. Remember, leave your
21 notebooks here and do not discuss this matter or allow
22 anyone to discuss it with you, and we will await you. Just
23 knock on the door when you're ready to return.

24 (Jury exits the courtroom)

1 THE COURT - All right, anything from the State
2 before we take our short comfort break?

3 MS. WALKER - Nothing, Your Honor.

4 THE COURT - All right, from the defense?

5 MR. SAWYER - Your Honor, the only thing that I'd
6 add is that the State's made a big deal about Bernard's
7 right twice in the closings, look over his evidence and
8 look over the law. I'll just ask for a jury charge at this
9 point just to tell the jurors that he's allowed to do that,
10 that's his right. I think it's misleading to sit there and
11 act like him being able to read the law and have his lawyer
12 read him the law can - be able to read his evidence and his
13 lawyer read his evidence as something untoward is just
14 violative of his constitutional rights.

15 THE COURT - I think -- as I understood the
16 argument, the focus was the -- had to do with the telephone
17 conversations from the jail and his conversations with
18 others that I think he admitted those conversations about
19 manipulating the evidence, he said -- yes, based on cross
20 examination were you telling someone to destroy evidence,
21 and he said yes, and I think he says in the conversations
22 I've been reading the law, and I think the conversation was
23 then -- and then you told people to destroy evidence, and
24 he said yes. I mean -- is that where you're going -- is
25 that what the argument was?

1 MS. WALKER - Yes, Your Honor, that was the point
2 of the argument.

3 THE COURT - Yes. Yes, absolutely. I don't
4 believe that -- I don't -- I don't believe that's a charge
5 that would be required on -- particularly based on the
6 arguments, and I think the argument was a fair argument
7 under all those circumstances and would respectfully deny
8 your request to add that charge. I would ask you all to do
9 this for me. I have a verdict form and during -- I want
10 y'all to take your comfort break -- but if you'd do this
11 for me. Please take a look at the verdict form, and we
12 need to -- I'm just going to ask me if you'd put these ---

13 MS. WALKER - Yes, Your Honor. May I approach.

14 THE COURT - I'm asking you. Come on. Even
15 before you take your comfort break and then we'll be at
16 ease until we hear from the jury.

17 (WHEREUPON, COUNSEL APPROACH THE BENCH AND REVIEW
18 VERDICT FORMS)

19 (Recess taken)

20 THE COURT - Okay, how do I get the jury? How'd
21 this happen?

22 DEPUTY - He's coming?

23 BAILIFF - You want me to bring them on?

24 THE COURT - Yes, bring them out.

25 (Jury returns to the courtroom)

1 BAILIFF - Jury is seated, Your Honor.

2 THE COURT - Thank you so much. Ladies and
3 gentlemen, you have now heard all of the evidence and the
4 arguments of both sides. It is now my duty to instruct you
5 regarding the law applicable to this case. Ladies and
6 gentlemen, the indictment in this case charges the
7 defendant -- and if I use the term defendant, I mean Gerald
8 Bernard Haltiwanger, Jr. -- and the indictment in this case
9 charges Mr. Hatliwanger with murder. I remind you that the
10 fact that the defendant was arrested, charged and indicted
11 in this case is not evidence in this case, and it cannot be
12 considered by you as evidence of guilt in this case, nor
13 does it create any presumption or inference of guilt.
14 Ladies and gentlemen, the indictment is simply the formal
15 written instrument which contains the charge made against
16 the defendant. It's a notice document. It is the formal
17 document by which this case is brought into this Court, and
18 the indictment in this case, which is Indictment #2012-GS-
19 40-05298, states as follows or alleges as follows I should
20 say, that Gerald Bernard Haltiwanger, Jr. did in Richland
21 County on or about August the 25th, 2012 willfully,
22 feloniously and intentionally kill the victim, Mr. Jimmy
23 Moti, with malice aforethought, either express or implied
24 by means of gunshot wound, and the victim did die as a
25 proximate result thereof in violation of Section 16-310 of

1 the South Carolina Code of Laws, 1976, as amended. The
2 Defendant, Mr. Haltiwanger, has pled not guilty to this
3 indictment, and that plea places the burden on the State to
4 prove the defendant guilty beyond a reasonable doubt. A
5 person charged with committing a criminal offense in South
6 Carolina is never required to prove himself innocent or not
7 guilty. I charge you that it is an important rule of the
8 law that a defendant in a criminal trial no matter what the
9 seriousness of the charge may be will always be presumed to
10 be innocent of the crime for which the indictment was
11 issued unless guilt has been proven by evidence satisfying
12 you of that guilt beyond a reasonable doubt. This
13 presumption of innocence does not end when you begin your
14 deliberations, but it accompanies the defendant throughout
15 the trial until you reach a verdict of guilt based on
16 evidence satisfying you of that guilt beyond a reasonable
17 doubt. The presumption of innocence is like a robe of
18 righteousness placed about the shoulders of the defendant
19 which remains with the defendant until it has been stripped
20 from the defendant by evidence that satisfies you of the
21 defendant's guilt beyond a reasonable doubt. The
22 presumption of innocence is not a mere legal theory, and it
23 is not just a legal phrase. It is a substantial right to
24 which every defendant is entitled unless you the jury are
25 satisfied from the evidence of the defendant's guilt beyond

1 a reasonable doubt. What then is reasonable doubt in the
2 law? A reasonable doubt is the kind of doubt that would
3 cause a reasonable person to hesitate to act. The State
4 has the burden of proving the defendant guilty beyond a
5 reasonable doubt. Some of you may have served as jurors in
6 civil cases where you were told that it is only necessary
7 to prove that a fact is more likely true than not true,
8 such as by the greater weight or the preponderance of the
9 evidence. In criminal cases the State's proof must be more
10 powerful than that. It must be beyond a reasonable doubt.
11 Proof beyond a reasonable doubt is proof that leaves you
12 firmly convinced of the defendant's guilt. There are very
13 few things in this world that we know with absolute
14 certainty, and in criminal cases the law does not require
15 proof that overcomes every possible doubt. If based on
16 your consideration of the evidence you are firmly convinced
17 that the defendant is guilty of the crime charged, you must
18 find the defendant guilty. If on the other hand you think
19 there is a real possibility that the defendant is not
20 guilty, you must give the defendant the benefit of the
21 doubt and find him not guilty. In a little while you're
22 going to hear me talk to you about the charge of murder.
23 There is a lesser included offense called involuntary -- or
24 excuse me -- voluntary, not involuntary -- it is voluntary
25 manslaughter. It is a lesser included offense of murder.

