

VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Jennifer B. McCoy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BYRON LABRON RIVERS,

APPELLANT

APPELLATE CASE NO 2019-001253

RECORD ON APPEAL

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	)	2019-GS-10-1889
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	)	2019-GS-10-2143
vs.	)	
	)	
BYRON LABRON RIVERS	)	
	)	
Defendant	)	
	)	
	)	
_____	)	TRANSCRIPT OF RECORD

June 10, 2019
Charleston, South Carolina

Volume 1 (of 2)

B E F O R E:

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1 PRETRIAL MOTIONS

2 THE COURT: We have several pretrial motions which
3 were filed on behalf of both parties in this case I
4 understand. We'll start with the State and switch over
5 at the appropriate time. All right Mr. Lietzow, I'm
6 happy to hear from you.

7 MR. OSBORNE: Your Honor, the State has filed a
8 motion to preclude the defense from making any mention of
9 drugs that had been found in the victim's house. After
10 the murder had occurred police went back into the house
11 and they located a small baggie of cocaine. They located
12 a scale that had residue on it and I believe they found a
13 small amount of marijuana.

14 Our position is that this is a home; it was an armed
15 home invasion that involved a robbery. This little bit
16 of drugs doesn't do anything except confuse the jury. I
17 don't see any relevance in introducing it at all.

18 I guess the only relevance that could come into play
19 is that Mr. Fyall, Antonio Fyall, after being shot in the
20 head comes back in the house saw the small bag of cocaine
21 on the ground picked up that small bag and then threw it
22 into a tub.

23 Presumably he was trying to help his brothers as the
24 police came and then ended up trying to charge one of
25 them. But all that ends up doing is just confusing the

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1 jury and takes them off track to this being a murder and
2 an armed home invasion.

3 THE COURT: All right. Mr. Mack or Ms. Norris;
4 whichever wants to respond.

5 MR. MACK: Thank you, Judge. We respectfully
6 request that you deny the State's motion. This is the
7 crux of the defense's theory that Mr. Rivers went to [REDACTED]
8 [REDACTED] to conduct a drug deal. And if you granted their
9 motion we would pretty much have to change our entire
10 defense theory.

11 But the State admits that we have individuals in
12 this case who are hiding drugs on the crime scene. That
13 means all the more reason to allow it in. I don't see
14 how this confuses the jury at all. The -- and the State
15 claims this is a little amount of drugs but we're talking
16 about a scale on the stove that had cocaine around it, a
17 bag of weed, a stack of cash in the bottom drawer of the
18 dresser where -- in the bedroom which is next to the
19 living room where this incident took place, and a bag of
20 weed by the murder victim in this case.

21 So this to me sounds like a substantial amount of
22 drugs. And the victims in this case in addition, Judge
23 were admittedly using drugs on the date of the incident.
24 They said that to the police when they were interviewed.
25 Also, toxicology reports indicate that the murder victim

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1 in this case Kirby Fyall was under the influence of
2 marijuana. So not only are we talking about an issue
3 that is at the crux of the defense but an issue that may
4 call into question the State's witness's ability to
5 testify about the drugs.

6 THE COURT: Okay.

7 MR. OSBORNE: And Your Honor, in reply I would just
8 say I'm not sure which witnesses are going to testify
9 that they were using drugs that day, and even if they did
10 I'm not sure how that's relevant either. That's the
11 first that I've heard that that's the defense's theory on
12 the case that this is a drug deal that had gone bad.

13 I mean I would admit I suppose that I could see a
14 scenario in which they introduce evidence of that fact
15 and then it comes in but just to introduce that in our
16 case or for them to ask our witnesses about that is just
17 conjecture at this point and those are going to be facts
18 that are not in the record at all.

19 THE COURT: All right. You're asking me to prevent
20 him from mentioning those, is that essentially it? I
21 mean at this point in time this is sort of a precursory
22 motion?

23 MR. OSBORNE: It is, Your Honor ---

24 THE COURT: --- in the abstract. I don't know Mr.
25 Mack, is that your theory of the case? You, indeed would

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1 plan to be going into that in your opening statement? Is
2 that your plan right now?

3 MR. MACK: Yes.

4 THE COURT: I'll allow it for now and how far we go
5 with it will be a determination for how it comes out on
6 the witness stand. Of course if you're going to -- I
7 don't have to tell you if you promise the jury to see
8 something in openings and then they don't see it later on
9 that's a risk, a calculated risk that only you as an
10 attorney know whether or not you want to make.

11 But at this point in time I'll allow it. I mean I
12 think it could go to several things such as motive and
13 that sort of thing I suppose. In the abstract right now
14 I'll allow you to go into it in opening and how far once
15 again we get during testimony we'll just have to take it
16 one witness at a time, okay, in terms of relevance. All
17 right. What else from the State?

18 MR. LIETZOW: The only other thing we want to bring
19 to your attention, Judge and it's something that we've
20 discussed with the defense is that one of the witnesses
21 in this case, her name is Nashishi Walker we're very
22 aware that Mr. Mack had represented her at a prior time.
23 We've been told that Ms. Norris is going to be doing the
24 cross-examination of that. At this point we don't have a
25 problem with that. We just wanted to make sure that was

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1 on the record that Mr. Rivers was aware of that so that
2 there was no potential PCR down the line due to him
3 having a potential conflict.

4 THE COURT: This is a State's witness -- or just a
5 lay witness I assume ---

6 MR. LIETZOW: --- it is a lay witness, Your Honor.

7 THE COURT: All right. Mr. Mack, you want to
8 respond? You apparently represented this young lady at
9 some point in time. I guess it's a woman; I shouldn't
10 assume that. Is it a female? At some point in time you
11 represented her in the past?

12 MR. MACK: Yes, a low level drug offense, Judge.
13 And Mr. Rivers is aware of the situation and is agreeable
14 to --

15 THE COURT: Yes, I don't see any conflict there
16 really. Anything else?

17 MR. LIETZOW: Nothing further from the State, Your
18 Honor.

19 MR. OSBORNE: Except we do have several body worn
20 camera and dash cam that we want to introduce. I've
21 provided copies to Ms. Norris, and I know it's been kind
22 of late. I don't know if y'all have had a chance to
23 review it yet. If so, maybe we can hash some of this out
24 now before we have to keep pulling the jury in and out.

25 THE COURT: What do they depict?

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1 MR. OSBORNE: I guess the argument is going to be
2 there is some hearsay comments and there are statements
3 and we're going to argue that they are excited utterances
4 and would be allowed in under that exception.

5 THE COURT: These are warrant officers who reported
6 the crime scene I understand, is that correct?

7 MR. OSBORNE: That's correct, Your Honor.

8 THE COURT: Okay. I'm happy to hear from the
9 defense. When were they turned over?

10 MR. OSBORNE: Well, they've had the body worn
11 camera footage ---

12 MS. NORRIS: --- I've had a chance to look at them
13 Judge.

14 THE COURT: Okay, great Ms. Norris.

15 MS. NORRIS: We can get past that. I guess the
16 easiest way is to take them one by one. The first one is
17 the arresting officer for Stacy Green, who is a co-
18 defendant and basically has the officers you can hear
19 them on the radio and she is talking to the Defendant or
20 to the co-defendant who obviously is not on trial here
21 and asking him where is the weapon.

22 You can hear people who are unknown to me; I assume
23 it is Antonio Cummings in the background. There is
24 somebody else talking about whose phone it is, etcetera.
25 So we object to all of that; its hearsay. It is not

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1 excited utterance for the co-defendant to say I didn't
2 have a gun. I was only taking stuff. He's not on trial.
3 If he gets on the witness stand and testifies that's a
4 different story. But we object to that body camera. Do
5 you want to take them one by one or you want me to
6 address all of them?

7 MR. OSBORNE: The clip itself has two minutes and
8 45 seconds. I mean rather than us trying to depict what
9 it is we could just play it right now.

10 THE COURT: Okay. Obviously, it's hard for me to
11 make these rulings ---

12 MS. NORRIS: --- I understand and I ---

13 THE COURT: --- when I haven't seen the video
14 footage. If you have it, that would be great. Let's go
15 ahead and take this opportunity to cue it up.

16 MR. OSBORNE: I have it cued up right now.

17 THE COURT: Oh, you do. Okay. Can you turn these
18 on? Great, thank you.

19 MR. OSBORNE: And just for the record this is
20 Officer Fortier's body worn camera clip and it's State's
21 142.

22 THE COURT: Thank you.

23 [Whereupon, the video plays]

24 [Whereupon, the video ends]

25 THE COURT: Okay, is that it? Obviously, it's hard

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1 for me to even make out what is being said; it's very
2 difficult. I assume the questionable portion I'll look
3 at is at the very end when the officer asks him where the
4 gun is, is that what...

5 MS. NORRIS: --- yes, and ---

6 THE COURT: --- I couldn't even hear him ---

7 MS. NORRIS: --- at the very end and he says I was
8 only taking stuff. But before that there is a portion
9 where the officer is asking whose phone that is and it is
10 unclear who is talking.

11 THE COURT: Uh huh. So you're seeking to -- you
12 would seek to suppress that portion I suppose of that
13 video to whatever extent or the entire video?

14 MS. NORRIS: The phone portion I don't have a
15 problem with but at the end where's the gun; I don't want
16 a child to find it and the co-defendant is speaking
17 saying I was only taking stuff. We object to that part.

18 THE COURT: Okay. Just that part, okay. All
19 right.

20 MR. OSBORNE: Just to put it all into perspective
21 Officer Fortier was the very first officer to arrive on
22 scene. This is her body worn camera footage. When she
23 arrived on scene she saw the co-defendant Stacy Green
24 fleeing the area. An individual from the neighborhood by
25 the name of Antonio Cummings was chasing him. With or

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1 without that; it depends on what testimony we get, I
2 believe Mr. Cummings will testify though that he hit Mr.
3 Green as hard as he could with that bat. Then he ended
4 up tackling Mr. Green. As he tackled him Officer Fortier
5 then jumped in and then helped, and Mr. Cummings actually
6 helped Officer Fortier in putting Mr. Green in handcuffs.

7 This is what is happening right at that moment. I
8 can't think of a much more excited situation than an
9 individual who this ran after a murder who just got hit
10 with a bat who just got tackled and is being arrested by
11 the officers.

12 So at the very beginning the important part for us
13 is that this video shows that Mr. Green is wearing a
14 single black glove. When the Defendant is arrested he is
15 also wearing a matching single black glove; both of them
16 are wearing them on the right hand.

17 And as far as the excited utterance goes at the end
18 Officer Fortier is asking him while she is putting him in
19 handcuffs is there a gun around; I don't want a child to
20 find it. And his response is I didn't have the gun; I
21 was just taking stuff. This is the definition of an
22 excited utterance. This is what is happening at the
23 moment. It could not be much more energy filled than
24 what it is at that moment.

25 THE COURT: Okay. My only hesitation to be honest

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1 with you is the fact that it is in response to a question
2 posed by law enforcement obviously before rights are read
3 or anything of that nature. So, I think for that reason
4 out of an abundance of caution we'll mute just that
5 portion of the testimony but I think everything else
6 certainly I think would be admissible up to that point.
7 So we'll just need to make sure we have a good time take
8 of where that question from the officer arises.

9 And again respectfully it's mostly -- if he had said
10 it I think your argument would be strong if he just told
11 the officer the stuff. But because it is in response to
12 a question out of an abundance of caution we'll just mute
13 that part of the conversation. So that's that body worn
14 camera footage. What's next?

15 MR. OSBORNE: What I will end up doing -- well I'll
16 do this for all of your rulings we'll go back and then
17 clip it in the trial but this might be difficult if we're
18 doing this today. What about this? What if I just play
19 that portion once he is placed under handcuffs and then
20 we will go back and then re-clip it so the jury will have
21 that portion and then we'll substitute one ---

22 THE COURT: --- we can. You know I'll do it either
23 way because we can bring them back in here if they need
24 to replay testimony later. That's not a problem. It's
25 not necessary for my purposes that you re-make all of

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1 these video clips ---

2 MR. OSBORNE: --- okay ---

3 THE COURT: --- as long as the record is clear as
4 to when we are muting it. If that's clear for the record
5 it's not necessary that you make multiple copies; don't
6 worry about that.

7 MR. OSBORNE: Okay.

8 THE COURT: Okay, what's next?

9 MS. NORRIS: The second one was the same officer in
10 the back of her vehicle when the co-defendant is sitting
11 in the back by himself. They've got the video and audio
12 on and he's talking to himself and we object to that.
13 Again, it's a co-defendant. It's got nothing to do --
14 our client was not present. This is after he was
15 arrested. He's handcuffed, he's detained.

16 THE COURT: Okay. Is the video in car footage or
17 something?

18 MR. OSBORNE: Beg the court's indulgence.

19 THE COURT: Sure.

20 [Whereupon, Mr. Osborne prepares to play the video]

21 THE COURT: This is going to be State's exhibit
22 138.

23 [Whereupon, the video plays]

24 [Whereupon, the video ends]

25 MR. OSBORNE: To put this into perspective what

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1 he's talking about there would be armed home invasion
2 both he and the Defendant enter the house. As soon as
3 they enter the house they end up shooting Antonio Fyall,
4 the Defendant shoots him -- well, it's our position the
5 Defendant shoots Antonio Fyall and it does not kill him.
6 Antonio takes off running through the house and literally
7 dives through the kitchen window for safety. The
8 remaining occupants are inside the house.

9 They then rob them at gunpoint. He is taking the
10 stuff; the Defendant has the gun on the victims and is
11 putting it into a bag; Mr. Green is. Now at a certain
12 point Kirby Fyall who is the murder victim is hiding
13 behind the couch. The Defendant then tells Mr. Green to
14 lift up the couch to see if he sees anything under there
15 to take. When he does that Kirby after Mr. Green lifts
16 up the couch then pushes the couch and then charges the
17 Defendant.

18 During that struggle over the gun the Defendant
19 shoots himself twice in each leg. So whenever he makes
20 the comment I ain't F'ing with these boys anymore the 'N'
21 word shoot himself. There is an individual who is caught
22 on the scene who has been shot and it is the Defendant.

23 So that's the relevance there. Obviously he's
24 excited. You can hear that he is breathing hard. He
25 just ran; we saw the fight or least the struggle before

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1 this. He's not -- he is in custody but he's not subject
2 to any interrogation.

3 THE COURT: Okay. And you would seek to admit this
4 through the officer's in car?

5 MR. OSBORNE: Yes.

6 THE COURT: Okay. What do you want to tell me in
7 response?

8 MS. NORRIS: Your Honor, he may be excited and
9 breathing hard but this is not his first arrest. He
10 knows he is being recorded. He has every reason to make
11 statements to blame the other guy and not him. And all
12 of that stuff about looking under the couch and flipping
13 it up that's news to me. I haven't seen any discovery
14 where any witness says that.

15 All I've seen is that the deceased came out from
16 behind the couch. All that other stuff I haven't seen in
17 discovery so I don't know where that comes from. We
18 object to this. He has a right to confront and cross-
19 examine his co-defendant should he choose to take the
20 witness stand.

21 THE COURT: Okay. This does seem to fall more
22 squarely into an excited utterance situation at this
23 point in time. I'm not going to make an affirmative
24 ruling but I would lean towards allowing it in.
25 Certainly it could come in as impeachment evidence if

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1 nothing else. If this individual does take the stand and
2 it becomes necessary to impeach him with a prior
3 statement I think certainly would be admissible in that
4 way. But at this point I'm inclined to let it in as the
5 State wishes, which is an excited utterance. So for
6 planning purposes, again this is not a final ruling; I'll
7 make the call during trial but that's the way I would
8 lean on that one. What's next?

9 MS. NORRIS: The next one is a clip from the body
10 camera of Officer Sharp who is talking I believe to
11 Sanquan Fyall who is out there screaming he shot my
12 brother I stomp his butt; put it that way. I assume the
13 Officer would testify that he is referring to this young
14 man.

15 That statement was made about ten minutes into the
16 officer's clip and the officers didn't arrive until about
17 five minutes after the initial call so we are at least
18 fifteen minutes away. And Sanquan is certainly excited;
19 there is no doubt about that but two and half hours later
20 when he is at City Hall he is screaming the same way when
21 the officers are trying to interview him in an interview
22 room.

23 Again, I submit it is hearsay. This young man has a
24 right, constitutional right to confront and cross-examine
25 a witness should he choose to testify.

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1 THE COURT: Okay.

2 MR. OSBORNE: The only thing I will say and I don't
3 disagree with what Ms. Norris has said with the exception
4 of saying as you know Your Honor there is a plethora of
5 cases that say that there is no timeframe for excited
6 utterance. And this man Sanquan just watched his brother
7 be murdered.

8 And the other thing I will go ahead and tell you now
9 this is going to be very difficult to hear what Sanquan
10 is saying because he is so excited. But the officer who
11 was actually wearing the body worn camera will testify to
12 what was being said and you can hear a lot better since
13 he was there. But I do believe that Ms. Norris's
14 depiction of what this is going to show is accurate.

15 MS. NORRIS: While we're on that topic Judge I'll
16 object to the officer interpreting ---

17 THE COURT: --- yes, I'm going ---

18 MS. NORRIS: --- what Sanquan is saying ---

19 THE COURT: --- to agree with that. I'm not going
20 to allow it.

21 MS. NORRIS: I thought she was just conceding that.

22 THE COURT: An interpreter so to speak of what is
23 said. I mean ---

24 MS. NORRIS: --- I can understand the essence.

25 THE COURT: Okay.

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1 MS. NORRIS: The essence is he shot my brother; I
2 stomped his butt. There is a lot around it that you
3 can't understand ---

4 THE COURT: --- and you'll have to catch me up a
5 little bit on the factual scenario here obviously ---

6 MS. NORRIS: --- Sanquan ---

7 THE COURT: --- is this the gentleman who allegedly
8 stopped this Defendant?

9 MR. OSBORNE: Yes.

10 THE COURT: Okay.

11 MS. NORRIS: The State's allegations are my client
12 and Stacy Green break into a home ---

13 THE COURT: --- I got that part ---

14 MS. NORRIS: --- in that home is Kirby Fyall who is
15 shot and killed. Sanquan Fyall, his brother ---

16 THE COURT: --- okay ---

17 MS. NORRIS: --- Theodore and other people who are
18 related or friends.

19 THE COURT: Okay.

20 MS. NORRIS: But there is no question that the guy
21 who was shot and killed is his brother.

22 THE COURT: Okay. Well, let's see this video clip
23 then. Do you have it ready?

24 MR. OSBORNE: Yes, Your Honor.

25 [Whereupon, the video plays]

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1 [Whereupon, the video ends]

2 THE COURT: Okay. I would lean toward allowing
3 that in as well. It would clearly fall within an excited
4 utterance subject to the hearsay rule. Again, this is
5 not a final ruling. We will make that during the time of
6 trial; things change. But at this point that's how we
7 intend to proceed. So what's next?

8 MS. NORRIS: The next one is an in car camera I
9 believe also from Officer Sharp. As he is driving up you
10 see the Defendant on the ground. You hear him saying,
11 the officer saying we need more units to Chicora. And
12 then at least on my copy there was no sound and you're
13 just watching the officer out there around him, is that
14 correct?

15 MR. OSBORNE: You got me at a loss there. I'm not
16 exactly sure what's on this C.D. so.

17 MS. NORRIS: Maybe we better play it, Judge. I
18 think I don't have any objection but it's very short. I
19 want to make sure that that's ---

20 THE COURT: --- okay. You just want to make sure
21 you know what it says.

22 MR. OSBORNE: This is State's 146.

23 THE COURT: Let's make sure we have a sound check
24 on that, right? Okay.

25 [Whereupon, the video plays]

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1 [Whereupon, the video ends]

2 MR. OSBORNE: Your Honor, I certainly don't have an
3 objection to muting all of that. For us what is
4 important is showing the neighborhood, showing this
5 Nashishi woman right here [indicates]. She becomes
6 important with the collection of evidence and the
7 sledgehammer that you saw the officer picking up and then
8 dropping down. And that is the Defendant that they are
9 approaching. So I can go mute on all of that.

10 THE COURT: Okay. The State has offered to mute
11 the entire video so does that sound ---

12 MS. NORRIS: --- that's fine, Your Honor. I don't
13 have any objection as long as it is muted.

14 THE COURT: All right. Moving on. Are there any
15 other videos?

16 MS. NORRIS: The last one and I don't think is a
17 witness for today but we can go ahead and address it. It
18 is a short clip by Officer Decedue's body camera where he
19 is talking -- he is essentially radioing I assume asking
20 for EMS saying he has one shot in the butt. And you can
21 hear him saying he has one shot in the head. I don't
22 have any objection to that. I mean I'm not sure exactly
23 what the purpose is but I don't have any objection to
24 that one.

25 MR. OSBORNE: I mean our whole position there is

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1 that they were -- the victims were ordered to take their
2 pants off. Johnell who is the individual who was shot in
3 the buttocks is without pants. So that was our whole
4 purposes in introducing that.

5 THE COURT: All right. Moving on. I'm going to
6 switch over. Does the State have any other pretrial
7 motions that we need to address at this time?

8 MR. OSBORNE: We have some chain issues but I
9 really think it's their motion.

10 THE COURT: Their motion. Okay, let's switch
11 sides. Mr. Mack?

12 MR. MACK: Thank you, Judge. To start the defense
13 has filed a motion to suppress any reference to Mr.
14 Rivers' gang, alleged gang affiliation. And we stand by
15 that motion today.

16 THE COURT: Okay.

17 MR. MACK: I believe the State has said they don't
18 intend to introduce any mention of that in their case in
19 chief. And if the Court will make a ruling on that
20 motion. Thank you.

21 THE COURT: Do you intend to introduce the fact
22 that he was in a gang allegedly in your case in chief?

23 MR. OSBORNE: I do not. The only thing that I can
24 envision in this coming up is hearing their theory that
25 Byron Rivers went to this house to purchase drugs. So

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1 just to give you -- we weren't planning on introducing
2 this in our case in chief. I guess I'll have to see how
3 it goes. To be perfectly frank because we do have
4 evidence that Byron Rivers is an enforcer in a gang
5 called Gangster Disciples --

6 THE COURT REPORTER: Gangster?

7 MR. OSBORNE: Gangster Disciples. The victim there
8 is information that he was a Blood member. These two are
9 rival gangs. So to suggest that an enforcer for the
10 Gangster Disciple would go for a friendly drug deal to a
11 known Blood member is to individuals in law enforcement a
12 little preposterous. So I could see where -- I guess it
13 would just depend on what he planned on bringing up. But
14 we don't plan on introducing that in our case in chief.

15 THE COURT: Okay. Sounds like they do not plan on
16 introducing that in their case in chief. I'm going to
17 withhold rulings until evidence is shown what might
18 interest it otherwise.

19 MR. MACK: Thank you, Judge. And to this point
20 about rivaling members using drug deals I believe I
21 mentioned this is in my written motions, I don't think
22 the State can say with any certainty that rival gang
23 members went into a drug deal.

24 THE COURT: I don't see any expert witnesses on
25 gangs on the witness list for now. So, go on to your

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1 next motion which is what Mr. Mack?

2 MR. MACK: Judge, we filed a motion to suppress the
3 Hi-Point 9mm which is allegedly the murder weapon in this
4 case and the associated DNA and firearms evidence due to
5 a lack of complete chain of custody.

6 THE COURT: I have reviewed your motion and the
7 case law you relied on is incorporated fully for purposes
8 of the record today.

9 MR. MACK: Thank you, Judge. And I would first
10 like to respond to some of the cases that -- and
11 arguments that the State made. I believe they first made
12 that a 9mm is non-fungible evidence. We would submit to
13 the Court that in this particular case we don't have a
14 detailed description of the gun and it potentially is
15 fungible item as a result.

16 It's only described as -- I'm sorry, non-fungible
17 evidence -- it's only described as being black and
18 silver. A Hi-Point 9mm is an extremely cheap gun. It
19 runs about 150 dollars to 200 dollars and is very
20 frequently used in crimes.

21 If the Judge is unwilling to say that it is
22 admissible we submit that the DNA that was associated
23 with that is not submissible simply because it could be
24 transferrable. It definitely is non-fungible. This gun
25 was missing for about a day before it was acquired by law

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1 enforcement. And the opportunity exists of course to
2 plant DNA on it while it was missing. In addition to
3 that we have a problem with the chain itself as shown in
4 the records presented to us by the State.

5 We have a chain of custody sheet that was included
6 in discovery saying that Detective Bailey acquired this
7 weapon, this is not in my motion by the way, on July
8 16th, 2016 and then the DNA is somehow taken from that
9 weapon with a buccal swab on July 15th, 2016; a day
10 before the gun was acquired. So that just adds credence
11 to our argument that the DNA should not come in. If you
12 should allow the gun to come in simply saying that ---

13 THE COURT: --- so the DNA was swabbed from the
14 gun, right?

15 MR. MACK: Right; from the trigger of the gun.

16 THE COURT: Okay. I'll let the State respond.

17 MR. LIETZOW: Thank you, Judge. I'll take this in
18 the order that Mr. Mack presented it in. I think in
19 South Carolina the state law is very clear that guns are
20 non-fungible items and non-fungible items are not subject
21 to the strict chain requirement.

22 In this case, Your Honor, Detective Bailey did take
23 custody of that pistol, did note the serial number. In
24 State v Freiburger [phonetic], which is the seminal case
25 in South Carolina that does hold that guns are not

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1 fungible and require the chain of custody. One of the
2 things that the Court said in that case is that they are
3 readily identifiable by their serial number. So this
4 weapon has not had its serial number obliterated or
5 anything like that. The serial number was recorded when
6 the gun was recovered and the serial number is still the
7 same as it was on the day it was recovered by Detective
8 Bailey. So we think that's certainly admissible.

9 As to the DNA swab that was taken on that gun, Your
10 Honor, the State would consent with the defense that that
11 is a fungible item and does require a chain of custody
12 scrutiny.

13 Mr. Mack said that the DNA was swabbed on the
14 trigger on July 15th. The way I believe that timeline
15 went down was that the gun was acquired by Detective
16 Bailey on July 16th. It was taken into evidence on July
17 18th. Anita Moore with the North Charleston Police
18 Department took a swab on the trigger and handle portions
19 of that gun. And then both of those items of evidence
20 were sent to SLED on July 20th.

21 So it's the State's position that that timeline is
22 as the State just asserted it was that nothing was taken
23 on the 15th. The 15th is when the day of the incident
24 was. The 16th was the date they received that gun. And
25 the 18th was the day that that swab was taken from that

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1 gun. So I think those are my positions in rebuttal to
2 what the defense stated. The defense makes a large deal
3 about the chain of custody prior to the gun going into
4 law enforcement's hands. And I think Anne Williams
5 details that issue pretty clearly in the State's trial
6 brief. Has Your Honor had an opportunity to look at ---

7 THE COURT: --- I do, yes. I have it.

8 MR. LIETZOW: State v Hatcher is the seminal case
9 in South Carolina on chain of custody. And I think it's
10 pretty clear in this instance that the chain of custody
11 doesn't start until law enforcement takes possession of
12 that weapon. Once Detective Bailey who is the law
13 enforcement representative takes possession of that
14 weapon the chain is very clear. We've provided all of
15 that to the defense.

16 And it's the State's position that there are no
17 missing links. There is no evidence of tampering. Once
18 the State does take possession of that gun, its smooth
19 sailing so to speak all the way to SLED where it is
20 tested. And those experts are prepared to testify to the
21 results and all the witnesses in between are prepared to
22 testify to the steps they took to ensure that the chain
23 was properly recorded to ensure that weapon was not
24 tampered or altered in any way, which are exactly the two
25 things that State v Hatcher which deals with fungible

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1 items of evidence are looking to -- looking for law
2 enforcement to do when dealing with that fungible
3 evidence. So it's the State's position that in summary a
4 gun is a non-fungible piece of evidence so that's
5 certainly admissible with the caveat that the State is
6 going to go into the serial number to make sure all that
7 is squared away.

8 As to the DNA swab that was taken off the gun that
9 is a fungible item of evidence and the State is prepared
10 to have the witnesses testify and a chain of custody and
11 is prepared to make sure that those proper steps were
12 ensured to make sure that wasn't materially altered in
13 any way.

14 For that reason, Your Honor, we would ask you to
15 respectfully deny the defense's motion and rule that both
16 the gun is admissible and the swab from the DNA is
17 admissible as well.

18 THE COURT: Okay.

19 MR. LIETZOW: Thank you.

20 THE COURT: Would you like to respond?

21 MR. MACK: Thank you, Judge. I think the word that
22 the State used is smooth sailing and that is simply not
23 the case. We have the chain of custody forms right here
24 and are looking at it and I can provide you a copy too
25 and the State as well as evidence in their discovery. It

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1 specifically says that Detective Bailey took custody of
2 the gun on July 16th and the DNA swab was taken on July
3 15th which doesn't make any sense. Also, Judge this
4 characterization that the chain of custody only begins
5 with law enforcement I didn't uncover that in my
6 research. The cases that I cited in my trial brief they
7 mainly deal with CI buys. And in one particular case ---

8 THE COURT: --- of course evidence of CI buys isn't
9 evidence that is introduced from the State in the first
10 place, right. And drugs or money that is used in a CI
11 buy originates from the State.

12 MR. MACK: Correct.

13 THE COURT: A little bit different than this
14 scenario. Go ahead.

15 MR. MACK: But in that particular case State v
16 Sweet the CI although on audio recording was allowed to
17 drive to the scene on his own in his own vehicle before
18 doing his deal. So it would support that he was not
19 underneath total police surveillance during that portion
20 of his buy. And for that reason the drugs were not
21 allowed in simply because the State could not account for
22 a rifle missing.

23 See Judge on that first page going back to the chain
24 of custody form, page 457, you can see that Detective
25 Bailey took item number 1 through 10 on July 16th 2016.

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1 That's right underneath the itemized list. At number 5
2 is the Hi-Point 9mm note the serial number 003780. And
3 then on Rule 5 page 472 see item number 53 through 55
4 dated July 16, 2016. I believe that is SLED Officer
5 Moore. She says she takes a DNA swab from the handgun on
6 July 15th, 2016.

7 THE COURT: Okay. What do you think Mr. Lietzow?
8 Can you make ---

9 MR. LIETZOW: --- I do apologize if I did make the
10 record unclear. Mr. Mack is right on what the paper
11 says. In meetings with Anita Moore she did indicate that
12 that is a typo. She is going to be testifying to the
13 fact that she took that DNA swab on the 18th of July and
14 it would frankly be impossible that she would have been
15 unable to take that DNA swab on the 15th because
16 Detective Bailey is unequivocal that he did not take
17 possession of that gun until the 16th. So that's a typo.
18 They can certainly cross-examination her on that but her
19 testimony is going to be that she did take that DNA swab
20 on the 18th.

21 And as to State v Sweet Your Honor I think that case
22 is certainly distinguishable. In that case the CI was
23 acting as an agent of the State and acting under the
24 direction of the State. So it would be conceivable that
25 the chain of custody would start with that CI who was for

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1 intents and purposes acting as a law enforcement officer.
2 What Mr. Mack is asking the Court to rule is essentially
3 not allowing any evidence in unless police were at a
4 crime scene at the immediate time that the crime
5 occurred.

6 It's an unreasonable burden and quite frankly it is
7 an impossible burden for law enforcement to be held
8 responsible for the time that takes place between a crime
9 and when they become involved. And to rule any other way
10 just sets that precedent that is going to be frankly
11 impossible to comply with. And for those reasons again,
12 Your Honor I would ask that you respectfully deny the
13 defense's motion.

14 And Your Honor one more thing if I may. Anything
15 that the defense has argued we would say that is a matter
16 that goes to the weight and not to the admissibility.

17 THE COURT: Thank you. I would agree with the
18 Solicitor. I think this is a matter that goes to the
19 weight and not the admissibility. I do believe Mr. Mack
20 that our jurisprudence that discusses chain of custody
21 when it talks about the time it is obtained I take that
22 to mean from law enforcement. I don't take it to mean
23 from Joe Smith on the street. How could we possibly
24 expect lay people to keep a chain of custody? And I
25 think to rule otherwise would be extremely violative of

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1 public policy which would be to encourage the citizens
2 who come across evidence to turn it over to law
3 enforcement as soon as they can or as soon as they are
4 made aware that it would be helpful.

5 So respectfully I think that you have some very
6 strong arguments that you are welcome to go into
7 regarding the weight of this evidence and the potential
8 for something to have happened to it before it was turned
9 over to law enforcement. I think that is certainly there
10 for your client's benefit potentially.

11 But I would deny your motion to suppress both the
12 gun and the DNA as I find that even with the date
13 discrepancy I find that is easily a Scribner's error on a
14 date sheet. I don't find that to bar the evidence or the
15 admissibility of it.

16 And certainly once again you can question that
17 witness about any discrepancy in the date and use that
18 for your argument. But I will not suppress these items.
19 Okay, so next motion.

20 MR. MACK: Judge, if I may respond to that briefly
21 for the record?

22 THE COURT: Respond to my ruling?

23 MR. MACK: Yes, Judge just actually to his
24 argument, his characterization of my argument. I'm not
25 saying that law enforcement that the chain of custody

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1 starts with -- I'm not saying that chain of custody
2 extends beyond law enforcement here. I'm saying that the
3 State has to identify the people who are in possession of
4 that gun before it gets to law enforcement.

5 And in this particular case they can't do that.
6 They've actually indicated to the Court that the person
7 who found the gun allegedly Leutonia Traxler is not going
8 to testify in this courtroom today. And that creates a
9 problem. They cannot identify a person; they don't have
10 an affidavit from that person which is what State v Sweet
11 requires. And for that reason there is a lack of a chain
12 of custody.

13 Also one more point I failed to make. The serial
14 number it is not mentioned at all on the crime scene in
15 this particular case making that gun potentially a
16 fungible item. Thank you, Judge.

17 THE COURT: All right. Your argument is preserved
18 for the record and my ruling stands. What's the next
19 motion we need to take up?

20 MR. OSBORNE: The defense in their motion has
21 detailed nicely for us the criminal convictions that they
22 would seek to impeach the witnesses on. I don't see a
23 single one in here that falls within the 10 year
24 parameter unless I'm missing something. They are mostly
25 just various drug convictions and things like that. My

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1 reading of the Rule on that, I think it's 608, is it
2 comes down to a balancing test the 403 analysis; one part
3 of it. And once you get outside of the 10 years it's
4 even more favorable to us.

5 So we would ask that the defense be precluded on
6 impeaching any of our witnesses based on these
7 convictions. And the only one that might be tough is
8 Antonio Fyall in 1997 giving a false information ---

9 THE COURT: --- false information; I saw that.

10 MR. OSBORNE: That one I guess I mean I could see
11 that ---

12 THE COURT: --- I would think that would be
13 admissible. Yeah, I think they could certainly go into
14 that; the nature of the offense. Let me pull that out; I
15 know he sent that to us.

16 [Whereupon, the Court reviews documents]

17 THE COURT: All right. So Mr. Mack I'll just
18 address these as you did in the order of your submission.
19 Number one Kirby Fyall; he's the victim in this case, is
20 that right?

21 MR. LIETZOW: He's the deceased, Your Honor.

22 THE COURT: The murder victim I should say; I'm
23 sorry to be more specific. Were you seeking to somehow
24 admit these old drug and gun charges?

25 MR. MACK: Yes, Judge. Mainly because of -- we're

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1 not trying to submit any other convictions other than the
2 drug charges in this case mainly because ---

3 THE COURT: --- not the gun then, just the drugs?

4 MR. MACK: Correct.

5 THE COURT: Okay.

6 MR. MACK: I believe there are only drugs listed on
7 this.

8 THE COURT: Under Kirby you had drug charges and
9 then weapon charges.

10 MR. MACK: Correct. I actually don't intend to --
11 did not intent to include Kirby Fyall in the motion.

12 THE COURT: Okay.

13 MR. MACK: Only drug crimes and crimes of a false
14 nature included outside the purview of the 10 years. I
15 submitted this motion partially because I wasn't quite
16 sure what the State's theory was going to be in this case
17 given the change in the prosecutors.

18 And the previous discussion with the prosecutor was
19 and based on prior court proceedings involving the co-
20 defendant was that these victims in the case were playing
21 a nice game of video games and weren't doing any sort of
22 drug dealing in their case.

23 And I thought that introducing older evidence would
24 go to the weight of that creditability -- that argument
25 or at least undercut it and was necessary in order to

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1 suggest that they are individuals that haven't had run-
2 ins with the law in the past and actually have a lengthy
3 history with drugs.

4 THE COURT: Does the State intend to somehow
5 bolster the character of these witnesses or make them
6 appear to be Sunday school students in any way shape or
7 form?

8 MR. OSBORNE: No, Your Honor. I mean we can't run
9 from that that they were playing video games prior to
10 being murdered. I mean that's what the testimony is
11 going to show. But as far as saying they're good people
12 or have character trait of peacefulness no, we're not
13 introducing that.

14 MR. LIETZOW: And some of my testimony that I am
15 going to try to elicit from the witnesses I'm going to
16 flat out ask them about their criminal history in the
17 last 10 years based on 609(a)(1). So no, we're not
18 trying to avoid that at all. We just think that the
19 convictions outside of the 10 years do not fall under the
20 exception that 609 lays out.

21 THE COURT: Yeah, I don't tend to think especially
22 drug charges outside of 10 years I really don't think
23 again unless the State somehow having a witness say
24 they've never done drugs or something along those lines
25 then maybe we can reassess this. But at this point of

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1 time obviously the false information is fair game
2 obviously; that's Antonio Fyall's charge from 1997 going
3 through it looks like Sanquan only had drug charges.
4 They're all older than 10 years. Let's see...

5 [Whereupon, the Court reviews documents]

6 THE COURT: They appear to be. Theo Fyall, much
7 older; Johnell, older. Antonio Cummings had a petty
8 larceny in 2000.

9 MR. LIETZOW: Judge, I believe the defense's motion
10 only details convictions that are older than 10 years.
11 These witnesses do have some more recent charges that
12 would fall within the 10 year exception.

13 THE COURT: Oh, okay.

14 MR. LIETZOW: Antonio Cummings does have current
15 pending charges but we plan on eliciting that testimony
16 through the witnesses.

17 THE COURT: Okay. I tell you what. This is good
18 to bring all this to my attention. I appreciate you
19 doing that. We'll just take this up as we go one witness
20 at a time, okay?

21 MR. MACK: Thank you, Judge.

22 THE COURT: All right. What's next?

23 MR. MACK: Judge, the defense filed a motion to
24 suppress the jail calls in this particular case.

25 THE COURT: Okay.

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1 MR. MACK: Under Rule 5 which states that the
2 State's required to promptly provide us with evidence on
3 request. And in this particular case it's kind of a
4 contentious issue about whether my client was threatening
5 witnesses.

6 And I was approached by prosecutor Anne Williams.
7 To that regard prior to a bond hearing that we had with
8 another client on March 15th, 2019 she raised the issue
9 with me. Then she sent an email to my co-counsel -- or
10 sorry; she made a phone call to my co-counsel Teresa on
11 April 10th, 2019 questioning the client's willingness to
12 plead guilty and wondering why there might be jail calls
13 where he was supposedly threatening witnesses.

14 So 19 days later on May 22nd the evidence reviewer
15 finally was provided with the jail calls and then this
16 past Wednesday were given specific discovery identifying
17 those particular jail calls. This past Thursday I was at
18 the jail playing those calls for Mr. Rivers in a
19 professional booth where he could barely hear what was
20 being said.

21 And we had a discussion about how he might explain
22 them away; how me might take the stand. And you know I
23 sort of had to tell him flat out that we might not have
24 time to prepare for that given the timing in which we
25 were delivered the jail calls and the time in which we

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1 had to prepare for trial. So we're asking for a
2 suppression motion based on lack of promptness in terms
3 of providing us with those tapes.

4 THE COURT: You got the tapes?

5 MR. MACK: I'm sorry, a ruling on the suppression
6 of the tapes; sorry.

7 THE COURT: All right. You got them on the 22nd of
8 May? Run me through your chronology again.

9 MR. MACK: Yes. There was about 100 different jail
10 calls on four or five different C.D.'s; all from
11 different numbers.

12 THE COURT: You got C.D.'s on the 22nd of May?

13 MR. MACK: Correct.

14 THE COURT: And then it was on the -- what day were
15 you given the actual -- so there is another follow-up?

16 MR. MACK: That would have been this past
17 Wednesday, June the 29th.

18 THE COURT: And that was when you were given I
19 guess the actual ---

20 MR. MACK: --- that's correct ---

21 THE COURT: --- timestamp that you are looking at;
22 is that correct?

23 MR. MACK: Right. And we couldn't have possibly
24 have figured out which calls or which numbers these were
25 coming from because the State is claiming or our client

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1 allegedly used different PIN numbers in order to place
2 the calls. So we filed a discovery request for Byron
3 Rivers' jail calls from the jail and we wouldn't have
4 received these at any point.

5 THE COURT: So these particular calls in question
6 were used from a different inmate's PIN number; is that
7 correct?

8 MR. MACK: Correct.

9 THE COURT: Okay. Does the State want to respond?

10 MR. LIETZOW: Your Honor, I'm getting into some
11 weird territory here. Culver Kidd initially had this
12 case and then it went to Anne Williams and as you are
13 aware Anne's not here and now I have it so the exact
14 timeline of when Rule 5 was disclosed I don't want to
15 misrepresent anything to the Court.

16 Our position would be though that from what I know
17 from our offices and their policies as soon as we get
18 that information in we give it to the defense. I think
19 the way I understood Mr. Mack's motion to read was that
20 their issue was that we didn't give them specific notice
21 of the exact calls that we intend to introduce.

22 And our response to that, Your Honor would be that
23 we've put you on notice that every single thing you get
24 in Rule 5 could potentially be fair game. So we think
25 that any information that we give to them as to the exact

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1 jail calls that we enter is a courtesy and not a
2 requirement. And we did give them that information last
3 week about the more specific calls that we intended to
4 introduce.

5 But we certainly -- our position is that we're not
6 in violation of Rule 5 and we don't think suppression of
7 those jail calls is the appropriate remedy. And as to
8 the PIN issue we will have testimony to authenticate all
9 those jail calls as we believe is appropriate. Your
10 Honor can make that ruling when those witnesses come up.

11 THE COURT: Okay. I would say once again I'll
12 withhold ruling until the time of trial but at this point
13 in time I would lean toward allowing it in. It's
14 difficult to prepare for these cases and the jail phone
15 calls are so voluminous and sometimes it's hard frankly
16 to go through every single thing.

17 But I don't find that giving you knowledge of these
18 specific ones last Wednesday is barring your client from
19 receiving a fair trial. I think you still had time to
20 prepare for that and go through those. Certainly they
21 were turned over earlier than that; they were turned over
22 back on the 22nd is what I'm hearing.

23 So that would have been a few weeks ago, which
24 certainly would have given you time to if not personally
25 go through them have others in your office go through

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1 them. So for that reason right now I would not lean
2 toward suppressing them. But we can deal with them as
3 they are introduced more specifically, okay.

4 And I believe you had another motion Mr. Mack in
5 going through your submissions. You had a motion to
6 suppress your client's prior convictions and bad acts, is
7 that correct?

8 MR. MACK: Correct, Judge. Although because of the
9 change in the prosecution I'm not certain if the State
10 intends to introduce a prior charge that Byron Rivers
11 has.

12 MR. OSBORNE: Only if he testifies and it comes up.

13 THE COURT: Okay. So it sounds like they only
14 intend to introduce that if he takes the stand and it is
15 brought up through that testimony, okay?

16 MR. MACK: Thank you, Judge.

17 THE COURT: Okay. Thank you very much. Anything
18 else we need to take up before 3 o'clock?

19 MR. LIETZOW: Nothing from the State. Thank you,
20 Judge.

21 THE COURT: Sure. Anything else from the defense?

22 MR. MACK: Nothing from the defense.

23 THE COURT: All right everybody; we'll be at ease
24 until 3 o'clock. Thank you very much. And we'll prepare
25 to bring the jury in and go right into opening statements

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1 all right.

2 [Whereupon, Court is in recess from 2:39 p.m. until
3 2:56 p.m.]

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State v Byron Rivers
Proceedings
June 10, 2019

1 THE COURT: I'd like to make a quick clarification
2 for the record, Mr. Mack. He handed up to me during our
3 discussion regarding your motion to suppress the DNA and
4 the gun I guess some discovery that had been handed over
5 to you. It's stapled together and the bottom of the
6 first page says Rule 5 457. I just want to make that as
7 a Court's exhibit for appellate purposes for the record.
8 We'll mark that as Court's 1.

9 [Whereupon, Court's exhibit number 1 is marked by
10 the court reporter]

11 MR. MACK: Judge, before you call the jury the
12 defense moves to sequester all the State's witnesses.

13 THE COURT: Okay. All right. Any problem outside
14 of your case agent is obviously going to be here and your
15 investigator ---

16 MR. LIETZOW: --- the only two, Your Honor is
17 Detective Bailey and our investigator Chaney. But other
18 than that we would have no objection.

19 THE COURT: Okay. So are the other ones already
20 outside the courtroom as far as you're aware?

21 MR. LIETZOW: Yes, ma'am. The witness that is
22 going to testify first is out there and the witness that
23 is going to testify second is currently on the way.

24 THE COURT: Okay. So yeah, just make sure they
25 stay outside before they testify and they can come in

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1 afterwards. All right. I'll get a status update on our
2 jury and I'll be right back.

3 [Off the record momentarily]

4 THE COURT: All right. The jury is all present.
5 Are the attorneys ready to begin?

6 MR. LIETZOW: The State is ready, Your Honor.

7 MR. MACK: The defense is ready, Judge.

8 THE COURT: All right. You can bring the jury in.

9 THE BAILIFF: Bring them in?

10 THE COURT: Yes, sir.

11 [Whereupon, the jury enters at 3:05 p.m.]

12 THE BAILIFF: All jurors present, Your Honor.

13 THE COURT: Thank you very much. Please be seated.
14 Good afternoon ladies and gentlemen. Thank you for being
15 so prompt this afternoon. That will certainly aid in us
16 getting you in and out of here on a daily basis in an
17 efficient manner so I appreciate that. Ladies and
18 gentlemen of the jury the case we are about to try once
19 again is the State of South Carolina versus Byron Labron
20 Rivers.

21 Before we begin this trial I want to tell you this
22 trial is probably going to be very different from what
23 you might expect. Many people don't have the chance to
24 attend court like you are doing today so they might think
25 from watching T.V. or movies or reading books that the

State v Byron Rivers
Opening Statements-Remarks by Mr. Osborne
June 10, 2019

1 OPENING STATEMENTS

2 BY MR. OSBORNE:

3 Chicora or as some people call it the Makin' it is a
4 neighborhood in North Charleston. It is one of the most
5 violent neighborhoods in North Charleston. It is
6 dangerous. And it's not far from here. If you get on
7 Spruill Avenue and you start to head towards Park Circle
8 as you near Reynolds you will be in Chicora or in the
9 Makin'.

10 Now you don't go off of Spruill into the Makin' on
11 either side unless you live there or you're looking for
12 trouble. And that's exactly what this man was looking
13 for right here [indicates].

14 Byron Rivers or Little B on the night of July 15th
15 of 2016 this man went into the Makin' with Stacy Green.
16 They were both armed with handguns and they both had a
17 matching glove on their right hand. Together they
18 committed a home invasion and an armed robbery. And by
19 the time they were through two men were shot and one man
20 was dead. His decision, his actions that night should
21 have a consequence.

22 On the night this incident occurred at about 9:30
23 p.m. and you will hear that this Defendant and Mr. Green
24 went to a house at [REDACTED] Avenue, Apartment A. He
25 knocked on the door. Inside the apartment at that time

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Opening Statements-Remarks by Mr. Osborne
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1 was Sanquan Fyall; it was his apartment, Theodore Fyall
2 Sanquan's brother, Antonio Fyall who would be shot in the
3 head by this Defendant. Miraculously though he would
4 live. You would have Kirby Fyall; Kirby Fyall wouldn't
5 make it through the night because this man would murder
6 him.

7 Then you would have Johnell Watson who was shot in
8 the buttocks, Frederick Smalls who was robbed at gunpoint
9 and Eleanor Delesline who is Johnell's girlfriend. She
10 was in the apartment as well.

11 When he knocked on the door Antonio Fyall answered
12 the door. Antonio didn't ask who it was; he didn't look
13 through the peephole because he was under the impression
14 that it might be a friend who had just left who was
15 coming back. When he opened the door this Defendant
16 didn't give him a chance. He fired his gun.

17 Now luckily like I said earlier it didn't kill
18 Antonio. It grazed his head but Antonio ran for his life
19 at that moment. He ran through the apartment and then he
20 actually ended up diving out of the kitchen, the closed
21 kitchen window, to get out.

22 After he did that the Defendant then turned his
23 attention to the remaining occupants. At gunpoint he
24 ordered them to empty their pockets. He ordered them to
25 take off their pants. Mr. Green was there with a bag and

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Opening Statements-Remarks by Mr. Osborne
June 10, 2019

1 he ended up collecting all the loot and putting it into a
2 bag. Now this Defendant then told Mr. Green since all
3 the victims were on the ground to look underneath the
4 couch to see if one of them might have slipped something
5 under the couch I suppose.

6 When Mr. Green -- but what neither one of them knew
7 was that Kirby was hiding behind the couch. When he
8 heard the Defendant order Mr. Green to open or to lift up
9 that couch Kirby had a choice to make. He was either
10 going to hope and pray that they would let him live or he
11 would fight for his life; and he chose to fight for his
12 life.

13 And as that couch was lifted Kirby then pushed the
14 couch and charged toward this Defendant and a struggle
15 ensued. And during that struggle gunshots rang out over
16 and over again. Johnell would be shot in the buttocks
17 and this Defendant would end up shooting himself in both
18 of his legs. Kirby would be shot as well over and over
19 again; in his neck in his abdomen a couple of times and
20 in his back. Kirby would die on the scene.

21 Now this Defendant having been shot in both legs
22 couldn't run so Mr. Green then grabbed him and then tried
23 to bring him outside to where they had a white car as
24 their getaway car waiting to pick them up. Now when
25 Antonio Fyall jumped out of the window he did ask for

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1 help. He told people to call the police. But he also
2 asked for help from people in the neighborhood. When Mr.
3 Green got outside and was carrying this Defendant they
4 had a welcoming committee waiting for them in the Makin'.

5 Mr. Green then carried the Defendant less than a
6 block and then the crowd started to surround them and he
7 dropped him on the ground and took off running. But
8 before he did he dropped the bag down and he also threw
9 down his gun and he took off running like I said.

10 Antonio Cummings, one of the guys in the Makin' took
11 off running after him. Antonio was armed with a bat and
12 when Antonio caught Mr. Green he hit as hard as he could.
13 Mr. Green fell to the ground and Antonio held him there
14 for Officer Sara Fortier when she arrived on scene and
15 actually helped her basically put Mr. Green in handcuffs.

16 Now while that was going on the Defendant was laying
17 on the ground shot in both of his legs. Prior to the
18 police arriving this Defendant would become familiar with
19 street justice in the Makin' in the form of a
20 sledgehammer and several drop kicks to his head.

21 North Charleston Police Department arrived on the
22 scene and they investigated this murder just like they
23 would any other murder. Right next to where the
24 Defendant was found on the ground shot was Stacy Green's
25 gun. He threw that down before he took off running. The

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Opening Statements-Remarks by Mr. Osborne
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1 bag of loot that was left there was collected by some of
2 the people in the neighborhood. But they didn't keep it;
3 they ended up giving it to another Fyall, Rickey Fyall, a
4 brother who wasn't in the house.

5 When Rickey got it he looked inside, he saw that
6 there was some property in there and there was also the
7 murder weapon. He then notified Detective Bailey and
8 turned it over to him. North Charleston Police then
9 processed the gun and found out that there was DNA on the
10 gun and the DNA came back matching him [indicates], the
11 Defendant.

12 You will hear and see that the Makin' is a violent
13 neighborhood and it is violent because of men like him
14 [indicates]. At the end of this trial I am going to ask
15 you to hold him accountable for his actions that night,
16 not on the streets of the Makin' but right here in this
17 courtroom. Thank you.

18 MR. MACK: Thank you, Judge.
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State v Byron Rivers
Opening Statements-Remarks by Mr. Mack
June 10, 2019

OPENING STATEMENTS

BY MR. MACK:

Byron Rivers' co-defendant Stacy Green shot and killed Kirby Fyall. He peppered the entire living room of [REDACTED] Avenue after Kirby Fyall attacked Byron Rivers.

He peppered that living room with 9mm shell casings and 9mm bullets; one that he put in Kirby Fyall's chest, lower abdomen, one that he put in Antonio Fyall's head, one that he put in Johnell Watson's backside and one that he put in Byron Rivers crotch right below the waistline; a near fatal wound.

Byron Rivers was at [REDACTED] Avenue for a deal. In his possession was a 40 caliber handgun, a Walther PPS that never fired a shot. For that reason you cannot convict Byron Rivers of murder. For that reason you should acquit him of all pending charges.

In this particular case as we hear so often the hand of one is not the hand of all. In this particular case the hand of one is the hand of one and that hand belongs to Stacy Green.

Detective Bailey got the call late on July 15, 2016. A potential triple homicide in the Makin' a high crime area; the prosecutor is correct. One person dead on scene, two critically injured in the hospital. One of

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Opening Statements-Remarks by Mr. Mack
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1 those people was Byron Rivers. His button down shirt,
2 tall coffee mug in hand and he heads to the police
3 station. And when he arrives at the police station he
4 sees chaos. The interview rooms are overflowing with
5 victims and witnesses so much so that people are in the
6 conference room being questioned.

7 They are screaming, wailing, flipping furniture,
8 upset and rightfully so; their brother, their cousin is
9 dead. But Detective Bailey has got a job to do. He's
10 got to figure out what happened. So he goes from room to
11 room to room asking the simple questions; what happened?
12 Who fired first? Why did the shooting start?

13 But for whatever reason as he is trying to put the
14 pieces together the pieces don't align. Some of them are
15 missing. For whatever reason when he starts asking those
16 simple questions in different rooms among these
17 sequestered witnesses he can't piece together the story.

18 Some say the shooting started up instantly, that the
19 suspects kicked open the door and started firing. Others
20 say the incident took ten -- seven to ten minutes. Some
21 gave very few details about the suspects appearance;
22 black clothes one of them light skin, one of them dark
23 skin. Some can't identify the weapon that was used and
24 simply describing it as silver and black. And as
25 Detective Bailey is asking these questions he realizes

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Opening Statements-Remarks by Mr. Mack
June 10, 2019

1 that something is missing. There are a few common
2 denominators in their stories. There was one shooter,
3 that shooter had dreads or dreadlocks and a robbery took
4 place. Also, key factor; the shooters are not wearing
5 masks.

6 As Detective Bailey is going from room to room at
7 the station details from the crime scene start to filter
8 in either by radio transmission or by first responders
9 who are showing up at the station. He hears about the
10 chaos at [REDACTED]. He hears that Byron Rivers was
11 seen in front of the house, his limp body with a gunshot
12 wound to the groin, blunt force trauma wounds to the
13 head, torso, and leg, his femur bone shattered.

14 He hears that the primary suspect Stacy Green was
15 tackled about 40 yards from the entrance to the house by
16 a bystander. And in his flight path there is a bag of
17 loot belonging to the individuals inside [REDACTED] and
18 a Walther PPS 40 caliber.

19 Detective Bailey also hears that inside [REDACTED]
20 there are no 40 caliber shell casings. The only shell
21 casings found there belong to a 9mm handgun and a .380
22 handgun; no 40 calibers. He also hears about some
23 contraband inside that house. Scales smothered in drugs
24 on the stove, a bag of weed on the floor, a bag of
25 cocaine stashed with a giant Rubbermaid covered in blood.

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Opening Statements-Remarks by Mr. Mack
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1 So now he goes back to the interview room
2 questioning those individuals asking the tough questions.
3 Who shot first? Did you have a gun at the house? Were
4 y'all dealing drugs? And surprisingly nobody can give
5 him an answer to that question. They all deny it. They
6 deny dealing drugs. They deny possessing guns and they
7 deny firing first.

8 Also, further police investigation reveals -- well,
9 actually let me back up. A 9mm is eventually recovered
10 the next day in this case by the hands -- handed over to
11 police by the uncle of the victim, Rickey Fyall. It's in
12 a white trash bag. And in that trash bag is some of the
13 belongings. This is the day after the incident.

14 And Rickey Fyall tells police that he got that 9mm
15 handgun from two guys on the scene. They gave it to him
16 and for whatever reason he did give it to police. That
17 two guys upon further questioning turns into a guy and
18 two girls.

19 And then upon further investigation by Detective
20 Bailey we learn that those two guys -- that one guy and
21 two girls is actually one woman, Leutonia Traxler who
22 won't be testifying this week who no longer lives in the
23 Makin'.

24 This case is a huge mess. We got bullets, guns,
25 drugs, and money all over this crime scene. Yet the

State v Byron Rivers
Opening Statements-Remarks by Mr. Mack
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1 State's theory is very simple. They want you to believe
2 that Byron Rivers committed a murder because he showed up
3 at this house with Stacy Green and because he was carried
4 out by Stacy Green and because SLED says his blood was on
5 the trigger of that 9mm; the 9mm that disappeared for an
6 entire day and we have no idea where it originated.

7 This case is not that simple. And while the State
8 presents its case in chief I want you to ask the tough
9 questions that Detective Bailey failed to ask. Who
10 conducts an armed robbery without a mask? What armed
11 robbery lasts between seven and ten minutes? What gun
12 fired the bullets in this case?

13 I'm not talking about the shell casings. I'm
14 talking about the bullets, the projectiles the business
15 end of the bullet; the part that kills. What gun fired
16 those bullets? Why did that 9mm disappear for an entire
17 day? Why did Kirby Fyall attack Byron Rivers? And why
18 was Byron Rivers really there.

19 Among the answers to those questions is an acquittal
20 for Byron Rivers. Among the answers to those questions
21 is a not-guilty on all counts they made against him.
22 Among the answers to those questions is a killing at the
23 hands of Stacy Green, a hand that acted not as the hand
24 of all but as the hand of one; his own.

25 THE COURT: The State may call its first witness.

State v Byron Rivers
Sara Fortier-Direct Examination by Mr. Osborne
June 10, 2019

1 MR. OSBORNE: The State calls Officer Sara Fortier.
2 [Whereupon, Ms. Fortier comes forward]
3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]
5 CLERK OF COURT: State your full name for the
6 record spelling your last name.
7 THE WITNESS: My name is Sara Fortier. My last
8 name is spelled F-O-R-T-I-E-R.
9 - - - - -
10 SARA FORTIER,
11 Having been first duly sworn,
12 Was examined and testified as follows:
13 DIRECT EXAMINATION
14 BY MR. OSBORNE:
15 Q. Fortier not Fortier?
16 A. Either way.
17 Q. Okay. If it's not obvious where do you work?
18 A. I work for the North Charleston Police Department.
19 Q. And how long have you been there?
20 A. I've been there five years.
21 Q. And prior to that any law enforcement experience?
22 A. Five years as well with the City of Charleston.
23 Q. Okay. And during your time with North Charleston
24 what have been some of your various assignments?
25 A. I just got promoted to Corporal in the Patrol

State v Byron Rivers
Sara Fortier-Direct Examination by Mr. Osborne
June 10, 2019

1 Division and I'm also a field training officer, which
2 I've been for four of my five years at North Charleston.

3 Q. All right. Let's go back to the night of July the
4 15th, of 2016. Were you working that night?

5 A. Yes sir, I was.

6 Q. And what was your assignment?

7 A. I was patrol division in the south bureau of the
8 city of North Charleston.

9 Q. Okay. And where is the south bureau?

10 A. It is essentially between the City of Charleston
11 line at like Meeting and Pittsburg, that area, and then
12 the south end will go up to Rivers at Durant and then
13 Dorchester to West Montague.

14 Q. Okay. Is the south bureau one of the busier
15 bureaus?

16 A. You could say that, yes sir.

17 Q. Okay. Are you familiar with the neighborhood of the
18 Makin'?

19 A. Yes, sir.

20 Q. Do you answer a lot of calls there?

21 A. Yes, sir. We answer a lot of calls there.

22 Q. What type calls?

23 A. It can be everything from shootings, robberies,
24 ditched stolen vehicles, burglaries.

25 Q. All right. On this night did you respond to Leland

State v Byron Rivers
Sara Fortier-Direct Examination by Mr. Osborne
June 10, 2019

1 Avenue?

2 A. Yes sir, I did.

3 Q. And so in what capacity?

4 A. I was the first officer on scene.

5 Q. The very first officer?

6 A. It was myself and another officer right behind me
7 but yes, we arrived on scene at the same time.

8 Q. Okay. And what was the nature of the call
9 originally?

10 A. It was a robbery in progress.

11 Q. And did that change?

12 A. It did. While in route dispatch advised that shots
13 had been fired while we were in route.

14 Q. Okay. So initially a robbery in progress and then
15 seconds, minutes later shots?

16 A. It was seconds where they said that shots had been
17 fired.

18 Q. All right. Just go ahead and tell the jury what
19 happened when you arrived on scene?

20 A. When I arrived I was coming down North Carolina
21 Avenue. As I approached Leland there were a bunch of
22 people in the street pointing down Leland Avenue towards
23 Spruill Avenue.

