

VOLUME VI OF VI

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Lexington County

Honorable Eugene C. Griffith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KIERIN MARCELLUS DENNIS,

APPELLANT.

APPELLATE CASE NO. 2019-001486

RECORD ON APPEAL

ROBERT M. DUDEK
Chief Appellate Defender

ALAN WILSON
Attorney General

ADAM SINCLAIR RUFFIN
Appellate Defender

DONALD J. ZELENKA
Deputy Attorney General

LARA M. CAUDY
Appellate Defender

MELODY J. BROWN
Senior Assistant Deputy Attorney General

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

JULIANNA E. BATTENFIELD
Assistant Attorney General

S. R. HUBBARD, III
Solicitor, Eleventh Judicial Circuit

ATTORNEYS FOR APPELLANT

Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201
(803)734-3727

ATTORNEYS FOR RESPONDENT

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FROM THE AUGUST 19-27, 2019 TRIAL: COURT’S EXHIBIT #2 (PHOTO DEFENDANT AND CAR DOOR) AND STATE’S EXHIBIT #23 (POSTER BOARD)

FROM THE NOVEMBER 17-19, 2014 IMMUNITY HEARING: STATE’S EXHIBIT #11 (VIDEO RECORDING), STATE’S EXHIBIT #12 (IPAD VIDEO), STATE’S EXHIBIT #35 (VIDEO INTERVIEW), STATE’S EXHIBIT #39 (VIDEO RECORDING), AND STATE’S EXHIBIT #41 (COOK-OUT VIDEO)

FROM THE AUGUST 22 & 24, 2017 IMMUNITY HEARING: STATE’S EXHIBIT #2 (CD), DEFENDANT’S EXHIBIT #2 (LEXINGTON PD 2/17/2014), DEFENDANT’S EXHIBIT #3 (COMBINED VIDEO), AND DEFENDANT’S EXHIBIT #5 (LYNCH INTERVIEW)

1 crazy.

2 Q. Where did you go after the game?

3 A. After the game, some friends and I went to Cook
4 Out.

5 Q. When you arrived at the Cook Out, was there many
6 people there yet?

7 A. There were a few folks there, Lexington folks, Dutch
8 Fork folks. We were already kind of there. We were kind, we
9 were one of the first folks there.

10 Q. How was everything inside the restaurant?

11 A. Inside the restaurant it was typical restaurant
12 atmosphere after a basketball game or a sporting event.
13 Everyone was in there having a good time, ordering food,
14 having a burger, taking pictures.

15 Q. Did you and your friends, did y'all get a table?

16 A. We did.

17 Q. And where were you sitting inside the restaurant?

18 A. I sat towards the front of the restaurant kind of
19 back inside a booth back there and kind of hopped around
20 throughout the night.

21 Q. Did you ever notice when a group of the defendant
22 and his friends entered the restaurant?

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

24 Q. Did anything in your mind change?

25 A. Not really to me. The only thing I really noticed

1 is that the restaurant got a little quieter and some attention
2 kind of went towards them, but to me I was just like, oh, I'm
3 not really sure what's going on.

4 Q. Did you see any kind of altercations?

5 A. No, ma'am.

6 Q. Did you hear any verbal altercations?

7 A. None.

8 Q. What was the next thing that you remember
9 happening?

10 A. After that I just remember folks beginning to kind
11 of almost exit the restaurant. First a few folks kind of
12 trickled out, then some other folks went, some of my friends
13 went, and I kind of peaked out to see what was going on.

14 Q. Did you go outside?

15 A. I did. Eventually I did.

16 Q. Eventually. When you got outside, what did you see
17 going on in the parking lot?

18 A. When I went outside, I stood kind of right on the
19 side of the Cook Out sidewalk. I just kind of peered around.
20 I just saw folks were kind of out looking at what was going on
21 kind of in the back side of the parking lot. Really at that
22 time there wasn't a whole lot going on. I was just kind of
23 checking it out.

24 Q. Did you see that group of Lexington High School kids
25 at that time?

1 A. I did not.

2 Q. What's the next thing you remember happening?

3 A. The next thing I remember happening as folks were
4 kind of out towards the sidewalk or the island kind of near
5 the entrance, I headed over that way. I was looking at what
6 everyone's attention was looking at and going towards and then
7 following that is when a vehicle pulled around and threw out
8 money.

9 Q. Did you see where this vehicle came from?

10 A. It came from the backside. I can't really remember
11 exactly what is back there, but it came from behind, not in
12 the Cook Out parking lot but from the other side of the
13 drive-in to get to Cook Out and whatever else is over there
14 now. That's where the vehicle exited from back there, tossed
15 money and some trash or receipts out.

16 Q. Did you see what kind of car this was?

17 A. I didn't. It was some sort of SUV though.

18 Q. Did you see who was driving the car?

19 A. Not at the time that the money was thrown out.

20 Q. Where did that person whoever in that car threw the
21 money out, where did they throw the money?

22 A. They threw the money right into the road, right into
23 the street, so as they drove out kind of in the exiting lane
24 almost they tossed money right out their window into the
25 street.

1 Q. What, if anything, did you do when the money was
2 tossed out?

3 A. Once the money was tossed out my initial reaction
4 is, hey, I'm gonna go get some money, so I dart out into the
5 road along with a few other people to try to go get some money
6 that was thrown out there.

7 Q. When that car threw the money out, did it remain in
8 that same spot?

9 A. It did. It did. It threw it out as it was moving.

10 MS. PATTERSON: Your Honor, permission for the
11 witness to step down.

12 THE COURT: Sure.

13 THE WITNESS: (Complies.)

14 BY MS. PATTERSON:

15 Q. Mr. Chatman, if you will stand on this side so the
16 court reporter can hear. Kind of orient yourself to this area
17 of the Cook Out Restaurant right here. Where were you
18 standing when you saw the car come up and throw the money.

19 A. I was standing right around in this area here
20 whenever the car pulled around and threw out the money.

21 Q. From which direction did the car come from again?

22 A. The car came from back in this area back here.

23 Q. Where did the car throw the money?

24 A. The car threw the money right around in this area.

25 Q. That's the area you went in to get the money?

1 A. So I left this area, entered into the road right out
2 here to try to get some of the money.

3 Q. What happened once you were out in the road trying
4 to get the money?

5 A. As I was out in the road trying to get the money
6 almost immediately after that was when I hear an engine rev
7 and another vehicle comes into that same side of the road
8 where the money was thrown and everybody was in the road, very
9 rapidly and almost hit me.

10 Q. How close did that car come to you?

11 A. It was within about an arm's reach. If I didn't
12 move out of the road as quick as I did, my right knee would
13 have been hit as I was leaving the road.

14 Q. And as you're leaving the road, do you look and see
15 what kind of car this is?

16 A. Not make and model, but I see that it's a lighter
17 color vehicle.

18 Q. Can you see who's driving the car?

19 A. Yes.

20 Q. And how are you able to see who is driving this
21 car?

22 A. As I'm backing out of the road I can see as the
23 member who was driving that car as they're driving up the
24 window was cracked and as the window was cracked we locked
25 eyes and I can remember what they were wearing.

1 Q. Other than locking eyes with this person, did you
2 notice anything else about this person's characteristics?

3 A. They were wearing a beanie and they had dreads.

4 Q. Did you know this person that night?

5 A. I did not.

6 Q. Have you since learned who that person was?

7 A. Yes, ma'am.

8 Q. Who was that person?

9 A. The defendant Kierin Dennis.

10 Q. Now, as you're running away -- Let me back up for
11 one second. That person who threw money out of the car, did
12 you hear them say anything as they were throwing the money
13 out?

14 A. As they were throwing the money out, I cannot
15 remember if they said anything but I remember sprinting into
16 the road to get the money.

17 Q. Do you remember seeing that person get out of the
18 car at any time?

19 A. Yes, ma'am.

20 Q. What did you see that person doing?

21 A. Whenever they exited their vehicle, they stood
22 outside their vehicle with like a pipe or some type of pole
23 inside their hand.

24 Q. Do you know if there was anyone standing in front of
25 that vehicle?

1 A. In front of the vehicle the person with the pipe was
2 driving?

3 Q. That threw the money out. Yes, sir.

4 A. No, ma'am.

5 Q. Nobody was standing in front of it?

6 A. No one was standing in front of the vehicle.

7 Q. And now let's go back to the car that almost hit
8 you. I'm sorry. I'll ask you to step down one more time.

9 A. (Witness complies.)

10 Q. Devon, when that car came, did you see which
11 direction that car came from?

12 A. The car came from the same direction that the car
13 that threw the money just further over into this side of the
14 road.

15 Q. Where again in the road were you when the car almost
16 hit you?

17 A. I was around in this area here, was getting the
18 money and the car came around here very quickly and almost hit
19 me right around in this area.

20 Q. Where was that car positioned again?

21 A. It was positioned right around in here.

22 Q. Which way did you run when you were trying to get
23 away from the car?

24 A. As I exited the road, I ran back this way and as I
25 left I remember coming back over this island here with my knee

1 being the last thing that left the road.

2 Q. Where were you standing the rest of the time?

3 A. After that I kind of backed up and then I ended up
4 back over here following that.

5 Q. Please take your seat.

6 A. (Witness complies.)

7 Q. Devon, I'm going to show you what is marked as
8 State's Exhibit 32 and ask you to take a look at it. Do you
9 recognize that picture. Who is in that picture?

10 A. I do.

11 Q. Who is in that picture?

12 A. That's me here.

13 MS. PATTERSON: Your Honor, at this time we move
14 State's Exhibit 32 into evidence.

15 MR. RUTHERFORD: Without objection, Your Honor.

16 THE COURT: 32 is in without objection.

17 BY MS. PATTERSON:

18 Q. What were you wearing that night?

19 A. I was wearing a blazer, some plaid pants and yellow
20 neon Nike Free Runs.

21 Q. Do you recall if this picture was taken before or
22 after you ran away from that car?

23 A. I believe this was afterwards.

24 Q. Is that the area you described that you ran back
25 to?

1 A. Yes.

2 Q. As you're standing there what are you observing?

3 A. I'm observing some of my classmates and friends are
4 kind of talking and asking, hey, what's going on. Why did you
5 almost hit my friend.

6 Q. Where are they at this point when they're asking
7 these questions?

8 A. They're asking the questions at the window of the
9 vehicle.

10 Q. What vehicle is that?

11 A. The vehicle that almost hit me.

12 Q. Can you hear exactly what they're saying?

13 A. No, ma'am.

14 Q. But do you hear their voices?

15 A. I do. I do.

16 Q. Do they sound happy, sad, or something else?

17 A. I mean, they didn't sound very happy. I almost got
18 hit along with some of my other classmates.

19 Q. What's in your hand in this photograph?

20 A. I got my hat and a Cook Out cup that I got from the
21 restaurant I was drinking from.

22 Q. So you managed to get away from the car and you
23 didn't drop anything?

24 A. No, ma'am.

25 Q. And although you're not at the window, can you kind

1 of see what's going on at the car?

2 A. Not exactly besides all that I could hear from where
3 I was standing.

4 Q. At any point did you see anybody throw anything at
5 that car?

6 A. I did not. No, ma'am.

7 Q. Did you see anybody rocking the car?

8 A. No, ma'am.

9 Q. Was anybody standing in front of that car?

10 A. No, ma'am.

11 Q. Did you eventually see that car leave?

12 A. I did.

13 Q. Can you describe the exit, the way the car left?

14 A. Whenever that vehicle, it sped out of the parking
15 lot I remember so there's a little bit of divot as you come
16 into that parking lot unless it's been fixed but at that time
17 it kind of went down a little bit of a divot there and that
18 car exited so quickly that the suspension on the vehicle kind
19 of lifted as it came out and sped off to the left.

20 Q. And at some point, Devon, did you realize what had
21 happened to Cape?

22 A. Yes, ma'am. Eventually.

23 Q. What did you do after you found out what happened to
24 him?

25 A. Once I found out what had happened, like my role was

1 really just, hey, it's gonna be all right. Everyone calm
2 down. It's okay. Like it's gonna be all right.

3 Q. Did you remain in that parking lot?

4 A. I did.

5 Q. Devon, do you have a brother?

6 A. I do. A twin.

7 Q. A twin. What's his name?

8 A. Deshon Chatman.

9 MS. PATTERSON: I think we met him on Tuesday.
10 Thank you, Devon. Please answer any questions the
11 defense may have.

12 CROSS EXAMINATION

13 BY MR. RUTHERFORD:

14 Q. Good morning.

15 A. Good morning, sir.

16 Q. You described a, I believe you said a divot; is that
17 correct?

18 A. Yes, sir.

19 Q. Can you point out that divot in this photograph? Do
20 you recognize this photo?

21 A. Yes, sir. Right in this area right here right where
22 the patterns are different on the road there. Obviously this
23 is kind of newer pavement where this was kind of an unpaved
24 area.

25 Q. So it didn't look like this at the time?

1 A. I'm not exactly sure.

2 Q. Do you see the divot?

3 A. I do. Right here.

4 Q. So this was there when that happened that night, is
5 that what you're saying?

6 A. That's the area of the road where the divot would
7 have been.

8 Q. You said it would have been -- and I'm not trying to
9 trick you. I'm just asking you -- you talked about the
10 pavement, how it looks different or something. I don't want
11 to put words in your mouth. Tell me about this area and what
12 you remember from that night.

13 A. There are no specifics, but I do remember there was
14 divot as you're going out, and it may still be there today.
15 I'm not exactly sure.

16 Q. But you don't see it there?

17 A. This is more than likely the area where that divot
18 is.

19 Q. Okay. And you described the suspension of the truck
20 doing something as it went up; is that right?

21 A. If you drive at a rapid rate of speed going over any
22 type of hill or divot, your vehicle is gonna react to that.

23 Q. And this photograph right here, you have seen this
24 photograph before; is that correct?

25 A. Yes, sir.

1 Q. Are you in this photograph?

2 A. No, sir.

3 Q. So this is, this could be accurately described as
4 the truck that almost hit you; is that correct?

5 A. Yes, sir.

6 Q. While they were going through -- And this is, I'm
7 gonna show you State's Exhibit number 32, you showed the
8 prosecutor that that was you in this picture right here; is
9 that right?

10 A. Yes, sir. That's me.

11 Q. What's the deal with the green shoes?

12 A. Neon yellow.

13 Q. Neon yellow. Is that a Dutch Fork thing?

14 A. I don't think it's a Dutch Fork thing.

15 Q. Okay. So you're wearing the green shoes and you had
16 them on the whole night, correct?

17 A. Yellow shoes. Yes, sir.

18 Q. Yellow shoes. I'm sorry. Yellow shoes. And the
19 car that you said almost hit you is where in this photograph
20 again?

21 A. In this photograph? It's not in this picture.

22 Q. So it's not even in this picture?

23 A. It's not in this.

24 Q. How far is it would you say between where you are
25 and where the car is?

1 A. I'm not exactly sure on this picture.

2 (Playing video.)

3 BY MR. RUTHERFORD:

4 Q. Okay. Now, this as it's cueing up, do you see
5 yourself in this picture?

6 A. Yes, sir.

7 Q. And did you need to come down and see it better or
8 can you see it from here?

9 A. I can see it from here.

10 Q. What are you doing?

11 A. This is when I'm moving away.

12 Q. Are you laughing, smiling?

13 A. I can't see it from here.

14 Q. Do we need to dim the lights so you can see it
15 better?

16 A. No.

17 Q. Was that you laughing?

18 A. I'm not exactly sure.

19 Q. So that would be you running away with the cup doing
20 like this (indicating); is that right?

21 A. That is me running away.

22 Q. Was that a smile on your face when you're doing
23 that?

24 A. I cannot tell from this video.

25 Q. We'll play it again. So this car you stated almost

1 ran you over?

2 A. It did.

3 Q. And you described to the prosecutor this harrowing
4 experience, the last thing you remember is your knee leaving
5 the roadway?

6 A. Very true.

7 Q. And that's you running away with the cup laughing;
8 is that right?

9 A. That's me running away.

10 Q. Okay. So what you described to the prosecutor was
11 not the way you remember feeling that night, was it?

12 A. That is incorrect.

13 Q. So when it shows you running -- That's the car,
14 correct?

15 A. Correct.

16 Q. And it shows you running away like this
17 (indicating), correct?

18 A. Correct.

19 Q. And so in this picture that the prosecutor showed
20 you, are you smiling in this picture?

21 A. I can't tell.

22 Q. You can't tell. And again, you have seen the video.
23 You said that you weren't smiling. You don't remember whether
24 that was you laughing and you're looking at this and you said
25 that you can't remember or you don't know whether you're

1 smiling or not in this picture?

2 A. Correct. I do not know.

3 (Video stopped.)

4 MR. RUTHERFORD: Your Honor, State's Exhibit 32, is
5 that in evidence?

6 THE COURT: It is without objection.

7 MR. RUTHERFORD: Your Honor, can I pass this to the
8 jury to pass it down?

9 THE COURT: Or show it on the screen. I don't
10 care.

11 MR. RUTHERFORD: Sometimes it's hard to see up
12 there, Your Honor. Your Honor, can we take up a matter
13 of law?

14 THE COURT: Sure. We need to take up a matter of
15 law. Step into the jury room. Have you back out here
16 shortly.

17 (Whereupon, the jury entered the jury room at 9:45
18 a.m.)

19 MR. HUBBARD: Your Honor, I don't know if you
20 noticed, it looks like one of our jurors wrote a note.
21 We're gonna pass it up to you. I believe one of the
22 bailiffs has it.

23 THE COURT: I didn't notice. I was not paying a
24 attention. The note I got yesterday from the young man
25 that came in late, I believe said one of y'all referred

1 have that, too, so don't worry about which one it is.
2 I'm gonna give you kind of an index and it's the one that
3 the court uses so y'all will know which one is which so
4 everybody will be fine. With that explanation, continue
5 on, Mr. Rutherford.

6 MR. RUTHERFORD: Thank you, Your Honor. Your Honor,
7 this is video number 18 that we have put in and it's
8 currently at 22:41 according to the video and the
9 computer says it's at 2:05.

10 THE COURT: All right.

11 (Playing video exhibit #18.)

12 BY MR. RUTHERFORD:

13 Q. Now, do you see yourself in that video?

14 A. Yes, sir.

15 Q. Did you see yourself from the time you entered the
16 frame? I don't want to assume that you were paying attention.
17 Did you see yourself from the time you entered the frame on
18 the left until when you stopped?

19 A. Yes, sir.

20 Q. Who do you speak to next?

21 A. I'm not exactly sure who is at that door there, but
22 I'm sure I probably talked to the folks at the door, if I even
23 spoke to them.

24 Q. So you don't remember?

25 A. The folks at the door right there.

1 Q. Who is that?

2 A. Looks like Justin Mitchell who I went to the game
3 with and Cook Out.

4 Q. Now, it appears that you're going back off frame
5 back to the left towards where the car is; is that correct?

6 A. Yes, sir.

7 Q. Do you know what you were about to do?

8 A. Negative.

9 Q. Do you know where you ended up?

10 A. Negative.

11 Q. Now, do you remember when you went back over off
12 frame which would have been where Mr. Dennis' car was how many
13 kids are over there at this point standing around?

14 A. I'm not exactly sure.

15 Q. Do you remember how many kids were at Mr. Dennis'
16 car?

17 A. Not a number.

18 Q. Do you remember how many kids were in front of
19 Mr. Dennis' car?

20 A. No.

21 Q. Do you remember how many kids at this point were up
22 at the other car that had thrown the money out?

23 A. None.

24 Q. You said you none. Zero?

25 A. Zero.

1 Q. The gentleman at that car that was in that car and I
2 can't remember, I don't want to put words in your mouth, but
3 did you see him get out of the car?

4 A. I did.

5 Q. And then what did he do?

6 A. He stood out in front of his own vehicle.

7 Q. He stood in front of his vehicle?

8 A. His own vehicle with a pipe.

9 Q. He stood in front of it?

10 A. Yes, sir.

11 Q. So he got out and he had a pipe and then he walked
12 to the front of his car?

13 A. Yes, sir. From what I remember.

14 Q. So he's basically in his headlights; is that
15 right?

16 A. Yes, sir.

17 Q. So from your vantage point you're looking and
18 you see the gentleman that had just thrown the money. Did you
19 watch him closely?

20 A. There was a lot going on. Did I watch him closely?
21 I don't think I can say I watched him closely.

22 Q. But you remember him getting out with a pipe and
23 walking to the front of his car, is that safe to say?

24 A. I remember him ending up in the area of the front of
25 his car.

1 Q. In front of his car. But there were no other kids
2 around him; is that right?

3 A. Yes, sir.

4 Q. No Dutch Fork kids, no Lexington kids, nobody else;
5 is that right?

6 A. Zero.

7 Q. Do you remember anybody being in the car with him?

8 A. I do not remember.

9 Q. Do you remember seeing anyone on the other side of
10 his vehicle?

11 A. I do not remember.

12 Q. Do you remember seeing anyone parked over in the
13 parking lot of the business right across the driveway?

14 A. Yes.

15 Q. You do?

16 A. Yes.

17 Q. So there were cars parked over there?

18 A. Yes, sir.

19 Q. Did you see people over there?

20 A. There might have been one or two people over
21 there.

22 Q. Okay. Do you remember what you had for a drink that
23 night?

24 A. No, sir.

25 Q. So in State's Exhibit 32 which was the picture that

1 we referenced earlier after the gold Explorer you stated
2 almost hit you, you still have your cup. Did you still have
3 your drink in it?

4 A. I'm not exactly sure, but I know I still had the
5 cup.

6 Q. You had a cap?

7 A. The cup.

8 Q. The cup. And the cap actually, right?

9 A. If that's what's in the image.

10 Q. And you actually go back towards the Cook Out with
11 that cup and then according to the video you then go back
12 towards the car with that cup, correct?

13 A. I think I went towards the car. I think I went
14 towards another vehicle that was over there.

15 Q. Another vehicle that was in the driveway?

16 A. Yes, sir.

17 Q. Let me be clear. After this picture is taken which
18 we showed on the screen, you then walk back towards --

19 A. Towards that direction. Yes, sir.

20 Q. But you're saying you didn't go to where the
21 Explorer was?

22 A. No, sir.

23 Q. So there was another car in the driveway that you
24 went to?

25 A. Not necessarily right to the car. I walked back out

1 into that vicinity.

2 Q. To that vicinity but not where the gold Explorer
3 was?

4 A. It was still in my line of sight.

5 (Playing video.)

6 BY MR. RUTHERFORD:

7 Q. So when we see on that screen the gold Explorer and
8 you running away from it, when you say that you had it in your
9 line of sight, you mean like it was from you to the pole?

10 A. It was just as the video shows. It was within my
11 line of sight.

12 Q. But you weren't in the vicinity of the truck?

13 A. Not to where -- So whenever I enter the frame of
14 that iPad video, that is where I am.

15 Q. Okay. How many kids from Dutch Fork do we see over
16 on that top side of the screen where you were? How many go
17 over there?

18 A. It's a mixture. I'm not exactly sure.

19 Q. A mixture of kids and adults or Dutch Fork and
20 Lexington?

21 A. Dutch Fork and Lexington.

22 Q. How many kids, period, ran over after the gold
23 Explorer left?

24 A. I'm not exactly sure.

25 Q. Can you guess?

1 (Playing video.)

2 MS. PATTERSON: Objection, Your Honor. Calling for
3 speculation. He said he didn't know.

4 MR. RUTHERFORD: Your Honor, the problem is he's
5 there and if he doesn't remember and we're watching a
6 tape where it looks like a whole bunch of people are
7 running over, and I don't remember. I don't know. He
8 was in the vicinity.

9 BY THE WITNESS:

10 A. You mentioned a whole bunch of people. That's just
11 the thing, a whole bunch of people.

12 THE COURT: I don't think he has to name a number.
13 The video speaks for itself. He's been asked and
14 answered it. He didn't remember. He didn't count
15 them.

16 MR. RUTHERFORD: That's right. I'm sorry, Your
17 Honor.

18 BY MR. RUTHERFORD:

19 Q. So as you see all of these kids up here, right?

20 A. Correct. Dutch Fork and Lexington students.

21 Q. Dutch Fork and Lexington. Now, since you have said
22 that, which ones were Lexington?

23 A. I couldn't tell you.

24 Q. But you just testified Dutch Fork and Lexington.
25 Where are they?

1 A. I know Dutch Fork and Lexington students were out
2 there. I hung out in the Cook Out with friends from Lexington
3 and Dutch Fork.

4 Q. So let me walk you forward from the Cook Out. This
5 is outside. This is a picture. You said you see Dutch Fork
6 and Lexington kids. Where are they?

7 A. Somewhere where all those other folks are.

8 Q. But you can't tell which ones are Lexington kids in
9 the picture?

10 A. I couldn't tell you who any of those people are from
11 this video.

12 Q. So do you know, the silver car that was parked right
13 there, do you know that car?

14 A. I do not.

15 (Playing video.)

16 BY MR. RUTHERFORD:

17 Q. Did you see the Explorer drive up?

18 A. I did. I also exit the frame shortly after that.

19 Q. And you will notice all of those people that were in
20 that parking lot ran over there, did they not?

21 A. Sure. Probably to get the money along with me
22 because I'm also in that group.

23 Q. The money at that point was already in the street,
24 was it not?

25 A. It had just been thrown as we -- So if you go back a

1 couple frames there, you can see when I'm in the frame and I
2 exit and I head into the road to go get the money. So that's
3 me there at the top of the screen with the neon yellow shoes
4 right there.

5 Q. You see the White Infiniti. All right. So you
6 disappeared out of the frame.

7 A. Into the street to get the money that was thrown
8 out.

9 Q. Then here comes the gold Explorer?

10 A. Right.

11 Q. And now you notice everybody running over,
12 correct?

13 A. Yes, sir.

14 Q. Can you count the number of people there or is it
15 too many?

16 A. I can't count.

17 Q. You can physically count, you just can't count the
18 number of people?

19 A. Correct.

20 Q. And so many people that you can't count it ran over
21 towards the Explorer. The money had already been thrown,
22 correct? Because you already left the screen; is that
23 right?

24 A. I can't give you a number of people.

25 Q. Right. But when the money was thrown, you left the

1 screen to go get it, correct?

2 A. Along with many others.

3 Q. The Explorer comes up and you said it almost hit
4 you, correct?

5 A. Correct.

6 Q. The Explorer is already stopped at this point,
7 correct?

8 A. I'm not sure of what the make and model of the
9 vehicle is, but it's a lighter color vehicle that almost hit
10 me. The vehicle that threw the money came into the road first
11 and threw the money out. That's when you see students leave
12 the frame including myself to go get the money.

13 Q. Right. You told me and I believe you told the
14 prosecutor this is the vehicle, correct?

15 A. Correct.

16 Q. And this light colored vehicle came up. Did you see
17 it in the video when it came up?

18 A. I did. I saw the neon headlights of it.

19 Q. So when it came up, all the rest of the crowd that
20 didn't go after the money then came to the Explorer; is that
21 right? Or did they go to get the money?

22 A. They probably came right after I was almost hit.

23 Q. To do what?

24 A. To look to make sure I was okay.

25 Q. But you ran back. How many came back to see if you

1 were okay?

2 A. Eventually ran back.

3 Q. So all of these people as you can see them emptying
4 out, emptying out, if that's who ended up at the car and we
5 know that because there's a video, where did the rest of them
6 go?

7 A. I'm not exactly sure.

8 Q. So when you say you're not exactly sure, could some
9 of them have ended up looking for the money like you?

10 A. Perhaps. I mean, they -- I went into the road to
11 get money. That's what I was after.

12 Q. Which would have put them in front of the tan
13 Explorer; is that right?

14 A. In front of which one?

15 Q. You said you went to get the money, the tan Explorer
16 pulled up while you were looking for the money, you then got
17 out of the way, and the truck stopped. If they went to the
18 same place you did, they would be in front of the tan
19 Explorer, would they not?

20 A. Negative. Because I had backed out of the road so
21 that I was not hit by the vehicle.

22 Q. Right. Not where you were but where they were?

23 A. I'm not sure where they went.

24 (Playing video.)

25 BY MR. RUTHERFORD:

1 Q. Do you know whether he's calling your name or not?
2 Is that you, Devon?

3 A. I'm not sure whose name he's calling.

4 Q. You're saying you don't remember whether that was
5 your name or not?

6 A. If I heard --

7 MS. PATTERSON: Your Honor, he's calling for
8 speculation. He was not in the car that recorded the
9 iPad.

10 THE COURT: I've seen the video enough. He said he
11 didn't know.

12 MR. RUTHERFORD: Well, that's why I played it again,
13 Your Honor, to see if I can refresh his memory. If he
14 says he doesn't know --

15 THE COURT: Don't play it again please. I mean, not
16 for that question. You can play it again certainly, but
17 he said he didn't know.

18 BY MR. RUTHERFORD:

19 Q. So once you then come running back from the vehicle
20 the second time?

21 A. I never went all the way up to the vehicle as you
22 can see inside the picture there.

23 Q. That's a still shot --

24 A. Correct.

25 Q. -- on the video as you were see running away from

1 the vicinity of the vehicle, correct?

2 A. Correct.

3 Q. And you hear somebody say something in a video
4 that's watching, correct?

5 A. Correct.

6 Q. As you run towards their car, correct?

7 A. Per the video. Yes, sir.

8 Q. And again, you don't know if you were smiling or
9 laughing as you did that?

10 A. I do not know. I don't remember.

11 Q. What was funny?

12 A. I said I do not know if I was even the one laughing.
13 There was so much going on. You can't even hear what they're
14 saying in that video. I don't know.

15 Q. Is it not true that you can't hear because everybody
16 is laughing?

17 A. If I had heard my name, I probably would have
18 stopped at that vehicle. If somebody calls your name, you're
19 gonna stop. They're gonna have your attention.

20 Q. So do you remember speaking to a police officer that
21 night?

22 A. Yes, sir.

23 Q. Do you remember what that officer told you, asked
24 you? Did you give a statement that night?

25 A. I don't remember what the officer specifically

1 asked. I do believe I did give a statement that night.

2 Q. Do you remember someone pointing at you to a police
3 officer describing you?

4 A. No, sir.

5 Q. You don't. When you ran up to the car, you said you
6 didn't see anyone throw anything at the car; is that right?

7 A. Which car?

8 Q. At the tan light colored car that you described
9 it?

10 A. Correct. I did not see anyone throw anything.

11 Q. Do you remember telling Investigator Carter that you
12 felt like you wanted to throw the drink on Kierin?

13 A. Negative.

14 Q. You don't remember saying that?

15 A. I do not remember saying that.

16 Q. If I played it for you, would it help your memory?

17 A. Yes. But I don't remember saying that.

18 Q. Do you remember talking to Investigator Carter?

19 A. I do.

20 Q. Where did that happen?

21 A. I believe at the police station.

22 Q. Did you talk to him that night?

23 A. Yes, sir.

24 Q. Did you write him a statement that night?

25 A. I believe I did.

1 Q. Did you talk to him at the police station that
2 night?

3 A. I don't believe it was that night.

4 Q. So this was sometime later when you went to the
5 police station to sit down with him; is that right?

6 A. Yes, sir.

7 Q. And do you remember speaking to any other officers
8 that night?

9 A. I cannot remember. I only remember the investigator
10 who showed up.

11 Q. So you don't remember anybody in uniform at a police
12 car whether you talked to them or not?

13 A. I don't remember whether I talked to them or not,
14 but I do remember them being there. It's only like two
15 officers and everyone else was giving statements as well.

16 Q. Do you remember how you knew who Investigator Carter
17 was if you don't remember talking to any other police
18 officers?

19 A. He was wearing civilian clothes. He was out of
20 uniform.

21 Q. Right. So you would not have known who he was,
22 correct? You would not have known that he was Investigator
23 Carter?

24 A. He announced himself as he came on the scene. It
25 was very clear.

1 Q. And as he came on the scene were there other police
2 officers already there?

3 A. Yes, sir.

4 Q. Do you remember talking to any of them?

5 A. I believe I did just to give them facts.

6 Q. Male or female, do you remember?

7 A. I believe there was a female and a male.

8 MR. RUTHERFORD: Your Honor, may we approach?

9 THE COURT: Yes.

10 (Side bar off the record.)

11 THE COURT: All right. We'll take a quick break. I
12 want to see what they're going to play, the excerpt.
13 Y'all step into the jury room. Have you right back in
14 here.

15 (Whereupon, the jury entered the jury room at 10:15
16 a.m.)

17 THE COURT: You got what you need?

18 MR. RUTHERFORD: Yeah.

19 MR. HUBBARD: Your Honor, for redirect we were
20 looking at some stuff, too.

21 THE COURT: Do the best we can.

22 MR. HUBBARD: If you don't mind Sully coming back
23 in.

24 THE COURT: Oh, yeah. I don't want him staying
25 out.

1 MR. RUTHERFORD: Did we kick him out?

2 THE COURT: No. He just needs to come back in here
3 before we start.

4 MR. RUTHERFORD: Yeah.

5 (Whereupon, the jury entered the courtroom at 10:25
6 a.m.)

7 THE COURT: All right. Go ahead.

8 MS. PATTERSON: Your Honor, I don't object to the
9 whole interview coming in.

10 THE COURT: Okay. We can do it without doing the
11 whole thing. Maybe that might save some time. I don't
12 know. There's no question that he's going to appear in
13 the whole thing.

14 (Playing video.)

15 BY MR. RUTHERFORD:

16 Q. Now, do you see yourself in that video?

17 A. Yes, sir.

18 Q. Who is with you?

19 A. That's my brother and my mom.

20 Q. Who all is in the room I guess?

21 A. My brother, my mom, Detective Carter. I'm not sure
22 who the other person is. I have no idea.

23 Q. Okay. I wasn't trying to -- I don't know either so
24 I just didn't know if you knew. Do you remember doing this
25 interview?

1 A. I do not honestly, but obviously that's me there but
2 I don't remember the interview.

3 (Playing video.)

4 BY MR. RUTHERFORD:

5 Q. So could you hear that? I'm sorry.

6 A. No, sir.

7 (Playing video.)

8 BY MR. RUTHERFORD:

9 Q. I'm sorry. We know exactly where it is, but getting
10 the pointer to go there and do that is...

11 (Playing video.)

12 BY MR. RUTHERFORD:

13 Q. So do you remember telling Investigator Carter that?

14 A. I don't remember it but it's in the video here so it
15 did happen.

16 Q. And as you were -- After this happened, do you
17 remember someone later on accusing you of doing exactly
18 that?

19 A. Being accused? Yes. But having thrown it? No.

20 Q. So you remember being accused of what?

21 A. Of potentially throwing my cup.

22 Q. So tell me about that.

23 A. I don't have anything to tell you about it because I
24 had the cup the whole time in all of the frames and videos
25 that are from that evening.

1 Q. No. Tell me about the accusation. How did that
2 come about?

3 A. I'm not sure.

4 Q. Somebody accused you of doing something?

5 MS. PATTERSON: Your Honor, objection. Hearsay.

6 THE COURT: Rephrase your question.

7 BY MR. RUTHERFORD:

8 Q. Tell me how the accusation came about.

9 A. I do not know.

10 MS. PATTERSON: Speculation.

11 MR. RUTHERFORD: He's standing there. Somebody
12 accused him of doing something.

13 THE COURT: No. No. Wait. Don't argue with him.

14 BY THE WITNESS:

15 A. It was not that night someone accused me.

16 THE COURT: You can ask him to explain that but...

17 BY MR. RUTHERFORD:

18 Q. So no one that night pointed you out and said you
19 did something?

20 A. Correct.

21 Q. Okay. So when you were in the Cook Out, you said
22 that you were walking around talking to people; is that
23 right?

24 A. Yes, sir.

25 Q. Did you have your phone out?

1 A. I did not.

2 Q. You didn't have your phone out?

3 A. I did not.

4 Q. You weren't taking pictures with people?

5 A. I was taking pictures of people but it was not on my
6 phone.

7 Q. It was on other people's phones?

8 A. Yes, sir.

9 Q. Did you have a phone at that time?

10 A. I believe so.

11 Q. Okay. You just didn't take it out and take any
12 pictures?

13 A. Correct.

14 Q. Have you ever heard the phrase "do it for the
15 vine"?

16 A. I have.

17 Q. Can you explain to the court what it means?

18 A. I honestly do not know what it means.

19 Q. So you've heard it but you don't know what it
20 means?

21 A. Correct.

22 (Playing video.)

23 BY MR. RUTHERFORD:

24 Q. You don't know what that means?

25 A. What does what mean?

1 Q. Did you hear him say "do it for the vine" or not?

2 A. I did not.

3 Q. Do you know Johnny Shaw?

4 A. I do.

5 Q. Did you see him that night?

6 A. I did.

7 Q. Did you see him after you ran away from the car?

8 A. Negative. I do not believe so.

9 Q. You don't believe so?

10 A. No.

11 MR. RUTHERFORD: No further questions, Your Honor.

12 THE COURT: Redirect.

13 MS. PATTERSON: Your Honor, I may have a couple of
14 things but I need to go check on status.

15 THE COURT: Okay.

16 REDIRECT EXAMINATION

17 BY MS. PATTERSON:

18 Q. Devon, just real quick, I know Mr. Rutherford showed
19 you a video to refresh your memory. Is your memory now
20 refreshed on whether or not you heard Mr. Dennis say
21 anything?

22 A. Yes, ma'am.

23 Q. What did you hear him say?

24 A. As I backed out of the road and we locked eyes, I do
25 now remember based off of that interview him saying, what's

1 up? What's up?

2 Q. Okay. Did you ever throw a cup?

3 A. No, ma'am.

4 Q. Was anyone in front of Mr. Dennis' car when it took
5 off?

6 A. No, ma'am. Not at any point.

7 MS. PATTERSON: No further questions, Your Honor.

8 RECROSS EXAMINATION

9 BY MR. RUTHERFORD:

10 Q. Since now you have a memory, you're saying that
11 no one was in front of Mr. Dennis' car. Did you not just
12 describe the white Infinity with the gentleman in front of his
13 car with the crowbar?

14 A. The gentleman with the pipe was in front of his own
15 vehicle.

16 Q. In front of his own vehicle. So he got out and he
17 walked in front of his own vehicle. Was it not in that same
18 driveway?

19 A. No, sir.

20 Q. I wasn't in that driveway?

21 A. They were not in front of each other. They were
22 parked kind of almost side by side but he was a little further
23 ahead.

24 Q. So the gentleman in the white Infinity was further
25 ahead standing out in front of his own vehicle?

1 A. No, sir.

2 Q. I'll let you describe it. Tell me again how that --

3 A. The gentleman with the pipe was out in front of his
4 own vehicle.

5 Q. Right. Where?

6 A. His vehicle was off, if the driveway is going this
7 way, to the left.

8 Q. So he was over to the left and if I'm coming into
9 the Cook Out, he would be in that lane; is that right?

10 A. Not all the way over there but yes.

11 Q. So not all the way over there, more towards the
12 middle, correct?

13 A. Yes, sir.

14 Q. And if Mr. Dennis is right here, he is closer to the
15 left side of the street; is that correct? In the opposite
16 lane. Would that be right?

17 A. Yes, sir.

18 Q. So if Mr. Dennis is to go out in his own lane, is
19 the white Infinity in the way?

20 A. The white Infinity? Which vehicle is the white
21 Infinity?

22 Q. Do you remember the car that threw the money?

23 A. Yes, sir.

24 Q. What kind of car was it?

25 A. I do not remember what kind of car it was.

1 Q. Okay. Do you know what color it was?

2 A. No, sir.

3 Q. So it was a car?

4 A. Yes, sir. It was an SUV.

5 Q. It was an SUV?

6 A. Yes, sir.

7 Q. So the SUV, you don't know the color, you don't know
8 the make?

9 A. I cannot remember.

10 Q. That's fine. I just don't want to put words in your
11 mouth when I describe it. The SUV, the gentleman got out and
12 he walked to the front of the SUV, correct?

13 A. He was outside of his vehicle. Yes, sir.

14 Q. Right. Where was that vehicle?

15 A. The vehicle was not in far left lane and not in the
16 middle. It was not directly in front of Dennis' vehicle nor
17 was it in front of any other vehicle.

18 Q. But if he's in the middle, two lane road -- Let me
19 ask you this: Which way did Mr. Dennis leave? Did he go to
20 the right of that vehicle or to the left?

21 A. He left straight on so the lane that he was in, he
22 left right out of there unobstructed.

23 Q. So he left in the wrong lane?

24 A. He left - whatever lane that he was in he left from.
25 Yes, sir.

1 Q. I'm asking you. You said he's parked closer to the
2 curb where you were standing. That would be the wrong lane,
3 correct?

4 A. Yes, sir.

5 Q. And you're saying that he drove out the wrong
6 lane?

7 A. He exited without obstruction in that lane. Yes,
8 sir.

9 Q. And he exited without obstruction because there was
10 a vehicle in his lane; isn't that right?

11 MS. PATTERSON: Objection. Speculation.

12 BY THE WITNESS:

13 A. In his lane --

14 THE COURT: I think his lane maybe -- He's answered
15 the question where Mr. Dennis' car went. Rephrase that
16 question maybe another way.

17 BY MR. RUTHERFORD:

18 Q. Do you have a driver's license?

19 A. Yes, sir.

20 Q. Okay. Do you remember taking the test?

21 A. I do not remember taking the test, but I do have a
22 driver's license.

23 Q. How old are you?

24 A. 23.

25 Q. If you are driving on a two lane road, which lane is

1 yours, the one on the right or the one on the left?

2 A. You drive on the right side of the road.

3 Q. So you would be on the right?

4 A. Yes, sir.

5 Q. If there's a vehicle on the right side of the road,
6 is that vehicle in your lane?

7 A. If it's on the right side of the road in the lane
8 with me?

9 Q. Yes, sir.

10 A. Then yes, sir.

11 Q. If you are over here, are you on the wrong side of
12 the road?

13 A. If I'm driving onward in the right direction -- I'm
14 not really sure where you're going.

15 Q. It's a two lane road, correct?

16 A. Yes, sir.

17 THE COURT: Show him a picture.

18 MR. RUTHERFORD: That's the problem, Your Honor.
19 Again, that's what goes back to my further objection.

20 THE COURT: No. No. No. Show him a picture
21 because you're not - he's being clear with his answers
22 and I think the more questions is getting more confusing
23 as to what the point is.

24 BY MR. RUTHERFORD:

25 Q. Here we go. So you said the money was thrown right

1 here, correct?

2 A. Yes, sir. Right around back there.

3 Q. So Mr. Dennis pulls up here, correct?

4 A. Yes, sir. That's where his vehicle sped around to.
5 Yes, sir.

6 Q. Right. And the money is here, right?

7 A. Yes, sir. The money - it was - the vehicle was
8 moving. As he threw the money the vehicle was moving forward
9 so the money was kind of spread out all in this area.

10 Q. And where was the other vehicle?

11 A. The other vehicle would have been right in this side
12 not all the way over here but right in this area.

13 Q. So almost beside where Mr. Dennis was?

14 A. No, sir.

15 Q. So give it to me again. Mr. Dennis is where?

16 A. His vehicle is right around in this area.

17 Q. And the other vehicle is where?

18 A. The other vehicle was like right around in this
19 area.

20 Q. So they looked like these vehicles here?

21 A. Not exactly. I couldn't tell you exactly where they
22 were.

23 Q. You can't tell where the vehicle is but you know
24 that nobody is standing in front of the cars?

25 A. Yes, sir.

1 Q. So you can't see the whole car but you know that
2 nobody is in front of Mr. Dennis' car; is that right?

3 A. Correct. From my view point, my line of view.

4 Q. You ran out into the street to get money, did you
5 not?

6 A. Yes, sir.

7 Q. In the picture right after you run out from the
8 street you have a cap and a cup in your hand. Where is the
9 money?

10 A. I don't have it. That's all I know.

11 Q. You don't have it?

12 A. No, sir.

13 Q. You dropped it?

14 A. I never got any of it.

15 Q. You ran out into the street to get money, two
16 seconds later you have a cap and a cup in your hand. Where is
17 the money?

18 A. I didn't get any.

19 MR. RUTHERFORD: No further questions.

20 THE COURT: You may step down.

21 MS. PATTERSON: Your Honor, may this witness be
22 excused?

23 MR. RUTHERFORD: Without objection, Your Honor.

24 THE COURT: He may.

25 MS. PATTERSON: The State calls Alexis Brunson.

1 Thereupon,

2 ALEXIS BRUNSON

3 after having been first duly sworn, testified as follows,

4 THE CLERK: Please have a seat. Once you're seated,
5 state your full name spelling your last please.

6 THE WITNESS: Alexis Brunson, B-r-u-n-s-o-n.

7 DIRECT EXAMINATION

8 BY MS. PATTERSON:

9 Q. Alexis, where did you graduate high school?

10 A. Dutch Fork.

11 Q. What year?

12 A. 2014.

13 Q. What are you doing now, Alexis?

14 A. Right now, I was working at Rios but I'm planning to
15 move so...

16 Q. Where are you moving to?

17 A. Denver.

18 Q. And back in 2014 did you attend a basketball game at
19 Lexington High School between Dutch Fork and Lexington?

20 A. Yes, ma'am.

21 Q. Where did you go after the game?

22 A. We went to Cook Out.

23 Q. Who did you go with?

24 A. Taylor Bianchi and Kaitlin French.

25 Q. And before you went to the Cook Out, did you have a

1 conversation with anyone about going to the Cook Out?

2 A. We called Deshon Chatman to see where everyone was
3 going after the game.

4 Q. Without saying what Deshon may have said, did he
5 tell you anything about the Cook Out?

6 A. Anything about Cook Out specifically?

7 Q. About going to the Cook Out?

8 A. No. He just told us to go home.

9 Q. Did you go home?

10 A. No. We went to Cook Out.

11 Q. When you got to the Cook Out, what was going on when
12 you first arrived?

13 A. Nothing was going on when we first got there.
14 Everyone was just hanging out and eating.

15 Q. Did you eat?

16 A. I ordered a milk shake.

17 Q. What were you doing?

18 A. Talking with my friends and hanging out.

19 Q. Alexis, do you remember what you were wearing that
20 night?

21 A. I was wearing a pink button up shirt, jeans,
22 boots.

23 Q. I'm going to show you what's been entered as State's
24 Exhibit number 28. Do you see yourself in that photograph?

25 A. Yes.

1 Q. Can you point yourself out to the jury?

2 A. Right there (indicating.)

3 Q. Who are you sitting next to?

4 A. Michael.

5 Q. Michael who?

6 A. James.

7 Q. Can you see who is sitting next to him?

8 A. Up there, no, but when you showed me, it's Cape.

9 Q. Cape. And, Alexis, do you remember when the
10 defendant and his friends came into the Cook Out?

11 A. I don't remember exactly when they walked in, but I
12 remember noticing that they were there.

13 Q. What made you, what caught your attention to them?

14 A. Just, I mean, I guess they were quiet. They -
15 everyone is really happy and getting along and excited and
16 they weren't. They were just like negative energy.

17 Q. Do you remember hearing them say anything when they
18 walked in?

19 A. I don't remember hearing any of them say anything.

20 Q. Do you remember seeing where they went after they
21 walked in?

22 A. (Witness shaking head.) No.

23 Q. Did you pay them any attention?

24 A. I wasn't paying them any attention. No.

25 Q. Did you ever hear some of your friends say anything

1 to that group?

2 A. I don't.

3 Q. And had you even seen them at the game?

4 A. (Witness shaking head.)

5 Q. Speak up.

6 A. No. No. I did not.

7 Q. And so do you remember going outside?

8 A. I do.

9 Q. What made you go outside?

10 A. Everyone else was going outside.

11 Q. When you got outside, what did you notice?

12 A. People yelling back and forth.

13 Q. When you say people, who are these people?

14 A. Dutch Fork students and then the Lexington students
15 that arrived later.

16 Q. So this was a mutual exchange of words between both
17 groups?

18 A. Yes, ma'am.

19 Q. Do you remember where the Lexington group went after
20 the exchange of words?

21 A. They were walking towards the pet store or the
22 building that was beside Cook Out, that area.

23 Q. Did you or any of your friends follow them to their
24 cars?

25 A. No.

1 Q. How many cars do you remember being associated with
2 that group?

3 A. Three.

4 Q. Did they leave immediately?

5 A. No.

6 Q. What can you tell us about what you noticed?

7 A. That night when I was there, I noticed that they all
8 walked over in that direction but everybody pretty much
9 chilled out. Like no one was yelling back and forth anymore,
10 uhm, and they were all over there.

11 Q. Let me show you this picture and see if you
12 recognize it. It's State's 23. Do you see on this poster
13 where that group may have went? Use the laser.

14 A. This is Cook Out, right?

15 Q. Yes.

16 A. They're like over here.

17 Q. So where are you standing after they leave?

18 A. After they left, I was, uhm, like over here.

19 Q. What were you doing?

20 A. Drinking my milk shake, talking to my friends.

21 Q. Do you remember if this was a school night?

22 A. It was a Monday night, school night.

23 Q. Who did you ride with?

24 A. Kaitlin and Taylor.

25 Q. And where did you see their cars go initially?

1 A. What do you mean?

2 Q. Did you notice their cars drive away?

3 A. No. I thought they kind of like grouped up. They
4 didn't leave immediately so their cars were like between the
5 pet area and like the back.

6 Q. Can you point with the pointer?

7 A. Just like over here and over here (indicating.)

8 Q. And you saw their cars over there?

9 A. I, uhm, I know that they were over there with their
10 vehicles.

11 Q. And what were you and your other classmates doing
12 when their cars were over there?

13 A. Just talking to each other. I mean, at that point
14 everyone was outside so we just stayed there. It was late.
15 It was a school night like you said. Just like driving out.

16 Q. Do you know how long their cars were parked over
17 there in that spot?

18 A. I don't know how long they were but...

19 Q. Did you eventually see them leave?

20 A. Yes, ma'am.

21 Q. How did you see them leave? Describe who you saw
22 first.

23 A. I mean, first a car left, one of the three.

24 Q. Do you know what that car looks like?

25 A. I think it was a sedan.

1 Q. Then what did you see next?

2 A. Uhm, I saw another car come up and throw money out
3 of their window.

4 Q. Okay. Did you see what that car looked like?

5 A. I don't remember exactly.

6 Q. And I'm sorry. Did you see who was driving that
7 car?

8 A. I could just tell it was a guy.

9 Q. Where did the car throw the money? Use the pointer.

10 A. I want to say it was around here (indicating.)

11 Q. And after the car threw the money, did it stay in
12 that same spot?

13 A. No. It drove. I thought it drove away but...

14 MS. PATTERSON: Your Honor, may I approach for one
15 second?

16 THE COURT: Sure.

17 (Side bar off the record.)

18 BY MS. PATTERSON:

19 Q. Alexis, after that car that threw money, where did
20 you see it go?

21 A. After it threw money?

22 Q. After it threw money.

23 A. After the car threw the money it like left so I
24 can't say he went anywhere because I thought he left the
25 parking lot.

1 Q. What did you see happen after the money was thrown
2 out?

3 A. Then the third car comes up and it's accelerating
4 really fast and I thought he was trying to hit the students
5 that were going after the money that had been thrown in the
6 road.

7 Q. So let's back up one second. After the car threw
8 the money, what did you see any of your classmates do?

9 A. They went after it.

10 Q. I'm sorry.

11 A. Like our classmates went after the money that was in
12 the road.

13 Q. Do you remember how many people went out?

14 A. I don't remember how many. Maybe like --

15 Q. Do you remember anyone specifically going out?

16 A. I remember Devon Chatman.

17 Q. And what do you see as they're going after the
18 money?

19 A. Like I saw his car accelerating and trying to run
20 them over in the street. That's what it looked like.

21 Q. When you say "he", who are you talking about?

22 A. Kierin.

23 Q. Did you see what this car looked like?

24 A. It was an SUV.

25 Q. And where did the car stop in relation to the kids

1 that were in the road?

2 A. In relation to the kids that were in the road?

3 Q. Yes.

4 A. Well, no one was in the road anymore, but they
5 stopped like right here.

6 Q. Now, when you seen Devon get the money, you said
7 there were some more kids in the road?

8 A. (Witness nodding head.)

9 Q. Then how did the car come up?

10 A. What do you mean?

11 Q. Which direction did it come from?

12 A. Like from back here.

13 Q. Where did the car stop?

14 A. Like here.

15 Q. So you said he almost hit the kids?

16 A. He was, yes, driving really fast.

17 Q. Kind of describe how he stopped.

18 A. Abruptly.

19 Q. How did this make you feel?

20 A. I just - very upset.

21 Q. Did you know -- How were you able to see who was
22 driving the car?

23 A. I was at - I went up to his window.

24 Q. I'm gonna show you State's Exhibit 24. Do you see
25 yourself in this photograph?

1 A. Yes.

2 Q. Can you use the pointer to point yourself out?

3 A. (Witness complies.)

4 Q. Alexis, are you the only girl up there at the
5 window?

6 A. Yes.

7 Q. What made you go up there again?

8 A. Like what did I go up there to say?

9 Q. Yes. What made you go up to the window?

10 A. I was upset. Like he had just almost ran over our
11 classmates. I wanted to let him know like that wasn't cool.
12 Like you don't do that. This is way more than a high school
13 game at this point like if you're putting peoples lives in
14 danger. I was trying to get him to go home.

15 Q. And you said you saw the driver of the car?

16 A. Yes.

17 Q. And was his window up, down, or something else?

18 A. It was down. Like we were talking to each other.

19 Well, I mean --

20 Q. You were talking to him?

21 A. Yeah. Talking at him.

22 Q. What did he look like?

23 A. Like braids, a knitted hat.

24 Q. And what kind of things were you saying when
25 you went up to the window?

1 A. I went up to the window and I was basically like,
2 what the fuck are you doing? Like you need to get out of
3 here. This is - like trying to speak some kind of common
4 sense into his head because it seemed like it just wasn't
5 there. Like, it was, I don't know. I was just so - I was so
6 upset.

7 Q. Were you standing in the road or were you standing
8 kind of on the curb?

9 A. I was on the curb. I wasn't in the road. No. I
10 wasn't in the road.

11 Q. So were you able to see him inside the car?

12 A. Yes.

13 Q. What, if anything, do you remember him saying?

14 A. He's just like saying that like we don't - what he
15 has like we don't want. We just like this issue right now, he
16 didn't seem worried or like scared. He was just more like you
17 don't want what I have, like hand in pocket.

18 Q. So you saw his hand in his pocket?

19 A. Yes.

20 Q. Which hand was that?

21 A. It was his right hand.

22 Q. Now, I've showed you this picture, but at the time
23 did you remember any of these other people that were beside
24 you?

25 A. No.

1 Q. What was your focus on?

2 A. My focus was on him. Like I was really trying to
3 get him to listen to me so he could go home.

4 Q. And what do you remember seeing next, Alexis?

5 A. Like after I yelled?

6 Q. Yes.

7 A. I mean, from where I was standing it looked like a
8 punch was thrown out of the window and then after that
9 happened the car sped off.

10 Q. Can you describe to us kind of what you saw come out
11 the window?

12 A. A right, like, arm.

13 Q. A right arm. Did you see any other parts of his
14 body come out of the window?

15 A. Not to my knowledge.

16 Q. And while you are at the window, do you see anybody
17 reach inside of his window?

18 A. No, ma'am.

19 Q. Did you see anybody throw anything at his car?

20 A. No, ma'am.

21 Q. Do you see anybody rock his car or anything?

22 A. No.

23 Q. And the whole time about how long is this car in
24 that spot?

25 A. I couldn't tell you how long.

1 Q. But the entire time were you standing in that same
2 spot?

3 A. (Witness nodding head.)

4 Q. Did anybody move you out of the way?

5 A. No, ma'am.

6 Q. What happened after you saw the right? Describe it
7 again. I'm sorry.

8 A. Like, I mean, it looked like he punched him really
9 quickly and as soon as he did that, he left like he did.

10 Q. Before he left, was anybody standing in front of his
11 car?

12 A. Not to my knowledge.

13 Q. And how did he drive away from --

14 A. Fast. The same way he approached.

15 Q. And what did you think happened, Alexis?

16 A. I thought that Kierin had punched Cape and, uhm, and
17 left.

18 Q. But at the time did you realize who had gotten what
19 you thought to be punched?

20 A. Did I --

21 Q. Did you know, when you saw his right fist come out
22 of the car, did you know who he hit?

23 A. Uhm, immediately?

24 Q. Yes.

25 A. Like, I mean, after everything happened, after he

1 was gone and I was able to look at who was around me I
2 noticed.

3 Q. And then you noticed Cape had been hurt?

4 A. Uhm, like I said, I thought he just sort of got
5 punched because everything was moving really quickly.

6 Q. And at what point did you notice it was more than a
7 punch?

8 A. When all the cars were gone and, uhm, I heard
9 someone say like that he was stabbed.

10 MS. PATTERSON: Your Honor, we're going to move the
11 car door. Your Honor, may the witness step down?

12 THE COURT: She may.

13 MR. RUTHERFORD: Your Honor, the demonstrative
14 subject to previous objections.

15 THE COURT: Demonstrative evidence only.

16 BY THE WITNESS:

17 A. (Witness complies.)

18 BY MS. PATTERSON:

19 Q. Alexis, can you kind of show the jury, let's say if
20 this was the car that you were standing in front of that night
21 or standing at the window that night, where would you have
22 been standing?

23 A. Around here.

24 Q. And again, did you stay in that same position the
25 entire time that car was right there?

1 A. Yes, ma'am.

2 Q. There were other people around you?

3 A. Yes.

4 Q. At the time did you know who it was?

5 A. (Witness shaking head.)

6 Q. How did you see his right hand come out of that
7 window?

8 A. Quick.

9 Q. Keep your voice up.

10 A. Quickly.

11 Q. Can you kind of demonstrate?

12 A. (Indicating.) I mean...

13 Q. Okay. You can sit back down.

14 A. (Witness complies.)

15 MS. PATTERSON: Thank you, Alexis. Please answer
16 any questions the defense may have.

17 CROSS EXAMINATION

18 BY MR. RUTHERFORD:

19 Q. Ms. Brunson, you stated that you were, that you did
20 not go into the street, correct?

21 A. Correct.

22 Q. You were standing on the curb, correct?

23 A. Absolutely.

24 Q. And you were standing on the curb. Actually, we can
25 see you in State's Exhibit number 24 as you were standing on

1 the curb according to your testimony at the window of Mr.
2 Dennis' car; is that right?

