

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
R. Markley Dennis, Circuit Court Judge

RECEIVED

Sep 21 2020

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DEVIN JAMEL JOHNSON,

APPELLANT

APPELLATE CASE NO. 2019-000938

RECORD ON APPEAL

SUSAN B. HACKETT
Appellate Defender

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

ATTORNEY FOR APPELLANT

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

WILLIAM EDGER SALTER, III
Senior Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

SCARLETT WILSON
Solicitor, Ninth Judicial Circuit
101 Meeting Street, Suite 400
Charleston, South Carolina 29401-2214

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	I
TRIAL TRANSCRIPT DATED APRIL 1-4, 2019.....	1
JURY VOIR DIRE	2
JURY SELECTION.....	20
<u>JACKSON V. DENNO</u> HEARING.....	30
TESTIMONY	
DAVID OSBORNE	
Direct Examination by Ms. Linder	31
Cross Examination by Mr. Familoni.....	46
ARGUMENT BY MR. FAMILONI.....	54
ARGUMENT BY MS. LINDLER.....	57
RULING BY THE COURT.....	59
OPENING STATEMENT BY MS. SIGAL	62
OPENING STATEMENT BY MR. KOZELSKI.....	70
TESTIMONY	
ROBERT HOLMES	
Direct Examination by Ms. Sigal.....	76
Cross Examination by Mr. Kozelski.....	81
Redirect Examination by Ms. Sigal	95
Re-Cross Examination by Mr. Kozelski	96
TENIKA ELMORE	
Direct Examination by Ms. Linder	97
Cross Examination by Mr. Kozelski.....	108
MATT JAHNGEN	
Direct Examination by Ms. Linder	115
Cross Examination by Mr. Kozelski.....	123
RENE CHARLES	
Direct Examination by Ms. Sigal.....	129

Cross Examination by Mr. Kozelski	151
JEFF MILLER	
Direct Examination by Ms. Sigal.....	165
Cross Examination by Mr. Kozelski	177
JENNIFER WOOLEY	
Direct Examination by Ms. Linder	185
Cross Examination by Mr. Kozelski	187
DAVIS OSBORNE	
Direct Examination by Ms. Linder	189
Cross Examination by Mr. Kozelski	252
Redirect Examination by Ms. Linder.....	278
Re-Cross Examination by Mr. Kozelski	281
ILA SIMMONS	
Direct Examination by Ms. Linder	282
Cross Examination by Mr. Kozelski	288
Redirect Examination by Ms. Linder.....	288
Re-Cross Examination by Mr. Kozelski	289
KATHLEEN BUTLER	
Direct Examination by Ms. Linder	290
Cross Examination by Mr. Kozelski	295
VANESSA MORTON	
Direct Examination by Ms. Sigal.....	300
Cross Examination by Mr. Kozelski	306
DIANGELO BUMCUM	
Direct Examination by Ms. Sigal.....	309
Cross Examination by Mr. Kozelski	317
Redirect Examination by Ms. Sigal	324
CRAIG KOSARKO	
Direct Examination by Ms. Sigal.....	326
STATE’S MOTION TO EXCUSE JUROR	343
RULING BY THE COURT.....	350
CRAIG KOSARKO (continued)	
Direct Examination by Ms. Sigal.....	354
Cross Examination by Mr. Kozelski	377
Redirect Examination by Ms. Sigal	389

Re-Cross Examination by Mr. Kozelski	392
WILLIS WALKER	
Direct Examination by Ms. Sigal.....	394
NICHOLAS BATALIS	
Direct Examination by Ms. Linder	415
Cross Examination by Mr. Kozelski	421
EXPLANATION OF RULING TO DISMISS JUROR BY THE COURT	422
MOTION FOR DIRECTED VERDICT.....	426
RULING BY THE COURT.....	426
CHARGE CONFERENCE.....	428
STATE RESTS	429
CLOSING ARGUMENT BY MS. LINDER.....	430
CLOSING ARGUMENT BY MR. KOZELSKI	451
CHARGE ON THE LAW	467
OBJECTIONS TO THE CHARGE ON THE LAW	486
RULING BY THE COURT.....	487
JURY QUESTION.....	489
CHARGE ON THE LAW	489
VERDICT	492
SENTENCING	493
RANDOM STRIKE SHEET	495
MOTION FOR NEW TRIAL HEARING TRANSCRIPT DATED MAY 29, 2019.....	497
RULING BY THE COURT.....	510
COURT’S EXHIBIT #2 (MEMO OF LAW)	517
COURT’S EXHIBIT #7 (JURY NOTE)	523

COURT’S EXHIBIT #10 (JURY NOTE)	524
STATE’S EXHIBIT #57 (PHONE RECORDS)	525
STATE’S EXHIBIT #58 (PHONE RECORDS)	526
STATE’S EXHIBIT #59 (PHONE RECORDS)	527
STATE’S EXHIBIT #64 (PHONE RECORDS)	528
STATE’S EXHIBIT #70 (CELL MAPPING)	531
STATE’S EXHIBIT #85 (PHONE RECORDS)	547
MOTION FOR NEW TRIAL	599
MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR NEW TRIAL.....	601
INDICTMENT NO. 2011-GS-10-5208.....	608
INDICTMENT NO. 2011-GS-10-5207.....	610
INDICTMENT NO. 2018-GS-10-6264.....	612
SENTENCE SHEET.....	614
CERTIFICATE OF COUNSEL	615

THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE’S EXHIBIT #25 (PHOTO); STATE’S EXHIBIT #26 (PHOTO); STATE’S EXHIBIT #27 (PHOTO); STATE’S EXHIBIT #28 (PHOTO); STATE’S EXHIBIT #55 (DVD); STATE’S EXHIBIT #76 (VIDEO); STATE’S EXHIBIT #80 (DVD); STATE’S EXHIBIT #82 (POWERPOINT).

State of South Carolina	)	Court of General Sessions
	)	Ninth Judicial Circuit
County of Charleston	)	Case No. 2018-GS-10-06264
	)	Case No. 2011-GS-10-05208
	)	
	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
	)	
Devin Johnson,	)	
	)	
Defendant.	)	
	)	

April 1-4, 2019
Charleston, South Carolina

B E F O R E:

The Honorable R. Markley Dennis, Judge; and a jury

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

Stephanie B. Linder, Esquire
Price Sigal, Esquire
Attorneys for the State

John J. Kozelski III, Esquire
Tola Familoni, Esquire
Attorneys for the Defendant

Krystal J. Smith
Circuit Court Reporter

1 THE COURT: Because I'm going to ask if you know Ashley
2 Pennington or worked with the Public Defender's Office. I
3 have to do that.

4 MR. KOZELSKI: Yeah. And in -- you know, I may have
5 thought --

6 THE COURT: With all due respect, I -- I understand.
7 I've heard some things too at seminars, and judges didn't like
8 them either, but I don't fault you for asking. I'm not going
9 to hold it against you. I'm just not -- I'm not going to
10 guard against -- just like don't use the word victim. Well,
11 everybody knows what a person is if they're victims. We've
12 read it. I mean Lord knows the paper today, the horrible
13 victim from -- at Five Points. That just -- it was horrible.

14 I mean but I appreciate it. I'm not going to refer to
15 you as a public defender --

16 MR. KOZELSKI: Right.

17 THE COURT: -- to begin with.

18 MR. KOZELSKI: Thank you.

19 (WHEREUPON, there was a pause in the proceedings until
20 the jury panel entered the courtroom at 11:18 a.m., after
21 which the proceedings resumed as follows.)

22 THE BAILIFF: All present, Judge.

23 THE COURT: Thank you. I appreciate it.

24 Thank you, ladies and gentlemen. I appreciate that and
25 you're sort of in the last steppingstone for most of you from

1 being able to go back to your normal routine, but I appreciate
2 again your patience.

3 As I mentioned to you when we were qualifying you, the
4 questions that you are going to hear now don't have any
5 correct answers. They're just designed to help you make your
6 decision as to whether you can assist me in being a fair and
7 impartial judge of the facts, and that's the sole purpose of
8 these questions.

9 The first thing I'm going to do is introduce the parties.
10 First of all, the State of South Carolina is a party in any
11 criminal dispute in this state that brings a claim. So that
12 -- that -- we know that's the case.

13 Does anybody have any connection with the State that
14 would give them concern about their ability to be fair and
15 impartial to the State of South Carolina as the prosecuting
16 agency? If so, please stand.

17 (WHEREUPON, one person stood.)

18 THE COURT: Yes?

19 JUROR NUMBER 198: I have a professional relationship
20 with the prosecutors. I have worked with them in the past.

21 THE COURT: Would that affect you?

22 JUROR NUMBER 198: It wouldn't, but I think it could
23 create the appearance of impartiality and so I should probably
24 be excused.

25 THE COURT: Well, I appreciate that. That's my call, but

1 you -- you're being honest about it. Obviously, you may have
2 a tendency to lean more towards the prosecution?

3 JUROR NUMBER 198: Yes, Your Honor.

4 THE COURT: And your name and number?

5 JUROR NUMBER 198: Emily Limehouse, Number 200 [sic].

6 THE COURT: Ms. Limehouse, you'll be excused from
7 participation in this dispute. Call the number after six
8 tonight.

9 And let me just say this, ladies and gentlemen. That's a
10 classic example of why I believe so strongly in this system.
11 That's what -- I've had jurors do that over and over. Some
12 not so much coming forward and just saying, Your Honor, I have
13 this situation, but in answering saying, you know, it probably
14 is better just to let somebody else serve as a juror.

15 So thank you very much.

16 JUROR NUMBER 198: Thank you, Your Honor.

17 THE COURT: Have a good day.

18 MR. KOZELSKI: Your Honor, for the record, she's 198.

19 THE COURT: 198.

20 JUROR NUMBER 198: Thank you.

21 THE COURT: Thank you. Any others?

22 (WHEREUPON, there was no response.)

23 THE COURT: Thank you. There appear to be none.

24 The person accused in this case is Mr. Devin Jamel
25 Johnson. Mr. Johnson, if you'd please stand?

1 (WHEREUPON, the defendant complied.)

2 THE COURT: He's seated at this table. Mr. Johnson is
3 the gentleman in the middle.

4 Thank you. You can be seated.

5 Are there any members of the jury panel related by blood
6 or marriage, have any business dealings, socially or casually
7 acquainted with Devin Johnson? If so, please stand.

8 (WHEREUPON, there was no response.)

9 THE COURT: Thank you. There appear to be none.

10 Mr. Johnson is represented by Mr. Kozelski. If you'd
11 identify yourself and anyone who will be assisting, please.

12 MR. KOZELSKI: Thank you.

13 Good morning, ladies and gentlemen. My name is John
14 Kozelski. I'm an attorney here in Charleston. Standing
15 alongside me is Tola FAMILONI, who also works in my office.

16 THE COURT: Thank you very much.

17 Are there any members of the jury panel related by blood
18 or marriage, have any business dealings with, socially or
19 casually acquainted with, ever been represented by Mr.
20 Kozelski or Mr. FAMILONI? If so, please stand.

21 (WHEREUPON, there was no response.)

22 THE COURT: Thank you. There appear to be none.

23 Are there any members of the jury panel related by blood
24 or marriage to Mr. Ashley Pennington, have any business
25 dealings with him or have any connection with Mr. Pennington

1 or anyone that works for Mr. Pennington? And he has offices
2 in Berkeley and in Charleston County. If so, please stand.

3 (WHEREUPON, there was no response.)

4 THE COURT: Thank you. There appear to be none.

5 Are there any members of the jury panel related by blood
6 or marriage, have any business dealings with, socially or
7 casually acquainted with our solicitor, Scarlett Wilson, or
8 ever been represented by Ms. Wilson? If so, please stand.

9 (WHEREUPON, there was no response.)

10 THE COURT: Thank you. There appear to be none.

11 Ms. Wilson has a number of persons assisting her as
12 deputy solicitors or assistant solicitors. One is Ms. Linder.

13 If you'd identify yourself and anyone who will be
14 assisting you, Ms. Linder.

15 MS. LINDER: My name is Stephanie Linder, and I work with
16 the Solicitor's Office. Assisting me is going to be Price
17 Sigal. She's also an assistant solicitor. And then my
18 investigator, Chuck Jolla, will be coming in and out of the
19 courtroom throughout.

20 THE COURT: And that's Chuck Jolla?

21 MS. LINDER: Yes, Judge.

22 THE COURT: Thank you. Are there any members of the jury
23 panel related by blood or marriage, have any business dealings
24 with, socially or casually acquainted with Ms. Linder, Ms.
25 Sigal or Mr. Jolla or ever been represented by Ms. Sigal or

1 Ms. -- Ms. Linder? If so, please stand.

2 (WHEREUPON, there was no response.)

3 THE COURT: Thank you. There appear to be none.

4 Mr. Johnson has been accused of two crimes and the -- the
5 allegations are contained in these documents that I'm holding
6 in my hand, what they appear to you to be pieces of paper.
7 They are not evidence. They just merely contain the
8 accusations, and I need to share with you what's alleged.
9 Please remember it's not -- it's not evidence, but I need to
10 ask you some questions about it.

11 It's alleged that Mr. Johnson on or about June the 8th,
12 2011, with malice aforethought did himself or in concert with
13 others kill and murder Aakeem Smalls by means of a firearm and
14 that Aakeem Smalls did die as a proximate result of that
15 shooting in violation of the statute prescribing the conduct
16 of murder.

17 It's further alleged that on that particular time and
18 date that Mr. Johnson had in his possession a 9 millimeter --
19 9 millimeter handgun or visibly displayed what appeared to be
20 a 9 millimeter handgun during the commission of or attempted
21 commission of a murder or a violent crime, which murder is
22 designated as a violent crime.

23 I share that with you to find out if any member of the
24 jury panel has heard anything, read anything, you have any
25 prior knowledge of this dispute? If so, please stand.

1 (WHEREUPON, there was no response.)

2 THE COURT: Thank you. There appear to be none.

3 Is there anything about the nature of this dispute that
4 you -- because of some strong feelings you may have, something
5 that may have occurred in your lifetime to you, a family
6 member or close personal friends, that would affect your
7 ability to fairly and impartially apply your common sense,
8 your sense of logic and reason in analyzing the evidence at
9 the end of this trial in deciding what you believe to be the
10 true facts and then, once deciding that, take the law and
11 apply that fairly and impartially? If you feel there would be
12 something, please stand.

13 (WHEREUPON, one person stood.)

14 THE COURT: Yes?

15 JUROR NUMBER 5: Your Honor, I was held up at gunpoint in
16 Alabama right about that same time frame.

17 THE COURT: Okay. And your name and number?

18 JUROR NUMBER 5: My number is Number 5, Patricia
19 Armbruster.

20 THE COURT: Ms. Armbruster, I'm going to excuse you from
21 participation in this dispute. Have a good day. Call the
22 number after six.

23 Are there others?

24 (WHEREUPON, there was no response.)

25 THE COURT: Thank you. There appear to be none.

1 I'm going to identify a number of persons, ladies and
2 gentlemen, and if you're related by blood or marriage to any
3 of these persons, have any business dealings with them, are
4 socially or casually acquainted with them, you need to stand
5 and share that information, please.

6 Robert Holmes.

7 Tenika Elmore.

8 Vanessa Morton.

9 Shaconnor Goff.

10 The following individuals are with the Charleston Police
11 Department, either now or formerly.

12 Matt -- is it Jahngen?

13 MS. LINDER: Jahngen.

14 THE COURT: Jahngen. Okay.

15 Rene Charles.

16 David Osborne.

17 Craig Kosarko.

18 Jeff Miller.

19 Mary Phillips.

20 Jennifer Wooley.

21 Kathleen Butler.

22 Barry Goldstein.

23 Willis Walker.

24 Also, Ila Simmons, who is with SLED, South Carolina Law
25 Enforcement Division.

1 Josh Cheney or Cheney with the Solicitor's Office.

2 Sharmaine Johnson.

3 James Tindall.

4 Diangelo Buncom -- Bumcum.

5 Darnell Eddington.

6 Any of those?

7 (WHEREUPON, there was no response.)

8 THE COURT: Thank you. There appear to be none.

9 Are there any members of the jury panel that are
10 supporters of a police booster organization, honorary law
11 enforcement organization or similar group, such as South
12 Carolina Law Enforcement Association, Sheriff's Association,
13 Fraternal Order of Police, any of those or similar
14 organizations? If so, please stand.

15 (WHEREUPON, there was no response.)

16 THE COURT: Thank you. There appear to be none.

17 Are there any members of the jury panel or member of your
18 immediate family who are members of victims' rights or law
19 enforcement organizations such as Citizens Against Violence
20 Crime, known as CAVE, Mothers Against Drunk Driving, MADD, or
21 similar organizations? If so, please stand.

22 (WHEREUPON, there was no response.)

23 THE COURT: Thank you. There appear to be none.

24 One of the principles of law that apply in every criminal
25 prosecution in this state and, as far as I know, the United

1 States is that persons accused of crimes, such as Mr. Johnson,
2 are never required to prove or disprove anything. They
3 certainly do not have any responsibility to prove their
4 innocence because the law says the burden of proof rests
5 solely on the party charging the person, and in this case the
6 State of South Carolina.

7 And in order to have a person found guilty, the State
8 must convince a jury, all twelve persons, that they have met
9 the burden of proof by establishing each element of the crime
10 charged to the standard known as beyond a reasonable doubt,
11 and I'll define that for you at a later date or later time.

12 But if it fails to prove each element, then the jury must
13 return a verdict of not guilty, and that would be even if the
14 defendant or person accused -- when I use defendant, it's just
15 a term used to designate the party against whom a claim is
16 made, such as this. And if that person -- even if that person
17 provides no evidence, doesn't say anything at all, they still
18 must return a verdict of not guilty because the State would
19 have failed to meet its burden of proof, and that's one of the
20 major principles of law in every criminal dispute.

21 Is there anything about your strong beliefs, your
22 experiences in life that would give you any concern about your
23 ability to follow that instruction?

24 And of course, the flipside of that is, obviously, if
25 they've established each element beyond a reasonable doubt,

1 then you must return a verdict of guilty because why? Because
2 the State would have met its burden of proof and is entitled
3 to a verdict.

4 Anything about that because of something that's occurred
5 in your life that would give you any concern about your
6 ability to follow that and apply that in this case? If so,
7 please stand.

8 (WHEREUPON, there was no response.)

9 THE COURT: Thank you. There appear to be none.

10 Are there any members of the jury panel or member of your
11 immediate family that have ever been involved in a criminal
12 prosecution or criminal dispute, such as this? Either you
13 were the person that was alleged to have been the victim of
14 the crime, you were the person that was accused of committing
15 the crime, you were a witness for either side, or you had any
16 involvement whatsoever. If so, please stand.

17 (WHEREUPON, there was no response.)

18 THE COURT: Thank you. There appear to be none.

19 Any other specific questions from the State?

20 MS. LINDER: I beg the Court's indulgence.

21 THE COURT: Okay.

22 MS. LINDER: We don't have any other exceptions.

23 THE COURT: Any other specific questions from the
24 defense?

25 MR. KOZELSKI: Your Honor, we'd ask that the Court ask

1 Number 10 on our voir dire.

2 THE COURT: Oh, yes. I forgot to ask that.

3 Are there any members of the jury panel or member of your
4 immediate family or close personal friends that have been
5 involved in -- with any addiction to any substance? If so,
6 please stand.

7 (WHEREUPON, several people stood.)

8 THE COURT: All right. I'm going to ask those persons to
9 come forward. The attorneys may approach. Okay.

10 THE BAILIFF: Juror Number 183.

11 (WHEREUPON, a bench conference was held with Juror Number
12 183 as follows.)

13 JUROR NUMBER 183: How are you?

14 THE COURT: I'm well. I hope you're well.

15 JUROR NUMBER 183: In 1981, I was arrested for false
16 imprisonment.

17 THE COURT: Okay.

18 JUROR NUMBER 183: And I got off.

19 THE COURT: Would that affect you in this situation?

20 JUROR NUMBER 183: No.

21 THE COURT: Will you be able to be fair and impartial and
22 apply your common sense fairly and impartially and not be
23 influenced by that?

24 JUROR NUMBER 183: No.

25 THE COURT: Your decision will be based on the evidence

1 and the law?

2 JUROR NUMBER 183: Uh-huh.

3 THE COURT: Is that a yes?

4 JUROR NUMBER 183: Yes.

5 THE COURT: Okay. The reason I ask that is this lady
6 takes down our words.

7 JUROR NUMBER 183: Okay.

8 THE COURT: All right. Any other questions from either
9 side?

10 MS. LINDER: No.

11 THE COURT: Very well. And your number again?

12 JUROR NUMBER 183: 183.

13 (WHEREUPON, the bench conference ended.)

14 THE COURT: 183 will remain.

15 Thank you, sir.

16 THE BAILIFF: Juror Number 3.

17 (WHEREUPON, a bench conference was held with Juror Number
18 3 as follows.)

19 THE COURT: Good morning. Yes, ma'am.

20 JUROR NUMBER 3: I did have a question. I was accused of
21 shoplifting, but it was expunged. But that's not why I'm
22 here.

23 THE COURT: No, no.

24 JUROR NUMBER 3: I'm a recovered alcoholic. I've been
25 clean and sober for nine years April 15th.

1 THE COURT: Congratulations.

2 JUROR NUMBER 3: Thank you.

3 THE COURT: And would that affect -- would either of
4 those things affect you in deciding this case?

5 JUROR NUMBER 3: No.

6 THE COURT: If you heard testimony about any kind of
7 addiction, would you be able to apply your personal
8 experiences fairly and impartially?

9 JUROR NUMBER 3: I would think so.

10 THE COURT: Yes or no?

11 JUROR NUMBER 3: Yeah.

12 THE COURT: Well, I appreciate that, and it's a normal
13 answer. The question I guess is there anything about your
14 experience that would give you difficulty being fair to both
15 sides?

16 JUROR NUMBER 3: Oh, gosh.

17 THE COURT: Number 3?

18 JUROR NUMBER 3: Yes.

19 THE COURT: Thank you for that, and I'm going to remove
20 that possibility.

21 JUROR NUMBER 3: Okay.

22 THE COURT: I appreciate your candor though.

23 (WHEREUPON, the bench conference ended.)

24 THE COURT: Number 3 will be excused from participation
25 in this dispute.

1 If you'll just call the number after six. Thank you.

2 THE BAILIFF: Juror Number 181.

3 (WHEREUPON, a bench conference was held with Juror Number
4 181 as follows.)

5 JUROR NUMBER 181: Hi. Your Honor, my younger brother is
6 a severe alcoholic.

7 THE COURT: Okay. Would that affect you in this case if
8 you were to hear testimony from a witness that had some
9 addiction?

10 JUROR NUMBER 181: No.

11 THE COURT: Would you be able to apply your personal
12 experiences fairly and impartially?

13 JUROR NUMBER 181: I would.

14 THE COURT: And your decision would be based on the
15 evidence and the law and be fair to both sides?

16 JUROR NUMBER 181: Yes, sir.

17 THE COURT: Thank you so much.

18 (WHEREUPON, the bench conference ended.)

19 THE COURT: 181 will remain.

20 THE BAILIFF: Juror Number 152.

21 (WHEREUPON, a bench conference was held with Juror Number
22 152 as follows.)

23 THE COURT: Yes, ma'am. Come on up. Yes, ma'am, your
24 situation?

25 JUROR NUMBER 152: My boss has a daughter who is a heroin

1 addict.

2 THE COURT: Okay.

3 JUROR NUMBER 152: And she has been in and out of
4 facilities and it's just been a daily thing.

5 THE COURT: I understand. It's a tough situation.

6 JUROR NUMBER 152: Yeah.

7 THE COURT: It's happening more and more, obviously.

8 JUROR NUMBER 152: Yes.

9 THE COURT: Would that affect you in this case if there
10 were testimony about somebody battling drug addictions?

11 JUROR NUMBER 152: I would probably use those past
12 experiences and be biased against someone.

13 THE COURT: Okay.

14 JUROR NUMBER 152: Just being normal.

15 THE COURT: I appreciate it. Thank you.

16 (WHEREUPON, the bench conference ended.)

17 THE COURT: Number 152 will be excused from participation
18 in this dispute.

19 Thank you. Call the number after six.

20 Any other questions?

21 MR. KOZELSKI: No more questions.

22 THE COURT: Anything from the State?

23 MS. LINDER: No, Your Honor.

24 THE COURT: Ladies and gentlemen, as I mentioned to you,
25 the last question that I specifically asked -- and I'm going

1 to ask you that because it really sums it all up.

2 When I took this job in 1994, just as when I became a
3 lawyer, I had to raise my hand and take an oath to uphold the
4 law and to hold office as a lawyer, and I did the same thing
5 when I became a judge. And I try -- as I mentioned, try to do
6 that every day of my life to honor that, but I will do the
7 best of my abilities to make decisions based on the evidence
8 and the law that I have the responsibility of deciding and
9 apply my common sense and logic fairly and impartially.

10 And you're present. Thank you. You take care of that
11 part of my responsibility. I don't have to decide the
12 evidence or the facts. You do.

13 Is there anything that you've heard about this dispute
14 that would give you any concern about your ability to raise
15 your hand and make a similar commitment that you will make to
16 serve with me as a judge in this case? Anything that you've
17 heard that would give you any concern? Please raise -- please
18 stand.

19 (WHEREUPON, there was no response.)

20 THE COURT: Thank you very much. I appreciate it.

21 What's going to happen now is your names will be drawn
22 and a list prepared at random, and you'll be called one at a
23 time. And when your name is called, you'll follow the clerk's
24 instructions.

25 But what -- excuse me for turning my back on you. What

1 the clerk will ask you to do is stand in front of this podium
2 and face your fellow jurors and the parties. And each side in
3 this case can excuse jurors. The State has five
4 opportunities; the defendant has ten opportunities.

5 And they will -- we'll go through that process until we
6 seat our twelve jurors and two alternates, and if somebody
7 says seat the juror, then you'll be asked to turn and take a
8 seat and they will instruct you where to sit in the box. If
9 they say excuse the juror, don't be offended by that. That's
10 just the way the process works. And we'll go through that
11 process until -- until we have selected our jury. Thank you
12 very much.

13 Do we have a list yet?

14 THE LAW CLERK: She put it in. She had to go print it in
15 another room. She'll be back in just a second.

16 THE COURT: Love computers, love technology, but
17 sometimes if you don't work something -- and I know y'all have
18 never had that problem. One of the reasons I was a little bit
19 late is I was trying to get something done and I couldn't --
20 maybe some of y'all have worked with PDFs. I don't work with
21 them very much, but I was trying to get a document saved and I
22 was fighting that thing badly. So I'm showing my ignorance
23 this morning.

24 We'll be with you in just a moment. So as soon as she
25 comes back.

1 (WHEREUPON, there was a pause in the proceedings, after
2 which the proceedings resumed as follows.)
3 THE COURT: Okay.
4 THE CLERK: Ladies and gentlemen, if your name is called,
5 please come forward and stand in front of the podium, turn and
6 face the parties, and you may bring all of your belongings.
7 Juror Number 267, Barry Peterson.
8 (WHEREUPON, a white male came forward.)
9 THE CLERK: What say you for the State?
10 MS. LINDER: Please present this juror.
11 THE CLERK: What say you for the defendant?
12 MR. KOZELSKI: Please excuse this juror.
13 THE CLERK: Sir, you may have a seat back in the
14 audience.
15 Juror Number 383, Thorton White.
16 (WHEREUPON, a white male came forward.)
17 THE CLERK: What say you for the State?
18 MS. LINDER: Please present this juror.
19 THE CLERK: What say you for the defendant?
20 MR. KOZELSKI: I beg the Court's indulgence.
21 THE COURT: Certainly.
22 MR. KOZELSKI: Please excuse this juror.
23 THE CLERK: Sir, you may have a seat back in the
24 audience.
25 Juror Number 83, Elizabeth Deaton.

1 (WHEREUPON, a white female came forward.)

2 THE CLERK: What say you for the State?

3 MS. LINDER: Please present this juror.

4 THE CLERK: What say you for the defendant?

5 MR. KOZELSKI: Please seat Ms. Deaton.

6 THE CLERK: Ma'am, you may have a seat in the jury box.

7 You have been selected.

8 Juror Number 364, Thomas Valiulis.

9 (WHEREUPON, a white male came forward.)

10 THE CLERK: What say you for the State?

11 MS. LINDER: Please present this juror.

12 THE CLERK: What say you for the defendant?

13 MR. KOZELSKI: Please excuse this juror.

14 THE CLERK: Sir, you may have a seat back in the
15 audience. Thank you.

16 Juror Number 138, George Hamrick.

17 (WHEREUPON, a white male came forward.)

18 THE CLERK: What say you for the State?

19 MS. LINDER: Please present this juror.

20 THE CLERK: What say you for the defendant?

21 MR. KOZELSKI: I beg the Court's indulgence.

22 THE COURT: Yes, sir.

23 MR. KOZELSKI: Please excuse the juror.

24 THE CLERK: Sir, you can have a seat back in the
25 audience.

1 Juror Number 71, Britney Clarke.

2 (WHEREUPON, a black female came forward.)

3 THE CLERK: What say you for the State?

4 MS. LINDER: Please present this juror.

5 THE CLERK: What say you for the defendant?

6 MR. KOZELSKI: Please present Ms. Clarke.

7 THE CLERK: Ma'am, you may have a seat in the jury box.

8 Juror Number 162, Luke Jarrett.

9 (WHEREUPON, a white male came forward.)

10 THE CLERK: What say you for the State?

11 MS. LINDER: Please present this juror.

12 THE CLERK: What say you for the defendant?

13 MR. KOZELSKI: Please present Mr. Jarrett.

14 THE CLERK: Sir, you can have a seat in the jury box.

15 Juror Number 115, Michael Freeman-Bazemore.

16 (WHEREUPON, a white male came forward.)

17 THE CLERK: What say you for the State?

18 MS. LINDER: Please present this juror.

19 THE CLERK: What say you for the defendant?

20 MR. KOZELSKI: Please excuse this juror.

21 THE CLERK: Sir, you can have a seat back in the

22 audience.

23 Juror Number 181, John Kiser.

24 (WHEREUPON, a white male came forward.)

25 THE CLERK: What say you for the State?

1 MS. LINDER: Please present this juror.

2 THE CLERK: What say you for the defendant?

3 MR. KOZELSKI: Please present Mr. Kiser.

4 THE CLERK: Sir, you can have a seat in the jury box.

5 The defendant has exhausted five of its strikes.

6 Juror Number 205, Rudolph Lutge.

7 (WHEREUPON, a white male came forward.)

8 THE CLERK: What say you for the State?

9 MS. LINDER: Please present this juror.

10 THE CLERK: What say you for the defendant?

11 MR. KOZELSKI: Please present this juror.

12 THE CLERK: Sir, you can have a seat in the jury box.

13 Juror Number 336, Ashley St. Onge.

14 (WHEREUPON, a white female came forward.)

15 THE CLERK: What say you for the State?

16 MS. LINDER: Please present this juror.

17 THE CLERK: What say you for the defendant?

18 MR. KOZELSKI: Please present Ms. St. Onge.

19 THE CLERK: Ma'am, you may have a seat in the jury box.

20 Juror Number 248, Shanendoah Nettles.

21 (WHEREUPON, a white female came forward.)

22 THE CLERK: What say you for the State?

23 MS. LINDER: Please present this juror.

24 THE CLERK: What say you for the defendant?

25 MR. KOZELSKI: Please excuse Ms. Nettles.

1 THE CLERK: Ma'am, you may have a seat back in the
2 audience.

3 Juror Number 36, Marnie Browder.

4 (WHEREUPON, a white female came forward.)

5 THE CLERK: What say you for the State?

6 MS. LINDER: Please present this juror.

7 THE CLERK: What say you for the defendant?

8 MR. KOZELSKI: Please excuse this juror.

9 THE CLERK: Ma'am, you can have a seat back in the
10 audience.

11 The defendant has now exhausted seven of its strikes.

12 Juror Number 179, Felisha King.

13 (WHEREUPON, a black female came forward.)

14 THE CLERK: What say you for the State?

15 MS. LINDER: I beg the Court's indulgence.

16 THE COURT: Certainly.

17 MS. LINDER: Please excuse this juror.

18 THE CLERK: Ma'am, you may have a seat back in the
19 audience.

20 Juror Number 7, Timothy Backman.

21 (WHEREUPON, a black male came forward.)

22 THE CLERK: What say you for the State?

23 MS. LINDER: Please present this juror.

24 THE CLERK: What say you for the defendant?

25 MR. KOZELSKI: Please present Mr. Backman.

1 THE CLERK: Mr. Backman, you may have a seat in the jury
2 box.

3 Juror Number 278, Dane Rabang.

4 (WHEREUPON, an Asian male came forward.)

5 THE CLERK: What say you for the State?

6 MS. LINDER: Please present this juror.

7 THE CLERK: What say you for the defendant?

8 MR. KOZELSKI: Please present Mr. Rabang.

9 THE CLERK: You may have a seat in the jury box.

10 Juror Number 183, Kevin Koozer.

11 (WHEREUPON, a white male came forward.)

12 THE CLERK: What say you for the State?

13 MS. LINDER: I beg the Court's indulgence.

14 THE COURT: Certainly.

15 MS. LINDER: Please present this juror.

16 THE CLERK: What say you for the defendant?

17 MR. KOZELSKI: Please excuse this juror.

18 THE CLERK: Sir, you may have a seat back in the
19 audience.

20 Juror Number 251, Keslie Nolen.

21 (WHEREUPON, a white female came forward.)

22 THE CLERK: What say you for the State?

23 MS. LINDER: Please present this juror.

24 THE CLERK: What say you for the defendant?

25 MR. KOZELSKI: Please present Ms. Nolen.

1 THE CLERK: You may have a seat in the jury box.
2 Juror Number 58, Hope Carter.
3 (WHEREUPON, a black female came forward.)
4 THE CLERK: What say you for the State?
5 MS. LINDER: I beg the Court's indulgence.
6 THE COURT: Okay.
7 MS. LINDER: Please present this juror.
8 THE CLERK: What say you for the defendant?
9 MR. KOZELSKI: Please present Ms. Carter.
10 THE CLERK: Ms. Carter, you may have a seat in the jury
11 box.
12 Juror Number 90, Barbara Dilligard.
13 (WHEREUPON, a black female came forward.)
14 THE CLERK: What say you for the State?
15 MS. LINDER: I beg the Court's indulgence.
16 THE COURT: Okay.
17 MS. LINDER: Please present this juror.
18 THE CLERK: What say you for the defendant?
19 MR. KOZELSKI: Please present Ms. Dilligard.
20 THE CLERK: Ms. Dilligard, you may have a seat in the
21 jury box.
22 Juror Number 350, Branch Tanksley.
23 (WHEREUPON, a white male came forward.)
24 THE CLERK: What say you for the State?
25 MS. LINDER: Please present this juror.

1 THE CLERK: What say you for the defendant?

2 MR. KOZELSKI: Please present Mr. Tanksley.

3 THE CLERK: Mr. Tanksley, you can have a seat in the jury
4 box.

5 THE COURT: All right. Select our alternates. Strikes
6 will be one and two.

7 THE CLERK: Juror Number 47, Gregory Burns.

8 (WHEREUPON, a white male came forward.)

9 THE CLERK: What say you for the State?

10 MS. LINDER: Please present this juror.

11 THE CLERK: What say you for the defendant?

12 MR. KOZELSKI: Please excuse Mr. Burns.

13 THE CLERK: Mr. Burns, you may have a seat back in the
14 audience.

15 Juror Number 68, Dennise Church.

16 (WHEREUPON, a white female came forward.)

17 THE CLERK: What say you for the State?

18 MS. LINDER: Please present this juror.

19 THE CLERK: What say you for the defendant?

20 MR. KOZELSKI: Please excuse Ms. Church.

21 THE CLERK: Ms. Church, you can have a seat back in the
22 audience.

23 Juror Number 44, Shannon Bullard.

24 The defendant has exhausted both of their strikes.

25 (WHEREUPON, a white female came forward.)

1 THE CLERK: What say you for the State?

2 MS. LINDER: Please present this juror.

3 THE CLERK: What -- any --

4 THE COURT: Go ahead.

5 THE CLERK: Any challenges from the defendant?

6 MR. KOZELSKI: No, ma'am.

7 THE CLERK: You may have a seat in the jury box.

8 Juror Number 72, Michael Clifton.

9 THE COURT: Strikes are again one and two.

10 (WHEREUPON, a white male came forward.)

11 THE CLERK: What say you for the State?

12 MS. LINDER: Please present this juror.

13 THE CLERK: Any challenges from the defendant?

14 THE COURT: No. They have two now.

15 THE CLERK: Okay.

16 MR. KOZELSKI: We've exhausted our strikes.

17 THE COURT: No. You have two. One and two for each --

18 each one.

19 MR. KOZELSKI: Oh, for each?

20 THE COURT: For each juror.

21 MR. KOZELSKI: You can seat this juror.

22 THE CLERK: You can have a seat in the jury box.

23 THE COURT: Are there any motions from the State

24 regarding the selection?

25 MS. LINDER: I beg the Court's indulgence.

1 THE COURT: Certainly.

2 MS. LINDER: No motions from the State.

3 THE COURT: Any motions from the defendant?

4 MR. KOZELSKI: None from the defendant.

5 THE COURT: Ladies and gentlemen, those of you that were
6 not selected, thank you for your assistance and participation.
7 You are now free to leave. Call the number after six tonight
8 and just follow that instruction. Have a great day. Thank
9 you.

10 (WHEREUPON, the jury panel was released and exited the
11 courtroom at 12:03 p.m.)

12 THE COURT: Ladies and gentlemen, those of you that were
13 selected, thank you very much as well. And as I mentioned to
14 you, there's some matters that we need to take up this
15 afternoon. So rather than have you hanging around for a
16 couple or three hours, I would think, we will just start in
17 the morning.

18 Let me talk to you about seating and when you leave,
19 you'll leave to the door to your right. Mr. Pryor will show
20 you where you need to report tomorrow. You'll come directly
21 to the jury room.

22 The seating arrangement is the first two rows are for our
23 first twelve selected. The third row is the alternates and,
24 Ms. Bullard, you and Mr. Clifton, those are your seats. You
25 can occupy any of those that you wish as you're alternates.

1 MS. SIGAL: And we sent the -- just so the record is
2 clear, we did send the required notice of intent to introduce
3 this certification and we filed it. And we didn't know if
4 Your Honor would like us to make it a Court's exhibit just so
5 the record is clear we did properly --

6 THE COURT: We probably should make it a Court's exhibit.
7 That would be fine with me.

8 MS. SIGAL: Permission to approach?

9 THE COURT: Absolutely. And just for the record, I'm
10 treating it as similarly to we get a document certified by the
11 -- by the RMC office and this is -- this what it is and we
12 don't have to get a the person that went and got it from the
13 RMC office. It is what it is.

14 (WHEREUPON, the Verizon authentication document was
15 marked as Court's Exhibit Number 6.)

16 THE COURT: Okay.

17 MS. SIGAL: Thank you.

18 THE COURT: Thank you. All right. What other -- what
19 other issues do we have?

20 MS. LINDER: I think we have a Denno hearing.

21 THE COURT: Yes, ma'am. You may proceed.

22 MS. LINDER: The State would call David Osborne.

23 THE COURT: Is he testifying as a police officer or as a
24 lawyer? Because if we have to -- if it's a lawyer, we have to
25 have him qualified as an expert, I think.

DAVID OSBORNE - DIRECT BY MS. LINDER

1 THE CLERK: Do you swear or affirm that the testimony you
2 shall give the Court and jury in the trial of this case shall
3 be the truth, the whole truth, and nothing but the truth, so
4 help you God?

5 THE WITNESS: I do.

6 THE CLERK: You may be seated and, for the record, please
7 state your full name, spelling your last.

8 THE WITNESS: David Osborne, O-s-b-o-r-n-e.

9 DAVID OSBORNE, being first duly
10 sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MS. LINDER:

13 Q: Good afternoon. How long were you in law enforcement?

14 A: About 17 years.

15 Q: And can you just briefly tell the Court about your
16 experience in law enforcement?

17 A: I worked five years in New Orleans for the New Orleans
18 Police Department. I came here in '02, worked a couple years
19 on the street. Then I became a detective in the robbery unit,
20 worked there for a couple years, and then I worked -- then I
21 moved over to the violent crimes unit, where I was a homicide
22 detective. I got promoted to sergeant and then ended my
23 career there as running the violent crimes unit.

24 Q: And while you were actually going through law school, as
25 the Court is aware of, what was your role at the police

DAVID OSBORNE - DIRECT BY MS. LINDER

1 department at that time?

2 A: I was a sergeant in charge of the violent crimes unit.

3 Q: And you're at the Solicitor's Office now. How long have
4 you been with the Solicitor's Office?

5 A: Just over five years.

6 Q: Throughout your career, have you had the occasion to
7 interview a suspect of crime?

8 A: I have.

9 Q: Any estimate of how many times you've done it or
10 approximation?

11 A: Hundreds. Maybe a thousand.

12 Q: And did you have the occasion in this case to interview
13 the suspect?

14 A: I did.

15 Q: And that's Devin Johnson?

16 A: Yes.

17 Q: And you see him in the courtroom here?

18 A: Yes.

19 Q: Can you tell the Court how did you first get involved in
20 this case?

21 A: I was called out that night. The murder occurred on June
22 the 8th of 2011 and went on into the early morning hours of
23 June the 9th. I went to the scene at first, then I went to
24 MUSC. I spoke with the victim's family. And in the beginning
25 part of the investigation, it was really three main detectives

DAVID OSBORNE - DIRECT BY MS. LINDER

1 that worked it: me, Sgt. Kosarko, and Sgt. Barry Goldstein.

2 Q: And did you ever interview the defendant's girlfriend at
3 the time, Tenika Elmore?

4 A: I did.

5 Q: Also known as Alyssa?

6 A: I did.

7 Q: And was that before or after you interviewed this
8 defendant?

9 A: That was before.

10 Q: And for the limited purposes of this hearing, did Tenika
11 share any information with you about the defendant's
12 whereabouts on the day of the murder?

13 A: She did. She stated that on the day of the murder her
14 and her boyfriend, the defendant, went down to Charleston. He
15 dropped her off at the Verizon, which is the old Charlestown
16 Square Mall. Then he was supposed to come back and pick her
17 up at 11 p.m., I think it was, but he was late. He arrived
18 about 15 -- 20 minutes late and then he would've been in
19 possession of her Toyota Camry that day or that night.

20 Q: And was there any video surveillance of the overall
21 murder scene in this case?

22 A: There was. There was outside surveillance at Georgetown
23 Apartments, which depicted most of the parking lots.

24 Q: And was there any vehicle visible in that video?

25 A: There was.

DAVID OSBORNE - DIRECT BY MS. LINDER

1 Q: And I know that you just testified that Tenika had let
2 you know that the defendant was late picking her up. What car
3 did he pick her up in that night?

4 A: I think it was a Toyota Camry.

5 Q: And you had all this information before you did the
6 interview with the defendant; is that right?

7 A: I did.

8 Q: And when did you interview the defendant?

9 A: Oh, what was that? June the -- June the 11th, I believe.

10 Q: Would it help you to -- did it go on for a couple of
11 hours?

12 A: It went on for about four-and-a-half -- five hours.

13 Q: And would it make sense to you if it started on the night
14 of June 10th and went into the 11th?

15 A: Okay. Yeah, that's right.

16 Q: And do you remember approximately what time the interview
17 started?

18 A: About 9 p.m.

19 Q: Was it a long interview?

20 A: For a homicide, maybe slightly more than average, but it
21 was about average.

22 Q: And in your training and experience, how do you typically
23 begin interviewing a suspect?

24 A: Well, you issue or advise them of their Miranda warnings.
25 Typically, an interview like this, especially with Mr.

DAVID OSBORNE - DIRECT BY MS. LINDER

1 Johnson, I figured that he already knew that we were coming to
2 interview him. So in the beginning it's mostly just listening
3 to what his story is.

4 Q: So you testified this was a four-and-a-half -- five-hour
5 interview. Throughout the entire time you were with the
6 defendant, did you notice any sign of mental defect?

7 A: No.

8 Q: Any sign of physical defect?

9 A: No.

10 Q: Intoxication?

11 A: No.

12 Q: Did he ever complain of being in pain?

13 A: No.

14 Q: Did he seem to understand what you were saying?

15 A: He did.

16 Q: And did you have any problems understanding him?

17 A: No.

18 Q: At any point during, was the bathroom offered?

19 A: Yes.

20 Q: And was the defendant ever offered anything or given
21 anything to drink?

22 A: I don't specifically recall, but I know we would have.

23 Q: And did you ever threaten the defendant with violence?

24 A: No.

25 Q: And did he appear to be of reasonable intelligence for

DAVID OSBORNE - DIRECT BY MS. LINDER

1 his age?

2 A: Yes.

3 Q: I just want to kind of immediately jump to a little bit
4 of talk about cigarettes. Did the defendant ask you
5 throughout the course of the interview for a cigarette?

6 A: He did.

7 Q: And did he ask you that more than one time?

8 A: He did.

9 Q: And are you allowed to smoke in the interview room at
10 CPD?

11 A: Not in 2011. You could smoke in the interview room in
12 '02.

13 Q: Throughout your career, have you ever allowed someone to
14 have a cigarette?

15 A: I have.

16 Q: And can you explain to the Court just kind of some of the
17 considerations that go into whether or not you let someone go
18 out and have a cigarette?

19 A: Yes. So especially -- well, it depends on what they're
20 arrested for, but if they're arrested for murder, you
21 certainly need to think about safety. He has to be shackled.
22 You need a belt harness or a security belt that you could loop
23 the handcuffs through. I certainly wouldn't do it by myself
24 regardless, but -- but either way, there certainly needs to be
25 a level of comfortable where I'm comfortable with him that I'm

DAVID OSBORNE - DIRECT BY MS. LINDER

1 going to walk outside and allow him to have a cigarette in his
2 hand.

3 Q: And as far as kind of how CPD is laid out in 2011, from
4 the interview room to where you feel comfortable enough, how
5 would you have to maneuver through the building to get to a
6 spot?

7 A: Well, you -- well, I would have to escort him to the
8 elevator. We would go downstairs. We would walk out the
9 sally port and then he would smoke in the sally port.

10 Q: And did you ever feel comfortable enough with this
11 defendant during the course of the interview to give him a
12 cigarette?

13 A: No.

14 Q: And did you end up denying several requests for
15 cigarettes?

16 A: I did.

17 Q: Did you ever make him a promise that throughout the
18 course of your interview that if you tell me XYZ, then I'll go
19 easy on you?

20 A: No.

21 Q: And I think you said it a bit before, but in a little bit
22 more detail. When you first go in prior to commencing the
23 interview, what you go through with him or her?

24 A: His Miranda warnings.

25 Q: And how do you advise Miranda?

DAVID OSBORNE - DIRECT BY MS. LINDER

- 1 A: I read it directly from a card.
- 2 Q: And do you explain those to him?
- 3 A: I do.
- 4 Q: And do you ask that the defendant sign anything?
- 5 A: Yes. The back of the card indicating he understands and
- 6 wishes to waive his rights.
- 7 Q: Did you do that in this case?
- 8 A: I did.
- 9 Q: And did you go through each one of those rights?
- 10 A: I did.
- 11 Q: Did he appear to understand?
- 12 A: Yes.
- 13 Q: And did he indicate that to you?
- 14 A: Yes.
- 15 Q: And what happened when Miranda was complete?
- 16 A: After it was completed, I asked if he would sign the
- 17 back. He did -- or something to that effect, but either way,
- 18 he signed the back and then I asked him if he -- well, I don't
- 19 recall exactly what I asked him, but either way, then we
- 20 started the interview.
- 21 Q: And did he ever say I wish to waive my Miranda rights and
- 22 speak to you about June 8th?
- 23 A: No. I definitely don't think he said that.
- 24 Q: But he indicated that he understood those rights?
- 25 A: That's right.

DAVID OSBORNE - DIRECT BY MS. LINDER

1 Q: All right.

2 MS. LINDER: Your Honor, if I may I approach?

3 THE COURT: You may.

4 BY MS. LINDER:

5 Q: All right. At this time, I want to show you what's been
6 marked as State's Exhibit 80 for purposes of this hearing. Do
7 you recognize that?

8 A: I do.

9 Q: How do you recognize it?

10 A: Well, I recognize it because I put my initials on it.

11 Q: All right. And when you initialed this, is this a fair
12 and accurate representation of the interview done with the
13 defendant?

14 A: Yes.

15 MS. LINDER: Your Honor, at this time, I would seek to --
16 and throughout the hearing, I'll admit different clips, Your
17 Honor.

18 THE COURT: Okay. For purposes of this hearing.

19 MS. LINDER: Yes, Judge.

20 THE COURT: It will be admitted. What's the Exhibit
21 number you referenced?

22 MS. LINDER: This exhibit number is State's 80.

23 THE COURT: Thank you.

24 (WHEREUPON, State's Exhibit Number 80, was marked and
25 entered for purposes of the Jackson v. Denno hearing

DAVID OSBORNE - DIRECT BY MS. LINDER

1 only.)

2 (WHEREUPON, a portion of State's Exhibit Number 80 was
3 played. Not transcribed herein.)

4 BY MS. LINDER:

5 Q: All right. So after you advised him of Miranda, did the
6 interview proceed from there?

7 A: It did.

8 Q: And without getting into every single detail of what he
9 told you, what's the gist of the story that he gave you when
10 the interview started?

11 A: I believe for the first four hours the story was pretty
12 easy. It was that he was in Orangeburg the entire time or the
13 entire day of the murder.

14 Q: And was he ever at Georgetown?

15 A: No.

16 Q: And did you immediately confront him with the information
17 that you knew?

18 A: I don't know that I immediately confronted him with that,
19 but at a certain point, I definitely did tell him that we knew
20 that wasn't true based on what we had at that point in the
21 investigation.

22 Q: So as far as talking about interview strategy, you
23 typically start pretty -- pretty light and easy; is that
24 right?

25 A: Right. Yeah.

DAVID OSBORNE - DIRECT BY MS. LINDER

1 Q: And can you explain why you would do that?

2 A: Well, like in this case right here in particular, I knew
3 that he would have known that we would want to talk to him.

4 So I thought that he would've had a story that he wanted to
5 tell me, if he was going to talk to me at all. So I might as
6 well just listen to him and get an idea about where he was
7 coming from and what his story was. And in generally speaking
8 just in interviews in general, it's always a good idea to
9 listen first and see what's being said.

10 Q: And did you believe him with his first story?

11 A: No.

12 Q: And does the tone of your interview ever change
13 throughout it?

14 A: An interview, especially one going on this long, there's
15 going to be peaks and valleys the entire time.

16 Q: And when he was going with his Orangeburg story, did he
17 ask you about cigarettes?

18 A: Yes.

19 Q: Did you think he was cooperating at that point?

20 A: No.

21 Q: From time to time, was something said to the effect like
22 cigarettes are for cooperators?

23 A: I think I did use that, yes.

24 Q: And why were you saying that to him? Why were you doing
25 that or denying him?

DAVID OSBORNE - DIRECT BY MS. LINDER

1 A: Well, because I didn't want to go downstairs with him and
2 have him have a cigarette in his hand, and I certainly didn't
3 get the feeling that he appreciated the situation that he was
4 in enough to trust him to go downstairs with him.

5 Q: Did the denial of cigarettes ever trigger him to confess
6 to murder?

7 A: No.

8 Q: And is it fair to say that he requested cigarettes a
9 number of times?

10 A: I mean it was, you know, for 4 or 5 hours. I would say
11 maybe a handful, maybe a little more than that.

12 Q: Each time that he asked for a cigarette and you denied
13 it, did he all of a sudden -- did that pressure him to change,
14 to all of a sudden changing his story and confess to murder?

15 A: No. And the demeanor wasn't like -- the demeanor was --
16 you know, I don't want to say jovial, but he was kind of
17 smiling when he would ask it. He might follow it up with
18 something like, you know, come on, man, give me a cigarette,
19 but it wasn't anything like he was desperate. I mean he was
20 smiling when he was asking it.

21 Q: And was there ever any conversation or talk about his
22 daughter during this interview?

23 A: Yes.

24 Q: And what was that?

25 A: Well, again, based on that demeanor, I wasn't getting the

DAVID OSBORNE - DIRECT BY MS. LINDER

1 impression that he appreciated his situation. So he was told
2 that it doesn't get any more serious than murder. That there
3 was a possibility that he would not see his daughter again.

4 Q: And you're saying based on his demeanor you thought he
5 maybe didn't appreciate it. Do you -- at any point, did you
6 think he didn't understand what was actually occurring in that
7 interview room?

8 A: No. He definitely knew he was in there for murder. He
9 had already been advised of his -- of his -- he had been read
10 his warrant. And when I took the paperwork off the table,
11 that was the warrants that he had already been issued.

12 Q: And after any conversation about his daughter, did that
13 immediately trigger him to confess to murder?

14 A: No.

15 Q: Or to change his story drastically?

16 A: No.

17 Q: And that's after every time that his daughter was brought
18 up?

19 A: Yeah. I don't think she was brought up that much.

20 Q: And did the defendant eventually change his story?

21 A: He did.

22 Q: And when did he change that story?

23 A: He -- I had allowed him to make a couple phone calls.

24 The first time he called Tenika, his girlfriend. I'm not sure
25 if he spoke to his mom on that occasion. That was pretty soon

DAVID OSBORNE - DIRECT BY MS. LINDER

1 after the interview had begun. That didn't have any effect.

2 He called his -- he called Tenika again after about four
3 or four-and-a-half hours and then he also spoke to his mother
4 on that occasion. I was out of the interview room for about
5 30 minutes when he made those two phone calls. When I came
6 back into the interview room, I don't think I asked another
7 question and then he changed his sorry.

8 Q: So when he started making those calls, were you in that
9 room?

10 A: I was not.

11 Q: And was it still recording?

12 A: Yes.

13 Q: All right. At this time, I'm going to play another clip
14 for you.

15 (WHEREUPON, a portion of State's Exhibit Number 80 was
16 played. Not transcribed herein.)

17 BY MS. LINDER:

18 Q: All right. And just to go into a little more context,
19 the three clips that we just saw -- or I guess it's kind of
20 two phone conversations we just saw. About what time is this
21 happening?

22 A: I think that was about 12:30.

23 Q: And at the end of the conversations that he had on the
24 phone, what happens after that?

25 A: I walk in there. I end up taking the phone. Well, it

DAVID OSBORNE - DIRECT BY MS. LINDER

1 was my phone. So I end up getting my phone back. His mom was
2 on the other line. I had already talked to her a couple times
3 myself. So I just told her I would get back to her. I hung
4 up and then, like I said, I don't think I even asked a
5 question and then Mr. Johnson then started to tell his second
6 version of what happened that day.

7 Q: All right. One more quick clip I'd like to publish.

8 (WHEREUPON, a portion of State's Exhibit Number 80 was
9 played. Not transcribed herein.)

10 BY MS. LINDER:

11 Q: And we just saw part of this clip, but just to be
12 abundantly clear, when the defendant finally changes his story
13 and puts himself on the scene, what happened immediately
14 before that?

15 A: He spoke to Tenika or Alyssa, his girlfriend, and his
16 mom.

17 Q: And did he change his story right after you said no to a
18 cigarette request?

19 A: No.

20 Q: Did he change his story after you explained the gravity
21 of the situation and his ability to potentially see his
22 daughter if convicted?

23 A: No.

24 Q: Then did you threaten him with violence at all prior to
25 the change?

DAVID OSBORNE - DIRECT BY MS. LINDER

1 A: No.

2 MS. LINDER: That's all I have for you. Answer anything
3 the defense may have.

4 THE COURT: Cross-examine?

5 Wait a minute. Do you need a break?

6 THE COURT REPORTER: No, sir.

7 THE COURT: You're okay?

8 THE COURT REPORTER: Yes, sir.

9 THE COURT: Cross-examine.

10 MR. FAMILONI: Thank you, Your Honor.

11 THE COURT: Yes, sir.

12 CROSS-EXAMINATION

13 BY MR. FAMILONI:

14 Q: Mr. Osborne, you said you were involved with law
15 enforcement for about 17 years; is that right?

16 A: That's right.

17 Q: And you've conducted hundreds, if not a thousand
18 interviews?

19 A: That's right.

20 Q: And I'm assuming over that course of time you've learned
21 to read individuals?

22 A: To do what now?

23 Q: Read individuals, their body language, their emotions?

24 A: We do pay attention to that, yeah.

25 Q: And in particular, you saw in this interview with Mr.

DAVID OSBORNE - CROSS BY MR. FAMILONI

1 Johnson at some point he puts his head down on the table?

2 A: I don't recall seeing that, but it wouldn't surprise me.

3 Q: So -- well, let me clarify and back up. This interview
4 started at 9 p.m.?

5 A: That's right.

6 Q: And it went on, as we've already discussed, almost 5
7 hours. You don't know what type of day he had before that
8 though; correct?

9 A: Only what he told me.

10 Q: Okay. So -- and the first thing he does when he gets
11 into the room is ask you for a cigarette?

12 A: Maybe one of the first things, yeah.

13 Q: And when somebody asks you for a cigarette, what does
14 that indicate to you in regards to his state of mind?

15 A: That he wants to smoke.

16 Q: Okay. But in terms of -- there's an association, would
17 you agree, with cigarettes and addiction?

18 A: It can be.

19 Q: Cigarettes contain nicotine?

20 A: Right.

21 Q: And nicotine is a very addictive substance?

22 A: Heroin is a very addictive substance. I don't know that
23 nicotine is that addictive.

24 Q: Would it surprise you to know that nicotine and heroin
25 are both considered addictive substances just generally?

DAVID OSBORNE - CROSS BY MR. FAMILONI

1 A: That would surprise me immensely if you're putting heroin
2 on the same level as nicotine.

3 Q: I didn't say the same level. I just said addictive, in
4 the same category in terms of addictive substances?

5 A: That would surprise me.

6 Q: Okay. So would it also surprise you that people struggle
7 to quit smoking cigarettes?

8 A: That would not surprise me.

9 Q: Okay. And that's generally because it's considered
10 addictive?

11 A: That's correct.

12 Q: Okay. So three minutes into this interview, Mr. Johnson
13 is already at 9 p.m. asking for a cigarette?

14 A: That sounds right.

15 Q: And then later on in this interview -- I believe the
16 timestamp is --

17 MR. FAMILONI: One moment, Your Honor.

18 THE COURT: Certainly. Take your time.

19 BY MR. FAMILONI:

20 Q: 23:19 of this interview. So I want to say it might be
21 about two hours in, he asks for a cigarette again. This is
22 not the second instance, but he elaborates now. He mentions
23 that it's almost as if he's a heroin addict; is that right?

24 A: I don't recall that, but it wouldn't surprise me.

25 Q: You don't recall that conversation at all?

DAVID OSBORNE - CROSS BY MR. FAMILONI

1 A: I don't recall him saying that he equates nicotine to
2 being a heroin addict, but that wouldn't surprise me.

3 Q: Thinking back on that statement now, how would that have
4 impacted you? How would you consider that?

5 A: No different.

6 Q: You wouldn't have taken it seriously?

7 A: Well --

8 Q: You would not have taken that statement seriously?

9 A: That he's saying that his nicotine addiction is the same
10 as a heroin addict?

11 Q: Yes.

12 A: No, I would not take that serious.

13 Q: So in your experience as a police officer, you've dealt
14 with a variety of issues, murder, drugs, the whole thing?

15 A: I have.

16 Q: And you've seen, in particular with drugs, the effects
17 that various addictions have had on a person's body and mind?

18 A: I've seen their behavior, yes.

19 Q: And you would say their behavior is radically different?

20 A: Depending upon the substance, that's correct.

21 Q: And in particular, their mind is altered in some manner
22 or another?

23 A: Depending on the substance, yeah.

24 Q: So in this instance, regardless if you took it seriously
25 or not, Mr. Johnson indicated that his lack of nicotine or his

DAVID OSBORNE - CROSS BY MR. FAMILONI

1 inability to smoke a cigarette is affecting him in some way or
2 another?

3 A: Through my training and experience, I have never seen an
4 individual who is addicted to nicotine do what drug addicts do
5 on a daily -- on a daily basis. Never.

6 Q: Would he need to demonstrate the behavior of a drug
7 addict who is using heroin for you to take him seriously?

8 A: Anyone. Not just Mr. Johnson, I said anyone.

9 Q: When you proceeded to ask him questions after this fact,
10 throughout the course of the interview he asked multiple times
11 for a cigarette?

12 A: He did.

13 Q: In increasing urgency?

14 A: No. I would not agree with that.

15 Q: You wouldn't?

16 A: In fact, to me -- and that was part of the reason why we
17 switched topics and brought up his daughter because he was
18 smiling when he asked. When I see addicts looking for heroin,
19 they are not smiling. They're desperate. So that's why when
20 he said that heroin is equal to nicotine, I can tell you
21 through training and experience that cannot be more untrue.

22 Q: Well, I want to back off this direct comparison that
23 we're using for nicotine and heroin. Although he may have
24 used the two terms, I don't believe his intention and
25 certainly my -- not my intention to draw a direct correlation

DAVID OSBORNE - CROSS BY MR. FAMILONI

1 between the two. The only similarity that I'm drawing is that
2 they're addictive, not the level of addictiveness, just that
3 they're addictive.

4 A: I'm addicted to Diet Coke too. I mean I get it.

5 Q: I mean that's -- that's your issue. That's fine. Moving
6 on beyond that point, you begin to tie in cigarettes with
7 cooperation?

8 A: That is correct.

9 Q: You told him that cigarettes are for cooperators?

10 A: That's correct.

11 Q: So at that point, you understood that this is something
12 that he wanted, maybe needed, and you used it as an avenue to
13 get what you wanted? Is that true?

14 A: That is not true. I did not say that.

15 Q: Up until that point, the last half hour of his interview,
16 you believed that he was lying to you?

17 A: I don't believe he ever told me the truth.

18 Q: So you never said to him during that point that I think
19 you're lying to me at this moment?

20 A: No. I think I said that for the entire five hours.

21 Q: Okay. But -- so regardless, you told him that you
22 thought he was lying?

23 A: Yes.

24 Q: And with that assertion, you denied him cigarettes,
25 saying that because you're lying, you're not getting this?

DAVID OSBORNE - CROSS BY MR. FAMILONI

1 A: That is not what I said.

2 Q: I'm not quoting here. I'm just drawing connections here.
3 Cigarettes are for cooperators. We're going back to that.

4 A: I did say that.

5 Q: Okay. So that statement, did that indicate to you that
6 you felt like he wasn't being truthful or that he wasn't
7 cooperating with you at that point?

8 Q: That is correct. Or at any point.

9 Q: And that you wanted a different story from him? You
10 wanted him to tell you something that you felt was more
11 truthful?

12 A: I did want him to cooperate, yes.

13 Q: And cooperate to you meant telling the truth?

14 A: Telling the truth. That's correct.

15 Q: And at that point, the only indication that you had that
16 he was lying was the conversation with Tenika and potentially
17 this video of somebody arriving in a similar vehicle?

18 A: No.

19 Q: What else was there?

20 A: His niece, who I believe was eight or nine at the time,
21 said that she saw her out -- saw him outside the window
22 holding a pistol right after the shooting. That's what
23 started the investigation onto Mr. Johnson. The car, which
24 seemed pretty distinctive to me on the video, was Tenika's
25 car. We had him parking in an area which wouldn't even make a

DAVID OSBORNE - CROSS BY MR. FAMILONI

1 lot of sense if he was innocently going to his sister's
2 apartment to pick up laundry or drop off laundry, like he
3 said. He couldn't have parked at a further spot away from it.
4 Then he backed into the spot. Then he looked a whole lot like
5 the guy in the video. I mean it wasn't good enough to make a
6 positive ID, but it certainly looked like him. Boy, you're
7 asking me to go through the entire investigation. That's --

8 Q: Not true.

9 A: Those are the big points right there.

10 Q: You certainly don't have to. But your indication to him
11 was nothing more than prior conversations? You only told him
12 about a video and a conversation with Tenika?

13 A: No. I told him. I told him everything. I said your
14 niece saw you holding a pistol just seconds after the
15 shooting, and he called her a liar, and I said the girl is
16 only about eight years old. Why would she lie on you? And he
17 said I don't know. She's lying.

18 And then I told him what Tenika said and he said she's a
19 liar too, and then he said, well, she must be cheating on me
20 with another man and giving another man the car. So I pretty
21 much laid out the entire investigation to him and when -- and
22 you can actually hear him telling that to his mom, here's what
23 they're saying. And he's repeating what I told him.

24 Q: And then you're using that over the course of four hours
25 as your basis for why he's lying to you is what you're saying?

DAVID OSBORNE - CROSS BY MR. FAMILONI

1 A: Yeah.

2 Q: And then at the end of the interview, it culminates in
3 him changing his story after talking to his mother and his
4 sister?

5 A: Yeah.

6 MR. FAMILONI: No further questions, Your Honor.

7 THE COURT: Redirect?

8 MS. LINDER: None, Your Honor.

9 THE COURT: Okay. You may come down, Mr. Osborne.
10 Are there any additional witnesses?

11 MS. LINDER: None, Your Honor.

12 THE COURT: I'll be happy to hear from you, Mr. Familoni.

13 MR. FAMILONI: Yes, Your Honor. Obviously, the direct
14 issue that I think we're trying to work through here is the
15 voluntariness of the statement and whether or not his will was
16 overcome. A person's will, that word in particular, is not a
17 light switch. It's not something that you turn on and off at
18 a moment's notice.

19 This interview went on for almost 5 hours. There were a
20 series of instances that were listed in the brief being
21 offered to you and I would argue last time around that were in
22 totality to the detriment of his will.

23 We start off with the cigarettes. Whether or not we want
24 to take it seriously, addiction to nicotine or whatever
25 substance does have an effect on the mind. It does corrupt or

1 weaken it in a certain type of way. This interview started at
2 9 p.m. and then it continued on for five hours; so already we
3 have two -- two of these factors, length of time and fragility
4 of mind.

5 We're also talking about experiencing the system. We
6 know that Mr. Johnson perceived from Mr. Osborne during the
7 interview that he's not somebody who's been deeply involved,
8 not a violent criminal by any means, not somebody that would
9 know the ins and outs of an investigation such as this.

10 Then we bring in his daughter and the constant references
11 from -- at that time, I believe it was Detective Kozarko and
12 Detective Osborne to manipulate the will that is already
13 fragile of Mr. Johnson. All of these are used together in
14 totality to manipulate an individual who from the bet -- from
15 the get wasn't in the right state to cooperate.

16 I understand that he was given Miranda. We're not
17 arguing Miranda here. It's after the fact when we know that
18 he's already deficient. Detective Osborne at the time and
19 currently used the assertion that he didn't feel safe to take
20 him out and offer him a cigarette. When Mr. Johnson first
21 asks for one, he says I think we can make that happen. It
22 never happens.

23 And the support of the safety issue is that in part his
24 perceived dishonesty. Somehow, he's trying to draw a
25 correlation between him being dishonest and him causing him

1 potential physical harm of some sort, which I find frankly
2 ludicrous because there are times during this interview, as
3 we've seen, that it was just the two of them in the room. He
4 hands him his cell phone. He leaves the room. A cell phone
5 in many ways can be considered more dangerous than a cigarette
6 because in nature, besides the fact that it's lit, it's very
7 fragile. There are components of a cell phone that can be
8 used in far more dangerous of a manner than a cigarette.

9 So there's trust already there clearly. There's no
10 indication from Osborne throughout that interview or Detective
11 Kosarko that he's scared, that he believes that there's going
12 to be some type of harm caused him by Mr. Johnson. Absolutely
13 not.

14 And to the effect that they were laughing together he
15 says at some point, regarding the seriousness at which he took
16 his request for a cigarette. They were joking or laughing as
17 if it was nothing. So using that in concert, it seems like
18 the actions of Osborne were for one purpose, to over a period
19 of time wear down the will of Mr. Johnson.

20 And I understand your concerns in terms of, you know,
21 whether or not cigarettes can really have that affect we would
22 consider serious enough or even just the mention of a
23 daughter, taking her away, is a direct correlation to a threat
24 against him and whether or not it's against his family,
25 something he considers his own. But once again, I don't think

1 we're looking at any facts independently, but we're looking at
2 them as a whole.

3 And I think as a whole, over such a long period of time,
4 Mr. Johnson was left with no other belief than that if he
5 didn't change his story, if he didn't cooperate, that he would
6 lose everything. And maybe a sane individual might not follow
7 that track, but we already know that he was fragile from the
8 get and he only became more so as time went on.

9 THE COURT: Response?

10 MS. LINDER: Thank you, Your Honor. May it please the
11 Court.

12 As Your Honor is well aware, when we look at the totality
13 of circumstances for the purposes of this hearing, we're
14 merely looking for the preponderance standard. I want to kind
15 of get into -- what we're looking for is we're looking for the
16 waiver of Miranda and the voluntariness of the statement. I
17 understand he just stated we're not -- they're not fighting us
18 on the waiver. I just want to briefly go over that though --

19 THE COURT: You don't need to.

20 MS. LINDER: -- for the purposes of the record.

21 THE COURT: You don't need to.

22 MS. LINDER: Okay. Then as far as the voluntariness is
23 concerned, after he waives that Miranda, it stays in place
24 unless he revokes it or unless his will is overborne, and I
25 understand their position is, first of all, they're saying the

1 length of time of the interview led to it. I would say that
2 we elicited testimony from then Detective Osborne that that
3 length of time was average, maybe a little more than average,
4 but average for a murder case.