1 Ladies and gentlemen, you're going to hear me tell you in a
2 little bit when we go over the verdict form that should you
3 find that the State has failed to prove that the defendant
4 is guilty beyond a reasonable doubt of the crime of murder,
5 then you will consider the lesser included offense of
6 voluntary manslaughter. Then if you find that the State
7 has met its burden of proof, you will consider that, and if
8 the State has met its burden of proof of voluntary
9 manslaughter beyond a reasonable doubt on the same, the
10 exact same standards that we are talking about you'd find
11 him guilty, but if you find that the State has failed to
12 meet its burden of proof with regards to voluntary
13 manslaughter, you would find the defendant not guilty.

14 Ladies and gentlemen, the defendant in a criminal case is
15 always entitled to the benefit of the doubt. Now, I remind
16 you that during this trial you and I have certain duties to
17 perform. As the Trial Judge it is my responsibility to
18 preside over the trial of this case and I have the duty to
19 rule on the admissibility of the evidence offered during
20 the trial. You are to consider only the competent evidence
21 before you. You are to consider only the testimony which
22 has been presented from the witness stand and any exhibits
23 which have been made a part of the record in this case. I
24 have the additional duty to charge you the law applicable
25 to this case. As the presiding Judge I am the sole Judge

1 of the law of this case, and it is your duty as jurors to
2 accept and apply the law as I state it to you even if you
3 disagree with it or if you have a preconceived idea about
4 what you think the law is or what it ought it should be and
5 it should differ from what I tell you the the law is.

6 Ladies and gentlemen, even if you disagree with what I tell
7 you the law is or if you have a preconceived idea -- maybe
8 you want to have a conversation with your legislator at
9 some point, but for our system to work correctly, you must
10 accept and you must apply the law exactly as I state it to
11 you. Ladies and gentlemen, in every case tried in this
12 Court before a jury, the jury, you, the jury, become the
13 sole, the exclusive, the only judge of the facts. A Trial
14 Judge cannot intimate, state, comment on or make any
15 statement to a trial jury about the facts in a case. Since
16 you the jury are the sole judge of the facts in this case,
17 you are not to infer from what I have said during the
18 progress of this trial in ruling on the admissibility of
19 evidence or otherwise or anything that I say now during
20 this course of this instruction to you that I have any
21 opinion regarding the facts in this case. The law doesn't
22 allow me to have an opinion regarding the facts in this
23 case. I have no opinion. That is a matter solely, solely,
24 for you to determine. As jurors it is your duty to
25 determine the effect, the value, the weight and the truth

1 of the evidence which has been presented during this trial.
2 Now, ladies and gentlemen, normally there are two types of
3 evidence which are presented during a trial. One's called
4 direct evidence and the other is circumstantial evidence,
5 and we're going to talk about them. I'm going to give you
6 an example. Direct evidence is the testimony of a person
7 who claims to have actual knowledge of a fact such as an
8 eyewitness. It is evidence which immediately establishes
9 the main fact to be proved. Circumstantial evidence is
10 proof of a chain of facts and circumstances which indicate
11 the existence of a fact. It is evidence which immediately
12 establishes collateral facts from which the main fact may
13 be inferred. Circumstantial evidence is based on inference
14 and not on personal knowledge or observation. Let me give
15 you an example. Last week we were about to feel like we
16 were in February, it was so cold, and they tell us it's
17 going to be cold tomorrow. Go with me to February. Let's
18 say it's February, late February; it's cold outside, snow
19 is the forecast. Y'all get snow in Columbia; we don't ever
20 get it in Summerville, but y'all get it in Columbia. It's
21 cold and snow is forecast. You walk out after supper about
22 9:00 o'clock at night and you look up and there's some
23 white frozen stuff hits you right in the eye. You truly
24 are an eyewitness when you say it's snowing. You're an
25 eyewitness to it snowing. You see it snow. Your testimony

1 would be that testimony which would immediately,
2 immediately establish the main fact to be proved. It's
3 snowing. You see it snowing. That's direct evidence.
4 Let's talk about circumstantial evidence. We'll go back to
5 February; it's freezing cold, snow is forecast, you look
6 outside just before you go to bed and all you see is your
7 poor, pitiful brown crunchy grass, but it's freezing cold
8 and snow's the forecast. You know when you go to bed that
9 all you see is your poor, pitiful brown crunchy grass, but
10 you do know that it's February, it's cold and snow is
11 forecast, and when you wake up in the morning, snow is
12 covering everything. Well, here's what you know. You know
13 that it's February, it's cold, snow was forecast when you
14 went to bed, brown, poor pitiful brown crunchy grass was
15 outside and snow covered everything in the morning. You
16 can testify to all of that, but the proof of those
17 collateral facts points to the existence of the fact that
18 it snowed overnight. Proof of the collateral facts which
19 points to the existence. You know that it snowed overnight
20 through inference. That is called circumstantial evidence.
21 Proof, the collateral facts which point to the existence of
22 a fact. The law makes absolutely no distinction between
23 the weight or value to be given either direct or
24 circumstantial evidence, nor is a greater degree of
25 certainty required of circumstantial evidence than of