3 A. Right.

4 Q. You further stated that you saw a punch come out the
5 window and you actually demonstrated the punch. Can you do it
6 again?

7 A. From here?

8 Q. Yeah. Just show me how it looked, what you saw.

9 A. (Indicating.)

10 Q. Just a punch?

11 A. Out the window.

12 Q. Just a punch?

13 A. Right.

14 Q. Okay. You further stated that you were not sure who
15 got punched, correct?

16 A. Right. At that time.

17 Q. So you're standing I believe you said right here and
18 you did not know who got punched?

19 A. No. Because I wasn't paying attention to the people
20 around me.

21 Q. But you happened to pay attention to the punch?

22 A. Yes. If the person I'm staring at punches somebody
23 out of the window, I'm gonna notice that.

24 Q. So you saw that. When I asked you to describe it,
25 that's exactly what you saw, somebody do that, correct?

1 A. I saw a fist leave the window.

2 Q. Okay. You were standing close enough to his car to
3 see in, correct?

4 A. Yes.

5 Q. You said the window was down, correct?

6 A. Yes.

7 Q. Did you see a cell phone in the car?

8 A. No.

9 Q. Did you know when you went to accuse him of trying
10 to run your friends over whether he even saw them?

11 MS. PATTERSON: Your Honor, calling for speculation.

12 MR. RUTHERFORD: That's all we've been doing.

13 THE COURT: If she knows.

14 BY THE WITNESS:

15 A. Can you ask your question again?

16 BY MR. RUTHERFORD:

17 Q. When you went to accuse him of trying to run your
18 friends over, did you know or do you know, did you find out
19 whether he even saw your friends?

20 A. No. I just assumed that he did.

21 Q. Okay. And as you are standing here and you said
22 that you said some expletives and yelled at him, was anybody
23 else saying anything?

24 A. Yes.

25 Q. Who would those people be?

1 A. I don't know who was saying things. Like what are
2 you asking me? After the fact or when?

3 Q. When you were talking to Mr. Dennis, were you
4 talking or were you yelling?

5 A. When I was yelling at Mr. Dennis, I had no idea who
6 was beside me that was yelling.

7 Q. So do you know the people that were beside you in
8 State's Exhibit 24?

9 A. Yeah.

10 Q. But you don't know who else was saying anything?

11 A. No.

12 Q. You can't identify a single person that said a
13 single thing?

14 A. If you're asking me about that night while I was
15 there at the car, I cannot tell you who was there and what
16 they said.

17 Q. Okay. But you know what you said?

18 A. I know what I said.

19 Q. Okay. Now, do you remember who was immediately to
20 your left?

21 A. No.

22 Q. Do you remember who was immediately to your right?

23 A. No.

24 Q. When you said that you saw your friends almost get
25 run over, who was that?

1 A. Who almost got run over?

2 Q. Yes, ma'am.

3 A. I was focused on Devon because I saw him in the
4 street.

5 Q. All right. Who else?

6 A. The other people that went after the money. I don't
7 remember exactly who else was in the street.

8 Q. Did I cut you off? I'm sorry.

9 A. No. I answered you.

10 Q. So the only person that you remember was --

11 A. Devon.

12 Q. -- Devon? That's it?

13 A. Yes.

14 Q. The other people that ran out in the street after
15 the truck, the SUV stopped, do you know where they went?

16 A. What are you asking me?

17 Q. The people that you said ran in the street to get
18 the money --

19 A. Yes.

20 Q. -- you saw Devon, what happened to the other
21 people?

22 A. Well, I mean, I don't know where they went but I
23 know they got out of the road.

24 Q. So you don't know where they went or who they were,
25 but you know where they were?

1 A. No one was in the street anymore because they almost
2 got ran over by a car.

3 Q. So who is the people that you're describing?

4 A. I have already told you I don't know.

5 Q. All right. So you said to the Solicitor that when
6 Mr. Dennis entered the Cook Out, she talked about the mood
7 changing and you described, you said I don't know I think was
8 your answer. Tell me what your answer was. When they walked
9 into the Cook Out, how did the mood change I believe was the
10 question.

11 A. The mood changed because their attitudes, their
12 demeanor, everyone was happy, enjoying time. Like no smiles
13 on their faces. Just like looked -- You can tell when people
14 are different. Like I don't know.

15 Q. All right. This is the Cook Out, would you agree?

16 A. Yes.

17 Q. Okay.

18 (Playing video.)

19 BY MR. RUTHERFORD:

20 Q. I'll show you when they walk in. Now, at that
21 moment it looks to me like everybody is looking at -- Do you
22 know Michael James?

23 A. I know Michael James.

24 Q. It looks like everybody is looking at Michael James
25 and focused on what's going on there; is that right? You see

1 peoples heads turn and everybody is kind of looking that way;
2 is that right?

3 A. Everyone is looking that way.

4 Q. Where are you?

5 A. I don't see myself.

6 Q. Okay. Now, the Solicitor wanted you to describe the
7 mood. They've come in. So when you're describing the mood to
8 the Solicitor, tell me where you are.

9 A. You can't see where I am in that video. I mean,
10 there's other videos that show where I'm at.

11 Q. The Solicitor wanted you to describe the mood when
12 they came in. You talked about their energy. You talked
13 about when they came in. I'm asking you in this Cook Out
14 where are you?

15 A. I am sitting in that booth right there by the
16 door.

17 Q. You're in the booth right there by the door when
18 they come in?

19 A. Like in that area. That's where I was when I was in
20 Cook Out.

21 Q. Is that you walking in?

22 A. That's me.

23 Q. Walking in?

24 A. I mean, I guess I came from outside. I don't know.
25 Like you...

1 Q. So let me back up.

2 A. Okay.

3 Q. What is behind you where you just came from? That
4 is the door to the Cook Out, correct?

5 A. Right.

6 Q. You see Mr. Dennis and his friends standing in the
7 Cook Out, correct?

8 A. Right.

9 Q. You just saw yourself walk in, correct?

10 A. Okay.

11 Q. So is it possible that you were not even there when
12 they walked in?

13 A. It's possible that I wasn't there when they walked
14 in.

15 Q. So it's possible you just answered questions from
16 the Solicitor and from me describing a scene that you did not
17 even witness? That's you, correct?

18 A. That's me.

19 Q. Okay. Now, is it possible that you went out another
20 door at some point? Do you know the doors to the Cook Out?

21 A. No.

22 Q. So that's not possible?

23 A. Am I only allowed to like say things that you ask
24 me? Like can I not say anything else?

25 Q. I'll ask you questions. You can answer them and if

1 I haven't asked you the right one, I'll try better. When you
2 just came in on this video, were you coming in from outside?

3 A. I don't know where I was coming in from. I thought
4 I was inside. I mean, I can't answer that.

5 Q. That's you sitting at the table, correct?

6 A. Yes.

7 Q. Can you see the time on that? That's 14 minutes in;
8 is that right?

9 A. I can't see it.

10 Q. Can you see it now? It's not a trick. I just want
11 to make sure for the record. It's at 14 minutes and 18
12 seconds on the video for the record when you were sitting at
13 the table. You remember sitting at the table with Michael
14 James, correct?

15 A. I remember sitting at the table.

16 Q. You told the Solicitor earlier that you were, I
17 believe she showed you a picture of you sitting at the table
18 with Michael James?

19 A. Okay. Yes. I was sitting next to Michael.

20 Q. That's you in that picture, correct?

21 A. Yes.

22 MR. RUTHERFORD: No further questions.

23 THE COURT: Ms. Patterson.

24 REDIRECT EXAMINATION

25 BY MS. PATTERSON:

1 Q. Alexis, you do remember seeing the defendant and his
2 friends inside the Cook Out, don't you?

3 A. Yes.

4 Q. And when you got inside the Cook Out, did you ever
5 go to the bathroom?

6 A. No.

7 Q. Did you ever go back outside?

8 A. No.

9 Q. And that frame that he just showed you, do you know
10 where you were immediately before that scene?

11 A. Before I come in the frame? I have no idea.

12 Q. Throughout the night were you socializing with a lot
13 of people inside the Cook Out?

14 A. I was.

15 Q. Were you walking around throughout the restaurant?

16 A. Yes.

17 MS. PATTERSON: No further questions.

18 THE COURT: You may step down. You're finished.

19 MS. PATTERSON: Your Honor, may she be excused?

20 MR. RUTHERFORD: Without objection.

21 THE COURT: She may be without objection.

22 MS. PATTERSON: The State calls Lamar Butler.

23 Thereupon,

24 LAMAR BUTLER

25 after having been first duly sworn, testified as follows,

1 THE CLERK: Please have a seat. Once you're seated,
2 state your full name spelling your last please.

3 THE WITNESS: Lamar Butler, B-u-t-l-e-r.

4 DIRECT EXAMINATION

5 BY MS. PATTERSON:

6 Q. How are you, Mr. Butler?

7 A. I'm good. How are you?

8 Q. Can I call you Lamar?

9 A. Yes, ma'am.

10 Q. Lamar, where did you graduate high school?

11 A. Dutch Fork.

12 Q. What year?

13 A. 2015.

14 Q. So 2014 would have been your junior year?

15 A. Yes, ma'am.

16 Q. Did you hang out with a lot of seniors?

17 A. Yes, ma'am.

18 Q. And I'm going to show you State's Exhibit number 5.

19 Did you go to the basketball game over here in Lexington

20 between Lexington and Dutch Fork on February 17, 2014?

21 A. Yes, ma'am.

22 Q. Can you show the jury where you are in this picture?

23 Can you see yourself?

24 A. Right there.

25 Q. Where are you?

- 1 A. Right there.
- 2 Q. What are you doing, Lamar?
- 3 A. I was dancing.
- 4 Q. Why were you dancing?
- 5 A. Because that's what we did at the high school games
6 in the crowd. Well, I did.
- 7 Q. Was it a good game?
- 8 A. Yes, ma'am.
- 9 Q. And so it appears in that picture you look pretty
10 excited about winning?
- 11 A. Yes, ma'am.
- 12 Q. When you got outside of the game, did you see any
13 problems in the parking lot?
- 14 A. No, ma'am.
- 15 Q. When you got to the parking lot, what did you do?
- 16 A. Me and another classmate, we started dancing and
17 then everybody was around us.
- 18 Q. Do you remember who that classmate was?
- 19 A. Yes, ma'am. I was Will Sweeper.
- 20 Q. What kind of dance are you and Will doing?
- 21 A. It's called the Nana.
- 22 Q. Is it kind of loud outside?
- 23 A. Yes, ma'am. You can say we were. Yeah. We were.
- 24 Q. Who is we?
- 25 A. Pretty much the whole, like the crowd that we were

1 in.

2 Q. Is that Dutch Fork?

3 A. Yes, ma'am.

4 Q. Were y'all celebrating?

5 A. Yes, ma'am.

6 Q. I show you State's Exhibit 4. Do you recognize
7 what's in this photograph?

8 A. Yes, ma'am.

9 Q. Okay. What is this?

10 A. The parking lot.

11 Q. Of where?

12 A. Lexington.

13 Q. Where were you at when y'all were dancing and
14 celebrating?

15 A. We were over right here.

16 Q. Who did you go to the game with, Lamar?

17 A. Chauncy.

18 Q. Do you remember where he was parked?

19 A. Right over close over here somewhere.

20 Q. When y'all are dancing or celebrating what, if
21 anything, are the other Dutch Fork kids doing?

22 A. I don't they was chanting with us, too, and they
23 were just hyping us up.

24 Q. And about how long did this celebration last?

25 A. About five minutes, if that.

1 Q. Did you ever notice anybody that you didn't go to
2 school with or wasn't familiar with when you were out there
3 dancing?

4 A. Yes. When I stopped. Yes, ma'am.

5 Q. Who did you notice?

6 A. Uhm, a girl and a dude, they just came into our
7 circle and that's pretty much when I stopped.

8 Q. What did this dude look like?

9 A. He was heavy set.

10 Q. Where did you go after you left the game?

11 A. Me and Chauncy, we went to Cook Out.

12 Q. When you got to the Cook Out, what was going on?

13 A. We just, everybody pretty much got there so we was
14 just sitting down chatting, stuff like that.

15 Q. Did you notice the defendant and his friends walk
16 into the Cook Out? Were you there already?

17 A. Yes, ma'am.

18 Q. Describe who walked in with him.

19 A. He had the heavy set guy, the girl, and I think like
20 a light skinned dude, and there was one other person.

21 Q. What did the defendant look like?

22 A. He had dreads and I guess a beanie on.

23 Q. The heavy set guy and the girl, were they the same
24 ones that you said walked in the circle?

25 A. Yes, ma'am.

1 Q. What do you remember happening next?

2 A. We were all sitting down and then I saw Michael, I
3 saw they had, they were outside with him and he pretty much
4 like made a little gesture, threw his hands up and then that's
5 pretty much when we went outside.

6 Q. How did you see Mike outside? Did you see him
7 actually go outside?

8 A. No. I just saw him through the window. He was
9 already out there so I didn't even pay attention to him going
10 outside.

11 Q. When you saw him outside, at what point did you see
12 the Lexington people were out there, too?

13 A. When they had just walked out the door, I saw Mike
14 turn around like and it's like they were exchanging words and
15 then he just threw up his hands.

16 Q. And what did you do?

17 A. I went outside.

18 Q. Were you the only one to go outside?

19 A. No, ma'am.

20 Q. Who went outside with you?

21 A. Pretty much everybody else.

22 Q. Was this -- Go ahead.

23 A. Pretty much the whole Cook Out cleared out really.

24 Q. Now, did you tell anybody else let's go outside or
25 did everybody just kind of follow?

1 A. Uhm, well I told the person beside me which is
2 Tyreke, I was like, hey, Mike's outside. We gonna make sure
3 he all right, then I went out there and then they pretty much
4 just followed, everybody followed.

5 Q. So this was just something you did because this was
6 your friend?

7 A. Yes, ma'am.

8 Q. When you got outside, what did you see?

9 A. They were starting to, like it was, like they had
10 just finished exchanging words and they had pretty much
11 started to walk past Mike and that was pretty much it. They
12 just walked to their cars and we were all out there. We
13 didn't go back there.

14 Q. Did you hear anybody exchanging words?

15 A. I mean, I'm sure there were, but I can't tell you
16 what they said.

17 Q. But did you hear people from both groups exchanging
18 words?

19 A. Yes, ma'am.

20 Q. Did you hear anything in particular?

21 A. No, ma'am.

22 Q. Now, did you see this group walk to their cars?

23 A. Yes, ma'am.

24 Q. Did you see what area they were parked?

25 A. Yes, ma'am. They were in like the back like of, it

1 was like this and it was towards the car wash I think.

2 Q. How many cars were associated with these people?

3 A. Three.

4 Q. And did they leave immediately?

5 A. No, ma'am.

6 Q. Did you or any of the Dutch Fork students follow
7 them to their car?

8 A. No, ma'am.

9 Q. Where did you see them go initially?

10 A. They all went to their cars and they pretty much
11 just like met up by each other. Like they had turned around.
12 They was facing each other like cops do.

13 Q. Before that, did you ever see anybody go into their
14 trunk?

15 A. Before that? No. That's probably when they were
16 parked, then I saw like the trunk and stuff.

17 Q. What did you see?

18 A. Well, I saw some - I saw one trunk open and that's
19 when they were over there talking for like, I don't know,
20 three to five minutes, but they were over there talking and
21 then the trunk closed and they just started moving.

22 Q. Did you see who went to the trunk?

23 A. No, ma'am.

24 Q. Where were the Dutch Fork students standing when the
25 Lexington people were at their cars?

1 A. I mean, we were all over. Like we were scattered,
2 but nobody was further than the curb.

3 Q. Let me show you State's Exhibit 23. The Cook Out
4 Restaurant is to the right. Do you recognize this parking
5 lot?

6 A. Yes, ma'am.

7 Q. And where were you when the Dutch Fork kids were
8 standing with the Lexington kids at their car?

9 A. Let's see. We were all over here.

10 Q. Where do you see the Lexington people?

11 A. Over here.

12 MR. RUTHERFORD: I can't hear him.

13 THE COURT: They both said the same thing. Speak
14 up.

15 BY MS. PATTERSON:

16 Q. Where do you see to the Lexington people?

17 A. Right here in that area.

18 Q. And so what do you remember happening next?

19 A. Uhm, the heavy set guy, he was in his car and he
20 came and drove up. He threw money out and he said like, this
21 is what y'all are worth, and then a couple of our classmates
22 ran into the road and started picking up the money and that's
23 when the other truck came and like pretty much almost hit
24 them, but he stopped and then like one of our guys got out of
25 the way and the other guy got pulled out of the way, pulled

1 out of the road.

2 Q. Let's talk about that. So where did the heavy set
3 guy, where did he pull up at when he threw the money out?

4 A. It was probably like right here (indicating.)

5 Q. Did his car remain in that same spot?

6 A. No. He pulled up a little bit.

7 Q. Where did he pull up to?

8 A. Right here.

9 Q. Did you ever see him get out of the car?

10 A. No.

11 Q. Where did your classmates go?

12 A. They were right here like in that area picking up
13 money.

14 Q. Do you remember anybody specifically in the road
15 picking up the money?

16 A. Yes, ma'am.

17 Q. Who do you remember?

18 A. It was Devon Chatman and Tyreke Farrow.

19 Q. Describe how the car came and almost hit your
20 friends?

21 A. It came from over there and he just sped up to like
22 right here close to where that car is.

23 Q. What happened to Tyreke?

24 A. He got pulled out of the road.

25 Q. Who pulled him out of the road?

1 A. Xavier.

2 Q. Xavier. What's his last name?

3 A. Holliday.

4 Q. What happened to Devon?

5 A. He, I would say he got out of the way quick
6 enough.

7 Q. At this time where are you standing?

8 A. I'm like right here.

9 Q. And how close to that curb did the defendant's car
10 get?

11 A. They got real close, like almost on the curb.

12 Q. And what did you do, Lamar, when that almost
13 happened?

14 A. Well, it was like six of us and they were all pretty
15 close so they just calling like, he went up to the window so I
16 went up there, too.

17 Q. Do you remember what you were wearing that night?

18 A. Yes, ma'am. I had a red Nike sweat shirt on, some
19 Adidas pants and red Nike shoes.

20 Q. I'll show you State's Exhibit 24 and see if you can
21 identify yourself in this picture.

22 A. Right there.

23 Q. And this is just a still shot from a really quick
24 iPad video but can you kind of describe to the jury what's
25 going on after that car stops?

1 A. It's like everybody is pretty much like yelling,
2 cussing, stuff like that and, uhm --

3 Q. Were you able to see who was driving the car?

4 A. Yes, ma'am.

5 Q. And how you were able to see? How was the window?

6 A. It was about halfway down.

7 Q. Half way down?

8 A. Yes, ma'am.

9 Q. So you got a good look at the driver?

10 A. Yes, ma'am.

11 Q. What did he look like?

12 A. Like what do you mean?

13 Q. Can you describe his appearance?

14 A. Oh, he had the dreads and the hat and, uhm, I think
15 he had a jacket on, something like that.

16 Q. And what were you all saying to him at the window,
17 do you remember?

18 A. I honestly don't.

19 Q. Was people saying stuff though?

20 A. Yes, ma'am.

21 Q. Did you hear him say anything back?

22 A. No, ma'am.

23 Q. What was he doing?

24 A. So he was just sitting their calm just chilling
25 almost.

1 Q. And at any point did you see anybody reaching inside
2 of this car?

3 A. No, ma'am.

4 Q. Did you see anybody touching the car?

5 A. No, ma'am.

6 Q. Did you see anybody throwing anything at the car?

7 A. No, ma'am.

8 Q. Could you see his hands inside the car?

9 A. Well, I know they were on the wheel so they were
10 like he was relaxed almost.

11 Q. Lamar, if you will step down for a minute and keep
12 your voice up and stand on this side so the court reporter can
13 hear.

14 A. (Witness complies.)

15 Q. How far would you say the car window was down when
16 you saw this defendant?

17 A. (Indicating.)

18 Q. When he first pulled up, how was the window?

19 A. It was like - it was about like lower than half
20 almost.

21 Q. And at any time did it go lower or higher?

22 A. Yes, ma'am. Probably like this window right there.

23 Q. So are you ever looking at him? Can you see him
24 from where you are?

25 A. Yes, ma'am.

1 Q. Now, is there anybody directly in front of you?

2 A. I mean, we were like, I wouldn't say we were like
3 all moving each other, but I didn't stay still so, yeah, I got
4 to look.

5 Q. And if this was the car door, how far back were
6 you?

7 A. I was probably about right here in this area.

8 Q. Was anybody standing blocking your view of him
9 inside this window that you couldn't see?

10 A. I mean, yeah. Somebody right here and somebody
11 right here but not really.

12 Q. And if you can take a seat in the chair.

13 A. (Witness complies.)

14 Q. Be careful. How did you see the defendant sitting?

15 A. Like this (indicating.)

16 Q. We'll move the door so the jury can see it.

17 A. (Witness complies.)

18 Q. How did you see the defendant sitting in the car?

19 A. Like this (indicating.)

20 Q. Speak up. I'm sorry.

21 A. He was like this, laid back.

22 Q. Did you ever see him do any gestures or anything?

23 A. Yes, ma'am.

24 Q. What did you see him do?

25 A. He do like head, like come closer. Head, like come

1 closer.

2 Q. What did you see happen after that?

3 A. He pretty much made like it was like a quick jab, it
4 was, he just drove off after that.

5 Q. What did you see -- How did you see the jab
6 happen?

7 A. Like this (indicating.)

8 Q. Out the window?

9 A. Mm-hmm.

10 Q. You saw his fist?

11 A. Yeah. It looked like he just punched him.

12 Q. So did you ever see any weapons or anything in his
13 hand?

14 A. No, ma'am. It was quick so I really didn't.

15 Q. So what happened after you saw that quick jab?

16 A. He drove off and then Da'Von, he kind of stumbled
17 back and that's when we all just like, I mean, pretty much --
18 Well, Bruce had, they had went, like I thought they was gonna
19 follow him, but they had rushed Da'Von to the hospital so I
20 had left after that.

21 Q. When he drove off, was anyone standing in front of
22 his car?

23 A. Yes. His friend was right there. Like where he had
24 parked at, where his friend had parked at, he had, he was
25 right there, but I thought he had left, too.

1 Q. Which friend was this?

2 A. The heavy set guy.

3 Q. Did you see anything in his hand?

4 A. A crowbar or a pipe or something like that.

5 Q. And he almost hit his friend?

6 A. Yes, ma'am.

7 Q. Did you see any of the Dutch Fork students standing
8 in front of the car?

9 A. Which car?

10 Q. The defendant's car.

11 A. No.

12 Q. Did anyone try to grab his steering wheel?

13 A. No, ma'am.

14 Q. When did you realize that Cape had actually been
15 stabbed and not punched?

16 A. Uhm, it was later on after I got home. I had, it
17 was either, I think, a text pretty much went out, you know.

18 Q. So after the defendant drove off, where did you
19 go?

20 A. I went home.

21 Q. And again, where did you think Cape and Marcus
22 went?

23 A. I thought they were gonna follow him.

24 Q. Just to be sure, Lamar, did you ever see anybody put
25 their hands inside that car?

1 A. No, ma'am.

2 Q. Did you ever see anybody bang on that car?

3 A. No, ma'am.

4 Q. Or throw anything at that car?

5 A. No, ma'am.

6 MS. PATTERSON: Thank you, Lamar. Please answer any
7 questions the defense may have.

8 THE WITNESS: Yes, ma'am.

9 CROSS EXAMINATION

10 BY MR. RUTHERFORD:

11 Q. Lamar, how tall are you?

12 A. About five nine now.

13 Q. Five nine now?

14 A. Yeah.

15 Q. How much do you weigh?

16 A. About 175.

17 Q. I'm showing you again State's Exhibit number 24.
18 Where are you again?

19 A. Right here.

20 Q. You're right there?

21 A. Yes, sir.

22 Q. Do you see the back of the SUV?

23 A. Yes, sir.

24 Q. Where is that?

25 A. Right here.

1 Q. So you were almost at the back of the SUV; is that
2 correct?

3 A. Yes, sir. At that point in time.

4 Q. That's when the car stopped, when the SUV is
5 stopped, correct?

6 A. Mm-hmm.

7 Q. And you're almost at the back of the SUV, correct?

8 A. Yeah.

9 Q. You said at that point in time. Did you not start
10 there?

11 A. I mean, I'm not sure because like I said, I was
12 moving around.

13 Q. You were moving around?

14 A. Yes, sir.

15 Q. While you were moving around, did you see an
16 individual take his shirt off?

17 A. No, sir.

18 Q. Did you ever see an individual out there in a wife
19 beater?

20 A. Yes, sir.

21 Q. Who was that?

22 A. I want to say Bruce, I think.

23 Q. You said Bruce?

24 A. Yes. Marcus.

25 Q. I'm sorry?

1 A. Well, that's his nickname. His name is Marcus.

2 Q. Marcus what?

3 A. Taylor.

4 Q. Marcus Taylor?

5 A. Yes, sir.

6 Q. And Marcus Taylor had on a wife beater?

7 A. I - I - probably. I'm not sure.

8 Q. Do you remember seeing someone out there that night

9 --

10 A. Yeah.

11 Q. -- in a wife beater?

12 A. Yes, sir.

13 Q. Do you remember how cold it was?

14 A. Yes, sir.

15 Q. Why did he have on a wife beater?

16 MS. PATTERSON: Objection. Speculation.

17 THE COURT: If he knows. But he can't --

18 MR. RUTHERFORD: If he knows, he knows. If he

19 doesn't, he doesn't know.

20 THE COURT: If he knows, he can answer.

21 BY MR. RUTHERFORD:

22 Q. Why at that point near the truck did Marcus Taylor
23 have on a wife beater?

24 A. Because he took his shirt off.

25 Q. He took his shirt off. It was February, was it

1 not?

2 A. Yes, sir.

3 Q. Where is Marcus Taylor in this picture?

4 A. I don't see him.

5 Q. You don't see him. Was Marcus Taylor around the
6 truck?

7 A. Not where we were.

8 Q. Not where you were. So you said you're about five
9 ten, 175; is that right?

10 A. Five nine, 175.

11 Q. Five nine, 175. Do you know how long your arms
12 are?

13 A. Probably over six feet.

14 Q. Over six feet?

15 A. Yes, sir.

16 Q. Do you know how long it is from here to here?

17 A. No, sir.

18 Q. Okay. Do you mind coming and sitting in whatever
19 this is?

20 A. (Witness complies.)

21 Q. Do you remember -- What kind of car was it that
22 night?

23 A. Forward Explorer.

24 Q. Forward Explorer?

25 A. Yes, sir.

1 Q. Do you remember whether the Ford Explorer had tinted
2 windows or not?

3 A. I'm not sure.

4 Q. You're not sure?

5 A. No, sir.

6 Q. But you could see it, correct?

7 A. Yes, sir.

8 Q. You're looking in, correct?

9 A. Yes, sir.

10 Q. You described how the window went down, correct?

11 A. Yes, sir.

12 Q. But you don't know whether it was tinted?

13 A. No, sir.

14 Q. Okay. So can you show me how you saw from, and I
15 guess you can position me here, you look like you're about
16 here. Is that where you are in that picture?

17 A. Yes, sir. In that picture.

18 Q. Okay. Show me what you saw Mr. Dennis do?

19 A. You talking about when he threw the punch?

20 Q. Yes.

21 A. Like this (indicating.)

22 Q. Just like that?

23 A. It was quicker than that.

24 Q. Do that again.

25 A. (Indicating.)

1 Q. Hold your hand out and leave it there when you get
2 there?

3 A. (Witness complied.)

4 Q. Just like that?

5 A. Mm-hmm.

6 Q. So whoever got punched was standing here; is that
7 right?

8 A. No. It wasn't that close.

9 Q. You said, I asked you to describe what Mr. Dennis
10 did. You then did it. I asked you to hold your hand right
11 there. Do it again.

12 A. (Witness complies.)

13 Q. So whoever was at the end of that was standing right
14 here; is that right?

15 A. No, sir. It wasn't that close.

16 Q. So then --

17 A. It was quicker than that.

18 Q. So I'll give you another chance. Show me again what
19 you saw Mr. Dennis do.

20 A. (Indicating.)

21 Q. Just like that?

22 A. (Witness complies.)

23 Q. So whoever got hit was standing just like that; is
24 that right?

25 A. No. He wasn't that close.

1 THE COURT: He's answered your question three
2 times.

3 MR. RUTHERFORD: He has. And I'm trying to give him
4 the opportunity to clean it up.

5 THE COURT: No. No. I mean, that's his answer.

6 THE COURT: You're right.

7 BY MR. RUTHERFORD:

8 Q. So you're saying he wasn't that close, correct?

9 A. Yes, sir.

10 Q. Okay. And again, you were over here, correct?

11 A. Yes. At the time.

12 Q. What was the person at the window, what was he
13 saying?

14 A. I couldn't tell you.

15 Q. You can't tell me?

16 A. I don't know.

17 Q. Now, there are all these people around the window?

18 A. Mm-hmm.

19 Q. And people are you said yelling and saying things to
20 Mr. Dennis; is that right?

21 A. Mm-hmm.

22 Q. But you don't know what he was saying?

23 A. (Witness shaking head.)

24 Q. Do you remember anybody else around him?

25 A. Mm-hmm.

1 Q. Do you remember Xavier Holliday?

2 A. Mm-hmm.

3 Q. What was he doing?

4 A. I don't know. Probably doing the same thing
5 everybody else was.

6 Q. He was just right there doing the same thing?

7 A. Mm-hmm.

8 Q. The same thing being yelling at Mr. Dennis; is that
9 right?

10 A. Mm-hmm.

11 Q. Do you remember where he was standing?

12 A. I mean, yeah. He was at the window.

13 Q. He was at the window, too?

14 A. Yes.

15 Q. Am I about where he was?

16 A. Mm-hmm.

17 Q. So I'm about where Xavier was, correct?

18 A. Mm-hmm.

19 Q. And there was somebody else here, correct?

20 A. Yes.

21 Q. And there was somebody else here, correct?

22 A. Yeah. Alexis.

23 Q. Alexis. And she was standing on the curb,
24 correct?

25 A. Mm-hmm.

1 Q. So the curb was right near?

2 A. Yes.

3 Q. So you were on the curb, too?

4 A. Yes, sir.

5 Q. So y'all are on the curb over the car; is that
6 right?

7 A. No, sir.

8 Q. You're just standing on the curb and the car happens
9 to be there?

10 A. Yes.

11 Q. Okay. So y'all are standing on the curb right here
12 at the car window; is that right?

13 A. Yes. It is. Yes, sir.

14 Q. All right. And nobody stepped in the street,
15 correct?

16 A. I'm not sure.

17 Q. Okay. So and you said Alexis. Who was here?

18 A. Probably Tyreke, Xavier.

19 Q. Tyreke, Xavier?

20 A. Yes, sir.

21 Q. Who else?

22 THE COURT: You need to speak up a little bit.

23 MR. RUTHERFORD: I need to speak up?

24 THE COURT: No. No. You're fine. I just can't
25 quite hear his answers. He's presenting away from me.

1 MR. RUTHERFORD: I'm sorry, Your Honor.

2 You're right. You're right.

3 BY MR. RUTHERFORD:

4 Q. So you said Alexis is here?

5 A. Mm-hmm.

6 Q. Next to her is Tyreke?

7 A. Yes.

8 Q. Next to Tyreke is who?

9 A. Xavier.

10 Q. Xavier. Next to Xavier is who?

11 A. Probably either me or Mike.

12 Q. You or Mike. And do you remember on down?

13 A. I think James was down there.

14 Q. Okay. Where was Da'Von Capers?

15 A. He had came up.

16 Q. He came around?

17 A. Mm-hmm.

18 Q. Was Da'Von Capers in the street when the gold

19 Explorer came up?

20 A. No, sir.

21 Q. Was Da'Von Capers or any of the people that you have
22 described at his window?

23 A. No, sir.

24 Q. So where was Da'Von Capers?

25 A. He was coming to the car.

1 Q. He was coming to the car?

2 A. When I got, when Xavier was right there, I moved him
3 out of the way.

4 Q. So you moved Xavier out of the way?

5 A. Yeah.

6 Q. And then what?

7 A. And then I pretty much was there.

8 Q. Then you were right here on the curb?

9 A. Yeah. And Da'Von came, he coming like, I was
10 walking away and he was coming like --

11 Q. He pushed you out of the way and then he came right
12 there?

13 A. Mm-hmm.

14 Q. And what did he say?

15 A. I don't know.

16 Q. But you're here and you're five nine, 175, and
17 Da'Von pushed you out of the way and then stepped here; is
18 that right?

19 A. I'm five nine, 175 now.

20 Q. Then how tall were you?

21 A. Like five seven, 150.

22 Q. Fine seven, 150?

23 A. Yeah.

24 Q. And he pushed you out of the way?

25 A. Mm-hmm.

1 Q. So that he could get here?

2 A. Mm-hmm.

3 Q. But you don't know what he said, right?

4 A. No. I don't know what anybody said.

5 Q. But he didn't step in the street, correct? There's
6 nobody in the street, right?

7 A. No, sir.

8 Q. But you were on the curb when he moved you?

9 A. Mm-hmm.

10 Q. So he stepped right where you were, he's on the
11 curb, correct?

12 A. Yes.

13 Q. Okay. So after you saw, and do the punch again that
14 you saw.

15 A. (Indicating.)

16 Q. After you see this, and then the car drives off; is
17 that right?

18 A. Mm-hmm.

19 Q. And you said that his friend was in front of him.
20 If you're him, where was his friend?

21 A. Probably like where the back wall --

22 Q. But in terms of the lanes?

23 A. He was like in between them two.

24 Q. Like right here? I don't want to --

25 A. Yes. Yes.

1 Q. Okay. So but not this close --

2 A. Yeah.

3 Q. -- but just about right here?

4 A. (Witness nodding head.)

5 Q. And you said he drove and almost hit his friend; is
6 that right?

7 A. (Witness nodding head.) Yes.

8 Q. Behind him or in front of him or how did that --
9 You said he almost hit his friend. Describe that.

10 A. He had to swerve because he almost hit him.

11 Q. Got you. And did his car go out that way or to the
12 left or you don't remember?

13 A. I'm not sure.

14 Q. Okay. Now, at that point what happened?

15 A. Uhm, Da'Von stumbled back and he pretty much like, I
16 guess he had told Marcus that they need to go so after that I
17 had pretty much left.

18 Q. So Da'Von is here and he stumbles back and he tells
19 Marcus who has no shirt on they need to go. Where is
20 Marcus?

21 A. He started going to his --

22 Q. No. When Da'Von is at the window, where is Marcus
23 with no shirt on?

24 A. He wasn't around. He wasn't -- I don't know.

25 Q. You don't know?

1 A. But he wasn't over here.

2 Q. You can step down. I'm sorry.

3 A. (Witness complies.)

4 Q. Now, you went to high school, correct?

5 A. Yes, sir.

6 Q. Does it mean anything to you when someone takes
7 their shirt off?

8 A. I mean, depends on what's going on.

9 Q. When all this is going on, does it mean anything to
10 you if someone is outside at the Cook Out and they take their
11 shirt off?

12 A. I mean, depends on how you take it.

13 Q. What does it mean to you?

14 A. It could mean to me when stuff like that going on if
15 I was to take my shirt off, probably gonna end in an
16 adrenaline thing.

17 Q. So that's all it means, an adrenalin thing?

18 A. Yeah. I mean, he's like - he's - he went into like,
19 like his big brother mode, almost like protection.

20 Q. Protecting the people in the street?

21 MS. PATTERSON: Objection. Speculation. He doesn't
22 know who he was protecting.

23 MR. RUTHERFORD: I didn't say it. He said it.

24 THE COURT: He can answer the question, but he can't
25 tell why the other fellow did it.

1 BY THE WITNESS:

2 A. Like protection of anybody that we were with.

3 BY MR. RUTHERFORD:

4 Q. And it was -- How many of y'all at that time? When
5 y'all went outside and the Lexington crowd went towards their
6 car, how many people was there?

7 A. A lot.

8 Q. A lot?

9 A. Yeah.

10 Q. But he had to protect a lot?

11 A. Yeah. That's just how he is.

12 Q. Is that him right here?

13 A. Yes, sir.

14 Q. Okay. Now, you said -- I'm gonna take you back. I
15 apologize. I'm gonna take you back to the high school. You
16 said that you all were dancing. I believe Will Sweeper was
17 dancing and everybody was around him in a circle; is that
18 right?

19 A. Yes, sir.

20 Q. And you said the heavy set guy and the girl walked
21 through the circle; is that right?

22 A. Yes, sir.

23 Q. So they walked through the circle?

24 A. Yes, sir.

25 Q. How did that make you feel?

1 A. Uhm, I was kind of like questioning like why, so
2 that's why I stopped.

3 Q. Because you took it like a taunt; is that right?

4 A. That was just --

5 Q. Disrespectful?

6 A. Yeah. You could say so.

7 Q. And when you say they walked through the circle,
8 Will is dancing and everybody is around him and they come
9 walking up through the circle?

10 A. Yes, sir.

11 Q. Did you see any cops?

12 A. I think there was one telling everybody to clear
13 out.

14 Q. So the cop is telling everybody to clear out and
15 here they come walking through y'all's circle. And how did you
16 feel?

17 A. I was just -- It was weird.

18 Q. So when you're at the Cook Out and you're sitting in
19 the booth, who is it that tells Michael James that they're
20 about to walk in?

21 MS. PATTERSON: Objection. Hearsay.

22 BY THE WITNESS:

23 A. I don't know.

24 BY MR. RUTHERFORD:

25 Q. You don't know?

1 THE COURT: He doesn't know. I'll allow the
2 question.

3 MR. RUTHERFORD: Because I didn't ask him what he
4 said. I said who.

5 THE COURT: Right.

6 BY MR. RUTHERFORD:

7 Q. You don't know?

8 A. (Witness shaking head.)

9 Q. Where were you sitting in that booth?

10 A. I was -- What do you mean?

11 Q. Could you see outside?

12 A. Yes, sir.

13 Q. Could you see the door?

14 A. No. Because they had that little - they had a table
15 or booth right there.

16 Q. But you were facing that way; is that right?

17 A. Mm-hmm.

18 Q. So you didn't have your back to it?

19 A. Yes.

20 Q. You were facing that way?

21 A. Mm-hmm.

22 Q. So you could see out the window, correct?

23 A. Yes, sir.

24 Q. And you could see that people that walked through
25 your circle coming in the Cook Out; is that right?

1 A. No. I didn't see them come in.

2 Q. You didn't see them come in?

3 A. No. When they came in, that's when I saw them. I
4 didn't see them walking in.

5 Q. But you're at the booth, correct?

6 A. Mm-hmm.

7 Q. Did you hear anybody say anything before they came
8 in?

9 A. No, sir.

10 Q. Did you see Michael James stand up?

11 A. Yes, sir.

12 Q. What did he do?

13 A. Threw his hands up.

14 Q. Threw his hands up?

15 A. Mm-hmm.

16 Q. Did you hear what he said?

17 A. No, sir.

18 Q. You didn't hear what he said?

19 A. No, sir.

20 Q. Did you hear what they said back?

21 A. No, sir.

22 Q. Then what did Michael James do?

23 A. I think he -- I'm not sure honestly.

24 Q. You're not sure?

25 A. No.

1 Q. Okay. And so later on you said that Mr. Dennis and
2 his friends went outside --

3 A. Mm-hmm.

4 Q. -- correct?

5 A. (Witness nodding head.)

6 Q. And then Michael James went outside, too; is that
7 right?

8 A. Mm-hmm.

9 Q. Did he tell you he was going outside?

10 A. No, sir.

11 Q. You're still sitting in the booth?

12 A. Yes, sir.

13 Q. And you're looking out the window; is that right?

14 A. Yes, sir.

15 Q. And you said he did a gesture. What is that
16 gesture?

17 A. Threw his hands up again.

18 Q. Show me.

19 A. (Indicating.)

20 Q. What did that mean to you sitting inside the Cook
21 Out?

22 A. It looked to me like they were exchanging words and
23 he kind of said like what type thing.

24 Q. So he does like this and you said he made a gesture.
25 This is the gesture?

1 A. Mm-hmm.

2 Q. And when he made that gesture, you said I got to go
3 outside; is that right?

4 A. Yeah.

5 Q. And you told somebody else I got to go check on him
6 because he's -- Right?

7 A. Right. Yes, sir.

8 (Playing video.)

9 BY MR. RUTHERFORD:

10 Q. Is that when you saw him?

11 A. Yes, sir.

12 Q. Okay. And then he comes walking back towards where
13 they are, right? And he does it again, right?

14 A. Yes, sir.

15 Q. Okay. So point out when you walk out.

16 A. That's me right there, first one out.

17 Q. Right there. Okay. Now, did you notice the
18 Lexington kids walking off?

19 A. Yes, sir.

20 Q. If you just went to check on him and they're walking
21 off, how come you didn't go back inside?

22 A. Because, I mean, everybody was outside already so, I
23 mean, it wasn't like I be walking back in there.

24 Q. So everyone is outside so you might as well stay
25 out?

1 A. I wasn't there, sir.

2 Q. Because at that point all your friends are outside;
3 is that right?

4 A. Yes, sir.

5 Q. But yet the Solicitor asked you what happened to the
6 Lexington crowd and you're able to tell her because when
7 you're out there and your friends are out there, you're still
8 watching them, aren't you?

9 A. Yeah.

10 Q. You know where they are?

11 A. Mm-hmm.

12 Q. You know what they're doing --

13 A. Mm-hmm.

14 Q. -- right? And you stand on the curb, right, because
15 when they leave, they're gonna drive right by you, right?

16 A. I mean, they had already circled around one time or
17 one of them did so...

18 Q. As you're watching the whole thing?

19 A. Yeah.

20 Q. And where is Marcus and does he still have his shirt
21 on or had he already taken it off?

22 A. I don't know. I wasn't paying attention.

23 Q. You weren't paying attention?

24 A. No, sir.

25 Q. So you don't remember when he took his shirt off?

1 A. No, sir.

2 Q. Just that he did it?

3 A. Yes, sir.

4 Q. Okay. And so at this point you're at the curb not
5 talking to your friends, you're focused on where Mr. Dennis
6 and his friends are?

7 A. I probably focused on him. I mean, I kept my eye on
8 him.

9 Q. And Marcus and who else?

10 A. Xavier, Chauncy.

11 Q. And everybody is on the curb; is that right?

12 A. Mm-hmm.

13 Q. So then he comes walking, he comes driving up, Mr.
14 Dennis does. And where is Xavier?

15 A. He was over there with us.

16 Q. Did you have to grab him, pull him out of the road
17 or anything?

18 A. No. He grabbed Tyreke.

19 Q. He grabbed Tyreke. Do you remember ever grabbing
20 Xavier?

21 A. Yeah. I grabbed him, but that was when the car
22 stopped.

23 Q. Why did you grab him?

24 A. Because he's a hothead. I know Xavier.

25 Q. Xavier's a hothead?

1 A. Yeah.

2 Q. So Xavier the hothead goes up to the car and you
3 grab him?

4 A. (Witness nodding head.)

5 Q. All right. What did Xavier the hothead say?

6 A. I'm not sure.

7 Q. You don't know. But you grabbed him?

8 A. But I know he probably said some stuff to them.

9 Q. Okay. And when Xavier the hothead ran to the car,
10 tell me how close he was to the car?

11 A. Probably right there.

12 Q. But he never stepped off the curb or did he step in
13 the street?

14 A. He didn't.

15 Q. So he's on the curb right there standing in the
16 way?

17 A. Mm-hmm.

18 Q. And you grabbed him and pulled him back?

19 A. Yes, sir.

20 Q. Now, as they -- Do you see where you are in this?

21 A. No, sir.

22 (Playing video.)

23 BY MR. RUTHERFORD:

24 Q. Where did you park?

25 A. We were like --

1 Q. I don't need you to be accurate.

2 A. We were across - we were across the street from
3 there.

4 Q. You were across the way?

5 A. Yeah.

6 Q. Who are those people in the street right there?

7 A. I guess they were with us, Dutch Fork.

8 Q. And they're in the street, correct?

9 A. Yes, sir.

10 Q. Okay. And you can see groups walking over to where
11 your car is, correct?

12 A. (Witness nodding head.)

13 Q. But that's not you?

14 A. No, sir.

15 Q. Because you're on this side?

16 A. Yes, sir.

17 Q. So there are other kids walking over on that side?

18 A. Mm-hmm.

19 Q. Okay. And what we're watching now is essentially
20 what is marked as State's Exhibit number 23; is that right?
21 Can you see that?

22 A. Yes, sir.

23 Q. Okay. And what you're seeing is about right here;
24 is that right? What's right here behind this tree, do you
25 know? Is it a driveway?

1 A. Yes.

2 Q. So when you see that white SUV down there, he is
3 where this tree is in the picture; is that right? It's not a
4 trick. I'm trying to orientate.

5 A. Pretty much over this way.

6 Q. Okay. So and you can't tell that from this angle
7 because we're kind of looking this way where as this is an
8 overhead shot, correct?

9 A. Mm-hmm.

10 Q. Okay. Now, do you remember whether they were doing
11 any construction at that time where you parked?

12 A. I'm not sure. I wasn't paying attention to that.

13 Q. Okay. Do you know where you are at this point?

14 A. I'm honestly probably still over here by the curb.

15 Q. Are you in this big group over here? Do you know
16 whose silver car that is?

17 A. Where at?

18 Q. Right here.

19 A. No, sir. I don't.

20 Q. Okay. So and you don't know where you are at this
21 point, correct?

22 A. No, sir.

23 Q. Okay. Do you see in this picture, or when you
24 walked out, did you see Da'Von Capers?

25 A. When I walked out of Cook Out?

1 Q. Yes, sir.

2 A. I mean, yes, sir.

3 Q. Okay. Do you see him now?

4 A. No, sir. I don't. I don't recognize nobody right
5 now.

6 Q. Okay. Can you tell where this camera is at the Cook
7 Out?

8 A. Yes, sir.

9 Q. That's it on the front corner?

10 A. Yes, sir.

11 Q. Looking back at that parking lot?

12 A. Yes, sir.

13 Q. Did you see the headlights come out of there?

14 A. Yes, sir.

15 Q. So when somebody turns out from under the tree,
16 they're essentially going to be right here; is that right?

17 A. Yes, sir. I mean...

18 Q. When I say right here, I mean right where they would
19 turn out; is that right?

20 A. Yes, sir.

21 Q. And so it was nighttime when this happened,
22 correct?

23 A. (Witness nodding head.)

24 Q. And you said that he threw the money here; is that
25 right?

1 A. Yes, sir.

2 Q. And so if somebody turned right there and the kids
3 are in the road right here, do you know whether he even saw
4 them?

5 MS. PATTERSON: Calls for speculation.

6 MR. RUTHERFORD: He ran to the window, Your Honor.
7 He already speculated.

8 THE COURT: I know. Your question is not based on
9 what the driver saw from back there.

10 MR. RUTHERFORD: I asked him whether he knew.

11 THE COURT: He can say what he saw.

12 BY THE WITNESS:

13 A. Can you repeat it?

14 BY MR. RUTHERFORD:

15 Q. So when the cars turn out of here, did you see
16 Mr. Dennis' eyes to know where he was looking when he pulled
17 up and you said he almost hit the kids?

18 A. No. I couldn't see his eyes.

19 Q. Okay. When you were looking in his car, did you see
20 his cell phone?

21 A. No. I didn't see his cell phone.

22 Q. So in essence you don't know whether Mr. Dennis saw
23 anybody in the road when he turned in the road?

24 A. I'm pretty sure I would remember.

25 Q. But you don't know?

1 A. I don't know.

2 MR. RUTHERFORD: No further questions.

3 THE COURT: Any redirect?

4 MS. PATTERSON: Yes, sir.

5 THE COURT: Okay.

6 REDIRECT EXAMINATION

7 BY MS. PATTERSON:

8 Q. Lamar, while Sully is setting that up, defense
9 counsel was asking you about the defendant pulling into this
10 area where the money had been thrown out.

11 A. Yes, ma'am.

12 Q. Would you consider the way he pulled in this crowd
13 to be a normal rate of speed?

14 A. No, ma'am.

15 Q. How would you describe that rate of speed?

16 A. It was faster than it should have been, I guess. I
17 was like -- I can't say exact miles per hour.

18 Q. But it was faster than it should have been?

19 A. Yes, ma'am.

20 Q. And he asked you a lot of questions about Marcus.
21 Did you have your eyes on Marcus the entire time?

22 A. No, ma'am.

23 (Playing video.)

24 BY MS. PATTERSON:

25 Q. And we're going to play this frame by frame. Do you

1 see the defendant's car in this frame?

2 A. Yes, ma'am.

3 Q. Let's just keep watching it. Let me know when you
4 see it take off.

5 A. Okay.

6 Q. Is the car already gone?

7 A. Yes, ma'am.

8 Q. And do you see Marcus in this frame?

9 A. No, ma'am.

10 Q. And again, is the defendant's car gone now?

11 A. Yes, ma'am.

12 Q. Did you see Marcus in that frame?

13 A. Yes, ma'am.

14 Q. Had the defendant already drove away at the time
15 that you saw Marcus come up in this white shirt?

16 A. Yes, ma'am.

17 Q. Did you see Cape fall back? Can you kind of
18 describe how this happened, what you witnessed?

19 A. It was like he fell back into Tyreke and, uhm, he
20 kind of just like lost his foot almost.

21 Q. And this picture that we've been showing you, this
22 is just a moment in time, correct?

23 A. Yes, ma'am.

24 Q. Because I think you described it was constant
25 movement?

1 A. (Witness nodding head.)

2 Q. Yes or no?

3 A. Yes, ma'am.

4 Q. Who was constantly moving around?

5 A. Me, Xavier and Tyreke.

6 Q. Who moved Tyreke?

7 A. Xavier.

8 Q. Where did Xavier move Tyreke from?

9 A. That's when he pulled him out of the road and then
10 right there it was just Xavier kind of moved him, well, he was
11 up at the window and Tyreke was out up at the window, too.

12 Q. And you moved Xavier out of the way?

13 A. Yes, ma'am.

14 Q. And I think defense counsel said Cape pushed you.
15 Did he push you out of the way?

16 A. It was kind of like, it was like a watch out type of
17 thing.

18 Q. And can you step down for a second? I'm sorry.

19 A. (Witness complies.)

20 Q. And again, how far away were y'all at this window?

21 A. Probably here. I was - I was right here. And then
22 Xavier was up here and I was probably right here.

23 Q. Then did you see Cape at the window?

24 A. Yes, ma'am. I was like back here almost.

25 Q. And how far up to the Window was Cape?

1 A. He was like right here.

2 Q. So was Cape's hands and arms and head all in the
3 window?

4 A. No, ma'am.

5 Q. We're gonna turn it sideways so we can do it again.
6 And again, how far up to the window were you?

7 A. Right here.

8 Q. How far up was Cape?

9 A. Right here.

10 Q. And again, how were you all constantly moving
11 around? Keep your voice up.

12 A. I mean, because like Tyreke was right there and then
13 I saw Xavier going up so then I moved Xavier. That's when
14 Cape came like kind of just moved like that. So, I mean, I
15 just like walked around almost and he was up here right
16 here.

17 Q. So he was about right there when you saw the punch
18 come out of the window?

19 A. Yes, ma'am.

20 Q. What you thought was a punch. Have a seat. I'm
21 sorry.

22 A. (Witness complies.)

23 Q. Defense counsel was showing you the video and asking
24 you about all those kids. Did you know where all those kids
25 were going?

1 A. No, ma'am.

2 Q. Is it possible some were leaving to go home?

3 A. Yes, ma'am.

4 Q. I apologize. I'm gonna show you the frame by frame
5 once again.

6 (Playing video.)

7 BY MS PATTERSON:

8 Q. And I want you to kind of just look at your friends
9 and kind of describe, you described previously how Cape fell
10 back and I just want you to look at the frame and kind of
11 explain what kind of movement you see in your friend.

12 A. Yes, ma'am.

13 Q. First of all, identify yourself with the pointer.

14 A. (Witness complies.)

15 Q. And is this after you have been moved away by
16 Cape?

17 A. Yes, ma'am.

18 Q. Can you kind of see some movement right there?

19 A. Yes, ma'am.

20 Q. Do you know who those people are that's moving in
21 front of you?

22 A. Tyreke is in the white right there.

23 Q. You say Cape fell into Tyreke?

24 A. Yes, ma'am. He was in the white. He fell into him
25 right there because you can see his plaid.

1 Q. And the car again has taken off?

2 A. Yes, ma'am.

3 Q. And at this point did you know what happened?

4 A. No, ma'am.

5 Q. What did you see?

6 A. After the car took off?

7 Q. Well, no. Before the car took off, what had you
8 seen?

9 A. It was just like a simple jab.

10 MS. PATTERSON: Thank you.

11 THE WITNESS: Yes, ma'am.

12 RECROSS EXAMINATION

13 BY MR. RUTHERFORD:

14 Q. So now that she has slowed it down for you and shown
15 you when Marcus comes into the frame, is he not coming from
16 exactly where Mr. Dennis came from?

17 A. Like that area?

18 Q. Yes, sir.

19 A. Yes, sir.

20 Q. So Mr. Dennis, you described him as speeding or
21 going faster than normal coming from the same area where
22 Marcus Taylor was with his shirt off; is that right?

23 A. I don't - I don't know if he was already over there
24 when they were over there.

25 Q. Coming from the same area that Marcus Taylor came

1 from; is that right?

2 A. Yes, sir.

3 Q. And Marcus Taylor had his shirt off, did he not?

4 A. He did.

5 Q. Did you see Marcus earlier?

6 A. What do you mean earlier?

7 Q. Did you see him earlier in the evening?

8 A. Yes, sir.

9 Q. Did he have his shirt on?

10 A. Yes, sir.

11 Q. At this point he did not. You saw him in the frame
12 as he comes from the same place Mr. Dennis came from with his
13 shirt off, correct?

14 A. Yes, sir.

15 Q. And Marcus according to you was not standing close
16 enough to the car --

17 A. Mm-hmm.

18 Q. -- to see what happened to Cape, correct?

19 A. Yes, sir. He wasn't up there when I was up there.

20 Q. He was back?

21 A. Yeah.

22 Q. Where Mr. Dennis came from, correct?

23 A. Yes, sir.

24 MR. RUTHERFORD: With his shirt off. No further
25 questions, Your Honor.

1 THE COURT: You may step down. Good time for a
2 lunch break. All right. Take lunch. Enjoy it. Don't
3 talk about the case. Be back in the jury room at 1:30.
4 All right.

5 (Whereupon, the jury was released for lunch break at
6 12:20 p.m.)

7 (Lunch break.)

8 BAILIFF: All rise. Come to order. Court is now in
9 session.

10 THE COURT: Be seated. All the jurors are back.
11 Are you ready?

12 MR. HUBBARD: Yes, Your Honor.

13 MR. RUTHERFORD: Yes, Your Honor.

14 THE COURT: Excellent, excellent. Bring them in.

15 (Whereupon, the jury entered the courtroom at 1:35
16 p.m.)

17 THE COURT: All right. Welcome back. I went out to
18 Hudson's. None of y'all came out there. Solicitor, call
19 your next witness.

20 MS. PATTERSON: Thank you, Your Honor. The State
21 calls Benjamin Vollmer.

22 Thereupon,

23 BENJAMIN VOLLMER

24 after having been first duly sworn, testified as follows,

25 THE CLERK: Please have a seat. Once you're seated,

1 state your full name spelling your last please.

2 THE WITNESS: Benjamin Vollmer, V-o-l-l-m-e-r.

3 DIRECT EXAMINATION

4 BY MS. PATTERSON:

5 Q. Mr. Vollmer, where are you employed?

6 A. Lexington County EMS.

7 Q. How long have you been employed with the Lexington
8 County EMS?

9 A. About eight years now, ma'am.

10 Q. What is your title?

11 A. Paramedic crew chief.

12 Q. How long have you been a paramedic?

13 A. About seven years.

14 Q. Before you were a paramedic, what was your job
15 title?

16 A. I was an EMT crew member.

17 Q. What type of training did you undergo to become a
18 paramedic?

19 A. It's about six months of EMT school followed by an
20 additional year of paramedic school which includes didactic
21 and clinical portions.

22 Q. And back in 2014 what was your job title?

23 A. I was a paramedic crew chief.

24 Q. Did you receive training in emergency medicine?

25 A. Yes, ma'am.

1 Q. What are some of your duties as a paramedic crew
2 chief?

3 A. I'm responsible for oversight of all the patient
4 care on the ambulance and that includes some of the more
5 advanced procedures that we can perform.

6 Q. Were you on duty on the night of February 17th,
7 2014?

8 A. Yes, ma'am. I was.

9 Q. Were you dispatched to 811 West Main Street in
10 Lexington?

11 A. Yes, ma'am.

12 Q. What is located at this address?

13 A. That is the Lexington Urgent Care.

14 Q. And do you have your report with you?

15 A. I do.

16 Q. What time were you dispatched to that location?

17 A. I was dispatched at 21:50.

18 Q. What time did -- What type of call did you respond
19 to?

20 A. I was dispatched to a report of a stabbing.

21 Q. What time did you arrive on scene?

22 A. 21:57.

23 Q. So seven minutes later?

24 A. Yes, ma'am.

25 Q. When you arrived at the scene, what did you first

1 see?

