VOLUME I OF II

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Post-Conviction Relief

Michael G. Nettles, Circuit Court Judge

Case No.: 2017-002269

Deonte Brown #361477, ... Petitioner,

vs.

State of South Carolina, ... Respondent.

APPENDIX

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STATE OF SOUTH CAROLINA | COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON | 2013-GS-10-535
2013-GS-10-536
2013-GS-10-537

STATE OF SOUTH CAROLINA,
Plaintiff,
-vs-
DEONTE BROWN,
Defendant.

TRANSCRIPT OF RECORD

September 15-19, 2014

Charleston, South Carolina

B E F O R E:

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

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

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Jessica Baldwin, Assistant Solicitor
Attorneys for the State

James Smiley, Esquire
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Attorney for the Defendant

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

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(September 15, 2014.)

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

Mr. Brown, are you Deonte Stephen Brown?

THE DEFENDANT: Yes, sir.

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

(In open court, jury panel present.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

stand. All right.

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

Yes, your name?

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

THE COURT: He did what?

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

THE COURT: How long ago was that?

A PROSPECTIVE JUROR: About ten years.

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

A PROSPECTIVE JUROR: No, sir.

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

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

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

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

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

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

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

A PROSPECTIVE JUROR: I do know a Derek Boyd.

I'm Joseph Matutina, juror 212.

THE COURT: And you know Mr. Boyd?

A PROSPECTIVE JUROR: I believe so.

THE COURT: How do you know him?

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

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

A PROSPECTIVE JUROR: No, sir.

THE COURT: All right. Thank you.

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

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

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

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

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

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

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

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

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

A PROSPECTIVE JUROR: No, Your Honor.

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

Victor Magwood? I find none. Santresa Gordon? I find none. Ray Hayward? I find none. Kenneth Anderson? I find none. Tiesha Hayward? I find none. Montrell Butler? I find none. Lorenzo Brown? I find none. Derrick Brown? I find none. Jessica Brooks? I find none. Shalimar Brisbane? I find none.

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

find none.

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

THE COURT: Yes.

(Discussion held at sidebar.)

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

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

Yes, your name and number?

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

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

THE DEFENDANT: No, sir.

THE COURT: What's your number again?

A PROSPECTIVE JUROR: 195.

THE COURT: Okay. Thank you.

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

THE COURT: What was your name and number again?

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

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

A PROSPECTIVE JUROR: Darlene Byrd, number 48.

THE COURT: Okay.

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

THE COURT: What did she do?

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

THE COURT: Well, she doesn't anymore.

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

A PROSPECTIVE JUROR: No.

THE COURT: All right. Anyone else?

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

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

THE BAILIFF: Number 81, Melissa Dimaggio.

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

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

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

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

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

THE BAILIFF: Number 25.

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

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

A PROSPECTIVE JUROR: Absolutely. I'm sorry.

THE COURT: All right. Okay. Thank you.

A PROSPECTIVE JUROR: Thank you.
THE BAILIFF: 175, 175.
A PROSPECTIVE JUROR: My cousin was murdered in 2010.
THE COURT: Okay. And who is this again?
A PROSPECTIVE JUROR: I'm Olivia Jones.
THE COURT: Your cousin?
A PROSPECTIVE JUROR: Will Isles. It was in Pittsburgh.
THE COURT: Do you think this would affect your ability in this case to be fair and impartial either for or against the State or for or against the defense?
A PROSPECTIVE JUROR: No.
THE COURT: Great. Thank you. Juror.
THE BAILIFF: Juror 80.
THE COURT: Yes, sir?
A PROSPECTIVE JUROR: I had a family member family member charged with attempted murder.
THE COURT: Do you think that would affect your ability to be fair and impartial in this case, either for or against the State or for or against the defense?
A PROSPECTIVE JUROR: No.
THE COURT: And this family member, is he currently being prosecuted or was?

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

THE COURT: Was he convicted?

A PROSPECTIVE JUROR: Yeah.

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

A PROSPECTIVE JUROR: About six months ago.

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

A PROSPECTIVE JUROR: Yes.

THE COURT: The local one?

A PROSPECTIVE JUROR: Yeah.

THE COURT: It was Charleston?

A PROSPECTIVE JUROR: Yes.

THE COURT: What was his name?

A PROSPECTIVE JUROR: Alonzo Desaussure.

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

A PROSPECTIVE JUROR: No.

THE COURT: Okay. Thank you.

THE BAILIFF: 153.

THE COURT: Yes.

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

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

A PROSPECTIVE JUROR: No, I don't.

THE COURT: Okay. Great. Thank you.

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

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

THE COURT: All right.

THE BAILIFF: 191, 191.

THE COURT: Yes.

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

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

A PROSPECTIVE JUROR: I do not know the facts

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

THE COURT: Okay. All right. Thank you.

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

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

THE COURT: Name and number?

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

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

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

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

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

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

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

related to last few questions?

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

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

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

THE COURT: Okay. Thank you. Yes?

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

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

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

THE COURT: All right. Thank you.

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

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

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

THE COURT: Thank you.

A PROSPECTIVE JUROR: I'm Robert Whittemore,

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

THE COURT: Thank you.

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

THE COURT: Thank you.

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

THE COURT: All right.

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

THE COURT: Okay. Thank you.

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

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

please stand.

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

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

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

THE COURT: Okay. Thank you.

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

THE COURT: What was your number again?

A PROSPECTIVE JUROR: 30.

THE COURT: Thank you. Yes?

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

THE COURT: Thank you.

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

THE COURT: What was your number again?

A PROSPECTIVE JUROR: 129.

THE COURT: Yes, ma'am?

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

THE COURT: All right. Yes?

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

THE COURT: Thank you.

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

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

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

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

Your name and number, please.

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

THE COURT: All right. Yes?

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

THE COURT: Okay. Yes?

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

THE COURT: Thank you.

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

THE COURT: What was your number again?

A PROSPECTIVE JUROR: 175.

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

training.

THE COURT: All right. Anyone else? Okay.

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

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

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

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

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

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

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

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

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

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

(The following discussion was held at sidebar.)

THE COURT: Any challenges for cause.

MR. SMILEY: Number 81.

THE COURT: Okay.

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

THE COURT: 25, same thing?

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

THE COURT: Family member --

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

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

THE COURT: Are you all right with that one?

MS. LINDER: That's fine.

THE COURT: Okay.

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

THE COURT: 175?

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

THE COURT: Okay.

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

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

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

THE COURT: Or for cause, anyway.

MR. SMILEY: For cause.

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

all right with those, Stephanie?

MS. LINDER: Yes.

THE COURT: Do you have any?

MS. LINDER: No additional.

THE COURT: Okay. Anything else?

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

THE COURT: Okay.

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

(End of sidebar.)

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

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

If both sides accept you, you go you go sit

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

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

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

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

MR. SMILEY: Yes, sir.

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

Juror number 30, David Benfield.

(The juror, a white male, approaches.)

What say you for the State?

MS. LINDER: Please present this juror.

THE CLERK: What say you for the defendant?

MR. SMILEY: Please excuse Mr. Benfield.

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

Juror number 195, Robyn Litchfield.

(The juror, a white female, approaches.)

What say you for the State?

MS. LINDER: Please present the juror.

THE CLERK: What say you for the defendant?

MR. SMILEY: Please excuse the juror.

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

Juror number 326, Faith Singleton.

(The juror, a black female, approaches.)

What say you for the State?

MS. LINDER: Please present the juror.

THE CLERK: What say you for the defendant?

MR. SMILEY: Please seat the juror.

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

Juror number 260, Leander Orr.

(The juror, a black female, approaches.)

What say you for the State?

MS. LINDER: Please present this juror.

THE CLERK: What say you for the defendant?

MR. SMILEY: Please seat Ms. Orr.

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

Juror number 388, Hunter Windham.

(The juror, a white male, approaches.)

THE CLERK: What say you for the State?

MS. LINDER: Please present the juror.

THE CLERK: What say you for the defense?

MR. SMILEY: Beg the Court's indulgence.

Please seat Mr. Windham.

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

Juror number 363, Renee Villaume.

(The juror, a white female, approaches.)

What say you for the State?

MS. LINDER: Please present the juror.

THE CLERK: What say you for the defendant?

MR. SMILEY: Please seat Ms. Villaume.

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

Juror number 330, Michelle Smith.

(The juror, a white female, approaches.)

What say you for the State?

MS. LINDER: Please seat the juror.

THE CLERK: What say you for the defendant?

MR. SMILEY: Please seat Ms. Smith.

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

Juror number 172, Judith Jones.

(The juror, a white female, approaches.)

What say you for the State?

MS. LINDER: Please present this juror.

THE CLERK: What say you for the defendant?

MR. SMILEY: Please excuse Ms. Jones.

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

That's three strikes for the defendant.

Juror number 156, Bryan Hunter.

(The juror, a white male, approaches.)

What say you for the State?

MS. LINDER: Beg the Court's indulgence. Please excuse this juror.

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

Juror number 44, Sharon Burns.

(The juror, a black female, approaches.)

What say you for the State?

MS. LINDER: Please present this juror.

THE CLERK: What say you for the defendant?

MR. SMILEY: Please seat Ms. Burns.

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

Juror number 344, Linda Summey.

(The juror, a white female, approaches.)

What say you for the State?

MS. LINDER: Please seat this juror.

THE CLERK: What say you for the defendant?

MR. SMILEY: Please excuse Ms. Summey.

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

Juror number 398, Pamela Young.

(The juror, a black female, approaches.)

THE CLERK: What say you for the State?

MS. LINDER: Please seat this juror.

THE CLERK: What say you for the defendant?

MR. SMILEY: Please seat Ms. Young.

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

Juror number 229, Steven Miller.

(The juror, a white male, approaches.)

What say you for the State?

MS. LINDER: Please present the juror.

THE CLERK: What say you for the defendant?

MR. SMILEY: Beg the Court's indulgence.

Please seat Mr. Miller.

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

Juror number 284, David Price.

(The juror, a white male, approaches.)

THE CLERK: What say you for the State?

MS. LINDER: Please present this juror.

THE CLERK: What say you for the defendant?

MR. SMILEY: Please excuse Mr. Price.

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

Juror number 196, Heather Lloyd.

(The juror, a white female, approaches.)

What say you for the State?

MS. LINDER: Please present this juror.

THE CLERK: What say you for the defendant?

MR. SMILEY: Please seat this juror.

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

case.

Juror number 312, Paula Suzette Schiffiano.

(The juror, a white female, approaches.)

What say you for the State?

MS. LINDER: Please present this juror.

THE CLERK: What say you for the defendant?

MR. SMILEY: Please excuse Ms. Schiffiano.

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

Juror number 266, Charles Patrick.

(The juror, a white male, approaches.)

What say you for the State?

MS. LINDER: Please present this juror.

THE CLERK: What say you for the defendant?

MR. SMILEY: Please seat Mr. Patrick.

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

Juror number 354, Yi Tsai.

(The juror, an Asian female, approaches.)

What say you for the State?

MS. LINDER: Please present this juror.

THE CLERK: What say you for the defendant?

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

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

Juror number 332, Thomas Smith.

(The juror, a white male, approaches.)

What say you for the State?

MS. LINDER: Please present this juror.

THE CLERK: What say you for the defendant?

MR. SMILEY: Please excuse Mr. Smith.

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

Juror number 174, Nathaniel Jones.

(The juror, a white male, approaches.)

What say you for the State?

MS. LINDER: Please present this juror.

THE CLERK: What say you for the State?

MR. SMILEY: Please excuse Mr. Jones.

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

Juror number 225, Gretchen Meyer.

(The juror, a white female, approaches.)

What say you for the State?

MS. LINDER: Please present this juror.

THE CLERK: What say you for the defendant?

MR. SMILEY: Please excuse Ms. Meyer.

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

Juror number 300, Alexander Robbins.

(The juror, a white male, approaches.)

What say you for the State?

MS. LINDER: Please excuse the juror.

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

Juror number 351, Clarence Tolly.

(The juror, a white male, approaches.)

What say you for the State?

MS. LINDER: Beg the Court's indulgence.

Please present this juror.

THE COURT: What say you for the defendant?

MR. SMILEY: Beg the Court's indulgence.

Please excuse Mr. Tolly.

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

Juror number 297, Judy Risher.

(The juror, a white female, approaches.)

What say you for the State?

MS. LINDER: Please present the juror.

THE CLERK: Any challenge from the defendant?

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

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

Now picking for the first alternate.

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

THE COURT: Yes.

THE CLERK: Juror number 48, Darlene Byrd.

(The juror, a white female, approaches.)

What say you for the State?

MS. LINDER: Please present this juror.

THE CLERK: What say you for the defendant?

MR. SMILEY: Please seat Ms. Byrd.

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

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

(The juror, a white female, approaches.)

What say you for the State?

MS. LINDER: Beg the Court's indulgence.

Please present this juror.

THE CLERK: What say you for the defendant?

MR. SMILEY: Please present the juror.

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

Judge, the jury has been selected and seated.

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

MS. LINDER: Nothing from the State.

THE COURT: From the defense?

MR. SMILEY: No.

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

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

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

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

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

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

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

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

picked for a jury?

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

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

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

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

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

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

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

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

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

(Jury dismissed.)

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

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

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

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

Thank you so much for your patience.

(Jury panel dismissed.)

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

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

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

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

THE COURT: Okay.

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

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

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

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

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

THE COURT: He's unavailable.

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

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

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

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

THE COURT: Okay.

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

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

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

time, I guess is what I'm saying.

THE COURT: Okay.

MR. SMILEY: Fair enough? Not really.

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

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

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

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

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

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

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

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

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

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

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

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

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

Do you understand that.

THE DEFENDANT: Yes, sir.

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

THE DEFENDANT: No, sir.

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

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

(Recess taken.)

(September 16, 2014.)

THE COURT: All right. Folks, welcome. Thank you for your patience. You would think today was a Monday.

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

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

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

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

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

(Jury duly sworn.)

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

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

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

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

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

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

innocent.

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

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

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

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

not evidence. All right?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Objection.

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

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

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

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

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

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

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

Now, we got some procedural rules that we

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

on their side's behalf, all right?

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

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

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

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

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

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

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

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

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

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

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

Thank you.

THE COURT: Mr. Smiley?

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

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

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

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

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

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

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

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

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

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

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

Thank you.

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

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

DAVID JOHNSON,

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MS. BALDWIN:

Q. Good morning, Deputy.

A. Good morning.

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

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

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

A. Patrolling, traffic enforcement, calls for service.

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

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

Q. What was your position in July of 2012?

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

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

A. Yes, I do.

Q. And to where did you respond?

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

Q. Is it 3505, 3565?

A. Correction. 3556.

Q. Is that in Charleston County?

A. Yes, ma'am, it is.

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

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

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

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

MR. SMILEY: Without objection.

THE COURT: Admitted.

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

BY MS. BALDWIN:

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

A. Right here (indicating).

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

A. Burger King is right here (indicating).

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

A. Laundromat and a car wash.

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

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

Q. Where is the Main Road side?

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

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

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

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

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

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

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

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

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

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

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

Q. About --

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

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

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

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

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

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

Q. About what time did you arrive?

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

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

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

Q. Does that help refresh your recollection?

A. Yes, ma'am.

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

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

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

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

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

MR. SMILEY: Objection, Your Honor. Speculation.

THE COURT: Sustained.

MS. BALDWIN: Beg the Court's indulgence.

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

THE WITNESS: Thank you.

THE COURT: Mr. Smiley?

CROSS-EXAMINATION

BY MR. SMILEY:

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

Were you the first responding officer?

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

almost right behind me.

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

A. Yes.

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

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

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

A. Yes, sir.

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

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

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

A. Okay.

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

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

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

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

A. Yes, sir.

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

A. Yes, sir.

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

A. Yes, sir.

Q. Did you go inside the Waffle House?

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

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

A. Yes, I did.

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

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

out what they saw.

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

A. Yes, sir.

MR. SMILEY: Beg the Court's indulgence. Thank you very much. I have nothing further.

THE COURT: Redirect?

MS. BALDWIN: No, Your Honor.

THE COURT: You may step down. Thank you. You're free to go. Thank you.

Next witness?

MS. LINDER: State calls Erin Meyer.

ERIN MEYER,

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

DIRECT EXAMINATION

BY MS. LINDER:

Q. Good morning. Where are you employed?

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

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

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

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

enforcement and specifically in forensics.

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

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

A. Forensics investigator.

Q. What are your duties at a crime scene?

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

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

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

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

A. Yes, ma'am.

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

A. I was called out to process a scene.

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

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

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

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

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

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

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

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

A. Yes, ma'am.

Q. Did you take interior and exterior photographs?

A. Yes, ma'am.

Q. Was anyone else from the crime scene assisting?

A. Yes, Investigator Mark Watson.

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

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

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

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

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

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

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

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

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

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

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

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

Q. Did you process any vehicles on the scene?

A. Yes. We processed two vehicles.

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

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

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

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

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

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

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

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

A. Yes, ma'am.

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

A. Yes, ma'am.

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

A. Yes, ma'am.

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

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

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

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

Q. Were you able to recover those two videos?

A. Yes, ma'am.

Q. And that was off the SD card?

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

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

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

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

A. Yes, ma'am.

Q. And did you enter that into evidence?

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

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

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

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

A. Yes.

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

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

Q. How do you recognize that disk?

A. That is my handwriting and my initials.

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

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

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

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

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

A. Yes, ma'am.

Q. And what is that?

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

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

MR. SMILEY: Without objection.

THE COURT: Admitted.

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

BY MS. LINDER:

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

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

Q. And what are these two items up here?

A. Cameras.

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

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

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

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

Q. And State's Exhibit 5?

A. Different angle, entryway of the Waffle House.

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

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

Q. And what about this item here?

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

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

A. Both the vehicles that we processed.

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

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

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

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

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

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

Q. State's Exhibit 8?

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

Q. On this side (indicating)?

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

Q. State's 9?

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

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

A. Yes, ma'am.

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

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

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

A. Yes, ma'am. Yeah.

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

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

Q. That we just saw all those pictures of?

A. Yes, ma'am.

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

THE COURT: Go right ahead.

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

BY MS. LINDER:

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

left-hand corner?

A. Yes, ma'am.

Q. What does it say?

A. 0400.

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

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

All right. We'll start around there.

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

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

A. Yes, sir.

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

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

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

Thank you.

(Recess taken.)

(In open court, jury not present.)

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

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

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

THE COURT: You got this guy coming?

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

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

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

THE COURT: How long are you going to be?

MR. SMILEY: I'll be quite a while --

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

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

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

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

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

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

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

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

(In open court, jury present.)

THE COURT: All right. You may resume.

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

THE COURT: Cross?

CROSS-EXAMINATION

BY MR. SMILEY:

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

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

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

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

A. Yes, sir.

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

A. Yes, sir.

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

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

A. Correct.

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

A. Yes, sir.

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

A. Yeah.

Q. Go ahead.

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

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

A. We attempt to. That is our intent.

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

A. Yes.

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

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

A. Yes, sir.

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

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

A. Correct.

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

A. Correct.

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

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

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

A. Yes, sir.

Q. And that shows the foyer?

A. Yes, sir.

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

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

the left that will take you to the parking lot.

Q. And you found that projectile in that space?

A. Yes, sir.

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

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

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

A. Yes.

Q. And there was some blood around that projectile?

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

Q. And/or both?

A. Yes.

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

A. Yes, sir.

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

A. Yes.

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

A. Yes, sir.

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

A. Yes.

Q. All right.

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

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

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

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

A. Yes, sir, yes.

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

A. Yes.

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

A. Yes, sir.

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

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

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

A. Yes, please.

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

A. Yes.

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

A. Is this enlarged?

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

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

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

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

BY MR. SMILEY:

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

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

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

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

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

MS. LINDER: Without objection.

THE COURT: It's admitted.

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

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

BY MR. SMILEY:

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

A. Yes, sir.

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

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

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

A. Yes.

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

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

A. Correct.

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

A. Are you referencing the shirt or at all?

Q. In general.

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

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

A. Yes.

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

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

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

A. Correct.

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

A. Yes.

Q. Same as the shirt and everything?

A. Yes.

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

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

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

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

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

A. Was I asked to collect a firearm?

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

A. I didn't collect a firearm.

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

A. Correct.

Q. Did you collect any in this case?

A. I don't recall --

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

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

Q. Projectile, the one you collected inside?

A. Correct.

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

A. Inside the foyer, yes.

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

A. Correct.

Q. But as far as casings go --

A. There were no casings --

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

A. Correct.

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

A. Yes, sir.

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

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

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

Q. Okay.

A. And within a couple feet of each other.

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

A. A line search, a grid search --

Q. They're the same thing?

A. Correct.

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

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

A. Correct.

Q. I'm not trying to trick you.

A. Correct. There were no casings in this.

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

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

Q. GSR being gunshot residue?

A. I'm sorry. Gunshot residue, yes.
Q. You do fingerprint analysis, correct?
A. Correct. We do other analysis too, but in this case, yes, we were capable of doing fingerprints.
Q. Okay. And you did dust for prints in this case, correct?
A. Yes, sir.
Q. And you also, in collecting evidence, I think you said you got some DNA off the red cups or you attempted to get it --
A. Yes. We collected in an attempt --
Q. You collected saliva off of the cups in an attempt to get some DNA?
A. Correct, yes, sir.
Q. Or attempt to get some saliva that may contain some DNA?
A. Yes, sir.
Q. Okay.

MR. SMILEY: Beg the Court's indulgence.

BY MR. SMILEY:

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

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

A. Correct.

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

A. It was 11:30 in the morning.

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

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

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

A. Of the actual dynamics of the parking lot?

Q. Right.

A. No.

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

A. No.

MR. SMILEY: I appreciate it. Thank you.

THE COURT: Redirect?

MS. LINDER: Just briefly.

REDIRECT EXAMINATION

BY MS. LINDER:

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

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

was located?

A. Yes.

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

A. Correct.

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

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

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

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

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

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

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

BY MS. LINDER:

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

A. When I got there, no.

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

A. Yes, ma'am.

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

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

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

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

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

MS. LINDER: Beg the Court's indulgence.

I have nothing further.

THE COURT: Recross?

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

THE COURT: All right. You can step down.

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

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

Thanks for your patience.

(In open court, jury not present.)

MS. LINDER: We would ask Ms. Meyer be

excused.

MR. SMILEY: We have no problem with that.

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

(Recess taken.)

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

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

(In open court, jury present.)

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

MS. LINDER: State calls Mark Watson.

MARK WATSON,

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MS. LINDER:

Q. Good afternoon. Where are you employed?

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

Q. How long have you been with law enforcement?

A. Almost 12 and a half years.

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

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

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

A. I was working as a forensics investigator.

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

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

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

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

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

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

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

A. I did.

Q. And what did you respond to?

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

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

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

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

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

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

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

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

brands, but that type of cup.

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

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

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

A. I did.

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

A. Yes, ma'am.

Q. Did you take them with and without placards?

A. Yes.

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

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

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

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

A. Can you elaborate a little more.

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

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

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

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

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

A. It does.

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

A. Yes, ma'am, it does.

Q. Feel free to mark on that screen itself.

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

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

A. Yes, ma'am, we did.

Q. How did you process them?

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

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

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

A. I did.

Q. What did you process?

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

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

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

the autopsy.

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

A. Yes, ma'am.

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

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

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

A. I'm ready.

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

A. Yes, ma'am.

Q. And how do you recognize it?

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

there, and I entered it into the computer.

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

A. I do.

Q. And how do you recognize these?

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

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

MR. SMILEY: Without objection.

THE COURT: Admitted.

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

BY MS. LINDER:

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

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

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

Q. And State's Exhibit 16, could you tell the jury what you were taking a picture of in State's Exhibit 16.

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

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

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

Q. What is this here?

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

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

A. This is crime scene tape.

Q. Okay.

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

lot.

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

A. Cameras. These were surveillance cameras.

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

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

Q. Okay. State's Exhibit 19?

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

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

A. Yes, ma'am, it was.

Q. And what is all this around here?

A. Broken glass.

Q. State's Exhibit 20.

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

Q. And State's Exhibit 21?

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

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

Q. And what is this over here?

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

Q. Uh-huh.

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

Q. State's Exhibit 22?

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

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

A. Yes, ma'am. Those were actually two vehicles that we fingerprinted, and there is another red cup over here.

Q. State's Exhibit 23.

A. These are placards, what I was talking about, numbers. This is actually numbering this -- because we end up collecting a blood sample, or swab, from this sidewalk, and this is just so we can identify this bloody area as being placard number five. We did the same over here with this cup here, marked the placard number four.

Q. And then, finally, State's Exhibit No. 24.

A. Again, there is five, six is the projectile.

MS. LINDER: Beg the Court's indulgence.

I have no further questions. If you could, answer anything Mr. Smiley may have.

CROSS-EXAMINATION

BY MR. SMILEY:

Q. Just a couple, Investigator Watson.

We know each other, so I won't introduce myself. This is Ms. Hensley and my client, Deonte Brown.

A. How are you doing, Jim?

Q. Let me ask you a couple questions. You were working in concert with Detective Meyers?

A. I was. I was in training at the time. When I talked about on-the-job training in forensics, maybe two weeks, maybe a little bit more than that, I was kind a shadow.

Q. Now we're two years later, so you've got a little more experience than that?

A. Yes, sir.

Q. I'm going to show you a couple of your pictures. I just want to ask you a couple questions.

A. That's fine.

Q. Just give me a second.

I'm going to show you what's been entered as State's Exhibit 17, and you were just talking about that earlier.

A. Yes, sir.

Q. We can actually see what appears in your picture to be where the bullet entered?

A. Yes, sir.

Q. It appears to be from the outside in?

A. Yes, sir.

Q. And you, in fact, found the projectile inside, right?

A. We found a projectile inside, yes, sir.

Q. All right. And then I'm going to show you what's been entered as State's 22, and this is that first island, right --

A. Correct.

Q. -- away from the Waffle House, and that's the far side of it?

A. It's closest to the Waffle House.

Q. Okay. I'm just doing bad English. Let me try again.

A. Are we talking about the same things?

Q. We are. There are mulched islands in the parking lot, correct?

A. Correct.

Q. From the Waffle House, this would be the one that is closest?

A. Correct.

Q. And this picture looks from the far side of that island back towards the Waffle House?

A. Yes, sir.

Q. When you arrived, was there -- had Mr. Reed, had he been transported?

A. He had been transported, yes, sir.

Q. Were you directed that this was the general area that he was found?

A. Yes, sir.

Q. Okay. But you didn't actually see him?

A. No, I did not.

Q. Okay.

A. The only reason -- another reason I had believed that that's where he was found is that there's these medical scissors laying there.

Q. That wouldn't be there otherwise?

A. Correct.

Q. And from the circumstances, you were able to say those are EMT scissor?

A. Yes, sir. Very common for those to have -- for an EMT to that those kind of scissors.

Q. So when you say this is where somebody was laid down, that EMS came and then you found a pair of scissors, that circumstantially leads you to the conclusion --

A. Correct.

Q. -- that this must be EMT scissors, correct?

A. Yes, sir.

Q. All right. Now, I asked Investigator Meyer, but I want to make sure I asked you. You did not find any casings at the scene?

A. No, sir.

Q. All right. And one of the things that when you do the grid search, the line walk, that would be something common you were looking for, right?

A. Yes, sir. We look for anything from cigarette butts to casings to blood droplets to anything that -- plastic cups. It could be anything, but when we do a line search, we're looking for the minutest piece of evidence that we can find.

Q. Right, and that's one way to make sure you don't miss it, by lining everybody up and going through it one at a time?

A. Yes, sir.

Q. So we can be fairly confident that if there had been some casings in that parking lot when you walked it, y'all would have found it?

A. I would hope so, sir.

Q. Okay.

MR. SMILEY: Beg the Court's indulgence.

That's all I have. Thank you.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MS. LINDER:

Q. Mr. Smiley was asking you about casings.

A. Yes, ma'am.

Q. Does every firearm give off -- I know I'm using the wrong word, but give off a casing?

A. No, ma'am.

Q. Eject? And can you explain that?

A. There are firearms, such as revolvers or a lot of single shot shotguns, where casings will be carried from the scene with the firearm because they don't eject the casing.

Q. And on scene before you arrive, is it possible that --

MR. SMILEY: I'm going to object. It requires speculation.

THE COURT: Well, I don't know what her question is going to be, but it doesn't sound like you're laying a foundation for a speculative --

BY MS. LINDER:

Q. In your training and experience, are there ever outside sources or reasons why items are not as they were at the moment of the incident?

A. Yes, ma'am.

Q. And can you explain that.

A. There are things, like I said earlier, from wind and rain and weather, people trampling through that, people removing evidence prior to us arriving on scene to secure evidence or secure the scene. Sometimes evidence is removed.

MS. LINDER: I have nothing further. Thank you.

THE COURT: Recross?

MR. SMILEY: Very briefly.

RECROSS-EXAMINATION

BY MR. SMILEY:

Q. Now, the scene was already secured when you got there, correct?

A. Yes, sir.

Q. But you and Investigator Meyers were there fairly shortly after the alleged incident happened, correct?

A. Yes, sir.

MR. SMILEY: All right. That's all I have.

THE COURT: You can step down. Do you need him for anything else?

MS. LINDER: No. We would ask he be excused. Thank you.

THE COURT: You're free to go. Thanks. Next

witness.

MS. BALDWIN: The State calls Tyh'Shka Catts.

TYH'SHKA CATTS,

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MS. BALDWIN:

Q. Tyh'Shka, just so the jury knows a little bit about you, how old are you?

A. Thirty-five.

Q. Where are you currently living?

A. Ohio.

Q. Where in Ohio?

A. Columbus.

Q. Okay. Do you have any children?

A. Yes.

Q. How many children do you have?

A. Five.

Q. And are you from Ohio originally?

A. No, ma'am.

Q. Where are you from originally?

A. Poughkeepsie, New York.

Q. Just down in Charleston for the day to testify?

A. Yes, ma'am.

Q. Okay. Did you live in Charleston at some point?

A. Yes, ma'am.

Q. Okay. Were you living in Charleston in July of 2012?

A. Yes, ma'am.

Q. Where were you working then?

A. I was working at Burger King.

Q. And where was Burger King in relation to the Waffle House incident that we're talking about today?

A. Right next door.

Q. Do you remember an incident that happened in July of 2012 at the Waffle House?

A. Yes, ma'am.

Q. Okay. Where were you earlier in the evening?

A. I was at an after hours called Frazier's.

Q. Okay. Were you there with anybody else?

A. I met one of my co-workers there.

Q. And what is her name?

A. Santresa Gordon.

Q. Did anything happen at the after-party?

A. My truck got stuck in a ditch.

Q. Tell us about that. Your truck got stuck in a ditch. Did anybody help you with that?

A. Yes, ma'am.

Q. And who helped you with that?

A. Well, Santresa and another guy had got me some

help to get my truck out of the ditch, because a whole bunch of people pulling and stuff.

Q. Did you know who the guy was that helped you?

A. No.

Q. Do you remember what he was wearing?

A. Yes.

Q. What was he wearing?

A. He had on a red shirt with some dark colored, like, dark blue jeans and he had, like, the beginning start of dreads in his hair.

Q. So after you got your car out of the ditch, where did you go?

A. To the Waffle House.

Q. Did you go with anybody else?

A. No. I drove by myself.

Q. When you got to the Waffle House, what did you do?

A. I sat outside for a couple minutes, because it was -- I seen it was crowded. I sat outside, and when I seen people coming out, I went inside, and then I sat down and --

Q. And then what happened? What did you see?

A. When I sat down, I seen a guy -- there was one guy just sitting in a chair, minding his own business, and then I see the same guy that had on the red shirt and the dark shorts with the dreads in his hair yelling in the

guy's face.

He was calling him -- excuse my language, calling him bitches, and he was yelling in the guy's face, saying, I'm from the country. Where you from?

Then he proceeded to keep on calling him bitches, and then he was just -- kept yelling Red Top. I'm from the country. Where you from, bitch?

Q. Do you know why he was yelling at him?

A. I guess maybe -- it was probably alcohol. I don't know.

MR. SMILEY: Objection. Speculation.

THE COURT: You can't speculate, but if you know, you can say, otherwise --

THE WITNESS: I apologize. No, I'm not sure. Sorry.

BY MS. BALDWIN:

Q. So you're watching this argument taking place. Did you know the guy that was sitting down that the guy in the red shirt was yelling at?

A. No, ma'am.

Q. Did you know any people that were in the Waffle House?

A. No.

Q. Did anything else happen besides the guy in the red shirt yelling?

A. After, I guess, it got a bit intense, the guy that worked there came out and was telling them that they needed to stop or whatever, and he was trying to calm everything down and stuff like that, and then the guy -- the guy that had on the white shirt that was sitting down, minding his own business, the guy that worked there was trying to escort both of them out.

And then the guy with the red shirt pulled out a gun, and then after that, I just moved and I went underneath the table.

Q. You said you went underneath the table?

A. Yes, ma'am.

Q. Went by yourself underneath the table?

A. No. There was a lady under there. I don't know her name, though. There was a lady under the table.

Q. I'm going to put up on the screen for you, Tyh'Shka, State's Exhibit 3. It's already been admitted into evidence. This is the video, surveillance video. Have you viewed that video previously in my office?

A. Yes, ma'am.

Q. Do you recognize this angle, Tyh'Shka?

A. Yes.

Q. I'm just having some technical difficulties.

All right. I know that is a little bit better. It's a little more normal.

Tell us when you see yourself walk in. Are you in yet, do you know?

A. No. I'm right there (indicating).

Q. Right where? You can actually touch that screen, and that will put a little mark there.

A. Right there (indicating).

Q. That's you?

A. Yeah.

Q. Do you know that big guy in the striped shirt?

A. No, ma'am.

Q. Were y'all walking in together?

A. No.

Q. Just happened to --

A. Yes, just happened to be walking by.

Q. Just tell us when you see yourself.

A. Right there (indicating).

Q. What are you wearing?

A. I had on a one piece short set, one shoulder.

Q. Okay. I'm just going to pause it real quick. Who is that guy in the red shirt that's at the bottom right-hand corner?

A. That is the guy who was yelling in the other man's face that he was from the country and calling him bitches and stuff like that.

Q. Did you know his name?

A. No.

Q. And what are you doing while all this is going on?

A. Just watching, paying attention to my surroundings.

Q. And what was the man in the red shirt doing?

A. Still yelling and cursing and stuff like that.

Q. What was going through your head?

A. I couldn't understand what was going on. It was just all craziness to me.

Q. What is happening here?

A. That's when the guy that worked at the Waffle House came out and was telling him to stop because this guy wasn't -- the other guy wasn't bothering anybody.

Q. About how far away from all of this do you think you were?

A. Like -- not even a foot. I was literally sitting right there, so I wasn't so far.

Q. Closer than you and me right now?

A. Yes.

Q. How about now?

A. I would say, like, from here to about right here (indicating).

Q. To right about here?

A. Yes.

Q. Okay. What's happening there?

A. That's when the guy had pulled out -- I don't know if they were going to fight or whatever, but the guy pulled out -- was getting ready to pull out the gun, and soon after that, everyone just, like, scattered.

Q. Were things happening pretty quickly to you?

A. Uh-huh.

Q. Were you watching what was going on down --

A. Yeah. I was looking towards the door.

Q. Now, at what point did you get up?

A. When I heard a shot is when I got up.

Q. And then what are you doing there?

A. The couple that was sitting at the end, I got under the same table they were under.

Q. And what was your state of mind when you heard the shots go off?

A. I honestly -- I was scared, but, like, I don't know.

Q. You said you were scared.

A. Yeah.

Q. Did it make you feel comfortable to have shots ringing out?

A. No.

MS. BALDWIN: Beg the Court's indulgence.

BY MS. BALDWIN:

Q. Tyh'Shka, just tell us, who did you see had the

gun?

A. The guy that had on the red shirt and the dark shorts with the dreads in his hair.

MS. BALDWIN: May I approach the witness, Your Honor?

BY MS. BALDWIN:

Q. I'm going to show you State's 36 for ID. Do you know what this is?

A. A 911 call.

Q. Did you call 911?

A. Yes, ma'am.

Q. Is this a recording of the 911 call you made?

A. Yes, ma'am.

Q. How do you know that?

A. I heard it.

Q. Did we have you initial it?

A. Yes, ma'am.

Q. And that's you on the 911 call?

A. Yes, ma'am.

MS. BALDWIN: At this point I would like to ask that State's Exhibit 36 be admitted.

MR. SMILEY: Without objection.

THE COURT: All right. You may publish it.

(Whereupon, State's Exhibit No. 36 was marked for identification and admitted into evidence.)

(Whereupon, the 911 call was played for the jury.)

BY MS. BALDWIN:

Q. And that was you, Tyh'Shka?

A. Yes, ma'am.

Q. Okay.

MS. BALDWIN: Beg the Court's indulgence.

BY MS. BALDWIN:

Q. And just to clarify, the guy that you pointed out in the video in the red shirt --

A. Yes, ma'am.

Q. -- that was the guy that helped you out earlier in the evening?

A. Yeah. Yes, ma'am.

Q. So you had seen him before?

A. Yes, ma'am.

Q. You recognized him from the club that evening?

A. Yes, ma'am.

Q. And he was also the guy that you saw hold the gun?

A. Yes, ma'am.

Q. Okay.

MS. BALDWIN: I don't have any further questions. Please answer any of Mr. Smiley's questions.

CROSS-EXAMINATION

BY MR. SMILEY:

Q. Ms. Catts, I'm Jim Smiley. This is Ms. Hensley, and this is my client, Mr. Brown, okay?

A. Yes, sir.

Q. Now, you came in that night from the club. When you got there, you said it was really crowded?

A. Yes, sir.

Q. Pretty chaotic before anything happened, was it?

A. Yes, sir.

Q. People were in and out in the parking lot, everywhere, right?

A. Yes, sir.

Q. And, actually, when that first group comes out is when you saw them, and would lighten up and you went in, right?

A. Yes, sir.

Q. And the video pretty much shows exactly where you were, right?

A. Yes, sir.

Q. Okay. The only thing it didn't show is what was being said, right?

A. Yes, sir.

Q. Okay. The fellow with the red shirt on, his shirt was open, right? It was unbuttoned?

A. It was unbuttoned, yes, sir.

Q. Hanging down, sort of like -- I don't know how to

explain it. It was open?

A. Yes.

Q. And he had on a pair of jeans.

A. Yes, sir.

Q. And so you were within a couple of feet, two or three feet, from him, right?

A. Yes, sir.

Q. And you saw he was in the other gentleman's face talking trash, right?

A. Yes, sir.

Q. And you had a pretty good view of that whole thing, right?

A. Yes, sir.

Q. You didn't see a gun in his waistband, did you?

A. I seen the part of his shirt that was open. I didn't see his waistband.

Q. Let me ask this: You say you saw him pull out the gun?

A. Yes, sir.

Q. And he pulled it out of his waistband?

A. From the side.

Q. From his right side?

A. I don't remember which side. I just know it was from the side.

Q. From the side?

A. Yes.

Q. All right. And it would have appeared that it was tucked into his pants, like, between the pants and the skin or hip?

A. Yes, sir.

Q. Okay. Now, it's your testimony that from your vantage point you were able to see him pull the gun out from the right side, correct?

A. No. I said I didn't see the side.

Q. I'm not trying to trick you, Hon. I apologize. You said you saw him pull a gun out from the side.

A. Yes.

Q. And that was at the point that the cook had come around, the security guard was involved, and everybody was moving towards the door, correct?

A. Yes.

Q. Okay. I just want to make sure that that's the point that -- that gun, when you saw it, was it pulled out before they went into that foyer area or after?

A. I honestly don't recall.

Q. And when you called 911, you were still under the table, right?

A. Yes, sir.

Q. You didn't actually see anybody shoot a gun, though, right?

A. No, sir, I didn't.

Q. Now, I'm going to turn on one of the videos, so just give me a second.

While they're working on that, let me ask you another question. How many shots did you hear?

A. Four or five.

Q. Four or five?

A. Yes, sir.

Q. If we could go to about 4:10, 4:11 when Ms. Catts comes in. I appreciate your help. That would be great.

So when you were coming in, there was a huge rush of other people going out, right?

A. Yes, sir.

Q. And then is it -- this is you coming in the door, right?

A. Uh-huh.

Q. Behind the big gentleman, right?

A. Yes.

Q. It does look like you're together, but I understand you weren't, and y'all sit at different places. You sit at the end of that counter, right?

A. Yes, sir.

Q. And then this is the camera that is above you looking down at the door?

A. Right. I believe so, I guess.

Q. Well, is that --

A. That's the door, yes.

Q. And you're sitting down, just to the right of this camera?

A. Yes.

Q. And so, of course, your view is at eye level back in that direction, right?

A. Yes.

Q. But, generally, the view, and you -- and, for the record, it's State Exhibit 3 that is in evidence that I'm showing to Ms. Catts, camera angle two.

