

VOLUME I OF II

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenwood County
Frank R. Addy, Circuit Court Judge

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Oct 14 2020

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

XZARIERA OKEVIS GRAY,

APPELLANT

APPELLATE CASE NO. 2019-001109

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE’S EXHIBIT #2 (CD); STATE’S EXHIBIT #6 (PICTURE); STATE’S EXHIBIT #10 (PICTURE); STATE’S EXHIBIT #11 (PICTURE); STATE’S EXHIBIT #12 (PICTURE).

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
)
 -VS-)
)
 XZARIERA OKEVIS GRAY,)
)
 DEFENDANT.)
 _____)

2018-GS-24-00829 & 00830

TRANSCRIPT OF RECORD

MAY 6 - 9, 2019
GREENWOOD, SOUTH CAROLINA

BEFORE:

THE HONORABLE FRANK R. ADDY

APPEARANCES:

ATTORNEYS FOR PLAINTIFF:

JOSHUA THOMAS, ASSIST. SOLICITOR
CARSON PENNEY, ASSIST. SOLICITOR

ATTORNEYS FOR DEFENDANT:

JANNA NELSON, ESQ.
SHANE GORANSON, ESQ.

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

1 If I don't get a chance to see you again, I want to
2 thank you for coming in here. If I don't see you again,
3 which is entirely possible if this case is going to take as
4 long as I anticipate, but if I don't see you again,
5 remember, just for showing up here today and participating
6 in this process, you get a get-out-of-jury-service-free-card
7 that's redeemable here in this courtroom for the next three
8 years, okay?

9 It's not an actual card, but you're going to have to
10 remember that you came in here in May of 2019 and served.
11 And if you let the clerk know, if you're summoned in the
12 next three years they'll say, hey, you don't even have to
13 show up on the first day of court, okay?

14 With that, remember to call the number tomorrow night.
15 Y'all take care. Be safe. And maybe I will see you again
16 soon, maybe not. And do leave those buttons with us, okay,
17 please. Thank you.

18 (Whereupon the remaining jurors exited the courtroom at
19 12:42 pm)

20 **THE COURT:** All right. The jury is out. Again, I do
21 anticipate -- what I want to do is go ahead and release the
22 jury, have them come back sometime this afternoon when we
23 can start the case in earnest.

24 How long do you anticipate your direct taking on the
25 Castle Doctrine motion that you were going need to make, Ms.

1 Nelson? Ballpark? Won't hold you to it, but ...

2 MS. NELSON: Maybe 15, maybe 20 minutes.

3 THE COURT: Okay. And then ---

4 MR. THOMAS: I think I've got at least probably three
5 rebuttal witnesses, maybe a fourth.

6 THE COURT: Okay. So maybe an hour. All right. I'll
7 have the jury report back at 3:00. And I'll just have them
8 report to the place where they assembled this morning. All
9 right. Let's have the jury back out, please, sir.

10 (Whereupon the jury entered the courtroom at 12:45 pm)

11 THE COURT: All right. The record will reflect that
12 the jury is back and seated. Ladies and gentlemen, what
13 we're going to do is in a few moments I'm going to go ahead
14 and let you take a break for lunch and because there are a
15 few motions that the Court needs to address and because we
16 need to eat, too.

17 I anticipate in talking to the attorneys that the
18 motions may take about an hour. Hopefully it'll help
19 expedite a few things in this case. But, obviously, you
20 don't need to be present for the legal arguments that the
21 lawyers are going to be making.

22 So what I'm going to do is I'm going to ask that you
23 report back to the courthouse at 3:00 and come to room 200.
24 That's the room that you were in this morning, okay? So I
25 need you back at two -- sorry, need you back at 3:00. Go to

1 200 at 3:00. See y'all then. Thanks.

2 (Whereupon the jury exited the courtroom at 12:49 pm)

3 **THE COURT:** The jury is out. We'll be at ease til
4 let's say around two, if we could.

5 And, solicitor, I think the officer with the Department
6 of Corrections is still here if y'all need to give him
7 instructions about -- I think the -- are you the gentleman
8 who brought the defendant in this case?

9 **MR. THOMAS:** I think Freda maybe spoke to him. There's
10 some paperwork they need to fill out.

11 **THE COURT:** Okay.

12 **MR. THOMAS:** We'll get that filled out so ---

13 **THE COURT:** Let's get that filled out so that he can
14 remain with us and then he can be on his way, okay? Very
15 good. We'll be at ease til around two.

16 (Whereupon court was in recess at 12:50 pm)

17 (Whereupon court reconvened at 2:15 pm)

18 **THE COURT:** If we may, we'll go back on the record in
19 the State versus Mr. Gray. And as I understand it, we need
20 to proceed with a Castle Doctrine hearing at this point in
21 time. Anything before we go right into it, Ms. Nelson? Or
22 anything you want to put on the record?

23 **MS. NELSON:** No, sir, Your Honor.

24 **THE COURT:** All right. Y'all ready?

25 **MR. THOMAS:** Ready, Your Honor.

XZARIERA GRAY - DIRECT EXAMINATION BY MS. NELSON

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1 **THE COURT:** All right. Call your first witness.

2 **MS. NELSON:** We'd call Xzariera Gray, Your Honor.

3 **THE COURT:** If you'd come up, Mr. Gray.

4 **MADAM CLERK:** Place your left hand on the Bible and
5 raise your right hand, please.

6 **Xzariera Gray,** being duly
7 sworn testified as follows;

8 **Direct Examination by Ms. Nelson:**

9 Q. All right. Mr. Gray, you're Xzariera Okevis Gray?

10 A. Yes, ma'am.

11 Q. Is it okay if I call you Zay?

12 A. Yes, ma'am.

13 Q. Okay. You know we're here starting the trial on your
14 murder case?

15 A. Yes, ma'am.

16 Q. Did you know Demetrius Fuller?

17 A. I heard of him, but I -- but I didn't know him like
18 that.

19 Q. You didn't ---

20 A. I don't ---

21 Q. --- know him like ---

22 A. --- know him like that, no.

23 Q. Did you know his face or his nickname?

24 A. Yeah, I heard of him, but I -- I didn't grow up with
25 him or nothing. I don't know him personally.

XZARIERA GRAY - DIRECT EXAMINATION BY MS. NELSON

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1 Q. Y'all had not spent a lot of time together?

2 A. No, ma'am.

3 Q. So what I'd like you to do is going back to August 26th
4 of 2017 when this happened -- what I'd like for you to do is
5 start the day before on the 25th, which would have been
6 Friday, and just kind of tell the Judge how your day went
7 that day and what you did.

8 A. Okay. My day started off, I had went to a orientation
9 for a job. I had just got hired for a job at Fuji Film. So
10 we -- I just got hired, took the drug test, passed the drug
11 test. And so I left, and we went to go pay the rent for the
12 apartment.

13 And then me and my girl, we had a little disagreement.
14 So I told her I just want to get dropped off for a couple of
15 hours, come back and pick me up. So she ended up dropping
16 me off. And I never called her back to come pick me up that
17 night. So ...

18 Q. Where'd she drop you off, Zay?

19 A. On Gray Street.

20 Q. Did she drop you off at Ricky Grant's ---

21 A. Yeah, at Tia house -- yeah, Ricky house -- Rick house.

22 Q. And Ricky's house is at [REDACTED] Gray Street where this ---

23 A. Yes, ma'am.

24 Q. And that's where this happened?

25 A. Yes, ma'am.

XZARIERA GRAY - DIRECT EXAMINATION BY MS. NELSON

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1 Q. Okay. Go ahead.

2 A. So she dropped me off. And so we sat out in the yard,
3 me, Rick -- a couple of people was out there. But we sat
4 out there and, you know, drinking a little bit, smoking and
5 just chillin, you know. Because I know I had to go to work
6 that following Monday, so I wasn't really doing nothing. I
7 was fixin to get ready to go home that night, but -- so I
8 never called her to come back and pick me up that night.

9 So around about 11:30, 12:00 -- it was about 11:30,
10 12:00 he asked me, bro, you want to go out? I was like,
11 man, I don't know, but, yeah, we can go. And I was like, I
12 got to get home. It was late, though, because I had to go
13 home. So I was like, yeah, we can go out for a little bit.

14 Q. So Rick was the one who suggested going to the club?

15 A. Yeah.

16 Q. Okay. And who ---

17 A. So ---

18 Q. Who all went?

19 A. It was just me and him at the time. So when -- we
20 getting in the car -- so we getting in the car. Before we
21 pulled off, dude -- Meatball knocked on the window. He
22 like, ---

23 THE COURT: Rebar?

24 A. Meatball.

25 THE COURT: Meatball. Okay.

XZARIERA GRAY - DIRECT EXAMINATION BY MS. NELSON

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1 A. He knocked on the window. He knocked on Rick window
2 and like, where y'all fixin to go? Y'all fixin to go out?
3 Rick was like, yeah, we fixin to go out. And he looked at
4 me like, bro, you straight? You know, he can ride with us
5 or something? Man, this yo car. It's not my car. So he
6 let him in the car.

7 So we got in the car. We rode to the car, I mean, rode
8 to the club to the little Getaway. And on the way there I
9 tell, bro, like, man, I ain't even feelin it no more. I
10 ain't even going in. So he like, bro, I'm just fixin to go
11 in and get a couple of drinks. I ain't going to be in here
12 long. I'll be right back.

13 So they got out of the car, and they left. They went
14 in the Getaway. And they stayed in there for a couple of
15 hours. And I stayed in the parking lot talking to some
16 people I know. We drunk a little couple of beers.

17 And then about -- I say about 3:30, might been 3:30,
18 4:00, I'm not really sure about the time, Rick came back to
19 the car and he was like, bro, you ready to go home? I was
20 like, yeah. And he was like, well, let me go stop by the
21 house and let Tia know what I'm about to do, that's his
22 girlfriend, let Tia know what I'm about to do, and we fixin
23 to go, and I'll take you home.

24 Q. Let me ask you about something before you go any
25 further, Zay. On your way to the club did Mr. Fuller,

XZARIERA GRAY - DIRECT EXAMINATION BY MS. NELSON

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1 Meatball, did he give you anything?

2 A. No. No, he never gave me nothing. Like I said, like I
3 didn't know him anyway then. Like two weeks prior we had
4 problems. So I didn't -- I didn't, you know what I'm
5 saying, I didn't -- I know he didn't give me nothing. So,
6 no, ma'am.

7 Q. You had problems with him a couple of weeks before?

8 A. Yes, ma'am.

9 Q. And that's why your friend asked you if ---

10 A. Yeah, that's ---

11 Q. --- you were straight?

12 A. --- why Rick asked me like, bro, you straight? You
13 know me, I'm like, yeah, he good. This yo car. You know, I
14 can't tell you who you let in your car.

15 Q. So Meatball didn't give you anything at all?

16 A. No, ma'am.

17 Q. Not -- did he give you a gun?

18 A. No, ma'am.

19 Q. Did he ask you to put a gun anywhere?

20 A. No. He never asked me nothing about a gun, period.

21 Q. Did you ever see him with a gun at that ---

22 A. That day ---

23 Q. --- on the way to the club?

24 A. That day -- no, I didn't see him with a gun that day.

25 Q. Okay. So when -- and when y'all left the Getaway, who

XZARIERA GRAY - DIRECT EXAMINATION BY MS. NELSON

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1 was with you and Rick when y'all left?

2 A. It was just me and Rick when we left.

3 Q. Okay.

4 A. So we get back to Gray Street. He went in there -- me
5 and him walked in the house. And he walked to his girl's
6 room and like, Tia, you know, you ready for work? You
7 getting ready for work? And I think she replied like, I
8 ain't going today or something.

9 So we sat in the living room and we was talking a
10 little bit. I'm playing on my phone. I heard somebody
11 coming down the street, you know, talking loud, you know.
12 So -- and then they started walking up the steps. They
13 walked up the steps.

14 So when he came up the steps he started saying like, I
15 ain't forget about you hitting my brother in the mouth or
16 something -- something he was saying like, you know. So
17 Rick like, y'all take that outside. I don't need that in my
18 house. So I walked outside.

19 And then I was fixin to walk away. But then I thought
20 about it, you know what I'm saying? I said, why would I,
21 you know what I'm saying, leave when I know I got a ride
22 home? So I turned back around to go in the house.

23 When I got in the house he came back and followed me
24 again. And he came back in there and started with me again.
25 So Rick told him, man, I told y'all to go outside. Man, I

XZARIERA GRAY - DIRECT EXAMINATION BY MS. NELSON

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1 don't need that in the house. My girl back there asleep.
2 Man, y'all need to get out of the house. So we walked out
3 of the house.

4 By the time we get out of the house, I stepped on the
5 front porch, he swung and hit me. When he hit me, we got to
6 tussling. We got to tussling for like 30 seconds. And then
7 he -- he started reaching for his gun on his waistband. And
8 I -- I grabbed the gun.

9 About the time we still tussling over the gun, I get
10 the gun. And when I get the gun, it like -- I stumbled back
11 and the gun fired, fired the gun. Like -- and that's what
12 happened.

13 Q. So when you went -- after the club, you got back in the
14 car with Rick?

15 A. Yeah, I got back in the car with Rick.

16 Q. And y'all went back to Rick's house?

17 A. Went back to his house.

18 Q. Were you invited there?

19 A. Yeah. I always go -- that's where I usually be at.
20 Sometimes -- that's mostly where I usually hang at.

21 Q. You and Rick are friends?

22 A. Yeah, he's -- yeah, supposedly.

23 Q. Okay. You felt like you were friends at that time?

24 A. Yeah, he was straight. We ain't had no problems.
25 Never had a problem.

XZARIERA GRAY - DIRECT EXAMINATION BY MS. NELSON

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1 Q. So you were there at Rick's house and you said y'all
2 were just talking, you were playing on your phone?

3 A. Um-hum (affirmative).

4 Q. Had you tried to get Mr. Fuller to come over there at
5 any point?

6 A. No. I -- like I said, we never -- we never dealt
7 around, we never hung around each other. We -- we, you know
8 what I'm saying, because we -- like I said, the prior like.
9 So I just avoid him, period, like you know what I'm saying?
10 I didn't -- I didn't stay in that area.

11 So I didn't come over there unless Rick be like, bro,
12 you coming over here to chill today or something? So I come
13 over there and chill. But that particular day, I got
14 dropped off and me and him was just chillin, you know what
15 I'm saying?

16 Q. So as far as you know, Mr. Fuller came over there of
17 his own accord?

18 A. Yeah.

19 Q. That was his decision?

20 A. Yes, ma'am.

21 Q. You didn't call him and say, hey, come over here ---

22 A. I didn't have his number or nothing. No. No, ma'am.

23 Q. Did you -- did you offer to have any kind of fight with
24 him?

25 A. No. No, ma'am.

XZARIERA GRAY - DIRECT EXAMINATION BY MS. NELSON

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1 Q. You -- tell me again why you went outside when he got
2 there.

3 A. Because I -- I went outside when he got there because
4 Rick was telling us like, you know, y'all get out the house
5 like -- because he was getting loud in Rick house. I wasn't
6 really saying nothing. He was just getting loud talking
7 about, you know, man, I still owe you for hitting my brother
8 in the mouth and all this. I'm like, man, that's old, you
9 know? So ---

10 Q. So ---

11 A. --- I walked out of the house out of respect for Rick.
12 I walked out of the house. I was fixin to get ready to
13 leave. And then I thought about it, I said, man, if I can
14 -- like his people are all around him and like, you know,
15 that know him like -- and that's where he from. Like I
16 didn't want to just put myself in the position where I get
17 hurt or something.

18 So I turned around where I knew somebody at, you know
19 what I'm saying? And then I had a ride home. So I turned
20 around to go back in the house. He followed me again back
21 to the house.

22 And then, you know, Rick told us again, y'all get out
23 my house. Bro, I done told y'all don't come back in my
24 house. Man, y'all being doing all that right there. Man,
25 y'all step outside the house. If y'all going to argue,

XZARIERA GRAY - DIRECT EXAMINATION BY MS. NELSON

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1 y'all going outside the house. I told you I was going to
2 take you home, bro, but if y'all going to argue, y'all step
3 outside the house. So I stepped outside the house. And
4 that's when he, you know, tried to hit me or whatnot.

5 Q. Okay. So Mr. Fuller tried to hit you?

6 A. Well, yes, ma'am.

7 Q. And then the two of you got into a tussle or a scuffle?

8 A. Yes, ma'am.

9 Q. I don't remember what word you used.

10 A. It was a tussle like, you know, like he was tussling
11 like -- then when he see like he had done grabbed my shirt,
12 like he was tussling with me, he started reaching for the
13 gun, reaching for the gun.

14 He had it, but I had let loose of him and grabbed the
15 gun. Like I had both hands on the gun. He had the gun,
16 too, and I happened to get it off his waistband and I --
17 when I was falling back, and that's when I shot.

18 Q. Was he standing up when you shot him?

19 A. Yes, ma'am.

20 Q. Is he -- is he taller than you are?

21 A. He's way -- yeah. Yes, ma'am.

22 Q. I know you're not very tall, but he was taller than you
23 ---

24 A. Yes, ma'am.

25 Q. --- are? Is -- was he in pretty good shape?

XZARIERA GRAY - DIRECT EXAMINATION BY MS. NELSON

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1 A. I would say.

2 Q. Did you feel like if you -- how did you feel if you ran
3 away? What do you think would have happened if you had
4 tried to run?

5 A. If I'd have tried to run I probably would have been
6 shot. Like -- and I didn't really know he had the gun until
7 we got to tussling. If I'd have ran, I probably would have
8 got shot. That's what I was thinking. And I thought about
9 it after the fact like he could have shot me if I would have
10 ran.

11 Q. Have you -- I know you said you don't know Mr. -- you
12 did not know Mr. Fuller that well.

13 A. Uh-uh (negative).

14 Q. Did you know him ever to have a gun before you saw one
15 that night?

16 A. Of course. Of course.

17 Q. How many times would you say you had seen him with a
18 gun before?

19 A. This had been like -- this had been like the third
20 incident that I seen him with a gun.

21 MR. THOMAS: Objection, Your Honor. Under the Rules
22 for character evidence, the decedent in a murder case, can't
23 get into specific incidences unless it directly involves a
24 threat against this defendant or if it's close in ---

25 THE COURT: All right. Well, he's -- at the very least

XZARIERA GRAY - DIRECT EXAMINATION BY MS. NELSON

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1 they have to proffer the evidence. I'll rule on the
2 objection after the proffer is made. So go ahead and
3 proceed.

4 MS. NELSON: Thank you, Your Honor. And I would just
5 say this would go to Zay's state of mind about whatever
6 threat he felt.

7 Direct Examination by Ms. Nelson Continued:

8 Q. You said you had seen -- seen it three times?

9 A. Yes, ma'am.

10 Q. Were you involved in any of those prior times that you
11 had seen Mr. Fuller with a gun?

12 A. Like the first time I seen him with a gun, like me and
13 his little brother had got into a altercation. And his
14 brother had the same gun he had. He was chasing me around
15 the car with a gun. And then I ran in Tia house. And I
16 guess he ended up giving him back the gun.

17 They came back down there like 20 minutes later. And
18 they was like, man, put the gun down, man, just fight him
19 one on one. And he never put the gun down. So he never put
20 the gun down that day. So -- but everybody got -- got him,
21 you know what I'm saying, leave out the yard or whatnot. He
22 left that night. I went home.

23 The second occasion when -- I was at home and somebody
24 came to me and they was like, you know, Meatball said he on
25 Gray Street right now talking about he looking for you and

XZARIERA GRAY - DIRECT EXAMINATION BY MS. NELSON

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1 your brother, you know what I'm saying? He going to shoot
2 you and your brother if he find y'all. If he catch y'all,
3 he going to shoot y'all. So I was like, yeah.

4 So like about a hour later I ended up going to Tia
5 house. I didn't see him that day, but a couple of people
6 telling me like, yeah, he was over here. He ended up
7 dropping the gun, you know what I'm saying? While he was
8 talking, he dropped the gun.

9 And that's, you know what I'm saying, that's the second
10 time I seen it. The third time that night we got to
11 tussling that night, and I get it off his waistband when we
12 was tussling.

13 Q. So the two of you had had encounters before where Mr.
14 Fuller had a gun?

15 A. Yes, ma'am.

16 Q. How did you -- what were you feeling when you were in
17 this struggle with Mr. Fuller ---

18 A. I felt like ---

19 Q. --- and you saw ---

20 A. I felt like -- I felt like I was fixin to die because
21 once I seen the gun like it -- like my life lay in front of
22 my eyes like because he was reaching. I know if he'd have
23 got to the gun he was going to shoot me. I know he was
24 going to shoot me because he was reaching for it.

25 Like while we tussling he had -- he had both hands on

XZARIERA GRAY - DIRECT EXAMINATION BY MS. NELSON

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1 me, then he let go one hand and grabbed the gun and started
2 trying to pull the gun out. And I let him go, period, and
3 just grabbed the gun and we tussling over that. And I ended
4 up getting control of the gun. And when I was falling back,
5 I shot.

6 Q. So you -- are you saying falling back are you -- were
7 you backing ---

8 A. Like backing up ---

9 Q. --- up trying to get away from him?

10 A. --- like as in backing up from him like backing up at
11 the time.

12 Q. What happened after you backed up from him after you
13 were able ---

14 A. After I backed up he started coming with like rage
15 force like. And then that's when I shot.

16 Q. What did you do after you shot?

17 A. After I shot I, you know, I took off running because I,
18 you know, like I said, this his area, this where his family
19 from, you know, a lot of people -- this where he grew up
20 at. A lot of people, they was, you know what I'm saying, I
21 started hearing people saying they were going to kill me and
22 all this right here, so I ran.

23 I knew what was going to happen, you know what I'm
24 saying, because he got family around that area. If they'd
25 have found out what happened, they were going to try to do

XZARIERA GRAY - DIRECT EXAMINATION BY MS. NELSON

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1 something to me.

2 Q. How many times did you shoot him?

3 A. Once.

4 Q. Did you try to shoot him more than once?

5 A. No, ma'am.

6 Q. Did everything happen pretty fast once you were able to
7 get the gun?

8 A. Yeah. As soon as I got the gun, like I was walking
9 back, stepping back, like looking at him stepping back, and
10 he started like rushing towards me. And that's when, you
11 know, I shot. It happened so fast like. And then he took
12 off running, and I took off running, you know.

13 Q. Did you have a lot of time to think?

14 A. No, ma'am.

15 Q. As best you can remember, what was going through your
16 mind when you took the gun away?

17 A. I don't -- what was going through my mind, like if I
18 don't get this gun, he going to kill me. Like, you know, I
19 was really scared. You know, just being real, I was scared.

20 Q. When you had these two previous encounters with him
21 where you saw him with this same -- you didn't say same
22 weapon, but you saw him with a weapon, ---

23 A. Um-hum (affirmative).

24 Q. --- did you call the police?

25 A. No, ma'am.

XZARIERA GRAY - CROSS-EXAMINATION BY MR. THOMAS

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1 Q. Why not?

2 A. Because like I felt like -- I felt like if I would have
3 called the police, then it could have got worser [sic], you
4 know what I'm saying? My family could have been harmed or
5 anything could have happened.

6 I just stayed out the way. I just -- I didn't go
7 around him, period. Like after that, I just -- I wasn't
8 looking for him, you know what I'm saying? I just stayed in
9 my own lane. I didn't bother him, you know what I'm saying,
10 no more. Like after that, I just -- I wasn't looking for
11 him or nothing. I just tried to avoid him as much as
12 possible.

13 Q. Did you and Mr. Fuller have the kind of relationship
14 where he would have given you his gun to hold when he went
15 in a club?

16 A. No, ma'am.

17 Q. Did he ask you to hide his gun?

18 A. No, ma'am.

19 Q. Give me just one second, Zay.

20 (Pause)

21 Q. That's all I have right now. Mr. Thomas may have some
22 questions for you.

23 THE COURT: Cross.

24 Cross-examination by Mr. Thomas:

25 Q. Mr. Gray, I think at the beginning of your testimony

XZARIERA GRAY - CROSS-EXAMINATION BY MR. THOMAS

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1 you said that you didn't really -- you'd heard of Mr.

2 Fuller, but you didn't really know him that well, is that
3 right?

4 A. Yes, sir.

5 Q. Okay. And you said you hadn't had any real prior
6 interactions with him.

7 A. Can you repeat that?

8 Q. You said you hadn't had any prior interactions with
9 him.

10 A. What you mean by that?

11 Q. You hadn't hung out with him, spent any time with him.

12 A. I'm saying like, you know, I see -- like I be in the
13 same place where he grewed up at. So I see him, but we
14 don't hang together ---

15 Q. Right. You just see him coming and going and ---

16 A. Yeah, I never ---

17 Q. --- you sort of hang around the same people?

18 A. Yeah. Yeah, pretty much.

19 Q. Okay.

20 A. But I never hung around him like that.

21 Q. But then later you told us about these two prior
22 incidences. I believe you said one of them was when his
23 brother was chasing you with a gun?

24 A. Yeah.

25 Q. Okay. His brother was chasing you with a gun. Did --

XZARIERA GRAY - CROSS-EXAMINATION BY MR. THOMAS

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1 he didn't have a gun?

2 A. He had the gun, too. He gave -- his brother gave him
3 the gun 20 minutes later.

4 Q. Okay. While you were still there?

5 A. I was in Tia house. Like I -- when I see him come back
6 in the yard -- it was a lot of people came in the yard. He
7 was like the one came in the yard with the gun in his hand.

8 Q. Okay. So his brother chased you with a gun and then
9 you went in the house?

10 A. Right. I ran away from ---

11 Q. Okay.

12 A. Yes, sir.

13 Q. And the second time was when you said some people were
14 going around saying that Meatball's got a gun, he's looking
15 for you, he's going to kill you and your brother?

16 A. Right.

17 Q. Okay. But you said you never actually saw him that
18 day.

19 A. That day? No, I didn't -- right. I didn't actually
20 see him, but other people saw him. You right.

21 Q. Okay. So you were at the Getaway. You went with Ricky
22 and Meatball to the Getaway?

23 A. Um-hum (affirmative).

24 Q. And that's the South Main Street Bar and Grill?

25 A. Yes, sir.

XZARIERA GRAY - CROSS-EXAMINATION BY MR. THOMAS

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1 Q. Okay. Did you have your ankle monitor on at that time?

2 A. No, sir.

3 Q. Okay. And you weren't abiding by your conditions that

4 Judge Hocker put on you to stay out of a bar ---

5 A. No, sir.

6 Q. --- and restaurant? Okay. You went there, you said

7 you weren't feeling it, you weren't really wanting to go,

8 but you ended up going and staying until, what, 3:30, about

9 3:30, four?

10 A. Yeah, we -- I was in the parking lot. I didn't -- I

11 didn't keep up with the time. Yeah, right ---

12 Q. Okay.

13 A. --- around that area.

14 Q. And during that whole time Meatball never gave you a

15 gun, ---

16 A. No.

17 Q. --- obviously? Right. Because y'all weren't friends

18 like that. He wasn't going to give you a gun.

19 A. No.

20 Q. Okay. When you got back to Gray Street your brother

21 Aaron was there, wasn't he?

22 A. No, he wasn't.

23 Q. He was never there?

24 A. No.

25 Q. Okay. You guys get -- you said Meatball comes up,

XZARIERA GRAY - CROSS-EXAMINATION BY MR. THOMAS

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1 y'all get into an argument about whatever it is he's mad
2 about?

3 A. Um-hum (affirmative).

4 Q. But it wasn't about a gun?

5 A. Nah, it was about his brother, the prior incident.

6 Q. Okay. And does that argument occur inside the house or
7 does that occur -- let me show you ...

8 (Whereupon State's exhibit 1 was marked for
9 identification)

10 Q. Let me show you what's been marked as State's exhibit

11 1. Is that a picture of Ricky's house?

12 A. Yeah.

13 Q. Okay. And that's what it looked like ---

14 A. Um-hum (affirmative).

15 Q. --- around that time?

16 A. Um-hum (affirmative).

17 **MR. THOMAS:** Your Honor, I guess for this hearing we'd
18 move this in as State's number 1.

19 **THE COURT:** Without objection for purposes of the
20 hearing.

21 **MS. NELSON:** No objection.

