

VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Darlington County

Honorable Roger E. Henderson, Circuit Court Judge

JOSHUA A. REED,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-000555

APPENDIX

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INDEX

INDEX	i
TRIAL TRANSCRIPT (OCTOBER 21, 2013)	1
<u>ANDERS</u> BRIEF OF APPELLANT (NOVEMBER 13, 2014)	695
<u>ANDERS</u> PRO SE RESPONSE (JANUARY 9, 2015)	710
OPINION NO. 2015-UP-484 (OCTOBER 14, 2015)	713
REMITTITUR (NOVEMBER 13, 2015)	715
APPLICATION FOR POST-CONVICTION RELIEF	717
RETURN AND PARTIAL MOTION TO DISMISS	725
AMENDMENT TO PCR APPLICATION	732
POST-CONVICTION RELIEF HEARING TRANSCRIPT (JANUARY 16, 2018)	735
ORDER OF DISMISSAL	780
INDICTMENTS	793
SENTENCE SHEETS	797

STATE OF SOUTH CAROLINA)
COUNTY OF DARLINGTON) GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA)

STATE,)

TRANSCRIPT OF RECORD

v.)

13-GS-16-262

13-GS-16-263

JOSHUA REED AND)

13-GS-16-264

JOHNATHAN REED,)

13-GS-16-265

DEFENDANTS.)

October 21, 2013
Darlington, South Carolina

B E F O R E :

THE HONORABLE HOWARD P. KING, JUDGE;
AND JURY

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

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Typed for Margaret Sullivan

INDEX

	Page
Qualifying of the jury	7
Striking of the jury	21
Matter of law regarding juror	41
Pretrial motions	49
Biggers hearing	50
Motion to suppress search warrant	51, 159
Preliminary remarks by the Court	181
Opening remarks by Mr. Holt	191
Opening remarks by Ms. Wooten	195
Opening remarks by Mr. Swilley	198
Asia L. Gregg:	
Proffer	56
Direct examination by Mr. Holt	203
Cross-examination by Mr. Jones	214
Cross-examination by Mr. Swilley	233
Redirect examination by Mr. Holt	246
Recross-examination by Mr. Jones	248
Recross-examination by Mr. Swilley	250
Johnny L. Washington:	
Direct examination by Mr. Holt	252
Cross-examination by Ms. Wooten	258
Cross-examination by Mr. Swilley	266
Redirect examination by Mr. Holt	270
Recross-examination by Mr. Swilley	272
Anthony Wingate:	
Proffer examination	275
Direct examination by Mr. Holt	280
Cross-examination by Mr. Jones	289
Cross-examination by Mr. Swilley	296
Redirect examination by Mr. Holt	301
Recross-examination by Mr. Swilley	303
William Sessoms:	
Direct examination by Mr. Holt	309
Cross-examination by Ms. Wooten	316
Cross-examination by Mr. Swilley	318
Jason A. Thompson:	
Direct examination by Mr. Holt	319
Cross-examination by Mr. Swilley	324
Tenyonde Richardson:	
Direct examination by Mr. Holt	327
Cross-examination by Ms. Wooten	329
Cross-examination by Mr. Swilley	331
William K. Woodham:	
Direct examination by Mr. Holt	333
Cross-examination by Ms. Wooten	337
Cross-examination by Mr. Swilley	337

Mark A. Blair:	
Direct examination by Mr. Holt	339
Cross-examination by Mr. Jones	355
Cross-examination by Mr. Swilley	358
Michael Stokes:	
Direct examination by Mr. Holt	360
Cross-examination by Mr. Swilley	361
James Hudson, Jr.:	
Direct examination by Mr. Holt	364
Michael L. Anderson:	
Direct examination by Mr. Holt	369
Cross-examination by Mr. Swilley	375
Joseph Kinard:	
Direct examination by Mr. Holt	378
Cross-examination by Mr. Jones	380
Cross-examination by Mr. Swilley	383
Brian Rudick:	
Direct examination by Mr. Holt	384
Cross-examination by Mr. Jones	398
Cross-examination by Mr. Swilley	403
Laura South:	
Direct examination by Mr. Holt	405
Cross-examination by Ms. Wooten	415
Cross-examination by Mr. Swilley	417
Redirect examination by Mr. Holt	418
Defendant rights	421, 553
Brandon Huggins:	
Direct examination by Mr. Holt	432
Cross-examination by Ms. Wooten	450
Cross-examination by Mr. Swilley	457
Jennifer M. Stoner:	
Direct examination by Mr. Holt	459
Cross-examination by Mr. Jones	474
Cross-examination by Mr. Swilley	485
Terry M. Anderson:	
Direct examination by Mr. Holt	497
Cross-examination by Mr. Jones	511
Cross-examination by Mr. Swilley	522
Redirect examination by Mr. Holt	528
Stipulation	533
Janice Ross:	
Direct examination by Ms. Parker	537
Cross-examination by Mr. Swilley	541
Directed verdict motions	543
Charges	557, 566
Closing remarks by Mr. Holt	574
Closing remarks by Mr. Jones	598
Closing remarks by Mr. Swilley	618
Charge to the jury	641

Exceptions to the charge	665
Playing of video for the jury	668
Playing of defendant Johnathan's statement for the jury	676
Re-charge	672
Verdict	678
Polling of the jury	679
Directed verdict motions	685
Remarks by the victim family	688
Remarks by Mr. Jones	689
Sentence of the Court	692

EXHIBITS

STATE'S:

No.	Description	I.D./EVD.
1	Lineup	113/347
2	Lineup	113/347
3	Lineup instructions	306/541
4	Lineup instructions	306/541
5	Lineup instructions	306/541
6	45 Cobra	306/444
7	Six rounds	306/449
8	Blue T-shirt	306/465
9	Exhaust pipe	306/410
10	Photos of driver's license and gun	306/441
11	9-1-1	306/311
12	Two CAD 9-1-1 calls	306
13	CD	306/311
14	DVD	306/504
15	DVD	306/472
16A-KK	Photographs	306/406
17A-G	Photographs	306/389
17H-AA	Photographs	306/371
18	GSR kits	306/470
19	Particle lifts from T-shirt	306/467
20	CD video from Marketplace	306/
21	SLED report	306/472
22A-B	Miranda right forms	306
23	Autopsy report	534/534

COURT'S:

1	Voir dire	21
2	Johnathan Reed	21

1 MR. HOLT: If it please the Court, the
2 State would like to call the following four
3 indictments. The State versus Johnathan Alexander
4 Reed, 2013-GS-16-0263, for possession of a weapon
5 during a violent crime; 0262 for murder,
6 2013-GS-16-0265, the State of South Carolina versus
7 Johnathan Reed, possession of a weapon during a
8 violent crime as well as 0264, the State of South
9 Carolina versus Johnathan Reed for murder.

10 Mr. Joshua Reed is represented by Rick Jones, and
11 Johnathan Reed is represented by Mat Swilley.

12 THE COURT: All right. So that I can get
13 the matter in the right order, counsel, let me make
14 — I know of course, for the State appearances is
15 Mr. Holt and Ms. McKenzie representing the State.
16 Counsel, if defense states your appearances for the
17 record please.

18 MR. JONES: My name is Rick Jones along
19 with Julie Wooten who is representing Mr. Joshua
20 Reed.

21 MR. SWILLEY: My name is Mat Swilley and I
22 represent Johnathan Reed.

23 THE COURT: All right. Ladies and
24 gentlemen of the jury, you have heard the State call
25 the cases against Johnathan Tyrone Reed and Joshua

1 Alexander Reed. What I'm going to tell you now is
2 not evidence in this case. It is simply the
3 allegations of the indictments and is the charges
4 against the defendant but is not evidence. You'll
5 decide this case based upon the evidence that you
6 hear from the witness stand and any exhibits, not
7 based upon what is in the indictments, but there
8 are four indictments in this case. Each of them,
9 each defendant in this case is charged with the
10 crime of murder and possession of a weapon during a
11 violent, during the commission of a violent crime.
12 And the State charges that Johnathan Tyrone Reed and
13 Joshua Alexander Reed did in Darlington County on or
14 about February 15th, 2012, along with — well,
15 together, willfully, feloniously, intentionally kill
16 the victim Milton Hunter with malice aforethought
17 either expressed or implied by means of shooting the
18 victim. And the charge against each individual is
19 murder.

20 In addition, each individual is charged
21 with the possession of a weapon during the
22 commission of a crime, of a violent crime, also
23 arising out of the incident which occurred on
24 February 15th, 2012, whereby, the victim in this
25 case, Mr. Milton Hunter, lost his life.

1 Now as has already been said, the
2 defendant Mr. Joshua Reed is represented by
3 Mr. Jones. Mr. Jones, would you stand, introduce
4 your client to the jury please.

5 MR. JONES: Yes, Your Honor. This is my
6 client Mr. Joshua Reed.

7 THE COURT: All right. Mr. Swilley
8 represents Mr. Johnathan Reed.

9 Mr. Swilley, would you have Mr. Johnathan
10 Reed stand and face the jury please.

11 MR. SWILLEY: This is Mr. Johnathan Reed.
12 He's from Hartsville, South Carolina.

13 THE COURT: Thank you. All right, ladies
14 and gentlemen, before we select a jury I need to ask
15 you some questions. Please give your attention to
16 these questions; and if any of them apply, then
17 stand accordingly or advise us accordingly. Is any
18 member of the jury panel related by blood or
19 connected by marriage to either of the defendants
20 Johnathan Reed or Joshua Reed, if so, please stand.

21 (There was no response.)

22 THE COURT: The following individuals may
23 appear as witnesses in this case, and I would ask if
24 the witnesses are present, if they would please
25 stand when their name is called. Asia Gregg,

1 Anthony Wingate, Johnny Lee Washington, David
2 Sessoms, S-E-S-S-O-M-S, Jason Thompson of the
3 Hartsville Police Department, Tenyonde Richardson of
4 the Hartsville Police Department, Brandon Huggins of
5 the Hartsville Police Department, Cheryl McCall of
6 the Hartsville Police Department, Kelley Woodham of
7 the Hartsville Police Department, Stan Kelly of the
8 Hartsville Police Department, Mike Anderson of SLED,
9 Joseph Kinard, Mark Blair of the Hartsville Police
10 Department, Chief James Hudson of the Hartsville
11 Police Department, Brian Rudick of the Hartsville
12 Police Department, Terry Anderson of the Hartsville
13 Police Department, Michael Stokes of the Hartsville
14 Police Department, Laura South of the Hartsville
15 Police Department, James W. Green of SLED, Jennifer
16 Stoner of SLED, SLED being the State Law Enforcement
17 Division, and Doctor Janice Ross for, a forensic
18 pathologist. Is any member of the jury panel
19 related by blood or connected by marriage to any of
20 the proposed witnesses, if so, please stand.

21 (There was no response.)

22 THE COURT: Thank you. In addition the
23 following people might also appear as witnesses in
24 this case. If they are present please stand.
25 Barbara Reed, Lavester Reed, Anthony Wingate, Johnny

1 Lee Washington, Ryan Pierce, and Bill Mein (ph).
2 Again, is any member of the jury panel related by
3 blood or connected by marriage to any of the
4 proposed witnesses, if so, please stand.

5 (There was no response.)

6 THE COURT: Thank you. Now as I said, let
7 me ask the solicitors if they would stand and
8 introduce themselves to the jury. I think I've
9 already introduced them; but you need to introduce
10 yourselves please, Mr. Holt, Ms. McKenzie, for the
11 jurors.

12 MR. HOLT: Thank you very much, Judge. My
13 name is John Holt. Beside me is Patty McKenzie
14 Parker. She's recently married and that's her new
15 name. And she's one of my bosses. And over here is
16 Zach Foard who's recently hired by our office and he
17 will be assisting some in this case.

18 THE COURT: Is any member of the jury
19 panel represented now or been represented in the
20 last ten years by either of the, any of the
21 assistant solicitors in this case any of the lawyers
22 in the Fourth Circuit Solicitor's Office, if so,
23 please stand.

24 (There was no response.)

25 THE COURT: The defendants, Mr. Jones,

1 Mr. Swilley, are with the Fourth Circuit Public
2 Defender's Office. Has any member of the jury panel
3 represented now or been represented in the last ten
4 years by Mr. Jones or Mr. Swilley or any member of
5 the Fourth Circuit Solicitor-- I mean, the Fourth
6 Circuit Public Defender's Office, if so, please
7 stand.

8 MR. SWILLEY: Your Honor, just for the
9 record, I don't work for the fourth circuit. I have
10 a law office in Myrtle Beach.

11 THE COURT: All right. Correct that, Mr.
12 Swilley is with a private law firm in Myrtle Beach.
13 Is any member represented by Mr. Swilley or been
14 represented in the last ten years by him, if so,
15 please stand.

16 (There was no response.)

17 THE COURT: Is any member of the jury
18 panel close personal friends of any of the parties,
19 their lawyers, or any of the witnesses whom I have
20 read u off to you, if so, please stand.

21 (There was no response.)

22 THE COURT: Yes, sir, your name.

23 THE POTENTIAL JUROR: My name is Kelvin
24 Hunter, juror 72.

25 THE COURT: Give me your number again.

1 72?

2 THE CLERK OF COURT: Yes, sir.

3 THE COURT: All right. Mr. Hunter?

4 THE POTENTIAL JUROR: Yes.

5 THE COURT: All right, Mr. Hunter, tell me
6 what your response to that is.

7 THE POTENTIAL JUROR: I am close friends
8 with Mr. Wingate family as well as the Hunter
9 family.

10 THE COURT: Okay. That will be the
11 victim's family?

12 THE POTENTIAL JUROR: Yes, sir.

13 THE COURT: Okay. Did you say close
14 personal friends with them?

15 THE POTENTIAL JUROR: Yes, sir.

16 THE COURT: Okay. All right, thank you,
17 sir.

18 Yes, sir.

19 THE POTENTIAL JUROR: Your Honor, I do
20 know the Hunter family, been knowing for many years.

21 THE COURT: Let me's get your name first.

22 THE POTENTIAL JUROR: I'm sorry, juror 87.

23 THE CLERK OF COURT: Mr. Tommy March.

24 THE COURT: 87, Mr. March. So you know,
25 you say you know the Hunter family; is that correct?

1 THE POTENTIAL JUROR: Yes.

2 THE COURT: Are y'all close personal
3 friends or just normal acquaintances?

4 THE POTENTIAL JUROR: Yes, sir.

5 THE COURT: Sir?

6 THE POTENTIAL JUROR: We're just
7 acquaintances. We've known each other for a few
8 years.

9 THE COURT: Would the fact that you know
10 them prevent you from giving both the State and the
11 Defense a fair and impartial trial based on the
12 evidence —

13 THE POTENTIAL JUROR: No, it will not,
14 Your Honor.

15 THE COURT: —would you be able to put
16 that aside based on the evidence? And would you do
17 that?

18 THE POTENTIAL JUROR: Yes, I would.

19 THE COURT: All right, thank you, sir.
20 Does any member of the jury panel know anything
21 about the facts of this case as I have briefly
22 recited them to you, if so, please stand?

23 (There was no response.)

24 THE COURT: Has any member of the jury
25 panel or a member of your immediate family — and I

1 define immediate family as spouse, parent, brother,
2 sister, or child. Has any member of the jury panel
3 or member of your immediate family ever been the
4 victim of a violent crime, that is, a crime upon
5 your person, if so, please stand.

6 (There was no response.)

7 THE COURT: Is any member of the jury
8 panel or a member of your immediate family currently
9 employed or been employed with a law enforcement
10 agency within the last ten years, if so, please
11 stand.

12 All right. Yes, ma'am, your name please.

13 THE POTENTIAL JUROR: Shannon Munoz, 98.

14 THE COURT: 98, Ms. Mouzon? How you
15 pronounce that? Yes, ma'am, I didn't get your
16 number.

17 THE POTENTIAL JUROR: 98.

18 THE COURT: 98, all right. Tell me what
19 the situation is please, ma'am.

20 THE POTENTIAL JUROR: The question was
21 member of family member —

22 THE COURT: Who is the family member?

23 THE POTENTIAL JUROR: Russell Cox.

24 THE COURT: No, I mean —

25 THE CLERK OF COURT: What's the

1 relationship?

2 THE COURT: What's the relationship?

3 THE POTENTIAL JUROR: He's my father.

4 THE COURT: Your father?

5 THE POTENTIAL JUROR: Yes, sir.

6 THE COURT: Where is he employed, was
7 employed?

8 THE POTENTIAL JUROR: Florence County.

9 THE COURT: Is he still employed there?

10 THE POTENTIAL JUROR: He's commissioned
11 but he's not —

12 THE COURT: In the Sheriff's Office, is
13 that what he was?

14 THE POTENTIAL JUROR: (No verbal
15 response.)

16 THE COURT: All right. So he's — is he
17 retired from the Sheriff's Office in Florence
18 County? Did I state that right?

19 THE POTENTIAL JUROR: Yes, sir.

20 THE COURT: All right. Would that fact
21 prevent you from giving to the State and the Defense
22 a fair and impartial trial based on the evidence?

23 THE POTENTIAL JUROR: No, sir.

24 THE COURT: Would you be able to put that
25 aside and decide this case based on the evidence in

1 this case?

2 THE POTENTIAL JUROR: Yes, Your Honor.

3 THE COURT: And would you do that?

4 THE POTENTIAL JUROR: Yes, sir.

5 THE COURT: Thank you, ma'am.

6 Yes, sir, the gentleman in the blue shirt.

7 THE POTENTIAL JUROR: Frank Stoda, 129.

8 THE COURT: 129. All right, Mr. Stoda,
9 tell me what your situation is. I recall from the
10 roll call that you were employed with 911
11 communication system; is that correct?

12 THE POTENTIAL JUROR: That is correct.

13 THE COURT: You're retired from that now?

14 THE POTENTIAL JUROR: Yes.

15 THE COURT: Okay. Is there anything you
16 wanted to add to what you had disclosed a little
17 while before?

18 THE POTENTIAL JUROR: No.

19 THE COURT: I mean, no other -- there's no
20 other --

21 THE POTENTIAL JUROR: My wife worked for
22 the 9-1-1 center also and -- was a part of the --

23 THE COURT: All right.

24 THE POTENTIAL JUROR: --Police
25 department.

1 THE COURT: And that was in Virginia?

2 THE POTENTIAL JUROR: Yes.

3 THE COURT: Okay, all right. Mr. Stoda,
4 would that fact prevent you from giving to the State
5 and the Defendant a fair and impartial trial based
6 on the evidence?

7 THE POTENTIAL JUROR: No.

8 THE COURT: Would you be able to put that
9 aside and decide this case based on the evidence
10 here in this courtroom?

11 THE POTENTIAL JUROR: Yes.

12 THE COURT: And would you do that?

13 THE POTENTIAL JUROR: Yes.

14 THE COURT: Thank you, sir.

15 Okay, thank you. Has any member of the
16 jury panel or member of your immediate family, as I
17 have defined that term, concurrently employed or
18 worked in the last ten years in the Fourth Circuit
19 Solicitor's Office, if so, please stand.

20 (There was no response.)

21 THE COURT: Has any member of the jury
22 panel or member of your immediate family worked in
23 any prosecutor's office within the last ten years,
24 if so, please stand.

25 Yes, ma'am.

1 THE POTENTIAL JUROR: Number 59.

2 THE COURT: Yes, ma'am.

3 THE POTENTIAL JUROR: My daughter is an
4 assistant district attorney in North Carolina.

5 THE COURT: Okay, all right. Would that
6 prevent you from giving to both the State and the
7 Defendant a fair trial based on the evidence in this
8 case?

9 THE POTENTIAL JUROR: No.

10 THE COURT: Would you be able to put that
11 aside and decide this case based on the evidence you
12 hear in this courtroom?

13 THE POTENTIAL JUROR: Yes.

14 THE COURT: Thank you, ma'am.

15 Has any member of the jury panel or is any
16 member of the jury panel a member of a victim's
17 rights group such as MADD, SADD, CAVE, CADRE, any of
18 those five organizations whose primary purpose is
19 strict law enforcement or support of law enforcement
20 if so, please stand.

21 (There was no response.)

22 THE COURT: Has any member of the jury
23 panel formed or expressed an opinion as to the guilt
24 or innocence of the defendant or either of these
25 defendants Joshua Reed or Johnathan Reed? Any

1 member of the jury panel formed or expressed an
2 opinion as to the guilt or innocence of either of
3 them, if so, please stand.

4 (There was no response.)

5 THE COURT: Is any member of the jury
6 panel aware of any interest, any bias, or any
7 prejudice for or against either of the defendants
8 Johnathan Reed or Joshua Reed, if so, please stand.

9 (There was no response.)

10 THE COURT: Can each member of the jury
11 panel give to the State and the Defendant a fair and
12 impartial trial, if not, please stand.

13 (There was no response.)

14 THE COURT: Other than what has been
15 disclosed to me, does any member of the jury panel
16 know of any reason whatsoever why he or she should
17 not serve as a juror in this case, if so, please
18 stand.

19 All right, yes, sir. Mr.?

20 THE POTENTIAL JUROR: Mr. Hunter, 72.

21 THE COURT: You're Mr. Hunter?

22 THE POTENTIAL JUROR: Yes, sir.

23 THE COURT: All right, Mr. Hunter, I
24 understand your situation. Thank you, sir.

25 Are there additional questions on behalf

1 of the State, Mr. Holt or Ms. Parker?

2 MR. HOLT: No, sir, Your Honor.

3 THE COURT: All right. Mr. Jones, there
4 were two other questions that you had included in
5 voir dire that I am not going to ask, 4 and 6. I'll
6 give this to the court reporter, have her mark it as
7 a Court exhibit and make it part of the record.
8 Other than that are there any other questions?

9 MR. JONES: No, sir.

10 THE COURT: Mr. Swilley?

11 MR. SWILLEY: There are, Your Honor. I'll
12 bring those up to Your Honor.

13 (Pause.)

14 THE COURT: All right. Ladies and
15 gentlemen, later on this trial or at some point in
16 the trial the Court will instruct you on certain
17 principles of law. Among those will be reasonable
18 doubt, presumption of innocence, and mere presence
19 at the scene of a crime and a number of other legal
20 principles. Is there any member of the jury panel
21 who feels that they could not follow the
22 instructions of the Court on the law as given to you
23 by this Court for any kind of personal reasons, if
24 so, please stand.

25 (There was no response.)

1 THE COURT: Has anyone on the jury panel
2 or other member of your immediate family, including
3 children, been to Pride Park in Hartsville, South
4 Carolina, or go to that location on a regular basis,
5 if so, please stand.

6 (There was no response.)

7 THE COURT: All right, Mr. Swilley, those
8 are the ones I'm going to ask from your list. The
9 others I believe I've either covered or I decline to
10 ask because I don't think that they are necessary in
11 this case. I've asked some of them already. I will
12 give it to the court reporter and have her mark it
13 as Court's Exhibit Number 2.

14 MR. SWILLEY: Thank you, Your Honor.

15 (Court's Exhibit Numbers 1 and 2 were
16 marked and made a part of the record.)

17 THE COURT: Counsel, come up and let's
18 talk about the procedure regarding the jury please.

19 (WHEREUPON, counsel approached the Bench
20 for an off-the-record discussion.)

21 THE COURT: All right, Mr. Clerk, if you
22 will give us the jury please.

23 Ladies and gentlemen, I told you earlier
24 this morning the computer will select the names of
25 the jurors randomly. When your name is called

1 please come through the door over here and come up
2 to the front of the courtroom and face the back of
3 the courtroom. If you are acceptable to the State
4 the State would indicate by saying present the
5 juror. If you're accepted each defendant will have
6 a chance then to decide whether they'd like to keep
7 you or whether or not they would like to use one of
8 their peremptory strikes. Mr. Jones first, he will
9 either state seat or accept the juror, and then
10 Mr. Swilley will have a chance to either state
11 accept or seat the juror. If any one of the three
12 lawyers excuses you, have a seat back out with the
13 remainder of the jury panel. If all three accept
14 you then you would have a seat in the jury panel and
15 we will proceed to the next juror.

16 All right, Mr. Clerk, if you will give us
17 the jury.

18 THE CLERK OF COURT: Juror number 59,
19 Linda Haenchen (white female). If you'll come
20 forward, ma'am, this way for me. If you will come
21 forward, stand right here for me please, Ms.
22 Haenchen.

23 What saith the State, Mr. Holt?

24 MR. HOLT: Please present this juror.

25 THE CLERK OF COURT: What saith the

1 Defense, Mr. Jones?

2 MR. JONES: Please excuse this juror.

3 THE CLERK OF COURT: You've been excused
4 from this particular case. If you'd just simply go
5 back and have a seat in the audience for me, Ms.
6 Haechen.

7 Juror number 137, Beckie Tidwell (black
8 female). What saith the State, Mr. Holt?

9 MR. HOLT: Please present Ms. Tidwell.

10 THE CLERK OF COURT: What saith the
11 Defense, Mr. Jones?

12 MR. JONES: Please seat the juror.

13 THE CLERK OF COURT: What saith the
14 Defense, Mr. Swilley?

15 MR. SWILLEY: Please excuse Ms. Tidwell
16 from the trial of this case.

17 THE CLERK OF COURT: You've been excused
18 from this particular case, Ms. Tidwell. If you'd
19 have a seat back out in the audience for me please.

20 Juror Number 87, Tommy March (black male).
21 What saith the State, Mr. Holt?

22 MR. HOLT: Please present Mr. March.

23 THE CLERK OF COURT: What saith the
24 Defense, Mr. Jones?

25 MR. JONES: Please excuse this juror.

1 THE CLERK OF COURT: You've been excused
2 from this particular case, Mr. March, thank you.

3 Juror number 76, Chantel James (black
4 female). What saith the State, Mr. Holt?

5 MR. HOLT: Please present Ms. James.

6 THE CLERK OF COURT: What saith the
7 Defense, Mr. Jones?

8 MR. JONES: Please seat the juror.

9 THE CLERK OF COURT: What saith the
10 Defense, Mr. Swilley?

11 MR. SWILLEY: Please swear Ms. James.

12 THE CLERK OF COURT: Please have a seat in
13 the jury box for me, Ms. James.

14 Juror number 77, Eboney Jett (black
15 female). What saith the State, Mr. Holt?

16 MR. HOLT: Please present Ms. Jett.

17 THE CLERK OF COURT: What saith the
18 Defense, Mr. Jones?

19 MR. JONES: Please seat the juror.

20 THE CLERK OF COURT: What saith the
21 Defense, Mr. Swilley?

22 MR. SWILLEY: Please swear Ms. Jett.

23 THE CLERK OF COURT: Please have a seat in
24 the jury box for me, Ms. Jett.

25 Juror number 80, Scott Jordan (white

1 male). What saith the State, Mr. Holt?

2 MR. HOLT: Please present Mr. Jordan.

3 THE CLERK OF COURT: What saith the
4 Defense, Mr. Jones?

5 MR. JONES: Please excuse the juror.

6 THE CLERK OF COURT: You've been excused
7 from this particular case. Thank you.

8 Juror number 123, Helen Smith (white
9 female). What saith the State, Mr. Holt?

10 MR. HOLT: Please present Ms. Smith.

11 THE CLERK OF COURT: What saith the
12 Defense, Mr. Jones?

13 MR. JONES: Please seat the juror.

14 THE CLERK OF COURT: What saith the
15 Defense, Mr. Swilley?

16 MR. SWILLEY: We'd excuse Ms. Smith from
17 the trial of this case.

18 THE CLERK OF COURT: You've been excused
19 from this particular case, Ms. Smith. Thank you.

20 Juror number 146, Steven Williams (black
21 male). What saith the State, Mr. Holt?

22 MR. HOLT: Please present Mr. Williams.

23 THE CLERK OF COURT: What saith the
24 Defense, Mr. Jones?

25 MR. JONES: Please seat the juror.

1 THE CLERK OF COURT: What saith the
2 Defense, Mr. Swilley?

3 MR. SWILLEY: Please swear Mr. Williams.

4 THE CLERK OF COURT: Please have a seat in
5 the jury box for me, Mr. Williams.

6 Juror number 63, Katherine Hines (white
7 female). What saith the State, Mr. Holt?

8 MR. HOLT: Please present Ms. Hines.

9 THE CLERK OF COURT: What saith the
10 Defense, Mr. Jones?

11 MR. JONES: Please seat the juror.

12 THE CLERK OF COURT: What saith the
13 Defense, Mr. Swilley?

14 MR. SWILLEY: Please excuse Ms. Hines from
15 this particular case.

16 THE CLERK OF COURT: You've been excused
17 from this particular case. Thank you.

18 Juror 34, David Dixon (white male). What
19 saith the State, Mr. Holt?

20 MR. HOLT: One moment, Mr. Clerk.

21 THE CLERK OF COURT: Okay.

22 MR. HOLT: Please present Mr. Dixon.

23 THE CLERK OF COURT: What saith the
24 Defense, Mr. Jones?

25 MR. JONES: Please seat Mr. Dixon.

1 THE CLERK OF COURT: What saith the
2 Defense, Mr. Swilley?

3 MR. SWILLEY: Please swear Mr. Dixon.

4 THE CLERK OF COURT: Please have a seat in
5 the jury box for me please.

6 Juror number 95, Brandon Melton (white
7 male). What say the State, Mr. Holt?

8 MR. HOLT: Please present Mr. Melton.

9 THE CLERK OF COURT: What saith the
10 Defense, Mr. Jones?

11 MR. JONES: Please excuse this juror from
12 this case.

13 THE CLERK OF COURT: You're excused from
14 this particular case, Mr. Melton.

15 Juror number 15, Michael Blackwell (white
16 male). What saith the State, Mr. Holt?

17 MR. HOLT: Please present Mr. Blackwell.

18 THE CLERK OF COURT: What saith the
19 Defense, Mr. Jones?

20 MR. JONES: Please excuse the juror.

21 THE CLERK OF COURT: You've been excused
22 for this particular case, Mr. Blackwell.

23 Juror number 132, Jamie Streett (white
24 male). What saith the State, Mr. Holt?

25 MR. HOLT: Please present Mr. Streett.

1 THE CLERK OF COURT: What saith the
2 Defense, Mr. Jones?

3 MR. JONES: Seat the juror.

4 THE CLERK OF COURT: What saith the
5 Defense, Mr. Swilley?

6 MR. SWILLEY: Please swear Mr. Streett.

7 THE CLERK OF COURT: Please have a seat in
8 the jury box for me, Mr. Streett.

9 Juror number 128, Lillian Stewart (black
10 female). What saith the State, Mr. Holt.

11 MR. HOLT: What was the juror's number,
12 Mr. Suggs?

13 THE CLERK OF COURT: 128.

14 MR. HOLT: Please present Ms. Stewart.

15 THE CLERK OF COURT: What saith the
16 Defense, Mr. Jones?

17 MR. JONES: Please excuse the juror.

18 THE CLERK OF COURT: You've been excused
19 from this particular case, Ms. Stewart. Have a seat
20 back out in the audience for me. Thank you.

21 Juror number 84, Barbara Lee (white
22 female). What saith the State, Mr. Holt?

23 MR. HOLT: Please present Ms. Lee.

24 THE CLERK OF COURT: What saith the
25 Defense, Mr. Jones?

1 MR. JONES: Seat the juror.

2 THE CLERK OF COURT: What saith the
3 Defense, Mr. Swilley?

4 MR. SWILLEY: We excuse Ms. Lee from the
5 trial of this case.

6 THE CLERK OF COURT: You're excused from
7 this particular case, Ms. Lee.

8 Juror number 144, Christopher White (black
9 male). What saith the State, Mr. Holt?

10 MR. HOLT: Please excuse Mr. White.

11 THE CLERK OF COURT: You've been excused
12 for this particular case, Mr. White.

13 Juror number 102, Phillip Parrell (white
14 male). What saith the State, Mr. Holt?

15 MR. HOLT: Please excuse this juror.

16 THE CLERK OF COURT: You've been excused
17 from this particular case, Mr. Parrell. Thank you.

18 Juror number 135, Franklin Swinton (black
19 male). What saith the State, Mr. Holt?

20 MR. HOLT: Please present Mr. Swinton.

21 THE CLERK OF COURT: What saith Defense,
22 Mr. Jones?

23 MR. JONES: Please seat the juror.

24 THE CLERK OF COURT: What say the Defense,
25 Mr. Swilley?

1 MR. SWILLEY: Please swear, Mr. Swinton.

2 THE CLERK OF COURT: Have a seat in the
3 jury box, Mr. Swinton?

4 Juror number 22, Kevin Byrd (white male).
5 What saith the State, Mr. Holt?

6 MR. HOLT: Please present Mr. Byrd.

7 THE CLERK OF COURT: What saith the
8 Defense, Mr. Jones?

9 MR. JONES: Please excuse the juror.

10 THE CLERK OF COURT: You've been excused
11 from this particular case, Mr. Byrd.

12 Juror number 20, Danielle Brown (white
13 female.

14 MR. HOLT: What number, Mr. Clerk?

15 THE CLERK OF COURT: Juror 20. What saith
16 the State, Mr. Holt?

17 MR. HOLT: Please present Ms. Brown.

18 THE CLERK OF COURT: What saith the
19 Defense, Mr. Jones?

20 MR. JONES: Please seat the juror.

21 THE CLERK OF COURT: What saith the
22 Defense, Mr. Swilley?

23 MR. SWILLEY: Please seat Ms. Brown.

24 THE CLERK OF COURT: Have a seat,
25 Ms. Brown.

1 Juror number 21, Sabrina Butler (white
2 female. What saith the State, Mr. Holt?

3 MR. HOLT: Please present Ms. Butler.

4 THE CLERK OF COURT: What saith the
5 Defense, Mr. Jones?

6 MR. JONES: Please seat the juror.

7 THE CLERK OF COURT: What saith the
8 Defense, Mr. Swilley?

9 MR. SWILLEY: Please excuse Ms. Butler
10 from the trial of this case.

11 THE CLERK OF COURT: You've been excused
12 from this particular case, Ms. Butler.

13 Juror number 113, Travis Ritenour (white
14 male). What saith the State, Mr. Holt?

15 MR. HOLT: Please present Mr. Ritenour.

16 THE CLERK OF COURT: What saith the
17 Defense, Mr. Jones?

18 MR. JONES: Please seat the juror.

19 THE CLERK OF COURT: What saith the
20 Defense, Mr. Swilley?

21 MR. SWILLEY: Beg the Court's indulgence.
22 Please swear, Mr. Ritenour.

23 THE CLERK OF COURT: Please have a seat in
24 the jury box for me, Mr. Ritenour.

25 Juror number 117, Joshua Sanderson (white

1 male). What saith the State, Mr. Holt?

2 MR. HOLT: Please present Mr. Sanderson.

3 THE CLERK OF COURT: What saith the
4 Defense, Mr. Jones?

5 MR. JONES: Please seat the juror.

6 THE CLERK OF COURT: What saith the
7 Defense, Mr. Swilley?

8 MR. SWILLEY: Please swear Mr. Sanderson.

9 THE CLERK OF COURT: Have a seat in the
10 jury box for me, Mr. Sanderson.

11 Juror number 140, Henry Walker (white
12 male). What saith the State, Mr. Holt?

13 MR. HOLT: Please excuse Mr. Walker.

14 THE CLERK OF COURT: Mr. Walker, you've
15 been excused for this particular case. Thank you
16 very much.

17 Juror number 35, James Dixon (white male).
18 What saith the State, Mr. Holt?

19 MR. HOLT: Please present Mr. Dixon.

20 THE CLERK OF COURT: What saith the
21 Defense, Mr. Jones?

22 MR. JONES: Please excuse the juror.

23 THE CLERK OF COURT: You're excused from
24 this particular case, Mr. Dixon. Thank you.

25 Juror 41, Jayme Ferger (white female).

1 What saith the State, Mr. Holt?

2 MR. HOLT: Please present the juror.

3 THE CLERK OF COURT: What saith the
4 Defense, Mr. Jones?

5 MR. JONES: Please seat the juror.

6 THE CLERK OF COURT: What saith the
7 Defense, Mr. Swilley?

8 MR. SWILLEY: Please excuse Ms. Ferger
9 from the trial of this case.

10 THE CLERK OF COURT: You've been excused
11 from this particular case, Ms. Ferger. Thank you.

12 Juror number 120, William Sims, Jr. (black
13 male). What saith the State, Mr. Holt?

14 MR. HOLT: This is number 120, Mr. Clerk?

15 THE CLERK OF COURT: Correct.

16 MR. HOLT: Please present Mr. Sims.

17 THE CLERK OF COURT: What saith the
18 Defense, Mr. Jones?

19 MR. JONES: Seat the juror.

20 THE CLERK OF COURT: What saith the
21 Defense, Mr. Swilley?

22 MR. SWILLEY: Please swear Mr. Sims.

23 THE CLERK OF COURT: Please have a seat in
24 the jury box for me, Mr. Sims.

25 Juror number 89, Michael McCallum (white

1 male).

2 MR. JONES: What number, Mr. Clerk?

3 THE CLERK OF COURT: 89.

4 MR. JONES: Sorry.

5 THE CLERK OF COURT: What saith the State,
6 Mr. Holt?

7 MR. HOLT: Please present the juror.

8 THE CLERK OF COURT: What saith the
9 Defense, Mr. Jones?

10 MR. JONES: Seat the juror.

11 THE CLERK OF COURT: What say the Defense,
12 Mr. Swilley?

13 MR. SWILLEY: We'd excuse Mr. McCullum
14 from the trial of this case.

15 THE CLERK OF COURT: You're excused from
16 this case, Mr. McCullum.

17 Juror number 145, Jeremy Widener (white
18 male). What saith the State, Mr. Holt?

19 MR. HOLT: Please present the juror.

20 THE CLERK OF COURT: What saith the
21 Defense, Mr. Jones?

22 MR. JONES: Please seat the juror.

23 THE CLERK OF COURT: What saith the
24 Defense, Mr. Swilley?

25 MR. SWILLEY: Please swear, Mr. Widener.

1 THE CLERK OF COURT: Please have a seat in
2 the jury box for me, Mr. Widener.

3 Juror 98, Shannon Munoz (white female).
4 What saith the State, Mr. Holt?

5 MR. HOLT: Please present Ms. Munoz.

6 THE CLERK OF COURT: What saith the
7 Defense, Mr. Jones?

8 MR. JONES: Please excuse the juror.

9 THE CLERK OF COURT: You've been excused
10 for this particular case, Ms. Munoz. Thank you.

11 Juror number 129, Frank Stoda, Jr. (white
12 male). What saith the State, Mr. Holt?

13 MR. HOLT: Please present the juror.

14 THE CLERK OF COURT: What saith the
15 Defense, Mr. Jones?

16 MR. JONES: Excuse this juror.

17 THE CLERK OF COURT: You've been excused
18 from this particular case, Mr. Stoda.

19 Juror number 36, John Early, Jr. (white
20 male). What saith the State, Mr. Holt?

21 MR. HOLT: Please present the juror.

22 THE CLERK OF COURT: Any reason to show
23 cause, Mr. Jones?

24 MR. JONES: No, sir.

25 THE CLERK OF COURT: What saith the

1 Defense, Mr. Swilley?

2 MR. SWILLEY: Please swear Mr. Early.

3 THE CLERK OF COURT: Please have a seat in
4 the jury box for me, Mr. Early.

5 THE COURT: All right, counsel, let's go
6 with the first alternate. one, two, and two.

7 THE CLERK OF COURT: Juror number 30,
8 Marquita Cotton (black female). What saith the
9 State, Mr. Holt?

10 MR. HOLT: Please present this witness.

11 THE CLERK OF COURT: What say the Defense,
12 Mr. Jones?

13 MR. JONES: Excuse this juror.

14 THE CLERK OF COURT: You're excused from
15 this particular case, Ms. Cotton.

16 Juror number 32, Elizabeth Davis (white
17 female). What saith the State, Mr. Holt?

18 MR. HOLT: Please present Ms. Davis.

19 THE CLERK OF COURT: What saith the
20 Defense, Mr. Jones?

21 MR. JONES: Please seat the juror.

22 THE CLERK OF COURT: What saith the
23 Defense, Mr. Swilley?

24 MR. SWILLEY: Please swear Ms. Davis.

25 THE CLERK OF COURT: Have a seat in the

1 jury box, Ms. Davis.

2 THE COURT: Counsel, second alternate,
3 same procedure.

4 THE CLERK OF COURT: Juror 44, Mary Folk
5 (white female). What saith the State, Mr. Holt?

6 MR. HOLT: Please present Ms. Folk.

7 THE CLERK OF COURT: What saith the
8 Defense, Mr. Jones?

9 MR. JONES: Excuse the juror.

10 THE CLERK OF COURT: You've been excused
11 from this particular case, Ms. Folk.

12 Juror number 11, Daniel Benton (black
13 male). What saith the State, Mr. Holt?

14 MR. HOLT: Please excuse Ms. Benton.

15 THE CLERK OF COURT: You've been excused
16 from this particular case, Mr. Benton.

17 Juror 73, Benjamin Jackson (black male).
18 Is there any reason for cause from the State,
19 Mr. Holt?

20 MR. HOLT: There is none.

21 THE CLERK OF COURT: What saith the
22 Defense, Mr. Jones?

23 MR. JONES: Seat the juror.

24 THE CLERK OF COURT: What saith the
25 Defense, Mr. Swilley?

1 MR. SWILLEY: Please swear Mr. Jackson.

2 THE CLERK OF COURT: Please have a seat in
3 the second chair outside the jury box for me,
4 Mr. Jackson.

5 THE COURT: Anything with regard to
6 striking of the jury on behalf of the State,
7 Mr. Holt?

8 MR. HOLT: There is none, Your Honor.

9 THE COURT: On behalf of the Defense,
10 Mr. Jones?

11 MR. JONES: No, sir.

12 THE COURT: Mr. Swilley?

13 MR. SWILLEY: No, Your Honor.

14 THE COURT: All right. Ladies and
15 gentlemen drawn in the trial of this case, I've been
16 advised that there are matters we need to take up
17 and handle before we can actually start the trial of
18 this case and we're going to do those for the rest
19 of the day. There are matters that have to be taken
20 up on the record and outside of your presence so I
21 am going to excuse you for the rest of today. What
22 I'm gonna ask that you do is go with the bailiff and
23 be back in your jury room please at 9:30 tomorrow
24 morning and we'll be ready to start at that time.
25 There are several things that I want to tell you

1 before I excuse you. First of all, later on in this
2 case I will allow the twelve of you that make up the
3 principal jury to select from among yourselves a
4 foreperson of the jury. When that foreperson is
5 selected that person should sit in the first seat
6 here on the front row. The alternate should always
7 sit in the two seats where they're seated outside
8 the jury box. The rest of the seats in the jury box
9 are not reserved, and it does not matter what order
10 you come and go to the courtroom. I would simply
11 ask that you go all the way down so it wouldn't be a
12 situation of crawling over one another, leaving the
13 first seat on the front row for the foreperson and
14 when that foreperson is selected and I will tell you
15 when to do that and the two seats on the outside for
16 the two alternates.

17 I would also tell you that when you are
18 assembling in the jury room in the morning or any
19 time throughout the trial of the case, it would be
20 improper for you to discuss this case at any time
21 until I tell you to begin your deliberations. You
22 should not discuss the case among yourselves until
23 all of the evidence is in and until you've heard the
24 arguments of counsel and the instructions on the law
25 by the Court. So whenever you're in the jury room

1 you can talk about anything you want to. Talk about
2 weather, sports, children, grandchildren, anything
3 at all, but don't talk about this case until I tell
4 you it is appropriate for you to do so. Also, while
5 you're away from the courthouse do not discuss the
6 case with anyone. This means that when you see your
7 family or your friends, do not discuss the case with
8 them. I know that at this point you don't know
9 anything about the case except what I have told you
10 the basic elements of the indictment are. But
11 nonetheless, it would be improper for you to discuss
12 this case with anybody, with your friends or with
13 your family, while outside the courtroom. Another
14 reason for that is pretty apparent. You've got to
15 decide the case based upon what you hear in this
16 courtroom and not on the basis of anything else that
17 you might learn from anybody else. Do not allow
18 anyone to discuss the case with you. If anyone
19 should approach you or try to talk to you about the
20 case, get their name and their description, report
21 it to the bailiffs. They will report it to me and I
22 will deal with them.

23 Also, do not do any research either by
24 either in newspaper or internet or anywhere else
25 with regard to this matter. In other words,

1 basically when you're away from the courthouse just
2 forget about the matter until you come back in the
3 courthouse and hear the evidence in this case.

4 With those admonitions then, I am going to
5 excuse you now, allow you to go about your business
6 for the rest of the day, and ask that you be back in
7 your jury room tomorrow morning at 9:30 and we will
8 have all these preliminary matters taken care of and
9 will be ready to go forward. Thank you. You may go
10 with the bailiff.

11 (WHEREUPON, the jury was removed from the
12 courtroom at 12:13 p.m., and the following
13 proceedings commenced in open court.)

14 THE COURT: All right, Mr. Jones,
15 Mr. Swilley, we're going to be in recess on this
16 case until 2:15 at which time we'll be back here
17 ready to take up the matters that y'all need to take
18 up so we will be ready to go forward at 2:15. We'll
19 be at ease on this case then until 2:15. All of the
20 parties that are involved in this matter are now
21 excused.

22 (WHEREUPON, a lunch break was taken.)

23 THE COURT: All right, back on the record
24 with regard to the matter of State versus Joshua
25 Reed and Johnathan Reed. The two defendants are

1 present in the courtroom with their attorneys. The
2 State is present represented by Mr. Holt and
3 Ms. Parker. During the lunch recess, Counsel, the
4 clerk advised me that a juror had come to their
5 office. A juror that was selected in the trial of
6 this case had come to their office, and we need to
7 address that first of all.

8 Ms. Carter, can you identify the juror
9 please.

10 THE CLERK OF COURT: Your Honor, he's in
11 the back of the room.

12 If you'll stand up.

13 THE COURT: What's your name, sir?

14 JUROR SWINTON: Franklin Swinton.

15 THE COURT: Come on up here.

16 THE CLERK OF COURT: Juror number 135.
17 Well, it's 18 on that. Come stand right here for
18 me.

19 THE COURT: All right. Counsel, that's
20 juror number 135, Mr. Swinton.

21 All right, Mr. Swinton, let me remind you
22 earlier this morning the Clerk administered the oath
23 to you so you are under oath. I need to ask you
24 some questions concerning your discussions with the
25 clerk's office in which you told them — apparently

1 you told the clerk's office you that did not believe
2 that you could serve as a juror in this case.

3 JUROR SWINTON: Yes, sir.

4 THE COURT: Why is that?

5 JUROR SWINTON: Well, it's a matter of
6 conscience. That's a religious reason why.

7 THE COURT: As a matter of conscience,
8 what do you mean?

9 JUROR SWINTON: Well, I'm a minister.

10 THE COURT: Yes, sir.

11 JUROR SWINTON: And I'm pretty much strict
12 and neutral when it comes to cases like this, and I
13 was wondering is there any possible way that another
14 juror could take my place in this particular case.

15 THE COURT: Well, of course you'll recall
16 that we went through the voir dire examination, and
17 one of the questions that I asked was does any
18 member of the jury panel know of any reason
19 whatsoever why he or she should not serve as a juror
20 in this case, and I didn't get any response from you
21 at that time.

22 JUROR SWINTON: Well, it was because of
23 the fact, sir, that I was really struggling against
24 my conscience. And I do apologize for, you know,
25 this being a last minute thing for me to bring it to

1 your attention. I had to think long and hard about
2 it.

3 THE COURT: Well, you say it's a religious
4 reason. You're a minister. Do you have a church?

5 JUROR SWINTON: I tend to a local kingdom
6 hall here in Darlington.

7 THE COURT: I'm sorry?

8 JUROR SWINTON: I tend to one of our local
9 kingdom halls here in Darlington. I'm one of
10 Jehovah witnesses.

11 THE COURT: Any questions you want to ask
12 this juror, Mr. Holt?

13 MR. HOLT: So it's your belief that you
14 couldn't pass judgment either way, either guilty or
15 not guilty?

16 JUROR SWINTON: Correct, sir.

17 MR. HOLT: That's it, Judge.

18 THE COURT: Mr. Jones, anything you'd like
19 to ask?

20 MR. JONES: I think the only question I'd
21 ask is, you said that you would have to be neutral
22 in a situation like this. I think that's what we're
23 all striving for is to get neutral parties who would
24 listen to the evidence and then make a decision
25 based on the evidence that's presented. Do you have

1 a problem with that?

2 JUROR SWINTON: Yes, sir, I do.

3 MR. JONES: And tell me what that problem
4 is.

5 JUROR SWINTON: Well, the problem — well
6 see, being that I'm a very, (inaudible) you know,
7 I'm not sure whether (inaudible) or not, but then
8 I'm very certifiable. I do believe that it's really
9 not in my place to pass any judgment on anybody
10 regardless. I was basically taught not to judge
11 because I was, you know, and I base my own decision
12 based on that, sir.

13 MR. JONES: It's not a matter of just
14 starting out neutral and being swayed by evidence.
15 You're saying you can't make a decision?

16 JUROR SWINTON: Exactly, sir.

17 MR. JONES: That's all.

18 THE COURT: Mr. Swilley?

19 MR. SWILLEY: And I'm sorry, can you tell
20 me again why — what prevented you from coming
21 forward with this beforehand.

22 JUROR SWINTON: Well, it was, it was a
23 struggle that I had with my conscience. I should
24 have said and I had I think (inaudible). And I do
25 apologize. I wish I had brought it up earlier and

1 did have the opportunity.

2 MR. SWILLEY: And sir, can you tell me,
3 can you discern whether or not you're not -- you
4 understand you're being asked to decide whether or
5 not the State has proven its case beyond a
6 reasonable doubt. I mean, that you take issue with?

7 JUROR SWINTON: I'm sorry?

8 MR. SWILLEY: Is that, I mean, do you
9 understand that the jury decides whether or not the
10 State has proven their case beyond a reasonable
11 doubt. I mean, you understand that's what it is the
12 jury does this?

13 JUROR SWINTON: Yes, sir.

14 MR. SWILLEY: Knowing that now do you
15 think that would, you know, that would inhibit you
16 from being able to sit on this jury?

17 JUROR SWINTON: Well, no, sir, I still
18 stick with my conscience decision.

19 MR. SWILLEY: Okay, but just so I'm clear,
20 you're telling me that you understand that you
21 decide that -- you understand that a jury comes to a
22 conclusion of whether or not the State has proven
23 that person guilty beyond a reasonable doubt. And
24 you do have a problem doing that, don't think you
25 can come to a decision doing that?

1 JUROR SWINTON: (Inaudible.)

2 MR. SWILLEY: Okay.

3 THE COURT: Motions, counsel, Mr. Holt?

4 MR. HOLT: Judge, I'd like him excused
5 from the jury, and my argument is economical.
6 Whether he comes back guilty or not guilty, that's
7 only part of my job. The other party of my job here
8 is to move the docket. And I think that with a
9 hundred percent that this jury is gonna come through
10 -- and it might not be today, it might be tomorrow,
11 might be Wednesday -- and he just looks like a
12 mistrial waiting to happen. We have the alternates.
13 I'd rather get rid of him now to insure that I don't
14 have to try the case multiple times.

15 THE COURT: Mr. Jones?

16 MR. JONES: I don't have a problem with
17 you releasing him.

18 THE COURT: Mr. Swilley?

19 MR. SWILLEY: I take no -- I don't have a
20 problem with this jury here leaving.

21 THE COURT: Well, that's my concern of
22 course, is that this gentleman has testified that he
23 would not be able to make a decision either way and
24 that would just result in a -- whatever we did this
25 week being futile and being mistrial and that's

1 something we don't need to do no matter whether it's
2 for guilt or for innocence.

3 My concern, Mr. Swinton, is the fact that
4 this has caused the Court some problems and caused
5 everybody here some problems because these very
6 questions were asked before we ever drew the jury
7 and you didn't come forward and tell us that you
8 have a problem at that time. And if that had been
9 the case we would have excused you before it ever
10 got drawn and then we could have drawn additional
11 jurors. What it amounts to now is that we got two
12 alternates and we're gonna replace, put one of those
13 alternates on the jury and that only leaves us one
14 alternate. But if we have another problem, we still
15 could have a mistrial simply by your not coming
16 forward earlier and telling us that this was a
17 problem. That's the reason for asking these
18 questions. And for that reason I'm not going to —
19 I'm going to excuse you from this jury. I'm also
20 going to not require that you come back as far as
21 general sessions court is concerned.

22 But Madam Clerk, I want him transferred to
23 Common Pleas, and he'll have to serve as a juror in
24 Common Pleas court where he's not sitting in
25 judgment of his fellow man.

1 THE CLERK OF COURT: Yes, sir.

2 THE COURT: Okay. You'll be excused.

3 You're get another notice and you'll have to come
4 back to the court when there's civil court going on.

5 JUROR SWINTON: Thank you, sir.

6 (Juror was excused.)

7 THE COURT: All right. And while we're
8 don't that, Madam Clerk, if you'll put the names of
9 the two alternates in a hat and we'll have one of
10 those honest looking deputies around here, if we can
11 find one, draw one of the two names. Those would be
12 Elizabeth Davis is one of the alternates, juror
13 number 32; and Benjamin Jackson, juror number 73, is
14 the other alternate.

15 THE CLERK OF COURT: We don't have a
16 deputy.

17 THE COURT: Well, let the bailiff do it.

18 THE CLERK OF COURT: Your Honor, the juror
19 that we're gonna select to put on the panel will be
20 Benjamin Jackson.

21 THE COURT: All right, that's juror number
22 73 will take the place of the juror. All right,
23 counsel, any objection to the procedure of excusing
24 the one juror for reasons stated on the record and
25 selection of the alternate juror on behalf of the

1 State, Mr. Holt, any objection?

2 MR. HOLT: No objection, Your Honor.

3 THE COURT: Mr. Jones?

4 MR. JONES: No, sir.

5 THE COURT: Mr. Swilley?

6 MR. JONES: There's not, Your Honor.

7 THE COURT: All right, fine. Thank you,
8 Counsel. I understand there's some pretrial
9 motions. Let's find out what we got. Before we go
10 forward I was advised in chambers that Mr. Jones I
11 believe -- are there any pretrial motions on behalf
12 of the State, Mr. Holt?

13 MR. HOLT: There are none.

14 THE COURT: Mr. Jones, I understand you
15 had one with regards to identification; is that
16 correct?

17 MR. JONES: I do, Your Honor.

18 THE COURT: All right. Give me a little
19 summary about what the identification issue is and
20 what the motion is.

21 MR. JONES: Your Honor, we got three
22 witnesses who have picked, actually picked both of
23 the defendants out of a lineup.

24 THE COURT: A live lineup or photo lineup?

25 MR. JONES: Photo lineup.

1 THE COURT: Okay.

2 MR. JONES: And I have issues that the
3 photo lineup itself was...

4 THE COURT: Unduly suggestive?

5 MR. JONES: It really was in my opinion,
6 Your Honor. And the first prong, the second prong
7 — I think we're probably going to take some
8 testimony from the witnesses or from perhaps a
9 couple of the law enforcement people as to whether
10 or not the other identifications were so reliable as
11 to override the fact that the lineups were unduly
12 suggestive.

13 THE COURT: I understand the Biggers
14 factors in connection to this matter. Are the —
15 it's a two prong inquiry as to the process was
16 unduly suggestive and subject to whether the
17 out-of-court I.D. was so reliable that there's no
18 substantial likelihood of misidentification. That's
19 the inquiry under the Biggers matter. All right, so
20 the motion has been made by Mr. Jones as to his
21 client.

22 Mr. Swilley, you join in that motion?

23 MR. SWILLEY: I am, Your Honor, for the
24 record.

25 THE COURT: And that's your only motion,

1 Mr. Jones?

2 MR. JONES: It is, Your Honor. We are
3 working on some issues dealing with the statement of
4 the defendant Joshua Reed, which I believe we're
5 going to be able to resolve with Mr. Holt.

6 THE COURT: Take care of all Jackson v.
7 Denno matters —

8 MR. JONES: Yes, sir.

9 THE COURT: —voluntariness? Okay. All
10 right, we'll give you a chance to do that.

11 All right, Mr. Swilley, you also have a
12 motion in connection, a motion for suppression of
13 all the results of the search warrant. Is that —
14 or the search, I don't know whether it was a warrant
15 or not.

16 MR. SWILLEY: There was, Your Honor.
17 There was a search warrant of ■ Lincoln Avenue in
18 Hartsville as well as a search warrant of the
19 address of ■ Lincoln Avenue in Hartsville. I'm
20 not contesting the, whether or not there's probable
21 cause to search the home. However, I'm moving to
22 suppress anything that was found at ■ Lincoln
23 Avenue on the basis of relevance and which is Rule
24 402 and on the basis of the Court finding there is
25 any relevance of anything found, that any

1 introduction of such evidence would be a violation
2 of Rule 403 and substantially more prejudicial than
3 probative. Your Honor —

4 THE COURT: But you're not moving to
5 suppress the results of the search on the basis of
6 no probable cause.

7 MR. SWILLEY: I mean, there was probable
8 cause to search the home. It's just nothing that
9 was uncovered that's relevant evidence in this case.

10 THE COURT: What is the evidence that you
11 don't, you think outweighs the prejudicial effect
12 outweighs the probative value?

13 MR. SWILLEY: Well, Your Honor, everything
14 —

15 THE COURT: Or is not relevant. What's
16 the evidence that you think they've got that they
17 want to use? I mean, I can't really rule on it till
18 they introduce it but.

19 MR. SWILLEY: I understand that. Well,
20 there was a .45 caliber Cobra patriot handgun found.
21 There was a red Eliza (ph) dart box. There was
22 several boxes of 45 caliber 38 Special rounds found,
23 bags of marijuana, 15 photographs, a letter to my
24 client from another individual in the Department of
25 Corrections, my client's driver's license, a couple

1 of pair of rubber croc shoes, a couple of other
2 rounds. It's my understanding a bag of marijuana as
3 well as some 9 by 18 Makorov (ph) rounds and some 38
4 blue elliptical shaped pills with no imprint. None
5 of which was found here has any logical relevance to
6 the case at bar. And the allegations are that the
7 decedent Mr. Hunter, Mr. Hunter Campbell, was shot.
8 There were rounds uncovered from his person which
9 when sent to SLED they didn't come back as rounds
10 that are consistent with the rounds that was fired
11 in a 38 or 357 magnum revolver. There were no shell
12 casings that were found at the scene.

13 Your Honor, when law enforcement
14 interviewed the three eyewitnesses, none of which
15 ever claimed my client had a gun, that was never —
16 that he had a gun used a gun, encouraged anyone to
17 use a gun. They conducted search warrant on both
18 his and his brother's homes which I believe are
19 duplexes in the same building and then uncovered as
20 evidence. There's nothing that suggests that there
21 was a .45 caliber Cobra patriot gun used. There was
22 never juxta position with bullets that were found in
23 Milton Hunter Campbell with anything that was found
24 in the home of my client. There was never any kind
25 of analysis that juxta posed if the bullet found in

1 the decedent, and bullets in the house were the same
2 make or model other than same gig or same round so
3 anything that would have been introduced as to that
4 would be completely irrelevant and it were court
5 find it had any relevance is extremely prejudicial.

6 THE COURT: Well, I'm gonna have to wait
7 and see. We'll get to that in a few minutes. The
8 more — the one we need to take up first is the
9 matter of the ID. Let's take care of that and we'll
10 come back to the results of the search and determine
11 whether that is a matter that can be handled in
12 pretrial motion. All right, Mr. Holt, the State
13 [sic] has made a motion to suppress the
14 identification of the defendant under the Biggers
15 case and the State cases construing it, and so the
16 burden shifts to the State to show that the
17 identification was not unduly suggestive and that it
18 was so reliable that no substantial likelihood of
19 misidentification exists so I'll allow you to put up
20 any witnesses you wish to put up in that regard.

21 MR. HOLT: Thank you, Your Honor. If it
22 please the Court, the State would like to call Asia
23 Gregg to the stand.

24 THE COURT: All right, come around please.

25 THE CLERK OF COURT: Put your left hand on

1 the Bible, raise your right hand please.

2 WHEREUPON,

3 **ASIA GREGG,**

4 having been duly sworn by the Clerk of Court,

5 testified as follows:

6 THE CLERK OF COURT: If you will have a
7 seat.

8 **PROFFER EXAMINATION**

9 BY MR. HOLT:

10 Q Ms. Gregg, how old are you?

11 A 25.

12 Q And could you please state your whole name for
13 the record?

14 A Asia Lawan (ph) Gregg.

15 Q And where are you from?

16 A Hartsville, South Carolina.

17 Q And have you ever testified in court before?

18 A No.

19 Q And are you an only child?

20 A No.

21 Q And who were your siblings?

22 A Milton Hunter was and Shakobe Ashalique (ph)
23 Gregg.

24 Q And what was the highest point of education you
25 reached before stopping?

1 A 11.

2 Q 11th grade? And on February 15th, 2012, did you
3 have occasion to visit Pride Park?

4 A Yes.

5 Q And what were you doing, what was your plan?

6 A Before we got there I called my brother Milton
7 Hunter on the phone to ask him was he coming uptown
8 that day, and he said he was. He was with a prior
9 friend of his. And he asked me to get him something
10 to eat 'cause I was on my way to Yogi Bear to get me
11 something to it. Me and my ex-boyfriend Johnny Lee
12 Washington. And on the way there he called me and
13 told me to get him something to eat, and I got him a
14 Boo Boo box as well as myself and Johnny Lee and we
15 met up at the park.

