

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Mar 29 2021

SC Court of Appeals

Appeal from Beaufort County

Honorable Brooks P. Goldsmith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHN IRA DUNCAN III,

APPELLANT

APPELLATE CASE NO 2019-001919

RECORD ON APPEAL

KATHRINE H. HUDGINS
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

WILLIAM M. BLITCH, JR.
Senior Assistant Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEY FOR APPELLANT

ATTORNEYS FOR RESPONDENT

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE’S EXHIBIT #30 (SNAPCHAT VIDEO BY ALEX CONTELLO); STATE’S
EXHIBIT# 32 (SURVEILLANCE VIDEOS ON DISK); STATE’S EXHIBIT #33 (VIDEO
OF FIST FIGHT); STATE’S EXHIBIT #37 (VIDEO OF DONTARIOUS SEAY
INTERVIEWS)**

STATE OF SOUTH CAROLINA)

IN THE FAMILY COURT
2017-JU-07-00190
2017-JU-07-00191

COUNTY OF BEAUFORT)

STATE OF SOUTH CAROLINA,)

Plaintiff,)

-vs-)

JOHN DUNCAN,)

Defendant.)

-----)

TRANSCRIPT OF RECORD

OCTOBER 28, 2016
BEAUFORT, SOUTH CAROLINA

B E F O R E:

THE HONORABLE PETER L. FUGE, JUDGE.

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

JEAN K. MCCORMICK, ASSISTANT SOLICITOR
ATTORNEY FOR THE STATE

JARED SULLIVAN NEWMAN, ESQ.
ATTORNEY FOR THE DEFENDANT

DONNA HARTLEY
FAMILY COURT REPORTER

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WITNESSES

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ALL EXHIBITS WERE MARKED FOR IDENTIFICATION ONLY PRIOR TO
THE COMMENCEMENT OF THE TRIAL.

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1 THE COURT: Okay.

2 Now let me just deal with the housekeeping issue
3 here.

4 Okay, we're gonna close the door now. Close it.
5 That's it.

6 All right, now, everybody, my name is Judge Pete
7 Fuge. I'm family court judge. And we're gone hear this
8 case. It's called a waiver hearing. And it's not a - We're
9 not here for - We're here - It is a specific
10 responsibility that we have. The solicitor's asked that
11 the child be waived up to Court of General Sessions and
12 we're gonna hear a hearing. So the bottom line is I'm not
13 gone have - I'm not gone have, you know, gesticulations,
14 arm waving and anger. That - That's not what this is
15 about. We're not gone be - This is a court.

16 Now, I've gone ahead and gathered all the public want
17 to come in I've let them come in. I need you to please act
18 appropriately. Use proper decorum. I may - I'll see what -
19 might hold you in contempt of court. This is so serious. I
20 want to make sure everyone gets a fair shake.

21 Now, the next thing is I want to know what members of
22 the press we have. I have passed up the credentials for
23 two members of the press. Where . . .

24 All right. All right and, now, you know the rules.
25 And I want to make sure that you - there are no cameras.

1 The only thing you should have on you is a pencil and, and
2 a pad. If anybody has something else tell me now.

3 UNIDENTIFIED SPEAKER: No, sir.

4 THE COURT: All right, good.

5 Both of you stand up and tell me your name, and tell
6 me - tell me that's the truth.

7 HARTLEY WIRE (PH): I'm Hartley Wire.

8 THE COURT: Okay.

9 And you have only with you pencils or a - you're not
10 using that ---

11 HARTLEY WIRE: Yes, Your Honor.

12 THE COURT: . . . a pencil or a pen and a pad.

13 HARTLEY WIRE: Yes.

14 THE COURT: Take some notes.

15 All right, now, you have no cameras; there's no
16 recorders, nothing like that.

17 HARTLEY WIRE: No, sir.

18 THE COURT: All right.

19 Sir, your name.

20 STEPHEN PASTANEL (PH): My name is Stephen Pastanel
21 with The Beaufort Gazette and The Island Packet.

22 THE COURT: All right.

23 STEPHEN PASTANEL: And I also only have a notepad
24 and a pen, Your Honor.

25 THE COURT: No devices that - No - You're not

1 gone take any pictures on those same devices.

2 STEPHEN PASTANEL: No, sir.

3 THE COURT: Okay. Thank you very much.

4 I am sorry to have to ask that.

5 All right.

6 Besides - Are there any other court personnel in
7 here? If you'll stand up, just let me see where you are in
8 case I need to . . .

9 Two deputies up front. In the back. All right.

10 And the attorneys and, and the . . .

11 All right. Let's proceed. What I want to do us
12 everybody - all the attorneys, if you'll just announce
13 your presence, announce your name to the record so we may
14 proceed.

15 Mr. Newman.

16 MR. NEWMAN: My name is Jared Sullivan Newman and
17 I'm representing John Ira Duncan.

18 MS. MCCORMICK: Jean McCormick, Assistant
19 Solicitor.

20 MS. STROM: Margaret Strom, Assistant Solicitor.

21 THE COURT: And you're here to advise or just --
22 or just observe?

23 MR. STONE: Just to observe, Your Honor, Duffie
24 Stone, Solicitor.

25 THE COURT: Our solicitor is here.

1 And assistant solicitor.

2 MR. THORNTON: Sean Thornton, Judge. I'm deputy
3 solicitor.

4 THE COURT: Oh.

5 That's it?

6 (No verbal response.)

7 THE COURT: All right, let's proceed. Got the
8 burden of proof.

9 MS. MCCORMICK: Thank you, Your Honor.

10 This is in the interest of John Duncan. He's 17 years
11 old. He's charged as with the offense of murder, Petition
12 15 190, and possession of a firearm during the commission
13 of a violent offense, Petition 15 191.

14 Again, present with him is Jared Newman.

15 His mother Mrs. Ava (ph) Duncan should be present. If
16 you could please raise your hand.

17 We also have John Duncan, his father, present.

18 On behalf of the victim Dominique Williams (ph) we
19 have his mother Miss Prethenia Middleton (ph). Would you
20 please raise your hand?

21 Mr. Leroy Williams, his father. We have Olger (ph)
22 Williams, his stepmother. Nekita Lasha Middleton (ph),
23 aunt. We have Mary Middleton. Grandmother.

24 And is Pastor Johnson present?

25 The State has filed a petition seeking waiver in this

1 matter. We are ready to proceed with the waiver
2 hearing seeking transfer of jurisdiction to The Court of
3 General Sessions. We would like to call our first witness
4 Seth Reynells.

5 THE COURT: Now, are there any other witnesses?
6 Perhaps we should sequester the witnesses in an abundance
7 of caution. I don't - I mean I know there's not - but, you
8 know, it's the whole - and that's where - People are
9 people. It's human nature.

10 Why do we have the witnesses but the first witness.

11 You've got just your client or you're gonna not put
12 him on the stand?

13 MR. NEWMAN: I'm probably not gonna put up any
14 witnesses for the purpose of this hearing and, just to let
15 The Court know, ---

16 THE COURT: You have ---

17 MR. NEWMAN: I, I, I don't have a problem with -
18 There are three witnesses that are kind of all
19 professional.

20 THE COURT: Okay, fine. There's no objection then
21 they can stay here. I don't - I'm not gone do that, do
22 that. Okay, fine.

23 Step over, sir.

24 THE COURT: Your full name, sir?

25 X. Seth Robert Reynolds.

SETH ROBERT REYNELLS - DIRECT BY MS. MCCORMICK

9

1 THE COURT: Your witness.

2 Oh, that's right. I'm sorry. My, my bailiff has to go
3 to a doctor's appointment.

4 Raise your right hand.

5 SETH ROBERT REYNELLS, after being duly sworn,
6 testified as follows:

7 DIRECT EXAMINATION

8 BY MS. MCCORMICK:

9 Q. Investigator Reynells, can you please spell your
10 name for the court reporter?

11 X. Yes, ma'am. My first name is Seth, S-e-t-h. My last
12 name is Reynells, R-e-y-n-e-l-l-s.

13 Q. Thank you.

14 And where are you employed?

15 X. I am a deputy sheriff for The Beaufort County
16 Sheriff's Office. South of the Broad.

17 Q. And what is your position?

18 X. I'm a criminal investigator.

19 Q. And did you investigate the incident that occurred
20 on July 19, 2015, at Coligny Circle?

21 X. Yes, I did.

22 Q. And can you please go in and start off by telling me
23 what happened at the incident location?

24 X. Okay.

25 On Jan - or excuse me, July 19 of 2015 at

SETH ROBERT REYNELLS - DIRECT BY MS. MCCORMICK

10

1 approximately 8:20 p.m, deputies responded to a report of
2 gunshots. And a gunshot victim. At Coligny Circle which is
3 located within the town of Hilton Head, Beaufort County,
4 South Carolina.

5 Upon arrival the first on scene were flagged down by
6 numerous pedestrians. And directed to the wooden boardwalk
7 which is approximately 75 feet west of the main traffic
8 circle, directly in front of the parking lot for the
9 Holiday Inn Beach House. Where a individual was located
10 lying in the landscape with - and had suffered a single
11 gunshot wound to the face just over the right eye. Next to
12 the bridge of the nose.

13 The area was cordoned off. There was some witnesses
14 identified very, very quickly and they were taken to the
15 side and EMS, which came from a short distance up the
16 street, arrived and attempted to, to resuscitate the
17 victim and he remained unresponsive at that time.

18 Q. And what day of the week was that?

19 X. It was a Sunday evening.

20 Q. And who was the victim?

21 X. The victim's name was Dominique Xavier (ph)
22 Williams. He, he was known more affectionately to his
23 family and his friends as Dom.

24 Q. And how old was Dom?

25 X. Seventeen.

SETH ROBERT REYNELLS - DIRECT BY MS. MCCORMICK

11

1 Q. And you indicated that there some witnesses to the
2 shooting, is that correct?

3 X. Yes, ma'am.

4 Q. Can you please tell me the names of those witnesses?

5 X. Yes.

6 When the first deputies arrived two young men were
7 identified as Jestin Morrow and Davon Williams. They were
8 actually with the victim Dom at the time this incident
9 occurred on the boardwalk.

10 And the third individual Dontarious Seay was also
11 identified within a matter of minutes as being the
12 individual that was walking with Mr. Duncan. At the time.

13 THE COURT: Would you spell those three names,
14 sir?

15 X. Yes, sir. Jestin, J-e-s-t-i-n - last name Morrow,
16 M-o-r-r-ow. Davon, D-a-v-o-n - last name Williams,
17 W-i-l-l-i-a-m-s. And Dontarious is D-o-n-t-a-r-i-o-u-s and
18 his last name is S-e-a-y.

19 THE COURT: That's it.

20 Q. And do they - Were they acquaintances of John
21 Duncan?

22 X. Yes, ma'am, they were. They were all familiar with
23 the victim and the suspect, having been classmates in
24 school for many years.

25 Q. Okay.

1 And this is John Duncan here at the table sitting by
2 Mr. Newman?

3 A. Yes, it is.

4 Q. And can you - You, you said you went - What did
5 Jestin Morrow tell you?

6 X. When - I, I did not respond immediately to the
7 scene. There was a lot of commotion at the scene. There
8 were a lot of pedestrians down in that area at that time.
9 There's a severe concern of crowd control as well as
10 protecting the scene at that time. So I went directly to
11 the Hilton Head office where I met with Mr. Morrow and
12 Davon Williams and Dontarious Seay to start with. I
13 interviewed them at the office.

14 Q. And to back up, did they indicate to the law
15 enforcement that was present was the suspect immediately
16 identified?

17 X. Yes.

18 Q. And who did they say that was?

19 X. They said it was John Duncan.

20 Q. And did they tell you, your witnesses, what
21 occurred at the scene at that time, what they observed?

22 X. Yes, ma'am. Mr. Jestin Morrow and Davon Williams
23 both stated that as they were walking along the boardwalk
24 on South Forest Beach heading towards a, a Coligny Beach
25 fountain area. With Dom. They observed John Duncan walking

SETH ROBERT REYNELLS - DIRECT BY MS. MCCORMICK

13

1 towards them. From the opposite side of the plaza, more
2 the Coligny Plaza direction towards them.

3 Both witnesses stated that Duncan, when he got within
4 a reasonable distance, said something to the effect of,
5 oh, you thought I was playing; you thought this was a
6 game. And then at the same time witnessed what looked to
7 be either a purple Crown Royal bag or something of a
8 purple nature. From his right pocket. Held it up and then
9 there was one shot. One fire and then Mr. Duncan fled on
10 foot.

11 At - Just as that happened Dontarious Seay, who was
12 lagging behind at that point from Mr. Duncan, walked up
13 apparently in shock, with his hands up and said, damn, he
14 really shot him. And then Dontarious ran off as well,
15 pulled back.

16 Q. Okay.

17 And after he was identified by the police, those
18 three witnesses, did you attempt to locate John Duncan?

19 X. We did. Unfortunately, there had been a little, like
20 I say, a lag in time. It had been a few hours so we had to
21 interview everybody, get statements. And when we
22 determined that it was John Duncan that we were looking
23 for we attempted to locate him at the residence he was
24 currently staying at, at [REDACTED] Woodhaven Drive, Unit 1 4,
25 and there was negative contact there.

1 We tried the phone that he had and it was - it, it
2 had been cut off. Or shut down, excuse me.

3 And then we attempted to locate any known family
4 members, immediate family members. Knowing addresses,
5 places of employment, all that stuff, and had zero contact
6 with nobody related to John Duncan or John Duncan.

7 Q. And you said you went to his residence. Who, who was
8 he living with?

9 X. He was living with his mother.

10 Q. And did you speak with her?

11 X. No. She was unavailable at the time.

12 Q. And did you eventually catch up with John Duncan?

13 X. On the twenty-first of July so the following
14 Tuesday.

15 No, excuse me, Monday.

16 No, Tuesday, I apologize. The twenty-first of July.
17 My office was contacted by Mr. Newman advising that John
18 Duncan wished to surrender to law enforcement. And he was
19 trying to work out a schedule to do so.

20 In speaking with Mr. Newman, Mr. Newman indicated
21 that John would be invoking his right to remain silent and
22 wouldn't be making any statements to law enforcement.

23 Q. And just to back up a little bit, as far as trying
24 to locate him, did you also try to locate his parents, see
25 if they knew where he was?

SETH ROBERT REYNELLS - DIRECT BY MS. MCCORMICK

15

1 X. Yes, ma'am. We, we tried to track down Mr. And Mrs.
2 Duncan at known places of employment. They hadn't been in
3 to work; no one had talked to them.

4 We responded to John's grandmother's house out in
5 Hardeeville, along with Hardeeville investigators to see
6 if she had heard anything from the family or had any idea
7 where they might be located. And she, unfortunately,
8 didn't - was not able to provide us with any information.

9 Q. And at the time of the incident John Duncan was 15
10 years old, 10 months and 19 days?

11 X. Yes, ma'am.

12 Q. And what did you charge him with.

13 X. A - The petitions were drawn for the family court
14 for murder and possession of a firearm during a commission
15 of a firearm crime.

16 Q. And murder is a violent crime, is that correct?

17 X. Yes, ma'am, yes.

18 Q. And, and if he was 16 years old would you have
19 charged him differently?

20 MR. NEWMAN: Your Honor, I object to that. The
21 factual facts. We said what he's charged him with. He said
22 that ---

23 THE COURT: He can say.

24 Go ahead.

25 X. If he were 16 he would have been charged as an

1 adult. For this offense.

2 Q. And was there anyone else charged?

3 X. No, ma'am.

4 Q. No codefendants?

5 X. No, ma'am.

6 Q. After the incident occurred you investigated what
7 happened before the shooting, is that correct?

8 A. That is correct.

9 Q. Can you please tell The Court what your
10 investigation revealed regarding the contact between these
11 two?

12 X. Yes. After speaking with the immediate witnesses and
13 close friends, to include Jestin Morrow, Davon Williams,
14 there's another friend Trey Daise (ph), it became obvious
15 that there was some friction between Mr. Duncan, John
16 Duncan and Dominique Williams. And what it seemed to stem
17 from, which was the agreed upon discussion by everybody,
18 was that there had been a altercation involving a drug
19 deal gone bad on Friday night, the sixteenth, into very
20 early Saturday morning.

21 Dominique and Trey Daise and Jestin Morrow all snuck
22 out of the house on first night - Thursday - yeah, Friday
23 night and Saturday morning. They drove down to the south
24 end to meet John at his residence off of Woodhaven Drive.

25 And they pulled up. Dominique was driving Trey's car.

SETH ROBERT REYNELLS - DIRECT BY MS. MCCORMICK

17

1 Jestin was in the back. John walked out to the car. He had
2 said previously, earlier in the day that he had a quarter
3 to sell, which would be a quarter ounce of marijuana or
4 seven grams which is ----

5 Q. Was it John Duncan said that?

6 X. Yes, ma'am.

7 According to some of the witnesses he had actually
8 posted something like Snapchat earlier in the day saying
9 he had that weed.

10 They went down to buy some, quarter ounce, 50,
11 roughly 60 bucks.

12 He went back inside. After meeting them in the
13 parking lot he went back inside. To get a scale. When he
14 came back out Dom asked, hey, let me see that for a
15 second. And then once he had it he said let me just pull
16 up and get into a parking spot and then drove away. So he
17 drove away with the weed.

18 Q. And they see each other after that occurred?

19 X. Well, after that - Not that evening, no.

20 Q. Okay.

21 X. Very shortly thereafter, because we're in an age
22 where social media seems to be the technique that everyone
23 uses as opposed to calling each other, or what not, the
24 word got out amongst this group of friends that John
25 Duncan wanted his weed back and he wanted to fight

1 Dominique to get it back.

2 As a result there was a fight staged or set up for
3 the following day which was the Saturday of the
4 eighteenth. John didn't want to leave his end of the
5 island so they came down to the south end and it occurred
6 approximately 3:30, 4:00 at Cordillo Courts, which is on
7 Cordillo Parkway.

8 THE COURT: What day?

9 X. That was Saturday, Your Honor.

10 The fight was attended by, essentially, the same
11 group of friends. And the two young men squared off
12 against each other in the middle for a period of eight or
13 nine minutes. And, you know, battled it out.

14 Many of the individuals I spoke to said that there
15 was no clear winner or loser of that fight, that everybody
16 kind of got their shots in. And then afterwards everyone
17 felt like that the beef had been squashed, is what they
18 said, that the beef had been settled. Because of the
19 fight. And, in fact, right after the fight all of those
20 gentlemen, to include John Duncan and the victim Dominique
21 Williams, all went upstairs to an apartment that - which
22 was right there in Cordillo Courts and hung out for a few
23 minutes.

24 Q. And after they hung out they went there separate
25 ways?

SETH ROBERT REYNELLS - DIRECT BY MS. MCCORMICK

19

1 X. Yes, ma'am. Dominique and the handful of guys left
2 because there was a full moon party that was planned for
3 the south end that, that night, later that night. And John
4 Duncan remained behind with Dontarious Seay.

5 Q. And then after the fight, which you said was
6 Saturday about 3:30 . . .

7 X. Three thirty, four o'clock, yes, ma'am.

8 Q. What events transpired after the fight?

9 X. After the fight there was a - Again, social media is
10 difficult to control.

11 After the fight Dom, Jestin and Davon Williams went
12 off and did their thing. Mr. Duncan remained about
13 approximately 10 minutes later and then he left as well.
14 His whereabouts were unaccounted for at this point.

15 But the following day Dominique, Jestin and Davon
16 went down to the south end again. It was a Sunday. It was
17 a nice day. Early mid afternoon. Went down to have some
18 lunch, play some mini golf. Get out on the beach, just
19 have a Sunday on Hilton Head.

20 During that time John Duncan was indirectly trying
21 to locate Dominique. He didn't talk to Dominique directly,
22 never did call on the phone, nothing like that, but was
23 contacting some mutual friend saying, hey, have you seen
24 Dom today, where's he at, where can I find him.

25 At approximately - Hold on for just a second - He

1 arrives back off Hilton Head between six and seven p.m. on
2 Sunday. Picks up Dontarious Seay from Cordillo Courts
3 where they were all the day previous. And then they
4 proceed to do a systematic search of the very south end of
5 Hilton Head. Looking for Dominique and his friends.

6 When I was interviewing Mr. Seay he indicated that
7 they started back at Coligny Plaza. Walked down North
8 Forest Beach Road to Sea Crest Resort across the front of
9 the beach entrance to the Tiki Hut. Then looped back
10 around to some of the businesses and other buildings
11 nearby before returning again back out to the beach and
12 walking up and down the beach and then back. On the
13 street. So for a relatively small area they were covering
14 it. And repeatedly.

15 At just after eight p.m. Dominique and Davon and
16 Jestin had come off of the beach down beyond the Holiday
17 Inn Beach House which is off South Forest Beach Drive.
18 They were walking back along the boardwalk towards Beach
19 Park.

20 Shortly before that John and -- John Duncan and
21 Dontarious Seay had walked in the same direction, across
22 the front of the beach park where the fountain is located.

23 At some point, whether somebody whistled or somebody
24 hollered, Dontarious and John stopped, turned around and
25 looked back in the direction they had just come from.

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1 Paused for a couple of seconds. Turned around again facing
2 away from the victim and just a matter of seconds later
3 you see John Duncan walking in the direction of, of where
4 the victim's coming from. At a high rate of speed. He
5 seems to be walking with purpose.

6 He walks up to - He's walking across the side of the
7 road at this point. He walks up to the curb. The victim
8 Dominique Williams is standing the back side of the pine
9 straw on the walkway. Walks out a little bit. John Duncan
10 walks up, withdraws something from his pocket. You see Mr.
11 Williams fall immediately. People around are jumping and
12 running, that kind of thing. And then John Duncan flees on
13 foot followed very shortly thereafter by Dontarious Seay.

14 Q. And you know that because you have some of those
15 actions on surveillance video?

16 A. That is correct.

17 Q. And where did you get that video?

18 X. The video was obtained from The Town of Hilton Head.
19 They have a number of cameras down there on the south end
20 that are used mostly for parking and they cover the area
21 around the beach park and the immediate vicinity. And they
22 were obtained. And submitted to evidence.

23 MS. MCCORMICK: Your Honor, I would ask that I
24 be allowed to submit plaintiff's surveillance video. My
25 understanding, Mr. Newman has no objections and I would

1 also ask that it be admitted in to evidence.

2 MR. NEWMAN: Correct.

3 THE COURT: Exhibit 1.

4 MS. MCCORMICK: Yes, sir.

5 THE COURT: Well, they premarked exhibits so I'm
6 gonna . . .

7 MS. MCCORMICK: Exhibit 10. Thank you.

8 THE COURT: So the first exhibit, the first
9 exhibit they're offering is exhibit 10.

10 (WHEREUPON, Plaintiff's Exhibit Number 10 entered in
11 to evidence without objection.)

12 MS. MCCORMICK: And, Your Honor, would it be okay
13 if Investigator Reynells come down and ----

14 THE COURT: Sure.

15 MS. MCCORMICK: Thank you. We need to point
16 some things out.

17 Q. And just for The Court again, Investigator Reynells,
18 what time exactly was the shooting?

19 X. Eight twenty p.m. and - hold on just a second -
20 thirty-five seconds.

21 Q. What I'm gonna do, I'm gonna start with camera 24.
22 If you could try to set it up for The Court. Also let us
23 know, you know, regarding the camera, camera angle and
24 what's going on.

25 You can see up there that it's a time stamp.

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1 X. Yes. I have a - They were copy that were submitted
2 that came directly from the town. So the numbers of the
3 cameras any rhyme or reason.

4 We're looking at camera number 24 right here. It is
5 situated on the eastern side of beach park looking back
6 towards Coligny Circle. That little area that's got the
7 rail on it is actually for Logan Road and the traffic
8 circle is up there.

9 Q. And this view, how far was the incident location
10 from this view right here?

11 X. Well, would be left on this camera of this
12 location.

13 MS. MCCORMICK: What I'm gonna do, I'm gonna
14 ask Marvin (ph) to start it and, Judge, would it be okay
15 while I start it if he could point out the suspects on the
16 video?

17 THE COURT: Certainly. Without objection. Go
18 ahead.

19 X. Walking there from the left side to the right the
20 one wearing the white t-shirt and black pants with the
21 white shoes. This is Dontarious Seay followed by John
22 Duncan wearing the black jacket, bracelet, hat.

23 Q. And what time is that?

24 X. That is at 8:19 and 20 seconds.

25 Q. And I think the cameras just keep on circling, is

1 that . . .

2 So that's the end of that, that angle.

3 X. And just for reference purposes, when I said that
4 they were walking back towards Coligny Plaza away from the
5 victim, that is what . . .

6 Q. Different camera. Eighteen. You can stop it once he
7 gets it set up.

8 All right.

9 X. This is, essentially, just opposite side of that
10 same traffic circle. They were looking back across the
11 other camera we were just looking at, is probably in the
12 upper left-hand corner of this, this screen we're looking
13 at here.

14 THE COURT: Camera 18, is that what you're
15 saying?

16 X. Camera 18, sir.

17 And we're at 8:19 p.m. and 13 seconds. And if you
18 just look in the top right third of the screen you can see
19 Mr. Seay, Mr. Seay in a white shirt and dark pants and Mr.
20 Duncan immediately behind.

21 Q. That corner right there?

22 X. That lower right-hand corner, yes, ma'am, wearing a
23 dark jacket and the colored pants.

24 If you'll stop it right there.

25 The camera just jumped about 15, 20 seconds but,

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1 again, at the top right-hand corner, coming from the right
2 side of the screen across is John Duncan walking at a
3 accelerated pace towards the wooden pathway and then
4 Dontarious Seay dressed in a white shirt and black pants
5 just following behind him.

6 Q. This is 10 seconds before the shooting?

7 X. Yes, ma'am.

8 MR. NEWMAN: You say, you gave the opinion it's an
9 accelerated pace. I'd like to watch it.

10 Q. Go ahead.

11 Now I would like to move to camera 13. Stop it once,
12 once . . .

13 X. Yes. This is camera 13 which is - I believe it's
14 mounted on one of the bathroom buildings that they have
15 right here at the entrance to the beach access but then,
16 again, it's same. Right there just behind the palm tree.
17 For a point of reference the individual that you see
18 through the palm tree at the top middle of the screen is
19 Dontarious Seay. And it's 8:19 and 32 seconds.

20 What I believe is happening right here is Mr. Seay
21 did tell me when I was interviewing him that they were
22 walking away from that area; they thought they heard a
23 noise, whether it was a whistle or a shout, something like
24 that. They stopped and turned around. They didn't see
25 anything, continued to walk for a minute and then they

1 hear it again and then they turn around and John takes
2 off.

3 MR. NEWMAN: Where did they take off?

4 X. They - I'm sorry, I didn't see it. I didn't say it.

5 They walk off because they were covered by trees for
6 a few seconds and then they turn around again and then
7 John Duncan is walking from the right to the left followed
8 by Dontarious Seay.

9 MR. NEWMAN: You say John taking off. Is that what
10 you ---

11 X. I say take off. He - They were walking together all
12 afternoon and then at that point there was separation.

13 MR. NEWMAN: According to Mr. Seay?

14 X. Yes.

15 MR. NEWMAN: Okay.

16 MS. MCCORMICK: Does that finish?

17 (No verbal response.)

18 Q. Now I'd like to take you to camera 1 which is the
19 actual shooting.

20 X. This is camera 1. It's looking directly west
21 towards the wooden walkway. The - For reference purposes
22 the beach access area is just screen to the left. That you
23 see and this is, obviously, the traffic circle right down
24 there. This is facing the westbound of Holiday Inn beach
25 front property. And it is 8:20 and six seconds.

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1 That was Mr. Duncan, John Duncan, the one in the
2 black with the gray and the hat, walking.

3 Q. Right there?

4 X. Yes, ma'am, on the left part of the screen.

5 And it's tough to see but the victim and his friends
6 are just now becoming visible just to the right of that
7 individual with the lighter color, like, more to the
8 right. It's someone - Almost looks like a yellow shirt
9 right there.

10 Q. Yeah.

11 X. The victim and his friends are just to the right of
12 that at this point. They're gonna come this way.

13 Mr. Williams, Davon Williams is the one that's
14 swinging the towel in his hand right there.

15 John walks up. The victim is directly, in terms of
16 this line of sight, directly behind - or in front of which
17 I call east, just behind Dontarious Seay standing which is
18 to the right of that big tree there.

19 He shoots and runs off. Dontarious stands around for
20 a few seconds. And then leaves behind him.

21 MR. NEWMAN: Would you agree you can't identify
22 any of these people?

23 MS. MCCORMICK: Your Honor ---

24 MR. NEWMAN: Other than ---

25 THE COURT: This is not cross-examine.

1 MR. NEWMAN: I, I just thought it might be
2 easier while we're running the thing. Otherwise I'll have
3 to - I can wait. That's fine.

4 X. The, the gentleman wearing sweat - gray sweatpants
5 is Davon Williams. The gentleman standing in front of him
6 wearing no shirt and you don't see this one because he's
7 behind that car. He's got a light-colored athletic shorts
8 on. Is Jestin.

9 Q. And you interviewed them---

10 X. I did that within 30 or 45 minutes of this happening
11 and they were wearing the same stuff.

12 They were, obviously, upset. They had let all of
13 their phones run down at, no battery at this point.
14 They're not sure what - They're in shock. They were having
15 - They is Jestin and Davon, the two gentlemen that were
16 walking with the victim, and they are trying to get their
17 heads straight. And they ended up using the cell phone of
18 just a bystander who had already called for help.

19 Q. I'd now like to move to final camera, number 19.
20 Could you set that up, please?

21 X. Yes, ma'am.

22 Camera 19, again, we're looking at grid pattern
23 bottom right-hand corner which is the beach unloading and
24 loading area off of the traffic circle. Traffic circle's
25 what you see immediately behind it.

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1 The fountain would be just below the left-hand
2 corner of the screen.

3 This is just another angle of what we've seen with
4 them walking across.

5 Q. At 8:19?

6 X. Eight nineteen and twenty-three seconds, camera 19.

7 That is John Duncan walking from the right side of
8 the screen to the left side of the screen, approximately
9 12, 13 seconds before shooting.

10 Q. So he's heading ---

11 X. He's headed - He's headed towards the victim. At
12 this time.

13 MR. NEWMAN: Let me ask you. Can you identify him
14 as John Duncan?

15 X. Yes, I can.

16 MR. NEWMAN: Oh, you can?

17 X. I can. If I ---

18 MR. NEWMAN: If, if, if you didn't have your
19 witnesses telling you, the friends of Dom, you wouldn't be
20 able to identify that as anybody, would you?

21 X. Probably not.

22 MR. NEWMAN: Okay. That's what I thought.

23 Q. But you, you showed lineups to the witnesses and
24 they've identified him being the individual who shot Dom?

25 THE COURT: Well, let's stay with - I wish I

1 hadn't allowed that question.

2 MS. MCCORMICK: Yes, sir, thank you.

3 THE COURT: But, you know, this is a unique
4 situation with a tape and, really, I don't want to turn
5 this in to a food fight.

6 X. My, my simple answer would be the, the
7 gentleman ---

8 THE COURT: Proceed.

9 X. Sorry, sir?

10 THE COURT: Skip it.

11 Q. If You could just maybe finish saying it out, play
12 it some more.

13 MR. NEWMAN: No, I'm, I'm good.

14 MS. MCCORMICK: Okay.

15 THE COURT: He was walking across the street.

16 X. The individual moving through the median of the
17 traffic circle is John Duncan. The shooting has occurred;
18 he's now running away. From the scene.

19 Q. And where the bikers are there, how far was the
20 shooting from where the bikers are here on the -- on
21 the ---

22 X. Sixty, seventy feet, something like that. The bikers
23 are right there at the -- what really is kind of the
24 beginning of the wooden pathway but it had sort of curvy
25 route back towards South Forest Beach Drive.

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1 Q. Okay.

2 X. But I, I would - Good to note that the shooting
3 has just occurred. And there are - there was children all
4 over on vacation all in very short, close proximity.

5 MR. NEWMAN: Who is that?

6 X. I'm sorry, I wasn't looking. Go back. A second.

7 MR. NEWMAN: The fellow in the white T-shirt.

8 X. That's Dontarious.

9 MR. NEWMAN: What was his last name?

10 X. Seay, S-e-a-y.

11 At that point is when he ran back over and said,
12 damn, I can't believe you shot him.

13 MR. NEWMAN: Or at least that's what he told you.

14 THE COURT: I'm in charge. And the reason is we
15 have, have some order. So I'm trying to accommodate
16 everybody and allow you to ask a few questions but we're
17 headed beyond that. We're get to cross-examination. Or you
18 can do it for the direct. Stay with the tape. And none of
19 this back and forth. I just have to.

20 Go ahead.

21 Any questions about the tape please ask who is that,
22 that sort of stuff because I want to treat everybody - but
23 we just can't have this turn in to a conference.

24 Is that it?

25 MS. MCCORMICK: Yes, sir.

1 THE COURT: Put it in to evidence. Give it to the
2 court reporter.

3 Go ahead.

4 Now, I want to accommodate both of you. Perhaps you
5 may inquire some further direct and maybe some cross as to
6 this tape itself. Up and down. I don't mind - What else do
7 you have of this gentlemen?

8 MS. MCCORMICK: I've just got, like, a couple
9 more questions and I'll be ---

10 THE COURT: Okay, then.

11 And then you can cross.

12 All right, go ahead.

13 Q. Investigator Reynells, as far as your recommendation
14 on behalf of The Beaufort County Sheriff's office
15 regarding transfer of John Duncan, what is that?

16 MR. NEWMAN: Your Honor, I'm gone object to that
17 question. That - That's a decision for The Court, not for
18 law enforcement.

19 THE COURT: Well, that will be - The solicitor
20 made that decision. I'll be - I'll be the trier. My
21 decision. The solicitor's asking that he be transferred, a
22 decision.

23 There's - What he said in 16 0 5, a decision.

24 Go ahead.

25 MS. MCCORMICK: So he can answer that, Your Honor?

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1 THE COURT: No. Object.

2 MS. MCCORMICK: Okay.

3 THE COURT: Sustained.

4 Q. Do you feel that John Duncan's a danger to the
5 community?

6 MR. NEWMAN: Your Honor, again, that's what you're
7 here to determine based on the facts, not on some opinion
8 of a career law enforcement officer.

9 THE COURT: Well, you can cross-examine. I think
10 - I think that's certainly a reasonable question.

11 Go ahead.

12 X. I feel that what we've seen on that tape and his
13 actions that afternoon were a danger to the people that
14 were there. Yes, ma'am.

15 CROSS-EXAMINATION

16 BY MR. NEWMAN:

17 Q. Do you know anything about Mr. Duncan from a
18 psychological standpoint?

19 X. I do not.

20 Q. Is it fair to say you would not be the witness to
21 ask about adolescent brain development, rehabilitation,
22 those type of things?

23 X. I would not be the witness, yes, sir.

24 Q. Okay.

25 You are a career law enforcement officer?

1 X. So far.

2 Q. You have very strong opinions.

3 Now, when I asked you on the tape where you've
4 identified Mr. Duncan, isn't it true that you can only do
5 that through Trey and Jestin? And Dontarious?

6 X. Correct.

7 Q. Okay.

8 And, likewise, the information about whether there
9 was some type of weed deal or ripoff, you have no actual
10 knowledge of that but for the friends of Dom that gave you
11 information, correct.

12 X. The, the gentlemen that were with him in
13 the car at the time, yes, sir.

14 Q. And you have no way to independently verify that. We
15 have to believe their stories, correct?

16 X. I was unable to ask Mr. Duncan about it so I don't
17 have any independent verification, no, sir.

18 Q. Irrespective of that, is the answer to my question
19 is you don't know whether they're telling the truth about
20 any of this, do you?

21 X. I have to rely on them being honest, yes, sir.

22 Q. Okay.

23 And I show you what's been marked as defendant's 5
24 for identification, a photograph and ask you if you can
25 tell me what that is.

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1 MS. MCCORMICK: Your Honor, may I see that?

2 THE COURT: I thought you'd already exchanged.

3 MR. NEWMAN: Yeah. I got these from the solicitor.

4 I'm sorry.

5 MS. MCCORMICK: Your Honor, the plaintiff, state
6 would object to this.

7 THE COURT: You object?

8 MS. MCCORMICK: Well, when the appropriate time we
9 object to this.

10 Q. I was referring to defendant's 5 for ID. What is
11 that a photograph of?

12 X. It's two gentlemen taking a selfie. Using, likely,
13 a phone.

14 Q. Okay.

15 And who are the two gentlemen?

16 X. The gentleman on the left is the victim. And I do
17 not know who the gentleman on the right is.

18 Q. All right.

19 And the gentleman on the right is posing like he's
20 holding a AK-47 or some type of rifle.

21 X. He has his hands out.

22 Q. And one hand back?

23 X. One hand back, yes, sir.

24 Q. Okay.

25 I show you defendant's 2 for identification.

1 Are these photographs that y'all obtained during
2 your investigation?

3 X. They were not.

4 Q. Okay.

5 What does that appear to be a photograph of?

6 X. That appears to be an individual lean back - sitting
7 back in a vehicle.

8 Q. Whole lot of cash?

9 X. They've got some cash up there by the windshield,
10 yes, sir.

11 Q. You've been an investigator for quite some time,
12 right?

13 THE COURT: That's number 2 for identification.
14 Somebody with all this cash.

15 MS. MCCORMICK: Your Honor ---

16 MR. NEWMAN: It - It's been identified.

17 MS. MCCORMICK: I object at this time. On the
18 grounds of relevance.

19 THE COURT: What's the relevance? You might want
20 to lay a foundation. I mean what's, what's the relevance?

21 MR. NEWMAN: The relevance are, Your Honor, I
22 believe on the identification and when the officer looks
23 at them, these were taken approximately - July 10,
24 approximately nine days prior to this and the victim and a
25 numerous of his friends are holding money and flashing

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1 hands.

2 THE COURT: Wait a minute. I saw a picture,
3 exhibit number 2. I didn't see - I saw - All right,
4 exhibit number 1, it's ID ---

5 All right, so it's number - His number 1 is number 5.
6 They're premarked as number 5. It's the first one he's
7 entered.

8 All right. So, then, but it's been identified as a
9 picture. Says Dominique Williams and it's got Dom and -
10 Dominique, some boy.

11 What's the next one you're trying to get in?

12 MR. NEWMAN: The next one is Mr. Dominique ---

13 THE COURT: That's it. Number?

14 MR. NEWMAN: Exhibit number 2.

15 THE COURT: All right. Let's see. Okay. So now
16 we're gone do exhibit number 2 which is your exhibit
17 number 2. As far as chronology.

18 That's a picture of somebody in a car nobody's
19 identified. With some cash.

20 MR. NEWMAN: Right. I wanted to ask him to read
21 the caption of whose Facebook page ---

22 THE COURT: Well, if somebody can identify the
23 picture. But they can't get it in with this guy. He
24 doesn't even know who he is. Right?

25 MR. NEWMAN: No, sir.

1 THE COURT: So there you go.

2 Q. Have you looked at any Facebook pages in this case?

3 X. I have.

4 Q. Okay.

5 Have you looked at Dominique Williams's Facebook
6 page?

7 X. I have - I have not.

8 THE COURT: The first one he identified as a
9 picture of . . .

10 Can identify it. It's really no - It's got ----

11 Q. Let me ask you this, Your Honor - Deputy.

12 X. Yes, sir.

13 Q. It shows two small photos and it says Dominique
14 Williams updated his cover photo and then it has dates. Do
15 you agree that those are the same photos and the same name
16 from the Facebook pages?

17 X. In reference to the Facebook page belonging to
18 Dominique Williams, yes, sir.

19 Q. Okay.

20 X. Those are the same two cover photos.

21 Q. Cover photos.

22 Would it not be reasonable to assume when he updates
23 his Facebook page that that's Dominique?

24 X. It would be - It would be hard to tell. It's
25 somebody sitting in the car holding money, yes, sir. I

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1 couldn't say for certain that that was Dominique.

2 Q. Okay.

3 THE COURT: Well, your number 1, as far as I'm
4 concerned, which is one that you premarked as five, you do
5 not object to that? Picture of - Facebook picture.

6 MS. MCCORMICK: No, sir.

7 THE COURT: But number 5 - Number 5? Let's see.
8 Number 2 which is premarked as number 2, that's, that's
9 - hasn't been authenticated. Get it in some other witness.
10 This man can't authenticate it.

11 And you object to it.

12 MS. MCCORMICK: Yes, sir.

13 THE COURT: Relevance.

14 MS. MCCORMICK: I do on relevance grounds.

15 THE COURT: Now, this next thing is - Let me see
16 what else you've got. This, this is messing this record
17 up.

18 I have a problem with this. I hate premarked. I
19 shouldn't have let it done. My fault.

20 Here it is.

21 MR. NEWMAN: This is number 1.

22 THE COURT: Okay, but give me the other pictures,
23 premarked pictures.

24 You want to do something here with this one? Number 3
25 or premarked number 3?

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1 MR. NEWMAN: Yes. I would like to introduce that
2 and I'd like . . .

3 Q. Do you know who that is in that photograph?

4 X. That is Dominique Williams.

5 Q. All right.

6 And, likewise, says Dominique Williams. Is that a
7 small profile picture that likewise matches this one and
8 the other photograph I showed you?

9 X. Yes, sir.

10 Q. Okay.

11 And what is he doing with his hand?

12 X. He's holding it up.

13 Q. And does that mean anything to you?

14 X. No.

15 Q. So you know nothing about gang signs?

16 X. Well, I'm not by any means a gangs sign expert, no,
17 sir.

18 Q. So you know nothing about them, never heard about?

19 X. I've heard about them. I'm not . . .

20 Q. So you don't want to say?

21 X. It, it could be a gang sign.

22 Q. Okay.

23 X. I can't readily identify it as one, though.

24 Q. I'm referring to ---

25 THE COURT: To the -- He says it's a picture . . .

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1 MS. MCCORMICK: Your Honor, I would object to this
2 exhibit number 3 just on the grounds of relevancy. We're
3 here today for the purpose of seeing if John Duncan should
4 be transferred to general sessions. We're not here to try
5 the case and I don't know that it's relevant, anything
6 he's raising in this picture. It's about the victim.

7 Again, we're here today with John Duncan to
8 determine if he's sophisticated and mature enough to ----

9 THE COURT: Let me see number 3.

10 MR. NEWMAN: At the appropriate time I'll state my
11 grounds and why I believe they are relevant.

12 THE COURT: She's objecting now. It hasn't been
13 authenticated.

14 It's a picture of the decedent, is all it is. Where's
15 the relevance?

16 MR. NEWMAN: Well, I asked about sign.

17 THE COURT: He says he doesn't know. He doesn't
18 have any idea. Could be anything. I mean . . .

19 MR. NEWMAN: I ask - I ask it be put in evidence
20 for The Court to determine because one of things I can
21 show or need to show or to rebut to This Court is whether
22 or not this was premeditated, whether or not there were
23 grounds for this action to have occurred, whether or not
24 psychologically Mr. Duncan was prepared to deal with
25 certain things in his life that will come out during ----

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1 THE COURT: Don't testify.

2 MR. NEWMAN: It does go to mitigate.

3 THE COURT: Talking about a murder.

4 MR. NEWMAN: It, it ----

5 THE COURT: It was a murder and you're asking
6 whether to send this boy to general sessions. I don't see
7 the -- You know ----

8 MR. NEWMAN: But it goes to mitigate as to -- as
9 to whether or not it's a heat of passion, whether or not
10 it's an actual response based on the psychology ---

11 THE COURT: Where is that intent? I'm trying to
12 find -- you know, the supreme court -- It says -- It says ---
13 I've got the case right here. I'm running through the
14 factors, all right?

15 Serious of -- Seriousness of the alleged offense.
16 Okay. Murder.

17 MR. NEWMAN: It may be manslaughter.

18 THE COURT: Violent, premeditated, willful
19 manner.

20 You're saying this is somehow -- You say that, that,
21 that it wasn't premeditated? He justified -- He was
22 justified in putting a bullet in his head?

23 MR. NEWMAN: I'm not saying justified, Your Honor.
24 There's varying degrees between murder, voluntary
25 manslaughter, involuntary manslaughter. Doctor Dunn

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1 discusses this in her report.

2 THE COURT: Okayell, I'll reserve my ruling.

3 Keep it for identification. Reserve my ruling til we
4 hear further.

5 So two - The only one that's in, number 5 which is
6 the first one. That's number 2 and number 3 are not in but
7 they're still in for identification.

8 And I'm reserving my ruling as to objection as far as
9 relevance.

10 Okey-doke, it's fine.

11 (WHEREUPON, Defendant's Exhibit Number 5 was entered
12 in to evidence without objection.)

13 MR. NEWMAN: All right.

14 Q. You had mentioned the day before, or so, that there
15 was a fight between the 17 year-old Dominique Williams and
16 a 15 year-old John Duncan, is that correct?

17 X. That is correct.

18 Q. And your information, although you can't verify it,
19 this was supposed to resolve some type of dispute?

20 X. Correct.

21 Q. All right.

22 MR. NEWMAN: Your Honor, I move to play the video,
23 the last 20, 25 seconds of the - of cell phone capture of
24 the fight that occurred between Dominique and Mr. Duncan.
25 State says they do not object.

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1 MS. MCCORMICK: No objection Your Honor.

2 THE COURT: That's gonna be -- Was it marked,
3 premarked?

4 MR. NEWMAN: Yes. It's defendant's 1.

5 MS. MCCORMICK: Your Honor, I gave, gave court
6 reporter a stack of things

7 THE COURT: That's okay. I should've known
8 better.

9 Q. Whose cell phone ---

10 THE COURT: For the record it's number 1. This
11 will be his.

12 Go ahead.

13 Q. Whose cell phone did this fight come off of?

14 X. Jestin Morrow.

15 Q. Jestin Morrow, and you mentioned him as one of the
16 group that was hanging out with Dom and Trey?

17 X. Correct.

18 Q. Okay.

19 Identify who you see.

20 X. The -- If we could either back it up or -- back it up
21 or move it forward so they're standing . . .

22 Q. Okay.

23 X. In the picture we're looking at right now the
24 individual who is on the ground is John Duncan. Individual
25 standing is Dominique Williams.

SETH ROBERT REYNELLS - CROSS BY MR. NEWMAN

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1 Q. Thank you.

2 That's Mr. Duncan on the ground?

3 X. Yes, sir.

4 Q. And in the audio they are taunting Mr. Duncan?

5 X. They're talking, everybody. They're saying you guys
6 don't get on it we're gonna beat y'all up, and that kind
7 of stuff. Yes, sir.

8 Q. Thank you.

9 MR. NEWMAN: If Your Honor wishes, there's some
10 rough language on that but if The Court wishes to review
11 there is audio.

12 THE COURT: This is in. Number 1. It's being
13 passed up. It's marked. Video of this fight.

14 (WHEREUPON, Defendant's Exhibit Number 1 was entered
15 in to evidence without objection.)

16 Q. Now, where Mr. Duncan lives, Woodhaven, that is down
17 near Coligny, is it not?

18 X. Correct.

19 Q. And that would be the area of town which he resides?

20 X. Yes, sir.

21 Q. All right.

22 You said on this, this day Dom, Jestin and Davon
23 Williams or Trey came to the south end?

24 X. That is correct.

25 Q. And that as described from either Jestin, Davon or

SETH ROBERT REYNELLS - CROSS BY MR. NEWMAN

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1 Dontarious, I believe Dontarious, as they were walked
2 somebody whistled or hollered and then maybe repeated it,
3 obviously trying to get their, their - Mr. Duncan and
4 Dontarious's attention?

5 X. Yes, sir.

6 Q. And you don't know whether they were being taunted
7 or told to come over there to get beat up or anything like
8 that, do you?

9 X. No.

10 Q. But it's obvious from the evidence you put together
11 is that this young man and his friends were called over to
12 where Dominique was?

13 X. I believe that they were - their attention was
14 brought in to that direction, yes, sir.

15 Q. Okay.

16 And the way you understand it, that would've been
17 either from Dominique or somebody in the group of friends
18 that Dominique was with?

19 X. Correct.

20 Q. Okay.

21 Have you ever met Mr. Duncan before?

22 X. I have not, no. I have not.

23 Q. You know what grade of school he was in?

24 X. Should've been Freshman or Sophomore.

25 Q. Okay.

SETH ROBERT REYNELLS - REDIRECT BY MS. MCCORMICK

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1 X. Based on his age.

2 Q. Do you know whether or not he played any sports?

3 X. I do not, no.

4 Q. Have you ever spoke to him?

5 X. Prior, no, sir. Never spoke to him.

6 Q. Spoke with any of his teachers?

7 X. No, sir.

8 Q. Have you spoken with any of his coaches?

9 X. I have spoken to the football coaches at the high
10 school, yes.

11 Q. About Mr. Duncan?

12 X. About all these gentlemen, yes, sir.

13 MR. NEWMAN: Thank you. I don't have any further
14 questions.

15 REDIRECT EXAMINATION

16 BY MS. MCCORMICK:

17 Q. Mr. Newman asked you about he told you about - or
18 that late night, early Saturday morning.

19 X. Uh-huh.

20 Q. Indicating they were friends of Dom. They were also
21 friends of John Duncan, were they not.

22 X. They were all friends. They all ran in the same
23 circles and hung out outside of school together, were
24 classmates, correct.

25 Q. And how long would you say they have known each

1 other?

2 X. Mr. Daise indicated that he's known John since first
3 grade. About nine years.

4 Q. And do you know that John Duncan has a nickname?

5 X. His friends that I spoke to ---

6 MR. NEWMAN: Your Honor, I ask for relevance on
7 that.

8 MS. MCCORMICK: Your Honor ---

9 THE COURT: Overruled.

10 X. The, the friends that I interviewed said that his
11 nickname was Flex (ph). Flex was what they called him
12 because he was, for lack of a better term, all talk. He
13 would make empty threats a lot. He used the phrasing on
14 God to substantiate what he was saying, I'm, you know,
15 gone beat you on God, shoot him on God, that kind of
16 stuff.

17 MS. MCCORMICK: Thank you. That's all I have.

18 RECROSS EXAMINATION

19 BY MR. NEWMAN:

20 Q. And, also, in that you found out that they like to
21 taunt John, if that not correct?

22 X. Correct.

23 Q. Okay. So he was teased, taunted by his friends?

24 X. I was -- Fifteen year-old boys pick at each other
25 all the time.

ZELPHINE SMALLS - DIRECT BY MS. MCCORMICK

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1 Q. Fifteen year-old boys.

2 MR. NEWMAN: Thank you.

3 THE COURT: Okay.

4 Come down.

5 May I excuse the witness?

6 MS. MCCORMICK: Yes, sir.

7 THE COURT: All right.

8 MS. MCCORMICK: Your Honor, I'd like to call

9 Zelfphine Smalls to the stand.

10 ZELPHINE SMALLS, after being duly sworn, testified as
11 follows:

12 DIRECT EXAMINATION

13 BY MS. MCCORMICK:

14 Q. Ms. Smalls, can you please state your name for the
15 record?

16 X. Zelfphine Smalls.

17 Q. And who are you employed?

18 X. With Department of Juvenile Justice.

19 Q. And what is your title?

20 X. Community Specialist III.

21 Q. And were assigned by DJJ to handle the intake and
22 coordination of John Duncan?

23 X. Yes, ma'am, I was.

24 Q. And how old is John?

25 X. John is currently 17.

1 Q. Okay.

2 Do you know his date of birth?

3 X. Yes. His date of birth is [REDACTED].

4 Q. Okay.

5 And does John have a prior record?

6 X. No.

7 Q. Any prior diversions?

8 X. No, ma'am.

9 Q. I'd like to show you what's marked Plaintiff's
10 Exhibit 7.

11 Okay, again, I'm gone show you Plaintiff's Exhibit
12 7. Do you recognize that?

13 X. Yes, ma'am. It's his school records.

14 Q. Okay.

15 And did you request those school records as part of
16 your being the intake counselor of John Duncan?

17 X. Yes, ma'am.

18 Q. And are those records sent out on a routine basis?
19 By the school?

20 X. Yes, ma'am.

21 MS. MCCORMICK: Your Honor, at this time I would
22 ask that those be admitted in to evidence.

23 THE COURT: Do you have a copy for The Court?

24 MS. MCCORMICK: I do, Your Honor.

25 MR. NEWMAN: And I do object those, Your Honor.

ZELPHINE SMALLS - DIRECT BY MS. MCCORMICK

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1 THE COURT: Number 7. Let me take a look at them.

2 And the basis for your objection? She said ---

3 MR. NEWMAN: Well, the first one is - However, on
4 a foundational basis, Your Honor, she's not a custodian of
5 those records. That would be somebody from school. She
6 cannot lay a foundation as to those records, other than
7 she received them from somebody else at a school.

8 Foundational basis 2, there is opinions that are
9 expressed in those records by remarks and comments that
10 I'm not able to cross-examine, examine.

11 The witness is not able to identify or ask the - any
12 of those statements or, in fact, made.

13 And, three, there's a grounds that those records go
14 back to 2010.

15 THE COURT: Ma'am.

16 MS. MCCORMICK: Sir, we believe they ----

17 THE COURT: What is - What is the - First of all,
18 you know, she hasn't properly authenticated it. And
19 they're not - they're not her - They're school records.

20 Second, he says that he objects because there're all
21 sorts of hearsay, subjective statements made in there.

22 And, then, three, he objects that remote. I guess
23 that's what he's saying.

24 MS. MCCORMICK: Yes, sir.

25 THE COURT: And your position is?

ZELPHINE SMALLS - DIRECT BY MS. MCCORMICK

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1 MS. MCCORMICK: Your Honor, we believe they are
2 admissible, first under rule 7 of the family court which
3 states that family court school records are admissible,
4 they're kept in the normal course of business.

5 The second is this is a waiver hearing. We believe
6 hearsay's admissible. And, you know, as long as The Court
7 believes that they are appropriate that it would be
8 admissible so she can as a representative of DJJ say she
9 requested those from the school as she normally does as
10 the caseworker.

11 Additionally, Doctor Dunn reviewed these records
12 where she issued a waiver evaluation and the records are
13 mentioned in the waiver information.

14 THE COURT: Respond.

15 MR. NEWMAN: Your Honor, I would just respond,
16 number 1, on the foundation she is not the custodian of
17 the records .

18 THE COURT: She never said she was. She said they
19 were sent to her in the ordinary course of business from
20 the school district, normally they get these files.

21 MR. NEWMAN: But she can't testify that those
22 records were kept in the ordinary course of whatever
23 schools they're from. That would be from the school
24 custodian.

25 THE COURT: What about the family court rule?

ZELPHINE SMALLS - DIRECT BY MS. MCCORMICK

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1 MR. NEWMAN: I'm sorry?

2 THE COURT: How about the family court rule?

3 MR. NEWMAN: As, as to that, I'll defer to The
4 Court on that.

5 But much like police records that obtain opinions in
6 them, those are not admissible.

7 THE COURT: Family court rule . . .

8 MS. MCCORMICK: Seven.

9 THE COURT: I think rule 7 they're admissible. At
10 this hearing.

11 Secondly, but more importantly is these, these - I
12 see these school records all the time and that's - our
13 legislature's come out with rule 7.

14 They're self-authenticating. Rule 7.

15 Okay, so they're in.

16 MS. MCCORMICK: Okay, Your Honor.

17 Q. And you've you had an opportunity ---

18 THE COURT: For those two reasons.

19 (WHEREUPON, Plaintiff's Exhibit Number 7 was entered
20 in to evidence over objection.)

21 Q. Prior to today did you have an opportunity to review
22 those records?

23 X. Yes, ma'am, I did.

24 Q. Okay.

25 And you're familiar with his education based on your

1 investigation as his caseworker?

2 X. Yes, ma'am.

3 Q. Okay.

4 I'd like to refer you to some of the specific
5 records. I think we have them beginning in fifth grade, is
6 that correct?

7 X. Yes, ma'am.

8 Q. And what school did he attend at that time?

9 X. Jasper County school, Hardeeville Elementary.

10 Q. And did he have any behavior incidents while he was
11 in fifth grade?

12 THE COURT: You know, I, I, I don't -- Where are
13 we going with fifth grade?

14 MS. MCCORMICK: Your Honor, I, I think that when
15 Doctor Dunn will testify it could be relevant regarding,
16 regarding ---

17 THE COURT: The, the question itself. Try to get
18 a little bit more close to time.

19 MS. MCCORMICK: Yes, sir.

20 MR. NEWMAN: Your Honor, please, If Doctor Dunn
21 will actually use these records and form opinions on them,
22 I would object to this witness just laying them out. The
23 exhibit is in evidence and I think we can get right to
24 Doctor Dunn.

25 THE COURT: Well, I can read real well, now.

ZELPHINE SMALLS - DIRECT BY MS. MCCORMICK

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1 MR. NEWMAN: And ---

2 THE COURT: After all these years, 69 years old.

3 It's okay, I can read them.

4 But I think we're - It's her case; she just wants to
5 present it.

6 MS. MCCORMICK: Yes, Your Honor, I'll limit my
7 questions.

8 Q. Let's, let's go on to when he attended the Beaufort
9 County schools. What grade?

10 X. He attended Beaufort County schools tenth grade.

11 Q. Okay.

12 And did he have any behavior writeups at that time?

13 X. Yes, ma'am, according to these records.

14 Q. And according to the records he had approximately
15 52 behavior writeups?

16 X. That's correct.

17 Q. And that was between what grades?

18 X. Eighth through tenth.

19 Q. And did you find out if John Duncan had any type of
20 individual educational plan or behavior intervention plan?

21 X. Yes, ma'am. I requested any special education
22 records from Beaufort County School District. Miss Brenda
23 Hunt, the director of special ed, in a letter dated July
24 20 of 2015. She wrote me back to let me know that he did
25 not have any special education records and he was not a

ZELPHINE SMALLS - DIRECT BY MS. MCCORMICK

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1 special education student.

2 MS. MCCORMICK: Move in to evidence.

3 Q. Let me show you Plaintiff's Exhibit Number 4. Is
4 this the letter that you received?

5 X. Yes, ma'am, it is.

6 Q. And, again, what does it state?

7 X. It states that he doesn't have any special
8 education.

9 Q. Okay.

10 MS. MCCORMICK: Your Honor, I'd ask that that be
11 admitted in to evidence.

12 THE COURT: It's number 4.

13 MS. MCCORMICK: Yes.

14 THE COURT: Marked for identification.

15 Let me see it.

16 Thank you.

17 (WHEREUPON, Plaintiff's Exhibit Number 4 was entered
18 in to evidence without objection.)

19 THE COURT: All right, proceed.

20 MS. MCCORMICK: All right.

21 Q. Now, as a representative of DJJ you also monitor his
22 behavior at school while he's at the detention center?

23 X. Yes, ma'am, I do.

24 Q. Okay.

25 And based on your position do you have instances of

ZELPHINE SMALLS - DIRECT BY MS. MCCORMICK

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1 his behavior while he was there?

2 X. Yes, ma'am.

3 Q. I'd like to show you Plaintiff's Exhibit Number 6.

4 MR. NEWMAN: Your Honor, and I object to this line
5 of questions.

6 THE COURT: And what is your basis for that?

7 MR. NEWMAN: The basis, one is on relevance with
8 the situation out there. We're talking about ----

9 THE COURT: The supreme court has supreme court
10 cases where the child's record - They say what?

11 MR. NEWMAN: I'm sorry, I'm not familiar with
12 that, Your Honor.

13 THE COURT: Well, I'm gonna overrule it.

14 Q. Show you Plaintiff's Exhibit 6. Can you please
15 identify that?

16 X. Yes, ma'am. These are the discipline records from
17 our detention center.

18 Q. And are you familiar with those records?

19 X. Yes, ma'am, I am.

20 MS. MCCORMICK: Your Honor, I have a copy for
21 The Court.

22 THE COURT: Number 5.

23 MS. MCCORMICK: Six.

24 THE COURT: Very well, six.
25

1 (WHEREUPON, Plaintiff's Exhibit Number 6 was entered
2 in to evidence over objection.)

3 Q. Did John Duncan have behavior instances while he's
4 been detained at DJJ?

5 X. Yes, ma'am.

6 Q. And can you tell me when he was detained?

7 X. Yes, ma'am. He was detained on the twenty-first.

8 Q. Okay.

9 And can you tell me, did he have any writeups for
10 aggressive behavior while he was there?

11 X. Yes, ma'am, he did.

12 Q. And has he been in fights while he was there?

13 X. Yes, ma'am.

14 Q. And has he threatened staff while he was there?

15 X. Yes, ma'am.

16 THE COURT: I'll read it.

17 MS. MCCORMICK: Your Honor, will you allow me to ask
18 what incidents?

19 THE COURT: Which one?

20 MS. MCCORMICK: Sir?

21 THE COURT: What have we got?

22 MS. MCCORMICK: I would like to ask her specifically
23 about the 5/9/16 assault and battery.

24 THE COURT: Okay, let me see. Are they in
25 chronological order?

ZELPHINE SMALLS - DIRECT BY MS. MCCORMICK

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1 MS. MCCORMICK: They should be.

2 THE COURT: Okay. May 6. Okay.

3 Why do we even -- Why, why do you want her to have her
4 read it? I can read it. But I mean I, I -- If you have a
5 reason I'll be glad . . .

6 MS. MCCORMICK: She does have further information
7 that's not in the records about the report. That I'd like
8 to ask her.

9 MR. NEWMAN: I've not been provided with any of
10 that.

11 MS. MCCORMICK: It was -- It was relayed to her by the
12 social worker. It was not in part of the discovery. With
13 the state.

14 MR. NEWMAN: I would object to it. I don't have
15 any time to prepare for it. I don't know what she's gonna
16 ask.

17 It could've been written -- could've been typewritten
18 in a report and sent to her. Now it's sprung on me here
19 today.

20 THE COURT: Well, I don't think they're trying to
21 spring anything at all on you. But I know you're just
22 doing your job.

23 I'm gone leave that out.

24 MS. MCCORMICK: Yes, sir.

25 THE COURT: He cross examine her. It's like I

1 could say things.

2 MS. MCCORMICK: Yes, sir. Yes, sir, thank you.

3 Q. Today - When someone is detained does DJJ do a drug
4 test for that individual?

5 X. Yes, ma'am, we do.

6 Q. And did they do that for John Duncan?

7 X. Yes, ma'am, they did.

8 Q. And I'd like to show you Plaintiff's Exhibit Number
9 3.

10 MR. NEWMAN: I object on relevance, Your Honor.

11 THE COURT: All right.

12 I've got concerns of the community as well.

13 Q. And can you tell me what the result of the test
14 was?

15 X. Yes, ma'am. The result of the test was positive for
16 THC.

17 Q. Okay, now I'm moving on. I'm almost finished. What I
18 would like to do ---

19 THE COURT: I don't want you to rush. We're gone
20 get this - We're gone do it right, now, if we have to
21 finish up next week.

22 MS. MCCORMICK: Thank you, Your Honor.

23 Q. What I would like to do is talk to you about the
24 guidelines. You're familiar with the guidelines working at
25 the department of juvenile justice, are you now?

ZELPHINE SMALLS - DIRECT BY MS. MCCORMICK

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1 X. Yes, ma'am, I am.

2 Q. And the offense of murder, possession of a weapon
3 during a violent offense, what would the guidelines state?

4 X. The guidelines would be 36 to 54 months.

5 MS. MCCORMICK: I'm gonna write that down.

6 Q. And so that would be three years. And four years and
7 two months, the guidelines?

8 X. Yes, ma'am.

9 THE COURT: Six months. All right.

10 Q. And you said John's 17?

11 X. Yes, ma'am.

12 Q. And can you tell me how long John can be kept at
13 department of juvenile justice?

14 X. Once John turns 17 he can be transferred to our
15 adult SCDC. Department.

16 Q. Okay.

17 Now, as far as whether he's transferred or not, just
18 him being supervised in detention or, you know, in, in, in
19 DJJ facility, how long can they keep John Duncan in a DJJ
20 facility?

21 X. Until he's 18, I believe is . . .

22 Q. Now, they can supervise him on probation until he's
23 18, is that correct?

24 X. That's correct.

25 Q. Okay.

1 And would it be fair to say that they can keep him
2 until he's 21 years old?

3 X. (No verbal response.)

4 Q. And, again, just generally speaking.

5 X. Yes, they could but that would be up to the parole
6 board.

7 Q. Okay.

8 But the most they can keep him is 21?

9 X. Uh-huh.

10 Q. So if that is the case then he wouldn't even serve
11 the maximum guideline?

12 X. That's correct.

13 Q. Because he would be 21 before the 54 months?

14 X. Right. Yes, ma'am.

15 Q. Okay.

16 The maximum he would serve would be 3 years and 10
17 months?

18 X. Yes, ma'am.

19 Q. And, again, after the 21 is there any type of
20 supervision?

21 X. Not by DJJ.

22 Q. By no one, is that correct?

23 X. Correct.

24 Q. Okay.

25 Now, do you have a presumption regarding releases?

ZELPHINE SMALLS - DIRECT BY MS. MCCORMICK

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1 Is there a presumption that a juvenile be released at the
2 minimum guidelines?

3 X. Yes, yes, ma'am.

4 Q. So that would be three years.

5 And does DJJ have a policy where they get credit for
6 pretrial detention?

7 X. As long as it's for the crime that they committed.

8 Q. So ---

9 X. Being held for.

10 Q. So if they plead guilty for, in this instance, to
11 murder and possession - commission of a crime while in
12 possession of a deadly weapon he would be subject to
13 getting credit for pretrial detention?

14 X. Yes, ma'am.

15 Q. Okay.

16 And he's been in detention for a little over a year?

17 X. Yes, ma'am.

18 Q. And then he's looking at two years?

19 X. (No verbal response.)

20 Q. And if, if he was released on probation he's only
21 subject to DJJ supervision until he's 18, is that correct?

22 X. Yes, ma'am.

23 MS. MCCORMICK: Your Honor, that's all I have.

24

25

ZELPHINE SMALLS - CROSS BY MR. NEWMAN

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CROSS-EXAMINATION

BY MR. NEWMAN:

Q. What's the reason for all that?

X. What's the reason for all what?

Q. You've got a murder case and you've got parole guidelines. What's the reason for that?

X. That's the policy.

Q. And it's policy because you look toward the rehabilitation of juvenile offenders, is that not correct?

X. That's correct.

Q. And you guide them as they grown in their - in their learn processes, through their brain development. We have programs for them and you have secure facilities, is that not true?

X. That's correct.

Q. Okay.

And is that not a recognition by the department of juvenile justice, that juveniles are malleable, they're changeable, they're trainable? To become good people.

X. Yes, sir.

Q. And is there anything that would - Solicitor's asked you to comment on presumptions of release. Is there anything that would lead you for the department of juvenile justice to believe that John Ira Duncan is not rehabilitatable (ph) (sic)?

ZELPHINE SMALLS - CROSS BY MR. NEWMAN

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1 X. Well, that's not my area of expertise. That's our
2 parole board speciality. So ----

3 Q. Right, and if he wasn't rehabilitated he wouldn't
4 make parole, would he?

5 X. That will be up to them.

6 Q. To the parole board but my point is there's a
7 mechanism in place because DJJ recognizes that even for
8 all offenses because they have guidelines for murder that
9 these children are rehabilitatble, is that not correct?