5 He also testified that he was out of the room for 30
6 minutes because the guy was using his phone. So it wasn't a
7 solid amount of time. So for that amount of time, I don't
8 think it's something that would've overborne his will.

9 As far as the cigarettes and daughter go, you know, I
10 think there's a case -- I think it's McGregor. Let me find
11 the -- is it Oklahoma? And more or less says that denial of
12 cigarettes does not raise to the level of police coercion. If
13 I could locate that, I'll give you the cite here shortly.

14 THE COURT: That's all right. I really --

15 MS. LINDER: Okay.

16 THE COURT: I'm not -- let me just go ahead and finish
17 this because we're -- you don't need to put your argument on
18 that it's really not. I understand what you're saying
19 concerning the addiction and the denial of it and, probably,
20 it has -- could have a lot more bearing and weight and I
21 assume -- I didn't note the timing, but the telephone
22 conversation -- he leaves. The telephone conversation. He
23 comes back and this is at the end of the -- of this lengthy
24 period of time.

25 MS. LINDER: Yes, Judge.

1 THE COURT: If Mr. -- if the defendant hadn't shown such
2 cognitive skills and awareness in the telephone conversation
3 of telling -- of saying specifically what they were claiming
4 that he did, talking to -- we only heard one side of the
5 conversation and, frankly, to be candid with you, I don't know
6 that the cigarettes were as compelling as what his mother and
7 the other one were saying to him that he needed to do.

8 That's what's the most compelling thing to me and, quite
9 frankly, it shows pretty much his -- his awareness of
10 everything, having listened to it and he said, okay, and he
11 makes a decision for himself to change it, not because he's
12 threatened, but because of what somebody told him. I agree we
13 don't -- I don't know what they said, but his demeanor during
14 the conversation is not somebody that's stressed out. It's
15 somebody that's saying, okay, I made a -- basically, without
16 saying it, I made a mistake. I hear you, mom. I've got to
17 change this, and what do I need to change. Well, I'll say
18 that I was there and this is my story. And frankly, it shows,
19 okay, I got to change it and he's pretty -- pretty sharp and
20 aware because he goes from not being there to, well, let me
21 tell you what it was really done.

22 And then, of course, that's -- there was some parts that
23 were factually correct and a lot of parts that may be
24 factually challenged, but it shows an awareness of this person
25 of knowing exactly what he was doing and, furthermore, and I

1 guess the biggest thing, he didn't have to say a word when he
2 comes back in, but he starts talking.

3 And that's -- again, why would he suddenly do that when
4 he spent the last entire time without any additional threats
5 just suddenly start talking except for what was said to him on
6 the telephone conversations? And that would be the motivating
7 factor, not the lack of having a cigarette.

8 So all of those things I would say by the preponderance
9 -- of course, I would certainly charge the jury that that's a
10 great argument they'll have to find beyond a reasonable doubt.
11 I don't have to make that finding because I don't quarrel with
12 you. I'll take judicial notice that cigarettes are addictive
13 and no question it's very difficult, but I also would hasten
14 to add I have an administrative assistant that -- who has been
15 with me for 46 years and she smoked probably 3 to 4 packs a
16 day. In fact, it went crazy when we stopped the smoking in
17 our office before I quit practicing law and never seen such a
18 change of everything around the office.

19 But be that as it may, she was fine until she had her
20 first scare of cancer. She stopped for a year and then when
21 she had a mastectomy, she stopped and she hasn't smoked again.
22 It's addictive, but things can change your mind about that,
23 and I don't think you do that with heroin. So I would have to
24 agree that that is not analogous, but there's no question it's
25 addictive.

1 But that's not the really controlling part. If we don't
2 have that segment of the telephone conversation, maybe you've
3 got a point. You're wearing -- you're wearing him out. You
4 left him for 30 minutes by himself and he's just stressed out
5 and just says, okay, this is what I'm going to do to get out
6 of here, but I've got a telephone conversation and that's --
7 that's the motivating for my part that puts it over the
8 preponderance without any question.

9 So for those reasons, certainly your argument will be
10 made to the jury and they can make the ultimate call, but I'm
11 going to allow the statement to come in. I think it was after
12 Miranda warnings and really not coerced at all.

13 In fact, the only coercion was from whomever he was
14 talking to on the phone. There was a lot of coercion to that
15 because he sure did -- you could tell his demeanor changed.
16 He became more, okay, I got to get more compliant here. I've
17 got to figure out another channel, another avenue. That's
18 what I read. That's how I interpreted that and read that. So
19 for that reason, I'll allow it.

20 As for the -- the search, I'll look at that and let y'all
21 know first thing in the morning. Okay? Thank you.

22 MS. LINDER: Thank you, Judge.

23 THE COURT: You bet. I didn't mean to cut you off, Ms.
24 Linder.

25 MS. LINDER: That's all right.

1 a very logical reason you can't make a decision until you hear
2 all of the evidence. So please remember to keep that open
3 mind. It's very, very important.

4 After the closing arguments, then I will give you the
5 charge on the law where I will discuss -- discuss with you
6 various principles of law, give you -- define the elements of
7 each of those crimes for you, and then you'll be instructed to
8 retire and perform the task that you've accepted, and I know
9 that you will perform it consistent with the oath that you
10 took.

11 It's a privilege and an honor to serve with each one of
12 you as a judge in this case and I thank you very much for your
13 attention to my remarks. I ask you to please give that same
14 attention now to the attorneys as they give their opening
15 statements.

16 Solicitor, you may proceed.

17 MS. SIGAL: May it please the Court.

18 THE COURT: Yes, ma'am.

19 OPENING STATEMENT ON BEHALF OF THE STATE

20 MS. SIGAL: Good morning, ladies and gentlemen. I'd like
21 to introduce myself again. I am Price Sigal, and I represent
22 the State of South Carolina through the Ninth Circuit
23 Solicitor's Office. It is a pleasure having you here this
24 week. I know all of you have lives that we've put on hold to
25 be here to serve your jury duty, and I'd like to thank you on

1 behalf of everyone here for your time and your attention to
2 this matter.

3 On the evening of June 8th, 2011, Aakeem Smalls was 22
4 years old, and he was hanging out with his girlfriend,
5 Sharmaine Johnson, at the Georgetown Apartments. You're going
6 to hear a lot about the Georgetown Apartments in this trial.
7 The complex is comprised of several buildings that are in a
8 row. So you would have A, B, C, D, E, and so on, and between
9 each building is a parking lot.

10 The apartments make up the perimeter of each building and
11 they all face an interior courtyard, and the reason I tell you
12 this is because you're going to hear more about, again, the
13 apartment complex and where the surveillance videos are set
14 up. You see, you can only enter each building if you come
15 into a parking lot and then you enter the entrance which is in
16 the center of each building through a breezeway. So just keep
17 that in mind.

18 So back to June 8th. Aakeem Smalls is in apartment
19 building C, which is where Sharmaine Johnson lived. It was a
20 nice summer night. He was out on the porch having a drink and
21 he sees his friend, Diangelo Bumcum, and they have a
22 conversation. They hang out for a little while and then
23 Diangelo goes on his merry way down to apartment building E.

24 Aakeem goes inside Sharmaine's apartment and he comes out
25 a short time later, but this time he's not met by a friendly

1 face. He's approached by two individuals by the stairway and
2 he knew who one of those individuals was at least and he knew
3 at least what one of those individuals was there for because,
4 ladies and gentlemen, one of those individuals was this
5 defendant, Devin Johnson. And Aakeem saw them and he turned
6 and he ran and he ran fast.

7 In fact, he ran so fast that he literally ran out of his
8 shoes. He was wearing flip-flops and he ran out of his flip-
9 flops and began to flee, running for his life, panicked, and
10 he had good reason to panic because one of those men pulled
11 out a 9 millimeter handgun and began firing, boom boom boom
12 boom boom, in the most cowardly way possible, shooting at a
13 fleeing, running away, terrified Aakeem Smalls.

14 Now, we don't know if Aakeem knew it at the time, but one
15 of those bullets hit him in the back and it was traveling
16 through his body as he ran and his body was slowly filling up
17 and he was beginning to drown in his own blood, but his
18 adrenaline had kicked in. Again, he was running for his life.

19 When he took off, he went through the parking lot
20 towards building D, through the courtyard of building D, into
21 the parking lot toward building E. Once he gets to building
22 E, he takes a right and heads towards the back and brings it
23 up to the fence. He jumps over the fence and he lands in the
24 backyard of an unoccupied residence.

25 So at that time, he begins to remove his clothing,

1 probably to try to figure out where the wound was. At this
2 time, no doubt he had figured out he had been shot.

3 And what might be the ultimate tragedy here is that he
4 was running so fast, he was trying so hard to get away from
5 these two men who wanted to kill him, he wanted so, so badly
6 to disappear from sight, that he did too good a job of hiding
7 himself because law enforcement and EMS -- they arrived
8 quickly. Shots -- calls had come in, shots have been fired,
9 but it took law enforcement a long time to find him. It took
10 EMS a long time to find him. And when they did find him, he
11 was still alive, but just barely. He did pass away at the
12 hospital shortly thereafter.

13 Of course, as I stated, law enforcement arrived.
14 Detectives arrived and one of the big questions they're asking
15 was, well, who was with Aakeem that night, trying to solve
16 this case. Well, naturally, Diangelo Bumcum's name came up.
17 Remember, Diangelo was with Aakeem about 10 minutes before the
18 shooting and, unfortunately, Diangelo was wrongly arrested in
19 this case. His charges were cleared a short time after that,
20 but he was wrongfully arrested in this case.

21 Mr. Kozelski is a great attorney and he will no doubt
22 advocate to the absolute best of his ability for his client
23 this week, and he very well may try to shift the blame from
24 Devin Johnson to Diangelo Bumcum. He may try to make Diangelo
25 Devin's scapegoat.

1 The good news for all of you is that you will have
2 evidence in this trial -- you will be able to view it -- of
3 the surveillance video that shows Diangelo leaving the scene
4 of the crime ten minutes before that. You'll hear from
5 witnesses, including Diangelo himself, that confirms all of
6 that. And I don't want to focus too much on Diangelo because
7 this case is not about him. I want to say one more thing.

8 In addition to the evidence that cleared Diangelo,
9 Diangelo and Aakeem were friends. They were buddies. He
10 didn't have a reason to want to murder Aakeem Smalls, and that
11 is the question law enforcement began asking. Who did have a
12 reason to want to kill Aakeem Smalls?

13 And that's when they started turning their attention to
14 Devin Johnson because Devin Johnson had a reason. It's the
15 age-old reason for so much conflict in this world. Money.
16 Aakeem Smalls owed Devin some money, quite a bit of money in
17 fact, and Aakeem Smalls for whatever reason was refusing to
18 pay his debt.

19 But we know it's not just about the debt. It's about the
20 disrespect that comes when someone feels they're not being
21 treated right. Feelings of disrespect, they can fester and
22 they can fester into something ugly. Devin Johnson couldn't
23 have Aakeem Smalls walking around town owing him a debt
24 without repercussions.

25 So law enforcement -- they turned their attention to

1 Devin. In fact, he was Sharmaine Johnson's brother. Remember
2 Sharmaine? She was Aakeem Smalls' girlfriend. She was the
3 one who lived at Georgetown Apartments in building C where the
4 shooting occurred.

5 But then law enforcement comes into another dead end
6 because Devin told police he was in Orangeburg all day. How
7 does one commit a murder in Charleston if you're in Orangeburg
8 all day?

9 Well, what if we can prove to you that Devin Johnson was
10 not in Orangeburg all day. What if we can prove to you he was
11 in Charleston at the Georgetown Apartments just feet away from
12 Aakeem Smalls when he was shot? What if we can prove to you
13 that on the day of June 8th, 2011, Devin Johnson was planning,
14 communicating with his buddies on his cell phone, about his
15 intentions to kill Aakeem Smalls? What if we can prove to you
16 that Devin Johnson had access to the same kind of ammunition,
17 the same brand, the same caliber that was used to kill Aakeem
18 Smalls? And what if we can prove to you the Devin Johnson
19 lied to police over and over again throughout their
20 investigation? Because that is what the evidence is going to
21 show here this week.

22 We're going to talk more about the law at the end of this
23 trial, but I just wanted to bring to your attention one legal
24 principle that's important and it's good for you to know now.
25 You probably noticed that I said two men approached Aakeem

1 Smalls in that hallway. We know there were two men. We don't
2 know who that other man was. So many of you may be thinking,
3 well, then what if it was the other man who pulled the
4 trigger?

5 Well, there's a very important principle of law called
6 accomplice liability or otherwise known as the hand of one is
7 the hand of all when someone participates in a crime. What
8 that means is that if you find that Devin Johnson was an
9 active and knowing participant in the murder of Aakeem Smalls,
10 it doesn't matter who pulled the trigger because the hand that
11 pulled the trigger is the hand of both when they act together.
12 So just keep that in mind throughout the course of this trial.

13 You've probably seen on TV or on the news footage of
14 trials where there's that one big piece of evidence, the
15 smoking gun piece of evidence that sort of cracks the case
16 open. That seems to be what's normally shown on TV shows.

17 That's not what we have here this week, although I want
18 you to think about this case as more like a big jigsaw puzzle.
19 My co-counsel and I are going to give you piece by piece by
20 piece this case, all of the evidence that you need.

21 And some of these pieces may not seem significant at
22 first glance. Some of these pieces may not seem to fit, but I
23 ask you to pay close attention to each piece so when you go in
24 your jury room you can start to fit them together.

25 And I submit to you that if you do that, a clear picture

1 is going to come into view, and that picture that's going to
2 come into view is that Devin Johnson is guilty of the murder
3 of Aakeem Smalls. Piece by piece by piece, you'll be firmly
4 convinced of his guilt, and that's really what proof beyond a
5 reasonable doubt means is that you are firmly convinced of the
6 defendant's guilt.

7 Now, I know probably when you got your jury letters in
8 the mail or maybe when you got chosen for this jury yesterday
9 it may have seemed like a bit of an inconvenience. You
10 certainly put your lives on hold to be here.

11 But I believe that by the end of this trial, it's not
12 going to feel like an inconvenience. It's going to be
13 something that you're proud to have been part of. You're
14 going to be able to give some peace and justice to the family
15 of Aakeem Smalls, who have wanted this for some time.

16 And you're also going to be able to help clear the air of
17 suspicion off an innocent man, Diangelo Bumcum. So I believe
18 that what may have started out as an inconvenience will
19 actually be something you're quite proud of.

20 And again, we thank you for your time and your attention
21 this week.

22 THE COURT: Thank you, Ms. Sigal.

23 Mr. Kozelski?

24 MR. KOZELSKI: Your Honor, may it please the Court.

25 THE COURT: Yes, sir.

OPENING STATEMENT ON BEHALF OF THE DEFENDANT

MR. KOZELSKI: Devin was a marijuana salesman, not a murderer. Now, I know all of you are law-abiding citizens, you wouldn't be on this jury if you weren't, but I want you to entertain me just for a moment and imagine that you're in the business of selling marijuana. Now, I'm not talking about states where it's legal, like Colorado and it's a billion-dollar industry. I'm talking about small-time South Carolina eight years ago.

Now, imagine that when you're conducting this business, you see a man shooting a gun right outside the place where you stash your weed. What do you do? Do you try to stealthily sneak past the man shooting a gun? Do you pick up the phone and call 9-1-1 and tell them everything that's going on? Or do you just book it and try to get the hell out of there?

Now, imagine two days later, the police come knocking on your door. They tell you you're under arrest for murder. They put you in handcuffs, throw you in the back of a police car. You see your six-year-old daughter getting put in the back of another police car. They drive you down to Charleston, where they put you in an interrogation room.

In that room, they slap a murder warrant down in your face on your -- on the table. They tell you we need to take your clothes. Here's some jail garb to put on. They swab your mouth for DNA. And they tell you there's nothing you can

1 do about this, nothing.

2 We know you're ignorant of the system. We've seen your
3 record. We know you're not a violent guy. We don't like you
4 for this. Why don't you help yourself out and tell us what
5 happened? Tell us who shot him. If you won't do it for
6 yourself, do it for your daughter. She's only six years old.
7 I can tell you raised her right. She's so polite, so well
8 mannered. Nobody who raises a daughter like that is a bad
9 guy.

10 But if you don't want to tell us what happened, you might
11 as well forget about her because she's going to forget about
12 you. You're going to become irrelevant to that little girl.
13 Sure, she'll be raised by other men, but you're going to miss
14 those recitals, you're going to miss graduation, you're going
15 to miss every important milestone in her life if you don't
16 tell us what happened.

17 What do you do? Do you tell the police, look, I was
18 there, but I was just there to drop off drugs for Aakeem, I
19 didn't shoot the man? Or do you try to separate yourself from
20 the situation right away, lie and say you weren't there?

21 Now, Devin chose to lie, like almost everybody does in
22 that interrogation room. He lied because he knew that he
23 didn't shoot Aakeem Smalls, but lying to the police does not
24 make you a murderer. One thing that Devin never lied to
25 police about was the fact that Aakeem owed him money, the

1 apparent motive for this killing. Don't you think if somebody
2 was trying to conceal the fact that they committed a murder
3 that they would lie or hide about the motive? Yeah. Aakeem
4 owed me few dollars. So what?

5 Sure, Devin wasn't honest about why Aakeem owed him that
6 money because he's a drug dealer and drug dealers don't want
7 to implicate themselves or others in drug dealing. You can go
8 to prison for that too.

9 But y'all are not here to decide whether or not Devin is
10 a drug dealer. You're here to decide whether the evidence
11 proves beyond a reasonable doubt that he is a murderer, but
12 you're not going to hear any evidence or anybody get up on
13 that stand and tell you they saw Devin shoot Aakeem Smalls.
14 The State is not going to present you with a murder weapon
15 that they found on Devin or in Devin's car or in his
16 apartment. You're not going to hear about any forensic
17 evidence like DNA or fingerprints recovered at the scene that
18 point to Devin.

19 You are going to hear about gunshot residue. That's also
20 referred to as GSR. Now, gunshot residue is a cloud of tiny
21 metallic particles that expels from a gun after it's been
22 fired, and these tiny metallic particles can get on your
23 hands. They can get on your arms. They can get on your
24 clothing. And law enforcement tests for GSR to make sure if
25 somebody has fired a gun or been in very close proximity to a

1 gun.

2 And you're going to hear about gunshot residue in this
3 case, but not in relation to Devin. Nothing on Devin or
4 Devin's clothing came back with gunshot residue. No. It's on
5 Diangelo Bumcum. Diangelo, the other person who was charged
6 with Aakeem's murder, and you're going to hear a lot about
7 Diangelo Bumcum throughout this trial.

8 And Diangelo and Devin do not know each other, and I find
9 it very surprising that the State is going to go through great
10 lengths to try to prove to you that Diangelo did not shoot
11 Aakeem, but they dismissed his charges before they even got
12 the results back from the -- from the -- about the GSR from
13 the South Carolina Law Enforcement Division. And you're not
14 going to hear about any other detectives going and talking to
15 Diangelo and asking him why do you have this GSR on your shirt
16 because, lo and behold, Diangelo leaves the state and nobody
17 asked him about it.

18 Now, the State wants you to believe that Devin killed
19 Aakeem over this debt, but that fails to grasp the big
20 picture. Devin supplied Aakeem with marijuana so Aakeem could
21 sell the weed for Devin because Devin lived in Orangeburg.
22 Devin didn't know anybody down here to sell weed to. Aakeem
23 did. This was their business. This was their partnership.
24 And the business was good. They were selling out very
25 quickly, making money.

1 But the State wants you to believe that this is the
2 reason, even after eight years, that Devin cut off his nose to
3 spite his face, that he was so enraged over this 100 or \$200
4 debt that the only option he had was to murder Aakeem, his
5 friend, his partner, his sister's boyfriend, practically
6 family.

7 Now, is it a coincidence that somebody would try to rob
8 Aakeem at the exact time that Devin is coming to handle his
9 business? It could be. It might be, but I will tell you
10 Aakeem is not the first nor the last drug dealer to be robbed.
11 This is a dangerous enterprise and it is in a high crime area.

12 That is by no means a reason or a justification for
13 Aakeem to get shot. What happened to him is a tragedy. It
14 is, but don't let this tragedy blind you to the fact that
15 Devin did not commit this crime.

16 This jury box is not the place for your sympathy. We
17 picked you all because we believed that you could put your
18 feelings to the side and become the judges of the facts. How
19 each and every one of you interpret those facts is important.

20 Do not create another tragedy by convicting an innocent
21 man based on him seeing a botched robbery and lying to the
22 police about it. A murder is the most serious crime under the
23 law. This is without a doubt the most important week of
24 Devin's life. Each and every one of you holds his fate in
25 your hands. So each and every one of your opinions matter.

1 As he sits before you now, Devin is an innocent man. And
2 as the judge just sat down here and instructed you, he remains
3 an innocent man throughout this entire process until you hear
4 all the evidence and that evidence leaves you firmly convinced
5 beyond a reasonable doubt in your mind that Devin is guilty.

6 But you're not going to hear that, ladies and gentlemen.
7 You're not going to hear that evidence today. You're not
8 going to hear that evidence tomorrow. You're not going to
9 hear it at all because Devin did not shoot his friend, Aakeem.
10 And that's why at the end of this trial I'm going to stand
11 right here before you again and I'm going to ask that you find
12 him not guilty.

13 THE COURT: Thank you, Mr. Kozelski.

14 You may call your first witness, Solicitor.

15 MS. SIGAL: The State calls Robert Holmes.

16 (WHEREUPON, there was a pause in the proceedings until
17 the witness entered the courtroom, after which the
18 proceedings resumed as follows.)

19 THE CLERK: If you will, place your left hand on the
20 Bible and raise your right. Do you swear or affirm that the
21 testimony you shall give the Court and the jury in the trial
22 of this case shall be the truth, the whole truth, and nothing
23 but the truth, so help you God?

24 THE WITNESS: I do.

25 THE CLERK: You may have a seat. And for the record,

ROBERT HOLMES - DIRECT BY MS. SIGAL

1 please state your full name, spelling your last.

2 THE WITNESS: Robert Holmes, H-o-l-m-e-s.

3 ROBERT HOLMES, being first duly
4 sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MS. SIGAL:

7 Q: Good morning, Mr. Holmes.

8 A: Good morning.

9 Q: How are you today?

10 A: All right.

11 Q: Mr. Holmes, how old are you?

12 A: 31.

13 Q: And where are you from?

14 A: I live in South Carolina.

15 Q: Okay. Right outside of Charleston?

16 A: Yes, ma'am.

17 Q: And how long have you lived in this area?

18 A: In this area for about 10 or 15 years.

19 Q: Okay. So a big part -- a decent part of your life was
20 lived in this area?

21 A: Yes, ma'am.

22 Q: What do you do for a living right now?

23 A: I work at Bear Roofing.

24 Q: Can you repeat that, please?

25 A: I work at Bear Roofing.

ROBERT HOLMES - DIRECT BY MS. SIGAL

- 1 Q: Roofing? Okay. And do you know why you're here today?
- 2 A: Yes, ma'am.
- 3 Q: How old were you when you first met Aakeem Smalls?
- 4 A: Elementary, I'd say about first grade.
- 5 Q: Okay. So about how many years is that?
- 6 A: I'd say about 20.
- 7 Q: Were you close to Aakeem Smalls?
- 8 A: Yes, ma'am.
- 9 Q: How close were you?
- 10 A: Like a brother, best friend.
- 11 Q: Brother and best friend?
- 12 A: Yes, ma'am.
- 13 Q: What kind of things did you do together?
- 14 A: Everything.
- 15 Q: Were you with him almost every day?
- 16 A: Yes, ma'am.
- 17 Q: I'm going to ask you a question and I don't want to make
- 18 you uncomfortable, but were you and Aakeem ever involved in
- 19 the using and selling of marijuana?
- 20 A: Yes, ma'am.
- 21 Q: Can you just briefly describe that a little bit to the
- 22 jury?
- 23 A: It was on a daily basis we used to smoke. We used to
- 24 sell marijuana.
- 25 Q: Okay. And where did you get your marijuana?

ROBERT HOLMES - DIRECT BY MS. SIGAL

1 A: We used to get it from different people until we met
2 Devin.

3 Q: Okay. So you said you got your marijuana from Devin?

4 A: (No verbal response.)

5 Q: Both of you got it from Devin?

6 A: Yes, ma'am.

7 Q: When you say Devin, is Devin in the courtroom right now?

8 A: Yes, ma'am.

9 Q: Okay. Can you please point him out?

10 A: (Indicating.)

11 Q: How did you come to meet Devin?

12 A: Through Aakeem.

13 Q: Were you friends with Devin Johnson?

14 A: Just, like, a business friend.

15 Q: Business friend? What was Aakeem's relationship with
16 Devin Johnson?

17 A: Aakeem was dating his sister. So like a little brother-
18 in-law to him.

19 Q: Did Aakeem have a nickname that people called him?

20 A: Yes, ma'am.

21 Q: What was that?

22 A: Ace.

23 Q: So when we hear Ace, that means Aakeem?

24 A: Yes, ma'am.

25 Q: Same thing?

ROBERT HOLMES - DIRECT BY MS. SIGAL

1 A: Yes, ma'am.

2 Q: As Ace's best friend, did you have personal knowledge of
3 Ace and Devin's relationship?

4 A: Yes, ma'am.

5 Q: Around the time of Ace's murder, was there anything
6 particular going on between Ace and Devin?

7 A: Yes, ma'am.

8 Q: Can you tell me about that?

9 A: They had a little problem going on because Aakeem took
10 Ace's marijuana.

11 Q: Aakeem took Devin's marijuana?

12 A: Yes, ma'am.

13 Q: And about how much marijuana was taken?

14 A: Like, a QP.

15 Q: And can you explain to the jury what a QP is?

16 A: Four ounces. The value is, like, \$1,000.

17 Q: Okay. Is that like the street value?

18 A: Yes, ma'am.

19 Q: Okay. Did you talk to Devin around this time?

20 A: Yes.

21 Q: Can you tell us about that?

22 A: I forgot to put it in my first interview, but I talked to
23 him during the time. He was looking for Aakeem.

24 Q: You talked to Devin around that time?

25 A: Yes, ma'am.

ROBERT HOLMES - DIRECT BY MS. SIGAL

- 1 Q: Around the time of this murder?
- 2 A: Yes, ma'am.
- 3 Q: And you said he was looking for Aakeem?
- 4 A: Yes, ma'am.
- 5 Q: Did he tell you why he was looking for Aakeem?
- 6 A: No, ma'am.
- 7 Q: Did you get the impression following that conversation
- 8 that Devin and Ace's relationship had gone south?
- 9 A: Yes, ma'am.
- 10 Q: Did Devin sound happy or unhappy when you talked to him?
- 11 A: Unhappy.
- 12 Q: Did you tell him where Aakeem was?
- 13 A: No, ma'am.
- 14 Q: How long between the time that Devin called you looking
- 15 for Ace and the time that you learned that Ace was killed?
- 16 A: Within about a week.
- 17 Q: Switching gears a little bit, have you ever heard of the
- 18 phrase to wet somebody up?
- 19 A: Yes, ma'am.
- 20 Q: So what does that mean?
- 21 A: That means shoot them up.
- 22 Q: So if I were to say to you this weekend I'm going to go
- 23 wet somebody up, what would that mean?
- 24 A: That would mean you're about to go shoot them up.
- 25 Q: So in your life experience, if you heard somebody say

ROBERT HOLMES - DIRECT BY MS. SIGAL

1 that, you mean to shoot them up?

2 A: Yes, ma'am.

3 Q: Where have you heard that?

4 A: In the streets.

5 Q: In the streets?

6 A: Yes, ma'am.

7 Q: So have you heard people say that?

8 A: Yes, ma'am.

9 MS. SIGAL: I beg the Court's indulgence.

10 THE COURT: Certainly.

11 MS. SIGAL: Thank you, Mr. Holmes.

12 THE COURT: Cross-examine?

13 CROSS-EXAMINATION

14 BY MR. KOZELSKI:

15 Q: Good morning, Mr. Holmes.

16 A: Good morning.

17 Q: I've got a few questions for you. You said you've known
18 Aakeem basically since elementary school?

19 A: Yes.

20 Q: And you said he goes by Ace. He also goes by AK; right?

21 A: Yes.

22 THE COURT: Was that a yes?

23 THE WITNESS: Yes.

24 THE COURT: Thank you.

25 BY MR. KOZELSKI:

ROBERT HOLMES - CROSS BY MR. KOZELSKI

- 1 Q: You said he's like a -- like a brother to you?
- 2 A: Yes.
- 3 Q: So you hung out with him all the time?
- 4 A: Yes, sir.
- 5 Q: But you weren't with him when he was shot; right?
- 6 A: No, sir.
- 7 Q: Okay. You were in Ravenel then?
- 8 A: No. I was in Wayside. Actually, on the other side of
- 9 Wayside on 17.
- 10 Q: Okay. So again, you weren't with him?
- 11 A: Right.
- 12 Q: And you certainly didn't see who shot Aakeem?
- 13 A: Right.
- 14 Q: And you're just going off of basically what you've heard
- 15 in talking to the police about this whole incident?
- 16 A: No.
- 17 Q: Well, again, you --
- 18 A: I'm sorry.
- 19 Q: You didn't see anything?
- 20 A: No. I didn't see anything.
- 21 Q: Okay. So, you know, the police have come and talked to
- 22 you about this incident; right?
- 23 A: Right.
- 24 Q: You spoke to that man, Detective Osborne?
- 25 A: Yes, sir.

ROBERT HOLMES - CROSS BY MR. KOZELSKI

1 Q: Okay. And because of your relationship with Aakeem,
2 that's why they came to speak to you; right?

3 A: Yes.

4 Q: I mean it was a -- it was a few weeks after Aakeem had
5 been murdered. I think it was June 21st, 2011; right? That's
6 when Detective Osborne came to speak to you?

7 A: I can't remember the exact date.

8 Q: Okay. But that sounds about right, a few weeks after?

9 A: Yes.

10 Q: Okay. And -- and being the friend that you are, you did
11 want to help the police?

12 A: Yes.

13 Q: And it's not always easy talking to the police; right?

14 A: Right.

15 Q: You can't always trust the police?

16 A: Right.

17 Q: You've lied to the police before?

18 A: Right.

19 Q: You've been -- you've been convicted of giving false
20 information to the police?

21 A: Right.

22 Q: But because this is Aakeem we're talking about, you --
23 you agreed to talk to Detective Osborne?

24 A: Yes.

25 Q: And that interview was recorded; right?

ROBERT HOLMES - CROSS BY MR. KOZELSKI

1 A: Right.

2 Q: And Detective Osborne was asking you questions
3 specifically about Devin and Aakeem, their relationship;
4 right?

5 A: Right.

6 Q: And you were answering those questions to the best of
7 your knowledge; right?

8 A: Right. Yes, sir.

9 Q: He also asked you if you knew Diangelo Bumcum?

10 A: Yes.

11 Q: You thought you might know him from school, but you
12 didn't really know him; right?

13 A: Right.

14 Q: So really the focus of the interview with Detective
15 Osborne here was -- was about Aakeem and Devin?

16 A: Right.

17 Q: And Detective Osborne is asking you why Devin would kill
18 Aakeem?

19 A: Yes.

20 Q: Okay. And he wants you to explain to him basically why
21 -- why Devin would want to kill Aakeem?

22 A: Yes.

23 Q: And again, you weren't there at the time of the shooting;
24 right?

25 A: Right.

ROBERT HOLMES - CROSS BY MR. KOZELSKI

1 Q: So you're just going off of what basically you know from
2 Aakeem and what you've heard and what Detective Osborne is
3 telling you; right?

4 A: Right.

5 Q: And at the end of the interview, Detective Osborne asked
6 you if there's anything else that you can add to help this
7 investigation; right?

8 A: Yes.

9 Q: And you told him that's all you knew; is that right?

10 A: Yes.

11 Q: Okay. Now, I want to talk to you about what -- what you
12 didn't tell the police. You just testified on direct
13 examination that Devin tried to call you a week before this
14 looking for Aakeem. Did you not just testify to that?

15 A: Yes. That's something I think was missing off the
16 report.

17 Q: Okay. So you never told Detective Osborne when he was --

18 A: I swear I did, but that's the only thing that was missing
19 off the report.

20 Q: Okay. You told Detective Osborne in that recorded
21 statement that Devin was calling you?

22 A: No. I forgot to told [sic] him.

23 Q: Okay. So you didn't tell Detective Osborne that Devin
24 tried to call you about that?

25 A: No. I missed -- I missed that on the report.

ROBERT HOLMES - CROSS BY MR. KOZELSKI

1 Q: Okay. This is something that you added later; right?

2 A: (No verbal response.)

3 Q: You never gave police your phone number?

4 A: No.

5 Q: And you don't even know what your phone number was back
6 then?

7 A: No, sir.

8 Q: Police never came to you with a list of phone numbers and
9 said which one is yours?

10 A: No.

11 Q: And you never told the police what to get wet or to wet
12 up means to kill somebody? You never told them that ever, did
13 you?

14 A: No.

15 Q: And I know I've asked you questions about this, Robert,
16 and I want to go over this a little bit about slang. I think
17 you are actually in a better position to talk about slang than
18 some of these people like detectives. But slang is cultural;
19 right?

20 A: Right.

21 Q: It's -- and it's language that's constantly changing and
22 constantly evolving; right?

23 A: Right.

24 Q: Some slang isn't meant for everyone; right?

25 A: (No verbal response.)

ROBERT HOLMES - CROSS BY MR. KOZELSKI

1 THE COURT: You need to --

2 A: Yes.

3 THE COURT: You need to answer, please, so the court
4 reporter --

5 THE WITNESS: Yes, sir.

6 THE COURT: -- can take down your answer.

7 BY MR. KOZELSKI:

8 Q: Some slang is just meant for certain groups of people;
9 right?

10 A: Right.

11 Q: As soon as people outside of that group start using it,
12 it sort of loses its meaning; right?

13 A: Not necessarily.

14 Q: Okay. But it's evolving? You know, you move on to new
15 words; right?

16 A: Right.

17 Q: So no one -- no one uses the phrase foshizzle [ph]
18 anymore; right?

19 A: Some people.

20 Q: Okay. But nobody in your crowd uses that; right?

21 A: No.

22 Q: Even -- even words, like, that were popular last year,
23 like woke, once they start using it, like people like me start
24 using the word woke, people like you don't use that word;
25 right?

ROBERT HOLMES - CROSS BY MR. KOZELSKI

1 A: No.

2 Q: So timing of when slang is used can make a difference in
3 the context of what the slang word means; right?

4 A: Right.

5 Q: And we've talked about the term wet up before and I've
6 asked you questions about cultural references to the term wet
7 up and I've asked you questions about -- you've seen Denzel
8 use the term wet up in *Training Day*?

9 A: No. He didn't use the term wet up. He used the term
10 wet.

11 Q: Like to get wet; right? That's in that movie *Training*
12 *Day* where he's holding the bowl of weed to Ethan Hawke and
13 says smoke this; right?

14 A: Yes.

15 Q: And he smokes it and says I didn't know you liked to get
16 wet?

17 A: Yes. But it's two different ways. He used wet and wet
18 up is two different things.

19 Q: Okay. But yeah, different words mean different things to
20 different people; right?

21 A: Yes, sir.

22 Q: And -- and we've talked about the term rip and run?

23 A: Yes.

24 Q: Right? I would say that's a term that is defined by
25 ripping off a drug dealer and running away; right?

ROBERT HOLMES - CROSS BY MR. KOZELSKI

- 1 A: Right.
- 2 Q: That's how I would, but that's not how you use it; right?
- 3 A: No.
- 4 Q: How do you use it?
- 5 A: Like sleeping with somebody and you haul tail.
- 6 Q: Okay. So sleeping with a girl and then you run off?
- 7 A: Yes, sir.
- 8 Q: Okay. So different things mean different things to
- 9 different people; right?
- 10 A: Yes.
- 11 Q: And you testified earlier that you knew Devin as kind of
- 12 Aakeem's brother-in-law; right?
- 13 A: Yes.
- 14 Q: And Devin lived in Orangeburg?
- 15 A: Yes.
- 16 Q: And he would come down from Orangeburg to -- to give
- 17 Aakeem and you marijuana?
- 18 A: Yes.
- 19 Q: And this was exotic marijuana; right?
- 20 A: Yes.
- 21 Q: And you laid out the price structure to Detective Osborne
- 22 during that interview; right?
- 23 A: Yes.
- 24 Q: You said \$20 a blunt?
- 25 A: \$20 a gram, yeah.

ROBERT HOLMES - CROSS BY MR. KOZELSKI

- 1 Q: A gram. \$120 a quarter?
- 2 A: Yes.
- 3 Q: About 200 to 225 a half?
- 4 A: Yes.
- 5 Q: And \$400 for an ounce?
- 6 A: Yes.
- 7 Q: And you call an ounce a zone; right?
- 8 A: Yes.
- 9 Q: And this is -- this is high-grade weed; right?
- 10 A: High-grade, yes.
- 11 Q: And the problem was that Devin didn't know anybody down
- 12 here to sell weed to; right?
- 13 A: Right.
- 14 Q: Aakeem did?
- 15 A: Yes.
- 16 Q: So they sort of partnered up?
- 17 A: Yes.
- 18 Q: And Devin would bring the exotic weed down from
- 19 Orangeburg to his sister's house?
- 20 A: Yes.
- 21 Q: And then he would stash it there?
- 22 A: Yes.
- 23 Q: And Aakeem would take it and sell it?
- 24 A: Yes.
- 25 Q: And you were one of their first customers actually;

ROBERT HOLMES - CROSS BY MR. KOZELSKI

1 right?

2 A: Right.

3 Q: And business was good. They were selling out real quick?

4 A: Yes.

5 Q: I mean good weed is hard to come by?

6 A: Yes.

7 Q: So you just testified on direct that Aakeem stole Devin's
8 stash; right?

9 A: Right.

10 Q: But you didn't actually see Aakeem steal anything; right?

11 A: No.

12 Q: And you just told us that Devin stashed that weed at his
13 sister's house for Aakeem to sell; right?

14 A: Yes.

15 Q: So you said on direct that Aakeem took a QP of Devin's
16 marijuana?

17 A: Yes, sir.

18 Q: That's a quarter pound; right?

19 A: Yes.

20 Q: That's four ounces?

21 A: Right.

22 Q: But back in June of 2011 when you talked to Detective
23 Osborne, you said that Aakeem had taken about a zone or a zone
24 and a half?

25 A: No.

ROBERT HOLMES - CROSS BY MR. KOZELSKI

1 Q: You didn't say that to --

2 A: No.

3 Q: -- Detective Osborne?

4 A: No.

5 Q: Okay. Mr. Holmes, if I showed you a transcript -- do you
6 know what a transcript is?

7 A: Yes.

8 Q: Okay. That is a recorded -- it's a typed-up version of
9 your recorded statement to Detective Osborne. Would that
10 refresh your recollection as to what you said? I know it's
11 eight years ago. Would that refresh your recollection as to
12 what you told Detective Osborne? Would it?

13 A: I don't know.

14 Q: If you read your words?

15 A: Yeah. If I read my words.

16 Q: Okay.

17 A: It may refresh it.

18 THE COURT: You need to mark it, please.

19 MR. KOZELSKI: Okay.

20 THE COURT: For identification purposes only at this
21 point.

22 (WHEREUPON, the transcript was marked as Defendant's
23 Exhibit Number 1 for identification.)

24 MR. KOZELSKI: May I approach, Your Honor?

25 THE COURT: You may. It's Defense 1?

ROBERT HOLMES - CROSS BY MR. KOZELSKI

1 MR. KOZELSKI: Yes.

2 THE COURT: Thank you. For identification only.

3 BY MR. KOZELSKI:

4 Q: Mr. Holmes, I'm going to show you what's been previously
5 marked as Defense Exhibit 1 for identification purposes only.

6 Can you see the top of that?

7 A: Yes.

8 Q: Okay. And that says an interview between Detective
9 Osborne and you, Robert Holmes; right?

10 A: Right.

11 Q: And it says interview conducted on June 21st, 2011?

12 A: Yes.

13 Q: Okay. Now, I'm going to ask you to turn to page 5 in
14 there. And you can -- you can actually look down to line 14.
15 Okay? Where it says Detective Osborne.

16 A: Yes.

17 Q: Where he asks you how much Aakeem took?

18 A: I said like a zone and a half.

19 Q: A zone and a half?

20 A: Yes.

21 Q: Okay. So you told Detective Osborne that Aakeem took an
22 ounce and a half; right?

23 A: Yes.

24 Q: Not a QP?

25 A: Yes.

ROBERT HOLMES - CROSS BY MR. KOZELSKI

1 Q: Okay. Now, there could have been some dispute over --
2 over money; right?

3 A: Right.

4 Q: But we're not talking -- a zone and a half, you're not
5 talking about a whole lot of money. It's about \$500 or
6 something like that; right?

7 A: Yes, sir.

8 Q: And you told Detective Osborne that Aakeem did give Devin
9 some money; right?

10 A: Yes.

11 A: And Aakeem thought everything was fine?

12 A: Yes.

13 Q: He was going back with Sharmaine. He was staying at her
14 place?

15 A: Yes.

16 Q: And you told Detective Osborne that to you everything
17 seemed fine; right?

18 A: Yes.

19 Q: But Detective Osborne is still asking you why Devin
20 killed Aakeem?

21 A: Yes.

22 Q: And so you told him that you guessed everything wasn't
23 straight between them; right?

24 A: Right.

25 Q: But you don't know for sure?

ROBERT HOLMES - CROSS BY MR. KOZELSKI

1 A: No.

2 Q: And you also told Detective Osborne that you've never
3 seen Devin with a gun?

4 A: No.

5 Q: And you've never seen Devin threaten Aakeem in any way?

6 A: No. There's three messages.

7 Q: You've never seen Devin threaten him?

8 A: No.

9 Q: Okay.

10 MR. KOZELSKI: Thank you. No further questions, Your
11 Honor.

12 THE COURT: Redirect?

13 MS. SIGAL: Yes, Your Honor.

14 REDIRECT EXAMINATION

15 BY MS. SIGAL:

16 Q: Mr. Holmes, in 2011, what did the phrase wet him up mean?

17 A: Shoot him up.

18 Q: What does it mean now?

19 A: Still the same thing.

20 Q: Mr. Kozelski asked you about that movie *Training Day* with
21 Denzel Washington?

22 A: Yes, ma'am.

23 Q: And you said that the phrase wet and wet him up are two
24 different things?

25 A: Yes, ma'am.

ROBERT HOLMES - REDIRECT BY MS. SIGAL

1 Q: Just to clarify, what does wet versus wet him up mean?

2 A: Wet is like you're using something and you're feeling --
3 you're feeling getting wet. Then wet him up is when you're,
4 like, shooting somebody. You're going to shoot somebody up.

5 MS. SIGAL: Thank you. Thank you, Mr. Holmes.

6 THE COURT: Recross?

7 RECROSS-EXAMINATION

8 BY MR. KOZELSKI:

9 Q: So wet could mean to get intoxicated?

10 A: Huh?

11 Q: Wet can mean to get intoxicated?

12 A: Yes. It could be intoxicated.

13 Q: Okay.

14 MR. KOZELSKI: Thank you. No further questions.

15 THE COURT: All right. Mr. Holmes, you may step down.
16 You can call your next witness, please.

17 MS. LINDER: The State calls Tenika Elmore.

18 (WHEREUPON, there was a pause in the proceedings until
19 the witness entered the courtroom, after which the
20 proceedings resumed as follows.)

21 THE CLERK: Please place your left hand on the Bible and
22 raise your right. Do you swear or affirm that the testimony
23 you shall give the Court and jury in the trial of this case
24 shall be the truth, the whole truth, and nothing but the
25 truth, so help you God?

TENIKA ELMORE - DIRECT BY MS. LINDER

1 THE WITNESS: Yes.

2 THE CLERK: You may be seated. And for the record,
3 please state your full name, spelling your last.

4 THE WITNESS: Tenika Elmore, E-l-m-o-r-e.

5 TENIKA ELMORE, being first duly
6 sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MS. LINDER:

9 Q: Good morning, Ms. Elmore.

10 A: Good morning.

11 Q: If you can, just tell the jury little bit about yourself.
12 Are you from Charleston?

13 A: No.

14 Q: Where are you from?

15 A: Orangeburg.

16 Q: Have you lived in South Carolina for most or all your
17 life?

18 A: Yes.

19 Q: And where are you currently working?

20 A: United States Post Office.

21 Q: Where were you working back in 2011?

22 A: Verizon Wireless.

23 Q: How long did you work at Verizon?

24 A: Eight years.

25 Q: And the Verizon where you worked, was that in Orangeburg

TENIKA ELMORE - DIRECT BY MS. LINDER

1 or where was that located?

2 A: North Charleston.

3 Q: In North Charleston? So did you commute from Orangeburg
4 to North Charleston?

5 A: I did.

6 Q: Approximately how long was that commute, barring a day
7 like today with traffic and weather?

8 A: About an hour and ten.

9 Q: And do you recognize this gentleman sitting right there
10 pouring water at that table?

11 A: Yes.

12 Q: Who is that?

13 A: That's my ex-boyfriend.

14 Q: How long were the two of you boyfriend and girlfriend?

15 A: On and off about four years.

16 Q: How did you first meet him?

17 A: We met on a chatline.

18 Q: Did y'all ever live together?

19 A: We have.

20 Q: And where were you living together?

21 A: Orangeburg, South Carolina.

22 Q: Do you remember where in Orangeburg y'all were living
23 back in 2011?

24 A: Eaton Apartments on Kings Road.

25 Q: Did you ever come to learn of a person named Aakeem or

TENIKA ELMORE - DIRECT BY MS. LINDER

1 Ace?

2 A: Yes.

3 Q: And who was that?

4 A: That was Devin's sister's boyfriend.

5 Q: And do you remember his sister's name?

6 A: Sharmaine.

7 Q: Do you know if Devin knew Ace?

8 A: Yes.

9 Q: Did you know anything about a debt that was owed to Devin
10 from Ace?

11 A: Yes.

12 Q: Going back to your job working at the North Charleston
13 Verizon, how did you get there? How did you commute there?

14 A: I drove.

15 Q: And what type of car were you driving back in June of
16 2011?

17 A: A 2008 Toyota Camry.

18 Q: What color was that?

19 A: Blue.

20 Q: Did Devin ever ride with you down into North Charleston
21 or Charleston when you'd go to work?

22 A: Yes.

23 Q: And did he do that with you frequently?

24 A: Yes.

25 Q: And what car would you take from Orangeburg down to work?

TENIKA ELMORE - DIRECT BY MS. LINDER

- 1 A: The blue Toyota, Toyota Camry.
- 2 Q: When he rode down with you, what happened with your car?
- 3 Did he drop you off? Did you keep the car? Did he walk away
- 4 on foot? What normally happened?
- 5 A: He would drop me off.
- 6 Q: Did he take your car while you were at work then?
- 7 A: Yes.
- 8 Q: And sometimes did he let you know where he was going
- 9 throughout the day while you were working?
- 10 A: Sometimes.
- 11 Q: What kind of places did he go?
- 12 A: His mom's, his sister's, Walterboro.
- 13 Q: You mentioned his mom. Where does she live?
- 14 A: Summerville at the time.
- 15 Q: And his sister? Where did his sister live?
- 16 A: West Ashley.
- 17 Q: Did she live in West Ashley back in June of 2011?
- 18 A: As far as I know, yes.
- 19 Q: And what type of place? Do you know if she lived in a
- 20 house or apartment complex?
- 21 A: Apartment.
- 22 Q: All right. I want to take you back to June 8th of 2011.
- 23 Where did you wake up that morning?
- 24 A: Orangeburg.
- 25 Q: And who was with you at your place?

TENIKA ELMORE - DIRECT BY MS. LINDER

1 A: Devin and his daughter.

2 Q: Did you have to work that day?

3 A: I did.

4 Q: And did you drive down to North Charleston for work?

5 A: I did.

6 Q: And what car did you use that day on the 8th?

7 A: The blue Toyota Camry.

8 Q: Who was with you in your car when you came down to work?

9 A: Devin and his daughter.

10 Q: And did you get dropped off?

11 A: I did.

12 MS. LINDER: Your Honor, if I may approach the witness?

13 THE COURT: You may.

14 BY MS. LINDER:

15 Q: At this time, I'm going to show you State's 25, 26, 27,
16 and 28. If you could, take a look at those, please. And
17 these have already been admitted for evidence. So at this
18 time I would like to publish them and ask you a couple
19 questions. These images are going to come up on that screen
20 right in front of you to give you the best view.

21 All right. This is State's 25. What is this picture?
22 What is this vehicle?

23 A: That's my car.

24 Q: And this is the car that you had back on June the 8th,
25 2011?

TENIKA ELMORE - DIRECT BY MS. LINDER

1 A: Correct.

2 Q: I'd like to show you State's 27. And again, this is your
3 car?

4 A: It is.

5 Q: And what, if anything, do you notice about the rear tire?

6 A: It's missing a hubcap.

7 Q: And is that how you knew your car to be at that time?

8 A: Yes.

9 Q: I'm going to show you State's 26. Is this still that
10 same car? That's your car that we've seen earlier?

11 A: Yes.

12 Q: And what's interesting or of note about that front tire?

13 A: It's also missing a hubcap.

14 Q: And is that how you knew your car to be back on June the
15 8th?

16 A: Yes.

17 Q: Finally, State's 28. What -- what is this plate back
18 here?

19 A: That's my college plate, license tag.

20 Q: And this, again, is an image of your car?

21 A: It is.

22 Q: All right. So when you were riding down in this car or
23 driving down in this car to work and were dropped off, who
24 took your car? Who was in the car when you last saw it?

25 A: Devin and his daughter.

TENIKA ELMORE - DIRECT BY MS. LINDER

1 Q: And so you worked all day; right?

2 A: I did.

3 Q: When you got done with work that day, who picked you up?

4 A: Devin.

5 Q: Was he with his daughter?

6 A: He wasn't.

7 Q: Was he in your car?

8 A: He was.

9 Q: Was he on time?

10 A: No. Never on time.

11 Q: When was he supposed to pick you up that night?

12 A: I don't -- around 11 -- 11, I think.

13 Q: But you say he was late picking you up that night?

14 A: Uh-huh.

15 THE COURT: Is that a yes?

16 THE WITNESS: Yes. That is a yes.

17 BY MS. LINDER:

18 Q: When he picked you up, did he seem really rattled and
19 really shaken up?

20 A: No.

21 Q: Did he seem sad or upset or disturbed by something he
22 witnessed?

23 A: No.

24 Q: Did he tell you, oh, my gosh, Tenika, I just saw Ace get
25 shot?

TENIKA ELMORE - DIRECT BY MS. LINDER

- 1 A: He didn't.
- 2 Q: Did he tell you I just saw a shooting?
- 3 A: He didn't.
- 4 Q: Did he tell you you won't believe what I just saw?
- 5 A: He didn't.
- 6 Q: So after he picked you up, where did y'all go in the car?
- 7 A: To pick his daughter up.
- 8 Q: To pick up his daughter? Where was his daughter?
- 9 A: At his mom's.
- 10 Q: His mom's? And was that in Summerville, I think --
- 11 A: Summerville.
- 12 Q: -- you previously said? After getting his daughter from
- 13 his mom's house, did y'all stop anywhere on the way home?
- 14 A: We did.
- 15 Q: And where did you stop?
- 16 A: At a gas station.
- 17 Q: And do you remember telling police exactly kind of the
- 18 directions of where you went when you stopped for gas?
- 19 A: Down the road from his mom's.
- 20 Q: All right. At this time, I'm going to show you what's
- 21 been marked and already entered as State's Exhibit 67 and 68.
- 22 All right. And again, these images are going to show up right
- 23 in front of you. State's 67. Do you recognize this person?
- 24 A: Yes.
- 25 Q: Who is that?

TENIKA ELMORE - DIRECT BY MS. LINDER

1 A: Devin.

2 Q: And is this the outfit he was wearing that night when he
3 picked you up from work?

4 A: Yes.

5 Q: And here is State's 68. Do you recognize this person?

6 A: Yes.

7 Q: Who is that?

8 A: Devin.

9 Q: And again, is this the top shirt he was wearing that
10 night when he picked you up?

11 A: Yes.

12 Q: After going from his mom's house picking up his daughter
13 to going to that gas station, did his mood change? Did he
14 tell you at that point, Tenika, I just saw something really
15 bad?

16 A: No.

17 Q: Did he tell you I just saw Ace got shot?

18 A: No.

19 Q: Did he tell you he was -- he was worried about his
20 sister, Sharmaine, doing something he saw?

21 A: No.

22 Q: So after you went to the gas station that night, where
23 did y'all head? Where did y'all go?

24 A: To Orangeburg.

25 Q: To Orangeburg? And about how long was that trip to

TENIKA ELMORE - DIRECT BY MS. LINDER

1 Orangeburg?

2 A: An hour, an hour and ten.

3 Q: An hour, hour and ten? And at any point on the ride back
4 to Orangeburg did he tell you of something startling,
5 surprising, frightening, a shooting? Did he tell you anything
6 like that had just happened?

7 A: No.

8 Q: To your knowledge, is Devin the person who had your car
9 from when he dropped you off at the start of your shift to
10 when he picked you up late?

11 A: Yes.

12 Q: And was that car that 2008 blue Toyota Camry?

13 A: It was.

14 Q: When did you find out that Ace had been killed?

15 A: I think it was the next day.

16 Q: And who did you find out from?

17 A: I overheard a telephone conversation that he had.

18 Q: And were you present when Devin learned about it?

19 A: Yes.

20 Q: And that was the next day?

21 A: Uh-huh.

22 THE COURT: Is that a yes?

23 THE WITNESS: Yes.

24 BY MS. LINDER:

25 Q: And what was his reaction when he heard that Ace was

TENIKA ELMORE - DIRECT BY MS. LINDER

1 killed the next day?

2 A: Shocked.

3 Q: Did it appear to you that he was acting like it was the
4 first time he was hearing about this?

5 A: Yes.

6 Q: Did he ever tell you that he went by his sister's house
7 the night before on June the 8th?

8 A: No.

9 Q: After the next morning, the next day -- well, the 9th when
10 he learned of it for the first time, at that point did he tell
11 you, well, let me tell you -- let me tell you what happened
12 last night? Did he confess anything to you at that point?

13 A: No.

14 Q: At that point, did he tell you he was at his sister's?

15 A: No.

16 Q: At that point, did he tell you he saw Ace got shot?

17 A: No.

18 Q: If I were to tell you that my plans were to wet somebody
19 up this weekend, what would I mean by that?

20 A: To shoot them.

21 Q: Is that your understanding of what it means today?

22 A: Yes.

23 Q: Is that also your understanding of what it meant back in
24 2011?

25 A: Yes.

TENIKA ELMORE - CROSS BY MR. KOZELSKI

1 MS. LINDER: I beg the Court's indulgence.

2 THE COURT: Certainly.

3 MS. LINDER: I don't have anything else for you. If you
4 could, just answer anything the defense may have.

5 THE COURT: Cross-examine, please.

6 CROSS-EXAMINATION

7 BY MR. KOZELSKI:

8 Q: Good morning, Ms. Elmore.

9 A: Good morning.

10 Q: I'm sorry you have to be here. I know you don't want to
11 be here, but this whole ordeal has put you through a lot;
12 right?

13 A: Correct.

14 Q: And I say you don't want to be here, but you were sort of
15 forced to be here; right?

16 A: I got a subpoena.

17 Q: Right. You got a subpoena and that's basically just a
18 little piece of paper that the State served you with that says
19 you have to be here; right?

20 A: Correct.

21 Q: If you don't show up, they can -- they can hold you in
22 contempt of court and throw you in jail?

23 A: Correct.

24 A: So, you know, you were somewhat forced to be here?

25 A: If that's your interpretation, yes.

TENIKA ELMORE - CROSS BY MR. KOZELSKI

1 Q: Okay. But you've done everything that the State and the
2 police have asked of you; correct?

3 A: Right.

4 Q: And you're not dating Devin anymore?

5 A: No.

6 Q: You don't have any reason to lie for Devin?

7 A: No.

8 Q: And you -- you've cooperated with the police from the
9 very beginning; right?

10 A: Correct.

11 Q: You told them you and Devin were living together in
12 Orangeburg?

13 A: Correct.

14 Q: That his six-year-old daughter, Denavia [ph], was living
15 with you guys too?

16 A: Yes.

17 Q: You were helping -- helped raising her?

18 A: Yes.

19 Q: And at some point in June 2011, the police come to your
20 work and pick you up; right?

21 A: Yes.

22 Q: They -- they take your car; right?

23 A: Yes.

24 Q: You tell them they can search it?

25 A: Yes.

TENIKA ELMORE - CROSS BY MR. KOZELSKI

1 Q: Whatever they want to do. They -- they put you in an
2 interrogation room; right?

3 A: Yes.

4 Q: And they question you for a long time?

5 A: Yes.

6 Q: And you answer all their questions?

7 A: Yes.

8 Q: And you even allow the police to search your home?

9 A: Yes.

10 Q: You consented to that? They didn't have to get a search
11 warrant? You said go search it?

12 A: Yes.

13 Q: And at that time, the police never asked you what wet up
14 means?

15 A: I'm not sure. It's been a lot of interviews. I'm not
16 sure which one it was.

17 Q: I know. It's been eight years, but you don't -- you
18 don't remember in that interview whether they --

19 A: The first one they picked me up?

20 Q: Yes.

21 A: I don't.

22 Q: Yeah. Okay. And at some point, you've had solicitors
23 and you've had Ms. Linder ask you what certain slang terms
24 meant; right?

25 A: Correct.

TENIKA ELMORE - CROSS BY MR. KOZELSKI

1 Q: Asked you what it meant to do a lick?

2 A: Correct.

3 Q: Which means to rob somebody?

4 A: Correct.

5 Q: I mean it can also mean to literally stick your tongue on
6 something?

7 A: Yes.

8 Q: They've -- they've asked you what wet or to get wet
9 means; right?

10 A: Right.

11 Q: You've also said that means to get drunk or intoxicated?

12 A: That's an interpretation, yes.

13 Q: And you've never heard Devin say get wet meaning to stab
14 or shoot somebody, have you?

15 A: I haven't.

16 Q: When he uses that term, he means it to be intoxicated;
17 right?

18 A: Yes.

19 Q: And you weren't aware of the business arrangement that
20 Devin had with Aakeem; right?

21 A: I wasn't.

22 Q: Okay. So Devin sort of kept that part of his life sort
23 of separate from you? Obviously, he didn't want to tell you
24 that he was dealing weed; right?

25 A: Right.

TENIKA ELMORE - CROSS BY MR. KOZELSKI

1 Q: And so, you know, he didn't tell you everything that was
2 going on in his business arrangements with Aakeem or what
3 happened with Aakeem?

4 A: Right.

5 Q: And you knew who Aakeem was; right?

6 A: I knew of him as Sharmaine's. I never met him.

7 Q: And he was dating Devin's sister. You knew that?

8 A: Yes.

9 Q: And as far as you knew and what you told the police is
10 you didn't think there was any bad blood between them; right?

11 A: No, I didn't.

12 Q: You testified you knew that there was money owed; right?

13 A: Uh-huh.

14 Q: Was that -- what was that? I need an answer.

15 A: Yes. I said uh-huh, but I'm not supposed to say that.
16 Yes.

17 Q: But Devin wasn't upset about this or irate or he got
18 angry about it; right?

19 A: No.

20 Q: Devin's friendly to everybody; right?

21 A: He is.

22 Q: You've never seen him be violent?

23 A: No, I haven't.

24 Q: He's never put his hands on you; right? Or anything like
25 that?

TENIKA ELMORE - CROSS BY MR. KOZELSKI

1 A: No, he hasn't.

2 Q: And, in fact, when you were interviewed by the police,
3 you told the police that Devin said Aakeem was a cool dude?

4 A: Yes.

5 Q: They were friends?

6 A: Yes.

7 Q: And I just want to talk briefly about that. You
8 mentioned this phone conversation that you overheard. And you
9 don't know who was on the other line at that point; right?

10 A: I don't.

11 Q: And you don't know what they were telling Devin; right?

12 A: No.

13 Q: You don't know whether they said, hey, Aakeem got shot or
14 Aakeem got murdered; right?

15 A: I don't know.

16 Q: Okay. Because there is a difference between the two;
17 right? Somebody getting shot and somebody getting murdered?

18 A: Uh-huh. Yes.

19 Q: People can survive a shooting; right?

20 A: Yes.

21 Q: But there ain't no coming back from somebody who gets
22 murdered; right?

23 A: Right.

24 Q: So if somebody told him that Aakeem was murdered, that he
25 was dead, this came as a surprise to Devin; right?

TENIKA ELMORE - CROSS BY MR. KOZELSKI

1 A: It was.

2 MR. KOZELSKI: No further questions, Your Honor.

3 THE COURT: Redirect?

4 MS. LINDER: Nothing further.

5 THE COURT: Thank you. You may come down.

6 All right. Ladies and gentlemen, at this point, we'll
7 take a break to let you go to your jury room. Do not begin
8 your deliberations. Don't discuss the case. We'll be with
9 you in about 15 minutes. Thank you.

10 (WHEREUPON, the jury exited the courtroom at 10:53 a.m.)

11 THE COURT: All right. Anything from the State before we
12 recess?

13 MS. LINDER: Nothing from the State.

14 THE COURT: Anything from the defendant?

15 MR. KOZELSKI: No.

16 THE COURT: We'll be -- we'll be at ease for about 15
17 minutes, please.

18 (WHEREUPON, there was a break in the proceedings from
19 10:54 a.m. until 11:11 a.m., after which the proceedings
20 resumed as follows.)

21 THE COURT: All right. Please let the record reflect
22 that Mr. Johnson is present. Is the State ready to continue?

23 MS. LINDER: Ready to continue.

24 THE COURT: The defense is ready?

25 MR. KOZELSKI: Yes, Your Honor.

MATT JAHNGEN - DIRECT BY MS. LINDER

1 THE COURT: Bring in our jury, please, Mr. King. Thank
2 you.

3 (WHEREUPON, the jury entered the courtroom at 11:13 a.m.)

4 THE BAILIFF: All jurors present and seated, Your Honor.

5 THE COURT: Thank you very much.

6 Thank you, ladies and gentlemen. We're ready to
7 continue.

8 Solicitor, you may call your next witness.

9 MS. LINDER: The State calls Matt Jahngen.

10 (WHEREUPON, there was a pause in the proceedings until
11 the witness entered the courtroom, after which the
12 proceedings resumed as follows.)

13 THE CLERK: Please place your left hand on the Bible and
14 raise your right. Do you swear or affirm that the testimony
15 you shall give the Court and jury in the trial of this case
16 shall be the truth, the whole truth, and nothing but the
17 truth, so help you God?

18 THE WITNESS: I do.

19 THE CLERK: You may be seated. And for the record,
20 please state your full name, spelling your last.

21 THE WITNESS: Matthew Jahngen, J-a-h-n-g-e-n.

22 MATT JAHNGEN, being first duly
23 sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MS LINDER:

MATT JAHNGEN - DIRECT BY MS. LINDER

1 Q: Good morning.

2 A: Good morning.

3 Q: Where are you employed?

4 A: City of Charleston Police Department.

5 Q: And what's your rank?

6 A: Senior police officer.

7 Q: How long have you been employed by the City of Charleston
8 Police Department?

9 A: Eight -- almost 9 years.

10 Q: And what are some of your duties as a patrol officer?

11 A: Answer calls for service, obviously, in the district of
12 West Ashley. Also work traffic collisions, do traffic
13 enforcement, and other such things.

14 Q: As part of your duties, have you ever responded to scenes
15 of shootings?

16 A: I have.

17 Q: And were you working back on the night of June the 8th,
18 2011?

19 A: Yes, ma'am.

20 Q: And did you respond to a shooting that night?

21 A: Yes, ma'am.

22 Q: Where was that?

23 A: That was at an apartment complex formerly known as
24 Georgetown Apartments.

25 Q: Is that in Charleston County?

MATT JAHNGEN - DIRECT BY MS. LINDER

1 A: That is in Charleston County.

2 Q: All right. At this time, I'm going to show you what's
3 already been entered as State's Exhibit 1. Does that look
4 good? All right. I'm going to put this up on the Elmo. It
5 will come up on the screen right in front of you. All right.
6 If you could, look at State's Exhibit 1, which is up there
7 behind you. Can you kind of show -- tell the jury what that
8 shows?

9 A: That is the apartment complex that we discussed, formerly
10 known as Orange Grove -- I'm sorry. Georgetown Apartments.
11 It's an apartment complex running from Orange Grove Road to
12 the Ashley River, with Mulmar Street and Orange Grove Shores
13 parallel to the complex itself.

14 Q: All right. And that is a touch screen in front of you,
15 but what is this road right here?

16 A: That is Orange Grove Road.

17 Q: Okay. And then if you go this way, keep going on that
18 road, where do you go in West Ashley?

19 A: If you continue on Orange Grove in the direction, that
20 will take you to Sam Rittenberg Boulevard.

21 Q: All right. And so you said Mulmar. Where is that
22 street? If you can kind of -- you can draw on it if you want
23 on the map there.

24 A: That will be this -- this street running this direction
25 right here.

MATT JAHNGEN - DIRECT BY MS. LINDER

1 Q: Okay. And these apartments, can you explain how they're
2 set up or how they're identified?

3 A: Yeah. Each -- each building has a letter starting with A
4 going through F, starting with A on Orange Grove Road and then
5 all the way through building F, which is the furthest one down
6 by the Ashley River.

7 Q: And will you just go ahead and write on those roofs to
8 show the jury?

9 A: Absolutely.

10 (WHEREUPON, the witness complied.)

11 BY MS. LINDER:

12 Q: And let's -- just for right now, let's talk about
13 building C, just as an example. How are they set up? If you
14 wanted to, can you park your car on Mulmar and walk into an
15 apartment right here? Or how are these building set up with
16 the doorways?

17 A: Well, the doorway to each building is on the interior,
18 sort of like facing a courtyard. They have covered -- covered
19 roofs and it faces the interior. So for instance, building C,
20 the entrances to the apartments would be in these areas here.
21 It's kind of, like, set up like after a motel.

22 Q: Okay. And these parking -- are these all parking lots
23 then?

24 A: Yes. Each of -- each of these areas is a -- is a parking
25 area.

MATT JAHNGEN - DIRECT BY MS. LINDER

1 Q: All right. What I want to do is -- okay. Instead of
2 erasing here, I'm going to use the map up here for you to
3 hopefully be able to show some things to the jury.

4 Now, I want to get back to the night of June 11th of --
5 June 8th of 2011. What happened when you arrived on the scene
6 that night?

7 A: Well, I had -- I had responded and arrived to a report of
8 gunshots being heard in the area and then during my response
9 and my arrival, I was informed that there was an alleged
10 victim of a gunshot wound who had fled the area and could not
11 be located. They didn't know where they were. I had known
12 that other officers were already on scene at the incident
13 location itself; so I took it upon myself to come in on Mulmar
14 Street and walk down that street in an attempt to find any
15 witnesses.

16 Q: And did you see anyone?

17 A: I did. I made contact with a female on Mulmar Street.

18 Q: And approximately where on Mulmar Street did you see that
19 individual?

20 A: Without knowing the exact home, it was in this general
21 area.

22 Q: Okay. And based upon your conversation with her, where
23 was your attention directed?

24 A: My attention was directed to building D, which is this
25 building right here.

MATT JAHNGEN - DIRECT BY MS. LINDER

1 Q: Okay. And what did you do next?

2 A: Well, the woman had advised me that she had heard what
3 sounded like gun shots, looked out her window and saw a male
4 figure running through the courtyard of that building. That
5 was all the information that she could provide. So I directed
6 my attention towards that -- that building. Other officers
7 who were on scene of what was the incident had mentioned that
8 there was -- that there was blood on the ground there.

9 MR. KOZELSKI: Objection, Your Honor. Hearsay.

10 THE COURT: Sustained as to what the officer said.

11 BY MS LINDER:

12 Q: When you went over to the area after talking to someone,
13 did you observe anything?

14 A: I did.

15 Q: What did you observe?

16 A: I did observe some blood on the ground.

17 Q: And what did you do after seeing that?

18 A: After seeing the blood on the ground and based on what
19 the woman had told me, I attempted to follow a trail in the
20 direction.

21 Q: And where did you -- where -- if you could draw on the
22 map, where were you and where were you following this trail
23 that you observed?

24 A: I began just outside of building D in this parking lot.

25 Q: Okay.

MATT JAHNGEN - DIRECT BY MS. LINDER

1 A: And began to follow it in this -- in this direction.

2 Q: And did anyone or anything interrupt you from continuing
3 to follow that trail?

4 A: Yes.

5 Q: What was that?

6 A: A male had come up to me running. He had come up to me
7 and said that he had heard what sounded --

8 MR. KOZELSKI: Objection, Your Honor.

9 THE COURT: Sustained.

10 BY MS. LINDER:

11 Q: After the male came up to you running, what did you do?

12 A: I listened to what he had to say.

13 Q: Where did you go after speaking to this male?

14 A: This male directed me and I followed him through this
15 building, through the courtyard, and then through this parking
16 lot to this general area here.

17 Q: All right. When you got into that general area, what, if
18 anything, did you hear or observe?

19 A: When I was in that general area, I did hear what sounded
20 like a voice over a fence line.

21 Q: So what did you do?

22 A: I then scaled the fence, which is in this area here,
23 except for it's the parking lot from the adjacent property. I
24 scaled that fence and went through the brush there to that
25 backyard of that home that you see right here.