16 Q All right. Who was at the park with you, all
17 combined?

18 A All combined it was Milton Hunter, my brother,
19 me, Johnny Lee Washington, and Chip — I call him
20 Chip.

21 Q All right. And did someone come and join y'all?

22 A At that time, no.

23 Q All right. And can you tell us what happened
24 from there?

25 A We was all sitting there eating, just talking.

1 My brother got up from the table, the picnic table
2 that we was at, and he was going across the street
3 to the barber shop to the soda machine to get him a
4 soda. And on his way coming back, the Reed brothers
5 was in a blue truck and they passed by one time. My
6 brother seen it but kept walking and came towards
7 the park. And he said, what's wrong. And I'm
8 looking at him like, just, just looking at him like
9 out of space just staring at him like. And he
10 wasn't really saying nothing. And I'm like, Milton
11 what's wrong. He was like, them boys just rolled
12 by. I'm like, what boys. He said them Reed boys. I
13 said, okay, we ain't going to be at the park long,
14 come on, let's hurry up and eat.

15 MR. JONES: Your Honor.

16 THE COURT: Yes, sir.

17 MR. JONES: It was just brought to my
18 attention by the Solicitor. We have a reason to
19 sequester witnesses. We've got all the witnesses in
20 here. I think it might be appropriate.

21 THE COURT: Yeah, I think it is
22 appropriate in this case.

23 Sequester the witnesses, Mr. Holt. If you
24 will take care of the other witnesses on this issue.

25 MR. HOLT: I can, Your Honor.

1 THE COURT: All right.

2 (Pause.)

3 MR. HOLT: How about law enforcement
4 witnesses, Your Honor?

5 THE COURT: Well, I think if they're a
6 part of this questioning, yes, sir, they'll have to
7 be sequestered. If you're going to put them up on
8 the issue of the I.D. and the procedure of I.D. and
9 I think anything that goes with the issue of.

10 MR. HOLT: I wasn't aware that it
11 pertained to the hearing.

12 THE COURT: Okay, that's fine.

13 Go ahead, Ms. Gregg.

14 Go ahead and ask your next question, Mr.
15 Holt. Let's get back on track.

16 BY MR. HOLT:

17 Q You said -- what happened after the Reed brothers
18 drove by?

19 A He walked back into the park and he was like,
20 man. I was like, what's wrong. He wasn't saying
21 anything so I was staring at him like out of space
22 trying to get his attention like, Wop, tell me
23 what's going on what's wrong.

24 Q And for the judge and the court reporter and
25 everyone else, who was is Wop?

1 A Milton, his nickname.

2 THE COURT: Who is that?

3 THE WITNESS: My brother Milton Hunter.

4 THE COURT: Okay.

5 THE WITNESS: And I asked him, I asked him
6 again, I said him what's wrong. He was like, them
7 Reed boys just rolled by. I said, well don't worry
8 about it, we ain't going to be at the park long,
9 let's just hurry up and eat. So in the process of
10 us hurrying up and eating and me taking my box to
11 the trash can they rolled by again, and the
12 direction that they rolled by was from left to
13 right. So they was leaving like coming from Hair so
14 Lovely Tina Salon towards Piggly Wiggly where the
15 railroad track is, going back that way.

16 BY MR. HOLT:

17 Q Uh-huh.

18 A Okay. My brother called my cousin and asked
19 him — he called my cousin Kenneth Dubose and asked
20 him where he was. Kenneth say they was on Jasper
21 and he said, what's up. Milton said, them Reed boys
22 rode by again. Kenneth say, did they say anything
23 to you. Wop said, Milton said, no. He was like,
24 all right. Kenneth say, I'm on my way. And
25 approximately us finish eating up, finished, you

1 know, throwing our stuff away or whatever, Milton
2 stood up. And I asked Milton what he stood up for
3 and he was like, 'cause them boys keep riding by.
4 And I was like, don't worry about it, let's just
5 hurry up and go. And in the process of us sitting
6 there, we was about to get up and go, they came from
7 this end of the street and parked their car where
8 the truck right here beside where they park the
9 funeral home cars and such inside the garage then.
10 A patrol car from them get another patrol car went
11 pass them. They stayed in the car until the patrol
12 car got to the stop sign and made a right. That's
13 when they got out. When they got out they entered
14 the park. My brother stood up. My words to my
15 brother was, if anything go down I'm wit you, I'm
16 not gonna let you fight by yourself. Those were my
17 words to him. He said okay. My brother stood up.
18 I stood up beside him. Joshua came in the park
19 first and Johnathan was behind him. Joshua gave
20 Johnny Lee dap first, and then he gave my brother
21 dap.

22 Q Dap?

23 A Handshake, like (indicating), whatever. That
24 kind of handshake.

25 Q Okay.

1 A Johnathan stood on the side where John Lee was
2 sitting. Picnic table was kind of slanted like this
3 way. I was sitting here. Milton was sitting here.
4 Johnny Lee was sitting here. When they entered
5 Joshua came in first. Johnathan came behind him.
6 Joshua gave Johnny Lee dap first and give my brother
7 dap, I was still standing beside my brother.

8 Q How close were you to the defendants?

9 A Arm reach.

10 Q And could you see their faces?

11 A Yes.

12 Q What was the weather like that day?

13 A It was, it was good weather. It was kind of warm
14 a little bit, but it still ---

15 Q Was there any ---

16 A ---had a chill.

17 Q Was there anything hampering you from viewing
18 them?

19 A No.

20 Q Go ahead.

21 A He gave Milton -- he gave Johnny Lee dap first
22 and he gave my brother dap, Milton Hunter. He gave
23 Milton dap. So, in the process of that some words
24 was exchanged. He -- Joshua asked Milton, did you
25 talk to your big brother. Milton said, yes,

1 everything is squash.

2 Q And squash means?

3 A I get — everything is done, dealt with, nothing
4 more to deal with it.

5 Q Okay.

6 A Johnathan said, hum, really. Five seconds after
7 that Joshua took — it was a silver revolver out of
8 his pocket and just started shooting. The first
9 shot scared Milton to the point where his hands was
10 in his pocket. When the first shot went off he
11 jumped like he was scared, like it shot him. Right
12 after the first shot three more came right behind
13 it.

14 Q Did you have occasion to look and see what
15 Johnathan was doing while his brother Joshua was
16 shooting?

17 A Standing there. He was just standing there.

18 Q And did he have a gun on his person?

19 A Yes, he did. He had a gun in his pocket on
20 Johnny Lee Washington.

21 Q And what did you believe the purpose of Johnathan
22 having a gun pointed at Johnny Lee Washington?

23 A So Johnathan wouldn't try to interfere with
24 anything that was going on or to scare him to
25 tell — or to warn him, don't jump in or don't do

1 —

2 Q How long do you think this lasted from the time
3 the Reed brothers walked into the park to the time
4 they escaped the park? How long do you think that
5 was?

6 A I'd say it happened in a good bit of 30 seconds.

7 THE COURT: I'm sorry, how long?

8 THE WITNESS: A good bit of 30 seconds.

9 BY MR. HOLT:

10 Q Not once they approached you and y'all started
11 talking?

12 A Oh, from the time they entered into the park?

13 Q I'm talking about from the time they entered the
14 park till the time they ran from the park?

15 A I'd say about 30 to 35 minutes.

16 Q And that's just an estimate, right?

17 A Yeah, just an estimate.

18 Q All right. And once the incident was over what
19 did the suspects do?

20 A Johnathan pulled Joshua by the coat and was like,
21 come on, come on, come on. Joshua, he had on some
22 crock shoes like the ladies at the hospital wear
23 with the holes at the top. His shoes was about to
24 come off so I guess he was trying to wiggle his foot
25 back in his shoe and his brother was trying —

1 pulling his coat, come on, come on. And they just
2 ran to the truck. And in the process of them
3 running to the truck and trying to crank the truck,
4 u, a bottom piece of the pipe from under the truck
5 fell off and it just sped off. And in the process
6 of speeding off it was just a bunch of black smoke
7 behind the truck.

8 Q And about how soon after the incident did you
9 report this to law enforcement?

10 A I was in shock. I'd say almost by the time they
11 got out the park, by the time they got out the
12 little gate I was on the phone with my mom. Chip
13 actually was on the phone with the 9-1-1.

14 Q Okay. And did the officers question you about
15 this?

16 A Yes, a officer did question me. They asked me
17 did I see who did it and what did they look like,
18 describe them, what kind of clothes they was wearing
19 and what direction they was, they left in, and what
20 color vehicle they was in.

21 Q And what did you tell the police?

22 A I told them, um, that it was, um, I didn't know
23 his -- at first I didn't know, like, his whole name
24 but I called him Juby 'cause that's what I knew him
25 by, Juby. And he was like, Juby. And I was like,

1 Juby, but I know their last name is Reed. And he
2 asked me to describe the clothes that they had on.
3 I told them that Joshua had on some little clogs
4 that the nurses, nurse ladies wear at the hospital.
5 He had on like a little flanny jacket that zips up
6 with the little hoodie. He had on some light
7 colored almost like, kind of like sweat pants or
8 something, something like jogging sweat pants that
9 you exercise in. I didn't really pay attention to
10 what Johnathan had on 'cause my focus wasn't on him;
11 he was on the other side. My focus was on Joshua
12 'cause he was right there in front of my brother.

13 Q Okay. Now let me ask you this, did the police
14 have occasion to show you a photo line-up?

15 A Yes, they came — actually they came to my house
16 after I left the hospital, Carolina Pines, and it
17 was a white — it was a causation tall bald head
18 guy.

19 Q Okay. Did he show you a line up?

20 A Yes.

21 Q And were you able to pick the defendants out of
22 the line-up?

23 A Yes.

24 Q The people that had shot your brother, were you
25 able to pick them out of a line-up?

1 A Yeah, he showed me three pieces of paper with at
2 least six photos on it, and he told me to look and
3 see. He said, do you see the person who shot your
4 brother? And I said yes. He said could you point
5 to that person and I pointed to Joshua. And he told
6 me to circle it and initial it. He said, do you see
7 anybody else in this lineup that was with Joshua? I
8 said, yes, right there, Johnathan. He told me to
9 circle it and initial it.

10 Q And how certain were you on a scale of one
11 percent to a hundred percent that who you picked out
12 in the lineup was who shot your brother?

13 A I'm a hundred percent. They were in my face,
14 arms reach.

15 Q And when the police were showing you this lineup,
16 did they tell you who to pick?

17 A No, they didn't.

18 Q And did they suggest anybody for you?

19 A No, they didn't. They just handed me a piece of
20 paper and said do you see the person that shot your
21 brother. Those are their words.

22 Q Did in any way type or system did they influence
23 who you picked?

24 A No.

25 Q Please answer any questions that Defense has,

1 okay?

2 A Okay.

3 THE COURT: Mr. Jones.

4 MR. JONES: Yes, sir. Thank you.

5 **CROSS-EXAMINATION**

6 BY MR. JONES:

7 Q Ms. Gregg, I need to ask you a couple of
8 questions starting with the amount of time that you
9 just testified to that this accident took place from
10 start to finish. Did I understand you to say that
11 from the time the individuals got out of a truck and
12 entered the park until the time that they left was
13 30 to 35 minutes?

14 A Yes.

15 Q What did you do —

16 A It's a estimate.

17 Q What did you do for 30 to 35 minutes?

18 A I was standing beside my brother. From the time
19 that they were walking in my brother got off the
20 bench and I stood up beside him.

21 Q And the conversation that you just described that
22 took place, was that the only conversation?

23 A That the Reed brother and my brother had?

24 Q That everybody had that was right there?

25 A Yeah, that was the only conversation.

1 Q All right. And that conversation as you just
2 described it to me would have taken about a minute
3 or two. What'd you do the other 30, 31, 35 minutes?

4 A Just standing there.

5 Q Everybody just stared at each other for 30, 35
6 minutes?

7 A After Joshua asked, did you talk to your big
8 brother and my brother said, yeah everything is
9 squash, Johnathan said, huh, really. And it was
10 just dead silence. They were stare — like, I don't
11 want to say mean, like a lot of people don't know
12 what mean like mean; but like a strange look as of
13 like anybody can give you a look like this, your
14 definition like this (indicating) what would your
15 definition be like?

16 Q Do you watch TV?

17 A Yeah.

18 Q All right. Give me an example of a time period
19 of 30 to 35 minutes from a television show that you
20 watch?

21 A Does that include commercials?

22 Q Yeah, whatever you want it to include.

23 A Okay. I watch a lot of Law and Order.

24 Q Okay.

25 A From the time Law and Order comes on until the

1 first commercial is the 30, 35 minutes.

2 Q Okay, that would be your estimate of the time?

3 A Yeah.

4 Q Okay, thank you. Now let me go back and ask a
5 couple more questions. I think I heard you say all
6 of this goings on around Pride Park occurred while
7 you, Mr. Washington, and Chip were in the park
8 eating; is that correct?

9 A Correct.

10 Q Okay. And I thought I heard you say that
11 individuals were driving by in a blue truck; is that
12 correct?

13 A Correct.

14 Q Okay. And I think I also heard you say that you,
15 when you — when all this occurred, that the actual
16 violent part of the confrontation took about 30
17 seconds?

18 A Yes, sir.

19 Q Is that correct?

20 A Yes, sir.

21 Q Okay. And during that period of time you were
22 arms length away?

23 A Yes, sir.

24 Q All right. Do you know Mr. Joshua Reed?

25 A Yes, sir.

1 Q All right. How did you know him?

2 A I went to school with him.

3 Q All right. And what grades were you in school
4 with Mr. Reed?

5 A I was two grades above him.

6 Q Okay. And would you consider yourselves to be
7 friends?

8 A No, I mean, acquaintances.

9 Q Acquaintances.

10 A The last time I seen Joshua before this event was
11 like in a grocery — as a matter of fact it was in
12 IGA. I seen him at IGA, but it wasn't a hey or a
13 bye. It was just a look, and you know, I mean, I —
14 it wasn't conversation between us. I mean, it's
15 been so long since any conversation or any talking
16 of any of that nature. It was just a glance of,
17 okay, I know that person and just keep it moving.
18 But as far as communication and all that, no.

19 Q You knew him by name?

20 A Yes.

21 Q All right. When you first were asked by law
22 enforcement to tell them what happened and who might
23 have been involved in this, how long was it after
24 the event happened? Was it the same day?

25 A Yeah, it was the same day.

1 Q Okay.

2 A As soon as it happened it took dispatch about no
3 more than like five minutes to get there, and when
4 they got there they started questioning me.

5 Q All right. And the statement that you gave that
6 was videotaped, do you remember that?

7 A Yes.

8 Q When was that?

9 A This was two days after.

10 Q All right.

11 A If I'm not mistaken.

12 Q And do you remember what you said during that
13 video statement? You don't have to repeat the whole
14 thing, if you just are familiar with your statement.

15 A Yeah, I'm familiar with it.

16 Q Why would you call Mr. Reed Rail (ph) at that
17 period?

18 A Rail?

19 Q Yeah.

20 A At the time I was trying to remember their last
21 name and Rail came out; and then I was like, no, no,
22 no, it's not Rail, it's Reed.

23 Q And do you recall describing the tall one with
24 short hair as Johnathan?

25 A No, I don't recall that.

1 Q You don't remember that?

2 A No.

3 Q If I read you a statement that said which one of
4 the two did you believe was Johnathan and your
5 answer was, oh, I know which one was Johnathan, the
6 tall dark skinned one because that's my class mate.
7 Do you admit or deny saying that?

8 A I don't recall saying that was my class mate. I
9 don't recall that.

10 Q Okay. How about the answer to the question about
11 the younger one with dreads. Do you know your
12 answer do that question?

13 A Juby, yeah.

14 Q And if the video statement says I think his name
15 was Joshua, would that be correct or incorrect?

16 A I have no recall of that.

17 Q You don't remember saying that?

18 A No.

19 Q Okay. Who is Chip?

20 A Chip is the other witness that was there.

21 Q Did you know him?

22 A No, sir, just by hearsay. I don't know him
23 personally.

24 Q Did you, Mr. Washington, and Chip are the actual
25 three people there —

1 A Yes.

2 Q —and your brother were the only ones there when
3 this happened?

4 A Yes, sir. That was in the park at that time when
5 it happened, yes, sir.

6 Q And when did you get to know Ship by, Chip or
7 Ship?

8 A I really didn't get to know him until he came to
9 the setting up. He was there at the park during the
10 time it happened. I mean, he wasn't over there like
11 talking to us. It was me, my brother Johnny Lee at
12 the picnic table eating, having conversation to
13 ourselves. Chip was already in the park and he was
14 by his car.

15 Q Were you introduced to him then that day?

16 A No.

17 Q And the setting up was when?

18 A The setting up happened, the setting up — a lot
19 of people was at the house that night, the same day
20 it happened that night, was when everybody came to
21 the house and, you know, was giving their remorse
22 and stuff.

23 Q And do you recall questioning during your video
24 statement that says, I just know him by Chip?

25 A Yes.

1 Q Okay. But you didn't know him prior to this
2 time?

3 A No.

4 Q Okay. Did all of y'all talk about what happened?

5 A No.

6 Q Didn't talk about it at all?

7 A No, because after that incident I never seen Chip
8 again.

9 Q How about at the setting up, did he not come to
10 the setting up?

11 A He came to the setting up that night.

12 Q Did y'all talk about it then?

13 A No, 'cause I was in the -- I was so shaken up I
14 didn't want to talk to nobody. Only person I spoke
15 to was the investigator that came to the house.

16 Q All right. And how about when right after the
17 events happened everybody, I assume, was very upset
18 and very excited, would that be an understatement?

19 A Yes, sir.

20 Q Did y'all discuss the matter among yourselves,
21 you, Mr. Washington, and Chip at that time?

22 A No, sir, because at the setting up I was there
23 and Chip was there, and Johnny Lee didn't come until
24 the next day.

25 Q Move back -- well, before y'all left the park did

1 y'all all discuss this?

2 A No, sir, because at the time I was being
3 questioned by the officer and Chip was still in the
4 park. I guess he was on his phone and John Lee
5 wasn't in the park anymore.

6 Q Okay, that's all I have. Thank you.

7 THE COURT: Mr. Swilley.

8 **CROSS-EXAMINATION**

9 BY MR. SWILLEY:

10 Q Asia, you said it was a blue truck they were
11 driving?

12 A Yes, sir.

13 Q Even though (inaudible) green truck ---

14 A A bluish green truck, ---

15 Q ---green truck?

16 A ---like a maroon.

17 Q A maroon? That's red; isn't it?

18 A Like, no, I mean ---

19 Q What color was it?

20 THE COURT: Wait a minute.

21 THE WITNESS: It's like a bluish green.

22 BY MR. SWILLEY:

23 Q Okay. Like a teal would you say?

24 A I'm trying to see a color. It's like, almost
25 like the color in the background of that second

1 picture but a little bit darker. You know where
2 that curtain is right there, the color on the inside
3 blue but it's like, it was kind of like a greenish
4 blue; but more of it was like a blue.

5 Q Okay. And you said that when they were walking
6 up it was Joshua first and then Johnathan walking
7 behind him?

8 A Yes.

9 Q All right. You said they walked up, right. And
10 who gave Johnny Lee dap first?

11 A Joshua gave Johnny Lee and my brother dap.
12 Johnathan didn't do anything.

13 Q Johnathan never gave anybody dap?

14 A No.

15 Q Okay. Didn't shake anybody's hand?

16 A No.

17 Q Okay. And then you said that it was -- they sat
18 there and -- what did you guys talk about for 30
19 minutes?

20 A I didn't talk about anything.

21 Q You were sitting right there, right?

22 A Yeah.

23 Q Okay.

24 A When they came in the park Joshua came in first
25 and Johnathan came behind him.

1 Q Right.

2 A Johnathan came up and gave Johnny Lee dap and
3 give my brother dap. Johnathan was standing beside
4 John. Joshua was in front of my brother and I was
5 beside my brother. And the words that Joshua said
6 was, did you talk to your big brother. The words
7 that my brother said was, yes, everything is squash.
8 Johnathan said, oh really. That when Joshua said,
9 okay, or whatever. He didn't say anything but he
10 was just standing there with that look on his face
11 like (indicating.)

12 Q And you said it was — it was Joshua that said,
13 oh really, when you talked to Terry Anderson, right?

14 A No, I said —

15 Q Oh, really?

16 A —Johnathan said, oh, really. Joshua is the one
17 that said did you talk to your big brother.

18 Q And today is the first time that you said that it
19 was Johnathan that said, oh really, right? Now you
20 never said that before, have you?

21 A Said what before?

22 Q You said it was, and you said it was — or you
23 said the Reed brothers said we'll talk, remember
24 that, when you talked to Terry Anderson? And then
25 you said Milton said, I done talked to my big

1 brother so everything is squash, right?

2 A Uh-huh.

3 Q So Milton was saying he had already talked to
4 whom?

5 A His big brother —

6 Q Who is?

7 A —as in big brother. I don't know what that
8 means.

9 Q Really?

10 A He just said big brother.

11 Q Okay, all right. And then you told Terry
12 Anderson it's just somebody he calls his big
13 brother, right?

14 A I guess it's somebody. I mean, big brother, that
15 could be somebody he call big brother or a home boy
16 he can say, what up, big bro. I don't know what big
17 brother means. All I heard him say was did you talk
18 to your big brother.

19 Q Okay. And then you said the Reed brother was
20 like, the words that he said was, oh really, right?

21 A Uh-huh.

22 Q And you were talking about Joshua there, right?

23 A I was talking about Johnathan. Johnathan said,
24 oh really.

25 Q Okay. And after he said, oh really, he went out

1 and just started shooting?

2 A Joshua —

3 Q All right.

4 A —came out and started shooting.

5 Q All right. And he had a gun, and Joshua had the
6 gun in what hand, his right or left hand?

7 A Joshua had the gun in his left hand.

8 Q Okay. But then you told Terry Anderson it was
9 his right hand, right?

10 A I don't recall that because Terry Anderson didn't
11 never — I don't recall him asking me what hand that
12 he had a gun in.

13 Q Okay. And he took the gun out of his pants
14 pocket, right?

15 A Correct.

16 Q Okay. And then you told Terry Anderson it was
17 out of his hoodie, right?

18 A I don't recall that.

19 Q Sure, okay. And you knew, you said you went to
20 school with Joshua, right?

21 A Uh-huh.

22 Q And he was two grades below you?

23 A Yes, I'm 25. I'm thinking he's, what, 23, 22,
24 23.

25 Q So if Johnathan was in three grades below you,

1 right?

2 A I don't know how old he is.

3 Q Okay. You don't remember Johnathan from high
4 school?

5 A No, I just remember Joshua.

6 Q Where did you go to high school, Hartsville?

7 A Hartsville High School. And I also went to
8 Darlington High School. In between those times I
9 was both places; I switched schools.

10 Q You'd never seen Johnathan before, had you?

11 A Dread hair, no.

12 Q You never seen him before that day?

13 A I seen him but you talking about the day it
14 happened?

15 Q No, before the day it happened had you ever seen
16 Johnathan?

17 A No, I seen Joshua —

18 Q Right.

19 A —in IGA, but I haven't seen Johnathan. I
20 haven't seen him.

21 Q Okay.

22 THE COURT: Counsel, I believe we're
23 getting a little far field all the way. This is not
24 an issue as to her testimony and what the
25 credibility of it is concerned. That's a matter for

1 the jury. All we're talking about here as I
2 understood is this a motion to suppress the out of
3 court identification under Biggers; and of course,
4 what Biggers is, is a challenge to the out of court
5 identification as being unduly suggestive. So what
6 she saw at the time or what was going on out there
7 at the scene really is not the issue here under
8 State versus Biggers. The question is whether or
9 not there was an out of court identification that is
10 unduly suggestive; and if so, was it so reliable
11 that most substantial likelihood of
12 misidentification exist. But I don't think we need
13 to get into a cross-examination of her direct
14 testimony of what happened at the scene.

15 MR. SWILLEY: I understand, Your Honor,
16 I'm getting there. I apologize.

17 THE COURT: All right.

18 BY MR. SWILLEY:

19 Q So you said you never seen Johnathan before that
20 day in your whole life, right?

21 A I'm not saying out of my whole life, but I didn't
22 see him before that happened, no.

23 Q Okay. So you don't recall ever seeing Johnathan
24 before that, right? So you've never seen his face
25 before, right?

1 A I've seen his face before; but before that
2 happened, no, I haven't seen his face. You, what
3 you're trying to say is did you see him any time in
4 your life. Yes, I have seen him before in my life;
5 but during that time, no, I didn't see him in that
6 area period, no.

7 Q Do you recall any time before February 15th in
8 2012?

9 A No.

10 Q You don't recall anything ever about your life
11 before February 15th, 2012?

12 A About him, no. I never seen him before that.

13 Q So would it be accurate to say you had never seen
14 Johnathan before the day of the shooting, correct?

15 A Yeah, correct.

16 Q Okay, all right. Now later on that day you were
17 given a photographic lineup that contained a picture
18 of Johnathan in there, right?

19 A Uh-huh.

20 Q Who gave you this photographic lineup?

21 A The Caucasian bald head dude.

22 Q That would be Mr. Anderson, right?

23 A Yes.

24 Q And you went through there and you identified —
25 you recall which photograph you identified, what

1 number it was?

2 A No, I don't.

3 Q Okay. Beg the Court's indulgence. Asia, let me
4 ask you again, you said this gentleman right here
5 showed you the photographic lineup, Mr. Anderson?

6 A No, it wasn't him. Not him, no. The guy that
7 shopped me the lineup, he didn't wear glasses. He
8 was a tall, that guy isn't tall.

9 Q Right?

10 A He was a tall, white, bald head guy. He did not
11 wear glasses.

12 Q All right. Sand how long did you look at the
13 photographic lineup of Johnathan before you
14 identified the picture of Johnathan?

15 A I didn't have to look at it long. I seen — I —
16 don't — incidents like that, anything that's
17 troubling and terroring, you will never forget a
18 face so as soon as he showed met that lineup I saw
19 him and I pointed him out.

20 Q Okay.

21 A Circled his face and put my initials.

22 Q All right. And you know, you didn't notice that
23 Johnathan picture was the only one in the lineup
24 that had a white background, right? Do you recall
25 that?

1 A No, I don't recall.

2 Q I'm gonna show you this photographic lineup,
3 Asia. You see photograph number one, right? You
4 see that?

5 A Uh-huh.

6 Q Okay. And you see how it's darkened in the
7 background?

8 A Yes.

9 Q Okay. And is that Johnathan?

10 A No.

11 Q Okay. You see this second photograph, you see
12 how it's darkened in the background?

13 A Yes.

14 Q That's picture number two?

15 A Yes.

16 Q That Johnathan?

17 A No.

18 Q Okay. You see photograph number 3?

19 A Yes.

20 Q You see how it's darkened in the background?

21 A Yes?

22 Q Is that Johnathan?

23 A No.

24 Q Okay. So you see picture number 5?

25 A Yes.

1 Q See how it's darkened in the photograph?

2 A Uh-huh.

3 Q Is that Johnathan?

4 A No.

5 Q You see where it's darkened in the photograph?

6 A Yeah.

7 Q That's not Johnathan, right?

8 A That's not Johnathan.

9 Q You see number 6, right. It is a photograph, it
10 was six pictures, right?

11 A Uh-huh.

12 Q Is that darkened in the background?

13 A Yes.

14 Q Is that Johnathan?

15 A No, it's not.

16 Q I'm gonna show you number 4. Is that Johnathan?

17 A Yes, and the background is not darkened.

18 Q Okay. And did you notice the fact, the type of
19 photograph used is different than the other five
20 previously you picked out Johnathan in the lineup?

21 A Can you repeat that?

22 Q Did you recognize that that photograph was
23 different than all the rest when you picked
24 Johnathan out of the lineup?

25 A No, I didn't recognize that?

1 Q So you're telling me it had no effect on which
2 photograph you selected out of that lineup?

3 A No, it had no effect. Just by looking at — just
4 with the other photos that you showed me that had
5 the blackened part of it, if you looked at it you
6 can tell if you know that person or not. Just
7 because it's blackened out and it's real dark, you
8 can tell just by looking at it, no, that's not him.

9 Q And that's — so you're telling me that the fact
10 that the photograph was completely different type
11 did not effect, didn't grab your attention?

12 A No, it didn't grab my attention.

13 Q Okay.

14 MR. SWILLEY: Your Honor, I have nothing
15 further.

16 THE COURT: Mr. Holt.

17 **REDIRECT EXAMINATION**

18 BY MR. HOLT:

19 Q The man in the park you saw who shot your
20 brother, did you pick him out of a lineup with one
21 hundred percent accuracy?

22 A Yes, sir.

23 MR. HOLT: Your Honor, at this time I'd
24 like to call our next witness.

25 THE COURT: Wait a minute. That's the

1 last question you have of this witness?

2 MR. HOLT: Yes, sir.

3 THE COURT: All right. Anything further,
4 Mr. Jones?

5 MR. JONES: No, sir.

6 THE COURT: All right. Thank you, you may
7 step down.

8 All right, you may call your next witness,
9 Mr. Holt.

10 MR. HOLT: Anthony Wingate.

11 MR. JONES: Judge, may we all approach a
12 minute.

13 THE COURT: Sure.

14 (WHEREUPON, counsel approached the Bench
15 for an off-the-record discussion.)

16 THE CLERK OF COURT: Come right here.
17 Place your left hand on the Bible, raise your right.
18 WHEREUPON,

19 **ANTHONY G. WINGATE,**

20 having been duly sworn by the Clerk of Court,
21 testified as follows:

22 THE CLERK OF COURT: If you will sit in
23 that brown chair right there, they're going to ask
24 you some questions.

25 **P R O F F E R E X A M I N A T I O N**

1 BY MR. HOLT:

2 Q Could you please give your whole name for the
3 court reporter.

4 A Anthony Gerard Wingate.

5 Q And what nickname do you go by?

6 A Ship.

7 Q And have you ever testified in court before?

8 A No.

9 Q Okay. What's your level of education?

10 A I graduated from Denmark Technical College in
11 2005.

12 Q Okay. And on February 15th, 2012, did you have
13 occasion to be in Pride Park?

14 A Yes, I did.

15 Q And can you describe what you witnessed that day?

16 A Well, when I got to the park Johnny Lee
17 Washington and Asia, they was already in the park.
18 And then I turned in 'cause I was driving. I turned
19 in, I parked. And I walked over and started talking
20 to them and then Milton walk, came over, and we was
21 just all sitting there talking.

22 Q Okay. What did you come to the park to do?

23 A I came there to eat 'cause I had — I had some
24 food and plus I had a little bit of liquor.

25 Q Okay. And were you planning on doing that by

1 yourself?

2 A That was my intention, yeah.

3 Q Okay. And then did you realize that you were
4 going to have share the tables with another group?

5 A Yeah, but only one person had asked me for, like,
6 a drink and that was Johnny Lee Washington, but he
7 was just playing. And so I walked over and I poured
8 a little bit in a cup. I had just came from getting
9 a tattoo on my arm and it was hurting. I wanted to
10 drink something to ease the pain.

11 Q How many drinks had you had, do you think?

12 A I only had just that one.

13 Q Okay. What did you witness yourself that day?
14 Describe to me what happened.

15 A Well, we was all sitting there — well, I was
16 sitting there. Johnny Lee was sitting on the corner
17 of the picnic table, and Asia was standing in front
18 of him and Wop was standing in front of me. And we
19 were just sitting there talking, and he was like,
20 you got 65 cents so I can get a soda. And he walked
21 across the street to get a soda. And when he came
22 back he was looking, you know, just like something
23 was wrong. I said, what's up man, what's wrong.
24 And he was like, that them dudes I got into it with,
25 you know, a few months back or whatever. And I

1 said, man, what y'all got going on out there, like
2 that. And he was like, um, dude say I shot him. So
3 I said, what you talking about, like that. And he
4 was like, that's what they say. And I said, man,
5 you want to get in my car so I can take you whenever
6 you got to go to, you know what I'm saying, I'll
7 drop you off like at Burger King or something. And
8 he was like, naw, they ain't gonna do nothing. So
9 they pass, then they came back around again. Then
10 the third time they came they had -- I guess they
11 kind of like waited because there was a police
12 officer in one of those new police Chargers. He was
13 at the stop sign, and the police made a left. They
14 pulled to the right shoulders of the road and then
15 the two guys came in the park. The man right -- I
16 don't know what his name is -- but he was on the
17 left-hand side and he was on the right side walking
18 in the park. So when I turned around, the one with
19 the long hair, he spoke to Johnny Lee; and so I
20 said, dam, what going on here. A few words was said
21 and they was like -- Wop say, I already talked to
22 Pam (ph), that already squared away. My man right
23 here said, you sure about that. And he was like,
24 yeah, man, I already handled that, that taken care
25 of. And he was like, oh really. So I was like,

1 what the hell is going on here. So me, I stood up
2 and started walking towards where the gazebo at
3 'cause I was fixing to go to my car 'cause I was
4 like, well, they's just going to fight, oh well. By
5 the time I got to the gazebo and walked passed like
6 the — I don't know if the pole still green or
7 whatever color it is now that connected to the
8 gazebo?

9 Q Yeah.

10 A As soon as I walked past and looked back I heard
11 Wop say, you ain't gonna do that out here. And my
12 man say, what? And only thing I heard was pow, pow,
13 pow. When I looked Wop was doing like this right
14 here, and I thought he shot his sister 'cause she
15 fell so far back.

16 Q Who had the gun?

17 A The dude right here (indicating).

18 Q The one in between two people?

19 A Yeah.

20 Q Let the record reflect —

21 A And I don't know, I don't know —

22 MR. HOLT: And just let the record reflect
23 he's pointed at Joshua.

24 THE WITNESS: I can speak now?

25 BY MR. HOLT:

1 Q Yeah.

2 A I don't know them, you know, by names or nothing.

3 Q All right, and let me stop you right there. How
4 close were you to the defendants on the day they
5 shot Milton Hunter?

6 A When they first walked in the park I'm sitting
7 here. Let's just say like this.

8 Q Less than 5-feet?

9 A Yeah, standing right there, like right there,
10 both them standing like that.

11 Q All right. Now were you drunk?

12 A No, 'cause I hadn't only drunk half of the cup.

13 Q And was it raining, was it storming?

14 A No—

15 Q Had you had a clear view of the defendants?

16 A Yeah, it was a nice day.

17 Q All right. Now did the police ever show you a
18 photo lineup?

19 A When we got to the police station.

20 Q Okay. And did you have a hard time picking them
21 out of the photo lineup?

22 A No, no.

23 Q Did the police suggest to you who to pick?

24 A No. Only thing he did was start a thing up there
25 with a bunch of pictures on it. And I say, well no,

1 it can't be him 'cause he locked up. Then once you
2 go through the pictures you can basically see who it
3 was.

4 Q And between one hun— one and a hundred percent,
5 how sure are you that you picked out the people that
6 shot Milton Hunter?

7 A Two hundred.

8 Q Okay. And did the police in any way suggest to
9 you who to pick?

10 A No.

11 Q Did they influence you in any way?

12 A No.

13 Q Did they try to break you or threaten you to pick
14 out a certain person?

15 A No.

16 Q Okay, that's all. Please answer any questions
17 Mr. Jones has.

18 THE COURT: Mr. Jones.

19 MR. JONES: Yes, sir.

20 **CROSS-EXAMINATION**

21 BY MR. JONES:

22 Q Mr. Wingate.

23 A Yes.

24 Q Is your nickname Ship like a sailing ship?

25 A Yes, sir.

1 Q Okay. Not Chip like a chopping chip?

2 A Naw.

3 Q Okay, all right. Can you give an estimate of the
4 time from the first time that you saw anyone other
5 than Mr. Washington, Ms. Gregg, and Mr. Milton
6 Campbell Hunter come into the park until the time
7 that those people left the park?

8 A Well, when I got to the park Washington and Asia
9 was already in the park. I was just coming from the
10 tattoo parlor.

11 Q That's a bad question. Let me start all over
12 again.

13 A Yeah.

14 Q Okay? Your testimony was two people shot Milton
15 Campbell Hunter while you were there?

16 A Yeah.

17 Q How long did that whole episode take from start
18 to finish?

19 A It seemed like a long time, but it probably
20 wasn't no more than about 15 minutes tops.

21 Q Okay. During that 15 minutes was your back
22 towards the people talking, or were you facing
23 everybody that was talking?

24 A Well, I was facing Wop, Milton, I was facing him.
25 And they was -- well, my back was turned to them

1 after I turned around to see who it was that was
2 speaking. I looked, turned back around, and then
3 that's when the conversation went on.

4 Q Okay. And during that 15 minutes of time you
5 were kind of minding your own business but you could
6 hear what was going on?

7 A Yeah.

8 Q How about the length of time that you actually
9 had an opportunity to see who it was that was doing
10 the talking? Can you give me an estimate of that
11 time that you actually looked—

12 A In between —

13 Q —at the people?

14 A In between the 15 minutes when they first came
15 up, then the one with the long hair spoke to Johnny
16 Lee, I say within a three to five minute range after
17 the conversation ended, that's when the other part
18 happened.

19 Q Okay. And you had — you had some pain from a
20 tattoo and you were drinking a little liquor?

21 A Yes, sir.

22 Q All right. And the lineup that you got shown,
23 when did that happen? Did it happen the same day?

24 A Yes.

25 Q It did, okay. Later that afternoon or evening?

1 A Yes, after the, you know, after the police took
2 him with the ambulance, and then — I can't think of
3 what the officer name is, but he say is y'all going
4 to come down to the station and we'll give y'all,
5 provide y'all with a ride. I said, well, that's my
6 car right there. And he said, no, you can ride with
7 us. I said okay.

8 Q All right. But now the video statement that you
9 gave, that was not the same day? The video
10 statement you gave when they asked you a bunch of
11 questions?

12 A Uh-huh.

13 Q That was the same day or another day?

14 A That was the same day.

15 Q Same day?

16 A Same — no, no, no, no, my bad. He called me. I
17 was at work one day and I think it's — bald head,
18 white guy. Anderson?

19 Q Yes.

20 A He called me; I was at work. Asked me could I
21 come over there to give, re-give my statement again.

22 Q Okay. But the lineup was actually the same day?

23 A Yes, sir.

24 Q Okay. And did you prior to that time had you
25 ever seen either of these two gentlemen?

1 A From when I used to be in the neighborhood but
2 not knowing them 'cause we way two different age
3 range.

4 Q Okay. But you did know Ms. Gregg,
5 Mr. Washington, and Milton Campbell Hunter?

6 A I know Washington. I didn't know Ms. Gregg.

7 Q Okay.

8 A But I knew Milton from a previous time.

9 Q Got you. All right. And the lineup that you
10 were given I think you said you knew it wasn't one
11 'cause he was in jail. Did you go through the
12 process of elimination and pick out some that you
13 knew and kind of discard those ---

14 A No, it wasn't ---

15 Q ---until you got to the one that you picked?

16 A No, it wasn't like that. It was like as soon as
17 he put the paper down on the thing, I just got
18 through reading a, what you call it, mug shot book.
19 And the first picture of that was on the first row.
20 I say, well, I know that ain't him 'cause he in
21 jail, just like that, that was the statement I made.

22 Q So the mug shot book and the pieces of paper they
23 put down, is that the same thing? Is that the same
24 thing you're talking about?

25 A No. A mug shot book is what I had in my car.

1 And I had just seen the first person, the first
2 per— male, black male that was on the printout of
3 the pictures was in that —

4 Q You talking about like the little paper you
5 buy —

6 A Yeah.

7 Q —from a convenience store?

8 A Yeah.

9 Q I understand, all right. And you recognized one
10 of those people as one of those lineup people?

11 A Yeah, it was on there, yeah.

12 Q All right, I got you. All right, did you notice
13 that the backgrounds were different on the lineup
14 pictures for each one of these lineups? Did you
15 notice anything about that?

16 A I wasn't too much paying attention. I was
17 looking at faces.

18 Q All right. Thank you, that's all I have.

19 THE COURT: Mr. Swilley.

20 **CROSS-EXAMINATION**

21 BY MR. SWILEY:

22 Q Mr. Wingate, in regards to my client, how long
23 did it take you to pick out a photograph of him when
24 you got the lineup?

25 A As soon as I, I mean, well, they put one up and I

1 looked, and I remember the first person that I saw
2 was in the mug shot.

3 Q Right.

4 A I kept looking at it. I say, well that's the
5 dude right there that shot him. Then they put
6 another one up and I looked. I said, that's the
7 dude that was standing there that the — that's the
8 dude that was standing beside him.

9 Q Okay. And at that time you were — were you
10 still kind of buzzed from the liquor when you were
11 looking at the photographs?

12 A I was never buzzed.

13 Q Okay, I got you. All right. And you said you
14 had seen Johnathan before, and you hadn't seen him
15 before?

16 A Yes, I had seen the guys before, but it been like
17 years ago when I used to be on the street out there.

18 Q Right. How many years would that been?

19 A Now as of October 23rd it will be 13 years 21
20 days and 72 hours.

21 Q Mr. Wingate, so you're telling me the last time
22 on February 15th, 2012, the day of the shooting, you
23 hadn't seen my client since he was a little boy
24 then?

25 A Yes.

1 Q So he was like a little kid?

2 A Right. May I speak.

3 Q Yeah.

4 A The reason being I hadn't seen him that long was

5 I have a cousin that stay at the end of the street.

6 Q Which street is that?

7 A Lincoln Avenue. Ms. Bernetha, that's my cousin.

8 I used to go there and that's where I used to see

9 the little kids running around.

10 Q And my client was a child then, right?

11 A Back then, yeah.

12 Q So is it fair to say you had never seen him when

13 he was an adult?

14 A Not really.

15 Q Okay, all right. Thank you, Mr. Wingate.

16 THE COURT: Anything further of this

17 witness, Mr. Holt?

18 MR. HOLT: No, sir, Your Honor.

19 THE COURT: All right, thank you. You may

20 step down.

21 All right, Mr. Holt, next witness

22 regarding the identification question on the lineup.

23 MR. HOLT: Sir?

24 THE COURT: I said, the next witness with

25 regard to the identification questions lineup.

1 MR. HOLT: Johnny Washington.

2 THE CLERK OF COURT: Mr. Washington, if
3 you'll come around and let me swear you. Put your
4 left hand on the Bible, raise your right.

5 WHEREUPON,

6 **JOHNNY LEE WASHINGTON,**

7 having been duly sworn by the Clerk of Court,
8 testified as follows:

9 THE CLERK OF COURT: Just have a seat in
10 that chair. They're gonna ask you a couple of
11 questions, okay.

12 THE COURT: Go ahead, Mr. Holt.

13 MR. HOLT: Thank you, Judge.

14 **DIRECT EXAMINATION**

15 BY MR. HOLT:

16 Q Can you give your whole name for the Court and
17 court reporter.

18 A Johnny Lee Washington.

19 Q And have you ever testified in court before?

20 A No, sir.

21 Q And how old are you?

22 A 31.

23 Q And February 15th of 2012 did you have occasion
24 to be in Pride Park?

25 A Yes, sir.

1 Q Who did you go with?

2 A Asia Gregg.

3 Q And who did you meet there?

4 A Milton Hunter.

5 Q And what happened once Milton Hunter got there to
6 the park with you?

7 A We sitting there eating Yogi Bear food. Asia had
8 came from Yogi Bear. Next thing I know I seen the
9 Reed boys pass by there about four times. Little
10 cousin Sharon (ph) came out there for a minute to
11 visit, then he left. And before time they came
12 became they pull up on the side of the road I think
13 on Marion Street. Came in the park. They came up
14 in the park. You know what I'm saying, everybody
15 talking for a minute, shook my hand, and I seen a
16 police car going by. I was seeing where the police
17 car going by. Turn back around I seen, you know
18 what I'm saying, boom, boom, boom, boom, boom.

19 Q What do you mean when you say boom, boom, boom,
20 boom?

21 A I heard them shots go off.

22 Q Who shot who?

23 A I'm saying Joshua Reed shot Milton Hunter.

24 Q Now did you know the Reed boys before this?

25 A I'm saying I know them but I ain't had known them

1 like that.

2 Q Okay. And how close were you to the shooting?

3 Were you under 10-feet or more than 10-feet away?

4 A Like from here to this lady right here.

5 Q That's how close you were to the defendants?

6 A Yes, sir.

7 Q And was there any weather in your way?

8 A No, sir.

9 Q Was there anything blocking your view or keeping
10 you from getting a crystal clear image of the
11 defendants?

12 A No, sir.

13 Q Now later on that day did you have occasion for
14 the police to show you a photo lineup?

15 A Yes, sir.

16 Q And did you look at the lineup?

17 A Yes, sir.

18 Q And did you pick the defendants out of the
19 lineup?

20 A Yes, sir.

21 Q And on a scale of one to a hundred how certain
22 were you that who you picked out were the ones that
23 shot Milton Hunter?

24 A Yes, sir, ten.

25 Q No, between one and hundred.

1 A A hundred.

2 Q Okay. Please answer any questions that the
3 Defense has.

4 THE COURT: Mr. Jones.

5 **CROSS-EXAMINATION**

6 BY MS. WOOTEN:

7 Q How are you, Mr. Washington?

8 A I'm doing all right.

9 Q So you said you were in the park. Who else was
10 in the park with you at the time?

11 A Me, Shiran Wingate, my cousin. And my baby momma
12 Asia, Levan Griggs, and Milton Hunter.

13 Q And how long after you got to the park did the
14 two suspects come in the park by?

15 A I say a good 30 minutes after that.

16 Q Thirty minutes after you got there? And from the
17 time that they walked into the park to the time they
18 left, how long would you say that was?

19 A Say again. Can you run that question back over
20 for the record.

21 Q From the time they walked into the parking to the
22 time they left the park, how long was that?

23 A Well, long.

24 Q How many minutes, five minutes, two minutes?

25 A I can't tell you.

1 Q No idea?

2 A No idea.

3 Q Okay. So the day this happened had you been
4 drinking?

5 A No, I wasn't intoxicated or nothing. I was sober
6 mind. If I was intoxicated I'd still know who they
7 was.

8 Q Did Mr. Wingate give you anything to drink that
9 day?

10 A Yeah, he gave me a little drink, a little sip,
11 took a little shot together, that we did.

12 Q Okay. Were you under the influence of any drugs
13 on that day?

14 A No, I wasn't on nothing.

15 Q So you said that two men came in and somebody
16 shook your hand. Who shook your hand?

17 A Joshua Reed shook my hand.

18 Q Joshua Reed shook your hand?

19 A Yeah, he shook my hand and his buddy had shook my
20 hand. He had shook Milton hand. He grabbed Milton
21 and shot him in the head about five times.

22 Q He shot him in the head five times?

23 A About five times.

24 Q And you saw this happened?

25 A Yeah, I seen this happen. It clear like

1 daylight, like it is right now.

2 Q Okay. So you didn't hear it; you saw it?

3 A No, I ain't hear it, I saw it.

4 Q How far away were you?

5 A Like I said one time, from here to that lady.

6 Q So 2-feet you say?

7 A I don't know how many feet that is; I ain't got a
8 ruler.

9 Q Okay. How long did you know the Reeds before
10 this day?

11 A Sort of like '05, '04, but I don't know them like
12 that.

13 Q You also said while you were in the park a police
14 car drove by?

15 A Uh-huh.

16 Q While you say the Reeds were in the front with
17 you?

18 A Yeah, yes, ma'am.

19 Q Do you remember seeing a photo lineup later that
20 day?

21 A Yes, ma'am.

22 Q Do you know how many people were in this lineup?

23 A It was a lot of people, a lot of.

24 Q A lot of people? How long did it take for you to
25 identify Mr. Reed?

1 A Oh, with no problem, right there on the spot.

2 Q Did you notice anything different about these
3 pictures, that one was different from another?

4 A No, ma'am.

5 Q Who showed you this photo lineup?

6 A Chief Anderson took me down there. And like I
7 said, I seen the police officer was in here just a
8 while ago.

9 Q You don't see him in the courtroom now?

10 A No, ma'am.

11 Q Okay. I don't have anymore questions for you.

12 A Yes, ma'am.

13 THE COURT: Mr. Swilley.

14 **CROSS-EXAMINATION**

15 BY MR. SWILEY:

16 Q Mr. Washington, were you -- just to make sure,
17 were you acquainted with Mr. Johnathan Reed before
18 this date of the shooting?

19 A Can you run it back over for me.

20 Q Well did you know him, were you acquainted with
21 him?

22 A No, sir.

23 Q So you never knew Johnathan before the day of the
24 shooting, right?

25 A I had know him but I don't know him like that.

1 Q When you say you don't know him like that —

2 A Like, he's like, you know what I'm saying. I
3 know he used to stay on our street. He used to come
4 on through but I don't know, like hang out, no
5 kicking, no spending the night here and there and
6 go, they up and go.

7 Q And you said that when the Reeds approached you
8 that day, was Johnathan in front or was Joshua in
9 front?

10 A Johnathan was standing over here. Reed was
11 standing right in front of me just like this right
12 here. This one right here. My baby momma was right
13 there, you know what I'm saying.

14 Q When you say Reed, when you refer to Reed —

15 A Oh, Joshua Reed.

16 Q Joshua Reed, correct. Okay. And so you said so
17 you recall when they walked up from when they parked
18 the car, parked the truck?

19 A Yes, sir.

20 Q Was Joshua in front of was Johnathan in front?

21 A I don't know which one in the front.

22 Q Okay.

23 A I can't be exact.

24 Q All right. And you said that — and I'm sorry.

25 You said that on that day you shook hands with

1 Johnathan first or Joshua?

2 A I said I shook hands with both of them, Joshua
3 and Johnathan.

4 Q Okay, which one first?

5 A I don't know which one first to be exact, but I
6 shook hands with both of them though 'cause I know.

7 Q All right. And can you tell me about how long
8 from the time, from the point of the shooting to the
9 point of the photograph line-up, how long did that
10 take?

11 A I really couldn't tell you that either 'cause I
12 had stayed in the park for a minute till they start
13 investigating the whole crime scene.

14 Q You had stayed in the apartment?

15 A No, I had stayed in the park the whole time till
16 they investigate the whole crime scene. I couldn't
17 move nowhere.

18 Q You have no idea how long it took?

19 A No, sir.

20 Q You -- they show you a lineup of Johnathan's
21 picture first or one with Joshua's picture first?

22 A I don't know.

23 Q Okay, all right. And how -- and when you saw the
24 photographic line-up shot -- sorry. When you saw
25 the photographic lineup with Johnathan -- that's my

1 client right here in the green shirt — how long did
2 it take you to find his picture?

3 A Right there? That's him.

4 Q How many photographs were sitting up on the table
5 at the time?

6 A I don't know, sir.

7 Q I mean, was it less than ten?

8 A I don't know how many photographs but it had like
9 little photographs. That's him in the line-up. You
10 know how it is when they be lined up in there. It
11 probably been six to the top, probably been six to
12 the bottom, you know.

13 Q I'm sorry, Mr. Washington.

14 A It probably been six photographs to the top of
15 people, six pictures to the bottom of people who,
16 you know what I'm saying, pick them out.

17 Q So that would have been about 12 things?

18 A I don't know.

19 Q And were the pictures that were surrounded by
20 Johnathan's picture, were they different looking
21 people than Johnathan or were they the same type
22 people?

23 A Clear like day.

24 Q So they were different than the picture of
25 Johnathan?

1 A Clear like day, that's him.

2 Q Okay. I understand that, sir, but I'm talking
3 about — let's talk about the other pictures that
4 were around the picture of Jonathan. Were they
5 similar to Johnathan's photograph?

6 A Different people.

7 Q They were different people, right, but like the
8 types of people in the photograph, were they —

9 A Naw.

10 Q They didn't look like Johnathan?

11 A Naw.

12 Q Okay, all right. Thank you, Mr. Washington?

13 A It was him though.

14 Q All right.

15 THE COURT: All right. Anything further?

16 MR. HOLT: I don't have anymore questions,
17 Judge.

18 THE COURT: All right, you may step down.

19 MR. HOLT: If I could get Brian Rudick out
20 the back please.

21 THE CLERK OF COURT: Place your left hand
22 on the Bible, raise your right.

23 WHEREUPON,

24 **BRIAN RUDICK,**

25 having been duly sworn by the Clerk of Court,

1 testified as follows:

2 THE CLERK OF COURT: If you'll have a seat
3 in that chair.

4 THE COURT: All right, Mr. Holt.

5 **DIRECT EXAMINATION**

6 BY MR. HOLT:

7 Q Can you please give the court reporter your full
8 name?

9 A It's Lieutenant Brian, B-R-I-A-N, Rudick,
10 R-U-D-I-C-K.

11 Q And where are you employed?

12 A The Hartsville Police Department.

13 Q And how long have you been employed there?

14 A Nineteen years.

15 Q And what is your position currently? I know you
16 said lieutenant but just specify it.

17 A I'm lieutenant over investigations unit.

18 Q And what does that entail?

19 A We monitor daily activities of the investigators,
20 both criminal and narcotic assigned cases, assist
21 the detectives with whatever cases they're working
22 on.

23 Q And were you in that position on February 15th,
24 2012?

25 A Yes.

1 Q And what were your duties that day? Did you have
2 occasion to produce a photographic line-up, two of
3 them for two defendants?

4 A I did. On the date in question late in the
5 afternoon the Hartsville Police Department,
6 specifically my investigators, got investiga-- got
7 involved in a homicide investigation.

8 Q All right. Let me stop you right there.

9 (WHEREUPON, State Exhibits Nos. 1 and 2
10 were marked for identification only.)

11 THE COURT: All right.

12 MR. HOLT: Permission to approach, Judge.

13 THE COURT: Yes, sir.

14 BY MR. HOLT:

15 Q I'm gonna show you what's been marked State's
16 Exhibit 1 and State's Exhibit 2.

17 THE COURT: Actually, I think they are
18 marked as Court's, right?

19 MR. HOLT: Court's exhibit for I.D.
20 purposes.

21 THE COURT REPORTER: State's 1 and 2 for
22 I.D.

23 THE COURT: State's 1 and 2 for I.D.,
24 okay.

25 BY MR. HOLT:

1 Q If you can look through those and tell me do you
2 recognize them?

3 A Yes, sir, I do.

4 Q And have there been any changes, alterations, or
5 deletions made since last you looked at them?

6 A No, sir.

7 Q Now Investigator Rudick, if you can tell us from
8 start to finish how you created the lineup that you
9 were talking about. You can set that down. Tell us
10 how you created it, why you created it, and the
11 circumstances surrounding its creation.

12 A Like I said, on February 15th, 2012, the
13 Hartsville Police Department and the investigative
14 unit were involved in investigation of a homicide.
15 During the course of the investigation Sergeant
16 Terry Anderson had been given two names of persons
17 possibly involved. I was involved with going to an
18 address on Lincoln Avenue. We had located a — the
19 description of a vehicle that was given out. One of
20 our officer's found a vehicle matching that
21 description. We were following up with that
22 investigation. We happened to be at the Reed
23 residence on Lincoln. From there I went to assist a
24 few other parts of the investigation. We spoke to
25 Johnathan and Joshua Reed in the front of the house.

1 Some other things led us to believe they were
2 possibly involved. We wanted to do an interview
3 with them at our investigations unit, not in their
4 front yard. They were taken to investigations; and
5 while I was doing that, I spoke to Sergeant Anderson
6 by phone and he had told me that witnesses at the
7 scene had identified Joshua and Johnathan as being
8 involved in the shooting. So based on the fact that
9 the witnesses were calling their names, that we were
10 at their residence, and that they were now in my
11 office to be invest— to be questioned, Sergeant
12 Anderson asked me to create two separate lineups
13 with them in them and that's what I did.

14 Q How did you get the pictures for the lineups?

15 A The vast majority of our pictures we use a
16 software called RMS. It's made by Southern
17 Software. Most of our booking photographs, if we
18 find someone who's not had an arrest we might pull
19 their DMV photograph and add it to our system;
20 therefore, when you're dealing with someone you can
21 actually pull up their photograph and take a look at
22 it. It has a module built in that does photo
23 lineups for us. So knowing the names of those
24 involved, we simply start with their picture, pull
25 up what we have in our system. For this particular

1 case both Johnathan and Joshua, their pictures were
2 significantly old. I can't give you an exact date
3 but they were both in their teens when the
4 photographs were taken and I did not feel they were
5 representative of that they looked liked currently.

6 Q What did you do?

7 A What we did was, because you can see from most of
8 the photographs they're based off a neutral
9 background, something similar to a painted wall, so
10 that there's nothing else to distract in the back.
11 DMV, jail pictures are all done about the same way.
12 We simply took their photograph standing in front of
13 a neutral wall of the detective division and
14 imported those photographs into the system, used
15 their photograph as the base, and then found five
16 other individuals of similar, of the same race, sex,
17 similar physical description I.f there was long hair
18 we found long hair individuals that looked similar
19 that had no significant changes. You know, one's
20 you know, not a Facebook photograph and the rest are
21 booking photographs; we try to make them all look
22 the same.

23 Q And State -- Court's exhibit for I.D. 1 and 2,
24 those are the lineups that you just talked about
25 creating?

1 A Yes.

2 MR. HOLT: Your Honor, at this time I'd
3 like to move those into evidence.

4 THE COURT: All right, any objection?

5 MR. JONES: Not for just for purposes of
6 this hearing.

7 THE COURT: Yeah, just for purposes of
8 this hearing, any objection?

9 MR. JONES: No objection.

10 THE COURT: Both in evidence for purposes
11 of this hearing, State's numbers 1 and 2.

12 BY MR. HOLT:

13 Q Now did you have occasion to show those lineups
14 to any of the plea witnesses to the crime?

15 A I did.

16 Q And which one did you show it to?

17 A Asia Gregg.

18 Q And where did you meet with her and show it to
19 her at?

20 A At her family's residence on East Home Avenue.

21 Q And did you influence, suggest, threaten or in
22 any other way conjure her into picking out certain
23 individuals?

24 A Absolutely not, sir.

25 Q And how certain was she of the individual she

1 picked out that had shot her brother Milton Hunter,
2 how certain did she appear to you that day?

3 A Significantly certain.

4 Q And how soon after the shooting did you do the
5 video, the photographic lineup?

6 A Not to the minute, but probably four to five
7 hours.

8 Q Okay. And I'm gonna show you — and I'm sorry
9 for this, what's been marked as State's Exhibit for
10 identification 3. And I don't want you to tell me
11 what it is but I want you to answer, has it been
12 altered, changed, any deletions made since the last
13 time you looked at it?

14 A No, sir.

15 Q And when Asia picked people out of a lineup at
16 her house on East home Avenue, do you just take her
17 word for it, or is there some type of memory made,
18 some type of recording made for that purpose? And
19 does she sign some paperwork or does she just point
20 people out to you?

21 A Our standard operating procedure is we have a
22 form that they fill out indicating to whom they were
23 indicating was involved in the crime —

24 Q Okay.

25 A —or who they recognized.

1 Q And did you give that piece of paper to Asia?

2 A I did.

3 Q And did she fill it out?

4 A I filled out the majority of it, the case number,
5 date, time location, my name, and who I was
6 interviewing or speaking to. It wasn't an interview
7 but showing her the lineup. And then she completed
8 the very bottom where indicates the number she's
9 identifying and how.

10 Q And the piece of evidence in your hand is that
11 said memorialization of the photo lineup that you
12 showed Asia?

13 A Yes.

14 MR. HOLT: Your Honor, at this time the
15 State would like to move State's Exhibit for
16 identification 3 into evidence for purposes of this
17 hearing only.

18 THE COURT: Any objection, Mr. Jones?

19 MR. JONES: No, sir.

20 THE COURT: Mr. Swilley?

21 MR. JONES: There is none, Your Honor.

22 THE COURT: All right, admitted into
23 evidence as State's number 3 for purposes of the
24 Neil v. Biggers hearing.

25 BY MR. HOLT:

1 Q And can you tell us who she picked out of the
2 photo lineup, what number of people, and then tell
3 us who those people are represented by those?

4 A She picked out two. Like I said, there were two
5 separate lineups. Knowing we were dealing with two
6 separate suspects we did not want them in the same
7 lineup so we created two separate ones. In the
8 first lineup she picked out number four and said he
9 was the guy driving. In the second lineup she
10 picked out number two and said this is the one that
11 shot my brother.

12 Q And then the first lineup number four, who is
13 that?

14 A That would have been Joshua — I mean, excuse me,
15 Johnathan.

16 Q And in the second lineup, two, who was that?

17 A Joshua.

18 Q Okay. How were the photographs displayed? Did
19 you put six pictures on one page, or what did you
20 do?

21 A No, sir. Following the FBI best practices they
22 were printed in black and white on individual
23 photographs per one sheet so it was six individual
24 sheets handed to her one at a time for
25 identification.

1 Q To your knowledge after the witness, the one
2 witness you dealt with looked at the lineup, did she
3 communicate to anyone else what her answers were?

4 A Not to my knowledge.

5 Q Okay. And did she appear certain to you?

6 A Absolutely.

7 Q And did you give copies of the lineup to any
8 other officers so that they could ask other
9 individuals?

10 A I created two sets of lineups. Mark Blair had
11 another set, but it was the exact same. I just hit
12 print twice when we created them.

13 Q Okay. Thank you very much. Please answer any
14 questions Defense might have.

15 THE COURT: Mr. Jones.

16 MR. JONES: Yes, sir.

17 **CROSS-EXAMINATION**

18 MR. JONES:

19 Q You have the actual lineups?

20 A Yes, sir.

21 Q I'm gonna show you first number 1, State's
22 Exhibit Number 1, and ask you if you would agree
23 with me that picture number 4 has a different
24 background than the others?

25 A Only as of all six are slightly different with

1 different gray scale backgrounds.