22 (Whereupon State's exhibit 1 was admitted into evidence
23 for this hearing)

24 Q. So I'm going to put it up -- you know what, you're
25 sitting up here with the Judge, so I'll just bring it up to

XZARIERA GRAY - CROSS-EXAMINATION BY MR. THOMAS

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1 you.

2 **THE COURT:** Yeah.

3 Q. All right. So that's Ricky's house.

4 A. Um-hum (affirmative).

5 Q. And y'all were inside of that house?

6 A. Yeah, me and Rick was.

7 Q. Okay. And the tussling and the fighting that ended up
8 happening with Meatball, it occurred up on this landing up
9 here or did it occur out here in the dirt?

10 A. He hit me right here. And we started tussling right
11 here.

12 Q. Okay.

13 A. Right up in this area, somewhere in the area. It was
14 dark.

15 Q. Okay. So he hits you up here?

16 A. Yes, sir.

17 Q. And then y'all come down into this area?

18 A. Yeah. And we started tussling.

19 Q. And you said that wrestling out in front in the dirt
20 ---

21 A. Right here. All right -- about ---

22 Q. Thirty seconds?

23 A. I say 30, 40 seconds. I'm not really sure.

24 Q. Okay.

25 A. It seemed like a lifetime, you know what I'm saying?

XZARIERA GRAY - CROSS-EXAMINATION BY MR. THOMAS

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1 But ---

2 Q. Okay. But it wasn't just like a real quick thing? It
3 lasted a little bit longer than ---

4 A. About 30, 40 seconds, ---

5 Q. Okay.

6 A. --- I'd say.

7 Q. Okay. And you said during the course of that tussling
8 there were some other people out there?

9 A. I -- I was focused.

10 Q. You were focused? Okay.

11 A. I don't -- I didn't see ---

12 Q. I hear ya.

13 A. --- nothing around.

14 Q. I hear ya. So you're up on -- you're out here in the
15 dirt, you're tussling with Meatball, and you said you saw
16 him reaching for his gun -- for a gun?

17 A. Yeah, he reached for his gun.

18 Q. You could see -- it was dark, but you could tell ---

19 A. Like ---

20 Q. --- it was a gun?

21 A. --- we right here in front of each other tussling. We,
22 you know, grabbed -- got each other, we tussling. Like he
23 ain't trying to let me throw him to the ground, and I ain't
24 trying to let him throw me to the ground.

25 Q. Right.

XZARIERA GRAY - CROSS-EXAMINATION BY MR. THOMAS

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1 A. And then when he let go, he had me one hand like this,
2 and he started reaching like this, started reaching. And

3 ---

4 Q. So I guess ---

5 A. --- I let him go completely and grabbed the gun.

6 Q. Okay. So he's reaching with one hand, but somehow you
7 get both of your hands on it and ---

8 A. I let him go completely and grabbed the gun like ---

9 Q. Okay.

10 A. --- when he ---

11 Q. Good. Okay. So you got both your hands on it. And
12 then you said you started falling backwards?

13 A. I like stepped back.

14 Q. Okay. So taking a few steps, one step, two steps?
15 Like how far do you think you were?

16 A. Man ...

17 Q. Let me do this. I'm going to start right here ---

18 A. You talking about the distance between us?

19 Q. Yeah. How far -- how far away from him did you get?

20 Pretend like you're Meatball and you just tell me where to
21 stop.

22 (Pause)

23 Q. I'm you.

24 A. Come on back. To that podium.

25 Q. Let me start ---

XZARIERA GRAY - CROSS-EXAMINATION BY MR. THOMAS

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1 A. To the podium.

2 Q. Oh, okay.

3 A. To that thing right there.

4 Q. All right. So y'all were a pretty good ways apart when

5 ---

6 A. Right there.

7 Q. --- you got back?

8 THE COURT: About 20 feet ---

9 A. Yes, sir.

10 THE COURT: --- to the podium.

11 Q. Okay. So -- and that's the point at which you said you
12 shot the gun?

13 A. He was fixin -- yeah, he started -- like he was raging
14 like (Witness indicating).

15 Q. Okay.

16 A. And that's, you know, I was -- and, you know, at the
17 time, I ain't going to lie, I was scared. And I ain't going
18 to lie, I was.

19 Q. Okay. Did the gun go off by accident or did you -- you
20 pulled the trigger ---

21 A. Excuse me?

22 Q. --- on purpose?

23 A. Huh?

24 Q. I just want to make sure. It sounded kind of like you
25 said you were falling backwards and the gun just went off.

XZARIERA GRAY - CROSS-EXAMINATION BY MR. THOMAS

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1 And I just wanted to make sure ---

2 A. I'm saying my finger hit the trigger.

3 Q. Okay. So you -- you pulled the trigger?

4 A. Yes, sir.

5 Q. It wasn't an accident, then?

6 A. It was a accident because I was scared at the time.

7 Like I didn't mean to do it. Like I'm just being real. It
8 was a accident to me.

9 Q. Okay. But I guess what I'm getting at is did you
10 either -- either you didn't mean to shoot him and it
11 accidentally went off or you were scared and you shot him.
12 Which one ---

13 A. Scared and I shot.

14 Q. Okay. That's all I needed to know. Hang on one
15 second.

16 (Pause)

17 Q. All right. And your girlfriend -- I think you said you
18 were going -- Rick was going to take you home that night?

19 A. Yeah.

20 Q. He was going to take you back to your girlfriend's
21 house?

22 A. Um-hum (affirmative).

23 Q. Did she live over on Foundry Road at that time? Kind
24 of over near Guy Butler?

25 A. Um-hum (affirmative).

XZARIERA GRAY - CROSS-EXAMINATION BY MR. THOMAS

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1 Q. Okay.

2 THE COURT: That's a yes.

3 A. Yes, sir.

4 Q. So where is -- where is the South Main Bar and Grill in
5 relation to that?

6 A. It ain't too far from her house.

7 Q. Okay. So he actually took you all the way over here to
8 ---

9 A. He ---

10 Q. --- Gray Street?

11 A. He went to go check and see was his girl ready for work
12 because she -- I think she had to go to work that morning or
13 he thought she had to go to work. But I told him, yeah,
14 I'll ride with you over there to go check. And he went and
15 checked to see. She said she wasn't going in, I think. I
16 wasn't in the room with them, so ...

17 Q. Gotcha. And I guess Meatball went to the club with
18 y'all, but didn't come back with you?

19 A. Correct.

20 Q. Okay. So I just want to make clear, this was something
21 I -- you said Meatball never gave you a gun, you never saw a
22 gun until he started reaching for it, right?

23 A. Oh, prior incidents I seen the gun.

24 Q. But that night ---

25 A. That night I didn't see none.

XZARIERA GRAY - REDIRECT EXAMINATION BY MS. NELSON

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1 Q. Okay. Thank you. That's all I have.

2 **Redirect Examination by Ms. Nelson:**

3 Q. Just one clarification, Zay. Are you -- when you
4 estimate the distance y'all were able to put between you,
5 are you just remembering as best you can right now?

6 A. That's the best I can remember. I just -- like I can't
7 tell you exactly how far the distance was.

8 Q. And after you were able to back up what did he do?

9 A. He started rushing towards me.

10 Q. Okay. Thank you.

11 **THE COURT:** All right, sir. Thank you. You can step
12 down. Any additional witnesses, Ms. Nelson?

13 **MS. NELSON:** No, sir, Your Honor.

14 **THE COURT:** Anything in reply?

15 **MR. THOMAS:** Yes, Your Honor. I call Jeovani Vacquec.

16 **MADAM CLERK:** Place your left hand on the Bible and
17 raise your right hand, please.

18 **Jeovani Vacquec,** being
19 duly sworn testified as follows;

20 **Direct Examination by Mr. Thomas:**

21 Q. Mr. Vacquec, if you could, could you spell your first
22 and last name for the court reporter?

23 A. Okay. Jeovani Vacquec.

24 **THE COURT:** Would you spell those?

25 A. J-e-o-v-a-n-i.

JEOCANI VACQUEC - DIRECT EXAMINATION BY MR. THOMAS

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1 **THE COURT:** And Vacquec is V-a ...

2 A. V-a-c-q-u-e-c.

3 Q. And, Mr. Vacquec, where do you live?

4 A. [REDACTED] Greene Street.

5 Q. And is that near Gray Street?

6 A. Yeah.

7 Q. If we're looking at the front of your house, which way
8 is it to Gray Street? To the right or to the left?

9 A. Left.

10 Q. Okay. So do you have any sort of -- like if you look
11 out that side of your house can you see Gray Street?

12 A. Yeah.

13 Q. Okay. Do you have any sort of cameras or anything up?

14 A. Yes, sir.

15 Q. Did you have those cameras up back in August of 2017?

16 A. Yes, sir.

17 Q. And when I say cameras, what -- are those security
18 cameras? What kind of cameras are those?

19 A. I really -- I can't remember the brand, but I got about
20 eight -- eight cameras around my house.

21 Q. Okay. And do those all feed back to one central
22 computer, I guess, or TV monitor?

23 A. Yeah, to a monitor.

24 Q. Okay. And from that monitor can you go and review all
25 the video from all those different cameras?

JEOCANI VACQUEC - DIRECT EXAMINATION BY MR. THOMAS

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1 A. Yeah.

2 Q. And did one of those cameras look out towards Gray
3 Street?

4 A. (Affirmative nod).

5 THE COURT: He nods yes.

6 Q. I need you to speak up so she ---

7 A. Yes.

8 Q. Okay. And was that camera working the night of August
9 26th -- the morning of August 26th, 2017?

10 A. Yes.

11 Q. And how do you know it was working?

12 A. Because I -- I check it, you know, every two days.
13 And, you know, every -- I check ---

14 Q. Okay. So you regularly checked it ---

15 A. Yeah, I checked it.

16 Q. Okay. Did police come to your house on August 26th to
17 ask you if they could look at it?

18 A. Yeah.

19 Q. Okay. And did you watch the video footage with them?

20 A. Yeah. Yeah, I saw it because it was on my roof. So I
21 have to look.

22 Q. Okay. So you -- and it was Detective Kay, I believe,
23 is who ---

24 A. Yeah.

25 Q. --- came and helped you? Okay. And we've had a chance

JEOCANI VACQUEC - DIRECT EXAMINATION BY MR. THOMAS

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1 to look at this disk this morning?

2 A. Um-hum (affirmative).

3 (Whereupon State's exhibit 2 was marked for
4 identification)

5 Q. This is State's exhibit 2. Is that your initials on
6 there?

7 A. Yes.

8 Q. Is this the disk you looked at this morning?

9 A. Yeah.

10 Q. Okay. What's on this disk?

11 A. I really don't know. I just ...

12 Q. Okay. Well, let me ask it to you this way. Is this --
13 is this disk footage from your camera?

14 A. Yeah.

15 Q. Okay. You just don't know what happened on ---

16 A. No.

17 Q. Okay. Because you -- you don't know anything about
18 this case other than they just ---

19 A. I just -- they told me to come over here. So I just
20 come. So I didn't know nothing about it.

21 Q. Okay. But we looked at it and this is the footage that
22 the detective came and got?

23 A. Yeah.

24 MR. THOMAS: At this time, Your Honor, I'd move State's
25 exhibit number 2 into evidence.

JEOCANI VACQUEC - DIRECT EXAMINATION BY MR. THOMAS

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1 **MS. NELSON:** Your Honor, the objection we would have is
2 that it -- the time stamp on the video does not match the
3 alleged time of the incident. So I'm not sure if we're
4 looking at the right time or not. The time stamp is 18 --
5 starts at about 18:10. So I guess that in military time
6 translates to about 6:00 at night.

7 **THE COURT:** You want to speak to that, solicitor, or
8 ask him ---

9 **MR. THOMAS:** I can maybe ask some more questions. Let
10 me ...

11 (Whereupon State's exhibit 3 was marked for
12 identification)

13 Q. Let me show you State's exhibit number 3. What's that
14 a picture, I mean, what does that look like to you? What
15 does that appear to be?

16 A. Looks -- I guess it's something like something
17 happened.

18 Q. Well, let me ask you this. Is that a picture from your
19 video camera ---

20 A. Yeah.

21 Q. --- that we looked at earlier?

22 A. Yeah.

23 Q. And does that -- is that the camera that looks out over
24 Gray Street?

25 A. Yeah.

JEOCANI VACQUEC - DIRECT EXAMINATION BY MR. THOMAS

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1 Q. And how can you tell that?

2 A. Because I -- I got cameras on top of my garage. It
3 shows, ---

4 Q. Okay.

5 A. --- you know, I got a big old garage in front of the --
6 on this street.

7 Q. Um-hum (affirmative).

8 A. So I point it to keep, you know, everything safe.

9 Q. Right. Okay. So -- and then you can see like -- you
10 can see the boat that the neighbor has down there ---

11 A. Yeah.

12 Q. --- and the county shops? So that's how you recognize
13 that?

14 A. Yeah.

15 Q. Okay. And does this -- this came from the video that
16 we watched earlier? The police cars and everything?

17 A. Yeah.

18 Q. Does that look like it's from the video from earlier?

19 A. Yeah.

20 Q. Okay.

21 MR. THOMAS: Your Honor, I'd move State's number 3 into
22 evidence. Well, let me -- let me do this.

23 Q. The time stamp on this, it says it's at 18 -- probably
24 18:19.

25 A. Yeah. When I bought those cameras, I didn't set the

JEOCANI VACQUEC - DIRECT EXAMINATION BY MR. THOMAS

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1 right -- the right date. So I just plug it in and that's
2 it. So I didn't know the right time.

3 Q. So if you want to know like what specific time you need
4 to look at the camera, how do you figure that out? You just
5 count backwards?

6 A. Yeah.

7 Q. Okay.

8 MR. THOMAS: Your Honor, I would renew my -- 2 and 3
9 motion ---

10 MS. NELSON: Your Honor, I'd just submit it doesn't
11 sound like Mr. Vacquec was actually watching this occur on
12 the monitors as it occurred and it doesn't sound like he has
13 any way of knowing what time this happened on this video
14 that is being discussed.

15 THE COURT: Okay. Well, he's testified that he didn't
16 reset the time stamp, never messed with that when he set up
17 the cameras. And perhaps the question of the time stamp
18 would go to the weight as opposed to admissibility, but he's
19 authenticated the videos that were taken at his residence,
20 and he's authenticated State's 2 and 3. So for purposes of
21 the State's motion to admit, they will be admitted. And
22 just so we're clear, they're being admitted for purposes of
23 this hearing and not necessarily the State's case in chief.

24 MR. THOMAS: I'll have to lay that foundation.

25 THE COURT: Sure.

JEOVANI VACQUEC - CROSS-EXAMINATION BY MS. NELSON

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1 (Whereupon State's exhibits 2 and 3 were admitted into
2 evidence for this hearing)

3 **MR. THOMAS:** That's all the questions I have for Mr.
4 Vacquec.

5 **THE COURT:** Any questions?

6 **Cross-examination by Ms. Nelson:**

7 Q. Mr. Vacquec, do you -- what do you do to maintain that
8 equipment at your house?

9 A. Just clean it out sometimes.

10 Q. Did you install it yourself?

11 A. Yes.

12 Q. Do you -- how long do you keep videos for?

13 A. They record probably like two, three months and they
14 restart, you know, erase everything.

15 Q. So anything from that time period now would be -- would
16 have been taped over?

17 A. Yeah.

18 Q. What do you -- where do you store -- what do you store
19 it on? Is it on a hard drive on a computer?

20 A. No, on a TV, small TV.

21 Q. How do you store the recordings?

22 A. Oh, yes, on -- on the recording machine. So I -- I
23 just really just watch for -- to keep safe everything around
24 my house. So I just, you know, I didn't -- I just keep, you
25 know, ...

RAYMOND KENNEDY - DIRECT EXAMINATION BY MR. THOMAS

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1 Q. So what kind of recording machine is it that they're
2 kept on?

3 A. I really -- I can't say the brand, you know. It's ---

4 Q. Is it a tape? Do you use ---

5 A. No, it's a hard drive.

6 Q. Okay. So it's some kind of electronic ---

7 A. Yeah.

8 Q. --- equipment, hard drive ---

9 A. Yeah.

10 Q. --- that is attached?

11 A. Yeah. The camera right inside.

12 Q. Okay. Thank you, sir.

13 THE COURT: All right. Thank you, sir. You can step
14 down.

15 MR. THOMAS: Your Honor, the State calls Raymond
16 Kennedy.

17 THE COURT: If you would, come over here, please, sir,
18 and just be sworn.

19 MADAM CLERK: Raise your right hand, please.

20 Raymond Kennedy, being

21 duly sworn testified as follows;

22 Direct Examination by Mr. Thomas:

23 Q. Good afternoon, Mr. Kennedy. How are you?

24 A. All right.

25 Q. Could you just -- just tell the Judge how old you are.

RAYMOND KENNEDY - DIRECT EXAMINATION BY MR. THOMAS

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- 1 A. Forty-seven.
- 2 Q. Where do you live?
- 3 A. [REDACTED] Siloam Church Road.
- 4 Q. Okay. So you live here in Greenwood?
- 5 A. Yes, sir.
- 6 Q. You lived here your whole life?
- 7 A. (Affirmative nod).
- 8 Q. Did you know -- we keep calling him Meatball. But you
- 9 know Mr. Fuller?
- 10 A. Yes, sir.
- 11 Q. Do you know Mr. Gray?
- 12 A. Yes, sir.
- 13 Q. Okay. I want to go back to August 25th of last year,
- 14 late night of August 25th, early morning of August 26th. Do
- 15 you remember that?
- 16 A. (Affirmative nod).
- 17 Q. You've got to ---
- 18 A. Yes, sir.
- 19 Q. --- speak out loud so she can ---
- 20 A. Yes, sir.
- 21 Q. Where were you hanging out during the day, I guess?
- 22 A. During the day?
- 23 Q. Or that night. Where were you hanging out when all --
- 24 when all this happened?
- 25 A. On Gray Street.

RAYMOND KENNEDY - DIRECT EXAMINATION BY MR. THOMAS

80

- 1 Q. Okay. And where at on Gray Street?
- 2 A. At Rick house.
- 3 Q. Okay. And that's Ricky Grant?
- 4 A. Yes, sir.
- 5 Q. Okay. Did you end up going anywhere with them that
- 6 night or did you just hang out at the house?
- 7 A. I was just hanging out.
- 8 Q. Did Ricky and some other people go to the club?
- 9 A. Yeah, they went to the club.
- 10 Q. Okay. But you didn't go with them?
- 11 A. No, sir.
- 12 Q. Okay. When they came back from the club -- let me put
- 13 it this way. Who all went to the club? Who left?
- 14 A. Rick, Meatball and Zay. All them left together.
- 15 Q. Okay. And when they came back, who all came back?
- 16 A. Just Rick, Zay, and Zay's brother. That's it.
- 17 Q. You said Zay's brother?
- 18 A. Yeah.
- 19 Q. Okay. That's Aaron, I think, is his name?
- 20 A. (Affirmative nod).
- 21 Q. Okay. Meatball didn't come back with them?
- 22 A. (Negative nod).
- 23 Q. Did Meatball come back to the house at any other time?
- 24 A. He came back later on.
- 25 Q. And when he came ---

RAYMOND KENNEDY - DIRECT EXAMINATION BY MR. THOMAS

81

1 MS. NELSON: I'm sorry, I'm just -- I'm old. I'm ---

2 A. He came back later on.

3 MS. NELSON: --- having trouble hearing him.

4 A. He came back later on. It was about like a hour later.

5 Q. Okay. And when he came back was he -- what kind of

6 mood was he in?

7 A. He, I mean, when he came back he asked about a gun --

8 about his gun.

9 Q. Okay. So was he -- was he angry? Was he upset? Or
10 was he excited? Or what was his attitude, I guess?

11 A. I mean, he was like -- he was angry about his gun --
12 about his gun being missing.

13 Q. Okay. Was he yelling? Was he irate? Or was he just
14 ---

15 A. He just -- he was asking -- he just asked Zay did he
16 have his gun.

17 Q. Okay.

18 A. And Zay was like -- told him no. He said, no, he
19 didn't have it.

20 Q. Okay. What did Zay say again?

21 A. He said, no, he didn't have his gun.

22 Q. Okay. Did you see a gun on Meatball at any point at
23 all that night?

24 A. No, sir.

25 Q. Okay. And based on interactions with him it was your

RAYMOND KENNEDY - DIRECT EXAMINATION BY MR. THOMAS

82

1 understanding he didn't have a gun on him, is that right?

2 A. Who had a gun? Did Meatball have a gun on him?

3 Q. Yeah. Did Meatball have a gun?

4 A. I didn't see the gun. But he said he took the gun when
5 they left. He said he had the gun with him in the car. He
6 left the gun in the car.

7 Q. Okay. But when he came back he was looking for the gun
8 with Mr. Gray?

9 A. Yes, sir.

10 Q. Okay. Then what happened between the two of them?

11 A. After Zay told him he didn't have the gun, Meatball
12 left. About 30 minutes later he came back asking about the
13 gun again. He told him he didn't have it.

14 So they was inside the house. Rick told them to get
15 out -- to leave out his house without, you know, with the
16 altercation or whatever. So Zay went and stood in the yard.
17 Meatball kept asking about his gun. He kept telling him he
18 didn't have the gun. And they got to scuffling and the
19 gunshot went off.

20 Q. Okay. You say they got to scuffling. Did they get to
21 scuffling in the yard or on the porch?

22 A. In the yard.

23 Q. Okay. Did they ever get into a scuffle in the house or
24 up on the steps or anything that you remember?

25 A. They was fussing up on the steps.

RAYMOND KENNEDY - DIRECT EXAMINATION BY MR. THOMAS

83

1 Q. Okay. And how did they end up coming off the steps?

2 Did anybody push somebody? Or did they go peacefully? Or
3 how did they -- did they fall off? How did that happen?

4 A. They was tussling and -- tussling on the steps at first
5 and then they broke it up. Then they went out in the yard
6 and ---

7 Q. Okay.

8 A. --- that's when everything ...

9 Q. Did you see the shot that was fired?

10 A. I heard the shot. And after I heard the shot, Meatball
11 got up. The first thing -- the last thing he said was, that
12 MF shot me for real.

13 Q. Okay.

14 A. And he ran down the street.

15 Q. Before -- how long would you say that they were -- I
16 guess, when you say they were tussling, were they like
17 locked up on each other or were they just verbally like ---

18 A. They were tussling. Next thing I know, bam.

19 Q. Okay. Did you see where they were standing when the
20 shot went off or were you paying attention to that?

21 A. It was a tree in between the benches where we was
22 standing at -- where they was standing at.

23 Q. Let me show you State's exhibit 1 and see if you can
24 show the Judge where -- I guess, show us where the first
25 tussle happened and then show us where the tussling ended

RAYMOND KENNEDY - DIRECT EXAMINATION BY MR. THOMAS

84

1 up.

2 MS. NELSON: May I come up and ---

3 MR. THOMAS: Yes. I'm sorry.

4 A. We was standing on the ---

5 Q. Speak up so she can ---

6 A. They was tussling right here in the yard.

7 Q. Okay. So sort of in the middle of that yard ---

8 A. Yeah.

9 Q. --- right in front of the steps?

10 A. (Affirmative nod).

11 Q. Okay. And where were you standing when all this was
12 going on?

13 A. We was standing on this side, on the opposite side.

14 Q. Okay. So to the right of those picnic tables?

15 A. To the right of the picnic tables. There's a tree
16 right there.

17 Q. How far away from each other would you say they were
18 when the shot went off?

19 (Pause)

20 Q. How about we do this. Pretend like you are Zay and
21 I'll be Meatball. And you tell me when to stop.

22 A. A little bit closer than that.

23 Q. A little closer?

24 A. I mean, they were tussling. They were tussling ---

25 Q. Okay. So five or six feet?

RAYMOND KENNEDY - DIRECT EXAMINATION BY MR. THOMAS

85

1 A. They were tussling.

2 Q. Okay. But when the shot went off they were separated?

3 A. (Affirmative nod).

4 Q. Okay.

5 A. Meatball got up off the ground. So Meatball got up off
6 the ground. And that's when he said the MF shot me for real
7 and ran down the street because that was at Arlene Smith's
8 house.

9 Q. Okay.

10 THE COURT: Arlene who?

11 A. Smith.

12 THE COURT: Smith.

13 Q. Have you -- I know we had a chance a couple of weeks
14 ago to watch the surveillance ---

15 A. Um-hum (affirmative).

16 Q. --- footage. I guess let me play that for you real
17 quick. And you may need to ...

18 MR. THOMAS: Is that turned as far as ---

19 THE COURT: Yeah, it's as far as it's going to go.

20 Q. Do you want to come down here, maybe, next to the court
21 reporter so you can see better?

22 MADAM COURT REPORTER: He's got to really speak up.

23 A. Okay.

24 (Whereupon the video was played)

25 Q. Okay. What are we looking at on this video? I'm going

RAYMOND KENNEDY - DIRECT EXAMINATION BY MR. THOMAS

86

1 to hit play and just let it run. And you -- what's all
2 these lights on the right hand side?

3 A. Talking about over there?

4 Q. Yes.

5 THE COURT: Mr. -- sir, -- Mr. Kennedy, why don't you
6 stand right here between ---

7 A. That's the city.

8 Q. Okay. That's the city?

9 A. (Affirmative nod).

10 Q. And where is Ricky's house in this video?

11 A. Right there where that little light at. That's the
12 porch. That's the front door where that light at. That's
13 the front door.

14 Q. Right here?

15 A. Yes, sir.

16 THE COURT: That's the light of the front door. That's
17 Ricky's house?

18 A. Meatball -- that's Meatball walking back.

19 Q. That's Meatball walking back. Walk over here so she
20 can hear you. All right. So while they're all in the house
21 like this, are they -- is there arguing? Is it loud? Is it
22 heated or just ---

23 A. He asking about the gun. At that time he's still
24 asking about the gun.

25 Q. Okay. And who are all these people walking around in

RAYMOND KENNEDY - DIRECT EXAMINATION BY MR. THOMAS

87

1 front of the house right there? Who all else was out there,
 2 I guess?
 3 A. It was me ---
 4 Q. Tell her so she can hear ---
 5 A. It was me, his brother -- his brother ain't doing the
 6 walking. He stayed in the yard. It was me, this guy named
 7 ---
 8 MADAME COURT REPORTER: I ---
 9 THE COURT: Johnny who?
 10 MADAME COURT REPORTER: Step back here so you're at the
 11 microphone. A guy named who?
 12 Q. Talk -- act like you're talking to her, don't talk ---
 13 A. It was me, a guy -- I think it was a guy named Denny
 14 was out there that night. It was -- it was somebody else.
 15 Q. And how ---
 16 A. And a white girl, Edie, she had walked up.
 17 Q. And is that -- that light there in front of that car,
 18 that's the front porch of that house, of Ricky's house?
 19 A. Right there.
 20 Q. Okay. Has the tussling started at this point? Or are
 21 they still on the steps?
 22 A. They ain't came down the steps.
 23 Q. Is that them there right now?
 24 A. That's them right there.
 25 Q. Who all was down there on the bottom -- at the bottom

RAYMOND KENNEDY - DIRECT EXAMINATION BY MR. THOMAS

88

1 of those steps?

2 A. That's when he got up.

3 THE COURT: Say that again, sir.

4 A. That's when he got up. That was after the shot when he
5 got up off of the ground and ran down the street.

6 Q. Okay. So let me do this. This video we just watched
7 -- you can have a seat back up there.

8 (Whereupon State's exhibit 4 was marked for
9 identification)

10 Q. All right. I'm going to show you State's exhibit
11 number 4. What is that? Is that a still shot from the
12 video we just watched?

13 A. That's where they was tussling right there.

14 Q. Okay. That's where they were?

15 A. (Affirmative nod).

16 Q. Okay. And this is -- I guess this is an -- this is
17 that view we just saw. This is Ricky's house. That's
18 people in front of it.

19 A. (Affirmative nod).

20 Q. That's the other house and then the shot. That's from
21 the video we just watched?

22 A. Yes, sir.

23 MR. THOMAS: Your Honor, for this hearing, State's
24 number 4, I'd move it into evidence.

25 THE COURT: No objection?

RAYMOND KENNEDY - DIRECT EXAMINATION BY MR. THOMAS

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1 **MS. NELSON:** No objection for the purposes of this ;
2 hearing.