MATT JAHNGEN - DIRECT BY MS. LINDER

1 Q: What, if anything, did you find in the backyard?

2 A: When I got back to that location, I did find a male who
3 was laying on the ground.

4 Q: And what did he look like when you made contact with him?

5 A: I made contact. This was a black male who was lying on
6 his back. He was wearing only boxer shorts and socks, and I
7 did see that there was what seemed to be a great deal of blood
8 on him.

9 Q: And did you see or notice anything about his chest?

10 A: Yes. I did see a small hole in his chest.

11 Q: Was he conscious?

12 A: He was conscious.

13 Q: Was he responsive to your questions?

14 A: He was not responsive to my questions.

15 Q: What happened next?

16 A: I attempted to -- along with other officers who were
17 attempting to join me, I attempted to keep him calm and figure
18 out where we were so we could summon emergency medical
19 services.

20 Q: Was he in good shape?

21 A: No, ma'am.

22 Q: So when EMS came, did they transport him?

23 A: They did.

24 Q: And what did you do after they transported him?

25 A: I remained at that location and secured that immediate

MATT JAHNGEN - DIRECT BY MS. LINDER

1 area until crime scene technicians could process it
2 thoroughly.

3 MS. LINDER: I beg the Court's indulgence.

4 THE COURT: Certainly.

5 MS. LINDER: All right. I have no further questions. If
6 you could, answer anything the defense may have.

7 THE WITNESS: Yes, ma'am.

8 THE COURT: Cross-examine.

9 CROSS-EXAMINATION

10 BY MR. KOZELSKI:

11 Q: Good morning, Officer Jahngen.

12 A: Good morning.

13 A: I want to talk to you just a little bit about what it
14 means to be a senior police officer.

15 A: Yes, sir.

16 Q: Not everybody starts off being a senior police officer;
17 right?

18 A: Correct.

19 Q: You've got to work your way up?

20 A: Yes.

21 Q: And before you even become a cop, you've got to go to the
22 police academy?

23 A: Yes.

24 Q: And one of the things that they teach you at the police
25 academy is how to write reports?

MATT JAHNGEN - CROSS BY MR. KOZELSKI

1 A: Yes.

2 Q: I mean, believe it or not, writing reports is probably
3 one of the most important things that you do as a police
4 officer; right?

5 A: Yes.

6 Q: And that's because you work on a number of cases?

7 A: Yes.

8 Q: And sometimes you work on more than one case at a time?

9 A: Yes.

10 Q: And you want to write stuff down in your report so that
11 you can recall it later; right?

12 A: Yes.

13 Q: And from the time that the incident occurs to the time
14 that the trial, you can work on hundreds of cases; right?

15 A: Yes.

16 Q: I mean it's been eight years in this case. You've
17 probably worked on hundreds of cases?

18 A: Yes.

19 Q: So you need to review those reports in preparation of
20 your testimony, like today?

21 A: Yes.

22 Q: And without the report, you might not be able to remember
23 what happened?

24 A: That's right.

25 Q: So it's important that when you write these reports that

MATT JAHNGEN - CROSS BY MR. KOZELSKI

1 these reports are accurate?

2 A: Yes.

3 Q: And they're complete? You want them to be complete?

4 A: Yes.

5 Q: The ability to testify truthfully requires that you be
6 able to tell the whole truth and nothing but the truth; right?

7 A: Yes.

8 Q: If you leave something out of your initial report, you
9 can always file a supplemental report; right?

10 A: Yes.

11 Q: And you also prepare these reports in anticipation of
12 being cross-examined by someone like me; right?

13 A: Yes.

14 Q: If I were to ask how do you remember that, you want to be
15 able to say I wrote it in my report?

16 A: Yes.

17 Q: And your department even has field manuals on report
18 writing; right?

19 A: Yes.

20 Q: And in those field manuals, it says, you know, from a
21 defense attorney's perspective and from a jury's perspective,
22 if you don't have it written down in your report, that means
23 it didn't happen; is that right?

24 A: That's correct.

25 Q: And report writing helps you communicate the facts that

MATT JAHNGEN - CROSS BY MR. KOZELSKI

1 you learn in your investigation to other people that are
2 working the investigation, like the lead detective; right?

3 A: Yes.

4 Q: And it's important that those reports be accurate and
5 complete because you also might leave the department; right?

6 A: Yes.

7 Q: But a copy of those reports go to the solicitor; right?

8 A: Yes.

9 Q: And then a copy goes to me in the discovery process; is
10 that right?

11 A: Yes, that's right.

12 Q: And so everybody is depending on your report to be
13 complete and accurate?

14 A: Yes.

15 Q: And that goes for any officer, not just you; right?

16 A: Yes. Correct.

17 Q: And you wrote a supplemental report about your
18 involvement in this case; right?

19 A: Yes, I did.

20 Q: So when you -- you get to the scene, a little bit
21 chaotic, you don't know exactly what is going on; right?

22 A: That's correct.

23 Q: And you basically talk to some people, you see a blood
24 trail, and you follow it?

25 A: Yes.

MATT JAHNGEN - CROSS BY MR. KOZELSKI

1 Q: And eventually, you -- you can actually hear a cry -- a
2 cry for help over the fence line?

3 A: Yes.

4 Q: And you scale the fence?

5 A: Yes.

6 Q: And you EMS -- or you radio EMS where you are?

7 A: Yes.

8 Q: Because you eventually get to Aakeem or who you come to
9 find out is Aakeem, the person who was shot; right?

10 A: Yes.

11 Q: And you're in full police uniform?

12 A: Correct.

13 Q: And Aakeem was still alive when you get to him?

14 A: Yes.

15 Q: I know you said he was in bad shape, but he was able to
16 tell you that he was shot in the back?

17 A: He did.

18 Q: And he was -- he kept saying that he couldn't breathe?

19 A: Yes.

20 Q: But he doesn't say anything to you about who shot him?

21 A: No.

22 Q: He doesn't tell you Devin shot me?

23 Q: He does not, no.

24 Q: If he had said something like that, you certainly would
25 have put that in your report?

MATT JAHNGEN - CROSS BY MR. KOZELSKI

1 A: Yes, I would.

2 MR. KOZELSKI: No further questions, Your Honor.

3 THE COURT: Redirect?

4 MS. LINDER: No redirect.

5 THE COURT: Thank you. You may come down, sir.

6 THE WITNESS: Thank you, sir.

7 THE COURT: Do you wish this witness to be excused?

8 MS. LINDER: Yes, Your Honor.

9 THE COURT: Any objection?

10 MR. KOZELSKI: No objection.

11 THE COURT: You're also free to leave, Officer. Thank
12 you.

13 THE WITNESS: Thank you, Your Honor.

14 THE COURT: Call your next witness.

15 MS. SIGAL: The State calls Rene Charles.

16 (WHEREUPON, there was a pause in the proceedings until
17 the witness entered the courtroom, after which the
18 proceedings resumed as follows.)

19 THE CLERK: Please place your left hand on the Bible and
20 raise your right. Do you swear or affirm that the testimony
21 you shall give the Court and jury in the trial of this case
22 shall be the truth, the whole truth, and nothing but the
23 truth, so help you God?

24 THE WITNESS: Yes, ma'am.

25 THE CLERK: You may be seated. And for the record,

RENE CHARLES - DIRECT BY MS. SIGAL

1 please state your full name, spelling your last.

2 THE WITNESS: Rene Charles, C-h-a-r-l-e-s.

3 RENE CHARLES, being first duly
4 sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MS. SIGAL:

7 Q: Good morning, Officer Charles.

8 A: Good morning.

9 Q: Can you please tell us where you work?

10 A: I work for the City of Charleston Police Department.

11 Q: In what capacity?

12 A: I'm a crime scene investigator.

13 Q: How long have you been in that role?

14 A: Twenty-one years.

15 Q: And I know we've all seen this on TV, but I imagine in
16 real-life it's a little different. How would you describe the
17 job of a crime scene investigator?

18 A: The job as a crime scene investigator is to respond to
19 crime scene calls, investigate the -- the crime scene,
20 document the scene, process the scene, collect the physical
21 evidence, photograph the scene.

22 Q: So is it important as a crime scene investigator to
23 document the scene as it is as you find it?

24 A: Yes.

25 Q: And typically, what is the first thing you do when you

RENE CHARLES - DIRECT BY MS. SIGAL

1 get to a scene?

2 A: The first thing I do when I respond to crime scene calls,
3 I will have spoke with the first responding officer at the
4 scene and he or she will brief me about the -- the incident
5 and what's going on.

6 Q: And then do you walk through the scene?

7 A: Yes, ma'am.

8 Q: And you mentioned earlier, but usually you take
9 photographs in this process?

10 A: Yes. Photographs is part of the crime scene
11 investigation. Took photographs and document the evidence.

12 Q: About how many crime scenes have you responded to in your
13 career?

14 A: Throughout my career, lots of calls. Lots of crime scene
15 calls. Hundreds and thousands.

16 Q: Do you responding to -- I'm sorry. Do you recall
17 responding to a crime scene on June 8th, 2011?

18 A: Yes.

19 Q: Where was the crime scene you responded to on that date?

20 A: On June 11th -- June 8th, 2011, I responded to a shooting
21 scene that took place at Georgetown Apartment Complex located
22 at [REDACTED] Orange Grove Road in the -- in West Ashley.

23 Q: So is that in Charleston County?

24 A: That's in the city, Charleston city.

25 Q: And it's within the County of Charleston?

RENE CHARLES - DIRECT BY MS. SIGAL

1 A: Yes.

2 Q: Okay. And so what did you first do when you arrived at
3 that scene?

4 A: When I first arrived at the crime scene, I spoke with the
5 first responding officer. That was Officer Wisener [ph], and
6 he briefed me about the shooting scene. He informed me that a
7 shooting just occurred and he located some evidence out there
8 at the scene. So I was requested to -- requested to process
9 the crime scene based on the information.

10 MS. SIGAL: Permission to publish State's 1, Your Honor.

11 THE COURT: You may.

12 MS. SIGAL: All right.

13 BY MS. SIGAL:

14 Q: Officer Charles, I am -- okay. I'm showing you what's
15 been admitted as State's 1. Can you please point out the
16 building that you just talked about where some of the evidence
17 was located when you arrived?

18 A: When I first arrived, I was told that the shooting took
19 place in the hallway of building C. That's building C, and
20 the shooting took place in the hallway in building C,
21 somewhere in the area of building C.

22 Q: Okay. So we're talking about right here in the middle?
23 This is building C?

24 A: Yes. This is building C.

25 Q: And you just marked -- I believe it's right there, so

RENE CHARLES - DIRECT BY MS. SIGAL

1 kind of on the corner by the parking lot and Mulmar Road. Is
2 that where you're indicating?

3 A: Yes.

4 Q: Okay. Officer Charles, is this another aerial view of
5 the apartment complex?

6 A: Yes. That's the -- that's the aerial view of building C
7 and also building D and building E. Building D and building
8 E.

9 Q: And will this poster help aid your testimony in
10 describing where you went?

11 A: Yes.

12 Q: Okay. And so you stated that this was building C
13 previously; right?

14 A: That's correct.

15 Q: And you said this was D and this was E?

16 A: That's correct, yes.

17 THE COURT: Solicitor, have you marked that? Has that
18 been marked? Is it an exhibit at this point for ID only?

19 MS. SIGAL: It has not been marked for ID.

20 THE COURT: So the record will reflect what we're looking
21 at, we need to have it marked for identification only.

22 MS. SIGAL: I apologize, Your Honor.

23 THE COURT: No. That's no problem. It's necessary. I
24 want to be sure I haven't missed it.

25 (WHEREUPON, the large photograph was marked as State's

RENE CHARLES - DIRECT BY MS. SIGAL

1 Exhibit Number 81 for identification only.)

2 MS. SIGAL: Let the record reflect that we are using 81
3 as a demonstrative aid.

4 THE COURT: That is fine. It's for ID purposes only.
5 Any objection to the use of the demonstrative evidence?

6 MR. KOZELSKI: No objection.

7 THE COURT: Very well. Thank you. Okay.

8 MS. SIGAL: All right.

9 BY MS. SIGAL:

10 Q: Okay. And you said that this was D?

11 A: Yes.

12 Q: And this is E?

13 A: Yes.

14 Q: All right. And you stated on the map that this is the
15 area where the -- I think you just stated up there. This is
16 the area where the evidence was located in this general area?

17 A: That's the general area where the evidence were located.

18 Q: Okay.

19 A: On the ground.

20 Q: That's where you were directed by Officer Wisener?

21 A: Yes.

22 Q: Okay. I'm showing you what's been marked as State's
23 Exhibits 2 through 9. Can you just take a look at these?

24 A: Thank you.

25 Q: And tell us if you recognize those?

RENE CHARLES - DIRECT BY MS. SIGAL

1 A: Yes. Those are photographs that I took of the crime
2 scene.

3 Q: Okay. Thank you. And these have already been admitted
4 into evidence and we're going to publish these. Here we go.
5 If you can, please tell us what we see in this picture?

6 A: In this pictures -- on this picture, you can see a black
7 Nike sandal on the ground next to the vehicle, the Ford
8 Explorer vehicle that was also at the crime scene. So I took
9 photographs of the sandal on the ground showing that the
10 evidence was located.

11 Q: And are we still over here by building C?

12 A: Yes.

13 Q: And in which direction -- which building was that car
14 facing?

15 A: The car was facing building C.

16 Q: Okay. So I'm just going to sort of mark on here -- I'm
17 not an artist -- where the shoe was found.

18 A: Yes, that's correct.

19 THE COURT REPORTER: Which photo is that?

20 MS. SIGAL: That's photo number -- State's Exhibit 2.

21 BY MS. SIGAL:

22 Q: Now, we're going to look at State's Exhibit Number 3,
23 admitted as State's Exhibit 3. Is this the same vehicle?

24 A: That's the same vehicle. Here, I'm showing an overall
25 picture of the -- the vehicle and also the hallway, the

RENE CHARLES - DIRECT BY MS. SIGAL

1 hallway of building C.

2 Q: Okay. And is that crime scene tape in that picture?

3 A: Yes. The crime -- crime scene tape is to secure the area
4 and also to protect the evidence.

5 Q: Now, we're going to show you what's been admitted as
6 State's Exhibit Number 4. Is this the same hallway we were
7 just looking at?

8 A: Yes. That's the hallway of building C, showing all the
9 evidence on the ground marked with the evidence markers.

10 Q: You said the evidence markers. Is that what those little
11 yellow things are in the picture?

12 A: Yes.

13 Q: Can you tell in this picture which evidence markers those
14 were?

15 A: Those were evidence marker number 2, 3, 4, 5.

16 Q: And can you tell us what apartment is right next to this
17 hallway?

18 A: Right next to the hallway is apartment [REDACTED] and also
19 [REDACTED].

20 Q: Now, I'm showing you what's been admitted -- publishing
21 what's been admitted as State's Exhibit Number 5. Can you
22 please tell us about this picture?

23 A: Yes. In this picture, as you can see, evidence marker
24 number 2 and evidence marker number 3, both items showing two
25 fired shell casings on the ground.

RENE CHARLES - DIRECT BY MS. SIGAL

1 Q: I'm just going to mark this so we're still in this area
2 where you have two fired shell casings.

3 A: Yes.

4 Q: Okay. Now, I'm going to publish --

5 MS. SIGAL: Permission to publish State's 7, Your Honor?

6 THE COURT: Yes.

7 BY MS. SIGAL:

8 Q: Can you please tell us about that picture?

9 A: This photograph is showing one Nike sandal that was also
10 found at the crime scene on the ground near the fired shell
11 casings.

12 Q: Does that Nike sandal match the other Nike sandal we saw
13 in the picture by the car?

14 A: Yes.

15 Q: Okay. Moving along, I'm showing what's been admitted as
16 State's 8. Can you tell us what this depicts?

17 A: This photograph is showing a close-up of evidence marker
18 number 5. It's also a fired shell casing that was found at
19 the crime scene.

20 Q: Another shell casing?

21 A: Another shell casing.

22 Q: Okay. I'm showing you what's been admitted as State's
23 Exhibit Number 9. Again, what are we looking at here?

24 A: We're looking at evidence marker number 6 and also it's
25 another fired shell casing that was found -- found at the

RENE CHARLES - DIRECT BY MS. SIGAL

1 crime scene.

2 Q: So is the -- I apologize. Finally, State's 6. Is this
3 the same hallway, just a different view of what we've seen?

4 A: Yes. It's the same hallway. It's a close-up photograph
5 with the evidence marker on the ground and also the item.

6 Q: Okay. And what do you notice that's on the ground that's
7 been evident in these pictures and in State's 6?

8 A: And also, during the investigation, I noticed some blood
9 drops on the ground, along with the fired shell casings and
10 the black Nike sandal -- the black Nike sandals and the
11 evidence markers and I noticed some blood drops in the hallway
12 of building C.

13 Q: So -- and I know sometimes it's hard to make out, but
14 you're saying there's blood drops around these shell casings
15 and the sandal in that hallway?

16 A: Yes.

17 Q: All right. Thank you. All right. I'm going to shift
18 your attention a little bit. We just reviewed some pictures
19 with those evidence markers with the shell casings you just
20 talked about; right?

21 A: Yes.

22 Q: Were the actual shell casings collected by you?

23 A: Yes.

24 Q: When you processed the scene?

25 A: Yes.

RENE CHARLES - DIRECT BY MS. SIGAL

1 Q: And how do you usually collect those and document that?

2 A: After I took photographs of each evidence on the ground,
3 I will collect each item separately and place each item in
4 separate envelope, mark it, initial, my name and with the case
5 number and also the -- the location where I collected the
6 items from.

7 MS. SIGAL: Permission to approach the witness, Your
8 Honor?

9 THE COURT: You may.

10 BY MS. SIGAL:

11 Q: Okay. I'm showing you what's been marked for ID as
12 State's 48, 49, 50, and 51. Can you please take a moment and
13 look at these items and let us know if you recognize them?

14 A: Yes. Excuse me. Yes.

15 Q: How do you know what those are?

16 A: Those are the fired shell casings that I collected from
17 the crime scene. It's evidence marker 101, 102, 103, 105, and
18 also 106.

19 Q: And so those are the four shell casings that you found on
20 the scene at Georgetown Apartments?

21 A: Yes.

22 Q: They're the ones we just looked at in the photographs?

23 A: Yes.

24 Q: And how do you know those are the ones that you
25 collected?

RENE CHARLES - DIRECT BY MS. SIGAL

1 A: On the outside of the envelope, I put my initial on the
2 back of the envelope and also the case number and all the
3 information that I recovered from the scene.

4 Q: And is that how you remember where you found each item?

5 A: Yes.

6 MS. SIGAL: At this time, we would move to admit State's
7 48, 49, 50, and 51 into evidence, Your Honor.

8 THE COURT: Any objection?

9 MR. KOZELSKI: No objection.

10 THE COURT: Without objection, 48, 49, and 50 [sic] are
11 admitted.

12 (WHEREUPON, State's Exhibits Number 48, 49, 50, and 51,
13 shell casings, were admitted into evidence.)

14 BY MS. SIGAL:

15 Q: Officer Charles, how many years have you worked in crime
16 scene?

17 A: Twenty-one years.

18 Q: Twenty-one years? And is it part of your training and
19 experience -- during those years, have you rudimentary
20 knowledge of firearms and how they work?

21 A: Yes.

22 Q: Can you tell us what a shell casing is?

23 A: A shell casing -- it's a part of the bullet. When the
24 weapon is fired, the shell casing is ejected from the weapon,
25 and the other parts of the bullet, the fired projectile, also

RENE CHARLES - DIRECT BY MS. SIGAL

1 will exit from the weapon to hit the target.

2 Q: Okay. So it sounds like there's two parts. We have the
3 projectile or the bullet and then the shell casing?

4 A: Yes.

5 Q: And are both of those ejected from the gun when a gun is
6 fired?

7 A: Yes, that's correct.

8 Q: And in what direction does the bullet usually travel?

9 A: The bullets usually travel based on the location where
10 the shooter is located. The shell casings also will be in the
11 area approximately where the shooting is.

12 Q: Would it be fair that the bullet travels toward a target?

13 A: Yes. Toward a target.

14 Q: And the shell casings -- where do they usually land in
15 proximity to the shooter?

16 A: Usually they land closer to the proximity to the shooter,
17 yes.

18 Q: Going back to State's 48 that you have in front of you,
19 can you take a look at this exhibit and tell me if this fired
20 shell casing contains any information in regard to the type of
21 ammunition that we're looking at here?

22 A: Yes. By looking at the fired shell casings, they have
23 stamps. All the informations from the fired shell casings is
24 on the back of the base of the head stamp, and this particular
25 casing was a 9-millimeter fired shell casing.

RENE CHARLES - DIRECT BY MS. SIGAL

1 Q: So is 9 millimeters -- is that the caliber?

2 A: Yes, caliber. Yes.

3 Q: And what about the brand?

4 A: It's 9 millimeters Luger. FC Luger.

5 Q: Okay. Switching gears again. In looking at building C
6 that we've looked at before and particularly when you mention
7 the blood drops, did anything of interest become very clear to
8 you in regard to the blood drops and the location of those
9 blood drops?

10 A: Yes. The -- the blood drops were showing a pattern, a
11 trail of blood, a blood trail from building C, continuing to
12 the parking lot between building C and building D, and so on
13 continuing to building E.

14 Q: Okay. So you called it a blood trail?

15 A: Blood trail.

16 Q: And did you follow the blood trail?

17 A: Yes, I did.

18 Q: Okay. And again, where did the blood trail start?

19 A: The blood drop -- the blood trail started in the hallway
20 of building C all the way continued to building D and ends at
21 the rear of building E.

22 Q: Okay.

23 MS. SIGAL: Permission to publish State's 24?

24 THE COURT: You may.

25 BY MS. SIGAL:

RENE CHARLES - DIRECT BY MS. SIGAL

1 Q: Officer Charles, I'm now showing you what's been admitted
2 as State's 24. Do you recognize this map?

3 A: Yes. That's the -- the aerial -- aerial view of the
4 Georgetown Apartment Complex also showing a green line to
5 indicate the path of the blood trail from building C all the
6 way down to building D and continuing all the way in the rear
7 of building E.

8 Q: Okay. So is that the blood trail indicated by that green
9 line? Is that the blood trail that you followed in your
10 investigation?

11 A: Yes.

12 Q: Officer Charles, I'm now showing you what's been admitted
13 as State's Exhibit 10. Can you tell us what is depicted in
14 that picture?

15 A: That's evidence marker number 7 and also some blood drops
16 on the -- on the ground showing the direction from the hallway
17 of building D.

18 Q: Okay. Do you remember which building this was in?

19 A: Building D.

20 Q: Building D?

21 A: Yes.

22 Q: So we've moved from C to D at this point?

23 A: Yes.

24 Q: Okay. I'm showing you what's been admitted as State's
25 Exhibit Number 11.

RENE CHARLES - DIRECT BY MS. SIGAL

1 A: That's the evidence marker, a close-up photograph of the
2 evidence marker showing a bullet fragment on the ground.

3 Q: Showing a bullet fragment on the ground?

4 A: Yes.

5 Q: Is that what the evidence marker 7 is indicating?

6 A: Yes.

7 Q: Is there also blood in that picture?

8 A: Yes. The blood drops right -- right on this, right on
9 the area right there.

10 MS. SIGAL: Permission to approach the witness, Your
11 Honor?

12 THE COURT: Yes.

13 BY MS. SIGAL:

14 Q: I'm now showing what's been marked for identification as
15 State's Exhibit 52. Can you please tell us if you recognize
16 this exhibit?

17 A: Yes. That's evidence marker number 7, the fired bullet
18 fragment that I collected from the -- from the scene -- from
19 the crime scene.

20 Q: And again, how do you know that that's the one that you
21 collected from the crime scene?

22 A: My initial is on the back of the envelope and also all
23 the information is on the outside of the envelope with my name
24 and the case number and the location.

25 MS. SIGAL: Your Honor, at this time, we'd move to

RENE CHARLES - DIRECT BY MS. SIGAL

1 introduce State's 52 into evidence.

2 THE COURT: Any objection?

3 MR. KOZELSKI: No objection.

4 THE COURT: State's 52 is admitted without objection.

5 (WHEREUPON, State's Exhibit Number 52, projectile
6 fragment, was admitted into evidence.)

7 MS. SIGAL: Thank you.

8 BY MS. SIGAL:

9 Q: Can you explain a little bit more about what State's 52
10 is? What is a bullet fragment and how does it come into
11 being?

12 A: The bullet fragment is a small metal piece from the
13 bullet that was fired and you could get it from, you know,
14 when the bullets hit a target or from the victim's clothing.
15 It was dropped while he was running from the scene.

16 Q: Moving on to State's Exhibit Number 12, could you tell us
17 what we're looking at in this picture, please?

18 A: In this picture, you're looking at -- excuse me -- the
19 blood drops and also the arrow showing the directions of the
20 -- the blood.

21 Q: So the arrow, was that placed there by you?

22 A: That was placed by me.

23 Q: And you're showing the direction of the blood trail in
24 that picture?

25 A: Yes.

RENE CHARLES - DIRECT BY MS. SIGAL

1 Q: Okay. Thank you. Now, we're moving on to State's
2 Exhibit 13 and can you sort of give us an idea of where we
3 are, which building we're in in this picture?

4 A: This picture is showing the hallway of building D, still
5 in building D.

6 Q: Okay. And are you still following the blood trail?

7 A: Yes.

8 Q: And can you please point out any blood that you're
9 following in this picture, just for context?

10 A: The blood is going toward --

11 Q: Okay. Thank you.

12 A: -- the exit to building D.

13 Q: Okay. Now, I'm showing you what's been admitted as
14 State's 14. Is this more of the blood trails?

15 A: It's more of the blood trail on the ground going out of
16 building -- building D.

17 Q: And again, those markers, were they placed there by you
18 to indicate the direction?

19 A: Yes.

20 Q: Okay. I'm kind of skipping ahead to State's Exhibit 17.
21 Is this more of the blood trail?

22 A: That's more of the blood trail, yes.

23 Q: And what building are we in at this point?

24 A: Still in building -- building D, going out of building D.

25 Q: Okay. In what direction are we headed? Which building

RENE CHARLES - DIRECT BY MS. SIGAL

1 are we headed toward at this point?

2 A: At this point, we're headed towards building E.

3 Q: Okay. And now I'm showing you what's been admitted as
4 State's 18. What do you notice about the frequency in the
5 drops in this picture?

6 A: In this photograph, we can see the blood trail continue
7 all the way behind building E and make a sharp turn behind the
8 building.

9 Q: So you said we're in building E at this point?

10 A: Yes.

11 Q: And I'm showing you what's been marked as State's 20.
12 I'm sorry. Marked and admitted as State's 20.

13 A: And this photograph is showing a close-up of the blood
14 trail behind building E.

15 Q: And you mentioned this a minute ago, but did it appear
16 that the blood trail sort of took a turn to the right?

17 A: Yes. As you can see, the arrow turning to the right
18 behind the building.

19 Q: Okay. And in what direction -- it's kind of dark back
20 there, but what was back there?

21 A: Back there, it's the wooden fence and also the A/C unit
22 behind the building.

23 Q: I'm showing you what's been admitted as State's 21. Is
24 that the fence you were just talking about?

25 A: Yes. That's the wooden fence behind building E.

RENE CHARLES - DIRECT BY MS. SIGAL

1 Q: Behind building E?

2 A: Yes.

3 Q: Okay. Now, I'm showing you State's 22. Can you explain
4 that picture for us, please?

5 A: In that picture, it's the A/C unit. It's the A/C unit
6 behind building E where I photographed blood drops on top of
7 the A/C unit.

8 Q: I'm now showing you what's been admitted as State's 23.
9 Is that the A/C unit you were just referring to?

10 A: Yes. That's the blood drop on top of the A/C unit
11 located behind building E.

12 Q: Okay. And is that where the blood trail ended?

13 A: That's where the blood trail ended behind building E.

14 Q: We went from C to parking lot to D to parking lot to E
15 and then out by the fence?

16 A: Yes.

17 Q: Okay. Thank you. After documenting and collecting the
18 evidence that we just referred to, did your involvement in
19 this case continue on to June 10th, 2011?

20 A: Yes, it did.

21 Q: What did you do on June 10th?

22 A: On June -- on June 10th, 2011, I received the search
23 warrant to -- a search warrant to process a 2008 Toyota Camry
24 for -- from the -- that was involved in the shooting.

25 Q: You said you had to execute a search warrant on that car?

RENE CHARLES - DIRECT BY MS. SIGAL

1 A: Yes.

2 Q: What do you do when you're processing a search warrant on
3 a car? What kind of steps do you take in the process?

4 A: In this case, the search warrant was for -- to be
5 searched for any firearms, shell casings, bullets,
6 fingerprints, DNA evidence.

7 Q: Do you take photographs during that process?

8 A: Yes, I did.

9 Q: Okay. And you mentioned fingerprints. Can you tell us a
10 little bit about how the process works to look for
11 fingerprints and collect them?

12 A: Yes. Fingerprints -- it's latent fingerprints. It's not
13 visible to -- to see it with the naked eyes. So to make it
14 visible, I use black powder -- excuse me -- black powder and a
15 fingerprint brush. I apply the black powder on the surface
16 with the fingerprint brush and then use a clear tape to lift
17 the prints and put it on the fingerprint cards.

18 Q: So the print lifts up on the tape and then you place it
19 on a fingerprint card?

20 A: Yes.

21 Q: And sometimes fingerprints are referred to as latents?

22 A: Latents.

23 Q: What does latent mean?

24 A: Latent mean you cannot see it. It's not visible to see.
25 You have to use either black powder, black fingerprint powder

RENE CHARLES - DIRECT BY MS. SIGAL

1 or any type of chemicals to make the latents visible.

2 Q: So the fingerprint sticks to the tape and gets placed on
3 the card. What do you do after you place it on the card?

4 A: After I place it on the card, I will send it to the
5 latent examiner for analysis.

6 Q: Do you document where you found each fingerprint so you
7 can refer back to it later?

8 A: Yes.

9 Q: And so you pull the prints, but did someone else do the
10 actual analysis?

11 A: Yes.

12 Q: And again, we mentioned that you processed the blue
13 Toyota Camry back on June 10th, 2011; correct?

14 A: That's correct.

15 Q: Do you remember how many latent lifts or fingerprint
16 lifts you took from this car?

17 A: I collected a total of 35 latent fingerprint cards from
18 the vehicle.

19 Q: Officer Charles, I'm now going to show you what's been
20 admitted as State's Number 29. Do you recognize that car?

21 A: Yes. That's the -- that's the photograph of the -- the
22 vehicle, the 2008 Toyota Camry.

23 Q: I'm showing you what's been marked as State's -- I'm
24 sorry -- admitted as State's 30. Is this another side of the
25 Camry?

RENE CHARLES - DIRECT BY MS. SIGAL

1 A: That's the other side of the Camry. That's the rear
2 passenger side door and also the evidence tape number 1 and
3 also number 2.

4 Q: So when you were referring to fingerprint tape, is that
5 what that looks like?

6 A: That's -- that's what it looks like, the clear tape 1 and
7 clear tape number 2. That's the latent fingerprints that I
8 located on the vehicle.

9 Q: And again, you would've documented that 1 and 2 came from
10 the passenger side of the car?

11 A: Yes.

12 Q: Do you notice anything unusual in this picture about the
13 back tire?

14 A: Yes. In this photograph, I noticed that the -- the rear
15 cover was missing on the rear passenger side tire.

16 Q: Now, I'm showing you what's been admitted as State's 31.
17 Can you please tell us what we see in this picture?

18 A: In this picture, you see fingerprint lift number 8 and
19 also fingerprint lift number 9.

20 Q: And do you remember which side of the car that was on?

21 A: That was on the exterior front passenger side door.

22 Q: I'm showing you State's 32, what's been admitted as
23 State's 32, and can you tell us what we see in that picture,
24 please?

25 A: In that picture is a close-up photograph of fingerprint

RENE CHARLES - DIRECT BY MS. SIGAL

1 lifts of 19, 20, 21. All came from the exterior front driver
2 side door panel.

3 Q: And State's 33. Can you tell us what is indicated in
4 that picture?

5 A: In that picture, that's the fingerprint lift 27,
6 recovered on the exterior of the gas cap.

7 Q: And I'm going to go back to what's been admitted as
8 State's 29. What do you notice about that back tire?

9 A: That tire is -- still has the cover rim still on the --
10 on the tire.

11 Q: Okay.

12 MS. SIGAL: I beg the Court's indulgence.

13 THE COURT: Yes.

14 MS. SIGAL: All right. Thank you, Officer Charles.

15 Please answer any questions Mr. Kozelski may have.

16 THE COURT: Cross-examine?

17 CROSS-EXAMINATION

18 BY MR. KOZELSKI:

19 Q: Good afternoon, barely, Mr. Charles.

20 A: Yes, sir.

21 Q: Crime scene is a very important part of many
22 investigations; right?

23 A: Yes.

24 Q: And you can collect evidence that can identify an
25 individual perpetrator; right?

RENE CHARLES - CROSS BY MR. KOZELSKI

- 1 A: Yes.
- 2 Q: And you're trained on how to protect crime scenes?
- 3 A: Yes.
- 4 Q: You're also trained in other specialized techniques?
- 5 A: Yes.
- 6 Q: You're trained on how to document evidence?
- 7 A: Yes.
- 8 Q: You can take photos? You can draw diagrams?
- 9 A: Yes, sir.
- 10 Q: You're also trained on how to collect evidence; right?
- 11 A: Yes, sir.
- 12 Q: You just talked briefly about collecting fingerprints?
- 13 A: Yes, sir.
- 14 Q: You can collect shoe prints?
- 15 A: Yes, sir.
- 16 Q: You can collect DNA?
- 17 A: Yes, sir.
- 18 Q: And there -- there's a lot of different types of DNA that
- 19 you can collect; right?
- 20 A: Yes, sir. That's correct.
- 21 Q: You can collect blood?
- 22 A: Blood.
- 23 Q: You can collect hair?
- 24 A: (No verbal response.)
- 25 Q: Is that a yes?

RENE CHARLES - CROSS BY MR. KOZELSKI

1 A: Yes, sir.

2 Q: Sorry. She's taking down everything that you're saying;
3 so she has to get a response.

4 You can get DNA from saliva?

5 A: Yes, sir.

6 Q: You can get DNA from semen?

7 A: Yes, sir.

8 Q: You can also get what's called touch DNA or contact DNA?

9 A: That's correct.

10 Q: And basically, what that is is if a person touches a hard
11 surface, the oils from their fingers and the residue from
12 their fingers can leave behind their DNA?

13 A: That's correct, yes.

14 Q: And you use this as part of one of the specialized
15 techniques that you do and you can collect that?

16 A: That's correct, yes.

17 Q: You also collect shell casings?

18 A: Yes.

19 Q: Projectiles?

20 A: Yes.

21 Q: Unspent rounds?

22 A: Yes.

23 Q: You can also collect gunshot residue?

24 A: Yes, that's correct.

25 Q: And you test for that? Basically, gunshot residue are

RENE CHARLES - CROSS BY MR. KOZELSKI

1 tiny metallic particles that expel from a gun after it's been
2 fired?

3 A: That is correct.

4 Q: And once you collect this evidence, you are trained to
5 preserve it?

6 A: Absolutely, yes.

7 Q: And you have to follow certain protocols to do that?

8 A: Yes.

9 Q: And that's to ensure that this evidence that you gathered
10 -- it doesn't get mishandled or expired in any way?

11 A: Yes.

12 Q: And then you take that evidence that you collected back
13 to your lab?

14 A: Yes.

15 Q: And once back at the lab, you process the evidence?

16 A: That's correct.

17 Q: And that -- that literally means you examine it?

18 A: Examine it, yes.

19 Q: And sometimes that can mean, like, putting it under a
20 microscope?

21 A: That's correct.

22 Q: And if you don't test it, there are other agencies that
23 you can send the evidence to that would do the testing for
24 you; right?

25 A: Yes, sir.

RENE CHARLES - CROSS BY MR. KOZELSKI

1 Q: And you're a scientist; right?

2 A: Yes.

3 Q: And as a scientist, you're objective about the evidence
4 that you're examining?

5 A: Yes.

6 Q: And after you examine the evidence and you collect it,
7 the hope is that you're going to find one identifying piece of
8 evidence; right?

9 A: Right.

10 Q: And that's -- that's the holy grail of crime scene
11 investigation?

12 A: Right.

13 Q: I want to talk to you about arriving on the scene back in
14 June of 2011. You arrived at the Georgetown Apartments;
15 right?

16 A: Yes.

17 Q: And this is a fairly large crime scene; right?

18 A: Yes. Uh-huh.

19 Q: Basically, you have to shut down the entire apartment
20 complex to preserve the scene?

21 A: Yes. They already have a shooting scene, yes.

22 Q: And, you know, you have manuals on how you protect
23 evidence and one thing that you learned in these manuals is
24 nobody touches anything before you get there; right?

25 A: Right.

RENE CHARLES - CROSS BY MR. KOZELSKI

1 Q: That's the golden rule of crime scene investigation?

2 A: Yes.

3 Q: And while you were at the Georgetown Apartments, you
4 didn't actually go into any apartments or search any
5 apartments while you were there; right?

6 A: I don't recall. No, I did not.

7 Q: Okay. But you -- you did photograph the entire scene?

8 A: I did, yes.

9 Q: And you took video?

10 A: I did, yes.

11 Q: Well, you took a still and photograph of -- still
12 photographs and video of the entire scene; right?

13 A: Yes.

14 Q: And then you collected pretty much anything with blood on
15 it that you could?

16 A: Yes.

17 Q: You don't know if one of the suspects might've bled on
18 something. So you collect it; right?

19 A: That's correct, yes.

20 Q: You collected four spent shell casings?

21 A: I did, yes.

22 Q: And then a fired bullet fragment?

23 A: Yes, I did.

24 Q: And Nike sandals?

25 A: Yeah. One pair of Nike sandals, yes.

RENE CHARLES - CROSS BY MR. KOZELSKI

1 Q: You also just briefly talked about conducting a search of
2 a Toyota Camry -- Toyota Camry?

3 A: Yes, I did. Yes.

4 Q: Okay. And you said it was the one involved in the
5 shooting. You don't know if that actual car itself was
6 involved in the shooting, that's just what you were told at
7 the time?

8 A: I was advised, yes.

9 Q: Okay. And then while you were searching this vehicle,
10 you were specifically looking for ammunition; right?

11 A: Yes.

12 Q: Firearms?

13 A: Firearms, yes.

14 Q: Firearm accessories?

15 A: Yes, sir.

16 Q: And biological evidence like blood or DNA?

17 A: That's correct, yes.

18 Q: And after the search, you didn't find any ammunition?

19 A: I did not. No, sir.

20 Q: You didn't find any firearms?

21 A: I did not. No, sir.

22 Q: No firearm accessories?

23 A: No, sir.

24 Q: You didn't find any blood on the floormats or anything?

25 A: I don't -- I don't recall. No, sir.

RENE CHARLES - CROSS BY MR. KOZELSKI

1 Q: Now, you took everything that you collected and you took
2 that back to your lab; right?

3 A: Yes.

4 Q: And then you examined the evidence that you were able to
5 examine personally; right?

6 A: Yes.

7 Q: And you might not have the equipment necessary to do all
8 the testing like we talked about; right?

9 A: That is correct, yes.

10 Q: So some of the evidence that you -- you have to send it
11 to the South Carolina Law Enforcement Division, SLED?

12 A: SLED, yes.

13 Q: And SLED then sends the results back to you?

14 A: Not necessarily me, but to the detectives.

15 Q: Right. If you have -- if you have evidence that needs to
16 be tested, you tell the detective, hey, I don't have the
17 equipment for this and then the detective tells you to send it
18 to SLED; right?

19 A: The detective on the case will make the request also.

20 Q: And then SLED will send back --

21 A: The result.

22 Q: -- a report back to the detective?

23 A: That's correct, yes.

24 Q: Okay. So you don't really get to see the results as much
25 as you may want to?

RENE CHARLES - CROSS BY MR. KOZELSKI

1 A: No.

2 Q: Okay. Not all the time?

3 A: Not all the time.

4 Q: DNA. That's tested by SLED?

5 A: Yes.

6 Q: And then you have to send them something up to compare
7 the DNA that you found; right?

8 A: Yes.

9 Q: I want to talk to you a little bit about fingerprints
10 because you testified on direct that you took a number of
11 fingerprints off of this car, and fingerprints, obviously, can
12 be left behind by somebody touching a hard surface; right?

13 A: Right.

14 Q: And that's just oils from the fingers left --

15 A: Right.

16 Q: -- being left and pressed into the hard surface; right?

17 A: Right.

18 Q: And depending on where that surface is located, it can
19 determine how long the fingerprint stays on that surface;
20 right?

21 A: I don't know about how long, but if it's there, it's
22 going to be there.

23 Q: Well, if -- okay. So if the surface is outside and it's
24 exposed to the elements, the fingerprint is most likely not
25 going to stay there very long?

RENE CHARLES - CROSS BY MR. KOZELSKI

- 1 A: Yes.
- 2 Q: Right?
- 3 A: Yes. That's correct.
- 4 Q: It can -- it can be washed away by the rain; right?
- 5 A: Right.
- 6 Q: And if it's in a high-traffic area, like say pushing
- 7 buttons on an elevator, the chances of the fingerprint getting
- 8 wiped away are pretty good if somebody else touches that same
- 9 button and smears it?
- 10 A: That is correct. Smearing.
- 11 Q: You might still be able to get somebody's touch DNA from
- 12 that; right?
- 13 A: That's correct.
- 14 Q: But the detail in the fingerprint is not going to be
- 15 there?
- 16 A: That's correct.
- 17 Q: And even if you have gloves on, if you rub over a print,
- 18 it can smear the detail; right?
- 19 A: Yes, sir.
- 20 Q: And alternatively, if you touch something in a safe and
- 21 close space that is not exposed to the elements, a fingerprint
- 22 can stay for a very long time; right?
- 23 A: Absolutely, yes.
- 24 Q: I mean it could stay for months or even years at a time?
- 25 A: Yes, sir.

RENE CHARLES - CROSS BY MR. KOZELSKI

1 Q: And there's no way to tell how long a fingerprint has
2 been on an object?

3 A: No. There's no way to tell.

4 Q: And you're trained in knowing kind of where to expect to
5 find fingerprints on certain things?

6 A: Certain locations, yes.

7 Q: If I drove my car here today and I know it's raining
8 outside, but if it's -- if it's in the parking garage and not
9 in the rain, you might expect to find my fingerprints on my
10 car?

11 A: Yes, sir.

12 Q: And once you find those fingerprints, you're trained in
13 how to --

14 A: Lift.

15 Q: -- lift them; right?

16 A: Yes.

17 Q: And you apply black powder or whatever chemical that
18 you're using; right?

19 A: Yes, sir.

20 Q: And then you stick a piece of tape over it?

21 A: Yes.

22 Q: And I know this is very simplistic, but I'm just trying
23 to explain this kind of to the jury.

24 A: Sure.

25 Q: And then you literally lift the tape and the print with

RENE CHARLES - CROSS BY MR. KOZELSKI

1 it?

2 A: Yes.

3 Q: Off the object?

4 A: Off the object.

5 Q: That's why it's called a lift?

6 A: A lift. That's what they call a lift, yes.

7 Q: And then you put that tape on a white card or a piece of

8 white card?

9 A: Piece of card, yes.

10 Q: And then you label that card?

11 A: Yes.

12 Q: And then you -- someone else does the examination?

13 A: Yes. Someone else, yes. Not me.

14 Q: So someone with latent print examination experience?

15 A: Examiner.

16 Q: Okay. And that person may run it through AFIS?

17 A: AFIS, yes.

18 Q: And AFIS is the Automated Fingerprint Identification

19 System?

20 A: That's correct, yes.

21 Q: That's a national database?

22 A: That has files.

23 Q: Right. That you can search to see if there's a match;

24 right?

25 A: That's correct. Yes, sir.

RENE CHARLES - CROSS BY MR. KOZELSKI

1 Q: And I know we've -- I've questioned you about this
2 before, but you're familiar with IBIS as well; correct?

3 A: Yes.

4 Q: And IBIS is the Integrated Ballistic Information System;
5 right?

6 A: Right.

7 Q: It's kind of like the AFIS but for bullets?

8 A: For firearms.

9 Q: For firearms?

10 A: Yes.

11 Q: And it's every -- every firearm has unique
12 characteristics; right?

13 A: That's correct, yes.

14 Q: And you can tell when a fire is -- when a firearm is
15 discharged, it leaves these characteristics in microscopic
16 forms on the shell casings?

17 A: Shell casings. Yes, sir.

18 Q: Right?

19 A: Uh-huh.

20 Q: And if -- if you recover these shell casings, you can
21 give them to SLED and SLED puts them in this IBIS database?

22 A: Yes, sir.

23 Q: And that's a national database; right?

24 A: Yes. Right.

25 Q: And it just basically compares other evidence images in

RENE CHARLES - CROSS BY MR. KOZELSKI

1 -- in the database; right?

2 A: Yes, sir.

3 Q: And if there's matches, it will let law enforcement know?

4 A: Right.

5 Q: And this helps authorities know whether or not there's
6 sort of new leads that help identify people in crimes?

7 A: Yes, sir.

8 Q: And if you see this gun was used in another crime, SLED
9 will alert you; right?

10 A: Yes, that's correct.

11 Q: And it will alert you when those other crimes occurred;
12 right?

13 A: Yes, sir.

14 Q: And it will alert you where those other crimes occurred;
15 right?

16 A: Right.

17 MR. KOZELSKI: I beg the Court's indulgence.

18 THE COURT: Yes, sir.

19 MR. KOZELSKI: No further questions, Your Honor.

20 THE COURT: Redirect?

21 MS. SIGAL: Nothing from the State.

22 THE COURT: Thank you, Mr. Charles. You can step down.
23 Do you wish this witness to be excused?

24 MS. SIGAL: Yes, sir.

25 THE COURT: Okay. How long is your next witness?

JEFF MILLER - DIRECT BY MS. SIGAL

1 THE COURT: You may have a seat.

2 JEFF MILLER, being first duly
3 sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. SIGAL:

6 Q: Good afternoon, Officer Miller. Where do you work?

7 A: Charleston City Police Department.

8 Q: In what capacity?

9 A: I'm a crime scene investigator.

10 Q: What are your duties as a crime scene investigator?

11 A: I respond to calls for service and take photographs,
12 collect physical evidence.

13 Q: Would it be fair to say you document scenes as they are
14 when you arrive?

15 A: Yes.

16 Q: And when you document these scenes, how is that done
17 traditionally?

18 A: It can be through photographs, video, sketches.

19 Q: Do you recall in this capacity responding to a murder
20 scene on June 8th, 2011?

21 A: Yes.

22 Q: Where was that scene?

23 A: I went to [REDACTED] Orange Grove Shore Road.

24 Q: And is that in Charleston County?

25 A: Yes.

JEFF MILLER - DIRECT BY MS. SIGAL

1 Q: Where is that, generally speaking? What part of
2 Charleston County?

3 A: West Ashley.

4 Q: And what was that location when you arrived?

5 A: It was a house either under renovation or under
6 construction.

7 Q: So did you initially respond to the apartment complex?

8 A: I don't remember going to the apartments first. I went
9 to the house on Orange Grove Shore Drive.

10 Q: And was that adjacent to the apartment complex?

11 A: Yes.

12 Q: I'm going to show you on the Elmo what's been admitted as
13 State's Exhibit Number 1. Do you recognize this exhibit?

14 A: Yes.

15 Q: What is this of?

16 A: This is an aerial view of the area showing the apartment
17 complex and then the house that I went to.

18 Q: Okay. And speaking of the house that you went to, can
19 you please point out on the Elmo -- it's a touchscreen --
20 which house you're talking about?

21 (WHEREUPON, the witness complied.)

22 Q: So that's the house that you responded to on June 8th?

23 A: Yes.

24 Q: Thank you. And you might have mentioned this, but what
25 was the state of the house when you responded?

JEFF MILLER - DIRECT BY MS. SIGAL

1 A: It looked like it was under renovation or it was under
2 construction.

3 Q: Okay. So was it unoccupied?

4 A: It was unoccupied.

5 Q: And did you take photos of that scene?

6 A: Yes.

7 Q: Was the victim there when you arrived?

8 A: Yes. EMS was tending to him and getting ready to
9 transport him.

10 Q: Okay.

11 MS. SIGAL: Permission to approach the witness, Your
12 Honor?

13 THE COURT: You may.

14 BY MS. SIGAL:

15 Q: I'm showing you what's been admitted as State's 34
16 through 40 and, if you could, just take a look at these photos
17 and tell me if you recognize them?

18 A: Yes.

19 Q: Okay. And how are you able to recognize them?

20 A: I took those photos that night.

21 MS. SIGAL: Permission to publish these photos?

22 THE COURT: You may.

23 BY MS. SIGAL:

24 Q: All right. First, I'm going to show you what's been
25 admitted as State's 34. Can you tell me what this is a

JEFF MILLER - DIRECT BY MS. SIGAL

1 picture of?

2 A: This shows the -- from the street toward the house. The
3 apartment complex is to the left.

4 Q: And this is the house you responded to?

5 A: Yes. Straight in the back is the house showing down the
6 driveway toward the house.

7 Q: Okay. And now I'm showing you what's been admitted as
8 State's 35. I apologize. Can you tell us what is in this
9 picture?

10 A: Yeah. This is showing if you went down the driveway and
11 you went around to the right of the house. This is a photo
12 showing down the right of the house.

13 Q: Okay. Thank you. Now, I'm showing you what's been
14 admitted as State's 36. What do we see in this picture?

15 A: This is a picture that shows the clothes and you can see
16 the cell phone.

17 Q: What do you mean when you say the clothes? Would you
18 mind pointing that out for us to see?

19 A: Here are the clothes and then there's a cell phone over
20 here.

21 Q: And it's kind of hard to tell in that picture what
22 clothes those are. I'll show you what's been admitted as
23 State's 38.

24 A: Yes. The number 2 shows the -- the pants with a belt and
25 then the -- you can't see the other number, but those are

JEFF MILLER - DIRECT BY MS. SIGAL

1 athletic shorts.

2 Q: Is that sort of a -- just a closer picture of what we
3 just saw?

4 A: Yes.

5 Q: Okay. Now, I'm showing you what's been admitted as
6 State's 37. I believe you already pointed out the cell phone.
7 Is this the same cell phone we looked at there?

8 A: Yeah. That's a close-up of the cell phone.

9 Q: And I'm showing you what's been admitted as State's 39.
10 What are we looking at in this picture?

11 A: That was two shirts that were together, a black shirt and
12 a white shirt.

13 Q: Were they tangled up together?

14 A: Yes.

15 Q: And what part of the yard are we in right now? Are we in
16 the side yard? The back yard? The front yard?

17 A: Well, the clothing items when you first started were to
18 the right as you go to the back of the house and then we ended
19 up in the back of the yard.

20 Q: So this was done in the back yard?

21 A: No. It was actually off to the side.

22 Q: Okay. And I'm showing you what's been admitted as
23 State's 41, and which part of the yard are you in right now?

24 A: This -- I'm in the back of the yard taking a picture
25 toward the house.

JEFF MILLER - DIRECT BY MS. SIGAL

1 Q: So this is the back of the house we're looking at?

2 A: Yes.

3 Q: And what do we see in this picture?

4 A: I took a picture of this area that shows the -- you can
5 see the patio table. That's where the victim was found was
6 right next to that table.

7 Q: And State's 42? What is this a picture of?

8 A: That's the same table showing the blood that's on top of
9 the table.

10 Q: So is this just a close-up of what we just saw?

11 A: Yes.

12 Q: And what is that to the right -- I'm sorry -- to the left
13 of the blood?

14 A: It's just a plastic bag.

15 Q: We saw something in the previous pictures, the clothing
16 items. Did you do anything with those clothing items? Were
17 they collected?

18 A: Yeah. The clothes were collected and then they were
19 taken and placed in a drying closet. We can't package them
20 until they're dry.

21 Q: And so you mentioned you can't package them until they're
22 dried. Did they have blood on them?

23 A: Yes, they did.

24 Q: And were you tying those clothes to the victim who was
25 found back there?

JEFF MILLER - DIRECT BY MS. SIGAL

1 A: Yes.

2 Q: And now I'm showing you what's been admitted as State's
3 Number 40. Can you please tell us what we see in this
4 picture?

5 A: I took the picture. This is the white shirt that shows
6 the hole in the shirt.

7 Q: Okay. And when you say the hole in the shirt, what do
8 you mean?

9 A: Right here. It could be a bullet -- bullet hole.

10 Q: And the red that's in the -- on the shirt, what is --
11 what is that?

12 A: It was blood.

13 Q: And just to be clear, was your response to the scene and
14 the collection of evidence -- was all of this on June 8th?

15 A: Yes.

16 Q: Did your involvement in this case end at that time?

17 A: No. I went -- as soon as I left this scene, then I went
18 to MUSC to fingerprint the victim and to get a gunshot residue
19 test. I also went back later in the day to search the area to
20 see if I could find anything else during the daylight. I took
21 additional photos and then they asked me to swab a fire
22 extinguisher box that had been broken.

23 Q: And when you do the collection of these things, do you do
24 the later analysis or are you just mostly doing the
25 collection?

JEFF MILLER - DIRECT BY MS. SIGAL

1 A: Just collection.

2 Q: Did you ever respond to Georgetown Apartments on a later
3 date?

4 A: Yeah. On the 14th, I went back. I was requested by
5 Detective Goldstein to come there to collect an unfired bullet
6 that was found in a drawer of a nightstand in the bedroom.

7 Q: And do you remember which apartment you were directed to?

8 A: It was apartment [REDACTED], I believe, a second-floor
9 apartment.

10 Q: So it was an upstairs apartment?

11 A: Yes.

12 MS. SIGAL: Permission to approach the witness, Your
13 Honor?

14 THE COURT: You may.

15 BY MS. SIGAL:

16 Q: I'm showing you what's been marked and admitted as
17 State's 43 through 47. If you can just take a look at those
18 and let me know if you can identify those?

19 A: Yes.

20 Q: Thank you.

21 MS. SIGAL: Permission to publish 43 through 47, Your
22 Honor?

23 THE COURT: You may.

24 BY MS. SIGAL:

25 Q: Okay. First, I'm showing you State's 43. What's this a

JEFF MILLER - DIRECT BY MS. SIGAL

1 picture of?

2 A: That's a picture of the apartment door of ■.

3 Q: And again, this is the apartment door at Georgetown
4 Apartments that you responded to?

5 A: Yes.

6 Q: Now, I'm showing you State's 44. What is this a picture
7 of?

8 A: That's the bedroom and in the corner you can see the
9 nightstand with the drawers open.

10 Q: And can you just indicate on the screen, please, which
11 drawer you're talking about?

12 (WHEREUPON, the witness complied.)

13 Q: And is that the nightstand that Detective Goldstein
14 directed you to?

15 A: Yes.

16 Q: Okay. I'm showing you State's 45. What is this a
17 picture of?

18 A: This is a picture of the drawer showing what's in the
19 drawer. You can see the bullet right there by that CD.

20 Q: State's 46?

21 A: That's just a more close-up picture of the -- showing the
22 bullet.

23 Q: Now, I'm showing you State's 47. What's this a picture
24 of?

25 A: That's a picture of the headstamp of the bullet that was

JEFF MILLER - DIRECT BY MS. SIGAL

1 in the drawer.

2 Q: And can you please tell us the caliber and the brand of
3 the bullet, judging from this picture?

4 A: Well, the brand is FC. That's who made it. Nine
5 millimeter is the size or the caliber of gun that it would
6 fit.

7 Q: Okay. So is it a proper analogy to, say, compare this
8 to, say, a pair of shoes that if it was a size 11, it would be
9 the 9 millimeter and Nike would be the FC?

10 A: Yes.

11 Q: So FC is the maker of that brand of ammunition?

12 A: Yes.

13 Q: And is this a photograph of the same bullet that was
14 found in that drawer we just saw?

15 A: Yes.

16 Q: Was it unfired?

17 A: Unfired, yes.

18 Q: How do you know if a bullet has been fired or not?

19 A: Well, you can see that the primer, which is the spot in
20 the center, it hasn't been struck, and then the bullet was
21 still intact. It was still part of the shell casing.

22 Q: What do you -- what did you do with the unfired bullet
23 once it was collected?

24 A: It was taken and placed in an envelope and sealed and
25 then dropped off. They wanted to fingerprint it. So it was

JEFF MILLER - DIRECT BY MS. SIGAL

1 turned over to latent recovery to be printed.

2 Q: So another department sort of took it from there once you
3 made that request?

4 A: Yes.

5 MS. SIGAL: Permission to approach the witness, Your
6 Honor?

7 THE COURT: Yes.

8 BY MS. SIGAL:

9 Q: I'm now showing you what has been marked as State's
10 Exhibit 53. Can you please look inside that bag and tell us
11 if you identify that item?

12 A: Yeah. This is the bullet that I picked up in the drawer
13 and placed it in this envelope and I sealed it.

14 Q: And how are you able to determine that that is the bullet
15 that you collected?

16 A: I gave it a number and then I initial it and then I take
17 this envelope and I place it in this one and then that's my
18 tag and then my initials are on the back.

19 MS. SIGAL: At this time, Your Honor, we would move to
20 enter State's 53 into evidence.

21 THE COURT: Any objection?

22 MR. KOZELSKI: No objection.

23 THE COURT: Without objection, State's 53 is admitted.

24 (WHEREUPON, State's Exhibit Number 53, unfired round, was
25 admitted into evidence.)

JEFF MILLER - DIRECT BY MS. SIGAL

1 MS. SIGAL: I beg the Court's indulgence.

2 THE COURT: Yes, ma'am.

3 BY MS. SIGAL:

4 Q: Officer Miller, were you a part of the collection of the
5 GSR from the victim in this case?

6 A: Yes.

7 Q: Okay. And just briefly, what do you do when you collect
8 GSR from a person?

9 A: Well, for the hands we just take a -- like, this was some
10 time ago. We used to use a two-step process where we had a
11 solution on a Q-tip, as well as a sticky stub. So you would
12 swab the hands and then you'd also have a sticky stub, one for
13 each part of your hand. And then they're sealed and then
14 they're placed into an envelope.

15 Q: And is it a certain practice or certain time frame where
16 you're able to get GSR and a certain time frame where you
17 wouldn't be able to get GSR from a person's hands?

18 A: Well, with SLED, they like it to be no more than four
19 hours.

20 Q: So if you were to come into contact with someone several
21 days after an incident, would you even swab their hands for
22 GSR?

23 A: It wouldn't be worth doing, no.

24 Q: Okay. And what is the reason for that?

25 A: Well, they're particles and they can fall off and you can

JEFF MILLER - DIRECT BY MS. SIGAL

1 wash them off.

2 Q: Okay. Thank you.

3 MS. SIGAL: All right. Thank you, Officer Miller. We
4 have no further questions for you this time.

5 THE WITNESS: Absolutely.

6 THE COURT: Cross-examine, please.

7 CROSS-EXAMINATION

8 BY MR. KOZELSKI:

9 Q: Good afternoon, Mr. Miller.

10 A: Hey.

11 Q: When you arrived at the scene when you originally got
12 there, you collected everything from where around Aakeem was
13 found; right?

14 A: Well, yes. It had been moved by EMS because they had to,
15 you know, treat him and to get him to the hospital. So --

16 Q: Right. And then you gathered his belongings or what you
17 thought was his stuff?

18 A: Correct.

19 Q: And you also got his belongings from the hospital?

20 A: Yes.

21 Q: And in all this recovery of belongings, you didn't find
22 any money?

23 A: Well, I didn't do the autopsy; so I didn't pick up any --
24 anything in regards to that. I had what I picked up from the
25 scene.

JEFF MILLER - CROSS BY MR. KOZELSKI

1 Q: Okay. But you also went to the hospital and collected a
2 GSR kit?

3 A: The GSR, correct, and I did the fingerprints on him as
4 well.

5 Q: Okay. And in all the stuff that you found from what you
6 recovered from Aakeem, you didn't find any money?

7 A: I did not, no.

8 Q: And I want to talk briefly -- I know you just talked
9 about GSR, but when you -- when you respond to a homicide
10 crime scene where a victim was shot, one of the pieces of
11 evidence that you are looking for is this gunshot residue;
12 right?

13 A: Yes.

14 Q: And -- and what that is is basically, in a nutshell -- I
15 know this is kind of simple, making it simple, but tiny
16 metallic particles that expel out of the gun in a cloud after
17 a gun has been fired?

18 A: Yes.

19 Q: And as you said, it can get on your hands and get on your
20 arms; right?

21 A: Correct.

22 Q: And it can get on your clothing?

23 A: Correct.

24 Q: And if it gets on somebody's hands, like you said, you
25 want to try to test that as quickly as possible within four

JEFF MILLER - CROSS BY MR. KOZELSKI

1 hours?

2 A: Well, you want to -- you want to get the sample within
3 four hours, yes.

4 Q: Right. Because people can wash their hands and it comes
5 off?

6 A: Yes.

7 Q: But it can also get on people's clothing; right?

8 A: Yes.

9 Q: And it can stay on clothing a lot longer?

10 A: I believe so, yes.

11 Q: And you said you went to try to recover gunshot residue
12 from Aakeem; right?

13 A: From his hands.

14 Q: Okay. But you didn't find any on Aakeem; right?

15 A: I collected the samples and then they have to be analyzed
16 at SLED.

17 Q: Okay. So SLED does the analysis --

18 A: Correct.

19 Q: -- for gunshot residue? Six days after this shooting,
20 you are called back to Georgetown Apartments; correct?

21 A: Correct.

22 Q: And that's when you're asked to do kind of a search of
23 apartment [REDACTED]; right?

24 A: Well, the search -- they had already done that. I was to
25 take the picture and collect the bullet that they found in the

JEFF MILLER - CROSS BY MR. KOZELSKI

1 drawer.

2 Q: Well, I kind of want to talk to you about that. You
3 know, as a crime scene investigator, one of the things when
4 you're responding to a crime scene is to sort of preserve any
5 evidence that you might find; right?

6 A: Yes.

7 Q: And you have field manuals in the Charleston Police
8 Department where they teach, not only you but for the benefit
9 of other officers, that if there's a crime scene where
10 evidence is going to be collected, don't touch anything before
11 crime scene gets there; right?

12 A: That's in the perfect world, yes.

13 Q: The golden rule. That's what they call it in your
14 department; right?

15 A: (No verbal response.)

16 Q: And that's just to make sure that nothing gets
17 mishandled; right?

18 A: Correct.

19 Q: And so when you respond to apartment [REDACTED], this wasn't
20 part of the original crime scene that you responded to back on
21 June 8th; right?

22 A: No. I -- I went to a totally different address.

23 Q: And when you respond there, you said they've already
24 conducted the search; right?

25 A: Yes.

JEFF MILLER - CROSS BY MR. KOZELSKI

1 Q: It's Detective Goldstein that calls you to the scene to
2 sort of document what he's already found; right?

3 A: Correct.

4 Q: And you find a bullet in the nightstand; right?

5 A: Correct.

6 Q: And I just saw -- we saw pictures of those, but the
7 nightstand is opened; right?

8 A: Correct.

9 Q: And you don't know if that nightstand was open before you
10 got there or closed?

11 A: I don't know.

12 Q: Okay. And you don't know where this bullet came from?

13 A: Well, I took it out of the drawer.

14 Q: Okay. But before it was in the drawer --

15 A: No.

16 Q: You don't know where it came from?

17 A: Correct.

18 Q: And you don't know how it got there?

19 A: Correct.

20 Q: And you don't know how long it had been there; right?

21 A: Correct.

22 Q: It could have been there several months?

23 A: Correct.

24 Q: It could've been there four hours?

25 A: Correct.

JEFF MILLER - CROSS BY MR. KOZELSKI

1 Q: But you take pictures of this bullet on the -- on the
2 nightstand -- in the nightstand; right?

3 A: Correct.

4 Q: You pick it up and take a picture of the primer face?

5 A: Headstamp.

6 Q: Headstamp?

7 A: Yeah.

8 Q: And then you put it in an envelope; right?

9 A: Yes.

10 Q: From your naked eye, you can't tell whether or not
11 there's any type of fingerprint on there, can you?

12 A: No. I couldn't see anything.

13 Q: And you don't do any sort of swab for contact DNA on
14 this?

15 A: No.

16 Q: Okay. So you basically put it in an envelope so somebody
17 else can examine it to see if there's a print on it?

18 A: Yes.

19 Q: And that is basically all you did with that -- that
20 particular piece of evidence?

21 A: Yes.

22 Q: I want -- I want to just briefly talk about this because
23 Ms. -- Ms. Sigal over there asked you some questions about
24 this bullet and she compared it to shoes, like Nikes.

25 A: Yes.

JEFF MILLER - CROSS BY MR. KOZELSKI

1 Q: Nike being that brand and 9 millimeter being the shoe
2 size. Now, when you -- you're investigating a crime scene,
3 sometimes you take shoe prints as evidence; right?

4 A: Correct.

5 Q: And Nike is one of those common shoe prints that you come
6 across; right?

7 A: Yeah. I've seen quite a few, yes.

8 Q: I mean Nike makes a lot of shoes; right?

9 A: They're a popular shoe, yeah.

10 Q: And FC stands for Federal Cartridge?

11 A: I think so, yes.

12 Q: Okay. And that's also a very popular brand of
13 ammunition?

14 A: Yes.

15 Q: And 9 millimeter, one of the most common types of handgun
16 ammunition?

17 A: Yes.

18 Q: I mean you could -- you could almost go into any gun
19 shop, you can go in Walmart and buy 9-millimeter Federal
20 Cartridge ammunition; right?

21 A: Yes.

22 Q: And even some police departments use Federal Cartridge as
23 their main source of ammunition?

24 A: Well, I'm not sure about the police departments, but
25 yeah, they could.

JEFF MILLER - CROSS BY MR. KOZELSKI

1 Q: Okay. So all in all, very common, very common type of
2 bullet?

3 A: Yes.

4 MR. KOZELSKI: No further questions.

5 THE COURT: Redirect?

6 MS. SIGAL: No, Your Honor. Nothing from the State.

7 THE COURT: Thank you.

8 You may come down. Thank you, Mr. Miller.

9 THE WITNESS: Thank you, Your Honor.

10 THE COURT: You may call your next witness.

11 MS. LINDER: The State calls Jennifer Wooley.

12 (WHEREUPON, there was a pause in the proceedings until
13 the witness entered the courtroom, after which the
14 proceedings resumed as follows.)

15 THE CLERK: Place your left hand on the Bible and raise
16 your right. Do you swear or affirm that the testimony you
17 shall give the Court and jury in the trial of this case shall
18 be the truth, the whole truth, and nothing but the truth, so
19 help you God?

20 THE WITNESS: I do.

21 THE CLERK: You may be seated. And for the record,
22 please state your full name, spelling your last.

23 THE WITNESS: Jennifer Lynn Wooley, W-o-o-l-e-y.

24 JENNIFER WOOLEY, being first
25 duly sworn, testified as follows:

JENNIFER WOOLEY - DIRECT BY MS. LINDER

DIRECT EXAMINATION

1
2 BY MS. LINDER:

3 Q: And where do you currently work?

4 A: I am medically retired.

5 Q: And where did you work back in June of 2011?

6 A: The Charleston Police Department, assigned to the crime
7 scene unit.

8 Q: And how long did you work with the Charleston Police
9 Department?

10 A: Thirteen years.

11 Q: What did your duties include with crime scene?

12 A: I had several different positions from my years in crime
13 scene. So I started as a crime scene tech, then moved into
14 latent recovery specialist, working mostly laboratory work,
15 and then eventually to the crime scene supervisor position.

16 Q: And did you have the chance in this case to do any latent
17 recovery work?

18 A: I did.

19 Q: And in this case, did you process an unfired cartridge?

20 A: Yes.

21 Q: All right. At this time, I'm going to show you what's
22 already been admitted into evidence as State's 53. And do you
23 recall who you received that from?

24 A: I received it from Jeff Miller.

25 Q: And does it appear in substantially the same condition as

JENNIFER WOOLEY - DIRECT BY MS. LINDER

1 it did when you first got it?

2 A: Other than the cuts in the seals that I put on it, yes.

3 Q: And did you end up pulling any prints from this item?

4 A: I recovered one fingerprint.

5 Q: And can you kind of explain to the jury how did you go
6 about recovering that print?

7 A: The first thing you do is examine the item and you look
8 how you need to process. Every item is processed a little
9 differently. This was a solid surface; so I went into a
10 fuming chamber and got a chemical called cyanoacrylate, which
11 kind of hardens it a little bit. It allows me to do a few
12 more things. And then I put fingerprint powder on it and
13 lifted it with fingerprint tape and placed that on an
14 identification card and transferred it to the examiner for the
15 print.

16 Q: So your role was limited to trying to lift the print from
17 the item?

18 A: Correct.

19 Q: And I think you just testified that you then sent it
20 along for further processing?

21 A: Correct.

22 Q: All right.

23 MS. LINDER: I beg the Court's indulgence.

24 THE COURT: Certainly.

25 MS. LINDER: I have no further questions. If you could,

JENNIFER WOOLEY - CROSS BY MR. KOZELSKI

1 answer anything they would have.

2 THE COURT: Cross-examine.

3 MR. KOZELSKI: Thank you.

4 CROSS-EXAMINATION

5 BY MR. KOZELSKI:

6 Q: Ms. Wooley, just briefly, when you do your job as a
7 latent print examiner or lift a latent print, you've got to be
8 very careful; right?