2 A. I saw my patient laying flat on the concrete just
3 outside the front door and he appeared to be unresponsive.

4 Q. Did you begin treatment on the patient?

5 A. Immediately.

6 Q. Were you able to identify who the patient was?

7 A. I was.

8 Q. Who did you identify him to be?

9 A. It was Da'Von Capers.

10 Q. Did you assess Da'Von's condition?

11 A. I did.

12 Q. What was your initial assessment?

13 A. As I said before, he was unresponsive. He had very
14 weak pulses. His skin was very cool, diaphoretic. These are
15 all indicators of an advanced state of shock.

16 Q. What type of treatment did you render?

17 A. On scene rapid transport was my primary goal. We
18 got him loaded up into the ambulance and enroute to Richland
19 which is our level one trauma center.

20 Q. What is a level one trauma facility?

21 A. Essentially it's a hospital that has different
22 physicians on duty, different specialties so they're prepared
23 for just about any trauma or emergency that comes in through
24 the door.

25 Q. Did you have assistance this night with treating

1 Da'Von?

2 A. I did. I had my partner Drew Barr and I also had
3 numerous fire fighters that were on scene as well.

4 Q. What time did you depart that location, leave that
5 location?

6 A. At 22:04. I was on scene for about seven minutes.

7 Q. And who drove the ambulance?

8 A. It was my partner Drew Barr.

9 Q. And enroute to Palmetto Health Richland did anything
10 change about Da'Von's condition?

11 A. Absolutely. About five minutes into transport I
12 noted that he no longer had a pulse, his heart was no longer
13 beating on its own.

14 Q. Did this concern you?

15 A. Greatly.

16 Q. Why?

17 A. He is now in cardiac arrest. As I said before, he
18 was in an advanced level of shock and it progressed to the
19 point where he no longer had his own heartbeat.

20 Q. After you noticed this, did you continue to Palmetto
21 Health Richland?

22 A. We stopped so we could initiate CPR and I could get
23 several other treatments started to try and restart his
24 heart.

25 Q. What kind of treatment did you render?

1 A. I was unable to place an IV due to his level of
2 circulatory collapse so I placed a needle directly into his
3 bone. I was able to give him medications and fluids through
4 that. As I said before, we initiated CPR. I was able to
5 place a breathing tube into his trachea as well. He also
6 received what's called a pleural decompression. I used a
7 needle to treat his collapsed lung.

8 Q. Where did you place this needle?

9 A. On the left side of his chest.

10 Q. And did this treatment seem to be helping?

11 A. None of the treatments I rendered seemed to help.

12 Q. Did you make it to Palmetto Health Richland?

13 A. No, ma'am. Our protocol dictates with patients we
14 have in cardiac arrest we divert to the closest hospital.

15 Q. What hospital would that have been?

16 A. That was Lexington Medical Center.

17 Q. Back in 2014 how long had you been an EMT or
18 paramedic?

19 A. That was about three or four years of service at
20 that point in time.

21 Q. Now you're at about how many years?

22 A. About eight.

23 Q. Throughout your career how many knife injuries have
24 you --

25 MS. SIMPSON: Objection, Your Honor.

1 THE COURT: Relevance.

2 MS. PATTERSON: Your Honor, defense counsel has made
3 a statement in her opening argument that this was a kind
4 of getaway from me stab wound. I need to be able to
5 establish, Your Honor, that this is not a normal ordinary
6 stab wound treatment.

7 MS. SIMPSON: Your Honor, if I may respond. The
8 appropriate witness at the appropriate time, however, he
9 is not qualified as an expert in this.

10 THE COURT: Sustain the objection. We got another
11 medical person coming in on the witness list.

12 BY MS. PATTERSON:

13 Q. And when you responded and treated Mr. Capers, had
14 you ever seen an injury like that?

15 MS. SIMPSON: Objection, Your Honor.

16 THE COURT: He can answer that.

17 BY THE WITNESS:

18 A. That type of injury isn't very common. I haven't
19 seen many injuries like it.

20 BY MS. PATTERSON:

21 Q. And how long did it take to get Da'Von to Lexington
22 Medical Center?

23 A. It took us looks like about 34 minutes, but like I
24 said, we stopped enroute so we could initiate CPR and numerous
25 other treatments to try an stabilize him, get his heart

1 started again.

2 Q. While you were at the hospital, did anything happen
3 regarding Mr. Capers?

4 A. We took him to the ER room where he was shortly
5 pronounced dead by a physician minutes later.

6 MS. PATTERSON: Thank you, Mr. Vollmer. Answer any
7 questions the defense may have.

8 MS. SIMPSON: Your Honor, I have no questions for
9 this witness.

10 THE COURT: Okay. You may step down.

11 MS. PATTERSON: Your Honor, we ask that this witness
12 be excused.

13 MS. SIMPSON: Without objection.

14 THE COURT: Certainly. Has his work clothes on.

15 MR. HUBBARD: The State calls Jesse Simmons.

16 Thereupon,

17 JESSE SIMMONS

18 after having been first duly sworn, testified as follows,

19 THE CLERK: Please have a seat. Once you're seated,
20 state your full name spelling your last please.

21 THE WITNESS: Jesse Simmons, S-i-m-m-o-n-s.

22 DIRECT EXAMINATION

23 BY MR. HUBBARD:

24 Q. Officer Simmons, where do you work?

25 A. Town of Lexington Police Department, sir.

1 Q. How long have you been there?

2 A. Employed there for approximately 12 years.

3 Q. What's your rank?

4 A. Currently a school resource agent which is an
5 agent.

6 Q. How long have you been a school resource officer?

7 A. A little less than a year.

8 Q. Back in 2014 what were your duties?

9 A. I was actually assigned to the investigation
10 division.

11 Q. Do you remember getting involved in the case
12 involving Mr. Dennis?

13 A. I do, sir.

14 Q. Do you recall responding to the execution of a
15 search warrant at his residence?

16 A. I do, sir.

17 Q. What day was that?

18 A. We initially went out to the residence on February
19 17, 2014 and the actual, because of time delay, the execution
20 was February 18.

21 Q. Do you remember what his address was?

22 A. ■5 Drooping Leaf Drive.

23 Q. Is that outside the town?

24 A. It is, sir.

25 Q. Prior to your arrival, were there any other officers

1 out there?

2 A. Yes, sir. When I arrived at that residence, there
3 were several Lexington County deputies on that scene.

4 Q. Is that protocol out of town?

5 A. Yes. We have the local jurisdiction agency out
6 there as we do a search warrant.

7 Q. In conducting a search warrant, is this just your
8 agency or did you have another outside agency?

9 A. We had outside agencies, SLED, one of the crime
10 scene units responded to the residence to assist us in the
11 execution of the search warrant.

12 Q. Was there basically a protocol what SLED was going
13 to do versus what you do?

14 A. Primarily my point there was to stand by with SLED,
15 allow them to actually process the scene. It was treated as a
16 crime scene and allow them to do their job and be with them
17 and basically observe and any evidence or anything that they
18 didn't take, I was gonna take into custody.

19 Q. Okay. Now, what about, what time about did you show
20 up for that?

21 A. Between the time of about 10:30 to 10:50, 10:45 that
22 night.

23 Q. The county was there?

24 A. Yes, sir.

25 Q. Were you one of the first Town of Lexington

1 officers?

2 A. I was the very first Town of Lexington officer to
3 show.

4 Q. Who lives directly across the street from Mr.
5 Dennis?

6 A. It's gonna be William Zander at I believe the
7 address was ■4 Drooping Leaf Drive.

8 Q. Did you come into contact with Kierin Dennis on that
9 night?

10 A. I did. Yes, sir.

11 Q. Did you -- Now, let me ask you this: Was he under
12 arrest at that point?

13 A. He was not, sir.

14 Q. Did you interrogate him at all at that point?

15 A. I did not, sir.

16 Q. What was your purpose for being there?

17 A. When I was initially notified that there was an
18 incident, I was actually at home. We're on-call. If they
19 have any assistance or any issues to come in, we come in. I
20 was given very little information initially because sometimes
21 that's how it happens. I was just told somebody had been
22 stabbed at the Cook Out and attempt to locate somebody named
23 Kierin Dennis or an individual by the name of Kierin Dennis as
24 well as a William so that's pretty much all I knew. I didn't
25 know the roles of anyone or exactly what or how it happened.

1 Q. You didn't know anyone had died at this point?

2 A. I was not aware of that. I knew someone had been
3 injured but I didn't know what their status was.

4 Q. When you came in contact with Mr. Dennis what, if
5 anything, did you let him know?

6 A. I simply spoke with him and advised him that I was
7 there to talk with him about an assault that had happened at
8 the Cook Out and was wanting to have him come back to the
9 police department if he would be willing to for an
10 interview.

11 Q. What was his response?

12 MS. SIMPSON: Objection, Your Honor, just subject --
13 I understand your ruling but just to renew my previous
14 objection.

15 THE COURT: Objection noted for the record.

16 BY THE WITNESS:

17 A. His response was, he tilted his head a little bit,
18 he furrowed his brow and said, "an assault?" which I kind of
19 interpreted as a question.

20 MS. SIMPSON: Objection, Your Honor. You made a
21 ruling with respect to this issue.

22 THE COURT: I was thinking my ruling was he can
23 speak to the voice inflection which he did but that would
24 be it.

25 BY THE WITNESS:

1 A. Which is why at that time that's what I interpreted,
2 I again explained to him that there was an assault at the Cook
3 Out and that we wanted him to come back with us if he was
4 willing to do an interview.

5 BY MR. HUBBARD:

6 Q. Now, when SLED was conducting their search warrant,
7 what, if any, items did they not take that you were interested
8 in?

9 A. Primarily the items that they did not take with them
10 was a cell phone which was found in the bedroom that we
11 believed to be Mr. Dennis' bedroom. It was an iPhone in a
12 case. There were a few other items we did not take as well,
13 but that was the main item of interest for us.

14 Q. I'll show you a photograph and see if this is the
15 phone and where you located it?

16 A. Yes, sir. That is correct.

17 MR. HUBBARD: Offer this into evidence, 33.

18 THE COURT: 33.

19 MS. SIMPSON: Without objection.

20 THE COURT: State's 33 is admitted without
21 objection.

22 BY MR. HUBBARD:

23 Q. It's kind of hard to see here but is that the
24 phone?

25 A. Yes, sir.

1 Q. Now, what we're looking at is what object in the
2 bedroom is this?

3 A. Cell phone in his bedroom on the blanket.

4 Q. On his bed?

5 A. On his bed. Yes, sir.

6 Q. In this home did you determine how many occupants
7 there were?

8 A. My understanding at that time there was going to be
9 Mr. Dennis as well as his mother. I do not believe there were
10 any other occupants.

11 Q. And due to the decor and the items in that room,
12 does that appear to be Mr. Dennis'?

13 A. Yes, sir.

14 Q. Let me show you, take a look in that bag and see if
15 you can recognize what's in that bag.

16 A. Yes. That's the cell phone that was taken off the
17 bed.

18 MR. HUBBARD: Offer this into evidence.

19 MS. SIMPSON: Yes. That's the one.

20 MR. HUBBARD: Yes.

21 MS. SIMPSON: I just can't hear over here.

22 BY THE WITNESS:

23 A. That's the phone.

24 MS. SIMPSON: Without objection.

25 THE COURT: Okay. So State's 34 is the cell phone

1 admitted without objection.

2 BY MR. HUBBARD:

3 Q. So this would be the phone?

4 A. Yes, sir.

5 Q. What brand of phone is this?

6 A. It's an iPhone.

7 Q. With a case?

8 A. Yes, sir.

9 Q. Was it in that case at the time?

10 A. I believe so. Yes, sir.

11 Q. And it had a charger as well?

12 A. Yes, sir.

13 Q. In the photograph you can't really see it the way
14 we've got it displayed there, but at a close look can you
15 actually see the paint on the case?

16 A. Yes, sir. You can see it on the side, on the right
17 side if you're looking at the phone.

18 Q. Okay. Now, when you got the phone, what did you do
19 with it?

20 A. Once I returned to our police department, the very
21 first thing I did was to drop it into evidence, and our
22 evidence custodian Don Pardue who ultimately took custody of
23 it.

24 Q. Was that on the 18th?

25 A. That was the 18th. Yes, sir.

1 Q. Did you have an opportunity to take the phone back
2 out?

3 A. I did, sir.

4 Q. When was that?

5 A. It's gonna be the next day on the 19th I removed it
6 from evidence.

7 Q. Where did you take it?

8 A. I took it to the SLED fusion center where we were
9 gonna attempt to see if we could actually download information
10 from the phone.

11 Q. Were you able to have any tests done that day?

12 A. Unfortunately we were not because of time. I don't
13 believe he had the pass code for the phone and SLED was not
14 able to access the phone at that time so I took it and I
15 returned it back to our police department and placed it in
16 evidence.

17 Q. Did you also attempt to take it to the FBI?

18 A. Yes, sir. The very next day I took it actually to
19 the FBI headquarters and left it in their possession to see if
20 they could attempt to make access into the phone without the
21 pass code.

22 Q. So you left the phone with them at that time?

23 A. Yes, sir.

24 Q. Were they able to test the phone at that point?

25 A. Ultimately they were not.

1 Q. Was there a reason for that?

2 A. They could not get access to it either during that
3 time. They were without a pass code. Apple phones were very
4 difficult to get into.

5 Q. And who retrieved the phone from the FBI?

6 A. Another individual Corporal Cameron Mortenson.

7 Q. With your officer?

8 A. Yes, sir.

9 Q. He returned it back to evidence?

10 A. That is correct, my understanding.

11 MR. HUBBARD: I think that's all I've got at this
12 time. Thank you.

13 THE WITNESS: Thank you, sir.

14 MS. SIMPSON: Please the Court.

15 THE COURT: Yes, ma'am.

16 CROSS EXAMINATION

17 BY MS. SIMPSON:

18 Q. Is it Investigator Simmons?

19 A. Officer. School officer.

20 Q. Officer Simmons, just a couple questions.

21 A. Sure.

22 Q. I want to turn your attention to when you made
23 initial contact on February 17th with Mr. Dennis at the home.
24 I believe you indicated there were already three other
25 officers present on scene or two more?

1 A. Yeah. There were several deputies out there. Some
2 were with Mr. Zander across the street, some with Mr. Dennis
3 at his residence.

4 Q. And you stated that your purpose for coming out
5 there was to actually, I guess, detain him until transport
6 arrived?

7 A. No. My initial reason for going out there was to
8 attempt to make contact with him and see if was willing to
9 come back for an interview at our police department.

10 Q. Was he cooperative with you?

11 A. Yes. He was.

12 Q. And he wasn't rude to you in any way?

13 A. No.

14 Q. He wasn't cursing? He didn't resist or run or any
15 anything of that nature?

16 A. No. When I made contact with him, he was on the
17 porch, sitting on the porch pretty much the entire time.

18 Q. Ultimately were you responsible for the police
19 transport or was that someone else?

20 A. No. One of our officers who was working that night
21 came out and transported him.

22 Q. When he was taken away I guess in police custody,
23 did you observe that and had the ability to observe?

24 MR. HUBBARD: Your Honor, objection. He was never
25 in police custody. He wasn't taken away in police

1 custody. That's what he just said.

2 THE COURT: She can ask the question how was he
3 transported.

4 BY MS. SIMPSON:

5 Q. How was he transported?

6 A. The officer that came and got him ended up putting
7 him in handcuffs and transported him to the police
8 department.

9 Q. Okay. Other than with respect to the search warrant
10 and the phone collection, was that the extent of your
11 involvement in this case?

12 A. Yes. It was.

13 MS. SIMPSON: I have no further questions.

14 MR. HUBBARD: One quick follow up.

15 REDIRECT EXAMINATION

16 BY MR. HUBBARD:

17 Q. But he voluntarily chose to come back?

18 A. He did. We went over that that he was willing to
19 come back to the police department be transported by us but
20 voluntarily so.

21 Q. When you transport somebody who is a suspected
22 suspect, you do that?

23 A. Yes. Usually put them in handcuffs.

24 Q. But you had no warrant at that time?

25 A. No. He wasn't in custody. Had no warrants. I had

1 no information that I would put charges on him or detain him
2 for any reason.

3 MR. HUBBARD: Thank you.

4 THE COURT: You may step down.

5 MR. HUBBARD: The State calls Cameron Mortenson.

6 Thereupon,

7 CAMERON MORTENSON

8 after having been first duly sworn, testified as follows,

9 THE CLERK: Please have a seat. Once you're seated,
10 state your full name spelling your last please.

11 THE WITNESS: Corporal Cameron Mortenson,
12 M-o-r-t-e-n-s-o-n. Lexington Police Department.

13 DIRECT EXAMINATION

14 BY MR. HUBBARD:

15 Q. Corporal Mortenson, how long have you been with the
16 Lexington Police Department?

17 A. I just started my 19th year.

18 Q. What are your current duties?

19 A. I work with the Special Operations Division and I
20 help supervisor our community action team and I also am a
21 public information officer and also work on our social
22 media.

23 Q. So you have multiple hats all wrapped in one role?

24 A. Yes, sir.

25 Q. Back in 2014 did you assist in the case against Mr.

1 Dennis?

2 A. I did. I was assigned to the Criminal Investigation
3 Division at that time and I was asked to take a phone to SLED
4 so that they could download it.

5 Q. Let me show you this phone, State's 34 all wrapped
6 up here. I'll take it out and let you look at it.

7 A. Yes, sir. I do recognize it. It had a distinctive
8 case.

9 Q. And it is an iPhone?

10 A. It is.

11 Q. Now, had this phone already been to SLED one time?

12 A. I believe it had been one previous time.

13 Q. So you took it out of evidence again. When or about
14 did you have it at SLED?

15 A. It was April 3rd, 2014.

16 Q. What was the purpose of taking it to SLED on this
17 occasion?

18 A. They were gonna download the phone. They had an
19 updated, or not an updated version of Cellebrite but they were
20 gonna attempt to try to extract some information from the
21 phone.

22 Q. Were you there the entire time?

23 A. I was.

24 Q. Was anything extracted at that time?

25 A. They were able to give a short kind of abbreviated

1 report. They weren't able to pull everything off the phone.

2 Q. After they did that, what did you do with the
3 phone?

4 A. I returned it to the Lexington Police Department and
5 the phone was placed back into evidence.

6 Q. Who checked it out of evidence after that?

7 A. That phone was then taken by Detective Carter to the
8 FBI.

9 Q. Is that on July 7th?

10 A. That was in July.

11 MR. HUBBARD: Thank you. I have no more questions.

12 MS. SIMPSON: Thank you. Please the Court.

13 CROSS EXAMINATION

14 BY MS. SIMPSON:

15 Q. Officer Mortenson, did you actually take any other
16 phones into custody or submit any other phones to SLED
17 with respect to this case?

18 A. I did not. There was just this phone.

19 Q. The one phone?

20 A. Correct.

21 Q. All right. And other than that is that the extent
22 of your involvement?

23 A. It is. Yes, ma'am.

24 MS. SIMPSON: No further questions.

25 THE COURT: You may step down.

1 MR. HUBBARD: The State calls Mike Phipps.

2 Thereupon,

3 MICHAEL PHIPPS

4 after having been first duly sworn, testified as follows,

5 THE CLERK: Please have a seat. Once you're seated,
6 state your full name spelling your last please.

7 THE WITNESS: Michael Phipps, P-h-i-p-p-s.

8 DIRECT EXAMINATION

9 BY MR. HUBBARD:

10 Q. Officer Phipps, now what rank do you go by? We've
11 known each other for a while. You've been at the Sheriff's
12 Department for a while. What's your rank currently?

13 A. Investigator.

14 Q. What are your duties with the Sheriff's
15 Department?

16 A. I'm currently assigned to our forensic services
17 unit. Previously I was involved with our crime scene unit
18 also within the forensic services unit. Right now I'm
19 assigned as a forensic technology examiner meaning I examine
20 digital evidence.

21 Q. How long have you been doing digital evidence
22 examinations?

23 A. It was a collateral duty while I was in crime scene
24 so I have been examining digital evidence since 2005.

25 Q. Have you ever been qualified as an expert in a court

1 of law in examining digital evidence?

2 A. Yes, sir.

3 Q. Do you know how many times?

4 A. I think around a dozen times so far.

5 Q. Have you gone to classes and schooling to stay up on
6 the latest changes in technology particularly phones?

7 A. Yes. It's an ongoing struggle to stay current.
8 Probably since I started receiving specific training in
9 digital evidence I've had approximately 650 hours of
10 training.

11 Q. What have you been classified as an expert in in
12 court?

13 A. Several areas of examining cell phones specifically,
14 examining digital evidence in general, cell phone records,
15 various aspects of digital evidence.

16 MR. HUBBARD: Your Honor, at this time I offer him
17 as an expert in those areas.

18 THE COURT: Any voir dire?

19 MS. SIMPSON: Your Honor, if we may approach.

20 THE COURT: Yes.

21 (Side bar off the record.)

22 THE COURT: I've got to put something on the record
23 real quick. Y'all step back in the jury room.

24 (Whereupon, the jury entered the jury room at 2:05 p.m.)

25 MR. HUBBARD: Your Honor, they're objecting to one

1 MS. SIMPSON: He may know by the end of this. All
2 right. Thank you, Your Honor.

3 THE COURT: Mm-hmm. All right. We've been in here
4 almost 55 minutes. Y'all need a quick break while the
5 jury is still back there? Because if we don't do it in
6 20 minutes because I do.

7 (Short break.)

8 THE COURT: All right. Let's bring our jury in.

9 (Whereupon, the jury entered the courtroom at 2:30
10 p.m.)

11 THE COURT: Continue on please.

12 MR. HUBBARD: Thank you, Your Honor. I believe when
13 we left off I was offering Mike as an expert in phone
14 extractions, analysis of data.

15 THE COURT: All right. Folks, what the State has
16 done is the first time this witness, type of witness has
17 been called, Investigator Phipps has now been offered as
18 an expert in the field of expertise digital evidence
19 examination and analysis. He can testify within that
20 field of expertise about opinions in that field. This is
21 what I found. This is what I saw. Now, it's digital
22 data he analyzed and so he's been offered in that field
23 of digital data analysis. Okay. I'm gonna leave it
24 there. He's an expert in that field.

25 MR. HUBBARD: Thank you, Your Honor.

1 THE COURT: All right.

2 MS. SIMPSON: Just briefly, Your Honor, since we're
3 on the record now, I have no objection to him being
4 qualified as an expert in that field.

5 THE COURT: Okay.

6 DIRECT EXAMINATION CONTINUED

7 BY MR. HUBBARD:

8 Q. Investigator Phipps, were you asked to analyze
9 defendant Kierin Dennis' phone, his iPhone for the purpose of
10 this case?

11 A. Yes, sir.

12 Q. Did the Lexington Town Police ask you to do that?

13 A. Yes.

14 Q. I'll show you this iPhone, State's 34. Is this the
15 phone that you were asked to analyze?

16 A. Yes, sir. It is.

17 Q. What were you asked to do? What type of extraction
18 were you asked to do?

19 A. I don't recall being asked for a specific
20 extraction, but obviously any time we're examining anything of
21 evidentiary value we try to look for the most evidence as we
22 can find at one time. In this case a physical acquisition of
23 the phone means that we're basically getting everything you
24 can possibly get at one time off the phone and that's what we
25 conducted in this case.

1 Q. How much information were you able to pull off that
2 phone?

3 A. 7.4 gigs of data.

4 Q. Does this include videos, pictures, texts, phone
5 calls, all that information?

6 A. Everything someone would have on a modern smart
7 phone.

8 Q. Then were you specifically asked to just pull text
9 and phone information for a time period between 9:24 p.m. and
10 10:30 p.m. from February 17th, 2014?

11 A. Yes, sir. I was.

12 Q. In doing so were you able to do basically a summary
13 board for that time period?

14 A. I did.

15 Q. I'm going to show you what's been marked as State's
16 35 and see if you recognize this as your work product?

17 A. Yes, sir. It is.

18 MR. HUBBARD: Your Honor, I offer this into
19 evidence.

20 MS. SIMPSON: Your Honor, subject to my previous
21 objection.

22 THE COURT: Subject to previous objection it's
23 admitted.

24 BY MR. HUBBARD:

25 Q. Mike, I don't know if you can see from there, what

1 the best way is here, but knowing that jurors might not be
2 able to read this, can you explain what hours you start from
3 and what you go to and what you have on this board?

4 A. It starts at 9:24 p.m. on February 17th, 2014 and
5 runs through 10:29 p.m. the same evening. You have the times
6 in the left column and then in the right hand column it will
7 tell you whether it's a call like call logs or a text message,
8 incoming or outgoing text message. In the case of calls it
9 gives the number that was called either incoming or outgoing
10 and the duration and again for text whether it was incoming or
11 outgoing.

12 Q. Okay. Can you, if you would, starting with 9:24
13 p.m., would you read what you have there?

14 A. At 9:24 there was an incoming phone call that lasted
15 12 seconds from [REDACTED]52 followed by at 9:28 an outgoing
16 text message to a different phone number [REDACTED]36 that's
17 reads at Cook Out, you. Then following that was at 9:37
18 another outgoing text to that same number. That's hello.
19 Then at 9:40 an outgoing text to a different number this time
20 [REDACTED]04 and it reads, they was trying to fight us at Cook
21 Out. At 9:40 there's an incoming text from the [REDACTED]36 number.
22 At 9:41 an outgoing text that reads, ooo, great timing. Now
23 it's picture time, to that same number, the [REDACTED]36 number. At
24 9:42 there's an incoming call that lasts 47 seconds from the
25 [REDACTED]04 phone number mentioned previously. At 9:43 p.m. an

1 incoming text from the [REDACTED]36, then again 9:50 another incoming
2 phone call from the number that's [REDACTED]52 that lasts 49
3 seconds. That follows up with another incoming call at 9:52
4 from the same number for 13 seconds, then again still in the
5 9:52 time period another incoming call. This one was missed
6 meaning that the called party meaning the phone, the phone,
7 this phone did not pick up and it was from a different number
8 [REDACTED]88. At 9:53:38 p.m. there's an incoming call that
9 lasts 38 seconds and that's the same number that was missed
10 previously. At 9:54 an incoming call from - a missed incoming
11 call from [REDACTED]30. At 9:57 an incoming call from
12 [REDACTED]05. That was also missed. At 9:58 they have a
13 completed call that lasted 13 seconds from the call that was
14 just previously missed [REDACTED]05. At 10:03 p.m. there was an
15 incoming call that was a missed call from the [REDACTED]50.
16 At 10:07 incoming call lasted one minute 13 seconds from,
17 that's a new number as well, [REDACTED]29. At 10:09 an
18 incoming call missed from [REDACTED]85. At 10:10 an outgoing text
19 to [REDACTED]36. That's WTD.

20 Q. Those are just the --

21 A. Just the letters WTD. Outgoing text message same
22 time period a few seconds later to the same number that reads
23 WYB. That's the last outgoing text that we found on the
24 device.

25 Q. Outgoing being?

1 A. The user of that phone placed an outgoing text.

2 Q. The user of the defendant's phone?

3 A. Correct. Correct. Placed at outgoing text. 10:10

4 an incoming call lasted three minutes and 21 seconds from

5 [REDACTED]52. At 10:13 an incoming text from the [REDACTED]36 number.

6 At 10:14 an incoming call that was missed, not picked up from

7 [REDACTED]650 number. At 10:18 an incoming text that is from

8 [REDACTED]85 and it reads, what happened at Cook Out. At 10:26 an

9 outgoing call lasting 8 seconds from [REDACTED]150.

10 Q. Outgoing meaning he made the call?

11 A. Yes. These are the final placed call to that number

12 lasted 8 seconds. At 10:26 an outgoing call to a different

13 number [REDACTED]88 lasting one minute and 47 seconds and

14 that's the last outgoing phone call from that phone, and there

15 was an incoming call text at 11:29 from 414 --

16 Q. 10:59?

17 A. I'm sorry. At 10:29, from [REDACTED]07.

18 Q. Now, I know you just read a bunch of numbers. You

19 weren't asked to identify numbers at this point, correct?

20 A. That's correct.

21 Q. But this is the base information off the phone

22 between those hours?

23 A. That's the raw data. That's what you would see if

24 you pulled up the call logs and flipped through them on the

25 phone itself.

1 MR. HUBBARD: Okay. Investigator Phipps, I think
2 that's all I've got.

3 MS. SIMPSON: Thank you. May it please the Court.

4 THE COURT: Yes, ma'am.

5 RECROSS EXAMINATION

6 BY MS. SIMPSON:

7 Q. Investigator Phipps, good afternoon.

8 A. Good afternoon.

9 Q. With respect to the phone extraction, when did you
10 say you received the phone?

11 A. July 16th, 2014.

12 Q. And that's actually the day that you were able to do
13 the extraction, correct?

14 A. It is. Yes.

15 Q. It had actually been provided prior to that in
16 evidence, I guess, and attempts made to extract it?

17 A. That's the first time I ever had physical contact
18 with the phone.

19 Q. Okay. But you are aware that Mr. Dennis voluntarily
20 gave up the access code to the phone?

21 A. That's what I was told. Yes.

22 Q. As far as the information in a physical extraction
23 you said text messages are available, pictures, correct? All
24 kinds of things, right?

25 A. Yes.

1 Q. Pretty much the cloud, I guess. I'm not really text
2 savvy. But did you do an extraction on Deshon Chatman's
3 phone?

4 A. No. This is the only phone that I had contact with
5 in this case.

6 Q. So you weren't asked by the prosecution or anybody
7 else to review any other phone like Lamar Butler, Michael
8 James, Devon Chatman, Tyreke Farrow, Xavier Holliday, Marcus
9 Taylor, Kenneth Williams, Chauncey Legette, Waldon Roberson,
10 Walter Roberson, or Alexis Brunson or Taylor Bianchi?

11 A. No, ma'am.

12 Q. Just this one phone?

13 A. Yes, ma'am.

14 Q. And as far as the actual chart that you did, bear
15 with me, the information contained here, all you can tell us
16 is what is seen on the phone. You can't tell us like what's
17 actually being stated during the conversation during the phone
18 call, correct?

19 A. That's correct.

20 Q. And even though a certain number is called, you
21 can't really tell who picked up?

22 A. That's correct.

23 Q. And you only know personally that the phone was used
24 during a time period. You don't know who was using it. Could
25 have been anybody.

1 A. That is correct.

2 Q. And you don't know the context of the texting,
3 correct?

4 A. No, ma'am.

5 Q. And as far as, for instance, just hypothetically
6 speaking if a person, if a lot of people were texting back and
7 forth on phones, you may have conversations especially if
8 they're together where nowadays kids are texting and then also
9 talking, correct?

10 A. Yes. That's possible.

11 MS. SIMPSON: No further questions. Thank you.

12 THE COURT: You may step down.

13 MR. HUBBARD: The State calls Sergeant Brent Carter
14 back to the stand, and I ask that Investigator Phipps be
15 excused.

16 MS. SIMPSON: Without objection.

17 THE COURT: You may be. Sergeant Carter has already
18 been sworn from his prior testimony so I'll remind him
19 he's still under oath.

20 Thereupon,

21 BRENT CARTER

22 after having been previously first duly sworn, testified
23 further as follows,

24 REDIRECT EXAMINATION CONTINUED

25 BY MR. HUBBARD:

1 Q. Sergeant, have you had an opportunity to see State's
2 35?

3 A. I have.

4 Q. I want to ask you about some of the phone numbers.

5 A. Yes, sir.

6 Q. Were you able to determine a phone number for Keith
7 Adams?

8 A. I was, sir.

9 Q. And what is his phone number?

10 A. [REDACTED] 52.

11 Q. [REDACTED] 52?

12 A. Yes, sir.

13 Q. What about Morgan Zander?

14 A. Yes, sir.

15 Q. Okay.

16 A. [REDACTED] 88.

17 Q. And what about Will Zander?

18 A. [REDACTED] 150.

19 Q. Now, I'm gonna ask you to do this for me, if you
20 will. Will you please come down and where you see those
21 numbers on this call and text chain write in the name it
22 belongs to, those three names.

23 A. Sure.

24 MS. SIMPSON: Your Honor, just for technical
25 purposes, the exhibit has already been entered as is and

1 would be altered at this point so I would object on that
2 ground, but otherwise if they want to mark it in some
3 manner, that's fine.

4 MR. HUBBARD: It's done all the time. I think it's
5 proper to add. Basically he's adding additional
6 information that's relevant. I don't think there's an
7 objection to the relevance of that information. It's
8 just adding some testimony.

9 THE COURT: Considering it's evidence and
10 information and not a summary of information itself, it's
11 the cell phone information.

12 MR. HUBBARD: Yes, sir.

13 THE COURT: This is a summary of the data off the
14 cell phone. This is additional information about that
15 data. I think the Court will find that under 403 it
16 should be allowed. He can't give editorializations about
17 what this means or that means or whose phone number is
18 assigned to whom. I think it is probative and not unduly
19 prejudicial.

20 MS. SIMPSON: Thank you, Your Honor. I have no
21 issue with that.

22 THE COURT: Okay. So you understand my ruling? He
23 can't write what it meant. He can say so and so phone
24 number. Okay?

25 BY MR. HUBBARD:

1 Q. Now, before you have a seat, let me ask you this,
2 unless your information is up there, but what time period was
3 Mr. Dennis inside the Cook Out? Do need your information?

4 A. I need my notes.

5 Q. Tell you what. You can just sit up there and do
6 that.

7 A. (Witness complies.) He was inside the Cook Out
8 from, converting from military time here 9:25 p.m. until 9:42
9 p.m.

10 Q. What time did he leave out of Cook Out from the
11 parking lot that we saw in the iPad?

12 A. So when he left from the parking lot for good for
13 the night?

14 Q. Yes, sir.

15 A. That would have been 9:49.

16 Q. Okay. And we heard your office had officers out
17 there by 10:50 at his house?

18 A. I believe so. Yes, sir.

19 Q. And there were Lexington County officers out there
20 before that?

21 A. There were Lexington County officers on scene when
22 our officers got on scene. Yes, sir.

23 Q. Now, if I ask you to step down one more time to go
24 over there.

25 A. (Witness complies.)

1 Q. And using those times this first incoming call
2 lasting 12 seconds is from whom?

3 A. From Keith Adams.

4 Q. What time is that call?

5 A. That call is at 9:24, 49 seconds.

6 Q. Right before they actually get into Cook Out?

7 A. Yes, sir.

8 Q. The next call involving Keith Adams is by your board
9 9:50 an incoming call?

10 A. Yes, sir. Which would have been right after he left
11 Cook Out.

12 Q. Within what?

13 A. Within a minute.

14 Q. 9:52 another call?

15 A. Yes, sir.

16 Q. From Keith Adams?

17 A. Yes, sir.

18 Q. Now, the first one at 9:50, how long is that one?

19 A. 49 seconds.

20 Q. The second one, how long is that?

21 A. 13 seconds.

22 Q. At 9:52 who calls?

23 A. Morgan Zander.

24 Q. It's a missed call?

25 A. Yes, sir. It missed.

- 1 Q. 9:53 who calls?
- 2 A. Morgan Zander.
- 3 Q. And how long does that one last?
- 4 A. 38 seconds.
- 5 Q. This is after he's left the Cook Out?
- 6 A. Yes, sir.
- 7 Q. So this is after the stabbing?
- 8 A. Yes, sir.
- 9 Q. Getting on down to Keith Adams again at 10:10, how
- 10 long does that call from Keith Adams last?
- 11 A. 3 minutes and 21 seconds.
- 12 Q. Then Will Zander at 10:26, how long is that one?
- 13 A. 8 seconds.
- 14 Q. This last outgoing call is to who?
- 15 A. 10:26, 48 seconds. Again is Morgan Zander and it
- 16 lasted one minute and 47 seconds.
- 17 Q. And your officers got there at 10:50 so it's right
- 18 sometime after this?
- 19 A. Yes, sir.
- 20 Q. But we know the county got up there --
- 21 A. Somewhere prior to.
- 22 Q. Okay. Thank you.
- 23 A. (Witness resumes witness stand.)
- 24 Q. Now, did you have an opportunity to talk to
- 25 Mr. Dennis again?

1 A. I did, sir.

2 Q. Your first opportunity was on the night of the
3 incident; is that correct?

4 A. Yes, sir.

5 Q. When was the second opportunity you had to talk to
6 him?

7 A. The second time was on the 20th of February in
8 2014.

9 Q. Who initiated that conversation?

10 A. We were approached by Mr. Dennis' counsel.

11 Q. Mr. Rutherford?

12 A. Yes, sir.

13 Q. And did y'all meet and have a conversation?

14 A. We did, sir.

15 Q. Where was that conducted?

16 A. At my agency.

17 Q. In an interview room?

18 A. Yes, sir. Interview room Lexington Police
19 Department.

20 Q. And like all the other interviews was this one
21 recorded?

22 A. Yes, sir. It was.

23 MS. SIMPSON: Without objection, Your Honor.

24 BY MS. PATTERSON:

25 Q. I'll show you, Sergeant Carter, is this the

1 interview?

2 THE COURT: That's State's 36.

3 BY THE WITNESS:

4 A. It is, sir.

5 MS. SIMPSON: Without objection.

6 THE COURT: State's 36 is in evidence without
7 objection.

8 BY MR. HUBBARD:

9 Q. Sergeant, while we're waiting, there's mention of
10 other phones --

11 A. Yes, sir.

12 Q. -- that other folks have?

13 A. Yes, sir.

14 Q. Did you have any reason or probable basis to take
15 other people's phones?

16 A. As far as other folks from the scene, no, sir.

17 Q. So the phones you were interested in the main phone
18 you're interested in is obviously Mr. Dennis'?

19 A. Yes, sir.

20 (Playing State's Exhibit #36.)

21 BY MR. HUBBARD:

22 Q. Sergeant, at this point in this conversation, this
23 interview when he's describing how he reacted, he had his hand
24 going out the window?

25 A. Yes, sir.

1 Q. While we are queuing up the rest of it, there was
2 talk about Will's car being surrounded, people grabbing his
3 handles, he couldn't move. Did you have an opportunity to
4 interview Will Zander?

5 A. I did, sir.

6 Q. Was his sister Morgan Zander in the car as well?

7 A. Yes, sir.

8 Q. Did you interview her as well?

9 A. I did, sir.

10 Q. Did either one of them ever say anything about --

11 MS. SIMPSON: Objection, Your Honor. Calls for
12 hearsay with respect to what they say.

13 THE COURT: Okay. It would be hearsay.

14 BY MR. HUBBARD:

15 Q. Did you have any information of anyone ever pulling
16 on the handles of Will Zander's car?

17 A. Not that I recall, sir.

18 Q. And you interviewed Will Zander?

19 A. I did.

20 Q. You interviewed Morgan Zander?

21 A. Yes, sir.

22 Q. All right.

23 (Playing State's Exhibit 36.)

24 MR. RUTHERFORD: Your Honor, this is clearly
25 attorney/client.

1 MR. HUBBARD: Your Honor, I object. They had no
2 objection to this and they've seen it. There's no
3 attorney/client.

4 MR. RUTHERFORD: What is he talking about? That's
5 me and my client and no one else in the room. That's
6 clearly attorney/client.

7 THE COURT: Stop it.

8 (Video stopped.)

9 MR. HUBBARD: I offered this into evidence. They
10 have had it for five years.

11 THE COURT: Hang on. Hang on. I didn't hear
12 anything said.

13 MR. RUTHERFORD: I don't know what was said, but
14 clearly when a lawyer is talking to his client certainly
15 the Solicitor is not trying to get what that conversation
16 is that he just played over the microphone but that's the
17 problem. I don't know what's being said, but out of an
18 abundance of caution he's playing it, there's no officer
19 in the room, I have turned my back to the camera to talk
20 to my client --

21 THE COURT: Wait. Wait. You don't have to describe
22 it. I saw it. He's back in the room. Can we go from
23 there.

24 MR. RUTHERFORD: I think going from there is fine.
25 I just wanted to make sure that that wasn't going to be

1 the subject of his direct examination.

2 MR. HUBBARD: It's not.

3 THE COURT: Okay. Play it.

4 (Playing State's Exhibit #36.)

5 BY MR. HUBBARD:

6 Q. Sergeant, I want you to listen to the last part
7 again. Pause it. It just fades.

8 (Playing State's Exhibit #36.)

9 BY MR. HUBBARD:

10 Q. I just a few more questions. He mentions getting a
11 phone call and walking outside of Cook Out?

12 A. Yes, sir.

13 Q. Do you see an incoming phone call -- Do you see a
14 text and a phone call that have the same number in that
15 link?

16 A. I do.

17 Q. Can you say what number that is?

18 A. Uhm, it's [REDACTED] 04.

19 Q. Now, the first time you see that, what time is it?

20 A. 9:40 and 18 seconds.

21 Q. Is that a text or a phone call?

22 A. It's an outgoing text.

23 Q. So it's from Mr. Dennis' phone?

24 A. Yes, sir.

25 Q. What does that text say?

1 A. It says, they was trying to fight us at Cook Out.

2 Q. They was trying to fight us at Cook Out?

3 A. Yes, sir.

4 Q. When this text went out, where was Mr. Dennis?

5 A. At 9:40 he would have still been inside the
6 business.

7 Q. So he's texting someone that someone is trying to
8 fight him at Cook Out while he's there?

9 A. Yes, sir.

10 Q. He gets a phone call what time?

11 A. You're asking about the same number?

12 Q. Yes.

13 A. At 9:42 and 15 seconds.

14 Q. Is that when he walks out of Cook Out?

15 A. That is when he walks out of Cook Out.

16 Q. Who did he say that was?

17 A. He said it was his cousin.

18 Q. So he text his cousin that someone as trying to
19 fight him in Cook Out?

20 A. Yes, sir.

21 Q. Then gets a phone call. That's the phone call that
22 he steps out?

23 A. Yes, sir.

24 Q. Now, while he's in Cook Out, do you see other texts
25 that indicate, anything that might indicate fear or that

1 there's a fight, anything consistent with they're trying to
2 fight us at Cook Out?

3 A. No, sir.

4 Q. What do you see?

5 A. I see a text that says, at Cook Out, and then you,
6 then I see a text hello with about six o's, then another
7 incoming text and then right below that an outgoing text, ooo,
8 great timing. Now it's picture time.

9 Q. So all that's going on while he's in the Cook Out
10 and when he sends that text, they're trying to fight us, or
11 they was trying to fight us?

12 A. Yes, sir.

13 Q. Again, you have reviewed these Cook Out interior
14 videos many times?

15 A. Yes, sir.

16 Q. Did you ever see any type of altercation while he
17 was in the Cook Out?

18 A. No, sir.

19 Q. And when he's describing as he's trying to leave in
20 his vehicle and people are around his car the stabbing, how
21 many explanations did you pick up?

22 A. Well, as far as explanations as to why people --

23 Q. No. No. How he did the stabbing?

24 A. Oh, explanation of motions.

25 Q. Yes.

1 A. Okay. I saw a couple.

2 Q. Okay. What did you see? What did you hear him say
3 in this interview?

4 A. I saw the first move of the example of the stabbing
5 was this (indicating.) And then --

6 Q. "This" being for the record? Because they don't
7 understand "this."

8 A. The right arm reaching out the window.

9 Q. Did you not, in fact, ask him other than sticking
10 your hand out the window for the stabbing, did you ever stick
11 your hand out again. Did you ask him that?

12 A. Yes, sir. That was my question. Other than at the
13 time of the stabbing did you stick your hand out the window?

14 Q. Did you hear him correct you, no, no, no. That's
15 not how it happened?

16 A. No, sir.

17 Q. What was the other explanation?

18 A. So he made the hand motion to the side multiple
19 times during the conversation. There was at one point where
20 they were trying to get a good idea of it and his counsel
21 stood up to play the role of the victim and leaned over him
22 and asked Mr. Dennis to, you know, is this the position and
23 Mr. Dennis stabbed this way at one point and then that way at
24 another point (indicating.)

25 Q. And in that explanation where did they have

1 Mr. Capers?

2 A. Leaning inside the vehicle.

3 Q. So stabbing inside the vehicle?

4 A. Yes, sir.

5 MR. HUBBARD: I believe that's all I have at this
6 time. Please answer and questions the defense has.

7 THE COURT: Yes, sir.

8 MR. HUBBARD: Your Honor, again, I may just want to
9 reserve the right to call him again should I need to.

10 THE COURT: Okay.

11 RECROSS EXAMINATION CONTINUED

12 BY MR. RUTHERFORD:

13 Q. Investigator Carter, when you interviewed Mr. Dennis
14 and I was present --

15 A. Yes, sir.

16 Q. -- that is after -- You said, you mentioned a
17 vehicle at that point. Is there a vehicle there?

18 A. No, sir. There's not.

19 Q. Where are we?

20 A. We're inside our interview room, sir.

21 Q. Where is that?

22 A. That's at the Lexington Police Department, sir.

23 Q. Are there vehicles there?

24 A. There are not, sir.

25 Q. There are no vehicles at the Lexington Police

1 Department?

2 A. Well, not inside the building, no.

3 Q. Are there vehicles at the Lexington Police
4 Department?

5 A. There are some parked outside, sir.

6 Q. Could Mr. Dennis and I leave?

7 A. We could have gone out with you, sir. Yes.

8 Q. No. Could Mr. Dennis and I leave?

9 A. Well, Mr. Dennis is in custody in Lexington County
10 at that time.

11 Q. So in order for Mr. Dennis to leave, he would have
12 needed you to walk him outside, correct?

13 A. Yes, sir.

14 Q. Did you bother to do that?

15 A. I did not do that, sir.

16 Q. Did you bother to walk him to a car and have me sit
17 in the car or have me stand outside the car so that he could
18 show you what happened?

19 A. No, sir. I did not do that, sir.

20 Q. And there are, as you stated, I imagine, SUV's at
21 the Lexington Police Department, correct?

22 A. I'm sure there were, sir.

23 Q. In fact, Mr. Dennis, as you said, is in custody.
24 Did you have his vehicle at that point?

25 A. I did not have his vehicle, sir.

1 Q. Did you have a search warrant for his vehicle at
2 that point?

3 A. At that point, no, sir.

4 Q. You had not searched his vehicle prior to that
5 point?

6 A. His vehicle was searched at the same time as the
7 search of his home.

8 Q. Which is prior to that point?

9 A. Yes, sir. Prior to that point. Yes, sir.

10 Q. So you did have a search warrant prior to that
11 interview, did you not?

12 A. Yes, sir. I just want clarification. Yes, sir. It
13 would have been that night, sir.

14 Q. Okay. So for clarification you had a search warrant
15 prior to interviewing him, did you not?

16 A. Yes, sir.

17 Q. And at that moment when you interviewed him, you
18 could have taken his vehicle and brought it to the police
19 department, could you not?

20 A. Well, I didn't have possession of his vehicle at
21 that time.

22 Q. But you could have, could you not?

23 A. Well, I would have had to ask their permission
24 because it was back in their possession.

25 Q. Did you?

1 A. I did not, sir.

2 Q. So you could have simply asked permission to bring
3 his SUV to the police department. Did you ask?

4 A. No, sir. I did not.

5 Q. Okay. When Mr. Dennis left his house, you heard the
6 other officer state he left there in handcuffs, correct?

7 A. Yes, sir.

8 Q. He could not have driven in handcuffs, could he?

9 A. Well, no, sir. He couldn't have. But he was riding
10 with the officer and that's our policy.

11 Q. So again, he could not have driven his own car in
12 handcuffs to the police department, could he have?

13 A. Okay. So you're asking me if he could physically
14 drive while wearing handcuffs?

15 Q. Yes, sir?

16 A. I just want to be clear.

17 Q. Yes, sir. When he came to the police department, he
18 was in handcuffs. He didn't put the handcuffs on himself, did
19 he?

20 A. No, sir.

21 Q. So when handcuffs are placed on him, he did not have
22 the opportunity to bring his car to show you what happened at
23 the police department, did he?

24 A. Yes, sir. That's correct. He could not drive with
25 handcuffs.

1 Q. Are you finished? You were talking. I just want to
2 make sure I'm not interrupting.

3 A. No, sir. Just trying to complete the question.

4 Q. All right. So in order for his car to have gotten
5 to your police department, you would have had to have brought
6 it there, correct?

7 A. Yes, sir. Or someone else he knows that had
8 possession could have brought it there.

9 Q. Someone else he knows. Let's be clear. You have
10 the authority to get his car and bring it to the police
11 department, do you not?

12 A. That car was not in my possession at that time.

13 Q. That's not what I asked you. You have that
14 authority, do you not?

15 A. To just go take his car?

16 Q. You had a search warrant to search his car. You
17 could have done it at the police department or at his house,
18 could you not.

19 A. The search warrant had already been served, sir.

20 Q. You have the authority to go to another judge and
21 ask the judge to seize the car, do you not?

22 A. So you're asking if I -- Yes, sir. I could have --

23 MR. HUBBARD: I object. Now he's asking a legal
24 opinion because a judge rules on that for search
25 warrants.

1 MR. RUTHERFORD: Your Honor, if I can be heard.

2 He's the lead investigator and he knows full well --

3 MR. HUBBARD: Not in front of -- Your Honor.

4 THE COURT: Wait a minute.

5 MR. RUTHERFORD: He argued. It's my turn.

6 THE COURT: Wait a minute. He's answered the
7 question several times. The car was searched. The car
8 was returned to the owners. There's a lot more legal
9 issues to getting a second search warrant that we don't
10 need to get into because it didn't happen.

11 MR. RUTHERFORD: Your Honor, I didn't ask him about
12 the search warrant. He brought that up.

13 THE COURT: You said do you have the authority to
14 know.

15 MR. RUTHERFORD: Because he keeps talking about a
16 search warrant. What I'm asking him about is did he have
17 the authority to bring the car.

18 THE COURT: That's not a fair question because the
19 car has been returned. The timing is off.

20 BY MR. RUTHERFORD:

21 Q. Who returned the car?

22 A. The car was never taken. It was actually at the
23 premises and left at the premises after the search was
24 completed.

25 Q. Could you have requested the car?

1 A. From a family member?

2 Q. From anybody.

3 A. Or could I have requested at the time of the search
4 warrant to seize the car?

5 Q. Yes.

6 A. Okay. We could have requested that. We did not at
7 the time see a need to seize their vehicle from them.

8 Q. So at the time you didn't seize it. Then he's
9 sitting in your police department. Did you see the need
10 then?

11 A. No, sir. Not to seize his car.

12 Q. Did you see the need to simply ask for the car to be
13 brought to the police department?

14 A. I did not ask for it to be brought there, sir.

15 Q. So again, as I am trying to demonstrate what
16 happened, we're using a chair sitting on the floor; is that
17 correct?

18 A. Yes, sir.

19 Q. And so now you're sitting here trying to say that
20 that was not right when clearly it wasn't right to begin with,
21 correct?

22 MR. HUBBARD: Your Honor, I object. I object
23 because he's the attorney. He could have asked for the
24 car to be brought.

25 THE COURT: Let's get away -- There's no car in the

1 room. There was opportunity.

2 MR. RUTHERFORD: Your Honor, he's a police officer.

3 THE COURT: I know, but we're overworking a real
4 simple point. It was never done.

5 MR. RUTHERFORD: Your Honor, they have spent time to
6 rebuild a car that was so important, but he didn't think
7 it was important to do it then.

8 MR. HUBBARD: I object.

9 THE COURT: Hang on. I'm ready for a little break.
10 Send y'all to the jury room. Don't talk about the case.

11 (Whereupon, the jury entered the jury room at 3:50
12 p.m.)

13 THE COURT: All right. We've got to quit this
14 banter, okay? They didn't take the defendant out to any
15 car, his car or one similar, no car at any time to try to
16 demonstrate it. It wasn't done. They could have, but
17 although this they could have done it, you didn't ask.
18 Nobody did it. It just didn't happen. That's a simply
19 fact. And don't go into, you could have gone to a judge
20 and gotten a search warrant and seized the car and
21 brought it to Lexington County and couldn't have driven
22 the car in handcuffs. It's confusing to him. It's
23 confusing to me. And I think the jury is not amused by
24 the banter. What can I do to help y'all get past that?
25 I mean, it was never demonstrated in Mr. Dennis' car or a

1 THE COURT: They didn't, left it out there, that's
2 their choice and their risk.

3 MR. RUTHERFORD: Exactly.

4 THE COURT: That's what you can say. But you can
5 say was my client ever given the opportunity to show you
6 in his car what he believed happened that night. The
7 simple answer is negative.

8 MR. RUTHERFORD: Right.

9 THE COURT: Solicitor equal. In his statement he
10 gave several different versions of it. Responses. He
11 was never given an opportunity in his car to do it and
12 that's simple enough. Y'all try to keep it somewhere
13 near those boundaries. I'm not gonna tell you don't step
14 outside of them. It's gonna be hard. Do your best. I
15 just thought we were getting far afield and the jury
16 needed a little bit of a break.

17 (Short break.)

18 THE COURT: Ready to continue on? Let's go.

19 (Whereupon, the jury entered the courtroom at 4:05
20 p.m.)

21 THE COURT: All right. Continue on.

22 MR. RUTHERFORD: Thank you, Your Honor.

23 BY MR. RUTHERFORD:

24 Q. Investigator Carter, you did not offer my client nor
25 myself an opportunity to demonstrate at the actual vehicle

1 what happened that night, did you?

2 A. I did not, sir.

3 Q. And, Investigator Carter, in fact, we left that room
4 and went to where the car was. Was my client offered the
5 opportunity to do it then?

6 A. I did not offer it, sir.

7 Q. Who served the search warrant on the vehicle?

8 A. Well, the search warrant on the vehicle is part of
9 the original search warrant done at the house that night.

10 Q. So did you do it or somebody else?

11 A. I did not serve that search warrant.

12 Q. So you never had custody of the vehicle; is that
13 right?

14 A. I did not have custody of the vehicle. No, sir.

15 Q. When did you do the measurements?

16 A. Measurements were done at a later date, sir. About
17 a month later.

18 Q. So you went back out to the actual vehicle a month
19 later?

20 A. Yes, sir.

21 Q. And when you went out to the vehicle a month later
22 and you did the measurements, how did you do it?

23 A. Well, we obtained a search warrant, we went out to
24 the house and I had another officer with me. We used some
25 measuring tape and a legal pad as sort of a level to get a

1 straight measure.

2 Q. So you didn't have an actual level?

3 A. No, sir. I did not have a level. No, sir.

4 Q. And at the time you went out to measure the vehicle,
5 did you know why you were measuring it? What were you trying
6 to get out of it?

7 A. Well, I was asked to take measurements of the
8 vehicle and just to get the measurements of certain parts of
9 it. I'm trying to recall why somebody saying a specific
10 reason what they were needing it for, but they needed the
11 measurements to the vehicle.

12 Q. When you say they, you're the lead investigator?

13 A. I was speaking with the Solicitor's Office.

14 Q. Okay. So at that point that you went back out a
15 month later, could you not have taken the vehicle then? I'm
16 not asking a legal question.

17 A. Well, I believe at that time I'm sure it's possible
18 I could have presented a seizure warrant to a judge. I don't
19 know if they would approve it or not.

20 Q. Now, you're an investigator, correct?

21 A. I was, yes, sir, at the time.

22 Q. You went to investigator school to become an
23 investigator; is that right?

24 A. Well, the investigations position is a promotion
25 within the agency. There is subsequent training that is

1 received during the time you're an investigator.

2 Q. When you were measuring this vehicle, were you
3 measuring it to try to exactly match, when I say this vehicle,
4 the gold Explorer, were you measuring it to try to get it
5 exactly the way that it was on the night in question?

6 A. I was trying to obtain measurements of the vehicle
7 as it was at that time when I was there, true measurements of
8 that vehicle at that moment.

9 Q. So while you were there you weren't concerned with
10 how it was on February 17th?

11 A. Well, I would be concerned with how it was on
12 February 17 so as I did that the belief was that the
13 measurements would be within reason very close to what they
14 would have been on that date.

15 Q. So on February 17th when the vehicle was at the Cook
16 Out --

17 A. Yes, sir.

18 Q. -- and Mr. Capers was standing at the door --

19 A. Yes, sir.

20 Q. -- was there someone in the vehicle or not?

21 A. Was there someone in the vehicle?

22 Q. Yes, sir.

23 A. Yes, sir.

24 Q. So when you took the measurements from the ground to
25 the top of the window, did you place someone in the vehicle to

1 mimic Mr. Dennis' weight?

2 A. No, sir. I did not.

3 Q. You did not. So have you ever watched someone sit
4 in a car?

5 A. Yes, sir. I have seen someone sit in a car.

6 Q. And when they do, you ever seen a car move because
7 someone sat in it?

8 A. Depends on how big they are. Yes, sir.

9 Q. How long was Mr. Dennis?

10 A. How big? You want me to give his exact weight and
11 height?

12 Q. Yeah.

13 A. I don't know his exact weight and height, but he is
14 an average size individual.

15 Q. So then someone of average size getting in this
16 vehicle, getting in his vehicle at the time, would it have
17 made the vehicle move or not?

18 A. That would be conjecture. I've not seen him sit in
19 that car.

20 Q. But you could have either had him or someone
21 weighing the same thing as him because he did, sit in the
22 vehicle, correct?

23 A. Yes, sir. I could have.

24 Q. And you did not, correct?

25 A. I did not, sir.

1 Q. And so when you took the measurement, no one was in
2 the vehicle?

3 A. No, sir.

4 Q. And you didn't use a level. You used a note pad,
5 correct?

6 A. Yes, sir. Made sure the note pad was level to
7 measure.

8 Q. Okay. So looking at this door, what is different
9 from, besides the color, what is different from this door and
10 Mr. Dennis' door?

11 A. You mean aesthetically?

12 Q. Yes, sir.

13 A. Well, certainly it's just a door. It's not attached
14 to a vehicle. I can see a portion down below where there
15 might have been some rubber decoration there that's not there.
16 Obviously the color is different.

17 Q. And you're the lead investigator, correct?

18 A. Yes, sir.

19 Q. Did Mr. Dennis' car have this little key pad to get
20 in it?

21 A. I believe looking at the crime scene pictures, I
22 mean, I'm having to recall all the pictures, I'm not positive.
23 I can't recall at this point.