10 X. Yes, sir.

11 Q. And you have many programs and many facilities to do
12 that?

13 X. Yes, sir.

14 Q. And highly trained professionals like the
15 psychologist that's gonna come?

16 X. Yes, sir.

17 Q. And speciality trained teachers?

18 X. Yes, sir.

19 Q. Now, as for John's record in there, getting in some
20 fights, is that not a judgement call? When a CO finds two
21 juveniles fighting they don't know who started it, if
22 one's protecting themselves ---

23 MS. MCCORMICK: Your Honor ----

24 Q. - if one's not, isn't that true.

25 MS. MCCORMICK: - he was saying that the records

ZELPHINE SMALLS - CROSS BY MR. NEWMAN

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1 speak for themselves. And now he's going in and asking
2 questions about the records. That the state was not
3 allowed to.

4 THE COURT: You're saying I don't want her to ask
5 these other questions about interpretations and that sort
6 of stuff, I tried - I just said, you know I can read all
7 those things, you know, about those DJJ records that you
8 objected to.

9 MR. NEWMAN: Well, I objected to them but they
10 were allowed in so I think I should be ---

11 THE COURT: No, interpretation is what you're
12 saying. She's saying, hey, you wouldn't let us go in to
13 all these discussion, interpretation of DJJ records and
14 now you want to go in to it.

15 Let's see, I'm gone go ahead and just rephrase your
16 question, please.

17 Q. When a staff worker - It's a violation to fight
18 while in custody, correct?

19 X. Uh-huh.

20 Q. All right.

21 And would you agree or not agree that a detention
22 facility that the juveniles you house, particularly
23 because of their age and, again, that they're males that
24 fighting is a common occurrence? At the facility. Is that
25 correct?

ZELPHINE SMALLS - CROSS BY MR. NEWMAN

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1 X. Common occurrence.

2 Q. All right.

3 And in John's records, specifically, it was noted
4 that he was the victim of an assault, is that not correct?

5 X. Yes, sir.

6 Q. Okay.

7 So I my question was if a -- if a CO sees a fight
8 they blame them both at fault, they find one's an
9 aggressor and one's not but that's just a judgement call
10 made by the reporting officer, is it not?

11 X. Can't be certain.

12 Q. Okay.

13 And based on what you've seen in John's records and
14 your experience with DJJ, is there anything from your
15 experience that tells you that John is not rehabilitatable?

16 MS. MCCORMICK: She's asked and answered.

17 THE COURT: Well, she's already said I'm not
18 qualified.

19 I apologize. I'm still a lawyer after all these
20 years.

21 MR. NEWMAN: I was asking from her knowledge,
22 experience and perspective is there anything that jumps
23 out as to why this child would not be rehabilitatable.

24 THE COURT: That isn't what she said. That's the
25 parole board, I don't -- I don't think -- I'm not an expert

ZELPHINE SMALLS - REDIRECT BY MS. MCCORMICK

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1 in that field ----

2 MR. NEWMAN: She nodded with the answer you gave
3 so I'll accept that, Your Honor.

4 No further questions.

5 THE COURT: What is your answer?

6 X. Yes, I'm not familiar. That ----

7 THE COURT: Thank you.

8 X. That's not my area of speciality.

9 THE COURT: And it's not a direct question,
10 right?

11 And I think that we certainly know our legislature
12 said all our kids are - we're trying to rehabilitate our
13 children. That's why we don't call them, you know - They
14 call it delinquency as opposed to a specific crime because
15 they're, they're being delinquent. You know, I'm telling
16 you stuff you know. So . . .

17 MR. NEWMAN: And that was the point I was trying
18 to reenforce, that our legislature does recognize that.
19 It does have facilities for that . . .

20 MS. MCCORMICK: Your Honor.

21 REDIRECT EXAMINATION

22 BY MS. MCCORMICK:

23 Q. Whether John Duncan is rehabilitated or not he will
24 be released at the maximum 3 years and 10 months?

25 X. Yes, ma'am.

CANDACE J. DUNN - DIRECT BY MS. MCCORMICK

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1 THE COURT: Step down.

2 (WHEREUPON, Plaintiff's Exhibit Number 3 was entered
3 in to evidence over objection.)

4 THE COURT: Okay.

5 MS. MCCORMICK: I'd like to call Doctor Candace
6 Dunn.

7 THE COURT: Is she here?

8 CANDACE J. DUNN, after being duly sworn, testified as
9 follows:

10 THE COURT: Okay, your witness.

11 MR. NEWMAN: Judge, as to the three plaintiff's
12 exhibits that I've been shown, they're labeled one, five
13 and eight, I have no objection to. There's a stipulation
14 that Doctor Dunn is certified as an expert in the field of
15 clinical psychology accompanied with her CD - CV and the
16 preadjudicatory transfer waiver.

17 MS. MCCORMICK: I've got copies for The Court.

18 May I approach?

19 But I do not have a copy of the stipulation.

20 (WHEREUPON, Plaintiff's Exhibit Number 1 was entered
21 in to evidence without objection.)

22 (WHEREUPON, Plaintiff's Exhibit Number 5 was entered
23 in to evidence without objection.)

24 (WHEREUPON, Plaintiff's Exhibit Number 8 was entered
25 in to evidence without objection.)

DIRECT EXAMINATION

BY MS. MCCORMICK:

Q. Doctor Dunn, who are you employed with?

A. The South Carolina Department of Juvenile Justice.

Q. And you are here today because you conducted a prewaiver evaluation and issued a report on behalf of John Duncan?

X. Yes.

Q. I'd like to start off, you have a recommendation as whether he should be waived to general sessions or stay in family court?

X. It is against the department of juvenile justice for the evaluator or the psychologist to offer such an opinion. I also ethically could not do that because that is a legal decision, not a clinical decision.

Q. Can you please tell me how you begin the waiver process? As far as you're concerned. What type of actions do you take?

X. It's made known to me that my services will be called upon to conduct waiver evaluation. I receive a packet of information, typically from the community specialist, that contains records such as school records, mental health records if those are available, any treatment records, police incident reports, a whole packet of information.

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1 Shall I continue?

2 Q. Did you review those type of records in this case?

3 X. Yes, I did.

4 Q. Okay.

5 And once you review those records what did you do?

6 X. I make contact with the solicitor and the defense
7 attorney to let them know that I will be part of the
8 process. And to let them know when I would be arranging to
9 meet with the juvenile.

10 Q. And did you meet with the juvenile?

11 X. Yes, I did.

12 Q. Can you please tell me when you met with John
13 Duncan?

14 X. I met with him on two dates. I met with him on
15 October 2 and then again on October 15. Or sixteenth,
16 excuse me.

17 Q. And who was present? Was anyone present for your
18 meeting with John Duncan?

19 X. Mr. Newman was present on the first day. He was
20 present during the clinical interview portion of the
21 process.

22 Q. And did you interview anyone else in regard to this
23 waiver?

24 X. I spoke with the biological mother. And I spoke with
25 her on September 23, 2015.

1 Q. And do you recall how long you spoke with her?

2 X. I believe it was between an hour and a half, two
3 hours.

4 Q. Did you interview anyone else in his family?

5 X. I did not.

6 Q. And who does John live with?

7 X. At the time that I started my waiver evaluation
8 he was living with his biological parents.

9 Q. Is there a reason why you didn't interview his
10 father?

11 X. I'm recollecting that the first date that I set up
12 to interview with his parents needed to be changed and the
13 father was not available on the second day, on the
14 September 23.

15 Q. And part of your process is to perform a number of
16 psychological tests, is that correct?

17 X. Correct.

18 Q. I'd like to ask you about your MMPI on page 12. Can
19 you briefly tell me what type of test that is?

20 X. It's self-reporter inventory that the juvenile
21 completes. Pencil and paper test. It's intent is to be
22 able to discern any psychopathy or tendencies regarding
23 personality traits.

24 Q. Okay.

25 And did you get a valid profile for John on that

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1 test?

2 X. His results were valid.

3 Q. Okay.

4 And can you briefly tell me what the results were at
5 the MMPI?

6 X. They tended to show that he responded with emotion.
7 Some liability with his affect, that he could become
8 frustrated easily. There also appeared to be tendency for
9 him to misinterpret the intentions of others. And he
10 seemed to have some cognitive beliefs that the world
11 tended to be a hostile place and the result of all of
12 these things working together tended to be disruptive to
13 his interpersonal relationships.

14 Q. And could you please read your last sentence
15 out loud? Beginning with John's responses.

16 X. John responses suggest that he may be extremely
17 manipulative and experience highly strained relationships
18 because of his behavior problems, irritability and
19 hostility.

20 Q. And as a result of that test, would that be a
21 negative factor toward rehabilitation?

22 X. It would.

23 Q. I'm gone ask you about the next test. Can you please
24 tell me what type of test that is?

25 X. This is another pencil and paper test that was

1 developed specifically for use with the juvenile
2 delinquent population. Again, it is intended to try to
3 discern any tendencies in personality. And, in part, it
4 can highlight if there are any defense mechanisms at work.
5 And, also, if there are tendencies towards oppositional or
6 conduct behavior.

7 Q. And did you obtain a valid profile for this test for
8 John?

9 X. I did.

10 Q. Can you please tell the results of this test?

11 X. One of the things that the test does is it sort of
12 places someone in what's called subtype. In John's case he
13 fell in to the cultural conformance subtype. And these -
14 that indicated that he was similar to juveniles who see
15 little reason to question their life; they're comfortable
16 with things as they are. They often will attribute their
17 problems to outside agencies or people. Such as teachers
18 or parents.

19 If the cultural conformist, if they are associating
20 with a group whose norms are antisocial they would tend to
21 want to behave in a similar manner in order to obtain
22 approval from that group.

23 Again, there was some indication that his
24 interpersonal relationships were not, perhaps, what they -
25 one would wish them to be. And, again, me might interpret

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1 other people's motivation, perhaps not be good at
2 interpreting nonverbal cues or having cognitive that would
3 cause him to interpret things differently.

4 And a tendency to, perhaps, work outside of what
5 would be typically acceptable behavior by society's
6 standards.

7 Q. So how does he interpret the behaviors of others?
8 In what type of manner? What is - What is his
9 interpretation of behavior?

10 X. Well, based on these results it appeared to me that
11 he would, perhaps, misinterpret others' behavior as
12 hostile in intent.

13 Q. And I believe in your report you said that John
14 received an elevated index score for this?

15 X. On the Jesness?

16 Q. Yeah.

17 If you can look, a couple of sentences on that
18 - on that paragraph. Beginning John had elevated scores.

19 X. Yes.

20 And that was what I just referred to. In tending to
21 resolve issues in a way not generally acceptable to
22 society.

23 Q. And would his results on this Jesness Inventory test
24 be another negative factor or likelihood of rehabilitational
25 (ph) (sic)?

1 X. Yes.

2 Q. I'm wanting to go on now to page 15,
3 recommendations.

4 THE COURT: What page?

5 MS. MCCORMICK: Page 15. Recommendations.

6 Q. Regarding these, are you asking The Court in these
7 recommendations to, to do these things? Are you
8 recommending this be done, The Court order these things?

9 X. No. The first set of recommendations, I apologize,
10 it's kind of a formatting issue. The first set are
11 returning - things that would be recommended if he were
12 returned to the community. On the following page there are
13 recommendations if he is not able to be returned to the
14 community.

15 Q. Okay.

16 So with regard to this first one, one through six,
17 those would only be implemented until his eighteenth
18 birthday?

19 X. Yes.

20 Q. And why is that?

21 X. It's my understanding that probation - probationary
22 supervision ends at that time.

23 Q. Okay.

24 So if he were released in to the community he would
25 only be supervised for 10 months?

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1 X. Apparently that's correct, yes, ma'am.

2 Q. All right.

3 Now the second part, you've, you've made
4 recommendations regarding his return to community's not
5 possible, is that correct?

6 X. Correct.

7 Q. All right.

8 Can you please briefly tell me about your first
9 recommendation?

10 X. It was brought to my attention in -- again, in
11 requesting records, that he did appear to have some
12 difficulties adjusting to detention. And this would
13 probably be a recommendation that would be applicable to
14 most juveniles.

15 The best benefits are obtained when rules are made
16 clear and consequences are made clear. And also that
17 rewards are offered for behavior that meets the standard.

18 Q. Okay.

19 And do they have that type environment at department
20 of corrections?

21 X. I would hope that they do, yes.

22 Q. The second one regarding education and vocational
23 programs, they also have those type of programs at the
24 department of corrections?

25 X. They do.

1 Q. Okay.

2 Substance abuse treatment, is that available at the
3 department of corrections?

4 X. It is.

5 Q. Okay.

6 Counseling, is that available at the department of
7 corrections?

8 X. It is.

9 Q. Okay.

10 And family visits, is that allowable at the
11 department of corrections?

12 X. It is.

13 Q. Okay.

14 And, again, those were your recommendations?

15 X. Yes.

16 Q. Okay.

17 And you say in your report different department of
18 corrections and DJJ services. I'd like to show you what's
19 marked Plaintiff's Exhibit 9.

20 MR. NEWMAN: No objection.

21 MS. MCCORMICK: State's Exhibit Number 9, copy.

22 Q. Can you please tell me what that is?

23 X. This is correspondence that I received from South
24 Carolina Department of Corrections.

25 Q. And that list the different programs and services

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1 available?

2 X. The rehabilitative and mental health services that's
3 offered by The South Carolina Department of Corrections.

4 MS. MCCORMICK: Your Honor, may I approach?

5 THE COURT: Yes, ma'am.

6 Are you asking to introduce nine in to evidence?

7 MS. MCCORMICK: Yes, sir, I am.

8 THE COURT: Counsel? You object to nine?

9 MR. NEWMAN: Oh, no, I do not.

10 I'm sorry. I was reading, Judge, I apologize.

11 (WHEREUPON, Plaintiff's Exhibit Number 9 was entered
12 in to evidence without objection.)

13 Q. And, again, those pretty much go detail of what we
14 just said, that services that you recommend are available
15 at department of corrections?

16 X. They are.

17 Q. And is - As far as vocational programs, they
18 actually have more programs than DJJ, is that correct?

19 X. They do appear to have more programs, yes.

20 Q. Okay.

21 I'd like to move on now to sophistication and
22 maturity, your part page 16. I believe your indicated that
23 his age of sophistication and maturity were consistent
24 with his age. That correct?

25 X. Correct.

1 Q. And he's 17 now?

2 X. Correct.

3 Q. Okay.

4 And at the time of the offense he would've been
5 almost one month and seven days from being 16?

6 X. Correct.

7 Q. And are you aware that the South Carolina
8 legislature ---

9 MR. NEWMAN: Your Honor, I would object to that.
10 The solicitor can argue that.

11 THE COURT: Let her finish the question.

12 Q. The South Carolina legislature has determined a 16-
13 year-old can be charged as an adult?

14 X. I am aware of that.

15 THE COURT: But that was after this case. After
16 the young man was arrested.

17 MS. MCCORMICK: Okay. Thank you.

18 THE COURT: Go ahead.

19 Q. And because you say he does have the ability doesn't
20 mean that he had - can - would be amenable to
21 rehabilitation, does it?

22 X. I can't speak to what his future motivation might
23 be.

24 Q. Okay.

25 So just because he mentally had the capacity to do

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1 it, we don't know if he will, will learn from the services
2 that are given to him?

3 X. I wouldn't be able to foretell that, no.

4 Q. Okay.

5 Likelihood of reasonable rehabilitation, page 17.

6 You list a number of negative factors. Number 1, you
7 indicate that persons who commit serious antisocial
8 actions can be difficult to rehabilitate.

9 X. Yes.

10 Q. He's charged with murder. That would be appropriate.
11 That statement.

12 Would it be a further negative factor if he
13 committed the offense in a premeditated manner?

14 X. Yes.

15 Q. And would it be a further negative factor if he
16 committed the offense with women and children and babies
17 close by?

18 X. I would say so.

19 Q. Number 2, you said he revealed some marijuana use
20 and was caught with some drug paraphernalia. Would it be a
21 further negative factor if it were determined that he was
22 selling drugs?

23 X. Yes.

24 Q. And you also did a substance abuse screening for
25 John, is that correct?

1 X. Correct.

2 Q. And he had elevated scales? Elevated for risk of
3 drug abuse problem?

4 X. The results indicated that he had higher
5 probability.

6 Q. And is that a negative factor toward likelihood of
7 rehabilitation?

8 X. Yes.

9 Q. You indicated in your report that John has
10 problematic behaviors at school since 2010. Shooting,
11 striking a teacher. A major disruption. Is that a negative
12 factor?

13 X. Correct.

14 Q. Let me ask you. He has aggressive behaviors
15 beginning at, say, fifth grade. Does that make it even
16 further a negative factor?

17 X. If those behaviors are demonstrated to continue,
18 yes.

19 Q. And you've reviewed the records, is that correct?

20 X. Correct.

21 Q. The school records and behavior records?

22 X. Correct.

23 Q. Did it appear that that behavior has continued?

24 X. Yes.

25 Q. Number 4. He minimizes marijuana use. And his

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1 problematic behaviors. You indicated the presence or
2 belief that rewards and punishments are the results of
3 external factors and may attribute to origins of problems
4 to outside sources. Again, that's a negative factor?

5 X. Yes.

6 Q. And would it be a further negative factor if he was
7 written up for behavior problems at the detention center?

8 X. Yes.

9 Q. Okay.

10 And further for aggressive behavior at the detention
11 center?

12 X. Yes.

13 Q. And, again, the fact that he would be sealing drugs.

14 MR. NEWMAN: Your Honor, I don't think the state's
15 proven. They've put in one hearsay statement there was
16 some kind of one-time deal. It's referred in the record
17 again. This child has no criminal record. He's not been
18 charged with any possession of drugs. And slandering him
19 as some type of drug dealer here and there's absolutely no
20 evidence of that. She just has the witness
21 speculating ----

22 THE COURT: I believe - I guess she's saying if I
23 believe that he had the boys come over, tried to sell them
24 some marijuana. He left. He went out. Looking around for
25 him. Let it be known. And they had a fight at 3:30, 4:00.

1 For some unknown reason, apparently, that, that he may -
2 If I believe he's a drug dealer that would be a factor,
3 negative factor, is that what you're saying?

4 MS. MCCORMICK: Yes, sir.

5 THE COURT: So if I believe he is I'll consider
6 it a negative factor. If I don't I won't.

7 MR. NEWMAN: Fair enough.

8 Q. And now I'd like to move on. You've listed some
9 positive factors.

10 X. Yes.

11 Q. Regarding his likelihood of be rehabilitated.
12 Number 1, he's got a strong family support system.

13 X. Yes.

14 Q. If it appears that his family helped him abscond
15 from law enforcement would that turn that positive factor
16 to a negative factor?

17 MR. NEWMAN: Your Honor, I would, again, object to
18 that. You've heard evidence in the record that while they
19 couldn't immediately find him that I immediately called
20 Mr. Reynells and said I have the child and we turned him
21 in.

22 THE COURT: Well, it was two or three days later.

23 MR. NEWMAN: It was maybe two days. But I don't
24 understand how that's absconding.

25 THE COURT: Maybe that's a strong word but

CANDACE J. DUNN - DIRECT BY MS. MCCORMICK

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1 rephrase your question.

2 Q. Would it be a negative factor if his family was not
3 available to communicate with law enforcement?

4 X. If I'm understanding the meaning of your question,
5 yes.

6 Q. As far as you said he has ability to empathized
7 with others. You had - You couldn't go about determining
8 your normal route, is that correct?

9 X. I was unable to explored that area as much as I
10 would've preferred to.

11 Q. And why was that?

12 X. I part - and I can't speak to specific questions
13 without referring to my notes - there were some questions
14 that his attorney asked could you refrain from answering.
15 And there were some questions that John declined to
16 answer.

17 Q. And as a result, because of that you, you asked him
18 hypothetical questions?

19 X. I did.

20 Q. Okay.

21 And in number 2, can you please tell me what
22 question you asked and his response?

23 X. I believe the question you're referring to is I
24 asked him if he - how he thought the family of a victim of
25 a crime would feel. And he said that they would -

1 something like they, they would feel bad.

2 Q. Did he also say I don't be around crime to know how
3 someone would feel?

4 X. I would need to check my note. I don't think that's
5 exactly what he said.

6 Q. Let me, if I could, refer you to page 10. And if you
7 would look at paragraph 2, the last sentence.

8 X. You would like me to read it?

9 Q. Yes, ma'am.

10 X. When he was asked hypothetically about how he
11 thought people felt when they commit crimes he answered by
12 saying I don't be around crime to know how someone would
13 feel.

14 Q. Okay.

15 And getting on back to the other, he's got the
16 ability to apply rehabilitative concepts. That's a
17 positive factor, is that correct?

18 X. Correct.

19 Q. And, again, just because he has the ability doesn't
20 mean that he will do that, is that correct?

21 X. Correct.

22 Q. And can you say how long it will take him? If he ---
23 If he is rehabilitated to do that?

24 X. That would - That would be a unique process for each
25 individual.

CANDACE J. DUNN - DIRECT BY MS. MCCORMICK

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1 Q. And, briefly, regarding his intellectual scale. He
2 received a low average on processing speed, is that
3 correct?

4 X. Correct.

5 Q. What is processing speed?

6 X. Processing speed, as I - as the test uses it,
7 measures his speed and accuracy of the child's habitual
8 identification, decision-making and decision
9 implementation.

10 Q. Okay.

11 Would that mean he might have a more difficult
12 time grasping rehabilitative concepts?

13 X. It would mean - likely mean that he would require a
14 little bit more time in the presentation of concepts to
15 him.

16 Q. As far as adequate protection is it true that John
17 - He could be sentenced til his twenty-first birthday but
18 DJJ could release him the very next day?

19 X. Correct.

20 Q. And they could also send him to alternative
21 placement?

22 X. Correct.

23 Q. And as far as the guidelines is there a presumption
24 that he be released at his minimum guideline?

25 X. If he has shown that he has worked towards meeting

1 goals and has been cooperative, yes.

2 Q. And is there any way that you can prevent that he
3 will not commit another violent crime?

4 X. No.

5 Q. And can you guarantee that he will be rehabilitated?

6 X. No.

7 MS. MCCORMICK: Thank you, Doctor Dunn.

8 X. You're welcome.

9 CROSS-EXAMINATION

10 BY MR. NEWMAN:

11 Q. Can you guarantee he's not rehabilitatable? To a
12 reasonable degree of psychiatric - clinical psychological
13 certainty?

14 X. I'm so sorry. Could you please repeat that, sir.

15 Q. Do you have an opinion whether he's not
16 rehabilitatable to a reasonable degree of psychiatric
17 certainty? Or, or clinical psychology, whatever your
18 field's in.

19 X. You're asking me to say that he cannot be
20 rehabilitated? I don't believe that. I, I have no way of
21 knowing that he cannot be rehabilitated.

22 Q. And, in fact, you've listed at least six factors
23 that are very positive as to why he could be?

24 X. Correct.

25 Q. All right.

CANDACE J. DUNN - CROSS BY MR. NEWMAN

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1 Now, you mentioned something about John's processing
2 speed being slower. Does that make him a bad person?

3 X. No.

4 Q. Is, is that his fault?

5 X. No.

6 Q. Okay.

7 Does that have to do with the, the development of
8 the brain in learning, does it not?

9 X. Yes.

10 Q. All right.

11 And are you aware that in the short time John's been
12 in there that he's gotten his GED?

13 X. I was aware of that.

14 Q. Does that show that he is able to learn?

15 X. I would think so, yes.

16 Q. All right, and you've got some folks in there that
17 have tried for a long time to get their GED and just can't
18 because they're just not that bright. Isn't that true?

19 X. It may be.

20 Q. Okay.

21 Now, you noted in your report - Let me find it.

22 We've talked about the level of sophistication and
23 maturity. John would see, based on your testing, threats
24 that may seem rational to him, outside threats, that may
25 not seem rational to a person who is fully developed, is

1 that correct?

2 X. I will answer yes to that.

3 Q. Okay.

4 And, again, that's not fault based; that's just what
5 the testing indicated, correct?

6 X. Correct.

7 Q. And you also mentioned that it's now well documented
8 that the development of parts of the brain responsible for
9 impulse control and decision-making, at least in the
10 males, continues up to the age of 25.

11 X. Correct.

12 Q. And, in fact, there is a good body of research now,
13 within the last few years, that shows that - and if I'm
14 wrong tell me - that in 15-year-old, 16-years-olds that
15 the - there can be a disconnect between the prefrontal
16 cortex thinking and limited thought? In response to
17 stimuli, is that correct?

18 X. (No verbal response.)

19 Q. All right.

20 And it is will documented that in young man like
21 John their prefrontal cortex is not only underdeveloped,
22 that the neuron are growing to access that for
23 informational processing.

24 X. Are you talking about myelination?

25 Q. Yes.

CANDACE J. DUNN - CROSS BY MR. NEWMAN

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1 X. Correct, those processes are all in place and
2 working to provide greater what you would call
3 connectivity between the brain areas.

4 Q. Right, connectivity.

5 And as John grows the -- some of these negative
6 factors you have mentioned may well diminish.

7 X. That may be.

8 Q. Okay.

9 And the responses to outside stimuli by the limbic
10 system would act more as an accelerator and -- Would it be
11 fair to say as an accelerator in using information process
12 to the prefrontal cortex would act, act more like breaking
13 information to process?

14 X. You're asking me if, if -- when the limbic system is
15 activated is that more likely to spur action? I'm not
16 quite sure ---

17 Q. Or spur a, a response without reason to stimuli.

18 X. Correct.

19 Q. Snap judgements.

20 X. Correct.

21 Q. And those may will be inappropriate because they're
22 not thought through like a fully developed brain would
23 think.

24 X. Correct.

25 Q. Now, we had asked and weren't able to get the money

1 for one ---

2 THE COURT: Okay. Don't do that.

3 Q. Would John benefit from having a functional MRI to
4 be able to determine these things?

5 X. I'm not a neuropsychologist. In my opinion as a
6 clinical psychologist, while that data might be useful I
7 don't think it would be confirmatory.

8 Q. Okay.
9 But it may be useful.

10 X. (No verbal response.)

11 Q. Did you see anything from a organic respect that
12 John's brain would not continue to develop normally?

13 X. No, I did not.

14 Q. Okay.

15 And isn't it very important to have a strong support
16 system for juveniles in the rehabilitative process?

17 X. Yes.

18 Q. And the bottom line is you were able to -- I know
19 it's not the best evidence you wanted but John does have
20 the ability to show empathy and compassion.

21 X. I believe so.

22 Q. Those are important to the rehabilitative process?

23 X. Yes.

24 Q. And you noted that your test were valid and John
25 tried hard and gave you -- just for lack of term, gave you

CANDACE J. DUNN - CROSS BY MR. NEWMAN

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1 a valid effort on his part to complete everything you
2 asked him to complete?

3 X. I believe he did, yes.

4 Q. You have some juveniles even at a young age who are
5 manipulative and malingering, is that - In there responses
6 to you.

7 X. Juveniles, juveniles will be unwilling to fully
8 engage in the testing for a variety of reasons. But, yes,
9 that does occur.

10 Q. Okay.

11 And you did not find that in John. You believe
12 your tests were valid and he tried as hard to do what he
13 could.

14 X. I believe he did, yes.

15 Q. Okay.

16 Does the fact that he has a GED factor in to any of
17 your opinion as to his ability to be rehabilitatable?

18 X. I think that's a positive. That he has accomplished
19 that.

20 Q. Okay, because I think what the solicitor was getting
21 at is maybe if we'd lock him up we don't have enough time
22 to get him to where he needs to be. You have no opinion on
23 that, is that correct?

24 X. It would be impossible for me to predict.

25 Q. Generally, within the criminal justice system isn't

1 it true that a one-time impulse killers are the least
2 likely to commit - recommit crimes?

3 X. Yes.

4 Q. And does the department of juvenile justice have, in
5 your opinion, adequate, secure facilities and counselors
6 and teachers and clinicians that could make a positive
7 effort in John's life?

8 X. Yes.

9 Q. And his - Is there a reason why DJJ has parole
10 guidelines? Isn't that reason because the parole board
11 would look and determine that a juvenile has gotten
12 rehabilitated, has benefitted from in-custody services?

13 X. Yes.

14 Q. And is safe to be released?

15 X. That would be a decision they would make.

16 Q. Okay.

17 MR. NEWMAN: Thank you.

18 X. You're welcome.

19 REDIRECT EXAMINATION

20 BY MS. MCCORMICK:

21 Q. Regarding John's behavior at the detention center,
22 would it be fair to say that he's continuing to display
23 aggressive and violent conduct?

24 X. It appears that he's had incidences of that, yes.

25 Q. And regarding the 25-year-old, the magic number,

CANDACE J. DUNN - RECROSS BY MR. NEWMAN

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1 now, the most he can be kept at department of juvenile
2 justice is, is how long?

3 X. I believe through the age of 21.

4 Q. And then once he's released there's no supervision
5 at all, is that correct?

6 X. Not by any department of juvenile justice, correct.

7 Q. So that's four years, the time of 25 that he will be
8 unsupervised and he's - if he's kept in family court?

9 X. His supervision would stop at age 21, correct.

10 MS. MCCORMICK: Thank you, Doctor Dunn.

11 X. You're welcome.

12 MR. NEWMAN: I'd follow up just briefly on that.

13 RECROSS EXAMINATION

14 BY MR. NEWMAN:

15 Q. There's no such thing as a magic number, correct?

16 X. Correct, the processes are not linear.

17 Q. It depends on the individual, is that not correct?

18 X. Correct.

19 Q. Let's go back to our situation of a juvenile brain
20 using a limbic system. Would that factor in to impulsivity
21 even if it was carried out over a period of time? And as
22 to a overreaction to stimuli?

23 X. I think I understand your question and, certainly,
24 an immature brain whose feedback is occurring more from
25 the limbic system, an emotional system is going to respond

1 to stimuli than that of a more mature brain that would
2 take the time to process, make better decisions, consider
3 consequences. Does that answer your question?

4 Q. Yes, ma'am.

5 MR. NEWMAN: Thank you.

6 THE COURT: Anything else?

7 MS. MCCORMICK: No, sir.

8 MR. NEWMAN: No, Your Honor.

9 THE COURT: Okay, well, I'll take this under
10 advisement and thank you very much. You can go home.

11 MR. NEWMAN: I know you're tired; I know you've
12 got information to process but before you make a final
13 decision I would like to be able to come before The Court
14 and make sort of a closing statement ----

15 THE COURT: Do it now.

16 MR. NEWMAN: ---- and let the solicitor do so as
17 well.

18 THE COURT: Feel free to do it now. We've got
19 half an hour. I mean thought you were finished, you didn't
20 want a closing statement. I would be glad to hear a
21 closing statement. But this is a waiver hearing.

22 Please sit down.

23 THE COURT: Can we excuse this witness?

24 MS. MCCORMICK: Yes, sir.

25 THE COURT: Sure, and I apologize.

1 Please. You've got the burden.

2 CLOSING ARGUMENT

3 BY MS. MCCORMICK:

4 MS. MCCORMICK: Thank you, Your Honor.

5 The state, again, is requesting that John Duncan be
6 transferred to The Court of General Sessions. As The Court
7 knows, the case is Kent versus United States.

8 Going through the factors, the first factor, the
9 seriousness of the alleged offense to the community and
10 whether the protection of the community requires waiver.
11 It's a violent crime; it's a felony, most serious, and you
12 could see from the video, this was Coligny Circle. It was
13 a summer day, July 20. There are babies, children around
14 and he makes the decision to go and take a gun and shoot
15 Dom.

16 And, again, as you can see from, from the tape that
17 protection of the community was at risk for this charge.
18 Whether it was committed in a violent, aggressive,
19 premeditated or willful manner. Again, the facts show
20 clearly that this factor is met. There was the theft, the
21 drug deal that went. It was Friday, early Saturday
22 morning. Nothing happened at that time.

23 Saturday there was a fight. Both of them were
24 together. Nothing happened at that time. They actually
25 went upstairs after the fight and, and spoke. However,

1 later, several days later, from Friday, that Sunday
2 evening he obtained the gun; he goes through Coligny Plaza
3 looking for Dom. And finds him. Stands over him, according
4 to a witness, and states that's what you get.

5 Whether the alleged offense was against a person or
6 property. Obviously this is against person where death -
7 in which there was death.

8 The merit of the prosecuting complaint, whether there
9 is evidence upon which a grand jury may be expected to
10 return an indictment. It's on video. The shooting's on
11 video. There were threats of John Duncan who I see him as
12 the one who shoot him. They IDed what he was wearing. And
13 what he did.

14 The desirability of trial and disposition of the
15 entire offense in one court where the child's codefendants
16 are adults. There're no codefendants in this case.

17 The sophistication and maturity of the child as
18 determined by consideration of his home, his environmental
19 situation, emotional attitude and living pattern. It was
20 stated that he was one month and seven days of 16 years
21 old, in which the legislature has determined he should be
22 treated as an adult.

23 Regarding the rehabilitation, it's indicated that he
24 has low processing speed. They don't know how long it
25 would take him to be rehabilitated and they cannot assure

1 that he will and the amount of time that he would be at
2 DJJ.

3 The child's prior record of involvement with the
4 juvenile justice system. He has no prior record, Your
5 Honor.

6 Prospects for adequate protection of the public and
7 the likelihood of reasonable rehabilitation of the child
8 by the use of procedures, services and facilities
9 currently available to the family court. It's a very
10 limited time in which he could be there. At the most it's
11 until his twenty-first birthday. He's 17 years old and two
12 months. His behavior continues to exhibit the type of
13 behavior. He, he continues to be aggressive. And violent.

14 Department of corrections has programs available for,
15 for John to be, be rehabilitated. We believe that there's
16 a less chance of rehabilitation.

17 And, again, I would like to state even if he stays
18 the maximum guideline where he's 21 he's gonna be released
19 back in to the community with no supervision whatsoever.

20 Thank you.

21 THE COURT: Counsel.

22 CLOSING ARGUMENT

23 BY MR. NEWMAN:

24 MR. NEWMAN: Please The Court, Your Honor.

25 I think on one aspect and it comes across very well

1 because you hear a very seasoned investigator tell you
2 what a bunch of kids John's age and who were allegedly all
3 friends together, that's why I doubt very much there was
4 some kind of a weed deal. All these people hung out,
5 supposedly hung out together, knew each other, went over
6 to each others' houses. I don't know what went on; the
7 investigator doesn't know what went on. In this case.

8 I would look to the fact that you do see, if it is
9 Mr. Duncan walking around, and I think this is very
10 telling. One, we are in his neighborhood, not these other
11 children - as the detective said - not their neighborhood.
12 So they came down there.

13 Mr. Duncan is down there and not once but possibly
14 twice was called over to where the victim was with his
15 friends. So I don't know if that is a fight. We don't
16 know. The investigator doesn't know.

17 I don't know - We don't know if these kids are
18 telling the truth as to what happened, whether there was
19 some type of attempted altercation immediately before
20 this, if they were called over.

21 But what I'm gone ask The Court to look at is that I
22 do think that we have a disconnect between popular skews
23 of, of revenge or vengeance. And what the goal of juvenile
24 court should be. Doctor Dunn was very candid that in very
25 recent years that we have recognized the disconnect in

1 juvenile brains, male juvenile brains, part - partly
2 for - of, of acting more on their limbic system rather
3 than a prefrontal cortex. And Doctor Dunn recognized that
4 they recognized - that was very well recognized now that
5 we didn't know in 1966 when all these Kent factors were
6 passed. So I think it is a recognition.

7 Because John may have a slow processing speed, that's
8 not his fault. That's a organic process. However, he was
9 able to get his GED and that is - I'd have a problem with
10 GED now became I'm terrible at math. It may have those
11 components in them.

12 So she never once said that John is not
13 rehabilitatable. And the factors she never said to a
14 reasonable degree of clinical psychology, well, it could
15 make him a little slower. She didn't come out with any
16 type of magical words that - She couched everything in
17 could, possibly, maybe. But when you actually look at, at
18 what we, we find and look at, her testimony is that he is
19 rehabilitatable.

20 The state talks about - at lot about the time, the
21 time, the time. Let's, let's just take the veneer off it.
22 What the state's trying to tell you is he ain't gone get
23 enough punishment unless he's tried as an adult. That is a
24 pure theory of, of, of ----

25 THE COURT: We just have a - We have this case of

1 - What was it? State v. Kelsey, wasn't it? I mean there's
2 been a couple cases in South Carolina they actually
3 discuss this issue.

4 MR. NEWMAN: I understand.

5 THE COURT: Okay.

6 MR. NEWMAN: I was trying to make that point. That
7 something for you to consider but that is on the lines of
8 retributive justice. What we're wanting to punish John for
9 this eventual act that he is alleged to have done. And
10 we're saying vengeance is bad. Now we're saying, well,
11 vengeance might be good if it's on our side.

12 Would also ask This Court to consider that, that
13 they've given, basically, six reasons yes and six reasons
14 no. In their recommendations that - The state has the
15 burden of proof. Every defendant in any criminal case is
16 entitled to --- entitled to a rule of - If the punishment's
17 not enough then maybe that's a factor The Court consider.
18 If The Court considers that I ask The Court to expressly
19 write that in it's order.

20 But I think when you look at everything, if, if you
21 look at the age, okay, he's short of the sixteenth
22 birthday and the law's changed and all that. The law's the
23 law. This Court has jurisdiction over this child. This
24 Court calling him an adult does not make him an adult.
25 He's still a child. And he will be until he grows through

1 that. Granted, he's older.

2 These are one of the, the things that are horrible
3 for juveniles that are tried in the adult world. This
4 kid's grown an inch and a half since I first represented
5 him. He get up in the court two years from now he's gonna
6 look and act and everything, look like a full man.

7 We can - DJJ says they have the resources to
8 rehabilitate this young man. He's rehabilitatable. I ask the
9 flip side. If you want to do it on pure punishment, let's
10 say John gets convicted of voluntary manslaughter. He can
11 get from a two-year sentence - which he'd do six years at
12 DJJ - to a 30-year sentence.

13 Let's, let's assume he gets convicted of that. He
14 gets convicted of murder he goes for 30 day for day. And
15 he'll be out when he's 48. Forty-seven, or what ever time
16 they get. The person you're gonna get when you come out -
17 assuming he survives prison, African-American males, their
18 average age of dying in prison is between 52 and 55, of
19 natural causes because of the medical treatment and, you
20 know, other causes of the environment. You're gonna get a
21 thoroughly worthless individual. You're gonna get an
22 individual that's never held a job, that's gonna be
23 completely institutionalized, that is gonna be counted 17
24 times a day, every day; is gonna be subjected to,
25 literally, fighting for his life every day, drawing eyes

1 in the back of his head. When he steps out you're gonna
2 have a thoroughly institutionalized person that is a
3 danger to the community. And society.

4 The solicitor's maybe hoping. She said, well, 25. If
5 he gets convicted in, in adult court upstairs he's not
6 getting a two-year sentence, a three-year sentence. The
7 state has already indicated they're asking for maximum
8 sentences.

9 Now, we know The United States Supreme Court has
10 finally said a juvenile cannot be sentenced to life
11 without the possibility of parole. That is the only thing
12 that is off the table upstairs for this young man that has
13 inappropriate responses to stimuli and there's a
14 scientific basis for why that is. And it's a scientific
15 basis that that can be grown out of.

16 There's a basis that DJJ has - and you'll have a
17 packet of it - any number of facilities, clinicians that
18 can put this young man on the right track.

19 If we're gonna try him as an adult please write a
20 one-sentence order just says he ain't getting enough
21 punishment down here.

22 Thank you, Your Honor.

23 THE COURT: Well, this is terrible, terrible
24 situation. I want to thank everyone. I'm proud. Everybody
25 controlled themselves. That would have taken away. It wasn't

1 for you; it was for him. The state, the community. It
2 would've taken away so much. You know, I can't be a hall
3 monitor and concentrate on what was presented to me. I am
4 so sorry for everyone.

5 Thank you.

6 (End of Transcript of Record.)
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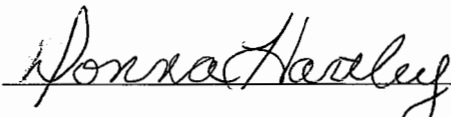
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

I, Donna Hartley, Official Court Reporter for the Fourteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Family Court for Beaufort County, South Carolina on the twenty-eighth day of October 2016.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

April 2, 2019


Donna Hartley, Court Reporter



STATE OF SOUTH CAROLINA) IN THE FAMILY COURT OF THE
COUNTY OF BEAUFORT)
2016 NOV 15 PM 3:36)
IN THE INTEREST OF:)
JOHN DUNCAN)
BEAUFORT COUNTY)
LEAFLET S.C.)
PETITION NUMBER(S):
2015-JU-07-190 & 191
TRANSFER OF JURISDICTION ORDER

DOB: [REDACTED]

DATE OF HEARING: October 28, 2016
JUDGE: The Honorable Peter L. Fuge
ATTORNEY FOR SOLICITOR: Jean McCormick
ATTORNEY FOR JUVENILE: Jared S. Newman
COURT REPORTER: Donna Hartley
GUARDIAN AD LITEM: n/a

Certified - A True Copy

Jean A. Pearson
Clerk of Court
Beaufort County SC

THIS MATTER CAME BEFORE the court upon the State's July 28, 2015 Motion for Transfer/Waiver pursuant to section 63-19-1210 of the South Carolina Code (2010). On July 20, 2015, the State filed the above-referenced Petitions against John Duncan (the Juvenile), alleging that on July 19, 2015, he was a delinquent child in that he did commit the following offenses in Beaufort County, South Carolina: Murder (15-190) in violation of section 16-3-10 of the South Carolina Code (2015) and Possession of a Firearm During the Commission of a Violent Crime (15-191) in violation of section 16-23-490 of the South Carolina Code (2015).

A Consent Order for a Pre-Waiver Evaluation was issued on August 5, 2015. An Amended Consent Order for a Pre-Waiver Evaluation, which added the *Hitopoulus* provision, was issued on September 29, 2015. See *State v. Hitopoulus*, 279 S.C. 549, 551, 309 S.E.2d 747, 749 (1983). The Waiver Hearing was scheduled for June 19, 2016; however, counsel for the Juvenile requested a continuance in order to seek money from The Defense

of Indigents for an expert to evaluate the Juvenile's cognitive functioning. The Motion for Continuance was granted, and the defense was awarded funding through the Defense of Indigents in the amount of four thousand dollars. It was also ordered that if the defense was unable to retain an expert for that amount of funding, an emergency hearing was to be scheduled. The defense also requested additional funds for a Magnetic Resonance Imaging (MRI) scan. This request was denied. However, it was ordered that if the evaluator reports that an MRI is medically necessary, an emergency hearing on the issue of medical necessity was to be scheduled. The Waiver Hearing was rescheduled for October 13, 2016, but was continued at the request of the Defense due to Hurricane Matthew.

The Waiver Hearing was held on October 28, 2016. The person's reflected above were present, as well as the Juvenile, the Juvenile's mother and father, other members of the Juvenile's family, and members of the Victim's family. Preliminary matters were taken up by the court prior to the commencement of the hearing. The court found the use of restraints was not necessary.

The court has carefully considered the testimony of the following witnesses with due deliberation: Seth Reynells (Investigator Reynells), Investigator with the Beaufort County Sheriff's Office; Zephine Smalls (Ms. Smalls), Community Specialist, III with the South Carolina Department of Juvenile Justice; and, Dr. Candice J. Dunn, PsyD (Dr. Dunn), Licensed Psychologist with the South Carolina Department of Juvenile Justice. The Court has had the opportunity to observe the witnesses and assess their credibility.

The court has carefully considered with due deliberation the exhibits admitted into evidence, including (1) surveillance video before, during, and after the shooting, (2) video obtained from a cell phone of a fist fight between the Juvenile and the Victim, (3) school

records of the Juvenile, (4) detention center records of the Juvenile, (5) Curriculum Vitae of Dr. Dunn, (6) the Pre-adjudicatory transfer (Waiver) Evaluation Conducted by Dr. Dunn, (7) a letter from Beaufort County School District dated July 28, 2015, indicating that the juvenile has not received any special education services, (8) the Juvenile's drug screen dated July 21, 2015 with a positive result for THC, (9) a letter with attachments regarding the Rehabilitative and Mental Health Services Offered by the South Carolina Department of Corrections and (10) a photograph of the victim.

Based upon the above and the applicable case law and statutory authorities, the Court makes the following findings of fact and conclusions of law:

CONCLUSIONS OF LAW

The Family Court has exclusive jurisdiction over children¹ accused of crimes. S.C. Code Ann. § 63-3-510(A)(1)(d) (2010). "However, the family court may transfer jurisdiction over a criminal matter to the court of general sessions." *State v. Jones*, 392 S.C. 647, 652, 709 S.E.2d 696, 699 (Ct. App. 2011) (citing S.C. Code Ann. § 63-3-1210(6) (2010)). Subsection (6) of the transfer statute provides:

Within thirty days after the filing of a petition in the family court alleging the child has committed the offense of murder . . . , the person executing the petition may request in writing that the case be transferred to the court of general sessions with a view to proceeding against the child as a criminal rather than

¹ The statute defines a child or juvenile as "a person less than seventeen years of age." S.C. Code Ann. § 63-19-20(1) (2010).

as a child coming within the purview of this chapter. The judge of the family court is authorized to determine this request.

S.C. Code Ann. § 63-19-1210 (2010). "The serious nature of the offense is a major factor in the transfer decision." *State v. Kelsey*, 331 S.C. 50, 65, 502 S.E.2d 63, 71 (1998). "[T]he best interests of the public or of the juvenile may . . . require that the juvenile be held accountable as an adult for his criminal conduct." *In the Interest of Shaw*, 274 S.C. 534, 542, 265 S.E.2d 522, 526 (1980). See also *State v. Pittman*, 373 S.C. 527, 558, 647 S.E.2d 144, 160 (2007) ("Upon a motion to transfer jurisdiction, the family court must determine if it is in the best interest of both the child and the community before granting the transfer request.").

The Family Court must consider eight factors, as approved by the United States Supreme Court in *Kent v. United States*, 383 U.S. 541 (1966), when deciding whether to waive its jurisdiction over a juvenile:

- (1) The seriousness of the alleged offense.
- (2) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner.
- (3) Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted.
- (4) The prosecutive merit of the complaint.

- (5) The desirability of trial and disposition of the entire offense in one court.
- (6) The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living.
- (7) The record and previous history of the juvenile, including previous contacts with law enforcement agencies, juvenile courts and other jurisdictions, prior periods of probation, or prior commitments to juvenile institutions.
- (8) The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services and facilities currently available.

State v. Jones, 392 S.C. 647, 652–53, 709 S.E.2d 696, 699 (Ct. App. 2011) (citing *Kent*, 383 U.S. 541, 566–67 (1966)).

FINDINGS OF FACT

I. Investigator Seth Reynells

Investigator Reynells testified that on July 19, 2015, at approximately 8:23 p.m., law enforcement responded to the area of the Coligny Beach Access in Hilton Head, South Carolina, which is located in Beaufort County, to the report of a gunshot victim. It was reported that a subject had been shot in the head and the suspect fled. Two individuals were identified at the scene as accompanying the Victim at the time of the shooting, and

they identified John Duncan (the Juvenile) as the shooter. The two individuals were associates of the Victim and the Juvenile. A third witness was later identified as being with the Juvenile at the time of the shooting and reported to law enforcement that the Juvenile was the shooter.

Investigator Reynells stated that it was discovered that the Victim had taken approximately sixty dollars worth of marijuana from the Juvenile approximately two days before the shooting. The next day, the Victim and the Juvenile fought. The fight was recorded on a cell phone, and the video of the fight was discovered by the Sheriff's Department. The video was admitted into evidence and played for the Court. Immediately after the fight, the Victim and the Juvenile went with their associates, who were present for the fight, to a nearby residence and "hung out."

Investigator Reynells testified that law enforcement obtained surveillance video capturing the incident from the Town of Hilton Head. The videos were admitted into evidence and played for the Court. Investigator Reynells described the actions of the Juvenile and Victim which were revealed on the surveillance video. Investigator Reynells testified that the Juvenile began a "systematic" search for the Victim. The shooting occurred at a busy tourist spot by the beach with women and small children present.

Investigator Reynells stated that neither the Juvenile nor his parents could be located after the shooting. The Juvenile turned himself over to law enforcement two days after the incident.

I find that based upon the testimony of Investigator Reynells and the evidence presented, analysis of the first, second, third, and fourth *Kent* Factors clearly militate towards the conclusion that the best interests of the Juvenile and the public warrant

transfer to the General Sessions Court. *See Jones*, 392 S.C. at 652, 709 S.E.2d at 699. The fifth *Kent* Factor is neutral as there are no co-defendants. *See id.*

II. *Zelphine Smalls*

Ms. Smalls testified that the Juvenile has no prior adjudications or diversions, and he had not received any special education services. She further stated the juvenile received fifty-two behavioral write-ups between eighth and tenth grade while in Beaufort County schools. She testified the Juvenile had also had behavior write ups while at the South Carolina Department of Juvenile Justice Detention Center, and that he tested positive for THC when he entered the Detention Center.

III. *Dr. Candice Dunn*

Dr. Dunn testified that she could not make a recommendation as to whether jurisdiction should be transferred to General Sessions. She did note that the Juvenile had school behavioral incidents as early as November of 2009, which included instances of fighting and physical aggression towards peers and and a ten day suspension for striking a teacher. Dr. Dunn stated that if it was determined that the behavior continued, she would consider that a negative factor toward likelihood of rehabilitation. Dr. Dunn testified she was aware of the Juvenile being written up for rule violations at the Detention Center. Dr. Dunn stated that if the behavior continued while at the Detention Center, she would consider this to be a negative factor toward likelihood of rehabilitation. Further, the results from cognitive testing showed that the Juvenile fell into the Average/Low Average range, but his ability to speedily process information fell into the borderline range. When

questioned about his borderline score on processing speed, Dr. Dunn indicated that the Juvenile could take a longer time to benefit from rehabilitative efforts.

Dr. Dunn testified that the Juvenile's test results from the Minnesota Multiphasic Personality Inventory-Adolescent indicated that he believes the world to be a hostile place and that others are out to get him. His responses suggest he may be extremely manipulative and experience highly strained relationships because of his behavior problems, irritability, and hostility. She agreed that the test results are a negative factor toward likelihood of rehabilitation.

Dr. Dunn testified that the Juvenile's test results on The Jesness Inventory-Revised indicated that he was primarily a cultural conformist. Characteristics of a cultural conformist are that they rarely admit to serious problems but when they do they attribute the origin of the problems to the external world, for example, teachers, police, school, etc. Other scores suggested that the Juvenile is similar to youth who have an awareness of feelings of anger and aggression which are often accompanied by hostile behavior. Dr. Dunn agreed that the test results are a negative factor toward likelihood of rehabilitation.

Dr. Dunn testified that the Juvenile received his General Education Diploma while being detained at the South Carolina Department of Juvenile Justice Detention Center. She stated that the Juvenile's level of sophistication and maturity, socio-emotional development, and intellectual and academic functioning would be considered average for his age. He is cognitively capable of benefiting from mental health treatment as he is able to understand concepts that would be presented in counseling. He possesses empathy, he can be compassionate, and he is connected with his family. She also testified that the development of the parts of the brain responsible for impulse control and decision-making

continues up to the age of twenty-five. She testified that the above would be positive factors toward likelihood of rehabilitation.

In taking everything into consideration the court makes the following findings under *Kent*:

- (1) There is no more serious offense to the community than murder. The serious nature of the offense is a major factor in the transfer decision. The incident occurred in a busy tourist location with small children playing in the nearby fountain and children riding their bikes by the shooting.
- (2) The offenses were committed in an aggressive, violent, premeditated and willful manner. Although the Victim took marijuana from the Juvenile, the shooting occurred two days after the incident. The day after the theft, the Victim and the Juvenile fought. The next day the Juvenile systematically tracked the Victim and shot him in the head.
- (3) These offenses were against persons and culminated in the death of a seventeen year old young man.
- (4) There was more than sufficient evidence presented of the prosecutive merit of the petitions. Ample evidence exists upon which a Grand Jury may return indictments on all charges. The incident is captured on surveillance video with witnesses to substantiate the video.
- (5) There are no co-defendants.
- (6) The sophistication and maturity of the Juvenile is considered average for his age and he is cognitively capable of benefitting from rehabilitative efforts.

- (7) The Juvenile has no prior adjudications or contacts with law enforcement agencies.
- (8) The public will not be adequately protected. The structure of our juvenile commitment laws does not guarantee that the Juvenile will be in a secured, structured setting until he turns twenty-one (21). In fact, the statutory scheme for commitment, divests the court from further authority after placing the Juvenile for commitment for an indeterminate period not to exceed his twenty-first (21st) birthday. In other words, the family court does not have the authority to order that the Juvenile stay committed until he turns twenty-one (21). Furthermore, once the Juvenile turns twenty-one (21) he is released unconditionally-with no supervision at all. The court finds that his commitment guidelines of 36-54 months, if he is adjudicated on the pending charges, are inadequate, not only for the completion of his rehabilitative services but for the protection of the public. The testimony of Dr. Dunn was unrefuted that the Juvenile will have the same, if not more rehabilitative serves at the South Carolina Department of Corrections.

See Kent, 383 U.S. 541, 566-67 (1966).

In taking everything into full and careful consideration, the court concludes that the best interests of the public and of the Juvenile require that the Motion for Transfer/Waiver be granted.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that the State's Motion for Transfer/Waiver shall be granted; the charges of Murder and Possession of a

Weapon during a violent offense shall be transferred to the Court of General Sessions.

IT IS SO ORDERED.


2016
Beaufort, South Carolina


The Honorable Peter L. Fuge
Judge of the Family Court

State of South Carolina	)	Court of General Sessions
	)	Fourteenth Judicial Circuit
County of Beaufort	)	Case No. 2016-GS-07-02133
	)	
The State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
John Ira Duncan III,	)	
	)	
Defendant.	)	
	)	

May 6-9, 2019
Beaufort, South Carolina

B E F O R E:

The Honorable Brooks Goldsmith, Judge; and a jury

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

Isaac McDuffie Stone III, Esquire
Sean Paul Thornton, Esquire
Attorneys for the Plaintiff

Jeffrey Scott Stephens, Esquire
Benjamin John Tripp, Esquire
Attorneys for the Defendant

Aileen Butler
Official Circuit Court Reporter

Transcribed by:
Krystal J. Smith
Official Circuit Court Reporter

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1	<u>STATE'S EXHIBITS</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	1	Photograph		82,175
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8	6	Photograph		201
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16

17

18

19

DEFENDANT'S EXHIBITS

20	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
21	1	Demonstrative		509
22	2	Video		383
23	3	Facebook Messages		489

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25

1	<u>COURT'S EXHIBITS</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	1	Photo Lineup	108	
4	2	Photo Lineup	108	
5	3	Photo Lineup	108	
6	4	Photo Lineup	108	
7	5	Photo Lineup	108	
8	6	Disk	104	
9	7	Photograph	130	
10	8	Photograph	130	
11	9	Video	135	
12	10	Statement	178	
13	11	Document	604	
14	12	Document	604	
15	13	Jury Instructions Request	604	
16				
17				
18				
19	<u>COURT REPORTER LEGEND</u>			
20	dashes --	intentional or purposeful interruption		
21		or change in thought		
22	ellipses . . .	trailing off		
23	[ph]	phonetically written		
24	[sic]	written as said		
25				

1 was telling the truth? You can't do that, not until you hear
2 everything. You keep those thoughts to yourself. At the end
3 of the case, then you can say, hey, what about that?

4 Okay. Any problems? Any questions?

5 (WHEREUPON, there was no response.)

6 THE COURT: 9:30 in the morning, ladies and gentlemen.
7 See you then.

8 THE FEMALE BAILIFF: Follow me, please.

9 (WHEREUPON, the jury exited the courtroom.)

10 THE MALE BAILIFF: The jury is clear, Your Honor.

11 THE COURT: Anything else? Anything from the State?

12 MR. STONE: No, sir. Not from the State.

13 THE COURT: From the defense?

14 MR. STEPHENS: No, Your Honor. I was just wondering
15 when you want us back for pretrial?

16 THE COURT: Two o'clock? Does that work with y'all?

17 MR. STONE: Yes, sir.

18 MR. STEPHENS: Yes, Your Honor.

19 THE COURT: We'll be in recess until 2 o'clock.

20 (WHEREUPON, there was a break in the proceedings, after
21 which the proceedings resumed as follows.)

22 THE COURT: Whenever anybody is ready to begin the
23 pretrial.

24 MR. STONE: Your Honor, I know there are a number of
25 issues that we need to bring up pretrial. I'd like to, if I

1 could, start with the photographs.

2 The defense has moved for a -- basically, an in-camera
3 viewing of the photographs that we intend to -- to admit, not
4 only of the crime scene. I'm going to go a little bit
5 further because I have some other pictures that I think we
6 need to cover as well, which are autopsy and photographs like
7 that. I have those ready to go and I would like to take that
8 up first, if I may, **unless there's an objection.**

9 THE COURT: No objection from the defense?

10 MR. STEPHENS: No objection, Your Honor.

11 MR. STONE: Your Honor, the -- I will be operating off
12 of three cases, and I'll hand the defense a copy of these
13 cases and I'll hand these up to you. *State v. Collins*, *State*
14 *v. Tucker*, and *State v. Gray*, and I've given the court
15 reporter a copy of those so that she'll have the cite on
16 that.

17 The issue that is going to be before you -- and we have
18 a number of exhibits that we plan on introducing. Let me
19 first start with autopsy photographs. Normally, I don't
20 offer autopsy photographs. This case is a little bit
21 different.

22 When I met with the pathologist, she went through and
23 showed me these. She explained the bullet trajectory. I
24 will tell you that just in general the victim in this case
25 was shot what I would refer to as point-blank range and the

1 bullet actually entered into the left of the eye, which you
2 will see.

3 There are various characteristics that the -- that the
4 pathologist explained to me showing me these photographs. I
5 do not believe they are particularly graphic, but I want to
6 go ahead and show them to you. And I think the defense
7 already has them.

8 These, Your Honor, are what I would call pre-autopsy
9 photographs. They are not autopsy photographs that the
10 pathologist took once she started the autopsy. That's just
11 how the body -- how she saw the body when it came in.

12 The other photographs that came from the pathologist
13 that she will testify, two x-rays. X-rays showed actually
14 where the bullet ended up. I'll hand those up to you, Your
15 Honor, and I apologize. I should have referred to you as the
16 numbers. We have already pre-marked those, but the numbers
17 are on the back of those exhibits and I should've called that
18 to your attention.

19 THE COURT: All right. So the first two you're
20 referring to have been marked as State's 5 and 6.

21 MR. STONE: Yes, sir.

22 THE COURT: And the last two, 7 and 8.

23 MR. STONE: Yes, sir.

24 THE COURT: State's 7 and 8.

25 MR. STONE: And then this last one that we will talk

1 about in this segment is State's Exhibit 9, which is a chart
2 prepared by the pathologist. And this is a large blow-up,
3 actually, and I'll show it to Your Honor here. I've got an
4 actual smaller copy, if you'd like a copy version of that.
5 Again, these are items that the pathologist will testify to
6 and will use to corroborate her testimony, and I believe that
7 under that concept that they are proper.

8 The analysis that Your Honor would go through primarily
9 is, number one, is it relevant? Does it tend to show
10 something in controversy? Is it something that makes
11 something more or less probable?

12 Obviously, these are photographs of the -- of the victim
13 when the victim arrived at the -- at the pathologist's
14 office. They are not pathology pictures after the -- after
15 it has progressed. So the question first is is it relevant?

16 The second analysis, obviously, is under 403, whether or
17 not the -- the probative value of that is substantially
18 outweighed by the unfair prejudice, and that's when we get
19 into the analysis of those cases that I handed you.

20 *State v. Collins*, which is probably the most recent case
21 on this particular point, is a case from 2014. It's a South
22 Carolina Supreme Court case. And in that case, the
23 photographs offered by the State and were held by the Supreme
24 Court to be properly admitted were photographs of a 10-year-
25 old child who had been mauled -- and I think that's a very

1 conservative way of putting it -- by a pack of pit bulls.
2 The -- the photograph showed the body not only bitten but
3 torn in various places. The dogs had actually started eating
4 the child, and those photographs were properly admitted.

5 I will point you specifically to page 7 of that opinion,
6 and this is, again, *State v. Collins*, which is for the -- for
7 -- for the record 409 S.C. 522, 763 S.E.2d 22.

8 Again, *Collins* outlines the general standard that all
9 relevant -- relevant evidence is admissible and any -- the
10 relevance basically turns on whether or not it makes the
11 existence of any fact more probable, and it only may be
12 excluded if its probative value is substantially outweighed
13 by the danger of unfair prejudice. And that, of course, the
14 analysis is left in your sound discretion.

15 Noting on page 8, the most gruesome photographs may be
16 admissible if they tend to shed light on any issue or to
17 corroborate testimony. Well, again, the pathologist will
18 testify to all of these that she used in making her
19 determination. And quite frankly, I don't believe these
20 photographs would be considered anywhere near as gruesome as
21 the ones described in *State v. Collins*.

22 *State v. Tucker*, in this particular case, the Court
23 admitted and found to be proper black-and-white photographs
24 depicting the victim at the crime scene. This showed the
25 placement of the victim, and this will probably be more

1 relevant as to these next crime scene photographs that I'll
2 show you.

3 Again, though, the note on this, which as I read now
4 from page 8 of that opinion, is that these type of
5 photographs should be excluded only if they are calculated to
6 arouse the jury's sympathy or prejudice. And again, I think
7 these are very -- these are -- I don't see these -- and this
8 is, of course, your decision, but I don't see these as
9 something that are highly prejudicial and I think they're
10 relatively conservative views of what we -- what we could
11 have offered.

12 The last -- the last opinion, Your Honor, is a Court of
13 Appeals opinion and, normally, I wouldn't hand that up to you
14 except that there was a very good analysis in this case by
15 then Judge Few from the Court of Appeals, now Justice Few.

16 His analysis basically was all about unfair prejudice,
17 and I'm reading from page 14 of that opinion. This says that
18 prejudice -- and I think this is pretty interesting because
19 it's actually a really good analysis of how we should analyze
20 this.

21 Prejudice that is unfair is distinguished from
22 legitimate impact evidence that has an outcome on the case.
23 Unfair prejudice does not mean the damage to a defendant's
24 case that results from the legitimate probative force.
25 Rather, it refers to evidence which tends to suggest a

1 decision on an improper basis.

2 What Justice Few further noted in this opinion is on the
3 next page. The objective manner in which Dr. Marcus
4 presented the photographs mitigated any tendency towards
5 unfair prejudice.

6 The pathologist is Erin Presnell. She has been with the
7 Medical University for several years and she has testified in
8 this court several times, and I believe before you. I don't
9 -- I can't recall that. I will tell you that she is very
10 objective when it comes to her testimony. There will not be
11 anything overly flamboyant about introducing these
12 photographs.

13 So for those -- those reasons, Your Honor, I will seek
14 to admit through the pathologist State's Exhibit 7, 8, the
15 chart which is State's Exhibit 9, State's Exhibit 6, and
16 State's Exhibit 5, and I've shown those to you and defense
17 counsel.

18 I can move on to the crime scene photographs or we can
19 discuss those further at your pleasure.

20 THE COURT: Let's go ahead and respond to whatever we
21 have here.

22 MR. STEPHENS: Well, Your Honor, we're basically looking
23 for relevance to figure out what they're going to use. We
24 have -- I think we were served with 35 or so autopsy photos,
25 some of them pretty gruesome with, you know, the brain

1 exposed and things like that.

2 The defense doesn't have any objection to any of these
3 photographs, Your Honor. We are -- we don't -- we wouldn't
4 object to pre-admitting those. Really, with the diagram, I
5 think that that is a photo and I think that -- I'm sure
6 they'll lay the proper foundation for Dr. Presnell's
7 testimony. But no objection to those photographs, Your
8 Honor.

9 THE COURT: All right.

10 MR. STONE: And those are the only ones that we will
11 seek to introduce at that stage.

12 The next ones, Your Honor, are crime scene photographs.
13 These were actually taken -- I think we had some previous
14 discussion about Alex Contello. Mr. Contello was -- was a
15 bystander at the scene at Coligny Beach and he had his cell
16 phone with him. When he heard the shooting, at some point he
17 turned his camera on, and I believe this is Snapchat. It's
18 one of these -- one of these versions, but there is a video
19 of the actual crime scene immediately afterwards.

20 These are from his -- his telephone. Each one shows
21 something particular and, again, I think this goes back to
22 the analysis that we had previously in *State v. Tucker*.
23 Again, these are crime scene photos that shows how the body
24 is located immediately thereafter. It shows the people that
25 are working on him. This would be State's Exhibit 4, State's

1 Exhibit 3, State's Exhibit 2, and State's Exhibit 1. I'll
2 show those to the defense.

3 MR. STEPHENS: Thank you, Your Honor.

4 MR. STONE: I know he already has these pictures, but I
5 want to show which ones we are seeking. There are a number
6 of crime scene pictures, but these are the only ones we
7 intend to introduce.

8 (WHEREUPON, counsel conferred off the record.)

9 MR. STONE: These are -- technically, Your Honor, these
10 are actual still shots from Contello's video and we will be
11 introducing the video as well.

12 MR. STEPHENS: Your Honor, the only defense objection to
13 it is it's cumulative. I know the solicitor said that each
14 showed something different. They seem, at least to the
15 defense, to be cumulative unless there's some point to the
16 testimony as to why they are -- they aren't cumulative, why
17 they are different.

18 THE COURT: Well, do you mean cumulative in addition to
19 other evidence or do you mean that it's cumulative the same
20 thing?

21 MR. STEPHENS: Cumulative with each other, Your Honor.
22 They seem to -- cumulative with each other. They seem to
23 show the same thing over and over again.

24 THE COURT: What about it, Solicitor?

25 MR. STONE: They actually don't. Each one of those have

1 something different in them that makes them necessary.

2 Again, these are still photographs from a video. The
3 video will be shown in its entirety, but those stills are
4 just taken from that. You actually have one person that will
5 testify that is photographed in the scene.

6 There is also another issue, Your Honor. I don't know
7 if the defense, nor do I expect them to tell me, whether or
8 not they are going to allege that there was -- that this was
9 a fight, something that would rise to the level of voluntary
10 manslaughter, whether or not there was an issue of self-
11 defense.

12 What those photographs show immediately after the scene,
13 there is no weapon, there is no sign of any type of struggle
14 and, as you can tell from the victim, he is defenseless in
15 those photographs. And these are people that have -- that
16 are administering him immediately after the shooting. The
17 last photograph shows a police car and I'm not sure which
18 number that is, but the one that has a police car in the
19 background.

20 THE COURT: Okay.

21 MR. STONE: That is the only one that is not immediate.
22 That's within maybe five or ten minutes. The issue there is
23 there is a -- there is a witness who will testify that they
24 heard -- that the defendant called them after the shooting.
25 They were out of breath, but they could hear sirens in the

1 background. What that shows is that the sirens had arrived
2 and it gives you some idea. So that's corroborating yet
3 another witness testimony.

4 So I will tell you that each one of those are
5 corroborated by other witnesses and they are -- they are fair
6 and accurate depictions, but that would be something I
7 clearly would have to offer in as evidence.

8 THE COURT: Mr. Stephens?

9 MR. STEPHENS: I don't have anything further, Your
10 Honor. I do have a question. We had a number of crime scene
11 photographs taken by law enforcement. I just wanted to see
12 if there was -- if that was again just the two photos of the
13 entry wound that they intend to introduce?