9 A: Yes.

10 Q: You wear gloves?

11 A: Correct.

12 Q: And even when you wear gloves, you're careful not to
13 touch the object because you can smear it; right?

14 A: Correct.

15 Q: And you can lose the detail on it?

16 A: Absolutely, yes.

17 Q: So it's important that when you are pulling a lift from
18 something not to touch it?

19 A: I have to touch it.

20 Q: Right.

21 A: Like, I cannot examine it without touching it, but
22 obviously, minimalizing how I touch the items to surfaces that
23 would not be conducive to fingerprints. In the case with a
24 bullet, you could -- if you just hold it at the ends that are
25 normally too small and too much detail --

JENNIFER WOOLEY - CROSS BY MR. KOZELSKI

1 Q: Right.

2 A: -- to get good ridges, but the center of the bullet that
3 goes around would be the best area. So I obviously want to
4 maximize my recovery possibility.

5 Q: Right. So you would want to hold it at the ends of the
6 bullet; right?

7 A: I did, yes.

8 Q: Okay. And you don't know where this bullet came from;
9 right?

10 A: It came from Jeff Miller. That's all I know.

11 Q: Right.

12 MR. KOZELSKI: Thank you. No further questions.

13 THE COURT: Redirect?

14 MS. LINDER: No redirect.

15 THE COURT: Thank you. You may step down.

16 MS. LINDER: Judge, we'd ask that she be excused.

17 THE COURT: Any objection?

18 MR. KOZELSKI: No objection.

19 THE COURT: You're also free to leave. Thank you.

20 Call your next witness.

21 MS. LINDER: The State calls David Osborne.

22 THE CLERK: Do you swear or affirm that the testimony you
23 shall give the Court and jury in the trial of this case shall
24 be the truth, the whole truth, and nothing but the truth, so
25 help you God?

26

DAVID OSBORNE - DIRECT BY MS. LINDER

1 THE WITNESS: I do.

2 THE CLERK: You may be seated. And for the record,
3 please state your full name, spelling your last.

4 THE WITNESS: David Osborne, O-s-b-o-r-n-e.

5 DAVID OSBORNE, being first duly
6 sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MS. LINDER:

9 Q: Good afternoon.

10 A: Good afternoon.

11 Q: Where are you currently employed?

12 A: With the Ninth Circuit Solicitor's Office.

13 Q: So you work in the same office that I do now?

14 A: I do.

15 Q: And when did you start there?

16 A: It's a little over five years now.

17 Q: And in what capacity do you work at the Solicitor's
18 Office?

19 A: I am an assistant solicitor.

20 Q: So you do my job? You're a lawyer?

21 A: Yes.

22 Q: And prior to working at the Solicitor's Office and
23 becoming an attorney, can you just tell the jury a bit about
24 your employment history?

25 A: Yeah. So I started in 1997 with the New Orleans Police

DAVID OSBORNE - DIRECT BY MS. LINDER

1 Department. I was a police officer there. I worked there for
2 five years. I worked two years on the streets. I worked a
3 year or so in a task force unit. It's kind of like a
4 proactive unit. I was then a robbery detective for about a
5 year and a half. Before I left, I worked in the FBI joint
6 public corruption task force unit with the NOPD.

7 I came here in 2002. I worked in patrol with the
8 Charleston Police Department for a couple years. I then moved
9 on to the robbery unit and worked there for a couple years. I
10 then got transferred over to the violent crimes unit, where I
11 was a homicide detective in essence. I got promoted to
12 sergeant. I was a sergeant in charge of the field
13 intelligence unit for about six months and then I came back to
14 the violent crimes unit, where I ran that unit until I left.

15 Q: Did you get any awards while you were in law enforcement?

16 A: Yeah. I mean I got some awards at NOPD, detective
17 awards. I was in a joint unit with the ATF called Project X
18 where we were just trying to take guns off the street. I got
19 an award for that. I came back here and received a few awards
20 with CPD.

21 Q: And what was your job in June of 2011?

22 A: I was a detective in the violent crimes unit then.

23 Q: And I want to kind of get right into this case now. Did
24 you have the occasion to respond to a murder scene back on
25 June the 8th of 2011?

DAVID OSBORNE - DIRECT BY MS. LINDER

1 A: I did.

2 Q: And did you immediately respond when you heard that
3 report?

4 A: Well, no. I was off that night. So I got the call. So
5 I came in. I did respond to the scene briefly. I saw we
6 pretty much had that covered and so then I went to the
7 hospital and started meeting with the victim's family.

8 Q: Okay. Talking about the scene where you first responded,
9 I'm going to show you up here what's been marked as State's 1,
10 if I can locate it. Okay. If you can, kind of explain to the
11 jury -- they've heard a little bit about the layout of
12 everything, but specifically, where is this map showing? What
13 is this showing?

14 A: All right. So just to orient you if you're not familiar
15 with this area, this entire area here is -- was called the
16 Georgetown Apartment Complex. The name has since changed.
17 I'm not sure what it is now. This is Orange Grove here.
18 Orange Grove basically runs the same direction as Highway 7,
19 which would be a few more blocks that way or Sam Rittenberg,
20 but yeah, this is the entire apartment complex there at
21 Georgetown.

22 Q: All right. And when you responded, which building
23 specifically in this complex did you respond to?

24 A: All right. The area of interest originally was this
25 building, which is building C, and they're labeled and I think

DAVID OSBORNE - DIRECT BY MS. LINDER

1 Officer Jahngen said this. It was A, B, C, D, E, and F.

2 Q: All right. So within that building C, where specifically
3 did you first go? Where was the first point of your
4 attention?

5 A: The first point of interest was where Crime Scene
6 Investigator Rene Charles testified, and it was downstairs and
7 that was [REDACTED]. So it's under, you know, the roof there.

8 Q: All right. So [REDACTED]. Is that the first floor or second
9 floor?

10 A: That the first floor.

11 Q: And what apartment is just above that on the second
12 floor?

13 A: [REDACTED].

14 Q: And who lived there?

15 A: Okay. There were a few people. It was a Darrell
16 Williams, Sharmaine Johnson, Sharmaina Robinson, Alicia
17 Johnson, and Shaconnor Goff. Sharmaine Johnson being the
18 defendant's sister, but also the victim's girlfriend.

19 Q: All right. And was there evidence documented in close
20 proximity to this area that you circled underneath [REDACTED] near
21 [REDACTED]?

22 A: Yes. So all the shell casings and the sandal and whatnot
23 that Investigator Rene Charles testified to was all right
24 here, and it was basically all underneath Sharmaine's
25 apartment.

DAVID OSBORNE - DIRECT BY MS. LINDER

1 Q: And after responding to the scene, where did you go?

2 A: Then I went to MUSC.

3 Q: All right. By the end of the night, by the end of the
4 evening of June 8th, had you developed a person of interest in
5 this case?

6 A: We had.

7 Q: And by the end of that night, had you developed a vehicle
8 of interest?

9 A: We had.

10 Q: All right. Now, I want to kind of move to the following
11 day, June 9th. Did your investigation continue that day?

12 A: It did.

13 Q: And how did it continue?

14 A: The first thing we did was myself and Detective Goldstein
15 went back out to the scene that we had daylight and we could
16 get a better idea of what we were looking at. We had been
17 looking at photos basically in nighttime the night before. So
18 we went back out to Georgetown and kind of retraced where the
19 evidence was collected.

20 Q: And along with going back to the scene in the daylight,
21 did you go there to observe anything that maybe could be of
22 help to you in this investigation?

23 A: Yeah. Once we went back through the crime scene and sort
24 of traced the blood trail that Investigator Charles mentioned,
25 we went to the main office of Georgetown to start viewing and

DAVID OSBORNE - DIRECT BY MS. LINDER

1 trying to collect the surveillance videos.

2 Q: So this apartment complex had surveillance videos?

3 A: It did.

4 Q: All right. I'm going to show you yet again State's 1. I
5 don't know if it's -- Detective Osborne, if you think it's
6 easier, I'm happy to hold up for ID purposes only 81, if you
7 think that's easier for you to point out.

8 A: I think it's easier right here.

9 Q: Okay. All right. So here we are back at State's Exhibit
10 1. You said you went to the office. Where is the office in
11 here?

12 A: The office is right around here. Or was. They've redone
13 it, but that's --

14 Q: All right.

15 A: -- where it was.

16 Q: So you're pointing, like, right here?

17 A: Yeah.

18 Q: Okay. And so when you went to the office, can you kind
19 of explain to the jury the location of the surveillance
20 cameras at Georgetown Apartments?

21 A: The surveillance cameras capture the parking lots. They
22 don't capture the interior or, you know, the apartments
23 themselves. They capture the parking lots. So like this
24 right one right here, I think we were basically calling this
25 the office camera because it seemed like the way they

DAVID OSBORNE - DIRECT BY MS. LINDER

1 positioned it they were interested in capturing anything that
2 happened near or around the office, and this basically kind of
3 got that area like that.

4 Then there was another camera that I'm pretty certain
5 that it views that area right there. And then there was
6 another one over here, and you can tell better once you see
7 it, but I may think they may have all run in that general
8 direction. And I'm sure there was one over here, but there
9 was no interest in that one, at least no evidentiary value.

10 Q: All right. So when you went through and you were
11 observing these surveillance videos, did you end up collecting
12 those videos?

13 A: I did.

14 Q: And did you review them all?

15 A: I did.

16 Q: Did you make any observations about the timestamps on
17 those videos?

18 A: Yeah. When I was looking at the video in the office and
19 I could see the real time, like I could see the video, what it
20 was capturing at that moment, I made a note that the timestamp
21 that was showing on the video was 8 minutes slower than what
22 real time was. So whatever time we're looking at on the
23 video, we're going to have to add 8 minutes to it to get to
24 what the real time was.

25 Q: And what made you even consider something like that, that

DAVID OSBORNE - DIRECT BY MS. LINDER

1 the time was going to be off?

2 A: It was just through experience. I mean a lot of cameras
3 are -- video cameras aren't synced to any web or any
4 satellite. A lot of them are just independent. The one good
5 thing about this though is that each one of these cameras were
6 all synced together so we didn't have to try to do math
7 between different cameras.

8 Q: So ultimately you learned that the camera time was 8
9 minutes; is that right? Is that what you said?

10 A: Yes.

11 Q: All right. So I'm going to show you what's been marked
12 -- what's been marked as State's Exhibit 55, and do you
13 recognize that?

14 A: I do.

15 Q: How do you know what that is?

16 A: These are the videos that are from the Georgetown
17 Apartments on the day of the shooting or the night of the
18 shooting, June the 8th of 2011.

19 Q: And how are you familiar with that?

20 A: Because I've seen these a number of times.

21 Q: And does it fairly and accurately represent the videos
22 that you initially watched while at the office that day?

23 A: They do.

24 MS. LINDER: Your Honor, at this time, the State would
25 seek to admit State's Exhibit 55 into evidence.

DAVID OSBORNE - DIRECT BY MS. LINDER

1 THE COURT: Any objection?

2 MR. KOZELSKI: No objection.

3 THE COURT: Without objection, State's 55 is admitted.

4 (WHEREUPON, State's Exhibit Number 55, surveillance
5 videos on disk, was admitted into evidence.)

6 BY MS LINDER:

7 Q: All right. I'm going to use State's 81 for ID purposes
8 only. Before I start doing anything with these surveillance
9 videos, where on this map, if you can tell the jury, is [REDACTED]?

10 A: Right where Investigator Charles or maybe Ms. Price put
11 those dots.

12 Q: Okay. So this is where [REDACTED] is?

13 A: Uh-huh. Yes.

14 Q: All right. And [REDACTED] where's that in relation to it?

15 A: [REDACTED] is right below [REDACTED].

16 Q: And that camera that gets the parking lot between C and
17 D, does it capture the actual murder?

18 A: No.

19 Q: The camera that was in the parking by the office, does it
20 capture the actual murder?

21 A: No. The way they're positioned, they -- they're not
22 pointing into the breezeway at all.

23 Q: All right.

24 (WHEREUPON, a clip from State's Exhibit Number 55 was
25 published on screen and then paused.)

DAVID OSBORNE - DIRECT BY MS. LINDER

1 BY MS. LINDER:

2 Q: So as you mentioned, before we get into this, what angle
3 is this taken from?

4 A: This looks like it's between C and D. So, yeah, I can't
5 write on here. The -- the scene of the shooting where the
6 shell casings were recovered is going to be just sort of off
7 the screen right here.

8 (WHEREUPON, a portion of State's Exhibit Number 55 was
9 played on the screen and was then stopped.)

10 BY MS. LINDER:

11 Q: And were you able to pinpoint a time of this murder?

12 A: Yes. The time would have been 10:18.

13 Q: And is that the time that's reflected on the -- on the
14 screen in front of you?

15 A: No. The time that's on the screen here is going to be
16 10:10. So it's going to be 8 minutes slow.

17 Q: All right. All right. We're just going to play this.
18 Or not.

19 I beg the Court's indulgence.

20 All right. We will come back to this.

21 THE COURT: Do you want to excuse the jury and let them
22 --

23 MR. LINDER: If I may have, Your Honor.

24 THE COURT: Ladies and gentlemen, I'll going to let you
25 go and take care of a technical problem. We'll bring you out

DAVID OSBORNE - DIRECT BY MS. LINDER

1 as quick as we can. Do not begin your deliberations.

2 (WHEREUPON, the jury exited the courtroom at 2:28 p.m.)

3 MS. LINDER: We did try this out yesterday with this disk
4 and it worked. I apologize, Judge.

5 THE COURT: Ms. Linder, that's -- that's the par for the
6 course for this stuff.

7 MS. LINDER: I know. If Ms. Smith can come forward and
8 help make sure.

9 THE COURT: Absolutely.

10 MS. LINDER: She gets much more than I ever would.

11 (WHEREUPON, there was a pause in the proceedings, after
12 which the proceedings resumed as follows.)

13 THE COURT: We'll be at ease for 5 or 10 minutes. Y'all
14 can stretch or do something. Give you a chance to -- you
15 know, to come down.

16 MR. KOZELSKI: Thank you, Judge.

17 (WHEREUPON, there was a break in the proceedings from
18 2:36 p.m. until 3:06 p.m., after which the proceedings
19 resumed as follows.)

20 THE COURT: Okay. Resume our places. Runners take your
21 marks. We are ready for them.

22 THE BAILIFF: Ready?

23 THE COURT: Yes. Thank you.

24 (WHEREUPON, the jury entered the courtroom at 3:07 p.m.)

25 THE BAILIFF: All jurors are present and seated, Your

DAVID OSBORNE - DIRECT BY MS. LINDER

1 Honor.

2 THE COURT: Thank you very much, John. I appreciate it.

3 Thank you, ladies and gentlemen. We -- those things --
4 we tried them and when we played it, and one of them we tried
5 again. In one of the hearings I had yesterday concerning
6 this, I listened for probably 30 or 40 minutes to it. It
7 played fine and then today it doesn't play. So it must be
8 y'all, but anyway. Just teasing.

9 I think it's going to work now. So thank you for your
10 patience with us and we're ready now to continue.

11 Solicitor, you may resume.

12 MS. LINDER: Thank you, Your Honor.

13 BY MS. LINDER:

14 Q: So after our technical difficulty break, Detective
15 Osborne, were you able to pinpoint the time of the murder?

16 A: I was.

17 Q: And the time of the murder -- what was that?

18 A: 10:18.

19 Q: And what time was that reflected in the time on this
20 surveillance?

21 A: So you need to take 8 away. So it's 10:10.

22 Q: All right. We're just going to play this for a moment.

23 (WHEREUPON, a portion of State's Exhibit Number 55 was
24 played on the screen and then stopped.)

25 BY MS. LINDER:

DAVID OSBORNE - DIRECT BY MS. LINDER

1 Q: Just to remind the jury, where is the shooting in
2 reference to this image we're seeing?

3 A: This SUV right here was the one that Investigator Charles
4 was talking about. So it's going to be just -- just off the
5 screen.

6 Q: And an SUV is parked right alongside building C; is that
7 correct?

8 A: Right.

9 Q: And what is that we just saw?

10 A: That was an individual running from C toward D.

11 Q: And can you show the jury on State's Exhibit 81 for ID
12 purposes that's next to you -- can you show them where
13 approximately the camera that gets D and E is located?

14 A: From C to D?

15 Q: From D to E.

16 A: From D to E?

17 Q: So what we just saw is where?

18 A: I thought we were just looking at C to D.

19 Q: We were. Where is that one?

20 A: C to D is between here and here and, if I'm seeing it
21 right, it would be pointing off in this direction.

22 Q: And then --

23 THE COURT: We need to turn that so the jury can --

24 THE WITNESS: Oh, I'm sorry.

25 THE COURT: Well, you could turn it a little bit so you

DAVID OSBORNE - DIRECT BY MS. LINDER

1 can stand on the side. Excuse me. Thank you.

2 BY MS. LINDER:

3 Q: And then so we just saw a clip from C/D. Where's the
4 camera for D/E?

5 A: I would have to look at it, but I think from D to E, if I
6 remember correctly, it's pointing off this way.

7 Q: All right. I'm going to show another clip.

8 (WHEREUPON, a clip from State's Exhibit Number 55 was
9 played on the screen and then stopped.)

10 BY MS. LINDER:

11 A: Yeah. So I can actually see it's pointing the opposite
12 direction. It's pointing toward the road. So it's pointing
13 from here going this way, and I know that because we followed
14 the blood trail going this way.

15 Q: And in this -- in this shot of the camera up top that
16 they see on the screen, you say it's pointing toward the
17 street. Do you actually see that street in here?

18 A: Not really. The -- up in here maybe you can sort of see
19 it on the other side of that tree.

20 Q: So we just saw an individual run by, and I just stopped
21 it where the clock says 10:10:45. What actually is the time
22 of that?

23 A: 10:18.

24 Q: And you were just talking about how the video is backing
25 up what you had observed with the physical evidence. What did

DAVID OSBORNE - DIRECT BY MS. LINDER

1 the physical evidence show you going from D to E and then
2 after that?

3 A: The blood trail followed just like Investigator Charles
4 had indicated, and then when it goes up into E, it took a --
5 the blood trail took a hard right and then you pick it up
6 again by the fence line where the A/C unit would have sort of
7 been off in that direction.

8 Q: All right. Earlier, you kept talking about an office
9 camera. Where is exactly the office again on State's Exhibit
10 81 for ID purposes?

11 A: Well, it's between B and C. It's easy to remember the
12 pool is C. So if you remember that, then the office camera is
13 up, like, in about this direction pointing over here and the
14 office, best as I can recall, was over on this side.

15 Q: All right. Before I start hitting play on this camera,
16 this office camera, the clock says it's 10:07. So what is the
17 real time of that?

18 A: You've got to add 8 do it. So 10:15.

19 Q: 10:15, almost 10:16?

20 A: Right.

21 Q: And what's the murder time?

22 A: 10:18.

23 Q: And that on the camera is --

24 A: Well, it would be 10:10.

25 Q: All right. So we're just minutes before the murder here?

DAVID OSBORNE - DIRECT BY MS. LINDER

1 A: Right.

2 Q: All right. I'm going to play this clip.

3 (WHEREUPON, a clip from State's Exhibit Number 55 was
4 played on the screen and then stopped.)

5 BY MS. LINDER:

6 Q: So I want to ask you is there anything significant in
7 your investigation to you about the parking job that we just
8 saw happen?

9 A: You know, he backed into a parking space. It could be
10 indicative of him wanting to get out in a hurry.

11 MR. KOZELSKI: Objection, Your Honor.

12 THE COURT: Sustained. That would be speculation.

13 BY MS. LINDER:

14 Q: And is there anything significant about the appearance of
15 this car in the video?

16 A: It's kind of hard to tell, but if you were to slow it
17 down or watch it a couple different times, you can see it
18 appeared as though the tires on this side both were missing
19 the hubcaps and on the other side they were -- the hubcaps
20 were there. And I'm only saying that because, you know, these
21 were much darker on this side and on the other side they
22 appear to be a little bit shiny. You could tell that when it
23 was backing in.

24 Q: And you previously testified that at the end of the first
25 night there was a vehicle of interest developed; right?

DAVID OSBORNE - DIRECT BY MS. LINDER

1 A: Yes.

2 Q: And later was a car seized from Tenika Elmore?

3 A: Yes.

4 Q: And what was the make and model of that car?

5 A: Toyota Camry.

6 Q: And what color?

7 A: I'm pretty sure it was blue.

8 Q: To the best of your observation, is that consistent with
9 the vehicle we see here?

10 A: It is.

11 Q: And that vehicle that was later seized, can you say
12 anything about the hubcaps or lack thereof of that vehicle?

13 A: Ms. Elmore's car was the same way. The two hubcaps on
14 the passenger side were missing and I'm pretty sure they were
15 both present on the driver's side.

16 Q: All right. I'm going to keep playing this clip.

17 (WHEREUPON, a clip from State's Exhibit Number 55 was
18 played on the screen and then stopped.)

19 BY MS. LINDER:

20 Q: And what did we just observe?

21 A: Two individuals walked toward the breezeway. Again, just
22 to kind of bring it all into perspective, this is the opposite
23 side from which we found all of the shell casings and where
24 Sharmaine resided, but the two individuals that are walking,
25 they are walking in that direction.

DAVID OSBORNE - DIRECT BY MS. LINDER

1 Q: All right. So right here when those two individuals will
2 turn the corner, the time is 10:08:55. What's the actual
3 time?

4 A: You have to add 8; so just about 10:17.

5 Q: So this appears turning the corner about a minute prior
6 to the murder?

7 A: Right.

8 Q: And have you yourself ever walked the distance from this
9 location in the parking lot to where all the evidence and
10 shell casings were found at the opposite end of building C?

11 A: I have.

12 Q: And about how long did it take you to get there?

13 A: Walking at an average pace like they were walking, it
14 took me about 30 seconds.

15 Q: I'm going to play a little bit more.

16 (WHEREUPON, a clip from State's Exhibit Number 55 was
17 played on the screen and then stopped.)

18 BY MS. LINDER:

19 Q: What are we seeing here, like in the middle to bottom of
20 the screen?

21 A: An individual walking their dog.

22 Q: And did that point become significant later in your
23 investigation?

24 A: It did.

25 Q: I'm going to keep playing.

DAVID OSBORNE - DIRECT BY MS. LINDER

1 (WHEREUPON, a clip from State's Exhibit Number 55 was
2 played on the screen and then stopped.)

3 BY MS. LINDER:

4 Q: And now we're around the time of the murder?

5 A: Right.

6 Q: And what did we just see in that video?

7 A: Two individuals reenter the car in the same position that
8 they exited.

9 Q: About how much time went from the murder time and the --
10 them getting back into the car?

11 A: Seconds.

12 Q: Did you note anything about the demeanor or the way that
13 they got back into the car?

14 A: Well, they were in a hurry.

15 Q: How would you describe the dress of the driver?

16 A: The dress of the driver?

17 Q: The clothing.

18 A: I think he had on dark pants, but it looked like he had
19 on a tank top, you know, commonly referred to as a wife
20 beater.

21 Q: All right. At this time, I'm going to show you what's
22 been marked and already entered as State's 62 and 78. All
23 right. If you could just look at those?

24 A: Okay.

25 Q: All right. At this time, I'm going to publish State's

DAVID OSBORNE - DIRECT BY MS. LINDER

1 62. What is this?

2 A: This is the victim, Aakeem Smalls, running. This is the
3 first image that we have of him after he was shot.

4 Q: And the time on the video?

5 A: 10:10.

6 Q: And 30 seconds?

7 A: And 30 seconds.

8 Q: And what's the actual time?

9 A: 10:18.

10 Q: And State's Exhibit 78, what is this image showing?

11 A: So I should have said the first image is directly after
12 he's running from C to D. This is the next image that we have
13 of Mr. Smalls and this is him running from D to E and this
14 would be 10:10:39 video time, 10:18 again real time.

15 Q: And basic math, 10:10:30 to 10:10:39, what's that time
16 difference?

17 A: Nine seconds.

18 Q: And tell me if I'm pointing this out for the jury -- if
19 you can come down real quick and I'll get out of the way.

20 (WHEREUPON, the witness complied.)

21 BY MS. LINDER:

22 Q: So when you see in the first still -- in the first set we
23 watched, where is the victim running when he exits?

24 A: He's running from C to D.

25 Q: All right. So he runs from C to D and that's at

DAVID OSBORNE - DIRECT BY MS. LINDER

1 10:10:30. And then the next one, he's running from where to
2 where that we see?

3 A: From D to E.

4 Q: And that's nine seconds later?

5 A: Right.

6 Q: All right. At this time, I'm going to show you what's
7 been marked as State's -- and entered as State's 73, 74, 75,
8 and 77. Will you just look at these, please?

9 A: Okay.

10 Q: Thank you. All right. First, I'm going to show you
11 State's 73. What do we see right here?

12 A: This is the first image that we have of the Toyota Camry
13 pulling up.

14 Q: State's 74. What are we seeing here?

15 A: The same thing. It's the next frame from that
16 surveillance video.

17 Q: State's 75?

18 A: On this one, he's already made the turn and he's backing
19 into place.

20 Q: And I'd like to ask when you're watching the video -- I
21 believe you already testified to it. From State's 75, the
22 entire area, versus State's 73, can you tell a difference?

23 A: Right. Just a little shinier there on the driver's side.

24 Q: And then now look at State's 77.

25 A: Right. Darker on those sides.

DAVID OSBORNE - DIRECT BY MS. LINDER

1 Q: All right. And this image again. And it shows what?

2 A: The vehicle, the Toyota Camry, has already completed the
3 parking, backing in.

4 Q: And what time is this?

5 A: 10:08:15.

6 Q: All right. Now, I'd like to show you what's already been
7 admitted as State's 61, 60, and 79.

8 A: Okay.

9 Q: All right. First, what I'd like to show is State's
10 Exhibit 61. All right. And what do we see in this image?

11 Q: It's the passenger and we've identified him. That's the
12 driver.

13 Q: And State's 60?

14 A: That's the driver.

15 Q: And what time is this?

16 A: 10:08:49 video time, 10:16 real time.

17 Q: 10:16:49 video time or 10:16:49 real time?

18 A: Thereabouts, yeah.

19 Q: And then after they turned the corner, how long did you
20 say it took you to walk from approximately this area to the
21 opposite end of the building?

22 A: About 30 seconds.

23 Q: And then here is State's 79. What is this showing? If
24 you look at the time, this is before --

25 A: Well, I know this is --

DAVID OSBORNE - DIRECT BY MS. LINDER

1 Q: -- or after the murder?

2 A: This is after the murder. It's kind of blurry. I guess
3 they're already back in the car now, but this is after the
4 murder or maybe they're moving so fast I can't see them.

5 Q: And did you review the entirety in some distance before
6 and after the murder time? Did you review the Georgetown
7 Apartment surveillance video?

8 A: I have reviewed it since then. Early on, I was mostly
9 just focused on what we've seen here.

10 Q: And going a little bit of distance of time just before
11 the murder and just after, how many people or who all did you
12 see go from that office camera and enter the breezeway of
13 building C between B and C?

14 A: Okay. So the easiest way to answer that question is
15 showing it off this I think.

16 From that time frame that we were watching, the only
17 person that I saw going this way was the individual with the
18 dog. I didn't see anyone coming this way. So from C to D,
19 only the guy with the dog and then from E to D, nobody except
20 the two that were in the car.

21 Q: So just as a reminder to the jury of how this place is
22 set up, what is the only way to get into the interior of those
23 apartments? The only way?

24 A: Through the breezeway.

25 Q: Through the breezeway?

DAVID OSBORNE - DIRECT BY MS. LINDER

1 A: Right.

2 Q: So you cannot access it on that long side road that we
3 see, Mulmar? You can't access into straight to an apartment?

4 A: No, not that I could see. Now, I mean maybe there's a
5 way you can come through the pool and come through that way.
6 I'm not sure. I mean I didn't really see that, but coming
7 from this way, I didn't see any way unless you can go through
8 somebody's apartment.

9 Q: And in the moments leading up to this murder, did you see
10 -- aside from the guy with the dog and the two fellows in the
11 car, did you see anybody enter building C from the B/C parking
12 lot?

13 A: No.

14 Q: And moments after the murder, did you see anybody exiting
15 building C from the B/C parking lot?

16 A: You mean exiting C? Well, exiting, no, I did not.

17 Q: And in the moments leading up to the murder, did you see
18 anyone enter building C from the opposite end closer --

19 A: Right.

20 Q: -- to the incident location?

21 A: No.

22 Q: And when did you collect this video?

23 A: We collected the video the day after the murder. The
24 murder occurred on the night of the 8th. We -- we saw some of
25 it that night, but we actually got it in our hands on the 9th,

DAVID OSBORNE - DIRECT BY MS. LINDER

1 the morning, the next day.

2 Q: And did you continue to do work on this case the
3 following day on the 10th?

4 A: Yes.

5 Q: And earlier, you testified that there is a vehicle of
6 interest; is that correct?

7 A: Yes.

8 Q: And who was the registered owner of that car?

9 A: Tenika Elmore.

10 Q: And did you interview her on June the 10th?

11 A: I did.

12 Q: And what was her relationship kind of to this
13 investigation?

14 A: She was or is Mr. Johnson's girlfriend.

15 Q: And where did she work?

16 A: She did work at Verizon.

17 Q: And what location of Verizon?

18 A: On Mall Drive by the theater, the old Citadel -- not
19 Citadel. Charlestown Square Mall.

20 Q: And on June the 10th, so we're two days after the murder,
21 did you personally observe her car that day?

22 A: I did.

23 Q: And did you notice anything significant about it?

24 A: It had the same characteristics, notably the hubcaps
25 missing on the passenger side and hubcaps present on the

DAVID OSBORNE - DIRECT BY MS. LINDER

1 driver's side.

2 Q: And was she cooperative with you?

3 A: She was.

4 Q: And you said you interviewed her. Where did that
5 interview take place?

6 A: We went -- well, we contacted Verizon. Then we went to
7 Verizon and made contact with her and then asked if she would
8 come to the station and she agreed.

9 Q: And when you were interviewing her, Tenika, where was the
10 defendant?

11 A: He was in Orangeburg.

12 Q: And did you end up getting a search warrant for Tenika's
13 vehicle?

14 A: I did.

15 Q: What did you do after learning of the defendant's
16 location on June the 10th?

17 A: I notified the US Marshals Task Force, Officer Jonathan
18 Lane. He was a CPD officer, but he was assigned to the US
19 Marshals, and told him to try to locate Mr. Johnson.

20 Q: And was the defendant located in Orangeburg?

21 A: He was.

22 Q: And what did you do? Did you stay in Charleston or where
23 did you go?

24 A: No. We then relocated to Orangeburg.

25 Q: Who is we?

DAVID OSBORNE - DIRECT BY MS. LINDER

1 A: It was me, Detective Craig Kosarko, and I'm almost
2 certain we drove up there with Tenika and their daughter,
3 Denavia.

4 Q: And prior to going to Orangeburg, did you or any member
5 of law enforcement reach out to the defendant or a family
6 member about wanting to speak to him?

7 A: Yes.

8 Q: And were there any efforts made on his part to reach out
9 to you prior to you going up to Orangeburg?

10 A: No.

11 Q: What happened when you got to Orangeburg?

12 A: By the time I got there, the US marshals had already
13 arrested the defendant or Mr. Johnson. We got there. I asked
14 Ms. Elmore if she would agree to allow me to -- or us to
15 search the apartment. She said that was fine. We searched
16 their apartment.

17 Mr. Johnson was then brought back to the city. I stayed
18 there briefly or we, myself and Detective Kosarko, stayed
19 there for a moment. We then left Tenika and Denavia at the
20 apartment and we came back to the city to interview the
21 defendant.

22 Q: And with all of your training and experience that you had
23 mentioned when you first started to testify, have you
24 conducted a number of suspect interviews in your career?

25 A: I have.

DAVID OSBORNE - DIRECT BY MS. LINDER

1 Q: And can you kind of tell the jury a little bit about what
2 happens in the beginning of the interview and what your
3 strategies are?

4 A: Well, it really depends on the situation. Some -- some
5 interviews are going to be handled differently. If an arrest
6 is made on scene, like right after the incident, some
7 interviews are going to be handled differently. Like, in this
8 one, where we don't interview the individual until a few days
9 later.

10 So myself and Detective Kosarko had plenty of time to
11 talk about, you know, how we were going to handle this, how we
12 were going to approach this specific interview, and we
13 believed that he knew we were going to want to speak to him.
14 So in our mind, in my mind in particular, if he were going to
15 talk to us, he had already made up his mind what he was going
16 to say.

17 MR. KOZELSKI: Objection, Your Honor.

18 THE COURT: Sustained under 602 as speculative.

19 BY MS. LINDER:

20 Q: And that interview that you said took place, where did
21 that take place?

22 A: At CPD, at Charleston Police Department.

23 Q: And was that recorded?

24 A: It was.

25 Q: On audio and video?

DAVID OSBORNE - DIRECT BY MS. LINDER

1 A: Yes.

2 Q: And approximately what time did that interview start?

3 A: About 9 p.m.

4 Q: All right. At this time, I'm going to show you what's
5 been marked as State's Exhibit 80. Do you recognize that?

6 A: I do.

7 Q: How do you recognize it?

8 A: It is the interview that I conducted with the defendant
9 on June the 10th and I know that because I viewed it and those
10 are my initials.

11 Q: Does this fairly and accurately represent what happened
12 in your interview with Mr. Johnson back on the 10th or the
13 interview that started on the 10th?

14 A: It does.

15 Q: And before we start playing this, I'm sure the jury has
16 seen plenty of TV and understands a little bit, but can you
17 talk to the jury about any warnings or advisements that you
18 give an individual prior to conducting an interview?

19 A: Really, for the most part, it is the stuff that you see
20 on TV. You know, you have the right to remain silent, the
21 right to an attorney. If you can't afford to hire an
22 attorney, one will be appointed to represent you. You have
23 the right to stop answering questions at any time you so
24 choose.

25 At CPD, they have those rights on a Miranda card. So

DAVID OSBORNE - DIRECT BY MS. LINDER

1 anytime a detective or an officer is issuing those rights to
2 an individual, they read it directly from the card to make
3 sure not to misstate anything.

4 Q: And did you do that in this case?

5 A: I did.

6 Q: And did the defendant appear to understand everything
7 that you were saying?

8 A: Yes.

9 Q: And in your preliminary questions and throughout the
10 interview with the defendant, did he appear impaired in any
11 way?

12 A: No.

13 Q: Did he appear intoxicated in any way?

14 A: No.

15 Q: Did you threaten him with any kind of physical violence
16 prior to this?

17 A: No.

18 Q: Did you promise him any leniency prior to this?

19 A: No.

20 Q: All right.

21 MS. LINDER: We'd like to enter State's 80 at this point.

22 THE COURT: All right.

23 MR. KOZELSKI: Subject to our earlier objections.

24 THE COURT: All right. Subject to the objections and the
25 arguments placed on the -- previously placed on the record,

DAVID OSBORNE - DIRECT BY MS. LINDER

1 State's Exhibit 80 is admitted subject for that objection in
2 every respect. Okay.

3 (WHEREUPON, State's Exhibit Number 80, interview of the
4 defendant on disk, was admitted into evidence.)

5 BY MS. LINDER:

6 Q: And as far as interrogation techniques, have you been
7 trained in a variety of interrogation techniques throughout
8 your career in law enforcement?

9 A: I have.

10 Q: And after you gave all of the rights to the defendant,
11 did he indicate to you that he wished to speak to you?

12 A: He did. And to feed back off of some of those
13 techniques, in a situation like this and in a lot of
14 situations really, what I try to do is just listen in the
15 beginning to hear what their story is and then sort of see how
16 it unfolds from there.

17 And in this case right here, that's what I did. There
18 are a lot of techniques and strategies that you can use. I
19 don't have to go in and simply say I don't know anything about
20 this case. Can you tell me what you did? I can use different
21 techniques and say different things.

22 Q: All right. At this time, I'd like to play a clip from
23 the interview for you and for the jury.

24 (WHEREUPON, a two-minute clip from State's Exhibit Number
25 80 was played on the screen and then stopped. Not

DAVID OSBORNE - DIRECT BY MS. LINDER

1 transcribed herein.)

2 BY MS. LINDER:

3 Q: And so what we see there, what is that paperwork that
4 looks like you're writing on and he's writing on and the
5 fellow next to you is writing on?

6 A: Well, if you pull it back up, I will -- the paperwork
7 that was put off to the side was all of his warrants. He had
8 already been served his warrants. The paperwork that I was
9 writing on is the Miranda card.

10 Q: And the Miranda card is as you described earlier?

11 A: Yes.

12 Q: And so after you advised Miranda, did he indicate to you
13 that he wanted to talk?

14 A: Yes.

15 Q: And what story did he give you as soon as he sat down?
16 What was kind of the gist of the first story he gave you?

17 A: So what I wanted to do was to first tell him or try to
18 get him to admit that he was in Georgetown and then once we
19 went from there, then I could sort of get an idea about what
20 happened in Georgetown. We, for several hours, didn't get
21 past the first step because he said he was never in
22 Georgetown. He said he was in Orangeburg the entire day.

23 Q: And about how long did he persist in this story that he
24 was in Orangetown -- Orangeburg?

25 A: He said that he was in Orangeburg maybe four hours.

DAVID OSBORNE - DIRECT BY MS. LINDER

1 Q: And what time did your interview begin?

2 A: Nine. Maybe three or four hours.

3 Q: All right. I'm going to show another clip.

4 (WHEREUPON, a 9-minute clip from State's Exhibit Number
5 80 was played on the screen and then stopped. Not
6 transcribed herein.)

7 BY MS. LINDER:

8 Q: So in this video we just watched, did you give him --
9 Devin Johnson, the defendant in this case, did you give him an
10 opportunity to tell his story?

11 A: I did.

12 Q: Were you angry?

13 A: Was I angry there? No, I wasn't angry there.

14 Q: Did you listen to him?

15 A: I did.

16 Q: And he's pretty clear about his location that day?

17 A: Yes.

18 Q: And just so the jury fully understands the sequence of
19 events, at this point had you already talked to Tenika?

20 A: I had.

21 Q: And we saw you kept mentioning Wednesday, Wednesday,
22 Wednesday. Why were you mentioning Wednesday?

23 A: Because that's the day of the murder.

24 Q: And when is this interview taking place?

25 A: On the 10th, I believe, two days later.

DAVID OSBORNE - DIRECT BY MS. LINDER

1 Q: Now, you mentioned a phone in this interview. Why are
2 you mentioning a phone?

3 A: When the defendant was arrested, he was in possession of
4 a phone. I had put the phone -- well, I got possession of the
5 phone. So then I put the phone on my desk and so when we
6 walked by, I was just verifying. I was interested in the
7 phone because I was thinking that if he was in possession of
8 the phone that entire day, if and when we ever get cell phone
9 records, well, that's going to show if he was in Orangeburg or
10 whether he was in Charleston. That would be pretty easily
11 disprovable.

12 Q: And --

13 A: Or provable.

14 Q: And what did he tell you about the use of that phone?

15 A: Well, that's why I was asking those questions. I wanted
16 to make sure that it wasn't a situation like it was a
17 community phone or a bunch of people used it and he said, no,
18 that he was the only one that used it and he was using it on
19 that day.

20 Q: And did you ask him about any other phone numbers?

21 A: I did.

22 Q: And what did you ask about?

23 A: Well, I wanted to know his phone number and Sharmaine's
24 phone number, mainly because he said that he got the phone
25 call from Sharmaine and that's how he learned about Aakeem

DAVID OSBORNE - DIRECT BY MS. LINDER

1 being murdered. So I wanted to see when that occurred and I
2 knew if I got the records, then I could see where he was when
3 that call occurred.

4 Q: And in this clip that we've just seen, does the defendant
5 dispute that there is a debt, that there is money owed to him?

6 A: No.

7 Q: From Ace?

8 A: No.

9 Q: And later on as this interview progresses, do you get a
10 little bit more confrontational about some things?

11 A: I did.

12 Q: And can you explain how, if at all, that is involved with
13 your training and your different interrogation strategies?

14 A: The easiest way I think to explain it is it might be what
15 you see on TV sometimes, but there are certain things we
16 certainly can't do. Like, you can't put your hands on
17 somebody. You can't threaten them. You can't, you know,
18 promise them things. You can't do that. I can't -- or
19 detectives can't falsify a document to make it look like we
20 have evidence that we don't have.

21 Now, there are things that we can do. Like, I can lie to
22 them. I can tell them that -- I can misrepresent evidence. I
23 can tell them that we have witnesses that are putting you on
24 the scene and maybe we don't.

25 I didn't do any of that in this case that I can recall.

DAVID OSBORNE - DIRECT BY MS. LINDER

1 I don't think I -- I don't think I needed to. I think I told
2 him everything that we did have and then presented him with
3 options, and that's one of the things that I thought I could
4 really get through to him. If I just presented him with the
5 options, presented him with the evidence that was in place, he
6 had an easy out, and that's one of the things we do during
7 interrogations all the time.

8 The out here is that there are two people involved and
9 chances are -- I mean we knew at that time we had the same
10 headstamp, we had the same caliber, so there's probably only
11 one shooter. So I was hoping that he would tell me that, you
12 know, he wasn't there, but this other guy did it, and then we
13 could identify who the other guy was because we had no idea.
14 So that's really what I wanted to get to and that was the out
15 that I presented him more than -- on more than one occasion.

16 Q: All right. I'm going to play another clip here. This is
17 a little bit later on in the interview.

18 (WHEREUPON, a 1-minute clip from State's Exhibit Number
19 80 was played on the screen and then stopped. Not
20 transcribed herein.)

21 BY MS. LINDER:

22 Q: All right. Your comment there that you made my job a lot
23 easier and I do appreciate it, what are you mean -- what do
24 you mean by that?

25 A: It's probably not a good technique. You know, I hadn't

DAVID OSBORNE - DIRECT BY MS. LINDER

1 had a lot of sleep at that point. When you get these murders,
2 you're working nonstop. I was being very sarcastic and what I
3 meant by that was that the story that he gave, if he was
4 telling the truth, it would be easy to prove. I had a lot of
5 evidence to believe that he was not telling the truth and I
6 thought that would be easy to disprove.

7 Q: All right. And earlier you discussed moving to different
8 trial techniques. We're going to play another clip for you.
9 At this point, we're an hour into the interview.

10 (WHEREUPON, a 1-minute clip from State's Exhibit Number
11 80 was played on the screen and then stopped. Not
12 transcribed herein.)

13 BY MS. LINDER:

14 Q: All right. So here we are an hour into the interview.
15 Has he changed his story to you yet?

16 A: No.

17 Q: Are you attempting to give him opportunities to change
18 his story?

19 A: I tried to give him opportunities to change his story,
20 tried to slowly tell him some of the things that we did know
21 that showed that he was not being truthful. Everything that I
22 was saying to him, I certainly wasn't getting through to him.

23 Q: All right. I'm going to play another clip for you.

24 (WHEREUPON, a 1-minute clip from State's Exhibit Number
25 80 was played on the screen and then stopped. Not

DAVID OSBORNE - DIRECT BY MS. LINDER

1 transcribed herein.)

2 BY MS. LINDER:

3 Q: All right. Is it fair to say you're getting a little
4 irritated or --

5 A: Yeah. I mean I think that's fair to say. Again, lack of
6 sleep can play a part in some of it.

7 Q: So after that and you got up and exited the room, what's
8 happening there between you and Sgt. Kosarko?

9 A: When we walk outside of the room?

10 Q: Yes.

11 A: Well, so that's where we start talking about different
12 techniques. I mean we're not ending the interview. We are
13 going to try something else. All right? And so we walk
14 outside and we start talking about different things that we
15 might be able to impress upon him. It's pretty clear to us in
16 that portion of the interview he doesn't seem to appreciate
17 the situation that he's in. So we tried different things.

18 Q: All right. We're going to move ahead another hour into
19 the interview.

20 (WHEREUPON, a 2-minute clip from State's Exhibit Number
21 80 was played on the screen and then stopped. Not
22 transcribed herein.)

23 BY MS. LINDER:

24 Q: All right. Here at this point in the interview, did he
25 give you names or addresses or specific physical descriptions

DAVID OSBORNE - DIRECT BY MS. LINDER

1 of anybody who would have seen him in Georgetown that night?

2 A: In Georgetown or Orangeburg?

3 Q: I'm sorry. In Orangeburg.

4 A: No.

5 Q: All right. So did he continue on the same version of
6 Orangeburg up to about midnight, about three hours into this?

7 A: Yeah. What we were -- what we were saying wasn't getting
8 us anywhere.

9 Q: All right. I'm going to play one more clip for you.

10 (WHEREUPON, a 1-minute clip from State's Exhibit Number
11 80 was played on the screen and then stopped. Not
12 transcribed herein.)

13 BY MS. LINDER:

14 Q: All right. So we're only showing the jury, obviously,
15 clips of this very long interview. At different times, did
16 voices get raised and lowered by you or other people?

17 A: Yes.

18 Q: And during any of that, did you ever threaten any sort of
19 physical violence?

20 A: No.

21 Q: Did you -- I think we saw a cup in the last clip on the
22 table. Did you ever offer him or get him something to drink?

23 A: Yes.

24 Q: And did you ever offer a bathroom break of any sort?

25 A: Yes.

DAVID OSBORNE - DIRECT BY MS. LINDER

1 Q: And at some point in this interview, did the defendant
2 ever ask you for cigarettes?

3 A: He did.

4 Q: And can you explain your thought process with your
5 experience about cigarettes and interviewing suspects?

6 A: There was a time where an individual wanted a cigarette,
7 you could just give it to them right there in the interview
8 room and they could smoke right there. The ultimate decision
9 on whether to allow someone to smoke in an interview room or
10 just period is going to be the arresting officer. They --
11 there's nothing that requires you to give a cigarette to an
12 individual.

13 So the thought process that goes into giving someone a
14 cigarette is how do you go about doing that. You can't let
15 them smoke in the building. All right? That stopped years
16 ago, and I'm glad too because it was terrible.

17 But anyway, so -- but if -- but if you wanted to let
18 someone have a cigarette, then what you'd have to do is put
19 leg irons on them, you would have to put a belt restraint on
20 them so that their hands would be handcuffed up close like
21 this, or you could allow them to smoke without being in a belt
22 restraint so they could have their hands free. It's much --
23 it's really cumbersome for them to be down here.

24 I tell you all that to say it's a lot of planning that
25 goes into it and I'm certainly not going downstairs out of the

DAVID OSBORNE - DIRECT BY MS. LINDER

1 building by myself. So I'm going to need people with me.

2 Having Detective Kosarko would be nice, but I'd really want
3 somebody else. I'd really want maybe two or three guys.

4 So no. If I'm going to go through all of that and I'm
5 going to use manpower and resources and take that time to do
6 that, then I'm going to have to have a certain comfort level
7 with someone. I'm going to need to feel like they're
8 cooperating with the investigation, that they appreciate where
9 they're at, especially when we're talking about a murder. If
10 it's a shoplifting, I don't -- I mean it probably wouldn't
11 matter that much.

12 I say all that to say I never reached that level to feel
13 like I am going to feel comfortable walking outside with him,
14 especially with the charge that he had pending. So when he
15 asked for a cigarette, I told him no. I think I even told him
16 cigarettes are for cooperators in one of my more frustrated
17 moments.

18 Q: And so we got to -- in leading up to this stage, like we
19 said about three hours in, did you ever talk to the defendant
20 about his daughter?

21 A: I did. And I think that Detective Kosarko may have made
22 a comment or two.

23 Q: And what's the point and purpose of that?

24 A: Well, one, I met her and Ms. Elmore and I liked her.

25 She's a really cute kid. So in my mind I'm thinking that, you

DAVID OSBORNE - DIRECT BY MS. LINDER

1 know, he must in some way be involved in her life. So I
2 wanted to impress upon him the situation that he was in
3 because I didn't get the impression that he quite understood
4 or appreciated it.

5 MR. KOZELSKI: Objection, Your Honor.

6 THE COURT: Sustained. I'll agree it's based beyond his
7 scope.

8 BY MS. LINDER:

9 Q: After any kind of conversation about the defendant's
10 daughter or after cigarettes, did he immediately change his
11 story and start telling you a different version?

12 A: None of that worked. I mean we weren't getting anywhere
13 there.

14 Q: So about three hours in, when you stepped out of the
15 room, what trial strategy do you go to for your final one?

16 A: Well, I had already spoken to Ms. Elmore and I had spoken
17 to his mother. So I thought that if he wasn't listening to
18 me, and that's what I thought, then he might listen to them.
19 So I gave him my phone and then allowed him to call them.

20 Q: And did you leave the room?

21 A: Or call whoever he wanted. I mean I left the room.

22 Q: And was the video camera still going?

23 A: It was.

24 Q: All right. I'm going to play a clip for you.

25 (WHEREUPON, a 1-minute clip from State's Exhibit Number

DAVID OSBORNE - DIRECT BY MS. LINDER

1 80 was played on the screen and then stopped. Not
2 transcribed herein.)

3 BY MS. LINDER:

4 Q: And here, who was he on the phone with?

5 A: I'm not a hundred percent sure. I believe it was either
6 Ms. Elmore or the mother -- or his mom.

7 Q: All right. And he's talking about if your car was on the
8 scene. Is he in that conversation complaining about how mean
9 you were or about how you didn't give him cigarettes?

10 A: No. And it wasn't all adversarial. I mean there was a
11 lot of joking going on between him and I too. I mean that's
12 the way an interview works. It's a lot of peaks and valleys.
13 He's basically repeating what I told him.

14 Q: All right. I'm going to go to another clip.

15 (WHEREUPON, a 4-minute clip from State's Exhibit Number
16 80 was played on the screen and then stopped. Not
17 transcribed herein.)

18 BY MS. LINDER:

19 Q: And what was happening on that phone call?

20 A: I'm sorry. Say it again?

21 Q: What was going on in that phone call?

22 A: He was talking to his mom. He was repeating some of what
23 I had told him and then he was asking what should I do --

24 Q: And --

25 A: -- and --

DAVID OSBORNE - DIRECT BY MS. LINDER

1 Q: I apologize. Go ahead.

2 A: And then he just said, well, I have already lied to him
3 once.

4 Q: At some point, do you reenter the room?

5 A: I did.

6 Q: After this?

7 A: I did.

8 Q: And was your strategy successful?

9 A: Well, I didn't know when I reentered the room. While
10 this was recording, we weren't watching this. There's a lot
11 of paperwork and stuff that goes into charging somebody. So
12 we were trying to get all that finished. So when I walked
13 back in, I don't think I said anything except, you know, I
14 took my phone back and then he just started talking. So --

15 Q: All right. We're going to play --

16 A: To move the ball, yes, it was.

17 Q: We're going to play another clip.

18 (WHEREUPON, a 2-minute clip from State's Exhibit Number
19 80 was played on the screen and then stopped. Not
20 transcribed herein.)

21 BY MS. LINDER:

22 Q: All right. So we heard him talking about talking to
23 Alyssa and his mom. Are Alyssa and Tenika the same people?

24 A: Yes.

25 Q: And when you first entered and walked in the room, what

DAVID OSBORNE - DIRECT BY MS. LINDER

1 happened?

2 A: When I first walked in, he handed the phone to me. I
3 spoke to his mom briefly, and both his mom and Tenika, when I
4 had spoke to them when I talked to them earlier, I had told
5 them that I was going to call them when this was all said and
6 done, you know, and tell them what he had to say. And that's
7 what I told her.

8 Q: All right. So about how long had he been on the phone
9 speaking with family members?

10 A: About 30 minutes.

11 Q: And so at this point, the last clip we saw was about four
12 hours into the interview. Did he change his story about being
13 in Orangeburg?

14 A: Yes.

15 Q: And what out of what he told you seemed significant in
16 your investigation?

17 A: Well, everything that he just said there was significant.
18 He -- I was -- I asked him a lot of questions after that
19 trying to identify Creep. It would've been better if he knew
20 his full name, but that was okay. I needed to know other
21 things to be able to try to identify him. And so that was the
22 entire interview for the most part and what went on from
23 there, me trying to get every piece -- ask any question I
24 could possibly think of to ask to try to identify Creep.

25 Q: All right. He mentioned there was a dog. Did you ever

DAVID OSBORNE - DIRECT BY MS. LINDER

1 purposefully or inadvertently tell him about a man with a dog?

2 A: No. I never mentioned that.

3 Q: And when he was talking about the shots going off,
4 anything significant about that to you?

5 A: Well, I mean --

6 Q: Anything about the number of shots?

7 A: The number of shots. The way he held his hand, it was
8 kind of indicative of holding a semiautomatic, but the number
9 of shots were consistent with the number of fired shell
10 casings that we saw or recovered.

11 Q: When he -- when he started telling you about his friend,
12 Creep, what kind of questions did you start asking him?

13 A: Again, anything I could think of. You know, obviously,
14 the physical descriptors, but more importantly, how can I find
15 him. All right? So he gave me -- he said that he had a
16 tattoo. I can't recall exactly, but it was a tattoo I think
17 on his arm. Then I asked him, well, how can I go about
18 finding him.

19 So then he told me and this is where it gets a little
20 wonky, but he told me that I needed to go to Summerville and
21 go near Alston Middle School to this pool hall on the track
22 and then if I go in there and ask for an individual by the
23 name of Midget, then Midget would end up taking me to Creep
24 because Midget and Creep were friends. So I did -- well, that
25 was a whole 'nother investigation in and of itself. We did

DAVID OSBORNE - DIRECT BY MS. LINDER

1 all of that.

2 Q: So when you were asking information in his interview
3 about Creep, did he know where Creep worked?

4 A: No.

5 Q: Did he know Creep's phone number?

6 A: He had a Creep contact in his phone, but when I asked him
7 what was Creep's phone number, he did not know.

8 Q: And did he know Creep's given name?

9 A: No.

10 Q: But he was specific about a tattoo you said?

11 A: Yes.

12 Q: Okay. From all the clips that we have watched, is it
13 your understanding that the defendant was acknowledging and
14 admitting that he was the driver of that Camry in Georgetown?

15 A: Yes.

16 Q: From watching that clip in his last version, it -- it
17 says that he saw the shooting. Is that -- did I hear that
18 correct?

19 A: Right.

20 Q: And had you previously showed him a picture of someone
21 during the course of the interview?

22 A: I had not, but Detective Kosarko did.

23 Q: And who was that image that you previously or someone
24 previously showed him in his interview?

25 A: Diangelo Bumcum.

DAVID OSBORNE - DIRECT BY MS. LINDER

1 Q: And had you or anyone else given him a name or nickname
2 of the person in the picture?

3 A: I don't think I did. I think the way that came about was
4 he told us that he heard that we were looking at Dee, a person
5 that he knew by Dee or that he didn't know by Dee, but that's
6 what he was told, that we were looking for a person named Dee.

7 Q: And hours prior to that clip when he was first shown the
8 image of this individual, what was his reaction to that?

9 A: He didn't know him.

10 Q: Did he say that more than once?

11 A: Yeah.

12 Q: Was there any interest in the part of your agency to look
13 at Diangelo Bumcum as a possible suspect?

14 A: Absolutely.

15 Q: And why is that?

16 A: Diangelo was the last person that we knew of to be with
17 the victim.

18 Q: And did you ever interview Diangelo?

19 A: I interviewed Diangelo at 12 o'clock while this is going
20 on. So at certain moments where -- we have two interview
21 rooms. They're side by side. So at certain moments you'd see
22 that I'm in there alone, Detective Kosarko was interviewing
23 Diangelo. Diangelo turned himself in once he heard we were
24 looking for him.

25 During that moment -- I'm fairly certain it's during that

DAVID OSBORNE - DIRECT BY MS. LINDER

1 exact moment right there where he's making the phone call, I
2 then confer with Detective Kosarko, who relates to me what
3 Diangelo had told him, and then I go in and then also -- well,
4 us together then go in and speak to Diangelo.

5 Q: You say he turned himself in. Did the marshals have to
6 go pick him up?

7 A: No.

8 Q: And how did it come about that he knew that y'all wanted
9 to talk to him?

10 A: We spoke to his mom.

11 Q: And was Diangelo -- where was he located?

12 A: Well, at the station. He came in.

13 Q: And did he give you an interview when he came to the
14 station?

15 A: He did.

16 Q: And at any point, did you or do you know of as being lead
17 detective -- did anyone else from your agency speak with other
18 individuals who stayed at Georgetown Apartments?

19 A: Yes. I did.

20 Q: And were there any conversations about Diangelo, about
21 him, not to him, with others who lived in Georgetown
22 Apartments?

23 MR. KOZELSKI: Objection, Your Honor.

24 THE COURT: Restate your -- rephrase your question. I'll
25 sustain the objection. That would require hearsay of a

DAVID OSBORNE - DIRECT BY MS. LINDER

1 degree.

2 BY MS. LINDER:

3 Q: Based on your interviews -- based on your interview with
4 Diangelo, did you speak to other individuals in Georgetown?

5 A: After my interview with Diangelo, yeah. Then I went to
6 speak to other people in Georgetown.

7 Q: And after your interview with Diangelo, did you re-review
8 the surveillance from Georgetown?

9 A: Yes. Based on -- yes, I did.

10 Q: And were you looking for anything in particular in that
11 surveillance?

12 A: I wanted to see if I saw Diangelo walking from building C
13 to D prior to the murder.

14 Q: And about how far prior to the murder were you looking?

15 A: I think it was about 10 minutes before.

16 Q: All right. At this point, I'm going to direct the jury's
17 attention back to State's Exhibit 55, which is the Georgetown
18 surveillance videos that have already been admitted.

19 (WHEREUPON, a portion of State's Exhibit Number 55 was
20 played on the screen and then stopped.)

21 BY MS. LINDER:

22 Q: All right. And it's paused right now. What time is on
23 -- is reflected on this surveillance?

24 A: Ten o'clock surveillance time, 10:08 would be the real
25 time.

DAVID OSBORNE - DIRECT BY MS. LINDER

1 Q: All right. So this is 10:08 real time.

2 (WHEREUPON, a portion of State's Exhibit Number 55 was
3 played on the screen and then stopped.)

4 BY MS. LINDER:

5 Q: All right. And in that video, are you able to identify
6 close details of -- of the face of that person?

7 A: No. You're not able to identify, you know, that well.

8 Q: And after having met him and interacting with him, would
9 you say that that seems consistent with his body shape and
10 type?

11 A: I have spoken to him, yes, to Mr. Bumcum, and that
12 certainly looks like him.

13 Q: And again, if we can use this, State's 81 for ID
14 purposes, so the -- the camera that we just saw is located
15 where and does -- and shows what, if this is the shooting?

16 A: Yeah. So we're looking toward the road. So we're over
17 here.

18 THE COURT: Why don't you bring that out here so that all
19 the jury can see it? The ones on the end can't very well.

20 THE WITNESS: Got it.

21 THE COURT: Thank you.

22 BY MS LINDER:

23 Q: So if the shooting is here, where is that camera that we
24 just watched?

25 A: That's between C and D. I think it's pointing off in

DAVID OSBORNE - DIRECT BY MS. LINDER

1 this direction.

2 Q: And you see an individual walking. Where is he walking?

3 Where do you see him walking from and to?

4 A: From C toward D.

5 Q: From C toward D?

6 A: Right.

7 Q: And the time? What was the time on that when he was

8 leaving C and D?

9 A: 10:08 real time, 10 o'clock surveillance time.

10 Q: All right. Was that individual running or walking?

11 A: No. He was just walking at a regular pace.

12 Q: And did you continue to check other cameras for an

13 individual with that same description walking?

14 A: I did.

15 Q: And did you see him in another location?

16 A: A little tougher on the second one, but he's headed in

17 the right direction.

18 Q: And all of this is happening approximately 10 minutes

19 prior to the murder?

20 A: Right.

21 Q: All right. At this time, I'm going to show you what's

22 already been marked and admitted as State's 63, 71, and 72.

23 Okay?

24 A: All right.

25 Q: All right. I'm going to publish these and put them up,

DAVID OSBORNE - DIRECT BY MS. LINDER

1 and I know you're as loud as I am. So I'm going to put these
2 up, but if you don't mind standing by this map to show the
3 jury what the perspective is?

4 We're going to start with State's 63. And this
5 individual, where are we seeing here?

6 A: If I had to guess, I would put him up in this area, but
7 it's -- it's between C and D.

8 Q: All right. And then State's 71?

9 A: It's going to be between D and E. If I had to guess,
10 maybe right up in here.

11 Q: And State's 72, this figure up here?

12 A: I think this is the same camera. It's just showing him
13 further going further in this direction toward E.

14 Q: And looking at the timestamps of these, the C to D camera
15 is at -- I know it's 8 minutes -- 10 minutes and 13 seconds
16 and then the D/E is what time?

17 A: 10:57 [sic].

18 Q: And then the D/E here?

19 A: 10:01:06 or 08.

20 Q: And previously you testified that you've walked this
21 area?

22 A: I have.

23 Q: And is that timeline consistent with you personally
24 walking from C to D or C to D through D and then D to E?

25 A: At a normal pace, yes.

DAVID OSBORNE - DIRECT BY MS. LINDER

1 Q: At a normal pace?

2 A: (No verbal response.)

3 Q: In the last version of Devin's story with this guy named
4 Creep, did you ever find somebody who you thought was Creep?

5 A: I did. So when we went to track and then went and met
6 Midget, Joshua Esau [ph], he told us that Creep is named Byron
7 Kenzie. I was not familiar with this individual, but
8 apparently, he is very familiar to the Summerville Police
9 Department and Dorchester County Sheriff's office.

10 So prior to going through that whole breadcrumb trail
11 basically of finding Creep that the defendant laid out to us,
12 I called the Creep that was in the contacts just to see if I
13 might be able to get lucky and have him just come in and talk
14 to me. I spoke to him briefly. He then hung up. Calling
15 that contact name.

16 So then once we spoke to Mr. Esau and went down that and
17 found out that it was Byron Kenzie is the Creep that Joshua
18 knew, Mr. Esau, I went and met with Byron and started talking
19 to him. While talking to him, I noticed that he did not have
20 the tattoo that the defendant told me Creep should have.

21 I then tried to call the phone number for the contact
22 that I called earlier of Creep. The phone rang again. I was
23 standing there looking at Byron, the person answered the
24 phone, and I could tell it was the same voice. So at that
25 point, I realized that the Creep that he sent us to was not

DAVID OSBORNE - DIRECT BY MS. LINDER

1 the same Creep that was in his contact phone.

2 Q: So earlier on in this trial, there was some testimony
3 about processing and testing and things of the like. As the
4 case agent or lead detective, do you make the determination
5 about whether something is sent for further testing?

6 A: I do, yeah.

7 Q: And in this case, were there fired casings collected?

8 A: The fired shell casings were collected and sent up, yes.

9 Q: And did you have those fired shell casings that I believe
10 you can see in State's 5? You see marker 2, marker 3, 8,
11 marker 5, and State's 9, marker 6. Those were fired shell
12 casings. Did you have them printed by CPD?

13 A: No.

14 Q: Why not?

15 A: CPD, Charleston Police Department, used to fingerprint
16 fired shell casings. That's no longer a policy. They don't
17 do that anymore just because it's a fruitless effort.

18 And the reason for that is they've actually tried.
19 They've sent people out on the range, fired round after round
20 after round, let the casing cool down and try to recover a
21 fingerprint from it, and it's not worth the effort and it's
22 just, I guess, basic physics. When you're fire a gun, the
23 bullet goes out the barrel, the fired shell casing ejects from
24 the port, it is extremely hot, and it burns up any latents
25 that are going to be on the fired shell casing.

DAVID OSBORNE - DIRECT BY MS. LINDER

1 Q: And did you end up submitting those four fired casings to
2 SLED?

3 A: We did.

4 Q: And you asked for them to be tested?

5 A: We did. A different type of test though.

6 Q: Not for fingerprints?

7 A: No. We were testing to see if it was fired from the same
8 weapon. So that's IBIS. So you -- they can take a photograph
9 basically of the fired shell casing and they can send it in
10 the system and then that system can then tell if there's
11 another fired shell casing fired from the same gun that has
12 similar characteristics. So we can see if this gun was used
13 in any other crimes, but more importantly for this case, we
14 could see if it was one weapon that was used to shoot Mr.
15 Smalls or multiple weapons.

16 Q: And did you -- was any saliva collected from this case?

17 A: No.

18 Q: And does that surprise you?

19 A: No. This wasn't a saliva case.

20 Q: Any semen found in this case?

21 A: No, we didn't find any semen.

22 Q: So was any semen tested in this case?

23 A: No.

24 Q: Any footprints found in this case?

25 A: No.

DAVID OSBORNE - DIRECT BY MS. LINDER

1 Q: Were there any DNA swabs that were taken in this case?

2 A: Yes.

3 Q: And were those sent away for further testing?

4 A: They were.

5 Q: As far as the search warrant on Tenika or Alyssa's car,
6 are you aware that there was no blood located in that car?

7 A: Yes.

8 Q: And did that surprise you as the lead investigator in
9 this case?

10 A: No.

11 Q: Why?

12 A: Well, this wasn't that type of murder where you might
13 expect to see blood transfer. We just kind of -- this is sort
14 of like just a street-level walk up and shoot somebody kind of
15 murder. If you get hands-on with somebody and there's knives
16 and cuttings involved, you're going to have blood transfer.
17 It's almost inevitable. Had it been one of those more brutal
18 --

19 MR. KOZELSKI: Objection, Your Honor. Speculation.

20 THE COURT: Overruled. Based on his experience, that's
21 an opinion. I'm going to allow it.

22 BY MS. LINDER:

23 Q: Then in that case, I would expect to see something, but
24 just walking up, shooting somebody, and then turning around
25 and walking away, you're not going to see evidence transfer,

DAVID OSBORNE - DIRECT BY MS. LINDER

1 at least not generally.

2 Q: And are you aware that there were no guns or bullets
3 located in that Camry?

4 A: I am.

5 Q: And when was the Camry seized versus when this incident
6 happened?

7 A: On the 10th.

8 Q: A couple days later?

9 A: Two days later.

10 Q: And are you aware that there was a search warrant done on
11 [REDACTED] or [REDACTED] in this case?

12 A: Yes.

13 Q: And where is that in relation to where the shooting
14 occurred?

15 A: That is Sharmaine Johnson's apartment and her relatives,
16 younger relatives, and it is directly above the crime scene
17 where the fired shell casings were recovered.

18 Q: And in that case, are you aware that there was an unfired
19 cartridge that was collected?

20 A: I am.

21 Q: And I'm going to show you -- put up here State's Exhibit
22 47. And what is this showing?

23 A: That is showing the headstamp to the recovered live round
24 from Sharmaine's apartment. It is the same headstamp of each
25 of the four fired shell casings that were found on the night

DAVID OSBORNE - DIRECT BY MS. LINDER

1 of the murder.

2 Q: And did you request that this get fingerprinted?

3 A: We did.

4 Q: And tell the jury why this is different from those other
5 four?

6 A: Because that's a live round. It doesn't go through the
7 same combustion of a fired shell casing. So you could
8 conceivably -- although -- I mean, admittedly, it's kind of
9 rare to get a fingerprint on a small item like that, but we
10 decided to go ahead and try.

11 Q: And was clothing collected in this case?

12 A: Yes.

13 Q: And was some of that clothing sent for further testing?

14 A: It was.

15 Q: So I'd like to kind of switch gears here and talk to you
16 about the phrase wet up or wet somebody up. In all your years
17 with law enforcement, have you ever heard that term?

18 A: I have.

19 Q: And what do you understand that term to mean?

20 A: That term -- the first time that -- well, I'm a violent
21 crimes detective. So the first time that I heard that term, I
22 inquired what does that even mean and then when it was
23 described to me, it seemed rather obvious. Like, when you
24 shoot somebody multiple times, they bleed and then they get
25 wet. So that's wet them up.

DAVID OSBORNE - DIRECT BY MS. LINDER

1 Q: And throughout your time in law enforcement, patrol,
2 detective, sergeant, did you learn a lot of street slang?

3 A: I did.

4 Q: And, for example, slang, what is a lick?

5 A: A robbery.

6 Q: Does lick have any other definitions?

7 A: Of course.

8 Q: What is an iron also known as?

9 A: A gun.

10 Q: What is a gap also known as?

11 A: A gun.

12 Q: But if you hear the phrase you're going to wet somebody
13 up, what does that mean to you?

14 A: That means you're going to shoot somebody. Wet somebody
15 up is different than get wet. Get wet is getting high. Wet
16 somebody up or wet them up is shoot somebody.

17 Q: And did you ask maybe some of the contemporaries of
18 Aakeem Smalls, the victim in this case -- did you ask them
19 what that phrase meant?

20 A: No. I had no reason to.

21 Q: Why didn't you ask them?

22 A: We did not learn that that phrase became relevant in this
23 case until we started getting the phone records back, which
24 was in July. When we were conducting these interviews, it was
25 in June.

1 MS. LINDER: I beg the Court's indulgence.

2 THE COURT: Certainly.

3 MS. LINDER: I don't have anything further. If you can
4 answer any questions the defense may have.

5 THE COURT: Wait for cross-examination.

6 MR. KOZELSKI: I am, Your Honor.

7 THE COURT: Oh, I know, but I mean I'm going to let the
8 jury take a break at this point.

9 MR. KOZELSKI: That's fine.

10 THE COURT: I'll let you go to your jury room, ladies and
11 gentlemen. Don't begin deliberations. We'll be with you in
12 about 15 minutes. Thank you.

