

 ORIGINAL

Volume I of II

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM YORK COUNTY

John C. Hayes, III, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DAVONTAY HENSON,

APPELLANT

Appellate Case No. 2011-204008

RECORD ON APPEAL

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State of South Carolina) In the General Sessions
) Court of York
)
County of York) Case No.: 2010-GS-46-04457
 2010-GS-46-00989

State of South Carolina.,)
)
 Plaintiff.,)
)
 -vs-) Transcript of Record
)
 Davontay Henson.,)
 Donta Kevon Reid.,)
)
 Defendants..)

November 14-18, 2011
York, South Carolina

B E F O R E:

Honorable John C. Hayes, III, Judge, and a jury.

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1 personal friends with the defendants as well as counsel for
2 the defense or anyone working in the Public Defender's
3 Office. And then the other question, Your Honor, that
4 would typically be asked is that if any person holds any
5 Strong moral, philosophical, or religious reasons -- any of
6 those religious or moral, philosophical reasons why they
7 could not serve in standing judgment of another person.

8 THE COURT: If I miss anything, call it to my
9 attention when I ask you to, okay?

10 MR. THOMPSON: Yes, Your Honor.

11 THE COURT: Just let me know when the jury gets here.

12 (SIDE BAR OFF THE RECORD AT 03:14 PM.)

13 (JURY ENTERS COURTROOM AT 03:14 PM.)

14 (COURT BACK IN SESSION AT 03:18 PM.)

15 THE COURT: Thank you, you may take your seats.

16 Members of the jury panel, I am John Hayes from Rock
17 Hill and along with Judge Alford, who you met this morning,
18 I am one of the two resident judges with the 16th Judicial
19 Circuit. That includes both York and Union County. Like
20 Judge Alford, I've been assigned this week to hold court
21 here in York, Criminal Court, General Session's Court, is
22 the technical name.

23 We're starting the first trial of the week for this
24 courtroom at this time. And I am going to call on the
25 Solicitor, Mr. Brackett or his associate Deputy, Mr.

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1 Thompson to tell us -- announce the cases, and tell us what
2 this first case is about and who's involved.

3 MR. BRACKETT: May it please the Court?

4 THE COURT: Yes, sir.

5 MR. BRACKETT: Your Honor, this is in regards to State
6 versus --

7 THE COURT: I'm asking you to tell them.

8 MR. BRACKETT: Yes, sir.

9 THE COURT: I've got a copy. I've got a cheat sheet
10 to use.

11 MR. BRACKETT: The State is prepared to draw a jury in
12 the case of State versus Davontay Darrell Henson,
13 Indictments 2010-GS-46-0-4-4-5-7, an indictment for murder.
14 2010-GS-46-4-4-5-7-A, count two of that indictment being in
15 possession of a firearm during the commission of a violent
16 crime. 2010-4458 assault and battery with intent to kill.
17 4458-A count two, possession of a firearm during the
18 commission of that violent crime. 2010-4459, indictment
19 for armed robbery and count two. 4459-A, being in
20 possession of a firearm during the commission of that
21 violent crime. 4460, indictment for armed robbery with
22 it's count two as well being the firearm charge. 4461
23 indictment for armed robbery and its count two being the
24 firearm charge. And 2010-4462 indictment for criminal
25 conspiracy. Those are all charging Davontay Darrell

1 Henson.

2 We are also prepared to also go forward on State
3 versus Donte Kevon Reid, 2010-988, indictment for murder.
4 988-A, possession of a firearm during the commission of a
5 violent crime. 989, armed robbery and count two of the
6 firearm. 990, indictment for armed robbery, and count
7 two of that indictment being a firearm charge. 991,
8 indictment for armed robbery with count two being a firearm
9 charge. 992, criminal conspiracy charge. 993, assault and
10 battery with intent to kill. And 993-A, the count two of
11 that indictment for the firearm charge there.

12 They're in court represented by their counsel, Mr.
13 Chiarenza and Ms. Inzerillo of the Public Defender's
14 Office. And they are also prepared to go forward having
15 entered pleas of not guilty.

16 THE COURT: Okay. Of course Mr. Kevin Brackett and
17 Mr. Willie Thompson from the Solicitor's Office.

18 (ATTORNEYS STOOD.)

19 THE COURT: You may be seated.

20 And Mr. Reid is represented by Ms. Melissa Inzerillo
21 and Ms. Ashley Anderson.

22 And Mr. Reid, would you please stand so the jury can
23 see who you are.

24 (ATTORNEYS INZERILLO AND ANDERSON STOOD WITH DEFENDANT
25 REID.)

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1 THE COURT: That's Mr. Reid.

2 And also seated with them is Mr. Hobart Kelly.

3 (MR. KELLY STOOD.)

4 THE COURT: You may be seated. He's an investigator.

5 Hobart Kelly, I got it wrong, I'm sorry.

6 And then, Mr. Darrell Henson is represented by Mr.

7 Derek Chiarenza.

8 (ATTORNEY CHIARENZA AND DEFENDANT HENSON STOOD.)

9 THE COURT: And this is Mr. Henson and Mr. Chiarenza.
10 You may be seated.

11 Solicitor has read to you the charges against these
12 two individuals. The incident in question allegedly
13 happened on October 1st, 2009 at [REDACTED]
14 [REDACTED] in Rock Hill. The alleged victims are a Tyrone
15 Quantarious King, who is deceased at this time; Kenny
16 O'Brian Cunningham; and Henry Maurice Jackson, allowed to
17 or are still alive, is my understanding.

18 First, are any of you related by blood or marriage, or
19 are any of you a close, personal friend or acquaintance of
20 any of the individuals to whom you've just been introduced.
21 If so, please stand? Of either the attorneys or the
22 defendants. No one stands.

23 Were any of you members of the Grand Jury which passed
24 on these indictments at an earlier time. If so, please
25 stand? No one stands.

1 You've been introduced to the defendants and the
2 alleged victims and the place where this happened in the
3 day. Do any of you know anything about this case? Have
4 any of you heard about it from any source whatsoever? Or
5 have any of you formed or expressed any opinion about any
6 matter or issue which would be involved in this case? If
7 so, please stand.

8 Yes, sir. I'm not going to ask you to go in great
9 detail. Just tell me your name and number.

10 A. Bill Berry, Juror 18. I'm just a Rock Hill resident
11 and aware of the case. That's all.

12 THE COURT: All right. Would the fact that you have
13 heard something about the case, if that would prevent you
14 from being fair and impartial in the trial of this case,
15 please raise your hand? He did not raise his hand.

16 If you would be unable to base your verdict on the law
17 and the evidence in the trial, please raise your right
18 hand? He does not.

19 Thank you. You may remain with us.

20 Anybody else?

21 (NO RESPONSE.)

22 THE COURT: Are any of you or a member of your
23 immediate family involved in law enforcement at any level
24 or in the prosecution of criminal cases, and that includes
25 anything from MD's to local sheriff or city police, highway

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1 patrol, US Attorney, marshals, solicitors, district
2 attorneys, anything like that? If so, please stand if
3 you're related by blood or marriage to any of those
4 individuals.

5 Yes, sir. All right, yes, ma'am, your name and
6 number?

7 A. Dawn Branham, I'm Juror 27.

8 THE COURT: And who -- Why are you standing?

9 MS. DAWN BRANHAM: My husband is a detective with the
10 Sheriff's Office.

11 THE COURT: Here in York County?

12 MS. BRANHAM: Yes, sir.

13 THE COURT: All right. You can remain standing right
14 now.

15 MS. BRANHAM: Okay.

16 THE COURT: This is a City of Rock Hill case, I
17 believe. So I'm going to ask, the fact that your husband
18 is involved in law enforcement, would that affect your
19 ability to be fair and impartial in the trial of this case?

20 MS. BRANHAM: No, sir.

21 THE COURT: Would you be able to base your verdict
22 solely on the law and the evidence?

23 MS. BRANHAM: Yes, sir.

24 THE COURT: All right, thank you. You may have a
25 seat.

1 Yes, sir, your name and number?

2 A. Bo Modla, Juror Number 144. My sister-in-law is a
3 city judge.

4 THE COURT: All right. This is a city case, and I --
5 Well, would that affect your ability to be fair and
6 impartial in the trial of this case?

7 MR. MODLA: No.

8 THE COURT: Would you be able to base your verdict
9 solely on the law and the evidence?

10 MR. MODLA: Yes.

11 THE COURT: All right, thank you. You may be seated.

12 She is not named as a witness, and so I appreciate you
13 standing and telling us that.

14 No one else stands.

15 Are any of you members of or contributors to
16 organizations, such as Mothers Against Drunk Drivers;
17 Students Against Drunk Drivers; C.A.V.E, which is an
18 acronym for Citizens Against Violence; Trooper's
19 Association; Sheriff's Association; Fraternal Order of
20 Police. Any of you members of, contributors to those
21 organizations? If so, please stand.

22 No one -- Okay, yes, ma'am, your name and number?

23 A. Emily Schell, 195. I get mailings for contributions,
24 but I'm not a member.

25 THE COURT: All right. Will that affect your ability

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1 to be fair and impartial in this trial?

2 MS. SCHELL: No.

3 THE COURT: You may be seated, thank you.

4 Now the next, sort of, maybe, part by part question,
5 I'm not going to ask you to go in detail to your response
6 because it would, perhaps, be somewhat personal. But, I am
7 going to ask you to stand. And then I'll ask you whether
8 because you're standing, if that would that prevent you
9 from being fair and impartial.

10 But if any of you or a member of your immediate family
11 either been the victim of or charged with some type of
12 violent crime such as a murder, or a violent assault, or a
13 burglary, or an armed robbery; if so, please stand.

14 All right. Yes, sir, your name and number? Let's
15 start in the front, and we'll work our way back. Your name
16 and number -- Well, let's start at the front. Anybody
17 else? All right, let's everybody -- Now we've got six
18 standing.

19 Yes, ma'am, your name and number?

20 A. Camilla Moore, 146.

21 MADAME COURT REPORTER: Judge, I can't hear her.

22 THE COURT: All right, speak up. This lady's got to
23 take this down.

24 A. Camilla Moore, 146.

25 THE COURT: All right, remain standing.

1 Yes, ma'am, the next lady.

2 A. Elizabeth Roseborough, 193.

3 THE COURT: All right, yes, sir?

4 A. George Gallis, 72.

5 THE COURT: All right, yes, sir?

6 A. Victor Wilform, 238.

7 A. Louis Bennett, 16.

8 THE COURT: Yes, ma'am.

9 A. Robin Pincus, 172.

10 THE COURT: All right. The six of you who are
11 standing, if this past life experience of yours, if that
12 were to prevent you from being fair and impartial in this
13 trial, please raise your right hand. None do.

14 Okay, yes, sir, Mr. Gallis?

15 MR. GALLIS: Yes, sir.

16 THE COURT: Okay. Am I pronouncing it right?

17 MR. GALLIS: Yes, sir.

18 THE COURT: All right, you'll be excused. You can
19 have a seat.

20 The other five did not raise their hand, and they will
21 remain with us. Thank you. When I say, "remain with us,"
22 you are excused, but don't leave - yet.

23 Do any of you have any strongly-held feelings
24 regarding the recreational use of marijuana that would
25 prevent you from being fair and impartial in the trial of

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1 this case; if so, please stand. No one stands.

2 THE COURT: Do any of you have any moral, religious,
3 or philosophical reasons that you, or strongly held
4 feelings, religious, philosophical, or moral feelings so
5 strongly held that you would be unable to be fair and
6 impartial in the trial of this case; if so, please stand.
7 No one stands.

8 Now, I'm going to read you a long list of names. And
9 I'm going to go through it slowly. Not all of these
10 witnesses will testify. But, some will testify and some
11 who don't testify names may pop up during the trial. So,
12 if any of you are related by blood or marriage, or, if
13 you're a close, personal friend or acquaintance of any of
14 these individuals, please stand up. And I know some names
15 are -- I'm not going to say, common, because that doesn't
16 sound kind. But some names, more than one people have.
17 So, if you think this might be the person that you know or
18 are related to, let me know.

19 From Baltimore, Maryland: Thomas Mistysyn,
20 M-I-S-T-Y-S-Y-N.

21 Then, the other individuals, I think, are local:
22 Meisha Bennett; Shaleika Black; Krystal Nicole Cathcart;
23 David Chambers; Dacovan Cloud; Kartina Cloud; Deqavion
24 Cook; Bernice Cunningham; Kenny Cunningham; Alextin Davis;
25 Sheila Davis; Sheyontay S-h-e-y-o-n-t-a-y, Sheyontay

1 Henson; Carwunda Jackson; Emma Jackson; Henry Maurice
2 Jackson; Keisha Jackson; Yvonne Jackson; Alijah Keshawn
3 James; Alphonso James; Darius Bernard Jeter; Marvin
4 Johnson; Kimberly Jones; Detric Vermell King; Kwmane King;
5 Tyrone King; Alphonso Leach; Aileen Louise Newman; Dante
6 J. Parker; Robert L. Reid; Tonya A. Reid; Ervin Bridgette,
7 B-r-i-d-g-e-t-t-e; Samantha Latreal Ervin.

8 Then from the Emergency Medical Services, E.M.T.'s:
9 John Childers, John Finch, Christopher Floto, Steve
10 Pursley.

11 From the Forensic Service Unit of York County: Brian
12 Bagwell, John George, Kevin Sullivan.

13 From the Rock Hill Police Department: Lisa Allen,
14 Brent Allmon, William Andrews, Tim Ayers, Jason Boyd, Stacy
15 Brogden, Keely Chavaka, Teresa Childers, Chris Crowder,
16 Carlos Culbreath, Jason Dalton, and Keith Dugan.

17 Also from the police department: Myra Durham; William
18 Green; Matt Hall; Leland Harrelson; Kathy Harveston; Les
19 Herring; Shana H. Hornung, H-o-r-n-u-n-g; Robert N.
20 Jenkins; O.B. Johnson; Jim Lubben; Tamara Marshall; Keenan
21 McCrorey; Lee McKellar; Paul Myers; Adam Nerntuda;
22 Christopher Price; John Rainier; Corey Riley; William
23 Rivera; Mark Schurig; Justin Spencer; Cedric A. Stokes;
24 John Darin Swiger; Ryan Thomas; Lieutenant Thompson; Phil
25 Tripp.

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1 State Law Enforcement Division: Betty Butler, Lilly
2 Gallman, Lori Giles, Nikki Perry, Kenneth Whitler.

3 From the York County Detention Center: Cheryl Goode.

4 And then, these others are not related with law
5 enforcement either: Dominick Stowers; Robert E. Thompson;
6 Kadijra, K-a-d-i-j-r-a, Denise Walker; Shelita Juanita
7 White; and Keith Wilks.

8 Any of you related by blood or marriage; or close,
9 personal friends or acquaintance of any on that list, and I
10 know it's a long list.

11 All right, we'll start over here. Yes, ma'am, your
12 name and number?

13 A. Meagan Thrower, 221.

14 THE COURT: All right, did you get that?

15 MADAME COURT REPORTER: Yes, sir.

16 THE COURT: And who are you related to or know?

17 MS. THROWER: I work with and I'm friends with John
18 Childers, John Finch, Chris Floto and the other EMS worker,
19 I can't remember the name.

20 THE COURT: All right, will that affect your ability
21 to be fair and impartial in the trial in this case?

22 MS. THROWER: No, sir.

23 THE COURT: All right, you may have a seat.

24 All right, yes, sir?

25 A. Bill Berry, Juror 18. I worked with the City of Rock

1 Hill and parks, recreational, tourism. I know most of the
2 police officers. I lived in the city of Rock Hill, I've
3 also lived in York County for a few years. And, I know,
4 several people at the Sheriff's Department and other...

5 THE COURT: Would that affect your ability to fair and
6 impartial?

7 MR. BERRY: No, sir.

8 THE COURT: All right, you may be seated too.

9 All right, Mr. Modla?

10 MR. MODLA: Bo Modla, Juror 144. Keith Wilks, is that
11 Keith Wilks of the Rock Hill School District?

12 THE COURT: It is.

13 MR. MODLA: Yeah, I work with him.

14 THE COURT. Would that affect your ability to be fair
15 and impartial in the trial of this case?

16 MR. MODLA: No, sir.

17 THE COURT: All right, you can be seated, thank you.

18 Yes, ma'am, your name again?

19 A. Robin Pincus, 172. I couldn't understand how to
20 pronounce -- Is it Detective Keith Dugan or is it Dougan?

21 THE COURT: I think it's probably Dugan, D-u-g-a-n.

22 MS. PINCUS: Yes, I'm close friends with him.

23 THE COURT: Okay, all right.

24 MS. PINCUS: And it will not affect me.

25 THE COURT: It will not affect your ability? All

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1 right, yes or no?

2 MS. PINCUS: No.

3 THE COURT: Okay, you can remain with us, thank you.
4 And I'm sorry to make you say that, but we've got to have a
5 record.

6 MS. PINCUS: Okay.

7 THE COURT: Somewhere down the line, somebody may be
8 saying that we don't know what she said.

9 Anything further from the State?

10 MR. BRACKETT: Nothing further from the State, Your
11 Honor.

12 THE COURT: Ms. Inzerillo?

13 MS. INZERILLO: No, Your Honor.

14 THE COURT: Mr. Chiarenza?

15 MR. CHIARENZA: No, Your Honor.

16 THE COURT: Members of the jury panel, do any of you
17 know of any reason whatsoever why you could not or should
18 not serve as a fair and impartial juror on the trial of
19 this particular case; if so, please stand at this time. No
20 one stands.

21 Now the way we draw juries in this courtroom is as
22 follows, names will be drawn at random. Each side, three
23 sides, I'll call them: The State, Mr. Reid, and Mr.
24 Henson. Their counsel will each have a right to strike up
25 to ten individuals. When I say, "strike," that just simply

1 means excuse or let go.

2 If you hear your name called, please come up and stand
3 by the Bailiff, and turn around. And face first the table
4 that will be to your left. And one of the solicitors will
5 say either, "Present the juror" or "Excuse the juror." If
6 you hear the words, "Excuse the juror," you may return to
7 your seat. If you hear the words, "Present the juror,"
8 turn and face the table where Mr. Reid is seated. And one
9 of his attorneys will say either, excuse the juror, again,
10 that means you may return to your seat or present the
11 juror. If you hear the words, present the juror, then Mr.
12 Henson's counsel, Mr. Chiarenza, will have an opportunity
13 to either excuse the juror or have the juror sworn. So, if
14 you ever hear the words, excuse the juror, go back to your
15 seat. If you hear, present the juror, remain standing. If
16 you hear the words, swear the juror, the Bailiff will show
17 you where to -- how to arrange yourself in the jury box.

18 Go ahead and bring with you, if you have any pocket
19 books, jackets, anything like that, so that if you are
20 seated, you won't have to go back and fetch them.

21 All right, Madame Clerk.

22 (STRIKING OF THE JURY AT 03:36 PM.)

23 MADAME CLERK: Number 127 George Marvin.

24 (WHITE MALE COMING FORWARD.)

25 What sayeth for the State?

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1 MR. BRACKETT: Please present Mr. Marvin.
2 MADAME CLERK: Defense Reid?
3 MS. INZERILLO: Please swear the juror.
4 MADAME CLERK: Defense Henson?
5 MR. CHIARENZA: Please swear the juror.
6 MADAME CLERK: You may have a seat in the jury box.
7 Number 249 Gary Young.
8 (WHITE MALE COMING FORWARD.)
9 MADAME CLERK: What say you for the State?
10 MR. BRACKETT: Please present Mr. Young.
11 MADAME CLERK: Defense Reid?
12 MS. INZERILLO: Please swear the juror.
13 MADAME CLERK: Defense Henson?
14 MR. CHIARENZA: Please excuse Mr. Young.
15 MADAME CLERK: You are excused from this case.
16 Number 128 Scott Maxwell.
17 (WHITE MALE COMING FORWARD.)
18 MADAME CLERK: What say you for the State?
19 MR. BRACKETT: Please present Mr. Maxwell.
20 MADAME CLERK: Defense Reid?
21 MS. INZERILLO: Please swear the juror.
22 MADAME CLERK: From Defense Henson?
23 MR. CHIARENZA: Swear the juror.
24 MADAME CLERK: You may have a seat in the jury box.
25 Number 151 Craig Myers.

1 (WHITE MALE COMING FORWARD.)

2 MADAME CLERK: What say you for the State?

3 MR. BRACKETT: Please present Mr. Myers.

4 MADAME CLERK: Defense Reid?

5 MS. INZERILLO: Please swear the juror.

6 MADAME CLERK: Defense Henson?

7 MR. CHIARENZA: Please excuse the juror.

8 MADAME CLERK: You are excused from this case.

9 Number 195 Emily Schell.

10 (WHITE FEMALE COMING FORWARD.)

11 MADAME CLERK: What say you for the State?

12 MR. BRACKETT: Please present the juror.

13 MADAME CLERK: Defense Reid?

14 MS. INZERILLO: Please swear the juror.

15 MADAME CLERK: Defense Henson?

16 MR. CHIARENZA: Please swear the juror.

17 MADAME CLERK: You may have a seat in the jury box.

18 Number 140 Shelley Meares.

19 (WHITE FEMALE COMING FORWARD.)

20 MADAME CLERK: What say you for the State?

21 MR. BRACKETT: Please present the juror.

22 MADAME CLERK: Defense Reid?

23 MS. INZERILLO: Please swear the juror.

24 MADAME CLERK: Defense Henson?

25 MR. CHIARENZA: Please excuse the juror.

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1 MADAME CLERK: You are excused from this case.
2 Number 85 Deborah Harris.
3 (WHITE FEMALE COMING FORWARD.)
4 MADAME CLERK: What say you for the State?
5 MR. BRACKETT: Please present the juror.
6 MADAME CLERK: Defense Reid?
7 MS. INZERILLO: Please excuse the juror.
8 MADAME CLERK: You are excused from this case.
9 Number 218 Eugene Thompson.
10 (WHITE MALE COMING FORWARD.)
11 MADAME CLERK: What say you for the State?
12 MR. BRACKETT: Please present the juror.
13 MADAME CLERK: Defense Reid?
14 MS. INZERILLO: Please swear the juror.
15 MADAME CLERK: Defense Henson?
16 MR. CHIARENZA: Please excuse the juror.
17 MADAME CLERK: You are excused from this case.
18 Number 117 Frances Leonhardt.
19 (WHITE FEMALE COMING FORWARD.)
20 MADAME CLERK: What say you for the State?
21 MR. BRACKETT: Please present the juror.
22 MADAME CLERK: Defense Reid?
23 MS. INZERILLO: Please excuse the juror.
24 MADAME CLERK: You are excused from this case.
25 Number 6 Jill Alosi.

1 (WHITE FEMALE COMING FORWARD.)

2 MADAME CLERK: What say you for the State?

3 MR. BRACKETT: Please present the juror.

4 MADAME CLERK: Defense Reid?

5 MS. INZERILLO: Please swear the juror.

6 MADAME CLERK: Defense Henson?

7 MR. CHIARENZA: Please swear the juror.

8 MADAME CLERK: You may have a seat in the jury box.

9 Number 88 Raymond Hasenfus.

10 MR. CHIARENZA: That number again please.

11 MADAME CLERK: Eighty-eight.

12 MR. CHIARENZA: Thank you, Madame Clerk.

13 (WHITE MALE COMING FORWARD.)

14 MADAME CLERK: What say you for the State?

15 MR. BRACKETT: Please present the juror.

16 MADAME CLERK: Defense Reid?

17 MS. INZERILLO: Please swear the juror.

18 MADAME CLERK: Defense Henson?

19 MR. CHIARENZA: Please swear the juror.

20 MADAME CLERK: You may have a seat in the jury box.

21 Number 18 William Berry, Jr.

22 (WHITE MALE COMING FORWARD.)

23 MADAME CLERK: What say you for the State?

24 MR. BRACKETT: Please present the juror.

25 MADAME CLERK: Defense Reid?

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1 MS. INZERILLO: Please excuse the juror.
2 MADAME CLERK: You are excused from this case.
3 Number 11 Israel Ashley.
4 (WHITE MALE COMING FORWARD.)
5 MADAME CLERK: What say you for the State?
6 MR. BRACKETT: Please present the juror.
7 MADAME CLERK: Defense Reid?
8 MS. INZERILLO: Please swear the juror.
9 MADAME CLERK: Defense Henson?
10 MR. CHIARENZA: Please swear the juror.
11 MADAME CLERK: You may have a seat in the jury box.
12 Number 186 Charles Redmond.
13 (WHITE MALE COMING FORWARD.)
14 MADAME CLERK: What say you for the State?
15 MR. BRACKETT: Please present the juror.
16 MADAME CLERK: Defense Reid?
17 MS. INZERILLO: Please excuse the juror.
18 MADAME CLERK: You are excused from this case.
19 Number 78 Thomasine Gilliam.
20 (BLACK FEMALE COMING FORWARD.)
21 MADAME CLERK: What say you for the State?
22 MR. BRACKETT: Please excuse the juror.
23 MADAME CLERK: You are excused from this case.
24 Number 79 Dwight Gilmore.
25 (BLACK MALE COMING FORWARD.)

1 MADAME CLERK: What say you for the State?
2 MR. BRACKETT: Please present the juror.
3 MADAME CLERK: Defense Reid?
4 MS. INZERILLO: Please swear the juror.
5 MADAME CLERK: Defense Henson?
6 MR. CHIARENZA: Please swear the juror.
7 MADAME CLERK: You may have a seat in the jury box.
8 Number 193 Elizabeth Roseborough.
9 (BLACK FEMALE COMING FORWARD.)
10 MADAME CLERK: What say you for the State?
11 MR. BRACKETT: Please excuse the juror.
12 MADAME CLERK: You are excused from this case.
13 Number 15 Betty Beamguard.
14 (WHITE FEMALE COMING FORWARD.)
15 MADAME CLERK: What say you for the State?
16 MR. BRACKETT: Please present the juror.
17 MADAME CLERK: Defense Reid?
18 MS. INZERILLO: Please excuse the juror.
19 MADAME CLERK: You are excused from this case.
20 Number 20 John Bisser.
21 (WHITE MALE COMING FORWARD.)
22 MR. BRACKETT: That number again, Madame Clerk?
23 MADAME CLERK: Twenty.
24 MR. BRACKETT: Thank you.
25 MADAME CLERK: What say you for the State?

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1 MR. BRACKETT: Please present the juror.

2 MADAME CLERK: Defense Reid?

3 MS. INZERILLO: Please swear the juror.

4 MADAME CLERK: Defense Henson?

5 MR. CHIARENZA: Please swear the juror.

6 MADAME CLERK: You may have a seat in the jury box.

7 THE COURT: Mr. Cruger, Mr. Cruger, we're going to
8 have two alternates.

9 BAILIFF CRUGER: I got it. Yes, sir, thank you.

10 MADAME CLERK: Number 91 Wanda Helms.

11 (WHITE FEMALE COMING FORWARD.)

12 MADAME CLERK: What say you for the State?

13 MR. BRACKETT: Please present the juror.

14 MADAME CLERK: Defense Reid?

15 MS. INZERILLO: Please swear the juror.

16 MADAME CLERK: Defense Henson?

17 MR. CHIARENZA: Please swear the juror.

18 MADAME CLERK: You may have a seat in the jury box.

19 Number 230 Pamela Voss.

20 (WHITE FEMALE COMING FORWARD.)

21 MADAME CLERK: What say you for the State?

22 MR. BRACKETT: Please excuse the juror.

23 MADAME CLERK: You are excused from this case.

24 Number 122 Lorie Lauwer.

25 (WHITE FEMALE COMING FORWARD.)

1 MADAME CLERK: What say you for the State?
2 MR. BRACKETT: Please present the juror.
3 MADAME CLERK: Defense Reid?
4 MS. INZERILLO: Please swear the juror.,
5 MADAME CLERK: Defense Henson?
6 MR. CHIARENZA: Please swear the juror.
7 MADAME CLERK: You may have a seat in the jury box.
8 Number 54 Brittany Davidson.
9 (WHITE FEMALE COMING FORWARD.)
10 MADAME CLERK: What say you for the State?
11 MR. BRACKETT: Please present the juror.
12 MADAME CLERK: Defense Reid?
13 MS. INZERILLO: Please excuse the juror.
14 MADAME CLERK: You are excused from this case.
15 Number 48 Robin Corn.
16 (WHITE FEMALE COMING FORWARD.)
17 MADAME CLERK: What say you for the State?
18 MR. BRACKETT: Please present the juror.
19 MADAME CLERK: Defense Reid?
20 MS. INZERILLO: Please swear the juror.
21 MADAME CLERK: Defense Henson?
22 MR. CHIARENZA: Please swear the juror.
23 MADAME CLERK: You may have a seat in the jury box.
24 Number 206 Teresa Spencer.
25 (WHITE FEMALE COMING FORWARD.)

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1 MADAME CLERK: What say you for the State?

2 MR. BRACKETT: Please present the juror.

3 MADAME CLERK: Defense Reid?

4 MS. INZERILLO: Please swear the juror.

5 MADAME CLERK: Defense Henson?

6 MR. CHIARENZA: Please swear the juror.

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

8 THE COURT: On the alternates, the strikes will be one
9 each for the State on the first; two each for the Defense
10 on each.

11 MADAME CLERK: Number 173 Douglas Pitt.

12 (WHITE MALE COMING FORWARD.)

13 MADAME CLERK: What say you for the State?

14 MR. BRACKETT: Please present the juror.

15 MADAME CLERK: Defense Reid?

16 MS. INZERILLO: Please swear the juror.

17 MADAME CLERK: Defense Henson?

18 MR. CHIARENZA: Please excuse the juror.

19 MADAME CLERK: You are excused from this case.

20 Number 246 Alfred Wurthman.

21 (WHITE MALE COMING FORWARD.)

22 MADAME CLERK: What say you for the State?

23 MR. BRACKETT: Please present the juror.

24 MADAME CLERK: Defense Reid?

25 MS. INZERILLO: Please swear the juror.

1 MADAME CLERK: Defense Henson?

2 MR. CHIARENZA: Please swear the juror.

3 MADAME CLERK: You may have a seat in the jury box.

4 Number 185 Cornelia Rebh.

5 (WHITE FEMALE COMING FORWARD.)

6 MADAME CLERK: What say you for the State?

7 MR. BRACKETT: Please present the juror.

8 MADAME CLERK: Defense Reid?

9 MS. INZERILLO: Please swear the juror.

10 MADAME CLERK: Defense Henson?

11 MR. CHIARENZA: Please swear the juror.

12 MADAME CLERK: You may have a seat in the jury box.

13 THE COURT: Anything from the State involving striking
14 of the panel?

15 MR. BRACKETT: Nothing from the State, Your Honor.

16 THE COURT: Ms. Inzerillo?

17 MS. INZERILLO: No, Your Honor.

18 THE COURT: Mr. Chiarenza?

19 MR. CHIARENZA: No, Your Honor.

20 THE COURT: Those of you who are not chosen, please
21 call back tonight after 6:00 -- Call back tonight after
22 7:00. And please follow whatever instructions you may
23 receive. I'm sure Judge Alford told you how important that
24 was. Make sure that if you're supposed to call back at a
25 certain time that you do so. If you're supposed to report

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1 at a certain time that you do so. So, I'm going to ask you
2 to leave quietly because I'm going to start talking to this
3 panel, and that finishes it for the day.

4 MR. BRACKETT: Judge.

5 THE COURT: Wait, Whoa, Whoa.

6 MR. BRACKETT: May I approach?

7 THE COURT: Yes. Wait, wait, wait....Wait, wait,
8 wait..

9 BAILIFF CRUGER: Hold on.

10 DEPUTY FERGUSON: Hold on, hold on.

11 THE COURT: I'm sorry, they need to -- I'll tell you
12 what, I'm wrong. Go back downstairs to the jury assembly
13 room. We originally -- they would draw a jury in that
14 room, and then come over here. Now we went first and so I
15 was about to let you go home before Judge Alford had a shot
16 at you. So, go back down to the jury room downstairs. I'm
17 sorry. Thank you.

18 (JURY DISMISSED AT 04:00 PM.)

19 THE COURT: Those of you who are chosen, we've got
20 some matters to take up outside of your presence that will
21 take up the rest of the afternoon. So, I'm going to let
22 you go in just a few moments and ask you to return or tell
23 you to return by 10:00 in the morning. And we will start
24 with the testimony and the actual trial and opening
25 statements, and my opening remarks at 10:00 in the morning.

1 You are on this jury panel, even though you haven't
2 been sworn in, you are an acting, active juror. So, there
3 are certain things I need to tell you at this time. You
4 are not to discuss the case among yourselves or try to make
5 up your own mind until I instruct you to jointly deliberate
6 and return a unanimous verdict. Prior to that time, you
7 don't have all the tools you need to make a fair and
8 reasonable decision. So, don't discuss the case with
9 anyone. And if anyone does try to discuss this case with
10 you, report that back to me because I'll have to take
11 action against someone who has tried to talk to a seated
12 juror.

13 Don't let yourself be exposed to any news coverage if
14 there is any. I don't know that this case will be covered
15 by the news media, but if it is, do not let yourself be
16 exposed to it. Don't read about it, watch anything about
17 it, or listen to anything that could remotely deal with
18 this trial. Anything catches your eye or ear that could
19 have anything to do with this trial, don't let yourself be
20 exposed to it. Again, don't make up your own mind.

21 And in this modern world, I have to tell you, do not
22 go online or do any independent research. Don't go online
23 or go anywhere to try to find out anything about the
24 charges; about the people involved, that is the attorneys

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1 or the defendants; or about me; or about the law; or
2 anything that could remotely deal with this trial. It
3 would be a violation of your oath for you to do any
4 independent research.

5 And -- Yes, sir.

6 A. Before you go any further, before we do the oath. My
7 name is Dwight Gilmore. I'm taking criminal justice
8 classes online at Waller University. And I have
9 information on this case because I done a case study on it.

10 THE COURT: All right. Well, I asked earlier if
11 anybody had any knowledge, information about the case.

12 MR. GILMORE: Not much as -- It was, like, in a
13 discussion. It wasn't -

14 THE COURT: All right. Well, let's don't go into it
15 too much at this point.

16 MR. GILMORE: Okay.

17 THE COURT: But I'm glad you brought that to my
18 attention.

19 Don't go, anyone of you, to this Byars Street address.
20 I don't know that any of you would have any reason to go
21 there. But, this happened over two years ago or about --
22 right at two years ago, and things may have changed. So,
23 you've got to rely on the testimony at the trial. I don't
24 know what the testimony will be but there may be something
25 that has to do with the physical layout. And it may have

1 changed. So, don't go on Byars Street at all, unless you
2 absolutely, necessarily have to.

3 Now, in just a moment, I'm going to let you go to the
4 jury room before I dismiss you.

5 But first, anything else before we let them go to the
6 jury room?

7 MR. BRACKETT: Not at this time from the State, Your
8 Honor.

9 THE COURT: All right. Ms. Inzerillo?

10 MS. INZERILLO: No, Your Honor.

11 THE COURT: Mr. Chiarenza?

12 MR. CHIARENZA: No, Your Honor.

13 THE COURT: All right. I'm going to let you go to the
14 jury room for a few minutes, but again don't discuss the
15 case.

16 And Mr. Maxwell, I'm going to ask you to be the
17 foreman, so when we reconvene, you'll take the seat here on
18 the first seat. And the two alternates will always sit
19 back there in those first seats on the back row. And
20 everyone else has no assigned seating. So, I'm going to
21 let me let you go to the jury room at this time. Don't
22 leave, just go to this upstairs jury room and get
23 comfortable for a few minutes and use the facilities or
24 whatever.

25 (JURY PANEL DISMISSED AT 04:05 PM.)

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1 MADAME COURT REPORTER: Wilson.

2 (COURT REPORTER INDICATED TO OFFICER WILSON TO TURN
3 RECORDER OFF PLACED IN FRONT OF JURY IN COURT GALLEY.)

4 MADAME COURT REPORTER: Thank you, Judge.

5 THE COURT: Let's deal with the juror. State's
6 thoughts, comments, consultations?

7 MR. BRACKETT: Well, he probably needs to be
8 individually voir dired on the record to determine what
9 information he has, and whether or not it will affect his
10 ability to be impartial.

11 THE COURT: All right. Ms. Inzerillo?

12 MS. INZERILLO: I agree with that, Your Honor. But, I
13 would also add that surely had we had this information
14 prior to the selection, it may have affected our selection.
15 So, we would ask that he either be substituted or voir
16 dired.

17 THE COURT: Mr. Chiarenza?

18 MR. CHIARENZA: Your Honor, I'd like to hear what he's
19 got to say first as to whether or not he can still be fair
20 or impartial. I wasn't quite sure exactly what his
21 exposure to this case was or how, particularly since the
22 case hasn't been adjudicated, what -- Well, I don't know, I
23 just think -- I agree with the Solicitor, Your Honor,
24 before I would be inclined to make any motion as to what to
25 do with him.

1 THE COURT: Well, the problem with that is that Ms.
2 Inzerillo's already told me that if she had had this
3 knowledge, she would have exercised her strike. And she'd
4 have been permitted to exercise her strike. Whatever he
5 says, we can't cure that.

6 MR. BRACKETT: We would consent to have him removed
7 and replaced with an alternate under -- with that
8 situation, Your Honor.

9 THE COURT: Mr. Chiarenza. But, I'm going to make
10 this observation, of course, we don't necessarily bring
11 race into things, but he is the only black on the jury.
12 So, I point that out simply for information sake. I mean,
13 obviously, you all can tell that, but both defendants, for
14 the record, are black and are African American. And that's
15 the only other observation I'll make.

16 Anything further, Ms. Inzerillo?

17 MS. INZERILLO: No, Your Honor. We would just ask
18 again because he was pulled sort of the middle of the pack.
19 Obviously other considerations went in into it. And he has
20 now disclosed in front of the jury that this case has been
21 discussed by him. We just ask the jury be re-pulled.

22 THE COURT: Well, I'm not going to re-pull the whole
23 jury. That's why we have alternates. You're just
24 basically asking him to be -- You're not asking for the
25 jury -- Let me back up. Your options are not -- This isn't

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1 like a Batson. I'm not going to excuse him and re-pull the
2 whole panel. If there's any flaw, then what we will do is
3 -- The only option is to have him excused and pull by lot
4 one of the two alternates to sit. So, I don't know if that
5 changes your -- I'm not trying to change your mind. I'm
6 just telling you, re-pulling, you're not getting another
7 jury panel to draw from. You've got this jury panel with
8 Mr. Gilmore, or you've got it without him.

9 MS. INZERILLO: My position would be, then, without.

10 THE COURT: Okay, all right, that's fine.

11 If you'll bring Mr. Gilmore in?

12 THE COURT: Mr. Gilmore.

13 MR. GILMORE: Yes, sir.

14 THE COURT: I hate to single you out, but you did
15 exactly what you are supposed to do. And I'm going to
16 excuse you from sitting on this panel since you've got some
17 previous knowledge about it. Again, it's admirable that
18 you let me know that, and I appreciate it. But, I can't
19 let you continue to sit since you do have some information.
20 And as hard as you tried, I know you would be fair and
21 honest, it's still hard to block things out of your mind
22 that are in there.

23 So, I will excuse you. And you don't need to report
24 back downstairs. Everybody else reported back downstairs.
25 I'm going to allow -- Ms.

1 Ms. Naylis, I'm going to allow him to leave and call
2 back tonight after 7:00 about further instructions. So,
3 you can go for the day.

4 MR. GILMORE: Okay.

5 THE COURT: All right, thank you so much.

6 MR. GILMORE: All right.

7 THE COURT: I have written the two alternates names on
8 slips of paper that's been folded over. So, I'm going to
9 ask Ms. Naylis to draw one

10 MR. CHIARENZA: Your Honor, can I -- Before we go
11 there, I'm just sort of in uncharted territory here and I
12 want to put something on the record.

13 THE COURT: Okay.

14 MR. CHIARENZA: I like the jury we have. And I,
15 particularly, was satisfied with Mr. Gilmore being on the
16 jury. I think that I had to weigh the jury I had versus
17 any other jury, we may have ended up with -- Had I made a
18 motion that I believe was available to me that I did not
19 make based on the fact that Mr. Gilmore was on the jury.

20 I don't know what the Court will do with it but I just
21 want to put it on the record that, if I got this correct,
22 the State exercised three strikes. They were all female.
23 Two of those strikes were black females. And had I wanted
24 to take the chance of a new jury being drawn, I believe,
25 under Batson, I would have asked the State to come up with

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1 both a racially-neutral reason and a gender-neutral reason
2 for exercising the strikes in the way that they did. I
3 don't know that I can go now backwards and do that. But
4 I'd have been a lot more inclined to do it with Mr. Gilmore
5 not being on the jury.

6 THE COURT: Yeah well, I'm going to come back to you
7 in just a second.

8 I understand, and that's a point well-taken, but, and
9 I'm going to hear of whether or not they are racially
10 neutral, but I think the Batson motion, that's why I always
11 ask if anybody has any concerns about the strikes. And the
12 strikes were exercised at that time. I know sometimes you
13 don't want to exercise your rights under Batson when you've
14 got a jury you like.

15 And so when Batson first came in, it became quite
16 fashionable. I saw many people strike good jurors just
17 because they felt like they have a actual reason. And so I
18 think you are very wise to have done it the way you did.

19 Now we are where we are, and there was no objection to
20 the strikes at the time. I don't know of any cases that
21 give us any guidance as to what to do if the makeup of the
22 jury has changed.

23 But, I am going to just ask if the State has any --
24 ask the State to respond as though a Batson motion is
25 proper before the Court because I'm not sure whether it is

1 or is not right at this point. I'm going to ask the State
2 to respond as if the Batson motion were timely made.

3 MR. BRACKETT: Yes, sir, Your Honor. We exercised
4 three strikes. That is correct. All of the strikes were
5 exercised against both jurors who had previously been
6 charged with a criminal offense. Whether the charge was
7 resulted in a conviction or not, our position was that,
8 that could put in their mind a bad taste towards law
9 enforcement and slant them against law enforcement in some
10 form or fashion. So, in an abundance of caution, we struck
11 anybody who came before us who had previously been charged
12 with a criminal offense.

13 THE COURT: I find that is racially neutral and gender
14 neutral.

15 Mr. Chiarenza, do you have any -- And I know you
16 haven't had a chance to think about both sides because of
17 where we are -- any reason to show that those were
18 protectual reasons?

19 MR. CHIARENZA: No, Your Honor. If I understood the
20 Solicitor correctly, then we can conclude that he did not
21 seat anyone who had been charged with a criminal offense.

22 MR. BRACKETT: And I was just pulling this back out so
23 that I could actually put on the record because some years
24 from now we might not be able to gather this information,
25 while it's in front of us now.

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1 Our first strike was Juror Seventy-eight, Ms.
2 Thomasine Gilliam, a black female. She had prior charges.
3 She had twice been charged with possession of crack,
4 violation of the liquor law, possession of cocaine, and
5 false statement of -- No, I'm sorry. I actually think that
6 I may have prosecuted her previously. These were back in
7 the '90s so, and I thought I knew her when I saw her name.
8 But in any event, those were her charges.

9 Juror One Ninety-three, Ms. Roseborough, had
10 previously been charged. She also was an African-American
11 female. Prior charges for disorderly conduct, damaged
12 property, CDV, and driving under the influence.

13 And then, my final strike was exercised against Juror
14 Number Two Thirty, Ms. Voss, a white female. And she had a
15 prior charge, possibly -- There was a question mark by it.
16 I wasn't sure, but out of an abundance of caution, she had
17 indicated that she might have been charged with
18 shoplifting. So, we struck her as well.

19 And there were no other jurors that were seated who
20 had any prior charges whatsoever.

21 MR. CHIARENZA: I'm satisfied with that, Mr. Brackett.

22 THE COURT: Well I find that if a Batson motion had
23 been timely made that it would have been denied. I find
24 that there are racially-neutral reasons. I find that they
25 are not protectual and therefore no Batson violation in any

1 event.

2 Now, before I get this jury in and tell them --
3 Incidentally, our Ms. Naylis drew -- is it Mr. or Ms.
4 Wurthmann? Mr. Wurthmann, Alfred Wurthmann, Juror Two
5 Forty-six as our alternate. So, I'm going to call them in,
6 and tell them that and dismiss them for the day.

7 All right. Bring them in.

8 THE BAILIFF: Bring them in.

9 (JURY PANEL REENTERS COURTROOM AT 04:18 PM.)

10 THE COURT: Mr. Wurthmann, you are now on the jury. I
11 excused Mr. Gilmore. He didn't do anything wrong. This
12 happens, and that's why we draw alternates because
13 sometimes people realize there are reasons they need to
14 call stuff to my attention. He did, he did exactly what he
15 should have, and I find no fault with him. But we did a
16 random draw, and you were drawn as the alternate. So you
17 will be the alternate Ms. Rebh, -- I mean you will be the
18 juror, and now you're the only alternate, Ms. Rebh.

19 With that said, I'm going to excuse you for the
20 evening, keeping in mind all those admonitions that I gave
21 you earlier. We'll see you back at 10:00. The Bailiff
22 will tell you how to get in and out while you're serving as
23 a juror. And we'll see you at 10:00 in the morning.
24 Before you leave, anything else from the State?

25 MR. BRACKETT: No, sir, Your Honor.

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1 MS. INZERILLO: No, Your Honor.

2 MR. CHIARENZA: No, Your Honor.

3 THE COURT: All right, we'll see you at 10:00 in the
4 morning. Have a pleasant evening.

5 (JURY PANEL EXCUSED AT 04:19 PM.)

6 THE COURT: It's 4:15, we've been at it for a while.
7 I know we got some motions to take up. I do have drug
8 court tonight which means we'll have to stop at least about
9 quarter to Five, quarter to Six, at the latest. But, we've
10 got several motions.

11 Why don't we take a real short, refresher break, and
12 then come back, and take motions. And I'll let Counsel
13 establish the order in which we are to take them.

14 (SHORT RECESS AT 04:20 PM.)

15 (BACK ON THE RECORD AT 04:33 PM.)

16 THE BAILIFF: Come to order.

17 THE COURT: Thank you, take your seats. Get the
18 defendants in.

19 MR. THOMPSON: If it please the Court.

20 THE COURT: We'll need the defendants.

21 MR. THOMPSON: Okay.

22 (DEFENDANT'S REENTER COURTROOM.)

23 THE COURT: Defendants with counsel are present.
24 Solicitor.

25 MR. BRACKETT: Yes, sir, Your Honor. We discussed it

1 with Counsel for the defendants, and we think that probably
2 the most logical way to proceed is to handle Mr. Reid's
3 Denno motion. That will familiarize you then with the
4 statements that he made which will aid you in deciding
5 Bruton issues.

6 But, perhaps, we can take up a severance motion first.
7 I think Mr. Chiarenza said he had some brief comments to make
8 about that.

9 THE COURT: All right.

10 MR. CHIARENZA: Thank you, Your Honor. Just for the
11 record, I know we indicated that we would be moving to sever.
12 And this is on the grounds of -- The Court is obviously
13 familiar with -- just, there is an antagonistic
14 -- the defenses here, Mr. Reid's given statement, which we
15 -- it's going to be the basis of the Denno hearing. And we
16 feel quite certain the State is going to move to introduce
17 that statement. That statement or portions thereof
18 implicate my client.

19 I'm aware that the State realizes that it will
20 -- Under the law should probably have to redact portions
21 of that statement. Nevertheless, we would take the
22 position that it's still not much of a leap for a jury to
23 read between the lines as it were. So, based on that, I
24 believe that trying these clients -- these two defendants
25 together deprives my client of a fundamental right to a

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1 fair trial, Your Honor. It's for that reason that I would
2 move to have these two defendants tried separately for
3 the Court to sever this trial today and let the State decide
4 against which defendant they want to go to trial today, Your
5 Honor.

6 THE COURT: All right. We'll hear from the State.

7 MR. THOMPSON: Your Honor, I believe the Defense really
8 has shown no real prejudice at this point. There's nothing
9 -- The cases have certainly arise out of all the same
10 facts and charged with exactly the same charges as co-
11 defendants within the case. As a matter of fact two other
12 defendants, two female defendants were charged with the exact
13 same charges and pled and are testifying regarding the
14 involvement of both. With these defendants, there's nothing
15 really to, you know. as far as judicial economy that
16 there's a great benefit to try them together of course, if
17 the jury deserves the whole picture as well to be able to see
18 everyone here, the involvement that each person had according
19 to the people who are testifying.

20 And as far as the redaction of the State but there is
21 one statement that Donte Reid gave that does implicate this
22 defendant, however, I believe, we can come to a very good and
23 successful conclusion on how to redact that. And we'll see
24 that as we get into that with the Bruton motions that I'm
25 sure will follow.

1 But the first three statements that Mr. Reid gives say
2 nothing about Mr. Henson. They simply say, first him, and
3 then another man altogether, named Darius Jeter. And Mr.
4 Jeter was actually charged and the charge was dismissed
5 because that ended up being untruthful that Mr. Jeter was
6 involved. Then he admitted that him and Samantha Ervin and
7 Mr. Jeter did it, ultimately, on the third statement.

8 And then we find the fourth statement is where he
9 mentions everyone and clears Mr. Jeter.

10 And so, there are a number of things that can be done.
11 And we can correct any Bruton issue with the redactions that
12 the State is proposing. But there is nothing else that
13 points out that this is a case in which, on its face, any
14 prejudice to the defendants going to trial together on these
15 criminal charges

16 MR. CHIARENZA: And if I may, Your Honor.

17 THE COURT: All right.

18 MR. CHIARENZA: I apologize, but I just -- just so the
19 record is crystal clear, obviously the right I am speaking
20 about is the right for my client to confront and cross
21 examine witnesses against him. So, what we are anticipating
22 is that Mr. Reid would not take the stand. However, his
23 statement would come in, and my client would not be able to
24 cross examine on that statement. So, I think, just for the
25 matter of the record, I need to clarify what specific right

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1 I'm arguing that he would be deprived of by virtue of these
2 two individuals being tried together.

3 (PAUSE.)

4 THE COURT: How have you got it? How's the redaction
5 and how does it read?

6 MR. THOMPSON: Your Honor, the State can provide --

7 THE COURT: Do it this way. Read it to me unredacted
8 and then redacted.

9 MR. THOMPSON: All right. We went back to the statement
10 that says,

11 "I have earlier made statements to the police officers
12 about what happened the night Tyrone King, who I call Banks
13 was shot. I told parts of the truth because I had been
14 threatened by the guy that done the shooting. The guy's name
15 is Davontay. And I picked him out of a photo lineup today
16 also.

17 The night this happened, it was me, Davontay, and Lee
18 Lee over at Samantha's house on Keels Avenue. Sam and
19 Davontay left and when they got back, Davontay had a
20 rifle, and he was loading it up. The rifle was black and
21 brown in color. It was about three feet long. It was
22 white tape around the butt of the gun. I assume that Sam and
23 Davontay had went and got the gun because he didn't have it
24 before they left. And they said they were going to get
25 something. It was already dark, and we were all standing

1 around outside. And Sam told him to take the gun in the
2 house, and he did. He took it to Sam's room. We all went up
3 there too. I wanted to be" -- It says, "noise," but I
4 believe it should have been "nosey" -- "to see what the gun
5 looked like.

6 Davontay was holding the gun, and he said he was wanting
7 to let it rip. He said it was automatic. He asked me if I
8 wanted to walk with him because he had said something about
9 robbing somebody. I didn't want to go because I didn't know
10 where we were going or where he was going to put the gun. He
11 said that he was putting it in his pants. I told him I
12 didn't want to go. He asked Sam if she wanted to go
13 somewhere. She asked -- it says 'where,' and he said,
14 'anywhere that he can make a lick.'

15 Me, Sam, and Lee Lee, and Davontay got in Sam's
16 grandfather's truck, a small truck. I got in the bed, and
17 Lee Lee and Davontay got in the cab with Sam, and Sam drove.
18 As they were leaving, I saw Duke, who was Darius Jeter
19 walking near Sam's house. He tried to flag us down, but we
20 kept going.

21 We rode around a little bit and went to Sam's mother's
22 house. I asked Sam to take me home, so I could use the
23 bathroom. I called Maurice, that's on Sam's phone, on the
24 way to my house. I was going to smoke with him. And when I
25 asked if he wanted to, he said, 'Yes.' I told Maurice, we

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1 could call him when I got home. I told Maurice I would call
2 him when I got home. Sam asked me if Maurice had any money
3 or if he'd sell weed. I told her that he did sell weed, and
4 that he might have some money. Sam asked me if I would set
5 up Maurice. I told her that I really don't want to, but I
6 can.

7 When we got to my house, Sam told me to call Maurice
8 when I got inside, and find out who all was with him at his
9 house, and then to call her back. I went to the back room
10 and tried to call Maurice from my house phone, but he
11 wouldn't pick up his cell phone. So, I walked to his house.
12 He only lived a couple of houses from me on Byar Street.

13 When I got to Maurice -- When I got there, Maurice was
14 there along with Tyrone King and Kenny. I asked Maurice to
15 use his cell phone to call Sam to let her know that there was
16 two other people there with Maurice. I then asked Maurice to
17 walk with me to midtown, but he wouldn't. While I was on the
18 porch with Maurice, Sam drove by three or four times. And
19 Maurice said, 'Why does this truck keep coming by?' I walked
20 off the porch.

21 And when I got to the end of Byar Street, I made a left
22 on Maple Street. And Sam was driving down Byar Street. And
23 when she saw me, she made a left turn on Maple Street too.

24 Davontay and Lee Lee then got out of Sam -- got out
25 after Sam stopped. I told Lee Lee that there was three

1 people since Maurice would walk with me. Davontay then said,
2 'Fuck it. I might as well run up on the porch and rob all
3 three of them.'

4 Sam had drove over to Reynolds Street and parked on the
5 dirt road to the left after the bridge. Davontay asked me
6 which house they were at, and what did it look like. I told
7 him that they were all on the porch. Davontay had the rifle,
8 and him and Lee Lee walked towards Maurice's house. I walked
9 toward where Sam was parked. I knew where she was going to
10 keep" -- or -- "I knew where she was going to be because she
11 told us where she was going to park. I got in the truck with
12 Sam, and we sat there for maybe five minutes and then
13 heard a bunch of shots. Sam pulled off and picked up
14 Davontay and Lee Lee at the bridge. Davontay got inside the
15 truck with me and Sam, and Lee Lee got in the bed. We all
16 went back to Sam's house. We started talking about the
17 situation, and Lee Lee said that she was the one that asked
18 the guys for the weed. Davontay started saying he didn't
19 want anyone to snitch on him, and if anybody did snitch, he
20 would come back and get them. I got a call on Sam's house
21 phone from my step-dad telling me that Tyrone and Kenny had
22 been shot. Davontay and Lee Lee left in the truck, and Lee
23 Lee drove. I believe that Davontay took the rifle with him,
24 and Lee Lee came back a little while later by herself. I
25 stayed all night at Sam's, and when I woke up, Sam had gotten

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1 a text message saying that Tyrone had died. My step-dad
2 called again and told me that the police had been by my house
3 or by the house and wanted to talk with me. I walked home
4 and called the number the officer had left."

5 And that's the statement that's unredacted.

6 The redacted statement, and I'll point out that this
7 statement, Your Honor, there are no blanks or lines that are
8 struck through. This has been seamlessly put together so
9 that it appears as if it hasn't been altered at all. So,
10 that's one of the concerns, I believe, in the case law on
11 these type of issues with Bruton.

12 "Since I had earlier made statements to police officers
13 about what happened the night that Tyrone King and Banks, who
14 I call Kenny, was shot. I told parts of the truth because I
15 had been threatened by 'the guy' that done the shooting.
16 This guy's name is" -- I'm sorry, I thought I redacted it but
17 didn't.

18 "I had earlier made statements to the police officers
19 about what happened the night that Tyrone King who I
20 called Banks was shot. I told parts of the truth because I
21 had been threatened by 'the guy' that had done the shooting.

22 The night this happened, it was me, 'the guy' that did
23 the shooting, and Lee Lee over at Samantha's house on Keels
24 Avenue. Sam and 'the guy' left. And when they got back,
25 'the guy' had a rifle, and he was loading it up. The rifle

1 was black and brown in color. It was about three feet long.
2 It had white tape around the butt of the gun. I assume
3 that Sam and 'the guy' had went and got the gun because
4 he didn't have it before they left. And they said they were
5 going to get something. It was already dark, and we were all
6 standing around outside. And Sam told him to take the gun in
7 the house, and he did. He took it to Sam's room. We all
8 went up there too. I wanted to be noisy and see what the
9 gun looked like.

10 'The guy' was holding the gun, and he said he was
11 wanting to let it rip. He said that it was automatic. He
12 asked me if I wanted to walk with him because he had said
13 something about robbing somebody. I didn't want to go
14 because I didn't know where he was going to put the gun. He
15 said that he was going to put it in his pants. I told him I
16 didn't want to go. He asked Sam if she wanted to go
17 somewhere. She asked him 'where,' and he said, 'anywhere
18 that he can make a lick.'

19 Me, Sam, Lee Lee, and 'the guy' got in Sam's
20 grandfather's truck, a small truck. I got in the bed, and
21 Lee Lee and 'the guy' got in the cab with Sam, and Sam drove.
22 As we were leaving, I saw Duke, who was Darius Jeter walking
23 near Sam's house. He tried to flag us down, but we kept on
24 going.

25 We rode around a little bit and went to Sam's mother's

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1 house. I asked Sam to take me home, so I could use the
2 bathroom. I called Maurice on Sam's phone, on the way to my
3 house. I was going to smoke with him. And when I asked if
4 he wanted to, he said, 'Yes.' I told Maurice, I would call
5 him when I got home. Sam asked me if Maurice had any money
6 or did he sell weed. I told her that he did sell weed, and
7 he might have some money. Sam asked me if I would set up
8 Maurice" -- or -- "if I would set Maurice up. I told her
9 that I really don't want to, but I can.

10 When we got to my house, Sam told me to call Maurice
11 when I got inside, and find out who all was with him at his
12 house, and then to call her back. I went to the bathroom and
13 tried to call Maurice from my house phone, but he wouldn't
14 pick up his cell phone. So, I walked to his house. I only
15 live a couple of houses from -- He only lives a couple of
16 houses from me on Byar Street.

17 When I got there, Maurice was there along with Tyrone
18 King and Kenny. I asked Maurice to use his cell phone to
19 call Sam to let her know that there was two other people
20 there with Maurice. I then asked Maurice to walk with me to
21 midtown, but he wouldn't. While I was on the porch with
22 Maurice, Sam drove by three or four times. And Maurice said,
23 'Why does this truck keep coming by?' I walked off the
24 porch.

25 And when I got to the end of Byar Street, I made a left

1 on Maple Street. And Sam was driving down Byar Street. And
2 when she saw me, she said she" -- I'm sorry -- "when she saw
3 me, she made a left turn on Maple Street too.

4 'The guy' and Lee Lee then got out after Sam stopped.
5 I told Lee Lee that there was three people since Maurice
6 wouldn't walk with me. 'The guy' said, 'Fuck it' and 'I
7 might as well run up on the porch and rob all three of them.'

8 Sam had drove over to Reynolds Street and parked on the
9 dirt road on the left after the bridge. 'The guy' asked me
10 which house they were at, and what did it look like. I told
11 him that they were all on the porch. 'The guy' had a rifle,
12 and him and Lee Lee walked towards Maurice's house. I walked
13 to where Sam was parked. I knew where she was going to be
14 because she told us where she was going to park. I got in
15 the truck with Sam, and we sat there for maybe five
16 minutes and then heard a bunch of shots. Sam pulled off and
17 picked up 'the guy' and Lee Lee at the bridge. 'The guy' got
18 inside the truck with me and Sam, and Lee Lee got in the bed.
19 We all went back to Sam's house. We started talking about
20 the situation, and Lee Lee said that she was the one that
21 asked the guys for the weed. 'The guy' started saying he
22 didn't want anyone to snitch on him, and that if anybody did
23 snitch, he would come back and get them.

24 I got a call on Sam's phone from my step-dad telling me
25 that Tyrone and Kenny had been shot. 'That guy' and Lee Lee

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1 left in the truck, and Lee Lee drove. I believe that 'he'
2 took the rifle with him, and Lee Lee came back a little while
3 later by herself. I stayed all night at Sam's, and when I
4 woke up, Sam had gotten a text message saying that Tyrone had
5 died. My step-dad called again and told me that the police
6 had been by their house and wanted to talk with me. I walked
7 home and called the number the officer had left."

8 I can pass both of these up, Your Honor, and copy -

9 THE COURT: Do you have the cases? Any cases?

10 MR. THOMPSON: Yes, Your Honor.

11 Do you want me to address the Bruton in addition to the
12 severance, at this point, Your Honor?

13 THE COURT: Well I think, I think the severance is, sort
14 of, predicated on the Bruton matter.

15 MR. THOMPSON: Bruton?

16 THE COURT: Yes.

17 All right.

18 MR. THOMPSON: Basically, the tenets, I think, that we
19 look at are, one, if the redactions themselves, the changes
20 are not obvious. I think as we look at the actual, physical
21 statements, the fact that that redactions were made are not
22 obvious. There's no blanks, there's no blacked out spaces,
23 there's no large gaps in between paragraphs or sentences
24 or things like that. There appears to be a seamless
25 statement as it would have been taken if he had not mentioned

1 the name of the final co-defendant.

2 And going and looking at, for instance, the Holder case
3 that is before the Court. One of the cases that I passed up
4 is 382 S. C. 278; and 676 S. E. 2d 690; 2009 case from the
5 Supreme Court South Carolina. In this case, it mentions
6 specifically that just putting in "she" in this particular
7 case, that while that is sometimes appropriate, it's not
8 enough to satisfy Bruton in this case because by looking at
9 the statement on its face, everyone knew it was still meaning
10 this particular defendant. But the fact pattern in that case
11 is much different than in this case. That's a fact pattern
12 in which she was the mother of this child. It was a homicide
13 by child abuse case. She was the only female involved in the
14 whole thing. So when the defendant was saying that there
15 were bruises on the child, and he thought that she was the
16 one who had placed those bruises or caused those bruises or
17 caused the abuse, it made it obvious, the only other person
18 in the household was her, so as far as she goes. So, I think
19 that in this particular case, it's saying, if you look at it
20 on its face and based on the facts, it's going to have to be
21 her without anything else. In other words, no one else had
22 to testify, and there's no other doubt that she was the one
23 who did it.

24 Whereas, in this case, by using "he" or "the guy,"
25 there's more than one guy. There's actually two that we have

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1 charged. But in addition, Mr. Reid also mentions another guy
2 in his initial statements, in his first initial three
3 statements, a Darius Jeter person, that he ultimately says
4 was not involved. And the last statement where it says that
5 they just passed by and wasn't involved.

6 At this point, you can't discern who in the world he's
7 talking about. If you look at this statement on its face,
8 there could be any number of people because the house they're
9 talking about being at is Samantha Ervin's house. That's not
10 the house of everybody else. You don't know who other people
11 will be there. And, I think, actually the testimony will
12 show that the people that are there -- We're going to have
13 testimony from Elijah James who was there, who would have
14 been another black male who was at that house, but did not
15 participate in this crime, but was at that house. So, I
16 think, it doesn't just in itself say that Davontay Henson was
17 involved in this crime.

18 Now of course there will be other witnesses who testify
19 saying that Davontay Henson was involved in a crime but
20 that's all right. I mean this case law if the case law tell
21 us that it's not a matter if other evidence can prove because
22 you're always going to have the other evidence. It's a
23 matter of the statement on its face as we look at it.

24 And I would point out too, in the Holder case, while
25 they found that error, they still found it to be a

1 harmless error because the defendant had made some of
2 their own admissions. And they also looked at the strength
3 of the State's case. And if you go to *State versus*
4 *Johnson*, once again in this particular case, one of the
5 things that happened here is the investigator testified in
6 addition to having some blank spaces and things like that in
7 the statement which we do not have here. The investigator in
8 *State versus Johnson*, which is 390 S.C. 600 and 703 S. E. 2d
9 217, it was also based on the fact that the investigator said
10 that after he spoke with this "x" witness, who was the one
11 that used -- that redacted the statement with -- He then used
12 that to charge the defendant who the statement was used
13 against. So, it implicated, made it obvious by that
14 testimony based only on the statement that was redacted
15 with these major holes in it, that as we looked at the
16 statement itself that then it implicated the defendant. We
17 don't have that here. I'm not going to be calling the
18 detectives to testify about the statement of Donte Reid and
19 then they arrested or made an arrest warrant for Davontay
20 Henson. Because actually in this case, they had already
21 received information from Samantha Ervin that Donte -- That
22 not only Donte was involved, but that Davontay Henson was
23 involved, and that Aileen Newman was involved. And they had
24 already reissued warrants based on her statements she has
25 testified. So, I think, he won't be talking about the

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1 statements of Donte Reid to being the one that causes him
2 to charge Davontay Henson. And so we don't have to worry
3 about that in this case either.

4 And as I said, the other thing that they look at is
5 the strength of the State's case itself. If there's a lot
6 of other strong evidence that helps to prove, that's not
7 the only thing that links the Defendant, in other words.
8 In this case, it's not. There's two co-defendants who are
9 going to come forward and say, "They were with us. They
10 did this with us." And as a matter of fact, the victims in
11 the case will identify Donte Reid as being the one who came
12 before the robbery occurred, that he borrowed the victim's
13 cell phone. He made a call. And on that call, you'll
14 recall him saying about two others or two more. And that's
15 really what broke the case open, when the victim told about
16 what Donte Reid had done. And then, of course, then the
17 other Defendant's telling who all was involved because
18 Donte Reid doesn't mention Davontay Henson until the final
19 statement. And so, as far as redaction goes, it's the only
20 statement that has to be redacted. And by virtue of him
21 naming other people as he went along, it leaves a wide
22 variety of people that this other person can be. There's
23 no direct pointing to the Defendant in that particular
24 instance.

25 I think that's it, Your Honor. I think, as I said, in

1 its plain reading of the statement, it doesn't point to
2 Davontay Henson.

3 THE COURT: Mr. Chiarenza.

4 MR. CHIARENZA: Your Honor, I believe Mr. Thompson has
5 accurately, more or less, stated the law. But I think that
6 I would take issue to him as to the overall strength of the
7 State's case. There's no physical evidence in this case
8 against my client. There's no forensic evidence against my
9 client. The State's entire case against my client
10 essentially depends on the testimony of cooperating co-
11 defendants and granted, to a lesser extent, some other
12 individuals who may be able to put my client with these
13 people on the night in question, but not as eyewitnesses to
14 the actual crime.

15 So, I take the position that to allow the statement in
16 without giving my client the opportunity to cross examine
17 on this statement, does deny him of a substantial right
18 under the constitution, the right to confront witnesses, one
19 of the premier rights that a criminal defendant has, and we
20 just quite simply would be denied that right in this
21 instance.

22 And I -- It sort of begs the question if Mr.
23 Thompson's so convinced that the jury is likely to just
24 plug in anybody in this void where they've redacted and put
25 in "the guy," "the guy," "the guy." And then I wonder why

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1 he wants the statement in at all. It's so vague. And when
2 measured against the three prior statements of Mr. Reid,
3 that it -- He'll have you believe that the jury can do
4 nothing but just assume that it's right in line with the
5 other three statement that are given. I think that, that
6 takes a rather narrow view of the situation that we've got
7 here with these two individuals sitting side by side at
8 trial together. Personally, in my personal opinion,
9 matters very little when it comes to matters of law. But
10 I've always found it to be disingenuous that any court has
11 managed to find that this redaction somehow satisfies the
12 screening problem here which is a non-testifying co-
13 defendant implicating his co-defendant without the person
14 being implicated, having an opportunity to cross examine,
15 particularly here where there are some credibility issues
16 with Mr. Reid. He gave a number of false statements
17 leading up to the statement in question. I just think to
18 let his statement stand without my client having an
19 opportunity to attack the validity of that statement denies
20 him of that right, Your Honor. And it's not a clear-cut
21 area of the law. And I'll leave it up to the Court to
22 render its decision.