1 direct evidence. Ladies and gentlemen, you should weigh
2 all the evidence in the case, and after weighing all the
3 evidence, if you are not convinced of the guilt of the
4 defendant beyond a reasonable doubt, you must find the
5 defendant not guilty. Now, necessarily to have met your
6 findings of fact, you must determine what is called the
7 credibility of the witnesses who have testified in this
8 case. What does credibility mean? It means believability,
9 believability. It becomes your duty as jurors to analyze,
10 evaluate the evidence and determine which evidence
11 convinces you of its truth. In determining the
12 believability or credibility of witnesses who have
13 testified in this case, you may believe one witness over
14 several witnesses or several witnesses over one witness.
15 You may believe a part of the testimony of a witness and
16 reject the remaining part of the testimony of that same
17 witness. You may believe the testimony of a witness in its
18 entirety, or you may reject the testimony of a witness in
19 its entirety. You may consider whether any witness has
20 exhibited to you any interest or bias or prejudice or other
21 motive in the case, and you may also consider the
22 appearance and the manner of the witness while on the
23 witness stand. These are examples. This is certainly not
24 exhaustive. You did not drop your common sense at the
25 courthouse door, ladies and gentlemen. Now, ladies and

1 gentlemen, in this case you have heard testimony about
2 witnesses who were deemed to be expert witnesses. We're
3 going to talk about that. Our rules of evidence ordinarily
4 do not permit witnesses to testify regarding their opinions
5 or conclusions. There is, of course, an exception to this
6 rule and that exists for witnesses who are deemed to be
7 expert witnesses, a witness who, education, experience,
8 knowledge, training and profession, they've become an
9 expert in some art, science, profession or calling and they
10 may state an opinion as to relevant and material matter in
11 which the witness claims to be an expert. And they may
12 also state the reasons that they have for the opinion. You
13 should consider any expert opinion received in evidence in
14 this case and like any other evidence, you give it the
15 weight you think it deserves. If you decide that the
16 opinion of the expert witness is not based on sufficient
17 education and experience or if you conclude that the
18 reasons given in support of the opinion are not sound or
19 that the opinion is outweighed by other evidence, you may
20 disregard the opinion entirely. An expert witnesses
21 testimony is to be given no greater weight than that of
22 other witnesses simply because the witness is an expert.
23 Further, you are not required to accept an expert's opinion
24 even though it is not contradicted. Expert witness
25 testimony is given for the purpose of helping you

1 understand the evidence. It is not given for the purpose
2 of controlling your judgment. Now, let's talk about
3 intent, intent. In order to establish criminal liability,
4 criminal intent is required. For example, the mental state
5 required to be proven by the State for a particular crime
6 might be purpose or intent, knowledge and the like.
7 Criminal intent must be proven by the State beyond a
8 reasonable doubt. We will talk about criminal intent in a
9 just a little bit with a little bit more specificity as it
10 applies to the charge in a lesser included offense, but
11 criminal intent must be proven by the State beyond a
12 reasonable doubt. Criminal intent is always a matter that
13 must be determined by the jury from the circumstances
14 surrounding the situation. Why? Because there is no way
15 that you can prove intent to a mathematical certainty and
16 there certainly isn't any way that medical science can
17 dissect a person's brain and determine what the person had
18 in mind. So the law says that criminal intent may be
19 inferred from the circumstances shown to have existed.
20 This is how you make a determination of whether or not the
21 element requiring intent was present. It is not necessary
22 to establish intent by direct or -- I can say direct and
23 positive or direct or positive evidence -- or direct and
24 positive evidence, but intent may be established by
25 inference in the same way as any other fact by taking into

1 consideration the act of the parties and all the facts and
2 circumstances of the case. Ladies and gentlemen, criminal
3 intent is a mental state. It is a conscious wrongdoing.
4 It is up to you to determine what the defendant intended to
5 do based upon the circumstances shown to have existed.
6 Criminal intent can arise from action or failure to act.
7 It can arise from an indifference to duty or consequences
8 that are considered by the law to be the equivalent of
9 criminal intent. Now, ladies and gentlemen, there has been
10 evidence presented that witnesses have made prior
11 statements, which are not consistent with the witnesses
12 present testimony. You may use this evidence to decide
13 whether to believe the witness. You may also use evidence
14 of the earlier contradictory statements to determine the
15 truth of those statements. It is up to you to determine
16 whether to believe the earlier statement or the testimony
17 given at trial. If a witness has shown to have knowingly
18 testified untruthfully concerning any material matter, you
19 may consider this in determining whether to trust the
20 witnesses testimony as to other matters. You may reject
21 all the testimony of that witness or give all or part of
22 the testimony the weight that you think it deserves. The
23 statement alleged to have been made by the defendant has
24 been admitted into evidence in this case. While the Court
25 has determined that the statement is admissible, I instruct

1 you that you make the ultimate decision of whether or not
2 the defendant made the statement. If the defendant did
3 make the statement, you must determine whether the
4 statement was made by the defendant voluntarily and of his
5 own free will. This means that the statement was not
6 caused by pressure or force or fear or threats or coercion
7 or intimidation or by hope or promise of leniency or a
8 reward of any kind. In determining whether the statement
9 was voluntary, you should consider both the circumstances
10 of the defendant and the details of the questioning. Some
11 factors which you must consider are the age of the
12 defendant, the defendant's education or lack of it, the
13 defendant's mental ability or mental capacity, the
14 defendant's IQ or intelligence, the defendant's background
15 and environment, the place and the length of detention, the
16 nature of the questioning and the advice or lack thereof to
17 the defendant of his constitutional's rights including but
18 not limited to the right to remain silent, that any
19 statement could be used against him in a Court of law, the
20 right to have a lawyer present, that if he could not afford
21 a lawyer, a lawyer would be appointed to represent him
22 without any cost, and that he could stop making a statement
23 at any time. You must carefully consider all of the
24 surrounding circumstances before you give any weight to an
25 alleged statement. The State has the burden of proving