13 (WHEREUPON, the jury exited the courtroom at 4:41 p.m.)

14 THE COURT: All right. Anything from the State at this
15 point?

16 MS. LINDER: Nothing from the State.

17 THE COURT: Do you anticipate it being longer than two
18 hours?

19 MR. KOZELSKI: No, Your Honor.

20 THE COURT: We'll finish before 6 o'clock?

21 MR. KOZELSKI: Yes.

22 THE COURT: Okay. All right. Then let's -- let's --

23 MR. KOZELSKI: Well, I mean hopefully I'll be in and out
24 here.

25 THE COURT: Well, I -- and I'm not trying to -- I just

1 want to -- I mean if we're talking about an hour and a half,
2 then I would probably let them come back tomorrow, but that's
3 fine. But I've, obviously, been there too. If things get
4 going, don't worry about that. Okay? I'm not restricting you
5 at all.

6 MR. KOZELSKI: Thank you.

7 THE COURT: We'll be at ease for about 10 minutes then.
8 Thank you.

9 Mr. Osborne, I'd ask you not to have any conversation
10 with any attorneys, please --

11 THE WITNESS: Yes, sir.

12 THE COURT: -- during the break. Thank you.

13 (WHEREUPON, there was a break in the proceedings from
14 4:42 p.m. until 4:55 p.m., after which the proceedings
15 resumed as follows.)

16 THE COURT: Are you ready to proceed?

17 THE WITNESS: Yes, sir.

18 THE COURT: Okay. Are you ready, John?

19 MR. KOZELSKI: Yes, Your Honor.

20 THE COURT: Okay. Let's bring in our jury, please.

21 THE BAILIFF: Yes, sir.

22 THE COURT: Thank you.

23 MS. LINDER: Judge, if we could talk to you real quick?

24 THE COURT: Yes. What?

25 MS. LINDER: I noticed a few times throughout that the

1 gentleman --

2 THE COURT: Oh, I have noticed it too.

3 MS. LINDER: Okay.

4 THE COURT: Okay. Whatever y'all want to do at the end
5 of the trial --

6 MS. LINDER: Okay.

7 THE COURT: -- I'll be happy to do that. I'm not going
8 to single him out now.

9 MS. LINDER: Absolutely. Okay, Judge.

10 THE COURT: I was watching him. He tried. He did the
11 best he could, but he was -- he kept trying and then he tried
12 to drink some water, but it wasn't long and he was back to
13 sleeping again.

14 MS. LINDER: Right. Okay.

15 THE COURT: But I'll entertain that at the appropriate
16 time.

17 MS. LINDER: Thank you, Judge.

18 THE COURT: Okay. But thank you for noting it. I did
19 note it and I -- having been one of the judges that had the
20 occasion of having to report it, it was in Richland County, I
21 called it a sleeping juror case, and I noted when they moved
22 to excuse him, I said no, but I watched him because he would
23 put his head down on the -- he actually put his head down on
24 the chair, but he had a notepad and occasionally he'd pick it
25 up and write a note and then put it back down. So I said

DAVID OSBORNE - CROSS BY MR. KOZELSKI

1 that's a difference. So I don't know about this one.

2 MR. KOZELSKI: Gotcha.

3 (WHEREUPON, the jury entered the courtroom at 4:56 p.m.)

4 THE COURT: I've noticed that you've maintained that
5 seat. Have you been selected as the presiding juror?

6 THE FOREPERSON: (No verbal response.)

7 THE COURT: I kind of figured that. Your name for the
8 record and your juror number?

9 THE FOREPERSON: 336.

10 THE COURT: Thank you. I appreciate it.

11 THE FOREPERSON: You're welcome.

12 THE COURT: And thank you, ladies and gentlemen, for
13 taking care of that as well.

14 All right. You may cross-examine, Mr. Kozelski.

15 MR. KOZELSKI: Thank you, Your Honor. May it please the
16 Court.

17 CROSS-EXAMINATION

18 BY MR. KOZELSKI:

19 Q: Mr. Osborne, I know you're an assistant solicitor now,
20 but I'm going to call you Detective Osborne just for
21 continuity's sake --

22 A: Okay.

23 Q: -- as we move on.

24 A: Very well.

25 Q: And as the lead detective in a homicide investigation,

DAVID OSBORNE - CROSS BY MR. KOZELSKI

1 you're basically on the -- on the ground running the show;
2 right?

3 A: Yes.

4 Q: You want to take a blanket approach at the beginning
5 because you don't know what's important and what's not?

6 A: That's right.

7 Q: And you have police officers at your disposal; right?

8 A: Yes.

9 Q: You've got crime scene technicians?

10 A: Yes.

11 Q: Other detectives that you can call upon; right?

12 A: Yes.

13 Q: And you can also send evidence to the South Carolina Law
14 Enforcement Division for testing?

15 A: Yes.

16 Q: And your goal is to solve the case?

17 A: Figure out what happened, yeah.

18 Q: And you have a lot of resources at your disposal to do
19 that?

20 A: We do.

21 Q: And all the information pertaining to what evidence is
22 collected goes through you?

23 A: Yes.

24 Q: You're the central hub of all the evidence. Otherwise,
25 you can't direct people what to do unless you know what's

DAVID OSBORNE - CROSS BY MR. KOZELSKI

1 going on; right?

2 A: That's correct.

3 Q: And one of the ways that you can close a case is by
4 making an arrest; right?

5 A: Right. That's why I was hesitant because you can solve a
6 case otherwise, but yeah.

7 Q: Right. And you can still work on cases after you make an
8 arrest, but right, you can -- you can still work on them after
9 that; right?

10 A: Yeah, yeah, yeah.

11 Q: So as a good detective, you should work on a case after
12 the arrest; right?

13 A: Yes.

14 Q: But eventually, that sort of power transfers to a
15 solicitor once they get assigned the case; right?

16 A: That is correct.

17 Q: And once the solicitor has the case, that person has all
18 the power to sort of make the decisions?

19 A: That's correct, yeah.

20 Q: A solicitor can tell the detective what needs to be done,
21 if there's further investigation; right?

22 A: Yes.

23 Q: A solicitor decides whether or not there's enough
24 evidence to go forward; right?

25 A: Yes.

DAVID OSBORNE - CROSS BY MR. KOZELSKI

1 Q: And despite all the hard work that a detective may put
2 into it, a solicitor can look at a case and say, no, I'm going
3 to -- I'm going to dump this case, I don't want anything to do
4 with it; right?

5 A: That's right.

6 Q: The solicitor decides what witnesses are important?

7 A: That's correct.

8 Q: What evidence is important?

9 A: That's correct.

10 Q: And once it goes to the solicitors, it's basically out of
11 your hands; right?

12 A: That's correct.

13 Q: And you are a solicitor; right?

14 A: Right.

15 Q: It's like I'm fighting three of you guys. I want to talk
16 to you a little bit about active shooters. When -- not
17 necessarily as a detective when you get there, but maybe a
18 responding officer when he immediately gets to a scene where
19 there's an active shooter, it can be pretty chaotic; right?

20 A: Yes.

21 Q: People's natural instincts are to run when they hear
22 gunshots?

23 A: Yeah. But I want to make sure. So when I hear active
24 shooter based on my training in my previous life, that means
25 that when the officer gets there on scene, there is somebody

DAVID OSBORNE - CROSS BY MR. KOZELSKI

1 that's killing people. They are shooting people, like, you
2 know, at a school.

3 Q: Right.

4 A: That's when I think of active shooter.

5 Q: In those type of actions where you see somebody shooting
6 a gun, the natural tendency is to see people run and scatter?

7 A: So that's -- yeah, that's what people do. We're trained
8 to not do that.

9 Q: Right.

10 A: We're not supposed to.

11 Q: I'm not talking about the police. I'm talking about
12 regular people.

13 A: Okay.

14 Q: Yeah. And that -- and that's -- that's what they do.
15 Most people run; right?

16 A: Right.

17 Q: And there are a number of reasons why bystanders might
18 not stick around to talk to the cops?

19 A: That's right, yeah.

20 Q: They could have just hightailed it out of the area;
21 right?

22 A: Right.

23 Q: They could know the shooter and be afraid of retaliation?

24 A: Sure.

25 Q: They don't want to be labeled a snitch?

DAVID OSBORNE - CROSS BY MR. KOZELSKI

1 A: Right.

2 Q: I mean this is a real thing that you have to deal with as
3 a -- as an officer is people not wanting to be labeled a
4 snitch?

5 A: Right.

6 Q: People just might not like the police?

7 A: That's true too.

8 Q: People could be involved in criminal activities
9 themselves; right?

10 A: Right.

11 Q: A drug dealer who witnesses a shooting might not stick
12 around to tell the police all about it?

13 A: Probably not.

14 Q: And it's fair to say that most people don't stay put when
15 gunfire is going off?

16 A: Right.

17 Q: Sometimes you can get people to talk to you; right?

18 A: Yes.

19 Q: And if you can, depending on who they are and whether
20 they are a witness or a suspect, you would like for them to
21 come down to the station to be interviewed?

22 A: So not -- not all the time. The individual that -- this
23 is an example. The individual you saw walking the dog, I
24 wouldn't feel any need to bring him down to the station. It's
25 pretty cut and dried what he saw, if he saw anything.

DAVID OSBORNE - CROSS BY MR. KOZELSKI

1 If it's a more detailed interview, like with Ms. Elmore,
2 I'd like to have access to computers, to DMV records, if
3 anything opened up where I would need to get a little more
4 information. So a more detailed interview, I prefer to have
5 that at the station. A quick one, did you see anything, I can
6 do that on the scene.

7 Q: And also, when you're in an interrogation room, it's
8 being recorded; right?

9 A: That's important, right.

10 Q: And this room that you're in is a small room; right?

11 A: Right.

12 Q: There's no windows inside the room?

13 A: No.

14 Q: It's only enough room for just a few people, maybe two
15 police officers and a witness maybe?

16 A: And a table. Right.

17 Q: Okay. And a lawyer could be in there if they -- if they
18 request one; right?

19 A: Yes.

20 Q: And -- and no matter who you're talking to in this
21 interview room, whether they're guilty or not, most people are
22 going to start off lying to you?

23 A: A suspect or a witness?

24 Q: Let's say a suspect.

25 A: It's very rare talking about murders for an individual to

DAVID OSBORNE - CROSS BY MR. KOZELSKI

1 come in and just admit that they killed someone without, you
2 know, an interrogation. I've seen it one time in 17 years or
3 so.

4 Q: Okay. And so most people are going to try to minimize
5 what they saw or heard or their involvement?

6 A: Absolutely. Yep.

7 Q: And people have their own reasons for not wanting to be
8 honest with the police; right?

9 A: That's right.

10 Q: And it's, like I said, pretty normal for those people to
11 lie in an interrogation?

12 A: Yes.

13 Q: Now, your ultimate goal in that interrogation room is
14 you're trying to get to the truth; right?

15 A: That's right.

16 Q: And if you believe that somebody in your interrogation
17 has committed a crime, another thing that you might try to do
18 is get a confession?

19 A: That is true. I would only add one little caveat to that
20 is a confession isn't worth anything if it's not the truth.
21 So when an individual is confessing to you, you need to make
22 sure that what they're telling you is true. Otherwise, it
23 might be a false confession and it's worth nothing. So you
24 would ask them things that only the person who had committed
25 the crime could know. And that's how you sort of verify that

DAVID OSBORNE - CROSS BY MR. KOZELSKI

1 it's a true confession and not just someone telling you what
2 they think you might want to hear.

3 Q: But you know as a detective and as a solicitor that
4 confessions are sort of worth their weight in gold as far as
5 trial is concerned; right?

6 A: Well, that's why -- that's why I wanted to give that
7 little caveat because if it's not done properly and someone's
8 simply just parroting what a detective told them to say, then
9 it's not worth its weight in gold. They're just repeating
10 what was told to them.

11 Q: But it's pretty hard to walk back on saying you did
12 something once you did it in an interrogation room and it's
13 all recorded; right?

14 A: I think it's easy to walk back on if it's a parroting
15 confession. If it's a parroting confession where the
16 defendant is simply just repeating everything that was told to
17 them and volunteers nothing new to it, then I don't know how
18 you can rely on it. So I would say a reliable confession that
19 is told by a person who only could've committed the crime is
20 worth its weight in gold.

21 Q: But you're trained in several techniques and tactics on
22 how to talk to certain suspects; right?

23 A: Yes.

24 Q: And, you know, you talked about this a little bit in your
25 direct examination with Ms. Linder, but there are, you know,

DAVID OSBORNE - CROSS BY MR. KOZELSKI

1 certain techniques you can use. You could do the old-school
2 good cop/bad cop; right?

3 A: Well, you can. You can't, you know, put your hands on
4 somebody or threaten them, but you could, yes.

5 Q: And I'm not saying you used it in this case, but you
6 could have Kosarko come in and start yelling at Devin and then
7 leave the room and you can come in and sort of be the shoulder
8 to cry on; right? That's the kind of technique that I'm
9 talking about, not that you used it in this case.

10 A: Right.

11 Q: It is a technique?

12 A: It's not prohibited --

13 Q: Right.

14 A: -- in any way, right.

15 Q: You -- you're really trying to build a rapport with
16 whoever you're talking about? That could be one technique?

17 A: Yeah. I mean that's pretty much the technique more often
18 than not.

19 Q: Yeah. I mean you're looking at Devin and you're saying,
20 look, I've seen your record. I know you're not a violent
21 dude. I don't like you as the shooter here. Why don't you
22 tell me what happened? Right?

23 A: So that I would not categorize as developing rapport,
24 although it is. It's really more characterizing what you
25 mentioned earlier, a technique of minimalization, minimizing

DAVID OSBORNE - CROSS BY MR. KOZELSKI

1 his involvement, and I kind of mentioned this earlier. He --
2 there is another person there. He can always blame the other
3 person.

4 Q: Okay. And like you say, you're not allowed to beat on
5 anybody?

6 A: No.

7 Q: But you can straight up lie to suspects about evidence
8 that you have or, you know, what you found; right?

9 A: I am fairly certain I did not do that in this case, but
10 there's nothing stopping me from doing that.

11 Q: Okay. So in a way, lying is part of your job?

12 A: Well, it is. It can be, you know, but again, I don't --
13 I don't -- I'm almost certain I didn't in this case.

14 Q: Okay. And you can tug on certain heartstrings, like
15 family?

16 A: Yes.

17 Q: You did that with Devin using his six-year-old daughter,
18 Denavia?

19 A: Yes.

20 Q: Telling him he's -- that she's never going to see her
21 daddy again?

22 A: Well, I don't know that it was put to him exactly that
23 way. I think what was in the context of what was being put to
24 him was to say that I'm presenting him with options and saying
25 that I mean it doesn't get any more serious than murder.

DAVID OSBORNE - CROSS BY MR. KOZELSKI

1 Q: And you're using --

2 A: And there are consequences to that.

3 Q: And you're telling him other -- other men are going to
4 raise her? That's what you said?

5 A: Well, so that comes in the context of what he was saying
6 about Ms. Elmore.

7 Q: Okay. You didn't tell her don't worry there is a --
8 there is another man at your -- at your mama's house? He
9 seemed like a nice old man. I'm sure there's going to be
10 other men that raise her?

11 A: No, I did say that.

12 Q: Yeah.

13 A: But that was coming in the context of what he was
14 alleging of Ms. Elmore.

15 Q: And you and Kosarko talked about him missing all of the
16 milestones in her life?

17 A: I think that was Kosarko, but yeah.

18 Q: And that's because you didn't believe he was being honest
19 with you?

20 A: That is correct. And -- and I mean this didn't encompass
21 a large portion of the interview mostly because it didn't seem
22 to be moving the ball for us.

23 Q: And I mean it's a five-hour interview; right? It's a
24 long interview?

25 A: Yeah.

DAVID OSBORNE - CROSS BY MR. KOZELSKI

1 Q: And we've only seen parts of it?

2 A: That's correct.

3 Q: But at some point when you do talk to him about his
4 daughter, he does -- he does -- it does get to him a little
5 bit?

6 A: Well, I don't know if it did or not. He didn't -- I mean
7 it's not like he boo hoo cried or anything, but it did seem
8 like he may have gotten a little choked up momentarily, but
9 nevertheless, that wasn't what got us going or changed his
10 story.

11 Q: He does start crying and he tells you his daughter is his
12 soul; right?

13 A: I would not say that he was crying. I mean I don't
14 remember seeing a tear at all, but it did seem like he might
15 have gotten choked up.

16 Q: Okay. Now, eventually, he does tell you he was there at
17 the Georgetown Apartments; right?

18 A: That's right.

19 Q: But he never tells you that he's involved in any way?

20 A: No.

21 Q: He doesn't -- he doesn't confess to you that he has any
22 involvement in this murder; right?

23 A: That's right.

24 Q: Now, because you're a solicitor, I'm going to -- I'm
25 going to ask you this, but you would know this as a detective.

DAVID OSBORNE - CROSS BY MR. KOZELSKI

1 Selling drugs, that's illegal; right?

2 Q: And no matter what your -- what drug you're selling,
3 whether it's marijuana, cocaine, heroin, if you're selling
4 drugs, that is a felony offense in South Carolina; right?

5 A: I don't prosecute many drugs. I assume they all are
6 felonies.

7 Q: Okay. And felony charges can carry serious prison time;
8 right?

9 A: That is does, yes.

10 Q: And if you have somebody in an interrogation room and
11 they're telling you about them selling drugs, that's a
12 confession, is it not?

13 A: It depends on what the substance of the interrogation is.
14 If I'm investigating a murder, which I was in this case, I
15 could have cared less if he confessed to selling drugs.

16 Q: Okay.

17 A: It really would not have mattered to me one bit.

18 Q: But Devin may not know your intentions; right?

19 A: Well, I did ask him a number of times to express any
20 concerns that he had with being honest with me. So I mean --

21 Q: And again, you're the police; right?

22 A: I think I can answer that, yes, he did know what my
23 intentions were.

24 Q: Okay. He may not trust you to know that he can confess
25 that he was selling drugs to you?

DAVID OSBORNE - CROSS BY MR. KOZELSKI

1 A: That's part of the developing a rapport aspect of it,
2 yeah.

3 Q: And again, this whole interview was being recorded?

4 A: It is. It was. Sorry.

5 Q: Now, I want to talk to you about some of the things that
6 Devin never lied to you about. He never lied to you about
7 Aakeem owing him money; right?

8 A: No.

9 Q: And that's the alleged motive for this shooting; right?

10 A: Yes.

11 Q: And he never lied to you about not knowing Diangelo?

12 A: Not knowing Diangelo? Right. That's correct.

13 Q: And you kept telling him two things. I don't want to
14 hear two things out of your mouth. I don't want to hear that
15 you weren't in -- you weren't in Georgetown and that you don't
16 know Dee; right?

17 A: Right.

18 Q: And in --

19 A: In the context because that's what he kept saying. Not
20 that I -- not that I disbelieved him, but that was the thing
21 he kept saying because he was telling me that he knew that we
22 were looking for Dee.

23 Q: Right. But he didn't know --

24 A: So that's the context.

25 Q: But he didn't know Dee?

DAVID OSBORNE - CROSS BY MR. KOZELSKI

1 A: Right.

2 Q: But you did show him a picture of Diangelo; right? Or
3 you or Kosarko --

4 A: Right.

5 Q: -- showed him a picture of Diangelo?

6 A: Right.

7 Q: And when he does finally start to be honest with you and
8 talk to you about what happened that night, he does say that
9 was the guy that I saw? The picture of Diangelo that you
10 showed him?

11 A: Right. But we weren't just -- because I know there's so
12 much -- it's a long time. We were just showing that picture
13 to see if he even knew him?

14 Q: Right.

15 A: And he said he didn't know him.

16 Q: Okay. And you did interrogate Diangelo Bumcum too?

17 A: I did.

18 Q: You were part of that -- that interrogation with
19 Detective Kosarko at some point?

20 A: I was.

21 Q: And when you came in there, you basically told Diangelo
22 his story was impossible?

23 A: I did.

24 Q: You told him he was lying?

25 A: I did.

DAVID OSBORNE - CROSS BY MR. KOZELSKI

1 Q: And so then, at some point, you go and you talk about
2 talking with Diangelo and getting this video and you said it
3 looks like him in the video; right? You got that two days
4 later or the next day?

5 A: Right. When I walked in and told Diangelo that, within
6 minutes, that changed and then I knew I needed to do something
7 else, and that's what I did.

8 Q: You took a different -- different tactic; right?

9 A: No. I -- I went where I was told to go.

10 Q: Okay. And you got this video, which you said is now
11 Diangelo in that video?

12 A: Right.

13 Q: And so you went and got Diangelo out of jail?

14 A: No.

15 Q: Okay. So you kept him in jail?

16 A: Well, so that decision wasn't made by me personally, but
17 what I can tell you is that Diangelo was not in a good place
18 then. He was doing other things and I only know that -- well,
19 we, in essence, called his mom and talked to his mom and his
20 mom told us to let him stay in jail until the prelim.

21 Q: Okay.

22 A: And that's what we did.

23 Q: So his mama wanted him to stay in jail?

24 A: His mom basically put him in timeout.

25 Q: And so you don't think he's guilty of this, but you just

DAVID OSBORNE - CROSS BY MR. KOZELSKI

1 allow him to sit in jail? That's what you're telling me?

2 A: It was for -- I don't know -- a week maybe. It might've
3 been two.

4 Q: And his charges were ultimately dismissed?

5 A: That's correct.

6 Q: And in September, your office received a report back from
7 SLED indicating that Diangelo had gunshot residue on his
8 shirt?

9 A: No. That's incorrect.

10 Q: Is it not?

11 A: That's incorrect.

12 Q: What is incorrect about that?

13 A: Everything you just said.

14 Q: That you did not receive a report in September from the
15 South Carolina Law Enforcement Division?

16 A: We got a report from SLED, but it is not positive for GSR
17 on Diangelo's shirt.

18 Q: Okay. There are particles of lead?

19 A: That's a different thing.

20 Q: On his shirt?

21 A: Particles -- you're saying two different things. To get
22 GSR on a shirt, you need to see the presence of three
23 different particles. It's lead, antimony, and barium. If you
24 see all three of those present, SLED will report positive GSR
25 on a shirt. If you only see one, in this case lead, which is

DAVID OSBORNE - CROSS BY MR. KOZELSKI

1 the most prevalent of the three, that is not a positive for
2 GSR.

3 And in fact, lead is a very prevalent component or
4 element in brake pads, and Diangelo Bumcum, if I remember
5 correctly, worked at Jiffy Lube at the time. So to find a
6 limited amount of barium or lead on his shirt, you would've
7 almost expected to see it, but to say that that's a positive
8 for GSR, it is not a positive for GSR.

9 In fact, SLED doesn't even report now what they reported
10 back in 2011 because it's so misleading to say that we found
11 lead on a shirt, to say that that's a positive for GSR because
12 it quite simply is not.

13 Q: And in 2011 they, in their report, said his shirt was
14 positive for particles of lead, which are a component of
15 gunshot residue?

16 A: That is correct, but it is not positive for gunshot
17 residue.

18 Q: Okay. And you never went back and talked to Diangelo
19 Bumcum about this, these particles of lead?

20 A: No. Because I knew where he worked and I knew the
21 insignificance of that.

22 Q: Okay.

23 A: But I did check other things that I was told to check.

24 Q: I want to get back to the parking lot where you
25 demonstrated about with the -- the cameras, where the cameras

DAVID OSBORNE - CROSS BY MR. KOZELSKI

1 were, and you testified that Devin backed into his parking
2 spot; right?

3 A: Yes.

4 Q: And there are -- there are a lot of cars. You can see it
5 on the surveillance video. There are a lot of cars that are
6 backed in; right?

7 A: That's right.

8 Q: And in these videos that you have reviewed -- I'm going
9 to -- I think this is State's -- what is it? 89? 91?

10 THE COURT REPORTER: 81.

11 Q: Is it 81?

12 A: 81.

13 Q: 81. Okay. Can you see this?

14 A: Yes.

15 Q: Is this visible to you?

16 A: Uh-huh.

17 Q: Okay. You are seeing camera angles that point towards
18 this direction; correct. They point in that direction?

19 A: Yeah.

20 Q: They're covering this part of the parking lot; right?

21 A: That's right. That's right.

22 Q: And you can't see what's happening on this part of the
23 parking lot?

24 A: No.

25 Q: I mean there's significant blind spots to these cameras?

DAVID OSBORNE - CROSS BY MR. KOZELSKI

1 A: I don't know that I would say significant, but there are
2 definitely blind spots, yes.

3 Q: I mean we can't -- we -- obviously, we can't see Aakeem
4 running from behind the building. That's not caught on
5 camera?

6 A: No.

7 Q: And that's because these -- this area of the parking lot
8 is not on the cameras; right?

9 A: Yes.

10 Q: So if you're from Georgetown Apartments, I mean you can
11 see these cameras mounted on the facade of the buildings;
12 right?

13 A: I would imagine you could. I was just thinking about
14 your last question. I don't know that you would've seen him
15 because he hit the breezeway though. I think -- I think you
16 get a good idea of him running to the breezeway, but you are
17 correct though, not talking about Aakeem. Like, if you were
18 to hug that tree line, I don't know that that would show up.

19 Q: Yeah. So if somebody came here --

20 A: You'd see that.

21 Q: And then you'd see that, but if they went back in this
22 direction, you might not catch it?

23 A: That's correct.

24 Q: Okay. You talked a little bit about your search for
25 Creep; right?

DAVID OSBORNE - CROSS BY MR. KOZELSKI

1 A: Yes.

2 Q: And Devin is vague about who he's with; right?

3 A: He is definitive that it was Creep. He's vague about
4 helping me find Creep.

5 Q: And I mean, obviously, if you -- if you find Creep, you
6 might be serving him with a murder warrant as well?

7 A: It's a little bit trickier with the passenger. The
8 driver took the shooter there, the driver took the shooter
9 from there. Okay? I would have to show that the passenger,
10 whoever it was, Creep, whoever, was actively involved in the
11 murder. So that would have been -- that would've been a close
12 call. I would've definitely wanted to talk to him. That's
13 for sure.

14 Q: But you don't know who Creep is?

15 A: No. We've never identified him.

16 Q: But Creep does exist?

17 A: I found a Creep and I feel confident that is the Creep
18 that he sent me to, but I do not know who the passenger in
19 that car is.

20 Q: But you called the Creep that was in his phone?

21 A: I did call that person.

22 Q: And somebody spoke to you?

23 A: Yes.

24 Q: They didn't want to speak to you?

25 A: No, they did not.

DAVID OSBORNE - CROSS BY MR. KOZELSKI

1 Q: But you did speak to a real person?

2 A: I did.

3 Q: And so he does exist?

4 A: Two Creeps may exist, but --

5 Q: There's more -- more than one a.k.a. Creep out in the
6 world?

7 A: Yeah.

8 Q: Okay. So you talked a little bit about some slang as
9 well on direct and I don't know if I talked to you about this
10 before, but do you know what a drop is when we're referring to
11 drugs, if someone were to make a drop?

12 A: I don't know that I've ever heard that term before, but I
13 can envision what it is.

14 Q: Okay. And you've heard of the term rip and run?

15 A: I haven't. I don't know that I've ever heard that term
16 before, but again, I can imagine what that means.

17 Q: Okay. But you testified you know what a lick is; right?

18 A: Yeah. See, I worked robberies and violent crimes. I
19 think those two terms are mostly in the drug world, which I
20 don't really know a whole lot about.

21 Q: But a lick, that's something that you would be familiar
22 with in -- in a robbery?

23 A: I worked a lot of robberies, yeah.

24 Q: And people rob drug dealers?

25 A: Well, that's how I -- yeah.

DAVID OSBORNE - CROSS BY MR. KOZELSKI

- 1 Q: A lot; right?
- 2 A: Right. That's how I came to learn it.
- 3 Q: Right. So it's not uncommon for drug dealers to be
- 4 robbed?
- 5 A: It is very common.
- 6 Q: You sent the US marshals to pick up Devin in Orangeburg;
- 7 right?
- 8 A: I did.
- 9 Q: And you went there yourself; right?
- 10 A: I did.
- 11 Q: And I think you explained on direct that you actually
- 12 drove Tenika and Denavia up to Orangeburg?
- 13 A: Yes.
- 14 Q: But Devin was at his apartment with Denavia there when
- 15 y'all got there; right?
- 16 A: Oh, maybe I'm wrong about -- no, that's -- I'm sorry.
- 17 You're right because Tenika would have been at work. You're
- 18 right. Sorry.
- 19 Q: So --
- 20 A: But I saw her in Orangeburg. Okay.
- 21 Q: And so you left the -- and there wasn't any -- you know,
- 22 they didn't have to call out the guards or anything like that,
- 23 megaphone for him to come out; right?
- 24 A: No.
- 25 Q: There was no incident as far as arresting Devin; right?

DAVID OSBORNE - CROSS BY MR. KOZELSKI

1 A: No.

2 Q: Not hiding up in the attic or in a kitchen cabinet or
3 something like that?

4 A: No.

5 Q: People do that when they're running from the US marshals;
6 right?

7 A: Oh, I've seen it before, yeah.

8 Q: Okay. So there was no incident when he got arrested?

9 A: No.

10 Q: And you actually drove his daughter, Denavia, back down
11 to Charleston; right?

12 A: I'm a little vague on some of this, but I thought we went
13 to McDonald's together, so I feel like we would have been in a
14 car together at some point.

15 Q: You dropped -- you dropped her off at his mother's house?

16 A: Okay. That sounds right.

17 Q: Okay. And -- but while you're in Orangeburg, Tenika
18 gives you permission to search her house?

19 A: Yes.

20 Q: You can take whatever you want out of her house?

21 A: Yes.

22 Q: That you think is evidence of this case; right?

23 A: Yes.

24 Q: And you collect some of Devin's clothing; right?

25 A: I collected the -- to the best of my recollection, the

DAVID OSBORNE - CROSS BY MR. KOZELSKI

1 only male clothing I could find there.

2 Q: Right. And you put it -- put it in an evidence bag?

3 A: I did.

4 Q: You also collected the clothing from the interrogation
5 room; right?

6 A: I did.

7 Q: And I'm not going to hit you with knowing all of it.

8 A: It was way before.

9 Q: But you did collect -- you did collect all of Devin's
10 clothing that you could find; right?

11 A: I did.

12 Q: And he also got his mouth swabbed for DNA while he was in
13 the interview room; right?

14 A: Yes.

15 Q: And ultimately, you send that clothing and the DNA up to
16 SLED to be tested; right?

17 A: Yes.

18 Q: And you send that with Diangelo's clothing as well;
19 right?

20 A: Yes.

21 Q: And no gunshot residue on any of Devin's clothes?

22 A: Nothing.

23 Q: And while you were searching this apartment, you didn't
24 find any firearms?

25 A: No.

DAVID OSBORNE - CROSS BY MR. KOZELSKI

1 Q: You didn't find any ammunition?

2 A: No.

3 Q: No firearm accessories?

4 A: No.

5 Q: In fact, you never recovered any weapon that was used in
6 this case?

7 A: No. We never did.

8 MR. KOZELSKI: I beg the Court's indulgence.

9 THE COURT: Yes, sir.

10 MR. KOZELSKI: No further questions, Your Honor.

11 THE COURT: Redirect?

12 MS. LINDER: Briefly, Your Honor.

13 THE COURT: Sure.

14 REDIRECT EXAMINATION

15 BY MS. LINDER:

16 Q: I just want to kind of bring you back to the defendant's
17 statement in this case. Mr. Kozelski was asking a bunch of
18 questions about, you know, well, wouldn't a drug dealer be
19 afraid to tell the truth and things like that. Did he have to
20 mention that he was there relating to drugs in order to place
21 him on the scene for you?

22 A: No.

23 Q: Did he need to -- could he have given you a different
24 reason of why he was on the scene?

25 A: He ultimately did.

DAVID OSBORNE - REDIRECT BY MS. LINDER

1 Q: Could he say he was visiting his sister?

2 A: Yeah.

3 Q: Could he say he was hanging out with friends?

4 A: Yeah.

5 Q: Could he have said he was just, you know, killing time
6 before going to go pick up his girlfriend from work?

7 A: Yes.

8 Q: So do all of those variations of his story put him on
9 scene without admitting drugs?

10 A: Right.

11 Q: And in your interview, the defendant mentioned that there
12 was a debt?

13 A: Yes.

14 Q: I don't remember. Was it \$420 I think is what he said;
15 is that correct?

16 A: I think it was 420, yeah.

17 Q: And so the defendant mentioned a debt to you. Did he
18 mention it was due to his stash of exotic weed being stolen?

19 A: No. I don't think that was it. I think it was -- if I
20 remember correctly, I thought it was to pay an electric bill
21 or something, to pay bills.

22 Q: And do you remember did he tell you early on in your
23 interview about that debt?

24 A: Yes.

25 Q: But he didn't tell you until hours and hours later about

DAVID OSBORNE - REDIRECT BY MS. LINDER

1 him actually being on scene; is that right?

2 A: That's right.

3 Q: So Mr. Kozelski asked you about clothing being collected
4 that belonged to the defendant. Do you know if the clothing
5 collected was the clothing from the night of the murder?

6 A: No.

7 Q: In fact, the night of the murder, what was he wearing?

8 A: It was a tank top, like a wife beater type of.

9 Q: And would you say it's common for an individual if they
10 own one to own more than one? Are those commonly sold in
11 multipacks?

12 A: Yes.

13 Q: And when did you end up collecting this tank top?

14 A: Two days later, June 10th.

15 Q: Did the defendant tell you that that was his shirt that
16 he was wearing on the 8th, that that was the specific shirt?

17 A: No, I don't think so.

18 Q: Did Tenika tell you that was the specific shirt that he
19 was wearing two days before on the 8th?

20 A: No.

21 Q: In your training and experience with all your years in
22 law enforcement, do you -- I don't know if you can even break
23 it into numbers. Would you say that -- if somebody is
24 suspected to committing a murder with a firearm, would you say
25 that the majority of the time a firearm is found in their

DAVID OSBORNE - REDIRECT BY MS. LINDER

1 house days later?

2 A: No.

3 Q: Or not? With your training and experience.

4 A: I'm just trying to think of a time in which we actually
5 were able to recover the murder weapon. I mean more often
6 than not, people don't hang on to those.

7 Q: So would you say it's a rare occurrence if you were to
8 find days later the murder weapon in the person's home?

9 A: Oh, yeah. That would be very rare.

10 MS. LINDER: I don't have anything else for you.

11 THE COURT: Recross.

12 MR. KOZELSKI: Just briefly.

13 RECROSS-EXAMINATION

14 BY MR. KOZELSKI:

15 Q: You said you collected all the clothing that you could at
16 Tenika's apartment; right? All the stuff that was, like, male
17 clothing; right?

18 A: Yeah. To the best of my recollection, I think there was
19 only one pair of pants and one T-shirt.

20 Q: Okay. And you sent that off to be tested?

21 A: I did.

22 MR. KOZELSKI: Nothing further.

23 THE COURT: All right. Thank you. You may come down.

24 Thank you, ladies and gentlemen. That concludes the
25 testimony for this afternoon and I'll now let you go home.

ILA SIMMONS - DIRECT BY MS. LINDER

1 state your full name, spelling your last.

2 THE WITNESS: My name is Ila Simmons and my last name is
3 spelled S-i-m-m-o-n-s.

4 ILA SIMMONS, being first duly
5 sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. LINDER:

8 Q: Good afternoon.

9 A: Good afternoon.

10 Q: Where do you work?

11 A: I work at the South Carolina Law Enforcement Division,
12 also known as SLED, in the forensic services laboratory's
13 trace evidence department.

14 Q: And how long have you worked with SLED?

15 A: Almost 18 years.

16 Q: And specifically in trace evidence, what do your duties
17 include?

18 A: I analyze gunshot residue.

19 Q: And can you tell the jury a little bit about your
20 training and experience?

21 A: I received a Bachelor of Science degree in chemistry from
22 Columbia College. After completing that, I went to work at
23 SLED, where for the first three years I worked with a court-
24 qualified, SLED-certified trace evidence examiner. I had to
25 learn how to use all the instrumentation and I had to take

ILA SIMMONS - DIRECT BY MS. LINDER

1 written and practical examinations and pass them with 100
2 percent efficiency. Once I completed that, I was deemed
3 certified to analyze trace evidence samples.

4 Q: And have you ever testified in court before as an expert?

5 A: I have.

6 Q: And do you have an idea of approximately how many times?

7 A: Approximately 300.

8 MS. LINDER: Your Honor, at this time, I would ask that
9 Ila Simmons be declared an expert in gunshot residue analysis.

10 THE COURT: Do you care to examine as to qualifications?

11 MR. KOZELSKI: No objection.

12 THE COURT: She will be permitted to render opinions in
13 that area.

14 MS. LINDER: Thank you, Judge.

15 THE COURT: Thank you.

16 BY MS LINDER:

17 Q: All right. So if you would kind of explain this to the
18 jury in a general sense, when a gun is fired, there's a cloud
19 or plume of these particles that come out. What components or
20 particles must come out in order for it to be considered
21 gunshot residue?

22 A: Gunshot residue is a mixture of microscopic chemicals
23 that come out of a gun when it is discharged. It's made up of
24 lead, barium, and antimony. When you find all three of those
25 elements together in a particle in a molten or round state, it

ILA SIMMONS - DIRECT BY MS. LINDER

1 comes from nowhere else in nature or man-made except from the
2 discharge of a firearm's primer.

3 Q: So you have to have all three of those elements for
4 something to be gunshot residue?

5 A: That's correct.

6 Q: And have your policies and procedures at SLED regarding
7 the reporting requirements changed over your time there?

8 A: Yes, ma'am, they have.

9 Q: And can you explain what they were, why they changed, and
10 what they are today?

11 A: Yes, ma'am. We used to report on the separate components
12 of gunshot residue. As I mentioned, it's composed of lead,
13 barium, and antimony. So if we found round antimony, round
14 lead, round barium separately, we would report them as those
15 particular items found. It wasn't considered gunshot residue,
16 but it was a component of gunshot residue.

17 Now, we have constrained our reports and we only report
18 if gunshot residue is found. That means you have to have a
19 molten particle and it has to contain lead, barium, and
20 antimony.

21 Q: And is it fair to say that that policy changed in order
22 for you to be more accurate?

23 A: It changed so that we can be more stringent because we
24 know that sometimes lead, barium, and antimony in separate --
25 separately can come from other environmental sources, where

ILA SIMMONS - DIRECT BY MS. LINDER

1 gunshot residue is specific to a gunshot.

2 Q: And so, for example, lead. What other ways can you have
3 lead?

4 A: You can get it from machine parts, from automobile parts.
5 You can get it from fishing weights. You can get it from lead
6 flux when you're welding.

7 Q: So if someone worked as a mechanic at Jiffy Lube, would
8 you be surprised or would you expect there to be lead
9 particles on their clothing?

10 A: That is very probable that someone would have round lead
11 on their clothing from being in a mechanic shop, yes.

12 Q: So the test -- if you did the test today that was
13 conducted years ago and you yielded the same result, what
14 would your report actually state?

15 A: That no particles characteristic of gunshot residue were
16 found.

17 Q: And is that because, ultimately, the item was negative
18 for gunshot residue?

19 A: Yes. No gunshot residue particles were found.

20 Q: And even from 2011 when the reporting was a bit
21 different, if you were to testify in court at that time, what
22 would your testimony be as far as gunshot residue?

23 A: Gunshot residue was not found.

24 Q: So it would be the same exact testimony because whether
25 it was 2011 or today, there's no gunshot residue?

ILA SIMMONS - DIRECT BY MS. LINDER

1 A: That's correct.

2 Q: All right. Just for a little education for the jury -- I
3 always still like learning about it myself. If there's a
4 firearm, let's say a semiautomatic firearm, and it's fired,
5 where does the gunshot residue come out of?

6 A: Ninety-eight percent of the gunshot residue will come out
7 of the muzzle end of the gun, following in the trajectory of
8 the bullet that comes out of the gun. A small amount will
9 come out of a semiautomatic from the ejector port, which is
10 where the cartridge case is kicked out of the gun.

11 Q: So 98 percent -- I know this is not what a gun looks
12 like. Ninety-eight percent you said goes in the same
13 trajectory as the bullet?

14 A: That's correct.

15 Q: So it moves forward?

16 A: Yes.

17 Q: And the ejection port is two percent?

18 A: No, it's probably, like .8 percent.

19 Q: Okay.

20 A: A small amount can come back and wrap around on the hands
21 of the person --

22 Q: Okay.

23 A: -- that's shooting the gun or anything in close proximity
24 to that weapon.

25 Q: So if someone's arm is outstretched and they fire a

ILA SIMMONS - DIRECT BY MS. LINDER

1 firearm, would you expect that it would probably have the
2 ejection port wrap around and come back on the individual's
3 hand?

4 A: Yes, it is possible.

5 Q: Would you expect it to wrap around and come on the
6 person's arm?

7 A: It can. It just depends on how long the person's arm is
8 and what type of ammunition was used. Different ammunitions
9 have different amounts of gunshot residue. So if less is
10 expelled, less will get on someone's hands.

11 Q: And would you say most likely if the arm is outstretched
12 and a gun was fired, the ejection port, .8 percent or whatnot,
13 would wrap around and come back on clothing?

14 A: It's a possibility, but most -- most likely, not much of
15 the gunshot residue would wrap back and get on clothing.

16 Q: And is it possible to shoot a gun and not get any gunshot
17 residue on yourself?

18 A: Yes, it is.

19 Q: And not get any gunshot residue on your clothing?

20 A: Yes, it is.

21 Q: Okay.

22 MS. LINDER: I beg the Court's indulgence.

23 THE COURT: Certainly.

24 MS. LINDER: All right. I don't have any further
25 questions. If you can answer anything the defense may have.

ILA SIMMONS - CROSS BY MR. KOZELSKI

1 THE COURT: Cross-exam, Mr. Kozelski.

2 MR. KOZELSKI: Briefly.

3 CROSS-EXAMINATION

4 BY MR. KOZELSKI:

5 Q: Ms. Simmons, you conducted gunshot residue tests on a
6 number of pieces of clothing that were sent to you?

7 A: I did.

8 Q: All right. And you -- obviously, you don't know where
9 these items come from; right?

10 A: No, sir.

11 Q: But they are labeled as to who they belong to?

12 A: Yes, sir. These were.

13 Q: And you were -- you tested a number of articles of
14 clothing belonging to Devin J. Johnson?

15 A: I did.

16 Q: Okay. And you found no particles or components of
17 gunshot residue on any of those clothing articles?

18 A: That's correct.

19 MR. KOZELSKI: No further questions.

20 THE COURT: Redirect?

21 MS. LINDER: I beg the Court's indulgence.

22 THE COURT: Yes, ma'am.

23 MS. LINDER: Just very briefly.

24 REDIRECT EXAMINATION

25 BY MS LINDER:

ILA SIMMONS - REDIRECT BY MS. LINDER

1 Q: Talking about items you tested and who it was noted that
2 they belonged to, what is the description of Item 13?

3 A: Item 13 is one white T-shirt belonging to Diangelo
4 Bumcum.

5 Q: And that white T-shirt with your findings, your results,
6 is that the one that earlier you said you had testified that
7 there was no gunshot residue on?

8 A: That's correct.

9 MS. LINDER: Thank you very much.

10 THE COURT: Recross?

11 MR. KOZELSKI: Just briefly.

12 RECROSS-EXAMINATION

13 BY MR. KOZELSKI:

14 Q: The shirt that she's referencing, you're saying you just
15 don't list that there are individual components of gunshot
16 residue anymore; right?

17 A: That's correct.

18 Q: Okay. Bu back in 2011, you did put that there were round
19 lead components, which is a component of gunshot residue;
20 correct?

21 A: Yes, sir. It can be. Yes, sir.

22 Q: Okay.

23 MR. KOZELSKI: Thank you.

24 THE COURT: All right. Thank you, Ms. Simmons. You may
25 come down.

KATHLEEN BUTLER - DIRECT BY MS. LINDER

1 Do you wish this witness to be excused?

2 MS. LINDER: Yes, please.

3 THE COURT: Any objection, Mr. Kozelski?

4 MR. KOZELSKI: No objection.

5 THE COURT: You're also free to leave. Thank you.

6 You may call your next witness.

7 MS. LINDER: The State calls Kathleen Butler.

8 (WHEREUPON, there was a pause in the proceedings until
9 the witness entered the courtroom, after which the
10 proceedings resumed as follows.)

11 THE CLERK: If you will, place your left hand on the
12 Bible and raise your right. Do you swear or affirm that the
13 testimony you shall give the Court and jury in the trial of
14 this case shall be the truth, the whole truth, and nothing but
15 the truth, so help you God?

16 THE WITNESS: I do.

17 THE CLERK: You may be seated and, for the record, please
18 state your full name, spelling your last.

19 THE WITNESS: My name is Kathleen Butler, B-u-t-l-e-r.

20 KATHLEEN BUTLER, being first
21 duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MS LINDER:

24 Q: Good afternoon.

25 A: Good afternoon.

KATHLEEN BUTLER - DIRECT BY MS. LINDER

1 Q: Where are you currently working?

2 A: Charleston Passport Center.

3 Q: Where were you working back in 2011?

4 A: I was working at the Charleston Police Department.

5 Q: In what capacity?

6 A: I was a police officer and a latent print supervisor.

7 Q: And how long did you work at the City of Charleston
8 Police Department?

9 A: Approximately 28 years.

10 Q: And can you tell the jury a little bit about your
11 training, education, and background when it comes to latent
12 prints?

13 A: I have approximately 700 -- over 700 hours of latent
14 print training. It started when I was in crime scene. I did
15 an independent study on my own time under the previous latent
16 examiners, Libby Oliver and Chris Scott. Then when a spot
17 became available, I applied for it and they put me there. I
18 also had basic fingerprint, advanced fingerprint ridgeology,
19 and other classes. The list just goes on.

20 Q: And in all of your time with the City of Charleston
21 Police Department, do you have any approximation of how many
22 fingerprint analyses that you did?

23 A: I've done over 600,000 latent print comparisons,
24 including classes I've gone to, daily work, and the reviewing
25 and tests that we're made to take yearly.

KATHLEEN BUTLER - DIRECT BY MS. LINDER

1 Q: And have you ever been qualified as an expert before to
2 testify in court?

3 A: Yes, I have.

4 MS. LINDER: Your Honor, at this time, I would request
5 that Kathleen Butler be declared an expert in latent
6 fingerprint analysis.

7 THE COURT: Examine her?

8 MR. KOZELSKI: No objection.

9 THE COURT: She'll be permitted to render opinions in
10 that area.

11 BY MS LINDER:

12 Q: And, Ms. Butler, what are latent prints?

13 A: Latent means invisible, invisible to the eye, and it's
14 through chemicals and other powder developments that makes
15 them visible to be lifted so that they can be compared against
16 another individual.

17 Q: And what are known prints?

18 A: By applying a thin layer of printer's ink to the finger,
19 nail to nail, and having a nice card stock, you roll the
20 finger of an individual, which you know who that individual
21 is. And you do it with each finger and then you do flat
22 impressions of each hand. So those are what we call known
23 fingerprints. It's a ten-print card.

24 Q: And in your job at the City of Charleston, did you
25 compare unknown prints to known prints of a person?

KATHLEEN BUTLER - DIRECT BY MS. LINDER

1 A: Yes.

2 Q: And did you have the occasion to do that in this case,
3 the State versus Devin Johnson?

4 A: Yes, I did.

5 Q: And did you have the occasion to examine some latent
6 lifts from a vehicle in this case?

7 A: I did.

8 Q: Do you recall how many lifts total were taken from that
9 vehicle?

10 A: I believe it was around 35.

11 Q: And do you recall what areas of the vehicle the lifts
12 were taken?

13 A: I believe it was all over the vehicle. It was the door,
14 the trunk. I'm not sure.

15 Q: And did you compare those lifts to the defendant, to his
16 known prints in this case?

17 A: I did.

18 Q: And which, if any, of those lifts were matched to the
19 defendant?

20 A: Okay. Without a copy of the report --

21 Q: Absolutely. I'm going to give you -- all right. I am
22 going to hand you what's been -- I'm going to hand you what's
23 been marked State's 83 for ID purposes only. Will this help
24 refresh you with your result in that case?

25 A: Yes, it would.

KATHLEEN BUTLER - DIRECT BY MS. LINDER

1 Q: Please take your time to look it over and then, if you
2 could, let the jury know how many of those lifts were
3 identified to belong to the defendant out of the 35 that you
4 looked at?

5 A: Okay. There's, like, 35 images. If we're going by just
6 the lift card, then 18 of the lift cards.

7 Q: Eighteen of the 35?

8 A: Uh-huh.

9 Q: Match this defendant?

10 A: Yes.

11 Q: From the vehicle? All right. Next, I wanted to ask you
12 did you compare the defendant's known prints to any lifts or a
13 lift from an unfired cartridge in this case?

14 A: I did.

15 Q: And -- and do you recall what the results are or would
16 you like to refresh yourself --

17 A: I know there --

18 Q: -- with a copy of your report?

19 A: I know there was an identification, but I would really
20 like the report.

21 Q: Absolutely.

22 MS. LINDER: If I may I approach, Your Honor?

23 THE COURT: You may.

24 BY MS. LINDER:

25 Q: This is State's 84 for ID purposes. How many lifts were

KATHLEEN BUTLER - DIRECT BY MS. LINDER

1 taken from the unfired cartridge in this case?

2 A: There was one lift taken from the unfired cartridge.

3 Q: And when you compared that one lift from the unfired
4 cartridge and compared it to this defendant, what were your
5 results?

6 A: That it was identified to Devin Johnson.

7 Q: So the print on the unfired cartridge belonged to the
8 defendant?

9 A: It did.

10 Q: Okay.

11 MS. LINDER: I have no further questions. If you could
12 answer any the defense may have.

13 THE COURT: You may cross-examine.

14 CROSS-EXAMINATION

15 BY MR. KOZELSKI:

16 Q: Ms. Butler, as a latent print examiner, you receive
17 fingerprint cards and are told to examine them; right?

18 A: Yes.

19 Q: You're not out in the field lifting and examining prints
20 out there; right?

21 A: No, sir.

22 Q: And in many cases, you get different crime scene techs
23 might send you different cards to examine on the same case?

24 A: Correct.

25 Q: Like in this case, you might get fingerprint cards from

KATHLEEN BUTLER - CROSS BY MR. KOZELSKI

1 Rene Charles and fingerprint cards from Jeff Miller?

2 A: Correct.

3 Q: And you can get them on different days as well?

4 A: Correct.

5 Q: And you ended up getting a bunch of my client's

6 fingerprints that were submitted by Mr. Charles after a search

7 warrant of the car; right?

8 A: I would need to see the envelope to tell you the date and

9 all that, but yes. We receive not directly from the crime

10 scene tech. They have a lockbox, which we have a key.

11 Q: Okay.

12 A: So once they finish tagging their evidence, they put it

13 in a sealed envelope. We open the lockbox, we grab it, and we

14 identify or verify, basically, what they are submitting to us.

15 Q: Okay. And you received 24 of those prints or 24 hits

16 from the lifts that were submitted from Mr. Charles?

17 A: I think 21 of them were identified.

18 Q: Okay. And a number of those were from Devin Johnson's

19 right ring finger; correct?

20 A: Correct.

21 Q: And then you also received a lift from the bullet that

22 you just talked about and that was submitted by Ms. Wooley on

23 a separate day; right?

24 A: Yes. June 22nd.

25 Q: Okay. But you examined all the cards on the same day;

KATHLEEN BUTLER - CROSS BY MR. KOZELSKI

1 right?

2 A: Correct.

3 Q: That's July 1st?

4 A: Yes.

5 Q: And again, I guess you don't -- you don't have control or
6 you didn't bring this list with you today?

7 A: No. I don't have access to that anymore.

8 Q: Okay. And over the course of your career, I think you
9 just testified that you've looked at over 600,000
10 fingerprints; right?

11 A: Correct.

12 Q: And you've testified before many times in trial; right?

13 A: Correct.

14 Q: And I've heard you testify before that you've looked at
15 25,000 fingerprints; right? You've testified to that before?

16 A: I'm pretty sure I've testified to many numbers, yes.

17 Q: Okay. And you've also testified that you've seen over
18 300,000 fingerprints.

19 A: Uh-huh.

20 Q: Right?

21 THE COURT: Is that a yes?

22 THE WITNESS: Yes.

23 BY MR. KOZELSKI:

24 Q: So how many fingerprints is it that you've looked at over
25 the course of your career?

KATHLEEN BUTLER - CROSS BY MR. KOZELSKI

1 A: I stopped counting in 2015, but the last time I testified
2 in this court case, it was approximately over 600,000. I
3 looked at fingerprints day in and day out when I worked for
4 the Charleston Police Department. I was a latent examiner for
5 over 12 years.

6 So if you take that, whether it's one person being
7 compared against each and every case I've looked at and we go
8 with a general number of six lifts with multiple impressions
9 on those lifts, each one of those is counted as a comparison.
10 So you can imagine that with just 35 lifts and one submitted
11 on another day, I'm looking at five different individuals.
12 One, two, three, four, five. So five times as many images are
13 on those lifts.

14 Q: So we'll go with over half a million lifts that you've
15 looked at; correct?

16 A: Fine. That's fine.

17 Q: Okay. And in my -- my career as a lawyer, I've probably
18 had about a thousand clients, but every -- every once in a
19 while, I'll maybe misplace a client's folder or file. Have
20 you ever -- have you ever misplaced anything?

21 A: No, I haven't.

22 Q: So out of 600,000 times, you've never mis-examined a
23 fingerprint?

24 A: No.

25 Q: You've never mis-identified a fingerprint?

KATHLEEN BUTLER - CROSS BY MR. KOZELSKI

1 A: No.

2 Q: Not once in your career?

3 A: Not once in my career.

4 MR. KOZELSKI: No further questions.

5 THE COURT: Redirect?

6 MS. LINDER: None, Your Honor.

7 THE COURT: Thank you. You may step down.

8 Do you wish Ms. Butler to be excused?

9 MS. LINDER: We do.

10 THE COURT: Any objection?

11 MR. KOZELSKI: No objection.

12 THE COURT: You're also free to leave. Thank you.

13 THE WITNESS: Thank you.

14 THE COURT: Call your next witness, please.

15 MS. SIGAL: The State calls Vanessa Bumcum.

16 (WHEREUPON, there was a pause in the proceedings until
17 the witness entered the courtroom, after which the
18 proceedings resumed as follows.)

19 THE WITNESS: Hi. How are you?

20 THE CLERK: If you will, please come forward.

21 THE WITNESS: Sure.

22 THE CLERK: If you will, place your left hand on the
23 Bible and raise your right. Do you swear or affirm that the
24 testimony you shall give the Court and jury in the trial of
25 this case shall be the truth, the whole truth, and nothing but

VANESSA BUMCUM MORTON - DIRECT BY MS. SIGAL

1 the truth, so help you God?

2 THE WITNESS: I do.

3 THE CLERK: You may be seated and, for the record, please
4 state your full name, spelling your last.

5 THE WITNESS: Okay. My name is Vanessa Bumcum Morton,
6 M-o-r-t-o-n.

7 VANESSA BUMCUM MORTON, being
8 first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. SIGAL:

11 Q: Good afternoon, Vanessa.

12 A: Hi.

13 Q: We're going to jump right in. Did you know Aakeem
14 Smalls?

15 A: Yes.

16 Q: And can you please tell us how you knew him?

17 A: I knew him through my grandnephew, which is my
18 grandnephew's uncle. So he was like family.

19 Q: He's like family?

20 A: Yes.

21 Q: Did there come a time when you learned that he had been
22 killed?

23 A: Yes.

24 Q: And how did you learn this information?

25 A: When my son called me on the phone.

VANESSA BUMCUM MORTON - DIRECT BY MS. SIGAL

- 1 Q: And who is your son?
- 2 A: Diangelo Levar Bumcum.
- 3 Q: What was Diangelo's demeanor when he called you?
- 4 A: He was quite hurt. He was quite, quite hurt.
- 5 Q: Hurt?
- 6 A: Yes, he was. Yes.
- 7 Q: And what did you tell him when you talked to him on the
- 8 phone when you found out this news?
- 9 A: To bring his -- home.
- 10 Q: You told him to come home?
- 11 A: Yes.
- 12 Q: Okay. And did he follow your instructions?
- 13 A: Yes, he did.
- 14 Q: Did he come home that night?
- 15 A: Yes, he did.
- 16 Q: And what did he do when he got in the house?
- 17 A: He was ranting about they killed him, they killed him,
- 18 and he fell to his knees. He was quite hurt.
- 19 Q: Did there come a time when the police were interested in
- 20 speaking to Diangelo?
- 21 A: Yes.
- 22 Q: Did you see your son on TV?
- 23 A: Yes, I did.
- 24 Q: What was your reaction?
- 25 A: I was on the phone at the time and I was just looking at

VANESSA BUMCUM MORTON - DIRECT BY MS. SIGAL

1 the news and it came across and I went in the living room and
2 I said, Diangelo, they're looking for you.

3 Q: Did you contact anyone after that?

4 A: Yes.

5 Q: Who did you contact?

6 A: Charleston Police Department.

7 Q: Did you contact them right after you saw him on TV?

8 A: Yes, I did.

9 Q: And did they come to your house?

10 A: Yes, they did.

11 Q: Did Diangelo know that you were calling the police?

12 A: Yes, he did.

13 Q: Did he try to run out of the house?

14 A: No, he didn't.

15 Q: Did he try to run away?

16 A: No.

17 Q: Did he go with the police?

18 A: Yes, he did.

19 Q: Did he put up a fight in any way?

20 A: No.

21 Q: Did Diangelo tell you about the night that Aakeem Smalls
22 was murdered?

23 A: Yes, he did.

24 Q: Did the police express any interest in taking anything
25 from the home when they were there?

VANESSA BUMCUM MORTON - DIRECT BY MS. SIGAL

1 A: Yes, they did. Yes, they did.

2 Q: And what was your response to their -- them wanting to
3 search the house?

4 A: I'll help you look.

5 Q: Did you make them get a warrant?

6 A: Yes. They were waiting on a warrant at the time and I
7 said I'll help you look.

8 Q: Did you help them look?

9 A: Yes, I did.

10 Q: And did you give them anything?

11 A: Yes, I did. The clothing that he had on.

12 Q: So you gave them the clothing that he had on when?

13 A: The two days before the incident that happened.

14 Q: And do you remember what kind of piece of clothing that
15 was?

16 A: It was a T-shirt and a pair of pants. Uh-huh.

17 MS. SIGAL: Your Honor, permission to publish State's 55
18 at 10 minutes and four seconds.

19 THE COURT: Okay.

20 (WHEREUPON, a portion of State's Exhibit Number 55,
21 surveillance video, was published on screen.)

22 BY MS. SIGAL:

23 Q: Vanessa, while we figure that out, I'd like to show you a
24 photo.

25 MS. SIGAL: Permission to approach the witness, Your

VANESSA BUMCUM MORTON - DIRECT BY MS. SIGAL

1 Honor?

2 THE COURT: You may.

3 BY MS. SIGAL:

4 Q: I'm showing you what's been marked and admitted as
5 State's 63.

6 A: Uh-huh.

7 Q: Can you tell us if you recognize the person in that
8 photo?

9 A: Yes. That's my son.

10 Q: Thank you. I'm just going to put this on the Elmo so we
11 can all see what you just looked at. Vanessa, you said that's
12 your son?

13 A: Yes. That's my baby.

14 Q: And if you will, if you can just point out the timestamp
15 on the bottom of that picture?

16 A: The timestamp is at 10.

17 Q: It's at about 10?

18 A: Yes.

19 Q: Is that what you said?

20 A: Uh-huh.

21 Q: Thank you. Diangelo was arrested for this; right?

22 A: Yes, he was.

23 Q: Did that upset you?

24 A: Yes, it did.

25 Q: Did you think this was something that he would be capable

VANESSA BUMCUM MORTON - DIRECT BY MS. SIGAL

1 of doing?

2 A: No. He does some stupid things, but that's not one of

3 them.

4 Q: You said he's done some stupid things?

5 A: Yes.

6 Q: He's made some mistakes in his life?

7 A: Yes.

8 Q: Is that --

9 A: But that's not one of them.

10 Q: And anything remotely like this?

11 A: Oh, no.

12 Q: Did there come a time where you learned that the charges

13 were dismissed against your son?

14 A: Yes.

15 Q: What was your reaction to that at first?

16 A: Keep him in jail.

17 Q: Why did you say that?

18 A: Because it's been a lot going on that -- that year. I

19 had a lot going on. I had just lost my mom and this happened.

20 So I was like, okay, I can't take no more. Keep him in jail

21 because I was feared for his life also too.

22 Q: And, Vanessa, where was your son working at the time of

23 this incident back in 2011?

24 A: He was working at Jiffy Lube.

25 Q: At Jiffy Lube?

VANESSA BUMCUM MORTON - DIRECT BY MS. SIGAL

1 A: Uh-huh.

2 MS. SIGAL: I beg the Court's indulgence.

3 THE COURT: Certainly.

4 BY MS. SIGAL:

5 Q: Vanessa, can you tell what kind of shirt he's wearing in
6 State's 63 that we have up on the Elmo? Well -- we'll go back
7 to the picture. I'm sorry. Can you tell what kind of shirt
8 your son is wearing in that picture?

9 A: It's a tank top.

10 Q: All right. Thank you.

11 A: Uh-huh.

12 Q: And now, we're going to --

13 A: A white tank top.

14 Q: Okay.

15 MS. SIGAL: Thank you, Vanessa.

16 THE WITNESS: Okay.

17 MS. SIGAL: I have no further questions for you at this
18 time.

19 THE WITNESS: Okay.

20 MS. SIGAL: Please answer any questions the defense may
21 have.

22 THE WITNESS: Okay.

23 THE COURT: Cross-examine.

24 CROSS-EXAMINATION

25 BY MR. KOZELSKI:

VANESSA BUMCUM MORTON - CROSS BY MR. KOZELSKI

1 Q: You don't know exactly where Diangelo was at the time
2 that Aakeem was shot, do you?

3 A: Yes. He told me when he called me where he was.

4 Q: Okay. But you personally didn't see him; right?

5 A: I saw him earlier that day.

6 Q: Okay. But at the time that Aakeem was shot, you weren't
7 with Diangelo; were you?

8 A: No, I was not.

9 Q: Okay. But you don't think your son committed this
10 murder?

11 A: Oh, no, he did not.

12 Q: Okay. But the State did charge him?

13 A: Yes.

14 Q: And arrest him?

15 A: They sure did.

16 Q: So I mean how do you explain that?

17 A: Oh, I can explain it because he was the last person seen
18 with Aakeem.

19 Q: Okay.

20 A: Uh-huh.

21 Q: And that in and of itself doesn't deserve a murder
22 warrant, does it?

23 A: Well, if you're the last person seen with somebody, of
24 course, you're going to be questioned for it, but if there's
25 talk in the street, of course.

VANESSA BUMCUM MORTON - CROSS BY MR. KOZELSKI

1 Q: Okay.

2 A: They're going to think you did something.

3 Q: But they put a -- they put a murder warrant on him and
4 they charged him?

5 A: Yes, they sure did.

6 Q: Okay. And you're saying they were wrong?

7 A: Yes, they was.

8 Q: Okay. That's -- that's Mr. Osborne; right?

9 A: Yes.

10 Q: He was wrong?

11 A: Yes. I told him that too.

12 Q: Okay.

13 MR. KOZELSKI: Thank you. No further questions.

14 THE COURT: Redirect?

15 MS. SIGAL: I beg the Court's indulgence.

16 THE COURT: Okay.

17 MS. SIGAL: Nothing further, Your Honor.

18 THE COURT: Thank you. You may come down.

19 THE WITNESS: Okay.

20 THE COURT: Call your next witness, please.

21 MS. SIGAL: The State calls Diangelo Bumcum.

22 (WHEREUPON, there was a pause the proceedings until the
23 witness entered the courtroom, after which the
24 proceedings resumed as follows.)

25 THE CLERK: Place your left hand on the Bible and raise

DIANGELO BUMCUM - DIRECT BY MS. SIGAL

1 your right. Do you swear or affirm that the testimony you
2 shall give the Court and jury in the trial of this case shall
3 be the truth, the whole truth, and nothing but the truth, so
4 help you God?

5 THE WITNESS: Yes.

6 THE CLERK: You may be seated and, for the record, please
7 state your full name, spelling your last.

8 THE WITNESS: My name is Diangelo Bumcum. Last name is
9 spelled B-u-m-c-u-m.

10 DIANGELO BUMCUM, being first
11 duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. SIGAL:

14 Q: Good afternoon, Diangelo.

15 A: How are you doing?

16 Q: How are you today?

17 A: I'm fine.

18 Q: Diangelo, where do you live?

19 A: Now, I live in Tennessee.

20 Q: And how did you get here today or this week?

21 A: Greyhound.

22 Q: Greyhound bus?

23 A: Yes, ma'am.

24 Q: And what kind of work have you recently done the past few
25 years?

DIANGELO BUMCUM - DIRECT BY MS. SIGAL

1 A: Warehouse, light industrial.

2 Q: And did our office reach out to you about coming here

3 today?

4 A: Yes, ma'am.

5 Q: And were you willing to discuss the case with us?

6 A: Yes, ma'am.

7 Q: And do you know why you're here?

8 A: Yes, I am.

9 Q: Diangelo, did you know a young man by the name of Aakeem

10 Smalls?

11 A: Yes, I did.

12 Q: Did you know him well?

13 A: Yes. He was like family to me.

14 Q: And how did you know him?

15 A: I knew him through -- my cousin had a child by his sister

16 and we grew from there. Yeah.

17 Q: So you said there was some family connections by marriage

18 at the time?

19 A: Yes.

20 Q: So were you guys close?

21 A: Very close.

22 Q: Where were you living back -- I take that back. Were you

23 aware of the Georgetown Apartments?

24 Q: Yes, ma'am?

25 Q: And did you ever live there?

DIANGELO BUMCUM - DIRECT BY MS. SIGAL

1 A: Yes, I did.

2 Q: And when did you live there?

3 A: I lived there between 2010 and 2011.

4 Q: On June 8th, 2011, where were you living?

5 A: I was living on Avalon around the corner.

6 Q: Around the corner?

7 A: Yeah.

8 Q: Who were you living with?

9 A: With my grandmother.

10 Q: Okay. On June 8th, 2011, did you see Aakeem Smalls?

11 A: Yes, I did.

12 Q: Can you tell us -- the jury -- tell the jury a little bit
13 about kind of how that came to be?

14 A: I was coming from around the corner because mainly that
15 area I'm familiar with and I was just walking through and I
16 saw him sitting on the porch. And when I went up, I chatted
17 and we talked for, like, a little minute and we just talked
18 for a good while, for a couple of few minutes, and we was just
19 talking about the normal stuff, you know, the everyday things
20 like how are you doing, what you up to, you know, just the
21 normal, everyday thing. That's it.

22 Q: Did you know anybody else at the Georgetown Apartments
23 that day?

24 A: No. Only the guys that lived in the back.

25 Q: In the back?

DIANGELO BUMCUM - DIRECT BY MS. SIGAL

- 1 A: Yeah. Building E.
- 2 Q: Do you remember which building that was?
- 3 A: Building E.
- 4 Q: Building E?
- 5 A: Yes.
- 6 Q: So you knew some guys in building E?
- 7 A: Yeah.
- 8 Q: Okay. And back to your conversation with Aakeem, was the
- 9 conversation friendly?
- 10 A: Very friendly.
- 11 Q: Did it ever get angry or contentious?
- 12 A: No.
- 13 Q: At some point, did you leave where Aakeem was?
- 14 A: Yes.
- 15 Q: And just to back up, where were y'all? Which building
- 16 were y'all in?
- 17 A: We were in building C, upstairs.
- 18 Q: Okay. And so, at some point, you left Aakeem?
- 19 A: Yes.
- 20 Q: All right. And where did you go when you left Aakeem?
- 21 A: I went straight to the back of building E.
- 22 Q: Back to building E?
- 23 A: Yeah. All the way in the back.
- 24 Q: What were you going to do in building E?
- 25 A: I was going to meet up with some friends because when I

DIANGELO BUMCUM - DIRECT BY MS. SIGAL

1 was talking with him, I told him where I was going and he
2 said, yeah, tell them I'll be back there eventually. So we
3 were all going to meet up. The guys in building E and me and
4 him, we hung out together.

5 Q: So you thought you were going to see Aakeem a little bit
6 later?

7 A: Yes, I did.

8 Q: And did you eventually make it to building E?

9 A: Yes, I did.

10 Q: Did you find out that evening what happened to Aakeem?

11 A: I found out a few minutes after, sitting in the
12 apartments with the fellows, and I saw flashlights in the
13 blinds and, when I opened the blinds, it was Charleston's
14 finest all over the courtyard, flashlights. And I waited for
15 a few minutes and then I stepped out of the apartment and then
16 I saw someone who was walking through and I asked him what
17 happened and they told me that he got shot.

18 Q: What was your reaction to that?

19 A: I was hurt because I called my mother and I called my
20 kids' mother and I called my cousin and told them what
21 happened. And when I called my mother, she immediately told
22 me to come home. There was other words, but she told me to
23 get around the corner and come home.