2 Q Okay. And I'm gonna show State's number 2 and
3 ask you the same question except ask you if picture
4 number two has a significantly different background?

5 A Once again, all six are slightly different
6 versions of gray scale backgrounds.

7 Q Would you agree with me that picture number 2
8 though is significantly lighter in background than
9 the other five?

10 A I wouldn't necessarily use the word
11 significantly, but it is different, yes, sir.

12 Q And I think you've explained why because that
13 picture was actually taken that day, whereas, the
14 other ones were generated by your program?

15 A The other ones were physically taken either by
16 DMV, Department of Corrections, the jail, other
17 locations and other -- we import them into our
18 system for use. But that one, those two were taken
19 that day, yes, sir, if that's your question.

20 Q And just so I understand, the program that you
21 talked about, are the pictures in the program or do
22 you have to go find the pictures?

23 A No -- yes and no. The RMS module that we use has
24 the ability for you to attach a photograph from
25 different sources. So over the years through

1 bookings, through DMVs, sometimes we'll run across a
2 suspect or a victim that we don't have a photograph
3 of, and you go find a photograph of them and import
4 it; that way we know what they look like. So the
5 exact origin of all twelve of those photographs
6 other than the two that I personally took, I could
7 not tell you exactly. But they're already in the
8 system. We didn't have to go hunt on the internet
9 or anything like that.

10 Q And the two from Mr. Joshua Reed and
11 Mr. Johnathan Reed, though, were taken that day?

12 A Yes.

13 Q Thank you. That's all I have.

14 THE COURT: Mr. Swilley.

15 BY MR. SWILLEY:

16 Q Investigator Rudick, did I hear correctly, you
17 yourself took photographs of Johnathan and Joshua
18 Reed?

19 A I believe I did.

20 Q And when you placed the photographs in front of
21 Ms. Gregg were they on the table like —

22 A No, sir. We were — we were in a bedroom area
23 and I handed them to her one at a time.

24 Q One at a time?

25 A Yeah. FI best practice is not to have them in a

1 spread where they can see them all at the same time.
2 It's to see them individually.

3 Q Just to be sure, when she came across when she
4 was going to the photographic lineup for Johnathan
5 she identified him as the guy driving?

6 A Yes.

7 Q Did she give any other description of
8 Mr. Johnathan Reed at that time?

9 A Not that I recall.

10 Q Okay. And Mr. Jones may have asked this, did the
11 other photographs as far as the ones being Johnathan
12 could you tell -- I mean, can you testify as to how
13 old those photographs were?

14 A No, no.

15 Q Okay. Nothing further, Your Honor.

16 THE COURT: Mr. Holt?

17 MR. HOLT: Nothing else for this witness,
18 Judge.

19 THE COURT: All right, if you'd give those
20 exhibits back to the court reporter please. You may
21 step down.

22 All right, Mr. Holt.

23 MR. HOLT: Mark Blair.

24 THE COURT: Right there, Mr. Blair, to be
25 sworn.

1 THE CLERK OF COURT: If you'd place your
2 left hand on the Bible, raise your right.
3 WHEREUPON,

4 **MARK A. BLAIR,**
5 having been duly sworn by the Clerk of Court,
6 testified as follows:

7 THE CLERK OF COURT: Have a seat right
8 here.

9 **DIRECT EXAMINATION**

10 BY MR. HOLT:

11 Q Can you provide your whole name for the record?

12 A Mark Alexander Blair.

13 Q And where are you employed?

14 A Hartsville Police Department.

15 Q And in what capacity?

16 A I am a training officer and was accreditation
17 manager and handle grants.

18 Q Okay. And on February 15th, 2012, what position
19 were your working with HPD?

20 A Then I was accreditation manager. I was the
21 accreditation manager. We've since ceased
22 accreditation, but I was the accreditation manager.

23 Q And how did you become involved in the murder of
24 Milton Hunter?

25 A I was working in my office that day, and when I

1 heard the radio call go out about a shooting
2 incident at Pride Park I went to the area. And by
3 the time I got there — my office is about a
4 mile-and-a-half away. By the time I got there they
5 said there was enough officers on location; and
6 subsequent radio call notified us that we were
7 supposed to be looking for a pickup truck, a green
8 pickup truck. I went to Lincoln Avenue.

9 Q Let me stop you right there?

10 A Yeah.

11 Q Officer Blair, did you have occasion to come into
12 possession of two photographic lineups?

13 A Okay, yes, sir. I was at the investigations
14 division about 5:30, 5:45 in the afternoon. And I
15 had finished doing some other work down there; and
16 Lieutenant Rudick handed me a series of photo
17 lineups and asked me to take them up to the station,
18 the main office, to the chief of police, so I — and
19 that's what I did; I took the lineups.

20 Q Now looking at State's Exhibit 1 and 2 for
21 purposes of this hearing only, do you recognize
22 those exhibits?

23 A Yes, sir. These are the lineups that I was given
24 by Lieutenant Rudick.

25 Q Okay. Now did you have occasion to show those

1 lineups to any witnesses of Milton Hunter's murder?

2 A Yes, I showed them to — showed them to Anthony
3 Wingate and Johnny Washington.

4 Q All right, now, I want to hand you what's been
5 marked for identification purposes as State's
6 Exhibit 5 and State's Exhibit 4.

7 A Okay.

8 Q And I don't want you to tell me what they are,
9 but I do want you to tell me if you've seen them
10 before.

11 A Yes, sir, I've seen them before.

12 Q And have there been any changes, alterations,
13 deletions made in anything? Are they different
14 since the last time you've seen them?

15 A It does not appear so, no.

16 Q Okay. Once you showed the photographic lineups
17 to the two witnesses did you memorialize their
18 findings in any way? Did you write down what they
19 showed you?

20 A Yes.

21 Q Okay. And is that writing, is that it right
22 there?

23 A On the bottom of the forms?

24 Q Yes, sir?

25 A Yes, sir.

1 MR. HOLT: Your Honor, at this time the
2 State would like to move State's Exhibit 4 and 5
3 into evidence please.

4 THE COURT: For purposes of this hearing?

5 MR. HOLT: For just purposes of this
6 hearings.

7 THE COURT: Gentlemen?

8 MR. JONES: No objection, Your Honor.

9 MR. SWILLEY: No objection.

10 THE COURT: Admitted for purposes of this
11 hearing, State's Numbers 4 and 5.

12 BY MR. HOLT:

13 Q Judge -- I'm sorry, Officer Blair.

14 A Yes.

15 Q Can you tell us what the two witnesses pointed
16 out on those State's exhibits right there?

17 A Yes, sir. I read them the instructions on the
18 forms and --

19 Q And what are those instructions?

20 A Okay, I'll read them to you just like I read.

21 "I, Mark Blair, will advise you the procedures for
22 viewing the following lineup. The fact that these
23 photographs, persons are being shown to you, should
24 not cause you to believe that a guilty person has
25 been identified or arrested. The person that

1 committed the crime may or may not be in this
2 lineup. Regardless of whether you make
3 identification the police will continue to
4 investigate this incident. It is just as important
5 to clear innocent persons from suspicion as it is to
6 identify the guilty parties. Please keep in mind
7 that the individuals depicted in the lineup may not
8 appear exactly as they did at the time of the
9 accident because features such as hair and clothing
10 are subject to change. You will be shown a number
11 of photographs/images/people. All the
12 images/persons will be shown even if an
13 identification is made. Whenever you recognize
14 anyone please tell the officers which
15 photograph/image you recognize and how you recognize
16 the individual. Please indicate in your own words
17 how certain you are of the identification. Do not
18 indicate in any way to other persons or witnesses
19 that you have or have not made an identification."
20 Those were the instructions read on that evening.

21 Q All right. And did you read that to both
22 witnesses you met with?

23 A Yes, sir, separately.

24 Q Did you show the photographic lineups to them
25 together?

1 A No, sir.

2 Q Okay.

3 A I showed first one lineup and then the other
4 lineup.

5 Q All right. Now Anthony Wingate —

6 A Uh-huh.

7 Q All right, now Anthony Wingate, who did he pick
8 out of the first lineup, what number?

9 A Let's see, Anthony Wingate picked out photograph
10 number 2.

11 Q And who was photograph number 2?

12 A Josh Reed.

13 Q And how sure of himself was Anthony Wingate? Did
14 he write or acknowledge it on there anywhere?

15 A He did not write or acknowledge. He wrote on
16 here — you want me to read exactly what he wrote?

17 Q I do?

18 A "I saw him shoot Woop up close." And he
19 indicated to me that he knew the individuals in the
20 photograph for a number of years and had —

21 Q You say Woop, you mean W-O-P?

22 A W-O-O-P.

23 Q It's pronounce Wop.

24 A Wop or Woop. I would assume Woop.

25 Q And on the second interview who did he pick?

1 A On the second lineup he picked out number four.

2 Q And who was that?

3 A Which was Johnathan Reed.

4 Q And what did he write under Johnathan Reed?

5 A All he wrote was he drove him up there.

6 Q All right. Putting that aside, who was the other
7 person he interviewed that day?

8 A The other person was Johnny Washington.

9 Q And what dates and time did you do those
10 interviews? Does your form reflect that?

11 A Yes, sir, February 15th, 2012, at 6:10.

12 Q All right. And what, who is that witness?
13 What's their name?

14 A Johnny Washington.

15 Q And who did he pick out of the photo lineup?4?

16 A Our of the first lineup he picked out number 4
17 which was Johnathan Reed.

18 Q And what did he write under there?

19 A He wrote, I am a hundred percent — well, the
20 form says, "I am blank certain of my selection," and
21 he wrote in "a hundred percent because I know him
22 five year. He was driver of the truck." In his own
23 words.

24 Q Who did he pick out of the second lineup?

25 A He picked out photograph number 2 which was

1 Joshua Reed.

2 Q What did he say under there?

3 A Again, "I am a hundred percent certain of my
4 selection because I seen him shout. I know him for
5 five year."

6 Q Okay. And did you bribe, coerce, conjure,
7 influence, threaten, or any way do anything to
8 mandate that these witnesses picked out these
9 defendants?

10 A No, sir.

11 Q If they had picked out somebody else would you
12 have cared?

13 A No.

14 Q Okay. Thank you very much, Officer Blair.
15 Please answer any questions Mr. Jones or Mr. Swilley
16 might have.

17 THE COURT: Mr. Jones, okay.

18 MS. WOOTEN: Thank you.

19 **CROSS-EXAMINATION**

20 BY MR. SWILLEY:

21 Q Good afternoon. Is it Sergeant Blair?

22 A Yes.

23 Q How are you doing?

24 A Doing well.

25 Q I have a few questions about the lineup?

1 A Okay.

2 Q Where exactly did you meet with Mr. Wingate and
3 Mr. Washington?

4 A It was in the rear of the police department at
5 135 West Carolina Avenue. It's an area we commonly
6 call the squad room or the sergeant's room.

7 Q And they were both in the same room when you
8 arrived?

9 A Yes.

10 Q Okay. Which — was it Mr. Wingate or
11 Mr. Washington that talked to you first?

12 A It was Anthony I talked to first while
13 Mr. Washington was outside.

14 Q And where did you take Mr. Washington, or where
15 did you take Mr. Wingate to make sure they weren't
16 together?

17 A Mr. Wingate stayed inside with me.
18 Mr. Washington went outside, and I do not remember
19 the officer's name that was standing there, but they
20 were separated by 12 feet and a brick wall.

21 Q And so as part of your line— I'm sorry, let me
22 rephrase. Was it common for you to show photo
23 lineups to witnesses? Was that part of your daily
24 routine?

25 A No, ma'am.

1 Q Had you done it before?

2 A Not using this particular form. This is the
3 first time used this particular form and procedure.

4 Q Okay. How long before you met with your,
5 Mr. Wingate and Mr. Washington, were you given the
6 photo lineup?

7 A It was about 15 minutes.

8 Q Did Mr. —

9 A Maybe.

10 Q —Lieutenant Rudick tell you how to do it or did
11 he just give you the form?

12 A He gave me the form and the photo lineups and
13 told me to take them up to the station. I actually
14 created this form myself as part of my accreditation
15 manager duties so I was familiar with the form.

16 Q Okay. So when you had the witness fill out the
17 form, do you fill out part of it and they complete
18 the rest of it?

19 A I fill out the date and time and then they
20 complete the bottom section of it.

21 Q Do you make sure that form is complete before you
22 take it back to them?

23 A Yes.

24 MS. WOOTEN: Do you mind if I approach,
25 Your Honor?

1 THE COURT: No, ma'am.

2 BY MS. WOOTEN:

3 Q So as to State's Exhibit 5 for identification
4 purposes, this is Mr. Wingate's?

5 A Uh-huh.

6 Q Is that completely filled out on the bottom?

7 A No, ma'am.

8 Q Did you request that he completely fill it out on
9 the bottom?

10 A I do not recall.

11 Q And what is missing on that form?

12 A I am blank certain of my selection because.

13 Q Okay.

14 A And after because he wrote he drove him up there,
15 but he did not say how certain he was on the form.

16 Q Okay. So when you are at the office with the
17 witnesses were you aware that the Reed brothers were
18 also there at the same time?

19 A At the police station?

20 Q Were they at the same building where the —

21 A Oh, no, no, no. They weren't there at the police
22 station with me.

23 Q Okay, you didn't see them?

24 A No, I did not see them.

25 Q Great. How did you show the photographs to Mr.

1 Wingate for example?

2 A I took the six photographs and laid them out out
3 on the table and asked that he look at them one at a
4 time and I believe — no, he looked at them all the
5 way through and then identified numbers 2 and 4
6 respectively.

7 Q Right. Did you happen to notice something
8 different about the background of those photos?

9 A I didn't really look at them. Looking at them now
10 they may be a little bit different.

11 Q And what do you — may I approach again, Your
12 Honor?

13 THE COURT: Yes.

14 BY MR. SWILLEY:

15 Q Let's look at this lineup right here.

16 A Okay.

17 Q This one contains Mr. — this is State's Exhibit
18 for identification purposes 1 so — excuse me one
19 second. What would you say is different from number
20 4 to the rest of these photos in the background?

21 A Hold them that far away. I need my glasses on.
22 From number 4?

23 Q Do you notice anything different, the background
24 being darker or lighter?

25 A No, number 3 is a lot darker and numbers 1 and 2

1 have this whited band on the side, whereas number 3
2 does not.

3 Q Okay. So there's various degrees of gray in the
4 background?

5 A Yeah, just a little bit different gray.

6 Q Okay. How long did Mr. Wingate spend with the
7 photographs before he made his identification?

8 A A minute or so, maybe two.

9 Q And Mr. Washington came second?

10 A Uh-huh.

11 Q How long would you say he spent with the
12 photographs before he made his identification?

13 A Again, when he got to -- I got to refer to my
14 report here. He stopped when he saw Johnathan Reed,
15 and I asked him to go on ahead and go through all
16 photographs to make sure.

17 Q A while ago you said spread them on the table?

18 A Uh-huh.

19 Q Does that mean you would just you put them up in
20 front of him and he picked them out?

21 A Yeah. I mean, I didn't spread them out one at a
22 time. I just kind of handed them to them and made
23 sure that there were six in there.

24 Q Great.

25 MS. WOOTEN: I have no further questions

1 for this witness, Judge.

2 THE COURT: Okay. Mr. Swilley.

3 **CROSS-EXAMINATION**

4 BY MR. SWILLEY:

5 Q Mr. Blair, I just want to make sure, when you —
6 when you showed Anthony Wingate the photograph of
7 Johnathan Reed, right, you said that he wrote down,
8 I quote, "He drove him up there"?

9 A Uh-huh.

10 Q That's number 4, right?

11 A Yes.

12 Q Okay. Did he make any kind of contemporaneous
13 statement along with the identification Johnathan
14 Reed?

15 A Did he make any other statement that's not
16 written down on the form?

17 Q That you're talking about.

18 A He did say he recognized some of the other
19 photographs in the lineup, that they didn't have
20 anything to do with it.

21 Q But as far as Johnathan Reed, show me where.

22 A Okay.

23 Q Show me we he said he was one that drove him.

24 A Oh, right here.

25 Q Okay.

1 A Right.

2 Q Right.

3 A Uh-huh.

4 Q At the time he wrote that he didn't say anything
5 as far as a description of Johnathan Reed or
6 anything he might have done?

7 A No, sir.

8 Q Okay. Just that he said he was the one that was
9 driving?

10 A Uh-huh.

11 Q Okay. And when you showed the photographic
12 lineup of Johnathan Reed to John Lee Washington he
13 said, I quote, "I know him five year. He was driver
14 of the truck."

15 A Yes.

16 Q Okay.

17 A The English isn't right; but yeah, "I know him
18 five year, he was driver of the truck."

19 Q And he didn't, he didn't say or write anything
20 else and in association with his identification of
21 Johnathan Reed, correct?

22 A Correct.

23 Q Okay. And how long did you say it took
24 Mr. Wingate to identify Johnathan Reed?

25 A Not long, just a couple of minutes to look at the

1 whole thing.

2 Q Okay. And what about Johnny Lee Washington?

3 A Same thing, just...

4 Q Okay, nothing further.

5 THE COURT: Mr. Holt.

6 MR. HOLT: Just one question and I'm done,
7 Judge.

8 **REDIRECT EXAMINATION**

9 BY MR. HOLT:

10 Q Was anybody else in the office with you while you
11 were giving these?

12 A Yes, Chief James Hudson was watching the whole
13 procedure.

14 MR. HOLT: That's all, Your Honor.

15 THE COURT: Anything further, Mr. Jones?

16 MR. JONES: Nothing further.

17 THE COURT: Thank you, sir. You may step
18 down.

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: Make sure the court reporter
21 has the exhibits.

22 THE WITNESS: Okay, I'll leave them right
23 there.

24 THE COURT: Mr. Holt.

25 MR. HOLT: Would you get Chief Hudson

1 please. One more witness, Your Honor.

2 THE COURT: All right.

3 THE CLERK OF COURT: Place your left hand
4 on the Bible, raise your right hand.

5 WHEREUPON,

6 **JAMES HUDSON, JR.,**

7 having been duly sworn by the Clerk of Court,
8 testified as follows:

9 THE CLERK OF COURT: Have a seat in the
10 witness chair.

11 **P R O F F E R E X A M I N A T I O N**

12 BY MR. HOLT:

13 Q How are you doing, Chief?

14 A Good, how are you?

15 Q Can you please give your whole name and title for
16 the court reporter?

17 A James Hudson, Jr., chief of police, Hartsville
18 PD.

19 Q And how long have you been chief?

20 A A little over two years.

21 Q And how long have you been in law enforcement?

22 A Eighteen years.

23 Q And what capacity were you with law enforcement
24 on February 15th, 2012?

25 A Chief of police.

1 Q For Hartsville still?

2 A Yes, sir.

3 Q And did you have occasion within your office to
4 witness Officer Blair give witnesses photographic
5 lineups?

6 A I did.

7 Q And within your presence did Officer Blair
8 threaten, coerce, confuse, discombobulate, try to
9 get them say anything that wasn't true?

10 A No, he did not.

11 Q Did he try to pull any one picture above any
12 other picture to get them to pick out a certain
13 individual?

14 A He did not.

15 Q And is that the policy in your office —

16 A It is.

17 Q —the way that they did the photographic lineup?

18 A Yes, sir.

19 Q Okay. And is it your policy to confuse or
20 threaten people in photographic lineups?

21 A No, sir.

22 Q You witnessed Officer Blair show both lineups to
23 two different witnesses?

24 A I did.

25 Q Thank you, Chief. That's all.

1 THE COURT: Mr. Jones.

2 **CROSS-EXAMINATION**

3 BY MR. JONES:

4 Q Yes, sir, just a couple of questions. Chief, at
5 the time that Sergeant Blair was showing the lineup
6 to the two witnesses were the suspects also at the
7 same facility?

8 A No, sir.

9 Q They were not?

10 A No, sir.

11 Q Do you know if they were in custody at that time?

12 A They were being sought after.

13 Q So they were not even under arrest to your
14 knowledge?

15 A There was a whole lot going on. They were being
16 looked for at the time.

17 Q Okay, that's all I have.

18 THE COURT: Mr. Swilley.

19 **CROSS-EXAMINATION**

20 BY MR. SWILLEY:

21 Q Chief Hudson, do you have any independent
22 recollection of Miss — excuse me, of Mr. Wingate
23 and Mr. Washington selecting the two individuals in
24 those photographs in each lineups?

25 A We followed protocol. They were shown a photo

1 lineup and given opportunity to pick those persons
2 out.

3 Q Do you have -- do you remember this though?

4 A Yes, sir.

5 Q Okay. And do you recall when Anthony Wingate
6 selected Johnathan Reed out of the photograph?

7 A I do.

8 Q Okay. And did he make any kind of
9 contemporaneous statements based on your
10 recollection anything associated with Mr. Johnathan
11 Reed?

12 A Not to my knowledge.

13 Q Okay. And as far as Johnny Lee Washington goes,
14 did he make any kind of contemporaneous statements
15 as far as identification with Mr. Reed as far as how
16 he recognized him from that day and for what reason,
17 or just that you recognize him?

18 A Just that he recognize him.

19 Q Nothing else indicative of any kind of
20 participation that Mr. Johnathan Reed has in the
21 incident, correct?

22 A Not to my knowledge.

23 Q Thank you, sir.

24 A Yes, sir.

25 THE COURT: Mr. Holt.

1 MR. HOLT: No further questions, Your
2 Honor.

3 THE COURT: Okay, you may step down.

4 THE WITNESS: Thank you, sir.

5 THE COURT: Any further evidence on behalf
6 of the State in connection with this matter,
7 Mr. Holt?

8 MR. HOLT: No, sir, Judge.

9 THE COURT: All right. Mr. Jones, any
10 evidence on behalf of the defendant in this regard?

11 MR. JONES: No, sir, Your Honor, just a
12 chance to argue.

13 THE COURT: We'll do argument in just a
14 minute. I'm talking about evidence.

15 MR. JONES: No.

16 THE COURT: Mr. Swilley, anything on your
17 behalf?

18 MR. SWILLEY: There's not, Your Honor.

19 THE COURT: All right. Your motion,
20 Mr. Jones, I'll be glad to hear from you.

21 MR. JONES: Judge, it's our position that
22 number one, under Neil v. Biggers, State's exhibit 1
23 and 2, although the officers questioned did not
24 readily agree with me, I think if the Court looks at
25 these two exhibits, pictures that were identified,

1 number 2 and number 4 have significantly different
2 backgrounds than the other pictures that are
3 presented. For that reason we feel that those
4 lineups themselves were unduly suggestive. Under
5 the two point, two prong inquiry the Court has to
6 make, then I believe that the Court turns to the
7 witnesses that were presented and determine whether
8 or not their identifications were reasonable under
9 all the other circumstances. And I think going
10 individually starting with Miss Asia Gregg, the
11 length of time that she indicated that the situation
12 occurred was significantly different I think than
13 the other witnesses. But she says that she spent
14 about 35 minutes looking at the defendants, that she
15 was standing right next to her brother, that they
16 had her undivided attention and that she was shown a
17 lineup shortly after the event occurred. Your
18 Honor, we would argue that that is -- I won't say
19 inherently unreliable, but it appeared from her
20 testimony which as the Court remembers significantly
21 expanded just on the lineup situation that I believe
22 tried tell us everything she knew as she was
23 questioned. It appears from the statements which
24 she gave earlier -- I understand the Court did not
25 have those statements -- but the questioning that

1 was done of Ms. Gregg, she in fact did not have the
2 degree of knowledge of either Mr. Joshua Reed or
3 Mr. Johnathan Reed she indicated on her direct
4 testimony. The same thing I believe for
5 Mr. Wingate, Ship. He cut down on time
6 significantly. I think he was down to about 15
7 minutes and that his opportunity to view of the
8 defendant was even a lot shorter than that, three to
9 five minutes. His degree of attention, I would
10 submit to the Court, was probably significantly
11 affected by the fact that he just had a tattoo and
12 he was hurting and he was trying to drown the pain
13 with whatever liquor he was drinking. I will
14 concede that the length of time between the crime
15 and actual confrontation was fairly short so that
16 they were probably had not had a significant impact
17 on his ability to identify. However, in the
18 testimony that he gave it appeared that he might
19 have been doing a little process of elimination
20 because I believe he's the one that said that he had
21 bought the dollar mug shot thing at a convenience
22 store and recognized the first guy off of it so he
23 took him out just by process of elimination.

24 THE COURT: But he didn't say anything
25 about the other five, did he?

1 MR. JONES: But he did not say anything
2 about the other five, no, sir. Mr. Washington
3 probably was the strongest of the three witnesses
4 who did the identification; and he had, I believe, a
5 significantly better opportunity to view the
6 situation. And the fact that he appears to have
7 known both of these defendants for a longer period
8 of time, but he — I'm still troubled by the fact
9 that he said he knew them but he didn't know them in
10 that way; and I'm not exactly sure what that meant
11 other than he was probably very surprised and
12 shocked, and upset about the whole situation going
13 on and I would submit that that probably would lend
14 the Court to believe that that perhaps is not a very
15 reliable identification also. Coupled with the fact
16 that all of them were shown the same lineups that
17 had a significantly different background of these
18 two defendants, I would submit that the out of court
19 identifications by all three, Asia Gregg, John Lee
20 Washington, and Anthony Wingate should be
21 suppressed, Your Honor.

22 THE COURT: Wasn't that an attempt,
23 Mr. Jones — and I'm gonna look at them in just a
24 minute — but wasn't that an attempt by law
25 enforcement to come up with a more accurate lineup

1 by a showing of people about the same age, rather
2 than showing them the pictures that they had on file
3 which was significantly younger?

4 MR. JONES: I do not have any hesitation
5 in telling the Court I don't think that the
6 Hartsville Police Department intentionally did
7 anything wrong.

8 THE COURT: I understand.

9 MR. JONES: I just, whenever it developed
10 it got white backgrounds of these two individuals
11 and varying degrees of gray for all of the other
12 ones.

13 THE COURT: But the reason they wanted to
14 use the two particular pictures of the defendants
15 was to make their age in the same area as the other
16 people that were in the lineups.

17 MR. JONES: Yes, sir, I'll certainly agree
18 with that.

19 THE COURT: All right, Mr. Swilley, let me
20 hear from you.

21 MR. SWILLEY: Your Honor, I think
22 Mr. Jones has summarized the argument that the
23 photographs were unduly suggestive due to
24 background, their salient quality of that photograph
25 judging from the other five on each of the

1 photographic lineups. I don't think there's
2 anything in testimony that would suggest second
3 prong of Biggers is that the identification,
4 nevertheless reliable, there's no substantial
5 likelihood of misidentification existed I. don't
6 think that — I think these witnesses would have
7 testified they did not know the two individuals if
8 either at all or well. As far as Ms. Gregg was
9 inconsistent, she said she couldn't ever remember
10 seeing him before that date. Mr. Wingate was
11 ambiguous. Mr. Washington was ambiguous about how
12 well he had known the defendant before that, and Mr.
13 Wingate probably never seen those gentlemen before
14 as adults.

15 So I think that, you know, the unduly
16 suggestiveness of the lineups is apparent, and I
17 don't think these identifications were reliable
18 enough. There's no substantial likelihood of
19 misidentification was in existence of the Court
20 prohibit all three of these individuals from
21 identifying my client —

22 THE COURT: All right.

23 MS. WOOTEN: —during the State's case in
24 chief.

25 THE COURT: All right.

1 Mr. Holt.

2 MR. HOLT: Judge, I think, you know, the
3 first part of the test we're talking about was
4 identification procedure conducted unduly
5 suggestive; and I certainly believe, Your Honor,
6 that we've seen evidence to show that Defense
7 doesn't even get past the first prong of the Biggers
8 test. The only conceivable thing they have going
9 for them is that the background for the Reed brother
10 was a little bit lighter. And Your Honor, when you
11 look at it I want you to remember what Officer Blair
12 said. Some are lighter, some are darker, some have
13 borders, some don't, some photographs are bigger,
14 some are not as big. Judge, there is not an annual
15 criminal consortium that gets together and sends out
16 photographs of all these people. Detective Rudick
17 told us you get them from DMV, you get them from the
18 county jail. They get them when they take them
19 themselves and then enter them into the system. So
20 you've got all these different cameras, all these
21 different purposes, feeding this one program that
22 picks and chooses.

23 Judge, should Rudick and them have used
24 the teenage pictures of the Reed brothers 'cause
25 then I think we would have been something almost

1 comical where they're showing a photographic lineup
2 with a bunch of adults and two juveniles; and to get
3 around that, Rudick and them made their own
4 pictures. I think on top of all of this, I want
5 everybody in the courtroom to never forget that
6 everyone out there knew the Reed brothers to begin
7 with. They have no problem pointing them in here
8 today. They had no problem talking about them.
9 They had no problem telling the Defense where and
10 when they knew the Reed brothers from. I think you
11 got three people who saw a murder and they're off a
12 little bit on their times on what they saw but you
13 just got three different opinions. I don't think
14 you have an underlying conspiracy about a police to
15 place two people under arrest for no reason
16 whatsoever.

17 Judge, I want to say we don't even get to
18 the second prong because I don't think the lineup
19 was unduly suggestive in the least. But even if you
20 do find that, that it was somewhat — and it can't
21 be somewhat suggestive, it's got to be unduly
22 suggestive, I know we don't go there. But the
23 second prong was the procedure is so suggestive as
24 to give rise to the very substantial likelihood of
25 irreparable misidentification under a totality of

1 the circumstances, we have to remember that they
2 knew the Reed brothers so that there's no way the
3 second prong could ever be reached.

4 THE COURT: All right, thank you, sir.
5 All right. The case law in this case, most
6 especially Neil versus Biggers which is a US Supreme
7 Court case cited as 409 US 188. 93 Supreme Court
8 375 is the basis for the identification questions
9 that have risen before the Court and sets forth the
10 test that has to be used by the Court in determining
11 whether an identification is admissible. It has
12 been interpreted several times by the South Carolina
13 supreme court most notably in State verses Lewis,
14 354 South Carolina 222, 580 South Eastern 2d 149 and
15 State versus Patterson 337 South Carolina 215, 522
16 South Eastern 2d 845. All of those cases establish
17 proposition is whether identification procedure was
18 so impermissibly suggestive as to give rise to a
19 very substantial likelihood of irreparable
20 misidentification.

21 Biggers of course sets forth a two prong
22 test, two prong inquiry. First, whether the ID
23 process was unduly suggestive; and if it is found
24 that it was unduly suggestive, then you go to the
25 second prong as to whether the out of court ID was

1 as so reliable that no substantial likelihood of
2 misidentification exists. Biggers also sets forth a
3 five factor test to be applied in determining
4 whether the identification was unduly suggestive,
5 whether the confrontation procedure was unduly
6 suggestive. That's what we're looking at here is
7 the confrontation procedure. And the five steps of
8 Biggers are the opportunity of the witness to view
9 the criminal act at the time; secondly, the witness'
10 degree of attention; third, the accuracy of the
11 witness' prior description of the criminal or the
12 perpetrator; fourth, the level of certainty to, of
13 the witness, the level of certainty of the witness'
14 identification; and fifth, the length of time
15 between the crime and the confrontation. In this
16 case we've got four separate witnesses who were
17 shown lineups of the defendants in the case along
18 with other things, separate lineups, and were asked
19 to view these two separate lineups individually.

20 In my view the lineups were not unduly
21 suggestive. First of all, looking at the
22 opportunity of the witnesses to view the criminal
23 acts, they both, all three of them had plenty of
24 opportunity varying from 15 to 20 minutes to review
25 the criminal acts. The degree of attention, they

1 were no doubt that they were looking very straight
2 out and they were right just within a very short
3 distance of them so all three of the witnesses were
4 their identity -- their attention is focused on the
5 scene.

6 When I come to the third factor which I
7 think Mr. Holt has pointed out is one of the most
8 important, and that's the accuracy of the witness'
9 prior description of the perpetrator. I take that
10 to mean it wasn't so much of a prior description of
11 the perpetrator, but that all three of these
12 witnesses knew who the defendants were in varying
13 degrees. The first witness testified that she went
14 to school with one of them and the other one was
15 behind at school but she knew them by name and knew
16 who they were. And the other two witnesses also
17 were able to say that they knew them or could
18 identify them, not necessarily that they were good
19 friends with them but it's not like they were just
20 trying to identify a complete stranger for any of
21 them, all, none of the three tried to identify a
22 complete stranger. All of them knew two
23 perpetrators in this case. And I think it's a
24 strong factor under Biggers under the third factor
25 to be considered.

1 Another factor to be considered is that
2 the level of certainty of all of them was very high.
3 And there was only a short time, anywhere from three
4 to five hours between the time of the crime and time
5 of the confrontation so all five of the Biggers
6 factors are in favor of a very strong unlikelihood
7 of misidentification so I agree, I really don't
8 think that it is necessary to go to the second
9 factor of Biggers to determine whether the
10 identification was unduly suggestive. I mean, the
11 second prong, because the ID is not unduly
12 suggestive; but even if it were — and I looked at
13 the background of these pictures — I think that
14 it's such a slight difference that the average
15 person just like the witnesses would not have
16 noticed any difference in the background. The
17 background of all of the pictures is in gray. All
18 six of them is varying degrees of gray. It may be
19 that one of them are a little lighter than the
20 others; but I don't think that there is really any
21 substantial difference that makes them. It's not
22 like some of them were standing in front of a
23 different wall or a different background. They're
24 simply blank, gray backgrounds which I don't think
25 is any substantial difference in the photographs.

1 And especially when you couple that with the fact
2 that all of the witnesses recognized them or knew
3 them personally, I think that is a very small
4 difference. Actually, it's a distinction without a
5 difference. So even though I don't think it is
6 necessary, I don't think that the — I do think that
7 the out of court I.D. is so reliable that no
8 substantial likelihood of misidentification existed
9 even though it was not necessary that the Court go
10 to that prong to find that the lineups as presented
11 by the police are admissible, and the Court will so
12 rule.

13 All right, let's take five minutes and
14 then, Mr. Swilley, let's come back and we'll take a
15 look at the matter you wanted to do. In the
16 meantime, Mr. Holt, what I would like for you to do
17 is to identify the evidence out of that search
18 warrant that Mr. Swilley objects to as to what you
19 wish to introduce and then we can decide whether or
20 not it's admissible or not.

21 MR. HOLT: There's only one piece of
22 evidence I wish to introduce.

23 THE COURT: All right. Tell us what that
24 is and we'll come back in a few minutes. Let's take
25 five minutes. All right, five minute recess.

1 (WHEREUPON, a recess was taken from the
2 proceedings.)

3 THE COURT: All right, we're back on the
4 record with regard to the State versus Johnathan
5 Reed and State versus Joshua Reed. Both Mr. Reeds
6 are present in court with their counsel. The State
7 is present, represented by the Fourth Circuit
8 Solicitor's Office. The next matter, I think, that
9 we need to address, Mr. Swilley indicated that he
10 had an objection to matters that were seized, the
11 admissibility of evidence seized as a result of a
12 search warrant. And in order to determine whether
13 it's admissible or not, one of the things I wanted
14 to do was to determine factually what the State
15 intended to use that was obtained in that search
16 warrant. And Mr. Holt, identify for me what you
17 want to introduce.

18 MR. HOLT: Judge, just by way of
19 background, Johnathan Reed tells everyone that he
20 lives at [REDACTED] Lincoln. Officers arrived at 4:29
21 right after they tracked the truck down and they see
22 him walk over to [REDACTED].

23 THE COURT: Okay.

24 MR. HOLT: So they get the search warrant
25 for his house and his brother's house. It's not a

1 duplex. It's set separate in the middle by another
2 house. One is their parent's house. The other is
3 their grandparent's house. That maintain a loose
4 residence in both.

5 MR. JONES: Your Honor, I don't want to
6 interrupt Mr. Holt.

7 THE COURT: Hold on just a minute.

8 MR. JONES: There's witnesses -- the
9 original witnesses are in the courtroom.

10 THE COURT: What's that got to do with --
11 so you're not objecting to the -- what they're gonna
12 say. You've already said the search warrant is all
13 right. It's just a question that he's identified ed
14 what evidence we're talking about as to the
15 relevance of it.

16 MR. SWILLEY: What that's admitted could
17 affect their testimony.

18 THE COURT: I didn't plan to take any
19 testimony to determine with relevance.

20 MR. SWILLEY: I'm talking about testimony
21 on the record tomorrow.

22 MR. HOLT: The -- he might be talking
23 about...

24 MR. SWILLEY: Your Honor, just out of
25 abundance of caution, I mean, I have to protect

1 myself. I know it's a case that's highly sensitive
2 as far as what testimony is gonna be from lay
3 witnesses. I wouldn't want that testimony tainted
4 from what's again on.

5 THE COURT: I don't see how that affects
6 relevance of testimony.

7 Go ahead, Mr. Holt.

8 MR. HOLT: And essentially what they find
9 in Johnathan Reed's room is a pistol and I think ---

10 THE COURT: Is what?

11 MR. HOLT: Is a pistol.

12 THE COURT: Okay.

13 MR. HOLT: That's -- they also throughout
14 that house, okay, Judge, they also take a bunch of
15 photographs. They find some small smalls of
16 marijuana and they find numerous ammunition.

17 THE COURT: Don't care about that. All
18 I'm interested in is what you want me to do as a
19 result of the search warrant.

20 MR. HOLT: The gun found in Johnathan
21 Reed's room.

22 THE COURT: All right. And what's the
23 relevance of that to the evidence in this case?

24 MR. HOLT: Asia Gregg said that when Josh
25 shot her brother Johnathan Reed had a gun on Johnny

1 Lee Washington. During his video statement
2 Johnathan Reed testified that he hadn't seen or
3 fired a gun in 12 years, he does not own a gun; and
4 yet, in his bedroom is a pistol, the same type of
5 gun that Asia described was pointed at her.

6 THE COURT: Doesn't that only come up for
7 impeachment purposes?

8 MR. HOLT: I don't think it does, Judge.
9 I think the video statement that he gave law
10 enforcement is gonna come in where Terry Anderson is
11 gonna show where Johnathan says I never had a gun
12 nor do I own a gun, and I didn't have a gun in
13 there. And then I think Asia is also gonna say that
14 he, Johnathan had a gun, when he was there at the
15 scene.

16 THE COURT: All right. You plan to
17 introduce a statement that is admitted to be
18 voluntary that he, where he says he did not own a
19 gun?

20 MR. HOLT: Yes, sir.

21 THE COURT: All right. And then you wish
22 to introduce the gun to show that that statement is
23 not true?

24 MR. HOLT: Yes, sir.

25 THE COURT: All right.

1 MR. SWILLEY: Your Honor, he's on trial
2 for murder and possession of a weapon and commission
3 of a violent crime, not for being a liar to Terry
4 Anderson. The fact of the matter that he had a gun
5 under his bed and that he said that he hadn't fired
6 a gun in however many years, first of all, the fact
7 he had a gun under his bed doesn't negate that fact
8 in and of itself. Second of all, the fact he had a
9 gun under the bed would suggest that he is a
10 criminal although this gun, he was 21 I believe at
11 the time —

12 THE COURT: Well, I thought you were
13 arguing a relevance question.

14 MR. SWILLEY: It's not, it's not relevant
15 to this case. I mean, there's no, there's no way
16 that this gun, this particular gun found under the
17 bed of Johnathan Reed can be linked anywhere to the
18 scene of the crime.

19 THE COURT: Well, that's true, and that's
20 not what he's offering it for. What he's offering
21 it for is to show that the statement he made to
22 police is untrue.

23 MR. SWILLEY: Your Honor —

24 MR. HOLT: Your Honor —

25 THE COURT: Wait a minute now.

1 MR. SWILLEY: And that's fine, but it
2 does — doesn't have any bearing on the actual crime
3 for which he's on trial now.

4 THE COURT: True, but that doesn't make it
5 irrelevant. I mean, the relevance of it, he's
6 saying that your man made a voluntary statement to
7 police —

8 MR. SWILLEY: Okay.

9 THE COURT: —which you agree with.

10 MR. SWILLEY: As goes to voluntariness.

11 THE COURT: Okay. So if it's voluntary
12 then it's admissible; is it not?

13 MR. SWILLEY: The statement, yeah, it
14 passed the Denno smell test, yeah, that's true, I
15 agree to that.

16 THE COURT: So the statement is
17 admissible?

18 MR. SWILLEY: Right.

19 THE COURT: And what he wants to do is to
20 offer testimony to the effect that what he said in
21 the statement is not true because a gun was found at
22 his house.

23 MR. SWILLEY: Okay.

24 THE COURT: All right. Isn't that
25 relevant to that issue?

1 MR. SWILLEY: I don't think that it is
2 because the object of the statement is the last time
3 he's fired a gun and he tells them, you know, it's
4 been some time. The fact there's a gun under the
5 bed doesn't mean he fired a gun at any time.

6 THE COURT: That's not what I understood
7 the statement to say. I understood he said the
8 statement said that he didn't have a gun. What does
9 the statement say?

10 MR. HOLT: Judge, they've got the
11 transcript, but I just wanted to interject in case
12 you didn't hear me or I didn't say it right. The
13 witness Asia Gregg is going to say he pulled a
14 pistol on Johnny Lee Washington to keep them out of
15 the altercation that his brother was having with
16 Milton Hunter. It's alleged that both individuals
17 had guns. One witness is going to say that
18 Johnathan had a gun at the scene. That's also the
19 main reason I believe that piece of evidence is
20 relevant.

21 THE COURT: Say that again, Mr. Holt.

22 MR. HOLT: Asia Gregg, who is the female,
23 she is the sister of Milton Hunter.

24 THE COURT: Right, the first witness who
25 testified in the I.D. hearing.

1 MR. HOLT: Yes, sir. She was also the
2 closest person to the scene who is going to testify
3 for us. She describes Johnathan Reed as pulling a
4 pistol out on Johnny Lee Washington and the other
5 ones to keep them out of the altercation that Joshua
6 was having with Milton Hunter.

7 THE COURT: All right. So she's gonna say
8 he had a weapon at the scene?

9 MR. HOLT: Specifically a pistol.

10 THE COURT: A pistol.

11 MR. HOLT: Because she's saying that
12 Johnathan had a revolver and that's why no shell
13 casings were found.

14 THE COURT: Okay.

15 MR. HOLT: When I asked her was that the
16 only gun there, she said no. Johnathan is gonna
17 have it. She's gonna testify to that.

18 THE COURT: Mr. Swiley's client had a
19 weapon?

20 MR. HOLT: Right, yes, sir.

21 THE COURT: And your contention is that
22 weapon was seized or that was seized as a result of
23 the search warrant was the weapon that he had at the
24 scene of this crime?

25 MR. HOLT: Yes, sir, Your Honor.

1 MR. SWILLEY: And first of all, Your
2 Honor, in her prior statement she makes no mention
3 of my client having a gun period; so therefore, so
4 that point, the gun that was found under Johnathan's
5 bed has not been identified as to have been used or
6 brandished in the shooting. You know, no one's
7 identified this particular weapon as having anything
8 to do with shooting at the park. I think it would
9 be irrelevant. And if was, even if it's prejudicial
10 or even if it's probative that he lied, it's still
11 unduly prejudicial. It makes him look like a
12 criminal. The jury is gonna infer that he had
13 something to do with this crime primarily because of
14 the fact of the gun under his bed that hasn't been
15 — no one has factored this into this whole —

16 THE COURT: Isn't it probative of the fact
17 that the witnesses testified that he had a gun at
18 the scene —

19 MR. JONES: No.

20 THE COURT: —and the gun was found at
21 his house?

22 MR. SWILLEY: No, because there's no way
23 that anybody identified this particular gun found
24 under his bed.

25 THE COURT: What's anything says it has to

1 be this particular gun? Well, isn't that a matter
2 of weight for the jury?

3 MR. SWILLEY: I disagree because if it's
4 not this particular gun that was used at the scene
5 of the shooting then, or alleged to have been used
6 at the scene of the shooting, it's completely
7 irrelevant.

8 THE COURT: Isn't it circumstantial
9 evidence that the witness had a gun in his control;
10 and therefore, could have had a gun at the scene of
11 the thing. Isn't that circumstantial evidence to
12 that fact?

13 MR. SWILLEY: I don't think that it is
14 because there's no identification of this particular
15 gun.

16 THE COURT: Well, that's true, but it's
17 still circumstantial evidence of a pistol.

18 MR. SWILLEY: Well, I don't think, I don't
19 think it would be circumstantial evidence of a
20 pistol. I think it's — the only thing it's evident
21 of is that he owned a gun or that he was, that there
22 was a gun in his room at the time the search warrant
23 was executed; that's it. And this is the first —
24 today, well recently, the first time I've heard that
25 there was any allegation that he had a gun at the

1 scene whatsoever. She makes no mention of that
2 beforehand.

3 THE COURT: Who — wait a minute now. Who
4 did you say — I didn't understand that.

5 MR. SWILLEY: In her statement to the
6 police and then during the investigation —

7 THE COURT: Well, you can cross-examine
8 her on that in talking about the witness, but she
9 did say today that he had a gun at the scene; did
10 she not?

11 MR. SMILEY: She did.

12 MR. HOLT: She did.

13 THE COURT: And she's gonna testify to
14 that fact, I assume, that he had a gun at the scene.

15 MR. HOLT: She is.

16 MR. SWILLEY: If she does. She can't —
17 there's no way she can identify this particular gun
18 and therefore it's not relevant.

19 THE COURT: But that's the weight to be
20 given to it as opposed to the admissibility.

21 MR. SWILLEY: Well, you know, assuming
22 the — even assuming for argument sake that there
23 was a gun in the park and there was another gun, I
24 don't see how this gun would be relevant, would be
25 relevant to anything that went on at the park.

1 THE COURT: Well, I disagree. I think the
2 circumstantial evidence is the fact that your client
3 had access to a gun and, or a pistol, and it was
4 found at his house and under his bed so he had
5 access to it; and it's circumstantial evidence,
6 evidence of the fact that he had a weapon at the
7 scene. I think that -- the weight to be given to
8 that is for the jury to determine and not its
9 admissibility. So I would disagree, on grounds of
10 relevance I would not exclude the weapon found under
11 his bed.

12 MR. SMILEY: And we're going on Rule 403
13 more substantial --

14 THE COURT: Well, go ahead, I'll hear you
15 on that.

16 MR. SMILEY: As far as being admitted,
17 assuming that he feels like it is relevant, anything
18 probative the admission of this gun can offer, is
19 substantially outweighed by unfair prejudice as a
20 result to this being introduced to Johnathan Reed.
21 The mere fact he owned a gun under his bed, the jury
22 is gonna infer that he uses guns, that he carries
23 guns unlawfully, he uses guns within the commission
24 of felonies. And it's gonna unduly prejudice him in
25 front of the jury and that prejudice is gonna

1 substantially outweigh whatever probative value that
2 that gun can have in this case.

3 THE COURT: All right, I will disagree. I
4 will find evidence is relevant and it is not — I
5 know it can be excluded if the probative value is
6 substantially outweighed by the danger of unfair
7 prejudice; but in my view the danger of unfair
8 prejudice is not substantially outweighed by — the
9 probative value is not substantially outweighed by
10 the danger of unfair prejudice. I think the word
11 substantially is the key here so I would overrule
12 the objection on 401 and 403.

13 MR. SWILLEY: I would, if the Court would
14 note my objection for the record.

15 THE COURT: Not necessary, the record are
16 will reflect that.

17 All right, anything else, Mr. Holt, before
18 we go forward tomorrow?

19 MR. HOLT: No, sir, Your Honor.

20 THE COURT: Mr. Jones?

21 MR. JONES: No, sir.

22 THE COURT: All right, Mr. Swilley?

23 MR. SWILLEY: No, sir.

24 THE COURT: All right, counsel, let's be
25 ready to go forward at 9:30 tomorrow morning. See

1 you then.

2 (WHEREUPON, the proceedings were concluded
3 for the day to be reconvened on October
4 22, 2013.)

5 THE COURT: Back on the record with regard
6 to the matter State versus Johnathan Tyrone Reed and
7 Joshua Alexander Reed. The defendants are present
8 in the courtroom with their counsel. The State is
9 present and represented by Mr. Holt and Ms. Parker.
10 Anything from the State before we bring the jury and
11 have the jury sworn and begin the trial, Mr. Holt?

12 MR. HOLT: Judge, I just think it might be
13 the time to discuss — immediately following the
14 openings we're gonna go into the three fact
15 witnesses. There are some records involved. If we
16 could hear what Defense counsel plans on —

17 THE COURT: Go into what? I'm sorry.

18 MR. HOLT: Go into the three fact
19 witnesses.

20 THE COURT: Oh, okay.

21 MR. HOLT: If we can hear what Defense
22 counsel thinks they're entitled to bring up from the
23 record. I've never done this motion from this side
24 before.

25 THE COURT: All right, let's look at

1 those. Let me get a witness list and see who those
2 witnesses are. All right, those are Alecia Gregg,
3 Anthony Wingate, and Johnny Lee Washington. All
4 right, first with regard to Ms. Gregg, what is her
5 criminal record, Mr. Holt?

6 MR. HOLT: Judge, I believe she was
7 convicted of an arson third in Beaufort County.

8 THE COURT: And when was that?

9 MR. HOLT: 2/21/2011.

10 THE COURT: Okay. Anything else?

11 MR. HOLT: That's it, Judge.

12 THE COURT: All right, that's Ms. Gregg.
13 All right, Mr. Wingate.

14 MR. HOLT: Judge, he was convicted of
15 distribution of crack cocaine in 1993.

16 THE COURT: Okay.

17 MR. HOLT: And malicious injury to city
18 property in 1995, shoplifting. I think that's it,
19 Judge.

20 THE COURT: All right. Okay. And then
21 Johnnie Lee Washington.

22 MR. HOLT: His is a little more extensive,
23 Your Honor. He's got a grand larceny to a motor
24 vehicle in 1999. A burglary third in 2006, he
25 received a YOA on it. And I believe that's it, Your

1 Honor.

2 THE COURT: Okay.

3 MR. HOLT: Judge —

4 THE COURT: Yes, sir.

5 MR. HOLT: Johnny Lee Washington, when he
6 was convicted of burglary second he was also
7 convicted of a burglary third. They were run
8 concurrent in two thousand —

9 THE COURT: Burglary second and burglary
10 third.

11 MR. HOLT: Yes, sir, 2006.

12 THE COURT: Okay. All right, Mr. Jones,
13 let's first address Ms. Gregg, the arson third of
14 2011. What's your position on that?

15 MR. JONES: That that would be subject to
16 impeachment, Your Honor.

17 THE COURT: How do you — what do you say,
18 Mr. Holt?

19 MR. HOLT: Certainly not, Your Honor. I
20 don't agree. I don't think it goes to truth or
21 voracity or anything.

22 THE COURT: It doesn't have to, does it?
23 Under the rule 609 a person attacked credibility of
24 the witness evidence of witness other than accused
25 has been convicted of a crime shall be admitted

1 subject to 403. If a crime is punishable by death
2 or imprisonment in excess of more than one year in
3 which the witness was convicted and evidence been
4 convicted such, shall be admitted if the Court
5 determine its probative value admitting the evidence
6 outweighs its prejudicial effect. The old test of
7 under the old rules of going to the truth or
8 voracity is not the test anymore.

9 MR. HOLT: Then I make my objection under
10 403, Judge. I think that — or where 403 count from
11 the rules I just read rather. I think it'd be more
12 prejudicial than it's fair because it doesn't have
13 anything to do with the facts at hand. I think it
14 doesn't show personally of her anything dishonest.

15 THE COURT: Okay. All right, I'll come
16 back to that. Mr. Swilley, I would assume you also
17 take the position that that is admissible under 609.

18 MR. SWILLEY: It is, Your Honor. It
19 carries — arson third degree carries up to 15
20 years. This happened in 2011 so it's within the ten
21 year time limit. I do think it is admissible for
22 purposes of impeachment under rule 609. I don't
23 think that the prejudicial impact is substantially
24 outweighed any kind of probative value of that.

25 THE COURT: It is substantial in this

1 rule. It just says that its prejudicial effect.
2 The other one that has substantial outweighing.
3 This just says for the court determines the
4 probative value of admitting the evidence outweighs
5 its prejudicial effect of the accused. Okay. Let's
6 look at Mr. Wingate's. Mr. Jones, distribution of
7 crack in '93. When in '93, Mr. Holt? It's getting
8 close to the ten year.

9 MR. HOLT: It's over 20 years at this
10 point, Judge.

11 THE COURT: That's right, it is, yea,
12 okay. That's why I'm a lawyer and not a
13 mathematician. Okay. So you got the distribution,
14 of crack, malicious injury to county property, did
15 you say? That's over 20 years. I mean, that's 18
16 years. And shoplifting is what year?

17 MR. HOLT: 2006, Judge.

18 THE COURT: And that's shoplifting first?

19 MR. HOLT: Shoplifting first. It was
20 handled in magistrate's court.

21 THE COURT: So that's up to ten years.
22 What's your position on those, Mr. --

23 MR. JONES: I don't see anything we can
24 impeach. He has a -- he's got some arrests,
25 substantial arrests in '04 with no disposition on

1 this, this NCIC that we have we've been provided.
2 So the only thing we got is shoplifting in '06 and
3 —

4 THE COURT: I agree. Well, let me hear
5 from you, Mr. Swilley.

6 MR. SWILLEY: Your Honor, and I know know
7 if I plan on out using this, just so we know, I'm
8 looking at subsection 406. It says evidence any
9 witness has been convicted of a crime shall be
10 admitted if it involves dishonesty or false
11 statement regardless of punishment. I think that
12 shoplifting inherently involves dishonesty so I do
13 think it would be admissible under the rule.

14 THE COURT: Well, which crimes under
15 609(a) (2)?

16 MR. SWILLEY: Shoplifting in 2006, and
17 it's been about ten years. I do think that
18 shoplifting would be admissible. The, I think the
19 crack cocaine charge in '04 doesn't fall —

20 THE COURT: There is no crack cocaine in
21 '04.

22 MR. SWILLEY: Okay.

23 THE COURT: Three crimes of distribution
24 of crack in 1993, malicious injury to city property
25 in '95, and shoplifting in '06.

1 MR. SWILLEY: I apologize. I was looking
2 at the charges he picked up and it reported no
3 disposition so I think the only shoplifting — the
4 shoplifting will be admissible under the crime of
5 violence under 609 subsection two.

6 THE COURT: All right, I understand your
7 position. Okay, now what about Mr. Washington?
8 Apparently he has a grand larceny in '99, burglary
9 third in '06, burglary third and burglary second in
10 '06. Mr. Jones, what's your position?

11 MS. WOOTEN: Your Honor, it's our position
12 that the burglary second and the burglary third in
13 2006 should be allowed to be —

14 THE COURT: Okay. Mr. Swilley, what's
15 your position?

16 MR. SWILLEY: Your Honor, I looked at
17 Mr. Washington's wrap sheet. He has a two
18 thousand — I think the burglary is inherently a
19 crime of dishonesty as well and would be in a
20 position such it would be admissible under
21 subsection two. I think those should be used for
22 impeachment.

23 THE COURT: Okay. You agree? Y'all both
24 agree that grand larceny is outside the ten year
25 period?

1 MR. SWILLEY: I concur with that.

2 THE COURT: All right. The ruling of the
3 Court would be that as far as Ms. Gregg is concerned
4 that the, it is admissible under 609(a)(1), well,
5 the arson third, because I do feel that the
6 probative value of admitting the evidence outweighs
7 the prejudicial effect, and therefore, it is
8 admissible for impeachment purposes.

9 With regard to Mr. Wingate, the
10 shoplifting would be admissible under 609(a)(2).
11 The witness has been convicted of a crime involving
12 punishment, I mean, involving dishonesty and false
13 statement so the shoplifting is admissible. And as
14 far as Mr. Washington is concerned, the only thing
15 that is admissible of the two burglary convictions
16 in '06. They fall within the purview of 609(a)(1).
17 So those would be admissible as impeachments.

18 All right, thank you. All right, anything
19 else then before we bring the jury in?

20 MR. HOLT: Nothing from the State, Your
21 Honor.

22 THE COURT: Anything, Mr. Jones?

23 MR. JONES: No, sir.

24 MR. SWILLEY: No, sir, Your Honor.

25 MS. WOOTEN: No, Your Honor.

1 THE COURT: Anything?

2 MR. SWILLEY: There's not.

3 THE COURT: No motion's been made to me of
4 sequestering the witnesses. I suppose y'all have
5 agreed among that or —

6 MR. JONES: We did, Your Honor.

7 MR. HOLT: And I hate to say this, Your
8 Honor, I hate to interrupt you, if you could just
9 say before every time the jury comes in to make sure
10 the witnesses leave. I tried my best yesterday and
11 today, but I'm scared that there might be somebody
12 in here snuck in.

13 THE COURT: I'll do it right now. If
14 there's anybody on this witness list that I
15 published that are witness for State or Defense in
16 this case, you will not be allowed to, permitted to
17 stay in the courtroom until you are called as a
18 witness. And there were two witness lists that were
19 furnished to me and those names were furnished to
20 me. So if any of those witnesses in the courtroom,
21 then you'll need to leave until you are called as a
22 witness.

23 (Pause.)

24 THE COURT: All right, ready to go, Mr.
25 Holt?

1 MR. HOLT: Yes, sir, Your Honor.

2 THE COURT: Gentlemen?

3 MR. JONES: Yes, sir.

4 MR. SWILLEY: Yes, sir.

5 THE COURT: Ms. Swilley? All right, bring
6 the jury in please.

7 (WHEREUPON, the jury was returned to the
8 courtroom and the following
9 proceedings commenced in open court.)

10 THE COURT: I want to thank you for your
11 promptness in being back here this morning. We did
12 have a few matters that we had ed to tend to this
13 morning, and we have taken care of those. One of
14 the things that I want to — a couple of things I
15 want to tell you before we begin. First of all, it
16 became necessary yesterday afternoon to excuse one
17 of the members of the jury and to substitute one
18 of — we went through the process and took care of
19 that and the or with an alternate is that the, or
20 not in place in the order of selection. They're
21 replaced randomly. And the two alternates were
22 Ms. Davis and Mr. Jackson, and those — the random
23 selection there resulted in Mr. Jackson being
24 selected as a principal on this jury and so now he
25 is one of the twelve members of the principal jury.

1 And Ms. Davis, you will remain as the
2 alternate in this case and of course will sit
3 outside.

4 When we break for lunch and when you come
5 back after lunch, what I would like for you to do at
6 that time, the reason I stopped you from selecting
7 the foreman this morning is because Mr. Jackson
8 should participate in that process since he is now
9 one of the principal members of the jury. I want
10 the jury from the twelve of you to select a person
11 to be the foreperson and that foreperson should sit
12 in the first seat. Ms. Davis should not participate
13 in this process because she is an alternate, but it
14 should be twelve members of the principal jury
15 should select the foreperson and advise the bailiff
16 who you selected, and then that person should always
17 sit in the first seat on the front row.

18 The other thing that I would ask you is if
19 anyone attempts to talk with you about this case in
20 any manner over the evening recess or contact with
21 you in any way about this case over the evening
22 recess, I would need to know about it.

23 (There was no response.)

24 THE COURT: Negative response and that's
25 good. Also, if anybody has read any news stories or

1 seen anything on television about this case over the
2 evening recess I would also need to know about that
3 now.

4 (There was no response.)

5 THE COURT: Again, negative response and
6 that's good. All right, we are now ready to
7 proceed, ladies and gentlemen.

8 Mr. Clerk, let's swear the jury.

9 THE CLERK OF COURT: Yes, sir. I ask each
10 one of you to stand and raise your right hand for me
11 please.

12 (WHEREUPON, the jury was

13 THE CLERK OF COURT: If you accepted the
14 oath please indicate by saying I will.

15 (Jurors responded.)

16 THE CLERK OF COURT: Everyone who took the
17 oath may have a seat.

18 THE COURT: Before we begin the actual
19 trial of this case I thought it might be helpful if
20 I explain to you basically how a trial proceeds. I
21 know that all of you have seen trials on television,
22 but I think you'll find that it is a great deal
23 different in real life. First of all, the State
24 will make an opening statement. An opening
25 statement is not evidence. It is simply an outline

1 to help you understand what the State expects the
2 evidence will show. The defendants may, if they
3 wish to, present an opening statement but they don't
4 have to for reasons that I will explain later.
5 Following the opening statements you will hear the
6 testimony in this case. This consists of testimony
7 from the State's witnesses as well as any physical
8 exhibits which will be introduced as evidence. And
9 I will tell you now that if there are physical
10 exhibits admitted into evidence, the lawyers may ask
11 for permission to publish those exhibits. That
12 simply means to show the jury those exhibits, and I
13 will likely grant that permission. And they will
14 either hold them up to you while you're sitting
15 there in the jury box or pass them around and allow
16 you to look at them while you're in the jury box.
17 Do not been concerned if you do not have as long to
18 look at any physical exhibit as you might like.
19 Anything that is introduced into evidence will go
20 with you to the jury room when you retire to
21 deliberate your verdict.

22 Following the completion of the testimony
23 the attorneys will again have an opportunity to make
24 what is called a closing statement or summation to
25 you. This is an opportunity for the attorneys to

1 summarize the case from their respective points of
2 view. Again, these arguments are not evidence.
3 Following the closing statements by the attorneys I
4 will instruct you on the law of South Carolina as it
5 pertains to the issues that have arisen in this
6 case; and when I have completed my instructions to
7 you, you will be permitted to begin your
8 deliberations in order to reach a verdict.