Now, this whole time you're sitting down here at the corner, right?

A. Yes, sir.

Q. And you can't see it, but the gentleman, or the man in the red open shirt, is going at it with the fellow minding his business, right?

A. Uh-huh.

Q. And the guy --

A. That's where the guy that worked there came out.

Q. And you saw the gun come out as they're going out, right?

A. Uh-huh.

Q. Okay. And your view would have been at eye level back towards the door, right?

A. Yes, sir.

Q. Because you didn't ever go towards the door. You stood up, and when you heard the shot, you went under, right?

A. Yes, sir.

Q. So you heard the shot but didn't see it, correct?

A. Yes, sir.

Q. If you could just stop that.

Now, afterwards, you stayed at the scene, right?

A. Uh-huh.

Q. And the police came?

A. Uh-huh.

Q. And they spoke to you briefly?

A. Yes, sir.

Q. And they gave you a witness statement, didn't they?

A. Yes, sir.

Q. And so you and the couple that were back in the corner and the employee that hurt her leg and another lady all sat back in the corner and wrote your statements, right?

A. I wrote my statement at the station.

Q. Okay.

A. I wrote something in the corner too, but I wrote something at the station, yes.

Q. You did two statements, right?

A. Yes, yes. Sorry.

Q. Because that night, out at the Waffle House, you wrote something down on a witness statement.

A. Yes, sir.

Q. And later, you came in -- I believe you spoke with Investigator Moir-Smith at a later time and gave another statement; is that right?

A. That same morning, night; however, we were tooken {sic} down to the station, right there. I don't remember the investigator that I spoke with.

Q. All right. I'm not doing very good. So I'm going to break it into little pieces, okay? Sometimes I try to ask too much at one time.

You were given a witness sheet when you were at the scene, correct?

A. Yes.

Q. You sat in that back corner and wrote a statement, correct?

A. Yes.

Q. Okay. Then when you got that, shortly after that, you went down to the station?

A. Yes, sir.

Q. And you spoke with an investigator?

A. Uh-huh.

Q. And then they asked you to do a summary, another summary, of what you saw?

A. Yes, sir.

Q. Okay. And you were also shown a photo lineup, right?

A. Yes, sir.

Q. And you were asked -- you were shown a series of six photographs to see if you recognize anybody, right?

A. Yes, sir.

Q. And you weren't able to pick out anybody as being the shooter, correct?

A. Correct.

MR. SMILEY: Beg the Court's indulgence.

BY MR. SMILEY:

Q. Just one more question, Ms. Catts.

You saw the weapon pulled out, and it was four or five seconds later before you heard the shots, or the first shot?

A. About that.

Q. Okay. It wasn't like the weapon came out and then there was a shot. You saw a weapon come out, and then some time, a few seconds later, then you heard it.

A. I'm sorry?

THE COURT: You just gave us a nod. I need you to say your answer out loud.

THE WITNESS: Yes. I apologize.

THE COURT: All right. Thank you.

All right. Do you have any redirect?

MS. BALDWIN: Just briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. BALDWIN:

Q. The person that you said pulled out the gun, the person in the red shirt, was the red shirt easily identifiable to you?

A. Yes.

Q. The shirt stuck out to you?

A. Yes.

Q. Did you see anybody else in the Waffle House with a red shirt?

A. No. Everyone else had on, like, white T-shirts or blue T-shirts. No one else had on a red shirt.

MS. BALDWIN: Court's indulgence.

I have no further questions.

RECROSS-EXAMINATION

BY MR. SMILEY:

Q. Are you trying to say that there was nobody with a red shirt other than the fellow that you saw pull the gun out in the Waffle House?

A. Not with -- yes.

Q. Nobody else had a red shirt on?

A. I didn't see anyone else with a red shirt on.

Q. So if somebody else had a red shirt on, you would just be mistaken?

A. No, I --

Q. Could I --

MR. SMILEY: That's all I have. Thank you.

THE WITNESS: Okay.

THE COURT: You can step down.

All right, folks. Why don't we take a ten-minute rest room break.

Don't begin deliberations or discussions. Please don't discuss testimony or anything with each other, and we'll be back in about ten minutes.

(Recess taken.)

THE COURT: You got your next witness ready?

MS. LINDER: Yes.

THE COURT: Let the record reflect the defendant is in the courtroom. Bring the jury in.

(In open court, jury present.)

THE COURT: All right. We will resume now with the State calling their next witness.

MS. LINDER: The State calls Montrell Butler.

MONTRELL BUTLER,

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MS. LINDER:

Q. Good afternoon, Mr. Butler. Where are you originally from?

A. Pineland.

Q. Is that out in the southern area of Charleston County?

A. Yeah, I guess so. Yeah.

Q. Is Pineland -- I'm trying to get the jury -- is it close to Hollywood, part of Hollywood?

A. Uh-huh.

Q. And do you know why you're here today?

A. Yes, ma'am.

Q. Were you at the Waffle House back on -- in July 2012 on Savannah Highway?

A. Yes, ma'am.

Q. And where were you before you went to that Waffle House?

A. Frazier's.

Q. And what is Frazier's?

A. A club in Davidson.

Q. And how did you get to Frazier's?

A. I rode with my friend.

Q. What kind of vehicle did you ride in?

A. Buick.

Q. And who was in the car when you rode to Frazier's?

A. Me, Lorenzo, Quanesiha, and Thomas.

Q. And did anything out of the ordinary happen when you were at Frazier's?

A. No, ma'am.

Q. And after Frazier's, how did you get to Waffle House?

A. Same car.

Q. Same car. And who was in the car with you on the way to Waffle House?

A. I think it was me, Lorenzo, Quanesiha, Thomas, and Brandon.

Q. And do you remember where the white Buick got parked in the parking lot?

A. On the left side.

Q. Does the left side mean toward Savannah Highway or toward Burger King, or toward the back road?

A. Toward Savannah Highway.

Q. Where did you go when you got to the Waffle House?

A. Inside.

Q. When you were at the Waffle House that night, did a fight happen a little bit after 4:00 in the morning?

A. Uh-huh.

Q. And did a shooting happen that night, again, a

little bit after 4:00?

A. Yes, ma'am.

Q. And did you leave the scene that night before the police arrived?

A. No, ma'am.

Q. Did you give an interview with police that night?

A. No, ma'am.

Q. Can you tell the jury what happened a little more specifically, what happened when you went inside the Waffle House. What happened that night?

A. I was in the Waffle House, and about five minutes out there a fight broke out.

Q. Who was in the fight?

A. It was Deonte Brown and some other guy and Derrick Brown.

Q. Did you know the other guy that was in the fight with Deonte Brown?

A. No.

Q. Do you remember what the other guy was wearing?

A. White.

Q. And do you remember what Deonte was wearing that night?

A. Red.

Q. And how do you know Deonte?

A. In the schoolyard.

Q. You went to school together?
A. (Nods head.)
Q. Is it fair to say you've known him a pretty fair amount of time, over a year?
A. Uh-huh.
Q. And is Deonte in the courtroom?
A. Uh-huh.
Q. What is he wearing?
A. White.
Q. Can you be more specific? Where is he sitting?
A. Right there (indicating).
Q. So did you stay inside the Waffle House the whole night?
A. No, ma'am.
Q. Why did you go outside the Waffle House?
A. I followed a girl.
Q. And were you inside the Waffle House when the shooting happened?
A. No, ma'am.
Q. Where were you?
A. In the Buick.
Q. In the Buick?
A. Uh-huh.
Q. Were you sitting up in the Buick? Were you taking cover in the Buick? How was it?

A. I was sitting up, and when the shooting started, I started ducking.

Q. Was there anybody else in the Buick with you?

A. Uh-huh.

Q. Who?

A. Quanesiha.

Q. All right. At this time, I'm going to show you a video, and I'm going to have you go through -- it will show up on the screen in front of you, and we'll play some of it and pause some of it, and I'm just going to ask you a couple of questions while we go through.

Now, who are those two guys entering right there?

A. Derrick and Deonte.

Q. And what is Derrick's last name?

A. Brown.

Q. And what is he wearing?

A. Black.

Q. Is that the individual holding the cup?

A. Uh-huh.

Q. And whose behind him?

A. Deonte.

Q. And is that Deonte who you said you went to school with?

A. Uh-huh.

Q. And is it fair to say that Deonte is also from the

general Hollywood area?

A. Uh-huh.

Q. And is it fair to say Derrick is from the Hollywood area?

A. Yes, ma'am.

Q. Was Deonte at Frazier's earlier that night that you're aware of?

A. Yeah.

Q. Those cups that Deonte and Derrick have, are those from the Waffle House or where, or do you know?

A. From the club.

Q. They're from the club? And can you see who is entering right now?

A. Yes, ma'am.

Q. Who is entering and what are they wearing?

A. Quanesiha and Chavis.

Q. Quanesiha, Quanesiha is a she?

A. Yeah.

Q. What is she wearing?

A. A dress.

Q. Is that the individual in the stripes?

A. Uh-huh.

Q. And who is the other person?

A. Chavis.

Q. And what's he wearing?

A. Blue, blue and white.

Q. And are they both also from the Hollywood area?

A. Yes, ma'am.

Q. And who is entering now?

A. That is Sinclair.

Q. Do you know Sinclair's last name?

A. Heyward.

Q. And is he also from the Hollywood area?

A. Uh-huh.

Q. All right. Now, I know there is a bunch of people, but if you can tell me, when you see them, who else is entering? And explain what they're wearing, or if the hairstyle helps --

A. I see Lorenzo.

Q. What is Lorenzo's last name?

A. Brown.

Q. What is he wearing?

A. Black and white.

Q. Okay. If you touch that screen, it will light up, so can you kind of circle where Lorenzo is.

Did you say Lorenzo is wearing white?

A. Black and white.

Q. Black and white? All right. And do you recognize anybody else at this point?

A. I can't really see.

Q. Do you recognize the individual on the far right of the scene? It looks like braids or dreads to about the shoulder?

A. Uh-huh.

Q. Who is that?

A. Dontaye.

Q. What is his last name?

A. Reed.

Q. And does he have a nickname?

A. Snoop.

Q. Is he also from the Hollywood area?

A. Uh-huh.

Q. Do you also recognize the fellow in the light gray shirt, also on the left?

A. Uh-huh.

Q. Who is that?

A. Brandon.

Q. Is he also from the Hollywood area?

A. Yes, ma'am.

Q. Do you recognize the person standing right in front of Brandon?

A. That's me.

Q. That is you? What were you wearing that night?

A. Blue shirt.

Q. Did it have some writing on the back of the shirt?

A. Uh-huh.

Q. All right. Go ahead.

What is going on in this area where y'all look clumped together?

A. I think it was an argument.

Q. Do you see anybody on there with a red shirt besides Deonte?

A. Yes.

Q. How many people aside from Deonte are wearing a red shirt?

A. One.

Q. Okay. And where is he sitting?

A. At the counter.

Q. Do you know him?

A. Yeah, yes.

Q. Do you know his name? Are you friends, or you just recognize --

A. I know him, but I don't really remember his name.

Q. Okay. We can go ahead.

Who is that fellow coming in with a hat and, it looks like, a black shirt, white guy? Do you understand what I'm saying, on the left side of the screen?

A. Yeah.

Q. All right. Is it typical for Waffle House to have security out there?

A. Yes, ma'am, sometimes.

Q. Do you remember what was happening right here? If you don't, that's okay, if you know.

A. No.

Q. Okay. Is that a better picture of Lorenzo, black T-shirt and white shorts?

A. Yes, ma'am.

Q. What is the security guard doing here, do you remember?

A. They trying to break something up.

Q. Okay. And do you see yourself? Pause it, please.

Did you see yourself just now? You can rewind it. Looking for 4:10, around 4:10 -- all right. And you said you were in a dark blue shirt with some writing on it?

A. Uh-huh.

Q. Okay. I'm just going to play -- no, it's before this. Do you see yourself?

A. Yes, ma'am.

Q. Where are you wandering?

A. I don't know.

Q. Just hanging out?

A. Yeah.

Q. Is that Chavis that is walking over to you, bluish turquoise shirt on?

A. Uh-huh.

Q. Where are you going?
A. Over and coming back.
Q. Where are you going now?
A. Outside.
Q. Now, pause it, please. How many people are wearing a red shirt at this point?
A. Two.
Q. And who is the person in the red shirt, like, to the forefront of the screen, with -- it looks like white stuff on the shoulders and holding the cup?
A. Deonte.
Q. And the other fellow is the guy you said you recognized still sitting at that counter?
A. Yes, ma'am.
Q. Okay. Where is that guy from the counter going?
A. I don't know where he's going. Outside.
Q. He went outside?
A. Uh-huh.
Q. At this point you're still outside. Have you seen yourself come back in?
A. No, ma'am.
Q. Have you seen yourself come back in at this point?
A. No, ma'am.
Q. Have you seen that fellow with the red shirt that left come back in at this point?

A. No.

Q. Okay. Pause it. All right.

Have you come back in that you've been able to see?

A. Huh?

Q. Have you entered the Waffle House again since you've been able to see?

A. No, ma'am.

Q. And can you see what Lorenzo is doing right here?

MR. SMILEY: Objection, Your Honor. He's outside at this point in time. He doesn't have an independent basis to say what's going on outside.

THE COURT: Maybe if he can't see, but if he can see, he can tell what he saw.

MR. SMILEY: Yes, sir.

BY MS. LINDER:

Q. If you know, you can answer. If not, that's okay.

A. I said it's showing his back, so I can't see what he's doing.

Q. I'm just going to briefly show you one other angle of this, okay? All right. We're going to look at camera six, and we're going to rewind it just a little bit and have you talk about a couple of things.

All right. Is this the exterior of the Waffle House?

A. Yes, ma'am.

Q. Have you previously watched these videos?

A. Yes, ma'am.

Q. Okay. We're going to play a little bit for you. Who is that exiting, do you know?

A. I can't really see.

Q. What about that striped tunic, or dress?

A. Quanesiha.

Q. What about in front of that white SUV? It looks like a dark shirt with writing on the back.

A. That's me.

Q. And earlier, you had said that you had gone outside the Waffle House and you saw that on the video; is that right?

A. Yes, ma'am.

Q. Okay. Tell me if you see yourself at all. And do you see that white Buick in this video?

A. Yes, ma'am.

Q. Can you point that out? Can you touch that screen and show that white Buick?

A. (Indicating.)

Q. And that's where you said earlier that it parked, or was parked?

A. Yes, ma'am.

Q. Now, who is that girl with that striped tunic

talking to at the top of the screen, top left, if you can tell?

A. I think she's talking to me.

Q. Talking to you?

A. Uh-huh.

Q. Now, where are you going?

A. To the car.

Q. All right.

MS. LINDER: I have no further questions for you, if you can answer anything the defense may have.

CROSS-EXAMINATION

BY MR. SMILEY:

Q. So that white Buick that you pointed out, that's the car you and Quanesiha end up in?

A. Uh-huh.

Q. And were you in that car when the shots were fired?

A. Yes, sir.

Q. And you were in the front driver's side?

A. I can't really remember.

Q. Were you in the front seat, were you --

A. I believe so. I think she was in the back.

Q. She was in the back, and that car is facing out towards Savannah Highway?

A. Yes, sir.

Q. And y'all were sitting in the car?

A. Yes, sir.

Q. Okay. And you were in the Waffle House when Scrappy got thrown out, right?

A. I think so. Can't remember.

Q. When the guard took him out, you don't remember?

A. I can't remember.

Q. And I guess Derrick Brown, he's also known as Scrappy, right?

A. Yes, sir.

Q. And when you were in there and the fuss first started, it got broken up, right?

A. Uh-huh.

Q. And it wasn't so much going on that you stayed to watch, you and Quanesiha went out to the car, right?

A. Yes, sir.

Q. And in that parking lot, you saw a whole lot of people in the parking lot. There were a lot of people in the parking lot too?

A. Yes, sir.

Q. It's common -- see if you agree with me. Is it common that after Frazier's closed down, lots of people come to the Waffle House on the weekends?

A. Yes, sir.

Q. Now, Deonte, you saw him that night in the Waffle

House, right?

A. Yes, sir.

Q. And he had on a red shirt with some epaulets and stuff like that, and it was open, right?

A. Yes, sir.

Q. And he had on some jean pants, right, or jeans of some sort, and they were loose, right?

A. Yes, sir.

Q. And the whole time he was -- while you were in the Waffle House and he was in the Waffle House, you could see him, right?

A. Yes, sir.

Q. Did you ever see him with a gun?

A. No, sir.

MR. SMILEY: That's all I got.

THE COURT: Redirect?

MS. LINDER: No redirect. Can this witness please be excused?

THE COURT: You can step down. Do you need him for anything?

MR. SMILEY: No, sir.

THE COURT: You're free to go. Next witness.

MS. BALDWIN: State calls Lorenzo Brown.

LORENZO BROWN,

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MS. BALDWIN:

Q. Lorenzo, where are you from?

A. Hollywood.

Q. How long have you lived there?

A. All my life.

Q. All your life. Do you know the defendant, Deonte Brown?

A. Yes, ma'am.

Q. How do you know him?

A. School.

Q. You guys went to school together?

A. Yeah.

Q. Have you known him a long time? Y'all friendly?

A. Yeah.

Q. Is he in the courtroom today?

A. Yes, ma'am.

Q. Where is he sitting?

A. (Pointing.)

Q. Right there?

A. Yeah.

Q. Okay. What's he wearing?

A. White shirt.

Q. I'm going to bring you to the night of July 14,

2012, into the early morning hours of July 15, 2012. Do you remember an incident happening at the Waffle House that night?

A. Yes, ma'am.

Q. Where had y'all been prior to the Waffle House?

A. Frazier's.

Q. Who did you go to Frazier's with?

A. I drove.

Q. You drove?

A. Yeah.

Q. What were you driving?

A. Buick.

Q. I just need you to speak up a little bit so that lady can take down what you say, okay?

Did anybody ride with you in the Buick?

A. Yes, Montrell, Quanesiha, Brandon, and Thomas.

Q. And after Frazier's, you went over to the Waffle House?

A. Yes, ma'am.

Q. And who drove over there?

A. Me.

Q. Okay. In which car?

A. Buick.

Q. And who rode with you over to the Waffle House?

A. Quanesiha, Thomas, Brandon, Montrell.

Q. What did you do when you got to the Waffle House?
A. Went in, sat down at the bar.
Q. Anything happen while you were there?
A. Yes. Got into a little argument.
Q. Who got into an argument?
A. Deonte and some guy.
Q. You don't know the guy?
A. No.
Q. Does Deonte go by any other name other than Deonte?
A. Doesn't.
Q. Sometimes call him Deonte?
A. Yeah.
Q. Do you know what the argument was about?
A. Not really. It was a long time ago.
Q. It's been a long time?
A. Yeah.
Q. Do you remember giving a statement to the police soon after this incident occurred?
A. Yeah.
Q. Do you remember telling them it was over -- the argument was over a cigarette, you thought?
A. Yeah. There's a -- yeah.
Q. Was it just a verbal argument?
A. No.

Q. What happened besides them just arguing?

A. They got into a little scuffle, you know.

Q. A scuffle?

A. Yeah.

Q. What happened with the scuffle?

A. They got into it for a little second. I said they got into it for a little second in the Waffle House.

Q. Are you excited about being here today?

A. No, not really.

Q. Did we have to give you a subpoena to make sure you came?

A. Yeah.

Q. So you heard a little scuffle. There was a scuffle over by the doorway?

A. Uh-huh.

Q. When you say doorway of the Waffle House, what do you mean?

A. The doors of the Waffle House, double doors.

Q. So near the outside?

A. Yeah.

Q. Do you remember when they were arguing you videotaping anything with your cellphone?

A. Yeah. Yes, ma'am.

Q. Okay. I'm going to show you what has been admitted as State's Exhibit 2. Do you know what that is?

A. Yes, ma'am.

Q. What is that?

A. It's my video off my cellphone.

Q. How do you know that's it?

A. Because I initialed it.

Q. Okay. You viewed the video?

A. Yes, ma'am.

Q. Do you remember giving the -- telling the police that you downloaded those videos?

A. Yes, ma'am.

MS. BALDWIN: Your Honor, at this time I would like to publish State's Exhibit 2.

MR. SMILEY: I have no objection.

THE COURT: It's admitted. You can publish it.

BY MS. BALDWIN:

Q. How many videos are there?

A. Two.

Q. That's real quick, huh? You're laughing. Whose voice is that in the background?

A. Mine.

Q. Had you been drinking some at the club?

A. Yeah.

Q. A little relaxed. And who is that in the red shirt?

A. Deonte.
Q. Did you know who the guy in the white shirt was?
A. No.
Q. And sort of what was going on there?
A. I don't know. I don't know. I can't remember.
Q. Had that scuffle that you talked about happen yet?
A. No.
Q. Had that scuffle happened yet at that point?
A. No, ma'am.
Q. Who is that guy in the blue shirt --
A. In the blue shirt?
Q. Yeah.
A. Chavis.
Q. And who was the person in the red shirt?
A. Deonte.
Q. Was that usual for Deonte to be acting like that?
A. No.
Q. After the scuffle into the doorway, what happened?
A. They was fighting for a little second. I don't know. There were some shots. I turned and ran back behind the bar, like toward the side.
Q. Heard some shots, and you ran off to the side? Could you see exactly what was going on?
A. A little bit.
Q. You could see fighting?

A. (Nods head.)

MS. BALDWIN: Beg the Court's indulgence. I don't have any further questions for you.

CROSS-EXAMINATION

BY MR. SMILEY:

Q. I am Jim Smiley. I represent Deonte, and this is Ms. Hensley, who is my second chair, just so you know who everybody is.

Y'all been at Frazier's that night, a whole bunch of you?

A. Yes, sir.

Q. It wasn't like it was an organized thing; it was just everybody went to the club?

A. Yes, sir.

Q. And is it fairly common after the club closes that lots of people go to that Waffle House?

A. Yes, sir.

Q. And it was pretty crowded inside that night, wasn't it?

A. Yes, sir.

Q. And there was people outside in the parking lot too, right?

A. Yes, sir.

Q. It's not like everybody comes straight inside?

A. Yeah.

Q. And you were sitting pretty close to Deonte and the fellow when they got -- and the little scuffle, right? Did you get a good view of Deonte, right? And Deonte had on a red shirt, right, and it was open?

A. Yeah.

Q. And he had on blue jeans of some sort?

A. I don't remember.

Q. Do you remember if they were tight or loose?

A. No.

Q. Okay. But you could see the front of Deonte, right?

A. Yeah.

Q. You didn't see a gun, did you?

A. No, sir.

Q. And when Deonte started acting a fool -- Deonte looked pretty drunk there. Is that your observation?

A. Feeling good, probably.

Q. And he started ripping pretty hard there, didn't he, talking a bunch of trash?

A. Yeah, a little bit.

Q. Did you see Deonte even hit the fellow?

A. No -- I can't recall.

Q. Let me ask you this, Lorenzo: You remember Scrappy getting thrown out, right?

A. No.

Q. You don't remember that? Okay. When -- did you see Deonte throw a drink at the fellow?

A. I think so, I think -- yeah.

Q. Okay. And then at that point, the cook came around from behind? Do you remember seeing that?

A. Who?

Q. The cook.

A. No.

Q. Okay. You don't remember seeing who was pushing everybody towards the front of the Waffle House?

A. Huh-uh.

Q. Let me ask you some things I know you know. The fight that you saw, it took place in that foyer area?

A. Yeah.

Q. And when I say foyer area, I mean outside the inside door and inside the outside door, right?

A. Yeah.

Q. And that's where everybody was when you heard the shot?

A. Yeah.

Q. When you hear the shot, you ducked, right?

A. Yeah. I turned and went back out of the way.

Q. Okay. At any point in the night, did you see Deonte with a gun?

A. No, sir.

MR. SMILEY: Beg the Court's indulgence.

BY MR. SMILEY:

Q. The camera, that's one of those things when you saw it was going on, you thought it was funny?

A. Yes, sir.

Q. And I think you were holding out money at one point in it, right?

A. Yes, sir.

Q. Because it was sort of silliness, right?

A. Yeah.

Q. Okay.

MR. SMILEY: That's all I got.

THE COURT: Redirect?

MS. BALDWIN: None, Your Honor.

THE COURT: You can step down. Anybody need this witness any longer?

MS. BALDWIN: We're done with him, Your Honor.

THE COURT: Do you need him, Mr. Smiley?

MR. SMILEY: No, sir.

THE COURT: You're free to go. Next witness.

MS. LINDER: State call Chavis Heyward.

CHAVIS HEYWARD,

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MS. LINDER:

Q. Mr. Heyward, where are you from?

A. Hollywood.

Q. Hollywood?

A. Yes, ma'am.

Q. Do you know why you're here today?

A. Yes, ma'am.

Q. Are you happy about being here today?

A. No, ma'am.

Q. Were you served a subpoena for your appearance here today?

A. Yes, ma'am.

Q. Do you currently work?

A. No, ma'am.

Q. Do you have an interest in music? Are you a rapper?

A. Yes, ma'am.

Q. And what is your nickname?

A. CJ.

Q. CJ?

A. Yes, ma'am.

Q. Do you have any other nicknames for rapping or just in general?

A. CJ.

CHAVIS HEYWARD - DIRECT EXAMINATION

Q. Were you at the Waffle House back in mid-July in 2012, on Savannah Highway?

A. Yes, ma'am.

Q. And that night, did a fight happen at the Waffle House?

A. A fight?

Q. Did a verbal argument happen?

A. Yes, ma'am.

Q. Did that verbal argument ever escalate into some punches being thrown?

A. I didn't see no punches get thrown.

Q. At some point that night at the Waffle House, did a shooting take place?

A. Yes, ma'am.

Q. Before going to the Waffle House that night, I want to take you back a couple of hours. Did you go to Frazier's that night?

A. Yes, ma'am.

Q. And at Frazier's, what vehicle did you ride in? Or if you don't remember, that's fine.

A. I don't remember.

Q. Okay. Do you remember if you rode by yourself or with other people to Frazier's?

A. No, ma'am.

Q. Do you remember what time you went to the Waffle

House after Frazier's?

A. No, ma'am, not exact time.

Q. Was it midnight, was it 8 a.m.? Do you have any idea?

A. No, ma'am.

Q. And is it typical to go to the Waffle House after the clubs close?

A. If you're hungry.

Q. When you went to the Waffle House that night, do you remember where you parked?

A. No, ma'am.

Q. The verbal argument at the Waffle House, do you remember who that was between?

A. If you show me, I can remember. That was, like, two years ago. I can't remember.

Q. Would it help refresh your recollection of what happened to watch the video?

A. If you want to show me the video, then, yeah, if I can remember two years ago. Do you remember something two years ago?

Q. I would just ask that you answer the question. Would you like to watch the video? Would that help refresh your recollection?

A. Yes, ma'am.

Q. All right. If you can look at the screen in front

of you, we're going to be watching it, pausing it along the way.

Who were the two individuals that walked in, one in the black shirt, one in the red shirt?

A. That's Derrick and --

Q. What is Derrick wearing?

A. Black T-shirt.

Q. And who is in red?

A. Deonte.

Q. And who is Deonte?

A. Right here. In the red shirt right there.

Q. And are they carrying something in their hands?

A. Yeah, cups.

Q. Are those cups from the Waffle House or are those cups from Frazier's, do you know?

A. I don't know.

Q. And just now kind of watching that doorway to enter, okay --

A. Uh-huh.

Q. -- who is that coming in?

A. I don't know. Oh, that's me. Yeah, in the blue shirt.

Q. Can you see who is coming in in that white T-shirt?

A. My little brother.

Q. What is his name?

A. Sinclair.

Q. Can you tell who all these people are? If you can, tell me their names and what they're wearing.

A. Lorenzo in the black T-shirt.

Q. Okay.

A. Snoop.

Q. And what is Snoop wearing?

A. White T-shirt.

Q. Who is Snoop? What is his real name?

A. I don't know his real name.

Q. You know him as Snoop?

A. Yes, ma'am.

Q. Is he from the Hollywood area?

A. Yes, ma'am.

Q. Are most of these people from the Hollywood area?

A. Yes, ma'am.

Q. Okay. And underneath the weird letters and symbols at the bottom of that video screen, is that you in the blue shirt?

A. Yes, ma'am.

Q. Okay. If you look at the screen, we're going to look at a different angle. We're going to go to camera one. All right. Do you recognize the person in the red shirt?

A. Yes, ma'am.

Q. Who is that?

A. It's Dontaye.

Q. Do you recognize the fellow sitting down with the black shirt, white shorts, and dreads, turning toward the counter now?

A. Where at?

Q. Sitting at the counter, on the front left side in the black shirt. He'll turn around shortly. You can keep watching.

A. I don't know everybody on this video, on this camera. Why do you keep asking me the names? I don't know all these people.

Q. Do you know the fellow in the white T-shirt sitting along the wall that Deonte appears to be having an exchange with?

A. No, ma'am.

Q. So you don't know him?

A. Where at? Right here, by the jukebox?

Q. Yes.

A. No, I don't.

Q. Okay. And what are you doing here? What are you doing here?

A. Telling them to stop, I guess. Trying to break it up.

Q. Trying to be the pacemaker?
A. Yes, ma'am.
Q. We're going to switch the angle. We're going to flip to camera angle two.
Do you see yourself in this?
A. No, ma'am.
Q. Do you see yourself in the blue shirt in this one?
A. Yes, ma'am.
Q. Where are you? Point it out on the screen in front of you, please.
A. (Indicating.)
Q. If you touch the screen in front of you, it will show up. It's a touch screen.
A. All right.
Q. Keep watching. Where are you now, could you see? If you just watch yourself on the screen, could you point yourself out again?
A. (Indicating.)
Q. Just watch yourself, and if you can just kind of tell us where you're moving. Is that you?
A. Yes, ma'am.
Q. Are you in the doorway? You're in between the two doorways; is that correct?
A. No. I'm not in between two doorways. I'm in between the door. I haven't make it all the way outside.

I couldn't make it all the way outside. I'm still standing out right there.

Q. All right. Why couldn't you make it all the way outside?

A. Gunshots.

Q. Where are you coming now?

A. Back in.

Q. Why are you coming back in?

A. Glass hit me.

Q. Glass hit you?

A. Yes, ma'am.

Q. Where did it hit you?

A. My neck.

Q. Did you see who shot that night?

A. No, ma'am.

Q. Did you see what the shooter was wearing that night?

A. No, ma'am.

Q. Do you recall meeting in my office on August the 19th of this year with myself, Ms. Baldwin, and Kenny Barfield, my investigator?

A. Yes, ma'am.

Q. And do you recall at that time having an interview with us and going through this video?

A. Yes, ma'am.

Q. And at any time while you were at the solicitor's office that day, did you indicate anything about the shooter?

A. No, ma'am.

Q. Did you tell Investigator Barfield that the shooter was wearing a red shirt?

MR. SMILEY: Objection, Your Honor. Asked and answered.

THE WITNESS: I can answer that question.

MR. SMILEY: I would -- asked and answered, Your Honor.

THE COURT: You asked a general question, anything about the shooter. Then you ask specifically about a red shirt. That's all right. Go ahead.

THE WITNESS: Answer the question?

BY MS. LINDER:

Q. Yes.

A. Now re-ask the question again.

Q. The question is, did you tell Investigator Barfield back on August the 19th in the solicitor's office that it was the guy in the red shirt who was the shooter?

A. No, ma'am.

Q. And on September the 8th of this year --

A. Uh-huh.

Q. -- do you recall having a phone conversation with Investigator Barfield from my office?

A. Yes, ma'am.

Q. During that phone conversation, do you recall indicating to him the color shirt of the shooter?

A. No, ma'am.

Q. Chavis, you're from the Hollywood area, correct?

A. Yes, ma'am.

Q. And I believe you testified previously that you know everybody on that video.

A. Yep.

Q. Does that include this defendant, Deonte Brown?

A. Yes, ma'am.

Q. Have you ever been in trouble with the law before?

A. Yes, ma'am.

Q. In 2011 were you convicted of a gun charge and two drug charges?

A. Yes, ma'am.

MS. LINDER: I have no further questions.

MR. SMILEY: May it please the Court, Your Honor?

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. SMILEY:

Q. Chavis, I'm Jim Smiley. How are you? This is

Deonte Brown who I represent I know you know him, and this is Ms. Hensley, my second chair, all right?

You and I have never spoken before, have we?

A. No, sir.

Q. That night everybody had been at the club having a good time?

A. Yes, sir.

Q. And I think you testified that it's not unusual afterwards to go to the Waffle House afterwards?

A. Yeah.

Q. If you're hungry, you go to the Waffle House, right?

A. Yes, sir.

Q. And that night, there were a lot of people there, right?

A. Yes, sir.

Q. Both inside and outside?

A. Uh-huh.

Q. And you saw Deonte inside the Waffle House that night?

A. Yes, sir.

Q. And, I mean -- because I get Dontaye Snoop and Deonte -- I mess them up, but Deonte Brown, my client, you saw him inside the Waffle House, correct?

A. Yes, sir.

Q. And he was acting pretty foolish, wasn't he?
A. Yes, sir.
Q. And you saw he had a red shirt on, didn't you?
A. Yes, sir.
Q. And it was open?
A. Yes, sir.
Q. And he had on those jean pants, and they were baggy and loose; is that fair to say?
A. Yes, sir.
Q. Did you see him with a gun?
A. No, sir.
Q. And you were right there next to him a good point of that, right?
A. Yes, sir.
Q. Actually, at one point, you were trying to get him to calm down when he was ripping and talking trash and everything, weren't you?
A. Yes, sir.
Q. And then were you in the -- you were in the Waffle House when the security guard threw Scrappy out, weren't you?
A. I don't remember that.
Q. You do remember that?
A. No, sir.
Q. Okay. I'll leave it alone.

The point that the cook came from behind the counter, do you remember that?

A. I mean, basically, I can't remember. Right now I can't remember.

Q. I'm asking questions that I know you'll know the answer to.

A. Right.

Q. When the fight, the pushing and shoving took place, that was inside those doors that -- the foyer when you come in, the outside door and the inside door?

A. Before?

Q. I call it a foyer.

A. Yeah.

Q. There is a set of doors?

A. The wall -- the door before the wall, before you walk in the outside, before you go outside.

Q. Actually, I'm going to get a picture. It will be easier, okay?

A. All right.

Q. Let me see which one is best.

I show you what's been put in as State's Exhibit No. 8. That's the inside door to the foyer, right?

A. Yes, sir.

Q. Okay. And I'm going to show you what's been marked as State's Exhibit 17, and that shows the outside

door, right?

A. Yes, sir.

Q. Now, the scuffle that took place, it took place between the outside door and the inside door, right?

A. Outside door, I think.

Q. So you were right --

A. Where it happened at?

Q. Yeah.

A. Where that mirror broke at, the window broke at.

Q. Right. You were inside?

A. Yes, sir. I couldn't make it outside.

Q. When you heard the shots go off --

A. I ran back into Waffle House.

Q. You didn't see anybody shoot.

A. No, sir.

Q. Now, you didn't hang around and talk to the police that night, did you?

A. No, sir.

Q. But you did talk with the police, right?

A. That night?

Q. Not that night, but later.

A. Yeah, a while back, like.

Q. And you told them what you knew, right?

A. Uh-huh.

Q. And then right before trial, Investigator Barfield

got you and started asking you some more questions?

A. Yes, sir.

Q. Okay. Did you write a statement any time right before trial or anything?

A. No. I never write statements.

Q. Okay. I got you. And in your testimony, and you're clear, that you didn't see anybody shoot anybody?

A. I didn't see nobody shoot nobody.

Q. All right.

MR. SMILEY: Thank you.

THE COURT: Redirect?

MS. LINDER: No redirect, Your Honor.

THE COURT: You can step down. Do you need this witness anymore?

MS. LINDER: We would ask that he be released.

THE COURT: Do you need him?

MR. SMILEY: No, sir.

THE COURT: You're free to go.

Next witness?

MS. LINDER: State calls Kenny Barfield.

KENNY BARFIELD,

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MS. LINDER:

Q. Where do you work?

A. The solicitor's office, Ninth Circuit.

Q. Are you actually assigned as an investigator with me as one of your attorneys?

A. I am.

Q. What do some of your duties include? Or, rather, do some of your duties as an investigator with the solicitor's office include assisting witnesses and prepping for trial?

A. That's correct, yes, ma'am.

Q. And did you assist with prepping of witnesses and setting up meetings with witnesses for this trial?

A. Yes, ma'am.

Q. And did that include a meeting back on August the 19th of this year?

A. That's correct.

Q. And did you set up a meeting with Chavis Heyward?

A. I did.

Q. And how did you set that meeting up?

A. By phone call, had him respond by phone and confirm that he would on the 19th of that month come to our office at a certain time.

Q. And who was present during the meeting with Chavis Heyward that day?

A. Yourself and Jessica Baldwin.

Q. And you were present?

A. That's correct.

Q. And during the meeting with Mr. Heyward, were the events leading up to the shooting at the Waffle House discussed?

A. Yes, ma'am. You had a conversation with Mr. Heyward several minutes prior, then showed him the video, which he then identified certain people in the video as he did today on the stand.

More conversation went after that during, I guess, the approximately 45 minutes or so that he was there in our office.

Q. And at any point in time from when he came to the solicitor's office voluntarily to meet with us to when he left the solicitor's office that day, did Chavis Heyward ever indicate to you that he saw who the shooter was?

A. Yes, ma'am.

Q. And at any point that day, did Chavis Heyward indicate to you that he knew -- not just saw it, but knew the identity of the shooter?

A. He did.

Q. And can you please explain that.

A. During the conversation, Mr. Heyward was becoming --

MR. SMILEY: Objection, Your Honor. This is hearsay.

MS. LINDER: Your Honor, I believe --

THE COURT: It's under 613(b).

BY MS. LINDER:

Q. Proceed, please.

A. During the conversation you were and Ms. Baldwin had, I was an observer in the conference room with Mr. Heyward. This conversation went on, and he was very reluctant about giving any information because of being in that area and was more or less being on the offensive, as he was on the stand today, not identifying and hem hawing around about his involvement in the actual incident itself.

After the interview we had, and speaking with Mr. Heyward for a while, I escorted Mr. Heyward down the hallway. We stopped before exiting the door in order to get me past the parking garage to do so, and we were waiting for Ms. Linder and Ms. Baldwin to finish up some stuff they had before I let him go.

At that point, I talked to him. I said, Look, Chavis, you can be a hard rear end if you want to, but I can see you have a good heart because you tried to save that young man that was shot inside that foyer. I said, You were trying to break up that fight -- and he also

told me there was no reason to do what they did to him, because that boy was not -- he was slow mentally and that there was no reason for him to be picked on that night.

So when he was talking about that, I knew he was concerned about what happened.

Q. And did you know this from all your training and experience from law enforcement prior to coming into the solicitor's office?

A. Yes, ma'am. I retired from the city of Charleston in 2007 before coming on the job. I've been here seven years since then.

Q. Please continue.

A. We continued talking, and I could see his demeanor somewhat loosened up and I said, Look, you can act like a thug if you want to in front of anybody that you want, but I know you've got a heart, and I know you want to help solve this situation and get this monkey off your back.

At that time I said, Look, man, you don't have to tell me the name of the individual that did the shooting, but you tell me what color shirt he was wearing.

Q. And why did you mention to him that he didn't have to tell you the name? Was that an issue before?

A. It was. He didn't want to give up a name who was there because they were all friends and related somehow

within this incident that happened, so everybody knew everybody that was involved in this.

Q. So how did he end up responding to you?

A. I said, Again, Chavis, I said, Man, you don't have to tell me who it was or give me a name. I said, What color shirt was the shooter?

And he says, Red.

And I said, Thank you. I appreciate your cooperation.

I then went back and wrote up a statement that I had, my notes of that particular incident which I have in front of me today, write what he told -- what conversation I had with him and what he told me.

Q. Did you have a phone conversation with Chavis Heyward on September the 8th of this year?

A. I did, yes, ma'am.

Q. And was that conversation -- was the intention behind that conversation to assist me in the preparation of this trial with scheduling for witnesses appearing in court?

A. I did. Yes, ma'am, it was.

Q. And did you end up speaking to Chavis Heyward back on September 8, which was a week ago?

A. Yes, ma'am. He answered the phone, and I had the phone number where I called him where he answered.

Q. What happened when you talked to him on the phone that day?

A. Chavis insisted he never said that about the red shirt. Going back over my notes, he said Deonte -- I told the defense lawyer that identified Deonte as the shooter. He wanted to know why I did that.

I told him I did not tell him it was Deonte. I told him in my statement that you told me it was the guy wearing the red shirt that was the shooter.

He then told me that he never said that, that he said -- that he said red shirt, not the black shirt was the shooter. That's what he told me over the phone. He again reiterated that it was the red shirt, not the black shirt, is what he said his statement was to me the first time we met.

Q. So with your 30 plus years of law enforcement with the city of Charleston and the solicitor's office, you had how many separate conversations with Chavis Heyward about the identity of the shooter in this case?