23 THE COURT: Well, I find it is, if not completely
24 clear-cut, fairly clear-cut. And I find that the statement
25 they've redacted is not on its face incriminate the

DETECTIVE LESLIE HERRING: DIRECT BY MR. THOMPSON - IN CAMERA -82-

1 Defendant Henson with use of the term, "the guy," "the guy
2 that did the shooting' "the guy." And I think that
3 purports with the current status of the law as to what
4 terms satisfy the requirement of a proper redaction. That
5 is, as opposed to leaving blanks, using "x," or using some
6 -- This is not a situation such as the Holder case.

7 So, I find there is no violation of confrontation
8 clause. No Bruton violation will occur as by use of the
9 State's production of the redacted statements. And I also
10 deny, based on that ruling, deny the motion to sever as
11 that appears to be the only predicate for there being any
12 grounds for severance. And having been exposed of
13 adversely to Mr. Henson, I deny the motion to sever.

14 All right. What motion is next?

15 MR. THOMPSON: Your Honor, at this point, I think
16 we'll do the Jackson Denno hearing.

17 THE COURT: All right.

18 MR. THOMPSON: The State would call Detective Les
19 Herring to the stand.

20 (WHEREUPON: LESLIE R. HERRING,
21 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

22 DIRECT EXAMINATION (IN CAMERA)

23 LESLIE R. HERRING BY MR. THOMPSON:

24 Q. Detective Herring, will you state your full name,
25 please?

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1 THE COURT: Ms. Inzerillo?

2 MS. INZERILLO: Yes, Your Honor.

3 MR. CHIARENZA: Your Honor, just a guess, but in light
4 of the Court's decision not to sever the case, I shared
5 with both sides -- well, co-counsel on the State, a
6 paragraph that's essentially a cautionary charge to give
7 the jury regarding trying these defendants separately.
8 Some of the cases I've seen that charge in, they're all
9 severance cases, and the court goes on to say in those
10 cases that, you know, we find given the fact that the court
11 gave this cautionary charge, there was no prejudice. And
12 in a lot of those cases, the charge is given at the
13 beginning of the trial.

14 THE COURT: You got a copy of it?

15 MR. CHIARENZA: Yes, Your Honor.

16 THE COURT: Certainly.

17 MR. CHIARENZA: I'm going to have to take it back from
18 Ms. Inzerillo.

19 THE COURT: Anybody object to it?

20 MR. BRACKETT: No objection from the State, Your
21 Honor.

22 MS. INZERILLO: No, Your Honor.

23 MR. CHIARENZA: And it's just that paragraph.

24 THE COURT: All right.

25 Bring in the jury.

1 You ready to swear them, Ms. Regina?

2 (JURY ENTERS COURTROOM AT 11:15 AM.)

3 THE COURT: Now that you're all comfortably seated,
4 I'm going to ask you to stand so the clerk can administer
5 the oath.

6 MADAME CLERK: Please raise your right hand.

7 (WHEREUPON: THE JURY IS DULY
8 SWORN AND ALL AFFIRMED.)

9 THE COURT: You can be seated now. Thank you.

10 I know when you look at the clock you think I missed
11 that class about telling time in kindergarten. I really
12 didn't. We had some matters of law to take up outside your
13 presence, and by doing it now we will be able to move
14 forward through the trial a little more rapidly. We did
15 work until almost 6:00 last night, and I had another,
16 another kind of court I had to hold at 6:00. So we would
17 have worked -- came in at 9:30 and started again. So we've
18 been working, and I apologize if we took longer than I
19 thought, and that we did not utilize your services for a
20 while.

21 I'm going to chat with you now for just a minute.

22 As to these charges, Mr. Reid and Mr. Henson have
23 entered pleas of not guilty. This places on the State the
24 burden of proving their guilt beyond a reasonable doubt.
25 Now the fact that they have been arrested, and charged, and

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1 are on trial is not any indication that they committed
2 these offenses. That's just the way our system works.
3 Individuals who are thought to have committed an offense
4 are charged, indicted, and tried. But that is not
5 conclusive. You are the determiners of whether or not the
6 State has proven an individual's guilt beyond a reasonable
7 doubt before you could find that person guilty of an
8 offense.

9 Now the fact that each has multiple charges does not
10 mean that the State's case is any weightier than it would
11 be if there were only one. You are to look at and examine
12 each charge under the facts presented, and the law as I
13 charge it, and determine independently of what you
14 determine on the other charges with some slight exceptions
15 which I'll tell you again at the trial. Your verdict would
16 be based as to each indictment as to the charges under that
17 indictment, the proof of the State, and my charge on the
18 law.

19 Now the fact that there are two individuals on trial
20 and charged, you must consider each of them separately and
21 determine each one's case separately based on the law and
22 the evidence that I give you at a later time. You must
23 consider each charge separately. You must decide
24 separately whether each individual is guilty or not guilty
25 of the charges alleged in the indictment as to that

1 individual. It is your duty to give such consideration to
2 each individual defendant on these separate charges alleged
3 in these separate indictments, that is separate
4 consideration to each defendant separately as to each
5 charge. You must consider the law and evidence for each
6 individual defendant on each of the charges, and write your
7 verdict accordingly. I will remind you of this at the end
8 of the trial, but please keep that in mind.

9 Now as to the charges, each of the defendants has
10 entered pleas of not guilty and that places on the State
11 the burden of proving that person's guilt beyond a
12 reasonable doubt as to that particular charge.

13 Now in just a minute the attorneys for the State -- an
14 attorney for the State, and an attorney for each defendant
15 have the right, but no obligation to come before you and
16 make, what I call, opening statements. At this time, the
17 attorneys are not presenting arguments or trying to sway
18 you or persuade you as to a certain verdict. It's too
19 early to do that. At this point, they're simply outlining
20 or blueprinting the trial. They're telling you what the
21 issues will be, what they think the facts may develop, and
22 they may allude to and tell you some of the law that they
23 believe I will charge you at the end of the case. But
24 they're not trying to convince you of anything at this
25 time.

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1 After the presentation of the evidence, they will have
2 an opportunity to come before you and make closing
3 arguments. At that time they will be trying to persuade
4 you of what verdict you should return.

5 I have three primary jobs in this case as trial judge.
6 One is that I'm the mechanical person so to speak, the
7 logistics person. I make sure we take breaks, that one
8 person talks at a time, that you can see and hear; the
9 mechanical part of the trial. I also rule on questions of
10 evidence, and I've already done some of that. But during
11 the trial we may have some issues where one side believes
12 certain evidence should be allowed to be considered by you,
13 and the other, based on some legal principle or rule,
14 believes that evidence should not come into the record for
15 your consideration, it is up to me to rule on that
16 question. It may be if a party has an objection to certain
17 evidence that I'll have to excuse you while we take it up
18 outside of your presence. Don't hold that against the
19 attorney. That is their job. They'll object if they think
20 something is being placed into the record. And if somebody
21 is doing it, they're not doing it with any ill-motive, that
22 is asking the questions or presenting the evidence. But if
23 a party believes that certain evidence should be excluded,
24 I must make that determination.

25 My third job is that I'm the sole judge of the law.

1 You must take, accept, and apply the law as I charge it.
2 And this is true even if you think I charge the law in
3 error or even if you think the law should be different.
4 Your oath requires you to take, accept, and apply the law
5 as I charge it. I'm giving you some legal principles now.
6 During the trial, I may give you some legal principles, and
7 at the end of the trial, I've give you a concise and
8 comprehensive charge on the law that you are to apply to
9 the facts as you determine them to be. You are not to
10 infer from anything I say or do at anytime as indicating an
11 opinion of mine on the facts. Our law does not allow a
12 trial judge to formulate or to express to a jury any
13 opinion on the facts. That is solely your job.

14 It is solely up to you as a trial jury in this case to
15 examine the evidence and give to it the effect, the value,
16 the weight, the truth you believe it should have. In doing
17 this may believe one witness as opposed to several, several
18 witnesses as opposed to one. You may believe all, part, or
19 none of a witness's testimony. Use your common sense, your
20 sense of logic, your sense of reason as you analyze the
21 evidence.

22 You also must judge to determine the true facts, the
23 believability, the credibility of the witnesses. In
24 assessing credibility, use those things I've just
25 mentioned. Use the things that you in your day-to-day life

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1 find as being indicative of the truthfulness. And you can
2 use certain evaluators: how a witness acts on the stand,
3 their demeanor, is a witness hesitant or straightforward in
4 responding to questioning? Look at the consistencies and
5 inconsistencies in witnesses' testimony. Consider any bias
6 or prejudice. That is, whether a witness would wish to
7 help or hurt one side or the other. And you can consider
8 the opportunity that witness had to know those things about
9 which they testified. All of these things you consider to
10 determine the true facts, apply the law, and you'll be in a
11 position to return a verdict that speaks the truth.

12 I'm not going to go over with you in detail my
13 admonitions of yesterday about not doing any independent
14 research, or discussing the case, or letting yourself be
15 exposed to news. I said that yesterday, and I remind you
16 that those admonitions go forward throughout the trial.

17 Mr. Foreman, you will be the liaison between the jury
18 and myself, preside over the jury's deliberation, and sign
19 the jury's unanimous verdict. If you can't see or you
20 can't hear, let me know, cup your eye, give me a voice-
21 raising gesture, a nudging gesture, and I'll try to correct
22 that. It's not fair for you to have to make a
23 determination in this case, and then not have you see and
24 hear those things you need to see and hear.

25 We take breaks about every hour and a half. I find

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1 that's a good breaking time. But if any of you need a
2 break at anytime, please raise your right hand, and we will
3 take a break. It's hard to pay attention if you're not
4 comfortable, and I would rather take a break than have you
5 not being able to pay attention. And I extend that to
6 counsel and the attorneys -- counsel and the defendants.
7 We wish to move the case along, but we're not in such a
8 hurry that we won't take a break if someone needs it.

9 You do not need to take notes.

10 And at this time I'm going to ask the attorneys to
11 make their opening statements if they wish.

12 MR. BRACKETT: Thank you. May it please the Court?

13 THE COURT: Yes, sir.

14 MR. BRACKETT: October 1st, 2009, in the city of Rock
15 Hill, it was a cool, clear evening, about 51, 52 degrees.
16 At [REDACTED], which is a little road that runs right
17 off Reynolds, which runs into Freedom, right near where it
18 comes into Heckle, three individuals were sitting on the
19 porch: Henry Jackson, who lived at that house; and two of
20 his friends, Kenny Cunningham, and Tyrone King.

21 Henry Jackson had received a phone call, from a fellow
22 he knew, asking whether or not he could come by and see him
23 on the porch that night. And Henry said, "That would be
24 fine." The fellow who called him was this man over here,
25 Donta Reid. He said, "I'll be here. Come on by whenever

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1 you want." About sometime between 10:30 and 10:40 that
2 night, Mr. Reid showed up at the porch and spoke briefly
3 with the man sitting on the porch that night. He told them
4 that he knew a girl that he wanted Henry to go and see, but
5 she was in Midtown and asked him, "Would you come with me
6 to see this girl?" And Mr. Jackson declined. He said,
7 "No, I'm going to stay right here." So Donta Reid said,
8 "Well, can I borrow your phone for a minute? I need to
9 make a quick phone call." And he did. And Henry Jackson
10 was listening to him, and he heard him say, "There's two
11 more," a couple of other things, and then he hung up and
12 left.

13 A few minutes after that, 5 maybe 10, a young woman
14 walked up. A young woman they didn't know. She walked
15 around. There's a wooden rail fence that surrounds their
16 yard and an opening on the left side. She came around and
17 came through the opening and walked up to the porch and
18 started talking to them.

19 Very shortly after she walked up and started talking
20 to them, a man that they didn't know either, came up behind
21 them. They didn't know him because they couldn't recognize
22 him. He had a mask covering his face. He reached down
23 into his pants and pulled out a rifle, a short rifle that
24 looked as if maybe the barrel had been sawed off. He
25 pointed the gun at the three men on the porch and told them

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1 that they had to give it up.

2 He instructed the girl to step up onto the porch, and
3 search the men, and look around the porch area for anything
4 of value. She did. The two individuals sitting on the
5 porch, Mr. Tyrone King and Kenny Cunningham were relieved
6 of a cell phone, some cigarettes. Mr. Jackson was relieved
7 of his wallet and another cell phone.

8 She came back down off the steps of the porch and
9 rejoined the man holding the rifle, pointing it at the
10 three men, Cunningham, King, and Jackson holding their
11 hands up, Jackson standing on the porch of his own home
12 being robbed at gunpoint. She walked back down to him, and
13 they started to leave.

14 She said something to the man. And the man turned
15 around and decided to take one more thing. He squeezed the
16 trigger of that rifle, which as it turns out was an
17 automatic .22 and quickly sprayed 10 bullets across the
18 front of the porch striking Mr. Cunningham in the leg and
19 striking Mr. King, taking from his mother Detric something
20 that was more valuable than you could carry away in your
21 pocket, something more valuable than anybody ever deposited
22 in a bank. Tyrone King fell to those steps, and that's
23 where he died with a gunshot to his head.

24 The two individuals ran out of the opening around the
25 fence and down Byar Street in the direction of Scoggin.

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1 Mr. Jackson grabbed his friend Mr. Cunningham as they
2 were running off not knowing if they were going to fire
3 again, and dragged Ms. Cunningham into the house, and
4 called 911, and the police responded.

5 Mr. King was taken to the hospital where he was
6 pronounced dead. Mr. Cunningham was treated for the shot
7 to his leg.

8 They gave as good a description as they could of the
9 individuals who had done this crime. And the police got to
10 work trying to figure out who had done this, who had killed
11 Tyrone King, who had shot Kenny Cunningham, and who had
12 robbed all three men at gunpoint.

13 The next morning, Mr. Jackson recalled an important
14 fact. He said, "You know what? Right before those two
15 people showed up, Donta Reid came to my house. That's
16 right. And he asked to use my phone. And he called
17 somebody, and I heard him say something strange. 'There's
18 two more.' He might have had something to do with this."

19 So the police go, and they interview Mr. Reid. And
20 they ask him, "Where were you last night?" He says, "I was
21 at this girl's apartment over in Midtown."

22 So they go to that apartment to see if the girl would
23 vouch for the fact that he was there. She doesn't. Nobody
24 at that apartment saw him that night.

25 So they go back to the police department. They read

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1 Donta Reid his rights and obtain a statement from him in
2 which he acknowledges that he was there on Byar Street that
3 night. But he says, "The fellow that I was with was named
4 'Duke.' His real name is Darius Jeter. And Darius Jeter
5 had the gun. And I saw Darius Jeter walk off in the
6 direction telling me he was going to rob somebody. And
7 Darius Jeter was the guy who shot and killed Tyrone King.
8 That's the man you need to be looking for." And he signed
9 that statement swearing under oath that it was true.

10 So the police went to find Darius Jeter, and then
11 brought him in and charged him with a crime. But as it
12 turns out, Darius Jeter had nothing to do with this. The
13 only thing Darius Jeter had anything to do with was earlier
14 that night, he saw them as they drove past in the truck.
15 They saw him standing out in the middle of the road, and
16 they talked to him for a minute. But other than that,
17 Darius Jeter had nothing to do with this case. In two more
18 statements after the first one, Mr. Reid stuck to the
19 Darius Jeter story.

20 But ultimately, he implicated another individual named
21 Samantha Ervin. You're going to hear from Samantha Ervin.
22 We're going to call her to the stand. She is cooperating
23 with the State. She will testify as to exactly what
24 happened that night. She told the police. And she will
25 take this witness stand over here. And she will tell you

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1 that they left out that night from her house on Keels
2 Avenue, her; a woman named Aileen Newman; Donta Reid; and
3 this man right here, Davontay Henson, nicknamed "B'more"
4 because he's from Baltimore.

5 That they left out of her house on Keels Avenue with
6 the intention of going and robbing these people on Byars,
7 that they only knew about the people on Byars because they
8 were friends of Donta Reid. And it was Donta Reid's idea,
9 that he's the one that told them, "These are three guys I
10 know. They might have something." And Davontay jumped
11 right on it and said, "Well let's go rob them." So the
12 plan was for Donta to go and lure them down the street, and
13 B'more would be waiting with the gun. But when Henry
14 Jackson didn't want to go, B'more decided, "Well if he's
15 not coming to me, I'll go to him." And Samantha Ervin is
16 going to tell you that.

17 She told them about another person that was involved,
18 Aileen Newman, the girl who walked up to the porch with
19 B'more, with Davontay Henson. Samantha Ervin said, "Her
20 name's Aileen Newman. She lives up in Charlotte." So the
21 police started looking for Aileen Newman. When she was
22 apprehended up in Charlotte, taken to the Charlotte-
23 Mecklenburg Police Department to be interviewed there, and
24 she gave a statement basically saying the same thing up
25 front that Samantha Ervin had said, that the four of them

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1 were involved. At the beginning, though, she tried to make
2 it sound like she was forced to do it at gunpoint, that she
3 was an unwilling participant. Aileen Newman is going to
4 take that witness stand in this courtroom and tell you
5 that, that wasn't true, that she was a willing participant,
6 that she did go willfully and voluntarily to the porch on
7 Byar Street. She searched those three gentlemen, she took
8 their property, she ran off down the street after Davontay
9 Henson, squeezed off ten rounds killing Tyrone King.

10 That's not all you're going to hear, though. The
11 house on Keels Avenue, which was Samantha Ervin's house,
12 was also the home of her cousin, a gentlemen named Alijah
13 James. Mr. James is going to come into the courtroom and
14 tell you, "While I wasn't with them that night when they
15 went to Byars, I was at the house before they left, and all
16 four of them were together. And I was at the house later
17 on when they came back, all four of them together, agitated
18 and excited.

19 You're going to hear from Alijah James' sister
20 Shaleika Black who also was staying at the house at that
21 time. And she's going to tell you the same thing.

22 Now Davontay Henson, as I just told you, you're going
23 to hear that Mr. Henson is the one who held the gun in his
24 hands. You're going to hear that Mr. Henson is the one
25 whose finger pulled the trigger taking Tyrone King's life.

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1 But he's not the only one charged with murder.

2 Donta Reid is also charged with murder. He didn't
3 pull the trigger, how can he be charged with murder?

4 The judge is going to instruct you at the end of the
5 case there's a principle of law that's called, "The hand of
6 one is the hand of all." When two or more people conspire
7 and act together to commit some criminal object, each
8 person is responsible for the acts of the other in the
9 conspiracy just as if they did the act themselves. There's
10 an old case in South Carolina law, and it came from Clover,
11 South Carolina. A group of men decided they wanted to rob
12 a bank. One guy's job was to set fire to a barn on the
13 other side of the town distracting everybody to the barn
14 fire while the other men went to the bank and robbed it,
15 while all the men in town, and the police, and the fire
16 department were engaged in fighting the fire on the other
17 side. Well, the guy who set fire to the barn, he never
18 went into the bank. He didn't hold a gun on anybody. But
19 he was just as guilty of bank robbery as the guys who did
20 because he was where he was doing what he was supposed to
21 do to make it easier for the other people to do what they
22 had to do.

23 And Donta Reid was on the porch that night counting
24 the guys, calling them up, saying, "There's two more, not
25 just Henry Jackson, but Henry Jackson and two more." And

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1 he also told them one other piece of information, "They
2 don't have guns. They're not armed. So let's take them,
3 and you can come down here and rob them." Donta Reid
4 helped set this robbery-murder up, and Donta Reid is just
5 as guilty of murder as Davontay Henson is. The hand of one
6 is the hand of all. That's what the judge will instruct
7 you.

8 Now, the judge will also instruct you that the burden
9 of proof in this case belongs to the State. The Defendants
10 as they sit there are presumed innocent. And that's a real
11 right. It's not just something we say. But I submit to
12 you, after you hear from Samantha Ervin, after you hear
13 from Aileen Newman, Alijah James, Shaleika Black, the
14 police that investigated this case, there will be no
15 reasonable doubt in your mind that both of these gentlemen
16 are guilty of murder, both of these gentlemen are guilty of
17 armed robbery and conspiracy. And at the end of the case,
18 we will ask you to return a verdict of guilty on all these
19 charges.

20 Until then, thank you very much for your kind, careful
21 attention in this case. And I put on the case along with
22 my Deputy Solicitor Willie Thompson. I'm Kevin Brackett,
23 the Solicitor. I appreciate your service in this matter,
24 and we look forward to the summation at the end of the
25 case. Thank you.

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1 THE COURT: Ms. Anderson.

2 MS. ANDERSON: May it please the Court?

3 THE COURT: Yes, ma'am.

4 MS. ANDERSON: Ladies and gentlemen, the Solicitor has
5 just stood in front of you and painted a picture of what
6 the State's view of this case is.

7 I want to call your attention to what officers found
8 on October the 1st, 2009, but more particularly, what
9 officers didn't find when they responded to the scene on
10 October 1st, 2009 at [REDACTED].

11 We look through the eyes, perhaps, of Officer
12 Harrelson who was one of the first officers from Rock Hill
13 Police Department who was all on the scene. And Officer
14 Harrelson arrived there the late evening hours, began the
15 investigation, was able to observe, was able to talk to
16 people that night. And there were two words, ladies and
17 gentlemen, that at no time when Officer Harrelson was there
18 on October 1st, 2009 did he ever hear. And those two words
19 were "Donta Reid." On the evening of October 1st, 2009,
20 none of the witnesses that Officer Harrelson talked to on
21 the scene mentioned Mr. Reid's name. When he arrived on
22 the scene, Mr. Reid wasn't at [REDACTED]. He wasn't
23 observed or talked to that evening at all by police in the
24 area.

25 And to this point, ladies and gentlemen, no witness

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1 has said that when the robbery, when the shooting occurred,
2 at [REDACTED] on October 1st, 2009, that Donta Reid was at
3 [REDACTED].

4 Forensic Services Unit was called out to [REDACTED] on
5 October 1st, 2009. And they processed the scene. And
6 there's no forensic evidence that shows that Donta Reid was
7 at [REDACTED] at the time two other people came up to
8 the porch and robbed the three individuals, and then one of
9 those individuals began shooting.

10 And I believe, ladies and gentlemen, if you watch
11 through the course of this trial, you won't see a single
12 witness called by the State, come through these doors,
13 cross this carpet, sit in this witness stand, and tell you
14 that when the robbery and the shooting occurred, that Donta
15 Reid was there.

16 Now the State referenced some statements made by Donta
17 Reid, and that's correct. Mr. Reid did talk to the police,
18 and he told them what he knew. And Mr. Reid did tell the
19 police that he had talked with some other people and there
20 was a plan. There was an original plan to rob an
21 individual named Maurice Jackson who lived at [REDACTED]
22 [REDACTED]. But Mr. Reid also told the police that he didn't
23 want to. And he also told the police that there were other
24 people involved. And yes, he told the police that earlier
25 on October 1st, he had gone to [REDACTED]. And he

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1 did, in fact, use a phone, and he did, in fact, call
2 another person. And he did say something to the effect of
3 "two people" or "two more," something to that nature.

4 And then, ladies and gentlemen, he told the police
5 that he left. And he told the police that he was afraid.
6 And he also told the police that he had been threatened by
7 someone else. And I bring that up, ladies and gentlemen,
8 because the key fact is that he told the police that he
9 left. And indeed no witness will come into this courtroom
10 and tell you that when the robbery took place, when those
11 individuals came up to the porch on [REDACTED] when those
12 individuals started shooting, that Donta Reid was there.
13 And he never told the police that he knew that was going to
14 happen, that he knew that someone would begin shooting,
15 that he knew these individuals would choose, ultimately, to
16 rob the people on the porch.

17 But for that, ladies and gentlemen, the State will ask
18 you to find him guilty beyond a reasonable doubt of murder.

19 I'd like to give you an illustration to think about as
20 you hear all the testimony in this case. If I walked out
21 of this courtroom right now, walked out of those doors, and
22 went through those double-doors out into the front corridor
23 -- I'm not going to do it.. I'll just let you imagine it.
24 If I went in and out in that front hallway and all of you
25 remain here in this courtroom, you wouldn't know what I

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1 said out in that front hallway. You wouldn't know what I
2 did. You could make assumptions about what you thought I
3 might do, but you won't know for certain because you're not
4 out there to see what I do, and you're not out there to
5 hear what I do. And no individual can know what another
6 person is thinking. And you couldn't know what I'm
7 thinking out there. But that's exactly the theory that the
8 State is standing up here and asks you to convict Donta
9 Reid on. He wasn't present when the robbery happened. He
10 wasn't present when the shooting happened. He didn't see
11 what happened. He didn't hear what happened. He couldn't
12 know what decisions those other individuals might have
13 made.

14 In the course of this case and at the end of this
15 case, you'll hear more about the law in this case and the
16 burden of proof. But I bring up in particular, the State's
17 burden of beyond a reasonable doubt because it is such an
18 important part of our system. And it's a very, very high
19 burden. And if the State fails to meet that burden, then
20 it's your duty as jurors in our system to return the
21 verdict, not guilty. And if the State comes one millimeter
22 short of meeting that burden, then it is your duty to
23 return a verdict not guilty.

24 I ask you, ladies and gentlemen, to listen critically
25 to what you hear, to look at this case critically, to

OPENING STATEMENT: BY MS. ANDERSON
BY MR. CHIARENZA

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1 listen for what you do hear, and just -- it's important to
2 listen to what you don't hear, and to think about what is
3 just. Our system is about justice. Your duty as jurors is
4 to do justice with your verdict. I ask you to think about
5 what seems right, and what seems fair, and what seems just
6 in all of the circumstances.

7 At the end of the case, my co-counsel Ms. Inzerillo
8 will stand in front of you, and will talk to you again, and
9 will ask you to return a just verdict. I ask you to
10 remember, ladies and gentlemen, to look at the evidence and
11 to remember that on October 1st of 2009, Donta Reid left.
12 I ask you to return a verdict -- We'll ask you at the end
13 of this trial to return a verdict of not guilty.

14 Thank you, ladies and gentlemen.

15 THE COURT: Mr. Chiarenza.

16 MR. CHIARENZA: May it please the Court, Your Honor?

17 THE COURT: Yes, sir.

18 MR. CHIARENZA: I hope you don't mind, I may, maybe,
19 reference these notes from time to time. Years ago, I used
20 to just come up here and wing it, but I find the older I
21 get, the less able I am to remember things quite the way I
22 need to, so...

23 First of all, I want to welcome you to the courtroom.
24 I want to welcome you to the Moss Justice Center. You've
25 got a terrific responsibility this week, and I know that

OPENING STATEMENT: BY MR. CHIARENZA

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1 you all are going to be able to carry it out and do your
2 duty excellently. Really quite literally, you all are the
3 chosen ones. We chose you. The State got to pick you, got
4 to say yes or no. Counsel for Mr. Reid got to say yes or
5 no. And then it was up to me to say yes or no. There's a
6 reason that all of you are sitting on this jury because all
7 of us, for whatever reasons, based on your backgrounds,
8 your education, maybe just the way you carry yourselves, we
9 all believe that you will make fine jurors in this case,
10 that you will follow your oath, and that you will do what
11 is required of you. So again, in line of welcoming you
12 here, I just want to -- This can be, I guess, an odd
13 experience if you've never been here before. And, in fact,
14 as luck would have it, a very dear friend of mine is
15 sitting in jury duty in Richland County, in criminal court,
16 in General Sessions. And we spoke yesterday, and she asked
17 me a question about the proceedings. So, I just can't help
18 but wonder that maybe you all are thinking the same thing.

19 So, I'm going to take a little liberty here and just
20 advise you. This woman here is the court reporter. And
21 that funny thing she's speaking into is taking down
22 everything she says. And what she is saying is everything
23 that I'm saying right now. It is her job to memorialize
24 these proceedings here today. So whenever there is a
25 witness testifying, whenever the judge speaks to you,

OPENING STATEMENT: BY MR. CHIARENZA.

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1 whenever any of the lawyers are speaking, the court
2 reporter will repeat it into that microphone and it will be
3 preserved forever. You may be asking yourself, "Why can't
4 they just do a tape recording?" Well they do that as well,
5 but this is sort of like a backup. So in case in the
6 future, people are listening to the recording, they have a
7 difference over what a word may be, we've got also the
8 court reporter's interpretation of what was said.

9 While we're introducing people, this is one of our
10 fine assistant clerks. And it's the Clerk of Court's job
11 to basically wrangle all the paperwork that's involved in a
12 court proceeding, to be the liaison between what's going on
13 up here, and what's going on downstairs, and handle matters
14 of record. And we've got a fabulous clerk's office here in
15 York County, and they do a wonderful job.

16 Now you've already met the judge.

17 There are various other individuals in the courtroom
18 including some security.

19 I am counsel for the Defendant Donta Reid -- I'm sorry
20 -- for the Defendant Davontay Henson. I should have
21 checked my notes and seen who my client was. Right?

22 These are co-counsel for Defendant Donta Reid.

23 These are the attorneys for the State. They prosecute
24 the case. And as Mr. Brackett told you, it is their burden
25 to prove to you the allegations they brought against both

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1 defendants of this case. They are alleging that these
2 gentlemen have committed certain crimes.

3 As these individuals sit before you today, as my
4 client sits before you today, Mr. Henson is presumed
5 innocent. And he is innocent all throughout this
6 proceeding until you determine whether or not you've heard
7 enough evidence to find him guilty beyond a reasonable
8 doubt of the numerous charges that the State claims he is
9 guilty of.

10 So you've heard a little bit of what this case is
11 about. And I'm not going to get too much into what the
12 testimony is going to be because nothing I say to you is
13 evidence. I can't testify. I wasn't there. I didn't do
14 an investigation in this case. I can't present any
15 evidence to you. What Mr. Brackett told you, that's not
16 evidence either. That's his understanding of this case,
17 and that's his theory of the case, and that's his outline
18 to you based on what he believes his evidence will show.
19 And I expect that much of what he presents to you will be
20 along the lines of what he said he will present to you. We
21 just sort of differ on what all that stuff's going to end
22 up meaning in the end. How do I know that? Well, there's
23 this terrific movie, maybe you've seen it. It's one of my
24 favorites. It's "My Cousin, Vinny." And there's a point
25 in the movie where Joe Pesci plays this lawyer that, sort

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1 of, finds himself down south, maybe in a little bit over
2 his head trying a case where his relative is actually
3 charged with murder along with another individual. And Joe
4 Pesci's down there with his fiancé, Marisa Tomei. And at
5 one point, he says, "I just wish I could see into the
6 Prosecutor's file, and I wish I knew what he had." She
7 tells him, "He's got to show you his file, you idiot, it's
8 called discovery. You're entitled to it." Right? So
9 that's why I know what's in their file. Discovery is a
10 fairly universal concept in the criminal law in the United
11 States. So, I've seen their file. I know what's in their
12 file, and I think I have a pretty good idea of what they're
13 going to present to you today. So, I will touch on that
14 briefly. We'll get into it a whole lot more when the case
15 is over.

16 Essentially, what they're going to present to you is a
17 number of law enforcement witnesses who are not
18 eyewitnesses to the proceedings that occurred on October
19 1st, 2009. There isn't a single law enforcement officer
20 who is going to testify in this trial, who has any
21 firsthand knowledge from seeing what occurred or hearing
22 what occurred on that night.

23 Now I submit to you what those officers are going to
24 be able to prove to you is that an event occurred. I take
25 no issue with that. I freely admit that something occurred

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1 on that. A young man lost his life. Another young man was
2 shot and injured. Another young man was robbed along with
3 the first two. That certainly occurred. But it's not the
4 State's job in this case, or at least it's not their
5 primary purpose to prove to you that something occurred.
6 This is not a "What happened?" This is a "Who done it?"
7 If you don't remember a single thing I say other than that,
8 please remember that. Remember that when you are
9 evaluating witnesses on a witness stand. Remember that
10 when you are evaluating the physical evidence that is
11 introduced into evidence in this case, which you'll be
12 given to take back into the jury room. Don't look at it
13 from the standpoint of "Does this prove something
14 happened?" because that's not the question you're here to
15 answer. Look at it from the standpoint of "Does this prove
16 Davontay Henson committed these crimes?" That is the
17 question you are here to answer.

18 To put it another way. If this were an arson case,
19 okay, that's the criminal burning of property or a
20 building, the State would have to prove that the fire was
21 purposely caused by someone with the intention to burn down
22 the building. So they do have to prove, what. In an arson
23 case, they have to prove somebody did this on purpose. It
24 wasn't just a faulty toaster, a bad wire. And then they
25 have to prove, who, okay. So this case isn't about the

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1 "what." Why am I spending so much time on that? Because
2 they're going to have a lot of evidence to present to you.
3 Again, this goes back to, how do I know what they're got?
4 Because of discovery. I've seen the file. They will show
5 you probably dozens, if not hundreds of photographs. I
6 submit to you that everyone of those photographs, more or
7 less, proves that something occurred, or it gives you an
8 idea of what the location looked like. Where did this
9 happen? I will also submit to you that not a single one of
10 those photographs proves that Davontay Henson did anything.

11 I also suspect that the State will enter into evidence
12 some shell cases from what, we will be told, is a 22
13 rifle. Those shell casings would seem to tend to prove
14 that a .22 rifle was fired on this night at the Byars
15 Street address because that's where they were found. Those
16 shell casings do not prove that Davontay Henson fired the
17 rifle. Again, they prove a "what," but they do not prove a
18 "who." And the question you've got to answer in this case
19 is "Who?"

20 I submit to you that I could beat this dead horse, and
21 go on with all the evidence that they're going to present
22 to you with the exception of some live witness testimony.
23 They will put some people on this stand that will tell you
24 who. And I'll talk about them a little bit more at the end
25 of the case. But what I want to impress upon you now

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1 before you see those witnesses is that you need to ask
2 yourself, "All right, this person Samantha Ervin is telling
3 me Davontay Henson was involved. Does she have something
4 to gain by that? Is it important that she tell us that?
5 Does she benefit by telling us that? Has she been
6 inconsistent in things she said in the past? Do I maybe
7 have a reason to question Samantha Ervin's credibility?"
8 You need to be asking yourself that question when she
9 testifies.

10 Aileen Newman will testify as well. And she will
11 attempt to answer the who question. She will say that
12 Davontay Henson was involved. Again, you need to look at
13 Aileen Newman and say, "Are you the type of person I'm
14 going to believe? Are you a credible witness? Have you
15 gained something by coming into this courtroom and saying
16 that it was Davontay Henson? Have you lied previously
17 about what occurred in this case? Have you sworn an oath
18 and lied about this case in the past? Should I have some
19 reason to maybe not believe everything you're telling me is
20 the truth?"

21 You'll hear other witnesses who are not charged in
22 this case, but they're also not eyewitnesses to the case.
23 Those people are people that will supposedly have been
24 around that evening when they saw the other individuals
25 together at various points in the night. Again, the same

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1 goes for them. "Have you been inconsistent before? Do
2 your statement maybe not match up? Do you have something
3 to gain here? Were you forthcoming right when this
4 occurred? Were you truthful, or did we have to get this
5 out of you? Should I believe you?" When all the dust
6 settles, what you're going to have, those witnesses are all
7 going to fall into a particular category of young people
8 seem to be, sort of, idle. You all know idle hands are the
9 devil's workshop? They don't appear to be doing much with
10 their lives. And that's what the State's going to be
11 basing their entire case on: the testimony of those
12 individuals with the exception now of the two surviving
13 victims. What you'll hear from those individuals is what
14 they were able to see and hear on that night. And again,
15 you'll hear it from them, what I'm telling you is not
16 evidence. But I submit to you that they had very little
17 opportunity to observe on that evening, that they were both
18 interviewed very soon after the event took place by law
19 enforcement. They have got sworn, written statements, and
20 that those statements say precious little that's going to
21 be able to allow you to come to the conclusion that
22 "Clearly, the guy they saw that night was Davontay Henson."
23 Their statements are general in nature. They describe a
24 masked individual and really not much else.

25 What we're asking you to do this week is not easy, but

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1 it's honorable, and it's important. And again, all of us
2 have determined that you are very well suited for this
3 case. We can only ask that you listen to your oath, and
4 you apply your oath. You listen to the judge's
5 instructions on the law, and you apply the law. And that
6 you get into that jury room and say that "The State proved
7 their case to me beyond a reasonable doubt. Have they
8 proved the 'who' of this case beyond a reasonable doubt?
9 Is the fact that a couple of co-defendants and some other
10 people with a limited opportunity to observe things on that
11 evening came into court and to some degree, less or more,
12 made Davontay Henson one of the who. Is that enough for me
13 to find him guilty of murder, and all the other things he's
14 been charged with, beyond a reasonable doubt?"

15 I submit, ladies and gentlemen, that from what I've
16 seen in the file, and from what I expect to be presented to
17 you over the course of the next couple of days, that if you
18 follow your oath in this case, you're going to have to come
19 to the conclusion that the State did not prove their case.
20 And not proving should mean not guilty.

21 Thank you.

22 THE COURT: Call your first witness.

23 MR. THOMPSON: If it please the Court, Your Honor, the
24 State would call Henry Maurice Jackson to the stand.

25 MADAME CLERK: Please raise your right hand, place

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1 your left hand on the Bible.

2 (WHEREUPON: HENRY MAURICE
3 JACKSON, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
4 FOLLOWS:)

5 THE COURT: Can I see Counsel up here just a minute?
6 Go ahead and have a seat.

7 (WITNESS ENTERED WITNESS BOX.)

8 (BENCH CONFERENCE AT 12:00 PM OFF THE RECORD OUR OF
9 HEARING OF JURY.)

10 THE COURT: Members of the jury panel, based on what I
11 understand, the time that it's going to take to present
12 this witness, it's 12:00 o'clock, I think we usually go to
13 12:31. But I think we'll take an early lunch. I'll ask
14 you to be back at 1:30, and we'll try to start as promptly
15 as we can at 1:30. Have a pleasant lunch.

16 (JURY EXITS COURTROOM @ 12:00 PM.)

17 THE COURT: Mr. Jackson, you can step down. We'll
18 reconvene at 1:30 and start promptly as we can after that.

19 Before we adjourn, in looking at my big stack of
20 papers, we also had a motion on behalf of Mr. Reid to
21 suppress items from [REDACTED] My recollection is
22 that that is not going to be an issue?

23 MR. THOMPSON: I believe that is correct.

24 THE COURT: I just wanted to make sure. Thank you.
25 All right, we'll see you at 1:30.

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1 (RECESS AT 12:00 PM.)

2 (BACK ON RECORD AT 1:30 PM.)

3 (DEFENDANTS REENTER COURTROOM.)

4 THE BAILIFF: Order in the Court.

5 THE COURT: Thank you, take your seats. Is the State
6 ready?

7 MR. BRACKETT: The State's ready, Your Honor.

8 THE COURT: Ms. Inzerillo?

9 MS. INZERILLO: Yes, Your Honor.

10 THE COURT: Mr. Chairenza?

11 MR. CHIARENZA: Yes, Your Honor.

12 THE COURT: All right.

13 Mr. Jackson, please come back up, and take the stand.
14 You're under oath.

15 MR. CHIARENZA: Your Honor, just a matter that's off
16 the record.

17 (OFF THE RECORD BRIEFLY AT 1:31 PM.)

18 THE COURT: Bring in the jury.

19 (JURY ENTERS THE COURTROOM AT 01:36 PM.)

20 THE COURT: All right. We have Mr. Henry Maurice
21 Jackson on the stand.

22 Mr. Thompson.

23 MR. THOMPSON: Thank you. If it pleases the Court,
24 Your Honor.

25 THE COURT: Yes, sir.

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1 DIRECT EXAMINATION

2 HENRY MAURICE JACKSON BY MR. THOMPSON:

3 Q. Mr. Jackson, will you give your full name for the
4 Court, please?

5 A. Henry Maurice Jackson.

6 Q. And can you speak up just a little bit, please?

7 A. Henry Maurice Jackson.

8 Q. Do you go by Maurice?

9 A. Yes, sir.

10 Q. Maurice, can you tell me where you live?

11 A. [REDACTED].

12 Q. Is that in Rock Hill?

13 A. Yes, sir.

14 Q. And that's here in York County?

15 A. Yes, sir.

16 Q. How long have you lived at [REDACTED]?

17 A. Fifteen years.

18 Q. Ten years?

19 A. Fifteen.

20 Q. Oh, fifteen.

21 Who else lives with you there?

22 A. My grandma.

23 Q. Did your grandmother live with you there back in 2009?

24 A. Yes, sir.

25 Q. And did anyone else live with you there other than

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1 your grandma?

2 A. No, sir.

3 Q. Now can you tell me, on the night of October 1st of
4 2009, who all was at your house that night?

5 A. Me, Tyrone King, and Kenny Cunningham.

6 Q. Okay. Are those a couple of friends of yours?

7 A. Yes, sir.

8 Q. How long have you know them?

9 A. All my life.

10 Q. And can you tell me, what were you all doing that
11 evening?

12 A. Sitting on the porch and listening to music.

13 Q. Okay. And where were you keeping -- where was the
14 music playing from? Did you have something out on the
15 porch with you or --

16 A. I got an outlet outside on the front porch.

17 Q. Okay. And how long had you all been out on the front
18 porch that night?

19 A. Well, a couple of hours. A few hours.

20 Q. Okay. And going to the point of the robbery that
21 night, can you tell me, about what time did the robbery
22 occur?

23 A. About 10:50, close to 11:00, Eleven o'clock.

24 Q. All right.

25 A. PM.

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1 Q. And before that time, how long had the three of you
2 been on the porch?

3 A. For about a good hour. A good hour.

4 Q. And tell me about what happened. What did you first
5 notice when the robbery occurred? How did it all go down?

6 A. We were sitting on the porch, texting on the phone,
7 music playing. And then all of the sudden, we look up, and
8 we see two people. It's a girl and a dude. And we're
9 asking each other, do we know them. And we're saying, no.
10 So by that time, the girl asked a question, but I ain't
11 hear.

12 Q. Was she still out in the street when she asked the
13 question or had she come up to the porch?

14 A. She was about -- about like my post, the fence, and
15 the driveway.

16 Q. Okay. And, I ask if you would, I show you State's
17 Exhibit Number One.

18 MR. THOMPSON: Your Honor, for the purpose of these
19 exhibits, State's Exhibits One through Thirty-two are
20 photographs of the scene. We showed them to the Defense,
21 and they have stipulated that they can be entered into
22 evidence at this time before we get started. I believe
23 without objection.

24 THE COURT: Counsel for Mr. Reid?

25 MS. ANDERSON: That is correct. No objection.

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1 MR. CHIARENZA: That's correct, Your Honor, with the
2 understanding that the foundation as far as who took these
3 photos and such will be dealt with later.

4 THE COURT: All right. Thank you.

5 (WHEREUPON: STATE'S EXHIBIT NUMBERS ONE THROUGH
6 THIRTY-TWO IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

7 Q. I'll have you look at State's Exhibit Number One.
8 Does that depict the fence post that you're talking about
9 in it?

10 A. Yes, sir.

11 MR. THOMPSON: I'll ask to display Defense Exhibit
12 Number One -- State's Exhibit Number One on the screen for
13 Mr. Jackson.

14 MR. CHIARENZA: Your Honor, with the Court's
15 permission --

16 THE COURT: Yes, you all can move where you can see.

17 (STATE'S EXHIBIT NUMBER ONE PUBLISHED ON COURTROOM
18 OVER HEAD.)

19 Q. All right. And as that powers up, if you would tell
20 me, she was at the post there. What, if anything, was she
21 saying to you at that time?

22 A. I couldn't remember because I had the music up to
23 loud.

24 Q. And did you recognize her?

25 A. No, sir.

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1 Q. Did you recognize what she was wearing?

2 A. She had on a gray sweater and pink jogging pants.

3 Q. And did you recognize anything about her hair? Did
4 she have any --

5 A. She had light-color brown strips in her hair that
6 looked like a wig.

7 Q. And did -- Once again, did you recognize her face?

8 A. Yes, sir.

9 Q. But is it someone that you knew at that time?

10 A. No, sir.

11 Q. All right. Can you see that photograph?

12 A. Yes, sir.

13 Q. All right. If you would, if you would take this
14 pointer and show me where she was standing when you first
15 saw her when she started to talk to you.

16 THE COURT: Turn the lights down.

17 (CLERK OF COURT DIMMED COURTROOM LIGHTS.)

18 THE COURT: Thank you.

19 A. Right up in there.

20 Q. Right up in there? So, she hadn't got quite to the
21 entrance to the walkway?

22 A. No, sir.

23 Q. All right. And where were you on the porch at that
24 time?

25 A. Rocking chair.

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1 Q. Okay. So, that's a rocking chair up there on the top
2 of the porch?

3 A. Yes, sir.

4 Q. And you were sitting on the rocking chair?

5 A. Yes, sir. I was sitting in it inside. It wouldn't
6 turn sideways, though. It was facing straight.

7 Q. It was facing out toward the street?

8 A. Yes, sir.

9 Q. And where were the other two gentlemen? Where were
10 Tyrone King and Kenny Cunningham?

11 A. Tyrone was sitting right there at the top, and Kenny
12 was sitting right there on the other side.

13 Q. All right. So both of them at the top of the steps
14 sitting on the steps?

15 A. Yes, sir.

16 Q. Were they also facing out to the street or were they
17 facing towards you?

18 A. They was facing out to the street, but they had their
19 head down.

20 Q. All right, okay. What happened after that? What did
21 she do at that point?

22 A. She asked a question. And by the time she asked the
23 question, she just ranned up to the porch.

24 Q. Okay, so --

25 A. Like she come, ran to the porch, and said, "It's a

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1 robbery. It's a stickup. Everybody give it up. You've
2 got drugs, money, whatever, give it up."

3 Q. And so, did you see what the other person was doing at
4 that point in time?

5 A. He was standing right here. And then by the time she
6 ran to the porch, he come running. And when he got right
7 there, he pulled out a rifle.

8 Q. And where did he pull it out from?

9 A. From his pants.

10 Q. All right. And could you see the rifle at that point?

11 A. Yes, sir.

12 Q. And what, if anything, did he do at that point?

13 A. He said, "Yo, yo, give it up, this is" -- "This is a
14 mother-fucking stickup. If you got drugs, if you move,
15 I'll shoot."

16 Q. And at that point, could you see what he was wearing?

17 A. He had on all black.

18 Q. Okay.

19 A. Black mask over his face, black flag over his head,
20 black jacket.

21 Q. And describe what you mean by the mask and the flag.

22 A. Well the mask -- Well the mask was like a pulled-over
23 toboggan with the holes in it.

24 Q. Okay.

25 A. And then he had the flag over his face, a black flag

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1 over his face.

2 Q. Kind of like a bandanna?

3 A. Yeah.

4 Q. Is that -- Okay.

5 A. Yeah.

6 Q. And what else was he wearing?

7 A. He had on a black jacket, black hoodie. The jeans
8 looked black, but they probably was a dark navy blue.

9 Q. All right. Now he pulled the gun out of the jeans.
10 Right?

11 A. Yeah.

12 Q. Well I mean, were the jeans tightfitting? I mean
13 could you see the gun ahead of time? Were those, kind of,
14 really lose?

15 A. You couldn't see the gun.

16 Q. Was he wearing -- Were they really lose then? I mean
17 something you could actually fit that rifle in?

18 A. I guess so.

19 Q. Okay. How about the top of his shirt or his jacket?
20 Was it kind of baggy or was it pulled to his body?

21 A. Kind of baggy.

22 Q. Okay. Were you able to tell that he had a weapon
23 before he pulled it?

24 A. No, sir.

25 Q. All right. Could you recognize him at that point in

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1 time?

2 A. No, sir, 'cause he had a mask over his face.

3 Q. All right. What did you all do at that point when
4 they were starting to demand whatever you had? What did
5 you do?

6 A. We put our hands up.

7 Q. Okay. And when you had your hands up, then what did
8 you do? I mean did you start to take things out of your
9 pockets?

10 A. No, she ranned up to the -- the girl ranned up to the
11 porch, and she pat our pockets down, and she made me stand
12 up. Took my wallet, took my cell -- Well, my cell phone
13 dropped. She took my cell phone from my lap. Well, as it
14 hit the floor, it dropped, and then she took it. Went in
15 my pocket, got my wallet. Went in my other pocket, got my
16 cigarettes.

17 Q. Okay.

18 A. And then the dude that was holding the gun, he was
19 like, "Hurry up, hurry up, hurry up." And she was like, "I
20 got this" -- "I got this shit."

21 Q. Well, go ahead and say what they said, please.

22 A. She was like, "I got this shit." "I got this." And
23 when she opened my wallet up, it wasn't nothing but \$25
24 dollars in it. She must have thought she had \$100, \$200,
25 \$300 dollars. And then, by that time, when she leaved me,

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1 the dude with the rifle, he comes on the porch, put the gun
2 in Tyrone and Kenny's face, checking their pockets. They
3 didn't have nothing on them. But Tyrone had a cell phone.

4 Q. Did they take that cell phone from Tyrone?

5 A. Yeah, they took the cell phone.

6 Q. Okay. And did she also go through their pockets as
7 well or just yours?

8 A. She went through theirs too.

9 Q. Okay. And did he go through their pockets after she
10 did or before she did.

11 A. He went through it after she did, after he waived the
12 gun in their face.

13 Q. Okay.

14 A. And he actually touched their pockets too to make --
15 to check, I guess, after.

16 Q. And what did he do with the gun as he was going
17 through their pockets?

18 A. He was waiving it in they face, and then pointing it
19 at me at the same time.

20 Q. Can you demonstrate to us how he was holding it when
21 he was going through their pockets?

22 (WITNESS STOOD.)

23 A. Like this. "Don't move. Mother-fucker, don't move.
24 This is a stickup."

25 Q. And where was she when he was doing that?

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1 A. She was up there where I was.

2 Q. Okay.

3 A. But she --

4 Q. So, she was still farther up on the porch, but he was
5 on the steps. Correct?

6 A. Yeah.

7 Q. When you looked at him on the steps, was there
8 anything you could notice about him as far as, you know,
9 looking around the mask?

10 A. All I could see is that he had hair, dreads.

11 Q. He had dreads?

12 A. Yeah.

13 Q. His hair were dreads?

14 A. Yeah.

15 Q. About how long were they?

16 A. They was long -- They was long so they came about
17 right here.

18 (WITNESS INDICATED TO SHOULDER.)

19 Q. All right. Did they come out of the mask?

20 A. Yeah.

21 Q. They came out of the bottom of the mask?

22 A. Yeah, out of the bottom.

23 Q. And from seeing him at that point, did you -- I mean,
24 he was covered with a mask. Could you recognize him at
25 all?

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1 A. I couldn't recognize him, but I know from his voice
2 that he wasn't from Rock Hill. He was from up north.

3 Q. And what did you recognize about his voice? You said
4 from up north?

5 A. No, he -- "Yo, yo" -- You could tell -- You could tell
6 from somebody from Rock Hill who is not from Rock Hill from
7 how they talk.

8 Q. Okay. And he didn't sound like he was from Rock Hill
9 to you?

10 A. No, sir.

11 Q. Okay. Now, I'm going to ask as well, at that point,
12 they had taken, I think, your cell phone, and your wallet.
13 And you had said some cigarettes as well. How were the
14 cigarettes packaged that they took?

15 A. There wasn't nothing but two cigarettes in there. It
16 was a Newport box.

17 Q. So, it was a box of Newports?

18 A. Yeah.

19 Q. And what was in it?

20 A. Two cigarettes.

21 Q. Okay. And they took that from you out of your pocket?

22 A. Yes, sir.

23 Q. All right. And do you know if they got anyone else's
24 wallet at that point in time?

25 A. No, sir, not that I know of. I don't know if anybody

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1 else had a wallet.

2 Q. All right. Was your ID in your wallet when they took
3 it?

4 A. Yes, sir. ID, social security card, school ID.

5 Q. Now when you -- When this happens and he starts
6 patting down the pockets, what happens next?

7 A. Well, after they robbed us, they gets to take -- They
8 gets to walk off. And then, she was like, "They seen my
9 face. You've got to turn back around and shoot. Shoot or
10 do something."

11 Q. Who said that?

12 A. The girl.

13 Q. The girl?

14 A. Yeah.

15 Q. Okay.

16 A. She say, "You got to turn back around and shoot or do
17 something." So by that time, he came back to the bottom
18 step right there and started shooting. And when he was
19 shooting, he was shooting from like the bottom going up to
20 the top. So, as I'm standing up in the rocking chair, all
21 I see is bullets just rippling fine out of the gun. And so
22 as I -- That's why -- The reason why the rocking chair
23 turned this way 'cause when I dove to the front of the
24 steps, I dove right here in front of the door. And as I
25 dropped -- As I dropped, he was shooting at me, so bullets

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1 hit the door, knocked the door open, and when I dropped --
2 When I dropped to the ground, the bottom glass shattered
3 from him shooting at me. And then he outlined my whole
4 body from the holes being in the house.

5 Q. Now, what were Kenny and Tyrone doing at that point?

6 A. They was holding their head down telling them, "Please
7 don't shoot. Stop, stop fuckin shooter. You got what
8 you -- You got -- You got -- You robbed us, go on and go
9 away."

10 And by that time -- by that time, right after he shot
11 and took off, I heard Tyrone say, "Oh man, this mother-
12 fucker shot me." And then, by that time, I got up, getting
13 ready to go in the house. Kenny got up behind me, and he
14 dropped right here at the door. So, I just pulled him on
15 in the house and dialed 911 immediately.

16 Q. And was Kenny shot too; did you find out?

17 A. Yeah, he was shot in his leg and in his pinky toe.

18 Q. All right.

19 A. In between his pinky toe.

20 Q. Now, as you heard that gun fire, can you tell me how
21 rapid the firing was?

22 A. Pshew, pshew, pshew. He was just shooting.

23 Q. Was it like someone pulling a trigger repeatedly? Or
24 was it like something going automatically?

25 A. Like automatic.

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1 Q. Okay. And what did he do as he fired? Did he move
2 away from the porch as he was firing?

3 A. No, he was standing in the same spot.

4 Q. Now, did he have any problems with the gun when he
5 went to fire it?

6 A. Yeah. When he fired the first time, it's like the gun
7 jammed up. He done something, and then he just started
8 back shooting.

9 Q. About how many times did it fire before it seemed to
10 jam up?

11 A. Like three or four times.

12 Q. Now, if we could, I'm going to ask you to look at
13 State's Exhibit Number Three. I believe that's up on top
14 of the porch; is that correct?

15 A. Yeah.

16 (STATE'S EXHIBIT NUMBER THREE PUBLISHED ON COURTROOM
17 OVERHEAD.)

18 Q. I believe that's the rocking chair there. Is that the
19 rocking chair you were in?

20 A. Yes, sir.

21 Q. And now is that -- Tell me what you did. Is this the
22 spot where you --

23 A. I was lying right there.

24 Q. Okay.

25 A. And then, when the glass shot out, it fell on top of

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1 me.

2 Q. All right. So when you got up, was there glass all
3 over you?

4 A. Yeah, I had to get up and shake it off. And I was
5 checking myself to make sure I wasn't shot. And that's
6 Tyrone's charger right there.

7 Q. His charger to his cell phone?

8 A. Yeah.

9 Q. Had it been plugged in prior to all of this?

10 A. Yeah, it was plugged in.

11 Q. Now, we'll go to another exhibit. We'll go to State's
12 Exhibit Number Twenty-four.

13 (STATE'S EXHIBIT NUMBER TWENTY-FOUR PUBLISHED ON
14 COURTROOM OVER HEAD.)

15 Q. I believe that's the door from the inside, the front
16 door. Correct?

17 A. Yes, sir.

18 Q. All right.

19 A. And that's one -- That's one of the bullets right
20 there that came from the inside of the house from him
21 shooting at me where the rocking chair was at.

22 Q. One of the bullets went through the wall there?

23 A. Yeah.

24 Q. All right. Can you tell me -- If you can describe
25 this front screen door to me, is it all glass all the way

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1 down that front screen door?

2 A. Yeah.

3 Q. I mean, is there glass in the middle, on top, on the
4 bottom, all of it?

5 A. Yeah, there's glass at the top, middle, and at the
6 bottom.

7 Q. Okay. What was the only glass broken on that door?

8 A. Right there.

9 Q. Right at the bottom, right where you were?

10 A. Yeah.

11 Q. And then, if we could then go to State's Exhibit
12 Number Twenty-three.

13 (STATE'S EXHIBIT TWENTY-THREE PUBLISHED ON COURTROOM
14 OVER HEAD.)

15 Q. Can you see that all right from where you are?

16 A. That's the bullet hole right there from when I dove.
17 Two -- two -- three bullet holes went past my head. That's
18 one, and the other two skint the door right here.

19 Q. Now when that -- Was that -- So that mark wasn't on
20 the door prior to all this; is that correct?

21 A. No.

22 Q. Tell me, was that metal door, was it pulled to when
23 the firing occurred?

24 A. When the firing occurred and hit it, it pushed the
25 door -- The door was closed, but it just pushed it open.

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1 Q. Okay. So the metal door was closed initially, but
2 after the firing started, it was pushed open?

3 A. Yes, sir.

4 Q. Now going back, I think, to State's Exhibit Number
5 Twenty-four. And I think you can see just a portion of it
6 on the right there at the corner. Is that the boom box you
7 all were listening to?

8 A. Yeah, right there.

9 Q. Is that where the music was coming from?

10 A. Yes, sir.

11 Q. Okay. Now, we saw the first photograph that we looked
12 at with the fence. If we could go back to that just
13 briefly.

14 (STATE'S EXHIBIT NUMBER ONE PUBLISHED ON COURTROOM
15 OVER HEAD.)

16 Q. That is State's Exhibit Number One. Does that fence
17 go out and go all the way around the yard?

18 A. Yes, sir.

19 Q. All right.

20 State's Exhibit Number Twenty-nine, please.

21 (STATE'S EXHIBIT NUMBER TWENTY-NINE PUBLISHED ON
22 COURTROOM OVER HEAD.)

23 Q. Is that how the fence looked in front of the yard that
24 night?

25 A. Yes, sir.

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1 Q. And as well State's Exhibit Thirty.

2 (STATE'S EXHIBIT NUMBER THIRTY PUBLISHED ON COURTROOM
3 OVER HEAD.)

4 Q. And it continued to the other corner of the yard; is
5 that right?

6 A. Yes, sir.

7 Q. And then the last State's Exhibit Thirty-one.

8 (STATE'S EXHIBIT NUMBER THIRTY-ONE PUBLISHED ON
9 COURTROOM OVER HEAD.)

10 Q. And is that where the corner of it is on the front as
11 you face the house on the right side?

12 A. No, that's the left side. That's the left side.

13 Q. If you're on -- If you're standing at the house -- Are
14 you talking about facing the house, or are you standing at
15 the house looking at the street?

16 A. No, if I'm standing -- Like say if I was standing in
17 front of my yard like where the police car at.

18 Q. Uh-huh.

19 A. Like say if I was facing the fence -- Which way are
20 you talking about? 'Cause like --

21 Q. Where the opening is on the fence. Where that corner
22 is -- If you're -- Let's just do it this way. If you're
23 standing on your porch where the rocking chair is.

24 A. Yeah.

25 Q. And you look out at the street, is that corner of the

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1 fence on the left or the right?

2 A. It's on the left.

3 Q. And is that an opening there at the fence ---

4 A. Yes, sir.

5 Q. -- at that part? Is that the only other opening on
6 the fence on that as you go around the fence as it goes
7 around the yard?

8 A. Yes, sir.

9 Q. And the one you showed us initially, that's the other
10 one?

11 A. Yes, sir.

12 Q. Okay.

13 MR. THOMPSON: Can you turn the lights back on, Madame
14 Clerk?

15 (COURTROOM LIGHTS BROUGHT BACK UP.)

16 Q. Now after the shooting started, did you see which way
17 they went?

18 A. They came back -- They came back out the way that they
19 came.

20 Q. The way they came in at that opening?

21 A. Yeah. And they left running down -- They left running
22 down Byar Street like they're going to Scoggins.

23 Q. Okay. So, once again, standing on your porch, as you
24 were at your rocking chair, on Byar Street, did they go to
25 the right, or did they go to the left?

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1 A. Well as I'm standing on my porch, I just see them take
2 off down -- down the left. You say standing on my porch?

3 Q. Right.

4 A. Well they took off the left way.

5 Q. And that's towards Scoggins?

6 A. Yeah.

7 Q. Did you see anyone else with them at that point in
8 time?

9 A. No, sir.

10 Q. So only two people?

11 A. Just two people.

12 Q. Now, was there enough light that you could actually
13 see them when they were up close to you?

14 A. No, sir.

15 Q. Were you able to tell some things -- Obviously, you
16 gave me some description about clothing and stuff, were you
17 able to tell then, was there enough light to be able to
18 tell that?

19 A. Yes, sir.

20 Q. Now, once again, tell me -- She's actually on the
21 porch with you. Correct?

22 A. Yes, sir.

23 Q. So how close is she to you? Just, I mean,
24 obviously --

25 A. She like right in front of me.

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1 Q. Okay.

2 A. Like, right here.

3 Q. And patting you down?

4 A. Yeah.

5 Q. Were you able to get a good look at her at that point
6 in time?

7 A. Yes, sir.

8 Q. And could you tell -- Is there any chance that was a
9 guy?

10 A. No, it was a girl.

11 Q. All right. And the one that had the gun, how close
12 did he get to you?

13 A. He didn't get -- He didn't come up -- He didn't come
14 up to me. He just kind of like -- When he came to the
15 steps, like from the time that I seen him was like, really
16 like -- like as far as seeing his dreads was when he got
17 like right there.

18 Q. Okay. Was that when he was patting down your other
19 two friends?

20 A. Yeah, yes, sir.

21 Q. All right. So, were you sitting in your rocking chair
22 or standing at that point?

23 A. I was standing up.

24 Q. Were you watching him as he was patting them down?

25 A. Yes, sir.

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1 Q. Okay. And again, did you recognize him at all at that
2 point?

3 A. No, sir, because he had on a mask.

4 Q. Any possibility that, that person was other than --
5 Was a woman, not a man?

6 A. It was a man.

7 Q. Okay. Any doubt in your mind?

8 A. It had to be a man from the voice. I know a woman
9 ain't got no deep voice.

10 Q. Okay. Now, at this point, when they start running
11 off, what do you do?

12 A. When they started running off?

13 Q. Yeah, when they started running off, what do you do?

14 A. I guess, shake the glass off of me, pat myself down,
15 make sure I wasn't shot. Kenny hops up behind me and he
16 fell. And that's when we went in the house and called 911.

17 Q. And you called 911 at that point.

18 I want to show you what's marked as State's Exhibit
19 Number Thirty-four. Can you tell me what that is?

20 A. That's the tape from the call to 911.

21 Q. If you could speak up because, I can hear you, but I
22 don't know that everyone else can.

23 A. It's the tape from the call to 911.

24 Q. All right. And have you listened to that?

25 A. Yes, sir.

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1 Q. And does it properly record the conversation you had
2 with 911 that night?

3 A. Yes, sir.

4 Q. And is it accurate?

5 A. Yes, sir.

6 Q. And you've listened to this. Correct?

7 A. Yes, sir.

8 Q. And did you mark something to note that you had
9 listened to it?

10 A. Yes, sir. I put my initials on it.

11 Q. And those are your initials here?

12 A. Yes, sir.

13 MR. THOMPSON: Your Honor, I ask to enter this into
14 evidence at this time.

15 THE COURT: Any objection?

16 MS. ANDERSON: No, Your Honor.

17 MR. CHIARENZA: No, Your Honor.

18 THE COURT: In without objection.

19 MR. THOMPSON: And I ask to publish it to the jury,
20 Your Honor.

21 THE COURT: All right.

22 (WHEREUPON: STATE'S EXHIBIT NUMBER THIRTY-FOUR
23 IDENTIFIED AND MARKED, ENTERED INTO EVIDENCE.)

24 (WHEREUPON: STATE'S EXHIBIT NUMBER THIRTY-FOUR,
25 PUBLISHED TO THE JURY AT 01:59 PM.)

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1 Q. Can you tell me -- You mentioned you lived there with
2 your grandmother. Where was your grandmother when all this
3 happened?

4 A. She was in the bed asleep.

5 Q. And did she wake up after this occurred?

6 A. Yes, sir.

7 Q. Were the police able to get there quickly?

8 A. Yes, sir.

9 Q. When the police came, were you able to tell them, kind
10 of, a description of what you had seen and what had
11 occurred?

12 A. Yes, sir.

13 Q. Were you able to give a description as to the height
14 and weight of the people that were involved?

15 A. Yes, sir.

16 Q. And do you recall the description you gave them at
17 that time?

18 A. I told them that the girl's height had to be like
19 5'8," 5'6" to 5'8," 130. And the boy -- the boy's height
20 was like -- the dude's height was like from 5'7" to 5'9,"
21 like 145 pounds.

22 Q. And do you recall telling the officer about the dreads
23 that you described to us today?

24 A. Yes, sir.

25 Q. As well, were you able to describe, kind of, an age

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1 range that you were able to determine?

2 A. Well, from the voice, I -- From the voice of the girl,
3 I was thinking she was maybe 20, and the dude, 22 to 23.

4 Q. And did you tell the police that at that time?

5 A. Yes, sir.

6 Q. Now, on the porch there, about how high up is that
7 porch off the ground when you're standing right next to it?

8 A. I don't know how high it is.

9 Q. About how high is it on you -- If you'll stand up and
10 just kind of -- If you were standing at that porch, about
11 what part of your body does it come to?

12 (WITNESS STOOD.)

13 A. Probably to -- Probably to, like, right here.

14 (WITNESS INDICATED TO HIS BODY.)

15 Q. So, about the top of your chest?

16 A. Yeah.

17 Q. And how tall are you?

18 A. 6'1."

19 Q. So Maurice is 6'1" and it comes to about the top of
20 your chest?

21 A. Yeah.

22 Q. So, it's kind of a higher porch. It's not just a --
23 It's not one you would just step off of or step onto.

24 A. No, it's a high porch. It ain't nothing you can step
25 off of.

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1 Q. Now I notice as well, at the front of this picture,
2 there's a bicycle there down at the bottom of the steps.
3 With the lights on it's a little harder to see. Whose
4 bicycle was that?

5 A. Kenny Cunningham.

6 Q. Had Kenny ridden his bicycle there?

7 A. Could you repeat that?

8 Q. Had Kenny ridden his bicycle there?

9 A. Yes, sir.

10 Q. All right. Was there another bicycle there as well?

11 A. Yes, sir. It was on the -- on the other side of
12 the -- of the police.

13 Q. On the other side of the fence behind the police
14 officer?

15 A. Yes, sir.

16 Q. Whose bicycle was that?

17 A. It's Tyrone King.

18 Q. Is that what Tyrone had ridden there?

19 A. Yeah, he rode that bike there.

20 Q. Now, had you all hung out earlier in the day out here
21 too?

22 A. Yes, sir.

23 Q. When was the first time that day that you all were
24 together?

25 A. Around like Four o'clock.

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1 Q. And during that time, did anyone else come over around
2 Four o'clock or so?

3 A. A couple of my friends.

4 Q. Okay. And what did you all do then?

5 A. Sitting on the -- Well, we were playing basketball at
6 first.

7 Q. Okay.

8 A. And after that we were sitting on the porch, chilling.
9 And we was talking to my mom because she was there too.

10 Q. Your mom came by?

11 A. Yeah.

12 Q. All right. How long did she stay?

13 A. She stayed from like Four to Seven o'clock.

14 Q. All right. And when she comes, is she there strictly
15 to visit with you or does she help her mom there? Is that
16 her mom that's your grandmother that lives there?

17 A. Yes, ma'am -- Yes, sir.

18 Q. Okay. Does she help out with your grandmother there?

19 A. Yes, sir.

20 Q. Now, is there a time between then, did Kenny and
21 Tyrone stay there the whole time all the way through or did
22 they leave and then come back?

23 A. They left and came back.

24 Q. All right. How long were they gone? Do you recall?

25 A. They was gone -- They left like around Seven, and they

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1 came back like around -- like around -- like 9:30 or close
2 to Ten, like right before -- right before the shooting and
3 all that occurred.