9 Now ladies and gentlemen, you're now the
10 jury in this case and I want to take a few minutes
11 to tell you something about your duty as jurors and
12 to give you some basic instructions. At the end of
13 this trial I will give you more detailed
14 instructions and those instructions will control
15 your deliberations. It will be your duty to decide
16 from the evidence what the facts are. You, and you
17 alone, are the judges of the facts. You will hear
18 the evidence, decide what the facts are, and apply
19 those facts and the law which I will give to you.
20 That is how you reach a verdict. In doing so you
21 must follow the law whether you agree with it or
22 not. The evidence consists of the testimony of
23 witnesses, documents, and other things received into
24 evidence as exhibits and any facts on which the
25 lawyers agree or which I may instruct you to accept.

1 Now you should not take anything that I may say or
2 do during this trial as indicating what I think of
3 the evidence or what your verdict should be. The
4 law does not permit me to have an opinion on the
5 facts. The same law that makes you the judge of the
6 facts makes me the judge of the law. You must take
7 the law as I give it to you regardless of what you
8 think the law is or what the law ought to be. If
9 I'm wrong on the law there's another time and place
10 for that error to be corrected; but for this case
11 you must accept the law as I charge it to you.

12 Now in a criminal case brought by the
13 State of South Carolina the State charges the
14 defendants with two crimes. Each one is charged
15 with a crime of murder and the crime of possession
16 of a weapon during the commission of a violent
17 crime. To these charges the defendants have pled
18 not guilty. They're -- the charges are contained in
19 indictments which I hold in my hand. The
20 indictments are not evidence of anything. They are
21 simply the documents by which the case is brought to
22 trial and are a general description of the charges
23 made by the State against the defendants. As I
24 said, the defendants have pled not guilty to these
25 charges and are presumed innocent unless and until

1 proven guilty beyond a reasonable doubt. A
2 reasonable doubt is the kind of doubt that would
3 cause a reasonable person to hesitate to act. A
4 defendant has the right not to testify and never has
5 to prove innocence or present any evidence. The
6 burden of proof is always on the State of South
7 Carolina.

8 Now there are certain things that are not
9 evidence and you must not consider them as evidence
10 in deciding the facts of this case. The statements
11 and arguments of attorneys are not evidence.
12 Questions and objections of the attorneys are not
13 evidence, and testimony that I instruct you to
14 disregard is not evidence. Evidence may be direct
15 or circumstantial. Direct evidence is testimony by
16 a witness about what that witness personally saw or
17 heard or did. Circumstantial evidence is indirect
18 evidence. The law permits you to give equal weight
19 to both, but it is for you to decide how much weight
20 to give to any of the evidence. There are rules of
21 evidence which control what can be received in
22 court. When a lawyer asks a question or offers an
23 exhibit into evidence and the lawyer on the other
24 side thinks that it is not permitted by the rules,
25 that lawyer may object. If I overrule the

1 objection, the question may be answered or the
2 exhibit may be received. If I sustain the objection
3 the question cannot be answered or the exhibit
4 cannot be received. Whenever I sustain an objection
5 to a question or deny a motion to admit an exhibit
6 into evidence, you must ignore the question or the
7 existence of the exhibit and you must not guess what
8 the answer would have been or what the exhibit would
9 have shown. Sometimes it may be necessary for me to
10 request that you leave the courtroom while I discuss
11 with the attorneys legal questions that come up
12 during the trial. If this occurs, you should not
13 speculate about our discussions or the reasons that
14 you were asked to leave the room. This is simply a
15 procedure that the law requires when certain legal
16 issues arise.

17 There also may be occasions when I ask the
18 attorneys to step up to the Bench so that I can
19 discuss a legal issue with them in private. I will
20 do this as often as possible so that you will not be
21 required to leave the courtroom more than is
22 absolutely necessary. Again, if I ask the attorneys
23 to step up to the Bench or if I ask you to leave the
24 courtroom, please don't think that anybody is trying
25 to hide anything from you or keep any evidence from

1 you. This is simply a procedure used by all lawyers
2 and by all court to determine and decide legal
3 questions.

4 Now in deciding the facts of this case you
5 may have to decide which witnesses to believe and
6 which witnesses not to believe. This is called
7 credibility. You may believe everything a witness
8 says or only part of it or none of it. In deciding
9 what to believe you may consider a number of factors
10 including the witnesses ability to see or hear or
11 know the things a witness testified to; the quality
12 of a witness' memory; the witness's manner or
13 demeanor while testifying; whether the witness has
14 an interest in the outcome of the case or any
15 motive, bias, or prejudice; whether the witness is
16 contradicted by anything the witness said or wrote
17 before the trial or by any other evidence; and how
18 reasonable was the witness' testimony when
19 considered in the light of other evidence which you
20 do believe.

21 Now just a few words to you about your
22 conduct as jurors. Some of the things I have
23 already told you, but they're important enough that
24 they bear repeating. First of all, do not talk to
25 each other about this case until the end of the case

1 when you go to the jury room to deliberate your
2 verdict. Secondly, do not talk with anyone else
3 about the case until the trial is ended following
4 your verdict and you have been discharged as jurors.
5 This means do not discuss the case with members of
6 your family or your friends or with anyone else.
7 You may tell them that you are a juror, but don't
8 tell them anything about the case until you have
9 been discharged by me. Do not let anyone talk to
10 you about the case. If anyone should try to talk to
11 you about it get their name and their description,
12 report it to the bailiffs, they will report it to me
13 and I will deal with them. Do not read any news
14 stories or articles or listen to any radio,
15 television reports about the case. Do not do any
16 research on the internet or any other research
17 device. You're not to consider as evidence anything
18 that you may see or hear when court is not in
19 session. Do not make any investigation into the
20 case on your own. And finally and probably most
21 important, do not make up your mind about what your
22 verdict should be until you have heard all of the
23 testimony in this case and the arguments of counsel
24 and the instructions on the law by the court. You
25 will be instructed when to begin your deliberations

1 by either me or one of the bailiffs.

2 Are there any objections to my initial
3 remarks on behalf of the State, Mr. Holt?

4 MR. HOLT: None, Your Honor.

5 THE COURT: Behalf of defendant,
6 Mr. Jones?

7 MR. JONES: None from the —

8 THE COURT: Mr. Swilley?

9 MR. SWILLEY: No, Your Honor.

10 THE COURT: All right, the first order of
11 business, ladies and gentlemen, is the matter of
12 opening statements. For that purpose the State
13 will — I mean, the Court will recognize the
14 assistant solicitor, Mr. Holt.

15 MR. HOLT: Thank you very much, Your
16 Honor, may it please the Court, Mr. Jones,
17 Ms. Wooten, Mr. Swilley. Pride Park is located on
18 South Sixth Street in Hartsville. It is right
19 behind the police station, Marketplace, Mozingo
20 Liquors. It's not far. It's about a half a mile
21 from there. On February 15th, 2012, Milton Campbell
22 Hunter, his sister and her boyfriend, were occupying
23 one of the picnic tables on a sunny day like 4:00 in
24 the afternoon. Another person, another group, and
25 the others came. Shortly thereafter two men started

1 driving by, once, twice, I don't know how many
2 times, and they parked. And after they parked they
3 got out, and they spoke to Milton Hunter for not a
4 very long amount of time and not a lot of words were
5 exchanged before the two men pulled out a gun, shot
6 Milton Campbell Hunter in the head, in the body, in
7 the neck. This trial is gonna be about what
8 happened that day, and this trial is gonna be about
9 the Reed brothers. And I, John Holt, who represent
10 the County of Darlington and the State of South
11 Carolina intend to prove, and believe I can, that it
12 was the Reed brothers that killed Milton Hunter that
13 day.

14 Now throughout the course of this trial
15 you're gonna learn how the government actually works
16 from trials to the investigations, to various
17 courtroom staff and what they do, and I can promise
18 you it will not be anything like what you expect or
19 what you come to believe happens in television and
20 movies. It's a lot simpler. I'm gonna pull people
21 up and I'm gonna put them in that chair, and I'm
22 gonna examine them. And we're gonna introduce
23 various pieces of evidence from them that they might
24 have collected. And throughout the whole thing what
25 I want you to remember is this, in America, the

1 State has the burden to prove someone guilty. In
2 this country the government can't just come in and
3 say you're guilty of a crime and you have to prove
4 your innocence; that's not how it's done. I have to
5 come up here and prove to y'all beyond a reasonable
6 doubt that the gentlemen sitting at these tables and
7 represented by these attorneys were the ones that
8 killed Milton Hunter. I don't think I'm gonna have
9 a problem doing that. But the trade-off to all that
10 is, is that citizens of America, citizens of South
11 Carolina, citizens of Darlington, have to give up
12 their time; they have to be here. And I want you to
13 think about how important that is to everyone
14 involved for the State, to the defendants even, and
15 I want you to think about the rights you gain
16 because of that. It's because you come here today
17 that the government can't just come and take other
18 people away. It's a very important thing. And I
19 want you to remember that that oath you just swore
20 was to two things.

21 Listen to the evidence to follow the law
22 because while you have no formal training as a jury,
23 you're twelve people from twelve different walks of
24 life. You've been loved; you've been lied to. You
25 may have begun it yourself. You work jobs you've

1 been fired, all these various life experiences come
2 to make you a unique judge of circumstance, of
3 character, of things that you're gonna see on that
4 witness stand and the evidence you're gonna hear.
5 And it's this collective common sense that the
6 twelve of you bringing to the table are gonna solve
7 this problem in front of you. I don't have any
8 doubt how it's gonna be solved or how I'm gonna
9 prove it to you. I know how I'm gonna do that. But
10 when you go back there, there can't be any belief
11 what I want, what I feel like is right, what I feel
12 like happened. You swore an oath and throughout the
13 course of this trial I don't want y'all to forget
14 it. Listen to the evidence and follow the law. And
15 even though it may not make us always happy, those
16 are the two things that you're gonna be sworn to do.

17 Now I'm gonna sit down and I'm gonna let
18 them talk and shortly thereafter, we're gonna get
19 into the case. I'm gonna call the witnesses that
20 were there, and I'm gonna call the ones that
21 investigated, both of which have ample evidence to
22 prove my case. Thank you.

23 THE COURT: Mr. Jones, your client care to
24 make opening statement?

25 MR. JONES: Yes, sir.

1 THE COURT: Ms. Wooten?

2 MS. WOOTEN: Yes, Your Honor. There are
3 two sides to every story. I want y'all to keep that
4 in mind as you hear evidence today and tomorrow and
5 however long this trial may last. Thank you. My
6 name is Julie Wooten. I'm an attorney here in
7 Darlington. I represent the Fourth Circuit Public
8 Defender's Office. Seated over at the table next to
9 me is Mr. Rick Jones and beside him is Mr. Joshua
10 Reed; that's our client. Everybody in this room
11 here today has a very important job to do. The
12 government has already spoken to you, Mr. Holt,
13 Ms. Parker, Mr. Farr. They represent the State, and
14 it is their job to prove each charge and each
15 element of the defenses beyond a reasonable doubt.
16 The court reporter, she takes down every word we say
17 to make sure we have an accurate record. The judge,
18 he sits in judgment of law. He will instruct you on
19 the law at the conclusion of the case and tell you
20 what law to apply to the facts.

21 The government puts up first. This is
22 important because as the judge told you, as Mr. Holt
23 told you himself, they have the burden of proof in
24 this case. They have to prove to you beyond a
25 reasonable doubt that our client committed the crime

1 in which he is charged. They carry the burden.
2 They have to prove every element and that for this
3 reason that they sit close to you, they talk first,
4 and they have to put up the witnesses. As defense,
5 we have don't have to prove anything to you. We
6 don't have to make an opening statement, which is
7 what I'm doing right now. We don't have to call a
8 single witness. Mr. Reed himself does not have to
9 speak because he has nothing to prove. He sits here
10 today an innocent man. He is an innocent man. He
11 remains an innocent man up until and only if the
12 State, the Government, is able to prove their case
13 to you beyond a reasonable doubt.

14 I would like very much for y'all to listen
15 carefully to every bit, the information you're gonna
16 hear, all of the evidence, all of the testimony
17 that's presented. Yesterday when we did jury
18 selection all of you were chosen by Mr. Joshua Reed,
19 by Mr. Rick Jones, myself, because you all have
20 common traits. You all have common sense, as
21 Mr. Holt said, and you all have the ability to have
22 an open mind to listen, and that is what we ask of
23 you. Don't make up your mind until you hear all of
24 the evidence presented to you.

25 I'm not entirely sure what this case is

1 going to be because I don't have a crystal ball.
2 What I can tell you is you're gonna hear conflicting
3 stories. You're gonna hear conflicting stories I
4 imagine from one witness to another, and I would
5 anticipate that you're gonna hear conflicting
6 stories sometimes within a witness' own testimony
7 from previous statements, today in court, or perhaps
8 with themselves as they're sitting on the witness
9 stand. The judge is at the very end will instruct
10 you on what it means to have evidence beyond a
11 reasonable doubt. He'll explain that to you.
12 Briefly he told you it is a doubt which causes a
13 reasonable person to hesitate to act. While you're
14 listening to the evidence keep all of this in mind.
15 Listen to what everybody says, think about what
16 motives they might have, what biases they might have
17 in play, and then you get to judge exactly what
18 evidence to take in consideration.

19 I don't know how many of you were excited
20 about coming to jury yesterday or today; but I will
21 tell you this, this may be just an ordinary Tuesday
22 for you, but this is the most important day of
23 Joshua Reed's life. Thank you so much for your
24 service. Thank you for coming too. Thank you for
25 your open mind.

1 THE COURT: Mr. Swilley.

2 MR. SWILLEY: Thank you, Your Honor. Good
3 morning, my name is Mat Swilley. I grew up in
4 Greenville. I practice now in Myrtle Beach in a
5 small law firm. That right there, the young man
6 with the long hair, that's my client. That's
7 Johnathan Reed. He grew up in Hartsville. He's
8 about 22 years old. Grew up with a low income
9 family with his brothers, with his mother. And what
10 happened on February the 15th of 2012 goes kind of
11 like this. Johnathan and his brother were on the
12 way to the store, went down 6th. They turned off
13 Marion, went down 6th Street. And I don't know how
14 familiar y'all are with Hartsville. But he stopped,
15 got out at Pride Park which is a public park in the
16 middle of Hartsville. Then he get out, walk up.
17 Milton Hunter is there. Johnathan Washington is
18 there. And these are the people y'all are gonna
19 hear about later on. A guy named Anthony Wingate is
20 there sitting at the park eating Yogi Bear's fried
21 chicken, which I think that's the only Yogi Bear
22 left in America. And they're sitting there, the
23 Reeds come up, they're all conversating. They're
24 there for a number of minutes, all right. Somehow
25 between Joshua Reed and Milton Hunter some bad blood

1 comes up and between a conversation shots get fired
2 by Joshua Reed. Milton Hunter dies. And my client,
3 Johnathan Reed, does exactly what any reasonable
4 person would do at that moment, he takes off. He
5 removes himself from the situation. Nobody wants to
6 be in the middle of a gun fight. Johnathan never
7 had a gun. He never participated in anything
8 illegal in Pride Park. He never insisted telling —
9 never assisted in any crime that took place; he
10 didn't commit a crime. The reason that Johnathan is
11 on trial right now; I'm gonna tell y'all, the reason
12 why he's in that chair, because he's not gonna sit
13 in that chair, and bear with us, against his
14 brother. He didn't do that from the beginning, and
15 he's didn't exactly will do that now. That's why
16 he's charged a crime.

17 And what Mr. Holt said about the process
18 and Ms. Wooten said about the process is all right
19 except for Ms. Wooten said one thing that kind of I
20 don't agree with; and that's that Mr. Holt and
21 Ms. Parker, their job is to prove a defendant guilty
22 beyond a reasonable doubt. I disagree with that.
23 And as a former assistant solicitor, the job of the
24 State and the solicitor's office is to seek justice.
25 It's not to win; it's not get your conviction. It's

1 to seek justice, and that's what y'all are here to
2 do too. Y'all are here to seek justice, to create
3 right. And justice in this case would be an
4 acquittal of Johnathan Reed because Johnathan Reed
5 is not guilty of murder. He's not guilty of
6 possession of a weapon in the commission of a
7 violent crime. I hope y'all can see that conclusion
8 at the end of the case 'cause that's the truth.

9 And to understand kind of what's going on
10 here I'm gonna break it down a little bit. To get
11 to the point where we're at now, what happens is an
12 investigation like this where there's a killing,
13 police come and they investigate. When they get all
14 their evidence they have to go before either summary
15 court judge or a city judge which is the local
16 judge, you know, within the municipality or the
17 magistrate or the county, if it's in the county
18 jurisdiction. And they have to come to that judge
19 and say, okay, we think we have probable cause which
20 is kind of a loosely defined term where there's some
21 evidence something happened that a crime happened,
22 and some evidence that this individual committed
23 this crime and then they have to get judge to sign
24 the want if they want to get, if they want to have
25 the defendant, the person, charged with the crime

1 and arrested. Okay, what happened in this case is
2 the Hartsville police, the City of Hartsville, was
3 the investigating unit. They were the law
4 enforcement agency that was in charge of the
5 investigation in this case. They came in, they did
6 their investigation. And I believe there was a
7 gentleman named Terry Anderson that was the lead
8 investigator in this case, was in charge of
9 investigations. He goes to the city judge of
10 Hartsville, filled out a warrant with the exact same
11 word for word paragraph for both of these people
12 accusing them of what they did. It was signed and
13 Johnathan and Joshua were arrested. After that, in
14 order to get to that — you have to secure the
15 arrest — in order to get them into court before a
16 jury to be tried, what has to be done there has to
17 be an indictment issued by what's called a grand
18 jury. And that's kind of a, it's kind of a strange
19 process. The grand jury convenes in secrecy, okay.
20 A officer goes and testifies before a group of
21 people that have to make a finding themselves to
22 probable cause based upon what they've been
23 instructed is probable cause and they have to issue
24 what's called a true bill indictment which some of
25 you come before here.

1 This today is the first time that
2 Johnathan Reed has got to participate in this
3 process whatsoever. That means the buck stops with
4 y'all. You're the decision makers. I think when
5 Ms. Wooten says that y'all are the fact finders; but
6 the fact that you have to come to conclusion to is
7 whether or not the State has proven their case
8 against my client and Mr. Jones and Ms. Wooten is
9 going to have to beyond a reasonable doubt. And
10 they're not gonna come to that conclusion with
11 Johnathan Reed. And you shouldn't come to Johnathan
12 Reed because Johnathan Reed is not guilty. He never
13 had a gun. He never assisted in the murder. He
14 never did anything to perpetuate, to further the
15 purpose of the killing.

16 Now what happened this day, this is not,
17 this wasn't a plan, okay. Nobody plans to kill
18 anybody in the middle of the afternoon in front of
19 three people, all right, that didn't happen. This
20 is a spur of the moment decision that took place.
21 Johnathan just happened to be literally at the wrong
22 place at the wrong time. That's why he's there
23 today. He is not guilty of murder and he's not
24 guilty of possession of a weapon, he committed no
25 violent crime. Thank you.

SW- A. GREGG - DIRECT

1 THE COURT: Mr. Holt, you may call your
2 first witness.

3 MR. HOLT: Thank you very much, Judge.
4 Asia Gregg up here please.

5 THE CLERK OF COURT: If you'll come
6 forward right there as a witness please. Place your
7 left hand on the Bible, raise your right.

8 WHEREUPON,

9 **ASIA LAVON GREGG,**
10 having been duly sworn by the Clerk of Court,
11 testified as follows:

12 THE CLERK OF COURT: Have a seat up there
13 for me please.

14 THE COURT: Go ahead, Mr. Holt.

15 **DIRECT EXAMINATION**

16 BY MR. HOLT:

17 Q Asia, would you please give your full name for
18 the jury and the court reporter.

19 A Asia Lavon (ph) Gregg.

20 Q How old are you?

21 A 25.

22 Q Where do you live now?

23 A -I'm currently staying in Florence, but I stay in
24 Hartsville, South Carolina.

25 Q Where are you from?

SW- A. GREGG - DIRECT

1 A Hartsville, South Carolina.

2 Q Did you have a brother named Milton Hunter?

3 A Yes.

4 Q All right. Now Asia, I want to take you to
5 February 15th, 2012, and I want to ask you what you
6 did that day from the time you got up to the time
7 you got to Pride Park.

8 A From the time I got up myself and Johnny
9 Washington was together. We went to his mom's
10 house. I called my brother. He didn't get an
11 answer. He called me back. Me and Johnathan was on
12 our way to Yogi Bear getting something to eat. He
13 called and asked could I, would i get him something
14 to eat and I said okay. We met up at Pride Park.

15 Q All right. Did y'all plan on meeting up there
16 that day or did it kind of just happen?

17 A It kind of just happened.

18 Q All right. What happened next?

19 A We all were sitting there eating, just talking,
20 reminiscing, having a good time. Gave my brother
21 some change to go to the vending machine across the
22 street.

23 Q And now at this time who was at Pride Park with
24 you and who was also there?

25 A There with me was Johnny Lee Washington, my

SW- A. GREGG - DIRECT

1 brother Milton Hunter, me and Anthony.

2 Q And when you say Anthony who do you mean?

3 A Ship.

4 Q Okay. What's his last name, for the jury?

5 A I can't remember his last name.

6 Q Okay. Were y'all friends before February 15th?

7 A No.

8 Q Did you know him before February 15th?

9 A No.

10 Q Was he there when y'all got there, or did he get
11 there later?

12 A He was there before we got there.

13 Q All right. What happened after your brother went
14 and got a drink?

15 A He was coming back across the street and the Reed
16 brothers rode past.

17 Q All right. Now let me interject here, and I want
18 to step away from the story. Where was Milton
19 living at this time?

20 A Milton was currently staying in North Carolina.

21 Q What was he doing in Hartsville that day?

22 A Family emergency.

23 Q Okay. And how many days had he been in
24 Hartsville?

25 A Three.

SW- A. GREGG - DIRECT

1 Q Okay. When was he planning on leaving?

2 A 15th.

3 Q All right. Now what happened after he got there?

4 A He came back across the street. He called my
5 cousin Kenneth and asked him —

6 MR. JONES: Objection, hearsay.

7 THE COURT: All right. What's the basis,
8 Mr. Swilley?

9 MR. SWILLEY: On the basis of hearsay,
10 Your Honor.

11 THE COURT: All right. I'll hear from
12 you. But it seem like to me it might be an offer of
13 truth to show the effect to the jury but.

14 MR. HOLT: That's off— it's offered to
15 show the effect. It's not offered for the truth.

16 THE COURT: All right. I overrule the
17 objection at this point.

18 I would tell you that most of the time you
19 cannot testify as to what somebody else said.

20 That's what we lawyers call hearsay. This
21 particular statement does not fall within the
22 hearsay rule, but be careful about saying in the
23 future what anybody told you.

24 Okay, go ahead.

25 BY MR. HOLT:

SW- A. GREGG - DIRECT

1 Q You saw the brothers drive by. What happened
2 next?

3 A He made a phone call.

4 Q Okay. And about how many times did the Reed
5 brothers drive by?

6 A About three.

7 Q Did you know them, the Reed brothers, prior to
8 that day?

9 A From around.

10 Q Were you friends?

11 A No.

12 Q All right. On the third time did they stop?

13 A Yeah.

14 Q And what happened then?

15 A They parked their car and got out.

16 Q And what happened next, Asia?

17 A They entered the park. They entered the park.

18 THE COURT: Wait a minute, take your time.

19 THE WITNESS: They entered the park and
20 proceeded to walk towards us.

21 BY MR. HOLT:

22 Q About how close did they get to y'all before the
23 stopped?

24 A Arms reach.

25 Q Did they say anything to you?

SW- A. GREGG - DIRECT

1 A No, not to me.

2 Q Did you hear what they said to Milton?

3 A Yes.

4 Q What was that?

5 A Joshua asked my brother if he talked to his big
6 brother.

7 Q And did Joshua ask your brother anything else?

8 A No.

9 Q Did Joshua say anything after Milton answered
10 him?

11 A No.

12 Q What did you see happen next?

13 A Joshua pulled a handgun from his coat pocket and
14 started shooting.

15 Q About how many times did he shoot?

16 A About five.

17 Q Did you notice what type of gun it was?

18 A Yes, sir.

19 Q What type of gun was it?

20 A It was a silver and round revolver.

21 Q Do you know how many times your brother got hit?

22 A About four.

23 Q And after Josh shot him what happened next?

24 A They ran.

25 Q To where?

SW- A. GREGG - DIRECT

1 A To their truck.

2 Q What did they do then?

3 A Left.

4 Q From the time they entered the park, okay, and
5 started walking toward you, Anthony and Johnny, to
6 the time they ran back to their truck and got away,
7 about how long do you think it was?

8 A About ten minutes.

9 Q All right.

10 MR. HOLT: Your Honor, permission to
11 approach for demonstrative evidence.

12 THE COURT: Yes.

13 BY MR. HOLT:

14 Q Now Asia, who came up with Johnathan, I mean,
15 with Joshua? When he shot your brother who was with
16 him?

17 A His brother Johnathan.

18 Q Did you see while Joshua shot your brother what
19 Johnathan was doing?

20 A Yes, sir.

21 Q And what was that?

22 A He was standing beside Johnny Lee with a gun in
23 his pocket.

24 Q Asia, this is going to be tough. With the
25 Court's permission I'm gonna ask you to look at the

SW- A. GREGG - DIRECT

1 diagram we got right there.

2 Can she stand up, Your Honor?

3 THE COURT: Yes.

4 BY MR. HOLT:

5 Q Do you recognize this scene, Asia?

6 A Yes, sir.

7 Q And what is it?

8 A Pride Park.

9 THE COURT: Keep your voice up, you're
10 away from the microphone.

11 THE WITNESS: This is the center of Pride
12 Park.

13 BY MR. HOLT:

14 Q All right. If that's the center of Pride Park
15 and these are the picnic tables, can you show us
16 where y'all were eating the Yogi Bear?

17 A Right here.

18 Q And who was taking up the other picnic table?

19 A (Inaudible.)

20 Q All right. Young and Young parking lot. Can you
21 show us where the Reed brothers truck pulls up?

22 A It came from here about right there.

23 THE COURT: Keep your voice up please.

24 THE WITNESS: It came like from this way
25 and start right here.

SW- A. GREGG - DIRECT

1 BY MR. HOLT:

2 Q And where did they enter the park from?

3 A This gate right here.

4 Q So show us how far across the park they had to
5 walk to reach y'all?

6 A All the way across the park.

7 Q Can you show us one more time where you were
8 sitting when they came up?

9 A I was sitting right here.

10 Q And how close was your brother to you?

11 A Five and five.

12 Q So y'all planned to meet the threat head on?

13 A Yes, sir.

14 Q Now when the Reed brothers were walking up to
15 y'all how did you feel?

16 MR. SWILLEY: Objection, Your Honor.

17 THE COURT: What's the objection?

18 MR. SWILLEY: It's irrelevant how she
19 felt.

20 THE COURT: No, sir, overruled.

21 BY MR. HOLT:

22 Q How'd you feel Asia?

23 A Very intimidated.

24 Q And why was that?

25 A By the way they came up.

SW- A. GREGG - DIRECT

1 Q And how long did they talk to your brother before
2 they shot him?

3 A No more — excuse me, no more than six seconds.

4 Q Asia, did you see them drive away?

5 A Yes.

6 Q And can you show the jury which route they took
7 once they got back in their truck to leave the
8 scene?

9 A When they back in the truck they came to the stop
10 sign.

11 Q And that's 6th Street?

12 A Yeah.

13 Q All right. Asia, you can sit down. Thank you.

14 A (Complies.)

15 Q Immediately after Milton was shot what happened?

16 A I went down to him and I called my mom.

17 Q And after you called your momma what happened
18 after that?

19 A The ambulance and the police came. They took me
20 from him and started questioning me.

21 Q All right. Do you know who called 9-1-1?

22 A Yes.

23 Q Did anybody call?

24 A Yes.

25 Q Who was it?

SW- A. GREGG - DIRECT

1 A Anthony.

2 Q About how long after the 9-1-1 call till the
3 police got there?

4 A 30 minutes.

5 Q Were there police in the area prior to the
6 shooting?

7 A Yeah.

8 Q And how do you know that?

9 A When they parked their car a policeman came
10 behind them and went around and made a right turn.

11 Q Now later on, you're not at the scene anymore, I
12 want to talk about your interaction with the
13 officers. Did an officer come to your home?

14 A Yes.

15 Q And what did y'all discuss?

16 A The lineup that he wanted to show me.

17 Q And did he show you a lineup?

18 A Yeah.

19 Q Did you have any trouble picking out Joshua Reed?

20 A No, sir.

21 Q Did you have any trouble picking out Johnathan
22 Reed?

23 A No, sir.

24 Q And how certain were you that the individuals
25 shot your brother?

SW - A. GREGG - CROSS

1 A Very certain.

2 Q On a scale of one to a hundred percent?

3 A A hundred percent.

4 Q And do you see them in the courtroom now?

5 A Yes.

6 Q Can you point to them?

7 A (Indicating.)

8 Q Can you point to who shot your brother?

9 A (Indicating.)

10 MR. HOLT: No further questions, Your
11 Honor.

12 THE COURT: Cross-examination, Mr. Jones.

13 MR. JONES: Yes, sir.

14 **CROSS-EXAMINATION**

15 BY MR. JONES:

16 Q Ms. Gregg, my name is Rick Jones. I'm
17 representing Mr. Reed, and I've got a few questions
18 concerning your testimony. On February the 15th how
19 long had you and Mr. Hunter and Mr. Washington been
20 in Pride Park before your brother was shot?

21 A About 30 minutes.

22 Q Okay. During that time what were you doing?

23 A Eating and talking to my brother and Johnny.

24 Q Okay. And there was somebody else at the other
25 table I believe was there?

SW - A. GREGG - CROSS

1 A No.

2 Q Is that correct?

3 A He wasn't at the table.

4 Q Where was he?

5 A Standing by his car.

6 Q And who is that?

7 A Anthony.

8 Q So he wasn't at the table?

9 A No.

10 Q All right. Where was his car parked?

11 THE COURT: You can step down and show
12 him.

13 THE WITNESS: This is the parking lot.
14 They built places where you can park your cars, and
15 this is the parking lot. He was parked right here,
16 and the playground right there.

17 BY MR. JONES:

18 Q All right. And who was that?

19 A Ship, Anthony.

20 Q All right, did you know him before that day?

21 A No.

22 Q How did you know his name was Ship?

23 A Talking to him in the park.

24 Q That day?

25 A Yes.

SW - A. GREGG - CROSS

1 Q Okay. During the time that you were talking to
2 him did you go over to his car?

3 A No.

4 Q Where you said you were sitting at that table,
5 did you stay there the whole time?

6 A Yes.

7 Q Okay. Do you know how far away his car was from
8 where you were sitting at that table?

9 A Less than 3-feet.

10 Q 3-feet?

11 A Less than 3-feet.

12 Q All right. Can you tell me how far 3-feet is?

13 A As long as this right here.

14 Q Just give me an example from one distance to
15 another distance. Is it farther from me to you?

16 A Uh-huh.

17 Q Closer?

18 A A little closer.

19 Q All right. Tell me where, tell me where you
20 think 3-feet is as I move across.

21 A Right there.

22 Q About here?

23 A Yeah.

24 Q So the car where Ship was was about this far away
25 from where you were sitting; is that correct?

SW - A. GREGG - CROSS

- 1 A Yes.
- 2 Q Okay. Now he stayed there the while time?
- 3 A Yes, sir, on the phone.
- 4 Q What was he doing?
- 5 A On the phone.
- 6 Q Pardon me?
- 7 A On his phone.
- 8 Q Okay. Was he on his phone the whole time?
- 9 A I'm not sure.
- 10 Q Okay. How about when you were talking to him,
- 11 was he on his phone and just, did you interrupt him
- 12 as she was talking?
- 13 A No.
- 14 Q So he got off the phone at some point in time or
- 15 did he just put it back?
- 16 A Got off the phone.
- 17 Q Okay. If you want to sit back down that will be
- 18 all right.
- 19 A (Complies.)
- 20 Q Did either Mr. Washington or your brother talk to
- 21 that gentleman?
- 22 A Yes.
- 23 Q Did both of them talk to him?
- 24 A My brother.
- 25 Q Did any seem to know him?

SW - A. GREGG - CROSS

1 A Yes.

2 Q Okay. Did he -- did your brother introduce you
3 to Ship?

4 A Yes.

5 Q Okay, so that's how you got to know him that day?

6 A Yes.

7 Q All right. The table where you were sitting --
8 and again, you were eating; is that correct?

9 A Yes.

10 Q You'd been there about 30 minutes before your
11 brother was shot; is that correct?

12 A Correct.

13 Q You described two gentlemen parking a truck,
14 getting out, and walking across the park to where
15 you were?

16 A Correct.

17 Q All right. How close did those gentlemen get to
18 you, your brother, and Mr. Washington?

19 A Arms reach.

20 Q Okay. Now is that -- that's farther than 3-feet
21 that we just went through a minute ago?

22 A Yes, closer.

23 Q Closer, okay. Can you stretch your arm out and
24 tell me if that's how far away they were?

25 A Yes.

SW - A. GREGG - CROSS

1 Q All right. And about how far is that?

2 A Arms reach.

3 Q All right. That was a silly question; I
4 apologize for that. Now as the three of you were
5 sitting at the table tell me again where each of you
6 were?

7 A Johnny Lee was seated right here. My brother was
8 sitting right here and I was sitting right here.

9 Q Okay. While you're standing there that's a
10 picnic table; is that correct?

11 A Correct.

12 Q Were the two of you on the bench facing the
13 table?

14 A No, sir, I wasn't facing it.

15 Q How were you seated on the table?

16 A I was facing towards the bench. Johnny Lee
17 Washington was looking towards the fence where they
18 parked, where my brother was towards the fence where
19 they parked.

20 Q Again, you were on the benches or sitting on the
21 table?

22 A On the table.

23 Q Sitting on the table, okay. As these two people
24 approached the table where you were sitting did
25 y'all shift around any?

SW - A. GREGG - CROSS

1 A Yes.

2 Q What did you do?

3 A My brother stood up and I stood up beside him.

4 Q All right. Again, on the same side of the table?

5 A Yes, sir, right here.

6 Q All right. And I apologize, are you across the
7 table from where the gentlemen came up to you?

8 A Yeah. When they came in I was standing right
9 there beside my brother. I had done got up.

10 Q Was the table between you and them?

11 A No.

12 Q Okay, that's what I'm asking. If you will point
13 to that diagram and tell me where those two
14 gentlemen came up.

15 A They entered the park and came about right here.

16 Q Can you take this pen and mark where you think
17 they stopped. Just put an X where you can see
18 please, ma'am. Okay. And again, I'm sorry, take it
19 back and put a circle where you and your brother
20 were standing.

21 A (Complies.)

22 Q All right. Now you just put a circle on the end
23 of the table; is that correct?

24 A Yes.

25 Q Okay. And again, they're this far away?

SW - A. GREGG - CROSS

1 A Yes, sir.

2 Q All right. You can sit back down if you want to.

3 A (Complies.)

4 Q Mr. Holt asked you how long this whole episode
5 took. I believe you said about ten minutes; is that
6 correct?

7 A Yes, sir.

8 Q Now you said it took between 30 and 35 minutes
9 before; didn't you?

10 A Yes, sir.

11 Q That wasn't right?

12 A No.

13 Q When did you decide it took ten minutes?

14 A I had to really think and go back to what
15 happened to really calculate.

16 Q And when did you do that, last night?

17 A No.

18 Q So from yesterday to today when did you do your
19 calculations?

20 A Between last night and today.

21 Q Okay, so maybe this morning?

22 A I won't say this morning.

23 Q Well tell me when?

24 A Between last night and today.

25 Q In the middle of the night?

SW - A. GREGG - CROSS

1 A You can say that.

2 Q No, I want you to say something. When did it
3 happen?

4 A From the time I left here yesterday till now.

5 Q Okay, all right. And now before I think you said
6 that for a long period of time everybody just stared
7 at each other?

8 A Yes, sir.

9 Q Did that happen?

10 A Yes, sir.

11 Q During that ten minutes -- well, let me back up a
12 minute. I think Mr. Holt asked you from the time
13 that the two gentlemen began to speak to your
14 brother until he was shot, didn't you just say it
15 took 6 seconds for that to happen? When was all the
16 staring taking place?

17 A Right after he asked my brother the question.

18 Q Okay. And everybody just kind of stared at each
19 other for somewhere between five and ten minutes
20 perhaps?

21 A I wouldn't say five to ten minutes.

22 Q What would you say?

23 A I'd say for like two.

24 Q Okay, all right. And so the conversation took
25 six seconds and everybody stared at each other for

SW - A. GREGG - CROSS

1 two minutes. What'd you do the other almost eight
2 minutes?

3 A Nothing.

4 Q Did you star at each other, did you walk around,
5 did you ---

6 A No.

7 Q What did you do?

8 A I just stood there.

9 Q For eight minutes?

10 A Beside my brother. I won't say it was eight
11 minutes.

12 Q Tell me how long you think it was?

13 A About a minute.

14 Q Okay. So we got two minutes, we got six seconds,
15 we got another minute. All right, if I add right
16 that's three minutes and six seconds. What did you
17 do for the other seven minutes that you described
18 all this taking place?

19 A Nothing, just standing there.

20 Q Just staring at each other?

21 A Yeah.

22 Q All right. Was that outside of the one minute we
23 just described everybody staring at each other, was
24 that another time?

25 A Within that minute.

SW - A. GREGG - CROSS

1 Q Okay. Then maybe I'm missing, we — you just
2 described three minutes and six seconds
3 approximately —

4 A Uh-huh.

5 Q —out of ten minutes. What happened the rest of
6 the time?

7 A It happened so fast I don't remember.

8 Q Could it be that the whole confrontation took
9 around three minutes instead of ten minutes?

10 A Can you explain that again.

11 Q Okay. If I under— let me ask it this way. I
12 understood what you said originally when Mr. Holt
13 was talking to you, from the time two individuals
14 parked, walked across, came up to where you were,
15 shot and went back to the car, that took about ten
16 minutes. Is that, is that what you said?

17 A Yes, sir, that's what I said.

18 Q All right. I'm just trying to get you to explain
19 to me what happened during that ten minutes, and the
20 only thing we've covered is three minutes and six
21 seconds. So I'm asking you, could the event have
22 taken way less than ten minutes, more like three
23 minutes, or if it happened over a period of ten
24 minutes what'd y'all do the rest of the seven
25 minutes?

SW - A. GREGG - CROSS

1 A I'm not sure.

2 Q All right. Now I believe that you said that you
3 knew both Mr. Reeds; is that correct?

4 A Correct.

5 Q How did you know both Mr. Reeds?

6 A They both attended the school that I was going
7 to.

8 Q And what school was that?

9 A Hartsville High.

10 Q And when was that?

11 A '06, '05.

12 Q Okay. What grade would you have been in when
13 they were at Hartsville High with you?

14 A 11.

15 Q You were in the 11th?

16 A Uh-huh.

17 Q Were you in front of them or behind them in
18 school?

19 A In front of them.

20 Q All right. And how old are you?

21 A 25.

22 Q Okay. So in the 11th grade did you know both
23 Mr. Reeds at that point in time?

24 A I wouldn't say know.

25 Q What would you say?

1 A Know of them.

2 Q Okay, all right. And were you familiar with
3 their names?

4 A With one, yes.

5 Q Which one?

6 A Juby.

7 Q Who?

8 A Juby, Johnathan.

9 Q Judy?

10 A Juby.

11 Q With a B, Juby? Okay. And that's Johnathan, is
12 he the younger or the older of the two?

13 A The younger.

14 Q Okay. Do you recall talking with Sergeant
15 Anderson either the next day or a day or two after
16 your brother was shot?

17 A Yes.

18 Q All right. And do you -- during that
19 conversation did you tell Sergeant Anderson
20 everything you knew about what happened?

21 A Yes, sir.

22 Q Okay. And do you remember describing the two
23 gentlemen that you said came up to the park?

24 A Yes, sir.

25 Q All right. And do you remember having trouble

SW - A. GREGG - CROSS

1 remembering their names?

2 A Yes, sir.

3 Q All right. Had a great deal of trouble; did you
4 not?

5 A I wouldn't say a great deal.

6 Q What would you say?

7 A Just a little mix-up.

8 Q Did you know their names?

9 A Yes, I knew their names but they —

10 Q Who was Rail you described?

11 A I was mistaken their last name for Rail, than
12 Reed.

13 Q Okay. What else did you mistake?

14 A I think that's it.

15 Q But you mistook Johnathan for Joshua; did you
16 not?

17 A Yes.

18 Q Okay. do you not think that's fairly significant?

19 A Yes.

20 Q That you didn't know which one was which?

21 A I know which one is which. It's just a name. It
22 happened so fast when they were questioning me.

23 Q But this is two days afterwards when you have had
24 plenty of time to think about it?

25 A I did, but my remorse was on my brother and my

SW - A. GREGG - CROSS

1 family.

2 Q Okay. Now who did you talk to from the time that
3 your brother was shot in the park until you talked
4 with Sergeant Anderson and how — when was that?

5 Let me back up, when did you talk to Sergeant
6 Anderson, how many days after this?

7 A I think it was the day after.

8 Q Next day?

9 A Yes, sir.

10 Q Okay. So about 24 hours later?

11 A Yes, sir.

12 Q During that 24 hours who did you speak with
13 concerning what happened?

14 A Could you explain?

15 Q Sure. Did you talk to your mother about what
16 happened?

17 A Yes.

18 Q Did you talk to your baby's father,
19 Mr. Washington, about what happened?

20 A No.

21 Q Didn't see him anymore?

22 A Not after that, until the setting up.

23 Q Okay. And tell me when that setting up happened?

24 A It started that night.

25 Q The same night he was shot?

SW - A. GREGG - CROSS

- 1 A Yes, sir.
- 2 Q Okay. So you saw him that night after Mr. Hunter
- 3 was shot that afternoon; is that right?
- 4 A Yes.
- 5 Q Okay. Did you talk to him?
- 6 A No.
- 7 Q Didn't say a thing to him?
- 8 A I spoke to him.
- 9 Q Did you talk about the Reeds?
- 10 A No.
- 11 Q What did you talk about?
- 12 A He asked me how I was doing, how I was holding
- 13 up, and I was going to be okay and everything was
- 14 going to be all right.
- 15 Q But you never said anything about those two Reed
- 16 brothers that came to the park?
- 17 A No.
- 18 Q But you talked to your mom about it?
- 19 A Yes.
- 20 Q Who else?
- 21 A My mom and Rudick.
- 22 Q And is that Lieutenant Rudick that we talked
- 23 about with the Hartsville Police Department?
- 24 A Yes, sir.
- 25 Q Describe him.

- 1 A He's a tall Caucasian bald head guy.
- 2 Q When did he talk to him?
- 3 A That night.
- 4 Q The night that your brother was shot?
- 5 A Yeah.
- 6 Q At your house or at the police department?
- 7 A My mouse.
- 8 Q Okay. And who was there then?
- 9 A Family and friends.
- 10 Q Give me a number, how many people?
- 11 A About ten.
- 12 Q Okay. And did those ten people hear anything
- 13 that was going on between you and Lieutenant Rudick?
- 14 A No.
- 15 Q Okay. When you talked to your mother about what
- 16 had happened in the park did any of those ten people
- 17 hear what you were saying?
- 18 A Just one.
- 19 Q Who is that?
- 20 A My grandmother.
- 21 Q All right. Did not anyone ask you what happened,
- 22 who did this, what was going on?
- 23 A No.
- 24 Q Not a soul?
- 25 A No.

SW - A. GREGG - CROSS

1 Q All right. And you didn't say, those Reed
2 brothers shot my brother?

3 A No.

4 Q Except to your mother and grandmother?

5 A Yes.

6 Q And Lieutenant Rudick?

7 A Yes, sir.

8 Q Okay. When -- let's go back to the park, all
9 right. When Ship was at his car y'all were just
10 conversing between the table and the car with him?

11 A Can you explain it.

12 Q When y'all were talking to each other, --

13 A Uh-huh.

14 Q --all right, what was the conversation about?

15 A My brother introduced me to him. He mentioned
16 that I do a little free styling rap as in music, and
17 that he knew him because he used to date a girl that
18 he was curr-- the mother that he was currently
19 dating.

20 Q So there's no question that your brother knew
21 Ship?

22 A Yeah.

23 Q Okay. What was Ship doing at his car?

24 A Nothing. He was standing by his car on the
25 phone.

SW - A. GREGG - CROSS

1 Q He was drinking; wasn't he?

2 A I don't remember.

3 Q Did Johnny hot ask him for a drink?

4 A I don't remember.

5 Q Okay. Did Milton not ask him for a cigarette?

6 A Yes.

7 Q Did Johnny get a cigarette?

8 A I don't remember.

9 Q Okay. But you don't remember any alcohol?

10 A No, sir.

11 Q Okay.

12 MR. JONES: One second please, Your Honor.

13 BY MR. JONES:

14 Q Just a couple of more questions, Ms. Gregg.

15 Ms. Gregg, you're no stranger to law enforcement;
16 isn't that correct?

17 A Correct.

18 Q In fact, in 2011 I believe you had a conviction
19 for arson in the third degree; is that correct?

20 A Correct.

21 Q All right, thank you. From yesterday until today
22 you got your thoughts together a little bit better,
23 and we trimmed down the time of the event from 30 to
24 35 minutes to either 10 minutes or 3 minute; is that
25 correct?

SW - A. GREGG - CROSS

1 A Correct.

2 Q All right. Is there anything else from yesterday
3 to today that you have changed?

4 A No.

5 Q Okay, that's about it? Thank you.

6 THE COURT: Mr. Swilley.

7 **CROSS-EXAMINATION**

8 BY MR. SWILLEY:

9 Q Asia, tell me just to clarify, you said that
10 Johnathan and Joshua came to the park together,
11 right?

12 A Yes.

13 Q Right. And you said that Joshua approaches
14 Johnny Lee and gives him a hand shake, right?

15 A Correct.

16 Q Then Joshua approaches and gives your brother a
17 hand shake, right?

18 A Correct.

19 Q And I think just to clarify, you said that from
20 the time the Reed brothers got to the park to the
21 shooting was about 30, 35 minutes?

22 A Yes, sir, I did.

23 Q Can you speak a little louder please, ma'am?

24 A Yes, sir, I did.

25 Q That they were there, they conversated.

1 Everybody conversated for a while, right?

2 A I wouldn't say everybody conversated.

3 Q So they were there, there was conversation going
4 on?

5 A Correct.

6 Q All right. About 30, 35 minutes you say?

7 A That's what I said but...

8 Q That's what you said but what?

9 A No.

10 Q So?

11 A The time, it happened so fast the time seemed it
12 was longer, but it probably was three or ten
13 minutes.

14 Q Okay. So when you got there you said that Joshua
15 asked Milton, your big brother, right?

16 A Right.

17 Q Okay. And after that Milton said something along
18 the lines of that's squash is taken care of, right?

19 A Right.

20 Q And then you said at that point that's when
21 Joshua pulled out a gun and shot your brother,
22 right?

23 A Correct.

24 Q All right. Now Johnathan never shot anybody,
25 correct?

SW - A. GREGG - CROSS

1 A Correct.

2 Q All right. And at that time after — I'm sorry,
3 and I — tell me how many times you think that your
4 brother was struck by a bullet?

5 A About four.

6 Q About four times? Okay. And can you tell me
7 what hand that Josh, that Joshua had the gun in?

8 A He had in his right hand.

9 Q In his right hand? Okay. And you said there was
10 no more words said on behalf of anybody?

11 A No.

12 Q Okay. Johnathan didn't occur — didn't tell his
13 brother to shoot your brother, did he?

14 A I don't know.

15 Q Based on your — you don't remember that, do you?
16 That didn't happen, right, from your recollection?

17 A Could you explain that question.

18 Q Johnathan didn't have anything to do with
19 shooting your brother, right, as far as aiding or
20 abetting, right, that's correct?

21 A I don't know.

22 Q Okay. And you said that — you stated on direct,
23 to Mr. Holt you said that, today, you said Johnathan
24 had — was standing beside Johnny Lee with a gun in
25 his pocket?

SW - A. GREGG - CROSS

1 A Correct.

2 Q Okay. Was that so — just sitting here kind of
3 like this? Can you see?

4 A Yeah, I can see.

5 Q I mean, did it look like this?

6 A No.

7 Q What did it look like?

8 A Can I stand? This is the picnic — this is the
9 picnic table and me and my brother were standing
10 right here. Johnny Lee was right here. He was
11 standing right here with one hand, right, like this.
12 You could see the imprint. This is the imprint of
13 it.

14 Q So he was just sitting like this?

15 A Yeah.

16 Q Wasn't pointing it at anybody?

17 A No.

18 Q He was just sitting —

19 A No.

20 Q He was —

21 A Johnny Lee — to explain it, Johnny Lee, he was
22 sitting right here.

23 Q Right.

24 A He was standing there, right here. His coat
25 pocket, if he was facing this way it'll be this way.

SW - A. GREGG - CROSS

1 His coat pocket was like this.

2 Q Right. So based upon your observations Johnathan
3 wasn't pointing a gun at anybody?

4 A It was on Johnny Lee, yes.

5 Q But you just told me he didn't point a gun at
6 anybody, that it was in his pocket.

7 A It was in his pocket. You could see the imprint
8 of it.

9 Q Okay. But you just told me he wasn't pointing it
10 at anybody. Now you're saying it was?

11 A It was on Johnny Lee.

12 Q You told me he was pointing a gun at Johnny Lee
13 through his pocket. Is that what you're saying now?

14 A Yeah.

15 Q Okay. And you can go ahead and sit down.
16 Yesterday when you were testifying I think you said
17 that — you just said Johnathan had a gun pointed at
18 Johnny Lee Washington, right? You didn't say
19 anything about a pocket, right?

20 A No.

21 Q Okay. So, and then you recall when you were
22 interviewed by Investigator Anderson here you never
23 mentioned anything you never mentioned anything
24 about a gun with Johnny period, right?

25 A Correct.

SW - A. GREGG - CROSS

1 Q Okay. And you just told Mr. Jones that when you
2 talked to Investigator Anderson you told
3 Investigator Anderson everything you knew about what
4 happened, right?

5 A Yes, sir, that I thought I knew everything what
6 happened.

7 Q Okay.

8 A Everything happened so fast, it's ...

9 Q Right. And when you were talking to Investigator
10 Anderson everything would have been pretty fresh in
11 your mind, right?

12 A Most of it, yes.

13 Q Right. And you remember going into the police
14 station and gave about a ten minute interview with
15 Investigator Anderson?

16 A Yes.

17 Q And it's true that not one time did you mention
18 that Johnathan ever had a gun, correct?

19 A I only had it mentioned one time.

20 Q When you met with him for that 30 minute period
21 at the police station, right?

22 A Uh-huh.

23 Q You never admitted Johnathan -- you never said
24 Johnathan had a gun?

25 A Right.

SW - A. GREGG - CROSS

1 Q Okay, so you said one thing with Investigator
2 Anderson and now you're saying another thing
3 yesterday, now you're saying another thing today.
4 Which one is true?

5 A What I said today is true.

6 Q Okay. So you're telling me now that you didn't
7 tell the truth to Investigator Anderson?

8 A I'm not saying that I didn't tell the truth.
9 Everything happened so fast that, I mean, I couldn't
10 remember it happened a year ago so me trying to get
11 my thoughts together and reminisce on what happened
12 and having to go back to the scene and really think
13 about it is my recollection so, yes, I might have
14 been mistaken.

15 Q So Asia, you said when you talked to
16 Investigator Anderson you didn't have to back a year
17 ago, did you?

18 A No.

19 Q You just had to go back a day or so, right?

20 A Yes.

21 Q And you didn't mention anything about Johnathan
22 having a gun or doing anything as far standing
23 there, correct?

24 A Correct.

25 Q Okay. So now that we're at trial you changed

SW - A. GREGG - CROSS

1 that story to implicate Johnathan, correct?

2 A Could you explain that.

3 Q So now today and yesterday and I guess as of last
4 Friday, you've changed your story to indicate
5 Johnathan, correct?

6 A Correct.

7 Q Okay. So first you didn't implicate Johnathan at
8 all and now you are implicating Johnathan. You
9 agree with me there?

10 A Uh-huh.

11 Q Okay. Now let me -- it's fair to say -- be
12 honest with me of course. You hate Johnathan Reed;
13 don't you?

14 A I wouldn't say hate.

15 Q Okay. Well, you blame Johnathan Reed for your
16 brother's death along with his brother, correct?

17 A Correct.

18 Q And you want them to be convicted; don't you?

19 A In my heart, yes.

20 Q Well, I mean, just generally you want them to be
21 convicted; is that true?

22 A Yes.

23 Q Both of them, right? Right. And you understand
24 that if you had stuck with the story at the
25 beginning that's, that doesn't implicate Johnathan

SW - A. GREGG - CROSS

1 Reed, does it?

2 A No.

3 Q Okay. And now you've changed your story today
4 and yesterday to say that Johnathan had a gun,
5 right?

6 A It wasn't that I changed my story.

7 Q But Asia, you didn't, you never said anything
8 about him having a gun the first time period, and
9 now you're saying that he did have a gun. That's
10 changed, right?

11 A Yes, it did change.

12 Q That's something different; isn't it?

13 A Yes, sir.

14 Q Right. And you changed that story to implicate
15 Johnathan. Why did you do that?

16 A It wasn't that I was intentionally trying to put
17 him in the scene to try to say he did or didn't do
18 anything. I just left out some stuff because it
19 was — when I had the interview with him it was —
20 he was going through, and at the time I was trying
21 to block out stuff that I didn't really want to go
22 back to it but they was — I guess I did make a
23 mistake and leave some things out.

24 Q Okay. You didn't — you want to block stuff out
25 not go back to it, but you told Investigator

SW - A. GREGG - CROSS

1 Anderson that Josh shot your brother?

2 A Yes.

3 Q I mean, you said, you didn't block that out, did
4 you? You told him that Josh shot him, right?

5 A Yes.

6 Q Okay. And you didn't tell him that Johnathan did
7 anything, correct?

8 A Correct.

9 Q Other than the fact he was there present, right?

10 A Yeah.

11 Q Okay. And that doesn't make a lot of sense, does
12 it?

13 A If you think about it, no.

14 Q Okay, okay. Beg the Court's indulgence. Asia,
15 this is the most — is it true this is the most
16 traumatic thing that's ever happened to you;
17 wouldn't it?

18 A Yes.

19 Q What happened on October 15th, 2012 is something
20 that you, nor anybody else would ever forget, right?

21 A Correct.

22 Q All right. But you do acknowledge that you've
23 changed your story more than once since that day; is
24 that correct?

25 A Yes.

SW - A. GREGG - CROSS

1 Q Okay. Even though this is — this is the worst
2 thing you've ever seen, right?

3 A Yes.

4 Q All right. And you think this — and you'd never
5 seen anything similar to this beforehand, right?
6 You'd never seen a shooting beforehand, had you?

7 A Me personally, no.

8 Q I mean, in person, right? You've never seen
9 shooting before, have you?

10 A No.

11 Q You'd never seen anybody die before, have you?

12 A No.

13 Q And you've never anybody be shot or die since
14 this time, have you?

15 A No.

16 Q Okay. So it's true that this should stand out in
17 your mind as would you agree with me to say that
18 you'll never — you don't think you're ever going to
19 forget this, do you?

20 A No.

21 Q Yet you changed what you say happened several
22 times, is that right, about three times, correct?
23 Yes or no.

24 A Correct, yes.

25 Q Okay. And I think you said that you had known

SW - A. GREGG - CROSS

1 both of the Reeds beforehand before the shooting?

2 A I wouldn't say know.

3 Q You knew who they were?

4 A Yes.

5 Q Okay. And you told — I think you told
6 Investigator Anderson that you did know the brother
7 with the dreads, right, from your interview
8 beforehand?

9 A Can you repeat the question.

10 Q I'm sorry. You told Investigator Anderson that
11 you didn't know the brother, the other brother with
12 the dreads, right? You told Investigator Anderson
13 you didn't know him, right?

14 A Correct.

15 Q But you did know him, right?

16 A I don't know him. I know of him.

17 Q Okay. But you know who he was, right?

18 A Yeah.

19 Q But you told Investigator Anderson you didn't?

20 A I don't remember.

21 Q Okay. Now, and you said that, you said that
22 Joshua had the gun in his left hand?

23 A No, I said his right hand.

24 Q Okay, you say his right hand. And you said that
25 he took, he pulled the gun out of his pants pocket?

SW - A. GREGG - CROSS

1 A Coat pocket.

2 Q Coat pocket. Okay, was it a coat like a coat
3 like I'm wearing or was it like a ---

4 A No, it was like a --- almost like a, it was like,
5 not a jogging, it was like a coat that you would
6 wear with sweat pants.

7 Q Okay. And you remember what clothes Johnathan
8 was wearing?

9 A I can't remember.

10 Q You can't remember about his clothes that he was
11 wearing that day?

12 A No, sir.

13 Q Okay. Can you say that when --- did Jonathan
14 shake hands with your brother Milton and Johnny Lee
15 when they got there?

16 A Say it again.

17 Q Did Johnathan, did he shake hands with Johnny Lee
18 and with Milton when they walked up?

19 A No.

20 Q He didn't shake hands? Okay. But you told
21 Investigator Anderson that they shook hands? So you
22 said they gave him a hand shake, right? "They" as
23 in both of them. Is that what you meant when you
24 talked to Investigator Anderson?

25 A I don't remember that.

SW - A. GREGG - REDIRECT

1 Q I'm sorry?

2 A I don't remember that.

3 Q Okay. And the first person you called was your
4 mother; is that right?

5 A Right.

6 Q You didn't call the police, 9-1-1?

7 A No, sir.

8 Q Ship called the police, right?

9 A Correct.

10 Q Okay. You said after the shots rang out they
11 both ran, right?

12 A Correct.

13 Q They both fled? And that's the last thing you
14 remember about the Reeds?

15 A Yes, sir.

16 Q Okay.

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

18 Nothing further, Your Honor.

19 THE COURT: Redirect?

20 MR. HOLT: Thank you very much, Judge.

21 **REDIRECT EXAMINATION**

22 BY MR. HOLT:

23 Q Asia, on the day in question did you have a stop
24 watch in your pocket?

25 A No, sir.

SW - A. GREGG - REDIRECT

1 Q Did you have a tape measure on you?

2 A No, sir.

3 Q Did you write down in a note book everything
4 every time somebody said something to you?

5 A No, sir.

6 Q All right. Asia, I want you to think real
7 carefully what Mr. Swilley was asking you. And he
8 was bringing up Terry Anderson's interview. Did
9 Terry Anderson ask you who shot your brother?

10 A Yes.

11 Q And who did you say did it?

12 A Joshua.

13 Q Now did Terry Anderson ever specifically ask you
14 who all had guns on them?

15 A No.

16 Q Okay. So did you tell the truth to Terry
17 Anderson at those times he investigated you and
18 talked to you about the crime?

19 A Yes.

20 Q And are you telling the truth now?

21 A Yes.

22 Q And has there been any change in your story?

23 A A little bit about the time that the, the
24 approximate time they came into the park and the
25 shooting and afterwards, that probably changed,

SW - A. GREGG - RECROSS

1 yeah.

2 Q So things you have to guess on changed?

3 A Yeah.

4 Q Okay. Asia, who shot your brother?

5 A Joshua Reed.

6 Q And who was beside him when he did it?

7 A Johnathan Reed.

8 Q And how certain are you?

9 A I'm positive.

10 Q Thank you, Asia.

11 MR. HOLT: That's all, Your Honor.

12 THE COURT: Recross, Mr. Jones?

13 MR. JONES: I do have two things that I
14 would like to ask Ms. Gregg.

15 **RE - CROSS EXAMINATION**

16 BY MR. JONES:

17 Q Mr. Holt just asked you when talked to Sergeant
18 Anderson 24 hours after this event happened you told
19 him that Joshua Reed shot your brother; is that
20 right?

21 A Correct.

22 Q That's not correct what you told Mr. Anderson, is
23 it? You told him, in fact, that Johnathan shot your
24 brother; isn't that right?

25 A I don't remember.

SW - A. GREGG - RECROSS

1 Q You don't remember being confused about who was
2 who?

3 A Talking to Anderson at the police station?

4 Q Whenever you talked to him?

5 A When I talked to him as soon as it happened at
6 the park, it happened so fast I mistake that last
7 name for Rail and it was Reed so I might have did
8 said Joshua and Johnathan.

9 Q And you mixed both of them up and you didn't know
10 which one so you told them that somebody else other
11 than Joshua shot your brother. You said Johnathan
12 shot my brother, but that wasn't right, was it?

13 A No.

14 Q Okay. And I believe you stated just a minute ago
15 that Joshua pulled a gun with his right hand; is
16 that correct?

17 A Correct.

18 Q And yesterday you said it was the left-hand; did
19 you not?

20 A I don't remember saying left hand.

21 Q You don't recall saying left hand when you were
22 asked about what hand Joshua used?

23 A No.

24 Q Gracious. That's all I have, thank you.

25 THE COURT: Recross, Mr. Swilley?

1 MR. SWILLEY: Thank you, Your Honor,
2 briefly.

3 **RE - CROSS EXAMINATION**

4 BY MR. SWILLEY:

5 Q Asia, when you interviewed with Investigator
6 Anderson, you know, when you taped it, you'd agree
7 that whether or not Johnathan would have had a gun
8 in court, right?