A. Twice.

Q. And in either of those times when you talked to Chavis Heyward, did he seem under the influence?

A. No.

Q. Did he seem confused?

A. No.

Q. Did he seem uncertain?

A. No.

Q. And on August the 19th of 2014, did Chavis Heyward identify the red shirt as the shooter?

A. He did.

Q. And on September the 8th, over the phone, did he reiterate and identify the red shirt as the shooter?

A. Yes, ma'am.

Q. And during the conversations with Chavis Heyward, did he show and explain to you where he was and how he would have that perspective to see the shooter?

A. Yes. He identified in the interviews that you and Ms. Baldwin had with him showing the video, he did point out where he was at, who was there, who he knew during the confrontation in the Waffle House leading to when they came in the door to where the altercation had started with Deonte Brown and the gentleman, the innocent bystander, that was wounded, where the drink was thrown in his face. He did identify everybody and clearly said he was there and saw the whole thing.

MS. LINDER: I have no further questions.

Please answer any questions the defense may have.

CROSS-EXAMINATION

BY MR. SMILEY:

Q. Chavis didn't write this down?
A. No, sir.
Q. It wasn't recorded?
A. No, sir.
Q. You were the only one present for this conversation?
A. We were standing at the hallway exiting the building, yes, sir.

MR. SMILEY: That's all I got.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MS. LINDER:

Q. Before Mr. Heyward told you the information, when yourself, Mr. Heyward, myself, and Ms. Baldwin were in the interview room in our office, did Mr. Heyward indicate, not identify, but indicate at that time anything about law enforcement's identification of the shooter in this case?

If that doesn't make sense, I can try to say it better.

MR. SMILEY: It's beyond the scope of cross.

THE COURT: I'll sustain it on that ground.

MS. LINDER: Then I have nothing further.

THE COURT: You may step down.

THE WITNESS: Thank you.

THE COURT: Next witness?

MS. LINDER: Sinclair Heyward.

SINCLAIR HEYWARD,

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MS. LINDER:

Q. Good afternoon, Mr. Heyward. Where are you originally from?

A. Ravenel, South Carolina.

Q. Where are you currently living?

A. Virginia.

Q. What are you doing in Virginia?

A. I'm in the Navy.

Q. You're in the Navy?

A. Yeah.

Q. And were you served a subpoena to come down here today?

A. Yes.

Q. Do you know why you're here today? Do you know you're here today to testify in a case?

A. Yeah.

Q. Were you at the Waffle House located at Savannah Highway and Main Road back in mid-July in 2012?

A. Yes.

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Q. And where were you before -- where were you hanging out before going to the Waffle House?

A. Frazier's.

Q. What is Frazier's?

A. Club.

Q. And what vehicle did you ride to Frazier's?

A. Thunderbird.

Q. Who was driving?

A. Me.

Q. Who was in the car with you?

A. Dontaye.

Q. Who is Dontaye?

A. My friend.

Q. What is Dontaye's last name?

A. Reed.

Q. And did Dontaye end up dying that night?

A. Yes.

Q. What was your relationship with Dontaye?

A. Best friend.

Q. He was your best friend?

A. Yeah.

Q. Did anything unusual or out of the ordinary happen while y'all were at Frazier's?

A. No.

Q. At what point did you leave Frazier's and head to

the Waffle House?

A. After the club closed. I don't know what time.

Q. After the club closed? And what vehicle did you ride in to the Waffle House?

A. Thunderbird.

Q. And who was in the car?

A. Me and Dontaye.

Q. You and Dontaye?

A. Me, Dontaye, and Rell.

Q. And when you arrived at the Waffle House that evening, do you recall where you parked?

A. At Waffle House?

Q. At the Waffle House?

A. Yeah.

Q. Where did you park?

A. By the tree.

Q. By what tree?

A. The tree, like --

Q. Keep talking.

A. The tree closest to, like, Frazier's, I guess -- not Frazier's, the Waffle House.

Q. All right. At this time I'm going to show you State's Exhibit 1, okay, just to orient you to this.

This is State's Exhibit 1. It has already been admitted into evidence and testified to. Do you

recognize what this is?

A. Parking lot of the Waffle House.

Q. Okay. And that screen in front of you is a touch screen, so if you touch it or circle, it will show up.

Can you kind of point out where you were talking about where you parked?

A. Right here.

Q. That's the tree you're talking about?

A. Yeah.

Q. All right. So when you got to Waffle House that night, did you stay in the parking lot or did you go inside?

A. Gone inside.

Q. And what happened when you went inside the Waffle House? What were you doing?

A. Just sitting around, standing around.

Q. And is it a typical occurrence after the club closes to maybe go to Waffle House?

A. Yeah.

Q. Did you go to the club a lot?

A. No.

Q. That night, the Waffle House, did a verbal argument happen a little bit after 4:00 in the morning?

A. Yeah.

Q. And did a physical fight -- were punches thrown at

Waffle House that night?

A. I didn't really see the fight, but I guess, yeah.

Q. Did a shooting happen that night?

A. Yeah.

Q. Do you know if someone was shot that night?

A. Yeah.

Q. Do you know how many people were shot that night?

A. As far as I know -- I only know two.

Q. Do you know what the injuries were?

A. What you mean?

Q. The two people who were shot?

A. Yeah, I know them.

Q. Did they both die?

A. No, only one.

Q. And who was that?

A. Dontaye.

Q. And is that the same Dontaye that is your best friend?

A. Yeah.

Q. And is that the same Dontaye that you rode in the Thunderbird with to Frazier's?

A. Yes.

Q. And is that the same Dontaye that you rode from Frazier's to the Waffle House with?

A. Yes.

Q. How long you had known Dontaye?

A. A long time, since elementary.

Q. Since elementary school?

A. Yeah.

Q. So in the Waffle House, can you explain to the jury who was involved in the verbal argument that occurred?

A. Deonte and some dude. I don't know him.

Q. And who is Deonte? What is his full name, if you know it?

A. Deonte Brown.

Q. Do you remember what he was wearing that night?

A. Red shirt.

Q. And the fellow that he was in -- that he was yelling at, or in an argument with, did you know him?

A. No.

Q. And did you see a physical fight or a tussle or punches being thrown?

A. No.

Q. You didn't see that?

A. No.

Q. Where were you in the Waffle House during all this?

A. Inside.

Q. Where inside?

A. At the them little chairs right by the window.
Q. And did you hear gunshots?
A. Yes.
Q. Did you see who shot?
A. No.
Q. What did you do after the shooting?
A. Went outside.
Q. What did you do outside?
A. Went in my car. I saw Dontaye on the ground.
Q. Did you go to your best friend?
A. Yeah.
Q. Did you end up going to the hospital that night?
A. I went to the wrong hospital.
Q. You went to the wrong hospital?
A. Yeah. I went to the one in West Ashley.
Q. Okay. Okay. All right. At this time, I'm going to show you just clips of a surveillance video that's already been admitted into evidence and just ask you a couple questions about it, okay?
A. All right.
Q. All right. Who is walking in in the white T-shirt?
A. That's me.
Q. Okay. Who is in the red shirt that you're standing behind?

A. Right here?
Q. Yeah.
A. Deonte.
Q. Who is in that turquoisy-blue shirt, kind of walking towards you?
A. Chavis.
Q. Are you any relation to Chavis?
A. Yeah, brother.
Q. Chavis is your brother?
A. Yeah.
Q. All right. Keep playing. Do you recognize that fellow with the white T-shirt and kind of braids to his shoulders who is walking in, coming between you and Chavis?
A. Yeah. Dontaye.
Q. That's Dontaye?
A. Yeah.
Q. Do you recognize that fellow with the dark shirt? It looks like there is writing on it.
A. I can't see.
Q. Okay. There is a better angle. I'll point him out to you, see if you know who that is.
A. All right.
Q. All right. If you can kind of see -- do you see yourself here?

A. Yeah.
Q. Where are you standing?
A. Right here (indicating).
Q. And who is next to you?
A. Dontaye.
Q. Y'all arrived together?
A. Yeah.
Q. Okay. Where are you going?
A. Going out there, I guess.
Q. Is that you standing in the doorway?
A. Yeah.
Q. I know it can be tough to tell, but if you can make sure to speak into the microphone, this lady next to you has to report everything.

Now, this guy in the red shirt at the counter, who is that?

A. I don't know. I can't see.
Q. Okay. Where does he appear to be going?
A. Leaving out?
Q. Yes.
A. He's leaving out, I guess.
Q. Okay. Who is that coming out in the white T-shirt?
A. That's me.
Q. And who did you just pass by? What girl is that

that you walked behind?

A. I think that's Quanesiha.

Q. Okay. Do you recognize that fellow with the white shirt and the black T-shirt who is leaning against the counter toward the bottom of the screen, now bending down? If you don't, that's okay.

A. Yeah. Lorenzo.

Q. Is he also from Hollywood?

A. Yeah.

Q. Who is that again in the blue shirt?

A. My brother.

Q. What's happening here? People just walking by you? What happened?

A. Trying to stop the altercation, I guess.

Q. All right. Do you see where you are?

A. Yeah.

Q. Where are you?

A. (Indicating.)

Q. You didn't move. Did you get involved in trying to break that up?

A. No.

Q. Where are you going now?

A. Over there.

Q. Are there people in between you and the exit door to that Waffle House?

A. Yeah.

Q. Where are you now? Are there a bunch of people in that area between those two doors and going outside?

A. Yeah.

Q. Where did you go now?

A. (Indicating.)

Q. Are you bending down right there?

A. Yeah.

Q. Why are you bending down?

A. Somebody shot.

MS. LINDER: I don't have any other questions for you, if you could answer anything Mr. Smiley may have.

THE WITNESS: Yes, ma'am.

CROSS-EXAMINATION

BY MR. SMILEY:

Q. Hey, Sinclair. Jim Smiley. I represent Deonte. Ms. Hensley is the second chair.

How long have you been in the Navy?

A. A year-and-a-half.

Q. Well, thank you very much, because I am glad you got in the Navy.

Back at that time, y'all had been in Frazier's earlier that night; everybody drinking, partying, having a good time?

A. Yeah.

Q. At the Waffle House, when you got there, there was lots of people at Waffle House, fair to say?

A. Yeah.

Q. And there were people both inside and outside in the parking lot, right?

A. Yeah. People been outside, yeah.

Q. Well, after you -- after Frazier's closed, is it fairly common to go to the Waffle House for a while before you go home?

A. Yeah.

Q. And so it's sort of almost like a hangout, right? Go get some food, hang out, and then go home?

A. Yeah.

Q. I'm not trying to put words in your mouth, but is that fair to say?

A. Yeah. If you're hungry, you go to Waffle House.

Q. Got you. And that night, you saw Deonte acting foolish inside, right?

A. Yeah.

Q. And you were standing right there, and Snoop and Lorenzo and Deonte was right there, talking to trash to that fellow, right?

A. Yeah.

Q. And then you saw the red shirt he had on?

A. Yeah.

Q. And you noticed that it was open, right?

A. Yeah.

Q. And he had on a pair of blue jeans, something like that?

A. Yeah.

Q. Some baggy jeans?

A. Yeah.

Q. You were able to see his waistband, right?

A. Yeah.

Q. Did you see him with a gun?

A. No.

Q. And your back was actually turned when the shot went off, right?

A. When the shots went out, I turned around.

Q. And you didn't see the shot or where it came from?

A. No.

Q. Was everybody backed in that foyer still when that shot went out? When I say that foyer, that's the inside door going out and the inside door coming in. Were they all backed in there?

A. Yeah.

Q. And when you went outside -- and your car was near where Snoop was; is that right?

A. Yeah.

Q. And you could see that he had been hurt, right?
A. Yeah.
Q. And you spoke with the police a couple months after that, right?
A. Yeah.
Q. And you gave them a statement, right?
A. Yeah.
Q. And you told them you didn't see who shot?
A. Yeah.
Q. And you tried to cooperate in any way you could, right?
A. Yeah.

MR. SMILEY: Beg the Court's indulgence. That's all I have, Your Honor.

THE COURT: Redirect?

MS. LINDER: No redirect, Your Honor. We would ask that this witness be released.

THE COURT: Any objection?

MR. SMILEY: No objection. No objection.

THE COURT: You're free to go. Thank you.

MS. LINDER: Your Honor, if we may approach.

THE COURT: Yeah.

(Discussion held at sidebar.)

THE COURT: All right, folks. This looks like a good place to break for the day, so I'm going to

send you home with the same instructions I did yesterday.

Don't talk to anybody about the case, including other members of the jury panel. Don't begin deliberations or discussions. Don't try to find out anything about the case. What you need to know about this case we'll present to you in this courtroom.

So don't post anything to social media, no Facebook, no Twitter, whatever they call it. Just go home and enjoy the evening. We're going to start back at 9:30 in the morning. Hopefully everything will go smooth. I promise you this morning was an aberration, but if you could get in a little bit before 9:30, our aim is to start at 9:30.

All right? Thank you for your patience today.

(Recess taken.)

(September 17, 2014.)

THE COURT: Is everybody ready? Let the record reflect the defendant is in the courtroom.

(In open court, jury present.)

THE COURT: All right. Welcome back, folks. We're going to start now with the State calling the next witness.

Madame Solicitor, whenever you're ready.

MS. LINDER: Thank you, Your Honor. The

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State calls Joe West.

JOSEPH WEST,

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MS. LINDER:

Q. Good morning.

A. Good morning.

Q. Where do you currently work?

A. I work as a senior agent at the South Carolina Law Enforcement Division, which is commonly known as SLED. My permanent assignment is the tech services unit. We process and handle video, audio, electronic surveillance needed for requesting agencies.

Q. And how long have you been employed by SLED?

A. I've been employed by SLED since '93; 23, 24 years.

Q. What agencies bring you videos?

A. With tech services, we more or less get videos from crime scenes, convenience stores, malls, shopping centers, what have you, where something has happened and they have a video. The agency will bring it in. It may be a city agency, county agency, state, or federal, and, of course, our in-house people also bring videos in.

Q. And so do you enhance video?

A. Well, that's what most people commonly call when we process videos, the word "enhance". If you think about it, we watch things on TV, and they have these great computers that zooms in and it gets stuff.

That's not something we do. More or less, we're able to process videos that some people can't because of the nature that they play as a program. We make the video playable on another format. We capture screen shots, but the word "enhance", as far as adding something or subtracting something from the image is not something we do.

Q. So what things do you have the ability to kind of tweak, I guess, from the screen shot you capture?

A. More or less, if you imagine a video, you've seen, perhaps, on TV a surveillance video from a store. We're taking that video, and we're either slowing it down with the program, the software, we're slowing it down so you can view it easier. Sometimes you see action easier if it's slower.

We're capturing or freezing a particular image on the screen to catch a person or an item or an incident that occurs. The software allows us to place, as we've seen before, like, a circle around faces or items or a description somewhere on the video. More or less, we can change the brightness, how bright you can see the

picture. We can zoom in to the picture as we view it or as we freeze it and then provide still images for a trial.

Q. When you get these videos from different agencies, do you alter the video or change the actual video in any fashion?

A. No, ma'am. The actual video itself, the software that comes in -- in the old days, it would be a VHS tape. We don't manipulate that software. We record as the video plays with another program, so you're viewing the program on the TV, the video from the surveillance cameras, and you're recording that with the software, and it's that recording made from the software that we do our adjustments to the brightness and zooming.

Q. And how long does it take from this process of going through a video?

A. You know, often what it is, we spend days on videos sometimes trying capture images or to get exactly what law enforcement wants in evidence. In some cases it's something as simple as playing the video, capturing four or five screen shots, providing a copy on to a CD ROM, and out the door they go.

Q. Were you contacted by the Charleston Sheriff's Office about some video in this case?

A. Yes, ma'am.

Q. Back in July of 2012, were you brought a video to kind of do what you do with it? I want to say enhance, but I know that's not the right word.

A. Yes, ma'am. It was a Detective Lawrence that came to SLED that day, and he had the video with him.

Q. At this time, I show you what's been marked as State's Exhibit 25. Feel free to open that.

A. Thank you.

Q. Do you recognize that?

A. Yes, ma'am.

Q. How do you recognize it?

A. It has my handwriting and my initials on the front of it.

Q. And is this the disk that you worked with back in July of 2012?

A. Yes, ma'am. That was the disk created with the enhanced pictures if, you will.

MS. LINDER: At this time, I would seek to enter State's Exhibit 25 into evidence.

MR. SMILEY: Without objection.

THE COURT: Admitted. You can publish.

MS. LINDER: Thank you, Your Honor.

(Whereupon, State's Exhibit No. 25 was marked for identification and admitted into evidence.)

BY MS. LINDER:

Q. And at this time, I'm going to play the video, and you can just see it on the screen in front of you, okay?

A. Yes, ma'am.

Q. Now, in this case, did you work on the exterior camera angle?

A. Yes, ma'am.

Q. And did you do your brightness to the exterior camera angle?

A. Yes, ma'am.

Q. And did you also have a separate recording slowing down the exterior angle?

A. Yes, ma'am.

Q. All right. This first is the 100 percent speed exterior camera angle.

(Whereupon, the video was played for the jury.)

BY MS. LINDER:

Q. And did you also slow down a version of the video?

A. Yes, ma'am.

Q. And to what percent did you do that?

A. 35 percent.

Q. And on this, is the brightness adjusted?

A. We changed the brightness on a few features.

Q. Like you were previously discussing, did you alter the content on this video?

A. No, ma'am.

MS. LINDER: Thank you.

I have no further questions for you, if you can answer any questions Mr. Smiley may have.

THE WITNESS: Yes, ma'am.

CROSS-EXAMINATION

BY MR. SMILEY:

Q. So this is the best view you could get out of this, in your estimation, correct?

A. Yes, sir.

Q. And so you take the original and try whatever technique you can not to change the content -- it's not Photoshopped, in other words?

A. No, sir.

Q. It's more of just adjusting what light conditions you have to create as clear a picture as possible?

A. Yes, sir.

Q. Is it fair to say?

A. Yes, sir.

MR. SMILEY: That's all I got.

THE COURT: All right. Any redirect?

MS. LINDER: No redirect. We ask that this witness be excused.

THE COURT: You're free to go. Thank you.

THE WITNESS: Good morning.

THE COURT: Next witness.

MS. BALDWIN: State calls Jesse McNeal.

JESSE McNEAL,

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MS. BALDWIN:

Q. Where are you from?

A. Johns Island, South Carolina.

Q. How long have you lived there?

A. All my life.

Q. How old are you?

A. Twenty-eight.

Q. Where do you currently work?

A. City of Charleston County maintenance authority.

Q. Are you wearing you union for work?

A. Yes, ma'am.

Q. How long have you worked there?

A. I just started about five months ago.

Q. Where did you work back in July of 2012?

A. Waffle House.

Q. Waffle House where?

A. Savannah Highway.

Q. I'm going to show you what's been marked as State's Exhibit 26. Can you tell me what that is?

A. Waffle House.

Q. It's the Waffle House?

A. It's the Waffle House.

Q. Is it a picture of the Waffle House?

A. No. It's the plans.

Q. Thank you.

MS. BALDWIN: At this time, I seek to admit State's Exhibit 26 into evidence.

THE COURT: It's admitted.

(Whereupon, State's Exhibit No. 26 was marked for identification and admitted into evidence.)

MR. SMILEY: Again, Your Honor, I don't object. I just want to make sure to note it isn't to scale. It certainly represents the Waffle House, but they don't provide a scale or measurement, but I'm not complaining.

MS. BALDWIN: Well, Your Honor, for the record, it is to scale.

THE COURT: What's the scale?

MS. BALDWIN: That, I don't know, Your Honor, but these are the original blueprints, it's our understanding, from that Waffle House.

MR. SMILEY: Great. Your Honor, I'll keep my mouth closed.

THE COURT: All right.

BY MS. BALDWIN:

Q. Jesse, could you sort of describe these different areas? What is in here?

A. That's the high bar.

Q. And if you touch on that screen, you should be able to mark on it.

A. That's the high bar, low bar.

Q. Where is the low bar? It didn't show up?

A. Right here, this area (indicating).

Q. Okay. And then what is over at this end?

A. That's more seating. That's the -- that's not the office area, but some more seating -- you got them in sections. This side is the office area, and this side is stretch.

Q. Where's the stretch?

A. Over here (indicating), and this is the office. That's what we call the sections seating.

Q. Oh, okay. So that area you just pointed out is the office, but it's actually customer seating?

A. Yes. It's customer seating.

Q. Right back, here what is that?

A. The grill area.

Q. And when you worked at the Waffle House, what did you do?

A. I was the grill operator.

Q. The customer area, the spot where all the

customers were, was that a big area?

A. I mean, medium size, about regular size of a Waffle House, I mean -- it's not really that bad, you know.

Q. Do they vary that much?

A. Not really. A lot of Waffle Houses are basically almost the same size. Some get a little bigger but not much.

Q. And then just so the jury can see, what is here?

A. The entranceway.

Q. And here?

A. Bathrooms.

Q. How long had you worked at the Waffle House as of July 2012?

A. July of 2012, I would say about three years, four years. I would say about four years. I left for a year.

Q. Okay. I'm going to bring you to the night of July 14 into the morning of the 15th of 2012. Were you working that night?

A. Yes, ma'am.

Q. What position were you working?

A. Grill operator.

Q. Okay. Do you remember an incident that happened?

A. Yeah, a shooting.

Q. A shooting happened?

A. Uh-huh.

Q. Tell us about that.

A. Well, I was cooking, and, you know, the club rush came in. Everybody started piling in. I wasn't really paying attention too much, but basically just cooking people orders, but eventually an argument broke out between my cousin, who I let sit in there some nights --

Q. Who is your cousin?

A. Quentin Allen.

Q. Okay. Tell us about your cousin. What was his sort of personality, demeanor? What was his mental state like?

A. I mean, he's a little challenged. You know, he's kind of slow. He doesn't really register things like a normal person would.

Q. Did Quentin really have a lot of places to stay?

A. No. He's homeless.

Q. Do you know where Quentin is now?

A. From information given to me, he's admitted --

MR. SMILEY: Objection, Your Honor. It's hearsay.

THE COURT: You can tell us if you know.

THE WITNESS: Oh, I mean, he's in Florida, I guess. That's as far as I know, in Florida.

BY MS. BALDWIN:

Q. Have you really seen him at all since this happened?

A. No. I saw him one time after that. I can't recall the date, but I saw him for a brief moment, asked him some questions, and after that, I didn't see him again.

Q. Would Quentin come into the Waffle House often?

A. Yeah. He would come and sit down and chat. Since he was homeless, I would give him some food and let him drink and sit and talk with us.

Q. How about the guys that came in that night, the club group, I guess?

A. Uh-huh.

Q. Did you recognize any of them?

A. What do you mean, do I recognize them?

Q. Like, do they come in there a lot?

A. Yeah. It's a normal crowd that comes in there.

Q. Okay. Would people come into the Waffle House after the club quite a few times?

A. Uh-huh.

Q. So you said that they started -- somebody started fighting with Quentin. What happened?

A. Starting fussing, arguing. From my understanding, it was over a cigarette. I don't know. They started fussing and fighting, and at that point -- once they

started fussing and I saw it start to escalate, I basically came from behind the counter, try to intervene a little bit.

Q. Why did you come from behind the counter? Wasn't there a security guard there?

A. Yeah. I don't know what he was doing.

Q. Fair enough. So you came from behind the counter? What was your intention when you came from behind the counter?

A. To try to calm things down and maybe alleviate some of the problems that was about to happen, because I could see it escalating.

Q. And about where were you when you were watching this happen? You can point it out on that diagram, if you can.

A. When I actually saw them starting arguing and started to come back, I was by the grill.

Q. Okay. And where were they?

A. Over here (indicating). My cousin was sitting right here, and they were arguing with him right there.

Q. Okay. So what happened when you came from behind the counter?

A. Well, they were still arguing and fussing. Once they got around and they started pushing people, they threw a drink in my cousin's face.

Q. Who was this person that was arguing with your cousin? Did you know him?

A. No. I didn't know him personally, but I seen him regularly come into Waffle House.

Q. Do you recall what he was wearing, what he looked like?

A. I can't recall what he was wearing, but, I mean, I know what he looked like.

Q. When you said you were pushing people, what did you mean by that?

A. Just trying to break it up, like, because once the drink got thrown -- once they threw the drink in his face, he saw red and was ready to fight over that.

Q. Quentin was ready to fight?

A. Yeah.

Q. When you say he threw a drink in his face, what do you mean? Was it water?

A. No, I mean -- we didn't serve that drink. I don't know what was in the cup.

Q. Could you smell it at all?

A. Not really. I mean, it smelled kind of like alcohol, but I can't really tell because everybody smelled like alcohol.

Q. Everybody smelled like alcohol? So what happened after he threw the drink?

A. That's when we got out of control, it was kind of too much for me to handle. I was trying to push people out of the way and break things up, but there was too much people there, you know.

Q. Did the fight stay in that same spot?

A. No.

Q. Where did it go? Show me on that diagram.

A. It went from here to here, from where they started at to here, and then to here and then in here (indicating).

Q. Okay. And when you got to in there, into the little vestibule area, what happened?

A. It was just punches thrown, punches thrown everywhere, and once everybody actually -- once I actually got it to the point where it was kind of broken up and I started pushing my cousin back in, then the glass shattered and the bullet came through the window and they shot through the window.

Q. What was that whole fight like? Were people calm?

A. No.

Q. How many people were there? Were there a few people or a lot?

A. There was a lot. There was a lot.

Q. What was your focus when you were in that little vestibule area?

A. Getting my cousin back in the store.

Q. What did you do after you heard the shots?

A. I ducked. I dropped down. I mean, I saw my cousin got shot in the arm, you know, and he was bleeding. And I was -- like, I was in shock, so I ducked down and tried to figure out what was going on.

Q. And then what did you do?

A. Then after I ducked down and I saw he was shot, then I stepped outside the door, and there was a white truck parked right in front of the door. And I ducked down behind that, and I wanted to go -- I tried to peek around. Once I started to peek around, I heard a couple more shots, and then I just stood behind the truck until everything died down.

Q. I'm going to show you what's been admitted as State's Exhibit 4.

A. That's the white truck right there.

Q. That's that white truck you were ducking down behind?

A. Uh-huh.

Q. Jesse, we're going to bring up some surveillance video that's State's Exhibit 3. I just want you to walk me through it, as we -- do you know what we're looking at?

A. Uh-huh.

Q. Okay. What are we looking at here?

A. That's my cousin. That's the guy that threw the drink in his face.

Q. Okay. Could you hear what the guy was yelling?

A. No. I wasn't paying attention.

Q. At that point you weren't --

A. Not at that point, I wasn't paying attention.

Q. Why not?

A. Because I was cooking. There was a lot of people in there.

Q. What made you realize things were escalating?

A. It was just a bunch and -- a bunch of unnecessary noise and commotion going on from that side, and I just keep glancing back and seeing them over there standing by my cousin.

Q. And where are you in this shot?

A. I'm by the grill.

Q. Huh?

A. I said, I'm by the grill -- no, there I go, right there. I'm sorry.

Q. Point yourself out for us.

A. Right there (indicating).

Q. Okay. And what are you doing here?

A. Just trying to calm the situation down, break it up.

Q. Do you remember what -- go ahead.

A. From what I heard --

MR. SMILEY: Objection.

THE WITNESS: -- they mistake my cousin for being in the club.

MR. SMILEY: Hearsay, "what I heard".

BY MS. BALDWIN:

Q. Jesse, you can't say what you heard somebody -- somebody told you, okay? You just have to say what you saw, okay?

A. Oh, I was telling them what I heard.

Q. What you heard the person yelling?

A. Yeah.

MR. SMILEY: Then I withdraw. I misunderstood.

BY MS. BALDWIN:

Q. What was the person yelling?

A. They were mistaking him for being in the club, getting them kicked out of the club or something of that nature, but he's homeless. He got no business being in the club. He wasn't at the club.

Q. Do you remember what that guy in the blue was doing?

A. He was trying to -- he was trying to stop my cousin from fighting, telling him, You don't want that,

you don't want that.

Q. You see what's going on here, Jesse? What's happening?

A. A bunch of commotion. Everybody is arguing.

Q. Where are you? Can you see yourself in here?

A. I'm somewhere in the midst of all of this.

Q. Okay.

A. I think right here --

Q. Where are you? Right there? Okay. And then where do you go?

A. Everybody started moving towards the door because they were getting ready to fight. I'm just trying to go in there and try to stop, because once my cousin is mad, he's mad. He's ready to fight.

Q. Was he saying anything that you heard prior to the drink being thrown in his face?

A. Something about a cigarette. Other than the fact they mistake him for being in the club, they was arguing over a cigarette.

Q. Was Quentin saying anything?

A. No. He was, like, it rolled over his shoulder until the drink got thrown in his face.

Q. Where are you right now?

A. I'm inside the entranceway.

Q. Can you see yourself at all in there right now?

A. (Indicating.)

Q. Ride in the middle of it all. And what were you doing?

A. Trying to stop it. There was so much going on. I was just trying to stop it and get people out of the restaurant.

Q. When the gunshots went off, you said -- where -- do you recall where the guy who threw the drink was?

A. I can't recall that, no.

Q. And what did you do after the shots went off?

A. I mean, I just kind of dropped down and --

Q. And did what?

A. Once -- I looked up for a minute and I stepped outside.

Q. Can you see yourself in the video?

A. Right here (indicating).

Q. Where is Quentin?

A. Right there.

Q. He's on the ground?

A. Uh-huh. He's still down.

Q. Give us just a moment, Jesse.

All right. What's this a shot of?

A. Outside, the parking lot, right in front of the entranceway.

Q. Who is that person that's on the sidewalk?

A. Security guard.

Q. Where are you at this point? Are you inside or outside?

A. I'm most likely inside. I'm not sure what part of the video this is.

Q. Can you tell what's happening here?

A. That's the fight. Everybody is throwing punches and yelling and arguing and all this commotion going on.

Q. And then what just happened?

A. Shot.

Q. And then where are you?

A. Right there (indicating).

Q. Point it out again? Okay. And did you see who, if anybody besides your cousin, got shot?

A. No. I mean, afterwards, I saw a guy over this side of the parking lot, holding his side.

Q. Do you remember giving a statement to police that night?

A. Yeah, that morning.

Q. Do you remember giving them one at the police station?

A. Uh-huh.

Q. Do you recall telling them that the person that threw the cup of, I think, beer in your cousin's face was five-seven to five-eight, dark skin, about 150 to 160

pounds wearing a dark red T-shirt --

MR. SMILEY: Objection. Leading, Your Honor.

THE COURT: You can't just read from a statement. You got to ask him -- if he says something different, you can impeach him with it.

THE WITNESS: I don't remember.

BY MS. BALDWIN:

Q. Do you remember telling them what the shooter looked like?

A. Yeah.

Q. I apologize, what the person who threw the cup of beer looked like?

A. Yeah, I remember.

Q. What did that person look like?

A. Dark skin, about five-six, five-seven.

Q. What were they wearing?

A. A red shirt.

Q. Okay.

A. And black pants.

Q. Do you remember telling them about the end of the fight, right before the shots?

A. Vaguely.

Q. Would it help you remember if you got a chance to look at your statement?

A. Yeah.

Q. Okay.

MR. SMILEY: I don't object to refreshing his memory.

THE COURT: All right.

BY MS. BALDWIN:

Q. Okay. Does that help you remember?

A. Yeah.

Q. What did you tell them about the end of the fight?

A. What do you mean?

Q. What did you tell them about trying to get your -- trying to break up the fight near the end, right before the shots were fired?

A. After -- once the shots were fired, I saw a guy holding his side, falling inside the parking lot.

Q. What were you trying to do with your cousin right before the bullets were fired?

A. Push him back in the store, get him back in the store, because nothing good was going to come out of where he was going.

Q. And would it help you remember what you told the police about what the guy who was swinging looked like if you looked at the rest of your statement?

A. Yeah.

Q. Just take your time. Look through there.

What did you tell them about who was involved in

the fight?

A. What did I tell who?

Q. The police.

A. I told them what I saw. What do you mean? What did I tell them?

Q. Who did you tell -- do you remember the police asking you who was involved in the fight?

A. Uh-huh.

Q. Okay. And what did you tell them about who was involved in the fight?

A. I just described the guys. I described what they were wearing and their build.

Q. Okay. What were they wearing?

A. The one guy with the black pants, red T-shirt -- I mean, not red T-shirt, red button down shirt with designs on it, and another guy with dreadlocks, about six foot, black short pants, white shirt.

MS. BALDWIN: Beg the Court's indulgence.

BY MS. BALDWIN:

Q. Jesse, just a couple more questions for you and then I'll be done, okay?

A. Uh-huh.

Q. Do you recall telling the police about the end -- the stopping of the fight, whether or not the fight stopped?

A. I mean, that was a while ago.

Q. Does your statement help you remember?

A. Yeah. I mean, it helps, but -- the stopping the fight, I don't really understand what you're trying to get at.

Q. Look right around the top of the second page.

MR. SMILEY: Your Honor, I object. If he's using it to refresh his memory, it's fine --

THE COURT: Yeah. He's not allowed to just testify from it.

MR. SMILEY: And I believe he's answered it too, Your Honor.

THE COURT: Well, I think he answered it by saying he didn't understand the question.

MR. SMILEY: Yes, sir.

THE COURT: So rephrase your question.

BY MS. BALDWIN:

Q. The fight progressed into the vestibule, correct?

A. Uh-huh.

Q. And prior to the shots going off, what were you trying to do with Quentin?

A. Push him back in the store. Stop the fight and push him back into the store.

Q. And then what happened?

A. And then the shot came through the window.

MS. BALDWIN: Court's indulgence.

That's all the questions I have.

CROSS-EXAMINATION

BY MR. SMILEY:

Q. Hey, Jesse. I'm Jim Smiley. I represent Deonte Brown. This is Ms. Hensley, my second chair, just so you know who I am, okay?

Before the fight, do you remember the security guard putting another fellow out that night?

A. No.

Q. You don't remember that. That's fine. By the way, being a cook must be the hardest thing at 4:00 in the morning. You got a lot going on, right?

A. I don't have a lot of time to pay attention to what's going on.

Q. Most of the time you've got your back turned?

A. Right.

Q. And you get that same rush about every weekend? After the club closes, everybody comes and hangs out there and gets food?

A. Uh-huh.

Q. A lot of people there on a night like that?

A. Uh-huh.

Q. Inside and outside?

A. Yeah. I don't focus too much on outside.

Q. I understand. You got up close to Deonte, the fellow in the red-shirt, and would you call the pants he had on sort of the baggy ones that the fellows wear? Do you remember?

A. I can't remember, no.

Q. You do know the shirt was unbuttoned, and it was hanging out?

A. Uh-huh.

Q. And were you close to him when you came over to sort of break up the fight?

A. Right.

Q. So you could see his waistband?

A. Yeah.

Q. You didn't see a gun, did you?

A. I mean, I wasn't paying attention like that, so, I mean, I can't remember in detail, but --

Q. But if he had a gun right there in his waistband --

A. I would see it, yeah.

Q. You would have seen it.

A. Uh-huh.

Q. And once your cousin understandably lost his temper, he was ready to go after the fellow that threw the drink in his face?

A. Uh-huh.

Q. And so everything, as it started going towards the front, got pretty chaotic?

A. Yeah.

Q. And your cousin was throwing punches. There was just more than two people throwing punches; it was chaos?

A. Yeah. There was a couple of them throwing punches, because once my cousin got up and want to fight and started to swing, it's just like everything broke out.

Q. It was craziness.

A. Crazy, yeah.

Q. And it all got bunched into --

A. That small little area.

Q. It made it even harder, right?

A. Yeah.

Q. And you were, at that point, focussing on getting your cousin back inside, right?

A. Uh-huh.

Q. And the fight started to let down as the glass shattered?

A. Not -- yeah, I mean --

Q. There was still fighting?

A. They were still fighting, you know what I'm saying, but we eventually got people outside the store.

Q. Okay.

A. And once we got -- once the last person walked out the door --

Q. And then bang?

A. Bang.

Q. You did not see who shot him?

A. No.

Q. You didn't -- you don't know whether that shot came from five feet away or twenty feet away, do you?

A. No.

Q. When the glass shattered, that's when your cousin reacted?

A. Uh-huh.

Q. And sort of bent down, and you were still standing up, I think, at that point --

A. At that point, yeah. I stood up after the shot was fired.

Q. And everybody started running, correct?

A. Uh-huh.

Q. And is it fair to say you thought about going into the store but saw everybody was sort of down there, so you and your cousin sort of went out to use --

A. Yeah. I saw the truck, and got behind it, yeah, you know what I'm saying?

Q. And while you were ducked down, you heard another shot?

A. Uh-huh.

Q. So you didn't see who shot that shot.

A. No. From the video, I mean -- when I heard the shot, I, you know, tried to peek around the truck.

Q. And you told the police everything is on the camera, right?

A. Yeah.

Q. And you heard multiple shots that not, not just two. There were more shots than that, right?

A. Yeah. There was three or four of them.

Q. Okay. And you gave a statement to the police, the one you refreshed your memory, that night, right?

A. That morning.

Q. Night, morning?

A. Uh-huh.

Q. But it's not like you came in months later. You gave it --

A. No, once.

Q. And you actually sort of did it twice, right? You gave them one there, and then you ended up going down to the station with them?

A. Uh-huh.

Q. And they put you in an interview room, talked to you again, and then asked you to summarize, basically, what you had said again?

A. Uh-huh.

Q. And then so you gave them everything you knew?

A. Uh-huh.

Q. One of the things you did tell them, though, is that the cameras would catch it?

A. Uh-huh.

Q. And you're saying uh-huh, which I do all the time, but for the record, I'm bad about it, yes and no.

A. All right. Yes.

Q. Jesse, the front of your building -- y'all put posters up on it, right?

A. Yes.

Q. And so the view from the inside to the outside is not clear. I mean, you can see out, but not all the way down. There is stuff in the way?

A. No. Certain windows got posters on them, specials going.

Q. I got you. Simple question. They served you a subpoena to be here today, right?

A. Yes.

Q. That is a process to be here in court. You've always been cooperative with them, right?

A. Yes.

Q. It's not like you were trying to avoid court?

A. No.

JESSIE McNEAL - REDIRECT EXAMINATION

Q. It doesn't make anybody happy to have to come here, but they still subpoenaed you, right?

A. Right.

MR. SMILEY: Beg the Court's indulgence. That's all I have, Your Honor.

THE COURT: Redirect?

MS. BALDWIN: Briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. BALDWIN:

Q. Jesse, Mr. Smiley was ask you about the guy with the red shirt and the shirt being open?

A. Uh-huh.

Q. Was it open like this?

A. No. Just open, like all the buttons was loose.

Q. Okay. So if he had a gun, like, in his waistband in the back, would you have seen that?

A. No.

Q. What about over here, would you have seen that?

A. No.

Q. Were you paying close attention to his waistband?

A. No.

Q. Who was your focus on?

A. My cousin.

MS. BALDWIN: Court's indulgence. Nothing further, Your Honor.

MR. SMILEY: No questions.

THE COURT: All right. You can step down. Why don't we take a morning rest room break and be back in ten minutes. Again, don't begin deliberations or discussions.

MR. SMILEY: And as far as I'm concerned, Mr. McNeal can be excused.

THE COURT: Thank you. You're free to go.

(Recess taken.)

THE COURT: Got your next witness ready?

MS. BALDWIN: Yes, Your Honor.

THE COURT: Let the record reflect the defendant is in the courtroom.

(In open court, jury present.)

THE COURT: All right. Call your next witness.

MS. BALDWIN: Thank you, Your Honor. State calls Dario Teran.

DARIO TERAN,

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MS. BALDWIN:

Q. How are you doing?

A. Pretty good.

Q. Tell the jury just a little bit about yourself. How old are you?

A. I'm 33. I work in West Ashley, and I am a parts manager.

Q. Do you have any kids?

A. I have a 13-year-old.

Q. Who were you living with back in July 2012?

A. It was me and Wendy Patrick, my ex-fiancee, at that time.

Q. Are you and Wendy together?

A. No, ma'am.

Q. I'll bring you to the early morning hours of July 15, 2012. Do you recall that?

A. Yes, ma'am.

Q. What were you doing?

A. Eating at Waffle House, or trying to eat.

Q. How did you get to Waffle House?

A. I drove my Escalade.

Q. Did you go with anyone?

A. Yeah, me and Wendy.

Q. I'm going to show you State's Exhibit 26. That's already been admitted into evidence. If you touch that screen in front of you, it will make a little mark.

Do you recall where you were sitting?