14 MR. STONE: No. I want to make sure I'm answering his
15 question. I do have photographs from the video cameras that
16 are located throughout -- throughout Hilton Head in that
17 area. If that's what we're talking about, I do plan on
18 introducing those, but I don't --

19 MR. STEPHENS: May I have a moment, Your Honor?

20 MR. STONE: Your Honor, there are a number of pictures
21 that are much more graphic. I don't believe that's necessary
22 and I'm not going to seek to introduce anything like that.

23 MR. STEPHENS: Nothing further from the defense on that,
24 Your Honor.

25 THE COURT: All right. The Court will admit those

1 exhibits that we just last referred to as 1, 2, 3, and 4.

2 (WHEREUPON, State's Exhibits Number 1, 2, 3, and 4,
3 photographs, were admitted into evidence.)

4 MR. STONE: Okay. And I believe that is everything that
5 would cover that and I believe that was motion number 8 from
6 the defense, and I believe that covers all those other
7 issues.

8 We have pre-marked all of our exhibits and photographs,
9 and I'll make sure that I show those to the defense so that
10 there's no discovery issue on that. We also have behind me,
11 which I've also pre-marked -- these are all overheads in some
12 variation and they will be testified to by various witnesses.

13 I actually do not plan on introducing these as evidence
14 I use. I plan on using them more as Court's exhibits for
15 reference during the trial. State's -- State's Exhibit
16 Number 14, which is an overview, generally of the entire
17 neighborhood where this took place.

18 State's Exhibit 13, which is an overview more
19 particularly of Coligny Circle, but most importantly it shows
20 where the cameras are located, and those cameras we are going
21 to introduce video footage from that, as well as still
22 photographs.

23 We have a close-up of Coligny Circle. This is an actual
24 photograph taken by our office. This is State's Exhibit
25 Number 12. It's a drawn photograph of Coligny Circle and

1 there will be witnesses that will testify where the shooting
2 took place and what they saw using this as well.

3 And then finally, we have State's Exhibit 15, which are
4 cell towers which show the location of phone calls being made
5 by the defendant progressing onto Hilton Head Island, and
6 that shows that at 5 o'clock, 5:58, and 7 o'clock the
7 location. This was actually created by a combination of cell
8 phone records from Verizon, as well as our office, whose
9 witness will testify, Dylan Hightower, who created it and
10 will testify to the significance. He has been qualified in
11 the past as an expert in not only the cell phone information
12 coming out of telephones but also the cell tower analysis.

13 I just wanted to go ahead and cover that or have that
14 out there now.

15 MR. STEPHENS: Your Honor, I think they said that they
16 are only using this as demonstrative evidence.

17 MR. STONE: That's --

18 MR. STEPHENS: And we -- I don't have any objection to
19 that at the present. I guess I'm going to have to wait until
20 it's -- you know, once they have their witnesses testify and
21 I've had a chance to take a look at it, if it doesn't seem to
22 be misleading to the jury, I don't think we'll have any issue
23 with it.

24 We also have a map that I don't have with me today, and
25 I've got the head of Beaufort County Geographic Information

1 Services on our witness listed to testify if we need to
2 authenticate it and lay a foundation for it. We may go ahead
3 and try to do that. I'm not -- I haven't decided right now,
4 but I don't foresee an issue with it. I'm just going to take
5 a look.

6 I'm aware of Mr. Hightower's prior testimony and we may
7 have an objection on that, on his qualifications as an
8 expert, but I don't think I'm going to have an issue with
9 those pictures.

10 THE COURT: You said you do not have any questions
11 concerning his qualifications?

12 MR. STEPHENS: We might have questions about Mr.
13 Hightower's qualifications as an expert, Your Honor, but I
14 think that's premature right now.

15 THE COURT: All right.

16 MR. STEPHENS: I'm going to have to hear the questioning
17 when they offer him, but I don't have an issue with those
18 right now, the photographs.

19 THE COURT: All right.

20 MR. STONE: I think that covers everything as far as his
21 motion number 8, Your Honor.

22 (WHEREUPON, counsel conferred off the record.)

23 MR. STONE: Your Honor, if I -- if the defense can go
24 ahead and try to go through the issues that we had asked for
25 a pretrial hearing about.

1 THE COURT: Okay.

2 MR. STONE: Number one is -- I'm a little unsure of how
3 the Court wants to proceed. This case was originally waived
4 up from Family Court. My understanding from my research and
5 talking to some other solicitors from other circuits is that
6 normally we're not going to be -- normally, **we're** not able to
7 object to the Family Court order that waives jurisdiction to
8 General Sessions Court. That's usually something that the
9 appellate courts consider.

10 However, Your Honor, I've seen some recent decisions
11 where the appellate courts have said that the waiver of
12 jurisdiction is -- may not be juris -- may not be
13 jurisdictional. From an abundance of caution, Your Honor, we
14 put it up on our list that I am objecting to the Family Court
15 waiver of jurisdiction.

16 I do have an expert that we have retained, but pretrial
17 in a pretrial conference with Mr. Thornton and Judge Mullen,
18 we have reached an agreement to -- since my expert wasn't
19 available for this court week, to bifurcate the proceedings
20 so that my expert will -- will finish her evaluations as
21 necessary and we will schedule a sentencing hearing if -- if
22 Mr. Duncan is convicted of something, Your Honor, we will
23 schedule that for later. And she's going to provide most of
24 my testimony, even if it's a proffer, about the Family Court
25 waiver.

1 However, if the Court is willing to entertain it, I do
2 have some things that I could offer at this point as far as
3 documents and argument, Your Honor. I've got the Family
4 Court order, a transcript of the waiver hearing, and just my
5 arguments that the judge may have not properly evaluated the
6 *Kent* factors for the transfer of jurisdiction.

7 MR. THORNTON: Thank you, Judge. If I might, I just
8 wanted to let the Court know Mr. Stephens is correct as far
9 as the bifurcation proceedings, and I apologize. I probably
10 should have covered that with you this morning. I just
11 didn't think of it.

12 This case was continued previously and, because of a
13 number of moving pieces, the State agreed to do a sentencing,
14 if we get to that point, at a later date -- obviously, it
15 would need to be in front of Your Honor -- because Mr.
16 Stephens had an expert that he felt necessary in mitigation
17 that could not be here. So that part is accurate as to any
18 mitigation.

19 As to the -- the appellate issue involved, if I can
20 speak on that at least real quickly, Judge, I would point to
21 the Court -- I'm going to hand you *State v. Rice*, Your Honor,
22 and *State v. Lockhart*.

23 *Lockhart* is one of the few one-page opinions I've ever
24 seen, Your Honor. So it's very short. *State v. Rice*, again,
25 is -- is the other case I would hand up to the Court and I'm

1 going to give those to you, Your Honor. We can make those a
2 Court's exhibit if necessary. And *State v. Lockhart*.

3 Your Honor, *State v. Rice*, which is 401 S.C. 330. Your
4 Honor, *State v. Rice* deals with somewhat of a similar issue,
5 and I'm going to do something I don't do a lot of, which is
6 I'm going to talk a little bit about a dissent. It was
7 Justice Pleicones and he concurred in the result but
8 dissented in one area that the Court held.

9 And part of his reasoning was -- and this was not --
10 this was not covered by the majority in the case; so this is
11 more or less dicta. It's dissent, but what he basically says
12 is he goes to the statute involved in that case, Your Honor,
13 as far as transfers of jurisdiction and things like that and
14 what he says is that it is improper for a circuit court to
15 hear any kind of appeal except in one case.

16 There is one case where that would be appropriate, Your
17 Honor, and that is in -- and I made a copy of this also.
18 Your Honor, it is in 63-19-1210, which deals with the
19 transfer of jurisdiction. Specifically, Your Honor,
20 Subsection 6, which deals in the very limited case of when
21 someone of any age, any juvenile of any age, is charged with
22 murder or CSC first, they can be waived up and it's a
23 different proceeding -- procedure. It's not the procedure we
24 did in this case.

25 And it's specifically in that statute, Your Honor, that

1 you can -- that the State can appeal that order because that
2 would be a final order of that case and it specifically says
3 in that Subsection 6 of that statute that you appeal that to
4 General Sessions Court.

5 Other than that, orders from Family Court in this arena
6 are not reviewable by the Circuit Court. So, number one, I
7 would respectfully tell the Court that it is our position
8 that this Court does not have jurisdiction over an appeal of
9 a Family Court matter not specifically set up by statute,
10 which is what Justice Pleicones was saying in *State v. Rice*.

11 *State v. Lockhart*, Your Honor, says that -- that even
12 the Court of Appeals, it is improper to hear an appeal until
13 such time as the person has been convicted because there's
14 nothing to appeal. It's an interlocutory matter and not
15 subject to appeal.

16 Specifically, Judge, what they say in *Lockhart* is we
17 hold that a Family Court order transferring jurisdiction over
18 a defendant to a Court of General Sessions is interlocutory
19 and not subject to immediate appeal to this Court, and they
20 dismissed it on those grounds. And what they basically said
21 was until such time as or if and when such time as someone
22 has been convicted, it is not reviewable by any Court, but I
23 believe that *Rice* would indicate, Your Honor, that the
24 General Sessions Court has no jurisdiction anyway.

25 But even if this Court had jurisdiction, Judge, I think

1 *State v. Lockhart* says it does not -- it would not come up
2 until after such time as there has been a conviction. So
3 that would be -- I just wanted to put that on the record
4 quickly, Your Honor. That would be the State's contention.

5 THE COURT: Mr. Stephens?

6 MR. STEPHENS: Your Honor, I -- actually, I don't
7 disagree with those holdings, which is why I approached this
8 with some trepidation. The reason why I have raised this
9 pretrial is simply because of a decision. I'm sorry I don't
10 have the citation in front of me right now, but it's, I
11 think, a more recent appellate decision where the Court --
12 and, again, I'm sorry I don't have the citation, Your Honor
13 -- said that -- that the Family Court waiver may be a -- a
14 judicial issue and not a jurisdictional one. That kind of
15 put the fear of God into me, Your Honor, because, as the
16 Court is aware, if jurisdictional issues aren't waived,
17 anything else might be waived.

18 And -- and so from an abundance of caution, we raised
19 the -- the issue. I'm well -- I'm aware of the holdings and
20 the position of the appellate courts that it's an appellate
21 issue. However, I want to put it out there.

22 When we have our expert, Your Honor, if we get to a
23 sentencing portion, I intended to offer her testimony and
24 challenge this in a post-trial in a motion for a new trial
25 and proffer it for the Court of Appeals as necessary, Your

1 Honor, but I'm just trying to make sure we've covered the
2 base to preserve that issue if it is waivable.

3 THE COURT: All right. And see if this sounds correct
4 under what y'all just told me. That I will take that issue
5 under advisement and hear additional argument and testimony
6 and all at a later date if needed? Is that what y'all said?

7 MR. STEPHENS: I think that's sufficient, Your Honor. I
8 just wanted to, again, make sure that I raised it so no
9 appellate court says that I waived it by failing to preserve
10 the issue at every point that I needed to.

11 MR. STONE: I believe that's correct, Your Honor.

12 THE COURT: Okay.

13 MR. STONE: You can -- you can hear testimony later.
14 Our position is going to be that regardless of what the
15 future testimony is is that this Court would not have
16 jurisdiction, but certainly we can take that up at a later
17 time once Mr. Stephens' expert is able to come to court to
18 deal with that issue, if we get to that point.

19 THE COURT: All right.

20 MR. STEPHENS: Again, it may just be a proffer of
21 testimony to make sure it's in the record for the Court of
22 Appeals.

23 THE COURT: All right. The Court takes that matter
24 under advisement and keeps the record open to receive
25 additional argument and testimony on that issue, if the

1 defense wishes to do so.

2 MR. STEPHENS: Thank you, Your Honor.

3 Your Honor, I think that your instruction to the jury
4 about accessing or not accessing any news about this -- this
5 trial and about this incident probably covers the second
6 issue that we had as far as the defense was going to move to
7 have them -- to have the jury ordered not to access any kind
8 of smart device. I think that -- that the Court has
9 adequately covered that issue and we're not going to ask for
10 any -- any additional order to the jury.

11 The third issue, we do have a motion to sequester the
12 witnesses, I would say lay witnesses in the case, not law
13 enforcement. We are not alleging law enforcement witnesses
14 or the Solicitor's Office's employees might somehow taint
15 each other's testimony.

16 However, there's a lot of witnesses in this case who
17 were friends, high school acquaintances, that and the other.
18 We want to make sure that they weren't in here having their
19 testimony influenced by other people's testimony. Since
20 these are -- since these are things that happened almost four
21 years ago, they may -- they may be influenced by each other's
22 testimony.

23 THE COURT: Did you say you're not asking to sequester
24 law enforcement?

25 MR. STEPHENS: I am not asking to sequester law

1 enforcement, Your Honor. My understanding is that -- that at
2 least I believe that I've got a higher burden with law
3 enforcement. I've got no reason to believe that their
4 testimony is going to be affected by the testimony of other
5 law enforcement officers or, you know, any of the experts in
6 the case are going to be affected, but we would ask for the
7 -- for the lay witnesses to be sequestered so that they are
8 not listening to testimony of other -- other witnesses.

9 THE COURT: Solicitor?

10 MR. STONE: I think it's proper for the lay witnesses to
11 be sequestered. I think that should go on both sides, any
12 lay witnesses for the defense as well, but I think that's
13 proper, Your Honor.

14 MR. STEPHENS: And we do have some family members who
15 are -- who are on our witness list. I will make sure that
16 before we begin the case on the merits if the Court does
17 order that and I'll also instruct them about not discussing
18 the case and that they be excluded from the court during
19 other witness testimony, Your Honor.

20 THE COURT: Okay. So the Court will grant the motion
21 but will require the State and defense counsel to be
22 responsible to notify their respective witnesses, conditioned
23 on the State having an effective procedure to be able to get
24 the witnesses in the court when needed.

25 MR. STONE: Yes, sir. I'm going to try to use -- I

1 think we've used -- if you'll give me just a moment.

2 Michelle Frazier is our victim advocate. She's also helped
3 coordinating those witnesses and I think you've met her
4 before.

5 We're just going to use the jury room, assembly room
6 over here. We're going to put all of our witnesses in the
7 jury assembly room, which will be right across the hall, and
8 she will shuffle them back and forth. So I think that will
9 be an efficient way of getting them out here.

10 THE COURT: Okay. All right. So that motion to
11 sequester is granted on the terms and conditions as stated.

12 MR. STEPHENS: Your Honor, turning to the fourth issue
13 about testimony of hearsay, now that I've had a chance to
14 review the State's witness list, it looks like just about any
15 witness who -- any person who has given a statement appears
16 to be on their witness list. So I'm assuming that those
17 witnesses have all been subpoenaed to appear.

18 I don't have -- right now, I don't have any reason to
19 believe that there's going to be any testimony of hearsay of
20 a non-appearing witness from the State. So I've got no issue
21 with that right now, Your Honor.

22 THE COURT: All right.

23 MR. STEPHENS: You know, if we find out that a certain
24 witness is not going to appear, we can take that up, you
25 know, as necessary.

1 THE COURT: Okay.

2 MR. STEPHENS: I think we already dealt with the
3 defense's motion for a change of venue given the Court's --

4 THE COURT: I think so.

5 MR. STEPHENS: -- excusing the witnesses who might've
6 been biased -- or excuse me -- the jurors who might've been
7 biased, I think that's taken care of.

8 The sixth issue, Your Honor, might be a little time-
9 consuming. I kind of lumped together anything that -- all
10 the motions in limine from the defense as far as the
11 statement that Alex Contello would be called to testify
12 about. He also would be called to testify about the video
13 that the solicitor was talking about with the still photos.
14 Alex Contello was a lay witness to the shooting or its
15 aftermath.

16 I filed a written motion on Mr. Contello this morning
17 and I don't know if the Court has had a chance to take a look
18 at that. I -- it is just -- it's based -- or I at least
19 wrote it in the framework of *Neil v. Biggers* because it's a
20 quasi-identification of the -- the declarant of a statement
21 as the shooter when the -- when the witness has made other
22 statements that he didn't see the shoot -- the actual
23 shooting.

24 We are both moving to exclude the identification as that
25 declarant of the statement, that's what you get, as being the

1 shooter and we are also asking that that statement itself be
2 excluded as -- as unduly prejudicial. That the -- any
3 probative value would be substantially outweighed by the
4 prejudice of the jury, assuming that the shooter or the
5 defendant is the person that said it, and there's no evidence
6 from Mr. Contello that it was.

7 Your Honor, I've got the statements of Mr. Contello that
8 were attached to the motion. I also have a recording of the
9 interview of Mr. Contello, if --

10 THE COURT: Have I seen that motion?

11 MR. STEPHENS: Yes, Your Honor. I think I -- I thought
12 I had handed it up this -- this morning. There was also a
13 copy of it at least. It was also filed. It should have been
14 attached to the documents, but the Court has another copy
15 that if the -- if the Court needs me to hand that up, Your
16 Honor.

17 THE COURT: Well, I remember this discussion, but I
18 don't remember receiving -- receiving anything.

19 MR. STEPHENS: Your Honor, I have an extra copy, which
20 might mean that they -- that I didn't leave one with the
21 Court when we had our chambers conference this morning.

22 THE COURT: Okay.

23 MR. STEPHENS: Your Honor, may I hand this up? I would
24 just ask if we could have a brief recess before we take that
25 up. I can go through my other issues. I would just want the

1 Court to have a chance to take a look at that.

2 And I do have the video interview of Mr. Contello, if --
3 if we can proceed and see that as well, if the -- if the
4 written statements aren't sufficient to show what he -- what
5 his testimony would be.

6 THE COURT: You're saying don't do this yet? Is that
7 what you said?

8 MR. STEPHENS: Your Honor, I'm asking for a recess so
9 the Court would have a chance to read that before we take up
10 this -- this issue.

11 THE COURT: Okay.

12 MR. STEPHENS: Mr. Contello's statement.

13 I do have some other things that the defense is moving
14 to exclude. I don't know that they're going to be an issue
15 with the State, one of which would be there were some
16 references in statements by witnesses in the investigation
17 that the defendant sold marijuana or had always had marijuana
18 on him or had sold marijuana in the past, and I don't believe
19 the State is intending to go into any prior misconduct as
20 404(b) or *Lyle* evidence in this case, Your Honor, but I just
21 want to make sure that I've addressed that.

22 MR. STONE: I think that's right, Your Honor, but let me
23 make sure I'm clear because I don't want there to be any
24 misunderstanding on the part of the defense.

25 This event took place over three days, Friday, Saturday,

1 and Sunday. The shooting took place on Sunday. There was a
2 fight between these two individuals. And I say fight. It
3 was a fistfight, kind of a wrestle sort of thing on Saturday,
4 but it all stems from an event on Friday in which the victim
5 went to the defendant and with the intent of buying
6 marijuana. The defendant handed him the bag of marijuana and
7 the victim drove off with it.

8 I don't know how you could tell the story and leave that
9 out because all of the witnesses said this is where this came
10 from. That's why they fought Saturday to make -- to settle
11 their differences, and that's why he shot him on Sunday. So
12 I think from the standpoint of that first event of him
13 selling the marijuana, I don't know how you could possibly
14 tell the story. I think that's not just proper under 404(b),
15 I think it's actually not even 404(b). I think it's res
16 gestae. I think it establishes the overall crime.

17 And in that same vein, one of the witnesses -- and this
18 is an actual witness who is associated with the defendant who
19 was with the defendant during the shooting, was with the
20 defendant that day going up to the shooting. This witness is
21 Dontarious Seay. Mr. Seay testified and actually gave a
22 statement to law enforcement that the defendant had been
23 robbed before and told him he wasn't going to be robbed
24 again. He would take things into his own hands.

25 Again, I think that establishes the mentality that we're

1 dealing with. It establishes the reason for the shooting.
2 It establishes why over a very small bag of marijuana he felt
3 it necessary to not only fight him, but when the fight didn't
4 necessarily come out the way he wanted it to, to then shoot
5 him in the face. I don't know how you tell that story
6 without those -- those two components.

7 We do not intend to go any further than that. I don't
8 intend to establish that he's been selling marijuana for any
9 length of time. The robbery, I think, is pretty clear, but
10 -- and I think that references the robbery on this, but as
11 far as the marijuana, I think that has to come in under res
12 gestae, but we don't intend to go any further than I just
13 told Your Honor.

14 MR. STEPHENS: Your Honor, we have no objection. We
15 agree that the allegation that this started from a robbery of
16 marijuana that the defendant had been trying to sell was --
17 we understand that's part of the -- of this incident. We are
18 not challenging that.

19 THE COURT: Okay.

20 MR. STEPHENS: And I think the solicitor's answer to my
21 question or my issue that they don't intend to go into any
22 allegation of any prior drug dealing. I think the statement
23 that the solicitor referenced about the defendant having been
24 robbed before doesn't imply that that was -- that that was a
25 drug transaction or anything. So we have -- I have no

1 objection to the -- the information the solicitor intends to
2 introduce as he just stated, Your Honor. So I think that
3 addresses my -- my question about *Lyle* evidence or 404(b)
4 evidence.

5 THE COURT: Okay.

6 MR. STEPHENS: I don't think we have any other issues
7 there.

8 I've got something on here about compelling discovery.
9 Your Honor, the only thing that -- I think we can work out
10 most of the discovery issues. They are for some of our
11 electronic discovery that we just aren't able to open. I
12 think that I'll be able to work with the solicitor to figure
13 that out after we recess tonight.

14 We would move to compel the State to turn over any
15 criminal history for witnesses they intend to call in the
16 case prior to those witnesses being called, Your Honor.

17 MR. STONE: We'll -- we'll work with him on the
18 discovery, Your Honor.

19 Just so do you know and so the Court is aware, we have a
20 system with using both evidence.com, as well as a Matrix link
21 up with the Sheriff's Office evidence. All evidence that is
22 transmitted, that's never been a problem as far as I don't
23 think any of that is evidence that the defendant cannot open
24 or we have trouble with. The only issue has ever come up
25 when we're dealing with disks in which evidence is downloaded

1 onto the disk and then that is -- whether it's not downloaded
2 properly or things like that.

3 I will help them as best I can on that. It's actually
4 more of an issue when it's coming out of the creation of
5 this, taking the digital evidence back into a hard copy, and
6 I think probably going forward we're going to -- to probably
7 change the policy a little bit so that all evidence that is
8 electronically transmitted will cover everything else.

9 I think we're going to have to go to a system in which
10 we actually go to the Sheriff's Office and get that and allow
11 the defense to do the same because that's coming up, but we
12 will do everything we can to help him. We're facing those
13 same issues when it comes over on the disk form. Sometimes
14 it works, sometimes it doesn't, but we'll be glad to work
15 with him on anything, and I think that's another reason it's
16 good that we've gone over our exhibits today. We've covered
17 a very limited amount of stuff that we're putting into
18 evidence and so, from that standpoint, I think that will be
19 relatively easy to cover.

20 MR. STEPHENS: Your Honor, Mr. Thornton indicates that
21 they're going to be providing rap sheets for their witnesses
22 as soon as -- as soon as they can. I'm sure that they'll
23 have them before we start the case in chief tomorrow.

24 I don't think that there's anything else that the Court
25 needs to rule on for discovery at this point. I think both

1 parties have been trying to work that out as best we can,
2 Your Honor.

3 The other -- I think that just leaves the -- the issue
4 with Mr. Contello's testimony about his statement.

5 MR. THORNTON: It does, Your Honor, except for just the
6 in general *Biggers* issue and my understanding -- and I'm
7 sorry. I will have it for you when we argue it here in a
8 couple minutes, but it's *Perry v. New Hampshire* and there's a
9 case called *State v. Wyatt*, which is a South Carolina -- I
10 believe it's a Supreme Court case that talks about *Perry*, and
11 it does set forth that we need to do a procedure.

12 You know, prior to *Perry v. New Hampshire*, as Your Honor
13 knows, the standard was, well, they all knew each other, you
14 don't have to do anything with the *Neil v. Biggers*, but now
15 if there is an indication that a -- that any kind of
16 suggestive policy or procedure is used by law enforcement,
17 then you have to at least do the first prong.

18 So I know Mr. Stephens wanted Your Honor to take a
19 minute and read his motion real quick. Since that's kind of
20 *Biggers* related, if I could ask Your Honor to take maybe five
21 or ten minutes and do that and I'll get the witness ready and
22 I can put my -- my goal in this case, Judge, would just be to
23 put the officer on the stand limited to just talking about
24 the procedures because, as *State v. Wyatt* says, Your Honor,
25 quoting *Perry v. New Hampshire*, if -- if the first prong,

1 which is that there were no suggested procedures, if the
2 Court is satisfied there wasn't a suggestive procedure, then
3 the inquiry ends there, and we can do that pretty quickly.

4 And I'll have -- I apologize. I'll have all those cites
5 here in the next five minutes. So if the Court would take a
6 break.

7 MR. STEPHENS: Your Honor, I'd join in asking for a
8 recess to do that and I've got no objection to having the
9 investigator testify for that issue. I think that there are
10 some other factors about reliability that relate just to Mr.
11 Contello's statement, but we're not objecting to the
12 suggestibility of any of the eyewitness identification of the
13 defendant, Your Honor.

14 The only other thing that I would have, Your Honor, is
15 if we have that break, I would at least make sure that we can
16 play the interview of that one witness for the -- for the
17 statements that we're objecting to.

18 THE COURT: All right. We'll be in recess for ten
19 minutes.

20 MR. STONE: Thank you, Your Honor.

21 MR. STEPHENS: Thank you, Your Honor.

22 (WHEREUPON, there was a break in the proceedings, after
23 which the proceedings resumed as follows.)

24 THE COURT: I've read the motion and the statements
25 attached to the motion and now you want me to listen to them

1 or see what's in it?

2 MR. STEPHENS: Your Honor, I have the -- the interview
3 of Mr. Contello. I'm not sure of the order that you want to
4 do this in. I think that the State is going to briefly put
5 on Investigator Reynells, but I'm happy to take them up
6 either way. I'm ready to go ahead and mark and play that
7 recording. It's -- it's not that long, Your Honor. I think
8 it's not more than 20 minutes tops, but if I can have that
9 marked as a Court's exhibit, I can go ahead and start that.

10 THE COURT: Any objection?

11 MR. STONE: I have no objection, Your Honor.

12 THE COURT: All right.

13 MR. STONE: He can go ahead and do that.

14 MR. STEPHENS: And I apologize, Your Honor. The way we
15 got this, there are other videos of interviews on it. We're
16 only playing Mr. Contello's. Do you want that as the next
17 Court's exhibit?

18 (WHEREUPON, the video was marked as Court's Exhibit
19 Number 6.)

20 MR. STEPHENS: Thank you, ma'am.

21 THE COURT: Let's see if I've got this right. He gave
22 several statements, one through videotape?

23 MR. STEPHENS: I think that he was interviewed on scene
24 or near the scene, I believe, Your Honor, and then he --
25 there is a couple of summary of interviews that are in the

1 investigation he gave and then he gave one written statement
2 that he did just before, I believe, he was interviewed here.
3 So I think he had concluded his written statement and then
4 was interviewed here, Your Honor.

5 THE COURT: Okay.

6 MR. THORNTON: Yes, sir. He gave a written statement
7 and there's something on video as well, Judge, and then the
8 other things you saw were summaries. He talked to a couple
9 of different officers. All this is occurring on scene and he
10 actually wrote out one written statement and then I believe
11 it's correct that this was taken. The video is pretty
12 contemporaneous to that.

13 THE COURT: So there are two pieces of evidence, if you
14 will, regarding this issue. One is the written statement and
15 the other is the oral statement?

16 MR. THORNTON: Yes, sir. Because the others -- not that
17 I'm disputing the summaries at this point, but the others
18 would be summaries. So it's a written statement he gave,
19 which I think is consistent with the -- with the summaries.

20 THE COURT: Okay.

21 MR. THORNTON: And then the video.

22 MR. STEPHENS: Yeah. There are only a few details that
23 are different between the summaries and the written statement
24 and the video. I think he stays pretty consistent, but,
25 again, Your Honor, I just want to make sure that you get the

1 totality of what he said and the identification. I'm just
2 going to play this video for you.

3 THE COURT: Okay.

4 MR. STEPHENS: And if the State is all right with me
5 skipping ahead, I think there's some dead space where he's
6 just sitting and waiting for the investigator.

7 (WHEREUPON, there was a pause in the proceedings while
8 an attempt was made to play Court's Exhibit Number 6,
9 video statement of Alex Contello.)

10 MR. STEPHENS: Your Honor, I'm just going to try to get
11 the connection. If that doesn't work, then I'll proceed with
12 just the statements.

13 (WHEREUPON, there was a pause in the proceedings, after
14 which the proceedings resumed as follows.)

15 MR. STEPHENS: Your Honor, I apologize for wasting the
16 Court's time with trying to get this to work, but technical
17 difficulties. I'm prepared to go forward with just argument.
18 The Court has already got copies of the -- of the written
19 statement and summaries of interview. As the Court is aware
20 from my motion, do you want to proceed --

21 THE COURT: Sure. Go ahead.

22 MR. STEPHENS: -- with the argument portion, Your Honor?

23 I had written this as under the rubric, I guess, of *Neil*
24 *v. Biggers*. I am unaware right now of whether there was
25 anything that was misleading or suggestive that -- that law

1 enforcement did when talking to Mr. Contello. As far as the
2 *Biggers* portion, that would just be about him identifying the
3 speaker and the statement that he -- that he wrote about as
4 being the shooter.

5 THE COURT: You don't object to the statement?

6 MR. STEPHENS: Well, we do, Your Honor, but not under
7 *Biggers*. Under -- under *Biggers*, our concern is just his
8 identification of the speaker who said, "That's what you get"
9 as having been the shooter, since he stated that he didn't
10 see the shooter.

11 I don't know that any law enforcement personnel
12 suggested that that was the shooter. He didn't see the
13 shooting. He didn't see a gun. I don't know if that's a
14 conclusion that Mr. Contello had made or if law enforcement
15 might have suggested that that person was the shooter.
16 Basically, Your Honor, I don't know. We're concerned about
17 that. I don't think that the person is the shooter.

18 And then as a wholly separate issue, the statement
19 itself. Under *Biggers* though, again, it's saying that this
20 person that he saw who made the statement and then ran away
21 was the shooter.

22 MR. THORNTON: Judge, I'll hand the Court -- I'm going
23 to hand also these cases to you.

24 Your Honor, I'll call the Court's attention again to
25 *State v. Wyatt*, which is 421 S.C. 306, which cites *Perry v.*

1 *New Hampshire*, which is a Supreme Court of the United States
2 case, 565 U.S. 228. Also, Your Honor, they both, obviously,
3 stand for the premise under *Neil v. Biggers*, which is 409
4 U.S. 188. So I'll hand those up to the Court. I know that
5 the Court is familiar with them.

6 Your Honor, in addition, what I'd like to try to do to
7 abbreviate this procedure -- and I've talked to Mr. Stephens
8 about it and I've shown him these and he has copies of them.
9 These are the lineups which I've made Court's Exhibits 1
10 through 5.

11 These are the lineups that were done with the defendant
12 and this goes to all of the statements, Judge, that were
13 given. I'm just trying to cover that basis. We're talking
14 about *Neil v. Biggers*. There's going to be several
15 eyewitnesses who are going to come in and identify the
16 defendant, not, however, Mr. Contello, which I'll get to in a
17 second.

18 So I would like to make those a Court's exhibit. I've
19 already shown them to defense counsel.

20 (WHEREUPON, the photo lineups were marked as Court's
21 Exhibits 1, 2, 3, 4, and 5.)

22 MR. THORNTON: So as to the other witnesses, it's my
23 understanding that Mr. Stephens, after having reviewed
24 everything -- and I will tell this Court as an officer of the
25 Court after having reviewed everything, there don't appear to

1 be any improper police procedures that were done or
2 suggestive procedures that were done as to outside of
3 Contello. I know he has an issue with that, which we'll
4 address the testimony in a minute.

5 Your Honor, in this case, I believe Mr. Stephens would
6 agree that you've got -- those are not in any way suggestive.
7 All the backgrounds match. They're all relatively the same
8 size. Nobody is closer up than the other defendants and
9 there were two or three different -- actually, three
10 different lineups used. There's a total of five in front of
11 you because a couple of them were used twice, but there were
12 actually three different lineups, again, all the same
13 background. That's why I'm putting those up there to make
14 them a Court's exhibit.

15 In addition, Seth Reynells, who is here and I will put
16 up on the stand as to the Contello matter in a moment, Your
17 Honor, he is on camera basically telling him all the things
18 that you are supposed to tell them, which is that there is --
19 you know, just because I'm handing you these pictures doesn't
20 necessarily mean that the person who is -- who is on -- who
21 was in this case the shooter that they've identified as John
22 Duncan that he's even in here. It's just as important to set
23 the innocent free as it is to convict the guilty. He goes
24 through the litany in every single one of those, Your Honor.
25 He reads it right from the sheet.

1 In addition, Judge, in this case anyone who is going to
2 walk in here and say that's, you know, the person who did the
3 shooting, meaning the defendant, is going to be somebody that
4 had knowledge of the defendant and had either gone to school
5 with him, played football with him, and had known him for a
6 couple of years.

7 But as it indicates in *Wyatt*, Judge, unless there's a
8 complaint as to some suggestibility without necessity by
9 police procedures, then there's no need to even get to the
10 second prong. So I just wanted to put that on the record.
11 Unless Mr. Stephens disagrees with me, I think I've correctly
12 stated his and my discussions and I've made those a Court's
13 exhibit in case a Court down the road needs to look at the
14 lineups.

15 MR. STEPHENS: That's correct, Your Honor. I'm not
16 challenging the identification of the defendant as the
17 shooter from the other witnesses who had a prior sense of
18 knowledge of the defendant, not based on a *Neil v. Biggers*
19 concern for overly suggestive identification. They did those
20 identifications on camera in their own interviews. Your
21 Honor, we're not challenging any of those.

22 MR. THORNTON: I would also point out to the Court we're
23 not going to be seeking to admit the -- the lineups, Judge.

24 THE COURT: All right.

25 MR. THORNTON: Again, these people had already given the

1 defendant's name and who he was and then this was a
2 confirmatory thing at the end usually of the interview.

3 Now, as to Alex Contello, this is kind of an interesting
4 -- interesting argument. Judge, I've looked at it. The
5 problem that I see with it is that Mr. Stephens has kind of
6 partially framed it as a *Neil v. Biggers* issue.

7 Well, Alex Contello is from Syracuse, New York. I think
8 you heard that and saw it. We had our witness list this
9 morning. He doesn't know John Duncan. He's not going to
10 come in here and say that's the shooter. He could not
11 identify him at the time. So there is no identification of
12 the defendant in this case.

13 The issue is, as I understand it from the way Mr.
14 Stephens has framed it, is that he identifies a person who
15 said a certain thing as the shooter. Well, if you look at
16 the statement even, Judge, it does make sense.

17 And again, I do believe in fairness to Mr. Contello that
18 he's pretty consistent. He says I didn't see the shooting.
19 He also says I didn't see the gun. Well, Your Honor doesn't
20 know this yet, but you will hear testimony that the gun was
21 inside what in essence is a Crown Royal bag. It was inside
22 of a purple bag. Other eyewitnesses say that. So the fact
23 that he didn't see the gun, you know, is not -- not
24 particularly surprising considering it was concealed in a
25 bag.

1 What he says is I heard a loud noise, and I don't mean
2 to drag this out, Judge. I know you've got the statement in
3 front of you, but the point is he looks -- he looked. He
4 hears a noise. He looks up and the person he sees standing
5 over, you know, who he assumes has just been shot, the prone
6 victim in this case, he says that person says, "That's what
7 you get," and runs off. And he assumes they are the shooter
8 because they're the one standing over the body.

9 Now, I think that's a fair interpretation of the way it
10 is written out in his statement and what he would indicate on
11 the stand. I'm going to put -- go ahead and with the Court's
12 permission call Seth Reynells as to any police involvement in
13 that, but he's not -- it would be different if there was some
14 accusation that he said he saw the shooting and he's not
15 telling the truth about it, but he says from the get-go,
16 look, I heard a noise and looked up and I saw someone
17 standing over there and he assumed that, obviously, that was
18 the shooter. They made the statement, "That's what you get,"
19 and then ran off.

20 So if we could, I'll call Seth Reynells to the stand and
21 ask him a brief question or two, let Mr. Stephens ask him a
22 question. Seth Reynells is the one who did the interview, I
23 believe, with Mr. Contello. And then Mr. Stephens can ask
24 him anything about the procedures involved of Mr. Contello's.

25 Again, it's odd because he's not identifying the

SETH REYNELLS - DIRECT BY MR. THORNTON

1 defendant. So the State would call Seth Reynells to the
2 stand.

3 THE CLERK: Place your right hand on the Bible and raise
4 your left hand. The other way.

5 THE WITNESS: This is my right hand. You're looking
6 backward.

7 THE CLERK: Yeah. Do you solemnly swear or affirm to
8 truthfully answer all questions asked of you by this Court,
9 so help you God?

10 THE WITNESS: I do.

11 THE CLERK: Thank you.

12 SETH REYNELLS, being first
13 duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. THORNTON:

16 Q: Mr. Reynells, who do you work for, sir?

17 A: I work with the Beaufort County Sheriff's Office.

18 Q: And did you work with them on or about July 19th of 2015?

19 A: Yes, sir, I did.

20 Q: And did you have an occasion either -- and forgive me, I
21 don't remember -- the 19th or early morning hours of the 20th
22 to interview an Alex Contello from New York?

23 A: Yes, sir, I did. It was approximately 11:35 or 11:40
24 p.m. on the 19th.

25 Q: All right. And is that -- you saw -- I know we couldn't

SETH REYNELLS - DIRECT BY MR. THORNTON

1 get the volume on it, but you saw the -- were you one of the
2 officers in the room that was up on the screen?

3 A: Yes. I know we were both wearing blue, but I was the
4 first one in the room sitting on the right-hand side.

5 Q: All right. And were you also involved in the taking of
6 the written statement by Mr. Contello?

7 A: Yes, sir.

8 Q: All right. And when you talked to Mr. Contello -- I
9 know you've obviously been in here and you've heard the
10 discussion. Did you at any time tell him, oh, the person you
11 saw above them was the shooter?

12 A: No, sir.

13 Q: Did you at any time tell him other witnesses had -- had
14 identified the person standing over the body as the shooter?

15 A: No, I did not.

16 Q: All right. And did you in any way intimate anything
17 about what he saw or what he should have seen or what other
18 witnesses had seen?

19 A: No, sir, I didn't. It's my job to just collect
20 information.

21 Q: Let me ask you this. Did you at some point show him --
22 we've got Court's exhibits that you provided me earlier,
23 color copies of the, for lack of a better word, six-pack
24 lineups; is that correct?

25 A: Correct. Yes, sir.

SETH REYNELLS - DIRECT BY MR. THORNTON

1 Q: All right. Did you show Mr. Contello one of those
2 lineups?

3 A: I did.

4 Q: And was he able to pick out anybody?

5 A: No, he was not.

6 Q: All right. And has he ever indicated to you that he
7 could identify the shooter or even that he saw everything
8 involved in the shooting?

9 A: He's never said anything to that effect. No, sir.

10 MR. STONE: I don't have anything further. Please
11 answer any questions Mr. Stephens has.

12 CROSS-EXAMINATION

13 BY MR. STEPHENS:

14 Q: Investigator, this is going to be extremely short. Do
15 you have any knowledge as to whether any officers who were --
16 who initially spoke with Mr. Contello identified this person
17 that he saw over the body as the shooter?

18 A: I do not. No, sir. I don't have any knowledge of that.

19 Q: But it's fair to see you have no reason to think any law
20 enforcement officer would have said that?

21 A: No. Because I know that there was a -- there was a
22 little bit of a pandemonium in terms of the scene as they
23 were making contact with witnesses. They were just trying to
24 get information.

25 Q: And do you have any idea -- did you have any discussions

SETH REYNELLS - CROSS BY MR. STEPHENS

1 with Mr. Contello not on the videotape about why he
2 identified that person as the shooter?

3 A: No, sir, I did not.

4 MR. STEPHENS: I think that that's it for this portion,
5 Your Honor. Thank you.

6 MR. STONE: Nothing further, Judge. I'd ask Mr.
7 Reynells be allowed to step down.

8 THE COURT: You can step down, sir.

9 THE WITNESS: Thank you, Your Honor.

10 MR. STEPHENS: Your Honor, if I may, this was -- I think
11 this was something I had to go through, you know, all the
12 twists and turns to make sure that I address whether there
13 was a *Biggers* issue. I've read the *Wyatt* case that Mr.
14 Thornton had provided to me.

15 I haven't had a chance to look at the *Perry v. New*
16 *Hampshire* case, but I believe based on the case law I looked
17 at if there's -- if the first prong isn't met, if there's no
18 indication of any sort of suggestive procedure done by law
19 enforcement, that the inquiry under *Neil v. Biggers* would
20 need to stop there.

21 So we -- the defense would concede that as far as the
22 *Biggers* portion of our motion that -- that that's -- that's
23 been settled by the -- by the testimony of Investigator
24 Reynells.

25 I would like to proceed with the 404 -- excuse me -- 403

1 balancing test argument in the motion, Your Honor.

2 THE COURT: Okay.

3 MR. STEPHENS: This really is about the -- both the
4 circumstances from the -- from the statement and the words
5 themselves that are used. As noted in the motion, Mr.
6 Contello stated that he didn't see the shooting. He heard
7 something, looked up, and saw this -- this person standing
8 over the body of the victim saying words to the effect of
9 "That's what you get," and run off. And he stated that he
10 did not see a weapon and didn't see the shooting, that he was
11 at a distance.

12 At one point, he said that he was 100 feet behind them,
13 but I think in the interview he indicated that at the time
14 that he heard the bang he might have been as close as 50 feet
15 to -- to the -- to the victim. He said that he heard
16 something after "That's what you get," but couldn't -- but
17 couldn't distinguish what it was.

18 Your Honor, I think under these circumstances without
19 being able to identify the speaker as the actual shooter or
20 the speaker as the defendant that it has very little
21 relevance in the case. For all we know, it could have been
22 another person. There is surveillance footage of the scene,
23 but it's a little chaotic after the shooting and the people
24 are indistinct at the distance of the recording, but it could
25 have been another person who was not the defendant or the

1 shooter who said, "That's what you get."

2 Mr. Contello also at his distance may have misheard the
3 statement, but regardless, Your Honor, we think it's -- the
4 probative value is substantially outweighed by the risk that
5 the jury is going to believe that -- that this was the
6 shooter, even though no one has identified him as such, and
7 that this was a statement about the -- about the shooting
8 itself. And again, Mr. Contello hasn't identified this
9 person as the shooter or that this statement was about the --
10 that shooting.

11 THE COURT: Let me make sure I understand where you are
12 in the -- in this process. The statement, "That's what you
13 get," you object to now or do not?

14 MR. STEPHENS: I do, Your Honor.

15 THE COURT: All right.

16 MR. STEPHENS: This is under --

17 THE COURT: And you also object to the statement that
18 that was the shooter?

19 MR. STEPHENS: Pardon me, Your Honor?

20 THE COURT: You object to both of them, both statements?

21 MR. STEPHENS: Well, "That's what you get" and his claim
22 that that was the shooter who said it. I don't know that
23 it's actually going to come out when Mr. Contello testifies
24 that this was the shooter, but we definitely object to
25 "That's what you get" as -- as an interpretation under Rule

1 403.

2 THE COURT: Hang on a minute. I want to hear from the
3 State. So if the witness does say the person standing there
4 was the shooter, you object or do not object to him saying
5 that? I'm a little confused about what your position is on
6 those two issues.

7 MR. STEPHENS: Your Honor, if this -- if there is no
8 taint to it as pretrial identification, I mean it would be a
9 lot easier if we found that it was tainted and then clearly
10 in-court identification would not be admissible.

11 If Mr. Contello testified that this was the shooter he
12 heard and he saw the shooting and this was the shooter who
13 said it, I think the relevance goes up dramatically there.
14 That -- that the defense would still be allowed to go into
15 his prior inconsistent statement, but I think that at that
16 point it wouldn't be the same 403 analysis.

17 But I have no reason to believe that Mr. Contello would
18 say at this point that this -- that he now remembers seeing
19 the shooting.

20 THE COURT: All right.

21 MR. STEPHENS: But at a minimum, Your Honor, we -- the
22 State -- excuse me. The defense would concede that the
23 relevance of that statement goes up dramatically if he
24 identifies the speaker as being the shooter, and I haven't
25 seen it.

1 THE COURT: All right. Let me hear from the State.

2 MR. THORNTON: Judge, as to the comment, you know, the
3 shooter said -- and we'll get to that part in just a second,
4 but the shooter said something. I think most of what Mr.
5 Stephens is focused on are cross-examination questions. In
6 other words, if he were to get up and testify in court and
7 say, well, the shooter said, well, wait a minute now. The
8 shooter said that? Well, how do you know that was the
9 shooter?

10 I think all of that is fine for cross-examination, but I
11 don't think it keeps -- it keeps him from saying that. If he
12 assumed that based on what he observed firsthand, I think
13 that's fair for him to testify to. I don't think it's a
14 *Biggers* issue or a 404(b) as to that.

15 As to "That's what you get," Judge, it's not -- it's not
16 out -- the probative value is not outweighed by -- by any
17 prejudice, certainly not substantially outweighed by the
18 prejudice for this reason. If for nothing else, it's a
19 necessary element, Judge. The statement, "That's what you
20 get," I think we would all agree is a malicious statement.

21 We have charged the defendant in this case with murder.
22 One of the elements, necessary elements, is malice
23 aforethought. And for someone to shoot another person in the
24 face, malicious as that is, but to then say, "That's what you
25 get," is malicious and it is a necessary element of the

1 offense and our contention is, Your Honor, that it was said
2 by the defendant. So it's an admission by a party opponent.

3 But a statement made by the defendant that shows malice
4 and carelessness when malice is a necessary offense of the
5 crime, I do think, Judge, that I think the probative value
6 far outweighs any prejudice. Again, these are questions Mr.
7 Stephens can ask about, well, how do you know this was the
8 shooter and you were 50 feet away or 100 feet away. All of
9 those things are good cross-examination questions, but I do
10 not believe, respectfully, that that would keep the statement
11 out.

12 MR. STEPHENS: Your Honor, very briefly. I think that
13 Mr. Thornton has -- has established why the probative value
14 would be substantially outweighed by the danger of unfair
15 prejudice because they are -- they are trying to show that
16 this was the shooter, even though he has not been identified
17 by this witness as that person and his description of that --
18 of the speaker doesn't match the defendant. It doesn't match
19 the person seen on surveillance footage as far as the size
20 and the clothing he alleges.

21 THE COURT: This is not part of the res gestae under the
22 moment of what was happening?

23 MR. THORNTON: It certainly would need to -- you would
24 certainly be res gestae to tell the story, Judge, and again,
25 it's all on video. Under that theory then, unless you could

1 identify and you know, hey, the shooter is John Duncan, then
2 you wouldn't be able to give any information. I mean what we
3 have is multiple eyewitnesses who are going to get up in here
4 and say John Duncan did the shooting.

5 You have another witness who doesn't know him and can't
6 identify him, but can say the person standing over his body
7 right after the shot went off when I looked said the
8 following. It is an everyday inference for a jury to take
9 those two things and say, yes, he heard that or, no, he
10 didn't. And again, Mr. Stephens is free to, you know, ask
11 all those cross-examination questions, but it certainly is
12 necessary to tell the story and it's a necessary element of
13 the offense.

14 THE COURT: I agree with the State's position and would
15 allow the testimony.

16 MR. STEPHENS: I understand your ruling, Your Honor.
17 Thank you.

18 THE COURT: Which brings us to what?

19 MR. STEPHENS: I think that was it on the list. I added
20 one -- I know I put in one additional issue about if the
21 State intended to offer any kind of victim impact evidence on
22 the merits, and I don't think that they -- I looked at their
23 witness list. I don't think that they intend to offer
24 anything like that.

25 MR. STONE: No, sir. That wouldn't be proper. We

1 wouldn't do that.

2 MR. STEPHENS: So I don't think we have any other issues
3 from the -- from the defense at this point. Again, we have
4 those -- some outstanding discovery issues that are minor,
5 but I think they can be worked out with the State prior to
6 going on the record tomorrow.

7 MR. THORNTON: Your Honor, I did have one thing and I
8 just wanted to put this on the record to make sure that it's
9 covered. We will absolutely do whatever we can to help with
10 Mr. Stephens as far as opening whatever he can't open.

11 One of the things that Mr. Stephens -- and he provided
12 it to us just as he was supposed to, Your Honor. One of the
13 things he did was get whatever incident reports were at --
14 that involved some of our witnesses, just two or three of
15 them, at least it was just two or three of them that anything
16 was provided, and I just wanted to make sure that absent
17 whatever the rap sheets show that Mr. Stephens was not going
18 to try to get into, you know, incident reports or calls for
19 service or anything else.

20 I looked through them and I didn't see anything that
21 would even remotely be proper and I just wanted to make sure
22 of that before -- you know, before we got here in the morning
23 and, you know, if we need to argue it, I want to be ready to
24 do that. I didn't think he was going to do that, but I
25 wanted to ask.

1 MR. STEPHENS: Your Honor, we're -- the only, I think,
2 incident that would -- that I believe is relevant to this
3 that is not, you know, classic impeachment through a
4 conviction or something, there was -- there was an incident
5 about two days after the shooting where the -- where two
6 witnesses, friends of the victim, showed up at the Boys and
7 Girls Club of Hilton Head Island, in the words of one of
8 them, to confront the defendant's friend, Dontarious Seay.

9 That that may be something that -- that the defense
10 would like to inquire into, if there was some kind of
11 intimidation that they were trying to do, if it's that they
12 were confronting, trying to confront him. They were trying
13 to find the whereabouts of the -- of the defendant at the
14 time, Your Honor.

15 Part of our defense argument -- excuse me. Part of our
16 defense case may be about bullying and actions that were
17 fomented by one of the witnesses, who we believe arranged for
18 this robbery on Friday, arranged for the fight. Your Honor,
19 we believe that that is connected to this other incident.

20 THE COURT: I'm not sure I followed you completely, but
21 maybe the State can tell me what they -- what their position
22 is.

23 MR. THORNTON: Judge, I don't understand how it would be
24 relevant under the rules. I mean he -- this isn't -- like,
25 if this was a confrontation between the defendant and the

1 victim, a prior, clearly there is case law that says that
2 that is admissible, but a witness supposedly going to
3 confront another witness I don't understand. I don't
4 understand how that would be admissible under the rules.
5 It's not anything indicative of someone's -- I'm sorry,
6 Judge. The word escapes me. Reputation for truthfulness.

7 So it's not -- it's not good impeachment information.
8 It's -- it's -- it's an inquiry, again, that has -- that
9 occurs after this case. So I don't -- I don't know how he
10 would get that in under the rules, which is why I brought it
11 up.

12 MR. STEPHENS: It goes to their bias against the
13 defendant, Your Honor. They were trying to find him. Even
14 though the police are on the lookout for -- for Mr. Duncan,
15 these young men are trying to find him themselves, which
16 again, I think that kind of vigilante action, which I
17 wouldn't characterize in front of a jury as vigilante action,
18 shows a bias, a hostility towards the defendant by these
19 witnesses.

20 THE COURT: All right. So a witness that the State
21 might call to testify in the case, you're saying tried to
22 intimidate another witness?

23 MR. STEPHENS: Well, they were confronting Mr. Seay to
24 try to find or try to intimidate him to find the whereabouts
25 of the -- of the defendant, Mr. Duncan. They were looking

1 for him, even though the police were already out searching
2 for him.

3 Your Honor, again, I think that shows hostility towards
4 Mr. Duncan. Your Honor, I think that the witness may already
5 say that they have hostility towards Mr. Duncan, but if they
6 denied it, I would want to be able to go into that as a -- as
7 issue to refute any claims that they don't have hostility
8 towards Mr. Duncan at this point.

9 MR. THORNTON: Judge, this may be something we just have
10 to kind of see how it plays out. You know, I would -- you
11 know, I hate trying to unring the bell, but you're trying to
12 imagine now what somebody is or is not going to say.

13 So I know Mr. Stephens well enough to know he's not
14 going to get too far afield and, if I object, he would stop
15 asking the questions or if the solicitor did. So we'll --
16 let's just see where it goes and I won't -- I won't ask any
17 more about that right now.

18 But if that's the only issue and the other ones are non-
19 issues, then -- then, you know, we can address that as it
20 comes up.

21 MR. STEPHENS: Your Honor, I would not. Just knowing
22 that this is an issue, I'm not going to delve right into it.
23 If I feel like that -- that somehow it's relevant and
24 necessary, I will ask for a brief recess to ask you about
25 that.

1 There's one minor -- but I think I already know the
2 answer. One of the witnesses, Devon Williams, had originally
3 been charged with a burglary in General Sessions court. I
4 think it was remanded back to or transferred back to the
5 Family Court, where it was resolved.

6 (WHEREUPON, counsel conferred off the record.)

7 MR. THORNTON: Your Honor, I've handed him all the rap
8 sheets. I believe that the case he's talking about -- I
9 looked at them this morning. I think that was -- I don't
10 think it was transferred back to Family Court. It was three
11 defendants altogether. I believe that Mr. Williams pled
12 guilty to a trespass and a larceny.

13 I think -- if I'm remembering this correct, Jeff, I
14 think that was the one that was stolen liquor or something
15 out of a restaurant.

16 MR. STEPHENS: Well, by the way, if it doesn't meet the
17 -- if it doesn't meet the standard of a conviction for
18 impeachment purposes, Your Honor, then -- then I won't ask
19 about it. I'll look at their rap sheets.

20 MR. THORNTON: I looked, Judge. I don't believe there
21 is any, but obviously if Mr. Stephens sees something that I
22 missed, we can address that in the morning. But I don't
23 believe there's any --

24 THE COURT: Okay.

25 MR. THORNTON: -- convictions in there that would be --

1 THE COURT: All right.

2 MR. THORNTON: -- admissible.

3 THE COURT: Let's do that.

4 MR. STEPHENS: Thank you, Your Honor. I don't have
5 anything further.

6 THE COURT: That's it?

7 Okay. From the State?

8 MR. THORNTON: Your Honor, I don't believe that I've got
9 anything else that -- I hate to say that and then I come up
10 with one for you in the morning, but I don't believe we've
11 got anything else today, Judge. I think we've gotten through
12 just about everything we needed to.

13 MR. STONE: We'll show the defendant all of the exhibits
14 that we've already gotten marked -- I think we have
15 everything except maybe two or three marked -- and then help
16 him with any of the discovery that he can't open and we'll be
17 ready to go.

18 THE COURT: All right. Does anybody else have anything?

19 MS. BUTNER: No, Your Honor. Thank you. We're fine.

20 THE COURT: All right. We will adjourn until 9:30
21 tomorrow morning.

22 MR. STONE: Thank you, Your Honor.

23 MR. STEPHENS: Thank you.

24 MR. THORNTON: Your Honor, would you like us here about
25 nine, if the jury is coming in at 9:30?

1 THE COURT: 9:15.

2 MR. THORNTON: Yes, sir.

3 THE COURT: Of course, if you haven't forgotten
4 anything.

5 MR. THORNTON: I hope not, Judge. If I did, I promise
6 you the boss will tell me.

7 (WHEREUPON, the proceedings adjourned for the day.)

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9 (WHEREUPON, the proceedings resumed.)

10 THE COURT: Apparently, we're still short a juror. Is
11 it -- did I understand there's something we need to take up
12 before the jury comes in at any rate?

13 MR. THORNTON: There is, Your Honor. Judge, Mr.
14 Stephens gave me three photographs this morning and
15 apparently has a video and we've offered to let him play that
16 if he needs to on our system. We'll just turn the television
17 so Your Honor can see it.

18 I am not objecting to this photograph. There is video
19 of a fight that occurred on the Saturday, the day before the
20 shooting, and I believe that comes from that day. So I don't
21 have any objection to that. I think that's how the victim --
22 it's a picture of the victim, Your Honor. It's how he would
23 appear in the videos I believe we're going to play.

24 I do object to -- and they're not marked. So we
25 probably ought to get them marked as Court's exhibits so we

1 know what we're referring to.

2 THE COURT: All right.

3 (WHEREUPON, the two photographs were marked as Court's
4 Exhibit Number 7 and Court's Exhibit Number 8.)

5 MR. THORNTON: Your Honor, the two photographs I have
6 left are going to be Court's Exhibits 7 and 8, and I've asked
7 the court reporter if it was all right to go ahead and call
8 the video that he wants to play, even though we don't -- she
9 doesn't have the disk yet, as Court's 9 just so that the
10 record will be clear.

11 Court's 7, Your Honor, is a photograph of the victim in
12 the case and Court's 8 is a photograph of a -- it's either
13 Snapchat or some kind of messaging service that came off of
14 Jestin Morrow's phone, who is a witness in the case,
15 basically indicating that Flex, which is the nickname of the
16 defendant in this case, is scared to fight Dominique.

17 My objection, Your Honor, as to the picture of the
18 victim, first of all, is relevance. Second of all, I kind of
19 -- Mr. Stephens hasn't told me this, but these exact three
20 photos were used by Mr. -- or submitted by Mr. Duncan's
21 previous attorney in the Family Court hearing and so I'm
22 somewhat familiar with what that was used for.

23 That particular picture was used in an attempt to allege
24 that the victim was a member of a gang and that he was
25 throwing --throwing up a gang sign. Obviously, it was

1 unsuccessful because I don't believe he is, number one, and,
2 number two, I certainly don't think there's anybody qualified
3 to say that, at least not that I've seen on anybody's witness
4 list.

5 So if -- if it is Mr. Stephens's intention to do that,
6 then I think that's also improper. You know, it's character
7 assassination of the victim and, as you know, Your Honor,
8 even witnesses who are going to appear and testify character
9 can't be attacked except for their credibility for
10 truthfulness or untruthfulness. So I would object on those
11 grounds.

12 As to the other picture, I just -- it's relevance, Your
13 Honor. I don't -- you know, you said -- what that basically
14 says is that the defendant is scared to fight the victim.
15 Well, they did fight. So obviously, at some point he wasn't
16 because -- although when Your Honor sees the fight, you'll
17 know what I mean when I say it wasn't much of a fight, but it
18 certainly -- they certainly did fight. I don't understand
19 what the relevance of that would be; so I would start there
20 and then I'd just asked the Court to hear me again after Mr.
21 Stephens puts his reasons for them on the record.

22 Thank you, Your Honor.

23 THE COURT: All right. Mr. Stephens?

24 MR. STEPHENS: Your Honor, addressing first that -- that
25 caption photograph from the inside of the vehicle, Your

1 Honor, in his prior statements Mr. Morrow had stated that on
2 the day of the fight between the defendant and the victim,
3 Dominique Williams, that the defendant, Duncan, had wanted to
4 fight. That the fight happened because Mr. Duncan wanted to
5 fight.

6 We believe that this would be a -- this would be a prior
7 inconsistent statement. That if -- if Mr. Morrow is on the
8 witness stand, that the defendant would be allowed to ask him
9 about -- about who wanted to fight in this case. And if he
10 repeats his prior statements that Mr. Duncan had wanted to
11 fight, then we would be allowed to ask him didn't you send
12 out some -- some form of social media posting that Mr. Duncan
13 was afraid to fight the victim?

14 And what's more, Your Honor, if this case goes into
15 potential self-defense and we start talking about reasonable
16 fear, then fear of the victim is very relevant, Your Honor,
17 but even without that, this does go to an inconsistent
18 statement that Mr. Morrow made with this posting. We believe
19 based on the time stamp this would be an hour approximately
20 before the fight when this was taken and sent out and, Your
21 Honor, with the Court's permission, I can move on to the
22 other items.

23 With respect to the photograph of the victim wearing the
24 black bandanna and a polo shirt, we would like to be able to
25 ask the investigator whether or not he investigated whether

1 there was any gang motivation in the animosity between the
2 defendant and the victim in the case. He's welcome to say,
3 no, he didn't.

4 If I -- I would like to be able to ask whether or not
5 that there were concerns that the black bandanna that the
6 victim was wearing in both this fight photograph and this
7 other photograph was an -- was an indication of possible
8 affiliation with a gang called the Gangster Disciples.

9 What's more, Your Honor, in the video of the fight,
10 there's a reference to the Gangster Disciples. There are
11 comments about you *ain't no G*. There are people in the
12 background saying neither one of you are Gs, which I believe
13 would be slang term for Gangster Disciples. The officer may
14 not be able to -- the investigator may not be able to testify
15 about that, in which case we'd be done. We'd be shut down on
16 that avenue of questioning. The bandanna is also referred to
17 in the fight video as his flag, which we also believe is gang
18 slang for their colors, which would indicate their gang
19 affiliation.

20 Not only do we believe that that is relevant about the
21 investigation itself and whether there were any other
22 possible background behind the fight, behind the actual
23 shooting, but again, if we go into self-defense, it's going
24 to be relevant into the reasonable fear that the defendant
25 might've had of the victim if they were gang affiliated.

1 What's more, to follow up on that, Your Honor, I believe
2 that the State may offer a number of Facebook posts from the
3 defendant's Facebook account. Those were obtained from
4 subpoena. I would like to be able to ask the investigator
5 questions about those -- that Facebook account.

6 One of the posts on there after the shooting is from a
7 person who posted to Mr. Duncan. You had to kill my little
8 6Ron, and then the slang term N-word. I'm coming for you.
9 Pardon the expression, Your Honor. P-u-s-s-y, watch. And we
10 -- I would like to be able to ask the investigator whether he
11 knows if 6Ron is a slang term for a member of the Gangster
12 Disciples, as we believe it is.

13 Again, if he doesn't have that information, doesn't know
14 information about gangs, I think we're shut down there.
15 However, I do believe we would be able to ask the witnesses
16 who were present at the fight who made comments about you
17 ain't no G, whether or not that was a reference to -- to Mr.
18 -- to Mr. Williams being or at least claiming to be a member
19 of the Gangster Disciples. He wore gang colors in the fight,
20 Your Honor. We should be able to ask him questions about --
21 or the witnesses questions about whether or not he purported
22 to have gang affiliations.

23 What's more, another witness in the case, Your Honor,
24 Mr. Dajon -- also slang name Pugg Robinson. They did a check
25 of his phone, not really a forensic analysis, but it showed

1 communications between that witness and Mr. Williams where
2 he, a friend of Mr. Williams, was asking him if he was
3 affiliated with the Crips, which is an ally gang to the
4 Gangster Disciples. And there is some conversation back and
5 forth. I would like to be able to ask Mr. Robinson if he
6 knew if the defendant was associated with either of those
7 gangs.

8 It's in the case, Your Honor. I mean the victim is
9 wearing gang colors in the fight. He's wearing gang colors
10 in his Facebook posting. We don't know if anything else in
11 this -- in this case is related to possible gang affiliation,
12 but it certainly could go to whether a reasonable person
13 would be in fear of someone who fought them with gang colors
14 on who they then disrespected by knocking them off his head
15 might have a motive to retaliate.

16 THE COURT: All right.

17 MR. STEPHENS: And, Your Honor, I think the last thing
18 that was mentioned by Mr. Thornton was a video that I think
19 we can play. I provided a copy to the -- to the State. I
20 don't know if they want to have that copy marked as a Court's
21 exhibit. We can mark this.

22 (WHEREUPON, the video on disk was marked as Court's
23 Exhibit Number 9.)

24 MR. STEPHENS: We can play it through the -- through the
25 State's system so the Court can make a ruling. The defense

1 would just inform the Court that the intent for this video
2 would only be extrinsic evidence of a prior inconsistent
3 statement by Mr. Robinson if in cross-examination of Mr.
4 Robinson he denies making certain statements.

5 In his prior statement to law enforcement, Mr. Robinson,
6 Dajon Robinson, had mentioned a prior incident with the
7 defendant, that -- that they had almost come to blows in a
8 prior incident. There is a recording of that prior incident.

9 I'd like to ask Mr. Robinson about it for a number of
10 reasons. First would be whether it shows any animosity or
11 not towards -- towards Mr. Duncan.

12 Second, Your Honor, the State has made a part of their
13 case, in fact a huge part of their case, the fact that or the
14 allegation that Mr. Duncan made threats to shoot the victim
15 in this case.

16 In this video, there's a threat by Mr. Robinson to shoot
17 the defendant in the face that's clearly made in jest. I
18 would like to ask Mr. Robinson whether or not that sort of
19 language was common in their social group, to threaten
20 violence, to threaten shooting. It is a huge part of this
21 case, Your Honor, and if Mr. Robinson denied it, I would like
22 to be able to ask him whether or not he had used language
23 like that himself with respect to the defendant in this
24 incident. If he denies that, this is extrinsic evidence of a
25 prior inconsistent statement there, Your Honor.

1 Again, the State is using these prior threats to show --
2 to try to show malice aforethought. It is an element of the
3 offense and the defense should be allowed to attack that by
4 showing this sort of language was -- was not unusual.

5 In fact, the witnesses in their prior statements all
6 said that they didn't take that kind of threat seriously.
7 I'd like to be able to inquire as to why you don't take that
8 seriously. Is it in part because you all are using or other
9 people are using that kind of language that we have evidence
10 of, Your Honor.

11 And that's -- again, I would only be using it as
12 extrinsic evidence should Mr. Robinson deny the statement on
13 the stand.

14 THE COURT: All right.

15 MR. STEPHENS: We can play it or Mr. Thornton can
16 respond, however the Court --

17 THE COURT: Let him respond.

18 MR. THORNTON: Your Honor, the problem with all the
19 stuff about the gang this and gang that is you can't unring
20 the bell. I mean what Mr. Stephens is saying is, well, I'd
21 just like to ask. Well, did you look into his gang past?
22 Well, no. Okay, well, I'm shut down now.

23 It doesn't work that way and the Court knows that and
24 Mr. Stephens knows that. Once he starts ringing that bell,
25 even without any substance or any evidence of it, you know,

1 it's just like Mr. Stephens gets up there and says, Your
2 Honor, he's wearing gang colors. He's wearing black. Your
3 Honor is wearing black. The court reporter is wearing black.
4 I've got black on my tie. It's -- you know, it is something
5 that you can throw out there as this nefarious entity without
6 any evidence of it and then, you know, I can't unring that
7 bell once it's been rung.

8 And all of the stuff, like this video and these things,
9 it's all dealing with other people. It's not dealing with
10 the defendant and the victim. As I stated yesterday when we
11 were talking about some other pretrial matters, if you were
12 talking about problems between the victim and the defendant,
13 I think that's relevant, but when you're talking about
14 statements made by another witness in a previous encounter
15 with the defendant and not the victim, then, you know, I
16 don't think that that's admissible, Judge, for all the
17 reasons I've already stated.

18 But those are my problems. Once you start throwing that
19 gang word out there, we can't unring the bell.

20 THE COURT: Well, and what you wish to do is -- I guess
21 you primarily wish to -- wish to do that with the
22 investigator; is that right?

23 MR. STEPHENS: Your Honor, I would like to ask the
24 investigator whether he had -- had looked into potential
25 animosity based on gang affiliations in the case.