4 Q. Okay. Now, the night this occurred, were you able to
5 tell officers about anyone else who had stopped by that
6 night? Did you recall other people stopping by right
7 before it occurred, or not?

8 A. Donta Reid.

9 Q. Okay. But did you remember to tell officers that
10 night when that happened?

11 A. No, I told them the next day.

12 Q. All right. When did it jog your mind that Donta Reid
13 had stopped by?

14 A. Could you repeat that?

15 Q. When did it -- When did you remember that Donta had
16 stopped by?

17 A. Right before the shooting occurred.

18 Q. Right, I know, but I'm asking -- You said that you
19 didn't tell the police right away. You told them the next
20 day --

21 A. Yeah, the next day.

22 Q. Right. What is it in your mind that jogged you to
23 remember that Donta had stopped by?

24 A. Well, the next day when the police came, they asked me
25 did -- was -- did anybody come by before or after. And I ~

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1 told them, and it hit in my head, I said, "Donta Reid came
2 to use my phone ---

3 Q. All right.

4 A. --- right before it happened."

5 Q. Did anything stand out to you about Donta Reid using
6 your phone at that time?

7 A. Yeah, when he said, "two of them."

8 Q. All right. Now, we'll go back to that in a second,
9 but how long have you know Donta Reid?

10 A. I known him for like -- probably like six, seven
11 months.

12 Q. Okay.

13 A. 'Cause he had -- As far as I know, he had just moved
14 on that street.

15 Q. All right. And did he live near you on Byar Street?

16 A. Yes, sir, like, on the next street -- not the next
17 street, but on the other side, on the left side, just a
18 couple of houses down.

19 Q. So, he lived pretty close to you?

20 A. Yes, sir.

21 Q. Did you see him on a fairly regular basis?

22 A. Yes, sir.

23 Q. Did he used to come and hang out on your porch with
24 you?

25 A. Yes, sir.

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1 Q. And again, tell me about when he stopped by your house
2 that night. How did that happen?

3 A. He called -- He -- Well first, he was texting. And he
4 say he was at the store going to get some cigars, and did
5 he know -- did I know where some weed at. I told him no.

6 And he said, "Well" -- When he called -- When he
7 called me back it probably was like about 20 or 30 minutes
8 later he called me back and say, "Well, I'm at the house.
9 I'm fixing to come down -- I'm fixing to come down the
10 street and holler at you." And then, he was -- That's when
11 he was wanting me to walk -- He say, "I got some" -- "I
12 know of some pine in the midtown, would you walk with me?"
13 And I told him, no. I say, "I'm not leaving my company on
14 the porch."

15 Q. Now what do you mean when you say, "Pine"?

16 A. Weed.

17 Q. Some weed? Some marijuana?

18 A. Yeah.

19 Q. All right. Now going back. It seems a little
20 confusing the way I'm hearing it from you. You said you
21 were texting a little bit back and forth, and then he
22 called you?

23 A. Yeah.

24 Q. When do you remember him calling you? Do you remember
25 about what time that was? Or how far before the robbery

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1 was it that you remember him calling you?

2 A. It was probably like about 15, 20 minutes before --
3 before the robbery.

4 Q. That he called you or that he used your phone to call
5 out?

6 A. Are you talking about used my phone to call them? To
7 call --

8 Q. No, no. Let's go back.

9 A. Yeah.

10 Q. Let's step back. I don't want to confuse you. When
11 you're back here, you're getting some texts from Donta.
12 And you said he was telling you that he wanted -- that he
13 was asking you if you had any weed and about coming over.
14 When was that conversation? How far before the robbery was
15 that conversation?

16 A. It was like about 45 minutes earlier.

17 Q. Okay. So, a good bit earlier before the robbery. In
18 other words, not just like 10 or 15 minutes before?

19 A. Yeah.

20 Q. Okay. And when he called you, did you tell him to
21 come on over?

22 A. Yeah, I told him, I say -- I say, "Come on" -- Well,
23 when he asked me did I know where some weed was, I told
24 him, "No." And then he was like, "Well, when I leave the
25 store, I'm going to come on" -- "I'm going to come on

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1 over."

2 Q. Okay.

3 A. And so that's what he done. When he left the store,
4 he came on over.

5 Q. All right. And so when he came over, at that point,
6 what did he do when he came over?

7 A. He asked -- He asked to use one of our phones, but
8 Tyrone wouldn't let him use his phone. So, he used mine.

9 Q. All right. And did he stand right in front of you and
10 talk on the phone?

11 A. No.

12 Q. What did he do?

13 A. He came off the porch and stepped out in the yard --
14 out in the front yard.

15 Q. So could you actually hear all of his conversation
16 when he was on the phone?

17 A. No, sir.

18 Q. What, if any, did you hear in the conversation?

19 A. The only thing I heard in the conversation was when he
20 was coming back on to the porch, and he was saying,
21 "There's two." Then I guess, whoever he was talking to,
22 they were saying, "What?" And he was, like, "It's two of
23 them."

24 Q. Okay. And is that what stuck out to you when you
25 remembered to tell the police about it?

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1 A. Yes, sir.

2 Q. All right. And at that point, after this had all
3 happened, and then you had recalled that, did that make you
4 suspicious of Donta at that time?

5 A. Yes, sir.

6 Q. Did you tell the police you were suspicious of him at
7 that time?

8 A. Yes, sir.

9 Q. And then going back to that, when he actually used
10 your phone to call out, and you heard him say, "There's
11 two" or "two of them" how far before the actual crime did
12 that occur?

13 A. You're talking about when he had called -- called out?

14 Q. Right.

15 A. When he used my phone?

16 Q. Right. When he called out using your phone.

17 A. It was like -- It was like 15 to 20 minutes.

18 Q. All right.

19 A. And then that's when that occurred -- the robbery
20 occurred.

21 Q. Okay, so --

22 A. But he say -- He say he was coming back when he was
23 trying to get me to walk down to midtown with him.

24 Q. And tell us what that means. What do you mean, "Walk
25 down to midtown"? Where is midtown?

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1 A. Right off Scoggin Street.

2 Q. So, he was asking you to go with him down towards --
3 on Byars down towards Scoggins and head down to an area of
4 the city that you all call "Midtown."

5 A. Yes, sir.

6 Q. All right. Did he say what he wanted to do there?

7 A. No, he just say, "Come and take a walk with me." And
8 I told him, "No, 'cause I got company on the porch. I'm
9 not leaving my company."

10 Q. So, you wouldn't go because both Tyrone and Kenny were
11 there?

12 A. Yeah, that's why I didn't go.

13 Q. All right. But he had asked you to go with him at
14 that point in time?

15 A. Yes, sir. And then when he left, he said he was going
16 to be back, but he never came back.

17 Q. All right. And so how long were you there, I mean,
18 having come back, would the police have been there at that
19 point?

20 A. If he would have came back, yeah.

21 Q. Okay. Did he call you again at all that night, that
22 you recall?

23 A. No, sir.

24 Q. And you have a land line in addition to your cell
25 phone. Right?

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1 A. Yes, sir.

2 Q. Has he ever called you on that line as well? In other
3 words, does he know your land line number, the number to
4 the house?

5 A. Yes, sir.

6 Q. So, you've talked to him on that line before?

7 A. Yes, sir.

8 Q. And he didn't call you on that line either?

9 A. No, sir.

10 Q. Now, let me ask you this. You know Donta Reid pretty
11 well. Right?

12 A. Yes, sir.

13 Q. Any chance that, that gunman was Donta Reid?

14 A. No, sir.

15 Q. Would you have recognized him if it were Donta?

16 A. Yes, sir. I'd recognized his voice.

17 Q. Okay.

18 A. And the way how he walk.

19 Q. And how he walks?

20 A. Yes, sir.

21 Q. In other words, how he holds himself?

22 A. Yes, sir.

23 Q. And so, in your mind, is there any way that could have
24 been Donta with the gun that night?

25 A. It wasn't him.

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1 Q. All right. How about the girl? Any way that Donta
2 could have been dressed up to try and be the girl that
3 night?

4 A. It wasn't him.

5 Q. Any chance that, that girl was actually a guy?

6 A. It wasn't.

7 Q. Now, let me ask you, do you know a guy named Darius
8 Jeter?

9 A. Yes, sir.

10 Q. How do you know Darius Jeter?

11 A. Went to high school with him.

12 Q. Have you known him fairly well?

13 A. I know him from high school.

14 Q. Okay. Have you seen him around the neighborhood too?

15 A. Yes, sir.

16 Q. Had you talked to him here and there over the past
17 several years?

18 A. Yes, sir.

19 Q. Do you recognize him when you see him?

20 A. Yes, sir.

21 Q. Do you recognize him when you hear him?

22 A. Yes, sir.

23 Q. Can you tell me, is there any way that either one of
24 those people that were robbing you that night were Darius
25 Jeter?

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1 A. No, sir. I know his voice. He came to my house and
2 chilled a couple of times too.

3 Q. So he's been with you on the front porch hanging out
4 too?

5 A. Yes, sir, playing a game, video game too.

6 Q. All right. Now when the detectives -- I believe, you
7 said that it was the next day that you recalled this stuff
8 with Donta Reid. Did you have them to come to your house
9 and talk to you again at that time?

10 A. Yes, sir.

11 Q. And was that Detective Herring and Detective Ayers?

12 A. I can't remember which one it was, but I think it was
13 him.

14 (WITNESS INDICATED TO DETECTIVES BEHIND SOLICITOR.)

15 Q. Okay, Detective Ayers?

16 A. Yeah.

17 Q. And while you were talking to him, did you tell him
18 about all this stuff with Donta?

19 A. Yes, sir.

20 Q. And the phone calls?

21 A. Yes, sir.

22 Q. Did you tell him whether you thought Donta was the one
23 who robbed you or not?

24 A. No, sir. I told him that, but I was like, it couldn't
25 have been him because of his voice. I know his voice.

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1 Q. Were you telling them, though, that he set it up?

2 A. Yeah, I told them he set it up.

3 Q. Okay. And in addition to that, were you able to
4 describe anything more about the Defendants at that time?

5 Something you recognized about the Defendants?

6 A. Could you --

7 Q. In other words, you had mentioned earlier that you had
8 said that you had noticed a northern accent.

9 A. Yes, sir.

10 MR. CHIARENZA: Objection, leading, Your Honor.

11 THE COURT: Rephrase the question.

12 BY MR. THOMPSON:

13 Q. Is there anything that you told the detectives at that
14 morning about the Defendants that you recognized?

15 A. Yes, sir.

16 Q. What was that?

17 A. Donta Reid.

18 Q. Right, you told Donta Reid but, I mean, the Defendants
19 that committed the robbery. Is there anything you
20 described to --

21 A. Oh, I told them about -- I told them about the dread
22 locks. That he had dread locks.

23 Q. Right.

24 A. And he had a -- And he had a up north accent, voice.

25 Q. All right. And did you describe it any more than up

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1 north?

2 A. Yeah, I said he sounded like he from Baltimore 'cause
3 I got people from Baltimore.

4 Q. You have some relatives in Baltimore?

5 A. Yes, sir.

6 Q. Have you been there before?

7 A. Yes, sir.

8 Q. And have you -- You contact your relatives regularly
9 from Baltimore?

10 A. They came down here. They came down here like last
11 month. My grandma passed.

12 Q. But, I mean, even before that, before this crime
13 occurred ---

14 A. Oh, no.

15 Q. -- have you had regular contact with your folks in
16 Baltimore?

17 A. Huh-uh.

18 Q. I mean, have you talked to them? You say when you
19 talk about the accent. how do you know about a Baltimore
20 accent?

21 A. Oh, 'cause of my aunt. She calls the house a lot.

22 Q. Okay. And you talk to her a lot?

23 A. Yes, sir.

24 MR. THOMPSON: I beg the Court's indulgence, Your
25 Honor, for one moment.

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1 (PAUSE @ 2:15 PM.)

2 Q. Did -- You had said that Donta Reid had come over at
3 times and hung out with you. Did he also know Tyrone and
4 Kenny?

5 A. Yes, sir.

6 Q. And, I mean when he showed up that night and talked to
7 you, did he also talk to them while he was there?

8 A. Yes, sir.

9 Q. And has he hung out with them as well on your porch?

10 A. Yes, sir.

11 Q. After all this happened, did Donta ever call you back
12 to ask ---

13 A. No, sir.

14 Q. --- if they were all right or what he had heard?

15 A. No, sir.

16 Q. Did you ever have contact with him again after that?

17 A. No, sir.

18 Q. Now one other thing, when you all were on the front
19 porch and the robbery occurred, did you all resist them in
20 any way? I mean, did you try to fight them off when they
21 were trying to search you?

22 A. No, sir.

23 Q. Did you refuse to give anything up to the robbers?

24 A. No, sir.

25 Q. Do anything to try to incite them to shoot at you all?

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1 A. No, sir.

2 Q. So at the end when he started shooting was that a
3 surprise to you?

4 A. Yes, sir.

5 Q. Did you see or figure out any reason why they would
6 have shot at you at that point?

7 A. No, sir, because I didn't have -- I mean I didn't have
8 nothing but \$25 dollars in my wallet and some cigarettes.
9 And they ain't had nothing, so I figure, what's the use of
10 shooting? But, like the girl say, "They seen our face."
11 So, I guess that's the reason why he shot.

12 Q. All right. Thank you.

13 Nothing further.

14 MS. INZERILLO: May it please the Court, Your Honor.

15 THE COURT: Yes, ma'am.

16 CROSS EXAMINATION

17 HENRY MAURICE JACKSON BY MS. ANDERSON:

18 Q. Maurice, you received several phone calls from Donta -
19 over that evening. Right?

20 A. Yes, ma'am.

21 Q. And guesstimate there were about five to seven phone
22 calls made between you and Donta?

23 A. Five to seven?

24 Q. Uh-huh.

25 A. No, ma'am.

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1 Q. Okay. About five? Less than five or more than five?

2 A. Less than five.

3 Q. Okay. On some of these phone calls, you didn't pick
4 up every time? You might have noticed you had a miscall or
5 something like that; is that right?

6 A. Yes, ma'am.

7 Q. Okay. But at some point that evening you did, as you
8 testified, talk to Donta on the phone. Right?

9 A. Yes, ma'am.

10 Q. And Donta was calling you about getting some weed.
11 Right?

12 A. Yes, ma'am. He was asking did I knew someone who had
13 some weed.

14 Q. Okay.

15 A. And I told him, no.

16 Q. And he was also calling you to, essentially, hang out
17 with you and smoke marijuana. Right?

18 A. Yes, ma'am.

19 Q. Okay. And on this night, Donta came to your house to
20 meet with you. Right? He walked down to your house?

21 A. Yes, ma'am.

22 Q. All right. And when he came by your house, he was
23 pretty calm. Right?

24 A. Yes, ma'am.

25 Q. He didn't pick a fight with you?

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- 1 A. No, ma'am.
- 2 Q. Or with Tyrone?
- 3 A. No, ma'am.
- 4 Q. Or with Kenny?
- 5 A. No, ma'am.
- 6 Q. He wasn't angry or aggressive with you?
- 7 A. No, ma'am.
- 8 Q. Now, you testified that when Donta was there he was,
- 9 essentially asked you to walk with him to Midtown?
- 10 A. Yes, ma'am.
- 11 Q. And that you didn't want to go?
- 12 A. No, ma'am.
- 13 Q. He asked you that question. Right?
- 14 A. Yes, ma'am.
- 15 Q. Not Tyrone or Kenny.
- 16 A. No, ma'am.
- 17 Q. And when you said, "Look man, I don't want to leave
- 18 'cause I got company," he asked to use your phone?
- 19 A. Yes, ma'am.
- 20 Q. Okay. And you let him use your phone?
- 21 A. Yes, ma'am.
- 22 Q. And Donta stepped into the yard to talk on the phone.
- 23 Right?
- 24 A. Yes, ma'am.
- 25 Q. Now, I'm going to -- I know we've seen the pictures,

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1 Maurice, but I kind of want you to help me envision the
2 yard. Okay?

3 If I am the back fence that we're seeing in that
4 picture. I'm about this far away from you if you're
5 sitting on the porch. Is that fair?

6 A. Okay. I'll point on here. I'll say about like -- He
7 stepped like right up in there.

8 (WITNESS INDICATED ON PHOTO.)

9 Q. Okay. Well, let's step back one -- Let's pretend I'm
10 the fence. Okay? Is this about how far away I would be
11 from you if you were sitting on your front porch?

12 A. It's a little bit back more.

13 Q. A little bit back more, okay. How about here?

14 (ATTORNEY STEPPED BACK FROM WITNESS STAND.)

15 A. Right there.

16 Q. Okay, right here. So, I'm standing right next to the
17 chairs at the State's Counsel table. Right?

18 A. Uh-huh.

19 Q. Okay. Now I know you kind of pointed it out, but when
20 Donta used your phone, he was about here.

21 (ATTORNEY MOVED CLOSE TO WITNESS STAND.)

22 Q. Is that right?

23 A. When he used my phone?

24 Q. Uh-huh.

25 A. When he grabbed my phone -- when he grabbed my phone

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1 and used it, when he dialed the number out, he was walking
2 off the porch.

3 Q. Okay.

4 A. And he stepped way back there.

5 Q. So he stepped here?

6 (ATTORNEY MOVED BACK FROM WITNESS STAND.)

7 Q. Is this fair?

8 A. No, huh-uh.

9 Q. Or further back?

10 A. Where you were standing at back there.

11 Q. Okay. Right here?

12 (ATTORNEY MOVED BACK FROM WITNESS STAND MORE.)

13 A. Back there.

14 Q. Oh, back next to Mr. Brackett?

15 A. Yeah.

16 Q. Okay.

17 (ATTORNEY MOVED BACK TO SOLICITOR'S TABLE.)

18 Q. So he stepped all the way back to the fence?

19 A. Yeah, while he was talking on the phone.

20 Q. Okay. And then after that, you said he was still on
21 the phone, and he walked up the stairs onto the porch. And
22 that's where you heard, sort of, the snippet of the
23 conversation that you heard?

24 A. Yes, ma'am.

25 Q. Okay. So he's, sort of, moving back and forth across

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1 your yard; is that right?

2 A. Yes, ma'am.

3 Q. Okay. And if I'm understanding you right,
4 essentially, on this night, you and your friends were kind
5 of hanging out on the porch. Right?

6 A. Yes, ma'am.

7 Q. So there was music going from the boom box. Right?

8 A. Yes, ma'am.

9 Q. You all were kind of hanging out, chatin'.

10 A. Yes, ma'am.

11 Q. And so, there's other noise going on other than it
12 just being a quiet night at your house; is that right?

13 A. Yes, ma'am.

14 Q. Okay. So when he comes back on the porch, and you say
15 that you hear this, sort of, snippet on the phone where he
16 says, "two of them," or "two guys," or something like that.

17 A. Yes, ma'am.

18 Q. And that's the only part of the conversation that you
19 heard. Right?

20 A. Yes, ma'am.

21 Q. And you're testifying that, sort of, recollecting that
22 you thought that was a little bit odd?

23 A. Yes, ma'am.

24 Q. And that, I believe you testified under Mr. Thompson's
25 questioning that, that's what led you to believe Donta was

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1 setting you up?

2 A. Yes, ma'am.

3 Q. Okay. But having not heard the entire conversation,
4 it's just as likely he was telling someone there were two
5 other people on the porch, it wasn't going to work. Is
6 that fair?

7 A. I mean -- I don't know.

8 Q. Right, because you didn't hear the whole conversation.
9 Right?

10 A. Yes, ma'am.

11 Q. Okay. So at this point, he gives you back your phone.

12 A. Yes, ma'am.

13 Q. He doesn't try to stick it in his pocket, walk away
14 with it, or anything.

15 A. No, ma'am.

16 Q. Okay. And then he leaves your yard. Right?

17 A. Yes, ma'am.

18 Q. Okay. And you don't see him again after that. Right?

19 A. No, ma'am.

20 Q. You didn't see where he went afterwards. Right?

21 A. Took off walking down the street going towards
22 Midtown.

23 Q. Okay. That was the last you saw him?

24 A. Yes, ma'am.

25 Q. So if you had -- If he had any conversations when he

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1 left your yard, you didn't hear those either?

2 A. No, ma'am.

3 Q. Now a little bit later, as you testified, two people
4 came into the yard and essentially robbed you and your
5 friends. Right?

6 A. Yes, ma'am.

7 Q. You didn't see the guy's face?

8 A. No, ma'am.

9 Q. And I think you were pretty clear on the direct that,
10 in your mind, there was a guy and a girl. Right?

11 A. Yes, ma'am.

12 Q. The guy had the gun.

13 A. Yes, ma'am.

14 Q. And you said obviously there was a girl. Right?

15 A. Yes, ma'am.

16 Q. And that's pretty obvious because she didn't have
17 anything covering her face?

18 A. Yes, ma'am.

19 Q. And the guy had, I think, a ski mask and then a
20 bandanna?

21 A. Yes, ma'am.

22 Q. Okay. And you were clear and are clear that the
23 shooter wasn't Donta.

24 A. No, ma'am.

25 Q. When they came into the yard they, at least the girl

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1 initially, demanded that you guys hand over everything you
2 had. Right?

3 A. Yes, ma'am.

4 Q. And you complied. Right?

5 A. Yes, ma'am.

6 Q. In fact, I think you initially told the police, you
7 kind of put your hands in the air like "I don't have
8 anything." Right?

9 A. Yes, ma'am.

10 Q. I mean, you were signally to them, you know, I'm not
11 going to fight you; is that right?

12 A. Yes, ma'am.

13 Q. Okay. And since you were sitting up on the porch in
14 that rocking chair, you sort of could look down and see
15 Kenny and Tyrone in your eyesight?

16 A. Yes, ma'am.

17 Q. So from what you remember on this night, they
18 essentially did the same thing. Right?

19 A. Yes, ma'am.

20 Q. So at no point during this robbery did you lunge for
21 either the girl or the guy.

22 A. No, ma'am.

23 Q. And at no point during this incident on the porch did
24 either one of your friends do that either?

25 A. No, ma'am.

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1 Q. Okay. And essentially even when the girl is sort of
2 touching you, going through your pockets, you don't even so
3 much as push her off of you?

4 A. No, ma'am.

5 Q. You don't give her any reason to suspect that you are
6 going to fight back or hurt her; is that right?

7 A. No, ma'am.

8 Q. Okay. And again because of where you are sitting on
9 the porch, you don't see Tyrone or Kenny do that either?

10 A. No, ma'am.

11 Q. And you don't see them do that even when the guy's in
12 their face with the gun going through their pockets?

13 A. No, ma'am.

14 Q. Okay. And I'm gesturing going through the pockets,
15 that's essentially what happened. Right? She physically
16 reached into your pockets, was taking stuff out?

17 A. Yes, ma'am.

18 Q. Okay. And I believe you indicated when you stood up,
19 essentially, to show them, you know, take what you need,
20 your cell phone fell out on to your lap. Right?

21 A. Yes, ma'am.

22 Q. So she had to bend down pretty close to you to pick it
23 up. Right?

24 A. Yes, ma'am.

25 Q. You didn't kick her?

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1 A. Nothing.

2 Q. You didn't hit her?

3 A. I didn't do nothing.

4 Q. You didn't say a curse word to her. Right?

5 A. No, ma'am.

6 Q. Giving her or him any indication you all were going to
7 do anything but comply. Right?

8 A. Yes, ma'am.

9 Q. Okay. Now when they were done, they essentially start
10 walking down out of your yard. Right?

11 A. Yes, ma'am.

12 Q. Maurice, I'm going to kind of have you walk me through
13 this as well. You're sitting on your porch, all right?
14 And as you can sort of see from some of the pictures Mr.
15 Thompson showed you that your yard -- If I'm walking from
16 your porch through that opening in the fence, it kind of
17 curves like this. Right?

18 A. Uh-huh.

19 Q. So let's say this right here is the opening in your
20 fence. Okay? So if I were to walk to you on the porch, I
21 would have to physically walk into your yard like this and
22 actually, sort of, turn and walk toward you on the porch.
23 Right?

24 A. Yeah.

25 Q. Okay. So after you guys have given them everything

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1 you've got, okay? The two people in the yard, the guy and
2 the girl, start walking away.

3 A. Yes, ma'am.

4 Q. Is that right? Okay.

5 So, they're going, and they're walking away from you
6 like this.

7 (ATTORNEY DEMONSTRATING.)

8 Q. Right?

9 A. Yes, ma'am.

10 Q. And their back's toward you, and they're walking out
11 of the yard?

12 A. Yes, ma'am.

13 Q. And even with their backs toward you, you still don't
14 lunge for them. Right?

15 A. No, ma'am.

16 Q. You still don't curse at them.

17 A. No, ma'am.

18 Q. Neither one of your friends do that?

19 A. No, ma'am.

20 Q. You don't threaten them in any way?

21 A. No, ma'am.

22 Q. And then at that point, you indicated you heard the
23 girl say, "They've seen my face, shoot 'em," or "You have
24 to do something." Is that right?

25 A. Yes, ma'am.

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CROSS BY MR. CHIARENZA

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1 Q. Okay. And so at this point, you say the shooter runs
2 up -- actually runs back to the porch steps. Right?

3 A. Yes, ma'am.

4 Q. And starts shooting?

5 A. Yes, ma'am.

6 Q. Okay.

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

8 THE COURT: Mr. Chiarenza?

9 MR. CHIARENZA: Thank you, Your Honor.

10 CROSS EXAMINATION

11 HENRY MAURICE JACKSON BY MR. CHIARENZA:

12 Q. Mr. Jackson, I'm sorry for your loss. I'm sorry you
13 lost your friend.

14 I'm going to ask you a couple of questions about your
15 testimony here today.

16 On the night in question, shortly after this event
17 occurred and officers show up, you recall giving a
18 statement to a Rock Hill police detective. Correct?

19 A. Yes, sir.

20 Q. All right. And over the last couple of days or maybe
21 couple of weeks, you have met with the Prosecution and
22 reviewed your written statement; is that correct?

23 A. Yes, sir.

24 Q. Okay. So you're pretty familiar with it. And I've
25 got a copy here. And I'll be happy to show it to you if we

HENRY MAURICE JACKSON: CROSS BY MR. CHIARENZA

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1 need for you to look at it to remember these things. Okay?

2 A. Yes, sir.

3 Q. I'm going to ask you some stuff about what's in this
4 statement. Would you agree with me that this statement was
5 given just after midnight on the night in question? So,
6 you all got robbed late at night, and then almost to
7 midnight, and then just past midnight. This says, "Time:
8 0051," which would be military time indicating just almost
9 1:00 in the morning the next day; is that correct?

10 A. Yes, sir.

11 Q. Okay. So, we're talking about not a whole day had
12 passed, just maybe an hour or an hour and a half from the
13 time of the robbery.

14 A. Yes, sir.

15 Q. Okay. So events are fresh in your mind at that point.
16 Correct?

17 A. Yes, sir.

18 Q. All right. Is there anything in this -- I'm just
19 going to go with what I'm seeing right here in this
20 statement, but if you don't recall saying this stuff, I'll
21 be happy to show you the statement where, that you've
22 signed. All right?

23 A. Yes, sir.

24 Q. All right. Do you recall in your written statement
25 indicating that from the voice of the shooter, he sounded

HENRY MAURICE JACKSON: CROSS BY MR. CHIARENZA

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1 to be 22 or 23-years-old?

2 A. Yes, sir.

3 Q. Okay. Do you recall in your written statement
4 indicating that he was wearing a black hoodie and a black
5 coat?

6 A. Yes, sir.

7 Q. Okay. What -- how -- What's a hoodie? What's your
8 idea of what a hoodie is?

9 A. A hoodie is like a pullover sweater.

10 Q. And it actually has a hood on it?

11 A. Yes, sir.

12 Q. Okay. So that hood covers from -- covers the entire
13 back of your head and the sides of your head. Correct?

14 A. Yes, sir.

15 Q. All right. And then you also indicated, I think, well
16 not in this statement -- Would you agree that in this
17 statement, you don't say anything about a bandanna or a
18 black flag? And I'll let you see if you do or you don't.
19 I think you say a ski mask, but nothing about a bandanna or
20 a black flag. I want you to take a look at these two
21 pages, and see if anywhere in there you mention a black
22 bandanna or a black flag.

23 (WITNESS READING DOCUMENTS.)

24 A. A black toboggan mask over his face. And I said --

25 Q. A black toboggan mask over the face?

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1 A. The mask is to -- The mask is basically a flag, a
2 black bandanna.

3 Q. Well, you weren't referring to like a ski mask?

4 A. No, I wasn't referring to a mask. I was referring to
5 the bandanna.

6 Q. A bandanna? Okay, fair enough. I guess, if that's
7 the way you describe it; that's fine. So he's got this
8 hoodie on covering the sides and the back of his head. And
9 he's got a flag, or cloth, or a bandanna, or something
10 covering up his face?

11 A. Yes, sir.

12 Q. But you could see his eyes; is that correct?

13 A. Yes, sir.

14 Q. And that's all you could really see?

15 A. Yes, sir. And the dreads hanging from the front side.

16 Q. Okay, the dreads. Show me in the statement where you
17 mention seeing dreads?

18 A. I didn't put it in the statement, but I said it to the
19 police call when I called.

20 Q. Okay. You didn't say it in the 911 tape, did you,
21 that we just listened to? Did you ever mention dread locks
22 in that? What we just listened to?

23 A. Well when -- I was telling it to -- Well, not in the
24 call, but like when the police came, and they actually got
25 there when he was talking over the -- over his intercom

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1 thing.

2 Q. Uh-huh.

3 THE COURT: You need to speak up so he can hear you.

4 A. When he was talking over his intercom when the police
5 got there, asking me what happened, I was telling them
6 that, that he possibly have dreads.

7 Q. Okay. Do you recall which officer that was that you
8 spoke to?

9 A. I can't remember his name.

10 Q. But will you agree with me that on this 911 tape you
11 made mere seconds after the robbery, you didn't mention
12 dreads in part of --

13 A. Yeah, I didn't mention it in the tape, but when the
14 police came, that's when I --

15 Q. I just want to know if you mentioned it, if you heard
16 it here.

17 A. Okay.

18 Q. Was it on the 911 tape?

19 A. No.

20 Q. Okay. And would you agree with me that the officer
21 who was speaking to you on the 911 tape asked at least
22 three or four times for a description of the shooter; is
23 that correct?

24 A. Yes, sir.

25 Q. Okay. And would you agree that what you told them --

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1 What you were able to tell them was, "He's wearing all
2 black, and he's got a flag on his head."

3 A. Yes, sir.

4 Q. Would you agree that maybe you told them that two or
5 three times?

6 A. Yes, sir.

7 Q. Okay. But at no time did you say, "He's got dreads."

8 A. Are you talking about on the 911?

9 Q. On the 911.

10 A. Yes, sir.

11 Q. You did not ever mention that. Correct?

12 A. No, sir.

13 Q. All right. Also can you show me anywhere in this
14 statement where you mention the shooter having some sort of
15 a northern accent. Is that in there, in your statement?

16 A. No, sir. I told that -- I told that to the police
17 when they got -- they got to my house.

18 Q. All right. Same policemen ---

19 A. Yeah, the same police.

20 Q. --- you supposedly told about the dreads? Okay.

21 But the police officer who took a written, sworn
22 statement from you at 51 minutes past midnight, you did not
23 mention dread locks or a northern accent, too. Correct?

24 A. No, sir, but as I was down at the station, I was
25 telling them.

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1 Q. Well where did this occur? Where was this statement?

2 A. At the station.

3 Q. Down at the station. Right?

4 A. At the station.

5 Q. Okay.

6 A. But I was telling him. I didn't put it in my
7 statement though.

8 Q. Okay. Explain to me, because I'm not sure that I'm
9 familiar, how does a Baltimore accent differ from a New
10 York accent?

11 A. From a New York? Well as far --

12 THE COURT: Speak in the microphone, please.

13 A. In the -- In the Baltimore accent as far as saying
14 like, "Yo, yo." In the New York accent, they "Yo, what's
15 up, B.?" "Hey B." That's a New York accent.

16 Q. Okay. Does everyone from New York speak like that?

17 A. The majority of them do.

18 Q. And everyone from Baltimore speaks the same way. Is
19 that what you're saying?

20 A. Yes, sir.

21 Q. Okay. And how would those differ from a Boston
22 accent?

23 A. I don't know no Boston accent.

24 Q. How about an accent from Richmond, Virginia?

25 A. I don't know no accent from no Richmond, Virginia

HENRY MAURICE JACKSON: CROSS BY MR. CHIARENZA

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1 either.

2 Q. You don't have any special training in speech dialects
3 or accents or anything like that?

4 A. No.

5 Q. Now this robbery, how long would you say it occurred?
6 Maybe a minute, two minutes total time?

7 A. About two, three, four minutes.

8 Q. Two, three, four, somewhere in there?

9 A. Yeah.

10 Q. Okay. And you testified that the shooter, he never
11 came up on the porch. Did he?

12 A. He came up on the steps.

13 Q. But not all the way up on top?

14 A. He didn't come all the way up.

15 Q. Okay. And again, you were asked twice, once by Mr.
16 Thompson and once by Ms. Inzerillo, and I'll just make it
17 three. The only portion of Mr. Reid's conversation in your
18 yard, you heard was him saying, "There's two."

19 A. Yes, sir.

20 Q. And you heard as -- At the end of the robbery, you
21 heard the girl say to the individual in the mask something
22 along the lines of, "Shoot them. You've got to shoot them.
23 They've seen my face."

24 A. Yes, sir.

25 Q. And then that's when the shooting began?

HENRY MAURICE JACKSON: CROSS BY MR. CHIARENZA

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1 A. Yes, sir.

2 Q. Again back to meeting with the Prosecution's office in
3 preparation for this matter, was that the first time you
4 started discussing dread locks with people?

5 A. The -- the -- Could you repeat that?

6 Q. Was -- You don't have dread locks in your written
7 statement. You don't mention dread locks on the 911 tape.
8 I'm just curious as to whether or not it first occurred to
9 you the shooter had dread locks after you met with the
10 Prosecution, people working for the Prosecutor's office?

11 A. You're talking about -- You're talking about down at
12 the station?

13 Q. No, those are police officers. When you met with
14 either Mr. Thompson, Mr. Brackett, Mr. Tolson, or any of
15 the individuals here. This meeting would have occurred in
16 this building. I'm going to ask you, did they discuss
17 dread locks with you at that time?

18 A. No -- No, sir.

19 Q. You've already testified that's your, basically, your
20 front yard to your home; is that correct?

21 A. Yes, sir.

22 Q. And this -- this little white item that's up there in
23 the yard kind of halfway between the police officer and the
24 fence post. Is that one of those plastic plumbing things,
25 like a clean-out?

HENRY MAURICE JACKSON: CROSS BY MR. CHIARENZA

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1 A. Yes, sir.

2 Q. That's what that is?

3 A. Yes, sir.

4 Q. All right. And you're there every day. But from this
5 photograph, it looks like it's sort of covered with mud
6 almost two-thirds of the way up. Is that what that
7 substance is on there?

8 A. Yes, sir.

9 Q. And your yard there is essentially -- It looks like
10 you have about as much luck as I do growing grass. It's
11 not a very grassy lawn. Is it?

12 A. No, sir.

13 Q. That's mostly dirt and clay, and so there's really not
14 much growing there. Correct?

15 A. Yes, sir.

16 Q. Now initially -- I think in your initial direct
17 examination from Mr. Thompson, in describing the shooter's
18 voice, what you first said was just that he didn't sound
19 like he was from Rock Hill; is that right?

20 A. Yes, sir.

21 Q. And is that what you actually told the officer that
22 night on the street that just -- He just didn't sound like
23 he was from around here?

24 A. Yes, sir.

25 Q. You didn't tell that officer he sounded like he was

HENRY MAURICE JACKSON: CROSS BY MR. CHIARENZA
REDIRECT BY MR. THOMPSON

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1 from Baltimore did you?

2 A. Yes, sir. I said he sounded like he got a up north
3 accent from Baltimore.

4 Q. But that's -- Again, that's nowhere in your written
5 statement?

6 A. It's not in the statement, but that's what I said to
7 the police.

8 Q. And you can't remember what officer that was that you
9 supposedly told that to?

10 A. No, sir.

11 MR. CHIARENZA: Court's indulgence. Just a second,
12 Your Honor.

13 (PAUSE.)

14 Q. The physical description of the shooter was 5 foot 9,
15 145 pounds; is that correct? I mean roughly.

16 A. Yes, sir.

17 Q. Thank you, Mr. Jackson.

18 MR. CHIARENZA: That's all I have, Your Honor.

19 THE COURT: All right.

20 REDIRECT EXAMINATION

21 HENRY MAURICE JACKSON BY MR. THOMPSON:

22 Q. Just briefly before you step down, Mr. Jackson. Now,
23 you had mentioned when Ms. Inzerillo was asking you about
24 Donta Reid that he had left going toward Midtown; is that
25 right?

HENRY MAURICE JACKSON: REDIRECT BY MR. THOMPSON

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1 A. Yes, sir.

2 Q. Okay. And that, once again, that's going left on
3 Byars if you're standing on your porch facing the street?

4 A. Yes, sir.

5 Q. Left on Byars?

6 A. Yes, sir.

7 Q. And that's also towards where Scoggin Street is.
8 Right?

9 A. Yes, sir.

10 Q. And I think you testified earlier, that's also the way
11 that the robbers went; is that correct?

12 A. Yes, sir.

13 Q. Did the robbers also come from that direction?

14 A. Yes, sir. They came -- They came together. Like, the
15 way I -- When we looked up on the front porch, they was,
16 like, standing side by side, really.

17 Q. All right.

18 A. But he was a little bit farther back from me.

19 Q. Okay. So they came from that direction, would they
20 have come around the fence and then into the opening there?

21 A. Yes, sir.

22 Q. Now again, Mr. Chiarenza was mentioning the statement
23 that you had given to the police at the station. I believe
24 that statement was given to a female officer, an Officer
25 Allen; is that right?

HENRY MAURICE JACKSON: REDIRECT BY MR. THOMPSON

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1 A. I don't --

2 Q. As far as --

3 A. I don't know her name.

4 Q. Was it a female officer?

5 A. Yes, sir.

6 Q. Was she out at the scene with you when it happened? I
7 mean, did she come out at the scene to your house, or did
8 you see her at the station?

9 A. No, she took me down to the station.

10 Q. Okay. Is it safe to say that at a point that you
11 talked to her? You had told several people about this --

12 MR. CHIARENZA: Objection, Your Honor.

13 THE COURT: It is a leading question.

14 MR. THOMPSON: Okay.

15 Q. Had you told any other officers about this before you
16 told her?

17 A. Yes, sir. 'Cause she -- she came like -- After --
18 After the officers came in the house and was looking around
19 and was looking on the porch and stuff, that's when I was
20 telling them.

21 Q. After this happened, were you scared?

22 A. Yes, sir.

23 Q. Were you nervous?

24 A. Yes, sir.

25 Q. Have you ever had anything like this happen to you

HENRY MAURICE JACKSON: REDIRECT BY MR. THOMPSON

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1 before?

2 A. No, sir.

3 Q. Thank you, no further questions.

4 THE COURT: Ms. Inzerillo?

5 MS. INZERILLO: Nothing further, Your Honor.

6 THE COURT: Mr. Chiarenza?

7 MR. CHIARENZA: Nothing, Your Honor.

8 THE COURT: You can step down and have a seat back in
9 the --

10 (WITNESS LEAVING WITNESS STAND.)

11 THE COURT: Call your next witness.

12 MR. CHIARENZA: Your Honor, I think we're just going
13 to permanently relocate where we are.

14 THE COURT: Okay.

15 MR. THOMPSON: If it please the Court, Your Honor.
16 The State would call Kenny Cunningham.

17 THE COURT: If you would come up, put your left hand
18 on this Bible, and raise your right.

19 (WHEREUPON: KENNY CUNNINGHAM,
20 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

21 MADAME CLERK: Thank you. You may have a seat.

22 THE COURT: You need to speak fairly loud and into
23 that microphone, if you would please, sir. Thank you.

24 DIRECT EXAMINATION

25 KENNY CUNNINGHAM BY MR. THOMPSON:

KENNY CUNNINGHAM: DIRECT BY MR. THOMPSON

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1 Q. Mr. Cunningham, can you give your full name for the
2 Court, please?

3 A. Kenny O'Brien Cunningham.

4 Q. And where do you live?

5 A. [REDACTED]

6 Q. I'm sorry.

7 A. [REDACTED]

8 Q. Clarinda?

9 A. Yes, sir.

10 Q. And that's in Rock Hill?

11 A. Yes, sir.

12 Q. How long have you lived in Rock Hill?

13 A. All my life.

14 Q. How old are you, Kenny?

15 A. Twenty-one.

16 Q. Can you tell me, how do you know Henry Maurice
17 Jackson?

18 A. I went to school with him, 3rd grade and on up.

19 Q. Is he a good friend of yours?

20 A. Yes, sir.

21 Q. How did you know Tyrone King?

22 A. I went to school with him.

23 Q. Was he also a good friend of your?

24 A. Yes, sir.

25 Q. Did y'all hang out a lot together?

KENNY CUNNINGHAM: DIRECT BY MR. THOMPSON

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1 A. Yes, sir.

2 Q. Do you go by Kenny? Is that --

3 A. Yes, sir.

4 Q. Now Kenny, can you tell me, on the day of the robbery,
5 were you over at Maurice's house, at Mr. Jackson's house?

6 A. Yes, sir.

7 Q. What were y'all doing there at the house?

8 A. Sitting on the front porch listening to the radio.

9 Q. And how long had you been there before the robbery
10 occurred. Do you recall?

11 A. Like a good hour.

12 Q. An hour?

13 A. Yeah.

14 Q. And can you tell me, before the robbery actually
15 happened, do you remember anyone coming by?

16 A. Before it happened?

17 Q. Yeah, before the robbery happened.

18 A. Oh, Mr. Reid came by.

19 Q. And that's Donta Reid?

20 A. Yes, sir.

21 Q. The Defendant here today?

22 A. Yes, sir.

23 Q. Did you know Donta Reid?

24 A. Yeah, I knew him from being over Maurice house.

25 Q. Has he hung out with you before?

KENNY CUNNINGHAM: DIRECT BY MR. THOMPSON

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1 A. Not like that, but I seen him, though. I speak to
2 him, whatever. I ain't know him like that.

3 Q. You know him when you see him?

4 A. Yeah.

5 Q. If you hear his voice, you recognize him?

6 A. Yeah.

7 Q. And how long had it been since you had first met him
8 back when the robbery occurred? How long had it been that

9 --

10 A. Couple of months, two -- about two or three months.

11 Q. I'm sorry. Two or three --

12 A. About two or three months. About two or three months.

13 Q. Months?

14 A. Yeah.

15 Q. Okay. Now when he came by, do you remember what
16 happened when he stopped by?

17 A. He stopped by, used Maurice's phone.

18 Q. Did he talk to you or Tyrone while he was there?

19 A. No. He walked between us while we were sitting on the
20 steps, and asked "Rece" can he use the phone.

21 Q. So y'all were sitting on the top of the steps when he
22 came by?

23 A. Yes, sir.

24 Q. And he walked up between you to talk to Maurice?

25 A. Yeah, yeah.

KENNY CUNNINGHAM: DIRECT BY MR. THOMPSON

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1 Q. Did you hear much of the conversation between him and
2 Maurice?

3 A. No, I heard him say, "Let him use the phone." Then he
4 got on the phone.

5 Q. Where did he go when he got on the phone?

6 A. Like walked off the steps and walked back up the
7 steps.

8 Q. Did he go out in the yard at all with the phone?

9 A. Yeah, he came out a little bit, like, right off the
10 steps.

11 Q. Okay.

12 A. Went back --

13 Q. And that's while he was talking on the phone?

14 A. Yeah, he was talk -- while he -- You know what I'm
15 saying? Walking -- leaving off the steps.

16 Q. Did you hear anything while he was on the phone?

17 A. Yeah, he was like "There's two of 'em."

18 Q. And was that near the beginning of the conversation,
19 the end of the conversation? Could you tell?

20 A. It was right before he hung up the phone.

21 Q. So was he coming back onto the steps at that point
22 when he hung up?

23 A. Yeah.

24 Q. So, was he actually -- I mean, how close he was to you
25 when you heard that?

KENNY CUNNINGHAM: DIRECT BY MR. THOMPSON

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1 A. Like right there on the steps, right there on the
2 steps. He was coming, like, two steps in front of -- like,
3 where I was sitting at.

4 Q. And on the steps, as we look at the house, were you
5 sitting on the left top of the steps or the right top of
6 the steps?

7 A. From this side, I was sitting on the right.

8 Q. And where was Tyrone sitting?

9 A. On the left.

10 Q. Now tell me again. How far was that before the
11 robbery that he stopped by?

12 A. Are you talking about --

13 Q. Yeah, how long was it from the time that Donta stopped
14 by to the robbery occurred?

15 A. I give him 25, 30 minutes.

16 Q. And did you see which way Donta went when he left?

17 A. Really, I wasn't paying no attention. I was listening
18 to the radio.

19 Q. All right. So you didn't even watch when he left
20 which way he went?

21 A. Yeah.

22 Q. Okay. Now at the time of the robbery, what were you
23 doing then?

24 A. At the time of the robbery?

25 Q. Yeah.

KENNY CUNNINGHAM: DIRECT BY MR. THOMPSON

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1 A. I was scared.

2 Q. No, I mean, what were you doing? Before it starts,
3 before it all happens, how do you describe it?

4 A. Oh, oh, before it -- before it happened, oh, that girl
5 -- A girl had walked up and she was like, could she get a
6 cigarette -- something -- She was asking for something. I
7 believe she asked for a cigarette, and she walked up
8 between us. She was like -- And we were like, we ain't got
9 no cigarette. So, I believe, she was fixing to get a
10 cigarette from Maurice.

11 So, next thing you know, we -- I looked down the
12 stairs, it was a dude with a gun.

13 Q. When did you first see the girl?

14 A. When I first seen the girl?

15 Q. Yes.

16 A. I seen her when she walked in the yard.

17 Q. So, you saw her walk through the opening on the side
18 of the fence?

19 A. Yeah.

20 Q. Did you see which way the girl came from on the
21 street?

22 A. She came from the way like from Scoggin Street, like,
23 from this way.

24 Q. So she's coming down Byar Street, but from the
25 direction of Scoggin Street?

KENNY CUNNINGHAM: DIRECT BY MR. THOMPSON

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1 A. Yeah.

2 Q. So, as you're sitting on the porch and facing the
3 road, is that from the left or the right that she's coming?

4 A. That's from the right. The way I was sitting, that's
5 from the right.

6 Q. Okay, the way you were sitting. Okay well, let's do
7 it this way. I'll just stick with this -- from the
8 direction of Scoggin Street. Correct?

9 A. Yeah, yeah, yeah, yeah.

10 Q. Okay. Now when she comes, does that mean that they
11 have to walk all the way around the fence there to get in?

12 A. No, they could have cut through the little part right
13 there, but they came all the way around.

14 Q. But they didn't cut through. They came all the way
15 around?

16 A. Yeah, they came all the way around.

17 Q. And she came up first. Right?

18 A. Uh-huh.

19 Q. What did you notice about her? What could you tell
20 me? What did she look like?

21 A. She had like some, like, some pajama pants on.

22 Q. Do you remember what color they were?

23 A. Like, pink and something. They were pink and
24 something. It was nighttime. I know I seen that pink.

25 Q. Could you tell what kind of top or anything she had on

KENNY CUNNINGHAM: DIRECT BY MR. THOMPSON

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1 at that point?

2 A. Gray-looking.

3 Q. And did she have anything covering her face?

4 A. No, she had a hoodie on, though, when she walked up.

5 But when she got up on the front porch, we weren't even

6 really paying no attention to her because we was looking at

7 the phone and listening to the radio. We didn't pay no

8 attention to her. But when I actually -- when I looked up,

9 you know, I looked behind me because we facing this way

10 towards the road on the steps, you know. And I looked up,

11 and I looked back down. It was -- It was a dude with a gun

12 saying, "Yo, yo, don't fucking move, yo. It's a fucking

13 stickup, yo."

14 Q. Okay.

15 A. Like that, but with --

16 Q. She was already up on the steps when that occurred?

17 A. Uh-huh.

18 Q. Now, had you -- Did you recognize her? Did you know

19 who she was at that point?

20 A. No, I didn't recognize her. I didn't know who she

21 was.

22 Q. Now when your attention gets turned to this dude, do

23 you see a weapon on him at all?

24 A. A weapon on her?

25 Q. On him?

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1 A. Oh, yeah, I seen a weapon. It right in my face. It
2 was right in my face.

3 Q. Can you describe it at all?

4 A. It was a rifle.

5 Q. And was he right at the bottom of the steps, right in
6 front of you?

7 A. Yeah, he was right in front of me and Tyrone from the
8 bottom of the steps.

9 Q. All right.

10 A. And he was -- He walked like halfway, like two steps
11 up. He was patting on our pockets going like this.

12 (WITNESS PATTING HIS BODY.)

13 A. "I know y'all fucking got something. I know y'all
14 fucking got something." But he kept waving the gun, you
15 know. He kept waving it at all three of us.

16 Q. And can you tell me as far as the girl goes, what did
17 she say to you? Did she say anything other than the fact
18 that she was asking for some cigarettes or something like
19 that when she first came up?

20 A. No, that's all she -- she -- That's all she asked for.
21 It's -- Really they used her to throw it out, like, you
22 know.

23 Q. And now, you mentioned that he searched you. Did she
24 search you at all?

25 A. No, she ain't search me. She ain't search me. But he

KENNY CUNNINGHAM: DIRECT BY MR. THOMPSON

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1 did though.

2 Q. Did you have anything on you?

3 A. Huh?

4 Q. Did you have anything on you that was taken?

5 A. No, I ain't had noting but ten dollars.

6 Q. Did they take that from you at that time?

7 A. No, that was on the steps, on the picture.

8 Q. But I mean, did you have it on the steps or was that
9 money on you when --

10 A. That was in my pocket.

11 Q. Okay. And after the robbery, it ended up on the
12 steps?

13 A. Uh-huh.

14 Q. Did -- When he patted you down, did he stick his hand
15 in your pockets and stuff like that?

16 A. Yeah, he -- he -- he had the gun -- He was doing like
17 this ---

18 (WITNESS PATTING HIS BODY.)

19 A. --- patting on my pocket, you know, trying to see what
20 was in there, but there wasn't nothing in my pocket.

21 Q. What could you recognize about him when he was patting
22 you down --

23 A. That's all I seen is all black.

24 Q. Okay.

25 A. That's all I seen.

KENNY CUNNINGHAM: DIRECT BY MR. THOMPSON

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1 Q. Could you tell, was it a dude at that time? You know
2 it was a guy?

3 A. Yeah, I know it was a guy.

4 Q. Could you tell it was a black male?

5 A. Yeah, I could tell he was black how he was talking,
6 stuff like that, how his reaction was, but --

7 Q. Could you see his hands as well?

8 A. No, I ain't seen his hands. I seen the gun.

9 Q. Okay. And did he also pat down Tyrone?

10 A. Yeah, he was patting -- We was sitting right beside
11 each other. He was patting down both of us like this ---

12 (WITNESS PATTING HIS BODY)

13 A. --- holding the gun with one hand, patting down both
14 of us.

15 Q. And the girl, when she got up on the steps, did you
16 see when she patted down Maurice?

17 A. My eyes was just focused on that gun. That's all I
18 was focused on.

19 Q. So you didn't look back behind you. You just stayed
20 focused to the gun?

21 A. Yeah, that's all I was focused on.

22 Q. Can you describe what he had as far as on his face and
23 head?

24 A. He had a mask on.

25 Q. Like what?

KENNY CUNNINGHAM: DIRECT BY MR. THOMPSON

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1 A. Like all black. Whatever he had on, he could see out
2 his eyes, though.

3 Q. Could you see anything else really other than the eyes
4 as far as that part of the face?

5 A. No, I don't know how -- All I see is eyes and that
6 gun. I wasn't really focused on that. I was only focused
7 on "Don't shoot." That's all I was saying, "Don't shoot."

8 Q. What kind of other clothes was he wearing?

9 A. Huh?

10 Q. What kind of other clothes was he wearing?

11 A. That's all I seen is all black.

12 Q. So black clothing?

13 A. Yeah.

14 Q. Could you tell was it baggy, or was it tightfitting
15 or --

16 A. It had to be baggy. It had to be baggy if he pull a
17 gun up out of there.

18 Q. You saw him pull the gun up out of his clothes?

19 A. Yeah, I seen it when he pulled it out

20 Q. Now when he was up close to you was there anything --
21 What, if anything, did you notice about his hair?

22 A. About his hair?

23 Q. Yeah.

24 A. I wasn't focused on his hair.

25 Q. You weren't focusing on his hair?

KENNY CUNNINGHAM: DIRECT BY MR. THOMPSON

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1 A. No, I wasn't focusing on the hair. I was focusing on
2 that gun he was pointing at me.

3 Q. Now did you comply with his commands at that time?

4 A. Yeah.

5 Q. Y'all did everything they asked you to do. Right?

6 A. Everything he asked me to do.

7 Q. How did it go after that? After he's patting you
8 down, what happened next?

9 A. After he pat -- After he patted her down, the girl
10 came on down the steps, but he was fixin -- They was fixin
11 to walk off because they had got the phones and stuff.
12 They had got the phones and the money out of Reese pocket,
13 or whatever. And they fixing to walk off till she say,
14 "They seen my face -- face -- They seen my face. And they
15 ain't got shit. You might as well do something. You might
16 as well do something." And then he turned around and
17 started shooting.

18 Q. How close was he when he started shooting?

19 A. At the bottom of them steps, right there.

20 (WITNESS INDICATED TO PHOTO.)

21 Q. Okay. And what happened when he started shooting? Do
22 you recall?

23 A. When he started shooting, I did like this.

24 (WITNESS COVERED HIS TORSO.)

25 A. I was like, "No, no, no." I did -- I folded up like

KENNY CUNNINGHAM: DIRECT BY MR. THOMPSON

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1 this. That's how I believe I got shot in my leg and my
2 foot in between my toe.

3 Q. So you had two gunshots that hit you?

4 A. Yeah.

5 Q. If you would, if you would be willing to step out,
6 could you show us where the gunshot hit you in your leg?

7 (WITNESS LEFT WITNESS STAND.)

8 A. It hit me right here.

9 Q. Okay.

10 A. It hit me right here and came out the back, right
11 there.

12 Q. So right in front, it came out your calf in the back
13 of your --

14 A. Yeah, it went straight through. The doctor said it
15 went straight through.

16 Q. And that's your left leg?

17 A. Yeah.

18 Q. So it went in the front of your left leg, just in
19 front of your calf, and then went out the back --

20 A. Yeah, yeah, the doctor say it went around. It went
21 around. It went straight out. And between my pinky toe
22 and my other toe, the bullet hit right there, like, the
23 bottom, I mean, between your pinky toe.

24 Q. Right.

25 A. And it got like stuck, like right here. Like the

KENNY CUNNINGHAM: DIRECT BY MR. THOMPSON

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1 bullet was stuck in my feet, and I had to have surgery,
2 like, a week later.

3 Q. So you had to have surgery on the other foot that --

4 A. Yes, sir.

5 Q. Did they recover that to make it right?

6 A. Yes, sir. 'Cause the bullet was stuck.

7 Q. Were they able to get the bullet out?

8 A. Yeah, they -- they got it out.

9 Q. Do you still experience any pain from the bullets and
10 the gunshots?

11 A. Like, like, when they be, like when the weather be bad
12 or whatever, like when it rain or whatever, my leg be
13 aching -- aching. And sometime I, like, I be walking and
14 it -- it'll go out on me. I have to sit down somewhere.
15 And I sit too long.

16 Q. What happened then at that point? You said you felt
17 yourself get shot; is that right?

18 A. Yeah, I didn't feel I got shot till I stand up.

19 Q. And when you stood up, what happened?

20 A. I had fell back down like, "Damn, I'm shot." I was --
21 You know what I'm saying? I was -- I was in shock. I was
22 -- You know what I'm saying? 'Cause this ain't never
23 happened to me.

24 Q. When did you notice that Tyrone had been shot?

25 A. When I looked at him. When I looked at him, he was

KENNY CUNNINGHAM: DIRECT BY MR. THOMPSON

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1 saying nothing. I was calling his name. I ain't touch him
2 or nothing like that 'cause I ain't know, you know, where
3 he was shot at. So I just -- I jumped up, and I was fixing
4 to go in the house, and I just fell. I was so -- I was so
5 shocked. And Reese pulled me on in the house and I
6 talked --

7 Q. And "Reese," that's Maurice Jackson?

8 A. Yes. And I kept telling them to call an ambulance,
9 "Call an ambulance." She got on the phone and called the
10 ambulance.

11 Q. All right. And you've heard the 911 tape. Right?

12 A. Yes, sir.

13 Q. Is that you in the background hollering to them?

14 A. Yes, sir.

15 Q. Okay. Was Tyrone able to get up at all after the
16 shooting? If you can answer out loud, please.

17 A. No, no, sir.

18 Q. Now did the police arrive pretty quick after the 911
19 call?

20 A. One did. But it took a long time for the ambulance to
21 come, though.

22 Q. The one that arrived, was he able to get information
23 from you as far as what had occurred in the robbery?

24 A. No, 'cause I was loud. I was yelling and I was
25 just --

KENNY CUNNINGHAM: DIRECT BY MR. THOMPSON

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1 Q. You were in a lot of pain because of the shooting at
2 that point?

3 A. Yeah, yeah, yeah, uh-huh. I didn't really talk to her
4 until I got to the hospital.

5 Q. Did you try to give a description to them, though,
6 while you were still there?

7 A. No, Reese was doing that.

8 Q. Okay. Can you tell me, when the rifle fired off, what
9 did it sound like as far as the shots go?

10 A. Pow, pow, pow, pow. Pow, pow, pow.

11 Q. So did it sound faster than someone just pulling the
12 trigger?

13 A. That's how it sounded, just like that.

14 Q. Did it seem like there were a lot of shots?

15 A. Yeah, it was a lot of shots.

16 Q. Now when the paramedics came, did they start treating
17 you then as well?

18 A. Yeah.

19 Q. As Tyrone?

20 A. Uh-huh.

21 Q. And did they take you to the hospital then, at that
22 point, to be treated?

23 A. Uh-huh.

24 THE COURT: You need to say, "Yes" or "No."

25 A. Yes, sir.

KENNY CUNNINGHAM: DIRECT BY MR. THOMPSON

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1 Q. Did the detectives -- Did any detective come to the
2 hospital and talk to you?

3 A. Yes, sir.

4 Q. Were you still in pain when you were talking to the
5 detectives at that point?

6 A. Yes, sir.

7 Q. How long did you have to stay in the hospital that
8 night?

9 A. I left, like, about 1:00 something that night.

10 Q. And did you have to go back, then, to the hospital?
11 After that?

12 A. Yeah, that -- the -- the -- like a, like a week later.
13 'Cause they had wrapped me up and all that. I had to go
14 back and get my X-ray's and all that, and show where the
15 bullet was at -- all that, then. I had surgery, then I
16 had -- got a cast and all.

17 Q. So it required you go back to the hospital more than
18 once after that?

19 A. Yes, sir.

20 Q. Now you had mentioned that you did know Donta Reid.
21 Is there any possibility that the guy that had that gun on
22 you that night was Donta Reid?

23 A. No.

24 Q. And the girl that was involved in the robbery that was
25 there in front of you, that came up the steps, was -- Are

KENNY CUNNINGHAM: DIRECT BY MR. THOMPSON

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1 you certain that, that was a girl? Any possibility that
2 was a guy?

3 A. It was a girl.

4 Q. Any possibility that was a guy?

5 A. No.

6 Q. Now let me ask you this as well. Do you know Darius
7 Jeter?

8 A. Yes, sir.

9 Q. How do you know Darius Jeter?

10 A. I know him from seeing him around the neighborhood.

11 Q. How long have you known him?

12 A. I knew him from school too. I know him from seeing
13 him.

14 Q. About how long have you known Darius Jeter?

15 A. About three or four years, probably longer than that.

16 Q. So if you saw him, you'd know him?

17 A. Yes.

18 Q. Would you know his voice if you heard it?

19 A. Yes.

20 Q. Okay. Any possibility it was Darius Jeter that was
21 the gunman that night?

22 A. No -- No, sir.

23 Q. Any possibility it was Darius Jeter that was looking
24 like the girl that night?

25 A. No, sir, too short.

KENNY CUNNINGHAM: DIRECT BY MR. THOMPSON

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1 Q. Now I notice in that picture there was a bike down
2 there at the bottom of the steps. Is that one of your
3 bikes?

4 A. Yes, sir.

5 Q. Had you ridden your bike there that night?

6 A. Yes, sir.

7 Q. Had Tyrone ridden his bike there as well?

8 A. Yes, sir.

9 Q. So if we look through the pictures, the two bikes that
10 are there are yours and Tyrone's?

11 A. Yes, sir.

12 Q. After this all happened, did Donta ever call you to
13 ask you if you were all right?

14 A. No, sir.

15 Q. Did you ever have any contact with Donta after that
16 night?

17 A. No, sir.

18 Q. Do you see Donta here in the courtroom today?

19 A. Yes, sir.

20 Q. Can you point him out for me, please?

21 (WITNESS POINTED TO DEFENSE TABLE.)

22 Q. If you will describe, just kind of, what he's -- what
23 he's got on.

24 A. Sitting right there.

25 Q. I understand you are pointing. If you could tell us

KENNY CUNNINGHAM: DIRECT BY MR. THOMPSON
CROSS BY MS. INZERILLO

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1 who you're pointing to. If you could point it out a little
2 bit more -- Who is he next too? Who is he sitting between?

3 A. See him sitting right beside that lady and the dude
4 right there.

5 Q. All right. At the counsel table here?

6 A. Yes, sir.

7 MR. THOMPSON: Your Honor, I ask that the record
8 reflect that he's pointed out Donta Reid.

9 THE COURT: All right. Okay.

10 Q. Thank you, Mr. Cunningham. Please answer any
11 questions they have for you.

12 A. All right.

13 MS. INZERILLO: May it please the Court.

14 CROSS EXAMINATION

15 KENNY CUNNINGHAM BY MS. INZERILLO:

16 Q. Kenny, you know Donta Reid. Right?

17 A. Yes, ma'am.

18 Q. And I believe you just testified that you know for a
19 fact he wasn't the shooter. Right?

20 A. Yes, ma'am.

21 Q. On October 1st in 2009, you were hanging out with
22 Tyrone and Maurice on Maurice's porch. Right?

23 A. Uh-huh. Yes, ma'am.

24 Q. And while you guys were there, you were kind of, you
25 were hanging out. You were listening to some music on the

KENNY CUNNINGHAM: CROSS BY MS. INZERILLO

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1 boom box. Right?

2 A. Yes, ma'am.

3 Q. And I think you said you were kind of looking at
4 things on his phone, like on YouTube, stuff like that?

5 A. Yes, ma'am..

6 Q. And you guys, generally, were just chatting because
7 you were just hanging out. Right?

8 A. Yes, ma'am.

9 Q. And somewhere in the middle of all this, Donta came to
10 the house. Right?

11 A. Yes, ma'am.

12 Q. And I believe you testified that you didn't really
13 talk to Donta, he kind of walked in between you and Tyrone
14 to go talk to Maurice. Right?

15 A. Yes, ma'am.

16 Q. And essentially, looking here at the picture that's up
17 here that's of the front porch, you and Tyrone are sitting
18 on the top step. Right?

19 A. Yes, ma'am.

20 Q. So if Donta wanted to get up the stairs to get to
21 Maurice who's sitting on the rocking chair on the porch,
22 he'd have to go between you guys. Right?

23 A. Yes, yes, ma'am.

24 Q. There's no other way on that high porch to get up
25 there except by the steps. Right?

KENNY CUNNINGHAM: CROSS BY MS. INZERILLO

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1 A. Yes, ma'am.

2 Q. So when he goes past you, he doesn't make any
3 conversation with you. Right?

4 A. No, ma'am.

5 Q. He doesn't ask you to walk anywhere with him?

6 A. No, ma'am.

7 Q. The only person he talked to is Maurice. Right?

8 A. Yeah.

9 Q. And I believe you indicated you weren't sure what the
10 conversation was. You just kind of saw him go up there and
11 talk to Maurice.

12 A. Uh-huh. Yes, ma'am.

13 Q. And by the same token, you didn't see him talk to
14 Tyrone either. Right? Ask Tyrone to walk anywhere.

15 A. No, ma'am.

16 Q. Now when Donta was there and he walked between you, he
17 wasn't aggressive with you or anything? He just walked
18 between you and Tyrone. Right?

19 A. No, ma'am.

20 Q. Then you indicated that you saw him using Maurice's
21 cell phone; Is that right?

22 A. Yes, ma'am.

23 Q. And that Donta went back, sort of, between you and
24 Tyrone again, down the stairs, into the yard. Right?

25 A. Yes, ma'am.

KENNY CUNNINGHAM: CROSS BY MS. INZERILLO

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1 Q. To use his cell phone. And while he's doing that,
2 again, you guys -- the boom box is still going. Right?
3 You're still looking at things on YouTube on the cell
4 phone. Right? You're not stopping what you're doing
5 because he's there.

6 A. Yes, ma'am.

7 Q. So when he is talking on the cell phone, you said
8 he's, essentially, at the base of the stairs; is that
9 right?

10 A. Yes, ma'am.

11 Q. And you guys are sitting at the top of the stairs of
12 the porch. Right?

13 A. Yes, ma'am.

14 Q. And there's about, correct me if I'm wrong, one, two,
15 three, four, five, six, seven steps on those steps?

16 A. Yes.

17 Q. So, you indicated that when he walked back up the
18 stairs that you heard a comment that was "two guys," or
19 "two of them," or something like that. Right?

20 A. Yes, ma'am.

21 Q. And you didn't hear any other part of the
22 conversation?

23 A. No, ma'am.

24 Q. So just that snippet. That's all you heard. Right?

25 A. Yes, ma'am.

KENNY CUNNINGHAM: CROSS BY MS. INZERILLO

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1 Q. And when he finished talking on the phone -- When
2 Donta finished talking on the phone, he gave the phone back
3 to Maurice. Right?

4 A. Yes, ma'am.

5 Q. He didn't try to stick it in his pocket, walk away
6 with it, anything like that?

7 A. No, ma'am.

8 Q. Then at that point, Donta left the yard. Right?

9 A. Yes.

10 Q. And you didn't see him come back to the house at all
11 that night. Right?

12 A. No.

13 Q. You didn't see, other than him leaving the yard, you
14 didn't see where he went after that?

15 A. No, ma'am.

16 Q. But a couple of minutes later, two other people did
17 come into the yard; is that right?

18 A. Yes, ma'am.

19 Q. And I know from your testimony on direct, really your
20 focus was on the guy; is that right?

21 A. Yes, ma'am.

22 Q. And we can all agree that the person with the gun was
23 a guy. Right?

24 A. Yes, ma'am.

25 Q. And you indicated you noticed he was dressed in all

KENNY CUNNINGHAM: CROSS BY MS. INZERILLO

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1 black and all you remember was the gun; is that right?

2 A. Yes, ma'am.

3 Q. What you remember immediately before that is that the
4 girl comes into the yard, and you think asks somebody for a
5 cigarette; is that right?

6 A. Yes, ma'am.

7 Q. And essentially when she does that, she's also, sort
8 of, walking up the stairs onto the porch. Right?

9 A. Yes, ma'am.

10 Q. And then, next thing you know, some guy pulls out a
11 gun; is that right?

12 A. Yes, ma'am.

13 Q. Okay. So you're sitting on the top stair of the
14 porch, sort of, looking at the gun; is that right?

15 A. Yes, ma'am.

16 Q. And while you're doing that, you're not fighting with
17 the guy; is that right?

18 A. No, ma'am.

19 Q. You're not lunging at him. Right?

20 A. No, ma'am.

21 Q. In fact you, essentially, put your hands up to show,
22 "I'm not going to fight you. I'm not going to resist
23 this."