1 beyond a reasonable doubt that the alleged statement was
2 voluntary. If you determine it was, you may give the
3 statement any further consideration that you deem proper.
4 You must decide what weight, if any, should be given to the
5 alleged statement. If you determine the alleged statement
6 was not the free and voluntary statement of the defendant,
7 you should not consider the statement at all. Now, ladies
8 and gentlemen, I further charge you that under our law and
9 the code section -- I got -- it's so nice to still have
10 books. We have so much on the internet -- I mean not
11 internet -- but on the computers now -- it's so nice to
12 have books. We have books. And these are the statutory
13 laws of the State of South Carolina, and I'm going to read
14 to you a little bit from one, and that -- actually from a
15 couple of them. This is South Carolina Code annotated
16 Section 40-18-110 and it says that a person who is
17 registered or licensed under this chapter and who was hired
18 or employed to provide security services on specific
19 property is granted the authority and arrest power given to
20 sheriff's deputies. The security officer may arrest a
21 person violating or charged with violating a criminal
22 statute of the State but possesses the powers of arrest
23 only on the property on which he is employed. Now, ladies
24 and gentlemen, I'm now going to talk to you about the
25 offense of murder and then I'm going to talk to you about

1 the lesser included offense of voluntary manslaughter.
2 We'll start with murder. Ladies and gentlemen, the
3 indictment charges Mr. Haltiwanger with murder. The State
4 must prove beyond a reasonable doubt that the defendant Mr.
5 Haltiwanger killed another person with malice aforethought.
6 What is malice? Well, malice is hatred, ill will or
7 hostility towards another person. It is the intentional
8 doing of a wrongful act without just cause or excuse and
9 with an intent to inflict an injury or under circumstances
10 that the law will infer an evil intent. Now, malice
11 aforethought does not require malice exists for any
12 particular time before the act is committed, but malice
13 must exists in the mind of the defendant just before and at
14 the time that the act is committed, therefore, there must
15 be a combination of the previous evil intent and the act.
16 Malice aforethought may be express or inferred. These
17 terms express and inferred do not mean different kinds of
18 malice but merely the manner in which malice may be shown
19 to exists, that is, either by direct evidence or by
20 inference from the facts and circumstances which are
21 proved. Express malice is shown when a person speaks words
22 which express hatred or ill will for another or when a
23 person prepared beforehand to do the act, which was later
24 accomplished. For example, lying in wait for a person or
25 any other acts of preparation going to show that the deed

1 was within the defendant's mind would be express malice.
2 Now, malice may be inferred from conduct showing a total
3 disregard for human life. Now, ladies and gentlemen, I now
4 want to tell you -- talk to you about self-defense. Ladies
5 and gentlemen, I'm going to very briefly tell you that the
6 defendant has raised the defense of self-defense. Self-
7 defense is a complete defense, and if it is established,
8 you must find -- let me -- you must find the defendant not
9 guilty. The State -- the State has the burden of
10 disproving self-defense by proof beyond a reasonable doubt.
11 The State has the burden of disproving self-defense by
12 proof beyond a reasonable doubt. If you have a reasonable
13 doubt of the defendant's guilt after considering all the
14 evidence, including evidence of self-defense, then you must
15 find the defendant not guilty. On the other hand, if you
16 have no reasonable doubt of the defendant's guilt after
17 considering all the evidence, including the evidence of
18 self-defense, then you must find the defendant guilty. The
19 following elements are required to establish self-defense.
20 Number one, first, the defendant must be without fault in
21 bringing on the difficulty. If the defendant's conduct was
22 the type which was reasonably calculated to and did provoke
23 a deadly assault, the defendant would be at fault in
24 bringing on the difficulty and would not be entitled to an
25 acquittal based on self-defense. Second, the second

1 element of self-defense is that the defendant was actually
2 in imminent danger of death or serious bodily injury or
3 that the defendant actually believed he was in imminent
4 danger of death or serious bodily injury. If the defendant
5 was actually in imminent danger, it must be shown that the
6 circumstances would've warranted a person of ordinary
7 firmness and courage to strike the fatal blow to prevent
8 death or serious bodily injury. If the defendant believed
9 he was imminent danger of death or serious bodily injury,
10 it must be shown that a reasonably prudent person of
11 ordinary firmness and courage would have had the same
12 belief. In deciding whether the defendant actually was or
13 believed he was in imminent danger of death or serious
14 bodily injury, you should consider all the facts and
15 circumstances surrounding the case, including the physical
16 condition and characteristics of the defendant and the
17 alleged victim. Now, the final element of self-defense is
18 that the defendant had no other probable way to avoid the
19 danger of death or serious bodily injury than the act as
20 the defendant did in this particular circumstance. Now,
21 ladies and gentlemen, I want to talk to you about the
22 lesser included offense of voluntary manslaughter. Ladies
23 and gentlemen, if you find that the State has failed to
24 prove beyond a reasonable doubt that the defendant
25 committed murder, you may consider whether the State has

1 proved beyond a reasonable doubt that the defendant
2 committed voluntary manslaughter. Now, what do we mean by
3 lesser included offense? You know the -- you see around
4 this time of the year, somebody called them Russian eggs or
5 something where you have like -- you take off one little
6 egg and there's another little egg underneath it -- I don't
7 know why lesser included offense is like take off the --
8 and then there's -- take off the -- the high -- the greater
9 offense, murder, and then there's a little egg. That's a -
10 - voluntary manslaughter's a lesser included. It's called
11 a lesser included offense. Voluntary manslaughter is a
12 lesser included offense of murder. Now, to prove voluntary
13 manslaughter, the State must prove beyond a reasonable
14 doubt that the defendant took the life of another in the
15 sudden heat of passion based on sufficient legal
16 provocation, both heat of passion and sufficient legal
17 provocation must be present at the time of the killing to
18 constitute voluntary manslaughter. Sudden heat of passion
19 may for a time affect a person's self-control and
20 temporarily disturb a person's reason. The sudden heat of
21 passion must be the type that would make an ordinary person
22 unable, not able, to coolly reflect on his actions and
23 would produce an uncontrollable impulse to do violence.
24 Sufficient legal provocation must be the type that would
25 make a person of ordinary reason and caution become enraged