24 Q: And did you listen to your mom?

25 A: Oh, yes, I did.

DIANGELO BUMCUM - DIRECT BY MS. SIGAL

1 Q: About how long between the time that you left Aakeem in
2 building C and the time you found out he had been killed?

3 A: It's been I would say roughly, like, 30 -- between 30 and
4 45 minutes.

5 Q: After Aakeem's murder, did the time come when you learned
6 that the police might be looking for you?

7 A: No, ma'am.

8 Q: Did you ever see your face on TV?

9 A: Two days afterwards.

10 Q: Okay. And what was your face on TV for?

11 A: My face was on TV for what happened at Georgetown
12 Apartments.

13 Q: Were you surprised to see your face on TV?

14 A: Yes.

15 Q: What happened when -- when you saw your face on the news?

16 A: I was shocked and I told my mother to call the police.

17 Q: You told her to call the police?

18 A: Yes, I did.

19 Q: Did you try to run?

20 A: No.

21 Q: Did you stay at the house until the police arrived?

22 A: Yes, ma'am.

23 Q: And did they arrest you?

24 A: Oh, yes, they did.

25 Q: And did they take you to the station and talk to you?

DIANGELO BUMCUM - DIRECT BY MS. SIGAL

1 A: Yes, they did.

2 Q: And did you give them a statement?

3 A: Yes, I did.

4 Q: And is the statement that you gave the police the same
5 statement you're giving us here today?

6 A: Yes, ma'am.

7 Q: Did you know Devin Johnson in 2011?

8 A: No, ma'am.

9 Q: Diangelo, did you have anything to do with the death of
10 Aakeem Smalls?

11 A: No. I did not have anything to do with it.

12 Q: What was your emotional reaction to the death of Aakeem
13 Smalls?

14 A: I cried and I dropped to my knees because I felt like I
15 lost a loved one. And when I called my cousin -- because he
16 told me was going down to the hospital and they was rushing
17 him and when I called, I heard crying in the background. So I
18 already knew that it was -- that something happened and it
19 crushed me and it had me in an awful -- still to this day, I'm
20 still kind of messed up about it, but I lost a real close
21 person.

22 Q: Diangelo, what kind of work were you involved in in 2011?

23 A: I was working at Jiffy Lube dealing with car services,
24 things -- you know, oil changes and things like that.

25 MS. SIGAL: I beg the Court's indulgence.

DIANGELO BUMCUM - DIRECT BY MS. SIGAL

1 THE COURT: Yes, ma'am.

2 BY MS. SIGAL:

3 Q: Diangelo, are you a saint?

4 A: No, I'm not. I make mistakes.

5 Q: You've made some mistakes?

6 A: Yes, ma'am.

7 Q: You've been in trouble with the law before?

8 A: Yes, I have.

9 Q: Have you ever been convicted of a crime?

10 A: Yes, I have.

11 Q: You've been to jail?

12 A: Yes, ma'am.

13 Q: Does any of that change anything that you've testified to

14 here today?

15 A: Yes.

16 Q: Yes?

17 A: I mean I'm basically right now -- this -- this trial has

18 done a lot for me over the years in all the things that I've

19 been through in my life. Yes, it made me --

20 Q: Right. But I want to make sure you understood the

21 question.

22 A: Yeah. I mean kind of ask me the question again. Yeah.

23 Q: Let me get you to answer the question.

24 A: Yeah.

25 Q: I'm saying you've been in trouble before?

DIANGELO BUMCUM - DIRECT BY MS. SIGAL

1 A: Yes, ma'am.

2 Q: Does the fact you've been in trouble -- does that change
3 the truth of what you're saying today?

4 A: No. It don't change the truth.

5 MS. SIGAL: Okay. Thank you.

6 THE WITNESS: Yeah, yeah. Thank you. Yes, ma'am.

7 MS. SIGAL: Okay. I have no further questions.

8 THE WITNESS: Yes, ma'am.

9 THE COURT: Cross-examine.

10 CROSS-EXAMINATION

11 BY MR. KOZELSKI:

12 Q: Good afternoon, Diangelo.

13 A: Hey. How you doing, sir?

14 Q: Good. Shortly after this incident, you did leave the
15 Charleston area?

16 A: (No verbal response.)

17 Q: Is that a yes?

18 A: What's that, sir?

19 Q: Is that a yes?

20 A: What's the question again?

21 Q: Shortly after this incident, you did end up leaving the
22 Charleston area?

23 A: I left Charleston a year after.

24 Q: Okay.

25 A: Yeah.

DIANGELO BUMCUM - CROSS BY MR. KOZELSKI

- 1 Q: A year after, you went up to Greenville --
- 2 A: Yeah.
- 3 Q: -- South Carolina?
- 4 A: Yeah.
- 5 Q: You did get in a little bit of trouble up in Greenville;
- 6 right?
- 7 A: Yeah.
- 8 Q: You are a convicted felon?
- 9 A: Yes, ma'am. I mean, yes, sir. Sorry.
- 10 Q: That's all right. After Greenville, you moved to
- 11 Tennessee?
- 12 A: Yes, sir.
- 13 Q: And you were there until just a few days ago; right?
- 14 Took a Greyhound here?
- 15 A: Yeah. Yeah.
- 16 Q: You knew about Aakeem's death when it happened, but you
- 17 didn't know you were a suspect until you saw your face on the
- 18 television?
- 19 A: That's correct.
- 20 Q: Right?
- 21 A: That's correct.
- 22 Q: And your mom called the police; right?
- 23 A: Yes, sir.
- 24 Q: I'm sorry. This woman right next to, she's taking down
- 25 everything she says.

DIANGELO BUMCUM - CROSS BY MR. KOZELSKI

1 A: Yeah.

2 Q: So I mean everything you say.

3 A: Yeah.

4 Q: I appreciate it. And the police came and picked you up;
5 right?

6 A: Correct.

7 Q: And they took you down to CPD headquarters?

8 A: Yes, sir.

9 Q: And they put you in an interrogation room?

10 A: Yes, sir.

11 Q: And that was with Detective Kosarko?

12 A: Yes, sir.

13 Q: And the first thing he did before even speaking to you
14 was basically read you your murder warrant?

15 A: Yes, sir.

16 Q: And so before even talking to the police, you were under
17 arrest for Aakeem's murder?

18 A: Right.

19 Q: And while you were in that interrogation room, Detective
20 Kosarko is asking you a bunch of questions?

21 A: Correct.

22 Q: And you're responding to his questions to the best of
23 your ability?

24 A: Yes, sir.

25 Q: And eventually, Detective Osborne comes in there; right?

DIANGELO BUMCUM - CROSS BY MR. KOZELSKI

- 1 A: Yes, sir.
- 2 Q: And you -- you were familiar with Detective Osborne?
- 3 A: Yes, sir.
- 4 Q: And one of the first things Detective Osborne tells you
- 5 is your story, impossible, not true; right?
- 6 A: Right.
- 7 Q: And you told him you had nothing to do with it?
- 8 A: Correct.
- 9 Q: And so they immediately ripped up your warrant and let
- 10 you go?
- 11 A: They didn't let me go.
- 12 Q: Okay. And you told the police that you saw Aakeem
- 13 through the breezeway that night; right?
- 14 A: Yes, sir.
- 15 Q: And you -- you told them you were coming from your
- 16 grandmother's house down the street?
- 17 A: Yes, sir.
- 18 Q: You weren't hanging out with James Tindall before you met
- 19 up with Aakeem?
- 20 A: Who is that?
- 21 Q: You don't know who James Tindall is?
- 22 A: I don't know names.
- 23 Q: Okay.
- 24 A: That name anyway.
- 25 Q: You were looking for marijuana that night?

DIANGELO BUMCUM - CROSS BY MR. KOZELSKI

- 1 A: No, I wasn't looking for weed that night.
- 2 Q: Okay. You knew Aakeem sold marijuana though; right?
- 3 A: No. I didn't know he sold any type of drugs.
- 4 Q: That didn't come up in conversation while y'all were
- 5 talking?
- 6 A: No.
- 7 Q: At some point, you do go into Sharmaine's apartment?
- 8 A: That was my first time going into her apartment.
- 9 Q: Okay. But you go in there to use the restroom; right?
- 10 A: Yeah. I went in there to use the restroom.
- 11 Q: And Sharmaine is in there with her children; right?
- 12 A: Yeah, she's in there.
- 13 Q: You might have asked Sharmaine for some money while you
- 14 were in the apartment?
- 15 A: No.
- 16 Q: Okay. You didn't do that?
- 17 A: No.
- 18 Q: You eventually come back out of the apartment; right?
- 19 A: Right after I finished using the restroom.
- 20 Q: And when you come out of the apartment, Aakeem is on the
- 21 phone with somebody?
- 22 A: He's on the phone.
- 23 Q: And you don't know who he's on the phone with?
- 24 A: Not at all.
- 25 Q: But he's arguing with someone?

DIANGELO BUMCUM - CROSS BY MR. KOZELSKI

1 A: He was on the phone talking, yeah.

2 Q: I mean it's getting heated --

3 A: Yeah.

4 Q: -- with whoever he's talking to --

5 A: Yeah.

6 Q: -- on the phone? And you don't know who it is; right?

7 A: No.

8 Q: And that's when you decide to leave and go to Eskimo's?

9 A: Yeah. I told him that I was going back there and he said

10 eventually he was going to be back there and meet me.

11 Q: Okay. And it's while you're at Eskimo when you -- at

12 Eskimo's is when you hear that Aakeem has been shot; right?

13 A: When I came outside after I saw the flashlights in the

14 blinds. That's when I came outside.

15 Q: Okay.

16 A: Yeah.

17 Q: And the whole -- basically, the whole apartment complex

18 is shut down?

19 A: Every apartment complex.

20 Q: There are police everywhere?

21 A: Yes.

22 Q: And you know why they're there; right?

23 A: Afterward, yeah, when they told me.

24 Q: Yeah. Someone came up to you and said Aakeem has been

25 shot; right?

DIANGELO BUMCUM - CROSS BY MR. KOZELSKI

1 A: Yeah.

2 Q: And you were just the last person to talk with Aakeem;
3 right?

4 A: Yeah.

5 Q: But you never go up to any of the police at the scene and
6 tell them that you had just spoke to Aakeem?

7 A: No.

8 Q: And I mean, obviously, you don't want to talk to the
9 police if you don't have to; right?

10 A: I mean, to be honest with you, no police officer stopped
11 me, and I just listened to what my mother told me because that
12 was the person who I called.

13 Q: Okay.

14 A: So I went home.

15 Q: Okay.

16 A: Yeah.

17 Q: But while you were there, you didn't go up to any police
18 and say, hey --

19 A: No.

20 Q: -- I just saw this dude?

21 A: Yeah. I didn't say anything.

22 Q: Okay.

23 MR. KOZELSKI: No further questions, Your Honor.

24 THE COURT: Redirect?

25 REDIRECT EXAMINATION

DIANGELO BUMCUM - REDIRECT BY MS. SIGAL

1 BY MS. SIGAL:

2 Q: Diangelo, did you ever know Aakeem to let Sharmaine use
3 his phone?

4 A: No.

5 Q: You spoke with Detective Osborne when you were
6 interviewed; right?

7 A: Yes, ma'am.

8 Q: And you told him your whereabouts that night?

9 A: Yes, ma'am.

10 Q: And did you give specifics about your whereabouts?

11 A: Yes, ma'am.

12 Q: You're positive where you went?

13 A: Uh-huh.

14 THE COURT: Is that it yes?

15 THE WITNESS: Yes.

16 A: Yes, ma'am.

17 THE WITNESS: I'm sorry, Your Honor.

18 Q: After you gave that information to Detective Osborne, did
19 he leave the interview room?

20 A: Yes, he did.

21 Q: And how soon after you gave that information to Detective
22 Osborne were you released?

23 A: I wasn't released after I gave my statement of what
24 happened. They were getting ready to transport me to the
25 county jail when this happened.

DIANGELO BUMCUM - REDIRECT BY MS. SIGAL

1 Q: Were you released shortly thereafter?

2 A: No, ma'am.

3 Q: How long until you were released?

4 A: It was a few months that I got released after I got
5 everything cleared on what -- on everything with ballistics I
6 guess with, you know, me being involved or whatever. So they
7 had me in regular population.

8 Q: Okay. Well, I -- we don't need all that information.

9 A: Okay. Okay. Yes, ma'am.

10 Q: You were released after you gave information to Detective
11 Osborne?

12 A: No. No, ma'am.

13 MS. SIGAL: No further questions, Your Honor.

14 THE COURT: Recross?

15 MR. KOZELSKI: No, Your Honor.

16 THE COURT: You may come down, sir.

17 You may call your next witness.

18 MS. SIGAL: Just a second, Your Honor. The State calls
19 Craig Kosarko.

20 (WHEREUPON, there was a pause in the proceedings until
21 the witness entered the courtroom, after which the
22 proceedings resumed as follows.)

23 THE CLERK: Do you swear or affirm that the testimony you
24 shall give the Court and jury in the trial of this case shall
25 be the truth, the whole truth, and nothing but the truth, so

CRAIG KOSARKO - DIRECT BY MS. SIGAL

1 help you God?

2 THE WITNESS: I do.

3 THE CLERK: You may be seated and, for the record, please
4 state your full name, spelling your last.

5 THE WITNESS: First name is Craig. Last name is Kosarko,
6 K-o-s-a-r-k-o.

7 CRAIG KOSARKO, being first duly
8 sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. SIGAL:

11 Q: Good afternoon.

12 A: Good afternoon.

13 Q: Where are you employed?

14 A: Charleston Police Department.

15 Q: In what capacity?

16 A: I'm currently a patrol supervisor on Team 4, West Ashley
17 area.

18 Q: And before you were on patrol, in which part of
19 Charleston Police Department did you work?

20 A: I was in central investigations.

21 Q: And what was your rank?

22 A: I was a sergeant from 2014 to '16, but in 2009 to 2013, I
23 was a master police officer at the time as a detective.

24 Q: And how long were you in the violent crime unit total?

25 A: Well, it was roughly about five or six years, give or

CRAIG KOSARKO - DIRECT BY MS. SIGAL

1 take.

2 Q: Back in June 2011, what capacity were you working in?

3 A: I was a detective in the violent crime unit.

4 Q: How long have you lived in the Charleston area?

5 A: I've been here since 1998.

6 Q: You're pretty familiar with the jurisdiction?

7 A: I am.

8 Q: Did you respond to a murder scene on June 8th, 2011?

9 A: I did.

10 Q: And where was that scene?

11 A: That was at the Georgetown Apartments. That's located at
12 [REDACTED] Orange Grove Road in West Ashley.

13 Q: After responding to the scene, did you take any other
14 actions on June 8th?

15 A: So yeah. We essentially went to MUSC as well and then
16 from there I assisted Detective Osborne with some follow-ups.

17 Q: Did your work continue to the 10th of June?

18 A: It did.

19 Q: What did you do on the 10th?

20 A: On the 10th of June, I assisted with the interview of the
21 defendant, as well as Diangelo Bumcum.

22 Q: Did you also interview James Tindall?

23 A: Yes. That was later on, yes.

24 Q: Did your work continue in this case on to June 14th, 2011?

25 A: It did.

CRAIG KOSARKO - DIRECT BY MS. SIGAL

1 Q: And what did you do on June 14th?

2 A: June 14th, I responded up to Summerville to the Kangaroo
3 gas station in reference to trying to pull some video from
4 there.

5 Q: Why did you do that?

6 A: We received information that would help further the case
7 that the defendant was up there after the murder.

8 Q: So did you request copies of the video on the 14th?

9 A: I did.

10 Q: And what was the date and time frame for which you
11 requested that surveillance?

12 A: From June 8th at 11 p.m. to June 9th at 1 a.m.

13 Q: And again, where was this gas station located?

14 A: This is at -- it would be 14 -- correction -- 1210
15 Central Avenue in Summerville.

16 Q: Summerville?

17 A: Correct.

18 Q: And did you ever end up picking up the copy of the video
19 from the store?

20 A: I did.

21 MS. SIGAL: Permission to approach the witness, Your
22 Honor?

23 THE COURT: Yes.

24 BY MS. SIGAL:

25 Q: I've handed you what's been marked for identification as

CRAIG KOSARKO - DIRECT BY MS. SIGAL

1 State's Exhibit 76.

2 A: Okay.

3 Q: Can you please tell us if you identify that item?

4 A: Yes. This would be the compact disc containing the video
5 -- security video from the Kangaroo.

6 Q: And did I request that you view that video?

7 A: Yes.

8 Q: And did you make any markings on it to show that that's
9 the video that you actually viewed?

10 A: I did. It's my initials.

11 Q: Thank you.

12 MS. SIGAL: At this time, Your Honor, we move to admit
13 State's 76 into evidence.

14 THE COURT: Any objection?

15 MR. KOZELSKI: No objection.

16 THE COURT: It's admitted without objection.

17 (WHEREUPON, State's Exhibit Number 76, gas station
18 surveillance video on disk, was admitted into evidence.)

19 BY MS. SIGAL:

20 Q: When you reviewed that video, did it show anyone who is
21 in the courtroom today?

22 A: Yes.

23 Q: And who did it show?

24 A: The defendant.

25 Q: And around what time did it show Devin Johnson in that

CRAIG KOSARKO - DIRECT BY MS. SIGAL

1 video?

2 A: I believe he arrived sometime around the 12:24 to 12:25
3 timeframe a.m. on the 9th of June.

4 Q: Okay. So this would be just a couple of hours after the
5 murder?

6 A: Correct.

7 Q: A little more than a couple hours?

8 A: Roughly.

9 Q: And so what was the demeanor of the defendant on the
10 video when you reviewed it?

11 A: He was calm, joyous. He was joking, laughing around.

12 Q: Could you see him interacting with other people in the
13 video?

14 A: Yes.

15 Q: Do you remember what he was wearing in the video?

16 A: He was wearing a white tank top and dark pants.

17 Q: And was there a timestamp in the video?

18 A: There is.

19 Q: And did the video reflect just one camera?

20 A: No. There are multiple camera views.

21 Q: Okay. Did the person in the video that you viewed -- did
22 he seem upset?

23 A: No.

24 Q: Did he seem shocked?

25 A: No.

CRAIG KOSARKO - DIRECT BY MS. SIGAL

1 Q: Did he seem like somebody who just saw his business
2 associate get shot?

3 A: No.

4 Q: Sgt. Kosarko, did you have any other involvement in this
5 case?

6 A: I did. I also drafted some search warrants for cell
7 phones in this case.

8 Q: Okay. And what was the phone -- I'm sorry. What was the
9 search warrant for?

10 A: It was for the cell phone belonging to the defendant.

11 Q: And what phone number was that?

12 A: That would be 843-217-3243.

13 Q: Thank you. I'd like to switch gears a moment back to the
14 gas station video that we just talked about.

15 A: Sure.

16 MS. SIGAL: And, Your Honor, permission to publish
17 State's 76?

18 THE COURT: You may do so.

19 MS. SIGAL: At -- the time at 12:28:35.

20 (WHEREUPON, State's Exhibit Number 76, surveillance
21 video, was played on the screen.)

22 MS. SIGAL: For the record, we are publishing it now at
23 about 12:28:22.

24 THE COURT: Okay.

25 BY MS. SIGAL:

CRAIG KOSARKO - DIRECT BY MS. SIGAL

1 Q: And, Sgt. Kosarko, if you could just point out to us when
2 the defendant comes into view? And while we're looking at
3 this, what view is this showing from the gas station?

4 A: This is the cashier. So it's a camera that comes down
5 above the cashier just to show what's going on.

6 Q: And just to clarify, I know that there is two -- on the
7 far end of the time is two zeros and then a 28 and then the
8 seconds?

9 A: Correct.

10 Q: Would that indicate that it's, like, midnight?

11 A: Correct. It's 12 a.m., 12:30 a.m.

12 Q: And who do we see in the picture now?

13 A: That would be the defendant.

14 Q: And again, does he appear to be upset?

15 A: No, no. If you could hear the audio, he would be joking
16 around with the cashier right now, laughing.

17 Q: Does he appear to be smiling?

18 A: He does, yes.

19 (WHEREUPON, there was a pause in the questioning while
20 the video was played through and then stopped.)

21 BY MS. SIGAL:

22 Q: Okay. Now, just to kind of go back to where we were, we
23 were talking about you got a search warrant for the
24 defendant's cell phone?

25 A: Yes.

CRAIG KOSARKO - DIRECT BY MS. SIGAL

1 Q: And can you please state again what that phone number
2 was?

3 A: So that would be 843-217-3243.

4 Q: And how did you learn that that was the defendant's phone
5 number?

6 A: We had several sources. One was from his mother. She
7 provided his number as the one that she knew to have or to
8 call him with. We also had his girlfriend, Tenika Elmore.
9 She provided his number. She was also the registered owner of
10 that -- of that cell phone but told us that he was the one
11 that used the phone and gave us the phone number.

12 And then when the defendant was arrested, a phone was
13 recovered off of his person by the task force, and that number
14 matched -- the phone on -- the number for that phone matched
15 the phone number that had been given to us by his family
16 members.

17 Q: And what kind of records were you requesting from
18 Verizon?

19 A: So multiple records. It's going to be the call detail
20 records, all your call logs, text messages, your -- any kind
21 of photos or any digital data that comes off the phone we were
22 requesting. Cell tower -- cell tower information.

23 Q: And what was the time period for the records?

24 A: I asked for June 4th, 2011, to June 9th, 2011.

25 Q: And what was the purpose of that time frame?

CRAIG KOSARKO - DIRECT BY MS. SIGAL

1 A: That was to -- that included the time of the murder. So
2 we were able to cover from the 4th to the 9th and that gave us
3 a pattern of behavior of the defendant, as well as during the
4 time of the murder.

5 Q: Did Verizon respond to your search warrant?

6 A: They did.

7 Q: On what date did you receive the records back from
8 Verizon?

9 A: I believe it was the 17th of June.

10 Q: Could it have been a later date?

11 A: Correction. It's going to be a later date. It's going
12 to be July 6th.

13 Q: July 6th?

14 A: Yes. Sorry.

15 Q: Okay. So almost about a month after the shooting you got
16 --

17 A: Yes.

18 Q: -- those records back?

19 A: Yes.

20 Q: And were the records very voluminous?

21 A: Yes.

22 Q: Did Verizon also send a certification of authentication
23 in regard to those records?

24 A: They did.

25 MS. SIGAL: Permission to approach the witness, Your

CRAIG KOSARKO - DIRECT BY MS. SIGAL

1 Honor?

2 THE COURT: You may.

3 BY MS. SIGAL:

4 Q: Sgt. Kosarko, I'm showing you what's been marked for
5 identification as State's 69.

6 A: Okay.

7 Q: Can you please tell us what this exhibit is?

8 A: So essentially when we do receive these phone records,
9 they typically send one of these letters, and this is
10 essentially -- this is telling us that one of their employees
11 did verify that number and verifies the time and date stamp
12 that we asked for in the search warrant and that it should
13 cover all information we asked. So it essentially is an
14 official documentation from Verizon certifying that they gave
15 us what we asked for.

16 Q: And so this is basically saying that those records are
17 authentic?

18 A: Correct.

19 Q: And that they're kept in the regular course of business?

20 A: Correct.

21 MS. SIGAL: At this time, Your Honor, we would move to
22 admit State's 69 into evidence.

23 THE COURT: All right. Any other additional objection
24 other than that previously argued?

25 MR. KOZELSKI: No, Your Honor.

CRAIG KOSARKO - DIRECT BY MS. SIGAL

1 THE COURT: Very well. Subject to the objection that was
2 placed on the record earlier, 68 is admitted.

3 MS. SIGAL: Thank you, Your Honor. I believe it's 69.

4 THE COURT: 69. I'm sorry. It is.

5 (WHEREUPON, State's Exhibit Number 69, Verizon cell phone
6 records, was admitted into evidence.)

7 MS. SIGAL: Thank you.

8 BY MS. SIGAL:

9 Q: Sgt. Kosarko, prior to this trial, did you review --

10 THE COURT: Excuse me.

11 Q: -- the --

12 THE COURT: Hold on a second.

13 MR. KOZELSKI: May we approach for just a second?

14 THE COURT: Yeah.

15 (WHEREUPON, a bench conference was held in the presence
16 of the jury but out of the hearing of the jury off the
17 record, after which the proceedings resumed as follows.)

18 THE COURT: Ladies and gentlemen, from time to time,
19 obviously, we've taken up and I've mentioned to you -- thank
20 you for your patience. We hear matters of law out of your
21 presence and that's by design because that's for my
22 consideration and you -- not to -- it's not to involve you.

23 It's much easier to not think about something if you
24 don't hear it. So that's why we do it. It's just a practical
25 approach to it. And sometimes we have to excuse you to

CRAIG KOSARKO - DIRECT BY MS. SIGAL

1 accomplish that. Sometimes we do what we just did. We have a
2 bench conference where we're discussing it and sometimes we
3 can resolve it without excusing you.

4 And we're going to move forward, but in just a moment
5 there will be a matter and that's very proper. There's
6 nothing -- don't read anything into that. That's just the way
7 we should -- that's the way it's supposed to be done. So --
8 and that's what the purpose of that conference was. Excuse
9 us.

10 Solicitor, you may continue.

11 MS. SIGAL: Thank you, Your Honor.

12 BY MS. SIGAL:

13 Q: So prior to this trial, you reviewed the general contents
14 of those records from Verizon?

15 A: Yes.

16 Q: And you determined that those records did, in fact,
17 contain the cell phone records of 843-217-3243?

18 A: Correct.

19 Q: And did the Verizon records contain any information
20 regarding to text messages?

21 A: It did.

22 Q: Did you review that information?

23 A: Yes.

24 Q: From reading those records, are you able to identify the
25 number that's sending the text message?

CRAIG KOSARKO - DIRECT BY MS. SIGAL

1 A: Yes.

2 Q: And are you also able to identify which number is
3 receiving the text message?

4 A: Correct, yes.

5 Q: And are you able to review the substance of each message?

6 A: We are.

7 Q: Focusing on those records in regard to the murder June
8 8th, did you closely review those texts?

9 A: Yes.

10 Q: So in reviewing the data, you're essentially able to read
11 Devin Johnson's incoming and outgoing texts on the day of the
12 murder?

13 A: We are.

14 Q: Did any text or series of texts have a particular
15 interest to you as far as evidentiary value in your
16 investigation?

17 A: Yes. There were some, yes.

18 Q: And what were those?

19 A: There was a series of texts between Devin Johnson, the
20 defendant, and a friend of his, Terry Stevens.

21 Q: Do you remember what phone number Terry Stevens had?

22 A: Yes. His number is 843-801-8768.

23 Q: And were you able to identify that it belonged to Terry
24 through your investigation?

25 A: Yes.

CRAIG KOSARKO - DIRECT BY MS. SIGAL

1 Q: Was Terry identified in the defendant's call log?

2 A: He was.

3 Q: And did you actually speak to Terry Stevens as some point
4 in your investigation?

5 A: Detective Osborne did.

6 Q: And did you review specifically what those text messages
7 said between Terry and Devin on June 8th, 2011?

8 A: Yes.

9 Q: What was the general gist of those messages?

10 A: It seemed like Devin wanted Terry to get off of work to
11 help him with something.

12 MS. SIGAL: Permission to approach the witness, Your
13 Honor?

14 THE COURT: You may.

15 BY MS. SIGAL:

16 Q: Sgt. Kosarko, I'm showing you what's been marked only for
17 identification as State's 82. Do you know what's contained on
18 that disk?

19 A: It's good to be a PowerPoint that's going to contain the
20 text messages.

21 Q: Okay. And will this -- does this PowerPoint contain the
22 text messages between Terry and Devin?

23 A: It does.

24 Q: Or I guess contain just the texts that Devin sent to
25 Terry?

CRAIG KOSARKO - DIRECT BY MS. SIGAL

1 A: Correct.

2 Q: And will this PowerPoint help aid your testimony here
3 today?

4 A: Yes.

5 THE COURT: You need to introduce it first before you
6 publish it. Are you introducing -- planning to introduce it?

7 MS. SIGAL: Your Honor, this is just as a demonstrative
8 aid. This has just been marked for identification.

9 THE COURT: Any objection?

10 MR. KOZELSKI: Not to these.

11 THE COURT: Not to this?

12 MR. KOZELSKI: Yeah.

13 THE COURT: Okay.

14 MR. KOZELSKI: No objection.

15 THE COURT: Okay. That's fine.

16 BY MS. SIGAL:

17 Q: And can you please read into the record their text
18 exchange to include time on June 8th, 2011, starting at 11:42
19 a.m.?

20 A: Sure. This is a text from Devin. It's 11:42 a.m. It
21 says what's popping.

22 And this is another text from Devin to Terry at 12:08
23 p.m. It says I going to need that bread today, at least half.

24 And at 12:10 p.m., again from Devin, I'm on my ass, brah
25 brah.

CRAIG KOSARKO - DIRECT BY MS. SIGAL

1 And this is at 12:15 p.m. from Devin back to Terry as
2 well. When's that gonna be because I'm almost on empty. E is
3 for empty. And my girl has got to get to work for the rest of
4 the week, essentially.

5 Q: Okay. And then does Terry respond?

6 A: Yes.

7 Q: Okay. And what is Terry saying? You can paraphrase.

8 A: When I get off.

9 Q: From Devin to Terry?

10 A: So yes. This is at 12:27 p.m. Okay, just hit me up.
11 I'll be around.

12 And at 1:30 p.m., what time you going to get off? I'm
13 whipping. We can cool it.

14 And again at 1:41 p.m. from Devin, where you be? I'll be
15 around. I'm driving five.

16 Q: And then does Terry respond to Devin?

17 A: He does.

18 Q: And what does he say?

19 A: Terry responds --

20 MR. KOZELSKI: Objection, Your Honor.

21 THE COURT: Yes, sir?

22 MR. KOZELSKI: At this point, it's going to be a hearsay
23 objection.

24 THE COURT: All right. Well, we need to let you go to
25 your jury room, ladies and gentlemen, and do not -- again,

1 Let's -- we've got a note? They can't be deliberating
2 yet. Thank you. Okay.

3 (WHEREUPON, the jury note was marked as Court's Exhibit
4 Number 7.)

5 (WHEREUPON, there was a pause in the proceedings, after
6 which the proceedings resumed as follows.)

7 THE COURT: Can y'all approach while you're resolving
8 this? We have another dilemma.

9 (WHEREUPON, a bench conference was held off the record,
10 after which the proceedings resumed as follows.)

11 THE COURT: All right. We'll be at ease for about --
12 about ten minutes.

13 Do you want me to talk to him in here or just -- Ms.
14 Linder?

15 MS. LINDER: Yes.

16 THE COURT: Excuse me for interrupting. Do you want me
17 to talk to him -- talk to him outside the jury room or do you
18 want me to bring him in the courtroom?

19 MS. LINDER: I'm fine with you speaking with him outside
20 the jury room, Judge.

21 THE COURT: Y'all fine?

22 MR. KOZELSKI: Yes, sir.

23 (WHEREUPON, there was a break in the proceedings from
24 2:58 p.m. until 3:08 p.m., after which the proceedings
25 resumed as follows.)

1 THE COURT: All right. Y'all resolved it?

2 MS. SIGAL: Yes, Your Honor. I think we -- we do need to
3 mark this as an exhibit.

4 THE COURT: Which one? You're going to mark it as a --
5 as a -- for identification only; correct?

6 MR. KOZELSKI: I believe they're going to enter it into
7 evidence, but --

8 THE COURT: Then -- then he's just going to publish from
9 it. It's not going to be any paraphrasing.

10 MR. KOZELSKI: Well, they're only -- they're only
11 intending to publish my client's statements.

12 THE COURT: I understand. The concern that I have is,
13 frankly, as Ms. Smith has succinctly stated. She said am I to
14 put what's on the screen. My statement to her is no. It's
15 not evidence. It's merely for demonstrative purposes. The
16 testimony about what's on the screen is what she puts down in
17 the record.

18 MR. KOZELSKI: Okay.

19 THE COURT: And that I think is correct. I don't think
20 she has the responsibility. That's why I don't know for what
21 useful purpose -- sometimes diagrams are helpful if a witness
22 is explaining what they're saying, but in this case, it really
23 isn't helpful at all because he's not saying what's up there.
24 Some of it's there, but some of it's not.

25 So it's really testimony without -- that's what gave me

1 concern is testimony in addition to what he's saying and a
2 jury is reading it. So that's why we don't -- that's -- I'm
3 going back and I'm fundamentally probably wrong, but I used to
4 tell mock trial kids you can't say it until it's admitted. It
5 can't go to the jury unless everybody says it is. That's why
6 I stopped and said what we're doing.

7 I don't have any problem because one thing I learned
8 early on Dawes Cooke is a master at this. Dawes objects very
9 rarely. He doesn't worry about a lot of the stuff. Whether I
10 thought it was objectionable or not doesn't make any
11 difference and so that's why I did what I did. So I don't
12 have any problem with how y'all resolve it.

13 But we've got two problems going simultaneously though.
14 Let me -- let me resolve mine right now first because I found
15 Stone and there's another decision that quoted Stone. Oh,
16 I'll tell you what. Reading -- rereading this case and
17 reading this trial, that was -- well, the appeal was 2002; so
18 it would've been '98. So I've learned a little bit since '98,
19 I hope.

20 I talked with Mr. Backman. First of all, I -- I noted
21 that he was nodding, but I've noted that he had his eyes
22 closed. I also noted he's had his eyes closed some today. I
23 don't know that he was -- if he was sleeping. By my
24 conversation with him, I think he's pretty alert to this and I
25 will tell you that I said you've said you -- he said I just

1 didn't recognize her and I now with given the morning I may
2 have said Vanessa Morton. I don't know that I even said
3 Bumcum Morton.

4 But be that as it may, I asked him would it influence his
5 opinion. He said absolutely not. I just thought I had -- I
6 thought I should. Because I recognized her finally, I thought
7 it was important for me to tell that and I thought, well,
8 that's pretty responsible that he did that in the first place.

9 That having been said -- and this is exactly the same
10 situation, a little bit different exposure. This was a death
11 penalty case, and the witness appeared and a juror came
12 forward and said -- one of them said, after the witness left
13 the stand, I didn't recognize her when you published it. It
14 wouldn't make any difference. And the solicitor, Wade Kolb,
15 moved to excuse her, and I did. So -- and this was the
16 Court's statement.

17 When a juror conceals information inquired into during
18 voir dire, a new trial is required only when the Court finds
19 the juror intentionally concealed -- this was a new trial --
20 information and the information concealed would've supported a
21 challenge for cause or would've been a material factor in the
22 use of peremptory challenges. I've done one of those. Where
23 a juror without justification fails to disclose a
24 relationship, it may be inferred, nothing to the contrary
25 appearing that the juror is not impartial. On the other hand,

1 where a failure to disclose is innocent, no such inference may
2 be drawn, and it cites another case.

3 Although the precedent case does not involve a new trial,
4 it -- Woods, which is a case they were quoting, is
5 instructive. It is patent here that Juror Thompson's failure
6 to disclose her acquaintance with Perry, who was a witness,
7 was innocent. Moreover, we find her scant acquaintance would
8 neither have supported nor -- would neither have supported a
9 challenge for cause nor would it have been a material factor
10 in the State's exercise of peremptory challenge.

11 Now, this one, there was no nothing at all. Thompson
12 clearly indicated former acquaintance with a witness whose
13 name she did not even know would not have affected her in any
14 way. Accordingly, we hold the trial judge abused his
15 discretion in removing her.

16 I've had another one where it said you've got to say that
17 you would've exercised, and this is where I knew about the new
18 trial. Steven John, who is now one of my colleagues on the
19 bench, my first death penalty case, we got through half and we
20 started the penalty phase. And when I walked in, we had a
21 problem, and Steven said, Judge, we hate to tell you this, but
22 talking to our client, he was not aware, but his sister came
23 to watch the closing arguments and she recognized one of the
24 jurors that she went to school with, she meaning the sister.

25 And had we known that as a defense counsel -- this was

1 she knew him. Maybe that was -- it was bad. He said we would
2 have used our peremptory challenge, and she didn't disclose
3 that and you have to declare a new trial. That was
4 ridiculous, but it quotes probably the Woods case.

5 There's no question in this situation you're asking --
6 you're not asking him to be relieved because of sleeping.
7 You're asking him to be relieved because of the sleeping and,
8 furthermore, because, as I understand, Ms. Linder, this
9 information which has now been disclosed as Court's Exhibit
10 Number 7; is that correct?

11 MS. LINDER: Yes, Judge.

12 THE COURT: That being said, had you known this, you had
13 a peremptory challenge. You would have exercised that
14 peremptory challenge?

15 MS. LINDER: Yes, Judge.

16 THE COURT: Okay. While I would find that there would be
17 no basis for cause, the State would've had every reason to
18 exercise that and you had the witness. You have to evaluate
19 whether you want somebody to know them or not know them and,
20 for whatever reason, I would find that I don't think that
21 that's an intent to remove a juror. I find that that would be
22 an exercise. Now, you can speak to that if you want to
23 before.

24 MR. KOZELSKI: Well, Your Honor, I will just mention at
25 the bench conference when we initially did talk about this,

1 the solicitor said that she wouldn't have struck him for a
2 juror that -- or a witness that was on her list.

3 I don't believe that Ms. Bumcum played a very critical
4 role in this case. I asked her maybe four questions. I think
5 she's just there to -- to talk about her role in telling
6 Diangelo to call the police. So I don't think she's a
7 critical witness in this case at all.

8 Both sides picked this juror to be on this case. I don't
9 believe that he has been sleeping. I think he has been paying
10 attention. I think by the -- the note itself indicates that
11 he has been watching these witnesses, that he knows Ms. Bumcum
12 and this became apparent to him.

13 I will say that I did see him close his eyes from time to
14 time, but I do think he was listening. I think he was nodding
15 his head to certain statements that were made by witnesses.

16 So I do believe he's paying attention. I don't believe
17 that that should be a reason for the Court dismissing him and
18 I don't believe his unintentional and certainly innocent
19 knowledge of a very insignificant witness I believe should be
20 grounds for him to be dismissed from this jury.

21 THE COURT: Ms. Linder?

22 MS. LINDER: Judge, I would say that I agree with Mr.
23 Kozelski that I believe it was innocent for this juror not
24 pointing out that he did know one of the people called on the
25 witness list. Your Honor, I know that we had all three of her

1 names, her first, maiden and her middle now, and last.

2 You know, the State only used one strike when we were
3 initially going through things, and I think it gets very
4 difficult. Mr. Kozelski was commenting about being at the
5 bench conference. I didn't know why we were walking up there.
6 I think there's an initial what and then even before I made it
7 back to the table, I thought, well, let me think. Would I
8 have used it?

9 Well, I don't know if it would've affected things. I
10 don't know if would've affected him, whether or not he knew
11 it, and for me I think you never know how a jury is going to
12 be if they know somebody named on your witness list. And out
13 of an abundance of caution, whether they know my investigator,
14 whether they know a lay witness, whether they know whoever, I
15 don't usually seat them. And I believe that it would've been
16 the same situation in this and I would've used one of my given
17 strikes.

18 THE COURT: Okay.

19 MR. KOZELSKI: I think in the conversations with this
20 juror he said that this would not affect him in any way.

21 THE COURT: Well, I understand that. We -- we're now
22 getting into peremptory challenges and I -- for whatever
23 reason, the strategy can be a strategy and that -- I'm sorry.
24 It's just like -- it's just like -- and I'll look at Woods,
25 but clearly -- clearly, persons -- I mean, you know, to be

1 candid with you, we could've challenged a lot of the strikes
2 on both sides. Well, not both sides. There weren't that many
3 on the State's, but there were probably some challenges that
4 could have been made to some of yours as well. But that
5 doesn't change anything because you have your own personal
6 strategy that you use and every trial lawyer does, and what
7 they will do, what persons they want on a jury.

8 And in this case, I would ask you this. I'd almost
9 convert it. While it's not a Batson challenge, it probably
10 would say do you have any -- any other person that's on the
11 jury that the State allowed to sit that knew the witnesses? I
12 don't know of any, but I mean I just -- I'm asking you.

13 MR. KOZELSKI: Are you saying witnesses that I would have
14 struck at the time?

15 THE COURT: No, no. That the State did strike that knew
16 -- that knew one of the witnesses.

17 MR. KOZELSKI: Not that I know of.

18 THE COURT: I'm not aware of any. So I don't think
19 there's any pretextual issue there. I think that's a
20 legitimate strategy she's articulated.

21 Quite frankly, given the testimony of the witness and her
22 -- some of her statements, I may have thought long and hard
23 about that too. I mean you just -- you just don't know which
24 way a -- what -- what a witness is going to -- what image it's
25 going to be and what somebody may have known or known this

1 person.

2 For instance, I don't know when. I didn't ask when he
3 knew her or how he knew her. It may have been a different
4 time in that lady's life. I don't know. I don't know
5 anything about any of this. I just find that to be a
6 legitimate reason that is not pretextual, not that I have to
7 make that finding, but I think she's entitled to it.

8 That, coupled with the fact that -- frankly, so that we
9 have it to protect at my discretion, I wrote down a note
10 watching him sleep that I was going to bring it to your
11 attention because I was concerned about it.

12 And I'll add this to it. While I think the man -- I
13 think -- I did this. He's the only one I wrote their age and
14 I went back and looked at how old he was. He was 64. And I
15 know how I was yesterday afternoon some too and I thought, you
16 know, giving him that, this is a -- they're watching a film
17 and he -- the one thing that gave me -- that I thought, well,
18 maybe that's some redemption, he tried to drink some water at
19 one point and he kept his eyes open and, frankly, he kept his
20 eyes open on your cross, but then he started dozing again at
21 some of that too. So I mean I watched him pretty much the
22 rest of the afternoon off and on.

23 But I think for the reason stated that she would've
24 exercised a peremptory challenge is -- is a -- is a major
25 motivating factor and I'm going to excuse him from the jury.

1 Now, that being said, the rule in a civil procedure you
2 pick the first alternate. The rule for criminal is you draw
3 them out of a hat. Which way you want to do it? I'll let
4 y'all decide. I've done it both ways in a criminal case.

5 MS. LINDER: Well, I mean I would say we do a criminal
6 draw out of a hat.

7 MR. KOZELSKI: I mean I'd like to pick the first
8 alternate. I'm not exactly sure which one it is.

9 THE COURT: You're not? I'll tell you which -- I'll tell
10 you which one it is, Mr. Kozelski. It's the gentleman sitting
11 on the -- on the -- he's -- he's been sitting in the first
12 chair.

13 MR. FAMILONI: Your Honor, can we talk for a moment?

14 THE LAW CLERK: The first alternate is the lady.

15 THE COURT: Excuse me. Excuse me. Excuse me. The first
16 alternate is the lady.

17 MR. KOZELSKI: Okay. Sure.

18 THE COURT: All right. So you'll take the first
19 alternate. You want the first alternate?

20 MS. LINDER: I just thought we should pull it out of a
21 hat. I mean it doesn't --

22 THE COURT: Do you want the first alternate? Which?

23 MS. LINDER: What do you want? What would you like?

24 THE COURT: Listen.

25 MS. LINDER: We'll let Mr. Kozelski --

1 THE COURT: I'm going to tell you this. If there's an
2 impasse here, I'm going to do what the rule -- what the law
3 says and I -- this is where we need to have rules. We need to
4 -- we need to do the -- if it works in civil, it ought to work
5 in a criminal. That's my feeling, but it's not a rule in
6 criminal court. So I can't. I'm not going to force that.
7 I'll draw them out of the hat.

8 MS. LINDER: Whatever you want. I'll defer to Mr.
9 Kozelski. Whichever one. I don't know who to pick.

10 MR. KOZELSKI: We'll take the first alternate.

11 THE COURT: The first alternate? That will be Ms.
12 Bullard. Okay? So I'm going to -- I'm going to excuse
13 without -- I'm not going to bring this gentleman in in front
14 of everybody. I'm going to just ask him to step out and just
15 tell him out of an abundance of caution he's being excused.
16 Okay? Thank you.

17 (WHEREUPON, the juror was excused off the record.)

18 (WHEREUPON, there was a break in the proceedings from
19 3:24 p.m. until 3:39 p.m., after which the proceedings
20 resumed as follows.)

21 THE COURT: All right. Have we resolved -- how -- what
22 did we -- what are we -- how are we going to go forward with
23 this so that I'm --

24 MS. SIGAL: Your Honor, we are going to -- first, we're
25 going to admit the PowerPoint.

CRAIG KOSARKO - DIRECT BY MS. SIGAL

1 THE BAILIFF: All jurors are present and seated, Your
2 Honor.

3 THE COURT: Thank you very much.

4 And thank you. Ms. Bullard, you now will be in the first
5 twelve and may sit in any seat you wish other than the first
6 chair. Mr. Backman has been excused and that has been
7 something that, again, that's not for your concern. It was
8 nothing -- anything unusual or wrong. It just happens
9 sometimes and you're not to consider that at all. So thank
10 you very much.

11 We're ready to continue. You may resume your
12 examination.

13 MS. SIGAL: Thank you, Your Honor. Permission to
14 approach the witness?

15 THE COURT: Yes, Ms. Sigal.

16 BY MS. SIGAL:

17 Q: Sgt. Kosarko, I'm showing you what's been marked for ID
18 only as State's Exhibit Number 30 -- I'm sorry -- 84.

19 A: Okay.

20 Q: Can you please tell us what that document is?

21 A: Sure. These are the official printout --

22 THE COURT REPORTER: Wait. We already have an 84.

23 MS. SIGAL: I apologize.

24 THE COURT: Thank you.

25 MS. SIGAL: Thank you.

CRAIG KOSARKO - DIRECT BY MS. SIGAL

1 THE COURT: So the next number is 85?

2 THE COURT REPORTER: 85.

3 THE COURT: All right. We'll mark it as 85 for ID only
4 at this point.

5 MS. SIGAL: Yes, Your Honor.

6 THE COURT: Okay.

7 Let me explain that too, ladies and gentlemen, so you'll
8 understand when you hear me say ID only or that -- or the
9 attorneys say that.

10 ID only is exhibits -- when you hear it, it's a process.
11 You hear I move the introduction. You hear me say is that
12 without objection. It's admitted as exhibit so-and-so.

13 Once an exhibit is admitted, it will accompany you to
14 your jury room. You'll have an opportunity to review that
15 exhibit and study that exhibit.

16 If it's for ID only, the testimony regarding that exhibit
17 certainly you would be able to consider that, but that exhibit
18 itself will not accompany you to the jury room. It remains
19 with the other court documents. It's just not something that
20 you will take back to your jury room with you.

21 So that's the distinction between ID and an admitted
22 exhibit for your purposes. Okay?

23 You may proceed.

24 MS. SIGAL: Thank you, Your Honor. Permission to
25 approach the witness again?

CRAIG KOSARKO - DIRECT BY MS. SIGAL

1 THE COURT: Yes, you may.

2 BY MS. SIGAL:

3 Q: I'm showing you what has been marked for ID only as
4 State's Exhibit 85. Can you please take a look at that and
5 tell us what that exhibit is?

6 A: This is a printout from the official Verizon records
7 regarding the text messages.

8 Q: And so these are part of the records that you received
9 from Verizon on July 6th?

10 A: Correct.

11 Q: In regard to the defendant's phone number?

12 A: Yes.

13 Q: And are these just the records from June 8th and June 9th
14 of 2011?

15 A: Yes. They appear to be so, yes.

16 Q: Okay. Thank you.

17 THE COURT: Okay.

18 MS. SIGAL: And permission to approach the witness again,
19 Your Honor?

20 THE COURT: Yes, you may.

21 BY MS. SIGAL:

22 Q: I'm showing you again what's been marked as State's
23 Exhibit 82, and you mentioned earlier what this was. Can you
24 tell us again so the record is clear?

25 A: Yes. So this is a PowerPoint presentation that contains

CRAIG KOSARKO - DIRECT BY MS. SIGAL

1 text messages from this printout essentially from the
2 defendant, as well as Terry Stevens.

3 Q: So these -- the PowerPoint contains text messages from
4 the defendant to Terry Stevens?

5 A: Correct.

6 Q: And does the PowerPoint contain the text messages as they
7 were in the records verbatim from the defendant to Terry
8 Stevens?

9 A: Yes, they do.

10 Q: And do they contain the times that were listed in the
11 actual records from Devin Johnson to Terry Stevens?

12 A: Yes.

13 Q: And will this PowerPoint help aid you in your testimony
14 to talk about the text messages?

15 A: Yes.

16 Q: Just from Devin Johnson to Terry Stevens?

17 A: Correct.

18 MS. SIGAL: At this time, we would move to admit the
19 PowerPoint into evidence, Your Honor.

20 THE COURT: Any objection?

21 MR. KOZELSKI: No, sir.

22 THE COURT: Without objection, State's 82 is admitted.

23 (WHEREUPON, State's Exhibit Number 82, Powerpoint
24 presentation of text messages, was admitted into
25 evidence.)

CRAIG KOSARKO - DIRECT BY MS. SIGAL

1 MS. SIGAL: Permission to publish?

2 THE COURT: You may publish it, yes, Ms. Sigal.

3 BY MS. SIGAL:

4 Q: Okay. We're going to start from the top.

5 A: Okay. So this is from Devin at 11:42 a.m. What's
6 popping?

7 At 12:08 from Devin. I need that bread today, at least
8 half.

9 At 12:10 p.m., on my ass, brah brah.

10 And this is at 12:15 p.m. from Devin. When that go
11 because I'm almost on E and my girl got to get to work the
12 rest of the week.

13 This is at 12:27 p.m. from Devin. Okay. Just hit me up.
14 I be around.

15 Q: Okay. At this point, what is Devin communicating?

16 A: He's essentially asking Terry to help him out with
17 something at this point.

18 Q: And during this exchange, does Devin ever indicate why he
19 wants Terry's help that night?

20 A: He didn't really explain why. He just wants him to get
21 off of work to help him.

22 Q: Okay.

23 A: And that's at 1:30 p.m. What time you get off? I'm
24 whipping. We can cool it.

25 At 1:41 p.m., way you at? I be around. I'm driving

CRAIG KOSARKO - DIRECT BY MS. SIGAL

1 five.

2 At 1:54 p.m., just hit me up, five.

3 And at 4:37 p.m., Devin texts, hey, I got -- I go wet
4 dude ass up tonight.

5 Q: Sgt. Kosarko, how long have you been in law enforcement
6 again?

7 A: It'll be 19 years in October.

8 Q: And have you interviewed many people?

9 A: Yes.

10 Q: In your career?

11 A: Yes.

12 Q: And with all that experience of interviewing people in
13 that -- in your -- in that capacity, what does the phrase mean
14 that he sent at 4:37 p.m.? What does that mean to you?

15 A: That means that I'm going to shoot somebody.

16 Q: Any other meanings you've come across other than to mean
17 to shoot someone?

18 A: No. It's -- essentially, it means that when you shoot
19 somebody, their clothes get wet from the blood. So that's
20 where that comes from.

21 Q: Let's pick up where you left off.

22 A: At 4:39 p.m., what time you get off?

23 At 4:44 p.m., yeah, I go take you back to the Chuck.

24 Q: And what is your idea of what the Chuck means?

25 A: It's -- it's slang for Chucktown, Charleston.

CRAIG KOSARKO - DIRECT BY MS. SIGAL

1 At 8:33 p.m., just bring your ass down here. Where you
2 good because I'll come down there for my five word.

3 And at 8:59 p.m., I need you. When you go be home?

4 Q: So is it safe to say at this point he's really trying to
5 recruit Terry to help him do something?

6 A: Correct.

7 Q: Finally, the last thing Devin Johnson texted to Terry
8 Stevens on June 8th?

9 A: Yes. It's at 9:34 p.m. I can't wait on you. I gotta
10 handle my biz.

11 Q: And you stated that was sent at 9:34 p.m.?

12 A: Correct.

13 Q: And again, what time is the murder of Aakeem Smalls?

14 A: It was at 10 -- 10:18 p.m.

15 MS. SIGAL: Permission to approach the witness, Your
16 Honor?

17 THE COURT: You may.

18 BY MS. SIGAL:

19 Q: I'm showing you what's been marked for identification as
20 State's 58. Can you tell me what that is?

21 A: Again, this is the official printout from the Verizon
22 records containing the defendant's phone number with the text
23 messages.

24 Q: And is this one of the records that was pulled directly
25 from the official records that you received from Verizon?

CRAIG KOSARKO - DIRECT BY MS. SIGAL

1 A: Yes.

2 MS. SIGAL: And at this time, we would have to admit
3 State's 58 into evidence, Your Honor.

4 THE COURT: Any objection?

5 MR. KOZELSKI: No objection.

6 THE COURT: Without objection, State's 58 is admitted.

7 (WHEREUPON, State's Exhibit Number 58, printout of text
8 messages, was admitted into evidence.)

9 MS. SIGAL: Permission to publish?

10 THE COURT: You may.

11 BY MS. SIGAL:

12 Q: Sgt. Kosarko, let me see if I can zoom out. I just want
13 to make sure we all understand how you were able to read this
14 and know that it actually went from Devin to Terry. So if you
15 can tell me how you know what the sending party's phone number
16 is, kind of how you figured that out from looking at this?

17 A: Sure. From the originating DN. So if you look in the
18 left column, you look down and you'll see the originating DN
19 and then you look to the right of that that and you'll see the
20 defendant's phone number, 843-217-3243.

21 Q: So that means that's the person sending the text?

22 A: That's correct.

23 Q: Okay. And --

24 A: That's the originating number.

25 Q: And can you tell us how you figure out the person who

CRAIG KOSARKO - DIRECT BY MS. SIGAL

1 receives that text?

2 A: So right across to the next column you see the
3 terminating DN, and that'll be the receiving phone with the
4 number 843-801-8768.

5 Q: And where do you locate the actual substance of the text?

6 A: If you go down where the highlight is, the yellow, the
7 little brackets, that's going to be what Verizon provides as
8 the text messages that they record.

9 Q: And again, just can you tell us what the message text is?

10 A: I go wet dude ass up tonight.

11 MS. SIGAL: Permission to approach the witness, Your
12 Honor?

13 THE COURT: Yes.

14 BY MS. SIGAL:

15 Q: Now, I'm showing you what's been marked for
16 identification as State's 59. What is this document?

17 A: Again, this is a printout from the Verizon records of
18 defendant's phone text messages.

19 Q: And was this pulled from the actual records?

20 A: It was.

21 Q: And is it a fair and accurate depiction of what was
22 received in the records --

23 A: It is.

24 Q: -- from Verizon?

25 A: Yes.

CRAIG KOSARKO - DIRECT BY MS. SIGAL

1 MS. SIGAL: At this time, we would move to admit State's
2 59 into evidence, Your Honor.

3 THE COURT: Any objection?

4 MR. KOZELSKI: No objection.

5 THE COURT: Without objection, 59 is admitted.

6 (WHEREUPON, State's Exhibit Number 59, printout of text
7 messages, was admitted into evidence.)

8 MS. SIGAL: Permission to publish?

9 THE COURT: You may.

10 MS. SIGAL: Thank you.

11 BY MS. SIGAL:

12 Q: Sgt. Kosarko, we won't go back through what we did.

13 A: Uh-huh.

14 Q: I apologize. If you can, just read what the highlighted
15 portion is here?

16 A: Sure. It says, I can't wait on you. I gotta handle my
17 biz.

18 Q: And again, how do you know who sent it and who received
19 it?

20 A: From the originating DN and the terminating DN.

21 Q: Okay. And who are those parties? Who did you determine
22 in your investigation to be those parties?

23 A: The originating is Devin Johnson and the terminating
24 would be Terry Stevens.

25 MS. SIGAL: Permission to approach the witness again,

CRAIG KOSARKO - DIRECT BY MS. SIGAL

1 Your Honor?

2 THE COURT: Yes.

3 BY MS. SIGAL:

4 Q: Now, I'm showing you what's been marked for
5 identification as State's Exhibit 64.

6 A: Okay.

7 Q: Can you please tell us what that item is?

8 A: Again, these are text messages from -- pulled from the
9 defendant's phone by Verizon in its printout.

10 Q: And are those a fair and accurate depiction of the
11 messages that were included in the Verizon text messages?

12 A: They are.

13 Q: And what date are those messages? What was the date?

14 A: This is from June the 9th, 2011.

15 Q: So these are from the day after the murder?

16 A: Correct.

17 MS. SIGAL: Your Honor, at this time, I would -- we would
18 move to admit State's -- I believe it's 64 into evidence.

19 THE COURT: Any objection?

20 MR. KOZELSKI: No, Your Honor.

21 THE COURT: Without objection, State's 64 is admitted.

22 (WHEREUPON, State's Exhibit Number 64, printout of text
23 messages, was admitted into evidence.)

24 MS. SIGAL: Permission to publish?

25 THE COURT: You may.

CRAIG KOSARKO - DIRECT BY MS. SIGAL

1 BY MS. SIGAL:

2 Q: So you stated this was -- these messages are from June
3 9th?

4 A: Correct.

5 Q: I'm publishing the first page of State's 64. And through
6 investigation were you able to determine the person who was
7 sending that text?

8 A: Yes. The originating DN is 843-343-7981. In that case,
9 this is going to be the defendant's mother.

10 Q: And who was the receiving phone number?

11 A: It would be the defendant, 843-217-3243.

12 Q: And what is the substance of that text from the
13 defendant's mother to the defendant?

14 A: You all right?

15 Q: Okay. I'm publishing page 2 of State's 64. Okay. And
16 can you determine who the person is sending this text and who
17 the receiving party is, please?

18 A: Sure. It's the defendant sending a text message to his
19 mother.

20 Q: Okay. And can you please state what the substance or the
21 message text is in this?

22 A: I want to be all right. Shay got it all twist up right
23 now, but I know you praying.

24 Q: Okay. And again, are we still on June -- on June 9th?

25 A: We are.

CRAIG KOSARKO - DIRECT BY MS. SIGAL

- 1 Q: Okay. And I should've asked you this before, but what
2 time was that text sent, the one you just read?
- 3 A: It's 1903 hours, which is 7:03 p.m.
- 4 Q: So are these messages in military time?
- 5 A: They are.
- 6 Q: Okay. And the next text right below it, can you tell us
7 what date and time that was sent?
- 8 A: Yes. It's going to be June 9th, 2011, at 1943 p.m. or
9 7:43 p.m.
- 10 Q: And who is the sending party?
- 11 A: That's going to be his mother again, the defendant's
12 mother again.
- 13 Q: Okay. And so she's responding? Is this a response to
14 the text?
- 15 A: Correct.
- 16 Q: And can you please state what the message text is?
- 17 A: How you mean you want to? All right. Deal with
18 yourself. Maintain your cool. Let them figure it out. You
19 had nothing to do with it.
- 20 Q: Okay. And then it looks like one minute later, who is
21 the sending party?
- 22 A: The defendant's mother again.
- 23 Q: So she's sending a --
- 24 A: Yeah.
- 25 Q: -- follow-up text?

CRAIG KOSARKO - DIRECT BY MS. SIGAL

- 1 A: Correct.
- 2 Q: And who was the receiving party?
- 3 A: The defendant.
- 4 Q: And what is the message text here?
- 5 A: Clear all your texts.
- 6 Q: And again, this is on June 9th?
- 7 A: Correct.
- 8 Q: At what time?
- 9 A: 1944 or 7:44 p.m.
- 10 Q: And finally, I'm publishing page 3 of State's 64, and if
- 11 you can tell us the date and time on this text?
- 12 A: Sure. June 9th, 2011, at 2238 hours or 10:38 p.m.
- 13 Q: And who is the sending party?
- 14 A: This would be the defendant.
- 15 Q: And can you tell us who the receiving party is?
- 16 A: His mother again.
- 17 Q: And what is the message text?
- 18 A: Talk to her, ma, and don't forget to erase your texts.
- 19 Q: Thank you. Are text messages the only phone records you
- 20 received from Verizon?
- 21 A: No. We also received phone call records and logs, as
- 22 well as the other digital data.
- 23 Q: You mentioned phone logs?
- 24 A: Uh-huh.
- 25 Q: What does that mean?

CRAIG KOSARKO - DIRECT BY MS. SIGAL

1 A: Essentially, we receive, when phone calls are made and
2 received, who the originating caller is or who they called or
3 who called the cell phone that we have our search warrant for.

4 Q: Did the phone records ever show any communication between
5 the defendant and the victim, Aakeem Smalls?

6 A: It did.

7 Q: And when was that communication?

8 A: That was June 4th, 2011.

9 MS. SIGAL: Permission to approach the witness, Your
10 Honor?

11 THE COURT: Yes.

12 BY MS. SIGAL:

13 Q: I'm now showing you what's been marked for identification
14 as State's Exhibit 57.

15 A: Okay.

16 Q: Can you please identify what this document is?

17 A: Sure. So this is a printout of the call logs from
18 Verizon regarding the defendant's phone -- phone records.

19 Q: And are they all of the phone records?

20 A: No. This is just a small section of them.

21 Q: And what section are the logs?

22 A: So this looks like it's from June 8th to June -- from --
23 I'm trying to --

24 Q: I know the writing is very small.

25 A: They are, yes. It would be from 9:01 p.m. to 11:40 p.m.

CRAIG KOSARKO - DIRECT BY MS. SIGAL

1 Q: And are these -- this document in front of you, is it a
2 fair and accurate depiction of the phone records you received
3 on July 6th, just a very small portion of it?

4 A: Correct, yes.

5 Q: All right.

6 MS. SIGAL: Your Honor, at this time, we would move to
7 admit 57 into evidence.

8 THE COURT: Any objection?

9 MR. KOZELSKI: No, Your Honor.

10 THE COURT: Without objection, State's 57 is admitted.

11 (WHEREUPON, State's Exhibit Number 57, phone call
12 records, was admitted into evidence.)

13 BY MS. SIGAL:

14 Q: And are you familiar with how to read those records?

15 A: I am.

16 MS. SIGAL: Permission to publish?

17 THE COURT: You may.

18 BY MS. SIGAL:

19 Q: I'm just briefly going to start from the -- this writing
20 is very small, but hopefully you can see it. All right. From
21 the far-left column, we see the network element name. What
22 does that mean?

23 A: It's going to be the Charleston area, essentially the
24 Verizon network, where they are kind of, yeah.

25 Q: So is it just a general area of where the record -- where

CRAIG KOSARKO - DIRECT BY MS. SIGAL

1 the calls were made?

2 A: It is.

3 Q: Okay. And mobile directory number, what does that mean?

4 A: So that's the target number. In this case, 843-217-3243
5 is the defendant. So that's -- that's the target number that
6 we sent our search warrant for.

7 Q: So is that number going to be the same throughout that
8 entire column?

9 A: It is.

10 Q: And that's because these records were only for that
11 target number?

12 A: That's correct.

13 Q: Okay. And the next column appears to be dialed digit
14 number.

15 A: Uh-huh.

16 Q: Can you tell us what that means?

17 A: So that's the -- the number dialed out from this
18 particular target number, which would be the defendant's
19 phone. So whatever the person was dialing the number is what
20 you'll see up there.

21 Q: So this is the person who gets a call?

22 A: Correct.

23 Q: Okay. And the next column says call direction. What
24 does that mean?

25 A: I'm not really sure about the call direction. I think

CRAIG KOSARKO - DIRECT BY MS. SIGAL

1 that's more Verizon, their own -- for their own record-
2 keeping.

3 Q: Okay. And under -- it says seizure DTTM?

4 A: Sure. So that's the time that a phone call was made
5 essentially.

6 Q: Okay. And then we're getting towards -- I apologize.
7 Okay. And the seizure duration?

8 A: So that's in -- that's the time duration in seconds of
9 the phone call that was made.

10 Q: And these next two columns I know are more of a, you
11 know, technical question about the cell site?

12 A: Correct. Yeah. Verizon has their own cell number
13 particular -- each cell tower has its number identifying that
14 they can pick out. So that's just more of Verizon.

15 Q: Okay. And the last column you see here is calling party
16 number.

17 A: Uh-huh.

18 Q: What does that mean?

19 A: So that column will show you who's calling who
20 essentially. So in the first -- like I said, for the first
21 line, that would be the defendant's phone calling out and, if
22 you go down, any other numbers that show up would be the
23 actual person calling.

24 Q: So that column refers to placing the call?

25 A: Correct.

CRAIG KOSARKO - DIRECT BY MS. SIGAL

1 Q: And is that column the one calling the number under
2 dialed digit number?

3 A: That's correct.

4 Q: Okay. Thank you. And have you had a chance to review
5 this document and figure out who these phone numbers belong
6 to?

7 A: Yes.

8 Q: To sort of make it a little bit easier for us to
9 understand. So through the course of this prosecution, have
10 the phone numbers in this document been compared to people in
11 the defendant's contact list to determine who he called and
12 who called him?

13 A: Correct.

14 Q: And first, can you tell us how many calls were placed
15 from the defendant or to the defendant's phone between 9:01
16 p.m. and 10:02 p.m.? So sort within that hour timeframe?

17 A: So it's going to be about ten calls.

18 Q: So he made ten calls within about a little over an hour?

19 A: Correct.

20 Q: Between 9:01 p.m. and 10:02 p.m.?

21 A: Yes.

22 Q: How many calls were placed between 10:03 p.m. and 10:34
23 p.m.?

24 A: Zero.

25 Q: So he went from about ten calls within an hour to zero

CRAIG KOSARKO - DIRECT BY MS. SIGAL

- 1 calls within about 30 minutes?
- 2 A: Correct.
- 3 Q: And what time was the murder?
- 4 A: It was at 10:18.
- 5 Q: How many calls were placed between 10:35 p.m. and 11:40
- 6 p.m.?
- 7 A: Twelve calls.
- 8 Q: So he had ten calls between basically 9 and 10, zero
- 9 calls from 10 to 10:30, and then he had 12 calls from about
- 10 12:35 [sic] to 11:45?
- 11 A: Correct.
- 12 Q: Okay. I'd like you to take us a little bit through the
- 13 call log, if you can.
- 14 A: Okay.
- 15 Q: Can you tell us who the defendant called at 9:04 p.m.?
- 16 A: At 9:04 p.m., the defendant calls Terry Stevens.
- 17 Q: Okay. Who did the defendant call at 9:15 p.m.?
- 18 A: He called his mother.
- 19 Q: Who did the defendant call at 9:20 p.m.?
- 20 A: His mother again.
- 21 Q: Who did he call at 9:30 p.m.?
- 22 A: He called Shay.
- 23 Q: Okay. And do you know who Shay is?
- 24 A: Shay is his -- Sharmaine Johnson, his sister.
- 25 Q: And how do you know that?

CRAIG KOSARKO - DIRECT BY MS. SIGAL

1 A: Shay is in the defendant's contact list, and Sharmaine
2 provided us with her number as well during interviews.

3 Q: Is that the same number?

4 A: Correct.

5 Q: Okay. Who did he call at 9:32?

6 A: He called mom, mama, his mother.

7 Q: Okay. And obviously, a little time goes by and then who
8 -- well, what about at 10:02 p.m.?

9 A: His mother calls him.

10 Q: And then no calls are placed or received again until what
11 time?

12 A: About 10:35 p.m.

13 Q: And who -- who does he receive a call from at 10:35 p.m.?

14 A: His sister, Shay.

15 Q: And again, what time was the murder?

16 A: It's at 10:18 p.m.

17 Q: Who does the defendant call next?

18 A: The defendant calls Tenika.

19 Q: Okay. And then who does he call at 11:08 and 11:09?

20 A: He calls Terry Stevens.

21 Q: Who calls the defendant at 11:11?

22 A: Shay calls him, his sister.

23 Q: Who does he call at 11:15?

24 A: He calls his mother.

25 Q: I'd like to go back to -- and I know it's difficult to

CRAIG KOSARKO - DIRECT BY MS. SIGAL

1 see, but number seven and eight on this list, what do you
2 notice about the number that was called that's unusual?

3 A: So it's offset and it has a *67 in front of it.

4 Q: What does that mean to have a *67 in front of a number?

5 A: It means that the person making the phone call does not
6 want the receiving person to see who it is. It essentially is
7 blocking the call.

8 Q: And who was that receiving number who got -- who was
9 called at the time the *67 was placed?

10 A: Sharmaine Johnson, his sister.

11 Q: And again, through your investigation, did you learn
12 where she lived?

13 A: Yes.

14 Q: And where was that?

15 A: [REDACTED] apartment [REDACTED] in Georgetown Apartments.

16 Q: And again, what time were those calls with the *67 in
17 front of it?

18 A: That's -- they were at 9:30 p.m.

19 Q: And what was the time that Devin Johnson last texted
20 Terry Stevens on June 8th?

21 A: He would have texted him -- let me go back to my notes.
22 He texted him at 9:34 p.m.

23 Q: So he called his sister at 9:30 with the *67 and then he
24 texted Terry Stevens at 9:34?

25 A: That's correct.

CRAIG KOSARKO - DIRECT BY MS. SIGAL

1 Q: And what was the subject of that text to Terry again?

2 A: I can't wait on you. I gotta handle my biz.

3 Q: And what time was the murder?

4 A: 10:18 p.m.

5 MS. SIGAL: I beg the Court's indulgence.

6 THE COURT: Certainly.

7 BY MS. SIGAL:

8 Q: Okay. And again, who was the person that the defendant

9 hid his phone number from when he was calling at 9:30?