24 A. Yes, ma'am.

25 Q. Okay. And essentially, when you're sitting on this

1 porch, if Tyrone is sitting next to you, he is probably
2 within about 5 inches of you; is that right?

3 A. Yes, ma'am.

4 Q. So it's not like you guys are really far apart.
5 Right?

6 A. No, ma'am.

7 Q. So you're, sort of -- You would have been aware if
8 Tyrone had lunged at the guy. Right?

9 A. Yes, ma'am.

10 Q. You would have heard if Tyrone had cursed at the
11 person or threatened him in any way. Right?

12 A. Yes, ma'am.

13 Q. And you didn't see him lunge or hear him say anything
14 to the robber threatening; is that right?

15 A. Yes.

16 Q. So essentially, from your perspective, you guys are
17 complying with what the robber wants. Right?

18 A. Yes.

19 Q. And you indicated that the guy had a gun in his hand,
20 and he is physically touching you; ---

21 (ATTORNEY PATTING HER TORSO.)

22 Q. --- is that right?

23 A. Yes.

24 Q. He's physically going through your pockets looking for
25 things?

KENNY CUNNINGHAM: CROSS BY MS. INZERILLO

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1 A. Yes, he's patting on me.

2 (WITNESS PATTING HIS TORSO.)

3 Q. He's physically touching you. Right?

4 A. Uh-huh.

5 Q. And even as he's physically touching you, you don't
6 take his hand and push him away. Right?

7 A. No, ma'am.

8 Q. You don't, you know, push your shoulder away. Right?

9 A. No, ma'am.

10 Q. Essentially, you sit there, and you let him touch you

11 ---

12 (ATTORNEY PATTING HER TORSO.)

13 Q. --- to get whatever he wants. Right?

14 A. Yes, ma'am.

15 Q. And when they are coming off the porch, they've gotten
16 everything from you. Right?

17 A. Yes, ma'am.

18 Q. So they're physically walking away from the house; is
19 that right?

20 A. Yes.

21 Q. And to kind of illustrate this again, if you're
22 sitting on the step, where you're sitting, and I'm walking
23 away from you, in order to get to the opening from the
24 fence, I'd have to walk straight and then, sort of, do a
25 right turn to get out the yard ---

KENNY CUNNINGHAM: CROSS BY MS. INZERILLO

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1 A. Yes.

2 Q. --- if I want to go through the fence post. Right?

3 A. Yes. Yes, ma'am.

4 Q. So, your hands are up. Right?

5 A. Uh-huh.

6 Q. The guy's going through your pockets, waving the gun.
7 Right?

8 A. Yes.

9 Q. And you're sitting there.

10 A. Yes.

11 Q. And you're letting him do it. Right?

12 A. Yes.

13 Q. And then the next thing you know, the guy and the
14 girl, they start walking away from you. Right?

15 A. Yes.

16 Q. They are leaving you behind. Right?

17 A. Yes.

18 Q. Their backs are toward you?

19 A. Yes.

20 Q. And then with their backs toward you, you don't holler
21 at them. Right?

22 A. No.

23 Q. You don't threaten them. Right?

24 A. No.

25 Q. You don't lunge for them. Right?

KENNY CUNNINGHAM: CROSS BY MS. INZERILLO

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1 A. No.

2 Q. You don't do anything to indicate to them, I'm going
3 to come after you now; is that right?

4 A. No.

5 Q. Okay. And so when the girl and the guy are walking
6 away from you, you hear the girl say, "They've seen my
7 face, shoot 'em." Right?

8 A. Yes.

9 Q. Or something to that effect?

10 A. Yes, ma'am.

11 Q. Because the guy has something covering his face.
12 Right?

13 A. Yes, ma'am.

14 Q. But the girl doesn't. Right?

15 A. Yes, ma'am.

16 Q. She's wearing a hood over her head, but you could
17 still see her face. Right?

18 A. Yes.

19 Q. And so you hear her say that, and then the guy turns
20 around and starts shooting all of y'all on the porch; is
21 that right?

22 A. Yes, ma'am.

23 Q. Okay. Now just to be clear, he started shooting when
24 she said that, not because of anything that you guys did?

25 A. When she -- When she -- As soon as she said that, that

1 is when he started shooting.

2 Q. So it wasn't anything that you guys did. Right?

3 A. No.

4 Q. Okay. And you were -- You indicated that you were hit
5 in your left calf area.

6 A. Yeah. And my leg, went straight through and my pinky
7 toe.

8 Q. And your pinky toe. Okay. And you indicated that you
9 went to the hospital and you, essentially, were released
10 that night because they had to get the X-rays done, take
11 the bullet out here.

12 A. Yes, ma'am.

13 Q. I guess it would be the heel of your foot since it
14 kind of stuck there?

15 A. Yeah, yeah, yeah.

16 Q. Okay. And so, you were on crutches until the bullets
17 could be removed?

18 A. Yes, ma'am.

19 Q. And then you had your surgery. They put you in a
20 cast. Right?

21 A. Yes, ma'am.

22 Q. Were you on crutches while you were on your cast?

23 A. Yes, yes.

24 Q. Okay. And then once you got your cast off, you
25 walked. Right?

KENNY CUNNINGHAM: CROSS BY MS. INZERILLO
CROSS BY MR. CHIARENZA

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1 A. Yes.

2 Q. You are not still permanently on crutches or using a
3 cane or anything like that?

4 A. Yes, ma'am.

5 MS. INZERILLO: No further questions, Your Honor.

6 THE COURT: Mr. Chiarenza?

7 MR. CHIARENZA: Thank you, Your Honor.

8 CROSS EXAMINATION

9 KENNY CUNNINGHAM BY MR. CHIARENZA:

10 Q. Mr. Cunningham, I'll express to you as well, I'm sorry
11 for your loss of your friend.

12 I've just got a couple of questions for you. You
13 testified that the girl in this instance, that could not
14 have been Mr. Jeeter because the girl was too short to be
15 Mr. Jeeter?

16 A. Yes, sir.

17 Q. And so, despite everything else going on, you were
18 able to make fairly good identifications of the height of
19 these individuals; is that correct?

20 A. Yes, sir.

21 Q. Okay so, that's the reason you gave why that this girl
22 was too short. So you were able to observe the height of
23 these individuals. In fact, you recall giving a statement
24 to law enforcement shortly after the incident occurred?

25 A. Yes, sir.

1 Q. Okay. And now - and I know, I mean, quite honestly,
2 I'm pretty impressed that you could even give a statement
3 given the fact that you had been shot. But you did about
4 an hour after the incident gave a statement, and you recall
5 that. Correct?

6 A. Yes, sir.

7 Q. Okay. And you've recently met with the Prosecution in
8 this case over the course of the last couple of weeks, gone
9 over your testimony with them. Correct?

10 A. Yes, sir.

11 Q. And you've prepared for this trial, discussed what all
12 they'd be asking you, and what you'd be testifying to.
13 Correct?

14 A. Yes, sir.

15 Q. And you had, during that time, certain -- Or well, you
16 tell me. Did you have an opportunity to go over that
17 statement that you had given to law enforcement?

18 A. Yes, sir.

19 Q. And I apologize. I didn't do this the last time.

20 This is one you all --

21 (ATTORNEY CHIARENZA SHARED DOCUMENT WITH SOLICITOR AND
22 OTHER DEFENSE ATTORNEYS.)

23 Q. And is this -- Do you recognize this as the
24 handwritten statement that you gave to them?

25 A. Yes, sir.

KENNY CUNNINGHAM: CROSS BY MR. CHIARENZA

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1 Q. Do you recall in this statement describing the
2 shooters being 5 foot 10, 150 pounds?

3 A. Yes, sir.

4 Q. And you've testified you were in a situation to get a
5 good look at least as far as height and weight of these --
6 Well you testified you could see height and felt like you
7 got a pretty good feel of the weight of that individual as
8 well?

9 A. Yes, sir.

10 Q. Okay. And the last thing you said was specifically
11 that you did not recognize the voice of the guy?

12 A. Yes, sir.

13 Q. Are you aware of any other written statement that you
14 may have given to law enforcement while they were
15 investigating this case?

16 A. Say that again, sir.

17 Q. Are you aware, is there any other written statement
18 other than this one that you recall ---

19 A. No, sir.

20 Q. --- with law enforcement?

21 Okay. And I know Ms. Inzerillo asked you, and I think
22 Mr. Thompson may have, but I'll ask you. Your testimony
23 was, as far as the telephone conversation that you overheard
24 Donta Reid discussing, the only portion of that you heard
25 him say was "two of them"?

KENNY CUNNINGHAM: CROSS BY MR. CHIARENZA
REDIRECT BY MR. THOMPSON

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1 A. Yes, sir.

2 Q. Okay.

3 MR. CHIARENZA: Your Honor, that's all I've got for
4 Mr. Cunningham.

5 THE COURT: Redirect?

6 MR. THOMPSON: Just briefly, Your Honor.

7 REDIRECT EXAMINATION

8 KENNY CUNNINGHAM BY MR. THOMPSON:

9 Q. Let me show you real quick a copy of the statement Mr.
10 Chiarenza was asking you about. Was that your handwriting?

11 A. No, sir.

12 Q. Who was writing that statement for you?

13 A. The detective.

14 Q. Were you still at the hospital when this was done?

15 A. Yes, sir.

16 Q. So the detective came into your room and asked you
17 some questions and wrote them down on the paper and asked
18 you to sign?

19 A. Yes, sir.

20 Q. Okay. One other thing, did you hear -- And I guess --
21 Did you hear Donta ask, when Donta was there, did you hear
22 him ask Maurice to walk to Midtown?

23 A. Yes, sir.

24 Q. Okay. Thank you. No further questions.

25 THE COURT: Ms. Inzerillo?

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1 MS. INZERILLO: Nothing further, Your Honor.

2 THE COURT: Mr. Chiarenza?

3 MR. CHIARENZA: Nothing, Your Honor.

4 THE COURT: You can step down and have a seat back out
5 there.

6 And we'll take our afternoon, 12 or so minute, break.

7 (JURY EXITS COURTROOM AT 03:20 PM.)

8 THE COURT: We will be at ease for a few minutes.

9 (COURT IN RECESS AT 03:20 PM.)

10 (WHEREUPON: STATE'S EXHIBIT NUMBER THIRTY-FIVE
11 PREMARKED FOR IDENTIFICATION.)

12 (DEFENDANT'S REENTER COURTROOM AT 03:32 PM.)

13 (COURT BACK IN SESSION AT 03:37 PM.)

14 THE COURT: Thank you, take your seats.

15 Bring in the jury.

16 (JURY REENTERS COURTROOM AT 03:39 PM.)

17 THE COURT: All right. Call your next witness.

18 MR. BRACKETT: The State would call Mr. Dominick
19 Stowers.

20 Mr. Stowers, if you would please, sir, step right up
21 to where that lady is sitting. There's a Bible in front of
22 her. Place your left hand on it, and raise your right.

23 (WHEREUPON: DOMINICK STOWERS,
24 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

25 THE COURT: You can have a seat there, and try to
26 speak loud and into that microphone.

DOMINICK STOWERS: DIRECT BY MR. BRACKETT

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1 DIRECT EXAMINATION

2 DOMINICK STOWERS BY MR. BRACKETT:

3 Q. would you please state your full name for us?

4 A. Dominick Lamont Stowers.

5 Q. And how old are you, Mr. Stowers?

6 A. Twenty.

7 Q. And where do you live?

8 A. Barber Street, Rock Hill, South Carolina.

9 Q. All right. Now what do you do for a living?

10 A. I work in the warehouse.

11 Q. Which -- Where at?

12 A. On York Highway, unloading trucks for my uncle.

13 Q. I got'cha. Now where is Barber Street in relation to
14 Byars?

15 A. Probably like five minutes away.

16 Q. Are you familiar with Byars Street? Know anybody that
17 lives on Byars?

18 A. My cousin.

19 Q. Who's that?

20 A. Maurice.

21 Q. Maurice -- What's his last name?

22 A. Maurice --

23 Q. Is he seated here in the courtroom?

24 A. Yes.

25 Q. Maurice Jackson?

DOMINICK STOWERS: DIRECT BY MR. BRACKETT

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1 A. Yes, sir.

2 Q. And he's your cousin?

3 A. In-law, yes, sir.

4 Q. Cousin-in-law?

5 A. Yeah, through marriage.

6 Q. I got 'cha. Okay. Were you on Byars Street on
7 October 1st of 2009?

8 A. I was.

9 Q. In the evening around a few minutes before Eleven
10 o'clock?

11 A. Yes, sir.

12 Q. What were you doing there?

13 A. Riding on a bike coming from the Boyd Place at the end
14 of Byars.

15 Q. Are you familiar -- You were on a bicycle -- Are you
16 familiar with that area, Byars Street and the surrounding
17 streets, Maple, and Scoggins, and Virginia and Reynolds?

18 A. That's where I grew up. Yes, sir.

19 Q. So, you know that area very well?

20 A. Yeah.

21 THE COURT: That wasn't clear. Coming from where?

22 THE WITNESS: The end of Byars Street.

23 THE COURT: End of Byar Street.

24 Q. I'm showing you what's been marked as State's Exhibit
25 Thirty-five for identification. And ask, can you tell the

DOMINICK STOWERS: DIRECT BY MR. BRACKETT

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1 jury what that is an aerial view of?

2 A. Byar Street area, everything around it. Yeah,
3 everything around Byar Street area.

4 Q. Does that accurately depict the area that we're
5 talking about where your cousin lives?

6 A. Hundred percent, yes, sir.

7 Q. [REDACTED] is that where your cousins lives?

8 A. Yes, sir.

9 Q. All right.

10 MR. BRACKETT: I'd ask -- I move State's Exhibit
11 Thirty-five. I previously shared this with Counsel for the
12 Defense and move it into evidence at this time.

13 MS. INZERILLO: No objection, Your Honor.

14 MR. CHIARENZA: No objection.

15 THE COURT: In without objection.

16 (WHEREUPON: STATE'S EXHIBIT NUMBER THIRTY-FIVE
17 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

18 Q. Sir, can you see there from where you're sitting? Can
19 you see the map pretty good?

20 A. Yeah.

21 Q. I want you to take this pointer, and you can use it to
22 show areas on the map. Point out if you need to reference
23 where we're talking about.

24 Can you tell me approximately where Byars Street is?

25 A. Right here.

DOMINICK STOWERS: DIRECT BY MR. BRACKETT

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1 (WITNESS INDICATING ON STATE'S EXHIBIT THIRTY-FIVE ON
2 COURTROOM OVER HEAD.)

3 Q. And can you show me where -- Do you know where your
4 cousin's house is on Byars?

5 A. Yeah, right here.

6 Q. Can you tell me which direction down Byars Street you
7 were coming?

8 A. I was coming from this end, coming around the curve.

9 Q. And approximately what time was it?

10 A. Something after Ten . A little bit before Eleven
11 after Ten.

12 Q. And as you came around the curb, tell the jury what
13 you saw.

14 A. As I came around the curve, I pass my cousin house,
15 and I seen them on the porch, like, with their hands up,
16 whatever. I seen a girl standing in the yard --

17 Q. You say, "them." Tell us who you're talking about.

18 A. I seen a girl, and I seen a boy. And I seen another
19 dude and another girl. And I seen the girl standing beside
20 the dude. And I seen the dude with a rifle in his hand, or
21 it looked like some long gun.

22 Q. You saw a guy and a girl?

23 A. Yes, sir.

24 Q. And the guy had a rifle?

25 A. Yeah.

DOMINICK STOWERS: DIRECT BY MR. BRACKETT

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1 Q. Did you see your cousin?

2 A. I really couldn't make out if it was him or not,
3 but...

4 Q. Okay. Could you see people on the porch?

5 A. Yeah, I seen people on the porch.

6 Q. About how many people did you see? Can you say?

7 A. Three.

8 Q. Now Dominick, you wear glasses, don't you?

9 A. Yes, sir.

10 Q. Were you wearing your glasses that day?

11 A. No, sir.

12 Q. So how bad is your vision?

13 A. Bad.

14 Q. So can you make out faces at the distance you were?

15 A. No, sir.

16 Q. Now, where were you when you first saw these people?

17 A. Like, diagonally across the street.

18 Q. You put this lecture pointer rest about where you
19 were.

20 A. About right here.

21 Q. And when you saw them sitting there, what did you do
22 when you saw the folks there, and you see a guy standing
23 there with a rifle?

24 A. I stopped on my bike, like, to kind of see what was
25 going on. And then I heard a female say something like --

DOMINICK STOWERS: DIRECT BY MR. BRACKETT

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1 "They're going to identify us," or "They seen our face," or
2 something like that.

3 Q. Were they looking in your direction, or was their
4 front to you, or was their back to you?

5 A. Their back -- Their back was to me.

6 Q. Did they see you?

7 A. No, they ain't see me.

8 Q. What was the lighting like where you were?

9 A. Dark, real dark.

10 Q. All right. Now tell us what happened after you heard
11 that.

12 A. After I heard the girl say something like, "They're
13 going to identify us," or "They seen our face," I heard a
14 couple of shots. And after that, I fled the scene on my
15 bike.

16 Q. Okay. And where did you go?

17 A. I went down Scoggin Street and went to Midtown.

18 Q. Can you identify who those people were? Could you see
19 them well enough to ever be able to identify them again?

20 A. No, sir.

21 Q. And some point, did you report what you saw that night
22 to the police?

23 A. Yes, sir.

24 Q. When was that?

25 A. Like a day after. I mean, the next day.

DOMINICK STOWERS: DIRECT BY MR. BRACKETT

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1 Q. The next day?

2 A. After it happened. Yes, sir.

3 Q. You called the police?

4 A. No, sir. Maurice was up there, whatever. And my
5 uncle, he heard I had been in the area when it happened, so
6 he came and got me and took me up there.

7 Q. And did you give a statement to them?

8 A. Yes, sir.

9 Q. Is what you just told us essentially what you told
10 them?

11 A. Yes, sir, basically.

12 Q. Did you know either of the robbers? The girl or the
13 guy? Did you recognize them in any way, shape, or form?

14 A. When it was happening?

15 Q. Yes.

16 A. No, sir.

17 Q. Did you see anybody else besides the people on the
18 porch there? As you were riding up the street, did you see
19 anybody else?

20 A. No, sir.

21 Q. Can you describe -- Could you see the man well enough
22 to see what he was wearing -- the man with the gun?

23 A. I think he had like on a black hoodie and a black ski
24 mask or something like that.

25 Q. And how about the girl?

DOMINICK STOWERS: DIRECT BY MR. BRACKETT
CROSS BY MS. ANDERSON

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1 A. Just seen like some pink pants or something -- like
2 pink tights or whatever.

3 Q. How long did this whole thing last for you from your
4 perspective from the time you first saw them to the time
5 you started running down the road?

6 A. Like 30 seconds, 45 seconds.

7 Q. Now Mr. Stowers, you've been in trouble before haven't
8 you?

9 A. Yes, sir.

10 Q. Back on New Year's Eve of last year, I think you got
11 arrested for possession of cocaine, and you pled guilty to
12 that?

13 A. Yes, sir.

14 Q. Thank you very much, Mr. Stowers. Please answer any
15 questions that counsel for either Mr. Reid or Mr. Henson
16 may have.

17 CROSS EXAMINATION

18 DOMINICK STOWERS BY MS. ANDERSON:

19 Q. Mr. Stowers, you weren't involved in any way, with
20 what happened October 1st of 2009. Right?

21 A. No, ma'am.

22 Q. You just happened to be riding by on your bike at the
23 time?

24 A. Yes, ma'am.

25 Q. And so what you're relaying to the Court today and the

DOMINICK STOWERS: CROSS BY MS. ANDERSON

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1 jury today is just what you saw that day?

2 And you don't have --

3 THE COURT: He didn't answer.

4 A. Yes, sir.

5 Q. And you don't have any reason not to be honest about
6 what you saw that day?

7 A. No reason.

8 Q. And from what you could see, you could see it clearly
9 enough that you believed you did see a robbery taking
10 place. Correct?

11 A. Yes, ma'am.

12 Q. And so from where you were, you felt like you were
13 seeing it as it was happening. Correct?

14 A. Yes, ma'am.

15 Q. And you testified that the people that you saw you
16 thought were actually robbing the individuals on the porch,
17 that there were two of them. Right?

18 A. Say that again..

19 Q. That there were two robbers that you saw. Right?

20 A. I seen one person with a gun. I seen three people
21 standing around.

22 Q. And you said you saw some people were on the porch.
23 Right?

24 A. Yes, ma'am.

25 Q. And you saw the one guy with the gun?

DOMINICK STOWERS: CROSS BY MS. ANDERSON

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1 A. Yes, ma'am.

2 Q. And you saw one person you said you thought was
3 female?

4 A. Yes, ma'am.

5 Q. And when you talked with -- you met with the police
6 back in October, on October 2nd, you talked with the
7 Lieutenant Dalton on that day?

8 A. Yes, ma'am.

9 Q. And do you recall telling him on that statement that
10 you saw two people robbing some people on a porch?

11 A. No, ma'am. I told him what I seen.

12 Q. And you said, you testified, that you did hear the
13 female, person you thought was female, say something?

14 A. Yes, ma'am.

15 Q. And you heard her say something to the effect of,
16 "They're going to identify us" or something to that manner?

17 A. Yes, ma'am.

18 Q. And then you heard gunshots after that?

19 A. Yes, ma'am.

20 Q. And then that was when you started running?

21 A. Yes, ma'am.

22 Q. But from where you were, it sounded to you like the
23 gunshots happened after you heard this female say
24 something?

25 A. Yes, ma'am.

DOMINICK STOWERS: CROSS BY MR. CHIARENZA

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1 MS. ANDERSON: Nothing further, Your Honor.

2 THE COURT: Mr. Chiarenza?

3 CROSS EXAMINATION

4 DOMINICK STOWERS BY MR. CHIARENZA:

5 Q. Mr. Stowers, I'm just a little bit confused, so I just
6 want to ask you one or two questions to clarify. Are you
7 saying that in addition to the folks that were on the
8 porch, you saw four other people involved in the commission
9 of the robbery, in doing the robbery, or being with the
10 robbers?

11 A. People I seen being with the robbers, I seen two
12 people. I seen a girl and a boy. I seen, like, three
13 people on the porch.

14 Q. Okay, because I thought when you first started, you
15 said you saw a boy, a girl, and another boy, and another
16 girl, and --

17 A. Yeah, it could have been my cousin and them. It could
18 have been -- It could have been the people who was getting
19 robbed. I mean, I just seen like four or five people in
20 all.

21 Q. Maybe four or five people total? Okay so, you're just
22 not really sure of what you saw. Is that what you're
23 saying?

24 A. No, sir. I know what I seen. I'm telling you what I
25 seen.

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DOMINICK STOWERS: CROSS BY MR. CHIARENZA
OFFICER LELAND HARRELSON: DIRECT BY MR. THOMPSON

1 Q. How many girls do you think you saw?

2 A. At least one.

3 Q. Possibly two?

4 A. Possibly two, but at least one.

5 Q. Okay.

6 MR. CHIARENZA: That's all I've got, Your Honor.

7 THE COURT: Redirect?

8 MR. BRACKETT: Nothing further.

9 THE COURT: Thank you, Mr. Stowers. You may be
10 excused. I appreciate your time.

11 (WITNESS LEAVING WITNESS STAND.)

12 THE COURT: Call your next witness.

13 MR. THOMPSON: May it please the Court, Your Honor,
14 the State would call Officer Leland Harrelson with the Rock
15 Hill Police Department.

16 Would you go up and be sworn, Mr. Harrelson.

17 (WHEREUPON: LELAND HARRELSON,
18 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

19 DIRECT EXAMINATION

20 LELAND HARRELSON BY MR. THOMPSON:

21 Q. Officer Harrelson, could you give your full name for
22 the Court, please?

23 A. Hugh Leland Harrelson, Junior.

24 Q. And where do you live, Officer Harrelson?

25 A. I live here in Rock Hill.

OFFICER LELAND HARRELSON: DIRECT BY MR. THOMPSON

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1 Q. And how long have you been with the Rock Hill Police
2 Department?

3 A. I've been with the police department for four years.

4 Q. And can you tell me, back in October 1st of 2009, were
5 you with the Rock Hill Police Department at that point?

6 A. I was.

7 Q. And what were you duties then?

8 A. I was assigned to the Rock Hill Police Street Crimes
9 Unit.

10 Q. And did you become involved in this case at that time?

11 A. I did. Yes, sir.

12 Q. And how did you become involved?

13 A. I was the first one to respond on scene.

14 Q. Do you remember when it was that you were called out?

15 A. It was approximately Eleven o'clock in the evening.

16 Q. And where were you when you received the call?

17 A. I was at the intersection of Black Street and Wilson
18 Street right near the post office in downtown Rock Hill.

19 Q. Is that far away from the place we're talking about on
20 Byars Street, [REDACTED] ?

21 A. No, sir. It's only four or five blocks away.

22 Q. So were you able to get there rather quickly?

23 A. I did. Yes, sir.

24 Q. And when you came in on Byars Street, did you come in
25 from the side of Scoggin Street or did you come in from the

OFFICER LELAND HARRELSON: DIRECT BY MR. THOMPSON

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1 other side?

2 A. I came in the side of Scoggin Street.

3 Q. And did you actually drive down Scoggin Street or how
4 did you arrive? What was your path at that point?

5 A. Yeah, I came down Maple Street -- Yeah, I came down
6 Maple Street past Scoggins, and then made a left on Byars
7 Street and went all the way down and stopped just short in
8 front of the residence.

9 Q. Do you recall what time you arrived there?

10 A. It was two or three minutes after the call initially
11 came out.

12 Q. And what was the scene like when you arrived?

13 A. I saw a gentleman laying on the porch. And I could
14 see that the glass of the door had been shot. And I saw
15 some lights on inside the residence.

16 Q. Could you hear people inside the residence?

17 A. I could. Yes, sir.

18 Q. What were you hearing from inside the residence?

19 A. I could hear people talking to each other. I exited
20 my patrol vehicle, approached the house, walked up to the
21 steps, checked on the gentleman on the steps. He was
22 unresponsive. And then I went on into the residence to
23 secure the residence.

24 Q. And the young man that was at the top of the steps,
25 can you describe exactly how he was when you found him?

OFFICER LELAND HARRELSON: DIRECT BY MR. THOMPSON

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1 A. He was laying almost at the very top, kind of at the
2 porch area, and he was laying just kind of face down. And
3 I came by and, you know, just kind of shook him and asked
4 him if he was okay. He didn't say anything to me. I went
5 on inside the residence to secure it to make sure the
6 suspects had left so EMS, the medical technicians, could
7 come on in, and that it was a safe environment for them.

8 Q. So is that one of your first duties when you arrive on
9 the scene to secure and make sure that there is no more
10 perpetrators there?

11 A. It is, yes, sir.

12 Q. And you did that at that time?

13 A. I did.

14 Q. Did you meet Maurice Jackson inside?

15 A. I did, yes.

16 Q. And how about Kenny Cunningham?

17 A. Yes, they were both inside the residence.

18 Q. Who else, if anyone, was inside the residence at that
19 time?

20 A. I believe it was one of their -- it's the grandmother.
21 She was inside. She was just sitting in a chair in the
22 living room where everybody was.

23 Q. And can you describe the demeanor of both Maurice
24 Jackson and Kenny Cunningham when you arrived?

25 A. They were both, you know, just very excited, you know.

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1 You could definitely tell something did happen. They were
2 just both just, you know, just talking to me, you know,
3 just shouting out what had happened. You know, I tried to
4 take them in, you know.

5 I searched the residence. I asked them if anybody
6 else was here. They said, no, that they had ran. And I
7 went ahead and just walked through the residence to make
8 sure, you know, nobody else as far as the suspects were
9 still inside.

10 Q. Was either one of them injured at the time, that you
11 could tell?

12 A. I believe it was Mr. Cunningham was laying on the
13 floor directly in front of the door. And I could see that
14 he had been shot in his foot and leg area.

15 Q. Now at this point when in your investigation, you
16 cleared the house, what is the next thing that you are
17 supposed to do as an officer or as the first officer on the
18 scene?

19 A. I spoke with both of the victims and tried to get a
20 description of the suspects to try to get it out to other
21 officers that are responding, so in case, you know, they --
22 if it's a vehicle. If they pass a vehicle or, you know,
23 also the physical and clothing description of the suspects
24 in case they would observe them walking down the street or
25 cutting through a wood line.

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1 Q. Now you're in a suit today, were you in an officer's
2 uniform that day?

3 A. Yes, I was in a uniform that day, and also I was in a
4 marked police car.

5 Q. And now you say you would call out the description
6 that they would give you. Do you have your radio on? Is
7 it a handheld device or is it one of the ones that's kind
8 of hooked to your shoulder?

9 A. Yes, a handheld device. I have a mic on my shoulder.
10 And I called it out, you know, as soon as I got information
11 from them as what they looked like and what they were
12 wearing. I called it out to the other units, you know,
13 arriving on scene.

14 Q. Do you recall the descriptions that you called out
15 that night?

16 A. Yeah, it was a black male that had dreads. I think
17 the approximate height was 5'6," 5'7," 150 to a 160 pounds.
18 Also, there was a black female who had on pink pants. And
19 I think she was around 5 foot, 120, a 130 pounds.

20 Q. And were you able as well -- Did they give you any
21 description of a weapon that you called out as well?

22 A. They said it was an automatic-type rifle.

23 Q. Were they able to tell you about the robbery itself?

24 A. They told me that --

25 MR. CHIARENZA: Your Honor, I'm going to object.

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1 That's hearsay.

2 Q. Well then, let's go this way.

3 A. Yes, sir.

4 Q. Were you able to call out then what direction that the
5 perpetrators left?

6 A. Yes, sir, I did. They had told me that they had --

7 MR. CHIARENZA: Your Honor, I'm going to object to
8 hearsay and --

9 MR. THOMPSON: It's what he called out. It's not --

10 THE COURT: Wait, wait. What now?

11 MR. THOMPSON: It's what he called out.

12 THE COURT: Well you can testify to what he called
13 out.

14 MR. CHIARENZA: Well --

15 THE COURT: Let me let the jury go to the jury room
16 just a minute while I take up a matter of law.

17 (JURY EXITS COURTROOM AT 03:59 PM.)

18 THE COURT: Mr. Chiarenza, the point is, he couldn't
19 call out anything unless he heard it from someone. So,
20 it's an indirect way of getting it in.

21 MR. THOMPSON: And that's true; however, Mr. Chiarenza
22 also questioned heavily both of the victims on the
23 descriptions they had given and whether they only came up
24 with some of those descriptions when they spoke with our
25 office. I'm allowed now to show that they did not come up

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1 with those just speaking to our office. At the time of the
2 actual crime, they told the officer who arrived. And he's
3 confirming that with some of those descriptions. And that
4 would include not just descriptions of the defendants, but
5 descriptions of what happened.

6 MR. CHIARENZA: I'll buy that if that's been
7 memorialized in writing somewhere, but I haven't seen any
8 notes, or reports, or anything to that effect.

9 MR. THOMPSON: If Mr. Chiarenza would go over the CAD
10 report, it's listed out and written down what was called
11 out.

12 MR. CHIARENZA: Well if Mr. Thompson wants to lay a
13 foundation for that report, he can do that, Your Honor.

14 MR. THOMPSON: I don't have to. I have the officer
15 who called it out.

16 THE COURT: Well, why does this not fall in 803-2 an
17 excited utterance?

18 MR. THOMPSON: It would fall under that as well. He's
19 already --

20 THE COURT: I hate to bring that up. I hate to be the
21 one to bring it up.

22 MR. THOMPSON: Well, and it would fall under that,
23 Your Honor. One of the reasons I asked for the demeanor
24 was -- during that -- was to point out they --

25 THE COURT: Well, I find under Rule 803 and 2 that

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1 it's a condition or startling event. Everybody I think can
2 argue with that under the stress of excitement caused by
3 the event or condition.

4 So, I'll allow it in.

5 MR. CHIARENZA: Your Honor, just for the record, I
6 would submit that this is more -- This is an interrogation,
7 it is an officer asking questions of a witness to prepare
8 for trial and testimony. The excited utterance might be
9 the 911 tape or something immediately blurted out, but once
10 a line of questioning occurs, I think, we're looking at a
11 Crawford situation. This officer is clearly gathering
12 evidence for trial or as part of his investigation. So, I
13 would just bolster my objection. But I don't think this
14 falls under excited utterance.

15 THE COURT: Anything else, Mr. Thompson?

16 MR. THOMPSON: The only thing I would put on the
17 record, Your Honor, is that the officer -- That this is in
18 preparation for trial. This isn't trying to capture the
19 assailants. This is not -- "Oh, let's prepare for trial
20 now as he arrives on the scene." He's putting out a call
21 to try and apprehend the assailants at that point. He's
22 not thinking about what's going to happen later on in
23 General Sessions Court.

24 THE COURT: Well I'm going to allow it in.

25 Bring in the jury.

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1 I'm going to bring the jury back in, but while they're
2 in, they...

3 Would you see if they have some coffee?

4 THE BAILIFF: Sir?

5 DEPUTY FERGUSON: Make some coffee.

6 THE COURT: I'm going to bring the jury back in and
7 we'll make some coffee for them.

8 (JURY REENTERS COURTROOM AT 04:03 PM.)

9 THE COURT: I miss read it. We've got coffee. We'll
10 get water. I misread. All right.

11 Would you all like some water brought in here? I'll
12 be glad to do it. Everybody says their fine now, we'll
13 make sure you have some. I apologize for not having it.

14 MR. THOMPSON: Thank you, Your Honor. If it please
15 the Court.

16 DIRECT EXAMINATION - CONTINUED

17 LELAND HARRELSON BY MR. THOMPSON:

18 Q. Officer, in what you were calling out at that time,
19 were you able to call out, from what they were able to give
20 you, a direction that the suspects were heading?

21 A. Yes, sir. If I was standing on the porch looking out
22 at Byar Street, they stated to me that the suspect ran to
23 the left, which would be down Byars towards Maple and
24 Scoggins Street.

25 Q. And again, were they able to tell you how many

OFFICER LELAND HARRELSON: DIRECT BY MR. THOMPSON

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1 suspects you were looking for at that point?

2 A. They stated two.

3 Q. And you have already mentioned the description of a
4 male and female; is that correct?

5 A. That is correct.

6 Q. Did they mention whether they were black or white?

7 A. They both mentioned they were black.

8 Q. And anything about the rifle that was given to you
9 that you called out?

10 A. They said it -- they thought it was like an automatic-
11 type rifle.

12 Q. Now I believe you gave the description earlier, you
13 called out the description of all black. Did they say
14 anything about whether their faces were covered?

15 A. They did say the face of the male was covered, and the
16 female.

17 Q. Did they -- Do you recall as far as the face of the
18 male, did they tell you how it was covered?

19 A. They said it was like a ski mask, had the eyes and the
20 mouth cut out.

21 Q. Now when you arrived and looked at the situation
22 itself. Also, I'm going to go back. I haven't finished
23 with some of the descriptions I'd like you to go to. What,
24 if anything, were they able to tell you about the actual
25 incident itself?

OFFICER LELAND HARRELSON: DIRECT BY MR. THOMPSON

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1 A. They said they were standing on the porch, said the
2 male and female approached them, said the male had a rifle
3 in his hands. They told them to give it up, to give them
4 all of their money. They searched all three of them, took
5 their cell phones and money, and stated, you know, if they
6 gave up what they had that they would not shoot. Said that
7 the female searched them, took the items off of them. And
8 then as she stepped back, the male started to fire upon
9 them.

10 Q. Now as you arrived, was the house light on when you
11 arrived there that night?

12 A. Yes, sir. The front porch light was on.

13 Q. And were there streetlights on as well, on the street?

14 A. Yes, sir.

15 Q. After you called out the initial descriptions and
16 everything, did any other officers arrive soon after that?

17 A. Yes, they did.

18 Q. And who were those officers?

19 A. There were two officers that arrived shortly after I
20 did, Officer Swagger and Officer Andrews.

21 Q. And can you tell me, when they arrived, what became
22 your duty at that point in time? After you called these
23 out and these officers arrived, what did you do next?

24 A. I stayed inside the residence with both of them and
25 just kept trying to get information, and we'd go back over

OFFICER LELAND HARRELSON: DIRECT BY MR. THOMPSON
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1 it to make sure that we did have everything correct.

2 Q. And can you tell me, outside, what were the other
3 officers doing at that point in time who had arrived?

4 A. I observed some other officers pull out some business
5 cards that they had. There were multiple shell casings on
6 the ground in front of the residence. I observed them.
7 They would fold the card in half and stick the card over the
8 shell casing, so as EMS was working and other officers
9 came, they wouldn't knock the shell casings around.

10 Q. And did EMS come shortly thereafter?

11 A. They did.

12 Q. Did they try to work on both Mr. King and Mr.
13 Cunningham?

14 A. They did.

15 Q. And how long did you stay at the scene that night?

16 A. I was there approximately an hour, an hour and a half.

17 Q. And as you told -- As they told you these things,
18 there were things that you called out over the radio; is
19 that correct?

20 A. That is correct. All the information they gave me, I
21 called out over the radio to other officers.

22 Q. Thank you. No further questions.

23 CROSS EXAMINATION

24 LELAND HARRELSON BY MS. ANDERSON:

25 Q. Officer Harrelson, the dispatch calls essentially for

OFFICER LELAND HARRELSON: CROSS BY MS. ANDERSON

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1 a shots fired call. Correct?

2 A. I believe that is right.

3 Q. And in the dispatch call that you responded to, there
4 were no named suspects listed?

5 A. That is correct.

6 Q. So essentially, you were going there. You didn't have
7 any idea who was involved? You were going there to
8 investigate that?

9 A. That is right.

10 Q. And you were the first officer on the scene. Correct?

11 A. I was.

12 Q. So you would have been the first officer or the first
13 in, sort of, person from Rock Hill Police Department to
14 speak to any of the witnesses on the scene?

15 A. That is correct.

16 Q. And you indicated that you were able to speak with
17 Maurice Jackson, a guy you named?

18 A. Yes.

19 Q. And Kenny Cunningham, also.

20 A. Yes.

21 Q. So Mr. Cunningham was injured and did require medical
22 attention?

23 A. He did.

24 Q. But he was conscious at the time and was able to relay
25 some information to you?

OFFICER LELAND HARRELSON: CROSS BY MS. ANDERSON

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1 A. Yes, Mr. Cunningham also gave me some information.

2 Q. And Mr. Jackson was not injured, so you were able to
3 talk with him probably more thoroughly?

4 A. I talked with both of them at the same time.

5 Q. Okay. And you indicated that this -- You responded
6 only a few minutes after this had taken place?

7 A. Yes.

8 Q. And you testified that when some other officers
9 arrived on scene subsequently, that they were placing
10 business cards over -- it looked like some shell casings?

11 A. Yes, I observed them doing that from inside the
12 residence.

13 Q. So essentially, that was to preserve any evidence that
14 Forensics might be able to process. Correct?

15 A. Yes.

16 Q. And when you talked with Mr. Jackson and Mr.
17 Cunningham, both were consistent of that evening relaying
18 to you that there were two people who came up and robbed
19 them. Correct?

20 A. That is right.

21 Q. And there was one individual with a gun?

22 A. That is right.

23 Q. And that was the male they described to you?

24 A. Yes.

25 Q. And an incident report was filed in this case.

OFFICER LELAND HARRELSON: CROSS BY MS. ANDERSON

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1 Correct?

2 A. Correct.

3 Q. And were you actually the officer who drafted, wrote
4 the incident report?

5 A. I did not write the incident report.

6 Q. Then that would be Officer Swagger that wrote the
7 incident report?

8 A. Yes -- Well, I can't -- I did not see him write it. I
9 believe his name is on the report.

10 Q. And you indicated you did not draft the incident
11 report in this, but you are familiar with what an incident
12 report is. Correct?

13 A. I am.

14 Q. And essentially what an incident report is, it is sort
15 of the first report written about a case?

16 A. Yes, it's just a -- It has all the descriptions of
17 everybody involved as far as a suspect or a victim. It
18 also has the address and a brief, narrative summary of what
19 took place.

20 Q. And an incident report would usually be written fairly
21 shortly after an officer has responded to a scene and
22 conducted some sort of investigation. Correct?

23 A. Yes.

24 Q. And it's going to be written while the information
25 basically is fresh in the officer's mind?

OFFICER LELAND HARRELSON: CROSS BY MS. ANDERSON

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1 A. That is correct.

2 Q. And an incident report -- Because an incident report
3 may ultimately be forwarded on to a detective if additional
4 investigation is needed?

5 A. That is right.

6 Q. But that would be the information that the detective
7 would have about sort of the first information learned
8 about the case?

9 A. Yes.

10 Q. And have you had an opportunity to look over the
11 incident report by the Officer Swagger in this case?

12 A. I have.

13 Q. And just before we get to that, you testified on
14 direct that you relayed that the suspects ran to the left
15 down Byars Street?

16 A. That is right.

17 Q. And in the CAD report, it indicates that the call was
18 toward Downey Street?

19 A. Downey Street is not in the area of Byars Street.

20 Q. Okay so, from this map that the State has on the
21 board, Downey Street does not appear on that?

22 A. That is right.

23 Q. So your indication was that they did not run toward
24 Downey Street? That was not in the information you
25 relayed?

OFFICER LELAND HARRELSON: CROSS BY MS. ANDERSON

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1 A. That is not.

2 Q. I'm going to have you just look over and verify if
3 that is the incident report that Officer Swagger filed on
4 this case.

5 A. Yes, this is the incident report.

6 Q. And that incident report was written, I believe it
7 says on the date on October 1st of 2009?

8 A. On this, that's right.

9 Q. And it was approved by an approving officer on October
10 2nd 2009?

11 A. That is correct.

12 Q. And so it appears that Officer Swagger would have
13 wrote this report within hours actually of perhaps being on
14 scene?

15 A. That is correct.

16 Q. And if you look through -- If you look on that report,
17 and look through that report, there is no mention of Donta
18 Reid's name in that report. Correct?

19 A. That is correct.

20 Q. And when you arrived on scene at [REDACTED] on
21 October 1st, 2009, you did not come in contact with Donta
22 Reid. Correct?

23 A. I did not.

24 Q. You did not come in contact with him at any point on
25 October 1st, 2009?

OFFICER LELAND HARRELSON: CROSS BY MS. ANDERSON
CROSS BY MR. CHIARENZA

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1 A. I did not.

2 Q. And when you spoke to Kenny Cunningham on October 1st,
3 2009, he did not mention Donta Reid to you that time?

4 A. No, he did not.

5 Q. And when you spoke to Kenny Cunningham on October 1st,
6 2009, he did not accuse Donta Reid of being a robber, of
7 being involved in a robbery.

8 A. No, he didn't.

9 Q. And then when you spoke to Maurice Jackson on October
10 1st, 2009, he did not mention the name Donta Reid to you?

11 A. That is correct.

12 Q. And when you spoke to Maurice Jackson on October 1st,
13 2009, Maurice Jackson did not accuse Donta Reid of being
14 involved in the robbery?

15 A. He did not.

16 Q. And in the course of your investigation on October
17 1st, 2009, at no point was the name Donta Reid mentioned to
18 you?

19 A. It was not.

20 MS. ANDERSON: No further questions, Your Honor.

21 THE COURT: Mr. Chiarenza?

22 MR. CHIARENZA: Thank you, Your Honor.

23 CROSS EXAMINATION

24 LELAND HARRELSON BY MR. CHIARENZA:

25 Q. Officer Harrelson, I'm going to stick along the same

OFFICER LELAND HARRELSON: CROSS BY MR. CHIARENZA

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1 lines of the incident report that Ms. Anderson was
2 questioning you about.

3 These reports, they're generated -- I guess they're a
4 summary. In this case, I see your name on the bottom and
5 Officer Swagger's name on the bottom. So can we glean from
6 that, that the information in this report came from both
7 you and Officer Swagger, some combination?

8 A. I relayed the information that I had before I left the
9 scene to Officer Swagger.

10 Q. Okay. And then that information ends up in this
11 report?

12 A. That is correct.

13 Q. And giving your testimony today you -- I mean this was
14 two years ago and I suspect you've been involved in a lot
15 of other calls between then and now. You're not simply
16 recalling all this just from memory are you?

17 A. Some of it I remember and some of it, you know, I
18 refresh my memory as far as reading the incident report,
19 and also the call log the dispatch had.

20 Q. Now when you reviewed this incident report, did you
21 notice that the description of the unknown black male --
22 Well first of all, would that be referring to the shooter
23 in this case? The unknown black male?

24 A. Yes, they said that there was a male that pulled the
25 trigger.

OFFICER LELAND HARRELSON: CROSS BY MR. CHIARENZA

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1 Q. Okay. Can you just read what's given as his height
2 and weight description?

3 A. It says 5'9," 145.

4 Q. And so that information had to be either relayed by
5 you or Officer Swagger?

6 A. That is correct.

7 Q. And there's some other information in this report. I
8 believe you've testified to some of it about the weapon was
9 a rifle, and what direction down Byars Street they went,
10 and that the girl was wearing pink pants. Please tell me
11 if you find anywhere in this report a mention of the
12 unknown black male shooter having dread locks?

13 A. It does not say in this report.

14 Q. And just one more -- while you got it --

15 A. Sure.

16 Q. Does it say anywhere in there that either one of the
17 victims relayed to you any sort of accent or how the --
18 what the unknown black shooter sounded like?

19 A. It does not.

20 Q. Did they, in fact, relate that to you that it may not
21 be in this report, anything about his accent or anything
22 like that. Do you recall that?

23 A. No, they did not relay anything to me about an
24 accident.

25 Q. Thank you very much, Officer.

OFFICER LELAND HARRELSON: REDIRECT BY MR. THOMPSON

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1 THE COURT: Redirect?

2 MR. THOMPSON: Yes, Your Honor.

3 REDIRECT EXAMINATION

4 OFFICER LELAND HARRELSON BY MR. THOMPSON:

5 Q. You had mentioned that you could go look at the
6 incident report in your call log. What is the call log?

7 A. The call log is what I -- What I say to other
8 officers. Dispatch actually types it in and every officer
9 has a computer in their vehicle. And that way they can go
10 back and actually look at a narrative of the radio traffic
11 that's been going on to refresh their memory on something.
12 Or, you know, if they step out of the vehicle and they just
13 don't hear it, they can go back and actually look and see
14 the conversations that's been going on over the radio.

15 Q. And was the description of dreads of the black male
16 shooter, was that listed in the call log?

17 MR. CHIARENZA: Your Honor, I'm going to object. I
18 think that's outside the scope of my cross examination.

19 A. It was.

20 THE COURT: No, I think it was a question about ---

21 MR. THOMPSON: It was directly.

22 THE COURT: --- did it or did it not have a reference
23 somewhere about the dreads.

24 MR. CHIARENZA: It came in, in the incident report,
25 and this -- And Mr. Thompson's had an opportunity to do a

OFFICER LELAND HARRELSON: REDIRECT BY MR. THOMPSON

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1 direct examination.

2 THE COURT: I overrule the objection.

3 MR. CHIARENZA: Thank you.

4 BY MR. THOMPSON:

5 Q. In the call log, does it mention the dreads?

6 A. Yes, the call log did have a -- my description of
7 dread locks.

8 Q. And again, that's what you called out. Correct?

9 A. That is correct.

10 Q. Thank you.

11 THE COURT: Ms. Anderson?

12 MS. ANDERSON: Nothing further.

13 THE COURT: Mr. Chiarenza?

14 MR. CHIARENZA: No, Your Honor.

15 THE COURT: All right. Call your next witness.

16 You can step down and be excused. We appreciate your
17 time.

18 OFFICER HARRELSON: Yes, sir.

19 (WITNESS LEAVING WITNESS STAND.)

20 MR. BRACKETT: The State would call Investigator Brian
21 Bagwell.

22 MADAME CLERK: Please raise your right hand, place
23 your left on the Bible.

24 (WHEREUPON: BRIAN BAGWELL, BEING

25 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

INVESTIGATOR BRIAN BAGWELL: DIRECT BY MR. BRACKETT

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DIRECT EXAMINATION

BRIAN BAGWELL BY MR. BRACKETT:

Q. Good afternoon, sir. Would you please state your full name and spell your last for the Court Reporter?

A. Yes, my name is Brian Bagwell, B-a-g-w-e-l-l.

Q. And where are you employed, sir?

A. With the York County Sheriff's Office.

Q. What do you do for the Sheriff's Office?

A. I am currently assigned to the Forensic Services Unit.

Q. What -- Can you tell the jury what the Forensic Services Unit is?

A. Yes, sir. Typically, we respond to crime scenes --

THE COURT: We need that --

MR. BRACKETT: Not this particular picture, but we'll need another one in just a moment.

THE COURT: That's fine.

A. Typically, we respond to crime scenes and process that scene whether it be -- whatever kind of scene it may be.

We document the scene with either sketches or photographs.

And we collect whatever physical evidence we may come across as evidence.

Q. So would that be like CSI?

A. Sort of, but not like TV. No, it works a little different than that.

Q. What's the difference?

INVESTIGATOR BRIAN BAGWELL: DIRECT BY MR. BRACKETT

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1 A. The difference is they get results in 10 or 15 minutes
2 and it might take us 6 weeks to get a DNA result back or,
3 you know, along those lines.

4 Q. All the tests and scientific gizmos that they have on
5 CSI, do you -- do those really exist? Do you have all that
6 stuff?

7 A. Some of them we do have. They use them improperly on
8 TV. They don't work the same as we have, and the way
9 they're actually used, but yeah, we have some of the same
10 tools.

11 Q. But not all of them?

12 A. Not all of them, no.

13 Q. How long have you been doing crime scene
14 investigation?

15 A. Since about 2001, so 10 years, roughly.

16 Q. So you're very well experienced.

17 A. Yes, sir.

18 Q. Have you -- During that time, have you been going to
19 training and --

20 A. Yes, sir, I have.

21 Q. And have you -- With 10 years of experience, have you
22 ever been qualified in court as an expert in crime scene
23 investigation?

24 A. Yes, sir, I have.

25 Q. In state court?

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1 A. Yes, sir.

2 Q. In this court?

3 A. In this court, yes, sir.

4 Q. By that judge?

5 A. Yes, sir, by that judge.

6 Q. All right.

7 MR. BRACKETT: Your Honor, at this time, I would move
8 that Investigator Bagwell be qualified as an expert in
9 crime scene investigation.

10 THE COURT: Any voir dire?

11 MS. ANDERSON: No, Your Honor.

12 THE COURT: Mr. Chiarenza?

13 MR. CHIARENZA: No objection, Your Honor.

14 THE COURT: I find he is qualified.

15 MR. BRACKETT: All right, sir.

16 Q. Now were you working the evening of October the 1st of
17 2009?

18 A. I was on call, yes, sir.

19 Q. When you're on call, what does that mean?

20 A. That means we're on telephone standby. Basically, if
21 an incident happens where they need our assistance, they
22 will page us or text us out and have us respond to the
23 scene.

24 Q. Did you get texted out for an incident on that evening
25 around Eleven o'clock?

INVESTIGATOR BRIAN BAGWELL: DIRECT BY MR. BRACKETT

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1 A. Yes, sir, I did.

2 Q. And where were you sent to?

3 A. To Byars Street. I don't remember the number. We'll
4 have to check the report, but it was on Byars Street.

5 Q. Does [REDACTED] sound about right?

6 A. That is correct, yes, sir.

7 Q. Now what did you find when you -- Do you know about
8 the time you got there?

9 A. I believe it was around 11:30-ish when I arrived on
10 the scene.

11 Q. What did you find when you got there?

12 A. When I arrived on the scene there was a numerous
13 number of Rock Hill officers and detectives already on the
14 scene. There was a lot of shell casings laying out on the
15 front walkway area. The officers had been kind enough to
16 put little white tents up and mark the location, the ones
17 that they saw for me. We noticed some little plastic
18 baggies; some currency laying on the steps; of course, some
19 blood; some EMS items on the porch area. That kind of
20 thing.

21 Q. Now let me back up one second. You said you work for
22 the Sheriff's Office?

23 A. Correct.

24 Q. And this happened in the City of Rock Hill?

25 A. That's correct.

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1 Q. How are you and the Sheriff's Office doing work in the
2 city case?

3 A. We have a Multi-jurisdictional Unit where all the
4 agencies come together and put a person in that unit so
5 that we're able to respond anywhere in the county. Rock
6 Hill officers can respond to York County and work
7 incidents, and I can respond in city limits and work
8 incidents.

9 Q. So you were the officer on call that night?

10 A. Yes, sir.

11 Q. Now when a crime like this happens, what is the --
12 What is the duty as far as crime scene preservation and
13 crime scene investigation, what are the duties of the first
14 responding officer?

15 A. The first responding officer is to rope off the area
16 to make sure that none of the items that may be laying
17 around get disturbed, damaged, moved, touched, or anything
18 along those lines. So they will rope it off and secure the
19 scene.

20 Q. And what do they use to rope it off with?

21 A. Crime scene tape, typically. Yellow-barrier tape.

22 Q. And what's the point of roping it off?

23 A. To keep unwanted individuals out and, like I said, to
24 make sure nothing happens to the integrity of the scene.
25 You know, if there's a shell casing laying there in the

INVESTIGATOR BRIAN BAGWELL: DIRECT BY MR. BRACKETT

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1 road and a vehicle rolls across it, it could get caught in
2 the tread and, of course, it's carried away. So, it's
3 imperative to make sure nobody gets in and alters the
4 scene.

5 Q. When you arrived on the scene, did it appear that
6 first responding officers had properly performed their
7 responsibilities as far as preserving the crime scene?

8 A. Yes, sir. As I recall, it had barrier tape up around
9 the perimeter of the yard.

10 Q. And nobody's allowed in there until y'all do your
11 work; is that correct?

12 A. It's supposed to be, yes, sir. But sometimes officers
13 go in and out if they're talking. There might be a witness
14 left in the house. It could be an elderly subject, and
15 they're still going back and forth talking to that person.
16 So, it's -- it's open for debate, but --

17 Q. Well, an EMS as well; isn't that right?

18 A. Correct.

19 Q. If there's somebody injured at the scene, then they
20 have to go in.

21 A. Correct.

22 Q. Okay. Now were you able to set up and document this
23 particular crime scene?

24 A. Yes, sir. When I arrived, I took digital photographs
25 of the incident location, and I did a sketch of the

INVESTIGATOR BRIAN BAGWELL: DIRECT BY MR. BRACKETT

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1 incident location as well.

2 Q. I'm going to show you a series of photographs that are
3 marked State's Exhibit One through Thirty-two. If you
4 would just look through those quickly and tell me if you
5 can recognize what is depicted in those photographs, and if
6 you know who took those photographs.

7 A. Yes, sir. These would be photographs taken by myself
8 the night of the incident when I arrived at the scene.

9 Q. Do those photographs depicted in State's Exhibit One
10 through Thirty-two, thirty-two photographs you're holding
11 in your hand, do they accurately depict the crime scene at
12 [REDACTED] as you found it at approximately 11:30 and
13 the following hours during which you were processing the
14 scene? Do they accurately depict that scene during that
15 time period as you found it that night?

16 A. Yes, they do.

17 MADAME COURT REPORTER: Excuse me, Mr. Brackett.
18 Would you come look at this, sir.

19 MR. BRACKETT: Oh, there's one left out?

20 MADAME COURT REPORTER: Yes, sir.

21 MR. BRACKETT: Thank you so much.

22 Q. State's Exhibit Three. Can you tell me whether or not
23 you recognize that?

24 A. Yes, sir. It's also a photograph I took the night of
25 the incident.

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1 Q. And does that likewise accurately depict the scene as
2 you found it?

3 A. Yes, sir.

4 Q. All right, sir. Now can you tell me if you recognize
5 what's been marked as State's Exhibit Thirty-three for
6 identification?

7 A. Yes, sir.

8 Q. And what is that?

9 A. That is a crime scene sketch that I diagramed the
10 night of the incident.

11 Q. And does that crime scene sketch accurately depict the
12 scene and the items that you found in it?

13 A. Yes, sir.

14 Q. We'll talk about that a little bit more, but at this
15 time I would move State's Exhibit Thirty-three for
16 identification into evidence.

17 THE COURT: Any objection?

18 MS. ANDERSON: No objection, Your Honor.

19 MR. CHIARENZA: No objection.

20 THE COURT: In without objection.

21 MR. BRACKETT: Okay.

22 (WHEREUPON: STATE'S EXHIBIT NUMBER THIRTY-THREE
23 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

24 Q. Right here, Investigator, if you would is a pointer.
25 And if you would, take us to State's Exhibit Thirty-

INVESTIGATOR BRIAN BAGWELL: DIRECT BY MR. BRACKETT

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1 three.

2 Can you shut the lights down? Thank you so much.

3 (COURTROOM LIGHTS LOWERED.)

4 Q. Can you tell us what is -- Just basically orient the
5 jury if you would, to what we're seeing in that diagram.

6 A. All right. What we're looking at, this is the diagram
7 of the house itself. It's basically an overview if you
8 were looking down on top of the house. This would be the
9 front porch area. This would be the fence, the wooden
10 fence that you see in some of the pictures. And all these
11 numbers are the evidence markings and cones and items of
12 evidence that I collected that night.

13 Q. Now when you say, "cones," what are you talking about?

14 A. We have numbered cones that we put out once we
15 initially photograph the scene. Some of the pictures do
16 not have numbered cones in it. We document as is, and then
17 we go back and put numbered cones on it so that we can
18 identify it back to that cone at a later time.

19 Q. So each cone would indicate an item of interest that
20 was found in the crime scene?

21 A. That's correct.

22 Q. And that numbers of a legend on the right side, does
23 that correspond with the cones, telling what each one is?

24 A. Yes, sir, it does.

25 MR. BRACKETT: Let's see State's Exhibit One, Ms.

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1 Collins.

2 (STATE'S EXHIBITS PUBLISHED ON COURTROOM OVER HEAD.)

3 Q. Can you tell us what that's a photograph of?

4 A. Yes, sir. Cone number one is representing a spent
5 shell casing that was located out on the scene.

6 Q. And just walk us right up that --

7 A. As we have here, we have items 1, 2, 3, 4, 5. And you
8 can't really see back here, but we have 7, 8, 9, 10. All
9 of those are representative of spent shell casings that
10 were laying out on the sidewalk area of this incident
11 location.

12 Q. And State's Exhibit Two. Can you tell us what that
13 depicts?

14 A. May I refer to my key, so that I can make sure that I
15 get it.

16 Q. Yes, sir. Let me let you hold that.

17 A. Thank you.

18 Q. Yes, sir.

19 A. All right. Item 11 and 12 represents two live rounds
20 that were found at the incident location, meaning they had
21 not been fired. They were ejected out of the gun or
22 dropped. We didn't know at the time, but they were just
23 live ammunition laying there on the ground.

24 Marker Number 13 is a \$10 dollar bill that was found
25 on the step.

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1 Number 14 is a plastic baggie, small Ziploc-style
2 baggie, if I recall correctly.

3 Item Number 15 was a swab with red stain. We had what
4 appeared to be blood, so we took a swab of it.

5 Item Number 16 down here was a small plastic bag that
6 was similar in nature to the one on the step.

7 And Number 17 up at the top was another swab with red
8 stain. It appeared to be blood on the top section that we
9 swabbed as well.

10 Q. Okay, sir. How about State's Exhibit Four?

11 A. That's a picture of the EMS trash, for better
12 terminology that they, when they were treating patients,
13 they were ripping bags open, and that's what's left behind
14 when they were trying to treat somebody.

15 Q. All right, sir. And State's Exhibit Five?

16 A. I believe we have two, at least one, bullet hole that
17 I can recall. That's what we're trying to depict that the
18 rounds hit the side of the building as well. There was
19 multiple rounds fired, and I was just trying to get some
20 shots of the bullet holes.

21 Q. All right, sir. Six?

22 A. And that's just a closeup of a bullet hole as well.

23 Q. Seven?

24 A. Another closeup shot of a bullet hole.

25 Q. And I'm going to go back, and you were talking about

INVESTIGATOR BRIAN BAGWELL: DIRECT BY MR. BRACKETT

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1 some of the spent shell casings that were found. Let's
2 take a look at eight.

3 A. All right, there's the shell casing right here.

4 Q. Ultimately, what was done with the shell casings that
5 were located?

6 A. They were collected, of course, packaged and turned
7 over to evidence control. After investigation, they were
8 sent down to SLED to ultimately see if they were all fired
9 from the same weapon.

10 Q. Do you have similar shots of shell casings for 1
11 through 10, I believe you said?

12 A. Yes, sir.

13 Q. Those are the shell casings?

14 A. Yes, sir.

15 Q. And we'll look at a bunch of pictures of shell
16 casings. Move right along here. How about 12? I'm sorry,
17 16.

18 A. That is the live round that I was referring to that
19 was found on the step area.

20 Q. What caliber were those rounds?

21 A. It appeared to be .22. They didn't have an actual stamp on
22 it, but they appeared to be .22 in size.

23 Q. Smaller caliber?

24 A. Smaller caliber, yes, sir.

25 Q. Number 17?

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1 A. And that's the \$10 dollar bill that was found on the
2 step area.

3 Q. Number 18?

4 A. Fifteen is a swab with red stain. You can see some of
5 the staining running across right here. That's what was
6 swabbed.

7 Q. All right. And Nineteen?

8 A. Nineteen depicts the pants and some bloodied items
9 that were found laying inside the home next to the couch.

10 Q. Twenty? I'm sorry. I've got State's Exhibit Twenty.

11 A. As you can see, a blood smear on the floor, right
12 there.

13 Q. And State's Twenty-one?

14 A. I believe we have another bullet hole that we're
15 trying to depict in that photograph.

16 Q. State's Twenty-two?

17 A. That's just an inside shot of the home. We just
18 typically take overall shots of the whole location.

19 Q. State's Twenty-four?

20 A. Just showing the front door where a bullet had come
21 through the door and shattered the glass and struck the
22 door. Just wanting to get a shot of that.

23 Q. State's Twenty-seven? Those white items in the right
24 mid-section of the photograph.

25 A. Yes, sir.

INVESTIGATOR BRIAN BAGWELL: DIRECT BY MR. BRACKETT

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1 Q. What are those?

2 A. Those are the little cones or little tents that I
3 referred earlier. The patrol officers are kind enough
4 sometimes that they -- Not all of them will do it, but some
5 of them will mark what they see on the ground so that we
6 don't have any trouble finding it. They kind of make it a
7 little easier for us to locate items of interest.

8 Q. So this is a photograph of the entrance into the yard
9 where your cones were, but it's before the cones went down?

10 A. That's correct.

11 Q. And off to the left there, you can see it sort of
12 running across the rear taillights of that car on the left
13 side.

14 A. Yes, sir.

15 Q. What is that on?

16 A. That is the barrier tape, the crime scene tape.

17 Q. State's Thirty-two.

18 A. And this is a shot from the front porch area just
19 looking down upon those same tents that we just saw in the
20 previous picture.

21 Q. All right, sir. Now all the items that you've
22 referenced, what would you do, again, with the shell
23 casings that you located?

24 A. Initially, they were collected, put in evidence
25 envelopes, sealed, signed over to evidence control. We

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1 eventually did a -- Excuse me, I can't think -- a SLED
2 analysis sheet. I'm sorry, I got tongue-tied there. Do a
3 SLED sheet to get them to test items for us. We sent them
4 down to have them tested to see if they were all fired from
5 the same weapon.

6 Q. Were you -- Did each casing get bagged individually?

7 A. Yes, they did.

8 Q. Were you also able to recover some projectiles?

9 A. Yes, I believe I got two projectiles from the scene.

10 Q. And what do you do with those?

11 A. We collect those the same way, seal them up, put them
12 in evidence control.

13 Q. What is the value forensically of collecting a
14 projectile?

15 A. If they are intact, then there's enough of the head
16 there. You can compare it to a gun. They can test fire a
17 gun and see if that bullet was fired from that gun because
18 they leave distinct markings on the bullet.

19 Q. Did you ever recover a gun in your investigation in
20 this case to compare any of those projectiles to?

21 A. No, sir.

22 Q. All right.

23 MR. BRACKETT: The Court's indulgence for a moment.

24 (PAUSE AT 04:36 PM.)

25 Q. Investigator Bagwell, would you take a look in this

INVESTIGATOR BRIAN BAGWELL: DIRECT BY MR. BRACKETT

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1 box, and tell me if you recognize what's contained in
2 there?

3 (WITNESS OPENED EVIDENCE BOX.)

4 A. This box contains items of evidence collected at the
5 incident location. And it may contain items by Kevin
6 Sullivan that was taken from, I think, the ER from one of
7 the victims. So, it's from the scene and later on through
8 the course of the investigation, other evidence.

9 Q. So a projectile was recovered from, I believe, Mr.
10 Cunningham?

11 A. I believe so, yes, sir.

12 Q. As well as two projectiles from the scene?

13 A. That's correct.

14 Q. Ten shell casings?

15 A. Yes.

16 Q. All right now, you also recovered two live rounds, I
17 believe?

18 A. Yes, sir.

19 Q. And were those similarly packaged and sent to SLED?

20 A. Yes, they were.

21 Q. But they're not in here?

22 A. I did not see them, no, sir.

23 Q. I'd ask that this be marked as State's Exhibit Thirty-
24 six and moved into evidence at this time.

25 MS. ANDERSON: Your Honor, may we approach?

INVESTIGATOR BRIAN BAGWELL: DIRECT BY MR. BRACKETT

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1 THE COURT: Yes, ma'am.

2 (BENCH CONFERENCE AT 04:40 PM OFF THE RECORD OUT OF
3 THE HEARING OF THE JURY.)

4 THE COURT: Ms. Anderson, any objection?

5 MS. ANDERSON: No objection.

6 THE COURT: Mr. Chiarenza?

7 MR. CHIARENZA: No objection.

8 THE COURT: In without objection.

9 (WHEREUPON: STATE'S EXHIBIT NUMBER THIRTY-SIX
10 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

11 Q. And real quick, these items, they are sealed. What's
12 that red tape across the back?

13 A. It's evidence tape that we put on the back to maintain
14 the integrity of the envelope. We seal it up, and we can
15 tell if it's been tampered with or opened up after that
16 point.

17 Q. And does it have, like, initials, the name of the
18 person that seized it? Is that your handwriting on the
19 front.

20 A. I don't believe that one is. I believe that was Kevin
21 Sullivan's. That might be the projectile taken from --

22 Q. Oh, okay. Well, I grabbed the one bag out of there
23 that wouldn't -- That's my luck. Let's go with this one
24 here. Take a look.

25 A. Yes, sir. Yes, sir, that's my initials on the back of

INVESTIGATOR BRIAN BAGWELL: DIRECT BY MR. BRACKETT

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1 the red tape.

2 Q. Okay. So if somebody had gotten into this bag, they
3 would -- it would be obvious by looking at the bag, either
4 the tape's going to be torn, or there will be a cut or a
5 hole in the back?

6 A. That's correct.

7 Q. And those are your initials on the tape?

8 A. Yes, it is.

9 Q. And your handwriting on the front of it?

10 A. Yes, sir.

11 Q. Is that the same true for each of those except for the
12 projectile that Kevin Sullivan recovered from the victim
13 Mr. Cunningham?

14 A. Possibly. And I say that because the handwriting may
15 be different on some envelopes 'cause Directors Means at
16 the time was out there and he may have filled out some of
17 the envelopes for me. But I did the actual collecting and
18 the sealing and the signing of the envelopes.

19 Q. Okay. So it would be a true statement to say that all
20 these envelopes contained items that you collected, placed
21 in there and sealed, to make sure that they were -- that
22 the items that you recovered were placed in a sealed
23 envelope?

24 A. That's correct.

25 Q. Okay. I'll show you another envelope, sir. Can you

INVESTIGATOR BRIAN BAGWELL: DIRECT BY MR. BRACKETT

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1 tell me what that is?