24 I saw a gentleman laying on the ground that was
25 later identified as Byron Rivers. And then we also --

State v Byron Rivers
Sara Fortier-Direct Examination by Mr. Osborne
June 10, 2019

1 people were pointing down the street saying the other
2 suspect is running down Leland Avenue. We observed a
3 black male in a white t-shirt running behind a black male
4 in a black t-shirt.

5 So myself and the other officer pulled up as far as
6 we could to try to catch up with him and then we pursued
7 on foot.

8 Q. You pursued on foot?

9 A. Yes, sir.

10 Q. Okay. So I'm not trying to put words in your mouth
11 but is it fair to say that your attention was diverted
12 from a person laying on the ground ---

13 A. --- yes ---

14 Q. --- that you knew to be Byron based on what people
15 are directing you to do?

16 A. Yes, because the -- we were -- there was a fear that
17 the other suspect would get away if we didn't chase after
18 him.

19 Q. Okay. And did you ever identify this second
20 suspect?

21 A. Yes, we did.

22 Q. And who was he?

23 A. His name was Stacy Green.

24 Q. Okay. And what about the person who was chasing
25 after Mr. Green, did you ever identify him?

State v Byron Rivers
Sara Fortier-Direct Examination by Mr. Osborne
June 10, 2019

1 A. We did.

2 Q. And who was he?

3 A. Antonio Cummings.

4 MR. OSBORNE: Your Honor, may I approach?

5 THE COURT: Yes.

6 Q. [Mr. Osborne] I'm showing you State's 1. Can you
7 take a look at that and tell me if you recognize that?

8 [Whereupon, the witness is shown photograph]

9 A. Yes sir, I do.

10 Q. And what is that?

11 A. That is the area of which the robbery shooting had
12 occurred and then the area that we ran down after that
13 chasing Stacy Green.

14 Q. Okay.

15 MR. OSBORNE: Your Honor, at this time we'd offer
16 State's 1 into evidence.

17 THE COURT: Any objection to State's 1?

18 MS. NORRIS: No objection.

19 THE COURT: Without objection State's 1 will be
20 admitted.

21 [Whereupon, State's exhibit number 1 is entered into
22 evidence by the Court]

23 [Whereupon, the photograph is shown]

24 Q. [Mr. Osborne] Now I'm showing you State's 1. If you
25 want me to flip it, let me know and I'll flip it.

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1 A. Yes, sir.

2 [Whereupon, Mr. Osborne adjusts the photograph]

3 Q. Does that help?

4 A. That's good.

5 Q. That's okay?

6 A. Uh Huh.

7 Q. Now you can mark on that screen right there. It's a

8 touch screen in front of you. You can actually mark on

9 it and then hit that triangle and clear it when you want.

10 A. Okay.

11 Q. So what direction did you respond to the scene?

12 A. So I came down, we were coming down this way

13 [indicates]. And then everybody was kind of like right

14 in this area [indicates].

15 Q. Okay. And we see it's already been marked as [REDACTED]

16 [REDACTED]. Is that a fair representation of where [REDACTED]

17 [REDACTED] is located?

18 A. Yes sir, it is.

19 Q. Okay. So you said people were congregating there.

20 Put an X where you first saw the individual lying on the

21 ground who you later identified as the Defendant Byron

22 Rivers?

23 A. It was in this -- well, it's kind of off but it was

24 in like that area right there [indicates]. There is like

25 a -- it is almost like an extension of the roadway, it's

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1 like pavement and it was in that area right there
2 [indicates] that he was laying.

3 Q. Okay. And these people were pointing. Which
4 direction were they pointing and when did you first see
5 Cummings chasing Green?

6 A. When I first saw Stacy Green he was running down the
7 sidewalk on Leland being chased by Antonio Cummings but
8 they were running this way [indicates].

9 Q. Okay. So when you first saw him is it fair to say
10 that Green was in close proximity to Rivers?

11 A. Yes.

12 Q. How many people do you estimate were out there at
13 that point? I know it is happening quick.

14 A. It was over ten.

15 Q. All right. So using this where did you park your
16 car and where did you start the chase?

17 A. I parked my car somewhere because we had to cut
18 behind the apartment complex so it was like kind of like
19 right here [indicates].

20 And I believe Leroy or Officer Hair pulled right
21 behind me. So it was pretty -- it was between where
22 Byron was laying and where Stacy and Antonio were
23 running.

24 Q. All right. And which direction did you chase them
25 as best you can remember?

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1 A. So there is a small apartment complex that is not
2 necessarily on the map so we had to run behind the
3 apartment complex through the trees towards Success
4 Street, which is -- this [indicates] is Success Street so
5 it would be here [indicates]. And we ran towards Spruill
6 Avenue through the wooded area between Leland and
7 Success.

8 Q. Okay. And we can barely see Spruill on the bottom
9 left hand corner?

10 A. Yes. This is Spruill Avenue right here [indicates],
11 sir.

12 Q. Okay. Now, you said Mr. Cummings he was chasing
13 him too.

14 A. Yes, sir.

15 Q. Did you ever -- were you ever able to catch Mr.
16 Green?

17 A. Yes.

18 Q. All right. Tell the jury how that happened.

19 A. As we came through the wooded area down here near
20 Spruill and Success I observed Mr. Cummings and Mr. Green
21 in a -- it's like a ditch between the railroad tracks and
22 the roadway on Spruill Avenue.

23 They were both on the ground. Mr. Green was
24 attempting to get up so I just put him back down on the
25 ground and waited for my backup unit to arrive. So I

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1 just tackled him back on the ground.

2 Q. And Cummings was there as well?

3 A. Yes, he was in the ditch as well.

4 Q. Okay. Now you had mentioned that the call came out
5 as an armed robbery and then shots fired. Now you are on
6 top of this suspect did you have any concerns?

7 A. A firearm.

8 Q. And what did you do to try to alleviate those
9 concerns?

10 A. I attempted to pat him down. I was able to pat him
11 back in his waistband and to the sides but because he was
12 laying on his stomach and I was laying to top of him it
13 was hard to frisk the front of him for a weapon so I just
14 asked him if he had a ---

15 Q. --- that's okay.

16 A. Okay.

17 Q. Now did you have the occasion to search him after
18 you placed him under arrest?

19 A. Yes. Officer Hair searched him but I was right
20 there when he searched him.

21 Q. Okay. Was anything taken from Mr. Green's
22 possession?

23 A. There were several items to include a wallet with
24 the name Theodore Fyall and a bunch of cards in his name.

25 Q. Okay.

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1 MR. OSBORNE: Your Honor, may I approach?

2 THE COURT: Yes.

3 Q. [Mr. Osborne] I'm showing you State's 130.

4 [Whereupon, the witness is shown exhibit]

5 Q. And I believe if you look inside I believe you're
6 going to see 130-A and 130-B. So it's basically 130-A
7 and 130-B located inside of 130. Will you take a look at
8 that and tell me if you recognize any of those items?

9 A. Yes, sir. There is a TWIC card belonging to
10 Frederick Smalls and then there is also a debit card as
11 well.

12 Q. Okay.

13 MR. OSBORNE: Your Honor, at this time we would
14 seek to admit 130 which contains 130-A and 130-B.

15 THE COURT: Any objection?

16 MS. NORRIS: No objection.

17 THE COURT: Admitted without objection.

18 [Whereupon, State's exhibit numbers 130, 130-A and
19 130-B are entered into evidence by the Court]

20 Q. [Mr. Osborne] And I also want to show you one other
21 one.

22 MR. OSBORNE: Your Honor, may I approach?

23 THE COURT: Yes.

24 Q. [Mr. Osborne] I'm showing you one other item. It
25 says State's exhibit 132. Can you take a look at that

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1 and tell me if you recognize that?

2 [Whereupon, the witness is shown exhibit]

3 A. Yes sir, I do.

4 Q. And what is that?

5 A. It's the wallet that we located on Stacy Green that
6 night.

7 Q. Okay. And was there any identifying names of cards
8 or anything of that nature that is located inside that
9 wallet?

10 A. I know Theodore Fyall's cards were inside the
11 wallet.

12 Q. Okay.

13 MR. OSBORNE: Your Honor, at this time we'd seek to
14 admit I think that's 132 into evidence.

15 THE COURT: Any objection to 132?

16 MS. NORRIS: No objection.

17 THE COURT: It's admitted without objection, 132.

18 [Whereupon, State's exhibit number 132 is entered
19 into evidence by the Court]

20 Q. [Mr. Osborne] Just so we're not being confusing here
21 these were all items that were located on Mr. Green's
22 possession, is that correct?

23 A. Yes sir, it is.

24 Q. I'm showing you now 130-A.

25 [Whereupon, the exhibit is shown]

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1 Q. Can you see that name there?
2 A. It's Frederick Smalls.
3 Q. Okay. And did that name Frederick Smalls have any
4 significance in this investigation?
5 A. Yes. He was on scene that night.
6 Q. He was one of the victims?
7 A. Yes, he was.
8 Q. And you had mentioned earlier a PayPal card, that's
9 130-B.
10 [Whereupon, the exhibit is shown]
11 Q. You don't have a name on that, correct?
12 A. No.
13 Q. 132 is a wallet?
14 [Whereupon, the exhibit is shown]
15 A. Yes, sir.
16 Q. And you said that there was an I.D. in here by the
17 name of Theodore Fyall?
18 A. Yes sir, there were cards in his name as well.
19 Q. Bank of America card?
20 A. Yes, sir.
21 Q. That's in his name Theodore Fyall?
22 A. Yes, sir.
23 Q. And I think you said there was also an I.D. in the
24 name of Theodore?
25 A. Yes sir, there was.

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1 Q. Did that cause any confusion at first as to who Mr.
2 Green really was?

3 A. It did. Because he had a wallet in his possession
4 we believed at first that his name was Theodore Fyall.
5 But it was cleared up after that.

6 Q. Okay. I want to ask you some questions about body
7 worn cameras.

8 A. Yes, sir.

9 Q. And so just basically tell the jury how body worn
10 cameras work.

11 A. So when we get dispatched to a call as soon as we
12 leave our car or soon after we turn on the camera. We
13 cannot alter video. We cannot do anything like that.

14 It's in a little box that is pretty much tamper
15 proof. So it records everything that we see and hear
16 while we're on scene.

17 Q. Okay. But you control it, right?

18 A. I do control it. Whoever the officer is will
19 control their own body worn camera.

20 Q. Okay.

21 MR. OSBORNE: Your Honor, may I approach?

22 THE COURT: Yes.

23 Q. [Mr. Osborne] I'm showing you now for I.D. purposes
24 State's exhibit 141.

25 [Whereupon, the witness is shown exhibit]

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1 Q. Can you take a look at that and tell me if you
2 recognize that?

3 A. Yes sir, I do.

4 Q. And what is that?

5 A. It's my body worn camera from that night.

6 Q. Okay. And so that's the footage from the entire
7 night is that fair to say?

8 A. Yes sir, it is.

9 Q. Now I'm showing you State's 142. Can you take a
10 look at that and tell me if you recognize that?

11 [Whereupon, the witness is shown exhibit]

12 A. It is also my body worn camera.

13 Q. But that's a clipped version of it?

14 A. It's a clipped version of it, yes.

15 Q. Okay.

16 MR. OSBORNE: Your Honor, at this time we would
17 seek to admit the portions we discussed of State's 142.

18 THE COURT: Any objection to State's exhibit 142 as
19 previously discussed?

20 MS. NORRIS: Nothing further on that.

21 THE COURT: All right. The prior objection is
22 preserved. Okay.

23 [Whereupon, State's exhibit number 142 is entered
24 into evidence by the Court]

25 [Whereupon, the video plays with questions from Mr.

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1 Osborne]

2 Q. [Mr. Osborne] I want to stop it right there for a

3 second. Are we looking at Mr. Green's right hand there?

4 A. Yes, we are.

5 Q. What's on his hand?

6 A. It's a glove.

7 Q. How about his left hand?

8 A. It's bare.

9 Q. What month is this again?

10 A. It is July.

11 Q. [Mr. Osborne] We'll back it up just a second to see

12 if we see his left hand.

13 [Whereupon, the video plays]

14 [Whereupon, the video stops]

15 Q. [Mr. Osborne] Wearing a glove on his left hand?

16 A. No, sir.

17 MR. OSBORNE: Your Honor, may I approach?

18 THE COURT: Yes.

19 Q. [Mr. Osborne] I'm showing you State's 129. Can you

20 take a look at that and tell me if you recognize that?

21 [Whereupon, the witness is shown exhibit]

22 A. I do, sir.

23 Q. And what is it?

24 A. It's the glove that was on his right hand.

25 Q. Okay. Mr. Green's?

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1 A. Yes, on Mr. Green's right hand.

2 MR. OSBORNE: Your Honor, at this time we'd offer
3 State's 129 into evidence.

4 THE COURT: Any objection?

5 MS. NORRIS: No objection.

6 THE COURT: Admitted.

7 [Whereupon, State's exhibit number 129 is entered
8 into evidence by the Court]

9 Q. [Mr. Osborne] Do you mind just going ahead and
10 pulling it out and publishing it to the jury?

11 [Whereupon, the witness shows exhibit to the jury]

12 Q. Okay. Now after Mr. Green was placed under arrest
13 where did you take him?

14 A. We took him back to my patrol vehicle which is
15 parked ---

16 Q. --- okay. And is your or was your patrol vehicle
17 equipped with in car camera?

18 A. Yes sir, it was.

19 Q. And was it running that night?

20 A. Yes sir, it was.

21 Q. That's the same thing I mean do you once that camera
22 and that footage is uploaded do you have the ability to
23 then go back and alter or tamper or damage it in any way?

24 A. No sir, we do not.

25 MR. OSBORNE: Your Honor, may I approach?

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1 THE COURT: Yes.

2 Q. [Mr. Osborne] I'm showing you State's 137 and 138.

3 [Whereupon, the witness is shown exhibits]

4 Q. [Mr. Osborne] 137 being for I.D. purposes. What is
5 137 if you recognize it?

6 A. It's my in car video from that night.

7 Q. And that's the entire clip?

8 A. Yes.

9 Q. And what is 138?

10 A. It is a clip of my in car camera that night.

11 Q. Okay.

12 MR. OSBORNE: Your Honor, at this time we'd seek or
13 offer to admit 138 into evidence.

14 MS. NORRIS: Please note our continued objection.

15 THE COURT: I will for the record; objection noted.
16 It will be admitted.

17 [Whereupon, State's exhibit number 138 is entered
18 into evidence by the Court]

19 Q. [Mr. Osborne] And while we're cueing that up.

20 MR. OSBORNE: Your Honor, may I approach?

21 THE COURT: Yes.

22 Q. [Mr. Osborne] I'm showing you State's 96. Can you
23 take a look at that and tell me if you recognize that?

24 [Whereupon, the witness is shown photograph]

25 A. Yes sir, that's a picture of the glove on his right

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1 hand.

2 Q. Okay. So it's a still shot of the video?

3 A. Of my body camera, yes.

4 MR. OSBORNE: Your Honor, at this time we'd offer
5 State's 96 into evidence.

6 MS. NORRIS: No objection.

7 THE COURT: Admitted without objection.

8 [Whereupon, State's exhibit number 96 is entered
9 into evidence by the Court]

10 [Whereupon, the video plays, State's exhibit 138]

11 [Whereupon, the video stops]

12 Q. [Mr. Osborne] [REDACTED], is that in the city and
13 county of Charleston -- or city of North Charleston and
14 county of ---

15 A. --- it is in the city of North Charleston.

16 MR. OSBORNE: No further questions.

17 MS. NORRIS: May it please the Court?

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State v Byron Rivers
Sara Fortier-Cross-Examination by Ms. Norris
June 10, 2019

1 CROSS-EXAMINATION

2 BY MS. NORRIS:

3 Q. Officer, could you pronounce your name for me,

4 again?

5 A. It's Fortier, ma'am.

6 Q. Fortier, okay. About how many officers were out

7 there that night?

8 A. There were a lot; I'd say over 20.

9 Q. And you can communicate together between your

10 radios?

11 A. Yes, ma'am.

12 Q. And after you ran down Mr. Green did you tell the

13 other officers what the path was that you ran through?

14 A. I don't recall, ma'am.

15 Q. Well, are you aware that a second black glove was

16 collected along the route you ran?

17 A. I'm now aware. My sole focus that night was Mr.

18 Green.

19 Q. Okay. So you just stayed with him and that was your

20 job?

21 A. Yes, ma'am.

22 Q. All right. Thank you, ma'am.

23 THE COURT: Any redirect?

24 MR. OSBORNE: None, Your Honor.

25 THE COURT: You can step down officer. Thank you

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1 very much.

2 THE WITNESS: Thank you.

3 THE COURT: Any objection to this witness being
4 excused from this trial from the State?

5 MR. OSBORNE: No, Your Honor.

6 THE COURT: From the defense?

7 MS. NORRIS: No objection.

8 THE COURT: Thank you, ma'am.

9 [Whereupon, the witness is excused and exits the
10 witness stand]

11 THE COURT: The State may call its next witness.

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State v Byron Rivers
Antonio Cummings-Direct Examination by Mr. Lietzow
June 10, 2019

1 MR. LIETZOW: The State calls Antonio Cummings.

2 [Whereupon, Mr. Cummings comes forward]

3 THE COURT: Come on forward Mr. Cummings. Have a
4 seat over there [indicates] please sir. Before you sit
5 down I'll swear you in.

6 [Whereupon, the witness is duly sworn by the Clerk
7 of Court]

8 CLERK OF COURT: Please state your full name for
9 the record spelling your last name.

10 THE WITNESS: My name is Antonio Daniel Cummings.

11 MR. LIETZOW: Please spell your last name please
12 Mr. Cummings.

13 THE WITNESS: C-U-M-M-I-N-G-S.

14 - - - - -

15 ANTONIO CUMMINGS,

16 Having been first duly sworn,

17 Was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. LIETZOW:

20 Q. How old are you Mr. Cummings?

21 A. I'm 48.

22 Q. And do you live here in Charleston?

23 A. Yes, sir.

24 Q. Before we get started I just want to clear up a
25 couple of things. In 2014 you were convicted of two

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1 counts of shoplifting?
2 A. Yes, sir.
3 Q. And in 2015 you were also convicted of two counts of
4 shoplifting?
5 A. Yes, sir.
6 Q. And you have current pending charges, right?
7 A. Yes, sir.
8 Q. Can you tell the jury what those pending charges
9 are?
10 A. Trafficking cocaine and crack and a heroin charge
11 and possession of a firearm.
12 Q. And do you have a possession with intent to
13 distribute marijuana charge pending?
14 A. Yes.
15 Q. And all those charges are from one incident, right?
16 A. Yes, sir.
17 Q. And are you represented by public defender Jason
18 King?
19 A. Yes, sir.
20 Q. And I am not the prosecutor for those charges,
21 right?
22 A. No, sir.
23 Q. And Mr. Osborne is not the prosecutor for those
24 charges either, right?
25 A. No, sir.

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1 Q. That matter is being handled by somebody else in our
2 office?

3 A. Yes, sir.

4 Q. You had a bond hearing on April 12, 2019 for those
5 charges, right?

6 A. Yes, sir.

7 Q. And at that hearing the prosecutor and the defense
8 attorney told the judge that you were a cooperating
9 witness in this case?

10 A. Yes, sir.

11 Q. Have I made you any promises to help you out on your
12 current pending charges?

13 A. No, sir.

14 Q. Has the prosecutor handling the case made you any
15 promises or made you any offers on your pending charges?

16 A. No, sir.

17 Q. Are you hoping to get some sort of leniency by
18 cooperating?

19 A. No, sir.

20 Q. Why are you here then?

21 A. Because Kirby Fyall was a friend of mine. I've
22 known his whole family all my life.

23 Q. At the time that this incident happened did you have
24 a pending probation violation?

25 A. Yes, sir.

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1 Q. So that meant if you came into contact with law
2 enforcement you would be arrested on that?
3 A. Yes, sir.
4 Q. So you knew as soon as you got involved in this
5 matter you were probably going to jail?
6 A. Yes, sir.
7 Q. But you got involved anyway, right?
8 A. Yes, sir.
9 Q. And do you know Sanquan Fyall?
10 A. Yes, sir.
11 Q. Where was he living on July 15th, of 2016?
12 A. He was living on Leland Street. I don't know the
13 current -- the exact address but it was Leland Street.
14 Q. Is that where he stayed and kept all his stuff at?
15 A. Yes, sir.
16 Q. Were you at [REDACTED] the night this incident
17 happened?
18 A. Not when it first started. I was on Grayson Street
19 around the corner; one block away.
20 Q. Who were you hanging out with that night?
21 A. Nashishi, and a young lady Patricia Traxler Pat, and
22 Shanelle [phonetic] Barnwell; three young ladies was in
23 that house on Grayson Street.
24 Q. And do you know Antonio Fyall?
25 A. Yes, sir.

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1 Q. Did you ever see him that night?

2 A. Not until the incident happened.

3 Q. Well, tell us about when you first saw him.

4 A. He came running up to the house on Grayson Street
5 knocking on the door. And Nashishi I think answered the
6 door and he was covered in blood. And that's when I
7 asked him what happened to him and he told me they had --
8 we call him Mammus [phonetic] ---

9 MR. MACK: --- objection.

10 THE COURT: Hearsay, obviously is your objection is
11 that correct? What's your objection Mr. Mack?

12 MR. MACK: Actually Judge I thought maybe he was
13 going to say something other than what he said.

14 THE COURT: So you withdraw your objection at this
15 point in time?

16 MR. MACK: Yes; sorry about that.

17 THE COURT: Okay. Objection withdrawn. Please
18 continue. Go ahead.

19 A. When Antonio Fyall came to the door he was covered
20 in blood like I said. He told me that they had Mammus
21 [phonetic] around the house and they were robbing them.

22 Q. [Mr. Lietzow] Who is Mammus [phonetic]?

23 A. We call Sanquan Fyall Mammus [phonetic].

24 Q. That's his nickname?

25 A. Yes, sir.

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1 THE COURT REPORTER: Tell me the nickname again.

2 THE WITNESS: Mammus [phonetic].

3 Q. [Mr. Lietzow] So what did you do next?

4 A. I grabbed my shoes and I had an aluminum bat inside
5 the house and I grabbed the baseball bat and we run on
6 out the door and went around the corner. Antonio asked
7 me he said where you going at? I said I'm going to get
8 him.

9 He said they got guns around there and you don't
10 need to go around there. I told him to have a seat
11 because he was all bloody and stuff. I said I'll be
12 back; I'm going to get him. So I went on around the
13 corner and went to the house.

14 There was some guy Percy we call him Percy Moore
15 [phonetic] he went with me around the corner. He knocked
16 on the door when we got there. As soon as he knocked on
17 the door that's when we heard the gunshots. When the
18 gunshots stopped I stood outside the house waiting to see
19 if the door would open.

20 The guy came out the door with his friend on his
21 back and a pillow case in one hand and a gun in the other
22 hand. And Mammus [phonetic] Sanquan Fyall he was behind
23 him and as soon as he seen me he started screaming my
24 name and was like Tony, Tony he killed Kirb; don't let
25 him get away. So when he said that that's when the guy

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1 seen me because at first he didn't see me when he came
2 out the door. He proceeded coming towards me and had the
3 gun in his hand. He never really raised it at me,
4 pointed it at me but I knew -- I didn't know if he had
5 any bullets left in the gun so I started backing up from
6 him. But I told him he ain't going nowhere.

7 Someone from the corner I think it was Pat or either
8 Shi Shi was yelling that's the car, that's the car that
9 was parked in front of the house. And so I turned to the
10 car and I went at the car with the bat and tried to hit
11 the window or something but they speed off.

12 Q. Tell me a little bit more about that car.

13 A. It was a white Chrysler 200. It had like mirror
14 tint so you couldn't see inside the car to see who was
15 driving.

16 Q. Is that where the two individuals were trying to go?

17 A. Yes, they was trying to get into the car.

18 Q. And so what did you do?

19 A. I stayed inbetween them and the car and I went at
20 the car with the bat to try to hit the window or to try
21 to hit the car with the bat. And whoever was in it
22 didn't want the car to be hit so they started driving
23 off.

24 Q. Why were you trying to hit the car?

25 A. Just to make them leave or see who was in there

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1 because I know that they was trying to get in.

2 Q. Let's back up just a second. When they these two
3 individuals came out of the house did you recognize
4 either one of them?

5 A. No, sir.

6 Q. Had you ever seen them before?

7 A. No, sir.

8 Q. And one was carrying the other?

9 A. Yes, sir.

10 Q. So you tried to hit the white Chrysler with the bat.
11 What happened after that?

12 A. They proceeded across North Carolina down Leland and
13 the guy walking told his friend he tried to wave him
14 back, told him to come on back but the guy he stopped in
15 the middle of the street and when he tried to back up I'd
16 get between him again and go at the car with the bat.

17 So this happened like three times he kept stopping
18 and pulling off and he didn't want me to hit the car like
19 I said until we crossed North Carolina. I guess he heard
20 sirens and stuff coming so the Chrysler 300 finally left.
21 He took off and he went down Spruill Avenue somewhere.

22 And the guy crossed North Carolina with his friend
23 on his back and he maybe he was tired from walking with
24 him so when he got across the corner by the great fence
25 he told him wait a minute I got to put you down and he

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1 put him on the ground. And I was steady talking to him
2 and I knocked on some doors telling people to call the
3 police, call the police. I kept telling him you going to
4 jail; the police is coming to get you right now.

5 So he had the pillow case in one hand and he still
6 had the gun in the other hand and he walked a few more
7 feet away from his friend after he put him on the ground.
8 I kept telling him you ain't going nowhere and stand in
9 front of him.

10 And he put the pillow case down and as I kept
11 talking to him and telling him the sirens are getting
12 closer I said they coming to get you. You hear that?
13 They're getting closer. So as I said that he finally
14 threw the gun and he ran around a building and came out
15 on Success Street.

16 He didn't know I was behind him the whole time
17 running through the woods. When he got to Success Street
18 he looked around to see if he see his ride. And I hit
19 him with the bat and we started fighting and I got on top
20 of him and choked him and the police came and I waved
21 them over there and I said over here, over here, he
22 killed my friend. And they came and apprehended him.

23 MR. LIETZOW: Your Honor, may I approach the
24 witness?

25 THE COURT: Uh Huh.

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1 MR. LIETZOW: May I have continuing permission to
2 approach the witness as necessary?

3 THE COURT: Yes.

4 Q. [Mr. Lietzow] Mr. Cummings, I'm showing you what has
5 been marked as State's exhibit 2, State's exhibit 4,
6 State's exhibit 8, and State's 13 and 14.

7 [Whereupon, the witness is shown photographs]

8 Q. Do you recognize those photos?

9 A. Yes, sir. That's the bag I guess they had the pants
10 and stuff in. As you can see in the picture some of the
11 pants has fell out the bag on the ground.

12 Right along, right in front of the tree is where his
13 friend put him down and right there where the officer is
14 standing at is where he threw the gun at.

15 Q. And Mr. Cummings we'll put these up on the screen so
16 you can talk about them. But are those a fair and
17 accurate representation of what the scene looked like
18 that night?

19 A. Yes, sir.

20 MR. LIETZOW: Your Honor, at this point I'd move
21 State's exhibit 2, 3, 4, 8, 13, and 14 into evidence.

22 THE COURT: Any objection to 2, 3, 4, 8, 13, and
23 14?

24 MR. MACK: I'm sorry; one more time?

25 THE COURT: 2, 3, 4, 8, 13, and 14?

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1 MR. MACK: No objection.

2 THE COURT: They will be admitted without
3 objection.

4 [Whereupon, State's exhibit numbers 2, 3, 4, 8, 13,
5 and 14 are entered into evidence by the Court]

6 MR. LIETZOW: Permission to publish?

7 THE COURT: Yes.

8 Q. [Mr. Lietzow] Looking at State's exhibit 2.

9 [Whereupon, the photograph is shown]

10 Q. Is that the trashcan in the area where you saw him
11 throw the gun and the bag down?

12 A. Yes, sir.

13 Q. And State's exhibit 3 is that the same photo just a
14 different view?

15 [Whereupon, the photograph is shown]

16 A. Yes, sir.

17 Q. And State's exhibit 14 please.

18 [Whereupon, the photograph is shown]

19 Q. Same view?

20 A. Yes, sir.

21 Q. And when you were mentioning something about some
22 other stuff and I interrupted you can you please explain
23 what we're talking about now?

24 A. When he put his friend down right in front of the
25 tree after he passed the tree ---

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1 Q. --- Mr. Cummings, you can take your finger and you
2 can mark on that screen to talk about where you're --
3 what you're mentioning.

4 A. Right about over here [indicates] he put his friend
5 down on the ground. You can pretty much see the puddle
6 where he was bleeding at on the ground on the sidewalk.

7 But once he put his friend down when I said he take
8 a few steps away from him I kept talking to him then he
9 finally put the pillow case down up here [indicates] you
10 can see where the bag is. But someone moved the bag
11 because the pants and stuff were out the bag.

12 Like I say after I kept talking to him he finally
13 throw the gun somewhere where those officers are at and
14 right along past this fence [indicates] there are some
15 brick apartments. He ran around the brick apartments and
16 through the woods and come out on Success Street.

17 Q. And the man that you chased after he's the one that
18 threw that gun behind that trash can right there
19 [indicates]?

20 A. Yes, sir.

21 Q. Were you and Green saying anything to each other
22 when you were chasing after him?

23 A. No, sir. He never said anything. He didn't know I
24 was behind him so I didn't say anything.

25 Q. Was he happy to see you or acted like y'all were

State v Byron Rivers
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June 10, 2019

1 friends or anything like that?

2 A. No, sir.

3 Q. And one more thing I want to double back just to be
4 clear. You said you came from Grayson Avenue. How far
5 apart is the house on Grayson Avenue to [REDACTED] where
6 the shooting took place?

7 A. It's actually one block away down North Carolina up.

8 Q. I'm showing you State's exhibit 1.

9 [Whereupon, the photograph is shown]

10 Q. Is it -- can you see it on that Mr. Cummings? Can
11 you see where Grayson Street is?

12 A. This [indicates] is Grayson Street.

13 Q. You see Grayson Street?

14 A. Yes, sir.

15 Q. Can you show approximately where the house was that
16 you came from?

17 A. It's in the corner right here [indicates].

18 Q. Thank you, Mr. Cummings. No further questions.

19 Please answer anything the defense has for you.
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State v Byron Rivers
Antonio Cummings-Cross-Examination by Mr. Mack
June 10, 2019

1 CROSS-EXAMINATION

2 BY MR. MACK:

3 Q. Mr. Cummings you were outside [REDACTED] when this

4 incident occurred, correct?

5 A. Yes, sir.

6 Q. And you were with some friends of yours?

7 A. Yes, sir.

8 Q. You said Nashishi Walker.

9 A. Yes, sir.

10 Q. A fellow named Dread was he there?

11 A. Yes, that's her boyfriend.

12 Q. A guy named Sam? He wasn't there?

13 A. I'm not sure.

14 Q. And a woman named you said Pat Traxler.

15 A. Uh Huh, Patricia Traxler.

16 Q. Patricia Traxler is her name?

17 A. That's her name.

18 Q. Does she go by Leutonia Traxler as well? You know

19 her by ---

20 A. --- Leutonia, yes.

21 Q. Leutonia?

22 A. Uh Huh.

23 Q. She was there?

24 A. Yes.

25 Q. And when you're hanging out outside the apartment

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1 Antonio Fyall shows up.
2 A. Yes, sir.
3 Q. And he's bleeding from his head.
4 A. Yes, sir.
5 Q. And blood is dripping down his shirt.
6 A. Yes, sir.
7 Q. And he said somebody has robbed the people at [REDACTED]
8 [REDACTED].
9 A. Yes, sir.
10 Q. And you went over to investigate it.
11 A. Yes, sir.
12 Q. You walked from where you were on Grayson Street.
13 A. Yes, sir.
14 Q. To [REDACTED]
15 A. Yes.
16 Q. And you saw that the guys were still in the house.
17 A. Yes, sir.
18 Q. And you got up along side of the house, right?
19 A. Yes, sir.
20 Q. And then somebody went to the door and knocked on
21 the door.
22 A. Yes, sir.
23 Q. And that's when you saw a couch flip?
24 A. I couldn't see inside the house. I just heard the
25 gunshot.

State v Byron Rivers
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1 Q. You didn't see a couch flip?
2 A. No, the door was shut.
3 Q. If I showed you -- you spoke with Detective Bailey
4 about this matter, correct?
5 A. Yes, sir.
6 Q. If I showed you a transcript would that help you
7 remember your conversation with him?
8 A. I know exactly what I seen and what happened.
9 Q. But do you remember telling him that you saw a couch
10 flip?
11 A. No. I heard that. They told me what happened after
12 the fact.
13 Q. Oh, you heard the couch flip? Okay, that's fine.
14 But it wasn't until that couch flipped that you heard
15 shots go off.
16 A. Yeah.
17 Q. Right?
18 A. Yes, sir.
19 Q. And then you see two dudes leave the house, right?
20 A. Yes, sir.
21 Q. One is dragging his leg.
22 A. Yes.
23 Q. And he winds up by the fence, correct?
24 A. Yes, sir.
25 Q. And the other guy is waving the gun around.

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1 A. Yes, sir.

2 Q. As he walks by you, right? Or as he runs by you?

3 A. Well, he's in front of me. I'm actually in front of

4 him; he's coming towards me.

5 Q. Okay. And you chase after him though because you

6 think he's emptied his gun, right?

7 A. After he throw the gun I chased him.

8 Q. Okay. So he threw the gun and you went after him.

9 A. Yes, sir.

10 [Whereupon, Mr. Mack and Ms. Norris confer]

11 Q. [Mr. Mack] Mr. Cummings, when you were chasing after

12 the person waving the gun after he threw the gun you saw

13 him throw a bag, right?

14 A. Throw a bat?

15 Q. Yes?

16 A. No, sir. I had the bat.

17 Q. You had the bat?

18 A. Yes.

19 Q. So the bag that he took out ---

20 A. --- not the bag, I saw bat; I thought you said bat.

21 Q. Oh, you saw him throw a bag, right?

22 A. Well, he put the bag down on the sidewalk before he

23 throw the gun.

24 Q. Okay. So you saw him throw the bag.

25 A. Yes.

State v Byron Rivers
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June 10, 2019

1 Q. And it was in his flight path?

2 A. Yes.

3 Q. Okay. No further questions.

4 THE COURT: All right. Any redirect?

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State v Byron Rivers
Antonio Cummings-Redirect Examination by Mr. Lietzow
June 10, 2019

1 REDIRECT EXAMINATION

2 BY MR. LIETZOW:

3 Q. Mr. Mack just asked you about the guy dragging and
4 dropping the other guy to the ground. Did you hear the
5 guy on the ground say anything?

6 A. No ---

7 MR. MACK: --- objection.

8 THE COURT: Okay. What's your objection, Mr. Mack?

9 [Whereupon, Mr. Mack and Ms. Norris confer]

10 MR. MACK: Hearsay, Judge.

11 THE COURT: It calls for hearsay? Could you
12 rephrase the question potentially so it doesn't call for
13 hearsay?

14 MR. LIETZOW: Your Honor, may we approach?

15 THE COURT: Sure.

16 [Whereupon, an off the record bench conference is
17 held]

18 THE COURT: Please proceed. Thank you, Mr.
19 Lietzow.

20 Q. [Mr. Lietzow] Mr. Cummings, did you hear the guy on
21 the ground say anything?

22 A. No, sir.

23 Q. He didn't say man, why did you shoot me or anything
24 like that?

25 A. No, sir.

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1 Q. Thank you. No further questions.
2 THE COURT: Any cross?
3 MR. MACK: No, Judge.
4 THE COURT: All right. Sir, you can step down from
5 the witness stand. Any objection to this witness being
6 excused from the trial of this case from the State?
7 MR. LIETZOW: No, ma'am.
8 THE COURT: Any from the defense?
9 MR. MACK: No, Judge.
10 THE COURT: All right. You're excused. You're
11 free to leave.
12 [Whereupon, the witness is excused and exits the
13 witness stand]
14 THE COURT: Ladies and gentlemen does anyone on the
15 jury need a quick break? If so just throw you hand up
16 and let me know. We can take one of you need it or we
17 can keep going.
18 [Whereupon, there is no response from the jury]
19 THE COURT: All right. We'll keep going. The
20 State can call its next witness.
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State v Byron Rivers
Frederick Smalls-Direct Examination by Mr. Lietzow
June 10, 2019

1 MR. LIETZOW: The State calls Frederick Smalls.
2 [Whereupon, Mr. Smalls comes forward]
3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]
5 CLERK OF COURT: Please have a seat and state your
6 full name for the record spelling your last name.
7 THE WITNESS: Frederick Smalls.
8 MR. LIETZOW: Could you spell that last name for
9 us, please?
10 THE WITNESS: S-M-A-L-L-S.
11 - - - - -
12 FREDERICK SMALLS,
13 Having been first duly sworn,
14 Was examined and testified as follows:
15 DIRECT EXAMINATION
16 BY MR. LIETZOW:
17 Q. Mr. Smalls, how long have you lived in Charleston?
18 A. Forty-five years.
19 Q. And are you employed?
20 A. Yes, sir.
21 Q. What do you do?
22 A. I work for the City of Charleston.
23 Q. How long have you been working for them?
24 A. Three years.
25 Q. What is on July 13th?

State v Byron Rivers
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June 10, 2019

1 A. My birthday.
2 Q. Tell us about July 13th 2016.
3 A. July 13th?
4 Q. Did you go out and celebrate?
5 A. Yes, sir.
6 Q. Where did you go?
7 A. To the Lions --
8 THE COURT REPORTER: To the where?
9 A. The Lion's Den.
10 Q. [Mr. Lietzow] Where is that out?
11 A. On Reynolds and Rivers.
12 Q. Did you see anybody at the club?
13 A. Yeah.
14 Q. Who did you see there?
15 A. That young man over there sitting with the dreads.
16 Q. Who else did you see?
17 A. A girl named Toya.
18 Q. Do you know her last name ---
19 A. --- and another guy. No, I don't know her last
20 name.
21 Q. Had you ever seen those individuals before?
22 A. No sir; the first time in my life.
23 Q. Had you seen Toya before?
24 A. Yes, I seen her before.
25 Q. But the two males that was the first time you'd seen

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1 them?

2 A. First time I see the two males, yes sir.

3 Q. Did that encounter seem odd to you?

4 A. I talked to her baby daddy about it. I'm like I see

5 her with some dudes and they don't look right.

6 Q. Who is Toya's baby daddy?

7 A. Sanquan Fyall.

8 Q. Did you confront Toya about being there with the

9 men?

10 A. No. I just tell her baby daddy.

11 Q. Did they ask you for a ride or did she ask you for a

12 ride?

13 A. Yeah, she asked me for a ride. I told her I said I

14 can give you a ride but I can't give those two dudes no

15 ride because I don't know them.

16 Q. What did she say to that?

17 A. She walked off and went across the street toward the

18 liquor store.

19 Q. Had you ever seen that other male before?

20 A. No, I never seen any one of them before.

21 Q. Have you ever seen that second male ever again?

22 A. No.

23 Q. Let's talk about three days later on July 16th,

24 2016. Where were you at?

25 A. I was at -- July 16th? That didn't happen on the

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June 10, 2019

1 16th; it happened on the 15th?

2 Q. You're right; I'm sorry.

3 A. I was inside the house on Leland Street. I just

4 brought Antonio Fyall from the Crab House from work. We

5 just got in the house.

6 Q. Whose house was it?

7 A. It was Sanquan's house. We got inside the house and

8 Antonio sent Percy across the street to do something. So

9 we didn't -- we just closed the door.

10 Q. As soon as y'all got there Percy ---

11 A. --- yeah, Percy went out the house. We ain't been

12 in there five minutes. Percy went out the house, three

13 minutes later a knock on the door.

14 Q. Who all was in there -- just backing up; who all was

15 in the house with you at that time?

16 A. Me, Nora, Budda ---

17 Q. --- can you use ---

18 A. --- Theodore Fyall, I don't know Nora's last name,

19 Nora, Antonio ---

20 Q. --- Antonio ---

21 A. --- Kirby been in there, Antonio Fyall, Kirby been

22 inside there.

23 Q. What's Kirby's last name do you know?

24 A. Fyall. And Johnell Fyall been inside the house.

25 Five minutes later a knock on the door. So we not --

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1 ain't nobody thinking -- they thinking its Percy coming
2 back in the house. Open the door. When they open the
3 door the young men run in the house with guns and tell
4 everybody to get naked. Take your clothes off and get
5 naked. I got naked.

6 They hold -- one guy holding the gun on me while the
7 other one is searching through the house. So he searched
8 through the house and he was like y'all think we playing.
9 Y'all give it up. We ain't playing. This ain't no game.

10 So the young man over there with the dreads, his
11 hair right there with the white shirt on, told the other
12 guy let's lift the couch up. And when he lift the couch
13 up that's when Kirby jump up from behind the couch and
14 pushed the couch on him and that's when he started
15 shooting and he killed my home boy.

16 And he was shooting wild in the house. He was just
17 shooting. I don't know why y'all got us going through
18 this right here right now. It don't make no sense.

19 Q. Mr. Cummings, please confine -- I'm sorry; Mr.
20 Smalls please -- we understand that it is difficult.
21 What is your relationship like with all the folks that
22 were there; Sanquan, Kirby, Johnell?

23 A. Them my home boys.

24 Q. You related by blood or just friends?

25 A. No, just friends. I raised up with them. But they

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1 a little younger than me but I watched them boys grow up.
2 Q. And so this man right here [indicates] what was he
3 doing throughout this interaction?
4 A. He been the one telling the other guy what to do.
5 Q. And did he move around the house at all?
6 A. No, he was standing by the door.
7 Q. Okay.
8 A. He was standing by the door and he tell the other
9 guy search through the house and go through the back.
10 Q. And did they both have guns?
11 A. Yes. But the other guy didn't let off no shots. He
12 just had the gun pointed.
13 Q. Where were you standing when they came in?
14 A. I been in the kitchen. Standing in the kitchen and
15 the other guy wanted them to come out the kitchen and sit
16 down in front.
17 Q. Were either of the guys wearing masks?
18 A. No.
19 Q. What did that mean to you?
20 A. That mean they come to kill everybody inside the
21 house. That's what that mean to me.
22 Q. Did you see anyone get shot besides Kirby?
23 A. Johnell got shot and Antonio got shot.
24 Q. Did you see anybody else get shot?
25 A. No.

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1 Q. After the shooting stopped what happened?

2 A. After the shooting stopped the guy who was standing
3 behind me let the gun down and walked out the door.

4 Q. Who was standing behind you?

5 A. His co-defendant.

6 Q. Where did he go?

7 A. Both of them walk out the door together.

8 Q. Was one carrying the other?

9 A. After all that went -- after they went out the door
10 what I did I was waiting for the next-door neighbor
11 outside on the porch. I ain't never looked down the
12 side.

13 When they telling me what happened on the other side
14 of the street I didn't see. All I know is when they
15 walked out the door I walked out the door behind him and
16 I went to the neighbor house and sat on her porch.

17 Q. Had you ever seen the individual that came with him,
18 his co-defendant, before in your life?

19 A. No, sir. I never seen him before in my life.

20 Q. Did you have a gun with you that night?

21 A. No, sir.

22 Q. Anybody else in the house have guns?

23 A. No, sir.

24 Q. And you had seen Rivers for the first time at the
25 club on your birthday two days before the incident?

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June 10, 2019

1 A. Yes, sir.

2 Q. Were you hesitant to get involved with law
3 enforcement right after this happened?

4 A. Yes sir, because at the time I was on federal -- I
5 was on supervised -- supervision, federal supervision.

6 Q. Were you hesitant to come today to testify?

7 A. No, because Kirby don't got no voice. Kirby gone
8 over some stupidity.

9 Q. You mentioned at one point that there is a street
10 code about not talking. Can you explain that to the
11 jury?

12 A. Yes, because every time you know if you -- the
13 street code is when you're telling on somebody ---

14 MR. MACK: --- objection. Relevance, Judge.

15 THE COURT: Overruled at this point.

16 Q. [Mr. Lietzow] Please continue.

17 A. When you say street code ain't nobody going to tell
18 on nobody. Nobody is going to testify. This is the
19 first time I been on the stand in my life. So street
20 code is you don't want to tell on nobody because you want
21 to mind your own business.

22 But being that we was a victim, we was the victim of
23 a crime there ain't no street code. When a man lose his
24 life, ain't no street code with that you know. There
25 ain't no street code with that.

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June 10, 2019

1 [Whereupon, Mr. Lietzow and Mr. Osborne confer]

2 Q. Did the Defendant Rivers and the co-defendant come
3 there to buy drugs from y'all?

4 A. No.

5 Q. Nothing further. Thank you, Mr. Smalls.

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State v Byron Rivers
Frederick Smalls-Cross-Examination by Mr. Mack
June 10, 2019

1 CROSS-EXAMINATION

2 BY MR. MACK:

3 Q. Mr. Smalls, you said you saw Byron Rivers at the
4 club on July 13th?

5 A. Yes, sir.

6 Q. What was the name of that club again?

7 A. The Lion's Den. They changed the name; I can't
8 remember exactly what. At the time it was the Lion's Den
9 or whatever they called it. It's off Rivers and
10 Reynolds; right across the street from Church's -- down
11 from Church's.

12 Q. You saw Byron Rivers at the Lion's Den and he was
13 with Latoya Mack?

14 A. Yeah.

15 Q. And you said Latoya Mack; he was talking to Latoya
16 Mack?

17 A. Yeah.

18 Q. And Latoya Mack is the mother of Sanquan Fyall's
19 child, correct?

20 A. Yes.

21 Q. And Sanquan Fyall was in that house with you on July
22 15th?

23 A. Yes, sir.

24 Q. He's the victim in this case?

25 A. Yes, sir.

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June 10, 2019

1 Q. And their kid is how old; six?

2 A. I don't know.

3 Q. And does Latoya Mack was she living with Sanquan
4 Fyall at some time?

5 A. Yes, sir.

6 Q. And was Sanquan Fyall paying for the child that they
7 had together, paying child support ---

8 MR. LIETZOW: --- objection, Your Honor.
9 Relevance.

10 THE COURT: I'd like you to approach I think,
11 momentarily.

12 [Whereupon, an off the record bench conference is
13 held]

14 THE COURT: Thank you. Please continue.

15 Q. [Mr. Mack] So Sanquan Fyall was paying child support
16 for this child?

17 A. I don't know.

18 Q. Was he paying Latoya Mack's rent?

19 A. I don't know.

20 Q. And you say that -- moving on to what happened on
21 the 15th, you say that Kirby Fyall he jumped from behind
22 the couch.

23 A. Uh Huh.

24 Q. That the Defendants didn't say lift the couch or
25 anything like that; he just jumped from behind.

State v Byron Rivers
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1 A. No, he said lift the couch and his co-defendant lift
2 the couch up and Kirby got out and pushed the couch onto
3 him and that's when he began shooting.
4 Q. Okay. And you spoke with Detective Bailey before
5 this court proceeding, correct?
6 A. Uh Huh.
7 THE COURT REPORTER: Is that yes?
8 A. Yes, sir.
9 Q. It is?
10 A. Yes, sir.
11 Q. And he met with you at the police station.
12 A. Yes, sir.
13 Q. Y'all talked about this incident in great detail?
14 A. Yes, sir.
15 Q. Did you mention to him at that time that the
16 Defendant asked this co-defendant to lift the couch?
17 A. Yes, I did.
18 Q. You did?
19 A. Yes.
20 Q. You sure about that?
21 A. I'm positive. I told him the whole story that went
22 on.
23 Q. If I showed you the transcript from that interview
24 you think you could find in there where you said?
25 A. I don't know. I can't remember. But I know he tell

State v Byron Rivers
Frederick Smalls-Cross-Examination by Mr. Mack
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1 his home boy to push up that couch.

2 Q. So you don't think you could find in that transcript
3 what he said?

4 A. I don't know. It happened three years ago. I don't
5 know.

6 Q. So you don't think you could find in that transcript
7 where you said ---

8 MR. LIETZOW: --- objection, asked and answered.

9 MR. MACK: He hasn't responded to the question.

10 THE COURT: Just ask the whole question. I think
11 he did answer but I'll let you ask the entire question
12 Mr. Mack.

13 Q. [Mr. Mack] So you don't think you could find in that
14 transcript where you said that the Defendant told the co-
15 defendant to lift the couch?

16 A. I can't remember right now. But I know for a fact
17 he tell his co-defendant to lift that couch. I ain't on
18 trial right here. I'm not on trial.

19 Q. So you can't remember what you said to Detective
20 Bailey?

21 A. But I know I tell him I know he tell him to lift
22 that couch. I know that.

23 Q. But you didn't tell that to Detective Bailey?

24 A. I can't remember right now if I tell Detective
25 Bailey.

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June 10, 2019

1 Q. Do you want to see a transcript?

2 MR. LIETZOW: Objection, Your Honor. Asked and
3 answered; we've gone over this.

4 THE COURT: He's asked it. Go ahead. You just
5 asked him if he wanted to see the transcript ---

6 MR. MACK: --- yes ---

7 THE COURT: --- and he said you could show if you
8 want me to; you could show me --

9 Q. [Mr. Mack] All right Mr. Smalls, here's the
10 transcript.

11 [Whereupon, the witness is shown document]

12 Q. I want you to take a look at that.

13 A. As a matter of fact I can't even see this small
14 writing.

15 Q. You can't see that small?

16 A. No, I can't see all that. And really this is a
17 waste of time right here.

18 Q. It is?

19 A. Yeah.

20 Q. So you can't read the transcript in front of you?

21 A. Listen, this really a waste of time because I can't
22 remember exactly everything I said but I know what
23 happened in that house.

24 You ain't been there. I know my home boy laying in
25 the graveyard so this transcript don't mean nothing to

State v Byron Rivers
Frederick Smalls-Cross-Examination by Mr. Mack
June 10, 2019

1 me.

2 Q. Your conversation with Detective Bailey mean nothing
3 to you?

4 A. Listen man. This -- I don't remember everything
5 that was said inside that courtroom -- I mean that
6 interview because I didn't much want to go at the time
7 because I was on supervised release. So I really didn't
8 much want to talk to the police to be honest with you.

9 Q. I got the transcript right there [indicates].

10 A. That ain't got nothing to do with my home boy being
11 dead. This transcript don't mean nothing to me. I been
12 in the house; you wasn't.

13 THE COURT: Mr. Mack, I think you've made your
14 point. You can move on to the next line of questioning
15 if you don't mind.

16 Q. [Mr. Mack] You also said you didn't see Stacy Green
17 carrying Byron Rivers?

18 A. No, because I didn't go down the street. I went
19 next door to the neighbor's house and sat on the porch.
20 Everything that unfold down that street when they getting
21 beat up and all that I ain't nothing -- I ain't seen none
22 of that because I ain't went down this side.

23 Q. So you didn't see Stacy Green carrying Byron Rivers
24 out of the house ---

25 A. --- I ain't seen -- I done tell you I did not see

State v Byron Rivers
Frederick Smalls-Cross-Examination by Mr. Mack
June 10, 2019

1 none of that. The only thing I see is the dude who was
2 standing behind me put that gun down and walk out that
3 door. Now who was carrying who or whoever did that that
4 ain't been none of my concern.

5 The only thing I was thankful to God that my life
6 was here, still here and I ain't been dead on that floor.

7 Q. I agree.

8 A. Because if my home boy ain't sacrifice his life for
9 us all of us would have been dead in that house.

10 Q. So you didn't see it?

11 A. Didn't I just tell you I ain't seen him carry
12 nobody.

13 Q. No further questions.

14 THE COURT: Okay. Any redirect?

15 MR. LIETZOW: I've got nothing further, Your Honor.

16 THE COURT: Okay. You can step down from the
17 witness stand, sir. Any objection to this witness being
18 released from the State ---

19 MR. LIETZOW: --- nothing from the State, Your
20 Honor.

21 THE COURT: Any from the defense?

22 MS. NORRIS: No objection, Judge.

23 THE COURT: Okay. Thank you very much. You're
24 free to leave.

25 [Whereupon, the witness is excused and exits the

State v Byron Rivers
Frederick Smalls-Cross-Examination by Mr. Mack
June 10, 2019

1 witness stand]

2 THE COURT: How long do you think the next witness
3 is going to be?

4 MR. LIETZOW: No more than 10 minutes on direct,
5 Your Honor.

6 THE COURT: Okay. Call your next witness. Thank
7 you.

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State v Byron Rivers
Theodore Fyall-Direct Examination by Mr. Lietzow
June 10, 2019

1 MR. LIETZOW: The State calls Theodore Fyall.
2 [Whereupon, Mr. Fyall comes forward]
3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]
5 CLERK OF COURT: State your full name for the
6 record spelling your last name.
7 THE WITNESS: My name is Theodore Fyall, F-Y-A-L-L.
8 - - - - -
9 THEODORE FYALL,
10 Having been first duly sworn,
11 Was examined and testified as follows:
12 DIRECT EXAMINATION
13 BY MR. LIETZOW:
14 Q. Mr. Fyall, do you live in Charleston?
15 A. Yes, I do.
16 Q. How long have you lived here?
17 A. All my life.
18 Q. Before we get started I want to ask you a few
19 questions. Do you want to be here today?
20 A. I guess.
21 Q. And you were convicted of possession of crack
22 cocaine in 2012, right?
23 A. Yes.
24 Q. Where do you work at?
25 A. Speedee Oil Change.

State v Byron Rivers
Theodore Fyall-Direct Examination by Mr. Lietzow
June 10, 2019

1 Q. How long you worked there?

2 A. For like six years.

3 Q. Were you at [REDACTED] on the night of this
4 incident?

5 A. Yes, I was.

6 Q. And what is that area called?

7 A. The Makin'.

8 Q. Who lived there at the time?

9 A. Sanquan.

10 Q. Who is Sanquan?

11 A. That's my cousin.

12 Q. Is it safe to say that you were pretty upset by this
13 incident?

14 A. Yes, I was.

15 Q. Go so far as to say angry?

16 A. Yes.

17 Q. Was that yes?

18 A. Yes.

19 THE COURT REPORTER: Sir, I need you to speak up a
20 little bit. Get closer. Thank you.

21 Q. [Mr. Lietzow] And who all was at 1808 Leland the
22 night this happened and how were you related to each of
23 those people?

24 A. Antonio, that's my brother; Sanquan, that's my
25 cousin; Fred, that's a friend of mine; Nora, that's a

State v Byron Rivers
Theodore Fyall-Direct Examination by Mr. Lietzow
June 10, 2019

1 friend of mine; Kirby, that's my cousin; Johnell, that's
2 my brother.

3 Q. What were y'all doing?

4 A. Playing video games.

5 Q. Having some drinks?

6 A. Yeah.

7 Q. Just hanging out?

8 A. Yeah.

9 Q. Do you remember where you were seated?

10 A. By the couch closer to the door.

11 Q. And do you remember where Kirby was seated?

12 A. Kirby was sitting on the opposite side of me.

13 Q. Who was playing the video games?

14 A. Kirby and Sanquan.

15 Q. What happened?

16 A. There was a knock on the door. Antonio opened the
17 door. Two guys rushed in with guns and made everybody
18 get down face-down on the ground. They started
19 ransacking the place.

20 They made everybody take their pants off and by the
21 time they got to Kirby I guess he put up a tussle or
22 whatever the case may be and shots just rang out.

23 Q. Were they both carrying guns?

24 A. Yes, they were.

25 Q. Were either of them wearing masks?

State v Byron Rivers
Theodore Fyall-Direct Examination by Mr. Lietzow
June 10, 2019

1 A. No masks.

2 Q. Do you remember if either of them was wearing
3 gloves?

4 A. Yes.

5 Q. Which ones?

6 A. I know I saw gloves on both of them.

7 Q. Do you remember who -- which of the two was doing
8 what inside that house?

9 A. Stacy was the guy that had us at gunpoint and the
10 other individual was ransacking the apartment I guess, or
11 whatever.

12 MR. LIETZOW: Court's indulgence.

13 [Whereupon, Mr. Lietzow and Mr. Osborne confer]

14 Q. [Mr. Lietzow] When they were making y'all empty your
15 pockets and take your pants off did y'all comply with
16 them?

17 A. I think Kirby was the only one that didn't take his
18 pants off.

19 Q. Why not?

20 A. I don't know.

21 Q. At one point did you get face-down on the ground?

22 A. Like within -- like after the guy took our pants?

23 Q. Did he order you down, down to the ground?

24 A. Yes.

25 Q. And what happened when you were face-down on the

State v Byron Rivers
Theodore Fyall-Direct Examination by Mr. Lietzow
June 10, 2019

1 ground?

2 A. What happened was I couldn't really tell you what
3 happened but I just know by the time they got to Kirby
4 there was a scuffle and then shots just rang out.

5 Q. Okay. Was this very chaotic when it was happening?

6 A. No, it wasn't chaotic.

7 Q. I mean was it something that happens on a regular
8 basis?

9 A. What happens on a regular basis?

10 Q. An armed robbery or a shooting. Was it hectic?
11 Were you scared when you were there?

12 A. Yes, everybody -- yes, I was scared.

13 Q. What happened after the shooting started?

14 A. After the shooting started we got up and ran.

15 Q. And did you see both the guys leave?

16 A. By the time I ran, I hide, and I saw some guy
17 carrying a guy -- I mean it was Stacy carrying the other
18 guy and Stacy left the guy.

19 Q. Had you ever seen any of these individuals before
20 this night?

21 A. Nope --

22 THE COURT REPORTER: What was your answer, sir? I
23 didn't hear you.

24 Q. No.

25 Q. [Mr. Lietzow] And did you have a gun on you that

State v Byron Rivers
Theodore Fyall-Direct Examination by Mr. Lietzow
June 10, 2019

1 night?

2 A. No. No, sir.

3 Q. Anybody else in the house have guns?

4 A. No.

5 Q. Did these two guys come there to hang out or buy

6 drugs from you guys or with you guys?

7 A. I don't know what their intention -- I don't know

8 what their intention was. It seem like they came to just

9 rob them.

10 Q. Okay. So going back to when they leave out the

11 house you said that Stacy was carrying Byron. Did you do

12 anything once you were out of the house and you saw them

13 trying to get away?

14 A. Yes, I did.

15 Q. What did you do?

16 A. Attacked Byron.

17 Q. Tackled him?

18 A. Attacked.

19 Q. You attacked him?

20 A. Yes.

21 Q. Why did you do that?

22 A. Out of frustration.

23 Q. What did you do to him?

24 A. Just kicking and punching him.

25 Q. Did you cooperate with law enforcement right after

State v Byron Rivers
Theodore Fyall-Direct Examination by Mr. Lietzow
June 10, 2019

1 this happened?

2 A. Yes, I did.

3 Q. Did you go to City Hall and give a statement after
4 the incident?

5 A. Yes, I did.

6 Q. Thank you, Mr. Fyall. Please answer any questions
7 that the defense may have for you.

8 MR. MACK: Nothing from the defense.

9 THE COURT: Okay. Thank you very much. You can
10 step down from the witness stand, sir. Any objection to
11 this witness being released?

12 MR. LIETZOW: Nothing from the State, Your Honor.

13 THE COURT: And from the defense?

14 MR. MACK: Nothing from the defense.

15 THE COURT: All right. You're free to leave.

16 [Whereupon, the witness is excused and exits the
17 witness stand]

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1 THE COURT: All right. Given the hour ladies and
2 gentlemen and I promised to try to keep it at 9 to 5-ish
3 I am going to allow us to break for the day. I am going
4 to instruct you once again do not do any independent
5 research whatsoever about this case.

6 Don't try to look up anything about it; the people,
7 the parties or the attorneys involved. Don't discuss the
8 case not with each and not with anyone at home as
9 difficult as that may seem. It is very important that
10 you follow my instructions on that at this point in time,
11 okay.

12 I am going to release you for the afternoon and we'd
13 ask that you be back tomorrow morning at 9:15. And I'll
14 release you to the bailiffs now and they can once again
15 give you more information if you need any about
16 tomorrow's parking or anything like that. Thank you very
17 much.

18 [Whereupon, the jury exits at 4:48 p.m.]

19 THE COURT: Thank you. We'll be at ease for the
20 afternoon and I'll see the attorneys back at 9:15. Thank
21 you very much.

22 [Whereupon, jury trial adjourns at 4:50 p.m.]
23
24
25

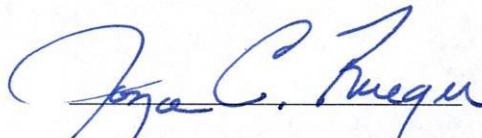
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Certificate of the Court Reporter
June 10, 2019

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of General Sessions for Charleston County,
South Carolina on the 10th day of June, 2019.

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

September 21, 2019


Joyce C. Rueger, CVR-M
Court Reporter

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
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	)	2019-GS-10-1889
	)	2019-GS-10-1890
	)	2019-GS-10-1891
	)	2019-GS-10-1893
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	)	2017-GS-10-2107
	)	2017-GS-10-2106
	)	2019-GS-10-1899
	)	2019-GS-10-2143
vs.	)	
	)	
BYRON LABRON RIVERS	)	
	)	
Defendant	)	
	)	
	)	
_____	)	TRANSCRIPT OF RECORD

June 11, 2019
Charleston, South Carolina

Volume 2 (of 2)

B E F O R E:

THE HONORABLE JENNIFER B. MCCOY, JUDGE

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Circuit Court Reporter

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PROCEEDINGS

THE COURT: Is the State ready to proceed?