9 A Yea.

10 Q Okay, and you failed — and you didn't tell him
11 that at the time, correct?

12 A Correct.

13 Q Thank you.

14 THE COURT: All right, thank you. You may
15 step down.

16 All right, ladies and gentlemen. You've
17 been in the courtroom almost an hour-and-a-half. I
18 think it's appropriate that we take our morning
19 break at this time. We are going to take about a
20 ten minute recess. I'm gonna allow you to go to
21 your jury room. Please do not discuss the case
22 among yourselves. Just relax a few minutes. I'll
23 send for you in about ten minutes. You may go this
24 way.

25 (WHEREUPON, the jury was removed from the

1 courtroom.)

2 THE COURT: All right, counsel, be ready
3 to start back 11:15 by that clock up there.

4 (WHEREUPON, a recess was taken from the
5 proceedings.)

6 THE COURT: All right, back on the record
7 with regard to the matter of the State versus Joshua
8 and Johnathan Reed. We had to have a few matters
9 that come up, but I just want to put on the record
10 too for everybody to hear here in the courtroom that
11 I understand that there have been some contact
12 between some of the people here and some of the
13 witnesses and if I find out that any witness has
14 been intimidated that person that makes that contact
15 is going to jail.

16 All right, Mr. Holt, you ready to proceed?

17 MR. HOLT: State is, Your Honor.

18 THE COURT: Ready to go, Mr. Jones?

19 MR. JONES: Yes, sir.

20 THE COURT: Ready, Mr. Swilley?

21 MR. SWILLEY: Yes, Your Honor.

22 THE COURT: Bring the jury in please.

23 (WHEREUPON, the jury was returned to the
24 courtroom at and the following
25 proceedings commenced in open court.)

SW - J. WASHINGTON - DIRECT

1 THE COURT: All right. Thank you, ladies
2 and gentlemen. I apologize for taking a little bit
3 longer that we had planned to. We did have a couple
4 of matters we had to deal with, and we have done
5 that and are ready to proceed.

6 Mr. Holt, you may call your next witness.

7 MR. HOLT: If it please the Court, Judge,
8 the State would call Johnny Lee Washington to the
9 stand. He's back there in the back.

10 THE COURT: All right.

11 THE CLERK OF COURT: If you'll come around
12 here please. If you'll put your left hand on the
13 Bible and raise your right.

14 WHEREUPON,

15 **JOHNNY LEE WASHINGTON,**

16 having been duly sworn by the Clerk of Court,
17 testified as follows:

18 THE CLERK OF COURT: Make sure you talk
19 loud enough where we can hear you.

20 **DIRECT EXAMINATION**

21 BY MR. HOLT:

22 Q Mr. Washington, could you please give your whole
23 name to the jury?

24 A Yes, I will. Johnny Lee Washington.

25 Q And how old are you?

SW - J. WASHINGTON - DIRECT

1 A 31.

2 Q And where are you from?

3 A Hartsville, South Carolina.

4 Q And where do you currently live?

5 A [REDACTED].

6 Q Now how do you know — is that the city of
7 Hartsville?

8 A Yes, sir, right on 5th Street.

9 Q How do you know Asia Gregg?

10 A My baby momma.

11 Q How long have you known her?

12 A I have known Asia Gregg since '04.

13 Q And did you know at any time her brother Milton?

14 THE COURT: Take the microphone away from
15 your face so we can hear you.

16 THE WITNESS: Sir?

17 BY MR. HOLT:

18 Q Did you happen to know her brother Milton Hunter?

19 A Yes, sir.

20 Q Now were you with Asia Gregg in the park on
21 February 15th, 2012?

22 A Yes, sir.

23 Q And what park were y'all in?

24 A We was in Pride Park.

25 Q And what city is that located in?

SW - J. WASHINGTON - DIRECT

1 A Hartsville, South Carolina.

2 Q And what county?

3 A Darlington County.

4 Q Now could you describe to us from the time you
5 got to the park to the time you left exactly what
6 happened?

7 A Yes, sir.

8 Q What happened?

9 A Me and Asia Lavon Gregg had left Hartsville
10 motel. She had want to leave, get something to eat.
11 I asked her where she want to get something to eat
12 from. She said from Yogi Bear. We got something to
13 eat from Yogi Bear. She had got her brother
14 something to eat and down me something to eat.

15 THE COURT: Slow down a little bit.

16 THE WITNESS: We had went to Pride Park.
17 We were sitting at Pride Park. Her brother Milton
18 Hunter, he had came out there. So young fella right
19 here, Joshua Reed and his brother Johnathan, were
20 right here, rode by the park about three times.

21 BY MR. HOLT:

22 Q What kind of car were they in?

23 A They was in a green truck, sir.

24 Q All right. And if you can stand up with the
25 Court's permission. This is Marion Young and Young.

SW - J. WASHINGTON - DIRECT

1 If you can show us which way they drove by Pride
2 park?

3 A Drove by this way right here, left and went over
4 here.

5 Q Okay. And how did they come back by later?

6 A They had came up in here right here.

7 Q And where did they park?

8 A They parked right beside the funeral home in the
9 parking lot there.

10 Q Okay. And you can sit down. Now exactly what
11 happened? Did they ever, did they ever park the
12 car? Did they ever park the green truck they were
13 in?

14 A Yes, sir.

15 Q And what did they do after that?

16 A They got out. Before they got out the police had
17 rode by though.

18 Q Okay. And what happened when they got out?

19 A They had walked — they had walked on the street,
20 walked where we was. Everybody was speaking and
21 talking for a little minute. When the police had
22 passed by I had looked where the police going at I
23 heard a gunshot went off.

24 Q Where were you looking when the gunshot went off?

25 A When I was looking when the first gun shot was

SW - J. WASHINGTON - DIRECT

1 looking off I look at the police car. Went I turned
2 back he had Milton like that right there —

3 Q Who had Milton?

4 A Joshua Reed, sir.

5 Q Okay. And what was he doing?

6 A Milton trying to fight for his life; and he was,
7 he was gunning him.

8 Q About how many times did he shoot the gun?

9 A He shot about five times though.

10 Q Did you see what type of gun Josh had?

11 A I no see really what type of gun he had, sir, but
12 I know —

13 MR. SWILLEY: Your Honor, can I request
14 the Court request the witness talk into the
15 microphone. I'm having trouble hearing him.

16 THE COURT: Move a little bit — pull the
17 chair up a little bit closer and slow down a little
18 bit.

19 BY MR. HOLT:

20 Q You said you saw Josh shooting Milton?

21 A Yes, sir.

22 Q And what did they do after he shot Milton?

23 A He and his brother, they ran up out the park,
24 jump back up in the truck, and they left.

25 Q Did you notice who was driving?

SW - J. WASHINGTON - DIRECT

1 A I couldn't really recall who was driving, sir.

2 Q Now previous to the day in question,

3 February 15th, 2012, did you know the Reed boys?

4 A I'm saying I seen them here and there; but as
5 hanging out all that, no, too young to be hanging
6 around me. I don't even know them like that.

7 Q All right. Did any time the police show you a
8 photographic lineup?

9 A Yes, sir.

10 Q And did you have trouble picking Josh out of the
11 lineup?

12 A No, I seen him clear like daylight like I see
13 everybody in this courthouse, no problem.

14 Q And did you have any problem picking Johnathan
15 out in the lineup?

16 A No, sir.

17 Q And on a scale of one to a hundred how certain
18 are you that you picked out of the lineup the people
19 that shot Milton Hunter that day?

20 A Unt, unt, just like that right there. It wasn't
21 a problem.

22 Q All right.

23 MR. HOLT: Beg the Court's indulgence. No
24 further questions, Your Honor.

25 THE COURT: Cross-examination, Mr. Jones

1 or Ms. Wooten?

2 **CROSS-EXAMINATION**

3 BY MS. WOOTEN:

4 Q Good morning, Mr. Washington.

5 A Good morning to you too.

6 Q So as to the date in question, how long would you
7 say it was between the time the two pulled up and
8 the time they left after the shooting?

9 A I really can't recall that, Miss, really can't.

10 Q So how long were you at the park before the two
11 individuals showed up?

12 A I just had left the hotel room so the hotel, the
13 hotel get out by 11:00. We go get something to eat,
14 guess we get to the park, probably like 30 minutes
15 to an hour probably.

16 Q 30 minutes to an hour before this happened?

17 Okay. You said something interesting in your
18 statement to Mr. Holt. You said — correct me if
19 I'm wrong — when the first shot happened you were
20 looking at a police car?

21 A When the police — when the first shot, got me up
22 bam, that one like that right there. He got Milton
23 though. That man grab that man like this right
24 here. I ducked. I thought the bullet was going to
25 hit me, I went, hold, what going on. I turned back

SW - J. WASHINGTON - CROSS

1 around he was gunning him.

2 Q But you said there was a police car there?

3 A No, I never say that there was a police was
4 there. They wait till the police pass by first.

5 Q Okay, the police car left and then something
6 happened, right?

7 A Yes, ma'am.

8 Q Right. Did anybody shake hands with anybody when
9 they got to the park?

10 A You say did anybody know —

11 Q Shake hands through each other, neither —

12 A We speak, we wasn't greeting.

13 Q Did y'all talk beforehand?

14 A Yes, ma'am, we talked.

15 Q Without telling me what anybody said how long did
16 you say y'all talked for?

17 A It wasn't what too many words really.

18 Q Did either of them shake your hand?

19 A Yes, both of 'em shake my hand.

20 Q Okay. How far away were you from the shooter
21 when they shot Milton Hunter?

22 A Right here to this, to this right here.

23 Q So you were very close?

24 A Yes, ma'am.

25 Q Can you describe the gun, what it looked like?

SW - J. WASHINGTON - CROSS

1 A I can't describe the gun or what it looked like,
2 and like, you know what I'm saying.

3 Q So did you see it or did you hear it?

4 A Oh, I hear it.

5 Q You heard it.

6 A When it went off I hear it now.

7 Q How many shots do you think were fired?

8 A About five.

9 Q Okay. So at the time on that day what was your
10 relationship to Asia Gregg?

11 A My baby momma.

12 Q Were y'all close?

13 A Close, tight, close, very close like that right
14 there.

15 Q Y'all from the hotel together?

16 A Yes, and all.

17 Q You had a baby together?

18 A Yes, and all.

19 Q So after the shooting happened, immediately after
20 the shooting happened before the police got there,
21 were you talking to Asia about what happened?

22 A Can you run that back over for the record?

23 Q Sure. After the shooting and before the police
24 got there were you comforting your baby's mother?

25 Were you talking to her, were you holding her?

SW - J. WASHINGTON - CROSS

1 A Yeah, I hold her, yeah.

2 Q Was she upset?

3 A Huh?

4 Q Was she upset?

5 A You say was she up-- you talking about was she
6 upset?

7 Q Did she seem upset to you, like crying or?

8 A What you mean by that?

9 Q What do I mean by upset? After the shooting
10 before the police got there was she crying?

11 A What you mean was she crying?

12 Q Was she crying? Did she have tears running down
13 her face? Was she crying, was she upset?

14 A You mean because her brother died? Yeah, yeah,
15 she was crying.

16 Q Were you talking to her about what happened?

17 A Whoa, they had left and went to the hospital with
18 her brother.

19 Q She left immediately and went to the hospital.

20 A Yes, and I stayed on the scene and she hustling
21 all them. All them investigator was talking to me
22 and Shawn Wingate. I ain't never left the scene or
23 nothing. I leaned against Shawn Wingate car the
24 whole time.

25 Q So you never went to the hospital, you stayed

SW - J. WASHINGTON - CROSS

1 there?

2 A No, I went to speak to the police station.

3 Q So tell me about Mr. Wingate. How do you know
4 him?

5 A That's my cousin.

6 Q Your cousin? When you got to the park was he
7 there first or did he come after?

8 A No, he was not there first.

9 Q You got there first?

10 A Yes.

11 Q You and Asia got there first, and Milton was
12 already in the park?

13 A No, Milton wasn't in the park.

14 Q So you and Asia got there first and then Milton
15 came?

16 A Me and Asia got there, then Milton had come to
17 the park.

18 Q And then who -- and then Mr. Wingate came after
19 that?

20 A Yes.

21 Q So where was Mr. Wingate when y'all were hanging
22 out and eating chicken?

23 A You say where he was?

24 Q Uh-huh.

25 A Mr. Wingate was sitting on the other table.

SW - J. WASHINGTON - CROSS

1 Q He was? Can you stand up for a second and show
2 me on the diagram, where were you? Where were you
3 and Asia?

4 A Right here. I was right here. I was sitting on
5 the table right here.

6 Q Right here? Where is Mr. Wingate?

7 A Mr. Wingate is right here.

8 Q Mr. Wingate is up here at the picnic table and
9 you're down here Asia down here?

10 A Uh-huh.

11 Q Milton was next to you?

12 A Right here.

13 THE COURT: All right now, speak up.
14 you're away from the microphone.

15 THE WITNESS: Milton is right here.

16 THE COURT: I still can't hear you.

17 THE WITNESS: Shawn Wingate laying on the
18 table right here. Asia's right here; Milton was
19 right here.

20 BY MS. WOOTEN:

21 Q Uh-huh.

22 A I was right here. Johnathan right there. In
23 front of Milton was Johnathan Reed.

24 Q So where did the two people that came in the
25 park, where did they come in from?

1 A Oh, they come from this road right here. That's
2 straight across.

3 Q You can have a seat. Thank you.

4 A (Complies.)

5 Q So how long — your cousin Mr. Wingate, what do
6 you call him?

7 A You say what do I call him?

8 Q Uh-huh, what do you call him?

9 A I call him Ship.

10 Q Ship. How long were you and Asia and Milton
11 hanging out before somebody came in the park?

12 A We been out there a good little minute, but I
13 can't give you no time limit on it.

14 Q Were you drinking?

15 A No, I had just a little sip of his drink.

16 Q Whose drink did you take a sip of?

17 A I took a sip of Ship drink.

18 Q He was drinking?

19 A Yes.

20 Q It's true that you yourself have a criminal
21 record, right?

22 A Yes.

23 Q Is it true that in 2006 you were convicted of
24 burglary second and a burglary third?

25 A Yes.

SW - J. WASHINGTON - CROSS

1 Q You're no stranger to dealing with law
2 enforcement?

3 A No, ma'am.

4 Q After this event happened and Asia went to the
5 hospital and you stayed at the park, was there some
6 time later on that evening that everybody gathered
7 at the family home?

8 A Me, I did not went to the family home.

9 Q Where did you go?

10 A Me and Shawn Wingate, you know what I'm saying --
11 she and her cousin took her to the police station.

12 Q Immediately?

13 A Immediately. I'm talking about, you know what
14 I'm saying, take her straight to the police station
15 to identify the people who shot him. She and her
16 cousin drop me off at home.

17 Q Do you know where Ship went after that?

18 A No. No, ma'am, I don't know.

19 Q Thank you. After the shooting happened you and
20 Asia, you were still together, right?

21 A Yes, ma'am.

22 Q Y'all were tight, close?

23 A No, ma'am, we still close. We still tight.

24 Q You still have a good relationship?

25 A Yes, ma'am, we still do. That's my baby momma.

1 Q Have y'all ever talked about what happened in the
2 park that day?

3 A Talk about it, yes, ma'am we do. We talk about
4 that but that's her brother T.

5 Q Right.

6 A That's my homeboy, her brother, and my friend.
7 We gonna talk about that. You can't forget about
8 it.

9 Q I understand.

10 MS. WOOTEN: Just one second, Your Honor.
11 I have no further questions, Your Honor. Thank you.

12 THE COURT: Mr. Swilley.

13 **CROSS-EXAMINATION**

14 BY MR. SWILLEY:

15 Q Johnny Lee, I think the last thing you just said,
16 this whole incident was something you could never
17 forget about, right?

18 A Yes, sir.

19 Q You remember it crystal clear?

20 A Yes, sir.

21 Q Like it was yesterday?

22 A Yes, sir.

23 Q Scoop up a little bit and talk into the mic. I
24 can't hear very well.

25 A Yes, sir.

SW - J. WASHINGTON - CROSS

1 Q I appreciate it. So based upon your
2 recollection, what you remember, which is good,
3 right?

4 A Yes, sir.

5 Q You know Johnathan Reed right here; don't you?

6 A I know him, but I don't know him like that.

7 Q Okay. You know who he was?

8 A Yes, sir, I know who he was.

9 Q And it's true to say Johnathan Reed never had a
10 gun, right?

11 A Sir?

12 Q Johnathan Reed, this guy right here, he never had
13 a gun, did he?

14 A Sir, you know what I'm saying, I can't look
15 through nobody pocket, don't look under nobody
16 shirt. I don't know what they man had, could --
17 well, his brother had a gun; I know that for a fact.

18 Q So based upon, based upon your memory Johnathan
19 Reed did not have a gun?

20 A Sir, I can't say that, sir.

21 Q Okay. Did you see Johnathan Reed with a gun?

22 A Sir, I didn't see him with a gun or none of that
23 right there, but I can't say he didn't had a gun
24 though.

25 Q What now?

SW - J. WASHINGTON - CROSS

1 A I can't say he didn't had a gun, but I didn't see
2 him with a gun.

3 Q Okay, and he didn't -- he wasn't pointing a gun
4 at you, was he, Johnathan Reed?

5 A First you trying to say he didn't had a gun, but
6 now you're saying --

7 Q No, no, he didn't point a gun at you, did he?

8 A No, he ain't no point gun at me.

9 Q Didn't point a gun, didn't have a gun in his
10 pocket pointing at you?

11 A No, sir.

12 Q on, right? The best you could tell Johnathan
13 Reed was just there, right?

14 A Yes, sir.

15 Q Didn't do anything to assist or help with the
16 shooting of Milton, did he?

17 A Well, he could have stopped it though.

18 Q I'm not asking if he could have stopped it or
19 not. I'm asking he didn't do anything to assist or
20 help with the shooting of Milton, did he?

21 A Well, why he came to the park in the first spot.

22 Q No, I'm not, no -- I can't answer questions. I'm
23 asking you, okay. Johnathan Reed did not do --
24 isn't it true Johnathan Reed did not do anything to
25 assist or help with the shooting of Milton Hunter,

SW - J. WASHINGTON - CROSS

1 correct?

2 A I can't say that —

3 Q Okay. So it's true to say based on what you
4 remember Johnathan Reed was there, right?

5 A Yes, sir.

6 Q And nothing more?

7 A Yes, sir.

8 Q Okay.

9 A Can I ask you a question?

10 Q No, you cannot ask me a question. I'm sorry, I
11 didn't mean to be rude. I can't offer testimony,
12 all right. So you said when you got there you shook
13 hands with both the Reeds, right?

14 A Say it again.

15 Q You shook hands with both the Reeds?

16 A I shook hands with both of them when they was
17 fixing to go. I thought they was going to leave
18 when he grabbed my home boy and shot him.

19 Q Okay. All right. So but you'd shaken hands with
20 both brothers before that, right?

21 A Yes, I shook both hands with both of them on the
22 streets and all seem like numerous times; but
23 hanging out and all that, no, we ain't never did
24 that.

25 Q Okay. And everything seemed to be — until

SW - J. WASHINGTON - REDIRECT

1 Milton got shot everything seemed to be normal?

2 A I ain't know that gonna happen that day.

3 Q So that's a yes?

4 A Say that again.

5 Q That's — everything seemed to be normal up to
6 that point, right?

7 A You talking about with Milton and them?

8 Q Just everybody there, everybody seemed to be
9 okay?

10 A Well, you can say that and to that.

11 Q Okay, all right. And from the point where the
12 Reeds got to the park and to the shooting happened
13 how long did you say that was?

14 A Say that again.

15 Q From the point where the Reeds came up, right,
16 and to the point where the shooting happened, how
17 long of a time was that?

18 A Sir, I couldn't tell you.

19 Q Couldn't tell me, no idea?

20 A No.

21 Q Okay.

22 MR. SWILLEY: Beg the Court's indulgence.

23 I have nothing further, Your Honor.

24 THE COURT: Redirect.

25 **REDIRECT EXAMINATION**

SW - J. WASHINGTON - REDIRECT

1 BY MR. HOLT:

2 Q Did you hear the Reed brothers say anything after
3 the shooting?

4 A No, sir.

5 Q Did you see which way they ran off?

6 A Yes, sir.

7 Q Which way was that?

8 A They ran off, left this way through there, head
9 back towards Young and Young way, across the
10 railroad tracks, you know what I'm saying like going
11 toward Hanna funeral home and all that.

12 Q Did they leave together?

13 A Yes, sir, they left together, jumped in the
14 truck.

15 Q Did Johnathan stay behind to help?

16 A Did he stay around to help?

17 MR. SWILLEY: Objection, Your Honor,
18 irrelevant.

19 THE COURT: Overruled.

20 BY MR. HOLT:

21 Q Did either one of the Reed brothers stay behind
22 to help Milton?

23 A I will say he assist him. I will say he help him
24 out, you know what I'm saying. He help, he assist.
25 He came out to the park with him, you know what I'm

1 saying. That like me going out to the park with my
2 brother and my brother don't know what's going on?

3

4 Q But neither one of the brothers stayed behind to
5 help?

6 A Yeah, they jump in the truck together and they
7 ran off together.

8 Q All right. Thank you, Mr. Washington.

9 THE COURT: Ms. Wooten, anything else?

10 MS. WOOTEN: No, Your Honor.

11 THE COURT: Mr. Swilley.

12 MR. SWILLEY: Briefly, Your Honor.

13 **RECROSS-EXAMINATION**

14 BY MR. SWILLEY:

15 Q Johnnie Lee, you're from the rough part of town,
16 right?

17 A That what they say.

18 Q Okay. Anyway, wouldn't it be — it would be
19 logical to say when a shooting happens it's the wise
20 thing to leave the scene —

21 MR. HOLT: Objection, your Honor.

22 MR. SWILLEY: —right?

23 THE COURT: Wait a minute, let him finish
24 the questions. Don't answer until he finishes the
25 question, then I'll see if there's an objection.

SW - J. WASHINGTON - RECROSS

1 What's the question?

2 BY MR. SWILLEY:

3 Q Would you say that it was — it is the logical
4 thing to do when a shooting happens is to run away?

5 THE COURT: All right, hold on, what's
6 the objection to that, Mr. Holt?

7 MR. HOLT: There is no objection.

8 THE COURT: All right, answer the
9 question.

10 BY MR. SMILEY:

11 Q You got to say yes or no, sir.

12 A Can you run that question back over.

13 Q Wouldn't it be the logical thing to say that when
14 a shooting occurs the wise thing to do would be to
15 run away, right?

16 A Umm.

17 Q Is that a yes or no?

18 A You say the wise thing to do is run away?

19 Q I mean, you don't want to be around when —

20 THE COURT: Wait a minute, let him answer
21 it.

22 BY MR. SWILLEY:

23 Q Right.

24 A That wasn't a wise thing to run away.

25 Q Okay. So you don't agree that when gun shots are

1 fired you don't want to remove yourself from the
2 scene?

3 THE COURT: He answered the question.

4 MR. SWILLEY: Okay, all right, I have
5 nothing further.

6 THE COURT: All right, thank you. You may
7 step down.

8 All right, counsel, come up a minute.

9 (WHEREUPON, counsel approached the Bench
10 for an off-the-record discussion.)

11 THE COURT: It requires us to do it a few
12 minutes and I must do it on the record and outside
13 of your presence so I'm gonna ask you to go to the
14 jury room. Please do not discuss the case among
15 yourselves and just relax a few minutes, but this is
16 something we'll have to take up on the record and
17 outside of your presence. Please go to the jury
18 room.

19 (WHEREUPON, the jury was removed from the
20 courtroom and the following
21 proceedings commenced in open court.)

22 THE COURT: Mr. Holt, I believe you wanted
23 to call Mr. Wingate as a witness; is that correct?

24 MR. HOLT: If we can get Mr. Wingate up
25 here please.

SW - A. WINGATE - PROFFER

1 Judge, at this time I also ask if it might
2 be appropriate if we cleared the courtroom as well
3 for both sides. I would like to put that out there.
4 I'm not sure how you or defense counsel would feel.

5 THE COURT: Well, I'm opposed to that. I
6 think the courtroom should be open and I've always
7 kind of felt like that and I feel like that now.

8 MR. HOLT: I agree.

9 THE COURT: All right.

10 THE CLERK OF COURT: Place your left hand
11 on the Bible, raise your right hand.
12 WHEREUPON,

13 **ANTHONY WINGATE,**
14 having been duly sworn by the Clerk of Court,
15 testified as follows:

16 THE COURT: Mr. Wingate, come up and have
17 a seat. I'm gonna tell you that in a few minutes
18 we're gonna bring the s jury back in and Mr. Holt is
19 going to ask you some questions on the record with
20 the jury in here and defense lawyers will also have
21 the right to cross-examine you with the jury in
22 here. But prior to doing that, we wanted to find
23 out what your testimony would be before the jury.

24 All right, Mr. Holt.

25 **P R O F F E R E X A M I N A T I O N**

SW - A. WINGATE - PROFFER

1 BY MR. HOLT:

2 Q How old are you, Mr. Wingate?

3 A 39.

4 Q And were you at Pride Park on February 15, 2012?

5 A Yes, sir.

6 Q What did you go there to do?

7 A My intentions, I went there to eat 'cause I just
8 got at tat, just had a tattoo on my arm, and then I
9 had some alcohol 'cause I was still feeling the pain
10 from it so I drink.

11 Q And why while you were at park what did you
12 witness?

13 A Basically I just saw the little dude shoot the
14 other dude.

15 Q Which dude is that?

16 A The dude sitting in the middle right there.

17 Q And do you know his name?

18 A Not, not really. I don't know his name really.
19 I just know from seeing him previous time before.

20 Q Okay. What else did you witness that day?

21 A Well, after the shooting that was basically -- I
22 called the 9-1-1, and then the police and stuff
23 came, and the ambulance came.

24 Q And after Milton Hunter was shot, laid there and
25 died, did you notice anything or did you do anything

SW - A. WINGATE - PROFFER

1 to help him?

2 A Yeah, I tried to stick my finger 'cause his
3 tongue was like real big, and I tried to put my
4 finger in his mouth to move his tongue back but that
5 didn't really help.

6 Q How do you know how to do that?

7 A 'Cause I took nursing class at Denmark Technical
8 class, College.

9 Q Did you see what the individual that shot Milton
10 Hunter, did you see what type of automobile they
11 arrived in?

12 A It was a green pickup truck.

13 Q All right. And using the diagram up there can
14 you show us where they parked and how they entered
15 the park and what they did next? Now this is Marion
16 Avenue, Fifth Street, and the picnic tables.

17 A They was parked about right here. And this the
18 parking lot right here to the Young and Young?

19 Q Yes, sir.

20 A And they was parked right there and walked
21 through here and we were all sitting — that's a
22 open gate right there so we was all sitting like
23 right up in this area here. Got over a little we
24 were sitting right here, and —

25 Q Where was your car parked?

SW - A. WINGATE - PROFFER

1 A Right here. About like in the middle of the
2 parking lot gravel.

3 Q Okay.

4 A Facing that way.

5 Q And you were at your car?

6 A No, I had walked -- when the conversation,
7 whatever the conversation was that they was having,
8 I started walking towards the -- is this the gazebo
9 right here?

10 Q No, sir.

11 A Whenever the gazebo at I started walking towards
12 it.

13 Q All right. And when you were on your way to the
14 gazebo did you notice anything, did you turn around
15 for any reason?

16 A Yeah, I heard one say, I already handled that, I
17 already talked to Fan about that. And then, and he
18 was like, oh really. And he said, man you --

19 Q Who said, oh really?

20 A The dude right there, the one in the middle. And
21 he say, oh really. And Wop said, man, you ain't
22 about that, you ain't gonna do that out here.

23 Q And who is Wop?

24 A Milton Hunter. By that time all I hear was gun
25 -- all I seen was gun -- he went boom, boom, boom.

SW - A. WINGATE - PROFFER

1 I thought that Asia, I thought she was shot 'cause
2 she tell so bar back and so I was like, damn. And
3 then she start trying to crawl towards him but he
4 was on the ground. By that time he was on the
5 ground. He just kep- he just -- I don't know if he
6 unloaded or not, but you know, he shot till he
7 stopped. And then he ran, grabbed his brother, and
8 they ran out the park.

9 Q What did they do after they left the park?

10 A Got out and as I was on the phone with the --
11 well, by that time they had done jump in their car
12 and went this way towards on Sixth street.

13 Q All right, Mr. Wingate, please answer any
14 questions that defense counsel may have.

15 THE COURT: I don't think
16 cross-examination is appropriate at this time. Mr.
17 Holt, you satisfied the witness has testified
18 truthfully?

19 MR. HOLT: Yes, sir.

20 THE COURT: You ready to proceed for the
21 jury?

22 MR. HOLT: I am.

23 THE COURT: All right, come have a seat.
24 All right, bring the jury in please.

25 (WHEREUPON, the jury was returned to the

SW - A. WINGATE - DIRECT

1 courtroom at and the following
2 proceedings commenced in open court.)

3 THE COURT: All right, thank you.. Ladies
4 and gentlemen, we're now ready to proceed.

5 Mr. Holt, you may present your direct
6 examination testimony of Mr. Wingate.

7 MR. HOLT: Thank you very much, Judge.

8 **DIRECT EXAMINATION**

9 BY MR. HOLT:

10 Q Mr. Wingate, can you give your whole name for the
11 jury?

12 A Anthony Sherod (ph) Wingate.

13 Q What county did you grow up in?

14 A Darlington County.

15 Q What city do you currently work in? What city do
16 you work in?

17 A Oh, Darlington.

18 Q All right. And are you familiar with the Pride
19 Park area of Hartsville?

20 A It's right down the street from my house.

21 Q All right. On February 15th, 2012, did you have
22 a occasion to be in Pride Park?

23 A Yeah.

24 Q About what time do you get there, do you know?

25 A It had to be around about — I left the tattoo

SW - A. WINGATE - DIRECT

1 parlor at 2:30 I think. I got there around about
2 2:45.

3 Q Okay. And can you, using the diagram up there
4 show us about where you parked your car.

5 THE COURT: Go ahead, sir.

6 THE WITNESS: I parked my car over here.
7 I came in — came off 'cause I came down Sixth, made
8 a left, and I parked my car. I parked the car right
9 there.

10 BY MR. HOLT:

11 Q And what was your intention that day from going
12 to the park?

13 THE COURT: You can stand there or you can
14 sit down.

15 THE WITNESS: My intentions I had went to
16 eat, and then I had — I had just got this tattoo
17 and I had bought about a half a pint of Svedka.

18 BY MR. HOLT:

19 Q Svedka is?

20 A Liquor, vodka, 'cause my arm was still hurting
21 from getting the tattoo.

22 Q Did you make yourself a drink?

23 A Yeah.

24 Q And about how many drinks did do you have that
25 day?

SW - A. WINGATE - DIRECT

1 A Well, I had poured about half of the bottle in
2 the cup with some ruby red cranberry juice.

3 Q Well, how about this, do you think you were
4 drunk?

5 A I ain't had nothing but one sip out of it.

6 Q And then what happened after you had one sip?

7 A After I went and poured it, went and sat back
8 down where the rest of everybody else was, they had
9 done came in the park. And then I asked, I asked
10 what y'all got going on here, and Milton say —

11 MR. JONES: Objection, hearsay.

12 MR. SWILLEY: Objection, hearsay.

13 THE COURT: Just tell what you did as a
14 result of what he said.

15 THE WITNESS: And I said, man, whatever.
16 By that time they had done came to the park.

17 BY MR. HOLT:

18 Q Okay, hold on, I think we're getting ahead of
19 ourselves. Did you go to the park with Milton and
20 Johnny Lee Washington and Asia? Did you go with
21 them?

22 A No, I went by myself.

23 Q Did you go with the intentions of meeting up with
24 anybody?

25 A No.

SW - A. WINGATE - DIRECT

- 1 Q So this is all just an unpleasant coincidence?
- 2 A Wrong place at the wrong time.
- 3 Q Now did you notice anybody driving by repeatedly
- 4 by the park that afternoon?
- 5 A Green truck.
- 6 Q Okay. And did that green truck eventually park?
- 7 A Yeah.
- 8 Q And who got out of the green truck?
- 9 A Them two guys right there.
- 10 Q All right. And did you know who you're referring
- 11 to as these two guys, did you know them?
- 12 A I mean, two different age brackets. I mean, I
- 13 know them from when they was little kids.
- 14 Q How old are you?
- 15 A I'm 39. I'll be 40 next month.
- 16 Q Okay. Now can you show us on the diagram where
- 17 they got out of their truck at and what they did
- 18 next?
- 19 A They got out — Marion Avenue right here,
- 20 somewhere in here. They were way behind the stop
- 21 sign, I know that.
- 22 Q Okay.
- 23 A 'Cause there was already — the police car at the
- 24 stop sign and the police made a left. And then they
- 25 got out.

SW - A. WINGATE - DIRECT

1 Q Where did they enter the park?

2 A Through the gate beside there off of Marion
3 Avenue.

4 Q All right. Where did they proceed to after they
5 entered?

6 A They walked straight towards where we was.

7 Q Now what did you do when you saw them walking off
8 and why?

9 A After I said, man, whatever, I started doing this
10 right here (indicating). I started doing this
11 (indicating).

12 Q So you were leaving?

13 A I was going towards -- I was going towards my
14 car, but I walked through up under the gazebo.

15 Q And why was that?

16 A 'Cause I had -- something didn't feel right to
17 me.

18 Q Now did you have occasion to turn around when you
19 started walking towards the gazebo?

20 A Yeah, when I heard --

21 Q What made you turn around?

22 A When I heard the last part of the conversation.

23 Q What did you hear?

24 A I heard --

25 MR. SWILLEY: Objection, hearsay.

SW - A. WINGATE - DIRECT

1 MR. HOLT: Party opponent, Your Honor.

2 THE COURT: Pardon me?

3 MR. HOLT: Parent opponent.

4 THE COURT: All right. You heard -- the
5 conversation, you talking about what one of these
6 two gentlemen said?

7 THE WITNESS: This gentleman right here
8 said.

9 THE COURT: It's what he said? Okay, all
10 right. Objection overruled.

11 BY MR. HOLT:

12 Q What did you hear that gentleman say?

13 A He said, what? Then he shot him.

14 Q Who did he shoot?

15 A He shot Milton.

16 Q And about how close was he to Milton when he shot
17 Milton?

18 A He was probably about like right here to that end
19 of this box right here.

20 Q And what did Milton do?

21 A I didn't know whether he pushed his sister or
22 not. I actually thought --

23 Q Where was his sister?

24 A She was right beside him 'cause I actually
25 thought he shot her because she fell probably about

SW - A. WINGATE - DIRECT

1 to where your podium thing at right here where you
2 —

3 Q Yes, sir.

4 A And he went to like do like this right here,
5 but — and he had done got hit like, I don't know,
6 three or four times. And he fell just like that
7 like he was still in the boxing stands.

8 Q And what happened to Asia?

9 A She was on the ground yelling, get up, get up,
10 get up Wop, get up. And then by that time I grabbed
11 my phone and I said, oh, shit — I mean, I —

12 Q You can say what you said.

13 A Oh. And then I was on the phone with 9-1-1 and
14 she had done crawled over to him. I think she tried
15 to turn him. She tried to turn his head or
16 something and I said, no, no, no, don't do that
17 because he gonna choke. And I was like, no, turn
18 him on his side so it will go out his mouth. And as
19 I got down, got down beside talking to the people,
20 they were like, calm down. And I was like, he can't
21 breathe. When I looked at his tongue it was, it was
22 mad big, it was really big. So I took my finger and
23 I tried to stick it down move his tongue back so he
24 could breathe.

25 Q And what happened when you did that?

SW - A. WINGATE - DIRECT

1 A He started (indicating). He was breathing in
2 because his tongue was, his airway was blocked by
3 his tongue.

4 Q How did you know to do that?

5 A Because I went to Denmark Technical College and I
6 took nursing for two-years-and-a-half.

7 Q Now after you called 9-1-1 what happened next?

8 A I said just tell the officer that just went down
9 Sixth Street, he can't be no more to the first light
10 to turn around. And she said what officer. I said,
11 all I know he driving one of them Hartsville police
12 cars.

13 Q All right.

14 A And that's when by that time I look up -- I don't
15 know who the guy, I don't know which officer it was.
16 I know it was a white guy. He came, slung up, jump
17 out. And I guess he called on his thing or whatever
18 and told the -- by that time the ambulance came and
19 we stood back like this right here while they did
20 what they was doing and put him on the gurney.

21 Q Who came and spoke to you next, do you remember?

22 A Two people walked up. Anderson and, what's his
23 name? I know him by Teyon.

24 Q Where did they take you?

25 A They took us to the police station.

SW - A. WINGATE - DIRECT

1 Q And when you were there what happened?

2 A They asked us did we know who did it.

3 Q And did you tell them?

4 A I said, well, I don't know 'em like that, but I
5 know of 'em. I know of 'em but I don't know 'em.

6 Q And did they show you a photo lineup?

7 A Yeah.

8 Q And did you pick the people out of the photo
9 lineup?

10 A Yeah.

11 Q And on a scale of one to a hundred, how sure are
12 you that the people you picked out were the people
13 that shot Milton Hunter?

14 A I was a hundred percent.

15 Q All right. And while you were there did the
16 police influence or force or coerce you in any way
17 to pick a certain person?

18 A No.

19 Q All right. After you picked the people out of
20 the lineup what did you do next?

21 A I said take me back to my car, man.

22 Q Did they take you back to your car?

23 A Yep, and the cup of liquor I had was still on the
24 back of the car.

25 Q Did you ever get to drink with Mr. Wingate?

SW - A. WINGATE - CROSS

1 A As soon as I got home.

2 Q No further questions.

3 THE COURT: All right, Mr. Jones.

4 **CROSS-EXAMINATION**

5 BY MR. JONES:

6 Q Mr. Wingate, I think I heard you say wrong place
7 wrong time. Would you describe the events of
8 2/15/12 as wrong, you being at the wrong place at
9 the wrong time?

10 A Yes, sir.

11 Q Okay. Now prior to February 15th of last year --
12 and if you've already answered I apologize; I didn't
13 hear it. Did you know either of the Reeds?

14 A No, I can't -- I think I know like their
15 grandfather or something like that 'cause I got an
16 aunt that stay on the same street at the very end.
17 In passing from taking my aunt to see her
18 sister-in-law down there and seeing them in the
19 yard, but that was when they was little. I don't
20 them like, you know, hung out with them.

21 Q No dealings with them?

22 A No.

23 Q Okay. And while you were at the park you
24 basically were there just to kind of hang out, get
25 over the tattoo that you had, have a drink, just

SW - A. WINGATE - CROSS

1 kind of be there?

2 A Yeah.

3 Q Is that correct?

4 A Yes, sir.

5 Q All right. When the other folks started coming
6 up, Mr. Washington, Ms. Gregg and Mr. Hunter, did
7 you know that crowd? Did you know them?

8 A Yes, me and — Johnny Lee, I know him, and I
9 didn't know —

10 Q How do you know him?

11 A His family used to say on the opposite street
12 from me?

13 Q Are you related to him?

14 A No.

15 Q Anybody — did you know anybody else?

16 A I knew Milton. I didn't know, I didn't even
17 though that was his sister, Asia. I didn't know he
18 had a sister.

19 Q And you didn't know Mr. Hunter by Milton, did
20 you?

21 A I just knowed him by Wop.

22 Q That was his nickname?

23 A Yeah.

24 Q And how long do you think y'all were there
25 talking before this incident took place when Milton

SW - A. WINGATE - CROSS

1 was shot?

2 A You asking me for the incident?

3 Q Just -- yes, the whole time that y'all talked
4 until Milton was shot. Estimate of time?

5 A I got to the park about 2:45 so we was there a
6 good 30 minutes before this whole incident took
7 place.

8 Q Now this, the chart that we have here, if I
9 understood you correctly you where t a picnic table
10 hanging out? Or, were you at one of those tables?

11 A Uh-huh.

12 Q Did you go back and forth from the table to your
13 car?

14 A At one point in time 'cause I got a cigarette. I
15 got me a cigarette and I got Johnny Washington a
16 cigarette.

17 Q And how long do you think you stayed at your car?

18 A Long enough to reach down in there and pick it up
19 and walk back.

20 Q Just a couple of seconds?

21 A Yeah.

22 Q You didn't hang out at your car and have your
23 drink and just kind of hang around there while you
24 were doing all of that?

25 A I didn't get to drink until after I ate. I ate

1 first.

2 Q And where did you eat?

3 A Picnic table.

4 Q Not your car?

5 A No.

6 Q All right. After you ate, after you had a drink,
7 after you got a cigarette, that's when this event
8 took place?

9 A Right after I poured the drink and walked back
10 over there to where the, where you know, where we
11 were sitting.

12 Q Okay. Can you describe what the two gentlemen
13 that walked up to Mr. Hunter were wearing?

14 A The man right there had on -- the one in the
15 middle that's sitting in the middle between you, he
16 had a hoodie and some shorts and some of them, then
17 hospital shoes like the women wear, I think they
18 call them crocks.

19 Q All right, we're talking about this gentleman,
20 Mr. Joshua Reed?

21 A Yeah, the dude in the middle.

22 Q Right here?

23 A Yeah, your client.

24 Q Okay. The hoodie, what color was it? Do you
25 recall?

SW - A. WINGATE - CROSS

1 A It was blue or black.

2 Q All right. Was it a pullover, a zip-up, or do
3 you remember?

4 A I just know it was a hoodie.

5 Q Okay, all right. Had some shorts on?

6 A Yes.

7 Q And again, if you said the color I didn't hear
8 it.

9 A I never said the color of the shorts.

10 Q Okay. Do you remember?

11 A I just know he had on shorts.

12 Q Okay. And then some dark crock shoes?

13 A Yeah.

14 Q All right. That's Mr. Joshua that we're talking
15 about. How about the other gentleman, do you recall
16 what he was wearing?

17 A He had on some jeans and a hood and some
18 sneakers.

19 Q All right. And again, any idea of the colors?

20 A I don't pay attention like that.

21 Q Okay. And from the time that the two gentlemen
22 walked up until Mr. Hunter was on the ground was it
23 a matter of seconds or a matter of minutes? How
24 long did it take for all that to take place?

25 A I wasn't counting.

SW - A. WINGATE - CROSS

1 Q Roughly, any idea?

2 A It wasn't — I's say short conversation so, I'd
3 say about 45 seconds but all of that to take place
4 start to finish.

5 Q Okay. Now after it happened I believe you said
6 two guys ran back to the, that little entrance there
7 on Marion, got in the truck, took off?

8 A Well, before he ran he grabbed his brother by the
9 jacket and pulled him.

10 Q So both of them are gone?

11 A Yeah.

12 Q All right. You're calling 9-1-1. You're trying
13 to help Mr. Hunter?

14 A Yeah.

15 Q Okay. All of that happened before the police got
16 there did you have a chance to say anything to
17 either Ms. Gregg or Mr. Washington?

18 A No, because she was hysterical. She was saying,
19 get up, Woop.

20 Q Okay.

21 A And Johnny was puzzled.

22 Q All right. After the police got there I assume
23 it took some time for the ambulance and all to take
24 Mr. Hunter to the hospital. Did you talk to Mr.
25 Washington, let's say, at that point in time?

SW - A. WINGATE - CROSS

1 A No, 'cause she was — he was holding her because
2 at the time that was his girlfriend, and he was
3 holding her and she was crying. He was trying to
4 hold her, you know, keep her calm.

5 Q Okay. Did she — did the two of them separate at
6 some time? Did she go one way and he went another
7 way?

8 A No, we all were standing there together once the
9 police and stuff go there 'cause they was like, we
10 need to talk to y'all 'cause, you know, you're right
11 here.

12 Q And as that was happening did y'all talk among
13 yourselves either with or without the police being
14 there, about what just happened?

15 A Could you repeat that again.

16 Q Did you and Mr. Washington and Ms. Gregg at any
17 time after this happened talk with each other about
18 what happened?

19 A Actually, yesterday was the first time I seen
20 them since this happened.

21 Q Okay, all right. Back up again, did I not here
22 you say that you and Mr. Washington were taken to
23 the police station to talk to the investigators?

24 A Yes.

25 Q Okay. How about during that time, did y'all talk

SW - A. WINGATE - CROSS

1 with each other about what just happened?

2 A No, 'cause I was in the front seat and they was
3 in the back seat of the car with Mr — what's his
4 name — Chief Hudson.

5 Q And maybe I misunderstood. Was Ms. Gregg with
6 y'all?

7 A I think, I think she was in the back seat with
8 us.

9 Q Okay. So your recollection is all three of you
10 went to the police station and then y'all started
11 talking to the police?

12 A That's the way it went.

13 Q Got you.

14 MR. JONES: One second, Judge.

15 THE COURT: All right.

16 MR. JONES: That's all I have. Thank you.

17 THE COURT: Cross-examination, Mr.

18 Swilley?

19 MR. SWILLEY: Yes, Your Honor.

20 **CROSS-EXAMINATION**

21 BY MR. SWILLEY:

22 Q Anthony, you go by Ship, right?

23 A Yes.

24 Q Okay.

25 A Oh, not no more.

SW - A. WINGATE - CROSS

1 Q Okay. Mr. Wingate then.

2 A Yeah.

3 Q You said you got there, came around there by
4 yourself, right?

5 A Yeah.

6 Q And you knew Wop, you knew Milton, right?

7 A Yeah, I knew Wop.

8 Q Were you friends with him?

9 A Well, we was acquaintance because a lady I used
10 to date, he was dating her daughter.

11 Q Okay. So it's true to say you don't really
12 have — none of the people involved this as far as
13 the people at Pride Park, you're not friends with
14 any of them, right?

15 A I'm friends with Johnny Lee.

16 Q Okay, all right, I'm sorry. Now is it fair to
17 say you -- the entire -- every shot that was fired
18 at Milton you witnessed that, right?

19 A Yeah, I believe the first one missed.

20 Q There was fired at him?

21 A Yeah.

22 Q So you witnessed this whole thing, right?

23 A Yeah, right.

24 Q And you see these two Reed brothers, right?

25 A Yeah.

SW - A. WINGATE - CROSS

1 Q You don't have any trouble telling them apart, do
2 you?

3 A No.

4 Q Okay. And at that time you said it took — now
5 you said from the time they pulled up to the time
6 that Milton was shot, how long of a time was that?

7 A I mean, in actuality when it happened it seemed
8 like it took a long time, but it probably wasn't no
9 more than probably 45 seconds.

10 Q And at the time you saw Joshua Reed shoot Milton
11 Johnathan Reed wasn't doing anything, right?

12 A He was standing, he was standing — see, he was
13 standing opposite side of Johnny Lee.

14 Q Right. And did I hear you say before that he
15 looked shooked when all this was going on?

16 A Yeah, I honestly say that.

17 Q Like, I mean, he had a look of bewilderment on
18 his face?

19 A He looked as puzzled just like I looked puzzled.

20 Q Right. And at the time you saw Johnny, Johnathan
21 didn't have a gun, did he?

22 A Not from my knowledge I don't know.

23 Q I mean, you didn't see a gun in his hand, did
24 you?

25 A No.

SW - A. WINGATE - CROSS

1 Q Didn't see a gun hanging out of his clothes, did
2 you?

3 A No. I think he had his hands in his, like in his
4 coat, in the hoodie.

5 Q You didn't see the imprint of a gun in his coat,
6 did you?

7 A Naw.

8 Q Is that no?

9 A No, no.

10 Q Okay. And at the time you said after the
11 shooting stopped, you said — did I hear
12 correctly — Joshua grabbed Johnathan and pulled
13 Johnathan out of there?

14 A Yeah, he — 'cause he was still standing there
15 sort of — they was over here and he had to go back
16 around the picnic table and he grabbed him by the
17 hoodie, was like, come on, come on, and they started
18 going and went back out through the gate.

19 Q So it's fair — it's true to say that based upon
20 your observations Johnathan Reed had nothing to do
21 with this shooting other than fact he was just in
22 the park? Is that true?

23 A (There was no response.)

24 Q Based on your observations?

25 A If I answer that in that way I'll be telling a

SW - A. WINGATE - CROSS

1 lie.

2 Q Well ---

3 A I want to answer it another way.

4 Q Mr. Wingate, just tell ---

5 THE COURT: Give him the best answer that
6 you can give him.

7 THE WITNESS: From my observation is he
8 ain't had anything to do with it he wouldn't never
9 been with him.

10 BY MR. SWILLEY:

11 Q Okay, but you didn't see him do anything but
12 stand there?

13 A He didn't do anything but stand there.

14 Q That's it, right?

15 A Yeah.

16 Q Okay. And after that you said -- and you said
17 yesterday was the first time you've seen Asia and
18 Johnny Lee since this incident?

19 A Yep.

20 Q Almost two years later?

21 A (Shakes head.)

22 Q Okay.

23 THE COURT: Yes?

24 THE WITNESS: Yes, sir.

25 THE COURT: She has to take this down.

SW - A. WINGATE - REDIRECT

1 She can't take down a nod.

2 THE WITNESS: All right, yes.

3 THE COURT: Okay.

4 MR. SWILLEY: Beg the Court's indulgence.
5 I have nothing further, Your Honor.

6 THE COURT: Redirect, Mr. Holt?

7 **REDIRECT EXAMINATION**

8 BY MR. HOLT:

9 Q Mr. Wingate, can you show us again how you said
10 the Reed brothers were standing when Mr. Hood was
11 talking to you?

12 A When they first came in the park they were
13 standing over here because they walked over and
14 spoke to Johnny Lee, shook his hand.

15 Q Now where was — just show us where Josh was
16 standing.

17 A Like here, and his brother was standing over —
18 talking about during the incident or when they first
19 got there?

20 Q During the incident?

21 A Oh. He was standing in front of the bench on
22 this side, and the brother was standing over here
23 still where Johnny Lee was.

24 Q Okay. So Josh Reed was standing over who?

25 A I don't know him by name.

SW - A. WINGATE - REDIRECT

1 Q The one that shot Milton, who was he standing
2 over?

3 A Oh, he was standing, he was standing right there
4 in front of Milton.

5 Q And the one who didn't shoot Milton, who was he
6 standing over?

7 A He was standing over Johnny Lee.

8 Q Okay. Now where were you at when this was
9 happening?

10 A Halfway in between the gazebo.

11 Q So is it fair to say that some of John — some of
12 the brother with dreads was blocked out from his
13 brother from your point of view?

14 A I couldn't — that's why I couldn't see whether
15 he had a gun or not.

16 Q Okay. Let me ask you this, did you look in his
17 pockets?

18 A Huh?

19 Q Did you look in his pockets?

20 A In?

21 Q In Johnathan's Reeds' pockets?

22 A No.

23 Q But you did see him stand standing over —

24 A Over John.

25 Q Okay. Did you — could you tell who was driving

SW - A. WINGATE - RECROSS

1 that day?

2 A No, but by the time I saw them they was walking
3 across the street together. I know the one that
4 did the shooting was on the left and the one that --
5 the other one that was standing was on the right.
6 So as far as knowing who was driving I don't know.

7 Q Thank you.

8 MR. HOLT: No further questions, Your
9 Honor.

10 THE COURT: Mr. Jones?

11 MR. JONES: Nothing.

12 THE COURT: Mr. Swilley?

13 MR. SWILLEY: Very briefly.

14 **RECROSS EXAMINATION**

15 BY MR. SWILLEY:

16 Q Mr. Wingate, when you say standing over you mean
17 like standing next to? Is that what you mean? I
18 mean, everybody was standing up, right?

19 A Well, Johnny Lee was sitting down.

20 Q Oh, so you mean standing just kind of like this?

21 A Standing right beside him.

22 Q That's all you mean?

23 A Yeah.

24 Q Okay, that's it.

25 THE COURT: All right. Witness is

1 excused.

2 Counsel, let me see you at side bar
3 please.

4 (WHEREUPON, counsel approached the Bench
5 for an off-the-record discussion.)

6 THE COURT: All right, you've completed
7 with this witness, Mr. Holt?

8 MR. HOLT: Yes, Your Honor.

9 THE COURT: You want him excused?

10 MR. HOLT: If it please the Court, if you
11 can excuse him as well as Johnny Lee Washington.

12 THE COURT: All right.

13 Mr. Wingate, you are excused, you're free
14 to go. And Mr. Washington is also excused. Let's
15 talk about scheduling just a moment. Come up here
16 just a minute.

17 (WHEREUPON, counsel approached the Bench
18 for an off-the-record discussion.)

19 THE COURT: All right, ladies and
20 gentlemen, I was talking to the lawyers about
21 scheduling, and there are some things that the
22 lawyers need to, in preparation for the next witness
23 that may take a few minutes and I think it's
24 appropriate for us to take our lunch break at this
25 time and so we are going to do that. I'm gonna ask

1 that you go get your lunch. Please be back in your
2 jury room, let's say at 1:30. It's 12:30 now. That
3 will give you about an hour. Does that give enough
4 time? If so, please be back in the jury room 1:30.
5 Over the recess for lunch do not discuss the case
6 with anyone. Do not allow anyone to discuss it with
7 you. If anybody approaches you about the matter or
8 tries to talk to you about it get their name or
9 their description, report it to me and I will report
10 it — and I will handle them. And just be back in
11 the jury room. Please do not begin discussing the
12 case among yourselves when you're re-assembling in
13 the jury room. I would ask that the twelve members
14 of the jury select a person that you want to be the
15 foreperson when you come back in, and notify the
16 bailiff of who that person is gonna be. But if
17 you'll be back in your jury room please at 1:30
18 we'll be ready to go forward at that time. Thank
19 you. Have a pleasant lunch.

20 (WHEREUPON, the jury was removed from the
21 courtroom at 12:30 p.m., and the following
22 proceedings commenced in open court.)

23 THE COURT: Counsel, come up just a moment
24 please.

25

1 (WHEREUPON, counsel approached the Bench
2 for an off-the-record discussion.)

3 THE COURT: All right, I understand the
4 jury is out. Now at this time just to, I know there
5 is an important matter for all the people that are
6 involved, that includes the victim's family and the
7 family and friends of the defendants as well. And I
8 know it also a highly emotional matter with each one
9 and I just don't want to — I want to make sure that
10 we do not have any problems. And to make sure that
11 we don't have any problems we're going to adjourn
12 the court in — I'll have Mr. Staggers to adjourn.
13 At this time I release all members of the victim's
14 family. Everyone else please keep your seats. All
15 right, victim's family may be released. You may,
16 are released.

17 Mr. Bailiff, let me know when they're on
18 the elevator.

19 (Pause while victim's family leaves the courtroom.)

20 THE COURT: All right, we'll be in recess
21 until 1:30, and we will start back at that time.

22 (WHEREUPON, a lunch break was taken.)

23 (WHEREUPON, State Exhibits Nos. 3 through
24 22 were marked for identification only.)

25 THE COURT: The State had the opportunity

1 to mark certain exhibits. Madam Reporter, what have
2 we marked and what have we got -- what's been
3 marked -- and are we marking into evidence or just
4 for identification?

5 MR. HOLT: Marked for identification, Your
6 Honor.

7 THE COURT: Oh, okay. Is everything is
8 just for identification? Nothing is admitted at
9 this point?

10 MR. HOLT: Nothing is admitted at this
11 point.

12 THE COURT: All right. Anything before we
13 bring the jury in, Mr. Holt?

14 MR. HOLT: There is not, Your Honor.

15 THE COURT: Mr. Jones?

16 MR. JONES: No, sir.

17 THE COURT: Mr. Swilley?

18 MR. SWILLEY: No, Your Honor.

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

21 (WHEREUPON, the jury was returned to the
22 courtroom and the following proceedings
23 commenced in open court.)

24 THE COURT: All right. Ladies and
25 gentlemen, thank you for your attention and your

1 promptness in being back here. And we had to take
2 care of a few matters but we got those taken care of
3 and we're ready to go forward. I understand the
4 jury has selected Mr. Dickson as the foreperson of
5 this jury so if you'll sit right where you are
6 seated now Mr. Dixon. And of course, the alternate
7 will sit where she is seated. The rest of the seats
8 are not reserved and you can sit in either seat in
9 the jury box. I will ask you now as I ask you every
10 time away from the courthouse if anyone has
11 contacted you or tried to talk with you about this
12 case in any manner whatsoever I will need to know
13 about it now.

14 (There was no response.)

15 THE COURT: Negative response and that's
16 goods. All right, at the time we adjourned for
17 lunch the State was presenting the State's case in
18 chief and they may continue to do so at this time.

19 Mr. Holt.

20 MR. HOLT: Thank you very much, Your
21 Honor. The State would like to call David Sessoms.

22 THE COURT: Come around please,
23 Mr. Sessoms.

24 THE CLERK OF COURT: Step forward and take
25 the oath of a witness please. I ask you to place

SW - W. SESSOMS - DIRECT

1 your left hand on the Bible, raise your right.
2 WHEREUPON,

3 **WILLIAM D. SESSOMS,**

4 having been duly sworn by the Clerk of Court,
5 testified as follows:

6 THE CLERK OF COURT: Step up to the
7 witness stand, sir.

8 THE COURT: All right, Mr. Holt, you may
9 proceed.

10 MR. HOLT: Thank you very much.

11 **DIRECT EXAMINATION**

12 BY MR. HOLT:

13 Q Please give your whole name for the jury and the
14 court reporter.

15 A My name is William David Sessoms.

16 Q And Mr. Sessoms, what's your current occupation?

17 A Currently I'm employed by Darlington County,
18 director of the Darlington County 9-1-1
19 communication center.

20 Q And what duties does your job entail?

21 A I'm the keeper of the records as far as
22 communications. We — central dispatch, we dispatch
23 all emergency response, fire, EMS, and law
24 enforcement for Darlington County.

25 Q All right. And how are 9-1-1 calls recorded?

SW - W. SESSOMS - DIRECT

1 A Everything coming into the 9-1-1 center, radio,
2 and telephone, is recorded, have a recording system.
3 And we're -- recording comes in and it's on a
4 computer and we can play it back and save it. But
5 everything coming in, conversation, radio, traffic,
6 on-traffic, every conversation coming into the 9-1-1
7 center is recorded.

8 Q And do you ever have to pull any of that data out
9 and make copies of them for storage?

10 A Yes, sir, that's really one of my primary jobs.
11 As the agency has something that needs play back I'm
12 the only one that does the recordings.

13 Q And how do you do that? How do you go about
14 doing that?

15 A It's on a server. We pull it up by -- we got a
16 computer aided dispatch. It's called a CAD report.
17 So when the call comes into 9-1-1 the dispatcher
18 takes the information, types it, and enters it into
19 the computer, and we dispatch the appropriate
20 agency. Once the -- we take the phone call. We
21 dispatch the emergency response agencies, and once
22 the call is completed they'll close the call out.
23 It's stored on the computer and the records go back
24 as long as the server is, you know, is good.

25 MR. HOLT: Permission to approach, Your

SW - W. SESSOMS - DIRECT

1 Honor.

2 THE COURT: Yes, sir.

3 BY MR. HOLT:

4 Q I'm gonna show you what's been marked for
5 identification purposes only, it's State's Exhibit
6 13 and State's Exhibit 11. And without telling me
7 what those are, can you tell me if you recognize
8 them?

9 A Yes, sir, I do.

10 Q And as far as State's Exhibit 11 and 13, since
11 the last time you've seen them have there been any
12 changes or alterations or deletions made to them?

13 A No, sir, it doesn't appear to be.

14 Q All right.

15 MR. HOLT: Your Honor, at this time the
16 State would ask to move 11 and 13 into evidence.

17 THE COURT: What are they?

18 THE WITNESS: I'm sorry, State's Exhibit
19 number 11 is the computer aided dispatch. We call
20 it the CAD report. It's the actual report where the
21 stuff is typed into the computer.

22 THE COURT: That's good enough. What's
23 the other one?

24 THE WITNESS: And the other is a -- this
25 is a copy of a disk that I burned for the Hartsville

SW - W. SESSOMS - DIRECT

1 Police Department.

2 THE COURT: All right. Any objection,
3 Mr. Jones?

4 MS. WOOTEN: May I review them?

5 THE COURT: Sure.

6 MR. SWILLEY: No objection from me, Your
7 Honor.

8 MS. WOOTEN: No objection, Your Honor.

9 THE COURT: All right, both exhibits will
10 be admitted into evidence without objection. Give
11 them back to the court reporter and let her take the
12 ID numbers off of them.

13 (WHEREUPON, State Exhibits Nos. 11 and 13
14 were admitted into evidence.)

15 THE COURT: All right, you may proceed,
16 Mr. Holt.

17 BY MR. HOLT:

18 Q Mr. Sessoms, in regards to that CAD report can
19 you explain to the jury what information it tells
20 you and how you know?

21 A It's a form. Everything — you know, forms are
22 always the same. It tells you, kind of tells me the
23 call taker name Pam took the call. Came in on
24 February 15th, 2012. It uses military time
25 16:04:47. And the call was processed and actually

SW - W. SESSOMS - DIRECT

1 entered into the computer at 16:05 so it took them
2 probably about 35, 40 seconds to get that
3 information entered. The call, once it's entered
4 into the system we use call takers and dispatchers.
5 We don't have separates; everybody does the same
6 job. So once the call is entered the appropriate
7 dispatcher for that agency — in this cases the
8 Hartsville Police Department — automatically
9 dispatches the call out to the Hartsville Police
10 Department. Since it was an emergency and needed
11 ambulance also we dispatch EMS and the Hartsville
12 Police Department.

13 Q And does it say what time you dispatched them?

14 A Yes, sir. Let's see, the call was put in at
15 16:05:52 and EMS was dispatched at 16:06:26, less
16 than, you know, 40 seconds later get EMS. And
17 Hartsville Police Department was dispatched at
18 16:07:23 so we —

19 Q And do you have a — do you have a status by —
20 when you have to alert multiple agencies do you have
21 a status who you alert first? Or, how does that
22 happen?