2 A. Yes, sir. It's item number 13 marked as the one \$10
3 dollar bill that I collected from the second step of the
4 residence.

5 Q. All right. And did you place that \$10 bill in the
6 envelope?

7 A. Yes, sir, I did.

8 Q. And is that your handwriting again on that?

9 A. Yes, sir, it is.

10 Q. And your initials on the evidence tape on the back?

11 A. Yes, sir.

12 Q. All right.

13 MR. BRACKETT: Your Honor, I'd ask at this time to
14 move State's Exhibit or have this marked as State's Exhibit
15 Thirty-seven and introduced into evidence at this time.

16 MS. ANDERSON: No objection.

17 MR. CHIARENZA: No objection.

18 THE COURT: In without objection.

19 (WHEREUPON: STATE'S EXHIBIT NUMBER THIRTY-SEVEN
20 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

21 Q. Investigator Bagwell, can you tell me for the purposes
22 of establishing jurisdiction in this case, what county is
23 [REDACTED] in?

24 A. It is in York County.

25 Q. Did you also have occasion to attend the autopsy of

INVESTIGATOR BRIAN BAGWELL: DIRECT BY MR. BRACKETT
CROSS BY MS. ANDERSON

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1 Mr. King?

2 A. Yes, I did.

3 Q. All right. And did you recover -- I believe it's in
4 that box as well -- Did you recover the projectile pieces
5 that were recovered during the course of that autopsy?

6 A. Yes, sir, I did.

7 Q. And were they similarly secured in an evidence bag as
8 the others were taped, and so forth?

9 A. Yes, sir.

10 Q. And ultimately all these items of evidence were turned
11 into Master Evidence Locker?

12 A. Yes, in Rock Hill PD. Yes, sir.

13 Q. Thank you very much, Investigator. Please answer any
14 questions that the counsel for either Mr. Reid or Mr.
15 Henson may have.

16 A. Okay.

17 CROSS EXAMINATION

18 INVESTIGATOR BRIAN BAGWELL BY MS. ANDERSON:

19 Q. You have the diagram, right?

20 A. Yes.

21 Q. And basically, Investigator, State's Exhibit -- I
22 believe it's Thirty-three.

23 A. Uh-huh.

24 Q. Correct? That is a diagram you made and that you
25 illustrated some to the jury?

INVESTIGATOR BRIAN BAGWELL: CROSS BY MS. ANDERSON

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1 A. That's correct.

2 Q. And you indicated on your testimony that Items 1
3 through 10 on that diagram were spent casings.

4 A. That's correct.

5 Q. And looking at the diagram, those spent casings
6 essentially sort of stretch from -- The spent casings here
7 on the 1 through 10, sort of, start the farthest out from
8 the house --

9 THE COURT: Make sure -- They can't see through you,
10 so --

11 MS. ANDERSON: I apologize.

12 Q. Essentially, they start from here, and this is
13 essentially -- Well, let's clarify. This here is a
14 representation of a fence in the yard?

15 A. That's correct.

16 Q. And this would be the spacing between the fence?

17 A. That's correct.

18 Q. And then if you travel to here, you would be traveling
19 up the yard to the steps?

20 A. That's correct.

21 Q. And then this would represent the front porch?

22 A. Yes, ma'am.

23 Q. And then this, where this number -- What is that?
24 Eighteen?

25 A. Uh-huh.

INVESTIGATOR BRIAN BAGWELL: CROSS BY MS. ANDERSON

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1 Q. This here, was this the front door?

2 A. That's correct.

3 Q. And you indicated items -- these items here, all of
4 these 1 through 10's are spent casings?

5 A. That's correct.

6 Q. And so the spent casings would start geographically
7 sort of on the outside of this space between the fence and
8 then continue at some point on the wall up to the steps?

9 A. Correct. All 10 were located in that distance.

10 Q. And there were no spent casings recovered on the front
11 steps of the residence?

12 A. That's correct.

13 Q. And you recovered two spent projectiles from inside
14 the residence. Correct?

15 A. One was in the doorframe where 18 is; that's correct.
16 And one on the inside of the home.

17 Q. But no spent casings recovered on the porch of the
18 residence?

19 A. No.

20 Q. And talking about spent casings versus projectile,
21 essentially, roughly, the casing would be, sort of, the
22 bottom part of a cartridge?

23 A. That's correct.

24 Q. And the projectile would be the, sort of, top part of
25 the cartridge?

INVESTIGATOR BRIAN BAGWELL: CROSS BY MS. ANDERSON

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1 A. That's correct.

2 Q. And when you talk about a live round, you're talking
3 about a cartridge and a -- a projectile and a casing that
4 has not separated?

5 A. Correct, has not been fired. That's correct.

6 Q. And when the gun is fired, then the two, if it is
7 fired successfully, will separate?

8 A. Correct.

9 Q. And it's typically common that a spent casing will,
10 sort of, eject from the gun somewhat geographically close
11 to where the gun is. Correct?

12 A. It depends on the gun, yeah. But most of them eject
13 to the right, but some eject back, some go left. So it
14 just varies on the gun.

15 Q. But not uncommon when an automatic weapon that it
16 ejects to the right?

17 A. No.

18 Q. And generally stay at a distance of no more, say, than
19 maybe 2 feet from the weapon?

20 A. That would be a good guess.

21 Q. And so based on where you found the spent casings, it
22 would be logical to say that the gun would have been fired
23 somewhere in the area of the yard out here?

24 A. Yes.

25 Q. And we know from the victim's injuries, that you were

INVESTIGATOR BRIAN BAGWELL: CROSS BY MS. ANDERSON

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1 made aware on the scene, that the gun was -- we can --
2 fired in the direction of the house. Correct?

3 A. Yes.

4 Q. And when you are called -- Basically, when you are
5 called out on a scene, you are looking for any evidence
6 that may be important to the case. Correct?

7 A. Correct.

8 Q. And you're doing that based on your training and your
9 experience?

10 A. Correct.

11 Q. And essentially, you're going to take into evidence
12 items that might be important to an investigation?

13 A. Yes.

14 Q. And if you are on the scene, and there is an item that
15 you can determine is not likely to have any sort of
16 investigative value, you wouldn't take that into evidence?

17 A. That's correct.

18 Q. 'Cause ultimately these items are going to become part
19 of the case?

20 A. Yes.

21 Q. And you don't want to take space up with evidence for
22 something that is not going to be important?

23 A. Right.

24 Q. You were called out to the scene on October 1st, 2009.
25 Correct?

INVESTIGATOR BRIAN BAGWELL: CROSS BY MS. ANDERSON

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1 A. Correct.

2 Q. And this was sort of late in the evening, so some of
3 your collection stretched over into the morning hours of
4 October 2nd?

5 A. That's correct.

6 Q. And once you were called out to the scene, you had the
7 ability to continue collecting evidence past your time on
8 the scene of October 1st?

9 A. I'm not sure I know what you are asking.

10 Q. In other words -- Let me rephrase that. Your
11 investigation is not limited to merely the time you
12 respond?

13 A. No, we can stay as long as it takes to process the
14 scene. However long it takes, we can be there processing.

15 Q. And continuing collecting evidence in the days, weeks,
16 however after you respond. However long a time.

17 A. Yes and no. Typically what we'll do if we get called
18 to a scene like this if we have a permission to search or a
19 search warrant, it's valid for only that initial search.
20 If we leave the scene, we'd have to get more permission or
21 a search warrant to go back on the scene again.

22 Q. The only time evidence was collected from this scene
23 was October 1st and October 2nd. Correct?

24 A. To my knowledge, yes.

25 Q. To your knowledge.

INVESTIGATOR BRIAN BAGWELL: CROSS BY MS. ANDERSON

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

2 (PAUSE.)

3 Q. But the items that were collected on October 1st, you
4 requested that 10 of the spent casings be submitted to SLED
5 for analysis. Correct?

6 A. Correct.

7 Q. And the spent projectiles that were taken down were
8 not submitted for testing. Correct?

9 A. I believe they were -- No, they weren't sent by me.
10 That's correct.

11 Q. And the two live rounds you took into evidence were
12 submitted?

13 A. That's correct.

14 Q. But out of all of the items that you took into
15 evidence on October 1st and October 2nd, those 12 items,
16 the 10 spent casings, the 2 live rounds, were the only
17 items that were submitted for any testing?

18 A. As far as I know, yes.

19 Q. And you did not perform any test yourself on any
20 additional items?

21 A. No.

22 Q. For example, you testified that you recovered, I
23 believe, it was a total of three swabs with red stain at

24 [REDACTED]

25 A. Correct.

INVESTIGATOR BRIAN BAGWELL: CROSS BY MS. ANDERSON
CROSS BY MR. CHIARENZA

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1 Q. And ultimately that was never tested to verify whether
2 it wasn't that blood. Correct?

3 A. I don't believe it was sent down to SLED, no.

4 Q. And you also testified you recovered a Ten dollar bill
5 from the scene?

6 A. Uh-huh, correct.

7 Q. And there was never any fingerprint analysis or any
8 sort of DNA analysis run on that?

9 A. No, not to my knowledge, no.

10 MS. ANDERSON: Nothing further, Your Honor.

11 MR. CHIARENZA: May it please the Court, Your Honor.

12 THE COURT: Yes, sir.

13 CROSS EXAMINATION

14 INVESTIGATOR BRIAN BAGWELL BY MR. CHIARENZA:

15 Q. Officer Bagwell, in relation to this case, is the Byar
16 Street location the only location that you processed?

17 A. Yes, sir.

18 Q. So you weren't sent out anywhere else in Rock Hill in
19 relation to this case?

20 A. No, sir.

21 Q. So all the evidence you collected would, therefore,
22 then obviously be limited to evidence you collected at the
23 Byar Street location?

24 A. That's correct, and the autopsy. I did attend the
25 autopsy.

INVESTIGATOR BRIAN BAGWELL: CROSS BY MR. CHIARENZA

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1 Q. And what again did you personally recover that was
2 associated with the autopsy?

3 A. Can I refer to my report?

4 Q. Sure, absolutely.

5 A. I collected head and pubic hair standards, inked
6 fingerprints, a gray-type tube of blood, and a fragment
7 from a projectile. And I took digital photographs.

8 Q. That projectile fragment, how far down the line did
9 that get as far as being sent off for any individual --
10 Sorry -- Any additional tests?

11 A. I don't know that it was sent because I don't think it
12 was enough. If I recall correctly, it was a very small
13 fragment that was recovered. It was enough to get a
14 ballistics test performed on.

15 Q. And I think the one item that the Solicitor handed you
16 that did not have your signature on there was the
17 projectile recovered from the surviving victim's leg; is
18 that correct?

19 A. I believe that's correct, yes, sir.

20 Q. Okay. But you didn't -- From what I understanding,
21 you didn't deal with that?

22 A. That's correct.

23 Q. All right, so you've got a number of items here that
24 you collected that have been put in evidence. Can you tell
25 me -- And I don't want to -- It's late in the day, and I

INVESTIGATOR BRIAN BAGWELL: CROSS BY MR. CHIARENZA

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1 don't want to go through every single one of these. So I
2 will ask you as to any event. Did any of those items --
3 Let's just start with, in general, the casings, all of the
4 casings combined. Do any of those casings bear any
5 particular qualities, or characteristics, or identifying
6 features that somehow relate to my client Mr. Henson?

7 A. No.

8 Q. Okay. So those casings, as far as those casings go,
9 they don't in any way indicate a particular individual
10 who's responsible for those casings being at the scene?

11 A. That's correct.

12 Q. It could certainly be argued that those casings would
13 indicate that a firearm was shot at that scene. I mean
14 that's not a hundred percent had to be that way, but it
15 certainly would be a reasonable conclusion to draw, that a
16 firearm was shot and these casings got dejected and ended
17 up there.

18 A. That's correct.

19 Q. Some possible scenarios, somebody could have just
20 pulled them out of their pocket and sprinkled them there?

21 A. Could happen, but you had bullet holes in the home and
22 everything to go along with it, so --

23 Q. And absolutely. And I'm not trying to make that
24 case -- I suppose my point is, they are good for
25 illustrating one thing, maybe not so good at illustrating

INVESTIGATOR BRIAN BAGWELL: CROSS BY MR. CHIARENZA

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1 other things.

2 A. Right.

3 Q. And what -- what I'm -- And I believe you've answered
4 it. They do not in any way illustrate a particular
5 person's involvement with them by their very nature?

6 A. That's correct.

7 Q. Okay. Let's talk about the projectiles. And again,
8 same question. Any of the projectiles that were recovered
9 on the scene, do they bear any particular qualities, or
10 characteristics, or identifying features that can tell
11 you -- that can help you tell this jury who's responsible
12 for those projectiles being on the scene?

13 A. No.

14 Q. Okay. The photographs. You took a number of
15 photographs and clearly they are an excellent documentation
16 of what that scene looked like when you arrived, which is
17 not very long after this event occurred. To your
18 knowledge, did any of those photographs indicate by their
19 nature or by what's contained in the photographs, that Mr.
20 Henson, my client specifically, to the exclusion of other
21 individuals, was on that scene that night?

22 A. No.

23 Q. And I guess I sort of promised this at the beginning,
24 so I'll do it now. Without going through everything that
25 is there, are you aware of anything that the Solicitor has

INVESTIGATOR BRIAN BAGWELL: CROSS BY MR. CHIARENZA

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1 spoken to you about, any of the items of evidence that
2 you've recovered that are put into evidence that bear any
3 particular qualities, or characteristics, or identifying
4 features that point to my client Mr. Henson being involved
5 in this case?

6 A. No.

7 MR. CHIARENZA: The Court's indulgence just a second,
8 Your Honor.

9 THE COURT: Yes, sir.

10 Q. I think they're Number 13 and Number 16 on the yellow
11 placards. Are those the two little plastic baggies?

12 A. Thirteen, I believe is a \$10 dollar bill.

13 Q. Oh, okay --

14 A. The plastic bag, it should be Number 14 and Number 16.

15 Q. That's what I'm referring to, 14 and 16. And those
16 were -- One was found on the steps, and one was found next
17 to the step, the stoop steps up against the foundation?

18 A. That's correct.

19 Q. All right. Do you have enough experience as a law
20 enforcement officer to testify as to whether or not those
21 baggies appeared consistent with drug packaging?

22 A. They appeared consistent with drug packaging. Yes,
23 sir.

24 Q. And just a couple, just to wrap up here real quick.
25 The blood -- To your knowledge, the blood or what appeared

INVESTIGATOR BRIAN BAGWELL: CROSS BY MR. CHIARENZA

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1 may have been blood on the scene, that wasn't tested or
2 ever matched up to any particular individuals?

3 A. No, it wasn't.

4 Q. And as far as the mechanics and firearms, I believe it
5 was Ms. Anderson who asked you sort of the way the
6 projectiles would eject from a fireman. But not all
7 firearms, in fact, eject their casing. Some remain with
8 the gun, is that correct?

9 A. Some will stove pipe and jam up, and -- Yes, sir.

10 Q. Well, I'm speaking about revolvers.

11 A. Oh okay, yes, sir.

12 Q. A revolver would not eject its casing.

13 A. Correct.

14 Q. In fact, if one were to shoot six rounds out of a six-
15 shooter, all six casings, you'd expect them to be
16 still -- remain in the gun itself.

17 A. Yeah, that's correct.

18 Q. So, if that individual, this hypothetical individual,
19 shot a revolver, and then walked away with it, they would
20 leave no casing evidence. We wouldn't expect those casings
21 to still be on the scene.

22 A. Correct.

23 Q. Thanks a lot, Officer Bagwell. That's all I have.

24 THE COURT: Redirect?

25 MR. BRACKETT: Yes, sir. I have a few questions.

INVESTIGATOR BRIAN BAGWELL: REDIRECT BY MR. BRACKETT

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REDIRECT EXAMINATION

INVESTIGATOR BRIAN BAGWELL BY MR. BRACKETT:

Q. Ms. Anderson asked you about the length of time that you stayed there and the things that you processed. And you could have stayed there longer or come back another day; isn't that correct?

A. Yes, sir.

Q. When you go to a scene like this, what do you use -- How do you know where to process?

A. Based on officer information we get on the scene. They'll kind of give us a synopsis of what happened, visually what we can see, and a combination of both.

Q. So based on the victims' relating that all the events transpired in the yard or on the stairs, would you have felt it necessary to process the garbage can in the kitchen?

A. No, sir.

Q. Any indication that anybody went there?

A. No, sir.

Q. So you confined your inquiry to those areas that you reasonably expected to yield some information, possibly.

A. That's correct.

Q. Now the casings. Mr. Chiarenza was talking to you about, the spent casings. And they don't definitively link. They contain no quality or characteristic which

INVESTIGATOR BRIAN BAGWELL: REDIRECT BY MR. BRACKETT

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1 links his client to anything?

2 A. Right.

3 Q. Had you developed me or anyone as a suspect, and I
4 were apprehended with a .22-caliber-sawed-off rifle, would
5 it have been possible to identify that rifle as the rifle
6 that authored the markings on those casings?

7 A. Yes, sir.

8 Q. So that's the value of seizing them?

9 A. Correct, correct.

10 Q. But we never got a rifle?

11 A. Right.

12 Q. Did you process everywhere that you could possibly
13 think of on that porch that might yield a fingerprint?

14 A. No, we did not. We had no information that they
15 approached the porch at all.

16 Q. Okay.

17 A. The information we had was the suspects maintaining
18 themselves down in the yard area and never approached the
19 porch to --

20 Q. Had you heard that they had patted down the victims,
21 searched them and --

22 A. Yeah, I possibly did hear that, yeah. I was thinking
23 at the time that we had information they didn't go on the
24 porch. But yeah, I do remember them being patted down,
25 somebody mentioning that. One of the officers said that.

INVESTIGATOR BRIAN BAGWELL: REDIRECT BY MR. BRACKETT

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1 Q. Possibly on the steps or on the top of the porch?

2 A. Right.

3 Q. Is it possible to lift -- Are my fingerprints going to
4 be on that shirt?

5 A. No, sir.

6 Q. Why?

7 A. The fabric soaks it in so quick. It doesn't let the
8 oils and the residue from your fingerprint stay there to be
9 developed.

10 Q. And likewise, if I'm putting my hands and frisking on
11 the outside of your pants, is it likely that you're going
12 to develop a DNA profile?

13 A. No, it's not.

14 Q. And was there anything that you had any information on
15 that might yield fingerprints, DNA, or other forensic
16 evidence that could link someone to that scene that you did
17 not test?

18 A. Not to my knowledge, no.

19 Q. You tested everything you could think of?

20 A. Yes, sir.

21 Q. Thank you very much.

22 THE COURT: Recross?

23 MS. ANDERSON: Nothing, Your Honor.

24 MR. CHIARENZA: Very briefly, Your Honor.

25 RECROSS EXAMINATION

INVESTIGATOR BRIAN BAGWELL: RECROSS BY MR. CHIARENZA

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1 INVESTIGATOR BRIAN BAGWELL BY MR. CHIARENZA:

2 Q. Officer, but you only -- You don't only perform your
3 test and examination of the scene based on what the victims
4 tell you. Right?

5 A. No, it's based on the total circumstances; officers,
6 victims, any information we have.

7 Q. Okay. So the detectives in this case believe case,
8 the lead case investigators, could have directed you, I'm
9 sure, asked you very nicely to go and process any scene in
10 York County; is that correct?

11 A. If they thought it was related to the case, yeah, they
12 would have directed us to that location.

13 Q. Okay. That's all I've got.

14 THE COURT: You can step down and be excused. We
15 appreciate your time.

16 THE WITNESS: All right, thank you, sir.

17 (WITNESS LEAVING WITNESS STAND.)

18 THE COURT: Let me see counsel up here just one
19 second.

20 (BENCH CONFERENCE AT 05:05 PM OFF THE RECORD OUT OF
21 THE HEARING OF THE JURY.)

22 THE COURT: I'm going to allow them to call one more
23 witness today. I was just trying to get some idea of time,
24 so that we don't go too late into the evening. We will go
25 through one more witness.

DETECTIVE TIM AYERS: DIRECT BY MR. THOMPSON

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1 Call your next witness.

2 MR. THOMPSON: The State would call Detective Tim
3 Ayers to the stand.

4 (WHEREUPON: TIM AYERS, BEING
5 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

6 DIRECT EXAMINATION

7 DETECTIVE TIM AYERS BY MR. THOMPSON:

8 Q. Detective Ayers, where do you work?

9 A. Rock Hill Police Department.

10 Q. How long have you worked there?

11 A. Seventeen years.

12 Q. And what are your duties there at Rock Hill Police
13 Department?

14 A. For the last 12 years, I've been assigned to the
15 Criminal Investigation or Detective Division. For the last
16 6 years, I've been assigned to person's crime, robbery,
17 homicide, major assaults.

18 Q. And can you tell me, did you become involved in this
19 particular case as a detective?

20 A. Yes, I did.

21 Q. And how did you become involved?

22 A. The night that the incident occurred on the 1st, I was
23 actually out and about in my vehicle. Heard the incident
24 given out over the radio and just responded immediately.

25 Q. So did you actually get to Byar Street yourself?

DETECTIVE TIM AYERS: DIRECT BY MR. THOMPSON

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1 A. Yes, I did.

2 Q. And was it long after the incident occurred that you
3 had gotten there?

4 A. EMS had not arrived on the scene or was just pulling
5 up as I arrived on the scene. I was probably the fourth or
6 fifth person on the scene.

7 Q. When you arrived, what was going on?

8 A. There were patrol officers roping off -- starting to
9 rope off the area. EMS was getting there, trying to go up
10 and attend to Mr. King who was laying on the porch.

11 Officer Harrelson was inside the house with Kenny
12 Cunningham and with Maurice Jackson. Detective Dugan was
13 the first investigator on the scene. I asked him to go
14 ahead and start snapping pictures to preserve everything
15 the way it was because we knew that Mr. King would be moved
16 immediately for trying to treat him further, which would,
17 you know, not be documented in the scene and all. So, we
18 were trying to document everything we could as quickly as
19 we could.

20 Q. So at this point, is it kind of your duty at this
21 point to kind of direct the other officers who arrived at
22 the scene?

23 A. The primary detective that's on the scene, it's his
24 job first to make sure that someone is securing the scene;
25 patrol is doing their functions as they're supposed to;

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1 making sure somebody's trying to locate and, I guess, keep
2 any witnesses from leaving the area to where we can get to
3 those people to find out any and all information we can.
4 You know, just basically securing the scene, making sure
5 and seeing what we needed, determining if we need to call
6 in additional detectives to assist with the investigation,
7 with interviews, those type things.

8 Q. Were you one of the detectives then responsible for
9 that, that night?

10 A. Yes, Detective Dugan was on call as backup, but he is
11 assigned to property crimes. And I knew that it would be
12 coming, this case being a person's crimes case would be
13 assigned to our part of the Detective Division. So, I
14 would become more of the primary at that time.

15 Q. Did you have the opportunity to speak to either Mr.
16 Cunningham or Mr. Jackson that night?

17 A. As I arrived on the scene and went to go inside,
18 Officer Harrelson was inside, just inside the door on the
19 floor Mr. Cunningham was laying there and in great pain.
20 He was hollering from the pain and all. And Maurice
21 Jackson was sitting there along with his grandmother
22 sitting in a chair in the den. And I was able to speak
23 with them at that time.

24 Q. Were they still pretty excited when you had gotten
25 there?

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1 A. Yes, sir. Mr. Cunningham, like I said, he was very
2 excited from being shot. He was in pain. He was -- Every
3 time I tried to ask him a little further, it was, "Man, I
4 don't know, I don't know. I've been shot, I've been shot."
5 It was very hard for him to relay a lot of information.
6 His main thought was the fact that, you know, the
7 excitement of just being robbed, being shot. He didn't
8 know how bad his injuries were going to be. And we were
9 able to go to Mr. Jackson at that time to get a little
10 further.

11 Q. All right. And can you tell me when you were on the
12 scene there, what other duties did you perform?

13 A. Once -- Once it was basically established that
14 everyone was performing their duties as needed to be,
15 Officer Harrelson was giving the victim -- Or to give them
16 the description of the suspects, the male and the female.
17 And he was actually broadcasting that out onto the radio.
18 And our dispatchers were entering that into the CAD system,
19 so all the officers that were in the area could look for
20 any suspects, making sure everything was there. At that
21 time, Mr. King and Mr. Cunningham had been transported to
22 Piedmont Medical Center. Other detectives and Captain
23 Bolinger had arrived on the scene could take over the
24 initial investigation at the scene. And I went to the
25 hospital to speak with Mr. Cunningham.

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1 Q. Did you take the statement from Mr. Cunningham?

2 A. Yes, I did. I did a handwritten using my own
3 handwriting. Mr. Cunningham was receiving treatment at the
4 time, at the hospital. They were trying to give him
5 medications for his pain. They were trying to assess the
6 wounds, moving him around trying to see so, it was very
7 hard to get a lot of information. It was basically, let's
8 get the basics of what we can down on paper just in case we
9 run into a suspect tonight where we have a little further
10 to go on. But that was the basics of what I got from him
11 at the hospital.

12 Q. Was he still in a good bit of pain at the hospital?

13 A. Yes, he was still in pain.

14 Q. Can you tell me, after you went to the hospital, what
15 then did you do that night? What was your other
16 responsibilities?

17 A. After I finished at the hospital, I went back to the
18 scene at Byar Street and see if anything else was needed.
19 At that time, I went to the Law Center where all the
20 detectives that had been called out will all come together,
21 kind of share the information. And everybody's trying to
22 put together any pieces of the puzzle that we have at that
23 time. We knew that we were looking for a black male with
24 dreads; a female, pink pants, gray sweatshirt given the
25 descriptions that we had been given. So we were trying to

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1 come up with any suspect that we could at that point 'cause
2 we had no names.

3 Q. And in your duties as a detective and the robberies
4 that you handle, is it common to have a male and female
5 commit the robberies often?

6 A. It was very strange to have a female directly actively
7 involved in the furtherance of actually committing the
8 robbery. A lot of times in the setup part of it or part of
9 the crime, you know, being the knock at the door, and then
10 behind it. But actually, physically directly being
11 involved, it was a little different than most of the
12 robberies we work.

13 Q. Such as patting someone down, that sort of thing?

14 A. Directly involved, yes, sir.

15 Q. So what initially were you looking for then that
16 night? As a detective, what were you trying to pinpoint?

17 A. Well at that point, we were talking to anybody that,
18 you know -- The zone, the police officers at the
19 department, they're assigned to a certain zone. They ride
20 that zone over and over and over. They know the people in
21 that area. Our street crimes unit, which Officer Harrelson
22 was assigned to at the time.

23 Our Narcotics Unit, they have informants. We're
24 putting out feelers to everybody. "Hey, talk to your
25 people, find out anything." We started running the

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1 scenario of "Do you know of any black males with dread
2 locks walking around the neighborhoods with a female?"
3 those type things.

4 We were trying to find any leaks we could at that
5 time.

6 Q. And when did the first real lead, as far as being able
7 to talk to someone who might be involved, come to you?

8 A. The next morning -- You know, we were there pretty
9 much through the night, but then the next morning, I come
10 back in and myself and Detective Herring received a phone
11 call to go to [REDACTED] to talk with Maurice Jackson.
12 He had further information he wanted to relay to us.

13 Q. And did you both go there then?

14 A. Yes, we both rode over to Mr. Jackson's house.

15 Q. Do you remember about what time that would have been?

16 A. I want to estimate around 9:00, 9:30, 9:45 in the
17 morning.

18 Q. Okay.

19 A. It could have been later, but I would estimate
20 somewhere around that time.

21 Q. And when you got there, what information did you
22 receive at that time?

23 A. Went up to the house, Mr. Jackson and his grandmother
24 were inside. There were numerous people outside. The
25 neighborhood was very upset and agitated that the event had

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1 happened. So we were able to go inside and speak with just
2 the two of them inside the house --

3 MR. CHIARENZA: Your Honor, I'm going to object to
4 anything they tell us at this point that's not an excited
5 utterance.

6 THE COURT: I sustain your objection.

7 MR. THOMPSON: Your Honor, could we take up a
8 matter of law?

9 THE COURT: I'm going to let the jury go to the jury
10 room just a minute.

11 (JURY EXITS TO JURY ROOM AT 05:18 PM.)

12 THE COURT: All right.

13 MR. THOMPSON: I'll let the Court know, the intention
14 of the State, Your Honor, with this particular line of
15 questioning is that this is the morning time in which
16 Maurice Jackson told the detectives he recalled what had
17 happened with Donta Reid the night before, with the phone
18 calls, and with him stopping by, and then right after the
19 whole thing about "two others" or "two more." And as well,
20 Donta Reid also told -- Or, I'm sorry. Maurice Jackson
21 told them at that time about the fact that he remembered
22 the accent, that it was someone from up north, and that it
23 was like a Baltimore accent. He has relatives from that
24 area and that's why he knew that. In addition he relayed
25 information such as he knew it wasn't Donta that had done

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1 it because Donta wasn't one of those two -- wasn't one of
2 the two that robbed him, but he set it up. He was setting
3 it up. And he's telling the detectives this at this time
4 because that's when he remembers. I think I could get into
5 it for a number of reasons. One, I know the Defense for
6 Mr. Reid has specifically questioned the facts of him
7 coming over when he was told that night --

8 THE COURT: He who?

9 MR. THOMPSON: When Donta Reid came over to Maurice
10 Jackson's residence. They pointed out on cross and made
11 him look as if somehow he -- Maybe this isn't true or maybe
12 this is not being correct -- that he didn't mention
13 anything to officers that night. He even asked the
14 officers that did he mention anything to him about Donta
15 Reid that night. No, he did not. Because of course, he
16 hadn't really thought until later that he was involved,
17 when he had more time to contemplate on the events of that
18 night. And that is certainly an honest mistake on his
19 behalf.

20 In addition, Mr. Chiarenza questioned heavily both of
21 the victims as to whether they told the descriptions that
22 they gave, and whether they said anything about accents.
23 And he questioned the officers, "Did he tell you anything
24 about an accent or anything about the voices of these
25 people?" And questioned heavily the ability of those

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1 victims to be able to be truthful in that aspect. This is
2 where the victims told both this detective and the other
3 one that -- Or, that's when Mr. Jackson told him about the
4 accent. That's when he told him about Donta Reid. That's
5 when he told him his impressions at that point and the
6 victim has testified to that. And his testimony has been
7 called into question, his credibility. His statement has
8 been called into question. So now I think I can
9 rehabilitate that with a prior consistent statement that he
10 has given to these officers.

11 MR. CHIARENZA: It's a mighty novel theory, Your
12 Honor, but I can see if I questioned Detective Ayers about
13 "He never told you about dread locks, or his accent," or
14 something along those lines. I don't open the door on what
15 this witness can say by cross examining another witness. I
16 don't -- the Solicitor has told us nothing changes this
17 testimony from hearsay, and it's clearly hearsay.

18 MR. THOMPSON: There's --

19 MR. CHIARENZA: It's cumulative to what Mr. Jackson
20 has testified to, and Mr. Jackson's testimony; he had an
21 opportunity to direct Mr. Jackson. I had an opportunity to
22 cross examine Mr. Jackson. And then -- And that's the end
23 of Mr. Jackson. I don't -- I'm unaware of any concept that
24 says now we can ask half a dozen other witnesses what Mr.
25 Jackson may or may not have told them. It's hearsay as to

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1 those witnesses.

2 MR. THOMPSON: Your Honor --

3 MR. CHIARENZA: I can't go back and cross examine Mr.
4 Jackson about it.

5 MR. THOMPSON: And Rule 801 (D) and 1 (B), it says
6 that, "statements which are not hearsay." And (B) says,
7 "consistent with the declarant's testimony it's offered to
8 rebut, and express, or apply charge against the declarant
9 of recent fabrication or improper influence or motive,
10 providing however that the statement must have been made
11 before the alleged fabrication or before the alleged
12 improper influence or motive that arose." And he alleged
13 that when he was questioning the victim that he didn't
14 bring these things forward until he talked with our office,
15 and so -- in recent weeks. This is talking about something
16 he did the very next morning that he specifically called
17 detectives there to tell them about to inform them as part
18 of their investigation. And it's consistent with what he
19 had said before that he was directly questioned on as being
20 not truthful on.

21 MR. CHIARENZA: I asked when he first spoke about it,
22 and if it was when he met with the Solicitor's Office. He
23 answered, "No." I had to take that answer. I think in
24 light -- I don't know that they get to bring it up now. I
25 mean I asked him the question. If you follow the

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1 Solicitor's logic, then it's any time you ask any question
2 of a witness that you may find slightly incredulous or that
3 you want to delve into a little bit further. But now that
4 opens the door to anything they may have told someone else.

5 THE COURT: No, I don't think its that. I think it
6 was an implication through questioning that this testimony
7 arose as a result of some reason to fabricate it. And
8 there was at least some implication that this didn't
9 arise -- I say, "this." Now I'm using pronouns myself that
10 don't relate to anything. But that the testimony regarding
11 the dread locks particularly and the description that was
12 given the -- that was not -- The information including that
13 about Mr. Reid and that of -- Well let me back up. I kind
14 of lost my train of thought. What's the question again?
15 Where -- that Mr. Reid --

16 MR. THOMPSON: Yeah, Mr. Reid came forth telling them
17 about or, Mr. Jackson came forth telling him about Donta
18 Reid and the call that he had made from stopping over and
19 making the call, and what he had heard on the call.

20 THE COURT: All right.

21 MR. THOMPSON: In addition --

22 THE COURT: But there's no implication that, that was
23 fabricated.

24 MR. THOMPSON: Right, but they certainly questioned
25 that -- I think it was Mr. Reid's attorney -- that when it

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1 occurred that it didn't occur the night that -- the night
2 that the crime occurred. That Mr. Reid's name was never
3 brought up that night.

4 THE COURT: Yes, ma'am.

5 MS. INZERILLO: Your Honor, just in light of that, and
6 on behest of Mr. Reid, I would just state that my
7 understanding is that Detective Ayer's testimony would go
8 to the fact that this information was relayed to him the
9 next day, which we were not questioning. Ms. Anderson was
10 merely questioning the officer at the scene that, that
11 information was not relayed on the scene that night. But
12 even under my crosses of both the victims, they both relay
13 that it was -- Or at least Mr. Jackson relayed that it was
14 told the next day. And that was not the question that I
15 asked or asserted to be fabricated.

16 MR. THOMPSON: Then I still would then, Your Honor, if
17 the Court thinks that I cannot go into that, I still -- I
18 think I could go into the fact that he would say that at
19 that point, he also told them about the accent that he
20 heard from the shooter that was "He's not from around
21 here." That it wasn't Donta that did it, that did the
22 shooting, but it was someone else not from around here.
23 And he had a voice like from Baltimore and his family is
24 from Baltimore.

25 THE COURT: Why isn't that hearsay?

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1 MR. THOMPSON: Well, Your Honor, it would be however,
2 they specifically attacked the victim's credibility as to
3 that particular statement and as to him fabricating that
4 most recently when he talked to our office. Now we have
5 someone who can confirm that, no it was not fabricated. It
6 was something that happened before and falls directly under
7 the Rule as not hearsay.

8 THE COURT: I'm looking at 801 (B) (1B). "Declarant
9 testified at the trial subject to cross examine relation
10 concerning the statement." But he was never asked, or was
11 he asked about the statement that he gave to --

12 MR. THOMPSON: He was asked if he had ever told the
13 officers about that statement.

14 THE COURT: "And the statement is consistent with his
15 testimony and his offer to rebut and express and implied
16 charge against the Declarant of recent fabrication."

17 MR. THOMPSON: Right. And Mr. Chiarenza implied that
18 it was only in recent weeks when he spoke with our office
19 that he told about this accent.

20 THE COURT: "The statement must have been made before
21 the alleged fabrication." What is the alleged fabrication?

22 MR. THOMPSON: It would be that he most recently only
23 told us this information in the weeks just a few weeks here
24 before trial when he interviewed with our office. Of
25 course, this would have actually been 2 years ago when he

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1 talked with the detective. So certainly it is before when
2 the alleged fabrication could have possibly occurred and
3 the further fabrication occurred.

4 THE COURT: Mr. Chiarenza.

5 MR. CHIARENZA: Your Honor, I don't know that I even
6 alleged that he was fabricating it other than just when he
7 first spoke about it. You know if he recalled it after
8 meeting with the Solicitor's Office. There's -- I think
9 that there's some evidence in the file at least, that it
10 can be inferred that the shooter may have had dread locks.
11 As to whether or not he remembered that at the time, spoke
12 to someone about it at the time, I asked him that. It's
13 not in his written statement. Let's just look at the
14 reality here. It's not in his written statement. It's not
15 in his 911 call to the police. It's not in the incident
16 report. It's just curious how there's nothing in any of
17 those items about dread locks or this supposed northern
18 accent until they develop Mr. Henson as a suspect who
19 happened to have dread locks at the time and was from
20 Baltimore. And it's then -- This isn't memorialized
21 anywhere in the file. But now, he supposedly told all of
22 these officers about that. And I asked him, and that's the
23 answer he gave me. And I don't know that I accused him of
24 fabricating that honestly.

25 THE COURT: You didn't accuse him, but you certainly

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1 implied just on the basis of what you said. I mean it just
2 bolstered that which --

3 MR. CHIARENZA: Your Honor, I would like the testimony
4 read back because I don't know that I --

5 THE COURT: No, let me finish. You asked and I
6 believe counsel for Mr. Reid continued because it's a good
7 tactic. It's done all the time by defense lawyers. "Well,
8 it's not in this report. It's not in that report. It's
9 not in this report," implying to the jury that they just
10 made it up or it came up later. So I'm going to allow it
11 in under 80 -- Whatever it was. I lost it. 801 (D) (1B).

12 MR. CHIARENZA: Your Honor, as it requires an
13 implication that I am alleging that he has fabricated his
14 statement, I'd ask that we listen to the testimony and --

15 THE COURT: Well I think I've heard enough testimony.
16 Again, it's a very good approach where "You're telling
17 something now that you didn't tell something earlier. You
18 didn't tell something now." And I can hear the arguments,
19 and if you made that argument, it -- If you did not make
20 that argument, it's probably going to be dismissed that
21 "Well, it's not in the report." Shake the report at the
22 officers, "It's not in here. Here's your black and white."
23 So I think there's enough here that there's an implication
24 that this was fabricated or -- I think it's allowed to be
25 again to rebut an improper motive and fabrication under the

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1 Rules. So I'm going to allow it.

2 MS. INZERILLO: Your Honor, just to clarify. Is that
3 only to any statements made about Mr. Chiarenza's client or
4 about Mr. Reid as well?

5 MR. THOMPSON: Your Honor, I think it's Mr. Reid. One
6 other reason that it would be allowed as testimony of res
7 gestai is this is part of the whole of the case. This is
8 as it happened, and as the Officer's first learn of Donta
9 Reid. This is when he first comes into the case.

10 THE COURT: I don't think it comes under res gestai.

11 MR. THOMPSON: I don't think it necessarily would be
12 hearsay for the Officer to say at this point is when he
13 learned of Donta Reid.

14 THE COURT: Well, I don't think it would be hearsay
15 when you say as a result of discussing. I mean I think we
16 kind of -- Well, Mr. Reid as opposed to the accent, I think
17 that it was -- the usual method is as a result of having a
18 conversation with Mr. "X." "Did you go" -- "What did you
19 do next?" "Well I went and found Mr. 'Y,' and went from
20 there." So I'm going to allow you to go into it as to the
21 accent and dreads, but not as to Mr. Reid.

22 MR. THOMPSON: All right.

23 THE COURT: Bring in the jury.

24 MS. INZERILLO: Your Honor, before we bring in the
25 jury, may I step out a minute?

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1 THE COURT: Yes, ma'am, all right.

2 Ms. Inzerillo, would you tell them to wait just a
3 minute?

4 MS. INZERILLO: Hold up the jury.

5 (MS. INZERILLO REENTERS COURTROOM.)

6 (PAUSE AT 05:30 PM.)

7 THE COURT: Now we bring in the jury.

8 MR. CHIARENZA: Your Honor, I'm protected on that?
9 I'm not going to have to renew that objection?

10 THE COURT: You made it, it's been ruled on.

11 MR. CHIARENZA: Thank you.

12 (JURY REENTERS COURTROOM AT 05:33 PM.)

13 THE COURT: Counsel, you may proceed.

14 MR. THOMPSON: Thank you, Your Honor. If it please
15 the Court.

16 DIRECT EXAMINATION - CONTINUED

17 TIM AYERS BY MR. THOMPSON:

18 Q. Detective, I believe we last left off when you were at
19 Mr. Jackson's house once again on Byar Street; is that
20 correct?

21 A. Yes, sir.

22 Q. With Detective Herring?

23 A. Yes, sir.

24 Q. And at that point, was Mr. Jackson able to relay
25 anything else to you and Detective Herring regarding the

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1 identity or description of any of the defendants at the
2 scene?

3 A. Mr. Jackson was describing the voice of the person who
4 had, had the gun on him the night before, who had actually
5 pulled the trigger, was the shooter in the incident. And
6 he said, "He's not from around here. He's from up north.
7 He has like a Baltimore accent. I have family in
8 Baltimore, and it sounds like a Baltimore accent."

9 Q. And both you and Detective Herring were there to hear
10 that at that time?

11 A. That's correct.

12 Q. After speaking with Mr. Jackson that morning, where
13 did you then go? What was your next step?

14 A. After we got through with that conversation with Mr.
15 Jackson, we were able to determine that we needed to speak
16 with Donta Reid who lives on Byar Street.

17 Q. Does he live right near Byar where Mr. Jackson lives?

18 A. Mr. Jackson at [REDACTED]. If you were at
19 Scoggins Street coming up Byar Street, he's on the right-
20 hand side of the road.

21 Mr. Reid would live on the left-hand side of the road
22 four or five houses up as the road curves up, back up
23 toward Freeman.

24 Q. Did you go to his residence at that point in time?

25 A. Yes, we did.

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1 Q. Was he home?

2 A. No, he was not.

3 Q. And did you leave any message for him to call you at
4 the police station or that you were looking for him?

5 A. Yes, we left a business card there. It was Detective
6 Herring's card. We left it at the scene and asked his
7 relative -- I think it was his grandfather, to give us a
8 call when he arrived home.

9 Q. All right. And after that, where did you go?

10 A. I went back to the station to continue working on the
11 investigation, both of us.

12 Q. All right. What was the next step then for you?

13 A. Not much longer after we arrived back at the station,
14 received a phone call that Mr. Reid had arrived home on
15 Byar Street and wanted to speak with us.

16 Q. What did you do then?

17 A. Detective Herring stayed at the station. I went in my
18 vehicle and went to Byar Street and pulled up at Mr. Reid's
19 house. I parked with my passenger side towards his
20 residence. He came right out, and got in the front seat,
21 and we rode to the station.

22 Q. Now did he at any point say he didn't want to go with
23 you at that time?

24 A. No, sir.

25 Q. Did you threaten or force him to go with you at that

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1 point?

2 A. No, sir.

3 Q. When you took him to the station, what happened as
4 when you arrived back to the station?

5 A. We arrived at the station, we walked in the back door
6 into the Detective Division and met with Detective Herring.
7 And the three of us went into a interview room right there
8 in the Detective Division.

9 Q. And what did you ask him about when you went in there?

10 A. We began speaking with him about the night before, you
11 know, where he'd been, that type thing. I was just getting
12 a basic time line of where he'd been the night before.

13 Q. Was he in custody at this time?

14 A. No.

15 Q. Had you arrested him for anything?

16 A. No, sir.

17 Q. And basically you were just trying to get information
18 from him at that point?

19 A. Correct.

20 Q. And what did he tell you as far as where he had been
21 and what he'd done?

22 A. He said that he had been over at his house. He left
23 from there, stopped over at Maurice Jackson's house on Byar
24 Street and made a phone call to a female, and left from
25 there and went to the female's residence over in Midtown

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1 Apartments, which is right around the corner from the house
2 in Byar Street.

3 Q. Did he say when he had done that?

4 A. In the, you know, 11:00, 11:30 range the night before.

5 Q. Okay. So around the time or after the time of the
6 robbery, somewhere in there?

7 A. Correct.

8 Q. And what did you do as a result with the information
9 he gave you at that point?

10 A. The -- Detective Herring, you know, just feeling like
11 there was not a lot of honesty in what was coming out.

12 MS. INZERILLO: Objection to the speculation.

13 THE COURT: Yeah, just don't define as to their
14 credibility. That's --

15 A. The --

16 THE COURT: Go ahead.

17 THE WITNESS: Yes, sir.

18 THE COURT: Disregard that answer.

19 A. Detective Herring and myself had Mr. Reid ride over to
20 the location that he had described and given the name for
21 the night before over at Midtown Apartments.

22 Q. Did y'all force him to do that?

23 A. No, sir.

24 Q. Did you ask him and he just said, "Okay"?

25 A. Asked him if he would go show us this residence and we

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1 could meet with this lady.

2 Q. Did he direct you where to go to get there?

3 A. He directed us to the location and gave us the name of
4 the person, and we pulled up to the front, and then he
5 changed the name of the lady.

6 Q. What do you mean "changed the name of the lady"?

7 A. He had given the original name of the person that he
8 had called and met with. And as we arrived at the location
9 and knew that we were going in to talk with somebody, he
10 said, "You need to ask for a different person's name".

11 Q. And who went in to talk to somebody at that point?

12 A. I stayed in the vehicle with Mr. Reid, and Detective
13 Herring went inside to where he had described the location.

14 Q. All right. What happened when Detective Herring came
15 back out?

16 A. Detective Herring returned to the car. At that time
17 he pulled Mr. Reid out of the car -- He didn't jerk him
18 out -- He opened the door, asked Mr. Reid to step out,
19 placed him in handcuffs, told him that we were going back
20 to the station to talk about it because he hadn't been
21 truthful.

22 Q. And so when y'all -- Did y'all talk about it more on
23 the way to the station or just wait until you get back?

24 A. No, on the way back to the station, you know, when
25 you're interviewing someone in that manner, you want to be

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1 able to read their body language, their facial expressions,
2 those type things. And it just wasn't the place to conduct
3 an interview in the car.

4 Q. Okay. So when you got back to the station, what
5 happened at that point?

6 A. We escorted him into the Detective Division, into the
7 interview room there in the Detective Division, and he was
8 read his *Miranda* rights at that time.

9 MS. ANDERSON: Your Honor, at this time, we would just
10 renew previous objections to this.

11 THE COURT: All right, subject to our Rules.

12 MR. CHIARENZA: I will as well, Your Honor, and for
13 different reasons without any previous objections subject
14 to --

15 THE COURT: Objections are overruled subject to --
16 based on earlier ruling.

17 BY MR. THOMPSON:

18 Q. Detective Ayers, can you tell me how were his *Miranda*
19 rights read to him at that point in time?

20 A. The interview room, as you walk in the door, there is
21 a seat to the left, a table or desk, and then a office
22 chair there with a computer and all in front of it. And
23 the *Miranda* rights are displayed on the screen, and we read
24 them right from the computer screen.

25 Q. And did you or Detective Herring read him his *Miranda*

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1 rights at that point?

2 A. If I may review just to make sure. On -- Detective
3 Herring read his *Miranda* rights.

4 Q. And how did that -- How did he do that in your
5 presence at that point?

6 A. I was seated right at the door just to the right of
7 Mr. Reid, and Detective Herring was sitting in front of the
8 computer.

9 Q. And the *Miranda* rights, are they up on the screen of
10 the computer at that point?

11 A. That's correct.

12 Q. And is that where you read them from?

13 A. Yes, sir.

14 Q. And would you read them to us as Detective Herring
15 read them to the Defendant at that time?

16 A. "Before we ask you any questions, you must understand
17 your rights.

18 You have the right to remain silent. Anything you say
19 can be used against you in court.

20 You have the right to talk to a attorney for advice
21 before we ask you any questions and to have him with you
22 during questions. You have this right to the advice and
23 presence of a attorney, even if you cannot afford to hire
24 one. We have no way of appointing you a attorney, but one
25 will be appointed by the courts for you, if you wish. If

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1 you wish, you may answer questions without the presence of
2 an attorney, and you may stop answering at any time you
3 desire until an attorney is present."

4 Q. Did he indicate that he understood those rights?

5 A. At that time I asked him, "Do you understand your
6 rights?" and he stated that he did.

7 Q. And are there more rights that you read after that or
8 that Detective Herring read after that?

9 A. After that is a statement that states, "I have read or
10 have read to me the statement of my rights shown above. I
11 understand what my rights are, and I am willing to make a
12 statement. I do not want an attorney at this time. I
13 understand and know what I am doing. I know that the
14 person who is talking with me is a police officer, and I
15 understand what he is talking about."

16 Q. And did he indicate that he understood that?

17 A. That's correct.

18 Q. And he wished to speak to you still at that time?

19 A. He made no indication that he did not.

20 Q. At this point or at any point you were speaking with
21 him during this speaking, did he invoke his right to an
22 attorney and ask to stop speaking?

23 A. No, sir.

24 Q. Was he threatened or coerced by either you, or
25 Detective Herring, or anyone else in his presence?

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1 A. No, sir. No, sir.

2 Q. Was he offered any hope of reward for giving the
3 statement at that time?

4 A. No, sir.

5 Q. Now after that, after the reading of the rights, did
6 you then begin to talk to him about what he knew?

7 A. Yes, sir.

8 Q. And did he start to tell you things that he knew
9 regarding the actual robbery in this case?

10 A. Yes, sir. We started speaking with him, and
11 conducting the interview, and to his involvement.

12 Q. And if you would, kind of describe to me the interview
13 process. How do you actually get it into paper at this
14 point?

15 A. Basically, you know, usually the way I start is just,
16 "Look, the information's not right, what you've been
17 telling us. Why don't you go ahead and tell us the whole
18 story." At that time, they'll start telling where they'd
19 been at that night. And we ask them to go in chronological
20 order, you know, kind of, "Tell me what you did," through
21 the whole time. And he'll start describing the events as
22 he wants to tell them to us at that time. So once --

23 Q. Is that what Mr. Reid did at this point when you began
24 talking to him?

25 A. Correct.

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1 Q. And during this conversation did he basically give you
2 a story of what occurred the night of the robbery?

3 A. That's correct.

4 Q. And now did you type it right then or Detective Ayers,
5 did you type it right then -- Or I'm sorry, Herring not
6 Ayers.

7 A. We always just go through the story, and at that time
8 have it pretty much in your mind. It allows you to move
9 through that, when you're typing it up, a little faster
10 than sitting there trying to keep up with someone who is
11 speaking.

12 Q. So you kind of went through the story the first
13 time ---

14 A. Correct.

15 Q. --- and then went through it again, and at that point
16 one of you began typing?

17 A. Right.

18 Q. And during the course of that, was the statement then
19 typed up on the computer screen?

20 A. Yes, sir, it was.

21 Q. And how was it confirmed that, that was the statement
22 that Mr. Reid wished to give at that time?

23 A. At that point, we actually read the statement back to
24 him off the screen.

25 Q. Okay.

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1 A. Is that -- Are you --

2 Q. Yeah, that's what I'm asking.

3 A. Right.

4 Q. You read the statement back to him off the screen?

5 A. Read the statement back to him off the screen to see
6 if he wanted to change anything in the statement, see if
7 there was anything wrong, something that we had worded
8 incorrectly in the statement. Give him the chance -- If he
9 indicates there's anything to change, we would change a
10 word here or there, but I don't recall any changes, but --

11 Q. Would that include if he wanted to add something to
12 it?

13 A. Yeah. "Is there anything else" -- At the end of it,
14 we always ask, "Is there anything else you want to add? Is
15 there anything else you need to say in this?"

16 Q. Did y'all say that to Mr. Reid that night?

17 A. I -- every one of my statements, I always do them that
18 way.

19 Q. And after it was read, did he agree that, that was his
20 statement?

21 A. It was -- He indicated, yeah, that was correct as far
22 as the story.

23 Q. Do y'all indicate the time period in which you take
24 the statement as far as how long he's with you during that
25 period of time?

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1 A. Yes, sir.

2 Q. And what were the actual date and time period that
3 y'all did the statement?

4 A. This was actually on October the 2nd at 1:45 p.m. when
5 we started in the afternoon. And we finished that same day
6 around 2:15 p.m. -- 30 -- 40 -- 30.

7 Q. At that point after he confirms that, that's the
8 statement, how do you then again put it on paper because at
9 that point it's on the computer. Right?

10 A. At that time, everything's fine with the statement
11 they have. We'll print it out, and we'll go over to the
12 printer and bring the copy of that back in to them, and ask
13 them, "Look, this is" -- "This is the statement that we
14 just printed off. Here's your rights that we read to you
15 at the first part. Here's the other statement that I read
16 or had read to me, my statement and rights. This is just
17 some personal information about you, your name, your
18 address, and all that. All right, this is your statement.
19 If you want to, go ahead and read that again, and make sure
20 it's all the same that we just looked at that on the
21 computer." At that time, I'll ask them to go back and sign
22 that we did read them their rights. They did understand
23 their rights, and they wanted to go ahead and give the
24 statement. And at the end, we'll ask them to sign their
25 statement.

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1 Q. Is that what you did -- Is that what you and Detective
2 Herring did with Mr. Reid?

3 A. That's correct.

4 Q. Did he sign, waiving his *Miranda* rights at that point?

5 A. Yes, he did.

6 Q. Did he sign as well under the second information of
7 rights that you read to us?

8 A. Yes, sir.

9 Q. And then after looking over the statement, did he sign
10 the statement itself?

11 A. Yes.

12 Q. His statement?

13 A. Yes, he did.

14 Q. And there's a third page. If you would tell us what
15 that is.

16 A. The third page is what we refer to as the notary page.
17 It's basically that "You're swearing and affirming that the
18 statement is true." And he signed that one as well.

19 Q. And you were the one who notarized that, I believe.
20 Is that --

21 A. Yes, I notarized that.

22 Q. Detective Herring witnessed it?

23 A. Correct, yes. That is Les Herring.

24 Q. Now if you would, do you have a copy of that statement
25 in front of you?

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1 A. Yes, sir.

2 Q. I'm going to hand you this. I think we'll ultimately
3 mark this.

4 And that's State's Exhibit?

5 MADAME COURT REPORTER: I've got Thirty-eight, Mr.
6 Thompson.

7 MR. THOMPSON: All right.

8 (WHEREUPON: STATE'S EXHIBIT THIRTY-EIGHT PREMARKED
9 FOR IDENTIFICATION.)

10 Q. If you can tell me what State's Exhibit Thirty-eight
11 is?

12 A. This is the statement that we took from Donta Reid on
13 August -- October 2nd.

14 Q. Is that the original statement?

15 A. Yes, it appears to be the original.

16 Q. Looking over it, has it been altered or changed in any
17 way since you were with Detective Herring and you took that
18 statement from the Defendant?

19 A. No, sir.

20 Q. And again I'll ask you, at any time during this
21 interview, did he ask for his attorney or ask that he stop
22 speaking?

23 A. No, he did not.

24 Q. Did y'all offer him any benefit or hope of reward for
25 telling you anything?

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1 A. No, sir.

2 Q. Did anyone threaten or coerce him in any way?

3 A. No, sir.

4 Q. Thank you.

5 MR. THOMPSON: Your Honor, I ask to enter this into
6 evidence at this time, State's Exhibit Thirty-eight.

7 MS. INZERILLO: Just my previous objection.

8 THE COURT: All right.

9 MR. CHIARENZA: Yes, the same, subject to previous
10 objections.

11 THE COURT: Subject based on previous rulings,
12 objections overruled and admitted into evidence.

13 (WHEREUPON: STATE'S EXHIBIT NUMBER THIRTY-EIGHT
14 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

15 BY MR. THOMPSON:

16 Q. Detective, if you would, read the statement for us.

17 A. Do you want me to start at the rights and go all the
18 way through or just the statement itself?

19 Q. Well, we've already read the rights. And before you
20 actually start in the body of the statement, you had
21 mentioned that there was some personal information taken
22 there?

23 A. Yes, sir.

24 Q. In the personal information, do you confirm that he
25 could read and write and understand the English language?

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1 A. That's correct.

2 Q. And how much school had he said he had completed at
3 that time?

4 A. He stated he had completed 11 years, and that he could
5 read and write English.

6 Q. If you would, just then read the body of the statement
7 for us.

8 A. "Last night, October 1st, 2009, I called Maurice
9 Jackson on my cousin's cell phone. His name is Mike
10 Dunalon. His number is 803-207-3141. I asked him if he
11 wanted to smoke some weed. He said, 'Yes.' I went home,
12 and I called Maurice from home. His cell number is 342-
13 0215. He didn't answer his cell phone, so I walked over to
14 his house.

15 Before all of this, I had talked with Duke, a guy that
16 I knew from Northwestern High School. He had told me that
17 he wanted to make a lick and get some money. I was talking
18 with him at the Sunset Park. There was just me and him,
19 nobody else heard what was being said. He asked me if I
20 knew who had any money or weed, and I told him that Maurice
21 had some weed.

22 When I went over to Maurice's house, I called Duke on
23 Maurice's cell phone. Duke's cell phone number is 230-
24 5225. And I told him that there were two people at
25 Maurice's house because I was going to get Maurice to walk

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1 with me to Midtown to keep him out of it since there were
2 two other guys that were there and had weed too. Maurice
3 wouldn't walk to Midtown with me, and then I left.

4 I walked up the street to where Duke was at. He was
5 standing at Scoggins and Maple Street. And that's when I
6 told him that there was three people there instead of two.
7 And I told him they were on the porch smoking.

8 Duke walked over to the ditch where he had put a
9 .22-caliber rifle. It was black all over. It looked like
10 the butt had been cut off, and there was white tape around
11 the butt. I told him that he shouldn't do it, but he said,
12 'Fuck that, I'm going to get the money.'

13 As I was walking off, Duke was walking toward
14 Maurice's house. I was on Scoggins Street when I heard
15 what sounded like a whole clip being shot, like it was
16 automatic. It must have been at least 10 to 12 shots.
17 Duke didn't look like he was high or anything.

18 I have not talked with Duke since then. I was shown a
19 photo of him at the police department, and his hair is
20 shorter now than it was in the picture."

21 Q. And that was the statement he gave to you at that
22 point in the afternoon?

23 A. That's correct.

24 Q. After he gave that statement, Detective, can you tell
25 me where did y'all -- what did y'all do as a result of that

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1 information?

2 A. We began looking for Duke and drawing up warrants for
3 Duke involved in the case.

4 Q. And can you tell me, and Duke is who? What's his real
5 name?

6 A. Darius Jeter.

7 Q. Tell me as well, when he mentions that they wanted to
8 make a "lick," what was he describing to you? What was
9 that he --

10 A. Street language for "making a lick" is to do a
11 robbery.

12 Q. And as he gave you some of these numbers, were you
13 able to confirm that Maurice's number was actually the 324-
14 0215 that he had given you?

15 A. That's correct.

16 Q. How about the cell phone number for Duke at 230-5225?
17 Did you find that to be correct?

18 A. We determined that was an incorrect number.

19 Q. Now after you -- Then as you said, you started looking
20 possibly for Duke at this point in time. Were y'all able
21 to find him that day?

22 A. Yes, there were numerous detectives going different
23 ways, different avenues of investigation. At that time,
24 Duke was or -- Darius Jeter was spotted in Confederate Park
25 on Confederate Avenue, and officers responded to that area,

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1 and were able to take him into custody.

2 Q. And did you have a chance to talk to Duke as well that
3 afternoon?

4 A. I did not.

5 Q. Did one of the detectives, did he come -- Was he
6 picked up that afternoon?

7 A. Yes, he was picked up and brought to the station.

8 Q. Did you learn what he had spoken to the detectives
9 about at that point?

10 A. Yes.

11 Q. And as a result of that, did you then again go to
12 speak with Donta Reid?

13 A. Yes, we did.

14 Q. And when was the next time that you were involved with
15 speaking with Donta Reid?

16 A. If I can review my notes here. I don't know exactly.
17 Next time I was involved with speaking with Donta Reid was
18 on October the 2nd at 11:55 p.m., just before midnight.

19 Q. So just later that same day?

20 A. Right.

21 Q. And where was he at that time when y'all went to talk
22 to him?

23 A. He was at the station still.

24 Q. So he had been placed under arrest at that point; is
25 that correct?

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1 A. That's correct.

2 Q. And so when he -- Was he in the holding area back in
3 the station? Is that --

4 A. Yes, sir.

5 Q. Did y'all bring him out of the holding area to talk to
6 him?

7 A. Yes, sir.

8 Q. And who was with you at that time and spoke with him?

9 A. Myself and Detective Herring.

10 Q. So the same detective that was with you the first
11 time?

12 A. That's right.

13 Q. Did you go to the same place to conduct the interview?

14 A. That's -- The same interview room was used.

15 Q. All right. And did you follow the same procedures
16 when you went in?

17 A. That's correct.

18 Q. And once again, if you'll describe briefly those
19 procedures again so that we're familiar with them.

20 A. As we enter the room, ask them to have a seat. And
21 because he was in custody, we again read him his *Miranda*
22 rights. And I explained to him, "I know you had your read"
23 -- " had your rights read to you already, but I'm going to
24 read them to you again." And at that time --

25 Q. And did you read them to him the same way off your

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1 computer screen?

2 A. Exactly. Verbatim again off the computer screen, same
3 way I'd done it before.

4 Q. And did he indicate that he understood those rights?

5 A. He did.

6 Q. And is it the same waiver that you read to us just a
7 few minutes ago that you read to him again?

8 A. Exactly.

9 Q. Because that's what's on the computer screen at the
10 Detective Division?

11 A. That's correct.

12 Q. Okay. And at any point during the time that you spoke
13 to him this evening, did he invoke his right and ask to
14 have an attorney present or remain silent?

15 A. No, sir.

16 Q. Did y'all threaten or coerce him in any way at this
17 point?

18 A. No, sir.

19 Q. Now when you went back to talk to him, is there
20 anything you confronted him with at that point?

21 A. At that time we confronted him and advised him that we
22 had developed further information, further people that were
23 involved, including a female.

24 Q. And now again, just to clarify. He had once again
25 waived his rights at this point in time?

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1 A. That's correct.

2 Q. Did you conduct the interview the same way? Kind of
3 go over the story initially and then go back and begin to
4 type through it.

5 A. At that point, you know, we're going to advise him,
6 "Look, what you told us earlier, you know that's not
7 correct. We've developed further information. These
8 people are involved now, you know. You need to come
9 forward and help yourself out and tell the truth."

10 Q. Again, did you follow the same procedure that you had
11 before as far as basically having him tell the story before
12 you began typing? And then --

13 A. Correct. And then go through the scenario of what
14 they're going to explain to us at that time.

15 Q. And at that point, did he then give you another full
16 statement?

17 A. Yes, sir, he did.

18 Q. And once again, after the statement was typed out on
19 the computer, how was it relayed to the Defendant?

20 A. The same way. Again, after we finished, we would
21 review the entire statement with him again on the computer.
22 "Do you want to make any changes? Anything you want to add
23 or take out?" Again, we would print it out, bring it back
24 to him, show him the printed copy, explain to him the
25 rights, the advisement that he wants to waive his rights.

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1 And then allow him to read through the statement again if
2 he would like to, to make sure that he understands that it
3 was the same one.

4 Q. And at this point in time, did he indicate that he
5 wanted to change or alter anything in the statement?

6 A. No, sir.

7 Q. And he was given that opportunity?

8 A. That's correct.

9 Q. Okay. And so when the statement was typed out, did he
10 then sign, saying that was his statement?

11 A. Yes, sir, he did.

12 Q. And again, did he sign his waiver of rights on that
13 statement as well?

14 A. That's correct.

15 Q. And the final sheet, the affidavit on the back, did he
16 sign that as well?

17 A. That's correct.

18 MR. THOMPSON: I'll mark this as the next State's
19 Exhibit, Your Honor.

20 (WHEREUPON: STATE'S EXHIBIT NUMBER THIRTY-NINE
21 PREMARKED FOR IDENTIFICATION.)

22 Q. This is State's Exhibit Number Thirty-nine.

23 State's Exhibit Thirty-nine, if you can tell me what
24 that is.

25 A. This is the second statement that I was involved with

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1 in taking from Mr. Reid.

2 Q. And can you tell me again the hours that, that was
3 done.

4 A. This was done October 2nd at 11:55 p.m., going into
5 October 3rd at 12:35 a.m.

6 Q. All right. Now is that the original statement that
7 you took with Detective Herring?

8 A. It appears so.

9 Q. Has it been altered or changed in any way?

10 A. No, sir.

11 MR. THOMPSON: Your Honor, I ask to admit State's
12 Exhibit Thirty-nine into evidence at this time.

13 MS. INZERILLO: Subject to previous objections.

14 MR. CHIARENZA: And again, just renew previous
15 objections.

16 THE COURT: All right. Based on earlier rulings,
17 objections are overruled and the statement is admitted into
18 evidence.

19 (WHEREUPON: STATE'S EXHIBIT NUMBER THIRTY-NINE
20 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

21 BY MR. THOMPSON:

22 Q. Detective Ayers, if you would now, go to the body of
23 this statement and read to us what he told you that
24 evening.

25 A. "Earlier today on October the 2nd, 2009, I gave them

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1 additional information to Detective Herring in reference to
2 the shooting and robbery on Byar Street the night before.
3 I did not tell everything because I was scared.

4 What really happened was I was over in Sunset Park.
5 And I was going to walk over to Sam's house. Sam is a girl
6 named Samantha who lives on Keel's Avenue. I saw Duke in
7 the park, and we sat down and started talking. He started
8 asking if I was down with doing a lick that night to try
9 and get some money. I really wasn't wanting to do that,
10 but I was tired of being broke. I finally said, yes, I
11 would do it. He asked me if Maurice had any weed, and I
12 said, 'He should have some.' He asked me to call him up to
13 see if he had any, and I said to him, 'You know I ain't got
14 no phone.' He said he was going to call Sam and tell her
15 what was going on with doing a lick on Maurice for any
16 weed.

17 I walked to Sam's house, and she asked me if I had
18 talked to Duke to know what was going on tonight. I told
19 her that I had talked to him and I knew the deal.

20 A little bit later, we got in a dark-colored truck
21 that Sam was driving. I got in the back part of the truck,
22 and she started to drive off to find Duke.

23 We got to Parks Grocery, and we saw Duke and he got in
24 the truck. I told him to drop me off, but Sam told me to
25 call Maurice first to see if he had some weed. I called

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1 Maurice from Sam's phone, and he said he didn't have any
2 weed right then, but he said he could get some. He told me
3 to come by when I got home.

4 I had Sam drop me off at my house and she and Duke
5 were going over to Reynolds Street to park the car and wait
6 in the dark. I called Maurice from my house phone, and he
7 didn't pick up so I walked down there to his house.

8 I saw Banks and Kenny Boo on the porch with Maurice.
9 Maurice said the guy he gets his weed from was asleep and
10 wouldn't wake up. I asked him if I could use his phone. I
11 called Sam's phone from Maurice's phone and made it sound
12 like I was calling her to get some weed. She asked me how
13 much I wanted, and I said, 'two.' I asked Maurice to walk
14 to midtown with me, and he said he didn't want to go.

15 I started to walk down Byar Street to Maple Street,
16 and Sam and Duke were standing on the corner of Scoggins
17 Street. Duke pulled a .22-caliber rifle out of the ditch.
18 It was the same way that I described it to you in the other
19 statement. Duke asked me how many people were at the
20 house, and I told him there were three people. I told him
21 that it was Maurice, Banks, and Kenny Boo. He asked what
22 they were doing, and I told him they were smoking. He
23 said, 'Man, I'm about to go up on the porch and rob all
24 three of them.' I told him not to do it, and he just
25 started walking off towards Maurice's house. Sam was going

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1 with him, and I called her -- called out to her to come
2 back and she it would be all right, and she would be right
3 back.

4 I went to the truck where it was parked on Reynolds
5 Street and sat there for about 5 minutes. That's when I
6 heard gunshots.

7 I saw them come running towards the truck, and Duke
8 put the gun in the back of the truck, and he said he
9 thought he shot one of them. Duke said he got a cell
10 phone.