MR. LIETZOW: Your Honor, there are two jury issues we need to bring to your attention before the jury comes in.

THE COURT: Okay. What do we need to take up before the jury comes back in this morning?

MR. OSBORNE: Your Honor, it was brought to my attention yesterday that we have two jurors that we need to bring to your attention.

THE COURT: Okay.

MR. OSBORNE: The first juror is juror number 4. Her name is Melanie Baker.

THE COURT: Okay.

MR. OSBORNE: So this was is a little bit tricky. So Ms. Baker works for Russell Frierson. Russell Frierson is Lauren Frierson's husband. We don't have any reason to believe that Melanie knows Lauren so when you asked the question do you know anyone in the Solicitor's office we don't think that she even knew that.

THE COURT: Okay.

MR. OSBORNE: The only reason why this came to our attention is because like I said she works for Russell so she had to text Russell and say I'm not coming into work this week because I'm on a jury for a murder trial.

1 THE COURT: Okay.

2 MR. OSBORNE: Lauren then notified me, I looked up
3 her name, she is on our list; or on our jury.

4 THE COURT: Okay. Does the defense want to
5 respond? I mean was there an exchange or any information
6 relayed about the case at all?

7 MR. OSBORNE: No, not at all.

8 THE COURT: [To the Defendant] Listen to what we're
9 saying real quick and then I'm going to give you plenty
10 of time to discuss this with your attorney. I just need
11 to make sure that you are hearing every single word we're
12 saying in your client's interest ---

13 MR. OSBORNE: --- no, not at all. In fact Ms.
14 Frierson said when her husband told her about it she said
15 I don't want to know anything else. Don't tell me
16 anything else; all I need to know is the woman's name.
17 And then she relayed that to me.

18 THE COURT: All right. Now Mr. Mack, how do you
19 want to respond? Do you want me to...

20 MR. MACK: If I could have one moment, Judge?

21 THE COURT: Yes, now please.

22 [Whereupon, Mr. Mack and Ms. Norris confer with his
23 client]

24 THE COURT: Now Mr. Mack, I can obviously bring Ms.
25 Baker in, which I believe I would do anyway out of an

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1 abundance of caution individually and give you the
2 opportunity to voir dire her or pose any questions that
3 you would like me to give her with regards to whatever
4 this notification was that I guess she had to get her
5 boss and her boss relayed that to his wife at some point
6 in time. What would you like to tell me?

7 MR. MACK: Judge, if we could see the juror that
8 would be helpful.

9 THE COURT: No problem ---

10 MR. MACK: --- so we can see who she is. Could I
11 get the juror number?

12 MR. OSBORNE: It's number 4, Melanie Baker. At
13 least that's the best I've been able to ascertain.

14 THE COURT: We think at this point. Okay. Now
15 there was another issue before I start bringing these
16 jurors in individually. Go ahead.

17 MR. OSBORNE: The second juror is juror number 212.
18 His name is Edward Pope. Edward has a daughter, a five
19 year old I believe, that goes to the same daycare as
20 Tyler Whitaker's daughter. And Tyler Whitaker is a
21 prosecutor in our office.

22 THE COURT: Yes. My child was in that class too
23 but I mean I didn't even know coming in. Okay.

24 MR. OSBORNE: We didn't have any reason to believe
25 that he would know that either but...

1 THE COURT: So how did this even get brought to
2 your attention?

3 MR. OSBORNE: I'm not exactly -- Shannon Elliott,
4 Ms. Elliott told me that Tyler became aware of it. And
5 I'm really not sure exactly how Tyler became aware of it.

6 THE COURT: Okay. We'll have to bring him in and
7 see what's going on here. All right. So let's bring in
8 number 4 first. And then while you're doing that pull
9 apart 212 and have him sit separately.

10 [Whereupon, Ms. Baker, Juror number 4 enters the
11 courtroom]

12 THE COURT: Thank you so much Ms. Baker. You can
13 have a seat. You're not in trouble or anything like
14 that. We just have to ask a couple of quick questions.
15 All right Ms. Baker did you -- obviously yesterday I
16 asked several questions are you related to, have any
17 personal or social relationships with anyone who works in
18 the Solicitor's office. You didn't respond at the time
19 and I guess it has come to the knowledge of the Solicitor
20 that you may or may not work for an Assistant Solicitor's
21 husband. Tell me.

22 JUROR NUMBER 4: Yes.

23 THE COURT: Okay. So just tell us about that.

24 JUROR NUMBER 4: So Russell Frierson -- I work at
25 the Citadel in athletic fundraising. I guess his wife is

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1 an attorney. I only met her once or twice.

2 THE COURT: You met her?

3 JUROR NUMBER 4: Yes.

4 THE COURT: So did you communicate with him that
5 you had jury duty or what was ---

6 JUROR NUMBER 4: --- I did.

7 THE COURT: Okay.

8 JUROR NUMBER 4: Yeah.

9 THE COURT: Okay. And so did you just text him
10 and say I have jury duty or how did that go down?

11 JUROR NUMBER 4: Yeah, I just let him know that I
12 would be out for the week or however long.

13 THE COURT: Okay.

14 JUROR NUMBER 4: They're all at a conference right
15 now so I just wanted to make sure because I'm like
16 basically the ad min; I answer the phones so.

17 THE COURT: Okay. So was there any information
18 exchanged with regards to anything about this case after
19 that?

20 JUROR NUMBER 4: I just let him know that I'd be
21 out. I wasn't sure how long.

22 THE COURT: Okay. And did he respond anything
23 about the case or anything like that?

24 JUROR NUMBER 4: Just a thumbs up emojis.

25 THE COURT: All right. Any follow up voir dire

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1 from the State?

2 MR. OSBORNE: None, Your Honor.

3 THE COURT: Any from the defense?

4 [Whereupon, Mr. Mack and Ms. Norris confer with
5 their client]

6 MR. MACK: No questions from the defense, Judge.

7 THE COURT: Okay. Ms. Baker, you can be excused
8 back in the back hall. The bailiffs will take you back.
9 If you could just keep her aside for one more minute
10 okay, and then you can bring in 212.

11 THE BAILIFF: Okay.

12 THE COURT: Okay. Thank you.

13 [Whereupon, juror number 4 exits the courtroom]

14 THE COURT: Any motions with regard to juror number
15 4 from either party?

16 MR. OSBORNE: None from the State.

17 MR. MACK: None from the defense, Judge.

18 THE COURT: Okay. So she will remain on the jury
19 without any objection from either side at this point in
20 time based on her responses. Okay. And we'll bring in
21 212 and we'll ---

22 MR. OSBORNE: --- a little clarification on 212.
23 Tyler just communicated to me that she saw him walking to
24 the garage getting in his car. She then ---

25 THE COURT: --- wait a minute.

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1 [Whereupon, Juror number 212 enters the courtroom]

2 THE COURT: Hey, how are you Mr. Pope?

3 JUROR NUMBER 212: Good morning.

4 THE COURT: Good morning. You're not in trouble or
5 anything like that. We just have to clarify a couple of
6 things for the record. It's come to the Solicitor's
7 attention that you may have spoken or had an exchange in
8 the parking garage with another Assistant Solicitor
9 yesterday. Is that what happened or did you come into
10 contact with anybody from the Solicitor's office at all?

11 JUROR NUMBER 212: I don't know anybody in the
12 Solicitor's office.

13 THE COURT: Okay. Did you see -- any follow up
14 questions from the Solicitor based on his response?

15 MR. OSBORNE: No, Your Honor.

16 THE COURT: Okay. Any from the defense based on
17 his response to that question? I think he doesn't even
18 know she works in the Solicitor's office. He didn't
19 realize that she...

20 [Whereupon, Mr. Mack and Ms. Norris confer with
21 their client]

22 MR. MACK: No questions from the defense.

23 THE COURT: Okay. And Mr. Pope for the record our
24 children were in the same preschool class I think last
25 year. Would that make it difficult for you to be fair

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1 and impartial to both sides of the case during this
2 trial?

3 JUROR NUMBER 212: No ma'am, not at all.

4 THE COURT: Okay. Thank you very much. Any
5 follow up questions with regards to what I just asked
6 him?

7 MR. OSBORNE: No, Your Honor.

8 THE COURT: To share with the Court? Okay, thank
9 you very much. We can send Mr. Pope back and then we can
10 put number 4 back with the rest of the body.

11 [Whereupon, juror number 212 exits the courtroom]

12 THE COURT: Any motions with regard to juror number
13 212 at this point in time?

14 MR. OSBORNE: No, Your Honor. Just so the record
15 is clear Ms. Whitaker had communicated with me, I know it
16 was kind of brief, but Ms. Whitaker stated that it's not
17 that he saw her, she saw him walking to the garage and
18 then she communicated that to Ms. Elliott who then told
19 me to inquire whether he was on the jury.

20 THE COURT: Okay. And clearly based on his
21 response to my question he didn't even know that he
22 worked at the Solicitor's office. I'm happy to entertain
23 any motions with regards to juror number 212 on behalf of
24 the defense.

25 MR. MACK: No motions from the defense.

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1 THE COURT: All right. Then I will inform them
2 that he can return to the rest of the body and is there
3 anything else before we bring the jury back in this
4 morning?

5 MR. OSBORNE: No, Your Honor.

6 THE COURT: Is the State ready to proceed with its
7 next witness?

8 MR. OSBORNE: Yes, Your Honor.

9 THE COURT: Okay.

10 [Off the record momentarily]

11 [Whereupon, the jury enters at 9:36 a.m.]

12 THE BAILIFF: All jurors present, Your Honor.

13 THE COURT: All right. Thank you very much.
14 Please be seated. The State can call its next witness.

15 MR. OSBORNE: Thank you, Your Honor.

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State v Byron Rivers
Dr. Alicia Privette-Direct Examination by Mr. Osborne
June 11, 2019

1 MR. OSBORNE: The State calls Doctor Privette.

2 [Whereupon, Doctor Privette comes forward]

3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: Please have a seat. State your
6 full name for the record spelling your last.

7 THE WITNESS: Alicia Renee Privette, P-R-I-V, as in
8 Victor, E-T-T-E.

9 - - - - -

10 DR. ALICIA PRIVETTE,

11 Having been first duly sworn,

12 Was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. OSBORNE:

15 Q. Good morning, doctor. Tell the jury what is your
16 occupation or profession?

17 A. I am a trauma and critical care and general surgeon
18 at the Medical University of South Carolina.

19 Q. Okay. Are you a duly licensed surgeon?

20 A. Yes, I am.

21 Q. In this state?

22 A. In the state of South Carolina as well as the state
23 of California.

24 Q. Okay. And do you specialize in any particular
25 branch or field of medicine?

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1 A. Yes, general surgery, trauma and critical care.

2 Q. Okay. And where did you receive your education and
3 training?

4 A. I received my medical degree from the University of
5 Utah, my general surgery training at the University of
6 Vermont, and then my fellowship training in trauma and
7 critical care at the University of California San
8 Francisco.

9 Q. Okay. So explain to the jury what does trauma
10 surgery or trauma care what do you mean when you say
11 that?

12 A. It's the care of anyone who comes in injured from
13 either an accident or intentional injury or harm.

14 Q. Okay. And are you presently engaged in the practice
15 of your profession? I think that's obvious.

16 A. Yes.

17 Q. And you said at MUSC. How long have you been at
18 MUSC?

19 A. It will be six years in August.

20 Q. Okay. And did you work in your profession prior to
21 that at another location?

22 A. I completed my fellowship in trauma and critical
23 care prior to that and then took the job here at MUSC.

24 Q. Okay. And are you a member of any specialized
25 medical or scientific groups or associations?

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1 A. Yes. I'm a Fellow of the American College of
2 Surgeons and a member of the Eastern Association for the
3 Surgery of Trauma.

4 Q. Okay. And are there any requirements for those
5 certifications?

6 A. To be board certified in general surgery and
7 critical care and you have to pass a licensing exam in
8 both of those specialties.

9 Q. Okay. And you've done that and you're licensed?

10 A. Yes.

11 Q. All right. And approximately how many trauma care
12 cases have you been involved in in your career?

13 A. Over the last six years just as an attending
14 physician not doing fellowship probably anywhere from 500
15 to 1000.

16 Q. Okay.

17 MR. OSBORNE: Your Honor, at this time the State
18 would offer Doctor Privette as an expert in the field of
19 trauma care.

20 MS. NORRIS: No objection.

21 THE COURT: Without objection. Ladies and
22 gentlemen normally a person cannot give opinion testimony
23 from the witness stand. However, there is an exception
24 when someone is designated as an expert in some field or
25 area of expertise. This witness will be qualified in the

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1 area of trauma care to give her opinion testimony in that
2 area. Now it doesn't mean you must accept her opinion
3 but is evidence for you to use in any way that you see
4 fit. Please continue.

5 MR. OSBORNE: Thank you, Your Honor.

6 Q. [Mr. Osborne] All right. Were you working at MUSC
7 on or about July the 15th heading into July the 16th of
8 2016?

9 A. Yes.

10 Q. In what capacity?

11 A. I was the in house trauma attending on call.

12 Q. I'm sorry?

13 A. I was the in house trauma attending on call.

14 Q. Okay. And during that night did you have the
15 occasion to treat a patient by the name of Johnell
16 Watson?

17 A. Yes. He would not have come in with a known name
18 but yes, he was identified as that person after.

19 Q. Well, so let's talk about that for a second. You
20 said he would not have come in with a known name?

21 A. Yes. The vast majority of our patients come in as
22 designated as a Doe name so they are not identified
23 because we don't necessarily are not able to necessarily
24 verify their identify when they come into the hospital.
25 So they are just identified as a trauma Doe name.

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1 Q. Okay. And what was -- did you ascertain what his
2 age was?

3 A. I believe at the time subsequently and then he was
4 28 I believe.

5 Q. Twenty-eight? All right. And about what time did
6 he arrive at MUSC?

7 A. Approximately between 10:30 and 10:45 maybe.

8 Q. All right. What was your role in treating Mr.
9 Watson?

10 A. So as the trauma attending my responsibility is when
11 a trauma alert goes out and a patient arrives my job is
12 to supervise a team that is caring for the patient.

13 This usually consists of ER residents, as well as
14 nurses, respiratory therapists, and general surgery
15 residents.

16 Q. Okay. And as the supervisor that is in charge of
17 treating a patient just general do you receive
18 information prior to the patient's arrival?

19 A. Most frequently we receive a page that has some
20 minimal information. It usually is the mechanism of
21 injury; so what kind of trauma they are, general vital
22 signs and sometimes age of the patient.

23 Q. And did you receive some limited information about
24 Mr. Watson prior to his arrival?

25 A. I don't have access to the actual page that went

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1 out. I would assume so; that's pretty standard. I'm
2 sorry, and they would actually also say what level of
3 trauma it is as well.

4 Q. Okay. When you saw him what was his condition or
5 level?

6 A. So he arrived as a level B, which is our secondary
7 level. So level A is our highest level; so the highest
8 acuity is the sickest trauma patients.

9 Level B is lower acuity but still serious but in his
10 case which gunshot wounds almost always qualify as a
11 level B trauma; more serious trauma is qualified as a
12 level A.

13 So he was a level A which indicated that the
14 mechanism injury was severe enough to activate a level B
15 but his vital signs were stable so he was not in any
16 distress from the injury at that time.

17 Q. And how far down do these levels go?

18 A. Just level A and level B. If they are not serious
19 and can be evaluated by the emergency department then the
20 trauma team is not activated.

21 Q. Okay. And what is a GS scale? What does that mean?

22 A. So a GCS is a Glasgow Coma Scale and it's how we
23 access or gauge a person's responsiveness. And it's
24 based on assessment of verbal response, eye opening, and
25 motor response.

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Dr. Alicia Privette-Direct Examination by Mr. Osborne
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1 Q. And did you evaluate him and put a number to his
2 scale?

3 A. Yes. For any level A or level B trauma we access
4 their GCS scale. It's part of our assessment and his was
5 a 15, which is the highest score you can have. It's a
6 scale of 3 to 15.

7 Q. All right. So let's get into it. What was Mr.
8 Watson's injuries? What did you treat him for?

9 A. So he had a single wound to his left buttock with no
10 obvious exit wound. The report we received was there was
11 a gunshot wound so that was the presumption that that was
12 what had caused the wound.

13 Q. Okay. Did you end up running or had run a
14 toxicology on his blood?

15 A. He did not have -- most of our trauma patients do
16 have an alcohol screen which was negative. Not all
17 patients get a toxicology which would include other drugs
18 and he did not have those screens.

19 Q. Okay. But for alcohol there was no alcohol?

20 A. That's correct.

21 Q. For ethanol I guess I should say.

22 A. Uh Huh.

23 Q. Okay. Can you explain to the jury any potential
24 dangers associated with Mr. Watson's injury?

25 A. So anytime you have a gunshot wound to any area

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1 there is a potential for significant tissue damage. In
2 the area of the buttocks especially with no exit wound we
3 don't really know what the trajectory is. If it enters
4 through the pelvis there are a significant number of
5 structures that can be injured.

6 There are large blood vessels that can cause
7 significant bleeding. There are bony structures that can
8 cause fractures. The colon and small bowel can also be
9 in the pelvis as well as the bladder.

10 Any injuries to those can, if not diagnosed promptly
11 and repaired, can cause sepsis leading to severe
12 infection and even death if they are not properly
13 treated.

14 Q. Okay. So would, and I think you've already answered
15 it, but would you say that there was a high risk of death
16 or great bodily injury from receiving that type of
17 injury; gunshot?

18 A. Depending on the trajectory, yes definitely.

19 Q. All right. Let's get into Antonio Fyall. Did you
20 treat him that night or understand you might have found
21 out later ---

22 A. --- yes, it would have been the trauma team, but
23 yes.

24 Q. And did you later learn about what his age was?

25 A. I believe 37.

1 Q. And what time did he arrive at MUSC?

2 A. I believe he arrived around 10 o'clock, about half
3 an hour before the prior patient.

4 Q. Okay. So we talked about this GCS scale. Mr.
5 Watson was at a 15, the highest possible. What level did
6 you place Mr. Fyall at?

7 A. So he was listed as a 4. So just about the lowest
8 level that you can have.

9 Q. And the scale starts at 3.

10 A. The scale starts at 3, correct.

11 Q. What were his injuries?

12 A. He had multiple lacerations to his arm as well as a
13 lacerations to his face and posterior scale so he was a
14 presumed gunshot wound to the face. It was unclear what
15 caused the laceration on his arms at that time so.

16 Q. Lacerations to his arms and his face but also a
17 gunshot wound?

18 A. The presumption was that the laceration -- so
19 basically without knowing again the trajectory is you can
20 have a superficial laceration that actually connects to a
21 deeper wound.

22 So the presumption was the laceration on his face
23 and the posterior wound on the back of his head was most
24 likely a secondary gunshot wound. Again, based on the
25 report that there had been a shooting.

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1 Q. Okay. Can you just demonstrate to the jury where on
2 his face the laceration was?

3 A. So it was basically kind of cheek here [indicates]
4 and deep and exit wound basically on the back of the head
5 [indicates].

6 Q. Okay. Interior or entry wound to the face and exit
7 to the back of his head ---

8 A. --- correct. And we don't always know so
9 trajectories are not always straight so we don't always,
10 we always specify them when we do the note as a
11 laceration or a wound because without more advanced
12 imaging or knowing where the bullet is lodged or the
13 story behind it is that you cannot say necessarily that
14 it is a bullet track without knowing if there is --
15 without looking at the more advanced imaging for the
16 surface.

17 Q. Okay. Was an alcohol or drug test run on Mr. Fyall?

18 A. He had an alcohol test, no drug test. The alcohol
19 test was negative.

20 Q. No alcohol. I think this is obvious but what are
21 some of the injuries or I should say the dangers of being
22 shot in the head?

23 A. Well obviously any time you have any trajectory
24 toward the face or the head depending on the trajectory
25 of the bullet that enters the brain matter if often

1 causes significant injury and damage. And that was the
2 concern with his low level of GCS. Part of how we judge
3 is that. It's specifically a measure of head injury.

4 So with the GCS of four there was great concern that
5 he had an intracranial or a brain injury from the wound
6 itself.

7 Q. And that turned out not to be the case though here?

8 A. Correct. We obtained a CAT scan and all we saw was
9 soft tissue injury. The CAT scan did suggest that due to
10 the direction of the error or -- when a bullet or an
11 object enters it does leave kind of a trail of gas and
12 air where there used to be solid tissue; something had
13 passed through it.

14 The suggestion based on the CAT scan was that the
15 air tracking looked like an object had gone through
16 probably through his face and out through the back of his
17 head.

18 Often face CT's are difficult because if people have
19 dental hardware it can kind of cause scatter where it is
20 more difficult to see but there were no obvious retained
21 fragments.

22 But given his decrease in mental status, which can
23 be caused by a concussion or a traumatic brain injury
24 from the force of the bullet or such as a trauma or fall
25 that that was likely the cause.

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Dr. Alicia Privette-Direct Examination by Mr. Osborne
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1 [Whereupon, Mr. Lietzow and Mr. Osborne confer]

2 Q. [Mr. Osborne] Can an individual's score decrease or
3 increase over time?

4 A. Yes ---

5 Q. --- after the injury is sustained?

6 A. Yes, it can. So it's not unusual for certain type
7 of head injuries specifically what we call epidural
8 hematoma where people will have a lucid period initially
9 after a trauma.

10 A good example is people -- there have been several
11 famous people who have had skiing injuries. They seem
12 normal and then die of a head bleed later. That's the
13 same -- that's an example of that.

14 And the reason for that is that you don't have
15 enough blood accumulation or damage initially to cause a
16 problem so your initial kind of bump on the head might
17 knock you out and then as blood accumulates it causes
18 pressure on the brain that can cause death.

19 So it's not unusual for people to initially have a
20 good score and then for it to go down depending on what
21 the injury is.

22 Q. And I would imagine loss of blood also contributes
23 to the score going down.

24 A. Correct. So lack of -- so other things again back
25 to like a lack of profusion to the brain so if your blood

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1 pressure is low most commonly in trauma is from blood
2 loss. So if you have a low blood pressure you're not
3 perfusing your brain as much so you're not as responsive
4 and so you have a score lower on that.

5 Q. Okay.

6 MR. OSBORNE: Thank you, Your Honor. No further
7 questions.

8 THE COURT: Cross-Examination.

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State v Byron Rivers
Dr. Alicia Privette-Cross-Examination by Ms. Norris
June 11, 2019

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CROSS-EXAMINATION

BY MS. NORRIS:

Q. Doctor, when you saw Mr. Johnell Watson was he oriented to time, place, etcetera?

A. Yes. That would be included in assessment of the GCS score it would be response to questions like that so yes.

Q. Okay. So basically he would walk and talk when you saw him?

A. I did not necessarily see him walk but yes, he was conversant.

Q. And Mr. Antonio Fyall could you help us understand why he was rated lower on the scale than Mr. Watson was when he was shot in the head?

A. He was -- I'm sorry; maybe I misunderstood. He was actually listed -- do you mean the trauma level?

Q. Yes?

A. He was actually listed as an A so he was highest, yes ---

Q. --- so he was A ---

A. --- so he was an A ---

Q. --- but a scale lower?

A. So through the GCS scale? So GCS actually the lower the number is actually the worse.

Q. Oh, okay.

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Dr. Alicia Privette-Cross-Examination by Ms. Norris
June 11, 2019

1 A. Yes. So 3 is the worse you can be. Fifteen is the
2 best you can be.

3 Q. Oh, thank you Doctor. No further questions.

4 THE COURT: Okay. Any redirect?
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State v Byron Rivers
Dr. Alicia Privette-Redirect Examination by Mr. Osborne
June 11, 2019

1 REDIRECT EXAMINATION

2 BY MR. OSBORNE:

3 Q. Just one question in regards to the scale. An
4 individual at 4 like Mr. Fyall was when he came in was he
5 conscious?

6 A. So the scores that he received so basically he had
7 one point which is no eye opening so he was doing nothing
8 to response, one for verbal in that he was not responding
9 to any commands or following any commands.

10 And he received two for motor which means he was
11 doing some posturing which is not his more reflexive
12 posturing and so he had on that scale he was very low on
13 that scale.

14 MR. OSBORNE: No further questions.

15 THE COURT: Okay. Anything else?

16 MS. NORRIS: No, Your Honor.

17 THE COURT: All right. Thank you Doctor. You can
18 step down. Any objection to this witness being released?

19 MR. OSBORNE: None, Your Honor.

20 MS. NORRIS: None.

21 THE COURT: All right. Thank you, ma'am. You're
22 free to leave. Thank you very much for your time.

23 [Whereupon, the witness is excused and exits the
24 witness stand]

25 THE COURT: The State may call its next witness.

State v Byron Rivers
Kenneth Sharp-Direct Examination by Mr. Osborne
June 11, 2019

1 MR. OSBORNE: The State calls Sergeant Kenneth
2 Sharp.

3 THE COURT: Okay.

4 [Whereupon, Mr. Sharp comes forward]

5 [Whereupon, the witness is duly sworn by the Clerk
6 of Court]

7 CLERK OF COURT: Please state your full name for
8 the record spelling your last name.

9 THE WITNESS: Kenneth W. Sharp. My last name is
10 spelled S-H-A-R-P.

11 - - - - -

12 KENNETH SHARP,

13 Having been first duly sworn,

14 Was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. OSBORNE:

17 Q. Sergeant Sharp, where do you work?

18 A. The North Charleston Police Department.

19 Q. And how long have you worked there?

20 A. Almost 22 years.

21 Q. Okay. And during your time with North Charleston
22 what have been some of the various assignments you've
23 had?

24 A. I've been assigned to uniform patrol, the police
25 community team, the SPEED team, narcotics twice, assigned

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1 to K-9 for the last 15 years, supervisor of the traffic
2 unit and the K-9 unit and highway patrol unit.

3 Q. All right. On the night of July the 15th of 2016
4 were you working?

5 A. Yes, I was.

6 Q. And you were a K-9 then I take it?

7 A. Yes, sir.

8 Q. So when you are a K-9 unit are you -- in North
9 Charleston are you assigned to a specific beat or an area
10 or do you kind of roam?

11 A. We're kind of roam. We're not really tied down to
12 one -- in one area of the city.

13 Q. On that night did you have the occasion to respond
14 to Leland Avenue?

15 A. Yes, I did.

16 Q. And you responded -- were you one of the first
17 officers to respond on scene?

18 A. Yes, I was one of the first responders.

19 Q. All right. I'm going to show you State's 1.

20 [Whereupon, the photograph is shown]

21 Q. Can you orient yourself to this map here?

22 A. Yes, I can.

23 Q. All right. Tell the jury when you responded what
24 direction and what was your response?

25 A. I responded from ---

State v Byron Rivers
Kenneth Sharp-Direct Examination by Mr. Osborne
June 11, 2019

1 Q. --- and that's a touch screen; I'm sorry. You can
2 touch it and everyone can see what you're touching.

3 Q. I was at Horizon Village, which was about a mile
4 away. I responded from the west side of Spruill Avenue,
5 which would have been up here [indicates].

6 And I came down Spruill and it is actually one
7 street over. I turned onto Success, went from Success to
8 North Carolina, and then North Carolina to Leland Street
9 and stopped right here [indicates].

10 Q. Okay. And why did you stop there?

11 A. I stopped there; there was an individual that was on
12 the ground. There were several people that were in the
13 streets and that was part of the call we were going to.

14 Q. Okay. Can you estimate about how long it took from
15 the call being dispatched to you arriving at that
16 location there?

17 A. It was within minutes; anywhere from three to five
18 minutes.

19 Q. All right. Tell the jury what you saw when you
20 arrived at that location.

21 A. All right. When I arrived on scene there was an
22 individual that was laying on the ground. There were
23 several people that were in the streets.

24 There was one individual that was walking around and
25 had a sledgehammer in his hand. There was a lot of

State v Byron Rivers
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1 yelling and there was a lot of screaming.

2 Q. Could you; the individual that you saw with the
3 sledgehammer in his hand how close in proximity was he to
4 the person that was on the ground?

5 A. He was within 10 feet. He actually walked right in
6 front of my patrol vehicle.

7 Q. And you said there was a lot of yelling and
8 screaming going on. What was the general nature of what
9 was being said?

10 A. When I exited my vehicle we were being told by
11 individuals ---

12 MS. NORRIS: --- objection, to what was said.

13 THE COURT: All right. Just try not to quote other
14 people directly but go ahead.

15 Q. [Mr. Osborne] Just the general nature.

16 A. General nature that the individual that was on the
17 ground was ---

18 MS. NORRIS: --- objection; same thing.

19 THE COURT: I'm sorry; you can rephrase the
20 question.

21 MR. OSBORNE: I'll lay down the foundation.

22 THE COURT: Okay.

23 Q. [Mr. Osborne] So the people that were screaming how
24 would you describe them? I think I might have answered
25 that question but how would you describe their state,

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1 their mental state?

2 A. They were excited. They were worked up. You could
3 tell they had been involved in a very intense situation.

4 Q. And what was the nature of the call that you were
5 dispatched to?

6 A. We were dispatched to a shooting and I believe a
7 burglary.

8 Q. And without saying right now yet what was being said
9 to you what was said did it relate to what the call was
10 dispatched for?

11 A. Yes.

12 Q. And did it seem to you as though what was being said
13 -- so you said it was within minutes that you arrived on
14 scene.

15 A. That's correct.

16 Q. So is it or is it not fair to say that what was said
17 was related to the nature of the call?

18 A. Yes. What was said and also what I observed while I
19 was travelling to the call.

20 Q. Okay. At this time I would ask you what was said.

21 MS. NORRIS: Objection; it's still hearsay.

22 THE COURT: I'm not sure who he is quoting at this
23 point in time.

24 MR. OSBORNE: And I don't think ---

25 THE COURT: --- what was said by the bystanders

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1 around or?

2 MR. OSBORNE: Yes. And we're not trying to
3 ascertain this quote came from a specific person. What
4 we're trying to do is bring the quote in as an excited
5 utterance.

6 THE COURT: Okay.

7 MR. OSBORNE: I don't think it requires ---

8 THE COURT: --- maybe let us know. We don't know
9 who is exactly.

10 MR. OSBORNE: I don't believe the Rule contemplates
11 us identifying the individual per name.

12 THE COURT: Right. I guess as opposed to a
13 layperson versus another officer. Can you ask him a
14 little bit more about who was around? Who ---

15 MR. OSBORNE: --- okay.

16 Q. [Mr. Osborne] The people who were making these
17 comments did you ever get their names?

18 A. Yes.

19 Q. The people who were making the comments when you
20 first showed up?

21 A. Yes, I heard yelling.

22 Q. Say it again.

23 A. That I could hear yelling and making those
24 statements, yes.

25 Q. And who was it?

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1 A. One was the brother of the victim and the other was
2 a female something Shi -- Shi Shi I believe that's what
3 she's known as.

4 Q. Okay. Well, I wasn't referring specifically to a
5 brother but let's talk about the brother.

6 A. I'm sorry; Sanquan.

7 Q. Okay. And so -- well, let's talk about him
8 specifically then. This individual --

9 MR. OSBORNE: Beg the court's indulgence.

10 [Whereupon, Mr. Lietzow and Mr. Osborne confer]

11 Q. [Mr. Osborne] Okay. So you said that you did
12 identify, or later identify one of the individuals as
13 being a brother of the victim ---

14 A. --- that's correct ---

15 Q. --- Sanquan.

16 A. That's correct.

17 Q. Let's talk specifically about Sanquan. How would
18 you describe Sanquan's state of mind?

19 A. It was excited. It was the same thing you could
20 tell he had been involved in a high ---

21 MS. NORRIS: --- objection.

22 THE COURT: What's your objection?

23 MS. NORRIS: He's about to say what Sanquan said to
24 him.

25 THE COURT: I don't know that. He's just

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1 describing his state of mind at this point in time from
2 his personal observation. So we'll wait -- overruled.
3 Go ahead.

4 A. You could tell that he was, that he had just been
5 involved in a highly intense situation. He was excited.
6 He was yelling. He was screaming. He was trying to let
7 us know what was going on and who did it.

8 Q. [Mr. Osborne] Did you make any attempts to try to
9 calm down Sanquan?

10 A. Yes. I made several attempts to try and calm him
11 down. I couldn't engage -- he wouldn't calm down enough
12 to where I could engage in a conversation. It was just
13 what he was stating to us at the time. He was very
14 upset.

15 Q. Is it or is it not fair to say that he was
16 inconsolable?

17 A. That's correct.

18 Q. Now again without getting into what Sanquan said,
19 not yet, did he say something?

20 A. Yes, he did.

21 Q. And did that comment relate to the reason why he was
22 hysterical?

23 A. That's correct.

24 Q. And when he made that comment was he still acting or
25 behaving in an excited hysterical inconsolable way?

State v Byron Rivers
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1 A. Yes.

2 Q. What did he say?

3 MS. NORRIS: Objection.

4 THE COURT: Overruled.

5 A. He made the statement that's the guy who shot my
6 motherfucking brother. And then he said we stomped his
7 ass. And he was referring to the gentleman that on the
8 ground.

9 Q. [Mr. Osborne] And what was Sanquan wearing when he
10 was saying that?

11 A. He was wearing boxer shorts and I don't think he had
12 a t-shirt on. I think he was just wearing boxer shorts.

13 Q. Okay. And you said that he, when he did this he
14 indicated it was the person on the ground. Did you ever
15 through the investigation identify that person on the
16 ground?

17 A. Yes.

18 Q. And who was that?

19 A. Byron Rivers.

20 Q. All right. And did you encounter any other people
21 who were injured?

22 A. Yes. After Mr. Rivers was secured in restraints
23 myself or Officer Perkins had already gone to the lower
24 end of Leland Street where the actual incident had
25 occurred. I made my way down there on foot and that's

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1 where I encountered the victim's cousin.

2 Q. And did you ever find out his name?

3 A. Antonio Fyall.

4 Q. And what injury was he suffering from?

5 A. He was suffering from a gunshot wound to the back of
6 his head.

7 Q. All right. Can you describe his appearance?

8 A. Yeah. He had a white sleeveless t-shirt on and the
9 front of it was saturated with blood. It was covered
10 with blood.

11 Q. All right. And his demeanor?

12 A. Excited, the same thing. You could tell he had just
13 been involved in a highly stressful situation; trying to
14 get him to calm down.

15 With the injury to his head I was trying to get him
16 to sit down on the ground several times. He refused to
17 listen to me. He was just very upset about what had
18 occurred inside the house.

19 MR. OSBORNE: Your Honor, may I approach?

20 THE COURT: Uh Huh.

21 Q. [Mr. Osborne] All right. I'm showing you -- well,
22 before I do this were you wearing a body worn camera that
23 night?

24 A. Yes, I was.

25 Q. All right. Explain to the jury briefly how does

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1 that work? Do you activate it? Can you activate it?

2 A. Yes. At the time we had body worn cameras that were
3 made by the L-3 system. And that particular body camera,
4 style body camera is activated by a slide button.

5 The body camera, most officers wear the camera right
6 here [indicates] center chest. And that's where I carry
7 mine.

8 Q. Okay. And do you have in car video at that time or
9 did you?

10 A. Yes.

11 Q. Okay. Was that activated as well?

12 A. Yes. That's a mobile vision unit and it was
13 activated I believe by my lights while I was responding
14 to the scene.

15 Q. Okay. And did you secure the video from your body
16 worn camera as well as the in car from that night?

17 A. Yes, I did.

18 Q. Okay. I'm showing you 145, 146, 147, and 148.

19 [Whereupon, the witness is shown C.D.'s]

20 Q. Let's start with 145. Can you take a look at that
21 and tell me if you recognize that?

22 A. Yes. This is going to be my in car camera video.
23 And I've initialed both disks.

24 Q. Okay. You've reviewed it and it appears to be
25 substantially the same as what occurred that night?

State v Byron Rivers
Kenneth Sharp-Direct Examination by Mr. Osborne
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1 A. Correct.

2 Q. Has it been altered or tampered in any way?

3 A. No, it has not.

4 Q. All right. And the next one after that is 146. Is

5 that right?

6 A. Yes. Actually both of these say my -- one says in

7 car video and one says in car clip.

8 Q. Right. So 146 is a clip?

9 A. Yes.

10 Q. The other one contains all of it?

11 A. That's correct ---

12 Q. --- the video from that night?

13 MR. OSBORNE: Your Honor, at this time we would

14 seek to admit 146 into evidence.

15 THE COURT: Any objection to 146?

16 MS. NORRIS: As long as the audio is down as

17 previously discussed no further objection.

18 THE COURT: Okay. So subject to the same

19 parameters we set pretrial State's 146 admitted.

20 [Whereupon, State's exhibit number 146 is entered

21 into evidence by the Court]

22 Q. [Mr. Osborne] All right. Now take a look at State's

23 exhibit 147 and 148. We'll start with 147 for I.D.

24 purposes and tell me what that is.

25 A. Yes. This is going to be video of my body worn

State v Byron Rivers
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1 camera system.

2 Q. That's the entire body worn camera footage from that
3 night?

4 A. That's correct.

5 Q. And what is 148?

6 A. It's going to be my body worn camera clip of this
7 video.

8 Q. Okay. 148 just contains a clip of 147?

9 A. Correct.

10 MR. OSBORNE: Your Honor, at this time we would
11 seek to admit 148 as well into evidence.

12 MS. NORRIS: Continued objection to that as
13 discussed previously.

14 THE COURT: Okay. Admitted over that objection
15 discussed previously. Thank you.

16 [Whereupon, State's exhibit number 148 is entered
17 into evidence by the Court]

18 [Whereupon, the video clip, State's exhibit 146, is
19 played with questions from Mr. Osborne]

20 Q. All right. You mentioned earlier there was an
21 individual carrying a sledgehammer.

22 A. Yes.

23 Q. Is this what we're seeing here?

24 A. Yes, the gentleman on the lower left screen with his
25 finger in the air pointing.

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Kenneth Sharp-Direct Examination by Mr. Osborne
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1 Q. And what was he pointing out?

2 A. I believe he was pointing back towards the actual
3 incident location where they had just come from; or
4 actually where they had just chased Byron Rivers from.

5 Q. That was you?

6 A. Yes.

7 Q. Okay. And you're walking over to the individual on
8 the ground, is that right?

9 A. That's correct.

10 Q. Okay. We've already said that person on the ground
11 is the Defendant Byron Rivers?

12 A. Yes.

13 Q. For the record we published 146 and now we're
14 publishing 148.

15 [Whereupon, the video clip, State's exhibit 148, is
16 played]

17 [Whereupon, the video ends]

18 Q. And that was Sanquan, the brother of the victim
19 screaming?

20 A. Yes, it was.

21 MR. OSBORNE: No further questions, Your Honor.

22 THE COURT: All right. Cross-Examination.

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State v Byron Rivers
Kenneth Sharp-Cross-Examination by Ms. Norris
June 11, 2019

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CROSS-EXAMINATION

BY MS. NORRIS:

Q. Good morning, Sergeant Sharp.

A. Good morning, ma'am.

Q. When you responded to the scene as you were driving in did you see Officer Fortier detaining Stacy Green?

A. Yes.

Q. And was he already in cuffs or was she still in the process of chasing him down?

A. I believe that he might have already been in the cuffs and that's why I actually passed by her location and went directly to the scene.

Q. And when you pulled up where and got out of your car to that commotion did you ever determine the name of the guy who had the sledgehammer?

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

Q. Did you take the sledgehammer away from him?

A. That's correct. I did.

Q. When you checked on Mr. Rivers is it fair to say that he was barely awake?

A. I asked him what his name was several times or two or three times and he wasn't able to say what his name was.

Q. And was he bleeding from his head?

A. I believe so, yes.

State v Byron Rivers
Kenneth Sharp-Cross-Examination by Ms. Norris
June 11, 2019

1 Q. Was he also bleeding from the crotch area?

2 A. I don't -- I can't say if he was bleeding from the
3 crotch area because I didn't do a full exam on him.

4 Q. Okay. And were you at that time calling for more
5 backup?

6 A. I think either myself or Officer Perkins actually
7 called for additional officers.

8 Q. And did you have EMS come in and take care of Mr.
9 Rivers and the injured folks there on scene?

10 A. Mr. Rivers and the gentleman that was shot in the
11 head at the lower end of Leland Street.

12 Q. Did you also encounter a gentleman out there that
13 was shot in the butt?

14 A. I don't think I did. I might have but I'm not sure.

15 Q. Okay.

16 MS. NORRIS: Just a second.

17 THE COURT: Uh Huh.

18 [Whereupon, Mr. Mack and Ms. Norris confer]

19 Q. [Ms. Norris] Sergeant Sharp was there a trash can
20 near where Mr. Rivers was?

21 A. Yes, there was.

22 Q. And were you present when a pistol was discovered
23 behind that?

24 A. I don't think I was near where the pistol was found.
25 I think I was still down near the 1800 block of Leland

State v Byron Rivers
Kenneth Sharp-Cross-Examination by Ms. Norris
June 11, 2019

1 Street. I believe an Officer Greenawalt located that.

2 Q. Okay. All right. Thank you so much.

3 THE COURT: Any redirect?

4 MR. OSBORNE: No, Your Honor.

5 THE COURT: Officer, you can step down from the
6 stand. Any objection to this witness being excused from
7 the State?

8 MR. OSBORNE: None, Your Honor.

9 THE COURT: Any from the defense?

10 MS. NORRIS: None.

11 THE COURT: All right. Thank you very much.

12 You're free to leave.

13 [Whereupon, the witness is excused and exits the
14 witness stand]

15 THE COURT: The State may call its next witness.

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State v Byron Rivers
James Greenawalt-Direct Examination by Mr. Osborne
June 11, 2019

1 MR. OSBORNE: The State calls Officer Greenawalt.
2 [Whereupon, Mr. Greenawalt comes forward]
3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: Please state your full name for
6 the record spelling your last name.

7 THE WITNESS: My name is James Greenawalt, Jr.
8 Last name is spelled G-R-E-E-N-A-W-A-L-T.

9 - - - - -

10 JAMES GREENAWALT,

11 Having been first duly sworn,

12 Was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. OSBORNE:

15 Q. Good morning, Officer.

16 A. Good morning.

17 Q. Can you tell the jury where you work?

18 A. I am currently employed by Summerville Police
19 Department.

20 Q. Okay. And how long have you been with Summerville?

21 A. Just over a year.

22 Q. And any prior law enforcement?

23 A. Yes, sir. Prior to that I was with North Charleston
24 Police Department and prior to that Mount Pleasant.

25 Q. All right. And how long were you with North

State v Byron Rivers
James Greenawalt-Direct Examination by Mr. Osborne
June 11, 2019

1 Charleston?

2 A. Ten years.

3 Q. Okay. And were you with North Charleston on July

4 the 15th, 2016?

5 A. I was.

6 Q. What was your assignment then?

7 A. I was assigned to the K-9 unit.

8 Q. All right. And were you working that night?

9 A. Yes, sir.

10 Q. And did you have the occasion to respond to Leland

11 Avenue?

12 A. I did.

13 Q. Were you one of the first responders?

14 A. I was one of the first ones on scene. I believe

15 Sergeant Sharp was already on scene before I got there.

16 The scene was still chaotic at the time.

17 Q. And you say the scene was chaotic in what sense? I

18 mean just describe it.

19 A. People running in the street screaming. There was

20 one gentleman on the ground.

21 Q. And did you ever identify that individual?

22 A. He was identified later on.

23 Q. And what was his name?

24 A. Byron.

25 Q. Do you remember his last name ---

State v Byron Rivers
James Greenawalt-Direct Examination by Mr. Osborne
June 11, 2019

- 1 A. --- I don't know his last name.
- 2 Q. Okay. And what were you tasked to do?
- 3 A. At that time I was tasked to secure the crime scene
- 4 and after the crime scene was secured keeping everybody
- 5 outside of the crime scene just to see if there was
- 6 anything around for evidentiary reasons.
- 7 Q. And when you say secure the crime scene how did you
- 8 go about doing that?
- 9 A. We had some crime scene tape.
- 10 Q. Okay. So you set up the tape?
- 11 A. Yes, sir.
- 12 Q. Now did you find anything of interest?
- 13 A. I did.
- 14 Q. What did you find?
- 15 A. I located a Walther firearm on the ground by a trash
- 16 can about eight yards away.
- 17 Q. About eight yards away from what?
- 18 A. Away from the person on the ground in the road.
- 19 Q. Okay. So about eight yards away you located a
- 20 firearm eight yards away from Mr. Rivers -- or Byron as
- 21 you remembered ---
- 22 A. --- correct.
- 23 Q. Okay. Now did you touch the firearm in any way?
- 24 A. I did not.
- 25 Q. You didn't move it?

State v Byron Rivers
James Greenawalt-Direct Examination by Mr. Osborne
June 11, 2019

1 A. Never moved it.

2 Q. And then what did you do then?

3 A. I notified my supervisor who then notified crime
4 scene unit and once they responded they took over.

5 MR. OSBORNE: Your Honor, may I approach?

6 THE COURT: Uh Huh.

7 Q. [Mr. Osborne] I'm showing you what has been marked
8 as State's exhibit 10.

9 [Whereupon, the witness is shown photograph]

10 Q. Can you take a look at that and tell me if you
11 recognize it?

12 A. Yes, sir. That's the firearm I found behind the
13 trashcan.

14 Q. It's a photograph of it?

15 A. Yes, sir.

16 MR. OSBORNE: Your Honor, at this time we'd seek to
17 admit State's 10.

18 THE COURT: Any objection to State's 10?

19 MS. NORRIS: None.

20 THE COURT: Without objection State's 10 admitted.

21 [Whereupon, State's exhibit number 10 is entered
22 into evidence by the Court]

23 Q. [Mr. Osborne] I'm going to show you first State's
24 exhibit 4.

25 [Whereupon, the photograph is shown]

State v Byron Rivers
James Greenawalt-Direct Examination by Mr. Osborne
June 11, 2019

1 Q. All right. What are we looking at here?

2 A. That's me inside the crime scene standing next to

3 the trash can where I located the firearm.

4 Q. I suppose that at this time you've already located

5 it so you're kind of standing over it?

6 A. Yes, sir.

7 Q. Okay. I want to show you State's exhibit 8.

8 [Whereupon, the photograph is shown]

9 Q. Is that just another photograph of the can?

10 A. Yes, sir.

11 Q. Now showing you State's exhibit 10.

12 [Whereupon, the photograph is shown]

13 A. That's the firearm that was behind the trash can.

14 Q. Okay.

15 MR. OSBORNE: Your Honor, may I approach?

16 THE COURT: Yes.

17 Q. [Mr. Osborne] I'm showing you State's exhibit number

18 126.

19 [Whereupon, the witness is shown exhibit]

20 Q. Can you take a look at that and tell me if you

21 recognize that?

22 A. That would be the firearm that I recovered behind

23 the trash can.

24 Q. Okay. And what type of firearm is it again?

25 A. It's a Walther.

State v Byron Rivers
James Greenawalt-Direct Examination by Mr. Osborne
June 11, 2019

1 Q. What caliber is it?

2 A. I'd have to look. One moment.

3 [Whereupon, the witness reviews document]

4 Q. It may say on the front of the box if you don't see
5 it.

6 A. It's a 40 caliber.

7 Q. And in all fairness to you you didn't pick this gun
8 up or handle it or anything.

9 A. No, sir. I waited for the crime scene.

10 Q. Okay.

11 MR. OSBORNE: Your Honor, at this time we'd seek to
12 admit State's 126 into evidence.

13 THE COURT: Any objection to 126?

14 MS. NORRIS: No objection.

15 THE COURT: Without objection admitted.

16 [Whereupon, State's exhibit number 126 is entered
17 into evidence by the Court]

18 MR. OSBORNE: No further questions.

19 THE COURT: Cross-examination.

20 [Whereupon, Mr. Mack and Ms. Norris confer]

21 MS. NORRIS: No questions. Thank you, sir.

22 THE COURT: All right. Thank you very much. You
23 can step down. Any objection to this witness being
24 released?

25 MR. OSBORNE: None, Your Honor.

State v Byron Rivers
James Greenawalt-Direct Examination by Mr. Osborne
June 11, 2019

1 THE COURT: All right. Any from the defense? May
2 he be released from subpoena?

3 MS. NORRIS: Yes, ma'am.

4 THE COURT: Thank you very much. You're free to
5 leave.

6 [Whereupon, the witness is excused and exits the
7 witness stand]

8 THE COURT: Next witness.

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State v Byron Rivers
Kyle Decedue-Direct Examination by Mr. Osborne
June 11, 2019

1 MR. OSBORNE: The State calls Officer Kyle Decedue.

2 [Whereupon, Mr. Decedue comes forward]

3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: State your full name spelling your
6 last name for the record.

7 THE WITNESS: My name is Officer Kyle Ryan Decedue.
8 My last name is spelled D-E-C-E-D-U-E.

9 - - - - -

10 KYLE DECEDUE,

11 Having been first duly sworn,

12 Was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. OSBORNE:

15 Q. All right officer, you work for North Charleston
16 Police Department?

17 A. Correct.

18 Q. How long have you been there?

19 A. Going on four and half years now.

20 Q. Okay. And what have been your assignments during
21 that time?

22 A. I started on the patrol division. I was patrol for
23 about two and half years. I moved into the special
24 operations division where I was a member of the SPEED
25 team and my current assignment is the gang intervention

State v Byron Rivers
Kyle Decedue-Direct Examination by Mr. Osborne
June 11, 2019

1 team.
2 Q. G-I-T-T?
3 A. Correct.
4 Q. Gang intervention team.
5 A. Yes, sir.
6 Q. How long have you been with that again?
7 A. About nine months now.
8 Q. Okay. Were you working on the night of July the
9 15th, 2016?
10 A. Yes.
11 Q. And what was your assignment then?
12 A. I was patrol unit.
13 Q. And did you have the occasion to respond to Leland
14 Avenue that night?
15 A. I did.
16 Q. All right. Do you know if there were other officers
17 there by the time you got there?
18 A. There were.
19 Q. Okay. So you were one of the secondary units that
20 arrived?
21 A. Correct.
22 Q. Was it still a pretty chaotic scene when you arrived
23 on scene?
24 A. Absolutely.
25 Q. And where did this incident occur? What area or

State v Byron Rivers
Kyle Decedue-Direct Examination by Mr. Osborne
June 11, 2019

1 neighborhood of North Charleston?

2 A. That would be the Chicora Cherokee neighborhood.
3 Sometimes people call it the Makin'. But its Chicora
4 Cherokee.

5 Q. And did you when you were in patrol did you answer
6 calls in that neighborhood?

7 A. Yes. My primary assignment was actually zone 1,
8 which this neighborhood falls into.

9 Q. Okay. So you were familiar with the Makin'?

10 A. Correct.

11 Q. Okay. A violent neighborhood?

12 A. Yes.

13 Q. All right. When you responded on scene what did you
14 do?

15 A. I arrived on scene, was one of several units that
16 showed up at the same time. We had just left our
17 briefing and ran down Interstate 26 to get to that area.

18 After I arrived I saw Officer Fortier was handling
19 somebody else there putting into handcuffs opposite some
20 railroad tracks.

21 I asked her if she needed help and she said no; go
22 to the house because I understood there was another
23 situation going on at the house on Leland Street. I came
24 around by the train tracks onto Leland Street where I
25 couldn't even make it to the house because there were

State v Byron Rivers
Kyle Decedue-Direct Examination by Mr. Osborne
June 11, 2019

1 police cruisers and EMS and people laying on the ground.

2 I was just short of the house is where I recognized
3 somebody laying on the ground complaining of injuries and
4 EMS just began to arrive and treat him.

5 Q. Okay. And did you ever identify this person laying
6 on the ground?

7 A. Yes. The first male that I came up to on the ground
8 was Mr. Byron Rivers.

9 Q. Okay. Did you notice anything unusual other than
10 being injured about Mr. Rivers while he was lying on the
11 ground.

12 A. He was wearing summertime clothing, light loose-fit
13 clothing. It was really hot that night. One thing that
14 I did think was strange was the fact that he was wearing
15 like a wool or a knit glove or something like that and
16 for it to be such a hot night. And I believe I made a
17 comment about that.

18 Q. Did he have two gloves on or just one?

19 A. No, he had one glove.

20 Q. All right. Would -- with that in mind what was the
21 name of this call that you responded to?

22 A. We were in a briefing at the time. It went out as
23 something very chaotic. I believe it started as a
24 robbery of some sort. Then there was information that
25 there were shots fired on the scene and that people were

State v Byron Rivers
Kyle Decedue-Direct Examination by Mr. Osborne
June 11, 2019

1 coming out of everywhere. So we were gathering
2 information as we showed up. But the most updated that I
3 got when I arrived was that somebody had been shot, at
4 least one person, and that there was another person that
5 was being taken into custody.

6 Q. Okay. And you said this was the middle of July in
7 Charleston. And with the nature of the call was there
8 anything that you and the other officers on the scene
9 elected to do in reference to the glove?

10 A. Yes. I made a comment to another officer about when
11 I left ---

12 MS. NORRIS: --- objection.

13 THE COURT: Okay. He can testify as to what he
14 believes he said at the time. Overruled. We'll see
15 where it goes. Go ahead.

16 A. When I arrived -- I'm sorry; could you repeat the
17 question?

18 Q. [Mr. Osborne] What did you -- what did you end up
19 deciding to do, if anything, in reference to the glove?

20 A. Yes. I had to go to the house so I had to leave Mr.
21 Rivers on the ground in the care of EMS and another
22 officer.

23 I did relay to that officer that I felt that that
24 glove was important just given the circumstances so I
25 relayed to that officer hey, make sure he does not take

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1 that off. Make sure that doesn't go anywhere. And I
2 believe that was collected and placed into evidence.

3 Q. Okay. And that was Officer Clyde King?

4 A. Yes.

5 Q. And did -- I mean you saw the glove is that fair to
6 say?

7 A. Yes.

8 MR. OSBORNE: Your Honor, may I approach?

9 THE COURT: Uh Huh.

10 Q. [Mr. Osborne] I'm showing you State's exhibit 128.

11 [Whereupon, the witness is shown exhibit]

12 Q. Can you take a look at that and tell me if you
13 recognize that?

14 A. Yes.

15 Q. And what is that?

16 A. It is a black knit glove.

17 Q. Okay.

18 A. Covered in grass ---

19 MR. OSBORNE: --- Your Honor, at this time we'd
20 seek to admit State's 128 into evidence.

21 THE COURT: Any objection to 128?

22 MS. NORRIS: I do object. I don't believe this
23 officer collected it. He just testified to that.

24 MR. OSBORNE: I could ask a couple more questions.

25 THE COURT: Maybe you could ask a couple more

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1 questions about the -- yes, thank you.

2 Q. [Mr. Osborne] Okay. You were there when Officer
3 [sic] Rivers was taken into custody?

4 A. Yes.

5 Q. And you were there with Officer King?

6 A. Yes.

7 Q. And you saw a black knit glove on the Defendant
8 Byron Rivers right hand?

9 A. Yes.

10 Q. And is that the black knit glove that was on Byron
11 Rivers' right hand?

12 A. Yes.

13 Q. And who put that into evidence? You could look on
14 the...

15 A. It looks like it was recovered by crime scene tech
16 Moore, Anita Moore.

17 Q. And who gave it to Moore?

18 A. It was collected by Officer King that would be Clyde
19 King.

20 Q. Okay. And that's the officer that was standing next
21 to you?

22 A. Yes, that's the officer that I notified that he was
23 wearing a glove and it probably needed to be collected
24 before I left to the chaotic scene at the house.

25 MR. OSBORNE: Your Honor, at this time we'd seek to

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1 admit State's exhibit 128 into evidence.

2 MS. NORRIS: No objection.

3 THE COURT: All right. Without objection. Thank
4 you.

5 [Whereupon, State's exhibit number 128 is entered
6 into evidence by the Court]

7 Q. [Mr. Osborne] All right.

8 MR. OSBORNE: Your Honor, may I approach?

9 THE COURT: Uh Huh.

10 Q. [Mr. Osborne] All right. I'm showing you State's
11 143 and 144. Can you take a look at these two C.D.'s?

12 [Whereupon, the witness is shown exhibits]

13 Q. Do you recognize them?

14 A. Yes. They have my last name and my initials.

15 Q. Okay. We've watched them or seen them?

16 A. I have.

17 Q. All right. So 143 what's on 143?

18 A. 143 I believe is the body camera on myself as I
19 arrived to the scene and made the initial contact with
20 Officer Fortier who told me to go around to the house.
21 And that's when I was en route to the house and noticed
22 Mr. Rivers laying on the ground.

23 Q. Right. So 143 is your entire body worn camera
24 footage, is that fair to say?

25 A. Right.

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1 Q. And what is 144?

2 A. 144 is a clip of after I had already left Mr.
3 Rivers, went to the house and was trying to control the
4 scene. I believe there were another two gentlemen that
5 were shot.

6 One was shot in the head and one was in the rear
7 buttocks area. And I was attempting to control the scene
8 and prioritize who needed EMS first.

9 Q. Okay. So 144 is just a clip of 143?

10 A. Correct.

11 MR. OSBORNE: Your Honor, at this time we'd seek to
12 admit 144 into evidence.

13 MS. NORRIS: No objection.

14 THE COURT: Without objection, 144.

15 [Whereupon, State's exhibit number 144 is entered
16 into evidence by the Court]

17 [Whereupon, the video, State's exhibit 144, is
18 played]

19 [Whereupon, the video ends]

20 MR. OSBORNE: Your Honor, may I approach?

21 THE COURT: Uh Huh.

22 Q. [Mr. Osborne] I'm showing you State's exhibit 97.

23 [Whereupon, the witness is shown photograph]

24 Q. Can you take a look at that and tell me if you
25 recognize that?

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1 A. Yes. That's Mr. Rivers laying on the ground.

2 Q. And that's a screen shot from your body worn camera
3 footage?

4 A. Yes, sir.

5 Q. Okay.

6 MR. OSBORNE: Your Honor, at this time we'd seek to
7 admit State's 97.

8 MS. NORRIS: No objection.

9 THE COURT: Admitted.

10 [Whereupon, State's exhibit number 97 is entered
11 into evidence by the Court]

12 [Whereupon, the photograph is shown]

13 Q. [Mr. Osborne] And we're looking at State's 97 now.
14 This is the photograph you were talking about?

15 A. Yes.

16 Q. All right. I'm first showing you State's 128.

17 [Whereupon, the witness is shown exhibit]

18 Q. That's the black wool glove?

19 A. Correct.

20 Q. That y'all got off the Defendant?

21 A. Correct.

22 Q. And we've already heard testimony to this. I'm
23 showing you now State's exhibit 129.

24 [Whereupon, the witness is shown exhibit]

25 Q. Do they appear to be similar?

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1 A. Yes.

2 MR. OSBORNE: No further questions, Your Honor.

3 THE COURT: All right. Cross-Examination.

4 MS. NORRIS: I don't have any questions. Thank
5 you, sir.

6 THE COURT: Thank you so much. You can step down
7 from the witness stand, sir. Any objection to him being
8 released?

9 MR. OSBORNE: No, Your Honor.

10 THE COURT: All right. From the defense?

11 MS. NORRIS: None.

12 THE COURT: All right.

13 [Whereupon, the witness is excused and exits the
14 witness stand]

15 THE COURT: The State may call its next witness.

16 MR. LIETZOW: May we approach, Your Honor?

17 THE COURT: Sure.

18 [Whereupon, an off the record bench conference is
19 held]

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1 THE COURT: All right ladies and gentlemen we are
2 going to take a morning break at this time. We've been
3 going about an hour and half, well a little less than
4 less, but we'll take about a 10 minute comfort break.
5 And I will see you back in about 10 minutes. Thank you
6 very much.

7 [Whereupon, the jury exits at 10:33 a.m.]

8 THE COURT: Thank you. We'll be at ease for about
9 10 minutes. Thank you everybody.

10 [Whereupon, court is in recess from 10:34 a.m. until
11 10:52 a.m.]

12 THE COURT: All right. Is everybody ready to
13 proceed?

14 MR. LIETZOW: Judge, two things we'd like to bring
15 to your attention first. Ms. Norris is going to object
16 to a series of photos so we'd like to hash that out
17 before the jury gets in here so we can be smooth on what
18 photos get into evidence.

19 THE COURT: Okay.

20 MR. LIETZOW: I didn't know if you wanted to do
21 that but the State would also renew its objection to Mr.
22 Rivers eliciting any testimony from Anita Moore about the
23 drugs. I think at this point -- our position hasn't
24 changed at this point it is still not relevant. Mr. Mack
25 had an opportunity to elicit testimony from two of the

1 witnesses who were inside that house and they never went
2 down that road. So at this point we just think for the
3 reasons that we argued in pretrial that it would be
4 prejudicial. It's not relevant and we don't think they
5 should be allowed to go into that.

6 THE COURT: Do y'all want to respond to anything
7 else other than what you've already stated pretrial.

8 MS. NORRIS: Your Honor, I'm not aware that anybody
9 that has testified thus far took photos in the house nor
10 collected crime scene evidence. So certainly we didn't
11 waive anything by that. And I submit that it is the
12 essence of the case.

13 Next to the body that is in the photographs is a bag
14 of marijuana. On the other side is a jar of marijuana.
15 In the kitchen that is right underneath where they had
16 multiple pictures of the window that Antonio Fyall jumped
17 out of there is a stove right there. On top of that
18 stove was a scale with white powder residue.