23 A Well, always do the ambulances first is the way
24 we — you know, it doesn't always work that way.
25 But if a dispatcher heres we're in a pretty tight

SW - W. SESSOMS - DIRECT

1 area or they are, and if they hear, you know, a
2 call coming in they'll automatically just
3 instinctly, you know, get EMS rolling. So it's done
4 kind of all in one motion.

5 Q Okay.

6 MR. HOLT: Your Honor, at this time the
7 State would like to publish the disk for the jury.

8 THE COURT: All right, permission granted.
9 As I told you ladies and gentlemen, the lawyers do
10 ask time to time to publish certain evidence to you
11 and they want to do that at this time. As you are
12 always be able to take anything that was admitted
13 into evidence back into the jury room with you and
14 look at it as long as for as much as you would like
15 to. And if it's something that requires electronics
16 to or make arrangements for that in the jury room as
17 well. You also have a right to see it while we're
18 here in the courtroom.

19 All right, Mr. Holt.

20 MR. HOLT: Thank you very much, Your
21 Honor.

22 (State Exhibit No. was played for the jury.)

23 BY MR. HOLT:

24 Q We can pick out certain portions of that call I
25 think that things are visible, you know, definitely

SW - W. SESSOMS - DIRECT

1 audible. Why does it sound like there were multiple
2 calls going on at the same time?

3 A Because there were. This is in an environment no
4 more distance than you're sitting and you have-- I
5 have at least five people on radios, and it -- when
6 you get a call like this it's total chaos. And you
7 know, you, it's bits and pieces. It's like fishing,
8 you know try to get that -- we need certain
9 information so we can send, you know, the proper
10 agency. And of course the first of course is do
11 anybody need an ambulance and try -- the most
12 important question is where is it at 'cause if we
13 can't get where it's at out of you, we can't get you
14 the help. So the dispatcher sometimes, you know,
15 and you can hear in the background it gets kind of
16 crazy but I have most of my -- this particular
17 shift, all of them are experienced dispatchers, you
18 know, so that's what you hear is what they heard and
19 they just to have to do the best they can with their
20 training and background to try to piece together the
21 information so we can respond.

22 Q And in less than a minute they still manage to
23 get people to the scene?

24 A Yes.

25 Q Dispatch from your end?

SW - W. SESSOMS - DIRECT

1 A If I'm not mistaken, let me look. The call was
2 actually dispatched to Hartsville police — well to
3 the EMS. Hartsville Police Department at 16:07:23.
4 And at 16:08 — at 16:08:07 which the first police
5 officer signed off at the scene.

6 Q All right. Mr. Sessoms, thank you so much for
7 all your help and please answer any questions that
8 defense counsel might have.

9 A Thank you.

10 THE COURT: Ms. Wooten.

11 MS. WOOTEN: Thank you, Your Honor.

12 **CROSS-EXAMINATION**

13 BY MS. WOOTEN:

14 Q Good afternoon, Mr. Sessoms.

15 A Good evening, yes, ma'am.

16 Q Can you tell me how many 9-1-1 calls were
17 received in the dispatch in relation to this
18 incident?

19 A Give me a minute. If the additional calls, you
20 know, the technician will get the report generated,
21 then we put notes into it so if you will give me
22 just a minute to. Had a second caller, also had a
23 caller from Rogers Barber shop. States he did not
24 see anything, man laying on the ground shot. So
25 there was two according to the notes. Then a male

SW - W. SESSOMS - DIRECT

1 caller called, we called back several times. The
2 bonk you heard is where we lost connection on the
3 cell phone, and of course we tried to make contact
4 several times. It went straight to voice mail.

5 According to this there were at least two calls in
6 this particular incident that we put into the CAD.

7 Q And is one of those phone calls the one we heard?

8 A Those are the two — yes, that's the one you
9 heard. Everything you heard is actually this.

10 Q Okay. And from those two 9-1-1 calls were
11 suspects positively identified on the phone call?

12 A Not on the phone call — well, I don't think, let
13 me. Of course, you heard the dispatcher ask, you
14 know, do you know who it was. The only — they give
15 a description at 16:30:47 which is about 25 minutes
16 after the call came in. Dreads, white male, light
17 skin, advise, give it out — very little information
18 you know, suspect information in this particular,
19 yeah.

20 Q But my question was at the time or shortly there,
21 a few minutes after the incident was there a
22 positive identification.

23 A Not to my knowledge, not into the 9-1-1 center
24 itself.

25 Q And it was a very quick response time I'm

SW - W. SESSOMS - DIRECT

1 guessing?

2 A Yes, ma'am.

3 Q So a matter of minutes from the first call to the
4 dispatch?

5 A Yes, ma'am.

6 MS. WOOTEN: Just one second please Your
7 Honor.

8 THE COURT: Yes, ma'am.

9 MS. WOOTEN: No further questions. Thank
10 you.

11 THE COURT: Mr. Swilley?

12 **CROSS-EXAMINATION**

13 BY MR. SWILLEY:

14 Q Mr. Sessoms, this is about the extent of your
15 involvement in this case?

16 A This is the only extent I've had, yes, sir.

17 MR. SMILEY: Thank you. Nothing further.

18 THE COURT: Anything further, Mr. Holt?

19 MR. HOLT: Nothing, Your Honor.

20 THE COURT: Thank you, Mr. Sessoms, you
21 are excused.

22 Would you like the witness excused,
23 Mr. Holt?

24 MR. HOLT: I'd appreciate it, Judge.

25 THE COURT: Any objection?

SW - J. THOMPSON - DIRECT

1 MR. JONES: No, sir, there is none.

2 THE COURT: You are excused, thank you
3 kindly.

4 All right, you may call your next witness,
5 Mr. Holt.

6 MR. HOLT: Can we get Jason Thompson from
7 the back please.

8 THE CLERK OF COURT: If you'd come around
9 to be sworn as a witness. Put your left hand on the
10 Bible, raise your right.

11 WHEREUPON,

12 **JASON ASHEY THOMPSON,**
13 having been duly sworn by the Clerk of Court,
14 testified as follows:

15 THE CLERK OF COURT: If you'll have a seat
16 right here.

17 **DIRECT EXAMINATION**

18 BY MR. HOLT:

19 Q Could you please state your whole name for the
20 court reporter and the jury.

21 A Yes, It's Jason Ashby Thompson.

22 Q And how old are you, Mr. Thompson?

23 A 37.

24 Q And where are you currently employed?

25 A Sunoco.

SW - J. THOMPSON - DIRECT

1 Q And what's your job there?

2 A Corporate security manager.

3 Q And how long you been doing that?

4 A Approximately one year. It'll be a year in
5 January.

6 Q All right. And before that where were you
7 employed?

8 A The city of Hartsville Police Department.

9 Q How long were you employed there?

10 A A year-and-a-half.

11 Q About how long have you been in law enforcement
12 you think?

13 A Almost 15 years.

14 Q All right. Where have you worked besides
15 Hartsville and Sunoco?

16 A At Wythe (ph) County, Virginia.

17 Q All right. And on February 15th, 2012, where
18 were you employed at that time?

19 A At City of Hartsville Police Department.

20 Q All right. And around 4:00 were you dispatched
21 or did you get a call, what — let me back up a
22 minute. I'm jumping ahead of myself. When you were
23 at Hartsville what exactly were your job
24 responsibilities what was your position within the
25 organization?

SW - J. THOMPSON - DIRECT

1 A I was a corporal in the patrol unit, patrol
2 division.

3 Q And if somebody is assigned to patrol what would
4 that entail versus what somebody assigned to
5 investigation would do?

6 A Patrol typically patrols the city looking for
7 crime, traffic violations, and responds to dispatch
8 or calls from dispatch.

9 Q All right. And on that day around, sometime
10 around 4:00 -- feel free to look over your notes,
11 were you dispatched to any individual call?

12 A Yes, I was. At approximately -- I don't have the
13 exact time. Approximately that time I was actually
14 I just pulled into the police department, rather,
15 the parking lot of the police department, and
16 received a call for shots fired in area of Pride
17 Park.

18 Q Now the police department is about how far from
19 Pride Park?

20 A Approximately four or five blocks.

21 Q Okay. And had you been by Pride Park earlier
22 that day?

23 A Yes. In fact, right just prior to that I had
24 driven past Pride Park on my way to the police
25 department so it was in a matter of a minute or so.

SW - J. THOMPSON - DIRECT

1 Q All right. And when you got to Pride Park after
2 you were dispatched what did you find at the scene?

3 A When I arrived on scene there were several people
4 in the vicinity of the center of the park. I
5 observed one gentleman laying on the ground. I
6 exited my vehicle, approached the subject there at
7 which point several subjects that were there were —
8 they were obviously emotional. They were saying
9 that he had been shot. I observed the victim lying
10 on the ground. And at that point started to render
11 first aid to him as well —

12 Q What did the victim look like to you?

13 A It appeared he had sustained a head wound. At
14 that initial point I couldn't tell what it was. He
15 was lying on his back and had a large pool of blood
16 coming out from the back of his head. He had an
17 injury to his — I can't remember which eyeball.
18 One of his eyes was protruding, and he also had
19 blood spitting from his mouth as he was attempting
20 to breathe.

21 Q All right. And did you hear him say anything?

22 A No, he was not responsive.

23 Q All right. Now what did you do then?

24 A At that point I was trying to find out where his
25 wounds were as well as try to gather information

SW - J. THOMPSON - DIRECT

1 from the folks that were there. I gathered
2 information. It was two subjects that had
3 previously been in the area and that they had fled
4 in one direction away from the park. I asked --
5 there was two male subjects that I was --

6 MR. SWILLEY: Objection, Your Honor. I'm
7 gonna object to hearsay.

8 THE COURT: He hadn't said anything. He
9 said he asked them. Let's see what -- he can
10 testify to what he said. Go ahead.

11 THE WITNESS: I asked the gentleman to
12 stand off to the side and wait for other officers to
13 arrive while I tended to the victim.

14 BY MR. HOLT:

15 Q And what'd you do next?

16 A Well, about the same time one of the -- another
17 police officer showed up. EMS showed up. We began
18 to take some, remove some of the clothing from the
19 victim to ascertain where the injuries were. I
20 recovered two cell phones from his pockets and
21 handed them to another police officer and asked him
22 to hold on to those. I also directed them to the
23 two subjects that I had previously been speaking to.

24 Q Did EMS come to the body?

25 A That is correct. He was -- the gentleman was

SW - J. THOMPSON - DIRECT

1 still, had a paint pulse while we were there, and I
2 actually went with him to the hospital.

3 Q How did you end up in the EMS with the victim?

4 A I rode in the ambulance the entire way.

5 Q And where did y'all go?

6 A Carolina Pines.

7 Q What did you witness there?

8 A We entered one of the trauma rooms. Several
9 doctors and nurses started to, tending to the
10 victim. They tried, what appeared, every medical
11 procedure they could at that point to save the
12 gentleman and was not successful.

13 Q Mr. Thompson, please answer any questions Defense
14 might have. Thank you.

15 THE COURT: Mr. Jones or Ms. Wooten?

16 MS. WOOTEN: No questions, Your Honor.

17 THE COURT: All right. Mr. Swilley?

18 **CROSS-EXAMINATION**

19 BY MR. SWILEY:

20 Q Mr. Thompson, you said when you got to Pride Park
21 you began speaking with several subjects, or two
22 subjects. Was that Johnny Lee Washington and
23 Anthony Wingate?

24 A I did not get their identifications. There's
25 just two subjects.

SW - J. THOMPSON - DIRECT

1 Q Okay. Two African American males?

2 A That is correct.

3 Q Any females around at the time?

4 A There were females. There was female in the
5 park. I did not speak to her. I do remember as I
6 approached a female turned around. She was very
7 emotional, and I didn't engage in any conversation
8 with her that I can recall.

9 Q Approximately how many other vehicles in the
10 park?

11 A A handful at most. Unfortunately because of the
12 circumstances, people started coming from
13 everywhere. I don't know who was there, quite, at
14 the time that it happened.

15 Q Okay. Thank you, Mr. Thompson.

16 THE COURT: Mr. Holt, anything further?

17 MR. HOLT: Nothing, Your Honor.

18 THE COURT: Can the witness be excused?

19 MR. HOLT: Yes, please.

20 THE COURT: Any objection?

21 MS. WOOTEN: No, Your Honor.

22 THE COURT: Thank you, Mr. Thompson.

23 Thank you for coming. You are excused.

24 THE WITNESS: Thank you.

25 THE COURT: All right, Mr. Holt, call your

SW - T. RICHARDSON - DIRECT

1 next witness.

2 MR. HOLT: Thank you very much, Your
3 Honor. At this time the State would like to call
4 Tenyonde Richardson of HPD.

5 THE CLERK OF COURT: If you'll come around
6 and take the oath of a witness.

7 WHEREUPON,

8 **TENYONDE RICHARDSON,**
9 having been duly sworn by the Clerk of Court,
10 testified as follows:

11 THE CLERK OF COURT: If you'll have a
12 seat.

13 **DIRECT EXAMINATION**

14 BY MR. HOLT:

15 Q Could you please give your whole name for the
16 jury.

17 A My name is Tenyonde Richardson.

18 Q How old are you?

19 A I'm 36.

20 Q And where are you currently employed?

21 A Hartsville Police Department.

22 Q And in what capacity?

23 A I'm the patrol commander.

24 Q Okay. So how many people are under you?

25 A At the current about 12, 13 people on patrol.

SW - T. RICHARDSON - DIRECT

1 Q And how long have you been in law enforcement?

2 A Eleven years.

3 Q How long you been with Hartsville?

4 A Eleven years.

5 Q So you've been with Hartsville the entire time?

6 A Yes, indeed.

7 Q That's unusual. Let's start by talking about
8 what your duties are. What are your duties with
9 patrol?

10 A My duties as patrol commander is to maintain day
11 operations on patrol.

12 Q And what does a patrol officer do, visa vie the
13 community? What are their responsibilities? Do
14 they answer calls, do they investigate crimes, what
15 do they do?

16 A Basically a patrol officer main duty is to answer
17 calls and just work the different areas which the
18 city itself is broken down into four sectors. Their
19 main job is patrol the sectors that they're working.

20 Q What sector is Pride Park?

21 A Pride Park is in Charlie sector.

22 Q All right. So on February 15th, 2012 did you
23 have occasion to go to Charlie sector, specifically
24 Pride Park?

25 A Yes.

SW - T. RICHARDSON - DIRECT

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

2 A When I arrived on scene I assisted the first
3 officer that was on scene, Corporal Thompson. I
4 assist by securing the scene and trying to maintain
5 order at that time 'cause it was kind of chaotic at
6 the time.

7 Q And what did you witness when you got on the
8 scene?

9 A When I got on scene I noticed a let of
10 individuals that were still there. There was a lot
11 of screaming and crying and noticed an individual
12 that was the victim that was lying on the ground.

13 Q All right. And did you put out any calls to look
14 for anything, or did you call for other officers?
15 Did you do anything in that regard?

16 A Yes, I did.

17 Q And what was that?

18 A Basically I started talking with bystanders or
19 people that were there in the park and try to get as
20 much information as possible, and the little bit of
21 information I did get was two individuals that left
22 in a green pickup truck and that's —

23 Q And what did you do with that information?

24 A After receiving that information I put it out
25 across the radio to the other units to start looking

SW - T. RICHARDSON - CROSS

1 for that vehicle with those two individuals in it.

2 Q All right. What did you do next?

3 A I started, after getting that information I
4 started trying to back some of the bystanders up and
5 start taping off the scene itself with securing
6 tape.

7 Q And why is taping off the scene important?

8 A It's important so we can preserve the scene
9 itself.

10 Q Why would you want to do that?

11 A Preserve whatever evidence that we're gonna have
12 to find just to keep people out of the incident
13 area.

14 Q And after you had the scene roped off what were
15 your responsibilities then and what did you do next?

16 A Just to try to gather as much information as
17 possible and just maintain that no one goes in the
18 scene itself.

19 Q All right, thank you so much. Please answer any
20 questions the Defense might have.

21 THE COURT: Mr. Wooten, Mr. Jones?

22 MS. WOOTEN: One second, Your Honor.

23 THE COURT: All right.

24 **CROSS-EXAMINATION**

25 BY MS. WOOTEN:

SW - T. RICHARDSON - CROSS

1 Q Good afternoon. How are you, sir?

2 A I'm doing well.

3 Q Is it Lieutenant Richardson?

4 A First Sergeant Richardson.

5 Q How are you this afternoon?

6 A Doing well.

7 Q How long after the initial call went out did you
8 respond to the scene?

9 A Well, when the call first came out I was coming
10 out the back of the station so I immediately jumped
11 in the vehicle and started heading towards the park
12 so I can't -- I don't remember the exact time it
13 came out; but shortly after, as soon as the call
14 came out I ran to my vehicle and went to the park.

15 Q And any estimation of time, five minutes, ten
16 minutes, how long it took you to get to the park?

17 A I would say no less than a minute or so.

18 Q Just a minute?

19 A Yes.

20 Q You testified that you thought it was chaotic?

21 A Yes.

22 Q And there were several bystanders and you were
23 helping control the scene; is that correct?

24 A That's correct.

25 Q Did you recognize any of the bystanders at the

SW - T. RICHARDSON - CROSS

1 park?

2 A I did, yes, yes, ma'am.

3 Q Did you recognize Johnny Lee Washington?

4 A Yes.

5 Q Did you recognize Anthony Wingate?

6 A Yes.

7 Q Did you talk to either of them?

8 A I remember talking to them; but like I said, my
9 main focus was trying to get everybody calmed down
10 and trying to assist Corporal Thompson with the
11 victim and trying to secure the scene.

12 Q Isn't it true that you wrote and submitted a
13 supplemental report —

14 A I did.

15 Q —for the case file? Do you remember writing
16 that report?

17 A Yes.

18 Q Do you remember asking the bystanders you spoke
19 to who the suspects were by name?

20 A Yes.

21 Q Did they give you an answer?

22 A Well, at that time they didn't know the
23 individuals by name. They just said two
24 individuals. And after I got the information as far
25 as that and the description of the truck, that's

SW - T. RICHARDSON - CROSS

1 when I gave that information out over the radio.

2 Q Thank you.

3 MS. WOOTEN: Just one second please, Your
4 Honor.

5 THE COURT: Mr. Swilley.

6 **CROSS-EXAMINATION**

7 BY MR. SWILLEY:

8 Q Mr. Richardson, how many people were in the park
9 at the time of your arrival, approximately?

10 A I can't give an exact number.

11 Q Approximately.

12 A I would say between four to five if I can recall.

13 Q Does that include Mr. Washington and Mr. Wingate?

14 A Yes, sir.

15 Q Okay. And you spoke to everybody there?

16 A Well, I didn't speak to everyone, no, sir.

17 Q Okay. Just Mr. Washington and Wingate?

18 A Yes.

19 Q Okay. Thank you, Officer Richardson.

20 THE COURT: Anything further, Mr. Holt?

21 MR. HOLT: No, sir.

22 THE COURT: All right. Thank you, Mr.
23 Richardson, you may step down.

24 Would you like the witness excused, Mr.
25 Holt?

SW - K. WOODHAM - DIRECT

1 MR. HOLT: I'd appreciate it.

2 THE COURT: Any objection?

3 MS. WOOTEN: No, Your Honor.

4 MR. SWILLEY: No, Your Honor.

5 THE COURT: Mr. Richardson, you are
6 excused.

7 All right, Mr. Holt, call your next
8 witness.

9 MR. HOLT: Kelly Woodham.

10 THE CLERK OF COURT: Please place your
11 left hand on the Bible and raise your right.
12 WHEREUPON,

13 **WILLIAM KELLY WOODHAM,**
14 having been duly sworn by the Clerk of Court,
15 testified as follows:

16 THE CLERK OF COURT: If you'll have a seat
17 right here in this wooden chair.

18 **DIRECT EXAMINATION**

19 BY MR. HOLT:

20 Q Officer Woodham, what's your current position
21 where you work?

22 A I'm a victim's advocate and a police officer for
23 the city of Hartsville.

24 Q And I apologize, what's your full name? Can you
25 do that for the court reporter?

SW - K. WOODHAM - DIRECT

1 A William Kelly Woodham.

2 Q How old are you?

3 A 38.

4 Q How long have you been in law enforcement?

5 A Nine years.

6 Q Okay, what did you do before that?

7 A I was SRO at Hartsville Middle School.

8 Q You have to tell us what SRO means?

9 A I'm sorry, school resource officer.

10 Q All right. Now how long have you been in that
11 position as police officer and victim's advocate for
12 HPD?

13 A About a year-and-a-half.

14 Q Now let me ask you this, February 15th, 2012,
15 what position were you employed in at HPD and what
16 were your duties then?

17 A I was school resource officer at Hartsville
18 Middle School.

19 Q All right now, date in question, February 15th,
20 2012, what, did you get — were you dispatched to a
21 call around 4:00, or what did you do that day?

22 A I just left Hartsville Middle School at about
23 4:00 that afternoon; I heard the call on the radio.

24 Q How did you respond?

25 A I went down Fourteenth Street, took a right on

SW - K. WOODHAM - DIRECT

1 Washington Street.

2 Q Did you go straight to Pride Park?

3 A I did not. I believe my — I was searching for a
4 vehicle in question.

5 Q All right, what vehicle were you searching for,
6 do you remember?

7 A It's a green pickup truck.

8 Q All right. And did you find that green pickup
9 truck?

10 A Yes, I did.

11 Q And where did you find it?

12 A ■■■ Lincoln Avenue.

13 Q All right now, once you found the green pickup
14 truck what did you do?

15 A I went to the front door at ■■■. There was a
16 lady standing on the porch, didn't identify her.
17 Asked her if anybody had driven the truck, and
18 before she could answer someone come on the front
19 porch.

20 Q And who was it that came on the front porch?

21 A Johnathan Reed.

22 Q And is he in the courtroom now?

23 A Yes.

24 Q And where is he?

25 A He's sitting with the dreads.

SW - K. WOODHAM - DIRECT

1 Q Okay. And what did he say?

2 A He had said he'd driven the truck about an hour
3 to run some errands in town.

4 Q So about — and he admitted to driving the truck
5 an hour before?

6 A Yes.

7 Q Well, did you test the hood to see if the hood
8 was still warm?

9 A I did not have.

10 Q What did you do then?

11 A I went back to my car to let the other officers
12 know that I possibly found the truck in question.

13 Q And then what happened?

14 A I waited. First Sergeant Blair was first. I
15 watched Johnathan Reed, see what he was gonna do
16 until other officers got there.

17 Q What did Johnathan Reed do?

18 A He walked around in the yard of ■■■ — well, ■■■,
19 and then went over to ■■■ Lincoln Avenue.

20 Q Did he ever enter the house at ■■■?

21 A After First Sergeant Blair arrived he did go in
22 the house.

23 Q All right. And what other involvement did you
24 have in this case?

25 A I transported Johnathan Reed to the Hartsville

SW - K. WOODHAM - CROSS

1 Police Department detective division.

2 Q All right. And where is that located?

3 A On south Fifth Street in town. I'm not sure of
4 the exact address.

5 Q But when somebody says — how many buildings does
6 Hartsville Police Department own or occupy in the
7 city of Hartsville?

8 A Two.

9 Q And where are they?

10 A One of them, the main office is 135 West Carolina
11 and the other one is on Fifth Street.

12 Q All right.

13 A That's where the detective division is.

14 Q All right, Officer Woodham, answer any questions
15 defense counsel may have, sir, okay?

16 THE COURT: Cross-examination, Mr. Jones
17 or Ms. Wooten?

18 MS. WOOTEN: Thank you, Your Honor.

19 **CROSS-EXAMINATION**

20 BY MS. WOOTEN:

21 Q How are you this afternoon?

22 A Good, thank you.

23 Q Just a few quick questions. You talked about
24 Johnathan Reed. You saw Johnathan Reed when you
25 were at the residence; is that correct?

1 A Correct.

2 Q Did you see Joshua Reed at that time?

3 A No.

4 Q Did you talk to Joshua Reed at that time?

5 A No, I didn't.

6 Q Did you transport Joshua Reed anywhere?

7 A No, I didn't.

8 Q That's all I have. Thank you.

9 THE COURT: Mr. Swilley?

10 **CROSS-EXAMINATION**

11 BY MR. SWILLEY:

12 Q Your testimony to the extent you were involved in
13 this case, Officer Woodham, you didn't do anything
14 else with regards to this case?

15 A No.

16 Q Okay, that's all.

17 THE COURT: All right. Anything further,
18 Mr. Holt?

19 MR. HOLT: No, sir, Your Honor.

20 THE COURT: Would you like to have the
21 witness excused —

22 MR. JONES: No objection.

23 THE COURT: Objection?

24 You are excused. Thank you for coming.

25 All right, you may call your next witness.

SW - M. BLAIR - DIRECT

1 MR. HOLT: Thank you very much, Judge. At
2 this time the State would like to call Mark Blair
3 to the stand.

4 THE COURT: All right.

5 THE CLERK OF COURT: If you'd put your
6 left hand on the Bible and raise your right.

7 WHEREUPON,

8 **MARK ALEXANDER BLAIR,**
9 having been duly sworn by the Clerk of Court,
10 testified as follows:

11 THE CLERK OF COURT: If you'll have a seat
12 in this wooden chair they'll ask you some questions.

13 THE WITNESS: Okay.

14 **DIRECT EXAMINATION**

15 BY MR. HOLT:

16 Q Officer Blair, can you please give your whole
17 name for the jury.

18 A Mark Alexander Blair.

19 Q And how old are you?

20 A I am 41.

21 Q Where are you currently employed?

22 A Hartsville Police Department.

23 Q Okay, how long have you been there?

24 A Nineteen years.

25 Q You've been in law enforcement 19 years or were

SW - M. BLAIR - DIRECT

1 you anywhere else before HPD?

2 A I started in Hartsville.

3 Q So your entire career?

4 A My whole career, yes.

5 Q On February 15th, 2012, what was your position
6 within HPD at that time?

7 A I was the accreditation manager. It's an
8 administrative job within the police department and
9 I also handled training, making sure the officers
10 get their proper training and keeping up with
11 certain case numbers and stuff.

12 Q All right, but on that day a call came out. Did
13 you respond to the call?

14 A Yes, sir, I was in my office at East Park
15 Apartments which is about a mile-and-a-half away
16 from Pride Park on the other side of town.

17 Q Okay. What did you do when the call came out?

18 A I left my office and drove across town; and
19 during the time that it took me to get there,
20 several -- it sounded like several other officers
21 had arrived on scene on the radio. It was getting
22 crowded. A description was given out of a green
23 truck being driven by two black males; and so
24 instead of going to the park, I went to the
25 immediate area just driving around trying to find

SW - M. BLAIR - DIRECT

1 green truck that might be driven by people matching
2 the description.

3 Q Did you find that truck?

4 A I did not. Officer Kevin Woodham called on the
5 radio and told me, or told everybody that he had
6 found the truck at [REDACTED] Lincoln Avenue, and that a
7 person at fitting the description of subjects at the
8 park had come to the door when he knocked on the
9 door asking about the vehicles and ---

10 MR. SWILLEY: Objection, Your Honor, as
11 hearsay. I believe he's testified as to what
12 Officer Woodham told him.

13 THE COURT: What say you? All right,
14 don't tell what you heard but what you did. You can
15 testify what you did as a response of what you
16 learned?

17 THE WITNESS: Okay. Based on what I heard
18 on the radio I went to assist with Kelly Woodham.
19 When I got there he began explaining what he had
20 found; and before we could actually go up to the
21 house or anything, the other officers start
22 arriving. Several Darlington County Sheriff's
23 Office deputies, as well as lieutenant Rudick and
24 some of our investigators, arrived on the scene as
25 well.

SW - M. BLAIR - DIRECT

1 BY MR. HOLT:

2 Q All right. Now what did you do -- now that scene
3 sounds like it became crowded as well.

4 A It did. I kind of stood back with Kelly and some
5 of the deputies basically waiting on some orders,
6 what do you want me to do. And at one point another
7 call came out over the radio from the officers at
8 the scene at Pride Park. One of them asked -- and
9 I'm not sure what the officer's name was, either
10 Brandon Huggins or Jason Thompson. They asked about
11 the, if the truck was missing an exhaust pipe, a
12 part of its exhaust system.

13 Q What did you do?

14 A The truck was sitting in the yard next to the
15 house so nobody else was looking at it at the time.
16 A couple of deputies were guarding it but nobody was
17 looking under it so I walked over and just kind of
18 crouched down and looked underneath it and there was
19 a section of exhaust pipe missing. So I got back on
20 the radio and said, yes, this truck is missing a
21 section of exhaust pipe.

22 Q All right. And after that ---

23 A After that I went back over to speak with
24 Lieutenant Rudick. He had put handcuffs on one of
25 the, one of the persons, either Johnathan or Joshua

SW - M. BLAIR - DIRECT

1 Reed. He put handcuffs on Johnathan. He was placed
2 in a patrol car. He was speaking with Joshua Reed.
3 And he informed me at that time that I needed to put
4 handcuffs on Joshua Reed and have both persons
5 transported down to the detective division.

6 Q All right. Once at the detective division, who
7 did you bring in with you, who did you meet, what
8 did you do?

9 A Let's see, Stan Kelley and Keely Woodham
10 transported the Reeds. I went -- I was handed
11 before I left the scene I was handed a gunshot
12 residue collection kit. This is a sample. Was
13 handed a gunshot residue collection kit and by
14 Lieutenant Rudick, and he asked me to go, to go
15 ahead and perform the test. Actually, Mike Anderson
16 asked me to go ahead and perform the gunshot residue
17 collection test on both the Reeds.

18 Q And did you comply with that?

19 A Yes, sir.

20 Q And what does a gunshot residue test entail?
21 What did you do and how did you do it? Were they
22 both in the same room with you?

23 A I did one at the time. Let me refer back to my
24 report. I started with Johnathan. And the way
25 these things work, the way these things work is

SW - M. BLAIR - DIRECT

1 there's a set of gloves in here and the form, and
2 some instructions. What I -- all I did was put on
3 the gloves and fill out the form with some basic
4 subject information. And then there's a set of
5 instructions that tells you exactly what to do, and
6 I followed the instructions step by step to collect
7 any gunshot residue that might be ---

8 Q What do the instructions entail just briefly?

9 You don't have to go into it.

10 A Okay. Tells you to fill out all the information
11 on the form, put on the disposable plastic gloves
12 that are in the kit, and there are some vials
13 inside. And it's basically just a little sticky
14 tape on these vials and you do one side of the hand
15 and with this sticky thing. Do one side of the hand
16 and then you put it away and then you turn the hand
17 over and there's another one for the palm. And then
18 you just put the sticky stuff on the palm and put
19 the vials back in the bag, then you do the other
20 hand.

21 Q And what are you trying to collect with those?

22 A You're trying to collect residue from firing a
23 pistol.

24 Q Okay.

25 A And according to the SLED report ---

SW - M. BLAIR - DIRECT

1 Q We're not going get into the SLED report.

2 A Okay, okay. It's just gun powder and little
3 pieces of molten metal that are left over when you
4 fire a gun that stick to your clothing, your hands,
5 things like that.

6 Q And maybe you said this, maybe you didn't, were
7 the suspects both in the same room?

8 A No, I did one complete kit on one subject and
9 then he was removed. The next suspect was brought
10 in and then I did the same kit on him. So I had two
11 separate bags with all their stuff separately.

12 Q And then what did you do with those kits?

13 A Those kits were turned over to -- I was gonna
14 give them to Terry Anderson but he was busy. On
15 evidence sheet I think it says Terry Anderson. Or
16 in my report it says Terry Anderson. I was gonna
17 give them to him. I sat them down on his desk and
18 sat waiting on him. He started the interview
19 process so Laura South came in from her office just
20 across the hall and got the bags and went ahead and
21 logged them into evidence since she was already
22 there.

23 Q And who is Laura South?

24 A Laura South is a detective. She's our evidence
25 officer. She's in charge of logging all the

SW - M. BLAIR - DIRECT

1 evidence, take them to SLED, things like that.

2 Q How did the defendants appear to you during
3 the — is there a acronym or shorthand for gunshot
4 residue test?

5 A GSR.

6 Q How did they appear to you during the GSR test?

7 A Johnathan was very calm and he didn't say much.
8 He was calm during the procedure. They were both
9 very compliant. Josh was a little bit more nervous
10 looking, and he was — he kept coughing. And he
11 would rub his hands on his pants, was kind of
12 twitchy. But neither one of them was, you know,
13 fighting against it or anything like that. They
14 were, they complied with the tests.

15 Q And after you administered the GSR and separated
16 the two co-defendants what did you do then?

17 A After I — once the test was complete they were
18 turned back over to patrol officers or detectives; I
19 can't remember. After I logged the evidence I was
20 handed two lineups and told to take the lineups to
21 the chief of police up at the main office.

22 Q All right. I want to stop you right there.

23 A Okay.

24 Q I want to approach.

25 THE COURT: Yes.

SW - M. BLAIR - DIRECT

1 BY MR. HOLT:

2 Q And I want to ask you, show you, what's been
3 marked strictly for identification purposes. It's
4 State's Exhibit 1 and State's Exhibit 2.

5 A Okay.

6 Q And I want to ask you if you recognize them. And
7 I want to ask you, since the last time you've seen
8 them have there been any changes or alterations or
9 deletions?

10 A I do recognize them. These are lineups that --

11 Q No, no, don't say --

12 A Okay, I do recognize them.

13 Q Okay. Have there been any changes, alterations,
14 or deletions?

15 A No, sir.

16 Q And can you tell me what those are?

17 A These are a set of lineups consisting of six
18 photographs of various individuals including
19 Johnathan and Joshua Reed.

20 Q All right.

21 MR. JONES: Your Honor, at this time the
22 State would ask that State's Exhibit for
23 identification 1 and 2 be moved into evidence.

24 THE COURT: Mr. Jones?

25 MR. JONES: Your Honor, we would renew our

SW - M. BLAIR - DIRECT

1 objection to these pieces of evidence.

2 THE COURT: Based on the same thing?

3 MR. JONES: Same grounds, Your Honor.

4 MR. SWILLEY: I will do that as well, Your
5 Honor, same objection.

6 THE COURT: All right, same ruling. The
7 exhibit will be admitted into evidence, State's
8 Number 1 and State's number 2 subject to objections
9 previously made by counsel.

10 (WHEREUPON, State Exhibits Nos. 1 and
11 2 were admitted into evidence.)

12 BY MR. HOLT:

13 Q Okay, Officer Blair.

14 A Yes.

15 Q Could you tell me what you did once you had the
16 lineups in hand?

17 A Okay. I went back to the station to the main
18 police department. Our detective division and our
19 police department are separated by half a mile or
20 so, so I went back to the police station with the
21 two lineups. There were two people waiting at the
22 police station, Anthony Wingate and Johnny
23 Washington. And I presented — separated the two
24 people. We took Anthony Wingate inside and left
25 Johnny Washington outside the police department.

SW - M. BLAIR - DIRECT

1 They're separated by a brick wall and a door. I
2 presented the lineups to Mr. Wingate, and there's a
3 form that goes with it.

4 Q And I'm gonna stop you right there, and I'm gonna
5 approach, Your Honor. And I'm gonna show you what's
6 been previously marked as State's Exhibit 4 and
7 State's Exhibit 5.

8 A Okay.

9 Q And we'll handle it just like we did the other
10 one.

11 A Okay.

12 Q In which case can you tell me do you recognize
13 these exhibits?

14 A I recognize the form.

15 Q And since the last time you've seen them have
16 there been any changes, alterations, or deletions?

17 A No, sir.

18 Q And if you can tell me and the jury what they
19 are.

20 A These are our lineup instruction forms they
21 consist of date, time, and some instructions for
22 viewing the lineup for how the procedure is done.
23 Basically what I do is I read the instructions to
24 the, whoever the person is that I'm giving the
25 lineup to.

SW - M. BLAIR - DIRECT

1 Q And let me stop you, and I apologize. We'll keep
2 that going in just a second.

3 A Okay.

4 MR. HOLT: Your Honor, at this time I'd
5 like to introduce State's Exhibit for identification
6 4 and 5 into evidence.

7 THE COURT: Mr. Jones.

8 MR. SWILLEY: Your Honor, I would object
9 to portion of State's Exhibit 5. Maybe we need to
10 argue this outside the presence of the jury since
11 it's a matter of law.

12 THE COURT: You may approach.

13 (WHEREUPON, counsel approached the Bench
14 for an off-the-record discussion.)

15 THE COURT: It's just marked for
16 identification at this time.

17 MR. HOLT: Okay.

18 THE COURT: What about number 4,
19 Mr. Jones?

20 MR. JONES: I was looking at that, Judge.

21 THE COURT: Okay, ID only at this point,
22 Mr. Holt.

23 MR. HOLT: Yes, sir, Your Honor.

24 BY MR. HOLT:

25 Q Let me ask you exactly how you show the photo

SW - M. BLAIR - DIRECT

1 lineups to the witnesses.

2 A Okay. I handed them the six photos and I kind of
3 kind of fan them public out a little bit so I knew
4 there were six of them. I laid them out on the
5 desk.

6 Q Why do you not put them all on the same sheet of
7 paper?

8 A I've been told that the old style of six pack
9 where I have them all on one sheet of paper leads
10 people to pick the person that looks most like the
11 suspect that they saw, that they could look at them
12 and get it wrong basically. It leads to false
13 positives.

14 Q How is what you did here different than that?

15 A Because they have to look at each picture
16 individually, and studies have shown that it leads
17 to better results. It's more likely they'll pick
18 somebody that's actually there rather than someone
19 that looks closest to it.

20 Q The two witnesses ---

21 A Uh-huh.

22 Q ---did they have any trouble picking out who shot
23 Milton Hunter?

24 A No, sir.

25 Q And how certain were they when you asked them?

SW - M. BLAIR - DIRECT

1 A They were, they were very certain. They said
2 they had known the individuals and they knew of them
3 and they had known them for a number of years.

4 Q And who did they pick out as the shooter? What
5 number on your photo lineup that's already marked
6 into evidence did they pick out?

7 A Okay, let's find out. Number 2. And number 2 is
8 Joshua Reed.

9 Q Okay. And who did they pick out from those photo
10 lineups as his accomplice?

11 A Johnathan Reed.

12 Q All right. And about how long did these photo
13 lineups take you?

14 A Just -- the actual looking at the photos was just
15 a couple of minutes. It took a little bit longer to
16 read the instructions and to fill out the forms so I
17 would say no more than 10, 15 minutes each.

18 Q And while you're here can you give us like a
19 synopsis or maybe a brief run-through of what those
20 instructions are? And what I'd like to talk about
21 is was there any type of influence from you or
22 anyone else that you saw there or pressure to pick
23 certain people out of a lineup?

24 A No, no, sir.

25 Q What are the instructions?

SW - M. BLAIR - DIRECT

1 A The instructions say: I, Mark Blair, will advise
2 you of the procedures for viewing the following
3 lineup. The fact that these photographs or persons
4 are being shown to you should not cause you to
5 believe that the guilty person has been identified
6 or arrested. The person that committed the crime
7 may or may not be in this lineup. Regardless of
8 whether you make identification, the police will
9 continue to investigate this incident. It is just
10 as important to clear innocent persons from
11 suspicion as it is to identify guilty parties.
12 Please keep in mind the individuals depicted in the
13 lineup may not appear exactly as they did at the
14 time of the incident because features such as hair
15 and clothing are subject to change. You'll be shown
16 a number of photographs or images or people. All
17 the images or persons will be shown even if
18 identification is made. Whenever you recognize
19 anyone please tell the officer which photograph or
20 image you recognize and how you recognize the
21 individual. Please indicate in your own words how
22 certain you are of the identification. Do not
23 indicate in any way to other persons or witnesses
24 that you have or have not made an identification.
25 Q All right. Mark, let me ask you a question. If

SW - M. BLAIR - DIRECT

1 they had picked someone else out or they had said he
2 wasn't on there, would you have cared?

3 A No, sir.

4 Q And what were you looking for with these photo
5 lineups?

6 A I was looking to see which person they picked
7 out.

8 Q All right. Please answer any — oh, I'm sorry.
9 What did you do after you showed them the photo
10 lineups?

11 A Filled out the forms, and I made a little note at
12 the bottom saying which one they picked out was
13 which person, and I think turned them back over
14 to — yes. Once it was over with, Chief Hudson
15 viewed the whole thing. And once it was — once I
16 was done with the lineups the — we took down some
17 additional information from the witnesses,
18 addresses, date of birth, stuff like that from the
19 police report so they could be included. I returned
20 the lineups to Laura South down at the detective
21 decision so I just drove back down to our detective
22 division and turned the lineups over to Laura South
23 so they could be entered into evidence.

24 Q All right. Thank you very much.

25 THE COURT: Cross-examination, Mr. Jones?

SW - W. SESSOMS - CROSS

1 MR. JONES: Yes, sir.

2 **CROSS-EXAMINATION**

3 BY MR. JONES:

4 Q Sergeant or lieutenant?

5 A Sergeant.

6 Q Sergeant Blair, a couple of questions.

7 A Yes, sir.

8 Q You mentioned when you were talking about the
9 lineup that the old way of doing, of showing a
10 witness a lineup was called a six pack where you
11 have all the photos on one piece of paper?

12 A Right.

13 Q Okay. And they don't do that then because you
14 said you read some studies and that was they were
15 giving out too many false positives?

16 A Right.

17 Q Okay. So how long has this way of viewing photos
18 been standard operating procedure?

19 A I do not know, sir.

20 Q Okay. The articles that you've read, did it
21 indicate that it's, that they're people who are
22 making those kind of incidents as to what might be
23 better practice that it's still evolving since
24 office trying to do better?

25 A I don't remember that.

1 Q Don't remember that, okay. All right, let me
2 show you if I can.

3 A Yes.

4 Q Go to State's Exhibits 1 and 2 and let's do 1
5 first.

6 A Okay.

7 Q All right. 1 is actually seven pages, six with
8 photos. Would you agree to that?

9 A Right.

10 Q And if you will look at the photos on all the
11 pages.

12 A Uh-huh.

13 Q And then I want to you a question or two.

14 A Okay.

15 Q All right. Would you agree with me when I say
16 that picture number 4 has a substantially lighter
17 background than any of the other pictures? Would
18 you agree or disagree with me on that?

19 A You say it's lighter than some of them. Number 3
20 is pretty close. Number 3 is a lot darker. I would
21 disagree substantially lighter.

22 Q Okay. What term would you use if you would use a
23 term?

24 A I would say lighter.

25 Q Okay. All right, thank you. That's number,

SW - W. SESSOMS - CROSS

1 that's State's Exhibit Number 1. And I'm gonna ask
2 the same question about number 2 and ask you if you
3 would agree with me that picture number 2, not page
4 number two but picture number 2, has substantially
5 lighter background than any of the other five
6 pictures.

7 A I would agree the background is lighter.

8 Q Okay, very good. Thank you.

9 A You're welcome.

10 Q Now as to those two lineups did you generate
11 those pictures?

12 A No, sir.

13 Q Do you know who did?

14 A Lieutenant Brian Rudick.

15 Q Very good. All right. And as to the two people
16 that you talked to, Mr. Washington and Mr. Wingate?

17 A Yes.

18 Q Both of them picked out the same two pictures I
19 believe that you said?

20 A Yes, sir.

21 Q All right. Do you recall if either one of them
22 identified either one of the suspects they picked
23 out by name?

24 A By name? I did not indicate that on my report so
25 I do not know by name.

SW - M. BLAIR - CROSS

1 MR. JONES: One second please, Your Honor.
2 That's all I have, Your Honor. Thank you.

3 THE COURT: Cross-examination, Mr.
4 Swilley?

5 **CROSS-EXAMINATION**

6 BY MR. SWILLEY:

7 Q Officer Blair?

8 A Yes.

9 Q State's exhibit I believe number 2?

10 A Yes, sir.

11 Q Which is right here?

12 A Yes, sir.

13 Q Mr. Jones discussed the fact that there's a
14 lighter background as well on the one with Joshua
15 Reed. Would you say that's the same situation, same
16 case with Johnathan Reed?

17 A Yes.

18 Q Okay. And if I heard you correctly you said you
19 were the one that actually took the gunshot residue
20 tests?

21 A Yes, sir.

22 Q Okay. And so during the course of taking the
23 test with the swab, right, the hand, front and back?

24 A Yeah, it was a two step process. The first one
25 is a sticky, it's like a sticky tape.

SW - M. BLAIR - CROSS

1 Q Right.

2 A And then the second one is a — and the second
3 part of the test is actually a swab. I was informed
4 by Laura South that at SLED they don't even —

5 Q Don't tell what anybody told you. I'm sorry.
6 Without telling what anybody told you, just to make
7 sure, you said that Mr. Johnathan Reed was compliant
8 when he was taking the test?

9 A Yes.

10 Q Okay. And you completed it the way it should be
11 completed?

12 A Yes.

13 Q Okay. And had you ever performed one of these
14 tests before?

15 A This was, I think, my fourth or fifth lineup of
16 these I've done.

17 Q Okay. And how many have you done since then?

18 A None since then.

19 Q Okay. But to the best of your knowledge you
20 completed this test correctly?

21 A Yes, sir.

22 Q Okay. Nothing further.

23 THE COURT: Anything further, Mr. Holt?

24 MR. HOLT: No, sir, Your Honor.

25 THE COURT: All right, thank you, sir.

SW - M. STOKES - DIRECT

1 You may step down.

2 THE WITNESS: Thank you, Your Honor.

3 THE COURT: All right, Mr. Holt, you may
4 call your next witness.

5 MR. HOLT: The State would like to call
6 Michael Stokes.

7 THE CLERK OF COURT: Mr. Stokes, if you'd
8 come around here to be sworn. Put your left hand on
9 the Bible and raise your right.

10 WHEREUPON,

11 **MICHAEL STOKES,**
12 having been duly sworn by the Clerk of Court,
13 testified as follows:

14 THE CLERK OF COURT: If you'll have a seat
15 in this witness chair. And state your name for the
16 record.

17 THE WITNESS: My name is Michael Stokes,
18 officer with the Hartsville Police Department.

19 **DIRECT EXAMINATION**

20 BY MR. HOLT:

21 Q What position are you at HPD currently?

22 A I'm a patrol officer.

23 Q And on February 15th, 2012, what position were
24 you then?

25 A I was a patrol officer.

SW - M. STOKES - DIRECT

1 Q How long you been in law enforcement?

2 A Close to five years.

3 Q Okay. Where did you spend those five years in
4 law enforcement at?

5 A Well, I started off in Florence, city of Florence
6 Police Department, then I transferred over to
7 Hartsville Police Department two years ago.

8 Q Now on February 15th, 2012, where were you
9 working?

10 A That day I was currently off. I was called in to
11 assist with a homicide that they had in the city of
12 Hartsville.

13 MR. HOLT: Judge, I think we just need a
14 brief side bar with you. I don't want to touch on
15 anything to be wrong.

16 (WHEREUPON, counsel approached the Bench
17 for an off-the-record discussion.)

18 BY MR. HOLT:

19 Q Officer Stokes, I don't want you to give me
20 anymore evidence than what I ask you, okay?

21 A Okay.

22 Q Did you collect the clothes from the defendants
23 in this case?

24 A Yes, sir.

25 Q And with those clothes did you collect Johnathan

SW - M. STOKES - CROSS

1 Reed's clothes?

2 A Yes, sir.

3 Q Did you collect Joshua Reed's clothes?

4 A Yes, sir.

5 Q And what did you do with the clothes once you
6 collected them?

7 A While we were at the, they were --

8 THE COURT: What did you --

9 THE WITNESS: --placed in a --

10 THE COURT: Just answer the question.

11 THE WITNESS: They were placed in a bag
12 and taken to Laura South to evidence.

13 BY MR. HOLT:

14 Q All right. Officer Stokes, please answer any
15 questions they may have.

16 MS. WOOTEN: No questions, Your Honor.

17 THE COURT: Mr. Swilley?

18 **CROSS-EXAMINATION**

19 BY MR. SWILLEY:

20 Q Did you say you place those clothes in a plastic
21 bag?

22 A They were. Put in a plastic bag and then placed
23 into a paper bag.

24 Q Okay, so the plastic bag, then in a paper bag?

25 A Yes, sir.

SW - M. STOKES - CROSS

1 Q Do you have any kind of protocol at the police
2 department that requires what type of bag to place
3 these, these clothes in?

4 A Not that I'm familiar with.

5 Q Okay. Did you do that, put that plastic bag on
6 your own accord or did you just do that 'cause you
7 were ordered to?

8 A I was requested from investigators, the
9 investigating staff, to place the clothes in
10 individual bags.

11 Q Okay. They didn't specify plastic or paper?

12 A No, sir. I believe they might have requested
13 plastic. I mean, excuse me, paper, but at the jail
14 they didn't have any available at the current time.

15 Q Okay, thank you.

16 THE COURT: All right. Thank you. You
17 may step down.

18 All right, Mr. Holt.

19 MR. HOLT: Judge, our next two witnesses
20 are gonna get into a lot of evidence. If you will

21 —

22 THE COURT: Okay, we can take a recess at
23 this time. We've been in the courtroom an hour, a
24 little over an hour, an hour 10, 15 minutes. Let's
25 take an afternoon recess at this time. Ladies and

1 gentlemen, it's about ten minutes to three. We plan
2 to start back at 3:00. Thank you. Go to your jury
3 room. Please do not discuss the case among
4 yourselves.

5 (WHEREUPON, the jury was removed from the
6 courtroom and the following
7 proceedings commenced in open court.)

8 THE COURT: Get any equipment you need to
9 get set up or if there's anything you need to share
10 to see if you can agree on it by saving time to do
11 so during this time, and let's plan to start back at
12 3:00.

13 MR. HOLT: Yes, sir.

14 (WHEREUPON, a recess was taken from the
15 proceedings.)

16 THE COURT: All right. Back on the record
17 with the matter of State versus Reed. Both counsel
18 for Mr. Reed, Joshua and Johnathan Reed, present in
19 the courtroom with their counsel. The State is
20 present represented by the Solicitor's Office.

21 Ready to go forward, Mr. Holt?

22 MR. HOLT: We are, Your Honor.

23 THE COURT: All right. Anything before we
24 bring the jury in, Mr. Jones?

25 MR. JONES: Nothing.

SW - J. HUDSON - DIRECT

1 THE COURT: Mr. Swilley?

2 MR. SMILEY: No, Your Honor.

3 THE COURT: All right, bring the jury in
4 please.

5 (WHEREUPON, the jury was returned to the
6 courtroom, and the following
7 proceedings commenced in open court.)

8 THE COURT: All right. Thank you, ladies
9 and gentlemen, we are now ready to proceed.

10 Mr. Holt, you may call your next witness.

11 MR. HOLT: Thank you very much, Judge. At
12 this time the State would like to call Chief James
13 Hudson to the stand.

14 THE COURT: Okay.

15 THE CLERK OF COURT: Come around to be
16 sworn. Place your left hand on the Bible and raise
17 your right hand.

18 WHEREUPON,

19 **JAMES HUDSON, JR.,**
20 having been duly sworn by the Clerk of Court,
21 testified as follows:

22 **DIRECT EXAMINATION**

23 BY MR. HOLT:

24 Q Chief, could you give your whole name for the
25 jury please.

SW - J. HUDSON - DIRECT

1 A Chief James Hudson, Junior.

2 Q All right. Where are you currently employed?

3 A Hartsville Police Department.

4 Q And what's your role in the Hartsville Police
5 Department?

6 A Chief of police.

7 Q And how long have you been there?

8 A Two years.

9 Q All right. How long you been in law enforcement?

10 A Eighteen years.

11 Q Eighteen years?

12 A Yes, sir.

13 Q Where were you before?

14 A The Darlington County Sheriff's Office.

15 Q Let me ask you this, what does the duties of the
16 chief of police, what does that normally entail?

17 A We see the day-to-day operations of the
18 department, implement new policies, and community
19 involvement.

20 Q And how would you classify your, what you did on
21 February 15th, 2012, in regards to the murder of
22 Pride Park? How would you classify your involvement
23 in this case?

24 A Overseeing operations in regards to the incident
25 that had taken place.

SW - J. HUDSON - DIRECT

1 Q Can you tell us exactly what you did?

2 A I met with the officers at the Hartsville PD in
3 the back, and I just observed the photo lineup being
4 done.

5 Q All right. And who were the -- who were the
6 officers conducting the photo lineup and who were,
7 who were they conducting it with, what witnesses
8 were they talking to?

9 A The officer was First Sergeant Mark Blair. What
10 was the second part of your question, sir?

11 Q And who were the witnesses he was speaking with?
12 Do you remember?

13 A The witness was a Johnny Washington and the
14 second person was Mr. Wingate.

15 Q And why were they there at your office?

16 A Those were the two people that from information
17 we had gotten, that was at the park during the time
18 of the incident.

19 Q Okay. Why were they at the main HPD office as
20 opposed to the investigative division?

21 A We always try to keep separation between the
22 person that possibly was accused of committing a
23 offense versus the witnesses.

24 Q And did you witness the two witnesses being shown
25 a lineup by Mark Blair?

SW - J. HUDSON - DIRECT

1 A I did.

2 Q And did Mark Blair or anybody else in your office
3 try to persuade or push on to the witnesses who to
4 choose in the lineup?

5 A No, sir.

6 Q And if you had saw anything like that would you
7 have allowed it?

8 A No, sir.

9 Q All right. Thank you very much, Chief. Please
10 answer any questions defense might have.

11 THE COURT: Cross-examination?

12 MR. JONES: I have no questions, Judge.

13 MR. SMILEY: Nothing, Your Honor.

14 THE COURT: All right. Thank you, Chief
15 Hudson, you may step down.

16 All right, you may call your next witness.

17 MR. HOLT: Thank you very much, Judge.

18 Can we get Mike Anderson out here.

19 THE CLERK OF COURT: Come around to be
20 sworn. Place your left hand on the Bible and raise
21 your right hand.

22 WHEREUPON,

23 **MICHAEL L. ANDERSON,**

24 having been duly sworn by the Clerk of Court,
25 testified as follows:

SW - M. ANDERSON - DIRECT

1 THE CLERK OF COURT: If you'll have a seat
2 in the chair.

3 **DIRECT EXAMINATION**

4 BY MR. HOLT:

5 Q Could you please give your whole name and
6 occupation for the jury?

7 A Michael L. Anderson, employed with the State Law
8 Enforcement Division, SLED.

9 Q All right. And how about February 15th, 2012,
10 where were you working then?

11 A I was a detective sergeant with the Hartsville
12 Police Department.

13 Q What -- Agent Anderson, how long have you been in
14 law enforcement?

15 A Forty years.

16 Q And when you were a detective in Hartsville what
17 do your duties entail?

18 A The investigation of criminal crimes of
19 Hartsville and outside the city of Hartsville,
20 protect and serve the citizens of Darlington County
21 and the citizens of South Carolina.

22 Q All right. How about specifically in regards to
23 the case at hand, Milton Hunter's murder at Pride
24 Park, on February 15th, 2012, what were your duties
25 in that case?

SW - M. ANDERSON - DIRECT

1 A My duties were there to secure a vehicle and
2 obtain search warrants.

3 Q All right. What did you do — first off, just
4 walk me through your day on the 15th. How did you
5 find out about the murder and what did you do after
6 that?

7 A I heard over radio dispatch they had located a
8 vehicle at Lincoln. I drove to that location [REDACTED].
9 I met with Lieutenant Brian Rudick of the Hartsville
10 Police Department and Corporal Stan— Kelly Windham
11 of Hartsville Police Department. And I was advised
12 at that time by Lieutenant Brian to secure vehicle
13 and obtain search warrants if needed.

14 Q All right. And were you a part of the group that
15 searched those two houses?

16 A Yes, I was.

17 Q Were you also the individual that searched the
18 truck?

19 A Yes, I was.

20 Q And as part of the search on the truck what all
21 did you do?

22 A Went through the complete body of the interior of
23 the truck looking for any type of weapons that could
24 be found, any things or type of drugs. Also there
25 was a flexible, which I call pipe, that was

SW - M. ANDERSON - DIRECT

1 recovered at the crime scene and I put the vehicle
2 on a jack.

3 Q All right.

4 A When I say jack, a hydraulic jack, I'm sorry.

5 MR. HOLT: Permission to approach, Your
6 Honor.

7 THE COURT: Yes, sir.

8 BY MR. HOLT:

9 Q I'm gonna show you what's been marked as State's
10 Exhibit 17 for identification purposes, 17-H through
11 17-AA.

12 A Yes, sir.

13 Q Now Agent Anderson, after you have time to look
14 those over I want to ask you if you recognize them.

15 A (Reviews exhibits.) Yes, sir.

16 Q All right. And what are they?

17 A Those are the pictures I've taken myself of a
18 1977 Ford pickup truck green in color.

19 MR. HOLT: Your Honor, at this time the
20 State would ask to move 17-H through 17-AA into
21 evidence?

22 THE COURT: Any objection?

23 MR. SWILLEY: I have no objection to those
24 photographs.

25 MR. JONES: I need to look just one more

SW - M. ANDERSON - DIRECT

1 quick time.

2 THE COURT: All right, sure.

3 (Pause while Mr. Jones reviews photographs.)

4 MR. JONES: No objection.

5 THE COURT: All right, admitted into
6 evidence without objection. Madam Court Reporter,
7 if you can take the I.D. marks off.

8 THE COURT REPORTER: I didn't I.D.

9 THE COURT: No I.D. marks, okay. That's
10 State's numbers what?

11 MR. HOLT: 17-H through 17-KK, or -AA.

12 THE COURT: All right, admitted into
13 evidence without objection.

14 (WHEREUPON, State Exhibits Nos. 17-H
15 through 17-AA were received into
16 evidence.)

17 BY MR. HOLT:

18 Q All right. Now Agent Anderson, if you could come
19 down here and look at this, one more question. Is
20 that the pipe that you have photographed in your
21 photograph?

22 A Yes, sir, that's the pipe there and I — after
23 that I took it back to the Hartsville evidence room
24 where it was being detained.

25 Q All right. Now if you can bring those

SW - M. ANDERSON - DIRECT

1 photographs with you and we could publish them to
2 the jury while we discuss it.

3 THE COURT: Yes, sir.

4 BY MR. HOLT:

5 Q Can you tell us what this is, Agent Anderson?

6 THE COURT: Specify which one.

7 BY MR. HOLT:

8 Q 17-AA.

9 A This is the 1977 green Ford vehicle that I
10 processed at the location out at J&M Auto Repair.

11 Q Why did you take that to J&M Auto Repair?

12 A At the time I was on a -- well, I finished before
13 I arrived at the scene and I dispatched the next
14 towing service which was J&M. They arrived about
15 ten minutes till seven and dispensed from there by
16 (inaudible) install.

17 Q All right. And can you tell us what this is
18 right there?

19 A This is the underneath of the Ford vehicle --

20 Q 17-H.

21 A I'm sorry. The vehicle itself wherein flexile
22 pipe and the muffler.

23 Q All right. Where did you find the vehicle at?

24 A I found it, first found it at [REDACTED] Lincoln.

25 Q Okay. And what is this a picture of?

SW - M. ANDERSON - DIRECT

1 A This is another picture of the vehicle itself
2 with the flexile pipe going back over the axle.

3 Q And that's 17-I. 17-K, why is that piece right
4 there significant?

5 A This is a piece of pipe itself identification to
6 match the number itself on the vehicle that was a
7 close up to.

8 Q Now 17-L, can you explain to the jury what's
9 going on in that photograph?

10 A This is generally McKenzie Hann (ph), he's the
11 owner of J&M, and he's holding this where he
12 processed or matching up this flexile pipe also with
13 also filler.

14 Q Did they match?

15 A Yes, they did.

16 Q And 17-M?

17 A This is another photograph of the muffler itself
18 you can see here the continue clamps also where it
19 mounts up here. Also you got a sticker where it's
20 also present. With this sticker it's a off market
21 brand of cell pipe you can buy mostly in any auto
22 parts store here.

23 Q And where did you receive this tail pipe from,
24 this specific one?

25 A I got that from the Hartsville Police Department

SW - M. ANDERSON - DIRECT

1 evidence room.

2 Q All right. What is that?

3 A This is a back shot of the vehicle itself going
4 through exhaust pipe. This is the one that was
5 missing. You notice this is the side on the right
6 side it's down. This is a shot of the vehicle
7 except the rear.

8 Q 17-0, what is this?

9 A This is a picture of identification of the
10 vehicle itself of the door, the doorjamb, and
11 identification of the vehicle itself. The car is
12 fine with the -- of the registration.

13 Q 17-U?

14 A This is the insurance card which we're all
15 familiar with. In South Carolina you got to have
16 insurance so this is the picture of the insurance
17 card itself.

18 Q 17-B?

19 A This is the information on the plate and
20 everything, the tag, registration, South Carolina.

21 Q And what's the significance of 17-W?

22 A This is going to be -- I'm sorry. This is
23 showing the condition of itself as you can see that
24 the material pipe itself, exhaust system itself, is
25 rotted, polluted, so that basically the whole

1 exhaust system itself should have been replaced at
2 some time.

3 Q Now the exhaust system that you've identified is
4 the one you tested here and you said that you got
5 that from the Hartsville evidence room. Did you
6 tell me or did I ask, did that fit the truck that
7 was found at [REDACTED] Lincoln Street?