1 and to lose control temporarily. The provocation needed
2 for voluntary manslaughter must come from some act of or
3 related to the alleged victim. Words alone, however vulgar
4 or insulting are not enough to be legal provocation. Where
5 death is caused by the use of a deadly weapon, the words
6 must be accompanied by some overt threatening act which
7 could have produced the heat of passion. The exercise of a
8 legal right, no matter how offensive it is to another, is
9 never sufficient legal provocation for voluntary
10 manslaughter. If the heat of passion had cooled or if
11 there was enough time between the provocation, if any, and
12 the killing for the passion of a reasonable person to cool,
13 the killing would not be voluntary manslaughter. In
14 deciding whether a reasonable person would've had enough
15 time to cool off, you should consider all the circumstances
16 surrounding the killing. You may consider the nature of
17 the provocation, if any, the defendant's mental and
18 physical state, the circumstances and relationship between
19 the parties. You must resolve any reasonable doubt between
20 murder and voluntary manslaughter in favor of voluntary
21 manslaughter. Now, ladies and gentlemen, I further charge
22 you that voluntary intoxication, voluntary intoxication
23 does not relieve an individual from criminal responsibility
24 and is generally not a valid defense in South Carolina.
25 And I further charge you that a killing may be voluntary

1 manslaughter where a legal arrest is attempted in an
2 unlawful manner as where the passion of the accused is
3 aroused by the employment of unnecessary violence. Now,
4 ladies and gentlemen, with regards to, of course, the
5 charge, I'm now going to go over with you the verdict form,
6 the verdict form. Before I do that, ladies and gentlemen,
7 I need you to keep in mind two things. Number one, your
8 verdict must be unanimous, must be unanimous. Now, I have
9 my two alternates. That should be a hint to you that on
10 this next occasion I want you to remain here with me in the
11 courtroom if you'd be so kind. Now, secondly, ladies and
12 gentlemen, on this verdict form there is the charge and
13 then the lesser included offense and then two possible
14 verdicts, ladies and gentlemen, and I've written on this
15 piece of paper; ladies and gentlemen, I could've written
16 just as legitimately in the other order. The one that's
17 second could be first and the one that's first could be
18 second, and the -- I just don't want you to take any hidden
19 meaning in which the order in which the two possible
20 verdicts are put on paper being not guilty and guilty of
21 course. Now, I'm going to come down there. So remember
22 your verdict must be unanimous which means this must be the
23 verdict of all 12 of you. This is not the verdict of any
24 one of you or in the majority certainly certainly doesn't
25 rule, but this must be the verdict of each and every one of

1 you. Ladies and gentlemen, madam presiding juror,
2 irrespective of which is this jury's verdict, I just need
3 it to be clear, so I just want you to circle it when you do
4 it, okay, so there's no question but what is this jury's
5 verdict. All right, number one, ladies and gentlemen, as
6 to the charge of murder, we the jury unanimous -- my
7 children think I'm a nag and y'all are learning that, too -
8 - unanimously find the defendant -- there are two possible
9 verdicts, guilty or not guilty. Ladies and gentlemen, if -
10 - if you find that the State has sustained its burden of
11 proof and -- of being beyond a reasonable doubt and you
12 find the defendant guilty, you circle that. If you find
13 that the State has failed to meet its burden of proof of
14 beyond a reasonable doubt with regards to murder, you
15 circle not guilty. Now, ladies and gentlemen, if you find
16 that the State has failed to prove the defendant guilty of
17 murder, then you may consider the lesser included offense
18 of voluntary manslaughter, voluntary manslaughter, and as
19 to the lesser included offense of voluntary manslaughter,
20 there are two possible verdicts, guilty or not guilty, and
21 if you consider the lesser included offense and you find
22 that the State has met its burden of unanimously finding
23 that the State has met its burden of proof of beyond a
24 reasonable doubt, then you determine that the defendant is
25 guilty, you circle guilty. If you find that the State has

1 failed to meet its burden of proof with regards to
2 voluntary manslaughter, you circle not guilty. In other
3 words, just whichever verdict this jury reaches -- I just
4 need it to be clear. Now, ladies and gentlemen, obviously
5 should you make a determination that the defendant is
6 guilty of murder, then you don't consider -- you don't
7 consider voluntary manslaughter, because it is -- remember,
8 it is a lesser included offense, and it is in the instance
9 that you find that the State has failed to meet its burden
10 of proof with regards to the offense of murder that you may
11 consider the voluntary manslaughter and then you will make
12 your determination, again, unanimously. And the
13 determination is whether or not the State has met its
14 burden of proof of beyond a reasonable doubt. Now, ladies
15 and gentlemen, in a moment I'm going to ask you to step to
16 your jury room with this instruction, do not discuss this
17 matter or allow anyone to discuss it with you, and leave
18 your notebooks in your seats, and you will be wondering,
19 why in the world, you've been telling us -- now's when we -
20 - it's going to be time to deliberate. Let me tell you
21 what's going to happen when you step to your jury room on
22 this next occasion. I'm simply going to turn to these
23 lawyers and I'm going to ask them two questions. Have I
24 given this jury all of the law that they may need for their
25 deliberations, and have I stated it to them correctly?