3 (Whereupon State's exhibit 4 was admitted into evidence
4 for this hearing)

5 Q. Let me ask you, does this look like the gunshot that
6 goes off?

7 **MS. NELSON:** Objection. Leading.

8 **THE COURT:** I sustain as to leading.

9 Q. What does that look like right there?

10 **MS. NELSON:** The same objection. It's -- he's told him
11 what to look for.

12 **THE COURT:** Well, let's handle it this way. When you
13 initially played the video, the portion -- I was trying to
14 get him to speak loudly enough so that the court reporter
15 could take it down. I'm going to need you to replay that
16 video anyway. Why don't you let me look at it, and we'll
17 take it from there.

18 **MR. THOMAS:** I apologize ---

19 **THE COURT:** It's okay.

20 **MR. THOMAS:** --- it's been a little awkward, Your
21 Honor, ---

22 **THE COURT:** No.

23 **MR. THOMAS:** --- the jury not being here and all.

24 Q. Okay. Let me just get this back from you. All right.
25 I'm going to let you answer any questions Ms. Nelson has.

RAYMOND KENNEDY - CROSS-EXAMINATION BY MS. NELSON

90

1 Cross-examination by Ms. Nelson:

2 Q. I don't think I have too much, Mr. Kennedy. I just
3 couldn't hear who else was there.

4 A. Yes, ma'am.

5 Q. Who else was there?

6 A. It was this girl named Edie. She was there.

7 Q. She was there when that happened? She was there when
8 the shooting happened?

9 A. You can see her, I mean, they didn't -- I ain't -- they
10 didn't show the part where she was walking out the yard.

11 Q. Was she there when Mr. Fuller got shot?

12 A. Yes, ma'am, she was there.

13 Q. She was? And that's Edie Walker?

14 A. Yes, ma'am.

15 Q. She's a white girl?

16 A. Yes, ma'am.

17 Q. And she's there when he gets shot. Who else is there?

18 A. His brother was there.

19 Q. Zay's brother?

20 A. Yes, ma'am.

21 Q. Where was he standing?

22 A. They was standing -- they was standing right there
23 together.

24 Q. He was standing with Zay?

25 A. Yes, ma'am.

RAYMOND KENNEDY - CROSS-EXAMINATION BY MS. NELSON

91

- 1 Q. And he was there when ---
- 2 A. Yes, ma'am.
- 3 Q. --- when Mr. Fuller got shot?
- 4 A. Yes, ma'am.
- 5 Q. Who else?
- 6 A. That's about it.
- 7 Q. Nobody else?
- 8 A. No, ma'am. I mean, Mr. Grant, he was there, but he was
- 9 in the house.
- 10 Q. Mr. Grant?
- 11 A. He was in the house. He was in the house the whole
- 12 time.
- 13 Q. He didn't ever come outside, right?
- 14 A. No, ma'am.
- 15 Q. And that's where he lived, ---
- 16 A. Yes, ma'am.
- 17 Q. --- is that right? You were -- you were asked about
- 18 whether you saw Mr. Fuller with a gun later on after the
- 19 club. Did you see Mr. Fuller with a gun before they went to
- 20 the club?
- 21 A. No, ma'am.
- 22 Q. So you never saw one?
- 23 A. No, ma'am. The only thing -- only reason I knew about
- 24 the gun, when they came back from the club.
- 25 Q. The only reason you know about ---

RAYMOND KENNEDY - CROSS-EXAMINATION BY MS. NELSON

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1 A. When they came back from the club, that's how I found
2 out about the gun situation.

3 Q. How'd you find out?

4 A. He was -- when they came back, he was asking about his
5 gun.

6 Q. So all you knew was, as you were standing there, Mr.
7 Fuller was asking something about a gun?

8 A. About his gun. He said it was his gun that got
9 missing. And I guess he thought ---

10 Q. What exactly did he say?

11 A. He came and he said, Zay, give me my gun. So Zay was
12 like, I don't have your gun. He was like, man, yes, you got
13 my gun. You the only one knew where I put it at or whatever
14 because all of them left together.

15 Then he left and came back about 30 minutes later and
16 asking about -- and asking about the gun again. He told him
17 again he didn't have no gun.

18 Q. So you never saw ---

19 A. That's when they got to arguing and whatever.

20 Q. So you didn't see Mr. Fuller ever with the gun that
21 evening?

22 A. No, ma'am. I seen him with a gun before, but I didn't
23 see him with it that evening. I have saw him with a gun,
24 but not that day.

25 Q. You had seen him with a gun?

RAYMOND KENNEDY - CROSS-EXAMINATION BY MS. NELSON

93

1 A. Not that ---

2 Q. Was it ---

3 A. But not that day that that went down, no. !

4 Q. Had you seen him with this same gun that was used?

5 A. I never saw the gun that was used.

6 Q. You just mentioned to me that you had seen -- oh, you
7 didn't -- you don't know? Okay.

8 A. No, ma'am.

9 Q. Don't know whether it was the same one you'd ---

10 A. I don't know ---

11 Q. --- seen him with ---

12 A. --- if it was the same one or not. Yes, ma'am.

13 Q. Okay. Okay. When's the first time you saw the video
14 that Mr. Thomas showed you?

15 A. When's the first time I seen that video there?

16 Q. Yeah.

17 A. Well, the first time I seen it it was -- it was on the
18 cell phone. They showed it to me on the cell phone. But
19 the regular video, I saw that about a week or two ago.

20 Q. About a week?

21 A. (Affirmative nod). About a week, two weeks ago.

22 Q. How long before that did you see it on a cell phone?

23 A. That was after it had -- after everything had happened. !

24 Q. How long after?

25 A. About a couple of days. About two or three days later.

RAYMOND KENNEDY - CROSS-EXAMINATION BY MS. NELSON

94

1 Q. Who showed it to you?

2 A. The detective.

3 Q. Was it Detective Kay sitting right here?

4 A. Yes, ma'am.

5 Q. He showed that video to you on a cell phone?

6 A. (Affirmative nod).

7 Q. What all did you and Detective Kay talk about when he
8 showed you that video on a cell phone?

9 A. Basically asking me the same questions what ---

10 Q. I'm sorry?

11 A. Asking me what did all I see and who all the people was
12 and all. The same thing -- the questions I got asked today,
13 he asked me the same questions.

14 Q. He asked you who all was there?

15 A. Who all was there and everything.

16 Q. And so you told him Edie Walker was there?

17 A. He already knew Edie Walker was there.

18 Q. And that Aaron Gray was there?

19 A. He already knew already.

20 Q. He already knew all that?

21 A. (Affirmative nod).

22 Q. And that Rick Grant was in the house?

23 A. Yes, ma'am.

24 Q. Is it right that the first time you talked to Detective
25 Kay was when you were leaving the hospital?

RAYMOND KENNEDY - REDIRECT EXAMINATION BY MR. THOMAS

95

1 A. Yes, ma'am.

2 Q. And that was the same -- you went up to the hospital
3 after all this happened?

4 A. Yes, ma'am.

5 Q. Same day?

6 A. Yes, ma'am.

7 Q. And that was the first time you talked to Detective
8 Kay?

9 A. Yes, ma'am.

10 Q. That was the first time you talked to any law
11 enforcement officer?

12 A. Yes, ma'am.

13 Q. Just one second.

14 (Pause)

15 Q. Thank you, sir. That's all I have.

16 THE COURT: Nothing on ---

17 MR. THOMAS: One question.

18 Redirect Examination by Mr. Thomas:

19 Q. You said you never saw Meatball with the gun that day.
20 Where did you -- did you see the gun that night when he had
21 it, when Mr. Gray had it?

22 A. No, I didn't see it.

23 Q. Okay. You just heard the sound ---

24 A. Just the sound, yes, sir.

25 Q. Okay.

RICKY GRANT - DIRECT EXAMINATION BY MR. THOMAS

96

1 A. But I never saw the gun.

2 Q. Okay. Thank you.

3 THE COURT: All right, sir. Thank you. You can step
4 down. Solicitor, any additional witnesses?

5 MR. THOMAS: Ricky Grant, Your Honor.

6 MADAM CLERK: Raise your right hand, please.

7 Ricky Grant, being duly
8 sworn testified as follows;

9 Direct Examination by Mr. Thomas:

10 Q. Hey, Mr. Grant. Good afternoon. Where do you live at?

11 A. [REDACTED] Gray.

12 Q. Okay. And that is -- who do you live there with?

13 A. Say what now?

14 Q. Who do you live there with?

15 A. My girl.

16 Q. Okay. Did you live there back on August 25th and 26th
17 of 2017?

18 A. Yeah.

19 Q. The night of August 25th did you go out to the club
20 with anybody?

21 A. Yeah.

22 Q. Who all went to the club with you?

23 A. Me, Zay, and Meatball.

24 Q. Okay. And when I say the club, I mean the South Main
25 Street Bar and Grill.

RICKY GRANT - DIRECT EXAMINATION BY MR. THOMAS

97

1 A. Yeah, the Getaway.

2 Q. Okay. The Getaway, South Main Street Bar and Grill the
3 same thing?

4 A. Yeah.

5 Q. Okay. Before you went to the club, I guess, were you
6 and Mr. Gray hanging out at your house?

7 A. Yeah. Yeah.

8 Q. Was Meatball there also?

9 A. He came a little after. Afterward, later on.

10 Q. Y'all rode to the, I guess, to the club together?

11 A. Um-hum (affirmative).

12 Q. And then y'all hung out there for a little while and
13 then left. Who all left when you left?

14 A. Just me and Zay.

15 Q. Okay. So y'all left Mr. Fuller at the club?

16 A. Yeah.

17 Q. Okay. Did he end up -- and where did y'all go, I
18 guess, when you came back?

19 A. I went back to -- I went back to the house.

20 Q. Okay.

21 A. Yeah.

22 Q. Were you supposed to take Mr. Gray home or anything
23 like that or just ---

24 A. Nah.

25 Q. --- y'all were going back to hang out?

RICKY GRANT - DIRECT EXAMINATION BY MR. THOMAS

98

1 A. Just went back to the house, yeah.

2 Q. Okay. And that's something y'all normally did, hung
3 out at your house?

4 A. Yeah.

5 Q. Okay. And did Meatball ever show back up at the house?

6 A. Yeah, he came like a -- about a hour, probably less
7 than a -- about a hour later.

8 Q. Okay. When he showed back up what was his attitude?

9 A. Asked where Zay was. And he asked for his pistol.

10 Yeah.

11 Q. When you say asked for his pistol, did you know what he
12 was talking about? Did you know about a gun that he had?

13 A. Actually before then, before then, before we went to
14 the club it was -- gave -- well, actually, he put the gun --
15 he put the gun up before we went to the club.

16 Q. Okay.

17 A. Yeah.

18 Q. When you say he put it up, did he put it up in the car
19 or ---

20 A. In the bushes. It was in the bushes.

21 Q. Okay. So he just left it sitting in the bushes?

22 A. Yeah.

23 Q. Okay. And I guess when he came back -- did you see
24 anybody take the gun out of the bushes?

25 A. No.

RICKY GRANT - DIRECT EXAMINATION BY MR. THOMAS

99

1 Q. And so you said he came back and he was looking for his
2 gun?

3 A. As he came to the house, ---

4 Q. Okay.

5 A. --- yeah.

6 Q. And did he and Mr. Gray get into a disagreement about
7 that?

8 A. Yeah. Afterwards, yeah.

9 Q. Okay.

10 A. After we got back from the ---

11 Q. Right.

12 A. Yeah.

13 Q. Y'all get back ---

14 A. Yeah, yeah, yeah.

15 Q. --- and then Meatball shows back up an hour later?

16 A. Yeah.

17 Q. And then at that point he's looking for his gun. And,
18 I guess, from your interactions he thought that Mr. Gray had
19 stole it ---

20 A. Yeah.

21 Q. --- for some reason?

22 A. Yeah.

23 Q. Okay. And what did Mr. Gray say in response to all
24 that?

25 A. It was kind of like a argument or disagreement, you

RICKY GRANT - DIRECT EXAMINATION BY MR. THOMAS

100

1 know, a lot of disagreement. And I put everybody outside
2 out of the house.

3 Q. Okay. Would you say -- would you say Meatball was
4 angry, or being loud, or what would you describe ---

5 A. They both was being loud. You know, they both was
6 being loud.

7 Q. And then you put them out of the house ---

8 A. I put them out of the house.

9 Q. What happened after that?

10 A. After that I went to the back room just to talk to my
11 girl for a little bit. Then after that, you know, ---

12 Q. I guess that's ---

13 A. --- the shot went off.

14 Q. Yeah, that's what I was going for. And after the shot
15 went off did you see Zay again?

16 A. Yeah. Yeah, I seen -- I seen Zay.

17 Q. What was he trying to do?

18 A. He just like he was -- he was in shock, yeah.

19 Q. Was he trying to get back in the house, or run away, or
20 what -- what did he do, I guess, is what I'm asking?

21 A. Yeah, sort of. Yeah.

22 Q. Okay. What did he do? Just tell me ---

23 A. Who?

24 Q. --- in your own words. What did Zay do? Tell me in
25 your own words.

RICKY GRANT - CROSS-EXAMINATION BY MS. NELSON

101

1 A. Well, actually, I guess -- I think he went next door --
2 I believe he went next door. He tried to come in. I just
3 kind of like shut the door.

4 Q. Okay.

5 A. You know, it was just -- I didn't want -- I didn't know
6 what -- I just left it at that.

7 Q. All right. Thank you, Mr. Grant. That's all the
8 questions I have. I'll let you answer anything Ms. Nelson
9 might have for you.

10 **Cross-examination by Ms. Nelson:**

11 Q. Hi, Mr. Grant.

12 A. How you doing?

13 Q. Good. How are you?

14 A. All right.

15 Q. Just want to make sure I understood right. Did you say
16 that after this happened Zay looked like he was in shock?

17 A. Yeah.

18 Q. Okay. Just making sure I heard you right.

19 A. Okay.

20 Q. You did not actually -- you just heard the shot ---

21 A. Yeah. I just heard the shot.

22 Q. You didn't see what was going on?

23 A. I didn't see nothing.

24 Q. Was there anybody there besides Zay and Mr. Fuller?

25 A. That's what I -- I don't know. It was so dark, you

RICKY GRANT - CROSS-EXAMINATION BY MS. NELSON

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1 know what I mean? It could have been -- it could have been
2 somebody, you know, next door, you know, in the cut
3 somewhere, but I didn't see anybody.

4 Q. Okay. If they were there, you didn't see them?

5 A. No, ma'am.

6 Q. Did you ever come all the way out of the house when all
7 this was going on?

8 A. No. No.

9 Q. You stayed inside the whole time?

10 A. I kind of looked out the door. Yeah, I stayed in.

11 Q. Was your -- was your front door open when Mr. Fuller
12 arrived?

13 A. When he arrived? No. No. You talking about -- you
14 talking about Meatball?

15 Q. Yeah.

16 A. No, no, no, he didn't. No. No.

17 Q. You opened it up ---

18 A. You talking about when he came back from the club?

19 Q. Right.

20 A. Yeah, yeah. No, it was closed. He knocked on the
21 door.

22 Q. Okay.

23 A. And I let him in.

24 Q. And he knocked on the door, you let him in.

25 A. Yeah.

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1 Q. And then you didn't really have any other interaction
2 with him?

3 A. No, no, no.

4 Q. And you ---

5 A. It was a big argument from there. Then I put them
6 outside.

7 Q. Okay.

8 A. Yeah.

9 Q. You never saw the two of them like scuffling or getting
10 physical ---

11 A. No, I didn't.

12 Q. --- with each other?

13 A. I didn't.

14 Q. You mentioned something -- and this would have been, I
15 guess when y'all had gone to the club, something about
16 putting the gun in the bushes?

17 A. Yeah. Yeah.

18 Q. Tell me more about that.

19 A. Well, we talking before we went to the club, yeah, we
20 put the -- they put the gun in the bushes. And me and
21 Meatball went inside because Zay couldn't go in because he
22 didn't have a ID.

23 Q. So he stayed out?

24 A. Yeah, he stayed out.

25 Q. And you say they put the gun in the bushes, who do you

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1 ---

2 A. Well, Meatball -- I can't remember if Meatball put the
3 gun or he asked Zay to put the gun in the bush. I think
4 Meatball put the gun in the bush.

5 Q. You think Meatball ---

6 A. Yeah.

7 Q. --- put the gun ---

8 A. Yeah.

9 Q. --- in the bushes?

10 A. Yeah.

11 THE COURT: And these are bushes outside of the club?

12 A. Yeah. Yeah, it was outside the club.

13 Q. So if you're ---

14 A. We was like parked -- I was parked like where the old
15 drive-in -- the old drive-in that was right there. That's
16 where I was parked at.

17 Q. So if you're looking at the front of the Getaway, ---

18 A. Um-hum (affirmative).

19 Q. --- where -- like if we're looking at the front of it,
20 where are the bushes? Are they over here? Over here?

21 A. The bushes was like kind of -- it was like off to the
22 side, my car was, because I was facing -- I was facing the
23 club. I was towards the drive-in.

24 Q. Okay.

25 A. Yeah.

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1 Q. All right. Are the bushes right next to the club?

2 A. Nah, they wasn't next to the club. No.

3 Q. Okay. So you saw -- what you think you remember is

4 Meatball putting the gun ---

5 A. Yeah.

6 Q. --- in the bushes?

7 A. Yeah. Yeah.

8 Q. You remember talking to Detective Kay when he came to

9 your house ---

10 A. Yes, ma'am.

11 Q. --- after all this happened?

12 A. Yes, ma'am.

13 Q. Any idea whether you told him anything about a gun

14 being in the bushes?

15 A. Yeah. Yeah. If I can remember, yeah.

16 Q. You think you remember that?

17 A. Yeah.

18 Q. Did you know he was recording you, like doing an audio

19 recording of your conversation?

20 A. No, I didn't know that.

21 Q. You didn't know Detective Kay was audio recording you?

22 A. No.

23 Q. Okay. Was there ever a time that you talked to him

24 that you knew he had you on the recording?

25 A. Matter of fact, yeah, I believe the first time -- the

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1 first time he talked to me I think he told me it was on --

2 he was recording me.

3 Q. Was that at your house?

4 A. Yeah. Yeah, it was at my house.

5 Q. He came over there to see you after all this happened?

6 A. Yeah.

7 Q. Right?

8 A. We talked. We talked, yeah.

9 Q. And you believed that while he was recording you you
10 told him about the gun going in the bushes?

11 A. Yeah.

12 Q. Okay. Have you had a chance to listen to the
13 recording?

14 A. No. No, I didn't. Because at first I didn't know he
15 had a gun on him. You know, when I first got to the club, I
16 didn't know he had a gun on him.

17 Q. You didn't know Meatball ---

18 A. No, I didn't ---

19 Q. --- had a gun?

20 A. No, I didn't know he had a gun on him.

21 Q. Had you ever seen him with a gun before?

22 A. No. I mean, I never really hung with Meatball like
23 that. I used to just see him spare of the moments, you
24 know.

25 Q. Did he ask to go ride along to the club with y'all?

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- 1 A. Yeah, he asked -- yeah, he did. He did.
- 2 Q. So you didn't know anything about the gun ---
- 3 A. Not until ---
- 4 Q. --- until you saw it ---
- 5 A. Yeah.
- 6 Q. --- go in the bushes?
- 7 A. Until we got to the club, yeah.
- 8 Q. And you'd never saw Zay with a gun?
- 9 A. No. No.
- 10 Q. When y'all left the club, when you and Zay left the
- 11 club, Meatball wasn't with you?
- 12 A. Yeah.
- 13 Q. And Zay didn't say, hey, I got Meatball's gun out of
- 14 the bushes?
- 15 A. No. No, he just came back and asked -- asked for it.
- 16 Q. You talking about Mr. Fuller came back ---
- 17 A. Yeah.
- 18 Q. --- and asked for it?
- 19 A. Yeah.
- 20 Q. I'm talking about when you and Zay left the club
- 21 together.
- 22 A. Yeah.
- 23 Q. Was Zay doing anything like bragging about how ---
- 24 A. No, no ---
- 25 Q. --- he got Meatball's gun?

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1 A. --- no, no. Uh-uh (negative).

2 Q. I went and got it out of the bushes?

3 A. No.

4 Q. And you didn't see him with it?

5 A. No. I just know -- I just know when we got back to the
6 house, they was arguing about -- they was arguing about the
7 gun. But I just said, if you got his gun, give it to him,
8 you know.

9 Q. Um-hum (affirmative).

10 A. And that was it. And they got loud, I just put them
11 out.

12 Q. And you still never saw one?

13 A. No.

14 Q. Okay. Do you remember telling Detective Kay when you
15 talked to him, I don't know if he gave him something to hold
16 or what?

17 A. Yeah.

18 Q. So ---

19 A. I don't think he gave it to him to hold -- just to hold
20 it, though, you know.

21 Q. Okay. So ---

22 A. I know the gun -- I know they put the gun in the bushes
23 before I went in the club. I know that.

24 Q. Meatball did?

25 A. Yeah. Yeah.

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1 Q. You remember telling him that the gun got possibly left
2 in the car? I don't know?

3 A. No.

4 Q. You don't remember that?

5 A. Uh-uh (negative).

6 Q. Thank you, sir.

7 A. Okay.

8 THE COURT: All right, sir. You can step down. Thank
9 you.

10 THE COURT: Any additional witnesses from the State?

11 MR. THOMAS: Nothing from the State.

12 THE COURT: Anything in reply?

13 MS. NELSON: Can I have just a second, ---

14 THE COURT: Sure.

15 MS. NELSON: --- Your Honor?

16 (Pause)

17 MS. NELSON: Your Honor, the only other thing we would
18 have is to provide you with a recording of Mr. Grant's
19 statement. I've listened to it several times. I don't hear
20 anything about a gun going into the bushes. Mr. Thomas or
21 Ms. Penney can correct me if I'm wrong. But we'd just ask
22 Your Honor to consider that in your ruling.

23 THE COURT: Okay.

24 MS. NELSON: And if you'd like to listen to it, I have
25 it on my computer.

1 **THE COURT:** Do y'all agree that there's no mention
2 about ---

3 **MR. THOMAS:** That was the first I'd heard the bushes,
4 Your Honor.

5 **THE COURT:** Okay. It sounds like they're in agreement.
6 So I'll certainly take that into consideration when
7 evaluating the last ---

8 **MS. NELSON:** I would just ---

9 **THE COURT:** --- witness' credibility.

10 **MS. NELSON:** --- submit that what I -- the questions I
11 asked him about what he remembered saying was -- he said
12 maybe it was possibly left in the car, I don't know, I don't
13 know if he gave him something to hold or what.

14 **THE COURT:** Okay. Very good. Solicitor, can you
15 replay one more time that video, kind of a few moments --
16 just sort of take it back a few moments before the part
17 where you maintain there was a muzzle flash?

18 **MR. THOMAS:** Your Honor, I'm going to start it back at
19 2:44. And, Your Honor, this is the video I gave you a copy
20 of earlier.

21 (Video played)

22 **MR. THOMAS:** You want me to back that up again?

23 **THE COURT:** Yeah, I didn't see anything, so go ahead.

24 (Video played)

25 **MR. THOMAS:** One more time?

1 **THE COURT:** Sure. Maybe third time's a charm. Go
2 ahead.

3 (Video played)

4 **MR. THOMAS:** Your Honor, if I could, I could ---

5 **THE COURT:** Yeah, if you want to tell me where you --
6 where you think -- because I'm not ...

7 **MR. THOMAS:** The State's position is that they're down
8 here in front of this car.

9 **THE COURT:** Okay.

10 **MR. THOMAS:** And you will see one set of feet over
11 here, and two sets of feet over here, the flash right here
12 and everybody sort of scatters.

13 **THE COURT:** Oh, I'm looking in the wrong place.

14 (Video played)

15 **THE COURT:** Right then?

16 **MR. THOMAS:** That's it.

17 **THE COURT:** Okay. I was looking in the wrong place.
18 Thank you. All right. Any argument on the Castle Doctrine?
19 I have read the motion that you submitted before we began
20 the actual hearing. But anything that you want to
21 accentuate or ---

22 **MS. NELSON:** I think most of it's in the motion or
23 everything's in there, Your Honor.

24 I would just say for the record that Zay was clearly --
25 I think it's been established he was clearly somewhere he

1 was invited to be. He was an invited guest. He was
2 certainly there with Mr. Grant's blessing. The two of them
3 had ridden off to the Getaway together and ridden back
4 together. So he certainly was somewhere that he had a legal
5 right to be when Mr. Fuller came to the place where Zay was.

6 And you heard Zay's testimony about what he felt he had
7 to do to defend himself, the speed with which things
8 happened, the threat he felt he was under because of what
9 was going on in his prior interactions with Mr. Fuller. He
10 clearly told you he was afraid, that he felt threatened.

11 And we would just argue that he has met all the requirements
12 under the Protection of Persons and Property Act, Your
13 Honor, and that he is entitled to immunity in this case.

14 **THE COURT:** Response.

15 **MR. THOMAS:** I think on the frontend of it, Your Honor,
16 I would argue that there is a jury question as to the
17 elements of self-defense. I don't think anybody debates
18 he's in a place he's got a right to be. I think what we
19 come down to is the elements of self-defense.

20 There's some testimony from the witnesses that the
21 defendant was armed with a handgun, got in sort of a tussle
22 and he retrieved it, but that the victim came in, had no
23 handgun on him, was asking about the gun and then the victim
24 pulled a gun out after a tussle and shot him. I guess my
25 position is that, in my mind, is a jury question.

1 Obviously, the video that we just showed, our position is
2 Mr. Gray's testimony is that there was a lengthy tussle.
3 You can watch the video. There's not really a tussle.
4 They're a good five or six feet apart from each other when
5 the shot goes off.

6 It appears there's two people on Mr. Gray's side and
7 Mr. Fuller is the only one on his side. It doesn't look --
8 it doesn't seem to match his description of events, which is
9 a tussle, and then he gets up, and he's falling backwards,
10 and he's running away, and he's shooting the gun. It looks
11 more like -- and the worst case scenario, Mr. Fuller is down
12 there, he's taking a fighting stance like maybe he's about
13 to fight him, and then Mr. Gray fires the handgun.

14 As far as the element of self-defense of a reasonably
15 prudent person, I guess the State's position is that if I --
16 if I have a handgun and he does not, and I'm standing next
17 to my brother, and he's five feet away from me, I don't
18 think a reasonably prudent person would feel like they were
19 in any sort of actual belief -- I know he did testify that
20 he felt like he was in fear for his life at that point in
21 time, but, Your Honor, I'd also argue that as far as the
22 fear, again, that has to be a fear that a reasonably prudent
23 person would have entertained.

24 And if I'm standing here with a gun with my brother
25 next to me, and -- or with somebody next to me, and Mr.

1 Fuller is on that other side, I don't think he could really
2 honestly be in any fear that he would need to strike a fatal
3 blow. But at the end of the day, it's a jury question. I
4 think we should go forward to a jury.

5 THE COURT: All right. Anything in reply, Ms. Nelson?

6 MS. NELSON: Yes, Your Honor. There was no testimony
7 that anyone ever actually saw the gun, period. There was
8 testimony about some discussion about it, but no one
9 actually saw Zay with it. They did not see him take it away
10 from Mr. Fuller. No one saw Mr. Fuller with it. So the
11 only testimony you've got about what did or didn't happen
12 with the gun is coming from Mr. Gray.

13 I also think it's -- maybe it's just because my eyes
14 aren't as good, but I think it's a stretch to draw a whole
15 lot of interpretation about what was going on out there from
16 that very dark surveillance video. Just because there's
17 something you can see at one point on that video, there's
18 all kinds of darkness in the yard of that house and up near
19 the porch.

20 The only reason you can see -- even see anything up
21 near the porch is from when the door gets opened. So I
22 think drawing a conclusion that there wasn't a tussle of any
23 significant length and relying on that video for that
24 conclusion is something of a reach, Your Honor.

25 THE COURT: All right. May I ask this question because

1 I'm not privy, obviously, to all the evidence? But the
2 firearm in this case was recovered?

3 MR. THOMAS: Correct.

4 THE COURT: Was it linked -- I assume it was linked to
5 the decedent in this case.

6 MR. THOMAS: The only link we have, I mean, the only
7 way we get the firearm in terms of linking it to anything is
8 witnesses who testified that they found the firearm in the
9 area they saw him throw it when they ran. There is another
10 witness who said he was out there.