11 I told them I was going to walk over to Sam's house,
12 and they drove off in the truck. I didn't want to ride
13 with them because I had a bad feeling that they were going
14 to get pulled over, and I didn't want to get caught up in
15 their mess. I walked to her house and about an hour later,
16 I got a call from my step-dad and he said that two of the
17 boys down the road had gotten shot and were in the
18 hospital. He asked me if I was safe, and I said I was
19 okay. That was when Duke threatened me and Samantha that
20 if we talked about it to anyone, he would shoot us and our
21 house up. Once he threatened me was when I got scared to
22 tell you all the story."

23 Q. And that was the statement he gave to you then, that
24 evening around 11:55 going into early morning the next day.

25 A. That's correct.

DETECTIVE TIM AYERS: DIRECT BY MR. THOMPSON

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1 Q. Can you tell me again if you would, you mentioned some
2 people by nicknames. Could you describe what their real
3 names were? For instance, he mentions "Banks." Did he
4 tell you who Banks was?

5 A. Banks is Mr. King.

6 Q. That's Tyrone King?

7 A. That's correct.

8 Q. And he mentioned "Kenny Boo." Do you know --

9 A. Kenny Boo is Kenny Cunningham.

10 Q. And then he mentioned "Maurice."

11 A. Maurice is Mr. Jackson.

12 Q. So the three young men at 340 or -- [REDACTED]
13 Correct?

14 A. The three victims in this case. Yes, sir.

15 Q. Okay. Now, were you ultimately able to get the phone
16 records of Samantha Ervin's phone?

17 A. That's correct, we were.

18 Q. And were you able to confirm that these phone calls
19 had occurred?

20 A. We were able to determine these phone calls were made
21 in the time frame just before the robbery occurred.

22 Q. And can you tell me as well in your investigation,
23 ultimately, did you -- I know while it doesn't mention --
24 Well, only mentions Samantha Ervin here. Were y'all able
25 to ultimately interview Samantha Ervin as well?

DETECTIVE TIM AYERS: DIRECT BY MR. THOMPSON

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1 A. Yes, sir. I was not involved in this.

2 Q. You were not involved in that?

3 A. I just notarized the signatures when she signed.

4 Q. Okay. But ultimately as a result of what Donta Reid
5 has told you here, was she interviewed as a result of that
6 by some detectives?

7 A. Yes, sir.

8 Q. Detective, to wrap things up now with you. There was
9 a good bit more investigation that was done after this; is
10 that correct?

11 A. Yes, sir.

12 Q. Did y'all also all end up -- Did you or one of the
13 other detectives end up interviewing Aileen Newman as well
14 as a result of this?

15 A. The search was done and she was located in Charlotte.
16 And afterwards, an interview was done with her.

17 Q. And ultimately -- I'll just leave that. That's all
18 for right now.

19 Thank you. Answer any questions the Defense has.

20 THE COURT: We'll stop for the day and do this cross
21 examination in the morning because it's a little after
22 6:00. So we're going to stop for the day.

23 Keep in mind my earlier admonitions. They continue
24 throughout the trial. We'll start back at 9:30. So be
25 back at 9:30, and we'll try to start promptly thereafter

DETECTIVE TIM AYERS: DIRECT BY MR. THOMPSON

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1 again. Have a pleasant evening.

2 (JURY EXITS COURTROOM AT 06:12 PM.)

3 THE COURT: We'll start back at 9:30 in the morning.

4 MR. CHIARENZA: Thank you.

5 THE COURT: Have a pleasant evening.

6 (COURT RECESSED AT 06:15 PM.)

7 (COURT BACK IN SESSION WEDNESDAY, NOVEMBER 16, 2011 AT
8 09:56 AM.)

9 THE COURT: Thank you. Take your seats please.

10 If we can have the witness back on the stand.
11 Procedurally, we're with Mr. Reid's Counsel, cross
12 examination.

13 You can bring in the jury.

14 (WITNESS RETURNS TO WITNESS STAND.)

15 (JURY ENTERS COURTROOM AT 09:58 AM.)

16 THE COURT: Good morning. I see we've finally been
17 able to locate some water. We're ready to get started
18 back. If you will call the witness that has been directly
19 examined by the State, and now the Defense has the
20 opportunity to cross examine.

21 Ms. Inzerillo.

22 MS. INZERILLO: May it please the Court, Your Honor.

23 THE COURT: Yes, ma'am.

24 CROSS EXAMINATION

25 DETECTIVE AYERS BY MS. INZERILLO:

DETECTIVE TIM AYERS: CROSS BY MS. INZERILLO

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1 Q. Detective Ayers, your role in this case was as case
2 agent along with Detective Herring. Right?

3 A. That's correct.

4 Q. And as case agent, essentially that means that you
5 guys are managing all parts of the case; is that fair?

6 A. That's correct.

7 Q. So essentially, any leads or information that come in,
8 you guys, sort of, sift through; perhaps, follow up with
9 witnesses; go through any paperwork; anything like that?

10 A. All of it should be directed to the two of us, yes.

11 Q. So it's fair to say that as, sort of, lead
12 investigator along with Detective Herring, you have a
13 pretty good overview of the case?

14 A. That's correct.

15 Q. Now, one of the things that you did in this case was
16 you spoke to Donta Reid. Right?

17 A. Yes, ma'am.

18 Q. And you indicated yesterday under direct that you
19 initially spoke to Donta about - or took a statement from
20 Donta about 1:45 on October 2nd; is that right?

21 A. The one in the -- the afternoon, 1:45 p.m.?

22 Q. Right.

23 A. Correct, yes.

24 Q. And you can keep that out because I'm going to ask you
25 some more questions on it.

DETECTIVE TIM AYERS: CROSS BY MS. INZERILLO

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1 And that was approximately about 12, 13 hours after
2 the incident on the porch; is that right?

3 A. Correct.

4 Q. And you went through yesterday how you and Detective
5 Herring were in a room with Donta and took the statement?

6 A. Yes, ma'am.

7 Q. And you indicated that, essentially, you interview
8 them first, and then you typed in what he says; is that
9 right?

10 A. That's correct.

11 Q. And in doing that, on the form that you used, you also
12 take personal information about Mr. Reid; is that right?

13 A. That's correct.

14 Q. And on this form, for example, the personal
15 information reflects the date of birth of May 1992; is that
16 right?

17 A. That's correct. May 12th.

18 Q. Right. Of 1992?

19 A. Yes.

20 Q. And that meant in 2009, he was 17 years old. Right?

21 A. Correct.

22 Q. So when he came in to meet with you, he didn't come in
23 with his mom or his step-dad or anything like that?

24 A. No.

25 Q. And it was just him in a room with you and Detective

DETECTIVE TIM AYERS: CROSS BY MS. INZERILLO

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1 Herring?

2 A. Correct.

3 Q. And this personal information also reflects that I
4 have a phone number of 325-8040. Right?

5 A. That's what he provided, yes.

6 Q. And, I believe, you touched on briefly yesterday that
7 you did subpoena some cell phone records in this case?

8 A. Yes, ma'am.

9 Q. And, essentially, just to kind of put in on the
10 context, in the age of cell phones and that type of thing,
11 law enforcement now has the ability to subpoena cell phone
12 records to see if there's any calls made back and forth,
13 any text messages back and forth, that type of thing.
14 Right?

15 A. You can, yes.

16 Q. And your understanding from the investigation is there
17 were the -- Mr. King and Mr. Jackson at least did have some
18 cell phones in their possession?

19 A. Yes, ma'am.

20 Q. And so, anytime you got a phone number, you were able
21 to subpoena those records to see if there was anything from
22 those records that could yield any clues about any
23 conversations or contact right around the time of the
24 robbery on the porch?

25 A. Yes, ma'am.

DETECTIVE TIM AYERS: CROSS BY MS. INZERILLO

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1 Q. And I believe you indicated yesterday under direct
2 that you did subpoena that, and there were some phone calls
3 made between Maurice's cell phone and Samantha Ervin's cell
4 phone?

5 A. Yes, there were.

6 Q. And you also subpoenaed -- had the ability to cross-
7 reference this 325-8040 number with the records that you
8 received, Maurice Jackson's records; is that right?

9 A. If there was a call made to his house, it would show
10 up.

11 Q. It would have gone there?

12 And to your recollection, there were a couple of calls
13 made from Donta Reid's house to Maurice Jackson's cell
14 phone; is that right?

15 A. I would have to go back and review the records. The
16 main ones that I paid attention to were the cell phone
17 calls, and the one that was outgoing from the land line,
18 the house phone ---

19 Q. Okay.

20 A. --- at [REDACTED].

21 Q. On this day at 1:45 when you're speaking to Donta.
22 Again it's you and Detective Herring in an interview room;
23 is that right?

24 A. Yes, ma'am.

25 Q. And he is, essentially at this point, you have placed

DETECTIVE TIM AYERS: CROSS BY MS. INZERILLO

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1 him under arrest. Right?

2 A. That's correct.

3 Q. And conveyed to him in some manner that you guys were
4 investigating him?

5 A. Yes, ma'am.

6 Q. I know yesterday you read through the statement. I'm
7 not going to ask you to do that again. But I just want to
8 have you reference a couple of things in the statement.
9 From being lead investigator and investigating the case,
10 you know there are certain facts that came to your
11 attention during the investigation of the case?

12 A. Correct.

13 Q. One of those facts being, Donta Reid went to Maurice
14 Jackson's house. Right?

15 A. Correct.

16 Q. And that he made a phone call from the porch?

17 A. Made -- There was -- Yes.

18 Q. On Maurice's cell phone?

19 A. Correct.

20 Q. And that sometime around -- Actually, prior to that,
21 he had asked Maurice to walk with him to Midtown?

22 A. That's correct.

23 Q. And then he made the phone call, and then he ended up
24 leaving, walking toward, essentially, Scoggin Street, Byars
25 Street area; is that right?

DETECTIVE TIM AYERS: CROSS BY MS. INZERILLO

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1 A. Yes, ma'am.

2 Q. So looking at the first statement, Donta does tell you
3 about midway down the paragraph on the first page, when
4 he's talking to this person Duke, "He asked me if I knew
5 who had any money or weed, and I told him that Maurice had
6 some weed." Right?

7 A. That's correct.

8 Q. And from your investigation, you learned that there
9 was some discussion about, perhaps, taking some weed or
10 some money from someone?

11 A. Yes, ma'am.

12 Q. And he goes a little bit further as describing the
13 number of people at the house. And he told you on October
14 2nd, that he had indicated there were two people at
15 Maurice's house. Right? Which is about two lines past.

16 A. "I told him there were two -- There was two people at
17 Maurice's house."

18 Q. And of course from your investigation, you know there
19 was a snippet of conversation overheard about two people.
20 Right?

21 A. Correct.

22 Q. And later on, again, a couple of lines down, he also
23 relays to you on October 2nd that Maurice wouldn't walk to
24 Midtown with him, so he left. Right?

25 A. Correct.

DETECTIVE TIM AYERS: CROSS BY MS. INZERILLO

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1 Q. Now he tells you that he goes back towards where Duke
2 was at. Right? Which is towards Scoggins and Maple
3 Street?

4 A. Right.

5 Q. And in this statement, which is the first statement he
6 gives you on October 2nd, he tells you, and I'm going to
7 read directly from the statement, "I told him," meaning
8 Duke, "that there were three people there instead of two."
9 Right?

10 A. Yes, that's correct.

11 Q. "And that they were on the porch smoking." Right?

12 A. Correct.

13 Q. He then mentions that Duke picks up a .22-caliber
14 rifle. Right?

15 A. Yes, ma'am.

16 Q. Which you knew from your investigation was the caliber
17 of bullet found at the scene?

18 A. That's correct.

19 Q. And then he says, "I told him that he shouldn't do
20 it." Meaning, he's telling Duke he shouldn't do it. "but
21 he," meaning Duke, "said 'Fuck that, I'm going to get the
22 money.'" Right?

23 A. Correct.

24 Q. And then he indicates, he has the exchange with Duke.
25 He walks away, and Duke walks towards the house. Right?

DETECTIVE TIM AYERS: CROSS BY MS. INZERILLO

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1 A. That's -- That's what his statement...

2 Q. And then a couple of lines down, he indicates that it
3 must have been at least 10 or 12 shots that he heard?

4 A. Correct.

5 Q. And that, again, you being lead investigator on the
6 case, know that there was about 10 or 12 either spent
7 casings or projectiles found on the scene. Right?

8 A. Yes, ma'am.

9 Q. So this was the first statement that he gives you?

10 A. Yes, ma'am.

11 Q. And you know from your investigation that these facts
12 that he's relaying to you are true. They're supported by
13 the investigation.

14 A. They seem to match the other evidence that we've been
15 able...

16 Q. Now, about 10 hours later, you actually speak with
17 Donta again. Right?

18 A. Yes, just before midnight we started again.

19 Q. And to kind of put this in context, you spoke to him
20 at 1:45 and again at somewhere around midnight, but it's
21 your understanding that Detective Herring had spoken to him
22 in between that time; is that right?

23 A. That's correct.

24 Q. Okay. And Detective Herring was in the room with you
25 at the first statement, and again at this next statement

DETECTIVE TIM AYERS: CROSS BY MS. INZERILLO

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1 that you requested for. Right?

2 A. That's correct.

3 Q. And essentially, while you guys are investigating the
4 case when there's, sort of, common officers involved, you
5 don't need the person you're talking to, to start all over
6 again. You need details. Right?

7 A. Right.

8 Q. Because in fairness, the three people in the room,
9 you, Detective Herring, and Donta, you've discussed this
10 before?

11 A. Yes, ma'am.

12 Q. Okay. And so this third statement, essentially, you
13 go back to him because you need information from him on
14 some more details of that night; is that right?

15 A. Yes. We had developed further evidence in the case
16 and knew that the first statement didn't contain the
17 evidence that we had at that point.

18 Q. Okay. But it did contain very significant details
19 that were purporting with your investigation?

20 A. This statement --

21 Q. The first statement.

22 A. The first statement had details in it that were
23 significant in the case, but as the case developed, it was
24 obvious there was more to it.

25 Q. And so, about a little before midnight that night, you

DETECTIVE TIM AYERS: CROSS BY MS. INZERILLO

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1 went -- you and Detective Herring went back into the room
2 and spoke with Donta again. Right?

3 A. Yes, ma'am.

4 Q. And again, it was just him in the room with the two of
5 you guys. Right?

6 A. Yes, ma'am.

7 Q. And he, and I'm pointing your attention to that third
8 statement. He indicates in the second line, "I did not
9 tell everything because I was scared." Right?

10 A. Yes, ma'am.

11 Q. So he's initially told you about 24 hours after the
12 fact that he is scared? Someone has scared him, he's
13 scared of a fact, or some reason to explain to you why he's
14 not been completely truthful?

15 A. That's what he stated to us.

16 Q. Now he details, you know -- He inserts Samantha
17 Ervin's name in this statement; is that right?

18 A. Yes, ma'am.

19 Q. And that's essentially because you guys had
20 information that Samantha Ervin was involved?

21 A. Yes, ma'am.

22 Q. So when you guys talked with him again on this date,
23 you told him, "Look we know Samantha Ervin is involved, you
24 need to tell us what you know." Right?

25 A. Yes, ma'am, basically.

DETECTIVE TIM AYERS: CROSS BY MS. INZERILLO

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1 Q. Basically. Okay. And so he starts off this statement
2 after telling you that he did not tell everything because
3 he was scared. He goes a little bit -- He's explaining
4 seeing Duke in the park. And he says that Duke asked if he
5 was down with doing a lick that night to try to get some
6 money. Right?

7 A. That's what he stated.

8 Q. And as you testified yesterday, "doing a lick"
9 essentially means robbing somebody?

10 A. Yes, ma'am.

11 Q. And after that he says, "I wasn't really wanting to do
12 that, but I was tired of being broke." Right?

13 A. Yes, ma'am.

14 Q. And again, because we did have you go through the
15 statements yesterday, I won't have you read every line, but
16 I'm going to turn your attention to the second page. In
17 the second line of the second page Donta continued, "I told
18 them to drop me off, but Sam told me to call Maurice first
19 to see if he had some weed." Right?

20 A. Correct.

21 Q. So he's indicating to you, it was at Sam's direction
22 that he get in contact with Maurice?

23 A. That's what he stated here.

24 Q. So he did indicate that he called Maurice from Sam's
25 phone and had a conversation with him. Right?

DETECTIVE TIM AYERS: CROSS BY MS. INZERILLO

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1 A. Yes, ma'am.

2 Q. And again, you did pull the phone records and that was
3 substantiated by your review of the phone records of
4 Samantha Ervin's phone?

5 A. That's correct.

6 Q. He indicates he had Sam drop him off at his house.
7 Right?

8 A. Yes, ma'am.

9 Q. And that he called Maurice from his house phone, but
10 Maurice didn't pick up. So he walked down to Maurice's
11 house; is that right?

12 A. That's correct.

13 Q. Okay. He then indicated to you, "I saw Banks and
14 Kenny Boo on the porch with Maurice." Right?

15 A. Yes, ma'am.

16 Q. And we know "Banks" is Tyrone. Right?

17 A. Correct.

18 Q. And "Kenny Boo" is Kenny Cunningham. Right?

19 A. Yes, ma'am.

20 Q. And you of course in your investigation knew that
21 Tyrone, and Kenny, and Maurice were all hanging out on the
22 porch at that time?

23 A. Yes, ma'am.

24 Q. Okay. So then he indicates, "I asked him," meaning
25 Maurice, "if I could use his phone." Right?

DETECTIVE TIM AYERS: CROSS BY MS. INZERILLO

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1 A. Yes.

2 Q. And again, you knew from your investigation, he did
3 use Maurice's phone. Right?

4 A. That's correct.

5 Q. That he called Sam's phone from Maurice's phone.
6 Right?

7 A. Correct.

8 Q. And again, from your review of the phone records, you
9 knew there was phone contact between Sam's phone and
10 Maurice's phone?

11 A. That's correct.

12 Q. He does indicate in the next line that she's having a
13 conversation with him, and he said, "two." Right?

14 A. Yes.

15 Q. Which again, as in the previous statement from your
16 investigation, you were aware that there was a snippet of
17 conversation heard saying, "two" or "two people," something
18 like that?

19 A. Yes, ma'am.

20 Q. He indicates he asked "Maurice to walk to Midtown with
21 me," but Maurice didn't want to go. Right?

22 A. Correct.

23 Q. And again, not to beat a dead horse, but you knew
24 that, that wasn't a fact that was revealed by your
25 investigation. Right?

DETECTIVE TIM AYERS: CROSS BY MS. INZERILLO

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1 A. Correct.

2 Q. In this statement as well, he also describes it as a
3 .22-caliber rifle. Right?

4 A. Yes, ma'am.

5 Q. Which we know from Forensics was the type of bullet
6 found at the scene?

7 A. Yes.

8 Q. He also again describes a meeting between him and
9 Duke, and now says that Sam was there. Right?

10 A. Yes.

11 Q. He says, "Duke asked how many people were at the
12 house, and I told him there were three people." Right?

13 A. Correct.

14 Q. He says that he then asked what they were doing, "I
15 told them they were smoking." Right?

16 A. Correct.

17 Q. Which is exactly the same thing he told you in the
18 first statement. Right?

19 A. That's correct.

20 Q. And again in this statement, Donta said, "he" meaning
21 "Duke" said, "Man, I'm about to go up on the porch and rob
22 all three of them." Right?

23 A. Correct.

24 Q. And again he tells you in this statement, "I told him
25 not to do it, and he just started walking off towards

DETECTIVE TIM AYERS: CROSS BY MS. INZERILLO

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1 Maurice's house." Right?

2 A. Correct.

3 Q. In this statement he indicates Sam started walking
4 with Duke. He told her to stop or come back, and she
5 wouldn't come back. She went home; is that correct?

6 A. That's correct.

7 Q. Okay. Now, he ends this statement by saying he got a
8 phone call from his stepfather about the incident on Byars
9 Street and said, "That was when Duke threatened me and
10 Samantha that if we talked about to anyone, he would shoot
11 us and our house up." Right?

12 A. That's correct.

13 Q. "Once he threatened me was when I got scared to tell
14 you all the story." Right?

15 A. Correct.

16 Q. Which kind of refers back to the initial thing he told
17 you was, "The reason I didn't tell you everything initially
18 was because I was scared"?

19 A. Correct.

20 Q. And he's conveying to you that he has been actually
21 threatened by Duke?

22 A. That's what he stated.

23 Q. Right. That if he told anyone what happened, he would
24 be shot, or his house would be shot up; is that right?

25 A. That's what he stated to us.

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1 Q. Okay. Detective Ayers, I had asked you sort of at the
2 beginning of this questioning about any phone calls made
3 from Donta's home phone and Maurice's cell phone. Right?

4 A. Correct.

5 Q. And you do recollect subpoenaing records from Cricket;
6 is that right?

7 A. Yes, ma'am.

8 Q. Okay. And you subpoenaed records from Cricket because
9 that was the service that Maurice Jackson had?

10 A. That's correct.

11 Q. And you knew his phone number. Right?

12 A. Yes, ma'am.

13 Q. And so you were able to look at records and sort of
14 cross-reference his phone number with any other phone
15 numbers you may have; is that right?

16 A. Yes, ma'am.

17 Q. Okay.

18 MS. INZERILLO: May I approach the witness, Your
19 Honor?

20 THE COURT: Yes, ma'am.

21 Q. I'm going to show you these phone records and see if
22 you recognize those as the phone records that you
23 subpoenaed.

24 A. Yes, ma'am. They appear to be.

25 Q. I'm going to turn your attention to an entry at

DETECTIVE TIM AYERS: CROSS BY MS. INZERILLO
CROSS BY MR. CHIARENZA

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1 10-1-2009.

2 MR. THOMPSON: Objection, Your Honor. If she's going
3 to publish the record, we ask that she enter it into
4 evidence.

5 THE COURT: This is what record?

6 MS. INZERILLO: Cell phone records, Your Honor. I
7 just want to question him about one section of them.

8 MR. THOMPSON: We have no objection to them being
9 published once it's entered into the record.

10 THE COURT: Then they need to be part of the record
11 for it to be published.

12 Q. So Detective Ayers, after speaking to Donta
13 essentially twice in this about 12 to 24 hour period,
14 right? He gave essentially two statements to you that do
15 have very common, similar facts in them; is that right?

16 A. The basics were there, and then additional information
17 was added to each thing, yes.

18 Q. Okay.

19 MS. INZERILLO: No further questions, Your Honor.

20 THE COURT: Mr. Chiarenza?

21 MR. CHIARENZA: Thank you, Your Honor.

22 CROSS EXAMINATION

23 TIM AYERS BY MR. CHIARENZA:

24 Q. Detective, you are one of the co-lead case agents in
25 this case?

DETECTIVE TIM AYERS: CROSS BY MR. CHIARENZA

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1 A. Yes.

2 Q. And as such, you're allowed to remain in the courtroom
3 during the entire proceedings. That's correct, right?

4 A. Yes, sir.

5 Q. And you've been here during the entire proceedings.
6 Correct?

7 A. Yes, sir.

8 Q. You've heard all the testimony from all the witnesses
9 so far?

10 A. Yes, sir.

11 Q. Now obviously as a case agent, you've got a lot of
12 involvement in this, so I'm going to try and break it down
13 into the various aspects that you've been involved with.
14 Going back to something you testified to yesterday, which
15 is having taken Mr. Cunningham's statement who was one of
16 the individuals on the porch. You recall taking his
17 statement. Correct?

18 A. Yes, handwritten statement in my handwriting, at the
19 hospital.

20 Q. And Mr. Cunningham sustained a gunshot wound to the
21 leg; is that correct?

22 A. Through and through on his leg and also into his right
23 foot.

24 Q. And these weren't -- And you're not a doctor, but I'll
25 just ask you to render an opinion as a police officer.

1 You've probably had some dealings with gunshots. These
2 were not life-threatening wounds were they?

3 A. They did not appear to be life-threatening.

4 Q. And I know you testified that it appeared Mr.
5 Cunningham was in some pain, but he was clearly lucid
6 enough to converse with you wasn't he?

7 A. Yes, he was able to give us some details, yes.

8 Q. And in fact, you took a statement from him and made it
9 part of your investigatory files in this case?

10 A. Correct.

11 Q. And to some extent relied on some of the information
12 he gave you to do follow-up investigation in this case?

13 A. Definitely. Yes, sir.

14 Q. So you either, based on dealing with his current
15 injury or -- Nothing else gave you reason to consider his
16 statement to be inherently unreliable or not worth
17 following up on?

18 A. No, sir.

19 Q. Okay. I believe you also testified that there were
20 portions of Mr. Reid's statement that were given to you
21 which indicated there was an individual named "Duke Darius
22 Jeter" involved in this case?

23 A. Yes.

24 Q. Mr. Jeter is not on trial here today?

25 A. No, he's not.

DETECTIVE TIM AYERS: CROSS BY MR. CHIARENZA

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1 Q. And Duke, that's not my client's nickname?

2 A. No, sir.

3 Q. So when Mr. Reid is discussing with you an individual
4 named Duke Jeter having the gun, and Duke Jeter saying
5 things like "F that, I'm going to go do this" and all that,
6 he's talking about another individual who is not in this
7 courtroom here today?

8 A. That's correct.

9 Q. And based on some of the information that you received
10 regarding Mr. Jeter, you, yourself actually sought the
11 search warrant for Mr. Jeter's residence; is that correct?

12 A. That's correct.

13 Q. Do you recall issuing -- Were you involved in the
14 issuing of that warrant? Processing, get going, and
15 actually conducting the search?

16 A. I arrived on the scene in the middle of the search
17 inside. I did not go inside the residence. I was outside.

18 Q. And now, the way a search warrant works, just in
19 general, not specific to this case, but an officer who's
20 investigating a case or has reason to believe that there
21 may be evidence in a particular place would go to a judge,
22 and there is a formal process, but in laymen's terms
23 essentially, you would tell the judge orally and in writing
24 that, "Look, we're working on a case, and we've developed
25 information, and I've got certain experience which would

1 lead me to believe that certain items may be found at a
2 particular residence."

3 A. That's correct.

4 Q. We're looking for a gun, or a handkerchief, or a
5 stolen car, or whatnot, and we think it might be in a
6 garage, or a warehouse, or somebody's house. Right?

7 A. That is correct.

8 Q. And then if a judge reviews the information that you
9 give him, and the judge decides, "Well it sounds like
10 you're on the right trial. I'm going to let you search
11 this place," and they would issue the search warrant, and
12 then you could go search the place.

13 A. That's correct.

14 Q. And it's important that when you present that evidence
15 to a judge, that's called your affidavit. Isn't it?

16 A. Yes, sir.

17 Q. And an affidavit, I mean these things, you go to
18 training for these things, and they have particular
19 requirements that you need to fulfill and that you're aware
20 of when you're petitioning the judge for the search
21 warrant. Correct?

22 A. That's correct.

23 Q. And you've been trained that this affidavit should
24 indicate that one, you, based on your knowledge and
25 experience and your involvement in this case, you're in a

DETECTIVE TIM AYERS: CROSS BY MR. CHIARENZA

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1 position to be able to talk knowledgeably about what it is
2 you're looking for and where you might find it. Correct?

3 A. That's correct.

4 Q. And then your affidavit also wants to specifically
5 tell the Court exactly what items you are looking for and
6 where you believe those items would be?

7 A. That's correct.

8 Q. And you did that in this case?

9 A. Attempted to, yes.

10 Q. In regard to Mr. Jeter's house?

11 A. That's correct.

12 Q. Now do you recall in your affidavit swearing to the
13 Court that you believe the female was armed with a revolver
14 handgun?

15 A. That is in the affidavit, yes.

16 Q. And you swore to that information when seeking a
17 warrant for Mr. Jeter's -- to search Mr. Jeter's house?

18 A. That's correct.

19 Q. Did you ever tie a revolver handgun to a female in
20 this case?

21 A. No, we did not.

22 Q. You did find -- Do you recall what you found at Mr.
23 Jeter's house and recovered?

24 A. I did not find it, but there was a .9-millimeter
25 handgun at that residence.

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1 Q. Were there were also some bullets recovered at the
2 residence?

3 A. Possibly was.

4 Q. If I showed you the return for the search warrant,
5 would that refresh your memory as to what all you got out
6 of there?

7 A. Yes.

8 (WITNESS REVIEWING PAPERWORK.)

9 A. Yes.

10 Q. So you remember now what y'all got out of there?

11 A. Uh-huh.

12 Q. So were there some bullets taken from Mr. Jeter?

13 A. Yes, there was three .38-special caliber.

14 Q. And I don't -- It's not my intention to mislead the
15 jury. Those were a different caliber than what we've been
16 talking about so far in this case?

17 A. Correct.

18 Q. They weren't -- They didn't match up with any of those
19 casings that were taken from Byars Street?

20 A. No, sir.

21 Q. They were just bullets and -- Okay.

22 You did find five cell phones at Mr. Jeter's house.
23 Correct?

24 A. Correct.

25 Q. And there was, in fact -- There was indication that

DETECTIVE TIM AYERS: CROSS BY MR. CHIARENZA

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- 1 during the course of the robbery, some cell phones were
2 taken from the victims. Correct?
- 3 A. Correct.
- 4 Q. Found some marijuana at Mr. Jeter's house?
- 5 A. That's correct.
- 6 Q. And you've testified there was a weapon there but also
7 kind of along the lines of the bullets, y'all made a
8 determination that, that .9-millimeter pistol you found at
9 Mr. Jeter's house didn't have anything to do with this
10 robbery?
- 11 A. That's correct.
- 12 Q. Now where did the information come from that the
13 female had a gun?
- 14 A. I have no idea.
- 15 Q. But you put that in your sworn affidavit?
- 16 A. That was the information that was provided by numerous
17 officers. Sworn officers had provided information to
18 myself as well. Previous search warrants that were issued
19 had that in there. I didn't know if someone else had
20 relayed that information either to Detective Herring or one
21 of the other officers. It was in other affidavits for a
22 search warrant. So, I followed that same information in my
23 search warrant as well.
- 24 Q. So you personally swore in your affidavit to the judge
25 upon information that you did not have any personal

DETECTIVE TIM AYERS: CROSS BY MR. CHIARENZA

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1 knowledge about. Is that what you're saying?

2 A. I would have had personal knowledge that an officer
3 passed along that information to me.

4 Q. Okay.

5 A. Which officer it was, I cannot recall.

6 Q. Okay.

7 A. It would have had to been told to me, or I would have
8 never put it in there. And it was also included in other
9 search warrants.

10 Q. But those officers aren't the ones swearing to this
11 affidavit?

12 A. That's correct. But an officer can give me
13 information that I can swear to in that affidavit as well.
14 I don't have to have direct personal knowledge that I
15 directly saw that gun or was told by the witness or victim
16 that, that gun was there. And an officer can relay that
17 information to me as well.

18 Q. And that would be fine if a judge was aware of that.
19 But does anywhere in your affidavit say that "Other
20 officers told me"?

21 A. No.

22 Q. No, okay. In fact, a judge reading this affidavit,
23 there's nothing inherent in your affidavit here that would
24 indicate to a court that you were doing anything other than
25 relaying personal knowledge?

DETECTIVE TIM AYERS: CROSS BY MR. CHIARENZA

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1 (PAUSE.)

2 Q. Let me rephrase that. Is there any part of this
3 affidavit where you indicate, "I received information
4 from"?

5 A. No.

6 Q. This thing just simply tells the judge, your sworn
7 signature on it, information. It doesn't say anything
8 about where it's coming from. Correct?

9 A. Everything in that is information that I've received
10 from somewhere.

11 Q. Okay.

12 A. It could be from personal knowledge. It could be -

13 Q. But you're the case investigator.

14 A. --- from somebody telling me about phone records that
15 we were looking for cell phones. Exactly, but yes.

16 Q. But you are the one swearing to it?

17 A. That's correct.

18 Q. And you don't remember who told you anything. You're
19 the lead case agent in this case ---

20 A. Yes.

21 Q. --- and you do not remember who told you ---

22 A. No, I do not.

23 Q. --- about the female having a handgun?

24 A. No, sir.

25 Q. Okay. Now, was Mr. Jeter arrested after the search of

DETECTIVE TIM AYERS: CROSS BY MR. CHIARENZA

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1 his home or prior to the search of his home?

2 A. Mr. Jeter was taken into custody before the search of
3 his home in Confederate Park on the other charges, yeah.

4 Q. Okay. So y'all were -- Mr. Jeter was actually
5 involved in some other criminal action?

6 A. No, he was involved in this case at the time due to
7 the statements that we had. So he was taken into custody
8 on the warrants that we had active.

9 Q. And Mr. Jeter, y'all charged him with criminal
10 conspiracy related to this case. Correct?

11 A. I would assume that was what he was charged with.

12 Q. If I show you the warrant, would that --

13 A. He was charged with -- I think he was initially
14 charged with all the crimes.

15 Q. Okay, and that's where I'm getting at.

16 A. Yeah.

17 Q. So, and all of the crimes being -- Did you charge Mr.
18 Jeter with criminal conspiracy; murder; armed robbery;
19 possession of a firearm during the commission of a violent
20 crime; another count of armed robbery; another count of
21 armed robbery; assault and battery with intent to kill
22 based on shooting Mr. Cunningham, and of course the murder
23 would be based on the death of Mr. King; another charge of
24 criminal conspiracy. I apologize, there's just one
25 conspiracy. I went further on to another individual's

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1 warrants. Do I need to show you these, or would you agree
2 that you charged Mr. Jeter with all of them?

3 A. Yes.

4 Q. Okay. And when y'all charge somebody with a warrant,
5 there's some language you put on there, similar but not
6 exactly the same, as the kind of affidavit you put on a
7 search warrant. And that language says something to the
8 effect of "Law enforcement has done an investigation and
9 has reason to believe that -- Well first, it says what
10 happened, and then it says, "The affiant is swearing to
11 this warrant based on belief for various reasons. Right?

12 A. Correct.

13 Q. And you weren't the affiant on any of these warrants
14 for Mr. Jeter?

15 A. No, sir.

16 Q. Were you -- As case agent, did you have any sort of
17 supervisory or approval role in having these warrants
18 issued against Mr. Jeter?

19 A. No, there's a lieutenant, and all of us will come back
20 and we'll sit down and talk, and then either the case
21 agents will decide to go ahead with the warrants. We
22 usually discuss it with the lieutenant as well.

23 Q. And it's not uncommon to find on these warrants
24 that -- Warrant again -- We talk about warrants. You're
25 asking permission to do something. A search warrant is

1 permission to search something, and an arrest warrant is
2 permission to go arrest somebody.

3 A. Correct.

4 Q. And in both cases, they have to be signed off by a
5 judge who says, "Yeah, you've given me enough information.
6 This sounds like you ought to go do what it is you want to
7 do."

8 A. Correct.

9 Q. Okay. And when you're asking for that permission, and
10 in an arrest warrant, it may be not -- you may not have to
11 get as detailed as a search warrant, but you still have got
12 to give some kind of reason why you want to arrest the
13 person. Right?

14 A. Correct.

15 Q. Okay. And it's not uncommon for that reason to be
16 "The reason we think this is the guy is because we've done
17 a police investigation, we've recovered some evidence, or
18 we've got some sworn statements from witnesses, or maybe
19 even perhaps the defendants themselves." Correct?

20 A. Correct.

21 Q. And in fact in this case, Mr. Jeter's warrants
22 indicated all of that. You have knowledge that his warrant
23 indicated all those things?

24 A. I would have to review them to say definitely yes, but
25 I would say that they all, after the affidavit of the basic

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1 facts of it, would say police investigation, probably sworn
2 co-defendant statements, recovered evidence. Yes.

3 Q. Okay. But now, ultimately despite all of those things
4 that were alleged to have existed in the pursuit of the
5 warrant against Mr. Jeter, Mr. Jeter's charges were
6 ultimately dismissed by law enforcement?

7 A. Through further investigation, it was determined he
8 was not involved.

9 Q. But he was booked, arrested, searched, processed, put
10 into an orange jumpsuit, all that stuff. Had to make bond
11 and everything else.

12 A. Denied bond.

13 Q. Or had bond denied.

14 A. Correct.

15 Q. So had to spend a little time in the jail, or I don't
16 honestly know. Do you know how long he was in jail before
17 he was released?

18 A. I do not know. I know it was as soon as it was
19 determined within days of his arrest I know procedures were
20 underway to get him out.

21 Q. You testified some, I believe it was a combination
22 maybe of direct examination and cross examination by Ms.
23 Inzerillo, that one of the things law enforcement can do in
24 a case that involves telephone communication is determine
25 if indeed calls that were alleged to have been made were

1 made because you can just look at the records and say -

2 A. Correct.

3 Q. --- my phone number called your phone number.

4 A. Yes, sir.

5 Q. Y'all did that in this case. Right?

6 A. Yes, sir, we did.

7 Q. And in fact, y'all looked at a great deal of telephone
8 records to determine as far as who was calling who and
9 where those phone calls were made from?

10 A. Yes, we were given some false phone numbers that we
11 received records that didn't exist and other phone numbers
12 as well. There was several that we received.

13 Q. All right. And so not only can a review of those
14 records tell you if a particular call was made from a
15 particular number to a particular number, it can tell you
16 what time the call was made. Correct?

17 A. That's correct.

18 Q. And it can even -- Y'all even have a way to figure out
19 if their cell phones -- probably where the person was
20 standing within reasonable proximity, where they were when
21 they made the call based on what cell tower picked up the
22 call?

23 A. If you request a cell tower site information, on some
24 phones you get a general area triangulation there within
25 five hundred to a thousand yards of this area. Other ones

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1 can put you down to -- Other cell phones are good enough to
2 put you within five to eight feet of something.

3 Q. And in your review of all the various cell phone
4 records that y'all investigated in this case, none of them
5 led to any phone that you connected to Mr. Henson?

6 A. No, sir.

7 Q. Okay. There is no indication in your investigation
8 that as far as having to do with this robbery, or at this
9 time, or any of those records that there were any calls
10 made by or to Mr. Henson?

11 A. Nothing indicates that a way at all.

12 Q. And there's no -- And I just want to caution you here,
13 Detective, because other witnesses are likely to be called
14 who may testify to things that they said. I'm speaking
15 specifically about physical evidence, and you know the
16 difference, right, between physical evidence and
17 testimonial evidence? Of course you do, and I just want to
18 just prevent any mistakes from being made.

19 In this case, are you aware of any physical evidence
20 that bears any certain unique qualities or characteristics
21 or identifying features that can be linked specifically to
22 my client Mr. Henson?

23 A. You want -- You're going into forensic evidence?

24 Q. Yeah, that type.

25 A. Forensic, fingerprints, his DNA, no.

DETECTIVE TIM AYERS: CROSS BY MR. CHIARENZA

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1 Q. Exactly.

2 A. No.

3 Q. There are no, say, footprints in this case that have
4 been matched up to his particular shoe he wears?

5 A. No, sir.

6 Q. And there's no blood, or fingernail scrapings, or hair
7 samples that can -- that bear his DNA?

8 A. No, sir.

9 Q. And there are no fingerprints, like you said, at the
10 scene of the crime or anywhere else for that matter, that
11 have been linked to Mr. Henson as being involved in this
12 crime?

13 A. No, sir.

14 Q. And just to -- I just want to clarify some things
15 chronologically about some of the statements you were
16 involved in, in this case. And I don't want to hear
17 anything about what was in these statements. It's not
18 where I'm going. I just want to know the statement we've
19 been calling the *Statement Number Three* from Mr. Reid, that
20 was taken on October 2nd. Do you recall?

21 A. Started just before midnight, I believe. 11:55 p.m.,

22 ---

23 Q. Okay.

24 A. --- and went into, what, 30 minutes, 40 minutes into
25 the next day on the 3rd, if that long.

DETECTIVE TIM AYERS: CROSS BY MR. CHIARENZA

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1 Q. Okay. And up to that point -- I'm sorry. And then
2 you took a statement from -- Sorry, let me backtrack again
3 just one bit. In *Statement Number Three*, that's the first
4 time that Mr. Reid mentions a woman named Samantha Ervin;
5 is that correct?

6 A. That's correct.

7 Q. Okay. And then you did an interview with Ms. Ervin,
8 who I believe will testify here at some point. I don't
9 want to know what's in it. But you spoke to her on October
10 5th. Correct?

11 A. I did not.

12 Q. You didn't do Ms. Ervin's statement?

13 A. I did not do that interview. I had notarized the
14 signatures as she finished.

15 Q. Okay.

16 A. But I was not involved with the interview.

17 Q. No problem because that's even better. I just want to
18 know when it was taken. Was that one done on -- Can you
19 tell us when that statement was taken?

20 A. Samantha Ervin had a voluntary statement that she did
21 on November the 1st, but her sworn statement that she took,
22 that was taken from her by Detective Herring was on October
23 the 5th at 6:30 to 8:00.

24 Q. So that statement is taken after Mr. Ervin [sic]
25 implicated her into things in his *Number Three Statement*?

DETECTIVE TIM AYERS: CROSS BY MR. CHIARENZA
REDIRECT BY MR. THOMPSON

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1 A. Correct.

2 Q. And then after Ms. Ervin's statement down there at the
3 Law Enforcement Center, Mr. Reid finally does a *Number Four*
4 which is after Ms. Ervin's statement?

5 A. That's correct.

6 Q. Okay.

7 MR. CHIARENZA: Court's indulgence just a second, Your
8 Honor.

9 THE COURT: Certainly.

10 MR. CHIARENZA: That's all I've got, Your Honor.
11 Thank you.

12 REDIRECT EXAMINATION

13 DETECTIVE TIM AYERS BY MR. THOMPSON:

14 Q. Going back to Mr. Chiarenza's mentioned forensic
15 evidence. Actually in this case is there forensic evidence
16 that links anybody to the crime?

17 A. No, sir, there is not.

18 Q. And is that unusual as a detective in this type of
19 case?

20 A. No, sir.

21 Q. Now going back also to one of the questions that he
22 asked you about swearing out an affidavit. Can you tell me
23 as a case agent, are there times that you would swear
24 out -- Or that as case agent, you would have another
25 officer swear out an arrest warrant or some other type of

DETECTIVE TIM AYERS: REDIRECT BY MR. THOMPSON

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1 affidavit on your behalf?

2 A. Yes. The same with the arrest warrants. Detective
3 Harveston, who might not have been involved with doing
4 something at that time, She was doing some of the warrants.
5 You know, can you help us out? And I think, you know, the
6 same thing with the search warrants.

7 Q. So you're saying to help you out. Is that because you
8 are busy at that point in time, investigating?

9 A. Yes, correct.

10 Q. So you get someone else to help you by swearing out
11 the warrant for you?

12 A. That's correct.

13 Q. Do you relay the information to that person so they
14 can swear out the warrant?

15 A. You'll relay information to them, this is the facts
16 that I know in the case, and you'll give them to that
17 person to the best of your knowledge. And I give them the
18 location, what you're looking for, that type thing. And
19 they'll proceed with the warrant.

20 Q. And is that common practice within the police
21 department.

22 A. Yes, sir.

23 Q. And is that how you're also trained to do it?

24 A. Yes, sir.

25 Q. Now looking just briefly as to Darius Jeter. At his

DETECTIVE TIM AYERS: REDIRECT BY MR. THOMPSON

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1 residence when that search warrant was served, who all
2 lived at that residence, or who was at that residence? Was
3 it just him?

4 A. I know his mother was there. Without looking at the
5 return on it, it was made in the presence of, I think,
6 there was a total of three people at the residence when the
7 warrant was executed.

8 Q. So was it a residence that Darius Jeter himself owned,
9 or was it --

10 A. No, he lived there with his mother.

11 Q. All right. So other people lived there as well?

12 A. That's correct.

13 Q. Okay.

14 A. I think his brother also lived at the residence. As a
15 matter of fact, the .9-millimeter that was inside the
16 residence, the picture was taken of, was his brother's.
17 And there was paperwork with it that showed where he had
18 bought it at a pawn shop.

19 Q. So his brother was in legal possession of the .9-
20 millimeter?

21 A. That's correct.

22 Q. Okay. Now once again, going back to Darius Jeter.
23 Initially y'all did warrants on him, as Mr. Chiarenza
24 pointed out. Correct?

25 A. That's correct.

DETECTIVE TIM AYERS: REDIRECT BY MR. THOMPSON

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1 Q. Was that based off of the statement that Donta Reid
2 had given you?

3 A. It was the totality of everything, not just Mr. Reid's
4 statement. There was -- You know, we knew that our victims
5 were describing this exact rifle. You know, everything was
6 there that matched up. And with Mr. Reid's statement, it
7 did line up to where it appeared to be the truth at the
8 time.

9 Q. And speaking of that, you're talking about the
10 details. Did you tell Donta Reid those details before he
11 gave his statement?

12 A. No, sir.

13 Q. As a matter of fact, did you tell him any details of
14 the robbery or the incident before he gave his statement?

15 A. Would never have revealed that to him.

16 Q. So the details he provided you, he provided to you
17 without you suggesting?

18 A. Correct.

19 Q. Now of course, this is on -- We're talking about
20 things that happened on the 2nd and 3rd of October. Did
21 y'all continue to investigate the case after that?

22 A. Yes, sir.

23 Q. And can you tell -- Did you ultimately clear Darius
24 Jeter, Duke, from being involved in this case?

25 A. Yes, we were able to clear his name, involvement in

DETECTIVE TIM AYERS: REDIRECT BY MR. THOMPSON

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1 this case.

2 Q. Did that takes months or days?

3 A. It was several days. I would say by the 5th, 6th, at
4 the most, we knew that he was no longer the one that had
5 been portrayed as the shooter in this case.

6 Q. But was Darius Jeter also still arrested for something
7 unrelated to this?

8 A. He had some other charges unrelated to this case as
9 well.

10 Q. So you didn't actually let him out of jail. He stayed
11 on the other charges?

12 A. We were able to get those charges released to where he
13 could have a bond set on those other charges, but he was
14 still in jail on those charges -- additional charges.

15 Q. Okay. Thank you. No further questions.

16 MS. INZERILLO: Nothing, Your Honor.

17 MR. CHIARENZA: No, Your Honor.

18 THE COURT: You can step down. Have a seat. Thank
19 you.

20 (WITNESS LEAVING WITNESS STAND.)

21 THE COURT: Call your next witness.

22 MR. BRACKETT: The State would call Samantha Ervin.

23 (WITNESS ENTERS COURTROOM FROM HOLDING CELL ADJACENT
24 TO COURTROOM.)

25 MR. BRACKETT: Step right over here.

SAMANTHA LATREAL ERVIN: DIRECT BY MR. BRACKETT

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1 Can we remove the bracelets?

2 (WRIST BRACELETS/SHACKLES REMOVED FROM WITNESS.)

3 MR. BRACKETT: Put your left hand on the Bible, the
4 Clerk will swear you in.

5 MADAME CLERK: Raise your right hand, place your left
6 on the Bible.

7 (WHEREUPON: SAMANTHA ERVIN, BEING FIRST CALLED AND
8 DULY SWORN, TESTIFIED AS FOLLOWS:)

9 MR. BRACKETT: Ma'am, if you would please, just step
10 up into that little booth there. Be careful, it's one step
11 up. Don't trip. Have a seat in that chair.

12 DIRECT EXAMINATION

13 SAMANTHA ERVIN BY MR. BRACKETT:

14 Q. Would you please tell the jury your name, and spell
15 your last so the court reporter can get it right.

16 A. Samantha Ervin, E-r-v-I-n.

17 Q. How old are you, Samantha?

18 A. I am 24.

19 Q. And where do you live now?

20 A. Currently, here.

21 Q. And where do you live regularly?

22 A. [REDACTED]

23 Q. Where were you living back in 2009?

24 A. [REDACTED]

25 Q. And where is that?

SAMANTHA LATREAL ERVIN: DIRECT BY MR. BRACKETT

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- 1 A. Rock Hill, South Carolina.
- 2 Q. Have you lived in Rock Hill all your life?
- 3 A. Yes, sir.
- 4 Q. Are you married?
- 5 A. No, sir.
- 6 Q. Do you have any children?
- 7 A. Yes, sir.
- 8 Q. How old?
- 9 A. She's one.
- 10 Q. So were you pregnant when you got arrested for this
- 11 offense?
- 12 A. Yes, sir.
- 13 Q. And you had your daughter while you were incarcerated?
- 14 A. Yes, sir.
- 15 Q. Where is she now?
- 16 A. My mom has her.
- 17 Q. Now you lived, you said, at [REDACTED]
- 18 A. Yes, sir.
- 19 Q. Whose house was that?
- 20 A. My uncle Alfonso Leach.
- 21 Q. And who all lived there?
- 22 A. Alijah James, Shaleika Black, and me.
- 23 Q. And your uncle? Did he live there?
- 24 A. Yeah, Alphonso, yeah.
- 25 Q. How old was he?

SAMANTHA LATREAL ERVIN: DIRECT BY MR. BRACKETT

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- 1 A. Seventy-four.
- 2 Q. And has he just recently passed away?
- 3 A. Yes, sir.
- 4 Q. Now tell me, how old is Alijah James?
- 5 A. Twenty-one.
- 6 Q. And who is he to you?
- 7 A. He is my cousin.
- 8 Q. And Shaleika Black?
- 9 A. She is my cousin.
- 10 Q. She is Alijah's sister, I believe.
- 11 A. Yes, sir.
- 12 Q. So you were living there in October? September,
- 13 October of 2009?
- 14 A. Yes, sir.
- 15 Q. Who is Aileen Newman?
- 16 A. She was my ex-girlfriend.
- 17 Q. How old -- How did you meet her?
- 18 A. Through my cousin Lashonda Leach.
- 19 Q. And when did you meet her?
- 20 A. In September '09.
- 21 Q. How long was your relationship with Aileen Newman?
- 22 A. A couple of weeks.
- 23 Q. Where was she living back in 2009?
- 24 A. Charlotte and Rock Hill.
- 25 Q. Where did she spend most of her time?

SAMANTHA LATREAL ERVIN: DIRECT BY MR. BRACKETT

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1 A. In Rock Hill.

2 Q. Back in September and the first part of October of
3 2009?

4 A. Yes, sir.

5 Q. Did she have a nickname?

6 A. Lee Lee.

7 Q. Is that what everybody called her, Lee Lee?

8 A. Yes, sir.

9 Q. Now how about Davontay Henson. Who is he?

10 A. He is my cousin Alijah's friend.

11 Q. And how did you meet him?

12 A. Through Alijah.

13 Q. And about when did you meet him?

14 A. In September.

15 Q. Did he have a nickname as well?

16 A. B'more.

17 Q. B'more. Why did they call him B'more?

18 THE COURT: I think when we talk about months, we
19 might want to talk about years.

20 MR. BRACKETT: Okay.

21 Q. You said you met him in September of what year?

22 A. '09.

23 Q. Are all the people and relationships, everything,
24 we're focusing on '09?

25 A. Yes, sir.

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1 Q. So his nickname was B'more?

2 A. Yes, sir.

3 Q. Why did he have B'more? What was --

4 A. He was from Baltimore, Maryland.

5 Q. How long did you know him altogether as of October
6 1st, 2009?

7 A. A couple of weeks.

8 Q. And where was he living? Do you know?

9 A. On Flint Street in Rock Hill.

10 Q. Did he spend much time on Keels Avenue?

11 A. Yes, sir.

12 Q. How often would you see him in the later half of
13 September of 2009?

14 A. Almost every other day.

15 Q. Now can you stand up and look around the courtroom,
16 and tell me, do you see Davontay Henson, B'more? Do you
17 see him in the courtroom?

18 A. Yes, sir.

19 Q. Can you stand up and identify him for the jury?

20 (WITNESS STOOD.)

21 A. He's right there with that white shirt on.

22 Q. With the tie, sitting next to the gentleman here?

23 A. Yes, sir.

24 Q. So that's B'more?

25 A. That's B'more.

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1 MR. BRACKETT: I ask that the record reflect that the
2 witness has identified the Defendant Davontay Henson.

3 THE COURT: All right. The record will so reflect.

4 MR. BRACKETT: Thank you, Your Honor.

5 Q. How about Donta Reid?

6 A. Yes, sir.

7 Q. How do you know him?

8 A. Through my cousin Alijah.

9 Q. And do you know where he lived?

10 A. He lived on Byars Street.

11 Q. On Byars? And how long did you know him?

12 A. I just met him in September '09 also.

13 Q. And who introduced you to him?

14 A. My cousin Alijah.

15 Q. And did you see -- How often did you see him back in
16 September of '09?

17 A. Almost every other day.

18 Q. Does he have a nickname?

19 A. Yes.

20 Q. What was his nickname?

21 A. Crud.

22 Q. Crud?

23 A. Yes, sir.

24 Q. C-r-u-d?

25 A. Yes, sir.

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1 Q. Did he -- That's all right. Do you see him in the
2 courtroom?

3 A. Yes, sir.

4 Q. And where is he?

5 A. He is currently sitting right there.

6 Q. Can you tell me what he is wearing?

7 A. He has a yellow tie on.

8 MR. BRACKETT: I ask that the record reflect that the
9 witness has identified the Defendant Donta Reid.

10 THE COURT: The record will so reflect.

11 Q. Okay. I want to turn your attention to October 1st of
12 2009, that day. And tell the jury, just give them a real
13 brief overview from about the time you woke up to the
14 evening hours, what did you do that day?

15 A. Well I woke up that Thursday morning. My sister
16 called me, and I went with her to Lancaster.

17 When I got back from Lancaster, I hung out with Donta,
18 B'more, Aileen, and Alijah for a little while.

19 I went upstairs and I took a nap, and I woke up, and I
20 got into an argument with Peanut.

21 Q. Who's Peanut?

22 A. My cousin Shandra's boyfriend.

23 Q. And about what time was it that you -- Do you know
24 what time you got back, about, from Lancaster? Can you
25 remember?

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- 1 A. I don't remember.
- 2 Q. Do you remember about what time you woke up?
- 3 A. I don't remember.
- 4 Q. Was it dark or light outside?
- 5 A. It was still light outside.
- 6 Q. So you get up and Peanut -- Who is he again?
- 7 A. My cousin Shandra's boyfriend.
- 8 Q. And you get in an argument with Peanut?
- 9 A. Yes, sir.
- 10 Q. About how old is Peanut?
- 11 A. About 54.
- 12 Q. And where does he live?
- 13 A. On Chestnut.
- 14 Q. Is that close to where you were on Keels?
- 15 A. Yes, sir.
- 16 Q. How long did the argument last? Was it a violent
- 17 argument?
- 18 A. No. It didn't last long. About 5 minutes or so.
- 19 Q. All right. And what did you do?
- 20 A. I left and went up the street and got B'More.
- 21 Q. So when you woke up, B'More was no longer in the
- 22 house?
- 23 A. He wasn't there.
- 24 Q. How long were you gone from the house?
- 25 A. Not long. Maybe 10 minutes or so.

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1 Q. When you came back, was Peanut still there?

2 A. No.

3 Q. Who was at the house at that point when you returned?

4 A. Elijah; Lee Lee; Shaleika; my uncle Alfonso; and my
5 cousin Alfonso, Jr.

6 Q. Okay. Was Donta there?

7 A. Yes, he was.

8 Q. And how about B'more? Did he come back with you?

9 A. Yes, B'more came back with me.

10 Q. Now at this time, can you recall, was it light or dark
11 outside?

12 A. It was dark outside.

13 Q. So about how long was it from the time you woke up,
14 got in the argument, left the house, were gone and came
15 back, what are we talking about there? How much time?

16 A. I don't remember.

17 Q. You just remember it was dark or getting dark when you
18 got back?

19 A. Yes, sir.

20 Q. When you got back to the house, where did you go? Did
21 you go in the house, or --

22 A. We were sitting in the backyard.

23 Q. Who all was sitting back there?

24 A. Me and B'more.

25 Q. Anybody else back there with you?

SAMANTHA LATREAL ERVIN: DIRECT BY MR. BRACKETT

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1 A. No.

2 Q. When you -- At this point in time, did you have a
3 weapon?

4 A. No, sir.

5 Q. Did you see B'more with a weapon?

6 A. Yes, sir.

7 Q. Had you ever seen him with a weapon before then, that
8 day?

9 A. No, sir.

10 Q. What kind of weapon was it?

11 A. It was a black shotgun.

12 Q. Where did he have it?

13 A. In his pants.

14 Q. About how long was it? Use your hands to show the
15 jury.

16 (WITNESS DEMONSTRATES WITH HER HANDS.)

17 Q. Okay. Are you very -- Do you know a lot about guns?

18 A. No, sir.

19 Q. So it was like a rifle kind of gun?

20 A. Yes, sir.

21 MR. CHIARENZA: Objection, Your Honor, leading, and it
22 contradicts the testimony already given by --

23 THE COURT: Let's don't get into contradiction. Let's
24 just -- Right now, it's just a leading question.

25 MR. CHIARENZA: Yes, sir.

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1 THE COURT: I sustain the objection.

2 BY MR. BRACKETT:

3 Q. Can you describe the gun?

4 A. It was black, and it had tape on it, clear tape around
5 the butt of the gun.

6 Q. What was he doing with the gun?

7 A. He was showing it.

8 Q. To who?

9 A. Me. And Alijah and them came outside. Alijah and
10 Aileen.

11 Q. How long were y'all in the backyard?

12 A. Not very long.

13 Q. Where did you go from there?

14 A. Inside the house.

15 Q. And who was in the house?

16 A. Donta Reid.

17 Q. So tell us what happened when you got in the house.

18 A. I went in the house. We was all sitting around
19 talking about robbing somebody. And that's when Donta said
20 he knew --

21 Q. You were talking about what?

22 A. Robbing someone.

23 Q. Who brought that up?

24 A. B'more did.

25 Q. And at what point did that come up? What were you

SAMANTHA LATREAL ERVIN: DIRECT BY MR. BRACKETT

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1 doing when that happened?

2 A. We was just sitting around talking amongst ourselves.

3 Q. All right. How long were you inside the house talking
4 before that subject came up?

5 A. I don't remember how long we was in the house. About
6 10 minutes or so, maybe?

7 Q. Did you have a watch on?

8 A. No, sir.

9 Q. Were you keeping track of the time?

10 A. No, sir.

11 Q. Okay. So do you recall how that subject came up?

12 A. No, sir.

13 Q. What prompted it?

14 A. I guess because he had a weapon with him.

15 Q. Well, tell us how that conversation unfolded.

16 A. We were sitting there, and they said they wanted to
17 rob somebody. And that's when Donta said that he knew
18 somebody they could rob. And at that time, he got my phone
19 and started texting someone on my phone.

20 Q. All right. Did he say who he was texting?

21 A. No.

22 Q. All right. Well tell us what happened.

23 A. After that, he said he was ready to go. So we all got
24 in the car --

25 Q. We all -- Who is we all?

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1 A. Me, Aileen, B'more, and Donta.

2 Q. Okay. Where did you go?

3 A. We went to Party World to get gas. And after we left
4 Party World, we stopped back by the house. Aileen had to
5 go in the house and pick up something. And when we got
6 back from there, we went by my mom's house. And after we
7 left my mom's house, we dropped Donta off at his house.

8 Q. Do you know how long all this took to go to Party
9 World, come back, go to your mom's house? Can you
10 guesstimate about how long that took?

11 A. No, sir.

12 Q. All right. So you dropped Donta off at his house.
13 Why did you do that?

14 A. He told us to drop him off at his house.

15 Q. Did he say what he was going to do?

16 A. No, he said he was going to go down there, and call
17 the phone, and let them know how many people was on the
18 porch.

19 Q. Call whose phone?

20 A. Call my phone, let us know how many people was on the
21 porch.

22 Q. Who all had a phone at that time?

23 A. Just me.

24 Q. Now how were you getting around?

25 A. My uncle's truck.

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1 Q. What kind of truck was it?

2 A. It was a Dodge Dakota.

3 Q. What color was it?

4 A. Hunter green.

5 Q. And how big of a truck is it? Is it like a crew-cab,
6 or short-cab, what kind of -- How many people fit in the
7 interior passenger area?

8 A. You could fit about five people in there.

9 Q. So who was sitting where?

10 A. I was driving, B'more was sitting on the passenger
11 side, Aileen was in the back seat, and Donta was in the bed
12 of the truck.

13 Q. Now could Donta hear what you were saying inside of
14 the car?

15 A. Yes, sir.

16 Q. Could you hear what he was saying from the truck?

17 A. Yes, sir.

18 Q. How was that possible?

19 A. The window was broke in the back.

20 Q. The window, where?

21 A. On the passenger side.

22 Q. Was he talking to y'all through the window?

23 A. No, sir.

24 Q. But he could stick his head in if he wanted to?

25 A. Yeah, he could stick his head in if he wanted to.

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1 Q. So now you dropped Donta off at his house. Where was
2 his house? Do you know?

3 A. On Byars Street.

4 Q. And you said -- Tell us again what he was going to
5 do -- what he said he was going to do?

6 A. He said he was going to call the phone and let us know
7 how many people was on the porch.

8 Q. Were y'all talking about the robbery while you were
9 driving around?

10 A. Yes, sir.

11 Q. So was there planning going on in the car?

12 A. Yes, sir.

13 Q. And at some point, the plan was to drop him off?

14 A. Yes.

15 Q. Now what happened after you dropped him off?

16 A. After I dropped him off, we went down the street on
17 Reynolds Street, and we were sitting there, and he called
18 the phone, and Aileen answered the phone, and he told her
19 it was two other people on the porch.

20 Q. And where were you guys located when that phone call
21 came in?

22 A. On Reynolds Street.

23 Q. Were you parked?

24 A. Yes, sir.

25 Q. Who all was in the car?

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1 A. Me, Aileen, and B'more.

2 Q. And what was the significance of two other people on
3 the porch?

4 A. I have no idea.

5 Q. Were you aware that they were going to try to rob
6 somebody?

7 A. Yes, sir.

8 Q. So what happened after that phone call was made?

9 A. After that phone call, they got out of the truck, and
10 they went down the street.

11 Q. Who's "they"?

12 A. Aileen and B'more got out of the truck, and they went
13 down the street.

14 Q. Which direction did they go?

15 A. Straight down the street.

16 Q. Towards where?

17 A. Byars Street.

18 Q. Where did you go? Did you stay there, or did you
19 move?

20 A. I stayed there.

21 Q. How long were you sitting there?

22 A. For a little while.

23 Q. Do you know -- Do you have any idea how long?

24 A. I don't know how long.

25 Q. What was the next thing that happened as far as you

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1 could tell?

2 A. Next thing that happened was they was gone for a
3 little while, then Donta comes up the street and gets in
4 the truck with me.

5 Q. Inside the car?

6 A. Yes, sir.

7 Q. And after that, he got inside --

8 A. And what did he tell you?

9 Q. I asked him where they was at. He was like, he didn't
10 know.

11 Q. Okay.

12 A. And so, we got in. We was listening to the music, and
13 the next thing you know, we heard gunshots.

14 A. How long after Donta got there?

15 Q. I don't recall how long after.

16 A. Was Donta aware that they were going to try to rob
17 somebody?

18 A. Yes, sir.

19 MS. INZERILLO: Objection, Your Honor, speculation.

20 THE COURT: Yeah don't, you're going into somebody's
21 thought process. I sustain the objection.

22 BY MR. BRACKETT:

23 Q. When you were discussing the planning of the robbery,
24 was Donta there?

25 A. Yes, sir.

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1 Q. Was he participating in the conversation?

2 A. Yes, sir.

3 Q. Was he aware of the plan?

4 A. Yes, sir.

5 Q. And did he have a role in the plan?

6 A. Yes, sir.

7 Q. After you heard the gunshots, what happened?

8 A. Aileen and B'more came running up the street.

9 Q. All right. From which direction?

10 A. They came running up from Byars Street.

11 Q. And what happened?

12 A. Aileen got in the bed of the truck, B'more got in the
13 passenger side, and Donta slid into the back seat.

14 Q. Did anybody have anything in their hands?

15 A. No, I didn't see nothing in nobody's hands.

16 Q. Did you see any weapons?

17 A. No.

18 Q. What did they say when they got in the car?

19 A. They didn't say nothing. B'more just took off his
20 sweatshirt, and threw it out the window.

21 Q. All right. And then what happened?

22 A. We went back to my uncle's house.

23 Q. How did you know to go there?

24 A. There was a meet-up spot to go back to.

25 Q. Did anybody tell you, "Let's go, let's drive"?

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1 A. Yeah.

2 Q. Who was that?

3 A. B'more told me, let's go.

4 Q. How long did it take you to get back to your uncle's
5 house?

6 A. Not long, maybe 10 minutes.

7 Q. Prior to this, did you see anybody else with any guns?

8 A. No, sir.

9 Q. Did you have a gun?

10 A. No, sir.

11 Q. Did you see Donta with a gun?

12 A. No, sir.

13 Q. Did you see Aileen with a gun?

14 A. No, sir.

15 Q. Did you see any of those people -- Other than B'more,
16 did you see anybody else have a weapon in their hand that
17 evening?

18 A. No, sir.

19 Q. What happened when you got back to the house?

20 A. We got back to the house and B'more was trying to hide
21 the gun in my uncle's abandoned truck. And my cousin came
22 outside and told him, no, he can't put it there. And we
23 all went --

24 Q. Your cousin, who?

25 A. Alijah.

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1 Q. Alijah.

2 A. Yes, sir.

3 Q. Okay.

4 A. We all went into the house, and they pulled out two
5 ID's and two cell phones in a Newport box --

6 Q. Who? Who's they?

7 A. B'more.

8 Q. Okay. And what did they do with these things?

9 A. They threw them on the table.

10 Q. Where in the house were you at this time?

11 A. In the living room.

12 Q. What were they saying?

13 A. B'more was doing his little dance saying, he got 'em,
14 he got 'em.

15 Q. He was doing a dance?

16 A. Yes, sir.

17 Q. Like, literally a dance?

18 A. Yes, sir.

19 Q. Okay. And you were in the living room.

20 Who else was there besides you and B'more?

21 A. Me, B'more, Aileen, and Donta.

22 Q. Okay. Where was Alijah?

23 A. In the living room also.

24 Q. So he was close enough to witness this?

25 A. Yes, sir.

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1 Q. Now what happened with the stuff that he took out of
2 his pocket?

3 A. They put it on the table, and we was looking through
4 the ID's, and B'more said he recognized an ID, which was
5 Tyrone King's ID. He said it was his brother's home boy.

6 Q. Was there any money in the wallet?

7 A. I didn't see any money.

8 Q. Did you see any money out on the table?

9 A. No, sir.

10 Q. What else was there? You said there were --

11 A. A Newport box with marijuana in it.

12 Q. Were there any cigarettes in it?

13 A. No, sir.

14 Q. How much marijuana was in the Newport box?

15 A. About a blunt.

16 Q. Okay. What's a blunt?

17 A. Basically like the lowest you can get, lowest you can
18 buy.

19 Q. A very small amount?

20 A. Yeah, very small amount.

21 Q. Enough to roll into one cigarette maybe?

22 A. Yes, sir.

23 Q. And what else was there? There was the Newport box --

24 A. Two cell phones and two ID's.

25 Q. What happened to all that stuff?

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1 A. Well Donta took the phone to a Cricket store, and he
2 was trying to get it transferred over to a Cricket phone,
3 whatever. And he couldn't, so he just threw it in the
4 bushes.

5 Q. Is this what he told you? Or did you go with him?

6 A. No, this is what -- I went with him.

7 Q. When was that?

8 A. That was Friday, the next day.

9 Q. About what time?

10 A. It was afternoon, about One or Two o'clock, maybe.

11 Q. Okay. And let's back up to the night before. You got
12 all this stuff out. So, Donta keeps at least one of the
13 cell phones. What happened to the other one?

14 A.. I have no idea.

15 Q. And the cigarette box?

16 A. They smoked it.

17 Q. And the ID's?

18 A. I don't know what they did with the ID's.

19 Q. Did you take them?

20 A. No, sir.

21 Q. How long did you stay at the house? How long was
22 everybody at the house after you got back?

23 A. Everybody pretty much -- We stayed there for a little
24 while.

25 Q. Did everybody stay there for the whole night?

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1 A. No, sir.