19 In the bedroom there is a rubber tote that after he
20 was injured Antonio Fyall went back into the house and
21 moved a baggie of crack or powdered cocaine from near the
22 body, put it in that tote, and there is also blood
23 underneath the lid of it. So I submit that it is the
24 essence of the case. It shows that they are trying to
25 hide drugs and everybody in that neighborhood -- there

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1 are witnesses Shi Shi Walker assuming she comes in and
2 testifies consistent with what she said to officers that
3 night everybody in the neighborhood knew that this house
4 had drugs.

5 THE COURT: I'm going to allow them to go into
6 asking the crime scene -- I assume your next witness is a
7 crime scene ---

8 MR. LIETZOW: --- yes, ma'am ---

9 THE COURT: --- investigator. What they found at
10 the scene I mean I'm not going to preclude them from
11 certain items that they collected from being asked about
12 during the trial. I mean I think it's in their purview
13 of their duties at the scene they collected what they
14 collected and we'll just deal with it as it comes, okay.
15 So you can ask them about what they found at the scene.

16 MS. NORRIS: Yes, Your Honor.

17 THE COURT: And then in regards to the photographs
18 let's talk about that.

19 MS. NORRIS: Yes, ma'am.

20 THE COURT: Specifically I have the thumb nails I
21 guess. Are they being incorporated within these?

22 MS. NORRIS: Yes.

23 THE COURT: So tell me which ones to look at.

24 MS. NORRIS: We object to -- well let me first say
25 48 shows the body from the door. We do not object to

1 that.

2 THE COURT: Okay.

3 MS. NORRIS: 69 also shows it with numbers and 80
4 shows where the deceased was in relation to the door
5 where the assailants came in. So I submit that
6 additional photos of the deceased have no purpose;
7 they're just cumulative.

8 To the extent that the State wants to argue that it
9 shows the numbers where evidence was collected, pictures
10 were taken after the body was removed. There is also a
11 diagram. So the ones we object to are 51 through 57.

12 THE COURT: Okay.

13 MS. NORRIS: 70, 72, 73, 75, 76, 77, 78, 83, 84,
14 85, 86, 88, 89, 90, and 153. There are also four autopsy
15 pictures that I don't think they are going to offer
16 through this witness.

17 THE COURT: Let's take those up -- so we'll start
18 back with 55, I think was the first one, 55 through ---

19 MS. NORRIS: --- 51 ---

20 THE COURT: --- 51 through 57 initially. I have
21 these but I'm happy for you to show them on the screen
22 too. All right 51, 52, 53, 54; those four seem to be of
23 pretty much the same thing. But I thought you didn't
24 object to the body in the room.

25 MS. NORRIS: Not the more distant view from the

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1 door ---

2 THE COURT: --- you're okay with 48?

3 MS. NORRIS: 48 we do not object to.

4 THE COURT: But these are a lot -- they are taken
5 from within the door frame I would say these are taken.
6 Show me 48 on the big screen.

7 [Whereupon, the photograph is shown]

8 MR. LIETZOW: Your Honor, this photo just gives a
9 general look into the front door. And you certainly
10 can't make out anything as far as the evidence that was
11 collected at the crime scene and where the location of
12 any evidence was.

13 THE COURT: Then show me 51 up there.

14 [Whereupon, the photograph is shown]

15 MR. LIETZOW: Again, Your Honor, this is a
16 different view when you go in the house you turn to the
17 right and this is what you can see. This is starting to
18 see where some of the evidence is. The next two are the
19 deceased.

20 [Whereupon, the photograph is shown]

21 MR. LIETZOW: You can see, Your Honor ---

22 THE COURT: --- what is this?

23 MR. LIETZOW: This is number 52.

24 THE COURT: Okay.

25 MR. LIETZOW: Near the deceased's foot Your Honor

1 is where there were shell casings located and in later
2 photos Anita Moore will actually place the placards down
3 to draw more attention. But this is just their overall
4 documentation of the scene before they start laying down
5 any of the evidence.

6 THE COURT: All right. When the placards arrive I
7 assume the -- the body is still there when the placards
8 are down. So why do we need these shots then? These are
9 cumulative at this point in time it appears to me. If
10 you want to look at evidence we need to be looking at the
11 70's, the photos in the 70's with the placards in them.
12 Do you just want a picture before placards and after
13 placards? Is that what you're going for?

14 MR. LIETZOW: That was the idea, Your Honor.

15 THE COURT: All right. Then let's keep in 48. I
16 think that will -- she doesn't object to 48. I find 51,
17 52, 53, 54, 55, 56, and 57 to be cumulative for that
18 purpose. So we will exclude those.

19 MR. LIETZOW: Can you say those numbers again,
20 Judge?

21 THE COURT: Yes. 51 through 57 will not be
22 admitted as they are cumulative to 48 which will serve
23 your purpose of here's the body in the room before
24 placards are assigned around the room, okay. So let's
25 move on to the next objectionable set. They did not

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1 object to 69. Let's look at 69.

2 [Whereupon, the photograph is shown]

3 THE COURT: Is that right Ms. Norris, no objection
4 to 69?

5 MS. NORRIS: No objection.

6 THE COURT: But then once you get to 70 they do
7 object. Let's look at 70.

8 [Whereupon, the photograph is shown]

9 THE COURT: About six inches closer, you just say
10 it's cumulative?

11 MS. NORRIS: It's cumulative. It doesn't show
12 anything new.

13 THE COURT: Okay. So 69 is in without objection or
14 will be once it's offered. 70 is -- 70 she objects to as
15 cumulative ---

16 MR. LIETZOW: --- okay. We don't need that one,
17 Your Honor.

18 THE COURT: So we agree that 70 will not be
19 admitted. 72?

20 MR. LIETZOW: You do not object to 72?

21 THE COURT: She does object to 72. Let's look at
22 72.

23 [Whereupon, the photograph is shown]

24 MR. LIETZOW: Your Honor, this is showing 21 and 19
25 specifically which are not seen in photograph number 69

1 that you don't object to. Those are obviously shell
2 casings recovered from the scene.

3 THE COURT: Okay. I do find that this -- I don't
4 find that to be overly prejudicial or graphic in nature
5 frankly. And it does show two additional placards which
6 are not visible from 69.

7 MS. NORRIS: There are other pictures after the
8 body is removed. There is also a diagram I think at 152
9 to show where those are without repeatedly showing the
10 body.

11 THE COURT: But those wouldn't show where they were
12 in relation to the body. Is that the issue ---

13 MR. LIETZOW: --- just one pivotal point in this
14 case ---

15 MS. NORRIS: --- the diagram has the body drawn in
16 it; 152.

17 [Whereupon, the photograph is shown]

18 THE COURT: Yes, but that's not even a photograph.
19 Like you said that's just a diagram. I'll allow -- which
20 one are we talking about?

21 MR. LIETZOW: 72, Your Honor.

22 THE COURT: 72 I'll allow it over the objection of
23 the defense. 73 let's look at.

24 [Whereupon, the photograph is shown]

25 THE COURT: What is this just another...

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1 MR. LIETZOW: The difference in this one, Your
2 Honor is you can now see -- can you go back to the other
3 one please, 72.

4 [Whereupon, the photograph is shown]

5 MR. LIETZOW: Now, 73 shows near the top of the
6 deceased and now you can see 27, 16, 26, and then there
7 is also -- and you can also see the makings of 22 which
8 is in the top left hand corner. So again, showing other
9 locations of evidence that was collected --

10 THE COURT: All right. That is mostly captured at
11 70, which we've already discussed so I do find this to be
12 cumulative. I think you've established -- I think you
13 have two shots in now of the body with respect to these
14 placards and I find that to be a little bit graphic.
15 Let's move on to the next. Now she didn't object to 74.
16 So let's look at 74.

17 [Whereupon, the photograph is shown]

18 THE COURT: No objection to 74 from you is that
19 right Ms. Norris?

20 MS. NORRIS: I do not object to that one and that
21 shows the same thing that the previous one that Your
22 Honor allowed in terms of 72, the number in the corner.

23 THE COURT: 75, 76 -- excuse me; 75 through 78 she
24 does object to so let's take a look at 75.

25 [Whereupon, the photograph is shown]

1 MR. LIETZOW: And Your Honor I don't think at this
2 point the record is clear that we are attempting to enter
3 black and white photos of the ones that the defense is
4 objecting to as prejudicial. So we have taken that step
5 to try to eliminate some of that out from their potential
6 objection.

7 But as far as 75 is concerned it's just a more
8 detailed view. You can see the 21 and 20; those are two
9 shell casings that were recovered from the scene. And
10 the location of those is very telling; 20 being directly
11 next to the victim's elbow and 21 being down near his
12 left knee.

13 MS. NORRIS: Shell casings bounce, Your Honor. That
14 doesn't mean that's where they fell.

15 THE COURT: Go back to 74.

16 [Whereupon, the photograph is shown]

17 THE COURT: So you're looking at placard 20 I
18 guess.

19 MR. LIETZOW: Yes, ma'am. And 76 is similar but on
20 76 you have item number 25. I'm not...

21 THE COURT: I mean 75 through 78 are really
22 cumulative to 70.

23 MR. LIETZOW: At this point Your Honor I would be
24 okay with 76 not coming in merely because 25 is a SIM
25 card and I don't think we're entering that into our case.

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1 But as far as 77 and 78 are concerned 77 and 78 have
2 shown you have item 20 which shows a view of one of the
3 shell casings directly next to the decedent's elbow.

4 THE COURT: 76 through 78 are not going to come in
5 because I think they are way more prejudicial than
6 probative at this point in time. You're going to have to
7 rely on the diagram for those shots. Okay, did we rule
8 on 75? 75 I'll allow in over the objection of the
9 defense. Okay, Mr. Lietzow?

10 MR. LIETZOW: Yes, ma'am.

11 THE COURT: 75 you can seek to admit. They won't
12 object. 76 through 78 I will not allow in if you seek to
13 admit those, okay. Let's move on. Now the next set
14 deals with it looks like a close up shot of a bullet
15 wound. Pull up photographs 83 through 86. So let's flip
16 over to 83.

17 [Whereupon, the photograph is shown]

18 MR. LIETZOW: Your Honor, 80 is entered -- is
19 without objection?

20 THE COURT: Apparently.

21 MS. NORRIS: I did not object to 80.

22 THE COURT: She did not object to 80. All right
23 83, 84, 85, 86 tell me what we're looking at here?

24 MR. LIETZOW: 83 is the gunshot wound to the lung
25 area of the decedent. Again, just trying to confine

1 right to the area and not having an overall photo of the
2 body. But this is one of the gunshot wounds that he did
3 sustain.

4 THE COURT: Okay. Are you going to have
5 photographs from the pathologist later on or?

6 MR. LIETZOW: Photographs of?

7 THE COURT: Did the pathologist do photographs as
8 well or are these your only gunshot wound photographs?
9 The pathologist appears to at least have a diagram.

10 MR. LIETZOW: We do have photographs from the
11 pathologist. Those would be the 98 to 101 series. And
12 86 is a 83, 84, 85, and 86 are all showing the same
13 thing. Our position would be that 85 or 86 would
14 probably document the best and be the least prejudicial.

15 THE COURT: But that's the same -- those are the
16 same bullet wounds that the pathologist documented at the
17 lab, is that correct?

18 MR. LIETZOW: Yes, ma'am.

19 THE COURT: Those photographs taken by the
20 pathologist to me are much less prejudicial and they give
21 you the same probative content as these would. But
22 certainly the crime scene technician really isn't going
23 to be able to give you a whole of testimony as to these
24 bullet wounds anyway. So I don't think you need to admit
25 83 through 86 for your purposes. We can move on. So we

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1 don't need -- those don't need to come in. They're kind
2 of messy. You got bloody clothes all around there. I
3 think the prejudicial effect outweighs the probative
4 value that you need for those photographs.

5 I think that those -- that can come in through the
6 pathologist so I would agree with the defense on those
7 four. Now do you have any objection to 88, 89, and 90 I
8 assume for the same reasons Ms. Norris, is that correct?

9 MS. NORRIS: Yes, Your Honor.

10 THE COURT: Those can be evidence that can come in
11 through the pathologist with regards to the gunshot
12 wounds and the alleged wounds. Even in black and white
13 it's pretty prejudicial photographs. Which one is that
14 88? Let me see 89.

15 [Whereupon, the photograph is shown]

16 THE COURT: And 90?

17 [Whereupon, the photograph is shown]

18 THE COURT: Mr. Lietzow I will allow you to be
19 heard on those. Are these the same bullet wounds you
20 would discuss with the pathologist ultimately?

21 MR. LIETZOW: These are the bullet wounds that the
22 decedent suffered to the back and yes the pathologist
23 would be discussing her professional opinion as to these
24 being the cause of Mr. Fyall's death.

25 THE COURT: Okay. Certainly obviously you can

1 discuss with the witness the fact that they viewed bullet
2 wounds or what they believe to be bullet wounds if that
3 is the case at the scene. But I don't think we need to
4 admit these photographs for that purpose. But you can
5 certainly discuss and ask her questions about it.

6 But I would agree that 88 through 90 are more
7 prejudicial than probative for your purposes. Okay, what
8 else Ms. Norris? You said 153?

9 MS. NORRIS: 153 and I'm not sure about 135 and
10 136. Could I see those on the big screen?

11 THE COURT: Let's look at 135 and 136.

12 [Whereupon, photographs are shown]

13 MS. NORRIS: I don't have any objection to that.
14 The only other one is 153.

15 THE COURT: Okay 153.

16 [Whereupon, the photograph is shown]

17 MR. LIETZOW: Different view of the bullet that Mr.
18 Fyall received in his lung area.

19 THE COURT: This was taken by the crime scene
20 technician?

21 MR. LIETZOW: Yes, ma'am.

22 THE COURT: What's your objection to this?

23 MS. NORRIS: Your Honor, I submit that it is
24 prejudicial. They had to lift his shirt up to even see
25 it. There is also another picture in the autopsy that

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1 shows the wound and the doctor can testify to that. It's
2 cumulative and prejudicial.

3 MR. LIETZOW: And to be fair they are objecting to
4 the autopsy photos as well. So our position is that
5 certainly we're going to need ---

6 THE COURT: --- I agree with it. I agree with that
7 100 percent. We'll deal with the autopsy photos at the
8 time that we ---

9 MS. NORRIS: --- to that extent I do object to the
10 autopsy photos but given a choice those are cleaner,
11 neater, and the doctor will be here to testify to exactly
12 what we're looking at in terms of the injury and what it
13 caused.

14 THE COURT: Okay. So 153 for now I would not
15 approve for admission. I think it's more prejudicial
16 than probative but understanding we'll have another
17 discussion before the pathologist testifies regarding any
18 potential objections to photographs being sought to be
19 admitted through the pathology. However, I would find
20 these types of photographs are more appropriate for the
21 pathologist to discuss.

22 MS. NORRIS: So just to be clear, Your Honor, the
23 ones you allowed that we objected to were 72 and 75?

24 THE COURT: I allowed 72 and 75, correct.

25 MS. NORRIS: Just for housekeeping purposes if they

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1 want to go ahead and mark the rest of the photos and have
2 them admitted we can skip across and save a lot of time
3 standing up at the projector.

4 MR. LIETZOW: I would much appreciate that.

5 THE COURT: Sure. Take a couple of minutes, no
6 problem.

7 MR. LIETZOW: And I want you to clarify so that I
8 don't scare anything up on the record. 73, and 74 my
9 notes don't indicate which way Your Honor ruled on those
10 two. I don't think they objected to 74.

11 THE COURT: They did not object to 74 so I didn't
12 have to make a ruling on that. 73 was a little bit
13 closer than ---

14 MS. NORRIS: --- I believe you ---

15 THE COURT: --- 72 I allowed in over their
16 objection. 73 I agree with them we would keep out
17 because it was cumulative. 75 I allowed in over their
18 objection or will if you offer it.

19 MR. LIETZOW: Thank you.

20 THE COURT: Okay.

21 [Whereupon, counsel confer over the photographs]

22 MS. NORRIS: Your Honor, I have no objection to 5,
23 6, and 7.

24 THE COURT: Okay.

25 MS. NORRIS: No objection to 9, 11, 12. No

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1 objection to 15 through 50.

2 THE COURT: Okay.

3 MS. NORRIS: No objection to 59 through 69.

4 THE COURT: What about 58 --

5 MS. NORRIS: 58 is not in this batch, Your Honor.

6 THE COURT: Okay, that's fine. 59 through 69.

7 MR. LIETZOW: I'm not putting 58 in.

8 THE COURT: All right. Got it.

9 MS. NORRIS: No objection to 71. 72 Your Honor
10 allowed over objection.

11 THE COURT: Okay. I'll allow you to renew your
12 objection at the time.

13 MS. NORRIS: 74 no objection. 75 Your Honor
14 allowed over objection.

15 THE COURT: Okay.

16 MS. NORRIS: No objection to 79 and 80.

17 THE COURT: All right.

18 MS. NORRIS: No objection to 91 through 95.

19 THE COURT: Okay.

20 MS. NORRIS: No objection to 134, 135, and 136.

21 THE COURT: Okay.

22 MS. NORRIS: No objection to 152. No objection to
23 154.

24 [Whereupon, Mr. Lietzow and Ms. Norris confer]

25 MS. NORRIS: Your Honor, we do not object to 108

1 through 117. Those are projectiles and shell casings.

2 THE COURT: Okay.

3 MS. NORRIS: We do not object to 118 through 120;
4 bullets from autopsy. We do not object to 122. Your
5 Honor, I don't particularly object to 121 but it is a
6 biohazard so I would ask that we submit a photo instead
7 of the actual pants just for...

8 THE COURT: Okay. I tell you what. This is
9 actually taking longer than it would take during the
10 course of the trial. So I appreciate counsel's efforts
11 to like make things go faster but this actually isn't
12 making it go faster.

13 So let's take the ones that you have marked so far
14 and the rest of them we'll just take one at a time, okay.
15 All right. You can bring the jury back in. Is your next
16 witness ready, Mr. Lietzow?

17 MR. LIETZOW: Yes, ma'am.

18 THE COURT: All right. We at least got the
19 photographs out of the way. That will help considerably.

20 [Whereupon, the jury enters at 11:29 a.m.]

21 THE BAILIFF: All jurors present, Your Honor.

22 THE COURT: Thank you. Ladies and gentlemen thank
23 you for patience. We obviously took a little longer than
24 ten minutes. We were trying in an effort to streamline
25 things to go through some things outside your presence

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1 while you were already gone so that's why it took a
2 little bit longer. But always with a mind to making sure
3 we make the best use of your time. So with that
4 Solicitor you can call your next witness.

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1 MR. LIETZOW: Thank you, Your Honor. Anita Moore.

2 [Whereupon, Ms. Moore comes forward]

3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: Please state your full name for
6 the record spelling your last name.

7 THE WITNESS: Anita Marie Moore, M-O-O-R-E.

8 - - - - -

9 ANITA MOORE,

10 Having been first duly sworn,

11 Was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MS. LIETZOW:

14 Q. Ms. Moore, where do you work?

15 A. I work for the North Charleston Police Department.

16 Q. And how long have you been with them?

17 A. About six and half years.

18 Q. And what is your title there?

19 A. I am a crime scene technician.

20 Q. Explain to the jury what that entails?

21 A. My job is to respond to potential crime scenes to
22 observe, document, process, and preserve any physical
23 evidence that is seen at a crime scene.

24 Q. And how long have you worked in that capacity?

25 A. I've been as a crime scene investigator for about 15

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1 years, in forensic science about 20.

2 Q. Okay. What kind of educational background do you
3 have?

4 A. I have a Bachelor's degree in chemistry and I have a
5 Masters in forensic science.

6 Q. And have you received specialized training for crime
7 scene analysis?

8 A. I have. I have attended the National Forensic
9 Academy out of Knoxville, Tennessee which is a ten-week
10 program. I've been certified through the International
11 for Identification as a crime scene analyst. And then
12 the American Board of Criminalistics as a crime scene
13 investigator.

14 Q. Approximately how many crime scenes have you been
15 called to and analyzed; ballpark figure?

16 A. Honestly I couldn't even -- I mean thousands. I
17 mean I don't keep track.

18 Q. What kind of precautions do you take when you arrive
19 to make sure that evidence is preserved and nothing was
20 contaminated?

21 A. We generally wear personal protective equipment,
22 normally gloves so we're not leaving prints or
23 transferring our DNA into the scene. Depending on the
24 scene you can also wear booties or tyvec suits. It
25 depends on what we have.

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1 Q. Does somebody maintain a crime scene log to document
2 who is coming in and out of the scene?

3 A. Generally the first officers on scene one of the
4 sergeants will assign somebody to handle that log.

5 Q. What is their -- what's their purpose?

6 A. It's to document who is coming into the scene and
7 for what reasons. We don't want anybody just traipsing
8 through the crime scene.

9 Q. Okay. Were you called out to the crime scene on
10 July 15th of 2016?

11 A. Yes sir, I was.

12 Q. And where did you go?

13 A. I was dispatched from headquarters to [REDACTED] -- or
14 actually [REDACTED] and North Carolina where the incident --
15 they first wanted me at in reference to the incident at
16 [REDACTED].

17 Q. And do you remember what time that was when you were
18 called out there?

19 A. I responded on scene at 22:04. I think the initial
20 incident on the incident report state that the call came
21 in at 21:27.

22 Q. And in civilian terms?

23 A. Oh, I'm so sorry. I got there a little after 10 so
24 10:04. The call came in about 9:37 or 9:27; I'm sorry.

25 Q. When you got there just briefly tell the jury a

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1 little bit about what the scene was like?

2 A. When I first arrived it was extremely active, busy.

3 There were a lot of police cars, a lot of officers.

4 There were a lot of people milling around. There was an
5 ambulance still there I believe.

6 They had already put up some crime scene tape to
7 cordon off the area and that's usually done before I get
8 there. But it was very chaotic when I got there.

9 Q. And when you get there your job is to take it all in
10 and process everything and make sure everything gets
11 logged into evidence?

12 A. Yes, sir. My job first is to handle any immediate
13 needs to collect any evidence that may be destroyed or
14 contaminated if it is left out.

15 Q. Okay. Do you have a system or a process that you go
16 about when you get to a crime scene like this?

17 A. We try. We try to have a systematic approach to
18 what we do. Sometimes it doesn't always work when you
19 have a scene this large and this crazy.

20 First thing we want to do is document what we see in
21 its original state as we arrive and that's usually by
22 photographs.

23 Q. Okay. And when you get there how do you determine
24 what pieces of evidence you're looking for and ultimately
25 what you're going to take in as evidence in a case like

1 this?

2 A. It can be a hit and miss sometimes unfortunately.
3 We don't always know all the details when we first arrive
4 because the investigation is still unfolding. We take
5 what we do know which was that somebody was shot. We're
6 looking for anything that may be in relation to that;
7 handguns, bullets, blood, anything to that nature.

8 And it goes according to what the crime scene is.
9 We also get information from the officers that are first
10 on scene and they tell us what they have observed and
11 what they have encountered when they got there and we
12 work from there.

13 And we continue to collect evidence that we may feel
14 is pertinent. Sometimes we collect things that are
15 eventually determined not to be pertinent but that
16 happens.

17 Q. Do you take any photos?

18 A. Yes sir, I take a lot of photos.

19 Q. What's the purpose of that?

20 A. To document the scene as I see it when I arrive.
21 Once we leave a crime scene there is no way to go back to
22 its original state because we've already processed it;
23 things have changed.

24 The only way to document it in its original state is
25 by photographs or video and from my notes and my report.

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1 The more photographs I can take to help make sure that I
2 see everything when I come back years down the line to
3 make sure that I know what happened.

4 Q. Okay. And you're the one that actually took these
5 photographs associated with this case?

6 A. Yes sir, I did.

7 MR. LIETZOW: Permission to approach the witness,
8 Your Honor?

9 THE COURT: Yes.

10 Q. [Mr. Lietzow] Ms. Moore, I am showing you a large
11 stack of photographs. For the purposes of the record
12 that would be photographs, State's exhibit 5 through 7,
13 9, 11, 12, 15 through 50, 59 through 69, 72 through 70 --
14 I'm sorry 72, 74, 75, 79, and 80, 91 through 95, 134
15 through 136, 152 and 154.

16 [Whereupon, the witness is shown photographs]

17 Q. Could you just briefly flip through those and tell
18 the jury whether those are the photographs that you took
19 on this particular evening?

20 A. Certainly.

21 Q. And are they a fair and accurate depiction of the
22 crime scene?

23 A. Yes sir, these are the photographs that I took
24 except for the Google search.

25 Q. And are those a fair and accurate depiction?

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1 A. Yes sir, they are.

2 MR. LIETZOW: Your Honor, at this point I would
3 move to enter all the State's exhibits I previously
4 alluded to into evidence.

5 THE COURT: All right. Without objection except
6 for 72 and 75, is that correct Ms. Norris?

7 MS. NORRIS: That's correct, Your Honor.

8 THE COURT: Those are admitted over defense
9 objection.

10 [Whereupon, State's exhibit numbers 5 through 7, 9,
11 11, 12, 15 through 50, 59 through 69, 72, 74, 75, 79, 80,
12 91 through 95, 134 through 136, 152, and 154 are entered
13 into evidence by the Court]

14 THE COURT: Thank you very much. Go ahead.

15 MR. LIETZOW: Permission to publish?

16 THE COURT: Yes.

17 Q. [Mr. Lietzow] Let's bring up State's exhibit 1
18 please.

19 [Whereupon, the photograph is shown]

20 Q. This is an overall map of the scene?

21 A. Yes. That's a Google search or Google earth
22 depiction of the area where the house is located at.

23 Q. State's exhibit 3?

24 [Whereupon, the photograph is shown]

25 Q. What do we have here?

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1 A. That is a photograph of the area I believe it was
2 across from 1816 Leland. When I first arrived I was
3 informed that there was a handgun that was located behind
4 the trash can where the officer is standing by to keep it
5 secure. So that is an overall photograph before I have
6 done anything to the scene.

7 Q. And for your edification we're not going to go
8 through each one of those photos. We're going to
9 highlight a few of them.

10 A. Okay.

11 Q. All those will go back to the jury and they can look
12 at all those. But for our purposes to move things along
13 we're just going to take a look at a few of these.
14 State's exhibit 5?

15 [Whereupon, the photograph is shown]

16 Q. What is this?

17 A. That is an intermediate photograph of the cell phone
18 that was found in the same vicinity of the handgun.

19 Q. Moving back to that trashcan, State's exhibit 8?

20 [Whereupon, the photograph is shown]

21 Q. And State's exhibit 9?

22 [Whereupon, the photograph is shown]

23 Q. Is that the trashcan where that weapon was found?

24 A. Yes. It was found behind that trashcan.

25 Q. And did you collect that handgun into evidence?

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1 A. I did.

2 Q. And do you recall what kind of gun that was?

3 A. One moment. I'll read it so I don't get the numbers
4 incorrect.

5 [Whereupon, the witness reviews document]

6 A. It was a Walther PPS 40 caliber Smith and Wesson.
7 The serial number on it was AK 2258.

8 Q. And was that weapon loaded when you took it into
9 custody?

10 A. It was.

11 Q. How as it loaded?

12 A. There was one round in the chamber and it had a
13 magazine that had seven rounds in it as well.

14 Q. State's exhibit 14 please?

15 [Whereupon, the photograph is shown]

16 Q. What are we looking at here?

17 A. That is an overall photograph of the same area. But
18 now I've placed evidence markers next to the items that I
19 intended on collecting.

20 Q. And what are those evidence placards? What evidence
21 are those?

22 A. Number two I believe was a white undershirt, it was
23 a tank undershirt, three was a pair of black pants, and
24 number four was a black grey and white stripe sock, and
25 then further down you can see number five which was the

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1 cell phone.

2 Q. I'm showing you what has been marked as
3 identification purposes only as State's exhibit 121 and
4 State's exhibit 122?

5 [Whereupon, the witness is shown exhibits]

6 Q. Do you recognize both of those items?

7 A. Yes. The bag has my initials on it and my seal from
8 where I collected it and the evidence stickers from when
9 we entered it into the computer system.

10 Q. And what is State's exhibit 121? That would be
11 North Charleston item number three if it will help you
12 refer to your report?

13 A. On my report it states it is a pair of black pants,
14 which are the ones that I collected from the scene across
15 from 1816 Leland.

16 [Whereupon, the witness views exhibit]

17 A. Yes. It is a pair of black pants and it has the
18 case number and my initials and it's just a pair that I
19 collected on scene.

20 MR. LIETZOW: At this point Your Honor I would move
21 to have State's exhibit 121 into evidence.

22 THE COURT: Any objection?

23 MS. NORRIS: No objection.

24 THE COURT: Without objection, 121.

25 [Whereupon, State's exhibit number 121 is entered

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1 into evidence by the Court]

2 Q. [Mr. Lietzow] Take a look at State's exhibit 122
3 please.

4 [Whereupon, the witness views exhibit]

5 Q. State's exhibit 122 is for identification purposes
6 only at this point. Do you recognize that?

7 A. Yes, sir. It was actually a work ticket that was
8 inside the pants that I collected from off scene.

9 Q. Those pants that you just looked at as State's
10 exhibit 121?

11 A. Yes.

12 Q. Did you collect State's 122 into evidence?

13 A. I did. Once I brought the pants back to
14 headquarters I go through and inventory what is in the
15 pants. I found the work ticket with information on it
16 with the name of Byron Rivers from Horizon Forest.

17 Q. So it that a work ticket with Byron Rivers name on
18 it?

19 A. Yes sir, it is.

20 MR. LIETZOW: I would move to enter that into
21 evidence as State's exhibit 122, Your Honor.

22 MS. NORRIS: No objection.

23 THE COURT: Thank you very much. Admitted.

24 [Whereupon, State's exhibit number 122 is entered
25 into evidence by the Court]

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1 Q. [Mr. Lietzow] When you were processing those pants
2 besides the work ticket and the other items was there
3 anything else noteworthy that you came across?

4 A. Yes. In the I believe it was right pocket there was
5 a hole that was consistent to a bullet hole.

6 Q. Okay. Was there any other bullet holes in those
7 pants that you noticed?

8 A. Not in the pants.

9 Q. Take a look at State's exhibit 135 and 136 please;
10 don't publish them yet.

11 [Whereupon, the witness views photographs]

12 Q. Actually go ahead and publish it please. State's
13 exhibit 134?

14 [Whereupon, the photograph is shown]

15 Q. Are those the pants, a photograph of the pants that
16 you collected?

17 A. It does appear that those are the pants, yes.

18 Q. And State's exhibit 135?

19 [Whereupon, the photograph is shown]

20 Q. What does that depict?

21 A. Again, you can see the it looks like there
22 [indicates] is the hole and there [indicates] is the hole
23 as well ---

24 Q. --- Ms. Moore, you can actually draw on that screen
25 with your finger.

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1 A. It looks like there is a hole there [indicates] and
2 might be -- I think there was two.

3 Q. Okay. And then State's exhibit 136?

4 [Whereupon, the photograph is shown]

5 Q. And on the bottom left right there [indicates] you
6 see one?

7 A. That hole there [indicates].

8 Q. So there were actually two separate bullet holes in
9 these pair of pants?

10 A. Yes.

11 Q. One on each side of the legs?

12 A. Uh Huh.

13 THE COURT REPORTER: Was that yes?

14 A. I'm sorry; yes.

15 Q. [Mr. Lietzow] And was there anything else in those
16 pants that you recovered?

17 A. Yes, sir. In the pocket where the bullet hole was,
18 I believe in the right; let me verify a second.

19 [Whereupon, the witness reviews document]

20 A. It was a Samsung cell phone was removed from the
21 left front pocket and it had damage to the bottom portion
22 of the cell phone and it had a projectile from the front
23 pocket.

24 Q. I'm showing you what has been marked for I.D.
25 purposes only as State's exhibit 112.

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1 [Whereupon, the witness is shown exhibit]

2 Q. Do you recognize that Ms. Moore?

3 A. Yes sir, I do.

4 Q. And what is that?

5 A. It is the item number 301 which is what I took out
6 of the pants of item 3, which is a spent projectile.

7 MR. LIETZOW: Your Honor, I'd move State's exhibit
8 112 into evidence.

9 THE COURT: Admitted.

10 [Whereupon, State's exhibit number 112 is entered
11 into evidence by the Court]

12 MS. NORRIS: No objection.

13 THE COURT: Okay.

14 Q. [Mr. Lietzow] Did you find any money in the pants?

15 A. Yes sir, I did.

16 Q. How much?

17 A. It was; let me find the correct amount.

18 [Whereupon, the witness reviews document]

19 A. It was 56 dollars and 75 cents.

20 Q. Okay. If we could pull up State's exhibit 17
21 please?

22 [Whereupon, the photograph is shown]

23 Q. What do we have here?

24 A. That is a photograph of, an overall photograph of
25 the area in front of I think it might have been 1806 --

1 [REDACTED] would have been in this area [indicates] and that is
2 going towards North Carolina Street.

3 So when I'm taking my overall photographs in a 360
4 fashion that picture is from where I'm standing in front
5 of [REDACTED] going towards North Carolina.

6 Q. State's exhibit 19?

7 [Whereupon, the photograph is shown]

8 A. That is a picture facing this house right here
9 [indicates] that is [REDACTED] where the incident
10 actually occurred.

11 Q. And is that the crime scene that you mentioned
12 earlier, the crime scene tape?

13 A. Yes, sir.

14 Q. And is that to prevent people from coming in and
15 out?

16 A. Yes sir, it is.

17 Q. State's 20 please?

18 [Whereupon, the photograph is shown]

19 Q. What are these cars out front?

20 A. Those are the vehicles that were parked in front of
21 1808 Leland. They were processed as to we didn't know
22 who they belonged to and they were in the crime scene
23 area.

24 Q. State's exhibit 24?

25 [Whereupon, the photograph is shown]

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1 Q. What is that stand right there [indicates]?

2 A. Oh, I'm sorry. That is a flood light that we put in
3 so we could actually see because it was very dark at that
4 point. By the time we got around to processing the area
5 it was late in the evening so that is a stand that we
6 placed to where we could see.

7 Q. State's exhibit 26?

8 [Whereupon, the photograph is shown]

9 Q. Is this just a different view looking back down
10 towards Leland Avenue ---

11 A. --- yes sir ---

12 Q. --- or looking down Leland?

13 A. Yes sir, it is.

14 Q. State's exhibit 31 please?

15 [Whereupon, the photograph is shown]

16 Q. Is this just a close-up view of the front of the
17 house and the cars out there?

18 A. Yes sir, it is.

19 Q. State's exhibit 36 please?

20 [Whereupon, the photograph is shown]

21 A. That is another close-up photograph of the white
22 vehicle that was parked in front of the residence.

23 Q. And what is that down by the tire?

24 A. I believe it was a white shirt.

25 Q. A shirt that had some blood on it?

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1 A. I believe so it did, yes.

2 Q. And then State's 39?

3 [Whereupon, the photograph is shown]

4 Q. Is that blood in the street right there [indicates]?

5 A. Yes sir, it is.

6 Q. State's 41?

7 [Whereupon, the photograph is shown]

8 Q. Blood on the Explorer?

9 A. Yes, sir.

10 Q. Okay. State's exhibit 43 please?

11 [Whereupon, the photograph is shown]

12 Q. What do we have here?

13 A. That is a close-up photograph. When we take our

14 photographs we normally take overall photographs. Then

15 we move in a little bit and take an intermediate

16 photograph, which is a little bit closer.

17 And then eventually we will take close-up

18 photographs so you can see the details of the items.

19 That one is an intermediate photograph of the front door

20 of the incident location.

21 Q. Okay. And State's 44 please?

22 [Whereupon, the photograph is shown]

23 Q. What do we have here?

24 A. That is a photograph of the front of the house to

25 the left of the front door where the kitchen window is

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1 broken out.

2 Q. And State's 46 please?

3 [Whereupon, the photograph is shown]

4 Q. And State's 47 please?

5 [Whereupon, the photograph is shown]

6 Q. Are those just showing the same photos with the

7 blood that you just referenced?

8 A. Yes sir, just close-up photographs.

9 Q. State's 48 please?

10 [Whereupon, the photograph is shown]

11 Q. What do we have here?

12 A. That is a photograph as you first approach the front

13 door looking into the residence.

14 Q. And is that the decedent right there [indicates]?

15 A. Yes sir, it is.

16 Q. And is this the initial point of view for you when

17 you are coming into the actual crime scene?

18 A. Yes sir, it is. When I first approach the door that

19 is the area and everything that I see at the initial

20 time.

21 Q. State's 49?

22 [Whereupon, the photograph is shown]

23 Q. What do we have here?

24 A. That is a closer photograph of the area at the

25 bottom of the front door, in front of the front door

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1 where there was a projectile.

2 Q. State's 49 -- I'm sorry; State's 50?

3 [Whereupon, the photograph is shown]

4 A. And that's a closer photograph showing the detail.

5 Q. And are you now putting placards down to mark where
6 the noteworthy pieces of evidence you're finding are?

7 A. Yes, sir.

8 Q. I am showing you for identification purposes only
9 State's exhibit 109.

10 [Whereupon, the witness is shown exhibit]

11 Q. Do you recognize that? It would be North Charleston
12 item number 15.

13 A. Yes, sir. And it has the case number and my
14 initials of item 15 that I collected from the scene.

15 Q. And is that the projectile that you recovered right
16 there [indicates]?

17 A. Yes sir, it is.

18 MR. LIETZOW: At this time we've move to enter
19 State's 109 into evidence.

20 THE COURT: Still no ---

21 MS. NORRIS: --- no objection.

22 THE COURT: All right. Admitted.

23 [Whereupon, State's exhibit number 109 is entered
24 into evidence by the Court]

25 Q. [Mr. Lietzow] Moving on State's 59 please?

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1 [Whereupon, the photograph is shown]

2 Q. Just a view of the freezer ---

3 A. --- that's a view of the freezer. I take a lot of
4 photographs because you never know what you need to
5 search and look for for evidence. That is just depicting
6 the refrigerator as it was when I first saw it.

7 Q. State's 60?

8 [Whereupon, the photograph is shown]

9 Q. Same purpose?

10 A. Yes, sir.

11 Q. State's 61 please?

12 [Whereupon, the photograph is shown]

13 Q. What do we have here?

14 A. That is the area in the kitchen right below the
15 kitchen window that was broken out and that was actually
16 a table that was broken and that's the glass from the top
17 of the table in front of the stove.

18 Q. And 63 please?

19 [Whereupon, the photograph is shown]

20 Q. And 64 please?

21 [Whereupon, the photograph is shown]

22 A. That is just a progression. So you saw the table
23 that was broken underneath the window and we took photos
24 showing exactly where it was in relation to the broken
25 window.

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1 MR. LIETZOW: Court's indulgence.
2 [Whereupon, Mr. Lietzow and Mr. Osborne confer]
3 Q. [Mr. Lietzow] And State's 68 please?
4 [Whereupon, the photograph is shown]
5 Q. What do we have here?
6 A. That is a close-up photograph of the area in front
7 of the front door where I placed a placard that the
8 projectile and the white shirt -- and the shirt that was
9 in front of the door.
10 Q. And State's 69 please?
11 [Whereupon, the photograph is shown]
12 Q. Is this the same photo we saw earlier but now with
13 the evidence documented?
14 A. Yes sir, it is; evidence placards as I first looked
15 into the door.
16 Q. And what are items 16, 26, and 27 of North
17 Charleston's?
18 A. Sixteen was a fired shell casing in a caliber of a
19 manufacturer Win 380. Items number 26 and number 27 was
20 a portion of the wallet that actually determined to be
21 the victim which the Coroner collected.
22 Q. I'm showing you for I.D. State's exhibit 108.
23 [Whereupon, the witness is shown exhibit]
24 Q. Do you recognize that?
25 A. Yes sir, I do.

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1 Q. And is that the 380 shell casing that corresponds to
2 item number 16 in that photo?

3 A. Yes sir, it is.

4 MR. LIETZOW: Move to enter this into evidence,
5 Your Honor?

6 THE COURT: Still no objection?

7 MS. NORRIS: No objection.

8 THE COURT: Thank you. It's admitted.

9 [Whereupon, State's exhibit number 108 is entered
10 into evidence by the Court]

11 Q. [Mr. Lietzow] I'm showing you State's exhibit 117.

12 [Whereupon, the witness is shown exhibit]

13 Q. Do you recognize that; North Charleston number 17?

14 A. Yes, sir. It has my initials and the case number
15 from that location.

16 Q. And what is that?

17 A. It is a fired shell casing.

18 Q. And what capacity?

19 A. In it was a Win 9mm Luger.

20 Q. State's 152 please?

21 [Whereupon, the photograph is shown]

22 Q. What is this?

23 A. That is a sketch of the scene that I completed.

24 Q. Okay. And I may refer back to this but does 17 up
25 there on the screen correspond with the location where

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1 you collected that shell casing from?
2 A. Yes.
3 Q. Okay.
4 MR. LIETZOW: Move to enter State's exhibit 117
5 into evidence.
6 THE COURT: Is there an objection to 117?
7 MS. NORRIS: No objection.
8 THE COURT: Admitted without objection.
9 [Whereupon, State's exhibit number 117 is entered
10 into evidence by the Court]
11 Q. [Mr. Lietzow] State's 72 please?
12 [Whereupon, the photograph is shown]
13 Q. What do we have here?
14 A. That's the angle when you first walked into the
15 living room from the front door and if you turn right
16 that's a photograph going towards the south wall showing
17 items number 19 and 21.
18 Q. Item number 19 is State's exhibit 113, which I'm
19 showing you now for identification purposes only.
20 [Whereupon, the witness is shown exhibit]
21 Q. Do you recognize that?
22 A. Yes sir, I do.
23 Q. And what is that?
24 A. That is a fired shell casing. It's a Win 9mm Lugar.
25 Q. And that corresponds to item 19 in that photo ---

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1 A. --- yes sir, it does.

2 MR. LIETZOW: Move to enter State's 113 into
3 evidence.

4 MS. NORRIS: No objection.

5 THE COURT REPORTER: 113?

6 MR. LIETZOW: 119. I'm sorry; 113.

7 [Whereupon, State's exhibit number 113 is entered
8 into evidence by the Court]

9 Q. [Mr. Lietzow] State's 74 please?

10 [Whereupon, the photograph is shown]

11 Q. Item 21 is that just a closer view of the same?

12 A. Yes sir, it is.

13 Q. I'm showing you State's exhibit 111.

14 [Whereupon, the witness is shown exhibit]

15 Q. Do you recognize that?

16 A. Yes, sir. It is a fired shell casing, item number
17 placard 21 and it's a Win 9mm Lugar.

18 MR. LIETZOW: Move to enter State's exhibit 111
19 into evidence, Your Honor?

20 THE COURT: Without objection 111 is admitted.

21 [Whereupon, State's exhibit number 111 is entered
22 into evidence by the Court]

23 Q. [Mr. Lietzow] I'm showing you State's exhibit 115.

24 [Whereupon, the witness views exhibit]

25 Q. That would correspond to North Charleston item

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1 number 20. Do you recognize that?

2 A. Yes sir, I do.

3 Q. And what is that?

4 A. That is evidence number 20 that I collected and it's
5 a fired shelled casing. And it's a make of FC 9mm Lugar.

6 Q. And State's exhibit 152 please?

7 [Whereupon, the photograph is shown]

8 Q. Can you please point out where that would have been
9 recovered from?

10 A. It would be item number 20 right in that area
11 [indicates].

12 MR. LIETZOW: Move to enter State's 115 into
13 evidence.

14 THE COURT: Without objection 115 is in.

15 [Whereupon, State's exhibit number 115 is entered
16 into evidence by the Court]

17 Q. [Mr. Lietzow] State's 80 please?

18 [Whereupon, the photograph is shown]

19 A. This is another picture of the living room where the
20 decedent was and it's showing the -- evidence markers 17,
21 18, 19, and 21 and it's from behind the love seat that
22 was tipped over. And that's just showing another view
23 trying to get all the evidence placards as I could.

24 Q. And State's exhibit 154 please?

25 [Whereupon, the photograph is shown]

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1 Q. What is this?

2 A. That's showing evidence placard number 23 which was
3 a spent projectile that was located on the sofa.

4 Q. I'm showing you State's exhibit 110.

5 [Whereupon, the witness is shown exhibit]

6 Q. Do you recognize that?

7 A. Yes sir, I do.

8 Q. Does that correspond to evidence number 23 in that
9 photo?

10 A. Yes sir, it does.

11 MR. LIETZOW: Move to enter State's 110 into
12 evidence.

13 THE COURT: Without objection 110 is admitted.

14 [Whereupon, State's exhibit number 110 is entered
15 into evidence by the Court]

16 Q. [Mr. Lietzow] State's exhibit 91 please?

17 [Whereupon, the photograph is shown]

18 Q. What are we seeing in this photo?

19 A. That is that same living room area after we have
20 removed the decedent from the scene. Once the decedent
21 was removed we located another fired shell casing
22 underneath him, which was placard number 35.

23 Q. I'm showing you State's 116 for I.D. purposes.

24 [Whereupon, the witness is shown exhibit]

25 Q. Do you recognize that?

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1 A. Yes sir, I do.

2 Q. Does that correspond to number 35 in that photo?

3 A. It does. It's a fired shell casing. It's a Win 9mm
4 Lugar.

5 MR. LIETZOW: Move to enter that into evidence,
6 Your Honor, State's 116.

7 THE COURT: 116 admitted.

8 [Whereupon, State's exhibit number 116 is entered
9 into evidence by the Court]

10 Q. [Mr. Lietzow] And is that a shell casing or a
11 projectile?

12 A. This is a fired shell casing.

13 Q. I'm showing you what is marked as I.D. State's
14 exhibit 114.

15 [Whereupon, the witness is shown exhibit]

16 Q. Do you recognize that?

17 A. Yes sir, I do. It's a fired shell casing. It's a
18 Win 9mm Lugar.

19 Q. And does that correspond to North Charleston number
20 40?

21 A. Yes sir, it does.

22 Q. If you could pull up 152 please?

23 [Whereupon, the photograph is shown]

24 Q. Can you mark on there where that was recovered from
25 please?

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1 A. When we were doing the examination with the Coroner
2 of the decedent we located it underneath the right knee.

3 MR. LIETZOW: Move to enter State's 114 into
4 evidence, Your Honor.

5 THE COURT: Admitted without objection, 114.

6 [Whereupon, State's exhibit number 114 is entered
7 into evidence by the Court]

8 Q. [Mr. Lietzow] And this is just a sketch that you
9 created after the fact to help you document and keep a
10 record of where all the pertinent items in this case were
11 recovered from?

12 A. Yes sir, it was.

13 Q. All right Ms. Moore, what else do you do when you
14 process a crime scene? Do you look for DNA or
15 fingerprints?

16 A. Yes sir, we do. In this instance there was a bike
17 that was outside the front of the residence. We
18 processed the handlebars; we didn't know who it belonged
19 to. There were some other items that we processed as
20 well for fingerprints we then collected at that time.

21 Q. Did you go to the autopsy location after the autopsy
22 was performed on the decedent to collect any evidence
23 that was recovered during the autopsy?

24 A. Yes, sir. I believe it was that Monday following I
25 went down to MUSC and collected the items collected from

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1 the doctors at autopsy.

2 Q. I'm showing you State's exhibit 118.

3 [Whereupon, the witness is shown exhibit]

4 Q. Do you recognize that; North Charleston 410?

5 A. I don't recognize the item itself. When we collect
6 -- when we get the items from autopsy it is in a sealed
7 container.

8 But I do recognize the information. It has my case
9 number. Item 410, which I designate for autopsies, the
10 400 series and my initials, yes.

11 Q. But that item hasn't been tampered with in any way
12 between the time that it was recovered and you collected
13 it?

14 A. No sir, it was in a sealed envelope.

15 Q. And does it say where that bullet was recovered
16 from?

17 A. This one is bullet number 1. I do not recall
18 offhand, I think they may have put it on the autopsy
19 report but I don't have that information. Oh, I'm sorry;
20 they did have that on there. It says from the right
21 chest; I apologize.

22 MR. LIETZOW: Move to enter State's exhibit 118
23 into evidence, Your Honor.

24 THE COURT: No objection to 118 through 120, is
25 that correct Ms. Norris?

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1 MS. NORRIS: No objection.

2 THE COURT: All right. Without objection.

3 [Whereupon, State's exhibit number 118 is entered
4 into evidence by the Court]

5 Q. [Mr. Lietzow] I'm showing you 119 and 120.

6 [Whereupon, the witness is shown exhibits]

7 Q. Do you recognize those two? The same situation; are
8 those both items that you recovered from the autopsy?

9 A. Yes. They are both collected from autopsy in sealed
10 envelopes and have the 400 number that means they were
11 collected from autopsy.

12 Q. Can you share where State's exhibit 119, North
13 Charleston 411 was recovered from?

14 A. It stated that it was a spent projectile number 2
15 and it was recovered from the right back.

16 Q. And State's exhibit 120?

17 [Whereupon, the witness is shown exhibit]

18 A. 120 stated they were bullet fragments and they were
19 collected from the abdomen.

20 Q. And are those different than the shell casings that
21 you recovered on scene?

22 A. Yes. These are spent projectiles. So these are the
23 bullets that came out of the shell casings from on scene.

24 MR. LIETZOW: Your Honor, I would move to enter 119
25 and 120 into evidence.

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1 THE COURT: Admitted without objection.

2 [Whereupon, State's exhibit numbers 119 and 120 are
3 entered into evidence by the Court]

4 MR. LIETZOW: Thank you.

5 Q. [Mr. Lietzow] Okay, moving forward. After the
6 autopsy were you told by Detective Bailey that any
7 additional evidence was recovered?

8 A. Yes sir, I was.

9 Q. And what was that evidence that you were told was
10 recovered?

11 A. I was informed that a bag was turned over to
12 Detective Bailey that contained numerous items including
13 a handgun ---

14 MS. NORRIS: --- objection.

15 THE COURT: Just try to state what you observed.
16 Not restate what other people told you; that's all. Go
17 ahead. You can rephrase the question if you need to.

18 Q. [Mr. Lietzow] Were you asked to respond to where
19 these items were at?

20 A. No, sir.

21 Q. Were you asked to take these, collect these items
22 into evidence and process these items?

23 A. I was requested to process the handgun that was
24 turned into evidence.

25 Q. Okay. So you were asked -- what was that handgun

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1 you were asked to process?

2 MS. NORRIS: Objection. It's not in evidence.

3 MR. LIETZOW: She can lay the foundation so I can
4 get it into evidence.

5 THE COURT: I'll allow it. Overruled. Go ahead.

6 Q. [Mr. Lietzow] What was that handgun you were asked
7 to process?

8 A. Let me make sure I'm reading the correct
9 information.

10 [Whereupon, the witness reviews document]

11 A. In my report it stated that I received from evidence
12 a Hi-Point and it had serial number of P, Papa-033780.

13 Q. And what caliber handgun was that?

14 A. I believe it was a 9mm.

15 Q. What brand was it?

16 A. A Hi-Point.

17 MR. LIETZOW: Your Honor, may we approach?

18 THE COURT: Sure.

19 [Whereupon, an on the record bench conference is
20 held as follows:

21 MR. LIETZOW: We're going to be trying to get some
22 evidence in and the defense has an objection to it. Can
23 we take up that objection right now? This is State's
24 exhibit 123. I'm trying to enter this into evidence.

25 MS. NORRIS: This is --

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1 THE COURT REPORTER: Ms. Norris, I can't hear you.

2 MS. NORRIS: This is the handgun that our pretrial
3 motion pertained to. There is a day period where nobody
4 can account for where this weapon was. And the last it's
5 seen on scene a woman picked it up and a man a day later
6 turn it into -- one of the victims turns it in to the
7 police and that's when Detective Bailey. So we object
8 period to this but we certainly object to any processing
9 of any bullets not in evidence yet.

10 THE COURT: Okay. And who collected this?

11 MR. LIETZOW: Detective Bailey.

12 THE COURT: And is she going to lay the foundation
13 as to how she came upon this item or anything?

14 MR. OSBORNE: We'll just have to go through -- we
15 can get it I.D. through her.

16 THE COURT: Which is what?

17 MR. OSBORNE: I.D. it through her. We're going to
18 bring it in through Detective Bailey.

19 THE COURT: Okay. So at this point you're just
20 having her I.D. it.

21 MR. LIETZOW: Well she did take swabs from the gun
22 and we will be trying to enter it in through her.

23 MS. NORRIS: And the swab pertains to the DNA and
24 that's the whole point of our pretrial motion.

25 THE COURT: Haven't I already ruled on.

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1 THE COURT REPORTER: Y'all have got to get closer
2 if you want it on the record.

3 MS. NORRIS: I said the swab pertains to the DNA.
4 That was the whole point of our pretrial motion was the
5 DNA.

6 THE COURT: Okay. I got it. At this point when
7 the DNA is -- I will allow her to testify as to how she
8 processed this gun understanding that you are going to
9 offer the gun over the objection of the defense. I will
10 allow her to testify to her processing of the gun.

11 MS. NORRIS: I would ask that it not being pointed
12 out until it goes into evidence.

13 THE COURT: I'm okay with that. That's fine. She
14 can just look at it and confirm it is the gun she
15 processed ---

16 MR. LIETZOW: --- so can we just ask about the swab
17 and I.D. the gun later? How else are we going to get the
18 swab in?

19 THE COURT: No, you can -- just I.D. the gun. She
20 handled the swab. She can testify about processing of
21 the gun.

22 MR. OSBORNE: I'll have to call her back later
23 about the swabs.

24 MR. LIETZOW: Are you saying we can get the swabs
25 in?

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1 THE COURT: She can get the swabs in; just not the
2 gun.

3 MR. LIETZOW: So I.D. the gun and the swabs can
4 come in?

5 THE COURT: Just not the gun. Thank you.

6 MR. LIETZOW: And I can't show her the gun.

7 THE COURT: Show it to her; just don't pull it out
8 the box.

9 MR. LIETZOW: Thank you.

10 THE COURT: Thank you. Please proceed.

11 [Whereupon, the on the record bench conference ends]

12 Q. [Mr. Lietzow] All right. I am showing you what has
13 been marked for identification purposes only as State's
14 exhibit 123. For now this is only for your eyes to see.

15 [Whereupon, the witness is shown exhibit]

16 Q. Do you recognize that?

17 A. Yes sir, I do.

18 Q. Is that the firearm you were asked to process?

19 A. It is. It has an evidence sticker on the front of
20 it that stated that I processed the handgun.

21 Q. Does that firearm have the same serial number as the
22 firearm that you were asked to process?

23 A. One moment.

24 [Whereupon, the witness views the handgun]

25 A. Yes sir, it does.

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1 Q. And when you were asked to process that what did you
2 do with it?

3 A. When I get an item for processing of this type
4 normally what we will do is we will swab the grip and
5 trigger areas of the handgun for DNA purposes. Then we
6 will process it for fingerprints as well.

7 In this instance I did Cyanoacrylate fuming, which
8 is commonly known as super glue fuming. Once that is
9 completed then I use black powder to process the gun for
10 fingerprints. Let's see if I collected any?

11 [Whereupon, the witness reviews her report]

12 A. Nothing collected fingerprint wise from this one.

13 Q. And when you are swabbing that what precautions do
14 you take to ensure that your DNA or something like that
15 cannot alter or tamper with the results?

16 A. We use gloves. We also make sure that is the only
17 item that is open at that time when we're working on it.
18 We also have a room specifically for items that we are
19 using for DNA, which we keep cleaned with germicide type
20 antiseptics that we clean the counters with, put paper
21 down to make sure that there is no contamination and we
22 don't breathe on it.

23 Q. And do you make any distinction when looking for DNA
24 between blood DNA and touch DNA?

25 A. We do. If we see blood on an item we will take a

1 swab of that because that is a different process for the
2 analysts at SLED verses touch DNA.

3 So when I'm swabbing the grip and trigger of a
4 handgun that is generally looking for touch DNA.

5 Q. And what part of the handgun did you swab for this
6 weapon?

7 A. We did -- I swabbed the grip, the rough edges where
8 we would not typically get fingerprints from and the
9 trigger guard and the trigger of the handgun.

10 Q. And what kind of DNA did you swab for in this case?

11 A. It was touch DNA.

12 Q. I'm showing you State's exhibit 124, Ms. Moore.

13 [Whereupon, the witness is shown exhibit]

14 Q. Do you recognize that?

15 A. Yes, sir. It has my initials on the original seal
16 along with the case number and the evidence item number
17 that I assigned to it and the RMS sticker stating that it
18 is a DNA swab from the trigger and grip of the handgun,
19 serial number P, Papa, 033780 which matches this handgun.

20 Q. And what do you do when you collect that to make
21 sure it hasn't been tampered with when you place it into
22 the envelope that you're going to place it into?

23 A. When we swab for touch DNA or most DNA we use a two-
24 swab technique. So I have a swab I use distilled water
25 from a sealed capsule. I swab the area that I want. I

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1 place it into a box, a drying box and then I take another
2 swab, go over that same area now that the item has been
3 re-hydrated in that area, we swab that. It goes into the
4 box.

5 They are allowed to air dry and then they are placed
6 into a sealed envelope with my initials, therefore I know
7 that it has not been tampered with before I send it to
8 SLED.

9 Q. And did you take a report that would detail the date
10 that you collected these swabs?

11 A. The chain that was signed when I collected the item
12 from evidence stated that it was signed over to me on the
13 19th of July on '16; sorry 2016.

14 Q. If you'll take a look at your evidence report, chain
15 of custody that has this swab I believe -- do you have
16 your chain of custody sheets for these items?

17 A. I don't have it in front of me.

18 Q. For the buccal swab you don't have it?

19 [Whereupon, the witness reviews document]

20 A. For this swab no; I don't have it in front of me.

21 Q. I believe on your report you listed the date as July
22 15th that you would have taken that buccal swab. Can you
23 explain that to the jury?

24 A. I did. I collected roughly 62 pieces of evidence in
25 this case in addition to the autopsy evidence. I typed

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1 my chain notes so they are easier to read for the jury,
2 for the Solicitor's office and the defense attorneys
3 because the chain has a tendency with a carbon copy after
4 a period of time they get difficult to read.

5 When I was putting them all on the chains I did not
6 change the date on the top. There were some -- the
7 original top ones were collected from the incident scene
8 itself and I put this particular buccal on that same
9 chain and did not change the date. I should have put it
10 on a separate chain.

11 Q. What date did you take the swab on that buccal -- or
12 what date did you take the swab on that pistol?

13 A. The chain of custody for the handgun that I signed
14 out of evidence stated it was July 19th. So I processed
15 it on that day and I swabbed it on that day.

16 Q. So it was a typo on your ---

17 A. --- yes sir, it was. I apologize.

18 Q. And I just want to double back to State's exhibit
19 126 which is the Walther 40 caliber weapon that you
20 recovered on scene.

21 A. Yes, sir.

22 Q. What's the capacity of that magazine? How many
23 bullets can that magazine hold?

24 [Whereupon, the witness reviews document]

25 MS. NORRIS: Your Honor, I'm going to object unless

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1 she's an expert in firearms on this particular question.

2 THE COURT: Go ahead. You can lead her; a little
3 bit of foundation perhaps.

4 Q. [Mr. Lietzow] Did you collect this weapon?

5 A. Yes sir, I did.

6 Q. What procedures are innate -- what procedures are
7 taken do you guys take to make sure that weapon is safe
8 when you collect it?

9 A. On scene I will eject the magazine from the handgun
10 itself. I will clear the chamber to make sure that there
11 are no rounds in the handgun so it does not get fired
12 during the transport.

13 Once I arrive back to the office and I go to process
14 the items what I will do is remove the rounds from the
15 magazine and they go into a separate envelope so that
16 there is no chance whatsoever that there is any misfires
17 or that there is anybody that can be hurt.

18 Q. As a police officer are you familiar with how
19 semiautomatic weapons work?

20 A. I am a civilian but I've been doing crime scene
21 investigations again for a long period of time and I've
22 handled a lot of handguns. A lot of them have been
23 loaded and I've had to unload them.

24 I've also been through specific training through the
25 department how to unload and secure safely firearms.

1 Q. And when you look at a magazine are you able to tell
2 how many bullets that magazine can hold by looking at it?

3 A. Yes, sir. Normally they will actually have the
4 number on them. This one does not. The magazines have
5 little holes where you can actually see. This one does
6 have seven.

7 That is the amount that I removed from the magazine.
8 It could be seven and they actually hold eight. But yes
9 at least seven; that's what I removed from it.

10 Q. Okay. And there was one round in the chamber?

11 A. Yes. So there was one round in the handgun in the
12 chamber.

13 Q. Did you find any firearms in [REDACTED] at the
14 crime scene location?

15 A. No, sir.

16 Q. Did you find any gun cases inside of there that
17 would hold weapons? You know sometimes people transport
18 guns in gun cases. Were there any gun cases inside?

19 A. I don't recall seeing any.

20 Q. Were there any holsters or firearms accessories
21 located in [REDACTED]?

22 A. I don't recall noting anything in my report and I
23 don't recall.

24 Q. Do you recall collecting any boxes of ammunition or
25 any ammo at all inside the house other than the items

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1 that we've already detailed?

2 A. No, sir.

3 Q. You said you were looking for blood on the gun
4 before you swabbed it. Did you find any blood?

5 A. No sir, I did not.

6 MR. LIETZOW: And as a housekeeping matter Your
7 Honor I would now at this point move to enter State's
8 exhibit 124 into evidence.