11 I mean, we've recovered the gun. The gun matches the
12 ---

13 THE COURT: The bullet.

14 MR. THOMAS: --- the gun that killed the decedent.

15 THE COURT: Right. But we can't definitively ---

16 MR. THOMAS: But there's no DNA or fingerprints that
17 tie it to either the victim, or the defendant, or anybody
18 else. !

19 THE COURT: As far as ownership?

20 MR. THOMAS: Correct.

21 MS. NELSON: And they ---

22 THE COURT: But clearly this was about a gun, it is the
23 State's theory?

24 MR. THOMAS: That's the State's theory, Your Honor.
25 And I guess I would, in reply to that, I agree with Ms.

1 Nelson, the video is not the best in the world, but, you
2 know, State's exhibit number 4, the still shot of when the
3 shot goes off, I mean, they're five or six feet away from
4 each other.

5 THE COURT: And you wanted to reply to that, Ms.
6 Nelson? Or ---

7 MS. NELSON: As far as the gun goes, I don't think
8 you're going to hear a single person say that that was Mr.
9 Gray's gun. It seems to me from everything I've read from
10 the discovery I've been provided that there is not any
11 dispute that that gun belonged to Mr. Fuller.

12 THE COURT: All right.

13 MS. NELSON: If I'm -- if I'm wrong, I would love to be
14 corrected, but ...

15 MR. THOMAS: Yeah. No, she's absolutely right. The
16 only -- the only thing I have that ties the gun to this --
17 to anybody in this case is the fact that it matches the
18 bullet that was found and the shell casing that was found.

19 THE COURT: All right.

20 MR. THOMAS: Who owned it beforehand, and who
21 possessed, and how many hands it went through? I mean, I
22 can -- several people have touched it.

23 THE COURT: Right. Okay. Well, the Court's reflected
24 upon the testimony that's been presented. And clearly if
25 the finder of fact were to believe Mr. Gray's version of

1 events, he may very well at best be entitled to a self-
2 defense instruction, but the question before the Court is
3 whether the defendant in this case has demonstrated by the
4 preponderance of the evidence that there -- that he is
5 entitled to protection under the Castle Doctrine.

6 I think we all agree that both parties were invited
7 guests. So clearly the defendant had the right to be there.
8 The testimony has differed somewhat in terms of whether the
9 decedent was six feet away, or 20 feet away, or somewhere in
10 between from the defendant when the defendant fired at him.

11 And Ms. Nelson is correct, the video is very dark and
12 it is hard to see what's transpiring, but we do have a
13 different version of events being offered by various
14 witnesses. All of them are nuanced.

15 If it was a clear open and shut case where all
16 witnesses testified as to what Mr. Gray's version of the
17 events were, it might be a different matter entirely. The
18 Court might be inclined to grant the defendant's motion.

19 But based upon the varying evidence and the open
20 question of whether the defendant's entitled to a self-
21 defense instruction, the Court's -- and passing upon the
22 credibility of the witnesses who have testified, the Court
23 finds that the defendant has not met his burden of proving
24 by the preponderance of the evidence that he's entitled to
25 protection under the Act.

1 **MS. NELSON:** Could I just add one ---

2 **THE COURT:** Sure.

3 **MS. NELSON:** --- citation for the record, Your Honor?
4 We would point to -- this looks like a 2017 case. Or, no,
5 it was just filed March 27th of 2019, State versus Dennis
6 Elvin Cervantes-Pavon. And there is a comment in the case
7 about -- that just because there are -- there's conflicting
8 testimony that does not mean that the -- that the Court
9 cannot itself weigh that testimony and make a determination
10 as to immunity.

11 The quote was just because conflicting evidence as to
12 an immunity issue exists does not automatically require the
13 court to deny immunity. The court must sit as the fact
14 finder at his hearing, weigh the evidence presented, and
15 reach a conclusion under the Act. So we would just add that
16 for the record, Your Honor.

17 **THE COURT:** I appreciate that. If the Court had a
18 hundred percent or very firm belief in the version of events
19 put forward by your client and argued by you, then, perhaps,
20 there would be -- it would be a different outcome,
21 obviously.

22 And that's kind of what I was getting at that to the
23 extent that your client's testimony would have been
24 corroborated by others who were present at the scene, the
25 Court might be more inclined to say that the defense has met

1 the burden of proving it by the preponderance of the
2 evidence.

3 In light of the conflicting evidence, though, and the
4 open question of whether this is, in fact, a case of self-
5 defense, the Court's declining your motion. I think it's
6 best -- such matters are best left, in this case, since
7 there is so much conflicting evidence, these matters are
8 best left to the finders of fact, namely the trial jury. So
9 --- ;

10 MS. NELSON: Yes, Your Honor.

11 THE COURT: --- for that reason, I'll decline your
12 motion.

13 MS. NELSON: Thank you, Your Honor.

14 THE COURT: All right. We probably need a few moments
15 for ourselves because we've been at it for about an hour and
16 30 minutes. I know that the jury is here.

17 And there were some other motions, Ms. Nelson, that you
18 wanted to put on the record. I have not had a chance to see
19 the body-cam video yet, to watch it yet. I don't know if my
20 clerk has either, probably not. She hasn't. Were you
21 objecting to all the videos?

22 MS. NELSON: No, sir.

23 THE COURT: You're okay with the dash-cam.

24 MS. NELSON: The dash-cam, we don't have any issue
25 with. I will offer some objection to the surveillance video

1 **MR. THOMAS:** And we can do that today. And then the
2 second video is the dash-cam. Hopefully -- that officer
3 worked a long night-shift. So hopefully we can do those two
4 before we get out of here.

5 **THE COURT:** Knock on wood.

6 **MR. THOMAS:** And then the video that she has the
7 biggest objection to would be a witness tomorrow. So we can
8 take that up first thing in the morning, probably.

9 **THE COURT:** All right. Let's take a few moments for
10 ourselves. You can put any objection that you have to Mr.
11 Vacquec's video on the record, Ms. Nelson, when we come
12 back. And then we'll bring -- while we're out, go ahead and
13 bring the jury into the jury room and make them comfortable,
14 okay?

15 **THE BAILIFF:** All right, sir.

16 **THE COURT:** All right. We'll be at ease for a few
17 moments.

18 (Whereupon court was in recess at 3:43 pm)

19 (Whereupon State's exhibits 5, 6 and 7 were marked for
20 identification)

21 (Whereupon court reconvened at 3:55 pm)

22 **THE COURT:** Could we anticipate taking Mr. Vacquec's
23 testimony this afternoon? Ms. Nelson, could you go ahead
24 and put the grounds for your motion to suppress the
25 videotape? I'm assuming that's the only reason he's going

1 to be called as a witness is for authentication purposes.

2 MR. THOMAS: Correct, Your Honor.

3 THE COURT: That way we can simply refer back to this
4 argument when they move that tape into evidence if that's --
5 if that's okay with y'all.

6 MS. NELSON: Sure, unless there's just something I'll
7 need to add after he ---

8 THE COURT: By all means. Sure.

9 MS. NELSON: --- testifies. Hopefully I'll cover
10 everything. You want to go ahead now?

11 THE COURT: Please.

12 MS. NELSON: The argument would be that the timestamp
13 does not match the actual time of the incident. And Mr.
14 Vacquec was not any kind of personal witness to what was
15 going on. It's not like he's -- was sitting at his monitor
16 watching as this occurred and was able to correlate it with
17 a gunshot that he heard.

18 There -- it's not -- doesn't seem to be clear from the
19 video whether either of these witnesses who have testified,
20 Mr. Grant or Mr. Kennedy, who have testified so far can be
21 located on that video anywhere. It's very dark.

22 It's difficult to tell much of anything about what is
23 going on, which would -- it's just -- it's leaving too much
24 up for speculation on the part of the jury. So I would
25 argue 403 and because both -- because of the quality of the

1 video and that it's just impossible to tell much about
2 what's going on whether it's even to identify Mr. Fuller or
3 Mr. Gray.

4 THE COURT: Okay. Solicitor.

5 MR. THOMAS: I think, Your Honor, as far as no one was
6 there to actually testify, no one can testify as to what
7 happened on that, I would agree with that. That's sort of
8 the pictorial testimony theory of introducing a piece of
9 evidence like this, a video or photograph.

10 But there's also the silent witness theory, which
11 basically says if you have a surveillance video or something
12 like that, the other jurisdictions that have adopted it,
13 North Carolina, Maryland, Alabama, Illinois, there's no real
14 case law in South Carolina. But they base it basically on
15 Rule 904 or 901(4) and (9), distinctive characteristics or
16 the process or system.

17 Basically if you can get somebody -- the operator of
18 the video equipment, the surveillance equipment to testify
19 as to basically how it works, the low threshold foundational
20 requirement, how it works, the process by which it records,
21 the product you get and that the actual exhibit is something
22 that comes from that product, then you've met the very basic
23 threshold authentication standard.

24 As far as the 403 argument, I mean, I would agree that
25 it's difficult to tell, but from -- once we pointed out to

1 Your Honor where it actually occurs at, there is -- you can
2 see some of the action.

3 As far as its relevance, it is relevant clearly to what
4 happened. The prejudicial value of that, I mean, I think
5 that goes more to the credibility of the evidence, not so
6 much -- it's not prejudicial, you know, it just shows us
7 what happened. Whether it shows it well or not goes more to
8 the, I guess, the credibility. And that's an argument about
9 what weight the jury should give to it.

10 But as far as its admissibility, Mr. Vacquec can
11 testify that that's a video from his security system, it
12 points out that way. He doesn't know what's on it because
13 he wasn't watching it, but he went back the next day,
14 downloaded it for the officers. And at that point I think
15 it comes in as substantive evidence.

16 It's not prejudicial, it's not confusing. You can see
17 something that happens. It gives the jury some idea of what
18 happened. It helps with the testimony. Helps them
19 understand it a little bit more.

20 **THE COURT:** Okay. Can I ask a question? After the
21 shot was fired there's somebody who's running in the video.
22 It looks like they're running away to the right of the
23 video. Do we know who that person is?

24 **MR. THOMAS:** That's the victim, Your Honor.

25 **THE COURT:** That -- the State's theory ---

1 **MR. THOMAS:** That's the direction ---

2 **THE COURT:** Okay.

3 **MR. THOMAS:** It's a hill that goes down that way. And
4 at the bottom of that hill is Tanyard Avenue, which is where
5 he's located a couple of minutes later. And we didn't watch
6 it all the way with the witness, but the copy that you have
7 -- there's also -- it goes until the police cars actually
8 come through the area and you can see them drive by. And
9 then it sort of stops after that once they find the body.

10 **THE COURT:** All right. That was my assumption then.
11 All right.

12 **MR. THOMAS:** I just -- it's a very long clip. And I
13 just -- we brought the stuff that I know officers --
14 witnesses are going to testify actually happened.

15 **THE COURT:** All right. Ms. Nelson, I appreciate your
16 position on that video, but the Court will allow it. A
17 picture's worth a thousand words, so to speak. And Mr.
18 Vacquec was able to state that the video equipment was his,
19 he installed it, he ran it.

20 I understand your position about the timestamp, but I
21 think he's cleared that up in the sense that he didn't mess
22 with the timestamp when he installed the equipment. And I
23 would say that the State has made a sufficient showing.

24 **MR. THOMAS:** And, I think, Your Honor, just for sort of
25 an -- on a conditional admissibility ground, Detective Kay,

1 when we put him up, will testify that the way he figured out
2 what time it is. Obviously, they know what time the shot
3 happened because they heard it.

4 **THE COURT:** Right.

5 **MR. THOMAS:** So he's just -- when he went to the house
6 he looked at what time was on the monitor and then just
7 backed up -- counted back. So, I mean, I can --
8 conditionally, if we admit it, I can clear that up with him
9 to firm up that foundation.

10 **THE COURT:** All right. Very good. That'd probably be
11 helpful, Mr. Thomas. Ms. Nelson, I understand your position
12 under 403, but I, again, believe that this is a video that
13 depicts relevant or potentially relevant information in this
14 particular case.

15 So when they move to introduce, if you want to just --
16 if you need to argue something else, give me a hi sign,
17 otherwise, you can simply say objection, and I'll simply
18 overrule it, and that'll refer back to this conversation,
19 okay? But if there's something else you want to throw out
20 there, just ask for a sidebar, and we'll get it on the
21 record at some point, okay?

22 **MS. NELSON:** Yes, sir. Thank you, Your Honor.

23 **THE COURT:** All right. We're ready to proceed with
24 opening instructions and argument?

25 **MR. THOMAS:** The State's ready, Your Honor.

OPENING STATEMENTS - MS. PENNEY

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1 opening arguments. No objections from the State?

2 MR. THOMAS: Nothing from the State.

3 THE COURT: None from the defense?

4 MS. NELSON: No, Your Honor.

5 THE COURT: All right. Ms. Penney, you're recognized
6 for your opening, ma'am.

7 MS. PENNEY: May it please the Court?

8 THE COURT: Yes, ma'am.

9 MS. PENNEY: On August 26th, 2017 Mr. Gray murdered
10 Demetrius Fuller. He shot him. He killed him. He murdered
11 him.

12 About 5:35, about 5:40 on the morning of August 26th,
13 2017 law enforcement were coming off of a 12 hour shift.
14 They were at the city shop, which is where law enforcement
15 fill up their cars with gas. It's where the city's trash
16 trucks go to get cleaned off and also fill up with gas, that
17 sort of thing.

18 As law enforcement were filling up with gas they heard
19 a shot, one single shot. They're familiar with the area.
20 And I'll tell you, the area is -- if you know where the --
21 if you know where the post office is in town, kind of right
22 in front of Magnolia, and then you have the Toros soccer
23 field right here, and you have the Index Journal kind of
24 across the street from that, the city shop is back there.
25 That's where law enforcement was filling up with gas.

OPENING STATEMENTS - MS. PENNEY

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1 They heard the shot. It's dark. They go driving
2 around the neighborhood right there to see what they could
3 see. They don't know what happened. They get in their car,
4 they drive around, they see some folks, some men standing in
5 a yard on Gray Street as they drive around.

6 Someone stops and asks them if they know what's going
7 on. Law enforcement doesn't get any real information from
8 this brief conversation. So they continue to drive.

9 And as they continue to drive, it's more than one car.
10 More than one officer responds. As they continue to drive,
11 one of the officers in the car hears a woman screaming. And
12 she's screaming that Mr. Fuller has been shot.

13 So they pull over. They see what's going on. And they
14 see Mr. Fuller laying on the steps of a house. He's been
15 shot once right near by his belly button. They're seeing
16 what are ultimately his dying moments.

17 As soon as they see him there and they hear the woman
18 screaming. They pull over. They call into dispatch, send
19 an ambulance, send emergency responders.

20 Fire fighters get there first and then EMS. EMS takes
21 him to the hospital. He passes away very shortly
22 thereafter.

23 Law enforcement is investigating all the while trying
24 to figure out what happened. They talk to who they can.
25 They look and see if they can find anything in the area.

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1 They're not even sure exactly where Mr. Fuller was shot.
2 They heard it, but at that moment they didn't see it. They
3 didn't know.

4 So then they look around Gray Street, and Greene
5 Street, and Tanyard. And they ultimately develop from
6 speaking with some witnesses that Mr. Gray shot Mr. Fuller
7 over a disagreement they had very early that morning. And
8 that's the shot that they heard.

9 You're going to hear more about this story. And you're
10 going to hear about how investigators put this together.
11 You're going to hear evidence from these investigators, law
12 enforcement, EMTs, fire fighters, witnesses on the scene.
13 You're going to hear from medical professionals about the
14 injury that ultimately killed Mr. Fuller.

15 You're also, as an aside, may hear us talk about him as
16 Meatball. His name's Demetrius Fuller. His friends call
17 him Meatball. We know him as Meatball. That's what we
18 think of him as. So if you hear us talk about Meatball,
19 that's Mr. Fuller.

20 So we're going to hear from medical professionals about
21 his injuries. We're going to hear about -- we're going to
22 see pictures of the scene. We're going to see some video of
23 the scene. You'll hear from law enforcement.

24 Also you're going to see the gun. The gun was found.
25 You're going to see the bullet that killed Mr. Fuller that

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1 Mr. Gray used to kill Mr. Fuller. You're going to see all
2 that come together. And that's going to be the evidence to
3 help us prove to you that he murdered Mr. Fuller, Meatball.
4 Murdered him.

5 And what is murder? It is wilfully and feloniously
6 with malice aforethought, you're going to hear that from
7 Judge Addy, with malice aforethought killing someone.

8 What is with malice aforethought? That's probably not
9 a word that we all think about all the time, aforethought,
10 malice aforethought. It really just means that in the brief
11 -- in the brief blink of an eye, before you pull the
12 trigger, before someone pulls the trigger to murder someone
13 that they had the intent to do it. Just the flashiest of a
14 flash, the blink of an eye. That's all you need to have
15 malice aforethought. And you'll hear more about that later,
16 but I just wanted to briefly introduce the concept to you.

17 So you'll have all this evidence. You'll have
18 testimony. And don't forget that what people say is
19 evidence. Not just the gun, not just the pictures, not just
20 the bullet, but what people say is evidence. And it's
21 important. Testimony is evidence.

22 You're going to -- you're going to have all this
23 evidence. You understand the definition of murder. And
24 then how does it all come together? The State has the
25 burden to prove this to you, to prove that Mr. Fuller was

OPENING STATEMENTS - MS. NELSON

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1 murdered.

2 What is that burden? That is beyond a reasonable
3 doubt. I think you've all probably heard that before. And
4 you'll hear more about it from Judge Addy, and you'll hear
5 more about it from the other lawyers at the end of the
6 trial.

7 But what is beyond a reasonable doubt? It is -- it is
8 essentially being firmly convinced that Mr. Gray murdered
9 Mr. Fuller. Not beyond all doubt. Not beyond every doubt.
10 Not beyond some imagined doubt. But beyond a reasonable
11 doubt means that you're firmly convinced that this happened,
12 and Mr. Gray was the one who did it. Thank you.

13 **THE COURT:** Thank you, Ms. Penney. All right. Ms.
14 Nelson, you're recognized for your opening, ma'am.

15 **MS. NELSON:** Thank you, Your Honor. May it please the
16 Court?

17 **THE COURT:** Yes, ma'am.

18 **MS. NELSON:** It was him or me. I don't know what else
19 I was supposed to do. That's what Zay was thinking in those
20 early morning hours of August 26th back in 2017 when Mr.
21 Fuller came to where Zay was and confronted him. It was him
22 or me. I don't know what else I was supposed to do. He was
23 surprised. He was shocked. And he was scared.

24 That night Zay had -- he was hanging out at Gray Street
25 where this incident occurred, hanging out with Ricky Grant.

OPENING STATEMENTS - MS. NELSON

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1 They had -- who I expect you'll hear from. They had gotten
2 in a car and gone down to the Getaway on South Main, had
3 been there for a while. Mr. Fuller, Meatball, had also been
4 there.

5 At some point Zay and Mr. Grant leave, they leave the
6 club, they go back over to Mr. Grant's house, and Zay's just
7 sitting there hanging out with Ricky, minding his own
8 business, not bothering a soul. And that's when Mr. Fuller
9 came over to [REDACTED] Gray Street where Zay was sitting there
10 hanging out not doing anything wrong.

11 What you're not going to have to worry about deciding
12 in this case is whether -- is whether Mr. Gray is actually
13 the one who shot Mr. Fuller because he did. You're not
14 going to have to decide that.

15 We're not going to tell you he was somewhere else or
16 try to pretend this didn't happen. He did fire that single
17 shot that ended up, unfortunately, killing Mr. Fuller.
18 That's called a homicide, death at somebody else's hand is
19 called a homicide, but a homicide is not always murder. And
20 he didn't murder him.

21 He didn't have malice aforethought. He didn't
22 premeditate anything. He was approached where he was and
23 confronted by Mr. Fuller. They ended up arguing. They
24 ended up scuffling. Mr. Fuller reached for the gun that was
25 in his waistband.

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1 Mr. Gray was able to arrest it away from him. He
2 stepped back to get away. He kept -- Mr. Fuller kept
3 coming. And in those -- in that short amount of time that
4 he had to try to figure out what in the world to do, he
5 pulled the trigger one time and shot Mr. Fuller. And then
6 he ran away and dropped the gun, afraid of retaliation.
7 It's not murder. But you aren't going to have to decide
8 whether he, in fact, pulled the trigger. He did.

9 This is a really serious case. It's very serious to
10 Mr. Gray. He felt like his life was on the line that night
11 or early that morning. And his liberty's on the line here
12 in this courtroom. And he finally gets a chance for you
13 folks to hear his side of the story and to let you know that
14 he didn't intend to kill anybody that night. He was in a
15 situation where he was confronted, where he was provoked.

16 Ms. Penney told you about the officers finding Mr.
17 Fuller on those steps in his dying moments. And I hate that
18 that happened. And I know that if Zay could turn the clock
19 back he would be anywhere else but there. But those dying
20 moments could just as easily have been Mr. Gray's. It was
21 him or me. It wasn't murder. At the end of the case we'd
22 ask that you find him not guilty.

23 **THE COURT:** Thank you, Ms. Nelson. Solicitor, if
24 you'll call your first witness, please.

25 **MR. THOMAS:** Your Honor, the State calls Jeovani

JEOVANI VACQUEC - DIRECT EXAMINATION BY MR. THOMAS

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1 Vacquec.

2 MADAM CLERK: Put your left hand on the Bible and raise
3 your right hand.

4 Jeovani Vacquec, being
5 duly sworn testified as follows;

6 Direct Examination by Mr. Thomas:

7 Q. Good afternoon, Mr. Vacquec. Could you introduce
8 yourself to the jury. What's your name, where do you live?

9 A. My name's Jeovani Vacquec.

10 Q. And where do you live?

11 A. █ Greene Street.

12 Q. So █ Greene Street? Is that what you said?

13 A. Yeah.

14 Q. Okay. And where is that at in Greenwood from here?
15 Just point us in the general direction.

16 A. It's behind the fire department.

17 Q. Okay. So is it next to Gray Street?

18 A. Yeah.

19 Q. Okay. So, I guess, does your property -- does it sit
20 at the corner of Gray and Greene? Is ---

21 A. Yes.

22 Q. --- that what you're telling us?

23 A. Yes, sir.

24 Q. And how long have you lived there?

25 A. About three years.

JEOVANI VACQUEC - DIRECT EXAMINATION BY MR. THOMAS

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1 Q. Okay. So were you living there back on -- in August of
2 2017?

3 A. Yeah.

4 Q. And do you have any sort of surveillance cameras or
5 surveillance equipment up at your house?

6 A. Yes, I have.

7 Q. What do you have?

8 A. I got eight cameras around my property.

9 Q. Okay. And they point in various directions?

10 A. Yeah.

11 Q. Okay. Does one of those cameras point out over your
12 lot towards Gray Street?

13 A. Yes, sir.

14 Q. And which camera is that? Where's that camera located
15 on your house?

16 A. On top of my garage.

17 Q. Okay. So it points down from your garage towards ---

18 A. Yeah.

19 Q. Okay. And why do you have all those cameras out there?

20 A. Because safety. I've got a lot of tools.

21 Q. And you had those cameras up back in August of 2017?

22 A. Yes, sir.

23 Q. Okay. Did you check those cameras pretty regularly to
24 make sure they were working?

25 A. Yeah.

JEOVANI VACQUEC - DIRECT EXAMINATION BY MR. THOMAS

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1 Q. Okay. Who installed those?

2 A. Myself.

3 Q. And did they -- I guess, were they on one computer, or
4 TV, or where did they all link back to?

5 A. A monitor.

6 Q. And where was that monitor at?

7 A. My room.

8 Q. Okay. So you could check that whenever you wanted to?

9 A. Yeah.

10 Q. Did you check it regularly?

11 A. Every -- every week.

12 Q. Okay. And does it constantly record?

13 A. Yeah.

14 Q. And how long does it save those recordings for?

15 A. It's like two or three months and they erase, and it'll
16 start -- it'll start over.

17 Q. So if you want to look at what's been going on around
18 your house can you go back and rewind and look at it?

19 A. Yeah.

20 Q. Okay. Do you remember an officer, a police officer
21 coming to your door the morning of August 26th and asking to
22 watch that video?

23 A. Yeah.

24 Q. Okay. And did you get a chance to watch it with him?

25 A. Yes.

JEOVANI VACQUEC - DIRECT EXAMINATION BY MR. THOMAS

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1 Q. And, I guess, explain to me -- does the video have like
2 a time or date on it?

3 A. Yeah. It has time and date, but when I bought the
4 cameras, I just hook it up, and I didn't put the right --
5 right date and the right time.

6 Q. Okay. But -- so how would you then, I guess, if you
7 wanted to say watch something that happened four or five
8 hours earlier, how would you -- how would you watch that?

9 A. I just back, you know, for two or three hours to
10 whatever I want to see.

11 Q. Okay. So you would just run the system back ---

12 A. Yeah.

13 Q. --- and sort of count back ---

14 A. Yeah.

15 Q. --- from where you were? Okay. And so I guess the
16 officer came to your door August -- morning of August 26th.
17 Did y'all watch your surveillance cameras together?

18 A. Yes.

19 Q. And did he run it back a few hours to the early morning
20 hours?

21 A. Yeah.

22 Q. And did he -- did you guys view, I guess, a span of
23 footage of what happened that morning?

24 A. No. I just -- I just saw something they trying to see,
25 and I didn't pay attention to what they looking for.

JEOVANI VACQUEC - DIRECT EXAMINATION BY MR. THOMAS

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1 Q. Okay. So you didn't pay attention to what they were
2 looking at?

3 A. No.

4 Q. You just -- you just let him watch it?

5 A. Just let him ---

6 Q. Okay. Did you -- but did he end up downloading some of
7 that?

8 A. Yeah.

9 Q. Okay. And how does he -- did he burn it onto a disk or
10 did he put it into a jump drive or ...

11 A. They put in USB drive.

12 Q. Okay. And the officer did that?

13 A. Yeah.

14 Q. Okay. I'm going to show you what's been marked as
15 State's exhibit number 2. Do you recognize that from
16 earlier?

17 A. Yeah.

18 Q. Are those your initials on it?

19 A. Yes.

20 Q. What's on this?

21 A. I really don't know -- depends on what they want to
22 see. So ...

23 Q. Okay. But what I'm asking is is this surveillance
24 footage from ---

25 A. Yeah, this was.

JEOVANI VACQUEC - DIRECT EXAMINATION BY MR. THOMAS

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1 Q. --- your camera? And is it the surveillance footage
2 that you and the officer looked at that day?

3 A. Yeah.

4 Q. Okay. And it's what he downloaded?

5 A. Yeah.

6 Q. And you had a chance to watch this just to confirm it
7 come from one of your cameras?

8 A. Yes.

9 Q. Yes? Okay.

10 MR. THOMAS: Your Honor, at this time I'd move State's
11 number 2 into evidence.

12 THE COURT: All right. Subject to all previous
13 motions, any reservations, Ms. Nelson?

14 MS. NELSON: Subject to the prior, yes, sir, Your
15 Honor.

16 THE COURT: That's State's ...

17 MR. THOMAS: It's marked as State's number 2.

18 THE COURT: All right. State's 2 is in evidence
19 subject to all prior hearings.

20 (Whereupon State's exhibit 2 was admitted into
21 evidence)

22 MR. THOMAS: Your Honor, at this time I'd -- I'm just
23 going to go ahead and publish it to the jury. We can,
24 obviously, give them some more context as we go.

25 THE COURT: Sure. Go right ahead. And they're going

JEOVANI VACQUEC - DIRECT EXAMINATION BY MR. THOMAS

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1 to play it on that screen behind y'all. So if you could,
2 just, you know, swivel around, and they'll be playing it
3 here momentarily.

4 (Whereupon State's exhibit 2 was played for the jury)

5 Q. Mr. Vacquec, you said this just looks out over your
6 empty lot towards Gray Street?

7 A. Yeah.

8 Q. Is that Gray Street running there ---

9 A. Yes.

10 Q. --- sort of in the middle? And what are those lights
11 back on the right hand side, kind of looks like a shop? Do
12 you know what that is?