A. Here (indicating).

Q. And you said you were trying to eat. Did anything happen to stop that?

A. Yes. There was a fight first and there was a couple gunshots.

Q. I'm sorry. Could you repeat that?

A. Argument first.

Q. Okay.

A. Between a crowd of people, and then I remember seeing a flash from the left side of my vision and two gunshots.

Q. How is your memory of that evening?

A. It's kind of blurry.

Q. It's kind of blurry?

A. Yes.

Q. Why is that?

A. Because I had an accident on a motorcycle.

Q. When did you have that accident on the motorcycle?

A. October 2012.

Q. Is your memory in general as good as it used to be?

A. I remember most of it, but, you know, I have lost memory since then.

Q. Do you recall giving a statement to the police about this incident?

A. Yes, ma'am.

Q. Do you recall --

A. I remember writing one at North Charleston. I thought I only wrote one that day, that night, that morning.

Q. You don't recall writing two, or more than one?

A. No, just one.

Q. When you say you gave a statement at North Charleston, what do you mean by that?

A. When I was in the office, the sheriff's office on Rivers Avenue, where they took me in after the shootout, me and Wendy.

Q. And you said your memory isn't very good about that evening?

A. It's not 100 percent. From what I remember, I remember seeing the flash on the left side, on my eyes, that night at the Waffle House.

Q. Do you remember anybody in particular involved in a fight?

A. There were all black fellows.

Q. Do you remember telling the police in your statement anything in particular about the person with the --

MR. SMILEY: Objection, Your Honor.

THE WITNESS: No, ma'am.

THE COURT: What's your objection?

MR. SMILEY: He's asked and answered the question -- the question has been asked and answered. Now she's asking a leading question to follow up.

THE COURT: Sustained.

BY MS. BALDWIN:

Q. Would it refresh your recollection if you looked over your statement as to what you told the police?

A. I think my statement would be better -- my -- the statement I gave then, back then, would be better than what I'm doing today.

MS. BALDWIN: Court's indulgence. Your Honor, may we approach?

(Discussion held at sidebar.)

THE COURT: Let me send the jury out while we discuss this.

(In open court, jury not present.)

MS. BALDWIN: My apologies Judge. It's 8035.

THE COURT: All right. And the statement you have is a signed statement by him?

MS. BALDWIN: Yes, Your Honor, and I can question him.

THE COURT: Can I see it?

MS. BALDWIN: Yes, sir.

THE COURT: All right. Mr. Teran, this is a statement -- it's written on a memo form from the

Charleston County Sheriff's Office dated 7/15/12. Is that your signature?

THE WITNESS: Yes, sir.

THE COURT: All right. Mr. Smiley?

MR. SMILEY: I believe it fits the exception, Your Honor.

THE COURT: Well, it does appear to. You can read it into the record. It doesn't go in as an exhibit, unless Mr. Smiley offers it.

MR. SMILEY: Right.

MS. BALDWIN: Thank you, Your Honor.

THE COURT: All right? Under 8035.

MS. BALDWIN: I'll have it marked for ID only.

THE COURT: I'm going to have the jury brought back in, and she'll ask you, again, is that your statement? Did you sign it? And then she'll -- I'll allow you to reed it to the jury. The document itself does not come into evidence.

THE WITNESS: I have to read it in? Can she read it instead?

MS. BALDWIN: I can read it.

THE WITNESS: With my language and my accent, I don't feel comfortable.

MS. BALDWIN: I'll read it.

THE COURT: Okay. Let's bring the jury in. Lay the foundation for the date and it's his signature.

MS. BALDWIN: Yes, Your Honor.

THE COURT: You have laid the foundation that he doesn't have a good memory of it because of the motorcycle accident and head injury, was it?

THE WITNESS: (Nods head.)

(In open court, jury present.)

THE COURT: All right.

BY MS. BALDWIN:

Q. You said you do recall giving a statement to the police at the police station?

A. Yes, ma'am.

(Whereupon, State's Exhibit No. 37 was marked for identification.)

BY MS. BALDWIN:

Q. I'm going to show you what's been marked as State's Exhibit 37 for ID. Can you tell me what that is?

A. It's my statement.

Q. And what is the date on the top of that page?

A. July 15, '12.

Q. Is your signature anywhere on that page?

A. Yes, ma'am. Right at the bottom.

Q. Down at the bottom?

A. Yes, ma'am.

Q. Thank you.

MS. BALDWIN: At this time, Your Honor, I would like to read the statement.

THE COURT: All right. Folks, under our rules, if somebody does not have a recollection of a statement that they made because of where -- here, he said he had a motorcycle accident. We don't normally let prior statements like this come in.

We can for, like, earlier witnesses, if they need to refresh their memory, they can look at it and then tell you what their testimony is, based on that. But because he states he had a motorcycle accident and it affected his memory, he doesn't remember what he saw that night, under those limited circumstances, our rules permit that statement to be read to you.

It won't actually come into evidence, but I'm going to allow the solicitor to now read that statement to you.

MS. BALDWIN: Black male in red baseball jersey start argument with a black male, white shirt, claiming he was from the country. Stated I'm from 162, and black male in red -- splash red cup at his face then walked off. Male in white got up and followed male in red to the door whose shot was fired. My fiancee and I went under table for safety.

There was another shot fired while we was under the dinner table. Shooter was about five feet ten, really skinny, with dreads, shoulder long, dark complexion in red jersey.

Question: Can you describe the jersey?

Answer: Red baseball jersey, either Grays or Cleveland.

Question: Did you see the first shot fired?

Answer: No, just the light from the gunshot.

Question: Who did you see fire the gun?

Answer: The guy with the red jersey is where the blast came from. It was just the worker from Waffle House that was trying to kick him out, in parentheses red jersey and his cousin, which is the guy that got shot in the arm wearing a white shirt.

Court's indulgence. Dario, I don't have any more questions for you.

THE COURT: Mr. Smiley?

CROSS-EXAMINATION

BY MR. SMILEY:

Q. Mr. Teran, I'm Jim Smiley, and I represent Deonte Brown, and Laree Hensley is the other lawyer that is helping me.

Where are you from, Mr. Teran?

A. Venezuela.

Q. How long have you been here?

A. Since '93.

Q. That night you got to the Waffle House a little bit before 4:00?

A. It was pretty late.

Q. Where had you been earlier?

A. At a friend's house.

Q. Okay. And you and Ms. Patrick went to the back corner?

A. Yes, sir.

Q. If I could put up State's Exhibit 3, if I could get a little help? I'm sorry to ask again. I know you had a motorcycle accident?

A. Yes, sir.

Q. And I know your memory isn't as good as it was back then. We're going to look at a video and ask you some questions about it, all right?

A. Yes, sir.

Q. If I could get that one -- thank you. All right. This shows that at about 4:00 -- and you're not there yet. That's not you in the back corner there, is it?

A. No.

Q. Okay. Could we fast forward until -- now, is that you in the back corner with Wendy? Can you tell?

A. I think so, yes.

Q. Okay. You're the guy in the white T-shirt?
A. Yes, sir.
Q. And that is Wendy that's sitting in the back corner facing the door?
A. Yes, sir.
Q. And you're looking away from the door, right?
A. Yes, sir.
Q. And it looks like you've got your breakfast there, right?
A. Yes, sir.
Q. And in relation to where the in and out door is, is back over your left shoulder?
A. Yes, sir.
Q. Okay. If we can play it forward at regular speed -- and so you're just minding your business at this point, eating your breakfast, right?
A. Uh-huh.
Q. And I can see, because the commotion is going on, you're looking over your shoulder from time to time?
A. I really don't remember.
Q. But you can see yourself in that corner?
A. Yes, sir, yeah.
Q. And you're in that far corner table, right?
A. Yes, sir.
Q. All right. And as this is going on, you're still

just minding your business and eating your breakfast and looking over your shoulder from time to time, right?

A. Yes, sir.

Q. Now, in your statement, you said the fellow slapped him or something, but --

A. I saw the red cup being thrown.

Q. Okay, threw a drink in his face. You didn't get up at any point. You stayed seated in your chair back there in the corner.

And there's a whole lot of commotion going on at that door, isn't there?

A. Yes, sir.

Q. It looks like everybody is sort of moving around, right, and you're sitting there, just sort of looking in that direction?

A. Yes, sir.

Q. And then everybody comes rushing in, and you go under the table. That's that first shot, right?

A. Yes, sir.

Q. And I think another lady actually comes under that table with you, didn't she?

A. Yes.

Q. And y'all stayed there for a good while, didn't you?

A. Yes, sir.

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Q. I don't blame you. You went under that table and stayed there.

A. Yes, sir.

Q. So the whole time you're -- and we can stop it.

The whole time you stay seated, right, in that table while the fuss is going on and the commotion at the door?

A. Yes, sir.

Q. And your testimony is you saw a flash?

A. Uh-huh.

Q. Okay. You never actually saw a gun in the --

A. No.

Q. -- man's hand?

A. No.

Q. All right. Because it's too far away and all that?

A. Yeah.

Q. And so you never actually saw a gun in the fellow with the red shirt's --

A. Yes, sir, that's correct.

Q. It's because of the fight and the way everything was going, that is what you assumed, right?

A. Correct.

Q. Okay. And you gave the statement right afterwards. They were handing out statement forms there

at the restaurant. Do you remember that?

A. From what I was told, I gave one there, and then I gave a second one, which she just read to y'all at the office.

Q. Right. And they showed you -- do you remember looking at some pictures and photo lineups?

A. Yeah.

Q. And you couldn't pick anybody out?

A. Correct.

MR. SMILEY: Beg the Court's indulgence.

BY MR. SMILEY:

Q. You were subpoenaed to be here, right? They gave you a subpoena?

A. Yes, sir.

Q. And you were cooperative?

A. Yes, sir.

Q. So it's not like you were trying to avoid it. You got a subpoena, didn't you?

A. Yes, sir.

MR. SMILEY: That's all I have.

THE COURT: Redirect?

MS. BALDWIN: Court's indulgence.

REDIRECT EXAMINATION

BY MS. BALDWIN:

Q. I just have a couple more questions for you.

Mr. Smiley just asked you -- he played that video. You were sitting in that back corner, correct?

A. Yes, ma'am.

Q. Did you see how your body was turned?

A. Yes, ma'am.

Q. Were you watching what was going on?

A. I was paying attention to it, yeah.

Q. And you remember me just reading the statement?

A. Yes, ma'am.

Q. Your statement? And the police asked you, who did you see fire the gun?

A. I don't remember that.

Q. Okay. And the statement I just read, you said the guy with the red jersey?

A. I don't remember seeing a gun.

Q. Would you say that your statement is more accurate than your memory now?

A. Yes, ma'am.

Q. Okay.

MS. BALDWIN: Court's indulgence. I don't have any more questions.

MR. SMILEY: If I could, Your Honor, very --

THE COURT: Go ahead.

RECROSS-EXAMINATION

BY MR. SMILEY:

Q. And your testimony is, and you remember this part, you didn't see a gun?

A. I just saw a flash. I don't remember --

MS. BALDWIN: Objection, Your Honor.

THE COURT: Overruled.

BY MR. SMILEY:

Q. You saw a flash?

A. Correct.

Q. The gentleman in the red shirt, you remember this, he did not have a gun, correct?

A. I never -- from what I remember, I never saw a gun.

Q. Okay.

A. Only a flash.

Q. And the question in your statement was: Did you see the first shot fired?

And the answer was: No, just the light from the gunshot. So you did not see a gun?

A. Correct.

Q. So the next question is: Who did you see fire the gun?

And your answer was: The guy with the red jersey is where the blast came from. It was just the worker in the Waffle House that was trying to kick him and the red jersey and his cousin who got shot in the arm.

You didn't actually know the cousin that night, did you?

A. No.

Q. You gathered that information --

A. Correct.

Q. -- from the cook and all?

A. Correct.

Q. When y'all were standing around afterwards, right?

A. That's correct.

Q. Because, of course, you talked about it, right?

A. Yes, sir.

Q. All right. Just so we're clear, because it's important, you at no point saw the fellow with the red open shirt --

A. Correct.

Q. -- holding a gun, did you?

A. Correct. All I saw was the flash.

Q. All you saw was the flash?

A. Yes, sir.

Q. And there were a whole bunch of people over there, right?

A. Yes, sir.

Q. And, also, your view toward that front door, there is some posters that were up on the window, right?

A. I'm pretty sure.

MR. SMILEY: That's all I have.

THE COURT: You can step down. Call your next witness.

MS. LINDER: State calls Tiffany Smith.

THE COURT: You're free to go. Thank you.

TIFFANY SMITH,

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MS. LINDER:

Q. Good morning. Where are you from, generally?

A. Charleston.

Q. And did you receive a subpoena to be here today?

A. Yes.

Q. And are you excited about being here?

A. No.

Q. But you understand that you have to be here today.

A. Yes.

Q. Were you -- where were you working back in July of 2012?

A. Waffle House.

Q. Okay. And are you still working at the Waffle House?

A. No.

Q. What are you doing now?

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A. PCA.

Q. Pardon me?

A. PCA.

Q. And what does that mean?

A. Personal care aid.

Q. Personal care aid. So it's the health care industry?

A. Yes.

Q. And you help individuals who need assistance.

A. Yes.

Q. All right. Were you working at the Waffle House the kind of overnight July 14th into July the 15th? Were you working at the Waffle House down on Savannah Highway and Main Road?

A. Yes.

Q. And do you remember what shift you were working?

A. Third shift.

Q. And what hours was the third shift?

A. From 9 p.m. to 7 a.m.

Q. And how long you had worked at Waffle House by the time this occurred?

A. Well, I was working at that Waffle House for about -- probably for a couple of months, just filling in, because they needed extra people.

Q. And that night that you were working, did an

TIFFANY SMITH - DIRECT EXAMINATION

argument happen, a loud argument?

A. Yes.

Q. And did a physical fight happen? Were punches thrown?

A. Yes.

Q. And, ultimately, did a shooting occur?

A. Yes.

Q. Did police respond to the scene that night?

A. Yes.

Q. And did you speak to police?

A. Yes.

Q. Did you speak to police at the Waffle House?

A. After everything --

Q. After everything?

A. Yes.

Q. And did you end up going to the police station and writing a statement?

A. Yes.

Q. Do you remember what section you were working that night, at the Waffle House?

A. It was on the right-hand side.

Q. Okay.

A. And half of the bar.

Q. Okay. I'm going to show you what's been marked as State's Exhibit 11. Is this the area you're describing

when you say the right-hand side and half of the bar?

A. Yes.

Q. What happened at the Waffle House that night, starting about 4:00 in the morning, 3:00 or 4:00?

A. Well, usually the kids get out the club around that time, and it was really, really crowded. So our security guard, he was there, and he was -- actually was supposed to kind of not let so much people in at one time.

Q. But he didn't do that?

A. He didn't do it.

Q. Okay.

A. So what I saw was the gentleman -- I don't know the names, but the gentleman in the white T-shirt, he was sitting by the jukebox, and the guy -- he was arguing, and so the guy --

Q. Who was arguing with the guy in the white T-shirt?

A. The guy with the red shirt on.

Q. Okay.

A. And they're arguing, and then next minute you know, the guy in the red, he threw a cup of, I guess, liquor in his face, and they started fighting. The -- my cook, the cook, came around the corner, trying to kind of like break it up, and then they were fighting out the door.

The guy in the red and a couple of his friends were fighting out the door, and then a couple of seconds later, I just saw the bullet came through the Waffle House window. And then I went outside, and the guy in the white shirt was shot in the arm, and there was another guy that was deceased, like, by the tree, laying flat on his stomach.

Q. When the guy in the red shirt was arguing with the guy in the white T-shirt, sitting by the jukebox, did you hear what words were being said at all?

A. No. I don't remember.

Q. Would it help refresh your recollection if you looked at your statement that you had given to police that night/morning?

A. Yes.

Q. Just before you look at it, is this -- does it look like your statement?

A. Yes, it does.

Q. And is this your signature?

A. Yes.

Q. If you want to just go over your statement and see if it refreshes your recollection of what you told the police that night happened.

A. Do you want me to read it out or --

Q. No. Just read it to yourself and see if that

helps you remember, because my question to you is, do you remember what the guy in the red shirt was saying toward the person in the white shirt when he was sitting there?

A. Okay. This does refresh my memory. The boy in red asked him, the boy in white, if he did --

MR. SMILEY: I would ask if she refreshes her memory that she answer and not read the statement.

THE COURT: You can refresh your memory and then answer the question, but don't just read the statement as the answer to your question, okay?

BY MS. LINDER:

Q. To echo what the judge said, if you could read the entirety of your statement, I believe there are couple pages there, and if it helps, refresh your recollection any time it's mentioned about what's happening to the guy in the white shirt.

THE COURT: Okay. Take your time. Do you need any more time?

BY MS. LINDER:

Q. What were all the different things being said to the guy in the white shirt?

A. Well, back what I was saying, from reading my statement, it kind of does refresh my memory. So the boy in the red, he asked the boy for a cigarette, and the boy in white said no.

Q. And did the boy in red say anything else to the boy in white?

A. He started cursing, cursing the boy out. Like, he got he started, like, saying something like the numbers, I guess where he was from. I forgot what the numbers were.

Q. Would it refresh you to look at your statement?

A. Yes, it was, like, 216, or 612.

Q. Okay. And do you recall if he was yelling or whispering? I have a pretty loud voice, especially compared to you, but do you know if he was yelling or saying it nicely, the tone that you heard that night?

A. It was kind of like -- it wasn't loud, but it was kind of like he was angry kind of, but not loud.

Q. And did you know the guy in the red shirt?

A. No.

Q. Did you know him personally?

A. (Shakes head.)

THE COURT: You need to say -- the court reporter has to get your answer, and when you just shake your head or nod your head, you can't put anything, really, down, so you just need to say yes or no instead of nodding or shaking. Okay?

THE WITNESS: Okay. No.

BY MS. LINDER:

Q. Did you know personally the guy in the red shirt?
A. I don't know him.
Q. Do you know personally the guy in the white T-shirt?
A. No.

MS. LINDER: I don't have any other questions for you, if you would answer any questions the defense may have for you. Thank you.

CROSS-EXAMINATION

BY MR. SMILEY:

Q. Ms. Smith, my name is Jim Smiley. I represent Deonte Brown, and this is Ms. Hensley who works with me, another attorney. Okay?

You were working that night, right?
A. Yes.
Q. And without labelling the sections -- but you had that section, the back corner section?
A. Right.
Q. The one furthest away from the door?
A. Yeah.
Q. And so you were in that general vicinity --
A. Right.
Q. -- during that. And the argument was over by the jukebox, right?
A. Exactly.

Q. And when Jesse came from around the corner and the security guard came up, y'all started moving toward the door, right?

A. Right.

Q. And at some point, a drink was thrown and the fight or scuffle broke out?

A. Uh-huh.

Q. Now, you didn't go to the door, though, you stayed back in?

A. I stayed back?

Q. All right. And you said you saw the bullet come from the glass. Is it more accurate to say you saw the glass shatter? I can't see a bullet.

A. What I saw was the shot came from the outside.

Q. Right?

A. Inside.

Q. Okay. So the shot came from the outside to the inside, through the glass.

A. Yes.

Q. And when that happened, I guess you ducked down?

A. Yes.

Q. Did you go under the table too?

A. Yes.

Q. Okay. But the fellow that had the red shirt on, the open one --

A. Uh-huh.
Q. -- you were pretty close to him, right?
A. Yes.
Q. Five, six feet during that time?
A. Yes.
Q. Okay. I promise I'm not trying to trick you. I'm just trying to ask you a few questions to get it.
Now, he had an open shirt, right?
A. Uh-huh.
Q. And you remember he had on jeans of some sort?
A. I don't remember.
Q. That's fine. It's been years. It's been a while. Do you remember if they were baggy or not?
A. No.
Q. Is it fair to say you didn't see a gun in his waistband, though?
A. Huh-uh.
Q. As a matter of fact, you never saw a gun, did you?
A. No.
Q. All right. At no point did you see the fellow with the red shirt on pull out a gun?
A. No.
Q. And the shot that came from the outside in, you didn't see where it came from; you just know it came from the outside?

A. Right.

Q. All right. Now, afterwards, then, the police are outside staking everything off, and you stayed inside, right?

A. Yes.

Q. Because, actually, I believe you and a couple of customers and Jesse, and maybe another waitress, April, that twisted her ankle --

A. Right.

Q. -- y'all sat in that back corner, right, sort of hung out back there, because the deputies gave you some statements?

A. Yes.

Q. So y'all discussed what had just happened, right?

A. Yes.

Q. Okay.

MR. SMILEY: Beg Court's indulgence.

BY MR. SMILEY:

Q. Oh, the video shows a little bit, but do you remember from your view back in that corner, back in the table in the back corner, when you look at the outside and the front door area, it's not a clear view.

There's posters on the glass in some places. I'm not saying you can't see out, but it's not like it's a crystal clear view, would you agree with that?

A. Yes.

MR. SMILEY: That's all I've got, Your Honor.

THE COURT: Redirect?

MS. LINDER: No redirect, Your Honor.

THE COURT: You may step down. Thank you.

Do we need her for anything else?

MR. SMILEY: No, sir.

THE COURT: You're free to go. Thank you.

Next witness?

MS. LINDER: State calls April Blodgett.

APRIL BLODGETT,

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

THE WITNESS: April Blodgett, B-l-o-d-g-e-t-t.

BY MS. LINDER:

Q. And if you can make sure you speak up, this lady that is right here is trying to record everything that is being said. Not everybody is as loud as I am.

Where are you originally from?

A. New Jersey.

Q. How long have you been in South Carolina?

A. Almost 17 years.

Q. And do you know why you're here today?

A. Yes, ma'am.

Q. Were you at the Waffle House at 3565 Savannah Highway back on July 14 and 15 of 2012?

A. Yes, ma'am.

Q. And in what capacity were you there? Were you working? Were you eating?

A. I was working.

Q. And how long have you worked at Waffle House?

A. Almost five years.

Q. Okay. And what's your position at Waffle House? What's your job title?

A. Currently?

Q. Yes.

A. I'm relief manager and a grill operator.

Q. And back in 2012, what were you doing at Waffle House?

A. A salesperson.

Q. And do you remember what shift you worked that night?

A. It was the third shift.

Q. And what hours is that shift?

A. 9 p.m. to 7 a.m.

Q. Do you still work at Waffle House?

A. Yes, ma'am.

Q. Do you still, did you still, work that 9:00 to

7:00 shift?

A. No, ma'am.

Q. That night when you went to work, what vehicle were you driving?

A. A Ford Explorer.

Q. What color was it?

A. Burgundy.

Q. And do you remember where you parked when you went to work that night?

A. In the front of the building.

Q. By the front doors?

A. Yes, ma'am.

Q. Do you remember what section you were assigned to that night, if you were assigned a specific section?

A. I had from the register down to by the entryway.

Q. Okay. I'm going to show you what's marked as State's Exhibit 13, and is this part of the section that you were describing that you had?

A. Yes, ma'am.

Q. And I'm also going to show you State's Exhibit 7. Is this a continuation of the section you described as having?

A. Yes, ma'am.

Q. Where is the register? If you touch that screen or circle it, it will show up.

A. It's right here (indicating).

Q. So the high top counter was yours.

A. Yes, ma'am.

Q. Okay. And I'm going to show you -- this is State's Exhibit 26. Can you kind of color in here or circle the area you were assigned to?

A. I had -- right here. I had this part right here (indicating).

Q. All right. That night when you were working, did an argument happen, some yelling happen?

A. Yes, ma'am.

Q. And did a fight happen? Were punches thrown?

A. Yes, ma'am.

Q. And, ultimately, did a shooting happen?

A. Yes, ma'am.

Q. Did police respond to the scene after that happened?

A. Yes, ma'am.

Q. And did you ever speak to police?

A. Yes, ma'am.

Q. And did you stay at the Waffle House or did you go to the police station? What did you do after everything happened?

A. When I got back from the hospital, I was taken to the police station.

Q. Okay. What did you do at the hospital?
A. I was injured that night.
Q. You were injured? How were you injured?
A. Somebody pushed me down and I sprained my knee.
Q. When you went to the hospital, did the -- what did the doctors do?
A. They cleaned my cut up and they bandaged my knee, put me on crutches.
Q. So you received crutches?
A. Yes, ma'am.
Q. Did you receive any pain medication?
A. Yes, ma'am.
Q. All right. Are you healing a little bit from that now, hopefully?
A. Yes, ma'am.
Q. If you could just kind of tell the jury a little bit about the specifics of that night, from starting, you know, around 3:00, 4:00 in the morning.
A. We were just really busy. We were packed. We were shorthanded, and a lot of other people started coming in.
Q. You were shorthanded. Was it all the regular people working at the Waffle House that night?
A. We were short one person.
Q. You were short one person, but everybody else were

regulars at that Waffle House?

A. Yes, ma'am.

Q. And did you have a security guard working that night?

A. Yes, ma'am.

Q. Did he do a good job as a security guard?

A. No, sir.

MR. SMILEY: I would ask that she not lead.

THE COURT: All right.

BY MS. LINDER:

Q. Can you explain what was happening, starting when the crowd was coming in? What do you mean, the crowd was coming in?

A. We have two separate crowds. We have the 2:00 crowd, and then we have a 4:00 crowd, and we were still packed from the 2:00 crow, and people were taking places to sit when the 4:00 club crowd came in. We tried to tell security not to let anybody else in because we were over capacity, but he didn't do that.

Q. And do you see -- from working at the Waffle House for almost five years, do you see regular customers come in, weekends or certain nights that you would work?

A. Yes, ma'am.

Q. Did you recognize some regulars that night when you were working?

A. Yes, ma'am.

Q. And once the 4:00 crowd came in, what happened of significance that night?

A. There was an argument that led into some fighting.

Q. Who was in the argument?

A. There was one gentleman that started the argument with another customer that was already in the restaurant all night. They were arguing. I didn't hear all the details of the argument.

Q. Can you describe what they were wearing, or where they were located in the restaurant?

A. The one gentleman had a red shirt on. He was sitting at the low counter, and then the other gentleman -- there was another gentleman that was sitting in the chair behind him against the wall that was sitting with one of our associates.

Q. All right. And so an argument started. Did that argument ever escalate from just words?

A. It escalated -- once the drink got thrown into the other guy's face --

Q. Who threw a drink?

A. A gentleman in a red T-shirt, and then they started arguing, and then there was a bunch of them and they just started fighting.

Q. Did anybody try to break up the fight?

A. One of the associates was trying to help. His cousin was one of the people involved.

Q. When you say associates, what do you mean?

A. One of my co-workers.

Q. Somebody that works at the Waffle House, when you say associate?

A. Yes, ma'am.

Q. So somebody that works at the Waffle House came to try to break up the fight?

A. Yes, ma'am.

Q. All right. And then can you explain kind of what happened.

A. They were fighting, and it led up to where they pushed him back by the little breezeway, and they were fighting in there, and then when that outdoor opened is when I saw a gun, and that's when I was starting to get down and the shots were fired.

Q. So the outside door from Waffle House to outside opened before the shots were fired?

A. Yes, ma'am.

Q. And you saw a gun be pulled?

A. I seen the gun. I don't know --

Q. Did you alert the police in any way?

A. Yes, ma'am.

Q. How did you alert the police?

A. When they started fighting is when I hit the silent alarm.

Q. There is a silent alarm at the Waffle House?

A. Yes, ma'am.

Q. Why did you hit the silent alarm?

A. From previous experiences.

Q. All right. At this time, I'm going to show you part of the video from Waffle House, and I would like for you to take us through and describe where you are and kind of -- it will help the jury understand where you were and what you were seeing, okay?

A. Yes, ma'am.

Q. Who is that girl with that white or pink hoody that just walked out from behind the counter?

A. That's my co-worker.

Q. Co-worker. When you were talking about a guy in a red shirt, which red shirt guy were you talking about?

A. That one (indicating).

Q. Okay. Do you recognize the guy in the white T-shirt who is just sitting down by the jukebox? Do you recognize any of these people as regulars?

A. Yes, ma'am. A lot of the them come in every weekend.

Q. Can you see where the guy in the red shirt is that you pointed out earlier?

A. Right there (indicating).

Q. And what area -- is that high counter or is that a booth? What area is that where he's standing by?

A. That's the low counter.

Q. That's the low counter. And during all this time when it gets really busy, were you going about your job taking orders, or were you kind of stopping and watching stuff? What were you doing?

A. No, I was still working.

Q. Do you serve drinks in those red cups?

A. No, ma'am. They're not allowed in the building.

Q. They're not allowed in the building?

A. No, ma'am.

Q. All right. We're going to flip from a different angle and play it from here and keep asking some different questions, okay?

A. Uh-huh.

Q. Do you see yourself?

A. I'm off camera now, but I just walked past. I'm right there at the register.

Q. At the register?

A. Yes, ma'am.

Q. And what are you doing now in this video?

A. Taking my order.

Q. And are you facing out toward all the patrons at

Waffle House?

A. No. Right now I have my back to them.

Q. Were you facing out when you take their order?

A. No. I was facing them when I was taking the order, but --

Q. Where are you located now? What tables are you tending to?

A. It looks like I'm right there by the first booth.

Q. From that booth, if you're facing out toward the booth from where you're standing, what else do you see? What area of the restaurant do you see?

A. From the first booth, you see the first. From the second booth, you see right out the doors.

Q. Where are you located?

A. I'm my way out. I already hit the alarm.

Q. Did you see the face of the person who fired the shot that night?

A. No, ma'am.

Q. Did you see a gun?

A. I seen a gun.

Q. And did you see anything around a gun?

A. I just seen the sleeve.

Q. What sleeve?

A. A red sleeve.

Q. A red sleeve?

A. Yes, ma'am.

Q. And did you tell the police that night when you wrote a statement that you saw a gun being held by somebody with a red sleeve?

A. No, ma'am.

Q. And why not?

A. I didn't even recall everything that night.

Q. As you stated prior, did you receive any medicines from doctors before giving your statement?

A. Yes, ma'am.

Q. Are you -- do you have any -- beg the Court's indulgence.

I don't have anything further for you at this time, if you answer anything Mr. Smiley may have.

THE COURT: Cross?

CROSS-EXAMINATION

BY MR. SMILEY:

Q. Good morning.

A. Hi.

Q. So your position in the Waffle House is usually behind that counter, right?

A. Yes, sir.

Q. And that's where you were working that night, right?

A. Yes, sir.

Q. Okay. Would you agree that it was two years ago, a while ago, right? It's been a while, and that typically we remember things better right after they happen than two years later?

A. Yes, sir.

Q. Now, you didn't actually see the shot, did you?

A. No, sir.

Q. Actually, you wrote in your statement -- or that statement you gave the next morning you didn't see who was shooting, correct?

A. Correct.

Q. All right. And do you remember being shown a photo lineup?

A. Yes, sir.

Q. They showed you a few, didn't they?

A. Yes, sir.

Q. You weren't able to pick out anybody as being the person that shot the gun, correct?

A. Correct.

Q. Now, when that glass broke, you went down, right?

A. Yes.

Q. You did hit the alarm before the shot? It was after the shot?

A. No, it was before.

Q. It was before, so you got -- you saw things were

winding up there, and you hit it and got out of the way, right?

A. Yes.

Q. Okay. And I think you said there is an employee exit, or employee area in the back part of the restaurant, and is that where you were heading?

A. Yes, sir, out the back door.

Q. And one of the other employees or someone stumbled on top of you, and that's how you hurt your knee?

A. I was pushed down.

Q. Pushed?

A. Uh-huh.

Q. After the police arrived and they put up the yellow tape, you stayed in the restaurant for a while, right?

A. Yes, sir.

Q. Because I think you went down to the far end and had a seat for a while?

A. Yes, sir.

Q. And there was some customers that were in there with you too, a couple of them?

A. Yes, sir.

Q. Two or three?

A. Yes, sir.

Q. And a couple of other employees were back there

too?

A. Yes, sir.

Q. And y'all sat there for a while until the EMT guys could come see you and talk to you, right?

A. For the most part, I was like the last one left in there. They had already taken everybody else out.

Q. Okay. My point is that y'all sat there, five or six of you in a group, in the back corner for a while, right?

A. Correct.

Q. And, of course, you talked about it, right?

A. Not really.

Q. People weren't saying what they saw?

A. No. Everybody was just checking on me at that point in time.

Q. Okay. Got you. Now, it's recently that you remember a red sleeve, right?

A. It's not recently, it's just recently that I talked to them.

Q. Oh, okay. So it came back to you after a while, right?

A. Yes, sir.

Q. Now, the fellow with the red shirt, it was unbuttoned, right?

A. Correct.

Q. And he had on jeans? Did you recognize what he had --

A. I don't recall.

Q. Do you remember if they were baggy or tight?

A. I don't recall.

Q. Okay. The red shirt, do you remember anything about it?

A. It had some writing on it, but other than that, no.

Q. Okay. It's pretty confusing and chaotic in there that night, wasn't it?

A. Yes, sir.

Q. And when everybody was moving into that foyer area, it was pretty crowded, wasn't it?

A. Yes, sir.

Q. That inside door that leads to the foyer, it has a pane of glass in front of it, right?

A. Yes.

Q. And it has a poster on it?

A. Uh-huh.

Q. As a matter of fact -- I beg the Court's indulgence.

First thing I'm going to put up is State's Exhibit 26, and I think you had looked at that a little bit earlier in your testimony. And this spot right here,

that's the booth, the last booth, before you go into y'all's walk areas; is that fair to say?

A. Yes, sir.

Q. All right. And this diagram can show the position of that booth to the wall in front of it and then that side door, correct?

A. Correct.

Q. Okay. And that's an accurate drawing of the place, would you agree?

A. Yes.

Q. Okay. And when that scuffle was going on at the front door, you were standing in front of that booth, right? We could see that on the video, right?

A. Not the last booth.

Q. You're saying it wasn't the last booth?

A. No, sir. It was the second.

Q. You're saying it was the second booth.

A. Yes.

Q. Where is the buzzer or alarm you got to hit? Where is it located?

A. There's five of them.

Q. Which one did you hit?

A. The one by the register.

Q. The one down here by the register?

A. Correct.

Q. I think in the video we could see it sometimes down there.

A. You can't -- yeah, you can't see the thing, but --

Q. Okay. So when this scuffle started going on and it got to that point, you walked down to the other register and hit the button and then came back and got in here, right?

A. I was already on the other end. After I hit the silent alarm is when I was headed to go out the back door.

Q. So while that scuffle is going on, you went to the other end?

A. I was already on the other end.

Q. So while the scuffle was going on you were already down there by the register?

A. Correct.

Q. So that was your view of what was going on was down by the register?

A. Before they got down to the door.

Q. Yeah?

A. Where he got to the doorway.

Q. Yeah?

A. I was already down there, and then they started arguing. That's when I hit the silent alarm.

Q. Okay. So -- okay. Now, I'm going to show you

what is State's Exhibit 12. That gives you a pretty good view of the front door, right?

A. Yes.

Q. And that is actually from about where that register is, correct?

A. Correct.

Q. And from there, that would be your view to the front door, correct?

A. Yes.

Q. And it had a poster up there on the left, near the front door, correct?

A. Right in the front right there, yeah.

Q. All right. Beg the Court's indulgence.

This gun you say you saw, what color was it?

A. Black.

Q. It wasn't silver, though?

A. No. It was black.

Q. Was it a revolver or an automatic?

A. I don't know the difference.

Q. Okay. Now, you didn't put that in your statement, though, that you saw a gun?

A. No.

Q. And that's important information, right?

A. Yes.

Q. As a matter of fact, you said -- did you see the

shooting? You put no, you didn't, and that was the statement the day of, right?

A. Correct.

Q. Okay. Now, when you gave the statement, I'm sure the policeman and you talked before you gave it, right?

A. I'm sorry?

Q. When you got to the station to give the statement, you talked with the police, right?

A. I didn't talk to them till I got there.

Q. Excuse me?

A. I didn't talk to the police until I got to the station, yeah.

Q. That's what I mean.

A. Yeah.

Q. And you knew what you were doing, right?

A. Yeah. I knew what I was doing.

Q. And you -- while you had had some pain medication, you weren't incapacitated by any means, were you?

A. I was sleepy and a little out of it, but other than that, I was fine.

Q. All right. And when you gave the statement, you tried to put in all the information that would be important that you can remember, right?

A. Yes.

MR. SMILEY: That's all I have.

THE COURT: Redirect?

MS. LINDER: Yes, Your Honor.

REDIRECT EXAMINATION

BY MS. LINDER:

Q. There's been a lot of questions about where you were and posters and windows, so I'm going to hopefully clear it up a little bit.

Your Honor, I believe the defense will agree to what will be numbered as State's Exhibits 38 and 39, which are two photographs from the scene.

MR. SMILEY: Without objection.

THE COURT: Admitted.

(Whereupon, State's Exhibit Nos. 38 and 39 were marked for identification and admitted into evidence.)

BY MS. LINDER:

Q. Just if you look at that screen in front of you again -- all right. You recognize this picture, ma'am?

A. Yes, ma'am.

Q. And sounds like a basic question: Will you point out the front door? Mark on the front door on that screen. Touch that screen, please, and mark on the front door.

A. Right here (indicating).

Q. And what windows, if any, are on the exterior of

the building and part of that kind of foyer between the two doors?

A. There's a mirror -- there is a glass here and here.

Q. Okay. And are there posters blocking your vision of that exterior door?

A. No, ma'am.

Q. Are there big posters blocking the window that looks half busted out?

A. No. There's just -- it was our stickers on there.

Q. Okay.

A. Jut right there in that little corner.

Q. The big window where the arrow was pointing, are there big posters blocking that window?

A. No, ma'am.

Q. And if we're going to look at the other photo -- and can you explain where this is in the restaurant, what this picture shows.

A. This is right there by the -- it shows the view from the little breezeway right there inside the door.

Q. There's a lot of talk about where you were located when the shooting happened, and I believe you testified when Mr. Smiley asked you, you were behind the second booth?

A. I was right there.

Q. You were right there.
A. Uh-huh.
Q. And are there posters not allowing us to see that location?
A. Huh-uh.
Q. When the fellows were just fussing at each other, where were they in the restaurant?
A. They started on the other side by the register. They started fussing over there.
Q. And where were you when they were all fussing at each other?
A. I was on that end.
Q. And when the shooting happened, where did that happen in the restaurant, generally?
A. That was outside the building.
Q. Was that near the jukebox? Was that near the register? Where did that happen?
A. By the front door.
Q. And where were you standing when the shooting happened?
A. I was between the second and third booth, or first and second, however you want to call it, in front of there because I remember ducking down behind it.
Q. And do you recall if when you were -- when you did a written statement for police after going to the

hospital, do you recall if they asked you did you see a gun?

A. I don't recall.

Q. Do you recall if they asked you did you see clothing near a gun?

A. I don't recall.

Q. Would it help to look at your statement to see about those questions? Would it help refresh your recollection?

A. It might.

Q. If you can read this and see if you see any questions about you seeing a gun or you seeing clothing attached to a gun, if you see those anywhere.

MR. SMILEY: Can she just refresh her memory and then ask her questions?

THE COURT: That's fine.

BY MS. LINDER:

Q. Just read your statement, please.

A. The whole thing?

Q. Just read it, and I'll ask you the questions. Just read it to yourself. I was asking if you remember -- I'm sorry, Ms. Blodgett.

To kind of backtrack, I was trying to ask you if you remembered if the police specifically asked you, point blank, did you see a gun that night, and if they

asked you, point blank, did you see clothing that was then attached to the gun?

And so you're looking at your statement to see if that refreshes your recollection if they specifically asked you those questions.

A. No, ma'am.

Q. All right. Reading that statement doesn't refresh you if those specific questions were asked?

A. Yes, ma'am.

Q. All right. Thank you. Did you see a gun that night?

A. Yes, ma'am.

Q. And did you see a sleeve that was ultimately holding the gun?

A. Yes, ma'am.

Q. What color was that sleeve?

A. Red.

MS. LINDER: Thank you. I have nothing further.

THE COURT: Recross?

RECROSS-EXAMINATION

BY MR. SMILEY:

Q. When you gave your statement, the purpose was to tell the police anything you know about that would be important, correct?

A. Yes, sir.

Q. Seeing a gun would have been important, correct?

A. Yes, sir.

Q. And the clothing that the person that you saw holding a gun would have been important, correct?

A. Yes.

Q. Okay. And they did ask you, did you see who was shooting? Do you remember that in your statement?

A. Yes.

Q. And you put, Answer: No. Correct?

A. Correct.

MR. SMILEY: That's all I got.

THE COURT: You may step down. Thank you. Anybody need her for anything?

MS. LINDER: No, Judge.

THE COURT: You're free to go. Next witness?

MS. LINDER: Your Honor, if we may approach for scheduling?

THE COURT: Sure.

(Discussion held at sidebar.)

THE COURT: Okay. Folks, we are at a break point right now, and we have the next witnesses lined up to come at 2:00, so I'll let you have a little bit longer lunch today, and, if you could, be back in the jury room a few minutes before 2:00. Our plan is to get started

right at 2:00.

So, again, you can go to lunch with anybody you want to. Please don't talk about the case in any way including commenting on witness demeanor, evidence, or anything like that. If anybody does approach you to talk about the case, please report that back to me when you come back. Enjoy your lunch. See you at 2:00.