1 THE COURT: I understand.

2 MR. STEPHENS: And if he says he doesn't have -- is not
3 familiar with gangs or the --

4 THE COURT: Why can't we do an in-camera on him in ten
5 minutes and find out?

6 MR. STEPHENS: We could, Your Honor. We're also
7 hampered a little bit by a fact that a lot of the -- the
8 eyewitnesses wouldn't speak to the defense before trial. So
9 I was not able to ask certain people like Jestin Morrow about
10 his knowledge of gang affiliation with Mr. Williams because
11 he hung up on us. He wouldn't -- he wouldn't talk to -- to
12 the defense when we tried to get in touch with him.

13 So, Your Honor, we're still trying to explore stuff that
14 we are unable to do pretrial, but, yes, Your Honor, we would
15 like to ask whether there was some -- whether they looked
16 into gang affiliation, but also would like to be able to ask
17 the eyewitnesses to the fight who made comments about Mr.
18 Williams wearing a flag, which is a term related to a gang,
19 and whether he was or wasn't a G, Your Honor.

20 If they say they don't know anything about gang
21 affiliations, then I might be stuck with that, Your Honor,
22 but I would like them to at least explain their comments that
23 they make during -- during the fight about Mr. -- Mr.
24 Williams' flag or the bandanna on his head and -- and whether
25 or not he was a G, Your Honor.

1 MR. THORNTON: Your Honor, again, I'm not sure. You
2 know, Your Honor asked him. He just said I want to ask the
3 investigator. Now, he wants to ask all the other witnesses
4 too. We can't, you know, be in a position to proffer every
5 witness. Again, when you start throwing that word out over
6 and over and over again with every witness when -- when
7 there's no evidence of it, I will put the investigator up
8 right now, Judge, but I don't know that that solves it.

9 THE COURT: Let me ask you this question.

10 MR. STONE: Yes, sir.

11 THE COURT: Why didn't we do this yesterday? All of
12 this yesterday?

13 MR. STEPHENS: Your Honor, with due regard, this is a
14 pre -- as a -- something that needed to be taken up pretrial
15 because I didn't know who the witnesses were until I got the
16 witness list. I do believe that at least comments made
17 during the fight, that a jury is going to hear them. If
18 those videos are played, we should have that opportunity to
19 explain or maybe inquire --

20 THE COURT: What about these?

21 MR. STEPHENS: -- as to what's being said.

22 THE COURT: What about these photographs?

23 MR. STEPHENS: Your Honor, at least with respect to the
24 one about Mr. Duncan not wanting or being scared of the
25 victim, that -- that relevance should -- should be implicit

1 in the statement, Your Honor. Again, that's just extrinsic
2 evidence.

3 THE COURT: My question is --

4 MR. STEPHENS: Yes, sir.

5 THE COURT: -- why didn't we do this yesterday?

6 MR. STEPHENS: The defense would have to take the Fifth
7 on that, Your Honor. I didn't know if Mr. Morrow would
8 actually be coming to testify because he wouldn't communicate
9 with us. I know that his college is having college finals
10 this week. He was out of state. I would -- I didn't know if
11 he was actually going to be able to come. This would only be
12 a prior inconsistent statement for Mr. Morrow since it was
13 from his phone. But that's the only reason, Your Honor.

14 THE COURT: In 15 words or less, Mr. Stephens, tell me
15 one more time why the photograph is relevant.

16 MR. STEPHENS: Your Honor --

17 THE COURT: Which is Number -- Number 7.

18 MR. STEPHENS: The only relevance of that is in the
19 context of the -- of the picture and the video of the fight
20 to show that the black bandanna was not a one-time
21 affectation. This was something that he has sported in other
22 photographs, which again is called a flag, which is a gang
23 term in the video.

24 I understand if the Court excludes it, we can still
25 proceed on with the -- with what's going on in the fight

1 itself, Your Honor, but again, the only relevance that the
2 defense has for that is in the context of the -- of what the
3 victim is wearing in the fight video to show that this black
4 bandanna has significance as a gang symbol.

5 THE COURT: Help me out. Who is going to -- who is
6 going to say that that bandanna is a gang symbol?

7 MR. STEPHENS: Well, Your Honor, I think the folks who
8 were present at the fight who made comments about his flag
9 was knocked off when it gets knocked -- when the bandanna
10 gets knocked off the victim's head. I would want to ask them
11 the significance of a flag, what does that mean, what are
12 they -- what are they referencing. And, Your Honor, again,
13 that picture I think would only be used to show that he's
14 sporting that flag of colors of Gangster Disciples other than
15 just this fight.

16 But the people who are watching it attach some
17 significance to the fact that his -- that the gang colors
18 were knocked off his head. So I should -- I believe the
19 defense should be able to inquire as to what that means. It
20 might help if the Court would also watch the fight video, but
21 I think that's coming in regardless. The defense certainly
22 has no objection to it.

23 THE COURT: And is that the fight video we had on the
24 screen here?

25 MR. STONE: No, sir.

1 MR. STEPHENS: No, Your Honor. This is just the one
2 with the language from Mr. Robinson to the defendant that if
3 he messes with his windows, he's going to shoot him in the
4 face. He clearly said it in jest.

5 MR. THORNTON: Your Honor, would you like us to play it?

6 THE COURT: I think we need to.

7 MR. THORNTON: Yes, sir. Go ahead.

8 (WHEREUPON, Court's Exhibit Number 9, video, was played.
9 Not transcribed herein.)

10 MR. STEPHENS: That's the extent of what the defense
11 would be asking to offer as extrinsic evidence depending on
12 Mr. Robinson's testimony was that -- that's it, Your Honor.
13 The defense wouldn't have anything else on that.

14 MR. THORNTON: The victim is not in the car, Judge.
15 It's got nothing to do with the victim and the defendant in
16 this case.

17 THE COURT: All right. Tell me who I was watching.

18 MR. STEPHENS: Your Honor --

19 THE COURT: Because I'm not sure I know anybody.

20 MR. STEPHENS: I believe the testimony would be that the
21 -- that the people in the car are Jestin Morrow and Dajon
22 Robinson, who are both witnesses here.

23 THE COURT: Okay.

24 MR. STEPHENS: And the person outside I think they would
25 testify is the victim -- is the defendant, Mr. Duncan.

1 MR. THORNTON: Judge, I'm sorry. Again, I know this is
2 this morning is when I got it, but the problem is is he's on
3 the one hand saying I want to show that this says they say
4 this kind of stuff all the time and it's clearly in jest, but
5 the reason that he put it forward was to show bias toward the
6 defendant.

7 Well, if it's in jest and they're just -- which clearly
8 looks like pranking and joking around, how does that show any
9 bias? I mean, again, it's relevance. The victim is not in
10 the car. The victim is not there. It has nothing to do with
11 the victim. And if it is, as Mr. Stephens says, just in
12 jest, then how does that show any bias against the defendant
13 by the two witnesses that are in the video?

14 MR. STEPHENS: I think it's one or the other, Your
15 Honor. Either he's ticked off at the defendant, and I don't
16 think he is, or this is the sort of thing that can be said in
17 jest. I'm going to shoot you in the face sounds pretty
18 severe, as is any statement about I'm going to shoot the
19 victim in this case, but -- but it's clearly something that
20 was said in jest there. I'd like to be able to ask the
21 witness whether or not in his group of friends, as these
22 people have been described already pretrial, that that sort
23 of thing is not uncommon.

24 THE COURT: So you're not going to use this unless he
25 denies it?

1 MR. STEPHENS: Yes, Your Honor. That's correct.

2 THE COURT: He says it's not --

3 MR. STEPHENS: I don't -- we don't say things like that.
4 I never said something like that.

5 THE COURT: Well --

6 MR. THORNTON: Judge, I just -- I keep falling back to
7 the same problem. He says, well, it's either one way or the
8 other. Well, that's -- that's not how you get evidence into
9 a court. If his -- if his connotation is that this is just a
10 joke, which I agree with him it certainly seems like by the
11 demeanor on there, then it doesn't show bias and it isn't
12 relevant because it doesn't involve the victim and the
13 defendant.

14 MR. STEPHENS: Your Honor, the only other thing I would
15 mention is that the witness does talk of this incident in his
16 interview when -- as a prior incident with the defendant.
17 Again, I don't think it's animosity, but it's something that
18 he already mentions when he was interviewed by law
19 enforcement. He brings it up himself.

20 I don't intend to play it unless the defense is denied,
21 but if the State ends up playing the -- the prior interview
22 of Mr. Robinson, this is already referenced. That's all,
23 Your Honor.

24 THE COURT: All right. I'm going to wait and see where
25 we are with the examination or cross-examination of the

1 witness.

2 MR. STEPHENS: I understand, Your Honor. And we will
3 work on trying to fix our technical difficulties before we
4 get to something like that.

5 THE COURT: Where does that leave us?

6 MR. THORNTON: The two -- **you've got two** -- I think it's
7 Court's 7, and the video is Court's 9 for the record.
8 Court's 7 and 8 are the two photographs that Your Honor has
9 up there that I've objected to.

10 THE COURT: Well, at this stage, I am going to sustain
11 the objection but, of course, we may have to revisit it
12 depending on what the testimony is and how it's come about.

13 MR. STEPHENS: Your Honor, is that the objection to both
14 of those photographs?

15 THE COURT: Yes.

16 MR. STEPHENS: I understand, Your Honor. And is that
17 also objection to -- sustaining the objection to me asking
18 Mr. -- asking Mr. Morrow about sending out a -- a social
19 media posting about the defendant being scared?

20 THE COURT: Well, it depends on what he says before you
21 get to that point.

22 MR. STEPHENS: I understand, Your Honor. I believe I
23 understand the ruling. Thank you, Your Honor.

24 MR. THORNTON: The only other thing I have, Judge, the
25 other thing that's been discussed is this questioning or

SETH REYNELLS - DIRECT BY MR. THORNTON

1 accusations dealing with gang or gang influence. I don't
2 think the Court has ruled on that yet.

3 Now, I've got the investigator here. He can get on the
4 stand. Obviously, that doesn't solve the issue that Mr.
5 Stephens has talked about about wanting to ask that same
6 question to the other witnesses, but at the Court's pleasure,
7 I can do either.

8 THE COURT: Any objection to the investigator?

9 MR. STEPHENS: No objection, Your Honor.

10 THE COURT: Do you want to do it in-camera?

11 MR. THORNTON: Yes, sir. Thank you, Your Honor. The
12 State calls Seth Reynells for the purposes of this in-camera,
13 Your Honor.

14 THE CLERK: Do you solemnly swear or affirm to
15 truthfully answer all questions asked of you by this Court,
16 so help you God?

17 THE WITNESS: Yes, I do.

18 SETH REYNELLS, being first
19 duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. THORNTON:

22 Q: Mr. Reynells, I'll try to keep this brief. You work for
23 the Beaufort County Sheriff's Office; is that correct?

24 A: Yes, sir. I'm a sergeant.

25 Q: And --

SETH REYNELLS - DIRECT BY MR. THORNTON

1 A: Yes.

2 Q: I'm sorry.

3 A: Go ahead.

4 Q: And you're the investigator on the case that we're here
5 on today, the State versus John Duncan?

6 A: Yes, I am.

7 Q: Are you -- do you have extensive specialized training to
8 make you a gang expert?

9 A: No, sir, I do not.

10 Q: Are you aware of any concrete evidence that either the
11 defendant in the case or the victim were gang members?

12 A: No, sir, I don't.

13 Q: And I know that --

14 MR. THORNTON: Again, Your Honor, I think he's testified
15 he's not an expert. So I am going to ask this question
16 though unless Mr. Stephens objects.

17 BY MR. THORNTON:

18 Q: You had indicated something to me earlier in reference
19 to the shoes that the -- the victim was wearing in the fight
20 video?

21 A: That's correct.

22 Q: Mr. Stephens has made a lot about the black headband he
23 had on, about it being associated with the Gangster
24 Disciples. What color were the shoes that he had on in the
25 fight video? Do you recall?

SETH REYNELLS - DIRECT BY MR. THORNTON

1 A: They were red.

2 Q: Are those -- are those two colors, as far as if it's
3 gang affiliation, generally diametrically opposed?

4 A: Generally, yes.

5 Q: All right. But you are not a gang expert nor would
6 offer an opinion as to gangs or gang affiliations or colors
7 or anything like that, would you?

8 A: That is correct, sir.

9 MR. STONE: Please answer any questions Mr. Stephens
10 has.

11 THE COURT: Mr. Stephens?

12 MR. STEPHENS: Thank you.

13 CROSS-EXAMINATION

14 Q: Investigator Reynells, you just testified about colors
15 that were used in -- in different -- by different gangs;
16 correct?

17 A: Yes, sir.

18 Q: What -- are you familiar in your experience as a law
19 enforcement investigator as to what gangs may use the color
20 red predominantly?

21 A: Yes. Generally, the Bloods is what I'm familiar with.

22 Q: Are you familiar in your experience as a law enforcement
23 investigator in this area as to what gangs may use the color
24 black predominantly?

25 A: No.

SETH REYNELLS - CROSS BY MR. STEPHENS

1 Q: Have you ever had experience as a law enforcement
2 investigator dealing with a gang called the Gangster
3 Disciples?

4 A: No, I haven't.

5 Q: Investigator, did you have a chance to watch the -- any
6 of the videos of the fight in this case?

7 A: Yes, sir.

8 Q: And do you recall whether you heard references to the
9 victim wearing a flag?

10 A: I don't recall. No, sir.

11 Q: Do you recall hearing in that video whether anyone made
12 reference to the victim not -- not being a G? You ain't no G
13 or words to that effect?

14 A: No, sir.

15 Q: All right.

16 MR. THORNTON: Your Honor, just to shorten this up so
17 Mr. Stephens doesn't feel like he needs to play a video, I
18 just watched it again for the 800th time last night.

19 There absolutely is something about someone says neither
20 one of you are no G, neither one of you are no G, and the
21 State will also stipulate that I think it's the defendant who
22 says I just knocked your flag off, but it's definitely said.
23 I mean I've looked at the thing within the last ten hours.
24 So I just wanted to go ahead and we'll stipulate that that is
25 accurate in the video.

SETH REYNELLS - CROSS BY MR. STEPHENS

1 MR. STEPHENS: One other question, Your Honor.

2 BY MR. STEPHENS:

3 Q: Investigator, as part of your investigation, did you
4 obtain a copy of the defendant's Facebook account?

5 A: I did obtain a copy of his Facebook content, yes, sir.

6 Q: And did you have a chance to review that, those Facebook
7 messages?

8 A: I reviewed generally. Yes, it went -- it came back to
9 me in a PDF format. It was 1,200-something pages. So I was
10 reviewing the days leading up to and just following July 19th.
11 So I did not review all 1,200 pages.

12 Q: Do you recall whether you saw a posting from July 21st,
13 approximately two days after the shooting, from a Dez OTG
14 Clark to the defendant that said you have killed my little
15 6Ron, n-i-g-g-a, I'm coming for you, p-u-s-s-y, watch?

16 A: I don't remember that specifically. Like I said, there
17 was a lot of content in there.

18 Q: All right. And the expression 6Ron -- excuse me -- 6RO,
19 6RO, that doesn't -- you don't understand? You don't know
20 what that might signify?

21 A: I don't.

22 Q: All right.

23 MR. STEPHENS: Your Honor, I don't have any further
24 questions for him.

25 MR. THORNTON: I'm sorry. Was it 6RON or 6RO?

1 MR. STEPHENS: 6RO. I misspoke. 6-R-O.

2 I don't have any further questions for Investigator
3 Reynells.

4 Your Honor, I think that I should still be able to ask
5 the question to get the response that he did not investigate
6 a potential for gang affiliation in a general sense because
7 he says he doesn't have knowledge of that gang, but he
8 clearly knows something about gangs.

9 If we're going to question the investigation, I believe
10 that that's a -- you know, that that's a failing. That at
11 least some people involved in this fight believe that there's
12 gang affiliation for those colors.

13 THE COURT: Is there going to be evidence from other
14 witnesses about gang affiliation? I just don't know.

15 MR. THORNTON: Judge, not that I'm aware of. I mean I
16 think that the general tenant of the witnesses that I'm aware
17 of basically say that -- that they were not in any gangs and
18 were not members of gangs. I don't -- I don't know of any
19 witness -- I always, Judge, couch that with, you know,
20 witnesses take the stand and say what they will, but I'm not
21 aware of any evidence in the case from the witnesses saying
22 or that we've talked to that are going to say that either
23 one, either the defendant or the victim, was in a gang.

24 And the other problem we have is, you know, in the fight
25 video they are saying neither one of y'all are Gs. Neither

1 one of y'all are Gs. Well, you know, if we're going to -- if
2 we're exploiting that, then does that mean that the defendant
3 is also in a gang? That's the loose terminology and that's
4 the problem that you get into when you start -- when you
5 start making these questions when you don't have a factual
6 basis for them, Judge.

7 So, you know, the investigator has already gotten up and
8 testified he didn't have any evidence. I know Mr. -- Mr.
9 Stephens has 6RON or 6RO or 6R or whatever, but there's
10 nobody that's going to -- I mean I don't understand that to
11 be a gang reference and I don't think anybody else that he
12 could call to testify will.

13 MR. STEPHENS: Your Honor, I'm happy to refrain from
14 asking Investigator Reynells those questions on cross. If it
15 comes up through other witnesses, he's on my list. I could
16 recall him during the defense case if that --

17 THE COURT: I think you could.

18 MR. STEPHENS: -- would be preferable to the Court.

19 THE COURT: I think you could recall him if -- if you go
20 down another path and show there is evidence.

21 MR. STEPHENS: Thank you, Your Honor.

22 THE COURT: Where does that leave us?

23 MR. STEPHENS: I had one other issue that I brought up
24 to -- to the State. I had two items that I wanted to be able
25 to use as demonstrative evidence during some witness

1 testimony.

2 No weapon -- the defense believes that no weapon was
3 recovered in this case. There was testimony about a handgun
4 or part of a handgun that was observed inside a Crown Royal
5 bag. I have a Crown Royal bag and a -- and a clearly fake
6 handgun that I would like to be able to ask witnesses to
7 utilize to show certain things, being how the -- how the
8 purported weapon was pointed, as well as the officers who
9 have -- who have used handguns that have marksmanship
10 training through their police Criminal Justice Academy
11 experience explain how you aim a handgun.

12 Your Honor, I think that the jury might not be -- not
13 all members may be aware of how a handgun works. Despite
14 what's on TV, I don't think they ever go into the finer
15 points of front sight tips or rear sight -- or rear sight --
16 rear sight on the -- on the weapon.

17 THE COURT: Y'all help me out. Who is going to -- who
18 is going to testify about there being, in fact, a Crown Royal
19 bag?

20 MR. STEPHENS: I think that --

21 MR. STONE: Almost all of our witnesses will tell you.
22 I mean everybody that actually saw it says that John Duncan
23 had the gun in a Crown Royal bag and he brought it out and
24 actually that he shot it while the bag was on top of the gun.
25 So we'll have a number of witnesses who will say that.

1 THE COURT: Okay.

2 MR. STEPHENS: Again, Your Honor, I'm not trying to
3 enter it. I clearly admit that we don't know what kind of
4 handgun was used. The only allegation is it was some kind of
5 handgun. So I have just an example of a handgun -- of a type
6 of handgun to try to get some testimony about how you aim a
7 handgun.

8 THE COURT: Well, let's see what the State will say, if
9 he has any objection.

10 MR. STONE: Your Honor, I won't be able to object until
11 he does it. So, you know, at that point in time, I'll handle
12 it if I think it's objectionable, Your Honor.

13 THE COURT: Okay.

14 MR. STEPHENS: Thank you, Your Honor.

15 THE COURT: Anything else?

16 MR. STEPHENS: Nothing from the defense.

17 MR. STONE: Nothing from the State, Your Honor.

18 THE COURT: All right. Does that mean we're ready for
19 the jury?

20 MR. STONE: May we get Investigator Reynells off the
21 stand?

22 THE COURT: I guess.

23 THE FEMALE BAILIFF: The jury is entering the courtroom,
24 Your Honor.

25 (WHEREUPON, the jury entered the courtroom.)

1 THE FEMALE BAILIFF: The jury is seated, Your Honor.

2 THE COURT: Good morning and welcome, ladies and
3 gentlemen, and let me go ahead and right off the bat
4 apologize for making you wait. It seems like you can
5 anticipate everything that's going to happen and you're
6 always wrong.

7 The first thing we're going to do, ladies and gentlemen,
8 is we're going to let the clerk administer to you your oath
9 as jurors.

10 Madam Clerk?

11 THE CLERK: If you can stand and raise your right hand?

12 (WHEREUPON, the jurors complied.)

13 THE CLERK: Do you solemnly swear or affirm that you
14 shall well and truly try and true deliverance make between
15 the State of South Carolina and the accused and a true
16 verdict give according to the evidence, so help you God?

17 THE JURORS: I do.

18 THE CLERK: Thank you. You can sit down.

19 THE COURT: Ladies and gentlemen, as you heard earlier,
20 the defendant has been charged with an indictment **that's** been
21 filed with the Court with the crime of murder, and the
22 elements of this offense will be explained to you at a later
23 date. I tell you though that the indictment is simply the
24 vehicle that brings this matter before the Court. It is not
25 in any -- by any sense evidence of any of the allegations

1 contained in the indictment.

2 The defendant has pled not guilty to the indictment.
3 The State, therefore, has the burden of proving each of the
4 elements of this indictment beyond a reasonable doubt, and it
5 will be your duty, ladies and gentlemen, to determine when
6 it's all over whether the State has met that burden.

7 Your purpose as jurors is to find and determine the
8 facts of the case. You are the sole judges of the facts of
9 the case. And if at any time I make a comment regarding the
10 facts of the case, you must disregard that.

11 On the other hand and with equal emphasis, the same law
12 that makes you the judges of the facts makes me the judge of
13 the law. The law as given to you by the Court is the only
14 law you may consider. You must accept the law as I give it
15 to you, even if you disagree with it.

16 Just as I cannot tell you what the facts are in the
17 case, you cannot disagree with me about what the law is.
18 Your job is to take the law as I give it to you and apply it
19 to the facts as you find them from the testimony of the
20 witnesses and other evidence that might be introduced during
21 the trial.

22 As I told you earlier, until this case is over you are
23 not to let anyone discuss this case with you. You're not to
24 discuss the case with anyone, even in the jury room among
25 yourselves.

1 During the trial, you also are not to listen to any news
2 reports, radio, TV, print, any electronic communications
3 concerning this trial. If something comes on and comes to
4 your attention inadvertently, you honestly must turn away
5 from it and disregard it and not listen to it or read it.

6 In just a moment, the solicitor will make an opening
7 statement where the solicitor will explain to you the issues
8 in the case or at least what the solicitor thinks the issues
9 are in the case and what the defendant -- what the solicitor
10 believes the evidence may show. The defendant also may make
11 an opening statement and tell you what they -- what the --
12 what the defense thinks the evidence will not show. The only
13 evidence you are to consider is the evidence you see in this
14 courtroom, hear in this courtroom or view in this courtroom.

15 From time to time, you almost certainly are going to see
16 the attorneys ask to see me at a sidebar or me motion to them
17 to come over here to the side where we speak in whispered
18 tones outside your presence. We may even ask you to step
19 into the jury room while we discuss some things, again
20 outside your presence.

21 And the reason we do that is not really to keep secrets
22 from you, but it's because the attorneys and I need to
23 discuss a matter of law and in discussing a matter of law I
24 may be required to discuss with the attorneys the facts of
25 the case. As I've already told you, I am prohibited by law

1 from discussing the facts of the case in your presence. Why?
2 Because you decide what the facts are.

3 Ladies and gentlemen, we'll now begin with opening
4 statements.

5 Solicitor?

6 MR. STONE: May it please the Court.

7 OPENING STATEMENT ON BEHALF OF THE STATE

8 MR. STONE: The defendant, John Duncan, wanted respect.
9 He wanted to be respected. And what you're going to hear
10 over the next day or maybe day and a half of testimony, of
11 exhibits, of photographs is that John Duncan was willing to
12 kill to get that respect.

13 On July the 17th, the victim in this case, Dominique
14 Williams, and John Duncan met. John Duncan was trying to
15 sell Williams some marijuana. Dom Williams and his friends,
16 instead of paying for the marijuana, took it and drove off,
17 and that's something that John Duncan couldn't have. He
18 couldn't let that go. He had to act.

19 The next day, they fought. It was a fistfight, but John
20 Duncan didn't win the fight. In fact, it's hard to tell if
21 anybody won the fight. But regardless, at the end of that
22 fight, John Duncan left with no more respect than he had
23 going into it. Again, he still needed that respect.

24 So the next day, Sunday, Sunday afternoon, on a day in
25 which the sun was out, there was plenty of light, he drove

1 from Hardeeville. He got a .40 caliber handgun, drove
2 through Bluffton, into Hilton Head, down to Coligny Circle,
3 and hunted for Dominique Williams. And when he found him, he
4 walked right up to him, he said you think this is a game, and
5 shot him right in the face, point-blank, while vacationers
6 were standing around watching, in the daytime, while two of
7 Dominique Williams' friends were literally standing right
8 there. And in fact, one of John Duncan's friends was
9 standing right there. And then after John Duncan shot him,
10 he got on the phone and he bragged he's dead, all because he
11 wanted respect.

12 Now, ladies and gentlemen, my job in this case is to
13 present to you the evidence, **as you'll hear.** I'll put
14 witnesses up on the stand. I'll show you photographs. I'll
15 show you video surveillance of the event. My job is to prove
16 to you beyond a reasonable doubt that John Duncan shot and
17 killed and, therefore, murdered Dominique Williams.

18 If I don't do that, if I don't prove to you that case
19 beyond a reasonable doubt, your job is to come back here and
20 say, no, sir, you didn't do your job, not guilty. But,
21 ladies and gentlemen, I'm going to come back after all of
22 this is over, after I put those witnesses up on the stand,
23 after I show you the photographs and I show you the video
24 surveillance, and I'm going to ask you to do what a verdict
25 is supposed to do, which is speak the truth. That's what it

1 means and that's the only thing I'll ask you to do.

2 At the end of your deliberations after you've heard all
3 of the evidence, I'm going to come back here and I'm going to
4 ask you to do one thing, tell us the truth. Thank you.

5 THE COURT: Thank you, Solicitor.

6 Mr. Stephens?

7 OPENING STATEMENT ON BEHALF OF THE DEFENDANT

8 MR. STEPHENS: Good morning, ladies and gentlemen. I
9 frequently come up as the first part of my opening and I
10 repeat some of what the judge says to tell the jury that the
11 arguments of counsel in openings and closings is not
12 evidence. We are not the storytellers here.

13 As the judge told you, we tell you what we think or hope
14 the evidence is going to show and what we think the issues
15 are in the case, but the storytellers are the witnesses that
16 we're going to call and that you're going to hear from in
17 this case.

18 And the solicitor is certainly more polished at
19 presenting what he thinks the issues are and giving you the
20 story, he's got decades of experience, but as I said, we're
21 not the storytellers. We are like carnival barkers saying
22 come in and see the show. We tell you what we hope it's
23 going to be, but until those witnesses actually testify, we
24 don't know.

25 When I was a prosecutor years ago, I would always hope

1 for a tidy case, clear-cut, and the good and the bad easy to
2 distinguish, everyone is consistent in their stories. That
3 is a rarity. It's hard to get a case like that. We
4 certainly don't have one here.

5 Now, as the solicitor stated, the State has the burden
6 of showing proof beyond a reasonable doubt, which the judge
7 is going to instruct you about that later and what it means.
8 That they have proven every element of the charge. In a
9 typical case, regardless of what it is, they have to prove
10 every piece of that charge proven true.

11 Also, in some cases there are defenses, and the judge
12 will instruct you about those that also have to be proven
13 beyond -- disproven -- excuse me -- by the State beyond a
14 reasonable doubt. We will see what the evidence produces in
15 this case for the instructions you're going to get at the
16 end.

17 The State has to rely on the stories that the folks are
18 going to tell on the stand to get to their burden. That's
19 going to present some difficulties in this case because there
20 are three eyewitnesses that you may hear from who identified
21 the defendant as a person who shot and killed the victim in
22 the case, Dominique Williams, but I believe you're also going
23 to hear that each one of those witnesses lied when they went
24 to -- when they were interviewed by law enforcement. They
25 either lied and corrected it in a subsequent interview or

1 they omitted something that was proven by other
2 investigation, but we know that each one of them left
3 something out of their statement, omitted something.

4 For example, you may hear about a fight that occurred
5 that the solicitor mentioned between the victim and John Ira
6 Duncan, the defendant. You might hear the reasons for that.
7 The solicitor talked about some kind of robbery of drugs.

8 When these eyewitnesses were interviewed, none of them
9 told the truth about the robbery. A participant in the
10 robbery you're going to hear didn't -- **didn't** mention it at
11 all except it was something he heard about.

12 Another person who would have been confronted with the
13 fruits of that robbery said that he thought the fight was
14 about some old beef, nothing about this robbery of drugs.
15 That witness didn't really know anything about drugs. So we
16 know that they've already lied once.

17 As the judge told you, you are going to be the sole
18 finder of fact here. I believe for each of you to determine
19 the credibility of these witnesses and whether you find them
20 reliable in the rest of their testimony, testimony about the
21 shooting, that they've already lied, you'll be able to judge
22 their demeanor on the stand and hear how they explain prior
23 inconsistencies.

24 We don't know how the -- these witnesses are going to
25 testify. I certainly don't. The solicitor doesn't really

1 know how they're going to testify, but we do know that
2 they've lied before.

3 We also know one other thing. You are likely to see
4 surveillance footage that shows one angle of the shooting
5 that happened where Dominique Williams was killed. You can't
6 see the face or clearly identify the shooter in the video,
7 but you'll notice some very odd things about the video that I
8 will discuss with you again at the end of this case.

9 The two friends of the victim at the shooting, they
10 don't try to help their friend. They don't try to get a
11 phone to call 9-1-1. They each walk off screen and they walk
12 around and it's minutes before they return to the scene, as I
13 think you'll see in that footage. I can't explain that.
14 Perhaps they can, but what that should demonstrate, ladies
15 and gentlemen, is there is something else going on. There is
16 more to this than the clear-cut request for respect that the
17 solicitor has mentioned.

18 I believe you're going to hear evidence from members of
19 Mr. Duncan's family, who are going to tell you that after
20 this fight on Saturday, July 18th, 2015, the defendant went to
21 a family get-together and party for his father's birthday.
22 That he stayed the night there. That his whole family came
23 back from Hardeeville the following day and **didn't** return
24 until just a short period of time before the shooting
25 happened. So again, it's not as clear-cut as the solicitor

1 makes it sound.

2 When you get to the end of this case and you've heard
3 all of the evidence, I would just like the jurors to consider
4 the inconsistencies, consider what you didn't see. When each
5 person testifies on the witness stand, I would just ask the
6 jurors to ask yourself are they leaving anything out. What
7 doesn't make sense? That's the most important thing here, at
8 least in -- in my mind. Does -- the stories they are
9 telling, do they make sense? Do they conflict with each
10 other?

11 If this shooting was about a robbery, then how come
12 witnesses may tell you that everything was fine between these
13 people after this -- after the robbery happened. If they
14 think it's because of the fight, how come **they'll** tell you,
15 well, everything seemed cool between these guys after the
16 fight? There's something else going on.

17 Can we trust the testimony that we're hearing about this
18 shooting? And when you consider the inconsistencies and what
19 **you're not seeing**, what doesn't make sense, at the end of
20 this case, you'll have to decide as the finders of fact
21 whether, despite all those inconsistencies and outright lies
22 from some of these witnesses, the State has met its burden of
23 proving beyond a reasonable doubt a murder.

24 And that is not just a killing, a shooting of the
25 victim. As the judge is going to instruct you at the end of

1 the case, murder is killing with malice aforethought. The
2 judge will give you a legal explanation of what that means at
3 the end of the case, but basically, it's evil intent, some
4 kind of planning. When you hear the evidence, you will have
5 to decide.

6 And then, as the solicitor said, the one thing we can
7 agree on is it will be your duty, your burden, to deliberate
8 amongst yourselves and decide if the State has met that
9 burden of proof beyond a reasonable doubt that the defendant,
10 John Duncan, committed a killing with malice aforethought of
11 this victim.

12 That's something else we agree on. Dominique Williams
13 -- his death is a tragedy, and a miscarriage of justice here
14 in finding the defendant guilty if the State has not met its
15 burden would also be a tragedy.

16 Thank you, ladies and gentlemen.

17 THE COURT: Solicitor?

18 MR. STONE: Your Honor, the State calls Alex Contello.

19 THE FEMALE BAILIFF: Right this way to be sworn in.

20 THE CLERK: Place your left hand on the Bible. Raise
21 your right hand. Do you solemnly swear or affirm to
22 truthfully answer all questions asked of you by this Court,
23 so help you God?

24 THE WITNESS: I do.

25 THE FEMALE BAILIFF: Please watch your step. You can

ALEX CONTELLO - DIRECT BY MR. STONE

1 adjust the microphone, but please speak directly into it.

2 THE CLERK: If you can say your name and spell it for
3 the record.

4 THE WITNESS: My name is Alex Contello, A-l-e-x C-o-n-t-
5 e-l-l-o.

6 ALEX CONTELLO, being first
7 duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. STONE:

10 Q: Mr. Contello, I'm going to -- let me ask you to pull
11 that microphone just a little bit closer to you.

12 A: Okay.

13 Q: I want to be able to hear you back here. Okay?

14 A: Gotcha.

15 Q: Where are you from, sir?

16 A: I'm from Syracuse, New York.

17 Q: And how long have you lived in Syracuse?

18 A: My whole life.

19 Q: What do you do there?

20 A: I'm a manager at a clothing manufacturer. We do, like,
21 vinyl embroidery and screen printing and stuff like that.

22 Q: In July of 2019, were you also living in Syracuse at
23 that time?

24 A: When, sir?

25 Q: In July of 2015?

ALEX CONTELLO - DIRECT BY MR. STONE

1 A: Yes, sir.

2 Q: And did you vacation during that time on Hilton Head or
3 were down here with your family?

4 A: Yes, sir. We drove down.

5 Q: Okay. Who came with you?

6 A: My mom and my dad and my little sister.

7 Q: Where did -- where were you staying in Hilton Head?

8 A: I don't remember the exact hotel, but I don't know. It
9 was a couple of blocks away from Coligny Beach.

10 Q: All right. And Coligny Beach is -- well, let me show
11 you this. We've got this.

12 MR. STONE: Your Honor, we've already pre-marked this as
13 State's Exhibit 12. I think the defense has seen that.

14 THE COURT: Thank you, sir.

15 BY MR. STONE:

16 Q: And I'll show it to you. Is this familiar to you as far
17 as the area that was somewhere around where you stayed when
18 you came down to Hilton Head?

19 A: Yes, sir. We were staying down the street, maybe about
20 two or three blocks down the street to the left there.

21 Q: Okay. All right. Let me ask you, if I could, if I
22 could get you to come down off the stand? I want to make
23 sure the jury can see what we're talking about.

24 (WHEREUPON, the witness complied.)

25 MR. STONE: Can you see that? All right.

ALEX CONTELLO - DIRECT BY MR. STONE

1 BY MR. STONE:

2 Q: All right. This is an aerial of Coligny Circle, I
3 guess, and then where is the beach? Kind of orientate us to
4 this, if you don't mind?

5 A: I believe the beach would be right here.

6 Q: Okay. All along here?

7 A: Yep. All along the bottom there.

8 Q: All right. The circle. What hotel were you were
9 staying in?

10 A: I don't remember the name of the hotel.

11 Q: Right.

12 A: It was down the block a couple ways. I just remember we
13 walked from the hotel as soon as we drove in. Maybe 30
14 minutes from when we drove in, we decided to go look at the
15 beach. We walked down this sidewalk here and that's where
16 the incident occurred.

17 Q: All right. This is -- and you're indicating a sidewalk
18 here?

19 A: Yes, sir.

20 Q: It picks up here and goes into sort of another little
21 circle over here to the side; is that right?

22 A: Yes, sir.

23 Q: All right. When you got to this edge of this circle,
24 which way did you go?

25 A: I walked this way.

ALEX CONTELLO - DIRECT BY MR. STONE

1 Q: All right. To the outside?

2 A: Yes, sir.

3 Q: And then heading -- and I guess you're heading down the
4 circle to go to the beach; is that right?

5 A: Yes. That's correct.

6 Q: And you were with your family when this happened?

7 A: Yep. All of us.

8 Q: Okay. Tell me what you see when this happens?

9 A: Basically, what I see when I'm coming down here, I hear
10 a bang first and I turn to look and there is a young man
11 slumped on the ground, not moving at all. So I instantly
12 started recording just to get as much information as I could.
13 I thought it was, like, a prank or something like that, but,
14 you know, I just started recording.

15 Q: What do you think you -- what do you mean you thought it
16 was a prank?

17 A: I've seen YouTube videos where people do, like, stupid
18 stuff all the time. So you never know what's real and what's
19 not. I thought it was, like, a firecracker maybe.

20 Q: Tell me about the -- first of all, the lighting out
21 there. About what time of day was this?

22 A: It was about five to -- I believe it was, like, five or
23 six p.m. exactly because we had just drove in.

24 Q: And tell me about the lighting?

25 A: The lighting was good.

ALEX CONTELLO - DIRECT BY MR. STONE

1 Q: Okay.

2 A: It was daylight.

3 Q: Are there other people out here at the time?

4 A: There were dozens of people, I believe.

5 Q: And where are the -- where are the people located?

6 A: There were people everywhere. There was a group of
7 people walking in front of us, a group of people behind us, a
8 giant collection of people down here.

9 Q: So when you hear the bang, where are you exactly?

10 A: I believe I'm right around this area right there.

11 Q: And what did you hear after? What did you do exactly
12 when you heard the bang?

13 A: I just started recording. I was taking, like, Snapchats
14 and sending them to my friends, like, hey, it's the beach,
15 but as soon as I heard --

16 Q: So you already had your phone in my hand?

17 A: I already had my phone in my hand. Yes, sir.

18 Q: Okay.

19 A: But it was just good timing, I guess, to start
20 recording.

21 Q: Okay. Did -- did you hear anything after the shot?

22 A: I believe I heard the -- I believe I heard someone say,
23 "That's what you're going to get." But I don't remember
24 exactly when.

25 Q: Okay. And how soon after -- after the shooting was that

ALEX CONTELLO - DIRECT BY MR. STONE

1 or after the bang that that happened?

2 A: Instantly.

3 Q: When you turned toward the person, tell me what you saw?

4 A: Just a lifeless body on their side, like, not moving at
5 all.

6 Q: Anybody around them?

7 A: Yeah. There were a couple people. Some people, like,
8 came to try and help and there were just people panicking and
9 running.

10 Q: Right after the shooting, did you see anybody? Could
11 you see the shooter? Could you make out who shot him?

12 A: No. I just saw, like, a black windbreaker run across
13 the circle this way.

14 Q: All right. And then after that, did you see anybody
15 else come up to the body? Did you have people coming to
16 help?

17 A: Yeah. There were a couple people trying to do -- I
18 believe perform CPR and something like that, but it didn't
19 look like it was going to help much.

20 Q: Okay.

21 MR. STEPHENS: Your Honor, the defense just requests
22 permission to move about the courtroom to observe.

23 THE COURT: Oh, certainly.

24 MR. STEPHENS: Thank you.

25 MR. STONE: Okay.

ALEX CONTELLO - DIRECT BY MR. STONE

1 BY MR. STONE:

2 Q: Now, let me show you **what's been** marked as State's
3 Exhibit 30, and I know this is just a disk, but do you
4 recognize your initials on this?

5 A: Yep. I initialed that last night.

6 Q: Is this the -- is this a copy of the Snapchat video?

7 A: Yes, it is.

8 Q: How about -- how about explain that to me, as I may not
9 be that familiar with Snapchat, but how -- how does that
10 work?

11 A: Basically, it's just like -- I don't know. Like, a
12 texting or a video call app. Basically, you can just send
13 pictures to your friends almost instantly. You can also
14 message them and stuff like that. So it's just like another
15 form of social media.

16 Q: Okay. But it's a video?

17 A: It's a video.

18 Q: Okay. And this was taken off of your phone?

19 A: Yes, it was.

20 Q: Is -- having after -- you've already reviewed this. Is
21 this a fair and accurate depiction of what you saw that day?

22 A: It's exactly what I saw.

23 MR. STONE: Your Honor, at this time, we'd move State's
24 Exhibit 30 into evidence.

25 MR. STEPHENS: Your Honor --

ALEX CONTELLO - DIRECT BY MR. STONE

1 THE COURT: Subject to prior objection?

2 MR. STEPHENS: Yes, Your Honor, and just assuming that's
3 the video I believe it is, I don't believe there's any
4 objection.

5 THE COURT: All right. We'll find out.

6 (WHEREUPON, State's Exhibit Number 30, Snapchat video by
7 Alex Contello, was admitted into evidence.)

8 MR. STONE: Can you see, Your Honor? All right.
9 Permission to publish that, Your Honor? We already have that
10 loaded into the -- into the system.

11 THE COURT: Certainly.

12 (WHEREUPON, State's Exhibit Number 30, Snapchat video by
13 Alex Contello, was played in court. Not transcribed
14 herein.)

15 MR. STONE: The first -- go back to the first one.

16 (WHEREUPON, the video was stopped.)

17 BY MR. STONE:

18 Q: The first one shows somebody actually standing over --
19 this right here. When did that take place?

20 A: That was probably right after it happened. I don't know
21 who that is, but that happened pretty much right after.

22 Q: All right. But that -- that's not the person you saw
23 with the black windbreaker?

24 A: No. No, it's not.

25 Q: That was somebody that came up afterwards?

ALEX CONTELLO - DIRECT BY MR. STONE

1 A: Yes, sir.

2 Q: Okay. And this is a fair and accurate depiction of the
3 scene as you saw it?

4 A: Yep.

5 MR. STONE: Go ahead and have a seat back. I'm sorry.

6 (WHEREUPON, the witness complied.)

7 BY MR. STONE:

8 Q: Let me hand you **what's** been marked as State's Exhibit 1,
9 2, 3, and 4, and ask you if you could identify those, please?

10 A: Yeah. These are all still images from the videos I
11 took.

12 Q: Are those fair and accurate depictions of the scene as
13 you saw it?

14 A: Yes, sir.

15 MR. STONE: Your Honor, at this time, we'd move State's
16 Exhibit 1 through 4 into evidence.

17 MR. STEPHENS: Your Honor, I would just reiterate my --

18 THE COURT: Subject to prior --

19 MR. STEPHENS: Renew my prior objections. Thank you.

20 THE COURT: Motion granted.

21 (WHEREUPON, State's Exhibits Number 1, 2, 3, and 4,
22 photographs, were admitted into evidence.)

23 MR. STONE: Permission to publish to the jury, Your
24 Honor?

25 Dylan, you got that?

ALEX CONTELLO - DIRECT BY MR. STONE

1 BY MR. STONE:

2 Q: State's Exhibit 1, and that is -- and, Mr. Contello, you
3 can see that from there?

4 A: Yes, sir.

5 Q: You can come down if you need to, but can you see it?

6 A: Yes, sir.

7 Q: All right. And when is that taken? When is that taken?

8 A: Almost immediately, probably as quick as I could react
9 to after the incident. Basically, after I heard the bang is
10 when I -- I tried to record it as soon as possible.

11 Q: Did you see anyone with him, walking with the victim
12 before -- before this?

13 A: Yes, sir. I saw a group of guys bouncing a basketball.
14 It looked like they were going to play basketball. They were
15 -- I don't know exactly how far away they were from us, but
16 it was a group of people.

17 Q: And obviously, you're taking this immediately after, but
18 did anyone hang out before this? Everybody just fled or how
19 did --

20 A: Like, literally, as soon as the bang went off, people
21 just darted in every direction, but a couple people came
22 back, like, to try and perform CPR and stuff like that. So
23 there was some people.

24 Q: All right. Let me go to State's Exhibit 2. And when
25 did this individual come back?

ALEX CONTELLO - DIRECT BY MR. STONE

1 A: That, I believe, would be shortly after I started
2 recording. I'm not sure who that is, but they just walked
3 over to the body.

4 Q: All right. State's Exhibit 3, and are these the people
5 that are starting to help him? Try to help him?

6 A: I believe so. There were some people performing CPR.

7 Q: All right. Let's go to State's Exhibit 4, and is that
8 what you're talking about?

9 A: Yes, sir.

10 MR. STONE: Thank you, Your Honor. I don't have any
11 further questions.

12 THE COURT: Cross-examination, Mr. Stephens.

13 MR. STEPHENS: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. STEPHENS:

16 Q: Mr. Contello, you just described the -- the person that
17 ran off when you initially looked up or saw this as wearing a
18 black windbreaker. Do you recall anything else to describe
19 that person as far as clothing?

20 A: No. I didn't see. I didn't identify anybody's face. I
21 just kind of saw. It was -- it all happened so quick and the
22 person darted across the main circle. So it just all
23 happened so fast.

24 Q: Do you recall your interview -- interviews with law
25 enforcement a day or so after this incident happened?

ALEX CONTELLO - CROSS BY MR. STEPHENS

1 A: I believe I went back to the station almost, like, an
2 hour or two after that.

3 Q: Do you recall whether you gave a -- more of a
4 description at that time?

5 A: I don't think so. I'm not sure.

6 Q: Do you recall saying that the person you saw running off
7 was wearing black shorts?

8 A: I'm not sure. I remember the black windbreaker.

9 Q: Would it refresh your recollection to see your prior
10 written statement?

11 A: Uh-huh.

12 MR. STEPHENS: Your Honor, if I could have this marked
13 as the next Court's exhibit?

14 THE COURT: All right.

15 (WHEREUPON, the statement was marked as Court's Exhibit
16 Number 10.)

17 BY MR. STEPHENS:

18 Q: Mr. Contello, I'm handing you what's been marked as
19 Court's Exhibit Number 10. If you could, take a look at it.
20 Do you recognize that document?

21 A: Yes, sir.

22 Q: And -- and what is it? What do you believe that that
23 is?

24 A: This is what I wrote down right after the incident to
25 the first officer, I believe, that was on scene.

ALEX CONTELLO - CROSS BY MR. STEPHENS

1 Q: And do you recognize your own handwriting and signature
2 on that page?

3 A: Yes, sir.

4 Q: All right. If you want to take a moment to -- to take a
5 look at that and look up at me when you're -- when you're
6 done, please?

7 (WHEREUPON, there was a pause in the proceedings, after
8 which the proceedings resumed as follows.)

9 MR. STEPHENS: All right. I'm retrieving Court's
10 Exhibit Number 10 from the witness.

11 BY MR. STEPHENS:

12 Q: Mr. Contello, does that refresh your recollection about
13 what you had -- had stated or put in your statement when you
14 were first interviewed about this?

15 A: (No verbal response.)

16 Q: And was that yes, sir?

17 A: Yes, sir.

18 Q: Okay. Sorry. I think the court reporter can't see if
19 you're nodding or what.

20 A: Yeah.

21 Q: So you have to -- have to say. And does it say that you
22 indicated that the person you saw running away was wearing --
23 was wearing a black windbreaker and black shorts?

24 A: I do have that written, yes. But I believe in other
25 footage it shows that I was -- that there were, like, leaves

ALEX CONTELLO - CROSS BY MR. STEPHENS

1 and stuff or bushes, I guess, in the -- in my line of vision,
2 but on the other camera I basically saw that he was not
3 wearing black shorts.

4 Q: And when did you observe this -- these bushes and other
5 things you just indicated?

6 A: In the footage.

7 Q: When did you review that footage?

8 A: Like, yesterday and weeks before.

9 Q: Was that your footage that you shot or was that
10 something else that you reviewed?

11 A: Footage I shot and also other footage.

12 Q: Okay. So you looked at other -- other scenes from --
13 from this incident?

14 A: Correct.

15 Q: And this is at the Solicitor's Office?

16 A: It was over a Skype.

17 Q: All right. Was that Skype with the Solicitor's Office
18 --

19 A: Yes, it was.

20 Q: -- preparing for your trial testimony?

21 A: Yes, it was.

22 Q: All right. Now, you -- I think you just testified that
23 you weren't sure how far away from you this occurred. Do you
24 recall stating when you were initially interviewed you
25 believed you were about 100 feet behind the -- this group of

ALEX CONTELLO - CROSS BY MR. STEPHENS

1 males?

2 A: I'm not that good at judging distances, but I -- I made
3 a rough estimate.

4 Q: Well, do you recall saying it was about 100 feet,
5 whether or not you now --

6 A: I don't remember.

7 Q: -- think it's something else?

8 A: I don't remember.

9 Q: All right. Do you recall giving a description of the
10 height of the person you saw running away?

11 A: I believe so.

12 Q: And what was that?

13 A: Around I think five -- I can't remember exactly what I
14 put down.

15 Q: Does it -- do you recall if you said that they were 5
16 feet, 11 inches, maybe more?

17 A: Maybe around there.

18 Q: And when you were behind these -- these males who you
19 think were bouncing a basketball or something like that, did
20 you hear any kind of noise, shouting, yelling, anything like
21 that?

22 A: No, sir.

23 Q: Did you hear any loud talking or anything like that?

24 A: No. I was trying -- I was conversing with my family at
25 the time.

ALEX CONTELLO - CROSS BY MR. STEPHENS

1 Q: So if -- if people ahead of you were yelling at other
2 people, is it fair to say that you weren't paying attention
3 until you heard that bang?

4 A: Possibly.

5 Q: And you said that -- when you were identifying this --
6 the video that the solicitor just showed you, you said that
7 you initialed that last night; correct?

8 A: Correct.

9 Q: So when did you fly into -- into Beaufort, Mr. Contello?

10 A: Last night.

11 Q: And did you do anything to prepare for your testimony
12 today other than reviewing that and initialing it?

13 A: No.

14 Q: But that's what you had done in that Skype meeting
15 previously?

16 A: Correct. Correct. I told them basically what I had
17 saw. I confirmed that it was my video.

18 MR. STEPHENS: I beg the Court's indulgence for just one
19 moment.

20 THE COURT: All right, sir.

21 MR. STEPHENS: No more questions for the witness. Thank
22 you.

23 THE COURT: Redirect?

24 MR. STONE: Yeah. Just briefly.

25 REDIRECT EXAMINATION

ALEX CONTELLO - CROSS BY MR. STEPHENS

1 BY MR. STONE:

2 Q: You didn't get a good look at the shooter? You don't --
3 you can't identify the shooter, can you?

4 A: No, sir.

5 Q: The State's exhibit -- I think this is 1, which I think
6 you had earlier testified to. Is that -- that's from your
7 camera. So is that pretty close to the distance you were
8 when you -- when you took it?

9 A: Yes, sir.

10 Q: Okay. But again, this one, which is I think State's
11 Exhibit 2, which has the guy in the white shirt, that's not
12 the guy you saw or that's not the shooter?

13 A: That is not the shooter.

14 Q: All right. But that again is about the distance where
15 you were from it?

16 A: (No verbal response.)

17 Q: Okay.

18 THE COURT REPORTER: So was that a yes?

19 THE WITNESS: Yes. Sorry.

20 BY MR. STONE:

21 Q: All right. And about how long did all that take?

22 A: The --

23 Q: From the shooting for you to turn around and look and
24 for the person in the windbreaker to run off?

25 A: I don't know. I guess -- it was just -- it was so

ALEX CONTELLO - CROSS BY MR. STEPHENS

1 quick. It just happened.

2 Q: Okay.

3 MR. STONE: Thank you. I don't have any further
4 questions.

5 MR. STEPHENS: Your Honor, I just have one question --

6 THE COURT: All right. Go ahead.

7 MR. STEPHENS: -- on recross.

8 RECROSS-EXAMINATION

9 BY MR. STEPHENS:

10 Q: Mr. Contello, I forgot to ask you did you see if that
11 person running off -- did you observe if they were wearing a
12 hat?

13 A: I didn't. I don't know if they were wearing a hat. I
14 know I saw in the security footage, but I'm not sure if I
15 wrote that down.

16 MR. STEPHENS: Thank you, Mr. Contello.

17 THE COURT: All right. Thank you.

18 MR. STONE: The State calls Mr. Saul Brown.

19 Thank you, Mr. Contello.

20 THE COURT: You may step down.

21 THE FEMALE BAILIFF: Please watch your step.

22 Right this way to be sworn in.

23 THE CLERK: You can place your left hand on the Bible
24 and raise your right hand. Do you solemnly swear or affirm
25 to truthfully answer all questions asked of you by this

SAUL BROWN - DIRECT BY MR. STONE

1 Court, so help you God?

2 THE WITNESS: I do.

3 THE FEMALE BAILIFF: Please watch your step. You can
4 adjust the microphone, but I need you to speak directly into
5 it.

6 THE CLERK: You can state your name and spell it for the
7 record.

8 THE WITNESS: Saul Brown, S-a-u-l B-r-o-w-n.

9 MR. STONE: I'm going to ask you to speak up just a
10 little bit and pull that microphone to you, sir, so I can
11 hear you.

12 THE WITNESS: Okay.

13 MR. STONE: All right.

14 SAUL BROWN, being first duly
15 sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. STONE:

18 Q: Mr. Brown, what do you do, sir?

19 A: Currently, I'm an equipment operator for the Georgia
20 Ports Authority.

21 Q: All right. Where do you live?

22 A: I live in Bullard [ph].

23 Q: And how long have you lived in Bullard, your whole life?

24 A: No, sir. Just for the last few weeks.

25 Q: Okay. Where did -- where did you live before that?

SAUL BROWN - DIRECT BY MR. STONE

1 A: Before that, I lived on Hilton Head briefly and then I
2 was stationed at Fort Bragg, North Carolina, for about two-
3 and-a-half years.

4 Q: Okay. Stationed at Fort Bragg? What was your job at
5 Fort Bragg?

6 A: I was a medical logistics specialist for the special
7 warfare centers and schools, and my job was to oversee the
8 acquisition, maintenance, and distribution of medical
9 supplies for the purpose of special operations combat medic
10 training.

11 Q: So do you have medical training yourself?

12 A: Yes, sir.

13 Q: And this is through the military?

14 A: Yes, sir.

15 Q: Let me ask you on July the 19th, 2015, were you on Hilton
16 Head at that time?

17 A: Yes, sir.

18 Q: Obviously, you know why you're here today. Tell us what
19 you saw or, first of all, what were you doing? Were you
20 vacationing down here? Were you living down here at the
21 time?

22 A: I was vacationing down here. At the time, we were
23 living on -- my then-wife and I -- actually, no. We were
24 still stationed at Fort Belvoir, Virginia, where I was
25 assigned to the Fort Belvoir Community Hospital.

SAUL BROWN - DIRECT BY MR. STONE

1 Q: Okay.

2 A: My then-wife, now ex-wife, and I were on Coligny Beach
3 just vacationing and we were leaving the beach. It was late
4 afternoon or early evening time frame. We came off the
5 beach, walking towards the public parking, and there was --
6 as soon as we come off the beach, there was a big crowd. It
7 was -- it seemed pretty chaotic. So immediately I was put on
8 edge. I knew that something wasn't quite right.

9 And as we kind of made our way through the crowd, we saw
10 a person laying on their ground -- on the ground on their
11 back and there was a woman performing CPR on this person.
12 And per CPR training, which I was CPR qualified at the time,
13 you are to go to the person, let them know who you are, let
14 them know you're CPR qualified, and to let them know that if
15 they need to that they can swap out and let you take over CPR
16 because CPR can be very strenuous.

17 Q: All right. Let me ask you this. On State's Exhibit 4
18 --

19 MR. STONE: Can you pull that up?

20 BY MR. STONE:

21 Q: Can you see that from where you're sitting?

22 A: I can. Yes, sir, I can see it.

23 Q: All right. Is this -- is this you in this photograph?

24 A: Yes, sir.

25 Q: All right. And this is the person you're performing the

SAUL BROWN - DIRECT BY MR. STONE

1 CPR on?

2 A: Yes, sir.

3 Q: What -- other than what we could see in the video, what
4 condition is the person in that you're working on?

5 A: As soon as I got close to the victim, I could tell that
6 the victim was deceased. They had signs and symptoms
7 incompatible with life. A lot of soft tissue was expelling
8 from their mouth, which is -- could be consistent with head
9 trauma. Anything that can disrupt. There is a lot of soft
10 tissue in a person's head and anything that disrupts that
11 tissue can cause it to expel out of the nearest orifice, in
12 this case the victim's mouth. So I could tell that based on
13 the obstruction the victim was not breathing. So the only
14 thing to do in that case -- because you can't do nothing
15 because people panic. So I relieved the -- I believe she was
16 a nurse.

17 Q: Okay.

18 A: So I relieved her and continued to perform CPR until
19 first responders arrived at the scene.

20 Q: Did -- and I'm assuming the person that you worked on
21 never -- never revived?

22 A: No. There was -- from the moment I saw the victim until
23 I was relieved by first responders, the victim exhibited no
24 signs of life.

25 Q: Okay. Did you see any signs of injury other than what

SAUL BROWN - DIRECT BY MR. STONE

1 you described before? That's actually not a sign of injury,
2 I guess?

3 A: No. That's more of a symptom --

4 Q: Gotcha.

5 A: -- of an injury. The victim did have a lot of swelling
6 around their face. From what I could see, I didn't see any
7 obvious signs of injury, but with the symptoms, it was
8 consistent with head trauma. So based on the fact that their
9 skull was still intact, I could tell it wasn't necessarily
10 blunt force trauma. So I'd say it would be consistent with a
11 gunshot wound potentially.

12 MR. STONE: Thank you, Your Honor. We don't have any
13 other questions.

14 Thank you, sir.

15 THE COURT: Any cross-examination, Mr. Stephens?

16 Hold on just one second.

17 THE WITNESS: Sorry.

18 MR. STEPHENS: Very briefly, Your Honor. Thank you.

19 CROSS-EXAMINATION

20 BY MR. STEPHENS:

21 Q: Mainly, Mr. Brown, I just want to say as a retired
22 Marine to another servicemember thank you for your service.

23 A: Thank you for yours.

24 Q: Thanks. Probably not as important as yours, but I just
25 want to ask when you were performing -- when you were

SAUL BROWN - CROSS BY MR. STEPHENS

1 assessing the -- the victim's medical condition and
2 performing CPR, do you recall if you observed any shirtless
3 young African-American men around the body?

4 A: There were a lot of people. I'm fairly confident that
5 some of them were shirtless males.

6 Q: Is it fair to say you were focused on the victim at that
7 point?

8 A: Right. I was pretty focused in on the victim, yes. But
9 like I said, there was a lot -- a lot of people around and
10 the scene was very chaotic.

11 Q: All right.

12 MR. STEPHENS: Thank you, Mr. Brown. No further
13 questions.

14 MR. STONE: Thank you. No further questions.

15 THE COURT: Thank you, Mr. Brown. You may step down.

16 MR. STONE: Trey Daniel.

17 THE FEMALE BAILIFF: Watch your step.

18 THE CLERK: If you can put your left hand on the Bible
19 and raise your right hand. Do you solemnly swear or affirm
20 to truthfully answer all questions asked of you by this
21 Court, so help you God?

22 THE WITNESS: I do.

23 THE FEMALE BAILIFF: You can adjust the microphone. I
24 need you to speak directly into it.

25 THE CLERK: If you could, state your name and spell it

CHARLES "TREY" DANIEL - DIRECT BY MR. STONE

1 for the record.

2 THE WITNESS: Charles Daniel, C-h-a-r-l-e-s D-a-n-i-e-l.

3 CHARLES "TREY" DANIEL, being
4 first duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. STONE:

7 Q: Now, I called you Trey already. Do you go by Trey or
8 Charles?

9 A: I go by Trey.

10 Q: All right. Well, I'll call you Mr. Daniel just to --
11 just to be formal about it. You are obviously with -- with
12 Hilton Head; is that correct?

13 A: That's correct. Hilton Head Island Rescue.

14 Q: And in what position, sir.

15 A: I'm a paramedic with Hilton Head Fire and Rescue.

16 Q: What exactly is a paramedic? I know there are different
17 terms and that, but what -- what -- what qualifies you as a
18 paramedic?

19 A: Well, it's an emergency medical technician, a paramedic.
20 It's the highest level of training medical personnel that we
21 have responding on an ambulance.

22 Q: Now, you work on Hilton Head?

23 A: That's correct.

24 Q: And Hilton Head, obviously, is in Beaufort County; is
25 that correct?

CHARLES "TREY" DANIEL - DIRECT BY MR. STONE

1 A: That's correct.

2 Q: Are you an employee of Hilton Head or Beaufort County?

3 A: I'm an employee of the town, the Town of Hilton Head.

4 Q: On July the 19th, 2015, were you also in this capacity at
5 that time?

6 A: Yes, I was.

7 Q: Did you get called to Coligny, Coligny Circle is what I
8 call it, but Coligny Beach in the Coligny Beach area?

9 A: Yes, I did.

10 Q: Do you recall or do you --

11 THE COURT: Solicitor, let me interrupt you --

12 MR. STONE: Yes, sir.

13 THE COURT: -- one second. I've been informed that we
14 need to take a five-minute recess for our jury.

15 MR. STONE: Yes, sir.

16 THE COURT: So, ladies and gentlemen, let's -- we'll
17 take a recess, and I'll remind you it's too early to begin
18 discussing the case.

19 THE FEMALE BAILIFF: Please leave your notebooks.
20 Follow me.

21 (WHEREUPON, the jury exited the courtroom.)

22 THE MALE BAILIFF: The jury is clear, Your Honor.

23 THE COURT: I wouldn't have interrupted your examination
24 except that the bailiff came over and said it was an absolute
25 emergency.

CHARLES "TREY" DANIEL - DIRECT BY MR. STONE

1 MR. STONE: That's all right. No problem, Judge.

2 THE MALE BAILIFF: Sorry.

3 THE COURT: Okay. We'll take a ten-minute recess.

4 MR. STONE: Thank you, Your Honor.

5 MR. STEPHENS: Thank you, Your Honor.

6 THE COURT: You can step down if you'd like or you can
7 stay there.

8 (WHEREUPON, there was a break in the proceedings, after
9 which the proceedings resumed as follows.)

10 THE COURT: Are you ready for the jury?

11 MR. STONE: Yes, sir, I am.

12 THE COURT: Is the defense ready for the jury?

13 MR. STEPHENS: Yes, Your Honor.

14 THE COURT: Let's bring in our jury.

15 THE FEMALE BAILIFF: The jury is entering the courtroom,
16 Your Honor.

17 (WHEREUPON, the jury entered the courtroom.)

18 THE COURT: Welcome back, ladies and gentlemen. I
19 believe we are ready to resume with examination of the
20 witness.

21 Solicitor?

22 MR. STONE: Thank you, Your Honor.

23 RESUMED DIRECT EXAMINATION

24 BY MR. STONE:

25 Q: Mr. Daniel, you were saying that you are a paramedic and

CHARLES "TREY" DANIEL - DIRECT BY MR. STONE

1 you were called to the scene July the 19th, 2017 [sic]; is
2 that correct?

3 A: That's correct.

4 Q: Do you know what time that was that you got the
5 dispatch?

6 A: I --

7 Q: First of all, let me ask you do you keep a running -- is
8 there any run log or something like this that records this?

9 A: Yes. We have two separate reports. We have our patient
10 care reporting and we also have fire RMS report that is also
11 a separate reporting that goes to OSHA.

12 Q: Okay. The -- there would be an indication somewhere?
13 Do you recall what time this event took place and then what
14 time you were dispatched?

15 A: So according to our run report, the injury time was
16 estimated around 2021 and we were dispatched at 2025. We
17 arrived on scene at 2030.

18 Q: All right. Now, all of that is military time?

19 A: Yes, sir.

20 Q: So break it down for me. If that's -- what time is that
21 from -- is that --

22 A: So 8:21 was the estimated injury time and the time that
23 we arrived on the scene was at 8:30.

24 Q: All right. And that's late afternoon/early evening?
25 The PM, in other words?

CHARLES "TREY" DANIEL - DIRECT BY MR. STONE

1 A: PM.

2 Q: Is that correct?

3 A: Yes, sir.

4 Q: All right. And when you arrived, what were the
5 conditions as far as could you see? Was the light still out,
6 that type of thing?

7 A: I believe it was dark.

8 Q: Okay. Tell me what you see once you get there?

9 A: Once I got there, there were laypersons performing CPR
10 on a male subject lying on the ground faceup. Once we got
11 there, we started CPR, took over CPR for the layperson, and
12 began our care.

13 Q: Okay. I have introduced State's Exhibit 4. Is this
14 what you are indicating with the laypeople doing the CPR when
15 you got there?

16 A: That's correct.

17 Q: And is that a fair and accurate depiction of the scene
18 as you saw it when you got there?

19 A: Yes.

20 Q: Okay. Now, if you will, when you took over CPR, tell me
21 what you did?

22 A: So we began CPR at a rate of 30 compressions and two
23 breaths per minute. We applied the cardiac monitor and saw
24 that there was noted to be PEA on the monitor. So we checked
25 for pulses in the carotid artery and the femoral. Felt no

CHARLES "TREY" DANIEL - DIRECT BY MR. STONE

1 pulses and noted the patient was not breathing.

2 Q: Did you note any injuries?

3 A: So we noted an entry wound just under the right eye.

4 From the back of the head we felt -- which is the occipital
5 region noted in my report -- there was significant bulging
6 and crepitus, meaning that the back of the head was unstable.
7 We also noted there was blood coming from the eyes and the
8 ears and the nose.

9 Q: All right. When you say entry wound, what are you
10 talking about?

11 A: Well, there was a penetrating wound just under the right
12 eye.

13 Q: Okay. Did the -- did the patient, the person you were
14 working on, did they ever revive did you note?

15 A: No.

16 Q: Did you ever get any signs of life from them?

17 A: No.

18 Q: And did that change from when you got there to when you
19 left?

20 A: No, it did not.

21 MR. STONE: Your Honor, I don't have any further
22 questions of this witness.

23 THE COURT: Cross-examination, Mr. Stephens.

24 MR. STEPHENS: No questions, Your Honor. Thank you.

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

DR. ERIN PRESNELL - DIRECT BY MR. STONE

1 You may call your next witness.

2 MR. STONE: Dr. Erin Presnell.

3 THE FEMALE BAILIFF: Right this way to be sworn in.

4 THE CLERK: If you can place your left hand on the Bible
5 and raise your right hand. Do you solemnly swear or affirm
6 to truthfully answer all questions asked of you by this
7 Court, so help you God?

8 THE WITNESS: Yes, ma'am.

9 THE FEMALE BAILIFF: Please watch your step. You can
10 adjust the microphone. I need you to speak directly into it.

11 THE CLERK: If you can state your name and spell it for
12 the record.

13 THE WITNESS: My name is Susan Erin Presnell, P-r-e-s-n-
14 e-l-l.

15 DR. ERIN PRESNELL, being first
16 duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. STONE:

19 Q: Dr. Presnell, what do you do, ma'am?

20 A: I'm a forensic pathologist. I work at the Medical
21 University of South Carolina up the road in Charleston.

22 Q: And how long have you worked there?

23 A: I have been on faculty there since 1999. So that's 30
24 -- 30? Thirty years.

25 Q: Okay. Speak up --

DR. ERIN PRESNELL - DIRECT BY MR. STONE

1 A: 20 years.

2 Q: -- for the microphone because I couldn't hear you.

3 A: Since 1999.

4 Q: All right. So in the purpose of the faculty, what do
5 you -- so you teach as well as perform autopsies; is that
6 correct?