13 A. That's the city parking lot.

14 Q. And, Mr. Vacquec, how many houses are we looking at in
15 this video? Can you tell?

16 A. How many houses?

17 Q. Yeah, how many houses are in this shot?

18 A. Two.

19 Q. But the one on the left, you don't really have any idea
20 what's going on ---

21 A. No.

22 Q. --- in this video? You weren't there when it actually
23 happened?

24 A. (Negative nod).

25 Q. So all this stuff that's going on here in the next few

JEOVANI VACQUEC - CROSS-EXAMINATION BY MS. NELSON

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1 seconds, you don't know anything about?

2 A. No.

3 Q. Again, Mr. Vacquec, you don't know whose truck that is
4 or who those people are standing in front of that other car?

5 A. No.

6 MR. THOMAS: Your Honor, just so the record will
7 reflect, I'm going to turn this off at the ten minute mark.

8 THE COURT: Very good.

9 Q. Mr. Vacquec, thank you. I have no other questions.

10 THE COURT: Any cross, Ms. Nelson?

11 MS. NELSON: Just briefly, Your Honor.

12 **Cross-examination by Ms. Nelson:**

13 Q. Mr. Vacquec, just to confirm, you weren't watching any
14 of that at the time that it was happening, right?

15 A. No.

16 Q. And you don't know anything about this case that we're
17 here for other than that you gave Detective Kay this video?

18 A. Yeah.

19 Q. Thank you, sir.

20 THE COURT: All right, sir. Thank you very much for
21 coming. You are free to go.

22 A. Thank you.

23 THE COURT: Take care, sir. Next witness will be
24 relatively brief?

25 MR. THOMAS: The next one is Officer Claphan, Your

KIRBY CLAPHAN - DIRECT EXAMINATION BY MS. PENNEY

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1 MS. NELSON: --- object, but I don't think we do.

2 THE COURT: All right. Do you have your next witness
3 in the courtroom?

4 MR. THOMAS: We're ready to roll.

5 THE COURT: All right. Let us have the jury, then,
6 please.

7 (Whereupon the jury entered the courtroom at 9:46 am)

8 THE COURT: All right. We've got the notepads sorted
9 out, I think. Go ahead and write your name on the top of
10 the -- or on the outside of the notepads if y'all want to or
11 on the first page. Welcome back, ladies and gentlemen.

12 Thank you for being here. Thank you for being here on time.

13 We're, of course, still in the State's case in chief in
14 the case of the State versus Mr. Gray. So at this point,
15 solicitor, if you'll call your next witness, please.

16 MS. PENNEY: The State calls Officer Claphan.

17 MADAM CLERK: Officer, you'll have to be sworn in.

18 OFFICER CLAPHAN: Okay. Sorry.

19 MADAM CLERK: Place your left hand on the Bible and
20 raise your right hand, please.

21 Kirby Claphan, being duly
22 sworn testified as follows;

23 MADAM CLERK: Thank you.

24 Direct Examination by Ms. Penney:

25 Q. Good morning, Officer Claphan.

KIRBY CLAPHAN - DIRECT EXAMINATION BY MS. PENNEY

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1 A. Good morning.

2 Q. If you would, please state and spell your name for the
3 record.

4 A. It's Officer Claphan, C-l-a-p-h-a-n.

5 Q. All right. Could you tell us what agency you work
6 with, officer?

7 A. Greenwood City Police Department.

8 Q. And how long have you been there?

9 A. Altogether six years.

10 Q. Okay. What were you doing before that?

11 A. Well, I worked for Greenwood Police Department for two
12 years, left and went to work with the State for four years
13 and then came back to Greenwood. Since I've been back it's
14 been four years.

15 Q. Okay.

16 A. So altogether with the city, six, total law enforcement
17 is ten.

18 Q. Okay. What were you doing with the State?

19 A. State transport police.

20 Q. Okay. What position do you hold now?

21 A. I think it's master patrolman.

22 Q. Were you a master patrolman on the morning of August
23 26th, 2017?

24 A. I'm really not sure.

25 Q. Were you a patrolman then?

KIRBY CLAPHAN - DIRECT EXAMINATION BY MS. PENNEY

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1 A. I was an officer then. I don't know exactly what my
2 rank is.

3 Q. Okay.

4 A. When I came back they kind of moved me up. I'm kind of
5 in limbo. So I'm pretty sure I was still senior master
6 patrolman then.

7 Q. Well, we're happy you're here and you were there then.

8 A. Well, I appreciate it.

9 Q. So were you working patrolman that morning of August
10 26th, 2018 [sic]?

11 A. Yes, ma'am. The day of the incident for this case?

12 Q. Yes.

13 A. Yes, ma'am.

14 Q. Okay. Do you remember what day of the week that was?

15 A. I'm not sure.

16 Q. Okay. If it was -- if we said it was a Saturday, would
17 that -- would that sound right?

18 A. I guess. I'd have to look at the date.

19 Q. Okay.

20 A. I was working the date of the incident, but I'm not
21 sure what day it was.

22 Q. Sure. What were you doing that morning?

23 A. Myself, I had an officer riding with me, Officer
24 Satterfield. We were sitting at the pumps. We'd just
25 filled up the patrol car. And I was looking over some

KIRBY CLAPHAN - DIRECT EXAMINATION BY MS. PENNEY

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1 reports, and I heard a gunshot. And it sounded real close.

2 So it sounded like in the area of Gray, maybe toward
3 Gray and Greene. So we left the shop trying to find out
4 where the gunshot come from. And I think that's the -- is
5 there anything else you need on that?

6 Q. Well, when you say you left the shop, how did you --
7 how did you leave?

8 A. We left by way of -- that'd be Fair Avenue, which is
9 beside the Toro soccer field. When I hit Phoenix, made a
10 left on Phoenix, made the first left on Milwee, went down
11 Milwee and made a left onto Gray. And when we got on Gray
12 we made the turn onto Gray.

13 After you turn off Gray, Milwee on the left, you go
14 down approximately 150 yards maybe, you'll make a sharp, I
15 call it a dogleg, but make a sharp right hand turn, you're
16 still on Gray, we seen a couple of subjects standing outside
17 on the left at a house.

18 As we made it to the stop sign, our windows were down
19 so we could try to find out what was going on, Satterfield
20 overheard somebody hollering. And we looked up and it was a
21 white female flagging her arms. She was right there at the
22 -- almost at the corner, I believe that's Tanyard and
23 Greene. So we immediately made a right turn and went up and
24 got out with the victim and spoke to him at that time.

25 Q. Okay. And did you -- did you recognize the person who

KIRBY CLAPHAN - DIRECT EXAMINATION BY MS. PENNEY

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1 was with the victim?

2 A. I knew Edie Walker, yes, ma'am.

3 Q. Is that -- is that who was with him?

4 A. Yes, ma'am.

5 Q. Okay. And is she who you heard screaming?

6 A. Yes, ma'am.

7 Q. Okay. And did you know the victim?

8 A. I didn't. I've heard of him, but I don't -- I don't
9 know him. I'm not familiar with him.

10 Q. Okay. So ---

11 MS. NELSON: Your Honor, we'd ask that they refer to
12 him as Mr. Fuller.

13 THE COURT: Okay.

14 MS. PENNEY: Excuse me. I apologize.

15 THE COURT: Mr. Fuller, decedent, Meatball, however you
16 choose.

17 Q. And where -- when you found Mr. Fuller where was he
18 exactly?

19 A. He was right beside a set of steps. He was laid back
20 with his feet towards Tanyard and his head toward the -- one
21 of the apartments. I assumed he lived there. But when I
22 started questioning people around, you know, around the
23 apartment they was like, no, he don't live here and we don't
24 know how he got here. But, yeah, he was laying back with
25 his back back and his feet toward the road.

KIRBY CLAPHAN - DIRECT EXAMINATION BY MS. PENNEY

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1 Q. Was he injured?

2 A. You could see a gun -- looked like a gunshot or wound
3 in his stomach. I couldn't tell you how bad it was because,
4 you know, I didn't see the exit wound, just seen the
5 entrance wound. The entrance room -- entrance wound didn't
6 look too bad, but I went ahead and called, told them to get
7 EMS rolling.

8 Q. Did EMS arrive?

9 A. Yes, ma'am. I don't know exactly how long it took them
10 to get there, but they did arrive.

11 Q. Did any other emergency services arrive before EMS?

12 A. Well, at that time Satterfield kind of stood by him.
13 You know, we questioned him to try to find out who shot him.
14 And I immediately started walking the scene trying to talk
15 to witnesses to see if I could -- anybody that was out.

16 I talked with Edie, went around and started talking to
17 anybody I seen in the area. So I'm not sure if city fire
18 got there first. I couldn't tell you because I was walking
19 up and down the road trying to find a shell casing, trying
20 to figure out where it occurred at.

21 Q. And when you spoke to folks in the area did you develop
22 any leads or any information when you did that?

23 A. Not really. I mean, one lady said that she'll talk to
24 us later on, but not really.

25 Q. Did you talk to her later on?

KIRBY CLAPHAN - DIRECT EXAMINATION BY MS. PENNEY

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1 A. No. I think one of the detectives went back and talked
2 to her.

3 Q. Who -- how did -- how did Mr. Fuller leave the scene?
4 Do you know?

5 A. Yeah, he left in -- with a -- in an ambulance.

6 Q. Do you know if an officer went with him to the
7 hospital?

8 A. I'm not sure. At that time we were -- our shift was
9 fixing to get off. So it was toward the end of our shift.
10 The morning shift started arriving. So I had to go back to
11 do paperwork to start the incident report.

12 So after they cleared the scene, we left. And I went
13 on back and started the incident report. So I don't know if
14 -- you know, the next shift was coming in. I don't know who
15 went down there and checked on him.

16 Q. Typically would somebody have gone with him to the
17 hospital?

18 A. They may not have went with him, but they'll usually go
19 back down there within a few minutes to try to question him.

20 Q. Do you know what detective took over or if you turned
21 it over to a detective when you left?

22 A. No, ma'am. When I left the detectives hadn't got in
23 yet and the day shift was coming on. So we cleared up to go
24 back to start the paperwork and left that with the day shift
25 because we was working off that morning.

KIRBY CLAPHAN - DIRECT EXAMINATION BY MS. PENNEY

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1 Q. When you drove from the pumps did you -- did you have
2 your dash-cam on?

3 A. I'm not exactly sure when I cut it on. I believe I
4 probably cut it on when I was turning down Milwee or Gray, I
5 would assume. I'm really not sure. You'd have to watch the
6 dash-cam to figure out exactly when I turned it on.

7 But usually from the time you turn it on it'll go back
8 -- the dash-cam will go back two minutes. So I'm not sure
9 exactly when I turned it on.

10 Q. But it was on?

11 A. Yes, ma'am.

12 Q. It was on. Once the -- once you've turned it off, once
13 you've cleared, how does that tape then get from your dash
14 to a format that we can all see?

15 A. When you pull up at City Hall, you know, you take your
16 body-cam and put it in a holder, and it'll automatically
17 download from the dash-cam and a body-cam. It'll upload
18 into the system at the police department, any video that
19 we've got.

20 Q. Have you viewed the videotapes that's -- that night?

21 A. Yes, ma'am.

22 Q. The dash-cam video?

23 A. Yes, ma'am.

24 Q. In fact, did you view it yesterday?

25 A. Yes, ma'am.

KIRBY CLAPHAN - DIRECT EXAMINATION BY MS. PENNEY

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- 1 Q. With me?
- 2 A. Yes, ma'am.
- 3 MS. PENNEY: Your Honor, may I approach the witness?
- 4 Q. Is this that video?
- 5 A. Yes, ma'am. It's got my initials on it ---
- 6 Q. And that's how ---
- 7 A. --- and the date.
- 8 Q. --- you know?
- 9 A. Yes, ma'am.
- 10 Q. Is that it has your initials on it?
- 11 A. Yes, ma'am.
- 12 Q. Is this video a fair and accurate representation of
- 13 what happened through the lens of your dash-cam that day?
- 14 A. Yes, ma'am.
- 15 Q. And it's an actual recording of those events?
- 16 A. Yes, ma'am.
- 17 Q. Has it been altered in any way?
- 18 A. If they do, I don't have sense enough to alter it. So
- 19 it had to be somebody smarter than me.
- 20 Q. Okay. And I will submit to you, officer, that we've
- 21 edited it in such a way to just make it a little shorter ---
- 22 A. Okay.
- 23 Q. --- than view the entire length. It's about three
- 24 minutes.
- 25 MS. PENNEY: I would like to at this time move it into

KIRBY CLAPHAN - DIRECT EXAMINATION BY MS. PENNEY

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1 evidence.

2 THE COURT: No objection? This is the dash-cam video.

3 MR. GORANSON: No objection.

4 THE COURT: All right. That's ---

5 MS. PENNEY: This is State's -- premarked as State's
6 exhibit 7.

7 THE COURT: State's 7 is in evidence without objection.
8 And you can publish at your leisure.

9 MS. PENNEY: Thank you, Your Honor.

10 (Whereupon State's exhibit 7 was admitted into
11 evidence)

12 Q. And just as a bit of a roadmap, officer, I'm going to
13 play this and then we can talk about what we all see.

14 (Whereupon State's exhibit 7 was played for the jury)

15 Q. Did you just pass the Toros field?

16 A. Yes, ma'am, to your left. Yes, ma'am.

17 Q. And now what street are you turning ---

18 A. Milwee off of Phoenix. So it had to be at this point
19 when it was put -- turned on right there at the corner
20 because it backed up. The two minutes prior to that won't
21 have sound. When the sound comes is when it was activated.
22 So it had to have been activated as soon as the sound come
23 on.

24 Q. All right.

25 A. And that's on Gray. And then straight ahead is what I

KIRBY CLAPHAN - DIRECT EXAMINATION BY MS. PENNEY

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1 call a dogleg on Gray, make that kind of sharp right. And
2 this is Greene.

3 (Whereupon State's exhibit 7 was stopped)

4 Q. All right. As I -- as I said, we've cut this video
5 off. What does the rest of the video show?

6 A. Just pretty much me and Satterfield exiting the patrol
7 car, walking up assisting him, trying to speak with Edie
8 Walker, asked her what she saw. Then I went ahead and
9 called for first responders to come in and provide him with
10 medical care. And then I started questioning the witness
11 while Satterfield stood by him.

12 Q. And was that, do you think, on this body-cam or the
13 dash-cam? Excuse me.

14 A. It should be on the body-cam.

15 Q. Right. And it's not on -- the dash-cam is just ---

16 A. The dash-cam is just going to show right in front,
17 yeah.

18 Q. But as we're talking about that, so what did you do --
19 we see you pull over. What did you do next?

20 A. Just exited the patrol car, walked over to him and we
21 asked him -- tried to get any information that we could from
22 him. Satterfield kind of stood by him while I went ahead
23 and called -- got EMS rolling.

24 And then I talked to Edie Walker. And then I walked --
25 there was a couple of females out by the road. I started

KIRBY CLAPHAN - DIRECT EXAMINATION BY MS. PENNEY

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1 talking to them because I knew once everybody else rolled
2 in, everybody would be gone. So I tried to find out what I
3 could. Then I walked up -- down Greene, made a left onto
4 Gray where we just come off, walked up and down trying to
5 find a shell casing.

6 Q. Did you find anything?

7 A. No. They called me back and said that we were clear to
8 leave. So when we left -- no. I was told the shell casing
9 was found just where I -- pretty much right about the place
10 that I stopped.

11 But we were -- like I said, we were getting off this
12 morning, clearing up. We was trying to go back to finish up
13 our paperwork. And one of the other officers, you know, let
14 me know that we were done, that the scene was clear, he had
15 been transported and asked me to come on back so we could go
16 start the report.

17 Q. When we see you pulled over in the video what -- what
18 brought you to that point?

19 A. Edie Walker was flagging us down and, you know, yelling
20 for us to come up there. And we stopped -- you can't see
21 her on that, but she's right here on the right. And he's
22 laying down and she was kind of kneeled down beside him.

23 Q. And Edie Walker, do you know her?

24 A. Yes, ma'am.

25 Q. How do you know her?

KIRBY CLAPHAN - DIRECT EXAMINATION BY MS. PENNEY

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1 A. She's -- she's a regular customer.

2 Q. Somebody you know from the neighborhood?

3 A. Yes, ma'am.

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

5 THE COURT: Please.

6 Q. Do you recognize this?

7 A. Yeah. It looks like the house on Gray. Yes, ma'am.

8 Q. Do you recognize this?

9 A. Yes, ma'am. Looks like the same house.

10 Q. Thank you. Is this an accurate depiction of what the
11 house might have looked like in the light?

12 A. Yes, ma'am. I believe they were like maybe one or two
13 cars out here parked in front of it that night. Looks like
14 it's -- nobody's there now, but usually there are a few cars
15 parked out around it.

16 MS. PENNEY: I have just showed Officer Claphan what
17 has been premarked as State's exhibit 1 and State's exhibit
18 5. Your Honor, I'd like to move these into evidence.

19 MR. GORANSON: No objection.

20 THE COURT: Without objection, State's 1 and 5 are in
21 evidence.

22 (Whereupon State's exhibit 1 and 5 were admitted into
23 evidence)

24 Q. Officer Claphan, can you tell us what this photo shows
25 you?

KIRBY CLAPHAN - DIRECT EXAMINATION BY MS. PENNEY

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- 1 A. The incident location where the incident occurred.
- 2 Q. You saw it in the dark, right?
- 3 A. Yes, ma'am.
- 4 Q. But this is about what you would have seen had you seen
- 5 it in the light?
- 6 A. Yes, ma'am.
- 7 Q. All right. Do you know the address there?
- 8 A. I couldn't tell you right off. No, ma'am.
- 9 Q. Is it [REDACTED] Gray Street? Does that sound right?
- 10 A. Sounds about right. Yes, ma'am.
- 11 Q. And that's about how the house looked that night as far
- 12 as you could tell?
- 13 A. Yes, ma'am.
- 14 Q. Other than what you just described as ---
- 15 A. Yeah, I think maybe a car parked right there in front
- 16 of it. But other than that, yes, ma'am, that's it.
- 17 Q. Is this where you saw the men on the dash-cam ---
- 18 A. Yes, ma'am.
- 19 Q. --- standing?
- 20 A. Yes, ma'am.
- 21 Q. Or, I guess, saw the shoes is about all we saw?
- 22 A. That's right.
- 23 Q. Okay. What is this?
- 24 A. It's the same location.
- 25 Q. Just a different angle?

KIRBY CLAPHAN - DIRECT EXAMINATION BY MS. PENNEY

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1 A. Yes, ma'am.

2 THE COURT: The record will reflect that the witness
3 was shown photographs of State's 1 and 5, respectively, ---

4 MS. PENNEY: Thank you, Your Honor.

5 THE COURT: --- in that order.

6 Q. I'm showing what's been premarked as State's exhibit 4.
7 Can you tell me what that is, officer?

8 A. Yes, ma'am. That's -- right behind there is the city
9 shop. And that's going to be the incident location in front
10 of it. I guess there's probably, maybe 200 yards from there
11 to that building. I mean, I guess you'd have to look it up
12 to know exactly, but it's a few hundred yards. And where we
13 were at from where this incident location is is just to your
14 left of where you see the lights back there where that is.
15 We're just to the left of that.

16 Q. And we'll explain that ---

17 A. Okay.

18 Q. --- a little further. Is this -- where have you seen
19 this? This particular version of this photograph?

20 A. I mean, that's from the top part of Gray coming -- like
21 if you're coming down Greene.

22 Q. Do you know how this was taken, though?

23 A. Yeah. I believe it was taken off somebody's video
24 surveillance.

25 Q. Does this look like, from what you can tell, a true and

KIRBY CLAPHAN - DIRECT EXAMINATION BY MS. PENNEY

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1 accurate depiction of what was going on ---

2 A. Yes, ma'am.

3 Q. --- at this time?

4 A. Yes, ma'am.

5 Q. Okay.

6 MS. PENNEY: I'd like to move State's -- premarked
7 State's 4 into evidence.

8 MR. GORANSON: No objection.

9 THE COURT: All right. Without objection, State's 4 is
10 in evidence.

11 (Whereupon State's exhibit 4 was admitted into
12 evidence)

13 MS. PENNEY: Publishing by Elmo to the jury.

14 Q. Can you explain -- and if you need to come down to
15 point, you're welcome to. I'm not sure if you do.

16 A. Okay.

17 Q. Explain some perspective. If you don't mind, telling
18 the jury what you see.

19 A. All right. This is going to be pretty much the
20 incident location right in here or close to that, close to
21 the left, somewhere in here. I can't tell with the tree.
22 But that's the city shop. And where we were parked in
23 reference to this is probably right in here where the pumps
24 are.

25 Q. Is that where you heard the shot?

KIRBY CLAPHAN - DIRECT EXAMINATION BY MS. PENNEY

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1 A. Yes, ma'am. It was pretty much directly behind me to
2 your left. I was sitting in the driver's side. It was like
3 right here. So, I mean, it was -- where we pulled up and
4 stopped, I mean, we knew it was -- it had to have been right
5 there when we heard the shot. But, you know, in that
6 direction. And it was so close that it was pretty distinct,
7 you know, where it come from.

8 Q. And I'll follow you up.

9 A. Okay.

10 Q. And I'm showing you what has been premarked as State's
11 exhibit 6. Can you tell me what that is?

12 A. Yes, ma'am. There's Milwee, Gray. And then where the
13 incident occurred was just after you make this right hand
14 little dogleg. And then where he was located was when you
15 go straight and make a right, make the first left on Tanyard
16 about two or three apartments on the right.

17 Q. And I'm going to ask you to do the same thing. I guess
18 we shouldn't have ---

19 A. Okay. That's fine.

20 Q. --- come all the way back up here. But is this a -- is
21 this a map of the area?

22 A. Yes, ma'am.

23 Q. Okay. And a true and accurate depiction of a map of
24 the area?

25 A. Yes, ma'am.

KIRBY CLAPHAN - DIRECT EXAMINATION BY MS. PENNEY

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1 Q. Okay.

2 MS. PENNEY: I'd like to move this in.

3 MR. GORANSON: No objection.

4 THE COURT: Without objection State's 6 is in.

5 (Whereupon State's exhibit 6 was admitted into
6 evidence)

7 Q. Can you explain, please, to the jury exactly where
8 everything is on this map?

9 A. Okay. Let me look at it a little better real quick.

10 Q. Sure.

11 A. This is going to be Public Works. That's just some
12 extra patrol cars sitting outside. And where we were at was
13 approximately right here. The shop's kind of like to our
14 left behind us, which the incident location was right in
15 here. So when we come out, the Toros field was here.

16 We exited out onto Phoenix here, come up Phoenix, made
17 the first left onto Milwee and then made that left onto
18 Gray. And this was the dogleg turn. The incident location
19 was in this area.

20 Went down to the stop sign and made a right. That's --
21 about the time we made a right was when we heard Edie
22 Walker. We pulled up here and kind of stopped in this area.
23 He was laying right in front of one of these apartments.

24 Q. All right. So is all of this right here -- is that the
25 city shop?

KIRBY CLAPHAN - CROSS-EXAMINATION BY MR. GORANSON

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1 A. Yeah, that's -- well, it's Public Works, city shop.

2 The city shop is probably right here. And the pumps are

3 kind of right in here. Well, actually about right here.

4 The city shop is right here.

5 Then that building that you see with the lights on it

6 is approximately right in here that you've seen from the

7 earlier exhibit. So this is the city property all in here.

8 So from there to there off the city property wasn't very

9 far.

10 Q. What is -- what is that right there? Do you know?

11 A. Talking about this here -- right here?

12 Q. Um-hum (affirmative). Is that a ditch?

13 A. Well, there is like a ditch. And there's a lot of

14 bamboo right in here because I've actually chased several

15 people back in that bamboo.

16 Q. Thank you, officer.

17 A. Yes, ma'am.

18 Q. Those are all the questions I have for now, officer.

19 Please answer any questions that Mr. Goranson may have for
20 you.

21 A. Okay.

22 THE COURT: Mr. Goranson.

23 **Cross-examination by Mr. Goranson:**

24 Q. Good morning, again.

25 A. Good morning.

KIRBY CLAPHAN - CROSS-EXAMINATION BY MR. GORANSON

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1 Q. You were sitting at the gas station pumps, right?

2 A. Yes, sir.

3 Q. And you had the windows down?

4 A. Yes, sir.

5 Q. And you heard the gunshot through your driver's side
6 window, correct?

7 A. Yes, sir. I was sitting here, the gas pump was to my
8 right, the shot was kind of in this direction.

9 Q. Right. And you were able to sort of decipher where it
10 was coming from pretty precisely?

11 A. Yeah, it was so close we didn't really hear the echo.

12 You know, usually when you hear a gunshot you'll hear the
13 echo behind it. It was so close we didn't hear the echo.

14 So a lot of times the echo will confuse you. But it was
15 like -- we could tell it was right behind us in the area of
16 Gray.

17 Q. So there was no real confusion about where that shot
18 came from?

19 A. No, sir.

20 Q. And you went out and you took the most direct route
21 there?

22 A. Yes, sir.

23 Q. You went down Phoenix, down Milwee, down Gray, correct?

24 A. Yes, sir.

25 Q. And that -- we saw the video earlier from your dash-

KIRBY CLAPHAN - CROSS-EXAMINATION BY MR. GORANSON

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1 cam. That was Patrolman Durkin's car in front of you, ---

2 A. Yes, sir.

3 Q. --- correct? So there was three officers in two cars?

4 A. Yes, sir. Satterfield was riding with me because he's
5 a trainee.

6 Q. He's a trainee, okay.

7 A. He was actually -- the NTO that was training him was
8 off. So the NTO asked me if he could ride with me that
9 night.

10 Q. Okay. So you were standing in for the -- I'm guessing
11 the training officer?

12 A. Yes, sir.

13 Q. That's what that stands for?

14 A. Yes, sir.

15 Q. Okay. And you -- so as you're driving down Gray Street
16 you see what Ms. Penney referred to as some shoes on the
17 video, right?

18 A. You talking about just in the light, which ---

19 Q. Yeah, right.

20 A. --- you can't see ---

21 Q. On the video.

22 A. Yes, sir.

23 Q. And you knew those shoes were attached to people at the
24 time, right?

25 A. That's right.

KIRBY CLAPHAN - CROSS-EXAMINATION BY MR. GORANSON

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1 Q. You saw four black males out there, right?

2 A. I don't remember exactly. I seen a few. I don't
3 remember if it was four. It might have been two or three.
4 I don't remember. But I do remember seeing some people
5 standing there. Which that's the normal, they're usually
6 standing there.

7 Q. Well, let me ask you this. If you -- well, you went
8 through the police academy ---

9 A. Yes, sir.

10 Q. --- training, right?

11 A. Yes, sir.

12 Q. The South Carolina Criminal Justice Academy?

13 A. Yes, sir.

14 Q. And while you were there they taught you how to
15 investigate cases, how to respond to cases?

16 A. Yes, sir.

17 Q. And you -- and what you do is you write an incident
18 report afterwards, right?

19 A. Yes, sir.

20 Q. And I believe you referenced that. You had to leave
21 the scene because there was a shift change.

22 A. Yes, sir.

23 Q. And you just went back and started ---

24 A. Started the initial report.

25 Q. And that's important because you need to get down the

KIRBY CLAPHAN - CROSS-EXAMINATION BY MR. GORANSON

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1 details ---

2 A. Yeah, before I forget them ---

3 Q. Before you forget them.

4 A. As fast as possible, yes, sir.

5 Q. Right. Because that -- particularly for this one, this
6 is the end of your shift?

7 A. That's right.

8 Q. And so you wouldn't be working again until the next day
9 and who knows what happens in between then?

10 A. Yes, sir.

11 Q. Okay. And you wrote an incident report regarding this?

12 A. Yes, sir.

13 Q. And you included in it the details of what happened?

14 A. Yes, sir. I mean, I haven't read the report since I
15 wrote it, so ...

16 Q. Well, I was just getting ready to say would it refresh
17 your recollection if I showed you your report?

18 A. Yes, sir.

19 Q. Okay.

20 **MR. GORANSON:** May I approach the witness?

21 Q. Take a look at that. And when you're done just look up
22 and let me know.

23 (Pause)

24 A. Yes, sir.

25 Q. Did that refresh your recollection?

KIRBY CLAPHAN - CROSS-EXAMINATION BY MR. GORANSON

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1 A. Yes, sir, somewhat. Yes, sir.