(Recess taken.)

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

(In open court, jury not present.)

THE COURT: You got your witnesses ready?

MS. LINDER: Yes. They're all here.

THE COURT: Everybody ready?

MR. SMILEY: As ready as we'll ever be.

THE COURT: Let the record reflect defendant is in the courtroom. Bring the jury in.

(In open court, jury present.)

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

MS. LINDER: State calls Betty Butler.

BETTY BUTLER,

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MS. LINDER:

Q. Good afternoon.

A. Good afternoon.

Q. Where are you presently employed?

A. I'm employed with the South Carolina Law Enforcement Division, also known as SLED.

Q. And how long have you been with SLED?

A. Over 18 years.

Q. What is your position there?

A. I'm a forensic technician in the DNA case work unit.

Q. What do your duties include at SLED?

A. As the forensic technician, we do a presumptive test for blood, semen; we look for skin cells. We look for hair, bodily fluids, or anything that could be of interest to a particular case.

Q. As a forensic technician, when you're looking for those items such as blood, semen, et cetera, where do you receive the items that you then examine for those?

A. We receive the items from the evidence control department.

Q. And are those items turned in to the evidence control department by law enforcement agencies throughout the state?

A. Yes, they do.

Q. Can you explain the process of how you go about examining an item to look for blood.

A. When I receive a particular item, I check to make sure that all the seals is completely sealed before I even check the items. Then I open up the items. I do a visual of the items.

Sometimes you can see spots and sometimes you can't. We use a clean swab where we put some fluid on it, we swab that particular area, and we do a chemical test. If that particular test is positive, it turns pink, and that means I can swab it in, send it up to DNA for further testing because there's a possibility that blood is there.

Q. All right. And did you handle any items submitted in this case L12-08586?

A. Yes, I did.

Q. What item did you handle?

A. SLED item No. 8 and 8.1.

Q. At this time I'm going to show you what's been marked as State's Exhibit 34 and 35, if you can please examine those items. Do you recognize those?

A. Yes, I do.

Q. And how do you recognize them?

A. They came in in this heat-sealed pouch. It has my initials, the date. It has the SLED lab number

L12-08586, item No. 8, and this is the 8.1.

MS. LINDER: And at this time, I would ask State's Exhibit 34 and 35 be admitted into evidence.

MR. SMILEY: No objection.

THE COURT: Admitted.

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

BY MS. LINDER:

Q. When you received item 8, SLED item 8, what is that described as?

A. Fired bullet projectile from Waffle House floor.

Q. And what did you do with item No. 8 when you received it?

A. When I received item No. 8, the request was for blood. I opened the item up. As I stated before, I used a clean swab. I put a chemical on it, swab the area. I used two swabs, swabbed one area, test one swab to see if it was a possibility there was blood on it.

It turned pink, so what I did, I went back and I swabbed the entire projectile and I let it dry. After it dries, I put it into a coin envelope and seal that coin envelope in the heat-sealed pouch and transfer it for further testing.

Q. And State's Exhibit 35, already admitted into evidence, is this the coin envelope that you were talking

about that you sealed and initialed?

A. That's it.

Q. And this, I believe you said, you sent for further testing to the DNA department?

A. Yes.

MS. LINDER: I have no further questions for you at this time, if you could answer anything the defense may have.

MR. SMILEY: Ms. Butler, Jim Smiley. How are you?

THE WITNESS: Fine, thank you.

MR. SMILEY: I don't have any further questions for you. Thanks for coming down. I hope your health is better.

THE WITNESS: Thanks.

THE COURT: All right. You can step down. Call your next witness.

MS. LINDER: The State calls Samuel Stewart.

SAMUEL STEWART,

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MS. LINDER:

Q. Good afternoon.

A. Good afternoon.

Q. Where are you employed?

A. I'm employed with the South Carolina Law Enforcement Division, commonly known as SLED.

Q. And how long have you been with SLED?

A. I have been with SLED for two-and-a-half years now.

Q. What is your title at SLED and what do your job duties include?

A. I'm a forensic scientist assigned to the DNA case department at SLED. I'm responsible for testing any evidence and known standards for DNA, trying to determine whether or not their DNA profile from the known standards can be included or excluded as a possible contributor to the DNA profile I developed from the evidence.

Q. Can you tell the jury a little bit about your education and your training and your background.

A. No problem. I received my bachelor of science in biology from Francis Marion University. I also received in-house SLED training under other court-qualified analysts for over a year-and-a-half where I could successfully complete hundreds of practice samples, a written exam, an oral exam a competency and mock trial before I could be certified as an analyst.

Q. And approximately how many times have you tested items to see about the presence of DNA?

A. Over hundreds, maybe close to thousands.

MS. LINDER: Your Honor, at this time I would ask that Samuel Stewart be qualified as an expert in the field of DNA analysis.

THE COURT: Do you wish to voir dire the witness?

MR. SMILEY: No, sir.

THE COURT: Okay. Folks, normally when people testify, I told you they come up and they tell you what they heard, they saw, they felt, they touched, they smelt, that sort of thing.

We don't normally let people come up and tell you what their opinion is about evidence, all right? The law says, though, that when somebody because of training or expertise or, you know, education in some field, experience rises to the level of being an expert in that field, then they're allowed to come into court and not only tell you what their observations were, but they can also give you their opinion about what the evidence is and give you the basis for that opinion.

Now, this witness has now been qualified as an expert in the field of DNA analysis, and he's going to be able to give you his opinion and testing and result. You decide how much weight to give his testimony. The fact that he's been qualified as an expert does not

require you to automatically give him greater weight than you would any other testimony in the trial.

You decide how much weight his testimony deserves based on all of the evidence that y'all hear throughout the case, okay? You may continue.

BY MS. LINDER:

Q. Mr. Stewart, did you receive any evidence in this case, SLED lab no. L12-08586?

A. Yes, I did.

Q. And what items did you receive?

A. If I can refer to my work?

Q. Yes.

A. I received item 6, which is a buccal swab from Deonte Brown; item 8.1, which was a swab from a fired projectile; item 9, which was a swab collected from the rim of a red cup; item 11, which was dried bloodstains collected from Dontaye Reed; and item 12, which was a buccal swab from Quentin Allen.

Q. When you received these swabs for analysis, did any of them appear to be tampered with?

A. No, they did not.

Q. If they had appeared to be tampered with, would you have continued on with that analysis?

A. No, I would not.

Q. Is that part of SLED procedure?

000316

A. Yes, it is.

Q. At this time I'm going to show you -- at this time, I'll show you what has been marked as State's Exhibits 33 and 35. You can look at those two items.

Are these items two of the items that you received to do analysis on in this case?

A. Yes, they are.

MS. LINDER: At this time I would ask to admit these two items into evidence.

MR. SMILEY: No objection.

THE COURT: Admitted.

(Whereupon, State's Exhibit No. 33 was marked for identification and admitted into evidence.)

BY MS. LINDER:

Q. And two items that I showed you, item No. 6 and -- I apologize, item No. 12 and 8.1, what were those two items?

A. Item 8.1 was a swab from the fired projectile, and item 12 was the buccal swab from Quentin Allen.

Q. And can you briefly describe in layman's terms the analysis that you performed on those two items to the jury.

A. No problem. First, I will explain, DNA stands for deoxyribonucleic acid. It is a genetic material found in every person and is responsible for certain traits like

our eye and our hair color.

What we do is target certain locations -- well, DNA is contained in chromosomes, which are found in every cell in the human body, excluding red blood cells. We receive half of our chromosomes from our mother and the other half from our father, and we target certain locations on your chromosomes, known as STRs known as short tandem repeats.

And what we do is we compile 16 different STR locations that are found on various chromosomes within your body to develop what is known as a DNA profile, which we use to identify a person from another person, excluding identical twins.

Q. And as a result of your examination in this case, did you create a report?

A. Yes, we did.

Q. Is that part of SLED's procedure?

A. Yes, it is.

Q. At this time I'm going to show you what has been marked as State's Exhibit 27. Can you tell me if you recognize this?

A. Yes. This is the report that I issued in this case.

Q. And this is the report that you completed per SLED procedure?

A. Yes, it is.

MS. LINDER: At this time, I would ask State's Exhibit 27 be admitted into evidence.

MR. SMILEY: No objection, Your Honor.

THE COURT: It's admitted.

(Whereupon, State's Exhibit No. 27 was marked for identification and admitted into evidence.)

BY MS. LINDER:

Q. Now, when you make analyses, you start with a standard; is that right?

A. Well, actually, I start with the evidence first.

Q. Okay.

A. I start with the evidence first, and I take that to process, and then I make sure to clean my area and start with the standards next. This is to prevent any cross-contamination that could happen.

Q. What is a standard?

A. A standard is either a cheek swab that we take from an individual or blood, and we use that as your DNA profile to identify you.

Q. And in this case, when you get -- in this case and other cases, when you get standards in, how do you develop a DNA profile from that?

A. Usually we will take a cutting from that swab or that dried blood standard, and we take it through our

different processes of DNA analysis. And what we do is we develop those 16 different STR locations, and we place those in a chart to identify that individual.

Q. All right. And at this time, I'm going to show you the third page of State's Exhibit 27. It's going to show up on that screen right in front of you. Okay. And can you explain what this chart is to the jury?

A. Yes. This chart is the DNA profiles for all the pieces of evidence that I received in this case.

Q. All right. And for item number 6 in this case -- I'm sorry. I apologize. Item number 12, buccal swab from Quentin Allen, is the buccal swab the cheek or is the buccal swab the blood?

A. The buccal swab is the cheek.

Q. And so if you look at this in the chart, item No. 12, can you explain what all of these numbers are all the way across?

A. No problem. Like I said, you receive half your DNA from your mother and half from your father. Depending upon that location, you will receive a number donated by each parent. Each location could be heterozygous or homozygous.

Homozygous means that your parents donated that same number to you. Heterozygous means that your mother donated one number and your father donated another, so

that's why there would be one number at one location or two numbers at each location.

Q. So for Quentin Allen, item number 12, right here, when it's just that single number 12, was that the homo or heterozygous?

A. That's the homozygous.

Q. And that means what exactly again?

A. It means both his mother and his father donated a chromosome to him at that location.

Q. Okay. And scooting just down that, now it's 13 now it's 17, is that homo or heterozygous?

A. That would be considered heterozygous.

Q. And where do each of those numbers come from?

A. One of those numbers came from his mother, and the other one came from his father.

Q. And item 8.1 in this case, swabs from a fired projectile, were you able to develop a profile out of those swabs?

A. Yes, I was.

Q. And is a profile developed from 8.1 reflected on this chart?

A. Yes, it is.

Q. And feel free -- if you touch it with your finger or draw an arrow, it will show up on that screen in front of you. Can you show the jury where the results from the

profile from 8.1 is?

A. Yes, right here. This is 8.1(indicating). You want me to draw all the way across?

Q. No, that's fine, that's fine. So the numbers that we see in 8.1, are these similarly collected to the Quentin Allen numbers we just went over?

A. Yes. Do you want me to read from my report?

Q. Yes.

A. The DNA profile developed from item 8.1 matches the DNA profile of Quentin Allen. Probability of randomly selecting an unrelated individual having a DNA profile matching this item is approximately 1 in 790 quintillion.

Q. So how many people are in the world's population?

A. Probably 7 billion?

Q. 7 billion?

A. That's correct.

Q. And you said which two items were a match?

A. Item 8.1 and item 12.

Q. And that was one in how many?

A. One in 790 quintillion.

Q. Quintillion?

A. That is correct.

Q. Do you have any idea how many zeros is in that?

A. It's 790 with 18 zeros behind it.

Q. So if we look at the chart, can you show us on this chart what you did in comparing the two profiles to determine they were a match?

A. I'm looking at correspondence between a location to see whether or not the numbers that are from the evidence match with anybody from a known standard, and at every location here between 8.1 and 12, I have the numbers corresponded with one another.

Q. For DAS-1179, what was your finding at that STR for Quentin Allen?

A. That would be a 12.

Q. And what about the swab from the fired projectile?

A. That would also be a 12.

Q. And for DD-2111, what was the finding for Quentin Allen?

A. 32, 31.2.

Q. And what was the finding for the swab from the fired projectile for that same STR?

A. That was also 31, 31.2.

Q. And going across the chart, do the numbers match between those two samples as you go through the 16 STRs?

A. Yes, they do.

Q. In layman's terms -- these numbers are a little over me. From your analysis, what can you say was located on the fired projectile?

A. With scientific reasoning, I can say that the DNA profile developed from the fired -- from the swab from the fired projectile matches the DNA profile of Quentin Allen.

Q. So Quentin Allen's DNA is on that projectile?

A. Yes. I can say that with scientific certainty.

MS. LINDER: I don't have any other questions for this witness, if you can answer anything the defense may have.

THE COURT: Any questions?

CROSS-EXAMINATION

BY MR. SMILEY:

Q. Did you get a subpoena to come here?

A. Yes, I did.

Q. And that's basically how you get called to court, right? You get subpoenaed in every case?

A. Not every case.

Q. Well, the majority of time?

A. Yes, I get a subpoena.

Q. Okay.

MR. SMILEY: Thank you. That's all I have.

THE COURT: Any redirect?

MS. LINDER: No redirect, Judge.

THE COURT: You may step down. Thank you.

MS. LINDER: And, Judge, is it okay to

release this witness?

THE COURT: Certainly. You're free to go.

THE WITNESS: Thank you.

THE COURT: Next witness?

MS. LINDER: State calls Ira Parnell.

IRA PARNELL,

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MS. LINDER:

Q. Good afternoon.

A. Good afternoon.

Q. Are you retired?

A. I am.

Q. Happily?

A. I'm getting used to it, yes, ma'am.

Q. Where are you retired from?

A. From SLED, State Law Enforcement Division.

Q. And how long were you with SLED?

A. Forty-one years and ten months.

Q. What was your job when you were at SLED?

A. I was assigned to the firearms and tool mark identification laboratory at SLED headquarters in Columbia.

Q. And what did your duties entail as being part of

the firearm and tool markings?

A. Examining evidence related to firearms, specifically fired bullets, fired cartridge cases, firearms themselves, and, on the tool mark side, bolt cutters, pliers, wrenches, anything -- any tool that can make a mark or leave a damaged area at a crime scene. We would compare those marks from the crime scene to the tools themselves.

Q. And can you tell the jury a little bit about your educational background and training.

A. Yes. I graduated from University of South Carolina with a degree in the area of criminal justice. I say the area of criminal justice because there was no criminal justice degree at that time. It was called a bachelor of general studies with an emphasis on criminal justice.

I'm a graduate of the FBI National Academy in Quantico, Virginia and, of course, our state academy, and I've attended countless seminars put on by the Association of Firearm and Tool Mark Examiners, which is an international organization of firearm and tool mark examiners, which we get together once a year for a week-long seminar to discuss the latest developments in firearm and tool mark identification, probably conducted many hundreds of thousands of individual comparisons

using a forensic microscope, and testified approximately 645 times as an expert in this area.

Q. And have you been declared an expert in state and federal court before?

A. Yes, ma'am.

Q. In South Carolina and other states?

A. Yes, ma'am.

MS. LINDER: Your Honor, at this time the State would request that he be declared an expert in the field of firearms and tool mark identification.

MR. SMILEY: No objection, Your Honor.

THE COURT: All right. Folks, the same instructions that I gave you a minute ago on the previous expert who was a witness will also apply to this witness who has been qualified as an expert in the field of firearms and tool mark identifications.

You decide how much weight to give his testimony based on all of the evidence that you will hear throughout the trial. You're not required to give his testimony any greater weight simply because he's called as a witness.

You may continue.

MS. LINDER: Thank you.

BY MS. LINDER:

Q. Did you receive any evidence in this case SLED lab

number L12-08586?

A. Yes, ma'am, I did.

Q. What items did you receive?

A. I received two fired bullets.

Q. And do you know what SLED item numbers those are?

A. SLED item No. 8 and SLED item No. 10.

Q. And when you received these items, did they appear -- did the packaging appear to be tampered with in any way?

A. No, ma'am. The evidence seal was intact as I received them.

Q. At this time I'm going to show you what has been marked as State's Exhibit No. 34 and State's Exhibit No. 32. Do you recognize these items?

A. Yes, ma'am, I do. State's Exhibits 32 and 34 all bear my case number, specimen number, and initials, and I seal these up myself after I completed my examination.

MS. LINDER: At this time State would offer into evidence State's Exhibit 32 and 34.

MR. SMILEY: I thought they were in, but no objection.

THE COURT: All right. Admitted.

(Whereupon, State's Exhibit No. 32 was marked for identification and admitted into evidence.)

BY MS. LINDER:

Q. Can you briefly explain in layman's terms to the jury what you do when you receive an item and as you're beginning to do your analysis.

A. Well, I could use these items, in this case State's Exhibits 32 and 34, as examples. As we receive evidence, the submitting agency or submitting person brings the evidence items to what we call our evidence intake area, and they store the evidence until one of us goes down and picks it up.

Once we pick up the evidence, we examine the seals to be sure that all the open areas of the evidence is taped up and it's secured and hasn't been tampered with. Once we establish that fact, we receive and take custody of the evidence, and, in this case, I would take them upstairs. We took them upstairs to the firearms department, to my office area, and the evidence area.

We then open the evidence, photograph it, photograph, actually, prior to opening it, showing the seals are intact, open the evidence, examine the items of evidence, first to see if there's any trace evidence, any fibers or blood or any other type of evidence on there that needs to be taken off before we start handling it and dislodge that.

That being done, we then microscopically look at

the outer surface of these bullets, State's Exhibits 32 and 34, for any striated markings, first of all to determine if it is good enough or in good enough condition to do an examination on. In this case, the case of State's Exhibits 32 and 34, they were both sufficiently marked and in good enough condition that I can microscopically compare them. I then compare them with each other microscopically and made a conclusion from there.

Q. And the conclusions that you made, after your analysis was done, did you memorialize that in any sort of report?

A. I did. I produced a formal report for -- to give to the submitter.

Q. At this time, I show you what has been marked as State's Exhibit 28. Do you recognize that?

A. Yes, ma'am, I do. This is a copy of the formal report submitted to the submitter in this case.

MS. LINDER: And at this time, I would seek to enter State's Exhibit 28 into evidence.

MR. SMILEY: I don't object, but one caveat, if we could approach, Your Honor.

(Discussion held at sidebar.)

(Whereupon, State's Exhibit No. 28 was marked for identification and admitted into evidence.)

BY MS. LINDER:

Q. Based on your analysis of items 8 and 10 in this case, what was your determination?

A. Based on the agreement of individual identifying characteristics on the outer surfaces on State's Exhibits 32 and 34, my items 8 and 10, I concluded, based on my experience and training in the experiments I conducted, that these two bullets were fired by the same firearm.

Q. And can you explain to the jury, explain fully, how you go about doing a comparison. What exactly are you looking at?

A. To do that, we have to back up just a little bit. When a firearm is manufactured, particularly one that has rifling in the barrel, such as the one that fired State's Exhibits 32 and 34, a lot of tooling, a lot of manufacturing processes go on. Not to get into too great a detail, but there are processes which remove metal from the inside of the barrel in a regular pattern. This is called rifling.

It is also done in a particular direction of twist; in other words, it makes the bullet spiral when it comes out of the barrel, much like a quarterback throwing a football. If the football is spiralling tightly, it goes straighter and farther. Same way with a bullet. If it's spinning tightly, then it goes straighter and

farther.

It can go either left or right. The twist is put into the barrel, depending on the manufacturer. The first thing that they do is drill a hole in the steel barrel and then they apply the rifling and then it's polished and it's fitted to the gun.

In the case of a revolver, which is what I think fired these two bullets, the barrel is fitted to that one gun and it can't be removed normally.

So during that manufacturing process, the drilling, the cutting of the rifling, and all the other processes that are done impart certain individual markings, or certain individual characteristics, to the inside of that barrel. When a bullet is fired through that barrel, it acquires those individual random unintentional characteristics on its outer surfaces, and they usually don't change much. It changes a little from a brand new gun from, say, one that's been fired 50 times.

Once it's settled in, then the markings are pretty well consistent, and if the bullet is not too badly damaged, then by microscopically comparing these imperfections that are impressed into the outside of the bullet, then you can determine whether or not a particular bullet was fired in a particular gun or, in

this case, whether the same gun fired both bullets.

These marks appearing in linear fashion. They're random, they're unintentional, but they're quite distinct, and the gun has its own signature. So in this case I microscopically compared State's Exhibits 32 and 34 for the presence or absence of these agreeing individual characteristics. I found sufficient agreement between these two bullets to conclude, based on my experience and training, that they were both fired through or down the same gun barrel.

Q. And, specifically, what calibers do you have down in your conclusions?

A. These were consistent with being a 38 caliber. This is a designation based on convenience, because the actual diameter of the bullet was .357 thousandths of an inch. Since there already was a 38, and then when they made the 357 Magnum, they had to come up with some other thing to call it, so they called it a 357 and a 38, 38.

There are a number of different calibers in the 38 class, but these bullets were most consistent with being a 38 special caliber.

Q. And that caliber -- is that caliber possible to exist in a revolver?

A. Yes, ma'am. It's most likely going to be a revolver.

Q. And for those who are not familiar with guns, what's the difference between a semi-automatic and a revolver?

A. A semi-automatic, which is what most everybody sees on TV, is a firearm that generally loads with a magazine or a clip into the grip of the gun. And when you pull the slide back and release it, it loads, and each time you pull the trigger, it fires, extracts and ejects the fired cartridge case and reloads a fresh cartridge ready to fire up until the capacity of the gun and it shoots itself empty, but it fires one time with each pull of the trigger.

A revolver, on the other hand, has what we call a cylinder. It has a round device, or in the middle of the gun, it's a cylinder that has several chambers within that cylinder, and it revolves, or turns in a circle, each time the trigger is pulled. In a double-action mode, when you just pull the trigger, the inner workings of the gun rotate the cylinder until it locks behind the hammer.

The hammer falls, fires, and nothing else happens until you release the trigger and pull the trigger again or cock it manually. So the revolver part of it is the turning in a circle of the cylinder itself during the firing process, and that happens strictly manually. The

gun does not do it by itself.

Q. And do cartridge casings get ejected from a revolver?

A. No, ma'am. They stay in the chamber until -- at such time either a screw is removed or a semi-latch is pushed and the cartridge cases are dumped out by somebody.

Q. And is it possible to compare a firearm itself with the markings and identifications from projectiles and see if those items match?

A. Yes, ma'am.

Q. And were you given a firearm in this case?

A. No, ma'am. I didn't receive a gun in this case.

Q. So did you do any testing on a firearm in this case?

A. No, ma'am.

Q. But you were able to decide and to conclude through your training and experience and examination that what, about items 8 and item 10, SLED items 8 and 10?

A. They were both consistent with being 38 special caliber, that they were both consistent in construction; in other words, the bullet looked alike. They were made the same way. They were fired in probably a revolver that had five lands and grooves with a right direction twist, and, again, they were both fired by the same gun,

and if I had a gun that were in good enough condition, then I could have possibly matched that gun to these bullets.

MS. LINDER: I don't have any other questions for you. If you could, answer anything the defense would have.

THE COURT: Cross?

CROSS-EXAMINATION

BY MR. SMILEY:

Q. Mr. Parnell, Jim Smiley. I think we've met a few times before. I understand we're at the end of the line for you but you finally get to enjoy retirement. I wish I would be seeing it one day soon, but I don't think so.

Let me ask you a couple questions.

A. Go ahead.

Q. You can say with a reasonable degree of scientific certainty those two bullets came from the same gun?

A. That's correct.

Q. Now, can you also say with a reasonable degree of scientific certainty that it's a revolver or it most likely would -- there is a difference, don't you agree?

A. I do. The only caveat to that, Mr. Smiley, is I'm unaware of another type of firearm other than a revolver with the number of lands and grooves, the physical characteristics that both these bullets, State's 32 and

34, possess. There may be something out there that I'm not aware of, but I'm fairly certain they were both fired out of a revolver.

Q. Fair enough. That answers my questions. You didn't have the revolver part in your report, but I think we got it cleared up now, so with a reasonable degree of scientific certainty is both bullets came from the same gun, and most likely that gun was a revolver?

A. That's correct.

Q. All right. Now -- we'll just stop there. I think that's enough today. Thank you very much.

THE WITNESS: You're welcome.

THE COURT: Redirect?

MS. LINDER: No redirect, Your Honor.

THE COURT: You may step down. Thank you.

THE WITNESS: Thank you.

THE COURT: Next witness?

MS. LINDER: Your Honor, if we may approach briefly.

THE COURT: Uh-huh.

(Discussion held at sidebar.)

THE COURT: Our next witness is a pathologist who should be arriving very shortly but hasn't gotten here yet, so we're go going take a break while we wait for him or her, and as soon as he or she gets here, we'll

call you back in.

If anybody needs to take a smoke break, you can do that. Again, don't talk about the case, comment on any witnesses or any evidence or anything like that, and we'll have you back here just as soon as this witness arrives.

Thank you.

(Recess taken.)

THE COURT: All right. Got everybody back? Let the record reflect the defendant is in the courtroom. Bring the jury back in.

(In open court, jury present.)

THE COURT: All right. Be seated. Okay, folks. We'll resume now with the State calling their next witness.

MS. LINDER: State calls Dr. Lee Tormos.

LEE TORMOS,

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MS. LINDER:

Q. Good afternoon. What is your occupation?

A. I'm a forensic pathologist at MUSC.

Q. And what is forensic pathology?

A. Forensic pathology is a subspecialty in medicine

that deals with how injury causes death.

Q. And can you tell the jury about your education and training, please.

A. Absolutely. I am a doctor by profession. I went to the University of Puerto Rico where I did my undergraduate degree and got a bachelor's in science. I went to medical school in Puerto Rico where I got my medical doctor degree. Then I did a specialty in anatomic and clinical pathology at the University of Puerto Rico. I worked for a few years before coming to the Medical University of South Carolina, or MUSC. I completed my subspecialty training in forensic pathology.

Q. And do you belong to any medical or scientific groups or associations?

A. Yes, I do. I belong to the National Association of Medical Examiners, which is a group of forensic pathologists that get together nationwide, and I also belong to the AAB, because in my spare time, other than forensic pathology, I do transfusion medicine at MUSC, so that has to do with the transfusion of blood and stem cell transplants.

Q. And can you explain your duties as a forensic pathologist at MUSC.

A. As a forensic pathologist, my main duties are to do autopsies on deceased people to identify why and how

they died.

Q. And approximately how many autopsies have you been involved in?

A. Over 1,000 autopsies.

Q. Have you ever been declared an expert in court before?

A. Yes, ma'am.

MS. LINDER: And, Your Honor, at this time we move to admit Dr. Tormos as an expert in the field of forensic pathology.

MR. SMILEY: Without objection.

THE COURT: All right, folks. Same instructions I gave you about earlier expert witnesses apply to this witness as well who has now been qualified as an expert in the field of forensic pathology.

She'll be able to testify in the form of an opinion. You decide how much weight you give her testimony based on all of the evidence that you'll hear throughout the trial.

Thank you. Go ahead.

BY MS. LINDER:

Q. Can you explain to the jury, just generally speaking, what happens during an autopsy?

A. During an autopsy, the decedent's body is brought to the autopsy room where the person is laid on the

table, and we proceed to do an external examination noting any evidence of injury, disease, identifying marks and scars and such, and then we proceed to do a surgical incision and an internal examination to note the changes associated with normal aging or with trauma to the body that may have led to the death.

Q. And approximately how long does an autopsy take to perform?

A. The average autopsy takes anywhere between two and four hours; however, a complicated autopsy may last up to days.

Q. Did you have an occasion to perform an autopsy in this case on the victim, Dontaye Reed?

A. Yes, I did.

Q. And where did you conduct that autopsy?

A. I conducted that autopsy at the Medical University of South Carolina, autopsy suite, on July 15, 2012.

Q. And can you tell the jury about what you learned of the decedent during the external examination.

A. Okay. The external examination showed me that this is a young man that appears the stated age of 19 years. He is of the black race. He is almost six feet tall. He's five-eleven and weighs 120 pounds, so he has a slim build.

His hair is in dreadlocks that are about a foot

long. He does have some facial hair, and other than a couple tattoos, there are no significant marks and scars on his body except for the evidence of injury.

Q. And based on this particular autopsy, within the bounds of scientific and medical certainty, have you formed an expert opinion concerning the cause of death?

A. Yes. The cause of death is a gunshot wound to the back.

Q. And have you determined a manner of death?

A. The manner of death is a homicide.

Q. And can you describe the gunshot wound in this case to the jury, please.

A. Yes. The gunshot wound is to the back, to the left flank, so right around the waistline, a little bit higher up to the left flank, and it's relatively small and round.

As we examined the body on the outside, we could tell where the bullet was. The bullet was actually seen as a little bump overlying the border of the ribcage on the right side. That is the only external evidence of injury.

Q. And as part of the autopsy workup, do you take X-rays and take photographs and do diagrams?

A. Yes, we do.

Q. And did you do that in this case?

A. We always do.

Q. At this time I'm going to show you what's been marked as State's Exhibit 29. Do you recognize that?

A. This is an image of the X-ray that we took at autopsy.

Q. Okay. And does this fairly and accurately depict the X-ray that you took during the autopsy of Dontaye Reed?

A. Yes.

MS. LINDER: At this time I would seek to admit State's Exhibit 29 into evidence.

MR. SMILEY: Without objection.

THE COURT: Admitted.

(Whereupon, State's Exhibit No. 29 was marked for identification and admitted into evidence.)

BY MS. LINDER:

Q. If you can please explain to the jury what this image is.

A. This is an image of the chest X-ray. As you can see, right down the center is the spinal column, or the vertebral column, as you may know it, and you can see the outlines of the ribs on either side. Okay?

The entrance was to the left side of the body. See the L over here? That is the left side. The entrance is right around here, and then the bullet

traveled left to right slightly upward and slightly anterior in this direction, and in its path it perforated the skin, the subcutaneous tissues, the muscles in the back that help hold you up, the big muscles of the back.

It lacerated the aorta, which caused bleeding. It perforated the stomach, pancreas, the liver. It hit the seventh rib. So your ribcage would go like this anteriorly. It hit this edge of the ribcage, and that's where it stopped, right under the skin. That's why we could see it on external examination.

So if you draw a line from the nipple, it's immediately below the nipple right at the edge of the rib cage where it entered on the left flank.

Q. And did you end up removing this item?

A. Yes. That bullet, I wrote over it. Yes, I did, removed the bullet during the course of the autopsy.

Q. At this time I'll show you what has been marked as State's Exhibit 30. Do you recognize that?

A. This is the bullet that we removed from Dontaye Reed.

MS. LINDER: At this time, Your Honor, I seek to admit State's Exhibit 30 into evidence.

MR. SMILEY: Without objection.

THE COURT: Admitted.

(Whereupon, State's Exhibit No. 30 was marked

for identification and admitted into evidence.)

BY MS. LINDER:

Q. And can you please tell the jury what this is.

A. That is the bullet that we recovered during the course of the autopsy.

Q. And what is this down here? Why is this in the photograph?

A. That is a ruler so that you have a scale with which to compare the size.

Q. And after collecting this bullet and other items, did you turn over those items to law enforcement?

A. Yes, I did. The bullet, along with the shorts, underwear, personal effects, fingernail clippings, full scalp hair, and a CD with images from the autopsy was transferred to Mr. Mark E. Watson of the Charleston County Sheriff's Office.

Q. And based on your training and experience in the autopsy done on Dontaye Reed, the cause of death was what?

A. The cause of death is a gunshot wound to the back.

MS. LINDER: I have no further questions. Please answer anything the defense may have.

CROSS-EXAMINATION

BY MR. SMILEY:

Q. Doctor, just a few things.

A. Yes.

Q. And one of the things you do after the autopsy is create a report, correct?

A. Yes.

Q. And in creating that report, you gathered information from not just the body, but information from the coroner?

A. Yes.

Q. From any information officers might give you and all of that, right?

A. Uh-huh.

Q. And one of the things you do before you get to your findings is you put in your understanding of the case history, right?

A. Yes.

Q. Okay. And in this case, on the first page of your report, you have the case history, and in that it was reported to you that at the scene there were at least three casings found?

A. Yes.

Q. Now, casings, in this case, you take that to be the part of the bullet that is left behind once it's shot, correct?

A. Yes.

Q. We'll keep it as nontechnical as possible. Now,

I'm going to use myself as a dummy, dummy probably being the best word for it, and I'm going to take my coat off just to see if I can talk my way through this a little bit.

So he was shot in the left flank, somewhere around in here, correct?

A. Yes.

Q. And it's a small hole, right?

A. It's a small hole, yes.

Q. And from that bullet entrance wound, you can tell a couple of things, one of which is the relative distance of how far the firearm was away, right?

A. Absolutely.

Q. You could either tell -- it falls in either one of three categories, right, contact?

A. That is correct. You would have a muscle imprint.

Q. Second would be a close shot.

A. Uh-huh.

Q. Or, third, a distant shot, correct?

A. Uh-huh.

Q. And in this case -- well, and in determining that, one of the things you're looking at is if there's a burn print on the wound, or if it's a contact wound, you might actually see some gasification inside, correct?

A. That is correct.

Q. If it's close, you're going to see powder burns, right?

A. Yes.

Q. Because -- and not anything real specialized, but in general, when a firearm fires, it shoots out particles of gunpowder, correct?

A. That is correct.

Q. And so if it was a close wound, you would see what's -- and I can't pronounce the word very well, stippling?

A. Stippling.

Q. Or burn marks in close proximity to the wound?

A. Yes.

Q. So if it's further away than a few feet, we'll keep it at that, it becomes a distance, and you can't tell the distance away, correct?

A. You can't tell if it's three feet or thirty feet.

Q. Exactly. And in this case, it's that last category, the distance one, correct?

A. On the skin, I don't have any evidence that it was close; however, I did not get the shirt to examine, therefore, I don't know if there is some soot on the shirt that may have been left there.

Q. From your examination of the body, however, it appears to be a distant wound?

A. Yes, it does.

Q. All right. And this bullet wasn't from back to front, it was more a back -- from left to right, back to front, if that makes sense?

A. And slightly upward.

Q. I was getting ready to get to that. And it started here and ended up here, correct, and up near the --

A. It's at the border of the ribcage, right at the border.

Q. Okay.

A. So it's only a couple of inches difference in the upward, so it's very slightly upward, but it is going left to right and to the front and slightly upward.

Q. Okay. That helps a lot. Now, we know that it's the gunshot that caused the death, but the bullet itself hit some vital areas as it traveled through the body, correct?

A. Absolutely.

Q. And I think one of the things you reported is that it had hit the aorta?

A. Yes.

Q. And the pancreas and what have you, and any one of those by themselves could have been fatal; is that fair to say?

A. Not any one of those. The aorta laceration is the most fatal. The pancreas and stomach, if treated at the hospital, may be survivable if there are no complications such as infection, and the liver has a lot of morbidity associated with it, but the most fatal injury is when it lacerated the aorta because it caused bleeding into the abdominal cavity.

Q. And while we know the instrument of death was a bullet, the cause of death would have been bleeding to death?

A. The mechanism, what is called mechanism of death, the mechanism of death is the hemorrhage bleeding into the abdomen.

MR. SMILEY: Thank you. I have no further questions.

THE COURT: Redirect?

MS. LINDER: I have no redirect.

THE COURT: Thank you. You may step down. Next witness?

MS. BALDWIN: State calls Christina Moyer-Smith.

CHRISTINA MOYER-SMITH,

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MS. BALDWIN:

Q. Detective, where are you employed?

A. Charleston County sheriff's office.

Q. And in what position?

A. I'm an investigator.

Q. What does that mean?

A. I'm a detective. I investigate major violent crimes.

Q. Did you receive any training to do that?

A. Yes. I completed the South Carolina Criminal Justice Academy. I've also completed detective one with the South Carolina Criminal Justice Academy. I also have on-the-job training as well as numerous interview trainings that I've had and other trainings that they provide us with.

Q. How long have you been employed with the Sheriff's Office?

A. Twenty years.

Q. And what was your position there back in July of 2012?

A. I was an investigator, just transferred into the major violent crimes unit.

Q. How did you become involved in this case?

A. On the day of the incident, I was on call, and I was called out by my supervisor and he had me respond to

MUSC.

Q. And what did you do when you got to MUSC?

A. Once I arrived at MUSC -- well, prior to arriving at MUSC, my supervisor advised me that there was an individual down there with a gunshot wound and another individual that had arrived at the scene -- had arrived at MUSC who was deceased. I made contact with Quentin Allen. He was the one with the gunshot wound to his arm.

Q. And you briefly mentioned it, but how did Mr. Allen appear?

A. He was -- he appeared to be kind of shocked, still kind of numb from the moment, a little bit angry because of what happened, and, I guess, could not believe that he had just been shot.

Q. Did you observe any injuries on him?

A. Yes. He had a gunshot wound that was through one part of his arm, left arm, went all the way through, and then he had a small laceration on the interior between the arm and his chest wall and he also had a laceration over his eye.

Q. Did he tell you what happened?

MR. SMILEY: Objection.

(Discussion held at sidebar.)

BY MS. BALDWIN:

Q. Did you interview Mr. Allen?

A. Yes, I did.

Q. Okay. As a result of your interview, what did you do? Did you do anything else at MUSC prior -- after speaking with him?

A. Okay. While we were there, I also collected what y'all heard about earlier as the GSR kit. I completed a GSR kit while I was there.

Q. Did you do anything else at MUSC?

A. I then spoke with Ms. Heyward. She is the mother of Dontaye Reed.

Q. As a result of your conversation with her, what did you do?

A. I spoke with her and she had given me some information that an individual was possibly involved --

MR. SMILEY: Objection, Your Honor. Hearsay.

THE COURT: Sustained.

BY MS. BALDWIN:

Q. Just say what you did as a result of that investigation.

A. As a result of that investigation, I went back to our headquarters, and the information I received from her, I proceeded to look through a database to attempt to identify an individual that was possibly involved.

Q. Did you, in fact, identify that individual?

A. Yes, I did.

Q. And who was that person?

A. It was Deonte Brown.

Q. What else was done during the course of the investigation?

A. One I arrived back to ou headquarters, there were multiple employees there, other people that were at the Waffle House, and they were being interviewed by other detectives.

Q. Okay. What else was done? Did crime scene respond?

A. I apologize.

MR. SMILEY: And, Your Honor, it appears she's referring to notes --

THE WITNESS: It's my report.

MR. SMILEY: Well --

THE COURT: Well, you don't just get to read the -- if you need them to refresh your recollection, but don't just look down at them and testify.

THE WITNESS: I apologize.

BY MS. BALDWIN:

Q. Did crime scene get involved?

A. Yes. They responded to the Waffle House. I responded to the hospital and then to CID, our headquarters, and while I was doing the other part of the investigation with obtaining as much information about

the possible suspect, crime scene was out at the scene collecting evidence.

Q. You mentioned you collected a GSR kit from Mr. Allen. Were any other GSR kits collected?

A. Another detective had collected a GSR kit from Dontaye Reed.

Q. Who?

A. Deonte Reed -- Dontaye Reed, I apologize.

Q. What is your understanding of what the scene was like?

A. I was able to kind of observe the scene through some of the surveillance video that was there but also information that was passed from other detectives that it was very chaotic at the time that the initial deputies arrived on scene.

Q. What other evidence was collected? Was any video collected?

A. Yes. The surveillance video was collected from the Waffle House.

Q. Any other video besides the surveillance video?

A. I spoke with a Lorenzo Brown, and he had some video on his cellphone that I had copied and entered into evidence.

Q. What was done with that video when it was collected from Waffle House?

A. That video as was taken to SLED, and SLED brightened it up, or enhanced the video, the exterior video, so we could attempt to see a little bit better at the scene.

Q. Have you viewed that video?

A. Yes, ma'am, I have.

Q. Did you view what video with any other -- anybody else?

A. I mean, other detectives were there. They also reviewed it, and also some of the individuals that had testified prior also had looked at the video to help us identify individuals in the video.

Q. Besides speaking with Mr. Allen and collecting the GSR kit, did you do anything else with him?

A. Yes. I later got a buccal swab from him. It's the DNA collection. It's where we take a sterile Q-tip and swab the interior of his cheek and swab the DNA so we could have that compared to blood that was left at the scene.

Q. I'm going to show you what's been marked as State's Exhibit 33. What is that?

A. That's the DNA collection kit.

Q. That was performed on him?

A. On Quentin Allen.

MS. BALDWIN: Your Honor, at this time we

seek to admit State's 33 into evidence.

MR. SMILEY: No objection.

THE COURT: Admitted.

BY MS. BALDWIN:

Q. What did you do with that buccal swab once you swabbed Quentin's mouth?

A. I had it placed into evidence.

Q. At the secure facility?

A. Yes, ma'am.

Q. Based on the statements, the interviews that were done with Mr. Allen as well as other witnesses and as well as the rest of the investigation, what was done?