7 A: Yes. So I'm a -- I teach medical students, but I'm also
8 a forensic pathologist and I do autopsies.

9 Q: What exactly is a forensic pathologist?

10 A: Well, forensic pathology is a subspecialty of the broad
11 field of pathology. So most pathologists don't necessarily
12 do a lot of autopsies. Pathology is the study of disease.
13 So if you go to your doctor and they do a biopsy or you go to
14 a surgeon and they take out an appendix, whatever tissue is
15 taken from you goes to the pathologist and they look at it,
16 look under the microscope, diagnose disease. So is it
17 cancer? Is it not? Is it an infection? Is it not?

18 And so I trained in the general field of pathology, but
19 then I subspecialized in forensic pathology where we're not
20 looking at just a piece of tissue. We're looking at the
21 whole body of somebody that has passed and we are looking for
22 diseases, but we also evaluate trauma and we do that through
23 the process of the autopsy and, ultimately, we're assessing
24 what was the cause of death and the manner of death for --
25 for our patients.

DR. ERIN PRESNELL - DIRECT BY MR. STONE

1 Q: Now, what type of training did you receive in order to
2 be able to do that?

3 A: Well, so I was at Clemson and after Clemson I went to
4 medical school at MUSC. After medical school, I decided on
5 the field of pathology. So I did the five-year general
6 pathology training and then after that I decided to
7 subspecialize in forensic pathology; so an additional year to
8 finish the training. Took the boards. So I'm board-
9 certified in -- in the general pathology, as well as the
10 forensic pathology, and also I have a medical license for
11 South Carolina.

12 Q: All right. And, Dr. Presnell, are you qualified -- have
13 you been qualified in courtrooms before as an expert in the
14 field of forensic pathology?

15 A: Yes.

16 Q: Do you know how many times?

17 A: It would be an estimate. Maybe 150.

18 MR. STONE: Your Honor, at this time, we'd offer Dr.
19 Erin Presnell as an expert in the field of forensic
20 pathology.

21 MR. STEPHENS: No objection, Your Honor. Thank you.

22 THE COURT: All right. That motion is granted. The
23 witness is so qualified.

24 MR. STONE: Thank you.

25 BY MR. STONE:

DR. ERIN PRESNELL - DIRECT BY MR. STONE

1 Q: Dr. Presnell, let me ask you -- let me turn your
2 attention to the autopsy that you performed on Dominique
3 Williams. Do you have that report with you?

4 A: I do.

5 Q: Do you recall that?

6 A: Yes.

7 Q: All right. Let me first to show you what's been marked
8 as State's Exhibit 6 and 7 and ask if you could identify
9 those photographs, please, ma'am?

10 A: These are copies of a photograph taken at the time of
11 autopsy of -- of Dominique and his injury.

12 Q: Okay. Are these fair and accurate depictions of how the
13 injuries appeared to you at the autopsy?

14 A: Yes.

15 Q: Let me show you what's been marked as State's exhibit
16 Number 7 and Number 8 and ask if you could identify those,
17 please?

18 A: These are copies of the x-rays that we took to locate
19 the bullet in Dominique.

20 Q: Okay. And those are fair and -- that's fair -- those
21 are fair and accurate depictions of the x-rays that you --
22 that you received and reviewed?

23 A: Yes.

24 Q: Okay. Let me show you what's been marked as State's
25 Exhibit Number 9. I know this is an increased size, but can

DR. ERIN PRESNELL - DIRECT BY MR. STONE

1 you identify this?

2 A: Yes. That is an enlarged diagram that we did at the
3 time of autopsy --

4 Q: Okay.

5 A: -- on Dominique.

6 Q: All right. And this is something you prepared or you
7 and your -- and the people working with the autopsy prepared
8 at the time?

9 A: Yes. I had -- at the time, we had another pathologist
10 that was in training in forensics and so her and I did --
11 worked on this case together.

12 Q: Okay.

13 MR. STONE: Your Honor, at this time, we'd move State's
14 Exhibit 5, 6, 7, 8, and 9 into evidence.

15 THE COURT: The motion is granted pursuant to the prior
16 order of the Court.

17 MR. STEPHENS: Yes, Your Honor. I just wanted to take a
18 look at them.

19 THE COURT: Sure.

20 MR. STONE: I'm sorry.

21 MR. STEPHENS: Real quick. I apologize.

22 MR. STONE: No, that's fine.

23 MR. STEPHENS: No objection, Your Honor. Thank you.

24 (WHEREUPON, State's Exhibit Number 5, photograph,

25 State's Exhibit Number 6, photograph, State's Exhibit

DR. ERIN PRESNELL - DIRECT BY MR. STONE

1 Number 7, x-ray, State's Exhibit Number 8, x-ray, and
2 State's Exhibit Number 9, diagram, were admitted into
3 evidence.).

4 MR. STONE: All right. They're into evidence.

5 BY MR. STONE:

6 Q: All right. Let me ask you, if you can, please -- I'll
7 project these on this television and ask if you could walk us
8 through this. If you'd like, could you come off the stand?

9 MR. STONE: Is that okay?

10 THE COURT: Whatever you -- whatever you wish to do.

11 THE WITNESS: I would love to.

12 (WHEREUPON, the witness complied.)

13 BY MR. STONE:

14 Q: Let me first start then with State's Exhibit 5 and 6 and
15 ask if you could walk us through that, please, ma'am?

16 A: So Dominique had basically one injury that we identified
17 at autopsy and it is this entrance gunshot wound. You can
18 see that it enters kind of the inside part of -- or to the
19 inside of the right eye. The bullet -- and you'll see it in
20 the x-rays when we get there, but the bullet will go
21 backwards. It'll go towards his back, a little bit towards
22 his right, and a little bit up. And by doing that, it goes
23 into the skull, through the bottom of the brain, through part
24 of the brainstem, and to the back of the brain and exits the
25 back of the skull on the right and then stops in the scalp,

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1 which is where we recovered the bullet.

2 Q: The next one, State's Exhibit 6?

3 A: This is just a closer view of the entrance gunshot wound
4 kind of below and to the midline of the -- the right eye.

5 There are a couple little abrasions above it, but nothing
6 significant.

7 Q: State's Exhibit 7 and 8?

8 A: So depending on the type of autopsy, we'll do different
9 studies. In gunshot wounds, we obtain x-rays and that's for
10 us to be able to locate the bullet. So in this photograph of
11 this x-ray, you can see from the side of his head the bullet
12 is back here at the back of the skull. You can see where it
13 has kind of pushed the -- pushed through the skull and is
14 right beneath the scalp.

15 You can actually see -- you can actually see where the
16 bullet enters right along here. It leaves a fragment of lead
17 right there. And you can -- if you're close enough, you can
18 see the little tiny fragments of lead going this direction.

19 His head is a little tilted in this photograph. We have
20 it up on a block so we can make sure we get the whole head.
21 So it looks like it might be, like, going up at a greater
22 angle, but if you tilt his head back to the normal position,
23 it's going slightly up.

24 Q: Okay. Let's go to State's Exhibit 8?

25 A: This is almost straight on. His head is tilted a little

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1 bit towards his left. So tilting it back to straight on, you
2 can see that the bullet is going in right here and going
3 slightly towards his left, which again you can appreciate the
4 projectile as the dark white piece at the back of his skull.

5 Q: From -- from these exhibits and from your examination,
6 your testimony, I think, earlier was you make two
7 determinations; is that correct?

8 A: Well, so ultimately, the conclusion of the autopsy
9 report is cause of death, which in this case would be the
10 disruption of the brain due to the single gunshot wound to
11 his face and his head, and then the other determination is
12 manner of death and, in this case, we would classify it as
13 homicide, meaning that he died at the hands of another.

14 Q: From a cause of death standpoint, is there any way you
15 could tell us how much time it took for him to die upon the
16 shot when the shot took place? Is there any way?

17 A: I mean this is a pretty fatal injury. In addition, it
18 goes right by the brainstem, which is the main -- the portion
19 of the brain that takes all of its signals out to the rest of
20 the body. And because it went through half of that, I mean
21 it -- it would have been within seconds.

22 Q: Let me ask you one other thing while I have you up here.
23 And I will use this, State's Exhibit 9. First of all, could
24 you first explain to the jury what are -- what are defensive
25 wounds?

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1 A: Well, defensive wounds are just a characterization of if
2 wounds are in a place that suggests that a person was
3 defending themselves when they -- when they got the injuries.
4 So for us -- like, for example, if somebody has -- has their
5 arms up and are warding off a blow, you might see injuries to
6 this part of the arm. At autopsy, I can just tell you where
7 the injuries are and it really depends on the scenario as to
8 if that's actually defensive injuries.

9 Q: On this -- on this chart, State's Exhibit 9, what --
10 there are some notations. What are these notations?

11 A: Well, this is the entire diagram of everything we found
12 on his body. The DF squares are defibrillation paths. This
13 is a scar on his right wrist. There's another scar on his
14 left arm. An ID tag with his name. He had some stretch
15 marks on his shoulders. The injury to -- the gunshot wound
16 to his face.

17 Q: Were there any signs of defensive wounds on his body?

18 A: This is the only injury we have is the one to the head.
19 We don't have any other injuries.

20 Q: No signs of bites, struggle, cuts, anything like that?

21 A: I have no other evidence of an injury.

22 Q: All right. Go ahead and take the stand, please.

23 (WHEREUPON, the witness complied.)

24 Q: Let me hand you now what's been marked --

25 MR. STONE: You know what? I don't think we've marked

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1 this one yet.

2 BY MR. STONE:

3 Q: This has been marked for identification as State's
4 Exhibit 31. Inside State's Exhibit 31, I'll ask you to pull
5 this out. Can you identify this for me, please?

6 A: This is a container that came from autopsy. It's
7 labeled with our autopsy label with Dominique's name and the
8 description of what's inside of it, which is a bullet, and
9 then right beside it is the bullet that is consistent with
10 the one we recovered at autopsy.

11 Q: Now, when you took the bullet out, what -- how did --
12 how does that work? Do you then put that in a sealed -- or
13 is that sealed in your presence?

14 A: Yes.

15 Q: And in that -- in the container that's in that bag; is
16 that correct?

17 A: Yes. In this container and then we transfer it to law
18 enforcement.

19 Q: All right. Do you or somebody under your direction
20 initial that --

21 A: No.

22 Q: -- that seal or you just seal it?

23 A: Oh, I'm sorry. We do not initial the bullet.

24 Q: Right.

25 A: However, we do write on the -- the label. This happens

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1 to be my handwriting, but then our documentation is the
2 evidence transfer form where we sign it over directly to law
3 enforcement.

4 Q: Okay. And do you change or alter that in any way before
5 you put it into -- put it in the capsule and seal it?

6 A: No.

7 Q: Okay. All right.

8 MR. STONE: Your Honor, I don't have any further
9 questions of this witness.

10 THE COURT: Cross-examination.

11 MR. STEPHENS: Thank you.

12 CROSS-EXAMINATION

13 BY MR. STEPHENS:

14 Q: Hello, Dr. Presnell.

15 A: Hello.

16 Q: It's nice to meet you in person.

17 A: Yes.

18 Q: We spoke a week or so ago and we talked a little bit
19 about the -- your autopsy report. You had mentioned in the
20 report that the -- when the bullet entered, it entered at a
21 slightly upward trajectory?

22 A: Correct.

23 Q: And that it was a combination, I believe -- I hope I'm
24 not misstating that -- of the point of entry along with the
25 angle that ended up bringing the bullet to the brainstem. Is

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1 that correct, ma'am?

2 A: Yes.

3 Q: All right. So it could have entered a different
4 location and still hit the same spot if the trajectory was
5 different; correct?

6 A: Correct.

7 Q: But if the trajectory of the bullet at the point of
8 entry had been different, had been, say as we discussed, a
9 straight trajectory, it might not have hit the brainstem?

10 A: Right. If it had been in a straight trajectory, it
11 might have just traveled on the -- at the -- along the base
12 of the skull and not entered.

13 Q: All right. But you can't tell whether there would have
14 been a lethal injury or not, I guess, it's fair to say
15 though, other than what you've described?

16 A: Correct.

17 Q: I suppose even the slightest cut you could get, you
18 know, an infection and kill you. Now, ma'am, we also
19 discussed the bullet that was retrieved and, as you -- as
20 what you stated, this is a bit deformed, but you had measured
21 the base of the round at .38 inches?

22 A: Yes. That's an approximation that we'll describe and
23 give a basic measurement for the bullet for descriptive
24 purposes.

25 Q: Is it fair to say that you couldn't determine from that

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1 the exact caliber that might've been used or that this bullet
2 might've been fired from; is that correct, ma'am?

3 A: Well, so I wouldn't -- I don't claim to have expertise
4 in the field of ballistics. So I would've let the ballistics
5 expert analyze that bullet to determine that -- that full
6 vision.

7 Q: In your experience with other autopsies though, is that
8 consistent with -- is that size bullet consistent with
9 9-millimeter rounds that you've extracted from bodies?

10 A: Well, I mean it certainly could have been 9-millimeter.
11 I just -- you know, again, I don't have the -- the definitive
12 answer for you on this particular bullet.

13 Q: All right.

14 A: I mean I would consider it a medium-caliber bullet.

15 Q: And since you're not an expert in ballistics, ma'am, you
16 couldn't say how the entry and trajectory of a different
17 caliber of bullet might have resulted in a different injury
18 or something like that?

19 A: Right. Yeah. Certainly, a different caliber, a smaller
20 one may not have even penetrated.

21 Q: All right.

22 MR. STEPHENS: I beg the Court's indulgence for just a
23 moment, Your Honor.

24 THE COURT: All right, sir.

25 MR. STEPHENS: I don't believe I have any further

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1 questions for the witness, Your Honor. Thank you.

2 Oh, I apologize, Your Honor. I did recall what I was
3 going to ask before.

4 BY MR. STEPHENS:

5 Q: Ma'am, I think when we talked about this before, we
6 talked about the point of entry of the -- of the round just
7 below the -- the eye. That's around the same location where
8 the sinus -- I know there are sinus areas all over the head,
9 but that was one sinus area?

10 A: Yes.

11 Q: And is it fair to say there's a bunch of smaller bones
12 in that area?

13 A: Yes. So the sinus bones tend to be thinner than, say,
14 the back of your skull. So at the-- around that area the
15 bones are thinner.

16 Q: Is that one of the reasons why you said that if the
17 trajectory had been different it might have hit a harder part
18 of the skull and just traveled around the skull?

19 A: Well, so if the trajectory had been different, it might
20 have not been angled upward and it might've been angled
21 straight back and had not entered the skull.

22 MR. STEPHENS: Thank you, ma'am.

23 Thank you, Your Honor. No further questions.

24 MR. STONE: No further questions. Thank you, Dr.
25 Presnell.

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1 THE WITNESS: Absolutely.

2 THE COURT: You may call your next witness.

3 MR. STONE: John Valvo.

4 THE FEMALE BAILIFF: Right this way to be sworn in, sir.

5 THE CLERK: If you'd place your left hand on the Bible
6 and raise your right hand. Do you solemnly swear or affirm
7 to truthfully answer all questions asked of you by this
8 Court, so help you God?

9 THE WITNESS: I do.

10 THE FEMALE BAILIFF: Please watch your step. You can
11 adjust the microphone. I need you to speak directly into it.

12 THE CLERK: If you could state your name and spell it
13 for the record.

14 THE WITNESS: My name is John Valvo, J-o-h-n V-as in
15 victor-a-l-v as in victor-o.

16 MR. STONE: Okay.

17 JOHN VALVO, being first duly
18 sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. STONE:

21 Q: Mr. Valvo, what do you do, sir?

22 A: I am an IT professional working for Viper Technology
23 Services at the Marine Corps Air Station.

24 Q: Okay. What do you -- what involvement do you have with
25 the Town of Hilton Head and their -- you know, I want to call

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1 them, I guess, security cameras, but cameras around the
2 island that are constantly on. What type of -- what dealings
3 do you have with those?

4 A: I was previously employed by the Town of Hilton Head for
5 ten years. I worked with the cameras for about eight.

6 Cameras are at most of the beach parks around the town of
7 Hilton Head. They do record mostly when there's motion
8 around them, depending on what type of camera it is and what
9 area it is located.

10 Q: Okay. Let me show you what's been marked as State's
11 Exhibit 13. First of all, just using this as an exhibit, can
12 you tell what this is, what this is a photograph of?

13 A: Yes. That is the Coligny Beach Park and the Coligny
14 Circle area.

15 Q: All right. Okay. Let me ask you if you could come down
16 off the stand, please, sir?

17 THE COURT: Certainly.

18 (WHEREUPON, the witness complied.)

19 MR. STONE: Let's make sure everyone can see that.

20 Okay.

21 BY MR. STONE:

22 Q: If you could, tell us -- I know you told us up there,
23 but show -- tell -- tell the jury what you just told me as
24 far as where -- where everything is located?

25 A: Okay. There's a multitude of cameras at the Coligny

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1 Beach Park. The ones that --

2 Q: Let me stop you there. When you're talking about
3 Coligny Beach Park, point and tell me what you're doing?

4 A: This is the Coligny Beach Park area right here.

5 Q: That's at sort of the bottom of the map in the center?

6 A: Yes. You have the fountain here, restrooms, boardwalk
7 going on down to the beach, the circle area here as well.

8 Q: When -- and you said there's -- these are motion
9 detectors. So the cameras are not on all the time; they're
10 just on when there's motion around there?

11 A: They are -- they actually are on all the time. They
12 only record when there is motion.

13 Q: I see.

14 A: So if it sees motion within a 10-second range, it will
15 go back and record from that 10-second range on to when it
16 doesn't see motion in the certain areas that we have blocked
17 out for it.

18 Q: Now, when there are -- when these cameras record, are
19 those recordings kept in the ordinary course of the business
20 in the Town?

21 A: Yes. Until they are overwritten.

22 Q: Okay. Until they're overwritten. Right.

23 A: Yes, sir.

24 Q: So if they are seized within -- within a certain time
25 frame, then those are going to be basically the records of

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1 those cameras?

2 A: That is correct.

3 Q: Again, if the movement has made the cameras move and
4 that's when they record; is that correct?

5 A: That is correct.

6 Q: Let me show you what we have marked as State's Exhibit
7 --

8 MR. STONE: I don't have it marked yet. I thought this
9 was marked. Sorry. Let me mark this one right here.

10 BY MR. STONE:

11 Q: This is marked as State's Exhibit 32 now. I think these
12 -- are those your initials on that?

13 A: That is correct, yes.

14 Q: Have you reviewed this disk?

15 A: I have.

16 Q: Is this disk a collection of the recordings from those
17 cameras?

18 A: Yes, it is.

19 Q: And those were kept in the ordinary course of the
20 business for the Town of Hilton Head?

21 A: Yes.

22 Q: Okay.

23 MR. STONE: Your Honor, at this time, we'd move State's
24 Exhibit 32 into evidence.

25 MR. STEPHENS: No objection, Your Honor. Thank you.

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1 THE COURT: The motion is granted. It's into evidence.

2 (WHEREUPON, State's Exhibit Number 32, surveillance
3 videos on disk, was admitted into evidence.)

4 MR. STONE: And I'll tell you what. I'm going to cover
5 it and it's going to take a little bit; so I'll go ahead and
6 let you sit back down, but I'm going to leave this out so we
7 know what we're talking about.

8 (WHEREUPON, the witness complied.)

9 BY MR. STONE:

10 Q: I'm going to hand you State's Exhibit 16 and ask if you
11 could identify that, please, sir?

12 A: This is -- pardon me -- camera 19 for the Coligny Beach
13 Park. It seems to be a capture from there.

14 Q: And that's a -- is that a fair and accurate depiction of
15 the capture from the video that you reviewed?

16 A: Yes.

17 Q: All right. Now, let me ask you this. On the top of
18 this, is it time stamped and dated?

19 A: Yes, it is.

20 Q: Is that military time or is that civilian time?

21 A: Civilian time.

22 Q: Now, are all of those like that or are some of them
23 different? For instance, let me go straight to -- I think
24 this is right -- State's Exhibit 17 and ask if you could
25 identify that, please, sir?

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1 A: Yes. This is camera 24 from the Coligny Beach Park, and
2 this one is set to military time. This one was a high
3 definition camera, which had a little bit of a different
4 server connected to it.

5 Q: Okay. So some of these are military time and some of
6 them are civilian time; is that correct?

7 A: That is correct.

8 Q: All right. And they are time stamped on the top one
9 way, regardless?

10 A: Yes.

11 Q: Now, is that a fair and accurate depiction of that -- of
12 the video as you reviewed it?

13 A: Yes.

14 Q: Okay. Now, I'm going to hand you State's Exhibit 18,
15 19, 20, and 29, and ask if those are fair and accurate
16 depictions of the video as you reviewed it?

17 A: Yes.

18 Q: All right.

19 MR. STONE: Your Honor, at this time, we'd move State's
20 Exhibit 16, 17, 29, 20, 19, and 18 into evidence.

21 MR. STEPHENS: No objection, Your Honor.

22 THE COURT: The motion is granted and they are admitted
23 into evidence.

24 (WHEREUPON, State's Exhibits Number 16, 17, 18, 19, 20,
25 and 29, still photographs from video, were admitted into

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1 evidence.)

2 MR. STONE: All right.

3 BY MR. STONE:

4 Q: I'm going to hand you these. First, I'm going to ask
5 you can you see the monitor from where you are?

6 A: No.

7 Q: All right. Can you come down?

8 MR. STONE: Your Honor, if that's permissible?

9 THE COURT: Certainly.

10 MR. STONE: Could you come down? I want to make sure.

11 (WHEREUPON, the witness complied.)

12 THE COURT: Mr. Stephens, do you need to go over there?

13 MR. STEPHENS: No, Your Honor.

14 MR. STONE: All right. Let me ask you first if you will
15 publish State's Exhibit 16?

16 BY MR. STONE:

17 Q: All right. Is that a fair and accurate depiction of the
18 -- of the camera? Now, first of all, where is -- what camera
19 is that from?

20 A: That is camera 19.

21 Q: Okay.

22 A: It is located on the -- the women's restroom at Coligny
23 Beach Park and is shooting across the entryway to where you
24 can drop people off to Coligny Beach Park.

25 Q: All right. I'm going to hold this up, which has been

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1 marked as State's Exhibit 12, and ask if you could point out
2 where that -- where this is being taken from?

3 A: It should be coming from this area right here and
4 shooting across.

5 Q: Shooting across this plaza area here?

6 A: Yes.

7 Q: Okay. All right. And what is the timestamp on that?

8 A: 8:19 p.m.

9 Q: Okay. Let me go then to State's Exhibit 17. What do
10 you -- what does that picture depict?

11 A: That is another camera. That one is stationed on the
12 men's restroom shooting across the fountain area, also across
13 into the drop-off area.

14 Q: Okay. And what is the timestamp on that?

15 A: That is military time 2019, which is 8:19 civilian time.

16 Q: So basically, the same time except from the other angle;
17 is that right?

18 A: That is correct.

19 Q: And that's going to be shooting back, I guess, this way;
20 is that correct?

21 A: That's correct. It's shooting from here across this
22 way.

23 Q: State's Exhibit 18. Same camera angle; is that correct?

24 A: That's correct.

25 Q: And what is the time on that one?

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1 A: 8:19:22, civilian time.

2 Q: And then State's Exhibit 19. Is that the same camera
3 angle or is that a different one?

4 A: That is the same. No, I'm sorry. That is a different
5 one. I apologize. There are two of them on the women's and
6 the men's restrooms and they are shooting at slightly
7 different angles. The cameras were put there before the tree
8 was.

9 Q: I see. And what is the timestamp on that one?

10 A: That is 8:19:33, civilian time.

11 Q: And then State's Exhibit 20. What is the timestamp on
12 that?

13 A: 8:19:59 and that is the same camera 13 that we saw in
14 the previous one.

15 Q: Okay. Let me ask you, if I could --

16 MR. STONE: Let's go back to State's Exhibit 16. This
17 is 16. All right. The next one, 17.

18 BY MR. STONE:

19 Q: I know **you're** timestamping this up here. Watching these
20 two individuals, can you tell me what -- I want to make sure
21 that I've got this at the right time sequence. So go now to
22 State's Exhibit 18, 19, 20. Is that the right time sequence?
23 Do I have that in the right sequence?

24 A: That is.

25 Q: Because I know **they're** from different camera angles, but

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1 --

2 A: Different camera angles, but that is the correct time
3 sequence, yes.

4 Q: Let me go to State's Exhibit 29. What is the time here
5 on this one?

6 A: That is 8:20:12 civilian time.

7 Q: All right. Thank you, sir. You can go ahead and take
8 the stand.

9 (WHEREUPON, the witness complied.)

10 BY MR. STONE:

11 Q: Let me now hand you State's Exhibit 21, 22, 23, 24, 25,
12 26, 27, and 28, and ask if you could identify those, please,
13 sir?

14 A: These are all shots from camera 1 from Coligny Beach
15 Park and they are shooting across the circle itself showing
16 oncoming traffic and a little bit of the -- the beach park
17 itself.

18 Q: All right. Are these fair and accurate depictions of
19 still shots basically coming from that same video?

20 A: Yes.

21 Q: Okay. And the same video I'm referring to as State's
22 Exhibit 32 with your initials; is that correct?

23 A: That is correct.

24 Q: All right.

25 MR. STONE: Your Honor, at this time, we'd moved State's

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1 Exhibit 21, 22, 23, 24, 25, 26, 27, and 28 into evidence.

2 MR. STEPHENS: No objection. Thank you.

3 MR. STONE: Okay.

4 THE COURT: The motion is granted and they are admitted
5 into evidence.

6 (WHEREUPON, State's Exhibits Number 21, 22, 23, 24, 25,
7 26, 27, and 28, still photographs from video, were
8 admitted into evidence.)

9 MR. STONE: Okay. All right. I'm going to get you to
10 come down from the stand one more time.

11 (WHEREUPON, the witness complied.)

12 BY MR. STONE:

13 Q: And if you will, tell us on State's Exhibit 12 where
14 camera -- excuse me -- where camera 1 is and in what
15 direction is it -- is it showing?

16 A: Camera 1 should be -- it's around this area over here
17 and it should be shooting in this direction.

18 Q: And it looks to me as if it's in sort of the center of
19 the map on the -- sort of, I guess, the edge. Where is the
20 beach? The beach is down here at the bottom?

21 A: The beach is down here, yes.

22 Q: So this would be -- as you're facing the beach, this
23 would be the left of the circle; is that correct?

24 A: Yes.

25 Q: Shooting back towards this area here; is that right?

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1 A: That is correct, yes.

2 Q: Okay. And -- all right. Let me go then to -- and I'll
3 ask you to stand there.

4 MR. STONE: On the monitor, if we could show the video
5 itself from camera 1?

6 BY MR. STONE:

7 Q: And let me ask you this too while I have you up here.
8 The -- what's been marked already as State's Exhibit 21 is
9 coming from the video that we're going to see of camera 1; is
10 that correct?

11 A: That is correct.

12 Q: What time does it start?

13 A: It is 8:20:14, 21, 27, 21:36.

14 Q: So this is basically at camera 1 at 8:20. I guess that
15 is right at 8:20; is that correct?

16 A: 8:20:01.

17 Q: In the afternoon? All right.

18 MR. STONE: Go ahead and play it.

19 (WHEREUPON, State's Exhibit Number 32, surveillance
20 video, was played. No sound.)

21 MR. STONE: And go straight to State's Exhibit 21.

22 BY MR. STONE:

23 Q: All right. What's showing up on the monitor is State's
24 Exhibit 21, which is one of the exhibits that I previously
25 showed you; is that correct?

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1 A: That is correct, yes.

2 Q: And what does it -- is that a -- is that a depiction of
3 the video that we just watched?

4 A: Yes.

5 Q: And what is the timestamp on that?

6 A: It is 8:20:14.

7 Q: So it's 8:20 with 14 seconds; is that correct?

8 A: Yes.

9 Q: All right. State's Exhibit 22, the timestamp on that?

10 A: That's 8:20:21.

11 Q: State's Exhibit 23?

12 A: 8:20:27.

13 Q: Exhibit 24?

14 A: 8:20:34.

15 Q: The next one, State's Exhibit 25?

16 A: 8:20:29.

17 Q: And State's Exhibit 26?

18 A: That's 8:21:14.

19 Q: State's Exhibit 27?

20 A: That's 8:21:27.

21 Q: And 28?

22 A: 8:21:36.

23 Q: So from State's exhibit --

24 MR. STONE: If I could get you to go back to 21?

25 BY MR. STONE:

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1 Q: Are these in time sequence as to -- as to the video? So
2 21, 22, 23, 24, 25, 26, 27, 28?

3 A: Yes.

4 MR. STONE: I don't have any further questions. Thank
5 you. You can have a seat.

6 THE WITNESS: Thank you.

7 MR. STEPHENS: Your Honor?

8 THE COURT: Cross-examination.

9 MR. STEPHENS: I -- I have a matter to take up outside
10 the presence of the jury.

11 THE COURT: All right. Let me see counsel at a quick
12 sidebar.

13 (WHEREUPON, a bench conference was held in the presence
14 of the jury but out of the hearing of the jury off the
15 record, after which the proceedings resumed as follows.)

16 MR. STEPHENS: Your Honor, I actually want to make
17 reference to one of the State's exhibits, if I could ask for
18 their assistance. I think it's State's 25, this one, and
19 then the next one.

20 Mr. Valvo, if you could step down again just for a
21 moment where you can see this?

22 (WHEREUPON, the witness complied.)

23 CROSS-EXAMINATION

24 BY MR. STEPHENS:

25 Q: Now, when you watch this video that this still shot was

JOHN VALVO - CROSS BY MR. STEPHENS

1 taken from, did you see the person in the -- wearing a golf
2 cap and shorts step to the left outside of the camera after
3 -- after the shot?

4 A: Yes.

5 Q: All right. Is there a camera that covers that area just
6 immediately to the left of this?

7 A: That would be -- that is right in front of the drop-off
8 area and there may be a camera that would cover that.
9 Possibly 24 would cover that.

10 Q: Well, let me ask you this, Mr. Valvo -- and you can go
11 back and have a seat on the witness stand. I appreciate it.

12 (WHEREUPON, the witness complied.)

13 BY MR. STEPHENS:

14 Q: You pulled these videos for the Solicitor's Office; is
15 that correct? Or for the law -- for law enforcement rather?

16 A: Law enforcement, yes. Law enforcement requested any
17 video pertaining that we could find pertaining.

18 Q: And in your review of these videos, did you find any
19 that show what that gentleman on the left did after he exited
20 the screen?

21 A: Any video that we found that would have any person was
22 submitted.

23 Q: All right. It's fair to say you don't recall a
24 particular video?

25 A: At this time, I don't recall, as it was some time ago.

JOHN VALVO - CROSS BY MR. STEPHENS

1 Q: All right.

2 MR. STEPHENS: Thank you, Mr. Valvo.

3 No further questions for the witness at this time.

4 MR. STONE: Nothing else, Your Honor.

5 Thank you, Mr. Valvo.

6 THE COURT: You may step down.

7 You may call your next witness, Solicitor.

8 MR. STONE: Sgt. --

9 THE FEMALE BAILIFF: Please watch your step.

10 MR. STONE: Sgt. Bob DiCarlo. I'm sorry.

11 THE CLERK: Do you want me to leave that up?

12 MR. STEPHENS: Your Honor, I'd like to be heard on an
13 administrative matter. I believe it's fairly urgent before
14 another witness is called.

15 THE COURT: I'll need to see you at sidebar again. I'm
16 not -- I'm not sure I know what you're talking about.

17 (WHEREUPON, a bench conference was held in the presence
18 of the jury but out of the hearing of the jury off the
19 record, after which the proceedings resumed as follows.)

20 MR. STONE: Sgt. Bob DiCarlo.

21 THE CLERK: Do you solemnly swear or affirm to
22 truthfully answer all questions asked of you by this Court,
23 so help you God?

24 THE WITNESS: Yes, I do.

25 THE FEMALE BAILIFF: Please watch your step. You can

ROBERT DICARLO - DIRECT BY MR. STONE

1 adjust the microphone. I need you to speak directly into it.

2 THE WITNESS: Yes, ma'am.

3 THE COURT: Mr. Stephens, did that solve the problem?

4 MR. STEPHENS: I believe so, Your Honor.

5 THE COURT: Okay.

6 THE CLERK: If you could state your name and spell it
7 for the record.

8 THE WITNESS: Robert DiCarlo, R-o-b-e-r-t D-i-C-a-r-l-o.

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

11 DIRECT EXAMINATION

12 BY MR. STONE:

13 Q: And you're with the Beaufort County Sheriff's Office; is
14 that correct?

15 A: Yes, I am, sir.

16 Q: Were you one of the first officers on the scene April
17 the -- I mean -- excuse me -- July the 19th, 2015, at Coligny
18 Beach?

19 A: Yeah. I believe I was the second one to arrive.

20 Q: Do you recall about what time you got there?

21 A: 8:25-ish, somewhere in that area, that range.

22 Q: Once you got there, what kind of scene did you see?

23 First of all, was it light outside? Could you see? What did
24 you see?

25 A: Yes. It was -- it was still fairly light out. When I

ROBERT DICARLO - DIRECT BY MR. STONE

1 pulled up, it was what I would define as chaotic. My first
2 deputy that got on scene was putting crime scene tape up
3 around and he was yelling and pointing to me, over there,
4 over there. I went over and I observed a young black male
5 laying on the ground on his back. There were two people,
6 which appeared they were doing CPR. I gave a quick look as
7 to what was going on and it looked like he had an apparent
8 gunshot wound to the face.

9 Q: I will show you what's been marked as State's Exhibit 4.
10 Is that the scene as you saw it?

11 A: Yes, sir.

12 Q: And I believe there's actually a patrol car in the back;
13 is that correct?

14 A: That is correct.

15 Q: All right. And -- but that's not -- that's not your
16 patrol car?

17 A: No.

18 Q: But that would've been a patrol car?

19 A: That probably would've been Cpl. Bates.

20 Q: Okay. Pardon me? I'm sorry.

21 A: That might have been Cpl. Bates' vehicle.

22 Q: Okay. He was the one setting up the crime scene tape?

23 A: Correct.

24 Q: And things like that?

25 A: Yes.

ROBERT DICARLO - DIRECT BY MR. STONE

1 Q: All right. How long have you worked on Hilton Head?

2 A: I've been with the Sheriff's Office 14 years, 11 of
3 those in Bluffton and Hilton Head.

4 Q: All right. So you're pretty familiar with the area?

5 A: Yes, sir.

6 Q: All right. Let me first show you -- and we've already
7 -- we've already referred to this, but I'll go back into it a
8 little bit. I'll ask if you'd come down off the stand?

9 A: Sure.

10 (WHEREUPON, the witness complied.)

11 BY MR. STONE:

12 Q: It makes it a little bit easier on the jury. State's
13 Exhibit 12. If you could tell us what that is?

14 A: That is an aerial depiction of the Coligny Beach traffic
15 circle, Coligny Beach area, what we call the beach access,
16 North Forest Beach, South Forest Beach, Pope Avenue.

17 Q: All right. The photograph that I showed you that's
18 State's Exhibit 4 is in what area in this photograph?

19 A: I'm sorry?

20 Q: In this area? What --

21 A: It would have been down in this area here.

22 Q: All right.

23 Q: All right. Now -- and the patrol car, I'm assuming,
24 would have been parked somewhere along here?

25 A: Yeah. Right along this area.

ROBERT DICARLO - DIRECT BY MR. STONE

1 Q: And that's about -- for the court reporter's purposes
2 and the jury, that's basically in the center to the -- I
3 guess to the right of the circle as you're facing the beach.
4 The beach is down here?

5 A: That's correct.

6 Q: All right, sir. You're fine right where you are.

7 A: Okay.

8 Q: No, you're fine. State's Exhibit 13 is obviously a more
9 distant photograph of this area. Could you tell us about
10 that, please?

11 A: Yep. Again, that's the Coligny traffic circle, Coligny
12 Beach access and water fountain, heading down to the beach,
13 South Forest Beach, North Forest Beach, Pope Avenue.

14 Q: Okay. Now, what are these things over here? This is --

15 A: That's a hotel. That's the Seacrest Hotel. There's
16 some condominiums.

17 Q: Okay. And then what is this area in here?

18 A: That is all Coligny Plaza.

19 Q: And those are shops?

20 A: Shops, restaurants, yes.

21 Q: All right. And there's a -- there's a notation on here
22 that there is Frosty Frog. Is that back there as well?

23 A: Yes. Correct. That would be the location of Frosty
24 Frog Café.

25 Q: Okay. One other one while I have you is State's Exhibit

ROBERT DICARLO - DIRECT BY MR. STONE

1 14. If you could, please tell us -- give us a little bit of
2 idea what that is?

3 A: Much further -- further aerial view of more of the south
4 end. So you've got the Coligny traffic circle here. This is
5 all the way Pope Avenue down to what would be Woodhaven area,
6 and that would take you down to the Sea Pines traffic circle.

7 Q: Okay. So Sea Pines would be in the very top up there,
8 but this is over here in the Woodhaven Gardens area; right?

9 A: That is correct.

10 Q: And then Frosty Frog is over on this side?

11 A: Yeah. This -- this here would be all of Coligny --
12 Coligny Plaza where the Frosty Frog is.

13 Q: Sounds good. All right. Thank you, sir.

14 (WHEREUPON, the witness returned to the stand.)

15 BY MR. STONE:

16 Q: When you -- when you first got to the scene, you know,
17 you described it as chaotic. Were you able to find or talk
18 to any witnesses on the scene when you got there?

19 A: Yeah. Again, when I arrived and I saw the two people
20 performing CPR, I also noted there were two young black males
21 who were within a few feet of what was going on. Both of
22 them I would define as hysterical, yelling, screaming,
23 stomping feet, things of that nature. So I immediately
24 turned to them and I said, you know, did you -- did you see
25 what happened? Do you know what happened? And one of them

ROBERT DICARLO - DIRECT BY MR. STONE

1 was just far too emotional to say anything. One of the
2 individuals, who I later identified as Devon Williams, said
3 they just thought --

4 MR. STEPHENS: Objection, Your Honor. May we approach?

5 THE COURT: All right.

6 If you'd like to stand and stretch while I do this,
7 you're welcome to do that.

8 THE WITNESS: Your Honor, I'm fine. Thank you.

9 (WHEREUPON, a bench conference was held in the presence
10 of the jury but out of the hearing of the jury off the
11 record, after which the proceedings resumed as follows.)

12 BY MR. STONE:

13 Q: Okay. Sgt. DiCarlo, let me back you up just a little
14 bit.

15 A: Yes, sir.

16 Q: The two people that you were talking to, the young black
17 males that you were talking to, did you get their names?

18 A: Yes.

19 Q: All right. What were their names?

20 A: Devon Williams and I don't recall the second one off the
21 top of my head.

22 Q: Do you have your -- do you have your report with you?

23 A: I do, as a matter of fact.

24 Q: Would that help you refresh your memory?

25 A: It certainly would. It was Devon Williams and Mr.

ROBERT DICARLO - DIRECT BY MR. STONE

1 Morrow, M-o-r-r-o-w. Mr. Morrow was the one that was just
2 inconsolable. I couldn't get any information out of him
3 whatsoever.

4 Q: And this is the one that you said -- he didn't tell you
5 anything, in other words?

6 A: No. He did not say.

7 Q: Okay. Mr. Devon Williams -- he was also upset, but he
8 was able to tell you things? He was able to talk to you?

9 A: He -- when I got to him and I -- again, I said to him do
10 you know what happened, did you see what happened, and his
11 immediate response was they fought just yesterday. John
12 Duncan shot him.

13 MR. STEPHENS: Your Honor, I just want to renew my
14 objection. We'll cover that at the break.

15 THE COURT: The objection is noted.

16 MR. STEPHENS: Okay.

17 THE COURT: So as to all of that.

18 BY MR. STONE:

19 Q: Go ahead. So when he said --

20 A: He said -- he said John Duncan shot him. I said who is
21 John Duncan, are you sure, and he said I know him personally,
22 and then he broke down again and that's all I could get out
23 of him until he was reconnected later.

24 Q: All right. Did he tell you where John Duncan lived or
25 if he knew about where he lived?

ROBERT DICARLO - DIRECT BY MR. STONE

1 A: He had mentioned something. Like I said, when I
2 reconnected him, you know, within a few minutes later, he
3 said something about Apartment [REDACTED] in Woodhaven Apartments.

4 MR. STONE: I don't have any further questions at this
5 time, Your Honor.

6 THE COURT: Cross-examination.

7 MR. STEPHENS: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. STEPHENS:

10 Q: I'm sorry. I can't see your rank. Are you still a
11 staff sergeant?

12 A: Staff sergeant.

13 Q: Okay.

14 A: Yes, sir.

15 Q: Okay. Staff Sgt. DiCarlo, you said that when you
16 arrived on scene, you observed the two black males who seemed
17 upset and hysterical; correct?

18 A: Oh, yes, absolutely.

19 Q: And you approached them and asked them if they saw what
20 -- if they saw what happened; correct?

21 A: Right. After I had taken a look at the victim, I saw
22 the two people working on him. They were -- again, they
23 caught my attention because they were yelling, you know,
24 sobbing, etc. So I asked them, you know, do you know what
25 happened.

ROBERT DICARLO - CROSS BY MR. STEPHENS

1 Q: Is it fair to say to the best of your knowledge that
2 they didn't approach any law enforcement officers themselves
3 to tell what happened?

4 A: Like I said, with -- with their emotional state, I can't
5 tell you what they were thinking. I just know I've been in
6 this profession for 25 years. Based on how they were
7 reacting, my assumption was either knew something or saw
8 something.

9 Q: But you didn't see them walk up to you or Cpl. Bates or
10 any other officer?

11 A: Well, Cpl. Bates was busy putting up crime scene tape
12 and trying to -- in July at Coligny Plaza, there are hundreds
13 of people.

14 Q: Okay.

15 A: So crowd control was -- for Cpl. Bates, securing the
16 crime scene and crowd control is his number one issue.

17 Q: Okay. Fair enough, Staff Sergeant, and I believe you
18 said you just were able to get a statement from Mr. Williams
19 but not Mr. Morrow?

20 A: Yeah. He was completely inconsolable. I couldn't get
21 anything out of him.

22 Q: All right. And do you know what Mr. Morrow was wearing?

23 A: I don't.

24 Q: Okay.

25 MR. STEPHENS: Thank you, Staff Sergeant. I appreciate

1 it.

2 THE WITNESS: No problem.

3 MR. STONE: Nothing else. Thank you, sir.

4 THE WITNESS: Thank you.

5 MR. STONE: The State calls Jestin Morrow.

6 THE FEMALE BAILIFF: Please watch your step.

7 THE WITNESS: Okay.

8 MR. STEPHENS: Your Honor, we'd like to -- this is going
9 to be a lengthy cross-examination and **examination** and I'd
10 like to put some matters on the record outside the presence
11 of the jury.

12 THE COURT: Now might be a good time to take a lunch
13 break anyway.

14 MR. STONE: We can do it anyway you want to, Your Honor.

15 THE COURT: Until 1:30, ladies and gentlemen. I hope
16 we'll be ready to go by then, but let's take a lunch break
17 until 1:30. I remind you it's too early to begin discussing
18 the case and don't let anyone discuss the case with you. See
19 you back at 1:30.

20 THE FEMALE BAILIFF: Please follow me now.

21 (WHEREUPON, the jury exited the courtroom.)

22 THE MALE BAILIFF: The jury is clear, Your Honor.

23 THE COURT: All right. Let me say that defense counsel
24 up at sidebar has made some motions, and I told defense
25 counsel we would hear those motions at our next break and let

1 him put those motions, including a motion for a mistrial --

2 MR. STEPHENS: Yes, Your Honor.

3 THE COURT: -- on the record.

4 MR. STEPHENS: And again, I think this is mostly about
5 preserving the issues and the -- the first issue that gave
6 rise to the defense motion for a mistrial was back when Mr.
7 Valvo was testifying.

8 I stepped back to position just behind the witness --
9 the witness box. I noticed that there was a -- some sort of
10 foam board or some kind of apparatus that photos that the
11 State had previously had admitted and published to the jury,
12 including photographs with close-ups of the -- of the
13 victim's dead body, entry wound, photos taken by Mr.
14 Contello, were affixed to that board.

15 I don't know how long they had been there, but I
16 certainly think they'd been there while we examined other
17 witnesses. I believe that was unduly prejudicial to have
18 them present. It distracted from the testimony of those
19 witnesses. It may have affected the jury on an emotional
20 level.

21 Just based on that, Your Honor, and to preserve the
22 issue, we'd move for a mistrial on that.

23 I think, Your Honor, if you're okay with tag teaming
24 counsel, which I don't know if the Court will, but Mr. Tripp
25 wanted to be heard on that -- on that issue.

1 THE COURT: Sure. Go ahead.

2 MR. TRIPP: Thank you, Your Honor.

3 Just for the record, we noticed this during the
4 testimony, again, of Mr. Valvo. We approached the Court at
5 the next available opportunity and had two sidebars on it.

6 The exhibit was finally covered up when Mr. Valvo left
7 the stand. So from the time he left the stand back to we're
8 not sure when, we can't tell, these exhibits were facing the
9 jury. These exhibits are 15 feet from the jury, resting
10 vertically against the bench in front of -- of Your Honor's
11 seat.

12 The exhibits consist of eight 8x11 photos stuck on a
13 foam board, again facing directly square to the jury at eye
14 level, 15 feet apart. So there's -- it's directly in their
15 field of vision, directly in front of them, and the photos
16 show -- I can look at the exhibit numbers on here.

17 They're not marked with exhibit numbers, but these
18 photos, the top three are images of the victim laying on the
19 ground deceased. The middle row is another picture of the
20 victim laying on the ground deceased with CPR being performed
21 on him. The next two photos on the middle row are the
22 victim's face at autopsy with the bullet wound next to the
23 eye, and the bottom two photos are the x-rays of the victim's
24 skull from the autopsy.

25 THE COURT: All right. Anything else on that issue?

1 MR. STEPHENS: Not on that issue, Your Honor. Thank
2 you.

3 THE COURT: Let me hear from the State.

4 MR. STONE: Yes, Your Honor. They are all marked
5 because they've all already been entered into evidence, and I
6 think they are 1 through 4 and then the autopsy pictures
7 which were admitted, I think 5, 6 and 7 and 8. Those are all
8 admitted pieces of evidence.

9 As you'll notice, Your Honor, what this is is -- true,
10 it is about 15 feet from the jury. I don't know how
11 inflammatory that necessarily would be as I'm showing it to
12 you. The point is is that throughout the testimony of almost
13 every witness that came up there, I had to pull a photograph
14 off of the board and show it to them. I plan on continuously
15 doing that throughout.

16 When he made the objection, I came over and put another
17 board in front of it, which I'll be glad to keep there.
18 That's just a way to keep it up. As you can see, there are
19 exhibits all over the place, all of which, however, have been
20 admitted into evidence, and those same exhibits have been
21 used continuously as witnesses are coming up. It's a way to
22 keep them up without having to file through stacks and stacks
23 of exhibits.

24 So -- and I just do want to make it clear because I
25 don't want there to be any confusion in the record, all of

1 those have already been admitted. They are exhibits. I'm
2 not familiar with a -- with an objection that we've shown --
3 we've published the exhibits too much, but that's -- all of
4 those are already into evidence, with the exception, Your
5 Honor, of the maps, which we've been using as more
6 demonstrative.

7 THE COURT: All right. I understand the objection. I'm
8 going to overrule the objection. If you have any authority
9 that says that if an exhibit is introduced and is published
10 too much that that could affect the outcome and be grounds
11 for a mistrial, I'd be glad to listen to it, but at this
12 point in time, having no such authority, I'm going to deny
13 the motion.

14 MR. STEPHENS: I understand your ruling, Your Honor. I
15 just -- I just want to -- again, want to say for the record
16 that I acknowledge that these were admitted and I believe for
17 the most part published. They may have all been published to
18 the jury.

19 THE COURT: Okay.

20 MR. STEPHENS: It's not about the amount of time that
21 the jury is exposed to them, but they are continuing to be in
22 their presence while during testimony completely unrelated to
23 them, Your Honor. It's the cumulative effect of that amount
24 of time.

25 Your Honor, if -- if after consultation we believe that

1 a jury instruction might be necessary, we might ask for one.

2 At this time, we are not asking for one.

3 THE COURT: All right.

4 MR. STEPHENS: If I might move on to the second issue,
5 Your Honor?

6 THE COURT: Next issue. All right.

7 MR. STEPHENS: That was just an objection during Staff
8 Sgt. DiCarlo's testimony when he gave a statement from Mr.
9 Devon Williams, who is a witness testifying here today, where
10 Mr. Williams identified John Duncan, the defendant, as the
11 shooter in the case.

12 I made an objection based on both that at this point,
13 since Mr. Williams has not testified, that this is testimony
14 of hearsay at this point. And traditional hearsay exceptions
15 such as excited utterance, which I acknowledge it would
16 normally fit under, wouldn't apply.

17 Also, the objection was also based on bolstering because
18 Mr. Williams will testify later and this might have a
19 tendency to make his testimony seem more credible rather than
20 if it was just used as a prior consistent statement, Your
21 Honor.

22 MR. STONE: Your Honor, the -- the officer testified two
23 things. One is that he arrived almost immediately
24 thereafter. In fact, the people that had already previously
25 testified were still there administering CPR or trying to

1 revive Dominique Williams. When he got there, the ambulance
2 had not even gotten there at this point.

3 So it's immediately afterwards. So it falls under 803,
4 Subsection 1, for present sense impression.

5 The second thing it falls under, which is even probably
6 more clear because of DiCarlo's testimony, he stated when he
7 got there they were hysterical. In fact, one was so
8 hysterical -- he spoke of Mr. Morrow -- he was not even able
9 to tell him anything. That falls clearly under 803,
10 Subsection 2, which is the excited utterance.

11 I think there was a reference at sidebar to *Crawford v.*
12 *Washington*. Of course, *United States v. Davis* and I think
13 *Michigan v. Davis* also came in, and I don't have those with
14 me. I wasn't anticipating from that context.

15 They came in afterwards to define testimonial evidence,
16 and testimonial evidence in their -- in their frame would not
17 be -- this would not be considered testimonial. Therefore,
18 *Crawford v. Washington* does not exclude it.

19 In fact, I think it's *Michigan v. Davis* that it actually
20 is a police officer interviewing someone who had just been
21 stabbed about who did it and that person told him and, of
22 course, they were not -- they died; so they were not able to
23 be there later on to testify.

24 Regardless, it falls clearly under 803, Subsection 1 and
25 2. I do not believe *Crawford v. Washington* excludes it.

1 THE COURT: I think that that was basically the side --
2 the ruling. Excuse me. The Court was agreeing with the
3 position of the solicitor at the sidebar, but it was -- we
4 agreed to go ahead and take it up anyhow.

5 MR. STEPHENS: Thank you, Your Honor. I just wanted to
6 preserve it for the record. Thank you.

7 THE COURT: It appears to me that spontaneous utterance
8 under the active and immediate influence of the event and,
9 therefore, would be part of the res gestae and an exception
10 to the hearsay rule.

11 What else? Do we have another motion?

12 MR. STEPHENS: Not from the defense at this -- at this
13 time, Your Honor. We did have an issue. It's not a motion.

14 Over the lunch break, we're going to -- I'm going to try
15 to keep working on this audiovisual situation, since we may
16 end up trying to play videos for the cross-examination of
17 some of the witnesses this afternoon.

18 THE COURT: Okay. Are we sure **there's** nothing else we
19 -- nothing else we need to take up during the lunch break?

20 MR. STONE: Nothing from the State, Your Honor.

21 MR. STEPHENS: Your Honor, I'm not sure if that's foot
22 stomping. There's something I should remember, but at this
23 point, I don't believe I have any -- anything else.

24 THE COURT: All right. We'll be in recess until 1:30.

25 MR. STONE: Thank you, Your Honor.

1 MR. STEPHENS: Thank you, Your Honor.

2 (WHEREUPON, there was a break in the proceedings, after
3 which the proceedings resumed as follows.)

4 THE COURT: Is the State ready?

5 MR. STONE: Just about. Yes, sir. Can we approach just
6 briefly?

7 THE COURT: Sure.

8 (WHEREUPON, a bench conference was held off the record,
9 after which the proceedings resumed as follows.)

10 THE COURT: I guess we can go ahead and bring the
11 State's next witness in while the jury is coming in.

12 MR. STONE: Sure.

13 MR. STEPHENS: Your Honor, I did have one question from
14 earlier. I had a -- basically, a plastic gun and a Crown
15 Royal bag. I was going to -- I may use or may ask to use one
16 of the witnesses to just point out how the weapon was pointed
17 at the victim with it, if the Court will allow that.

18 MR. STONE: And this was where --

19 THE COURT: The State said they were going to wait to
20 see.

21 MR. STONE: Yes, sir.

22 THE COURT: See whether you did it appropriately or
23 inappropriately, whatever that means.

24 MR. STEPHENS: All right. I was just letting the Court
25 know unless, you know, asserted otherwise, I don't want to

1 draw an objection by pulling the thing out, but I will -- I
2 will --

3 THE COURT: Well, here's what I would suggest. If
4 you're going to do something like that with the pistol, with
5 the mock pistol, you make a statement before you do it so
6 that the jury will know you aren't bringing a live weapon out
7 in the courtroom.

8 MR. STEPHENS: I understand, Your Honor.

9 THE COURT: And then the solicitor will know --

10 MR. STONE: Yes, sir.

11 THE COURT: -- what you're getting ready to do.

12 MR. STEPHENS: I understand, Your Honor. Thank you.

13 THE COURT: All right. Let's bring the jury in.

14 Mr. Stephens, I just happened to think about something.
15 At lunch, the court reporter indicated she was having some
16 trouble understanding you from time to time.

17 MR. STEPHENS: I understand, Your Honor. I can try to
18 speak loudly and distinctly, if that helps.

19 THE FEMALE BAILIFF: Are you ready?

20 THE COURT: I think we're ready.

21 THE FEMALE BAILIFF: The jury is entering the courtroom,
22 Your Honor.

23 (WHEREUPON, the jury entered the courtroom.)

24 THE FEMALE BAILIFF: The jury is seated, Your Honor.

25 THE COURT: Welcome back, ladies and gentlemen. I

JESTIN MORROW - DIRECT BY MR. STONE

1 believe we're ready to resume the presentation of evidence by
2 the State.

3 Solicitor?

4 MR. STONE: Thank you, Your Honor. Jestin Morrow.

5 THE FEMALE BAILIFF: Right this way to be sworn in,
6 please.

7 THE CLERK: If you'd place your left hand on the Bible
8 and raise your right hand. Do you solemnly swear or affirm
9 to truthfully answer all questions asked of you by this
10 Court, so help you God?

11 THE WITNESS: Yes, ma'am.

12 THE FEMALE BAILIFF: Watch your step. You can adjust
13 this microphone. I need you to talk right into it and talk
14 quite loudly.

15 THE CLERK: If you could, state your name for the record
16 and spell it out loud.

17 THE WITNESS: Jestin Morrow, J-e-s-t-i-n M-o-r-r-o-w.

18 JESTIN MORROW, being first duly
19 sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. STONE:

22 Q: Is it Morrow or Morrow? Morrow?

23 A: Yeah. Morrow.

24 Q: Okay. And I need you to speak up so I can hear you all
25 the way over here. Okay?

JESTIN MORROW - DIRECT BY MR. STONE

1 A: All right.

2 Q: How old are you, Jestin?

3 A: Twenty.

4 Q: And it's Jestin, not Justin? It's J-e-s-t-i-n; is that

5 right?

6 A: Yes, sir.

7 Q: Okay. You are 20?

8 A: Yes, sir.

9 Q: What are you doing right now?

10 A: Playing football at Marshall University.

11 Q: All right.

12 A: In West Virginia.

13 Q: At Marshall now?

14 A: Yes, sir.

15 Q: So are you in class right now? Have you got exams?

16 What? What am I pulling you out of?

17 A: Exams this week.

18 Q: Exams this week?

19 A: Yes, sir.

20 Q: They will make you take the exams when you get back;

21 right?

22 A: Yes, sir.

23 Q: Okay. What year are you at Marshall?

24 A: Redshirt junior.

25 Q: How many years have you -- how many years have you been

JESTIN MORROW - DIRECT BY MR. STONE

- 1 in school there?
- 2 A: Four.
- 3 Q: Four?
- 4 A: About four.
- 5 Q: Okay. Back in July of 2019 -- or back -- excuse me --
- 6 July of 2015, where were you in school at that point?
- 7 A: Hilton Head Island High School.
- 8 Q: And are you from Hilton Head originally?
- 9 A: Yes, sir.
- 10 Q: Do you know or did you know or do you know now John
- 11 Duncan?
- 12 A: Yes, sir.
- 13 Q: How long have you known John Duncan?
- 14 A: Like, a year and a half.
- 15 Q: Okay.
- 16 A: From --
- 17 Q: A year and a half back in 2015?
- 18 A: Yes, sir.
- 19 Q: Okay. How did you know him?
- 20 A: Football.
- 21 Q: Did y'all play on the same team?
- 22 A: Yeah. The same position. He was my backup.
- 23 Q: What's that now? I'm sorry. You have to speak up.
- 24 A: Same position. He was my backup.
- 25 Q: What position was that?

JESTIN MORROW - DIRECT BY MR. STONE

1 A: Cornerback.

2 Q: And you guys playing the same position, did y'all spend
3 a lot of time together?

4 A: Yeah. We started to, like, after the season started.

5 Q: So the season starts when? In August, I guess?

6 A: Yeah.

7 Q: And runs for how long?

8 A: Until, like, October probably, like late or early
9 November, something like that.

10 Q: Okay.

11 MR. STONE: Did you hear?

12 THE COURT REPORTER: I can hear him.

13 MR. STONE: Okay.

14 BY MR. STONE:

15 Q: All right. And so during the football -- during the
16 football season, you spent a lot of time with John Duncan?

17 A: Yes, sir.

18 Q: Okay. Did you also know Dominique Williams?

19 A: Yes, sir.

20 Q: And how did you know Dominique?

21 A: We grew up together, went to the same church and stuff.

22 Q: All, again, on Hilton Head?

23 A: Yes, sir.

24 Q: All right. Do you know where -- at the time, do you
25 know where John Duncan lived?

JESTIN MORROW - DIRECT BY MR. STONE

1 A: Yes, sir.

2 Q: Where was that?

3 A: In Winter -- Winterhaven or Winterhaven.

4 Q: Okay.

5 A: On the south end.

6 Q: On the south -- south end of what?

7 A: Hilton Head.

8 Q: All right. Now, what I'm going to do is I'm going to
9 ask you to -- I want to take you back to the 19th, that
10 Sunday, of July 2015. I'm going to ask you to come off the
11 stand, but I want you to keep your voice up so she can hear
12 everything. Okay?

13 A: Yeah.

14 Q: So come on down here, if you don't mind.

15 (WHEREUPON, the witness complied.)

16 MR. STONE: All right.

17 BY MR. STONE:

18 Q: All right. The first thing I'm going to do is show you
19 what has been marked as State's Exhibit 14 and, if you can,
20 tell me -- first of all, on the 19th, this is a Sunday. Who
21 were you hanging out with, and let's say -- **let's start** about
22 5 o'clock, 4 o'clock, 4:30, something like that?

23 A: At four, we were at Drew's grandma's house.

24 Q: All right. Where is --

25 THE COURT REPORTER: He's going to have to speak up.

JESTIN MORROW - DIRECT BY MR. STONE

1 Q: -- Drew's grandma's house?

2 THE COURT REPORTER: He's going to have to speak up.

3 MR. STONE: Okay.

4 BY MR. STONE:

5 A: Before we were at Drew's grandma's house. It's, like,
6 on Folly Field Beach.

7 Q: Okay.

8 A: So, like, by Chaplin Park.

9 Q: All right. And who is with you there?

10 A: Me, Drew, Pugg, Dominique, and Devon.

11 Q: Okay. All right. So Devon Williams?

12 A: Yeah.

13 Q: And Pugg? What is Pugg's full name?

14 A: Pugg Robinson.

15 Q: Robinson? And then Dominique was with you as well?

16 A: Yes, sir.

17 Q: Okay. And then I think you named one other person; is
18 that right? Was it just those?

19 A: It was me, Pugg, Drew --

20 Q: And Drew?

21 A: Yeah.

22 Q: Okay. All right. About 5 o'clock, what happens?

23 A: Drew and Pugg got to work.

24 Q: Where did they -- where did they work at the time?

25 A: New York City Pizza.

JESTIN MORROW - DIRECT BY MR. STONE

1 Q: Okay. So they left to go to work?

2 A: Yeah.

3 Q: All right. So now it's you, Devon, and Dominique; is

4 that right?

5 A: Yes, sir.

6 Q: Where do you go? Where do you guys go after that?

7 A: Mini golf on the south end.

8 Q: All right. Mini golf on the south end. Where is that?

9 Can you tell us on this -- and again, I'm referring to

10 State's Exhibit 14. Can you tell us about where that was?

11 Show us what this is first.

12 A: This is -- like, this is the circle and this is, like,

13 Wild Wings is right here. Mini golf is to the left here.

14 Q: All right. So going down Pope Avenue, Wild Wings is

15 over to the right and then the mini golf is kind of in front

16 of that?

17 A: Yeah. In this area. You can see off the side of the

18 road.

19 Q: I see. So what you're pointing to, it's in front of it

20 heading toward the beach; is that right?

21 A: Yes, sir.

22 Q: All right. So you guys played mini golf there. Do you

23 know how long you spent doing that?

24 A: An hour probably.

25 Q: Okay.

JESTIN MORROW - DIRECT BY MR. STONE

1 A: About that time. An hour and a half.

2 Q: All right. After that, where did you go?

3 A: We went to park at Piggly Wiggly, but there was no
4 parking. So we parked at, like, a hotel right beside it and
5 walked on the beach.

6 Q: Okay. Can you -- can you point us where? First of all,
7 this is the plaza you're talking about here?

8 A: Yes, sir.

9 Q: No parking in there? That's the Piggly Wiggly?

10 A: Yes, sir.

11 Q: All right. And I want you to -- let me get you to back
12 up just a little bit. That's fine. All right. And then
13 where did you guys end up parking?

14 A: Right here.

15 Q: Is that a hotel over here or something or an apartment
16 complex? What is that?

17 A: One of the two hotels, I think.

18 Q: Okay. So you parked in that parking lot and walked from
19 there?

20 A: Yes, sir.

21 Q: All right. Where did you walk? Where did you go?

22 A: We walked straight this way to the beach and took the
23 exit.

24 Q: Which is straight down basically. So you went straight
25 from the car straight to the beach?

JESTIN MORROW - DIRECT BY MR. STONE

1 A: Yes, sir.

2 Q: Okay. Once you got to the beach, where did you go?

3 A: We went to the Tiki Hut. So we passed, like, here all

4 the way to the right.

5 THE COURT REPORTER: I can't hear him. Sorry.

6 Q: Speak up.

7 A: To the Tiki Hut on the beach. It's, like, a little bar

8 kind of.

9 Q: And that's past -- that's past the circle?

10 A: Yes, sir.

11 Q: And that's past -- I think there's a hotel or something

12 right in here and that's past that as well; right?

13 A: Yes, sir. A little bit past it.

14 Q: Okay. Now, what were you guys doing on the beach?

15 A: Just walking. Seeing tourists. Just going to the west

16 end.

17 Q: All right. And it was you and Devon and --

18 A: And Dominique.

19 Q: -- and Dominique? All right. What did you do after

20 that?

21 A: We went to the west end, which is, like, kind of over

22 here kind of.

23 Q: Okay. And that's at the corner? This is the bottom

24 right corner?

25 A: Yes, sir.

JESTIN MORROW - DIRECT BY MR. STONE

1 Q: Okay.

2 A: But we got kicked out because we didn't have wristbands
3 and stuff. So they made us take the beach. Not the beach,
4 the sidewalk. They wouldn't let us go back through on the
5 beach. So we took the sidewalk and we walked all the way
6 this way to the circle.

7 Q: Toward the circle? All right. Let me go back now to --
8 you're good where you are -- State's Exhibit 12. It's a
9 closer view of the circle. You guys had come up at this
10 point right around here; is that correct?

11 A: Yes, sir.

12 Q: All right. Keep your voice up. Tell me what happens
13 next and, again, it's you three? Who -- who is in lead, who
14 is second, and who's third? How were y'all walking?

15 A: This way. Devon is to the right, Dominique is in the
16 middle, and I'm on the left.

17 Q: So Devon is basically leading. He's walking in front.
18 Then it's -- then it's Dominique?

19 A: Yeah, Dominique.

20 Q: And then you after them; right? When you get in here?

21 A: Yes, sir.

22 Q: Okay. What do you do after that?

23 A: We walk, like, come this way and go to the right. And
24 when we get right here, we notice John yelling or something
25 and we see him. He came from, like, this way.

JESTIN MORROW - DIRECT BY MR. STONE

1 Q: All right. Who do you notice is yelling?

2 A: John Duncan.

3 Q: Okay. And where are you when you first noticed John
4 Duncan?

5 A: In this area right here.

6 Q: Okay. On this edge of this -- now, I'm going to call
7 this the circle, but you've got that big circle here. This
8 is sort of a smaller sidewalk circle; is that right?

9 A: Yes, sir.

10 Q: All right. So you're right here when you first notice
11 John Duncan?

12 A: Yes, sir.

13 Q: And he is coming from which direction?

14 A: From this area.

15 Q: Is he by himself or is he with anybody?

16 A: He's with Dontarious.

17 Q: Dontarious who?

18 A: Seay.

19 Q: Okay. And how do you know Dontarious Seay?

20 A: He also played football for a little bit and he went to
21 Hilton Head.

22 Q: Okay. Had you known him for a while as well?

23 A: Kind of. I knew of him. We weren't friends.

24 Q: You weren't friends, but you knew who he was?

25 A: Yes, sir.

JESTIN MORROW - DIRECT BY MR. STONE

1 Q: Okay. Go ahead.

2 A: So when we get, like, right here and he was just
3 yelling. He was, like, you thought it was a game, you
4 thought it was a game, you thought I was playing. Then he
5 pulled a -- he pulled a purple bag out, like, the middle of
6 his pants and he shot him and he turned running.

7 Q: When -- all right. And I want to make sure that I'm --
8 and let me move this back just a little bit. You stay where
9 you are. First of all, Dom is in the center; is that right?

10 A: Yes, sir.

11 Q: And then I think you said -- is Devon -- and I'm facing
12 you like as if you were John Duncan. Dom is here. Where is
13 -- where are you?

14 A: Right here.

15 Q: You're right here?

16 A: Yeah.

17 Q: Okay. And then Dom is here and then where is Devon?

18 A: To that side.

19 Q: Right here?

20 A: Yes, sir.

21 Q: Okay. And as far as the distance is concerned, you're
22 basically standing right beside Dom? So you're hearing and
23 seeing pretty much the same thing he is seeing; right?

24 A: Yes, sir.

25 Q: Is this about the right distance or do I go forward or

JESTIN MORROW - DIRECT BY MR. STONE

1 back or what?

2 A: Back.

3 Q: Okay.

4 A: Right there.

5 Q: All right. At this point, what do you hear? What do
6 you hear John Duncan say?

7 A: He was just, like, you thought it was a game, you
8 thought it was a game, and he asked me if I was with him.

9 Q: All right. When he says you thought it was a game, you
10 thought it was a game, who is he saying that to? Is he
11 saying it to you or Dom?