10 A: His sister, Sharmaine.

11 Q: And through your investigation, who did you learn

12 Sharmaine was with on the night of the murder --

13 A: She was with --

14 Q: -- around 9:30?

15 A: Around 9:30, she was with -- if I can remember correctly,

16 Diangelo Bumcum was over there, but I'm not sure.

17 Q: And who -- I'm sorry. I'll rephrase the question.

18 A: Okay.

19 Q: Who was Sharmaine with that night? Who is her boyfriend?

20 A: Oh. I just -- that went out of my head. Aakeem Smalls.

21 No. Yeah. Aakeem Smalls, the victim.

22 Q: The victim in this case?

23 A: Yes.

24 Q: Thank you.

25 Q: You're welcome.

CRAIG KOSARKO - CROSS BY MR. KOZELSKI

1 MS SIGAL: Sgt. Kosarko, I have no further questions for
2 you. Please answer any questions Mr. Kozelski may have.

3 THE COURT: Cross-examine.

4 MR. KOZELSKI: Briefly. You can keep that back up.

5 CROSS-EXAMINATION

6 BY MR. KOZELSKI:

7 Q: This phone call that you're talking about, you're talking
8 about a 12-second phone call conversation?

9 A: The -- which one?

10 Q: The ones that you were just testifying to, the ones to
11 have --

12 A: The *67 ones?

13 Q: Yeah.

14 A: Yes.

15 Q: Twelve seconds to 28 seconds; right?

16 A: Correct.

17 Q: Okay. You don't know if anybody actually picked up the
18 phone there; right?

19 A: I just know the duration of the phone call.

20 Q: Okay. So somebody could've been calling. You don't know
21 if anybody was talking though?

22 A: I don't know.

23 Q: There's no way those records tell you what they -- what
24 they -- if somebody was talking on the phone; right?

25 A: I think I can -- for 28 seconds, I don't think there's

CRAIG KOSARKO - CROSS BY MR. KOZELSKI

1 going to be no talking.

2 Q: Well, you could just ring; right? It could just ring for
3 28 seconds; right?

4 A: No. I don't know if Verizon will actually record it just
5 ringing. I mean once it picks up on the -- once the --

6 Q: Once it picks up on the network, it starts the call
7 duration; right?

8 A: It may, at that point.

9 Q: Okay. So you're saying you don't know?

10 A: I don't know.

11 Q: Okay. And you made a big deal about this earlier, that
12 you got these videos from the gas station and Devin is being
13 friendly and joking with the cashier; right?

14 A: Yes.

15 Q: You don't know if Devin knows the cashier, do you?

16 A: No.

17 Q: But Devin does appear to be friendly; right?

18 A: Correct.

19 Q: And you interviewed Devin; right?

20 A: Yes.

21 Q: And in your interview with Devin, he was friendly to you
22 as well; right?

23 A: Yes.

24 Q: He never got angry with you?

25 A: No.

CRAIG KOSARKO - CROSS BY MR. KOZELSKI

1 Q: He was polite?

2 A: Yes.

3 Q: He was well mannered?

4 A: (No verbal response.)

5 Q: And I want to talk to you about going back to Georgetown
6 Apartments. As a detective and/or as a police officer, this
7 is not the first time you've responded to Georgetown
8 Apartments; right?

9 A: Correct.

10 Q: It's -- it's considered at this time probably a high
11 crime area?

12 A: At that time, yes.

13 Q: And at the time of this incident, CPD -- one of the ways
14 they were made aware of the situation was there were a number
15 people that called 9-1-1; right?

16 A: Correct.

17 Q: But CPD also has a system called Shot Spotter?

18 A: Yes. They did back then.

19 Q: Back at the time. You might not use it anymore, but --

20 A: No.

21 Q: I want to talk to you just briefly about what Shot
22 Spotter is. Shot Spotter is -- it's a company that places
23 tiny high-tech microphones on certain geographic areas; right?

24 A: That's correct.

25 Q: And then they have somebody monitoring those microphones

CRAIG KOSARKO - CROSS BY MR. KOZELSKI

1 24/7; right?

2 A: Right.

3 Q: And the person -- their only job is to listen for
4 gunshots?

5 A: Correct.

6 Q: And you don't have -- you don't put Shot Spotter in a low
7 crime area; right?

8 A: That's correct.

9 Q: You put Shot Spotter in an area where there's going to be
10 a lot of gunfire?

11 A: Right.

12 Q: Or where you're expecting gunfire; right?

13 A: That's right.

14 Q: Now, I want to talk to you a little bit about search
15 warrants and kind of what you did in this case. One of the
16 power -- one of the most powerful tools that you have as a
17 detective or a sergeant to gather evidence is a search
18 warrant; right?

19 A: Yes.

20 Q: And basically, if you believe that evidence of a crime
21 exists within a person, place or thing, you can write up a
22 search warrant; right?

23 A: Correct.

24 Q: It could be for somebody's home?

25 A: That's right.

CRAIG KOSARKO - CROSS BY MR. KOZELSKI

- 1 Q: Somebody's business?
- 2 A: Correct.
- 3 Q: A computer?
- 4 A: Yes.
- 5 Q: You can get their DNA?
- 6 A: Yes.
- 7 Q: And cell phone?
- 8 A: Correct.
- 9 Q: And all you basically have to do is describe in the
- 10 search warrant what you're looking for?
- 11 A: Correct.
- 12 Q: And why you believe you will find evidence there?
- 13 A: That's right.
- 14 Q: And you present it to a judge; right?
- 15 A: Correct.
- 16 Q: And you swear that what you put in there is the truth;
- 17 right?
- 18 A: Uh-huh. Yes.
- 19 Q: And then a judge signs it?
- 20 A: Yes.
- 21 Q: And you go gather your evidence?
- 22 A: Essentially, that's a quick rundown of it, yes.
- 23 Q: Okay. You no longer need anybody's consent to get what
- 24 you're looking for; right?
- 25 A: Correct.

CRAIG KOSARKO - CROSS BY MR. KOZELSKI

1 Q: You have a court order that what's described in the
2 search warrant and what you believe the evidence you're going
3 to find in there and you can go get it and no one can stop
4 you; right?

5 A: Yes.

6 Q: And you wrote several search warrants in this case;
7 right?

8 A: I did.

9 Q: And most of which were for cell phones; right?

10 A: Yes.

11 Q: As far as the phone calls from Devin to Aakeem, there was
12 only one phone call from Devin to the phone that was found on
13 Aakeem Smalls; right?

14 A: That's correct.

15 Q: And that was four days before the incident?

16 A: Yes.

17 Q: But nothing after that?

18 A: Nothing.

19 Q: From either way? No phone calls between the two of them;
20 right?

21 A: Correct.

22 Q: No text messages between the two of them?

23 A: Correct.

24 Q: And from your investigation, you were particularly
25 interested in one phone number, 843-813-1747?

CRAIG KOSARKO - CROSS BY MR. KOZELSKI

1 A: 813- 47 -- say that again?

2 Q: 813-1 -- 843-813-1747?

3 A: Okay.

4 Q: That was the last phone number that Aakeem was talking
5 to?

6 A: Okay.

7 Q: And that was the phone call that he had just minutes
8 before the murder; right?

9 A: Okay.

10 Q: Well, let me put it this way. You know from
11 interrogating Diangelo --

12 A: Uh-huh.

13 Q: -- that Aakeem was arguing with somebody on the phone
14 right before his murder?

15 A: Yes.

16 Q: And this phone call lasted for several minutes?

17 A: Correct.

18 Q: I believe it lasted for maybe -- anywhere from 12 to 15
19 minutes?

20 A: I believe so, yes.

21 Q: And you called that number; right?

22 A: I may have. I don't recall.

23 Q: Obviously, as a detective in this case, if somebody is
24 arguing with a person who was murdered, you want to find out
25 who that person was; right?

CRAIG KOSARKO - CROSS BY MR. KOZELSKI

1 A: Sure.

2 Q: So you found out what the number was that Aakeem was
3 talking to; right?

4 A: I don't know. I can't remember off the top of my head
5 which number it is, no.

6 Q: Okay. But you did attempt to contact that number; right?

7 A: I may have.

8 Q: Okay. And that number was out of -- out of service?

9 A: I believe so.

10 Q: Okay.

11 A: I don't recall off the top of my head.

12 Q: You actually took out a search warrant for that number as
13 well?

14 A: More than likely.

15 Q: But you couldn't find out who it belonged to?

16 A: I don't believe so, no.

17 Q: So you don't know who Aakeem was arguing with minutes
18 before he was shot?

19 A: No.

20 Q: And you also took some time to talk about the term get
21 wet or wet up and you said that means to kill somebody; right?

22 A: Yes.

23 Q: And you just said you'd just hear this while you're on
24 the streets; right?

25 A: No. Not necessarily. I hear it during interviews as

CRAIG KOSARKO - CROSS BY MR. KOZELSKI

1 well.

2 Q: Okay. So you hear it from people that you gather in the
3 interrogation room?

4 A: Yes.

5 Q: Okay. But you don't have any cultural reference to
6 provide us with?

7 A: What do you mean by cultural reference?

8 Q: Any type of rap song or anything like that?

9 A: I don't know any type off my head. I just know what
10 people tell me.

11 Q: Okay. And you're familiar with the term rip and run?

12 A: Rip and run? I haven't heard that one.

13 Q: Robbing a drug dealer and running away?

14 A: I haven't heard that, no.

15 Q: What about a lick? You've heard that?

16 A: I know lick, yeah. That's a robbery.

17 Q: Okay. And as a detective, you know it's very possible
18 for drug dealers to be robbed; right?

19 A: Yes.

20 Q: I mean you've done a number of murder investigations over
21 the course of your career; right?

22 A: Yes.

23 Q: And it's a good likelihood that a lot of those people
24 were drug dealers; right?

25 A: Some were, yes.

CRAIG KOSARKO - CROSS BY MR. KOZELSKI

1 Q: And especially when you're dealing with a high crime
2 area; right?

3 A: Correct.

4 Q: And you don't see a lot of people who supply people with
5 drugs rob the people that they're supplying; right? Is that
6 fair to say?

7 A: I mean I think -- I think every case is different. You
8 know, I don't want to generalize everything, you know, every
9 case that I worked on as being just that way.

10 Q: Okay. But if I'm supplying somebody with drugs, it
11 doesn't make a whole lot of sense for me to just rob them what
12 I just supplied them; right?

13 A: Everybody has their own motives.

14 Q: I want to talk to you about questioning Diangelo. Around
15 the same time that Detective Osborne is questioning Devin,
16 you're in the next room questioning Diangelo; right?

17 A: Correct.

18 Q: Just like Devin, Diangelo has been served with an arrest
19 warrant?

20 A: Yes.

21 Q: And the first thing you do is you read him what's
22 contained in the murder warrant?

23 A: Okay.

24 Q: I mean are you familiar -- did you review the interview
25 before you testified today?

CRAIG KOSARKO - CROSS BY MR. KOZELSKI

1 A: Yeah. It's been a while, but yes.

2 Q: Okay. And basically, what's in the murder warrant is the
3 probable cause or evidence that you have a judge sign off on;
4 right?

5 A: Correct.

6 Q: And so that's -- you're saying this is the evidence we
7 have against you; right? The probable cause?

8 A: The probable cause, yes.

9 Q: And after you tell him that, you want him to tell his
10 side of the story?

11 A: Yes.

12 Q: And at some point, you or Detective Osborne tell him his
13 story is impossible, you don't believe him, there's problems
14 with it; right?

15 A: There's problems -- well, you know, there's all different
16 ways to interview somebody. You challenge them. You want to
17 make sure that they're telling you the truth.

18 Q: Okay. And at the end of the questioning, you actually
19 collect the shirt off his back?

20 A: Yes.

21 Q: And you collect it because he tells you that's the shirt
22 he was wearing on the day of the shooting?

23 A: Correct.

24 Q: And you put that shirt in an evidence bag; right?

25 A: I believe so, yes.

CRAIG KOSARKO - CROSS BY MR. KOZELSKI

1 Q: And then you send it to SLED to be tested?

2 A: It would've been sent, yes.

3 Q: Now, just so we're clear, there was a phone call from
4 Devin that was found on Aakeem's phone four days before;
5 right?

6 A: That's correct.

7 Q: Nothing after that?

8 A: Correct.

9 Q: And you've also subpoenaed the phone records associated
10 with Aakeem's cell phone?

11 A: I did.

12 Q: And no phone call documented in his own records showing
13 any phone calls between the two of them?

14 A: Correct. We wanted to confirm that, yes.

15 Q: Okay. And there are no calls on Devin's phone from 10:02
16 until 10:35?

17 A: Correct.

18 MR. KOZELSKI: I beg the Court's indulgence.

19 THE COURT: Certainly.

20 MR. KOZELSKI: No further questions, Your Honor.

21 THE COURT: Redirect?

22 MS. SIGAL: I beg the Court's indulgence, Your Honor.

23 THE COURT: Yes.

24 MS. SIGAL: Permission to approach the witness, Your
25 Honor?

CRAIG KOSARKO - REDIRECT BY MS. SIGAL

1 THE COURT: You may.

2 REDIRECT EXAMINATION

3 BY MS. SIGAL:

4 Q: Sgt. Kosarko, I'm showing you what's been marked for
5 identification as State's 86.

6 A: Okay.

7 Q: Do you recognize this document?

8 A: Sure. It would be a supplemental from the case.

9 Q: And does that document refresh your memory a little bit
10 about the information regarding the victim's phone records the
11 Charleston Police Department got?

12 A: Okay.

13 Q: If you could take a second and look?

14 A: Sure.

15 Q: And tell us if it does refresh your memory?

16 A: Okay.

17 Q: And if you could take a look at the part where the phone
18 calls were made on the victim's phone on June 8th?

19 A: I see.

20 Q: The night of the murder?

21 A: Yes, ma'am.

22 Q: And can you just clarify for us who the victim's phone --
23 who the victim was talking to on that night?

24 A: So do you want me to go through --

25 Q: You can start with the time of -- first, can you tell us

CRAIG KOSARKO - REDIRECT BY MS. SIGAL

1 who he was talking to on June 8th? Can you list the people he
2 spoke with?

3 A: So it looks like starting -- if we go backwards from
4 11:30 p.m. down, it's a Little -- a Little Kev and then old
5 lady and then BM and then old lady again.

6 Q: And did you determine who BM was in your investigation?

7 A: BM was a -- I spoke to a Raven Drayton. It looks like
8 she's Aakeem's child's mother at that point.

9 Q: Thank you.

10 A: Yes, ma'am.

11 Q: And around what time did he speak to that person?

12 A: So that was at 10:40 p.m., it looks like, and also at
13 10:07.

14 Q: And I apologize for not clarifying this earlier, but the
15 calls that were made from Little Kev to the victim, were those
16 calls answered or were those calls missed?

17 A: They were missed.

18 Q: And what time were those calls missed?

19 A: 11:26 p.m. and 11:30 p.m.

20 Q: Okay. And so that would've been on the night of the
21 murder?

22 A: Correct.

23 Q: And so he was presumably deceased at that point?

24 A: Correct.

25 Q: Okay. And can you go back to the person he spoke to

CRAIG KOSARKO - REDIRECT BY MS. SIGAL

1 before then?

2 A: It would've been Little -- Little Kev.

3 Q: Okay. And was that answered or was that --

4 A: Those were missed.

5 Q: Those were missed? Okay. Can you tell us the calls
6 where they were actually received?

7 A: It looks like the old lady outgoing at 10:46, old lady at
8 10:45, old lady at 10:42 p.m. and then BM at 10:40 p.m., again
9 at 10:40 and another at 10:40 and then outgoing at 10:40 and
10 then at 10:07 missed, 9:43 missed.

11 Q: Okay.

12 MS. SIGAL: I beg the Court's indulgence.

13 BY MS. SIGAL:

14 Q: Sgt. Kosarko, this information was pulled from the
15 victim's phone; correct?

16 A: Correct.

17 Q: And do we have any knowledge as to the accuracy of the
18 time on those records?

19 A: No, we don't.

20 Q: But is it fair to say that leading up to his death he was
21 only speaking with females, with girls?

22 A: It looks like it, yes.

23 Q: All right.

24 MS. SIGAL: Thank you, Sgt. Kosarko. I have no further
25 questions at this time.

CRAIG KOSARKO - RECROSS BY MR. KOZELSKI

1 THE COURT: Recross?

2 MR. KOZELSKI: Just briefly, Your Honor.

3 THE COURT: Sure.

4 RECROSS-EXAMINATION

5 BY MR. KOZELSKI:

6 Q: Through your investigation, Detective Kosarko, you became
7 interested in the number 843-813-1747?

8 A: Okay.

9 Q: Do you remember subpoenaing or getting a search warrant
10 for this number?

11 A: Let me look. 843 -- what was the number again?

12 Q: 813-1747.

13 A: Okay. 1747 for AT&T?

14 Q: Yes.

15 A: Okay. All right.

16 Q: It's the last number that Aakeem was talking to?

17 A: Correct.

18 Q: Okay. And it was -- the duration was what? Thirteen
19 minutes or 14 minutes?

20 A: I believe so.

21 Q: And that is the person that Diangelo told you he was
22 arguing with; right? In that same timeframe?

23 A: Well, yes. You're talking about the timeframe?

24 Q: Yes.

25 A: Yes.

CRAIG KOSARKO - RECROSS BY MR. KOZELSKI

1 Q: And that exact same timeframe that Diangelo said he left
2 because Aakeem was arguing on the phone with somebody?

3 A: Correct.

4 Q: And you could never figure out who that person was?

5 A: Right.

6 Q: You don't know if it was a male; right?

7 A: That's correct.

8 Q: You don't know if it was a female?

9 A: Correct.

10 Q: Diangelo didn't know who it was?

11 A: No.

12 Q: Okay. But it wasn't from Devin's phone?

13 A: That's correct.

14 MR. KOZELSKI: No further questions.

15 THE COURT: All right. You may come down. Thank you,
16 sir.

17 THE WITNESS: Thank you.

18 THE COURT: Call your next witness.

19 MS. SIGAL: The State calls Willis Walker.

20 (WHEREUPON, there was a pause in the proceedings until
21 the witness entered the courtroom, after which the
22 proceedings resumed as follows.)

23 THE CLERK: Place your left hand on the Bible and raise
24 your right. Do you swear or affirm that the testimony you
25 shall give the Court and jury in the trial of this case shall

WILLIS WALKER - DIRECT BY MS. SIGAL

1 be the truth, the whole truth, and nothing but the truth, so
2 help you God?

3 THE WITNESS: I do.

4 THE CLERK: You may be seated and, for the record, please
5 state your full name, spelling your last.

6 THE WITNESS: Willis Walker, W-a-l-k-e-r.

7 WILLIS WALKER, being first duly
8 sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. SIGAL:

11 Q: Good morning, Willis.

12 A: Good morning.

13 Q: Can you tell us where you work?

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

15 Q: How long have you worked for the Sheriff's Office?

16 A: Since 2010.

17 Q: And what is your current position?

18 A: I am assigned to a Homeland Security Fusion Center.

19 Basically, it's a bunch of officers and analysts from
20 departments throughout the Charleston area and we work jointly
21 on cases and investigations.

22 Q: Okay. And can you just elaborate a little bit on that?
23 What kind of cases do you work on?

24 A: Sure. We do -- we do pretty much everything. We --
25 we're kind of like detectives. We work -- we do stuff at the

WILLIS WALKER - DIRECT BY MS. SIGAL

1 bridge run coming up this weekend. We do all kinds of crimes.
2 I focus a lot on the cell phone stuff for crimes, but we work
3 for countless agencies and departments throughout the --
4 throughout the state for that matter, but especially in the
5 local area.

6 Q: And how long have you been in law enforcement total?

7 A: Since 1997.

8 Q: Okay. And if you can just briefly tell us the different
9 stages of law enforcement you worked in --

10 A: Sure.

11 Q: -- until you got to the part where you are now?

12 A: Let's see. I started with Athens, Georgia, when I was at
13 University of Georgia. I worked there with the police
14 department for three years roughly and graduated and came to
15 Charleston in 2000. I worked here until 2004, when I became a
16 Special Agent with the Drug Enforcement Administration, the
17 DEA. With them, I was assigned to the New York field division
18 working out of Manhattan, and we worked all the boroughs. I
19 was on a task force there with agents, NYPD detectives and
20 state troopers. And in 2010, I came back to Charleston and
21 took a position with the Charleston County Sheriff's Office.

22 Q: Do you have any training and experience in analyzing and
23 mapping cell phone records?

24 A: I do.

25 Q: Can you tell us a little bit about your training and

WILLIS WALKER - DIRECT BY MS. SIGAL

1 experience with that?

2 A: Sure. My experience with technology and cell phones and
3 Title III investigations like wiretaps and stuff like that
4 started at Quantico when I was in the Academy, and I learned
5 about, you know, how to read call records and logs and
6 communications and transcripts, and so it started there.

7 And then probably about maybe six years ago, I got some
8 mapping classes with the South Carolina Research Authority
9 here locally and it was Art Map IX. So it was learning how to
10 map crimes and communications on -- on these maps with that
11 database.

12 Since then, I have received training from the FBI, the
13 National Domestic Communications Assistant Center, which is in
14 Fredericksburg, Virginia, and it's run by the Department of
15 Justice and the FBI. And they train, you know, how to -- they
16 keep me up to date with all the new changes in technology with
17 phones, with apps, and stuff like that. How to write
18 warrants, who -- who to write the warrants to, what you can
19 obtain, how long records are kept, and that kind of thing.

20 Q: And do you conduct any training through cell phone
21 subjects?

22 A: I do. Every day.

23 Q: How often do you deal with cell phone records?

24 A: I look at call detail records with cell phone records
25 every day.

WILLIS WALKER - DIRECT BY MS. SIGAL

1 Q: How many records would you say you've analyzed in your
2 career?

3 A: Thousands.

4 Q: Is your work peer-reviewed?

5 A: It is.

6 Q: How is that?

7 A: So I -- once again, from the -- I'm in a technical
8 research group with the National Domestic Communications
9 Assistance Center. That's a mouthful. It's the NDCAC and
10 they keep me up to date on stuff, but when I perform casework,
11 I have a SLED analyst that works in my office with me. She's
12 trained as well and we peer-review. And then also there is a
13 local FBI agent who is in the Cast [ph] division with the FBI
14 and he -- we talk on a weekly, if not daily, basis.

15 Q: And do you -- do you assist agencies at the state and
16 federal level with your cell phone analysis and mapping?

17 A: I do. Being on the task force where I am, I work for
18 Highway Patrol, DEA, ATF, and all the local agencies. So
19 everyone.

20 Q: Have you ever testified in court before to cell phone
21 records?

22 A: I have.

23 Q: How many times?

24 A: I don't have an exact number, but at least 20.

25 Q: Were you ever qualified as an expert in those cases?

WILLIS WALKER - DIRECT BY MS. SIGAL

1 A: Yes, ma'am, in about half of those I would say.

2 Q: Maybe ten or so times?

3 A: Yes, ma'am.

4 MS. SIGAL: Your Honor, at this time, we'd like to
5 request to have Mr. Walker admitted as an expert on the
6 subject of cell phone record analysis and mapping.

7 THE COURT: Would you care to examine him in that area?

8 MR. KOZELSKI: No.

9 THE COURT: I'll allow him to render opinions in analysis
10 of records and mapping. Okay.

11 MS. SIGAL: Thank you, Your Honor.

12 BY MS. SIGAL:

13 Q: And can you briefly explain what it means to analyze and
14 map cell phone records in layman's terms for us?

15 A: Sure. So, in order to obtain the records, the detective
16 or whoever's working the case would need to get a search
17 warrant signed by a judge and submit that to the cell phone
18 carrier. The carrier, be it Verizon, Sprint, whoever, is
19 going to send back records that are requested. The most
20 common thing is the call detail records. So these are records
21 showing -- if you have them, we could pull up. Do you have
22 one?

23 Q: Would it help in your testimony if you were able to sort
24 of draw on the touchscreen?

25 A: Sure.

WILLIS WALKER - DIRECT BY MS. SIGAL

1 Q: To show kind of how the cell phone towers work?

2 A: Sure.

3 Q: Thank you. All right. There's a -- there's a
4 touchscreen in front of you.

5 A: Gotcha. So it's up.

6 Q: Okay. So now -- and what you'll be able to do is use
7 your finger --

8 A: Yeah.

9 Q: -- and you can kind of draw what you mean when you talk
10 about the cell phone towers and all the different components.

11 A: Sure. So we'll digress for a second.

12 The -- the carrier submits a thing that's going to give
13 you the -- so you have a number. You get a search warrant for
14 that number and submit it to the carrier. The carrier returns
15 what they call call detail records. They're going to have the
16 date and time of the call or cellular transaction. They're
17 going to have the number that placed the call, the number that
18 received the call, the duration of the call.

19 If the call -- let's see. They're going to have ingoing
20 -- incoming, outgoing, and usually -- not I'd say usually.
21 Most of the time, they're going to have cell tower or cell
22 site information. That is which cell tower that was used
23 during the call.

24 Q: Okay. So when you say cell site and cell tower, is that
25 the same thing?

WILLIS WALKER - DIRECT BY MS. SIGAL

1 A: It is.

2 Q: Okay. So how does the cell --

3 A: So they're not all towers. It could be, you know, on a
4 building or one of those sites. So it's interchangeable.

5 Q: So we'll use the word cell site to be more accurate?

6 A: Sure.

7 Q: Can you explain how a cell site works, how it --

8 A: Sure.

9 Q: -- receives a signal and how we know, you know, where it
10 is?

11 A: Sure. So all the carriers supply the information. They
12 do it a little differently, but basically, they're going to --
13 they're going to supply you with a cell site list for all the
14 towers in the area and then you're going to correspond that
15 with the call detail records for the actual phone itself.

16 From there, you're going to get a physical address, a lat
17 and long, and there's going to be a cell site or cell tower
18 number. Also, there's going to be a sector or side of the
19 tower. This is where -- towers -- they -- like I say, it
20 could be on a building. It could be a metal structure
21 typically is what it is. If you don't know what you're
22 looking at, you might not know, but there's quite a few in the
23 area.

24 Q: Okay. And can you --

25 A: Sure.

WILLIS WALKER - DIRECT BY MS. SIGAL

1 Q: -- sort of indicate what you mean when you talk about
2 sectors that --

3 A: Sure.

4 Q: -- for people like myself --

5 A: So --

6 Q: -- that need to see a visual?

7 A: So this is, say, from an overhead view. So we're looking
8 from the sky down at the tower. It's -- essentially, it's
9 like a clock. So the tower is going to cover all the area
10 around the tower, and they're going to provide you with a
11 sector or a side of the tower, if you will.

12 The typical configuration is going to be something like
13 this, and this being sector one, sector two, sector three.
14 You can have a tower with six sectors, but generally they're
15 going to be three. If it is six, they'll indicate that.
16 You'll get that. But they're going to give you what you call
17 an azimuth, which is basically the orientation.

18 So this is like a clock with north being up here at the
19 top. They're going to give you a degree. So this would be
20 zero. I think I messed it up.

21 This would be zero degrees, this would be 90 degrees,
22 180, and they're going to give you -- so if the -- if the
23 azimuth was 90 degrees, the center -- it's going to tell you
24 sector one, but it'll tell you what that sector is, what the
25 degree is.

WILLIS WALKER - DIRECT BY MS. SIGAL

1 Q: So in essence, we have a tower and then we have the sides
2 of the tower, which are the sectors?

3 A: Yes.

4 Q: Is that right?

5 A: That is correct.

6 Q: And when a phone call is made, are you able to look at
7 the phone records and determine which tower the signal
8 registered and which sector or side registered?

9 A: Usually, yes.

10 Q: And are you able to determine that from the records?

11 A: Yes.

12 Q: And once you get that information, are you able to plot
13 and map these records into sort of a reader-friendly version?

14 A: Yes.

15 Q: For people who, you know, aren't experts in the subject
16 to be able to read and understand?

17 A: Yes, ma'am.

18 Q: And are these used in order to help us figure out where a
19 cell phone was at a certain date and time and when it was
20 used?

21 A: Yes, ma'am.

22 Q: Okay. And is it guaranteed that when a call is made the
23 signal will hit the closest tower to it?

24 A: Typically, but it's the tower with the strongest signal.

25 Q: So it's not guaranteed that it will always hit the

WILLIS WALKER - DIRECT BY MS. SIGAL

1 closest tower?

2 A: No. Typically, but I mean there are -- there are things
3 that can, you know, block the -- it's a -- it's a radio
4 frequency.

5 Q: And are also certain types of land or water that would
6 make --

7 A: Sure.

8 Q: -- it travel quicker or slower?

9 A: Sure.

10 Q: The signal?

11 A: Yes. The signal is going to travel faster over the water
12 because there's nothing to block it. If you have buildings
13 and stuff like that, it's going to cause interference and it's
14 not going to be as clear a signal.

15 Q: And --

16 A: Cloudy days as well.

17 Q: Do cell phone records usually reflect -- and we're
18 talking about, you know, the tower data. Do they reflect if
19 someone starts calling in an area and finishes the call in
20 another area? Would that generally be reflected?

21 A: Yes. Usually. All the carriers are a little different,
22 but they're going to give you the first -- first when the call
23 was initiated where the phone was, the tower that it used, and
24 then the last one when the call ended or was terminated.

25 Q: You stated that you work for Charleston County Sheriff's

WILLIS WALKER - DIRECT BY MS. SIGAL

1 Office. Did Charleston County Sheriff's Office investigate
2 this case?

3 A: No, ma'am.

4 Q: It was investigated by Charleston Police Department;
5 right?

6 A: Yes, ma'am.

7 Q: How did you come to be involved in this particular case
8 we're here on today?

9 A: I was contacted by the Solicitor's Office.

10 Q: And have you done that -- have you been contacted for
11 reasons like this in the past?

12 A: Yes. All the time.

13 Q: And what was asked of you?

14 A: To look at a certain stretch of the records and map
15 those.

16 Q: And map them?

17 A: Yes, ma'am.

18 Q: And did our office provide those records to you?

19 A: Yes, ma'am.

20 Q: And what is the time period in which you analyzed -- I'm
21 sorry -- you were requested to analyze and map?

22 A: It was -- let's see. It was from 9:01 p.m. to 11:40 p.m.
23 on June 8th, 2011.

24 MS. SIGAL: Permission to approach the witness, Your
25 Honor?

WILLIS WALKER - DIRECT BY MS. SIGAL

1 THE COURT: You may.

2 BY MS. SIGAL:

3 Q: I'm showing you what's already been admitted as State's
4 Exhibit 57. Do you recognize this document?

5 A: Yes, ma'am.

6 Q: Are these the records that you were asked to analyze and
7 map?

8 A: Yes, ma'am.

9 Q: I'll take that back from you.

10 MS. LINDER: And permission to publish 57 again, Your
11 Honor?

12 THE COURT: You may.

13 BY MS. SIGAL:

14 Q: So are these the call records that you used in your
15 analysis?

16 A: Yes, ma'am. These -- these would be the -- they're
17 referred to as the CDR or the call detail records.

18 Q: Okay. And we've already been through some of these
19 columns already in this trial. I want to focus your attention
20 to these columns towards the end that are titled first serving
21 cell site, first serving cell face, last serving cell site,
22 last serving cell face. Can you tell us what those means?

23 A: Sure. The -- this column here is going to be the cell
24 site and this column here is going to be the sector or side of
25 the cell site.

WILLIS WALKER - DIRECT BY MS. SIGAL

1 Q: Okay. And those look like a lot of numbers in that
2 column. How are you able to make any sense of those?

3 A: With the cell site list that the carrier provides.

4 Q: So you take that number and then you compare it to the
5 cell site list from --

6 A: Yes, ma'am. They're going to -- they're going to provide
7 it in a spreadsheet format and that I can go to the
8 spreadsheet and sort it and look at the number and get it from
9 there.

10 Q: In this case, were any of the calls hitting a different
11 tower or sector when they started as opposed to when they
12 ended?

13 A: No, ma'am. They were all -- this here is telling you the
14 length of the call in seconds, but this one, the first and
15 last cell site for all of the calls were the same.

16 Q: Okay. Thank you.

17 MS. SIGAL: Permission to approach the witness, Your
18 Honor?

19 THE COURT: You may.

20 BY MS. SIGAL:

21 Q: Now, I'm showing you what's been identified as State's
22 Exhibit 70. I'm sorry. It's been marked for identification
23 as State's Exhibit 70. Can you please identify that document
24 for us?

25 A: Yes, ma'am. This is the mapping that I prepared.

WILLIS WALKER - DIRECT BY MS. SIGAL

1 Q: You prepared that? Is that a PowerPoint?

2 A: Yes, ma'am.

3 Q: And you prepared that? Did you prepare that from the
4 records that were provided to you from our office?

5 A: Yes, ma'am.

6 Q: And did you prepare that for the timeframe that you just
7 stated that you were asked to look at and map?

8 A: Yes. And so the towers and the locations -- they don't
9 change that much, but they do periodically. So, yeah, you
10 want to make sure that you have the towers for the timeframe
11 in question.

12 Q: And just to be clear, so did you map those records that
13 we just looked at from Verizon for the phone number 843-217-
14 3243?

15 A: Yes, ma'am.

16 MS. SIGAL: Your Honor, at this time, we move to admit
17 State's -- I'm going to have to look back at this number.
18 It's State's 70.

19 THE COURT: Any objection?

20 MR. KOZELSKI: No.

21 THE COURT: Without objection, State's 70 is admitted.

22 (WHEREUPON, State's Exhibit Number 70, cell phone
23 mapping, was admitted into evidence.)

24 MS. SIGAL: Thank you, Your Honor. Permission to
25 publish?

WILLIS WALKER - DIRECT BY MS. SIGAL

1 THE COURT: You may.

2 BY MS. SIGAL:

3 Q: Okay. We're looking at the first page of your PowerPoint
4 and, just briefly, can you tell us what this is indicating to
5 you?

6 A: Sure. Verizon is the carrier for the phone. This is the
7 phone number here that the records are for. This is the date
8 and timeframe that was mapped.

9 Q: Okay.

10 THE COURT: All right. Hold on a second. We're going to
11 take a break at this point and let the jury go to the jury
12 room. Do not begin your deliberations. We'll be with you in
13 about 10 minutes. Thank you.

14 (WHEREUPON, the jury exited the courtroom at 4:51 p.m.)

15 THE COURT: All right. A juror indicated they needed a
16 break; so we'll take a break. About ten -- just let me know
17 when they're ready, John, if you will.

18 THE BAILIFF: Okay.

19 THE COURT: Okay. We'll take about at least a 10-minute
20 break.

21 MS. SIGAL: And, Judge, I don't think this will be that
22 long.

23 THE COURT: All right. How many more witnesses have you
24 got?

25 MS. SIGAL: We have left outside the pathologist. He has

WILLIS WALKER - DIRECT BY MS. SIGAL

1 MS. SIGAL: Thank you, Your Honor.

2 BY MS. SIGAL:

3 Q: Now, I'm going to publish page 3 of State's 70, and can
4 you briefly tell us where the cell sites are in this map?

5 A: Sure.

6 Q: And you can kind of point out with the touchscreen in
7 case for us.

8 A: Sure.

9 THE COURT: Just wait. I know that screen is close, but
10 you'll have that document where you can study it in depth when
11 you get to your jury room. So please -- please be aware of
12 that. Okay?

13 Excuse me for interrupting.

14 BY MS. SIGAL:

15 A: Just to give you some reference, downtown Charleston is
16 right there. This is 26, I-26 running right here. That is
17 526. What you see here is -- let me get rid of that. These
18 are the -- the towers -- sorry -- the towers and the sides of
19 the towers. This --

20 Q: And how many -- how many towers did you map? I'm sorry.
21 How many towers were used in this map to indicate for these
22 cell phone records you looked at? How many towers?

23 A: Six.

24 Q: Six towers?

25 A: Yes, ma'am.

WILLIS WALKER - DIRECT BY MS. SIGAL

1 Q: And do you remember how many calls you mapped in this
2 timeframe?

3 A: Let me count them for you. Twenty-four.

4 Q: Okay. And if you'll just point out briefly -- you just
5 pointed out the different parts of Charleston. The incident
6 location -- is that highlighted on this map?

7 A: Yes, ma'am. It's Georgetown Apartments here with this
8 blue dot --

9 Q: Okay.

10 A: -- right there.

11 Q: Thank you. Okay. And what call -- what time is the call
12 made in the top right-hand corner in this picture?

13 A: 9:01 p.m.

14 Q: And what's the next number? I mean -- I'm sorry. What's
15 the next time?

16 A: 9:04 p.m.

17 Q: And what general area is this tower in?

18 A: So this is in -- you have Dorchester Road here,
19 Orangeburg Road. It's up in the Summerville area.

20 Q: Okay. So the calls at 9:01 and 9:04 were in the
21 Summerville area?

22 A: Yes, ma'am.

23 Q: Okay. And now we're looking at the page with the calls
24 from 9:15 to 9:32, and how many calls are up there that he
25 made between that time frame?

WILLIS WALKER - DIRECT BY MS. SIGAL

1 A: Seven.

2 Q: Seven calls, and what area were those seven calls made
3 in?

4 A: It's still up in the Summerville area.

5 Q: Okay. And the way the cone is shaped, is that indicating
6 the sector?

7 A: Yes, ma'am. So the physical tower location is here and
8 it's indicating that it was on this side of the tower.

9 Q: So all seven of those calls were made right there?

10 A: In that area. Yes, ma'am.

11 Q: Okay. All right. This next map, what time is the call
12 made up in the right-hand corner?

13 A: It's 10:02 p.m.

14 Q: All right. And what area was this call made?

15 A: So this is 526. I apologize. This is 526 running here
16 and this is 26 running here. So there's Tanger Outlets.
17 Let's see. Rivers Avenue.

18 Q: And we can look at the next page, which hopefully helps
19 you be able to explain the perspective of where this call was
20 made at 10:02?

21 A: Yes, ma'am. So this is the previous -- this is a
22 zoomed-in here and you can see just a lot -- you can see where
23 the incident location was. So --

24 Q: And so is that sector -- what direction is that sector
25 facing from that tower?

WILLIS WALKER - DIRECT BY MS. SIGAL

1 A: It's facing southeast.

2 Q: Okay. And what river is that sector facing?

3 A: Let me get this off first. Let's see. This is the

4 Ashley River.

5 Q: Okay. Thank you. All right. And then we just have a

6 few more calls. What time is in the top right corner in this

7 map?

8 A: 10:35 p.m.

9 Q: And what area is this tower in?

10 A: This is North Charleston area. This is 26 running here

11 and Rivers Avenue there.

12 Q: Okay. And what -- what call is made in this map? I'm

13 sorry. What time?

14 A: 10:37 p.m.

15 Q: And again, what area are we in here?

16 A: This is North Charleston/Hanahan area. This is Ashley

17 Phosphate there and 26.

18 Q: Okay. And then where have we come back to? What area is

19 this in?

20 A: Summerville.

21 Q: So we're back in Summerville now?

22 A: Yes, ma'am.

23 Q: And how many calls are made with this tower?

24 A: Five.

25 Q: Five calls from what time?

WILLIS WALKER - DIRECT BY MS. SIGAL

- 1 A: 11:08 p.m. to 11:11 p.m.
- 2 Q: Okay. Again, what area are we in? What area of
- 3 Charleston?
- 4 A: That's Summerville.
- 5 Q: And what time was that call made?
- 6 A: 11:15 p.m.
- 7 Q: All right. What part of Charleston are we in here?
- 8 A: Let's see. This is still the Summerville area.
- 9 Q: Okay. Now, we're going to look -- let me look at an
- 10 overall map and is this another map that kind of shows the
- 11 towers?
- 12 A: Yes, ma'am.
- 13 Q: That were plotted in this case?
- 14 A: Yes, ma'am. Those are the six towers that were used
- 15 during the time frame.
- 16 Q: And judging from what you just said with the maps, it
- 17 appeared the defendant went from Summerville down into North
- 18 Charleston toward West Ashley and then back toward
- 19 Summerville; is that right?
- 20 A: Yes, ma'am. So -- yes, ma'am.
- 21 Q: Okay. And just to reiterate, the call made at 10:02,
- 22 what area was that in?
- 23 A: That is in the North Charleston/Hanahan area.
- 24 Q: Okay. And again, what direction is that sector facing?
- 25 A: It's facing southeast.

WILLIS WALKER - DIRECT BY MS. SIGAL

1 Q: And again, can you please point out where the incident
2 location is?

3 A: Sure. Right there.

4 Q: And again, what time was this call made?

5 A: 10:02 p.m.

6 MS. SIGAL: I beg the Court's indulgence.

7 THE COURT: Certainly.

8 MS. SIGAL: Thank you. I have no further questions for
9 you at this time. Please answer any questions Mr. Kozelski
10 may have.

11 THE WITNESS: Yes, ma'am.

12 THE COURT: Cross-examine.

13 MR. KOZELSKI: Your Honor, I don't have any questions for
14 this witness.

15 THE COURT: Thank you, sir. You may step down.

16 THE WITNESS: Thank you, sir.

17 THE COURT: Call your next witness.

18 MS. LINDER: The State calls Dr. Nicholas Batalis.

19 (WHEREUPON, there was a pause the proceedings until the
20 witness entered the courtroom, after which the
21 proceedings resumed as follows.)

22 THE CLERK: Place your left hand on the Bible and raise
23 your right. Do you swear or affirm that the testimony you
24 shall give the Court and jury in the trial of this case shall
25 be the truth, the whole truth, and nothing but the truth, so

DR. NICHOLAS BATALIS - DIRECT BY MS. LINDER

1 help you God?

2 THE WITNESS: I do.

3 THE CLERK: You may be seated and, for the record, please
4 state your full name, spelling your last.

5 THE WITNESS: My name is Nicholas Ike Batalis, B-a-t-a-l-
6 i-s.

7 DR. NICHOLAS BATALIS, being
8 first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. LINDER:

11 Q: Good afternoon, Dr. Batalis.

12 A: Good afternoon.

13 Q: If you could, please tell the jury what is your
14 occupation?

15 A: I'm employed as a forensic pathologist at the Medical
16 University of South Carolina.

17 A: And what is forensic pathology?

18 A: Forensic pathology is a subspecialty of medicine. It's
19 actually the -- forensic pathology branches off of pathology,
20 which is also a field of medicine. Pathology is a study of
21 disease.

22 So a general pathologist would be the one to look at a
23 tissue biopsy to determine if it's cancer or not cancer. A
24 regular pathologist is also somebody who would run a clinical
25 laboratory. So if you get blood work drawn, the pathologist

DR. NICHOLAS BATALIS - DIRECT BY MS. LINDER

1 would be the one overseeing that.

2 Forensic pathology is in a subspecialty off of that that
3 involves more the legal aspects of medicine, predominantly
4 performing autopsies to determine a cause and manner of death.

5 Q: All right. Can you tell the jury a little bit about your
6 education and your training, please?

7 A: Yes. I graduated college from Butler University and then
8 went on to complete medical school at Indiana University
9 School of Medicine. After graduating medical school, I then
10 moved to Charleston for a four-year training program in
11 general pathology. After that four-year general training
12 program, I passed a national certification exam to become
13 board-certified in general pathology.

14 Following those four years, I moved to Dallas, Texas, at
15 the Dallas County Medical Examiner's Office for a one-year
16 fellowship or specialty training specifically in forensic
17 pathology. After that additional year of training, I then
18 passed a national exam to become board-certified in forensic
19 pathology and then took my current position.

20 Q: And approximately how many autopsies have you been
21 involved with throughout your career?

22 A: I don't have an exact log, but at this point, it's over
23 2,000.

24 MS. LINDER: And, Your Honor, at this point, the State
25 would seek to declare Dr. Batalis as an expert in the field of

DR. NICHOLAS BATALIS - DIRECT BY MS. LINDER

1 forensic pathology.

2 THE COURT: Care to examine him on qualifications?

3 MR. KOZELSKI: No objection.

4 THE COURT: He will be permitted to render opinions in
5 that area.

6 MS. LINDER: Thank you.

7 THE COURT: Uh-huh.

8 BY MS LINDER:

9 Q: If you could explain to the jury, just briefly, what
10 happens, what are your procedures when you go through and
11 perform an autopsy?

12 A: Sure. So at the Medical University of South Carolina, we
13 perform autopsies for a number of counties around the state.
14 So generally, the first step would be we receive a call from a
15 coroner from one of the counties to report a death that they
16 would like us to investigate. They would then bring the body.

17 So the first time we see the body it's in our autopsy
18 suite. We'll take a set of photographs, what we call our as-
19 is photographs before we've done any manipulations. After we
20 take those photographs, we then will remove any clothing from
21 the body, clean the body, obtain any evidence that's needed,
22 and get the body cleaned up.

23 At that point, again we'll then take another set of
24 photographs after the body is disrobed and cleaned and then
25 perform an external examination. So an external examination

DR. NICHOLAS BATALIS - DIRECT BY MS. LINDER

1 is basically looking at the body from head to toe for some
2 things, such as height and weight, eye color and hair color.
3 So basic identifying features, but then also any evidence of
4 injury or disease that could've led to the person's death.

5 After that external exam is completed, we then move to
6 our internal exam, where we make surgical-type incisions to
7 examine the body, go through the organs one by one, again to
8 examine for any evidence of natural disease or trauma that
9 could have led to the death.

10 At the completion of the autopsy, we then -- then take
11 the findings and construct those into a report to relay what
12 we found during the autopsy.

13 Q: And did you have the occasion to perform an autopsy on
14 the victim in this case, Aakeem Smalls?

15 A: Yes, I did, on June 9th of 2011.

16 Q: And were you able to determine within a reasonable degree
17 of medical certainty the cause of death?

18 A: Yes, I was.

19 Q: And what did you determine that to be?

20 A: The cause of death in this case was a gunshot wound to
21 the trunk and specifically that gunshot wound led to massive
22 bleeding.

23 Q: And can you describe to the jury what injuries the victim
24 sustained or the path of the bullet I guess would be in
25 layman's terms did it go?

DR. NICHOLAS BATALIS - DIRECT BY MS. LINDER

1 A: Sure. So for this decedent, there was a single gunshot
2 wound. The entrance wound was on the mid-back or just -- just
3 left of center. After going through the skin of the back, the
4 bullet then continued to go through one of the ribs on the
5 left side, went through the left lung, and then exited one of
6 the ribs on the left side kind of where the top rib meets your
7 collarbone here. So as it went through there, again, going
8 through the left lung, it caused significant bleeding. We
9 recovered significant blood at the autopsy, and the decedent
10 was also seen in a hospital before that where they removed
11 additional blood from that area.

12 Q: And as part of your autopsy and in preparation for trial
13 today, did you do a body diagram for this?

14 A: I did.

15 Q: At this time, I'll show you what's been marked as State's
16 Exhibit 54. Do you recognize that?

17 A: I do. This is the diagram I prepared.

18 MS. LINDER: At this time, the State would seek to admit
19 State's 54 into evidence.

20 THE COURT: Any objection?

21 MR. KOZELSKI: No, Your Honor.

22 THE COURT: Without objection, State's 54 is admitted.

23 (WHEREUPON, State's Exhibit Number 54, autopsy diagram,
24 was admitted into evidence.)

25 BY MS. LINDER:

DR. NICHOLAS BATALIS - DIRECT BY MS. LINDER

1 Q: All right. Once I put this up here, if you can -- if you
2 can explain to the jury what exactly your markings are and
3 what do they show?

4 A: Sure. So it's just a simplified body diagram here. On
5 the right-hand side where the decedent's back, there's a
6 circle. That depicts approximately where the gunshot entrance
7 wound was in this case. So again, just -- just left of
8 midline in the mid-back.

9 And then on the picture on the left, the frontal view
10 where the X is, that's where the gunshot exited. Again, at
11 the -- kind of where the first rib and the collarbone is. So
12 you can see basically the main pathway the bullet was coming
13 from back to front and then it also went a little bit upward
14 because the entrance wound was kind of in the mid-back and
15 then it exited up here. So the main pathway was the bullet
16 was moving upward and also from the decedent's back to front.

17 Q: And, Dr. Batalis, would it be surprising to you if
18 someone was able to run just immediately after this type of
19 injury or gunshot?

20 A: No. Again, in this case, the bullet did perforate the
21 lung, which leads to significant bleeding that led to his
22 death, but this wouldn't necessarily be bleeding that would
23 occur extremely rapidly. Even in cases with rapid bleeding,
24 it's not uncommon for people to have -- be able to accomplish
25 exercise and activity for seconds to a matter of minutes,

DR. NICHOLAS BATALIS - DIRECT BY MS. LINDER

1 depending on which structures have been damaged.

2 Q: But ultimately, the cause of death of this victim, Aakeem
3 Smalls, you found to be the gunshot wound?

4 A: Yes.

5 MS. LINDER: Thank you. I have no further questions. If
6 you can answer anything the defense may have.

7 THE COURT: Cross-examine.

8 MR. KOZELSKI: Just briefly.

9 CROSS-EXAMINATION

10 BY MR. KOZELSKI:

11 Q: Dr. Batalis, the time of death here was 11:15 or 2315?

12 A: Correct.

13 Q: And it's safe to say that somebody who suffers an injury
14 like this would probably be very concerned about their health?

15 A: That would be speculation on my part to know what they
16 would feel.

17 Q: But somebody being shot in the back and it goes through
18 their chest, I mean they would be concerned about that; right?

19 A: It certainly would cause pain.

20 Q: Okay. Somebody might think they're dying?

21 A: It's possible.

22 Q: Okay.

23 MR. KOZELSKI: No further questions, Your Honor.

24 THE COURT: Redirect?

25 MS. LINDER: No redirect, Your Honor.

1 going to testify it came from Columbia? Because that would be
2 hearsay if you don't have the record.

3 MS. LINDER: Well, Judge, we do have all the phone
4 records with all the latitude and longitude and everything
5 like that.

6 THE COURT: Well, you -- I'm -- you have his. I'm
7 talking about the phone call. You just told me you don't have
8 the phone call records of the victim.

9 MS. LINDER: We do. We do have the victim's phone call
10 records and we also have --

11 THE COURT: Well, why didn't you put them in? I'm just
12 saying the bottom line is how -- that -- you just -- just that
13 you have them, then you made a choice.

14 I'm sorry. Thank you. Can't do it. And that's really
15 to try to protect the record in this case, but for the fact
16 that what the case is, I'd probably allow it.

17 Let me say also this because after we let the juror go, I
18 continued to do some research concerning dismissal of jurors,
19 and there's another case that I've had with State v. Coaxum
20 where the Court made an observation and again reversed my
21 decision primarily because I think they said abuse of
22 discretion.

23 And one of the languages that they used that I mentioned,
24 Stone and in this Coaxum case, was -- it's interesting to me
25 because I want to put this in the record so if it becomes

1 necessary to review it, I want them to address it in their
2 next decision.

3 They made a comment that I think I talked about the one
4 that would not -- the fact that he didn't disclose unless I
5 found that there was some willful or intentional just hiding
6 that. That did not disqualify him as a matter of cause, but
7 they made a comment that it's not a material basis for a
8 peremptory challenge that a witness knows somebody.

9 I find that extremely odd because I know what I did is a
10 lawyer. I struck a lot of people that knew persons in there.
11 That's why we ask the question. I can't tell you how many
12 hundreds of times in trying cases when somebody disclosed it
13 and I asked the same questions I asked that juror. Would that
14 influence you? And they gave the same answers that jurors say
15 when we're doing a qualification, yet people strike them every
16 day notwithstanding. I think that's a -- that's indicative of
17 a strategy and indicative of something that we as lawyers have
18 to make a decision on.

19 Coupled with the fact -- and I mentioned to you I noticed
20 some of the things, Mr. Kozelski, that you said that he
21 appeared to come back and was alert. My concern -- and I -- I
22 think he was sleeping at times. I don't think he was asleep
23 all of the time, but there were periods because -- and the
24 reason I want to put in the record my observations that would
25 support that is -- and I think he did it several times both --

1 both sides really, once to his left and he caught himself and
2 then the other one was to his right. And then he kept nodding
3 his head and, at first, I thought he was agreeing with things,
4 but then I realized it was a nod of head that he was -- he was
5 dozing off. And that's when he reached down and got the
6 water, which is confirmatory of the fact that he was -- he
7 knew he was sleeping. It wasn't a matter that he was -- he
8 was trying to do something to stay awake and, certainly, that
9 was commendable on his part.

10 All of that's important for my decision and I wanted that
11 on the record so that if they have to review this, they
12 understand my thought process because I understand what you
13 were saying that he was paying some attention and he did. I
14 mean he was alert.

15 My concern is this. If there's some part that he missed
16 by sleeping and that part -- and I don't know which way it
17 could go, both ways really, either way for the State or for
18 the defendant. If he missed a point and he relied on his
19 knowledge of this witness whom he knew -- and I don't know
20 which way he knew her. I mean if he knew her from a bad
21 standpoint, had a bad feeling about her, because we all -- and
22 I want the record to reflect this and this is no disrespect to
23 that lady. She was very straightforward, but she had an
24 unusual personality and that was noted by her responses coming
25 up. It's not in the record. She made responses that it's not

1 customary for a witness to do and certainly some of her
2 expressions were not what would be customary. That could lead
3 a juror to some determination and if this person knew that, it
4 may affect it.

5 And for that reason, I think the State's first reaction
6 was, no, I won't excuse him, but after thinking about it, I
7 think that shows some -- basically, they went back and
8 rethought that and said, you know, if I'd have known that,
9 given -- I know this witness. I know what her propensity is.
10 You knew that before you called her. I would've definitely
11 struck him.

12 So that -- those are the reasons that I did that, Mr.
13 Kozelski, and I will afford you any opportunity you want to
14 respond to any of that, but I just want the record to reflect
15 my thought process.

16 MR. KOZELSKI: I understand, Your Honor, and I think I've
17 got it.

18 THE COURT: You have stated very clearly. Thank you so
19 much. I appreciate it.

20 Solicitor, anything else on this issue about recall?

21 MS. LINDER: No, Judge.

22 THE COURT: I just think -- I think it's best left to the
23 -- to the argument and, certainly, as I stated, you are free
24 to argue. The only thing I guess you really can't argue -- I
25 don't think there's any testimony that the call was from

1 THE COURT: Wait. You haven't argued anything yet.

2 MR. KOZELSKI: Right.

3 THE COURT: I'd be happy to hear from you now.

4 MR. KOZELSKI: Your Honor, obviously, with the State
5 resting, we are going to make a motion for a directed verdict.
6 We -- this is obviously a substantial -- a circumstantial
7 evidence case and, as a circumstantial evidence case, it has
8 to be substantial.

9 I'm looking over at that table and I don't see an amount
10 of evidence like I've seen in trials in my past. I mean this
11 is -- this is a very, very -- I would say weak circumstantial
12 case. But they do put my client there, but mere presence at a
13 crime -- mere presence at the scene of a crime is not evidence
14 that he's guilty. So I'd ask the Court to grant a directed
15 verdict.

16 THE COURT: And I appreciate it. And to be honest with
17 you, my clerk sent me an instant message towards the end of it
18 and I won't disclose what it was, but -- and I'd shared his
19 concern, but then I started thinking about it. Then he said
20 I'm not talking about directed verdict. I'm talking about
21 reasonable doubt and I said okay. I'll give you that. But
22 that's what we have jurors for.

23 There's no question that from the standpoint of is there
24 any direct evidence that Mr. Johnson committed this crime, no,
25 there really isn't. The fact that two people got out of a car

1 and ran somewhere and then ran back, that doesn't mean
2 anything. It could mean -- there was some statements that you
3 now have from him about him being there. So you've got the
4 inference that he ran back because somebody got shot and he
5 saw it. I mean that's a reasonable inference to be drawn from
6 his statement that the jury has heard.

7 But clearly, you couple that with the fact that there was
8 testimony of some -- some bad blood to a certain extent.
9 There's also the other part that I think is a reasonable
10 inference to be drawn and I consider it circumstantial
11 evidence that he didn't disclose it when he was there in the
12 first place and that's indicative of the fact that I'm aware
13 something happened and I was involved, and that's a reasonable
14 inference to be drawn from that.

15 And as we -- I'm going to charge them because we know
16 circumstantial evidence is you're linking a number of factors
17 and when they lead you to a logical conclusion and you're
18 firmly convinced, that's it. And I think that that, in and of
19 itself, constitutes substantial circumstantial evidence
20 sufficient to be submitted to the jury.

21 So -- but do you want to be heard further, Solicitor, on
22 any of it?

23 MS. LINDER: I don't really have anything to add to that,
24 Your Honor.

25 THE COURT: Thank you very much. I mean there are other

1 things, but I just focused on just the one thing. Let me add
2 another.

3 He also said that he was totally upset by it, it was very
4 -- it was very upsetting to him, and that's another thing that
5 we see him in that film laughing and joking. He also said --
6 I think his girlfriend said that they didn't find out about it
7 -- I think she said until the next day, and that's another
8 thing and that he was upset about that. All of that is
9 inconsistent with his statement that he saw it happen. So
10 that's another basis for it.

11 But anyway, so when we -- when we -- the State rests,
12 we're not going to excuse the jury, but your motion is noted.

13 Any objection, Solicitor, to having it now being when
14 he's rested we've now argued and my ruling would be the same?
15 Any objection to that?

16 MS. LINDER: No objection.

17 THE COURT: So we're ready to argue then; correct?

18 MR. KOZELSKI: Yes, Your Honor.

19 THE COURT: Very good. Now, I'll get to work on my
20 charge. Thank you, all.

21 All right. We'll bring in our jury, John. Thank you.

22 MS. LINDER: Judge?

23 THE COURT: Yes?

24 MS. LINDER: I am so sorry. I wanted to make sure before
25 I say something in my opening -- or my closing. Are you going

1 to charge accomplice liability?

2 THE COURT: I'm going to charge it in the sense of what
3 is the hand of one. It talks about accomplice. It doesn't go
4 into great detail about it.

5 MS. LINDER: Okay.

6 THE COURT: But it talks -- it talks about being a part
7 of it, saying some -- playing some role in it.

8 MS. LINDER: Okay.

9 THE COURT: Okay.

10 MR. KOZELSKI: And, Your Honor, I am objecting to that
11 language being in there, but we can get into that later.

12 THE COURT: All right. At the end of the charge, that's
13 when we excuse the jury, that's no problem. Thank you.

14 (WHEREUPON, the jury entered the courtroom at 9:52 a.m.)

15 THE BAILIFF: All the jurors are present and seated.

16 THE COURT: Thank you very much.

17 And thank you, ladies and gentlemen. I hope you had a
18 good evening, what was left of your day yesterday, and again I
19 thank you for all your patience with dealing with the
20 situations that arose yesterday.

21 I think when we took our recess, you were possibly
22 considering another witness. Does the State wish to present
23 any additional witnesses?

24 MS. LINDER: The State rests.

25 THE COURT: Very well. As you recall when I -- when we

1 So please give them your attention, but I will remind you
2 in my charge and as I've stated before, their remarks, while
3 extremely important and very helpful, are not be considered
4 evidence at all. And likewise, my remarks should not be
5 considered evidence in any fashion. So thank you very much.

6 Solicitor, you may -- you may give your closing
7 arguments.

8 MS. LINDER: Thank you, Your Honor. May it please the
9 Court.

10 THE COURT: Yes, ma'am.

11 CLOSING ARGUMENT ON BEHALF OF THE STATE

12 MS. LINDER: At the beginning of this case, Judge Dennis
13 talked to you. He told you that when you came in here, you
14 had everything you needed to make a decision on this case.
15 You brought with you your common sense, your sense of logic
16 and reason, and your knowledge. You are the judges of the
17 facts with those things.

18 I'd like to start by talking to you a little bit about
19 the law in this case. My words are merely here to assist you
20 with understanding what the law is in the state of South
21 Carolina. There are certain concepts and ideas in law, and
22 the judge's instructions are going to be given to you shortly
23 and those are what you need to go by. He, in fact, is the
24 judge of the law.

25 So as far as the law is concerned, there's a concept of

1 reasonable doubt. Beyond a reasonable doubt. What is that?
2 Reasonable doubt is evidence that leaves you firmly convinced.
3 Reasonable doubt does not mean beyond every doubt. It does
4 not mean beyond any doubt. It does not mean beyond all doubt.
5 It leaves you firmly convinced.

6 There's also different types of evidence in cases. There
7 are cases that many times have direct and circumstantial
8 evidence. Sometimes it's one or the other. In this case,
9 we're relying on circumstantial evidence.

10 Direct evidence is testimony of a person who you hear
11 from that witness stand who claims to have actual knowledge of
12 a fact. They witnessed something happen.

13 Circumstantial evidence is proof of a chain of facts and
14 circumstances indicating the existence of a fact. It's based
15 on inference and that's a lot of what I'm going to ask you to
16 do and part of being a juror is doing is making those
17 reasonable inferences based on all of the evidence you hear in
18 this case. Something important I think to remember is that
19 there is absolutely no distinction in the weight or value
20 given to either direct or circumstantial evidence.

21 Another concept that my co-counsel mentioned to you in
22 the beginning of this trial is the hand of one is the hand of
23 all. It's a legal concept and, ultimately, what that means is
24 that one person is responsible -- is criminally responsible
25 for the acts of everything done by the other person. The

1 classic example, which frankly is pretty much what we have in
2 this case, if there are two people but only one gun and one
3 bullet, if those two people are acting together, they are
4 together, they are assisting each other, aiding each other,
5 abetting each other, planning with one another, all of that,
6 it means that the act of one is the act of all.

7 The defendant in this case, Devin Johnson, is charged
8 with murder. Murder is the killing of another person with
9 malice aforethought.

10 What is malice aforethought? It's kind of an old term,
11 but what it means is it's hatred, ill will, or hostility
12 towards another person. One way that it can be shown is when
13 a person speaks words which express hatred or ill will for
14 another.

15 Another -- another way malice can be shown is when a
16 person has prepared beforehand to do the act which was later
17 accomplished. There is not any kind of length of time that
18 this malice must exist before it happens. That's what
19 aforethought means. It doesn't have to exist for an hour
20 before, for days before, minutes before. It can form --

21 (WHEREUPON, the solicitor snapped her fingers.)

22 MS. LINDER: -- like that.

23 The defendant in this case is also charged with
24 possession of a weapon during the commission of a violent
25 crime. That is what it sounds like. It's the possession of a

1 weapon, a firearm in this case, during the commission of a
2 violent crime, and the judge will instruct you that murder is
3 classified in our South Carolina statutes as a violent crime.

4 So before I get into the evidence in this case, I'd like
5 to address some things with you that the defense is trying to
6 distract you with. They are trying to distract you with the
7 fact of the matter, which is that Devin Johnson murdered
8 Aakeem Smalls back on June the 8th of 2011.

9 The first distraction, Diangelo Bumcum did it. The
10 defense would have you believe that this man who you heard
11 from, who was literally related to the victim -- he claimed
12 they were best friends. They were so close, almost like
13 brothers. This man who was moments before, 10 minutes before,
14 inside the apartment when he went to the bathroom, seeing all
15 sorts of people, knowing all sorts of people, and then after
16 all that he left and then just decided to become a criminal
17 mastermind.

18 What really happened with Diangelo is that he immediately
19 turned himself in two days later, as soon as he saw that he
20 was wanted and his face was on the news. He did not run. He
21 did not hide. He went with police. He immediately told the
22 truth. He gave a very specific truth, and that's -- those
23 specifics of locations, of people, were all what he was doing.

24 And what he told the police back in 2011 is what he told
25 the police today in 2019. The police were able to verify a

1 lot of the information that Diangelo told you. They were able
2 to verify the truth in this case by looking at video
3 surveillance. You will have all of these back there, but
4 State's 63 is what shows you and it shows you Diangelo walking
5 away almost 10 minutes prior to the shooting.

6 Diangelo told you that he walked away when the victim was
7 on his phone and the victim was arguing with someone. The
8 defense would have you believe when he was talking about the
9 camera angles that Diangelo -- sure, sure, yeah, yeah, he
10 walked away, but somehow this man, who did not live in
11 Georgetown Apartments because he lived on Avalon, this man
12 knew where those cameras were in a place he didn't live, knew
13 the angles of the cameras and, in order to not be detected, he
14 snuck along the fence line and then he shimmied along the
15 building to get into the breezeway to shoot his friend that he
16 just saw moments prior.

17 Oh, and then right after the shooting when the victim
18 went running in the same direction where Diangelo supposedly
19 came from, Diangelo then retraced his steps and went along the
20 building to not be detected, down the fence line. I mean that
21 just does not make sense. It doesn't make sense.

22 The defense wants you to set aside your common sense, the
23 common sense that the judge told you was essential. They want
24 you to ignore Diangelo's statement. Ignore his mom's
25 testimony here, saying, oh, yeah, that's my son. Wants you to

1 ignore Diangelo's response when he heard the sad news. I
2 think both of those said he was hurt. One of them said he
3 cried, fell to his knees when he heard the information.
4 Ignore the fact that they called the police. Ignore the fact
5 that there was surveillance. Ignore the evidence in this
6 case.

7 The second distraction in this case is this unknown
8 caller did it. The defense would have you believe that some
9 unknown caller that was pointed out yesterday afternoon to you
10 that had a 15-minute heated phone call just prior to the
11 murder did it. Well, I mean that could be a reasonable
12 inference, but it also could not.

13 If you really think about it, the police told you that
14 they knew the victim had two phones. One of the phones was a
15 bunch of females all around leading up to the murder, and they
16 said that there was another call that was made for 15 minutes
17 just prior to the murder. Who made that call? I don't know.

18 What's a reasonable inference? Maybe the person who was
19 in the passenger seat who was pulling up to assist in doing
20 this murder? I don't know.

21 But what you do know is in watching this video
22 surveillance, you with your own eyes can see that leading up
23 to the murder and after the murder, the only people who come
24 in from the office side is this defendant and his passenger,
25 the unknown passenger. Nobody else. The only person who

1 comes -- oh, wait, there's no one who comes in from the other
2 side. That's it. You need to use your common sense and
3 really think about what is actually happening in this
4 situation.

5 The third distraction the defense wants you to think
6 about is GSR. He told you in his opening Diangelo Bumcum,
7 that shirt, ooh, GSR. GSR, GSR, GSR. Well, you heard from
8 Detective Osborne and he explained to you, no, Diangelo
9 Bumcum's shirt did not have GSR on it.

10 Just to make sure that you fully understood, we brought
11 Ila Simmons down from SLED. She has worked at SLED for a very
12 long time. She is wonderful and really knows her stuff. She
13 told you that Diangelo's shirt was negative. The white T-
14 shirt, but he's wearing a tank top in that video.

15 Regardless, the white T-shirt that Diangelo -- that was
16 submitted was negative for GSR. It had lead particles. One
17 of the few things that she -- one of the many things that she
18 said can give you lead particles, brake pads, working with
19 cars. He worked at Jiffy Lube. I mean that aside, she said
20 in 2011 that shirt was negative and in 2019 that shirt is
21 negative.

22 She told you also that the defendant's shirt that they
23 tested was negative. Okay. A negative shirt does not
24 exonerate the defendant. His shirt wasn't collected until
25 days later. We don't know. We don't know. We saw him with a

1 white tank top on. Those are sold in multipacks. That's
2 common sense and that also we had come out in testimony.

3 So who knows if -- if the one that was taken was the same
4 one? Who knows if something was washed? Who knows?

5 But GSR is not the end-all be-all in these cases. Ila
6 Simmons told you also -- which was interesting after 14-
7 something years here I didn't even know the percentages. She
8 was talking about how when you shoot a gun, 98 percent goes
9 out with the bullet and it's -- I thought it was 2 because I
10 figured 98 from a hundred was two. She said, oh, no, no.
11 It's .8 percent is what goes out the ejection port and she
12 said -- I mean it's possible, but is it likely to wrap around
13 to a hand, to wrap around to an arm? Oh, wait, to wrap around
14 to a shirt that may or may not have been tested days later?
15 GSR is a distraction.

16 So what I'd like to talk to you about is what's important
17 in this case and that is the evidence that was put forward to
18 you over the past few days in this trial. The evidence are
19 these exhibits. The evidence is what you hear from the stand.
20 That is the evidence that you are to consider in this case and
21 apply your common sense and logic.

22 I'd like to echo my co-counsel, Price Sigal. I'd like to
23 echo her opening remarks to you by telling you that this is
24 not a smoking-gun case. This is not a one huge piece of
25 evidence. You're not going to have that a-ha moment with one

1 piece of evidence. It's just not that kind of case.

2 It is what it is. It's a case, like she told you, with
3 many pieces, and those many pieces are like a jigsaw puzzle,
4 but when you put all of those pieces together, the picture is
5 clear and it becomes clear that Devin Johnson murdered Aakeem
6 Smalls.

7 I'd like to talk to you about motive. What is the motive
8 in this case? The motive in this case was a debt. The
9 defendant told you himself or the defense told you rather that
10 he was -- that the defendant is a marijuana salesman. You
11 heard information and you heard testimony from Robert and
12 Tenika and the defendant's statement that he was a marijuana
13 salesman and Aakeem, the victim, assisted him and worked for
14 him. Okay. The defendant supplied exotic marijuana, exotic
15 weed. Okay.

16 Also, you heard that from Robert that an ounce costs
17 \$420. You heard in the defendant's statement that he was owed
18 \$420 from the victim. You also heard that the defendant
19 didn't know anybody in Charleston to sell it to. He didn't
20 have customers because he wasn't a seller; he was a supplier.
21 Aakeem is the one who was the salesman. Aakeem was the one
22 who was the connect for the supply, the defendant, to the
23 demand, the customers.

24 And then one day, things changed. The defendant -- his
25 product was taken. His stash was stolen. The victim took the

1 defendant's marijuana. An underling stole and disrespected
2 his supplier by doing that. This case is about debt, but this
3 case is actually about disrespect.

4 You heard that the defendant was not pleased with
5 everything. You heard that he called Robert looking for
6 Aakeem about a week prior. You also saw text messages when he
7 is -- he's sending to his friend Terry about getting his
8 bread, about going to wet dude some ass up -- wet dude -- wet
9 up some dude's ass.