A. From that point, through all the information that we gathered, a warrant was then obtained for the arrest of Deonte Brown.

Q. Was he subsequently arrested?

A. Yes. He was arrested on the 16th.

Q. Of which month?

A. July.

Q. What was he wearing when he was arrested?

A. He was wearing the same clothing that we were able to identify in the video.

Q. What was done with that clothing?

A. It was collected and placed into evidence.

Q. I'm going to show you State's 31. Can you tell me

what that is.

A. This is a red shirt that was collected from Deonte Brown.

Q. By whom?

A. By myself.

MS. BALDWIN: At this time we seek to admit State's 31.

MR. SMILEY: Without objection.

THE COURT: Admitted.

(Whereupon, State's Exhibit No. 31 was marked for identification and admitted into evidence.)

BY MS. BALDWIN:

Q. If you could open that up, you say -- and what is that?

A. That is the red shirt I collected from Mr. Brown.

Q. And what did that shirt look like in terms of what we saw on the video?

A. It looks like -- I apologize. It looks like the shirt that you could see on the video.

MS. BALDWIN: Do you need that?

MR. SMILEY: I'm going to need it tomorrow. Just leave it out. That's fine.

BY MS. BALDWIN:

Q. And Detective Moyer-Smith, when you collect a piece of evidence and package it, do you know what date

and time it's collected?

A. We document what date and time it's collected.

Q. And when was this shirt collected?

A. It was collected, I believe, on the 16th, around 4:00 something in the afternoon. I would have to refer back to the time, if possible.

Q. Would it be documented on the bag that you package it in?

A. Yes.

Q. Would that help -- you don't remember?

A. Yeah. It says it's 1600 hours.

Q. On which date?

A. On the 16th, July 16th of 2012.

Q. You mentioned -- we've spoken about and played it during the trial, the surveillance video from the Waffle House.

A. Correct.

Q. You've reviewed this video?

A. Numerous times.

Q. Could you guess how many?

A. Twenty, twenty plus.

Q. You've reviewed statements and reports in this case?

A. Yes.

Q. Did you watch the video with people familiar with

the parties in the video?

A. Yes. Like I said a few minutes ago, I watched it with individuals that were at the scene. We would let some of the eyewitnesses take a look at the video so they could help us identify some of the individuals.

When we were attempting to identify some of the folks inside the video, sometimes it's very difficult when you don't have a community that is willing to help you. Some of the individuals that are in there, when you ask them to come in and assist you, they're not willing to because it's such a close-knit community. They obviously they don't want to give you the information of somebody else because they don't want that person, I guess, to be upset with them.

Q. Even though you didn't receive full cooperation, are you familiar with several parties on the video?

A. I am now, not at the time. I was not familiar with them. That's not a jurisdiction that I normally work. I don't work our south district jurisdiction. I work our West Ashley district, so with the assistance of some of the individuals that were willing to help us identify folks, it made my job a little easier.

Q. We're going to put State's Exhibit 3 up on the screen, the video.

MR. SMILEY: May we approach, Your Honor?

(Discussion held at sidebar.)

THE COURT: Let me send the jury out. Let me send y'all out while we discuss this for a minute.

(In open court, jury not present.)

THE COURT: What do you intend to offer this witness for at this point?

MS. BALDWIN: It's the State's position that she has viewed the video several times. This is part of the investigatory process. It was part of her and other officers' reviewing this video that caused them to develop Mr. Brown as a suspect and subsequently draw up the arrest warrants for him, so I think she can talk about this, is what I'm seeing. This is the reason why we made the arrest.

THE COURT: Well, she's already stated she developed that and had him arrested. I'm trying to figure out what she would add -- what is probative about her testimony if all she's doing is describing -- I'm afraid she might start putting in her opinions about things that other people have told her.

We have had half the people that were in that restaurant that night come in. They were there. They described what they saw because they were there. I don't really know what is probative to have her come back and kind of give commentary now about what's going on.

MS. BALDWIN: Your Honor, I don't believe the warrant for the murder was drafted until after the SLED-enhanced version was provided to the Sheriff's Office. We haven't heard any testimony about what about that version made them then draft this warrant for murder, and I believe she could explain that. She could talk about that --

THE COURT: I believe Mr. Smiley is challenging the sufficiency of the arrest warrant. I just don't see where it's probative to have her come in and give us commentary as to what she's seen on a video that we have now seen probably at least two dozen times, so I'm not going to allow you to do that.

All right? Do you have anything else you need from her?

MS. BALDWIN: Beg the Court's indulgence. We'll have a few more questions for her.

THE COURT: All right. Bring the jury back in.

(In open court, jury present.)

THE COURT: All right. You may continue with your questioning of the witness.

BY MS. BALDWIN:

Q. Thank you, Your Honor.

You have mentioned that the surveillance video was

sent to SLED?

A. Yes, ma'am.

Q. For what purpose again?

A. It was to enhance the video, or to lighten it up so that we would be able to see the exterior video a little bit clearer.

Q. Was anything else done to it besides lightening it?

A. Not to my knowledge.

Q. Based on --

A. It was slowed down. I do remember that, that I believe they slowed it down to a different percentage so we see it move a little slower than what it was.

Q. Did that enhancement aid in the investigation?

A. Yes, it did.

Q. As a result of that enhancement, did you do anything else in your investigation?

A. My belief just through -- we were just able to identify folks in the video and to basically identify people that were on the exterior, once it was slowed down a little bit. From when they were going from full speed or regular speed on the interior to the outside, we were able to slow down the video a little bit.

Q. What, if anything else, were you able to identify once you received the enhancement back?

A. Once we received -- once we got that back, there was also -- there is also a point in the video where you can --

MR. SMILEY: Objection, Your Honor.

THE COURT: Isn't this what we played this morning?

MR. SMILEY: Yes, sir.

THE COURT: This just got played this morning, right?

MS. BALDWIN: Yes, sir.

THE COURT: And the guy that did this, he didn't say anything, right?

MS. BALDWIN: I don't believe so, sir.

THE COURT: I'm not -- again, based on what we're talking about, the point is having her tell us what she saw in that. She wasn't there, and she only saw it after the fact.

MS. BALDWIN: May we approach, Your Honor?

THE COURT: Yeah.

(Discussion held at sidebar.)

BY MS. BALDWIN:

Q. As a result of what you saw on that video, did you draft any additional warrants?

A. Not from the video. The additional warrant was drafted after we received information back from SLED.

Q. Which information was that?

A. The letter that we received from SLED that connected the DNA that was located -- I don't want to say DNA. The projectile that was found inside the foyer matched the projectile that was found in the decedent's body.

Q. And in your understanding, where was the victim, Dontaye Reed, located when the police arrived on the scene?

A. In the parking lot, around that median, that prior testimony showed the median where there was a small tree right there.

Q. And the projectile recovered from him and the projectile matched --

A. The one that was found in the foyer.

Q. Is when did you what?

A. And that is when we drafted the murder warrant.

MS. BALDWIN: Court's indulgence.

I don't have any further questions. Please answer any of Mr. Smiley's.

CROSS-EXAMINATION

BY MR. SMILEY:

Q. Let me make sure I get this clear. You drafted the murder warrant after you got back the SLED results from the DNA.

A. Yes, sir.

MR. SMILEY: Beg the Court's indulgence.

BY MR. SMILEY:

Q. Now you drafted a warrant for murder on Deonte Brown sometime August of 2012?

A. Yes, sir.

Q. And I'm not trying to hold you exactly right, but I'm going to show you what's been entered as State's Exhibit No. 27. That's the DNA report of Mr. Stewart that came and testified?

A. Yes, sir.

Q. And is it not dated January 10th, 2014? Is that correct?

A. Yes, sir.

Q. All right. Now, let me ask you another question in another area.

In this case you came in contact with Mr. Brown, correct? And if you need to review your notes, let me just stop for a minute and let you review.

A. Yeah, if you don't mind.

Q. I don't mind at all. And, Your Honor, if you would, allow her to read the letter and refresh her memory.

Okay? Now, you came in contact with my client, Deonte Brown, on July 16th or 15th?

A. July 16th.

Q. He heard he was wanted and turned himself into Task Force Officer Alley?

A. Yes, sir.

Q. And Task Force Officer Alley got in touch with you and made arrangements for him to be brought over to CID?

A. Yes, sir.

Q. When Deonte got to CID, you immediately read him his Miranda warnings, right?

MS. BALDWIN: Objection, Your Honor. May we approach?

(Discussion held at sidebar.)

Let me send the jury back out.

(In open court, jury not present.)

THE COURT: All right. Mr. Smiley, what do you want to ask this witness?

MR. SMILEY: I'm going -- I intended on asking a series of questions about what he did, not what she said.

THE COURT: Just on our sidebar, for the record, you did state you wanted to ask if he said, presumably, I didn't say that.

And I just want to put it down for the record that's not hear -- I mean, that is hearsay because it's exculpatory, not inculpatory, and in order to come in as

not hearsay under 801(d)2, it would have to be offered against him, and that would be a self-serving statement.

MR. SMILEY: I understand that. I want to ask about her participation, not what he said.

THE COURT: All right. Let's go through what you want to go through so we don't bring the jury in.

BY MR. SMILEY:

Q. Now, Investigator Smith -- or is it detective?

A. Smith is fine, Detective Smith is fine.

Q. Detective -- because I know people do that. I don't want you to think I'm being degrading by that because I really want to call you the right way.

Investigator Smith, you had an opportunity to sit down with Deonte Brown with Detective Lawrence, correct?

A. Yes.

Q. And in that you questioned Mr. Brown, correct?

A. Correct.

Q. And that interview lasted for an hour or more?

A. Yes, sir.

Q. Okay. And during that interview, both you and Detective Lawrence brought a lot of pressure to bear on Mr. Brown in your questioning. Would you agree with that?

A. Can you -- I mean, what -- can you explain that?

Q. I'll break it down into smaller questions.

Did you, in fact, tell him information that wasn't true; for instance, that you saw him with a gun?

A. I don't recall saying that. I would have to --

Q. Okay. If --

MR. SMILEY: And that's where I was going to get to, Your Honor, quite frankly, is they're using it as impeachment for that part, because if you reviewed it -- well, that would be my first question, Your Honor. Then I would ask --

THE COURT: Your first question being what? It got a little disjointed there.

BY MR. SMILEY:

Q. My first question, did you in fact tell Mr. Brown some untruths when you were questioning him, one of which would be that you had looked at the video and seen him with a gun?

THE COURT: But there's been no evidence that he made a statement for her to be impeached on. So that's the hoop you got to get through first, is for her, for instance, to say, I asked him a question and he confessed. All right? That would be your first thing that you have to get on, and then you have to impeach and say you made some untruth statements to get him to confess to that, but so far I haven't heard anything that he made any inculpatory statement.

MR. SMILEY: Even when he felt like he was being lied to, pressured and intimidated and otherwise, he would not confess, and that's what I'm trying to get to, quite frankly.

THE COURT: I know where you want to go, and the problem with it is those are either -- they're statements, either verbal or nonverbal statements, that are inculpatory, or exculpatory, and you can't get those in through a third person. They would be hearsay, all right? Because you want to get her to, in essence, say he said, I didn't do it. All right?

So that's hearsay because he is here and he's not testifying. Those are out of court statements you're trying to get in through her, to get his out-of-court statement that he didn't do it in through her.

MR. SMILEY: I don't disagree with you.

THE COURT: All right. That's hearsay. So in order for it to come in as not hearsay under 801(d)2, it has to be a statement that's against him, inculpatory material, so you can't get in an inculpatory material --

MR. SMILEY: Yes, sir, and I guess what I'm trying to say is while his exculpatory stuff is important to me, of course, what I'm trying --

THE COURT: If he wants to exculpate himself by a statement, he's got to get up on the stand and do

it.

MR. SMILEY: We're going to get to that, but what I want to get to when I have this person on the stand, Your Honor, is I'm trying to get into the mode of interrogation versus what he says.

THE COURT: Yeah, but you're trying to impeach him before he gets on the stand, or bolster him.

MR. SMILEY: I'm trying to impeach.

THE COURT: You want to impeach her before he's testified to anything.

THE WITNESS: Thank you. I appreciate that.

THE COURT: I'll allow you to -- after he testifies, you can recall her. I don't even know if you can recall her to bolster him because the only way you can get an extrinsic statement would be if somebody said something different, but that's down the road.

But right now what you're trying to do is get in his out-of-court statement that he didn't do it and he maintained I didn't do it and he told her I didn't do it, through her, and that's hearsay, and you can't do that.

MR. SMILEY: Yes, sir.

THE COURT: I so rule.

MR. SMILEY: I understand, sir.

THE COURT: All right. Do we need to go through anything else with this witness before I --

CHRISTINA MOYER-SMITH - CROSS-EXAMINATION

MR. SMILEY: I have more questions for this witness. I'm trying to figure out where I should pick up and move on, because I understand your ruling.

THE COURT: Okay. Well, is there anything, so I don't have to keep running the jury in or out, that we might want to address, if possible? Where do you want to go next?

MR. SMILEY: We'll go to collection of the shirt and the phone through him. Okay?

THE COURT: All right. Bring the jury in.

(In open court, jury present.)

BY MR. SMILEY:

Q. So when you came in contact with Mr. Brown on July the 16th, you testified you collected his red shirt.

A. Yes, sir.

Q. Okay. And you also took into evidence the pants he had on that day?

A. Yes, sir, the clothing he was wearing.

Q. And you packaged them and put them into evidence, and I think they were sent off to SLED?

A. Yes, sir.

Q. You testified on directed the community was not very helpful. Who would not cooperate with you?

A. Initially, some of the first witnesses that were called were uncooperative in the beginning.

Q. And those would be ones that came and testified today or the day before? They weren't initially cooperative with you?

A. Yes, sir.

Q. At what time did you get out to the scene at the Waffle House?

A. I never went to the Waffle House. My response was directly to MUSC and then headquarters.

Q. It's down at MUSC you had said you had seen -- you actually saw the wounds on Quentin Allen?

A. Yes, sir.

Q. Did you take any photographs?

A. No, sir.

Q. Did you direct CSI -- sorry, and it's a bad thing to do because it's not really the same, I know, but the forensic people, collection people, at any point did you have them photograph the injury?

A. No, sir.

Q. I know you're not a doctor, and I'm not going to ask any technical questions. That wound, from what you can tell, went into the front part of the arm?

A. Yes, sir.

Q. And exited the back part of the arm?

A. Yes, sir.

Q. They call it a through-and-through?

A. That's correct.

Q. And they didn't -- so we don't get technical, small holes, both sides?

A. Yes, sir.

Q. He wasn't in a cast like he had broke a bone.

A. No, sir.

Q. So it didn't appear the bullet had hit a bone.

A. No, sir.

Q. And then he had a trench --

A. Small mark, like maybe the bullet went through, and, like, a graze mark on the interior.

Q. Right. So the assumption, using, like, deduction or circumstantial evidence, would be that the bullet traveled from the front to the back and then scraped his chest and then ended up on the ground inside the vestibule?

A. Yes.

Q. Did you have an opportunity to talk to the security guard, Mr. Thompson?

A. No, sir. One of other investigators spoke with him.

Q. Now, Mr. Thompson was not one that was uncooperative. He was cooperative with y'all, correct?

A. I believe he gave a statement, yes, sir.

Q. And the secure officer, Thompson, he had a gun,

right?

MS. BALDWIN: Objection, Your Honor.

THE COURT: What is your objection?

MS. BALDWIN: Speculation.

MR. SMILEY: I said yes or no. I'll ask a pre --

BY MR. SMILEY:

Q. Do you know whether the officer had a gun that night?

A. I believe that --

Q. If you done, it's okay.

A. I know one of the other investigators spoke with him and did say that he had a gun and counted the rounds and stuff that he had and --

Q. That's what I was getting to.

A. His gun was not used at the scene.

Q. Thank you. He didn't pull out his gun. It wasn't fired?

A. No, sir.

Q. And I guess I should have asked you this, at the beginning of this. I'm asking you questions from all over the place.

You're the case officer in this case, right?

A. Yes, sir.

Q. And in a chaotic case like this, you're trying to

pull everything together?

A. Yes, sir.

Q. Hard job, I know, especially in a case like this. I got you. The scene was pretty trampled, right? Even though you didn't go to the scene, from what you gather from your people, it was a mess out there?

A. That's correct.

Q. Not all of that community that failed to cooperate with you. In fact, Lorenzo Brown that testified, he got in contact with you fairly quickly that he had a video, right? You collected that video fairly early on?

A. Yes. He didn't just come forward. We had some of our investigators or detectives that know the area, know the folks, go out and ask him to come in once we identified him on the video, on the surveillance video.

Q. So from looking at the surveillance video, were you able to determine he took a video with his camera?

A. That's correct.

Q. All right. That makes perfect sense. So that's how you knew to ask him, if he had the video.

A. That's correct.

Q. And then he consented and let you have it?

A. That's correct.

Q. So he wasn't as good a citizen as I though he was.

A. He sure didn't call up and say, Look at what I

got.

Q. But he didn't erase it, either?

A. No, sir.

MR. SMILEY: I beg the Court's indulgence. I got nothing else, Your Honor. Thank you very much.

THE COURT: Redirect?

MS. BALDWIN: Beg the Court's indulgence. We have no further questions, Your Honor.

THE COURT: Any further witnesses?

MS. BALDWIN: State rests.

THE COURT: All right.

Well, folks, I'm going to break for today. We've got some legal things that we have to take up, and then we'll start with the defense's witnesses tomorrow morning.

What time did you tell me you had your first witness?

MR. SMILEY: We changed her now. She will be here at 9:30.

THE COURT: So let's go ahead and retire for the evening.

Again, you've heard all of the State's evidence now, but it's still not proper for you to begin your deliberations because you haven't heard all of them

yet, so don't discuss the case with anyone, including each other.

Don't visit the crime scene. Don't go looking on the Internet for anything. Don't post anything to social media. Just go home and enjoy the evening, and we will see you back tomorrow morning at 9:30. Okay? Thank you for your patience today.

(In open court, jury not present.)

MR. SMILEY: Your Honor, I need to make a motion for directed verdict, first to the murder case. In establishing the murder, that would be that of Dontaye Reed, they have not established by any evidence that Mr. Brown in fact shot Mr. Reed, Mr. Reed being the gentleman that was found in the parking lot that was later deceased at MUSC.

Even in the light of most favorable to the State they've refused to establish any evidence as to that point, Your Honor.

As to the attempted murder, that being with Mr. Quentin Allen, I would make a directed verdict that while there is some evidence that's been testified to as to Mr. Brown having the gun, there is not anyone who testified they saw Mr. Brown fire the weapon that allegedly struck Mr. Allen, and therefore I would make a motion for directed verdict as to that charge.

And subsequently as to the possession of a weapon during the commission of a violent crime, the other two failed, and certainly there would be no one establishing he fired the gun; therefore, it couldn't have been a crime of violence, and it would fall by the wayside also.

I don't believe there has been any objections or anything that I made that I need to protect at this point of the trial, sir, so I just have the directed verdict motion.

THE COURT: What is the State's response?

MS. LINDER: Your Honor, the State's position is that for a directed verdict, in looking at the case in the light most favorable to the State of all the evidence that's been presented thus far and in looking at the elements of murder, attempted murder, and possession of a weapon during the commission of a violent crime, for both the murder and attempted murder, we are -- the State submits both of those things were done, committed by way of utilizing a firearm, and both attempted murder and murder are classified as violent crimes according to our code.

So we have had testimony from Dr. Tormos that Dontaye Reed was shot in the -- mid-range, in the back, and that was the cause of his death. We have the

projectile from Mr. Reed, according to the SLED experts. Daniel Stewart has a projectile located at the scene, had DNA on it, and another individual testified that both of those came from the same weapon.

So we believe that we have shown that both individuals who were injured were injured by the same weapon. We've had multiple people testify and identify that individual in the red shirt that was open with the epaulets on his shoulders and whatnot. That shirt has been entered into evidence, that that individual wearing that was, in fact, the defendant, Deonte Brown.

We also had numerous people identify that that individual in that red shirt was the individual with the gun. The gun was fired and ended up causing the injury, and I believe we've satisfied, in the light most favorable to the State, all the elements of those crimes, and including the video I know we have played many times, but there's never enough times to watch that video, and I believe that the video, with the jury being able to examine the video as many times as they want with a laptop close to them, they can actually see much more as far as where people are located and other items.

And I think the video, coupled with the testimony, which has all been entered into evidence, gets us past the directed verdict stage.

THE COURT: Do you want to respond?

MR. SMILEY: Your Honor, a couple. In the light most favorable to the State, they've established -- their testimony has established that that there is people that saw a gentleman with the red shirt with the gun. That's the light more favorable. Not one single person testified that they saw Mr. Brown fire that gun. We've had people testify that they saw a gun. We know there were more than -- the testimony is also established, Your Honor, there was more than one gun out, that multiple shots were heard.

Also, the DNA that was found on the bullet -- well, I'll agree in the light most favorable to the State, is that DNA was placed on the bullet when it passed through Mr. Allen. There was also tons of blood in that foyer; however, I don't believe they've shown the ID. They have not produced any evidence to show that Mr. Brown fired the gun that went into Mr. Allen, and therefore -- since it's allegedly the same bullet from -- two bullets from the same gun, established through a theory of transferred intent that there was a second shot that was aimed for Mr. Allen that struck Mr. Reed, there's been no testimony to that effect.

MS. LINDER: Very brief response to that, Judge. I agree that there's not been testimony an

individual saw Mr. Brown's finger squeeze the trigger; however, I think that that's -- I don't think that that's required, to have a witness say that they saw an individual squeeze the trigger of a gun when we have individuals who say they saw him with a gun.

There's been no other testimony or exhibits or evidence that has shown anyone else with a gun. There has been nothing else to indicate that there was more than one firearm at the scene. There has been none of that, and I believe that we have shown enough in the light most favorable to the State that indeed the defendant was the individual in the red shirt. He was the only individual in the red shirt at the time of the shooting who was present, that he was handling and had a firearm, and all the things that I previously had stated, Your Honor.

THE COURT: Well, I suppose one of the most remarkable things about this case is I've never had a case with this many different video cameras and angles of the incident that took place and there being no conclusive proof as to who the shooter was, along with this many people in close proximity of an actual shooting with no one being willing to identify who the shooter was.

So there is no direct evidence that the

defendant was the shooter. It's all circumstantial evidence, and the circumstantial evidence standard is substantial circumstantial evidence, and here is what I have written down as the circumstantial evidence that the defendant was the shooter: First, that the defendant was wearing a red jersey and that he was being pushed out the door at the time that shots were fired.

Second: Chris Heyward told Investigator Barfield that the guy wearing the red shirt was the shooter. He denied that on direct and cross, but his statement came in under 613(b). Not the strongest evidence in the world, but it is evidence.

Then Dario Teran, he said that the guy wearing the red shirt was the shooter. Now, that came in under 803(5), purported recollection, because he stated, well, he couldn't really remember due to a motorcycle accident, which he suffered a head injury.

So that statement in, and that's what the statement said. He acknowledged on cross-examination that he may not have seen that, anything more than the flash, but, nevertheless, his statement did indicate that he said that at the time the guy wearing the red jersey was the shooter.

The next item, the fourth item, is April Blodgett, the waitress, said that she now remembers

seeing the gun come out of a red sleeve. Didn't remember it at the time or didn't tell anybody at the time, but she remembers it now. That was her testimony.

Then there is the fact that there were a number of people in that foyer area, but it wasn't an unlimited number of people, and the defendant was the only one in that foyer area that I could tell who was wearing a red jersey, and he was present in the foyer area when the shots were fired.

That is a chain of circumstantial evidence. It's not the strongest circumstantial evidence case I've ever seen, but, in my opinion, it is enough to get you past the directed verdict at this time, so your motions are denied.

MR. SMILEY: Thank you, Your Honor.

THE COURT: So we're ready to go in the morning with your witnesses?

MR. SMILEY: Definitely.

THE COURT: Okay. Well, let me revisit with the lawyers in the back for just a minute before we break for the day; otherwise, I'll see everybody at 9:30 in the morning.

(Recess taken.)

(September 18, 2014.)

THE COURT: Let the record reflect the

defendant is in the courtroom. Bring the jury in.

(In open court, jury present.)

THE COURT: All right, folks. Welcome back. We have heard all the State's evidence now yesterday, so we will begin this morning with the defense calling their first witness.

MR. SMILEY: Defense calls Whitney Berry.

WHITNEY BERRY,

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SMILEY:

Q. Ms. Berry, Jim Smiley. We met a few minutes ago. Could you tell the jury what is your occupation.

A. I am a forensic scientist working in the trace evidence lab for the South Carolina Law Enforcement Division, more commonly known as SLED.

Q. Okay. Before we get any further, let's start to break that down.

First, SLED, is that the main office where a bunch of scientists -- part of which where a bunch of scientists analyze evidence?

A. Yes. I work in the forensics building, which is that part of SLED.

Q. Let's talk about what trace evidence means and

being a trace evidence analyst. Would you tell the jury what that is, in general.

A. In general, trace evidence is any kind of microscopic evidence you would need to use some sort of extra instrument to see. So it could be something as simple as using a magnifying glass to look at a fiber to see what color it might be or something as advanced as using a scanning electron microscope to see what a particle is composed of and anywhere in between.

In our department, we analyze gunshot residue, we analyze fibers, paint, glass, explosives, fire debris, duct tape, and bank dye.

Q. When it blows up on the money, right?

A. Pardon?

Q. Bank dye, when it blows up on the money?

A. Yes.

Q. So you're really like -- I always call y'all the CSI people. Well, it's not like it is on TV. You're about as close as I'm going to get, right?

A. To some extent.

Q. All right. Now, would you tell the jury your educational background.

A. I have a bachelor's of science from the University of South Carolina. I was hired by SLED in 2013, so I've been working there for about a year-and-a-half now.

Since I began at SLED in the trace evidence department, I have completed SLED's in-house training program for gunshot residue analysis. This was a nine-month training program that included reading journal articles, books, different studies that have been done on GSR, as well as doing hands-on practical tests, written tests, on the theory of the instrument and how it operates, learning how do maintenance on the instrument and troubleshoot it as well as doing extensive sampling for clothing and working on case work underneath the supervision of the qualified analyst.

Q. And you've testified as an expert?

A. Yes. I've testified as an expert in gunshot residue.

Q. Okay. And so you're one of the State's experts, right, quote, unquote? You work for the state, right?

A. I wouldn't necessarily say that, if you're referring to working for one side over the other.

Q. Oh, that's not what I'm talking -- you're employed by the State of South Carolina.

A. I'm employed by the State of South Carolina.

Q. I'm not in any way indicating your analysis would be slanted one way or the other. I'm just saying, as working for the State of South Carolina, you're held out as an expert in law enforcement, correct?

A. Yes, correct.

Q. Before I do that, let's talk about gunshot residue. You're an expert. In your training, you've done gunshot residue analysis, correct?

A. Yes.

MR. SMILEY: At this time, I would ask that she be qualified as an expert in gunshot residue analysis.

MS. BALDWIN: No objection, Your Honor.

THE COURT: All right, folks. Recall I gave you yesterday instructions about expert witnesses. This witness has been qualified as an expert in the field of gunshot residue. You decide how much evidence to -- or how much weight to give her testimony based on all of the evidence that you'll hear throughout the trial.

BY MR. SMILEY:

Q. Now, we'll start talking about, what is gunshot residue?

A. Gunshot residue is everything that comes out of the muzzle of a gun when it's discharged. This includes primer residue, which is composed of three elements: Lead, barium, and antimony. It's also composed of rust, grease, dirt, and everything else that you can imagine that could come out the barrel of a gun.

Q. So when a gun is fired, it puts off a cloud of

these metals and chemicals or what have you?

A. Yes. When a gun is discharged, a small cloud comes out of either the ejection port on a semi-automatic or out of the cylinder gap on a revolver.

The small cloud would typically engulf the hands, if one was holding a gun, and anything nearby. The rest, and the majority of the gunshot residue, would follow the path of the projectile or the bullet towards its intended target.

Q. My question is, if a gun is fired, is it possible to find residue on clothing?

A. It is possible to find residue on clothing, as clothing would be something in the near vicinity to the discharging firearm.

Q. You said if it was a revolver that the particles that come backwards come from the gap between the cylinder?

A. Uh-huh.

Q. And the cylinder being the round thing that holds the bullets, right?

A. Yes.

Q. And the gap -- and there is a plate that keeps those bullets in the cylinders, correct, in the gun?

A. That's a little bit outside of my realm of expertise.

Q. That's fair enough. But, needless to say, is the particles come back out of that opening, correct?

A. Yes, it can.

Q. Okay. Now, is it fair to say that particles stay or attach longer to certain surfaces?

A. When a gun is fired and the particles come out, these particles are microscopic. Approximately 100 of these particles could fit across the diameter of one of your hairs, so it's very, very, very tiny. We're talking about between one and ten microns in size.

These particles are formed when the gun is fired and everything in the primer capsule super heats to make everything go down that gun range. So when that happens, the high heat and pressure that it's under causes all these particles to melt together, and they come out in tiny little spheres, essentially, ideally.

They come out in tiny little spheres, and these spheres and molten metal will land on anything that is in the vicinity of the discharged firearm. So that could be your hands; that could be getting embedded or clinging to your clothes; that can be it landing on the table or the floor or your shoes, anything that is within the area.

Q. Let me ask you this question, and hopefully I'm not asking something that is a stretch. Gunpowder residue would stay on the clothing longer than hands? Is

that fair to say?

A. Yeah, that would be fair to say.

Q. And so if it comes on your hands, if you wash your hands or wipe them on another surface or what have you, those particles come off, correct, or just fall off?

A. They do all have the potential to fall off. As far as hands go, it's generally accepted in the scientific community that you won't find GSR on somebody's hands after about four to six hours.

With clothing, it's a little different, because clothing isn't sweating. Clothing isn't moving around. You can expect to find GSR on clothing longer than you can expect to find it on hands. It can stay there pretty much indefinitely until it's removed by something, such as laundry. That would be a good example of how you get it off.

Q. All right. Let's talk about this case, all right? And in this case you received a bunch of items, but I want to focus on two items, all right? In this case you received a red shirt, and let me tell you what ID number that is. And --

A. 7.

Q. You're faster than I am. So you received item 7, and see if can you recognize it. Will it have any markings on it for you?

A. Yes.

Q. Okay. This one has been put in evidence. Can you tell when you examined that? You can pull it out if you like. I'm going to pull it out, so whatever makes it easier for you. Since you're putting them on, I'll put them on.

A. For me it's out of habit.

Q. I know it is.

A. All right. So on this item, what I've got is the SLED tamper evidence tape with my initials and date for the date that I sealed it up, which was 7/10/14. Right here where it's torn, I can see I wrote the unique lab identification number. Every case that's logged into SLED gets one of these numbers, so for this case it was L128586. It also has the item number, which is item No. 7 as it was logged into SLED, and again my initials and the date that I wrote that on there.

Q. Okay. So you do recognize it?

A. I do recognize it. The butcher paper, again, has all the identification; again, the SLED identifying number, my identification number, the initials, and the date.

Also, inside the collar I've also written the SLED identifying number, the item number, my initials, and the date, so I did initial this item.

Q. All right. Let me talk to you -- when this comes to SLED, I put a glove on my hand and picked it up with the other.

When this comes to SLED, is the first thing you got to do is see if there is any trace evidence that can be collected? Or tell me how it gets processed.

A. When clothing comes into SLED for analysis, for a GSR, the very first thing we do is we check the requests on it, make sure that if it has a DNA request on it we go through a few extra precautions to not potentially cross-contaminate with DNA.

Q. Stop. Talk about what cross-contaminate with DNA means, because I have no clue.

A. What we do is we have a room in the back of the trace evidence lab where we clean out a table, we put down some white butcher paper, very similar to that, and we lay the clothing out.

In the case of something that also has got a DNA request on it, we go a little extra further and we put on a face mask so that in case someone sneezes, coughs, et cetera, there is no chance for any DNA to end up on someone else's clothing. This is a protection for everybody involved.

My DNA is actually in the database at SLED so that if unknown female DNA came up on that clothing, they

could search and say, Well, she was working on this last; oh, yes, this matches her, but at the same time we don't want that to happen, ideally.

In this specific case, there was no DNA request on this, so I processed it per normal, just by putting the butcher paper down and then pulling the clothing out and then I began my -- or my collection from there.

Q. Okay. Talk about the collection.

A. To collect GSR off of clothing, or off of anything, really, you use what's called a particle lift. A particle life is a tiny, aluminum stub that you put double-sided tape on it, so in our case, it's double-sided tape with a carbon background so that when it's being scanned, everything bright, essentially, will pop.

The instrument that I use -- I'm sure everybody here has had an X-ray before, or seen an X-ray. The instrument I use takes an X-ray of particles I'm looking at, so, ideally, everything I'm looking for should be very, very bright on a black background. Very similar if you went to go have an X-ray. Your bones show up more white on the black background than anything else. So --

Q. All right. So you collected or attempted to collect from the shirt.

A. On a shirt, I would make up the particle lifts

myself, and then I would collect from four areas on the short-sleeved shirt: It would be the right sleeve, the left sleeve, and then the right and left chest areas.

Q. All right. So here, here, here, here (indicating).

A. Uh-huh.

Q. Okay. So you attempted to collect it. Then you analyze it, correct?

A. Yes.

Q. Okay. How do you analyze it?

A. I put it on a scanning electron microscope that has an energy dispersive X-ray detector on it. It sounds really complicated, but it's not as scary as it sounds.

That just means I take the particle lifts and I put them in an instrument, and then I put that instrument under vacuum to hold everything in place, and then an electron beam shoots down on to the sample, and it just moves across the sample, back and forth like a snake, and detects any sort of particulate matter that might be on there.

I did an X-ray spectrum. That tells me what it's composed of when it hits something, so --

Q. So, in this case, you took those four samples, put them under this super duper microscope, and looked for traces of gunpowder residue, right?

A. Yes. We were looking for molten particles of gunshot residue.

Q. Did you find any?

A. I did not find any gunshot residue on this shirt.

Q. You also were given a second piece of evidence, which was a pair of pants, correct?

A. Yes.

Q. And I believe that's your item 5, correct?

A. Yes.

Q. And you did the same kind of collection and analysis on the pants, right?

A. Yes.

Q. And those pants, I think, in your item five say they were pants collected from Deonte Brown?

A. On my report, it says one pair of black jean shorts with white stitching said to belong to Deonte Brown.

Q. So you did the same thing on that. Now, on a pair of jean shorts, do you still take four samples?

A. On pants, we take two samples.

Q. Where would they come from, in general?

A. They come from what we consider the left front and the right front, so if you think of a pair of pants laying flat on a table, you go from the waistband to about the mid-thigh, and that would be the front area of

one side.

Q. All right. So you get two samples there, and then you put those under the super duper microscope?

A. Uh-huh.

Q. Did you find any gunshot residue on the pants?

A. No, I did not.

Q. Now, of course, I would like to then say that proves that the person wearing those clothes didn't fire a gun, but that's not true.

A. No.

Q. Okay. It's fair to say, though, that if one fires a gun, there's a probability, or a likelihood, that gunshot residue would be on the clothes at the time of firing?

A. Yes. It is fair to say that gunshot residue would potentially land on the clothes, yes.

Q. Okay. While it doesn't exclude a person as shooting a gun, it certainly does not include them?

MS. BALDWIN: Object to leading.

THE COURT: Overruled.

BY MR. SMILEY:

Q. Is that fair to say?

A. Can I have an explanation to that answer?

Q. You can tell them whatever you want. I certainly want you to testify to what the findings say.

A. With clothing, we can't really put a time stamp on when gunshot residue was deposited. On a living person, we can say within four to six hours they were around a gun that was fired.

We can't say they were the shooter. We can't say if they were shot. We can't say if they came behind somebody and ran their hands all over the table and that's how it got on there. We can just say it's there.

The same with clothing. We can say it was there, but I can't tell you when it got there, and I can't tell you how it got there, all I can tell you is it's there. Clothing will hold GSR indefinitely.

If you go hunting one season, you hang your favorite hunting coat up in the closet without washing it, there's a good chance you're going to have gunshot residue on that hunting coat at the beginning of the next season, having not even shot it.

Q. Last couple of things here. You in this case created a report, right? If I could have that marked as Defense Exhibit 2, and I'm going to show you your report and see if you recognize it.

Is this the report you prepared for this case, or a copy of the report in this case?

A. Let me just check.

Q. Yes, ma'am.

A. Yes. This is a copy of my report.

MR. SMILEY: Your Honor, may we approach?

(Discussion held at sidebar.)

MR. SMILEY: At this time, Your Honor, I would move State's {sic} Exhibit 2 into evidence.

MS. LINDER: No objection.

THE COURT: Admitted.

(Whereupon, Defendant's Exhibit No. 2 was marked for identification and admitted into evidence.)

MR. SMILEY: Ms. Berry, I appreciate you coming to testify. I think the State might have some questions for you now. Thank you.

THE COURT: Cross?

MS. BALDWIN: Briefly, Your Honor.

CROSS-EXAMINATION

BY MS. BALDWIN:

Q. Good morning, Ms. Berry.

A. Good morning.

Q. Just a couple quick questions about your report.

You mentioned about reasons why there couldn't be any GSR on clothing, and you say laundering is one?

A. Yes.

Q. Could environmental factors also come into play?

A. Yes.

Q. What sort of environmental factors?

A. Because gunshot residue is so fine, if you imagine maybe having flour on your hands in the kitchen, every time you touch something, that flour comes off, and that's very similar to how transfer happens with GSR. You have something very fine, and every time you touch something, just a little bit can come off, so the same can happen with clothing.

If you have your clothing and it's raining or, perhaps, the wind is blowing really hard, just like with flour on your hands, there is the potential that some of that could get removed. If you touch something with your clothing, for example, I guess if you went up and gave somebody a hug, it will be the same as with hands and a handshake. You would have the potential to remove a little bit of GSR every time you did something like that.

MS. BALDWIN: Beg the Court's indulgence. I don't have any more questions for you.

Thank you.

THE COURT: Redirect?

MR. SMILEY: No, sir, Your Honor, and I had subpoenaed her. Can she be released?

THE COURT: Okay. You're free to go. Thank you.

THE WITNESS: Thank you.

THE COURT: Okay, folks. We need to take

about a ten-minute break right here right now before we call the next witness, so go back to the jury room and do not begin deliberations or discussions. We'll have you back in just a few minutes.

(In open court, jury not present.)

THE COURT: Okay. You needed a few minutes to talk with Mr. Brown, so let's take five, and I'll be back in a few minutes and see what your decision is.

(Recess taken.)

MR. SMILEY: Your Honor, after talking with my client at great length last night and this morning, he's decided that he does not wish to testify.

THE COURT: Okay. Well, let me just review that conversation we had the other day. Mr. Brown, stand up for a second.

I guess it was maybe Monday or Tuesday we talked and I told you, you have the right to testify, call witnesses. You also have the right to not testify, and I told you at that time you should consult with your lawyer, but, ultimately, this is a constitutional right that you have, and therefore only you can make that final decision and it's yours to act upon or to waive.

Your lawyer has just told me that you've decided that you do not want to testify; is that correct?

THE DEFENDANT: Yes, sir.

THE COURT: All right. And this is your decision and your decision alone?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. All right. Thank you very much.

MR. SMILEY: The defense will be resting, Your Honor.

THE COURT: Okay.

MR. SMILEY: And then I guess I'll do my motions, because Ms. Linder and I talked. We need to go over jury charges. I don't have any to submit, but I would like to see what you're going to charge before closing, and it sort of caught me and Ms. Linder a little off guard about how long our case was going to take this morning. She asked if it was okay if we have a little break before closing.

THE COURT: I'm going to bring them in, tell them we're resting, tell them we need about a half hour or so --

MR. SMILEY: Just to get things set up.

THE COURT: So I'll let you rest on the record, and then I'll send them out and you can renew your motions at that time and we'll talk about jury charges. All right? Bring the jury in.

(In open court, jury present.)

THE COURT: All right. Defense want to call any more witnesses?

MR. SMILEY: Your Honor, at this time the defense rests.

THE COURT: All right. Is the State going to have anything in reply?

MS. LINDER: Nothing in reply.

THE COURT: Okay. Folks, you've heard all of the evidence that is going to be presented to you in this case now, so the next phase of the trial is to have the closing arguments, and then I'll charge you on the law.

So we need to take about a 30-minute break right now so that I can go over some legal matters with the lawyers, get the jury charges finalized, and then we'll bring you back in for closing arguments and the charge on the law, so I'll send you back.

While you've heard all the evidence now, it's still improper to begin deliberations or commenting upon the witnesses or discussing the case in any manner, so just be patient with us. We'll probably be 30 minutes at the max, and we'll bring you back in here.