2 Q. Okay. And was it four black males you saw at [REDACTED] Gray
3 Street?

4 A. That's what I wrote on there, yeah.

5 Q. No reason you would have written that down
6 intentionally incorrectly, right?

7 A. No, sir. Not if -- it looked like there was a black
8 male standing on the porch and a couple out in the yard.

9 Q. Okay. So ---

10 A. Now it looks like I was mistaken on the way the victim
11 was laying.

12 Q. Okay.

13 A. I put the head was facing north. The head was actually
14 on the north side of the apartment, but his, I mean, looks
15 to me like -- I'm pretty sure his feet was in the north
16 direction. But now I didn't pull a compass out, but I've
17 got on there that his feet was in a southern -- in a south
18 direction, his head was in a north, but it was the opposite
19 way.

20 Q. Okay.

21 A. His feet was facing toward like the city shops area,
22 which would be, I would assume, north in that location.

23 Q. Okay.

24 A. And his head was back toward the apartment.

25 Q. Anything else?

KIRBY CLAPHAN - CROSS-EXAMINATION BY MR. GORANSON

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1 A. No, sir.

2 Q. Okay. But you wrote in here four black males?

3 A. Yes, sir.

4 Q. And you wrote in here that one of the black males went
5 into the house?

6 A. Yes, sir.

7 Q. Okay. And you also -- so it looked like Patrolman
8 Durkin stopped in front of [REDACTED] Gray Street, is that right?

9 A. Yes, sir.

10 Q. And then he proceeded on through and you proceeded on
11 through the intersection at Greene Street, right?

12 A. Yes, sir.

13 Q. Durkin took a left?

14 A. Yes, sir.

15 Q. You took a right?

16 A. Yes, sir.

17 Q. I believe Durkin and -- I believe Durkin heard from
18 those guys that the shot came from down the street?

19 A. Yeah, I don't know what -- I don't know what they told
20 Durkin.

21 Q. Okay. But you continued through Gray Street ---

22 A. Yeah. When I seen him make a left, I figured I'd make
23 a right.

24 Q. And you'd cover all the territory ---

25 A. That's right.

KIRBY CLAPHAN - CROSS-EXAMINATION BY MR. GORANSON

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- 1 Q. And you parked your car?
- 2 A. Yes. Pretty much right beside ---
- 3 Q. [REDACTED] Tanyard?
- 4 A. Yes, sir. Or pretty close. It was right there by
- 5 them.
- 6 Q. Sure. And you checked on Mr. Fuller?
- 7 A. Yes, sir.
- 8 Q. You talked to Edie Walker?
- 9 A. Yes, sir.
- 10 Q. She told you, I was just walking by, I heard him and
- 11 ---
- 12 A. Yeah, kind of saw him ---
- 13 Q. --- stopped to check on him.
- 14 A. --- just laying there. She acted like she didn't know
- 15 what -- really what happened.
- 16 Q. Well, she also told you that she didn't know what
- 17 happened?
- 18 A. That's right.
- 19 Q. She was walking down the street and saw him there, and
- 20 flagged you down?
- 21 A. Yes, sir.
- 22 Q. She was scared?
- 23 A. Yes, sir.
- 24 Q. Because he had a gunshot wound?
- 25 A. That's right.

KIRBY CLAPHAN - CROSS-EXAMINATION BY MR. GORANSON

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1 Q. Okay. And then you call EMS or first responders. Then
2 you go looking for evidence, right?

3 A. Yes, sir.

4 Q. You want to talk to people before they disappear?

5 A. That's right.

6 Q. And you want to find any physical evidence that might
7 be laying around?

8 A. Yes, sir.

9 Q. Particularly a shell casing?

10 A. Yeah, anything that I could find, gun, shell casing, or
11 another witness who could tell me what happened.

12 Q. Great. And so you walked from Tanyard, maybe, what, a
13 hundred yards to Gray Street?

14 A. Probably so. Yes, sir.

15 Q. And you looked for the shell casing?

16 A. And then I walked up Gray probably 75 yards, maybe, up
17 Gray, me and Officer Lee. He was on the right side of the
18 road, and I was on the left side of the road.

19 Q. And you walked up there, and I think you testified to
20 this, we knew it had to have happened right there?

21 A. In that area, yes, sir.

22 Q. That's why you walked up there?

23 A. Yes, sir.

24 Q. Because there wasn't any really doubt in your mind .
25 about the area of where the gunshot happened?

KIRBY CLAPHAN - CROSS-EXAMINATION BY MR. GORANSON

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1 A. Yes, sir. I mean, it -- we were pretty close, I mean,
2 kind of where we thought it was.

3 Q. You ---

4 A. Kind of area of Gray, and ---

5 Q. Right.

6 A. --- Milwee, or Greene, somewhere in that area.

7 Q. So you spoke to a couple of witnesses who said
8 basically they didn't see anything?

9 A. That's right.

10 Q. You did not go and knock on [REDACTED] -- the door at [REDACTED] ---

11 A. I did not.

12 Q. --- Gray Street?

13 A. No, sir.

14 Q. Okay. And you didn't talk to anybody who was in there?

15 A. No, sir. When I seen Durkin stop and talk with them
16 and then he drove past, I assumed that they told him they
17 didn't know anything. So I didn't even go back up to [REDACTED].
18 No, sir.

19 Q. Okay. And so we don't know who those people were?

20 A. No, sir. I didn't know who they were. No, sir. Well,
21 we just figured it was somebody shot up in the air. At the
22 time when we passed, we figured maybe somebody shot in the
23 air and had left the area.

24 Q. Okay. And then you learned that somebody had been
25 shot?

KIRBY CLAPHAN - CROSS-EXAMINATION BY MR. GORANSON

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1 A. That's right.

2 Q. And then you went onto Gray Street?

3 A. Yes, sir.

4 Q. And so you were not able to identify whether there were
5 any eyewitnesses to this incident?

6 A. No, sir.

7 Q. And no one came up to you during this time and said,
8 hey, ---

9 A. Well, some lady just come up and said -- I said, did
10 you see anything? She said, I'll talk to y'all later.

11 Q. Okay.

12 A. And I tried to make sure that I got a good picture of
13 her, who she was, because I didn't know -- I didn't know her
14 name.

15 Q. Okay.

16 A. And then I think one of the detectives talked to her
17 later on. They went back and looked at my body-cam, knew
18 who she was and went and talked to her.

19 Q. Okay. All right. And so -- let me back up to the
20 beginning of when you found Mr. Fuller. There was you --
21 Patrolman Durkin turned around and came -- got with y'all,
22 right?

23 A. I really don't remember. I just remember me and
24 Satterfield there, and I remember me calling first
25 responders. Several other units showed up. I do remember

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1 Lee -- Officer Lee being there because me and him were
2 walking together looking for the shell casing. But Durkin,
3 I don't remember where Durkin was or what he was doing at
4 the time.

5 Q. Okay. Officer Lee was there, Officer Durkin was there,
6 Officer Satterfield?

7 A. Yes, sir, because he was riding with me. Yes, sir.

8 Q. Officer Budreau was there?

9 A. He came a little later. He was -- I think one of us --
10 when he found out that we had a body, he come over there.
11 Yes, sir.

12 Q. When you had a gunshot?

13 A. Yes, sir. Victim, yes, sir. Well, I say body because
14 normally we just hear a shot. We respond to the area,
15 nobody saw anything. We may find a shell casing and we
16 leave because we don't have anything. But in this one, we
17 actually had a body, we actually had a victim at that one.
18 Yes, sir.

19 Q. Right. And so a lot of officers responded?

20 A. That's right.

21 Q. And it was Lee, Durkin, Satterfield, Budreau, Pope?

22 A. I'm pretty sure Pope was there, too. I think maybe
23 Pope and Lee were early men coming in that came in at like
24 5:00. We usually at 5:00 a early man -- we have two early
25 men come in. That way we can finish our paperwork so we can

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1 go home. And the early men start answering calls so that we
2 can finish whatever we did for the night.

3 Q. Okay. And there were some county officers who had
4 showed up? Mike Young, Sergeant Mike Young with Greenwood
5 County ---

6 A. Seems like I do remember them showing up, but I'm not
7 -- I couldn't tell you which ones because I was busy trying
8 to, you know, talk to people.

9 Q. Okay. No more questions. Thank you, officer.

10 THE COURT: Okay. No redirect?

11 MS. PENNEY: Yes, Your Honor.

12 THE COURT: Go ahead.

13 **Redirect Examination by Ms. Penney:**

14 Q. Officer, did you hear any yelling or commotion before
15 you heard the shot?

16 A. No. No, ma'am, I didn't. All I remember is the
17 gunshot. As I was checking reports -- we had just filled up
18 and checking reports. I may have had the music on, I don't
19 remember, but I do remember the gunshot. Now as far as
20 people, I can't remember if I heard anything before that or
21 not.

22 Q. And when you say area, that area, do you just mean that
23 house?

24 MR. GORANSON: Objection. Leading.

25 THE COURT: I think she's trying to get clarification.

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1 Overruled. Go ahead.

2 Q. Do you mean just that house?

3 A. No. I meant the area of Gray, Greene, kind of right in
4 there.

5 Q. So a general area is where you thought you heard the
6 shot?

7 A. Yes, ma'am.

8 Q. Is it common to hear gunshots in that area?

9 MR. GORANSON: Objection. Leading.

10 THE COURT: Overruled.

11 Q. Is it common?

12 A. Pretty much anywhere in the city limits you're going to
13 hear gunshots. But, yeah, we've had several gunshots or
14 shoot shots -- shots fired there, yes, ma'am, in that area.

15 Q. When you respond do you typically get help from
16 witnesses on the scene?

17 MR. GORANSON: Objection.

18 Q. In that area?

19 MR. GORANSON: Relevance to what usually happens ---

20 THE COURT: All right. Sustained.

21 Q. We talked about shift change a bit. Who was about to
22 come on? What shift was changing?

23 A. Opposite rotate -- we work C shift. A and C work the
24 same days. One works nights one day, B and D work together
25 days and nights. So we had worked night-shift. We were

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1 working off, so A was coming in to relieve us.

2 Q. So day-shift was about to start?

3 A. Yes, ma'am.

4 Q. That's all I have.

5 A. Okay.

6 Q. Thank you for your time.

7 MR. GORANSON: No further questions. Thank you.

8 THE COURT: All right. Thank you. You're free to go.

9 Take care.

10 A. Appreciate it.

11 THE COURT: Call your next witness, please.

12 MS. PENNEY: The State calls Officer Budreau.

13 THE COURT: Ladies and gentlemen, I forgot yesterday to
14 mention to you that if at any point in time, in addition to
15 having difficulty hearing, but if at any point in time you
16 need a comfort break for any reason, you need to take a
17 break, just wave at me, signal, throw something at me and
18 we'll take a break, okay?

19 Jason Budreau, being duly
20 sworn testified as follows;

21 **Direct Examination by Ms. Penney:**

22 Q. Good morning, lieutenant.

23 A. Good morning, ma'am.

24 Q. You all settled?

25 A. Yes, ma'am.

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1 Q. All right.

2 A. Thank you.

3 Q. Please let us know if you need anything to be more
4 comfortable.

5 A. Yes, ma'am.

6 Q. If you would, please tell for the record your title,
7 and your name, and spell it for the record, please.

8 A. Yes, ma'am. Lieutenant Jason Budreau with the
9 Greenwood City Police Department. First name is Jason.
10 Last name is spelled Budreau, B-u-d-r-e-a-u.

11 Q. How long have you been with the City Police Department?

12 A. Coming on about 13 years.

13 Q. What all -- what all have you done with the police
14 department?

15 A. I've done uniform patrol, drug enforcement, traffic
16 control, crime prevention, currently a shift supervisor.

17 Q. Were you a shift supervisor on August 26th of 2017?

18 A. Yes, ma'am, covering for a shift. Covering for the
19 supervisor that was out.

20 Q. So you were with a shift that wasn't typically yours?

21 A. Yes, ma'am. At that time I was in crime prevention.

22 Q. What were you doing early that morning, the 26th?

23 A. Probably working on paperwork to get off on time.

24 Q. Were you coming on or going off?

25 A. I was on -- I was working nights. So I would have been

JASON BUDREAU - DIRECT BY MS. PENNEY

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1 going off that morning.

2 Q. Was that towards the end of your shift?

3 A. Yes, ma'am.

4 Q. When you -- how did you find out about Mr. Fuller?

5 A. Initially it was put out by one of the other officers
6 that he had heard a gunshot in the area of Gray, Milwee, and
7 Greene, in that area. I heard that come out, but I stayed
8 at the office working on paperwork until he put out over the
9 air that he had a victim.

10 Q. And then once you heard that about Mr. Fuller, what did
11 you do?

12 A. I left City Hall and went to that location.

13 Q. And once you were out there what did you do next?

14 A. Checked on my officers, got the story from the officers
15 as to what they had, started the crime scene, had an officer
16 set up tape or put up tape and then went and spoke with Mr.
17 Fuller.

18 Q. Did he have anything to say?

19 A. Nothing that I could understand, mumbling. The only
20 thing I did understand come out of his mouth was he was
21 thirsty, and was -- he wanted some water or something to
22 drink, something along those lines.

23 Q. What did you -- do you remember specifically what you
24 asked him?

25 A. I was asking him who did this? Who shot him?

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1 Questions like that.

2 Q. When you got out there what update did you have from
3 the officers that were out there already?

4 A. Other than what I could visually see there wasn't much
5 they had for me.

6 Q. When you say there wasn't much, was there any
7 information ---

8 A. No, ma'am.

9 Q. --- they could provide you?

10 A. No, ma'am, not at that time. We didn't have a suspect.
11 All we had was Mr. Fuller and where he was laying. That's
12 all we had at that time. There were some other people out
13 there that the other officers were speaking to, but I don't
14 think at that point in time they had any information that
15 could help me.

16 Q. So when you responded were officers trying to gain
17 information?

18 A. Yes, ma'am.

19 Q. They just hadn't yet?

20 A. No, ma'am.

21 Q. While you were out there were there any shell casings
22 found?

23 A. No, ma'am.

24 Q. Once you had all this information what did you do with
25 it?

JASON BUDREAU - DIRECT BY MS. PENNEY

1 A. I contacted -- once I gathered everything I had I
2 contacted the detective division, the on-call detective.
3 That evening would have been Lieutenant Dixon.

4 Q. Did you personally do any follow-up after that?

5 A. No, ma'am.

6 Q. Do you know about when the detectives did come out?

7 A. It was later that morning. As far as the time, no,
8 ma'am, I don't.

9 MS. PENNEY: May I approach, Your Honor?

10 Q. Well, first of all, did you have -- did you have a
11 body-cam on?

12 A. Yes, ma'am.

13 Q. Did you -- do you know when you turned it on?

14 A. It would have been activated when I left the office
15 because I activated my blue lights.

16 Q. So is that an automatic thing?

17 A. Yes, ma'am.

18 Q. And then how did those -- how does that body-cam get
19 saved so that we can all view it later?

20 A. It's wirelessly transferred to a server at City Hall.

21 Q. And then we can pull it up from that server, ---

22 A. Yes, ma'am.

23 Q. --- is that correct? Do we have the -- do you have the
24 capability of pulling still shots off that body-cam?

25 A. Yes, ma'am.

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1 (Whereupon State's exhibits 8 - 13 were marked for
2 identification)

3 **MS. PENNEY:** Now may I approach, Your Honor?

4 **THE COURT:** Please.

5 Q. Can you tell me what this is? I'm showing Lieutenant
6 Budreau what's marked as -- premarked as State's exhibit 8.

7 A. Yes, ma'am. That is the road where Mr. Fuller was.
8 He's on the right.

9 Q. And we can talk in detail about it. I'll put it up on
10 the Elmo.

11 A. Yes, ma'am.

12 Q. I'm showing Lieutenant Budreau State's exhibit 9. Do
13 you recognize that?

14 A. Yes, ma'am. This is going to be a photograph off my
15 body-cam.

16 Q. I'm showing Lieutenant Budreau State's exhibit --
17 what's been premarked as State's exhibit 10. Do you
18 recognize that?

19 A. Yes, ma'am.

20 Q. What is that?

21 A. That's Mr. Fuller and two city officers.

22 Q. I'm showing Lieutenant Budreau what's been premarked as
23 State's exhibit 11. Do you know ---

24 A. Yes, ma'am.

25 Q. Do you recognize that?

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- 1 A. That's Mr. Fuller and looks like my left arm.
- 2 Q. What -- where is that from?
- 3 A. That's where he was sitting, Mr. Fuller was sitting.
- 4 Q. Is that from your body-cam?
- 5 A. Yes, ma'am. I'm sorry.
- 6 Q. I'm showing Lieutenant Budreau what's been premarked as
- 7 State's exhibit 12. Do you recognize that?
- 8 A. Yes, ma'am.
- 9 Q. What is that?
- 10 A. Also from my body-cam.
- 11 Q. And is a photo of?
- 12 A. Mr. Fuller.
- 13 Q. And finally I'm showing Lieutenant Budreau what's been
- 14 premarked as State's exhibit 13. Can you -- do you
- 15 recognize that?
- 16 A. Yes, ma'am.
- 17 Q. What is that?
- 18 A. Also from my body camera.
- 19 MS. PENNEY: Your Honor, I'd like to enter these into
- 20 evidence.
- 21 THE COURT: Any objection to 8 through 13?
- 22 MR. GORANSON: No, sir.
- 23 THE COURT: All right. 8 through 13 are in evidence.
- 24 (Whereupon State's exhibits 8 - 13 were admitted into
- 25 evidence)

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1 MS. PENNEY: Your Honor, may I publish to the jury?

2 THE COURT: Please.

3 Q. Lieutenant Budreau, can you tell the jury what -- can
4 you see very well from there or ---

5 A. No, ma'am.

6 Q. I don't believe we can ---

7 A. I'm catching a glare. I can move.

8 Q. I apologize.

9 A. No, ma'am, you're fine.

10 Q. Can you tell us -- can you tell the jury what this
11 photo shows?

12 A. Yes, ma'am. This is the street where Mr. Fuller was
13 located. This picture is going to be a still from my body-
14 cam. Mr. Fuller's on the right.

15 Q. Is he on the steps of one of those houses?

16 A. Yes, ma'am. The white handrail that's going up, he's
17 in that area somewhere.

18 Q. Is he maybe in this area, ---

19 A. Yes, ma'am.

20 Q. --- is that right?

21 A. (Affirmative nod).

22 Q. And that was State's exhibit 8. I'm showing State's
23 exhibit 9. What do we see here?

24 A. Mr. Fuller is to the right with the two officers -- it
25 looks like two officers from here.

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1 Q. Is he right there in that area?

2 A. Yes, ma'am.

3 Q. And is this ---

4 A. This still shot is also from my body-cam. That's a
5 little better.

6 Q. Is that better? And who are these folks?

7 A. The gentleman on the right is a city officer. The
8 gentleman on the left by the pants appears to be a county
9 deputy.

10 Q. You don't -- you don't know exactly who it is or if
11 they're law enforcement?

12 A. I believe that gentleman is Mr. Young with the
13 sheriff's office.

14 Q. And who -- do you know who that is? Do you recall?

15 A. No, ma'am.

16 Q. If I told you it was Edie Walker, would that sound
17 right?

18 A. That sounds correct, but, yes, ma'am.

19 Q. You cannot tell?

20 A. No, ma'am.

21 Q. I'm showing Lieutenant Budreau State's exhibit 10.
22 What is this?

23 A. Mr. Fuller is laying on his back with the white tennis
24 shoes on and there's two city officers there with him.

25 Q. Does he have a shirt on?

JASON BUDREAU - DIRECT BY MS. PENNEY

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1 A. No, ma'am.

2 Q. Does he have a hat on or anything?

3 A. I don't believe he had a hat on. No, ma'am.

4 Q. I'm showing Lieutenant Budreau State's exhibit 11. Can
5 you tell me what this is?

6 A. Yes, ma'am. The gentleman that's partly seated is Mr.
7 Fuller. And that's my left arm that's holding onto him.

8 Q. And another officer?

9 A. And another officer to the right. Yes, ma'am.

10 Q. Can you see Mr. Fuller's injury in this photo?

11 A. Yes, ma'am. There's a single hole -- by that picture
12 it appears to be almost centerline, right above his
13 waistline.

14 Q. Is that it right there?

15 A. Yes, ma'am.

16 Q. I'm showing Lieutenant Budreau State's exhibit 12. Can
17 you tell me what this is?

18 A. Yes, ma'am. Again, this is Mr. Fuller. You can see
19 his injury that is just to the left of his belly button.

20 Q. Is that it?

21 A. Yes, ma'am.

22 Q. Do you remember what that is?

23 A. No, ma'am, I don't.

24 Q. And, finally, I'm showing Lieutenant Budreau exhibit
25 11. What is this?

JASON BUDREAU - CROSS-EXAMINATION BY MR. GORANSON

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1 A. This is -- about midway of the picture is where Mr.
2 Fuller's located. And the gentlemen that are now arriving
3 are the fire department.

4 Q. What are the fire department doing there?

5 A. Rendering -- getting him ready for EMS, rendering aid
6 to him.

7 Q. Who arrived first? The fire department or EMS?

8 A. The fire department. Yes, ma'am.

9 Q. I believe if you'd like to have a seat, you might want
10 to.

11 A. I'll sit back down. Yes, ma'am.

12 Q. What happened to Mr. Fuller after this? What -- how
13 did he leave the scene?

14 A. He left the scene, the best I could tell, he was still
15 alive.

16 Q. Who took him off-scene, though?

17 A. EMS.

18 Q. Please answer any questions Mr. Goranson has.

19 A. Yes, ma'am.

20 Q. Thank you.

21 Cross-examination by Mr. Goranson:

22 Q. Good morning, lieutenant.

23 A. Good morning, sir.

24 Q. You were the shift supervisor that night? You were
25 covering?

JASON BUDREAU - CROSS-EXAMINATION BY MR. GORANSON

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1 A. Yes, sir.

2 Q. And so you were the one who's in charge of the area
3 that night?

4 A. Yes, sir.

5 Q. You had other officers that were there that were under
6 your authority, so to speak?

7 A. Correct, sir.

8 Q. Okay. And you've had training on being a detective?

9 A. No, sir.

10 Q. Okay. You've had training with the police academy,
11 correct?

12 A. Correct, sir.

13 Q. And you've been -- you've worked your way up through
14 some of the ranks within the police department through your
15 service?

16 A. Yes, sir.

17 Q. Through your knowledge and experience you've learned
18 how to maintain a crime scene?

19 A. Correct, sir.

20 Q. And you taped off that area or had taped off that area,
21 Tanyard?

22 A. Had an officer, yes, sir.

23 Q. Okay.

24 A. Had an officer tape off that area. I didn't ---

25 Q. You directed an officer to do that?

JASON BUDREAU - CROSS-EXAMINATION BY MR. GORANSON

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1 A. Yes, sir.

2 Q. And let's talk about who all was out there. We had
3 Sergeant Mike Young from the Greenwood County Sheriff's
4 Office?

5 A. Yes, sir. I believe that was him in that photo.

6 Q. And Officer Durkin?

7 A. Correct, sir.

8 Q. Officer Satterfield?

9 A. Yes, sir.

10 Q. Officer Claphan?

11 A. Correct, sir.

12 Q. Officer Lee?

13 A. Yes, sir.

14 Q. Officer Pope?

15 A. Yes, sir, I believe so.

16 Q. Okay.

17 A. It's been ---

18 Q. Yeah. Any other officers that you remember being out
19 there?

20 A. Besides myself. You didn't name myself.

21 Q. Well, you were out there.

22 A. Yes, sir.

23 Q. And then somebody came and took pictures, I believe, of
24 [REDACTED] Tanyard where Mr. Fuller was?

25 A. Yes, sir, but I don't recall who that would have been

JASON BUDREAU - CROSS-EXAMINATION BY MR. GORANSON

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1 if not the officer that was already there ---

2 Q. Okay.

3 A. --- that could have done that.

4 Q. Any other officers that you remember being out there?

5 A. No, sir, not off the top of my head. Not initially.

6 Q. Okay.

7 A. Now that was shift change. So if there were other

8 officers that showed up, I don't recall.

9 Q. Did you write an incident report?

10 A. No, sir.

11 Q. Okay. Did you memorialize any of this other than

12 through your body camera?

13 A. No, sir.

14 Q. All right. Have you watched your body-cam since then?

15 A. Yes, sir.

16 Q. When?

17 A. I watched it, I believe it was, a few weeks ago ---

18 Q. Okay.

19 A. --- as this geared up.

20 Q. Getting ready for trial?

21 A. Yes, sir.

22 Q. Did you -- have you -- so that was the only other time
23 you've watched it?

24 A. Yes, sir.

25 Q. All right. You mentioned calling Mike Dixon. Is he a

JASON BUDREAU - CROSS-EXAMINATION BY MR. GORANSON

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1 detective with the Greenwood Police Department?

2 A. Yes, sir. He's the lieutenant over the detectives
3 division.

4 Q. So he's in charge of all the detectives?

5 A. Major Butler's in charge. He's second.

6 Q. Okay. All right. He's second, but you called him?

7 A. Yes, sir, I did.

8 Q. And that would have been at 5:45, six am?

9 A. Yes, sir, give or take.

10 Q. And you told him, listen, we don't have much to go on
11 here, ---

12 A. I told him what I had.

13 Q. I don't know -- which was ---

14 A. I have a victim who's shot.

15 Q. Well, you had somebody who was shot?

16 A. Yes, sir.

17 Q. When you say victim, you mean he had an injury?

18 A. Correct, sir.

19 Q. Not about the status of him, you know, as it pertains
20 to this case in particular? You didn't know what had
21 happened for you ---

22 A. Oh, no, sir, I didn't know.

23 Q. Right. But he was wounded and that's why you're saying
24 victim?

25 A. Correct, sir.

JASON BUDREAU - CROSS-EXAMINATION BY MR. GORANSON

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1 Q. Okay. No one called 911 that night, is that ---

2 A. Not to my knowledge. No, sir.

3 Q. All right. So when you got out there, Mr. Fuller
4 couldn't tell you what happened?

5 A. Not to me. No, sir.

6 Q. And so there was nobody who called 911. No witnesses
7 were coming forward to say I saw what happened?

8 A. No, sir.

9 Q. In fact, Ms. Walker said I was just walking down the
10 street. I heard him. And I went to him and flagged the
11 officers.

12 A. I have no idea about that.

13 Q. Okay. But you talked to the officers who were on the
14 scene when you arrived?

15 A. Correct, sir.

16 Q. And you tried to get any information that they had?

17 A. Correct, sir.

18 Q. And from Officer Claphan you heard that he heard a
19 gunshot and went to that area?

20 A. I'd learned prior to me getting there about that. He
21 put it over the air ---

22 Q. Okay.

23 A. --- that he had heard a single gunshot in that area,
24 something to that effect.

25 Q. And you learned that some witnesses, some men said, we

JASON BUDREAU - CROSS-EXAMINATION BY MR. GORANSON

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1 heard it from over in that area?

2 A. From him, yes, sir.

3 Q. From Officer Claphan?

4 A. Yes, sir. I believe that's -- that's about what he
5 told me.

6 Q. Okay. And what -- you didn't -- you told the officers
7 -- were you telling them to go look for a blood trail? Did
8 you tell them to go look for a shell casing?

9 A. They were already doing it on their own.

10 Q. Okay.

11 A. And I did some myself, I believe, just trying to figure
12 out where.

13 Q. All right. After you spoke with Lieutenant Dixon, ---

14 A. Yes, sir.

15 Q. --- he told you that they weren't going to send anybody
16 out there right then?

17 A. That's correct, sir.

18 Q. And so you ended up ordering that the crime scene tape
19 be taken down?

20 A. Yes, sir. We broke -- we broke it down after we
21 finished.

22 Q. When you watched the body-cam a couple of weeks ago you
23 -- the body-cam is located on your chest, right?

24 A. Yes, sir. Mine's here.

25 Q. And it comes on when you turn your blue lights on?

JASON BUDREAU - CROSS-EXAMINATION BY MR. GORANSON

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1 A. Correct, sir.