1 Now, sometimes, ladies and gentlemen, I fail, and it's my
2 failure -- I failed to give a jury all of the law that they
3 may need for their deliberations, and in the event that I
4 need to bring you back out because I have failed to give
5 you all of the law that you may need and needed to have
6 instructed you on another part of the law, I ask you in
7 advance, please, do not consider that additional
8 instruction with any emphasis. I'm not trying to emphasize
9 any part of the law. I'm just trying to get it right and
10 give you all the law that you may need for your
11 deliberations. Now, ladies and gentlemen, sometimes -- and
12 goodness knows it's not intended -- but sometimes something
13 may have just come out wrong, and sometimes I need to
14 invite juries to come back out for the reason that I need
15 to correct something that I have told you that needs to be
16 corrected, so I ask you in advance, if I need to bring you
17 back out because I have failed to give you an instruction
18 correctly and I need to correct something, I ask you in
19 advance to please allow me to do that, to correct my error
20 in your minds. Now, in the event that I do not need to
21 bring you back out, then you will be brought the verdict
22 form and the exhibits and you will be brought a specific
23 instruction to begin your deliberations. Now, I need to
24 also instruct you that all 12 of you must be present for
25 you to deliberate. So if somebody needs to take a comfort

1 break, stop your deliberations, take a comfort break,
2 reconvene your deliberations when all 12 of you are
3 together again. Just keep in mind all 12 of you have to be
4 present for you to deliberate to discuss this matter. Now,
5 when you have concluded your deliberations and you have
6 filled out your verdict form -- and just to -- and I think
7 you saw it, but you will sign yours, presiding juror and
8 you know who you are. Just for your reference, today is
9 the 18th of November, 2013. So you'll date it; you'll sign
10 it. You will return to the courtroom and you will then
11 take the verdict form and you will pass it to one of our
12 bailiffs who will pass it to me -- may pass it the clerk
13 who will pass it to me. In other words, you do not publish
14 the verdict; it comes to me. You do not publish it. Now,
15 ladies and gentlemen, I do want to leave you with one last
16 concluding thought, and it's this. The word verdict comes
17 from a latin phrase veredicto, which means to speak the
18 truth, to speak the truth, which is now your task. Please
19 step to your jury room. Leave your notebooks in your seat
20 and do not discuss this matter or allow anyone to discuss
21 it with you. We'll be with your shortly.

22 (Jury exits the courtroom)

23 THE COURT - All right, additions, exceptions from
24 the State?

1 MS. CAMPBELL - Your Honor, the only thing that --
2 I noticed this is -- when you were doing criminal intent --
3 on the last paragraph you skipped a part where it may arise
4 from negligence or recklessness ---

5 THE COURT - Yes, and let me tell you why, because
6 ---

7 MS. CAMPBELL - I understand the negligent ---

8 THE COURT - Exactly.

9 MS. CAMPBELL - The recklessness that I was ---

10 THE COURT - The reckless part of it I think is
11 assumed when we talk about a conscious disregard for human
12 life I think is a better definition. And recklessness is
13 so associated in my mind of negligence and involuntary and
14 I think that the better definition is the conscious
15 disregard for human life. You know, that -- that goes in -
16 - the part that we put in ---

17 MS. CAMPBELL - You mean inferred intent?

18 THE COURT - Exactly. Exactly. I think that's so
19 much a more appropriate ---

20 MS. CAMPBELL - That's fine.

21 THE COURT - --- definition. That's the reason
22 why and I know that -- and I do that because it
23 recklessness negligence -- that's a civil overlay for me
24 and that would be the reason why. All right. Yes, sir?

1 MR. SAWYER - Thank you, Your Honor. Other than
2 just to renew our objections ---

3 THE COURT - Sure.

4 MR. SAWYER - --- the inclusion and exclusion of
5 the prior jury verdicts we've requested, just because we're
6 a whole weekend later we're just renewing all our prior
7 objections and motions that we have made in the past,
8 including mistrial motions, inclusions of those, ID's (sic)
9 the inclusion of testimony and any other objections we
10 might have made.

11 THE COURT - Thank you so much. And the rulings
12 will stand as made earlier. Now, I need you all to do this
13 for me. Please, look through the evidence and the verdict
14 form one more time to be sure that what is going to this
15 jury is what's supposed to be going to the jury. I am the
16 Judge that had the confession in the back pocket of the
17 blue jeans that nobody knew about, and I've always been
18 very sensitive about that and I always want my lawyers to
19 really look at the evidence that's actually going back to
20 the jury, so do that for me. Seriously, it happened in
21 Calhoun County. It was in the back pocket and defendant
22 put -- the defense put in a pair of jeans because identity
23 was very important and one of the jurors after the trial
24 said, sure am glad that confession was in that back pocket
25 and told the solicitor and the solicitor, you know, thank

1 goodness brought it to my attention and the case was
2 retried. So I am very sensitive about my lawyers helping
3 me by looking one more time at the exhibits before they go
4 back. So y'all come up and do that for me, please.

5 MR. SAWYER - Thank you, Your Honor. I believe
6 Ms. Campbell's getting the laptop ready for the video?

7 MS. CAMPBELL - We have a laptop that we send back
8 on these cases that's clean. Feel free to look at it.
9 It's the one we use.

10 MR. SAWYER - We'll just -- I'll get Mr. Sharpe to
11 go ahead and look at it.

12 THE COURT - And do you think we need to have a
13 designated geek on the -- maybe instead of presiding juror,
14 we need to have designated geek these days.

15 MR. SAWYER - I don't know. We have quite a few
16 fairly intelligent individuals back there, so I think ---

17 THE COURT - I think you're right. I think we
18 have -- probably half the jury could run it.

19 (WHEREUPON, COUNSEL REVIEWS THE EXHIBITS AND
20 VERDICT FORM.)