The clerk is going to go ahead and take your lunch orders. We'll get you a lunch, so that after we have the charge and everything, then we will have your lunch for you while you begin your deliberations. Okay?

So see you back in a few minutes.

(In open court, jury not present.)

THE COURT: Okay. Mr. Smiley?

MR. SMILEY: And, Your Honor, I'll keep it brief because they're basically the same arguments I made yesterday.

We've had since then one additional piece of information, or one witness, and so I'm going to renew my motions for directed verdict in that I don't believe the State has presented substantial circumstantial evidence in which to take this to the jury. At most, it's raised suspicion, and I don't believe there has been enough competent evidence in which this jury could find my client guilty, even looking at the evidence in the light most favorable to the State, so I renew my motions and I'll get you my charges.

THE COURT: Madame Solicitor?

MS. LINDER: Thank you, Your Honor. May it please the Court: Just as Mr. Smiley said, the only additional thing for the Court to consider this time is Whitney Berry's testimony, and in her testimony, she said that her results show that the defendant -- or the clothes that were collected and later tested, said to be worn by the defendant at the time of the incident, showed that he was not in the vicinity of the shooting. Your

Honor, I would submit to you that we know from the video he was in the vicinity of the shooting.

Also, she stated there were multiple other factors that could be the reason why something would come back as negative. Rain -- we heard testimony from the State's case from crime scene that it was raining when they arrived on scene. That could affect it.

Also, there are other environmental factors, other factors she said such as hugging, touching, laundering, and the items were not collected until 36 hours after the shooting itself happened, so we would ask in the light most favorable to the State that the defense's witness does not change anything, and we still believe that this case should go to the jury.

Thank you.

THE COURT: Well, as I said yesterday, it's a circumstantial evidence case as to the identity of who the shooter was, and there is really nothing new been added to that. The evidence that was presented this morning was favorable to the defense, but it doesn't completely exclude him from having been the shooter.

I go back to -- there is no question he was there. There's no question he was wearing a red jersey. There was evidence there was somebody else wearing a red shirt, but it was more in line with a T-shirt, and

everyone identified the defendant as wearing the red jersey, and he clearly was the person that was the one that instigated the scuffle that led to everybody being pushed out the door, and he was clearly present in that immediate vicinity when the gunfire went off.

So when you add that -- while nobody positively identified him as being the shooter, he was positively identified as wearing the red jersey as opposed to being the guy that wore the red T-shirt, and we have those three additional items that were presented in the State's case where Mr. Heyward told Investigator Barfield that the guy wearing the red jersey was the shooter, Dario Teran's testimony was the guy wearing the red jersey was shooter, and April Blodgett said she saw the gun coming out of a red sleeve.

Not the strongest circumstantial evidence case in the world, but it's enough, I think, to show the connection of events from which there is an inference that the defendant was the shooter, and I find that it rises to the level of substantial. That gets us past directed verdict.

So let's talk about what we're going to charge the jury on. What are you asking for, Mr. Smiley?

MR. SMILEY: I've talked with my client, I've talked to Ms. Hensley, I looked at it, and I'm not asking

for lesser included.

THE COURT: You're just going straight up murder and attempted?

MR. SMILEY: Yes, sir. We had a discussion in chambers yesterday about voluntary, and I'm in agreement with his -- the evidence is fairly undisputed that the provocation that began the series of events was started by my client, and I would submit it was the verbal -- the verbal words, but more than that was the throwing of the drink on his face.

So I don't know -- given all of that, I don't think I can ask for a voluntary instruction, because there's not any other -- there's not a stop and a start where there's another provocation that comes up, so I talked to him about that, explained it to him. I don't believe that we're entitled to one at this point, Your Honor, so I'm not requesting it.

I've tried to see under any circumstances that involuntary may apply to Mr. Reed's death. I can't put him -- even taking things in the light favorable to the State, looking at it, I can't put him in a legal position where to find he had the gun and fired it, so I can't ask for that.

As to the attempted murder, pretty much the same analysis comes from it. I thought about you could

find that he was not the shooter but was guilty of the original assault, Your Honor, but that's really, I don't believe, lesser included of murder, so it had to be alleged here.

So I can't ask for that, which I would like, but I'm just trying to put it together, so I can't request it there, Your Honor. So I think it's murder or nothing. Attempted murder, or nothing, possession of a weapon, or nothing.

THE COURT: You're not asking for a self-defense or accident?

MR. SMILEY: No, sir. I hadn't alleged self-defense at any point in the trial, so I don't believe the facts would support self-defense.

THE COURT: All right.

MR. SMILEY: So I have no jury charge request at this point. I would like to see your general charge, but at this point, I don't believe there is anything specifically I need to ask for.

THE COURT: All right. Madame Solicitor?

MS. LINDER: Your Honor, I believe your general charge will cover pretty much everything, but we would request a transferred intent to put in there. That's the only additional request we have.

THE COURT: Transferred intent, what -- how

does that apply?

MS. LINDER: Your Honor, I would say transferred intent implies, with our version of the facts, as Mr. Brown is in the parking lot, he turns around and fired back toward where his initial target, Quentin Allen, was, toward the Waffle House where there were a lot of people, and then he -- that intent that he had to pull the trigger and injure Quentin Allen was transferred to Dontaye Reed as he hit Dontaye Reed in his back.

There has been testimony that they all knew each other. They were all friends. I don't think there has been any testimony that he was necessarily the intended target, but it was his intentional act, and that intent transfers to the deceased victim, Dontaye Reed.

MR. SMILEY: There has actually been no evidence about Mr. Deonte Brown firing back and hitting Mr. Reed when he was aiming to Mr. Allen.

Your Honor, also, if you'll read the indictment, it doesn't allege that in the indictment either.

MS. LINDER: And, Your Honor, just to answer that, or to respond to that, I don't think it needs to be alleged in the indictment necessarily, and I would say there is evidence of that. We've got the video. There

are jurors going back there pushing play and pause and fast forward, for a long time, most likely, and I believe that when they watch the video, they will see, on the exterior video, Deonte Brown turning around, back toward the Waffle House, firing his weapon, and you see a muzzle flash go off, and then immediately thereafter Dontaye Reed falls to the ground.

So I do believe that there is evidence in the video of that transferred intent.

THE COURT: So you're saying it was his intent to kill --

MR. SMILEY: Quentin Allen.

THE COURT: Quentin? Is that his name?

MS. LINDER: Yes.

THE COURT: Okay. All right.

MS. LINDER: Your Honor, also on the video you see at that time Quentin Allen is out of the restaurant and standing on the sidewalk. So it's not that he went back into the restaurant, he's out, on the sidewalk, closer to where the defendant was.

THE COURT: This is what I'm going to charge: If the defendant, with malice aforethought, attempts to kill another person but by mistake injures or kills a different person, the defendant still has the intent to kill. Intent to kill is merely transferred from the

original person the defendant attempted to kill to the actual person killed or injured. All right?

All right. He's going to go get those copies. How long do you think you'll need? You get to open and close. Do you want to just close?

MS. LINDER: Open on the law, I'll say, would be about five minutes; the closing, about 30.

MR. SMILEY: Thirty to forty-five.

THE COURT: Okay.

MR. SMILEY: At the most.

THE COURT: All right. Well, as soon as he gives you those, I'll give you a few minutes to study this, short, sweet -- does anybody have a problem with me giving a copy of the instructions to the jury?

MR. SMILEY: No, sir.

THE COURT: No, sir, you're okay with that?

MR. SMILEY: Yes, sir. I'm okay with that, and the only thing I should is I understand you're going to give the transferred intent. I don't believe there has been any evidence submitted about the intent, that second shot was intended for Quentin Allen to kill him.

THE COURT: All right.

MR. SMILEY: I don't think it's been established, so I just want to make my exception for the record, and, also, I don't believe, that it was mentioned

in the indictment whatsoever.

Thank you.

THE COURT: All right. Noted for the record, your objection.

I notice one change in here. Defendant did not testify, so we'll add that. Let me send this to you. You can put it on there. Look at the first page, you are the judges of the fact. You determine the weight, credibility of the witnesses, whether or not they have a bias, prejudice, judge appearance and demeanor, that's the credibility charge.

MS. HENSLEY: The charge we're asking for, Your Honor, the charge that talks about credibility being believability.

THE COURT: Well, that's -- where are you getting this from? It's the same thing. Where is Jim?

MS. HENSLEY: He's getting ready for the closing, but I guess we need Jessica too. It says necessarily you must determine the credibility of the witnesses who have testified in this case. Credibility simply means believability. It becomes your duty as jurors to analyze and evaluate the evidence and determine which evidence convinces you of its truth.

In determining believability of witnesses who have testified in this case, you can believe one witness

over several witnesses or several witnesses over one witness.

That's the charge we're asking for. You want me to keep reading it? What we're asking for is because it's more extensive about you could believe one witness over several witnesses.

THE COURT: You got that.

MS. HENSLEY: You may believe part of the testimony of a witness and reject the remaining part of a witness.

THE COURT: I got that. It's right there, top of page two.

MS. HENSLEY: Okay. I understand.

THE COURT: All right. Other than that, everybody was all right with it? They just want one point taken out? All right. Okay. Anything further from the State?

MS. LINDER: Nothing further, and, Your Honor for the record, we reviewed the verdict form and jury charges that were given to us, and we don't have any objection with that.

THE COURT: I'm not sending the verdict forms since there is no lesser included, so I'm going to have them write on the back of the indictment.

MR. SMILEY: So we're not using it?

THE COURT: Correct. Are you okay with everything on the charges, other than what you objected to in there?

MR. SMILEY: Yes, sir.

THE COURT: Okay. All right. Well, let's bring the jury in then.

(In open court, jury present.)

THE COURT: All right, folks. Welcome back. We are now into the final phase of the trial in which the lawyers will get up and make their closing arguments and then I will charge you on the law, so let me reiterate.

What the lawyers are now going to do is review the evidence that you heard. They are not testifying. They weren't witnesses, so what they say is not to be considered as evidence. They are simply reviewing the evidence that you heard, and then they will, of course, review the law that I tell you -- that I will be telling you in an attempt to persuade you to render a verdict on their client's behalf.

Or rules of procedure provide that since the State has the burden of proof they get to open and close. In a criminal case like this, the State opens on the law, which is just a little five minute "this is what the law is", then you'll hear from Mr. Smiley, and then the solicitor will be closing in full. After that, I'll then

charge you on the law.

So, Madame Solicitor, if you're ready, you may begin.

MS. BALDWIN: Thank you, Your Honor.

Good morning, ladies and gentlemen. Just on behalf of the State of South Carolina, I want to thank you all for your service. I know it's not the most fun job in the world, but without you all we wouldn't be able to do our job, so we really appreciate it.

The defendant in this case is charged with murder, first of all, and the judge will instruct you on the law. If anything I say differs from what the judge says, you should follow what he says.

To prove murder, the State must prove that there was the unlawful killing of a person with malice aforethought. Malice aforethought can either be expressed or implied. They're just sort of different ways in which malice is shown. Express malice can be shown when a person speaks words or shows ill will toward another human being. Malice may be inferred, however, from conduct showing a total disregard for human life.

The judge will also talk to you about transferred intent. That is, if the defendant, with malice aforethought, attempts to kill another person but by mistake injures or kills a different person, the

defendant still has that intent to kill. The intent to till is merely transferred from the original person the defendant attempted to kill to the actual person killed or injured.

Basically, if you find that somebody was trying to kill one person but instead they killed somebody else, that still can be murder.

The defendant is also charged with attempted murder. As you can see up there, attempted murder is a person who, with intent to kill, attempts to kill another person with malice aforethought, which we just talked about, either expressed or implied, they're guilty then of attempted murder.

Lastly, the defendant is charged with possession of a weapon during the commission of a violent crime, and that's basically what it sounds like. If we've proven that the defendant possessed or visibly displayed a firearm during the commission of a violent crime, and both murder and attempted murder are violent crimes, then he is guilty of possession of a pistol during the commission of a violent crime.

The judge will also talk to you about direct versus circumstantial evidence, two types of evidence that are presented during a trial. Just remember that no greater weight can be given to one versus the other.

Lastly, and maybe most importantly, the judge will instruct you on reasonable doubt. Reasonable doubt -- to prove our case beyond a reasonable doubt, we have to prove -- give you proof that leaves you firmly convinced of the defendant's guilt.

Now, that doesn't mean beyond all doubt, or beyond any doubt. If it was beyond any doubt, there would be a witness in this trial instead of in the jury box where you are, but it's just proof that leaves you firmly convinced.

Once again, I would like to thank you for your service. I hope you have a lovely day.

THE COURT: Mr. Smiley?

MR. SMILEY: I told you in the beginning that this case was going to have some testimony. I want y'all to be able to look at it and see what they said, how they said it, where they saw, what they saw, when they saw it, use common sense to apply it, and I also told you in openings that when somebody perceives an event, it's not like it's a photograph that never changes.

Memories and perceptions change over time. Perceptions may not be accurate, but it's their perception. If it turned out it wasn't that way doesn't make them a liar, it just means their perception was incorrect, but I also told you, physical evidence does

not change. Physical evidence doesn't lie. Physical evidence doesn't improve over time, even though the SLED agent improved one piece of physical evidence, but he didn't change it.

Also, physical evidence -- don't forget, it is what it is. We're very fortunate in this case to have video that you can, as jurors, see what went on that night. You have a view from six different cameras of the area, and you also have a cellphone video of a small part of what went on. That's not changing. You will be able to look at that, all right?

Now, I've been fairly -- as a general rule, I love trying cases. That's why I became a lawyer, and as I try a case, if I seem lighthearted, what have you, please understand, this is a very, very serious matter, and I am taking it very seriously. This is the most important day of Deonte Stephen Brown's life. He is counting on y'all, and he knows you will uphold the oath that you took in the beginning, to be fair and impartial jurors.

And I've watched y'all, just like you've watched me during the trial, and I thank you for being so attentive and to paying attention and taking an oath. I have no doubt that your collective conscience will come to the right result in this case.

So, understand, I'm having a conversation with you, and it's my closing argument. I'm certainly not going to point out everything in this case that came up from the witness stand. I just couldn't possibly do it. Y'all have 12 minds, I have one, so if I miss something, it doesn't mean I didn't think it was important, I'm just having a conversation with you here today about what I believe they haven't proved.

Now, not one person under oath on that stand testified Deonte Brown fired a gun that night, not one person. There is no evidence to that. The video, and I'm going -- I know you have already seen the video a bunch of times. I'm going to show it one more time, and I'm going to show two angles, and I want to talk about a couple of things.

What I think the video says, what I think it says, all right, is I can't speculate about things that weren't testified to, and I'll tell you a story, and I'm sure Ms. Linder is going to look at it and tell you a story, but the facts that were testified to with that video is what it is, all right?

You'll understand as this all wraps up exactly what I'm talking about. People were identified in the video, right? People weren't identified in the video. I could point out people and say, that guy could

be the shooter. That could be so-and-so, you know, but the evidence came from here, and the evidence has been submitted as a video for y'all to watch.

Also, I told you at the beginning to look for the evidence, but look what's not given, because they have the burden, you know? And as a defense attorney, I always worry that when I say they've got the burden that you think that I'm somehow not playing fair or -- that's their job, to prove it beyond a reasonable doubt. It's why our system works; otherwise, we wouldn't need y'all. They have a burden, and it is a heavy burden, so that innocent people don't go to prison. They don't lose their liberty.

Now, Jesse McNeal was right there in the foyer, and two other important people were with him too, Quentin Allen and the security guard. The security guard was the most quasi law enforcement guy on the scene. You didn't hear from him. Understand that if anything they say would have been helpful to their burden, he would have testified.

I've been accused of hiding the ball for 20 years. I'm going to tell you, I ain't hiding any ball. I called the State's witness, the SLED agent, to show you about the clothes, that there wasn't anything on them. Didn't hide it from you. I wanted you to know that,

well, that was 36 hours afterwards before they collected the clothes, so, you know, it wouldn't have it on there.

And she told you, it could stay on there indefinitely. If you were -- if you shot somebody, would you come to the police station 36 hours later, wearing the same clothes you had on? If you're an 18-year-old kid, you might if -- like, my kid sleeps forever. If you went home, slept off the drunk, got up and was told that you were needed at the police station, you wouldn't hide anything. You just came into the police station.

They collected the clothes. According to their theory, he didn't fire just once, he fired twice, and there is not a spec of collective gunshot residue on this clothing.

You can say, Oh, he washed it.

You know, the clothes are the clothes. You have the evidence. You can't guess. Now, if you would show the video, the interior view, I think it's camera two, and I just want to talk about a few things, and bear with me while we go through it. I'll try to not stop it and go through, but if you could keep on -- thank you, thank you, I'll tell you when -- we just start playing from here, and this is about ten minutes beforehand.

And I'm not going to make it run completely, but I keep asking about the red shirt, all right? And

there is a guy sitting there with a red shirt. Montrell said he knew the guy, but he couldn't remember his name, and in a little bit, you're going to see he gets up and walks outside.

Now, we don't know if he left. We don't know if he stayed there, but to just say there wasn't anybody with a red shirt other than Deonte Brown is just not true, because there is. You're looking at him.

This Waffle House seems, on the weekends, to have a couple of rushes. It's when the bars close down at 2:00, and I think they've testified, Ms. April Blodgett testified, they get a rush that comes in, and then it clears out. And then about 4:00 when the other set of social clubs close, they get another thing.

When I was in high school, on Friday nights after football games, the only place out to hang out in Mount Pleasant was the Burger King so people would be inside and people would be outside, hanging around before they went home, and I'm going to suggest that that is pretty much what goes on here.

If we could fast forward, detectives -- and thank you very much, Detective Smith, for helping me. It's hard when the evidence works with their computers, and I'm not computer savvy. It puts them at an advantage and I appreciate they're kind enough to help me.

If you would go forward until the group starts coming in, that would be good. We'll play from there. We're about 7 minutes after 4:00. Deonte is coming in with the red shirt and the cups. I guess they're coming in from Frazier's, and you can see Mr. Heyward is coming in. It would have been identified, all right, so when I point to the video now and say there is Chavis Heyward, that's because he's been identified. Let's not be guessing.

You also see Sinclair Heyward, the guy that's in the Navy now, in the white shirt, so you see the group of fellows. You see Dontaye Reed, the young gentleman that got killed, he's coming in. You see Derrick Brown come in and gets thrown out, Scrappy. You see the other gentleman, Montrell, that came in, so you see everybody coming in, and I'm calling their names as I point them out there because there has been evidence from the stand to show that's where they were, okay?

It looks like a pretty busy place, and, like I said, Jesse is back there cooking. He's got a hard job. See the security guard? He's right there in the middle of it, and what I want you to see here in a second is what the security guard does. All right? And this isn't speculation. I think you can tell pretty clear what's going on.

There's an event that's going to happen here, which is Deonte talking trash to the fellow, Quentin Allen, but also the security guard is doing something here. So he comes over and he starts escorting somebody -- he's pointing out -- do you see him pointing out? And as these gentlemen are going out, you see Ms. Catts come in. You see that other fellow in the red shirt by Lorenzo Brown? I believe that's Sinclair that was identified, and you see Deonte come back in.

Now, could you freeze it right in there? It didn't matter exactly. I just want to talk.

I made a big deal out of this for a reason. Deonte Brown's shirt is open, all right, the entire time. He has a pair of jean shorts on which, when you watch the video, you're going to see him pulling up, that are loose.

If he had a gun, where is he going to keep it? Where is he going to hide it? It is loose on him. The shirt is wide open. His pants are falling down. I submit to you, a gun, the way he was moving around and jumping around, would have bounced off that floor.

I asked everybody, did you see a gun? Everybody had a really good view that was on the stand. They were close there. Not a person testified to that.

You can play it. Thank you, Detective.

You see the fellow, the other fellow with the red shirt, he heads out to the parking lot. Now, this camera angle is basically above where Ms. Catts was sitting at the end of the bar over there, looking back at the door, so I'm going to submit to you that this view is very similar to her view, if not a little better because it's elevated.

When you're in the jury room, you'll be able to look at this video any way you need, from any angle, any way. It's evidence. It's for y'all to look at, and you can see Deonte. You can see his open shirt. You can see as he's being pushed out.

Can you see a gun? No, because if you could, you can be sure -- we're slowing it down. The SLED agent tried to manipulate the video. When I say manipulate, I don't mean that in a bad way, but you can see the fight breaking out in between all those people in the doorway.

You can tell the shot has gone off. You can see Jesse. You can tell when the second shot went off. You can also see when Ms. April Blodgett -- and if I'm mispronouncing her name, forgive me -- was in this thing.

She went down to the register and hit the panic button and then got out of there, and I suggest to you -- you'll be able to see her position and the opportunity to see someone with a gun, and when I asked

her on the stand, did you see Deonte Brown with a gun, shoot a gun? She said no.

She says her recollection is that she saw -- her perception is that she saw a gun and a red sleeve. These are really short sleeves, by the way, but that's what she says she saw. I'm not calling her a liar. I'm just saying her perceptions are mistaken. We've got a fellow jumping around, acting like a fool, and he did in there, who gets in a fight, pushing and shoving match. The other people jump in too. The assumption is wrong that he must be the shooter.

Also, when Ms. Catts is sitting where she's sitting before the shot, you have Sinclair Heyward standing in the same place, right, the guy in the Navy? He was leaning up against the thing. Why didn't he see this? And he has all the incentive in the world. It's his friend out there who got killed. He said he didn't see it.

Now, if you could change the view of the interior, looking back to the back door -- forgive me. This one -- and I want to see after the shooting. All right. This is the camera angle back into the back corner. That's where Ms. Catts, Mr. Teran went under the table and Mr. Teran's girlfriend went under the table afterwards. You can see him standing up now, and if you

could just pause that, we'll let it play for a little bit.

That's where Ms. Catts called 911 from, and Ms. Catts conveys some information that she didn't see, even right then. This is what I mean by perception. She says there is someone that's dead outside. She didn't see that. She had gotten that information from being around others, talking about the event, which is normal. Everybody is gathered back there, and you talk about it.

There's Ms. Tiffany Smith. She came and testified. She didn't see anything, but you'll see everybody stays back in that corner for quite some time.

I'm not saying they're getting together to make up a story. That's not what I'm saying at all. I'm just saying, if you see an event and you sit down, it's just normal that the picture changes, that your perceptions are bent by that experience or talking about things together.

There's Jesse. Now, by the way, as you see -- that's where Mr. Teran was during the whole event with his back turned. What was his ability to really see? What was his view to see anything? And when I asked him about it, Did you actually see the fellow with the red shirt open with a gun?

He said, No, I saw a flash. I understand

that, because -- but when asked here, it's not, I couldn't remember. When he was asked in court, even though he's had a motorcycle accident, he said, I didn't see it, the gun.

The girlfriend back there in the corner had just as good a view, if not better, than Mr. Teran. I would have liked to have heard from her. You would have if she would have helped the State, and you can see the EMS people came in to talk with the waitress there. And I don't know what medication she was on. I can tell when she gave a statement that this insinuation that her memory got better because she was on medication that day, I don't think that is fair.

You don't know what medicine she was on. I don't know what medication she was taking. There wasn't any evidence presented to that effect, and I can promise you a law enforcement officer wouldn't let someone who wasn't capable be mistaken, and we all know memory is better afterwards than two years later. She agreed with that. You see them getting their statements and sitting back there to fill out their statements.

Now, if you could go to the outside video, I think that's number six, and I'm -- I promise you, I'll keep it as short as I can on the videos. It's hard to do from here, because I want to tell you all kinds of

things. I wish they would let me and Ms. Linder go back there in the room with you so we can talk with you the whole time, but that's not how it works in deliberation, and if we can go back pre -- that would be fine.

Now, this video, the SLED agent came in and slowed down, sped up, lightened it, darkened it to try to get as good a view as possible. This one isn't actually the one that's enhanced, but you'll have those back there too because I can promise you, if they can find a framed section of this that showed Mr. Brown firing a weapon and he could be identified, they would have been up here.

It's not evidence to just point at it now and say that's who it is. The testimony came from here. Keep going. Back up just a hair. A little more.

You see a fellow coming out. You see another fellow coming out. You see the security guard has come out. Look at the security guard here. He's concerned about something. It's me speculating, all right? And I can't tell you what it is, but watch him. And I'm not going to narrate this part. This is for y'all to look at.

I don't know that I need to speculate more than y'all can about who's who and what's what. I can tell you this: If there was someone holding a gun and firing it, you would have seen it, and if they could have

been identified, they would have been identified.

You see the fellow going between the two cars? That could easily have been Deonte. You see there's a flash back there, and a guy gets shot. If you ran between the two cars, that couldn't be Dontaye. Y'all look at it. I'm not going to point at it and say, This person is this person and that person is that person. There wasn't any testimony who was who in the parking lot. It's pure speculation.

Thank you very much.

Just a couple more things about perception. Mr. Teran talked about a Braves jersey or Cleveland jersey. It's his perception. He wasn't lying. He was mistaken. We see things or we think we see things, and that's what we remember. Our perceptions are changed as we interact with people and as time goes by, and so that information, while it's important, is certainly not foolproof.

Now, Ms. Catts, she says she saw a gun. Y'all would be able to determine whether she had the ability to see a gun. She did not see Deonte Brown fire a weapon, but she did say she saw a gun. You have Mr. Teran who believed he saw a shot but when we further inquired said he did not see Mr. Brown fire a weapon. It's important, but he did, at least, bring something up.

Now, Chavis Heyward was right there at the door, right? He came in and he testified, under oath, and he was asked directly, Did you see who fired the gun?

No.

Did you see it?

And he very clearly stated, under oath, no.

Now, they want to say he's covering up -- I don't know the motive for covering up, but they brought up Investigator Barfield and said he told me in the hall it was the guy in the red was the shooter.

That is important information. Mr. Heyward had been down and met with the two -- I mean, the two solicitors and the investigator that day. He had met the police earlier, because he had said that is when he's walking out, after he's already said, No, I didn't see it, didn't see it.

He has a change of heart, supposedly, after the heart-to-heart with Investigator Barfield and said, It's the guy in the red shirt, but I'm not calling names.

Now, that's important information. It's not recorded anywhere. I'm not saying Detective Barfield is lying. I wouldn't accuse him of that. I respect him very much. I believe that communication is a problem here, and there was a simple way to solve it.

To say, Who, Chavis? That's important.

Please come back in. We need to write that down. You just told me that. Take five minutes, or, if you couldn't get him to do that -- because you heard what happened in this building. There's security everywhere. See if you have it on tape, something.

I mean, that's their best piece of information, and they can't get it recorded, and I don't get it. How about trying again? As he's told you now, did he do a phone call? Let's get it on tape. Let's bring him in to get competent evidence, competent evidence.

Jesse McNeal said something -- and I know I jump around a little bit. Jesse McNeal said something about the first shot that I think is important. He didn't see it. He had his back turned, but I asked him, could he tell how far away that shot was? Was it close or far away?

And he said he couldn't tell. I think that's significant, or common sense. A 38 goes off right next to you, you know it's right next to you. My point is, we don't know where that first shot came from. We don't know whether it came from the scrum, right there at the door. We don't know if it came from the back of the Explorer, right out there, or further back. We know that it came from the outside in because of the way the window

shattered. And through common sense, if you look at it, it looks as if it had to be a right to left kind of shot.

That's about all you can tell. You can't tell distance. I wish we could. We know it's not on the video, because we can't see it and identify anybody shooting the first shot.

The second shot, you will see a flash on that video, and then you see Mr. Reed fall down. You cannot identify who is behind that gun. It is pure speculation. If they could have identified it, it would have been done from this witness stand. I just got a couple more things and then I'm going to sit down.

Beg your indulgence. Just a second. Let me check in to see if there is anything I forgot.

I'm going to tell you something, and it's important. I hope you will listen. You cannot find the defendant guilty based on suspicion, conjecture, speculation, no matter how strong it is. You can't.

I conviction in this case can only be based upon proof beyond a reasonable doubt. If it doesn't come to that standard, you must find Mr. Brown not guilty, and I'm going to suggest it's not even a close call.

This isn't a guessing game. You can't do anybody else's job. You can't fill in the blanks. This is a purely circumstantial case. There isn't any direct

evidence, as I keep pointing out, and last thing. I did a little thing about circumstantial evidence with one of the crime scene investigators, about you take fact A, the fact there was a person laying on the ground, the fact that the EMTs came, the fact that he knows what an EMT's scissors look like, so when they found those scissors, those set of circumstances led him to this conclusion that those were the EMT's scissors. That is sort of following the chain of circumstantial evidence.

As you apply that in this case, following the circumstances, is all of the things that are relied upon to establish a fact have to be wholly consistent. That means they all have to be there. If it's not there, you can't make the jump with this.

If something else that could be or couldn't be points another direction, you can't say that. In other words, A plus B plus C equals a fact. If C is not there, you can't go A plus B equals the fact. You have to have all of the circumstances, but by the same token, if A plus B plus C equals the fact, if there is another fact, like another D, there could be another solution to it, you can't say they've proved it.

I know it's real confusing, and the judge is going to give you the charge on circumstantial evidence, but you can't do their job for them. You're the finders

of the facts.

It's been my pleasure to try this case in front of you. I appreciate it. Mr. Brown has all the faith in the world that y'all are doing a very hard job, and bring back the only verdict the evidence can support: Not guilty.

Thank you.

THE COURT: Madame Solicitor?

MS. LINDER: Thank you, Your Honor. May it please the Court:

I came and I talked to you in the beginning of this case and told you that life is a series of choices, and the choice is a decision to act and actions all have consequences. Once of the consequences of the defendant Deonte Brown's actions is being here today.

First, I just want to briefly touch on what this case is and what this case is not. I would submit to you that items where the defense points as a lack of evidence is not a lack of evidence, it just merely doesn't move the ball, so to speak, and it's also not a lack of evidence, but it's subtle, or it's not definitive, which is why you have the toughest job out there, which is deciding what the facts are, what you believe and what you don't believe from the stand, what you believe and what you don't believe from the exhibits.

That's up to you. You get to decide every single one of those things.

This case is a whodunit; who had the gun, who shot the gun. This case is about ID. That's what the case is about. You know, you heard on testimony the crime scene took hundreds of photos. I think maybe 20 were entered, but I submit to you, whether 20 or 200 or 2,000 were entered, those photos were taken hours after this incident, and no one was left on scene.

Adding all those photos into this case would just take your time and mine, and it wouldn't help you decide who had the gun, who pulled the trigger. This is a whodunit.

Crime scene talked about a lot of processing. They printed the Explorer; they printed the Escalade; they printed the doors of the Waffle House; they printed the red cups. DNA swabs were taken from the red cups, all of that science stuff that even I myself am hooked on TV shows that are all about it. But, again, at the end of the day, does any of that show you, does any of that move the ball?

There is testimony that the trucks belonged to April Blodgett and Dario Teran. There was no testimony that the person was in the truck when they fired the gun. Who the prints came back to, does that

tell you who was there at the time and pulled the trigger? Who was there at the time and shot the gun and had the gun?

I would submit to you that that information -- while it is good, it was a complete investigation -- doesn't help you as deciders of the facts of what happened at that moment. This is a whodunit, so I think in thinking about that, it's important to go back and look at and consider everything that you've been sitting through and watching the past couple of days.

First, I'd like to take you kind of through the witnesses, and then I'm going to take you through some of the exhibits.

First person you heard from was David Johnson from the sheriff's office. He's a patrol guy. He showed up on scene. He responded about 4:15 in the morning to the Waffle House. He said there were lots of people. He said people were leaving everywhere. People were all over the scene.

He was trying to prevent people, I think he said, from trampling through the scene, so he was just trying to get people out and secure this scene the best way he could, as that first responder that day.

He also -- we got a map with him, and he

showed you where the Waffle House was. Then you heard from the two crime scene individuals, Erin Meyer and Mark Watson, also from the sheriff's office. They told you there's two full jobs at a crime scene.

I keep calling it a crime scene. The sheriff's office calls it forensic services. They search, they photograph, they collect, and they process. They told you about this line grid search, shoulder to shoulder, walking through the parking lot, looking for evidence. They told you that they did not find any casings which is consistent with a revolver.

They also told you that other things can affect what is left, or maybe carried away from the scene. They told you about a projectile that was located and collected, that projectile in the foyer doorway of the Waffle House. They told you about taking all the photographs, all of them without placards. Only a handful of them had placards, You saw some, and they told you it wasn't to tell you where the item was, it was more or less to document and catalog and number and itemize everything.

And they also told you that they didn't do a diagram in this case, and that was for many reasons, but they didn't have measurements in a diagram, and it ultimately came down to, and this is me paraphrasing it,

to the integrity of the scene.

I believe Ms. Meyer talked said trampling, the same word as Johnson did, and they were saying how from the information that they had received in their training and experience, with the number of people moving about, again, they didn't do that.

They also told you about printing and about swabbing and about collecting items, collecting the DVD from the Waffle House that has been just central to this case, and I'm sure it will be central to your deliberations, and it's probably going to be a long process of playing and rewinding and fast forwarding and playing and pausing and everything back there for you, but you'll have all that back there with you.

Their other job is to preserve evidence. They preserve evidence such as the cellphone videos that were taken of off Lorenzo's phone. They preserve evidence such as the red shirt, such as the projectile that was collected from the autopsy from Dontaye Reed's fallen body.

Next you heard from a bunch of what we lawyers call lay witnesses. You heard from Tyh'Shka Catts. She said she first saw the defendant at Frazier's. Frazier's is a club, social establishment, and she first saw him because her car was in a ditch and

she needed some help, and then when she got to Waffle House alone, she walked in there, and she told you of how the guy in the shorts was minding his business.

He was not responding. That same guy, the guy with the red shirt and dark shorts, was yelling, Bitches and he was ripping the country. She described his yelling as intense.

She then told you of how a worker walked over and tried to calm it down, tried to escort him out. She also told you that that guy, that same guy in the red, pulled out a gun. Then she told you that there were four to five shots total she heard. You heard testimony about four to five shots heard. She then told you that she ducked for cover, absolutely, and then she called 911.

You then heard from Montrell Butler. You heard from Mr. Butler who is from Hollywood, as were most of the people that night hanging out. He told you how he arrived in that white Buick, Lorenzo, Quaney, Brandon. It was parked facing 17. All that is shown on the video.

Shortly after his arrival, he tells you how he went inside, and he said he was inside during the argument, and then he showed you how he went outside. He went outside. He was outside, and then he went to the car, and he said he was in the front seat of that car, facing 17, when everything happened. He ID'd a bunch of

people in the film, people who he knew, people who he saw that night.

Lorenzo Brown then testified. He told you a lot of what Montrell told you. He came in the Buick with the same friends, told you where they parked. He seemed to, when he was on the stand -- and you can look at people's demeanors. He talked about a little scuffle, and then when asked about a fight, he said there was a fight for a little sec, and then he chuckled some.

Ultimately, after law enforcement reviewed the video, they were able to confront him with him taping the fight, so they retrieved the videos from his phone. He told you that he ran toward the door and then ran off to the side and then there were shots.

I submit to you that that isn't the correct order, and I submit to you you should watch that video. Check that order. Check that order. He ran toward the door, and then he ran off to the side and then the shots. I submit to you that he turned before other people did.

You then heard from Chavis Heyward. You heard Chavis Heyward from when he entered the double doors to when he sat up there. It's up to you to decide what to read into, if anything, his behavior. You saw his demeanor, his tone, his willingness to answer questions when he was being asked on the stand, and you

heard from him on the stand denying having not one, but two conversations with my office.

He was a little friendlier, in my opinion, and ultimately that is for you to decide. On cross, and at that time, from the stand, he acknowledged that there was a scuffle and that that scuffle, it went from pushing and shoving in the foyer, and then he said it moved outside, and then he said he was standing where the broken window was. You can watch that video. You can see him actually trying to be peaceful in the whole thing.

After Mr. Heyward, you heard from Investigator Barfield; Investigator Barfield, 37 years of law enforcement experience, worked for the city of Charleston for 30 years, retired, working at my office for seven. Investigator Barfield told you that Chavis Heyward identified to him on more than one occasion that the shooter, not the guy holding the gun, but the shooter was the guy in the red shirt. He came in voluntarily on August the 19th to my office. After maybe 45 minutes total, Investigator Barfield testified, he confessed to seeing the shooter.

Then last week, when being called about, Hey, you got to show up at this time, Investigator Barfield told you that Chavis Heyward brought up that, Hey, I

didn't you a name. I told you the red shirt. I did not tell you a name.

So he acknowledged, again, weeks apart, that it was the red shirt shooting, and as far as it being recorded, Investigator Barfield testified that immediately after both of those instances, weeks apart, he wrote reports to that effect.

You then heard from Sinclair. He's in the Navy. He's living in Virginia, he told you. He told you how his best friend, Dontaye Reed, was murdered. He told you how he picked up Dontaye in his Thunderbird. They went to Frazier's, and then they went to Waffle House. He told you when he went to Waffle House, he was hanging out with his best friend right by that window. He watched the video, and he identified what he saw that night.

Again, he didn't identify what he saw when watching it later in court, while watching it later with me, while watching later. These people are telling you what they saw that night. We have a video here. You get to look. You get to see from lots of different angles what happened.

So you heard from Joe West, very briefly, about how exciting it would be if he could take a really bright license plate and make it really crystal clear so

we can ID plates. That's not how it works. You take a screen shot, and I have it in my head it acts like a television. You have little knobs underneath your TV where you can do, like, brightness.

There's not a whole heck of a lot you can do to it, but he did what he could do, slowed it down and he adjusted the brightness, and you'll have those videos back there with you too. Play them, play them ad nauseam, whatever you need to see it.

You heard from Jesse McNeal. He told you about the diagram. He told you the Waffle House is, quote, not that big inside. He explained the club rush came in, 3:00 to 4:00, and he told you a little something that other people didn't: He told you that that argument that started this whole thing started with his cousin, Quentin Allen.

He told you that Quentin, these were his words, was slow and was challenged, and he had been admitted in Florida. Those were his words that he testified to. He told you that there was a fuss and he saw it was escalating, so he came from behind. He was trying to calm and alleviate the situation, and he said he was just pushing and trying to get everybody out, headed toward the door.

And then he told you that he got everybody

out, and then he was getting his cousin back in, and that's when a bullet went through the window. He told you this whole thing was unnecessary. He pointed out at certain points -- I had three different times that he pointed out what was happening and who was where. He told you the last person walked out the door, and BAM. He also testified there were three to four shots, multiple shots.

Tiffany Smith testified, and she didn't really add a whole lot, quite frankly, in my opinion, as far as trying to advance my version of the facts. But she did say that everyone went out the door, and a couple of seconds later there, was a bullet through the window.

You heard from April Blodgett. She explained that she hit the silent alarm, and she was sitting at the second booth. You're see where she was sitting, the second booth, and her perspective of how she was able to see. She said she saw a red sleeve and a gun.

Dario told you that he had that motorcycle accident. His memory wasn't very good, so you were able to hear read into the record his statement that he gave police, and, in that statement, he says that it was a black male in a red jersey who -- he said the shooter was five-ten in the red jersey.

He said, Who fired the gun?

Red jersey.

You then heard from Betty Butler who talked about swabbing the projectile. You heard about Samuel Stewart, or from Samuel Stewart, the DNA guy. He talked about how the projectile found in the foyer was swabbed by Betty, and then he created a profile of the 16 STRs and then he took the projectile from the body of Dontaye Reed and compared them, and -- oh, I'm sorry. I'm talking about the wrong person.

Samuel Stewart talked about the swab from the projectile and then the buccal swab, that sterile swab from inside the mouth, cheek swab, and compared those two, and it was Quentin Allen, the slow, challenged guy in the white T-shirt, whose DNA was on that projectile right in that foyer. I submit to you that makes sense.

It was Ira Parnell, who's loving life being retired from over 40 years with SLED, he talked about -- compared the two projectiles. He said those two projectiles -- and you have his report. You can read the his report up there.

Those two projectiles, with the rifling and the twists and the grooves, both of those were fired out of the same gun. The same gun equals bullet with Quentin Allen's DNA; same gun, bullet from Dontaye Reed's body.

He also went further and told you how the 357

Magnum 38 special revolver and there are no casings that ever get ejected with that.

You heard from Dr. Tormos, and she explained there is a gunshot wound to the back left flank of Dontaye Reed. She told you that, you know, he appeared to be, aside from the gunshot wound, you know, well-nourished, 19-year-old black male who seemed in line with everything else. She told you that that gunshot wound in the back is what killed him.

You then heard from Investigator Moyer-Smith. She told you about the investigation, but, ultimately, she didn't go on too long, because, as I stated to you earlier, this is a whodunit. The witnesses and the video tell the story. She wasn't there.

She told you how she progressed in her investigation. She interviewed Quentin. He was shot; he was numb; he was angry. It was a through-and-through shot and a chest graze. She said as a result of that interview and other things, she got warrants for attempted murder and possession of a weapon during the commission of a violent crime.