9 THE COURT: Which is what once again?

10 MR. LIETZOW: That is the swabs from the Hi-Point,
11 Your Honor.

12 MS. NORRIS: Continued objection to ---

13 THE COURT: --- over the continued objection the
14 swabs will be admitted. Thank you.

15 [Whereupon, State's exhibit number 124 is entered
16 into evidence by the Court]

17 Q. [Mr. Lietzow] Thank you, Ms. Moore. I have no
18 further questions.

19 THE COURT: Ready to proceed?

20

21

22

23

24

25

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1 CROSS-EXAMINATION

2 BY MS. NORRIS:

3 Q. Ms. Moore, did you also prepare a chart of the items

4 that you collected at the scene and the numbers on that?

5 A. Yes, ma'am.

6 Q. Do you have a copy of that ---

7 A. --- I did not bring it with me. I just brought my

8 report.

9 MS. NORRIS: Your Honor, may I approach?

10 THE COURT: Yes, ma'am.

11 [Whereupon, the witness is shown document]

12 Q. [Ms. Norris] Is that the chart we were just talking

13 about?

14 A. Yes, ma'am. It's the item descriptions and the

15 measurements that I took on scene where they were

16 located.

17 Q. And these are the North Charleston Police Department

18 items those yellow placards these numbers correspond to

19 that?

20 A. Yes, ma'am.

21 Q. Okay. On there you collected item number 6. What

22 was that?

23 A. It was the yellow handled sledgehammer from -- I

24 don't remember the exact number across the street from

25 but slightly down Leland from where the handgun was

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1 located behind the trashcan there was a large tree and
2 right before that that's where the sledgehammer was.
3 Q. And was that a sledgehammer with a handle that was
4 about three feet long or thereabouts?
5 A. I don't exactly recall the length but it was a large
6 yes ---
7 Q. --- it was pretty big one ---
8 A. --- yes.
9 Q. And you also collected just to make sure I'm clear
10 on the number of shell casings out there item 16 was a
11 Win 380?
12 A. Yes, ma'am.
13 Q. What is Win do you know?
14 A. That's usually an abbreviation for Winchester.
15 Q. That's a firearms maker?
16 A. Yes, ma'am.
17 Q. Or an ammunition maker; I'm sorry?
18 A. Ammunition.
19 Q. And there were three, four, five Win Winchester 9mm
20 Lugar shell casings? Items 17, 19, 21, 35, and 40?
21 A. Yes. There were five Win 9mm Lugers, yes.
22 Q. And one FC item 20 FC 9mm ---
23 A. --- yes ma'am.
24 Q. Do you know what FC stands for?
25 A. Not off the top of my head I can't; I'm sorry.

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1 Q. But it's another shell casing for -- when a weapon
2 is fired the thing that pops out?

3 A. Yes.

4 Q. Now you also collected out there and the Solicitor
5 went through some pictures with you item 29. You
6 documented ---

7 MR. LIETZOW: --- objection, Your Honor.

8 THE COURT: Okay.

9 MR. LIETZOW: Our position is that essentially Ms.
10 Norris is trying to publish evidence that hasn't been
11 admitted.

12 THE COURT: I'm not sure what you're talking about.
13 Do y'all need to approach?

14 [Whereupon, an off the record bench conference is
15 held]

16 THE COURT: Okay. Continue.

17 Q. [Ms. Norris] Do you have a large stack of pictures
18 up there?

19 A. Yes ma'am, I do.

20 Q. Let me get those from you, please. Let me go ahead
21 and get all this stuff please?

22 [Whereupon, Ms. Norris retrieves evidence items from
23 the witness]

24 Q. All right. Item 29 that you documented out there at
25 the scene what was that?

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1 A. According to the sheet that I documented it on it
2 states that it is a scale and it was collected by
3 Sergeant Reynolds.

4 Q. And do you know where in the scene that scale was
5 collected from?

6 A. Vaguely from my memory I believe it was on top of
7 the stove in the kitchen. I'm not positive.

8 Q. All right. And let me show you exhibit 61.

9 [Whereupon, the photograph is shown]

10 Q. Is that the stove here [indicates] that I'm pointing
11 to?

12 A. Yes ma'am, it is.

13 Q. So the scale was on top of that?

14 A. Yes, ma'am.

15 Q. And that stove is right by the window where someone
16 jumped out?

17 A. Yes, ma'am.

18 Q. And do you recall whether or not there was white
19 powder on that scale when it was collected?

20 A. I don't recall.

21 Q. Did you personally take the pictures at the scene?

22 A. I took the majority of the pictures. I do know that
23 Sergeant Reynolds did take some of the pictures that were
24 in the kitchen.

25 Q. Let me show you a couple of pictures and ask if that

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1 refreshes your recollection.

2 MR. LIETZOW: Your Honor, I'm going to object and
3 ask to approach.

4 THE COURT: Okay.

5 [Whereupon, an off the record bench conference is
6 held]

7 Q. [Ms. Norris] All right. Do you go by Agent or is it
8 just Ms. Moore?

9 A. Ms. Moore is fine.

10 Q. All right. Ms. Moore did you go in the kitchen
11 before you started marking different items?

12 A. Yes, ma'am.

13 Q. Okay. So you personally walked through the entire
14 house?

15 A. Yes, ma'am.

16 Q. And do you recall whether or not you took the
17 pictures that were taken in the kitchen?

18 A. I did take overall photographs of the entire house,
19 yes. I would have taken the pictures, the overall
20 pictures of the kitchen as well.

21 Q. So the Solicitor showed us pictures earlier where
22 you as I recall and you correct me if I'm wrong, there
23 were pictures where you documented what was in a freezer
24 and a refrigerator.

25 A. Yes.

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1 Q. You took those?

2 A. Yes.

3 Q. Okay. And was the stove near there?

4 A. Yes. The refrigerator when you first walked in --

5 the residence when you walked into the residence you go

6 down a little bit and the doorway was to the kitchen. As

7 soon as you walked into the kitchen the refrigerator was

8 right there and the stove was to your left.

9 Q. Do you recall how wide the refrigerator was? I'm

10 sorry; not the refrigerator the kitchen? It was pretty

11 small ---

12 A. --- yes, it wasn't very large, no. It was enough

13 for a small table...

14 Q. Now did you look on top of the stove as you did your

15 walk through?

16 A. Yes, ma'am.

17 Q. All right. I'm going to show you a couple of

18 pictures and ask if this refreshes your recollection of

19 what you saw in there.

20 [Whereupon, the witness is shown photographs]

21 A. Yes, ma'am.

22 Q. And item 29, the scale do you recall now whether it

23 had white powder on it?

24 A. It does appear to have some white substance on it,

25 yes.

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1 Q. And now in the living room, is the living room where
2 the deceased was?

3 A. Yes, ma'am.

4 Q. And in the living room item 24.

5 A. Yes, ma'am.

6 Q. Did you personally collect that do you recall?

7 A. Yes ma'am, I did.

8 Q. And what was that?

9 A. Item 24 was a glass jar with a plastic bag with
10 green plant material.

11 Q. And did that green plant material look like
12 marijuana to you?

13 A. I couldn't tell you, ma'am. I took photographs.
14 I'm not an expert in analysis on it so.

15 Q. You don't analyze but it's the same kind of material
16 you routinely collect and take pictures of in drug cases?

17 A. Yes, ma'am.

18 Q. Okay. And in the bedroom, do you recall where the
19 bedroom was?

20 A. Yes. The bedroom was located behind the living
21 room. So if you walk through the front door and you go
22 straight the entrance to the bedroom is straight across
23 from the front door.

24 Q. I'm going to ask the State to show 152 for me rather
25 than dig through all these things.

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1 [Whereupon, the photograph is shown]

2 Q. Now I believe you told us that you prepared this
3 diagram?

4 A. Yes, ma'am.

5 Q. And using that can you point where the bedroom was?

6 A. Certainly. The bedroom is in this area here
7 [indicates].

8 Q. Okay. And did you also during your walkthrough go
9 in that bedroom?

10 A. Yes ma'am, I did.

11 Q. And in that bedroom did you process any items in
12 there?

13 A. We took overall photographs and we did go through
14 numerous items in the room as well.

15 Q. And do you recall in that room finding a bag of
16 white powder?

17 A. Yes, ma'am.

18 Q. And was that contained inside any other item?

19 A. It was in a plastic tote that was next to the bed.

20 Q. In a plastic tote that's like a big plastic box?
21 Did it have a lid on it?

22 A. Yes, like one of those household 18 gallon plastic
23 totes with a lid.

24 Q. And was the lid on top of the tote that contained
25 the white powder?

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1 A. Yes, ma'am.

2 Q. And was there -- did you process underneath the lid?

3 A. We did lift the lid and we saw a red substance that

4 we believed to be blood.

5 Q. And did you take a swab of that as well?

6 A. Yes, ma'am.

7 Q. And those items are also documented on your chart?

8 A. Not on the chart -- not on the sketch, no, ma'am.

9 Q. No, not on the diagram ---

10 A. --- oh on this chart, yes ma'am ---

11 Q. --- I'm talking about the chart you're looking at

12 with the item number. And so we're clear the swab from a

13 pistol that you testified earlier to taking was item 54?

14 [Whereupon, the witness reviews document]

15 A. Yes, ma'am.

16 Q. And now you said that there was no blood on item 54.

17 Did you just eyeball it or did you do some test to make

18 that determination?

19 A. On the handgun, that handgun was -- item 54 was the

20 actual swab that I took. When I'm processing the handgun

21 I'm using an alternate light source, a bright light,

22 which will -- it's a really, really strong flashlight.

23 We also have a crime scene scope on it which is a

24 different wavelength of tool to enhance blood as well. I

25 used that as well and I did not see any blood on the

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1 handgun.

2 Q. Now all of the swabs that you took out there are not
3 -- well, some of them you did take out there. I asked
4 you about swabbing the tote that had the white powder in
5 it. Did you send that swab off to SLED?

6 A. I don't recall. It was a lot of items. I don't
7 have the SLED submittal in front of me. We're only
8 allowed to send so many at one time and then we can send
9 more after those have been completed but I don't recall
10 what was sent out the first...

11 Q. Are you the person that actually sent items to SLED?

12 A. Generally the case agent is the one who will do the
13 I-lab to request it going up to SLED; but not always.

14 Q. Let me show you this document and see if that
15 refreshes your recollection.

16 [Whereupon, the witness is shown document]

17 A. Yes, this is the slab I-lab request which is the
18 system that we use to enter in items to be sent up to
19 SLED for analysis.

20 Q. And is your name on that document?

21 A. Yes ma'am, it is.

22 Q. Does that refresh your recollection of whether
23 you're the person that sent things off to SLED?

24 A. Yes, ma'am.

25 Q. And do you see a swab from the tote from the bedroom

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1 in there?

2 [Whereupon, the witness reviews document]

3 A. Yes ma'am, we did.

4 Q. And in general the other things were swabs that you
5 took from the scene and from handguns?

6 A. Right ---

7 Q. --- in addition to other items?

8 A. Right, the fired shell casings and things, yes.

9 Q. All right. And in that bedroom do you recall
10 whether you also located a large amount of cash?

11 A. Yes, ma'am.

12 Q. And was that cash contained in a Crown Royal bag?

13 A. Yes, ma'am.

14 Q. Do you recall how much money was in there?

15 A. I don't know if I wrote it down. Sergeant Reynolds
16 actually collected it. Let me see if I recorded it.

17 [Whereupon, the witness reviews document]

18 A. I did not record the amount in my report. He
19 collected the money. I verified it but I don't recall.
20 I know it was a large amount.

21 Q. Were you part of -- well, let me ask you this. Did
22 y'all -- before you went through the house and did all
23 this stuff did you get a search warrant to search the
24 place?

25 A. I believe they did.

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1 Q. And let me show you this and ask if that is the form
2 that you fill out once you're completing a search
3 warrant?

4 [Whereupon, the witness is shown document]

5 A. Yes ma'am, it is.

6 Q. And on that does it indicate by your name how many
7 dollars were in the Crown Royal bag?

8 A. Yes. It states it was 502 dollars in one dollar
9 bills in the Crown Royal bag.

10 Q. All right. Now as you're processing the crime scene
11 do you routinely test persons out there for gunshot
12 residue?

13 A. It depends on what the detectives have found and
14 what they request of me to do. They do sometimes request
15 us to do gunshot residue kits on potential persons on
16 scene.

17 Q. Do you recall whether you did any gunshot residue
18 kits on this scene?

19 A. Yes ma'am, I did.

20 Q. Okay. Who did you test?

21 A. There was a subject that was detained when I first
22 arrived. They requested I do a gunshot residue test on
23 him and then we did one on the decedent as well.

24 Q. And the suspect that you processed his hands was
25 that the gentleman laying on the sidewalk that went with

1 EMS or the gentleman that Officer Fortier arrested and
2 put in her car?

3 A. The gentleman that I did the GSR kit was the
4 gentleman that in the patrol vehicle and they pulled him
5 out so I could do the GSR kit on him.

6 Q. And did you do a GSR kit -- well, let me ask you
7 this. How do you do the GSR kit? Tell us what's in it
8 and what you do?

9 A. A GSR kit contains little vials that have little
10 carbon sticky on it on the top of the vial. We open it
11 up and we actually just push the sticky tab onto the
12 hands of the subject that we are testing, put the cap
13 back on it and then that gets placed into the envelope
14 and then sent off for analysis.

15 Q. And did you also do a GSR kit on the deceased, Kirby
16 Fyall?

17 A. Yes ma'am, we did.

18 Q. Did you do a GSR kit on anybody else out there at
19 the scene that you recall?

20 A. Not on scene, no.

21 Q. Did you do a GSR on anyone anywhere else?

22 A. I did not, no. I don't know if another one was
23 done; I don't recall.

24 Q. Did you also collect a baseball bat out there?

25 A. A baseball bat was turned over to me by an officer

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1 that they collected on scene but it was turned over to me
2 on scene, yes.

3 Q. Okay. So that's item 49 on your chart -- by Officer
4 Fogle?

5 A. Yes, ma'am.

6 Q. Give me just a second.

7 [Whereupon, Mr. Mack and Ms. Norris confer]

8 Q. [Ms. Norris] Ms. Moore, I want to show you State's
9 exhibit 122, which is the work ticket.

10 [Whereupon, the witness is shown exhibit]

11 Q. I believe you testified earlier that that came from
12 the pockets of exhibit 3 that was the pants laid out
13 there where a suspect was removed from, is that correct?

14 A. Yes, ma'am.

15 Q. And what is the date on that work ticket?

16 A. It says date 7-18-2016.

17 Q. And this was collected from the pocket on July 15th.
18 And this is a ticket saying that he, Byron Rivers is
19 supposed to go to work on 7-18-16?

20 A. I don't know what that -- I just know it says work
21 ticket. I don't know what it's in reference to.

22 [Whereupon, the exhibit is shown]

23 Q. And so the work ticket, this is exhibit 122, it says
24 Horizon Forest Products?

25 A. Yes, ma'am.

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1 Q. And over here [indicates] the date you were talking
2 about 7-18 and its telling Byron Rivers work schedule 7-
3 18 through 7-22 is what it appears to be, correct?

4 A. Yes, ma'am.

5 Q. All right. And...

6 [Whereupon, Mr. Mack and Ms. Norris confer]

7 Q. And I believe you testified that you listed on a
8 chain of custody form where you did a DNA swab from the
9 Hi-Point 9mm?

10 A. Yes, ma'am.

11 Q. And that the chain of custody form -- let me show
12 you.

13 [Whereupon, the witness is shown document]

14 Q. And on that I believe you said that you typed in
15 July 15th?

16 A. Right. I had numerous chains and all the
17 information on the top of the chains has the case number
18 it has chains one of whatever and then it has the date of
19 the case agent on there. And I left the original date of
20 the incident on there instead of changing it.

21 Q. So as a crime scene person it's very important to
22 accurately document what you touch and when you touch it.

23 A. Yes, sir. Yes, ma'am; sorry.

24 Q. And in this particular case the DNA swab that you
25 took you couldn't possibly have taken it on July 15th, is

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1 that correct?

2 A. Right. No, it was done on 7/19 when I took the
3 evidence from evidence, the handgun from evidence.

4 MS. NORRIS: I don't have anything further, Your
5 Honor.

6 THE COURT: Okay. Any redirect of this witness?

7 [Whereupon, State's exhibit number 184 is marked by
8 the court reporter]

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REDIRECT EXAMINATION

BY MR. LIETZOW:

Q. I'm showing you what has been marked as State's exhibit 184 for identification purposes only.

[Whereupon, the witness is shown photograph]

Q. Did you take that photo?

A. Yes, sir.

Q. And what is that photo?

A. It's of the top of the stove that was in the kitchen.

Q. And the scale that the defense has referred to?

A. Yes.

MR. LIETZOW: At this point, Your Honor, I would move to enter State's exhibit 184 into evidence.

THE COURT: Any objection?

MS. NORRIS: No objection.

THE COURT: Without objection, 184.

[Whereupon, State's exhibit number 184 is entered into evidence by the Court]

Q. So you processed the whole house and you found a small amount of residue on the scale?

A. Yes. Some type of white powder, yes.

Q. And a small bag of cocaine in the tote?

A. It was a small bag of white powder, yes sir.

Q. And a little bit of marijuana?

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1 A. A green plant material was collected from the scene,
2 yes.

3 Q. Okay. And 502 bucks in cash?

4 A. Yes, sir.

5 Q. Did you -- you mentioned you swabbed that tote for
6 blood DNA, is that correct?

7 A. Yes sir, we did.

8 Q. And did you then package that like you did the swabs
9 on the gun that we talked about and send that up to SLED?

10 A. Yes, sir.

11 MR. LIETZOW: Can I publish State's 184, Your
12 Honor?

13 THE COURT: Sure.

14 [Whereupon, the photograph is shown]

15 Q. [Mr. Lietzow] Thank you.

16 MR. LIETZOW: Nothing further, Your Honor.

17 THE COURT: Any recross?

18 MS. NORRIS: No, Your Honor.

19 THE COURT: Thank you very much. You're free to
20 step down ma'am. Any objection to this witness being
21 released?

22 MR. LIETZOW: None from the State.

23 MS. NORRIS: None.

24 THE COURT: Thank you, ma'am. You're free to
25 leave.

1 [Whereupon, the witness is excused and exits the
2 witness stand]
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1 THE COURT: Ladies and gentlemen it is lunchtime.
2 It's about 10 till 1:00. I'm going to ask that you be
3 back at 2 o'clock if you can and we will resume at that
4 time. I'll release you to the bailiffs. See you back at
5 2 o'clock. And once again ladies and gentlemen for the
6 record I'm going to ask that you not discuss the case at
7 all, of course. Thank you very much.

8 [Whereupon, the jury exits at 12:50 p.m.]

9 THE COURT: Thank you. We will be at ease until 2
10 o'clock everyone. And for your own planning purposes for
11 the remainder of the week I've asked the Clerk to
12 actually order in lunch for the jury for the rest of the
13 week until we get through this trial just to try to keep
14 us on track.

15 So our future lunch periods will be significantly
16 shorter so you should plan accordingly and perhaps bring
17 your lunch those days okay. Thank you very much.

18 [Whereupon, court is in recess from 12:53 p.m. until
19 2:06 p.m.]

20 THE COURT: All jurors are back. Is the State
21 ready to proceed?

22 MR. OSBORNE: We are, Your Honor.

23 THE COURT: Okay. And the defense?

24 MR. MACK: Yes, Judge.

25 THE COURT: Okay. We'll bring the jury back in

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1 then. Thank you.

2 [Whereupon, the jury enters at 2:09 p.m.]

3 THE BAILIFF: All jurors are present, Your Honor.

4 THE COURT: Thank you. Please be seated. The

5 State may call its next witness.

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Antonio Fyall-Direct Examination by Mr. Osborne
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1 MR. OSBORNE: The State calls Antonio Fyall.

2 [Whereupon, Mr. Fyall comes forward]

3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: Please state your full name for
6 the record spelling your last.

7 THE WITNESS: My name is Antonio Fyall. Last name
8 F-Y-A-L-L.

9 - - - - -

10 ANTONIO FYALL,

11 Having been first duly sworn,

12 Was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. OSBORNE:

15 Q. All right Mr. Fyall, let's just take a second to
16 introduce yourself to the jury. Where are you from?

17 A. I'm from Charleston; born and raised here.

18 Q. Okay. And high school?

19 A. Burke High School graduate.

20 Q. Okay. Well, let's just get a couple of things out
21 of the way. In 1997 were you convicted for filing a
22 false police report?

23 A. Yes, sir.

24 Q. And in 2009 were you convicted for PWID, possession
25 with intent to distribute in close prox, and distribution

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1 of cocaine first offense?

2 A. Yes, sir.

3 Q. All right. Let's go back to 2016. Where did you

4 live at that time?

5 A. At the time I had moved to my cousin's house on

6 Leland Street.

7 Q. And who is your cousin?

8 A. Sanquan, Sanquan Fyall.

9 Q. Okay. And who all lived there?

10 A. It just was me and him. And you know some of the

11 family comes around every once in a blue moon like that.

12 Q. Okay. Were y'all pushing drugs out of that house?

13 A. No, sir.

14 Q. All right. Let's get into the night of July 15th of

15 2016. Were you at the house at that time?

16 A. Yes, sir.

17 Q. And who all was at the house just prior to this

18 incident?

19 A. It was me, Sanquan, Theo, Johnnell, Frederick, and

20 Cam, Frederick. It was me, Frederick, Cam -- me

21 Frederick, Theodore, Sanquan, Johnnell, and Eleanor.

22 Q. Okay. Let's just get right into it. Tell the jury

23 what happened.

24 A. I had just not too long got off of work. It was

25 around like I want to say like 8:30 or something like

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1 that. And when I came in the house you know they was
2 smoking you know smoking a little marijuana and stuff
3 like that in the house. You know it was pretty much like
4 a little family house to tell you the truth.

5 They was smoking a little weed and stuff like that
6 and there was a knock on the door. We thought it was one
7 of our other cousins you know because nobody don't come
8 to the house like that.

9 So when I opened the door the only thing I could see
10 was like dreads and it like shocked me so I had to you
11 know start -- we had like a little liquor bar right here
12 [indicates] so when the door opened I kept like closed it
13 back like how I wanted to.

14 And I know something went off and I didn't know I
15 was shot or nothing then. So once I closed the door the
16 person barged their way in the house. So by that time I
17 ran and run into the kitchen.

18 I thought I been like in the movies it just happened
19 so fast like that so I ran in the kitchen. And when I
20 ran in the kitchen I jumped through the kitchen window
21 but I bounced off the window so I said damn something
22 ain't so I kicked the window out.

23 So as I kicked the window out I was going like I
24 hope nobody don't come out here and like kill me or
25 something like that. So when I get out I crawl out -- I

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1 jump out the kitchen and I ran around the corner.

2 Q. All right. Let's stop the story right there and
3 we'll break it up into two parts, the first part being
4 what happened in the house and what happened after, okay?

5 A. Uh Huh.

6 Q. You said that when you heard the knock on the door
7 that you thought that it might be a friend or another
8 cousin?

9 A. Yes, sir.

10 Q. And who was that person --

11 A. Say that one more time.

12 Q. And who was that person that you thought it might
13 have been?

14 A. I thought it was a guy named Percy.

15 Q. And why did you think that ---

16 A. --- because one of my cousins had sent him to the
17 store.

18 Q. Okay. So you thought he had returned?

19 A. Uh Huh.

20 THE COURT REPORTER: Is that yes?

21 A. Yes.

22 Q. [Mr. Osborne] And you said whenever you went to the
23 door and you opened it you said you saw dreads?

24 A. That's all I could see was like dreads. I don't
25 know if something been around his mouth but it just hit

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1 me like real, real fast you know so.

2 Q. Okay. And nothing was said?

3 A. No. That's all I could pretty much remember like
4 that.

5 Q. And then you were shot?

6 A. Yeah.

7 Q. And where were you shot?

8 A. At the time I didn't know until I get back from
9 around the corner outside and he said man you bleeding,
10 you bleeding. You know at the time I really wasn't
11 thinking about the blood.

12 I just been trying to tell my friends who was around
13 the corner like on the next street there are some guys
14 around there and they robbing the house and stuff like
15 that. I trying to remember I don't think I passed out.

16 Q. Since this incident have you learned where you got
17 shot?

18 A. Yes, sir.

19 Q. And point to your body if you could where you got
20 shot.

21 A. The bullet went through my face [indicates] and come
22 out the back of my head [indicates].

23 Q. Okay. Now just prior to the knocking on the door I
24 know you said there was a little bit of weed smoking
25 going on what else were y'all doing?

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1 A. Playing video games; that's about it.

2 Q. Was this pretty common. It wasn't an unusual night
3 up until that point?

4 A. Yes, sir. That's all they normally do. You see, I
5 work a lot so that's all we normally do.

6 Q. Okay. Now let's talk about what happened when you
7 got outside. When you were outside [REDACTED] go ahead
8 and tell the jury what you did from that point on.

9 A. So when I went out I start running. As I was
10 running I seen a white car and the car like went down the
11 street but you know me I was just trying to get around
12 the corner to my home boy.

13 So I seen the car and the car came back again and
14 it looked real suspicious. So when I got to my home boy
15 to Antonio Cummings I said man, they robbing the house,
16 they robbing the house, they robbing the house, they
17 doing something you know.

18 So Anthony -- I mean Antonio Cummings I think he
19 went in the back and got like a sledgehammer and the
20 other guy, I can't remember the other guy name and he had
21 like a stick. And so as they was walking off of Grayson
22 Street to Leland Street I see one of the guys been
23 holding one of the other -- he was holding the other guy.

24 And they say that's them right there, that's them
25 right there. And so I guess he might have dropped him

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1 because I couldn't see that far because my vision was
2 starting to get a little blurry. And that's when I found
3 out they beat one of the guys up with a sledgehammer or
4 something.

5 Q. Okay. I'm going to show you a map and see if you
6 can orient yourself a little bit.

7 [Whereupon, the photograph is shown]

8 Q. I'm interested in which direction this white car was
9 travelling. Can you see the mark right there that says
10 [REDACTED]?

11 A. Yes. This is the house right here [indicates].

12 Q. And you can actually touch that screen so everybody
13 can see it.

14 A. And so when I jump out this window right here
15 [indicates] I ran and I came around and I believe the
16 white car was coming across because we end up like
17 meeting like a little bit right here [indicates]. You
18 see where my finger is at right there?

19 Q. Yep, yep.

20 A. So when I ran around the corner to right here
21 [indicates] to get Cummings ---

22 MR. MACK: --- objection. Relevance, Judge.

23 THE COURT: Overruled.

24 A. So when I get right here [indicates] to Cummings and
25 told him what was going on in the house I'm pretty sure

1 the car was -- I guess -- I don't know if they might have
2 turned going straight across and came back around but I
3 ended up meeting that car right here [indicates] again;
4 right there [indicates].

5 Q. Okay. Let's talk a second about that car. Is it or
6 is it not fair to say that you were familiar with most of
7 the people that lived in the Makin' or lived near your
8 house at least?

9 A. Yes, sir.

10 Q. And were you familiar with that car?

11 A. No, sir.

12 Q. All right. You said that Antonio is coming out and
13 there were other people out. And I know ---

14 A. --- as a matter of fact ---

15 Q. --- you were shot in the head and it's hard to
16 remember but as best you can remember what happened next?

17 A. All right. So as I was coming out because like I
18 see the white car was coming back out and Antonio
19 Cummings and them was coming this way [indicates]. I
20 know I see my brother Theodore. He was walking this way
21 [indicates]. He had on his boxers.

22 I was the only one made it out the house. So he had
23 on his boxers. So as I came right here [indicates] which
24 was my son's grandmother lives right here [indicates].
25 So I yelled out I say call my baby momma, call my baby

State v Byron Rivers
Antonio Fyall-Direct Examination by Mr. Osborne
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1 momma I been shot, I been shot. So as I went coming back
2 I see them saying to -- as I'm coming back it was kind of
3 dark so I been seeing somebody toting another guy right
4 here [indicates]. So I believe ---

5 MR. MACK: --- objection, Judge. Judge, can we
6 approach?

7 THE COURT: Sure.

8 [Whereupon, an off the record bench conference is
9 held]

10 THE COURT: Please continue.

11 A. Like I been saying I was coming -- after Tony and
12 them -- they left me pretty much. So what I see with my
13 own eyes I see Theodore across the street right here
14 [indicates] walking towards it looked like he was walking
15 towards Grayson Street.

16 And I see the guy toting somebody and he yelled at
17 me that's then right there, that's them right there. So
18 he walked back or running or something like that and they
19 end up meeting them right there [indicates] if I ain't
20 mistaken.

21 So by the time I get back across the street I didn't
22 know all that was taking place so I went back around the
23 corner to the house to see what was going on.

24 Q. [Mr. Osborne] All right. Well, let's just tell the
25 jury what you did whenever you got inside the house.

State v Byron Rivers
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1 A. So when I get back around the corner I got inside
2 the house I see my cousin on the ground and I touch his
3 body. And I say Kirb, Kirb you all right. His body feel
4 so -- I already know he was dead; his body was hard.

5 So I said damn and I just started like flipping out
6 a little bit. I'm trying to see what else I did to find
7 out what was going on.

8 So I'm probably -- me thinking I don't know really.
9 But anyway I ain't going to lie. I believe I see like a
10 little baggie like. His body was laying right here
11 [indicates]. I probably see it like almost to where that
12 bench is where you at it was like a little small baggie
13 of cocaine. I don't know where it came from.

14 So I get it and I look in the kitchen. I just
15 started thinking fast the police is outside. I don't
16 want to go out there with this in my hand I been thinking
17 I go to jail.

18 So I went inside the room where I sleep at and I put
19 it and wrap it up inside like a shirt or something. And
20 I came back out and I check on my cousin again and I went
21 back outside. That's when I was approached by North
22 Charleston.

23 Q. Okay.

24 MR. OSBORNE: Your Honor, may I approach?

25 THE COURT: Yes.

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1 [Whereupon, State's exhibit numbers 185, 186, 187,
2 and 188 are marked by the court reporter]

3 Q. [Mr. Osborne] I'm showing you State's exhibit 185,
4 186, 187, and 188.

5 [Whereupon, the witness is shown photographs]

6 Q. Do all of those pictures fairly and accurately
7 depict the way [REDACTED] looked or at least some of [REDACTED]
8 [REDACTED] looked on the night of the incident?

9 A. Yes, this was pretty much like after. All this was
10 afterwards after I left out of the house.

11 Q. Okay.

12 MR. OSBORNE: Your Honor, at this time we'd seek to
13 admit 185 through 188 in evidence.

14 THE COURT: Okay. Do you have a copy of those?
15 Have you reviewed those?

16 MR. MACK: Yes, Judge.

17 THE COURT: Any objection?

18 MR. MACK: No objection.

19 THE COURT: Okay. Admitted without objection.

20 [Whereupon, State's exhibit numbers 185, 186, 187,
21 and 188 are entered into evidence by the Court]

22 Q. [Mr. Osborne] All right. So you said when you went
23 back in the house you said that you had saw a small bag
24 of cocaine.

25 A. Yes, sir.

State v Byron Rivers
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1 Q. Now when you picked up the baggies what did you say
2 you did with it?

3 A. I went -- I look in the kitchen first and I started
4 thinking and the first thing I saw was the bin. So I
5 went in the kitchen -- not in the kitchen, I went inside
6 the room. I wrapped it up in something and I put in
7 inside the bin and I walked back out.

8 Q. Okay. I'm going to show you 185.

9 [Whereupon, the photograph is shown]

10 Q. Is that the bin that you're referring to?

11 A. Yes, sir.

12 Q. And whose room is that?

13 A. That was me and Sanquan's room.

14 Q. Y'all shared a room?

15 A. Pretty much, yeah.

16 Q. Okay. And I'm showing you now 186.

17 [Whereupon, the photograph is shown]

18 Q. Is this inside of the bin?

19 A. Yes, sir.

20 Q. Okay. So you said the small bag of...

21 [Whereupon, the photograph is shown]

22 Q. Is that it right there?

23 A. Yes, sir.

24 Q. I'm showing you 187.

25 [Whereupon, the photograph is shown]

State v Byron Rivers
Antonio Fyall-Direct Examination by Mr. Osborne
June 11, 2019

1 Q. Is it safe to say that would be your blood then?
2 A. Correct, sir.
3 Q. Now around this timeframe where were you working or
4 were you working?
5 A. The Charleston Crab House on the Market.
6 Q. The Crab House on the market?
7 A. Yes, sir.
8 Q. What did you do there?
9 A. I'm a kitchen manager there.
10 Q. Okay. Are you familiar with 188?
11 [Whereupon, the photograph is shown]
12 A. Are you talking about the shirt?
13 Q. I'm talking about the Crown Royal bag?
14 A. Yes, sir, yes sir ---
15 Q. --- did you know there was some ones in there?
16 A. Yes, sir.
17 Q. Who did those ones belong to?
18 A. Those are mine.
19 Q. And where did they come from?
20 A. When I was staying with my baby mother I used to
21 save all my coins and my change and stuff like that. So
22 we got in our little incident I brought that over with me
23 to my cousin house.
24 Q. Okay. You do have a PWID charge or conviction on
25 your record, right?

State v Byron Rivers
Antonio Fyall-Direct Examination by Mr. Osborne
June 11, 2019

1 A. Correct, sir.

2 Q. Do dope dealers usually accept payment in the form
3 of pennies?

4 MR. MACK: Objection, Your Honor.

5 A. No, sir.

6 THE COURT: Overruled.

7 Q. Okay. Do you know if Sanquan was dealing drugs out
8 of that house?

9 A. No, sir. That's something with me personally; I
10 done lived that lifestyle you know. So at the end of the
11 day I know my responsibility you know as being a kitchen
12 manager. And I had my share of time with you know being
13 in the street you know. So I don't want that stuff
14 around me.

15 But that house right there [indicates] that pretty
16 much basically a family house. You know them guys
17 coming around they smoking weed playing video games you
18 know. No drugs, you know.

19 When I used to sell drugs I used to have guns with
20 me at the end of the day. If an incident like that would
21 have happened I wouldn't be sitting here right now
22 talking to y'all; plain and simple.

23 Q. So you said when you used to sell drugs you had
24 guns.

25 A. Yeah.

State v Byron Rivers
Antonio Fyall-Direct Examination by Mr. Osborne
June 11, 2019

1 Q. Well, if this had been a drug rip how would that
2 have played out?

3 MR. MACK: Objection ---

4 A. --- it wouldn't have happened.

5 THE COURT: Sustained.

6 Q. All right. No further questions.

7 THE COURT: All right. Cross-Examination.

8 MR. MACK: Thank you, Judge.

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State v Byron Rivers
Antonio Fyall-Cross-Examination by Mr. Mack
June 11, 2019

1 CROSS-EXAMINATION

2 BY MR. MACK:

3 Q. Mr. Fyall, you just testified that the night of the

4 incident you heard a knock at the door.

5 A. Correct.

6 Q. And Cam answered the door; your friend.

7 A. I never said Cam answered the door. I said I

8 answered the door.

9 Q. You answered the door?

10 A. I opened the door.

11 Q. So Cam didn't answer the door?

12 A. No, sir.

13 Q. And you said one of the alleged robbers pointed a

14 gun at you?

15 A. What I said at the time I opened the door something

16 went off. I didn't know I was shot then so I ran --

17 after I couldn't get the door closed I ran into the

18 kitchen, jumped through the window, I bounce off the

19 window so I kicked the window out.

20 Q. So your testimony today is that nobody pointed a gun

21 at you when they came in the door?

22 A. What you mean nobody pointed? That's all you could

23 see. All I could remember was pretty much dreads and I

24 heard something loud went off.

25 Q. So nobody pointed a gun at you when they came in the

State v Byron Rivers
Antonio Fyall-Cross-Examination by Mr. Mack
June 11, 2019

1 door?

2 A. He might have had it in his hand but that's the only
3 thing I could remember seeing was the dreadlocks. That's
4 all I could remember ---

5 Q. --- so you do not remember seeing a gun pointed when
6 you opened the door?

7 A. Like I said I might have or might not, you know so.

8 Q. Might not?

9 A. Yeah.

10 Q. This entire incident lasted about seven to ten
11 minutes, correct?

12 A. I can't say that because I wasn't in the house, sir.

13 Q. You met with Detective Bailey before this trial then
14 correct?

15 A. Yeah, pretty sure at the hospital if I'm not
16 mistaken.

17 Q. And he asked you some questions about this incident?

18 A. Yes, sir.

19 Q. And do you remember telling him that this incident
20 lasted seven to ten minutes?

21 A. I don't know. I might have, I don't know. I just
22 not too long got out of surgery so I can't really answer
23 that.

24 Q. I understand that. If I showed you a transcript
25 from you and Detective Bailey's conversation would that

State v Byron Rivers
Antonio Fyall-Cross-Examination by Mr. Mack
June 11, 2019

1 help you remember?

2 A. It might.

3 Q. It might? I can do that.

4 A. Yes, sir.

5 Q. Here you are.

6 [Whereupon, the witness is shown document]

7 Q. Does that look like a transcript to you Antonio?

8 A. [No response]

9 Q. I want you to turn to page 2 of that transcript.

10 The page number is on the top.

11 A. Uh Huh.

12 Q. Right corner.

13 A. The right corner? That's three.

14 Q. Turn to page two.

15 [Whereupon, the witness complies]

16 A. That should be the next page, correct?

17 Q. Yeah. Need some help? About line five.

18 A. Line five?

19 Q. Yeah. Take a moment and read it ---

20 THE COURT: --- let him review it -- yes, thank you

21 Mr. Mack. I just wanted to make sure he wasn't going to

22 read anything out loud.

23 Q. [Mr. Mack] Line five to line ten.

24 [Whereupon, the witness reviews document]

25 A. Yeah, I remember telling him that, yeah.

State v Byron Rivers
Antonio Fyall-Cross-Examination by Mr. Mack
June 11, 2019

- 1 Q. That this incident lasted seven to ten minutes?
- 2 A. Correct, sir.
- 3 Q. Because during that time you jumped out the window
- 4 or kicked it open.
- 5 A. Uh Huh.
- 6 Q. You ran around the corner, right?
- 7 A. Yes.
- 8 Q. And you met up with your friend Shi Shi, Dread ---
- 9 A. --- it was Antonio Cummings and Dread.
- 10 Q. And you told them what was going on in the house?
- 11 A. Correct.
- 12 Q. And then they ran to the house?
- 13 A. Correct.
- 14 Q. And they saw what was going on?
- 15 A. Correct.
- 16 Q. During your conversation with Detective Bailey do
- 17 you remember mentioning a white car to him?
- 18 A. I probably don't. No, I probably don't.
- 19 Q. You didn't?
- 20 A. No.
- 21 Q. Okay. And during your conversation -- well,
- 22 actually let me back up a little. When you jumped out
- 23 the window you still had your pants on, right?
- 24 A. Correct. Yes, sir.
- 25 Q. And you had a cell phone in your pants?

State v Byron Rivers
Antonio Fyall-Cross-Examination by Mr. Mack
June 11, 2019

1 A. Yes, sir.

2 Q. But you never called the police?

3 A. No, sir.

4 Q. And during your conversation with Detective Bailey

5 did you mention the fact that you hid cocaine in the

6 house?

7 A. No, sir.

8 Q. Did you even mention that you went back to the house

9 and surveyed the crime scene?

10 A. No, sir. He didn't ask me none of those questions

11 too much like that.

12 Q. Right. But you went back there and you found a bag

13 of cocaine?

14 A. When I went there I seen my cousin on the ground so

15 I touched my cousin to see if he was alive. And I know

16 that he was already dead.

17 So that's when I -- the cocaine I spotted, that's

18 what draw my attention to the cocaine so I got it and I

19 put it in my room.

20 Q. And you hid it in the tote in the bedroom.

21 A. Correct.

22 Q. And you only mentioned hiding that cocaine ---

23 A. --- but to be honest, not to cut you off ---

24 Q. --- hang on, let me ask the question. You only

25 mentioned hiding that cocaine last week when you were

State v Byron Rivers
Antonio Fyall-Cross-Examination by Mr. Mack
June 11, 2019

1 called by the Solicitor's office, correct?
2 A. Say that one more time.
3 Q. The Solicitor's office called you.
4 A. Uh Huh.
5 Q. And they asked you if you hid that cocaine, right?
6 A. Yes, sir.
7 Q. Last week?
8 A. Something like that, yeah.
9 Q. And you told investigator Josh right there
10 [indicates], I don't know if you met him maybe you spoke
11 on the phone, and you told him that you hid that cocaine.
12 A. That I did what?
13 Q. That you hid the cocaine.
14 A. Correct.
15 Q. Did you mention the Crown Royal bag to Detective
16 Bailey?
17 A. No sir, not at the time. No, sir.
18 MR. MACK: No further questions, Judge.
19 THE COURT: All right. Any redirect?
20 MR. OSBORNE: Briefly.
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State v Byron Rivers
Antonio Fyall-Redirect Examination by Mr. Osborne
June 11, 2019

1 REDIRECT EXAMINATION

2 BY MR. OSBORNE:

3 Q. Okay. Let's take it in order. Mr. Mack asked you
4 about your conversation with Detective Bailey. When you
5 were talking to Detective Bailey and you said it took
6 five -- the incident took five to ten minutes.

7 Were you talking about the moment that you got shot
8 in the head and ran out the window or were you talking
9 about the entire incident from them leaving, being
10 beaten; all of it?

11 A. To be honest I just ---

12 Q. --- or can you remember?

13 A. I don't really remember because like I said I wasn't
14 at the crime scene when it took place, I mean afterwards
15 you know.

16 So I really didn't know how long it was you know. I
17 just really was laying in bed and just getting my mind
18 together to be honest.

19 Q. That brings me to my second point. Detective Bailey
20 if you can remember interviewed you the day after you
21 were shot in the head.

22 A. Correct.

23 Q. Do you remember that?

24 A. Correct.

25 Q. And maybe you know or maybe you don't know detective

State v Byron Rivers
Antonio Fyall-Redirect Examination by Mr. Osborne
June 11, 2019

1 Privette -- or Doctor Privette testified earlier today
2 that you literally had a hole going through your head
3 from your face all the way through the back of your head.

4 A. Yes sir, that's what they told me. They was like
5 they don't know how I made it through. She said I was
6 real lucky.

7 Q. Was it fair to say you were just doing the best you
8 could in answering his questions?

9 A. Yes, sir.

10 Q. All right. As best you can remember was Detective
11 Bailey interested in asking you a bunch of questions
12 about a small bag of coke or was he trying to find out
13 who murdered your cousin?

14 A. To be honest he was trying to find out who murdered
15 my cousin. He didn't give no details about nothing else
16 too much really.

17 Q. Yeah. So is it fair to say that the first person to
18 ask you about the coke was investigator Josh Chaney?

19 A. Yes, sir.

20 Q. And when he asked you about it you admitted yeah, it
21 was mine.

22 A. Correct.

23 Q. Okay. No further questions.

24 THE COURT: Anything else Mr. Mack?

25 MR. MACK: No, Judge.

State v Byron Rivers
Antonio Fyall-Redirect Examination by Mr. Osborne
June 11, 2019

1 THE COURT: All right. You can step down from the
2 witness stand.

3 [Whereupon, the witness is excused and exits the
4 witness stand]

5 THE COURT: The State may call its next witness.

6 MR. LIETZOW: Your Honor, I believe Mr. Fyall would
7 like to remain. Is it necessary for him to remain
8 sequestered or can he remain in the courtroom from now
9 on?

10 THE COURT: Do you need to keep this witness
11 sequestered at this point in time.

12 MR. MACK: I'm sorry, Judge. What's going on?

13 MR. LIETZOW: Mr. Fyall would like to remain in the
14 courtroom ---

15 THE COURT: --- may he be released from his
16 sequestration request?

17 MR. MACK: No problem with that, Judge.

18 THE COURT: Thank you very much.

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State v Byron Rivers
Brandon Darby-Direct Examination by Mr. Osborne
June 11, 2019

1 MR. OSBORNE: The State calls Brandon Darby.

2 THE COURT: All right.

3 MR. MACK: Judge ---

4 MS. NORRIS: --- Your Honor, just one
5 clarification. We don't have any objection to him
6 staying as long as he is instructed not to tell people
7 who are still witnesses under sequestration what is
8 happening in the courtroom.

9 THE COURT: Okay. So sir, obviously this goes to
10 any of the future witnesses who wish to testify and who
11 have previously been sequestered they are not to discuss
12 the case or inquire of testimony with anyone who has not
13 yet testified, okay?

14 MR. FYALL: Yes, ma'am.

15 THE COURT: All right. And so I just ask your
16 investigator to inform those out in the hallway the same
17 thing. Thank you.

18 MR. LIETZOW: Yes, ma'am.

19 [Whereupon, Mr. Darby comes forward]

20 [Whereupon, the witness is duly sworn by the Clerk
21 of Court]

22 CLERK OF COURT: State your full name for the
23 record spelling your last name.

24 THE WITNESS: Brandon Darby, D-A-R-B-Y.

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State v Byron Rivers
Brandon Darby-Direct Examination by Mr. Osborne
June 11, 2019

1 BRANDON DARBY,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. OSBORNE:
6 Q. Mr. Darby, good afternoon and thanks for coming in
7 on short notice. Where are you employed?
8 A. Charleston County EMS.
9 Q. And how long have you been with EMS?
10 A. A little over three years.
11 Q. All right. I think it's kind of obvious but what
12 are some of your duties as an EMS technician?
13 A. I'm a paramedic crew chief. I'm the lead provider
14 on an advanced life support ambulance for Charleston
15 County.
16 Q. Okay. Did you receive any training for that
17 position?
18 A. Yes, sir.
19 Q. And just tell the jury some of that training?
20 A. I did EMT training at Denmark Technical College.
21 That was eight months. Then I completed my training in
22 Savannah, Georgia paramedic training for a total of two
23 years education.
24 Q. Okay. Do you receive any certificates from your
25 training?

State v Byron Rivers
Brandon Darby-Direct Examination by Mr. Osborne
June 11, 2019

1 A. I've got a certificate nationally. I'm certified
2 through a national registry and the state of South
3 Carolina DHEC.

4 Q. Okay. Were you working as an EMS technician on the
5 night of July 15th, 2016?

6 A. Yes, sir.

7 Q. And did you have the occasion to respond to [REDACTED]
8 [REDACTED] Street?

9 A. Yes, sir.

10 Q. And what was the nature of the call that you
11 responded to?

12 A. Initially it came out as an assault. I was actually
13 the second unit in. The first unit got on scene then
14 determined that there were multiple patients on scene so
15 they called for additional ambulances and I happened to
16 be the second I believe of three to come into that scene.

17 Q. Okay. So you weren't the first. So is it fair to
18 say that when the EMS units arrive on scene that they
19 first go to the most injured patient?

20 A. Yes, sir.

21 Q. The ones that requires the most immediate attention?

22 A. Yes, sir.

23 Q. When you arrived on scene, what number EMS unit were
24 you?

25 A. What number unit?

State v Byron Rivers
Brandon Darby-Direct Examination by Mr. Osborne
June 11, 2019

1 Q. Yes? Were you the first or second?

2 A. The second EMS unit to come into the scene.

3 Q. Okay. Tell the jury what you saw when you arrived.

4 A. When I came on scene it seemed to be like an
5 apartment complex. Very chaotic. Heavy police presence,
6 heavy just neighborhood presence.

7 So fire department personnel was on scene. When I
8 got out I was flagged down by fire where they directed me
9 to where my patient would be at.

10 Q. Okay. And when you got to your patient where was
11 he?

12 A. Appeared to be if I remember correctly he was like
13 on the sidewalk in front of one of the apartment
14 complexes.

15 He was lying supine, which means he was on his back
16 and they had already started their initial care when I
17 got there.

18 Q. And did you end up treating this patient?

19 A. Yes, sir.

20 Q. And while I realize that identifying individuals
21 really isn't -- that's not something you're really
22 concerned about, right? But were you able to identify
23 him at some point?

24 A. No, sir.

25 Q. Okay. And that's really -- I mean explain to the

State v Byron Rivers
Brandon Darby-Direct Examination by Mr. Osborne
June 11, 2019

1 jury why y'all aren't worried about getting names.

2 A. If we can get a name that's great. But my primary
3 focus is to treat the patient on scene and get off scene.
4 Especially with a trauma patient we have it's called the
5 platinum ten; we need to be on and off scene and into a
6 trauma facility within ten minutes.

7 Q. Okay.

8 A. A patient contact, and if we can get a name
9 sometimes they can tell us their name and sometimes they
10 deteriorate and we just can't get that. So sometimes we
11 get it later on.

12 Q. You try to get in and out?

13 A. In and out, yes sir.

14 Q. And you said this patient was lying on the ground
15 outside?

16 A. Yes, sir.

17 Q. What was he treated for? What were his injuries?

18 A. Initially you can just tell his right thigh was a
19 little deformed. We took his pants off. He had a
20 gunshot wound in the top of both thighs, his right femur
21 appeared to be fractured; it was deformed, and his
22 pelvis, the right side of his pelvis was very unstable.

23 Q. Okay. From your observations and your training and
24 experience did it look like he could be running on that
25 leg?

State v Byron Rivers
Brandon Darby-Direct Examination by Mr. Osborne
June 11, 2019

1 A. No. Not -- no.

2 Q. Would you mind just standing up because it was kind
3 of hard to see where he was shot at; if you would
4 demonstrate.

5 [Whereupon, the witness stands]

6 A. If I remember correctly it was like right -- a
7 gunshot right here [indicates] and a gunshot right here
8 [indicates].

9 Q. All right.

10 [Whereupon, the witness is seated]

11 Q. Can we show State's 134?

12 [Whereupon, the photograph is shown]

13 Q. And you said you cut off the pants, right?

14 A. I think fire just pulled them off. They appeared to
15 just be pulled off.

16 Q. This has already been marked and admitted. Do those
17 appear to be the pants?

18 A. I...

19 Q. It's hard to say?

20 A. Because it was very dark outside. The only lighting
21 we had was the flashlights from law enforcement and the
22 scene lights on our medic units. There wasn't very much
23 light at all.

24 Q. I'm going to show you now 135.

25 [Whereupon, the photograph is shown]

State v Byron Rivers
Brandon Darby-Direct Examination by Mr. Osborne
June 11, 2019

1 Q. Do you see this hole right here [indicates]?

2 A. Yes, sir.

3 Q. Does that seem consistent with the upper thigh area?

4 A. It was a small caliber entrance wound so that can be
5 consistent with what I saw.

6 Q. Okay. There appears to be another hole right here
7 [indicates]. Do you remember if he suffered from two
8 gunshot wounds to the right leg or you're unsure?

9 A. I'm unsure.

10 Q. All right. I'm showing you 136.

11 [Whereupon, the photograph is shown]

12 Q. Now we're looking at the left thigh. Is this hole
13 right here [indicates] seem consistent with the location
14 to the gunshot wound to the left leg?

15 A. Yes, sir.

16 Q. Okay. No further questions.

17 THE COURT: All right. Cross?

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State v Byron Rivers
Brandon Darby-Cross-Examination by Ms. Norris
June 11, 2019

1 CROSS-EXAMINATION

2 BY MS. NORRIS:

3 Q. Mr. Darby, I believe you said that when you arrived

4 there was initial care ongoing?

5 A. Yes, yes sir [sic].

6 Q. Who was doing what?

7 A. I believe it was North Charleston Fire Department.

8 Their BLF providers they can like get vitals like -- just

9 like a basic assessment.

10 If the patient is like having difficulty breathing

11 they can assist. Just like basic care can be rendered by

12 them until an ALS unit can get on scene.

13 Q. And was the gentleman you treated handcuffed?

14 A. No, he wasn't.

15 Q. Are you sure about that?

16 A. I cannot -- I won't say he wasn't, but not that I

17 can remember.

18 Q. Okay. Thank you so much. Thank you for your

19 service.

20 THE COURT: Anything else?

21 MR. OSBORNE: No, Your Honor.

22 THE COURT: All right. You can step down from the

23 witness stand sir. Any objection to this witness being

24 released?

25 MR. OSBORNE: None from the State, Your Honor.

State v Byron Rivers
Brandon Darby-Cross-Examination by Ms. Norris
June 11, 2019

1 MS. NORRIS: No objection.

2 THE COURT: All right. Thank you. You're free to
3 leave.

4 [Whereupon, the witness is excused and exits the
5 witness stand]

6 THE COURT: The State may call its next witness.

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State v Byron Rivers
Lisa Bloodworth-Direct Examination by Mr. Osborne
June 11, 2019

1 MR. OSBORNE: The State calls Lisa Bloodworth.

2 [Whereupon, Ms. Bloodworth comes forward]

3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: State your full name for the
6 record spelling your last name.

7 THE WITNESS: My name is Lisa Bloodworth, B-L-O-O-
8 D-W-O-R-T-H.

9 - - - - -

10 LISA BLOODWORTH,

11 Having been first duly sworn,

12 Was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. OSBORNE:

15 Q. Good afternoon, Ms. Bloodworth.

16 A. Yes.

17 Q. Where do you work?

18 A. I work at the Sheriff Al Cannon Detention Center.

19 Q. All right. And how long have you worked there?

20 A. I have worked there about ten years now.

21 Q. And what have been some of your various jobs while
22 you worked there?

23 A. I worked down in processing where the inmates first
24 come in. And I have worked up in the lobby and I
25 currently work in the security threat room.

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1 Q. Okay. And what are some of your duties in the
2 security threat room?

3 A. We do a lot of Intel. We also do dealing with
4 subpoenas and we also work with a lot of outside
5 agencies.

6 Q. Okay. Let's talk about subpoenas because I guess
7 that's why you're really here, right? What are some of
8 the requests that are made via subpoena to your office?

9 A. They will send for various reasons but mostly record
10 type things so video visits, jail phone calls. Like a
11 booking jacket would be like their paperwork from when
12 they first came in; so those types of things.

13 Q. Okay. And for the jury's edification you said jail
14 calls. So inmates can make phone calls when they are in
15 jail, is that fair to say?

16 A. Yes, they can.

17 Q. All right. Explain how that process works and how
18 it is documented.

19 A. When they first come in once they are booked in all
20 the way we send them to like we have like a processing
21 day room. Once they are over there they'll get their
22 fingerprints and their photographs taken.

23 Once they have that done they are issued a PIN
24 number. Those PIN numbers each inmate has their own PIN
25 number. And they are usually just issued one once. So

1 if it is somebody that has come back a couple of times
2 they will have the same PIN number each time. And then
3 they use that PIN number to do various things; make phone
4 calls, use the kiosk in the unit so that's how they use
5 all of those.

6 Q. Okay. And so it's a personal identification number;
7 PIN number?

8 A. Yes, sir.

9 Q. So when an inmate makes a phone call from the jail
10 out they have to enter in their PIN number?

11 A. Yes, they do.

12 Q. When you retrieve those calls do you -- is that how
13 it is stored via PIN number?

14 A. Well, all the calls are stored but the way I
15 retrieve them you can do it different ways; various ways.
16 I can retrieve them per inmate, per PIN number or per
17 phone number. So I can retrieve them a couple of
18 different way.

19 Q. All right. Now, are those calls stored at or near
20 the time the call was made?

21 A. Yes, they are.

22 Q. And does the detention center maintain those calls
23 in the ordinary course of business?

24 A. Yes, we do.

25 Q. All right. And you said in your capacity it is part

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1 of your responsibility is to receive subpoenas for jail
2 calls and retrieve those calls?

3 A. Yes, it is.

4 Q. Now in this -- well, let's talk about this for a
5 second. So you said PIN number. Now the PIN number is
6 it fair to say it can be shared amongst inmates?

7 A. Yes, that would be very fair.

8 Q. And so if I were an inmate and I were to use someone
9 else's PIN number then -- and you wanted to retrieve that
10 call you would have to do so through that inmate's name
11 or PIN number.

12 A. Correct.

13 Q. But you mentioned another way of getting it. That
14 you can actually search the number that is called,
15 correct?

16 A. Yes.

17 Q. So you can literally put in the number ---

18 A. --- yes ---

19 Q. --- that is dialed and get all the calls that have
20 been dialed to that number?

21 A. Correct. Correct. I just -- generally when I begin a
22 target number, this is what we call it, and then I put
23 the target number in and there is generally a timeframe
24 that is requested with that as well. And then so I can
25 search that way and then every time that phone number has

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1 been called from the jail it will come up and it will
2 give me a list of who rang where and that whole thing of
3 who has been calling that phone number.

4 Q. Okay. Now in reference to this case investigator
5 Josh Chaney submitted a subpoena for inmate calls made
6 from the inmate Byron Rivers, is that correct?

7 A. That's correct.

8 Q. But he also submitted a second subpoena for a target
9 number, is that also correct?

10 A. Yes, it is.

11 Q. And was that target number 843-597-9687?

12 A. I believe so.

13 Q. All right.

14 MR. OSBORNE: Your Honor, may I approach?

15 THE COURT: Yes.

16 Q. [Mr. Osborne] I'm showing you State's exhibit 139
17 and 140 for I.D. purposes.

18 [Whereupon, the witness is shown exhibits]

19 Q. Can you take a look at those and tell me if you
20 recognize them?

21 A. Yes, I do.

22 Q. All right, how do you recognize them?

23 A. That is my writing and my signature.

24 Q. Okay. So you actually listened to those recordings,
25 is that fair to say?

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1 A. Yes, yes.

2 Q. So what is -- and one is a clip from the full call,
3 is that correct?

4 A. That's correct.

5 Q. Okay. What number is a clip from the call? What
6 State's exhibit; I'm sorry.

7 A. Oh, I'm sorry, 139.

8 Q. So 139 is a clip and ---

9 A. --- 140 is the actual full.

10 Q. 140 is all the calls ---

11 A. --- all the calls ---

12 Q. --- and 139 is just a clip?

13 A. Correct.

14 Q. Okay.

15 MR. OSBORNE: No further questions.

16 THE COURT: All right. Anything else from the
17 defense on this witness.

18 MR. OSBORNE: And I -- the State would offer
19 State's exhibit 139 into evidence.

20 THE COURT: Any objection to 139?

21 MR. MACK: Just renewing our previous objection --

22 THE COURT REPORTER: I'm sorry Mr. Mack, I didn't
23 hear you ---

24 MR. MACK: --- renewing previous objections to the
25 admission of that.

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1 THE COURT: All right. Is it the call itself?

2 MR. OSBORNE: It's the clip.

3 THE COURT: The clip?

4 MR. OSBORNE: Let me make sure.

5 THE COURT: I know you referenced 139 and 140.

6 [Whereupon, Mr. Osborne reviews the exhibit]

7 MR. OSBORNE: 139 is the clip so we would be
8 offering 139 into evidence.

9 THE COURT: Can I get y'all to come forward real
10 quick if you don't mind just for my own edification.

11 [Whereupon, an off the record bench conference is
12 held]

13 THE COURT: Okay. Thank you so much.

14 MR. OSBORNE: Your Honor, we would offer State's
15 exhibit 139 into evidence and publish through a separate
16 witness.

17 THE COURT: Okay. It will be admitted over the
18 objection raised at pretrial by the defense. So 139 will
19 be admitted.

20 [Whereupon, State's exhibit number 139 is entered
21 into evidence by the Court]

22 THE COURT: Anything else by way of cross-
23 examination of this witness, Mr. Mack?

24

25

State v Byron Rivers
Lisa Bloodworth-Cross-Examination by Mr. Mack
June 11, 2019

1	CROSS-EXAMINATION
2	BY MR. MACK:
3	Q. You said that inmates at the Sheriff Al Cannon
4	Detention Center typically use each other's PINs correct?
5	A. Correct.
6	Q. And when they are using each other's PINs they are
7	calling out of the jail and basically dialing that number
8	in.
9	A. Correct.
10	Q. Or somebody else could be using that PIN number and
11	pretending to be somebody else, correct?
12	A. They could.
13	Q. And typically in the jail you don't have a lot of
14	privacy, right?
15	A. None.
16	Q. And a lot of mail going back and forth or two
17	individuals in the jail, correct?
18	A. I'm sorry; one more time?
19	Q. A lot of mail is going to individuals in the jail?
20	A. Yes, it is.
21	Q. And individuals in the jail receiving that mail
22	don't have any places to store it.
23	A. They all have like a box -- yeah, they do have
24	storage places.
25	Q. But they are not locked.

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Lisa Bloodworth-Cross-Examination by Mr. Mack
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1 A. No, they are not locked.

2 Q. Of course they're not. So it's safe to say that a
3 person's personal belongings in jail, an inmate's, could
4 easily get stolen.

5 A. Yes.

6 Q. And a person could use that information when making
7 a call.

8 A. Yes.

9 [Whereupon, Mr. Mack and Ms. Norris confer]

10 MR. MACK: No further questions, Judge.

11 THE COURT: All right. Anything on redirect?

12 MR. OSBORNE: No, Your Honor.

13 THE COURT: Okay. You can step down. May this
14 witness be released from the State?

15 MR. OSBORNE: Yes, Your Honor.

16 THE COURT: From the defense?

17 MR. MACK: Yes, Judge.

18 THE COURT: You are released, free to go. Thank you.

19 [Whereupon, the witness is excused and exits the
20 witness stand]

21 THE COURT: Call your next witness.

22 MR. LIETZOW: May we approach, Your Honor?

23 THE COURT: Sure.

24 [Whereupon, an off the record bench conference is
25 held]

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1 THE COURT: All right. Everybody, we're going to
2 take about a five or ten minute break right now. We've
3 got a couple of technical things we've got to get going
4 here in the courtroom so we'll see you back in about five
5 or ten minutes. Thank you very much.