21 THE COURT - And then y'all we going to be in
22 recess until we hear from the jury and counsel, I actually
23 need to see you guys just when y'all finish doing that.
24 I'm going to wait, you know, to talk about a plan.

1 (DISCUSSION IS HELD BETWEEN COUNSEL AND THE COURT
2 REGARDING THE LAPTOP; WHEREUPON IT IS DECIDED THE LAPTOP
3 WOULD NOT GO BACK TO THE JURY UNLESS THEY REQUEST IT.)

4 BAILIFF - Your Honor, they wrote a note could
5 they have their pads?

6 THE COURT - Oh, yes, yes, yes. Absolutely.
7 That's my mistake. Of course they can have their pads.

8 (JURY DELIBERATES AT 1:15 P.M.)

9 (COURT IN RECESS AWAITING VERDICT)

10 (NOTES MARKED AS COURT'S EXHIBITS NUMBERS 9 AND
11 10.)

12 (VERDICT IS REACHED AT 2:35 P.M. PER THE BAILIFF
13 - NOT ON RECORD)

14 (COURT REMAINS IN RECESS AWAITING JUDGE BENJAMIN)

15 (JUDGE DeANDREA BENJAMIN ENTERS THE COURTROOM TO
16 RECEIVE VERDICT AT 3:07 P.M.)

17 THE COURT - All right, good afternoon. You may
18 be seated. All right, I am not Judge Goodstein. I'm Judge
19 Benjamin, but she is -- I'm sure you all probably know.
20 She stepped out. She had to go to the swearing in, so
21 she's asked that I take the verdict which I will, and I
22 believe she's going to just -- depending on what happens,
23 if there's -- if they need her after the verdict she'll be
24 around for any post-trial motions or anything like that.
25 She'll be back in a little bit. All right, so I'm just

1 taking the verdict. All right. All right, you can bring
2 them in.

3 (JURY RETURNS WITH VERDICT AT 3:08 P.M.)

4 BAILIFF - Jury is seated, Your Honor.

5 THE COURT - All right, ladies and gentlemen of
6 the jury, as you probably have already figured out, I'm not
7 Judge Goodstein. She had to leave and I am Judge Benjamin,
8 and I will be taking the verdict from you at this time.
9 Madam Forelady, it's my understanding that you all have
10 reached a verdict. Is that correct?

11 FORELADY - That's correct.

12 THE COURT - All right. And is that the verdict
13 of all 12 jurors?

14 FORELADY - Yes.

15 THE COURT - All right, and can you hand that to
16 the bailiff?

17 (WHEREUPON, VERDICT IS HANDED UP TO THE BAILIFF
18 AND THEN TO THE COURT.)

19 THE COURT - All right, yes, ma'am, I'm going to
20 ask the clerk to publish the verdict.

21 DEPUTY CLERK - Yes, Your Honor. Indictment
22 #2012-GS-40-05298, State of South Carolina versus Gerald
23 Bernard Haltiwanger, Jr., as to the charge of murder, we
24 the jury unanimously find the defendant guilty, signed #148

1 foreperson, November the 18th, 2013. Madam Forelady, is
2 this your verdict and the verdict of the entire jury?

3 FORELADY - Yes, it was.

4 DEPUTY CLERK - Thank you.

5 THE COURT - All right, anything else from the
6 jury on behalf of the State?

7 MS. WALKER - Nothing from the State, Your Honor.

8 THE COURT - Anything on behalf of the defense?

9 MR. SAWYER - Your Honor, we'd ask that you poll
10 the jury at this time.

11 THE COURT - All right. Yes, ma'am, I'm going to
12 ask the clerk to poll the jury.

13 DEPUTY CLERK - Ladies and gentlemen of the jury
14 I'm going to ask you two questions relating to your
15 verdict. Please answer yes or no to both questions as I
16 call out your number. Number 148, was this your verdict?

17 JUROR - Yes.

18 DEPUTY CLERK - Is it still your verdict?

19 JUROR - Yes.

20 DEPUTY CLERK - Number 128, was this your verdict?

21 JUROR - Yes.

22 DEPUTY CLERK - Is it still your verdict?

23 JUROR - Yes.

24 DEPUTY CLERK - Number 119, was this your verdict?

25 JUROR - Yes.

1 DEPUTY CLERK - Is it still your verdict?

2 JUROR - Yes.

3 DEPUTY CLERK - Number 97, was this your verdict?

4 JUROR - Yes.

5 DEPUTY CLERK - Is it still your verdict?

6 JUROR - Yes.

7 DEPUTY CLERK - Number 99, was this your verdict?

8 JUROR - Yes.

9 DEPUTY CLERK - Is it still your verdict?

10 JUROR - Yes.

11 DEPUTY CLERK - Number 202, was this your verdict?

12 JUROR - Yes.

13 DEPUTY CLERK - Is it still your verdict?

14 JUROR - Yes.

15 DEPUTY CLERK - Number 109, was this your verdict?

16 JUROR - Yes.

17 DEPUTY CLERK - Is it still your verdict?

18 JUROR - Yes.

19 DEPUTY CLERK - Number 301, was this your verdict?

20 JUROR - Yes.

21 DEPUTY CLERK - Is it still your verdict?

22 JUROR - Yes.

23 DEPUTY CLERK - Number 9, was this your verdict?

24 JUROR - Yes.

25 DEPUTY CLERK - Is it still your verdict?

1 JUROR - Yes.

2 DEPUTY CLERK - Number 140, was this your verdict?

3 JUROR - Yes.

4 DEPUTY CLERK - Is it still your verdict?

5 JUROR - Yes.

6 DEPUTY CLERK - Number 93, was this your verdict?

7 JUROR - Yes.

8 DEPUTY CLERK - Is it still your verdict?

9 JUROR - Yes.

10 DEPUTY CLERK - Number 219, was this your verdict?

11 JUROR - Yes.

12 DEPUTY CLERK - Is it still your verdict?

13 JUROR - Yes.

14 DEPUTY CLERK - Thank you. The jury's been

15 polled, Your Honor.