2 Q. And it records video and audio?

3 A. Correct, sir.

4 Q. Okay. So when you're watching it, the video lasts
5 approximately 22 minutes, ---

6 A. It's ---

7 Q. --- 23 minutes?

8 A. --- lengthy, yes, sir.

9 Q. Pardon?

10 A. It's lengthy.

11 Q. Okay. And that reflects the amount of time that you
12 were out on the scene?

13 A. Correct, sir.

14 Q. You turned it off when you left?

15 A. When I got back in my car to leave, I would have turned
16 it off.

17 Q. And that would have been -- so the call came out at
18 5:41 or 2?

19 A. Yes, sir.

20 Q. That was 23 minutes. That puts us at 6:05 or so.

21 A. Give or take. Yes, sir.

22 Q. And you went back to the office ---

23 A. I did, sir.

24 Q. --- to wrap up some paperwork?

25 A. Yes, sir.

JASON BUDREAU - CROSS-EXAMINATION BY MR. GORANSON

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1 Q. All right. When you were watching the body-cam do you
2 remember Officer Pope saying that he talked to somebody on
3 Gray Street and that person said it sounded like the gunshot
4 came from Tanyard?

5 A. He possibly could have told me that. Yes, sir. There
6 was a lot of information being given to me out there.

7 Q. And Solicitor Penney asked you about something on Mr.
8 Fuller's wrist. There was some talk of that on the body-
9 cam. Do you remember somebody saying South Main Bar and
10 Grill, the Getaway?

11 A. Somebody did say that. Yes, sir.

12 Q. How about when you were talking -- you also called your
13 captain that night after you talked to Lieutenant Dixon
14 before you left the scene.

15 A. I don't have a captain.

16 Q. Okay.

17 A. At that time I didn't have a captain. I worked for the
18 major of uniform patrol. I may have attempted to call
19 Captain McAllister, who at that ---

20 Q. Okay.

21 A. --- time was over investigations.

22 Q. Sorry. Not your captain, a captain?

23 A. Yes, sir.

24 Q. Okay. And informed him of what was going on?

25 A. Correct, sir.

JASON BUDREAU - CROSS-EXAMINATION BY MR. GORANSON

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1 Q. And you described Mr. Fuller not being able to really
2 communicate, he was sort of groaning and he -- your
3 characterization of that was maybe it was a mixture of
4 alcohol and pain?

5 A. Correct, sir.

6 Q. Okay. Now, we've heard the name Meatball a couple of
7 times. And I -- I don't know who -- I don't know him, but
8 I'm guessing Meatball maybe comes from Demetrius Fuller. Do
9 you ...

10 A. I've known Mr. Fuller as Meatball as long as I can
11 remember.

12 Q. Okay.

13 A. So I don't know where it came from, who started it or
14 anything like that. But anytime I had interaction with him,
15 I called him Meatball.

16 Q. Okay.

17 A. And he always answered me.

18 Q. All right. You didn't feel like Meatball was going to
19 cooperate with you?

20 A. No, sir, I didn't.

21 Q. One moment, please.

22 A. Yes, sir.

23 (Pause)

24 Q. You left the scene about 6:05-ish. And at that point
25 as far as you knew Mr. Fuller could have been shot right

JASON BUDREAU - CROSS-EXAMINATION BY MR. GORANSON

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1 there on -- at ■ Tanyard?

2 A. Could have.

3 Q. I mean, that was a possibility that ---

4 A. It's a possibility.

5 Q. Y'all didn't have any evidence ---

6 A. Right. Correct. I didn't have any evidence to lead me
7 anywhere else.

8 Q. Thank you, sir.

9 A. Yes, sir.

10 THE COURT: Any redirect?

11 MS. PENNEY: No redirect.

12 THE COURT: All right. Thank you very much. Be
13 careful ---

14 MS. PENNEY: Thank you, lieutenant.

15 THE COURT: Be careful stepping down there.

16 A. Yes, sir.

17 THE COURT: Ladies and gentlemen, we've been at it for
18 about an hour and ten minutes by my watch. We're going to
19 take a quick ten minute break. And if any of you need to
20 step outside to have a cigarette or anything like that, just
21 let the bailiff know, they'll take you downstairs, okay?

22 But, of course, don't discuss the case yet. I'll let
23 you know when you can. So adjourn to the jury room for just
24 a moment, and we'll be back on the record in about ten
25 minutes. Thanks.

DEREK OLIVER - DIRECT EXAMINATION BY MS. PENNEY

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1 (Whereupon the jury exited the courtroom at 10:52 am)

2 (Whereupon court was in recess at 10:53 am)

3 (Whereupon court reconvened at 11:08 am)

4 **THE COURT:** Of course, defendant is present with
5 counsel. You have your next witness in?

6 **MS. PENNEY:** We do, Your Honor.

7 **THE COURT:** All right. Let us go ahead and get the
8 jury then.

9 (Whereupon the jury entered the courtroom at 11:09 am)

10 **THE COURT:** All right. The record will reflect that
11 the jury is back and seated. At this point, solicitor, if
12 you'll call your next witness, please.

13 **MS. PENNEY:** State calls Derek Oliver.

14 **MADAM CLERK:** Place your left hand on the Bible and
15 raise your right hand, please.

16 **Derek Oliver**, being duly
17 sworn testified as follows;

18 **Direct Examination by Ms. Penney:**

19 Q. Good morning, Mr. Oliver.

20 A. Good morning.

21 Q. How you doing?

22 A. All right.

23 Q. If you would, please, state and spell your name for the
24 court reporter.

25 A. It's Derek Oliver, D-e-r-e-k. Last name is O-l-i-v-e-

DEREK OLIVER - DIRECT EXAMINATION BY MS. PENNEY

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1 r.

2 Q. And, Mr. Oliver, what do you do?

3 A. I'm an assistant shift supervisor for EMS.

4 Q. So are you a paramedic?

5 A. Paramedic.

6 Q. All right. How long have you been doing that?

7 A. Coming up on seven years now.

8 Q. Okay. Have you been with Greenwood the whole time?

9 A. Yes, ma'am.

10 Q. Were you working as a paramedic on the morning of
11 August 26th, 2017?

12 A. Yes, ma'am.

13 Q. Were you dispatched to a shooting that morning?

14 A. Yes, ma'am.

15 Q. Do you know where that shooting was that you were
16 dispatched to?

17 A. According to my report it was [REDACTED] Gage [sic] Street.

18 Q. Okay. Was the actual person that you -- person that
19 you took found maybe on Tanyard Avenue?

20 A. Yes, that's possible. I know when I arrived on the
21 scene it was in the middle of the road. So ...

22 Q. Okay. How did -- how did -- and this was Mr. Fuller?

23 A. Yes.

24 Q. Demetrius Fuller?

25 A. I'm sorry. The address I gave you was his address.

DEREK OLIVER - DIRECT EXAMINATION BY MS. PENNEY

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1 So, yes. That's possible, yes.

2 Q. Okay. So you were dispatched to the area of Tanyard
3 Avenue that morning?

4 A. Yes, ma'am. Greene Street and Tanyard.

5 Q. Okay. And the person that you transported was Mr.
6 Fuller?

7 A. Yes, ma'am.

8 Q. Okay. When you arrived, were there any other emergency
9 services there?

10 A. I believe Medic 20 was on-scene, fire department and
11 law enforcement.

12 Q. What was happening when you arrived?

13 A. Can I get a second to look at my report ---

14 Q. Sure.

15 A. --- so I can ---

16 Q. Sure.

17 (Pause)

18 A. Okay. It looks like from what I wrote here that the
19 unit -- the initial unit and the fire department may have
20 been packaging the patient. That's putting him on the spine
21 board and -- getting him in the stretcher and putting him in
22 the unit when I arrived.

23 Q. All right. Do you -- do you recall the condition of
24 Mr. Fuller when you arrived?

25 A. He was a little combative, but not responsive to verbal

DEREK OLIVER - DIRECT EXAMINATION BY MS. PENNEY

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1 communications.

2 Q. Medically what was going on with him?

3 A. Medically I observed the gunshot wound to the abdomen.

4 And he was pretty much kind of fighting with us, but beyond
5 that I really couldn't ...

6 Q. Okay. Was he -- did he appear to be doing well at the
7 moment?

8 A. No. Just by his behavior I could tell he wasn't doing
9 well, which is why I got in the unit with the crew.

10 Q. So when you said fighting with us, that's just --
11 that's not necessarily being, you know, physically fighting,
12 but just sort of a characterization of his medical state?

13 A. Yes. To give you a better understanding, when somebody
14 sustains any kind of trauma and they're bleeding a lot, they
15 become altered and they start fighting. They can't make
16 sense of what's right and what's wrong. They're just pretty
17 much fighting for their life.

18 Q. So what did you do to aid Mr. Fuller?

19 A. I think the most that I did was I attempted to start
20 two IVs on him, but was unsuccessful due to poor veins,
21 couldn't find a good vein to get an IV on.

22 Q. And then did you transport him anywhere?

23 A. Yes. I rode in with the original crew, Medic 20, to
24 the hospital and transported him in.

25 Q. What happened once y'all got to the hospital?

DEREK OLIVER - DIRECT EXAMINATION BY MS. PENNEY

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1 A. Once we pulled into the ambulance bay at the hospital,
2 he went into cardiac arrest. His heart stopped beating. I
3 think according to the unit's report, they had him on a
4 monitor and he was in what's called PEA, pulseless
5 electrical activity, which means that the heart is still
6 firing, but it's not beating. So he was pulseless, and we
7 started CPR.

8 Q. How long did you do CPR?

9 A. Probably -- the time it took us to unload him and get
10 him in the ER and then the ER staff took over.

11 Q. So once ER takes over ---

12 A. We stop unless they're short at the moment until they
13 can get more people in, but most of the time everybody's
14 waiting. And we'll just stop, and they'll take over.

15 Q. So was that the end of your interaction with Mr.
16 Fuller?

17 A. Yes.

18 Q. Thank you. Please answer any questions that Ms. Nelson
19 may have.

20 MS. NELSON: No questions. Thank you, sir.

21 THE COURT: Mr. Oliver, ---

22 MS. PENNEY: Thank you for your time, Mr. Oliver.

23 THE COURT: Thanks for coming. You're free to go.

24 Take care. Call your next witness.

25 MR. THOMAS: Your Honor, the State calls Raymond

RAYMOND KENNEDY - DIRECT EXAMINATION BY MR. THOMAS

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1 Kennedy.

2 MADAM CLERK: Raise your right hand, please.

3 Raymond Kennedy, being

4 duly sworn testified as follows;

5 Direct Examination by Mr. Thomas:

6 Q. Good morning, Mr. Kennedy. Could you spell your name
7 for the court reporter?

8 A. R-a-y-m-o-n-d K-e-n-n-e-d-y.

9 Q. And, Mr. Kennedy, where do you live?

10 A. [REDACTED] Siloam Church Road.

11 Q. Is that in Greenwood?

12 A. Greenwood, South Carolina.

13 Q. The decedent in this case, Mr. Fuller, did you know
14 him?

15 A. Yes, sir.

16 Q. What did you know him as? What nickname did he have?

17 A. Meatball.

18 Q. Do you know Mr. Gray?

19 A. Yes, sir.

20 Q. Okay. What names did you know -- what did you know him
21 as?

22 A. Zay.

23 Q. Okay. So when we talk about Meatball and Zay, those
24 are the two people that you saw the night of August 26th,
25 2017?

RAYMOND KENNEDY - DIRECT EXAMINATION BY MR. THOMAS

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1 A. Yes, sir.

2 Q. Okay. I'm going to ask you, what were you doing the
3 night of August the 26th or the early morning, I guess,
4 night of the 25th, early morning of the 26th?

5 A. We were sitting out in the yard.

6 Q. And where was that?

7 A. On Gray Street.

8 Q. And whose house was that?

9 A. Ricky.

10 Q. Is that Ricky Grant?

11 A. Yes, sir.

12 Q. Okay. And who all was over there?

13 A. It was me, Zay, Zay's brother, Meatball. We was all
14 sitting out, I mean, we was all sitting out in the yard
15 talking ---

16 Q. Okay.

17 A. --- before they -- before they left to go to the club.

18 Q. Okay. And when you say they left to go to the club,
19 who -- who are you talking about, they left?

20 A. It was Rick, Zay, and Meatball.

21 Q. And I'm going to show you State's exhibit number 1. Is
22 that the house we're talking about?

23 A. Yes, sir.

24 Q. And let's back this up. They went to the club. Who
25 left and went to the club?

RAYMOND KENNEDY - DIRECT EXAMINATION BY MR. THOMAS

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1 A. Rick, Zay, and Meatball.

2 Q. Okay. Did they go in the same car?

3 A. Yes, sir.

4 Q. Okay. Did they come back from the club later?

5 A. Well, Rick and Zay came back, but Meatball wasn't with
6 them when they came back.

7 Q. Okay.

8 A. He came back later on.

9 Q. Okay. You said he came back later on. How much later
10 on?

11 A. I'd say about 30 minutes to an hour after they got
12 back.

13 Q. Okay. And when he came back what was his demeanor?
14 What was his attitude?

15 A. He was walking up -- he was walking up Gray Street
16 towards -- towards Rick's house asking about his gun.

17 MS. NELSON: Object to hearsay.

18 A. Asking about -- asking ---

19 THE COURT: Hold on one second. You claim an exemption
20 or ...

21 MR. THOMAS: I guess the first would be the exemption
22 for it's not for the truth of the matter but for the effect
23 on the listener, response that comes in. And then I maybe
24 can lay a little bit more foundation. I would say it's more
25 for the current state of mind.

RAYMOND KENNEDY - DIRECT EXAMINATION BY MR. THOMAS

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1 **THE COURT:** All right. Well, he can obviously explain
2 what he observed -- anything that he observed about Mr.
3 Fuller when he came back, how he was behaving, that kind of
4 a thing. And if you need to lay a foundation for more in
5 the way of the statement that was given by Mr. Fuller, then
6 go ahead. But proceed.

7 **Direct Examination by Mr. Thomas Continued:**

8 Q. When Mr. Fuller came back was he upset?

9 A. About his gun.

10 Q. Okay. But was he angry, or yelling, or screaming? Or
11 was he calm? How was he -- what was he acting like?

12 A. He called Zay's name, but then he was like, give me my
13 gun. And Zay told him he didn't have his gun.

14 **MS. NELSON:** I would have to object to the hearsay,
15 Your Honor.

16 Q. Okay. How about this, don't tell me anything Meatball
17 said, tell me what Zay said.

18 A. During the time when ---

19 Q. That him and Meatball were conversing, what did Zay
20 say?

21 A. Meatball -- you talking about when he came back asking
22 about his gun?

23 **MS. NELSON:** Objection.

24 A. I mean, he didn't say ---

25 **THE COURT:** Just -- ask the question again.

RAYMOND KENNEDY - DIRECT EXAMINATION BY MR. THOMAS

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1 A. Oh, Zay didn't say anything.

2 Q. Okay. So Mr. Fuller, Meatball, comes back, he's
3 talking to Zay. What is Zay's response to all of Mr.
4 Fuller's questions?

5 A. He didn't have it.

6 Q. Okay. And when he said he didn't have it, did that
7 seem to satisfy Mr. Fuller or did he continue asking
8 questions? Don't tell me what he said, but just ---

9 A. He left.

10 Q. Okay. He left. Did he come back?

11 A. He came back.

12 Q. Okay. When he came back had his mood changed any or
13 was he still upset?

14 A. He was still upset about the gun. He was still asking
15 for -- he was still asking for the gun. He was still upset
16 about the gun.

17 Q. Okay. He was upset about something?

18 A. (Affirmative nod).

19 Q. He was asking Mr. Gray questions? He was asking Zay
20 questions?

21 A. Yes, sir.

22 Q. Okay. What did Zay say in response to those questions?

23 A. I don't have it.

24 Q. And did that conversation they have escalate in any
25 way?

RAYMOND KENNEDY - DIRECT EXAMINATION BY MR. THOMAS

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1 A. They got into a argument.

2 Q. Okay. They got into an argument. Where did that
3 happen at? Where did the argument happen at?

4 A. The argument happened -- well, Zay was in the house.
5 Meatball knocked on the door, went in and asked him the same
6 question. And that's when the argument started.

7 Q. Okay. And at that point did they leave the house?

8 A. Ricky told them to go out -- to go outside, you know,
9 with all that because he didn't want that in his house.

10 Q. Okay. So where were you at when all this happened?

11 A. I was standing outside.

12 Q. Let me show you -- what are we looking at here in
13 State's exhibit 1?

14 A. That's at the house.

15 Q. Okay. That's Ricky's house?

16 A. Yes, sir.

17 Q. Okay. And they were inside that house having an
18 argument? Is that what you just testified to?

19 A. Yes, sir.

20 Q. Okay. And where did they -- where were you at when all
21 this happened?

22 A. We was at the picnic -- well, right there where the
23 picnic table at, on over, it's another tree ---

24 Q. So right here?

25 A. So we was on the other -- on the other side.

RAYMOND KENNEDY - DIRECT EXAMINATION BY MR. THOMAS

224

1 Q. That way?

2 A. Yes, sir.

3 Q. Okay.

4 THE COURT: To the right of the picnic table.

5 A. Yes, sir.

6 Q. To the right of where that picture sort of cuts off?

7 A. (Affirmative nod).

8 Q. Okay. Who all was out there with you at that time?

9 A. It was me -- it was me, Edie, this guy named Denny
10 (ph.), he was out there, and then this dude BJ, he drove up
11 in the car -- in a truck.

12 Q. Okay. BJ, is that what you said?

13 A. (Affirmative nod).

14 Q. And you testified earlier that Mr. Gray's brother was
15 there. Was he there?

16 A. He was standing out there.

17 Q. Okay.

18 A. When the argument started, he was out there.

19 Q. Where did he go when the argument started? Where did
20 Mr. Gray's brother go when the argument started?

21 A. He was still -- he was outside.

22 Q. Okay. So everybody's outside ---

23 A. (Affirmative nod).

24 Q. --- in this area to the -- to the right ---

25 A. He was mostly trying to calm him down, you know, while

RAYMOND KENNEDY - DIRECT EXAMINATION BY MR. THOMAS

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1 they was arguing.

2 Q. Okay. When you say he was trying to calm him down, be
3 more descriptive for us.

4 A. His brother.

5 Q. Okay. When you say his brother, you mean ---

6 A. Zay's ---

7 Q. --- Zay's brother?

8 A. --- brother.

9 Q. Okay.

10 A. Yes, sir.

11 Q. And who was he trying to calm down?

12 A. Really both of them. He was trying to calm, you know,
13 telling them, you know, to chill out or whatever.

14 Q. Okay. And when they are outside arguing, where does
15 that start at?

16 A. (No response).

17 Q. When Zay and Meatball are arguing outside, where are
18 they arguing at?

19 A. In the yard.

20 Q. In the yard?

21 A. Yes, sir.

22 Q. Do they argue anywhere else?

23 A. They was on the porch.

24 Q. Okay.

25 A. I mean, they was on, I mean, they was up on each other

RAYMOND KENNEDY - DIRECT EXAMINATION BY MR. THOMAS

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1 and Zay pushed him off, told him, you know, I don't have,
2 you know, Zay told him, I don't have your gun. I ain't got
3 your gun.

4 Q. Okay. So let me make sure I'm hearing you right. Zay
5 pushed him off the porch and said, I don't have your gun?

6 A. Yeah.

7 Q. Okay.

8 A. Because they was up, you know, they was up on each
9 other.

10 Q. Okay. And then they get down into this area in front
11 of the house here?

12 A. Yes, sir.

13 Q. Okay. And then what happened?

14 A. The argument started again. He still asking about the
15 gun again. Zay kept telling him he don't have the gun.
16 That's when -- then the scuffling started.

17 Q. Okay. When you say scuffling, what do you mean
18 scuffling?

19 A. Tussling with each other. He kept asking about the
20 gun, where the gun, they got to tussling.

21 Q. Okay. They were -- when you say tussling, were they
22 locked up? Were they swinging at each other? Were they on
23 the ground?

24 A. A lock situation.

25 Q. What's that?

RAYMOND KENNEDY - DIRECT EXAMINATION BY MR. THOMAS

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1 A. They was in a locked situation.

2 Q. Okay. How long did that go on for?

3 A. It wasn't that long.

4 Q. Okay. Did they separate from that locked position?

5 A. I mean -- well, when Meatball hit the ground, that's

6 when the shot went off. You know, that's when -- that's

7 when the gunshot -- when he got up, that's when he said the

8 MF shot me for real.

9 Q. Okay. Well, let me -- let me -- let's back up. Let's

10 slow down. They're fighting in front of the house. They're

11 tussling, as you described it. And then they -- somehow

12 Meatball ends up on the ground?

13 A. (Affirmative nod).

14 Q. Okay.

15 **THE COURT:** He nods yes.

16 A. Yes, sir.

17 Q. Okay. And then did you hear a gunshot after that?

18 A. Yes, sir.

19 Q. Okay. Where did that gunshot come from?

20 A. Well, when he -- when he hit the ground, the gunshot

21 went off, everybody mostly was in shock.

22 Q. Okay. But what I'm asking you is who fired the gun?

23 A. I mean, you trying to say who -- I mean, when it was

24 over with the gun was in his hand. But you saying, I mean,

25 ---

RAYMOND KENNEDY - DIRECT EXAMINATION BY MR. THOMAS

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1 Q. Okay.

2 A. --- how he got the gun ---

3 Q. Well, let me ask it to you that way. Did you see Zay
4 with a gun?

5 A. After the incident was over with.

6 Q. Okay. Where did he go after the incident happened?

7 A. He went behind the house.

8 Q. He went behind the house?

9 A. (Affirmative nod).

10 Q. Okay.

11 A. Meatball went down the street and said that Zay had
12 shot him for real. Well, he said MF.

13 Q. Okay. So, I guess, you're saying Meatball got --
14 Meatball got shot and then ran away? Is that what you're
15 saying?

16 A. Yeah, ran down the street.

17 Q. Okay. And then ---

18 A. Ran down to Tanyard. That's where he collapsed at.

19 Q. Okay. How far apart would you say Meatball and Zay
20 were when the shot went off?

21 A. I really can't ---

22 Q. Let me -- let me ask you this. Let me hand you this
23 picture. I'm going to take -- let you take a look at it.

24 And then I'm going to put it back up and let you try to tell
25 me -- does this picture show where they would have been

RAYMOND KENNEDY - DIRECT EXAMINATION BY MR. THOMAS

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1 standing? Like, would they have been standing somewhere in
2 this picture?

3 A. Yeah. There's a tree there. They was on this side.
4 We was on the other side.

5 Q. Okay. So ---

6 A. We was on the right side of the picnic table.

7 Q. They were on this side. Is that what you're saying?
8 Yes or no?

9 A. They was on this side, and we was on the other side.

10 Q. You were on this side?

11 A. (Affirmative nod).

12 Q. Okay. When the shot went off were Meatball and Zay
13 locked up together or were they separated?

14 A. The shot went off when he was on the ground.

15 Q. Okay. So Zay was -- where was Zay when the shot went
16 off? If Meatball was on the ground, where was Zay?

17 A. He was standing up.

18 Q. Okay. And what did Meatball do after he was shot?

19 A. He got up.

20 Q. And where did he go?

21 A. Ran down the street.

22 Q. Okay. And what did Zay do after the shot went off?

23 A. He went behind the house.

24 Q. Okay. Did you see him anymore that night?

25 A. No, sir.

RAYMOND KENNEDY - DIRECT EXAMINATION BY MR. THOMAS

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1 Q. Okay. What did you do after Meatball ran off?

2 A. I mean, we went -- I went to his sister's house.

3 Q. Okay. Did y'all ---

4 A. To Meatball's sister's house.

5 Q. Okay. Did y'all hang around in front of the house for

6 a little while at first or did you go and meet ---

7 A. Yeah, we hung around for a little while. The police
8 rode through.

9 Q. Okay. So do you remember the police riding through?

10 A. (Affirmative nod).

11 Q. Okay. And did you leave before or after the police
12 rode through?

13 A. I left after the police rode through.

14 Q. Okay. And why did you leave?

15 A. I went to -- to Meatball's sister's house.

16 Q. And why, I guess, why did you -- what made you go to
17 her house?

18 A. To let her know her -- that her brother had got shot.

19 Q. Okay. Did you tell the police that when they rode
20 through?

21 A. They didn't -- they never -- they didn't stop.

22 Q. Okay. Why didn't you -- why didn't you tell them
23 anything about what happened when they rode through?

24 A. They just rode through -- they rode through and just
25 asked did y'all hear any gunshot? And they kept going.

RAYMOND KENNEDY - DIRECT EXAMINATION BY MR. THOMAS

231

1 Q. Okay. But you didn't tell them you heard anything?

2 A. I was walking -- I was walking towards her house then.

3 Q. Okay. Why didn't you, I mean, why didn't you tell the
4 police about what you saw right then?

5 A. Because they kept -- they didn't stop. It ain't like
6 they made -- hey, did y'all see -- did y'all hear a gunshot?
7 They just kept going.

8 Q. Okay. But then you said you went to his sister's house
9 after that?

10 A. (Affirmative nod) .

11 Q. Why did you do that? What made you want to go over to
12 her house? Did you see anything that made you want to go
13 over there?

14 A. To let her know that her brother had ...

15 Q. Okay. Fair enough. And I think you've said that you
16 -- where did you end up going with his sister? Did you end
17 up going somewhere with his sister?

18 A. With whose sister?

19 Q. With Meatball's sister?

20 A. No. His sister wasn't at home.

21 Q. Okay. Well, how did you -- how did you end up at the
22 hospital?

23 A. How did I end up at the hospital?

24 Q. Um-hum (affirmative).

25 A. I went with -- with one of the Smith's sons. '

RAYMOND KENNEDY - CROSS-EXAMINATION BY MS. NELSON

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1 Q. Okay. So you rode with somebody to the hospital. Was
2 that to check on Meatball?

3 A. No. He wanted me to ride with him. He didn't, I
4 mean, he heard the gunshot, but he didn't know what was
5 going on. He saw the ambulance on Tanyard. That was his
6 aunt's house where he left at.

7 Q. Okay. So did you end up talking to law enforcement at
8 the hospital?

9 A. Yes, sir.

10 Q. Okay. And you told them the same thing you've told us
11 here today?

12 A. Yes, sir.

13 Q. Was anybody standing next to Zay when the shot went
14 off?

15 A. His brother was standing -- his brother was standing
16 there.

17 Q. Thank you, Mr. Kennedy. That's all the questions I
18 have.

19 **THE COURT:** Ms. Nelson.

20 **MS. NELSON:** Thank you, Your Honor.

21 **Cross-examination by Ms. Nelson:**

22 Q. Hi, Mr. Kennedy.

23 A. How you doing?

24 Q. I'm good. You've said that when Meatball got there he
25 was upset with Zay?

RAYMOND KENNEDY - CROSS-EXAMINATION BY MS. NELSON

233

- 1 A. He was upset with his gun -- about his gun.
- 2 Q. He was calling Zay names. Is that right?
- 3 A. He was -- was he -- did he call him -- was he calling
- 4 him names or did he call Zay names?
- 5 Q. Did Mr. Fuller call Zay names?
- 6 A. He called his name, but he didn't call him, I mean, he
- 7 just -- he just said -- asked him did he have his gun. Zay
- 8 told him no. He kept telling him, no, he didn't have it.
- 9 Q. And you said that Mr. Fuller came and then left and
- 10 then came back, ---
- 11 A. Yes, ma'am.
- 12 Q. --- is that right? You remember -- you remember being
- 13 here in court yesterday?
- 14 A. Yes, ma'am.
- 15 Q. And you were -- you were testifying right here ---
- 16 A. Yes, ma'am.
- 17 Q. --- in that seat?
- 18 A. Yes, ma'am.
- 19 Q. The jury wasn't here, ---
- 20 A. Yes, ma'am.
- 21 Q. --- right?
- 22 A. Right.
- 23 Q. That was a hearing we had before the trial started?
- 24 A. Yes, ma'am.
- 25 Q. And you talked about the incident during that hearing,

RAYMOND KENNEDY - CROSS-EXAMINATION BY MS. NELSON

234

1 right? You talked about what happened?

2 A. Yes, ma'am.

3 Q. During that hearing didn't you testify that you never
4 saw a gun that night?

5 A. Yeah, I never saw -- I never saw the gun.

6 Q. You never saw a gun?

7 A. Asked me did I see him with a gun that night. I said,
8 no, I didn't see neither one of them with a gun, I mean,
9 before the incident happened.