6 [Whereupon, the jury exits at 2:58 p.m.]

7 MS. NORRIS: Judge, can I put something on the
8 record right quick?

9 THE COURT: Sure.

10 MS. NORRIS: I have been informed by our office
11 that Steven Bowden I think this morning as he was walking
12 through security overheard a juror saying that her phone
13 had been stolen here last night. We think it's one of
14 our jurors and I think she's aware that it was a public
15 defender client. Any further information on that?

16 MS. SCRUGGS: The bailiffs are searching for the
17 phone but ---

18 MS. NORRIS: --- this is my paralegal, Your Honor.

19 THE COURT: Hi. Tell me your name.

20 MS. SCRUGGS: Lauren Scruggs.

21 THE COURT: Lauren Scruggs, what's going on?

22 MS. SCRUGGS: They're searching for one of the
23 juror's phones. I don't know which ---

24 THE COURT: --- are you sure it's one of my jurors?

25 MS. SCRUGGS: I'm not sure which ---

1 THE COURT: --- we have like three or four trials
2 going on at this courthouse.

3 MS. SCRUGGS: Yes, ma'am. I'm not sure if it's one
4 of our jurors or one of the other jurors ---

5 THE COURT: --- that probably would have been
6 reported to me if one of our juror's cell phone had been
7 stolen. Let me ask the bailiff, how about that?

8 MS. NORRIS: I was going to say if ---

9 THE COURT: --- any problems with any of our
10 juror's cell phones having been stolen?

11 THE BAILIFF: Not as far as I know, Judge.

12 THE COURT: I would think you would know. You want
13 to go check with one of the other bailiffs? You were
14 here yesterday too weren't you?

15 THE BAILIFF: Yes, I was Judge.

16 THE COURT: You would have been informed as to that
17 I'm pretty sure so. I appreciate you letting us know.
18 I'm going to assume it is probably one of the other
19 juries involved in this courthouse. I think we've got
20 three or four different trial courts going right now
21 don't we?

22 THE BAILIFF: Yes, Judge.

23 THE COURT: All right, thank you Mr. Bailiff. I
24 appreciate you bringing that to my attention. All right.
25 So we're at ease. I would ask -- I know we've got a

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1 technical issue with this jail call quality. Could I --
2 could we try to play it right now over the break. Do
3 y'all mind cueing it up so I can get a feel for just how
4 poor the quality is if we do need to go ahead and
5 accommodate with headphones? Otherwise we're at ease.
6 So if you need to come and go or take a break feel free.

7 [Whereupon, court is in recess from 3:00 p.m. until
8 3:22 p.m.]

9 THE COURT: Is everybody ready to proceed? So can
10 I see the attorneys briefly for a minute.

11 [Whereupon, an off the record bench conference is
12 held]

13 [Off the record momentarily]

14 THE COURT: All right. Let's bring the jury back
15 in here if you don't mind, sir.

16 THE BAILIFF: Yes, ma'am.

17 THE COURT: We'll get the client in while they are
18 coming in.

19 [Whereupon, the jury enters at 3:24 p.m.]

20 THE BAILIFF: All jurors present, Your Honor.

21 THE COURT: Thank you very much. Please be
22 seated. The State may call its next witness.

23

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State v Byron Rivers
Brittany White-Direct Examination by Mr. Lietzow
June 11, 2019

1 MR. LIETZOW: Your Honor, the State calls Brittany
2 White.
3 THE COURT: All right.
4 [Whereupon, Ms. White comes forward]
5 [Whereupon, the witness is duly sworn by the Clerk
6 of Court]
7 CLERK OF COURT: Please state your full name
8 spelling your last name for the record.
9 THE WITNESS: My name is Brittany -- White.
10 THE COURT REPORTER: What's your middle name again?
11 THE WITNESS: Naomi.
12 - - - - -
13 BRITTANY WHITE,
14 Having been first duly sworn,
15 Was examined and testified as follows:
16 DIRECT EXAMINATION
17 BY MR. LIETZOW:
18 Q. Ms. White, how old are you?
19 A. Twenty-nine.
20 Q. You live in Charleston?
21 A. Yes, sir.
22 Q. How long have you lived in Charleston?
23 A. Twenty-nine years.
24 Q. Before we get started are you here voluntarily?
25 A. No.

State v Byron Rivers
Brittany White-Direct Examination by Mr. Lietzow
June 11, 2019

1 Q. You don't want to be here?

2 A. Uh Uh.

3 Q. Are you here because you were subpoenaed by the

4 State?

5 A. Yes, sir.

6 Q. And are you employed?

7 A. Yes, sir.

8 Q. Where do you work?

9 A. I supervise the cleaning crew at the Charleston

10 County District.

11 Q. You work for the school district?

12 A. Uh Huh.

13 THE COURT REPORTER: Is that yes?

14 A. Yes, sir.

15 Q. [Mr. Lietzow] How long have you worked for the

16 school district?

17 A. Nine years.

18 Q. What school do you work at?

19 A. Stiles Point Elementary.

20 Q. Do you know anyone in the Fyall family?

21 A. No, sir.

22 Q. Have you ever lived by Leland Avenue in North

23 Charleston?

24 A. No, sir.

25 Q. Do you know Byron Rivers?

State v Byron Rivers
Brittany White-Direct Examination by Mr. Lietzow
June 11, 2019

- 1 A. Yes, sir.
- 2 Q. How long have you know Byron for?
- 3 A. A month prior to that incident on July...
- 4 Q. Did you know him in 2017?
- 5 A. Yes.
- 6 Q. What was your phone number back then do you
- 7 remember?
- 8 A. 597-9687.
- 9 Q. And what was the area code on that?
- 10 A. 843.
- 11 Q. What other names did Byron go by?
- 12 A. Little B.
- 13 Q. B?
- 14 A. Uh Huh.
- 15 THE COURT REPORTER: Was that yes?
- 16 A. Yes, sir.
- 17 Q. [Mr. Lietzow] Did Byron Rivers ever call you in 2017
- 18 while he was in jail?
- 19 A. Yes, sir.
- 20 Q. How many times did he do that?
- 21 A. Like ten.
- 22 Q. And when Byron called you what number would he call
- 23 you on?
- 24 A. You mean like the jailhouse number?
- 25 Q. What number would he dial to get in contact with

State v Byron Rivers
Brittany White-Direct Examination by Mr. Lietzow
June 11, 2019

1 you?
2 A. 843-597-9687.
3 Q. So you would recognize Byron's voice when he would
4 call you?
5 A. Uh Huh.
6 THE COURT REPORTER: Is that yes?
7 A. Yes, sir.
8 Q. [Mr. Lietzow] And have we played a jail call for
9 you?
10 A. Yes, sir.
11 Q. And did you recognize your voice on that?
12 A. Yes, sir.
13 Q. And did you recognize Byron's voice on that?
14 A. Yes, sir.
15 Q. Where were you at when you received the call in
16 question?
17 A. Work.
18 Q. Okay. And when he would call you would you pass the
19 phone off to let him talk to somebody else or would you
20 have a conversation with him?
21 A. I'd pass the phone off and do a three way.
22 Q. And the particular call that occurred on July 24th
23 of 2016 did you have the conversation with him or did you
24 pass the phone off to him?
25 A. Pass the phone off to him.

State v Byron Rivers
Brittany White-Direct Examination by Mr. Lietzow
June 11, 2019

1 Q. Who did you pass the phone off to?

2 A. A guy named --

3 THE COURT REPORTER: A guy named?

4 A. He go by Oozie [phonetic].

5 MR. LIETZOW: Your Honor, at this point I would
6 move to enter and publish State's exhibit 139 into
7 evidence.

8 THE COURT: I think 139 has already been admitted
9 into evidence. You just need to publish it at this point
10 in time Mr. Lietzow?

11 MR. LIETZOW: Yes, Your Honor.

12 THE COURT: All right. We'll try to cue it up
13 then.

14 [Whereupon, State's exhibit 139, the video clip of
15 the jail call plays with questions from Mr. Lietzow]

16 Q. [Mr. Lietzow] Brittany, is that your voice on the
17 phone?

18 A. Uh Huh. Yes, sir.

19 Q. Ms. White, whose voice is that that you hear on the
20 phone?

21 A. Byron and Oozie [phonetic].

22 Q. Brittany, a missed call is that -- who is the
23 gentleman with the deeper voice that was just talking?

24 A. Oozie [phonetic].

25 [Whereupon, State's exhibit 139, the video of the

State v Byron Rivers
Brittany White-Direct Examination by Mr. Lietzow
June 11, 2019

1 jail call clip ends]

2 Q. [Mr. Lietzow] Thank you, Ms. White.

3 MR. LIETZOW: I have no further questions.

4 THE COURT: Any cross-examination of this witness?

5 MR. MACK: Thank you, Judge.

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State v Byron Rivers
Brittany White-Cross-Examination by Mr. Mack
June 11, 2019

1 CROSS-EXAMINATION

2 BY MR. MACK:

3 Q. Ms. White?

4 A. Yes, sir.

5 Q. You said you were in a like relationship with Byron.

6 A. Yeah, we were friends and had sex sometimes but that

7 was it.

8 Q. I didn't hear you.

9 A. We were friends. We had sexual relations sometimes

10 but that was it.

11 Q. And you know Latoya Mack?

12 A. Yeah.

13 Q. She a distant cousin?

14 A. She's a cousin from one of my people's on my daddy's

15 side.

16 MR. MACK: No further questions, Judge.

17 THE COURT: Anything else?

18 MR. LIETZOW: No, Your Honor.

19 THE COURT: Any objection to the witness being

20 excused?

21 MR. LIETZOW: None from the State, Your Honor.

22 THE COURT: Any from the defense?

23 MR. MACK: [No response]

24 THE COURT: You can step down.

25 [Whereupon, the witness is excused and exits the

State v Byron Rivers
Brittany White-Cross-Examination by Mr. Mack
June 11, 2019

1 witness stand]

2 THE COURT: Can she be released from her subpoena
3 Mr. Mack?

4 MR. MACK: Yes, Judge; sorry.

5 THE COURT: Thank you. Ma'am, you're free to
6 leave. All right. Next witness.

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State v Byron Rivers
Robert Bailey-Direct Examination by Mr. Lietzow
June 11, 2019

1 THE COURT: The State calls Detective Robert
2 Bailey.

3 THE COURT: All right.

4 [Whereupon, Detective Bailey comes forward]

5 [Whereupon, the witness is duly sworn by the Clerk
6 of Court]

7 CLERK OF COURT: State your full name for the
8 record spelling your last name.

9 THE WITNESS: My name is Robert F. Bailey, B-A-I-L-
10 E-Y.

11 - - - - -

12 ROBERT BAILEY,

13 Having been first duly sworn,

14 Was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. LIETZOW:

17 Q. Detective Bailey, please tell the jury where you are
18 currently employed?

19 A. I work for the City of North Charleston Police
20 Department.

21 Q. What is your job title there?

22 A. I am currently a sergeant in the office of
23 Professional Standards, which is considered the Internal
24 Affairs division of the police department.

25 Q. And how long have you been doing that?

State v Byron Rivers
Robert Bailey-Direct Examination by Mr. Lietzow
June 11, 2019

1 A. Right at eight months.

2 Q. What were you doing back in July of 2016?

3 A. I was assigned as the master patrol officer in the
4 Person's Crimes unit, which investigates all violent
5 crimes in the City of North Charleston, which includes
6 homicides, robberies.

7 Q. How did you become involved in this case?

8 A. I was contacted by then Sergeant Kuechler at
9 approximately 10 o'clock that night in reference to
10 coming in in reference to multiple subjects being shot
11 and that I was needed at the station to start
12 interviewing witnesses.

13 Q. So what was your, I guess official position on the
14 case?

15 A. At the time I was just coming in as an assisting
16 detective. But later on down through the investigation I
17 became the case agent.

18 Q. Did you ever have a chance to go to the crime scene?

19 A. I did not.

20 Q. So when you got to City Hall what did you do there?

21 A. When I got to City Hall I began in starting rooms
22 and began getting everything organized. We had multiple
23 victims and witnesses that came forward and was brought
24 to us in the detective bay.

25 Q. What was the situation like inside the detective bay

1 at that point?

2 A. We have at the City of North Charleston we have four
3 interview rooms. At the time we had six people brought
4 up to us; four of the people that were inside the
5 residence and two that were not inside the residence.
6 And we had to situation people in conference rooms with
7 officers sitting in and with recorders going on them.

8 Q. What was their demeanor like? How were they acting?

9 A. Sanquan Fyall was extremely upset to the point that
10 he was -- he had to be calmed down several times by me.
11 Even after I tried to calm him down and left the room his
12 emotions took hold of him and he started flipping the
13 interview table over.

14 Others were the same. Theodore Fyall was in pretty
15 much the same situation. Without flipping tables over he
16 was still emotionally, you could tell that he was not
17 wanting to be there but he knew that he had to be there.

18 Q. Who were your primary suspects at this point who had
19 committed the murder?

20 A. At the time of me getting there and initially
21 speaking with everyone it was pretty point on that the
22 initial suspects were Stacy Green and Byron Rivers.

23 Q. And as part of your interviews and investigation
24 did you obtain buccal swabs from any of the victims and
25 witnesses while they were at City Hall?

State v Byron Rivers
Robert Bailey-Direct Examination by Mr. Lietzow
June 11, 2019

1 A. I obtained signed written consent buccal swabs from
2 every witness and victim that was in my care at that
3 time.

4 Q. And what is the purpose of a buccal swab?

5 A. Just to compare to evidence on a later date that was
6 collected from scene to either cancel them out or to show
7 that they were at a certain spot.

8 Q. What are you trying to obtain? What is a buccal?

9 A. It's DNA. A buccal is just a cotton swab like a
10 long Q-tip that we stick in someone's mouth. It's very
11 in-invasive.

12 You just kind of rub the side of their cheek, you
13 let it air dry for a few moments and you put it right
14 back in the container. It is sealed and it was sent as
15 evidence to be sent to our crime scene for further
16 evidentiary purposes.

17 Q. And what did you say the purpose of those was?

18 A. DNA evidence.

19 Q. Who specifically did you take buccal swabs from at
20 City Hall?

21 A. Bear with me one moment.

22 [Whereupon, the witness reviews document]

23 A. Sanquan Fyall.

24 MR. LIETZOW: Your Honor, may I approach?

25 THE COURT: Yes.

1 Q. [Mr. Lietzow] Let me show you a document and
2 hopefully that will refresh your recollection.

3 [Whereupon, the witness is shown document]

4 Q. Does that refresh your recollection?

5 A. Yes.

6 Q. So who were they?

7 A. Sanquan Fyall, Eleanor Delesline, Theodore Fyall,
8 and ---

9 Q. --- did you take them from ---

10 A. --- Nashishi Walker; yeah, sorry.

11 Q. What was the date and time those were collected?

12 A. They were early morning hours of the 16th. I would
13 say -- bear with me one moment.

14 [Whereupon, the witness reviews document]

15 Q. That's fine. Just early morning ---

16 A. --- it was early morning hours of the 16th. It was
17 around 2 or 3 o'clock in the morning; sometime in that
18 frame.

19 Q. And they were cooperative and allowed you consent to
20 take them?

21 A. Yes.

22 Q. If somebody doesn't give consent is there any other
23 way you can get a buccal swab from them?

24 A. A search warrant.

25 Q. Were you able to interview Stacy Green about the

State v Byron Rivers
Robert Bailey-Direct Examination by Mr. Lietzow
June 11, 2019

1 incident this night?

2 A. I was.

3 Q. Okay. The next day, well I guess we're on the 16th
4 so later in the day did you have a chance to go to MUSC?

5 A. I did. After I secured for what little bit of time
6 I had left over in that day I got a phone call from
7 another detective stating that more information was
8 needed at MUSC.

9 And I was planning on coming in any way to speak
10 with or try to speak with Antonio Fyall who was currently
11 at MUSC and try to make contact with Mr. Johnell Watson.

12 Q. So did you go to MUSC?

13 A. I did.

14 Q. And who did you meet there when you got there?

15 A. When I first went there at first I went straight to
16 see Mr. Antonio Fyall who was in a room. He was sedated
17 in somewhat shape or form. And it was an audio recorded
18 statement, which means I had no video. We didn't at that
19 time; detectives were not issued body cameras.

20 So I spoke with him very briefly. He did have a
21 wound to his face. And I didn't want to overstay my
22 welcome with him. In hindsight I was asking him
23 questions but also too I didn't want to aggravate him
24 because I knew that he just went through a traumatic
25 incident. And he still allowed me to get a buccal swab

1 from him at that time when I was there with him. Once I
2 finished up with him I went down to see Mr. Byron Rivers
3 who was still in the intensive care unit.

4 He was currently being guarded by two deputies with
5 the Charleston County Sheriff's Department who will take
6 guard of our prisoners because we don't have the staff to
7 do so if we're having somebody stay at the hospital for
8 long periods of time.

9 Q. What was his condition at that point?

10 A. He was obviously heavily sedated. He was
11 unresponsive and he was not doing very well. He was in
12 critical but stable condition varying by hour.

13 Q. I want to back up just a second and transport you
14 back to the night of the incident. You said you did not
15 go to the crime scene, right?

16 A. I did not go to the crime scene.

17 Q. Explain to the jury the purpose of GSR, gunshot
18 residue.

19 A. Gunshot residue we call GSR is a kit that we have at
20 our disposal. A lot of times GSR is in reference to a
21 person. It's only good for up to four to six hours. It
22 comes with instructions in this kit.

23 It's probably a five by eleven envelope that has all
24 this stuff stuffed inside of it. When you pull it open
25 it's a piece of paper that gives you instructions. It

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1 tells you that if it has been four to six hours later
2 it's kind of useless; you're not going to get GSR from
3 someone's hands because of either contamination or
4 because of their hands could be washed or something of
5 that nature.

6 So we try to get GSR kits from people immediately
7 when we can or if we have the option or the opportunity
8 to get it as quick as we do.

9 Sometimes that helps us and sometimes we can either
10 a) forget to get GSR kits or b) we just run out of time
11 and we don't have that timeframe to get that GSR kit for
12 it to show anything of usefulness.

13 Q. As the case agent were you made aware whether a GSR
14 kit was conducted on Byron Rivers?

15 A. I was not made aware and I do not believe a GSR kit
16 was conducted on Mr. Rivers.

17 Q. Do you know why they didn't take a GSR kit on Mr.
18 Rivers?

19 MS. NORRIS: Objection; unless he personally knows.

20 THE COURT: Maybe you can just lay a foundation.

21 Q. [Mr. Lietzow] Moving forward to after seeing Mr.
22 Rivers what happened after that? Did you receive more
23 information that was pertinent to the case?

24 A. Yes. I secured from the Medical University of South
25 Carolina at which time I came back to North Charleston

1 City Hall, which is at 2500 City Hall Lane, which is
2 right off Montague. As soon as I pulled into the parking
3 lot I received a call from Detective Benton stating that
4 there was a gentleman calling him by the name of Rickey
5 Fyall who had information and evidence that he wished to
6 turn over.

7 At that time I stated I would call him at which time
8 I did call him and we agreed to meet back at MUSC where
9 he was down to visit Anthony Fyall who was his nephew.

10 Q. And did you go there to meet with him?

11 A. I did. And on my way to meet with Mr. Fyall it was
12 relayed through the phone that he had possible evidence
13 from the scene that night. I wanted to make sure that we
14 tried to preserve as much of the evidence and as much of
15 the chain as possible when it comes into my hands.

16 As stated before at that time in my bureau we did
17 not have body worn cameras. So I contacted our dispatch
18 and had our dispatch get in contact with the Medical
19 University of South Carolina Public Safety to ask if they
20 could have at least one or two officers meet with me who
21 did have body cameras so they could video the exchange
22 between myself and Mr. Rickey Fyall.

23 Q. And when you got there did you receive any evidence
24 from Rickey Fyall?

25 A. I did. When I arrived at MUSC at the emergency room

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1 side where all of your ambulances and fire department and
2 police park I contacted Mr. Fyall, Mr. Rickey Fyall
3 again. He stated he was on his way ---

4 MS. NORRIS: --- objection to what he said.

5 THE COURT: Sustained.

6 Q. [Mr. Lietzow] Without saying what Mr. Fyall said,
7 he'll come in and tell us what he said but just tell us
8 about your actions.

9 A. Contacted him and he agreed to meet at the parking
10 lot at the emergency room side of MUSC.

11 Q. And what did you receive from Mr. Fyall?

12 A. Upon making contact with him he provided me with a
13 plastic bag that contained -- at that time I didn't know
14 exactly what it contained; it was just a plastic bag.
15 And he stated that there was a weapon inside. I then put
16 on ---

17 MS. NORRIS: --- objection.

18 THE COURT: Sustained.

19 MS. NORRIS: Move to strike.

20 THE COURT: Strike the last statement made from
21 this witness please ladies and gentlemen. And Mr.
22 Lietzow you can continue on.

23 Q. [Mr. Lietzow] Without saying what Mr. Fyall said
24 when you received that bag what did you do with it?

25 A. When I received the bag I looked inside the bag.

1 There was a weapon inside the bag. I proceeded to put
2 gloves on to preserve any evidence. Did not want to
3 contaminate anything else, at which time I cleared the
4 weapon.

5 The weapon was silver and black in color. When I
6 cleared it there was no rounds in the chamber and there
7 was no rounds in the magazine.

8 At that time I secured everything back in my trunk
9 of my vehicle, shut the trunk, and proceeded to go finish
10 up what I was doing at City Hall.

11 Q. And besides the gun what other items were inside
12 that bag that was given to you?

13 A. Later on back at the station I was able to itemize
14 the stuff in the bag. It shows now as follows:

15 One pair of black pants, one pair of blue pants with
16 belt, one pair of blue jeans with belt, three plastic
17 bags; one was a white and blue Champs bag, a Hi-Point 9mm
18 chrome and black serial number P-033780 with one black
19 magazine, two quarters, two nickels, and eight pennies, a
20 Wendy's receipt, PayPal card with number 5311-0505-8238-
21 7658, a green lighter, and a TWIC card belonging to
22 Frederick Smalls later identified as Cam.

23 MR. LIETZOW: May I approach the witness, Your
24 Honor?

25 THE COURT: Yes.

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1 Q. [Mr. Lietzow] I'm showing you what has been marked
2 for identification purposes as State's exhibit 131. Take
3 a look at that and tell us if you recognize that.

4 [Whereupon, the witness is shown exhibit]

5 A. It's the seal that I put on with my initials on the
6 back line where it is cut through where it was opened.

7 Q. And what is it?

8 A. It is a -- it appears to be a white and blue Champs
9 bag and the trash bag that it came in.

10 Q. Is that the bag that you received directly from
11 Rickey Fyall?

12 A. It is.

13 Q. Did you tamper with it?

14 A. I did not.

15 Q. Add anything to it?

16 A. I did not.

17 MR. LIETZOW: Your Honor, at this point I would
18 move to enter State's 131 into evidence.

19 THE COURT: Same objection as previously stated?

20 MS. NORRIS: Your Honor, we object to all of these
21 items.

22 THE COURT: Okay. Your objection is made clear for
23 the record for purposes of appeal and we will admit those
24 items over objection. So far it's just 131; is that
25 right?

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1 MR. LIETZOW: Yes, ma'am.

2 THE COURT: All right. Go ahead.

3 [Whereupon, State's exhibit number 131 is entered
4 into evidence by the Court]

5 Q. [Mr. Lietzow] And when you were looking at the
6 weapon that was in that bag did you already say whether
7 it was loaded?

8 A. It was unloaded. There was no rounds with the gun.

9 Q. What kind of weapon -- was it a revolver or a
10 semiautomatic?

11 A. A semiautomatic pistol.

12 Q. I'm showing you what has been marked for
13 identification purposes only as State's exhibit 123.

14 [Whereupon, the witness is shown exhibit]

15 Q. Do you recognize that?

16 A. Yes. This is the firearm that I received on the day
17 of July 16, 2016.

18 Q. In that same bag from Rickey Fyall ---

19 A. --- in that same bag.

20 MR. LIETZOW: Your Honor, at this point I would
21 move to enter State's exhibit 123 into evidence.

22 MS. NORRIS: Continued objection.

23 THE COURT: Objection noted. Admitted.

24 [Whereupon, State's exhibit number 123 is entered
25 into evidence by the Court]

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1 Q. [Mr. Lietzow] All right. What's the next thing that
2 you did pertaining to this gun?

3 A. At that time after itemizing all of the items in the
4 bag they were separated and placed in individual
5 containers per their evidence weight and what they were.
6 The gun was then placed in a gun box and it was then
7 sealed by me.

8 It was then placed into evidence with a process for
9 prints and DNA fixed to the outside of the box along with
10 the other evidence that I received it was all placed in
11 evidence as well at the City of North Charleston Police
12 Department.

13 Q. Okay. On July 18th did you have a chance to meet
14 with Johnell Watson?

15 A. I did.

16 Q. What happened when you met with Mr. Watson?

17 A. He came in to meet with me at City Hall. He was
18 placed in an interview room at which time he provided his
19 statement to me.

20 He was also asked to provide a buccal swab for DNA
21 testing which he did. And he was also placed under
22 arrest because he had a warrant with the City of North
23 Charleston.

24 Q. Moving forward to July 20th what did you do on July
25 20th?

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1 A. One second.

2 [Whereupon, the witness reviews document]

3 Q. Did you go to the hospital?

4 A. No. At 11:15 on the 20th I secured buccal swab DNA
5 search warrants for Stacy Green and Byron Rivers at
6 approximately 11:15 p.m. with Judge Bligen.

7 THE COURT REPORTER: Judge?

8 Q. [Mr. Lietzow] Where did you go to get those swabs?

9 A. I went to Charleston County jail to get those.

10 Q. And when you obtained those buccal swabs what
11 precautions did you take to make sure that there was no
12 cross contamination or anything could have been messed up
13 with them?

14 A. At the time I wore gloves. Again, these are sterile
15 cotton swabs that come individually wrapped. They are
16 provided with their search warrant, they are read their
17 search warrant at which time we just ask them to open
18 their mouths and a quick swipe of each cheek and it was
19 air dried and put back in the container and then sealed
20 up.

21 Q. And why do you seal it up?

22 A. So it cannot be cross contaminated and so it can be
23 placed into evidence for further analysis.

24 Q. And from there where does it typically -- what do
25 you arrange to do with that piece of evidence?

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1 A. From there it will be taken back to City Hall where
2 a proper chain is kept and then it is placed into NCPD
3 evidence until we can get with our crime scene to get it
4 taken to SLED for analysis.

5 Q. I am showing you State's exhibit 125 for
6 identification purposes only.

7 [Whereupon, the witness is shown exhibit]

8 Q. Do you recognize that?

9 A. This is my handwriting and it is the buccal swab for
10 Byron Rivers dated 7/20/2016 at 11:37 p.m.

11 MR. LIETZOW: Your Honor, at this point I would
12 move to enter State's 125 into evidence.

13 THE COURT: Any objection to 125?

14 MS. NORRIS: None.

15 THE COURT: Without objection 125 will be admitted.

16 [Whereupon, State's exhibit number 125 is entered
17 into evidence by the Court]

18 Q. [Mr. Lietzow] Was the Hi-Point gun and the
19 Defendant's buccal swab entered into evidence at
20 different times?

21 A. Yes.

22 Q. Is there any purpose behind that or is that just how
23 the timeline worked out in this case?

24 A. That's how the timeline worked. I received the gun
25 on the 16th of July at which time upon me immediately

1 receiving the firearm it was taken back to my station.
2 The items were itemized and then throughout the way the
3 case worked I was able to secure the search warrants for
4 both Byron Rivers and Mr. Green and they were served on
5 them at the county jail several days later.

6 Q. Did you say what caliber weapon the Hi-Point was?

7 A. It was a 9mm.

8 Q. Can you talk a little bit more about the process
9 that occurs when you try to send evidence to SLED? What
10 is their policy when it comes to receiving evidence from
11 police departments?

12 A. Back when I was in investigations the policy was
13 that per the crime we could only send so many items. So
14 we had to have so many known and we had to have -- we
15 could only have so many unknown.

16 So the firearm would be consistent as an unknown DNA
17 touch DNA type situation. But a known would be a known
18 for a buccal swab for Mr. Rivers or a buccal swab from
19 one of the victims or a buccal swab from one of the
20 witnesses.

21 So we can only send so many items at one time to
22 SLED. And I think it was at that time it was only five
23 that we could send. So we had to be very particular
24 which items we sent and what we wanted sent first because
25 there is a long wait turn around for these items to come

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1 back to the City of North Charleston.

2 Q. Did you have a chance to review Byron Rivers cell
3 phone numbers recovered in this case?

4 A. I did.

5 Q. Was it damaged?

6 A. The phone was damaged beyond repair.

7 Q. Okay. Any indication on how or why it was damaged?

8 A. It appeared to be shot.

9 Q. Were you able to recover any of his contacts?

10 A. Through his SIM card our ---

11 MS. NORRIS: --- objection. I don't believe that
12 this witness is an expert in SIM cards.

13 THE COURT: Maybe you could lay a little bit more
14 foundation. Go ahead.

15 Q. [Mr. Lietzow] Do you -- when you get a phone in
16 evidence what's your process that you go through to try
17 to get evidence from it?

18 A. Usually the first thing we do is when we get a phone
19 from either a suspect or a victim or witnesses we usually
20 take the battery out. Before we take the battery out we
21 place the phone in airplane mode if we can.

22 We take the battery out; usually if it has a SIM we
23 remove the SIM card and we put it all in a bag. We put
24 it into evidence and at which time we gather all the
25 information off of it as we can. This incident had a lot

1 of cell phones so I had a lot of information that I had
2 to gather from each phone. If you open up your phone
3 you'll have IMEI numbers on the back, serial numbers on
4 the back of it; all this type of information that
5 requires to be on a search warrant.

6 Whether it's a victim's phone, a witnesses' phone,
7 or a suspect's phone it is your privacy to have your
8 phone without us looking into it or delving into it. So
9 I have to get a search warrant for each phone.

10 At that time I got a search warrant for each phone
11 that I had whether it was damaged or not and it was sent
12 to our analysis -- our detective that downloaded each
13 phone.

14 Q. What kind of information is stored on a SIM card?

15 A. Contacts, sometimes photos, it can store videos ---

16 MS. NORRIS: --- objection, Your Honor. I still
17 don't believe this witness is an expert in this.

18 THE COURT: Overruled. He's laid the foundation
19 and he's also the lead case agent and he is ultimately
20 responsible for this knowledge as he testified earlier
21 his role in the case. So I'll allow it. Please
22 continue.

23 Q. [Mr. Lietzow] You were telling us what kind of
24 information is contained on a SIM card.

25 A. Contacts, videos, photos; just small portions of

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1 your phone that can be -- if you take that SIM card out
2 you can put it into another phone and it will work in
3 that phone.

4 Q. Okay. And were you able to look at Byron River's
5 phone contacts via his SIM card in this case?

6 A. I was.

7 Q. Was there a contact name in there for Oozie
8 [phonetic]?

9 A. There was.

10 Q. Were you able to get any other information from
11 Byron River's cell phone?

12 A. No, I was not besides other contacts that he had in
13 his phone.

14 Q. Right. Were you ever able to determine if Stacy
15 Green lived over in the Makin' area?

16 A. I know that at the time of this incident he was not
17 living in the Makin' area. I've never been able to place
18 him in the Makin' or Chicora Cherokee area.

19 I do know that at the time of his arrest he was
20 staying with his grandfather who lives in the Union
21 Heights community, which is a mile and a half two miles
22 up the street.

23 Q. Same question about Byron Rivers. Do you know if he
24 lived in that area at the time?

25 A. I could never find any information that proved that

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1 Mr. Rivers lived in the Chicora Cherokee community.

2 MR. LIETZOW: Court's indulgence.

3 [Whereupon, Mr. Lietzow and Mr. Osborne confer]

4 Q. [Mr. Lietzow] You said there is time limits as to
5 when gunshot residue GSR can be taken right?

6 A. Yes.

7 Q. Is that because SLED has standards for accepting the
8 gunshot residue?

9 A. That is correct.

10 Q. And what's the time limit from the time of incident
11 to collection that they will allow you to submit gunshot
12 residue kit for?

13 A. In reference to the hands of a subject it would be
14 four to six hours.

15 Q. If your first opportunity to collect GSR would have
16 been more than six hours would you have even bothered
17 taking it?

18 A. No, I would not.

19 Q. And directly after this incident do you know if Mr.
20 Rivers was taken to MUSC?

21 A. Yes, he was.

22 Q. Is that where he received treatment?

23 A. That's correct.

24 Q. As the case agent did you want Rivers GSR?

25 A. I would have loved to have it.

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1 Q. But you couldn't get it here.

2 A. That's correct.

3 Q. And why is that?

4 A. Due to his condition it was pretty obvious that his
5 injuries were severe. Even when I went and saw him the
6 next day he was still intubated and watched over heavily
7 at the time.

8 [Whereupon, Mr. Lietzow and Mr. Osborne confer]

9 Q. Thank you. No further questions.

10 MS. NORRIS: May it please the Court?

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1 CROSS-EXAMINATION

2 BY MS. NORRIS:

3 Q. Detective Bailey, when you saw all those folks I
4 believe you listed four people from the house that night
5 at City Hall it was still within the four to six hour
6 window, correct?

7 A. That's correct.

8 Q. And you did not attempt to take a GSR kit on those
9 folks, specifically the people you listed; Sanquan Fyall,
10 Theodore Fyall.

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

12 Q. And Stacy Green. You saw him about what time that
13 night?

14 A. It was later on that night.

15 Q. But it was still within the four to six hour window,
16 correct?

17 A. Correct -- bear with me one moment and let me...

18 Q. Okay.

19 [Whereupon, the witness reviews document]

20 A. I don't have the timeframe in which I saw Mr. Green.
21 I just know that he was waiting patiently in the back
22 seat of a patrol car while we had so many people upstairs
23 with us.

24 Q. And you know that GSR was done on him at the scene,
25 correct?

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1 A. Yes, through my understanding of it.

2 Q. And when you saw him at City Hall you also collected
3 his clothing, correct?

4 [Whereupon, the witness reviews document]

5 Q. Let me make it a little easier. Whether you did or
6 not you could have collected his clothing?

7 A. Yes. I don't remember if I collected his clothing
8 or not that night but I could have, yes.

9 Q. And in your experience as a detective you can also
10 do GSR kits on clothing, correct?

11 A. That's correct.

12 Q. And that was not done on Stacy Green, right?

13 A. I do not believe so.

14 Q. And it was not done on Byron Rivers?

15 A. I do not believe so.

16 Q. So if a police officer out there on the scene when
17 Byron Rivers was laying on the street wanted to test his
18 clothes that could have been done, correct?

19 A. No, we would have had to submit his clothes to SLED.

20 Q. To do the kit?

21 A. Yes.

22 Q. Well, did you take his clothes and send them off to
23 SLED for GSR?

24 A. I believe we had Mr. Rivers' pants, or the shorts
25 that he was wearing that night but I do not believe it

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1 was ever sent off to SLED because of other evidence that
2 we got on scene.

3 Q. Now you also, and correct me if I'm wrong; I know
4 you will, you also had information from several people
5 including Latoya Mack and Nashishi Walker that this was a
6 known drug house there at [REDACTED], is that correct?

7 MR. LIETZOW: Objection, Your Honor. That would
8 ask for hearsay -- unless he hears the testimony--

9 THE COURT: I'm sorry. Can you approach real quick
10 to make sure I understood the question.

11 [Whereupon, an off the record bench conference is
12 held]

13 Q. [Ms. Norris] All right. Detective Bailey, do you
14 still go by detective? I know that you are in Internal
15 Affairs now.

16 A. I'll go by anything you call me.

17 Q. What's your preferred title? I want to call you
18 what you prefer to be called.

19 A. Detective Bailey, Sergeant Bailey, officer.

20 Q. Let's stick with detective.

21 A. That sounds good.

22 Q. Detective Bailey, as a case agent you had access to
23 all the information that was collected in this case,
24 correct?

25 A. Eventually, yes.

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1 Q. Okay. And as the case agent you've been in the
2 courtroom for all of the testimony, right?

3 A. That's correct.

4 Q. So you are aware at least that there was a bag of
5 white powder, a scale, a baggie of marijuana and a jar of
6 marijuana in the house, correct?

7 A. I'm aware of illegal substances, yes.

8 Q. Okay. And you testified about the bag you received.
9 If you don't mind, and you can put some gloves on if you
10 want to, I want you to pull the bag out.

11 A. Absolutely. There are three bags in it.

12 [Whereupon, the witness complies]

13 Q. And this I believe is exhibit 131, is that correct?

14 A. Yes, ma'am. It's a white trash bag, a white blue
15 and red Champs bag and what appears to be a Family Dollar
16 bag.

17 Q. And the items that you got I believe you listed a
18 number of items in there. Were there some pants in
19 there?

20 A. If you give me a moment; I have them itemized in my
21 report.

22 Q. All right.

23 [Whereupon, the witness reviews document]

24 A. Yes, there were actually three pairs of pants in
25 there; one pair of black pants, one pair of blue pants

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1 with belt, and one pair of blue jeans.

2 Q. And was it all packaged within this one what I would
3 say is a trash bag?

4 A. It was all packaged within that to include these two
5 items inside that, yes.

6 Q. So those two bags were in this bag but everything
7 was ---

8 A. --- absolutely, yes ma'am.

9 Q. So the pants was touching the weapon and everything
10 else in there. It was all just comingled.

11 A. Correct.

12 Q. All right. And when you got all those items to
13 include State's exhibit 123 this was admitted over
14 objection I believe.

15 A. I have it over here.

16 Q. When you got this weapon that was in that bag mixed
17 in with all the other items.

18 A. It was.

19 Q. Why don't you while you've got it up there why don't
20 you just pull it out so the jury can actually see it.
21 We've talked about it a lot but I don't think they've
22 actually seen it.

23 A. Oh, absolutely.

24 [Whereupon, the witness shows weapon to the jury]

25 Q. And that is the Hi-Point 9mm?

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1 A. It is a Hi-Point 9mm, yes ma'am.

2 Q. And the other weapon that was collected out there at
3 the scene, State's exhibit 126?

4 A. Was a Walther 40 caliber. Do you want me to pick
5 that up and show them?

6 Q. Yes, please.

7 [Whereupon, the witness shows weapon to the jury]

8 Q. And so there is a noticeable difference in that the
9 Hi-Point has a silver or chrome on the top and the
10 Walther is all black, correct?

11 A. That's correct.

12 Q. All right. And when you obtained that bag with the
13 Hi-Point 9mm that was a day after all this, correct?

14 A. It was on the 16th. It was on a Saturday; less than
15 24 hours since the incident happened.

16 Q. But the next day?

17 A. Yes.

18 Q. And you collected that from Rickey Fyall. To your
19 knowledge was he related to the people in the house?

20 A. Yes, he was ---

21 Q. --- you ---

22 A. --- yes, I did collect it from Mr. Fyall, Rickey
23 Fyall.

24 Q. And other than from what would be hearsay we don't
25 know where that bag was in the middle. You know what you

1 were told but you have no personal knowledge.

2 A. Correct.

3 Q. Give me just a second.

4 [Whereupon, Mr. Mack and Ms. Norris confer]

5 Q. Detective Bailey, did you personally interview
6 Frederick Smalls in this case?

7 A. I did not.

8 Q. Do you know who did that?

9 A. Detective Butler.

10 Q. And did you review that interview or you just took
11 it into evidence?

12 A. I did review it a long time ago, yes ma'am.

13 Q. Do you recall whether or not he said in that
14 interview with Detective Butler ---

15 MR. LIETZOW: --- objection, calls for hearsay.

16 THE COURT: Sustained.

17 MS. NORRIS: Your Honor, may we approach?

18 THE COURT: Sure.

19 [Whereupon, an off the record bench conference is
20 held]

21 Q. [Ms. Norris] Detective Bailey, would it help you if
22 I showed you a transcript of that interview that you
23 could review?

24 A. Oh, absolutely.

25 Q. I'm going to hand you the transcript of the

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1 interview from July 19th that we were talking about
2 between Frederick Smalls and Detective Jennifer Bailey.

3 If you could, just look at it for yourself.

4 [Whereupon, the witness is shown document]

5 Q. You want a bigger copy?

6 A. No, I'm good. I'll suffer through it. What do you
7 want me to look at? You want me to read it?

8 Q. I want you to just skim through it yourself to
9 verify that that's the interview. I assume you watched it
10 on video?

11 A. It's been several years since I watched it, yes.

12 Q. I don't want you to read anything from it. At the
13 end of it I'm just going to ask you if Mr. Smalls
14 mentioned anywhere that Mr. Rivers told somebody else to
15 flip a couch inside that apartment.

16 [Whereupon, the witness reviews document]

17 A. And what was your question again, ma'am?

18 Q. Did he mention to Detective Butler that Byron Rivers
19 told someone to flip a couch over or look under the couch
20 in apartment A at [REDACTED]?

21 A. Not through what y'all transcribed I do not see it.

22 Q. All right. You mentioned I believe that Johnell
23 Watson was arrested on an outstanding warrant?

24 A. Correct.

25 Q. That had nothing to do with this case, correct?

State v Byron Rivers
Robert Bailey-Cross-Examination by Ms. Norris
June 11, 2019

1 A. It did not.

2 Q. Was anybody arrested for the drugs found inside [REDACTED]

3 [REDACTED]?

4 A. At that time that was not my concern.

5 Q. Was anybody arrested for hitting Stacy Green with a
6 baseball bat?

7 A. No, they were not.

8 Q. Nobody was arrested for hitting Mr. Rivers?

9 A. No, they were not.

10 Q. Thank you, sir.

11 MS. NORRIS: No further questions.

12 THE COURT: All right. Any redirect?

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State v Byron Rivers
Robert Bailey-Redirect Examination by Mr. Lietzow
June 11, 2019

1 REDIRECT EXAMINATION

2 BY MR. LIETZOW:

3 Q. You didn't conduct the interview with Cam Smalls?

4 A. I did not.

5 Q. Do you know how much details Detective Butler had

6 when she was questioning the witness?

7 A. I do not.

8 Q. Byron Rivers' pants, where were they recovered?

9 Were they recovered from inside the bag you got from

10 Rickey Fyall? Where were Byron Rivers pants recovered

11 from?

12 A. The scene on the night of July 15th.

13 Q. So they were not in that bag?

14 A. No, they were not.

15 Q. And I believe Ms. Norris asked you that as the case

16 agent you have access to all the info that is collected

17 in this case?

18 A. That's correct.

19 Q. And you're made aware of everything that is going on

20 as far as the investigation is concerned.

21 A. Correct.

22 Q. Do you know whether there was gunshot residue

23 particles on Stacy Green?

24 A. I do not.

25 Q. If I showed you a document would that help refresh

1 your memory?

2 A. Yes.

3 Q. I'm showing you ---

4 MS. NORRIS: --- objection. This gentleman is not
5 an expert in the actual testing of GSR kits.

6 THE COURT: I'm not sure that he is being offered
7 as an expert ---

8 MR. LIETZOW: --- I'm not. I'm just asking him if
9 he was made aware. I'm trying to refresh his
10 recollection with this document.

11 THE COURT: I'll allow it at this point in time.

12 Q. [Mr. Lietzow] I'm showing you what has been marked
13 as identification purposes only as State's exhibit 189.

14 [Whereupon, the witness is shown document]

15 Q. Does that refresh your recollection on whether Mr.
16 Green had gunshot residue particles on him?

17 [Whereupon, the witness reviews document]

18 A. It does and he did not.

19 MR. LIETZOW: No further questions, Your Honor.

20 THE COURT: All right. Recross?

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State v Byron Rivers
Robert Bailey-Recross-Examination by Ms. Norris
June 11, 2019

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RECROSS-EXAMINATION

BY MS. NORRIS:

Q. You don't know whether Byron Rivers had gunshot
residue on him, correct?

A. I do not.

Q. Nothing sent off to test?

A. No, ma'am.

Q. Thank you.

THE COURT: All right. You may step down sir.

THE WITNESS: Thank you.

[Whereupon, the witness is excused and exits the
witness stand]

THE COURT: Mr. Lietzow, call your next witness.

State v Byron Rivers
Rickey Fyall-Direct Examination by Mr. Lietzow
June 11, 2019

1 MR. LIETZOW: The State calls Rickey Fyall.
2 [Whereupon, Mr. Fyall comes forward]
3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]
5 CLERK OF COURT: State your full name spelling your
6 last name for the record.
7 THE WITNESS: Rickey -- Fyall.
8 THE COURT REPORTER: What's your middle name, sir?
9 THE WITNESS: Neroa.
10 THE COURT REPORTER: Would you spell it for me?
11 THE WITNESS: N-E-R-O-A.
12 - - - - -
13 RICKEY FYALL,
14 Having been first duly sworn,
15 Was examined and testified as follows:
16 DIRECT EXAMINATION
17 BY MR. LIETZOW:
18 Q. Mr. Fyall, do you live in Charleston?
19 A. Yes, I do.
20 Q. How long have you lived here for?
21 A. All my life.
22 Q. What do you do for a living?
23 A. I cook.
24 Q. You own your own business?
25 A. Yes.

State v Byron Rivers
Rickey Fyall-Direct Examination by Mr. Lietzow
June 11, 2019

- 1 Q. Tell us about that.
- 2 A. I recently opened up the Rusty Crab Seafood Bar and
3 Grill. We will be open five months on the 25th.
- 4 Q. Where is that at?
- 5 A. Ashley Phosphate and Dorchester.
- 6 Q. Are you related to the individuals in this case?
- 7 A. Yes, I am.
- 8 Q. Are you related to Kirby Fyall?
- 9 A. Yes, that's my nephew.
- 10 Q. What's your relationship to Sanquan Fyall?
- 11 A. That's my nephew.
- 12 Q. And Theodore Fyall?
- 13 A. Nephew.
- 14 Q. How did you get involved in this case?
- 15 A. I got a phone call and I went to the scene.
- 16 Q. And did you get something at the scene?
- 17 A. Yes, I did. When I walked up everybody call me
18 Uncle Rick so they said Uncle Rick and somebody passed me
19 a bag.
- 20 Q. Who passed you the bag?
- 21 A. I can't remember her name.
- 22 Q. You initially told law enforcement that you got the
23 bag from some guy and some girl. Do you remember that?
- 24 A. Yeah. They were just standing out there along with
25 the rest of the crowd.

State v Byron Rivers
Rickey Fyall-Direct Examination by Mr. Lietzow
June 11, 2019

1 Q. Was Nashishi there when you got the bag, Nashishi
2 Walker?

3 A. Yes ---

4 MR. MACK: --- objection, leading Judge.

5 THE COURT: Sustained.

6 Q. [Mr. Lietzow] Is it safe to say that Nashishi Walker
7 is a crack head?

8 A. Yes.

9 Q. Where were you at when you got the bag?

10 A. That's on Dayton, on Dayton --

11 THE COURT REPORTER: At where, sir?

12 A. Dayton Street.

13 Q. [Mr. Lietzow] And what was your knowledge about the
14 significance of that bag?

15 A. Well, they told me that the guy's belongings were in
16 the bag.

17 Q. What belongings?

18 A. There were like they clothes.

19 Q. When you say they can you be more specific?

20 A. There were like two pair of pants I guess belongs to
21 Sanquan and Theodore. And there was some change in there
22 and also a pistol was in there.

23 Q. And what did you do with that bag when you got it?

24 A. Well, when I got -- I went downtown to the emergency
25 room where they had took Kirby and I saw the police

State v Byron Rivers
Rickey Fyall-Direct Examination by Mr. Lietzow
June 11, 2019

1 officer out there and I gave it to them and told them
2 what happened.

3 Q. Did you give it to them on the night of the
4 incident?

5 A. I think so. I can't remember exactly but I think it
6 was the night of the incident.

7 [Whereupon, Mr. Lietzow and Mr. Osborne confer]

8 Q. Did you take a Q-tip and get Byron Rivers DNA and
9 plant it on the trigger of the gun?

10 A. No.

11 Q. No further questions.

12 THE COURT: Cross-Examination.

13 MR. MACK: Thank you, Judge.

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State v Byron Rivers
Rickey Fyall-Cross-Examination by Mr. Mack
June 11, 2019

1 CROSS-EXAMINATION

2 BY MR. MACK:

3 Q. Mr. Fyall, you said you were on scene the night of

4 the incident.

5 A. I was called to the scene.

6 Q. And police officers are all around?

7 A. They were up the street before I -- ahead of me but

8 they were around.

9 Q. You saw some police officers that night?

10 A. Yes.

11 Q. And you testified now that a woman handed you that

12 bag?

13 A. Right.

14 Q. You spoke with Detective Bailey about that bag,

15 correct?

16 A. I don't remember what his name was.

17 Q. You spoke to a detective about that bag.

18 A. I guess.

19 Q. When you handed the bag to a law enforcement officer

20 you spoke to that officer ---

21 A. --- right, right.

22 Q. And you told him who gave you the bag.

23 A. I don't remember if I told him that or not.

24 Q. You don't? Do you want to look at the transcript

25 from that body cam video? Would that help refresh your

State v Byron Rivers
Rickey Fyall-Cross-Examination by Mr. Mack
June 11, 2019

1 recollection?

2 A. It could.

3 Q. Okay. While I'm handing you this Mr. Fyall do you
4 recognize Detective Bailey over there [indicates]?

5 A. Where?

6 Q. The man in the blazer and bow tie standing up?

7 A. Okay. It's been a while so it's vague.

8 Q. That's not the man you handed the bag to?

9 A. I can't remember.

10 Q. Okay. I'm showing you a transcript, Mr. Fyall, of
11 the video that was taken of this exchange that you can't
12 remember.

13 [Whereupon, the witness is shown document]

14 Q. And I want to direct your attention to page 1, line
15 18 and read to about line 24.

16 [Whereupon, the witness reviews document]

17 A. Okay.

18 Q. Do you remember what you said to Detective Bailey
19 now?

20 A. I still can't remember.

21 Q. Would it help if I ---

22 A. --- I mean I can't remember ---

23 Q. --- by reading that would it refresh your
24 recollection ---

25 A. --- I can't remember. I mean if I can't remember

State v Byron Rivers
Rickey Fyall-Cross-Examination by Mr. Mack
June 11, 2019

1 ain't nothing going to make me remember.

2 Q. I tell you what. Would it help if I played a body
3 cam video from that day? Would that help you remember?

4 A. I mean if that's what you need to do.

5 Q. Okay. We can do that.

6 THE COURT: You're not publishing it obviously at
7 this point in time. You just want him to view it.

8 MS. NORRIS: Can we approach, Your Honor?

9 [Whereupon, an off the record bench conference is
10 held]

11 THE COURT: All right. At this time ladies and
12 gentlemen we'll take a brief recess. I'll see you back
13 in -- how long is the clip? Anybody?

14 MS. NORRIS: It's no more than six or seven minutes
15 I think; ten at the outside.

16 THE COURT: All right.

17 MS. NORRIS: And did you want to play the whole
18 thing or just the portion we were just talking about?
19 That would be very brief.

20 MR. MACK: I'd like to play the whole thing since
21 it's so short.

22 THE COURT: All right. Any objection to us taking
23 a break for today. I'll stay and allow him to review it
24 and we can reconvene in the morning. Is that all right
25 with the State?

State v Byron Rivers
Rickey Fyall-Cross-Examination by Mr. Mack
June 11, 2019

1 MR. LIETZOW: I have no objection, Your Honor.

2 THE COURT: Okay with the defense?

3 MR. MACK: That works for me, Judge ---

4 THE COURT: --- that way we're not actually rushed.
5 Okay. All right. At this time ladies and gentlemen I
6 will release you for the day. We obviously have a few
7 matters to take up outside your presence for the
8 remainder of the time this afternoon. We will make good
9 use of that time and we'll see you back here in the
10 morning at 9:15. Thank you very much. Once again, do
11 not discuss the case whatsoever.

12 [Whereupon, the jury exits at 4:41 p.m.]

13 THE COURT: Thank you. Would you rather him view
14 it now or come back in the morning? I'll give you the
15 option.

16 MR. MACK: Now is fine. It's on standby.

17 THE COURT: Okay. So if you can queue it up now we
18 can play it obviously on our big screens.

19 [Whereupon, the body cam video plays]

20 [Whereupon, the video ends]

21 THE COURT: Is that the whole thing?

22 MR. MACK: That's it, Judge.

23 THE COURT: Okay. So at this point in time Mr.
24 Fyall has had an opportunity to view that. We will rest
25 for the day today and be at ease. We also just received

State v Byron Rivers
Rickey Fyall-Cross-Examination by Mr. Mack
June 11, 2019

1 a note which I will mark as a Court's exhibit; court's 2.

2 [Whereupon, Court's exhibit number 2 is marked by
3 the court reporter]

4 THE COURT: It says: Dear Judge, I am Christina
5 Green and have prior engagements already planned and paid
6 for this weekend and need to be excused on Friday, June
7 14th. If you may I would highly appreciate it. Juror
8 110.

9 Obviously, didn't let me know this during jury
10 qualifications. I was actually the qualifying judge this
11 week and gave everyone in the room an opportunity to come
12 forward and let me know if they had some extreme hardship
13 they needed to tell me about. She did not come forward.

14 I am not inclined to release her from the jury but
15 if the attorneys agree to replace her with an alternate
16 I'll leave that to them; otherwise I would keep her on.
17 But it's up to you all. If you want to discuss it
18 amongst yourselves that's fine as well.

19 MR. OSBORNE: Did she say she's leaving on the
20 14th?

21 THE COURT: She needs Friday off.

22 MR. OSBORNE: I'm hoping to be on the road on
23 Friday too so.

24 THE COURT: There are no guarantees -- I don't know
25 how many -- y'all know more about what this case than I

State v Byron Rivers
Rickey Fyall-Cross-Examination by Mr. Mack
June 11, 2019

1 do. I don't know how many more witnesses you intend to
2 call or any of that ---

3 MR. OSBORNE: --- we've got three more witnesses.

4 MR. LIETZOW: We think we'll be done tomorrow with
5 the State's case in chief.

6 THE COURT: All right. I'm just going off the
7 initial four to five days; we think we'll finish within a
8 week, Judge. That's the message I got last week. So Mr.
9 Mack what is your -- I'm obviously not holding you to
10 anything. You don't need to reveal how many witnesses
11 you intend to call but do you anticipate this being an
12 issue at this point in time?

13 MR. MACK: Not really, Judge.

14 THE COURT: Okay. And you said you have three more
15 witnesses to call after Mr. Fyall?

16 MR. LIETZOW: Yes, ma'am.

17 THE COURT: They should wrap of by what, lunchtime
18 tomorrow probably?

19 MR. LIETZOW: I would think that would be it.

20 THE COURT: Tomorrow will be Wednesday. All right
21 at this point in time I'm going to leave her on
22 anticipating that it's not an issue. And once again I'm
23 really not inclined to let her go anyway because she
24 should have told me this Monday morning frankly so. It
25 doesn't sound like an extreme hardship to me at this

State v Byron Rivers
Rickey Fyall-Cross-Examination by Mr. Mack
June 11, 2019

1 point in time. So we'll leave her on and let her know
2 she'll probably luck out anyway. Thank you very much.

3 All right Mr. Fyall, you can step down from the
4 witness stand. I need to give you some instructions
5 however, sir. Do not discuss this case with anyone. Do
6 you understand?

7 THE WITNESS: Yes, ma'am.

8 THE COURT: You are still under oath and you are
9 still on that witness stand as far as I'm concerned ---

10 THE WITNESS: --- okay ---

11 THE COURT: --- even overnight so do not discuss
12 the case with anyone ---

13 THE WITNESS: --- okay ---

14 THE COURT: --- no attorneys, no investigators, no
15 police officers, no one; do you understand?

16 THE WITNESS: I understand.

17 THE COURT: Thank you very much. Have a good
18 night. We'll see you back in the morning at 9:15.

19 [Whereupon, the witness exits the witness stand]

20 [Whereupon, the jury trial adjourns at 4:48 p.m.]

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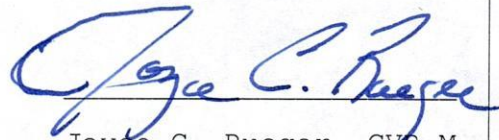
State v Byron Rivers
Certificate of the Court Reporter
June 11, 2019

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of General Sessions for Charleston County,
South Carolina on the 11th day of June, 2019.

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

September 21, 2019



Joyce C. Rueger, CVR-M

Court Reporter

STATE OF SOUTH CAROLINA.	)	COURT OF GENERAL SESSIONS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
State of South Carolina,	)	CASE NO.
	)	2017-GS-10-02104
PLAINTIFF,	)	2019-GS-10-01889 to 01891
	)	2019-GS-10-01893 to 01894
vs.	)	2017-GS-10-02106 to 108
	)	2019-GS-10-01899
	)	2019-GS-10-02143
Byron Labron Rivers,	)	
	)	TRANSCRIPT OF RECORD
DEFENDANT.	)	
	)	ORIGINAL
	)	
	)	

June 12-13, 2019

(June 10-11, 2019, separate transcript)

Charleston, South Carolina

B E F O R E:

The Honorable Jennifer McCoy, and a Jury.

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

Christopher Lietzow, Assistant Solicitor
David Osborne, Assistant Solicitor
For the State

Benjamin A. Mack, Esquire
Teresa L. Norris, Esquire
For the Defense

I N D E X - (Day Three and Four of Trial)

(SW) - DENOTES STATE'S WITNESS

(DW) - DENOTES DEFENSE WITNESS

WITNESSES(SW) Richey Fyall:

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Redirect Examination by Mr. Lietzow -- 20

(SW) Angelina Phillips:

Direct Examination by Mr. Osborne -- 22

Cross-Examination by Ms. Norris -- 34

Redirect Examination by Mr. Lietzow -- 35

(SW) Chad Smith:

Direct Examination by Mr. Lietzow -- 36

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(SW) Sara Goodman:

Direct Examination by Mr. Osborne -- 90

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If you need an additional copy of this transcript or a sealed transcript or if opposing counsel requires a copy of the transcript, you should contact the court reporter.

Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

NOTE: See Transcript for Day One and Day Two of Trial
For Exhibits Marked * and Admitted ** on Those Days

S T A T E ' S E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>ADMIT</u>
1 to 50	Photos	*	**
51 to 58	---	---	---
59 to 69	Photos	*	**
70 to 71	---	---	---
72	Photo	*	**
73	---	---	---
74 to 75	Photo	*	**
76 to 78	---	---	---
79 to 80	Photo	*	**
81 to 90	---	---	---
91 to 97	Photo	*	**
98	Photo	*	26
99	Photo	*	26
100	Photo	*	26
101	Photo	*	26
102	Photo	*	26
103	Photo	*	26
104	Photo	*	26
105-107	---	---	---
108	Shell Casing	*	87

<u>NO.</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>ADMIT</u>
109	Spent Projectile	*	**
110	Spent Projectile	*	**
111	Spent Projectile	*	**
112	Spent Projectile	*	**
113	Spent Casing	*	**
114	Spent Casing	*	**
115	Spent Casing	*	**
116	Spent Casing	*	**
117	Spent Casing	*	**
118	Projectile	*	**
119	Projectile	*	**
120	Bullet Fragments	*	**
121	Rivers' Pants	*	**
122	River's Worksheet	*	**
123	Hi-Point 9mm pistol	*	**
124	Swabs from gun	*	**
125	Rivers' Buccal Swab	*	**
126	Walther 40 Cal pistol	*	**
127	Swabs from glass window	*	---
128	Black Glove	*	**
129	Black Glove	*	**
130	Bag containing items from Stacy Green	*	--
130A	TWIC card	*	**

State vs. Byron Labron Rivers

<u>NO.</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>ADMIT</u>
130B	PayPal Card	*	**
131	Bag Containing Items	*	**
132	Theodore Fyall Wallet	*	**
133	---	---	---
134	Photo	*	**
135	Photo	*	**
136	Photo	*	**
137	CD	*	---
138	Dash Cam CD	*	**
139	Jail Call CD	*	**
140	CD	*	---
141	CD	*	---
142	Body Cam CD	*	**
143	CD	*	---
144	Body Cam	*	**
145	CD	*	---
146	Dash Cam	*	**
147	CD	*	---
148	Body Cam	*	**
149	---	---	---
150	CD	*	---
151	---	---	---
152	Sketch	*	**

<u>NO.</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>ADMIT</u>
153	---	---	---
154	Photo	*	**
155-188	Photo	*	44
189	GSR Report	*	---

D E F E N D A N T ' S E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>ADMIT</u>
1	Disk - CD	20	---
2	Photo	20	---
3	Unfired Bullets	88	---

C O U R T ' S E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>MARKED</u>
3	Jury Note	189
4	Jury Note	192
5	Charge Sent to Jury	193
6	Jury Note	193

1 (WHEREUPON, resume with day three of trial, 6/12/19, 9:21
2 a.m.)

3 THE COURT: Is the defense ready to proceed?

4 MR. MACK: I believe we have a couple of motions Teresa
5 will put on the record.

6 THE COURT: Okay.

7 MS. NORRIS: Your Honor, just -- just for clarification
8 purposes, we renew our objection to Your Honor's ruling
9 allowing the detective to testify to gunshot residue ---

10 THE COURT: The result that he received?

11 MS. NORRIS: --- to conclusions. I submit that number
12 one, he is not an expert in that and it is the very definition
13 of a violation of this young man's right to confront and
14 cross-examine witnesses.