She told you that she kept on working. She kept collecting evidence, interviewing people, getting stuff sent to SLED. She was able to collect the defendant's shirt. There's written on the stickers what

time everything was done.

Shooting was 4 a.m., or 4:13, I think, exactly on July 15th in the morning. The shirt was collected at 4 p.m. the 16th. It's 36 hours later. It's a day and a half later, but she collected it. She did a buccal swab. You know, she did all sorts of things.

And then she also told you that after doing all of this and getting some preliminary results back from SLED, getting the bullet results back -- you have those reports; you see all the dates -- that at that time she elected that she thought it was time to get the murder warrant.

Today you heard from Whitney Berry. You know, I think Whitney is lovely, and when you listen to her on the stand, she explains and she specified that a small cloud comes out when a gun is fired. And she said that cloud engulfs the hands and then follows the path downrange toward the target.

So I guess I'll do it this way: Engulfs the hand and follows the path downrange toward the target. That's where it is. The cloud comes out and goes that way. That's what she testified to.

She also told you that after four to six hours they don't even bother testing for GSR on hands, and, as you know, the interview that happened and all of

this was 36 hours later. There was no GSR done on the hands. That was 36 hours later.

She told you there is no GSR found on that shirt, but what does that mean? If you look at her report, and you'll have this back there with you, and her result -- it's actually a paragraph. It's not just no GSR. It's a paragraph.

She says in there that there are no particles consistent with gunshot residue located on the shirt. She then goes further to say that that means he was not in the vicinity of a gun being fired.

You know, it's up to you for how much you weigh an expert's testimony. I would submit to you that the video and everybody else shows he was in the vicinity of a shot being fired. The question is, did he pull the trigger?

She also talked about the ways that it can come off of clothing; the rain or wind. You heard from crime scene that, you know, like, within an hour of getting out there, it started raining --

MR. SMILEY: Objection, Your Honor. That's arguing a fact not in evidence.

THE COURT: Sustained. There was no evidence as to when the rain began and ended.

MS. LINDER: You heard from crime scene that

while they were on the scene, it was raining.

MR. SMILEY: Objection, Your Honor. Fact not in evidence.

MS. LINDER: Erin Meyer testified to that fact.

THE COURT: I think he said it rained while he was there. His earlier objection is when it began and when it ended, so overruled on this one.

MS. LINDER: Many reasons why GSR is not there, environmental; Whitney Berry told you rain and wind. You heard about it raining that day.

She also told you about hugging and touching. I don't know how much touching you have to do or how close of a hug or how long of a hug or how many hugs, but there are ways to get GSR off of your clothes, and then the big one, laundry, laundry. Out all night, get home, dirty clothes, put in hamper. Laundry cleans things right up.

So those are the people that you heard from, and now I'd like to talk to you about some of the exhibits that there are. You know, you are the judges of the facts, and it's up to you to decide who to believe and what to believe. It's up to you to decide what is on the video and what evidence means and what evidence does not mean. The ultimate decision is yours.

Similar to Mr. Smiley, I'm going to show you certain moments of the video, and it will ultimately be up to you to decide what it shows; however, I will argue to you based on the testimony and other items on the video.

First of all -- and I urge you to go back there and look. I'm going to tell you some times. I urge you to write them down. They may not be important to you. Like I said, it's up to you.

MR. SMILEY: Objection, Your Honor. This is frames from the video. That hasn't been put in evidence.

THE COURT: These are just for demonstrative purposes. They won't go back. They weren't in evidence. For demonstrative purposes, she can show them now.

MS. LINDER: This is from 4:11 -- and I'm looking at the time in the top left corner of all these. It says it's 4:11:07:683, so it's broken down to more than just a second. And in this photo, as you heard testified to, you see, I would argue, the defendant, the red shirt with the fancy shoulder stuff, the cup, and you see the other guy in the red shirt.

At 4:11:10:355, here, which is less than three seconds later from the previous photograph, you see the defendant with the fancy stuff on his shoulders on this red shirt holding a cup, and this chair is now

empty. This chair is now empty, three seconds later.

Three seconds after that, at 4:11:12:121, you see a shirt, a red T-shirt. At 4:11:17:534, this is right after that, and these were showing people exiting the Waffle House. And now what we see, at 4:12:11:435 -- and, again, these are all on that video. I just paused it because I'm not the master of a laptop.

I would argue here that you see the defendant in the red shirt with the fancy shoulders. You see Chavis Heyward, and people were telling you what was happening also. You see the cook, Jesse, trying to break up the fight, and then right here, well, you see that's Tyh'Shka Catts, staring, and right back here, you see a turned head of Dario looking. He told you he kept turning around to watch what was happening.

This photograph, this still picture out of that video that you guys all have and will have back there with you, from 4:12:16:152, so less than five seconds after that last one, the defendant, fancy red shirt, stuff on his shoulder, throwing a cup at Quentin. Peacemaker Chavis, Cook Jesse, Tyh'Shka -- look where she's looking. You got Dario. Look where he's checking out. All right?

On this photograph, which is from outside, this is from 4:12:45:496, so that number's up here. In

this picture, as Montrell pointed out to you when he was on the stand -- and these are all chronological that I'm showing you -- he pointed out that this is him. He's in the dark shirt with the white writing on the back, heading toward that white Buick, the white Buick that he pointed out to you facing 17.

Eleven seconds later -- I'm sorry. I just told you this is chronological. This is not. Here we're at 4:12:56, 4:12:56, so this is -- if I'm doing my math correct, which I could be totally wrong, this is ten seconds after we just saw Montrell, as he told you, heading toward that Buick, and in this photograph, Chavis even pointed out, that's him. That's Chavis in the foyer, going in there, still trying to be the peacemaker.

Four seconds later, at 4:13 -- and it's pixilated, yes. At 4:13:262, if you look here and you watch that video, I would submit to you that it looks pretty cleared out. That you see a hat facing forward of Jesse, you see a blue shirt of Chavis, and then you see a white T-shirt of Quentin. That's it. 4:13, that's all that's left in there.

Here we have at 4:13:01, one second later. Again, I urge you to watch this and you to make the final decision. At this point, again, it's cleared out in the foyer, and you've had Jesse and Chavis in here telling

you who was where.

Jesse, the bill of his Waffle House hat is turned back toward the white T-shirted Quentin and blue T-shirt or turquoise-shirted Chavis, focussed on his cousin Quentin. 4:13:02:496, again, this is one second later, if you look in that same foyer area, still pretty cleared out, and I urge you to go back, look at this video. Look at it before; look at it now.

Bill of the hat, Jesse, facing back. Jesse told you he was focussed on his cousin, trying to get his cousin inside the Waffle House, trying to get his cousin to safety, and you see that turquoise shirt and that chin growth, hair, stubble, beard, however you want to call it, facing out of Chavis.

And then here we have 4:13:03:371. It's the same thing. It's one second later; 13, three people left in the foyer. 13:01, three people in the foyer; Jesse looking at his cousin. 13:02, three people in the foyer, Jesse looking at his cousin; Chavis looking out. 13:03, three people in the foyer, Jesse's looking toward his cousin -- the bill of that hat, the bill of that hat, right there, blue shirt, I would submit to you. Again, you watch it. You decide. You decide the facts.

This video is evidence. You decide the weight of the evidence. You decide what this evidence

tells you about what happened.

This one is at 4:13:04:262, so one second later; again, we got the three people in the foyer, but, more interestingly, I would submit, we got this fellow. Lorenzo Brown identified himself in this video to you multiple times. He had the braids to his shoulder. He was wearing white shorts and a black shirt. If you look at this previous picture, two pictures ago, as he told you, he ran up there and he was watching. He was watching, but then you look here, oh, he's turning around.

Remember, I told you I agreed that the video reflects what he says. In his testimony, he said he went out there toward the door, and then he turned around and ran to the side and then he heard the shots. He is turning around and running to the side, I would submit to you, at 4:13:04:262. It's kind of weird, though. No one else was reacting, and at 4:13 -- and, unfortunately, those cameras just miss a chunk. At 4:13:04:887 -- and this is the SLED video, pause it, use it -- this is the same second that Lorenzo is turning away to run, you see what I would argue to you, although you decide, an individual in a fancy shirt and little white stuff on his shoulder coming out of that door, outside.

At 4:13:05:199, so less than half a second

after that last one, you see the same three standing in the foyer, but, more importantly, we're looking at him. This is Lorenzo. This is Lorenzo. He told you what he did. He told you what happened from the stand.

Here he is a second earlier, turning; people standing, standing. He's not just turning, he's running and ducking. I urge you to track, coming out the door, who goes around here and who doesn't.

And at 4:13:12, which is six seconds -- 4:13:12:048, six seconds after the one I just showed you, there's no one running here anymore. People have gone this way, and through testimony you heard the victim in the white T-shirt, who ended up falling in the mulch, and I would ask you to go back and pause it and look at it and make a determination of what is that? What is that light? What is this shirt? Where are these shorts? And then you'll see Dontaye Reed fall to the ground.

You know, I told you this case is about the defendant, it's about the choices the defendant made, his actions. He decided to go to Frazier's. He decided to go to Waffle House. He decided to bring that cup into the Waffle House. He decided to start an argument, and he decided to throw that cup to escalate it.

You know, he then ended up being kicked out. It took some time, not as slow as fractions of seconds

time, but it took a little time, but he was kicked out. He was shoved out, getting out of that Waffle House. He was out of the Waffle House, and then shots were fired.

Shots were fired, and then he ran, other people ran, and then, I submit to you -- and the video is the evidence and the video shows, I submit, that he turned back around toward the Waffle House, toward all the people, and fired again, firing outside of the Waffle House in the beginning, hit Quentin Allen, firing back at the Waffle House from the parking lot, struck and killed Dontaye Reed.

I ask you to go back and review and look at this. This case is a whodunit. The video shows. You are the deciders of the facts. You are the ones who get to decide what it shows. I would ask at the end that you come back with three verdicts of guilty: For the murder of Dontaye Reed, the attempted murder of Quentin Allen, and I would ask for a guilty on possession of a weapon during the commission of a violent crime.

Oh, I'm sorry. One more thing. I've had this on me the whole time. It's a good thing it's not a 38 special.

THE COURT: Are you finished?

MS. LINDER: Yes, Judge.

THE COURT: Okay. All right.

Well, folks, you've heard now the arguments, and so it is my duty to charge you on the law that applies to the facts of this case.

I told you at the beginning of the trial, you've got duties. I've got duties. Everybody in the courtroom, basically, has a role here, and part of my job as the trial judge is to preside over the trial of the case, rule on things like procedure, admissibility of evidence, things like that.

You're the judges of the facts. You consider only the evidence before you that was presented in this courtroom. Evidence is what people told you from the witness stand, photographs, documents, physical items, things like that.

My job also is to charge you on the law that applies to the facts of this case. It's your duty under the oath that you took at the beginning of the trial to accept the law as I now charge it to you. If you think you have some idea of what the law is or what it ought to be and it does not agree with what I now charge you that it is, you have to forget that idea because you are sworn under your oath to accept the law as I now charge you.

As judges of the facts, you alone are the judges of the facts. I have nothing to do with the facts of this case. You, the jury, decide what facts to

believe. Believability, credibility, those are all things within your purview. You decide how much weight to give the testimony of a witness, how much credibility to give the testimony of a witness. You decide whether or not a witness has a prejudice, a bias, or an interest in the outcome of the lawsuit.

You can judge things like appearance or demeanor on the witness stand and the reasonableness of a statement. You're not bound to decide this case based on the number of witnesses that a side produces. You can believe one witness over many or many over one. You can accept all of a witness's statement or you can reject it entirely.

You can accept part of a witness's statement and reject part of it, and so if you reject part of it, you can still accept the remainder of a witness's testimony. I also talked to you during the trial about expert witnesses, and those are people that -- I told you we don't normally let people come in and give you their opinion about evidence, but we make an exception for expert witnesses, and those are people who, because of their training and education and experience in the field, rise to the level of expertise, and we allow them to come in and give their opinion and state the reasons for their opinion.

You can give an expert witness as much or as little weight as you think it deserves. If you don't think it's based on sufficient education or experience or you conclude the expert's opinion is not sound or maybe it's outweighed by other evidence in the case, you can disregard it entirely.

You're not compelled to blindly accept an expert's testimony. You have the right to consider that testimony in light of all of the circumstances and all of the other evidence that you heard in the trial and give it such weight, if any, that you think it's entitled to.

Now, some of these things I have gone over with you, but I want to go over with you one more time, and I want to remind you, like I told you at the beginning of the trial, the fact that the defendant got arrested, charged, and indicted in this case is not evidence in this case. It cannot be considered by you as evidence of guilt. It doesn't create any presumption or inference of guilt.

An indictment is simply a formal written instrument that contains the charge against the defendant and lets him know what he's charged with, and it gives this Court jurisdiction to hear the trial. I also talked to you at the beginning of the trial about whether or not the defendant might testify, and I told you then that he

may or he may not, and in this case, he chose not to.

I instruct you now, and I emphasize, the fact that the defendant did not testify is not a factor to be considered by you in any way during your deliberations. You must not consider it at all while you are considering the question of guilt or innocence of the defendant. You shouldn't consider it in any manner whatsoever in your deliberations.

A defendant has a constitutional right to remain silent, and the assertion of this right must not be considered by you in any manner during your deliberations. I repeat, under your oath that you took, you are to draw no conclusion whatsoever from the fact that the defendant did not testify in this case. The fact that the defendant did not testify should not even be discussed in the jury room.

The burden of proof, as I stated to you, is on the State. The defendant is not required to prove that he is innocent. The burden of proof remains on the State to prove guilt beyond a reasonable doubt. The defendant was indicted and he pled not guilty. That plea of not guilty therefore cast the burden of proof upon the State to prove the defendant is guilty beyond a reasonable doubt.

As I told you, a person who's charged with a

crime in this case is never required to prove himself innocent. This is an important rule of law in this country. A defendant in a criminal trial is always presumed to be innocent of the crime for which he is indicted unless and until guilt has been proven by evidence satisfying you of that guilt beyond a reasonable doubt.

This presumption of innocence is not just a mere legal theory. This isn't just one of those phrases that we talk about in law school. This is a substantial constitutional right to which every defendant is entitled. This presumption of innocence accompanies the defendant from the time he is charged, throughout the trial, unless and until you reach a verdict based on guilt satisfying you of that guilt beyond a reasonable doubt.

So I've emphasized the State has the burden of proving guilt beyond a reasonable doubt. As I told you at the beginning of trial, some of you might have served as a juror in a civil case where you were told it was only necessary to prove that a fact is more likely true than not true, such as greater weight of the evidence, or preponderance of the evidence it's sometimes called.

In criminal cases, however, the State's proof

must be more powerful than that. It must be beyond a reasonable doubt. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases, the law does not require proof that overcomes every possible doubt.

If, based on your consideration of the evidence you are firmly convinced that the defendant is guilty of the crime charged, then you must find the defendant guilty. On the other hand, if you think there is a real possibility that the defendant is not guilty, then you must give the defendant the benefit of the doubt and find him not guilty.

Now, there are two types of evidence that get presented during a trial: There's direct evidence and there's circumstantial evidence. Direct evidence is evidence that directly proves the existence of a fact. It does not require deduction. Circumstantial evidence is proof of a chain of facts and circumstances that indicate the existence of a fact.

Crimes can be proved by circumstantial evidence, and the law makes no distinction between weight or value to be given to either direct or circumstantial evidence; however, to the extent the State relies on

circumstantial evidence, all of the circumstances must be consistent with each other and, when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt.

If these circumstances merely portray the defendant's behavior as suspicious, then the proof has failed. The State has the burden of proving the defendant guilty beyond a reasonable doubt, and this burden rests upon the State, regardless of whether the State relies on direct evidence, circumstantial evidence, or some combination of the two.

Now, I'm going to go over with you the elements of the substantive charges that he is charged with, and the first charge that I'm going to go over with you is for murder.

He's charged with murder in violation of Section 16-3-10 of the South Carolina Code of Laws. In order to prove that a defendant is guilty of murder, the State must prove beyond a reasonable doubt that the defendant killed another person with malice aforethought.

Malice is hatred, ill will, or hostility toward another person. It's an intentional doing of a wrongful act without just cause or excuse and with an intent to inflict an injury or under other circumstances that the law will infer an evil intent.

Now, I see some of y'all are taking notes, and that's fine if that is comfortable for you, but I'm going to send a copy of these charges back with you so you can just listen along if you want. All right?

Now, malice aforethought does not require that malice exists for any particular time before the act is committed. The malice must exist in the mind of the defendant just before and at the time the act is committed; therefore, there must be a combination of previous evil intent and the act.

Malice aforethought may be express or inferred. These terms, express and inferred, do not mean different kinds of malice, but merely the manner in which malice may be shown to exist; that is, either by direct evidence or by inference from the facts and circumstances which are proved.

Express malice is shown when a person speaks words which express hatred or ill will toward another or when the person prepared beforehand to do the act which was later accomplished. For example, lying in wait for a person or any other acts of preparation that show the deed was in the defendant's mind would be expressed malice. Malice may be inferred from conduct showing a total disregard for human life.

If the defendant with malice aforethought

attempts to kill another person but by mistake injures or kills a different person, the defendant still has the intent to kill. The intent to kill is merely transferred from the original person the defendant attempted to kill to the actual person killed or injured.

Now, the section charge that the defendant is facing is attempted murder, and that's in violation of Section 16-3-29 of the South Carolina Code of Laws. In order to prove attempted murder, the State must prove that the defendant, with the intent to kill, attempted to kill another person with malice aforethought, either express or implied.

Again, malice is hatred, ill will, or hostility towards another person. It's the intentional doing of a wrongful act without just cause or excuse and with an intent to inflict an injury or under the circumstances that the law will infer evil intent. Also, again, malice aforethought does not require malice exists for any particular time before the act is committed, but malice must exist in the mind of the defendant just before and at the time the act is committed.

Therefore, there must be a combination of the previous evil intent and the act. Again, just like with murder, malice aforethought may be express or implied, and these terms express or implied, again, do not mean

different types of malice, but merely the manner in which malice may be shown to exist; that is, either by direct evidence or inference from the facts and circumstances which are proved.

Express malice is shown when the person speaks words which express hatred or ill will for another or when the person prepared beforehand to do the act which was later accomplished. For example, lying in wait for a person or any other acts of preparation going to show the deed was within defendant's mind would be express malice.

The facts are proved beyond a reasonable doubt sufficient to raise an inference of malice to your satisfaction. This inference would simply be an evidentiary fact to be considered by you, the jury, along with the other evidence in this, case and you may give it the weight you decide it should receive.

An intent to kill is an element of attempted murder. In the context of an attempted crime, specific intent means the defendant intended to complete the acts comprising the underlying offense. Intent does not mean accidentally or involuntarily. Intent may be shown by acts and conduct of the defendant and other circumstances from which you nay naturally and reasonably infer intent.

Evidence of the character of the act, the

character of the instrument used, the manner in which it was used, the purpose to be accomplished, and the resulting wounds or injuries must be considered in determining the intent with which the act was committed. Intent may also be inferred when it is demonstrates that the defendant voluntarily and willfully commits an act, the natural tendency of which is to destroy another's life.

The third and final charge the defendant was indicted for is possession of a firearm during the commission of a violent crime, and this is in violation of Section 16-23-480 of the South Carolina Code of Laws. In order to prove that charge, the State must prove beyond a reasonable doubt that the defendant was in possession of a firearm or visibly displayed what appeared to be a firearm during the commission of a violent crime.

A firearm means any machine gun, automatic rifle, revolver, pistol, or a weapon which is designed to or may be readily converted to dispel a projectile. In order to find the defendant guilty of possession of a weapon during the commission of a violent crime, you must first find the defendant guilty of either committing a violent crime or attempting to commit a violent crime.

I charge you that murder and attempted murder

are both violent crimes under South Carolina law. The State must prove beyond a reasonable doubt that the weapon further advanced or helped in the commission of the crime.

I charge you that in determining your verdict of guilty or not guilty, you cannot consider any possible penalty for any particular crime. Punishment for the crime is a matter for me to determine and should never be considered by you in any way whatsoever in arriving at a verdict of guilty or not guilty. You cannot find a defendant guilty based on suspicion, conjecture or speculation, no matter how strong. A conviction can only be based upon proof of guilt beyond a reasonable doubt. If proof does not meet that standard, you must find the defendant not guilty. Finally, your verdict must be unanimous; that is, of course, all 12 jurors must agree on what the verdict is.

Now, folks, I'm going to send you back to the jury room. Don't begin your deliberations just yet, because there's a couple of little formalities we have to go through. First, I have to give the lawyers the opportunity to say if I misspoke something, which has happened on occasion, and I'll bring you back in, tell you what I misspoke, and correct it.

Once I send the evidence back, along with the

indictments and the jury charges, I'll tell the bailiff to tell you it's okay to begin your deliberations, but don't begin your deliberations until the bailiff tells you to.

Now, Mr. Foreman, you, of course, conduct the deliberations, but the other thing that you do to earn your pay as foreman of the jury is on the back of the indictments you will see, right underneath where the red stamp says true bill, there's a word that says verdict. You can't see it from here, but, trust me, that's what it says.

There's two possible verdicts on each of these indictments: Guilty or not guilty. Whatever the jury unanimously decides, you write that down, sign it, date it. Once you have reached a unanimous verdict on all three of these, then you let the bailiff know you've reached a verdict.

Now, these videos, if you want to watch them, you're welcome to watch them. We will have to bring the laptop in and have the person instruct one of you on how to do it, and I understand this is kind of special software that they have, but the bottom line is, I can't have anybody in that jury room while y'all are deliberating or talking. So he or she will instruct you on how to use it, do it, move to another one, but if you

run into a problem, just let us know. We'll bring the technician back in, get it straight for you, but then he or she will have to leave because nobody can be in there while you're deliberating. Okay?

On the other hand, if you prefer, we can bring y'all back in here and watch it, if you would rather do it that way, but, obviously, you couldn't do any -- you couldn't discuss anything while you're in our presence, but you could be here as well. All right?

So go back. Don't begin deliberations. Hopefully your lunches should be here, so, again, just hang on a minute before you begin your deliberations and I send the evidence back with you.

All right? Thank you. Actually, leave your notebooks at this point.

(In open court, jury not present.)

THE COURT: Anything from the State?

MS. LINDER: Nothing from the State.

THE COURT: From the defense?

MR. SMILEY: Other than the previous noted exception, no.

THE COURT: Okay. Is all the evidence ready?

MR. SMILEY: I want to double-check, but yes, sir.

THE COURT: Okay.

MS. LINDER: And, Your Honor, I didn't know --

THE COURT: How about that redacted --

MR. SMILEY: We switched it out, yes.

THE COURT: Okay. Good.

MS. LINDER: And, Judge, I didn't know if we should -- all of the disks that we put on one, so anything that was not admitted off it, if we can hold our exhibits out, like the different videos, and then just have the one trial disk just go back.

An example is the SLED disk has a bunch of other things on it that were not admitted.

THE COURT: Okay.

MR. SMILEY: And so there is one disk.

THE COURT: There is one disk that has all of these on it and nothing else?

MS. LINDER: Correct.

THE COURT: Good. That will be fine.

MS. LINDER: And we have instructions that are halfway typed up, we just need to finish typing up, so that Mike can help -- or whatever technician can help as far as the player is concerned.

THE COURT: Okay. Go ahead and pull the two alternates out.

I've discharged the two alternates.

(Whereupon, Court's Exhibit No. 4 was marked for identification.)

(Whereupon, at 1:15 p.m., jury begins deliberations.)

(Whereupon, at 4:40 p.m., judge receives a note from the jury.)

(In open court, jury not present.)

THE COURT: Okay. The jury said they haven't reached a verdict, but they would like to return tomorrow. They're tired. They don't think they can reach a verdict this afternoon.

Is that okay?

MS. LINDER: Yes, Judge.

MR. SMILEY: My preference is for them to keep going, but if that's what the jury asked for, I don't think I can tell them no. I prefer they just go ahead and say not guilty and let's go home now.

THE COURT: Okay. Bring them in.

MR. SMILEY: The alternates being released, I just don't want --

THE COURT: I'm going to tell them not to call the alternates or not to talk to them.

MR. SMILEY: I understand, but just at this late stage, if something happens, we won't have an alternate left.

THE COURT: I understand that. You know, the law says you have to discharge them once you submit it, so not much I can do if somebody doesn't show up at this point.

MR. SMILEY: I understand, but it worries me when they leave and come back that somebody could be in a car accident, somebody gets sick, we won't have an alternate anymore.

THE COURT: We could always agree to go with 11. Bring them in. All right. We'll bring an alternate in and tell them to start all over.

(Whereupon, Court's Exhibit No. 1 was marked for identification.)

(In open court, jury present.)

THE COURT: All right. Mr. Foreman, I've got your note. It says you all would like to continue your deliberations in the morning. We have agreed that's fine. What I would like to do is give y'all instructions to cease your deliberations.

I know it's a different thing to say don't think about the case anymore, but, really, you don't deliberate anymore. You don't talk to each other anymore. Don't call each other. Don't call the alternates either. If you got a call from the alternates, exchanged phone numbers, that sort of thing,

don't talk to the alternates, so just go home and relax this evening. Don't talk to anybody about the case, of course, including other members of the jury panel.

Don't put anything on social media or anything about Twitter or any of those things that I've been admonishing you about all week long.

If you would, report back tomorrow morning at 9:30. When you get to the jury room, don't start deliberating until everybody is here or I send word with the bailiff they'll tell me when everybody is here. Okay?

Thank you so much for your hard work today, and we will see you tomorrow morning at 9:30.

(Jury recessed.)

(September 19, 2014.)

THE COURT: Let the record reflect the defendant is in the courtroom.

(In open court, jury present.)

THE COURT: All right. Well, welcome back, folks. I just wanted to, for the record, put that everybody is in attendance and that I'm instructing you you can go back and resume your deliberations.

Now, take as much time as you want. We're here all day, and after, say, an hour or so, around 11:00, if it looks like you're going to be here for a

while, just let us know, and we will provide you with lunch. So take your time, and you can go back and resume your deliberations now.

Thank you.

(Whereupon, the jury resumes deliberations.)

THE COURT: Okay. Don't wander off too far.

(Recess taken.)

THE COURT: Let the record reflect the defendant is in the courtroom. Got a note from the jury that says the jury would like for the court reporter to read us the testimony of Quanesiha Catts and Officer Kenneth Barfield.

So what I usually do is just have the court reporter go down there, or just play it or read it, depending on what they want. They just got their lunch. I'll bring the foreman in, tell them that that's what they'll do, unless they want to come back in here and do it, and just send her down. I instruct her not to talk to the jury and just play it.

MR. SMILEY: And they don't deliberate --

THE COURT: They are not to discuss it. Okay? Bring the foreman down here.

(Whereupon, Court's Exhibit No. 2 was marked for identification.)

Mr. Foreman, I got your message. What I

usually do is have the court reporter go down take her equipment, and she can either read the it for you verbatim, or she can play the transcript back, rather than -- unless they want to come back here. Do you have a preference?

THE FOREPERSON: They just want to hear the testimony again, and whatever is more convenient for the court reporter. I didn't know if she needed to read it or whether or not she could play it.

THE COURT: I'll send her down once she gets her stuff together, and she'll either play it or read it, and you're in charge, so don't have any discussions while she's in the room.

She'll play it back as many times as you want and any sections and once she's done, then she'll leave, and then can you resume your deliberations. Okay?

THE FOREPERSON: We'll be done with lunch in about five to ten minutes.

THE COURT: Okay. Thank you so much.

(Recess taken.)

THE COURT: All right. I understand we have a verdict, so let the record reflect the defendant is in the courtroom. Bring the jury in.

(Whereupon, at 3:20 p.m., in open court, jury present.)

THE COURT: All right. Mr. Foreman, I understand the jury has reached a verdict?

THE FOREPERSON: Yes, Your Honor.

THE COURT: Is it unanimous as to all three?

THE FOREPERSON: It is, Your Honor.

THE COURT: All right. Will you hand it to the bailiff, please.

All right. Defendant will rise. Indictment 2013-GS-10-100537, State versus Deonte Stephen Brown, indictment for murder, the verdict of the jury is guilty; on indictment 2013-GS-10-535, indictment for attempted murder, the verdict of the jury is guilty; and indictment 2013-GS-10-535, indictment for possession of a firearm during the commission of a violent crime, verdict is guilty.

If, in fact, this is your verdict, would you please indicate that by raising your right hand?

Let the record reflect all the jurors have raised their right hands. Mr. Smiley, do you wish to have the jury polled?

MR. SMILEY: I do, Your Honor.

THE COURT: Will you poll the jury.

THE CLERK: Yes, sir.

(Whereupon, the jury was polled and all jurors indicated their agreement with the verdicts.)

Your Honor, the jury has been polled, and the verdict stands.

THE COURT: All right. Well, folks, I want to thank you for your jury service this week.

It's been an extraordinary week, very difficult trial. You know, I run into people all the time at grocery stores and out in the public sometimes and they go, Hey, I was on your jury a couple years ago, and I really enjoyed it. I learned a lot that week about the way the system works, about the jury trials.

And most of them -- almost every one of them, to me, have said, I enjoyed it. I learned a lot. And then they usually ask, Did we do the right thing?

And, you know, my answer is, Of course you did the right thing. You showed up and you did your service.

And you folks took this very, very seriously. This was a difficult case. There is -- you know, first of all, sometimes -- you get these more doing civil cases. You might get a little wreck case or you might get some contract dispute case or something along those lines. You know, there's no -- the stakes aren't as high and they're not as interesting, but it's important for those folks, nonetheless. It's their day in court. They weren't able to resolve it.

But then you get into cases on the criminal side where, you know, people have been accused of crimes, and then the cases like where people have been accused of the most serious crimes you can really be accused of, and those are difficult cases. This was an extraordinarily difficult case. You should be worn out just -- y'all listened all week long.

The lawyers did a tremendous job presenting this case. I really don't know personally what I would have done, and that's not to say I agree or disagree. I kind of have maybe a little bit more of sort of an academic approach to it because I have to do this every week so it would just wear me out to get emotionally invested in a case.

I look at it and go, You know, what? The system worked. We had 12 people that came through, picking 12 disinterested people. Part of my job is not only presiding, like I told you, but I also kind of keep an eye out for you folks to see if everybody is awake and paying attention, and then, you know, I kind of get a gut feel as to whether or not you're taking jury deliberations seriously.

I've had cases where, you know, the trial might last 45 minutes and the jury will be out three hours and you're wondering, What are they possibly

talking about back there? We're not going to get them lunch.

But then you get other cases where, you know, you have a difficult case and they might be out an hour. Well, the evidence, you know, is pretty clearcut on some of those, but this was a difficult case. I don't blame y'all for taking a long time, and, obviously, it's taken its toll on you emotionally to arrive at a verdict, and so you should be exhausted. It's been a long week, first of all, and it's been a difficult case for you to decide, and I just want you to know that.

I thank you for your service. The State of South Carolina thanks you for your service. When you look back on this over time, you know, you'll think about this a lot, and you're free to talk to anybody about it now. I've been telling you all week long you can't talk to anybody. You can if you want to now, and sometimes, in fact, you even hear from the lawyers that they like to call up and talk to jurors afterwards to see -- you know, it helps them do their next case, and that's fine to talk to somebody now if you want to.

You don't have to if you don't want to, but you can. And if you don't want to talk to them about it and they bug you, you call me, and I'll make sure it stops, but I've never had that problem with lawyers.

But, you know, you look back on service -- and I can't remember if I said this or not, because I usually tell people this when I qualify the jury, and I didn't qualify the jury this week.

Most of the time when people get their jury notice, their first reaction is, Oh, man, I would like to be on a jury some day, but this just isn't a good time.

And then they get here, and then they find out when they got on a jury and they really do get invested in it, and they really want to do a good job. You folks clearly worked at it and worked hard as jurors this week, and it's hard to explain that to somebody, I know, and the only people that can really identify with it is people that have done it now, like you have.

But, you know, people look at that jury notice and they go, I don't want to do that. Well, it's a responsibility of citizenship, it's a duty of citizenship, and that's why you probably show up, but, you know, all over the world there are people that are arrested for crimes or have disputes and they don't have the right to a jury trial, and they wish they did.

There are very few countries in the world in which somebody is accused by the government of committing a crime and they have a right to pick 12 people off the street and decide what the outcome of the case is.

That's a rare thing. We take it for granted because we do it every week, week in, week out, and we'll do it again next week and the week after that, so we take it for granted. But it's very special, what y'all have done this week, and I hope you will keep that in mind, and I hope that you will also think of jury service in the future not so much as a burden or responsibility, but it was a privilege to serve on a jury. It really is a privilege to serve on a jury, and I hope that you'll think of it that way on, because you participated in your government and your government worked because people like you show up.

And, you know, we have those three branchs of government: Legislative, executive, judicial. Well, this is the judicial branch, and you guys were a big part of it. So you did your service, and we thank you for it. Couldn't ask anything more out of 12 people, so I want to thank you for your service.

It's been a long, hard week, and you're free to go. If you remember from the qualification on Monday, you are now disqualified for the rest of the year from being on a jury, but you are also excused from further service for three additional years. But, remember, you can still do it, if you want, if you get called for a jury, and I hope that you'll come away feeling better

about the system and so not only do we count on people to show up, but we count on people to go back out and talk to other people and say, You know, I served on a jury and I'm glad I did.

And Mr. Patrick will probably tell you, lawyers are dying to get on a jury. They're always trying to figure out what y'all are trying to do back there. He's had a rare opportunity because most lawyers don't get to serve on a jury. He got a rare opportunity, and I'm sure he'll be sharing that with his fellow lawyers, and he's probably learned a lot too this week.

But you got to do something special, and I appreciate your hard work, so y'all are free to go. Thank you for your service.

(Jury dismissed.)

THE COURT: All right. Well, is there anything further from -- Mr. Smiley, you might have some motions that you want to make?

MR. SMILEY: Yes, sir, and I don't believe I have anything to add except for my motions for a new trial, Your Honor, would be based on the same arguments that I made at the close of the State's evidence, at the close of what I presented.

The only thing additional is I did make an exception to the transferred intent when I didn't believe

it conformed to the evidence as it was submitted and that it wasn't included in the indictment, and so, procedurally, I know I'm required to renew my motions, Your Honor, and I do that at this time.

THE COURT: I do believe you have covered direct.

MR. SMILEY: Thank you.

THE COURT: And your motions are denied.

MR. SMILEY: Yes, sir.

THE COURT: All right.

Madame Solicitor, what would you like to say before sentencing?

MS. LINDER: Your Honor, would like to say, and then I have -- Quinton Allen's mother could not be here. She has typed up a short paragraph about this that I've given to the defense, and I would like to give it to you and I would like to have the opportunity for some of Dontaye Reed's family to speak to you.

As far as my words on it, Your Honor heard the case. Deonte Brown's priors, as a juvenile, he had disturbing schools, and possession of marijuana in 2009; in 2012 he got an unlawful carrying of a pistol conviction. It was less than three months after that gun conviction, while on probation supervision, that this happened.

Your Honor, this has been a tough week and a long week; however, I think it's important to note that this defendant started everything that night. It could have stopped anywhere alone the way, and it didn't. He could have left. Anything else could have happened.

He fired multiple times at a group of people, and we're, quite frankly, lucky that more people didn't die. I think that this act that night and that morning was unnecessary, and it was just senseless, and I would ask that the sentence reflect that.

Your Honor, if I may pass up this -- this is from Ms. Sylvia Shepherd, who is Quentin Allen's mother. And after you read that, Your Honor, when you're done with that, I have Dontaye Reed's aunt.

THE COURT: All right. I will have this made part of the record.

(Whereupon, Court's Exhibit No. 3 was marked for identification.)

MS. LINDER: And, Your Honor, before I forget, these are the sentencing sheets.

Your Honor, Jocelyn Reed is the aunt of the deceased, Dontaye Reed, in this case, and she would like to address the Court on behalf of the family.

THE COURT: Yes, ma'am. What would you like to tell me?

THE WITNESS: Good afternoon, Your Honor. We are the Reed, Heyward, Johnson and Toomer family of the late Dontaye Reed. He was gunned down by the suspect on July 15th, 2012.

The family is asking for the maximum for justice. Even though people will quote, you in the wrong place at the wrong time, Dontaye was just where the Lord wanted him to be. The suspect had in mind when he put that weapon in his possession and was to hurt someone, it just happened to be our son, grandson, nephew, uncle and cousin.

Dontaye was the youngest son of his parents; also, the youngest grandson, nephew, uncle of this family. Our grandfather would always say, you do the crime, you got to do the time, an eye for an eye. We got death. They still got life. We have to visit the graveyard where there is no life. They can visit Mr. Brown at whatever facility you send him to serve his time.

All the family have of Dontaye is his fond memories, pictures, and that ruthless smile he always wear when he's with the family, and that's from our family.

THE COURT: Thank you.

THE WITNESS: You're welcome.

THE COURT: Anything further from the State?

MS. LINDER: Nothing further, Your Honor.

THE COURT: Mr. Smiley?

MR. SMILEY: Yes, sir, Your Honor, and I apologize. His mother got upset and left.

THE COURT: It's understandable.

MR. SMILEY: I talked to her beforehand, and I just don't think she could contain herself.

Your Honor, I do consider it a privilege that I represented Deonte Brown. He is a very articulate, well-spoken, and thoughtful young man. He's not dumb by any means. He's not discourteous. He has handled himself in my representation of him from the very beginning with more class than I think sometimes that even I could.

He has maintained his innocence from day one. He respects the jury's verdict. He does not understand it, but he respects it. He maintains he did not fire that shot, any of those shots, that day. I told him I would make sure that you understand that. That's his position and has been throughout.

I would ask you, in light of the fact he had only a misdemeanor conviction and record, the fact that he is young, 21 years old at this point in time -- he's been incarcerated since the date of arrest, July 16,

2012. His life is forever changed.

I respect what the Reed family said. Mr. Brown has always felt badly that it happened that night. He knows that the ball started rolling when he showed his behind, and for that, he feels great responsibility. He considered Dontaye Reed, Snoop, to be his friend; has felt that way, still feels that way.

Your Honor, I'm going to ask you for a 30-year sentence. I know it's day for day. He and I in preparing this case talked about what a 30-year sentence really meant, and I told him that he wouldn't be out of prison, if you would give him the minimum sentence, until he's my age.

And I have done a lot of living between 21 and 51, and I could not imagine what it would be like to be in prison for that long. I would hope you won't give him a life without parole, because the events of that night were senseless, no matter what. It is, I hope, distinguishable in some ways that a malice of a wicked hard takes on many forms, according to the jury, firing that gun and not understanding the repercussions of firing the gun versus the ill will and cold bloodedness in tracking someone down and firing at them.

Your Honor, I know he wants to address you, and he wants to -- I told him that he could say whatever

he would like as long as it's respectful, and he's always been respectful, so I ask you to give him an opportunity to address you, and I believe that's all I have at this time.

THE COURT: Mr. Brown, would you like to say anything?

MR. SMILEY: Stand up.

THE DEFENDANT: Your Honor, even though I know they found me guilty, Mr. Reed was one of my best friends, and sooner or later, the truth will come out. Out of the dark comes in the light. I trust in the name of God it will happen. Even though I got found guilty, the truth will come out sooner or later.

THE COURT: All right.

When I first started this job, I talked to a judge who had been around for a while and, I said, What's the hardest part of this job?

Without hesitation, he said, Sentencing young people to jail.

He was right. It still is the hardest part of the job. People do things when they're young that make no sense to anybody. I don't even think it makes sense to young people at the time. It's just the vast majority of us, when we do stupid things when we're young, we don't get caught, and they don't rise to the

level of shooting somebody.

I don't know what was going through your head. You were acting up, started this whole thing, getting in the face of a guy, alcohol, youth, testosterone, bad combination, but things start, and they have consequences, and the jury found you guilty.

This was a very difficult case from an evidentiary standpoint, but I do agree with the jury's verdict on this. I don't have any doubt in my mind that you were guilty of it. The question is, what's an appropriate sentence for a 21-year-old, 18 years old at the time, who committed this crime?

You have certainly forfeited the right to walk the streets as a free person. I'm going to go short on giving you a life without parole sentence. I'm going to give you 50 years, though, on the murder charge, 30 years on the attempted murder, and 5 on the weapons charge. They'll all run concurrent. You'll get credit for the time served, so some day, maybe it will hit you what you've done.

Good luck to you.

MR. SMILEY: Thank you, Your Honor.

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(Whereupon, the proceedings were concluded.)

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VOLUME II OF II

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Post Conviction Relief

RECEIVED
NOV 30 2018
S.C. SUPREME COURT

Michael G. Nettles, Circuit Court Judge

Case No.: 2017-002269

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

vs.

State of South Carolina, ...Respondent.

APPENDIX

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I, the undersigned Amanda Kelly Haffenden, RPR, CRR, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on September 15-19, 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

October 6, 2015

Amanda K. Haffenden

Circuit Court Reporter

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