24 Q. But you didn't have to recall when this was being
25 done because you measured it and you were trying to get an

1 exact duplicate of what Mr. Dennis' car looked like and you
2 were told that there was no difference in the models between
3 the years that this car was manufactured, that Mr. Dennis' car
4 was manufactured and this car was manufactured, correct?

5 A. I was not told all those things. I was asked to get
6 measurements of the physical vehicle.

7 Q. And so you are the lead investigator. When you saw
8 this, did you compare it with Mr. Dennis' vehicle?

9 A. I did not compare it other than to recheck the
10 measurements to make sure the measurements matched.

11 Q. So just to be clear, the only measurement that you
12 took was on the outside of the vehicle was from here to the
13 ground, correct?

14 A. No, sir. I measured the lower part of window, and
15 then the upper part of the window as well from the outside.

16 Q. The upper part of the window to the ground as
17 well?

18 A. No, sir. The upper part of the window, the width
19 and then the width at the base of the window. The measurement
20 from top to bottom, yes, sir, would have been from that
21 portion.

22 Q. That's correct. And you didn't mark on here or Mr.
23 Dennis' vehicle exactly where you took the measurement,
24 correct?

25 A. I did not make any marks on this vehicle. No,

1 sir.

2 Q. Okay. And what about damage to Mr. Dennis' vehicle,
3 did you check and see whether it had been damaged?

4 A. I did not check to look for specific damage, no,
5 sir.

6 Q. So whether Mr. Dennis' vehicle had been wrecked or
7 not, wouldn't that be relevant to whether a demonstrative
8 matched Mr. Dennis' vehicle?

9 A. Well, sir, I took the measurements as the vehicle
10 sat so if the wreck damage had caused any difference in the
11 height or size, it would have been there when I measured it so
12 the measurements would have been as they were with that
13 damage.

14 Q. That would have been to the exterior. But as you
15 move to the interior the damage could have impacted the floor
16 board of the car; is that correct?

17 A. I'm sorry. I just want to be clear with what you're
18 asking me. You want to know if measurements taken inside of
19 the vehicle could change due to damage inside the vehicle?

20 Q. Whether damage to the vehicle could impact the
21 measurements and things on the inside of the vehicle?

22 THE COURT: You're asking questions about things he
23 didn't do, wasn't asked to do. I mean, he didn't prepare
24 the demonstrative. He was asked to measure the Dennis
25 vehicle and that's what he did.

1 MR. RUTHERFORD: That's correct. And so --

2 THE COURT: All this was someone else's work.

3 MR. RUTHERFORD: That's right.

4 THE COURT: Okay. So can we --

5 MR. RUTHERFORD: I'm clear on the fact that it was
6 somebody else who did it.

7 BY MR. RUTHERFORD:

8 Q. Were you tasked with measuring the inside of the
9 vehicle as well?

10 A. Just some distances I believe from the console to
11 the door. I think there was -- As a matter of fact, I think I
12 have a copy of my notes here so I can say exactly what I was
13 measuring there, if that's okay.

14 Q. Sure.

15 A. There was a measurement done which would have been
16 from the ground to the window to the base there. Then there
17 was the height of the window itself. Then the width of the
18 window at the base. The width of the window at the top. And
19 then from the console to the window. And then from the
20 opposite side of the console to the window. From the window
21 to the opposite of the steering wheel. And from the window to
22 the keys.

23 Q. So the interior of the vehicle mattered enough where
24 you had to measure that as well, correct?

25 A. Certainly portions I was asked to measure.

1 Q. And so if I show you a picture of the gold Explorer,
2 can you tell me the difference in the car that Mr. Dennis was
3 driving that night and the door sitting here besides the
4 color?

5 A. I'm assuming this is the same - it's just a portion
6 so it's just a door. I can compare this door to that door. I
7 see that there is no key pad on this door but there is one
8 there. Obviously some paint. There's some striping there.

9 Q. So you notice that there's no key pad on Mr. Dennis'
10 door, correct?

11 A. Yes, sir.

12 Q. And so if we were told that this matched Mr. Dennis'
13 vehicle --

14 A. Yes, sir.

15 Q. -- that's not correct, correct?

16 A. You're asking me if -- Okay. I can tell you the key
17 pad is not there. I didn't build that so I don't know.

18 Q. I understand., but it doesn't match, does it?

19 A. I don't see a key pad on that particular picture of
20 the door.

21 MR. HUBBARD: Your Honor, is that evidence?

22 THE COURT: No, it's not.

23 MR. RUTHERFORD: I'm sorry. I'm gonna show you --

24 MR. HUBBARD: Your Honor, I'm going to ask that he
25 just hang onto them.

1 THE COURT: Put it over here.

2 MR. HUBBARD: I mean, I think all of this will come
3 in at some point, but until then I think it's improper.

4 BY MR. RUTHERFORD:

5 Q. I'm going to show you Mr. Dennis' vehicle at the
6 back. Do you see the bumper?

7 A. Can I hold it?

8 Q. Yeah. Sure.

9 A. I just want to get a good look. All right. So at
10 the bumper. And you're asking me?

11 Q. Can you see the bumper?

12 A. Yes, sir. I can see the bumper itself.

13 Q. Can you see the tailgate?

14 A. I can see the tailgate, sir.

15 Q. Does it look like the tailgate is closed and flush
16 with the taillights?

17 A. It looks like there may be something differential
18 there but this is kind of at an angle.

19 Q. So is it possible that the car could have had rear
20 end damage?

21 A. Total speculation, sir. There could be any reason
22 why that doesn't close.

23 MR. HUBBARD: May I look at those?

24 MR. RUTHERFORD: I'm sorry. (Proffering.)

25 BY MR. RUTHERFORD:

1 Q. Did you check the CARFAX?

2 A. I did not, sir. No, sir.

3 Q. Okay. So just to be clear, you know that the night
4 that Mr. Dennis' car was at the Cook Out he was sitting in the
5 car, correct?

6 A. Yes, sir.

7 Q. And so the measurement of 44 and a quarter that you
8 gave from here to the ground might not be accurate once
9 someone was in the vehicle, correct?

10 A. It would depend on who the person is, how much they
11 weigh versus the shocks of the vehicle I would assume.

12 Q. Right. So it may not be accurate, correct?

13 A. There is a possibility, sir, that it wouldn't be to
14 the absolute notch.

15 Q. Exactly. And so when Mr. Dennis was in the police
16 department or in your custody, did you measure his arm from
17 his shoulder to his fist?

18 A. I did not measure it, sir.

19 Q. Did you measure across his chest?

20 MR. HUBBARD: Your Honor, I would object to that
21 because that's a legal issue whether he had authority to
22 do that.

23 MR. RUTHERFORD: You want me to respond?

24 THE COURT: No. He didn't take measurements other
25 than the car. Move on.

1 BY MR. RUTHERFORD:

2 Q. So again, you knew that that night Mr. Dennis was
3 sitting in a car, correct?

4 A. Yes, sir.

5 Q. And I'll climb into the demonstrative that I believe
6 is inaccurate.

7 A. Yes, sir.

8 MS. PATTERSON: Your Honor, I object to him
9 testifying.

10 THE COURT: No. Let's - let me do that. We don't
11 need any commentary.

12 BY MR. RUTHERFORD:

13 Q. Again, Mr. Dennis told you that he had the knife in
14 his right hand and that he stabbed across?

15 A. Yes, sir.

16 Q. And you're the lead investigator. You were in the
17 room when the witness said that his hand was right here,
18 correct?

19 A. You're asking me about what another witness said
20 earlier today?

21 Q. Well, I assume you talked to him beforehand,
22 right?

23 A. I know the Solicitor Office has spoken to him for
24 sure.

25 Q. You're the lead investigator and you didn't talk to

1 him?

2 A. I've gone over his notes. I didn't contact him that
3 night. He's not an individual that I went out and
4 interviewed.

5 Q. So other witnesses that you interviewed, how many
6 did you place in a vehicle to see how close Da'Von Capers had
7 to be to the car?

8 A. I did not place any other witnesses in Mr. Dennis'
9 position.

10 Q. Do you believe that knowing how long Mr. Dennis' arm
11 is and how wide his body is might impact this case?

12 A. Knowing how long his arm is would impact the case?

13 Q. Yes, sir.

14 A. I don't think it was super significant because your
15 arm doesn't have to be a certain length to reach out the
16 window.

17 Q. So let me take you back. If he was Dwight Howard,
18 the basketball player who has a six foot arm length, how long
19 his arms are doesn't matter?

20 A. Well, I guess to a degree, but that would also
21 depend on the rest of the positioning of his body in the
22 car.

23 Q. So that's why the my question was did you measure
24 how wide he is?

25 A. I didn't measure how wide he is, sir.

1 Q. Exactly.

2 A. Any number of people could sit and then reach out
3 the car. I think that's impossible.

4 MR. HUBBARD: Your Honor, I'm gonna renew our
5 objection. One, asked and answered. Two, you have to
6 have legal authority to do measurements like of a
7 person.

8 MR. RUTHERFORD: And you can also request it.

9 THE COURT: You can. They didn't so let's move
10 on.

11 BY MR. RUTHERFORD:

12 Q. So again, did you measure the curb?

13 A. I did not measure the curb, sir.

14 Q. So each witness told you that they were standing on
15 the curb. Did you see how high the curb is to understand how
16 high that would have made each witness?

17 A. It's a standard curb height, sir.

18 Q. Which is what?

19 A. It's gonna be roughly between four to six inches.

20 Q. So standard curb height is between four to six
21 inches?

22 A. It's in that range.

23 Q. But you didn't measure it to see?

24 A. I didn't measure it to see, sir.

25 Q. Okay. And so that night, and I don't see him in the

1 picture, that night was Da'Von Capers wearing shoes?

2 A. Yes, sir. The victim was wearing shoes, I
3 believe.

4 Q. How high were the shoes?

5 A. They appear to be standard tennis shoes.

6 Q. Standard tennis shoes or standard high tops?

7 A. Well, how high the leather goes up the ankles
8 doesn't have anything to do with how high the sole is.

9 Q. Nor did I ask you that. So how high were the shoes
10 meaning how high was the sole of the shoes?

11 A. Okay. I'm sorry. I was confused. You mentioned
12 high tops. The sole of the shoes, they looked like standard
13 tennis shoes.

14 Q. So tennis shoes now come in standard?

15 A. Well, within reason. I mean, they didn't look like
16 platforms. They didn't look like they were flat bottoms.
17 They looked like standard tennis shoes.

18 Q. And so how much would that have elevated Da'Von
19 Capers from the ground?

20 A. I can't give you an exact number, sir.

21 Q. And you didn't measure them, did you?

22 A. I did not measure them, sir.

23 Q. So if Da'Von Capers was standing on a curb wearing
24 high tops, do you know how tall that would have made him?

25 A. I don't know, sir.

1 Q. Now, the Solicitor was asking you questions about
2 people throwing stuff at the car and pulling on the door
3 handles, correct?

4 A. I remember him asking about pulling on door handles,
5 sir.

6 Q. In fact, the night of the incident your team
7 collected information regarding people throwing trash at cars,
8 correct?

9 A. I believe there was one person that said they saw
10 someone throw a cup.

11 Q. You believe one or two?

12 A. Well, I know one I can recall right off the top of
13 my head, sir.

14 MR. RUTHERFORD: Your Honor, publish defense 4 for
15 ID. Actually I think this is defendant's 2 for ID.

16 MR. HUBBARD: Your Honor, I'm not sure what it is.
17 I don't think he can publish something unless it's in
18 evidence.

19 MR. RUTHERFORD: It is the dash cam belonging to
20 Officer Voravudhi and I am simply jogging his memory as
21 to the fact that two people told him that trash was
22 thrown at the vehicle because he said only one did.

23 MR. HUBBARD: Is he moving it into evidence?

24 MR. RUTHERFORD: I'm not playing the whole thing,
25 just playing that part.

1 MR. HUBBARD: I'm just asking.

2 THE COURT: Wait a minute. Wait a minute. I don't
3 think -- Come here real quick just the two of you.

4 (Side bar off the record.)

5 BY MR. RUTHERFORD:

6 Q. Investigator Carter, isn't it true that night that
7 more than one person told you that people were throwing trash
8 at Mr. Dennis' car?

9 A. I can recall in my head at least one person, yes,
10 sir.

11 Q. And isn't it true that night that more than one
12 person told you that somebody had reached in Mr. Dennis'
13 car?

14 A. I don't remember the numbers from that night that
15 said he reached in the car.

16 Q. Did you speak to Beth Bettini that night?

17 A. I did, sir.

18 Q. Did you speak to Zach Lynch that night?

19 A. I did speak to Zach Lynch, sir.

20 Q. Did you speak to Aubrey Walker that night?

21 A. I did speak to Aubrey Walker.

22 Q. That night? I don't want to confuse you.

23 A. No, sir. Yes, sir. I heard you.

24 Q. What about Michael James?

25 A. Michael James I do not believe I spoke to that

1 night. I don't recall speaking to him that night.

2 Q. Now, of the people that I have mentioned, does this
3 jog your memory as to who told you that someone reached into
4 Mr. Dennis' car that night?

5 A. I could look at their statements they made and let
6 you know for sure.

7 Q. Sure.

8 A. Are you asking of those specific people?

9 Q. Yes, sir.

10 A. Ms. Bettini did not. Zach Lynch did not.
11 Mr. Walker stated that he believed he saw a crowd of Dutch
12 Fork students at the car. He said some of them started
13 reaching into the car.

14 Q. Did you ever speak to Officer Voravudhi?

15 A. Absolutely did.

16 Q. You did not?

17 A. Absolutely did.

18 Q. You did. Did Officer Voravudhi tell you --

19 MR. HUBBARD: Object to any hearsay.

20 THE COURT: He gathered information in the
21 investigation.

22 BY MR. RUTHERFORD:

23 Q. Did Officer Voravudhi indicate to you that witnesses
24 had told her --

25 MR. HUBBARD: Your Honor, I'm gonna object to that

1 form of question.

2 MR. RUTHERFORD: He's the lead investigator, and how
3 he acted when he got information is crucial to the
4 investigation because of a decision that was made less
5 than an hour after this information was gathered.

6 MR. HUBBARD: Your Honor, I don't mind information,
7 it's just how - it's got to be the witness that has it.

8 MR. RUTHERFORD: Your Honor, he's the lead
9 investigator. He has all of it.

10 THE COURT: I know he gathers all the information
11 that was gathered from other people and that makes it a
12 step away from him.

13 MR. RUTHERFORD: So what he did with the information
14 is what's crucial because the law allows Mr. Dennis the
15 benefit of the protection of the law.

16 THE COURT: I'm with you on all of that. It's just
17 --

18 MR. RUTHERFORD: I can rephrase it, Your Honor.

19 THE COURT: Try to rephrase it.

20 MR. RUTHERFORD: Yes, sir.

21 BY MR. RUTHERFORD:

22 Q. During the course of your investigation, how many
23 different people told you that Mr. Capers reached in that
24 window?

25 A. I don't have an exact number for you, sir.

1 Q. You don't have an exact number?

2 A. No, sir.

3 Q. Okay. So before the decision was made to charge Mr.
4 Dennis that night --

5 A. Yes, sir.

6 Q. -- how many people did you speak to that told you
7 that Mr. Capers had reached into the window?

8 A. Let's see. That night how many people I personally
9 spoke to? Maybe one.

10 Q. Later on through the course of investigation you
11 testified that you don't know how many different people told
12 you that.

13 A. I just can't give you a number.

14 Q. I don't want to pin you down.

15 A. Yeah. I mean...

16 Q. So how many of those people did you give opportunity
17 to stand at a window and show what happened?

18 A. I had no one stand at a window.

19 Q. Okay. And after you interviewed Mr. Dennis that
20 first night, I believe you testified that you left the room
21 and that's when you charged him or that's when you made the
22 decision to charge with him with murder, correct?

23 A. No, sir.

24 Q. I'll allow you to explain. Again, my recollection
25 was that you said that you had left the room and you went and

1 talked to whoever and made the decision that you were going to
2 charge him. I don't want to put words in your mouth. You
3 tell me how it happened.

4 A. No, sir. That night as I testified earlier in this
5 trial, that night I left the room, I spoke to other
6 individuals in investigation, talked to my supervisor, we made
7 a decision to detain him at that time as we would continue to
8 investigate because at that point he wasn't in custody so we
9 wanted to detain him and we conducted a search warrant for
10 buccal swab and then we continued to talk to witnesses
11 throughout the evening. I believe on the report it notes that
12 he was charged at 05:00 in the morning.

13 Q. You said he wasn't in custody when he was in the
14 room talking to you?

15 A. Yes, sir. He agreed to come talk to us.

16 Q. I understand. And you're saying that when you left
17 and he put his head down on the table, I believe that's what
18 the video showed --

19 A. He actually slumped.

20 Q. Slumped?

21 A. Yes, sir.

22 Q. -- he was not in custody?

23 A. Yes, sir. He said that he would come speak to us.

24 Q. I understand that. After he was done talking, was
25 he in custody or not?

1 A. I detained him, sir. He wasn't under arrest.

2 Q. Detained meaning he couldn't leave?

3 A. At that point, yes, sir, pending the investigation
4 but he was not charged with a crime.

5 Q. So from that time until 05:00, about five hours
6 later, where was he?

7 A. He was actually down the hall in a training room.
8 An officer was standing by with him.

9 Q. So watching him. Was he in cuffs when he was moved
10 around?

11 A. I'm not positive. I'm not positive because I did
12 not see what was going on down there with him.

13 Q. Got it. So the actual decision was made to charge
14 him at 5:00 in the morning, correct?

15 A. It would have been shortly before that because 5:00
16 would have been the time stamp of arrest.

17 Q. We've heard from several witnesses that there were
18 multiple people out there, we have seen videos with 30 to 40
19 people in the parking lot, and before talking to them you made
20 the decision to charge him with murder at 5:00 in the
21 morning?

22 A. I'm sorry. Did you say -- That was a long question.
23 I want to make sure I have it all. Say it again.

24 Q. Okay. We've seen videos with 30 to 40 people in
25 them outside in the parking. We know that there were

1 witnesses on the scene that did not go to either Dutch Fork or
2 Lexington you said you spoke to. There are multiple people at
3 this car, and yet you say you made the decision to charge him
4 before you talked to everybody and looked at every piece of
5 evidence; is that right?

6 A. I had not spoken to everybody who was at Cook Out
7 that night before making the decision to arrest.

8 Q. Okay. So did you receive a statement from Deshon
9 Chatman that he called people to tell them not to go to the
10 Cook Out?

11 A. From Deshon Chatman? I know that there was a
12 discussion where he spoke about calling Ms. Brunson and saying
13 don't go up to the Cook Out.

14 Q. So where are their phones?

15 A. I don't have their phones, sir.

16 Q. Did you ask?

17 A. I didn't ask for their phones, sir.

18 Q. So you just went through a timeline of Mr. Dennis'
19 phone when he was at the Cook Out. Did you go through Michael
20 James' phone?

21 A. I didn't.

22 Q. So you don't know who he called?

23 A. I didn't, sir.

24 Q. So Marcus Taylor, did you go through his phone?

25 A. I didn't, sir.

1 Q. Did you ask him why he didn't have his shirt on?

2 A. I didn't ask him why he did not have his shirt on at
3 that point, sir.

4 Q. You said at that point. Did you ever ask him why he
5 did not have his shirt on?

6 A. I'm sorry. What I meant is I didn't ask because his
7 shirt was on earlier. That's what I meant. I didn't ask him
8 why his shirt had come off at that point.

9 Q. You said you're an investigator. When you see a
10 potential crime scene and someone has taken their shirt off in
11 40 degree weather, what does that indicate to you?

12 A. Well, the crime had already occurred so it indicated
13 to me because the subject had already committed the crime and
14 then left that this individual witnessed what had been going
15 on. It's a fluid chain of events. Because they had thrown
16 money in the road to set up students to get in the road so Mr.
17 Dennis could ride up to them and as he did that --

18 Q. I'm sorry. I'm sorry.

19 A. -- there's many people observing.

20 Q. Let me stop you because what you're testifying to
21 no one else had said. So let's go back.

22 MR. HUBBARD: Your Honor, I think he gets to answer
23 the question.

24 MR. RUTHERFORD: He's running on, Your Honor, and
25 Your Honor knows it, and he should answer the question.

1 The question was regarding Marcus Taylor taking off his
2 shirt and he's now talking about somebody else running
3 up. We have a video. We can play it.

4 THE COURT: I know. I understand that, but you
5 asked him why he did what he did and he was explaining
6 that. There was a fluid chain of events.

7 MR. RUTHERFORD: That's right and I can play it so
8 that he can see he's wrong.

9 MR. HUBBARD: Your Honor, if he would just ask the
10 question and let him answer the question.

11 THE COURT: All right. I tell you what. I don't
12 want to play the video again. We've seen it a time or
13 two.

14 MR. RUTHERFORD: We have stills.

15 THE COURT: Rephrase your question as to what
16 you want him to answer.

17 BY MR. RUTHERFORD:

18 Q. When Marcus Taylor is standing there looking like
19 he's ready to fight, did you not ask him why he took his shirt
20 off? Yes or no?

21 THE COURT: No. No. I think the question was did
22 you ask him.

23 BY MR. RUTHERFORD:

24 Q. Did you ask him? Yes or no?

25 A. I don't recall asking him why he took his shirt

1 off.

2 Q. Okay. So when you're looking at a scene and in this
3 case it was the Cook Out, it was the parking lot, it was a
4 car, do you believe it important to get as much information as
5 you can before you make the decision to charge someone?

6 A. Sure.

7 Q. Okay. And in this case do you believe that you did
8 that?

9 A. I believe that I did my best that night. Yes,
10 sir.

11 Q. Now, and I missed this. When was this picture
12 taken?

13 A. That picture was taken certainly after the fact. I
14 don't have that date.

15 Q. Do you remember around about when?

16 A. I don't. It would have been within, I'm just gonna
17 -- It would have been within months I'm assuming.

18 Q. So when this picture was taken, does it accurately
19 reflect how the scene looked that night?

20 A. It's pretty close. If there's any changes, they're
21 not significant I don't believe.

22 Q. You mean that it was February when this happened so
23 it was wintertime so no leaves may have been on the trees?

24 A. There certainly wouldn't have been leaves on the
25 trees in February maybe. Depends on the type of tree. It

1 could have been an evergreen. I don't know what type of tree
2 it is.

3 Q. I agree. But you didn't know when the picture was
4 taken, correct?

5 A. No, sir. I didn't take the photograph so I did not
6 take it down and keep it in my possession.

7 Q. But again, you're the lead investigator, right?

8 A. Right, sir. But that's not my photo. I didn't take
9 it. I didn't put it in my evidence.

10 Q. I understand.

11 A. I'm not a part of that chain.

12 Q. Now, over here there was construction going on over
13 at Petco or whatever it is; is that right?

14 A. What they did was -- Can I explain what they did?

15 Q. Sure.

16 A. What they did was there had been a curb there and so
17 there was a change. It used to be Blockbuster. We can all
18 remember that back in the day, and there used to be an
19 entrance, an additional entrance into Blockbuster. It was
20 closed off.

21 Q. Do you know where that additional entrance used to
22 be? I won't hold you to it. I was just curious.

23 A. Sure. The best I remember in ancient days going to
24 Blockbuster, I'm sure we've all done that, as I recall when
25 you would come in off the road, this would be a singular lane

1 and then there would be an entrance to Blockbuster right about
2 here. What they did is they actually busted the curb on this
3 side and modified it so that when you turned it, you wouldn't
4 have to go very far before you turned right into Petco and
5 allowed it to, you could go right in.

6 Q. So there used to be an entrance like right here?

7 A. I think the cosmetics were more on this side. They
8 modified where this ended and then where it curved in. That's
9 just the best of my recollection.

10 Q. Right. But when a witness testified about a divot,
11 could that be what he was referring to?

12 A. It could have been because when they did that, they
13 had to put a bunch of gravel right here, so it could have been
14 after they repaved. This is all new paving so after they
15 repaved, that pavement level was slightly different from the
16 original paving. You can see it right here, the line.
17 There's just a differential in height.

18 Q. And no picture was taken February 18th to look at
19 this picture and say what the differences were; is that
20 correct?

21 A. A aerial picture like this was not taken that day.
22 No, sir.

23 MR. RUTHERFORD: Okay. Your Honor, no further
24 questions at this time.

25 MR. HUBBARD: I just have a few questions, a few

1 follow up.

2 REDIRECT EXAMINATION CONTINUED

3 BY MR. HUBBARD:

4 Q. When you do a search on a car, anyone's car --

5 A. Yes, sir.

6 Q. -- your office depending on the type of search can
7 seize a vehicle and retain it, right?

8 A. Yes, sir. If need be.

9 Q. But you also have the option once you've completed
10 and looked for what you're looking for to turn it back over to
11 the owner, correct?

12 A. Yes, sir. If we believe we've conduct the search
13 that we felt we needed to at that time, yes. If we felt we
14 needed to do it again, we would have to produce another search
15 warrant.

16 Q. In this case y'all allowed the Dennis family to have
17 the vehicle back?

18 A. Yes, sir.

19 Q. In fact, you never seized it. You did the search
20 right there at the house?

21 A. Yes, sir.

22 Q. Now, in seizing vehicles you would agree that
23 inconveniences families at times, does it not?

24 A. Yes, sir.

25 Q. Now, once you turn something back over, can you just

1 go and take the vehicle again?

2 A. No, sir. A new search warrant has to be --

3 MR. RUTHERFORD: Now we're getting into the legal
4 issues that he said I couldn't.

5 THE COURT: No, sir. I agree with you, but you got
6 that far. He can go that far.

7 MR. HUBBARD: That's as far as I'm going on this
8 part.

9 THE COURT: A new search warrant issued for some
10 additional reason.

11 MR. HUBBARD: Right.

12 BY MR. HUBBARD:

13 Q. It's got to be an additional reason?

14 A. Yes, sir.

15 Q. Now, you could ask the family but the family could
16 also, or their attorney could say, hey, can you look at
17 this?

18 A. Yes, sir.

19 Q. And that wasn't done --

20 A. No, sir.

21 Q. -- by the other side?

22 A. That's correct.

23 MR. RUTHERFORD: Your Honor, I'm sorry. Can we take
24 this up outside the jury?

25 MR. HUBBARD: This is in response.

1 THE COURT: I know. I think we've gone far enough
2 with that.

3 MR. HUBBARD: All right. I'm done with that.

4 THE COURT: It wasn't done, period.

5 MR. HUBBARD: Yes, sir.

6 BY MR. HUBBARD:

7 Q. Now, phones --

8 MR. RUTHERFORD: Your Honor, I'm sorry. I have an
9 objection that I need to put on the record.

10 THE COURT: All right. You can put it on. I have a
11 really good idea. You can put it on, but your objection
12 is noted. We'll do it on the next break.

13 BY MR. HUBBARD:

14 Q. When it comes to phones of all these teenagers out
15 there with their phones --

16 A. Yes, sir.

17 Q. -- you were asked did you take those phones?

18 A. Yes, sir.

19 Q. You did not take those phones?

20 A. I did not.

21 Q. You could have, correct?

22 A. That's correct, sir.

23 Q. As far as the arrest from that night, there was the
24 various stories you were getting about whether hands were in
25 that window or not. You had the gold Explorer. You had all

1 this information. But when you interviewed Mr. Dennis that
2 night --

3 A. Yes, sir.

4 Q. -- he denied anything happened, right?

5 A. Yes, sir.

6 Q. So when we talk about windows and doors and all
7 that, his indication to you was that there was nothing to look
8 at here. I just drove past.

9 A. Yes, sir.

10 Q. As far as the Cook Out area, defense was showing you
11 State's 23 with the curb?

12 A. Yes, sir.

13 Q. We've got another one somewhere. Looking at State's
14 20. At the time of this incident was this entrance and exit
15 to your memory was that the same as in 2014?

16 A. It was. The only difference was there was some
17 gravel here. It hadn't been repaved --

18 Q. Just had not been --

19 A. -- to my recollection.

20 Q. Okay. Now, one other thing. If you go out there
21 today, has there been any change, for instance, to the car
22 wash?

23 A. The car wash there has. The gentleman that owns
24 that had some issues with people hanging out down in there and
25 leaving trash and ne'er-do-wells, I guess one would say, so

1 he's put up some barricades at the entrances to his car wash
2 so that you have to pay to get in.

3 Q. Other than that is the layout still pretty much the
4 same?

5 A. Yes, sir.

6 Q. Again, just looking at this as far as - would you
7 agree there are multiple ways to get in and out of Cook Out?

8 A. Yes, sir.

9 Q. And this one little road right here is not the only
10 way to get out of Cook Out?

11 A. That's correct, sir.

12 MR. HUBBARD: Thank you.

13 THE COURT: Anything else?

14 MR. HUBBARD: I think that's all, Your Honor. Thank
15 you.

16 THE COURT: Anything?

17 RECROSS EXAMINATION CONTINUED

18 BY MR. RUTHERFORD:

19 Q. Investigator Carter, did you ask for any other cell
20 phones to be given to you?

21 A. From any of the witnesses? No, sir.

22 Q. Did Morgan give you hers?

23 A. She provided videos from her phone.

24 Q. And the Solicitor was asking you about these
25 overhead shots?

1 A. Yes, sir.

2 Q. Do you know whether any of the people in this case
3 had seen an overhead shot of the Cook Out before?

4 A. I do not. No, sir.

5 Q. So you don't know whether they knew about any of
6 those entrances or exits, do you?

7 A. I don't know what they know. That's correct.

8 Q. And, in fact, as we look at these overhead shots you
9 would agree that the scene looks totally different at night,
10 correct?

11 A. Well, it's darker.

12 Q. It's darker. And so someone's ability to see when
13 they're not looking at a daytime overhead shot may be slightly
14 modified; is that right?

15 A. Someone's ability to see at night is slightly
16 modified.

17 Q. That's right. Thank you.

18 MR. HUBBARD: No further questions, Your Honor.

19 THE COURT: You may step down. You are subject to
20 recall --

21 MR. RUTHERFORD: Your Honor, I'm sorry. I don't
22 know why he said that. I was still talking but...

23 MR. HUBBARD: I thought he was done.

24 THE COURT: I thought you said --

25 MR. RUTHERFORD: I didn't say anything. He just

1 started.

2 THE COURT: I thought you said -- I was trying to
3 get him down. Are you done?

4 MR. RUTHERFORD: I said thank you to that question
5 and then I turned around.

6 MR. HUBBARD: I'm fine, Judge. I'm sorry. I
7 thought he was done. I think you did, too.

8 BY MR. RUTHERFORD:

9 Q. When Mr. Dennis came to see you with me the second
10 time that you interviewed him, did he tell you then that he
11 had taken Nyquil?

12 A. He did repeat that. Yes, sir.

13 Q. And so when you interview someone, if they have
14 taken a substance that modifies their sleep or makes them
15 tired, is that something that you want to know?

16 A. Well, what I want to do is see how they're actually
17 reacting in the moment. I'm not a doctor, but I do know that
18 medications affect people of different sizes and all sorts of
19 things so what I'm really looking for is their actual present
20 ability because some people, Benadryl may affect them
21 differently than it affects other people. So what I'm looking
22 for is if he's unable to react, if he's showing signs of, hey,
23 this is not someone I can talk to right now, he can't give
24 good answers, I would have to back off. But he was sharp. He
25 was very aware. He was with it.

1 Q. You would agree with me that --

2 MR. HUBBARD: Your Honor, I'm gonna object right
3 now. It's beyond the scope of my redirect.

4 THE COURT: I know, but they reserve their rights --

5 MR. HUBBARD: Okay. That's right. You're right.

6 THE COURT: -- so they get a full scoop or a bite at
7 the apple. That's why I'm going to allow that.

8 BY MR. RUTHERFORD:

9 Q. And you would agree with me that all of those things
10 that you just talked about would be compared to someone if you
11 had spoken to them before, how sharp, how direct they are,
12 things that you would know if you knew them or had talked to
13 them before, but seeing someone the first time is not gonna
14 give you an indication of how they're answering your
15 questions; isn't that right?

16 A. Well, I don't quite think it plays that way.

17 Q. Okay.

18 A. Because, I mean, like yourself, I deal with a lot of
19 people, and when you deal with a lot of people, sometimes
20 you're dealing with them for the first time and you can tell
21 they're slowed down. When I say slowed down, I mean what a
22 reasonable person would think. I'm pretty sure in this room
23 you could say, you know, look at a drunk person who is
24 inebriated to the point they couldn't properly respond,
25 everybody would say that guy's drunk. I don't need to be a

1 doctor per se to say he can't respond. He's actually giving
2 accurate responses. I think everybody who sees the video can
3 look at it and say, yeah, he's awake. He's asking questions.
4 He's trying to be inquisitive. You know, he responds to
5 everything I'm saying. He's lucid. I didn't find anything
6 there that would tell me that he was not lucid, that he was
7 not able to properly respond.

8 Q. Using the example you just gave where everyone could
9 point at him and say that he was drunk, it could be that he
10 was a diabetic, it could be that he had taken Nyquil or cold
11 medicine that made him that way?

12 A. So the baseline is not that he's drunk, but that
13 person's impaired. Maybe I should have said that. That they
14 could say that person is impaired to some degree because we're
15 reasonable humans. That's what all this is based on is
16 reasonability, and a reasonable person can't look at him and
17 say he's under the influence. He can't answer. It's just
18 difficult to do.

19 Q. And, in fact, your first response was to say that he
20 was drunk and that might be wrong?

21 A. I'm sorry.

22 MR. RUTHERFORD: No further questions.

23 BY THE WITNESS:

24 A. I'm sorry. I can't hear because of the air
25 conditioning.

1 AUGUST 23, 2019

2 BAILIFF: All rise. Court is now in session. The
3 Honorable Eugene C. Griffith presiding.

4 THE COURT: Thank you. Good morning. Please be
5 seated. Y'all got your stuff marked?

6 MS. SIMPSON: Your Honor, we do have several
7 objections with respect to I believe three or four of the
8 photos that the next witness will be testifying to.

9 MR. HUBBARD: Not to interrupt you, we're gonna put
10 Marc Miramontes on first.

11 MS. PATTERSON: So Marc Miramontes is testifying
12 first.

13 MS. SIMPSON: Then we can address the photographs
14 after him, if you want.

15 THE COURT: Okay.

16 (Whereupon, the jury entered the courtroom at 9:25
17 a.m.)

18 THE COURT: Good morning. I believe we don't get
19 bad weather this afternoon. Call your witness please.

20 MS. PATTERSON: Thank you, Your Honor. The state
21 calls Detective Marc Miramontes.

22 Thereupon,

23 MARC MIRAMONTES

24 after having been first duly sworn, testified as follows,

25 THE CLERK: Please have a seat. Once you're seated,

1 state your full name spelling your last please.

2 THE WITNESS: My name is Marc A. Miramontes,
3 M-i-r-a-m-o-n-t-e-s.

4 DIRECT EXAMINATION

5 BY MS. PATTERSON:

6 Q. Detective Miramontes, where are you employed?

7 A. With the Town of Lexington.

8 Q. How long have you been employed with the Town of
9 Lexington?

10 A. It will 19 years this December.

11 Q. And what capacity are you employed with the Town of
12 Lexington?

13 A. Right now I'm in the crime scene investigator and
14 evidence custodian.

15 Q. And how did you come to get involved in the case of
16 the State versus Kierin Dennis?

17 A. Back in February of 2017 I believe around 10:00 at
18 night Investigator Carter called me to assist him with a
19 stabbing and if I could go over to the ER and get a few
20 pictures of the victim.

21 Q. Did you, in fact -- What ER did you respond to?

22 A. The Lexington ER, the main hospital.

23 Q. Detective Miramontes, I think you said 2017.

24 A. I'm sorry. It's 2014.

25 Q. I'm gonna show you what's been marked as State's

1 Exhibits 37 through 43 and ask you to take a look at this.

2 Did you, in fact, collect anything from the hospital?

3 A. I did. When I arrived, the nurses advised me that
4 the victim had passed and they had taken both shirts that he
5 was wearing and normally they bag them for us so we can take
6 them as evidence and that's what they did. I brought them
7 back to the Lexington Police Department and placed them in
8 evidence.

9 Q. Will you take look at those photographs?

10 A. The plaid shirt is one of the shirts that I
11 collected and then there was an undershirt that he was also
12 wearing so there were two shirts but this is one of the shirts
13 that I collected.

14 MS. PATTERSON: Your Honor, at this time the State
15 moves 37 through 43 into evidence.

16 MS. SIMPSON: Without objection.

17 THE COURT: 37 through 43 inclusive without
18 objection.

19 BY MS. PATTERSON:

20 Q. And this is the victim's shirt that you collected?

21 A. That is correct, ma'am.

22 Q. I'm going so show you one more picture. Did you
23 take those measurements?

24 A. I did not.

25 Q. Do you know who took them?

1 A. I believe that was taken once it was taken over to
2 SLED to be tested.

3 Q. Did you attend the autopsy associated with this
4 case?

5 A. I did. It was I believe the morning of the 19th I
6 went over to the hospital at Newberry.

7 Q. And on February 20th, 2014 were you contacted to
8 assist any further in this case?

9 A. I did. I was contacted by Investigator Carter again
10 and asked me to assist him with possibly collecting the weapon
11 used in the crime.

12 Q. And what location did you respond to?

13 A. We went to, I had Investigator Carter with me and I
14 believe attorney Rutherford. They both rode in my car. We
15 followed one of the patrol cars. We went over to ■■■5 Drooping
16 Leaf, I believe it's Drive, ■■■5 Drooping Leaf.

17 Q. When you got to that location, were you directed to
18 the area where the knife may have been?

19 A. I was. I was advised by the defendant who was in
20 the back of one of the patrol cars and he was, they had
21 lowered the back window for him and he advised the patrol
22 officer that was driving Johnson that the weapon was behind
23 his house in the neighbor's yard.

24 Q. Do you have the address for that neighbor's yard?

25 A. I believe it's ■■■0 Drooping Leaf. It's basically

1 directly behind it. It's just a corner street and both houses
2 are facing the opposite directions on two different roads.

3 Q. Did you or any of the other officers speak to the
4 homeowner of that address?

5 A. Investigator Dykes from Lexington County was there
6 and he spoke with the owner and he signed a consent form that
7 Lexington County has.

8 Q. Can you describe what kind of area you was looking
9 for during the knife recovery?

10 A. I was just looking. I was told that he had buried
11 it in the back. I was looking for any area that was
12 disturbed. We were able to locate an area right past his
13 property line into the neighbor's yard. You could tell
14 everything was normal except for that area. It looked like it
15 was dug up or tried to be covered up and there were footprints
16 right next to it.

17 Q. What was the first thing you did when you saw this
18 area?

19 A. As soon as we saw that we taped it off and we kept
20 everybody from it and started taking pictures.

21 Q. Why do you take photographs?

22 A. Just to make sure because I was gonna have to dig
23 the area to try to locate and I wasn't sure exactly what else
24 there was going to be so I had to photograph everything first
25 and try to measure everything I could and then start digging

1 for it.

2 Q. Did you recover anything in this area?

3 A. I did. I recovered a box, a long box and it had I
4 believe two weapons, two knives in it.

5 Q. Detective Miramontes, I'm gonna show you what's been
6 marked as State's Exhibit 44 through 49 and ask you to take a
7 look at this (proffering.)

8 A. That's gonna be, you can see the back of the
9 defendant's home and the front of the neighbor's house where
10 the knife was located, and this one is the ground where it
11 shows where it was disturbed and also the same area with the
12 footprints next to it and then the box that was buried and the
13 last one has the knives inside the box.

14 MS. PATTERSON: Your Honor, at this time we move
15 State's Exhibit 44 through 49 into evidence.

16 MS. SIMPSON: Without objection.

17 THE COURT: 44 through 49, photographs admitted
18 without objection.

19 BY MS. PATTERSON:

20 Q. Detective Miramontes, I'm gonna show you - what does
21 this picture depict?

22 A. The backside of that house, on the right is the
23 defendant's home, and that's the back patio.

24 Q. I'm sorry. There's a pointer up there if you use
25 it.

1 A. I'm sorry. This house right here is the defendant's
2 home and this is the neighbor's house right here. You can
3 barely see the front of the house and the property. The area
4 we're gonna be looking at is the back area of this property
5 there. Right here is where the rest of the ground was fine.
6 It's just right here. It looks like the ground had been
7 disturbed and looked like somebody was standing or squatting
8 down right here where the ground looked like a couple of shoe
9 prints exactly the same shoe prints pushed down on ground.

10 Q. Is this just a closer image of what you just
11 described?

12 A. Yes. That is correct. That was after I started
13 digging down. It was about maybe six inches deep. There was
14 a long box located there.

15 Q. Is that just a closer image of what you just
16 described?

17 A. That is correct.

18 Q. What's depicted in photograph 49?

19 A. Those are the weapons that were located inside.
20 They had a lot of moisture on them. The ground was still kind
21 of wet so they still had a lot of moisture on them.

22 Q. I'll show you what's marked as State's Exhibit 52
23 and 53. I'll pass you up 52. Do you recognize that item?

24 A. Yes, ma'am. This is one of the smaller knives that
25 was inside the box.

1 MS. PATTERSON: Your Honor, at this time we move
2 State's Exhibit 52 into evidence.

3 MS. SIMPSON: Without objection.

4 THE COURT: That's the box and knife?

5 MS. PATTERSON: Yes, sir.

6 THE COURT: Without objection.

7 BY THE WITNESS:

8 A. Number 53 is the larger knife that was inside of
9 it.

10 MS. PATTERSON: Your Honor, we move State's Exhibit
11 53 into evidence.

12 MS. SIMPSON: Also without objection.

13 THE COURT: 53 is the box with the longer knife.

14 BY MS. PATTERSON:

15 Q. So the smaller knife as the picture reflects was
16 buried inside this box?

17 A. That is correct.

18 Q. With the larger knife?

19 A. Yes.

20 Q. And after you collected the knives, what did you
21 do?

22 A. I collected everything and took it back to the lab,
23 the police department and I tried to measure them just to have
24 somewhat of a measurement before they get dropped into
25 evidence and taken to SLED

1 Q. I'm gonna show you what's been marked as State's
2 Exhibit 50 and 51 and ask you to take a look at this.

3 A. 50 is the measuring of, the picture of the smaller
4 knife. It's taken out of the holder and just measured.

5 Q. What does 51 show?

6 A. 51 is the larger knife and also the picture of it
7 with the tape measuring on the side and across the blade.

8 MS. PATTERSON: Your Honor, at this time we move
9 State's Exhibit 50 and 51 into evidence.

10 MS. SIMPSON: Without objection.

11 THE COURT: 50 and 51 without objection,
12 photographs.

13 BY MS. PATTERSON:

14 Q. What does this photograph show?

15 A. That just shows the length of the knife, the full
16 knife with the handle and also the width of the blade.

17 Q. Did you take these measurements?

18 A. I did.

19 Q. How long was the knife in total?

20 A. The knife was about nine and a quarter inches long.

21 Q. What about the blade?

22 A. The blade was about one and a quarter.

23 Q. What was the width of that?

24 A. I'm sorry. The blade was about one and a quarter,
25 the width of it.

1 Q. And 51?

2 A. 51, the total length of the entire blade and the
3 handle was about 15 inches and then the width of the blade was
4 only about two inches on the thicker part.

5 Q. What happened to these knives once you did the
6 measurements?

7 A. They went to SLED and they were tested for DNA.

8 Q. And again, this was the smaller knife --

9 A. That is correct.

10 Q. -- that was found in the box? And this was the
11 longer knife that was found in the box?

12 A. Yes, ma'am.

13 MS. PATTERSON: Thank you, Detective Miramontes.
14 Please answer any questions the defense may have.

15 THE COURT: Yes, ma'am.

16 MS. SIMPSON: Thank you. May it please the Court.

17 THE COURT: Yes, ma'am.

18 CROSS EXAMINATION

19 BY MS. SIMPSON:

20 Q. Good morning, detective. How are you?

21 A. Good morning.

22 Q. You're currently in crime scene, correct?

23 A. That's correct.

24 Q. And you indicated that you photograph what you do.
25 Like that's very important --

1 A. That's correct.

2 Q. -- with respect to preserving the evidence a case?

3 A. Yes, ma'am.

4 Q. And then you go back and you begin --

5 A. To collect.

6 Q. -- to collect. And even throughout that process you
7 photograph?

8 A. Yes.

9 Q. So if you were taking measurements or doing anything
10 of that nature, you would always want to photograph just to
11 preserve?

12 A. Yes.

13 Q. So everybody would know where those measurements
14 came from --

15 A. Mm-hmm.

16 Q. -- at a later date?

17 A. Yes.

18 Q. And in this case you indicated you went out on, what
19 was the date to the house?

20 A. I believe it was 1/20. I'm sorry. It was on
21 2/20.

22 Q. And that was with Investigator Carter or Sergeant
23 Carter now, Mr. Rutherford as well as Mr. Dennis; is that
24 correct?

25 A. That's correct.

1 Q. And Mr. Dennis was in another patrol car?

2 A. Yes.

3 Q. And what was the reason y'all were going out
4 there?

5 A. Mr. Rutherford came in and said that he was informed
6 where the weapon would be and we went over there after the
7 defendant was picked up at the jail and brought out.

8 Q. Okay. So Mr. Dennis along with his counsel had
9 actually indicated to law enforcement where this weapon would
10 be?

11 A. That's correct.

12 Q. And as far as the, I guess, progression of this case
13 are you aware that there was actually a search warrant already
14 previously conducted at the house?

15 A. No. Oh, yes. I did because, yeah, the night of the
16 incident after I came back from the hospital I was told that's
17 what the other officers were doing.

18 Q. And at that point they had not located the actual
19 weapon that was used, correct?

20 A. That's correct.

21 Q. So but for the cooperation and kind of the
22 direction, y'all may not have found the weapon, the direction
23 of the defendant as well as Mr. Rutherford?

24 A. That's correct.

25 Q. And the location, and I want to go back to some of

1 the pictures. Let's start with State's Exhibit 44. Just so
2 I'm clear again, can you point out where Mr. Dennis, his house
3 was located?

4 A. Mr. Dennis' home is the one on the right right
5 here.

6 Q. And the area y'all were searching?

7 A. Was over here in the neighbor's property.

8 Q. So just past the property line I believe?

9 A. Yes. I believe they have bushes separating the
10 property lines between the three homes.

11 Q. So basically y'all weren't searching a river,
12 correct?

13 A. That's correct.

14 Q. Or a lake?

15 A. That's right.

16 Q. Or the side of an interstate --

17 A. Mm-hmm.

18 Q. -- where a weapon might have been thrown or disposed
19 of and you didn't have to dig through the trash or a dumpster,
20 correct?

21 A. That's correct.

22 Q. And then as a matter of fact, that's pretty close to
23 the defendant's home?

24 A. That's correct.

25 Q. And with respect to the actual location where you

1 found the knife, you indicated there was a slight disturbance,
2 right?

3 A. Correct.

4 Q. First -- Actually I'll back up just a little bit.
5 In State's 46 what are we seeing here again?

6 A. That's several shoe prints from somebody that was,
7 it looked like somebody that was standing there or squatting
8 down while they were doing whatever they were doing to get
9 that ground disturbed.

10 Q. Based on your experience as a crime scene
11 investigator and in investigations, period, it doesn't look
12 like there was much of an effort to cover up these shoe
13 prints, correct?

14 A. There was a lot of effort to cover everything up
15 except for the shoe prints.

16 Q. But with respect to shoe prints they're pretty clear
17 for shoe prints?

18 A. Yes.

19 Q. They aren't wiped over. Like you can find them?

20 A. Correct.

21 Q. I believe in State's 45 this is the actual area
22 where you noted the disturbance?

23 A. Yes, ma'am.

24 Q. And describe kind of what you mean by disturbance?

25 A. The areas right here and the rest of the area you

1 can tell where it rained and you have all the little
2 indentation from the rain and here it was, you can tell where
3 the ground was moved and also they had the shoe prints on top
4 of it.

5 Q. Okay. And as far as the rain, it had actually been
6 raining for a couple of days. You indicated there was
7 moisture still in the box even?

8 A. The ground was still moist just because of the time
9 of the year. It was cold, February, so the ground still has
10 moisture in it so when the box was located, there was a lot of
11 moisture inside.

12 Q. And then focusing on the knives that were found,
13 I'll start with State's Exhibit 48. This is the box,
14 correct?

15 A. Yes. That's correct.

16 Q. We don't have a really good photograph but as far as
17 the measurements that are indicated in this picture are those
18 of the box or of the actual, I guess, area dug?

19 A. Just the area dug just from the top of the ground to
20 where the box was.

21 Q. And what are -- I'm sorry. I have a hard time
22 seeing it. Maybe in your report -- I'll show you closer. In
23 State's 48, what are those measurements?

24 A. I'm not sure. I would have to get a close up of
25 it.

1 Q. So closer?

2 A. Yes.

3 Q. Did you keep a report of this?

4 A. No, ma'am.

5 Q. Let's see if we have a closer one. I don't believe
6 the State put in a closer one. How far would you guess that
7 was? Since you were out there you have kind of an idea. You
8 don't have to give me the exact.

9 A. I would say about six inches.

10 Q. So about six inches deep which is what, half a
11 foot?

12 A. Yes. That's correct.

13 Q. So this isn't the deepest hole that's been dug?

14 A. No, ma'am.

15 Q. It's pretty shallow. And the box in that is
16 depicted in State's 53. This is the box that was in the
17 hole?

18 A. That's correct.

19 Q. Six inches. And in State's 53, this knife, this is
20 actually the knife that belongs in the box, correct?

21 A. That's correct.

22 Q. It came in the box. And it's not, or are you aware
23 of whether this was the actual knife that was used?

24 A. I'm aware now that it's not the knife that was
25 used.

1 Q. Okay. The knife that was used is actually the
2 smaller knife, correct?

3 A. That's correct.

4 Q. That was placed on top?

5 A. Yes.

6 Q. I believe you indicated it was a total of what, nine
7 and --

8 A. I'm not sure.

9 Q. Nine -- I think I wrote it down.

10 A. If you bring up the picture, I can tell you
11 exactly.

12 Q. Let's see. There we go. That makes it better?

13 A. Yes.

14 Q. So what's the actual length of this in total?

15 A. In total from one tip to the other nine and about a
16 quarter.

17 Q. And the actual, not the handle but the blade
18 portion, about how long is that?

19 A. About four and a quarter.

20 Q. About four and a quarter. And the measurements are
21 actually depicted on it, correct?

22 A. I'm sorry.

23 Q. Are actually depicted, the measurements?

24 A. All those measurements were done at SLED.

25 Q. At SLED?

1 A. All the writing on it. Like I said --

2 Q. Are you aware that this is the actual knife that was
3 used?

4 A. Yes.

5 Q. And that was confirmed through my client Mr. Dennis?

6 A. Yes.

7 Q. And again, this knife was just kind of sitting on
8 top of the other knife in the box that it came in?

9 A. Yes. It was placed inside the box.

10 Q. In a very shallow grave?

11 A. Yes.

12 Q. And in your experience as far as disposal of weapons
13 have you had occasion to have to go search for a murder
14 weapon?

15 A. We haven't had that many here in town so...

16 Q. Okay. So Lexington not so much?

17 A. The only one after that one, yes, we had to go
18 looking for it.

19 Q. Had to go look. But you're aware that a lot of
20 times other agencies, other counties, they have to go search
21 for weapons in lakes, rivers, dumpsters, as well as bodies,
22 things of that nature?

23 A. Correct.

24 Q. And here in this case we have Mr. Dennis simply
25 putting the knife in a very shallow grave very close to his

1 home, correct?

2 A. Correct.

3 MS. SIMPSON: Thank you, Detective Miramontes. I
4 have no further questions at this time.

5 THE COURT: Anything else?

6 MS. PATTERSON: No, sir.

7 THE COURT: Free to go.

8 THE WITNESS: Thank you, sir.

9 MR. HUBBARD: The next witness is Tiffany Hezel. I
10 understand they have some issue.

11 MS. SIMPSON: Yes. We probably want to take that
12 up, a couple matters.

13 THE COURT: Let's do that first then. All right.
14 Before we take this witness, we have a couple things to
15 put on the record. Y'all step into the jury room. I'll
16 get you back in here as quickly as we can.

17 (Whereupon, the jury entered the jury room at 9:50
18 a.m.)

19 MR. HUBBARD: Your Honor, I've got a number of
20 photos that I want to put in. I don't believe there's an
21 objection to many of them. There's one we've premarked
22 as State's 60. I'll show Your Honor, knife found under a
23 sofa in the house. There's two sofas, 58. 59 I believe
24 is found under 58. They photographed it but this agent
25 will say that it's not the weapon but she's going through

1 (Short break.)

2 BAILIFF: Come to order. Be seated.

3 THE COURT: Y'all ready?

4 MR. HUBBARD: Yes, sir.

5 THE COURT: Bring the jury in please.

6 (Whereupon, the jury entered the courtroom at 10:10
7 a.m.)

8 THE COURT: All right. Call your witness please.

9 MR. HUBBARD: Thank you, Your Honor. The State
10 calls agent Tiffany Hezel Edwards.

11 Thereupon,

12 TIFFANY HEZEL EDWARDS

13 after having been first duly sworn, testified as follows,

14 THE CLERK: Please have a seat. Once you're seated,
15 state your full name spelling your last please.

16 THE WITNESS: Tiffany Hezel, H-e-z-e-l, Edwards,
17 E-d-w-a-r-d-s.

18 DIRECT EXAMINATION

19 BY MR. HUBBARD:

20 Q. Agent Edwards, where do you work?

21 A. I'm employed at the South Carolina Law Enforcement
22 Division which is commonly referred to as SLED and I am
23 currently assigned to the special victims unit in child
24 fatality.

25 Q. How long have you been with SLED?

1 A. I've been employed with SLED since 2011.

2 Q. The unit you're currently working in, how long have
3 you been there?

4 A. I've been assigned to the child fatality since
5 November of 2017, prior to which I was employed within the
6 crime scene and latent print divisions.

7 Q. Is that often called CSI?

8 A. In slang it can be referred to as CSI, yes.

9 Q. That's what I mean, just commonly referred to?

10 A. Correct.

11 Q. So how many years total were you in crime scene
12 investigation?

13 A. Roughly six.

14 Q. Were you called upon to come process certain things
15 in certain areas in the case involving Kierin Dennis?

16 A. Yes. I was.

17 Q. The evening of February 17th, 2014 and the early
18 hours of February 18th, 2014, do you recall responding to the
19 Cook Out in Lexington?

20 A. Yes.

21 Q. What was your purpose there?

22 A. I was contacted by our SLED operations desk that a
23 crime scene had been requested to assist in processing a crime
24 scene by the Lexington Police Department.

25 Q. Now, when you got there, what did you see and can

1 you tell us what you do when you pull up on a scene like this,
2 what you actually did on this one?

3 A. When we responded to the scene, the first thing we
4 do is we meet with the agent or the officer who is on scene to
5 get a general briefing of what they believe to have happened
6 at that moment in time. Everything is subject to change
7 during an investigation so this is just an initial briefing.
8 We were advised that there was an altercation that resulted in
9 a situation that resulted in blood shed, that there was some
10 physical evidence on scene. The scene had been secured prior
11 to our arrival. There were no witnesses present at the time I
12 responded. Basically we then go through the steps of
13 documenting the crime scene as it presents at that time with
14 the lighting conditions that were present and we go through
15 and we search for any physical evidence that may be present on
16 scene.

17 Q. You do that physical search and then do you also go
18 back and do photographs?

19 A. We do photographs initially, then we'll go forward
20 into doing a search because any search is an intrusive act so
21 we want to make sure that we document everything prior to
22 doing any search because you want everything in an as is
23 condition and sometimes with searches you can move things, but
24 you want them to have been documented in place prior to moving
25 with the search. When we responded to the Cook Out location,

1 we did a visual, just kind of taking in the surroundings,
2 documented the scene with photographs, we then did a search
3 for physical evidence which at that location the only physical
4 evidence that we located was blood stain evidence present upon
5 the roadway.

6 Q. All right. I want to show you State's 54, 55, 56,
7 and then 118. Take a look at these and see if these are some
8 of the photographs and some of the work you did?

9 A. Yes, sir.

10 MS. PATTERSON: Your Honor, I offer these into
11 evidence.

12 MS. SIMPSON: Without objection.

13 THE COURT: 54, 55, 56, 118, without objection.

14 BY MR. HUBBARD:

15 Q. Agent Edwards, looking at State's 54, is this one of
16 the photos you took before you started actually labeling?

17 A. That is correct.

18 Q. What area are we looking at right here?

19 A. This area is showing the Cook Out on the kind of
20 left hand portion of the photograph and this is standing with
21 the perspective of being down from the Cook Out on the roadway
22 between both the restaurant and at the time was a vacant store
23 in the adjacent address location.

24 Q. I want you to look at one of the boards that we have
25 here, one of many boards marked as State's 23, a daytime

1 photo?

2 A. Correct.

3 Q. Can you show me the approximate area we're looking
4 at in that photo?

5 A. We're gonna be down straight from where this SUV is
6 parked down towards the curb at that location with the Cook
7 Out Restaurant being up here.

8 Q. Okay. And there's a pointer in front of you if that
9 becomes necessary, too. Looking at State's 55, what are these
10 little yellow things we see?

11 A. Those are evidence placards. As I had previously
12 stated, the only physical evidence that we located at this
13 location was blood evidence, stain evidence. Due to the
14 lighting conditions it was dark, we responded at midnight, the
15 morning of the 18th. Blood is very difficult to see at night.
16 It's even more difficult to see on a dark surface. The
17 roadway does have a dark contrasting color to the blood, so
18 these markers basically just serve as an aid to show where the
19 evidence is present at for photographic documentation.

20 Q. Again, the area we're looking at where the patrol
21 vehicle is, is that on the Cook Out side or is that on the pet
22 store side?

23 A. Where the vehicle is located would be the entrance
24 to the Cook Out Restaurant from that main road that we just
25 showed on the previous photograph.

1 Q. 56, is this just a continuation of those placards?

2 A. This is a continuation of those same placards again
3 just showing for photographic purposes what evidence is
4 present in this document photograph and this is showing
5 continuation of the blood stain evidence that has now gone to
6 the parking lot opposite of the Cook Out.