2 Q. Who left?

3 A. B'more left.

4 Q. About how long after you got there did B'more leave?

5 A. He stayed for a little while. They went to the store
6 and bought beer and blunt cigarillos and stuff. And then
7 after that, he stayed for a little while longer, and then
8 he decided to leave.

9 Q. Who decided to leave?

10 A. B'more.

11 Q. And how did he leave, on foot?

12 A. Aileen drove him somewhere.

13 Q. Do you know where she took him?

14 A. To Spring Street.

15 Q. How long was she gone?

16 A. I don't remember how long she was gone.

17 Q. Where were you when they left?

18 A. In the bed.

19 Q. Did Aileen return at some point after she left to take
20 Mr. Henson -

21 A. Yes, sir.

22 Q. --- to Spring Street.

23 A. Yes, sir.

24 Q. When she returned to the house, where did she go?

25 A. Back to bed.

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1 Q. Did you get up and move around again that night, or
2 did you stay in bed?

3 A. We stayed in bed.

4 Q. Did you keep anything that was taken in the robbery?

5 A. No, sir.

6 Q. Did you smoke any of the blunt that was in the
7 cigarette pack?

8 A. No, sir.

9 Q. What time did you get up the next morning?

10 A. Early that morning about Eight o'clock.

11 Q. Who was in the house when you woke up?

12 A. Alijah, Donta, and Aileen.

13 Q. Did they wake up as well?

14 A. Yes, sir.

15 Q. Where did -- What happened that day?

16 A. We all went to the store. We came back from the
17 store --

18 Q. What store?

19 A. Parks Grocery.

20 Q. Is that close to your house?

21 A. Right up the street. Yes, sir.

22 Q. How long were you gone to the store?

23 A. Maybe about five minutes or so.

24 Q. Where did you go when you came back?

25 A. Went back to the house.

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1 Q. What did you do?

2 A. We took my uncle Alfonso Leach to pick up his brother,
3 and we went to a liquor store, and then came back down the
4 highway, and that's when Elijah called and said that
5 Donta's mom -

6 MR. CHIARENZA: Objection, objection.

7 MR. BRACKETT: You can't say -

8 THE COURT: Wait. I sustain your objection. Don't go
9 into what this other person said.

10 MR. BRACKETT: You can't talk about what other people
11 say unless it's what Mr. Henson, or Mr. Reid, or Aileen
12 said.

13 A. Yes, sir.

14 Q. So what --

15 A. Okay. After we went back, we went to Leach Road,
16 which is on Highway 5. And I got a phone call. Donta's
17 mom was looking for him.

18 Q. Okay.

19 A. So we --

20 Q. Did you tell Donta that?

21 A. Yes.

22 Q. Was he with you?

23 A. Yes, he was with me.

24 Q. Was he able to talk to his mom?

25 A. Yes, he talked to his stepfather, I believe.

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1 Q. Okay. And then what happened next?

2 A. After that, they said the police was looking for him,
3 and it was best for him to come home. So we took him home,
4 but we didn't take -- He didn't want to get dropped off at
5 his house. We let him off around the corner from Central
6 Park Elementary School.

7 Q. Is that close to Byars Street?

8 A. Yes, you could say.

9 Q. Did you -- So he got out of the car at that point?

10 A. Yes, sir.

11 Q. Okay. Did you see him again later that day?

12 A. At the City of Rock Hill.

13 Q. And did you see -- Where was Aileen at this time?

14 A. Aileen was at the house.

15 Q. Where did you go after you dropped Donta off?

16 A. Back to the house.

17 Q. Did you see B'more again that day?

18 A. Not until later that afternoon.

19 Q. About where were you when you saw him?

20 A. I had just got back from the police department.

21 Q. And what -- Did he talk to you at all?

22 A. No, he didn't say nothing.

23 Q. How long did -- How long was he -- Where did you see
24 him again?

25 A. At the house.

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1 Q. How long was he there?

2 A. I don't know how long he was there, prior to me
3 getting there, but I know he was there.

4 Q. After you got there, how long was he there?

5 A. For like a few minutes, and then he walked down the
6 street.

7 Q. Did you talk to him at all about what happened the
8 night before?

9 A. No, not --

10 MR. CHIARENZA: Asked and answered, Your Honor.

11 THE COURT: Overruled.

12 Q. That morning, did you talk to B'more about what
13 happened?

14 A. No, he wasn't there.

15 Q. No, I mean that -- when you saw him at the house in
16 the afternoon?

17 A. No.

18 Q. You didn't discuss the events of the prior night?

19 A. No.

20 Q. How about with Donta when you were driving around with
21 him, did y'all talk about what had happened?

22 A. No.

23 Q. When did you learn that Tyrone King was killed?

24 A. That Friday morning. I got a text on my phone.

25 Q. What did it say?

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1 A. RIP Tyrone King.

2 Q. Did you share that with everybody there?

3 A. Yes.

4 Q. Including Donta?

5 A. Yes.

6 Q. Did Davontay Henson or Aileen Newman, the night of the
7 robbery and the shooting, after you got back to the house,
8 did they say anything else about what happened --

9 MR. CHIARENZA: Your Honor, I don't think she can
10 testify to what Aileen Newman said.

11 THE COURT: I agree.

12 MR. BRACKETT: Okay.

13 Q. The Defendant Donta -- Davontay Henson, did he say
14 anything more about what happened at the porch other than
15 what you testified?

16 A. Yes, sir. He said, "I told them to give me
17 everything, and they replied, 'We gave her everything we
18 got.'"

19 Q. Did he say anything else?

20 A. No, sir.

21 Q. Did he say why he shot?

22 A. No, sir.

23 Q. At some point in time, did the police call you?

24 A. No, sir.

25 Q. At some point in time, did you call the police?

SAMANTHA LATREAL ERVIN: DIRECT BY MR. BRACKETT

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1 A. Yes, sir.

2 Q. Did you find out they were looking for you?

3 A. No, sir.

4 Q. What made you call the police?

5 A. I had called them. I was going to tell them
6 everything that happened.

7 Q. And when did that happen? When did you call them? Do
8 you remember?

9 A. I don't remember the time.

10 Q. How many days? Was it the next day?

11 A. Yes, sir.

12 Q. Did you talk to the police about what happened?

13 A. No, sir.

14 Q. Did you ultimately go to the police department and
15 meet with the detectives?

16 A. Yes, sir, when I turned myself in.

17 Q. And you were arrested?

18 A. Yes, sir.

19 Q. And they had warrants for you?

20 A. Yes, sir.

21 Q. And you knew they had warrants for you?

22 A. I didn't find out they had warrants for me till that
23 Monday.

24 Q. But before you went to the police department, you knew
25 they were looking for you, and they had warrants for you?

SAMANTHA LATREAL ERVIN: DIRECT BY MR. BRACKETT

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1 A. No, sir.

2 Q. Did you get an attorney?

3 A. No, sir.

4 Q. Eventually, did you get an attorney?

5 A. When I got here.

6 Q. And who was that?

7 A. Tawana Burris.

8 Q. Is she in the courtroom?

9 A. Yes, sir.

10 Q. Can you point her out?

11 A. Sitting right there.

12 (WITNESS POINTED TO ATTORNEY TWANA BURRIS.)

13 Q. And did she discuss this case with you?

14 A. Yes, sir.

15 Q. And what did you ultimately decide to do? Did you
16 want a jury trial?

17 A. No, sir.

18 Q. What did you decide to do?

19 A. Tell the truth.

20 Q. And have you pled guilty to any of these charges?

21 A. Yes, sir.

22 Q. What did you plead guilty to?

23 A. Criminal conspiracy and three counts of armed
24 robberies.

25 Q. And you're awaiting sentencing for that right now?

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1 A. Yes, sir.

2 Q. Is there any question in your mind that Davontay
3 Henson, the gentleman you identified earlier today, or
4 earlier when we were talking, and Donta Reid were present
5 with you that night on Reynolds Street and Byars Street the
6 night of the robbery?

7 A. Excuse me?

8 Q. Is there any question that those two gentlemen are the
9 ones that were with you the night of the robbery?

10 A. There's no question. There was with me.

11 Q. Were they there -

12 A. Yes.

13 Q. --- and actively participating in the robbery?

14 A. They was there.

15 Q. And is there any question about who had the gun that
16 night?

17 A. No, sir.

18 Q. Who was that?

19 A. B'more.

20 Q. Davontay Henson?

21 A. Henson, yes, sir.

22 Q. Did you see what happened with the gun after Alijah
23 said, "You can't leave it here"?

24 A. No, sir.

25 Q. Now you testified you were the only person that had a

SAMANTHA LATREAL ERVIN: DIRECT BY MR. BRACKETT

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1 cell phone that night?

2 A. Yes, sir.

3 MADAME COURT REPORTER: Forty, Mr. Brackett.

4 MR. BRACKETT: Thank you so much, Wanda.

5 (WHEREUPON: STATE'S EXHIBIT NUMBER FORTY, PREMARKED
6 FOR IDENTIFICATION.)

7 Q. Now, you testified you were the only person that had a
8 cell phone that night?

9 A. Yes, sir.

10 Q. Do you recognize the cell phone number or the
11 telephone number 230-5226?

12 A. Yes, sir.

13 Q. Whose phone is that?

14 A. That's mine.

15 Q. Have you -- I'm showing you what's been marked as
16 State's Exhibit Forty for identification. Have you had a
17 chance to look at these phone records from the phone 230-
18 5226, these Verizon records?

19 A. Yes, sir.

20 Q. Do you recognize those phone calls and those records?
21 Some of them, not all of them.

22 A. Yes, sir.

23 Q. Are you able to recognize enough to know that those
24 are the records of your phone?

25 A. Yes, sir.

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1 Q. Is that an accurate phone recording to the best of
2 your knowledge of the phone calls you made on that phone?

3 A. Yes, sir.

4 MR. BRACKETT: I'd move State's Exhibit Forty for
5 identification into evidence at this time.

6 MS. INZERILLO: No objection.

7 MR. CHIARENZA: No objection.

8 THE COURT: In without objection.

9 (WHEREUPON: STATE'S EXHIBIT NUMBER FORTY IDENTIFIED
10 AND MARKED, RECEIVED INTO EVIDENCE.)

11 MR. BRACKETT: The Court's indulgence, one minute.

12 (PAUSE.)

13 Q. Whose phone was Donta using to text his friend?

14 A. My phone.

15 Q. And did he call him from your phone as well?

16 A. I don't remember.

17 Q. One last question. Looking at Mr. Henson, has his
18 appearance changed any?

19 A. Yes, sir.

20 Q. How did he used to look?

21 A. He had dreads.

22 Q. And those are gone?

23 A. Yes, sir.

24 Q. How long were the dreads? Do you remember?

25 A. Shoulder-length.

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1 Q. Down to here?

2 (SOLICITOR INDICATED TO HIS SHOULDER.)

3 A. Yes, sir.

4 Q. That Verizon phone that you had, Samantha, was that a
5 monthly subscription, or was this a buy-the-minutes?

6 A. Buy-the-minutes.

7 Q. So when you want to put more minutes, you have to go
8 to the Verizon store?

9 A. Yes, sir.

10 Q. Thank you very much. Please answer any questions that
11 counsel for Mr. Reid or Mr. Henson may have for you.

12 A. Yes, sir.

13 THE COURT: Do you need a break?

14 MR. FOREMAN: Yes, sir.

15 THE COURT: All right. We'll take a break before we
16 get into cross examination. Take about a 12 minute break.

17 (JURY OUT AT 11:20 AM.)

18 (WITNESS ESCORTED FROM COURTROOM TO HOLDING CELL.)

19 THE COURT: We'll take about a twelve minute break.

20 (COURT IN RECESS AT 11:22 AM.)

21 (COURT RECONVENED AT 11:42 AM.)

22 THE BAILIFF: All rise. Order in the Court.

23 THE COURT: Thank you.

24 Take your seats. Thank you.

25 Bring in the jury.

SAMANTHA LATREAL ERVIN: CROSS BY MS. INZERILLO

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1 (DEFENDANT'S REENTER COURTROOM.)

2 (WITNESS RETAKES THE WITNESS STAND.)

3 (JURY REENTERS COURTROOM AT 11:44 AM.)

4 MS. INZERILLO: May it please the Court, Your Honor.

5 THE COURT: Yes, ma'am.

6 CROSS EXAMINATION

7 SAMANTHA LATREAL ERVIN BY MS. INZERILLO:

8 Q. Ms. Ervin, today is not the first day you've spoken to
9 someone about this case is it?

10 A. No, ma'am.

11 Q. In fact, when you were arrested by the police, you
12 gave them a statement. Right?

13 A. Yes, ma'am.

14 Q. And then after that, you gave a statement to the
15 Solicitor's Office. Right?

16 A. Yes, ma'am.

17 Q. And so today is actually the third time you discussed
18 this case?

19 A. Yes, ma'am.

20 Q. Now you were very specific in what happened the next
21 day when you woke up; Is that right?

22 A. Yes, ma'am.

23 Q. You recalled you got up on Eight o'clock, you remember
24 who was in the house; is that right?

25 A. Yes, ma'am.

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1 Q. But you failed to tell the jury that you were actually
2 confronted by the police in Confederate Park on that day;
3 is that right?

4 A. Yes, ma'am.

5 Q. And so when you had interaction with the police the
6 day after this happened, you didn't tell them anything
7 about this case did you?

8 A. No, ma'am.

9 Q. You didn't tell them that you had information on a
10 murder. Right?

11 A. No, ma'am.

12 Q. You didn't tell them that you could possibly give them
13 the names and places involved in that murder did you?

14 A. No, ma'am.

15 Q. And you did not tell them that you had in fact seen
16 what you considered to be a murder weapon, and whoever was
17 holding that weapon; is that right?

18 A. Yes, ma'am, that's right.

19 Q. Okay. So fast-forward to when you get arrested
20 several days later, okay? You met with the police on that
21 day. Right?

22 A. Yes, ma'am.

23 Q. And on that day, you were in a room with Detective
24 Herring here; is that right?

25 A. Yes, ma'am.

SAMANTHA LATREAL ERVIN: CROSS BY MS. INZERILLO

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1 Q. And he asked you some questions about this case?

2 A. Yes, ma'am.

3 Q. In fact, he asked you to tell him everything that you
4 knew about this case.

5 A. Yes, ma'am.

6 Q. Including your involvement in it. Right?

7 A. Yes, ma'am.

8 Q. He indicated to you, he wanted you to tell him the
9 truth, everything that happened?

10 A. Yes, ma'am.

11 Q. And you told him a version of events that day. Right?

12 A. Yes, ma'am.

13 Q. And then he typed in those events. Right?

14 A. Yes, ma'am.

15 Q. And then you reviewed that statement, and you signed
16 it. Right?

17 A. Yes, ma'am.

18 Q. And also as part of that statement, you signed
19 swearing that everything you told him was "the truth, the
20 whole truth, and nothing but the truth, so help me God."
21 Right?

22 A. Yes, ma'am.

23 Q. And that is exactly like the oath that you had to take
24 today when you put your hand on the Bible about an hour and
25 a half ago; is that right?

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1 A. Yes, ma'am.

2 Q. Okay. And in that first statement, when you were
3 talking to Detective Herring, you conveyed to him that you
4 really didn't know what was going on; is that right?

5 A. Yes, ma'am.

6 Q. That you thought maybe they were talking. You drove
7 down to this area, and the only reason why you went back to
8 this area is because you realized that Aileen had your cell
9 phone?

10 A. Yes, ma'am.

11 Q. Okay. And then that was a lie. Right?

12 A. Yes, ma'am.

13 Q. So when Detective Herring asked you to tell him the
14 whole truth, you lied to him?

15 A. Yes, ma'am, because I was scared.

16 Q. And you were scared because Davontay Henson had
17 threatened you. Right?

18 A. Yes, ma'am.

19 Q. In fact, he had threatened you and everybody in the
20 room that he was going to kill you if you talked?

21 A. Yes, ma'am.

22 Q. Okay. Now that was on October 5th of 2009; is that
23 right?

24 A. Yes, ma'am.

25 Q. And then as you indicated on direct, you got an

SAMANTHA LATREAL ERVIN: CROSS BY MS. INZERILLO

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1 attorney. Right?

2 A. Yes, ma'am.

3 Q. And after speaking with your attorney, you decided to
4 tell the truth; is that right?

5 A. Yes, ma'am.

6 Q. And telling the truth, in order to do that, you
7 entered into a plea agreement with the Solicitor's Office.
8 Right?

9 A. Yes, ma'am.

10 Q. And essentially at the time you entered into this plea
11 agreement, you were charged with murder. Right?

12 A. Yes, ma'am.

13 Q. You were charged with three counts of armed robbery.
14 Right?

15 A. Yes, ma'am.

16 Q. You were charged with criminal conspiracy?

17 A. Yes, ma'am.

18 Q. And you were charged with possession of a weapon
19 during the commission of a violent crime?

20 A. Yes, ma'am.

21 Q. Okay. And you knew that you were looking at life in
22 prison if you got convicted of murder. Right?

23 A. Yes, ma'am.

24 Q. And you didn't want to serve life in prison did you?

25 A. I just wanted to tell the truth.

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1. Q. But you didn't want to go to jail for life either did
2 you?

3 A. No, ma'am.

4 Q. Because you testified that you have a little baby?

5 A. Yes, ma'am.

6 Q. You didn't want to go the rest of your life not seeing
7 her?

8 A. No, ma'am.

9 Q. And so you decided to meet with the solicitors and
10 agree to a deal. Right?

11 A. Yes, ma'am.

12 Q. And the solicitors made you a deal. Didn't they?

13 A. Yes, ma'am.

14 Q. And as part of that deal, they dropped the murder
15 charge against you. Right?

16 A. Yes, ma'am.

17 Q. So you don't have to spend the rest of your life in
18 prison, do you?

19 A. That's correct.

20 Q. They only had you plead to three counts of armed
21 robbery. Right?

22 A. Yes, ma'am.

23 Q. And criminal conspiracy?

24 A. Yes, ma'am.

25 Q. And as part of your agreement, you and the Solicitor's

SAMANTHA LATREAL ERVIN: CROSS BY MS. INZERILLO

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1 Office agreed that the range of time that you would serve
2 would be between 10 years and 25 years; is that right?

3 A. Yes, ma'am.

4 Q. And so you know the least you can get is 10 years.
5 Right?

6 A. Yes, ma'am.

7 Q. And really, being honest, that's all you want to
8 serve. Right?

9 A. Yes, ma'am.

10 Q. You'don't want to serve 25 years. Right?

11 A. No, ma'am.

12 Q. Because if you serve 25 years, your daughter will be
13 26 by the time you get out of prison. Right?

14 A. Yes, ma'am.

15 Q. And you don't want to see that?

16 A. No, ma'am.

17 Q. So you want to get out of prison when she's around 10
18 or 11 years old. Right?

19 A. Yes, ma'am.

20 Q. Okay. Now, in order to get this agreement, you had to
21 write another statement. Right?

22 A. Yes, ma'am.

23 Q. And when you gave that statement, you were in a room
24 with your attorney. Right?

25 A. Yes, ma'am.

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1 Q. And with Mr. Thompson, here, in the yellow shirt.
2 Right?

3 A. Yes, ma'am.

4 Q. And similarly to what happened in October of 2009,
5 they typed down what you said. Right?

6 A. Yes, ma'am.

7 Q. And in that statement, you told them, "You know, I
8 lied to the police. I did know there was going to be
9 something going on"; is that right?

10 A. Yes, ma'am.

11 Q. Okay. And you admitted that you were hanging around
12 down on Reynolds Street or around the bridge down there
13 because that's where you were supposed to be, not because
14 you realized Aileen had your phone; is that right?

15 A. Yes, ma'am.

16 Q. You also indicated that you didn't know who was going
17 to get robbed that night. Right?

18 A. That's right.

19 Q. And you told them that you remembered seeing two ID's
20 and cell phones from the guys. Right?

21 A. Yes, ma'am.

22 Q. And that you thought you recognized someone off of one
23 of the ID's?

24 A. Yes, ma'am.

25 Q. At no point in that statement did you ever tell the

SAMANTHA LATREAL ERVIN: CROSS BY MS. INZERILLO

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1 Solicitor's Office that Donta Reid took one of the phones
2 and took it to Cricket?

3 A. No, ma'am.

4 Q. And at no point when you talked to Detective Herring
5 four days after this happened did you ever tell them that
6 Donta Reid took that phone to Cricket to try to put it in
7 his name, essentially?

8 A. No, ma'am.

9 Q. So you testified that you decided to tell the truth,
10 and that was the truth, this statement. Right?

11 A. Yes, ma'am.

12 Q. Now, you also put in your statement to the Solicitor's
13 Office that the plan was to rob all three guys on the
14 porch; is that right?

15 A. Yes, ma'am.

16 Q. That while you were at your uncle's house at Keels
17 Avenue, that y'all knew there were going to be three people
18 on the porch?

19 A. No, ma'am.

20 Q. Okay. You indicated that you heard Donta talking on
21 the phone essentially to Aileen while you were in the
22 truck. Right?

23 A. Yes, ma'am.

24 Q. And you could hear that whole conversation.

25 A. No, ma'am.

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1 Q. So you don't know everything that Donta told Aileen
2 about whatever he'd seen on the porch?

3 A. That's correct.

4 Q. And by your own admission in all of your statements,
5 you were essentially in the car the whole time?

6 A. Yes, ma'am.

7 Q. You never got out of the truck and went on scene?

8 A. No, ma'am.

9 Q. So you didn't see any of the events that happened on
10 scene?

11 A. That's correct.

12 Q. All of your information is based on what people in the
13 house were saying. Right?

14 A. Yes, ma'am.

15 Q. And you indicated that when you got back to your
16 uncle's house that it was Davontay Henson who was dancing
17 around, kind of bragging about getting them; is that right?

18 A. Yes, ma'am.

19 Q. Now, you're also clear on your testimony today that it
20 was about 1:00 or Two o'clock the next day that Donta took
21 this phone to Cricket to try to put it in his name
22 essentially?

23 A. Yes, ma'am.

24 Q. Okay.

25 A. But I didn't remember exactly.

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CROSS BY MR. CHIARENZA

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1 Q. But somewhere around 1:00 or 2:00?

2 A. Yeah, somewhere -

3 Q. Okay. And then it was after that, that you took him
4 home?

5 A. Yes, ma'am.

6 Q. Okay.

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

8 THE COURT: Mr. Chiarenza.

9 MR. CHIARENZA: Thank you, Your Honor.

10 CROSS EXAMINATION

11 SAMANTHA ERVIN BY MR. CHIARENZA:

12 Q. Ms. Ervin, you enjoying prison?

13 A. No, sir.

14 Q. It's a rotten place to be, isn't it?

15 A. Yes, sir.

16 Q. And you're serving currently to your knowledge, you
17 will have to do a minimum of 10 years in the South Carolina
18 Department of Corrections. Correct?

19 A. Yes, sir.

20 Q. And that is for this case, your involvement that
21 you've pled guilty to. Correct?

22 A. Yes, sir.

23 Q. But you haven't actually received your sentence yet
24 have you?

25 A. No, sir.

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1 Q. All right. And is it your understanding that your
2 sentence is going to be somewhere between 10 years and 25
3 years. Right?

4 A. Yes, sir.

5 Q. And what will affect whether you get 10 years or 25
6 years?

7 A. How well I cooperate.

8 Q. Right. And that's how well you do today testifying
9 for the State. Right?

10 A. Yes, sir.

11 Q. So you're looking out for yourself today. Right?

12 A. I'm just telling the truth, sir.

13 Q. But if you don't tell the truth, you won't be helping
14 yourself, will you?

15 A. No, sir.

16 Q. Okay. So you think you're looking out for yourself by
17 what you're doing today. Correct?

18 A. Correct.

19 Q. So while you say you may be here because you've got
20 the truth on your mind, you also have your future on your
21 mind. Correct?

22 A. Yes, sir.

23 Q. And you've got a little child who -- Have you ever
24 been out of prison with this baby?

25 A. No, sir.

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1 Q. So this child was born while you were incarcerated?

2 A. Yes, sir.

3 Q. So you have a very strong desire to get out of prison
4 as soon as you can to get with this child. Right?

5 A. Yes, sir.

6 Q. And that's only going to happen if you tell the State
7 what the State wants you to say. Correct?

8 A. Yes, sir.

9 Q. Now you have given now, three distinct versions of
10 what occurred that night, two of those being in prior
11 statements. You recall the first statement you gave to law
12 enforcement at the police department on October 5th of
13 2009?

14 A. Yes, sir.

15 Q. And do you recall that being the date of that
16 statement, October 5th?

17 A. Yes, sir.

18 Q. All right. And you're aware that this robbery that
19 you were involved in occurred on October 1st. Right?

20 A. Yes, sir.

21 Q. So you didn't go up to the police department between
22 the 1st and the 5th to talk to them, did you?

23 A. No, sir.

24 Q. But you did have an unrelated run-in with the police
25 on October 2nd. Right?

SAMANTHA LATREAL ERVIN: CROSS BY MR. CHIARENZA

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1 A. Yes, sir.

2 Q. In fact, that occurred in a park in Rock Hill. What
3 park was that?

4 A. Confederate Park.

5 Q. And Confederate Park, you stay on Keels Avenue.
6 Right?

7 A. Yes, sir.

8 Q. Confederate Park is just -- From Keels, you'd have --
9 It's kind of a straight shot up northwards. You'd cross
10 Main Street, and then you'd get to the park. Right?

11 A. Yes, sir.

12 Q. All right. And when you were at the park, you were
13 actually there with "Duke" Darius Jeter?

14 A. Yes, sir.

15 Q. All right. And he stays on Main Street. Right?

16 A. Yes, sir.

17 Q. So you're on Keels. Just a couple of blocks away is
18 Duke on Main, and then the two of y'all, the day after this
19 murder are together at the park; is that correct?

20 A. Yes, sir.

21 Q. And the police come and start questioning you and Duke
22 about something they're investigating. It's got nothing to
23 do -- They're not talking about the robbery, or murder, or
24 this case. Right?

25 A. That's right.

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1 Q. It was something totally different. Right?

2 A. Yes, sir.

3 Q. All right. And at that time, wanting to tell the
4 truth and all, you didn't say, "Hey, I got to talk to you
5 guys about some stuff that went down last night." You
6 didn't tell them that, did you?

7 A. No, sir.

8 Q. I just want to make sure we didn't miss that
9 statement. You didn't in any way say -- try and get a
10 phone number from one of those officers and say, "Can I
11 maybe call y'all later and talk to you?"

12 A. No, sir.

13 Q. And you didn't make any effort that day whatsoever to
14 reach out to law enforcement and tell them about this
15 robbery and this murder, did you?

16 A. No, sir.

17 Q. But you had opportunity to. I mean, you were face to
18 face speaking to a police officer on that day. Right?

19 A. Yes, sir.

20 Q. Okay. Let's talk specifically about some of the stuff
21 you told them on the 5th when you did get around to the
22 police department.

23 First of all, before you even get into what you're
24 talking about, you went up to the police department because
25 you had been told that they had been at your house on Keels

SAMANTHA LATREAL ERVIN: CROSS BY MR. CHIARENZA

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1 Avenue looking for you. Right?

2 A. No, sir.

3 Q. You're not aware that they searched your house and
4 went over there with a search warrant at Keels Avenue?

5 A. Yes, I'm aware of that.

6 Q. Okay. So, you know the police were at your house
7 searching?

8 A. Yeah, Monday I found that out.

9 Q. And when you found it out on Monday, and that's why
10 you went to the police station because you were made aware
11 the police wanted to speak to you.

12 A. Yes, sir.

13 Q. You didn't just happen to, you know, among your list
14 of things to do that day, go pick up the laundry, buy
15 groceries, go stop at the police department and tell them
16 what I know about this crime. It didn't go down like that,
17 did it?

18 A. No, sir.

19 Q. They wanted to talk to you, and you knew that. Right?

20 A. Yes, sir.

21 Q. All right. So when you got there, they served you
22 with warrants. You didn't leave the police department that
23 day, did you?

24 A. No, sir.

25 Q. Okay. You got booked, processed, arrested, and have

SAMANTHA LATREAL ERVIN: CROSS BY MR. CHIARENZA

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1 you ever been out of custody since that day?

2 A. No, sir.

3 Q. Okay. Yeah, but on that day, you gave *Statement*
4 *Number One*, your written statement. And you've had an
5 opportunity to review the statement, I'm guessing on a
6 number of occasions since that day two years ago. Right?

7 A. Yes, sir.

8 Q. You've gone over it with your lawyer, Ms. Burris?

9 A. Yes, sir.

10 Q. And you've gone over it with some folks from the
11 Solicitor's Office?

12 A. Yes, sir.

13 Q. All right. Now, let's talk about what you told them
14 on that day. And in this statement, you are aware that
15 right above where you signed this statement, it says, "All
16 of the above is the truth, the whole truth, and nothing but
17 the truth so help me God." Correct?

18 A. Yes, sir.

19 Q. And you signed that?

20 A. Yes, sir.

21 Q. Now if I represent to you something that's in this
22 statement and you don't remember it, just ask me and I'll
23 show it to you, okay? And we can both get on the same page
24 literally. Your recollection that in this statement, you
25 told them that you were -- You came downstairs. From Keel

SAMANTHA LATREAL ERVIN: CROSS BY MR. CHIARENZA

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1 Street, you were up in the bedroom with Aileen Newman who
2 was your girlfriend at the time. Correct?

3 A. Uh-huh.

4 Q. And you came downstairs, and you told them, "In the
5 living room was Davontay Henson, my cousin Alijah James" --
6 I'm sorry. I'll start right from the beginning of it. You
7 say, "When I came downstairs, there was a guy named Donta
8 Reid, Alijah James, and also Davontay Henson." You told
9 them all that, that those three people were down there when
10 you came down the stairs. Right?

11 A. Yes, sir.

12 Q. All right. But when Mr. Brackett was questioning you,
13 you told him that you had gone and got Davontay Henson that
14 day?

15 A. Yes, sir.

16 Q. So those two things, one of them is not the truth?

17 A. Yes, sir.

18 Q. If something is not the truth, what do we call it?

19 A. A lie.

20 Q. So, you told them that these three guys who were down
21 in the living room, your cousin Alijah and the two
22 defendants here today were all talking about smoking weed.
23 Right?

24 A. Yes, sir.

25 Q. All right. Now, here's your opportunity once and for

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1 all to get this right. Was there anybody else in the
2 living room at that time?

3 A. No.

4 Q. And Aileen who we call Lae Lae too. Right, that's her
5 name?

6 A. Lee Lee.

7 Q. Lee Lee, I'm sorry. She was upstairs?

8 A. Yes, sir.

9 Q. Okay. And they were talking about smoking weed, and
10 where they can all maybe get some weed from, more or less.
11 Right?

12 A. Yes, sir.

13 Q. And then Lee Lee comes downstairs, and I guess
14 overhears them and provides some weed for them. Did you
15 observe that -- say that?

16 A. Yes, sir.

17 Q. Then you talked about Mr. Reid texting some people
18 back and forth, and then about getting into your uncle's
19 truck. And then you told them that you actually -- You saw
20 Darius Jeter as y'all were in the truck that day. Correct?

21 A. Yes, sir.

22 Q. And that he, as you were droven by yelled back --
23 yelled at y'all about wanting some pot, or "I need some
24 pot."

25 A. Yes, sir.

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1 Q. You told officers that on this statement, you were
2 going to Midtown, and you were going to pick up somebody
3 named Keeke Wilson at her sister's house, but then when you
4 got there, you didn't pick her up because the truck was too
5 full. Remember telling that?

6 A. Yes, sir.

7 Q. Okay. But when Mr. Brackett was talking to you today,
8 you told him that you went to your mom's house, and you
9 also went to get gas and made absolutely no mention about
10 going to Keeke's house or going to Midtown. Right?

11 A. That's correct.

12 Q. Okay. So those two things, they don't agree with each
13 other. Right?

14 A. Right.

15 Q. So one of them is a?

16 A. Lie.

17 Q. Right.

18 A. But I did go over at Keeke's house to Midtown.

19 Q. But you didn't tell -- say that --

20 A. Yeah, I didn't say that at first, but I did go over
21 there.

22 Q. Now in this first statement, you don't make any
23 mention, and if you think you do, I'll be happy to let you
24 read it over. But you don't make any mention about seeing
25 Mr. Henson with a gun at any time before the robbery

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1 supposedly happened, and the shooting supposedly happened,
2 and him and Lea-Lea [sic] got back into the truck; is that
3 correct?

4 A. That's correct.

5 Q. And even the whole part about the truck, that's really
6 not how it went down. What I mean by that is, in this
7 statement, you make it sound like you dropped off Mr. Reid,
8 and then you dropped off Lee Lee, and my client Mr. Henson,
9 and then that you remembered, "Oh, Lee Lee's got my phone,
10 so I better go back and get it." And when you went to do
11 that, you saw Davontay -- I'm sorry. You saw Mr. Reid, and
12 he hopped in the truck, and you asked him where the other
13 two were, and then as you were riding around, you saw them,
14 and then they got back in the truck. But, it didn't really
15 happen that way.

16 A. No, sir.

17 Q. So that is a?

18 A. Lie.

19 Q. Right. And in fact very specifically, the first time
20 you mentioned the gun, in this first statement you say,
21 "When I got back home, they were getting out of the truck,
22 and that's when I saw the gun that B'more had." Correct?

23 A. Yes, sir.

24 Q. Okay. And then you and Lee Lee went back -- went
25 upstairs, and the other people we've mentioned so far were

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1 downstairs?

2 A. Yes, sir.

3 Q. And still, those other people are my client, Mr. Reid
4 and Alijah. Correct?

5 A. Yes, sir.

6 Q. That's it?

7 A. That's it.

8 Q. And Lee Lee had talked to you about, you know, saying
9 she wanted y'all to cover for her on this thing, be an
10 alibi. Right?

11 A. Yes, sir.

12 Q. And at some point, it's your testimony that Lee Lee
13 took Mr. Henson back. Well they went to a store, got some
14 liquor, alcoholic beverages of some kind, and came back and
15 drank them?

16 A. Yes, sir.

17 Q. All right. And I think you testified -- Or it was
18 your observation that Lee Lee took him home even though she
19 was a little buzzed, drunk at the time. Correct?

20 A. Yes, sir.

21 Q. Okay. Eventually she returned back to the house.

22 A. Yes, sir.

23 Q. And y'all just went to sleep?

24 A. Yes, sir.

25 Q. Now, in this statement, *Number One* here again, when

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1 Lee Lee gets back, she tells you that she took Davontay.

2 And then you say, "I haven't seen B'more since then." So

3 that's the night that he leaves the house, and you tell

4 police officers, "I haven't seen him since that night."

5 Correct?

6 A. Correct.

7 Q. But today, I'm pretty sure it was on your direct

8 testimony, you testify that you did see B'more the next

9 day.

10 A. That Friday, after --

11 Q. The day after.

12 A. The day after.

13 Q. In the morning, sun's up now. Everybody's been to

14 sleep, and they got up and woke up, and now it's a new day.

15 A. That Friday afternoon.

16 Q. In the afternoon of that day, so --

17 A. Yeah, when I got back from the police department.

18 Q. That you saw B'more, Mr. Henson, my client?

19 A. Yes, sir.

20 Q. Okay. I just want to make sure we're all done with

21 *Statement Number One.*

22 All right, let's go to *Statement Number Two.* Now this

23 is a little different. This one was -- Do you remember

24 where this one was done?

25 A. Yes, sir.

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1 Q. Where was that?

2 A. At the Solicitor's Office.

3 Q. That's here in this building. Right?

4 A. Yes, sir.

5 Q. And you were with Ms. Burris who's your attorney at
6 that time. Right?

7 A. Yes, sir.

8 Q. Now this statement -- Is it your recollection that
9 this occurred on November 1st, 2010, a full year and one
10 month after the robbery. Right?

11 A. Yes, sir.

12 Q. So, up until that time, y'all -- you hadn't stepped
13 forward and said, "I want to tell the truth, make a plea,
14 do a deal." You had plenty of time to talk to your lawyer
15 about various options of what you might do with this case.
16 Right?

17 A. Yes, sir.

18 Q. But thirteen months go by after the robbery, and now
19 you're at the Solicitor's Office and giving another
20 statement. Correct?

21 A. Yes, sir.

22 Q. All right. Now, in this statement, you told -- well,
23 the statement that you signed and met with Mr. Tolson, I
24 believe, who's an investigator for the Solicitor's Office.
25 Again in this statement, you don't say that you went out

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1 and picked up Mr. Henson, do you? According to this one,
2 he was already in the house; is that correct?

3 A. That's correct.

4 Q. Okay. So two times, in two previous statements, you
5 said he was already there when you first saw him, but today
6 you said that you went out and actually picked him up and
7 brought him back to the house. Right?

8 A. Yes, sir.

9 Q. And now in this statement that you're giving here to
10 the Solicitor's Office -- And this statement is part of
11 something they wanted you to do when y'all were negotiating
12 what your plea deal was going to be. Right?

13 A. No, sir. That's when I decided to tell the truth.

14 Q. But this was part -- Your understanding is that part
15 of your plea agreement required this statement?

16 A. For me to tell the truth.

17 Q. But it required that you give a statement?

18 A. Yes, sir.

19 Q. Let's assume you were giving the truth. You still had
20 to give a statement to get the plea deal. Right?

21 A. Yes, sir.

22 Q. Okay. And now in this statement, it's a little more
23 pointing to these guys. They're not just talking about
24 smoking some weed and where they can get some weed. This
25 one's pulling licks and -- You go right into, "They're

1 talking about pulling licks and doing a robbery"; is that
2 correct?

3 A. That's correct.

4 Q. Okay. And in this statement, it says that Donta,
5 Donta Reid, made it known that he knew someone they could
6 rob. Right?

7 A. Yes, sir.

8 Q. And that he got your phone and started making some
9 calls and this -- All that stuff he was doing had to do
10 with setting up a robbery?

11 A. Yes, sir.

12 Q. And in this statement, this isn't -- Y'all aren't --
13 You're not driving around. You're waiting. You and --
14 First you're just in the car, and then Mr. Reid comes in
15 the car with you. Right?

16 A. Yes, sir.

17 Q. And now in this statement also, it makes no mention of
18 seeing Mr. Henson with a gun till afterwards. You say "I
19 did see Davontay with a gun that night after the robbery."
20 Right?

21 A. Yes, sir.

22 Q. And your direct examination with Mr. Brackett, this
23 part about the victims ID's being laid out on the table,
24 today you said that Mr. Henson looked at one of the ID's
25 and said, "I know that guy. I recognize this guy." Was

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1 that -- Am I getting that right?

2 A. Yes, sir.

3 Q. All right. That's nowhere in this one here though.

4 Right? The one that you said, "I'm going to tell you the
5 truth as part of my plea deal."

6 A. Yes, sir.

7 Q. This statement says that you recognized one of the
8 guys. Right?

9 A. Yes, I also did too.

10 Q. But this statement says you recognized one of the
11 guys?

12 A. Yes.

13 Q. Okay. It doesn't say anything about Davontay
14 recognizing one of the guys?

15 A. No, sir.

16 Q. All right. And in fact, in this statement, you gave a
17 -- kind of referenced your first October 5th statement
18 where you once again said that the October 5th statement,
19 you were telling the truth given that statement too, except
20 "I didn't make it sound like I knew that a robbery was
21 going to happen when I actually did know a robbery was
22 going to happen." You clarified that point.

23 A. Yes, sir.

24 Q. But you specifically said on October 5th, "I gave a
25 statement to the Rock Hill police. I told the truth when

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REDIRECT BY MR. BRACKETT

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1 given that statement, but I did not make it sound like I
2 knew that a robbery was going to happen." Right?

3 A. Right.

4 Q. When in fact, there are actually -- There's more than
5 just that in the October 5th statement that's not truthful?

6 A. Correct.

7 MR. CHIARENZA: The Court's indulgence just a second,
8 Your Honor.

9 THE COURT: Okay.

10 (PAUSE AT 12:15 PM.)

11 MR. CHIARENZA: Thank you, Ms. Ervin, you've been very
12 helpful.

13 THE COURT: Redirect?

14 MR. BRACKETT: Yes, sir.

15 REDIRECT EXAMINATION

16 SAMANTHA ERVIN BY MR. BRACKETT:

17 Q. Ms. Ervin, did you have an attorney on October the 5th
18 of 2009 when you were at the police department?

19 A. No, sir.

20 Q. Was Ms. Burris there with you?

21 A. No, sir.

22 Q. Did anybody from the Solicitor's Office show up?

23 A. No, sir.

24 Q. Was I there?

25 A. No, sir.

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1 Q. Mr. Thompson over there?

2 A. No, sir.

3 Q. Did anybody offer you any kind of deal -- negotiate
4 any kind of plea arrangement with you then?

5 A. No, sir.

6 Q. You were just talking to the police?

7 A. Yes, sir.

8 Q. And you gave a statement?

9 A. Yes, sir.

10 (WHEREUPON: STATE'S EXHIBIT NUMBER FORTY-ONE
11 PREMARKED FOR IDENTIFICATION.)

12 Q. I'm showing you what's been marked as State's Exhibit
13 Forty-one for identification. Does this -- Take a look at
14 it. Does that look like the statement you gave?

15 A. Yes, sir.

16 Q. Look through it all. Look at the last page. Is that
17 your signature?

18 A. Yes, sir.

19 Q. And what date does it say on there?

20 A. October 5th, 2009.

21 Q. Okay.

22 MR. BRACKETT: Your Honor, I move State's Exhibit
23 Forty-one into evidence at this time.

24 MS. INZERILLO: No objection.

25 MR. CHIARENZA: I'm going to object because it's

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1 redirect, Your Honor.

2 THE COURT: Well, there's been an awful lot of
3 questioning concerning this statement, so I rule that you
4 allow it in over objection.

5 MR. BRACKETT: Your Honor, for the record too, I would
6 also note that under 801 (D), the implication that her
7 testimony today is somehow motivated improperly, and that
8 she's fabricated her testimony --

9 MR. CHIARENZA: Your Honor, I think the Court's ruled
10 and is allowing it in.

11 THE COURT: Yeah, you don't need to --

12 MR. BRACKETT: Yes, sir.

13 THE COURT: You don't need to -

14 (WHEREUPON: STATE'S EXHIBIT NUMBER FORTY-ONE
15 IDENTIFIED AND MARKED, ENTERED INTO EVIDENCE.)

16 Q. You didn't have a deal when you made this statement,
17 did you? What does this say right there?

18 A. "I make this statement of my own free will and accord
19 without reward or hope of reward. I have not been
20 mistreated or threatened in any way. All of the above is
21 the truth, the whole truth, and nothing but the truth, so
22 help me God."

23 Q. Now was it all the truth?

24 A. No, sir.

25 Q. Did you put yourself in the middle of this?

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1 A. No, sir.

2 Q. What were you trying to say your involvement was?

3 A. I didn't know what was going on. I was just dropping
4 them off. I had no idea what was going to happen.

5 Q. But who did you say was involved?

6 A. Donta Reid, Aileen Newman, and Davontay Henson.

7 Q. B'more? Davontay Henson and Donta Reid, the two
8 people here on trial?

9 A. Yes, sir.

10 Q. Has that story ever changed?

11 A. No, sir.

12 Q. Okay. Now Mr. Chiarenza asked you a question about
13 the second statement that you made where he said, "You
14 didn't say anything in that statement about going to get
15 B'more." Did you?

16 A. No, sir.

17 Q. He asked you about that, and you didn't say anything
18 in that statement about going to get B'more. I'm showing
19 you that statement right now. What does it say, that first
20 sentence?

21 A. "Statement concerning the homicide" --

22 Q. No, no.

23 THE COURT: You're reading --

24 A. Oh, right here? "On the evening of October 1st, 2009,
25 I met up with Crud, Donta Reid -

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1 THE COURT: Hold on, wait, wait. Let her read into
2 the microphone.

3 A. Okay.

4 Q. Slow down.

5 A. Okay. "On the evening of October 1st, 2009, I met up
6 with Crud; Donta Reid; "Lee Lee", Aileen Newman; and
7 "B'more", Davontay Henson at my uncle Alfonso Leach's house
8 on [REDACTED] in Rock Hill.

9 Q. Is that true? Did you meet up with all those people
10 there?

11 A. Yes, sir.

12 Q. Did anybody ask you how all those people got there?

13 A. No, sir.

14 Q. All right. So there were a number of things that you
15 didn't include, but that doesn't mean they were lies if you
16 didn't ask about them?

17 A. That is correct.

18 Q. Likewise, did anybody ask you whether or not B'more
19 recognized anybody in the ID's?

20 A. No, sir.

21 Q. Is that true though. Did he?

22 A. Yes, he did.

23 Q. Now, you said you were asked about Darius Jeter, and
24 you were with him. You saw Darius Jeter on October 1st, I
25 believe you testified to.

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1 A. Yes, sir.

2 Q. Where did you see him?

3 A. He was standing in the middle of the road.

4 Q. Where at?

5 A. On Keels.

6 Q. How far from [REDACTED] where you were living?

7 A. Right there in front, the sidewalk.

8 Q. Like feet?

9 A. Yeah, about 5 feet, maybe.

10 Q. Okay. Did he get in the truck with you?

11 A. No, sir.

12 Q. Did he know where you were going?

13 A. No, sir.

14 Q. Did he have any idea what your were up to?

15 A. No, sir.

16 Q. Did he show up over there on Byars Street later on?

17 A. No, sir.

18 Q. Did you see him over there getting into the truck
19 after the robbery?

20 A. No, sir.

21 Q. To your knowledge, did he have anything to do or any
22 knowledge of the robbery on Byars?

23 A. He didn't know anything about the robbery. He didn't
24 have anything to do with it.

25 Q. Now Mr. Chiarenza asked you about the sentence that

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1 you're going to get. You're facing a range of 10 to 25
2 years; is that right?

3 A. Yes, sir.

4 Q. And the judge is going to sentence you; isn't that
5 correct?

6 A. Yes, sir.

7 Q. All right. Now, am I the judge?

8 A. No, sir.

9 Q. Is Mr. Thompson the judge?

10 A. No, sir.

11 Q. So your sentence is going to be decided by somebody
12 other than the Solicitor's Office?

13 A. That is correct.

14 Q. You could get the 10 years?

15 A. Yes, sir.

16 Q. You could get 10; you could get 25?

17 A. Yes, sir.

18 Q. In any of your statements from October 5th till today,
19 sitting in that witness stand, have you ever said to
20 anybody that anybody other than B'more, Davontay Henson; or
21 "Crud" Davontay Reid was involved in the robbery and
22 shooting over on Byars Street on October 1st?

23 A. No, I said no one else was involved.

24 Q. I'm sorry.

25 A. No one else was involved.

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RECROSS BY MS. INZERILLO

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1 Q. All right. Have you ever said to anybody that they
2 weren't involved?

3 A. No, I never said that.

4 Q. No further questions.

5 MS. INZERILLO: May it please the Court, Your Honor.

6 RECROSS EXAMINATION

7 SAMANTHA ERVIN BY MS. INZERILLO:

8 Q. Ms. Ervin, Mr. Brackett just asked you if your story
9 ever changed about the involvement of -- I'm going to speak
10 specifically to Mr. Reid; is that right?

11 A. That's right.

12 Q. And you indicated that your story of his involvement
13 never changed. Right?

14 A. Correct.

15 Q. But on your first statement that you gave -- Do you
16 still have it up there with you?

17 A. No, ma'am.

18 MS. INZERILLO: May I approach the witness, Your
19 Honor?

20 THE COURT: Yes.

21 BY MS. INZERILLO:

22 Q. I'm going to show you what's been entered as State's
23 Forty-one, so you can read off of that. Okay?

24 A. Uh-huh.

25 Q. That's your first statement that you gave. Right? At

1 the police station.

2 A. Yes, ma'am.

3 Q. And in that statement, I'm going to turn your
4 attention to the top of the second page. Right?

5 A. Yes, ma'am.

6 Q. Now you call my client, Crud, right? That's his
7 nickname?

8 A. Yes, ma'am.

9 Q. So you say, "Crud said he was going to text his friend
10 and tell him I got some weed." Right?

11 A. Yes, ma'am.

12 Q. "That he, Crud, was texting back and forth with
13 someone on my phone." Right?

14 A. Yes, ma'am.

15 Q. "Crud asked me if I was going to drop them off so that
16 they could match the blunt with the person he was texting."
17 Right?

18 A. Yes, ma'am.

19 Q. And essentially, I imagine the blunt means you get
20 more marijuana, so you get more of a high. Right?

21 A. Yes, ma'am.

22 Q. It doesn't mean stealing, or robbing, or anything like
23 that?

24 A. No, ma'am.

25 Q. So in this statement, you never said that he came up

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1 with any plan to rob anybody from what you put in this
2 statement; is that right?

3 A. That's right.

4 Q. What you put in this statement is that Donta Reid was
5 just going to go smoke marijuana with some friends. Right?

6 A. Yes, ma'am.

7 Q. Okay. But then in your -- the statement that you gave
8 to the Solicitor's Office -- And if you don't remember,
9 then let me know, and I can -- I can show it to you.

10 That's the first time you say Donta made it known that he
11 knew someone that they could rob and used your phone to get
12 in touch with them. Right?

13 A. Correct.

14 Q. That's not the same thing your told the police on
15 October 5th?

16 A. No, ma'am.

17 Q. And then after that, you said the plan was for Aileen,
18 Donta, and Davontay to smoke some weed with the guys that
19 they were going to rob, and then rob them of their weed.
20 Right?

21 A. Yes, ma'am.

22 Q. So, and that of course is different than what you told
23 the police on October 5th?

24 A. Yes, ma'am.

25 Q. And again, you gave this statement in November of 2010.

1 in exchange for some consideration on your sentence.

2 Right?

3 A. Yes, ma'am.

4 Q. Now, do you recall that -- the plea agreement with the
5 State?

6 A. Yes, ma'am.

7 Q. And just to kind of put all this in context, you gave
8 that statement to the Solicitor's Office. Right?

9 A. Yes, ma'am.

10 Q. And then you've actually agreed to plead guilty to the
11 charges that are still remaining. Right? The armed
12 robberies and the criminal conspiracy.

13 A. Yes, ma'am.

14 Q. So you came into court and did that. Right?

15 A. Yes, ma'am.

16 Q. So when you come into the courtroom, you stand in
17 front of a judge, and you say "I'm pleading guilty of this.
18 I gave this statement. It's the truth." Right?

19 A. Yes, ma'am.

20 Q. Okay. You put your hand on the Bible a second time
21 when you tell that to the judge. Right?

22 A. Yes, ma'am.

23 Q. And you did that in this case. Right?

24 A. Yes, ma'am.

25 Q. And you are aware that in your plea agreement, it's

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1 clear that both the State and your attorney can ask the
2 judge for whatever sentence is appropriate between that 10
3 and 25 year range. Right?

4 A. Yes, ma'am.

5 Q. So while the judge makes the final decision, the State
6 can make some remarks to either help you get the 10 or make
7 you get the 25; is that right?

8 A. Yes, ma'am.

9 Q. Okay.

10 MS. INZERILLO: No further questions, Your Honor.

11 THE COURT: Mr. Chiarenza.

12 MR. CHIARENZA: I think just one or maybe a couple of
13 follow-ups, Your Honor.

14 RECROSS EXAMINATION

15 SAMANTHA ERVIN BY MR. CHIARENZA:

16 Q. Mr. Brackett's redirect question of you has left me a
17 little confused now. Is it your testimony that you did not
18 go pick up Mr. Henson on that day?

19 A. I went to go pick him up.

20 Q. Okay. And the only reason you didn't say that is
21 because nobody asked you about it?

22 A. Yes, sir.

23 Q. But the statement says that you met up with them at
24 the house. Right?

25 A. Yes, sir.

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1 Q. Well, isn't that different than somebody asking you
2 how they got there? It says you met up with them at the
3 house. Right?

4 A. Yes, sir.

5 Q. So that -- That's not a truthful statement. Correct?

6 A. Correct.

7 Q. Thank you. Nothing further.

8 THE COURT: You can step down and return to where you
9 were setting.

10 We're going to break for lunch till 1:45. It's almost
11 12:30, that's about an hour and fifteen minutes. And we'll
12 see you back in the jury room at that time. Thank you.
13 Have a pleasant lunch.

14 (JURY LEAVES COURTROOM FOR LUNCH AT 12:30 PM.)

15 THE COURT: May she can be excused and returned?

16 MR. BRACKETT: Yes, sir.

17 (WITNESS RETURNED TO HOLDING CELL.)

18 THE COURT: We'll be at ease 'till 1:45.

19 (DEFENDANT'S REID AND HENSON ESCORTED TO HOLDING
20 CELLS.)

21 (COURT IN LUNCH RECESS AT 12:30 PM.)

22 (DEFENDANT'S REID AND HENSON REENTER COURTROOM.)

23 (COURT BACK IN SESSION AT 01:47 PM.)

24 THE BAILIFF: Order in the Court.

25 THE COURT: Thank you, take your seats.

DARIUS BERNARD JETER: DIRECT BY MR. BRACKETT

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1 Is the State ready?

2 MR. BRACKETT: The State's ready, Your Honor.

3 THE COURT: Is the Defense ready?

4 MS. INZERILLO: Yes, Your Honor.

5 MR. CHIARENZA: Yes, Your Honor.

6 THE COURT: Bring in the jury.

7 (JURY REENTERS COURTROOM AT 01:48 PM.)

8 THE COURT: Call your next witness.

9 MR. BRACKETT: The State would call Darius Jeter.

10 (WITNESS ESCORTED FROM HOLDING CELL ADJACENT TO
11 COURTROOM.)

12 MR. BRACKETT: Here you go, sir.

13 (BRACELETS/SHACKLES REMOVED FROM WITNESS WRISTS.)

14 MADAME CLERK: Raise your right hand, place your left
15 on the Bible.

16 (WHEREUPON: DARIUS BERNARD JETER,
17 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

18 DIRECT EXAMINATION

19 DARIUS BERNARD JETER BY MR. BRACKETT:

20 Q. Mr. Jeter, would you please state your full name and
21 spell your last so the court reporter can get it right?

22 A. Darius Bernard Jeter. J-

23 THE COURT: Would you speak up, please, sir?

24 A. Darius Bernard Jeter.

25 Q. The court reporters going to hand you a microphone.

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1 You have a soft voice, Mr. Jeter, and I want to make sure
2 everybody can hear you really well. So, you can use that
3 microphone. Speak into that so everybody can hear you.

4 Darius Bernard Jeter, is that D-a-r-i-u-s?

5 A. Yes, sir.

6 Q. You have a nickname, Mr. Jeter?

7 A. Duke.

8 Q. Duke. How old are you, sir?

9 A. Nineteen.

10 Q. And I notice you're wearing a jumpsuit from the
11 Detention Center. Are you currently housed over in the
12 York County Detention Center?

13 A. Yes, sir.

14 Q. Is this for something completely unrelated to the
15 reason we're here today? Isn't it?

16 A. Yes, sir.

17 Q. Where do you live, Mr. Jeter?

18 A. [REDACTED]

19 Q. I want to turn your attention back to October of 2009.
20 You ever been charged with murder before?

21 A. Yes, sir.

22 Q. Back in October of 2009, did the Rock Hill Police
23 Department serve a warrant on you for murder?

24 A. Yes, sir.

25 Q. How did they -- Do you know how they came to you? Who

DARIUS BERNARD JETER: DIRECT BY MR. BRACKETT

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1 gave them information that you were involved in a murder?

2 A. Crud.

3 Q. Crud. What's his real name?

4 A. Donta Reid.

5 Q. Do you see him in the courtroom?

6 A. Yeah.

7 Q. Can you tell me what he's wearing?

8 A. Uh, a yellow tie.

9 Q. A yellow tie. This gentleman seated right over here?

10 A. Yeah.

11 MR. BRACKETT: I ask that the record reflect Mr. Jeter
12 has identified the Defendant Donta Reid.

13 THE COURT: All right.

14 Q. When did you first find out -- How did you find out
15 that you had been implicated or accused of being involved
16 in a murder?

17 A. 'Cause I had got locked up for a burglary charge, and
18 I seen him in there. And I just seen him like earlier that
19 day.

20 Q. Okay.

21 A. And I had got locked up. He was -- He was in jail and
22 I was surprised. And I was like, "What's up?" He didn't
23 say nothing. He was sitting in the back, in the back cell,
24 Cell 6. And so they served him some warrants.

25 Q. Is this at the Rock Hill Police Department?

DARIUS BERNARD JETER: DIRECT BY MR. BRACKETT

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1 A. Yeah.

2 Q. Is that when you got served with the warrants?

3 A. Yes, sir.

4 Q. For murder? Okay.

5 Now the murder warrants accused you of being involved
6 in a murder of a man named Tyrone King. Did you know
7 Tyrone King?

8 A. Yes, sir.

9 Q. Did you know Maurice Jackson, Henry Jackson?

10 A. Yes, sir.

11 Q. And Kenny Cunningham? They call him Kenny-Boo?

12 A. Yes, sir.

13 Q. You knew all of those guys. Okay.

14 On October 1st of 2009, did you rob with a gun Kenny
15 Cunningham, Maurice Jackson, or Tyrone King?

16 A. No, sir.

17 Q. Were you at the house on Byars Street that night?

18 A. No, sir.

19 Q. Did you shoot anybody on Byars Street or anywhere else
20 in Rock Hill on October 1st of 2009?

21 A. No, sir.

22 Q. Now, did you see Donta Reid on October 1st of 2009?

23 A. Yes, sir.

24 Q. Where did you see him?

25 A. On Keel Street.

DARIUS BERNARD JETER: DIRECT BY MR. BRACKETT

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1 Q. When you saw him on Keel Street, what were you doing?

2 A. I was coming down Keel Street trying to go to get some
3 -- get some weed.

4 Q. Get some weed? Where were you heading?

5 A. Down to a home boy house, Alijah house.

6 Q. And did you make it there?

7 A. Huh-uh.

8 Q. Where were they when you saw them? Where was Mr. Reid
9 when you saw him?

10 A. He was coming up the street in a green truck.

11 Q. Where was -- Was he in the truck?

12 A. No, he was in the back of the truck.

13 Q. In the bed part of the truck?

14 A. Yeah.

15 Q. Who else was in the truck? Could you see?

16 A. Ervin, Samantha Ervin driving.

17 Q. Could you see if -- Was there anybody else in the
18 truck?

19 A. I ain't see. Their windows was tinted.

20 Q. You couldn't see if anybody else was in there, or you
21 couldn't see who they were?

22 A. Couldn't see.

23 Q. Did you talk to Mr. Reid or Ms. Ervin on the street
24 that night?

25 A. I talked to Ms. Ervin.

DARIUS BERNARD JETER: DIRECT BY MR. BRACKETT

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- 1 Q. What did you say?
- 2 A. I asked them what they where they was going.
- 3 Q. All right.
- 4 A. They say they was going, to get in.
- 5 Q. How long did you talk to them?
- 6 A. Probably like 3 minutes.
- 7 Q. And did you get in the truck with them?
- 8 A. No, sir.
- 9 Q. Did they tell you a specific location that they were
- 10 going?
- 11 A. Huh-uh.
- 12 Q. After you talked to them, where did you go?
- 13 A. I went back to the store.
- 14 Q. Which store was that?
- 15 A. Grocery.
- 16 Q. Park? Is that Park Grocery?
- 17 A. Yeah.
- 18 Q. Is that a short block from where you met them?
- 19 A. Yeah.
- 20 Q. All right. Did you see them again that night?
- 21 A. No, sir.
- 22 Q. Do you have any information about what happened on
- 23 Byars Street?
- 24 A. No, sir.
- 25 Q. Did you witness anything that happened there?

DARIUS BERNARD JETER: DIRECT BY MR. BRACKETT

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1 A. No, sir.

2 Q. When they arrested you and charged you with murder,
3 they also charged you with a burglary. Right?

4 And you were actually -- Ultimately, you pled guilty to two
5 burglaries and a criminal conspiracy, and you're on
6 YOA. You got a Youthful Offender sentence for that?

7 (WITNESS INDICATED.)

8 Q. When they arrested --

9 THE COURT: Okay, wait, wait. You've got to answer
10 with something other than --

11 MR. BRACKETT: Yes, sir.

12 Q. Is that correct?

13 THE COURT: You've got to say yes or no. When he asks
14 you a question you've got to answer.

15 A. Yes, sir.

16 Q. So you were convicted of two burglaries and a criminal
17 conspiracy?

18 A. Yes, sir.

19 Q. Okay. When they arrested you and charged you with
20 those charges as well as the murder, did they book you in?
21 That is to say, did they take your picture, your
22 fingerprints, and do all that stuff?

23 A. Yes, sir.

24 Q. In the jail?

25 A. Yes, sir.

DARIUS BERNARD JETER: DIRECT BY MR. BRACKETT

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1 Q. Okay. I'm showing you -- Let me get this marked if I
2 can.

3 (WHEREUPON: STATE'S EXHIBIT NUMBER FORTY-TWO
4 PREMARKED FOR IDENTIFICATION.)

5 Q. I'm showing you what's been marked as State's Exhibit
6 Forty-two for identification. Do you recognize that
7 booking photo?

8 A. Yes, sir.

9 Q. What date does it say on there?

10 A. October 3rd.

11 Q. What year?

12 A. 2009.

13 Q. Is that a picture -- Does that picture accurately --
14 Who's in the picture?

15 A. Me.

16 Q. Does it accurately depict -- Let me see that. Does
17 that accurately depict you as you were on October 3rd and
18 October 1st as well of 2009?

19 A. Yes, sir.

20 Q. There was another picture in the back of this that
21 doesn't have anything to do with...

22 So that's how you looked?

23 A. Yes, sir.

24 Q. And that's how your haircut looked?

25 A. Yes, sir.

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CROSS BY MR. CHIARENZA

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1 MR. BRACKETT: Your Honor, I would move State's
2 Exhibit Forty-two into evidence at this time.

3 MS. INZERILLO: No objection.

4 MR. CHIARENZA: Your Honor, I'm going to object on the
5 lack of foundation as far as where, and who took this
6 photograph, and the circumstances.

7 THE COURT: In over objection.

8 (WHEREUPON: STATE'S EXHIBIT NUMBER FORTY-TWO
9 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

10 MR. BRACKETT: Thank you, Mr. Jeter. Please answer
11 any questions the counsel for Mr. Reid or Mr. Henson may
12 have for you.

13 MS. INZERILLO: No questions, Your Honor.

14 MR. CHIARENZA: If it please the Court, Your Honor?

15 THE COURT: Yes, sir.

16 CROSS EXAMINATION

17 DARIUS BERNARD JETER BY MR. CHIARENZA:

18 Q. Mr. Jeter, when you saw these individuals driving by
19 in the truck that you previously testified, you could
20 only -- The only people you saw was Donta Reid and Samantha
21 Ervin. Correct?

22 A. Yes, sir.

23 Q. And Donta Reid, he was in the back of the truck, so
24 there wasn't an issue with seeing him through any tinted
25 windows. He was in the bed part. Correct?

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1 A. Yes, sir.

2 Q. All right. And he was wearing a black hoodie and a
3 black bandanna. Correct?

4 A. Yes, sir.

5 MR. CHIARENZA: No further questions, Your Honor.

6 THE COURT: Anything further?

7 MR. BRACKETT: Nothing on redirect.

8 THE COURT: You can step down and return to the
9 holding cell. Thank you.

10 (WITNESS LEAVES WITNESS STAND, RETURNS TO HOLDING
11 CELL.)

12 THE COURT: Call your next witness.

13 MR. THOMPSON: The State would call Detective Leslie
14 Herring of the Rock Hill Police Department.

15 (WHEREUPON: LESLIE HERRING, BEING
16 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

17 DIRECT EXAMINATION

18 DETECTIVE LESLIE HERRING BY MR. THOMPSON:

19 Q. Detective Herring, could you give your full name for
20 the Court, please.

21 A. Leslie R. Herring.

22 Q. And where do you work?

23 A. For the Rock Hill Police Department.

24 Q. How long have you worked there?

25 A. December the 1st will be 33 years.

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1 Q. And how long have you been a detective with the police
2 department?

3 A. Most of my career, probably at least 25 years.

4 Q. Now, Detective, did you become involved in this case?

5 A. Yes, sir, I did.

6 Q. And can you tell me, how is it, or what part of the
7 case did you become involved in? Where were you on the
8 time line of events?

9 A. The actual robbery/murder happened about Eleven
10 o'clock. The day before -- Eleven o'clock p.m. the day
11 before, I came to work the next morning at Eight o'clock,
12 and at that time I was informed of the situation, and that
13 I would be one of the lead investigators.

14 Q. And did they make you a lead investigator along with
15 Tim Ayers in this case?

16 A. Yes, sir.

17 Q. Did y'all work together during this case?

18 A. Yes, sir, we did.

19 Q. And kind of tell me briefly, what are the
20 responsibilities kind of, of the lead investigators in the
21 case?

22 A. Pretty much is to oversee what's going on in the
23 investigation and run down leads, put together all the
24 paperwork, compile all the information. Pretty much, work
25 together doing all of that.

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1 Q. Do you have to delegate things out to other people
2 during that time?

3 A. Unfortunately, you have to make sure, you know,
4 somebody's doing stuff. You can't be doing two things at
5 one time. So if you're interviewing someone, you have to
6 ask someone else to do warrants, or do searches, or
7 whatever you have, you know, that needs to be done because
8 you just can't be in two places at one time.

9 Q. And in cases like this, would time be of the essence?

10 A. Yes, we try to work these things as fast as possible,
11 try to get the information as quick as we can.

12 Q. So were there a lot of people from Rock Hill working
13 on this case when it occurred?

14 A. Yes, sir. I think we probably had every detective at
15 some point involved in this investigation.

16 Q. And, so when you came in at Eight o'clock and found
17 out that you were going to be one of the lead detectives,
18 what's one of the first things that happened that morning?

19 A. Well, not being familiar with anything that happened
20 the night before, I was trying to get caught up as to
21 exactly what happened. And in the meantime, trying to get
22 caught up with what had took place. I was with Detective
23 Ayers, and we got a call to go back down to Byars Street
24 where the actual robbery/murder happened because I had not
25 ever been to the scene. So me and him rode back down to

DETECTIVE LESLIE HERRING: DIRECT BY MR. THOMPSON

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1 Byars Street to interview one of the victims.

2 Q. Do you know who it was that called you to go down
3 there?

4 A. I believe it was Mr. Jackson, Maurice Jackson.

5 Q. And did you and Detective Ayers then interview with
6 Mr. Jackson at that point?

7 A. Yes, sir. We went back down that morning and talked
8 with him. There was several people milling around outside.
9 And Mr. Jackson and, I think, his grandmother were inside.

10 Q. And was he able to relay more information to you about
11 the crime at that time?

12 A. Yes, sir. He indicated that he remembered some stuff
13 that he was not able to provide that night because of all,
14 everything that happened.

15 Q. And in some of the stuff that he was telling you
16 about, did he mention anything about that as far as a more
17 accurate description of the actual shooter?

18 MR. CHIARENZA: Objection. Leading, Your Honor.

19 THE COURT: Rephrase your question, please.

20 MR. THOMPSON: All right.

21 Q. Was there anything he told you about the shooter in
22 the case that you did not yet know?

23 MR. CHIARENZA: That's also leading, Your Honor.

24 THE COURT: That is still a leading question. I
25 sustain the objection.

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1 Q. Then, we'll just make it open-ended. What, if
2 anything, did he tell you at that point?

3 A. He gave us quite a bit of information that I had not
4 known previously. He told us about what role he thought
5 that Donta Reid played.