8 A Yes, it did.

9 Q And do you know where that pipe was found?

10 A No, Brandon Huggins brought that spot, brought
11 that in, I'm sorry. Brandon, he's a officer of
12 Hartsville.

13 Q But you were in charge of taking this and
14 photographing it and seeing if it fit?

15 A That is correct.

16 Q All right. Agent Anderson ---

17 A May I sit back down or?

18 Q Yes, sir, yes, sir. If you would answer any
19 questions Defense might have I'd appreciate it.

20 THE COURT: Mr. Jones, Ms. Wooten?

21 MR. JONES: Yes, sir. One second, Judge.

22 THE COURT: All right.

23 MR. JONES: No questions, Your Honor.

24 THE COURT: Mr. Swilley.

25 **CROSS-EXAMINATION**

SW - M. ANDERSON - CROSS

1 BY MR. SWILLEY:

2 Q Investigator Anderson, you yourself searched
3 inside the truck or did you procure a search
4 warrant?

5 A I searched the inside of the truck itself.

6 Q Okay. And nothing of evidentiary value was found
7 from the truck?

8 A That's correct.

9 Q Okay, thank you, Mr. Anderson.

10 THE COURT: Mr. Holt, anything else of
11 this witness?

12 MR. HOLT: No redirect, Judge.

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

15 THE WITNESS: Thank you, Your Honor. Have
16 a good day.

17 All right, Mr. Holt.

18 MR. HOLT: We call Joseph Kinard. I'd
19 appreciate it.

20 THE COURT: Come around, Mr. Kinard. Ms.
21 Carter will swear you.

22 THE CLERK OF COURT: Put your left hand on
23 the Bible and raise your right.

24 WHEREUPON,

25 **JOSEPH KINARD,**

SW - J. KINARD - DIRECT

1 having been duly sworn by the Clerk of Court,
2 testified as follows:

3 THE CLERK OF COURT: If you'll have a seat
4 in this brown chair and state your name for the
5 record.

6 THE WITNESS: Joseph Kinard.

7 **DIRECT EXAMINATION**

8 BY MR. HOLT:

9 Q Joseph, how old are you?

10 A 38.

11 Q And where are you employed?

12 A I'm self-employed, J&M Auto Repair and ---

13 Q And how long have you been in that business?

14 A Self-employed for about eight years.

15 Q All right. And on February 15th, 2012, did you
16 have a contract with the city to move something or
17 how did you become involved in this?

18 A I got a rotation call to ---

19 Q What's a rotation --- explain that to me and the
20 jury?

21 A You get put on a list with municipalities or your
22 state government to where you can tow vehicles for
23 that department. And there's like ten wreckers on
24 the list and it just so happened it was my turn to
25 be called to tow the vehicle.

SW - J. KINARD - DIRECT

1 Q And where did you go?

2 A It was right on the — it was a side street off
3 of Sixth Street on — I don't remember off the top
4 of my head the name of the street.

5 Q All right. And I'm gonna show you what's been
6 marked as State's Exhibit 6 through State's Exhibit
7 AA, number 17, and I'm gonna ask you if you
8 recognize the car you towed that day in connection
9 with this murder?

10 A I do.

11 Q All right. Can you show it to the jury?

12 A This Ford F-150.

13 Q Now is this a normal day where you just take it
14 and drop it off or did anything special happen?

15 A I was asked if I could be an expert witness to
16 testify about a exhaust pipe that they found. They
17 wanted me to identify whether it did or did not come
18 off of this truck.

19 Q Did you look at the pipe?

20 A I did.

21 Q For HPD?

22 A I did.

23 Q And let me ask you this, does this right here
24 appear to be a pipe that you looked at?

25 A It does.

SW - J. KINARD - CROSS

1 Q All right. And who was with you when you were
2 looking at the pipe and also looking at the truck?

3 A Mike Anderson, police officer for the city of
4 Hartsville.

5 Q All right. And did you find, did the pipe match
6 up with that specific truck?

7 A It did.

8 Q Okay. Did you put it back on there and put it
9 together?

10 A I did.

11 Q And everything matched up?

12 A It did.

13 Q All right. And what did you do after that?

14 A I wrote an affidavit confirming that.

15 Q All right. Joseph, please answer any questions
16 defense counsel might have.

17 THE COURT: Mr. Jones?

18 MR. JONES: Yes, sir, just a couple.

19 **CROSS-EXAMINATION**

20 BY MR. JONES:

21 Q Mr. Kinard, when you looked at that pipe and --
22 and I'm looking at State's Exhibit 17-L. Is that
23 your hand holding that pipe up there?

24 A It is.

25 Q All right. Now is your testimony that this pipe

SW - J. KINARD - CROSS

1 is the exact pipe that came from here, or is this
2 pipe a pipe that fits between these two pipes?

3 A It was the exact pipe.

4 Q Okay. And you determined that by how?

5 A The flexile pipe that was welded on to that had a
6 fracture in it and the fracture matched up
7 perfectly.

8 Q Very good. Now the pipe itself was given to you
9 by Sergeant Anderson; is that correct?

10 A Correct.

11 Q So you don't have any idea where it came from?

12 A No.

13 Q All right. Do you have any idea how long that it
14 had been disconnected from the rest of the truck?

15 A Not exactly.

16 Q Okay. And not exactly would mean it could be a
17 minute or it could be a year?

18 A I wouldn't say a year because of the rust on it,
19 where it was connected at. That's how I determined
20 that they did go together 'cause there was still
21 shiny metal there.

22 Q And when the pipe was brought to you was it in
23 the exact same condition as it is now?

24 A Appears to be.

25 Q All right. Did it appear to have been cleaned

SW - J. KINARD - CROSS

1 up, wiped off, or anything of that nature?

2 A No.

3 Q Okay. And the truck that you towed, did it
4 remain at your place of business?

5 A It's still there today.

6 Q Today it's still there? Got you.

7 A Yes, sir.

8 Q And let me go back to the time period. The
9 condition of the rest of the tail pipe in that 17-L,
10 and I'm gonna ask you again -- maybe 17-L and 17 --
11 well, I tell you what, let's start with I. 17-I, is
12 that part of the pipe that you think that this pipe
13 came off of?

14 A That end. If you'll see it's got a lip sticking
15 off the end where the flexile pipe is.

16 Q The top of that pipe?

17 A It matches up with this one here.

18 Q Okay. And is 17-H, is that the same pipe from a
19 different angle?

20 A It is.

21 Q Okay. And again, 17-L is where you are holding
22 this pipe back there?

23 A Correct.

24 Q And I'm gonna ask you again, just for my
25 clarification, could that pipe have been gone from

SW - J. KINARD - CROSS

1 the other two pieces of pipe for longer than a day?

2 A Not sure.

3 Q Got no idea how long it was?

4 A Not exactly.

5 Q That's it. That's all I have.

6 THE COURT: All right.

7 Yes, sir.

8 **CROSS-EXAMINATION**

9 BY MR. SWILLEY:

10 Q Mr. Kinard, you didn't participate in any part of
11 the investigation of the case; is that correct?

12 A I did not.

13 Q You're just limited to your inter-- activities
14 with what the -L pipe appeared to be?

15 A Yes, sir, correct.

16 Q All right.

17 THE COURT: Thank you, Mr. Swilley.

18 Anything else, Mr. Holt?

19 MR. HOLT: No, sir, Your Honor.

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

21 You may step down.

22 All right, you may call your next witness,
23 Mr. Holt.

24 MR. HOLT: Your Honor, at this time the
25 State would like to call Brian Rudick to the stand.

SW - B. RUDICK - DIRECT

1 THE CLERK OF COURT: Place your left hand
2 on the Bible and raise your right.

3 WHEREUPON,

4 **BRIAN RUDICK,**

5 having been duly sworn by the Clerk of Court,
6 testified as follows:

7 THE CLERK OF COURT: If you'll have a seat
8 and state your name for the record.

9 THE WITNESS: My name is Lieutenant Brian
10 Rudick.

11 **DIRECT EXAMINATION**

12 BY MR. HOLT:

13 Q Lieutenant Rudick, how long have you been in law
14 enforcement?

15 A Nineteen years.

16 Q Where are you currently employed?

17 A Hartsville Police Department.

18 Q How long have you been with HPD?

19 A My entire career.

20 Q Is that pretty popular?

21 A Too old to bounce around.

22 Q Where did you work previously? That question
23 doesn't apply. February 15th, 2012, what capacity
24 were you working for HPD at that time?

25 A Lieutenant over investigations unit.

SW - B. RUDICK - DIRECT

1 Q Okay. And explain to myself as well as the jury
2 what exactly your job entails?

3 A As an investigator we're tasked with looking into
4 cases that might require special techniques, special
5 investigative skills, or more advanced time than a
6 normal patrolman might be able to handle. And as
7 the lieutenant I'm to monitor the work flow and
8 watch what the other detectives are doing and
9 basically keep the division on track.

10 Q All right. How did you become involved with the
11 murder of Milton Hunter at Pride Park on
12 February 15th, 2012?

13 A At the time of the incident I was at the office
14 working some unrelated case and heard dispatch give
15 the call out and immediately responded to the area.

16 Q All right. Once you were on scene what did you
17 do?

18 A Initially before I got to the scene Corporal
19 Horton (ph), we had been given a description of a
20 green pickup truck possibly in the scene that was
21 involved. Before I actually made it to the scene
22 Corporal Horton said he was going to be out with a
23 green pickup truck on Eighth street. I was just
24 several blocks away so I responded to back him up.
25 Turned out that was an uninvolved vehicle. You can

SW - B. RUDICK - DIRECT

1 imagine when you start looking for a green pickup
2 trucks you find a quite a few of them. So we
3 determined that it was, it was, had not moved, it
4 was cold to the touch, was uninvolved. I then
5 responded to the scene.

6 Q So you did not arrest the first person in a green
7 pickup truck you came across?

8 A No.

9 Q All right, go ahead.

10 A Left there, went straight to the scene. When I
11 arrived there were emergency response vehicles, EMS,
12 fire department, I believe plenty of police cars.
13 So I parked in the middle of the roadway on Sixth
14 street, got out. Initially I spoke to Detective
15 Sergeant Terry Anderson. He was on scene before I
16 was. We conferred just briefly, and he said he
17 would be taking control of the case as the lead
18 agent.

19 Q How is the lead agent decided? What's the
20 significance of that?

21 A They're sort of the point of the spear, if you
22 will. They direct other activities or going on, and
23 they're the primary investigator on any given.

24 Q How are they chosen?

25 A At the time he was the first on scene. He had

SW - B. RUDICK - DIRECT

1 already spoken to several of the people there. He
2 had the most relevant information so he decided he
3 would maintain control and continue to investigate
4 on the scene.

5 Q All right. So what did you do after that?

6 A I was actually — I spoke to Captain Ray, see if
7 she needed anything, and at that time she did not.
8 As you can imagine on a scene like this it was kind
9 of chaotic. There was a young man making a lot of
10 conniption and noise just north of Pride Park where
11 the scene was.

12 Q Did you investigate that?

13 A I did. In fact, Sergeant Anderson directed me
14 to. And when you're dealing with a particular case
15 we tend to lose rank so he was directing the case.
16 He asked me to go find out what this guy was talking
17 about. I heard him made several comments about a
18 person possibly being involved by the name of Reed
19 Allen. I finally got him calmed down, asked him,
20 what you know. Obviously I had just got there; I
21 didn't know what he was talking about. And in short
22 he told me, well, I heard other people saying he's
23 the one who did it. I said, so you had no first
24 hand knowledge; he said no. And I recommended that
25 he not continue spreading names and rumors because

SW - B. RUDICK - DIRECT

1 somebody might get hurt behind it that wasn't
2 actually involved. He understood, calmed down. I
3 realized he had no actual actionable information so
4 we let him go.

5 At this point EMS was getting ready to
6 transport the victim from the scene to the hospital.
7 Not knowing his current condition we were gonna send
8 an officer with him in case of any kind of
9 spontaneous utterance if he said anything or was
10 able to answer any kind of questions, and I was
11 prepared to do that. In fact, I'd gotten back in my
12 vehicle and was relocating it out of the roadway
13 'cause I knew I was going to be parking and leaving
14 it there. I didn't want to leave it in the middle
15 of the road. And at that time Corporal Woodham came
16 over across the radio saying that he had found
17 another green pickup truck and needed assistance or
18 other officers to come to him. My truck was
19 running, I was facing in the correct direction, and
20 I was only two blocks away so I responded to him as
21 well.

22 Q What did you find when you got there?

23 A When I got there Corporal Woodham and I spoke
24 real briefly at the roadway. He told me that he
25 had —

SW - B. RUDICK - DIRECT

1 MR. JONES: Objection, Your Honor.

2 MR. SWILLEY: Objection to what he said.

3 THE COURT: Don't testify to what he told
4 you. Just tell what you did as a result of what he
5 told you.

6 THE WITNESS: We had — there was a green
7 Ford F-150 pickup truck parked at a residence.
8 Corporal Woodham had said that he had seen —

9 MR. JONES: Objection, Your Honor.

10 THE COURT: Don't testify to what he said,
11 just what you did.

12 THE WITNESS: Okay.

13 BY MR. HOLT:

14 Q Did you respond to any other houses in the
15 immediate vicinity of ■ based on reports you
16 received from other officers?

17 A I stayed directly in front of ■ the entire
18 time.

19 Q Did you have other officers secure ■ Lincoln
20 Street?

21 A Yes.

22 Q Okay. Who? Let me approach please. I'm gonna
23 show you what's been marked State's Exhibit A, 17-A
24 through 17-G and I want to ask you just briefly, o
25 you recognize those?

SW - B. RUDICK - DIRECT

1 A Yes, I do.

2 Q And have there been any changes to them since the
3 last time you saw them?

4 A No, sir.

5 Q And what are they?

6 A They're photographs that I took of a Ford F-150
7 pickup truck.

8 MR. HOLT: And Your Honor, at this time
9 I'd like to move those into evidence.

10 THE COURT: Any objection, Mr. Jones?

11 MR. JONES: I'll look one more quick time.

12 THE COURT: Okay.

13 MR. JONES: No objection at all.

14 THE COURT: Is there any objection, Mr.
15 Swilley?

16 MR. SWILLEY: No, sir.

17 THE COURT: Admitted into evidence 17-A
18 through 17-G?

19 MR. HOLT: Yes, sir.

20 THE COURT: Okay, admitted into evidence
21 without objection.

22 (WHEREUPON, State Exhibit Nos. 17-A
23 through 17-G were admitted into evidence.)

24 BY MR. HOLT:

25 Q All right. Can you tell the jury right now what

SW - B. RUDICK - DIRECT

1 those are and why they're significant?

2 A We had been given the description of a green
3 pickup truck initially by dispatch. To whom gave
4 that information I'm not aware, but that was the
5 vehicle that we were looking for as possibly being
6 involved. Before when — just after arriving and
7 speaking to Corporal Woodham I called Sergeant
8 Anderson and learned from him that he had been given
9 the name of Johnathan Reed on the scene. I knew
10 from 19 years of experience and working in
11 Hartsville that Reeds, several families of Reeds
12 lived in that proximity to where I was within a
13 house or two. I was not for sure if it was this
14 house, but I knew it was that part of the block. So
15 just adding those things together and the
16 possibility of this vehicle being involved was
17 greatly enhanced over just anyone else's vehicle.
18 Knowing that we would be needing search warrants for
19 the vehicle I took static photographs where it was
20 sitting before it was touched by law enforcement or
21 anyone else.

22 Q All right. What did you do after that?

23 A We had — I had asked, and I don't recall the
24 officer but I'd asked someone to locate Johnathan
25 Reed and asked him to come speak to me.

SW - B. RUDICK - DIRECT

1 Q Did you speak to him?

2 A I did.

3 Q And after you spoke with him what did you do?

4 A I spoke to him on video. I had a small body
5 camera because our in-car cameras were not
6 functioning on the cars that I had available so one
7 of the narcotics officer gave me a body camera.
8 Mirandized him, asked him some basic information and
9 I actually pointedly asked him if he was involved.
10 He denied —

11 Q What'd he tell you?

12 A He said he was not. With the information at hand
13 I thought it was worth questioning him a little more
14 detail in a little more controlled environment so I
15 asked him if he'd go with us to the police
16 department to the detective division for an
17 interview and he agreed.

18 Q And did you take him?

19 A Yes, he did.

20 Q What did you do after he did that?

21 A After speaking to Johnathan I learned that Joshua
22 was always on scene, and I do not recall to whom
23 told me that but he was also at one of the
24 residents. I asked him to come speak to me and
25 basically he repeated the same thing. Advised him

SW - B. RUDICK - DIRECT

1 he was being videotaped, advised him of his Miranda
2 rights, asked him if he was involved, he said no. I
3 asked him if he'd mind coming down to the office
4 talked with us, he said no, so he was transported at
5 that point.

6 Q All right. And what did you do after that?

7 A After they were transported I went down to our
8 detective division. When I first arrived Sergeant
9 Blair was administering a GSR kit on one of the two
10 Reeds; I don't recall which one. Once again, I
11 called Sergeant Terry Anderson to converse and
12 figure out what was going on. At that point he
13 asked me to create photo lineups to include both
14 Johnathan and Joshua Reed.

15 Q And if you could look at State's Exhibit 4 and
16 State's Exhibit 5 that are directly in front of you.
17 I think Blair was looking at them right before you
18 left. Yep, that's them. And if you could, tell the
19 jury if those are in fact the lineups you created?

20 A This is State's Exhibit 1 and State's Exhibit 2.

21 Q My bad.

22 A Okay. Yes, sir, these are the lineups that I
23 created that night.

24 Q Can you tell the jury how you created those
25 lineups.

SW - B. RUDICK - DIRECT

1 A The police department uses a software called RMS.
2 We write all of our incident reports, document
3 citations. It's pretty much our software for
4 everything we do, and in that software is a location
5 that we can add photographs. We generate
6 photographs from either booking at the jail, from
7 Department of Corrections photographs, Department of
8 Motor Vehicles photographs; and at times we just
9 take pictures of people and then import it to there.
10 It's called a master name index, and my name is in
11 there. Pretty much anyone we've had contact with at
12 all is in the master name index. So I enter
13 criteria that I'm looking for to create a lineup.
14 So if I have an oriental male as a suspect I would
15 enter that as their sex and race. I usually pick an
16 age, then go one year on either side of the
17 defendant or the suspect's age so that they're all
18 approximately the same age. And then physically go
19 through each photograph, and I'm looking for
20 similarities. You want -- if he has facial hair I
21 want to make sure everybody I selected has facial
22 hair. If he has a unique -- if he's bald I want to
23 find five bald guys to go along with him so it's not
24 as to stand out different from the other photo--
25 from the suspect photographs. So what I did was I

SW - B. RUDICK - DIRECT

1 started two separate lineups. One included each of
2 the Reed brothers, and then I found other people of
3 similar physical characteristics and added them as
4 well and created two separate lineups so they were
5 not in the same lineup.

6 Q All right. And once you created those lineups
7 what did you do?

8 A Like I said, they were created at the request of
9 Sergeant Anderson. I believe it passed off copies
10 of Sergeant Anderson because they were rather tasked
11 that needed to be completed.

12 Q And did you have occasion to actually show that
13 lineup to anybody?

14 A I did. After I did the lineup I ended up at the
15 hospital with the victim.

16 Q Did you meet with his family there?

17 A Just briefly I did.

18 Q All right. And then did you -- you proceeded to
19 where after that?

20 A After I left the hospital I went back to Lincoln
21 Avenue where they were conducting search warrants.
22 Over the radio they were running out of flashlights
23 so I had three that were charged in my vehicle; I
24 dropped them off. And at that time I was asked to
25 take the lineups out to East Carolina Avenue, East

SW - B. RUDICK - DIRECT

1 Home Avenue, excuse me, to where Ms. Asia Gregg was
2 with some family members.

3 Q All right. And I want to approach the witness.

4 THE COURT: Yes, sir.

5 BY MR. HOLT:

6 Q And I'm gonna show you what's been marked for
7 identification purposes only as State's Exhibit 3.
8 And I want to ask you if you recognize that?

9 A I do.

10 Q And since the last time you've seen it has there
11 been any changes or deletions made to it?

12 A No, sir.

13 Q And can you tell us what it is?

14 A It is the standard form that the Hartsville
15 Police Department adopted to, for creating lineups
16 and the instructions for viewing the lineups.

17 MR. HOLT: And Your Honor, at this time
18 I'd like to place State's Exhibit 3 into evidence.

19 THE COURT: Any objection?

20 MR. JONES: Yes, sir, we previously have
21 dealt with State's Exhibits—

22 THE COURT: All right, let me look at it.

23 MR. JONES: —3 and 4.

24 MR. SWILLEY: Same issue with 3 and 4,
25 Your Honor.

SW - B. RUDICK - DIRECT

1 THE COURT: All right, come around please.
2 (WHEREUPON, counsel approached the Bench
3 for an off-the-record discussion.)

4 THE COURT: All right, it's identified at
5 this time, not in evidence.

6 BY MR. HOLT:

7 Q Lieutenant Rudick, did Asia Gregg have a hard
8 time picking the individuals that killed her brother
9 out of the lineup?

10 A Absolutely not.

11 Q And about how long did she take looking at the
12 photographs?

13 A Oh, there were six in each lineup, twelve
14 photographs. Probably three to five seconds each.

15 Q And how certain about her choice did she appear
16 to be when she answered you?

17 A Extremely.

18 Q Okay. And Lieutenant Rudick, after you showed
19 the witness to Asia, after you showed the photo
20 lineup to Asia -- before I jump to the next one let
21 me back up, and I apologize. Did you in any way
22 influence her to make a decision?

23 A Absolutely not.

24 Q If she had failed to pick someone or not pick
25 someone off that lineup would you have cared?

1 A Not particularly.

2 Q Okay. Now what did you do after you showed the
3 lineup to Asia?

4 A Spoke to the family for a little while longer
5 expressed our condolences, expressed our concern if
6 there's anything we could do to help them, then I
7 left the house.

8 Q About what time was that, do you know?

9 A Seems like it was 8 or 9:00 in the evening.

10 Q Okay. So we're getting toward night?

11 A Oh, definitely, yes.

12 Q What did you do then?

13 A Went back to the office and started some of the
14 paperwork that is required on a case of this
15 magnitude.

16 Q Lieutenant Rudick, please answer any questions
17 that Defense counsel might have, okay?

18 THE COURT: Cross-examination, Mr. Jones?

19 **CROSS-EXAMINATION**

20 BY MR. JONES:

21 Q Mr. Rudick?

22 A Yes, sir.

23 Q When you were at the park then you got either
24 heard a call or you got a call about Lincoln Avenue
25 you said you were already pointed in the right

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1 direction?

2 A Uh-huh.

3 Q Which direction were you pointing?

4 A I was facing south.

5 Q Okay. And how did you get from Pride Park to
6 Lincoln Avenue?

7 A I turned right on Marion Avenue, proceeded down
8 to Eighth Street, turned left on Eighth Street, went
9 one block over, turned on to Lincoln.

10 Q That's the natural way to go; is it not?

11 A I guess so.

12 Q Okay, all right. But's the way you went?

13 A That's the way I went, yes, sir.

14 Q And you as a police officer with a task to
15 accomplish probably went the most logical route from
16 where you were to where you needed to go; is that
17 correct?

18 A I did.

19 Q Okay. Now when, I believe you stated that you
20 spoke individually with Mr. Johnathan Reed and
21 Mr. Joshua Reed. Both denied any involvement in
22 this situation?

23 A Correct.

24 Q All right. And as a result of what you were
25 doing you ended up with them at which HPD facility?

SW - B. RUDICK - CROSS

1 A They were taken to the detective division which
2 is 626 North Fifth Street.

3 Q Fifth Street, okay. All right. And at that
4 point in time had you already begun preparing a
5 lineup or did it happen after y'all got there?

6 A It was once we got to the detective division that
7 I was asked to complete that task.

8 Q Okay. And in completing that task how did you
9 generate the photos of Mr. Johnathan Reed and Mr.
10 Joshua Reed?

11 A Because I'm familiar enough with them, when I was
12 looking through the photographs I realized that the
13 two that we had on file for Johnathan and Joshua
14 Reed were significantly old to the point where they
15 were maybe in their teens when the picture was
16 taken. When we do a photo lineup you try to have
17 the most recent picture you can. People change over
18 time. Hair styles change over time so you want to
19 look — you want the person to look as close to what
20 they do at the moment as you can. I believe
21 Johnathan Reed's photograph, he had much shorter
22 hair; there was some obvious difference. So and
23 what we did was we took some photographs that night
24 of them standing in front of a neutral background
25 and then imported them into the system.

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1 Q All right. And that's where State's Exhibit
2 Number 1, that's where photo 4 came from; is that
3 correct?

4 A Yes.

5 Q All right. And on State's Exhibit Number 2,
6 that's where photo number 2 came from; is that
7 correct?

8 A Yes.

9 Q Would that explain why those two photos have
10 lighter backgrounds than the other ones?

11 A They do have lighter backgrounds, yes, sir.

12 Q Okay, thank you. Now also when you went — you
13 were the one who ultimately took those lineups,
14 exhibits 1 and 2, to Ms. Gregg; is that correct?

15 A Yes.

16 Q All right. Do you recall if Ms. Gregg identified
17 either of the suspects by name?

18 A Yes.

19 Q And was she correct in the names that she had?

20 A No.

21 Q And who had to help her get the correct names?

22 A Well, I wasn't asking her what their names were.
23 She pointed to the picture of Joshua and used the
24 word or the name Johnathan. And I, once again, just
25 for clarification of what she was identifying and

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1 she said that the picture of Johnathan was the
2 driver and the picture of Joshua —

3 MR. SWILLEY: Objection, Your Honor.

4 THE COURT: What's the objection?

5 MR. SMILEY: Previous to the issue of what
6 we discussed previously of hearsay. I'm gonna move
7 that comment be stricken from the record.

8 THE COURT: All right. Objection is
9 hearsay?

10 MR. SMILEY: That's correct, Your Honor.

11 THE COURT: What say you, Mr. Jones?

12 MR. JONES: Your Honor, I agree that the
13 answer to the question was hearsay. It was not —
14 actually it wasn't responsive to my question either.

15 THE COURT: All right. Objection
16 sustained. Rephrase your question.

17 MR. JONES: I will.

18 BY MR. JONES:

19 Q Lieutenant, I was asking whether or not you had
20 to correct Ms. Gregg in the naming of the two people
21 that you were — that both of y'all were talking
22 about?

23 A I did not correct her answer. I simply said that
24 that was not Johnathan.

25 Q Okay. And that was to picture number 4 in

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1 Exhibit number 1; is that correct?

2 A No, that was to picture number 2 and Exhibit
3 Number 2.

4 Q And that's the person she identified as
5 Johnathan?

6 A Yes.

7 Q Correct. Thank you.

8 THE COURT: Cross-examination,
9 Mr. Swilley.

10 **CROSS-EXAMINATION**

11 BY MR. SWILLEY:

12 Q You said you spoke with my client Johnathan Reed
13 at his house with a narcotics unit camera on your
14 person?

15 A Yes.

16 Q Okay. And at the conclusion of that conversation
17 did you make a recording of that, what was captured?

18 A Yes, I did.

19 Q Okay. And did you place that recording into
20 evidence?

21 A I believe I did.

22 Q And did you give that to the Solicitor's Office
23 with the case file?

24 A I believe I did.

25 Q Okay. So there's no reason that it should not

SW - B. RUDICK - CROSS

1 have been proffered from the Solicitor's officers,
2 right?

3 A Not that I'm aware of.

4 Q Okay. And when you spoke to them did you fill
5 out — you read him his Miranda rights off of a
6 card?

7 A I don't recall.

8 Q You don't know if it was a card or ---

9 A Honestly, it was rather chaotic. I don't know if
10 it was a card or from my memory.

11 Q Okay. I don't have anything else.

12 THE COURT: Anything further, Mr. Holt,
13 for this witness?

14 MR. HOLT: No, sir, Your Honor.

15 THE COURT: All right. Thank you, sir.
16 You may step down.

17 All right, Mr. Holt, you may call your
18 next witness.

19 MR. HOLT: Laura South. Can we bring her
20 back? And Your Honor, may we approach to talk about
21 scheduling while our witness is coming out here.

22 THE COURT: All right, sir.

23 (WHEREUPON, counsel approached the Bench
24 for an off-the-record discussion.)

25 WHEREUPON,

SW - L. SOUTH - DIRECT

1 **LAURA SOUTH,**
2 having been duly sworn by the Clerk of Court,
3 testified as follows:

4 THE CLERK OF COURT: Have a seat. State
5 your name for the record.

6 THE WITNESS: My name is Laura South.

7 **DIRECT EXAMINATION**

8 BY MR. HOLT:

9 Q Detective South, where are you currently
10 employed?

11 A With the Hartsville Police Department.

12 Q How long have you been there?

13 A A little over 16 years.

14 Q How long have you been in law enforcement?

15 A Sixteen years.

16 Q So HPD the entire time?

17 A The entire time.

18 Q And on February 15th, 2012 where were you
19 employed and in what capacity?

20 A I'm evidence custodian with the Hartsville Police
21 Department.

22 Q All right. And can you explain to the jury as
23 well as myself what the evidence custodian does and
24 what your primary responsibilities are.

25 A My primary responsibility is to store, log all

SW - L. SOUTH - DIRECT

1 evidence and secure all the evidence. I also take
2 the evidence to labs to get tested. I'm also a
3 detective so I do help out with cases as needed.

4 Q All right. And did you respond to the murder at
5 Pride Park?

6 A I did.

7 Q And about what time did you respond to that?

8 A It was immediately after the call came out. I'm
9 not sure exactly what the time was.

10 Q Who did you go with?

11 A Detective Terry Anderson.

12 Q All right. And what'd you do right the time you
13 got there?

14 A When I first got there there was a car that I saw
15 someone getting ready to leave the scene so I
16 stopped, stopped that person and started to talk to
17 him. And then Detective Anderson took over for me
18 and asked me to go to the, back to our office to get
19 a camera.

20 Q All right. Now I'm gonna approach and ask you if
21 you recognize for identification purposes State's
22 Exhibit 16-A through 16-KK. If you will just look
23 at them real quick and tell me just if you recognize
24 what they are?

25 A Yes, these the photos that I took at the crime

SW - L. SOUTH - DIRECT

1 scene.

2 Q Okay. You know, without talking about them can
3 you tell me if there were any deletions or have they
4 been changed or obstructed in any way since the last
5 time you've seen them?

6 A Not that I can tell, no.

7 Q And who took them?

8 A I did.

9 Q Okay.

10 MR. HOLT: And at this time, Your Honor,
11 the State would ask to move in those exhibits.

12 THE COURT: All right, Ms. Wooten, any
13 objection? Mr. Swilley?

14 (Attorneys review exhibits).

15 MS. WOOTEN: No objection.

16 MR. SWILLEY: No objection.

17 THE COURT: All right, State's numbers
18 16-A through -KK will be admitted in evidence
19 without objection.

20 (WHEREUPON, State Exhibits Nos. 16-A
21 through 16-KK were admitted into
22 evidence.)

23 MR. HOLT: Your Honor, if the witness can
24 come down here and help me publish them and explain
25 them to the jury.

SW - L. SOUTH - DIRECT

1 THE COURT: Yes, sir.

2 Ms. South, you may step down.

3 BY MR. HOLT:

4 Q Could you explain to the jury what 16-A is.

5 A That was a pool of blood of the victim.

6 THE COURT: Keep your voice up. She's got
7 to hear you. Step back a little bit.

8 THE WITNESS: Okay. That was a pool of
9 blood and the jacket and hat down by the victim.

10 BY MR. HOLT:

11 Q 16-B?

12 A You can also see the blood and the clothing that
13 was taken off the victim.

14 Q 16-C?

15 A Same thing.

16 Q All right. Now 16-D, what is that?

17 A That's the gazebo area at the park, and I believe
18 over on the other side where the other evidence —

19 Q All right. Show us where on this demonstrative
20 exhibit, this diagram right here, this gazebo will
21 be located?

22 A I believe that's this right here.

23 Q Okay.

24 A And the picture would have been coming I guess
25 from this way.

SW - L. SOUTH - DIRECT

1 Q All right. Now 16-F, what is this?

2 A This is just taken from another view point.

3 Q Now specifically what are these buildings that
4 you can see on the outside of the park behind that
5 fence?

6 A That is the funeral home.

7 Q What funeral home, do you know?

8 A Young and Young? That's where they parked in
9 front. That's where their garage is over there.

10 Q All right, and what is this photograph, 16-H?

11 A That is Roger's Barber Shop.

12 Q And what is that blue — what is that right
13 there?

14 A That's a (inaudible) machine.

15 Q Okay. Now 16-N, what is that?

16 A Okay, this is the clothing that we discussed
17 earlier and picnic table. This is Marion Avenue and
18 that's the garage at the funeral home.

19 Q Do you know what boxes of food there were on that
20 picnic table?

21 A They went to Yogi Bear.

22 Q What is this?

23 A That's the (inaudible).

24 Q Now this is — 16-U, explain to the jury where
25 this picture is taken from and why it's significant?

SW - L. SOUTH - DIRECT

1 A Okay. This is taken from the, where the garage
2 is of the funeral home on that side of the street
3 and it's --- there's a muffler ---

4 THE COURT: Keep your voice up please.

5 THE WITNESS: I'm sorry. This is the
6 Marion Avenue right here, and this is where there
7 was a tire track and part of an exhaust system. I'm
8 not sure what 'cause I don't know what that is.

9 BY MR. HOLT:

10 Q Just to help us decide, can you show us on that
11 demonstrative piece right there?

12 A It was somewhere over here.

13 Q All right. Can you come back please?

14 A Uh-huh.

15 Q Did you see that tail pipe there?

16 A Yes, I did.

17 Q And did you photograph it?

18 A Yes, I did.

19 Q Okay. And what's been marked previously as
20 State's Exhibit 9, does this appear to be the same
21 piece of pipe?

22 A Yes, it does.

23 Q I'm not a mechanic. I don't know the real name
24 of it. And after it was collected at the scene what
25 happened to it after that?

SW - L. SOUTH - DIRECT

1 A Well, I collected it. I put it in two grocery
2 bags to take it down to my office and I put it in
3 that box and sealed it up.

4 Q And is this the box you sealed it up in?

5 A Yes, it is.

6 MR. HOLT: Your Honor, at this time the
7 State would ask to introduce State's Exhibit 9 into
8 evidence.

9 THE COURT: Any objection?

10 MS. WOOTEN: No, Your Honor.

11 MR. SMILEY: I have none.

12 THE COURT: State's Exhibit Number 9
13 admitted without objection.

14 (WHEREUPON, State Exhibit No. 9
15 was admitted into evidence.)

16 BY MR. HOLT:

17 Q So you found this at the scene?

18 A Well, it was shown to me by (inaudible).

19 Q But you photographed it though?

20 A I photographed it.

21 Q And you collected it?

22 A Yes.

23 Q All right. And right here, there's plenty of
24 these -- the jury will see them -- State's Exhibit
25 16-X? What is that right beside the pipe?

SW - L. SOUTH - DIRECT

- 1 A That's a tire mark in the grass right here.
- 2 Q 16-Y?
- 3 A Same.
- 4 Q -Z?
- 5 A Same thing.
- 6 Q All right. What is 16-FF?
- 7 A It's a tire mark with a number marker.
- 8 Q And where is this if you point here from? Could
- 9 you say the name.
- 10 A 16-HH (ph). This is on Marion Avenue east
- 11 towards Sixth Street, and it's got the tail pipe and
- 12 tire mark.
- 13 Q 16-II?
- 14 A That's the picnic bench and the clothing.
- 15 Q All right. Detective South, you can have your
- 16 seat back. Thank you so much.
- 17 A Uh-huh.
- 18 Q Now if I could show you what's been marked as
- 19 State's Exhibit 8.
- 20 A Yes.
- 21 Q And I don't want you to tell me what it is.
- 22 A Okay.
- 23 Q I just want to ask you if you know what it is?
- 24 A Yes, sir.
- 25 Q And who collected it and gave it to you?

SW - L. SOUTH - DIRECT

1 A Michael Stokes, officer.

2 Q Okay. And after Michael Stokes gave it to you
3 what did you do with it?

4 A I sealed it up and I took it to SLED, not that
5 day but subsequently.

6 Q And after SLED worked through that who picked it
7 up from SLED?

8 A I did.

9 Q All right. And has it been in your custody and
10 control since then?

11 A Yes.

12 Q All right. Thank you so much.

13 A Uh-huh.

14 Q If I could ask you this right here.

15 A Uh-huh.

16 Q 18, do you know that is?

17 A These are GSR kits, gunshot residue kits.

18 Q And who collected those?

19 A I believe Brian Rudick, or Lieutenant Rudick, and
20 First Sergeant Mark Blair.

21 Q All right. And what did they do with them after
22 they collected them?

23 A They gave them to me and I sent them to SLED.

24 Q And after SLED tested them what happened to them
25 then?

SW - L. SOUTH - DIRECT

1 A I picked them up.

2 Q And they've been in your custody and control
3 since then?

4 A Yep.

5 Q All right. And number 19.

6 A This I — we just got from SLED when I picked,
7 when I picked up the gunshot residue kits. These
8 are particle lifts that they used on the shirt to
9 test the shirt.

10 Q All right.

11 A So I guess this is the lifts they did of the
12 shirt to test for gunshot residue.

13 Q Who collected those lifts?

14 A I imagine it was ---

15 Q What agency?

16 A SLED.

17 Q All right. And after they were collected and
18 tested who picked them up?

19 A I did.

20 Q And where have they been since then?

21 A In my safe at the department.

22 Q Now why don't you take a second and explain to
23 the jury how you keep the evidence. Is any, for
24 instance, is anybody allowed to go in and look at
25 the evidence in the department?

SW - L. SOUTH - CROSS

1 A No, it's all locked a safe, a bank vault type
2 safe.

3 Q All right. Who's got the key?

4 A It's a combination.

5 Q Who's got that?

6 A Just me and my lieutenant.

7 Q Do you let anybody in there that wants to go in
8 there, Laura?

9 A No. In fact, we have a log that we keep, but
10 normally it's just me and lieutenant.

11 MR. HOLT: Beg the Court's indulgence --

12 THE COURT: Yes, sir.

13 MR. HOLT: --housekeeping stuff. All
14 right.

15 BY MR. HOLT:

16 Q Detective South, please answer any questions that
17 Defense counsel might have.

18 A Yes, sir.

19 THE COURT: Cross-examination, Ms. Wooten?

20 MS. WOOTEN: Thank you, Your Honor.

21 **CROSS-EXAMINATION**

22 BY MS. WOOTEN:

23 Q Good afternoon, Ms. South.

24 A Good afternoon.

25 Q How are you?

SW - L. SOUTH - CROSS

1 A I'm fine. How are you?

2 Q I'm good. I just have a few questions for you.

3 A Okay.

4 Q Approximately how long after the incident was it
5 before you arrived at Pride Park?

6 A From the time we got the call I was at the police
7 department just like three or four blocks away so it
8 was just a matter of 30 seconds, a minute maybe.

9 Q So right after —

10 A From the time we got the call. I mean, I don't
11 know how long.

12 Q Immediately?

13 A Yes, we immediate went there.

14 Q And to my understanding your main job at Pride
15 Park was to take pictures?

16 A Yes, and collect the evidence.

17 Q Preserve the scene?

18 A Uh-huh.

19 Q Take photos? Okay. There are several pictures
20 of what appears to be that pipe taken. Did you
21 yourself discover that pipe?

22 A No.

23 MS. WOOTEN: May I approach the witness,
24 Your Honor.

25 THE COURT: Yes, ma'am.

SW - L. SOUTH - CROSS

1 BY MS. WOOTEN:

2 Q I show you State's Exhibit 16-FF it looks like?

3 A Okay.

4 Q Can you tell me what that is?

5 A That is a tire mark in the grass.

6 Q Would that be next to the exhaust, a part of the
7 exhaust?

8 A That's not in this photo.

9 Q Okay, but — all right.

10 A Yeah.

11 Q Do you know if any testing was done on that tire
12 track?

13 A No.

14 Q Okay. Those are all the questions I have. Thank
15 you.

16 THE COURT: All right, Mr. Swilley.

17 **CROSS-EXAMINATION**

18 BY MR. SWILLEY:

19 Q Corporal South, you were the one according to you
20 report you took all the stuff down to SLED for GSR
21 examination?

22 A Yes.

23 Q All that — not all of the things you collected
24 off the Reed brothers were taken down there; is that
25 correct?

SW - L. SOUTH - REDIRECT

1 A Correct.

2 Q And there's no reason for that? You just —

3 A I take what I'm instructed to take by
4 investigators so.

5 Q Okay. And you were told not to take everything?

6 A I was just told what to take.

7 Q Okay. And that was it, nothing more, nothing
8 less?

9 A That's what — I took what they told me to take
10 so.

11 Q You don't know why you weren't told to take the
12 rest of the clothes?

13 A (No verbal response.)

14 Q Is that a yes or no?

15 A No.

16 MR. SWILLEY: That's all I have.

17 THE COURT: Anything further?

18 **REDIRECT EXAMINATION**

19 BY MR. HOLT:

20 Q Does SLED place limits on what you can bring to
21 them that might be included in the decision on
22 what's tested and what's not?

23 MR. SWILLEY: Objection, Your Honor. I
24 think that calls for speculation.

25 THE COURT: All right. I agree with the

SW - L. SOUTH - REDIRECT

1 way the question is asked. I'll give you a chance
2 to rephrase it if there's anything you'd like to —
3 in other words, written policy. That's the only
4 way. She can't speculate as to what SLED tells.

5 BY MR. HOLT:

6 Q Can you just take anything you want to SLED?

7 A No.

8 Q Okay. Are there limits on what you can take?

9 A Yes.

10 Q All right. Thank you.

11 THE COURT: Anything further, Mr. Jones,
12 or Ms. Wooten?

13 MS. WOOTEN: No, Your Honor.

14 MR. SWILLEY: There's nothing.

15 THE COURT: All right, you may step down.

16 All right, counsel, let's talk about
17 scheduling just a moment.

18 (WHEREUPON, counsel approached the Bench
19 for an off-the-record discussion.)

20 THE COURT: The next witness is going to
21 be rather long, and it would probably take us into
22 the normal adjournment time and so I think it's
23 appropriate that we recess for the afternoon at this
24 time. I am going to allow you to go to your homes
25 and families. And I will tell you now as I have

1 told you throughout this case, that it would be
2 improper for you to discuss this matter with anyone
3 while you're away from the courthouse. You still
4 have not heard all the testimony in this case, and
5 of course, have not arrived at a verdict so any
6 discussion of the case with anyone else would be
7 improper. Similarly, do not let anyone discuss the
8 case with you. If anyone should approach you or try
9 to talk to you about this case over the evening
10 recess I will need to know about it. And also, if
11 there are any news stories or anything on television
12 at all, if you see any news stories or anything in
13 the broadcast media, simply turn them off and do not
14 listen to those because you've got to decide this
15 case based upon what you hear in this courtroom.

16 Also, in the morning do not deliberate the
17 matter among yourselves. It's still premature for
18 you to begin any discussion about the case. Just
19 simply go about your business tonight, basically
20 forget about this matter until tomorrow, and be back
21 in the jury room tomorrow morning at 9:30. All
22 right, thank you. Have a pleasant evening. I'll
23 see you tomorrow. Jury only.

24 (WHEREUPON, the jury was removed from the
25 courtroom at 4:21 p.m., and the following

1 proceedings commenced in open court.)

2 THE COURT: All right, counsel, while
3 we're waiting on the jury to leave the building, Mr.
4 Jones, Ms. Wooten, Mr. Swilley, what I'd like to do
5 would be to go ahead and advise the defendants of
6 their Fifth Amendment right without requiring a
7 decision at this time, and they'll still have an
8 opportunity talk to you. So I would ask if you
9 would all, both or all of you have your two clients
10 stand please.

11 Mr. Joshua Reed and Mr. Johnathan Reed, I
12 will tell you that you may be called as a witness to
13 testify in your own behalf. I now advise you that
14 you have the right to invoke the protections given
15 to you by the Fifth Amendment to the Constitution of
16 the United States and a similar counterpart
17 provision of the constitution of the State of South
18 Carolina. The Fifth Amendment to the Constitution
19 of the United States provides in part that no person
20 shall be kept, compelled in any criminal case to be
21 a witness against himself. This provision of law
22 means that you cannot be compelled or required to
23 testify in this case. This is a right and a
24 privilege which the law extends to you. It is a
25 personal privilege and no one can waive this right

1 except you. You have the right not to testify but
2 you also have the right to testify. The Court will
3 grant you the right to consult with your lawyer
4 before you make a decision. If you elect not to
5 testify your failure to testify cannot be considered
6 by the jury in its deliberations, and I would so
7 instruct the jury. If you elect to testify and
8 waive the privileges extended to you by the Fifth
9 Amendment of the Constitution you will then waive or
10 you would then assume the role of a witness in this
11 case and you would waive or give up your
12 constitutional privilege against self-incrimination.
13 This means that if you voluntarily take the witness
14 stand and testify, you will then subject yourself to
15 the same rules that govern other witnesses and you
16 may be examined and cross-examined on any relevant
17 issue in this case and you may be impeached to the
18 same extent as any other witness, all of which is
19 subject to the rules of law and the rules of
20 evidence.

21 I further advise you that if you elect to
22 take the witness stand and testify, that this
23 decision on your part must be made freely,
24 voluntarily, intelligently, and with knowledge of
25 the protections given to you by the Constitution and

1 with knowledge of the consequences of your election
2 to testify. Now as I said, I'm not going to require
3 a decision from you this afternoon because you have
4 not — we have not — the State has not closed their
5 case and it is not appropriate that you make a
6 decision at this time as to whether you do or do not
7 wish to testify in this matter.

8 But I will ask you, first of all, Mr.
9 Joshua Reed, have you understood what I've explained
10 to you?

11 DEFENDANT JOSHUA REED: Yes, sir.

12 THE COURT: Do you have any questions
13 about what I've explained?

14 DEFENDANT JOSHUA REED: No, sir.

15 THE COURT: Okay. And I would advise you
16 to consult with your lawyers because tomorrow at
17 some point in time it's very likely that I will ask
18 you whether you do or do not wish to testify in this
19 case and if they have talked with you about your
20 constitutional rights. You understand that?

21 DEFENDANT JOSHUA REED: Yes, sir.

22 THE COURT: All right. And Mr. Johnathan
23 Reed, do you have any questions that you wish to ask
24 me about what I've explained to you?

25 DEFENDANT JOHNATHAN REED: No, sir.

1 THE COURT: Have you understood what I
2 have explained?

3 DEFENDANT JOHNATHAN REED: Yes, sir.

4 THE COURT: And I will tell you that
5 sometime between now and tomorrow you need to
6 discuss with your lawyer about whether you should or
7 should not testify in this matter because it is
8 likely that at some point in time I will ask you
9 whether you wish to exercise your constitutional
10 right and not testify, or you do wish to testify.
11 You understand?

12 DEFENDANT JOHNATHAN REED: Yes, sir.

13 THE COURT: You have any questions you
14 wish to ask me?

15 DEFENDANT JOHNATHAN REED: No, sir.

16 THE COURT: All right, gentlemen, thank
17 you. You may be seated.

18 All right, counsel, given just for
19 planning purposes let me give you some thoughts and
20 y'all tell me what you think. First of all, without
21 prejudging the matter or without saying whether or
22 not, without ruling on the motions that I know will
23 be made at the appropriate time, when it comes to
24 charging my general felony charge includes
25 presumption of innocence, reasonable doubt, and

1 burden of proof. The reasonable doubt charge that I
2 use primarily is the one that Judge Baxley uses so
3 if y'all are familiar with Judge Baxley's charge on
4 reasonable doubt, that will be the one that I will
5 be using.

6 With regard to procedural charges, my plan
7 would be to use the direct and circumstantial charge
8 as enunciated in the recent case, the Logan case.

9 It changes the circumstantial evidence to the charge
10 a little bit. That would be the one that I would
11 use. There will likely be an expert witness and
12 that will be Doctor Ross so I will probably charge
13 the jury on the difference between expert witnesses,
14 again, depending on the defendants' decision.
15 There's the possibility of a charge of defendant not
16 testifying.

17 And I would assume, Mr. Jones, Ms. Wooten
18 or Mr. Swilley that y'all would request a charge on
19 eyewitness identification?

20 MR. JONES: Yes, sir.

21 THE COURT: Okay.

22 MR. SWILLEY: Yes, sir, Your Honor. I'd
23 also request a mere presence charge.

24 THE COURT: All right. I hadn't got there
25 yet.

1 MR. SWILLEY: Okay.

2 THE COURT: All right. I would also, will
3 charge on separate verdicts for each defendant, that
4 each of the defendants should be — the charges
5 against each defendant should be treated separately
6 and they will make separate decisions as far as each
7 defendant is concerned.

8 And I am sure, Mr. Holt, that you want the
9 accomplice liability charge.

10 MR. HOLT: I was about to stand up and ask
11 for it, Judge.

12 THE COURT: Okay. Which does include the
13 mere presence. In other words, that it requires an
14 active participation and not mere presence. Okay.
15 That's kind of — now and then, of course, the
16 substantive charge of murder and possession of a
17 possession and we'll get to see if there's anything
18 else that would be charged in the way of substantive
19 charges at this time. But murder and possession of
20 the weapon would be the substantive charges at this
21 time. I'll hear from you at some point in time when
22 we get all the evidence in.

23 All right. One other thing I was going to
24 — oh, let me ask you, as defendant counsel, is
25 there going to be any issue with regard to the

1 qualification of Doctor Ross under State versus
2 Castle as to her qualifications as an expert
3 witness?

4 MR. JONES: Not from me, Your Honor.

5 MR. SWILLEY: I don't anticipate that at
6 all.

7 THE COURT: So we don't need to have a
8 hearing outside the presence of the jury to
9 determine her qualifications and determine whether
10 she can testify. All right.

11 Now with regard to those two exhibits, 3
12 and 4, Mr. Holt, what do you do? You propose to
13 redact from those two exhibits the hearsay portion
14 of those exhibits? Is that what you're going to do?

15 MR. HOLT: Yes, sir, there's three, four,
16 is it five as well as Asia's and both the other —
17 there's three of them?

18 THE COURT: Did they all make statements
19 how they something and so they need to be redacted
20 as far as what the hearsay portion of them would be?

21 MR. HOLT: I'll take white out and just go
22 over all of them and then — and I'll do that today
23 and ask you tomorrow.

24 THE COURT: Get that done this afternoon
25 and show it to them in the morning and we'll see if

1 they have any objections on them at that point.

2 MR. HOLT: Yes, sir.

3 THE COURT: Okay, all right. Anything
4 else, counsel, that you think we need to do that
5 would expedite the matter and move it along? I
6 understand, Mr. Holt, that you anticipate in the
7 morning having Mr. Anderson from the Hartsville
8 Police Department and two SLED agents; is that
9 correct?

10 MR. HOLT: No, sir, I think I'm gonna
11 cancel one of the SLED agents. I think I'm gonna
12 have Investigator Anderson, Jennifer Stoner, and
13 Brandon Huggins who was supposed to be here today
14 but is ill. And I don't see -- Jennifer and Brandon
15 will probably take about as long as Laura South did
16 today. And Terry Anderson will probably take us
17 right you want to till whenever you're ready to
18 break from lunch to wait on Doctor Ross.

19 THE COURT: What time is Doctor Ross
20 scheduled here?

21 MR. HOLT: 2:00.

22 THE COURT: 2:00. I had Doctor Ross in
23 Fairfield County two weeks ago and had the same
24 situation that she performs her autopsies in the
25 morning and does her testifying in the afternoon.

1 So that's kind of what we have to do, schedule
2 around her, her schedule. All right, counsel, we'll
3 look at it from that angle. Now is there anything
4 else anybody thinks we need to take up at this time
5 that would expedite matters tomorrow? Mr. Holt, you
6 know of anything else?

7 MR. HOLT: Nothing from the State, Your
8 Honor.

9 THE COURT: Mr. Jones?

10 MR. JONES: Nothing.

11 MR. SWILLEY: Not at this time, Your
12 Honor.

13 THE COURT: All right. Then we'll be in
14 recess till 9:30 tomorrow morning. One other thing
15 before we do that. I think, again, the way for me
16 to do this this afternoon before we actually recess,
17 Mr. Holt, is let me go ahead and excuse the members
18 of the victim's family and let them clear the
19 building.

20 So y'all are excused. Everyone else
21 please keep your seats.

22 All right, I've been advised the people on
23 the elevator are out of the building. We are
24 adjourned then or in recess until 9:30 tomorrow
25 morning. See you then.

1 (WHEREUPON, the proceedings were concluded
2 for the day to be reconvened on October
3 23, 2013.)

4 THE COURT: Back on the record with regard
5 to the matter of State versus Johnathan and Joshua
6 Reed. The two defendants are present in the
7 courtroom with their counsel. The State is present
8 and represented by the Solicitor's Office. I have
9 been informed all the jurors are present. Anything
10 before I bring the jury in, Mr. Holt?

11 MR. HOLT: No, sir, Your Honor.

12 THE COURT: Mr. Jones?

13 MR. JONES: No, sir.

14 THE COURT: Mr. Swilley?

15 MR. SWILLEY: No, Your Honor.

16 THE COURT: All right, bring the jury in
17 please.

18 (WHEREUPON, the jury was returned to the
19 courtroom and the following
20 proceedings commenced in open court.)

21 THE COURT: Good morning, ladies and
22 gentlemen and thank you for your promptness in being
23 back here. And we are now ready to resume this
24 matter. As I told you yesterday the State still is
25 presenting their case and will continue to do so

SW - B. HUGGINS - DIRECT

1 this morning; but before we start with that, I do
2 need to ask you if anyone has tried to contact you
3 in any way about this case over the evening recess I
4 would need to know about it now.

5 (There was no response.)

6 THE COURT: Negative response, and that's
7 good. Also, if anybody read any news stories
8 heard any television or radio broadcast about this
9 matter over evening recess I will also need to know
10 about that now.

11 (There was no response.)

12 THE COURT: Again, negative response and
13 that's good.

14 All right, Mr. Holt, you may call your
15 next witness.

16 MR. HOLT: Thank you very much, Judge.
17 Can I get Brandon Huggins from the back please.

18 THE CLERK OF COURT: If you'll come around
19 to be sworn. Put your left hand on the Bible and
20 raise your right hand.

21 WHEREUPON,

22 **BRANDON HUGGINS,**
23 having been duly sworn by the Clerk of Court,
24 testified as follows:

25 THE CLERK OF COURT: If you'll have a seat

SW - B. HUGGINS - DIRECT

1 in this chair and give the court reporter your name.

2 THE WITNESS: Brandon Huggins.

3 **DIRECT EXAMINATION**

4 BY MR. HOLT:

5 Q Officer Huggins, what's your current position,
6 your employment?

7 A I'm with the city of Hartsville Police Department
8 and I work as a SRO in Washington Street Elementary
9 School at this time.

10 Q Can you explain what a SRO is?

11 A It's school resource officer and I work inside
12 the school.

13 Q And how long have you been employed by Hartsville
14 Police Department?

15 A It will be four years in March.

16 Q And how many years have you spent in law
17 enforcement total?

18 A Approximately nine years.

19 Q All right, where did you work before Hartsville?

20 A Pageland Police Department.

21 Q Okay. Now February 15th, 2012, what position did
22 you hold in Hartsville Police Department at that
23 time?

24 A I was a sergeant on patrol.

25 Q All right. What did your patrol duties include?

SW - B. HUGGINS - DIRECT

1 A I ran a shift, two other people besides myself at
2 the time. We usually run five by a little short at
3 the time; but had two other people besides myself,
4 and I was over that shift.

5 Q And how are patrol offices alerted to problems
6 within the community they have to respond to?

7 A Through dispatch which is located in Darlington,
8 and they give us over the radio, they'll dispatch us
9 to certain calls.

10 Q And on February 15th. The date in question, were
11 you dispatched to Pride Park?

12 A I was.

13 Q And about what time was that?

14 A Around 4:10 in the afternoon.

15 Q Okay. Did you reach the location?

16 A I'm sorry?

17 Q Did you make it to Pride Park?

18 A Yes, I did.

19 Q And once there on the scene what did you
20 discover?

21 A Once I arrived on scene I saw my corporal at that
22 time, which is Jason Thompson. He was bent down
23 over a black male laying on the ground. I saw three
24 other people standing in the park as well, two black
25 males and a black female who were obviously

SW - B. HUGGINS - DIRECT

1 distraught.

2 Q What other officers were on the scene when you
3 got there?

4 A Just Corporal Thompson at the time. Later
5 arrived would be my first sergeant, Tenyonde
6 Richardson. He arrived on scene shortly after and
7 we started cordoning off the crime scene, putting up
8 crime scene tape trying to get where no one --
9 restrict the area from anybody else getting into the
10 area.

11 Q Why does HPD do that?

12 A That's to preserve any evidence that we have
13 inside the crime scene so nobody tampers with or
14 moves anything that may be there.

15 Q And after you coordinated the search, let's say
16 quarantined, after you quarantined the area what did
17 you do next?

18 A After that I sequestered the three other -- well,
19 two black males and black female, sequestered them
20 off to the side and tried to keep them separate from
21 each other.

22 Q And what did you do after that?

23 A After that I turned those witnesses over to
24 detective Sergeant Terry Anderson who arrived on
25 scene. Those were turned over to him. Then I

SW - B. HUGGINS - DIRECT

1 started searching the area for any potential
2 evidence, handgun, shell casings, any other type of
3 weapons.

4 Q Did your investigation reveal a description that
5 you put out over the radio?

6 A It did as well. Through my investigation I
7 learned that we were possibly looking for two black
8 males approximately six feet in height, 20 to 25
9 years old driving a green Ford F-150 pickup truck.

10 Q And you put that out over the radio?

11 A I did.

12 Q And after you put that out over the radio what
13 did you do next?

14 A Once again I started looking for the shell
15 casings and any weapons that was used in commission
16 of the crime.

17 Q Did you find any shell casings or weapons?

18 A I did not find any shell casings, nor did I find
19 any weapons in the general vicinity of the crime
20 scene.

21 Q What did you find in the crime scene?

22 A Actually, I exited Pride Park. Those of you who
23 are not familiar -- I don't know if we have a map --
24 but I crossed Marion Avenue which was already
25 blocked off. We had other officers arrive.

SW - B. HUGGINS - DIRECT

1 Q There's a map right there. You can pull it out
2 and show it. From the bottom, flip that up.

3 A Do we have to label it on here where we can pick
4 it out pretty quickly? This will be the crime scene
5 right here, which is just right off of Sixth Street.
6 Marion Avenue is right here, and Pride Park is in
7 this general area. I exited the gate that was over
8 here and walked across Marion Avenue. There's a
9 little grassy area next to Young and Young Funeral
10 Home. That's where they park their cars at inside a
11 covered building across from their funeral home.
12 There's a little grassy area right here. Inside
13 that grassy area -- and we also had, to go any
14 further, we actually by this point in time we had
15 other officers already staged on Marion blocking
16 Marion Avenue off. Also on Sixth Street, Sixth
17 Street was blocked off as well so no one could enter
18 this area surrounding the crime scene.

19 I crossed Marion Avenue. And in that
20 little grassy area I could stand back and visibly
21 see what looks like a tire spinning off and that was
22 the general direction I was told where the vehicle
23 was parked at. You could see that tire spinning
24 off. And between that tire track and the grass area
25 there was a section of pipe laying kind of in the

SW - B. HUGGINS - DIRECT

1 middle of what a vehicle would look like.

2 Q You can put that down. I'm gonna show you what's
3 been marked as State's Exhibit 16-FF, -GG, -Z and
4 -Y. If you could — Your Honor, if the witness
5 could come here and we can talk about these in front
6 of the jury?

7 THE COURT: Yes, sir, you may step down.

8 BY MR. HOLT:

9 Q Now they saw these yesterday; but can you tell us
10 looking at 16-Y, is that a, is that a accurate
11 portrayal of what you saw that day?

12 A That is. As you can see the tire track here and
13 the section of tail pipe kind of standing in the
14 middle of where the section of the tail pipe would
15 run.

16 THE COURT: I don't know if they can see,
17 Mr. Holt. We got some people standing in the way.
18 Okay.

19 BY MR. HOLT:

20 Q About how far was the tail pipe from the tire
21 mark?

22 A I would say 3-feet maybe, somewhere in that
23 range.

24 Q Is that the tire mark?

25 A That is correct.

SW - B. HUGGINS - DIRECT

1 Q And were there any other tire marks in that area?

2 A If you can bring this picture back over. If
3 y'all are familiar with Hartsville and Young & Young
4 Funeral Home, that would be the concrete section of
5 their parking lot.

6 Q Now about how clean was this area?

7 A At that time as you can see in the pictures it's
8 very, very clean —

9 THE COURT: Counsel, again, step back.
10 There are people on the other end who can't see the
11 things.

12 THE WITNESS: At that time point in time
13 it was very clean in this area. There's generally
14 no trash in that area. Young & Young Funeral Home
15 keeps it very clean in that area 'cause it's so
16 close related to where they actually have funeral
17 services and things of that nature.

18 BY MR. HOLT:

19 Q All right. You can have a seat again.

20 A (Complies.)

21 Q I gonna show you what's been marked as State's
22 Exhibit 9 and entered into evidence and ask that you
23 hold that. Now could you tell me if that appears to
24 be the piece of exhaust pipe that you found that
25 day?

SW - B. HUGGINS - DIRECT

1 A It does.

2 Q And who did you tell about the exhaust pipe once
3 you found it?

4 A I actually come back and told detective Sergeant
5 Terry Anderson what I had found. I actually had —
6 to go even further than that, there were other
7 officers standing there who actually stood by. Once
8 again, no one is allowed in or outside the crime
9 scene, and they actually stood by while I went and
10 spoke with him.