7 Q. And not to belabor the point too much, but coming
8 back to State's 23, you begin where and end where?

9 A. We begin, the first photo that we saw showing the
10 placards was taken from nearly this perspective so our markers
11 had begun in the middle of the roadway and then continued over
12 the curb ending between the parking spots where these two
13 vehicles are located in this photograph.

14 Q. Did you do a diagram, State's 118? Is this a
15 diagram of all the placards and kind of just a general
16 layout?

17 A. That is correct. The placards denote where blood
18 stain evidence was present. The placards do not denote every
19 specific blood stain. It's just a general overview of where
20 blood evidence was located.

21 Q. So again, looking at this diagram on the left-hand
22 side the rectangular box is what?

23 A. That depicts the Cook Out Restaurant.

24 Q. Of course, you've got the pet supermarket on the
25 other side?

1 A. Correct.

2 Q. After you did all of your documentation there,
3 collected whatever you needed to collect, did you then proceed
4 to another scene?

5 A. Yes. We did.

6 Q. Where did you go?

7 A. Following completion of documentation and evidence
8 collection at this location we responded to an urgent care
9 location where a vehicle was located.

10 Q. Okay. Is that just a few blocks down from Cook
11 Out?

12 A. To the best I recall, yes.

13 Q. I'm showing you State's 22. If the Cook Out is
14 here, what is this facility here?

15 A. I believe that's the urgent care.

16 Q. So it's just right on down the road?

17 A. Correct.

18 Q. What was your understanding as to the urgent care?

19 A. It was reported that the vehicle that had been used
20 to transport the victim in this case was parked there under
21 the awning at the entrance and that upon his arrival at that
22 location he was then transported immediately to the hospital.
23 They did not render any immediate aid at that facility. So it
24 was basically the transportation vehicle that had been left
25 there while additional medical attention needed to be

1 sought.

2 Q. After that, Agent Edwards, did you respond to any
3 other location?

4 A. Yes. We did. Following completion of documentation
5 and evidence collection at that location we responded to a
6 third location. We responded to a residence. Your Honor, if
7 I could consult my notes for the exact address.

8 THE COURT: Sure.

9 BY THE WITNESS:

10 A. We responded to a residence located at ■5 Drooping
11 Leaf Drive in Lexington.

12 BY MR. HUBBARD:

13 Q. Let me ask you this: The Cook Out, where is the
14 Cook Out, what county?

15 A. It is in Lexington.

16 Q. Do you know what municipality it's in?

17 A. I believe it's under the Town of Lexington's
18 jurisdiction.

19 Q. Thank you. Now you mentioned a house.

20 A. Correct.

21 Q. What was the address again on that?

22 A. The residence was located at ■5 Drooping Leaf Drive
23 in Lexington, South Carolina.

24 Q. Okay. I want to show you State's 57 through 72 and
25 see if you recognize these?

1 A. I do.

2 Q. What are these?

3 A. Those are crime scene photographs that were taken
4 during our processing of the residence.

5 MR. HUBBARD: Your Honor, I move these into
6 evidence.

7 MS. SIMPSON: Without objection.

8 THE COURT: What's that number again?

9 MR. HUBBARD: It is 57 through 72. I believe I have
10 pulled out 60, but minus that that's what it is.

11 THE COURT: 57 through 72, but we're missing 60.
12 Everything is in except 60 without objection.

13 MR. HUBBARD: Yes, sir.

14 BY MR. HUBBARD:

15 Q. Agent Edwards, looking at State's 57, what are we
16 looking at here?

17 A. That's a photograph documenting the exterior of the
18 residence located at the address of ■■■5 Drooping Leaf Drive.

19 Q. State's 58?

20 A. This is the front sitting room as you enter the
21 front door and the front door is depicted on the left-hand
22 side of this photograph.

23 Q. 59?

24 A. Another perspective photograph from that same room.
25 The photograph prior to this showed the love seat with the

1 door. This is now moving further into the room depicting
2 where the couch is located within that first same room of the
3 residence.

4 Q. State's 61?

5 A. This is just documenting a half bath that was
6 located on the first floor of the residence.

7 Q. State's 62?

8 A. This is how the kitchen presented at the time that
9 we responded to the scene.

10 Q. I'm showing you State's 63.

11 A. This is a close up of a knife which is located in
12 the sink within the kitchen.

13 Q. And can I ask you why you're photographing a knife
14 in the kitchen?

15 A. At the time the search warrant was executed we were
16 obviously keeping our eyes open for all possible items of
17 evidence, but our main focus was on any potential blood
18 evidence that could have been transferred from the Cook Out
19 location to this location and also any sharp edged objects
20 that could have been used to create the injury sustained by
21 the victim that may have been brought back to this location
22 from the initial scene.

23 Q. State's 64 I see a butcher block. Is that also the
24 same reason why you took a picture of that?

25 A. Correct. We were just documenting the presence of

1 any sharp edged objects within the residence.

2 Q. 65 shows there are a couple of knives missing from
3 the block?

4 A. Correct.

5 Q. State's 66, is that yet another butcher block?

6 A. Correct. We're still in the kitchen.

7 Q. I'll show you State's 67.

8 A. The perspective of this photograph is standing in
9 the kitchen. Now we're looking into kind of a sitting area,
10 dining area from the kitchen with the room furthest depicted
11 in the photograph being what I referenced to be as a family
12 room all still on the first level of the residence.

13 Q. State's 68, is that a different perspective?

14 A. Different perspective, same sitting/dining area with
15 the family room in the background of the photo.

16 Q. Now, still focusing on the table, State's 69.

17 A. This is just a more mid range photograph of items
18 that are located on the dining table. In the foreground of
19 the photograph being closest to your viewing point there was a
20 driver's license bearing the name of Kierin Dennis.

21 Q. I show you a close up of that. Is this what you
22 found on that table?

23 A. Correct.

24 Q. That is State's 70. State's 71, what are these?

25 A. Those are a pair of boots located on a throw rug.

1 The perspective of their location is near the door that would
2 lead from the residence into the garage.

3 Q. That's State's 72. What is that a photo of?

4 A. This is just documenting the bottom of those shoes
5 just documenting the absence of any dirt or blood evidence
6 that could have been transferred from one location to
7 another.

8 Q. Now, we talked about the first floor. Is there a
9 second floor as well?

10 A. There is.

11 Q. I'll show you photographs 73 through 80. Do you
12 recognize these?

13 A. Yes. I do.

14 Q. What are these?

15 A. These are photographs that were taken in rooms of
16 the second floor of the residence and also photographs that
17 were taken of collected items of clothing back at the SLED
18 laboratory.

19 MR. HUBBARD: Move these into evidence, Your
20 Honor.

21 MS. SIMPSON: Without objection.

22 THE COURT: The number again?

23 MS. PATTERSON: 73 through 80, Your Honor.

24 THE COURT: 73 through 80 without objection.

25 BY MR. HUBBARD:

1 Q. Look at State's 73, what are we looking at?

2 A. This is the washer and dryer which was located on
3 the second floor of the residence.

4 Q. 74, is that also from the same room?

5 A. It is.

6 Q. Now we're gonna look at some clothing. State's 75,
7 where did you find that particular shirt?

8 A. This item of clothing was located within the washing
9 machine. That washing machine had just recently completed a
10 wash cycle so all of the clothing was wet and would have been
11 ready to go into the dryer, however, they never made it into
12 the dryer. We collected them directly from the washing
13 machine.

14 Q. State's 76, does that hold true for that as well?

15 A. Yes. It does.

16 Q. State's 77?

17 A. Still found within the washing machine.

18 Q. I show you a pair of pants, State's 78.

19 A. Recovered from the location inside the washing
20 machine.

21 Q. State's 79.

22 A. Recovered from the same location.

23 Q. I'm gonna show you State's 80. Where were these
24 items recovered?

25 A. Those were two dark in color knit caps that were

1 located from the bedroom believed to belong to Kierin
2 Dennis.

3 Q. I want to show you a stocking cap, State's 115.
4 Does this depict one of the stocking caps in that photograph?

5 A. Yes. It does.

6 MR. HUBBARD: I would move this into evidence.

7 MS. SIMPSON: Without objection.

8 THE COURT: 115 in evidence without objection.

9 BY MR. HUBBARD:

10 Q. Now, you mentioned the bedroom that you believe to
11 have been Mr. Dennis'. I'll show you some photographs. 81
12 through 97.

13 A. I recognize these photographs.

14 MR. HUBBARD: Thank you. Your Honor, I move these
15 into evidence.

16 MS. SIMPSON: Without objection.

17 THE COURT: Numbers again?

18 MR. HUBBARD: 81 through 97.

19 THE COURT: Without objection 81 through 97.

20 BY MR. HUBBARD:

21 Q. State's 81, what does that photo depict?

22 A. The perspective of this photograph is standing in
23 the hallway looking into the bedroom.

24 Q. When you take photographs, can you tell the jury how
25 you go about taking photographs?

1 A. The way I have been trained to document crime scenes
2 with photography is to move from overall perspective into a
3 room so I show the way I enter the room and then I then
4 photograph the room from each of the four corners in the
5 bedroom to show every perspective that could be obtained
6 within the bedroom if feasible. Sometimes you'll have large
7 pieces of furniture blocking you getting to a specific corner
8 so then you stand as close to it as you can to fill the
9 perspective of the different views within the room. You then
10 go from an overall vantage point to a mid range and then close
11 up on items of evidence that may be deemed important or
12 potential evidence in a case.

13 Q. Thank you. From 81 we go to State's 82. Is this
14 just right inside the room?

15 A. It is. If you look up on the left-hand side of this
16 photograph, you can kind of see the little notch of the door
17 plate where the knob would lock into the door, so this is as
18 I enter the room. This would have been my first corner
19 perspective and that would have been to your immediate left
20 upon entering that bedroom.

21 Q. State's 83, what are we looking at here?

22 A. Here we're just looking at photographs depicting the
23 overall presentation of the bedroom as it showed that evening
24 that we were there so we're just moving around the room with
25 general documentation.

1 Q. State's 84, what does that depict?

2 A. Again, we're still moving in a systematic way to the
3 right of the previous photograph just documenting the overall
4 condition, presentation of the room.

5 Q. State's 84, obviously is that the bed?

6 A. That is the bed in that bedroom, correct.

7 Q. State's 85.

8 A. Still just moving around the room from the previous
9 photographs. The bed would have been to the left where this
10 image is taken so we're just moving in a circle around the
11 bedroom getting the overall documentation and representation
12 of the items within the room.

13 Q. State's 86.

14 A. Now that we have taken overall photographs, we'll
15 then go back and take mid range or close ups of items that
16 appear to be relevant or of interest within the
17 investigation.

18 Q. Looking at 86 and when you look at 87, is that the
19 upper portion of that same object?

20 A. It is.

21 Q. And looking at that particular photograph, do you
22 see the beanie that we have marked as State's Exhibit 115?

23 A. Yes. I do. It's present on the right-hand side
24 within the portion of that locker.

25 Q. State's 88.

1 A. Just documenting clothing hanging within the closet
2 of that bedroom.

3 Q. 89, is that that same closet?

4 A. Correct. That would be shelf above where the
5 clothes were hanging.

6 Q. State's 90.

7 A. This would show the bottom portion of the closet
8 and organization and presentation of the shoes.

9 Q. State's 91 may have some of the same shoes but a few
10 more?

11 A. Correct.

12 Q. Same area?

13 A. Correct.

14 Q. And did you lay these shoes out or is that how you
15 found them?

16 A. That is how they were upon our arrival. We did not
17 position anything for the photograph. As I explained before
18 we're gonna take photos how everything presents as is before
19 we introduce any movement during searching.

20 Q. Moving to State's 92. Is that still in the
21 bedroom?

22 A. This is in the bedroom. This will be next to the
23 locker that we saw a few photographs prior to and then the
24 closet is then to the right of that clothes basket.

25 Q. The closet as depicted in State's 93?

1 A. Correct.

2 Q. That's the bottom of where those shirts were
3 hanging?

4 A. Yes.

5 Q. Now, was there also a bathroom related to this room
6 or close to this room?

7 A. There was not a bathroom connected to the room.
8 There was a bathroom just down the hall from this bedroom.
9 The only bathroom connected to a bedroom on the second floor
10 was within the master.

11 Q. I show you State's 94.

12 A. So this would have been that unconnected bathroom,
13 full bath upstairs.

14 Q. The clothing there appears to be mens clothing as
15 opposed to women's clothing?

16 A. It was consistent with male clothing. Yes.

17 Q. State's 95.

18 A. Again, these are just our overall photographs
19 depicting the presentation of that room that we're
20 documenting.

21 Q. The bedroom that we just mentioned with all the
22 clothes and the sports stuff and the shoes, State's 97, what
23 is that and where you are taking the picture from?

24 A. We documented a BB gun located underneath the bed in
25 that bedroom.

1 Q. And did you take it out so you could get a better
2 photograph in State's 96?

3 A. Yes. We removed it from underneath the bed to get a
4 better photograph with better lighting.

5 Q. Was it found under State's 84, the bed in this
6 photograph?

7 A. Yes. It is.

8 Q. Did you collect the BB gun?

9 A. No. We did not.

10 Q. Now, after you photographed the house and collected
11 the clothing, did you go anywhere else on that premises and
12 search anything else?

13 A. Yes. We did. We went to the garage where a gold in
14 color Ford Explorer was located. That was also included
15 within our search warrant to document and search for any
16 physical evidence related to the initial scene at the Cook Out
17 Restaurant.

18 Q. I'll show you State's 98 through 114 and see if you
19 recognize these (proffering.)

20 A. Yes. I do.

21 MR. HUBBARD: Your Honor, I move these into
22 evidence.

23 MS. SIMPSON: Without objection, Your Honor.

24 THE COURT: Numbers again?

25 MR. HUBBARD: 98 through 114.

1 THE COURT: 98 through 114 without objection.

2 MR. HUBBARD: Thank you, Your Honor.

3 BY MR. HUBBARD:

4 Q. State's 98, what's that a photograph of, Agent
5 Edwards?

6 A. So this is a photograph documenting the upper
7 portion of the front driver's side of the vehicle, kind of the
8 top portion of the door frame and a part of the driver window.
9 There were two vehicles located within this garage so the
10 photographs were taken in semi tight area. Immediately to the
11 right of where this vehicle is parked is that garage wall
12 which if you refer back to the photo of the exterior of the
13 residence this vehicle is parked between where the garage
14 would be closest to the front door and to the end of the house
15 so it's kind of in the middle of those two locations.

16 Q. State's 99.

17 A. So with this photograph we're standing in the same
18 perspective as the previous photograph but now we have just
19 lowered our view point to the lower portion of the window and
20 the actual front driver door.

21 Q. State's 100.

22 A. This is just showing the rear driver door area and
23 the wheel well of that side.

24 Q. State's 101.

25 A. This is just a documentation photograph showing the

1 license plate attached to the vehicle at the time that we were
2 there processing the car.

3 Q. I don't know if this one shows it as well. State's
4 102. Tell you what I'll do. I'll walk up and show you that
5 and then I'll show it to the jury. Is that the side view
6 mirror?

7 A. Yeah. That's gonna be the side view mirror on the
8 driver's side standing facing that mirror.

9 Q. So it's still part of that driver's side door?

10 A. Correct.

11 Q. State's 103.

12 A. This is just documenting the driver front
13 compartment from the perspective of the passenger side of the
14 vehicle.

15 Q. State's 104.

16 A. Again, we're on the passenger side of the vehicle
17 and we're just documenting the seat location of the driver's
18 seat.

19 Q. So looking at the camo seat, do you see the seat
20 belt?

21 A. Correct. The seat that is reclined back is the
22 driver's seat of this vehicle.

23 Q. State's 105.

24 A. Again, we're just documenting the interior of the
25 vehicle and items that were located within it.

1 Q. 106.

2 A. Documentation of the contents of the glove box
3 within that vehicle.

4 Q. 107.

5 A. This is a close up photograph of items located
6 within the glove box of that vehicle and in this particular
7 photograph it focuses on the folding knife and another South
8 Carolina driver's license that was issued bearing the name
9 Kierin Dennis.

10 Q. So it's laying in the glove box like that?

11 A. Correct.

12 Q. And these DL's both had the same date of issue?

13 A. I do not recall without looking at the photos.

14 Q. That's okay. Then that little knife we saw, is that
15 108?

16 A. Correct.

17 Q. I'll show you what's been marked as State's 117.

18 MS. SIMPSON: Your Honor, this is without objection.

19 BY MR. HUBBARD:

20 Q. Does this contain or contain that knife?

21 A. Yes, it does, in the original packaging containing
22 the item description and the date and time and my initials
23 when I collected it.

24 THE COURT: What number is that?

25 MR. HUBBARD: 117, Your Honor.

1 THE COURT: Without objection.

2 BY MR. HUBBARD:

3 Q. Again, you didn't know what, if any, weapon was used
4 at this point; is that correct?

5 A. All we had known is that a sharp force object was
6 related to the incident.

7 Q. Okay. I'll show you State's 109. What are we
8 looking at there and where was it located?

9 A. This was another knife located within the vehicle.
10 It was found within a pocket of one of the seat covers of the
11 front passenger seat.

12 Q. I'll show you what's been marked as 116.

13 MS. SIMPSON: Without objection.

14 THE COURT: 116 Admitted without objection.

15 MR. HUBBARD: Thank you, Your Honor.

16 BY MR. HUBBARD:

17 Q. Is this the folding knife that is depicted in that
18 photograph?

19 A. Yes.

20 Q. Is there a logo on there?

21 A. It is a marine logo knife.

22 Q. Again, you collected these not knowing what would or
23 would not be relevant to the case?

24 A. Correct.

25 Q. 110, what is that?

1 A. Again, we're just documenting the condition of the
2 vehicle at the time that we are taking the photographs.

3 Q. Is that in the back area of the vehicle?

4 A. Yes. This is the rear compartment of the vehicle.

5 Q. State's 111.

6 A. Different perspective of the same rear compartment
7 of the vehicle.

8 Q. State's 112. Really dark. Is that a speaker box?

9 A. Yes.

10 Q. So a large speaker box was in the back of that
11 Explorer?

12 A. Correct.

13 Q. These items we're looking at here, do you know what
14 they are?

15 A. I do not recall.

16 Q. Close up shot 113, 114 of these items, same items?

17 A. Again, just documenting the presence of everything
18 within the vehicle.

19 Q. Now, having documented the vehicle, did you also do
20 processing on this vehicle?

21 A. Yes. I did.

22 Q. I'll ask you about State's 98. Did you do any
23 processing as to this?

24 A. So this is again the exterior of the front driver
25 door. The exterior door and exterior window were processed

1 for latent prints as well as the interior side of this window
2 were processed for latent prints. There were also several
3 areas that presented with a darker discoloration in contrast
4 to the paint of the vehicle that were swabbed as suspected
5 blood evidence, however, the presumptive testing that was
6 performed on scene yielded a negative finding for blood.

7 Q. When you say latent print, what is a latent print?

8 A. In order to explain a latent print, may I first
9 explain what a fingerprint is?

10 Q. Absolutely.

11 A. On the palms of your hands and the soles of your
12 feet you have little raised portions of skin which are called
13 ridges and every single person has a unique pattern of those
14 ridges on those surfaces of their skin. So on the edges of
15 your fingers you can have three different general shapes. You
16 can have an arch where your ridges will flow in from one side,
17 rise up and then exit, you can have a loop pattern where the
18 ridges will flow in, recurve, exit the same side which they
19 entered, or you may have a whirl pattern where the ridges are
20 gonna flow in and make sort of like a bullseye pattern, a
21 circular pattern and then it will look like a bullseye in that
22 pattern. Within those overall patterns the ridges are gonna
23 do unique things individually and three of the characteristics
24 that we look for when doing fingerprint comparisons are when a
25 ridge will flow along as a single ridge and then four will

1 break into two which we call a bifurcation, where a single
2 ridge will flow and then stop suddenly which we refer to as an
3 ending ridge or you can have a very short ridge that resembles
4 a period at the end of a sentence and we refer to that as a
5 dot.

6 So your fingerprint is composed of the overall ridge
7 flow in that general pattern and then the presence of those
8 individual characteristics and their relationship to each
9 other within that overall pattern. So with all of that being
10 said along those ridges you also have sweat pores so
11 throughout the day you exert sweat. You touch your hair, you
12 touch your face, you touch other items so oils, dirt can
13 accumulate on these ridges in addition to the sweat that is
14 already being kind of secreted from those pores so throughout
15 the day there is a chance that when you touch an item, you can
16 leave a stamped impression of that residue in the shape of
17 your fingerprint pattern on that item.

18 So when we are searching for latent fingerprints
19 this means that if a fingerprint has been left, it's not
20 easily seen by the naked eye. It needs some sort of
21 enhancement to become visible. In this particular case we
22 attempted to enhance any fingerprint evidence by using black
23 powder so by applying black powder to these surfaces that
24 powder adheres to that oil or sweat residue and it creates a
25 contrast with the background so it creates a back fingerprint

1 impression on in this case a gold or a glass background.

2 Q. Now, you've told us a lot about latent prints and
3 fingerprints. Obviously you've got a lot of experience, but
4 do you have, is this all from your special education at SLED
5 and your training in this area?

6 A. It is. I have attended external training classes in
7 various aspects of latent fingerprint comparison and
8 development. I also completed an inhouse training with SLED
9 latent print department under court qualified senior agents
10 that included processing and comparisons.

11 MR. HUBBARD: Your Honor, at this time I move that
12 Agent Edwards be declared an expert in collecting,
13 analyzing, and comparing latent prints.

14 MS. SIMPSON: No objection, Your Honor.

15 THE COURT: All right. Agent Edwards has
16 professional training, experience, and is qualified in
17 the analysis and the collection of fingerprint evidence.
18 Continue on.

19 MR. HUBBARD: Thank you, Your Honor.

20 BY MR. HUBBARD:

21 Q. I also want to show you what we have previously
22 seen, State's 97. Did you look for any latent prints on the
23 door as well?

24 A. Yes. We did. The exterior of the door was
25 processed with black powder for potential fingerprint

1 evidence.

2 Q. As to both of those areas what, if anything, were
3 you able to find?

4 A. Latent fingerprint evidence was developed at the top
5 portion of the door frame above the window and below to the
6 left of the handle depicted in this photograph.

7 Q. So as to this photograph where would that be?

8 A. It would have been down and to the left of where the
9 handle is present.

10 Q. Down in this area?

11 A. In around about that area. Correct.

12 Q. As to 98 the photo where?

13 A. It would have been above the window on the door
14 frame.

15 Q. In this area?

16 A. Correct.

17 Q. Now, when you go about comparing prints, did you
18 compare against the prints of Mr. Dennis to rule him in or
19 rule him out?

20 A. When we compare prints, we compare prints not only
21 to potential suspects but also to potential victims. We
22 always compare the unknown impression to a known impression as
23 we never want to force an identification so in this particular
24 case I compared the collected latent impressions from this
25 vehicle to both Capers and Dennis known standards in this

1 case.

2 Q. What, if anything, did you find as to these prints,
3 these latent prints that you collected?

4 A. All of the latent impressions that were collected
5 off of this vehicle were identified back to Mr. Dennis.

6 Q. To Kierin Dennis?

7 A. Correct.

8 Q. Now, you mentioned swabs as well. What are you
9 looking to collect with swabs?

10 A. So in this particular case we're looking not only
11 for potential blood evidence as we knew that there was blood
12 shed at the scene, so we're looking to link a potential
13 vehicle back to the initial crime scene, but we're also
14 looking for any potential touch DNA that might have been
15 transferred from an individual onto the vehicle.

16 Q. What areas did you focus on?

17 A. So the focus for potential blood evidence and touch
18 DNA were to the driver compartment of this vehicle.

19 Q. In what area in the driver compartment?

20 A. For the blood evidence we focused on the areas that
21 had the darker discoloration in contrast to the either
22 exterior of the vehicle or interior door area of that vehicle.
23 For touch DNA we focused on the steering wheel, and the
24 initial reports that we had received was at the time of the
25 alleged incident the driver window was rolled down. You can

1 see in the photograph the time we responded to the residence
2 that window was all the way up. We rolled the window down
3 after this photograph was taken and during processing and we
4 swabbed the top rim of that window for potential touch DNA.

5 Q. Looking at the interior and the exterior of the car,
6 did you find anything that field tested positive for blood or
7 anything that visually looked like blood that tested positive
8 for blood?

9 A. We did not.

10 Q. Now, as to the steering wheel from this vehicle
11 which I believe is -- Let me ask you this: When you take
12 these swabs, what do you do with them?

13 A. When swabs are collected on scene, the policy at the
14 time that I was in crime scene is you take a dry swab and a
15 wet swab and you swab those two swabs simultaneously onto the
16 surface. Having a wet swab and a dry swab is by a kind of
17 research going to increase the chances that you're going to
18 collect the most potential DNA evidence that can be present
19 because you're gonna allow a dry or a wet swab to have any DNA
20 adhere whichever is gonna do best. So we took sterile swabs,
21 we moistened one with the iodized water, we kept the other
22 dry, used both swabs simultaneously to run over the areas that
23 were gonna be swabbed, they were allowed to air dry on scene,
24 they were then packaged on scene and sealed on scene prior to
25 leaving the scene and transporting them back to SLED where

1 they were logged into evidence.

2 Q. All right. And on TV it seems like one person does
3 all the analysis. At SLED is there someone else who actually
4 does the DNA analysis?

5 A. Yes. Once evidence is brought back to the
6 laboratory it's logged in and within SLED we have an
7 electronic database that issues a, for lack of a better word,
8 a unique UPC code to each item of evidence within a unique
9 case number and that movement of evidence is then tracked by
10 the scanning of that bar code throughout the various
11 departments and the individual scientists that is performing
12 examinations on that evidence.

13 Q. In this case did Mary Ann Boehm, a forensic
14 scientist at SLED conduct the DNA testing?

15 A. Yes. She did.

16 Q. Do you have her report?

17 A. Yes. I do.

18 Q. When she's doing this, again, much like what you had
19 to do with latent prints, does she have to compare against a
20 known DNA standard of a suspect and listed victim?

21 A. Yes. She does.

22 Q. So in this case Mr. Dennis and Mr. Capers?

23 A. Correct.

24 Q. In comparing that to the steering wheel which she
25 had marked as item 17, what was her finding?

1 A. The finding on the report by Agent Boehm was that
2 the swab from the steering wheel had insufficient profiles for
3 reliable interpretation.

4 Q. So basically she could not say whose DNA was on the
5 steering wheel?

6 A. Correct.

7 Q. As to window, item 18, what did she determine or
8 what were her conclusions?

9 A. Her result for the swab from the window was that no
10 DNA profile was developed.

11 Q. Now, she also looked at a knife which is marked as
12 State's 52. I believe she has it listed as item 45. There
13 are three items she looked at as to that knife, the handle,
14 the sheath, and the blade. As to the handle which is 45.1
15 what, if any, result did she find?

16 A. The result rendered for that was no DNA profile was
17 developed.

18 Q. No DNA profile. As to the sheath what was her
19 finding?

20 A. Partial DNA profile insufficient for reliable
21 interpretation.

22 Q. As to the blade which is 45.3, what was the DNA
23 finding?

24 A. The result rendered for that item was, the DNA
25 profile developed from item 45.3 matched the DNA profile of

1 Da'Von Capers. The probability of randomly selecting an
2 unrelated individual having a DNA profile matching this item
3 is approximately one in 1.6 quintillion.

4 Q. Based on that she listed it as a match?

5 A. Correct.

6 Q. Going back to your initial search of the house and
7 the car, the first floor, second floor of that house what, if
8 any, items did you find related to hunting gear?

9 A. None.

10 Q. No waders, no hunting rifles, no shot guns, anything
11 like that?

12 A. No, sir.

13 Q. As to fishing what, if any, items did you find in
14 the entire residence related to fishing?

15 A. I do not recall locating any items relevant to
16 fishing.

17 Q. No fishing poles, tackle box, anything like that?

18 A. No, sir.

19 Q. Did you find any magazines on hunting or fishing?

20 A. Not that I recall.

21 Q. Other than the BB gun under the bed, nothing that
22 even looked like a rifle or a sporting item?

23 A. No, sir.

24 Q. I want to show you Mr. Capers' shirt, if I can find
25 it. Let me show you what's been previously marked as State's

1 40, 41, 42, 43, and 38. Are these all of a plaid shirt
2 purported to be worn by our victim Mr. Capers?

3 A. Yes, sir.

4 Q. Focusing in on State's 43, that mark, what are we
5 looking at there?

6 A. You're looking at a linear tear within the fabric,
7 appears to be near the button up portion of the shirt kind of
8 just to the left of that as if it were being worn with that
9 perspective.

10 Q. That linear tear, can you give us an approximate
11 size of that?

12 A. It's roughly just over maybe an inch depending on
13 perspective.

14 Q. Okay. Put these up. State's 40, that's the shirt
15 Mr. Capers was wearing; is that correct?

16 A. Correct. We received the clothing via chain of
17 custody. I did not receive it directly from the individual.

18 Q. 38 is just more of a close up?

19 A. Correct.

20 Q. With the blood discoloration on the right side?

21 A. Correct.

22 Q. The tear we're talking about, is that in State's
23 43?

24 A. Correct.

25 Q. Do you see a rounded side and then a more narrow

1 side to that tear?

2 A. Correct.

3 Q. The knife, State's 52, is this a double bladed or
4 single bladed knife?

5 A. I'm not an expert in knives. I wouldn't feel
6 comfortable providing that.

7 Q. Would you agree with me there's one sharp side on
8 this knife?

9 A. Correct.

10 MR. HUBBARD: Your Honor, that's all I have at this
11 time. Please answer any questions the defense may have.
12 Thank you so much.

13 BY MR. HUBBARD:

14 Q. Oh, I did mean to ask you this: In the vehicle, did
15 you find any hunting or fishing gear in the vehicle?

16 A. No.

17 Q. Other than the camo seat covers, anything related at
18 all to fishing or hunting?

19 A. No.

20 MR. HUBBARD: Thank you.

21 MS. SIMPSON: May it please the Court.

22 THE COURT: Yes, ma'am.

23 CROSS EXAMINATION

24 BY MS. SIMPSON:

25 Q. Is it Agent Edwards now?

1 A. Yes, ma'am.

2 Q. Good morning. I want to talk a little bit about
3 what you did with respect to this case and some of the
4 processing. I want to focus first on the crime scene at the
5 Cook Out.

6 A. Okay.

7 Q. Were you the only crime scene investigator present
8 at that time?

9 A. No. I was not. The partner that I was assigned to
10 at the time was Special Agent Jamie Johnson. She also
11 responded and assisted with documenting and collecting
12 evidence in this investigation.

13 Q. And again, as you explained to the Solicitor
14 documenting via photographs all of that is very important
15 with respect to preserving evidence?

16 A. Yes, ma'am.

17 Q. And at the Cook Out you indicated primarily what you
18 found were items that appeared to be blood stains?

19 A. Correct.

20 Q. And those were marked. Did you also take some
21 measurements of that area?

22 A. Yes. Measurements were taken.

23 Q. Can you tell me where those measurements were taken
24 from?

25 A. Measurements were just taken to give an overall

1 depiction of kind of the area that was covered with potential
2 blood evidence so from the curb that bordered Cook Out to the
3 curb that then bordered the outskirts of the pet store so that
4 main turning road, the width of that.

5 Q. So I'm gonna show you State's 23 and is this kind of
6 the area that's depicted with your measurements --

7 A. Yes, ma'am.

8 Q. -- between this curb and here?

9 A. Yes, ma'am.

10 Q. And, of course, this photograph, was it taken during
11 the same conditions that you actually took the measurements of
12 the Cook Out?

13 A. No, ma'am. We were there when it was dark out. We
14 responded at midnight and this is a photograph that was taken
15 during daylight hours.

16 Q. Were any cars present?

17 A. At the time that we responded there were police
18 vehicles that were blocking the entrance to the Cook Out.
19 There was one parked vehicle at the second to back parking
20 spot on the left-hand side.

21 Q. Had all the people already cleared out of the
22 area?

23 A. Yes, ma'am. There were no witnesses present when I
24 responded.

25 Q. Did you take this photograph at all?

1 A. No, ma'am.

2 Q. What is the length of that area that you documented
3 as far as the width?

4 A. I would need to reference the sketch that has been
5 submitted into evidence.

6 Q. Okay. Do you have your report up there with you?

7 A. I have my notes from the report. Yes.

8 Q. Does it contain that diagram? Because I have a
9 copy. I'm just looking for State's Exhibit 118. While we're
10 doing that, did you take any measurements of the actual grassy
11 curb area while you were out there or I guess island? I don't
12 know what you were calling State's 23.

13 A. Not that I recall.

14 Q. Did you take any measurements regarding the curb
15 height?

16 A. No, ma'am.

17 Q. Were you asked to or requested to do that?

18 A. No, ma'am.

19 MS. SIMPSON: I don't have State's 118.

20 MR. HUBBARD: (Proffering.)

21 MS. SIMPSON: Thank you.

22 BY MS. SIMPSON:

23 Q. Okay. I'm gonna show you State's 118. Probably
24 just look at that there.

25 A. So the distance that is documented between those two

1 curb was approximately 28 feet 10 inches.

2 Q. So you were able to measure that without actually
3 placing cars or doing anything of that nature?

4 A. Yes, ma'am.

5 Q. You used a measurement, like a tape measure or
6 whatever y'all use?

7 A. We have a laser measuring device.

8 Q. Is that the most accurate?

9 A. Yes. That is what we reliability test quarterly and
10 that is what's issued to crime scene agents or it was at the
11 time I was crime scene.

12 Q. All right. So you actually used a laser to measure.
13 So 28 feet 10 inches is approximately what we have. As far as
14 once you left the Cook Out the processing, did you actually
15 collect all the evidence? You said swabs were taken from a
16 few.

17 A. Yes. We took a sampling of swabs from the blood
18 that was present on scene. We randomly selected to swab
19 suspected blood from markers B, J, and R. That was kind of
20 general spacing of present blood in different areas of the
21 roadway.

22 Q. Okay. After this, I believe you responded directly
23 to Mr. Dennis' home, correct?

24 A. No, ma'am. After leaving the Cook Out we responded
25 to the urgent care.

1 Q. Urgent care where the clothing items were collected
2 that are noted in State's 38, 40, 41, correct?

3 A. No, ma'am. I did not receive those items from that
4 vehicle.

5 Q. Okay. These were collected. Did you do the
6 processing on these? I know the Solicitor questioned you
7 about --

8 A. I did the photographic documentation of those.
9 Those items were actually received via chain of custody from
10 the Lexington Police Department, Detective Marc Miramontes.

11 Q. Okay. And on that that's where you were describing
12 the linear, I guess, cut to the shirt, correct?

13 A. Yes. There's a linear defect present in the
14 shirt.

15 Q. And approximately one inch on that?

16 A. Based on perspective of how you view the ruler.

17 Q. After responded to the hospital or the Lexington
18 County Emergency Medical Center, then did you proceed to the
19 home of Mr. Dennis?

20 A. Yes, ma'am. We responded to that residence on
21 Drooping Leaf Lane.

22 Q. Okay. I want to focus kind of on your search of
23 that residence. Did anyone respond with you at the time?

24 A. The personnel that was present at the time of our
25 arrival, there were three Lexington Police Department persons

1 there and when we were doing the search, one of the Lexington
2 detectives actually was there and did a search behind us.

3 Q. Okay. And actually let me back up for just a second
4 since you mentioned the deputies that were present at the
5 home. Did you also have an officer present with you at the
6 scene of the Cook Out?

7 A. Yes.

8 Q. And I believe you indicated that you all did a walk
9 through first and that officer briefed you kind of on what
10 occurred?

11 A. We were briefed on what was the initial information
12 that was being reported at that time, however, we don't base
13 how we work a scene solely on the information that we're
14 provided. It's just giving kind of a transfer of information
15 that we take into consideration, but we still then are really
16 focused on what evidence is present at the scene that we're
17 at.

18 Q. And with respect to that officer, once you're
19 finished, you clear the scene and turn it back over to law
20 enforcement, correct?

21 A. That is correct.

22 Q. Who did you do the walk through with and ultimately
23 clear the crime scene and release it to?

24 A. Can you just clarify? Which scene?

25 Q. Cook Out. I'm sorry.

1 A. So at the Cook Out location a final walk through was
2 completed with Lexington Police Department Officer
3 Voravudhi.

4 Q. And then moving back -- Sorry I have to jump back
5 and forth -- to the home, you indicated you all searched first
6 the ground floor, correct?

7 A. Correct.

8 Q. And you're aware that a knife or some sharp object
9 had been used in this case, correct?

10 A. Correct.

11 Q. So that's why the pictures of the kitchen knives and
12 everything that was shown to the jury you took photographs?

13 A. Correct.

14 Q. Because you don't know what necessarily may be
15 relevant down the road or anything else, you're just looking
16 for any potential evidence?

17 A. Correct.

18 Q. And as far as I believe you indicated in addition to
19 actual sharp objects you were looking for blood evidence such
20 as transfer or something of that nature?

21 A. That is correct.

22 Q. And did you find any of that within the home?

23 A. We did not. All of our presumptive tests for blood
24 evidence was negative at that residence.

25 Q. Then moving to the washing machine area, I guess

1 laundry area, where was that located in the home?

2 A. It was upstairs on the second floor and it was in
3 kind of a closet type opening. It wasn't a full room.

4 Q. Okay. So that's what's depicted in State's 73?

5 A. Correct. You can see the door handle on the side of
6 this photograph that just provided access to those
7 appliances.

8 Q. And they're still -- I'll put it up here. So this
9 is a whole laundry room?

10 A. It's not a complete room that you can walk into.
11 It's more of --

12 Q. Just a door?

13 A. -- just a door and then enough room for the
14 appliances to fit into the cut out.

15 Q. So in this one we still see there are some clothes
16 in the dryer, correct?

17 A. Yes. There's clothes in the washer, dryer and then
18 there's clothes that are piled up outside of the dryer.

19 Q. Okay. And as we noted in some of the other
20 pictures, and I won't belabor the point here, through all of
21 them - but there's a lot of laundry to be done throughout this
22 home, correct?

23 A. Yes, ma'am. There are items of clothing in hampers
24 and on the floor in several of the rooms of the residence
25 upstairs.

1 Q. And from the washing machine some of the items you
2 collected included two shirts, correct?

3 A. There were actually three shirts, a sweatshirt and a
4 pair of cargo sweat pants.

5 Q. Okay. I want to focus your attention on what's
6 already been entered as State's 75. Was that one of the
7 shirts that was collected?

8 A. Yes. It was.

9 Q. And what's depicted on that shirt?

10 A. It is a graphic Guy Harvey shirt depicting water, a
11 boat and a fish.

12 Q. Okay. So I guess some evidence that he may like
13 fishing, correct?

14 A. I just documented it as a Guy Harvey logo T-shirt.

15 Q. All right. Then I don't know if the State entered
16 the one. You also had another shirt that was entered Salt
17 Life?

18 A. Yes, ma'am. There was one black Salt Life brand
19 short sleeve T-shirt that was also removed from the washing
20 machine.

21 Q. I don't believe, I don't think the State entered any
22 photo so I'm just gonna show you what's marked as defense
23 exhibit -- I don't know where we are.

24 MS. SIMPSON: And this is solely for identification
25 purposes.

1 (Whereupon, Defendant's Exhibits #5 and #6 marked
2 for identification.)

3 BY MS. SIMPSON:

4 Q. I'm gonna show you --

5 MR. HUBBARD: May I see those first?

6 MS. SIMPSON: Yes (proffering.) My apologies.

7 BY MS. SIMPSON:

8 Q. Do you recognize what's depicted in these photos?

9 A. Yes. This is the black Salt Life T-shirt that was
10 recovered again from the washing machine. Again a graphic
11 T-shirt. This one seems to depicting three fishing reels.

12 Q. So three fishing reels in what's been marked as
13 defendant's exhibit 6 for ID.

14 MR. HUBBARD: No objection to those coming in.

15 MS. SIMPSON: Your Honor, I'm only offering them for
16 ID purposes.

17 THE COURT: Okay.

18 BY MS. SIMPSON:

19 Q. Moving on a little bit because y'all did a pretty
20 thorough search, the beanie that's been introduced as State's
21 Exhibit 115, that was located in the bedroom believed to be
22 Kierin Dennis', correct?

23 A. Correct. In the sports locker within the bedroom.

24 Q. And it wasn't in the washer or appeared to be
25 watched or anything?

1 A. It was not.

2 Q. And as far as the room, you documented that
3 extensively with photographs, correct? The bedroom I believe.

4 A. Yes, ma'am.

5 Q. So here. They've already been introduced as State's
6 Exhibits. Can you see that if I put them up on the screen
7 projector here?

8 A. Yes, ma'am.

9 Q. So in State's Exhibit 82, what area is this looking
10 into?

11 A. This is just inside the bedroom door so as soon as
12 you walk in the door that's the wall just to your left.

13 Q. You noticed some sports paraphernalia, I guess, for
14 lack of a better word, correct?

15 A. Correct.

16 Q. And that would be a lot of Colt's gear and NFL and
17 things of that nature. And then in State's 84, this is the
18 bed, correct?

19 A. Correct.

20 Q. And again, we see a lot of sports gear, Colts. I'm
21 not familiar with pro teams. I see some camo. Red Skins.
22 But sports on the walls, sports everywhere?

23 A. Correct.

24 Q. And then the same thing with respect to State's 85,
25 a football player on the wall. So it's clear he's a Colt's

1 fan?

2 A. The room had sports memorabilia, correct.

3 Q. What we don't see though is anything -- Are you
4 familiar with Lexington High School?

5 A. I am not.

6 Q. Moving to the processing, not the processing of the
7 car but you also went into the area of the home which is the
8 garage, correct?

9 A. Correct.

10 Q. And in that garage you indicated there were two
11 vehicles?

12 A. Correct.

13 Q. So a dark colored SUV which was not processed?

14 A. That is correct.

15 Q. What is the reason it was not processed?

16 A. At the time we were there we were advised that that
17 vehicle was not believed to be related in any way to the
18 incident as the vehicle description of the vehicle at the
19 initial crime scene was the gold in color Explorer.

20 Q. So did you have any indication or information
21 regarding who that vehicle belonged to or no?

22 A. Can you clarify? Which vehicle?

23 Q. The dark colored SUV that was not involved.

24 A. It was reported to us that it belonged to Mr. Kierin
25 Dennis' mother.

1 Q. So they had two vehicles potentially available
2 present at the scene that you responded to?

3 A. There were two vehicles located at the residence.

4 Q. And as far as the -- Let me go back a little back to
5 the bedroom where you located the BB gun underneath the bed.
6 Was that just kind of slid under the bed? Where you
7 photographed it is where it was?

8 A. Yeah. It was just right underneath the bed.

9 Q. Did you locate any kind of handguns, pistols?

10 A. No, ma'am.

11 Q. Any rifles?

12 A. No, ma'am.

13 Q. Scopes?

14 A. No, ma'am.

15 Q. Anything of that nature. No AR15, no revolvers, any
16 other guns?

17 A. No, ma'am.

18 Q. Just simply a BB gun?

19 A. Yes, ma'am.

20 Q. And the reason you didn't collect that is because
21 there was no allegation that any type of gun had been used in
22 this incident?

23 A. Yes, ma'am. I did not believe it was pertinent in
24 the investigation. It was just photographed and documented as
25 being present within the room.

1 Q. Okay. Now moving to the garage area that you
2 processed. What exactly did you do in the garage area?

3 A. Within the garage we were focused on the gold in
4 color Explorer and documenting the interior presentation of
5 what was present within the vehicle and then our search for
6 DNA and latent evidence was concentrated to the driver
7 compartment.

8 Q. Okay. Let me ask you, you stated the vehicle, the
9 tag number on State's 101, what is that?

10 A. That's the tag that was located on the rear of the
11 gold Explorer bearing the characters s-a-l-m-s 23.

12 Q. And do you have any idea what that may mean?

13 A. It's just letters and numerics that are present on
14 the license plate.

15 Q. With respect to your ability to process, you
16 indicated that law enforcement was present, correct?

17 A. Yes.

18 Q. And were you aware that keys were actually available
19 to be able to move the vehicles if need be after being
20 processed?

21 A. Yes. We used the keys to lower the window.

22 Q. To lower the window. So after you completed your
23 processing in the garage, you could have removed the vehicle
24 from the garage, correct?

25 A. We could have. Yes.

1 Q. Did y'all, in fact, do that?

2 A. No. We did not. Our documentation and processing
3 was done within the confines of the garage.

4 Q. And what photographs did you take of, I guess, the
5 garage area itself or did you take any of what was contained
6 in the actual garage not just the vehicles?

7 A. I would have to refer to all of the crime scene
8 photos in completion to be able to recall that.

9 Q. The Solicitor asked you a lot of questions about
10 fishing rods, tackle boxes, things of that nature. Are you a
11 fisherman? Do you like to fish?

12 A. I fish with my husband. I would not classify myself
13 as a fisherman.

14 Q. As far as rods and tackle boxes, do people typically
15 take them in the home or do they leave them in the garage?

16 A. I couldn't speculate on what people generally do
17 with their equipment.

18 Q. But it's possible if we had pictures of the garage,
19 that you would have noticed a tackle box in there, correct?

20 A. I suppose if it would have been documented or if it
21 was documented, they would be depicted in those photographs.

22 Q. And the rods weren't located in the home, but they
23 could have easily been located in the garage?

24 A. All I can testify to is I didn't locate them in the
25 vehicle or in the residence.

1 Q. What you did locate with respect to the pocket
2 knife, I don't know if I can get into it, but what's in
3 State's 117, that's a fairly old just standard pocket knife
4 that you recovered from the glove --

5 A. Yes, ma'am.

6 Q. -- correct?

7 A. Yes, ma'am.

8 Q. Did you look for any type of blood evidence on
9 this?

10 A. Yes. We did. We did a presumptive test on scene
11 with one of our presumptive chemicals and again, the results
12 were negative for suspected blood on that item.

13 Q. And as for State's 116 with the knife bearing marine
14 on it, did you also do any testing on that?

15 A. We did. We did the same presumptive testing and
16 again, negative results were yielded from that test for
17 suspected blood.

18 Q. Negative. I want to go to your processing for
19 fingerprints and I may cover a little bit of what the
20 Solicitor already has, but just to kind of be clear. So what
21 is a latent print versus known print?

22 A. A latent print is the impression that would have
23 been left by the sweat or build up of residue on the ridges
24 that I previously explained that when left upon an object is
25 not necessarily able to be seen with the naked eye so

1 enhancement would be needed to complete that contrast such as
2 oblique or sidelighting or black powder which was used in this
3 case.

4 Q. With respect to fingerprints -- I believe I asked
5 you two questions. So the known prints, that's when we get a
6 full fingerprint, right? Like you roll your prints.

7 A. Yes, ma'am. Known fingerprints are taken directly
8 from an individual.

9 Q. So you have two sets of known fingerprints in this
10 case?

11 A. Correct.

12 Q. With respect to latent prints as far as your ability
13 to compare those, there are some restrictions, right? You
14 actually have to be able to lift enough of a print, correct?

15 A. Correct. The latent impression has to be deemed of
16 value for comparison. Based on my training and experience you
17 have to have enough of the overall pattern shape and enough of
18 those individual characteristics within that pattern for it to
19 be deemed of value for further comparison.

20 Q. Okay. So if I just touch something, that doesn't
21 necessarily mean you're gonna be able to lift a print,
22 correct?

23 A. Correct. Latent prints are evidence of chance. You
24 don't always leave a fingerprint behind when you touch
25 something. It's gonna depend on the individual, their skin,

1 how much they're secreting, how much residue builds up on the
2 ridges. It also can be affected by the temperature outside.
3 If you're sweating more, it's gonna be a lot of moisture so,
4 in fact, you're almost like pushing a puddle onto a surface.
5 If it's cold or your skin is very dry, you might not have any
6 build up of residue or sweat so there really isn't anything to
7 necessarily transfer so we refer to latent evidence as
8 evidence of chance.

9 Q. So basically each of us may have different physical
10 -- I'm not a scientist -- but you said sweat like whatever or
11 pores, however we do, that affect the ability to leave a print
12 or not leave a print?

13 A. Correct. It's also going to take into effect the
14 amount of pressure that's applied, how the finger is coming
15 into contact, if it's straight down, if it's a pull, a push,
16 just general everyday motion of your hand you come in contact
17 with a lot of items. You're not necessarily consciously
18 thinking about stamping your fingerprint when you're just
19 randomly touching objects throughout the day.

20 Q. You also indicated those factors along with the
21 swipe or however with the temperature may make a difference,
22 too, so the colder it is, the less likely I am to be sweating
23 so much, so much moisture, correct?

24 A. Depending on the individual, yes.

25 Q. As far as another variable that can affect surface

1 areas, can you explain that for us? How that might affect the
2 ability to collect a print or not or find a print?

3 A. If the surface area has a build up of, say, debris
4 or coating, the impression might not necessarily make it to
5 the bottom most layer. If the surface is rough or textured,
6 the fingerprint may not leave a full impression behind because
7 it's gonna come into contact with that surface unevenly
8 because when you have texture, not all the ridges are gonna
9 touch the same, the same pressure or upon the same level of a
10 textured surface. So again, it goes back to this evidence
11 being all about being left by chance. The conditions all have
12 to line up, enough of the impression has to be left behind in
13 that stamped in transfer between the build up of the ridges
14 and the substrate or the item that is being touched.

15 Q. And as far as a term, I'm just gonna use, I don't
16 know if this is a correct term, but like overlay, like
17 multiple people touch, can you explain how that might affect
18 the ability to collect a usable latent print?

19 A. In events where you have multiple impressions that
20 seem to have been applied over the top of each other, you may
21 in that particular scenario you could not get necessarily
22 enough of a single impression of characteristics specific to
23 one impression to make an identification. It may be difficult
24 in scenarios like that to differentiate one impression or one
25 touch from the next one to the next one to the next one

1 depending on how they have been applied to the particular
2 item.

3 Q. Okay. So for your purposes then, your capacity as a
4 latent print examiner, you have to have certain standards, I
5 guess, that apply before you will compare a latent print or
6 even be able to collect a latent print and then ultimately do
7 a comparison, correct?

8 A. Correct.

9 Q. So you won't use anything that's less than those
10 standards?

11 A. Correct.

12 Q. And as far as the area of the car that you
13 processed, you stated, I believe, the exterior of the window
14 and the interior window area and door area?

15 A. The exterior of the front driver door, the exterior
16 of the front driver window, and the interior of the front
17 driver window.

18 Q. And on that again, you used only the black powder,
19 correct?

20 A. Correct.

21 Q. Is there another type -- I believe you explained a
22 couple other types of processing that can be used?

23 A. In the field a visual is usually always done with
24 oblique lighting, but as far as creating that contrast for
25 collection black powder is the most common technique used on

1 scene outside of the laboratory setting.

2 Q. I believe you did find some prints belonging to Mr.
3 Kierin Dennis, correct?

4 A. Yes, ma'am. I obtained and lifted latent prints
5 from the exterior of the vehicle in performing the comparison
6 to both known standards that I had. They were identified to
7 Kierin Dennis.

8 Q. And in your experience would you expect the
9 fingerprint of a person who either drove or owned the car to
10 possibly be on that car somewhere?

11 A. Yes.

12 Q. And as far as any other areas of the car, were those
13 processed like the side or I guess the front let's say the
14 driver's side, the back portion past the door or either the
15 front portion with the hood?

16 A. No, ma'am. Our search was requested for the front
17 driver compartment as that was believed to be the location of
18 the alleged incident.

19 Q. Okay. So if there had been fingerprints on some of
20 these other sides of the car, those just weren't processed in
21 that area?

22 A. The only area that we processed was the front driver
23 door compartment.

24 Q. Okay. And again, too, if people are using, you
25 know, we've talked about prints, but palm prints, things of

1 that nature or if clothing is in the way, will those affect
2 your ability to collect a print as well?

3 A. Well, palm prints can be collected the same way as
4 fingerprints. It's all made of friction ridge skin. As far
5 as clothing, clothing could potentially disrupt latent
6 evidence that might have been there. It could create a void
7 in any kind of debris that might be present on an object.
8 It's just gonna be dependent upon how everything interacts
9 with each other.

10 Q. And I believe, and maybe moving here, but turning
11 to, I guess, my final point on this. So just because I touch
12 something doesn't mean I'll necessarily leave a print,
13 right?

14 A. That's correct.

15 Q. And just because you don't find a latent print
16 doesn't mean it wasn't touched, correct?

17 A. Correct.

18 Q. Now, moving on, I believe you testified regarding
19 some of the results of DNA of another member of your lab in
20 your agency, correct?

21 A. Yes, ma'am. I read from her report.

22 Q. And you explained touch DNA and blood DNA or maybe
23 you didn't, serology or only touch?

24 A. I'm sorry. I don't understand the question.

25 Q. What DNA did you explain with respect to her

1 results?

2 A. I read the results from Mary Ann Boehm's report, but
3 as to the specifics they were swabs that she tested off of
4 various items.

5 Q. And specifically were swabs taken of certain areas
6 on the car --

7 A. Yes.

8 Q. -- of discoloration? Can you explain that to the
9 jury?

10 A. The swabs that were collected from the areas of
11 discoloration on the car were presumptively tested on scene
12 and were found to be negative for blood evidence.

13 Q. Okay. So they could have been something else but
14 just negative for blood?

15 A. Correct. And those swabs were not retained for
16 further testing. The presumptive was negative. We did not
17 retain those swabs for further testing.

18 Q. And those were on the exterior of the car,
19 correct?

20 A. There were three on the interior of the front driver
21 door frame and then there was one on the exterior of the front
22 driver's door.

23 Q. Okay. And as far as, I believe you stated that the
24 steering wheel was swabbed for DNA as well?

25 A. Correct. The steering wheel was swabbed for touch

1 DNA.

2 Q. And yet there was insufficient, I guess,
3 insufficient DNA to collect and test?

4 A. That is how her results in her DNA report reads.
5 Yes, ma'am.

6 Q. Okay. So even though assuming a person such as
7 Kierin Dennis drove that car, it's possible that you wouldn't
8 find his DNA there?

9 A. I'm not a DNA expert. All I can testify to is the
10 results listed in her report.

11 Q. But you're aware though that the fact that you don't
12 find DNA somewhere doesn't necessarily mean that a person
13 wasn't there?

14 A. Again, I'm not a specialist in DNA. I can testify
15 that just because I don't recover a latent print doesn't mean
16 something wasn't touched.

17 Q. As far as the results that I believe -- Who was
18 it?

19 A. It was Agent Mary Ann Boehm in DNA.

20 Q. And ultimately she found no DNA belonging to Kierin
21 in the car or at least inconclusive?

22 A. None of her reports show a match to Kierin Dennis.

23 Q. As a matter of fact, they don't show a match to
24 anyone?

25 A. She did report a match to the swabs from the blade

1 of the knife to Da'Von Capers.

2 Q. I mean from the car. I'm sorry.

3 A. No, ma'am.

4 Q. And so from the blade of the knife we do have DNA
5 from the victim?

6 A. Correct.

7 Q. And as far as the DNA -- I have just a couple more
8 questions, Agent Edwards. When you were processing, and I'm
9 going back to the location at the home, the residence at
10 Drooping Leaf Lane --

11 A. Okay.

12 Q. -- did you all actually open the cabinets and things
13 of that nature and take photographs or everything?

14 A. Again, without looking at all of the photos in
15 context I could not recall. It's been five years since I
16 worked this case.

17 Q. Based on your report it doesn't appear that you
18 noted anything from the cabinets or collected anything from
19 the cabinets --

20 A. No, ma'am. Nothing was collected --

21 Q. -- in the bathroom or kitchen or bedroom or
22 otherwise?

23 A. No, ma'am.

24 MS. SIMPSON: That's all I have. Thank you.

25 THE COURT: Any redirect?

1 MR. HUBBARD: No redirect, Your Honor.

2 THE COURT: Agent Edwards, you're free to go. Thank
3 you. Good time for our break.

4 MR. HUBBARD: Yes, sir. Your Honor, I ask that this
5 witness be excused.

6 THE COURT: Fair enough. I think she can be.

7 MS. SIMPSON: Without objection.

8 THE COURT: Step into the jury room. Don't discuss
9 the case.

10 (Whereupon, the jury entered the jury room at 11:40
11 a.m.)

12 MR. HUBBARD: For planning purposes since it's
13 almost 12, are they gonna do their view and then maybe a
14 lunch?

15 THE COURT: The van per the captain is available for
16 us. He was gonna get it here late this morning. It's
17 here, so the van is available for us and I think I'm
18 gonna let Deputy Lewis do the driving. Y'all can agree
19 on how to manage that. I was gonna give the jury
20 instructions. Y'all will be driven out there, look at it
21 to their heart's content, the deputies will take you
22 wherever you want to go and let you walk around as long
23 as you want, but you can't do anything other than look,
24 something along those lines.

25 (Short break.)

1 THE COURT: All right. Very good. Thank you very
2 much. Call your witness please.

3 MR. HUBBARD: Thank you, Your Honor. The State
4 calls Dr. Janice Ross.

5 Thereupon,

6 JANICE EDWARDS ROSS, M.D.
7 after having been first duly sworn, testified as follows,

8 THE CLERK: Please have a seat. Once you're seated,
9 state your full name spelling your last please.

10 THE WITNESS: Janice Edwards Ross, R-o-s-s.

11 DIRECT EXAMINATION

12 BY MR. HUBBARD:

13 Q. Dr. Ross, where are you currently working?

14 A. I'm currently in Charleston working with the
15 Coroner's Office down there. I was in Newberry with Newberry
16 Pathology Associates.