12 A: Dominique.

13 Q: Dominique?

14 A: Yes, sir.

15 Q: Okay. He addresses you at some point? What does he say
16 to you?

17 A: Are you still with him?

18 MR. STEPHENS: Your Honor --

19 Q: What's that?

20 THE COURT: Hold on.

21 MR. STEPHENS: Your Honor, objection. I think the
22 witness can't say who the -- the defendant was talking to
23 unless there's something more about how he knew.

24 MR. STONE: I'll be clear about that, Judge. I'm sorry.

25 THE COURT: Okay.

JESTIN MORROW - DIRECT BY MR. STONE

1 BY MR. STONE:

2 Q: What did he say to you?

3 A: Are you still with him?

4 Q: Okay. Did he call you by name?

5 A: Yes, sir.

6 Q: All right. So what exactly did he say?

7 A: Are you still with him, Jestin?

8 Q: Okay.

9 THE COURT REPORTER: I'm sorry. I didn't get that.

10 A: Are you still with him, Jestin?

11 Q: Okay. And what did you say?

12 A: Yes.

13 Q: All right. Does he -- does he say anything to Devon or
14 is Devon kind of over here on the side?

15 A: He didn't say anything.

16 Q: Okay. All right. At this point, he says -- which does
17 he say first, the game or the --

18 A: The game.

19 Q: He says the game first and then he says are you still
20 with him? Then what does he do?

21 A: He pulls a Crown Royal bag out of the middle of his
22 pants and he shot him.

23 Q: Where was the Crown Royal bag? You said -- you're
24 showing -- you're pointing in your pants, but where -- where
25 was it?

JESTIN MORROW - DIRECT BY MR. STONE

1 A: Somewhere under his black jacket.

2 Q: Okay. And he had a jacket on? So he's pulling it out
3 from there?

4 A: Yes, sir.

5 Q: You saw the bag?

6 A: Yes, sir.

7 Q: The Crown Royal bag?

8 A: Yes, sir.

9 Q: Did you think anything about it?

10 A: No. I thought, like, when he was coming, maybe they
11 were going to fight or something.

12 Q: Okay.

13 A: Not shooting.

14 Q: All right. And then what does he do right after that?

15 A: He pulls it out and shoots him and then he was just,
16 like, yeah, that's what you get because I'm not playing.
17 Then he turned around and just walked away.

18 Q: How far is he from him when he shoots him?

19 A: Like, right there.

20 Q: Okay. And at this point is where he shoots him?

21 A: Yes, sir.

22 Q: And then he says?

23 A: You thought I was playing. That's what you get.

24 Q: That's what you get? And then he runs off?

25 A: Yeah.

JESTIN MORROW - DIRECT BY MR. STONE

1 Q: What does Dontarious say to him when all this is going
2 on?

3 A: He was behind him a little bit more, like, kind of like
4 where you are probably.

5 Q: Okay. But he's over there?

6 A: Yeah. Behind him.

7 Q: Behind him? If you're John Duncan, he's behind you?

8 A: Yeah.

9 Q: Okay. All right. I'll tell you what. Let me -- let me
10 go now --

11 MR. STONE: Your Honor, this is State's Exhibit 32.
12 We're going to pull this out.

13 All right. Let me get you to stand here. That way she
14 can hear your voice, as well as these people as well.

15 All right. This has already been entered into as
16 evidence coming from camera 1, which is shooting straight
17 into this area here, which is across -- across here.

18 Dylan, go ahead and play that.

19 (WHEREUPON, State's Exhibit 32, video, was played.)

20 MR. STONE: Okay. Dylan, could you pause it just a
21 second?

22 BY MR. STONE:

23 Q: All right. Now, Jestin, tell us, first of all, where
24 are you and Dominique and Devon?

25 A: Right here.

JESTIN MORROW - DIRECT BY MR. STONE

1 Q: In this cluster right here?

2 A: Yes, sir.

3 Q: Right through the center here? All right. And at this

4 -- can you see -- where you are from there, is that the first

5 time you were actually able to see John Duncan or was it

6 closer?

7 A: No. When he got a little closer.

8 Q: Okay.

9 A: Kind of in the grass.

10 Q: All right.

11 MR. STONE: Go ahead and play it.

12 All right. Stop it.

13 BY MR. STONE:

14 Q: All right. Where -- are these you three here?

15 A: Yes, sir.

16 Q: All right. Which one is which?

17 A: That's me, Dominique, and Devon.

18 Q: All right. So, Jestin, you're on the -- I guess, as

19 you're facing, you're on the left, then Dominique, and then

20 Devon; is that correct?

21 A: Yes, sir.

22 Q: And who is that?

23 A: John.

24 Q: That's John Duncan?

25 A: Yes, sir.

JESTIN MORROW - DIRECT BY MR. STONE

1 Q: Who is this?

2 A: Dontarious.

3 Q: Dontarious Seay?

4 A: Yes, sir.

5 Q: Okay.

6 MR. STONE: Go ahead and play it.

7 All right. Stop it.

8 BY MR. STONE:

9 Q: Now, as I'm seeing here, could you point now where you
10 are in this?

11 A: Right here.

12 Q: That's you?

13 A: Yes, sir.

14 Q: All right. Where is Dom?

15 A: Right here.

16 Q: All right. And then where is Devon?

17 A: Right here.

18 Q: All right. And then Dontarious is -- it looks like --
19 how many feet do you think he's behind him?

20 A: Five or ten.

21 Q: What's that?

22 THE COURT REPORTER: I'm sorry. How many?

23 A: Five or ten.

24 Q: Okay. All right.

25 MR. STONE: Go ahead and play it.

JESTIN MORROW - DIRECT BY MR. STONE

1 Stop it.

2 BY MR. STONE:

3 Q: All right. What is happening at this point?

4 A: John shot Dominique.

5 Q: And is this you here?

6 A: Yes, sir.

7 Q: All right. So **you're** that close to him when he does it?

8 A: Yes, sir.

9 Q: Okay.

10 MR. STONE: Go ahead and play it.

11 BY MR. STONE:

12 Q: Tell us what's going on at this -- at this point?

13 A: I kind of just went black. I just walked across the
14 street.

15 MR. STONE: Now, stop it just a moment.

16 BY MR. STONE:

17 Q: This is -- is that you there?

18 A: Yes, sir.

19 Q: Okay. And where is Devon?

20 A: Right here.

21 MR. STONE: Go ahead and play it, Dylan. And it jumps a
22 little bit because of the motion sensor.

23 Stop it.

24 BY MR. STONE:

25 Q: All right. The person entering with the white shirt

JESTIN MORROW - DIRECT BY MR. STONE

1 coming back in the scene, do you know who that is?

2 A: Dontarious.

3 Q: Okay. But he's coming back after. So this is in the
4 time sequence? This is after the shooting?

5 A: Yes, sir.

6 Q: Okay.

7 MR. STONE: Go ahead and play it.

8 BY MR. STONE:

9 Q: And who is walking across the street at this point?

10 A: That's me.

11 Q: And then who is this other one on the other side?

12 A: Devon.

13 Q: What do you do after this?

14 A: My phone is dead. So I went to ask the lady, like, over
15 here on the waterspouts to use her phone to call my aunt.

16 Q: All right.

17 MR. STONE: Go ahead and take the stand. Thank you.

18 (WHEREUPON, the witness complied.)

19 MR. STONE: Excuse me just a moment, Your Honor.

20 BY MR. STONE:

21 Q: I'm going to show you -- I'm going to show you what's
22 been marked as and actually entered into evidence as State's
23 Exhibit 16 as a -- as a copy that's fair. Those are the two
24 people you identified just now on the video?

25 A: Yes, sir.

JESTIN MORROW - DIRECT BY MR. STONE

1 Q: And describe those? Tell me know those are?

2 A: Dontarious in the front in the white shirt and John in
3 the back.

4 Q: Okay. When you say John, John who?

5 A: John Duncan.

6 Q: Okay. State's Exhibit 18 and 22, do you see them in
7 that photograph as well?

8 A: Yes, sir.

9 Q: And again, who are they?

10 A: Dontarious in the white shirt and John in the back in
11 the black.

12 Q: Okay. I'm going to show you what's been marked as
13 State's Exhibit 10 and 11. Do you also see those two
14 individuals in State's 10 and 11?

15 A: Yes, sir.

16 Q: And those two people are?

17 A: John Duncan in the front and Dontarious in the back.

18 Q: Jestin, I want to go back now. That was -- the 19th was
19 a Sunday. I want to go back two nights and I want you to
20 tell the jury and tell me and the Court what happened Friday
21 night. Not Saturday, not Sunday, but Friday night.

22 A: Him and Dominique and Trey called me and said --

23 Q: Trey -- all right. I'm going to stop you. Trey is who?
24 Trey who?

25 A: Trey Days.

JESTIN MORROW - DIRECT BY MR. STONE

1 Q: Okay. And they called you?

2 A: They said that they were going to go to John's house to

3 get some weed, and I -- he had my BB gun. So I wanted to go

4 too.

5 Q: Who had your BB gun?

6 A: John.

7 Q: Okay.

8 A: So I went and got my BB gun when they were going there,

9 but they were going to take his weed, I guess.

10 Q: All right. So you're in -- how do you get there?

11 A: I'm in the backseat of Trey's car.

12 Q: All right. And who is driving?

13 A: Dominique. Trey was driving when they picked me up.

14 They switched.

15 Q: All right. Give me -- pull that microphone. Pull that

16 microphone a little bit closer to you. I'm sorry. It's not

17 picking you up very well. All right. So about what time is

18 this? Is this sometime Friday night? Friday afternoon?

19 What is this?

20 A: Like, midnight.

21 Q: Okay.

22 A: Around midnight.

23 Q: So what did you do? Did you sneak out of your house?

24 A: Yes, sir.

25 Q: Okay. You go and meet up with?

JESTIN MORROW - DIRECT BY MR. STONE

- 1 A: Trey and Dominique.
- 2 Q: Trey and Dom? And where do you meet them?
- 3 A: They picked me up outside my house.
- 4 Q: Okay.
- 5 A: Like, on New Hanover Road.
- 6 THE COURT REPORTER: I'm sorry. What road?
- 7 Q: And whose car was it?
- 8 A: On New Hanover Road.
- 9 Q: That's it. Better. And who car was it?
- 10 A: Trey's.
- 11 Q: And who was driving?
- 12 A: Trey at the time.
- 13 Q: Okay. At some point in time, did y'all -- did they
- 14 switch drivers?
- 15 A: Yes, sir.
- 16 Q: And when was that?
- 17 A: At the gas station.
- 18 Q: Okay. So now at this point, Dom is driving? Where do
- 19 you guys go?
- 20 A: To where John Duncan lived.
- 21 Q: All right. And where is that?
- 22 A: Woodhaven in the south end.
- 23 Q: Okay. Let me go -- this -- this is State's Exhibit 14,
- 24 and I think we talked about it earlier. It has a Woodhaven
- 25 Garden. Is this what we're talking about up here?

JESTIN MORROW - DIRECT BY MR. STONE

1 A: Yes, sir.

2 Q: All right. And that's where you guys went Friday night?

3 A: Yes, sir.

4 Q: All right. When you got to John Duncan's house, was he

5 there?

6 A: Yeah. He was outside.

7 Q: He was what?

8 A: Outside.

9 Q: Okay. Parking lot? Yard? What?

10 A: Parking lot.

11 Q: Okay. So you guys pull up. You're in the what seat?

12 A: The backseat.

13 Q: And Trey Days is in the front seat? Passenger or

14 driver?

15 A: Yes, sir. Passenger.

16 Q: And Dominique is driving?

17 A: Yes, sir.

18 Q: Tell me what happens after that?

19 A: John gave me my BB gun through the back out the -- out

20 the window and then he gives Dominique the weed through the

21 passenger window and Dominique just drives off with it.

22 Q: Was -- was Dominique going to -- in other words,

23 Dominique is in the -- in the thing. So John Duncan reaches

24 over the passenger and hands it to him?

25 A: Yes, sir.

JESTIN MORROW - DIRECT BY MR. STONE

1 Q: All right. And you're right there?

2 A: Yes, sir.

3 Q: When he -- when he does this, what does Dom do?

4 A: He said that he was about to, like, pull over and he

5 just drove off.

6 Q: Okay. So he basically said I'm going to pull over, but

7 he didn't? He kept driving?

8 A: Yes, sir.

9 Q: Did he pay John for the weed?

10 A: No, sir.

11 Q: Okay. And **weed, we're** talking about marijuana; is that

12 right?

13 A: Yes, sir.

14 Q: How much was it?

15 A: Three grams.

16 Q: How many?

17 A: Three grams.

18 Q: How much money are we talking about?

19 A: Like, \$60 at the most.

20 Q: Okay. So Dom drives off. What does John Duncan do when

21 Dom is driving off?

22 A: He chased it because it was, like, a little circle. So

23 he chased it until we got to, like, halfway, but then

24 Dominique just sped up.

25 Q: And y'all were still in the parking lot?

JESTIN MORROW - DIRECT BY MR. STONE

1 A: Yes, sir.

2 Q: Okay. So Dom gets away?

3 A: Yes, sir.

4 Q: Do you hear anything back from John Duncan?

5 A: Yes, sir. He Snapchatted me and I think all three of
6 us.

7 Q: All right. When you say Snapchat --

8 MR. STEPHENS: Objection. Objection, Your Honor. He --
9 I don't think that the witness can testify as to what other
10 people received in communications.

11 MR. STONE: Well, let's just talk about what you did.

12 I'm sorry, Judge.

13 A: Snapchat is --

14 MR. STONE: I apologize, Judge.

15 Stop just a second, Jestin.

16 I apologize, Your Honor.

17 THE COURT: Rephrase it.

18 MR. STONE: I'll just refer again to what he received.

19 THE COURT: All right.

20 MR. STONE: Thank you.

21 BY MR. STONE:

22 Q: All right. Let me just talk to you about what you got.
23 First of all, Snapchat. What is -- what exactly is that?

24 A: It's just a social media app.

25 Q: Okay. And so what happens? Obviously, it hits your

JESTIN MORROW - DIRECT BY MR. STONE

1 phone?

2 A: Yes, sir.

3 Q: And what does it look like? Is it a video? Is it a

4 text? What is it?

5 A: Text.

6 Q: A text?

7 A: Yes, sir.

8 Q: Okay. And who is that -- who is that text from?

9 A: John Duncan.

10 Q: What does it say?

11 A: Tell him I got a bullet waiting for him.

12 Q: Say that again?

13 A: Tell him I got a bullet waiting for him.

14 Q: Okay. What do you guys -- where are you when you get

15 that text?

16 A: By the next circle going towards the south end bridge.

17 So, like, halfway down.

18 Q: So y'all were going into the Sea Pines Circle?

19 A: Yes, sir.

20 Q: Okay. So y'all haven't reached it. Have you reached

21 the Cross Island Expressway yet?

22 A: No, sir.

23 Q: Okay. Did -- did you make any comment about that in the

24 car?

25 A: No, sir.

JESTIN MORROW - DIRECT BY MR. STONE

1 Q: Did you -- when was the next time you saw John Duncan?

2 A: The next day when they fought.

3 Q: All right. Tell me about the fight. Where did that
4 take place?

5 A: Dontarious' house in Cordillo.

6 Q: Is Cordillo -- where -- where is that in relation to
7 John Duncan's house?

8 A: Kind of, like, next-door neighbors, kind of, like the
9 next apartments.

10 Q: Gotcha. All right. Who is at the fight?

11 A: Me, Drew, Devon, Dominique, John, Dontarious. I think
12 that's it.

13 Q: Okay. All right. And did you -- did you videotape the
14 fight?

15 A: Yes, sir.

16 Q: Okay. About what time does this take place?

17 A: I can't recall off the top of my head.

18 Q: Okay. Was the fight -- do you know whether or not the
19 fight was directly related to what happened the night before?

20 A: Yes, sir.

21 Q: All right. Was this kind of the thing to settle the
22 score, so to speak?

23 A: Yes, sir.

24 Q: All right. Let me show you -- excuse me just a moment.

25 Let me show you what's been --

JESTIN MORROW - DIRECT BY MR. STONE

1 MR. STONE: Your Honor, let me mark this first as an
2 exhibit, the fight video.

3 BY MR. STONE:

4 Q: Let me show you what's been marked as State's Exhibit
5 33, and I think -- are those your initials up at the top?

6 A: Yes, sir.

7 Q: All right. Have you reviewed this video?

8 A: Yes, sir.

9 Q: Is this a fair and accurate depiction of the video that
10 you took at the fight that day?

11 A: Yes, sir.

12 Q: All right.

13 MR. STONE: Your Honor, at this time, we'd move State's
14 Exhibit 33 into evidence.

15 MR. STEPHENS: I beg the Court's indulgence for a
16 moment.

17 MR. STONE: Sure.

18 (WHEREUPON, counsel conferred.)

19 MR. STEPHENS: No objection, Your Honor. Thank you.

20 THE COURT: The motion is granted and it's admitted
21 without objection.

22 (WHEREUPON, State's Exhibit Number 33, fight video on
23 disk, was admitted into evidence.)

24 MR. STONE: Your Honor, at this time, we are going to
25 publish State's Exhibit 33.

JESTIN MORROW - DIRECT BY MR. STONE

1 (WHEREUPON, State's Exhibit Number 33, fight video, was
2 played in court. Not transcribed herein.)

3 MR. STONE: All right. Stop it just a second.

4 BY MR. STONE:

5 Q: Just so we know who you're talking about, who is in this
6 -- this clip here?

7 A: John Duncan and Dominique.

8 Q: Can you show us which is which? All right. Let me do
9 it this way. Instead of you having to come down, which one
10 is this one?

11 A: Dominique.

12 Q: That's Dominique?

13 A: Yes, sir.

14 Q: And that one is John Duncan?

15 A: Yes, sir.

16 Q: Okay. Can you see it from there or do you need to come
17 down here? Come down here just to make sure you can see it.

18 (WHEREUPON, the witness complied.)

19 BY MR. STONE:

20 Q: And you can play it a little bit if you need to see it.
21 Okay. This is Dominique here with the, I guess, blue sock?

22 A: Yes, sir.

23 Q: And then that's John Duncan there?

24 A: Yes, sir.

25 Q: Okay. Thanks.

JESTIN MORROW - DIRECT BY MR. STONE

1 (WHEREUPON, the witness returned to the stand.)

2 MR. STONE: Go ahead and play it.

3 (WHEREUPON, the video resumed playing.)

4 MR. STONE: Pause it just a second.

5 BY MR. STONE:

6 Q: All right. So now after this, the fight is, I'm
7 assuming, over. Where is this being taken? Where is this
8 video taken?

9 A: Inside Dontarious' house.

10 Q: All right. Is everybody inside of Dontarious' house?

11 A: Yes, sir.

12 Q: Both John Duncan and -- and John Duncan and Dominique
13 were both up there?

14 A: Yes, sir.

15 Q: So all of -- everybody is back together after the fight?

16 A: Yes, sir.

17 Q: All right. And who is this in the video?

18 A: John.

19 Q: Okay.

20 MR. STONE: Go ahead.

21 (WHEREUPON, the video resumed playing.)

22 (WHEREUPON, the video ended.)

23 BY MR. STONE:

24 Q: The dog by the way, the puppy, was that yours?

25 A: Yes, sir.

JESTIN MORROW - DIRECT BY MR. STONE

1 Q: Did you have that with you all day?

2 A: Yes, sir.

3 Q: When you were down at the -- and that's -- I guess
4 that's -- the fight is taking place Saturday, but Sunday you
5 had -- did you have the puppy with you Sunday too?

6 A: Yes, sir.

7 Q: Okay. When you were down at the beach?

8 A: Yes, sir.

9 Q: All right. Now, after -- and that was it? That was the
10 fight?

11 A: That was it.

12 Q: You've got to say yes or no.

13 A: Yes, sir.

14 Q: Okay. What did you guys do after the -- after that?
15 You're still -- everybody is still hanging out together up at
16 the --

17 A: Yeah, for a little bit and then Devon made them shake
18 hands and we just left.

19 Q: What's that now? **I'm sorry.**

20 A: Devon made them shake hands and we just left.

21 Q: All right. Devon Williams?

22 A: Yes, sir.

23 Q: Okay. And after he made them shake hands, what did they
24 -- what was the purpose of that? What did y'all do that for?

25 A: Because we thought that would just be the end of it at

JESTIN MORROW - DIRECT BY MR. STONE

1 that time.

2 Q: Did -- did John Duncan say anything after that?

3 A: Yeah. He was just, like, fuck the fight, whatever. If
4 I don't get my stuff back, he's dead regardless.

5 THE COURT REPORTER: He's what?

6 BY MR. STONE:

7 Q: I'm sorry. I didn't understand you either. Say it
8 again.

9 A: He said if I don't get my stuff back, he's dead
10 regardless.

11 Q: And when he said -- when he said if I don't get my stuff
12 back, he's dead regardless, this was after the fight?

13 A: Yes, sir.

14 Q: And -- all right. Did you see John Duncan after that
15 until Sunday, the next day?

16 A: No, sir.

17 Q: Okay.

18 MR. STONE: Excuse me just a moment.

19 BY MR. STONE:

20 Q: One other question. You identified at the -- at the
21 shooting that John Duncan shot Dominique. How far away was
22 he from you when he did that?

23 A: Dominique or John?

24 Q: John.

25 A: Like, ten yards probably.

JESTIN MORROW - DIRECT BY MR. STONE

1 Q: Okay.

2 A: If that.

3 Q: Any question in your mind **that's** who shot Dominique?

4 A: No, sir.

5 Q: Do you see John Duncan in the courtroom here?

6 A: Yes, sir.

7 Q: Where is he?

8 A: Right there.

9 Q: Point him out for me?

10 A: (Indicating.)

11 MR. STONE: Your Honor, let the record reflect that he's
12 pointing to the defendant.

13 THE COURT: So noted.

14 MR. STONE: I don't have any further questions. Please
15 answer any questions Mr. Stephens has.

16 MR. STEPHENS: Thank you.

17 THE COURT: Cross-examination.

18 MR. STEPHENS: Thank you, Your Honor.

19 First, I'd like to start with that video, if I can play
20 it on my own equipment or if --

21 MR. STONE: Excuse me just a moment. **I'm sorry.** I
22 apologize.

23 MR. STEPHENS: And, Mr. Morrow, if you could come down
24 so you can see this? Just wherever you can actually view it.

25 (WHEREUPON, the witness complied.)

JESTIN MORROW - CROSS BY MR. STEPHENS

1 (WHEREUPON, State's Exhibit Number 33, fight video, was
2 played.)

3 MR. STEPHENS: Could you pause it for a second?

4 CROSS-EXAMINATION

5 BY MR. STEPHENS:

6 Q: Mr. Morrow, was that jump in your original video
7 recording, to the best of your recollection, a second ago?

8 A: I don't know.

9 MR. STEPHENS: Can you back that up for a second?

10 (WHEREUPON, the video was played and then stopped.)

11 BY MR. STEPHENS:

12 Q: You saw that right there? Do you have -- did you have a
13 chance to review your video prior to coming in here today?

14 A: Yes, sir.

15 Q: Do you recall if that jump was in your original video?

16 A: Yes, sir.

17 Q: All right.

18 MR. STEPHENS: Can you press -- can you play it?

19 Could you stop it?

20 BY MR. STEPHENS:

21 Q: Mr. Morrow, was that jump in your original video?

22 A: I don't know.

23 (WHEREUPON, the video resumed playing and was then
24 stopped.)

25 Q: That?

JESTIN MORROW - CROSS BY MR. STEPHENS

1 A: I don't really remember.

2 Q: All right. You can sit down for a second, Mr. Morrow.

3 (WHEREUPON, the witness complied.)

4 BY MR. STEPHENS:

5 Q: And when the video cuts from the fight instantly to the
6 apartment, had you stopped and restarted the video?

7 A: Yes, sir.

8 Q: All right. Now, this portion here picks up with -- is
9 that with -- is that Devon Williams who is in the shot?

10 THE COURT REPORTER: I'm sorry. Is that who?

11 Q: Is that Devon Williams who is in that shot?

12 A: Yes, sir.

13 Q: Now, between the jump where it stopped and where it
14 started, Devon Williams actually pulled John Duncan off of --
15 off of Mr. Williams, didn't he?

16 A: I don't remember that video stopping.

17 Q: All right. So you don't recall if Devon Williams went
18 in and actually had to pull Mr. Duncan off?

19 A: No, sir.

20 Q: All right.

21 MR. STEPHENS: Mr. Hightower, you can shut that off.

22 BY MR. STEPHENS:

23 Q: Thank you, Mr. Morrow. Mr. Morrow, I'm showing you
24 what's been marked as Defense Exhibit 1 or -- excuse me. I'm
25 sorry. This is marked as Defense Exhibit 1. Mr. Williams,

JESTIN MORROW - CROSS BY MR. STEPHENS

1 if you -- excuse me. Mr. Morrow, if you can come down here
2 for just a second?

3 (WHEREUPON, the witness complied.)

4 BY MR. STEPHENS:

5 Q: What was your home address at the time that this
6 incident happened?

7 A: Gumtree, Orange Lane.

8 THE COURT REPORTER: I'm sorry. I couldn't hear.

9 BY MR. STEPHENS:

10 A: On Gumtree, Orange Lane.

11 Q: Did you give your address to law enforcement as 3 Orange
12 Lane?

13 A: Yes, sir.

14 Q: Okay. And do you know Dominique Williams' address or
15 his grandmother's address at the time that this incident
16 occurred?

17 A: China Bay.

18 THE COURT REPORTER: I can't hear.

19 A: In China Bay.

20 THE COURT: What if y'all change positions?

21 MR. STEPHENS: I understand, Your Honor. That might
22 help.

23 BY MR. STEPHENS:

24 Q: Do you know where Devon Williams was living at the time
25 this incident happened?

JESTIN MORROW - CROSS BY MR. STEPHENS

1 A: No. He usually stayed with his granddad in Muddy Creek
2 on the marsh.

3 Q: Do you know if he had an address on Hilton Parkway or
4 you just don't know?

5 A: I don't know.

6 Q: That's fine. And I think you may have mentioned before
7 he frequently stayed with Drew Bouldin? I'm sorry. That's
8 Pugg used to stay with Drew Bouldin; correct?

9 A: Neither one. I mean Devon was over there, but neither
10 one stayed over there.

11 Q: Okay. Where did Drew Bouldin live?

12 A: His grandpa had a house across from Chaplin Park.

13 Q: Okay. Do you know where the defendant, Mr. Duncan,
14 lives?

15 A: On the south end near Cordillo.

16 THE COURT REPORTER: I couldn't hear.

17 A: On the south end near Cordillo.

18 Q: Cordillo or Woodhaven? Well, they're right next to each
19 other, aren't they?

20 A: Yeah. They lived in the same area. Woodhaven. That's
21 what it is.

22 Q: And Mr. Seay, he lived next -- like, in a nearby
23 building on Cordillo?

24 A: Yes, sir.

25 Q: All right. Now, based on your recollection of the

JESTIN MORROW - CROSS BY MR. STEPHENS

1 island, does these addresses and locations for both yourself,
2 Mr. Williams, Mr. Duncan, Mr. Seay -- not Devon Williams. As
3 I understand, you don't recall where he lived. Do those seem
4 more or less a fair and complete indication of those
5 addresses?

6 A: Yes, sir.

7 Q: All right. And you're familiar where the Coligny Beach
8 area is on the south end of Hilton Head?

9 A: Yes, sir.

10 Q: And this point that's indicated Coligny Beach Park, is
11 that -- is that a fair approximation of where you recall that
12 to be?

13 A: Yes, sir.

14 Q: All right. Thank you, Mr. Morrow. You can have a seat
15 back on the witness stand.

16 (WHEREUPON, the witness complies.)

17 BY MR. STEPHENS:

18 Q: I want to kind of start chronologically kind of from the
19 beginning with that Friday, July 17th, that the solicitor
20 asked you about. You indicated that they called you and said
21 they were going to get some -- some weed; correct?

22 A: Yes, sir.

23 Q: And who were they who called you?

24 A: I can't recall, but it was either John -- not John.
25 Either Trey or Dominique.

JESTIN MORROW - CROSS BY MR. STEPHENS

- 1 Q: Had you had any discussions with them earlier that day
2 about purchasing weed?
- 3 A: I could have.
- 4 Q: Do you recall if you received a text from -- from Dom
5 about smoking weed?
- 6 A: I could have. Yes, sir.
- 7 Q: Okay. Now, when these gentlemen called you to tell you
8 about getting weed, what did they tell you?
- 9 A: That we were just going to get weed from John.
- 10 Q: Did you have any reason to know that John had weed at
11 that time?
- 12 A: Yes.
- 13 Q: How did you know that John had weed at that time?
- 14 A: He told me earlier that day.
- 15 Q: Why did he tell you he had weed earlier in the day?
- 16 A: Gosh, I --
- 17 Q: If you know.
- 18 A: I helped him sell it.
- 19 Q: Pardon?
- 20 A: I helped him sell it.
- 21 Q: Okay. Had you helped him at all arrange to get the weed
22 earlier that day?
- 23 A: I could have. I don't remember exactly.
- 24 Q: All right. Now, you said that -- that Trey Days and
25 Dominique Williams came and picked you up that evening at

JESTIN MORROW - CROSS BY MR. STEPHENS

1 some point?

2 A: Around midnight. Yes, sir.

3 Q: All right. And they took you to -- to John Duncan's
4 home area at Woodhaven?

5 A: Yes, sir.

6 Q: Had you had any discussions with -- with John about
7 selling weed to Dom at that point?

8 A: No, sir.

9 Q: All right. When you arrived at Woodhaven, did you know
10 that -- that Dom was going to rob John of the marijuana?

11 A: Yes, sir. After the car ride.

12 Q: Okay. When they showed up and the exchange went wrong
13 or -- or Dom grabbed the weed and drove off, what happened
14 after that? Y'all are in the car. What happened?

15 A: We drove around the circle and we exited and we were
16 going back. They were taking me back to my house.

17 Q: Did you have any communications with anyone else to tell
18 them that you now had this bag of weed?

19 A: No. It wasn't mine.

20 Q: Did anybody smoke some of the marijuana that night?

21 A: No, sir.

22 Q: Did anyone sell some of the marijuana that night that
23 you know of?

24 A: No, sir.

25 Q: Okay. So going forward, what else, if anything, did you

JESTIN MORROW - CROSS BY MR. STEPHENS

1 do that night?

2 A: I went back home for a while, wake up.

3 Q: So the next day at some point there's a fight at
4 Cordillo apartments?

5 A: Yes, sir.

6 Q: How did that come about?

7 A: I don't remember how we arranged it, but I know we kept
8 telling John just to fight, like, John and Dominique just to
9 fight it out, and John finally said that he would fight him.
10 So he was just, like, yeah, we'll fight. So they agreed to
11 fight.

12 Q: Did -- did John tell you that he wanted to fight
13 Dominique?

14 A: Yes.

15 Q: When did he tell you that?

16 A: Over Snapchat.

17 Q: And do you remember around what time that was?

18 A: No, sir.

19 Q: Okay. Did Dominique talk to you at all about fighting
20 John?

21 A: I mean he said he would. He didn't have a problem with
22 it.

23 Q: Did you talk to Pugg Robinson or Drew Bouldin at all
24 that day about a fight?

25 A: Possibly. I don't remember off the top of my head.

JESTIN MORROW - CROSS BY MR. STEPHENS

1 Q: Did you talk to either of them about the marijuana that
2 was stolen?

3 A: Possibly also.

4 Q: Do you recall if Pugg asked you to bring the marijuana
5 to Chaplin?

6 A: Pugg?

7 Q: Pugg.

8 A: I don't recall. I don't think so.

9 Q: Okay. Now, how did you know that -- how did you find
10 out that John was at the Cordillo Apartments area?

11 A: What do you mean? That night that we got it?

12 Q: The day of the fight.

13 Q: He told us. And Drew -- I think it was Drew. Yeah.
14 Drew and Pugg were already there with them.

15 Q: So let me back up a little bit. Do you know when you
16 first saw Drew and Pugg on that Saturday of the fight?

17 A: No. I don't remember. I think that was the first time.

18 Q: Did you have any discussions with them that you recall
19 about getting John to fight Dominique?

20 A: If that's what we were talking about, like, solving the
21 problem, no.

22 Q: Do you know or have firsthand knowledge of how Pugg and
23 Drew found John?

24 A: No.

25 Q: I guess we can ask them. Okay. So you said that John

JESTIN MORROW - CROSS BY MR. STEPHENS

1 told you he wanted to fight Dominique, but doesn't recall --
2 but you don't recall when you got that Snapchat; correct?

3 A: Yes, sir.

4 MR. STEPHENS: Your Honor, may I approach? May we
5 approach real quick?

6 (WHEREUPON, a bench conference was held in the presence
7 of the jury but out of the hearing of the jury off the
8 record, after which the proceedings resumed as follows.)

9 BY MR. STEPHENS:

10 Q: Mr. Morrow, you -- at some point that day before the
11 fight, you were exchanging snaps with -- with the defendant,
12 Mr. Duncan; correct?

13 A: You said before the fight?

14 Q: Yeah. You just mentioned you received a snap from him?

15 A: Yes.

16 Q: Did you also send any snaps to him that you remember?

17 A: Not that I recall.

18 Q: Do you recall if you sent a snap to him saying that he
19 was scared to fight Dominique?

20 A: Yes. Probably. After -- that wouldn't be -- I think
21 that would be after he said that he wanted to shoot him
22 instead of fight him.

23 Q: Thank you. You said after the fight you heard Mr.
24 Duncan say if I don't get my stuff back, he's dead
25 regardless?

JESTIN MORROW - CROSS BY MR. STEPHENS

1 A: Yes.

2 Q: Mr. Morrow, do you recall being interviewed twice before
3 within a few days of this incident happening in 2015?

4 A: Yes.

5 Q: Do you recall if you had mentioned to law enforcement
6 that John said words to the effect of if I don't get my stuff
7 back, he's dead regardless?

8 A: Something in that area, yes, sir.

9 THE FEMALE BAILIFF: Can you speak up a little bit,
10 please? Some of the jurors can't hear you. Okay? Thank
11 you.

12 BY MR. STEPHENS:

13 Q: Now, in that -- in that first conversation with law
14 enforcement, do you remember if you told them that you were
15 present when this marijuana got stolen?

16 A: I don't -- I don't think I did.

17 Q: Do you recall in your second interview with law
18 enforcement if you told them that you were present at the
19 robbery, but that it was a surprise to you?

20 A: I don't recall.

21 Q: Now, when you -- when you came over to the Cordillo
22 Apartments when this fight happened, where did you -- where
23 did your group meet with -- with John?

24 A: Just as soon as you -- kind of, like, outside of
25 Dontarious' house. As soon as you pull in, there's, like, a

JESTIN MORROW - CROSS BY MR. STEPHENS

1 little bit of grass.

2 Q: Do you recall if John or Dontarious asked y'all not to
3 start anything in the house?

4 A: I don't recall.

5 Q: All right. After the fight, did -- did the group go
6 back up to Dontarious' family's apartment?

7 A: Yes, sir.

8 Q: Did Dontarious invite everybody up there?

9 A: Yes, sir.

10 Q: So he told y'all everyone is welcome to come up?

11 A: Yes, sir.

12 Q: All right. Do you recall how long you stayed there?

13 A: Twenty minutes tops, probably.

14 Q: And during that time, did -- did Mr. Duncan attempt to
15 re-engage in the fight with -- with Dom?

16 A: No, sir.

17 Q: Now, in the video we just watched, Dom stops fighting at
18 the end; correct?

19 A: Yes, sir.

20 Q: So no one was pinned on the ground? Dom just stops;
21 correct?

22 A: Yes, sir. They broke it up.

23 Q: And when you were interviewed about this fight by law
24 enforcement shortly after the shooting, do you recall if you
25 told law enforcement that there was no real winner or loser

JESTIN MORROW - CROSS BY MR. STEPHENS

1 in the fight?

2 A: Yes, sir.

3 Q: Now, when John said if I don't get my stuff back, he's
4 dead regardless, did you take him seriously?

5 A: No, sir.

6 Q: Does he say stuff like that all the time?

7 A: Yes, sir.

8 Q: Now, going back to the previous night after the robbery,
9 you said he said tell him I've got a bullet waiting for him.
10 Do you recall if you told law enforcement about that?

11 A: I don't recall.

12 Q: Now, when he said that, did you believe him?

13 A: No, sir.

14 Q: And you actually showed up the next day when the -- when
15 the fight happened; right?

16 A: Yes, sir.

17 Q: All right. In your social circles at Hilton Head High
18 School and on the football team, I mean are there other
19 people that also talk about hurting somebody else or shooting
20 somebody else just as casual talk?

21 A: No, sir.

22 Q: So you've never heard one of your friends talk like that
23 before?

24 A: No, sir.

25 MR. STEPHENS: Your Honor, may we approach?

JESTIN MORROW - CROSS BY MR. STEPHENS

1 (WHEREUPON, a bench conference was held in the presence
2 of the jury but out of the hearing of the jury off the
3 record, after which the proceedings resumed as follows.)

4 MR. STEPHENS: Thank you, Your Honor.

5 THE COURT: Thank you.

6 BY MR. STEPHENS:

7 Q: So I think I just asked a little bit ago that you didn't
8 take John seriously when he said he was going to shoot
9 Dominique; correct?

10 A: No, sir.

11 Q: Is it fair to say that in your mind you thought that
12 after they fight it out that everything would be okay?

13 A: Yes, sir.

14 Q: After this fight happened, where did you and your
15 friends go?

16 A: I don't recall exactly, but I think we went back to the
17 beach.

18 Q: Do you know where John went?

19 A: No.

20 Q: Did you see him again that night?

21 A: No.

22 Q: All right. Did you have any communications with John
23 after this fight?

24 A: Me?

25 Q: You.

JESTIN MORROW - CROSS BY MR. STEPHENS

1 A: No.

2 Q: Now, in that fight video, do you know who said if one of
3 y'all **don't** hit the other one, I'm going to hit both of
4 y'all?

5 A: Me.

6 Q: Were you serious when you said you were going to hit
7 both of them?

8 A: No.

9 Q: Thank you, Mr. Morrow. Now, did Dom appear upset at any
10 point during or after this fight?

11 A: No, sir.

12 Q: Do you recall if you heard him make any kind of threats
13 or any comments to John?

14 A: No, sir.

15 Q: Was he angry at all when he had his bandanna knocked off
16 his head?

17 A: Probably not. I couldn't tell you his emotions.

18 Q: Fair enough. Did he say anything to you after this
19 fight to make you think that he was angry or upset with John?

20 A: No, sir.

21 Q: And now, after the fight, you said that you -- you and a
22 group of young men went to various locations the Sunday
23 afterwards; right?

24 A: Yes, sir.

25 Q: You went to just walk around the beach looking at people

JESTIN MORROW - CROSS BY MR. STEPHENS

1 and to mini golf?

2 A: We played mini golf first and then we went to Coligny
3 because we always go to the Tiki Hut.

4 MR. STEPHENS: I beg the Court's indulgence for just one
5 moment, Your Honor.

6 THE COURT: All right.

7 BY MR. STEPHENS:

8 Q: Prior to running into John Duncan and Dontarious on the
9 beach, did you have any reason to believe or anything you
10 remember that you had reason to believe that John was going
11 to be there at the beach?

12 A: No, sir.

13 Q: You didn't overhear any phone calls or see anything to
14 make you think that John was going to be at the beach?

15 A: No. My phone was dead.

16 Q: Without commenting on what they might have actually
17 said, did -- did Dom tell you anything to make you think that
18 he had been warned about John being on the beach?

19 A: No, sir.

20 Q: You don't recall if -- if Dom had ever said anything
21 about I'm not thinking about that man or any words to that
22 effect? You didn't hear anything like that from him?

23 A: I did, but he was talking to someone else, not me.

24 Q: Did you know if he was talking about John?

25 A: Yes.

JESTIN MORROW - CROSS BY MR. STEPHENS

1 Q: Now, when you were at the beach, you said that the first
2 time you saw John was when he was coming towards your group?

3 A: Yes.

4 Q: Do you recall if you or Dom or Devon in your hearing
5 yelled out, whistled?

6 A: No.

7 Q: Anything like that to get John's attention?

8 A: No.

9 Q: And when John started coming towards you, did you try to
10 say anything to him?

11 A: No, sir.

12 Q: I believe you said that he walked up and asked you if
13 you were still with Dominique?

14 A: Yes, sir.

15 Q: And said something towards Dominique?

16 A: It was opposite the way he said it. He said it
17 opposite.

18 THE COURT REPORTER: I'm sorry.

19 A: He said something to Dominique and then he asked me if I
20 was still with him.

21 Q: And then he shot him?

22 A: I said yes and then he shot him, yes.

23 Q: And then he -- and you saw him run off?

24 A: Yes, sir. He said that's what you get and then he
25 turned around and ran off.

JESTIN MORROW - CROSS BY MR. STEPHENS

1 Q: Now, before he shot Dominique, did you see Dominique do
2 anything, move at all, do -- take any kind of action that you
3 recognized at all?

4 A: No, sir.

5 Q: All right. Did you hear Dominique respond to John at
6 all?

7 A: No, sir.

8 Q: All right. And you said that after -- after you saw
9 John shoot, you heard him say --

10 A: That's what you get.

11 Q: That's what you get? Do you recall if you told law
12 enforcement that previously in either of your previous two
13 interviews?

14 A: I didn't tell them in the first one because I didn't
15 talk to anyone.

16 Q: Do you recall if you said it in the second one?

17 A: Yes.

18 Q: You believe you did say it in the second interview?

19 A: I believe I said it in one of the interviews. I don't
20 know if it was specifically the second one.

21 Q: Now, prior to coming in here today, you met with the
22 solicitor at least once to initial the disk that -- that had
23 the video from your phone; correct?

24 A: Yes.

25 Q: Did you review anything, any other documents or video or

JESTIN MORROW - CROSS BY MR. STEPHENS

1 anything before coming in here today?

2 A: Just the photos of, like, where we parked and stuff like
3 that. That's all.

4 Q: Did you review an incident report or any other
5 documentation about what other witnesses may have said in
6 this case?

7 A: No, sir.

8 Q: And so your testimony here almost five years later is
9 that you recall hearing Mr. Duncan say that's what you get?

10 A: Yes, sir.

11 Q: All right. Now, after the shooting, you saw in the
12 video how you walked off to the side. Is that a fair
13 description of what happened?

14 A: Yes, sir.

15 Q: You covered your head with something. What was that?

16 A: My shirt.

17 Q: Do you recall why you were doing that?

18 A: I was in disbelief.

19 Q: And you said that you borrowed a phone and -- and called
20 your aunt?

21 A: Yes, ma'am. Yes, sir.

22 Q: Did either you or Devon attempt to call 9-1-1?

23 A: No.

24 Q: Do you recall why --

25 A: We told people.

JESTIN MORROW - CROSS BY MR. STEPHENS

1 Q: -- you might not have done that?

2 A: We told people to call 9-1-1. So we figured it was
3 already -- already happening.

4 Q: When law enforcement personnel started showing up, did
5 you approach any of them to tell them what happened?

6 A: No, sir.

7 Q: Did any of them ask you what happened?

8 A: Yes, sir.

9 Q: Do you recall why you didn't try to tell law enforcement
10 personnel what happened?

11 A: Because I just watched my best friend get shot.

12 Q: Was -- did you regard Dom as your best friend?

13 A: Yeah.

14 Q: How long had you known Dom?

15 A: Since we were, like, six.

16 Q: Had you gone to school together?

17 A: Yes.

18 Q: Now, Dom had transferred from Hilton Head --

19 A: Yes.

20 Q: -- to a school in Georgia a year earlier; is that
21 correct?

22 A: Yes.

23 Q: So he was just home for the -- for the summer?

24 A: Yes, sir.

25 Q: All right. Now, after this happened, you said you just

JESTIN MORROW - CROSS BY MR. STEPHENS

1 watched your best friend get shot. Is it fair to say you're
2 angry at John Duncan for killing your best friend?

3 A: I'm not angry at anyone.

4 Q: After this happened, in the after --

5 A: I'm not angry at anyone.

6 Q: Well, I understand, Mr. Morrow, but if you can try to
7 remember back to the days right after --

8 A: I wasn't angry at anyone, sir.

9 MR. STEPHENS: Your Honor, I'm sorry to do this, but may
10 we approach one more time? This may be the last time.

11 THE COURT: All right. If you'd like to stand and
12 stretch while we do this, feel free.

13 (WHEREUPON, a bench conference was held in the presence
14 of the jury but out of the hearing of the jury off the
15 record, after which the proceedings resumed as follows.)

16 BY MR. STEPHENS:

17 Q: Mr. Morrow, after this happened, did you attempt to find
18 John, to locate him?

19 A: No, sir.

20 Q: Do you recall if you attempted to confront his friend,
21 Dontarious, about John's location?

22 A: No, sir.

23 MR. STEPHENS: I beg the Court's indulgence. I may be
24 about done, Your Honor.

25 THE COURT: Yes, sir.

JESTIN MORROW - CROSS BY MR. STEPHENS

1 BY MR. STEPHENS:

2 Q: Now, Mr. Morrow, shortly before all this happened, you
3 had received -- you made a verbal commitment to Marshall
4 University to go there and play football; correct?

5 A: Yes, sir.

6 Q: And you had a scholarship at Marshall?

7 A: Yes, sir.

8 Q: Did you have any concerns that your involvement in this
9 robbery and this shooting could jeopardize your scholarship
10 with Marshall?

11 A: Can you repeat that?

12 Q: Did you have any concerns when this happened that your
13 involvement in a robbery and this shooting incident might put
14 your scholarship at risk?

15 A: Yes, sir.

16 Q: All right.

17 MR. STEPHENS: Thank you, Mr. Morrow. I don't have any
18 further questions for you. Thank you.

19 THE COURT: Redirect?

20 MR. STONE: Just briefly.

21 REDIRECT EXAMINATION

22 BY MR. STONE:

23 Q: I want to make sure because I think the defense asked
24 you about, first of all, whether or not you called the
25 police. You just got through saying something about your

JESTIN MORROW - REDIRECT BY MR. STONE

1 telephone; right?

2 A: Yes, sir.

3 Q: And what was the condition with your telephone?

4 A: It was dead.

5 Q: Okay. Microphone?

6 A: It was dead.

7 Q: All right. But that you also said something about
8 telling other people to call the cops; is that correct?

9 A: Yes, sir.

10 Q: All right. This is -- let me show you this. This is
11 your statement, is it not?

12 A: Yes, sir.

13 Q: From July 19th, 2015?

14 A: Yes, sir.

15 Q: That's your name?

16 A: Yes, sir.

17 Q: At the bottom of that statement here, what does that
18 say?

19 A: Me and Devon screamed to call the cops.

20 Q: All right. And that's right after the shooting?

21 A: Yes, sir.

22 Q: All right. There was another question too and he asked
23 whether or not you told the police something in the line of
24 regardless of the fight, he's going to get shot, I'm going to
25 shoot him, however it was said. Let me point you to that

JESTIN MORROW - REDIRECT BY MR. STONE

1 statement also in there. What does -- right after that, I
2 heard John say? What does that say?

3 A: Oh, God. He can win the fight. I don't care, but if I
4 don't get my stuff back, he's going to get shot. Oh, God.

5 Q: But regardless of the fact that he Snapchatted you one
6 day and said I've got a bullet for him and then after the
7 fight he says regardless of the fight I'm going to shoot him,
8 you still didn't take him seriously?

9 A: No, sir.

10 Q: Do you take him seriously now?

11 A: Yes, sir.

12 MR. STONE: Nothing else.

13 THE COURT: Recross?

14 MR. STEPHENS: No recross, Your Honor.

15 THE COURT: Thank you, sir. You may step down.

16 THE FEMALE BAILIFF: Watch your step.

17 THE COURT: Do any of the jurors need a break? Or do
18 you all want to keep going? If anybody needs a break, let me
19 know?

20 (WHEREUPON, there was no response.)

21 THE COURT: All right. Call your next witness.

22 MR. THORNTON: The State calls Devon Williams, Your
23 Honor.

24 THE COURT: If any member of the jury needs a break
25 before I say let's take a break, raise your hand and let me

DEVON WILLIAMS - DIRECT BY MR. THORNTON

1 know or let the bailiff know.

2 THE FEMALE BAILIFF: Right this way to be sworn in.

3 THE CLERK: If you can place your left hand on the Bible
4 and raise your right hand. Do you solemnly swear or affirm
5 to truthfully answer all questions asked of you by this
6 Court, so help you God?

7 THE WITNESS: Yes.

8 THE FEMALE BAILIFF: Please watch your step. I need you
9 to adjust that microphone and speak directly into it, please.

10 THE CLERK: If you can state your name and spell it for
11 the record.

12 THE WITNESS: Devon D. Williams, D-e-v-o-n D. W-i-l-l-i-
13 a-m-s.

14 DEVON WILLIAMS, being first
15 duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. THORNTON:

18 Q: Mr. Williams, I'm going to ask you to make sure when
19 you're answering the questions to speak into the microphone
20 for me. So you probably need to get close to it when you
21 answer questions. Can you do that for me?

22 A: Yes, sir.

23 Q: All right. Because everybody in the courtroom, the
24 jury, and the court reporter, everybody needs to hear you.
25 All right. Mr. Williams, do you -- where do you currently

DEVON WILLIAMS - DIRECT BY MR. THORNTON

1 live?

2 A: Across the bridge over in Hilton Head.

3 Q: In Hilton Head?

4 A: Yes, sir.

5 Q: All right. And did you live in Hilton Head on or about
6 July 19th of 2015?

7 A: Yes, sir.

8 Q: All right. Do you know a person named John Duncan?

9 A: Yes, sir.

10 Q: And how do you know John Duncan?

11 A: We grew up together in Muddy Creek.

12 Q: And back in 2015, how long had you known John Duncan?

13 A: For a good ten -- ten years.

14 Q: So how old are you now?

15 A: Twenty-one.

16 Q: All right. So when you say you grew up with him, that's
17 exactly what you meant?

18 A: Woodhaven.

19 Q: All right. Do you -- did you also know a young man
20 named Dominique Williams?

21 A: Yes, sir.

22 Q: And how did you know Dominique?

23 A: Also, the same thing, just different areas.

24 Q: Let me ask you this. I want to take you to Sunday, it
25 was a Sunday, July 19th of 2015. What were you doing that day

DEVON WILLIAMS - DIRECT BY MR. THORNTON

1 and who were you with?

2 A: Well, we started off at Drew's house, Drew's mom.

3 Q: I'm sorry. I'm going to stop you every once in a while.

4 Drew who?

5 A: Bouldin. Andrew Bouldin.

6 Q: Okay.

7 A: Younger cousin. From his house, me, Dominique, and

8 Jestin left and went to play mini golf.

9 Q: All right. And Jestin? You mean Jestin Morrow?

10 A: Yes, sir.

11 Q: And by Dominique, you mean Dominique Williams?

12 A: Yes, sir.

13 Q: All right. So the three of you went to play mini golf.

14 Do you -- do you have any idea -- do you remember what time

15 it was? Morning? Afternoon?

16 A: It was in the afternoon.

17 Q: Okay. Late afternoon?

18 A: About four-ish.

19 Q: Okay. So sometime after four, you go to play mini golf

20 with Jestin and Dominique?

21 A: Yes, sir.

22 Q: Does Jestin have anything with him?

23 A: A puppy.

24 Q: All right. And did he -- does he walk around with the

25 puppy pretty much all day?

DEVON WILLIAMS - DIRECT BY MR. THORNTON

1 A: Yeah.

2 Q: All right. What did -- all right. So you go to play
3 mini golf. Where do you go from there?

4 A: Kenny B's, the restaurant. It's right around the corner
5 from -- from there.

6 Q: All right. And let me ask you something real quick.

7 MR. THORNTON: Court's indulgence, please, Your Honor.

8 THE COURT: Yes, sir.

9 MR. THORNTON: I'm going to get you, Mr. Williams, to
10 come step down off the stand. You're doing real well keeping
11 your voice up; so I don't think we'll have a problem with you
12 being heard, but I want you to stand kind of right here for
13 me on this side. Come on down. And I'll stand here and that
14 way your back is not to the court reporter. So hopefully,
15 she'll be able to hear you. You stand right over there for
16 me.

17 (WHEREUPON, the witness complied.)

18 BY MR. THORNTON:

19 Q: I want to make sure that everybody understands kind of
20 at least the general area of what you're talking about.
21 Let's make sure everybody can see that. All right. So
22 you're going to have to help me because I am not from Hilton
23 Head. So I want you to kind of point out to me and if I need
24 a different map, you let me know, but kind of where are we
25 talking about with the mini golf? Can you find that on the

DEVON WILLIAMS - DIRECT BY MR. THORNTON

1 map?

2 A: Right here in this area.

3 Q: All right. So here?

4 A: It's close to here.

5 THE COURT REPORTER: I'm sorry. I can't hear him
6 already. I can't hear him. If he could maybe stand in front
7 of it?

8 MR. THORNTON: You got it. How about if I just don't
9 get in his way?

10 THE COURT REPORTER: That's good.

11 BY MR. THORNTON:

12 Q: All right. So you pointed out the mini golf?

13 A: Right here. Right in this area.

14 Q: All right. And where did y'all go after mini golf? You
15 said something about KB's?

16 A: Kenny B's Restaurant.

17 Q: Kenny B's?

18 A: It's right here.

19 Q: All right. So fairly close by?

20 A: Yes, sir.

21 Q: All right. Where did you go from -- first of all, how
22 long do you think you guys were playing golf -- mini golf,
23 roughly?

24 A: About 45 minutes.

25 Q: All right. And remember, speak up a little bit. You're

DEVON WILLIAMS - DIRECT BY MR. THORNTON

1 doing fine. All right. So when you leave Kenny B's, where
2 do you go from there?

3 A: From Kenny B's, we went to Coligny Park. We went to the
4 beach.

5 Q: All right. So you went out to the beach. Now, is that
6 -- is the Marriott in that area somewhere?

7 A: Um --

8 Q: Or have I got that wrong?

9 A: I'm not aware.

10 Q: Okay. Well, let me ask you this. Then at some point,
11 did you guys get asked to leave one of the hotels?

12 A: Yes, sir. Because we didn't have our passes to be
13 there.

14 Q: Okay. Because you weren't guests of the hotel?

15 A: Yes, sir.

16 Q: All right. So where did you go after that?

17 A: Walking down -- what is this? North or south?

18 Q: Okay. So you walked down this way?

19 A: Yeah. We were coming off the beach.

20 Q: Okay. Coming off the beach?

21 A: Yes, sir.

22 Q: And then let me get this other map. Just stay right
23 where you are. So it's a little bit closer up. So as you're
24 coming off the beach, it would be from -- from down this way.
25 Are you walking then back toward here?

DEVON WILLIAMS - DIRECT BY MR. THORNTON

1 A: Yes, sir.

2 Q: All right. At some point, do you take this little
3 walking path, which is at the Coligny Park area?

4 A: Yes, sir.

5 Q: All right. And when you come across here, do you go
6 back around this way or do you come up over here?

7 A: Stay on the front side.

8 Q: The front side?

9 A: Yes, sir.

10 Q: All right. And as you approach in this area, do you see
11 someone?

12 A: We see two people actually.

13 Q: All right. Go ahead and take the stand back for me.

14 (WHEREUPON, the witness complied.)

15 BY MR. THORNTON:

16 Q: What two people do you see?

17 A: Dontarious Seay and John Duncan.

18 Q: All right. And which one of them is closer to you?

19 A: Like, what do you mean? Like, which is closer?

20 Q: I'm sorry. Was one in front of the other?

21 A: Oh. John approached before Dontarious did.

22 Q: All right. And as John approaches, what -- what does he
23 do or what does he say?

24 A: He asked Dom -- Dominique if he thought he was playing.

25 Q: I'm sorry. He asked Dominique what?

DEVON WILLIAMS - DIRECT BY MR. THORNTON

1 A: If he thought he was playing.

2 Q: Okay. And I'm sorry to stop you in the middle of this,
3 but let me ask you a question. Where are you three standing?
4 When I say you three, I mean you and Dominique and Jestin.
5 Are y'all spread out, you know, a certain way? Who is where?

6 A: All right.

7 Q: If you were facing -- right now, pretend that I'm
8 Dominique. Where are you at?

9 A: On this side.

10 Q: You're right here?

11 A: Yes, sir.

12 Q: And where is Jestin?

13 A: On that side.

14 Q: Okay.

15 A: Closer to the TV.

16 Q: All right. So John Duncan comes up. First of all, let
17 me ask you this. Do you see John Duncan in the courtroom?

18 A: Yes, sir.

19 Q: Where is he?

20 A: Right there.

21 MR. THORNTON: Your Honor, I'd like the record to
22 reflect he's identified the defendant in this case.

23 THE COURT: So noted.

24 BY MR. THORNTON:

25 Q: So John Duncan, the defendant in this case, he walks up

DEVON WILLIAMS - DIRECT BY MR. THORNTON

1 and he tells Dominique what?

2 A: You thought I was playing.

3 Q: All right. What happens after that?

4 A: I was trying to get Dontarious', like, attention to talk

5 to him.

6 Q: And I'm sorry. That's Dontarious? What's Dontarious'

7 last name?

8 A: Seay.

9 Q: All right. So you were trying to get his attention and

10 then what happened?

11 A: He asked Jestin if he was with Dom.

12 Q: All right. And we've got to be careful with the

13 pronouns.

14 A: Okay.

15 Q: So he who?

16 A: John Duncan asked Jestin Morrow if he was with Dominique

17 Williams.

18 Q: All right. And what happened after that?

19 A: He didn't say anything. He chuckled and shot him.

20 Q: All right. Who chuckled?

21 A: John Duncan.

22 Q: All right. So he said you thought I was playing and

23 then asked Jestin are you with him and then chuckles and then

24 what happened?

25 A: He shot him.

DEVON WILLIAMS - DIRECT BY MR. THORNTON

1 Q: And John Duncan shot who?

2 A: Dominique Williams.

3 Q: Did you see -- see the kind of gun it was?

4 A: No, sir.

5 Q: Was -- why not?

6 A: It was covered in a Crown Royal bag.

7 Q: A Crown Royal bag?

8 A: Yes, sir. It was a purple one.

9 Q: How many times did he shoot?

10 A: One. One time.

11 Q: And then what did he do after that?

12 A: Walked away or ran or whatever the hell he did.

13 Q: All right. Did he leave the area?

14 A: Yes, sir.

15 Q: All right.

16 MR. THORNTON: Court's indulgence, Your Honor.

17 THE COURT: Yes, sir.

18 MR. THORNTON: All right. If you would, Devon, come on
19 down from the stand again and, again, you've got to make sure
20 you keep your voice up so that the court reporter can hear
21 you. So I want you to stand for me right here.

22 THE WITNESS: All right.

23 (WHEREUPON, the witness complied.)

24 MR. THORNTON: And I'm going to get right here and stay
25 out of your way.

DEVON WILLIAMS - DIRECT BY MR. THORNTON

1 Dylan, go ahead and play it for me and get ready to
2 pause it, please.

3 This has already been introduced into evidence, Devon.
4 It's the video. It's a camera angle 1.

5 (WHEREUPON, the video was played.)

6 MR. THORNTON: All right, Dylan. Pause it.

7 BY MR. THORNTON:

8 Q: Do you see the three of y'all coming up yet, Devon, on
9 the screen?

10 A: Yes, sir.

11 Q: All right. Where -- where are you, Dominique, and
12 Jestin at?

13 A: I'm here. That's Jestin. I'm not sure about which --

14 Q: All right. Make sure you speak up.

15 MR. THORNTON: Go ahead, Dylan.

16 All right. Now stop it, Dylan. Pause it.

17 BY MR. THORNTON:

18 Q: All right. Who is that?

19 A: John Duncan.

20 Q: And who is that?

21 A: Dontarious Seay.

22 Q: And make sure -- I'll tell you what. I probably did a
23 poor job of this. I'm going to pull this back just a little
24 bit so we can make sure all the jurors can see.

25 All right, Devon. So you've identified -- just identify

DEVON WILLIAMS - DIRECT BY MR. THORNTON

1 them again just in case somebody didn't see. Who is this?

2 A: Dontarious Seay. John Duncan.

3 Q: And then, do you --

4 MR. THORNTON: Go ahead and play it, Dylan.

5 All right. Pause it.

6 BY MR. THORNTON:

7 Q: Now, and you can tell me if you already had noticed him,
8 but I'm going to let it go and I want you to say pause when
9 you think you would have noticed John Duncan coming towards
10 y'all. Do you think you had noticed him yet?

11 A: No, sir.

12 Q: All right.

13 MR. THORNTON: Go ahead and play it, Dylan. Pause when
14 he says so.

15 (WHEREUPON, the video resumed playing.)

16 A: Pause it.

17 Q: All right. So about right there as he walks towards all
18 on the -- on the grass there, you think you recognized him at
19 that point?

20 A: Yes, sir.

21 Q: All right. We're at 8:20:21. Is this where he's -- he
22 starts talking to y'all saying did you think I was playing
23 and talking to Jestin or is that after this?

24 A: That would be after this.

25 Q: All right.

DEVON WILLIAMS - DIRECT BY MR. THORNTON

1 MR. THORNTON: Go ahead and play it, Dylan.

2 All right. Pause it.

3 BY MR. THORNTON:

4 Q: All right. So somewhere right around in here is where
5 he starts talking and says those couple of phrases?

6 A: Yes, sir.

7 Q: And then chuckles?

8 A: (No verbal response.)

9 Q: All right.

10 MR. THORNTON: Go ahead, Dylan.

11 All right. Now, pause it for me.

12 BY MR. THORNTON:

13 Q: All right. Now, who is that right there going to be?

14 A: Jestin.

15 Q: All right. And who is that right there at that tree?

16 A: Dominique.

17 Q: And then you were?

18 A: Right there.

19 Q: Right there?

20 A: Yes, sir.

21 Q: All right. And that is -- you've testified earlier
22 that's Dontarious Seay?

23 A: Yes, sir.

24 MR. THORNTON: Go ahead and play it, Dylan.

25 All right. Pause.

DEVON WILLIAMS - DIRECT BY MR. THORNTON

1 BY MR. THORNTON:

2 Q: Now, what just happened right there?

3 A: He shot him.

4 Q: And when you say he, who shot who?

5 A: John Duncan shot Dominique.

6 Q: And is this where John then leaves?

7 A: Yes, sir.

8 MR. THORNTON: Go ahead and play it, Dylan.

9 All right. Pause it, Dylan.

10 BY MR. THORNTON:

11 Q: All right. So that is?

12 A: Dontarious Seay and Jestin.

13 Q: And then you are still over here standing right there;

14 is that right?

15 A: Yeah. Correct.

16 Q: I'm sorry.

17 THE COURT REPORTER: I can't hear him.

18 A: Yes, sir.

19 MR. THORNTON: I apologize. I walked on him on that

20 one, Madam Court Reporter.

21 BY MR. THORNTON:

22 Q: Where are you at?

23 A: Right here.

24 Q: So on the other side of the street right here?

25 A: Yes, sir.

DEVON WILLIAMS - DIRECT BY MR. THORNTON

1 Q: All right.

2 MR. THORNTON: Go ahead and play it, Dylan.

3 BY MR. THORNTON:

4 Q: Now, obviously there was a jump there with the motion,
5 but do you end up over here right here across the street?

6 A: Yes, sir.

7 Q: And are you walking around?

8 A: Yeah.

9 Q: Now, let me ask you this. You know, it's a fair
10 question. Why -- why didn't you immediately run over to
11 Dominique? What were you doing walking around?

12 A: I was in shock. I didn't know what to do.

13 Q: All right. Now, who is that?

14 A: That's Jestin.

15 Q: And who is that?

16 A: That's me.

17 Q: And at some point, do y'all head back over toward
18 Dominique?

19 A: Yes, sir.

20 MR. THORNTON: Go ahead and play it, Dylan.

21 BY MR. THORNTON:

22 Q: And do you stay in that area? Do you stay there until
23 law enforcement gets there?

24 A: Yes, sir.

25 Q: All right.

DEVON WILLIAMS - DIRECT BY MR. THORNTON

1 MR. THORNTON: All right, Dylan. That's good. Thank
2 you.

3 Devon, if you would, just go ahead and have a seat back
4 on the witness stand for me.

5 (WHEREUPON, the witness complied.)

6 BY MR. THORNTON:

7 Q: I'm going to show you what's been marked as State's
8 Exhibit Number 10 and 11 for identification.

9 MR. THORNTON: These have not been moved into evidence
10 yet, Your Honor, I don't believe.

11 BY MR. THORNTON:

12 Q: I'll ask you as to State's Exhibit Number 10, do you
13 recognize this still shot or photo?

14 A: Yes, sir.

15 Q: And do you -- were you able to recognize the two people
16 in it based on what they are wearing that day?

17 A: Yes, sir.

18 Q: And who are the two people in this video?

19 A: It's Dontarious and John Duncan.

20 Q: All right. And I'm going to let you look now at State's
21 Exhibit Number 11 and ask you the same question as to the
22 closer-up view. Do you see John Duncan and Dontarious Seay
23 in that still shot as well?

24 A: Yes, sir.

25 Q: All right. Could you point them out for me?

DEVON WILLIAMS - DIRECT BY MR. THORNTON

1 A: (Indicating.)

2 Q: All right. And are those the same clothes they would've
3 had on that day?

4 A: Yes, sir.

5 Q: That we just saw in the videos?

6 A: Yes, sir.

7 Q: All right. Is this a fair and accurate representation
8 of the way they looked that day?

9 A: Yes, sir.

10 MR. THORNTON: Your Honor, I'd ask that State's Exhibits
11 Number 10 and 11 be moved into evidence.

12 MR. STEPHENS: No objection, Your Honor.

13 THE COURT: The motion is granted and they are admitted
14 into evidence.

15 (WHEREUPON, State's Exhibit Number 10, photograph, and
16 State's Exhibit Number 11, photograph, were admitted
17 into evidence.)

18 MR. THORNTON: Dylan, can you bring up State's 10 for
19 me? All right.

20 And let me turn this, Your Honor. Court's indulgence,
21 Your Honor. I'm trying to make sure everybody can see this.

22 BY MR. THORNTON:

23 Q: Now, Devon, are you able to see from back there or do
24 you need to come down here?

25 A: I can see.

DEVON WILLIAMS - DIRECT BY MR. THORNTON

1 Q: Are you sure?

2 A: Yes, sir.

3 Q: All right. Do you see the -- do you see two people in
4 there that you know, that you recognize, that you just
5 identified for me up there?

6 A: Yes, sir.

7 Q: All right. Who is here in the dark windbreaker and the
8 light-colored pants?

9 A: That's John Duncan.

10 Q: And who is next to him in the light-colored shirt and
11 the darker-colored pants?

12 A: Dontarious Seay.

13 Q: All right.

14 MR. STONE: Dylan, 11.

15 BY MR. THORNTON:

16 Q: Same question now. I know you can't see that. Come on
17 down here for me. Remember, just keep your voice up.

18 (WHEREUPON, the witness complied.)

19 BY MR. THORNTON:

20 Q: All right. Who is standing right there, same -- what
21 appears to be the same clothing, obviously, as the other
22 picture and who is that in the front?

23 A: John Duncan.

24 Q: And who is that?

25 A: Dontarious Seay.

DEVON WILLIAMS - DIRECT BY MR. THORNTON

1 Q: And does he have some kind of visor or something that he
2 wears sometimes? I'm not sure if you can see it in that or
3 not.