15 It is a little different than Melendez-Diaz versus
16 Massachusetts. But that is the case where the Supreme Court
17 said you can't have a drug certificate from an analyst saying
18 it is drugs and present it through somebody else. We have got
19 a right to question and challenge that.

20 THE COURT: Okay. All right.

21 MS. NORRIS: So I renew the objection. I ask Your Honor
22 to strike it and to grant a mistrial because that is the kind
23 of thing that you can't unring that bell once it is ringing.

24 THE COURT: All right. What does the State -- how does
25 the State want to respond?

1 MR. LIETZOW: Your Honor, I think Ms. Norris even laid
2 the foundation with this -- with the witness that he was the
3 case agent, he was responsible for all of the information that
4 was going on.

5 So we didn't seek to enter any results into the gunshot
6 residue but merely as the case agent we asked him if he had
7 knowledge of what the results were. And he said, no. I
8 refreshed his recollection. And as the case agent I think the
9 record was clear that he had the knowledge and the information
10 or at least the expectation that he should have had it and
11 there was no trying to circumvent that report into evidence;
12 it was just merely to refresh his recollection.

13 As the case agent he should have known that, and I
14 refreshed his recollection; and he testified that there was no
15 gunshot residue on Stacy Green.

16 THE COURT: All right.

17 MS. NORRIS: The problem is, Judge, that I can't cross-
18 examine a man who didn't do the test about what the test is,
19 what it does, what it can show, what it can't show.

20 And I guarantee that if we put a gunshot residue expert
21 on that witness stand I can ask the question - if I stood here
22 right now and fired a weapon is it guaranteed I would have
23 gunshot residue on me - and the answer would be no.

24 This young man is entitled to question that evidence,
25 rather than just have someone who said he didn't even remember

1 read a report from somebody else doing a test saying yes there
2 is no gunshot residue on this man.

3 THE COURT: Okay.

4 MS. NORRIS: We just object. I think that took away this
5 young man's right to a fair trial, to confront and cross-
6 examine the witnesses. And if we don't fix it now, in my
7 experience, my opinion, this thing is going to come back at us
8 if he gets convicted.

9 THE COURT: Okay.

10 MR. LIETZOW: And, Your Honor, for the record, Ms. Norris
11 did open that door with that witness by asking him about that
12 gunshot residue. And I think that it would have been
13 prejudicial if the State having not been able to at least find
14 out if he had any information about that. And that was the
15 purpose of that line of questioning.

16 MS. NORRIS: I asked if a kit was done. I didn't ask him
17 what any kit showed. And as far as asking him about being a
18 case agent, I asked him about what was already in evidence,
19 was he aware that drugs were collected at that scene. It was
20 already in. I didn't offer any expert opinion about that.

21 THE COURT: Who is the State calling today after Mr.
22 Fyall is finished; you said you have three more witnesses?

23 MR. LIETZOW: We are calling the autopsy expert -- or the
24 autopsy doctor, the ballistics expert from SLED, the DNA
25 expert from SLED, and the necessary chain witnesses.

1 THE COURT: Well, I will take a minute and look at it.
2 We will be at ease for about 10 minutes. I will take a minute
3 to look at those a little closer.

4 Any cases anybody wants to point to me specifically they
5 are relying on to support their positions you can direct me
6 to?

7 DEFENDANT ATTY: Melendez-Diaz versus Massachusetts. I
8 have a copy of it ---

9 THE COURT: Well, yeah, hand it on up.

10 MS. NORRIS: --- if you prefer paper.

11 THE COURT: I will be glad to take a look at.

12 MS. NORRIS: May I approach?

13 THE COURT: Sure.

14 (WHEREUPON, document presented to the court.)

15 (WHEREUPON, break 6/12/19, 9:32 a.m.)

16 (WHEREUPON, resume 6/12/19, 9:40 a.m.)

17 THE COURT: I have taken an opportunity to review the
18 case law the defense handed me as well as my recollection of
19 the testimony that was presented on direct, cross, redirect.
20 I am standing by my ruling yesterday. I find the door was
21 opened by Ms. Norris as to the GSR results. The solicitor
22 then on redirect then merely used the document to refresh the
23 lead investigator's memory as to whether or not in fact these
24 results were obtained. And then he testified they were and
25 they were negative.

1 So I don't find an issue with how that transpired. I do
2 find that the door was opened by defense counsel on cross-
3 examination, so I stand by my ruling. But your objection is
4 more than covered for the record, Ms. Norris.

5 MS. NORRIS: Thank you, Your Honor.

6 THE COURT: Yes, ma'am. And I appreciate you bringing
7 that back up. Was there another issue we needed to take up
8 this morning before the jury comes in?

9 And I will say for the record I find the difference
10 between the Melendez-Diaz case -- and there is another case
11 that came actually a couple of years after that that discusses
12 the same issue. In both of those cases it was a little bit
13 different because there was -- this was all results that were
14 discussed during the direct examination of a case agent.

15 Again, I think what differentiates our situation is that
16 it was brought up on cross and so the door was opened. So
17 that is my position. So anything else before the jury comes
18 back in?

19 MS. NORRIS: The only other issue is basically the same
20 argument with Your Honor allowing the detective to testify
21 about the SIM card. Again, I don't think he is an expert for
22 that. We couldn't confirm.

23 THE COURT: Okay. And, again, that objection is
24 preserved for the record, renewed; and I rely on my previous
25 ruling from yesterday on the issue. Okay.

1 With that is the witness ready?

2 MR. LIETZOW: She is -- or he is, Your Honor.

3 THE COURT: He is. All right. Okay. All right. We can
4 bring him back to the witness stand please. And we can have
5 the jury come in this morning. Thank you.

6 (WHEREUPON, pause awaiting jury.)

7 THE COURT: Y'all can be seated while they sort through
8 their notebooks. Thank you very much.

9 (WHEREUPON, jurors enter 6/12/19, 9:42 a.m.)

10 THE BAILIFF: All jurors are present, Your Honor.

11 THE COURT: Thank you, so much. We are ready to proceed.

12 Mr. Mack, I believe you were cross-examining this
13 witness. You can resume.

14 **RESUME CROSS-EXAMINATION BY MR. MACK OF RICKEY FYALL:**

15 Q. Mr. Fyall, good to see you again. Now let's refresh the
16 jury's memory here. Yesterday you testified that you were on
17 the scene on July 5th, twenty -- sorry, July 15th, 2016;
18 correct?

19 A. Correct.

20 Q. At [REDACTED] Street, correct?

21 A. Correct.

22 Q. And you testified that an individual handed you a bag,
23 correct?

24 A. Correct.

25 Q. And that bag contained a 9 mm handgun or a handgun?

1 A. Correct.

2 Q. And you said Nashishi Walker was there when that bag was
3 handed to you?

4 A. I don't remember.

5 Q. You don't remember what you said yesterday?

6 A. All I know is somebody handed me the bag.

7 Q. You didn't say yesterday that Nashishi Walker handed you
8 the bag and that she is a crack head?

9 A. I said that, but I don't even remember who handed me the
10 bag.

11 Q. You watched the body cam video yesterday of Detective
12 Bailey accepting the bag from you at the MUSC parking lot,
13 correct?

14 A. Correct.

15 Q. The jury left the room and we played it on that video
16 screen, right?

17 A. Right.

18 Q. In front of the judge, in front of the prosecutor, and in
19 front of Detective Bailey; right?

20 A. Right.

21 Q. You watched that video?

22 A. Right.

23 Q. And in that video did you say that two guys handed you
24 the bag?

25 A. If that's what it says in the video.

1 Q. In that video when prompted by Detective Bailey about
2 whether a female handed you the bag did you say that one guy
3 handed you the bag?

4 A. I think that is what it -- what I said. I don't
5 remember. But ---

6 Q. You don't ---

7 A. Whatever the video said.

8 Q. I'm asking you now, did you say that in the video?

9 A. Yeah.

10 Q. You did? There was no mention of Nashishi Walker in that
11 video, correct?

12 A. Correct.

13 Q. There was no mention of any female in that video?

14 A. I said females were around.

15 Q. You said females were around?

16 A. Two females were around.

17 Q. But you didn't identify them, correct?

18 A. Correct.

19 Q. You have no idea who those females were in that video?

20 A. No.

21 Q. Mr. Fyall, you told police what you found at the crime
22 scene at the hospital the next day; right?

23 A. No, I -- I told them somebody handed me the bag and I
24 gave them the bag. That is what I told them.

25 Q. And you arranged to meet Detective Bailey the next day,

1 correct?

2 A. Correct.

3 Q. And you told him that some people went through the bag to
4 collect their belongings, correct?

5 A. I tell them that -- I gave -- I didn't say nobody went
6 through the bag.

7 Q. You didn't say that?

8 A. No, I didn't say that.

9 Q. You watched the video yesterday, correct?

10 A. Correct.

11 Q. And in that video did you tell Detective Bailey that you
12 let people go through the bag?

13 A. I didn't say I let people go through the bag.

14 Q. Did you say you let a person go through the bag?

15 A. No, I gave somebody something out of the bag.

16 Q. That is what you said in the video yesterday that you
17 watched?

18 A. I said I gave somebody something out of the bag.

19 Q. Are you certain of that?

20 A. That is what I said.

21 Q. Do you need to watch it again? I brought an extra
22 computer in the courtroom today with a set of headphones. And
23 we can watch it in front of the jury if you would like.

24 A. Well, go ahead. Put it up.

25 Q. Do you want to do that?

1 A. Yeah, let's do that.

2 Q. Okay.

3 MR. LIETZOW: Your Honor, may we approach?

4 THE COURT: Yes.

5 (WHEREUPON, bench conference.)

6 Q. The video is only like a minute and 30 seconds right, Mr.
7 Fyall?

8 A. I don't know. Come again?

9 Q. The video is only like a minute and 30 seconds, right?

10 A. I don't know how much time it is.

11 Q. Okay. I am going to push play now. Can you hear it all
12 right?

13 A. (Shrugs).

14 Q. Is that a yes?

15 A. I can't hear anything.

16 Q. You can't hear anything. Can you hear it now?

17 A. Yes.

18 Q. Okay.

19 (WHEREUPON, audio played for witness only.)

20 THE COURT: Mr. Mack, while he is listening to that, has
21 that been marked yet as a Court's Exhibit or an ID only
22 exhibit at this point?

23 MR. MACK: No, ma'am.

24 THE COURT: We need to make sure we do that before ---

25 MR. MACK: Yes, thank you for the reminder.

1 THE COURT: Okay.

2 (WHEREUPON, witness continues to listen to video.)

3 Q. Did you listen to the whole thing, Mr. Fyall?

4 A. Yes.

5 Q. Okay. And at the beginning of that video, Mr. Fyall, did
6 you say when I came up he got his keys out of there?

7 A. No -- no, that is not what I said.

8 Q. You didn't say that?

9 A. No, I didn't say that.

10 Q. If I give you a transcript of the video would that help
11 you remember your memory? You have got ---

12 MR. LIETZOW: Objection, Your Honor.

13 A. No. That is not what I said.

14 MR. LIETZOW: I think that is all ---

15 A. I told him like keys -- keys ---

16 MR. LIETZOW: Objection.

17 THE COURT: Hold on. Wait a minute, Mr. Fyall.

18 A. That is what I said.

19 THE COURT: I'm sorry. We have got somebody else trying
20 to talk at the same time.

21 MR. LIETZOW: I think asked and answered at this point.

22 THE COURT: Well, he is asking -- he asked him a
23 question, and then he is trying to explain his answer. Let's
24 let him answer the question and then we will move on.

25 Go ahead, Mr. Fyall. You can continue to -- finish.

- 1 A. What I said was that I gave him the keys out of the bag.
2 And he said did you give anything else. And I said no.
- 3 Q. So you gave somebody the keys out of the bag?
- 4 A. Yes.
- 5 Q. You didn't say: When I came up he got his keys out of
6 there?
- 7 A. No.
- 8 Q. Okay. Mr. Fyall, is that Leutonia Traxel (displaying
9 photo)?
- 10 A. Say that again now.
- 11 Q. Is that Leutonia Traxel?
- 12 A. I don't know her name.
- 13 Q. You don't know her name -- do you recognize that person?
- 14 A. I have seen her.
- 15 Q. Is that the person who handed you the bag?
- 16 A. I can't remember.
- 17 Q. Mr. Fyall, you know you are under oath today; right?
- 18 A. I understand.
- 19 Q. And your testimony is that you don't remember who handed
20 you the bag?
- 21 A. Nope, I don't.
- 22 Q. You said a woman, but you don't remember her face?
- 23 A. I said I don't remember.
- 24 Q. And you can't definitively say it was not that person?
- 25 A. I don't remember.

1 THE COURT: Mr. Mack, you need to mark that as an
2 exhibit. Thanks.

3 MS. NORRIS: No further questions, Judge.

4 THE COURT: Okay. Can we mark that ---

5 MR. MACK: Yes.

6 THE COURT: --- for ---

7 MS. NORRIS: I will give you the CD.

8 THE COURT: --- for ID only and the CD?

9 MS. NORRIS: Yes.

10 THE COURT: So the CD will be Defense 1 for ID only, and
11 the picture will be Defense 2 for ID only. Okay.

12 MR. MACK: Correct.

13 THE COURT: Thank you very much.

14 MR. MACK: Thank you.

15 THE COURT: Okay. All right.

16 (WHEREUPON, Defendant Exhibit Number 1, CD, was marked for
17 identification.)

18 (WHEREUPON, Defendant Exhibit Number 2, Photo, was marked for
19 identification.)

20 THE COURT: Any redirect of this witness?

21 PLAINTIFF ATTY: Just briefly, Your Honor.

22 THE COURT: Okay.

23 (WHEREUPON, exhibits retrieved.)

24 THE COURT: Go ahead.

25 **REDIRECT EXAMINATION BY MR. LIETZOW OF RICKEY FYALL:**

1 Q. Mr. Fyall, Good morning.

2 A. Good morning.

3 Q. You just had a chance to watch that video for the second
4 time now, right?

5 A. Yeah.

6 Q. And why did you tell Detective Bailey you gave him the
7 bag?

8 A. Because I thought that was the right thing to do.

9 MR. LIETZOW: Nothing further. Thank you, Your Honor.

10 THE COURT: Okay. Any recross?

11 MR. MACK: No, Judge.

12 THE COURT: All right. Mr. Fyall, you can step down from
13 the witness stand at this point in time, sir.

14 The State may call its next witness.

15 MR. OSBORNE: The State calls Dr. Angelina Phillips.

16 THE COURT: All right.

17 MR. LIETZOW: Your Honor, may this witness be released
18 from his subpoena? I apologize if you have already said.

19 THE COURT: Sure. No, I did not. Thank you. Wait a
20 minute, Mr. Fyall. Any objection to Mr. Rickey Fyall being
21 released from his subpoena?

22 MR. MACK: No objection.

23 THE COURT: All right. You are free to leave, sir.

24 Thank you very much.

25 (WHEREUPON, the witness was duly sworn.)

1 THE CLERK: State your full name for the record, spelling
2 your last name.

3 THE WITNESS: Angelina Phillips. P-H-I-L-L-I-P-S.

4 **DIRECT EXAMINATION BY MR. OSBORNE OF ANGELINA PHILLIPS:**

5 Q. Good morning, Dr. Phillips.

6 A. Good morning.

7 Q. Thanks for coming in. I know you have got a busy day
8 ahead of you.

9 A. I do.

10 Q. All right. So let's start off by telling the jury what
11 is your occupation.

12 A. I am a forensic pathologist.

13 Q. And how long have you been a forensic pathologist?

14 A. Four years.

15 Q. Are you a licensed physician in this state?

16 A. Yes.

17 Q. And how long have you been practicing medicine?

18 A. That would be eight years.

19 Q. And so just -- I guess describe to the jury what exactly
20 does it mean to be a forensic pathologist.

21 A. Forensic pathologist is someone who performs autopsy
22 looking for the cause and manner of death. It is part of the
23 specialty of pathology which is laboratory medicine. We do
24 clinical specimens. So things that are -- blood tests. And
25 we do anatomic pathology which are specimens that come from

1 surgeries. So if you have anything removed from surgery we
2 will look at that. And in anatomic pathology is where autopsy
3 pathology falls. And that includes medical, coming through
4 the hospital natural and forensic which may be referred to us
5 from coroners in the state.

6 Q. Okay. And now you mentioned that part of your duties is
7 to perform autopsies?

8 A. Yes.

9 Q. And how many autopsies do you estimate that you have
10 performed in your career?

11 A. Approximately 1,000.

12 Q. And are you board certified in the area of forensic
13 pathology?

14 A. Yes.

15 Q. What are some of the requirements for certification in
16 forensic pathology?

17 A. To be certified in forensic pathology one needs to
18 complete a four-year training in anatomic and clinical
19 pathology, perform a certain number of autopsies, then perform
20 another set of autopsies for forensic pathology training which
21 is a year, take a specialty examination.

22 Q. Okay. And have you ever testified in criminal trials
23 before?

24 A. Yes.

25 Q. Have you ever been qualified as an expert in the field of

1 forensic pathology?

2 A. Yes.

3 Q. How many times about?

4 A. Approximately 10 to 15.

5 Q. In what courts?

6 A. That would be Charleston, Beaufort, Berkeley, Jasper,
7 Florence, and Marion counties.

8 Q. Okay.

9 MR. OSBORNE: Your Honor, at this time the State offers
10 Dr. Phillips as an expert in the field of forensic pathology.

11 THE COURT: Any objection or additional voir dire for the
12 witness?

13 MS. NORRIS: No, objection. No questions.

14 THE COURT: All right. Ladies and gentlemen, once again
15 there is -- normally a person cannot give opinion testimony
16 from that witness stand. However, there is an exception when
17 someone is qualified due to education or experience in a
18 certain area then the court may allow them to.

19 This witness will be qualified in the area of forensic
20 pathology to give opinion testimony in that area. Now that
21 does not mean you must accept the opinion, but it is evidence
22 for you to use in any way that you see fit.

23 Please proceed.

24 MR. OSBORNE: Thank you, Your Honor.

25 Q. Okay. Dr. Phillips, did you have the occasion to perform

1 an autopsy on Mr. Kirby Fyall?

2 A. I did.

3 Q. And what day did you perform that autopsy?

4 A. That would be 7/16/2016.

5 Q. All right. And what was his age when he passed away?

6 A. Thirty-eight.

7 Q. His height and weight?

8 A. He was sixty-nine-and-a-half inches. That is 5'9", 9
9 1/2. And 174 pounds.

10 Q. Okay. Before we start getting into the injuries and the
11 manner and cause of Mr. Fyall's death, was a toxicology done
12 with his blood?

13 A. Yes.

14 Q. And what were the results of that toxicology?

15 A. Let me refer to my report. So we submitted peripheral
16 blood and urine. A urine screen was presumptively positive
17 for cannabinoids which is a marijuana product. And his
18 peripheral blood was positive for Delta 9-THC 11-hydroxy,
19 Delta 9-THC, and Delta 9-Carboxy THC which is marijuana and
20 marijuana derivatives.

21 Q. Okay.

22 MR. OSBORNE: Your Honor, may I approach the witness?

23 THE COURT: Yes.

24 Q. I am showing you State's 98 through 104. Can you take a
25 look at those photographs and tell me if you've recognize

1 them?

2 A. Yes, these are photographs taken at the time of autopsy.

3 Q. Okay. Did it fairly and accurately depict some of the
4 injuries and some of the items that were collected during the
5 time of the autopsy?

6 A. Yes.

7 Q. And would referencing those photographs assist you in
8 your testimony in describing to the jury what happened to Mr.
9 Fyall?

10 A. Yes.

11 MR. OSBORNE: All right. Your Honor, at this time we
12 seek to admit State's 98 through 105 I believe.

13 MR. LIETZOW: One-oh-four.

14 MR. OSBORNE: One-oh-four.

15 THE COURT: Any objection to 98 through 104?

16 MS. NORRIS: Ninety-eight through one-oh-one we object
17 to, as discussed previously. The others we do not object.

18 THE COURT: Okay. I will allow 98 through 104 in. I
19 have reviewed them. Subject to Rule 403 I find them
20 admissible. Go ahead. Over defense objection they will be
21 admitted.

22 (WHEREUPON, State's 98 to 104 admitted into evidence.)

23 Q. All right. Now Doctor, if you would -- well, I will tell
24 you what we will do. It will probably be easiest if you just
25 go ahead and go to the injuries Mr. Fyall received and then I

1 will show the jury the photographs that correspond to those.

2 A. Okay. So Mr. Fyall had four gunshot wounds. One of
3 those was to the neck, one to the chest, and two to the back.
4 The first gunshot wound designated A is to the left side of
5 his neck. That gunshot wound disrupts the skin, subcutaneous
6 tissue of the neck. It exits, reenters, and then exits the
7 scan again creating a grazed gunshot wound on the neck.

8 The next gunshot wound ---

9 Q. If we could just stop right there. And I will show
10 you -- I am sorry to interrupt. State's 98. And just for
11 clarification purposes these letters I know they go A, B, C,
12 D. Do they -- they don't necessarily represent the sequence
13 of the gunshots?

14 A. No, they do not.

15 Q. Okay. So you just have to label them some way?

16 A. Yes, it is a designation for me to help keep them in
17 order.

18 Q. Okay. So is this what you were referring to, in out, in
19 out (pointing)?

20 A. Yes. So it enters at the top wound and exits, re-enters,
21 and then exits again on the bottom-most wound.

22 Q. All right. Would you mind -- that is a touch screen in
23 front of you so we can all see what you are referring to.
24 What is the entrance wound?

25 A. That would be that one (pointing) which I have drawn

1 over. And so it goes under the skin in this direction
2 (pointing), exits, then enters here (pointing) again under the
3 skin, exits.

4 Q. Okay. And so that -- that bullet is not recovered?

5 A. No.

6 Q. And it -- so it was still very much live and had velocity
7 behind it to get out of the body?

8 A. Correct.

9 Q. And I guess what we are looking at here is a pretty steep
10 angle?

11 A. Yes.

12 Q. Okay. And you can actually clear that by hitting that
13 triangle.

14 MS. NORRIS: Objection to leading.

15 THE COURT: Try not to lead.

16 Q. All right. Which one are you going to go to next, B?

17 A. The gunshot wound to the chest, B.

18 Q. All right. I am showing you State's 99.

19 A. So this is a gunshot wound to the left side of the chest.
20 This one is going through disrupting the skin and subcutaneous
21 tissue of the chest. And internally the left hemi diaphragm
22 to the left side of the diaphragm, the left lung, para cardial
23 sac which is a sac around the heart, the epicardium which is
24 the surface of the heart on the left side. And then the
25 aorta, major vessel coming off of the heart with all of the

1 blood. Thoracic vertebra T-5 which is one of the vertebra in
2 the back of the chest cavity. The soft tissue on the right
3 side of the back. And with that there was approximately 800
4 ML's of blood in the left plural cavity around the lung.

5 Q. And just to put that into perspective, how much blood; is
6 that a significant amount of blood?

7 A. A liter is 1,000 ML's. So it is just 200 short of a
8 liter of blood.

9 Q. Okay. Was this a fatal shot?

10 A. Yes.

11 Q. Can you in your expert opinion estimate about how long
12 Mr. Fyall had to live after -- or would have lived after
13 receiving this shot?

14 A. Seconds to minutes.

15 Q. Okay. Now I am showing you what has already been marked
16 and admitted as State's 118. And this is labeled as Bullet
17 Number 1. Does that correspond to that bullet, or was this an
18 exit?

19 A. That bullet -- actually Bullet Number 2 is the one that
20 corresponds to Gunshot Wound B.

21 Q. Okay. And that would be 119?

22 A. Yes. Yes.

23 Q. Are you familiar with hollow point bullets at all?

24 A. I am not an expert on ammunition.

25 Q. All right. So B did not exit, and this was in his front?

1 A. Correct.

2 Q. Okay.

3 A. But -- sorry.

4 Q. No, go ---

5 A. B -- the Bullet Number 2 was from the back.

6 Q. Oh, okay.

7 A. Recovered from the back.

8 Q. And so that's Bullet Number 118?

9 A. Bullet Number 1 is recovered from the anterior shoulder
10 region.

11 Q. Okay. This would have been fragments?

12 A. Fragments are with -- associated with Gunshot Wound's D
13 to the back.

14 Q. D to the back. Okay. Well, then we will go on to with
15 that.

16 A. Okay. So this gunshot wound B is what we just described
17 to the chest, corresponding with the Bullet Number 2 which was
18 recovered from the back.

19 Q. All right. Are we moving on to C now?

20 A. Next would be D.

21 Q. Okay.

22 A. Which is the back. On the left side of the back. And
23 that gunshot wound is going through disrupting the skin and
24 subcutaneous tissue of the back; thoracic vertebra three,
25 which is two above the fifth one that -- the previous gunshot

1 wound disrupted; upper lobe of the right lung; the right
2 intercostal space, the space between the ribs on the third one
3 down; and then exiting the subcutaneous tissue of the chest.
4 With that there is some -- a few fragments of projectile that
5 we recovered along the bullet track.

6 Q. Okay. And then that corresponds ---

7 A. And it exits at C. I'm sorry.

8 Q. Okay. And so bullet fragments. And that would be
9 State's. 120?

10 A. Yes.

11 Q. Do you have any indication as to the trajectory of this
12 gunshot (pointing)?

13 A. This gunshot wound was going from back to front and to
14 the right and downward.

15 Q. Okay. And I didn't ask that about the shot to the chest.
16 What about the trajectory of that shot?

17 A. That one is also -- that is going front to back, left to
18 right, and upward.

19 Q. So the shot in the chest is going up, but the shot in the
20 neck and the back that we have talked about both sides -- or
21 so far have both been headed down?

22 A. Yes.

23 Q. Okay. And I see we have another wound here (pointing)?

24 A. The last gunshot to the back designated E is to the right
25 side of the back. That one is going through disrupting the

- 1 skin, subcutaneous tissue of the back, the right fifth ribs
2 and intercostal space posteriorly, and then the right third
3 intercostal space and pectoralis muscle - that is the muscle
4 of the chest - before coming to rest. And we recovered
5 projectile designated number one.
- 6 Q. Okay. And number one is State's 118; is that correct?
- 7 A. Yes.
- 8 Q. And again trajectory on that would have been going up or
9 down?
- 10 A. That one is going upward I believe. Back to front. And
11 I say slightly to the right. So I don't give an up or down.
- 12 Q. Okay. So it could have been straight on?
- 13 A. Yes.
- 14 Q. All right. And just to go back and clarify. So we have
15 got four gunshot wounds; gunshot wound labeled Number B ---
- 16 A. Yes.
- 17 Q. And that one is going slightly up?
- 18 A. Yes.
- 19 Q. A going down at a steep angle?
- 20 A. Correct.
- 21 Q. And then C again where was C, State's 100?
- 22 A. C was an exit wound for the gunshot wound to the back, D.
- 23 Q. I see. And that is 101?
- 24 A. Yes.
- 25 Q. Okay. Now I am going to show you State's -- and inside

1 of State's 118 and 119 it looks like y'all took individual
2 photographs of?

3 A. Correct.

4 Q. And this is 102, so this is the bullet from the right
5 chest?

6 A. Yes.

7 Q. 103, ---

8 A. Yes.

9 Q. --- in the right back?

10 A. Correct.

11 Q. And 104?

12 A. Yes.

13 Q. And these are the fragments that you mentioned?

14 A. Yes.

15 Q. So overall shot three to four times?

16 A. Four times.

17 Q. Before I ask you the last question, we talked about this
18 shot being such a steep angle?

19 A. Yes.

20 Q. Would this shot be consistent with the gun being placed
21 on the ground shooting up if he was standing?

22 A. If he were standing and the gunshot was coming upward,
23 no.

24 Q. Why do you say that?

25 A. The trajectory is going down. And if he was standing --

1 the gun would have to be above him. And if he was -- we
2 document them in a standing position, kind of like upright and
3 facing this way (motioning). So all of our trajectories are
4 not taken into account movement of the body.

5 Q. Would this be consistent with Mr. Fyall on his knees?

6 A. It is possible, yes.

7 Q. In your expert opinion, Dr. Fyall (sic), what is the
8 manner and cause from -- Dr. Phillips, Mr. Fyall's manner and
9 cause of death?

10 A. His cause of death is gunshot wounds to the neck and
11 torso. And manner is homicide.

12 Q. Okay.

13 MR. OSBORNE: No further questions.

14 THE COURT: Cross-examination.

15 **CROSS-EXAMINATION BY MS. NORRIS OF ANGELINA PHILLIPS:**

16 Q. Dr. Phillips, let me show you again State's 98. And when
17 we are looking at that wound I believe you testified that you
18 are not accounting for the position of the body, right?

19 A. Correct.

20 Q. So if I were to lean -- leaned over this way (motioning)
21 and shot in the neck I could get that same angle, correct?

22 A. That is correct.

23 Q. So all of this stuff about where the gun was, etc., etc.,
24 is just pure conjecture; it depends on a lot of factors?

25 A. That is correct.

1 Q. All right. Thank you, ma'am.

2 MS. NORRIS: I don't have anything further.

3 THE COURT: All right.

4 THE COURT: Any redirect?

5 MR. OSBORNE: One quick question.

6 **REDIRECT EXAMINATION BY MR. OSBORNE OF ANGELINA PHILLIPS:**

7 Q. Leaning over like that (motioning), so if he were leaning
8 and charging an individual it could be consistent with that as
9 well?

10 A. It is possible.

11 Q. Okay.

12 MR. OSBORNE: No further questions.

13 MS. NORRIS: Nothing further, Your Honor.

14 THE COURT: All right. You can step down. Thank you
15 very much. Any objection to this witness being released?
16 From the State?

17 MR. OSBORNE: None, Your Honor.

18 MS. NORRIS: None.

19 THE COURT: Thank you very much. You are free to leave.
20 Thank you, ma'am.

21 THE WITNESS: Thank you.

22 THE COURT: The State may call its next witness.

23 MR. LIETZOW: The State calls Chad Smith.

24 (WHEREUPON, the witness was duly sworn.)

25 THE CLERK: State your full name for the record, spelling

1 your last name.

2 THE WITNESS: My name is Chad Smith. S-M-I-T-H.

3 **DIRECT EXAMINATION BY MR. LIETZOW OF CHAD SMITH:**

4 Q. Mr. Smith, where do you work at?

5 A. I am employed with the South Carolina Law Enforcement
6 Division which is commonly known as SLED. Specifically I work
7 at SLED's forensic services laboratory in Columbia.

8 Q. What is SLED?

9 A. It is an agency, assisting agency, law enforcement
10 agency, which assists other agencies throughout the state in
11 services and in manpower.

12 Q. And what is your title there?

13 A. I am a forensic scientist in the firearms department at
14 the laboratory.

15 Q. And what are some of your duties as a forensic scientist?

16 A. My main responsibilities are examination of firearms,
17 ammunition, ammunition components. I also do tool mark
18 examinations such as examination of marks created by prybar's,
19 wrenches, things like that.

20 I also do serial number restoration, firearms that have
21 obliterated serial numbers. And we also do distance
22 determination for shotgun pellets, target to muzzle distance
23 information.

24 Q. What kind of educational background do you have for that?

25 A. I attended Clemson University. I received a bachelor of

1 science degree in biological sciences. And then I came on
2 board with SLED.

3 I entered the training program in the firearm's
4 department to become a firearm and toolmark examiner. This
5 training program lasts between three to five years. It is
6 supervised by the court qualified examiners of the firearm's
7 department. It involves extensive reading and studying.
8 There are multiple examinations and tests given during that
9 time. I also attended various classes and seminars. Later in
10 my training I helped the other examiners prepare their
11 casework.

12 And at the end of the training period I received a
13 comprehensible, multi-part examination which I successfully
14 completed. And then I began to receive my own casework.

15 Q. Have you toured any firearms manufacturing facilities as
16 part of your training?

17 A. Yes, I have, a number of firearm manufacturing facilities
18 throughout the country.

19 Q. Have you ever been qualified as an expert before in
20 firearms and ballistics identification in court?

21 A. Yes, I have.

22 Q. How many times approximately?

23 A. Over 60.

24 Q. What courtrooms have you been qualified as an expert in?

25 A. General Sessions mostly. I have also been ---

1 Q. What is General Sessions?

2 A. What is General Sessions?

3 Q. Uh-huh.

4 A. Such as this, a criminal court. As well as I did a
5 coroner's inquest earlier on.

6 Q. And approximately how many times have you analyzed spent
7 shell casings and spent bullets to determine whether they were
8 fired by a particularly known gun?

9 A. In my career I had done hundreds of cases which would
10 involve probably thousands of examinations looking at
11 cartridge cases and bullets.

12 MR. LIETZOW: Your Honor, at this time I would move to
13 qualify Chad Smith as a ballistics and firearm expert.

14 MS. NORRIS: No objection.

15 THE COURT: All right. Without objection. Ladies and
16 gentlemen, this witness will be qualified in the area of
17 firearms and ballistics to give opinion testimony in that
18 area. Once again that doesn't mean you must accept his
19 opinion. It is just information for you to use in any way
20 that you see fit.

21 Yes, sir, go ahead.

22 MR. LIETZOW: Thank you.

23 Q. Can you explain to the jury the components of a bullet?

24 A. Well, bullet is actual -- the projectile. A lot of
25 people call what is known as a cartridge a bullet, but

1 technically that is incorrect.

2 A unit of ammunition is called a cartridge. So you have
3 a cartridge which is made up of several components. You have
4 a cartridge case which a lot of people just call -- say a
5 spent casing. But that is the actual container from the other
6 components.

7 So the cartridge case holds inside the gun powder. And
8 then at the -- residing at the top or the mouth of that
9 cartridge case is the actual bullet or projectile.

10 So the projectile, the bullet, that is the part that goes
11 down the barrel towards the target. Whereas the cartridge
12 case is what is spent or left over after firing.

13 At the rear of the cartridge case you have what is called
14 a primer. And that component is struck by the firing pin of
15 the firearm which basically ignites the gunpowder and the
16 volume of gas that is created from that ignition causes the
17 bullet to travel down the barrel.

18 Q. And what are the two common types of pistols that are
19 available?

20 A. Handgun would be a more correct term. Two types of
21 handguns, you have got a semi-automatic pistol and then you
22 also have revolvers which are very common.

23 A semi-automatic pistol is designed -- use a -- it is
24 called a detachable box magazine. The magazine holds the
25 cartridges for the gun. And so every time you fire the gun,

1 one shot is fired; and then another cartridge is loaded from
2 the magazine into the chamber and ready to fire again. And
3 the cycle repeats every time you fire the weapon.

4 A revolver uses it is called a cylinder. So if you have
5 ever seen any of the old West movies or Western movies a
6 revolver is typically what they use. And a revolver it does
7 that, it just spins around a central access and then has
8 chambered -- basically holes through the cylinder which hold
9 the cartridges. So everything is contained right there
10 instead of using the magazine.

11 Q. And where do the shell casings go after the bullet comes
12 flying out of the shell casings in both revolvers and semi-
13 automatics?

14 A. The semi-automatics if it is working properly you would
15 have the cartridge case which is extracted out of the chamber
16 and ejected out of the gun and then it is just wherever it
17 ends up.

18 A revolver you would have to manually eject, extract
19 those cartridge cases out of the gun.

20 Q. And if there are shell casings littered around the crime
21 scene what does that typically mean to you?

22 A. It could mean several things. Basically it just means
23 that's how many cartridges probably fired. But you would have
24 to manually reload a revolver. Whereas during firing a semi-
25 automatic pistol all of that would happen automatically so you

1 would have cartridge cases littered about or wherever they end
2 up.

3 Q. So if a semi-automatic was used you would expect to have
4 cartridges littered around?

5 A. Correct.

6 Q. Okay. Do shell casings become deformed when they are
7 ejected from a semi-automatic handgun ---

8 A. They can ---

9 Q. --- after -- after they are fired do they become deformed
10 when they get ejected out of the weapon?

11 A. Once it leaves the weapon they could become deformed.
12 But that is usually caused by somebody stepping on them or a
13 vehicle or something like that.

14 Basically once it leaves the weapon wherever it ends up,
15 you know, it just depends on what kind of surface, if it is
16 going to bounce off of things or if it is going to roll. But,
17 you know, if it is a high-traffic area or there are other
18 individuals around or vehicles than that certainly could
19 damage a cartridge case.

20 Q. And do fired bullets become deformed when they are fired
21 out of a gun?

22 A. Depending on what a bullet would hit they could become
23 deformed or damaged. If it hits something hard, depending on,
24 you know, what that surface is made of, it can shatter, become
25 fragmented or certainly deformed. It just all depends on what

1 the surface of what the bullet hits.

2 Q. How do you go about determining whether a specific gun
3 fired a spent projectile or a fired bullet?

4 A. What we do is we have a gun to test with to compare to
5 fired cartridge cases and bullets submitted for evidence. We
6 would have to test fire that firearm and compare the known
7 test fires with the submitted evidence and look for the
8 markings that are created by the firearms during firing to see
9 if those markings would match basically to try to determine if
10 it is identification or not.

11 How we test fire our guns in our laboratories is we have
12 a water tank. It is a vertical water tank that we shoot into,
13 and the bullets travel into the water. The water stops the
14 movement of the bullets. And it doesn't add or take away any
15 of the markings that we would be looking for in our
16 examinations.

17 And then we can collect our cartridge cases. We have a
18 container that the cartridge cases if it is a semi-automatic
19 pistol would land into. So we would have our known test
20 specimens then.

21 And how we do our comparisons is called a comparison
22 microscope. And that is basically two microscopes that's
23 connected by an optical bridge system that we can look into
24 and we can compare two samples simultaneously via bullets to
25 bullets or cartridge cases to cartridge cases and look for

1 those microscopic markings that are created by the firearm to
2 determine if they match or not.

3 Q. Is that process the same for determining whether a gun
4 fired shell casings?

5 A. Correct.

6 Q. Okay. Are these tests and methods that you use the
7 standard tests and methods that experts across your industry
8 use?

9 A. Yes, these are standard across the field of firearm and
10 toolmark analysis.

11 Q. Mr. Smith, I'm going to show you State's Exhibit for ID
12 purposes only 155 through 183. Take a look at those. Just
13 flip through them and tell me whether you recognize those
14 photos.

15 (WHEREUPON, pause for witness review of photographs.)

16 A. Yes, I recognize these photographs.

17 Q. Did you take those photos?

18 A. I did. These are photographs from -- that I took during
19 the examination process and then which were included into my
20 case file.

21 Q. Okay.

22 MR. LIETZOW: Your Honor, at this point I would move to
23 enter those State's Exhibits 155 through 183 into evidence.

24 MS. NORRIS: No objection.

25 THE COURT: Without objection 155 through 183 are

1 admitted. Thank you.

2 THE WITNESS: Thank you.

3 (WHEREUPON, State's Exhibit Number 155 through 183 admitted
4 into evidence.)

5 Q. All right. I am now showing you what has already been
6 moved into evidence State's Exhibit 108 through 119. If you
7 don't mind taking a look at these and telling me whether you
8 recognize those items and others the items actually sent to
9 SLED for you to test?

10 THE COURT REPORTER: And I am sorry, excuse me, 108 I do
11 not have as admitted. I have 109.

12 MR. LIETZOW: Okay. 108 is the bag that all of those
13 items came in. So for the purposes of the record 109 through
14 119.

15 MS. NORRIS: No objection to 108.

16 THE COURT: No objection to 108. Do you want to admit
17 that -- do you wish to move 108 in as well, Mr. Lietzow?

18 MR. LIETZOW: Please, just for sake of the record.

19 THE COURT: Okay. One-oh-eight will be moved in without
20 objection as well.

21 (WHEREUPON, State's Exhibit Number 108 admitted into
22 evidence.)

23 (WHEREUPON, pause for witness to review items.)

24 A. Yes, these are items I received for examination. I do
25 recognize them. They are in the packaging that I submitted

1 back to the agency.

2 Q. And I am showing you State's Exhibits 123 and 126. Both
3 of these items are already into evidence. Are those the
4 two -- the two handguns that you received in connection to
5 this case?

6 A. Ladies and gentlemen, these firearms are safe to handle.
7 They have zip ties going through them. And I checked to make
8 sure that they are unloaded. So they are safe to handle.

9 (WHEREUPON, pause for witness to review exhibit.)

10 A. Yes, these are the two pistols I received for
11 examination.

12 Q. And who did you receive those from?

13 A. I received them directly from my evidence forensics
14 technician in the laboratory. The evidence was submitted by
15 North Charleston Police Department.

16 Q. Just a few perfunctory questions before we start talking
17 about the results. Did you tamper with these items in any way
18 or alter them prior to you performing your analysis on them?

19 A. No, I did not. The only thing that I would have done is
20 the firearms were processed for latent prints prior to my
21 coming into custody. And I would have wiped them down maybe
22 with some alcohol just to kind of get the fingerprint powder
23 off before I examined them.

24 Q. And are there precautionary measures that you guys take
25 to ensure that the evidence that you receive hasn't been

1 tampered with in any way?

2 A. Yes. We would make sure that the seals of the containers
3 would have the correct sealing. In this case it would be
4 evidence tape. And then the evidence tape would be initialed
5 and dated by a submitter.

6 Q. State's 121 which is the Walther, what caliber weapon was
7 that?

8 A. The Walther is a 40 Smith and Wesson caliber.

9 Q. And State's Exhibit 123 which is the Hi-Point what
10 caliber weapon is that?

11 A. That is a 9 mm Luger caliber.

12 Q. And did you test fire the State's Exhibit 123 prior to
13 you conducting your test?

14 A. Yes.

15 Q. Did State's Exhibit 123, the Hi-Point, come with any
16 bullets with it to you?

17 A. No, it was submitted only with a magazine. But no
18 unfired cartridges were submitted with the firearm.

19 Q. Did State Exhibit 126 come with any bullets?

20 A. Yes, it was received with eight unfired cartridges, a 40
21 Smith and Wesson caliber which would have been the correct
22 caliber for use with that gun.

23 Q. All right. I am showing you State's 155. Are those the
24 bullets that you received in connection with this case, the
25 spent -- the spent projectiles, the fired bullets?

1 A. Yes, those are three of the fired bullets that were
2 submitted.

3 Q. And do those numbers underneath the bullets correspond to
4 SLED items of evidence numbers?

5 A. Correct. Those would have been -- those item numbers
6 would have been given that particular number when they were
7 submitted to the laboratory.

8 Q. Do you receive information from the North Charleston
9 Police Department where these items of evidence are recovered
10 from?

11 A. The only information we would have received would have
12 been either on a submission documents saying that a particular
13 item came from somewhere or possibly it could have been
14 written on the packaging itself where an item is located. But
15 other than that we would have, you know, no first-hand
16 knowledge of where something was recovered.

17 Q. I am showing you State's 109, 110, and 112. Can you tell
18 where those came from based on that -- based on that?

19 A. Yes, the packaging itself does have some information that
20 the submitter added. I guess when the item of evidence was
21 located. They do have an address listed.

22 Q. What number does SLED 13 correspond to with State's
23 exhibit?

24 A. State's Exhibit 112.

25 Q. And does it say where that bullet came from?

1 A. Location as [REDACTED] Street. But it also has that the
2 projectile was recovered from the left front pocket of Item 3.

3 Q. Okay. And what item number does SLED 14 correspond to;
4 is that State's 109?

5 A. That's correct.

6 Q. And where in -- where at that location was that spent
7 bullet recovered from?

8 A. [REDACTED] Street would be the only location on the
9 actual projectile.

10 Q. It doesn't give any further information than that?

11 A. No, it does not.

12 Q. What about SLED Item 20 what does that correspond to; is
13 that State's 110?

14 A. Yes, it is.

15 Q. Does that give you any information where that was
16 recovered from?

17 A. [REDACTED] Street.

18 Q. Are those hollow points; can you tell?

19 A. Several of the items, State's Exhibit 112 and 110 ---

20 Q. And if you can give corresponding SLED numbers just so
21 that it is clear for the jury when they are looking at the
22 photos up there.

23 A. Sure. Those would be State's Exhibit 13 and 20 -- or,
24 excuse me, SLED Lab Item Number 13 and 20. Those are what is
25 known as jacketed hollow-point type bullets.

1 And basically all a hollow point is, it has got a cavity
2 of the nose or front portion that is designed to expand once
3 it hits a target, a soft target. And it is jacketed which
4 means it has a harder metal shell around a softer core.
5 Usually it is lead or some soft material.

6 So in this case it would have a copper alloy type metal
7 around this. It would be indicated as a jacketed hollow
8 point.

9 Q. What is the purpose of the bullet expanding when it hits
10 something soft?

11 A. Basically to create more damage. Jacketed hollow points
12 are used in hunting or self-defense as well. Basically it is
13 designed to dump a whole lot of energy very fast and designed
14 to create a large wound channel.

15 Basically that's getting into an area of ballistics which
16 we really don't get into. We are more concerned about what --
17 how an item marks via a bullet or cartridge case during
18 firing. So once it leaves the gun, you know, that is getting
19 into the ballistics side which how a projectile would perform.

20 But in general, the hollow point is designed to expand
21 and create, you know, a lot of energy when it hits the target.

22 Q. Okay. The two weapons that you received were a 40
23 caliber 9 mm. What is the typical weight of a 40 caliber
24 bullet?

25 A. Depending on what type of bullet it is. Several common

1 weights would be 165 grains of 180 grains. Grains is the unit
2 of measurement we use for weighing projectiles. Just to give
3 you an idea, there are seven thousand grains in one pound.
4 But grains is the accepted unit for measurement.

5 Q. What is the typical weight in grains for a 9 mm?

6 A. Again, depending on what kind of bullet. You have -- you
7 could have 115 grains or 124 on up to, you know, 147 grains.

8 Q. And 380?

9 A. Typically under a hundred is usual. Around 95 grains
10 would be a typical weight. Again it really just depends.
11 There are some projectiles that are heavier and some that are
12 lighter depending on how a manufacturer, you know, designed
13 that projectile, depends on what kind of weight that they
14 would want it to be.

15 Q. Okay. Taking a look at State's Exhibit 155 which shows
16 State's Exhibits 112, 109, and 110. Are you able to tell
17 whether those bullets were fired from any of the weapons that
18 you received for comparison purposes?

19 A. The -- again, State's Exhibit -- oh, I'm sorry. My Lab
20 Item Number 13 and 20 were consistent with being a 9 mm or
21 Luger caliber. My Item 14 was consistent with being a nominal
22 38 caliber, which is basically a class of projectiles. So
23 that could include the 9 mm Luger or a 380. Really as you can
24 tell it is missing some material, so I really couldn't get a
25 full weight. Both 9 mm and 380 would share the same bullet

1 diameter, so I couldn't exclude those just based on diameter.

2 So they would be correct, you know, diameter wise for the
3 Hi-Point 9 mm. It would be incorrect for the 40 Smith and
4 Wesson Walther.

5 They really didn't have a whole lot of rifling
6 characteristics on them. And when I talk about rifling
7 basically what that is is the manufacturers put a series of
8 what is known as lands and grooves. And all that really means
9 is there is like a grooves -- a series of grooves that are put
10 into the barrel, and then you would have a low portion. And
11 the part that is left is the high portion. That high portion
12 is called the land. And so it is put into the barrel in a
13 twisting kind of pattern. And what that does is when the
14 bullet is fired it engages those lands and grooves and it
15 causes the bullet to rotate as it travels down the barrel.
16 And what that does is basically just stabilize it. Once it
17 leaves the barrel it can travel farther and more efficiently,
18 than say if it wasn't rifled it would just kind of lob it.

19 So it is more kind of analogous to a football player, a
20 quarterback throwing a nice tight spiral. He wants that to
21 engage his target accurately whereas instead of just lobbing
22 it.

23 Q. And what are the weights and grains for those three
24 bullets right there, please?

25 A. Item Number 13 was measured at 146.4 grains. My Item 14

1 was weighed at 94.2 grains. And then Item 20 was weighed at
2 147.6 grains.

3 Q. Okay. I am showing you --

4 MR. LIETZOW: Court's indulgence. I apologize.

5 Q. All right. Resume using technology. Can you look up
6 there and see if you have State's Exhibit 118, please. Never
7 mind, sir, I have it right here. I apologize.

8 I am showing you State's Exhibits 118 and 119 which have
9 already been marked into evidence. What are those two items,
10 please?

11 A. These are two fired bullets.

12 Q. And where are those bullets recovered from?

13 A. State's Exhibit 118 which is my lab Item Number 37 was
14 recovered from right chest.

15 MR. LIETZOW: If you can pull up State's Exhibit 157.

16 Q. Does that correspond to the bullet that you are
17 referencing in your hands right now?

18 A. It does.

19 Q. Okay.

20 A. And you can see there is also a small piece of lead that
21 was submitted with that bullet.

22 Q. And is that a hollow point?

23 A. Yes. This was typical of being a hollow point --
24 jacketed hollow point type of bullet.

25 Q. And was that bullet fired from either of the two guns

1 that you received in evidence?

2 A. It could have been fired by the highpoint. Again, it is
3 most consistent with being a 9 mm Luger caliber which would be
4 the correct caliber for use in the Hi-Point. It would be
5 incorrect for use in the 40 Smith and Wesson.

6 Q. And what is the weight of that, please?

7 A. The bullet weighted 122.2 grains, and the lead piece
8 weighed 5.2 grains.

9 Q. And you have State's 119 in front of you?

10 A. Yes, this is another bullet that was submitted and it is
11 also said it is to be from right back.

12 Q. And State's 159, please?

13 A. Just a minute.

14 Q. Does that correspond with that bullet that you have in
15 your hands?

16 A. Yes, it does.

17 Q. And what are the results of that, Mr. Smith?

18 A. Again, it is the correct caliber for use in that to the
19 Hi-Point. It could have been fired from the Hi-Point. Again,
20 there wasn't much to the rifling impressions on there to try
21 to make a match. So it was basically inconclusive with the
22 Hi-Point. Couldn't say it was fired by that gun or couldn't
23 say it was not. But again it would be not fired by the 40
24 Smith and Wesson.

25 Q. And what is the weight of that, please?

1 A. 142.6 grains.

2 Q. So all the fired bullets that you received to analyzing
3 this case all of them were inconclusive, and what does
4 inconclusive mean; can you just summarize that; I think you
5 have been referencing it, but to make it nice and clean
6 please.

7 A. Inconclusive, again it is a determination which means
8 that I couldn't tell if they were fired by all the same gun,
9 if they were fired by the Hi-Point, or they could have been
10 fired by different guns.

11 Again, the markings on -- the individual markings that we
12 would look at under the microscope just weren't there. We
13 couldn't do anything with them or try to make a determination.
14 So again they could have been fired by the Hi-Point or could
15 have been fired by a different gun or guns.

16 Q. Is it possible that a specific gun like this Hi-Point
17 just doesn't mark well or it doesn't leave any distinctive
18 characteristics on a fired projectile that allows you to
19 definitively match it back to that weapon?

20 A. Yes, it could. Hi-Points are really known not for
21 marking bullets very well. They don't really have great
22 rifling impressions. So really it just depends on the gun
23 itself.

24 Again, typical for Hi-Point is that they don't really
25 mark the bullets very well.

1 Q. Okay. Shifting over to the shell casings that you
2 received, can a weapon ever fire a bullet that it is not
3 specifically designed to fire?

4 A. Sometimes they can. In this particular instance the Hi-
5 Point is a 9 mm Luger caliber. But it can fire 380 auto
6 caliber. It is not really recommended because it is not the
7 right caliber for the gun, but it can fire that particular
8 cartridge. And it can fire that particular cartridge fairly
9 reliably. It just depends on the individual gun and how it
10 works.

11 You can pretty much shoot, or try to shoot, anyway, a
12 smaller caliber out of a larger caliber. Conversely it would
13 be hard to do because it just wouldn't fit. But conceivably
14 if the projectile is smaller than the barrel then it may fire
15 it. It just depends on how that particular gun works. You
16 may have to do some engineering to try to make it work, but --
17 but it may be possible.

18 Q. So is a 40 caliber bullet larger than a 9 mm caliber
19 bullet?

20 A. Yes, it is.

21 Q. Can a 9 mm handgun fire a 40 caliber?

22 A. No, it cannot. It would be too large.

23 Q. Okay.

24 MR. LIETZOW: State's Exhibit 161, please and 162.

25 Q. Are these the shell casings that you recovered -- that

1 you were given in this case to analyze?

2 A. Yes, these were the fired cartridge cases that were
3 submitted. One of them, my Item Number 15, would be the 380
4 caliber cartridge case that was submitted. And the rest are 9
5 mm Luger caliber cartridge cases.

6 Q. Okay.

7 MR. LIETZOW: And State's 152, please.

8 Q. And that just corresponds to where all those items were
9 recovered from. I am showing you --

10 MR. LIETZOW: If we could pull back up State's 162,
11 please.

12 Q. I am showing you State's 108. State's 108 corresponds
13 with item -- SLED Item Number 16. Is that the fired shell
14 casing for the 380 that is depicted on the far left of that
15 row of shell casings?

16 A. Yes, it is.

17 Q. And are you able to tell whether any of the guns you
18 received in this case definitely fired that shell casing?

19 A. Yes. The Hi-Point 9 mm fired all of these cartridge
20 cases that I received for examination, including the 380 auto.

21 And how I was able to determine that is, again, we test
22 fire the gun. We compare the cartridge cases that were test
23 fired with each other with the cartridge cases that were
24 submitted and try to determine, you know, if they were fired
25 by the same gun.

1 And there were enough markings, similar markings, on the
2 cartridge cases in my test fires in the evidence to effect the
3 conclusion that they were fired by one gun, that gun being the
4 Hi-Point 9 mm that was submitted.

5 Q. Does Hi-Point do anything at their manufacturing facility
6 to aid folks like yourself in making this determination?

7 A. Yes, they do. One thing that they do is the
8 breechface -- and I will show you. The breechface would be
9 right here (pointing). This is part of the firearm that
10 supports the cartridge during firing. It is the part that has
11 a hole in there that allows the firing pin to pass through and
12 strike that primer on the cartridge to basically cause the
13 cartridge to be ignited.

14 So what they did on the breechface is they sand it. They
15 use a little small belt sander with sandpaper on it and they
16 sand that breechface to create totally random and unique
17 markings on that breechface.

18 So no breechface would have the same markings that
19 another one would have because it would be totally random of
20 that sandpaper hitting that area and bits of sandpaper the
21 grit would be breaking off and creating all sorts of random
22 markings.

23 And so when you fire the gun that area, the breechface,
24 would impart markings onto the cartridge case during firing.
25 And, again, it can use those markings to try to match it back

1 to the gun.

2 Q. And would that be similar to a human fingerprint it is
3 just unique for each gun?

4 A. It would be, yes.

5 Q. I have handed you State's 108, State's 117, State's 113
6 State's 115, 111, 116, and 114. Are those all the shell
7 casings that you recovered -- that you were given in this
8 case?

9 A. Yes, these are the 9 mm cartridge cases that I received,
10 again with the 380. Those would be all the cartridge cases.

11 Q. So I think the issue here is going to be that all of
12 those are 9 mm shell casings except for the 380?

13 A. Correct.

14 Q. And your expert opinion is that a 9 mm could fire a 380?

15 A. That is correct. And one of the things --
16 characteristics that I saw on the 380 cartridge case that I
17 received was a slight bulging. And what that means --
18 indicates is that -- 380 is a little bit smaller, not in
19 length - also in length - but in the width, besides a 9 mm.

20 It is marginally different, but it is enough to where if
21 you fire the 380 out of the 9 mm it is going to swell up just
22 a little bit to fill that chamber area where the cartridge
23 case -- or the cartridge resides during firing.

24 And so after that 380 would have been fired that bulge
25 would have still -- would still be there. And so it was very

1 indicative of a 380 being fired out of a 9 mm.

2 Q. And prior to you doing your tests do -- and you mentioned
3 that you do the test firing from the Hi-Point that you
4 received in evidence.

5 A. Yes.

6 Q. Did you fire any of your own 380 bullets through that
7 weapon?

8 A. I did. I fired several 380 caliber cartridges as well as
9 9 mm caliber cartridges for test firing.

10 Q. And did the Hi-Point have any issue firing those 380's
11 when you did -- when you were firing?

12 A. There's no notes -- I didn't indicate anything in my
13 notes that there were any issues. Again, it has been my
14 experience that shooting the 380, out of the nine, it can do
15 it fairly reliably. Which means that if it -- feed a
16 cartridge into the chamber, fire it, extract it, eject it, and
17 then feed another cartridge in the chamber ready for firing it
18 can do that fairly reliably.

19 Some other guns may not. It really just depends. Again,
20 it is firing a cartridge that it is not designed to fire. So,
21 you know, it really could -- could cause some malfunctions.
22 But again in my experience with the Hi-Points they can be
23 reliable with firing the 380's out of a nine.

24 Q. And in your expert opinion that Hi-Point fired all of
25 those shell casings that you received in this case?

1 A. Yes, that is correct.

2 MR. LIETZOW: No further questions, Your Honor.

3 THE COURT: All right. Any cross-examination of this
4 witness?

5 Mr. Lietzow and Ms. Norris, just briefly if I can see you
6 for a second.

7 (WHEREUPON, bench conference.)

8 **CROSS-EXAMINATION BY MS. NORRIS OF CHAD SMITH:**

9 Q. Is it Mr. Smith or Agent Smith; what is your title?

10 A. Either one would be fine.

11 Q. What do you prefer?

12 A. Agent Smith is fine.

13 Q. All right. Agent Smith, before I get started let me
14 collect all of our evidence back over here ---

15 THE COURT: Thank you, Ms. Norris.

16 Q. --- so I am not fumbling around trying to find things. I
17 might fumble anyway, but at least let us narrow it down.

18 All right. I believe that you testified and you
19 explained how these things work, but I am more of a visual
20 girl. So let me just pull out State's Exhibit 126. I am
21 going to try not to point it at anybody. They taught me that
22 in the Army.

23 THE COURT: And while you are doing that, Ms. Norris, I
24 will just give my standard instruction to the jury just to
25 understand that these weapons are obviously unloaded. They do

1 have these trigger locks. As you see these zip ties through
2 them, ladies and gentlemen. These firearm cannot be fired.
3 They are absolutely are not loaded. Just for your own
4 edification and knowledge. Okay. Thank you so much.

5 Q. All right. And you testified -- let me show you Item 12.
6 Is that what you were referring to as a cartridge or an
7 unfired bullet?

8 A. Correct. That is an unfired cartridge. So it is
9 basically intact. It has the unfired primer and the bullet.
10 The projectile is still with the cartridge case.

11 Q. Let me get that back.
12 (WHEREUPON, gun returned to exhibit table.)

13 Q. And so this right here is an unfired bullet; is that
14 correct?

15 A. Unfired cartridge, yes.

16 Q. Unfired cartridge. I'm sorry. And if I were to take
17 this thing, I believe he referred to a magazine; is this item
18 that I am holding right here the magazine?

19 A. Correct.

20 Q. So in order to make this weapon work I would stick this
21 thing, the bullet, unfired cartridge ---

22 A. Yes, ma'am.

23 Q. I'm sorry. Into the magazine and put that magazine into
24 there, correct?

25 A. Correct.

1 Q. All right. And then after that what would I do to make
2 this weapon work?

3 A. You would have to be able to get that cartridge into the
4 chamber, which is the rear part of the barrel. So you would
5 have to pull back the slide which is the part there
6 (pointing).

7 Q. This thing right here (pointing)?

8 A. Yes, ma'am.

9 Q. All right.

10 A. And then you would pull back. It is under spring tension
11 at that point. And then you would release it and then the
12 cartridge would be fed from the magazine into the chamber by
13 the slide. By that breechface area it would be pushing it
14 into the chamber.

15 Q. And then after that once I have got a cartridge in the
16 chamber is it just a matter of I pull this trigger ---

17 A. Yes, ma'am.

18 Q. --- and it fires?

19 A. Yes.

20 Q. All right. And if I do that is anything going to pop out
21 of this weapon?

22 A. If it is in proper working order the cartridge case would
23 eject from the firearm. And then if you had another cartridge
24 in the chamber ready for firing -- or I mean not in the
25 chamber, in a magazine ready for firing then it would -- the

1 rear -- the forward action of the slide again would take
2 another round from the magazine and put it into the chamber
3 for firing.

4 Q. All right. And let me show you State's Exhibit 111. And
5 I realize that that is a 9 mm, not for the 40 that I am
6 holding. But is that a casing?

7 A. Yes, this would be a cartridge case, fired cartridge
8 case.

9 Q. All right. So this would be what would pop out of the
10 side of this weapon?

11 A. That would be correct.

12 Q. All right. And now while we are talking about that, you
13 said that a 9 mm can fire a 380. A 40 could also fire a 9 mm,
14 correct?

15 A. It may. Depending on the individual gun. I have test
16 fired some nines out of a 40 before. Again, you would
17 probably -- depending on the firearm you may cause
18 malfunctions. It may not cycle properly. But technically it
19 is a smaller cartridge than the cartridge that it is designed
20 for for the firearm, so it may work.

21 Q. All right. And let me show you again. This is marked
22 Item 12. I assume it came out of the one bag there. Because
23 I don't see a State's exhibit number on it. Item 12 that is
24 an unfired cartridge. And Exhibit 111 that is you told us is
25 a casing. And State's Exhibit 110 is that a projectile or the

1 bullet portion that would come out the front end of a weapon
2 if I fired it?