11 Q All right, you can sit that down. Now I'm gonna
12 show you what's been marked for identification
13 purposes only as State's Exhibit 10. I want you to
14 hold on to that. Don't talk about it, just look at
15 it. And I'm gonna ask you what your duties were
16 after you found the pipe and what you did next
17 essentially?

18 A After I found the pipe and once the crime scene
19 had essentially been broken down once we had
20 collected all evidence we could collect at that time
21 we actually break the crime scene down and we move
22 forward from there. But at this point in time we
23 actually had two search warrants to be served on two
24 separate residences. I was asked to go to [REDACTED]
25 Lincoln Avenue and stand by with other officers

SW - B. HUGGINS - DIRECT

1 while we waited for the search warrant to arrive on
2 the scene.

3 Q Why were y'all standing by?

4 A The reason that I was standing by, I have to go
5 through -- detectives have to go out and see a judge
6 and to get a search warrant signed so we can
7 actually enter that residence and look for any
8 evidence that may have been involved in the crime.

9 Q All right. About how long did that take you
10 think?

11 A I'm gonna say maybe roughly an hour, maybe a
12 little longer.

13 Q And if you could stand up and look at the map and
14 show to the jury where in relation to Pride Park ■■■
15 Lincoln would actually be.

16 A Actually, this is Pride Park here. Lincoln
17 Avenue, as you can see is over here, so
18 approximately maybe roughly a half mile to a mile
19 from the location. I'd say more close to half a
20 mile to Lincoln Avenue. And ■■■ Lincoln Avenue is
21 actually towards the end of Lincoln Avenue, almost
22 towards the very end.

23 Q And who was on the search party that entered ■■■
24 Lincoln?

25 A At the time it was myself, Lance Corporal Joshua

SW - B. HUGGINS - DIRECT

1 Daniels, Detective April Cook, and Detective Brandon
2 Peavey. Detective Brandon Peavey and April Cook
3 were Darlington County Sheriff's Office.

4 Q But you were a part of it?

5 A Yes, I was.

6 Q And looking at State's Exhibit 10 can you tell
7 me, do you recognize that?

8 A I do.

9 Q And it's all one exhibit but it's two
10 photographs.

11 A Okay. I recognize both.

12 Q All right. And since the last time — I mean,
13 you know, is it a true and accurate portrayal of
14 what you saw that day?

15 A It is.

16 Q And have there been any changes, deletions,
17 alterations made to those photographs between the
18 photographs and the scene?

19 A No, they have not.

20 Q And can you tell us what it is?

21 A In the first picture would be Johnathan —

22 Q Can you just tell us, are they pictures from
23 where?

24 A They're pictures from [REDACTED] Lincoln Avenue.

25 MR. HOLT: And Your Honor, at this time

SW - B. HUGGINS - DIRECT

1 the State would ask to move State's Exhibit 10 into
2 evidence.

3 THE COURT: Any objection, Ms. Wooten or
4 Mr. Swilley?

5 MR. SWILLEY: If I may see the exhibits.
6 And just to clarify, is the exhibit both
7 photographs?

8 THE COURT: Sir?

9 MR. SWILLEY: Are both photographs the
10 exhibits? Your Honor, I'm gonna make an objection
11 to the second photograph of State's Exhibit 10 under
12 my previous objection?

13 THE COURT: Wait a minute.

14 MR. SMILEY: We join in his objection,
15 Your Honor.

16 THE COURT: Let's mark them A and B so
17 we'll know what they're talking about, Madam Clerk.
18 10-A and 10-B.

19 MR. SWILLEY: Your Honor, I —

20 THE COURT: Wait just a moment. All
21 right, there's no objection to 10-A; is that
22 correct?

23 MR. SWILLEY: That's correct.

24 MS. WOOTEN: No, sir.

25 THE COURT: So 10-A will be admitted

SW - B. HUGGINS - DIRECT

1 without objection. 10-B, what's your position,
2 Ms. Wooten?

3 MS. WOOTEN: We would join in with Mr.
4 Swiley's objection as with relevance.

5 THE COURT: All right. And your objection
6 Mr. Swilley is relevance under 401; is that correct?

7 MR. SWILLEY: As well as under rule 403,
8 Your Honor.

9 THE COURT: All right. The ruling of the
10 Court is that the evidence is relevant and I'll put
11 on the record the reasons why I feel that it is
12 relevant at a later time. I also feel that it is
13 admissible under 403; and again, I'll put the
14 reasons on the record at a later time. But the
15 objection on basis of 401 and 403 is overruled and
16 the exhibit 10-B will be admitted into evidence
17 over, subject to the objections of both defendants.

18 (WHEREUPON, State Exhibits Nos. 10-A and
19 10-B were admitted into evidence.)

20 BY MR. HOLT:

21 Q Officer Huggins, can you tell us what those are
22 pictures of and how you came to view those objects?

23 A One is a picture of Johnathan — can I show the
24 jury? One is a picture of Johnathan Reed's ID,
25 South Carolina ID, which was found on a dresser

SW - B. HUGGINS - DIRECT

1 inside of a bedroom at [REDACTED] Lincoln Avenue.

2 Q On or in?

3 A On top of the dresser, on the corner of the
4 dresser. As you see this -- I don't know if you
5 want to show them a little bit closer. But if you
6 can see this, this is exactly how it was found.
7 That's how it was photographed. We don't touch
8 anything until we photograph it before we move it.
9 And in the next, the next picture, is actually a 45
10 caliber semiautomatic handgun. As you can see it
11 was found inside of a container next to the bed, and
12 it does have ammo in it as well.

13 Q How do y'all know?

14 A I actually found both of those as I was searching
15 the room.

16 Q Okay.

17 MR. HOLT: And permission to approach,
18 Your Honor.

19 THE COURT: Yes, sir.

20 BY MR. HOLT:

21 Q At this time I'd like to show you what's been
22 marked as State's Exhibit 6-B. I'd ask that you
23 look at the object inside the box. Don't show it to
24 the jury. Ask if you recognize the exhibit?

25 A I do.

SW - B. HUGGINS - DIRECT

1 Q And have you seen it before?

2 A I have.

3 Q And since last you've seen it have there been any
4 changes?

5 A No, none that I see.

6 Q And did you find that object at [REDACTED]?

7 A I did find this object [REDACTED] Lincoln Avenue.

8 MR. HOLT: Your Honor, at this time the
9 State would move to submit it into evidence.

10 THE COURT: Same objection?

11 MR. SWILLEY: Yes, Your Honor, same
12 objection on relevance and rule 403.

13 THE COURT: Okay, same objection?

14 MS. WOOTEN: Same objection.

15 THE COURT: Same objection, same ruling.
16 I find the evidence is admissible under 401 and 403,
17 and we'll put the reasons on the record at a later
18 time. It will be admitted into evidence subject to
19 objections of the defendants.

20 (WHEREUPON, State Exhibit No. 6-B
21 was admitted into evidence.)

22 MR. HOLT: Thank you, Judge.

23 BY MR. HOLT:

24 Q Officer Huggins, would you pull that out and show
25 the jury exactly what it is?

SW - B. HUGGINS - DIRECT

1 A Yes.

2 THE COURT: First make sure it's safe
3 please.

4 THE WITNESS: Yes, sir.

5 BY MR. HOLT:

6 Q All right, sit down please.

7 MR. HOLT: Your Honor, I made a mistake.
8 There's also a 7-B inside of there that I'm gonna
9 have to question him and move into evidence.

10 THE COURT: All right, go ahead.

11 BY MR. HOLT:

12 Q Looking at State's Exhibit 7-B, are you aware
13 what that is?

14 A Yes, that is actually ---

15 THE COURT: Don't tell what it is.

16 THE WITNESS: Yes, I am. Yes, I am.

17 BY MR. HOLT:

18 Q Have there been any changes, deletions,
19 alterations made since you last reviewed it?

20 A None that I know of.

21 Q And are you sure it's substantially the same
22 thing you saw at [REDACTED] Lincoln Street?

23 A I am.

24 Q Okay.

25 MR. HOLT: Your Honor, at this time the

SW - B. HUGGINS - DIRECT

1 State would move 7-B into evidence.

2 THE COURT: 7-B? All right.

3 THE COURT REPORTER: It's just plain 7.

4 MR. HOLT: It's just plain 7.

5 THE COURT: 7, okay. All right, the first
6 exhibit was 6. Go ahead as far as State's Exhibit
7 Number 6.

8 BY MR. HOLT:

9 Q Can you show the jury what exactly State's
10 Exhibit Number 6 is?

11 A I will. It's a .45 caliber semiautomatic
12 handgun. And you all may not have been able to see
13 earlier, it's actually ---

14 THE COURT: All right, talk loud enough
15 for me to hear and her to play back for the jury.

16 THE WITNESS: Actually this was the
17 picture of where it was located at, inside [REDACTED]
18 Lincoln Avenue.

19 BY MR. HOLT:

20 Q And that was found in the same bedroom as the ID?

21 A It was. Can I describe the state it was found
22 in, the actual handgun?

23 MR. SWILLEY: I'm gonna object to that.

24 BY MR. HOLT:

25 Q What state was the handgun found in?

SW - B. HUGGINS - DIRECT

1 THE COURT: Just answer the questions.

2 THE WITNESS: The handgun was actually
3 found in a fully loaded state which means one is in
4 chamber and a fully loaded magazine.

5 BY MR. HOLT:

6 Q And was it found on additional ammunition?

7 MR. SWILLEY: Objection, Your Honor, I'm
8 gonna object to that on the basis of relevance and
9 also 403.

10 THE COURT: What was the question?

11 MR. HOLT: Was it found with additional
12 ammunition?

13 THE COURT: Wait, I didn't hear.

14 MR. HOLT: Was it found with additional
15 ammunition?

16 THE COURT: All right, objection is
17 overruled. Same ruling, again I'll put it on the
18 record. Objection is overruled.

19 BY MR. HOLT:

20 Q All right. And Brandon, after Officer Huggins,
21 after he found this in the bedroom what did you do
22 next?

23 A Once the handgun was found, as I stated before we
24 did not move any objects until they are
25 photographed. The semiautomatic .5 caliber handgun

SW - B. HUGGINS - DIRECT

1 was photographed inside of its container, which the
2 picture I showed you all earlier. And the handgun
3 was unloaded and put in a safe manner, and then it
4 was turned over to the investigators.

5 Q All right. And what did you do next?

6 A After all evidence was turned over inside the —
7 once search warrant was completed inside the
8 residence I cleared the scene and went back to the
9 station and completed my report.

10 Q All right. Now I was asking you about State's
11 Exhibit 7 earlier.

12 A Yes, sir.

13 Q And you said you recognized it?

14 A That's correct.

15 Q And has it changed since the last time you've
16 seen it?

17 A No, sir.

18 Q All right. Do you know what it is?

19 THE COURT: Don't tell what it is. Do you
20 know what it is?

21 THE WITNESS: Yes, I do. Yes.

22 MR. HOLT: And Your Honor, at this time
23 the State would ask to enter State's Exhibit 7 into
24 evidence.

25 THE COURT: Same objection?

SW - B. HUGGINS - CROSS

1 MR. SWILLEY: Same objection, Your Honor,
2 rules, relevance, and rule 403.

3 THE COURT: Objection is noted ---

4 MS. WOOTEN: Yes, Your Honor.

5 THE COURT: ---of both defendants and
6 overruled under 403, 401 and 403. I'll put my
7 reasons on the record later on.

8 (WHEREUPON, State Exhibit No. 7
9 was admitted into evidence.)

10 BY MR. HOLT:

11 Q And what is it?

12 A Actually, inside this is six rounds of .45
13 caliber ammunition.

14 Q Where you did you find it?

15 A It was found inside of the .45 caliber
16 semiautomatic handgun that I showed you all earlier.

17 Q Officer Huggins, please answer any questions that
18 defense counsel might have.

19 THE COURT: Yes, sir.

20 Ms. Wooten?

21 MS. WOOTEN: Thank you, Your Honor.

22 **CROSS-EXAMINATION**

23 BY MS. WOOTEN:

24 Q Good morning.

25 A Good morning.

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1 Q Are you Sergeant Huggins, Officer Huggins, how
2 shall I ---

3 A Well, at the time I was sergeant but with the new
4 job I took I went back to corporal so Corporal
5 Huggins will be fine.

6 Q I have a few questions about the date in
7 question. When you responded to Pride Park how --
8 what exactly was the reason for you going there, how
9 were you summoned?

10 A I was dispatched to someone being shot inside
11 Pride Park.

12 Q Great. Okay. When you arrived who was at the
13 scene?

14 A My corporal at the time, Corporal Jason Thompson.

15 Q He was the only person at the scene?

16 A Only person at the scene when I arrived and other
17 officers arrived shortly after I arrived.

18 Q You testified earlier to Mr. Holt that when you
19 arrived at the scene you were instructed to take
20 witnesses, three witnesses, and sequester them; is
21 that correct?

22 A Well, three potential witnesses at the time.

23 Q Jessie [sic] Washington, Anthony Wingate, and
24 Asia Gregg?

25 A No.

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1 Q Or did you know their names?

2 A Didn't know their names at the time.

3 Q Did you know their names after?

4 A That's correct.

5 Q Are those the three witnesses?

6 A Not Jessie Washington, Johnny Lee Washington.

7 Q I'm sorry, Johnny Lee Washington.

8 A Johnny Lee Washington, Anthony Wingate, and Asia
9 Gregg.

10 Q And you took all three of them together? Where
11 did you put---

12 A Actually we separated them out. I made them
13 stand -- at the time at the scene we don't want
14 people to get their stories the same matching
15 because we want the honest opinion of anybody. Once
16 you get people start talking afterwards, which they
17 were very distraught at the time so they wasn't
18 talking to each other, separated them out
19 individually, try to keep them apart from each
20 other.

21 Q And did you stand with these witnesses?

22 A I stood right in front of them, yes, I did.

23 Q And then when did these witnesses leave the
24 scene?

25 A I can't tell you when they left the scene. Once

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1 Detective Sergeant Terry Anderson arrived on scene
2 he took over the witnesses, potential witnesses.

3 Q All three?

4 A Yes.

5 Q Do you remember writing a supplemental report for
6 this case file?

7 A I do.

8 Q Do you recall that in your report you said that
9 you sequestered two black male witnesses?

10 A Actually it fell on the floor but. Yes, it does
11 say two black males, yes, ma'am.

12 Q Do you note anywhere in your report where you
13 mentioned a female witness and sequestering her?

14 A Not that I see in my report, no.

15 Q Would your recollection of the events that
16 happened be clearer today or when you wrote this
17 report?

18 A This report was probably wrote late at night
19 after I got done. I'd been working for 12 hours
20 previous to that so, but I would say my recollection
21 to the report would have been better at the time.

22 Q So it's likely that you're mistaken that Ms. Asia
23 Gregg was not taken into sequestration by you?

24 A May have not been, no, ma'am.

25 Q Okay. So also in your report you noted that the

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1 two black male witnesses gave you a rough
2 description of suspects; is that correct?

3 A That's correct.

4 Q Did they mention long hair or short hair or
5 physical description?

6 A Not that I —

7 MR. SWILLEY: Your Honor, I think that
8 calls for hearsay.

9 THE COURT: What about it, Ms. Wooten?

10 MS. WOOTEN: I'll rephrase.

11 THE COURT: Ma'am?

12 MS. WOOTEN: May I rephrase?

13 THE COURT: Yes.

14 BY MS. WOOTEN:

15 Q Did the suspect happen to identify — did the
16 witnesses happen to identify the suspects in any
17 greater detail than you noted in your report?

18 A Not that I have in my report at this time 'cause
19 I, I didn't speak to them that long, you know. I
20 was trying to get — we try to get a quick
21 description as we can because we want to get that
22 out to officers because when someone is shot we want
23 to catch the suspects as quickly as possible. So we
24 try to get a brief description and wait for other
25 officers to arrive so they can get a better

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1 description so the description I —

2 Q Thank you.

3 A If that makes sense.

4 Q Also just looking at your report, speaking from
5 your report did your witnesses happen to name
6 anybody by name?

7 A Not in my report, no, ma'am.

8 Q Thank you. And you were one of the first persons
9 from law enforcement to interact with them?

10 A I actually told them -- other than asking, yes,
11 but can I go a little further than that. Actually,
12 when you're talking to someone too we're not rolling
13 videotape. At that point in time my camera doesn't
14 reach that far; so therefore, you don't want someone
15 saying something and then not being on, recorded, to
16 be used further so I ask for general description,
17 yes.

18 Q No names given to you at that time?

19 A No, not at that time.

20 Q Great. And then the witnesses left the park.
21 They were turned over to Terry Anderson and you
22 didn't see them again for the afternoon?

23 A No, I did not.

24 Q Great. You also described about a search warrant
25 that you participated and executed at 430—

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1 A [REDACTED] Lincoln Avenue.

2 Q — [REDACTED] Lincoln Avenue? Okay. This has already
3 been admitted as State's Exhibit 6-B?

4 THE COURT: 6.

5 BY MS. WOOTEN:

6 Q Just 6, I'm sorry. Describe to me again what
7 this is.

8 A It's a .45 caliber semiautomatic handgun.

9 Q Would this type of handgun, would it have ejected
10 shell casings had it been used?

11 A Yes, ma'am, it would have.

12 Q Is that a revolver?

13 A No, it's not. It's a semiautomatic handgun.

14 Q Okay. So if rounds were fired from this gun they
15 would ejected, correct?

16 A Yes, ma'am, they would have.

17 Q You testified earlier that you helped to secure
18 the scene, quarantine it?

19 A Yes, ma'am.

20 Q Is that correct?

21 A That's correct.

22 Q Did you find any shell casings at the scene?

23 A No, ma'am, we did not find any shell casings at
24 the scene.

25 MS. WOOTEN: Just one second please, Your

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1 Honor.

2 THE COURT: Yes, ma'am.

3 MR. SMILEY: No further questions, Your

4 Honor. Thank you.

5 THE COURT: Mr. Swilley.

6 MR. SWILLEY: Thank you, Your Honor.

7 **CROSS-EXAMINATION**

8 BY MR. SWILLEY:

9 Q Mr. Huggins, talking again about the firearm that
10 was recovered, once it was recovered it was never
11 dusted for fingerprints, was it?

12 A I'm unsure. Once I turn it over to the
13 investigators that is their job —

14 Q Right.

15 A —to dust for fingerprints.

16 Q All right. And based upon your knowledge now
17 that wasn't done as far as you know?

18 A I do not know. I cannot answer that question.

19 Q Okay, that's fine. And as far as where the gun's
20 gone, the gun was never shown to any eyewitnesses,
21 was it, to your knowledge?

22 A As far as?

23 Q As you know.

24 A Which eyewitness are you talking about?

25 Q Well, anybody, any of the witnesses that any

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1 people found in the park. It was never shown to
2 anybody else?

3 A No, not that I'm aware of.

4 Q Okay. So there's really nothing as far as
5 forensics that you're aware of that links this gun
6 to anything that went on in Pride Park, correct?

7 A I'm not sure.

8 Q I mean, as far as you know.

9 A As far as I know, no, I don't know.

10 Q Okay. And let me ask you, this gun, it wasn't,
11 it wasn't registered as — well, as far as you know,
12 I mean, it was, it was being possessed lawfully,
13 right?

14 A As — without doing a background check, yes, it's
15 been possessed lawfully.

16 Q Correct. And let me tell you, when you said you
17 were in the park, I'm sorry, you're talking about
18 talking to the witnesses or getting sequestered, did
19 you have your recorder on, your mic?

20 A I can't remember if I had it on or not to be
21 honest with you.

22 Q Okay. So you don't know if anything was ever
23 recorded about as far as what you were doing in the
24 park?

25 A I'm not sure.

SW - J. STONER - DIRECT

1 Q Okay. Thank you, Investigator.

2 THE COURT: Redirect, Mr. Holt?

3 MR. HOLT: No, sir, Judge.

4 THE COURT: All right, thank you. You may
5 step down.

6 All right, Mr. Holt, you may call your
7 next witness.

8 MR. HOLT: Your Honor, the State will call
9 Jennifer Stoner from SLED.

10 THE COURT: All right.

11 THE CLERK OF COURT: Put your left hand on
12 the Bible and raise your right.

13 WHEREUPON,

14 **JENNIFER M. STONER,**
15 having been duly sworn by the Clerk of Court,
16 testified as follows:

17 THE CLERK OF COURT: If you'll have a seat
18 and state your name for the record.

19 THE WITNESS: Jennifer M. Stoner.

20 **DIRECT EXAMINATION**

21 BY MR. HOLT:

22 Q Ms. Stoner, where are you currently employed?

23 A I'm employed by the South Carolina Law
24 Enforcement Division in the trace evidence section
25 of the forensic lab.

SW - J. STONER - DIRECT

1 Q All right. And the South Carolina Law
2 Enforcement Division is more commonly known as?

3 A It's known as SLED.

4 Q All right. And I think you stated your
5 occupation. Can you say what it is you do within
6 that department?

7 A Within the trace department we have several
8 different categories of testing in which we perform
9 analysis. We perform gunshot residue analysis. We
10 perform fiber analysis, paint analysis, glass
11 analysis, explosive analysis, fire debris analysis,
12 and what is called a trace other category which
13 encompasses many different unknown identifications
14 and comparisons.

15 Q How long have you been doing that?

16 A I've been at SLED for 16 years and I've been in
17 trace evidence for 15 years.

18 Q All right. What did you do before that?

19 A I graduated college and then I spent — I was
20 hired by SLED, and I worked for a year in the
21 analysis department.

22 Q What was your major from college?

23 A Chemistry.

24 Q Okay. And did you receive any specialized
25 training after college while you were with SLED?

SW - J. STONER - DIRECT

1 A I went through a four year training program —
2 well, first when I started the drug analysis
3 department I attended criminal justice academy and
4 completed the in-house drug training program so that
5 I was qualified to analyze controlled substances.
6 After a year in that department I transferred into
7 the trace evidence section and began a four year
8 training program under the supervisor and the senior
9 analyst in that department. During that time frame
10 and up until currently I do take numerous courses
11 and classes that will be put on in types of analyses
12 that we perform for on the instrumentation that we
13 use to perform the analyses.

14 Q And what is gunshot residue like you were talking
15 about earlier?

16 A Gunshot residue is a term that's used to describe
17 a cloud that's formed when a weapon is discharged.

18 May I show a picture?

19 Q Yes, ma'am.

20 A Can I stand up?

21 Q Sure.

22 THE COURT: Yes.

23 THE WITNESS: These are pictures of
24 several different guns and just shows a cloud of
25 debris that comes out of a gun when it's fired.

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1 This cloud contains microscopic particles that will
2 deposit on your hands, on your clothes, or anything
3 in the vicinity to the weapon when it was
4 discharged.

5 Q And what do you call the process by which you
6 look for GSR? What's that called?

7 A Can you rephrase that?

8 Q What types of equipment are used in looking for
9 GSR?

10 A When we analyze for GSR we use an instrument
11 that's called a scanning electron microscope. All
12 it does is it does an automated search of our
13 samples, magnifies them, and then performs a
14 chemical analysis to determine what each particle is
15 made of elementary.

16 Q Now doing this for a living are you a member of
17 any professional organizations associated with doing
18 this type of work?

19 A I'm a member of the Southern Association of
20 Forensic Scientists and a member of AFTEE, which is
21 the Association of Trace Evidence Examiners.

22 Q Now have you ever testified as an expert in court
23 before?

24 A I have.

25 Q And approximately how many times?

SW - J. STONER - DIRECT

1 A I've testified 76 times.

2 Q And were you made an expert each time?

3 A I was.

4 Q And approximately how many GSR or gunshot residue
5 tests have you conducted?

6 A Over the 15 years that I've been in trace I've
7 probably examined well over a thousand examinations
8 on GSR.

9 Q All right. In what courts have you testified?

10 A I have testified in federal court, state court,
11 and that court in New Jersey.

12 MR. HOLT: Your Honor, at this time the
13 State would ask Ms. Stoner be qualified as an expert
14 in the field of trace evidence.

15 THE COURT: Voir dire regarding
16 qualification, Mr. Jones?

17 MR. JONES: Just one question, Your Honor.

18 THE COURT: Yes, sir.

19 MR. JONES: Your 76 qualifications as an
20 expert, how many of them have been associated with
21 GSR?

22 THE WITNESS: Probably about 40.

23 MR. JONES: I have no further questions.

24 THE COURT: All right.

25 MR. SWILLEY: I have none.

SW - J. STONER - DIRECT

1 THE COURT: All right. The Court will
2 qualify this witness as an expert in the field of
3 trace evidence, specifically in gunshot residue
4 analysis. Ladies and gentlemen, let me tell you
5 what that means. Ordinarily if a witness is not
6 testifying as an expert, the witness' testimony in
7 the form of opinions or inferences is limited to
8 those things which are within the perception of the
9 witness are granted based on the perception of the
10 witness are help to have a clear understanding of
11 the witness' testimony and do not require special
12 knowledge, skill, training, or experience. However,
13 if scientific technical or other specialized
14 knowledge will help the trier of fact, and that's
15 you in this case, to determine a fact and issue, a
16 witness qualified as an expert by knowledge, skill,
17 experience, training or education, may testify in
18 the form of an opinion. So basically the difference
19 between the nonexpert witness and an expert witness
20 is that an expert witness is allowed to give an
21 opinion on matters within their field of expertise.
22 Okay?

23 I've qualified this witness as an expert
24 in the field of trace evidence specifically gunshot
25 residue.

SW - J. STONER - DIRECT

1 MR. HOLT: Thank you, Your Honor.

2 BY MR. HOLT:

3 Q Now how do things work at your department?

4 Specifically how do you get evidence, how does the
5 testing process work, and how is it conducted?

6 A Evidence comes into the laboratory by the
7 individual police agency or a coroner's office or
8 fire department, depends on the type of evidence
9 that is submitted. The submitting officer will --
10 or evidence custodian, will bring the evidences into
11 the facility. They wait until there's an opening in
12 the log-in section. The log-in section is where all
13 evidence intake occurs for the lab. Once they go
14 into the log-in section they present their evidence
15 to the technician that is working that area. They
16 fill out -- they usually pre-log things. They fill
17 out like suspect's name, victim's name, where the
18 incident happened and the items they're submitting.
19 The evidences is logged in. It's given a unique lab
20 identifier, and each item is given a unique item
21 number. The evidence is sealed in the presence of
22 the officer bringing it in, and it's then
23 transferred to evidence storage area for each
24 department from which we pick up the evidence.

25 MR. HOLT: Permission to approach, Your

SW - J. STONER - DIRECT

1 Honor?

2 THE COURT: Yes, sir.

3 BY MR. HOLT:

4 Q I'm gonna show you what's been marked for
5 identification purposes as State's Exhibit 8 and ask
6 if you can tell me, do you recognize that object?

7 A This is a paper bag that would have come in a
8 sealed box. We usually don't receive evidence in
9 bags. It's usually in an outer box with all areas
10 sealed and initialed. But on the back of this it
11 has the lab number of the case, item number,
12 initials, and the date, so I can recognize it.

13 Q All right. And since the last time you've seen
14 it have there been any changes or alterations made?

15 A I sealed it here with my initials and date and
16 the seal is still intact.

17 MR. HOLT: Your Honor, at this time the
18 State would ask we introduce into evidence State's
19 Exhibit 8.

20 THE COURT: 8. Any objection, Mr. —

21 MR. JONES: No.

22 THE COURT: —Jones? Mr. Swilley?

23 MR. SWILLEY: If I can see it.

24 (Pause.)

25 MR. SWILLEY: No, sir, no objection, Your

SW - J. STONER - DIRECT

1 Honor.

2 THE COURT: All right, admitted in
3 evidence, State's Exhibit Number 8 without
4 objection.

5 (WHEREUPON, State Exhibit No. 8
6 was admitted into evidence.)

7 BY MR. HOLT:

8 Q Can you tell who in your department signed for
9 that, where it went, and when you received it?

10 A This evidence I received 10/2/2013. That is when
11 we opened it, processed it, and re-sealed it.

12 Q And can you open it now? Who sealed it?

13 A I did.

14 Q All right.

15 A Do you want me to take it out?

16 Q Uh-huh. Is it sealed again?

17 A When we process evidence for gunshot residue we
18 process in an evidence processing room. For most of
19 our evidence we lay down what we call butcher paper
20 to collect anything that may fall off of the
21 evidence while we're processing it in case we need
22 to preserve it. In this case we processed the
23 evidence on the paper, wrap it in the paper, and
24 then we take it and seal it again.

25 Q Now within that second layer of protection can we

SW - J. STONER - DIRECT

1 unwrap that and see what's in there?

2 A Does anyone have a knife for this one? Or
3 scissors?

4 THE COURT: You can't bring knives to the
5 courthouse.

6 THE WITNESS: You can't. Thank you.

7 (Exhibit is opened.)

8 BY MR. HOLT:

9 Q Can you just describe to the jury what that is?

10 A This is a blue T-shirt we collected gunshot
11 residue from?

12 Q All right. Now I want to ask you to look at and
13 see if you recognize State's Exhibit 19.

14 A State's Exhibit 19 are the samples that we
15 collected from the blue T-shirt.

16 Q All right. Now have you seen them before?

17 A Yes, when I collected them and sealed them.

18 Q So since you sealed them have there been any
19 changes, alterations, or deletions made?

20 A No, the seal is in tact on the top of the
21 envelope. It has not been.

22 MR. HOLT: Your Honor, at this time the
23 State would move State's Exhibit 9 into evidence.

24 THE COURT: Any objection, Mr. Jones?

25 MR. JONES: No, sir.

SW - J. STONER - DIRECT

1 THE COURT: Mr. Swilley?

2 MR. SWILLEY: No, sir.

3 THE COURT: All right. Admitted into
4 evidence without objection State's Number 19.

5 (WHEREUPON, State Exhibit No. 19
6 was admitted into evidence.)

7 BY MR. HOLT:

8 Q All right now, feel free to look at your report.
9 But using State's Exhibit 19 and 18 can you explain
10 to us what you did and what you found?

11 A This is — we make our own samples, particle
12 collectors in the lab. We don't actually use the
13 GSR kit for these collections, but it's the same
14 type of collection kit that was used. What we do is
15 we open the shirt and lay it out flat on the front
16 because if you discharge a firearm you don't expect
17 to find anything on the back of the shirt. We're
18 looking at the front of the shirt. We look at the
19 chest area and the sleeve area of the shirt. So we
20 will take these, use four them and dab over each
21 area and then mark the particle left of the area it
22 was collected from.

23 Q All right. Now specifically on that shirt did
24 you find any GSR, gunshot residue?

25 A On this shirt, which is item 11, and the particle

SW - J. STONER - DIRECT

1 lift that I collected from the shirt are item 11.1,
2 I found one round particle associated with gunshot
3 residue in my collection from that shirt.

4 Q Why would the particle be round?

5 A When a firearm is discharged there's a lot of
6 heat and pressure involved in that, and that heat
7 and pressure causes the particular matters ejected
8 from that gun to become molten which causes the
9 particular matter to become round.

10 Q Okay. Now what -- let me ask you this.

11 MR. HOLT: Permission to approach, Your
12 Honor?

13 THE COURT: Yes, sir.

14 BY MR. HOLT:

15 Q I'm gonna show you what's been marked as State's
16 Exhibit 18 and ask, without telling me what it is if
17 you recognize it?

18 A This is the lab number from the case I am
19 testifying on with the container number which
20 contains items of evidence and my initials are on it
21 when I picked it up and when I sealed it.

22 Q So since last that bag was opened you were there?

23 A Yes, seal was intact.

24 Q All right. Have there been the changes to the
25 bag that you can tell?

SW - J. STONER - DIRECT

1 A There's a State's exhibit sticker on it.

2 MR. HOLT: Your Honor, at this time the
3 State would ask to move State's Exhibit 18 into
4 evidence.

5 THE COURT: Any objection?

6 MR. SWILLEY: I have no objection.

7 MR. JONES: I have none.

8 THE COURT: All right admitted into
9 evidence without objection.

10 (WHEREUPON, State Exhibit No. 18
11 was admitted into evidence.).

12 BY MR. HOLT:

13 Q All right, Ms. Stoner, crack the bag open and
14 tell us exactly what we got inside. Why did you
15 seal it back up and unseal it? What's the purpose
16 of all this?

17 A Just to show that the evidence is secure, that
18 when we received it it was sealed and initialed so
19 that we can show that no one had tampered with the
20 evidence prior to us receiving it and that when it
21 was presented to the agency it was not tampered with
22 after the analysis. Container B contains three GSR
23 kits from Joshua Reed, Johnathan Reed, and Milton
24 Hunter.

25 Q All right. Now what GSR did you find on any of

SW - J. STONER - DIRECT

1 those containers, or any of those GSR kits?

2 A On the kit from Milton Hunter we did not perform
3 an analysis on that. With gunshot residue, when
4 you're as a victim and you're shot, we expect to
5 find gunshot on you because the barrel of the gun
6 was pointed at you and all that residue is going
7 towards you. A lot of the questions we get asked,
8 did the victim have a gun. We're unable to answer
9 that question so we're moving towards not analyzing
10 victim kits. And in this case I called to find out
11 if they needed the victim kit analyzed. It was told
12 I did not so we did not proceed with that analysis.

13 Q All right. How about the other two?

14 A The kit from Josh Reed on the right palm — when
15 you collect a gunshot sit kit you collect from the
16 right palm, back of the right hand, left palm and
17 back of the left hand. So we have four separate
18 collection areas. On the right palm I found one
19 particle of gunshot residue. On the back of the
20 right hand I found one round particle associated
21 with gunshot residue and the left palm and the left
22 back I did not find any particles associated with
23 gunshot residue.

24 Q And who was that on?

25 A That was on Josh Reed.

SW - J. STONER - DIRECT

1 Q All right. And what about the second kit?

2 A Number 9 was a kit from Johnathan Reed. On the
3 kit from Johnathan Reed, on the back of the left
4 hand I found one round particle consistent with
5 gunshot residue.

6 Q And on the other hand?

7 A And the other areas of the hand, negative.

8 Q All right. Now is the information stored from
9 your findings on any type of report?

10 A We generate a report which is State's Exhibit 21.
11 This is the report that I generated from the
12 evidence I analyzed in this case.

13 Q And you recognize it?

14 A Yes.

15 Q Has anybody changed it or deleted anything or
16 messed anything up since last you've seen it?

17 A It did not appear to be.

18 Q Okay.

19 MR. HOLT: Your Honor, at this time State
20 would ask to move ---

21 THE COURT: State's Number 21.

22 MR. HOLT: State's number 21 into
23 evidence.

24 THE COURT: Mr. Jones?

25 MR. JONES: I want to look at that.

SW - J. STONER - CROSS

1 (Pause.)

2 MR. JONES: No objection.

3 MR. SWILLEY: There is none.

4 THE COURT: Admitted into evidence without
5 objection.

6 (WHEREUPON, State Exhibit No. 21
7 was admitted into evidence.)

8 MR. HOLT: Thank you very much, Your
9 Honor. Your Honor, I don't believe the State has
10 any further questions.

11 THE COURT: All right. Mr. Jones?

12 MR. JONES: Yes, sir.

13 **CROSS-EXAMINATION**

14 BY MR. JONES:

15 Q Ms. Stoner I'm sensitive to rank. Are you Agent
16 Stoner or Ms. Stoner? Tell me how to address you.

17 A I'm a lieutenant.

18 Q All right. Sorry, Lieutenant. I have several
19 questions. Did I understand that the GSR evidence
20 got to you on October the 2nd this year?

21 A That is when -- it came into SLED on -- I don't
22 have the sheet. It was delivered 2/23/2012.

23 Q So you got it way back?

24 A Right, but I did not physically have it in my
25 custody until recently.

SW - J. STONER - CROSS

1 Q Was it stored somewhere at SLED?

2 A It is either stored in our log-in section
3 downstairs in the secure evidence storage or in our
4 department in our evidence room.

5 Q When did you you actually get possession of it?

6 A On October first of this year.

7 Q Okay, all right. Now does it make any difference
8 that it sat somewhere for a year-and-a-half before
9 you analyze it?

10 A It does not. With gunshot residue, once you
11 collect the evidence it will stay there until it's
12 physically removed or destroyed.

13 Q Okay. Particularly as to the shirt, did you
14 collect the evidence off the shirt in October or did
15 somebody collect evidence of the shirt in February
16 of 2012 and just store it?

17 A It was collected on October 2nd of 2013.

18 Q Okay. Now your picture that you had of the
19 cloud, I don't believe that's in evidence, but could
20 I see that a second?

21 A Which one you want? All three of them?

22 Q I didn't know you had three. Okay, let's look at
23 those top two. And would it be a fair statement to
24 say that that top picture of the cloud -- and if you
25 can hold that up for us -- is that one gunshot?

1 A Yes.

2 Q Okay. And this probably is a silly question but
3 do you have any idea, educated guess, how many
4 little GSR particles might be in that cloud?

5 A Thousands.

6 Q Thousands, okay. So if there were five shots
7 there would be five clouds?

8 A Each time the weapon is shot it would produce
9 another cloud. Yes.

10 Q Okay. Again, with thousands of little particles
11 floating around?

12 A Yes.

13 Q Okay. And if in those five clouds of thousands
14 of particles, over five thousands of particles that
15 are floating around, if a person was in the
16 vicinity -- or let me ask this, how close do I have
17 to be to come into contact with a cloud?

18 A It depends on the caliber of the weapon.

19 Q All right.

20 A Larger caliber weapons will produce a larger,
21 more dense cloud than a smaller caliber weapon.

22 Q Okay.?

23 A The general rule we look at is within three to
24 five feet of that cloud.

25 Q Okay, that's a good start. So I'm three to five

SW - J. STONER - CROSS

1 feet away and I've got thousands of particles
2 floating around. What surfaces might those
3 particles attach to?

4 A They can land on anything in that vicinity.

5 Q Okay. So it could be skin, it could be clothing,
6 it could be tables, it could be anything?

7 A Yes.

8 Q All right. Once a particle has attached to
9 something — and let's use a hand, okay?

10 A Uh-huh.

11 Q If I got — if I'm firing five times and I've got
12 thousands of particles all around and some of them
13 would probably come into contact with my hand —

14 A Yes.

15 Q —would that be a fair statement?

16 A It is.

17 Q Okay. Is it possible for those particles to
18 transfer to another object from my hand?

19 A It is possible. We don't — I don't have any
20 transfer studies on how many you expect to transfer,
21 but anything in that cloud can obtain particles on
22 it if it's in that vicinity.

23 Q Okay.

24 A And you can transfer it from your hand.

25 Q All right. And so if I have particles around and

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1 they could be on my clothes, they could be on my
2 hand, it could be anywhere, correct?

3 A Yeah.

4 Q And as I'm moving around could those particles
5 then attach to something else? Such as, let me give
6 you an example. If I grab the door handle could a
7 particle attach to a door handle?

8 A It could.

9 Q Okay. Or any other object?

10 A Yes.

11 Q Okay. Were you asked to examine GSR from any
12 other objects other than what you just mentioned?

13 A We were not.

14 Q Okay. Such as a door handle to a vehicle?

15 A We normally do not analyze those, but if asked we
16 do. But we cannot -- if I collect something from a
17 door handle I can't tell if it got there from
18 transfer or if it was vicinity to a shot being
19 fired.

20 Q Okay.

21 A So that's -- we normally aren't asked that
22 question to analyze those, but if we are, we will do
23 it. I can't answer, say yes, that was from
24 transfer.

25 Q Got you. It's just there?

SW - J. STONER - CROSS

1 A It's there.

2 Q All right. If I have a gun in my hand and I
3 shoot five times with five clouds of thousands of
4 particles and I put that gun in my pocket, would it
5 be a fair assumption that there may be particles in
6 my pocket?

7 A Yeah.

8 Q Were you asked to examine any items of clothing
9 that had pockets?

10 A I was not.

11 Q All right. The — is it number 8 or number 18?
12 Which one was the shirt?

13 A The shirt I believe was 18. You mean State's
14 Exhibit or item number?

15 Q I'm sorry, State's Exhibit?

16 THE COURT REPORTER: 8.

17 THE WITNESS: 8, sorry.

18 BY MR. JONES:

19 Q Number 8. That was a blue shirt that you
20 identified as being from Mr. Joshua Reed; is that
21 correct?

22 A It was — I was told that it was from Johnathan
23 Reed.

24 Q Of Johnathan Reed, I'm sorry. That's item number
25 8?

SW - J. STONER - CROSS

1 A Well, it's my item number 11.

2 Q Okay.

3 A It's State's Exhibit 8.

4 Q All right, sorry. Let me back up a minute. Let
5 me go back to the cloud we're talking about with

6 these thousands of particles going around. And I

7 had asked about the, a pocket of a item of clothing

8 that possibly could have particles in it, all right.

9 And you told me that it was also possible to

10 transfer from a hand with particles to another

11 object and have — but you don't how — I guess my

12 question is, you can't determine whether or not a

13 particle came initially from the cloud or got

14 transferred somehow; is that correct?

15 A That is correct. And in our results for that it

16 could have, we do a positive that it could have been

17 from being in the cloud, handling, firing, or being

18 in the vicinity of discharging a firearm or touching

19 something that had gunshot residue on it.

20 Q Okay. Now if I have shot a gun five times with

21 thousands of little particles floating around, would

22 it be logical to assume that I would have more than

23 one particle on the inside of my palm and one

24 particle on the outside of my palm?

25 A It depends on what you have done after you have

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1 fired the gun. When you collect a gunshot residue
2 kit we can only link anything found on the hands to
3 six hours prior to when that kit was collected, or
4 six hours from the time of the shooting. So if you
5 shoot a weapon and you wash your hands or wipe your
6 hands off, your body also absorbs that residue so
7 everything you do with your hands will remove it.
8 It doesn't stay on your hands indefinitely. After
9 we've done in-house studies, after three to four
10 hours, we don't see anything on the hand from
11 firing.

12 Q Got you. All right.

13 MR. JONES: If I might approach, Your
14 Honor?

15 THE COURT: Yes, sir.

16 BY MR. JONES:

17 Q If I did this, could I transfer a particle from
18 me to you?

19 A You could.

20 Q Okay. And if I did —

21 A If you have particles on your hand.

22 Q Correct. Let's assume that I have a gazillion
23 particles.

24 A If you shot a gun and you shake my hand, yes.

25 Q If I do this, I'm gonna get one on the outside,

SW - J. STONER - CROSS

1 on the inside if I got them on both hands?

2 A It's a possibility, yes.

3 Q Okay. And any — is there any other contact that
4 could or any other way other than direct physical
5 contact that these particles can get on something?

6 A Just from handling the weapon, firing the weapon
7 or being in the vicinity to it, or touching
8 something that has gunshot on it.

9 Q Okay. And I don't think I asked this but the
10 cloud that's floating around for about three to five
11 feet, do you have any idea how long that cloud stays
12 a cloud before the particles disburse or fall down?

13 A I don't. These are taken with high speed
14 photography so you don't even see this cloud when
15 you fire a weapon so it's not visible to your eye
16 when you see it. But I, I don't have any knowledge
17 of how long it will stay; it depends on the caliber
18 of the gun.

19 Q Okay?

20 A And the ammunition.

21 Q All right, and a couple more questions. The kit
22 that came from Mr. Hunter, tell me again why you did
23 not analyze that one?

24 A We in the past we would analyze victim GSR kits,
25 but more often it was happening we were being asked

SW - J. STONER - CROSS

1 did the victim have a weapon, could they have fired
2 a weapon. And we can't answer that question because
3 we expect to find it on their hands from being shot
4 so we've away from analyzing victim GSR kits unless
5 there are extenuating circumstances that they need
6 it analyzed so we're not routinely doing it anymore.
7 And in this case I called to find out if they needed
8 it done, and they told me it was all right to not
9 analyze in this case, that if something came up in
10 the future we could look at it but there was no
11 question they needed answered with this kit.

12 Q Okay. When you -- but before we leave that, if I
13 am, if I'm shot in the head area why would you it be
14 logical to assume I'm gonna have gunshot residue on
15 my hands?

16 A We find it on the hands of almost all victims
17 that have been analyzed that have been shot in
18 various different positions of being shot. It just,
19 the cloud, it disburses, and you find it on the
20 victims.

21 Q Okay. Again, we don't know in this situation
22 because it wasn't analyzed?

23 A I did not analyze it.

24 Q All right. And there was some -- there was a
25 question or two yesterday that left me a little

SW - J. STONER - CROSS

1 confused. Do you have a limit on how many GSR
2 analyzes you can do in any particular case?

3 A No. There is confusion with that within the lab
4 I think because the DNA department has a limit on
5 samples per case. We do not have a limit. But I
6 have had several calls from different agencies over
7 the past few months asking me that so we're trying
8 to let them know there is no limit for that. We —
9 whatever you collect we will analyze.

10 Q So in this case if you had items of clothing or
11 swabs from steering wheels of the vehicle or swabs
12 from a door or any of that nature, you could have
13 done all of that?

14 A I could not do swabs. If it was a particle
15 collection I could have analyzed it, but it would be
16 very time consuming so they have to decide what
17 they — the time frame they need the evidence
18 analyzed and what they're bringing in.

19 Q I think I used the wrong terminology but if —
20 how would you get a GSR particle off of, say a door
21 handle to a vehicle.

22 A Using the particle lift.

23 Q That little thing —

24 A Standard collection for any gunshot residue.

25 Q —that you dab on there?

SW - J. STONER - CROSS

1 A Yeah.

2 Q Okay, got you. But you could have analyzed if
3 you had received that type of, what you call that
4 again?

5 A A particle lift.

6 Q Particle lift from any item?

7 A I could have if the agency requested, yes.

8 Q Okay.

9 MR. JONES: One second please, Your Honor.

10 THE COURT: All right.

11 MR. JONES: No further questions. Thank
12 you.

13 THE COURT: All right, cross-examination,
14 Mr. Swilley.

15 **CROSS-EXAMINATION**

16 BY MR. SWILLEY:

17 Q Ms. Stoner, at the beginning of your report it
18 says that there's three types of particle that you
19 found, right? Actual gunshot residue particles,
20 particles that are consistent with prime or residue,
21 or particles that are associated with prime or
22 residue; is that correct?

23 A That's correct.

24 Q Okay. Now as far as, tell me, so there's the
25 actual particles of gunshot residue that you, that

SW - J. STONER - CROSS

1 you come to the conclusion actually came from a
2 gunshot. And what's — is that correct?

3 A Yes.

4 Q And what's the difference between a particle
5 consistent with the primer and particles that are
6 associated with primer?

7 A When the cloud formed you're gonna get all
8 different types of particles in that cloud. You're
9 gonna have the three component particles with the
10 barium, antimony, and lead which are considered the
11 gunshot residue.

12 Q Okay.

13 A These are the ones that are considered unique to
14 gunshot residue; they came from the discharge of a
15 firearm. Other particles are produced during that
16 discharge which we consider consistent and
17 associated. That just means the consistent
18 particles are usually two component particles. They
19 don't have all three of those components present.
20 And there are possibilities; they could have come
21 from another source. Normally we look fireworks can
22 give you molten particles, but usually in fireworks
23 we have sulfur, magnesium, different elements
24 present that we cannot have present in any particles
25 that we call consistent or associated with gunshot

SW - J. STONER - CROSS

1 residue. Associated particles are, I would say, the
2 third positive that we have because they're
3 basically round lead particles. You can find those
4 in other applications, but usually there's iron
5 present, or yet again, magnesium or sulfur. If
6 those are present we don't call them and they're
7 considered a negative. In this case they were round
8 lead particles which fell into our category of
9 particles associated with gunshot residue.

10 Q Okay. And am I correct when I say that the --
11 you said the actual gunshot residue which is a
12 combination of lead, barium, and antimony, those are
13 unique to gunshot residue?

14 A They are.

15 Q And the particles that are consistent are the
16 two, you said the two composite particles?

17 A Usually two component particles.

18 Q Two component particles. Is that more consistent
19 with like, I guess, the residue that drifts further
20 from the gun I guess?

21 A No, it's not. It's just, all these particles are
22 formed but since there is a possibility that
23 something else in the environment could provide that
24 even though I had no indication of it, we put that
25 disclaimer in there because it is a possibility.

SW - J. STONER - CROSS

1 Q And then the particles that are associated with a
2 single component ---

3 A Yes.

4 Q ---and that's the least, I guess that would be
5 the least consistent with gunshot residue?

6 A It's gonna tier. The gunshot residue is most
7 positive consistent than associated.

8 Q Okay, all right. And I'm gonna refer to your
9 item 9, 9.4.

10 A Uh-huh.

11 Q You have --- that's the left back of Johnathan
12 Reed. Say you have one particle that is consistent
13 with gunshot residue that was found --- and this is
14 the particle that, that may originate from
15 additional sources, correct?

16 A Uh-huh, yeah.

17 Q And as to your 9.3 which is the left palm of
18 Johnathan Reed, there was no, nothing found,
19 correct?

20 A No prime or gunshot residue was found.

21 Q As to the right back of Johnathan Reed there was
22 no prime or residue found, right?

23 A That is correct.

24 Q And as to right palm of Johnathan Reed there was
25 no prime or gunshot residue found, correct?

SW - J. STONER - CROSS

1 A That is correct.

2 Q All right. And I'm gonna refer to your 8.1 which
3 is the right palm of Joshua Reed. That was one
4 particle of gunshot residue which is the, unique to
5 the gunshot — you said it's unique to gunshot
6 residue, right?

7 A Yes, sir.

8 Q And then right back was one particle that was
9 associated with the gunshot residue of Joshua Reed,
10 item 8.2?

11 A Yes.

12 Q Okay. Now is it -- now is having gunshot residue
13 on both sides of a hand, is that more consistent
14 with firing, or firing a weapon or holding a weapon
15 than just having particles consistent on one side?

16 A Can you rephrase that please.

17 Q Sorry. Now is having gunshot residue on both
18 sides of your hand, is that more consistent with
19 firing a weapon or holding a weapon than if you just
20 have particles consistent with it on one?

21 A It's not — it just means that I found something
22 that I can call gunshot residue. The other
23 particles are consistent or associated. You see it
24 in gunshot residue; but the fact that it's on the
25 palm in the back, it just means you were in the

SW - J. STONER - CROSS

1 vicinity to that firearm when it was discharged.

2 Q Right. You just -- so with the -- with 9, with
3 item 9.4 where particle consistent, that just means
4 that you -- it was -- it was likely you were in the
5 vicinity when the gunshot was fired, correct?

6 A That's correct.

7 Q Okay. And that's Johnathan Reed, 9.4, correct?

8 A And when we report, even when we find gunshot
9 residue on hand, we can't say that they fired a
10 weapon as opposed to have been near the weapon when
11 it was fired.

12 Q Right, right, okay. And if you held a weapon
13 that had been fired at some time, would you be more
14 likely to have gunshot residue on your palm?

15 A Anything you handle will touch the area of your
16 hands if you would, so yes, handling on your palms
17 you would more likely find it on your palm.

18 Q You mean more likely that you held a gun that it
19 found on your palm, right? You mean it was more
20 likely gunshot residue, for any residue found on
21 your palm is more likely you have it on your palm.
22 And if it's not found, more likely that you didn't,
23 correct?

24 A If you have it on your palm I can say you handled
25 a weapon or you were in the vicinity when the weapon

SW - J. STONER - CROSS

1 was fired.

2 Q Okay.

3 A But I can't tell you if -- what happens is, after
4 you're in the vicinity to a weapon when it's fired
5 or if you fire a gun, anything you do will remove
6 that residue and after actually three to four hours
7 we don't expect to find any. So if you collect a
8 kit and I only find two particles on it, I don't
9 know what happened from the time it was collected
10 until I, the evidence was collected.

11 Q Okay.

12 A So when the gun was shot and the evidence was
13 collected, the particles could have dissipated,
14 could have been removed. They may not have been
15 there to begin with; I have no knowledge of that.
16 So therefore, when I find something, I have to say
17 that it was either you fired a weapon, you were near
18 a weapon when it was fired, you handled something
19 that had gunshot residue on it.

20 Q Okay. And the T-shirt, the bag the T-shirt came
21 in, do you have that, this bag? All right. And you
22 said, you testified to Mr. Jones you were told that
23 was a T-shirt of Johnathan Reed?

24 A I have a note on my sheet that I wrote down. It
25 said Johnathan Reed, but I may have misunderstood

1 them. I just analyzed it, and I did not have the
2 name in the report of who it was from.

3 Q And that evidence property right here, it states
4 that it was the T-shirt of Joshua Reed, correct?

5 A It does.

6 Q Okay. So there's really no way for you to know
7 what person that T-shirt --

8 A I have to go with what was on the bag.

9 Q Okay.

10 A What they submitted it as.

11 Q Okay, I understand. I have nothing further.

12 THE COURT: Redirect?

13 MR. HOLT: None, Your Honor.

14 THE COURT: All right, thank you ma'am.
15 You may step down.

16 Mr. Holt, make sure that the court
17 reporter gets all these exhibits now before she
18 packs up her stuff and leaves and takes things that
19 were not exhibits.

20 MR. HOLT: Your Honor, at this time the
21 State will call Terry Anderson.

22 THE COURT: All right, let's take a break
23 before we start.

24 MR. HOLT: Oh, I apologize.

25 THE COURT: Ladies and gentlemen, it's

1 about — you've been in the courtroom about an hour
2 15 minutes. We're gonna take a morning break at
3 this time before we go with the next witness so go
4 to your jury room. Relax about 10, 15 minutes.
5 We'll send for you very shortly. Do not discuss the
6 case among yourselves.

7 (WHEREUPON, the jury was removed from the
8 courtroom and the following
9 proceedings commenced in open court.)

10 THE COURT: All right, I want to put my
11 reasons on the record for the overruling of the
12 objection of Mr. Jones and Ms. Wooten and
13 Mr. Swilley with regard to the weapon. I did not
14 want to in the presence of the jury because it might
15 be, fear to be a comment on the facts, but I do
16 think that I need to put my reasons on the record.
17 And before I do that, Mr. Holt, do you have a copy
18 of the search warrant? I don't think it's been
19 introduced, but I'd like to see a copy of it, mainly
20 the return part of it, just the return. Do you have
21 the return?

22 MR. HOLT: Your Honor, it was used for
23 information during the motion that we had first
24 thing Monday morning. Yes, sir.

25 (Document tendered to the Court.)

1 THE COURT: All right. With regard to the
2 Exhibit 6 being the semiautomatic pistol and Exhibit
3 7 being the round found in the pistol, the Court
4 overruled the — first of all, there was no
5 objection to the search warrant itself, and so it
6 was not a motion to suppress because of an
7 improperly obtained search warrant but was a motion
8 to suppress the evidence obtained on that search
9 warrant on the grounds of relevancy and even if
10 relevant, that it was not admissible under 403. I
11 ruled that it was relevant, and to me it is relevant
12 because it corroborates the testimony of Asia Gregg
13 that Johnathan had a gun in his pocket. It is
14 probative, and as far as 403 is concerned, it is
15 probative of the fact that he participated in the
16 crime and was not merely present for a bystander and
17 this probative value is not substantially outweighed
18 by the danger of unfair prejudice, confusion of the
19 issues or misunderstanding or misleading the jury.
20 So that's where I see the relevance, that it is
21 relevant to the fact that another — it corroborates
22 the testimony of another witness that he had a gun
23 and this shows that he did have access to a gun or
24 ownership of a gun, and so it's relevant for that
25 factor. And I think that it's probative of the fact

1 that he was not just merely present but was a
2 participant or could have been a participant in the
3 circumstantial evidence of his participation, and
4 the jury has the right to consider that.

5 The reason I asked for the search warrant
6 is that the State did not offer a number of things
7 that were seized in the search warrant that I think
8 are clearly irrelevant and should not have been
9 introduced, and I would not have allowed them such
10 as a box of .45 caliber Federal rounds, a box of .38
11 special Federal rounds, a box of .40 caliber S&W
12 federal rounds, another — a baggie of marijuana, a
13 Winchester 410, other weapons, I mean other rounds,
14 Federal rounds, and plastic sandwich bags containing
15 three small bags of marijuana and plastic sandwich
16 bag of marijuana found in the kitchen and the green
17 leafy substance. All of those the State did not
18 offer, and I do not think they're relevant to the
19 issues that are here. But I do think that one, or
20 those two things that they did offer are relevant
21 for the reasons that I have stated because they do
22 corroborate the testimony of another witness in this
23 case, and the probative value is not substantially
24 outweighed by the danger of unfair prejudice. So
25 that was the reasons for allowing that and I just

1 wanted that record to reflect that.

2 All right, counsel, we'll take ten
3 minutes.

4 (WHEREUPON, a recess was taken from the
5 proceedings.)

6 THE COURT: Back on the record with regard
7 to Joshua Reed and Johnathan Reed. The defendants
8 are present in the courtroom with their attorneys.
9 The State is present represented by Mr. Holt and
10 Ms. Parker. Anything before I bring the jury in,
11 Mr. Holt?

12 MR. HOLT: No, sir, Your Honor.

13 THE COURT: Mr. Jones?

14 MR. JONES: No, sir.

15 THE COURT: Mr. Swilley?

16 MR. SWILLEY: No, Your Honor.

17 (WHEREUPON, the jury was returned to the
18 courtroom and the following
19 proceedings commenced in open court.)

20 THE COURT: All right, thank you. Ladies
21 and gentlemen, we are now ready to proceed. The
22 State will continue to present their case.

23 Mr. Holt, you may call your next witness.

24 MR. HOLT: Thank you, Judge. The State
25 would call Terry Anderson to the stand.

SW - T. ANDERSON - DIRECT

1 THE COURT: All right, Mr. Anderson.
2 WHEREUPON,

3 **TERRY M. ANDERSON,**
4 having been duly sworn by the Clerk of Court,
5 testified as follows:

6 THE CLERK OF COURT: Please have a seat.

7 **DIRECT EXAMINATION**

8 BY MR. HOLT:

9 Q Would you please give your whole name for the
10 jury.

11 A Terrance Michael Anderson.

12 Q And how old are you?

13 A 57.

14 Q All right. Where are you currently employed?

15 A I am self-employed as a private investigator.

16 Q All right. What type of jobs do private
17 investigators do?

18 A I basically do the same kind of thing I was doing
19 when I retired from the police department, but to a
20 different degree. I investigate car accidents,
21 domestic disputes, child custody disputes. I also
22 do some criminal work for defense attorneys.

23 Q Now before you were a private investigator what
24 did you do?

25 A I was with the Hartsville Police Department.

SW - T. ANDERSON - DIRECT

1 Q For how many years?

2 A For about almost 13 years.

3 Q How many years were you in law enforcement?

4 A Seventeen years.

5 Q Where did you work the other four?

6 A Before I went to Hartsville I was in the
7 Bennettsville Police Department ten months and
8 before that I was in Newberry North Carolina Police
9 Department for three-and-a-half years.

10 Q All right. And in law enforcement for 17 years,
11 on February 15th, 2012, where were you employed?

12 A I was with the Hartsville Police Department as
13 one of the detectives.

14 Q All right. And can you explain to us what
15 happened on February 15th, how you were notified of
16 the crime at Pride Park?

17 A Yes, sir. I was at the police department with
18 Corporal South. Captain Patricia Ray came in and
19 told us there was a shooting at Pride Park.
20 Corporal South and I responded in my car to Pride
21 Park. It took us about 30 seconds to get there.

22 Q All right. And how did you become primary on the
23 scene and explain to the jury what primary might be?

24 A I became the primary 'cause I was basically the
25 first detective on the scene so I started collecting

SW - T. ANDERSON - DIRECT

1 some information. And the primary investigator is
2 basically in charge of the investigation.
3 Lieutenant Rudick or other officers would ask me if
4 I needed something done; I would tell them to do
5 something. If I needed a search warrant, like I
6 told detective lieutenant, or Sergeant Mike Anderson
7 about doing search warrants at the residences. I
8 told Lieutenant Rudick I needed some photo lineups
9 to be shown to witnesses, stuff like that.

10 Basically the primary is someone who coordinates the
11 investigation.

12 Q And when you arrived at Pride Park what did you
13 notice and what steps did you take?

14 A When I arrived at Pride Park there were already
15 several officers there; I'm not sure how many.
16 There was a lot of people outside now. The park got
17 a fence around it. Got into the park. The EMS
18 personnel were working on the victim. I was
19 informed about a couple of witnesses that were off
20 to the side. And so because the victim was
21 unresponsive and they were working on him and going
22 to take him to the hospital, I went and spoke with
23 the witnesses.

24 Q And after you spoke with the witnesses what did
25 you do?

SW - T. ANDERSON - DIRECT

1 A After that — when I spoke to witnesses I got
2 some basic information about descriptions or who had
3 done, done the shooting. I passed that information
4 out to the other officers over the radio. I also —
5 a bunch of people standing outside the fence. I
6 started going up talking to a lot of people asking
7 them did anybody else see anything so I didn't focus
8 on just the three witnesses. I was hoping someone
9 else had seen something, but they weren't in the
10 park when it happened.

11 Q Did you find any other witnesses?

12 A No, sir, nobody else.

13 Q What did you find at the scene?

14 A At the scene we really didn't find a whole lot.
15 After the victim was taken away, Corporal South and
16 I checked the area. Besides the victim's clothing
17 that was left there from EMS, we checked for any
18 kind of shell casings and stuff. We didn't find
19 any, which indicated to me the weapon used was a
20 revolver.

21 Q All right. And after you searched the crime
22 scene what did you do then?

23 A After leaving the crime scene after we secured
24 the crime scene I went down to the police department
25 to the detective division and interviewed the two