17 Q. How long were you with Newberry Pathology
18 Associates?

19 A. 19 and a half years.

20 Q. What did you do there and what do you do in
21 Charleston?

22 A. I'm a forensic pathologist so we do autopsies for
23 the coroners of the State at their request.

24 Q. In Newberry do you do autopsies or did you do
25 autopsies for a number of surrounding counties as well?

1 A. Yes. I did.

2 Q. How long have you been in this field?

3 A. 43 years.

4 Q. What is your educational background for this
5 particular area?

6 A. I'm a doctor so I've had four years of college at
7 the University of South Carolina, four years of medical
8 school, and over five years of training in the field of
9 pathology. Pathology is the discipline in medicine as opposed
10 to something like surgery or pediatrics where we learn how to
11 make diagnoses using the microscope, diagnoses of cancer,
12 leukemia and using the blood work from the hospital
13 laboratory. We also learn how to do an autopsy to find a
14 cause of death. A forensic pathologist further is trained to
15 identify patterns of injury for the Court of Law, document
16 them, take fluids for toxicology and do a thorough autopsy to
17 find a cause and a manner of death.

18 Q. When we say cause and manner of death, how are those
19 different?

20 A. Cause of death is just what it says, what caused the
21 actual death. The manner of death is how that cause of death
22 came about whether it's natural disease like a heart attack,
23 whether it's a suicide, homicide, accident, and sometimes we
24 can't tell where you have to write down undetermined.

25 Q. How many autopsies have you performed in your

1 career?

2 A. Over 14,000.

3 MR. HUBBARD: Your Honor, I offer Dr. Ross as an
4 expert in forensic pathology.

5 THE COURT: Any voir dire?

6 MS. SIMPSON: No, Your Honor. We believe she's
7 qualified.

8 THE COURT: Ladies and gentlemen, Dr. Ross is
9 qualified in the field of forensic pathology and she can
10 offer opinions in her field of expertise.

11 BY MR. HUBBARD:

12 Q. Dr. Ross, February 19th, 2014, did you perform an
13 autopsy on a gentleman by the name of Da'Von Capers?

14 A. Yes. I did.

15 Q. Is this while you were still in Newberry?

16 A. Yes.

17 Q. When you perform an autopsy, what's the difference
18 between an external and internal examination?

19 A. The patient is brought to us. We do the autopsy in
20 the morgue at the Newberry County Memorial Hospital. The
21 patient is brought to us in a body bag which we open and we
22 look at the person clothed, take photographs and then we take
23 the clothing off, inventory it and take photographs of the
24 outside of the body before we do an internal examination which
25 is actually to look at each organ separately to identify

1 diseases and/or injuries.

2 Q. In doing an internal examination what, if anything,
3 did you note?

4 A. In this case we noted a stab wound in the chest.

5 Q. Is that the only injury of consequence?

6 A. Of consequence, yes.

7 Q. Now, did you note about how tall and approximate
8 weight of Mr. Capers?

9 A. We measured him at five feet seven inches in height
10 and we didn't have a scale in the morgue so we estimated his
11 weight at least 165.

12 Q. And prior to doing an internal, did you also do an
13 x-ray on him?

14 A. Yes.

15 Q. And again, when we talk about the wound you found,
16 you found one, what did you call it? What type of wound?

17 A. A stab wound.

18 Q. Did you see any slash wounds or cuts on the hands or
19 arms?

20 A. No.

21 Q. Did you see any slash or cut wounds on the face,
22 neck, or shoulders of Mr. Capers?

23 A. No.

24 Q. Or on the back?

25 A. No.

1 Q. Where approximately was the stab wound that you
2 located on Mr. Capers' body?

3 A. It entered just below the left nipple.

4 MR. HUBBARD: Your Honor, can I have the doctor step
5 down and just show on me where that wound would be
6 located?

7 THE COURT: Sure.

8 BY THE WITNESS:

9 A. (Witness complies.) It would be right about here
10 (indicating.)

11 BY MR. HUBBARD:

12 Q. Just that one wound?

13 A. Yes.

14 Q. Thank you, doctor. Now, the wound, in looking at
15 the wound could you determine if it was a double or single
16 edged instrument that was used?

17 A. It looked like a single edged knife. In other
18 words, one edge was sharp, the other edge was somewhat
19 blunt.

20 Q. I'm going to show you what's State's 52. Would this
21 be something like you're talking about blunt on one side but
22 sharp on this side?

23 A. Yes.

24 Q. Okay. And the sharp edge, which side of that wound
25 was it on?

1 A. It was toward the outside of the body, what we say
2 lateral as opposed to towards the middle of the body.

3 Q. So the sharp edge would have been on the outside
4 facing that way?

5 A. Correct.

6 Q. Okay. Now, did you also do an internal examination?

7 A. Yes.

8 Q. What did you see there?

9 A. We could follow the path of the knife. The knife
10 wound, it went down towards the middle of the body and
11 slightly towards the back. It caused, it perforated the wall,
12 one of the big walls of the heart, went through the diaphragm
13 and through the liver and punctured a little bit of the
14 stomach and caused a lot of hemorrhage in the left chest and
15 in the abdomen.

16 Q. What was the approximate depth of that wound?

17 A. Approximately three and a half to four inches.

18 Q. So if this knife, if I were to tell it's four and a
19 quarter inches, it would be most of this blade?

20 A. Consistent with. Yes.

21 Q. And you said it's a downward angle so in looking at
22 me, the blade goes in, is it going towards the center of my
23 chest or out?

24 A. It's going downward and slightly towards the center
25 of the chest.

1 MR. HUBBARD: Okay. I'll show you some photographs.

2 Your Honor, I believe they are all without objection.

3 MS. SIMPSON: Yes. Without objection.

4 BY MR. HUBBARD:

5 Q. State's 119, 120, 121, 122, 123, 124, 125. Just
6 looking at through 123 first. Do you recognize those?

7 THE COURT: For the record, I'm gonna let her
8 identify them and then --

9 MR. HUBBARD: Yes, sir.

10 BY THE WITNESS:

11 A. Yes. These are photographs I took at the time of
12 the autopsy.

13 MR. HUBBARD: Your Honor, I'll move all of these
14 into evidence so it's 119 through 123 at this time.

15 THE COURT: 119 through 123 identified and admitted
16 without objection.

17 BY MR. HUBBARD:

18 Q. Dr. Ross, starting with 119 and 120, are these the
19 same things just blown up?

20 A. Yes.

21 Q. 119, is this your original photo from an x-ray?

22 A. Yes.

23 Q. And then 120 is the blowup?

24 A. Yes.

25 Q. I've got a pointer for you and if I can, what I

1 would like to do is show you this x-ray and see if you can
2 orient to the jury what we're seeing here?

3 A. This is looking front to back on the patient, an
4 x-ray, so that this would be the left side, this would be the
5 right side. Here's the shadow of the heart. Here's the
6 shadow of the liver, and separating the chest and the abdomen
7 is the diagram which goes along here. So the wound came in
8 just underneath the left nipple and went downward to cut into
9 the heart, went through the liver and the stomach is right
10 underneath the liver right here.

11 Q. You say it nicked the stomach?

12 A. Yes.

13 Q. Is State's 121 the actual wound as it's visible from
14 outside of his body?

15 A. Yes.

16 Q. And again, this is right below the left nipple?

17 A. Correct.

18 Q. And this photo is pretty much to scale, is it not?

19 A. Yes.

20 Q. So just looking at it from the outside there doesn't
21 appear to be a lot of damage, is that safe to say?

22 A. Correct.

23 Q. Now, State's 123, what is that?

24 A. That's the injury to the heart, the perforation of
25 the heart muscle.

1 Q. And are those your hands holding it?

2 A. Yes.

3 Q. Showing where it's been sliced?

4 A. Yes.

5 Q. State's 123. So it slices through the heart. And
6 looking at State's 122 what am I looking at?

7 A. That's the surface of the liver where there's a
8 wound in the liver and underneath that is kind of a gray shiny
9 looking membrane. That's the stomach which is underneath the
10 liver so the wound goes through the liver and into the
11 stomach.

12 Q. Is it a puncture wound through the liver?

13 A. Yes. It's perforating all the way through.

14 Q. So down at the bottom of this photo is the stomach
15 but it perforated the liver and then nicked the stomach?

16 A. Yes.

17 Q. Doctor, I note in looking at this, I'll show you
18 again State's 122, there appears to be like on one edge of
19 this slit there's like two little narrow entry, like entry in,
20 entry out?

21 A. Yes.

22 Q. Is that at the top of the wound?

23 A. Yes.

24 Q. Would that be the sharp end of the blade?

25 A. Yes.

1 Q. Which confirms again a single edge blade?

2 A. Yes.

3 Q. Now, doctor, when we talk about an angle, you said
4 downward angle --

5 A. Yes.

6 Q. -- going in. Let me do this first. Let's talk
7 about the injury itself. What was the cause of death? To a
8 reasonable degree of medical certainty what was Mr. Capers'
9 cause of death?

10 A. Our fancy word is exsanguination which means to
11 bleed out so he bled to death internally due to the
12 perforation of the heart and liver due to the stab wound to
13 the chest.

14 Q. What was the manner of death?

15 A. Homicide.

16 Q. I want to show you two other photos, 124, 125. I
17 believe these are without objection as well. Have you seen
18 these?

19 A. Yes.

20 MR. HUBBARD: Your Honor, I offer these into
21 evidence.

22 MS. SIMPSON: Without objection.

23 THE COURT: 124, 125 admitted without objection.

24 BY MR. HUBBARD:

25 Q. Do these photos show basically a hand motion showing

1 the angle of how a stabbing has occurred?

2 A. Yes.

3 Q. Do these accurately depict the wound you found on
4 Mr. Capers?

5 A. No. They do not.

6 Q. 124, 125. Now, doctor, what is inaccurate about
7 that?

8 A. Well, it appears that he is pushing the knife up
9 from his, for instance, from his lap up into the chest of the
10 victim in which case the wound in the body would not be going
11 down, it would be going up or straight into.

12 Q. So that would be an inaccurate angle as depicted in
13 those photos?

14 A. Correct.

15 Q. Doctor, you've seen this car door. If someone were
16 to reach out and stab in a downward angle, would that or could
17 that be consistent with the wound you saw?

18 A. If they came from above enough, yes.

19 Q. Kind of like a downward angle like that?

20 A. Yes. The blade is straight so it's going straight,
21 it's going downward.

22 Q. So a motion like I'm depicting right now going
23 down?

24 A. Yes.

25 Q. Or like that?

1 A. Yes.

2 Q. Now, to get, if someone were to be leaning in, what
3 would the angle be? What would be necessary to get the angle
4 you found in Mr. Capers' body?

5 A. If the victim was bent over so that his chest was
6 sort of horizontal, the knife would have had to have gone
7 something like parallel to the ground. In other words,
8 sideways like this.

9 Q. So, doctor, if Mr. Dennis is in this vehicle, Mr.
10 Capers is coming through the window, how would Mr. Capers'
11 body have to be?

12 A. Pretty much straight in horizontally.

13 Q. Horizontal for that angle?

14 A. Correct.

15 Q. And how tall did you determine he was?

16 A. Five feet seven inches.

17 Q. But any stabbing upward would be the wrong angle?

18 A. Correct.

19 MR. HUBBARD: Dr. Ross, I believe that's all I have
20 at this time. Please answer any questions the defense
21 has.

22 CROSS EXAMINATION

23 BY MR. RUTHERFORD:

24 Q. Good afternoon, Dr. Ross. How are you?

25 A. Good afternoon.

1 Q. Dr. Ross, I believe the Solicitor testified and I'll
2 set it so you can see it that if an individual were sitting in
3 the car and the individual did like that with a straight
4 angle, you said that Mr. Capers, the patient that you
5 examined, would have had to have been how far over?

6 A. Pretty much so that the chest is parallel to the
7 ground.

8 Q. I believe your measurements were 15 and a half
9 inches from the top of the head to where you indicated the
10 incision was; is that correct?

11 A. Correct.

12 Q. And so if an individual that was five seven is
13 standing on a curb which is six inches high, how tall would
14 that make them?

15 A. 21 and a half inches. Yes. I'm sorry. The total
16 height would be six feet and a half inch.

17 Q. So six and a half feet?

18 A. Six feet one and a half inches. Yes.

19 Q. When you measured the height of Mr. Capers, I assume
20 you used a tape measure; is that right?

21 A. Yes.

22 Q. Did you have his shoes?

23 A. We measured from the bottom of the foot. We don't
24 measure the shoes.

25 Q. But did you have his shoes in your --

1 A. I believe so. No. We did not have the shoes.

2 Q. So you didn't have an opportunity to measure his
3 shoes to see how tall his shoes would have made him when he
4 was standing erect; is that correct?

5 A. Correct.

6 Q. And you're, I guess you don't have to be a doctor to
7 know that if he had on shoes, he would have been taller than
8 five seven; is that correct?

9 A. Correct.

10 Q. So if he was in shoes, he would be taller than five
11 seven. If he's standing on a six inch curb, he would be even
12 taller than that, correct?

13 A. Correct.

14 Q. And so at that point he's well over six feet if he
15 is in shoes and standing on a six inch curb; is that not
16 correct?

17 A. Correct.

18 Q. And so if he is - and, Dr. Ross, I'll be completely
19 honest with you, I don't know if you can tell, you're a
20 doctor, you've doing this for 43 years, I am not over six feet
21 so if we agree that I am not over six feet, I am not going to
22 be able to duplicate leaning in the window for someone that is
23 over six feet. Would you agree with me when I said that?

24 A. Yes.

25 Q. Dr. Ross, if you would, you stated in this x-ray

1 that it was pretty much to scale; is that correct? This is
2 State's exhibit number 120.

3 A. The photograph of the stab wound is to scale. That
4 may not be exactly to scale.

5 Q. Well, Dr. Ross, and again you measured, you took
6 these measurements with Mr. Capers laying on a table; is that
7 correct?

8 A. Correct.

9 Q. If Mr. Capers laying on that table from the entry
10 wound, from the incision which wa right below his left nipple
11 down to where you marked the lowest point that the knife hit,
12 how far was that?

13 A. I didn't measure that. It would be, probably be
14 about four inches.

15 Q. But you didn't measure it?

16 A. No.

17 Q. So if from his incision to that part where the knife
18 ended, is there anything in between there? Are there ribs?
19 Are there bones? Is there anything in between there?

20 A. Well, there's muscle and the edge of a rib I think
21 was incised and the firm muscle of the heart, the diaphragm
22 and the liver.

23 Q. So if you were to describe the way that the knife
24 entered the body, I think we're clear, it did not go like this
25 (indicating), correct?

1 A. Correct.

2 Q. And if he were -- and I'll do it so you can see it
3 so you don't have to get down -- if Mr. Dennis stabbed
4 straight out the window at someone standing erect, the knife
5 would have hit him here (indicating), correct?

6 A. Correct.

7 Q. And it would have gone -- What is the medical term
8 for the way that the knife would have entered the body and
9 gone into the body?

10 A. Front to back.

11 Q. Front to back?

12 A. Yes.

13 Q. And this did not do that, correct?

14 A. Correct.

15 Q. And so if Mr. Capers is standing outside the window
16 and he is standing on a curb and he has on tennis shoes, it
17 would take him, if I'm about five seven, it would take his
18 left nipple and place it up here (indicating), correct?

19 A. Approximately, yes.

20 Q. So witnesses that said that they only saw Mr. Dennis
21 do like this (indicating), that is not correct, is it?

22 A. No.

23 Q. The only way that that could be correct for someone
24 that is over six feet would be if they were leaning in the
25 window; is that correct?

1 A. Correct.

2 Q. And so if Mr. Capers is leaning in the window and
3 the blade comes straight, what is the most likely position
4 that Mr. Capers would have been in at that point? Can you
5 position my body to be --

6 A. Well, he would be leaning so that - at a right angle
7 but he could have been --

8 Q. I'm sorry. I'm a lawyer.

9 A. He could have been leaning over so that the chest is
10 sort of parallel to the ground, could have been inside the car
11 or outside the car.

12 Q. So almost parallel to the ground?

13 A. Correct.

14 Q. And in your 43 years, in your 14,000 autopsies what
15 you are telling this jury is that it is impossible for someone
16 to stand erect outside of a vehicle and given the angle of the
17 cut and have someone do just like this (indicating) and have
18 that wound created; is that correct?

19 A. Correct.

20 Q. So did you measure the distance of the incision --
21 and I know I asked you this. I want to make sure that I'm
22 clear on the answer. I'm not trying to ask it again. I may
23 have the terminology wrong -- is there any way to indicate by
24 how long the incision was meaning from where it starts and
25 where it stopped with those vital organs, I believe you

1 testified to about three or four vital organs, you testified
2 just now about it hitting a rib, is there any way to indicate
3 whether Mr. Capers had to have been leaning over for a four
4 inch incision to hit what it hit?

5 A. No. We don't generally measure a lot of those
6 wounds because tissue is elastic and it bends and you can push
7 it hard, you can push it a little bit so that the exact length
8 is probably between three and a half to four inches.

9 Q. And, Dr. Ross, if I am standing or anyone is
10 standing outside this car, in this case it would be Mr. Capers
11 and he was five seven so let's say he's standing flat footed
12 on the ground in his bare feet, how would the knife have had
13 to have come out of the window to have made this incision?
14 Would it be like this (indicating)?

15 A. Yes.

16 Q. And then down?

17 A. Yes.

18 Q. So like (indicating). I'm sorry. Dr. Ross, at this
19 point I need you to step down so everybody can see because I
20 had my back to you?

21 A. (Witness complies.)

22 Q. So someone standing outside of the window five seven
23 -- if you don't mind, stand here -- he was standing erect --

24 A. It would have to go pretty high up.

25 Q. And the amount of force needed to do that would be

1 what?

2 A. It's hard to say in --

3 Q. And if you can't, I don't want to put --

4 A. -- medical terms, but I would liken it to stabbing
5 into a two inch steak.

6 Q. So stabbing through a two inch steak. So the hand
7 would have to come up and then down like that with enough
8 force to stab through a two inch steak; is that right? A two
9 inch steak?

10 A. Right.

11 Q. So if this was the angle of entry the way that he -
12 if I'm standing like this and Kierin is here and it comes down
13 like that with that much force, in your medical opinion would
14 there be any indication on the incision of that force being
15 downward?

16 A. No. I mean, if it's pushed in far enough to the
17 hilt to hit skin, that would leave an abrasion.

18 Q. Did it do that in this case?

19 A. No.

20 Q. So but for every angle that I -- and again, if I'm
21 stating it incorrectly, stop me. That would be fine -- for
22 every angle that I lean over, his hand would go down,
23 correct?

24 A. Yes.

25 Q. So to what most people would consider a natural

1 stabbing motion or a natural - a motion that looked like a
2 punch, it would come pretty much straight on, would you
3 agree?

4 MR. HUBBARD: Your Honor, I do object to that. She
5 said she's a pathologist. On the natural motion of a
6 strike, a punch, that's for CSI.

7 THE COURT: Consistent with, I think the question,
8 she's an expert --

9 MR. RUTHERFORD: Consistent with. Fine.

10 THE COURT: -- she can answer that question in that
11 fashion. Rephrase the question, Mr. Rutherford.

12 BY MR. RUTHERFORD:

13 Q. Is it consistent with what you know as a pathologist
14 and as a human being that a motion consistent with a punch and
15 what people describe as a punch would come straight on?

16 A. Yes.

17 Q. And so if it is in any way consistent which a punch
18 coming straight on, it would be, depending on the height of
19 the person standing here, in this torso region, correct? And
20 I don't want to put words in your mouth because again, we
21 don't know the height of the car, we don't know the height of
22 the seat, we don't know the height of Mr. Capers. There are a
23 number of variables. But if it is consistent with a punch,
24 it's going to be straight on, consistent with straight on and
25 Mr. Capers would have had to have adjusted his body if it's

1 consistent with a punch in order for that angle to be correct;
2 is that right?

3 A. Yes. He would have to be bent over by the car.

4 Q. And I don't have anything that's six inches. In
5 order to recreate it to your satisfaction, what would we have
6 to have on the outside of this car in order to make it
7 accurate, something to make an individual Mr. Capers' size and
8 height as he stood there that night, correct?

9 A. Yeah.

10 Q. The shoes?

11 A. Yes.

12 Q. Whether he was standing on something. And we would
13 also need the car to be accurate, correct?

14 A. Correct.

15 Q. Now, I'm gonna ask you again what the Solicitor
16 asked. Do you see a car in that picture?

17 A. No. I do not.

18 Q. And it's two people, one sitting in a chair and the
19 other one standing over him, correct?

20 A. Right.

21 Q. And so there is no way that that could be accurate,
22 correct?

23 A. No.

24 Q. I mean, without the car and the seat there's no way
25 that that could be accurate, correct?

1 A. Correct.

2 Q. Please take your seat.

3 A. (Witness complies.)

4 Q. Dr. Ross, in your examination of this patient did
5 you have occasion to measure -- I'm sorry. Let me back up.
6 We went through different angles and we went through motions.
7 How much would it matter, the individual holding the knife,
8 how much would it matter how long their arm was for your
9 measurements?

10 A. I don't think it would matter.

11 Q. But as to how far someone would have to be from this
12 vehicle it would matter in your medical estimation; is that
13 correct?

14 A. Well, yes.

15 Q. And if the placement of someone or someone standing
16 erect outside of the vehicle and someone sitting in the
17 vehicle, they would only be able to reach so far if they never
18 left the vehicle; is that right?

19 A. Correct.

20 Q. And you would be able to determine that as a doctor,
21 as a person, as a human being measuring their arm, their
22 chest, whatever else you would need; is that right?

23 A. Yes.

24 Q. And so if, again, if it's not within your field of
25 study, I know you will tell me it is not, but if someone who

1 is about five seven, never exits this vehicle with a four inch
2 knife, how close would someone have to be standing to the
3 vehicle in order to get stabbed?

4 A. Well, it depends. I mean, you can lean out of the
5 window.

6 Q. If they never left the vehicle and they never leaned
7 out --

8 A. I couldn't tell you.

9 Q. Well, isn't it about four inches?

10 MR. HUBBARD: Your Honor, I object. She gave an
11 answer.

12 THE COURT: She gave an answer. She couldn't tell
13 you.

14 MR. RUTHERFORD: Again, Your Honor --

15 THE COURT: Rephrase the question.

16 BY MR. RUTHERFORD:

17 Q. If the knife and the person -- If the person never
18 left the vehicle and the knife did, how far would the knife
19 have to come out to make this incision?

20 MR. HUBBARD: Asked and answered.

21 THE COURT: Let her answer. It's a different
22 question.

23 BY THE WITNESS:

24 A. It depends on how close the victim is to the car.

25 BY MR. RUTHERFORD:

1 Q. But with this incision, you said it was about four
2 inches, correct?

3 A. Correct.

4 Q. So if the knife is outside like this (indicating),
5 then that person would have to be up to the base of the knife,
6 correct?

7 A. Well, your arm can go outside the window.

8 Q. I understand. But if the arm never leaves the
9 window, then - and we talked about the incision being four
10 inches and this knife being about four inches, the knife would
11 go completely inside as it did in this incision which would
12 put the person outside of the car where?

13 A. Right next to the vehicle.

14 Q. Right next to the vehicle. And you said that this
15 incision was under his left nipple, correct?

16 A. Correct.

17 Q. And so if I am standing here, in order to reach my
18 left nipple, the hand would have to come out and in front of
19 the mirror in order to get there; is that right?

20 A. Correct.

21 Q. So in order for that incision to be made it would
22 take the entire body - it would take the entire body because
23 there's a mirror here to be hit at that angle; is that right?

24 A. Yes.

25 Q. And that would place the individual standing there

1 in order to get stabbed at that angle fully in front of the
2 window, would it not?

3 A. Well, he would have to be bent over.

4 MR. RUTHERFORD: He would have to be bent over. And
5 again, this is not taking into account that if he was
6 standing on a curb, if he had on tennis shoes, and he's
7 bent over. No further questions, doctor.

8 REDIRECT EXAMINATION

9 BY MR. HUBBARD:

10 Q. Just a few. Dr. Ross, we've got you talking angles.
11 If you don't mind, would you mind stepping down again.

12 A. (Witness complies.)

13 Q. If someone five seven is standing on something six
14 inches, they're just over six feet tall?

15 A. Yes.

16 Q. So their head would clear the top of the car. If
17 the door showed the top of the car, their head would be
18 clearing that?

19 A. If that's six feet.

20 Q. Yep. And so someone this height, if they're leaning
21 in, would that be consistent with where the stab is?

22 A. with the window that high up, it looks like the
23 nipple is right at the level of the top of the window.

24 Q. If we were told that the window is halfway or just
25 under halfway as it is here, if someone is leaning in, would

1 that be --

2 A. It looks like --

3 Q. Can I get there?

4 A. In this re-enactment it looks like the wound would
5 be higher.

6 Q. Than what you showed. I see. So now when we're
7 talking angle, talking about a downward motion, if someone is
8 leaning into the vehicle in a downward motion, still, would
9 that still, for someone shorter than six feet would that make
10 it even more difficult to get below the nipple area that you
11 saw

12 A. Yes.

13 Q. Now, if this window is down, again, someone is at
14 the window, this angle, if it comes down like this, would that
15 be consistent as an angle coming in this direction
16 (indicating)?

17 A. Yes.

18 Q. This motion here would be consistent?

19 A. Yes.

20 Q. And if this individual is stepping back even a
21 little bit regardless of arms if you lean, can you still get
22 that angle?

23 A. Yes.

24 MR. HUBBARD: Doctor, I don't have anymore questions
25 at this time.

1 you're describing a person standing erect.

2 A. Correct.

3 Q. But as we discussed earlier if he is like this
4 (indicating), the motion is straight ahead, correct.

5 A. Not completely straight. If you bend over like that
6 (indicating) --

7 Q. Mind you, let me again make sure that the variables
8 are correct. I am five seven but I have on shoes, don't know
9 how tall that makes me, and if I could find something that
10 makes me over six feet and I'm even further higher, those
11 variables matter in terms of how straight the punch or the
12 stab is, correct?

13 A. What I'm saying is, is in order to be horizontal
14 like that, then the victim has to be pretty much bent over so
15 that the chest is parallel to the ground.

16 Q. Right. And for every inch the seat comes up, for
17 every inch the back of it comes up, it changes the angle of
18 both, does it not?

19 MR. HUBBARD: Your Honor, I object to that. Now
20 we're talking about something, about seat angles and
21 things like that. That's unfair for the doctor. She can
22 talk about stab angles and wound angles.

23 THE COURT: I think he's talking about -- Rephrase
24 the question. But y'all are describing each end of the
25 spectrum.

1 MR. HUBBARD: Right.

2 BY MR. RUTHERFORD:

3 Q. And every inch, for example, and this seat moves.
4 If I can manipulate this seat and lean it back, the further
5 back someone sits in the seat, it changes the angle where the
6 knife goes, does it not? And if I lean up as you stated
7 before, it's gonna change it. If I lean back, if I lean out,
8 the variables change depending on where the knife is and where
9 the person is standing outside the car; is that correct?

10 A. If you're leaning back like that, it would be more
11 difficult for you to do this downward motion (indicating).

12 Q. So if the seat is back, it's going to change the
13 angle at which the knife would have to go; isn't that right?

14 A. It could. Yes.

15 Q. And as it changes, again, it gets to how far the
16 person on the outside of the car is leaning and how much the
17 person on the inside moves up, moved down, or moves out,
18 correct?

19 A. Yes.

20 Q. So were you given any of that information when you
21 made your determination or when you examined the patient?

22 A. No. Anatomically I can say that the wound goes
23 downward towards the back and towards the middle of the
24 body.

25 Q. That's correct. And again -- This is the last

1 question. I'm sorry. Last series of questions. The dull end
2 or the blunt end of the knife, what did we call it?

3 A. Blunt edge.

4 Q. The blunt edge of the knife is on the outside,
5 correct?

6 A. The blunt --

7 Q. I'm sorry. It was on the --

8 A. Inside.

9 Q. -- inside?

10 A. Correct.

11 Q. You call that the

12 A. Medial. Towards the middle of the body.

13 Q. This being lateral (indicating), correct?

14 A. Yes.

15 Q. And is it consistent with somebody holding the knife
16 like this (indicating)?

17 A. You can hold the knife a lot of different ways.

18 Q. Well, if I'm in the car and I hold it like this --

19 A. You can still hold it two different ways.

20 Q. It doesn't matter.

21 A. No.

22 Q. It's just how you see that the incision was made and
23 how it entered the body?

24 A. Correct?

25 MR. RUTHERFORD: No further questions, Your Honor.

1 MR. HUBBARD: Nothing further, Your Honor.

2 THE COURT: Dr. Ross, thank you very much. Safe
3 travels back to Charleston.

4 THE WITNESS: Thank you.

5 MR. HUBBARD: Your Honor, at this time the State
6 rests.

7 THE COURT: Very good. All right. It's the end of
8 the State's case. I've got to put a few things on the
9 record. I want to discuss with lawyers what I think we
10 got left so y'all go to the jury room briefly and I'll
11 have y'all back in here and give you more instructions so
12 step in the jury room. You can't discuss the case yet.

13 (Whereupon, the jury entered the jury room at 2:15
14 p.m.)

15 (Short break.)

16 THE COURT: Okay. Give me the jury.

17 (Whereupon, the jury entered the courtroom at 2:30
18 p.m.)

19 THE COURT: All right. Mr. Richburg, you're our
20 foreperson. Here's the situation. We're gonna work this
21 afternoon. We're not gonna need you this afternoon so
22 I'm gonna stop y'all's work for today. Now, y'all didn't
23 hear my conversation with the clerk and all that stuff
24 before, but there's another big jury panel coming in
25 Monday morning for Civil Court next week. This is the

1 with that. Otherwise 12:30, 1:00 I want to be in here
2 and get to work promptly as soon as the jurors get here,
3 okay?

4 MR. RUTHERFORD: Your Honor, if we could, or if the
5 Solicitor could have Mr. Maggett transported. I don't
6 have that authority and I know it's Friday so I don't
7 know what we can do over the weekend. If he's here, if
8 she gives the okay, then I can talk to him and we can get
9 started on Monday morning.

10 THE COURT: I don't mind signing a transport to get
11 him moved but... Can you get him moved if I give you an
12 order to transport?

13 MS. PATTERSON: Yes, sir.

14 THE COURT: Okay. We can move Laurens to Lexington
15 for a short-term. I don't mind doing an order for
16 that.

17 MR. HUBBARD: We'll do an order of transfer.

18 MR. RUTHERFORD: Okay. Thank you, Your Honor.

19 THE COURT: All right. Now transport will be done,
20 if possible, hopefully you get permission. Now end of
21 State's case. Defense motions.

22 MS. SIMPSON: Thank you, Your Honor. May it please
23 the Court. At this time we would renew all of our
24 previous motions that were made during the course of this
25 trial and move for a directed verdict pursuant to South

1 Carolina Rules of Criminal Procedures, Rule 19. Pursuant
2 to that we believe the State has failed to meet its
3 burden providing evidence to support the elements of
4 murder in this case which is the unlawful killing of
5 another with malice aforethought either expressed or
6 inferred.

7 Specifically, Your Honor, there is no evidence to
8 support that this was unlawful. I think the evidence by
9 their very own witnesses all support that this is a case
10 of self defense and that he had a right to act pursuant
11 to the law of self defense and stand your ground.

12 Additionally, Your Honor, the testimony presented at
13 no point shows any kind of premeditated plan and while
14 circumstantial evidence can be used, it needs to be
15 substantial circumstantial evidence and so as for any
16 premeditation or aforethought at the time the fatal blow
17 was struck that just simply isn't present and we don't
18 have a voluntary case here and we certainly don't have
19 possession of a weapon during the commission of a violent
20 crime if there is no evidence to support the murder.
21 They only put up basically a homicide case meaning a
22 death case, but just because someone is dead does not
23 mean the murder applies.

24 So with respect to malice, there is absolutely no
25 evidence of hated or ill will or complete reckless

1 disregard on behalf of my client Mr. Dennis in this case.
2 All the testimony regarding arguments that were made,
3 those kind of focused on other individuals and we are
4 focused on the time of the stabbing. So at this time I
5 would respectfully ask that you grant the defendant's
6 motion for a directed verdict.

7 THE COURT: All right. Considering the testimony
8 heard by the Court there's evidence of word exchange back
9 and forth, words from the defendant Mr. Dennis saying you
10 don't want what we got, something to that effect in the
11 parking lots, a weapon, there is interchanged words, and
12 I don't know exactly how - there's harsh language back
13 and forth among the crowd around the Explorer,
14 interaction between the parties, there's plenty there for
15 the jury to hear, evaluate, and weigh. Whether there's
16 evidence of malice and hatred there, it only has to exist
17 before or not even for a specific amount of time.
18 There's evidence for the jury to weigh that and consider
19 that evidence. Regarding the use of a weapon, that
20 indictment wasn't handed up so we did not deal with
21 that.

22 MR. HUBBARD: That's correct. I just called the
23 murder.

24 THE COURT: It's just the one indictment so there
25 won't be a charge on use of a weapon. The State didn't

1 proceed on that. They went with the one murder
2 indictment. Respectfully there's enough evidence to get
3 past the directed verdict stage and give it to the jury
4 to consider so I'll deny the motion.

5 MS. SIMPSON: Thank you, Your Honor. And while I
6 did renew our previous objections, I do also want to
7 renew the motion that we made for a mistrial based on the
8 burden shift, shifting of burden of proof in this case.
9 We still stand by that. The Solicitor's comments were
10 clearly against your ruling that was made and that there
11 is no curative instruction that can completely alleviate
12 the damage that was done. As you know, the State bears
13 the burden of proof so we have no burden of proof
14 with respect to just presenting evidence or anything, but
15 we also have no burden of proof with respect to the
16 investigation so it sounded like based on those comments
17 and the previous arguments made I just wanted to make
18 sure the record is clear that we renew that motion as
19 well.

20 THE COURT: And respectfully my ruling will be the
21 same. I did invite the defense to give me a proposed
22 curative instruction. We did not re-address it this
23 morning. I did, however, tell you that I was gonna add a
24 sentence or so in my instructions and y'all will see it
25 in here when you get it because I added a couple of

1 THE COURT: 16-11-440 (a), (b) and (c)?

2 MR. RUTHERFORD: 16-11 (a) and (c).

3 THE COURT: (a) and (c). Okay. 16-11-440 (a) and
4 (c) and the Court's declined to let the defense use those
5 in closing arguments consistent with my prior ruling not
6 to instruct on the statute. All right. Solicitor, are
7 you ready?

8 MR. HUBBARD: Yes, sir.

9 THE COURT: All right. Bring the jury please.

10 (Whereupon, the jury entered the courtroom at 2:25
11 p.m.)

12 THE COURT: All right. Folks, let me explain to you
13 a little bit what we've been going over. We went over my
14 instructions to y'all which I'll give to you at the end
15 after the lawyers summarize their positions. We've
16 discussed some different nuances. When the defense
17 rested, that created some issues for the Court to take up
18 which I have taken up and addressed. Then we got into a
19 deeper conversation and we finally got that resolved and
20 the lawyers have had time to summarize so the length of
21 time you were in the back, that's on me, not the lawyers.
22 But the lawyers are gonna summarize their respective
23 positions. I'm gonna instruct you, and y'all begin your
24 deliberations after that, okay? Solicitor.

25 MR. HUBBARD: Thank you, Your Honor.

1 Kierin Dennis would not let it go. He would not
2 back down. He wasn't gonna give up. And he wasn't gonna
3 be disrespected, and Da'Von Capers paid for that with his
4 life. That's what this case is about. You heard at the
5 beginning it's Lexington versus Dutch Fork. For all of
6 us it's not because that's silly. It's foolish. And it
7 became something more to Kierin Dennis. It became
8 personal. So it was beyond foolish. It became
9 dangerous. It become lethal. Everything he said,
10 everything he did was a matter of choice, and every
11 choice he made, every choice he made was steeped in ill
12 will and hostility and anger. That means it was steeped
13 in malice.

14 You're gonna have two choices in this case. Either,
15 either Kierin Dennis is guilty of murder, or it's self
16 defense and he's not guilty. Those are your two choices.
17 Nobody has really explained the law to you. Ultimately
18 we argue law. We lawyers do. We'll disagree over it.
19 We'll fight like cats and dogs. The law comes from the
20 Judge. He told you at the beginning y'all are the judge
21 of facts. He's the Judge of the law. Any variation, any
22 difference from what we say, you yield to the Judge.
23 Y'all are the judge of the facts. The Judge can't tell
24 you how to decide the case, who you believe.

25 So let's talk a little bit about the law. You know

1 that I'm presenting this, but the Judge is the giver of
2 that law. It's probably easier to start with self
3 defense. You've heard a lot about self defense. Well,
4 what is self defense? What is required in order to be
5 able to claim self defense in South Carolina? You've got
6 to meet all four of these elements. You've got to be
7 able to go into a courtroom and it must be, you must be
8 without fault in bringing on the difficulty. If you had
9 any way of stirring up the problem, if you're at fault at
10 all for bringing on the difficulty, if you've put
11 yourself in a bad spot, a spot you helped create, you end
12 right there. There's no self defense in South Carolina.
13 We go home on that issue, it's done.

14 You've got to have all of these. You must believe
15 or actually be in imminent danger. You must actually
16 believe you're gonna die, or you're gonna face serious
17 bodily injury actually. And we'll talk more about that
18 because you remember the defendant saying I wasn't sure
19 what his intentions were, if he's gonna reach in and grab
20 my steering wheel or grab my keys. He never touched me.
21 He never touched the steering wheel. So is it okay then
22 to take a knife and jab it in somebody's body? Imminent
23 danger. And, and must be shown a reasonable prudent
24 person of ordinary firmness and courage would have
25 entertained the same belief.

1 So it's not what Kierin Dennis says. What an
2 ordinary reasonable person in that same situation would
3 go, you know what, that man is gonna lose his life, or he
4 was in serious, serious danger of serious bodily injury.
5 And we say ordinary firmness and courage because, well,
6 some people out there are a little more cowardly than
7 others and some people are fanatically brave. We're not
8 talking about a Navy SEAL. We're talking about an
9 ordinary person who is reasonable and who is prudent. In
10 this situation when an ordinary reasonable person says,
11 you know what, there's no way out of here except for me
12 to take a knife and stab it in a man's chest. It's my
13 only way out. It's my only way. Because then you get to
14 the last one.

15 Must not have - must have no other means of avoiding
16 the danger of losing his life or sustaining bodily
17 injury. If there's another way to get out of the
18 trouble, you're required to. If you can roll up that
19 window as opposed to taking a knife and stabbing
20 somebody, you've got to roll that window up. If you can
21 just take your foot off the brake and roll through the
22 crowd, let them slowly get out of your way, you've got to
23 do that. You can't just sit there and say, you know
24 what, I'm scared, therefore, I get to kill. That's not
25 the law. That's not the law. So if it's not self

1 defense, what is murder? Murder is the intentional
2 killing of another human being with malice aforethought.

3 Now, here's something interesting. Both sides agree
4 we've got a killing and it's intentional. They're just
5 claiming it's lawful because he had to do it. He had no
6 other choice. You heard him in opening. He had no other
7 choice. No other choice. He had to do it. The evidence
8 though says malice. And you ask, what is malice?
9 Because malice aforethought, that's the big difference
10 between the two, the two sides, what is malice
11 aforethought? Aforethought just means malice had to be
12 there at the time of the killing. At the time of
13 stabbing he had malice. The law uses a lot of different
14 words to describe malice. Sometimes it uses hatred, ill
15 will, hostility towards another person, evil intent, a
16 heart fatally bent on mischief. And here's some others,
17 and you think about this when you're riding into a crowd
18 full of people, a general malignant recklessness for the
19 lives and safety of others. And finally, conduct showing
20 a total disregard for human life. That's malice.

21 So you're either gonna find malice or self defense.
22 Those are your options in this case. Either he's telling
23 the truth and he's scared to death and he did nothing to
24 cause this situation and he had no alternatives and any
25 reasonably prudent person would agree and he had no way

1 out, or everything he did was with hostility, ill will.
2 It's murder. Those are your choices.

3 Some other charges the Judge is gonna give you, we
4 talk about we have the burden of proof, the State. The
5 defense does not have to put up anything. They don't
6 have to do anything. A defendant should never have to
7 come into a courtroom and produce anything to say, hey,
8 hey, hey, look, look, look. Wait a minute. I'm not
9 guilty. The Judge is gonna tell you that, but you need
10 to hear that from the prosecutor, too. We have the
11 burden, the State. We welcome that burden. So if
12 there's anything that you have heard or anything in your
13 mind that you think that doesn't apply, you need to
14 follow the law. I bear that burden. Me and me alone
15 with my colleagues.

16 You're gonna hear reasonable doubt. We have to
17 carry this burden beyond a reasonable doubt. You hear
18 that a lot. You heard at the beginning the defense used
19 one of the definitions that says a reasonable person
20 hesitates to act. Something that causes a reasonable
21 person to hesitate to act. Sometimes that's confusing
22 though. So what does that mean? Well, that's why our
23 Supreme Court has come in and said, you know what,
24 ultimately it just means that it's evidence that leaves
25 you firmly convinced of the defendant's guilt. Firmly

1 convinced. If we leave you firmly convinced, we have
2 proven our case. That's it. It's not has to be a
3 scientific certainty. It can't exclude all doubts
4 because some doubts can be absolutely unreasonable.
5 You're just firmly convinced.

6 And he's gonna let you know your job as jurors is
7 not to punish or to have mercy. That may strike some of
8 y'all as odd because you always think of that when you
9 come to the courthouse, but that's his job. He's the
10 Judge of the law. He and he alone can decide is this a
11 case where I need to really punish or is there room for
12 mercy. Jurors never decide that because you're not
13 deciding the punishment or the mercy on a case. You
14 decide the facts. You're the judge of the facts. And
15 the Judge is gonna instruct you on that as well. He's
16 gonna assume, and rightfully so that you will follow that
17 oath. You will not stray from that. And he took an
18 oath. He can't do your job. He can't question your
19 decision on these facts.

20 He's also gonna talk to you a little bit about
21 credibility of witnesses. And, folks, when you consider
22 credibility, you've heard statements by the defendant
23 when he was interviewed. You get to determine his
24 credibility too. You've heard a variety of people.
25 You've heard from law enforcement. You heard an expert

1 pathologist. You've heard a variety of people. You've
2 heard some young folks who were out there that night five
3 years ago, a long time ago, certainly in the world of a
4 young person. I want you to keep something in mind when
5 you're weighing their credibility. These folks out there
6 that night experienced something and saw something most
7 mature adults will never see. So when you see a young
8 lady shaking up there, we gave her something to keep her
9 warm and she's still shaking, there might be another
10 reason. When you have a man talking about, you know, I
11 can't remember. I'm blank. Keep that in mind when he
12 talks about trauma. But that's for you and you only.
13 You keep that in mind, but also remember the things that
14 were said and we'll talk a little bit more about what
15 they said.

16 So let's look at these facts. We started at the
17 high school. Our first witness, the principal, y'all
18 remember her. We had the basketball game. It was
19 contentious because two weeks before Dutch Fork and
20 Lexington had played over at Dutch Fork. Dutch Fork had
21 won and it was a really big deal because Dutch Fork
22 usually frankly stinks at basketball. They are a
23 football school as y'all now right now, big time
24 football. So when they won and beat of all schools
25 Lexington, they were, my, gosh, and it got rowdy. That's

1 why law enforcement came here. That's why the principal,
2 y'all heard, Dr. Sherri Walters said they took extra
3 precautions. They didn't want anything going wild here.
4 And lo and behold, lightening struck twice.

5 February 17th, 2014 Dutch Fork won again. And look,
6 for all of us it doesn't matter what school you went to
7 or any of those things. It really doesn't matter. But
8 for those kids it's a big deal. Some kids were beyond
9 elated and some were not and that happens. Some kids had
10 to trash talk. Happens every game, but y'all watched
11 this. What happened here was different because Kierin
12 Dennis wasn't gonna let this go. On the steps of the
13 school as he's coming out right here coming out to the
14 parking lot, remember he and Keith Adams had a run-in
15 with Justin Wallas. Y'all remember Justin Wallas. He's
16 the young man, he's in the Army, Fort Hood, Texas. He
17 leads the cheers. In fact, if you look at State's 5,
18 that's him right there. He's up front and center. He
19 leads the cheers. Good fellow. That was part of his job
20 at the school, lead the cheers so everybody can see
21 Justin Wallas. As he's leaving he's confronted by the
22 defendant and Keith Adams. It's the trash talk. He says
23 he responds when he hears, you don't want what I've got.
24 Well, what is that? This isn't about your school is
25 better or my school is better. It's a threat and that

1 threat doesn't stop there.

2 Y'all remember down in the parking lot it continues.
3 Now, you had a bunch of Dutch Fork kids and it probably
4 did look like a mass of kids out there. They were
5 celebrating, singing, chanting and some of those chants
6 are taunt chants. They are. And you heard Lamar Butler,
7 they formed a little ring and they were dancing. He was
8 dancing in the ring. All of that was going on and you
9 had the defendant, his buddy Will, the crowd, because
10 everywhere Kierin Dennis went, his little ducklings
11 seemed to be close by. He's clearly the guy they
12 followed. They break the ring.

13 Remember Lamar Butler? I love dancing. I love
14 dancing. In fact, the same poster you've got Lamar.
15 What you doing there, Lamar? That's part of this dance
16 called the Nana and I'm gonna tell you in five years I
17 still haven't figured out what it is. Apparently it's
18 old stuff. It's gone. So now the young kids don't even
19 know what it is. You have to go back five years to
20 figure it out. So Lamar was doing this Nana. And
21 remember the defendant's friends walk in, they kind of
22 break up the ring. What is that about? It's just
23 defiance. Y'all may be happy. Y'all may be winning, but
24 we're not going anywhere. We're not going anywhere.
25 This is our school, our turf. You can take your little

1 cheering section and go somewhere else.

2 Remember Deshon Chatman, a young man who didn't even
3 go to Cook Out. As he's walking he sees his buddies
4 dancing. He says I don't dance. On the other side of
5 his car is Chubb Roberson. I know y'all remember Chubb.
6 He's got the long blood hair. Can't miss Chubb. Chubb's
7 a character. What did they both hear independently from
8 one another? They hear the defendant Kierin Dennis
9 saying meet us at Cook Out. Meet us at Cook Out. Got
10 something for you there. That's going beyond chants,
11 folks. That's hostility. That's ill will. It's
12 building. It's building. Right now none of these other
13 students are really on notice that this guy is really
14 going over the edge, but he is. He's taking his little
15 crew with him.

16 You remember Morgan. Morgan Zander. You saw the
17 video. She's out there swinging it around. And what do
18 you hear her saying while the Dutch Fork kids are
19 chanting and dancing and causing a ruckus? She is at the
20 top of her lungs saying, when are we swinging? When are
21 we swinging? When are we fighting? This doesn't end in
22 this parking lot. This isn't gonna end here.

23 You have a couple of mature adults that intervene in
24 this, Officer Willoughby, the deputy out of Richland
25 County. He doesn't know these Lexington kids at all.

1 He's over here because of the prior game and he knows his
2 kids and as he comes out, he says, look, I think I'm done
3 for the day. We got them out of the auditorium. I'm
4 gonna go home. I'm done. It's late. I'm too old to be
5 going out to eat right now. He steps out on those steps.
6 He sees the Dutch Fork crowd whooping it up and a small
7 contingent of Lexington kids. He said everybody else is
8 gone. That man and his buddies hung around. They
9 weren't yielding an inch. They weren't giving up. We
10 will not leave here with our tails between our legs. So
11 he goes down there and he's trying to herd his crew.
12 Y'all go on home. Go back. Go back. And he hears, he
13 hears the big guy Will say something to the effect, and
14 he said I can't really remember, is it, we know where to
15 meet you or y'all know where to meet us. He's confirming
16 and corroborating with what Chubb told you. He's
17 confirming what Deshon told you. There's a threat and
18 there's a place to meet.

19 Remember what he said? If I knew there was a
20 specific restaurant, I would have told Lexington County.
21 I would have told them. But what I did do is I turned
22 around and I looked at my guys and said y'all just need
23 to go back to Irmo. Y'all just need to go back to Irmo.
24 You really do. And Chubb and Deshon did. They left.
25 They left. And Dr. Walters, remember her? She sees Will

1 in his car was his sister and she goes up to him and
2 says, Will, y'all need to be home. Go on home. Get out
3 of here. Because she can see the mess and she hears a
4 honking horn while she's trying to talk to Will, the car
5 right behind Will is blaring a horn and it is that man,
6 Kierin Dennis. She goes, what are you doing? He said
7 tell Will to meet me across the street at the gas
8 station. She says, you don't need to go there. You just
9 need to go home and she said something to the effect of
10 nothing good comes at night or you don't need to be out
11 at night, something to that effect, some motherly
12 teacherly advice that was ignored.

13 I'll tell you, folks, malice can be expressed in
14 words. Meet us at Cook Out. I got something for you.
15 That's expressed malice. Right there you're hearing
16 words the law says are malice. Words of malice. And if
17 you act on it, that's when it becomes murder. You don't
18 want what I got. Remember? He said that to Justin
19 Wallas as he's walking down the steps. Words of malice.
20 Stirring up trouble. Challenging these Dutch Fork
21 students. Meet us. Meet us right down the road. We got
22 something for you.

23 So then everybody pretty much goes to Cook Out.
24 Most of those kids know nothing about what was going on
25 in that parking lot. They left. They get to Cook Out

1 and it's not just Dutch Fork kids. There's Lexington
2 kids. Remember Devon Chatman, he's the twin, but he was
3 in the nice suit, he's in the Air Force, and he goes,
4 yeah, when I was there, I was talking to a number of my
5 high school friends from Lexington. He said, we were
6 having a good chat. It was a good atmosphere.
7 Everybody's loud. It's teenagers. We're just eating.
8 Remember that.

9 Well, the defendant, Mr. Kierin Dennis and his
10 buddies decide they want to go to Cook Out. Look, they
11 can, but why? They go there and as they walk in you have
12 Michael Adams - I mean James, Michael James stands up,
13 does his arms. You see that. He's not blocking anybody,
14 but you remember what Mr. Dennis says he says, is that
15 all you brought? Is that all you brought? Now, why
16 would he say that if there wasn't a threat in the parking
17 lot? Why would he say that? Because what was said in
18 the parking lot, meet us at Cook Out. I got something
19 for you, we got something for you, it's true.

20 Michael James, the mouth, nobody here is gonna
21 contest that, he's the blabber on the Dutch Fork side and
22 Morgan's the high pitched blabber on the other side. We
23 all admit that. Nobody here is gonna fight over that.
24 If we have to fight over that, we can all just go home.
25 We agree. The defendant says, we're just here to eat.

1 So what happens? Michael James sits down. He shuts up.
2 The magic words. Basically we're not here for trouble
3 and yet what were they there for? They were in that Cook
4 Out for 17 minutes. What are they in there for? The
5 same reason they walked into that dance ring. They
6 weren't there to eat. They were there to rain on
7 somebody else's parade. Kierin Dennis never ever took a
8 bite of anything.

9 There is an eerie photograph from the Cook Out and
10 it is Da'Von Capers walking in and he is looking right at
11 this guy who in a matter of minutes will be putting a
12 knife in his chest and killing him. That's on your video
13 that you've got in evidence. Who is there for food?
14 Y'all saw Da'Von Capers multiple times, when he walks in,
15 he's got food in his hands, he sits down and he eats. He
16 must get up five times maybe to go get a new drink, to go
17 get napkins. He's not milling about with his friends.
18 He's a man on a mission. And at one point he's standing
19 up looking at the board like I might end up ordering
20 something else. And right behind him is the defendant
21 and his friends. He is oblivious to them. He's there to
22 eat.

23 But what does this man and his friends do? They
24 stand there. They say there are no tables and, you know,
25 there's no place to sit down. I'm gonna tell you

1 something. If you look at the video clip from Cook Out,
2 you bounce around from the different camera views, you'll
3 see some tables. They never bothered to look. They
4 wanted to be front and center. Front and center. Kierin
5 Dennis was exactly where he wanted to be and they just
6 sat there. He's angry. He's with this crowd and he's
7 angry.

8 Now, I want to ask you this: Y'all saw Morgan point
9 to the security camera. And you will see her brother
10 looking up. He's looking at it, too. Now, why would you
11 do that if you weren't out looking for trouble? What's a
12 security camera matter? Do you think Da'Von Capers knew
13 where the security camera was? He knew where the refill
14 cups were and he knew where the food board was and the
15 cash register. He was there to eat. These others are
16 looking. And she pulls out the old phone again, starts
17 filming them. Do you remember it's that short clip? One
18 of the guys says, they gonna do nothing. And then she
19 says, thug Fork ain't gonna do anything. What are they
20 there for? They're there in this crowd like being in a
21 lion's den and they're being defiant and Kierin Dennis is
22 right there. He walks in, they walk in. He walks out,
23 they walk out. They're being defiant. Y'all aren't
24 going to do anything to us.

25 Well, obviously not. Dutch Fork really didn't care.

1 They didn't care. You see them hopping around, milling
2 around, talking to one another. They were ignoring them.
3 They don't care. They're eating. But no. They're being
4 defiant. Just right there. And it's not that it's too
5 crowded to get food. You saw the counter is clear.
6 That's when big Will, he breaks down. He's got to go get
7 a milk shake. Once he does, once big brother gets a milk
8 shake, his sister has to get a drink. That's all they
9 bought that night. And if Mr. Dennis lost his appetite,
10 then why stay? If it's such a bad atmosphere, why are
11 you there?

12 You hear on his second statement, might have been
13 his first, why you left? Well, I just lost my appetite
14 when I saw those guys. Well, why are you there? Look, I
15 know this is your Cook Out. You come here all the time.
16 This is on your side of town. Why are you staying?
17 Because he's not yielding. I will not leave with my tail
18 between my legs. It's a poke in the eye.

19 You can look at malice by actions and by words.
20 Malice is malice. Text messages. Kierin Dennis is not
21 afraid. He text somebody. There are several texts.
22 We've got it. You'll have it back there with you. But
23 some, ooo, great timing. Now it's picture time. Hello.
24 Nothing, nothing showing fear like, oh, my, God, help us.
25 He's not calling 911, but he does do something

1 interesting. He sends a text. They was trying to fight
2 us at Cook Out. Now it's past 10 but, folks, when he
3 sends it, he's in Cook Out. He says he sends it to his
4 cousin. What's that about? What's that about? And when
5 he gets a phone call, it's his cousin. What is that?
6 What is that? That's when he steps outside and
7 everybody, you see Will hurrying up and getting his milk
8 shake. Kierin's leaving. I've got to leave, too. And
9 his little sister coming behind him, they all leave.
10 They all go out there outside.

11 Kierin leans against the trash can but he's still
12 not going because he is where he wants to be. He's not
13 there to eat. It was never about food. Then we're back
14 to Michael James who comes walking out. Now, folks, if
15 Michael James really wanted to start something, inside
16 that Cook Out would have been the perfect place. He
17 walks out. And y'all have seen this played over and
18 over. As he walks by, you see him walking straight ahead
19 and you see him do a double take and you see Morgan' neck
20 crank. She is barking and he can't help himself. He may
21 have said something as he's walking but he tries to get
22 out a little distance. He does the old Michael James
23 arms, spread. He has to come forward to let a car by,
24 then he steps back some more and then you see Kierin
25 Dennis, his head going forward and when he moves forward,

1 they all move forward. And he doesn't have eyes in the
2 back of his head. He's barking back. He is barking at
3 Michael James. And at that point you heard Lamar say
4 everybody in there that was watching this went out to see
5 if Michael is okay. He's outnumbered. And then we had
6 some like with Devon Chatman, I don't know why they went
7 out. I just went because everybody did. Typical
8 teenagers.

9 And what happened out in that parking lot? Nothing.
10 No fight. Kierin Dennis isn't gonna fight somebody in a
11 parking lot. He's outnumbered and he wasn't ready. So
12 they walk behind him and follow him as he walks through
13 the parking lot. He leaves them alone. Remember, he's
14 walking to Michael James, and then he veers. Time to go
15 to the car. He starts walking to the car wash, which is
16 now as y'all saw blocked off. You can't park down there.
17 I wonder why. But back then you could. You also could
18 get out down there if you wanted. You didn't have to
19 drive through the Cook Out parking lot. And there's an
20 exchange of words but nobody ever throws a punch.
21 There's no blows.

22 So a crowd that was docile has now been revved up
23 again and revved up by the Dennis crew. And then of all
24 the people, if you want to get it going on the Dutch Fork
25 side, get to Michael James. They hit the right button.

1 Boom. We're back in it. Got him up again. Now, don't
2 you know it killed Kierin Dennis to walk across that
3 parking lot like he's defeated. But he wasn't done. He
4 walks down to his car. You have Will parked down there,
5 too. What do you see happening? I'll tell you what you
6 don't see. You don't see anybody following them to their
7 cars. Some of the kids you see going across the street
8 and are leaving, some are going back in the Cook Out, but
9 you got a nice little crew up on the edge of that curb in
10 the parking lot right at the edge of the parking lot
11 waiting to see what they're gonna do next. They're
12 waiting. You see Will pull up. You got it all on video.
13 What does he do? He's comfortable enough to get out of
14 his vehicle, pop the hatch. What's he doing? Why is he
15 popping the hatch? He's getting that metal pipe. Think
16 so? A crowbar. Why? Nobody is messing with you. What
17 does he need in that hatch? He doesn't have a spare milk
18 shake back there. What's back there? You can use your
19 good common sense. And then you see what he does? He
20 drives, here's Cook Out, he drives right up this road and
21 pulls right back around. And so Keith is waiting right
22 here. He pulls right around to Keith and it's around
23 that time that Kierin is pulling up and he pulls up and
24 you have the door to door conversation and you see Will
25 getting out of his car and going to join that

1 conversation. The crowd is just watching. What is going
2 on? Kierin Dennis can't let it go. We can't leave like
3 this, folks. I am not leaving with my tail --

4 MR. RUTHERFORD: Your Honor, I'm sorry. This is
5 clearly testifying to facts that are not in evidence.
6 There is no testimony that anyone said that.