3 A. Correct. This would be a fired bullet. That would be
4 the projectile that goes down the barrel towards the target.

5 Q. And so the casing there, that would be the bullet portion
6 that comes out of the front end of the casing down the barrel
7 and out; correct?

8 A. Correct. Yes.

9 Q. All right. And in this case -- well, let me ask you in
10 general as an expert. Ideally when you are doing your
11 casework if things are working the way you want to you would
12 have, what, weapons to test; correct?

13 A. Correct.

14 Q. Projectiles?

15 A. Right, depending on what some of that evidence was
16 submitted, if we had a firearm to compare cartridge cases and
17 bullets that were found at the scene then we could, you know,
18 see if we could compare test fires from that gun to see if
19 maybe they did fire a particular cartridge case or a bullet.

20 Q. So ideally what you are looking for is to take the
21 weapons -- and you received two weapons in this case, correct?

22 A. Correct.

23 Q. You take the weapons, you compare those with the shell
24 casing; correct?

25 A. Yes.

1 Q. And you try to match those?

2 A. Yes.

3 Q. And you did in this case you gave us your opinion that
4 these matched, they were all fired from a 9 mm or Hi-Point;
5 correct?

6 A. That is correct.

7 Q. All right. And ideally you could also tell us whether
8 the projectiles, the fired bullets from the scene and from the
9 autopsy came from that same 9 mm or a specific weapon?

10 A. Conceivably, yes, depending on again how well those
11 projectiles are marked you may be able to identify it back to
12 a particular firearm.

13 Q. I am going to show you State's Exhibit 155. And I
14 believe you testified - and correct me if I am wrong - that I-
15 13 and I-20 is consistent with a 9 mm; correct?

16 A. Correct.

17 Q. It doesn't necessarily mean it is a 9 mm?

18 A. No, it could be something different. Really depending on
19 the characteristics, the weight, the diameter, that is really
20 our best determination as to what it could be. But, again, it
21 could be something different.

22 Q. And when you are making your comparisons I think you
23 testified about markings. Can you tell the jury what lands
24 and grooves are?

25 A. Yes. The lands and grooves make up the rifling in the

1 gun. You know, you'd have a hole through the barrel to start
2 out with. And then put the rifling in is basically you are
3 putting the grooves in. You are either impressing the grooves
4 in or removing material to put those grooves in.

5 And, again, it is in a twisting pattern again to give
6 that bullet some rotational motion. But those lands and
7 grooves is what engages the bullet during the firing to create
8 it to spin basically.

9 And so basically you just have a lands which is the
10 portion that is left next to the groove. Which means just cut
11 the groove or put the groove in you are going to have an uncut
12 or a raised portion. So that is the land. And then the other
13 part would be the groove.

14 Q. And did you determine for State's Exhibit 126 the 40
15 caliber, how many lands and grooves this pistol -- or this
16 handgun -- I'm sorry, what is the correct term?

17 A. It is a pistol. Semi-automatic pistol.

18 Q. That this pistol how many lands and grooves this has?

19 A. Yes, it has six lands and grooves. And you can look down
20 the barrel and you can count how many lands and grooves and
21 the direction of twist. Some manufacturers like a left-hand
22 twist or a right-hand twist. It just it depends on the
23 specifications of the manufacturer.

24 But, again, you can look down the barrel and count those
25 lands and grooves. And also you can count the lands and

1 grooves on a bullet if it is engaging that rifling well enough
2 to do so.

3 Q. And this particular weapon is it a left twist or a right
4 twist?

5 A. It is right. Six right.

6 Q. And is there any other -- I believe on your worksheets --
7 let me ask it this way. I don't even know enough about these
8 things to ask the question probably. On your worksheet I
9 think you designated that this was conventional versus
10 polygonal?

11 A. Polygonal, ---

12 Q. Tell us what ---

13 A. --- correct.

14 Q. Tell us what all that means.

15 A. Basically there are two different types of rifling,
16 categorized as conventional and polygonal. Conventional means
17 that you have got squared edges in that rifling. If you look
18 at it it is just sort of like squared up and down with clearly
19 defined edges.

20 The polyoginal is sort of a wavy. We call that like
21 hills and valleys. So if you look at a cross-section of it it
22 would -- it doesn't have the squared-off clearly defined
23 edges. It just sort of waves as it goes.

24 Glock's have polyoginal rifling as well as some other
25 manufacturers. But the conventional rifling is -- again, it

1 is conventional before what polyoginal was -- what became
2 popular. So those are basically the two -- the two different
3 types of rifling.

4 Q. All right. And the Hi-Point 9 mm that you received,
5 Exhibit 123 did you determine how many lands and grooves this
6 particular handgun has?

7 A. Yes, it has eight lands and grooves, conventionally
8 rifled, with a right-hand twist.

9 Q. And ideally when you look at projectiles you try to see
10 if it has similar eight -- eight -- did you say left or right?
11 I'm sorry.

12 A. The Hi-Point is right. Both firearms are right-hand.

13 Q. Okay. So ideally if you were trying to connect a weapon
14 with a fired projectile you would also look to see how many
15 land and grooves on this thing (pointing)?

16 A. Correct.

17 Q. And I am pointing to State's Exhibit 110, for purposes of
18 the record.

19 All right. And you could also determine left or right,
20 ideally?

21 A. Ideally, yes.

22 Q. And whether it is conventional or polyoginal, ---

23 A. Right.

24 Q. --- can you tell that? All right. And in this
25 particular case I believe you told us about some weights. For

1 the 9 mm I believe you said the weight could go up to 147; is
2 that correct?

3 A. Yes, that is a typical high-end weight. That is not to
4 say that there is some 9 mm cartridges that the manufacturer
5 has a bullet that is even -- weighs heavier than that. But
6 that would be -- 147 would be -- would be on the high -- the
7 high end of the weight for a 9 mm.

8 Q. And for Item 120 I believe you told us that it was 147.6
9 grains; is that correct?

10 A. What does that correspond to, SLED item?

11 Q. I'm sorry, it is Item 20.

12 A. Yes, 147.6.

13 Q. All right. So Agent Smith, how in the world does a
14 bullet gain weight if it starts at a high end of 147 how do
15 you weight it at 147.6?

16 A. Well, that is a nominal weight. You know, manufacturers
17 don't have a specific -- they don't say 147.6 or whatever.
18 147 would be -- would be a nominal weight. So that would be
19 around. Very rarely do bullets weigh exactly what they are
20 supposed to. You may have, give or take, a couple of grains
21 for a particular weight bullet.

22 And, again, you can also have some material depending on
23 what the bullet hits. You may have some tissue. Or if it
24 hits a wall you may have some sheetrock or other material in
25 there to add weight to it.

1 So, again, the 147 is not set in stone. Again, it is
2 basically just a nominal weight.

3 Q. All right. And Item 14, State's Exhibit 109, I believe
4 you said that is consistent with a nominal 38?

5 A. That is correct.

6 Q. And a nominal 38 could be a 380?

7 A. It could be a 380. It could be a 9 mm Luger. It could
8 be something else. Just under that 38 caliber umbrella.

9 Again, it is missing some material; so I don't know how
10 much was missing. But the weight of it is around what a 380
11 bullet could weigh. The diameter would be the same. So I
12 don't know. So that is why I just went broad with the -- with
13 my conclusion that it was consistent with the nominal 38
14 caliber and not really narrow it down to a 380 or a nine
15 because -- because I really couldn't. But it could be 380 or
16 a nine or something else under the 380 -- or 38 umbrella.

17 Q. Does 357 fall under that nominal 38 umbrella?

18 A. It does. A 357, 38 special, there's 357 Sig; all of
19 those are nominal 38 caliber cartridges.

20 Q. And let me show you Item 20, State's Exhibit 110. And
21 let me just hand you that. I am handing you Item 20. I am
22 going to put up on the screen here -- actually we will work
23 with this one. State's Exhibit 155.

24 Is what you are looking at, Item 20, the same thing that
25 is in the picture here, State's Exhibit 155?

1 A. Correct, that is -- that would be the same bullet.

2 Q. And that is the one we were talking about that was 147.6,
3 so a little above weight?

4 A. Yes.

5 Q. All right. And on this particular cartridge it hasn't
6 lost weight, so it's fair to say that essentially the whole
7 thing is there?

8 A. It appears to be mostly intact. There may be a little
9 bit of damage to it, but for the most part it doesn't appear
10 to be missing much or if any material.

11 Q. And now you referenced a comparison microscope that you
12 have at SLED. Is that thing about \$10,000 or more in cost?

13 A. It would be quite a bit more. With the high-definition
14 camera systems that we have on each microscope they are
15 pushing almost towards \$100,000 per setup.

16 Q. So it is fair to say it is a pretty fancy machine?

17 A. A very -- a very expensive machine. And it is high-tech
18 I guess you could say.

19 Q. And in that comparison microscope you look at things such
20 as Item 20 and you try to determine the lands and groove,
21 those things we talked about; right?

22 A. We can use the comparison microscope for that or we can
23 use -- try to use a stereo microscope for looking for lands
24 and groove, which would be just a lower-powered scope.

25 The comparison microscope really when it comes into play

1 would be for doing the comparisons. You would need a lot more
2 power to try to look for those microscopic markings created by
3 the firearm. But we can either use the comparison microscope
4 or stereo microscope to try to determine the number of lands
5 and groove.

6 Q. All right. And on Item 20 here on State's Exhibit 155,
7 down here at the base I see some markings there. There in the
8 middle I see some markings. And your testimony - and again
9 correct me if I'm wrong - is that you can't look at the
10 markings and tell whether either of these weapons the 40 or
11 the 9 mm fired that?

12 A. Well, I was able to determine that it would be the wrong
13 caliber for the Walther, for the 40. It doesn't appear that
14 it could have been fired by the 40. These are -- the markings
15 that are created on the bullets that I submitted -- or that
16 were submitted are consistent with Hi-Point rifling. The core
17 rifling.

18 I can tell that it had poor engagement, which means that
19 there was some engagement with the rifling in the barrel. It
20 is just it didn't dig deep enough into that bullet to mark it
21 that well.

22 But there was -- under the microscope you could tell that
23 there were markings of engagement. I just couldn't tell to
24 what degree to make a determination how many lands and groove
25 and the other characteristics.

1 But if it would have been fired from the 40 there would
2 have been very -- or no markings, very little to no markings
3 form the rifling. Because basically this projectile is too
4 big for that barrel. It would just be sliding down that
5 barrel and not engaging the rifling properly.

6 Q. Can you tell me how many lands and grooves Item 20 has?

7 A. I cannot.

8 Q. All right. And so in essence the answer to my simple
9 question was you can't tell us whether Item 20 was fired by
10 either one of these weapons. That is all I asked.

11 A. I can exclude the 40 based on the characteristics. But
12 it was inconclusive with the Hi-Point, with the nine. Correct
13 caliber for the nine. Incorrect caliber with the 40. And it
14 doesn't have markings -- it does have engagement, which means
15 that it did engage the rifling of some sort of barrel; but it
16 would have been too small to engage rifling in the 40.

17 Q. And on those questions we are assuming that these are the
18 only two possible weapons, correct?

19 A. Correct, those are the only two guns that were submitted
20 to me for testing. I can only test what was submitted. So I
21 have no knowledge of other firearms. No other firearm was
22 submitted.

23 Q. And I believe you testified on direct that - and again
24 correct me if I'm wrong - that you essentially can tell how
25 many shots were fired from how many casings are present at a

1 scene; is that correct?

2 A. Well, if you have got cartridge cases littered around
3 that were fired all you can really say for sure was that's --
4 that's how -- that's how many cartridge casings were there.
5 You assume that is how many shots were fired. But again it
6 could have been more. Those are just what evidence is left.

7 Cartridge cases can be kicked around. Again, there's
8 individuals, they can go -- depending on what sort of surface
9 cartridge cases can roll, they can bounce. So really all you
10 have is just, you know, what is there to determine, you know,
11 what you can go by.

12 Q. And I am going to show State's Exhibit 114, one of these
13 casings. That thing is pretty small, right?

14 A. Yes, ma'am, they are not too large. Maybe an inch.
15 Maybe less than an inch.

16 Q. Okay. And it is easy to pick up, right?

17 A. Yes, very lightweight.

18 Q. So somebody can pick up casings and leave with them,
19 right?

20 A. That is a possibility.

21 Q. They can -- when they pop out of that -- out of that
22 weapon depending on the service they can bounce -- they will
23 bounce?

24 A. Right. If it is a hard surface they can bounce off and
25 end up basically who knows where. It just depends on where it

1 ends up is where it ends up. Cartridge cases have been known
2 to get stuck in areas. It just really depends.

3 Once it leaves that firearm it is really, you know, a
4 guessing game as to where a cartridge case may end up
5 depending on variables such as slope of the surface, the type
6 of surface it hits, etc.

7 Q. All right. And then the last couple of minutes you have
8 used the words guessing game and assumption. As a scientist
9 and all of that training you have testified about earlier, do
10 you operate on assumptions and guesses?

11 A. Well, it depends. When we try to determine -- could you
12 reference a specific topic -- if we are talking about
13 cartridge cases, again, that is out of my league as far as
14 once it leaves the gun where evidence may end up. Again, that
15 is beyond my expertise.

16 I don't think -- we really don't get into that sort of
17 category, because there are so many variables. So again, it
18 would be a guess depending on, you know, what sort of surface
19 a cartridge case may bounce off of, if there are individuals
20 around kicking them or -- really there's just too many
21 variables.

22 With regards to other topics such as maybe consistent
23 with specific caliber, we are using data to try to determine
24 basically what a particular cartridge -- or bullet may be. We
25 are using data that we can measure, measure a diameter of a

1 bullet. We can weigh it. And then we can compare it with
2 other known samples and other data that manufacturers of
3 cartridges can provide to try to determine what a bullet may
4 be most consistent with.

5 Again, it is not an absolute. It is just we are saying
6 this is what it's consistent or most consistent with.

7 Q. Agent Smith, do you recall what your item number was on
8 the 380 shell casing that you saw?

9 A. That would be Item 15.

10 Q. Here we go. State's Exhibit 108. Can you determine the
11 manufacturer or the brand of that particular shell casing?

12 A. Yes. It has a ---

13 Q. You can pull it out if you need to.

14 A. That is okay. The rear portion of a cartridge case
15 typically has information regarding either a caliber or
16 manufacturer. That is called a headstamp.

17 So in this particular case this cartridge case has a WIN
18 headstamp. And that stands for Winchester. So that would be
19 the brand for manufacturer of that cartridge case would be
20 Winchester. And, again, it is also noted as being 380 auto on
21 the cartridge case.

22 Q. And I have got State's Exhibit 162 up here. Is this that
23 I am pointing to the headstamp that you were talking about?

24 A. Yes, ma'am.

25 Q. And on that if you look close enough you see WIN, and

1 that is the Winchester that you are talking about?

2 A. Correct.

3 Q. All right. And can you as an expert in your examinations
4 determine the maker of what comes out of the other end, the
5 projectile? Let me find -- I believe Item 14 is the
6 projectile that you said was 38 nominal?

7 A. Correct. Typically with projectiles, bullets, unless it
8 has some sort of really distinguishing feature we generally
9 don't know what a particular manufacturer of a projectile is.
10 It really just depends on the characteristics of it. Some
11 manufacturers, again, have some very defined features that are
12 unique to a particular projectile that they manufacture.

13 There is also a possibility that ammunition
14 manufacturers, small ammunition companies, buy components from
15 larger ammunition manufacturers, buy the cartridge cases, buy
16 bullets and also load that ammunition themselves and sell it
17 under, you know, a different brand.

18 With the Winchester, the WIN on that headstamp, that
19 really just indicates that that is the brand of that cartridge
20 case. It could be a different actual manufacturer who loaded
21 the ammunition. It really -- this day in age there's so many
22 different manufacturing companies out there making ammunition
23 it is really hard to tell who actually loads that ammunition
24 and where they get their components from.

25 Q. And on direct there was some discussion about a hollow

1 point bullet. Is there also something called a total metal
2 jacket or a full jacket?

3 A. Full metal jacket, yes. Those are other popular type of
4 construction for bullets. FMJ, or full metal jacket, is a
5 popular term. And basically what that means is going back to
6 how a bullet is constructed. You have the core which again
7 would be the softer material. And then the jacket is
8 generally the harder material around it.

9 So with a full metal jacket you would have basically
10 everything is covered except for the base. A total metal
11 jacket bullet everything is covered including the base by the
12 jacket material.

13 Q. And on -- I'm sorry, I forgot the item number. Is it 15
14 that is the 38 nominal?

15 A. Fourteen ---

16 Q. Fourteen.

17 A. --- is the projectile.

18 Q. Can you determine whether that is a hollow point or a
19 full metal jacket?

20 A. It is consistent with being a total metal jacket in my
21 notes just based on the characteristics that I observed. I am
22 not saying it has to be a total metal jacket bullet, but it
23 does have the jacketed base. So that does rule out a full
24 metal jacket. Because, again, the full metal jacket does not
25 have the jacket in our closed base area. It is possible it

1 could be some sort of hollow point. But, again, just based on
2 what is left of this bullet it is consistent with being the
3 total metal jacket type of bullet that I am aware of.

4 Q. And that is what you put on your worksheet, correct?

5 A. That is correct.

6 Q. All right. And are you aware, Agent Smith, that
7 Winchester does not make a total metal jacket 380 cartridge?

8 A. I am not aware that they do or don't. Again, the
9 companies could buy the components, buy the cartridge cases
10 from Winchester, load a 380 bullet or whatever into that
11 cartridge case.

12 And, again, I am not saying that this particular bullet
13 came from this particular -- from this particular cartridge
14 case. That is not an examination that we can do to say that a
15 projectile came from a specific cartridge case. I am just
16 saying I treat them independently in that the bullet itself
17 with it missing material it still could be a 9 mm but then
18 again it could be a 380 auto or it could be something else.

19 So I have to treat them independently with each other.

20 Q. All right. Let me collect all of these things back from
21 you so I can keep the count of them.

22 All right. Is it part of your expertise to know how fast
23 a bullet travels?

24 A. It is not. That is getting again to the ballistic side
25 area. Sometimes we have a general idea of just reading

1 different things, articles. We may, you know, see some
2 information. We don't measure any kind of speeds of
3 projectiles or anything like that.

4 Again, once it leaves that barrel - I don't want to say
5 our part is done - but the markings that are on that bullet
6 have already taken place once it leaves that barrel.

7 So, again, we are trying to determine if a projectile or
8 a cartridge case was fired by a particular gun. So the speed
9 of the projectile is really outside of our typical expertise.

10 Q. All right. Well, I -- let me put it this way. You do
11 your own test firing, correct, to get your samples?

12 A. Correct.

13 Q. All right. And it is just fair to say that a bullet
14 moves pretty darn fast?

15 A. Yes, ma'am.

16 Q. All right. And what happens to the projectile portion -
17 and I am referring now to State's 115 - when it hits say
18 sheetrock; do you know?

19 A. Again, depending on what type of bullet it is. Some can
20 pierce or penetrate the sheetrock without much damage. Some
21 may hit the sheetrock and expand or fragment upon impact. You
22 really don't know.

23 And, again, we get fragments of bullets. We get whole
24 bullets. We get damaged bullets, you know, pieces. So
25 honestly we don't know what has taken place for things to

1 happen like that.

2 We assume they may have hit a specific material. Maybe
3 what is on -- what is left on a bullet or a piece of bullet,
4 we may have some material that is consistent in appearance
5 with sheetrock or wood fibers. But once we receive something
6 we really don't know what has happened to it.

7 Q. All right. Is it fair to say it is going to make a hole
8 in whatever it goes through or hits?

9 A. That would probably be a general idea that once a
10 projectile is going to keep going to until it hits something.
11 And it could make a hole. Depending on what kind of material
12 it is. If it is some super heavy-plated steel it may not
13 penetrate that material. So, again, I don't know.

14 Q. And you talked on direct about a revolver. And I believe
15 you referred to the old Westerns that is the things that spins
16 around that holds the unfired cartridges?

17 A. Yes, that is called a cylinder. And that's the part that
18 rotates or revolves. And then inside of the cylinder around
19 the periphery of the cylinder you would have what is called
20 chambers. So that would be what the cartridges would be
21 placed into and ready for firing.

22 Q. And those things if I had a revolver and fired it, it
23 would not spit out any shell casing, correct?

24 A. If it is in correct working order it should not eject or
25 extract any kind of cartridges on it own. Back in history

1 there were some attempts to try to make a revolver that --
2 they may have done something like that. But if a revolver is
3 in working order it is not supposed to do that.

4 Q. And how many cartridges does a typical revolver hold?

5 A. It really depends. On the low end, five cartridges. On
6 up to maybe ten or twelve cartridges, depending on the
7 caliber. Because you have to remember, the larger the caliber
8 the more room it is going to take up. So if you have
9 something like 22 caliber which is a small cartridge you can
10 pack more into a certain time amount of space than you could
11 say a larger cartridge that you would -- you only have a
12 certain amount of room to put.

13 Q. So theoretically I could take a revolver fully loaded
14 with say 12 rounds -- I think you said was about the top end?

15 A. Yes, 10 -- 10 or 12 maybe. There may be some revolvers
16 that have more than that.

17 Q. And I could go fire 12 bullets and not leave a single
18 shell casing there, correct?

19 A. Correct.

20 Q. And so at the end of the day your testimony - and again
21 correct me if I'm wrong - all of these shell casings came from
22 this Hi-Point 9 mm?

23 A. That is correct.

24 Q. And these projectiles, consistent with a 9 mm, but it
25 could be something else?

1 A. It could be something other than 9 mm. It is not a 40.
2 Too small to be a 40. But it could be under the umbrella,
3 again, of a 38 caliber umbrella.

4 Q. So the pistol fired the casing but we can't say that what
5 was found at the scene or in the body, the projectiles, we
6 can't say that that matches that 9 mm?

7 A. Correct, it is inconclusive of that particular gun.

8 Q. All right. And I believe you had five projectiles; is
9 that correct?

10 A. Yes, five fired bullets. And there was the small piece
11 of lead submitted with that one bullet that we looked at
12 earlier.

13 Q. And those five bullets you can't tell us whether they
14 were fired from the same weapon, correct?

15 A. Correct.

16 Q. So theoretically that could be five different weapons?

17 A. It could be.

18 Q. And then we have got these two handguns from the scene
19 that we assume were part of this case, so that is potentially
20 another two; so we are up to seven potential weapons?

21 A. Again, the bullets in my opinion were not fired by the 40
22 because they don't have the characteristics of the engaged
23 rifling. But they didn't -- they had some rifling impressions
24 on them, but I couldn't determine how many. But I could tell
25 that it had engaged rifling when it was fired. But if it

1 would have been fired from the 40 it wouldn't have engaged any
2 rifling. It was very -- it may have skipped across maybe some
3 rifling. But remember that bullet is too small for that
4 barrel. So it is basically just kind of bouncing down at
5 best. If it -- if a smaller caliber was fired from that gun.

6 But the bullets could have been fired by the Hi-Point or
7 by another firearm or firearms.

8 Q. We just don't know, correct?

9 A. That is correct.

10 Q. Give me just a second, Agent Smith. Thank you, Agent
11 Smith.

12 MS. NORRIS: I don't have anything further, Your Honor.

13 THE COURT: All right. Any redirect from the State?

14 **REDIRECT EXAMINATION BY MR. LIETZOW OF CHAD SMITH:**

15 Q. You mentioned a magazine is the piece that holds the
16 bullets and goes into the bottom of the gun to load it up?

17 A. Yes.

18 Q. Is it sometimes incorrectly referred to as a clip?

19 A. It is. A clip is actually something different. A lot of
20 people call a magazine a clip, but a clip is designed to
21 actually reload a magazine, an integral magazine in a firearm.
22 So if you have got a detachable magazine that has those
23 cartridges in it, that is a magazine and not a clip.

24 Q. And can a weapon fire different brands of cartridges?

25 A. Yes, it can. As long as it is, again, designed to fire

1 that particular caliber there are many different manufacturers
2 of ammunition. It doesn't matter what manufacturer makes the
3 cartridge. You can have a total mixed bag of manufacturers
4 and brands. As long as it is designed to fire that particular
5 caliber of cartridge then it should fire.

6 Q. Of the two handguns that you received, the 9 mm and the
7 40 caliber, with all of the fired shell casings and the
8 projectiles, in your expert opinion which of those two guns
9 fired all of the bullets in this case?

10 A. Well, bullet, once again, I can't tell if they are fired
11 by the Hi-Point, the 9 mm. They are consistent in caliber and
12 other characteristics with a Hi-Point. They are inconclusive
13 with it.

14 Again, in my opinion that were not fired by the 40,
15 bullet wise. Again, it -- there were some markings on the
16 bullet but it just didn't appear -- there was no evidence that
17 the 40 caliber had fired any of the components.

18 But they were -- the bullets were inconclusive with the
19 Hi-Point. The cartridge cases were fired by the Hi-Point.

20 Q. Thank you.

21 MR. LIETZOW: No further questions, Your Honor.

22 THE COURT: Any recross?

23 **RECROSS-EXAMINATION BY MS. NORRIS OF CHAD SMITH:**

24 Q. Do you have any tests that tell us whether the bullet
25 came out of a particular projectile -- or casing? I'm sorry?

1 A. No, ma'am, that is not an examination that we can perform
2 that a particular bullet came out of a particular cartridge
3 case.

4 Q. Thank you, Agent Smith.

5 MS. NORRIS: I don't have anything further, Your Honor.

6 THE COURT: Okay. Agent Smith, you can step down from
7 the witness stand. Any objection to this witness being
8 released?

9 MR. LIETZOW: No, ma'am.

10 MS. NORRIS: None.

11 THE COURT: Okay. Thank you, sir. You are free to
12 leave.

13 THE WITNESS: Thank you.

14 THE COURT: All right. Ladies and gentlemen, we have
15 been going for a couple of hours, so we will take a break at
16 this point in time for about ten or fifteen minutes. We will
17 let you retire for a little while and bring you back in after
18 that.

19 (WHEREUPON, jury exits 6/12/19, 11:39 a.m.)

20 THE COURT: Thank you. Please be seated. We will be at
21 ease as well for the next 10 minutes or so. If you need
22 anything else from me I will be back then. Thank you.

23 (WHEREUPON, break 6/12/19, 11:39 a.m.)

24 (WHEREUPON, resume trial, 6/12/19, 12:02 p.m.)

25 THE COURT: Before we just took a break the court

1 reporter brought to my attention as she should have that we
2 need to clarify a couple of items for purposes of the record.
3 I believe one was during the examination of the last witness I
4 believe the State's referred to 108 as a bag that contained
5 several other items. Upon further review we have determined
6 that State's 108 is actually different; it is a small baggy
7 that obtains a shell casing it appears.

8 Mr. Lietzow, do you understand that to be the case?

9 MR. LIETZOW: I do. And the confusion was that there was
10 a large bag that all of the other items came in and I
11 mistakenly referred to that large bag as 108 ---

12 THE COURT: Okay.

13 MR. LIETZOW: --- when actually that large bag contained
14 items 108 through 119.

15 THE COURT: Okay. Did you want to have 108 admitted when
16 you stated that; did you mean for this 108 to come in?

17 MR. LIETZOW: I did mean for the 108 that is -- with
18 Madam Court reporter to be admitted as Item 108.

19 THE COURT: All right. And was there an objection to
20 that from the State?

21 MR. LIETZOW: No objection.

22 THE COURT: Understanding now what the item actually is,
23 it is not just a bag?

24 MS. NORRIS: I do not -- I do not object to it.

25 (WHEREUPON, State's 108, shell casing, admitted into

1 evidence.)

2 MS. NORRIS: One other clarification of the record, the
3 unfired cartridges that I referred to multiple times ---

4 THE COURT: Yes

5 MS. NORRIS: -- I don't believe are actually in evidence.
6 I thought they were ---

7 THE COURT: They are not.

8 MS. NORRIS: --- because they were on the evidence table.
9 That was Item Number 2 for me to take up. I appreciate you
10 bringing it to my attention. So we will label that Defense 3
11 for ID only. Just for purposes of the record the unfired
12 cartridges that you referred to during your cross-examination
13 of Agent Smith will be marked as Defense Exhibit 3 for ID
14 only.

15 (WHEREUPON, Defendant Exhibit Number 3, cartridges, was marked
16 for identification.)

17 MS. NORRIS: One other thing while we are talking about
18 the evidence, the disk that Mr. Mack played and we have
19 marked - I am not sure if it is one or two for ID - there are
20 three different clips on that.

21 THE COURT: All right. Do you want to make a fresh disk
22 with just the one clip on it that you ---

23 MR. MACK: Or I can identify the disk by its number which
24 is on that particular disk in a separate file.

25 THE COURT: Oh, identify the clip by ---

1 MR. MACK: Right, we don't have the technology at the
2 PD's office to clip videos -- or at least I don't that I am
3 aware of.

4 THE COURT: Okay.

5 MS. NORRIS: It is basically three different views of the
6 same thing. But just for ---

7 THE COURT: Okay.

8 MS. NORRIS: Just to clarify which one he had ---

9 THE COURT: Then that is fine. Just let me know. Yes,
10 tell us for the record which one he viewed.

11 MR. MACK: So the video I showed Rickey Fyall is PICT --
12 I'm sorry, PICT -- PICT0014_2016.07.06_16.55.26.

13 THE COURT: Okay. Thank you.

14 All right. Anything else before the jury returns? And
15 do we have any other witnesses for the State?

16 MR. OSBORNE: One last witness.

17 THE COURT: Okay.

18 MR. OSBORNE: The DNA analyst.

19 THE COURT: Okay. I think the jury's lunch will be here
20 about 12:30. So maybe we will do that after this witness
21 testifies. Okay. We can bring the jury back in. Thank you.
22 (WHEREUPON, jury enters 6/12/19, 12:07 a.m.)

23 THE BAILIFF: All jurors are present, Your Honor.

24 THE COURT: Thank you very much. Please be seated. The
25 State may call its next witness.

1 MR. OSBORNE: Thank you, Your Honor. The State calls
2 SLED agent Sara Goodman.

3 (WHEREUPON, the witness was duly sworn.)

4 THE CLERK: If you would state your full name for the
5 record, spelling your last name please.

6 THE WITNESS: My name is Sara Goodman. Last name is
7 G-O-O-D-M-A-N.

8 **DIRECT EXAMINATION BY MR. OSBORNE OF SARA GOODMAN:**

9 Q. All right, Ms. Goodman, where do you work?

10 A. I work at the South Carolina Law Enforcement Division,
11 commonly referred to as SLED.

12 Q. All right. What do you do for SLED?

13 A. I am a forensic scientist assigned to the DNA case work
14 department.

15 Q. All right. And what type of work do you do as a
16 scientist there?

17 A. So I -- we receive items from law enforcement agencies
18 throughout the state. So I will generate DNA profiles from
19 items of evidence as well as the known standards. And if I
20 can I will make comparisons between those two and write a
21 report based on my findings.

22 Q. Okay. And what is your educational background?

23 A. I have a bachelors of science in biology from Erskine
24 College and a master's of science in forensic science from
25 Arcadia University which is in Pennsylvania.

1 Q. Have you received any additional training in --
2 specifically to the area or field of DNA analysis?

3 A. Yes, upon employment at SLED I went through about a year-
4 long training program with another court qualified analyst.
5 So that included some laboratory instruction as well as report
6 writing, tests, and court preparation.

7 So at the end of that training I successfully completed a
8 series of competency tests to become certified to do casework
9 in DNA analysis. And then we are required to receive at least
10 eight hours of continuing education in our field every year.

11 Q. All right. How many times would you estimate that you
12 have analyzed samples in an attempt to recover DNA or compare
13 it?

14 A. Probably over a thousand samples.

15 Q. And have you ever been qualified as an expert in the
16 field of DNA analysis before?

17 A. Yes, I have.

18 Q. About how many times?

19 A. About seven times.

20 MR. OSBORNE: Your Honor, at this time we would offer Ms.
21 Goodman as an expert in the field of DNA analysis.

22 THE COURT: Any challenge?

23 MS. NORRIS: No objection.

24 THE COURT: Okay. This witness will be qualified in the
25 area of DNA analysis. Ladies and gentlemen, once again, y'all

1 can accept her opinion but it is information for you to use
2 any way that you see fit.

3 Yes, sir. go ahead.

4 MR. OSBORNE: Thank you, Your Honor.

5 Q. All right. Ms. Goodman, just briefly in layman terms
6 describe to the jury what is DNA; what does that mean?

7 A. DNA is a chemical that is present in almost every every
8 cell of our bodies. It is basically the blueprint of who we
9 are. You get half from your mother and half from your father.
10 And with the exception of identical twins it is unique to an
11 individual, meaning only that person has that exact DNA
12 profile.

13 Q. Okay. And were you asked in this case to take a look at
14 and analyze - may I approach the witness, Your Honor -

15 THE COURT: Yes.

16 Q. - State's 124 and 125 which have already been marked and
17 admitted into evidence.

18 MS. NORRIS: Your Honor, we have a continuing objection
19 to one of those consistent with our pretrial motion.

20 THE COURT: Okay. At this point they are marked for ID
21 only; is that correct?

22 MR. OSBORNE: They have been admitted, Your Honor.

23 THE COURT: They already have been admitted. Oh, okay.
24 Okay. Thank you very much. Your objection is noted once
25 again.

1 Go ahead.

2 A. Yes, I did analyze these items.

3 Q. Okay. And we have already been through this before. So
4 125 is SLED Item Number 9 and that is a buccal swab from Byron
5 Rivers; is that correct?

6 A. Yes.

7 Q. And SLED Number 31, State's 124, is a swab from a nine
8 millimeter Hi-Point, and that would be State's 125; and I
9 realize you may not have all of that information but those
10 items have already been admitted.

11 A. Okay.

12 MS. NORRIS: For clarification, Exhibit 123 is the one
13 that we object to.

14 THE COURT: Okay. Thank you.

15 MR. OSBORNE: Do you mean 124? That is the swab DNA.

16 MS. NORRIS: One twenty-four.

17 THE COURT: Thank you.

18 MS. NORRIS: The swab from the nine millimeter.

19 THE COURT: Noted. Okay. Thank you very much.

20 Q. All right. Well, let me just ask you. When you -- well,
21 does SLED have protocols in reference to packaging of DNA
22 samples and buccal swabs?

23 A. Yes.

24 Q. And when you received those items did they appear to be
25 tampered or altered with it anyway?

1 A. They did not.

2 Q. And if they had been tampered or altered with in any way
3 would you have done any analysis on them?

4 A. No.

5 Q. Okay. All right. Tell the jury what type of analysis
6 did you do on those items.

7 A. So for both of these items I generated DNA profiles from
8 the item.

9 Q. Okay. And how do you go about doing that?

10 A. So once I receive items into my custody and have verified
11 that they are not tempered with and what DNA request they have
12 on them I open one item at a time and take samplings or
13 cuttings from each item and then through a series of chemicals
14 and machines will take them through the processes in our lab
15 so we will extract the DNA which is separating the DNA off of
16 the item that is on quantitative which tells us approximately
17 how much DNA is on that sampling, amplify the DNA which makes
18 billions of copies of it, and then through a machine and
19 computer software it is separated out and a DNA profile is
20 generated.

21 So I do that for both the evidence items and the standard
22 that we receive for that case. And then once I look at the
23 evidence items and determine whether or not I can use them for
24 comparisons I will make comparisons to any of the known
25 standards that I have for that case and write a report based

1 on my findings.

2 Q. Okay. And so in this case when you were making this
3 comparison a known standard would be the buccal swab from
4 the -- Byron Rivers?

5 A. Correct.

6 Q. And we heard a little bit about this earlier, but what
7 exactly is a buccal swab?

8 A. So a buccal swab are -- it is a swab which is usually
9 similar to like a cotton swab or a Q-tip that is rubbed on the
10 inside of a person's cheek.

11 Q. Okay. And were you -- I suppose you are able to develop
12 a profile from the known standard in this case?

13 A. Yes.

14 Q. All right. And that being Byron Rivers' buccal. Were
15 you able to develop a profile from the evidence stan- -- or
16 that was submitted to you?

17 A. Yes, from Item 31.

18 Q. And that being the swab from the pistol ---

19 A. Correct.

20 Q. --- from the Hi-Point? All right. And were you -- based
21 on that standard were you able to compare the DNA that was
22 recovered from the pistol to the defendant Bryon Rivers?

23 A. Yes, I made comparisons to all of the standards that I
24 had.

25 Q. Okay. And were you able to draw any conclusions when you

1 make that comparison?

2 A. Yes.

3 Q. And what were your findings?

4 A. The first one, Item 31 which were swabs from the trigger
5 and grip of handgun, the DNA profile is a mixture of at least
6 three individuals.

7 The partial DNA profile of the major contributor matches
8 the DNA profile of Byron Rivers. The probability of randomly
9 selecting an unrelated individual having a DNA profile
10 matching the major contributor to this mixture is
11 approximately one in thirty-two billion.

12 This item is not eligible for entry into the Combined DNA
13 Index System or CODIS. And due to the inability to calculate
14 a statistic no further interpretation will be offered
15 regarding the minor contributors.

16 Q. One in thirty-two billion?

17 A. Yes.

18 MR. OSBORNE: No further questions.

19 THE COURT: Cross-examination

20 **CROSS-EXAMINATION BY MS. NORRIS OF SARA GOODMAN:**

21 Q. Ms. Goodman, you are also an expert in serology, aren't
22 you?

23 A. Yes.

24 Q. All right. And that is basically blood?

25 A. It is the analysis of different body fluids.

1 Q. And ---

2 A. Which would include ---

3 Q. --- in this particular case were you asked to determine
4 whether there was blood on the trigger and handgrip of the
5 weapon?

6 A. Not on this item, no.

7 Q. And we are talking about 123.

8 A. I believe it is 124.

9 Q. Yes, the ---

10 A. Is ---

11 Q. The weapon itself is 123.

12 A. Oh, I'm sorry. Yes.

13 Q. The swab you have is 124?

14 A. Correct.

15 Q. Thank you for clarifying. And so -- so you don't know
16 whether there is blood on there or not?

17 A. I do not.

18 Q. And DNA can that come from -- obviously from the buccal
19 swab it can come from saliva?

20 A. Correct.

21 Q. It can come from blood?

22 A. Correct.

23 Q. What other sources can you get DNA from?

24 A. Pretty much any other body fluid; sweat, semen. You can
25 also get DNA from touch DNA which is the skin cells left

1 behind when you touch an item.

2 Q. And so if I touched somebody who was sweating and then
3 picked up that weapon it is possible that I could put their
4 DNA on that weapon?

5 A. It is possible.

6 Q. And the same thing for blood, if I touched somebody who
7 is bloody and then pick up this weapon it is possible I am
8 leaving their DNA; correct?

9 A. It is possible, yes.

10 Q. And you've talk about the packaging that law-enforcement
11 does. You don't have any idea who touched that weapon before
12 law enforcement got it other than somebody?

13 A. Correct, I do not know that information.

14 Q. And you don't know whether this weapon came in a plastic
15 bag comingled with multiple other items including clothing?

16 A. Before it came to SLED I am not sure what it was packaged
17 with.

18 Q. And you had a sample for Mr. Rivers. Who else did you
19 have known standards for in this case?

20 A. I had buccal swabs also from a Sanquan Fyall, Nashishi
21 Walker, Theodore Fyall, Eleanor Delesline, Antonio Cummings,
22 Johnnel Watson. I had a blood spot from Kirby Fyall. And
23 then buccal swabs also from Frederick Smalls, Stacy Green, and
24 Antonio Fyall.

25 Q. And I believe you testified that on that swab, Exhibit

1 124, it is at least three individuals?

2 A. Correct.

3 Q. And the major one is Mr. Rivers; now the other two could
4 they be people on that list but you just can't determine it?

5 A. Yes, I could not make comparisons to the minor
6 contributors so I can't say whether or not it is any of those
7 other individuals.

8 Q. And, again, you can't determine whether someone touched
9 Mr. Rivers sweaty and then picked up that weapon?

10 A. Correct. I can't say how the DNA got there, just that it
11 is there.

12 Q. All right. And you were also asked to look at -- you
13 were asked to look at some other swabs as well, correct?

14 A. Yes.

15 Q. All right. And one of those, Item 23, is that listed as
16 a swab from under side of a tote lid from bedroom?

17 A. Yes.

18 Q. And were you asked to do blood testing on that?

19 A. I was.

20 Q. Did you find blood?

21 A. It was presumptive testing for blood was positive.

22 Q. And whose DNA profile did that match?

23 A. The DNA profile matches the DNA profile of Antonio Fyall.

24 Q. And you also looked at I believe Item 29, a swab from the
25 handle of a sledgehammer; correct?

1 A. Correct.

2 Q. And Item 30, swabs from the handle of a sledgehammer near
3 the hammer; do you know what the hammer is on a sledgehammer?

4 A. Yes.

5 Q. That is the part that is actually banging, right?

6 A. Yes.

7 Q. And I believe you looked at a swab from a baseball bat; I
8 believe that is Item 33?

9 A. Yes.

10 Q. And there were some other swabs. And all of those things
11 you were asked to look at in this case?

12 A. Correct.

13 Q. And back -- when did you actually receive all of these
14 items; do you recall a date?

15 A. If I can refer to my chain.

16 Q. Yes, ma'am, you sure can.

17 A. I took these items into my custody on April 16th, 2018.

18 Q. All right. And did you also work at SLED back in 2016?

19 A. I did.

20 Q. And to your knowledge is there any limit on how many
21 items you can be asked to test?

22 A. We generally have a limit up front for homicides of five
23 items to begin with. But more items can be requested, or
24 there are exceptions to that as well.

25 Q. And you as an individual how many items did you test?

1 And you refer to your notes if you want.

2 A. In this particular case I worked 22 items.

3 Q. And is that policy of initially five but they can send
4 more, it that lab-wide including gunshot residue -- or trace
5 evidence I guess they call it?

6 A. That is just for our department.

7 Q. Okay. Do you know what the limit is or is there a limit
8 for other departments?

9 A. I am not sure about that.

10 Q. All right. Thank you, ma'am. I don't have anything
11 further.

12 THE COURT: Any redirect?

13 MR. OSBORNE: Just briefly.

14 **REDIRECT EXAMINATION BY MR. OSBORNE OF SARA GOODMAN:**

15 Q. So the DNA on the sledgehammer came back with -- came
16 back to a major contributor being that of Antonio Fyall; is
17 that correct?

18 A. I'm sorry, is that for Item 29?

19 Q. Twenty-nine and thirty.

20 A. Yes, the major contributor matched Antonio Fyall for 29.
21 Thirty was just a single source profile matching Antonio
22 Fyall.

23 Q. Okay. And one -- I know Ms. Norris asked you if you
24 analyzed a bunch of other items.

25 A. Yes.

1 Q. One item she didn't mention I will just go ahead and
2 mention it is item -- SLED Item 21, swabs from a glass kitchen
3 window. The DNA came back on that. Who did that end up
4 matching to?

5 A. That matched the DNA profile of Antonio Fyall.

6 Q. Okay. No further questions.

7 MS. NORRIS: Nothing further, Your Honor.

8 THE COURT: Okay. Thank you very much. Ma'am, you are
9 free to step down from the witness stand.

10 May this witness be excused? Any objection to being
11 released from this subpoena from the State?

12 MR. OSBORNE: None, Your Honor.

13 THE COURT: Any from the defense?

14 MS. NORRIS: No objection.

15 THE COURT: All right. You are free to leave. Thank you
16 very much.

17 All right. The State may call its next witness.

18 MR. LIETZOW: May we approach, Your Honor?

19 THE COURT: Yes.

20 (WHEREUPON, bench conference.)

21 THE COURT: Any other witness at this time, Mr. Lietzow?

22 MR. LIETZOW: Your Honor, at this point the State would
23 rest its case in chief.

24 THE COURT: All right. Thank you very much. Ladies and
25 gentlemen, we have reached a point in the trial that means I

1 need to take up some matters with these attorneys. It is also
2 about lunch time. I understand we expect our lunch to be here
3 soon. Is that right? I think 12:30 was the estimated time of
4 arrival. With this weather I am glad we are not throwing
5 y'all outside today. This worked out well.

6 But I will release you now for lunch. Hopefully those
7 lunches will be here in the next few minutes. And we will
8 resume, my goal would be about 1:00 or 1:15. If you need more
9 time than that just let the bailiffs know. And obviously that
10 is going to depend on exactly when lunch does arrive. So we
11 will let you go for now.

12 And please once again do not discuss the case. Now I
13 will also say you are not held hostage here by any means. If
14 you need to leave during this break that is fine. But if you
15 do leave just try to be back by about one o'clock if you can.
16 Okay. Thank you very much.

17 (WHEREUPON, jury exits 6/12/19, 12:26 p.m.)

18 THE COURT: Thank you. Please be seated. Happy to
19 entertain any motions from either side at this point in the
20 case. Any from the State?

21 MR. LIETZOW: Nothing from the State, Your Honor.

22 THE COURT: Anything from the defense?

23 MR. MACK: Thank you, Judge. We just renew all previous
24 motions included motion for a mistrial earlier today. And
25 move for a directed verdict from court based on lack of malice

1 aforethought under the murder charge and no proof of an armed
2 robbery in this case.

3 Mr. Rivers clearly went to the incident location to buy
4 some drugs. The only indication of an armed robbery is the
5 inconsistent testimony of the individual's side.

6 The State can't put the nine millimeter weapon it
7 believes to be the murder weapon in Byron River's hand other
8 than with some DNA evidence with skeptical chain of custody
9 and with two other unidentified individuals on a trigger.

10 The murder weapon was in Stacy Green's flight path, as
11 testified to by Rickey Fyall, the person who supposedly found
12 it or received it from the person who found it.

13 This was clearly a drug deal that went wrong. As many as
14 seven guns could have been in the house, as State's expert
15 from SLED testified. And Byron had none of the victim's
16 belongings in his possession. That is the murder and the
17 armed robbery charge.

18 As far as the attempted murder charges go, Judge, Johnell
19 Watson did not testify in this case, so we really do not know
20 the extent of his injuries. The State has attached a -- or
21 from his mouth. They had some experts testify. But he never
22 told us how badly he was injured.

23 And the State has attached an attempted murder indictment
24 to him. In addition Antonio Fyall claimed on the stand that
25 he was fatally injured. Somehow he ran from the incident

1 location with this fatal head injury, told people what was
2 going about half a block away, ran back to the incident
3 location, managed to hide some evidence found next to Kirby
4 Fyall in a bedroom and then speak to police officers after the
5 fact.

6 THE COURT: Okay. Anything else? All right. I will
7 allow the State to respond.

8 MR. LIETZOW: Thank you, Judge. As Your Honor is aware
9 in a directed verdict case the trial judge must consider only
10 the existence or nonexistence of the evidence and not its
11 weight. That is State v. Buckman.

12 If there is any direct evidence or any circumstantial --
13 or any substantial circumstantial evidence reasonably tending
14 to prove the guilt of the accused the case was properly
15 submitted to the jury. That is State v. Brannon.

16 On appeal from the denial of a directed verdict the
17 appellate court must view the evidence in the light most
18 favorable to the State. That is State v. Rowell

19 It should only reverse the trial court's ruling if that
20 ruling was based on error of law or there is no evidence in
21 the record to support the trial court's ruling. State v.
22 Dantonio.

23 As to the malice aforethought element of murder, Your
24 Honor, malice can be an intentional doing of a wrongful act
25 without just cause or excuse and with an intent to inflict an

1 injury or under circumstances that the law would infer evil
2 intent may be inferred from conduct showing total disregard
3 for human life. Malice may also arise when the deed is done
4 with a deadly weapon. The State has presented ample evidence
5 that the victim suffered a gunshot wound which is a deadly
6 weapon.

7 The defendant and his codefendant went to the scene
8 wearing matching wool gloves in July which showed their evil
9 intent. The State's contention is that we have certainly
10 surpassed the standard for a directed verdict motion as to the
11 murder charge.

12 As to the no armed robbery charge, Your Honor, there is
13 evidence that Stacy Green and Byron Rivers acted in concert
14 with one another.

15 Stacy Green had Theodore Fyall's wallet in his pocket
16 when he was apprehended which was stolen during the robbery.
17 And the bag that Stacy Green was walking around the house
18 filling up with the victim's belongings had a TWIC card
19 belonging to Frederick Smalls. It had the victim's pants
20 inside.

21 Also the fact that they made the victim's take their
22 pants off was evidence that they were robbing them. And
23 several of the witnesses were seen running around the crime
24 scene without any pants on, including Sanquan Fyall running
25 around in his boxers. And I believe Theodore Fyall was also

1 running around in his boxers.

2 As to not being able to put the gun in the defendant's
3 hands, I think we clearly demonstrated that his DNA is on it
4 from the trigger and the handle portion.

5 There is no evidence in the record that it was a drug
6 deal that went wrong.

7 As to the other charges, Johnell Watson not testifying,
8 the doctor, Dr. Privett, testified that had that bullet
9 perforated his colon it absolutely could have been a deadly
10 injury and he could have died. And Antonio Fyall was shot in
11 the face. And the doctor testified that that certainly could
12 have ended his life.

13 As to the elements of that charge, attempting to kill
14 another with malice, and the malice in this is you don't shoot
15 somebody in the face unless you are intending to kill them.
16 And you don't open fire in a confined area unless you are
17 intending to kill somebody. And both Johnell Watson and
18 Antonio Fyall were shot with bullets. And Byron Rivers
19 clearly had the intent to end life on that night.

20 Burglary first-degree, Your Honor, we have proved that it
21 was a dwelling. We have proved all of the aggravating
22 circumstances, that it was at night, that he had a deadly
23 weapon, that he caused physical injury to nonparticipants in
24 the crime.

25 As to the possession of a weapon during the commission of

1 a violent crime it is our position that we have proved that he
2 is guilty of murder, attempted murder, armed robbery, burglary
3 first. Those are all violent crimes and therefore would make
4 him guilty of possessing a weapon during that violent crime
5 because he did have a weapon.

6 So taking all that into consideration we would
7 respectfully request Your Honor to deny the defense's directed
8 verdict and allow all 11 of the indictments that we have moved
9 forward on to go to a jury for their decision. Thank you.

10 THE COURT: All right. Any response?

11 MR. MACK: Yes, Judge. I'm sorry, I neglected to mention
12 the burglary first-degree indictment. There are so many here.
13 The defense's position is that the intent to commit a crime
14 was never manifested when Byron Rivers and Stacy Green entered
15 that house. They were there for seven to ten minutes.
16 Anything could have happened during that seven to ten minutes.
17 I found it hard to believe an armed robbery took that entirety
18 of that time.

19 As far as the malice aforethought goes the State is
20 leaning heavily on that blurry photo of a glove introduced
21 into evidence by a deputy who didn't even remove it from Byron
22 Rivers' hand. He walked past it and he said hey that looks
23 important. Somebody else took it off of his hand and then
24 didn't testify.

25 That is pretty much all they have got as far as malice

1 aforethought goes, a glove. A glove that a black man in the
2 Macon could be wearing for any number of reasons other than an
3 armed robbery.

4 As far as the evidence that Stacy Green and Byron Rivers
5 acted in concert, the only evidence we have of that is that
6 they are seen entering the [REDACTED] together and they are
7 seen exiting it together. We have no idea who pulled the
8 triggers inside that house.

9 THE COURT: Okay. Thank you very much. I have been
10 known to direct a verdict a time or two, but this is not the
11 case that I find it is appropriate on any of these charges.

12 I have followed the testimony of all the witnesses
13 closely. And after considering all of the testimony I have
14 heard and arguments of counsel I respectfully deny your
15 motions for directed verdict, specifically your arguments as
16 to malice aforethought.

17 Of course we know that can occur not long before the
18 crime but almost at the same time as the crime is being
19 committed. And I find the facts and circumstances alleged
20 from the State and the State's witnesses in this case may give
21 rise to malice aforethought consideration by the jury.
22 Certainly it is going to be a jury question ultimately whether
23 or not the jury finds it to be malice aforethought.

24 With respect specifically to your attempted murder
25 directed verdict motions and the fact that Johnell did not

1 testify, we had clear testimony from State's witness Fred
2 Smalls who stated clearly he saw Johnell get shot. We also
3 had the testimony of the doctor who treated him at the
4 hospital and testified as to the nature of his wounds once he
5 was admitted to the hospital. So for those specific reasons
6 and for the general standard which I am to consider as the
7 existence of evidence at this point in time, not the weight,
8 respectfully once again your motions are denied.

9 Now having said that it is now time for the defense to
10 present its case. And I am sure you have discussed with your
11 client whether or not he wishes to testify.

12 DEFENDANT ATTY: I believe there are two other
13 indictments, Judge. An attempted murder on Antonio Fyall and
14 a burglary first-degree.

15 THE COURT: Yes, sir. I'm sorry, if you want me to
16 specifically address those I will. Okay.

17 MR. MACK: For my client's sake. I'm sorry.

18 THE COURT: That's okay.

19 MR. MACK: For Antonio Fyall I find his testimony
20 regarding his wounds plus the doctor's testimony is more than
21 enough to carry it over to a jury question of whether or not
22 there was indeed an attempted murder that took place.

23 And then what was your other specific one you want me to
24 address?

25 MR. MACK: The burglary first ---

1 THE COURT: Burglary. Yeah, I mean I think that the
2 elements of the burglary charge have been at least addressed
3 in testimony, through which we understand this was at night.
4 It was a dwelling that was entered into allegedly by these
5 individuals. They were bearing weapons according to testimony
6 of multiple witnesses who took the witness stand.

7 And obviously we have got some testimony that injuries
8 did occur as a result inside of the dwelling. So I think
9 there is at least a jury question as to whether or not that
10 did take place. So for those specific reasons those motions
11 are denied.

12 Anything else I can address specifically for you, Mr.
13 Mack?

14 MR. MACK: No, Judge. Thank you.

15 THE COURT: Okay. And so once again as I was saying, at
16 this point in time tell me about -- and I can give you more
17 time if you need to discuss your client's wish to testify or
18 not testify. And of course I will read him his rights in that
19 regard as well whenever you are ready. Just let me know, Mr.
20 Mack.

21 MR. MACK: Okay.

22 (WHEREUPON, Mr. Mack confers with Mr. Rivers.)

23 MR. MACK: Judge, Byron Rivers wishes not to testify.

24 THE COURT: Okay. Well, nonetheless, Mr. Rivers, I am
25 going to read these certain rights.

1 He can stand or sit down. It is up to you, Mr. Rivers.
2 Whichever you are most comfortable. I will ask the clerk to
3 put you under oath for this portion of what I am about to tell
4 you right now, okay.

5 (WHEREUPON, the defendant was duly sworn.)

6 THE COURT: All right. Mr. Rivers, at this time I have
7 to explain to you certain rights. And these are
8 constitutional rights that I have to explain to you. Okay.

9 If you don't understand anything I say at any point in
10 time I want you to let me know. If you want me to explain
11 anything in more detail I also want you to let me know that.
12 Do you understand?

13 DEFENDANT RIVERS: Yes, ma'am.

14 THE COURT: All right. We have now reached the stage of
15 the trial where you may present your defense. You have the
16 right to claim the protections given to you by the Fifth
17 Amendment of the Constitution of the United States. And the
18 Fifth Amendment states in part that no person shall ever be
19 compelled to in any criminal case to be a witness against
20 himself. This means that you cannot be required to testify in
21 this case. You have the right to testify on your own behalf
22 however no one can make you testify.

23 This is a personal right, and no one can waive this right
24 except for you. Now if you decide to testify you will be
25 subject to the same rules that have governed these other

1 witnesses and you may be examined and cross-examined on any
2 relevant issue in the case.

3 In addition, if you have any convictions which involve
4 dishonesty or false statement or for crimes punishable by
5 imprisonment or more than a year and this court determines
6 that the probative value of admitting this evidence outweighs
7 any prejudicial effect to you the solicitor would be able to
8 introduce your record to attack your credibility.

9 Now if you decide to testify this decision on your part
10 must be freely, voluntarily and intelligently made with
11 knowledge of the protections given to you by the Fifth
12 Amendment and the consequences of your decision to testify.

13 If you decide not to testify I will instruct the jury
14 that they cannot give the fact that you did not testify any
15 consideration whatsoever and that there is to be absolutely no
16 prejudice to you because you did not testify. It is left
17 entirely up to you whether or not you testify.

18 You can talk some more with your attorney, your family
19 and friends, or anyone else. But the final decision is going
20 to be left entirely up to you.

21 Do you understand what I have just explained to you?

22 DEFENDANT RIVERS: Yes, ma'am.

23 THE COURT: Do you have any questions about what I have
24 just explained to you?

25 DEFENDANT RIVERS: No, ma'am.

1 THE COURT: Have you discussed with your lawyers whether
2 or not you should or should not testify?

3 DEFENDANT RIVERS: Yes, ma'am.

4 THE COURT: Do you wish to talk to these lawyers anymore
5 at this time?

6 DEFENDANT RIVERS: No, ma'am.

7 THE COURT: Do you want to testify?

8 DEFENDANT RIVERS: No, ma'am.

9 THE COURT: All right. Thank you very much. He may be
10 seated.

11 Mr. Mack, do you intend to call any other witnesses at
12 this time?

13 MR. MACK: Yes, Judge, I am considering calling
14 Investigator Harry Long ---

15 THE COURT: Okay.

16 MR. MACK: --- for impeachment purposes. But that would
17 largely be determinative of the court's idea of how that would
18 affect closing argument. Would I be -- if I am calling him
19 just for impeachment purposes would I still be able to have
20 the final word in closing arguments?

21 THE COURT: It is my understanding that is still evidence
22 that you are introducing; it would therefore not entitle you
23 to final close.

24 But if you want to research the topic over lunch and come
25 back to me with ---

1 MR. MACK: Thank you.

2 THE COURT: --- a strong argument otherwise. You can let
3 me know. I am always open. But that would be my inclination
4 based on my understanding of the law.

5 MR. MACK: I appreciate that.

6 THE COURT: Okay.

7 MR. MACK: Yes, ma'am.

8 THE COURT: All right

9 (WHEREUPON, inquiring as to whether lunch arrived for jurors.)

10 MR. OSBORNE: Your Honor, it seems like we are going to
11 be rolling with closing pretty quickly after lunch. Do we
12 want to talk about charges now?

13 THE COURT: We can. Yeah, I'm happy to. My clerk has
14 begun crafting a charge, a draft charge. I am happy to email
15 it to y'all if you want to look over it at lunch, or we can
16 just talk about it now.

17 MR. OSBORNE: We would be requesting a hand-of-one charge
18 obviously.

19 THE COURT: I have that included. I think there was
20 sufficient evidence to include that. And we also have a
21 charge to mere presence at the scene.

22 (WHEREUPON, pause for answer as to lunch update.)

23 THE COURT: So we have got a little time. So why don't
24 we just go ahead and jump into talking about the charge then.

25 (WHEREUPON, break for court to email draft charges.)

1 THE COURT: I did find it appropriate to charge
2 manslaughter, for the record, given specifically the portion
3 of the jail tape where alleged -- he alleged -- the defendant
4 allegedly said they grabbed me and then -- so there was some
5 indication there sort of a heated passion going on. So that I
6 felt it was appropriate based on that if nothing else to
7 charge manslaughter.

8 I tell you what, I am going to give y'all a few minutes
9 with that and let you marinate on it and then we will come
10 back. Okay. Thank you very much.

11 (WHEREUPON, break 6/12/19, 12:48 p.m.)

12 (WHEREUPON, resume 6/12/19, 1:01 p.m.)

13 THE COURT: I understand there were some discussions over
14 the jury charge draft. I am happy to hear from Mr. Mack. Do
15 you want to go first?

16 MR. MACK: Yes, Judge. I have spoken with Byron Rivers
17 and he has told me that he would respectfully request that the
18 judge not charge manslaughter to the jury in the jury charge.

19 THE COURT: Okay. All right. I understand that is a
20 strategic decision sometimes.

21 All right. Any objection from the State on not charging
22 voluntary manslaughter?

23 MR. LIETZOW: Given the choice we prefer it not be
24 charged either, Your Honor.

25 THE COURT: Okay. Well, it sounds like we have an

1 agreement on that. Anything else that needs to be changed or
2 amended or added or deleted from the charges proposed apart
3 from the removal of the voluntary manslaughter charge?

4 MR. LIETZOW: None from the State, Your Honor.

5 MR. MACK: Judge, one small matter that we mentioned to
6 the State beforehand.

7 THE COURT: All right.

8 MR. MACK: I believe the charge lists Kirby Fyall as a
9 victim of an armed robbery. And I don't think there's any
10 evidence that he lost or had any of his items or possessions
11 removed from the house or stolen.

12 THE COURT: How does the State respond to that?

13 MR. LIETZOW: Your Honor, we did present that indictment
14 and we do feel as though there is sufficient evidence to go
15 forward on that. I feel like that probably should have been
16 taken up at the directed verdict. And we are certainly
17 prepared to ---

18 THE COURT: Yeah, I am not sure this is -- this is an
19 odd -- it seems like a late directed verdict motion to me, Mr.
20 Mack. I am not really sure what the nature of this would
21 (WHEREUPON, defense counselors confer.)

22 THE COURT: I guess to the extent in your directed
23 verdict motion you included all victims of the alleged armed
24 robbery?

25 MR. MACK: Correct.