6 MS. INZERILLO: Objection, Your Honor, to the hearsay.

7 THE COURT: I sustain the objection.

8 MR. THOMPSON: All right. That's why I was trying to
9 relate it to a certain area, Judge, if you'll allow me --

10 THE COURT: Well, I can't do it for you.

11 MR. THOMPSON: Okay.

12 Q. Was there anything about either of the suspects that
13 he was able to tell you?

14 A. Yes, sir. He gave us quite a bit more information
15 about both suspects. And one in particular, he remembered
16 hearing the voice and what the voice sounded like, somebody
17 from being up north, especially around the Baltimore area.

18 Q. And did he tell you which one of the suspects?

19 A. He said the individual with the rifle is the one that
20 approached. And it sounded like he was from up north.

21 Q. And did he tell you anything about how he would know
22 that?

23 A. He said he had family members or relatives that were
24 still in that area, in the Baltimore area.

25 Q. Now after you were there at the house that morning

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1 getting that information, where did you go from there?

2 What did you do as a result of the information that you had
3 gathered?

4 A. We left there and went directly across the street to
5 Donta Reid's residence.

6 Q. And when you got to Donta Reid's residence, how far
7 away is that from where this all occurred on Byars Street?

8 A. Just a few houses up the street, kind of around the
9 curve and on the other side of the street, just within --

10 Q. When you got there, was Donta Reid there?

11 A. No, sir, he was not.

12 Q. What did y'all do when you got there, and he wasn't
13 there? What did you do next?

14 A. Myself and Officer -- Detective Ayers walked up to the
15 house, and talked to an older gentleman, and gave him a
16 card, and told him that when Mr. Reid got back home to make
17 sure he give us a call. It was really important that we
18 talk with him.

19 Q. And so where did y'all go from there?

20 A. We left there and was trying to run some other leads
21 down that we had gotten that morning about a couple of
22 individuals that had been seen walking together, a male and
23 a female. And ultimately, we wound back up at the station.

24 Q. And when you got back to the station, what occurred?

25 A. As we were going in the station, I got a call that Mr.

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1 Reid had returned home and was wanting to talk to us. So I
2 went on in the station. I asked Detective Ayers if he
3 would go by and pick him up and bring him to the station.

4 Q. And did he come to the station at that point?

5 A. Yes, sir. He rode up to the station with Detective
6 Ayers.

7 Q. And when he got there, did you place him under an
8 arrest, or what did you do?

9 A. No, sir. We did not place him under an arrest. He
10 came in voluntarily, and we went back to an interview room
11 and sat down, and we were just talking with him.

12 Q. Did you ask him if he was willing to talk with you at
13 that point?

14 A. Yes, sir, we did.

15 Q. And was he willing to do that?

16 A. Yes, sir, he was.

17 Q. All right. At that point, was he still free to leave
18 if he wished to?

19 A. Yes, sir, he was.

20 Q. And as you began to talk to him what, if anything, did
21 he tell you?

22 A. He told us that he had been over at the Byars Street
23 address where the murder and robbery had happened that
24 evening and gave us the information that he had actually
25 used one of the victim's cell phones and made a phone call

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1. from, and I believe it was Maurice Jackson's phone that he
2 actually used to call a female that he wanted to go visit.

3 Q. And what did he say he did after that call?

4 A. He said after making that phone call, he gave Mr.
5 Jackson his phone back and he left and went over to the
6 female's house.

7 Q. Did he tell you where that house was located?

8 A. Yes, sir. He said it was in the Midtown Apartments
9 and gave us a street address and a letter number for the
10 apartment.

11 Q. What did y'all do as a result of that?

12 A. Well from interviewing him, just after having done
13 this for so many years, it just didn't feel right that he
14 was telling us the truth. So I asked him to -- to come
15 with us, show us the apartment. And we wanted to go talk
16 with the young lady that he had talked with that night.

17 Q. And did he actually take you to the apartment then?

18 A. Yes, sir. He directed us where to go and how to park.
19 And once we got parked, he told us -- or he told me because
20 I was going to be the one going up to the door. He said,
21 "Don't ask for her by the name I gave you earlier." And he
22 gave me a different name.

23 Q. Did you go up and ask for someone by that name?

24 A. Yes, sir, I did.

25 Q. All right. What happened at that point?

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1 A. When I went up there and knocked on the door, an older
2 lady came out. And she said that who I was asking for was
3 her daughter, and her daughter was not there at that time.
4 And I asked her if she knew Donta Reid, and she said, yes,
5 she knew him. And I said -- I asked her if her daughter
6 knew him. She said yes, her daughter also knew Mr. Reid.
7 And I asked her had he been over her house that night. And
8 she said, no, he had not been there. And she called her
9 daughter on the phone, and her daughter told her the same
10 thing, he had not been over at their house that night.

11 Q. All right. So what did you do as a result of that?

12 A. Well, I knew he had not been honest with us. I felt
13 like he had not been honest with us when I was interviewing
14 him. So I -- Now I knew he had not been honest with us.
15 So when I got back to the car, I had him step out of the
16 car. And I told him, put his hands behind his back. And I
17 placed the handcuffs on him and told him we needed to go
18 back downtown and talk a little bit further.

19 Q. So at that time, you took him into custody; is that
20 correct?

21 A. Yes, sir.

22 Q. And at least at that point, what if anything were you
23 considering charging him with at that point?

24 A. Well at that point, it was evident that he was
25 hindering a police investigation. I could have charged him

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1 with hindering a police investigation, or misprisonment of
2 a felony, or a number of different charges could have been
3 charged against him, criminal conspiracy because I felt
4 like he was involved in the case.

5 Q. And can you tell me, when you got back to the station,
6 did you interview him further?

7 A. Yes, sir. I told him what he had provided earlier, as
8 far as information, was not correct. And I wanted him to
9 be honest with us and tell us exactly what happened because
10 I felt like he knew more than he was actually telling us.

11 Q. Do you threaten him or coerce him in any way at that
12 point?

13 A. No, sir. Before I asked him any questions though, I
14 gave him his rights.

15 Q. And you read -- those are his *Miranda* rights.
16 Correct?

17 A. That is correct, yes, sir.

18 Q. And how was it that you read him his right?

19 A. When we first got back in to the interview room, the
20 computer screen is on -- The computer is on the table and
21 on the computer screen, we have a form that has the *Miranda*
22 warnings.

23 Q. And who was with you in the interview room then?

24 A. Detective Ayers was with me.

25 Q. And if you would, I believe, we have as State's

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1 Exhibit here, the State's Exhibit Number Thirty-eight. If
2 you would look at that.

3 MS. INZERILLO: Your Honor, I'm going to go ahead and
4 renew my objection to this subject matter --

5 THE COURT: Subject to earlier rulings, objection
6 overruled.

7 MS. INZERILLO: Thank you, Your Honor.

8 MR. CHIARENZA: If this is Number Four, Your Honor, I
9 would want to object.

10 THE COURT: Is this Number Four?

11 MR. THOMPSON: No, Your Honor. It's not. This is the
12 first.

13 THE COURT: We're not talking in code, by the way.
14 Go ahead.

15 Q. Detective Herring, can you tell me, what is that
16 State's Exhibit Thirty-eight, I believe? What is it, that
17 you have in front of you?

18 A. This is the very first statement that Donta Reid
19 provided to us at the law center.

20 Q. Okay. And it was you and Detective Ayers that were in
21 with him when he provided that statement?

22 A. Yes, sir, it was.

23 Q. If you would, read to us as you read to him his
24 Miranda rights that day.

25 A. These rights would have been on the screen, and this

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1 is exactly what I wrote -- I read to him.

2 "Before we ask you any questions, you must understand
3 your rights.

4 You've got a right to remain silent. Anything you say
5 can be used against you in court.

6 You have the right to talk to an attorney for advice
7 before we ask you any questions and to have him with you
8 during questioning. You have the right to the advice and
9 presence of an attorney, even if you cannot afford to hire
10 one. We have no way of appointing you an attorney, but one
11 will be appointed by the court for you, if you wish. If
12 you wish, you may answer any questions -- you may answer
13 questions without the presence of an attorney, and you may
14 stop answering any time you desire until an attorney is
15 present."

16 Q. And so at that point, did he indicate that he
17 understood his rights?

18 A. Yes, sir, he did.

19 Q. And what, if anything, did you explain to him as far
20 as those rights -- as far as the way it was on the computer
21 screen?

22 A. Well the next paragraph down, it says, "I have read or
23 have read to me the statement of my rights shown above. I
24 understand what my rights are, and I am willing to make a
25 statement. I do not want an attorney at this time. I

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1 understand and know what I am doing. I know that the
2 person who is talking to me is a police officer, and I
3 understand what he is talking about."

4 Q. All right.

5 A. And I indicated both times that there is a line that
6 he'll need to sign once this is printed out, that he did
7 understand both paragraphs.

8 Q. Did he understand that?

9 A. Yes, sir, he did.

10 Q. Did he indicate he still wished to speak with you?

11 A. Yes, sir.

12 Q. Now what do you next in the course of the interview?

13 A. Well the next little section on that statement form is
14 his personal information; his name, social security number,
15 how much education he's got, and if he can read and write,
16 that type of information.

17 Q. All right. And did he indicate that he could read and
18 write?

19 A. Yes, sir, he did.

20 Q. And was he as well tell you how much schooling he had?

21 A. Yes, sir. He told us he had an 11th grade education.

22 Q. And at that point, how did the interview proceed?

23 A. Well at that point, I indicated that I knew that he
24 had not been honest with us earlier when we had talked.

25 And I wanted him to be honest with me and tell me what he

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1 knew about the robbery and the murder on Byars Street. And
2 that's when he began telling us some information that he
3 had called Jackson -- Maurice Jackson's cell phone, and he
4 gave some information about whose phone he used to make
5 that phone call. And he actually gave us Maurice Jackson's
6 cell phone number. And we -- I listed that on the --

7 Q. All right. And what cell phone number did he give you
8 for Maurice Jackson?

9 A. He listed Maurice Jackson's number as 803-342-0215.

10 Q. And were you able to determine through the course of
11 your investigation that was the correct number for Maurice
12 Jackson?

13 A. Yes, sir, that is Maurice Jackson's -- was Maurice
14 Jackson's cell phone number at the time.

15 Q. Did he also -- and I'll get back to this in the minute
16 with the phone. But as far as actually typing the
17 statement in, were you doing the typing at this point?

18 A. Yes, sir, I was typing it.

19 Q. And do you type it initially as he's talking to you,
20 or do you have some other setup that you do?

21 A. No, basically what I like to do, I like to hear the
22 whole story at one time. And then after he goes through it
23 one complete time, I'll start back over from the beginning
24 and start typing it and have him repeat it back to me.

25 Q. All right. And is that what you did in this case?

1 A. Yes, sir.

2 Q. And is that when you started typing it, basically, as
3 you're going through it the second time?

4 A. Yes, sir.

5 Q. And as you type it in, was he telling you this
6 information?

7 A. Yes, it was coming straight out of his mouth onto the
8 keypad that I was typing.

9 Q. Had you told him any details of the crime at this
10 point?

11 A. No, sir.

12 Q. Now after you've completed typing in the statement and
13 talking to him, what happens next?

14 A. After I typed the statement as he provided it to me,
15 I -- there is another page on the computer screen that's
16 the notary page, and I go over that with him also. And
17 then I print the statement form itself out.

18 Q. Now did you read the statement to him after you had
19 typed it in?

20 A. I read it completely back to him. Yes, sir.

21 Q. All right. At that point, did you give him the
22 opportunity to add or correct anything in it?

23 A. Yes, sir. I always give everyone the opportunity. If
24 there's anything we need to add, anything I need to take
25 out, anything I need to be reworded, let me know now before

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1 I print it out.

2 Q. Was there anything that he wanted to change?

3 A. No, sir.

4 Q. And after you typed it out, did he then sign the
5 statement?

6 A. Yes, sir. He signed it on the front page where he
7 understood what his rights were, that he was giving them
8 voluntarily. And at the second page where the statement
9 actually ends, there's a line also where he signs so no one
10 would add anything to his statement. And then the third
11 page would have been the notary page where he also had to
12 sign in front of a notary.

13 Q. And you signed as the witness on that?

14 A. Yes, sir, I did.

15 Q. And that -- Is that the statement that you took from
16 him that day?

17 A. Yes, sir, it is.

18 Q. With Detective Ayers.

19 During the course of that statement, is there any time
20 that anyone threatened or coerced him in any way?

21 A. No, sir.

22 Q. Any time that anyone promised him any hope of reward?

23 A. No, sir.

24 Q. Any time that he invoked his right and said, "I want
25 an attorney" or "I don't want to speak to you."

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1 A. No, sir.

2 Q. Now after you took this statement, Detective, what
3 happened next with Donta Reid?

4 A. After we got this information from him, he was taken
5 back to the jail cell and put in a jail cell.

6 Q. Okay. And, I believe, going back to one other thing
7 regarding the phones that he told you in the statement, I
8 think, on that first page, right near the bottom. It
9 mentions something about Duke's cell phone number?

10 A. Yes.

11 Q. Did he tell you who Duke was?

12 A. Yes. He told us the individual named Duke -- I
13 believe he told us his full name. I'm -- He might not have
14 told us his full name. Maybe he just went by Duke at that
15 point. I don't know if we actually knew Jeter's name at
16 that point or not.

17 Q. Okay. And did you later in the investigation discover
18 who Duke was?

19 A. Yes, sir, we did.

20 Q. And the guy who just testified before you, was that
21 Duke?

22 A. That was Darius "Duke" Jeter. Yes, sir.

23 Q. Okay. Now the phone number that he gives there for
24 Duke, were you able to look into that phone number as well?

25 A. Yes, sir, we was.

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1 Q. Was that number correct for Duke?

2 A. Duke does not have a cell phone number or a cell phone
3 that I was aware of. That number that he provided that day
4 was actually one number off from the other defendant that
5 had testified, Samantha Ervin's number -- cell phone
6 number.

7 Q. So that's one number off of Samantha Ervin's number?

8 A. That is correct. Yes, sir.

9 Q. Okay. Now, did you have -- After speaking with him,
10 where did he go? Where did you take him?

11 A. We took him back to the Rock Hill Police Department,
12 holding him on the jail cell.

13 Q. And were you planning on then charging him with crimes
14 at that point in time?

15 A. Yes, sir. We knew at that point, we had charges that
16 could be placed against him as far as criminal conspiracy
17 and some other charges.

18 Q. All right. Now going back to this statement we were
19 just talking about, what were the times of that statement?
20 What times do you actually take it?

21 A. The statement began on October 2nd at 1:45 p.m., and
22 ended on October 2nd at about 2:15 p.m.

23 Q. Okay. Did you have more contact with Donta Reid later
24 that day?

25 A. Yes, sir, I did.

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1 Q. And can you tell me about that?

2 A. Yes, sir. We had -- was following up on the
3 information he had provided about this individual named
4 Duke and got a call, I think, from the -- someone in the
5 Detective Division that he wanted to provide some
6 additional information.

7 Q. All right. Where would that word have been sent from?

8 A. From the jail one of the jailers would have probably
9 called the Detective Division and asked one of us to come
10 back and talk with him some, further.

11 Q. And is that one of the jailers there at the Rock Hill
12 Law Center?

13 A. Yes, sir.

14 Q. Okay. And so, did you end up going to speak with him
15 at that point in time?

16 A. Yes, sir, I did.

17 Q. And tell me what occurred?

18 A. He indicated he wanted to provide additional
19 information concerning the robbery and the murder on Byars
20 Street.

21 Q. Did you take him then back to the interview room?

22 A. Yes, sir. I brought him back to the Detective
23 Division interview room, and we sat down and talked --

24 Q. Was Detective Ayers still with you at that time?

25 A. If he was, it was just briefly. I don't know if he

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1 was there for the whole interview or not.

2 Q. All right. But, so did you pretty much conduct this
3 interview on your own, by yourself?

4 A. Yes, sir. I think I did.

5 Q. Okay. Now when you went and took him back to the
6 interview room, what happened then? What did you do?

7 A. Well, when we got back to the interview room, I again
8 looked at the computer screen, read him his rights just
9 like I did the first time. He said he understood what his
10 rights were, went through the whole next paragraph that
11 this was all voluntarily given, no promises or anything
12 like that. He understood that. And I typed his personal
13 information in again, and he started telling me the
14 additional information that he wanted to provide.

15 Q. So basically you read his rights to him the same as
16 you already read them to us today. Correct?

17 A. As knowing, yes, sir, I did.

18 Q. And he wished to speak to you still at that point?

19 A. Yes, sir.

20 Q. And so at that point, did you do it the same way again
21 where basically you went over what he wanted to tell you,
22 and then you started typing as he went over it the second
23 time?

24 A. Yes, sir.

25 Q. And when you finished typing at that point, after he

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1 finished talking to you, is there anything -- did you give
2 him the opportunity to change anything that he wanted to at
3 that point?

4 A. Yes, sir. I gave him the opportunity. If there was
5 anything that he wanted to be added that wasn't in there,
6 or if there was anything he wanted to take out that didn't
7 sound right, or if he wanted to change anything. And he
8 did not want to do any of that.

9 Q. And then did you print it out for him at that time?

10 A. Yes, sir. I printed it out just like I did the first
11 one.

12 Q. Now before you printed it out, did you read this
13 statement to him as well?

14 A. Yes, sir. I completely went over -- read the whole
15 thing to him from the computer screen.

16 Q. And after it was printed out, did he wish to sign it
17 at that point?

18 A. Yes, sir, he did. He signed it in every place that I
19 indicated that he needed to sign it on.

20 Q. So the waiver of the *Miranda* that you told us about,
21 he signed that too?

22 A. Yes, sir.

23 Q. And once again, I guess an affidavit page on the end;
24 is that correct?

25 A. That is correct, yes, sir.

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1 Q. And who actually did the notary on that page for you?
2 Do you recall?

3 A. I don't know if I have a copy of the second statement.
4 Yes I do, I have it. I have the original. I'm sorry, what
5 was the question?

6 Q. All right. Who was the one who notarized the
7 statement?

8 A. Oh, I had Detective Jerry Waldrup notarize the
9 statement that was made.

10 Q. And you said that was the statement itself?

11 A. Yes, sir. This is the original statement.

12 Q. Has it been altered or changed in any way?

13 A. No, sir, it has not.

14 Q. So that's the statement you took from Darius Jeter at
15 that point. What was the time of day that you took that
16 one?

17 A. This is the statement that I took from Donta Reid.

18 Q. I'm sorry, that's right, Donta Reid, I'm sorry.

19 If you'll tell me the time that you took that from
20 Donta.

21 A. The second statement started at 4:10 p.m. and ended at
22 4:45 p.m. on October the 2nd.

23 MR. THOMPSON: I ask to number this at this time,
24 Madame Clerk.

25 (WHEREUPON: STATE'S EXHIBIT FORTY-THREE PREMARKED FOR

1 IDENTIFICATION.)

2 MR. THOMPSON: Your Honor, I'd ask to enter State's
3 Exhibit Forty-three into evidence at this time.

4 MS. INZERILLO: Your Honor, I just renew the previous
5 objection.

6 MR. CHIARENZA: Your Honor, I object based on all
7 previous objections.

8 THE COURT: Based on earlier ruling -

9 MR. CHIARENZA: I join in with Ms. Inzerillo's
10 objection.

11 THE COURT: Sorry, I didn't mean to cut you off.
12 Based on earlier rulings over objections, they're admitted
13 into evidence -- It is admitted into evidence.

14 (WHEREUPON: STATE'S EXHIBIT NUMBER FORTY-THREE
15 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

16 BY MR. THOMPSON:

17 Q. Detective, if you would, go to the body of the
18 statement itself, and read that for us, please.

19 A. "Today, October 2nd, 2009, I gave a sworn statement to
20 the detectives about a robbery and a shooting from last
21 night. I told the detectives what happened, but I want to
22 give additional information that I know.

23 When I met Duke and he took the rifle out of the
24 ditch, he put it inside his pants leg, he was wearing a
25 black -- and he was wearing a black hoodie and dark blue

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1 jeans. He had the hood up on his head. He wasn't wearing
2 any kind of mask at all.

3 He walked on towards Maurice's house. And then after
4 he got ahead of me, I turned around and walked back toward
5 Maurice's house too. I saw Maurice, Tyrone, and Kenny Boo
6 on the porch, and I saw Duke walk up to them. Duke asked
7 them if they had some weed for sale. I heard someone say
8 no. Duke then started acting like he had dropped something
9 and was patting his pants like he was looking for
10 something. Duke then pulled the rifle out of his pants,
11 and he told them to give it up. Kenny Boo was standing up,
12 and he pulled his pants down, and he said, 'I ain't got
13 nothing, just don't shoot me.' And he sat down. Tyrone
14 said, 'You can have this, this is all I got.' And he
15 handed Duke something. Duke asked Maurice what he had, and
16 Maurice gave Duke his wallet.

17 I started walking off, and I heard a lot of shots. I
18 ran after the gun -- I ran after the gunshot to my cousin's
19 house. His name is Diaz Jennings. Diaz is 20 years old,
20 and he lives with a girl named Jamere, and they have a
21 baby. He lives on -- He lives in the Workman Street
22 Apartments. I didn't tell him anything about what had
23 happened, and I didn't tell anyone else either."

24 Q. So this is basically the *Second Statement* he had given
25 you in a matter of hours. Correct?

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1 A. Yes, sir.

2 Q. And this is one that he asked to contact you in order
3 to give that statement?

4 A. Yes, sir.

5 Q. Now going on after he's given this statement. You
6 take him back to the holding area in the Law Center there?

7 A. Yes, sir, I do.

8 Q. What did you then do?

9 A. Basically I came back out into the Detective Division,
10 and we were discussing with -- I was discussing with other
11 detectives what, you know, what else needed to be done in
12 the case.

13 Q. And in the course of doing that, did you all end up
14 trying to get a hold of Duke or talk to Duke?

15 A. Yes, we are looking for Duke from the information that
16 wasn't on either one of the first or second statements that
17 Donta Reid provided.

18 He also provided information that there was a burglary
19 that Duke had been involved in, and it was a motorcycle he
20 had stolen. And I was not familiar with that because I
21 didn't work property crimes. I've worked persons crimes.
22 So, I got with the detective that was actually handling a
23 burglary where a motorcycle was stolen. He confirmed that
24 there had been a burglary at a residence, a motorcycle was
25 stolen. And he was looking at Duke as a possible suspect

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1 in that burglary. So that made me feel like what he was
2 telling me was probably true as far as the motorcycle, and
3 possibly some of it was true about the murder and the
4 robbery also.

5 Q. But at this point, the only person he's told you about
6 is him and Duke. Correct?

7 A. That is correct.

8 Q. Has he told you about any female?

9 A. He did not mention any female. Mr. Reid did not
10 mention any females at all at that point.

11 Q. And as one of the lead detectives, were you aware at
12 this point that a female was involved in this robbery?

13 A. Yes, sir, I was aware. And I was -- We was trying to
14 figure out if possibly one or the other could have been
15 dressed up as a female. We were just, you know, running
16 all the scenarios through our mind to see exactly what, you
17 know, what could have taken place.

18 Q. And then, as you continue to investigate this, did you
19 or one of the other detectives get to talk with Duke that
20 afternoon?

21 A. Yes, sir. We were looking for him because after being
22 told that there was a burglary that he was a suspect in,
23 and a motorcycle had been stolen, we got a call that he was
24 in the Confederate Park area with Samantha Ervin, and they
25 were getting ready to -- to either get the bike or had

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1 already gotten the bike, the motorcycle.

2 Q. And ultimately, were you one of the detectives who
3 talked to Duke, or was it someone else?

4 A. Well we got to the park. He was placed under arrest,
5 and Samantha Ervin was brought to the police department
6 also. So they were both brought in ---

7 Q. Okay.

8 A. --- to the police department.

9 Q. But did Samantha Ervin give any statement at that
10 point in time?

11 A. No, sir, no, sir. She did not.

12 Q. Did Duke talk to you at that point in time?

13 A. Yes, sir, he did. He provided us a sworn statement.

14 Q. And after you spoke with Duke, then what action did
15 you take?

16 A. From the information that he provided, that he had
17 seen Donta Reid with a female named Samantha Ervin, we went
18 back to try to talk to Mr. Reid again, a third time.

19 Q. Had Samantha Ervin already been allowed to leave at
20 that point?

21 A. Yes, sir. She had already left.

22 Q. So when you went back to Donta Reid, was it that same
23 day on the 2nd of October?

24 A. It was late that night. Yes, sir.

25 Q. What time was it that you went back to speak with him?

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1 A. I'm thinking it was probably close to midnight.

2 Q. And I'm going to show you, I believe it is State's
3 Exhibit Thirty-nine. It's right here. And is that the
4 statement that resulted from the third time that you spoke
5 with Donta Reid?

6 A. Yes, sir, it was. It -- Actually between the hours of
7 11:55 p.m., and 12:35 a.m., late night of the 2nd early
8 morning of the 3rd of October.

9 Q. And at this point, did you go once again and take him
10 out of the holding area at the Law Center?

11 A. Yes, sir, we did.

12 Q. Did you bring him back to the same interview room?

13 A. Same interview room, yes, sir.

14 Q. All right. And who was with you during this
15 interview?

16 A. Detective Ayers was with me in this interview also.

17 Q. And can you tell me, did he go by the same process in
18 this interview as far as *Miranda* rights go?

19 A. Exactly the same as the first two. Yes, sir.

20 Q. Did you read them off the screen just like before?

21 A. Yes, sir.

22 Q. Did he understand those rights?

23 A. Yes, sir, he did.

24 Q. And did he -- still willing to speak to you after you
25 read those rights to him?

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1 A. Yes, sir, he was.

2 Q. And during that period of time, did he then tell you
3 more in the statement -- I guess -- Let's start it off this
4 way. What if anything did you tell him initially as to why
5 you wanted to speak with him again?

6 A. Well at that point, we knew that there was a female
7 named Samantha Ervin from talking to Darius -- Darius
8 Jeter, that he had seen with Donta Reid. And so we wanted
9 to ask him what information had -- that he could provide as
10 far as Samantha Ervin and the incident that happened as far
11 as the shooting and the murder.

12 Q. And once again, during the -- during this process, had
13 you or either of the prior interviews, or on this one, told
14 any of the facts of the actual killing itself or the actual
15 robbery itself?

16 A. No, sir, we had not.

17 Q. So you're simply telling at this point, what's
18 Samantha Ervin's involvement?

19 A. Right.

20 Q. And again, did this interview process go the same way?
21 Basically, he tells the story to you, then the second time
22 around you start typing?

23 A. That is correct, yes, sir.

24 Q. And did y'all - Did y'all type it up then the
25 second -- as you went through the second story?

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1 A. Yes, sir -- the third story. It would be the third
2 story this time.

3 Q. Or the third story, I'm sorry.

4 A. Yes, sir.

5 Q. And as he went through and finished that, did y'all
6 give him any opportunity again to make any alterations or
7 changes to this statement?

8 A. Yes, sir, we did.

9 Q. And did he wish to make any?

10 A. He didn't wish to add anything, take anything out, or
11 change anything.

12 Q. And again, did you read this one to him before you
13 printed it off?

14 A. I read it completely back to him. Yes, sir.

15 Q. And he agreed with the statement at that time?

16 A. Yes, sir, he did.

17 Q. Did you then print it out for him?

18 A. We did print it out and showed him the areas that he
19 had to sign, just like the previous two.

20 Q. And did he sign all of those areas again?

21 A. Yes, sir, he did.

22 Q. All right. Including the statement itself?

23 A. Yes, sir.

24 Q. And so in this statement, does he involve Samantha
25 Ervin then?

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1 A. Yes, sir. He indicates that she was involved to some
2 extent as far as wanting to be involved in the robbery.

3 Q. Okay. And he's actually saying though in this one
4 that Samantha Ervin's actually one of people who went down
5 to the actual house. Correct?

6 A. I think so, yes, sir.

7 Q. I believe that's already entered into evidence. We've
8 already read it to the jury. So after he's taken -- After
9 you've taken this statement, what's the next step that you
10 take?

11 A. Well whenever he provides this information, we put
12 Samantha Ervin's picture in a lineup and take it to the
13 victims, and see if of the victims can remember seeing her,
14 or if she was actually there at the scene based on what Mr.
15 Reid had said what her involvement was.

16 Q. And was anyone able to identify Samantha Ervin?

17 A. No, sir. Nobody said she was there at all.

18 Q. And then what was the next step you took in the
19 investigation?

20 A. Well basically, we at that point knew that she was
21 involved in the robbery and the murder so we issued
22 warrants out for Samantha Ervin's arrest.

23 Q. All right. And as part of that, did you also go to
24 Samantha Ervin's residence or have officers go to her
25 residence?

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1 A. Yes, sir. That night we obtained a search warrant to
2 search her residence for any evidence of the robbery.

3 Q. That's on Keels Avenue -- or Keels Street?

4 A. Keels Avenue, yes, sir.

5 Q. Okay. And did you actually go to that?

6 A. Yes, sir, I did.

7 Q. All right. And going to that, did you -- Was she
8 actually there at the house that night?

9 A. No, sir. She was not there. There was an elderly
10 gentleman there and a couple of other people there inside
11 the house, but she was not there.

12 Q. And did you tell them that you were looking for her at
13 that point?

14 A. Yes, we executed the search warrant -- search -- We
15 were directed where she was staying in an upstairs bedroom,
16 and we pretty much contained our search to that area. But
17 we told the elderly gentleman that, you know, we needed to
18 talk to her. And if he could get in touch with her, to
19 tell her to come up and talk to us at the police
20 department.

21 Q. Were you able to find anything of value from the
22 investigation then?

23 A. There was nothing taken from the residence. No, sir.

24 Q. All right. So, but you told her family members at
25 this point that you're looking for her. Correct? And that

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1 for her to come in the station?

2 A. Yes, sir.

3 Q. Ultimately as the week progresses, does she come to
4 the station?

5 A. I think that Monday, she comes to the police
6 department. Yes, sir. This is like on a Friday night, and
7 that Monday she comes to the police department.

8 Q. Okay. So let me get this straight now. What day of
9 the week was October 1st?

10 A. I think that was a Thursday.

11 Q. And that's 2009. Right?

12 A. Yes, sir.

13 Q. So October 2nd, when most of these statements happened
14 with Donta Reid, would have been Friday?

15 A. Friday, yes, sir.

16 Q. And you said it was Monday when you had contact then
17 with her?

18 A. That is correct. Of course, we was off Saturday and
19 Sunday.

20 Q. All right. And then, when you had contact with her
21 Monday, did she ultimately give you a statement or give the
22 detectives a statement then?

23 A. Yes, sir. I interviewed Samantha Ervin at the
24 station. She gave me a statement.

25 Q. And based on that, did you learn more information

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1 about what had occurred?

2 A. Yes, sir. We -- After Samantha Ervin's statement, it
3 started -- the pieces of the puzzle started coming
4 together. It made more sense than what Mr. Reid had
5 provided earlier.

6 Q. And at that point, did you also look to sign out
7 warrants against other people after you talked to her?

8 A. Yes, sir. We were able to get warrants on Davontay
9 Henson and also on Aileen Newman.

10 Q. And as a result of that, did you wish to speak again
11 to Donta Reid?

12 A. Yes, after the information that we got from Samantha
13 Ervin, we knew that he had not told us the complete truth,
14 and we wanted to go back and give him an opportunity to be
15 honest with us and tell us what information he knew.

16 Q. And in going back to him then at that point in time,
17 when was it that you went back?

18 A. I think it was one day that week.

19 Q. Do you have a copy of the statement from that time?

20 A. Yes, I think I have the original statement.

21 That was on the 6th. We talked to Samantha Ervin, I
22 think, on the 5th, and then we went back the very next day
23 and talked to Mr. Reid again on the 6th.

24 Q. Okay. I'll show you this copy as well. Is that a
25 copy of that statement as well?

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1 A. Yes, sir. This is a copy of the statement.

2 MR. THOMPSON: Madame Court Reporter, I'd ask that you
3 number it, please.

4 (WHEREUPON: STATE'S EXHIBIT NUMBER FORTY-FOUR,
5 PREMARKED FOR IDENTIFICATION.)

6 MADAME COURT REPORTER: Forty-four, Mr. Thompson.

7 MR. THOMPSON: It's been numbered as State's Exhibit
8 Number Forty-four.

9 Q. Detective, if you would. Again, what time was it that
10 you went to speak with him on the 6th?

11 A. Let's see. It was at 9:40 a.m., on the 6th.

12 Q. Where was he located at that point when y'all went to
13 speak with him?

14 A. Well he had been transferred from the Rock Hill jail
15 to the Moss Justice Center here. And we had sent someone
16 to come pick him up that morning to bring him back to the
17 Rock Hill Police Department. So that's actually where we
18 interviewed him, at the Rock Hill Police Department.

19 Q. So someone brought him from the Detention Center over
20 here back down to Rock Hill?

21 A. Yes, sir.

22 Q. And did you interview him at that time?

23 A. Yes, sir, I did.

24 Q. And who was with you during that interview?

25 A. My supervisor at that time, Jason Dalton, Lieutenant

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1 Dalton.

2 Q. And how did the interview start? Was it in the same
3 interview room you had been before with him?

4 A. Yes, sir, same exact interview room.

5 Q. And when you were in that room, did you go over his
6 *Miranda* rights in the same form and fashion as you had
7 before?

8 A. Exactly the same way. We read to him off of the
9 computer screen the exact way we had done it the three
10 previous times.

11 Q. And did he understand his rights at that time?

12 A. Yes, sir, he did.

13 Q. Did he indicate he wanted to waive his rights?

14 A. Yes, sir, he voluntarily talked with us.

15 Q. And during that time -- I mean, I'm assuming you read
16 his rights exactly like you had before. Correct?

17 A. Yes, sir.

18 Q. And it's the same thing off the same computer screen
19 that we've already heard?

20 A. Yes, sir.

21 Q. Okay. Did he then -- or what if anything then at that
22 point did you tell him regarding what you knew?

23 A. We basically told him that we knew that there were
24 other people involved, and we wanted him to be honest with
25 us at that point because what he had told us in the

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1 previous three statements was not the truth.

2 Q. Okay. Did you tell him anything again specifically
3 about what occurred in the crime?

4 A. No, sir. We don't like to tell anyone when we're
5 interviewing them, any of the details. We want them to
6 tell us the details, so we'll know if they're being honest
7 and truthful or not.

8 Q. And during that portion of time, do you know if you
9 told them the names of any of the people that you had heard
10 now had been involved?

11 A. I'm sure we gave him the names to let him know that we
12 knew who else was involved in the murder.

13 Q. And at that point, did you basically conduct the
14 interview in the same way, listen to him tell what he had
15 to say, then go back over it, and begin typing?

16 A. I gave him an opportunity to go through it one
17 complete time. Yes, sir.

18 Q. And then did you type the statement at that point?

19 A. After he went through it the first time, he stopped
20 and I told him we were going to start actually taking it on
21 paper. And that's when he started telling me again, and I
22 started typing.

23 Q. And as -- After you were finished typing, did you then
24 read it back to him?

25 A. Yes, sir. I read it back to him from the computer

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1 screen.

2 Q. And did you give him a chance to change or alter
3 anything that he wanted in it?

4 A. I gave him the opportunity to add, or take anything
5 out, or anything that didn't sound right, to change the
6 wording.

7 Q. Did he wish to change anything at that time?

8 A. No, sir, he did not want to change anything.

9 Q. And you then printed it out in front of him?

10 A. Yes, sir, I did.

11 Q. And did he sign it?

12 A. He did sign it, yes, sir.

13 Q. Did he as well sign his waiver of rights in that
14 particular statement?

15 A. Yes, sir, he did.

16 Q. If you would though for this particular statement, is
17 that copy fairly and accurately depict the statement as you
18 took it that day?

19 A. Yes, sir, it does.

20 Q. Has it been altered or changed?

21 A. I have not changed anything in the statement. No,
22 sir.

23 Q. Okay.

24 MR. THOMPSON: And, Your Honor, that's the end of this
25 statement, the fourth one into evidence at this time.

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1 MS. INZERILLO: I just renew the previous objection.

2 MR. CHIARENZA: Can we approach, Your Honor?

3 THE COURT: Yes, sir.

4 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
5 THE JURY AT 02:42 PM.)

6 MR. CHIARENZA: Your Honor, I would just renew prior
7 objections as well.

8 THE COURT: Subject to earlier rulings, other
9 objections, admitted into evidence.

10 (WHEREUPON: STATE'S EXHIBIT NUMBER FORTY-FOUR
11 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

12 BY MR. THOMPSON:

13 Q. Detective, going back once again. In any of these
14 statements, this one or any of the other three, was there
15 any point that the Defendant had at any time asked for an
16 attorney during these times?

17 A. No, sir. He had not indicated --

18 Q. Is there time during this that he told you or any
19 other person in your presence that he did not want to speak
20 with you?

21 A. No, sir, he cooperated fully.

22 Q. Did anyone threaten or coerce him in any way on any of
23 these statements or any of the times you were with him?

24 A. No, sir.

25 Q. Did anyone offer him any promise or hope of reward

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1 during any of these four statements?

2 A. No, sir.

3 Q. Detective, if you would. I'm going to ask you one
4 time again, just because the format appears just a little
5 different on the face of this page, if you would read
6 through the *Miranda* rights that your read to him that day,
7 and then read through the statement as well.

8 A. "Before we ask you any questions, you must understand
9 your rights.

10 You have the right to remain silent. Anything you say
11 can be used against you in court.

12 You have the right to talk to a lawyer" --

13 THE COURT: Kind of slow down for the Court Reporter.

14 THE WITNESS: Okay, I'm sorry.

15 A. "Anything you say can be used against you in court.
16 You have the right to talk to a lawyer for advice before we
17 ask you any questions and to have him with you during
18 questioning. You have this right to the advice and
19 presence of a lawyer, even if you cannot afford to hire
20 one. We have no way of appointing you a lawyer, but one
21 will be appointed by the court for you, if you wish. If
22 you wish, you may answer questions without the presence of
23 a lawyer, and you may stop answering at any time you desire
24 until a lawyer is present."

25 Q. And is that where he signed underneath that paragraph?

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1 A. Yes, sir, he did.

2 Q. And then if you could read the next paragraph.

3 A. "I have read or have read to me the statement of my
4 rights shown above. I understand what my rights are, and I
5 am willing to make a statement. I do not want a lawyer at
6 this time. I understand and know what I am doing. I know
7 that the person who is talking with me is a police officer,
8 and I understand what he is talking about."

9 Q. Did he sign under that as well?

10 A. Yes, sir, he did.

11 Q. And, Detective, if you would, read the body of the
12 statement for us.

13 A. "I have earlier made statements to the police officers
14 about what happened the night that Tyrone King, who I call
15 "Banks" was shot. I told parts of the truth because I had
16 been threatened by the guy that had done the shooting.

17 The night this happened, it was me, the guy that did
18 the shooting, and Lee Lee - and Lee Lee over at Samantha's
19 house on Keels Avenue. Sam and the guy left, and when they
20 got back, the guy had a rifle and he was loading it up.
21 The rifle was black and brown in color and was about 3 feet
22 long. It had white tape around the butt of the gun. I
23 assumed that Sam and the guy had went and got the gun
24 because he didn't have it before they left and they said
25 they were going to get something. It was already dark, and

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1 we were all standing around outside. And Sam told him --
2 Sam told him to take the gun in the house, and he did. He
3 took the gun -- He took it to Sam's room. We all went up
4 there too, and I wanted to be nosey and see what the gun
5 looked like. The guy was holding the gun, and he said he
6 was wanting to let it rip. He said that it was an
7 automatic. He asked me if I wanted to talk with him
8 because he had something about -- he had said something
9 about robbing somebody. I didn't want to go because I
10 didn't know where he was going to put the gun. He said he
11 was going to put it in his pants. I told him I didn't want
12 to go. He asked Sam if she wanted to go somewhere. She
13 asked him where, and he said anywhere that he could make a
14 lick.

15 Me, Sam, Lee Lee, and the guy got into Sam's
16 grandfather's truck, a small truck. I got in the bed, and
17 Lee Lee and the guy got in the cab with Sam, and Sam drove.
18 As we were leaving, I saw Duke, who is Darius Jeter,
19 walking near Sam's house. He tried to flag us down, but we
20 kept on going. We road around a little bit and went to
21 Sam's mother's house. I asked Sam to take me home so I
22 could use the bathroom. I called Maurice on Sam's phone on
23 the way to my house. I was going to smoke with him, and
24 when I asked him if he -- if he wanted to, he said yes. I
25 told Maurice I would call him when I got home. Sam asked

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1 me if Maurice had any money or did he sell weed. I told
2 her that he did sell weed, and he might have some money.
3 Sam asked me if I would set Maurice up. I told her that I
4 really don't want to, but I can.

5 When we got to my house, Sam told me to call Maurice
6 when I got inside, and to find out who all was with him at
7 his house, and then to call her back. I went to the
8 bathroom, and I tried to call Maurice from my house phone,
9 but he wouldn't pick up his cell phone.

10 So, I walked over to his house. He only lived a
11 couple of houses from me on Byars Street. When I got
12 there, Maurice was there along with Tyrone King and Kenny.
13 I asked Maurice to use his cell phone to call Sam to let
14 her know that there was two other people there with
15 Maurice. I then asked Maurice to walk with me to Midtown,
16 but he wouldn't. While I was on the porch with Maurice,
17 Sam drove by three or four times, and Maurice said, 'Why
18 does this truck keep coming by?'

19 I walked off the porch, and when I got to the end of
20 Byars Street, I made a left on Maple Street, and Sam was
21 driving down Byars Street, and when she saw me, she made a
22 left turn on Maple Street too. The guy and Lee Lee then
23 got out of -- got out of Sam -- the guy and Lee Lee then
24 got out after Sam stopped. I told Lee Lee that there was
25 three people since Maurice wouldn't walk with me. The guy

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1 then said, 'Fuck that.' He said, 'Fuck it. I might as
2 well run up on the porch and rob all three of them.'

3 Sam had drove over to Reynold Street and parked on the
4 dirt road to the left after the bridge. The guy asked me
5 which house they were at, and what did it look like. I
6 told him that they were all on the porch. The guy had a
7 rifle, and him and Lee Lee walked towards Maurice's house.

8 I walked where Sam was parked. I knew where she was
9 going to be because she told us where she was going to
10 park. I got in the truck with Sam, and we sat there for
11 maybe 5 minutes, and then I heard a bunch of shots.

12 Sam pulled off and picked up the guy and Lee Lee at
13 the bridge. The guy got inside the truck with me, and Sam,
14 and Lee Lee -- with me and Sam, and Lee Lee got in the bed.
15 We all went back to Sam's house. We started talking about
16 the situation, and Lee Lee said she was the one that asked
17 the guys for the weed. The guy started saying he didn't
18 want anyone to snitch on him, and if anybody did snitch, he
19 would come back and get them. I got a call on Sam's house
20 phone from my step-dad telling me that Tyrone and Kenny had
21 been shot.

22 That guy and Lee Lee left in the truck, and Lee Lee
23 drove. I believe that he took the rifle with him, and Lee
24 Lee came back a little while later by herself.

25 I stayed all night at Sam's, and when I woke up, Sam

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1 had gotten a text message saying that Tyrone had died. My
2 step-dad called again and told me that the police had been
3 by the house, and wanted to talk with me.

4 I walked home and called the number that the officer
5 had left."

6 Q. And does that conclude his statement?

7 A. Yes, sir. That's the end of this statement.

8 Q. After that statement, did you have any other contact
9 with Donta Reid?

10 A. I don't think so. No, sir.

11 Q. Now can you tell me -- Do you recall what Donta Reid
12 looked like back at the time when you were interviewing him
13 in these various interviews on the 2nd of October and then
14 again on the 6th of October, 2009?

15 A. He had longer hair than he's got now.

16 Q. How long was it? Shoulder-length? Was it -- How was
17 it? Do you recall?

18 A. No, it was, I guess, a couple of inches, 2 or 3 inches
19 long, just --

20 Q. Okay. Was it in dreads?

21 A. No, sir.

22 Q. Now, as you continued the investigation, Detective,
23 what did you do regarding -- And in this statement, I
24 believe it said, "Lee Lee." Who is Lee Lee?

25 A. That's Aileen Newman.

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1 Q. And did Donta Reid tell you that as well?

2 A. I think he indicated that -- what her name was, Lee
3 Lee. And I think we were able to get photographs of her,
4 and she was identified in photographic lineups.

5 Q. Okay. And can you tell me, did you sign warrants out
6 against Lee Lee?

7 A. Yes, sir, we did.

8 Q. All right. Now, you said you had talked to -- prior
9 to Donta, you had talked to Samantha Ervin. Right?

10 A. That is correct. Yes, sir.

11 Q. And after having talked to Samantha Ervin, that's when
12 you signed warrants out on some of the other people; is
13 that right?

14 A. That is correct. Yes, we signed warrants out on
15 Davontay Henson and Aileen Newman at that time.

16 Q. Okay. When was it that you were able to have your
17 first contact with Lee Lee or Aileen Newman?

18 A. It was a while afterwards because she had left the
19 Rock Hill area and was back in Charlotte. And we had to do
20 a flier on her, a wanted poster, pretty much, and put her
21 in NCIC to try to find her because we didn't know exactly
22 where she was living.

23 Q. And when you do that type of flier, as officers, what
24 do you do with it? How do you get it out to the public?

25 A. Basically, we put a photograph on a piece of paper

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1 telling what the person is wanted for. And if someone has
2 contact with them to notify our agency, and it's got
3 telephone numbers and a brief description what this person
4 looks like.

5 Q. And does the Rock Hill Police Department release that
6 to the media in the area?

7 A. We try to give it to as many people in the media as we
8 can to get the person's picture out there in case someone
9 can spot them.

10 Q. And what are the outlets that you released Aileen
11 Newman's information to?

12 A. We put her in NCIC, which is the National
13 Information -- National Crime Information Center, which is
14 nationwide. And we also put the flier -- fliers out to all
15 the media in the Charlotte area.

16 Q. Okay. The TV stations?

17 A. TV stations, yes, sir. Everybody we could --

18 Q. How about the ones here in Rock Hill? Anything with
19 the Herald?

20 A. We give it to the Herald, CN2, all the local media.

21 Q. Okay. And as a result of putting that out, were you
22 able to find out where she was?

23 A. Yes, sir. She was arrested by Charlotte P.D. a few
24 days after we had put her in NCIC.

25 Q. And a few days after as well, you released this

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1 information to the media?

2 A. Yes, sir. After -- After this had been released to
3 the media, ---

4 Q. Okay.

5 A. --- she was arrested in Charlotte.

6 Q. And did you go interview her in Charlotte as well?

7 A. Yes, sir. Lieutenant Dalton and myself went to
8 Charlotte and talked with her.

9 Q. Do you remember the date that you interviewed her
10 there in Charlotte?

11 A. I believe that was on October the 8th that we actually
12 went to the Charlotte P.D. and interviewed her. And after
13 we left there, we went to her mother and father's residence
14 also.

15 Q. And did she provide a statement regarding her
16 involvement in this as well?

17 A. Yes, sir, she did.

18 Q. Now if you would, going back a little bit to some of
19 the phone numbers and phone records and that sort of thing,
20 I believe you said you were able to confirm the number that
21 Samantha Ervin had for her cell phone; is that correct?

22 A. Yes, sir, that is correct.

23 Q. And the one that Maurice Jackson had for his cell
24 phone?

25 A. Yes, sir, we did.

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1 Q. All right. And did you guys obtain the records for
2 those?

3 A. Yes, we executed a search warrant on Samantha Ervin's
4 cell phone records.

5 Q. And I'll show you State's Exhibit Number Forty, I
6 believe already entered into evidence. If you could tell
7 us what that is?

8 A. These are the call records for Samantha Ervin's cell
9 phone -- cell phone information.

10 Q. And once again, if you can tell us what Samantha
11 Ervin's number was.

12 A. Her cell phone number at that time was 803-230-25, I'm
13 sorry -- 5226 -- 230-5226.

14 Q. And as well, if you can tell us what Maurice Jackson's
15 cell phone number was?

16 A. Maurice Jackson's cell phone number is 803-342-0215.

17 Q. And can you tell me -- I'm going to go over just a
18 couple of the things on those records. I believe if you'll
19 go to lines 104, 105, and 106 on the cell phone records.

20 A. All right, sir.

21 Q. Are you there?

22 A. Yes, sir. I'm sorry.

23 Q. Can you describe to me, on those lines what if any
24 significance were you able to determine from those parts of
25 the records?

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1 A. That a phone call had been made about 9:54 p.m. on
2 October the 1st from Samantha Ervin's cell phone to the
3 residence phone of Maurice Jackson.

4 Q. Does it say how long that phone call would have
5 lasted?

6 A. About 35 seconds, I believe.

7 Q. Now is there anything that indicates whether the phone
8 call was actually answered, or could this be just ringing
9 and no answer?

10 A. It could be ringing and no answer. It doesn't
11 indicate -- for 35 seconds.

12 Q. And then the next phone number -- or the next phone
13 number called, how far or how long is this after that on
14 line 105?

15 A. That call was made at 9:56, about 2 minutes later,
16 to -- from her cell phone -- from Samantha Ervin's cell
17 phone to a different number.

18 Q. Was that number -- Does it appear to be a botched
19 number at that point?

20 A. That number was a mis-dialed number because they
21 didn't include all the area code, and the numbers are not
22 all -- or the first -- the first set of numbers are also
23 wrong.

24 Q. And on that, how long did that one last?

25 A. That was for one second.

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1 Q. And then line 106, that call, if you can tell me what
2 that is.

3 A. Again, that call was made from Samantha Ervin's cell
4 phone to Maurice Jackson's cell phone.

5 Q. So that's actually cell phone to cell phone at that
6 time?

7 A. Yes, sir, that is correct.

8 Q. And how long did that call last?

9 A. That was -- That call lasted for 49 seconds.

10 Q. And what was the time of that call?

11 A. That call was made at 9:55 p.m. on October the 1st.

12 Q. And that's 2009?

13 A. 2009, yes, sir.

14 Q. Now I'll direct you then to the next set of numbers,
15 in particular, line 115, and if you can tell me about that
16 call.

17 A. Okay, this call was made from Maurice Jackson's cell
18 phone to Samantha Ervin's cell phone. And that phone call
19 was made at 10:44 p.m. on October the 1st, 2009.

20 Q. And how long was the length of that call?

21 A. That call lasted for 43 seconds.

22 Q. Thank you, Detective. I think that's all I'll ask you
23 about the calls themselves.

24 Now Detective, you had said that you were able to --
25 or that Aileen was apprehended in Charlotte. Right? On

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1 October 8th. Correct?

2 A. That is correct. Yes, sir.

3 Q. What if anything was -- I guess at this point, who's
4 left to arrest? Who do you still need to find?

5 A. The only person at that point that we had not located
6 was Davontay Henson.

7 Q. Okay. So did you do the same type of thing for
8 Davontay Henson that you had done with Aileen Newman as far
9 as making a flier?

10 A. About the same time, we put out fliers for both of the
11 individuals, Aileen and Davontay Henson. We put their
12 pictures and information.

13 MR. THOMPSON: Could I have this marked as State's
14 Exhibit, please?

15 (WHEREUPON: STATE'S EXHIBIT NUMBER FORTY-FIVE
16 PREMARKED FOR IDENTIFICATION.)

17 Q. State's Exhibit Forty-five, can you tell me what that
18 is?

19 A. Yes, sir. This is the intelligent bulletin that we
20 provided to the media and also other police agencies trying
21 to locate Mr. Henson.

22 Q. All right. Did you include a picture of Davontay
23 Henson?

24 A. Yes, sir. His picture's wanted -- His picture is on
25 the flier and has a wanted information above his

1 photograph. And then I handwrote some information in here
2 that was not actually printed out on the computer.

3 Q. And the picture that you obtained, were you able to
4 verify the date it would have been taken?

5 A. This picture for Mr. Henson was taken in earlier 2009.

6 Q. So was it a fairly recent picture then?

7 A. Yes, sir. It was a pretty recent picture.

8 Q. And this flier is the one that then you passed out to
9 the media; is that correct?

10 A. We gave this to the media, and all the other agencies
11 around the surrounding area, and also up in Baltimore.

12 Q. So the agencies you're talking about, which agencies?

13 A. We gave it to all the agencies in South Carolina.

14 Q. I guess what I'm saying is, police agencies? Is that
15 what you're talking about?

16 A. Police agencies and media outlets.

17 Q. Media outlets?

18 A. Yes, sir.

19 Q. Did you hand it to CN2 here?

20 A. Yes, sir, we gave copies to the CN2 and all the
21 Charlotte TV stations so it could be put out.

22 Q. And as well, you had mentioned you had sent copies to
23 Baltimore. What -- Why is it that you sent copies to
24 Baltimore?

25 A. Well, the information was that, that's where he was

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1 originally from, Baltimore. We sent information to them
2 and other parts of South Carolina, Bamberg and that area
3 because we understood that they had lived there at some
4 point in time, Orangeburg/Bamberg area.

5 Q. So were you in charge of making sure this got out to
6 those places?

7 A. I tried to get it out to as many places as I could, as
8 quickly as I could.

9 Q. You sent it to Bamberg and Orangeburg as well?

10 A. I sent teletypes to them. I don't know if I actually
11 sent the flier out to them, but I teletyped them directly
12 letting them know we were looking for Mr. Henson.

13 Q. But if you're both in the Rock Hill and Charlotte area
14 and I guess as well as the Baltimore area, this was the
15 flier that was passed out?

16 A. Yes, sir.

17 MR. THOMPSON: Your Honor, I ask to enter this State's
18 Exhibit at this time.

19 THE COURT: Any objection?

20 MR. INZERILLO: No, Your Honor.

21 MR. CHIARENZA: Your Honor, I just object to
22 relevance, so unduly prejudicial. There's some writing on
23 here --

24 THE COURT: Well, let me see.

25 Can I see it?

1 MR. THOMPSON: Certainly.

2 If you'll pass that up to the judge, please.

3 (STATE'S EXHIBIT FORTY-FIVE RECEIVED UP BY THE COURT.)

4 THE COURT: I sustain the objection.

5 MR. CHIARENZA: Thank you, Your Honor.

6 MR. THOMPSON: Your Honor, if I may take up a matter
7 of law?

8 THE COURT: All right. We'll let the jury go to the
9 jury room and have an afternoon break.

10 (JURY EXITS COURTROOM AT 03:03 PM.)

11 THE COURT: Be glad to hear you.

12 MR. THOMPSON: Your Honor, there's a couple of
13 alternatives I think that I'd like to do with this and I
14 need to tell the Court why at this point because it's very
15 relevant.

16 THE COURT: Well, let's stick with what we got now.
17 You got an objection and I sustained the objection. So you
18 need to address that.

19 MR. THOMPSON: All right. The first thing that I
20 would tell the Court, Your Honor, is this is basically the
21 beginning of the police search for Davontay Henson. The
22 testimony of Detective Herring is going to be much more
23 thorough and the fact that all the other things that they
24 did including getting the Marshall Service involved.
25 Actually following phones, you know, that sort of thing to

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1 try and find Davontay Henson, that was an active
2 investigation for him. And that goes to the fact that the
3 defendant fled for some period of time. It was some eleven
4 months before he was captured. And involving that -

5 THE COURT: That doesn't prove he fled. This just
6 proves they were looking for him.

7 MR. THOMPSON: Exactly. But as part of that I will
8 point out in the case law that I handed up as to -- that I
9 handed to the Court I believe yesterday, the *Crawford* case
10 itself.

11 THE COURT: That was my case, I am familiar with that
12 one.

13 MR. THOMPSON: And I tried it so I can tell you,
14 Judge, I was with you on that. But I want to point out, in
15 that case it specifically talks about - my notes here -
16 that a critical factor in talking about flight is the -- to
17 the admissibility of flight is "whether the totality of the
18 evidence creates an inference that the defendant had
19 knowledge that he was being sought by the authorities, it
20 is sufficient that circumstances justify an inference that
21 the accused's actions were motivated as a result of his
22 belief that the police officer's were aware of his wrong
23 doing and were seeking him for that purpose."

24 And so I'm showing the Court, Your Honor, that there
25 was a lot of attention to this throughout South Carolina,

1 throughout Baltimore, throughout the Charlotte area. The
2 Defendant would have known at this point, had he not known
3 otherwise that he's being hunted. And I have more evidence
4 to prove towards that. The flyer itself -

5 THE COURT: You can make a proffer because this
6 doesn't prove that he ever saw it or heard of it.

7 MR. THOMPSON: Well, that's correct, but I would say
8 once again, going back to that case, it says "it is
9 sufficient that circumstances justify and inference that
10 the accused's actions were motivated as a result of the
11 belief that the officers were after him. There are a
12 number of other things that I intend to introduce through
13 school officials; for instance, I'll introduce the evidence
14 that the Defendant dropped out of school immediately right
15 around this time, and not only him but his sister. And
16 another person who was living at that house that I believe
17 it was his cousin but list the same parent or guardian.
18 That his mother also left town at this point in time. That
19 they all disappeared without withdrawing from school and
20 transferred them to another one; they disappeared, they
21 just dropped off the face of the earth basically at this
22 point.

23 Then ultimately they were able to find the mother and
24 when they talked to her the detective will even tell you
25 that he at one point searched that house because they were

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1 following, pinged her phone and following her, searched
2 that house. They're telling her look we have warrants for
3 him, he has to be, you know, he has to turn himself in.
4 And they of course deny any knowledge of where he is. But
5 here's a young man who's at the time seventeen; has no job,
6 and supposedly no family helping him but he's alluding the
7 police for eleven months. It's obvious that he knows he's
8 under arrest -- that there are arrest warrants for him and
9 that there is an inference from that from all the things
10 the police have done that they are looking for him.

11 What I suggest is that - and I guess what I want to
12 put out here that could help without actually putting in a
13 bulletin, my alternative would be to place in the picture,
14 to show the picture that they were showing around of the
15 defendant because it is relevant to what he looked like
16 around the time of the crime. As the detective testified
17 it's a picture from earlier that year and he does have
18 shoulder length -

19 THE COURT: Why does what he looked like have anything
20 to do with his knowledge? I mean of flight.

21 MR. THOMPSON: Because this is the picture that's
22 being posted everywhere. You see your picture being --
23 this is being put on television, being put in newspapers.
24 Here in the Herald there were stories with this picture.
25 This is the picture everyone's seeing so people are seeing

1 this picture including the defendant. As we can infer I
2 think from this he doesn't live in a vacuum. People who
3 know him see it; he's got to have learned through all of
4 this that he's wanted. And as I said -

5 THE COURT: I don't connect the picture to that
6 though. When he sees a picture of himself, he's got his
7 name underneath it.

8 MR. THOMPSON: Right. But what better proof do you
9 know now that the police are after you than they're putting
10 out wanted pictures of you?

11 THE COURT: If you see it.

12 MR. THOMPSON: Obviously it's being broadcast
13 everywhere; it would be hard for him not to see.

14 THE COURT: Well, I don't, I don't agree with that.

15 MR. THOMPSON: Judge, I think it would at least create
16 an inference that he should have seen it.

17 THE COURT: He should have seen it?

18 MR. THOMPSON: That's what ---

19 THE COURT: He should have seen it, would have seen
20 it?

21 MR. THOMPSON: --- it says, that's what it says I have
22 to do here, Judge. The case is pretty simple ---

23 MR. CHIARENZA: Your Honor, I've got to object from
24 Mr. Thompson ---

25 MR. THOMPSON: --- it justifies an inference.

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1 MR. CHIARENZA: --- continuing to argue after the
2 Court has ruled. And I think it's in clear violation of
3 the criminal rule which Mr. Thompson --

4 MR. THOMPSON: Mr. Chiarenza, the Court's asking me
5 questions, I'm simply answering his Honor.

6 THE COURT: I don't find that he's violated any rules.
7 I'm trying to dig into this. It's a very important issue
8 and I know where we're headed with it. When it was
9 initially introduced a day or two ago I said I had some
10 concerns about it. I still do. And I'm familiar with the
11 *Crawford* case because you tried it right here in this
12 courtroom.

13 MR. THOMPSON: In addition, Your Honor, as far as the
14 dreads go, the testimony is that he had and so it's
15 relevant on another basis as well. Not simply just the
16 picture going up that this is what he looked like at the
17 time and the jury has the right to see that as well.

18 MR. CHIARENZA: Well not a photograph that was taken
19 months earlier. And truth be told I think that's just the
20 ultimate desire of the State is to back door this
21 photograph -

22 THE COURT: I understand that.

23 MR. THOMPSON: It's relevant. It's not back dooring
24 anything.

25 THE COURT: Well I know, maybe it's not back door, but

1 I know that you want to get these dreads in.

2 When was the picture taken again, Officer Herring?

3 OFFICER HERRING: It was earlier in the month, 2009.

4 I'm not sure of the month. I think around June of 2009.

5 THE COURT: If you can have someone testify that this
6 is what he looked like on October 9th I think we'd be in a
7 different situation. But to try to establish that this is
8 what he looked like on the 9th, and the photo is from
9 several months earlier, I find that the photograph that's
10 presented here and the intelligent bulletin if they have
11 any probative value that its outweighed by the prejudicial
12 value. This particular bulletin also has information that
13 also has to be hearsay, so I sustain my objection. I mean
14 I sustain the objection and sustain my earlier ruling.

15 MR. CHIARENZA: Thank you, Your Honor.

16 MR. THOMPSON: All right. Thank you, Your Honor.

17 THE COURT: Let's take a break while the jury's out.
18 Got a ten minute break and they been out a few minutes.

19 (COURT IN RECESS AT 03:12 PM.)

20 (COURT BACK IN SESSION AT 03:25 PM.)

21 THE COURT: Thank you. Take your seats.
22 Bring in the Defendant's.

23 (WITNESS RETAKES THE WITNESS STAND.)

24 (DEFENDANT'S REENTER THE COURTROOM AT 03:26 PM.)

25 THE COURT: Anything else before we get the jury in?

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1 MR. THOMPSON: No, Your Honor.

2 THE COURT: All right. Bring in the jury.

3 (JURY REENTERS COURTROOM AT 03:28 PM.)

4 THE COURT: You may proceed.

5 MR. THOMPSON: Thank you, Your Honor. May it please
6 the Court.

7 DIRECT EXAMINATION - CONTINUED

8 LESLIE HERRING BY MR. THOMPSON:

9 Q. Detective Herring, in addition to having done the
10 flier and even into the local media and as you said to
11 Baltimore, what was one of the next steps you did to try
12 and locate Davontay Henson?

13 A. Well we -- I had already contacted the school district
14 to see if the mother had withdrawn him from school or
15 anything like that, or see if they were still in the area.
16 We contacted other parts of South Carolina like I mentioned
17 earlier because information was they had lived in the
18 Orangeburg area, Colleton County area, Bamberg. We had
19 sent out teletypes to those areas also. And like I said,
20 also contacted Baltimore, Maryland because he was
21 originally from that area.

22 Q. And could you find him here in the school district in
23 Rock Hill?

24 A. We had our school resource officers contact because
25 apparently there was some brothers or sisters that he --

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1 that were also in the school district, and they had been
2 withdrawn from the school district, and they were no longer
3 in the school district. And I think when they were
4 withdrawn, I think that's when the information from Bam --
5 Orangeburg County might have come from the actual school
6 district because that's where they had originally come to
7 Rock Hill from, that area. So we thought maybe they went
8 back to that area.

9 Q. Ultimately, did you find anyone in Orangeburg?

10 A. No, sir, nobody. Something -- The school came back to
11 us and told us that --

12 MR. CHIARENZA: Objection.

13 THE COURT: I sustain the objection.

14 A. No, sir.

15 Q. Just if you were able to find anyone at all. That's
16 all.

17 A. No, sir.

18 Q. Okay. Now you had talked that you had contacted the
19 Baltimore Police Department. What kind of things did you
20 give to the Baltimore Police Department?

21 A. We gave them the photograph, the flier with the
22 picture of Mr. Henson, the dread locks; his height, weight
23 description; date of birth; that type of information.

24 And also I contacted -- When I contacted Baltimore, I
25 told them his dad's name and where his dad lived in

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1 Baltimore thinking that maybe the mother had went back to
2 the -- her husband, or --

3 Q. Okay. And did you have the dad's address in
4 Baltimore?

5 A. Yes, sir. I had the dad's address and his name.

6 Q. Do you remember what his name was?

7 A. James Henson was his father's name.

8 Q. And do you remember the street address of where he
9 lived?

10 A. It was something like Potomac Avenue or something like
11 that in Baltimore.

12 Q. And did you have the Baltimore Police Department
13 contact his father?

14 A. Yes, sir. I had contacted Vince, I believe, Stevenson
15 with the Baltimore Police Department. I gave him that
16 address and the name of Mr. Henson's dad. And also, he
17 informed me --

18 MR. CHIARENZA: Objection.

19 THE COURT: I sustain the objection.

20 A. Yes, sir, I did. I gave him all the information that
21 I had.

22 Q. And you asked them to go check with this man?

23 A. Yes, sir, I did.

24 Q. And then as well, did you get any other agencies
25 involved in addition to Baltimore?

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1 A. Once it was determined that he was no longer in this
2 area, I contacted the US Marshall's Office in Columbia for
3 their assistance, looking for a fugitive because we had
4 assumed he had already left the area. We had gotten calls
5 initially right after this incident happened.

6 MR. CHIARENZA: Objection, Your Honor.

7 THE COURT: I sustain any information that came
8 through a call.

9 MR. THOMPSON: Okay.

10 Q. From putting some of this stuff out, now you are
11 obviously saying you had got calls. Were they like tips or
12 anything like that?

13 MR. CHIARENZA: Objection, Your Honor.

14 THE COURT: One, that's leading, number two, that
15 would be based on hearsay. I sustain the objection.

16 BY MR. THOMPSON:

17 Q. Detective, if you would, what did you do with the
18 Marshall service?

19 A. I filled out a fugitive request information form and
20 sent it to them with all his information, photographs,
21 stuff like that because we figured he had left the area and
22 needed assistance in locating him.

23 Q. And did the Marshall services assist you in trying to
24 locate him?

25 A. Yes, sir. I talked to the US Marshall Mike Etheridge

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1 in Columbia. And he --

2 MR. CHIARENZA: Objection to anything he might have
3 said.

4 THE COURT: I sustain the objection.

5 MR. THOMPSON: I'm not -- He's not -- I don't know
6 that he's testifying to what he was saying at this point.

7 THE COURT: Sounded like he was heading that way, but
8 anyway, I sustain --

9 You can't testify to what Mr. Etheridge said.

10 Go ahead.

11 Q. In your involvement with the Marshall search, did you
12 work with Mr. Etheridge?

13 A. Yes, sir, I did.

14 Q. In doing that, what are some of the things that you
15 did with the Marshall service?

16 A. I got involved with the Marshall service whenever we
17 was able to determine a phone number from Davontay Henson's
18 mother. And the Marshall service provided me information
19 that --

20 MR. CHIARENZA: Objection, Your Honor.

21 THE COURT: Yeah, I -- It's getting to be information
22 that was provided by someone else. I sustain the
23 objection.

24 BY MR. THOMPSON:

25 Q. Were you able to, in working with them, do anything

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1 regarding -- You had mentioned something about the phone.
2 What, if anything, were you trying to do with the phone
3 number?

4 A. We were trying to locate Davontay Henson's mother's
5 whereabouts. By doing so, we were trying to determine her
6 phone and where cell towers that she was hitting when she
7 was using her cell phone.

8 Q. And what do you call that when you try to do that?

9 A. I think it's called "pinging a cell tower" whenever
10 you try to locate an individual's whereabouts, and you have
11 their phone number, and you can tell when they're using
12 that telephone and which tower they're actually making
13 contact with.

14 Q. And were you involved in actually with the whole thing
15 with the Marshall's in pinging the phone?

16 A. Yes, sir, I was. Yes, sir.

17 Q. And so did you try -- Were you able to actually follow
18 some of the places she went?

19 A. Yes, sir, we were.

20 Q. And as a result of that, what if anything did you do?

21 A. We located Davontay Henson's mother, Shelita White, on
22 Spring Street, here in Rock Hill, South Carolina.

23 Q. Do you remember when that was?

24 A. We actually located her on January the 12th of 2010.

25 Q. And what happened at that point when you located her