10 This investigation, like many others for the police,
11 started with looking for a motive. That's what gives an
12 insight into what happened.

13 So then there's a plan in this case. The plan. The
14 defendant knew today was the day. June 8th, 2011. That was
15 the day.

16 The first step that he took was that he secured
17 transportation. He said you know what? I'm riding with
18 Tenika to work today. That's the first thing he did. Then he
19 said I got -- I can't have my child with me. So then he
20 dropped his daughter off at his mother's house.

21 The next step he did is he tried to recruit backup. He
22 had text messages to Terry. And you'll have all this stuff
23 back there with you. You'll have that PowerPoint of all those
24 text messages that he sent, 14 text messages. That's not
25 back-and-forth. That's what he sent Terry leading up to this,

1 and you'll have the times of that. He's asking about
2 location. He's asking about availability. When do you get
3 off of work? Where are you? Can I come pick you up? He's
4 asking all of these questions.

5 Step three in the plan was to kind of explain the plan
6 because Terry didn't really seem to be buying into it. So he
7 texts him and he gives a reason. I'm going to need that bread
8 today, at least half. And then Terry's not super responsive,
9 and you'll see that in all the text messages. And then he
10 says the actual plan. Hey, I go wet dude ass up tonight.
11 It's ass, as I misspelled it. You hear that.

12 You see step four. He located the target. He located
13 the target by blocking calls to his sister's phone. His
14 sister, who lived in Georgetown Apartments. His sister, who
15 lived in [REDACTED]. His sister, who lived feet away from where
16 Aakeem was murdered. His sister, Sharmaine or Shay, lives in
17 Georgetown. He used *67 two times at 9:30.

18 I submit to you, ladies and gentlemen, what is a
19 reasonable inference? Why would you block your number from
20 your sister? From your sister that, according to Tenika, he
21 goes and visits all the time.

22 Step five, the plan gets put into action. He sends the
23 text to Terry. I can't wait on you. I got to handle my biz.
24 And that's at 9:34. At 10:02, the cell mapping shows you it's
25 coming now, all those other calls, and you'll have that big

1 presentation that Willis Walker did. All those calls.
2 Summerville, Summerville, Summerville, Summerville,
3 Summerville, Summerville, and then I can't wait at 9:34. I
4 know traffic was bad yesterday, but 10:02, he's made it all
5 the way down here from Summerville. That timeline. He is
6 heading to West Ashley. His plan was going into action, the
7 plan to show Aakeem and anyone else the consequences if you
8 disrespect him.

9 So next I want to talk about the murder. There are a few
10 key things that I think we should talk about and look at the
11 murder. There's phone calls, there's text messages, there's
12 surveillance video, and there's physical evidence. There are
13 many other things in this case and by no means am I telling
14 you the only things you should consider. I'm saying these are
15 things I think you need to look at and consider and highlight.

16 First, I think we need to look at the frequency of calls.
17 We heard testimony in looking at the defendant's cell phone
18 records that in a one-hour period, 9:01 to 10:02 -- this is
19 the night of the murder, the murder is at 10:18-- ten phone
20 calls. These are not text messages. These are phone calls.

21 10:03 to 10:34, zero. The murder time is at 10:18.
22 10:35 to 11:40, 12 calls. So there is a drop in any activity,
23 and it's also important -- and again, you'll see this when
24 you're back there -- of who all these calls were to and from.
25 That matters.

1 Another thing to think about is just the general phone
2 activity in leading up to the murder. Again, the timeline
3 that I was referencing earlier. At 9:30, he has the *67 calls
4 to Sharmaine. At 9:34, he sends that text to Terry. I can't
5 wait on you. I got to handle my biz. At 10:02, that cell
6 mapping has him coming down.

7 So what happened in the gap of time when he made it to
8 West Ashley and there were no calls and no texts? What
9 happened? What happened in that time on his way down there?
10 I submit to you that he picked up his friend, that they headed
11 to Georgetown, but in order to do that he already had secured
12 the car for transportation. He was the driver to and from,
13 all of that.

14 So let's talk about Georgetown Apartments. We know the
15 layout here pretty much. Orange Grove. And this is a zoomed-
16 in map. And where that star is, that's approximately where
17 the murder took place. So we know that it's the -- it's
18 alphabetical going down. So that building with the pool,
19 that's building C, and then D are the two that are parallel.
20 E is the next one.

21 We also know as far as the layout there are parking lots,
22 and you can see that between each building. So for example,
23 if I lived, you know, over here in D, the one that looks most
24 like a circle, it doesn't make sense for me to park way up
25 there unless I'm working on my steps and I'm trying to lose

1 some weight or something. It makes no sense. I mean I'm that
2 person who will circle a grocery store lot twice to get two
3 spots closer. It doesn't make sense, especially if you're
4 there to pick up clothing or to lift things or do things or if
5 you're on a time crunch because you've got to get back and
6 pick up your girlfriend. It doesn't make sense.

7 Another thing that we heard about this layout is that
8 they're kind of in a courtyard style to whereas all the doors
9 for each of these face the interior, face the courtyard. If
10 you're walking down Mulmar Street, you can't just, like, walk
11 up in the center of C. You'd hit a -- you'd hit a wall. You
12 have to go into the breezeway and the only entrance is through
13 the center of the buildings in the breezeway and those are
14 from the parking lots only.

15 So I want to start by talking about this. This is the
16 same image. That pool really helps you ID where building C
17 is. That parking lot. That parking lot where there's the
18 arrow pointing, that's the parking lot by the office that's
19 between building C and B, and we call that the office.

20 So the defendant knew where his sister lived. He knew
21 that was in no way the closest spot to park. We also know
22 from looking at all the other pictures of the other parking
23 lots and watching surveillance there were spots available
24 right by her apartment. So it wasn't because it was super
25 crowded and there was nowhere else to go. It was a conscious

1 decision made by the driver of that vehicle, which admittedly
2 was the defendant.

3 So he knew to back in for a quick getaway. Not only did
4 he back in for a quick getaway, there are other reasons to
5 back in, but go back and look at that video or look at the
6 stills. You're going to notice something.

7 So this is when he's backing up into the spot and, again,
8 we have all those stills and you'll have the surveillance
9 itself. Look at the time. We know it's ten -- it's eight
10 minutes off. So this is just after 10:16 p.m. in real time
11 and the murder was at 10:18. He's backing in, that car with
12 no hubcaps, that car covered in his fingerprints, Tenika's
13 car, the car that he used, the car that he secured. He's
14 backing in. There he is backing in and they're getting out.

15 You know, it's kind of funny though. You know, backing
16 in can mean nothing, but backing in and leaving your
17 headlights on? To me, that puts it just further then the I
18 just like to back in. Leaving those lights on? And you'll
19 see that if you go watch those clips again or you look at
20 those stills, they get out of the car, they walk in. When
21 they're not near the car, those lights are still on. Pay
22 attention to that.

23 So they pulled in less than two minutes before the
24 murder. We also know that there's that random guy with the
25 dog, but no one else entered from that side except him and his

1 friend. And here they're out of the car walking and you see
2 those lights are still on. You see a center brake light and
3 the right taillight is still on.

4 So I think now we need to go to the scene. The scene is
5 where this yellow arrow is pointing and that is where Aakeem
6 was shot. The murder was at 10:18, which is 10:10 on
7 surveillance time. The murder happens at the base of the
8 stairwell near [REDACTED], just beneath [REDACTED].

9 So this is the base of the stairwell and you can see some
10 of those yellow evidence markers. You'll have, again, all
11 those pictures back there with you. You see a sandal. So
12 scared, so frightened he is running out of his sandals as he
13 is shot in the back.

14 You see these markers close up, 2 and 3. Those are two
15 of the four shell casings. You see 5. That's another shell
16 casing. You see 6. That's another shell casing. Four shell
17 casings. Those four shell casings all were the 9-millimeter
18 FC Luger casings. That's what they are.

19 And I think it's important to also note that days later,
20 they found an unfired cartridge feet away from where this
21 happened with one fingerprint on it, and that fingerprint
22 belonged to this defendant. That bullet is consistent with
23 the four shell casings that we saw.

24 So what does that mean? I submit to you that means he
25 had access to the same ammunition. Now, does that mean that

1 he pulled the trigger or that he merely supplied the gun to
2 the passenger or that he suggested everything to the
3 passenger? I submit to you that does not matter in the state
4 of South Carolina under the hand of one theory, and the judge
5 is going to charge you on that.

6 So I think it's important here that we look. So the
7 shooting just happened. The shooting happened at 10:18, which
8 is actually 10:10. So here we have 10:10:30. That's our
9 victim running. That's him running with no shoes because one
10 was in the stairwell and one was by a car in the parking lot
11 as he was running. It is important to remember the
12 chronology.

13 And then we go over to the next parking lot. That's D
14 and E. There he is. He's running again. And that is nine
15 seconds later from that -- that first image of him. So it
16 only took him nine seconds to go there.

17 The next thing we need to look is look back where that
18 car was parked by the office by the B and C buildings and you
19 look at this time, 10:10:45. So the victim ran that way and
20 at this point they're running and getting in that way.

21 You heard from Detective Osborne that he walked it off.
22 I mean he's a little taller than me, but he walked and paced
23 to see how long it would take him to get from that parking lot
24 to where Aakeem was murdered by this defendant and then, you
25 know, how long does it take to jog back. And looking at this

1 time, it matches up.

2 And then there they go, pulling out. Hurrying up. And
3 it's important to note in this video no one else leaves. No
4 one else leaves from the side by Sharmaine's apartment. No
5 one else leaves from the side by the office. No one else.

6 So I think it's important to try to figure out now so
7 where did the victim go. We last saw him in the parking lot.
8 I don't know if y'all's arrow is easy to see. As he's running
9 toward building E, he was running for his life. He was
10 running out of those sandals.

11 So we saw there was a blood trail. We learned about the
12 blood trail. And he's going. That blood trail is where that
13 arrow is as he's traveling underneath the coverage. He gets
14 to the fence. He's trying to figure out what he should do.
15 His blood is filling in his lungs. He looks to his left and
16 he notices, wait, there's something I can maybe use.

17 So he goes over there and he gets up on this AC unit to
18 climb over to escape this person that he knew who came and
19 shot him in the back. So then he goes over the fence, and we
20 saw the side of the house. There it is going toward the side.
21 That's the back of the house.

22 Dr. Batalis told you that the defendant died as a result
23 of a single gunshot wound to the back. This was a tragedy.
24 Aakeem Smalls was murdered on June 8th, 2011, completely and
25 totally unnecessarily. A life was lost that day that did not

1 need to be.

2 It did not end with the murder and speeding off though.
3 No, no, no. Not Mr. Johnson. He -- there was a cover-up. He
4 didn't call anybody. He didn't call 9-1-1, if he witnessed
5 this murder that scared him so. He didn't call his sister,
6 Shay. My Lord, that was right outside her apartment. I hope
7 she and the kids are okay. He didn't call Aakeem, who he
8 supposedly just saw get killed. Nothing.

9 Also with the cover-up, he didn't say a word to Tenika,
10 nothing. When he first saw her, he didn't tell her. He was
11 joking around, happy. On the drive to Summerville from North
12 Charleston, he didn't tell her. Joking around and happy. On
13 the way to the gas station, didn't tell her. Joking around
14 and happy.

15 In the gas station. Watch that clip from Kangaroo. He's
16 just chatting and hanging out with the cashier. Just joking
17 around like nothing. He wasn't scared. He wasn't frightened.
18 He was proud. He felt good after what he just did. That's
19 what happens when you disrespect me. On the way to Orangeburg
20 from the gas station on their hour-long ride, didn't say
21 anything to Tenika.

22 And then he went so far in his statement and Tenika told
23 you that he did not hear until the next morning when he got a
24 phone call and then he just -- I don't know if he pinched
25 himself or what he did to get those emotions starting. Oh,

1 I'm so sad. I'm so sad. I don't know what he did, but all of
2 this is part of his cover-up because he didn't want to let on
3 because he thought he was getting away with it.

4 There is another important thing I think about the cover-
5 up. Let's look at those text messages. Again, you'll have
6 copies of them. He and his mother are texting the next day.
7 Clear your messages. That's what the mom tells him. He
8 responds to his mother, talk to her, ma, and don't forget to
9 erase your texts.

10 I submit to you, ladies and gentlemen of the jury, what
11 does your common sense say? Unless he was out of storage in
12 his phone, why are you saying all this stuff about erasing
13 your texts? You know? Why? It's because he was covering it
14 up because he didn't want somebody to get access to his phone
15 because he thought he got away with it because he was in
16 Orangeburg and not in Charleston. But just to be on the safe
17 side, they were talking about trying to cover everything up.

18 Also with the cover up, he lied to police. There was a
19 four-hour lie. We didn't make you sit through the whole
20 thing, a four-hour lie about being in Orangeburg. He had no
21 emotion about that death in there.

22 And then it was only after he talked on the phone. He
23 talked to Tenika, who also goes by Alyssa, and he talked to
24 his mother. When he talked to Tenika, he said, yeah, they're
25 putting your car in Georgetown, and he had to repeat it a

1 couple times, if you remember, because she was, like, what,
2 and he said they are putting your car in Georgetown. He says
3 it over and over, and then his last question to her in the
4 clip that you saw was does that mean they're putting me on the
5 scene. He's trying to figure out, like, how much is Osborne
6 blowing smoke. How much is he storytelling and what do they
7 really know because he's very calculated in all of this.

8 So then he calls his mother. You hear him. Hey, mom.
9 It's Devin. And then you hear him. They took her car. They
10 made this part of the investigation. He tells his mother
11 every detail. They say they have video surveillance. He
12 tells his mother that and then he realized he was caught and
13 he tells. Oh, ma, I already told the story that wasn't true.

14 Yeah. But what does he do? He doesn't tell the truth
15 then either. He comes up with a new lie after he was caught.

16 I think that -- I told you that the judge in this case is
17 right. He told you to apply your common sense. That is what
18 you need in this case. This case is like a jigsaw puzzle and
19 I'm confident that you are going to put together all of the
20 pieces of this puzzle and you're going to use your common
21 sense.

22 You're going to look at motive. You're going to look at
23 opportunity. You're going to look at the text messages.
24 You're going to think about Robert Holmes. You're going to
25 think about the cell site locations. You're going to think

1 about matching ammunition. You're going to think about Tenika
2 Elmore. You're going to think about the surveillance video.
3 You're going to think about all of his phone calls.

4 I am confident that you will put together all of those
5 pieces and you will apply your common sense and you will
6 consider all of the evidence and you will have a clear
7 picture. You'll have a clear picture and you will find the
8 defendant guilty, guilty of committing murder and killing
9 Aakeem Smalls back on June the 8th of 2011. Thank you.

10 THE COURT: Thank you, Solicitor.

11 Mr. Kozelski.

12 MR. KOZELSKI: Thank you, Your Honor. May it please the
13 Court.

14 THE COURT: Yes, sir.

15 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

16 MR. KOZELSKI: Good morning. First off, I want to begin
17 by thanking you for everything that you've done. I know this
18 has been a long process and some of these days have sort of
19 drawn out. It's been a long week, but imagine dealing with
20 this for eight years, every day wondering when it's going to
21 end, and we're almost there. We're almost across the finish
22 line.

23 And after just a little more than a day of testimony, the
24 State is still trying to convince all of you that Devin, a man
25 with no history of violence with anybody, a man who was

1 friendly to everybody, would risk his freedom, risk his
2 daughter, risk his whole world for a couple of dollars to kill
3 his sister's boyfriend right outside of his sister's apartment
4 with his sisters and nieces inside. There's nothing that
5 could be further from the truth.

6 And we know it's not true because you heard from the
7 State's own witness, Robert Holmes, Aakeem's best friend, who
8 told you, yeah, there was a disagreement about some money, but
9 Devin gave -- or Aakeem gave Devin some money and everybody
10 was cool.

11 Aakeem -- Robert told you that Aakeem was Devin's
12 brother-in-law and that they did sell marijuana together, but
13 obviously, Aakeem didn't think that anything was wrong between
14 them because Aakeem was still going to Sharmaine's house. If
15 you think somebody's trying to kill you, you're not going to
16 go hang out at the sister's apartment.

17 And they're asking him why would Devin kill Aakeem. Why?
18 Detective Osborne kept asking him why would Devin kill Aakeem.
19 And so Aakeem -- Robert told him I guess everything wasn't
20 cool if you're telling me that Devin killed Aakeem.

21 But it's the only reason he could think of and it's not a
22 motive for murder. Robert told you that they were selling out
23 of weed quickly and that Devin had to keep bringing them more.
24 Aakeem didn't steal Devin's weed. Aakeem was selling the weed
25 that Devin stored at Sharmaine's apartment because that was

1 their arrangement.

2 Now, Robert, who has been convicted of giving false
3 information in the past, even embellished his story to say
4 that now it was a quarter pound of weed, even though he had
5 originally told Osborne that it was an ounce or an ounce and a
6 half.

7 And then he went on to say that, oh, yeah, now I remember
8 that Devin tried to call me a week before, but he never told
9 that to Detective Osborne. He never gave Detective Osborne
10 his phone number. And you heard that they had Devin's phone
11 number. They got a search warrant for all of his records, but
12 they didn't show you that connection because Robert didn't
13 even know his phone number at the time.

14 So you could tell that he was trying to help, but at the
15 end of the day, he wasn't there and he's just telling the
16 State and the police what they want to hear. What he did tell
17 you was that he's never seen Devin with a gun and he's never
18 seen Devin threaten Aakeem ever because that is not who Devin
19 is.

20 Now, Robert told you the word was out that he and Aakeem
21 were selling this good exotic weed, which obviously gave
22 somebody the idea to rob him. People rob and shoot drug
23 dealers all the time. Detective Kosarko testified to that and
24 Detective Osborne testified to that, but you didn't need them
25 to testify to that. You can use your common sense to know

1 that people rob drug dealers all the time because drug dealers
2 don't go to the police after they've been robbed.

3 And this is a high crime area. You heard Detective
4 Kosarko talk to you about Shot Spotter. Shot Spotter is these
5 tiny microphones that they place in geographic areas where
6 somebody monitors 24/7 all day long to listen for one thing
7 and one thing only, and that's gunshots. You don't put Shot
8 Spotter in an area where it's low crime where people aren't
9 shooting guns.

10 Maybe Aakeem told somebody, maybe Diangelo, that he was
11 waiting on his guy to make a drop and somebody knew a package
12 was coming. You heard Aakeem was arguing with somebody on the
13 phone that was 843-813-1747. Detective Kosarko told you they
14 couldn't find out who it was. They subpoenaed the records.
15 They subpoenaed the records, but they couldn't find out who it
16 was. And you didn't hear from Willis Walker, who looked at
17 those records and tracked them down.

18 Now, Ms. Linder got up here and said, oh, hey, maybe it's
19 the passenger, but if it was the passenger, then they would
20 have put Willis Walker up there to say he looked at this
21 number. Look. Look at where this tracks, it's the same place
22 Devin goes, but they didn't do that. So don't let that
23 influence you.

24 The State doesn't want you to believe that this is a
25 common robbery, which it is. They want you to believe that

1 this is a murder case, but let's think logically why that does
2 not fit.

3 Now, if your intent is to murder somebody and especially
4 somebody you know, somebody you're close to, somebody who is
5 basically your family, are you going to shoot them at a
6 distance and watch them run away? I mean if you're really
7 trying to murder somebody, wouldn't you chase after them and
8 make sure they were dead? Because if leave them alive, that
9 leaves all sorts of problems, not only legally, but you also
10 have to fear retaliation.

11 But that's not what happened in this case. You heard
12 that Aakeem was shot and he ran right out of his sandals. He
13 ran so far, basically a quarter mile, to get away that he
14 outran EMS. EMS couldn't find him, but Officer Jahngen did
15 find him.

16 Officer Jahngen heard him crying for help and Officer
17 Jahngen got over that fence and found Aakeem and he interacted
18 with Aakeem, and Aakeem was able to tell Jahngen where he was
19 shot and Aakeem was telling Jahngen that he was having trouble
20 breathing, but one thing that he never told Jahngen, that
21 Devin shot him because Aakeem didn't know who shot him.

22 Don't you think if somebody you know shoots you and the
23 police arrive, you're going to tell the police who shot you,
24 especially if you think you're dying. It's called a dying
25 declaration. And you didn't hear anything about that in this

1 case because, of course, Devin did not shoot Aakeem.

2 So no motive, no witnesses, no gun, no GSR, no forensics
3 at the scene of the crime. What are you left with to decide?

4 That's it, ladies and gentlemen. This is the evidence in
5 the case. This is what's going to go back with you when
6 you're back in that jury deliberation room. This is about the
7 cleanest evidence table I have ever seen in my life.

8 So what are they using? Three things. Devin lied about
9 being at the Georgetown Apartments that night. Two, the
10 bullet in the nightstand. And the third, some cryptic text
11 messages. These are the three things that they want you to
12 convict Devin of murder.

13 And I stood up here at the very beginning of this trial
14 and I told you that Devin lied to Detective Osborne in that
15 interview room, like everybody does when they get in there.
16 He lied. But they still took about two hours showing you
17 select footage of Devin's interview, showing you what we
18 already knew, that Devin did lie. An interrogation room that
19 is being recorded by the police is not the place that you want
20 to confess to being a drug dealer, to dealing in drugs.

21 Now, Detective Osborne told you, hey, look, I'm the
22 murder police. I don't care about drugs. I might've tried to
23 say that to him, but Devin doesn't know that. And what else
24 did Osborne tell you? He told you it's part of his job to lie
25 to people in that interrogation room. So Devin doesn't know

1 whether Osborne is lying to him and Devin doesn't want to go
2 to prison for felony drug distribution either.

3 Devin was there that night and I don't think that you
4 need Willis Walker to get up there and show you that he was
5 there. I told you that he was there, but being around the
6 scene of a crime does not make you guilty.

7 Well, he backed his car up. But if you look at that
8 surveillance video of the parking lot, you'll see about half
9 the cars are parked backwards. That's a whole lot of murder
10 warrants that Osborne should have written, but there are
11 people who witness shootings all the time and don't tell the
12 police about it for one reason or another.

13 Now, not everybody trusts the police and nobody wants to
14 be labeled a snitch. You even heard from Diangelo, who said
15 that he was the last person to speak to Aakeem. And when he
16 noticed that all those cops were around the scene, he saw all
17 the flashlights and he knew what was going on there, even he
18 did not go talk to the police and say, hey, I just talked to
19 this dude.

20 And it's not like Devin witnessed a cold-blooded murder.
21 Nobody saw anybody standing over Aakeem and shooting bullets
22 at him. Somebody saw somebody was shooting a gun. Everybody
23 ran. Devin ran. Aakeem ran, which is basic human instinct
24 when you have an active shooter.

25 Devin didn't find out that Aakeem was dead until later

1 that night, and Tenika told you he was genuinely surprised.
2 Why shouldn't he be?

3 And the State made a big deal about how the fact that he
4 didn't tell Tenika about the shooting, but Tenika told you he
5 kept that part of his life separate from their relationship.
6 She didn't know that he was dealing drugs. So why would he
7 tell her about a shooting that happened when he was going to
8 drop off weed there?

9 The next piece of evidence in the State's puzzle is what
10 I refer to as the magic bullet, and this piece of evidence is
11 puzzling indeed. You heard about how this bullet was a very
12 common brand and a very common caliber that you can go to
13 Walmart and buy it, to any gun shop and buy it. It's very
14 popular.

15 But you didn't hear anything about where this bullet came
16 from, who put it there, how long it had been there, why
17 Detective Goldstein was even searching Sharmaine's apartment
18 in the first place. In fact, you didn't hear from Detective
19 Goldstein at all in this case.

20 Now, I guess what they're trying to prove in this case is
21 that there was a fingerprint on the -- on the bullet, Devin's
22 fingerprint, but I don't know if that's even so sure. I mean
23 you're looking at the pictures that they show you of Jeff
24 Miller improperly handling that bullet because you heard from
25 Jennifer Wooley who says that's not how we handle a bullet

1 when we try to get fingerprints on it. We hold it at the
2 ends. You don't hold it where you think there's going to be
3 fingerprints.

4 And you heard from Rene Charles. He said even if you're
5 wearing gloves, if you're touching a place where a fingerprint
6 is going to be, that's going to smear it. That's going to
7 destroy the fingerprint.

8 And we didn't see any fingerprint card from Kathleen
9 Butler, who examined it, and I don't know what they expect us
10 to do other than to believe her because she's done 25,000
11 fingerprint examinations or 300,000 fingerprint examinations
12 or 600,000 fingerprint examinations, however many it is.
13 She's never gotten it wrong, but we didn't see that
14 fingerprint. We've just got to take her at her word.

15 But we don't know anything about this bullet other than
16 it was found in Sharmaine's apartment a week after the
17 incident, and they aren't alleging that Devin ran into his
18 sister's apartment that night. Obviously, there was not
19 enough time for that. So where did this bullet come from?
20 Whose nightstand is it? And why didn't we hear from anybody
21 in that apartment about what was in it, where it was, where it
22 came from?

23 Remember, Tenika told you that the State has the power of
24 a subpoena that can put anybody up on that stand and force
25 them to testify or put them in jail, let alone calling their

1 own detective, Detective Goldstein, but they didn't do that.
2 So you didn't hear anything about the origins of where this
3 bullet came from.

4 Lastly, the text messages to Terry Stevens. And again,
5 the State could have easily made Terry Stevens sit up on that
6 stand and explain to you what Devin meant by those texts, but
7 they purposely didn't do that because they wanted them to
8 remain cryptic on purpose.

9 They told you that they spoke to Terry Stevens, but they
10 chose not to call him and they want you to believe that Devin
11 is so careful about not calling or texting Aakeem to leave a
12 digital trail, but he certainly texts a random person that
13 he's going to do this.

14 Get somebody wet means to get intoxicated. Devin is a
15 drug dealer. That's what drug dealers do, get people
16 intoxicated.

17 All they could offer was that's what we hear on the
18 streets. Not one single anecdote did they offer you to say
19 that's what this means. But even Robert Holmes told you he
20 agreed with me, acknowledged my reference to Denzell using
21 that phrase in the movie *Training Day*. So you have at least
22 one cultural reference to rely upon when wondering what wet,
23 to get somebody wet or wet up means, but you don't need that.

24 You heard from Tenika. Tenika, who has no reason to lie
25 for Devin, who was dating him eight years ago, but obviously

1 getting arrested for murder is going to change somebody's
2 relationship status. And she told you that when Devin uses
3 that term, he means it to get intoxicated.

4 Slang is cultural and it means different things to
5 different people. So why not ask the man who the text was
6 sent to to come in and testify to what it means? I guarantee
7 you if Terry Stevens told the State or the police that it
8 meant to kill somebody that they would be up on that stand
9 testifying to that, but they didn't do that on purpose.

10 But the State can't be wrong. I mean we are talking
11 about award-winning detective, Assistant Solicitor David
12 Osborne, Esquire, there. He can't be wrong, even though he
13 has been wrong. Vanessa Bumcum said he was wrong because
14 they've been admitting throughout this entire trial that they
15 were wrong about Diangelo.

16 Remember, Diangelo was arrested and charged with Aakeem's
17 murder. Okay? You don't charge somebody with murder on
18 accident. This is not an oops scenario. Charging somebody
19 with murder is a serious matter for Detective Osborne, the
20 lead investigator, the case agent, the man in charge to say it
21 wasn't my call. I don't buy it. I don't buy it at all.

22 Whose call was it? Somebody had to make that call and
23 somebody had to have a reason to charge him and it can't be
24 because he was the last person that talked to Aakeem. That's
25 not how murder warrants work.

1 And jails -- jails are not private timeout boxes for
2 distressed parents, and I don't know what Diangelo did to his
3 mom to make her want to keep him in jail, but it must've been
4 bad if your mama wants you to stay in jail on a murder warrant
5 that she knows you didn't do. I don't know.

6 But did Diangelo kill Aakeem? I don't know. I don't
7 know. I don't believe that the State has disproven that he
8 did it. I know that if I was sitting in your seats and
9 Diangelo was on trial for Aakeem's murder, I would certainly
10 hesitate to convict him.

11 And that's how the judge will instruct you on what the
12 State's burden of proof is here. It is beyond a reasonable
13 doubt, that you cannot hesitate to convict Devin of murder.
14 And if that were the case, you would probably be in that jury
15 deliberation room for five minutes, but you're not going to be
16 because there is simply not enough evidence to convict anyone
17 of murder, let alone Devin.

18 Now, the State has talked about this a lot and the judge
19 is going to talk to you about the hand of one is the hand of
20 all, and I don't want this to confuse you when you are back in
21 the jury room. This whole trial the State has been selling
22 you a bill of goods. They have been selling you the fact that
23 Devin is this shooter. You saw that puzzle piece that they
24 put up there. Devin had the motive. Devin had the
25 opportunity. It was Devin, Devin, Devin that pulled this

1 trigger.

2 But now when they request the hand of one/hand of all,
3 they're saying, well, if we can't convince you that Devin
4 pulled the trigger, it would've had to have been the guy he
5 was with because we don't know who else it could be. But
6 that's not how this works, ladies and gentlemen. They have to
7 show you that this other person did this, and they don't know
8 anything about this person. They don't know who he was and
9 they don't know what he did.

10 And I even asked Detective Osborne. I said when you
11 figure out who this person is, are you going to serve them
12 with a murder warrant. He said, well, no. That's tricky
13 because he's the passenger. I would want to find out how he
14 was involved and what he knew before doing that.

15 So if they don't -- can't take out a murder warrant for
16 this person, they certainly can't convict this person for
17 murder, and therein lies the problem. You can't convict Devin
18 of murder if you believe this person did it because there is
19 no evidence that this person murdered Aakeem.

20 Now, you are about to make one of the most important
21 decisions of your life. Forget about the fact that it is the
22 most important decision that anybody's ever made in Devin's
23 life. This is one of the most important decisions that you
24 will make in your life and, because it is, the State is
25 supposed to give you a case that -- not that you can assume or

1 not that you can live with, not that you can tolerate, but
2 that you can be proud of, and they have not done that.

3 The decision you're about to make -- and the judge will
4 talk to you about this too -- is a collective one. All twelve
5 of you by the time you get back there will get back there and
6 talk as a collective, but it's also individual.

7 And one of the reasons that we bring a diverse group of
8 people like you guys together to decide these things is
9 because everyone's experience is different. Each one of you
10 had something to contribute that someone else might not. Each
11 one of you might see something differently. So you get
12 together and you talk about it.

13 But the flipside of that is each and every one of you,
14 because of the uniqueness of your experiences and your
15 perspectives, are entitled to your own opinion of the
16 evidence, and I say this no matter which way you lean. No one
17 can take that from you and you are perfectly within your
18 rights to stick to your guns if you view the evidence one way
19 and everybody else views it the other. Like I said, I say
20 that genuinely no matter which way you think. This is your
21 opportunity.

22 And I tell you this because it happens. People call me.
23 I send out jury questionnaires. They say, Mr. Kozelski, I
24 thought about what you were saying in your closing last night
25 and I want to change my vote. No. You can't do that. You

1 have one opportunity to get it right, one time, and that is
2 today.

3 And another Court might look at the decisions that I've
4 made during this trial or the decisions that the State has
5 made during this trial or even the decisions that Judge Dennis
6 has made during this trial and they might review those
7 decisions. Nobody -- nobody can go behind your verdict. It's
8 yours. Nobody can question it. Nobody can second-guess it.
9 And once you pass it, it exists forever and a day. It's in
10 blood and stone. It is yours and it cannot be undone.

11 I wish I could get up here and tell you that Devin is a
12 perfect person, that he's never made a mistake, but I don't
13 think I did that in this trial. We told you of Devin's flaws,
14 that he was selling marijuana illegally and that he lied to
15 the police about being at the Georgetown Apartments that
16 night. We all make mistakes. We all do things that we
17 regret.

18 But throughout this trial, I think that you've seen what
19 is important to Devin. It's his family. His family is very
20 important. I'm sure his mom sent him a text that said delete
21 all your texts because she doesn't want to see Devin go to
22 jail for selling drugs either, but she does text him. They
23 will figure out that you were not involved in this. They will
24 figure it out. They will figure out that you're not involved
25 in this, and she's the one in the interrogation room that is

1 talking to him and says you need to tell the truth. You need
2 to tell the truth.

3 And that's when Devin tells the truth because the truth
4 will save you and that's what I'm asking of you today, ladies
5 and gentlemen. I'm asking you to set this man free, free of a
6 cloud of suspicion that's been hanging over his head for the
7 last eight years, free from the nightmare of being wrongfully
8 accused, free to go home to be with his family because Devin
9 did not have anything to do with shooting Aakeem. So I'm
10 pleading with you to find him not guilty.

11 THE COURT: Thank you, Mr. Kozelski.

12 Ladies and gentlemen, at this point, I'm going to let you
13 go to your jury room for just a few minutes to have a break.
14 Do not begin your deliberations and, of course, do not discuss
15 this case. You still are not at that point.

16 And while you're -- during this break, a person will come
17 in and take your order for lunch so that with time we'll
18 hopefully have your lunch when we -- when we conclude the last
19 phase of this process.

20 You may retire to your jury room, but do not begin your
21 deliberations.

22 (WHEREUPON, the jury exited the courtroom at 10:56 a.m.)

23 THE COURT: We'll be at ease for a moment. Thank you.

24 (WHEREUPON, there was a break in the proceedings from
25 10:56 a.m. until 11:09 a.m., after which the proceedings

1 resumed as follows.)

2 THE COURT: All right. Let the record reflect Mr.
3 Johnson is present.

4 Mr. Tony, if you'll get the jury to return, please.

5 THE BAILIFF: Yes, sir.

6 THE COURT: Thank you.

7 (WHEREUPON, the jury entered the courtroom at 11:11 a.m.)

8 THE BAILIFF: All jurors are present, Your Honor.

9 THE COURT: Thank you, Mr. Tony.

10 CHARGE ON THE LAW

11 THE COURT: Thank you very much, ladies and gentlemen.

12 We now have reached the final stage of this process when it
13 becomes my responsibility to give you the law which, of
14 course, you have promised to accept and apply fairly and
15 impartially to those facts that you will determine very
16 shortly when you begin your deliberations.

17 You and only you have the exclusive duty and
18 responsibility to determine the effect, the value, the weight,
19 and the truth of the evidence that has been presented. When I
20 say truth, I'm talking about what you find to be believable
21 and credible.

22 Both the State and Mr. Johnson expect that you will at
23 the appropriate time apply your common sense and sense of
24 logic and reason fairly and impartially in analyzing this
25 evidence in deciding what you find to be credible and

1 believable, and then take the law and apply that law fairly
2 and impartially to those -- to those facts. And when you have
3 done that, you will have honored in every respect the
4 commitment that you made when we commenced this process.

5 During this charge, there may be from time to time and
6 you may have heard the reference to defendant. I think I
7 indicated to you that when we started. That's a term that we
8 use in the legal profession to designate the party against
9 whom a claim is made, either whether it's civil or criminal.
10 It's the same thing. And that's all it means. It means
11 nothing else. It's just a way of identifying Mr. Johnson. So
12 if you hear that, just know that I'm referring to Mr. Johnson.

13 As I mentioned to you when we started the qualifications,
14 he was accused in these two documents which I have in my hand.
15 They will not accompany you to your jury room because they're
16 not evidence. They just merely claim the -- they just contain
17 the allegations or accusations against him.

18 And it accuses him of committing the offense of murder
19 and the possession of a firearm during the commission of a
20 violent crime. To this -- to these indictments, Mr. Johnson
21 has rendered a plea of not guilty, which then places upon the
22 State the burden of proving his guilt beyond a reasonable
23 doubt.

24 As I told you when we were impaneling you and in my
25 opening statement, persons -- Mr. Johnson and anyone accused

1 of committing a criminal offense in this state and in this
2 country is never required to come in and prove anything or
3 disprove anything or present any evidence or say anything at
4 all, and the reason for that is the law says -- and it's very
5 -- it's not -- these aren't just words. It's an active
6 presumption that each of you, in order to honor your oath,
7 must maintain at all times and that is the presumption of
8 innocence.

9 And you can only set that aside when through your
10 deliberative process you become firmly convinced, that is
11 beyond a reasonable doubt, that the State has met its burden
12 of proof and established each element of the crime charged
13 before you may set it aside and only then may you set it
14 aside. The State -- the State alone has the burden of proof.

15 So obviously, ladies and gentlemen, the fact that a
16 person accused of a criminal offense doesn't testify against
17 himself or doesn't testify in a case involving him or her,
18 then that should never be considered by a jury because a
19 person accused has the right to remain silent and that can
20 never be used against them.

21 So the fact that Mr. Johnson in this case did not take
22 the stand and testify cannot be discussed by you, can't be
23 mentioned by you. It has no basis whatsoever for you. And if
24 you consider that, then you have violated the oath that you
25 took when you started because, as I stated, the State has the

1 sole burden of proof and must establish it beyond a reasonable
2 doubt.

3 A reasonable doubt. What does it mean? As I said, it's
4 a reasonable doubt is a doubt that would make an honest,
5 sincere, conscientious juror who is searching for the truth in
6 the case to hesitate to act or take some action. Proof beyond
7 a reasonable doubt is proof that leaves you firmly convinced
8 of the defendant's guilt. Now, I will tell you there are very
9 few things in this world and in this life that we know with
10 absolute certainty, and the law does not require proof that
11 overcomes every possible doubt.

12 If based upon your consideration of the evidence you're
13 firmly convinced the defendant is guilty of one or more of
14 these crimes, then you must find him guilty. If, on the other
15 hand, you think there's a real possibility that he's not
16 guilty, then you must give him the benefit of that doubt and
17 return a verdict of not guilty.

18 A reasonable doubt, ladies and gentlemen, may arise from
19 the evidence in the case or from the lack or absence of
20 evidence in the case, and it's up to you to determine whether
21 or not a reasonable doubt exists as to Mr. Johnson's guilt. I
22 charge you that he's entitled to every reasonable doubt
23 arising in the whole case.

24 What do I mean by that? Simply this. If upon any issue
25 of fact which is essential for you to return a verdict of

1 guilty you should have a doubt as to how that's to be
2 resolved, I would instruct you to resolve it in his favor.

3 Now, the evidence which you are to consider consists of
4 the testimony of the witnesses and exhibits that were
5 introduced and offered during the trial. As I mentioned to
6 you about the difference, any exhibits that was admitted will
7 accompany you to your jury room. Any exhibit that was
8 referenced for identification purposes, you consider the
9 testimony of that witness concerning that exhibit, but that's
10 the evidence that you'll be evaluating when you're instructed
11 to begin your deliberations.

12 If at any point during these proceedings you consider --
13 you think I have commented or suggested how you should resolve
14 a factual issue, you are to disregard that because that is not
15 my responsibility. I have nothing to do with that. I have to
16 give you instruction on the law.

17 Also, I would tell you that the remarks of the attorneys,
18 as I stated earlier this morning and when we started, they are
19 very important. They'll be very -- extremely beneficial to
20 you and you did give them your undivided attention and I
21 appreciate that, but please remember something. Their remarks
22 should not be considered evidence either.

23 And if your recollection differs from what they stated a
24 witness said or didn't say, then you are to disregard what
25 they said and take your recollection because you and you alone

1 are the sole judges of the facts.

2 If during their discussions they mentioned a principle of
3 law which differs from the law as I give it to you during this
4 instruction, you are also instructed to disregard those
5 remarks because for the purposes of this proceeding today, I'm
6 the sole judge of the law in this case.

7 Now, how does the entity who has the burden of proof
8 present its case? There are two types of evidence in cases
9 such as this and in any case really for that matter, whether
10 it's criminal or civil. It's direct or indirect evidence, and
11 the common name for indirect evidence is more commonly
12 referred to as circumstantial evidence.

13 Direct evidence, as the name would imply, generally deals
14 with a sensory perception. I saw something, I heard something
15 or the like. And if you're firmly convinced of the
16 credibility and believability of that testimony, then it would
17 establish that particular fact or circumstance.

18 Circumstantial evidence is when a witness testifies to a
19 number of facts and you are firmly convinced of each of those
20 facts and when you link them, either through inductive or
21 deductive reasoning, it leads you to a logical conclusion,
22 again about which you are firmly convinced, then it would
23 establish that particular fact or circumstance through
24 circumstantial evidence.

25 I would tell you that either method is used and quite

1 often both methods are used, and the law makes absolutely no
2 distinction between the weight or the value to be given to
3 either direct or circumstantial evidence, nor is there any
4 greater degree of certainty required for circumstantial
5 evidence than direct evidence. You are instructed to weigh
6 all of the evidence and decide, again, what you find to be
7 credible and believable.

8 I would instruct you, however, that the fact that -- that
9 if the State is relying on circumstantial evidence, there are
10 certain factors that must be present. First, you must be
11 firmly convinced as to each one of those circumstances upon
12 which they are relying and, secondly, when you link them, they
13 must -- the conclusion must be the only reasonable conclusion
14 to exclude any other reasonable hypothesis before you can rely
15 on it.

16 But I -- and I will tell you though the fact that the
17 circumstances in a case are merely suspicious of guilt or that
18 the guilt of the defendant is probable, that wouldn't be
19 sufficient. Why? Because it has to be more than somebody
20 suspected of guilt or probably guilty. It has to be proof
21 that leaves you firmly convinced, that is beyond a reasonable
22 doubt.

23 Now, during this proceeding, a statement alleged to have
24 been made by the defendant has been -- has been admitted into
25 evidence in this case. While I have made the determination as

1 to the admissibility of the statement, I would instruct you
2 that it is your ultimate decision as to whether or not the
3 defendant made the statement and, if the defendant did make
4 the statement, you must determine whether the statement was
5 made by the defendant voluntarily and of his own free will.
6 This means that the statement was not caused by pressure,
7 force, fear, threats, coercion or intimidation or by hope or
8 promise of leniency or reward of any kind.

9 In determining whether the statement was voluntary, you
10 should consider both the characteristics of the defendant and
11 the details of the questioning. Some of the factors that you
12 may consider would be the age of the defendant, the
13 defendant's education or lack of education, the defendant's
14 mental ability or capacity, the defendant's IQ or
15 intelligence, the defendant's background and environment, the
16 place and the length of detention, the nature of the
17 questioning, and the advice or lack of advice to the defendant
18 of his constitutional rights, including but not limited to the
19 right to remain silent, that any statement could be used
20 against him in a court of law, that the right to have a lawyer
21 present and that if he could not afford a lawyer, one would be
22 appointed to represent him without any cost, and that he could
23 stop making a statement at any time.

24 You must carefully consider all of the surrounding
25 circumstance before you give any weight to the alleged

1 statement. The State has the burden of proving beyond a
2 reasonable doubt that the alleged statement was voluntary and,
3 if you determine that it was, you may give the statement any
4 further consideration that you deem proper.

5 You must decide that the weight, if any, should be given
6 to the alleged -- if you determine the state -- excuse me. If
7 you determine the statement was not free and voluntary, then
8 you are instructed not to consider the statement at all.

9 Now, how do you decide the facts of this case? We've
10 been telling you -- all of us have been telling you it's a
11 common-sense exercise. You do it and you've done it all your
12 life, and there are many factors that we consider in assisting
13 us in making these types of decisions. I will discuss some of
14 them with you now, but if I don't mention a method or factor
15 that you've used in your life and you found it to be reliable,
16 please use it when you're instructed to begin your
17 deliberations.

18 But some of the factors you may want to consider would be
19 the appearance of the witness. How did they appear to you?
20 Sraightforward or hesitant in answering questions? What was
21 the ability to know the testimony that the witness gave and
22 how did the witness come to know that particular -- those
23 particular facts and circumstances?

24 Was the testimony of a witness consistent? Was it
25 inconsistent? Was it strengthened or weakened by other

1 evidence in the case? Was there a reason for a witness to
2 give testimony which may be helpful or detrimental to one side
3 or the other? In other words, was the witness biased or
4 prejudiced in any fashion?

5 During this -- during the testimony, you've heard mention
6 of a witness's criminal convictions. I would tell you that
7 the only purpose that you may -- the only -- that's only for
8 one purpose and that is for your assistance in evaluating the
9 credibility of that witness. It does not mean you can't
10 believe that witness or that you must believe it. It's just
11 simply a factor that you would consider with all other factors
12 and you can't consider it for any other purpose whatsoever.

13 Now, in making these decisions, you are given -- what you
14 find to be credible and believable, our law gives you very
15 wide latitude and broad discretion. You have the right to
16 believe many witnesses against one, one witness against many.
17 You have a right to believe all of a witness's testimony,
18 parts of a witness's testimony or none of a witness's
19 testimony.

20 Now, of course, you don't make these decisions
21 arbitrarily, but if there's a reason in the record of this
22 case for taking that position, you have that prerogative
23 because you have promised that you are going to at the
24 appropriate time search the evidence and to find -- and find
25 what you find to be credible and believable, regardless of the

1 source of the evidence, and that's what you will do in just a
2 few moments.

3 Now, when it comes to the law, you don't have any
4 latitude there and, as I mentioned to you when we were
5 qualifying you, there are principles of law that probably
6 everybody in this room may think need to be changed. So we
7 differ with that. That's our wonderful right in this country
8 and you have that right generally, but not today.

9 You have to take the law as I give it to you and apply
10 that law fairly and impartially to the facts that you will
11 determine. And whether you agree with it or not, it doesn't
12 matter. You've promised to set aside your personal feelings
13 and apply that -- apply the law fairly and impartially.

14 The order in my instruction means nothing. I had to put
15 it in some order. Don't put any greater weight on any one
16 aspect then you do on any other and, again, you will consider
17 the charge as a whole when you are applying it to the -- to
18 the case.

19 First, let me -- let me talk about the charge of murder.
20 What does that -- what does the State have to prove?

21 The State must prove beyond a reasonable doubt that Mr.
22 Johnson killed another person with malice aforethought. Now,
23 malice is hatred, ill will or hostility towards another
24 person. It is the intentional doing of a wrongful act without
25 just cause or excuse and with an intent to inflict an injury

1 or under circumstances that the law will infer evil intent.

2 Malice aforethought does not require that the malice
3 exist for any particular time before the act is committed, but
4 the malice must exist in the mind of the defendant just before
5 or at the time the act is committed and, therefore, there must
6 be a combination of a previous evil intent and the act.

7 Malice aforethought may be expressed or inferred. The
8 terms expressed and inferred do not mean different kinds of
9 malice, but merely the manner in which the malice may be shown
10 to have existed. That is either by direct or indirect or
11 circumstantial evidence.

12 Express malice is shown when a person speaks words with
13 express hatred or ill will for another or when the person
14 prepared beforehand to do the act which was later
15 accomplished.

16 The malice -- malice may be inferred, however, from
17 conduct showing a total disregard for human life. Inferred
18 malice may also arise when the deed is done with a deadly
19 weapon.

20 A deadly weapon is any article, instrument or substance
21 which is likely to cause death or great bodily harm. I charge
22 you that a pistol is a deadly weapon.

23 The use of a deadly weapon permits you to infer malice,
24 but it does not require you to infer malice. If facts are
25 proven in this case beyond a reasonable doubt sufficient to

1 raise an inference of malice to your satisfaction, this
2 inference would simply be an evidentiary factor to be taken
3 into consideration by you, along with all other evidence in
4 the case, before you may give -- give it such weight as you
5 find it should receive. And you are free to accept or reject
6 this permissive inference, depending on your view of the
7 facts.

8 Now, in conjunction with the crime of murder, I would
9 charge you of this principle of law. It's called the hand of
10 one is the hand of all.

11 If a crime is committed by two or more people who are
12 acting together in committing a crime, the act of one is the
13 act of all. A person who joins with another to accomplish an
14 illegal purpose is criminally responsible for everything done
15 by the other person which occurs as a natural consequence of
16 the acts or act done in carrying out the common plan or
17 purpose. If two or more people are together, acting together,
18 assisting each other in committing the offense, the act of one
19 is the act of all.

20 Now, prior knowledge that a crime is going to be
21 committed without more is not sufficient to make a person
22 guilty of the crime. Mere knowledge or merely being present
23 by another person and the crime is committed, that's not
24 sufficient to convict a person of the crime.

25 In order to convict the defendant -- even if the

1 defendant was present when it is committed, is not sufficient
2 to convict. You must -- guilt is -- to convict the defendant
3 as a principal, a principal is proven by showing an actual or
4 constructive presence at the scene as a result of a prior
5 arrangement. Therefore, finding a prior arrangement, plan or
6 common scheme is necessary for a finding of guilt as a
7 principal.

8 The State must prove beyond a reasonable doubt by
9 competent evidence that the theory of the hand of one is the
10 hand of all. A principal in a crime is one who either
11 actually commits the crime or who is present aiding, abetting
12 or assisting in committing the crime.

13 When a person does an act in the presence of and with the
14 assistance of another, the act is done by both. Where two or
15 more are acting with a common plan or scheme or intent are
16 present at the commission of the crime, it does not matter who
17 actually commits the crime. All are guilty.

18 And of course, as with any other aspect, the State has to
19 prove each of those facts that we just discussed beyond a
20 reasonable doubt. That means you are firmly convinced.

21 The defendant is also charged with the possession of a
22 weapon during the commission of a crime. Now, the law
23 prescribes that if a person is in possession of a firearm or
24 visibly displays what appears to be a firearm during the
25 commission of a violent crime and is convicted of committing

1 or attempting to commit the violent crime -- and I would
2 charge you that murder is defined by our law as a violent
3 crime -- then the person would be -- would be guilty of that.
4 Of course, all of which must be established beyond a
5 reasonable doubt. I would instruct you that a pistol is
6 considered a firearm in connection with interpreting or
7 applying that statute.

8 Now, criminal intent is a necessary element of each crime
9 and that has to be established beyond a reasonable doubt.
10 Intent means intending the result which actually occurs, not
11 accidentally or involuntarily. Intent may be shown by the
12 acts and conduct of the defendant and other circumstances from
13 which you may naturally and reasonably infer intent, and the
14 State has to prove each of those elements beyond a reasonable
15 doubt.

16 Criminal intent is a state of mind that operates jointly
17 with the act in the commission of a crime. It includes those
18 consequences which represent the very purpose for which an act
19 is done or known to be substantially certain to result,
20 regardless of desire.

21 Criminal intent is a mental state, a conscious
22 wrongdoing. So it's up to you to determine whether or not
23 what the defendant intended to do, first of all establishing
24 the defendant was involved, and based on the circumstances
25 that have been shown to have existed. I tell you that the

1 State has to prove intent, as it must prove every other
2 element, beyond a reasonable doubt.

3 Ladies and gentlemen, you are not advocates for either
4 side. You aren't here to reward any friends, nor are you here
5 to punish any enemies.

6 You and I as judges have to do something that I will
7 confess quickly to you it's not always easy because we're
8 human and as humans we all have varying degrees of human
9 emotion, but one thing is for certain. While we have that
10 right to have it, we have to make a conscious effort -- I mean
11 conscious -- to set those aside because your decision, my
12 decisions, can never be motivated or influenced by human
13 emotion.

14 So when you retire and begin your deliberations, you have
15 to methodically, deliberately, carefully make sure that you
16 set that aside, analyze the evidence, and decide what you find
17 to be true. And then once you decide that, you take the law
18 as I've given it to you and apply that law fairly and
19 impartially to those facts and you will have completed and
20 honored the process in every respect.

21 Madam Presiding Juror, to assist you in recording your
22 verdict, I have prepared two verdict forms, which you'll note
23 they look the same. There's a caption. The caption is simply
24 to facilitate the filing of the document. It means nothing.

25 And they read basically the same thing. One deals with

1 the crime of possession of a weapon during the commission of a
2 violent crime. The other deals with murder.

3 It says -- this one happens to be the murder. It says
4 we, the jury, by unanimous consent find the defendant, Devin
5 Jamel Johnson, on the charge of murder -- and there are two
6 choices. The order in which they appear means nothing. I had
7 to put it in an order. One says guilty, the other not guilty.

8 And what will you be saying? You will be saying that --
9 if it's guilty, you'll be saying we've analyzed the evidence
10 and you've found beyond a reasonable doubt that Mr. Johnson
11 committed the crime of murder consistent with my instruction,
12 and that would be either as a principal or one aiding and
13 abetting sufficient to comply with the hand of one/hand of
14 all, and you found that each one of those elements beyond a
15 reasonable doubt exists and, therefore, you're using the form
16 and placing on it guilty.

17 If you'll place a check or cross in the line that
18 precedes it and circle it, we'll know that's your decision,
19 and if you'll sign it and date it, you will have completed the
20 form.

21 Not guilty, you'll be saying you've considered the
22 evidence and the State has failed on one or more elements
23 because if they fail on one, you must return a verdict of not
24 guilty on that particular charge.

25 Verdict. What does it mean? It's unanimous. All twelve

1 of you must agree. If it's eleven to one, not sufficient.
2 It's got to be twelve to zero before it can be your decision.

3 The next is the possession of a weapon during the
4 commission of a violent crime. Same -- same options. In this
5 one though, there's one little caveat or catch.

6 If you find -- if you're collective in your decision that
7 Mr. Johnson was the person that actually shot -- fired the
8 shot, not just assisting and aiding, which the State would
9 have to prove, but he was the person that was the shooter,
10 then you may consider this one. And if you find that the
11 State has proven beyond a reasonable doubt that at the time he
12 had in his possession a gun and he committed the crime of
13 murder, then that would be -- and that was established beyond
14 a reasonable doubt and you were twelve to zero in agreement,
15 then you may return a verdict of guilty on that one.

16 If, on the other hand, you find that either Mr. Johnson,
17 of course, did not commit the crime of murder either as a
18 principal or aiding or abetting in that, then you must return
19 a verdict of not guilty on that. Why? Because there would be
20 no violent crime.

21 And also, if in this case you find that he was not the
22 person that was the shooter, you can't return a verdict of
23 guilty. Why? Because he didn't have in his possession the
24 firearm. So that -- those -- that would be the only request
25 on that one.

1 And this one should be -- obviously, can only be dealt
2 with if you first find murder, guilty of murder, him guilty of
3 the charge of murder. Otherwise, it's not guilty on both.

4 So with that instruction, I'm going to ask you this. The
5 first twelve of you feel that you're able to continue? If
6 someone feels they can't, raise their hand.

7 (WHEREUPON, there was no response.)

8 THE COURT: At this point, it appears that the first
9 twelve are able to continue, Mr. Alternate, and when we excuse
10 the jury in just a moment, I'm going to ask that you not
11 rejoin them in the jury room. They'll take you to a room and
12 I'll be in shortly to tell you how long you need to stay with
13 us, but they will -- they have now indicated that they're
14 ready to go.

15 And I know you're anxious to get started, but you're not
16 there yet. I have to excuse you to talk about my charge and
17 it might be necessary to return you to the courtroom to give
18 you some additional instruction or clarification and, if so,
19 we will bring you all back, including the alternate, and give
20 you additional instruction. But if there aren't any, then we
21 will gather the exhibits and deliver them to you. And when
22 you receive those exhibits, then and only then may you
23 commence your deliberations.

24 Now, during the deliberations, if any juror has to leave
25 the table for any reason, you must stop deliberating until all

1 twelve of you are together. But other than that, ladies and
2 gentlemen, you proceed as you deem fit and proper.

3 Also, let me also tell you that if you need to view any
4 of the videos, we'll have to return you to the courtroom to do
5 that. If that should become necessary, if you'll just write
6 us a note telling us which ones you need us to set up for you.
7 We'll bring you all back in to view the videos here because we
8 don't have a machine or a computer that we can send to you in
9 your jury room. So that's how that will have to be
10 accomplished.

11 But other than that, you'll have all the other evidence
12 that you need. But if you have a problem with any of it, then
13 just let us know and we'll try to address those problems.

14 Thank you for your attention. You may retire to your
15 jury room and wait for the exhibits before commencing your
16 deliberations. Thank you. You may retire.

17 (WHEREUPON, the jury exited the courtroom at 11:40 a.m.)

18 THE COURT: Exceptions or additions from the State?

19 MS. LINDER: None from the State.

20 THE COURT: Exceptions or additions for Mr. Johnson?

21 MR. KOZELSKI: Your Honor, no exception to how it was
22 read. It was perfect, but I just wanted to note on the record
23 that we are objecting to the hand of one/hand of all charge.

24 We don't believe that the State has presented any
25 evidence that the person that Mr. Johnson was with that night

1 was the shooter. I think the evidence that they presented
2 exclusively in this case was the fact that Mr. Johnson was the
3 shooter, and I will say that I believe I gave a softball to
4 Mr. Osborne when I asked him whether or not he would serve a
5 murder warrant on the person once he found out who he was and
6 he did say no, that is tricky because he's a passenger and I
7 would want to find out his involvement in this case before I
8 did that.

9 So I think even their own State's witness said we don't
10 have enough to say he's involved or not, and that's why I
11 think the Court should have declined to read that hand of one/
12 hand of all charge.

13 THE COURT: And I appreciate that and I would say to you
14 that I can't run from or hide from history. That I took that
15 position also in the first trial and the jury pointed out
16 something to me that I needed to heed.

17 And while I strongly agree with what you just said, that
18 that was the whole position, the jury asked a very legitimate
19 question and it caused me to reflect on, first of all, why did
20 I block it out so much, and I think I have some ideas about my
21 human -- my humanity and my sense of being a lawyer when I
22 shouldn't be when I'm a judge, but the other part is I learn
23 -- I try to learn from my mistakes.

24 And while I agree with you that certainly there was a lot
25 of indication of that in this particular case, I truly believe

1 the hand of one/hand of all is most appropriate, especially
2 with the fact that we have -- well, the evidence.

3 Of course, we have the evidence, if the jury believes it,
4 of course, that Mr. Johnson -- in taking instruction that the
5 State has presented that he was intending to go kill him, go
6 shoot him. Whether he died or not, I don't know if that was
7 necessarily it. Probably making him bleed I think was what
8 the typical literal statement of the vernacular, but that part
9 of it and then getting somebody to assist him, that seems to
10 imply I want to get somebody and maybe he didn't want to do it
11 himself. Maybe he wanted somebody else to be the shooter, but
12 he was going to assist. So I believe all of that really falls
13 into that accomplice part of being participating and so I
14 respect your position, but I think it's appropriate under the
15 evidence of this case.

16 Any other exceptions?

17 MR. KOZELSKI: No, Your Honor.

18 THE COURT: Thank you all very, very much. It's always a
19 pleasure to work with all of you.

20 MR. KOZELSKI: It certainly is.

21 MS. LINDER: Thank you.

22 THE COURT: All right.

23 THE LAW CLERK: Counsel, will y'all come check the
24 evidence before you send it back?

25 MS. LINDER: Yes.

1 (WHEREUPON, there was a pause in the proceedings for the
2 evidence to be checked.)

3 (WHEREUPON, a jury note was marked as Court's Exhibit
4 Number 9.)

5 (WHEREUPON, the jury deliberations began at 11:53 a.m.)

6 (WHEREUPON, there was a break in the proceedings from
7 11:53 a.m. until 1:54 p.m., after which the proceedings
8 resumed as follows.)

9 (WHEREUPON, a jury note was marked as Court's Exhibit
10 Number 10.)

11 THE COURT: Y'all approach.

12 MS. LINDER: I'm sorry, Your Honor.

13 THE COURT: And he can show it to you.

14 (WHEREUPON, a bench conference was held off the record,
15 after which the proceedings resumed as follows.)

16 THE COURT: Okay. Let's bring them in, please.

17 THE BAILIFF: Yes, sir.

18 (WHEREUPON, the jury entered the courtroom at 1:56 p.m.)

19 THE BAILIFF: All jurors are present, Your Honor.

20 THE COURT: Thank you, Mr. Tony.

21 Thank you, ladies and gentlemen.

22 Presiding Juror, I have what's now Court's Exhibit Number
23 10, and the question is does the hand of one apply to the
24 possession of a weapon during the commission of a violent
25 crime. That's a very good question because I told you that in

1 explaining the verdict form, I would give you this additional
2 instruction.

3 If the State has proved beyond a reasonable doubt that
4 the murder has been committed, then in order to have a
5 conviction for the hand of one/hand of all, the State would
6 also have to prove beyond a reasonable doubt that Mr. -- Mr.
7 Johnson had possession of a firearm at the time that that
8 murder was committed.

9 In other words, hand of -- you can't -- assuming just for
10 the sake that there were two people and three people,
11 whatever, the person -- in order to be convicted, the hand of
12 one doesn't apply to anything but the murder. It does not
13 apply to the -- to the firearm possession. You have to prove
14 actual possession of that in order to return a verdict of
15 guilty.

16 So with that additional instruction, if you'll resume
17 your deliberations. Thank you very much. If further
18 instructions are needed, please let me know.

19 (WHEREUPON, the jury exited the courtroom at 1:58 p.m.)

20 THE COURT: Other than borderline maybe getting close to
21 violating the Constitutional charge on the facts, any other --
22 any exceptions to the charge?

23 MS. LINDER: None from the State.

24 THE COURT: Any exception to the charge?

25 MR. KOZELSKI: No, Your Honor.

1 THE COURT: Thank you very much. I don't know how else
2 to explain that other than that, but I think given our
3 discussion, that's -- that's what we all I think had come to
4 an agreement. Thank you all very much.

5 MS. LINDER: Thank you.

6 THE COURT: We'll be at ease.

7 (WHEREUPON, there was a break in the proceedings from
8 1:59 p.m. until 2:22 p.m., after which the proceedings
9 resumed as follows.)

10 THE COURT: All right. I'm advised that the jury has
11 reached a verdict. Is the State ready to receive the verdict?

12 MS. LINDER: The State is ready to proceed.

13 THE COURT: And let the record reflect Mr. Johnson is
14 present. Is the defendant ready to receive the verdict?

15 MR. KOZELSKI: We are, Your Honor.

16 THE COURT: Okay. Mr. Johnson, when I read the verdict,
17 I would ask that you stand with your lawyers, please, sir.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Thank you.

20 Let's bring in our jury, Mr. Tony.

21 THE BAILIFF: Yes, sir.

22 (WHEREUPON, the jury entered the courtroom at 2:25 p.m.)

23 THE BAILIFF: All jurors are present, Your Honor.

24 THE COURT: Thank you, Mr. Tony.

25 Thank you, ladies and gentlemen.

1 they really have found that they didn't think he's the shooter
2 and so I fashioned the sentence in that with that in mind.
3 Frankly, that's why I didn't give him consecutive to the -- to
4 the five years.

5 So as I told him yesterday, I've given a lot of thought
6 to this because I want to be fair, but that was what I thought
7 was appropriate punishment for the crime of murder and so I'm
8 going to honor that decision. I haven't heard anything that
9 changes that. It's what I thought when the jury's question
10 came back. I said, yeah, that's exactly what. That's why I
11 said what I said.

12 I'll give you a chance to argue because I thought it
13 probably should have been charged and, obviously, it should
14 have been and I think the verdict clearly states this time
15 that it was a hand of one/a hand of all.

16 I wish it could be a teaching tool for somebody down the
17 road that says, you know, if you get involved with something
18 and you start participating, you might want to think twice
19 about it because you're going to be guilty just as much as the
20 principal, and that's -- that's something I don't think the
21 population at large understands. But anyway, thank you very
22 much.

23 SENTENCE

24 THE COURT: The sentence of the Court, Mr. Johnson, is
25 that you be committed to the Department of Corrections for a

1 term of 36 years, but I give you credit for 2,604 days.

2 Is that what you told me?

3 MR. KOZELSKI: Yes, Your Honor.

4 THE COURT: Towards that sentence. Good luck to you,
5 sir. Thank you.

6 MS. LINDER: Thank you.

7 (WHEREUPON, the proceedings ended at 2:46 p.m.)

8

9 --- END REQUESTED TRANSCRIPT ---

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Charleston County Courthouse
RANDOM STRIKE SHEET

4/1/19

JUDGE NAME : Dennis R. Markley Jr
TRIAL TYPE : General Session
PANEL ID : M640238
COURTROOM 4C

DESCRIPTION : State V Devin Jamel Johnson

Sorted by: Random Nbr
Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
1 Peterson, Barry D	267	W	M	()	(✓)	()	
2 White, Thorton C	383	W	M	()	(✓)	()	
3 Deaton, Elizabeth A	83	W	F	()	()	()	1
4 Valiulis, Thomas E	364	W	M	()	(✓)	()	
5 Hamrick, George C	138	W	M	()	(✓)	()	
6 Clarke, Britney A	71	B	F	()	()	()	2
7 Jarrett, Luke Z	162	W	M	()	()	()	3
8 Freemanbazemore, Michael	115	W	M	()	(✓)	()	
9 Kiser, John D Jr.	181	W	M	()	()	()	4
10 Lutge, Rudolph W	205	W	M	()	()	()	5
11 St, Onge Ashley E	336	W	F	()	()	()	6
12 Nettles, Shanendoah M	248	W	F	()	(✓)	()	
13 Browder, Marnie L	36	W	F	()	(✓)	()	
14 King, Felisha B	179	B	F	(✓)	()	()	
15 Backman, Timothy	7	B	M	()	()	()	7
16 Rabang, Dane K	278	A	M	()	()	()	8
17 Koozer, Kevin B	183	W	M	()	(✓)	()	
18 Nolen, Keslie C	251	W	F	()	()	()	9
19 Carter, Hope	58	B	F	()	()	()	10
20 Dilligard, Barbara D	90	B	F	()	()	()	11
21 Tanksley, Branch	350	W	M	()	()	()	12
22 Burns, Gregory A	47	W	M	()	(✓)	()	
23 Church, Dennise G	68	W	F	()	(✓)	()	
24 Bullard, Shannon L	44	W	F	()	()	()	alt 1

Charleston County Courthouse RANDOM STRIKE SHEET

JUDGE NAME : Dennis R. Markley Jr
TRIAL TYPE : General Session
PANEL ID : M640238
COURTROOM 4C

DESCRIPTION : State V Devin Jamel Johnson

Sorted by: Random Nb
Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
25 Clifton, Michael R	72	W	M	()	()	()	 call 2
26 Singleton, Leonard B	328	W	M	()	()	()	
27 Richardson, Mark S	288	W	M	()	()	()	
28 Lancaster, Timothy E	188	W	M	()	()	()	
29 Johnson, Marvin	168	B	M	()	()	()	
30 Fields, Aurelia C	107	B	F	()	()	()	
31 Keogh, Rebecca A	176	W	F	()	()	()	
32 Temoney, Kimberly Z	353	B	F	()	()	()	
33 Nee, Peter M	246	W	M	()	()	()	
34 Archambault, John A	4	W	M	()	()	()	
35 Ropp, Melanie E	302	W	F	()	()	()	
36 Lankford, Cynthia A	190	W	F	()	()	()	
37 Jenkins, Robyn N	165	W	F	()	()	()	
38 Powell, Patrick E	272	W	M	()	()	()	
39 Kotchish, Preston M	186	W	M	()	()	()	
40 Rebesco, Gina E	281	W	F	()	()	()	
41 Mcfadden, Troy D	217	B	M	()	()	()	
42 Smith, Lawrence D Jr.	333	B	M	()	()	()	

Total Number of Jurors:

42

** END OF REPORT **

1 STATE OF SOUTH CAROLINA) GENERAL SESSIONS COURT
 2 COUNTY OF CHARLESTON) CASE NO. 2018-GS-10-06264
 3 STATE OF SOUTH)
 4 CAROLINA,)
 5 Plaintiff,) Transcript of Record
 6 vs.)
 7 DEVIN JAMEL JOHNSON,) Date: May 29, 2019
 8 Defendant.)

9 * * * * *

10 B E F O R E:

11 The Honorable R. Markley Dennis
 12
 13
 14
 15
 16
 17
 18

19 * * * * *

20
 21 Denise J. Lauder, RPR
 22 Ninth Judicial Circuit
 23
 24
 25

1 A P P E A R A N C E S

2

3 REPRESENTING THE STATE OF SOUTH CAROLINA:

4 STEPHANIE LINDER, ASSISTANT SOLICITOR

5 O. T. Wallace Building

6 101 Meeting Street

7 Charleston, SC 29401

8

9 REPRESENTING THE DEFENDANT:

10 JOHN J. KOZELSKI, III, ESQUIRE

11 Ninth Circuit Office of the Public Defender

12 101 Meeting Street Suite 5

13 Charleston, SC 29401

14

15

16

17

18

19

20

21

22

23

24

25

1	INDEX	
2		Page No.
3	PROCEEDINGS.....	4
4	REPORTER'S CERTIFICATE.....	16

5			
6			
7			
8			
9			
10	<u>INDEX OF EXHIBITS</u>		
11			Page No.
12	COURT'S EXH. 1	Memorandum	4
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

1 (The following proceedings were had
2 5/29/19, 9:47 a.m., in re State v. Johnson,
3 Charleston County.)

4 (COURT'S EXH. 1, Memorandum in
5 evidence.)

6 THE COURT: Let the record reflect that
7 Mr. Johnson is present.

8 Good morning, Mr. Johnson.

9 THE DEFENDANT: Good morning, sir.

10 THE COURT: Mr. Kozelski, this is your
11 motion. I have your memorandum that's been filed,
12 and it's incorporated fully for purposes of review,
13 but you may state anything additional you wish to
14 reference. I'll be happy to hear from you.

15 MR. KOZELSKI: Thank you, Your Honor.
16 May it please the Court.

17 And just for education for the Court, I
18 have made that a Court's exhibit.

19 THE COURT: Okay. That's fine.

20 MR. KOZELSKI: If I refer to it, that's
21 what I will be --

22 THE COURT: If it's a Court's exhibit,
23 it's incorporated as anything that's filed, and I
24 have read it and relied on it.

25 The State has received a copy of it,