4 A: It looks like a bucket hat.

5 THE COURT REPORTER: I couldn't hear what he just said.

6 MR. THORNTON: He said it looks like a bucket hat. He's
7 talking about John Duncan in the bucket hat.

8 All right. Thank you very much, Devon. You can have a
9 seat.

10 (WHEREUPON, the witness complied.)

11 MR. THORNTON: Thanks, Dylan.

12 BY MR. THORNTON:

13 Q: And when the police got there, is it fair to say you
14 were still pretty upset?

15 A: Yes, sir.

16 Q: All right. Did you though talk to one of the officers
17 and identify who -- who had shot Dominique?

18 A: Yes, sir.

19 Q: And who did you tell them right then?

20 A: John Duncan.

21 Q: All right. Is that the same John Duncan that you've
22 identified here in court today?

23 A: Yes, sir.

24 Q: Did you know where he lived or have an idea where he
25 lived?

DEVON WILLIAMS - DIRECT BY MR. THORNTON

- 1 A: Other than where we grew up, no, sir.
- 2 Q: I'm sorry?
- 3 A: Other than where we grew up, no, sir.
- 4 Q: Okay. But did you tell the officer something about that
- 5 he might be in the Woodhaven Apartments?
- 6 A: Yes, sir.
- 7 Q: All right. And let me take you back. So that's Sunday,
- 8 the 19th. Okay? Let me -- 2015. Let me take you back a day
- 9 to Saturday. Did -- did John Duncan and Dominique -- did
- 10 they have a -- if you could call it a fight, did they have
- 11 some kind of a fight or wrestling match or whatever?
- 12 A: Yes, sir.
- 13 Q: All right. Now, based on what you saw, was there a real
- 14 clear winner to the fight?
- 15 A: No, sir.
- 16 Q: Did -- what happened after the fight?
- 17 A: We all went into Dontarious' house.
- 18 Q: All right. When you say Dontarious, is that the same
- 19 Dontarious who you just identified in the video?
- 20 A: Yes, sir.
- 21 Q: So it was his house y'all were at?
- 22 A: Yes, sir.
- 23 Q: Okay. So when you say we all back into Dontarious'
- 24 house, does that include John Duncan?
- 25 A: Yes, sir.

DEVON WILLIAMS - DIRECT BY MR. THORNTON

- 1 Q: Does that include Dominique Williams?
- 2 A: Yes, sir.
- 3 Q: All right. Were you there?
- 4 A: Yes, sir.
- 5 Q: Jestin Morrow?
- 6 A: Yes, sir.
- 7 Q: All right. And you all all -- after the fight,
- 8 everybody goes in there?
- 9 A: Yes, sir.
- 10 Q: And did -- did you think the fight was -- or the issue
- 11 was going to be settled at that point after they -- again, if
- 12 you'd call it a fight -- fought it out?
- 13 A: Yes, sir.
- 14 Q: All right. Did -- did you make them do anything after
- 15 the fight?
- 16 A: Other than them shaking hands and --
- 17 Q: That's what I was asking you about.
- 18 A: -- going their separate ways, no, sir.
- 19 Q: Okay. So -- but did you make them shake hands or tell
- 20 them to shake hands?
- 21 A: Yes, sir.
- 22 Q: Did you think that the fight was going to be over at
- 23 that time?
- 24 A: It should have been. Yes, sir.
- 25 Q: Did -- after that happened and after the fight, did you

DEVON WILLIAMS - DIRECT BY MR. THORNTON

1 hear John Duncan say anything about Dominique or say anything
2 to Dominique?

3 A: No, sir.

4 MR. THORNTON: Your Honor, I apologize. Court's
5 indulgence just a moment.

6 THE COURT: Certainly.

7 BY MR. THORNTON:

8 Q: I'm going to hand you -- I'm going to show you for
9 identification purposes what's been marked as Exhibit 34.
10 Devon, does that look like the statement that you gave law
11 enforcement?

12 A: Yes, sir.

13 Q: All right. And if you would, because what I just asked
14 you was if John Duncan said anything after the fight?

15 MR. STEPHENS: Your Honor, I just want to object for the
16 record, not to the statement itself, but only that I believe
17 the deputy solicitor is attempting to refresh recollection.
18 I just wanted to object for the record that I believe
19 refreshing recollection would only be if he didn't recall. I
20 think the witness stated that he didn't hear anything, which
21 was a definite statement and not I don't recall. If this is
22 being offered as a prior inconsistent statement, I think that
23 would be different, Your Honor.

24 MR. THORNTON: Judge, I think he's allowed to refresh
25 his recollection. It has been several years. I won't even

DEVON WILLIAMS - DIRECT BY MR. THORNTON

1 quote it. I just want to let him read what he told the
2 police at the time and see if that would alter his answer at
3 all.

4 THE COURT: All right. Overruled. Go ahead.

5 BY MR. THORNTON:

6 Q: If you would, just read for me. You don't have to read
7 from the document. Just read those first couple of lines,
8 Devon, and see if that jogs your memory as far as what Mr.
9 Duncan -- what you heard Mr. Duncan say. Did that help?

10 A: Yes, sir.

11 Q: All right. Did you hear then John Duncan say something
12 based on your refreshed recollection?

13 A: No, sir.

14 Q: You did not?

15 A: I didn't hear him say anything.

16 Q: You didn't hear him say it? Okay. Completely fine. I
17 don't want you to tell me what someone else may have told
18 you.

19 MR. THORNTON: Court's indulgence, please, Your Honor.

20 THE COURT: Okay.

21 MR. THORNTON: I don't have any further questions, Your
22 Honor.

23 Thank you very much, Mr. Williams. Please answer any
24 questions Mr. Stephens has.

25 THE COURT: Mr. Stephens?

DEVON WILLIAMS - CROSS BY MR. STEPHENS

1 MR. STEPHENS: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. STEPHENS:

4 Q: Mr. Williams, the victim in this case, Dominique
5 Williams, was he a relative of yours?

6 A: Yes, sir.

7 Q: He was your cousin?

8 A: Yeah. I was told.

9 Q: Pardon?

10 A: Yes, sir. I was told by my mother.

11 Q: All right. And had you known him for -- for several
12 years?

13 A: Yes, sir.

14 Q: All right. Now, you mentioned you had known the
15 defendant, Mr. Duncan, for -- for about ten years; is that
16 correct?

17 A: (No verbal response.)

18 THE COURT REPORTER: I'm sorry. You have to answer.

19 THE WITNESS: Oh.

20 BY MR. STEPHENS:

21 A: Yes, sir.

22 Q: Do you recall that he actually moved away around when he
23 was in the first grade?

24 A: No. I was there.

25 Q: Is it fair to say that he'd only been back at the Hilton

DEVON WILLIAMS - CROSS BY MR. STEPHENS

1 Head Island area for about two years?

2 A: I wouldn't be aware of that.

3 Q: All right. Fair enough. And at this time when this
4 incident happened, you went to Hilton Head High School with
5 Mr. Duncan?

6 A: Yes, sir.

7 Q: And y'all were on the football team together?

8 A: Yes, sir.

9 Q: Let me ask you a question, Mr. Williams. What was your
10 home address at this time?

11 A: Mine?

12 Q: Yes.

13 A: [REDACTED] William Hilton Parkway.

14 Q: All right. I'm going to quickly show you what's been
15 marked as Defendant's Exhibit 1. Do you see where your name
16 and the address at [REDACTED] William Hilton Parkway are indicated
17 on this?

18 A: Yes, sir.

19 Q: Do you see where it's pointing to?

20 A: Yes, sir.

21 Q: Would you say this is a fair and accurate depiction of
22 -- of where your address was at that time?

23 A: Yes, sir.

24 Q: Thank you, Mr. Williams. All right. Now, were you in
25 the same year in school as Jestin Morrow?

DEVON WILLIAMS - CROSS BY MR. STEPHENS

- 1 A: Yes, sir.
- 2 Q: And what position do you play on the football team?
- 3 A: Did I play or did Jestin play?
- 4 Q: Did Jestin play?
- 5 A: Jestin played corner.
- 6 Q: Played what?
- 7 A: Cornerback.
- 8 Q: Okay. Would you agree that he was kind of a leader on
- 9 the football team?
- 10 A: Yes, sir.
- 11 Q: All right. Did he pass on messages from Coach Payne and
- 12 help everybody at practice and stuff?
- 13 A: Not aware.
- 14 Q: Pardon?
- 15 A: Not aware.
- 16 Q: Okay. Now, did this -- the fight between Dominique and
- 17 -- and Mr. Duncan happened on Saturday, July 18th. Is that
- 18 what you recall?
- 19 A: Yes, sir.
- 20 Q: Okay. Now, the Friday, the day before that, did you
- 21 learn about some kind of robbery of Mr. Duncan?
- 22 A: No, sir.
- 23 Q: All right. On that Saturday leading up to the fight,
- 24 did you learn about that Mr. Duncan had been robbed?
- 25 A: No, sir.

DEVON WILLIAMS - CROSS BY MR. STEPHENS

1 Q: Did you have any discussions with Jestin or Dom about
2 them robbing -- robbing Mr. Duncan of a bag of marijuana?

3 A: No, sir.

4 Q: All right. Now, you were present when that fight
5 happened between Mr. Duncan and Dom?

6 A: Yes, sir.

7 MR. THORNTON: Court's indulgence, Your Honor.

8 (WHEREUPON, counsel conferred.)

9 BY MR. STEPHENS:

10 Q: And, Mr. Williams, I'm going to show you what's already
11 been previously admitted as State's Exhibit 33. If you can't
12 see it from there, you can step down and get to a place that
13 you can watch it. Can you see it all right there, Mr.
14 Williams?

15 A: Yes, sir.

16 Q: Okay. Was that a yes?

17 A: Yes, sir.

18 Q: Sorry. The court reporter has to hear it or she doesn't
19 know what we're saying.

20 (WHEREUPON, the video was played.)

21 MR. STEPHENS: Can you pause it for just a second?

22 BY MR. STEPHENS:

23 Q: Mr. Williams, is that you in that -- in that video right
24 there?

25 A: Yes, sir.

DEVON WILLIAMS - CROSS BY MR. STEPHENS

1 Q: With the floppy hat?

2 A: Yes, sir.

3 Q: All right. I'm not going to make fun of your floppy hat
4 or anything, but --

5 MR. STEPHENS: You can go ahead.

6 Will you pause it, Mr. Hightower?

7 BY MR. STEPHENS:

8 Q: Mr. Williams, did you hear Dominique Williams say I took
9 your sack?

10 A: No, sir.

11 Q: All right. When the fight actually happened, do you
12 recall if you heard Mr. Williams, Dominique, say anything
13 about taking a sack from the -- from the defendant, Mr.
14 Duncan?

15 A: No, sir.

16 Q: You didn't see him pull out a bag of marijuana?

17 A: No, sir.

18 Q: All right. Mr. Williams, do you recall sending a text
19 message to -- to Jestin the Saturday of the fight saying to
20 bring that -- pardon my expression, I'm just reading. Bring
21 that shit to Chaplin?

22 A: No, sir.

23 Q: Did you have any discussions with Jestin about bringing
24 marijuana with him to Drew Bouldin's house on Chaplin?

25 A: No, sir.

DEVON WILLIAMS - CROSS BY MR. STEPHENS

1 Q: Okay. If -- if you sent a message that said bring that
2 shit to Chaplin, do you know what that might be in reference
3 to or you just have no idea?

4 A: No idea.

5 MR. STEPHENS: Oh, I apologize. I withdraw those
6 comments, Your Honor. It was another witness I was making
7 reference to.

8 BY MR. STEPHENS:

9 Q: All right. Mr. Williams, when you were interviewed by
10 law enforcement about the fight, did you tell them that -- or
11 do you recall telling them that the fight was because of
12 something that happened with Dom a year ago?

13 A: No, sir.

14 Q: Do you recall if you told them that John has wanted to
15 fight Dominique for a long time?

16 A: No, sir.

17 MR. STEPHENS: I beg the Court's indulgence, Your Honor.
18 I apologize.

19 BY MR. STEPHENS:

20 Q: All right. Now, after the fight, you thought that the
21 -- the beef, for lack of a better word, between John and Dom
22 was over?

23 A: Yes, sir.

24 Q: All right. You stayed for -- for about how long at
25 Dontarious' apartment?

DEVON WILLIAMS - CROSS BY MR. STEPHENS

1 A: A good hour.

2 Q: Okay. And is it fair to say you got no feeling that --
3 that John and Dom were about to get into it again during that
4 time with another fight? Is that fair to say?

5 A: Yes, sir.

6 Q: Okay. After you left, did you see or communicate with
7 John again before this shooting on the next -- next day?

8 A: No, sir.

9 Q: And do you recall telling law enforcement that you were
10 actually walking up and down the beach looking for someone to
11 buy Dom's puppy?

12 A: No, sir.

13 Q: All right. I'm sorry. I misspoke again. Jestin's
14 puppy. Just to restate the question so I don't confuse you,
15 do you recall telling anyone that you were walking up and
16 down the beach looking for someone to buy Jestin's puppy?

17 A: No, sir.

18 Q: Okay. Now, prior to the shooting, you said you -- you
19 saw John. I think you indicated on the video kind of when he
20 stepped across the road onto the grass walking towards you or
21 walking towards your group?

22 A: Yes, sir.

23 Q: Do you recall if anyone whistled or yelled or anything
24 like that to get John's attention before that?

25 A: No, sir.

DEVON WILLIAMS - CROSS BY MR. STEPHENS

- 1 Q: All right. Because you didn't see him; right?
- 2 A: Right.
- 3 Q: Is that right?
- 4 A: Yes, sir. No.
- 5 Q: Did you hear either Dom or Jestin yell or whistle?
- 6 A: No, sir.
- 7 Q: When John walked up, when did you see something that you
- 8 believed to be a pistol?
- 9 A: I wasn't aware of it being a pistol because it was
- 10 covered by the Crown Royal bag.
- 11 Q: Were you looking at it when he shot or did you just
- 12 realize after Dom was shot that there must've been a gun?
- 13 A: I was looking at it as he raised it towards, like,
- 14 shooting. Yes, sir.
- 15 Q: Did you see any part of a gun protruding from it?
- 16 A: A bullet hole. Yes, sir.
- 17 Q: So you saw a bullet hole after the shot?
- 18 A: Yes, sir.
- 19 Q: All right. And just before Dom was shot, when John
- 20 walked up and was yelling or -- did you hear -- I think you
- 21 said you heard him yell things when he walked up?
- 22 A: Yes, sir.
- 23 Q: Did Dom do anything?
- 24 A: No, sir.
- 25 Q: Did you see him move at all?

DEVON WILLIAMS - CROSS BY MR. STEPHENS

1 A: He froze.

2 Q: Did you see him say anything?

3 A: Not a word.

4 Q: Now, prior to John coming up, did you have any reason to
5 know that John was going to be on the beach there?

6 A: No, sir.

7 Q: Did you hear -- without asking the words said, did you
8 hear anything from Dom that gave you the impression Dom knew
9 that John was going to be on the beach?

10 A: No, sir.

11 Q: And your group wasn't there on the beach to try to
12 confront Dom -- or John? Sorry.

13 A: No, sir.

14 Q: Now, after this shooting, did you do anything to try to
15 find John after he ran away?

16 A: No, sir.

17 Q: You never tried to confront Dontarrious to find out where
18 John was?

19 A: No, sir. Oh, actually, yes. Actually, yes. Yes, I
20 did.

21 Q: And how did that happen?

22 A: We went to the Boys and Girls Club. We went up to the
23 Boys and Girls Club.

24 Q: Who is we?

25 A: Me and Jestin did.

DEVON WILLIAMS - CROSS BY MR. STEPHENS

1 Q: All right. To find out where John was?

2 A: To find out where Dontarious was.

3 Q: So you were trying to talk to Dontarious there at the
4 Boys and Girls Club?

5 A: About the situation because I had no idea what was going
6 on.

7 Q: Did Jestin -- whose idea was it to go there?

8 A: Mine.

9 Q: Okay. And after you left the Boys and Girls Club, you
10 went to talk to Coach Payne?

11 A: Yes, sir.

12 Q: Were you worried at all you might be in trouble?

13 A: About?

14 Q: For going to the Boys and Girls Club like that?

15 A: No, sir.

16 Q: All right. Now, is it fair to say that after this
17 shooting you were kind of angry at John for what happened?

18 A: Yes, sir.

19 Q: Are you still kind of angry about it?

20 A: Yeah.

21 Q: Has anybody talked to you at all about how to testify
22 here?

23 A: No, sir.

24 Q: Did you ever talk to Jestin about what you put in your
25 statement?

DEVON WILLIAMS - CROSS BY MR. STEPHENS

1 A: No, sir.

2 Q: Do you hang around with -- with Jestin? Or at the time
3 did you hang around with Jestin a lot?

4 A: Yes, sir.

5 Q: And no one told you about a robbery on the Friday before
6 this fight and this shooting; correct?

7 A: Yes, sir.

8 Q: All right.

9 MR. STEPHENS: I beg the Court's indulgence. I don't
10 know that I have anything else for Mr. Williams. I just need
11 one moment, sir.

12 I don't have any further questions for Mr. Williams.

13 Thank you.

14 MR. THORNTON: Nothing further, Your Honor. I'd ask he
15 be excused.

16 THE COURT: Yes, sir. You may step down.

17 THE FEMALE BAILIFF: Please watch your step.

18 THE COURT: Anybody want a break or do you want to keep
19 going?

20 (WHEREUPON, there was no response.)

21 THE COURT: Call your next witness.

22 MR. STEPHENS: I would request if we could just take a
23 short recess.

24 THE COURT: All right.

25 MR. STEPHENS: Sorry.

1 THE COURT: We're getting those requests from all sides.

2 All right. Let's take a five-minute recess, ladies and
3 gentlemen. I remind you it's too early to begin discussing
4 the case.

5 THE FEMALE BAILIFF: Please follow me. Leave your
6 notebooks if you have been taking notes.

7 (WHEREUPON, the jury exited the courtroom.)

8 THE MALE BAILIFF: The jury is clear, Your Honor.

9 THE COURT: All right. We'll be in recess.

10 MR. STONE: Thank you, Your Honor.

11 MR. STEPHENS: Thank you, Your Honor.

12 THE COURT: Five or six -- five or six minutes.

13 (WHEREUPON, there was a break in the proceedings, after
14 which the proceedings resumed as follows.)

15 THE COURT: We probably need to put something on the
16 record, don't we, about a sidebar we had? Did we put all of
17 that on the record? All of our sidebar is on the record?

18 MR. STEPHENS: Your Honor, I'm trying to remember which
19 one that -- that was. I think that there was the one thing
20 with the car video that you had ruled was you weren't going
21 to let us put in or weren't going to let the defense ask Mr.
22 Morrow about, about someone else saying I'm going to shoot
23 you in the face.

24 THE COURT: Right.

25 MR. THORNTON: Yes, sir. Which I believe they were

1 going to use.

2 THE COURT: There was a sidebar objection to the
3 question.

4 MR. THORNTON: Yes, sir.

5 MR. STEPHENS: Yes, sir.

6 THE COURT: I ruled at sidebar I would sustain the
7 objection and we'd put it on the record the next break.

8 MR. STEPHENS: Yes, Your Honor.

9 MR. THORNTON: Yes, sir.

10 MR. STEPHENS: And I don't -- I know this is kind of
11 bending over backwards to keep all of it out of the hearing
12 of the jury, but -- but I think that's -- **that's** all correct,
13 Your Honor.

14 MR. THORNTON: I believe so, Your Honor, that that is
15 correct. That was definitely the Court's ruling and that was
16 what Mr. Stephens had indicated to the Court that he was
17 going to introduce it for and he did, in the State's opinion,
18 properly, you know, come up ahead of time and do that and
19 didn't try to slip it in front of the jury, as we talked
20 about at pretrial.

21 MR. STEPHENS: Yeah. I think -- I think we covered the
22 -- the -- both positions pretrial as well.

23 THE COURT: Right. What does it look like, Solicitor,
24 from the State's perspective for the rest of the day or the
25 rest of the week?

1 MR. STONE: The rest of the day, some. We'll have at
2 least three witnesses tomorrow morning, maybe more depending
3 on how many we clear through today, and I would expect us to
4 be through I would guess by noon tomorrow.

5 MR. THORNTON: With our portion, yes, sir.

6 MR. STONE: With our portion.

7 MR. STEPHENS: And the defense witness list is probably
8 going to be trimmed -- trimmed away. I don't foresee more
9 than about three to four of those witnesses being called
10 tops, Your Honor. I don't think we'll have any problem in
11 finishing with the defense case tomorrow.

12 MR. THORNTON: So hopefully, we could get it to the jury
13 either Wednesday afternoon or Thursday morning, Judge,
14 depending on when everybody finishes. I wouldn't think any
15 later than Thursday morning.

16 MR. STEPHENS: Your Honor, if we -- if the opportunity
17 arises, the defense would like the opportunity to work on the
18 request to charge overnight so that we can have that ready
19 for Thursday, if that's the way scheduling turns out, but I'm
20 sure we can address that at the Court's convenience.

21 THE COURT: All right. All right. Is the State ready
22 to call your first witness or your next witness?

23 MR. THORNTON: Yes, sir.

24 THE COURT: Let's bring the jury in and let's bring the
25 witness in.

DAJON ROBINSON - DIRECT BY MR. THORNTON

1 THE FEMALE BAILIFF: The jury is entering the courtroom,
2 Your Honor.

3 (WHEREUPON, the jury entered the courtroom.)

4 THE FEMALE BAILIFF: The jury is seated, Your Honor.

5 THE COURT: Welcome back, ladies and gentlemen. I
6 believe we are ready to resume the presentation of evidence
7 by the State.

8 Solicitor?

9 MR. THORNTON: Thank you, Your Honor. Dajon Robinson.

10 THE FEMALE BAILIFF: Right this way to be sworn in.

11 THE CLERK: If you can place your left hand on the Bible
12 and raise your right hand. Do you solemnly swear or affirm
13 to truthfully answer all questions asked of you by this
14 Court, so help you God?

15 THE WITNESS: Yes.

16 THE FEMALE BAILIFF: Right this way. Watch your step.
17 I need you to adjust that microphone and speak directly into
18 it.

19 THE CLERK: If you can state your name and spell it for
20 the Court.

21 THE WITNESS: Dajon Robinson, D-a-j-o-n R-o-b-i-n-s-o-n.

22 DAJON ROBINSON, being first
23 duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. THORNTON:

DAJON ROBINSON - DIRECT BY MR. THORNTON

- 1 Q: All right. Dajon, I'm going to ask you to -- you did
2 exactly what I was going to tell you to do, which is pull the
3 microphone, but make sure you speak up. Not everyone is as
4 fortunate as me and doesn't have to use a microphone. So I
5 want you to make sure that the jury and that the court
6 reporter can hear you. Okay?
- 7 A: All right.
- 8 Q: All right. Now, is it Dajon or Dajon?
- 9 A: Dajon.
- 10 Q: Dajon? And your last name you said is Robinson; is that
11 right?
- 12 A: Yeah.
- 13 Q: All right. Dajon, do you have a nickname?
- 14 A: Pugg.
- 15 Q: Okay.
- 16 A: P-u-g-g.
- 17 Q: If earlier someone referred to Pugg Robinson, would that
18 likely be you?
- 19 A: That is me.
- 20 Q: All right. That is you. Dajon, let me ask you a
21 question. Where do you -- where do you live right now?
- 22 A: Hilton Head.
- 23 Q: Okay. And are you in school somewhere?
- 24 A: Gaffney, South Carolina.
- 25 Q: In Gaffney, South Carolina? What school is up there?

DAJON ROBINSON - DIRECT BY MR. THORNTON

1 A: Limestone.

2 Q: Okay. And do you play football at Limestone?

3 A: Yes, sir.

4 Q: At what position?

5 A: Safety.

6 Q: All right. Did you live in Hilton Head on or about --
7 we're going back a few years now. Okay? July 19th of 2015?

8 A: Yes.

9 Q: All right. And that was a Sunday. So let me talk to
10 you about the day before that, which would have been Saturday
11 the 18th of 2015. Okay?

12 A: All right.

13 Q: All right. On that Saturday -- well, let me back up for
14 just a second. Do you know someone by the name of John
15 Duncan?

16 A: Yes.

17 Q: And do you see him in the courtroom?

18 A: Yes.

19 Q: All right. And could you point him out for me?

20 A: (Indicating.)

21 Q: All right.

22 MR. THORNTON: Your Honor, I'd like to record to reflect
23 that he's indicated the defendant in this case, John Duncan.

24 THE COURT: So noted.

25 BY MR. THORNTON:

DAJON ROBINSON - DIRECT BY MR. THORNTON

- 1 Q: Mr. Robinson, how long have you known John Duncan?
- 2 A: Eighth grade.
- 3 Q: Since the eighth grade? All right. And do you also or
- 4 did you also know someone named Dominique Williams?
- 5 A: Yes.
- 6 Q: And how -- how did you know Dominique?
- 7 A: Childhood.
- 8 Q: Okay. Childhood friends?
- 9 A: Long time.
- 10 Q: So when -- did you play football with -- with John
- 11 Duncan?
- 12 A: Yes.
- 13 Q: On the same team?
- 14 A: In high school.
- 15 Q: In high school? All right. And did you play safety in
- 16 high school also?
- 17 A: Yes.
- 18 Q: All right. And was that for Hilton Head or Prep or who
- 19 was that for?
- 20 A: Hilton Head.
- 21 Q: Hilton Head High School?
- 22 A: Yes.
- 23 Q: Dajon, on Saturday, the 18th of July, 2015, did -- were
- 24 you present at a fight between Dominique Williams, the victim
- 25 in this case, and John Duncan?

DAJON ROBINSON - DIRECT BY MR. THORNTON

1 A: Yes, I was present.

2 Q: All right. And did you see them -- if you call that a
3 fight, did you see them have a fight?

4 A: Yes.

5 Q: Okay. And based on what you saw, do you think anybody
6 really won that fight?

7 A: No.

8 Q: All right. Remember, speak up for me.

9 A: No.

10 Q: After the fight was over, did -- first of all, do you
11 know whose house this was right outside of?

12 A: Dontarious.

13 Q: All right. Is that Dontarious Seay?

14 A: Yes. That's his last name, I think.

15 Q: And did y'all -- what happened after the fight is over?
16 Did y'all go -- go anywhere in particular?

17 A: We went up to his house.

18 Q: And when you say we, meaning everybody?

19 A: Yes.

20 Q: Including John Duncan?

21 A: Yes.

22 Q: Including Dominique?

23 A: Yes.

24 Q: All right. And did -- did you kind of think that
25 whatever the issue was that led to the fight that that was

DAJON ROBINSON - DIRECT BY MR. THORNTON

1 over now?

2 A: Yes. The beef was squashed.

3 Q: Okay. The beef was squashed? Does that mean the same
4 thing as when I said the fight was over?

5 A: Yeah.

6 Q: All right. So you said that the beef was squashed. At
7 some point while y'all were in Dontarious' house, did you
8 hear John Duncan say anything to Dominique?

9 A: Yeah.

10 Q: And what did he say?

11 A: If I don't get my weed back by 7 o'clock, I'm going to
12 get the strap.

13 Q: Going to get the strap? And what do you understand
14 going to get the strap to mean?

15 A: A gun.

16 MR. THORNTON: Court's indulgence, Your Honor.

17 BY MR. THORNTON:

18 Q: All right. So you talked about going to get the strap
19 and if he didn't get his -- when you say weed back by 7 p.m.,
20 was that it?

21 A: Yeah.

22 Q: All right. How close was Dominique to you when he said
23 that? I'm sorry. How close was John Duncan to Dominique
24 when John said that?

25 A: I can't remember. We were just all in the same room.

DAJON ROBINSON - DIRECT BY MR. THORNTON

1 Q: You were all in the same room? So --

2 A: So fairly close.

3 Q: All right. And when he -- when he said, again, going to
4 get the strap, you understand strap to mean what?

5 A: A gun.

6 Q: What happened after that? Did y'all stay for a long
7 time or did you leave?

8 A: We didn't stay for a long time. We left shortly after
9 that.

10 MR. THORNTON: I don't have anything further, Your
11 Honor. I'd ask that Dajon just answer any questions that Mr.
12 Stephens has.

13 THE COURT: Cross-examination, Mr. Stephens.

14 MR. STEPHENS: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. STEPHENS:

17 Q: Mr. Robinson, you played football with Jestin Morrow,
18 Devon Williams, and the defendant, Mr. Duncan, back -- back
19 when this happened?

20 A: Yes, I did.

21 Q: All right. And is it fair to say you also socialized
22 with Jestin and Devon and sometimes Mr. Duncan?

23 A: Yeah.

24 Q: All right. Okay. At some point on this weekend of July
25 17th to 19th, did you become aware that or did you learn that

DAJON ROBINSON - CROSS BY MR. STEPHENS

1 Dom, Jestin, and Trey Days had robbed Mr. Duncan of some
2 weed, marijuana?

3 A: Yes. I heard about it, yes.

4 Q: Do you recall where you heard about it?

5 A: Excuse me?

6 Q: Do you recall who told you?

7 A: No, I don't.

8 Q: Did you speak to Dom or Jestin about the weed that they
9 now had?

10 A: Yeah. Saturday, before the fight.

11 Q: Do you recall sending a text message to Jestin asking
12 him to, quote, bring that shit to Chaplin?

13 A: No.

14 Q: On Saturday, where were you when you first met up with
15 Jestin and Dom?

16 A: At my friend's house.

17 Q: Is that Drew Bouldin?

18 A: Yeah.

19 Q: And he lives in Chaplin, off Chaplin Park?

20 A: Yeah.

21 Q: All right. Now, when did you first find out that there
22 was going to be a fight between the defendant and -- and Dom
23 Williams?

24 A: When we got to Drew's house.

25 Q: When you got to Drew's house?

DAJON ROBINSON - CROSS BY MR. STEPHENS

- 1 A: Yeah.
- 2 Q: And how did you find out there was going to be a fight?
- 3 A: They told us.
- 4 Q: Who is they?
- 5 A: Drew.
- 6 Q: Do you recall driving to John's house in the Woodhaven
- 7 area, the south side of Hilton Head, that afternoon?
- 8 A: Yeah.
- 9 THE COURT: Mr. Robinson, you've got to speak into the
- 10 microphone. The jurors can't hear you.
- 11 BY MR. STEPHENS:
- 12 A: Yes, I do.
- 13 Q: Do you recall why you drove over there?
- 14 A: For a fight.
- 15 Q: You were looking for John?
- 16 A: Yeah.
- 17 Q: And what was your understanding about who wanted this
- 18 fight?
- 19 A: It was a fight about weed that was tooke[n] [sic] from
- 20 John. So he wanted to fight Dominique to get his weed back.
- 21 Q: So John wanted to fight Dominique to get his weed back?
- 22 A: That was my understanding of it.
- 23 Q: Did anyone ever tell you that John was scared to fight
- 24 Dominique?
- 25 A: No.

DAJON ROBINSON - CROSS BY MR. STEPHENS

1 Q: Was it your understanding that Jestin wanted Dom to
2 fight Dominique to squash any beef between the two?

3 A: Yes.

4 Q: So is it fair to say that Jestin was kind of a leader on
5 the football team?

6 A: Yes.

7 Q: All right. So you drove with Drew Bouldin to John's
8 house in Woodhaven?

9 A: Yeah.

10 Q: And was John there?

11 A: No.

12 Q: So what did you do next?

13 A: We went to -- I don't know what the apartment complex is
14 called, but where Dontarious' house was.

15 Q: And did you find John there?

16 A: Yes.

17 Q: What did you do after you found John at Dontarious'
18 house?

19 A: We went down to a field in the little complex and that's
20 where they fought.

21 Q: When you say they, you mean Dominique Williams --

22 A: John and Dominique.

23 Q: -- and John Duncan. And Jestin was also there?

24 A: Yes.

25 Q: And Devon?

DAJON ROBINSON - CROSS BY MR. STEPHENS

1 A: Yes.

2 Q: And Devon, Jestin, and Dominique all came in a car
3 together to that location; right?

4 A: Yes.

5 Q: Do you know how they knew that John was at Cordillo
6 Apartments?

7 A: Through us, me and Drew, because we were there already.

8 Q: So you -- one of you got in touch with Jestin or Dom and
9 let them know that John was at the Cordillo Apartments?

10 A: Yes.

11 Q: And they came over for that fight?

12 A: Yes.

13 Q: Now, after this fight, everybody went up to Dontarious'
14 -- Dontarious' apartment?

15 A: Yes.

16 Q: Were y'all friends with Dontarious?

17 A: We were cool.

18 Q: Did you -- Dontarious wasn't on the football team at
19 that point; right?

20 A: No, he wasn't.

21 Q: Is it fair to say that you would regard him as John's
22 friend?

23 A: Yeah.

24 Q: But not really somebody that y'all hung out with?

25 A: Yes.

DAJON ROBINSON - CROSS BY MR. STEPHENS

1 Q: Do you recall if Dontarious invited everybody up there
2 or you just kind of rolled up as a -- as a group after the
3 fight?

4 A: We pretty much just went up there.

5 Q: All right. Do you recall how long you stayed there?

6 A: Thirty minutes max.

7 Q: Now, after the fight, you said a comment that you heard
8 John make. Did you hear Dom say anything like don't let me
9 hear anything about this fight or don't let me see you around
10 here anymore?

11 A: Who said that?

12 Q: Did you hear Dom say anything to John Duncan about not
13 wanting to hear anything else about the stolen weed or not
14 wanting to hear -- to see him around anymore?

15 A: No.

16 Q: Did you see Dom talking to John Duncan at all after
17 this?

18 A: They may have exchanged words.

19 Q: All right. Did you see John after this fight happened
20 after everyone left Dontarious' apartment?

21 A: No.

22 Q: Do you recall if John had tried to get in touch with you
23 at all after -- after this fight was over?

24 A: Yes.

25 Q: Did you -- did you have a chance to speak with him or

DAJON ROBINSON - CROSS BY MR. STEPHENS

- 1 did he just --
- 2 A: It was through text message.
- 3 Q: And do you recall what the subject of those text
- 4 messages were?
- 5 A: Where you at from him, from John. I said at work. He
- 6 said okay. Nothing more.
- 7 Q: Okay. But you don't recall him saying -- texting you
- 8 anything about asking where to find Dom --
- 9 A: No.
- 10 Q: -- or anything like that?
- 11 A: No.
- 12 Q: What impression did you get from him -- what did you
- 13 think he wanted to know when he was asking where you were at?
- 14 A: Where I was.
- 15 Q: Did you -- did you believe that he wanted to go do
- 16 something with you?
- 17 A: With me?
- 18 Q: Socialize, you know, get up someplace on the south side
- 19 of Hilton Head or anything like that?
- 20 A: No.
- 21 Q: Now, you -- on the day of the shooting, you had been
- 22 with Devon and Jestin and Dom earlier in the day?
- 23 A: Yes.
- 24 Q: And then you had to go to work?
- 25 A: Yes.

DAJON ROBINSON - CROSS BY MR. STEPHENS

1 Q: Were there any discussions about the fight and about
2 John and his threats to hurt Dominique?

3 A: No.

4 Q: When -- when you heard John say something like getting
5 back my -- if I don't get my weed back, I'm going to get my
6 strap or words to that effect, did you take them seriously?

7 A: No.

8 Q: And why is that?

9 A: Because he was known to make a lot of similar threats,
10 but never followed through.

11 Q: Is it fair to say that there are other people in your
12 social group, guys in Hilton Head Island, who also said silly
13 stuff like I'm going to beat you or I'm going to shoot you or
14 words like that?

15 A: Not so much as shoot, but maybe a threat here or there.

16 Q: Do you recall if that's the sort of thing you've ever
17 said to one of your friends?

18 A: Shoot? As far as shooting?

19 Q: Yes.

20 A: No.

21 Q: All right. Now, at the -- in the fight, did -- did you
22 see Dom pull out any of the marijuana that he had stolen
23 before?

24 A: During the fight?

25 Q: Well, during that whole kind of event at the Cordillo

DAJON ROBINSON - CROSS BY MR. STEPHENS

1 Apartments at any time?

2 A: So including us going up to the house?

3 Q: Pardon?

4 A: Including us going up to the apartment?

5 Q: Yeah.

6 A: Yeah.

7 Q: Okay. So at some point, Dom pulled out the weed and
8 showed what there was left?

9 A: Yeah.

10 Q: And when y'all were up in the apartment, was everybody
11 pretty much around the same area, location?

12 A: Yes.

13 Q: So it wasn't, like, a huge apartment with a bunch of
14 different rooms?

15 A: No.

16 Q: All right.

17 MR. STEPHENS: I beg the Court's indulgence.

18 THE COURT: All right.

19 BY MR. STEPHENS:

20 Q: Now, after you found out about this shooting, did
21 somebody tell you that John Duncan was the person who had
22 shot Dom?

23 A: Yes.

24 Q: And that made you angry towards John?

25 A: Yes.

DAJON ROBINSON - CROSS BY MR. STEPHENS

1 Q: Would it be fair to say you're still kind of angry
2 towards him?

3 A: You could use that word.

4 Q: All right. So after the fight was over at the Cordillo
5 Apartments and everybody went upstairs, did either John or
6 Dom still seem angry towards the other one?

7 A: John did. He seemed angry because he didn't receive the
8 weed back.

9 Q: But you still didn't take it seriously?

10 THE COURT: Just a little bit louder. I think the jury
11 is having trouble.

12 BY MR. STEPHENS:

13 A: John seemed angry because he didn't receive his weed
14 back.

15 Q: And --

16 A: Dominique was no longer angry.

17 Q: So Dominique was happy-go-lucky after this fight was
18 over?

19 A: He was no longer angry.

20 Q: All right. And -- and John still seemed angry?

21 A: Yes.

22 Q: But no one -- but you didn't take it seriously when he
23 said that he would get his strap?

24 A: No.

25 Q: All right. When he said that, was there anyone else

DAJON ROBINSON - CROSS BY MR. STEPHENS

1 around you that you saw?

2 A: The people who were there.

3 Q: Like, everybody who was there was in that area?

4 A: Yeah.

5 Q: Okay.

6 MR. STEPHENS: Thank you. No further questions.

7 THE COURT: Redirect?

8 MR. STONE: Only one question.

9 REDIRECT EXAMINATION

10 BY MR. THORNTON:

11 Q: After he shot and killed Dominique, do you take him
12 seriously now?

13 MR. STEPHENS: Objection -- objection, Your Honor.

14 MR. STONE: Withdrawn, Your Honor.

15 THE COURT: The question is withdrawn.

16 All right. Thank you, sir. You may step down.

17 THE FEMALE BAILIFF: Watch your step.

18 THE COURT: You may call your next witness.

19 MR. STONE: Richard Jaquiss.

20 THE CLERK: If you can place your left hand on the
21 Bible. Raise your right hand, please. Do you solemnly swear
22 or affirm to truthfully answer all questions asked of you by
23 this Court, so help you God?

24 THE WITNESS: Yes.

25 THE FEMALE BAILIFF: Please watch your step. You can

RICHARD JAQUISS - DIRECT BY MR. STONE

1 adjust the microphone. I need you to speak directly into it
2 and loudly, please. Thank you.

3 THE CLERK: If you can state your name and spell it for
4 the record.

5 THE WITNESS: Richard Jaquiss, J-a-q-u-i-s-s.

6 RICHARD JAQUISS, being first
7 duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. STONE:

10 Q: And what do you do, Mr. Jaquiss?

11 A: I'm a general manager at the Frosty Frog Café.

12 Q: And how long have you been the general manager there?

13 A: About 14 years.

14 Q: So in July of 2015, you were the general manager there
15 as well; right?

16 A: Yes, that's correct.

17 Q: Now, are there -- and first, let me go back here. We've
18 got a -- I don't know that I've shown you this. This has
19 been marked as State's Exhibit 13. I'd ask if you can take a
20 look at that and identify it. It's got a red dot indicating
21 Frosty Frog. Is that -- is that where that is? Is that your
22 establishment?

23 A: Yes, that's correct.

24 Q: All right. And it also indicates that there's a camera
25 on the Frosty Frog; is that correct?

RICHARD JAQUISS - DIRECT BY MR. STONE

1 A: Yes, it is.

2 Q: All right. Tell me about that?

3 A: For safety purposes, we had cameras installed throughout
4 inside and outside just to help with, you know, any kind of
5 trouble that we have.

6 Q: Does the -- and do these cameras record what's going on
7 and then it saves it or --

8 A: They do.

9 Q: -- how does that work?

10 A: They do. They record it.

11 Q: And that's contemporaneous with the events happening
12 that it's showing; is that correct?

13 A: That's correct, yes.

14 Q: And then you keep those -- I guess the copies of it or
15 whatever in the ordinary course of business at the Frosty
16 Frog; is that right?

17 A: Yeah. We keep them and if there's -- if there's
18 something that happens, I'll record it, save it, and, you
19 know, put it on a hard drive.

20 Q: And all of that is done as the event is taking place; is
21 that right?

22 A: Correct.

23 Q: Okay. I'll show you what's been marked as State's
24 Exhibit 35, a video of the Frosty Frog surveillance video.
25 Have you reviewed that?

RICHARD JAQUISS - DIRECT BY MR. STONE

1 A: I have.

2 Q: And is that a fair and accurate depiction of the outside
3 of Frosty Frog, the video in that -- that sidewalk area, so
4 to speak?

5 A: Yes, most definitely.

6 MR. STONE: Your Honor, at this time, we'd move State's
7 Exhibit 35 into evidence.

8 MR. STEPHENS: No objection, Your Honor. Thank you.

9 THE COURT: The motion is granted. It's admitted into
10 evidence.

11 (WHEREUPON, State's Exhibit Number 35, surveillance
12 video from the Frosty Frog, was admitted in evidence.)

13 MR. STONE: And, at this time, Your Honor, I would
14 publish State's Exhibit 35.

15 THE COURT: Certainly.

16 (WHEREUPON, State's Exhibit Number 35, surveillance
17 video from the Frosty Frog, was played in court.)

18 MR. STONE: Okay. If you could pause it, Dylan?

19 BY MR. STONE:

20 Q: At the bottom -- and I don't know that you can see that
21 from there. So if you want to come down, that's perfectly
22 fine.

23 (WHEREUPON, the witness complied.)

24 Q: I'm going to get out of your way and let you stand here,
25 if you will. At the bottom here on the bottom right, there

RICHARD JAQUISS - DIRECT BY MR. STONE

1 seems to be a date stamp and a timestamp; is that correct?

2 A: Yes.

3 Q: And what does that indicate?

4 A: It says 7/19/2015, 2012.

5 Q: All right. That's military time?

6 A: That's military.

7 Q: So that's?

8 A: 8:12.

9 Q: 8:12 basically?

10 A: Uh-huh. Yes.

11 Q: All right.

12 A: And five seconds.

13 Q: All right. And that date stamp and timestamp is
14 correct?

15 A: I believe it is, yes.

16 Q: Okay. Thank you. Go ahead and take a seat. And I'll
17 show you what has been put into evidence already as State's
18 Exhibit 10 and 11. Are those fair and accurate photographs
19 of and still photos of that video that we just showed you?

20 A: Yes, they are.

21 Q: Okay. And the date stamp, timestamp is down there at
22 the bottom of that as well; is that correct?

23 A: That is correct.

24 Q: Okay.

25 MR. STONE: I don't have any further questions of this

RICHARD JAQUISS - CROSS BY MR. STEPHENS

1 witness, Your Honor. Thank you.

2 THE COURT: Cross-examination?

3 MR. STEPHENS: Just I think it will be one or two
4 questions, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. STEPHENS:

7 Q: Sir, is it fair to say you don't know who those people
8 are in that video?

9 A: Personally, I do not know them.

10 Q: All right. You just pulled the video when it was
11 requested; is that fair?

12 A: That is fair.

13 Q: All right.

14 MR. STEPHENS: Thank you. No further questions.

15 MR. STONE: Thank you, Mr. Jaquiss. I appreciate it.

16 THE WITNESS: Yes.

17 THE FEMALE BAILIFF: Please watch your step.

18 THE COURT: Call your next witness.

19 MR. STONE: The State calls Dontarious Seay. May we
20 approach, Your Honor?

21 THE COURT: Yes.

22 (WHEREUPON, a bench conference was held in the presence
23 of the jury but out of the hearing of the jury off the
24 record, after which the proceedings resumed as follows.)

25 MR. STONE: Your Honor, we're looking for the next

DONTARIOUS SEAY - DIRECT BY MR. STONE

1 witness and we will get him. He is not where he was
2 previously.

3 THE COURT: All right.

4 THE FEMALE BAILIFF: Right this way to be sworn in.

5 THE CLERK: If you could place your left hand on the
6 Bible and raise your right hand. Do you solemnly swear or
7 affirm to truthfully answer all questions asked of you by
8 this Court, so help you God?

9 THE WITNESS: Yes, ma'am.

10 THE CLERK: Okay.

11 THE FEMALE BAILIFF: All right. Please watch your step.
12 I need you to adjust the microphone. Put your mouth right
13 next to it and speak loudly.

14 THE CLERK: If you could state your name and spell it
15 for the record.

16 THE WITNESS: Dontarious Seay, D-o-n-t-a-r-i-o-u-s
17 S-e-a-y.

18 DONTARIOUS SEAY, being first
19 duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. STONE:

22 Q: Mr. Seay, you've been subpoenaed to be here today; is
23 that correct?

24 A: Yes, sir.

25 Q: Okay. You are a friend of John Duncan's; is that

DONTARIOUS SEAY - DIRECT BY MR. STONE

1 correct?

2 A: Yes, sir.

3 Q: You were with John Duncan on the day of the shooting,
4 were you not?

5 A: Yes, sir.

6 Q: When -- when did you first -- and I'll talk specifically
7 about the day of the shooting. When did you first hear from
8 John Duncan that day on Sunday?

9 A: Timewise, I don't know. It was early. Like, I don't
10 know. Midday probably.

11 Q: Okay. When did you first meet up with John Duncan?

12 A: Once again, I don't know the time, sir.

13 Q: Okay. When he got -- did he come pick you up or did you
14 go pick him up?

15 A: We met somewhere.

16 Q: Where did you meet?

17 A: The crossings between the roads. I don't know the name
18 of it. Cordillo and Woodhaven. We met at the intersection.

19 Q: Where were you living at the time?

20 A: Cordillo Courts.

21 Q: And where was he living?

22 A: Woodhaven.

23 Q: And those are pretty close to each other?

24 A: Yes, sir.

25 Q: I'll show you what's been marked as State's Exhibit 14.

DONTARIOUS SEAY - DIRECT BY MR. STONE

1 At the very top, is that where John Duncan was living? And
2 you were living somewhere close to him; is that correct?

3 A: Yes, sir.

4 Q: All right. And you met up. If I'm looking again at
5 State's Exhibit 14, where did you meet with -- with John
6 Duncan?

7 A: Like, the intersection in between the roads.

8 Q: Okay. Between these roads down here?

9 A: Yes, sir.

10 Q: Okay. When you met up with John Duncan, what was your
11 intention? Where were you going?

12 A: Just on a walk to the beach.

13 Q: Any particular reason why?

14 A: No, sir.

15 Q: Did you know he had a gun on him at the time?

16 A: No, sir.

17 Q: Where did you go directly from his house? When you left
18 his house, did you walk or did you drive?

19 A: Once again, we weren't at his house.

20 Q: Okay. You met on this -- this intersection?

21 A: Correct.

22 Q: So right outside of his house; is that correct?

23 A: Yes.

24 Q: Okay. Once you meet up with him, are you driving or
25 were you riding?

DONTARIOUS SEAY - DIRECT BY MR. STONE

1 A: No. We were walking. We walked to the beach.

2 Q: Okay. You walked to the beach?

3 A: Correct.

4 Q: How did you get there?

5 A: We cut through the Coligny Plaza.

6 Q: Okay. And then when you cut through the Coligny Plaza,
7 this is around where Frosty Frog is?

8 A: Like I said, like I told you before, I don't remember
9 being there, but apparently.

10 Q: I'll show you what's been marked and put into evidence
11 as State's Exhibit 10 and 11. Is that you and John Duncan
12 outside of the Frosty Frog?

13 A: Yes, sir.

14 Q: Okay. All right. And the time on that says 8:11. Is
15 that about right?

16 A: I'm not sure of the time.

17 Q: And you cut through the Frosty Frog in order to get to
18 the beach?

19 A: Correct.

20 Q: All right. Where did you go after the Frosty Frog?

21 A: We went out back towards -- like I said, there's a hotel
22 back there and we exited or we entered the beach that way.

23 Q: Okay. All right. Going back to State's Exhibit 14,
24 when you left Frosty Frog, which is down here, where did you
25 go from there?

DONTARIOUS SEAY - DIRECT BY MR. STONE

1 A: This direction onto the beach.

2 Q: Okay. And then from here, where did you go?

3 A: Walked up the beach, came out at the fountains, and
4 headed back towards the plaza.

5 Q: Back towards the plaza back here?

6 A: Yes, sir.

7 Q: Okay. When you went back towards the plaza, what
8 happened after that?

9 A: As we were walking, we heard a noise. We looked.
10 Couldn't really tell who that was. So we decided to keep
11 walking. The noise got heard again. Afterwards, John Duncan
12 decided to walk towards that, the sound, and then --

13 Q: And by the way, was the sound coming from this -- the
14 bigger circle, the big Coligny Circle?

15 A: It was coming from if you were entering from the parking
16 lot area.

17 Q: Under State's Exhibit 12, was it coming from somewhere
18 in this area?

19 A: Correct.

20 Q: Okay. All right. So at that point, John Duncan decided
21 to walk in that direction; is that right?

22 A: Correct.

23 Q: Speed walking I believe, as you put it?

24 A: He was walking.

25 Q: Okay. Do you recall saying he was speed walking?

DONTARIOUS SEAY - DIRECT BY MR. STONE

- 1 A: No, I don't recall that, sir.
- 2 Q: Okay. And then as he was walking toward, where were
3 you?
- 4 A: Behind him.
- 5 Q: Okay. How far behind him?
- 6 A: Distance wise, I couldn't tell you.
- 7 Q: What happened after that?
- 8 A: A gunshot when off.
- 9 Q: Now, where were you standing when the gunshot went off?
- 10 A: At the edge of the circle, I guess, like, entering the
11 fountain area.
- 12 Q: Okay. And where was John Duncan standing?
- 13 A: In the grass area, I guess.
- 14 Q: All right. Did you see the people that were in front of
15 John Duncan?
- 16 A: Yes, sir.
- 17 Q: Who were they?
- 18 A: Jestin, Dominique, and Devon.
- 19 Q: Jestin Morrow?
- 20 A: Jestin Morrow, yes, sir.
- 21 Q: And Dominique Williams?
- 22 A: Yes, sir.
- 23 Q: And Devon Williams?
- 24 A: Yes, sir.
- 25 Q: And they were where?

DONTARIOUS SEAY - DIRECT BY MR. STONE

- 1 A: At this time, they were in front of him.
- 2 Q: Okay. They were in front of him? They were in that
3 little small circle area?
- 4 A: Correct.
- 5 Q: Did Dominique have to walk across the grass to get to
6 him?
- 7 A: Not at all.
- 8 Q: Okay. How did he get there? How did Dom -- how did
9 John Duncan get to Dominique, Devon, and Jestin?
- 10 A: He walked across the grass.
- 11 Q: Okay. So he walks across the grass, gets to them, and
12 then what happens after that?
- 13 A: A gunshot goes off.
- 14 Q: How does a gunshot go off? What do you mean by that?
- 15 A: Someone shot someone.
- 16 Q: Well, who was the someone and who got shot?
- 17 A: John Duncan shot Dominique Williams.
- 18 Q: And when John Duncan shot Dominique Williams, how far
19 away were you from it when it happened?
- 20 A: Distance wise, once again, sir, I don't know.
- 21 Q: Did you hear him say -- did you hear John Duncan say
22 anything to Dominique before he shot him?
- 23 A: No, sir.
- 24 Q: Did you hear him say anything afterwards?
- 25 A: No, sir.

DONTARIOUS SEAY - DIRECT BY MR. STONE

1 Q: Do you recall telling officers that you heard him say
2 something afterwards?

3 A: Not at all.

4 Q: Before John Duncan shot Dominique, did you see -- did
5 you see him with a gun?

6 A: No, sir.

7 Q: Did you know he had a gun?

8 A: No, sir.

9 Q: When he pulled the gun out, what did it look like?

10 A: All I saw was a purple bag, sir.

11 Q: A purple bag?

12 A: Correct.

13 Q: Is that, like, a Crown Royal bag?

14 A: Correct.

15 Q: Where did he pull it out from?

16 A: I couldn't really tell you. I just know it came out.

17 Q: So you see the purple bag and then you see him shoot him
18 through the bag?

19 A: Yes, sir.

20 Q: But you did not know that John Duncan had a gun with him
21 that day until you saw the purple bag; is that right?

22 A: Correct.

23 Q: Okay. Did Duncan tell you that he was going to shoot
24 Dominique?

25 A: No, sir.

DONTARIOUS SEAY - DIRECT BY MR. STONE

1 Q: Do you recall telling the police officers that John
2 Duncan did what he said he was going to do?

3 A: No recollection.

4 Q: Okay. Well, let me be more specific on that. Do you
5 recall talking to Investigator Reynells and Investigator
6 Levant, two investigators with the Beaufort County Sheriff's
7 Office?

8 A: No, sir.

9 Q: Okay. Do you recall talking to them at the Beaufort
10 County Sheriff's Office, the substation, the station on
11 Hilton Head?

12 A: I remember I had to go down there to have a conversation
13 with them. Yes, sir.

14 Q: Okay. And in fact, do you recall doing that twice, once
15 on the 20th and once on the 22nd, the day after the shooting
16 and two days after that?

17 A: That sounds about right.

18 Q: Okay. And on the 20th, you went down there about 7:21
19 a.m., sometime around 7:30?

20 A: Sounds about right.

21 Q: All right. And on the 22nd, sometime about two, two in
22 the afternoon; is that right?

23 A: Sounds about right.

24 Q: Do you recall telling the officer that John Duncan told
25 you he had been robbed before, but he wasn't going to be

DONTARIOUS SEAY - DIRECT BY MR. STONE

1 robbed again, he would take matters into his own hands?

2 A: Can you repeat your question?

3 Q: Do you recall telling the officers that John Duncan had
4 been robbed before and he told you he wasn't going to be
5 robbed again, he was going to take matters into his own
6 hands?

7 A: I remember having a conversation with John about this
8 and I remember him saying it wasn't going to happen again.

9 Q: But that's -- that's after the first robbery?

10 A: Correct.

11 Q: After another robbery, he says it's not going to happen
12 again?

13 A: (No verbal response.)

14 Q: Do you remember telling the officers --

15 THE COURT REPORTER: I'm sorry. He didn't answer.

16 Q: -- that?

17 A: Correct.

18 Q: Okay. I'm sorry. I interrupted. Correct. And that he
19 was going to take matters into his own hands, that he would
20 not get robbed again; is that correct?

21 A: Correct.

22 Q: In that same interview when you are talking to these
23 officers, do you recall telling the officers that John Duncan
24 did what he said he was going to do?

25 A: Those exact words?

DONTARIOUS SEAY - DIRECT BY MR. STONE

1 Q: Something close to those exact words?

2 A: No, sir.

3 Q: You don't remember that?

4 A: (No verbal response.)

5 MR. STONE: I don't have any further questions of this
6 witness.

7 THE COURT: Cross-examination.

8 CROSS-EXAMINATION

9 BY MR. STEPHENS:

10 Q: Good afternoon, Mr. Seay.

11 A: Good afternoon.

12 Q: The solicitor was just asking you about the interviews
13 you had with the investigators with the Beaufort County
14 Sheriff's Office. I'd like to ask you some questions, at
15 least to start with, about that first interview. Do you
16 recall what time you were brought? I know the solicitor
17 asked about what time the questioning might have been done,
18 but do you remember what time you were brought to the
19 Sheriff's Office to be questioned?

20 A: Not exactly. I just know I was woken up at 3 o'clock in
21 the morning.

22 Q: Okay.

23 A: Or around that time.

24 Q: So you were woken up around 3 o'clock in the morning.

25 Did law enforcement officers tell you they'd like you to come

DONTARIOUS SEAY - CROSS BY MR. STEPHENS

- 1 down to the Sheriff's Office to speak with them or did they
2 tell you you had to come to the Sheriff's Office to speak
3 with them?
- 4 A: I'm not sure, sir.
- 5 Q: All right. Did you feel like you had a choice, that you
6 had to go with them?
- 7 A: I didn't have a choice.
- 8 Q: All right. And I believe you were a minor at the time?
- 9 A: Correct.
- 10 Q: Was your mom around?
- 11 A: Correct.
- 12 Q: Do you know if anyone explained to her what was going
13 on?
- 14 A: I'm not sure at all, sir.
- 15 Q: All right. You were brought down to the Sheriff's
16 Office to be interviewed. You said they got you out of bed
17 around three in the morning. Do you remember how much sleep
18 you had that night?
- 19 A: Probably not -- not much at all.
- 20 Q: Do you know how long you had to wait around before they
21 started asking questions?
- 22 A: No, sir.
- 23 Q: Did you get any food or drinks or anything like that
24 while you were waiting to be questioned?
- 25 A: I believe I got something to drink as they were

DONTARIOUS SEAY - CROSS BY MR. STEPHENS

1 questioning me.

2 Q: All right. The officers came in and questioned you. Do
3 you recall Investigator Reynells telling you that your
4 answers were bullshit?

5 A: I do recall something of that matter.

6 Q: Do you remember Investigator Reynells telling you that
7 he was angry?

8 A: Something of that matter.

9 Q: Do you recall whether you asked them to stop questioning
10 you?

11 A: I do not recall that at all.

12 Q: Do you recall if they threatened to charge you with an
13 offense if you didn't cooperate?

14 A: They definitely did that.

15 Q: And were you frightened at some point that you had --
16 did you feel frightened at some point about this questioning?

17 A: I felt like if I wasn't answering truthfully, I was also
18 going to be charged.

19 Q: Okay. Were you answering them truthfully?

20 A: Yes, sir.

21 Q: Or did -- to the best of your recollection at that time?

22 A: Yes, sir.

23 Q: But you said that you had not really slept that night.

24 Do you feel like you were clearheaded and fully alert when
25 you were answering their questions?

DONTARIOUS SEAY - CROSS BY MR. STEPHENS

1 A: No, sir.

2 Q: All right. Now, at some point, you went back and were
3 interviewed again by the Sheriff's Office; correct?

4 A: Correct.

5 Q: At that point, is it fair to say that you were more
6 clearheaded and had slept some?

7 A: Correct.

8 Q: Do you remember why you went back to the Sheriff's
9 Office?

10 A: I'm guessing because they told me to.

11 Q: After the shooting, do you recall if -- or did you
12 become aware that Jestin Morrow and Devon Williams were
13 trying to talk to you?

14 A: I wasn't aware until the incident happened.

15 Q: And what was the incident?

16 A: They tried to come talk to me at the Boys and Girls
17 Club. I suppose that's what was going on.

18 Q: And did they get to talk to you?

19 A: No, sir. They had put the Boys and Girls Club on a
20 lockdown.

21 Q: And what, if anything, did you do after they lifted this
22 lockdown at the Boys and Girls Club?

23 A: I want to say I went home.

24 Q: Do you recall if your mom took you to the Sheriff's
25 Office partly because of this incident?

DONTARIOUS SEAY - CROSS BY MR. STEPHENS

1 A: I believe that might have happened.

2 Q: Now, going back to the -- starting with the Friday
3 before this shooting, the 17th, did John talk to you at all
4 about being robbed?

5 A: Yes, sir.

6 Q: Did he tell you anything that made you think that he was
7 going to try to shoot the person who robbed him?

8 A: No, sir.

9 Q: Now, when you saw him on Saturday, was he -- did he seem
10 angry and pissed off to you?

11 A: No, sir.

12 Q: Did he talk to you at all about wanting to fight
13 Dominique?

14 A: No, sir.

15 Q: After John came to your apartment on Saturday, did Dajon
16 Robinson and Drew Bouldin come over?

17 A: Yes, sir.

18 Q: Did they tell you why they were coming there?

19 A: Because of a fight.

20 Q: They told you they were looking for John?

21 A: Right.

22 Q: So that he could fight Dominique?

23 A: Correct.

24 Q: While they were there, do you know if they -- did you
25 observe them contact anyone else?

DONTARIOUS SEAY - CROSS BY MR. STEPHENS

- 1 A: No, sir.
- 2 Q: Did anybody else show up at your apartment?
- 3 A: Devon Williams, Dominique, and Jestin Morrow.
- 4 Q: Did they come to your actual apartment?
- 5 A: I believe so. Yes, sir.
- 6 Q: Do you know why they were coming to your apartment?
- 7 A: To fight John.
- 8 Q: Was that going to be there at the apartment?
- 9 A: At first, it was, but then I wasn't going to allow that.
- 10 So I told them they had to go someplace else.
- 11 Q: And did you observe this fight that happened then
- 12 outside the apartment?
- 13 A: I was there. Yes, sir.
- 14 Q: And again, did you have any reason to believe that John
- 15 wanted this fight to happen?
- 16 A: No, sir.
- 17 Q: All right. When -- after the fight was over, did you
- 18 invite everybody back up to your apartment?
- 19 A: I didn't invite. It just kind of happened.
- 20 Q: Did anybody ask you if they could -- if they could hang
- 21 out there or did they just kind of roll up in the apartment?
- 22 A: Just kind of everybody just rolled up in there.
- 23 Q: After the fight was over, did you see John try to start
- 24 any fight again with Dominique?
- 25 A: No, sir. I believe after everyone came to the

DONTARIOUS SEAY - CROSS BY MR. STEPHENS

1 apartment, they talked about it for a little bit. John got
2 off into his own corner and everybody else was just still
3 talking about it.

4 Q: As you -- as you sit here five years -- almost five
5 years later, it's your testimony you don't recall whether
6 John had said any threats about hurting Dominique?

7 A: Not at the apartment. No, sir. Not at all.

8 Q: Did -- did you hear Dom say anything, any kind of
9 threats to John?

10 A: No, sir.

11 Q: Do you know if -- if they had words outside of where you
12 were in the apartment? I mean did they have a chance to --

13 A: They could have. They could have. I'm not saying they
14 didn't, but I didn't hear anything.

15 Q: Okay. And I want to go back to the -- one more point
16 about those interviews. When you were interviewed by law
17 enforcement, did anybody put you under oath and make you
18 swear to tell the truth?

19 A: No, sir.

20 Q: But when you came in here today, you were put under
21 oath; correct?

22 A: Correct.

23 Q: And is everything that you've told us been the truth to
24 the best of your recollection?

25 A: Yes, sir.

DONTARIOUS SEAY - CROSS BY MR. STEPHENS

1 Q: Now, so you wouldn't say things just to help out John,
2 who was your friend four or five years ago?

3 A: No, sir. I'm telling the truth and nothing but the
4 truth.

5 Q: All right. Now, when all this was -- the fight was
6 over, at some point did John leave -- leave your apartment
7 that Saturday?

8 A: I'm sure he did. Yeah. Just like everybody else.

9 Q: Do you know where he -- where he went that night?

10 A: No, sir.

11 Q: When was the next time you saw him?

12 A: When we got together to walk to the beach.

13 Q: And I think you testified that he said -- may have said
14 something like, you know, get your shoes, we're going or
15 something like that? Is that a fair statement? Or do you
16 recall? I'll put it like that.

17 A: I believe he -- I believe we talked on the phone. He
18 was, like, are you trying to go to the beach. I was, like,
19 all right, cool, let me throw on some shoes and I'm on my
20 way.

21 Q: Now, you and John had lived near each other for about
22 how long do you believe?

23 A: At least a year, probably more.

24 Q: Is it fair to say that neither one of you really had a
25 car that you were supposed to drive at that time?

DONTARIOUS SEAY - CROSS BY MR. STEPHENS

1 A: Correct.

2 Q: Was it your habit to go to the beach with John on a
3 fairly regular basis?

4 A: Yes, sir.

5 Q: And did you find anything unusual about John asking you
6 to go to the beach with him that day?

7 A: No, sir.

8 Q: When you were walking to the beach with John, did he
9 seem angry or upset?

10 A: I don't remember, sir.

11 Q: Did he say anything about wanting to hurt Dom while you
12 were walking to the beach?

13 A: No, sir.

14 Q: Do you recall if he had any conversations with other
15 people? I'm not asking about what was said, but do you
16 recall if he had conversations with other people while he was
17 with you?

18 A: He might've got a phone call. I think maybe two. I'm
19 not sure exactly what they were about.

20 Q: Okay. Did he say anything to you about those phone
21 calls?

22 A: Not that I remember, sir.

23 Q: Okay. Now, after he got to -- after you got to the
24 beach, you were walking along and I think you said that at
25 some point you heard a noise, some kind of noise, and looked

DONTARIOUS SEAY - CROSS BY MR. STEPHENS

1 for the source; right?

2 A: Correct.

3 Q: At some point, John turned around and started walking
4 back the other direction?

5 A: Correct.

6 Q: Do you know what was -- what was being yelled?

7 A: No, sir.

8 Q: All right.

9 MR. STEPHENS: I'd like to have this marked as the next
10 defense exhibit.

11 MR. STONE: Excuse me just a moment, Your Honor. He has
12 asked about camera 18. I think that -- are you talking about
13 the town video? Town surveillance video?

14 MR. STEPHENS: Yeah. It should be --

15 MR. STONE: That's going to be on there on State's
16 Exhibit 32.

17 MR. STEPHENS: All right. Begging the Court's
18 indulgence, Your Honor. Begging the Court's indulgence.

19 (WHEREUPON, the video was played.)

20 BY MR. STEPHENS:

21 Q: Now, Mr. Seay, if you will, just look at the screen up
22 there. Is that -- is that you and Mr. Duncan that you see in
23 that video or can you tell?

24 A: Yes, sir.

25 Q: Okay. Now, when you were walking there with Mr. Duncan,

DONTARIOUS SEAY - CROSS BY MR. STEPHENS

1 were you trying to find Dominique Williams or his friends?

2 A: No, sir.

3 MR. STEPHENS: Sorry, Your Honor. This jumps. I
4 apologize, Your Honor. I am going to actually ask to have my
5 own exhibit marked because I think they show the same things.

6 (WHEREUPON, counsel conferred.)

7 MR. STEPHENS: Your Honor, we were just discussing
8 foundation, but the defense is moving Defendant's Exhibit 2
9 into evidence. It's -- we believe it's the same camera
10 footage that the State has, but doesn't cut off at the same
11 point, Your Honor.

12 MR. STONE: No objection, Your Honor.

13 THE COURT: It's admitted without objection.

14 (WHEREUPON, Defendant's Exhibit Number 2, surveillance
15 video, was admitted into evidence.)

16 MR. STEPHENS: Thank you.

17 (WHEREUPON, the video was played.)

18 BY MR. STEPHENS:

19 Q: All right. Mr. Seay, I know this is not very clear, but
20 if you could look up at that screen at the top, at the top
21 center, is that you and Mr. Duncan?