16 THE COURT - All right, thank you. Ladies and
17 gentlemen of the jury, I would like to thank you for your
18 service. I know you began on last week and for you coming
19 back today. You are excused from serving this week. The
20 clerk does have some information, some paperwork for you to
21 take into work. Once again, I know on behalf of everyone
22 here in Richland County, including Judge Goodstein in her
23 absence that we are thankful for your service this week.
24 We appreciate your sacrifice in being here and I wish you
25 all well, the very best. Thank you.

1 (JURY EXITS THE COURTROOM)

2 THE COURT - All right, Judge Goodstein will be
3 back at 4:30 and she will entertain post-trial motions at
4 that time and proceed I guess in the sentencing at that
5 time. All right, thank you. So if you all could just be
6 back at 4:30.

7 MS. WALKER - Thank you, Judge.

8 (COURT IN RECESS AWAITING JUDGE GOODSTEIN)

9 (JUDGE GOODSTEIN RETURNS TO THE COURTROOM AND
10 COURT RESUMES AT 4:37 P.M.)

11 THE COURT - Thank you everyone. Please be
12 seated. And counsel I just want to thank you for
13 cooperating so that the jury would not have to wait until I
14 returned and I really do appreciate that and just -- let me
15 just publicly say how much I appreciate Judge Benjamin
16 doing that for me. I've only waited, what, 25 years for
17 that, so that was pretty nice. All right, do you have --
18 you've got a sentencing sheet?

19 MS. CAMPBELL - I believe so ---

20 THE COURT - Thank you, and of course, I need to
21 hear, please, the defendant's record.

22 MS. CAMPBELL - Your Honor, as far as the
23 defendant's record, it starts back in 2005, he was
24 convicted of simple possession of marijuana. In 2006 he
25 was convicted of burglary in the second degree and he has a

1 separate conviction for use of vehicle without owner's
2 permission, then as far as convictions on criminal domestic
3 violence of a high and aggravated nature, in March of 2009
4 he was charged with CDVHAN where he attacked his wife by
5 slamming her to the -- dragging her to the ground in
6 pavement causing extensive bruising and contusions. He was
7 -- she was transported for a possible hip or leg fracture,
8 but I don't think it was broken and she (sic) pled to a CDV
9 on that one. Then in May of that year he was convicted of
10 assault and battery of a high and aggravated nature and
11 CDV. He committed a battery upon the victim who was his
12 two year old son, Javian (phonetic) Haltiwanger as he was
13 assaulting her -- his -- the baby's mother, Kendra
14 (phonetic) Haltiwanger. She was attacked from the rear
15 while she was holding the victim. She was slammed to the
16 floor causing the victim, the two year old as well as she
17 to strike the floor. He did plead to those, Your Honor, in
18 2009 it looks like. Then in 2010 it shows that he got a
19 parole revocation on those charges and then in 2011 he was
20 convicted of -- he was charged with possession of a firearm
21 by a convicted felon or whatever that charge is, unlawful
22 carrying of weapon and he pled to the weapon charge. Since
23 then, Your Honor, it looks like he's got from March of this
24 year -- of last year, excuse me -- before this happened a
25 DUI from Clarendon County. I don't know the disposition of

1 that. And that is the extent of his record that I'm aware
2 of.

3 THE COURT - Okay, and on behalf of the victim's
4 family, anyone wish to speak.

5 MS. WALKER - Yes, ---

6 MR. SAWYER - Your Honor, ---

7 THE COURT - Yes?

8 MR. SAWYER - --- were you going to entertain
9 post-trial motions?

10 THE COURT - You want to do that before
11 sentencing? Sure. Go ahead.

12 MR. SAWYER - I mean either one.

13 THE COURT - Absolutely.

14 MR. SAWYER - Whichever you'd rather do.

15 THE COURT - Why don't you go ahead.

16 MR. SAWYER - Yes, Your Honor, just want to get
17 them out of the way. Judge, we'd just move for a new trial
18 at this point based on prior objections and motions.
19 Obviously, Judge, I think the jury came back in an hour and
20 twenty minutes. We'd argue that they didn't deliberate for
21 a sufficient period of time. We think that's prejudice to
22 our client and we'd ask for a new trial on those main
23 basis. Also, Judge, by way of trial that lasted over a
24 weekend, bad luck of what might you say (sic), I think we
25 had what was termed as most violent weekend in the history

1 of Columbia where there was at least three murders over the
2 weekend. You did tell the jury not to pay (sic) to media
3 on this case. I think that might have prejudiced Bernard
4 as well, and for those reasons, Judge, plus all the prior
5 objections and motions, we'd just ask for a new trial at
6 this time.

7 THE COURT - Thank you so much for that, Mr.
8 Sawyer. On the basis that I articulated earlier, I think
9 there certainly was evidence on each and every element to
10 submit to the jury. The jury has rendered its verdict, and
11 I would respectfully deny your motion noting your exception
12 thereto. There wasn't any requested voir dire the jury
13 (sic) in any regard, but I don't -- I don't believe that --
14 I hear your concerns, but unfortunately in America given
15 cable news, given the 24 hour news cycle, I think that
16 people are aware news-wise of tragedies that happen all
17 over the world everyday, and so insofar as what may or may
18 not have happened allegedly in Columbia over the weekend, I
19 don't think there's any indication that that had anything
20 to do with this jury. I would note for the record that we
21 started last Tuesday in this trial and this jury was
22 riveted the entire time. I think they paid incredibly
23 close attention to all the testimony. There was -- all
24 important that -- not always riveting, but certainly they
25 gave it their undivided attention, as attentive as any jury