7 THE COURT: I agree. The Solicitor knows not to
8 argue the facts not in evidence. Continue on, please.

9 MR. HUBBARD: It's argument, Judge. Thank you.

10 THE COURT: Mm-hmm.

11 MR. HUBBARD: He's not gonna leave. He is not gonna
12 leave on those terms. He is gonna choose his terms and
13 he does. Because if he just wants to go home, why not.
14 Just go home. Why not leave. When you see the cars
15 moving as they start to go, you remember how they go.
16 You've got Keith pulling out. Keith pulls out and drives
17 right up this road and then turns to the right. Remember
18 that? And Will, Will's behind him. He starts coming
19 around. What is Kierin Dennis doing the minute Keith
20 Adams leaves? He's pulling in and turning around when he
21 could just come right on out up here and leave with him.

22 Folks, your common sense can tell you what's going
23 on. It's like the ballet of cars. It's choreographed.
24 And Will pulls out and what does he do? He's driving
25 down the center portion of this unmarked road. When he

1 gets up into this area, he throws money out. Remember
2 that? This is all y'all are worth. Rolls the window
3 down, makes that spiteful statement. This is all you're
4 worth. Now, here's what he doesn't do. He doesn't pull
5 right over here and throw it at the students. He pulls
6 in right here and throws it on the ground, in the road
7 and all the testimony has him pulling up a little bit.
8 Here's what you'll notice. You go back and watch Will
9 pulling up, he's gonna go off your screen, but you're
10 gonna see another car pull in behind him. It's not
11 Kierin Dennis. And it stops because Will has stopped and
12 you will see Devon Chatman and others over here in this
13 parking lot. You will see their heads turn and they all
14 run to the road to go pick up money and then the car that
15 you're seeing behind Will will move on and leaves
16 unobstructed, even with kids in the road unobstructed.
17 You will not see that car again. He leaves.

18 And Kierin Dennis isn't coming to rescue his buddy
19 because we was already committed to the turn. He was
20 already committed. If he wanted to leave, he could have
21 just stayed right in that far lane here which would have
22 been a proper lane. If he didn't know anything about
23 what Will was doing, hey, knucklehead, I'm going. Catch
24 up. But Will gets out, grabs his pipe and is watching
25 and Kierin Dennis pulls right into that crowd, revs his

1 engine and pulls into the crowd. That's what he does.
2 That is the final straw for these kids. This is not
3 about basketball at this point. It's not about high
4 schools. This is, holy, cow, you darn well almost killed
5 some of us. Conduct showing a total disregard for human
6 life, recklessness for the lives and safety of others.
7 Disregard. Absolutely. But for these kids getting out
8 of the way what would happen? They'd be hit. They'd be
9 hit. That is malice. That is malice. The situation he
10 created. The situation he participated in.

11 Now, Will can throw the money all day, but Kierin
12 Dennis chose where to drive. Into the crowd. Into the
13 crowd. That's what stirred them up. They didn't get
14 upset about money or even about Will's comments. It's
15 about almost getting run over and the only person who did
16 that was Kierin Dennis. He stirred them up. He won't
17 let it go. You'll see a truck pulling in behind Kierin
18 Dennis. It can leave. You will not see that pickup
19 truck again. You watch. You can get out if he had just
20 taken the path that that pickup truck took which was the
21 proper lane as opposed to revving your engine and going
22 into an oncoming lane at kids. You cannot claim self
23 defense now. Absolutely not. It's gone. And you have
24 hostility, evil intent, ill will. It's there. That's
25 what it is.

1 And once he gets there, folks, once he gets there,
2 all right, he hasn't killed anybody. Can he get himself
3 out? He can if he wants. He can if he wants. Because
4 Will's car is not in his lane. There are no kids in
5 front of him. You heard all these kids saying this. And
6 Will, is there a position that Will blocked in his buddy
7 and got out and stood with a crowbar or a pipe while his
8 buddy's car is being molested and his buddy is about to
9 lose his life and he's the idiot that's blocking him in
10 and that Will is not doing anything to help him either by
11 moving his car or running to his aid? Didn't happen.
12 Will is watching and nobody attacks Will or his car.
13 Nobody.

14 Remember in his first statement, maybe even his
15 second one, the defendant talks about, Kierin Dennis
16 talks about people going up to Will's door handles and
17 banging on his car? Sergeant Carter, he talked to
18 Morgan. He talked to Will. Nothing. Nothing was said
19 about any of that. If it had happened, he would have
20 heard it. So here he is sitting there. What's he do?
21 His window's half down. Lamar says he rolls it down even
22 more. Folks, I'm not afraid. I ain't afraid of y'all.
23 Defiance. Stirring that crowd up and feeding off their
24 anger. You heard Alexis Brunson. What the "F" are you
25 doing? You could have killed someone. Regardless of her

1 language, she's right. What were you thinking? But
2 nobody laid a hand on him. He even admits no one ever
3 touched him that night. No one. And he's right there.

4 And what does he say? What does he say? He's got
5 them all stirred up. They're hot as hornets. You don't
6 want what I got. You don't want to do this. Alexis says
7 his hand is down by his side. That knife, that knife
8 they say is a fishing knife and they can show his
9 interest in fishing because he's got a shirt that has a
10 fishing logo, that fishing knife he says is for
11 protection. It's not a fishing knife. It's a hunting
12 knife, but for him it's a knife for protection. What
13 does he do? Why does he have it right there? Did he get
14 that before he turned around? Or instead of moving his
15 little finger and rolling the window up, he took the time
16 to reach and get that knife, put it in his lap, pop the
17 little strip, pull it out of its sheath and hold it
18 there.

19 I'll tell you something, folks, Alexis Brunson just
20 saw him holding his hand down the whole time. She didn't
21 see all that maneuvering. He's ready. He's ready to go.
22 He was ready. He was feeding on their anger and it fed
23 his anger. And he did one more thing. Besides lowering
24 that window saying I'm not afraid, Lamar says he does
25 a head nod. Come closer. When you watch these kids in

1 front of that car, you first watch it, you're gonna have
2 about three seconds when you see the car on the iPad,
3 about three seconds. For about a whole second this story
4 about the deceased being right in that window, you ain't
5 gonna find him. This whole discussion about, well, is he
6 on the curb or not? There's the top of the car right
7 there.

8 Y'all have seen this vehicle set at the same height
9 so that someone who is now a little over six feet, now a
10 little over six feet is above that door frame. So would
11 Da'Von Capers at five seven standing on a six inch curb
12 be visible? Yeah. He wasn't on the curb. He stepped up
13 on the road right at the window. He steps up and he gets
14 stabbed for it. And frankly, folks, whether the hand
15 went in the window, the head went in the window, you know
16 what, ultimately that doesn't matter because if Kierin
17 Dennis started this, if he created this problem, if he
18 contributed to this problem that he's now finding himself
19 in, it doesn't matter. There's no self defense. He can
20 even be afraid, but he's not.

21 And he takes that knife. Remember what he says? I
22 thought I was just punching the guy. For a guy to have
23 the knife in my hand, the knife that -- How do you do
24 that? And who punches like that (indicating)? But he
25 makes the concerted effort to reach and punch through

1 what the doctor said would be the equivalent of a two
2 inch steak. We talked about angles and all that. The
3 doctor tried to explain what that angle was. And it got
4 comical with the recreation. She's not a CSI agent. She
5 knows the injury in the body. The position in the car?
6 Listen, she can testify what might or might not be
7 accurate, but it got comical when you see defense holding
8 their assistant's hand through the window and he's
9 dangling the knife. I'm pretty sure and think all of you
10 are he didn't get stabbed like this (indicating). There
11 was a real effort behind that thrust. It was powered by
12 malice.

13 He goes home. Enroute to his house does he stop by
14 the Sheriff's Department, hey, I've just been attacked?
15 Help me. He goes home. Does he call 911? No. But
16 there's someone at his house, someone at his house that
17 let's you know exactly what's going on. It's mama. If
18 you've just been attacked, you're afraid for your life
19 and you just had to do the most God awful thing to save
20 yourself and you get home, are you gonna tell your mama?
21 You bet. Mom, dear, God, let me tell you what just
22 happened. I just did something but he was gonna kill me.
23 You see, mama. Honey, are you all right? How about your
24 friends? Is everybody okay? I'm calling 911. Don't you
25 worry. Don't worry, sweetheart. You're gonna be all

1 right. But if you did something with evil intent, with
2 malice, if you did something you know is wrong, who is
3 the last person you're gonna tell? Your mama. Your
4 mama.

5 And what does he say in his interview? I just
6 didn't want to bother her. Worrying her. He gets his
7 clothes. In that interview he washes just what he has
8 on. He goes I'm just a kid. He played that card. I'm
9 just a kid. I watch TV. He knows about DNA.
10 Interesting, he doesn't clean out that car. He's not
11 afraid of finding blood in there because that will tell
12 you there wasn't anybody in his car, if that mattered.
13 He takes the knife, and the knives and he buries them.
14 It's interesting. Why in the world would you bury them
15 with this knife in this box? Defense counsel referred to
16 it several times as a shallow grave. It's like he had a
17 little casket for the murder weapon. Why is this knife
18 with it? If he felt like he needed a box, you have to
19 dig more. Was this in that car, too? Is this a
20 companion? Your good common sense can address that. But
21 he showed more respect for that knife burying that knife
22 than he did for Da'Von Capers who bled out in a parking
23 lot.
24 You look at his footprints. He wore boots that
25 night. Pictures of those boots. You don't see boot

1 prints right around that shallow grave. Was it Kierin
2 Dennis or one of Kierin's buddies that buried that knife?
3 You'll never know. You will never know. Officers come
4 to his house. Does he say anything about I was just
5 attacked? Zero. Brent Carter, that first interview.
6 Remember how he was in that first interview? He says,
7 hey, listen, were you scared? Was it basically self
8 defense? Nothing. What an ideal time to go, you know
9 what, I think I can tell you now. That first interview,
10 this scared 18 year old was like show me what you got.
11 What statements? What technology? What videos? Who's
12 saying what? You help me and maybe I can tell you.
13 That's not how it works. What genuinely scared person
14 says that?

15 The second interview, that's when he mentions the
16 knife was for protection, and he gives two stories. One
17 where he's reaching out, reaching out of the car. He
18 says, he says, if you listen to this audio and this
19 video, he says he reached out of the car. Brent Carter
20 asks him, besides that time when you reached out, was
21 there any other time that you reached out of the car?
22 None. It wasn't, no, no, no, no, no, no. You
23 misunderstood me. The answer was none. And then later
24 there was the re-enactment. And, oh, I know, we didn't
25 have a full blown Ford Explorer in here, but Kierin

1 Dennis was the one that was describing whether it was
2 accurate or not when you had that inside the car
3 stabbing. Whether the angle is what Dr. Ross said or
4 not, inside the car stabbing and reaching out in one
5 interview. Two stories, one interview. Is the truth
6 that different that fast?

7 At some point in this interview which goes on for a
8 while the defendant says something interesting. It's
9 like his guard has been dropped. He has now said
10 everything he's had to say and his defense attorney
11 prompts him, you know, what was going on? Why didn't you
12 come forward earlier? And he talks about, well, I was
13 scared. But it's his job to do this and it's not my job.
14 It's his job. But he says something else and it's almost
15 under his breathe and it reveals what's in his heart and
16 mind. It reveals what he's thinking. It reveals the
17 truth.

18 (Playing video.)

19 MR. HUBBARD: I'll tell you what. I'll move on
20 because you know what part it is. Okay. Go ahead.

21 (Playing video.)

22 MR. HUBBARD: I'll tell you what. Y'all got it back
23 there. I'm not gonna make you wait anymore. Y'all know
24 what he says. Y'all know what he says. Yes. I thought
25 I'd get away with it. Yes. I thought I'd get away with

1 it. What man could truly believe he's protecting himself
2 would say that? Yes. I thought I would get away with
3 it. And then he says one other thing. You never get
4 away with murder. Yes. I thought I would get away with
5 it. You never get away with murder. His guard is
6 dropped. He's relaxed and the truth just tumbles right
7 out.

8 Ladies and gentlemen, you've heard a lot of facts.
9 You've heard a lot of witnesses. Do not let Kierin
10 Dennis get away with murder. Thank you.

11 THE COURT: All right. A three minute break. Step
12 in the jury room and then we'll come right back in here.
13 Don't talk about the case.

14 (Whereupon, the jury entered the jury room at 3:20
15 p.m.)

16 (Short break.)

17 BAILIFF: All rise.

18 THE COURT: Ready to go?

19 MR. RUTHERFORD: Yes, Your Honor.

20 THE COURT: Bring the jury.

21 MR. HUBBARD: Your Honor, I have a question. What
22 is your reading on the rule of reply and argument?

23 THE COURT: I don't believe you get one in this
24 case.

25 MR. HUBBARD: Okay. I'm just asking to make sure.

1 THE COURT: Yeah. I think not. If they put up
2 anything, it would go you, him, short rebuttal.

3 MR. HUBBARD: Okay.

4 THE COURT: Again, we've got very little guidance on
5 that one.

6 (Whereupon, the jury entered the courtroom at 3:30
7 p.m.)

8 THE COURT: All right. Mr. Rutherford.

9 MR. RUTHERFORD: Thank you, Your Honor.

10 THE COURT: Mm-hmm.

11 MR. RUTHERFORD: 15 and a half inches. 15 and a
12 half inches. And I would ask that you remember that
13 throughout not only my closing but when you go back and
14 do your deliberations, the importance of 15 and a half
15 inches. As we go back to that night that we have all sat
16 here and had to listen to for the past week and a half we
17 heard a lot of things. We heard a lot of statements come
18 from people who sat on that witness stand. And the
19 Solicitor had his choice of who he called and the first
20 person he called was Dr. Sherri Walters. And I remember
21 getting her name wrong and I remember a note going to
22 Judge correcting me about exactly what her name was
23 because you all paid attention to what she said, who she
24 was and why she was here. And if you did, you didn't
25 hear her talk about Mr. Dennis at all having school

1 spirit, being wrapped up in his school, being wrapped up
2 in the basketball game. You didn't hear any of that.
3 You didn't hear that he honked the horn with malice. He
4 honked the horn and said I was trying to tell Will what
5 to do. If you don't mind, just tell him, and then moved
6 on. She was the assistant principal I believe at the
7 time. The Solicitor called her the principal. Either
8 way, she knew Mr. Dennis and she said she knew Morgan
9 Zander. Never did she say, yes, Kierin Dennis loved
10 Lexington High School and he was gonna defend it to its
11 death. Not one time.

12 And so after that if someone were paying attention,
13 they'd say, well, she just talked about Morgan Zander so
14 we must hear from Morgan Zander. Morgan Zander's name
15 has been mentioned several times. In fact, Investigator
16 Carter said we wouldn't be here but for Morgan Zander.
17 And so like others I waited to hear from Morgan Zander.
18 They never called her. The Solicitor just talked about
19 Will Zander, her brother, kind of heavy set. Said he got
20 out of the car and got a pole. Talked about what he did,
21 but never called him. Well, you heard the witness from
22 the witness stand say that Will and Morgan walked through
23 their dance circle and he said that upset me, made me
24 feel some kind of way. So where are they and why didn't
25 he call them?

1 You heard testimony from Waldon Roberson who sat on
2 that witness stand and said, yes, Kierin said meet us at
3 the Cook Out. But if you use common sense she also said
4 - he also said that he didn't know who Kierin was and if
5 you watched as he sat in the witness stand he never
6 pointed him out and said there he is. He probably just
7 heard the name and just repeated it, but couldn't say
8 that's him and didn't say that's him. He said, oh,
9 Kierin said.

10 You then heard for the first time witnesses said
11 something that could not have been factually similar to
12 what the other ones said because the first witness said,
13 well, the police had his Taser but he had it pointed at
14 the ground. And then Waldon got up and said, I will
15 never forget it. I had my hands up and I was backing up
16 because he was pointing the Taser at me. Well, could
17 Deshon see that? Yeah. He saw that. He was right
18 there. I was with my brother and my brother was arguing
19 with Morgan. Well, where is your brother? The one that
20 was arguing with the girl, where is he? Well, we didn't
21 bring him either. Where is the police officer who was
22 pointing his Taser at Waldon and his brother telling them
23 to back up? Why didn't they call him?

24 You heard Deshon Chatman say, I remember Kierin said
25 meet us at the Cook Out and he said as he said it there

1 was a police officer standing right there. Is it safe to
2 assume that if the police officer heard Kierin say that
3 he would have come in? Absolutely. Why didn't he? It
4 didn't happen. If it did, the police officer would be
5 here, the one that was pointing his Taser at Waldon and
6 his brother telling them to leave would be here saying I
7 heard him say that. Or he would come in and say I didn't
8 hear him say that. What you didn't hear was that police
9 officer at all.

10 Ladies and gentlemen, you had a game and during that
11 game you were shown this picture several times and that
12 shows the Dutch Fork crowd and they are excited and they
13 are dancing and they are happy and they have on their
14 Dutch Fork colors. Kierin Dennis had on a camouflaged
15 jacket. Don't know if Lexington had different colors
16 back then, but he had on camo. He had on his Chicago
17 Bulls cap. I don't know if Lexington and Chicago overlap
18 but if they do, then I'm wrong, but if not, he wasn't
19 even wearing anything from Lexington. But the Solicitor
20 wants you to believe that he couldn't let it go. But did
21 a single witness on that stand say that? He didn't call
22 Morgan to say it. He didn't call Will. He didn't call
23 Keith. He didn't call Lucky. Nobody said from that
24 witness stand where the evidence comes that Kierin Dennis
25 could not leave it alone. Not one person. They didn't

1 have a single witness say that Kierin Dennis cared at all
2 about the game. Why? Why? If he cared so much,
3 certainly we can bring in somebody to say that. Not one
4 witness.

5 Then the testimony is they left and they went to
6 Cook Out. And common sense suggests this Cook Out is on
7 the Lexington side of town and so Kierin Dennis showed up
8 with his friends to the Cook Out and as they showed up
9 they walk in and here is Michael James. Michael James
10 standing in his white shirt and Dutch Fork tie and he
11 says, what's up. Now, the Solicitor would have you
12 believe that he is like a Walmart greeter, I guess, and
13 he just stands and says what's up. But Lamar told you
14 what happened. He told you. He said that Will and
15 Morgan had walked through their dance circle and it made
16 them feel some kind of way and here came Will and Morgan
17 walking and so Michael James took it upon himself to
18 stand up and say, what's up.

19 Now, again, I don't believe I have to tell you that
20 that's an invitation to fight because I think everyone
21 knows when someone stands up and catches you walking in a
22 restaurant and says, what's up, how to take that? And
23 what did Mr. Dennis say? He said, we're just here to get
24 something to eat. Now, again, did Michael James leave?
25 Not at that moment. Kierin walks over to the counter

1 with his friends and they stand there and they're
2 watching this line in front of them. You can see it on
3 the video and you can see how crowded it is. And the
4 Solicitor was talking to Morgan about, well, how was the
5 mood? And then you realize that Morgan was lying. She
6 wasn't even in there at the time.

7 So Kierin and his friends are standing there and
8 they're watching what's going on. They see Michael James
9 who stands and is watching them and it's crowded. Y'all
10 went to that Cook Out. I don't know how it looked at the
11 moment, but when there are people in there and people
12 around there, it's not that big of a place. It's not
13 like this courthouse. It's just a fast foot chain. And
14 so they're standing around, they're looking and at some
15 point they go get their stuff and they walk out the door.

16 Ladies and gentlemen, once they walked outside, if
17 Michael James had never walked out after them, who knows.
18 We may not even be sitting here. But Michael James,
19 chief antagonist, as the Solicitor said, chief talker, he
20 walks out after them. And, Michael James, why did you
21 walk outside? Well, it depends on which story you want
22 to believe and it depends on whether he's talking to you
23 all on the stand or talking to the investigator as to
24 exactly why he walked outside, but if you can use your
25 common sense you know exactly why he walked out. He was

1 looking to antagonize, and so he walks out and says like
2 this (indicating.) And what happened? The Cook Out
3 empties.

4 And what happened after that? Kierin and his
5 friends walk right on past him. And if it's not a big
6 deal, Kierin keeps going, Michael James goes and does
7 whatever he was going to do and he goes back inside. But
8 that's not what happened and it's not what happened
9 because you heard from each one of these witnesses, we
10 watched them when they went to their cars. What are you
11 watching them for? Because at that point they weren't
12 Dutch Fork students. They had become the mob. They had
13 become this giant unruly mob and here is Michael James
14 directing them to come on outside and everybody is
15 waiting to see what happens next.

16 And so they walk to their cars. They have
17 effectively left the Cook Out. And if the mob had not
18 followed them and was standing there waiting on them to
19 drive out, as they put it, oh, we were just on the curb,
20 you can watch the video and see they're everywhere. You
21 went there to see. This is not a big place. This is not
22 a big place. And as you get 30 to 40 students outside in
23 that parking lot where are they going to end up? And the
24 answer is everywhere. And so what did you see on the
25 video? You saw Investigator Carter say there's Zach

1 Lynch as he walks back, and we tracked him as he walks
2 back and he's still doing his little thing and he's
3 looking in different places. Well, where is he? He
4 didn't go to Dutch Fork or Lexington that we know of.
5 He's just a guy on a smoke break. Why didn't they get
6 him? It is because he would have said something that
7 they don't want you to know.

8 Kierin and his friends sat at the back and they came
9 up and they talked and then as they started to leave,
10 here's the mob right on the sidewalk. And they said, oh,
11 Will came up and he threw money out and so everybody ran
12 to get the money. And you see on this video all of these
13 kids that you can see running to the car. How many kids
14 you can't see that are at the car, we have no idea. The
15 Solicitor said that no one touched on Will's car. Well,
16 call him and ask him. But if you don't, why didn't you?
17 Call Morgan. Call Lucky. They were in the car. Why
18 didn't you call them? Why didn't you call the people
19 that ran to his car to say we didn't touch it? Because
20 what you probably would have heard were the same lies
21 that you heard from other witnesses that talked about
22 what happened at Kierin's car.

23 So then they said Kierin pulled up and he like
24 gunned his engine. Well, you had Investigator Carter.
25 Did he go look at the muffler? Does he know what that

1 car sounds like on a normal basis? Do you? I don't know
2 if any of you have ever heard of Harley Davidson before,
3 but it's loud. Would it sound like he was gunning his
4 engine? I don't know. But neither do you because they
5 never brought anybody in to talk about how that car
6 sounded and those kids had never heard it. And they he
7 came running up and when he got there and he stopped,
8 Alexis Brunson had words for him. You almost hit my
9 friends. I said, could you tell that he even saw them?
10 No. Did you see whether his phone was out? The
11 Solicitor said he's texting and calling people. Did
12 you see whether his phone was out? No. Well, again, if
13 you don't know that he saw them and you never heard his
14 car before so you don't know how it sounds, how do you
15 know what happened? But the realty is they don't. It
16 was the mob that was coming over to address, as the
17 Solicitor stated, something that they could not let go.

18 And then, ladies and gentlemen, what you had was not
19 only a bunch of Dutch Fork students that couldn't let it
20 go, what you had was what went tragically wrong. With
21 the benefit of a curb, a curb because every witness said
22 we did not step off of the curb. Alexis, you stepped
23 off? No. Lamar, you stepped down? No. That's what the
24 witnesses said. The witnesses, not what the Solicitor
25 said, what the witnesses testified to, no one stepped

1 down off of the curb. And the Solicitor pointed out
2 something interesting. You don't see anybody's head
3 above the roof of the car. Well, if you're leaning in
4 the window, your head wouldn't be above the roof of the
5 car and what we know is that 15 and a half inches from
6 the top of the head to right below the left nipple is
7 where the incision occurred. With the benefit of the
8 curb, with the benefit of high tops, does that put Mr.
9 Capers aggressively entering Mr. Dennis' car?

10 You see, that night there was a victim. There was a
11 victim, and it was Kierin Dennis as he sat in his car.
12 The law allows anyone, anyone, including Mr. Dennis to
13 not have to run in fear, to not have to be in fear in his
14 own vehicle. If he is in an occupied vehicle and someone
15 tries to take him out, someone tries to reach in, Mr.
16 Dennis by law can react. By law he can defend himself
17 and if he does, if he does and someone is harmed or even
18 killed in the process, Mr. Dennis cannot be held at
19 fault. That's the law. Mr. Dennis has the right to
20 stand his ground in his car no different than he would in
21 the parking lot.

22 And so what happened at that car? Well, the
23 Solicitor kind of glossed over it but what do we know?
24 Alexis, what did you see? I saw this (indicating.)
25 Lamar, what did you see? I saw this (indicating.) I

1 said, well, show me. And he did and I stood there and he
2 realized how close it was. He said, well, he wasn't that
3 close. Show me again. And he did. And I stepped to
4 where the knife would have had to have been. He said it
5 couldn't have been that close. Do it again. And every
6 time at best it would have put Da'Von Capers right here.

7 What do you know about science? Solicitor said Dr.
8 Ross isn't CSI. Well, where is CSI then? Call them.
9 Because if you want to show that Da'Von Capers was not
10 aggressive, that Da'Von Capers couldn't leave it alone,
11 that Da'Von Capers was not crawling in his window, bring
12 CSI, but you don't because that's exactly what they would
13 show. And how? Because as you know from using common
14 sense, you had Lamar and Alexis say that he did just like
15 that (indicating) and by he, it's Kierin Dennis, that he
16 just like that. Just like that (indicating.) And when I
17 asked Dr. Ross if an individual that's sitting in a car
18 and was the punch just like that, where would it end up
19 given this wound, she said it would have meant that
20 Da'Von Capers was almost parallel to the ground standing
21 on a curb six inches higher, another inch higher from the
22 shoes parallel to the ground in the car.

23 And again, Alexis Brunson said the window was down.
24 The window was down. Lamar Butler, do you remember? I
25 don't know. What we know is that using common sense and

1 following the law if someone is sitting in their car,
2 somebody else, Da'Von Capers comes in and sticks his head
3 in the window and reaches as Michael James said into the
4 car, as several other witnesses when I posed that
5 question to Investigator Carter, how many people told you
6 that Da'Von Capers reached in the car? A couple. Well,
7 where are they? Because they didn't fit the narrative?
8 Because you all using observation can see that I'm not
9 that tall. I'm not that big, but standing here I take up
10 the entire window.

11 But what you also saw was this picture. That,
12 ladies and gentlemen, is an SUV and on that SUV you can
13 see the front headlight and you can see the back
14 taillight and all of these people here covering it up.
15 So what Kierin Dennis saw that night was, according to
16 the witnesses, you had Lamar who had pushed Xavier out of
17 the window. Well, why did you push Xavier out of the
18 window? Xavier's a hot head. What was it that Xavier
19 was going to do if Xavier's a hot head and you have to
20 push him from the window? I guess we're just discussing
21 where we're going next. You can use your common sense
22 and say that if Lamar had to push Xavier out of the
23 window because he was a hot head, what was going on at
24 that window? What did you also notice? You notice a car
25 with Dutch Fork kids pull in behind Kierin Dennis. Where

1 are they? Why didn't you call them? They said, oh, we
2 didn't know who they were. Yeah, you do. Two Dutch Fork
3 kids, they pulled up behind Kierin Dennis and then they
4 backed out slowly. Why didn't you call them? Because if
5 you're Kierin Dennis and you pull up and you're
6 surrounded by Dutch Fork kids at your window and behind
7 you you see two more kids that you don't know pull in
8 directly behind you, do you feel trapped?

9 And the law allows someone sitting in an occupied
10 vehicle to presume that when someone reaches in the car
11 and tries to get them out, that person is trying to do
12 them harm and the law allows them to react. What we know
13 is that car backed up. And the Solicitor asked each
14 witness, could he have left? And you finally heard, no,
15 because when he did it, he would hit his own guy. You
16 hear on the Cook Out video, he almost hit his own guy.
17 Well, you can't hit somebody who is not in front of you.
18 So what you now know is that, yes, he was blocked in. He
19 was blocked in when the Dutch Fork kids pulled in behind
20 him and he was blocked in by whoever was in front of him.

21 The Solicitor asked several times what about this
22 car. Tell me exactly where he was. You know, it's kind
23 of like an overhead shot. You looked at overhead shots
24 of the Cook Out and you saw on here different ways the
25 Solicitor pointed out, well, there's this exit down here

1 and there's this one here and there's the back here and
2 then some of you remember pulling into this courthouse
3 and if it was your first time, you didn't know where to
4 park because you had never saw an overhead shot and
5 imagine pulling in at night how it may seem. So showing
6 someone an overhead shot and saying they could have gone
7 out here is like showing someone an overhead shot of this
8 courthouse and saying you could have parked up here on
9 the ramp and you go, I don't know how to get on the ramp.
10 Because that's reality. The common statement is you
11 can't see the forest for the trees because when you're in
12 the forest, all you can see is trees. You don't see a
13 forest.

14 Ladies and gentlemen, that night all Kierin Dennis
15 saw was people trying to get in his car and his window,
16 people behind him and someone in front of him and he was
17 trapped. Not because he wanted to believe it, but
18 because it was reality. You heard it on the iPad video.
19 He almost hit his guy on his way out. You heard it on
20 the iPad video. The Solicitor is asking you not to
21 believe your own witnesses. His own witnesses. I'm
22 sorry. He's asking you to put aside the fact that they
23 told you how the stabbing occurred and that it was just
24 like that. He's asking you to put aside the fact that
25 the doctor testified given that wound and the angle as

1 the witnesses suggested he did that like (indicating),
2 that Mr. Capers would have had to have been almost
3 parallel to ground.

4 And, ladies and gentlemen, what you know is that if
5 Da'Von Capers at five seven was parallel to the ground
6 outside of that car he could have only been hit in his
7 head. The only place that could have happened would have
8 been in the vehicle. So the Solicitor said, well, he
9 could have gone like that and that would have achieved
10 it. But as the Solicitor just stated, Dr. Ross said it
11 had to be with a force to get through a two inch steak.
12 First of all, you can use your common sense and you go,
13 who would do that in a vehicle? Because Kierin was in
14 the car. So who would do that in the car? And if they
15 did and they achieved that, well, why didn't any witness
16 say that?

17 And then you heard the witnesses say what? After it
18 happened, Da'Von stumbled backwards. He just stumbled
19 backwards. Each witness said that. Devon Chatman said
20 he just stumbled backwards. Did they tell you that after
21 he got hit, he did like this? Or was it more reacting to
22 getting punched and stumbling back? The story is clear
23 and the story is simply that Da'Von Capers had no
24 business being in that car; that Da'Von Capers was doing
25 too much; that Da'Von Capers could not let it go; that

1 the malice the Solicitor spoke about was in Da'Von Capers
2 heart. You saw Kierin Dennis at the Cook Out pass Da'Von
3 Capers about five times. Didn't look at him. Didn't say
4 anything. Didn't touch him. Nothing. The Solicitor
5 didn't bring a single witness that showed that Kierin
6 Dennis cared what Da'Von Capers was doing at any point.

7 When the witnesses were on the stand and I said,
8 where was Da'Von Capers? I don't know. Well, was he in
9 the street? No. Well, when did he come up? He just
10 started pushing people out of the way. So Da'Von Capers
11 is not in the road, don't even know where he was except
12 that he had to get to that window. He had to get to that
13 window so much so that he pushed through and you heard
14 Lamar say he pushed through to get to the window. So who
15 couldn't leave it alone? So who couldn't leave it alone?
16 And Kierin Dennis sat in his car, sat in his car where he
17 has a right to be, where the law allows him to be, sat in
18 his car. And what did he do, he defended himself.

19 Now, again, you can look at the factors. You can
20 read all that or you can understand and use common sense
21 as to who had malice that night and who simply did what
22 the law allows them to do.

23 So Kierin Dennis then went home. You remember as he
24 drove off you heard the witnesses say, oh, yeah, they
25 were going after him. You can hear it on the video.

1 They were going after him. So do you know? Does he know
2 what even happened? Well, that's up to Investigator
3 Carter. Kierin comes in and says this is what I have.
4 Explain it to me the way that it was explained to you
5 all. In fact, it was so important to bring in a
6 demonstrative like this that they measure, measurements
7 are off, they measure. They went back and they got a
8 car. It didn't match. But just to be able to show what
9 happened. Why didn't they do that with Kierin? Why was
10 he not allowed to stand here and say this is how it
11 happened?

12 In fact, why didn't they do that with any of the
13 witnesses especially those like Zachary Lynch, Beth
14 Bettini that said something different than what Lexington
15 and Dutch Fork kids say? Why? Because, ladies and
16 gentlemen, if you're not clear on the story, there's only
17 one verdict and it's not guilty. This is not guilty but
18 we need to see. This is their chance. And common sense
19 says if they don't bring in witnesses that say something
20 different than what they want you to believe, then those
21 witnesses weren't gonna say it or they would be here.

22 Where is Xavier Holliday, the hot head? Where is
23 he? What was he gonna come in and say? Oh, what I would
24 have done. Where is Marcus Taylor? You heard the name.
25 Marcus Taylor who is standing back where Kierin came from

1 and he ain't got a shirt on in 40 degree weather in
2 February. And you heard Lamar testify, I asked him, what
3 would that mean to you? He said, nothing good. So
4 again, why didn't Marcus Taylor come in here and explain
5 to you why he took his shirt off when Kierin Dennis was
6 parked there? What would have happened next? What would
7 have happened next? But you know what, the law does not
8 make Kierin find out. It allows him to assume, to
9 presume what's about to happen. Bad things. Just like
10 at the basketball game, bad things.

11 When you go back and you start deliberating, it's
12 okay for you to ask yourself, well, how come we didn't
13 hear from more people. And it's okay for you to wonder
14 that because it's a good question. And if you don't
15 remember hearing from Morgan Zander, it's because she
16 didn't testify, and that's their obligation. If you
17 don't remember hearing from Will Zander, it's because he
18 didn't testify. Again, their obligation. If you don't
19 remember hearing from Keith Adams, their obligation.
20 Beth Bettini, Zachary Lynch, the two people out there
21 that weren't in school that said what they saw. But why
22 didn't you hear from them? Why didn't they come so that
23 they could be posed questions? Officer Kaitlin. Officer
24 Voravudhi who Investigator Carter told you was first on
25 the scene, her dash cam recording what went on. Where is

1 it? Where is it? How come if she's first on the scene
2 and she's talked to people and they're saying things and
3 Investigator Carter told you revealed that maybe other
4 people said that Cape reached in the car, well, where is
5 she and why isn't she here? She's a police officer and
6 if she's important and you believe her to be and you
7 recognize that she didn't come in an testify, it is okay
8 for you to find Kierin Dennis not guilty.

9 Shawn Grant, the police officer who had a Taser. We
10 know who he is. Where is he and why isn't he here?
11 Tyreke Farrow, you heard that name. Xavier Holliday, the
12 hot head. Marcus Taylor with his shirt off. Devon
13 Taylor, Lucky Cook, K.J. Williams, Collin James who was
14 in the car behind Kierin blocking him in. Where is he
15 and why isn't he here? Stephen Davis, Aubrey Walker.
16 All of these people whose names have been mentioned that
17 simply aren't here. The Solicitor told you that it is
18 their burden, that they have to prove that the defendant
19 committed this beyond a reasonable doubt and the
20 defendant is here telling you I don't bear a burden and I
21 didn't do anything wrong. I was sitting in my car and
22 Da'Von Capers tried to reach in. And you can use science
23 and witnesses to prove exactly that.

24 Because, ladies and gentlemen, it is your job to
25 make sure that that burden is clear. That's your job as

1 jurors. So when you go back faced with a situation, you
2 go, what do we do? We've been here for a week. How do
3 we do this? My suggestion is that as you go back you
4 start off with what happened. What do we know? And what
5 you know is that there was a car, there was a person
6 sitting in the car and that person is Kierin Dennis.
7 What do you know after that? You use the science and the
8 witnesses and I believe anyone with common sense can
9 determine that Da'Von Capers was reaching in that car.
10 It was a situation with a bunch of kids that got out of
11 control. It got out of control and the Solicitor wants
12 you to believe that Mr. Dennis is the one that made it go
13 out of control but there is no evidence to prove that.
14 In fact, everything is to the contrary. But if I was a
15 Solicitor asking you to believe an illusion, that may be
16 what I would do as well. I would put up witnesses and
17 those witnesses told lie after lie on the stand, then I
18 would have to pretend like the ball is not in this hand
19 so just watch this one as it moves.

20 So let's talk about things that happened afterwards
21 and what happened to the knife and where it is and what
22 did he tell his mother and what did he do with his
23 clothes. None of that shows malice. Malice towards
24 someone you don't even know, who didn't do anything to
25 you, who passed by you five times. None of that shows

1 malice. None of that shows him thinking about anything
2 except leaving and that the mob led by Michael James come
3 to his car, there's no malice. There's simply an exit.
4 And malice can be formed right beforehand, but malice is
5 not being mad because someone is coming into your car.
6 Malice is expressed, implied. I am going to defend
7 Lexington. Never happened. Nobody ever said that. I
8 love Lexington High School. Nobody ever said that. The
9 malice was Da'Von Capers. The ill will was Da'Von
10 Capers. The person that went out of control that night
11 and that needed to be stopped was Da'Von Capers.

12 What's unfortunate is that you all have to sit here
13 and decide. But that decision is simply if there is not
14 enough to say that Kierin Dennis acted with malice
15 aforethought, if there is not enough to show what
16 actually happened at the car and an exact angle, if there
17 is not enough to show that Kierin Dennis loved Lexington
18 High School so much that he felt the need, then you can
19 find him not guilty. Because doing so simply tells the
20 State you have to do more. You can't come in with this
21 many witnesses that you said were there that saw it, that
22 were a part of it and not bring them in. A jury cannot
23 be asked to do its job if you're not given the tools to
24 do so and we submit that they have not.

25 What we saw that night was a video by Johnny Shaw

1 and in that video you hear him yelling and I asked Devon
2 Capers -- I mean, I'm sorry, Devon Chatman what did he
3 say? I don't know. Do you know what do it for the vine
4 means? I don't know. Well, you'll have the video. You
5 can play it and you can listen to it and you can see the
6 atmosphere. The playing, the laughing by someone who
7 said that they almost got hit and you can watch him as he
8 runs with the cup. And I asked him, why were you
9 running? I don't know. What was funny? I don't know.
10 Nothing. And what you saw then was Johnny Shaw's car,
11 he's not driving but he's simply taking a video of the
12 mood and it's a jovial mob atmosphere. They got these
13 kids to leave and they're all laughing, having a great
14 time until they realize they had gone too far, that they
15 had too far.

16 And again, back to the illusion. Kierin goes home.
17 SLED goes and the agent is sitting there. The Solicitor
18 said, did you see any evidence of any hunting and
19 fishing? And I guess in her mind she's going, you mean
20 besides the camouflaged seats? No. I didn't see any
21 evidence. Besides the camouflaged seats? No. I didn't
22 see anything. And the camouflaged seats in the front and
23 the back? No. I didn't see anything. Besides him
24 having on a camouflaged jacket? No. I didn't see any
25 evidence of hunting and fishing. You mean, besides the

1 fact that he was wearing two fishing shirts? No. I
2 didn't see any evidence of that. Well, you all get to
3 decide whether it's an illusion or whether it's real and
4 trying to get you all to believe that there's no evidence
5 that he was a hunter or fisher wearing a camouflaged coat
6 and with camouflaged seat with fishing shirts on, you're
7 right. Don't believe it.

8 So then I said, well, agent did you see in the
9 garage whether he had any tackle boxes or fishing rods?
10 I don't know. I wasn't looking for that. So let's be
11 clear. You don't know. All you know is that he had
12 camouflaged seats in his truck, that he had fishing
13 shirts on. That's what you know and you're telling the
14 jury that you don't see any evidence that he was a hunter
15 or a fisher. Okay. Fine.

16 Ladies and gentlemen, in the beginning of this we
17 started with two lawyers. Thank you for being here and I
18 think I speak for both of us and the Judge when I tell
19 you thank you so much for coming in and giving us your
20 time. And I apologize for anything that anyone may have
21 done that you found offensive, you were bothered by, but
22 this is a serious case. My name is Todd Rutherford, and
23 I was introduced by my co-counsel earlier, but I have not
24 introduced myself. My name is Todd Rutherford and I
25 represent Kierin Dennis. I represent someone that was

1 charged with a crime that night and we believe he never
2 should have been charged. He took him in that room and
3 he tried to tell his story. He never got the opportunity
4 to do so beyond sitting in a chair as he tried to
5 describe what happened. And if you listen to it you will
6 hear him asking the investigator, do you need me to do it
7 again? Because the truth is the truth. The investigator
8 said he made a decision that night to charge him with
9 murder. That night. It took us a week. Took us a week
10 and we didn't even hear from all the witnesses. And you
11 decided that night? Is there a rush? Why the rush to
12 judgment? Why the illusion. Why the hiding of
13 witnesses?

14 You saw the defendant's license tag and the
15 Solicitor listed it up. The SLED agent said I don't know
16 what it says. She says it's just numbers and letters. I
17 don't know what it says. If she doesn't know that that
18 says psalms 23, I don't know what to tell you. I don't
19 know why they picked Kierin that night. I don't know
20 why. I don't know what Marcus Taylor was doing. I don't
21 know what Michael James was doing. I don't know what
22 Lamar Butler, Xavier Holliday, I don't know what they
23 were doing. But I know that the law allows Kierin to sit
24 in his car and stand his ground. That's what he did.
25 And if you believe that, if you can see that, if you can

1 believe the facts point you in that direction, then you
2 find him not guilty. If you are hesitant to do so and
3 say, well, wait, let me go through this again, any fact
4 that makes you hesitate or not see a clear picture or
5 cause you to say wait, wait, I'm not sure about that,
6 that's doubt. That's doubt. And that, ladies and
7 gentlemen, must be decided in behalf of Kierin Dennis.

8 He was 18 years old at the time. 18 years old.
9 These were a bunch of kids that got out of control. As
10 they got out of control, it came to a tragic end, came to
11 a tragic end for Da'Von Capers because it simply went too
12 far. I'm confident that at the conclusion of your jury
13 service you will decide that Kierin Dennis is not guilty.
14 Thank you.

15 THE COURT: All right. Mr. Richburg, my
16 instructions to y'all will take about 25 minutes. Do
17 y'all want a couple minutes right now and then y'all get
18 a break before you start deliberating or keep rolling?

19 MR. RICHBURG: Yes.

20 THE COURT: Okay. I'll come over here and talk. I
21 recently changed my contact lenses about ten days ago. I
22 used to get away with not wearing these. I have to wear
23 these.

24 So, Mr. Richburg, members of the jury, the State of
25 South Carolina charges the defendant Kierin Marcellus

1 Dennis with the crime of murder. Bear in mind that he
2 has pled not guilty and by that plea he's denied the
3 charges in the indictment. Mr. Dennis comes in the court
4 cloaked with the presumption of innocence and this
5 presumption of innocence continues throughout the case
6 and entitles him to a verdict of not guilty unless and
7 until it is dispelled by the evidence satisfying you, the
8 jury, beyond a reasonable doubt that he is guilty of the
9 offense charged. The state has to prove each and every
10 element of the alleged crime beyond a reasonable doubt.

11 Now, the constitution and law which makes you, the
12 jury, as I told you finders of fact, I am the Judge,
13 basically I am the sole and only instructor of the law.
14 You must accept as correct and true the law which I am
15 instructing and apply it to the evidence as you find it
16 and reach your verdict. If I should make an error in
17 instructing the law, there's another time, another place
18 to consider that error and, if necessary, correct it.
19 For our purposes today you must accept the law as I am
20 instructing it. If you have a different idea of what the
21 law is or what it should be, you must disregard that
22 disagreement or misunderstanding of the law and accept it
23 as I am giving it here this afternoon.

24 Now, I've told you this several times but in every
25 criminal prosecution the State has the burden of proof.

1 The defense has no burden whatsoever and the defendant is
2 presumed innocent. In our state according to our
3 constitution the prosecution must prove its case to the
4 standard of proof called beyond a reasonable doubt before
5 a finding of guilt may occur. If the State fails to meet
6 this high burden, then the defendant is entitled to a
7 verdict of not guilty. A defendant has no responsibility
8 to prove his innocence nor responsibility to disprove his
9 guilt.

10 Now, under our constitution and laws you, as I have
11 told you, are the sole finders of fact in this case. I
12 am not allowed to suggest in any way what I may think or
13 any opinion I may have as to the facts in this case or as
14 to the guilt or innocence of the defendant. That's not
15 my job. You as the finders of fact are the judges of the
16 credibility or believability of the witnesses who have
17 testified in the case.

18 Now, you from your collective judgment can use
19 anything in your history as you use in your every day
20 lives in measuring or evaluating a person's credibility
21 or their believability. You may also use some ideas that
22 have been passed along, what was the manner and
23 appearance of the witness who testified, was the witness
24 straightforward in answering, was the witness hesitant in
25 answering, how did the witness come to know the facts to

1 which he or she testified to, what was his or her ability
2 to know or to recollect these facts, would there be some
3 reason a witness who wants to give testimony which would
4 help or hurt one side or the other. In other words, was
5 a witness biased or prejudiced in any way to one side or
6 the other.

7 You can also consider was the testimony of a witness
8 strengthened or weakened by other testimony or other
9 evidence. You as a jury may believe as much or as little
10 of each witness' testimony as you deem proper. You can
11 believe testimony of a single witness against that of
12 many and just the opposite. You can believe part of a
13 witness' testimony and disbelieve the rest. The fact
14 that testimony is not controverted does not mean that you
15 must accept it as true and undisputed. You still are
16 allowed and get to gauge credibility of the witness to
17 determine the believability of the truth and the facts
18 offered through that testimony.

19 Now, during the trial there were several witnesses
20 presented who were qualified as experts. Ordinarily our
21 Rules of Evidence do not allow or permit witnesses to
22 testify as to their opinions or their conclusions. The
23 exception is an expert witness. An expert witness is a
24 person who by experience and education has become an
25 expert in a field of art, science, profession and may

1 state an opinion in that field they claim to be an expert
2 provided the opinion is relevant and material to the
3 matter being decided in the court. An expert may also
4 state reasons for their opinion. You may consider and
5 should consider any expert's opinion received in evidence
6 in this case like any other evidence. Give it the weight
7 you think it deserves. If you decide the opinion of an
8 expert witness is outweighed by other evidence, you may
9 disregard the opinion entirely. An expert witness'
10 testimony is to be given no greater weight than that of
11 other witnesses simply because the witness is an expert.
12 Further, you are not required to accept an expert's
13 opinion even though it's not contradicted.

14 Now, as the sole fact finders you should listen
15 closely to the evidence, and I'm confident you all have
16 done so. I've observed it. Weighing evidence is
17 entirely a mental process. You must weigh the evidence
18 using your good judgment and your common sense.

19 Now, I allowed jurors to take notes in this case and
20 my instructions on notes are that some people are better
21 note takers than others. The jurors notes should not be
22 given any greater weight or consideration than a
23 recollection of another juror. Remember that only the
24 notes are yours and are intended to help your memory.
25 They should not be taking precedence over anybody else's

1 own independent recollection of the evidence. Jurors who
2 don't take notes should rely on their own memory of the
3 evidence and should not be influenced by the fact that
4 other jurors may have taken notes since notes are only
5 for the note taker's personal use in refreshing his or
6 her memory of the evidence. Recollections of individual
7 jurors should be considered just as reliable as notes
8 taken among all the jurors.

9 In other words, I've told you a note taker's notes
10 don't trump a listener's memory and recollection.
11 Everyone is on equal footing when considering what the
12 testimony was and what facts you're trying to determine.

13 Now, in all cases there are generally two types of
14 evidence which are generally presented during a trial,
15 direct evidence and circumstantial evidence. Direct
16 evidence is the testimony of a person who asserts or
17 claims to have actual firsthand knowledge of a fact such
18 as an eyewitness. Circumstantial evidence is a little
19 different. It's proof of a chain of facts and
20 circumstances indicating the existence of a fact. Our
21 law makes absolutely no distinction between the weight or
22 value given to either direct or circumstantial evidence
23 nor is a greater degree of certainty required of
24 circumstantial evidence than of direct evidence. You
25 should weigh all of the evidence.

1 To the extent the State relies on circumstantial
2 evidence, all of the circumstances must be consistent
3 with one another and when taken together point
4 conclusively to the guilt of the accused beyond a
5 reasonable doubt. If these circumstances merely portray
6 the defendant's behaviors suspicious, then the proof has
7 failed. The facts and circumstances should be considered
8 in light of ordinary experience and common sense. The
9 existence of a fact cannot be based on speculation,
10 surmise or conjecture. Thus, after weighing all of the
11 evidence if you are not convinced of the guilt of the
12 defendant beyond a reasonable doubt, you must find him
13 not guilty.

14 I remind you that no one accused of a crime has to
15 prove his or her innocence. The State must prove his
16 guilt beyond a reasonable doubt.

17 I've been using that term reasonable doubt. What is
18 a reasonable doubt? It is simply this: A reasonable
19 doubt is the kind of doubt which would cause a reasonable
20 person to hesitate to act. The State has the burden of
21 proving the defendant guilty beyond a reasonable doubt
22 and some of you may have served as jurors in civil cases
23 where you were told that it is only necessary to prove a
24 fact is more likely true than not true. That is the
25 greater weight of the evidence or the preponderance

1 standard.

2 In criminal cases such as this one the State's proof
3 must be more powerful than that. It must be beyond a
4 reasonable doubt. Proof beyond a reasonable doubt is
5 proof that leaves you firmly convinced of the defendant's
6 guilt. There are very few things in this world that we
7 know with absolute certainty and in most criminal cases
8 the law does not require proof that overcomes every
9 possible doubt. Reasonable doubt may arise from the
10 evidence which is in the case or from a lack or absence
11 of evidence in this case.

12 Now, if based upon your consideration of the
13 evidence, you are firmly convinced that the defendant is
14 guilty of the crime charged, you must find him guilty.
15 If on the other hand you think there's a real possibility
16 that the defendant is not guilty, you must give the
17 defendant the benefit of the doubt and find him not
18 guilty. I instruct you that the very fact that you as a
19 group of jurors engaged in a full and free discussion on
20 the issue of guilt or non guilt in this case does not
21 automatically mean there's a reasonable doubt in the
22 case. If you have any doubt about anything during the
23 trial, you're required to resolve it in his favor. And
24 if you find the State has not meant its burden of proof
25 beyond a reasonable doubt, he would be entitled to a

1 verdict of not guilty.

2 Now, criminal intent is a necessary element of each
3 crime that must be proven by the State beyond a
4 reasonable doubt. Criminal intent is always a matter
5 that must be determined by the jury from the
6 circumstances surrounding the situation. There is no way
7 to prove intent to a mathematical certainty. There is no
8 way medical science can dissect a person's brain to
9 determine what he or she had in mind. So our law states
10 that criminal intent may be inferred from the
11 circumstances which were shown to have existed both
12 before and after the fact. This is how you, the jury,
13 makes a determination of whether or not the element
14 requiring intent was present.

15 Criminal intent is a state of mind that operates
16 jointly with an act or a failure to act in the commission
17 of a crime. Criminal intent is the mental state of a
18 conscious wrong doing. It is up to you, the jury, to
19 determine what the defendant intended to do based upon
20 the circumstances which were shown to have existed. The
21 State must prove criminal intent beyond a reasonable
22 doubt just as they must prove the other elements of the
23 crime.

24 Now, there was evidence in this case that several
25 witnesses made prior statements which are not consistent

1 with the witness' testimony at trial. You may use this
2 evidence to decide whether to believe the witness or not.
3 You may also use evidence of the earlier contradictory
4 statements to determine the truth of those statements.
5 It's up to you to decide whether to believe the earlier
6 statements and the testimony given at trial. If the
7 witness is shown to have knowingly testified untruthfully
8 concerning any matter or any material matter, you may
9 consider this in determining whether to trust the
10 witness' testimony as to other matters. You may reject
11 all testimony of that witness or give all or part of the
12 testimony the weight that you believe it deserves in this
13 case.

14 Now, a statement alleged to have been made by the
15 defendant was admitted in the evidence in this case. The
16 Court determined the statement was admissible. I
17 instruct you that you must make the ultimate decision as
18 to whether or not the defendant made the statement. If
19 he did make the statement, you must determine if the
20 statement was made by the defendant voluntarily and of
21 his own free will. This means that the statement was not
22 caused by pressure, force, fear, threats, coercion,
23 intimidation, or by hope or promise of leniency or a
24 reward of any kind.

25 In determining whether the statement was voluntary

1 you should consider both the characteristics of the
2 defendant, the details of the questioning, and some of
3 the factors you must consider is the age of the defendant
4 at the time of questioning, his education or lack of
5 education, the defendant's mental ability or capacity,
6 his IQ, or his intelligence, the defendant's background
7 and environment, the place and length of the detention,
8 the nature of the questioning, the advice or lack thereof
9 to the defendant of his constitutional rights including
10 but not limited to the right to remain silent, that any
11 statement could be used against him in a court of law,
12 the right to have a lawyer present, that if he couldn't
13 afford a lawyer, a lawyer would be appointed to represent
14 him without cost, and that he can stop making the
15 statement at any time.

16 You must carefully consider all the surrounding
17 circumstances before you give any weight to an alleged
18 statement. The State has the burden of proving beyond a
19 reasonable doubt that the alleged statement was
20 voluntary. If you determine it was, you may give the
21 statement any further consideration you deem proper. You
22 must decide what weight, if any, should be given to the
23 statement. If you determine the statement was not free
24 and voluntary, you should not consider the statement at
25 all.

1 All right. The specifics of the law in this case, I
2 have given you a general overview of some of the law of
3 the state, but in this case Mr. Dennis is charged with
4 murder. The State must prove beyond a reasonable doubt
5 that Mr. Dennis killed another person with malice
6 aforethought. Malice is defined as hatred, ill will, or
7 hostility towards another person. It is the intentional
8 doing of a wrongful act without just cause or excuse with
9 an intent to inflict injury or under circumstances that
10 the law will infer an evil intent. Malice aforethought
11 is not require that the malice exists for any particular
12 time before the act is committed. The malice must exist
13 in the mind of the defendant just before and at the time
14 of the act, therefore, there must be a combination of the
15 evil intent of the malice and the act itself. Malice
16 aforethought may be either expressed or inferred. These
17 terms, expressed and inferred, do not mean different
18 kinds, but merely the manner in which the malice may be
19 shown to have existed and that's either by direct
20 evidence, by inference from facts and circumstances which
21 may have been proven.

22 Malice may be shown when a person speaks words which
23 express hatred or ill will toward another or when a
24 person is preparing to do the act which was later
25 accomplished. For example, if someone was laying in wait

1 for a person or any other act of preparation showing that
2 the deed was within the defendant's mind. Malice in its
3 legal sense does not necessarily import ill will toward
4 the individual injured, but signifies a general malignant
5 recklessness for the lives and safety of others or a
6 condition of the mind which shows a harm regardless of
7 social duty fatally bent on mischief. Malice can be
8 inferred in any conduct showing a total disregard for
9 human life.

10 Now, in this case Mr. Dennis has raised the defense
11 called self defense. I instruct you our law recognizes
12 the right of every person to defend themselves or another
13 from death or to sustain serious bodily harm. To do this
14 the person may use such force as is reasonably necessary
15 even to the point of taking human life where such is
16 reasonable. The right of self defense is founded upon
17 necessity either actual or reasonable apparent necessity.
18 It is a complete defense to a charge of unlawful homicide
19 should you find that it existed upon the evaluation of
20 the evidence produced at the trial of this case. The
21 existence of self defense entitles the person charged
22 with the commission of an unlawful homicide to a verdict
23 of not guilty.

24 Now, although the defendant has raised the defense
25 of self defense, the burden of proof is not upon him to

1 prove the existence of self defense. As I have already
2 told you, the burden is upon the State to prove his guilt
3 of the crime to which he is accused beyond a reasonable
4 doubt, thus, the burden necessarily requires the State to
5 prove beyond a reasonable doubt the absence of self
6 defense. In order for you to consider the defense of
7 self defense you must obviously know what the elements
8 are. There are four basic elements before self defense
9 may be established.

10 First, it must be shown that the defendant was
11 without fault bringing on the immediate difficulty which
12 gave rise to the necessity of using deadly force which
13 resulted in the taking of a human life. One cannot
14 revoke, initiate, or otherwise through his own fault
15 bring about the difficulty and then claim the right of
16 self defense in using deadly force against an attack
17 which was caused by his provocation.

18 Second, it must be shown at the time the fatal act
19 was committed the defendant actually believed that he was
20 in imminent danger of losing his life or sustaining
21 serious bodily injury or that some other person was, or
22 that the defendant was actually in such imminent danger.
23 The term imminent danger means an immediate or present
24 danger and not a past or future damage.

25 Third, it must be shown that the belief of the

1 person claiming self defense of being in imminent danger
2 was a reasonable belief. It must be shown that a
3 reasonable prudent person of ordinary firmness and
4 courage would have entertained the same belief.

5 Now, the defendant or another person who is being
6 defended was actually in imminent danger, then it must be
7 shown the circumstances were such that it would warrant a
8 person of ordinary prudence and courage to inflict the
9 fateful injury in order to save himself or some other
10 person from death or serious bodily injury.

11 In other words, it must be shown that a reasonably
12 prudent person of ordinary firmness and courage if acting
13 under the same conclusion and entertaining the same
14 belief that deadly force was the only -- I'm sorry.
15 Would have entertained the same belief. Deadly force is
16 only appropriate when necessary and may be only exercised
17 when the defendant entertains a reasonable belief that he
18 or some other person is about to sustain a lose of life
19 or suffer from serious bodily harm.

20 The law of self defense encompasses preventative
21 action taken to protect one's own life and it is such
22 action as taken in anticipation of imminent danger of
23 losing one's life or sustaining serious bodily injury. A
24 defendant has a right to act upon appearances. He may be
25 mistaken. The law does not hold someone to a refined

1 assessment of the danger that might have been
2 accomplished having adequate time to reflect provided,
3 however, the defendant must have acted or should have
4 acted in the belief of the appearance of the danger.