22 A: Yes, sir.

23 Q: All right. If you would keep watching just a moment?

24 MR. STEPHENS: I apologize, Your Honor.

25 Can we back that up again?

DONTARIOUS SEAY - CROSS BY MR. STEPHENS

1 BY MR. STEPHENS:

2 Q: Now, right there, Mr. Seay, do you see the two of you
3 stopping? Did -- did you observe in that -- in that video
4 you and Mr. Duncan stopping --

5 A: Yes, sir.

6 Q: -- while you were walking? And do you recall what, if
7 anything, caused you to stop right there?

8 A: It could have been -- that could have been where we were
9 when the first noise came about.

10 Q: Well, let me -- if I can play the whole thing for you
11 again?

12 (WHEREUPON, the video was played.)

13 BY MR. STEPHENS:

14 Q: Now, is that Mr. Duncan walking back the way that you
15 had just come briskly?

16 A: Yes, sir.

17 Q: Quickly? Now, you had testified that you were walking
18 with Mr. Duncan and you heard something; correct?

19 A: Correct.

20 Q: And you then kept walking; is that correct?

21 A: Correct.

22 Q: And you heard something else?

23 A: Correct.

24 Q: And Mr. Duncan turned around and started walking back?

25 A: Right.

DONTARIOUS SEAY - CROSS BY MR. STEPHENS

1 Q: Is it fair to say, again, you don't recall or you don't
2 know what the noise was exactly?

3 A: No, sir.

4 Q: But you stopped. Did either one of you look back to see
5 the first time what the cause of the noise was?

6 A: We looked, but I -- my eyesight is not very good. So we
7 just decided to keep walking.

8 Q: Do you recall if Mr. Duncan said anything when you
9 stopped and heard that first noise?

10 A: I think he might've said is that Jestin.

11 Q: And after saying that, the two of you kept walking the
12 way you were?

13 A: Correct.

14 Q: Instead of immediately going back in that direction?

15 A: Correct.

16 Q: And something else was said to cause Mr. Duncan to then
17 turn around and start walking back?

18 A: Correct.

19 Q: But you're not going to try to claim that you heard what
20 it was, you just don't know?

21 A: I don't know, sir.

22 Q: But again, Mr. Duncan did immediately turn around and
23 start going towards the noise the first time and he asked is
24 that Jestin?

25 A: Correct.

DONTARIOUS SEAY - CROSS BY MR. STEPHENS

- 1 Q: Now, when -- now, Mr. Seay, how old were you when all
2 this happened?
- 3 A: Fifteen.
- 4 Q: Do you remember how old you were?
- 5 A: Fifteen.
- 6 Q: And do you -- do you know how old these -- these other
7 football players were? Devon? Dom?
- 8 A: Seventeen and eighteen.
- 9 Q: Were they friends of yours?
- 10 A: Yes, sir.
- 11 Q: So did you guys hang out together or did they just go to
12 school with you?
- 13 A: Hung out with a few of them.
- 14 Q: Now, right here, did you hear what was said, if
15 anything, between John and Jestin or the other gentleman when
16 John walked up?
- 17 A: No, sir.
- 18 Q: You were behind him when he walked up?
- 19 A: Correct.
- 20 Q: So at what point did you see if he had -- that he had
21 something in his hand, if ever?
- 22 A: Can you ask that question again?
- 23 Q: Well, you said that -- that he pulled something out and
24 shot. At what point did you realize, since you were behind
25 him, that he had something in his hand?

DONTARIOUS SEAY - CROSS BY MR. STEPHENS

1 A: When I seen the purple bag, I guess.

2 Q: Did you actually see a muzzle flash or anything like
3 that?

4 A: No, sir.

5 Q: Now, just before the shot, did you see -- did you see
6 anyone move? Did you see Jestin move towards John or Dom
7 move towards John?

8 A: As John walked up, I seen Devon and Jestin walk away
9 from Dominique.

10 Q: Now, having had a chance to watch that again, do you
11 recall if you saw Dom moving first away from Dominique --
12 excuse me -- away from Jestin but then back towards where he
13 and John were standing?

14 A: No.

15 Q: If you don't recall, that's fine. I was just -- I'm
16 asking if you saw Dom move at all or say anything?

17 A: No, sir.

18 Q: All right. After this shooting, did you go back and
19 check on Dom?

20 A: Yes, sir.

21 Q: When you went back to check on Dom, were Jestin or Devon
22 there?

23 A: In the area, but not where I was.

24 Q: Did you ever talk to them about what happened?

25 A: No, sir.

DONTARIOUS SEAY - CROSS BY MR. STEPHENS

1 Q: Did you ever have a chance to go to the Solicitor's
2 Office and talk to them about your testimony here, about how
3 you would testify here today?

4 A: I mean I went to the Solicitor's Office and talked to
5 them about what I've -- what I've said, not about what we
6 were going to talk about in here today.

7 Q: When was the last time you met with the Solicitor's
8 Office?

9 A: Last week, I want to say.

10 Q: Did you feel threatened or intimidated when you were
11 there?

12 A: At the end when I was leaving, I did, yes, sir.

13 Q: Why was that?

14 A: Because the solicitor here pulled me to the side and
15 told me that everything that I was saying was bullshit pretty
16 much, that if I didn't come into court with the -- with the
17 truth that he could possibly lock me up.

18 Q: Now, even hearing that, the solicitor saying, are you
19 testifying truthfully as to what you recall from almost five
20 years ago?

21 A: Yes, sir.

22 MR. STEPHENS: Thank you, Mr. Seay. No further
23 questions.

24 MR. STONE: Excuse me just a moment, Your Honor?

25 THE COURT: All right.

1 MR. STONE: I don't have anything else for this witness,
2 Your Honor.

3 THE COURT: Thank you, sir. You may step down.

4 THE FEMALE BAILIFF: Please watch your step.

5 THE COURT: What's it look like?

6 MR. STONE: I'll give you the full rundown. May I
7 approach and go over the schedule real quick?

8 THE COURT: Yes.

9 (WHEREUPON, a bench conference was held in the presence
10 of the jury but out of the hearing of the jury off the
11 record, after which the proceedings resumed as follows.)

12 THE COURT: Ladies and gentlemen of the jury, the
13 solicitor believes he has a witness that we could put up that
14 could be put up and finished with the cross-examination in
15 maybe total time of 30 minutes. My question to you is have
16 you had enough for the day or do you want to trudge forward?
17 What do you all want to do? Look at each other and talk to
18 each other and let me know.

19 (WHEREUPON, there was a pause in the proceedings, after
20 which the proceedings resumed as follows.)

21 THE FEMALE BAILIFF: Keep going, they said. Keep going.

22 THE COURT: You can call your next witness.

23 MR. STONE: The State calls Cedric Knighton.

24 THE COURT: All right.

25 THE FEMALE BAILIFF: Right this way to be sworn in.

CEDRIC KNIGHTON - DIRECT BY MR. STONE

1 THE CLERK: If you can place your left hand on the Bible
2 and raise your right hand. Do you solemnly swear or affirm
3 to truthfully answer all questions asked of you by this
4 Court, so help you God?

5 THE WITNESS: Yes.

6 THE FEMALE BAILIFF: Watch your step. You can adjust
7 the microphone. I need you to speak directly into it. Okay?
8 And speak loudly.

9 THE WITNESS: Okay.

10 THE CLERK: You can state your name and spell it for the
11 record.

12 THE WITNESS: Say that again?

13 THE CLERK: State your name and spell it for the record.

14 THE WITNESS: Cedric Knighton, C-e-d-r-i-c K-n-i-g-h-t-
15 o-n.

16 MR. STONE: Okay.

17 CEDRIC KNIGHTON, being first
18 duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. STONE:

21 Q: Mr. Knighton, let me ask you this go ahead and sit up in
22 that chair a little bit. We've got to get that microphone so
23 I can hear you. Okay?

24 A: All right.

25 Q: All right. Thank you, sir. Mr. Knighton, where do you

CEDRIC KNIGHTON - DIRECT BY MR. STONE

1 live, sir? Where do you live?

2 A: Bluffton, South Carolina.

3 Q: Okay. And how long have you lived there?

4 A: Well, I stay in Hilton Head really, but --

5 Q: You spend most of your time in Hilton Head?

6 A: Yes, sir.

7 Q: All right. You stay with your grandmother; is that
8 right?

9 A: Yes, sir.

10 Q: And did she bring you here today?

11 A: Yes, sir.

12 Q: Okay. When -- back in 2019 when this shooting took
13 place, were you living on Hilton Head or Bluffton? Where?

14 A: You said when? 2019?

15 Q: In 2015 when the shooting took place, where were you
16 living then?

17 A: I was living in Hilton Head.

18 Q: Okay. I'm going to get you to bring the microphone just
19 a little bit to you. I'm sorry. I can't hear you.

20 A: I was staying in Hilton Head.

21 Q: All right. I'm going to ask you specifically about --
22 about that day. First of all, did you know John? Do you
23 know John Duncan?

24 A: Yes.

25 Q: And how long have you known John Duncan?

CEDRIC KNIGHTON - DIRECT BY MR. STONE

1 A: Since eighth grade.

2 Q: Sometime late that afternoon, sometime around 7 o'clock,
3 did you get a phone call? And I'm talking specifically about
4 Sunday. You know the day that -- you know the day that
5 Dominique was shot and killed; correct?

6 A: Yes.

7 Q: All right. On that Sunday about 7 o'clock, 7:15,
8 something like that, did you get a phone call from John
9 Duncan?

10 A: Yes.

11 Q: And you know his voice, obviously. Do you talk to him?

12 A: Yes.

13 Q: What did he call you about?

14 A: He asked me looking for Dominique.

15 Q: He did what?

16 A: He called me asking looking for Dominique.

17 Q: And what did you tell him?

18 A: I told him I didn't know where he was. I ain't seen him
19 since the day before.

20 Q: And what did he say after that?

21 A: He said if you see him, tell him I got that thing for
22 him.

23 Q: Did he -- was he any more specific about what that thing
24 was?

25 A: No, sir.

CEDRIC KNIGHTON - DIRECT BY MR. STONE

1 Q: All right. Did you later on get another phone call from
2 John Duncan?

3 A: Yes, sir.

4 Q: And that was about eight -- I want to make sure. About
5 8:30; is that correct? Something around there?

6 A: Yes, sir.

7 Q: And when you got that phone call, what did you hear?

8 A: Nothing. Like, he was running or something and
9 breathing hard.

10 Q: All right. Say that again? I'm sorry.

11 A: I said he was breathing hard. So it was nothing. It
12 sounded like the wind.

13 Q: Okay. So he actually couldn't say anything, but you
14 could hear him breathing in the phone?

15 A: Yes, sir.

16 Q: All right. And that was a call that came up from his
17 call; is that right?

18 A: Yes, sir.

19 Q: Okay. All right. Do you see John Duncan in the
20 courtroom today?

21 A: Yes, sir.

22 Q: Can you point him out?

23 A: He's right there.

24 Q: The man sitting in the middle?

25 A: Yes, sir.

CEDRIC KNIGHTON - DIRECT BY MR. STONE

1 Q: Okay.

2 MR. STONE: Your Honor, if you will let the record
3 reflect that he's pointed out the defendant.

4 Thank you, sir. Answer any questions that the defense
5 may have.

6 THE COURT: So noted.

7 Cross-examination?

8 MR. STEPHENS: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. STEPHENS:

11 Q: Mr. Knighton, after that first phone call that you
12 mentioned, did you have a chance to look at your phone and
13 see how long that call was?

14 A: No, sir.

15 Q: Would it be fair to say that it could have been a minute
16 long?

17 A: I mean it could have, but I don't know.

18 Q: Do you recall if you talked about anything other than
19 where Dominique Williams was?

20 A: No.

21 Q: And is it possible that -- that Mr. Duncan might have
22 also wanted to know where Mr. Williams was to avoid another
23 confrontation with him, like the day before?

24 A: Say that again?

25 Q: You are aware that they had been in a fight the day

CEDRIC KNIGHTON - CROSS BY MR. STEPHENS

1 before the shooting; correct?

2 A: Yes, sir.

3 Q: Is it possible that Mr. Duncan wanted to know where
4 Dominique was to avoid a conflict?

5 A: I don't know, sir.

6 Q: All right. Now, Dominique -- do you know where he
7 lived?

8 A: Yes.

9 Q: On the north side of the island?

10 A: Yes.

11 Q: And John lived on the south side of the island by
12 Coligny Beach?

13 A: I believe so.

14 Q: John didn't really have a -- didn't really have a car he
15 normally drove? His mom had a car, but he didn't really have
16 a car; right?

17 A: Yes.

18 Q: In your opinion, could anyone avoid John by just staying
19 out of his neighborhood?

20 A: Say that again?

21 Q: I'll withdraw the question. Do you know if John knew
22 where Dominique lived?

23 A: No, sir.

24 Q: All right. Now, the first time you talked to law
25 enforcement and gave an interview, do you recall telling them

CEDRIC KNIGHTON - CROSS BY MR. STEPHENS

1 that you were present when the fight happened between Dom --

2 A: No.

3 Q: -- and John?

4 A: No.

5 Q: You don't remember it or you know you weren't present?

6 A: I was not present.

7 Q: Do you recall if you told them you were present?

8 A: No.

9 Q: All right.

10 MR. STEPHENS: I beg the Court's indulgence.

11 BY MR. STEPHENS:

12 Q: Mr. Knighton, are you familiar with the organization

13 Walk for Dom?

14 A: Yes.

15 Q: And you know that organization was started by

16 Dominique's mother in memory of him?

17 A: Yes.

18 Q: You've actually participated in -- in their walks,

19 haven't you?

20 A: Yes.

21 Q: Have you -- in your involvement with Walk for Dom, do

22 you interact with Ms. Milton, Dominique's mom? Do you talk

23 to her at these events?

24 A: Yes, sir.

25 Q: And it's fair to say that you feel bad about what

CEDRIC KNIGHTON - CROSS BY MR. STEPHENS

1 happened -- what happened to Dominique; correct?

2 A: Yes, sir.

3 MR. STEPHENS: Thank you, Mr. Knighton. No further
4 questions.

5 MR. STONE: Thank you, Mr. Knighton. No further
6 questions.

7 Your Honor, the State calls Jeffrey Wilson.

8 THE FEMALE BAILIFF: Right this way to be sworn in.

9 THE CLERK: You can place your left hand on the Bible
10 and raise your right hand. Do you solemnly swear or affirm
11 to truthfully answer all questions asked of you by this
12 Court, so help you God?

13 THE WITNESS: Yes, ma'am.

14 THE FEMALE BAILIFF: Please watch your step. Adjust the
15 microphone. Please speak directly into it.

16 THE CLERK: If you could state your name and spell it
17 for the record.

18 THE WITNESS: Jeffrey Wilson, J-e-f-f-r-e-y W-i-l-s-o-n.

19 MR. STONE: Okay.

20 JEFFREY WILSON, being first
21 duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. STONE:

24 Q: Mr. Wilson, I'm going to ask you to speak up into the
25 microphone a little bit so I can hear you. Okay, sir?

JEFFREY WILSON - DIRECT BY MR. STONE

- 1 A: All right. Can you hear me?
- 2 Q: Thank you. Where do you live, sir?
- 3 A: Hilton Head Island.
- 4 Q: And how long have you lived on Hilton Head?
- 5 A: Twenty-one years.
- 6 Q: How much? I'm sorry.
- 7 A: Twenty-one years.
- 8 Q: Okay. What do you do now?
- 9 A: I'm in school.
- 10 Q: Where are you in school?
- 11 A: South Carolina State University.
- 12 Q: Are you on break? Are you taking exams or what?
- 13 A: I'm on summer break.
- 14 Q: Okay. Let me ask you this. I'm going to go back to --
- 15 you know the day that Dominique was shot; is that correct?
- 16 A: Yes, sir.
- 17 Q: I want to go back and specifically talk to you. First
- 18 of all, do you know John Duncan?
- 19 A: Yes, sir.
- 20 Q: And how long have you known John Duncan?
- 21 A: Five years maybe.
- 22 Q: Okay. Do you recall getting some phone calls from John
- 23 Duncan on the day of the shooting?
- 24 A: Yes, sir.
- 25 Q: Let me ask you is your phone number 843-298-1189? Is

JEFFREY WILSON - DIRECT BY MR. STONE

1 that correct?

2 A: Yes, sir.

3 Q: And you also I think at that time talked to Cedric
4 Knighton, did you not?

5 A: Yes, sir.

6 Q: All right. I have -- his number is -- in fact, the
7 police actually got his phone number from you; is that
8 correct?

9 A: I'm pretty sure, yeah.

10 Q: Okay. And that was 940-0757? That's his number?

11 A: I can't recall.

12 Q: All right. Back then? Okay. All right. When -- the
13 first series of calls that you got from John Duncan, tell me
14 about those?

15 A: The first call was he was saying he was looking for Dom.
16 He had a .40 for him. And then the second call was that he
17 did it.

18 Q: The first call was sometime in the afternoon on Sunday?

19 A: Yeah. I would say yeah.

20 Q: And he says he's looking for Dom. What else did he say?

21 A: That he had a .40 for him.

22 Q: What's a .40? What is he talking -- what are you
23 talking about?

24 A: A handgun.

25 Q: What did you understand that to mean?

JEFFREY WILSON - DIRECT BY MR. STONE

1 A: A handgun.

2 Q: A handgun?

3 A: Yes, sir.

4 Q: And .40 refers to what? A caliber?

5 A: The caliber of it.

6 MR. STEPHENS: Objection, Your Honor. This -- the
7 witness is testifying to his opinion. Unless he's qualified
8 as an expert on street slang or something, Your Honor.

9 THE COURT: Overruled. I think the witness can testify
10 as to what he believed it means.

11 MR. STONE: Thank you, sir.

12 BY MR. STONE:

13 Q: And after he said -- after he asked you where Dom was
14 and that he had a .40 for him, what did you do after that?

15 A: I told him, you know, not -- not to do that and I told
16 him don't take it that way, and I proceeded to call
17 Dominique.

18 Q: Were you able to ever get in touch with Dominique?

19 A: One time.

20 Q: Okay. And at some point, did you convey that to
21 Dominique?

22 A: Yeah. I told him.

23 Q: Okay. All right. After that, let's skip ahead now.
24 When was the next time that you talked to John Duncan?

25 A: The next time I talked to him was after he did it.

JEFFREY WILSON - DIRECT BY MR. STONE

1 Q: And how do you know? How do you know you talked to him
2 after --

3 MR. STEPHENS: Objection.

4 Q: -- he did it?

5 MR. STEPHENS: Objection, Your Honor.

6 A: He told me.

7 MR. STEPHENS: Again --

8 THE COURT: Hold on just one minute. Hold just one
9 minute.

10 MR. STEPHENS: There was some confusion.

11 THE COURT: The objection is to the --

12 MR. STEPHENS: Objection to the comment after he did it,
13 Your Honor. Again, I think it's inflammatory and it's a
14 conclusion by the -- by the witness.

15 THE COURT: Is that responsive to your question?

16 MR. STONE: It actually was, but I can rephrase the
17 question.

18 BY MR. STONE:

19 Q: You got a second phone call? You got another phone call
20 after the phone call where he asked where Dom was, after the
21 call where he was talking about the .40 and you had a
22 conversation with him back and forth about trying to talk him
23 away from doing that. You then talked to -- John Duncan
24 called you again; is that correct?

25 A: Yes, sir.

JEFFREY WILSON - DIRECT BY MR. STONE

1 Q: Okay. And when he called you that last time that day,
2 what did he say?

3 A: He's dead.

4 Q: Pardon me?

5 A: He's dead.

6 Q: He's dead?

7 A: Yes, sir.

8 Q: Do you see John Duncan in the courtroom today?

9 A: Yes, sir.

10 Q: Would you point him out for me, please?

11 A: (Indicating.)

12 Q: The guy in the middle?

13 A: In the gray suit.

14 Q: Okay.

15 MR. STONE: Your Honor, if the record could reflect.

16 THE COURT: So noted.

17 MR. STONE: Thank you. I don't have any further
18 questions.

19 THE COURT: So noted.

20 Cross-examination?

21 MR. STEPHENS: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. STEPHENS:

24 Q: Mr. Wilson, prior to giving a statement to law
25 enforcement about giving -- getting a phone call from John

JEFFREY WILSON - CROSS BY MR. STEPHENS

1 Duncan, have you had a chance to check your phone to check
2 incoming and outgoing calls?

3 A: Yeah.

4 Q: Did you have a chance to check your phone records?

5 A: Yeah, I seen them.

6 Q: Now, Mr. Wilson, do you recall calling Mr. Duncan --

7 A: No.

8 Q: -- at -- I'm not done with the question. At 7:20:17 on
9 July 19th, 2015?

10 A: The last time I called John was to try to get back in
11 touch with him, but there was no answer.

12 Q: All right. Well, let me rephrase it. The first contact
13 that you had with John Duncan on July 19th, isn't it true that
14 that was you calling Mr. Duncan?

15 A: No.

16 Q: All right. Prior to speaking with Mr. Duncan on that
17 day, did you talk to -- without talking about the contents,
18 did you speak with Cedric Knighton before you spoke with Mr.
19 Duncan?

20 A: No.

21 Q: Do you recall if Cedric Knighton called you before you
22 spoke with Mr. Duncan?

23 A: No.

24 Q: Did -- do you know if law enforcement ever tried to
25 forensically examine your phone?

JEFFREY WILSON - CROSS BY MR. STEPHENS

1 A: No.

2 Q: Did you turn over a copy of your phone billing statement
3 to law enforcement?

4 A: I can't recall.

5 Q: All right. Now, I want to take you back a little bit,
6 Mr. Wilson. On that Friday, July 17th, at some point did you
7 become aware that there was a robbery of marijuana from Mr.
8 Duncan?

9 A: No.

10 Q: On that date, did you ever -- did you speak to anyone
11 about purchasing marijuana?

12 A: No.

13 Q: Do you recall a text to Jestin Morrow on that Friday
14 when the marijuana was purchased by Mr. Duncan that said I
15 need a 20 back because I only got two hundreds?

16 A: No.

17 Q: Do you recall any kind of conversation about money with
18 Mr. -- with Mr. Morrow?

19 A: No.

20 Q: And your phone number is 843-298-1189; correct?

21 A: Yeah.

22 Q: All right. Now, prior to these conversations on Sunday,
23 your testimony is that you were not aware that there was a
24 robbery of marijuana from -- from Mr. Duncan?

25 A: No.

JEFFREY WILSON - CROSS BY MR. STEPHENS

1 Q: Were you present or involved with the fight between Mr.
2 Duncan and Dominique Wilson [sic] that happened at Cordillo
3 Apartments?

4 A: No.

5 Q: When you spoke with Mr. Duncan on Sunday, whether he
6 called you or you called him, your testimony is he said
7 something about that Dom has that .40 cal waiting for him; is
8 that correct?

9 A: No.

10 Q: No?

11 A: That's not correct.

12 Q: I'm sorry. What did he say to you?

13 A: John said that he had a .40 caliber waiting on Dom.

14 Q: That's what I meant. He had a .40 caliber waiting on
15 Dom. Did you ask him anything about that statement?

16 A: No.

17 Q: After you spoke with John, did you attempt to contact
18 Dominique Williams repeatedly to warn him about this?

19 A: Yes, I did.

20 Q: And based on your knowledge of Mr. Williams -- excuse me
21 -- of Mr. Duncan, would you agree that he frequently made
22 idle talk of things like this, like he was going to hurt
23 somebody or in my day we would say bust a cap in somebody or
24 words to that -- words to that effect?

25 A: No.

JEFFREY WILSON - CROSS BY MR. STEPHENS

1 Q: Did you ever -- do you recall telling law enforcement
2 when you met with them that -- that this was an idle threat
3 because John would say things like that just to talk smack?

4 A: I don't recall.

5 Q: Do you recall, Mr. Wilson, speaking with Dom on the day
6 of the shooting and telling -- telling him that John was
7 looking for him?

8 A: Yes, I did.

9 Q: Do you recall Dom telling you I'm not trying to waste my
10 time on this man?

11 A: Correct.

12 Q: And you don't -- at the time, you didn't know anything
13 about -- about a robbery?

14 A: Not at that time.

15 Q: All right. And I just want to make sure I'm clear, Mr.
16 Wilson. After Mr. Duncan tells you that he's going to put a
17 -- he's got a .40 cal for Mr. Williams and you have no idea
18 why, you didn't ask him any questions about what this was
19 about?

20 A: He told me what it was about. I didn't have to ask.

21 Q: I'm sorry. Mr. Wilson, I thought your testimony was
22 just that you didn't know about the robbery and didn't know
23 about the fight?

24 A: I didn't know about it previous. I knew about -- I knew
25 about the robbery the day of the murder. That's when I found

JEFFREY WILSON - CROSS BY MR. STEPHENS

1 out about the robbery.

2 Q: All right. And how long do you think that these
3 conversations were on the phone with Mr. -- with Mr. Duncan?

4 A: I would probably say two minutes max, three minutes.

5 MR. STEPHENS: Thank you, Mr. Wilson. I have no further
6 questions.

7 MR. STONE: I just want to make sure.

8 REDIRECT EXAMINATION

9 BY MR. STONE:

10 Q: So you didn't know about the robbery beforehand, but
11 John Duncan told you about it when he was talking to you on
12 the phone?

13 A: Yes, sir.

14 Q: Is that correct? Okay.

15 MR. STONE: Thank you. Nothing further, Your Honor.

16 THE COURT: Thank you. You can step down, sir.

17 THE FEMALE BAILIFF: Please watch your step.

18 MR. STONE: Yes, sir.

19 THE COURT: And, ladies and gentlemen, now we are going
20 to call it a day. I'm going to ask you to do something for
21 me when we come back in the morning at 9:30. Well, you could
22 do it today if you wanted to.

23 Either this evening or in the morning when you are all
24 together, see if you could select a foreperson to represent
25 the jury. It has to be one of the original twelve. I don't

1 want y'all to get in a fight or a fuss over who it's going to
2 be. If you all can't do it, I can appoint somebody, but I'd
3 like for y'all to try to do it.

4 Don't forget what I've been telling you. You can't let
5 anybody talk to you about the case. You can't talk to
6 anybody about the case, even among yourselves.

7 See you back at 9:30 in the morning, ladies and
8 gentlemen. You're excused.

9 MR. STONE: May I approach briefly before they leave?

10 THE FEMALE BAILIFF: If you have a notebook, please
11 leave it.

12 THE COURT: Hold on just one moment.

13 THE FEMALE BAILIFF: Okay.

14 THE COURT: I'm sorry.

15 (WHEREUPON, a bench conference was held in the presence
16 of the jury but out of the hearing of the jury off the
17 record, after which the proceedings resumed as follows.)

18 THE COURT: I was reminded I should have also cautioned
19 you about reading or trying to do any investigation, seeing
20 who was publishing anything about this, if at all.

21 Now, then, you're excused.

22 THE FEMALE BAILIFF: Follow me, please.

23 (WHEREUPON, the jury exited the courtroom.)

24 THE MALE BAILIFF: The jury is clear, Your Honor.

25 THE COURT: You can never tell what The Island Packet

1 may publish about this.

2 MR. STONE: And I apologize. I didn't mean to interrupt
3 you, Judge. I just wanted to make sure. I wanted to make
4 sure that was clear. Thank you.

5 THE COURT: You said two or three?

6 MR. STONE: Yes, sir. Three.

7 THE COURT: Well, do we need to cover anything this
8 evening so we don't have to cover it at 9:30 in the morning
9 before the jury comes back?

10 MR. STEPHENS: Your Honor, I can't think of anything
11 from the defense. I apologize for that delay this morning,
12 Your Honor. I should have raised it quicker, but I can't --
13 I can't think of anything that will affect the progress of
14 the case.

15 THE COURT: Well, I would imagine after the State
16 concludes presentation of the State's case, we'll take a
17 break.

18 MR. STEPHENS: Yes, sir.

19 THE COURT: Hear any motions and then take that time to
20 speak with the defendant about his right to testify, and then
21 we'll see where we are.

22 MR. STEPHENS: Yes, sir.

23 THE COURT: And if that's the time to talk about
24 proposed charges, we can talk about them then or if that's
25 not the time, we'll talk about them later.

1 MR. STEPHENS: Yes, Your Honor. And I'll do my best to
2 have requests to charge done by tomorrow. We are going to
3 have a late night, but I will do my best to make sure that's
4 all done.

5 THE COURT: Okay. All right.

6 MR. STONE: The only matter that the State will have
7 tomorrow will be the qualifications of Dylan Hightower as an
8 expert. He's been qualified in court before and I think we
9 run that the same way that I would have done, that I did with
10 Dr. Presnell. However, if there's another way you'd rather
11 do it, I'll be glad to do that. But that was my intention.
12 I don't think that's necessary to take up prior to putting
13 him up on the witness stand.

14 THE COURT: No. I agree. Do you agree?

15 MR. STEPHENS: Your Honor, I think that's fine.

16 THE COURT: We'll wait and see what he says.

17 MR. STEPHENS: Yes, sir. That's fine.

18 THE COURT: All right. 9:30 -- 9:15 in the morning.

19 MR. STONE: Yes, sir. Thank you, Your Honor.

20 MR. STEPHENS: Thank you.

21 (WHEREUPON, the proceedings adjourned for the day.)

22 MAY 8, 2019

23 (WHEREUPON, the proceedings resumed.)

24 THE COURT: Any matters we need to take up before the
25 jury comes in? And by the way, they aren't all here yet.

1 MR. THORNTON: I don't believe so, Your Honor. I think
2 we're getting everything worked out. So I should know in the
3 next five minutes, but I believe we've -- Mr. Stephens had a
4 couple of matters this morning. I think we've just about got
5 them all agreed to.

6 THE COURT: Okay.

7 (WHEREUPON, there was a break in the proceedings, after
8 which the proceedings resumed as follows.)

9 THE COURT: The bailiff indicates all the jurors are
10 present and that they have selected Victoria Fitzgerald,
11 Juror 108, to serve as the foreperson. Is the State ready
12 for the jury?

13 MR. STONE: The State is ready, Your Honor.

14 THE COURT: Is the defense ready for the jury?

15 MR. STEPHENS: The defense is ready, Your Honor. Thank
16 you.

17 THE COURT: Let's bring the jury in.

18 THE MALE BAILIFF: The jury is entering the courtroom,
19 Your Honor.

20 (WHEREUPON, the jury entered the courtroom.)

21 THE MALE BAILIFF: The jury is seated, Your Honor.

22 THE COURT: Good morning and welcome back, ladies and
23 gentlemen. The bailiff handed me a note indicating he
24 believed the jury has selected Juror 108 to serve as
25 foreperson. Is that correct?

MICHELLE EICHENMILLER - DIRECT BY MR. STONE

1 THE FOREPERSON: Yes, sir.

2 THE COURT: You would be Juror 108?

3 THE FOREPERSON: Yes, Your Honor.

4 THE COURT: It's a wise decision the jury has made. I
5 agree with that. Thank you for serving.

6 I believe we are ready to resume with the presentation
7 of evidence by the State. Solicitor?

8 MR. STONE: Yes, sir. Michelle Eichenmiller.

9 THE CLERK: Do you solemnly swear or affirm to
10 truthfully answer all questions asked of you by this Court,
11 so help you God?

12 THE WITNESS: I do.

13 THE CLERK: If you could speak directly into the
14 microphone. If you could, state your name and spell it for
15 the record.

16 THE WITNESS: My name is Michelle Eichenmiller, E-i-c-h-
17 e-n-m-i-l-l-e-r.

18 MICHELLE EICHENMILLER, being
19 first duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. STONE:

22 Q: Ms. Eichenmiller, what do you do, ma'am?

23 A: I'm a forensic firearms examiner.

24 Q: Okay. With who?

25 A: With the South Carolina Law Enforcement Division,

MICHELLE EICHENMILLER - DIRECT BY MR. STONE

1 otherwise known as SLED. I work in the forensic laboratory.

2 Q: How long have you worked in the forensic laboratory at
3 SLED?

4 A: Thirteen years.

5 Q: And when you say you're a forensic -- did you say
6 forensic firearms examiner?

7 A: Yes.

8 Q: What does that entail?

9 A: Forensic science is the branch of -- firearms
10 identification is the branch of forensic science that deals
11 with anything related to a firearm. So fired bullets, fired
12 cartridge cases, firearms, long guns, handguns. Also, a
13 couple other tasks as needed, serial number restoration or
14 toolmark identification as well.

15 Q: Now, what type of training did you have to allow you to
16 do this?

17 A: There's no school you can go to become a firearms
18 examiner. Once I got my bachelor's degree in biology and a
19 master's degree in forensic science, I was hired at SLED. I
20 completed the in-house SLED training program for firearms
21 identification, which basically is an apprenticeship program.

22 I followed the examiners that were already court trained
23 and court qualified. I learned how they did their job. I
24 did a lot of reading and practical exercises on my own. At
25 the end, I took a test. They deemed me competent to work

MICHELLE EICHENMILLER - DIRECT BY MR. STONE

1 cases on my own. That whole process took about three or four
2 years.

3 Q: Now, have you been qualified as an expert in courtrooms
4 in South Carolina?

5 A: I have.

6 Q: Do you know how many times?

7 A: Approximately 80 times.

8 Q: All right. And in that expertise -- and I know I've
9 referred to it before as ballistics, but that's not correct,
10 is it? Is it -- it's forensic firearms and --

11 A: Toolmark and firearms identification.

12 Q: Toolmarks and firearms identification?

13 A: Uh-huh.

14 Q: Does that allow you to take a fired bullet, from
15 layman's terms, and to determine what caliber bullet that is
16 or what's that consistent with, things like that?

17 A: Yes. That's part of my job.

18 MR. STONE: Your Honor, at this time, we offer Michelle
19 Eichenmiller as an expert in the field of forensic firearms
20 and -- what am I leaving out? Firearms and --

21 THE WITNESS: Tool marks.

22 MR. STONE: -- and tool mark identifications.

23 MR. STEPHENS: Your Honor, we do object at this time. I
24 would just ask for some additional voir dire questions from
25 her.

MICHELLE EICHENMILLER - VOIR DIRE BY MR. STEPHENS

1 THE COURT: You may.

2 MR. STEPHENS: On her qualifications.

3 MR. STONE: Sure.

4 MR. STEPHENS: Thank you, Your Honor.

5 VOIR DIRE

6 BY MR. STEPHENS:

7 Q: Ms. Eichenmiller, what's your -- are you -- are you an
8 agent at SLED or are you a civilian technician?

9 A: I'm a sworn agent.

10 Q: Okay. Is your title agent? I just want to make sure
11 I'm using the right title.

12 A: Agent is fine.

13 Q: Okay. Agent Eichenmiller, you said that there is no
14 formal schooling for a firearms forensic evaluation sort of
15 -- sort of thing?

16 A: Right. There's no formal training for firearms
17 identification.

18 Q: Firearms identification. What kind of -- where is the
19 -- where does the science of firearms identification come
20 from? I mean are there treatises and are there courses on
21 firearms identification outside of law enforcement taught
22 programs?

23 A: Some universities do teach firearms identification. You
24 just can't get a degree in firearms identification.

25 Q: All right. Do you know if firearms identification is

MICHELLE EICHENMILLER - VOIR DIRE BY MR. STEPHENS

1 something that's been -- is that a science that has been
2 peer-reviewed by -- by other scientists to say this is
3 something that can be done to look at a bullet and determine
4 the caliber and the type of weapon it was fired from?

5 A: Yes, it has been.

6 Q: And did you read any kind of peer-reviewed articles,
7 treatises, things like that in your training?

8 A: Yes, I do.

9 Q: Have you -- I understand this is kind of a working kind
10 of science, but have you ever published or taught courses on
11 -- on this firearms identification?

12 A: I have not.

13 Q: Have you ever not been qualified when offered as an
14 expert in a -- in a court in South Carolina?

15 A: No.

16 Q: For the types of courts you were qualified in, were
17 those also generally criminal courts, General Sessions
18 courts, things like that?

19 A: Yes.

20 Q: All right. And is there any kind of certification that
21 you hold other than your title with SLED? Is there -- is
22 there a certified organization that says you are certified to
23 be a firearms identification?

24 A: There is an organization. I'm currently not certified
25 in it, but I am a member of the Professional Organization for

MICHELLE EICHENMILLER - VOIR DIRE BY MR. STEPHENS

1 Firearm and Toolmark Examiners.

2 Q: And is that the name of it? I mean what's the name of
3 it?

4 A: It's AFTE. It's the Association of Firearms and
5 Toolmark Examiners. It's an international organization
6 comprised of firearm and toolmark examiners. Also, people
7 who are tech advisors for us.

8 Q: And what does their certification process entail?

9 A: I believe you have to take -- they send you testing and
10 you have to complete it. They send you practicals and you
11 have to complete that as well.

12 Q: All right. Do you -- do you know about how long that
13 process takes to complete the certification?

14 A: I'm not sure.

15 Q: Are you currently going through the process of
16 certifications with that organization?

17 A: I am not.

18 MR. STEPHENS: Your Honor, I don't believe I have any
19 further questions for Agent Eichenmiller at this time. The
20 defense does object to her qualification as an expert in this
21 field, subject to any further voir dire by the defense.

22 Thank you, Your Honor.

23 MR. STONE: Let me just clear up --

24 THE COURT: Yes, sir.

25 MR. STONE: -- first the double negative.

MICHELLE EICHENMILLER - VOIR DIRE BY MR. STONE

VOIR DIRE

1

2 BY MR. STONE:

3

Q: In the over 80 times that you've been offered as an expert in court, have you ever been denied that status as an expert?

5

A: I have not.

6

Q: And your -- I know your -- your college, your collegiate degree, is in science. Your master's degree was in forensics?

8

A: Correct.

9

Q: And what does forensics include? What exactly is forensics?

10

A: Forensics includes all the branches of forensic science pertaining to anything criminal. So toxicology, drug analysis, fingerprint identification, DNA.

11

Q: So all of that -- and all of that is sort of a larger branch of the toolmark identifications and things that you learned at SLED?

12

A: Yes.

13

Q: Okay.

14

MR. STONE: Your Honor, the State's position is she's clearly an expert. She's testified in over 80 trials as an expert and has never once been determined not to be an expert. She clearly has the scientific background to testify as to the caliber of the bullet.

25

MICHELLE EICHENMILLER - VOIR DIRE BY MR. STONE

1 MR. STEPHENS: Your Honor, I've never had the
2 opportunity to -- to examine Agent Eichenmiller as to her
3 qualifications. Your Honor, I'm not sure about any prior
4 counsel asking her about her prior qualifications. All I can
5 say is it takes more than just other courts having qualified
6 you. The witness, while I'm sure she is knowledgeable in the
7 area she's testified, she's not certified by the organization
8 that she named as a professional organization that certifies
9 people as qualified in this area, Your Honor.

10 So again, our objection stands, Your Honor.

11 THE COURT: All right. I understand the objection. I'm
12 going to qualify the witness as requested by the State.

13 MR. STONE: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MR. STONE:

16 Q: Agent Eichenmiller, let me show you what's been marked
17 as State's Exhibit Number 31, and there's packaging inside
18 that. I'd ask if you could identify that, please?

19 A: Whenever I receive evidence at SLED, I check to make
20 sure that the evidence was sealed when I get it. When I open
21 it all the way up to the bullet, I will write on there with
22 my initials, the item number, and the case number.

23 Q: And you can take that out. I've already discussed it
24 with the court reporter. As long as we keep it in 31,
25 that'll be fine.

MICHELLE EICHENMILLER - DIRECT BY MR. STONE

1 A: Yes, sir.

2 Q: It's okay to unseal it anyway.

3 A: Okay.

4 MR. STONE: Do we have scissors back there anywhere? Do
5 we have any scissors? Can I hold that for just a second?
6 Got it.

7 BY MR. STONE:

8 Q: Okay. Now that I've torn it open, can you pull out what
9 you were talking about?

10 A: Yes. This bullet is engraved with my initials, the case
11 number, and the item number. This is the item I examined in
12 this case.

13 Q: Now, this came to you in, I believe, this bottle that
14 I'm showing you?

15 A: Yes.

16 Q: Is that correct?

17 A: Yes.

18 Q: And was it sealed when you received it?

19 A: Yes. And it was in a sealed paper bag when I received
20 it as well.

21 Q: Okay. And you -- and you unsealed it and then took the
22 -- I'm going to call it a bullet. Is that correct?

23 A: Yes.

24 Q: Okay.

25 MR. STONE: At this time, Your Honor, we'd move the

MICHELLE EICHENMILLER - DIRECT BY MR. STONE

1 State's --

2 BY MR. STONE:

3 Q: Did you change or alter it other than to test it when
4 you received it?

5 A: I did not.

6 MR. STONE: At this time, we'd move State's Exhibit 31
7 into evidence.

8 MR. STEPHENS: No objection, Your Honor. Thank you.

9 THE COURT: The motion is granted and it's admitted into
10 evidence.

11 (WHEREUPON, State's Exhibit Number 31, bullet, was
12 admitted into evidence.)

13 MR. STONE: Okay.

14 BY MR. STONE:

15 Q: What type of testing did you do on Item Number 31?

16 A: When we receive a bullet in a case, I will open it up.
17 I'll see if there's any trace evidence on it. In this case,
18 it was from autopsy; so it was biohazardous. I cleaned it
19 and then I further examined it by measuring it, weighing it,
20 and looking at it under my comparison microscope to see if
21 there were individual characteristics that I could use if I
22 received a firearm.

23 Q: In order to determine a caliber of a bullet, how do you
24 -- how do you determine that? How do you -- how do you
25 measure a bullet that has been fired?

MICHELLE EICHENMILLER - DIRECT BY MR. STONE

1 A: I have a set of calipers. It's basically a ruler that
2 you kind of open up the jaws and place the bullet in there at
3 the base and then you measure the diameter of the bullet.

4 Q: So when we talk about caliber, we're actually talking
5 about how big around it is and not how long?

6 A: Yes. How big -- how big around it is.

7 Q: Okay. That bullet that you received from Dominique
8 Williams' autopsy, what caliber of bullet? Could you tell
9 from studying that what caliber of bullet that is?

10 A: The diameter of the bullet is .400, which is consistent
11 with being a .40 S&W caliber or a 10-millimeter auto caliber.

12 Q: Now, the difference between the .40 caliber and the 10-
13 caliber is what? Obviously, the diameter is the same.
14 What's the difference?

15 A: In a fired bullet, there is no difference. It's the
16 same size, same area around. Once you put it in a cartridge,
17 then that's when there's a little bit of a difference. A 10-
18 millimeter is stronger, more -- more recoil, and the case is
19 longer.

20 Q: So the difference is length and not -- and not width
21 necessarily?

22 A: Correct.

23 Q: And that's on that casing that holds the bullet, not the
24 bullet itself; correct?

25 A: Correct.

MICHELLE EICHENMILLER - DIRECT BY MR. STONE

1 Q: All right. The -- so that bullet that you received is
2 one of two of those? Either it's consistent with either a
3 .40 caliber or a 10 caliber?

4 A: Yes.

5 Q: And how -- how many guns can fire a .40 caliber versus a
6 10 caliber?

7 A: 10-millimeter is rarer. We don't see as many of those
8 as we do .40 caliber.

9 Q: Okay. And one other question, what types of weapons can
10 fire a .40 caliber bullet?

11 A: In the absence of a firearm, whenever I receive a
12 bullet, I can put the measurements, which is the general
13 rifling characteristics, which is the number of lands and
14 grooves and the diameter of the bullet into a database. The
15 database has manufacturers that make firearms with those
16 specifications. And the date --

17 Q: All right. Let me stop you there. I'm going to
18 interrupt you and I apologize. You said lands and grooves.
19 What are you talking about?

20 A: Every firearm is made -- well, I should say most
21 firearms are made with rifling in the barrel. It helps keep
22 the barrel -- like a quarterback throwing a football, it
23 helps keep the bullet in a straight path. That's picked by
24 the manufacturer. So everybody -- every manufacturer can
25 pick different. Also, the width is different from each

MICHELLE EICHENMILLER - DIRECT BY MR. STONE

1 manufacturer, and this database holds all that information.

2 Once I put my specifications in, the computer will tell me

3 what manufacturers make firearms with those specifications.

4 Q: And did you do that in this case?

5 A: I did.

6 Q: And what did you find out?

7 A: I found out that in this case in .40 S&W caliber Bersa,
8 Glock, Heckler and Koch, IMI, Kahr, and Vector all make guns
9 in .40 caliber with those specifications, and then Glock also
10 makes a 10-millimeter auto with those specifications.

11 Q: And are most of those handguns?

12 A: Yes.

13 Q: Okay.

14 MR. STONE: No further questions, Your Honor. Thank
15 you.

16 THE COURT: Cross-examination?

17 MR. STEPHENS: Thank you.

18 CROSS-EXAMINATION

19 BY MR. STEPHENS:

20 Q: Agent Eichenmiller, let me ask you first you start the
21 process you said by taking calipers to measure the diameter
22 of the slug that -- that was sent to you; correct?

23 A: The diameter of the bullet, yes.

24 Q: Okay. Now, you take the bullet and you measure the
25 diameter. You got .4 inches?

MICHELLE EICHENMILLER - CROSS BY MR. STEPHENS

1 A: .400, yes.

2 Q: So that would be a .40 caliber then. Did -- when you
3 plugged that information about the round and the grooves into
4 your system, did you try other diameters?

5 A: I put .40 caliber in. That's what it came back with was
6 .40 and 10.

7 Q: Did you have a chance -- prior to conducting your
8 analysis of this round, did you speak to anyone else involved
9 in the investigation in this case?

10 A: I don't believe so.

11 Q: Did you have the opportunity to then speak, I guess --
12 you're saying you didn't have an opportunity to speak with
13 Dr. Presnell, the forensic examiner who did the autopsy and
14 removed the -- the bullet from the body?

15 A: I don't believe so.

16 Q: Now --

17 A: We don't usually speak with others.

18 Q: All right. Did you have an opportunity to review her
19 autopsy report in the case?

20 A: No.

21 Q: Agent Eichenmiller, do you remember -- when did you
22 begin conducting your forensic examination of this bullet?

23 A: Can I refer to my notes? Can I refer to my notes?

24 Q: Pardon?

25 THE COURT: The witness wishes to refer to her notes.

MICHELLE EICHENMILLER - CROSS BY MR. STEPHENS

1 MR. STEPHENS: Oh, certainly.

2 BY MR. STEPHENS:

3 A: I started my examination on September 29th of 2015.

4 Q: All right. And at that time, I think you said you
5 didn't communicate with anyone else who was involved in the
6 investigation in this case?

7 A: We usually don't communicate with others unless we have
8 questions.

9 Q: Prior to completing your report -- well, let me ask what
10 date was your report completed?

11 A: My report was completed on September 30th, 2015.

12 Q: Prior to completing your report, did you speak with any
13 investigators involved in the case?

14 A: I don't believe so.

15 Q: So you were unaware of any allegations that this was a
16 .40 caliber weapon that was used in the case?

17 A: I have no idea.

18 Q: And do you know if, hypothetically, this was -- the
19 diameter of this bullet was .38 inches, that would be, like,
20 .38 caliber; correct?

21 A: .38 is too large to be a .38 caliber. A .38 caliber is
22 .354.

23 Q: So what is the -- what would you say is the next smaller
24 caliber from -- from a .40 caliber?

25 A: I would say it was a 9-millimeter, a .38 special.

MICHELLE EICHENMILLER - CROSS BY MR. STEPHENS

1 Q: Okay. So a 9-millimeter. I'm sorry. I misspoke. What
2 are the -- what's the diameter of a round for a 9-millimeter?

3 A: .354. It's a .38 caliber. It's just a kind of .38
4 caliber.

5 Q: All right. And do you know if that's considered
6 generally like a medium-sized weapon, a medium-sized handgun?

7 A: I would consider it medium.

8 Q: All right. And regardless of the caliber of weapon, you
9 can't determine from the bullet itself what the load was, the
10 grains in the -- in the cartridge or anything like that;
11 right, ma'am?

12 A: I don't know the powder load. I know how much the
13 bullet weighed.

14 Q: All right.

15 A: I weighed it as part of my examination.

16 Q: All right. And is your testimony that you are
17 absolutely certain of the diameter of this round that you
18 tested?

19 A: Yes.

20 Q: All right.

21 MR. STEPHENS: Thank you, Agent Eichenmiller. I have no
22 further questions.

23 THE COURT: Redirect?

24 MR. STONE: Thank you, Agent. I appreciate your time.

25 Thank you, Your Honor.

JENNIFER DALMIDA - DIRECT BY MR. STONE

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

2 You may call your next witness.

3 MR. STONE: Jennifer Dalmida.

4 THE CLERK: You can place your left hand on the Bible
5 and raise your right hand. Do you solemnly swear or affirm
6 to truthfully answer all questions asked of you by this
7 Court, so help you God?

8 THE WITNESS: Yes.

9 JENNIFER DALMIDA, being first
10 duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. STONE:

13 Q: If you could, say your full name and spell the last one.
14 I think they may need that.

15 A: Jennifer Dalmida, D-a-l-m-i-d-a.

16 Q: Okay. Ms. Dalmida, where are you from, ma'am? Where do
17 you live?

18 A: In Orlando, Florida.

19 Q: And what do you do?

20 A: I am a record custodian for Verizon wireless.

21 Q: All right. And so we brought you down from Orlando
22 today?

23 A: Yes.

24 Q: Okay. As a records custodian at Verizon, what does that
25 entail?

JENNIFER DALMIDA - DIRECT BY MR. STONE

1 A: So as a record custodian, we are the keeper of the
2 record. So we basically travel from courthouse to courthouse
3 and we interpret any type of network records that we provide.

4 Q: Okay. These records, are these basically call logs and
5 things from various cell phones?

6 A: There's call logs as part of the information, yes.
7 These have the data transmitted on our network.

8 Q: This data -- is this kept in the ordinary course of the
9 business for Verizon?

10 A: Yes.

11 Q: All right. In fact, this is, I guess, how you bill?

12 A: Yes.

13 Q: All right. And that's not for any particular case?
14 That's just kept in your ordinary course of business?

15 A: Correct.

16 Q: Let me show you what's been marked as State's Exhibit 36
17 and ask if you could identify these two sheets of paper?

18 A: Yes. This is a copy of our call detail report.

19 MR. STONE: And I believe, Your Honor, we have discussed
20 this with the defense that there is an agreement that this is
21 the call report for John Duncan's cell phone that day.

22 MR. STEPHENS: That's correct, Your Honor.

23 BY MR. STONE:

24 Q: And these records are kept in the ordinary course of
25 business for Verizon?

JENNIFER DALMIDA - DIRECT BY MR. STONE

1 A: Yes.

2 Q: And you are the custodian of that?

3 A: Yes.

4 Q: Okay.

5 MR. STONE: Your Honor, at this time, we'd move State's
6 Exhibit 36 into evidence.

7 MR. STEPHENS: No objection.

8 THE COURT: The motion is granted and the document is
9 admitted.

10 (WHEREUPON, State's Exhibit Number 36, Verizon cell
11 phone records, was admitted into evidence.)

12 MR. STONE: Thank you, Your Honor. We don't have any
13 further questions of this witness at this time.

14 MR. STEPHENS: No questions, Your Honor. Thank you.

15 THE COURT: Thank you, ma'am.

16 THE WITNESS: Thank you.

17 THE COURT: You may step down.

18 Call your next witness.

19 MR. STONE: The State calls Dylan Hightower.

20 THE CLERK: Do you solemnly swear or affirm to
21 truthfully answer all questions asked of you, so help you
22 God?

23 THE WITNESS: I do. Dylan Hightower, H-i-g-h-t-o-w-e-r.

24 DYLAN HIGHTOWER, being first
25 duly sworn, testified as follows:

DYLAN HIGHTOWER - DIRECT BY MR. STONE

DIRECT EXAMINATION

2 BY MR. STONE:

3 Q: And, Mr. Hightower, what do you do, sir?

4 A: I'm an investigator with the Fourteenth Circuit
5 Solicitor's Office.

6 | Q: And --

7 | A: Here in Beaufort, South Carolina.

8 Q: And in the capacity as an investigator with the
9 Solicitor's Office, what -- what are your job duties?

10 A: Primarily, I assist local agencies, state and federal,
11 with active investigations. I serve on the ATF task force
12 out of Charleston. I'm working proactive investigations. I
13 also conduct analyses on cell phone records for agencies
14 throughout the Fourteenth Circuit.

15 Q: Now, the analysis on cell phones, tell me a little bit
16 about that. What does that entail?

17 A: So essentially, in most active investigations, law
18 enforcement agencies will execute search warrants on
19 providers or target numbers per se for any type of cellular
20 provider.

21 Q: Now, let me -- let me stop you there. The provider
22 we're talking about is what? What is the provider?

23 A: Like Verizon, AT&T, T-Mobile.

24 Q: Okay. And the target is the actual phone number of the
25 phone that you're looking for; is that correct?

DYLAN HIGHTOWER - DIRECT BY MR. STONE

1 A: That is correct.

2 Q: Okay. Go ahead. I'm sorry to interrupt you.

3 A: So essentially, what you do is you execute a search
4 warrant on a specific target number, the number you want
5 information on. The search warrant response comes back with
6 the call detail records, the subscriber information,
7 generally if it's 3G or 4G records, text message information,
8 text message content strictly for Verizon customers, and
9 things of that nature.

10 Q: In your -- in your work with these cell phones, do you
11 also know how to extract information from the physical phone
12 itself?

13 A: Yes, sir.

14 Q: And so how does that -- how do you go about doing that?

15 A: So essentially, it's the same process. You execute a
16 search warrant on the actual phone itself. Then you hook it
17 up to either a Cellebrite computer tool or a Mobilize
18 computer tool, which what that does, that goes into that
19 phone, extracts all the raw data out of it, and allows you to
20 analyze the records within the actual phone.

21 Q: Now, the third thing I want to ask you about are cell
22 towers. Tell me about how those work?

23 A: Essentially, again, cell towers are utilized to process
24 a phone call, either incoming or outgoing, no matter what.
25 In most cases, for each provider you would have -- once you

DYLAN HIGHTOWER - DIRECT BY MR. STONE

1 press send on your cell phone, it attaches to a switch, which
2 our switch here locally would be in Charleston, South
3 Carolina. That switch identifies a tower closest --
4 generally, closest to you to process that call.

5 MR. STEPHENS: I apologize. Your Honor, may we approach
6 for just a moment?

7 THE COURT: All right, sir.

8 (WHEREUPON, a bench conference was held in the presence
9 of the jury but out of the hearing of the jury off the
10 record, after which the proceedings resumed as follows.)

11 BY MR. STONE:

12 Q: Okay. Mr. Hightower, getting back to the cell towers,
13 the phone -- a cell phone goes to a switch. It identifies
14 one of the closest towers and what happens at that point?

15 A: It processes the call at that point and then the call
16 detail records, which is what we get from the cell phone
17 provider, would identify that tower location.

18 Q: Okay. What type of training have you received in order
19 to not only study the phone logs and make sense of what those
20 are and to be able to identify that, but also explain the
21 tower locations and how those are used?

22 A: So in 2010, I graduated from the University of South
23 Carolina with a bachelor of arts degree in sociology. Soon
24 thereafter, I attended a four-week on-the-job training for
25 criminal intelligence analysis at SLED, commonly referred to

DYLAN HIGHTOWER - DIRECT BY MR. STONE

1 as the South Carolina Law Enforcement Division. It was a
2 four-week on-the-job training. You go through all aspects of
3 criminal intelligence, also to include cell phone forensics.

4 In 2012, I attended a Pen-Link call analysis training
5 school, which allows you to go into and teaches you the way
6 of how to read and analyze call detail records and also how
7 to plot them on a map. In 2012 again, I attended a training
8 for the fundamentals of call detail analysis in North
9 Carolina. And in 2013, I attended the law enforcement
10 training academy here in South Carolina and became a law
11 enforcement officer here in the state of South Carolina.

12 In 2017, I attended a class to become a Mobilize
13 forensics operator, which allows me to go in and extract the
14 information from an actual phone, as well as last year in
15 2018 I attended the FBI CAST historical call detail record
16 analysis course. The FBI CAST team is the cellular analysis
17 survey team and they serve internationally for assistance
18 with analyzing phone records, plotting phone records, and
19 also teaching local agencies on how to read these records.

20 Q: The phone -- excuse me. The phone detail analysis, is
21 that the type of information that's contained in State's
22 Exhibit 36?

23 A: Yes, sir. I conduct all of my analyses based off of the
24 call detail records I am provided by the cellular network
25 provider.

DYLAN HIGHTOWER - DIRECT BY MR. STONE

1 Q: Did you also receive information concerning tower
2 connections and hits, for lack of a better term?

3 A: Yes, sir. You get an additional file that notates the
4 tower locations, the tower numbers, with the lats --
5 latitudes and longitudes, as well as the address of the
6 specific tower.

7 Q: Have you been qualified in court as an expert? And I
8 want to make sure I get this right, but call detail analysis
9 as well as cell tower analysis; is that correct?

10 A: Yes, sir. The term is historical cell site analysis.

11 Q: And have you been qualified as an expert in those fields
12 in court before?

13 A: Yes, sir, I have.

14 MR. STONE: Your Honor, at this time, we offer Dylan
15 Hightower as an expert in cell phone analysis, as well as the
16 cell tower -- the historical cell tower analysis that he
17 spoke of earlier.

18 MR. STEPHENS: Thank you, Your Honor.

19 VOIR DIRE

20 BY MR. STEPHENS:

21 Q: Mr. Hightower, by no means am I making light of your
22 undergraduate education, but I want to ask there's nothing in
23 your bachelor's degree that dealt with what you're testifying
24 here about, the cell tower analysis and the cell phone
25 analysis; correct?

DYLAN HIGHTOWER - VOIR DIRE BY MR. STEPHENS

1 A: No, sir.

2 Q: All right. So the four-week SLED course on criminal
3 intelligence, there was some time devoted to -- to cell
4 phones or cell towers? What was it?

5 A: Yes, sir. It's basically a beginners per se idea as to
6 how to analyze records, how to look at them, what they can
7 provide to you, and it was just basically an on-site training
8 for me to at least familiarize myself with how the use of
9 cell phone forensics and cell phone technology as utilized in
10 the criminal process.

11 Q: Do you know how long you spent in that program dealing
12 with cell phone records analysis?

13 A: Approximately probably four to five days.

14 Q: Okay. Your 2012 school, the first one you mentioned,
15 what was that again?

16 A: The 2012 was the ETS fundamentals of call detail records
17 analysis.

18 Q: What is that?

19 A: So essentially, again, that's a way for you to go in,
20 you analyze phone records, you do practicals with the -- with
21 the examiners that are teaching the class, again
22 familiarizing yourself with how to read the call detail
23 records and how to plot the cell towers on a map.

24 Q: Well, what's the -- what's the program though? I mean
25 who runs it, who teaches it, that sort of thing?

DYLAN HIGHTOWER - VOIR DIRE BY MR. STEPHENS

1 A: It's Emerging Technology Support. It's a company out of
2 North Carolina.

3 Q: Okay. And their instructors -- I mean is there some
4 kind of certification -- certifications in these areas?

5 A: Not that I'm sure of. I recall vaguely one of the
6 instructors having some type of certification in how to
7 analyze these records.

8 Q: Were these instructors, I guess, primarily former law
9 enforcement, ex-law enforcement personnel or civilians or
10 what?

11 A: The majority of the instructors that I see, especially
12 from the private entities, are people who are in the industry
13 of cellular technology prior to becoming an instructor on how
14 to -- how to read the records.

15 Q: Okay. And how long is that course?

16 A: That was a two-day course in North Carolina.

17 Q: All right. And you mentioned some course in 2012 in
18 North Carolina?

19 A: Yes, sir. It was actually that one, but I misspoke. It
20 was December of 2011 I attended a call analysis training
21 school by Pen-Link.

22 Q: Okay. Any of that deals with looking at records? Would
23 those also be cell tower records or just call detail records?

24 A: Yes, sir. It would be call detail records, including
25 the cell tower locations. Pen-Link offers a system where you

DYLAN HIGHTOWER - VOIR DIRE BY MR. STEPHENS

1 can import these records and it automatically maps them for
2 you, but a common practice is for you to import these records
3 into some type of system that does it automatically for you
4 but also do a manual analysis, which is what I generally do
5 for all cases.

6 Q: All right. And how long was that program?

7 A: That was a three-day course.

8 Q: All right. The 2013 law enforcement training, was that
9 general law enforcement like the Criminal Justice Academy or
10 was that something that also dealt with this subject?

11 A: No, sir. It was strictly Criminal Justice Academy to
12 become a Class I law enforcement officer in the state of
13 South Carolina.

14 Q: All right. In 2017, you mentioned Mobilize forensic
15 support. What's that?

16 A: So essentially, as we spoke about before, it's a phone
17 extraction system where you can actually extract the raw data
18 from the phone itself, not from the records but from the
19 phone itself.

20 Q: And again, I apologize because I'm misspeaking. Who
21 runs that program?

22 A: It's a private company based out of California. They
23 offer their service to international agencies, local
24 agencies, federal agencies.

25 Q: And again, how long is that program?

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1 A: That was a one-day course.

2 Q: And lastly, this CAST program. You said that was from
3 the FBI?

4 A: Yes, sir.

5 Q: And what's that program entail and how long is it?

6 A: Again, the FBI CAST program is a Cellular Analysis
7 Survey Team and they serve all local agencies and
8 international agencies with cell phone forensics. They also
9 teach local agencies, state agencies, and federal agencies on
10 the proper use and techniques of how to analyze phone
11 records, as well as cell tower locations. They also offer a
12 system called FBI CAST, which allows you to import the
13 records where it automatically analyzes it for you. But
14 again, you still do a manual analysis to make sure everything
15 matches.

16 Q: All right. And how long was the program?

17 A: That was a two-day course.

18 Q: And that's all the specialized training that you've
19 received in the area?

20 A: Yes, sir. In a classroom setting, that's correct.

21 However, I've been with multiple examiners throughout the
22 state essentially in the FBI CAST team to assist me in any
23 issues that I may have in analyzing records.

24 Q: All right. Mr. Hightower, is this -- are these areas
25 called -- excuse me -- cell phone analysis and/or cell tower

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1 analysis, are either of them taught as -- in some kind of
2 certification program or I mean some kind of organized
3 program that leads to any kind of certification that you're
4 aware of?

5 A: No, sir, not that I'm aware of.

6 Q: Okay. So no colleges that you know of have any kind of
7 program in cell phone analysis or cell tower analysis?

8 A: As far as any type of certifications, no, I know of
9 none.

10 Q: Do you know if there's any kind of scientific journals
11 or treatises that cover these issues of not so much cell
12 phone analysis but the cell tower analysis as far as
13 determining phone location and that sort of thing? I mean
14 has there been some kind of peer review or discussion among
15 the scientific community about this?

16 A: There is a class offered referred to as cellular theory,
17 which kind of goes into that, but it's more technical. It's
18 more on how the towers work, how the switches work, and how
19 the process works from start to finish.

20 Q: Is that a formal class taught some -- somewhere? It's a
21 class?

22 A: I know of other examiners and analysts that have taken
23 that course, but I have not.

24 Q: Do you know where that's -- where that's given?

25 A: I do not.

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1 Q: All right. But other examiners have told you, hey,
2 there's this class out here in cellular theory that they've
3 taken; correct?

4 A: I mean based off other analysts' testimony, I've noticed
5 a cellular theory class was out there, yes.

6 Q: And I know I've already covered this, but you have never
7 encountered someone who had any kind of certification in this
8 area through some organization. You -- you just may not be
9 familiar with that, but let me just be clear. To the best of
10 your knowledge, there is no certification anywhere you're
11 aware of for this kind of issue; right?

12 A: I mean other than the classes that are offered in
13 certification that allows you to analyze these records, I
14 mean that's it.

15 Q: Thank you. I understand and I guess I just want to ask
16 a couple of questions about courts and then I'm done. How
17 many times have you been qualified as an expert in South
18 Carolina courts?

19 A: Twice.

20 Q: All right. And have you ever been offered as an expert
21 when you were not qualified, where you were rejected for some
22 reason?

23 A: There was one time in Jasper County where my -- I did
24 not testify. I was unknown -- I was unaware of the reasons
25 why, but I did not testify.

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1 MR. STEPHENS: I don't believe I have any further
2 questions for Mr. Hightower about his qualifications.

3 Your Honor, I do have an objection about him being
4 qualified as an expert. I just want to state for the -- for
5 the record that I don't know that there's -- I have an issue
6 with the science, even though there hasn't been any testimony
7 about it being peer-reviewed. I'm -- the defense's concern
8 is that possibly it's because of the lack of certification
9 that this is -- that this may not be an area where anyone
10 should be certified right now as an expert.

11 I have no objection to Mr. Hightower testifying as to
12 his specialized knowledge. I'm a little concerned about
13 calling anyone an expert in this area because of the lack of
14 review or any kind of training qualifications. It looks like
15 he did, I think, in total less than a month of any kind of
16 courses. That may be all anyone gets, but still I've got
17 concerns about that anyone would be qualified as an expert in
18 this area.

19 THE COURT: Solicitor?

20 MR. STONE: Your Honor, we're offering this under Rule
21 702. The specialized knowledge is exactly what we're
22 offering him for. I think if you were to look at those phone
23 records, as well as cell tower analysis, it needs specialized
24 knowledge.

25 Whether there is a full degree now that's offered,

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1 obviously this is relatively new in the grand scheme of
2 things technology, but clearly, Mr. Hightower not only has
3 been qualified before but also is somebody who has taken from
4 the people who are actually creating the technology the
5 classes and courses in order to do this. I think it's proper
6 under the rule.

7 Again, it's a -- it's an issue of whether or not he can
8 assist the jury in specialized knowledge, which again -- and
9 I don't know if you've had an opportunity to look at the
10 phone records or cell tower analysis, but it takes
11 specialized knowledge to explain it. I could not explain it
12 myself.

13 So I think that it is proper under Rule 702, any
14 specialized knowledge which would assist the trier of fact to
15 understand the evidence, and I believe that he's got more
16 than enough of a background in order to do that.

17 MR. STEPHENS: Your Honor, just to be clear, the defense
18 has no objection to Mr. Hightower testifying as a fact
19 witness, as he did do the analysis. We just don't believe
20 that he qualifies as an expert in this area. Thank you.

21 THE COURT: All right. I'm going to withhold ruling on
22 the issue of whether or not he's an expert and let the
23 solicitor continue with his -- with his examination of the
24 witness. And if the defense counsel has an objection to any
25 question or testimony, then you need to state what the

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1 objection is.

2 MR. STEPHENS: I understand, Your Honor. I can abide by
3 that.

4 MR. STONE: All right.

5 BY MR. STONE:

6 Q: First of all, Mr. Hightower, did you do a -- and I'm
7 going to call it a cell tower analysis on John Duncan's phone
8 or the phone records that you received from Verizon?

9 A: Yes, sir, I did.

10 Q: Now, a cell phone analysis -- and I know you mentioned
11 earlier it's something to do with a switch. What exactly
12 does that tell us?

13 A: So the switch just identifies generally the closest
14 tower to process that individual phone call.

15 Q: Now, if there are multiple towers that are pretty close,
16 what happens then?

17 A: It just identifies the most useful tower, the one that
18 is not overloaded at that time.

19 Q: So if there's -- if there are a lot of calls going out,
20 then it would just pick the closest tower that's not getting
21 a lot of other calls?

22 A: Yes, sir. It differs from rural to urban areas. In
23 your more rural areas, you don't have near as much towers.
24 In an area like Hilton Head, for instance, you could have
25 towers, multiple towers within a one-mile or a two-mile