5 In other words, one does not have to wait until his
6 or her assailant gets the advantage, or one always has
7 the right under the law to self preservation from another
8 getting an advantage. There is a requirement that an
9 activity and such belief must be reasonable. What that
10 is, is what a reasonable prudent person acting under the
11 same or similar circumstances would have believed or
12 would have warranted acting as the defendant did.

13 Now, lastly, it must be shown that the defendant had
14 no other means of avoiding the danger of losing his life
15 or sustaining the infliction of serious bodily injury
16 other than to act as he did under these particular
17 circumstances of this case. The facts of this case are
18 for the jury to determine whether this necessity existed.

19 Now, in conclusion, if you find the State has met
20 its burden of proving its case beyond a reasonable doubt
21 including disproving the defense of self defense, you
22 return a verdict of guilt. If you have a reasonable
23 doubt as to the defendant's guilt as it relates to the
24 proof of the unlawful homicide after considering all the
25 evidence received including any evidence of self defense,

1 it would be your duty to resolve that reasonable doubt in
2 his favor and find him not guilty.

3 Now, I instruct and emphasize to you that the fact
4 that the defendant did not testify is not a factor to be
5 considered by you in any way in your deliberations, nor
6 in your consideration of the question of his guilt or his
7 innocence. It must not be considered by you in any
8 manner whatsoever. A defendant has the constitutional
9 right to remain silent and his assertion of this right
10 must not be considered by you in your deliberations. So
11 I repeat under your oath you are to draw no conclusion
12 whatsoever from the fact that he decided in this case to
13 not testify. The fact that he did not testify should not
14 even be discussed in the jury room. The burden of proof
15 is upon the State. The defendant is not required to
16 prove his innocence. The burden of proof remains with
17 the State to prove its case beyond a reasonable doubt.

18 So, Mr. Richburg, and the other members of the jury,
19 as y'all retire to begin your deliberations I want to
20 express the hope that each of you will be mindful of the
21 importance of your duties and responsibilities. You're
22 not called on to serve as jurors very often. You and I
23 are acting for the community and that's why we must see
24 to it that the trial is fair and the verdict is just.
25 It's my responsibility in this case to see that every

1 person tried before me receives fair and impartial
2 justice. As the presiding officer in court I'm
3 thoroughly convinced that whatever verdict you find will
4 be the result of going in the jury room and confining
5 deliberations and consideration of the evidence and the
6 law as you have heard it in this courtroom and not
7 consider anything from outside the courtroom, weighing
8 the evidence fairly and impartially and following my
9 instructions on the applicable law and reaching a
10 unanimous verdict. I'm convinced and very confident
11 y'all will do just that.

12 Now, those are my instructions. I generally provide
13 a copy of these instructions to the jury. I'll probably
14 do that. I have to make a couple corrections of things I
15 read as I went. I'll show you the verdict form which has
16 the caption, the case name. We the jury find the
17 defendant guilty, not guilty. It's very simple. Two
18 options. You decide. That's pretty simple. What
19 happens next is the lawyers kind of inventory the
20 evidence which was admitted, gather it up, the law clerk
21 will print off the list of evidence so y'all know which
22 videos are what and that kind of thing.

23 As soon as I speak to the lawyers about my
24 instructions and they don't have any exceptions or
25 suggestions, Judge, you glossed over this aspect of the

1 law or you didn't instruct on that aspect of the law, if
2 they're correct in their listening and I did skip or
3 gloss over, I may bring you back in and address that.
4 May not. If they're okay with the instructions given,
5 then you will be brought all of the evidence and the
6 verdict form and that's when you begin discussing the
7 case but not until then, okay?

8 Now, after you start deliberating, you're on your
9 time. Y'all want to talk for 45 minutes, take a break,
10 take a break. You can't discuss the case unless all 12
11 are in the jury room. Once you start deliberations, I
12 pull the two alternates out, okay? But y'all work as
13 long as you want to. Take a break, step outside and get
14 fresh air if you like. So now right now in a moment I'm
15 gonna say step in the jury room and let me talk to the
16 lawyers. That's a good time for our break because it
17 will be a few minutes for us to gather up all the
18 evidence and get it to you so it's a perfect time to take
19 a break, go to the restroom, then wait until all 12 are
20 back in there. When you get all 12 and all the evidence,
21 I'll pull the alternates out here and we'll probably
22 dismiss them because they don't stay after this. So
23 that's the status for you.

24 Now, if during deliberations you have a question,
25 Judge, can you explain this aspect of the law, tell me

1 what it is and I'll try to respond to it for you. Video
2 player, that computer on the table is a video player. It
3 generally comes in the jury room so y'all can watch the
4 videos. If you need somebody, probably got somebody
5 young enough that can work the computer. If you need
6 help with that, we'll provide that to you. Anyway, if
7 you need something, question, write it down, hand it to
8 the bailiff, they'll bring it to me, I'll talk to the
9 lawyers then and then we'll try to respond, okay? All
10 right. So for the time being step in the jury room, take
11 a break if you like. We'll address those issues I've got
12 to address and we'll get the deliberations started
13 shortly.

14 (Whereupon, the jury entered the jury room at 4:25
15 p.m.)

16 THE COURT: All right. Any suggestions, comments,
17 exceptions to the instructions?

18 MR. HUBBARD: None from the State, Your Honor.

19 MR. RUTHERFORD: Your Honor, just briefly, did you
20 instruct them, and maybe I missed it, that the verdict
21 had to be unanimous?

22 THE COURT: Yes. That was the next to last
23 sentence.

24 MR. RUTHERFORD: All right.

25 THE COURT: And I stated what the verdict form shows

1 (Whereupon, the jury entered the courtroom at 3:10
2 p.m.)

3 THE COURT: All right. Mr. Richburg, did y'all
4 reach a verdict?

5 MR. RICHBURG: Yes, sir.

6 THE COURT: Was it unanimous?

7 MR. RICHBURG: Yes, sir.

8 THE COURT: All right. Hand it to my bailiff
9 please.

10 MR. RICHBURG: (Proffering.)

11 THE COURT: All right. Madam Clerk, please publish
12 the verdict.

13 THE CLERK: Indictment 2014-GS-32-01440, The State
14 versus Kierin Marcellus Dennis. We the jury find as
15 follows: As to the charge of murder we the jury
16 unanimously find the defendant guilty, and it is so
17 signed by the foreperson. August 27th, 2019.
18 Mr. Foreman, ladies and gentlemen of the jury, if this is
19 your verdict, please indicate each of you by raising your
20 right hand. All hands raised, Your Honor.

21 THE COURT: Any further issues for the jury, Mr.
22 Rutherford?

23 MR. RUTHERFORD: Poll, Your Honor.

24 THE COURT: All right. By the number please.

25 THE CLERK: As I call your juror number, if you will

1 hold your hand up where I can recognize you. I will ask
2 you as to the verdict was this your verdict and is it
3 still your verdict. At that time please respond. Juror
4 175, as to the verdict, was this your verdict and is it
5 still your verdict?

6 KENNETH RICHBURG: Yes, ma'am.

7 THE CLERK: Number 72, as to the verdict, was this
8 year verdict, is it still your verdict?

9 TAYLOR GODFREY: Yes, ma'am.

10 THE CLERK: 47, as to the verdict, was this your
11 verdict, is it still your verdict?

12 DARRYL CRIBB: Yes, ma'am.

13 THE CLERK: 96, as to verdict, was this your
14 verdict, is it still your verdict?

15 MARY HOBBS: Yes, ma'am.

16 THE CLERK: 28, as to the verdict, was this your
17 verdict, is it still your verdict?

18 LAURA BURKETT: Yes.

19 THE CLERK: 95, as to the verdict, was this your
20 verdict, is it still your verdict?

21 DOREEN HINES: Yes.

22 THE CLERK: 119, as to the verdict, was this your
23 verdict, is it still your verdict?

24 MIKAYLA LAIRD: Yes, ma'am.

25 THE CLERK: 134, as to the verdict, was this your

1 verdict, is it still your verdict?

2 ANTHONY MARTIN: Yes, ma'am.

3 THE CLERK: 216, as to the verdict, was this your
4 verdict, is it still your verdict?

5 KIMBERLY WIGGINS: Yes, ma'am.

6 THE CLERK: 105, as to the verdict, was this your
7 verdict, is it still your verdict?

8 LYNN HURST: Yes. It is.

9 THE CLERK: 144, as to the verdict, was this your
10 verdict, is it still your verdict?

11 TODD MEYERS: Yes, ma'am.

12 THE CLERK: 71, as to the verdict, was this your
13 verdict, is it still your verdict?

14 ARTHUR GLOVER: Yes.

15 THE CLERK: All jurors polled, Your Honor.

16 THE COURT: All right. I thank y'all for y'all's
17 service. I want y'all to step back in the jury room.
18 I want to come back and speak to you personally, then
19 we'll send you on your way, explain what you need to do,
20 if you need something for work from the Clerk's Office,
21 we'll deal with that. I'll be back momentarily. Step
22 back in the jury room and then I'll dismiss you.

23 (Whereupon, the jury entered the jury room at 3:13
24 p.m.)

25 (Short break.)

1 sorry. I mean that with all my heart. Thank you.

2 THE COURT: All right. I have heard all of the
3 comments. The sentence of the Court is that Mr. Kierin
4 Dennis be confined to the Department of Corrections for a
5 definite term of 30 years and given credit for his
6 pretrial confinement. Anything else?

7 MR. RUTHERFORD: Nothing, Your Honor.

8 MS. SIMPSON: No, Your Honor.

9 THE COURT: I hope this brings closure to everyone.

10 MR. HUBBARD: Thank you, Your Honor.

11 (Whereupon, Court's Exhibit #3 marked for
12 identification.)

13 WHEREUPON, THE TRIAL WAS CONCLUDED.

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
2015 FEB 10 AM 8) ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON) CASE NO.: 2014-GS-32-01440, 1441

STATE OF SOUTH CAROLINA)
CLERK OF COURT)
LEXINGTON, SC)

vs.)

KIERIN MARCELLUS DENNIS,)

ORDER

Defendant.)

)

THIS MATTER came before the Court for a hearing on Defendant's Motion asserting Statutory Immunity from Prosecution. Defendant has been indicted on one count of Murder and one count of Possession of a Weapon During the Commission of a Violent Crime in which it is alleged that, on February 17, 2014, Defendant killed Da'Von Capers by stabbing him while Mr. Capers was standing outside Mr. Dennis' occupied vehicle in the parking lot of the Cook-Out restaurant in Lexington, South Carolina. Defendant has moved pursuant to the Protection of Persons and Property Act, Section 16-11-410, et. seq., of the South Carolina Code of Laws to dismiss this case, asserting that his act was justified and that, as a result, he is absolved from prosecution pursuant to the immunity granted in Section 16-11-450 of the Act. The Court conducted a hearing on Defendant's Motion beginning November 17, 2014, and concluding November 19, 2014. Present at the hearing were all parties and their respective counsel. Upon hearing the testimony of witnesses from both sides and both oral and written argument from both sides, the Court hereby denies the Motion to Dismiss pursuant to S.C. Code Section 16-11-410, et seq.

FINDINGS OF FACT

On February 17, 2014, a basketball game took place at Lexington High School between Dutch Fork High School and Lexington High School. Among those present at the game were the Defendant, Kierin Dennis, and his friends – Keith Adams, Ketura "Lucky" Cook, William Zander, and Morgan Zander, all current or former students of Lexington High School. Law enforcement provided additional measures of security at the game due to previous incidents between the two schools at previous games. After the game, the Lexington High School students were directed to the front exit of the building, and Dutch Fork High School students were directed to the back exit. Outside in the parking lot, Dutch Fork students were celebrating their win, doing the "Nae Nae" dance. When some Lexington students walked into the dance circle, a confrontation ensued, and law enforcement stepped in to clear the parking lot.

The Defendant and his friends left the parking lot, and they stopped at both McDonald's and Sonic restaurants before deciding to eat at the Cook-Out restaurant in Lexington, which was noticeably full. Several Dutch Fork students were at the Cook-Out, including Davon Chatman, Alexis Brunson, Michael James, Lamar Butler, Kenneth Williams, Jr., Tyreke Farrow, Xavier Holliday, and Da'Von Capers. Several Dutch Fork students testified at the hearing that the atmosphere was calm until the Defendant and his friends entered the restaurant, at which point the atmosphere became tense. Michael James, a Dutch Fork student, asked, "Is that all y'all brought?" at which point the Defendant responded, "We're just here to eat." Defendant and his friends then stood in line to order their food.

Shortly thereafter, Defendant and his friends decided to leave without having received the food they ordered. The Defendant exited the restaurant to take a phone call from his cousin, and Dutch Fork student Michael James followed him outside and exchanged words with the Defendant. The Defendant's friends followed him out of Cook-Out, and the Defendant and his



friends began walking to their vehicles. A crowd of Dutch Fork students followed the group, and words were exchanged between the two groups. The Defendant and his friends continued walking to their vehicles and eventually got into their respective vehicles. The Defendant got into his Ford Explorer, Keith got into his Nissan Armada, and Will, Morgan, and Ketura got into Will's Infiniti. Keith's vehicle was parked in the pet store parking lot adjacent to the Cook-Out parking lot. Will's and the Defendant's vehicles were parked further down at the car wash.

Keith pulled out of the pet store parking lot and stopped at the exit facing the Cook-Out parking lot near the car wash. The Defendant and Will remained in the car wash parking lot for approximately three minutes. Will then pulled up his vehicle, stopped in front of Keith's vehicle, exited, and took something out of the back of his vehicle. Will then pulled forward passing the Cook-Out parking lot where Dutch Fork students had gathered, circled around through the pet store parking lot, and stopped behind Keith's vehicle. Meanwhile, the Defendant pulled his Explorer next to Keith's vehicle in the pet store exit. The Defendant's vehicle was facing the pet store and his driver's side window was next to Keith's driver's side window. Will, who was parked behind Keith, got out of his vehicle to speak with Keith and the Defendant. The conversation lasted approximately two minutes. According to Keith, the three of them discussed, among other things, what exit to take to leave the vicinity.

After approximately five minutes, the Defendant and his friends decided to disperse. Keith pulled up first driving past Dutch Fork students and turned right onto Main Street. Then Will pulled up and stopped his vehicle next to the Dutch Fork students who were standing on the edge of the Cook-Out parking lot. He then rolled his window down and threw money out of the window. Several Dutch Fork students testified that as Will threw out the money, he yelled, "This is all y'all are worth." Some Dutch Fork students ran out into the road to pick up the money.

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While people were in the road attempting to pick up the money, the Defendant pulled into the pet store parking lot and turned his vehicle around so that he was facing the Cook-Out restaurant. The Defendant then drove at an accelerated rate of speed into the area where several Dutch Fork students had gathered, stopping next to the curb in the oncoming lane of traffic. Several Dutch Fork students testified that as the Defendant drove into that area, he nearly struck two people, Tyreke Farrow and Davon Chatman, who were in the road picking up the money that had been thrown. Xavier Holliday testified that he pushed Tyreke out of the way to prevent Tyreke from getting struck by the Defendant's vehicle. Davon Chatman testified that he was able to jump out of the way of the Defendant's vehicle.

Will then exited his vehicle and stood in the road holding a metal pipe. Meanwhile, the Defendant's vehicle was at a stand-still next to the curb where the Dutch Fork students were gathered. The Defendant's car window was rolled halfway down, and several Dutch Fork students testified that as they approached the Defendant's vehicle, he lowered the window a little more. Several students also testified that as the Defendant approached, he was leaning over toward the center console of the vehicle, with his right hand down and out of view. Several Dutch Fork students approached the Defendant's vehicle, yelling and cursing at the Defendant, upset about the Defendant's vehicle nearly hitting some of the Dutch Fork students.

The Defendant testified that he pulled up to the curb because he thought his friend Will might be in danger. He testified that after he pulled up to the curb, twenty or thirty students surrounded his vehicle, making him in fear for his life. He also testified that he thought they were trying to or were going to try to reach into his vehicle and grab him. However, several Dutch Fork students who testified indicated that no one was attempting to attack or grab the Defendant but that they were just standing there talking, albeit in a heated manner. Further, fingerprint analysis and DNA testing revealed no fingerprints or DNA other than that of the

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Defendant either on or in the vehicle. Moreover, several Dutch Fork students who testified indicated that no one was blocking the Defendant's vehicle, preventing him from being able to leave. Also, an iPad video shows one or two vehicles driving past the Defendant's vehicle while he is stationed next to the curb.

At some point after the Dutch Fork students approached the Defendant's vehicle and started talking to the Defendant, the Defendant reached his hand out of the window and stabbed Da'Von Capers who was standing next to the vehicle. He then immediately drove off at a high rate of speed and left the Cook-Out, even though his friend Will's vehicle remained in the same spot where he had stopped it prior to the Defendant pulling up to the curb. Da'Von Capers was later pronounced dead at the Lexington Medical Center.

STANDARD OF REVIEW

The Protection of Persons and Property Act provides immunity from prosecution when it applies. S.C. Code Ann. § 16-11-450 (1976). A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard. *State v. Curry*, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013). In a pretrial hearing to determine whether the Defendant is entitled to immunity under the Act, the Defendant has the burden to prove by the preponderance of the evidence that he is statutorily immune from prosecution. *See State v. Duncan*, 392 S.C. 404, 411, 709 S.E.2d 662, 665 (2011). The Act is stated as an attempt to codify the common law Castle Doctrine. The statement of legislative intent provides:

- (A) It is the intent of the General Assembly to codify the common law Castle Doctrine which recognizes that a person's home is his castle and to extend the doctrine to include an occupied vehicle and the person's place of business.
- (B) The General Assembly finds that it is proper for law-abiding citizens to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves and others.

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(C) The General Assembly finds that Section 20, Article I of the South Carolina Constitution guarantees the right of the people to bear arms, and this right shall not be infringed.

(D) The General Assembly finds that persons residing in or visiting this State have a right to expect to remain unmolested and safe within their homes, businesses, and vehicles.

(E) The General Assembly finds that no person or victim of crime should be required to surrender his personal safety to a criminal, nor should a person or victim be required to needlessly retreat in the face of intrusion or attack.

Section 16-11-420(A)-(E).

The Act reads, in pertinent part, as follows:

(A) A person is presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another person when using deadly force that is intended or likely to cause death or great bodily injury to another person if the person:

(1) against whom the deadly force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcibly entered a dwelling, residence, or occupied vehicle, or if he removes or is attempting to remove another person against his will from the dwelling, residence, or occupied vehicle and;

(2) who uses deadly force knows or has reason to believe that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred.

(C) A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be . . . has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

Section 16-11-440(A), (C).

Section 16-11-440(A) provides a presumption of reasonable fear of imminent peril of death or great bodily injury to a person who uses deadly force if he is attacked by or attempting to remove another from a dwelling, residence, or occupied vehicle. § 16-11-440(A). Subsection (C) provides that a person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be has no duty to retreat and has the right to stand his

ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60. § 16-11-440(C).

In addition to the provisions of the Act, the trial court must also consider the elements of self-defense in determining whether the Defendant is entitled to immunity from prosecution under the Act. *Curry*, 406 S.C. at 371, 752 S.E.2d at 266. This includes all elements of self-defense, save the duty to retreat. *Id.* First, the defendant must be without fault in bringing on the difficulty. *Id.* n.4 (citing *State v. Davis*, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984)). "Any act of the accused in violation of law and reasonably calculated to produce the occasion amounts to bringing on the difficulty and bars the right to assert self-defense." *State v. Slater*, 373 S.C. 66, 70, 644 S.E.2d 50, 52 (2007) (holding that the defendant's act of approaching an altercation that was already underway with a loaded weapon by his side could be reasonably calculated to bring about the difficulty that arose in the case).

Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. *Curry*, 406 S.C. at 371, 752 S.E.2d at 266 n.4. Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. *Id.* The fourth element – the duty to retreat – is the element that is excused under the Act. *Id.* The accused must demonstrate the elements of self-defense, save the fourth element, to the satisfaction of the trial court by the preponderance of the evidence. *Curry*, 406 S.C. at 372, 752 S.E.2d at 267.

ANALYSIS

The Defendant claims immunity from prosecution under both Subsections (A) and (C) of the Act. Subsection (A) has two requirements. Under Subsection (A), a person is entitled to the

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reasonable fear presumption if (1) the person against whom the deadly force is used is in the process of unlawfully and forcefully entering or has unlawfully and forcefully entered... an occupied vehicle AND (2) the person who used deadly force knows or has reason to know that an unlawful and forcible entry or unlawful and forcible act is occurring or has occurred. § 16-11-440(A)(1)-(2).

Regarding the first requirement, the Court finds that the Defendant has not met his burden of proving by the greater weight of the evidence that Da'Von Capers was in the process of unlawfully and forcefully entering an occupied vehicle or that he had unlawfully and forcefully entered an occupied vehicle. Although one witness testified that while he was standing a few dozen feet from the Defendant's vehicle, he saw what appeared to be several students reach inside the Defendant's vehicle, several other witnesses who were actually standing right next to the Defendant's vehicle testified that no one was touching the vehicle or reaching inside, but that they were simply standing next to the vehicle talking to the Defendant, albeit in a heated manner. Further, no fingerprints other than that of the Defendant were found on or in the vehicle. Based on the testimony of witnesses and other evidence, including an iPad video tape, the Court finds that the Defendant has not established the first requirement of Subsection (A) by a preponderance of the evidence.

Regarding the second requirement, the Court finds that the Defendant has failed to prove by the greater weight of the evidence that the Defendant, the person who used deadly force, did not know and had no reason to believe that an unlawful and forcible entry or an unlawful and forcible act was occurring or was about to occur. The Defendant alleges that he had reason to know or believe that Da'Von Capers was in the process of unlawfully and forcefully entering his occupied vehicle. However, the Court finds that based on the totality of the circumstances in this case, that is not credible. Again, several witnesses in the immediate area of the Defendant's

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vehicle testified that no one was touching or placing their hands on or inside the Defendant's vehicle, and the only fingerprints found on or in the vehicle were that of the Defendant. Therefore, the Court finds that the Defendant has not established the second requirement of Subsection (A) by a preponderance of the evidence.

In addition to failing to establish the provisions of Subsection (A) of the Act by a preponderance of the evidence, the Court finds that the Defendant has not established the elements of self-defense by the greater weight of the evidence. Regarding the first element, the Defendant has not shown by a preponderance of the evidence that he was without fault in bringing on the difficulty. The Defendant approached a crowd of Dutch Fork students near the curb at an accelerated rate of speed in the oncoming lane of traffic, nearly hitting at least two Dutch Fork students, and with a weapon at his side. Such an act was reasonably calculated to bring about the difficulty that arose. *See Slater*, 373 S.C. at 70, 644 S.E.2d at 52. Then, rather than attempting to leave, the Defendant kept his vehicle stationary. While the Defendant testified that he was unable to leave, the Court finds that based on the totality of circumstances in the case, that testimony is not credible. The iPad video showing the Defendant's vehicle stationed at the curb shows one or two vehicles driving past the Defendant's vehicle, indicating that he could have left, as these vehicles were clearly able to leave. Thus, the Court finds that he has not established that he was not without fault in bringing on the difficulty.

As to the third element, even if the Defendant established the second element, that he actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, the Defendant has not established by a preponderance of the evidence that a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. As noted above, the Dutch Fork students who testified indicated that no one had even touched the Defendant's vehicle, nor was anyone attempting to remove the Defendant from his vehicle. Also, fingerprint

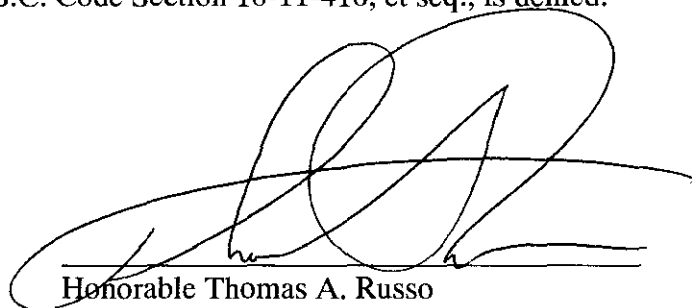
analysis and DNA testing did not reveal that anyone other than the Defendant had their hands on or in the vehicle. Accordingly, the Court finds that the Defendant has not established the elements of self-defense to the satisfaction of the Court by a preponderance of the evidence. Therefore, the Defendant's Motion to Dismiss under Section 16-11-440(A) is denied.

The Defendant also claims immunity from prosecution under Subsection (C) of the Act. Even if Subsection (C) applied, the Defendant would not be entitled to immunity under that subsection because he has not established the elements of self-defense by a preponderance of the evidence as noted above. Therefore, the Defendant's Motion to Dismiss under Section 16-11-440(C) is denied.

CONCLUSION

THEREFORE, IT IS ORDERED that for the foregoing reasons, the Motion to Dismiss the prosecution of this case pursuant to S.C. Code Section 16-11-410, et seq., is denied.

AND IT IS SO ORDERED.



Honorable Thomas A. Russo
Presiding Judge

February ^{7th} 4, 2015
Lexington, South Carolina

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STATE OF SOUTH CAROLINA)
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 COUNTY OF LEXINGTON)
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 State of South Carolina,)
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 vs.)
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 Kierin Marcellus Dennis,)
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 Defendant.)
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IN THE COURT OF GENERAL SESSIONS
 ELEVENTH JUDICIAL CIRCUIT
 CASE NO.: 2014-GS-32-01440, 1441

ORDER

2017 OCT 16 AM 11:13
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 CLERK OF COURT
 LEXINGTON SC

THIS MATTER came before the Court for a hearing on Defendant’s Motion for a second hearing asserting Statutory Immunity from Prosecution based on Protection of Persons and Property Act, Section 16-11-410, et seq., of the Code of Laws of South Carolina. The Court held a hearing on Defendant’s Motion for a new immunity hearing on August 22 & 24 and September 18, 2017. Present at the hearings were all parties and respective counsel.

PROCEDURAL HISTORY

The Defendant has been indicted on one count of Murder and one count of Possession of a Weapon during the Commission of a Violent Crime. The Defendant admits that he stabbed the victim, but asserts his act was justified. The Defendant requested a hearing to seek the Protections of §16-11-450(a) of South Carolina Code of Laws and receive a grant of immunity.

The Honorable Thomas Russo conducted an immunity hearing on November 17, 2014 through November 19, 2014. On February 4, 2015, Judge Russo issued his Order Denying Immunity. A trial began on October 3, 2016 and concluded with the jury deadlocked. The Honorable Eugene Griffith, Jr. declared a mistrial on October 11, 2016. The Defendant filed a

motion for a new immunity hearing based on new evidence which was favorable to the Defense, which was later turned over in discovery both prior to the jury trial and after the jury trial. The evidence presented at the second immunity hearing was testimony of Beth Bettinni¹, Officer Caitlin Voravudhi, Chauncey Meggett, 911 Custodian of Records, Dr. Janice Ross, Zachary Lynch and the State's reply witnesses. Upon hearing testimony of witnesses from both sides and both oral and written argument from both sides, the Court hereby denies the Motion to Dismiss pursuant to S.C. Code Section 16-11-410, et seq.

FINDING OF FACT

On February 17, 2014, Dutch Fork High School beat Lexington High School in a basketball game that took place at Lexington High School. Law enforcement provided additional security at the game due to previous incidents between the two schools at previous games. Among those present at the game were the Defendant, Kierin Dennis, and his friends- Keith Adams, Ketura "Lucky" Cook, William Zander, and Morgan Zander, all current or former students of Lexington High School. After the game, the students of the two high schools were directed to exit separate entrances of the building. Outside of the parking lot, Dutch Fork students were celebrating their win by dancing. Some Lexington students walked into the dance, requiring law enforcement to step in and clear the parking lot.

The Defendant and his friends left the parking lot, stopping at both Macdonald's and Sonic restaurants before deciding to eat at the Cook-Out restaurant in Lexington. Davon Chatman, Alexis Brunson, Michael James, Lamar Butler, and Da'von Capers (the victim) were among the Dutch Fork students identified as being at Cook-Out.

¹ Formerly known as Beth Goodwin



While walking into the cookout, the defendant's friend, Austin Sanders, was leaving the Cook-Out and told the group, "Yeah, I was in the drive-thru and a whole bunch of Dutch Fork kids were just—started getting rowdy in the drive-thru, shaking people's cars, and stuff like that." Despite this comment, Defendant and his group continued into the Cook-out.

The atmosphere inside the Cook-Out was calm until the Defendant and his friends entered the Cook-Out. The Dutch Fork students recognized the Defendant and his friends as the same group they encountered earlier at Lexington High School. Michael James, a Dutch Fork student, asked the Defendant and his friends, "is that all y'all brought?" and the Defendant responded with "we're just here to eat." Additionally, the Defendant texted his same cousin that the Dutch Fork students were "trying to fight [them] at Cook-Out." The group then stood in line to order food. The Defendant and his friends decided to leave without receiving the food they ordered. The Defendant exited the restaurant to take a phone call from his cousin.

The Defendant and friends began walking to their cars after exiting the Cook-Out. A crowd of Dutch Fork students followed the group outside towards their vehicles and words were exchanged. Eventually, the Defendant and his friends walked to their respective vehicles. It is undisputed that no one assaulted or attempted to assault the Defendant and his friends as they walked to their vehicles. The Defendant got into his Gold Ford Explorer, Keith Adams got into his White Nissan Armada, and Will, Morgan, and Ketura got into Will's Silver Infiniti Crossover.

Approximately five minutes later, the Defendant and his friends decided to disperse. Will Zander pulled up and stopped his vehicle next to a group of Dutch Fork students in the Cook-Out driveway. He rolled his window down and threw money out the window, yelling at

the Dutch Fork students, "this is all y'all are worth." Some Dutch Fork students ran out into the road to pick up the thrown money.

While the students were attempting to pick up the money, the Defendant pulled into the pet store parking lot and turned his vehicle around so he was facing the Cook-Out restaurant. The Defendant then accelerated rapidly into the crowd of students picking up the money, slamming on his brakes and driving in the wrong lane of traffic. The Defendant nearly hit Tyreke Farrow and Davon Chatman. Xavier Holliday testified that he pushed Tyreke out of the way to prevent the vehicle from striking him. Chatman was able to jump out of the way.

At this time, Will Zander exited his own vehicle holding a metal pipe. A group of students crowded around the car window. Da'von Capers (the victim) was among the students at the Defendant's window. The students gathered around the car for around a minute prior to Defendant fatally stabbing Da'von Capers. The Defendant's car window was rolled halfway down, and several Dutch Fork students testified that as they approached the Defendant's vehicle, he lowered the window even more. The Defendant sped out of the parking lot right after the stabbing. Da'von Capers was later pronounced dead at the Lexington Medical Center.

STANDARD OF REVIEW

The Protection of Persons and Property Act provides immunity from prosecution when it applies. S.C. Code Ann. Section 16-11-450 (1976). A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard. *State v. Curry*, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013). In a pretrial hearing to determine whether the Defendant is entitled to immunity under the Act, the Defendant has the burden to prove by the preponderance of the evidence that he is statutorily immune from prosecution. *See State v.*

Duncan, 392 S.C. 404, 411, 709 S.E.2d 662, 665 (2011). The Act is stated as an attempt to codify the common law Castle Doctrine. §§16-11-440(A), (C).

Section 16-11-440(A) provides a presumption of reasonable fear of imminent peril of death or great bodily injury to a person who uses deadly force if he is attacked by or attempting to remove another from a dwelling, residence, or occupied vehicle. §16-11-440(A). Subsection (C) provides that a person who is not engaged in an unlawful activity and is attacked in another place where he has a right to be has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60. §16-11-440(C).

ANALYSIS

The South Carolina Supreme Court has found that, consistent with the text of the Act and the Castle Doctrine, a valid case of self-defense must exist and the trial court must consider the elements of self-defense to determine a defendant's entitlement to immunity under the Act. *See State v. Curry*, 406 S.C. at 371, 752 S.E.2d at 266. This includes all elements of self-defense, save the duty to retreat. *See id.* At 371, 752 S.E.2d at 266.

The first element requires the defendant must be without fault in bringing the difficulty. *Id.* n.4 (citing *State v. Davis*, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984)). The evidence, which consists of video surveillance and witness testimony, shows the Defendant seeking out the Cook-Out restaurant and the Dutch Fork students that night. The Defendant chose the situation that led to the altercation with the Dutch Fork students. The Defendant also chose not to leave the other exits that were available to him. He chose to drive into a crowd of Dutch Fork students.

Second, the Defendant must have actually believed he was in imminent danger of losing life or sustaining serious bodily injury, or he actually was in such imminent danger. *Id.* The Defendant has failed to do so in this case. The Defendant and his friends went to the Cook-Out, knowing that Dutch Fork Students would be present. The Defendant could have left the Cook-Out without coming into contact with any Dutch Fork students, but he chose the route he left to assault and incite the Dutch Fork students. Additionally, the testimony as to the “fear in his eyes,” given by Beth Bettinni and the Defendant, are in direct contradiction with the testimony of the Dutch Fork students.

Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. *Id.* This standard has not been established by the preponderance of evidence, based upon the inconsistent testimony.

The fourth element, the Defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance, does not have to be proven in the present case.

Accordingly, the Court finds that the Defendant has not established the elements of self-defense to the satisfaction of the Court by a preponderance of the evidence.

Under the facts before this Court, the Defendant’s claim of self-defense presents a quintessential jury question. See *State v. Curry*, 406 S.C. 364, 752 S.E.2d 263 (2013) (Murder defendant was not entitled to immunity from prosecution under Protection of Persons and Property Act where testimony of defendant and eyewitnesses was in direct conflict as to whether victim attacked defendant). The direct contradiction between witnesses creates an issue for a jury to decide, not the trial court. Therefore, immunity does not apply because the Defendant has not

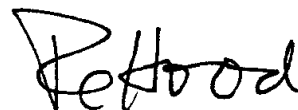
proven beyond a preponderance of evidence standard of self-defense. The Court finds that the Defendant has not established the elements of self-defense by the greater weight of the evidence.

Based upon the denial of immunity, the Court does not need to reach a ruling on the merits of whether or not Defendant was entitled to a second hearing. The Defendant was given the opportunity to present and proffer the evidence and the Court has considered the evidence. The state was allowed to respond. Further, the Court read the testimony from the original immunity hearing and the jury trial. The testimony has been heard and the record has been protected.

CONCLUSION

THEREFORE, IT IS ORDERED that for the foregoing reasons, the Motion to Dismiss the prosecution of this case pursuant to S.C. Code Section 16-11-410, et seq., is denied.

AND IT IS SO ORDERED.



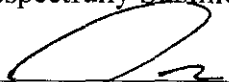
Honorable Robert E. Hood
Presiding Judge

October 11, 2017
Lexington, South Carolina

5. The 911 recordings were never produced at trial; no valid reason was given for such omission which may have served to exculpate Defendant.
6. Dash-cam video shown during trial further revealed Elizabeth Bettini's present sense impression as the attack on Defendant unfolded as articulated during testimony.
7. The manager of the Cook Out restaurant on duty the night in question was standing outside while taking a break. He testified as to his vantage of the attack on Defendant and recalled that Da'Von Capers was in fact the aggressor when Capers entered Kierin Dennis' occupied vehicle.
8. The above evidence was not heard during the initial stand your ground hearing, consequently, in the interest of justice, it is essential that this newly discovered evidence be heard and considered by this Court.

NOW THEREFORE attorney for Defendant, Kierin Dennis, moves this Honorable Court to conduct a hearing regarding Defendant's immunity from prosecution under S.C. Code § 16-11-440(A) and (C) in light of the above newly revealed evidence and testimony gained during trial and enter such Order deeming Defendant immune from prosecution.

Respectfully Submitted,



J. Todd Rutherford, Esquire
2113 Park Street
Post Office Box 1452
Columbia, South Carolina 29202
(803) 256-3003
Attorney for Defendant

Lexington, South Carolina

This _____ day of _____, 2017

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STATE OF SOUTH CAROLINA)
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 COUNTY OF LEXINGTON)
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 The State of South Carolina,)
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 vs.)
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 Kierin Dennis,)
)
 Defendant.)
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IN THE COURT OF GENERAL SESSIONS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Case No.: 2014-GS-32-01440

2014A32005 00047

BRIEF IN SUPPORT OF DEFENDANT'S
RENEWED MOTION FOR HEARING
PURSUANT TO
S.C. CODE §§ 16-11-440(A) AND (C)

Kierin Dennis, the above-captioned Defendant, by and through his undersigned counsel, respectfully submits this Brief in further support of Defendant's Renewed Motion for Hearing Pursuant to S.C. Code §§ 16-11-440(A) and (C), and hereby asserts as follows:

STATEMENT OF FACTS

On February 17, 2014, Defendant attended a basketball game between his alma mater, Lexington High School, and rival Dutch Fork High School.¹ He was joined by his friends, Keith Adams, Ketura "Lucky" Cook, William Zander, and Mr. Zander's sister, Morgan Zander. The game, which was held in the Lexington High School Gymnasium, was an intense one—requiring additional measures of security when the game ended. The Lexington High School students were directed to exit the building from the front of the gymnasium, while the Dutch Fork High School students were required to take the back exit. As Defendant and his friends were walking to their vehicles, a number of Dutch Fork High School students (hereinafter referred to as "Dutch Fork students") made their way back to the front of the building and began harassing Lexington High School fans. A police officer standing in the parking lot ordered the disorderly Dutch Fork students to disperse to ensure everyone's safety.

¹ Dutch Fork High School won the game by five points.

LISA M. CONNER
CLERK OF COURT
LEXINGTON SC

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After the game, Defendant and his friends went to a local Cook-Out to get some food. As soon as the group walked in, they were immediately accosted by a Dutch Fork student, Michael James, who wanted to know if their group of five was “all [they] brought” with them. Defendant dismissed the inquiry by replying, “We just came here to eat.” (This was Defendant’s first attempt to avoid conflict.) As the group was standing in line, Defendant observed Mr. James—the same man who approached him at the door—standing on a chair making a punching gesture over the back of Mr. Adams’ head.² At that point, Defendant told his friends that they should leave the restaurant, even offering to reimburse his friends for their food. (This was Defendant’s second attempt to avoid conflict.) Defendant then stepped outside to talk on the phone with his cousin, Tobias Davis.³ Defendant’s friends followed him out of Cook-Out.

Shortly thereafter, Mr. James—the Dutch Fork student who had antagonized the group earlier—walked outside and began a word exchange with Defendant, asking if he’s “still salty” about losing the game, as he walked in the direction of Defendant and his friends’ parked vehicles. Defendant and his friends began walking to their vehicles—passing Mr. James on the way. (This was Defendant’s third time attempting to avoid conflict.) As they continued to walk to their vehicles, a crowd of rowdy Dutch Fork students stormed out of Cook-Out and began following behind Defendant and his friends, yelling expletives and making threats.⁴

When Defendant and his friends arrived at their vehicles, they pulled up beside one other to discuss how they would spend the remainder of the night. Uncomfortable and fearful, the group decided to retire for the evening. Mr. Adams exited first; Mr. Zander followed, but made the unwise, impulsive decision to stop and throw money out of his window. Defendant, who was

² The video footage from inside Cook-Out corroborates this incident.

³ Mr. Davis called Mr. Dennis after receiving a text from Mr. Dennis which stated that the Dutch Fork students were trying to fight him and his friends at Cook-Out.

⁴ There were no less than 20 Dutch Fork students following Mr. Dennis and his friends.

last in the caravan, did not see Mr. Zander throw the money. When he looked ahead, Defendant saw the Dutch Fork students—the same people antagonizing them with verbal assaults and violent gestures, the same ones threatening to physically harm him and his friends only minutes before, the very same individuals who kept him and his friends from getting the food for which they stood in line and paid for—surrounding Mr. Zander’s vehicle. Out of concern for his friend’s safety, Defendant pulled up to Mr. Zander’s vehicle to make sure he was not being harmed. When he was close enough to see, Defendant realized that Mr. Zander was not being attacked; he sat quietly waiting for Mr. Zander to pull off.

The Dutch Fork students aggressively swarmed Defendant’s vehicle, yelling and screaming expletives at him. Mr. Zander, who was parked diagonally in front of the Defendant, placed his car in park, exited his vehicle, retrieved a metal stick from his trunk, and stood there holding it in anticipation of the Dutch Fork students next move. One of the Dutch Fork students, Mr. Capers, started banging on Defendant’s vehicle. When Mr. Capers got to Defendant’s window, he bent over and reached into the Defendant’s vehicle. The Defendant, shocked and scared for his life, grabbed a knife located in his center console with his right hand and swung toward the window in order to defend himself. This resulted in the stabbing and subsequent death of Mr. Capers. When Mr. Capers stepped back and the Dutch Fork students dispersed, Defendant pulled off, almost hitting Mr. Zander.

Defendant was subsequently indicted on one count of Murder and one count of Possession of a Weapon during the Commission of a Violent Crime, but asserts his act was justified and that, as a result, he is absolved from prosecution, pursuant to the immunity granted in section 16-11-450(A) of the South Carolina Code.

ARGUMENT

A. The Defendant has established by the preponderance of the evidence that he is entitled to immunity.

Defendant was occupying his vehicle when he was surrounded by a crowd of Dutch Fork students who were yelling threats and taunting him. They were throwing trash and other items at the vehicle, banging on his vehicle, reaching into the window, grasping at whatever they could reach. The Defendant was in fear for his life. Therefore, his right to use deadly force against Mr. Capers, who reached into Defendant's occupied vehicle is codified in Section 16-11-420(A).

The State argues that Section 16-11-420(B)(3) precludes Defendant from invoking immunity from prosecution pursuant to Section 16-11-440(A) based on their interpretation of *State v. Curry*, 406 S.C. 365, 752 S.E.2d 263 (2013). The State purports that the Defendant pulling up behind Mr. Zander and supposedly almost hitting the Dutch Fork students standing in the roadway, constitutes "aggression or fault," as well as an attempted assault on the part of the Defendant. The State's theory is illogical. If the Defendant was the aggressor that night and was attempting to assault the Dutch Fork students with his vehicle as the State alleges, why then did the Defendant stop his vehicle? Why did the Defendant not speed off and hit the Dutch Fork students who were surrounding his vehicle and taunting him as is evidenced by the Ipad video offered by the State? The State's nonsensical argument is essentially that the Defendant stopped his own attempted assault on the Dutch Fork students for no reason.

Defendant's more reasonable assertion is that he pulled up behind Mr. Zander not as an act of aggression nor as part of some grand conspiracy as the Solicitor alleges, but rather in defense of his friend, whom Defendant thought might have been under attack. Without seeing Mr. Zander throw money, the Defendant looked up and saw a crowd of Dutch Fork students rushing Mr. Zander's vehicle. After being chased out of the restaurant before they could even

eat their food, then being followed out of the restaurant by a swarm of students, and then still even further pursued while attempting to escape to their vehicles; the Defendant reasonably believed the Dutch Fork students were following through on the threats they had been making the entire night, and attacking his friends. Hence, Defendant was simply coming to the aid of his friend.

Under common law, the right to protect another arises under the same circumstances as self-defense. *State v. Cook*, 78 S.C. 253, 59 S.E. 862 (1907); see also *State v. Long*, 325 S.C. 59, 64, 480 S.E.2d 62, 64 (1997). Pursuant to *State v. Dickey*, 394 S.C. 491, 716 S.E.2d 97 (2011)—a case in which a security guard who was called to defend a resident of the apartment where he worked (by evicting the resident’s belligerent guest), shot and killed the guest when he saw the guest reaching for a weapon, later discovered to be a glass bottle—a person has the right to act on appearances, even if the person’s belief is ultimately mistaken. Similarly, Defendant was acting on the reasonable appearance that Mr. Zander was being harmed. Thus, his pulling up behind Mr. Zander to see if Mr. Zander was in danger, was not unlawful.

Furthermore, the crime of assault is an “unlawful attempt . . . to commit a violent injury upon the person of another, coupled with a present ability to complete the attempt or offer by a battery.” *Matter of McGee*, 278 S.C. 506, 507, 299 S.E.2d 334, 334 (1983). Defendant did not act in an effort to commit a violent injury on any of the Dutch Fork students. He did not have the requisite intent to injure any of the Dutch Fork Students; Defendant simply pulled his vehicle forward to see what was taking place around Mr. Zander’s vehicle. As such, Defendant was not using his vehicle to commit nor further any unlawful activity.⁵ Absent any unlawful activity on the part of Defendant, none of the above exceptions (of subsection (B)(3)) apply with regard to

⁵ If anything, the Dutch Fork students were ones who committed assault that evening.

his case, and the presumption of fear remains.⁶ Hence, Defendant is entitled to the immunity provided by the act.

B. The Defendant proved that “new” evidence, discovered after trial, exists warranting a new hearing.

The State also contends that Defendant is not entitled to immunity from prosecution because Mr. Capers was not entering or attempting to enter Defendant’s vehicle. The only witnesses the State offered in support of their claim and the murder charge against the Defendant, are friends and high school classmates of the deceased, who were also the main instigators of violence that night. After the initial Stand Your Ground hearing, Defendant became aware of the importance of two impartial and unbiased witnesses whose significance to Defendant’s case was stifled by the State; Beth Bettini and Zachary Lynch. Both eye witnesses were detached observers of the night’s events; both witnesses recounted in detail what they had witnessed to the two police officers first on the scene and their statements were captured by both police officer’s dash cam. Their eye witness accounts corroborate Defendant’s assertion that Mr. Capers was the aggressor and/or had been reaching into Defendant’s vehicle, and that Defendant had reacted out of fear for his safety.

1. Beth Bettini

The State claims that Ms. Bettini, an adult woman, who is married with children, is not a credible witness. Initially, the State predicated their disbelief of anything Ms. Bettini had to say on the fact that they were unable to find any record of Ms. Bettini calling 911 that night. Even though Ms. Bettini can be heard on Officer Voravudhi’s dash cam telling her that she had called 911 and even though Ms. Bettini, who knew Investigator Carter personally, told him specifically

⁶ Unlike the victim in *Curry*, Mr. Capers had no right to be in the Defendant’s occupied vehicle. Thus, employing subsection (B)(1) would be inappropriate in this instance. Hence, none of the above exceptions apply with regard to this case, so the presumption remains.

as soon as he arrived on the scene that she had called 911, the State was still unable to produce a record of Ms. Bettini's 911 call and therefore deemed her a liar. Ironically, on July 20, 2017, more than three years later, after a Stand Your Ground hearing and a murder trial, the State finally discovered the call log of the 911 call Ms. Bettini had made that night. Again, the absence of this call log was what had ultimately lead the State to disregard Ms. Bettini's account of that night.

Moreover, even after discovering a phone record of Ms. Bettini's 911 call, the State still attempts to discredit Ms. Bettini by attempting to point out some kind of inconsistency with the minutes of when the State claims a stabbing was first mentioned to a 911 operator and when Ms. Bettini asserts that the 911 operator she was speaking with asked her about a knife. Unfortunately, it is only due to the State's spoliation of a critical piece of evidence, Ms. Bettini's 911 recording, that the State can even make this argument. It is unclear why the State did not attempt to locate and preserve the recording of Ms. Bettini's phone call to 911, especially after she had adamantly told several law enforcement officers and the lead investigator that she had.

2. Zachary Lynch

The State also attempts to discount Zachary Lynch's testimony, claiming that his testimony is confusing and contradictory. However, understanding that multiple events occurred that night, Mr. Lynch's seemingly confusing account of the different events he observed are all in fact true. At the time of his interview, Mr. Lynch was unaware of which of the incidents he had observed was the stabbing and therefore did not know which of the events he had observed were of significance. When Mr. Lynch was asked to recount what he had witnessed, he was attempting to do so from memory, after being awake for 24 hours and without the knowledge of a single individual involved. His apparent confusion is understandable given the fact that he was never shown a picture or video and then asked to explain what he had seen. Likewise, the State's

own key witness stated that she thought the Defendant's vehicle was white.⁷ When Mr. Lynch saw Mr. Capers reach into Defendant's vehicle, Mr. Lynch initially thought that Mr. Capers had stabbed Defendant. Similarly, when Mr. Lynch wrote and stated that he saw an individual reach into a car, walk away, and then run back to the vehicle, what he was observed was Mr. Zander, taking the metal pipe out of his vehicle. An incident almost all of the other witnesses had also observed.

3. Ervin "Chauncey" Meggett

The State also attempts to negate the significance of Ervin "Chauncey" Meggett's statements to Investigator Sullivan during his interview on August 26, 2016, a witness not identified until two years after the initial Stand Your Ground hearing. Although the Solicitor claims that it was a paralegal who interviewed Mr. Meggett, it was Investigator Sullivan who actually interviewed Mr. Meggett while a paralegal from the Solicitor's office took notes. Mr. Meggett, a friend of Mr. Capers who was standing next to him at Defendant's car window, told Investigator Sullivan that Mr. Capers was banging on the Defendant's vehicle and that Mr. Capers was in the wrong. Mr. Meggett explicitly stated to Investigator Sullivan that "[h]ow I seen it, I know Cape was in the wrong by the way he approached because old dude was trying to leave." Mr. Meggett also told Investigator Sullivan that when Mr. Capers was banging on the window he was upset, telling Defendant to get out of the car. Furthermore, Mr. Meggett admitted to Investigator Sullivan that he used the word "scared" to describe Defendant because that is probably how he would feel if someone was banging on his window. Finally, Mr. Meggett revealed to Investigator Sullivan that "[s]omething made him mad because I've never seen him like that. It was out of character for him to act the way he did that night at the car."

⁷ At 20:00 in Officer Voravudhi's dash cam, when asked about the Gold SUV, Alexis Brunson can be heard saying that she doesn't know anything about a gold SUV because she thought all the vehicles were white and at 24:15 she is also heard saying that she isn't completely positive that it was Mr. Capers who had been stabbed.

4. Dr. Janice Ross

Additionally, the medical opinion of Dr. Janice Ross, the Pathologist who performed the autopsy of Mr. Capers, further corroborates Defendant's assertion that the deceased was reaching into Defendant's vehicle. Dr. Ross concurred that based on the trajectory of the stab wound and the Defendant's position inside a vehicle, the most probable scenario is that the deceased was bent over, with his body parallel to the ground when he was stabbed. Investigator Carter, who had been the lead detective on this case for the past 3 years, also confirmed the legitimacy of Dr. Ross' opinion with his visual demonstration of how the Defendant stabbed Mr. Capers, when he was on the stand.

The trial court, in denying the Defendant a grant of immunity stated that "the Court finds that the Defendant has not met his burden of proving by the greater weight of the evidence that Da'Von Capers was in the process of unlawfully and forcefully entering an occupied vehicle or that he had unlawfully and forcefully entered an occupied vehicle." The trial court came to this conclusion based on the fact that "[a]lthough one witness testified that while he was standing a few dozen feet from the Defendant's vehicle, several other witnesses who were actually standing right next to the Defendant's vehicle testified that no one was touching the vehicle or reaching inside, but that they were simply standing next to the vehicle talking to the Defendant, albeit in a heated manner."


Neither the Defendant nor the State were aware of the importance of these vital witnesses' statements prior to the initial Stand Your Ground Hearing in November 2014. Due to the narrowly focused and hastily conducted investigation, both the State and the Defendant were led to believe that neither witness was of any significance. The trial court stated in its order denying immunity that it came to its conclusion based on the lack of witnesses presented to corroborate Defendant's account. It is apparent then, that had these new witnesses testified at the

first hearing, Defendant would have rightfully been granted immunity. In *State v. Harris*, 391 S.C 539, 545, 706 S.E.2d 526 (2011), the Court citing *State v. Porter*, 269 S.C. 618, 621, 239 S.E.2d 641, 643 (1977) held that the credibility of newly-discovered evidence, proffered in new trial motion, is for the trial court to determine. Therefore, if the trial court finds these four independent witnesses, Ms. Bettini, Mr. Lynch, Mr. Meggett, and Dr. Ross, more credible than a mob of violent high schoolers; then the Defendant has established by a preponderance of the evidence, the standard of proof established by *State v. Duncan*, 392 S.C. 404, 411, 709 S.E.2d 662, 665 (2011), that he is entitled to immunity.

CONCLUSION

For the foregoing reasons, the Defendant, through his undersigned attorney, respectfully submits that he is entitled to the grant of immunity under the Act because he was clearly attacked while occupying his vehicle and had every reason to fear that great bodily injury or death would result if he did not protect himself. Defendant meets all the statutory requirements of the Act such that granting him immunity from prosecution for the incident that took place on February 17, 2014 would be in the interest of justice.

Respectfully Submitted,



J. Todd Rutherford, Esquire
2113 Park Street
Post Office Box 1452
Columbia, South Carolina 29202
(803) 256-3003

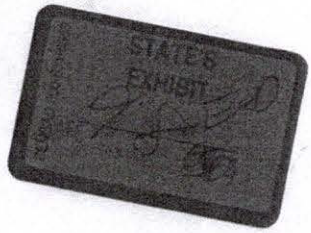
Attorney for Defendant

Columbia, South Carolina
This 21st Day of September, 2017

DATE: 2-17-14
2936

PAGE # 1 OF 1

LEXINGTON POLICE DEPARTMENT
111 MAIDEN LANE
LEXINGTON, SC 29072
(803) 359-6260



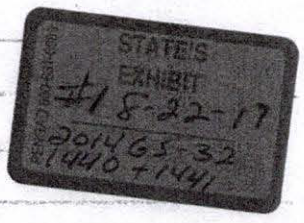
VOLUNTARY STATEMENT

OF: Zachery Lynch

PHONE#: [REDACTED] 95

ADDRESS: 515 W. Main Street

walked out of restaurant saw a lot of commotion, then proceed to walk towards incident and an african american male wearing a white shirt i proceed to go toward car parked in drive way. He reaches in the car is if to stab somebody. Then another guy walks up and throws a cup at the car then takes off. The african american males get in a gold 2 door explorer and drive off. Then a dark car pulls out right behind them and clips a guy standing by and almost hits 3 cars then drives off. Then everybody takes off



Zachery Lynch
SIGNATURE

DATE:

2014/17/2

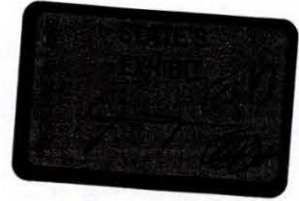
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DEFENDANT'S EXHIBIT

#1 8-22-17
20146532-1440
1441

LEXINGTON POLICE DEPARTMENT

111 MAIDEN LANE
LEXINGTON, SC 29072
(803) 359-6260



VOLUNTARY STATEMENT

OF: Beth W. Goodwin

PHONE#: [REDACTED]

90

ADDRESS:



South Village Rd Lexington SC 29072

I was pulling into cookouts to enter the drive thru when around 30 teenagers were in the parking lot. I thought there would be a massive fight. I pulled up to the drive thru and had window down when I heard cussing and screaming. At that point I saw a white/silver lexus, Ford SUV stop and yell and a black guy ran to the SUV and threw a drink at him. Around 10 other male teenagers ran toward the SUV and it (SUV) peeled out. The driver ~~the~~ of the SUV had dread locks and was african american. There appeared to be 2 other males in there. Then a small compact car took off and turned left to follow the SUV. I called 911 and then witnessed another car/truck black or dark blue pickup truck 2 door and made a left also. By this time the cops were pulling in.

slut
dad)

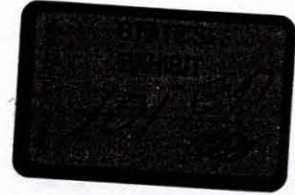
Beth Goodwin

SIGNATURE

8-17-2014

LEXINGTON POLICE DEPARTMENT

111 MAIDEN LANE
LEXINGTON, SC 29072
(803) 359-6260



VOLUNTARY STATEMENT

OF: Zachery Lynch

PHONE#: [REDACTED] 95

ADDRESS: [REDACTED] Arthurdale Drive W. Columbia 29170

I'm sitting inside and I notice ~~two~~ 2 africanamerican guys ~~are~~ sitting down acting suspicious. So a group of kids walk in and they start pointing and whispering to each other. So they get up and leave to their vehicle. I go to walk outside and there is a crowd of people standing around a car and they are yelling and cussing at each other. So some of the kids leave and a kid and the black guy get into an argument and start screaming & cussing again. So the kid goes to leave in a hurry and the ^{buff} black guy runs to his gold expedition and then runs back to the kid in the drive-way as he is about to leave and starts saying "get out the car". So the black guy reaches in the car with one arm and what looks like he stabs him. ~~While the kid was screaming~~ So the kid speeds off to the left exiting the parking lot. The black guy runs back to his truck and goes out the same direction as the kid did. So a guy comes running in my direction saying "why they stab my dude, i'm gonna get him back." So he gets in his car and follows him. Then everybody started running around saying "he got stabbed, he got stabbed", and they all ran off and drive away.

End of Statement

DEFENDANT'S EXHIBIT #7

Witness: _____
Zachery Lynch
SIGNATURE

2939

WITNESSES

Lexington Police Department

Brent Claude Cecil Carter

Law Enforcement Case #:

SRH

ARREST WARRANT NUMBER

2014A3220500047

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014GS3201440

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

JUNE TERM 2014

THE STATE

vs.

Kierin Marcellus Dennis

CDR #: 0116

Indictment for

MURDER

§ 16-03-0010

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

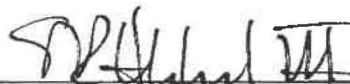
INDICTMENT FOR
MURDER

§ 16-03-0010

At a Court of General Sessions, convened on JUNE 2014, the Grand Jurors of Lexington County present upon their oath:

That **Kierin Marcellus Dennis** did in Lexington County, South Carolina on or about February 17, 2014, willfully, feloniously, and with malice aforethought stab the victim, **Da'Von Nathaniel Capers**, in the chest with a knife, and the victim died on February 17, 2014 as a proximate result thereof, in violation of Section 16-3-10 of the SC Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

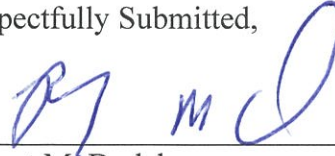


ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Robert M. Dudek
Chief Appellate Defender

RECEIVED

Sep 20 2021

SC Court of Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 20th day of September, 2021.