10 Q. Well, what you said yesterday was that you never saw a
11 gun.

12 A. No, ma'am.

13 Q. Right? And what you just testified to a few minutes
14 ago was that you can't say who shot the gun.

15 A. (No response).

16 Q. Mr. Thomas specifically asked you who shot it. And you
17 said, can't say who shot the gun.

18 A. (No response).

19 Q. Is that right?

20 A. They was scuffling. I just heard the gunshot went off.

21 Q. You just heard the gun.

22 A. (Affirmative nod).

23 Q. And what you're saying is that -- is that Mr. Fuller
24 had fallen down when he got shot?

25 A. Yes, ma'am.

RAYMOND KENNEDY - CROSS-EXAMINATION BY MS. NELSON

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1 Q. He was on the ground is what you're saying?

2 A. Yes, ma'am.

3 Q. So he's like -- he's on the ground here and Zay's
4 somewhere over here shooting at him, is that right?

5 A. When the gunshot went off, I just seen Zay standing up.
6 And, I mean, everybody was upset when the situation
7 happened.

8 Q. Okay. But you believed he was on the ground?

9 A. Yes, he was. Yes, ma'am.

10 Q. He was on the ground? And you said today -- you
11 mentioned Edie being there?

12 A. Yes, ma'am.

13 Q. Right? And you're talking about Edie Walker?

14 A. Yes, ma'am.

15 Q. Edie's a kind of young, thin, white lady?

16 A. Yes, ma'am. Wear glasses.

17 Q. Sorry?

18 A. She wear glasses.

19 Q. Wears glasses? And she was there at Rick Grant's house
20 at [REDACTED] Gray Street when Mr. Fuller got shot?

21 A. Yes, ma'am.

22 Q. And you said Aaron was there?

23 A. Yes, ma'am.

24 Q. And that's -- you're saying that's Zay's brother?

25 A. Yes, ma'am.

RAYMOND KENNEDY - CROSS-EXAMINATION BY MS. NELSON

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1 Q. And then you mentioned somebody else whose name I
2 didn't get. Who else did you say?

3 A. BJ.

4 Q. You said BJ drove up in a truck?

5 A. (Affirmative nod).

6 Q. Is that what you're saying today?

7 A. Yes, ma'am.

8 Q. You remember when we talked about this yesterday?

9 A. Yes, ma'am.

10 Q. Who was there? The only people you mentioned yesterday
11 were Edie and Aaron, is that right?

12 A. Yes, ma'am.

13 Q. You never mentioned anybody named BJ yesterday, did
14 you?

15 A. No, ma'am.

16 Q. No? Somebody talk to you about that between now and
17 then?

18 A. No, ma'am.

19 Q. You just didn't remember it yesterday ---

20 A. I didn't know because -- plus I just had had a
21 emergency. So I really, you know ...

22 Q. And I asked you -- you remember yesterday I asked you
23 several times to make sure we knew exactly who was there.
24 And you said it was Edie and Aaron.

25 A. Yeah, but ---

RAYMOND KENNEDY - CROSS-EXAMINATION BY MS. NELSON

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1 Q. Is that right?

2 A. --- BJ came after. It was after when BJ came. I'm
3 talking about ---

4 Q. Oh, so ---

5 A. BJ came after everything had happened.

6 Q. BJ drove up in the truck after everything was ---

7 A. After everything was over, yes, ma'am.

8 Q. So he wasn't there to see anything?

9 A. No, ma'am.

10 Q. Okay. So that's why you didn't mention him yesterday
11 'cause he didn't actually see what happened?

12 A. Yes, ma'am.

13 Q. So you think Edie saw what happened?

14 A. Yes, ma'am.

15 Q. You think Aaron saw what happened?

16 A. Yes, ma'am.

17 Q. And BJ drove up after and didn't see what happened?

18 A. Yes, ma'am.

19 Q. We got it -- I got it right?

20 A. Yes, ma'am.

21 Q. Anybody else?

22 A. No, ma'am.

23 Q. Is BJ's real name Antonio Nicholson?

24 A. Yes, ma'am. I just know him by BJ. Everybody know him
25 by BJ. BJ, ---

RAYMOND KENNEDY - CROSS-EXAMINATION BY MS. NELSON

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1 Q. Do you think ---

2 A. --- White Boy. Some people call him White Boy, some
3 people call him BJ.

4 Q. So you're not sure if we're talking about Antonio
5 Nicholson or ---

6 A. Yes, ma'am.

7 Q. --- not? That is his real name?

8 A. That's his real name.

9 Q. So Antonio Nicholson's the same as BJ, ---

10 A. BJ.

11 Q. --- or White Boy?

12 A. Yes, ma'am.

13 Q. Okay. Is he a white boy?

14 (Laughter)

15 Q. He's not, is he?

16 A. No, ma'am.

17 Q. Okay. All right. The police rode through, you said,
18 while you were still there, right?

19 A. Yes, ma'am.

20 Q. It was -- it was more than one police car ---

21 A. Yes, ma'am.

22 Q. --- that rode through?

23 A. Yes, ma'am.

24 Q. And was Mr. Fuller a friend of yours?

25 A. Both of them friends of mine. I was friends with both

RAYMOND KENNEDY - CROSS-EXAMINATION BY MS. NELSON

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1 of them.

2 Q. So you -- you knew your friend had just gotten shot.

3 A. (Affirmative nod).

4 Q. Mr. Fuller?

5 A. Yes, ma'am.

6 Q. Right?

7 A. (Affirmative nod).

8 Q. And a police car drives right past you, right?

9 A. (Affirmative nod).

10 Q. And you don't tell them anything about it, is that
11 correct?

12 A. Yeah, they just rode past. They didn't ask about the
13 shooting until they got -- I was -- they was going past.
14 That's when I went to Meatball's sister's house.

15 Q. You -- but the police car rode right past you?

16 A. They rode -- yeah.

17 Q. And you were still at [REDACTED] Gray Street when the police
18 car went past?

19 A. That's when I was leaving.

20 Q. And you didn't tell them what you had just seen?

21 A. No, ma'am.

22 Q. And then a second police car was right behind that one.

23 A. Yeah, they was right behind each other.

24 Q. You didn't tell that Officer Claphan in that car what
25 you'd seen either? Right?

RAYMOND KENNEDY - CROSS-EXAMINATION BY MS. NELSON

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1 A. No, ma'am.

2 Q. There were some other people standing there in the yard
3 with you when those officers ---

4 A. Yes, ma'am.

5 Q. --- rode through? There were at least four of y'all?

6 A. Three or four.

7 Q. Did anybody -- any of the three or four of you tell
8 those officers anything when they drove through?

9 A. I don't know what -- I didn't -- I didn't -- I just
10 went to his sister's house, to Meatball's sister's house to
11 let her know what had happened.

12 Q. Nobody told them anything that happened? Nobody said,
13 hey, you better be -- you'd better be looking for Zay Gray,
14 ---

15 A. No.

16 Q. --- and he just ran right behind the ---

17 A. No, ma'am.

18 Q. --- house right there?

19 A. Nobody didn't say that.

20 Q. When Mr. Fuller -- you said he was on the ground, he
21 got shot, he got up and he ran off?

22 A. Yes, ma'am.

23 Q. And he -- like if you're -- if you're standing in front
24 of the house on Gray Street, if the house is behind me, he
25 ran off down Gray Street this direction, right?

RAYMOND KENNEDY - CROSS-EXAMINATION BY MS. NELSON

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1 A. It's towards -- down the hill towards Greene and
2 Tanyard.

3 Q. And y'all knew he'd been shot? Because he got up and
4 said ---

5 A. He got up ---

6 Q. --- so?

7 A. --- and said so. Yes, ma'am.

8 Q. And who followed him to help him?

9 A. Nobody.

10 Q. Nobody ran after him?

11 A. (Negative nod).

12 Q. Out of all four of y'all, nobody went after him?

13 A. (Negative nod).

14 Q. So nobody told the police anything when they rode by?

15 A. No, ma'am.

16 Q. And nobody ran to see if Meatball was okay?

17 A. No, ma'am.

18 Q. Who called 911?

19 A. I don't know who called 911.

20 Q. Any of y'all call 911?

21 A. No, ma'am.

22 Q. Did you call?

23 A. No, ma'am.

24 Q. Did you hear anybody call?

25 A. No, ma'am.

RAYMOND KENNEDY - CROSS-EXAMINATION BY MS. NELSON

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1 Q. But you were there and you saw all of it?

2 A. Yes, ma'am.

3 Q. The first time you talked to anybody about it was --
4 well, let me go back. You said you rode to the hospital
5 with a -- was it a Mr. Smith ---

6 A. Yes, ma'am.

7 Q. --- that you rode to the hospital with?

8 A. Yes, ma'am.

9 Q. Did you get to see Mr. Fuller?

10 A. No, ma'am, I didn't.

11 Q. By the time you got to the hospital did you found out
12 -- did you find out that he had -- that he had died?

13 A. It was like 30 minutes to an hour later.

14 Q. That's when you went to the hospital?

15 A. No, that's when we found out. That's when I found out.

16 Q. Okay. So did you go to the hospital and you weren't
17 able to see him or anything, ---

18 A. No, ma'am.

19 Q. --- so you left?

20 A. I wasn't able to see him.

21 Q. Did you leave with Mr. Smith?

22 A. We stood -- we went and stood outside because they --
23 because the family, they was -- after the family was coming
24 in, couldn't nobody be in there but family members.

25 Q. Okay. And then you -- who were you leaving the

RAYMOND KENNEDY - CROSS-EXAMINATION BY MS. NELSON

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1 hospital with when you left? Did you ---

2 A. I didn't -- I didn't leave the hospital. I stayed on
3 the outside.

4 Q. You never left the hospital?

5 A. No, ma'am. I didn't leave the hospital until the day
6 -- the day -- after they came out and announced that he --
7 that they said he had done died, that's when he -- the
8 detective came -- came and talked to me.

9 Q. Okay. So you're standing outside the hospital with
10 some folks?

11 A. Yes, ma'am.

12 Q. And some of them were Mr. Fuller's family members?

13 A. Yes, ma'am.

14 Q. Was Tobias Brooks there, his brother?

15 A. Yes, ma'am.

16 Q. Mr. Brooks wouldn't -- wouldn't talk to Detective Kay,
17 would he?

18 A. No, ma'am.

19 Q. He just walked off from him?

20 A. (Affirmative nod).

21 Q. And then you didn't approach Detective Kay, he
22 approached you?

23 A. Yes, ma'am.

24 Q. Is that right?

25 A. Yes, ma'am.

RAYMOND KENNEDY - CROSS-EXAMINATION BY MS. NELSON

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1 Q. And that was because somebody else told him to go talk
2 to you?

3 A. Yes, ma'am.

4 Q. And then you told him you'd go ahead and talk because
5 they had already -- they already had a suspect in custody?

6 A. Who? They didn't have no suspect in custody.

7 Q. So you didn't say that?

8 A. (Negative nod).

9 Q. When you talked to Detective Kay did he take you down
10 to the city detective's office to talk to you or did he just
11 talk to you right there at the hospital?

12 A. At the city office, detective's office.

13 Q. Okay. He talked to you for maybe like three -- three
14 or four minutes?

15 A. About -- about five or ten minutes. He was asking me
16 some questions.

17 Q. Did you know he was recording you with a tape recorder,
18 or a phone, or some kind of recording device?

19 A. Yes, ma'am.

20 Q. And that recording is about three and a half minutes
21 long?

22 A. Yes, ma'am.

23 Q. So he talked to you for about three and a half minutes?

24 A. (Affirmative nod).

25 Q. And when you talked to Detective Kay you didn't tell

RAYMOND KENNEDY - CROSS-EXAMINATION BY MS. NELSON

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1 him about anybody else who was there, did you?

2 A. No, ma'am.

3 Q. You didn't mention Edie, right?

4 A. No, ma'am. They saw Edie on the recording.

5 Q. So you ---

6 A. They didn't ask me no questions about who all was
7 there. They was asking me questions about the incident.

8 That's all we ---

9 Q. Well, when you -- when you talked to Detective Kay you
10 didn't know anything about them seeing Edie on a recording,
11 did you?

12 A. This was after.

13 Q. The recording was after?

14 A. Yeah, the recording of the house and all that and who
15 all ---

16 Q. You didn't know anything about that until getting ready
17 for this trial?

18 A. It was before, yeah. Yes, ma'am.

19 Q. So when you talked to Detective Kay you didn't know
20 anything about Edie being on a recording?

21 A. They didn't ask me, no, ma'am -- about Edie being on a
22 recording?

23 Q. Right.

24 A. They didn't ask me about -- they didn't ask me about
25 who all was out there or anything like that.

RAYMOND KENNEDY - CROSS-EXAMINATION BY MS. NELSON

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1 Q. So if they didn't ask you about it ---

2 A. The only questions I was asked was what happened that
3 night. That's all was asked.

4 Q. So since they didn't ask you, you didn't tell them
5 anybody else they could talk to?

6 A. I guess they saw who was on the recording after they
7 got the recording or whatever and they saw Edie. That's --
8 I think that's when they talked to her.

9 Q. So they didn't know about Edie from you, I guess, is
10 what I'm saying?

11 A. No, ma'am.

12 Q. And you didn't tell them about Zay's brother supposedly
13 being there?

14 A. Yes, I told them ---

15 Q. You believe you said that in that report?

16 A. They asked me that.

17 Q. You believe you said that in that ---

18 A. They asked me was -- and I said, yeah. But they didn't
19 say nothing about Edie.

20 Q. You didn't tell them about BJ supposed to have been
21 pulling up in the truck, either, right?

22 A. No, ma'am.

23 Q. You didn't tell them it was Rick Grant's house?

24 A. Yes, ma'am.

25 Q. Okay. But that's the one person you told them about?

RAYMOND KENNEDY - CROSS-EXAMINATION BY MS. NELSON

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1 A. (No response).

2 Q. How long had you known Mr. Fuller?

3 A. I've known him basically all my life. We really -- we
4 grew up together.

5 Q. Did you live around the same ---

6 A. I knowed -- ma'am?

7 Q. Did you live around the same area?

8 A. Yes, ma'am.

9 Q. Had you ever seen Mr. Fuller with a gun before?

10 MR. THOMAS: Objection, Your Honor.

11 THE COURT: Don't answer that.

12 MR. THOMAS: 404.

13 THE COURT: Let's talk over here for a second.

14 (Whereupon a bench conference was held off the record
15 in the presence of the jury, but out of their hearing)

16 (Whereupon the bench conference was ended)

17 THE COURT: Ladies and gentlemen, I need to take up an
18 issue of law with the attorneys briefly on the record. So
19 if you would adjourn to the back for just a few moments,
20 okay? Thank you.

21 (Whereupon the jury exited the courtroom at 11:48 am)

22 THE COURT: The jury's out. I'm looking at Rule 404,
23 evidence of a person's character or trait not admissible for
24 the purposes of proving action in conformity therewith on a
25 particular occasion, subsection 2, except evidence of a

RAYMOND KENNEDY - CROSS-EXAMINATION BY MS. NELSON

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1 pertinent trait of character of the victim of the crime
2 offered by an accused, or by the prosecution to rebut the
3 same, evidence of peacefulness of the victim offered by
4 prosecution in a homicide case to rebut evidence that the
5 victim was the first aggressor.

6 The question on the floor is has this witness ever seen
7 Mr. Fuller with a gun before? Solicitor, you want to speak
8 to your objection a little bit more ---

9 **MR. THOMAS:** Your Honor, obviously, the State's
10 position is that is the character evidence of the victim
11 that's shown, I guess, to prove action to show he was
12 someone who carried a gun. And I'm assuming they're going
13 down the road of he'd used it before, fired at people,
14 threatened them with it, something of that nature. Those
15 would be specific instances of actions of the victim in a --
16 or the decedent in a homicide prosecution.

17 Under State versus Day, 341 S.C. 410, in a murder
18 prosecution with one pleading self-defense against an attack
19 by the decedent, evidence of other specific instances of
20 violence on the part of the decedent are not admissible
21 unless they were directed against the defendant or, if
22 directed against others, were so closely connected at the
23 point of time or occasion with the homicide as to reasonably
24 indicate the state of mind of the decedent at the time of
25 the homicide or to produce reasonable apprehension of great

RAYMOND KENNEDY - CROSS-EXAMINATION BY MS. NELSON

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1 bodily harm.

2 Basically the fact that Mr. Fuller had a gun at some
3 point prior in time has nothing to do with whether he had a
4 gun on him tonight or whether he had some violence in mind.
5 There's got to be some specific showing that the bad act of
6 Mr. Fuller possessing the gun is somehow related to this
7 case, not just he had a gun before.

8 **THE COURT:** Ms. Nelson.

9 **MS. NELSON:** I don't -- I was not intending to ask --
10 to ask Mr. Kennedy if he had ever seen Mr. Fuller commit any
11 acts of violence with a gun. I was just -- he's -- the
12 State's case is that he shows up asking for this gun that, I
13 guess, another witness is going to say put in the bushes or
14 something. And I just wanted to know if he's known him his
15 whole life whether he had ever seen him with a gun before,
16 if he -- I don't know whether him possessing a gun is a bad
17 act or not.

18 **THE COURT:** All right. Your question is only has he
19 seen him -- has he seen Mr. Fuller previously in possession
20 of a firearm? Yes or no? Not -- you're not going to ask
21 how many times or anything like that, just has he previously
22 seen Mr. Fuller in possession of a firearm?

23 **MS. NELSON:** (Affirmative nod).

24 **THE COURT:** Okay.

25 **MS. NELSON:** I might have been inclined to say how many

RAYMOND KENNEDY - CROSS-EXAMINATION BY MS. NELSON

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1 times, but if you're telling me that that's outside, ---

2 THE COURT: Well, ---

3 MS. NELSON: --- I won't. But I don't know what he's
4 going to say.

5 THE COURT: Right.

6 MR. THOMAS: And I think -- I think it's got to be
7 limited to did you see him with a firearm that night?

8 THE COURT: Well, the State's theory is that Mr. Fuller
9 came to this location to retrieve a firearm that he thought
10 Mr. Gray had. So clearly Mr. Fuller's not showing up there
11 armed because ---

12 MR. THOMAS: That's the State's position, obviously. I
13 think that's ---

14 THE COURT: Right.

15 MR. THOMAS: --- what, at least, this witness'
16 testimony has borne out.

17 THE COURT: Mr. Kennedy, have you, in fact, seen
18 Meatball previously with a firearm?

19 A. Yes, sir, I have.

20 THE COURT: How many times?

21 A. Several -- several times. Yes, sir.

22 THE COURT: All right. More than three, less than six?

23 A. More than three.

24 THE COURT: More than three?

25 A. (Affirmative nod).

RAYMOND KENNEDY - CROSS-EXAMINATION BY MS. NELSON

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1 **THE COURT:** Okay. Less than ten?

2 A. (Laughter).

3 **THE COURT:** You have seen him on occasion, then, with a
4 firearm more than three times?

5 A. Yeah.

6 **THE COURT:** Okay. And you're wanting to ask this
7 again, why, Ms. Nelson?

8 **MS. NELSON:** It seems like it's been made an issue in
9 the case by the State, that he's showing up there looking
10 for his gun and is mad because he thinks that Zay has it.
11 And, I don't know, it just seems logically to me that it's
12 -- that it's fair game to ask about this weapon that he's
13 supposedly coming there trying to retrieve.

14 **THE COURT:** I tend to agree. I mean, if it's the
15 State's case that he's walking around with a gun and he
16 stuck it in some bushes in order to get in the club, I
17 assume they had bouncers there with metal detectors or
18 something, the little hand-held ones. I'm assuming we're
19 going to hear from somebody at the club later, maybe, maybe
20 not.

21 **MR. THOMAS:** No.

22 **THE COURT:** No? No such luck. I'll allow her to ask
23 if he had previously seen Mr. Fuller with a gun. I don't
24 think that really implicates 404.

25 Plus, it's kind of the State's theory that Mr. Fuller

RAYMOND KENNEDY - CROSS-EXAMINATION BY MS. NELSON

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1 did, in fact, have a firearm, did walk around with it,
2 clearly he was walking around this evening with it. I don't
3 think that it's necessarily falling under the rubric of
4 character evidence so long as it's limited to have you seen
5 him previously with a gun?

6 And I agree with Ms. Nelson that it's probably
7 consistent with the State's theory of the case anyway.

8 Let's have the jury back, please. But not how many times.

9 (Whereupon the jury entered the courtroom at 11:55 am)

10 **THE COURT:** All right. Ms. Nelson, if you'll repeat
11 your last question, please, for the witness.

12 **Cross-examination by Ms. Nelson Continued:**

13 Q. You've known Meatball for a long time, you grew up with
14 him. Had you ever seen him with a gun?

15 A. Yes, ma'am.

16 Q. It wasn't any surprise to you that he was talking about
17 a gun?

18 A. No, ma'am.

19 Q. And, again, when this -- when this all happened in
20 front of you, you didn't talk to the police when they rode
21 by?

22 A. No, ma'am.

23 Q. And you didn't run after your friend to see if he was
24 okay?

25 A. (Negative nod).

RAYMOND KENNEDY - REDIRECT EXAMINATION BY MR. THOMAS

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1 Q. Is that right?

2 A. Yes, ma'am.

3 MS. NELSON: Just one moment.

4 (Pause)

5 Q. That's all I have. Thank you, Mr. Kennedy.

6 Redirect Examination by Mr. Thomas:

7 Q. Mr. Kennedy, you didn't talk to the police when they
8 rode by?

9 A. (No response).

10 Q. Have you been in trouble before with the police?

11 A. Yes, sir.

12 Q. Is there any particular reason why you wouldn't just
13 tell the police what was going on?

14 A. At the time my main focus was trying to get to his
15 sister's house to let her know what had happened.

16 Q. Okay. And when you were letting her know what happened
17 you -- you said, I think, all this happened kind of quickly,
18 is that right?

19 A. Yes, sir.

20 Q. And this was -- about what time was this happening,
21 again, at?

22 A. It was late in the morning.

23 Q. So it had been sort of a long night at that point?

24 A. (Affirmative nod).

25 Q. And it was getting towards the morning hours?

RAYMOND KENNEDY - REDIRECT EXAMINATION BY MR. THOMAS

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1 A. Yes, sir.

2 Q. Okay. And everything you've told us today is to the
3 best of your recollection from that?

4 A. Yes, sir.

5 Q. And you said you didn't tell Detective Kay who all was
6 there at first? Is that what you said?

7 A. Yes, sir.

8 Q. Why not? Why wouldn't you just name everybody that was
9 out there and tell him?

10 A. Because it happened so fast. Everything happened so
11 fast.

12 Q. Is there a -- is there a reason why you wouldn't just
13 open up and -- completely at the beginning and tell the cops
14 everything when they get there?

15 A. No, there wasn't no reason.

16 Q. Okay. And you said at the time the shooting happened
17 -- was his brother there?

18 A. Yes, sir.

19 Q. And where was his brother again?

20 A. He was standing in the yard.

21 Q. Okay. And where was Meatball?

22 A. He was -- he had fell on the ground and he got up.

23 Q. Okay. And that was around the time you heard the shot?

24 A. (Affirmative nod).

25 Q. Is it fair to say that you weren't paying really close

RAYMOND KENNEDY - RECROSS-EXAMINATION BY MS. NELSON

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1 attention to the scuffle that was going on? Would that be a
2 fair assessment?

3 A. We heard the scuffle. We heard them scuffling.

4 Q. Okay. And then you heard the shot?

5 A. Yes, sir.

6 Q. Okay. And then Meatball ran away?

7 A. Got up, said he got shot.

8 Q. And Zay ran away?

9 A. Yeah.

10 Q. Thank you, Mr. Kennedy. That's all I have.

11 **THE COURT:** Anything on recross?

12 **MS. NELSON:** I hope just briefly, Your Honor.

13 **Recross-examination by Ms. Nelson:**

14 Q. So now that Mr. Thomas has talked to you again you're
15 not sure exactly what was going on when the shot went off?

16 A. We ---

17 Q. Is that right?

18 A. We heard the scuffling and heard the shot.

19 Q. Heard the scuffling, heard the shot?

20 A. (Affirmative nod).

21 Q. You don't really know where they were or ---

22 A. I mean, they was in the yard when the shot ---

23 Q. Other than -- other than -- you don't know how close
24 they were to each other, whether somebody was up or down?

25 You just heard some scuffling and heard a shot?

RAYMOND KENNEDY - RECROSS-EXAMINATION BY MS. NELSON

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1 A. Yes, ma'am.

2 Q. Okay. So the other stuff about somebody falling down
3 or when stuff happened, you're really just not sure about
4 any of that?

5 A. That's what we heard. He was on -- he got up off the
6 ground.

7 Q. He did get up off ---

8 A.. Yeah, he got up off the ground. And that's when he
9 said Zay had shot him. But he didn't say Zay, he said MF.

10 Q. So you don't know -- you do or you don't -- where was
11 he when -- where was Mr. Fuller when he got shot? Was he on
12 the ground or not on the ground? Or you don't know?

13 A. He was on -- he was on the ground.

14 Q. Okay. So it was more than just ---

15 A. He ---

16 Q. --- hearing the scuffling?

17 A. After he was -- when we see him get up off the ground.
18 I don't know if both of them hit the ground. All I know, we
19 saw him get up off the ground. Both of them could have fell
20 on the ground, I don't know.

21 **MADAM COURT REPORTER:** I'm sorry. Repeat that ---

22 A. Oh, excuse me. Both of them could have fell -- both of
23 them could have been on the ground when it happened, but --
24 he was there when we seen him get up off the ground after
25 the shot went off.

RAYMOND KENNEDY - RECROSS-EXAMINATION BY MS. NELSON

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1 Q. So the shot went off and you see him get up?

2 A. Yes, ma'am.

3 Q. So you're not sure if he was on the ground when he got
4 shot or on the ground after he got shot? Is that fair?

5 A. He was on the ground when the shot went off.

6 Q. Okay. I just can't -- I can't tell whether you're --
7 whether you're sure or not. So ---

8 A. I am.

9 Q. And you say you don't like to talk to the police
10 because you've been in trouble before?

11 A. Because I've been -- that ain't got nothing to do with
12 me not talking to the police because I done been in trouble
13 before. That don't have anything to do with it.

14 Q. That's not what you just told Mr. Thomas?

15 A. (No response).

16 Q. Mr. Thomas was asking you if there's a reason you
17 wouldn't want to talk to the police and ---

18 A. And I told him no, it was no reason.

19 Q. And ---

20 A. He asked me have I been in trouble with the law before.
21 And I told him, yeah, which I have.

22 Q. Okay. But that doesn't make you not want to ---

23 A. No, ma'am.

24 Q. --- talk to the police?

25 A. No, ma'am.

RICKY GRANT - DIRECT EXAMINATION BY MR. THOMAS

258

1 Q. That had nothing to do with it?

2 A. That had nothing to do with it.

3 Q. Okay. So you just decided -- you didn't want to talk
4 to them when they rode by, but it had nothing to do with you
5 having trouble with the law before?

6 A. Nothing. I mean, he's a detective. He a law -- he's a
7 law enforcement officer, it don't -- it's not any different.

8 Q. He approached you, right?

9 A. Exactly.

10 Q. And when the officers rode by right after this
11 happened, since they didn't ask you anything, you didn't
12 offer anything?

13 A. Exactly.

14 Q. Okay. But nothing to do with being in trouble?

15 A. Exactly.

16 Q. Thank you, Mr. Kennedy.

17 THE COURT: All right. Mr. Kennedy, you can step down.
18 Thank you for coming. You're free to go. All right. Call
19 your -- you have another witness we can call?

20 MR. THOMAS: Yes, Your Honor. The State calls Ricky
21 Grant.

22 THE COURT: All right.

23 MADAM CLERK: Place your left hand on the Bible and
24 raise your right hand, please.

25

Ricky Grant, being duly

RICKY GRANT - DIRECT EXAMINATION BY MR. THOMAS

259

1 sworn testified as follows;

2 Direct Examination by Mr. Thomas:

3 Q. Good morning, Mr. Grant.

4 A. Good morning.

5 Q. Where do you live?

6 A. [REDACTED] Gray.

7 Q. Let me show you State's exhibit number 1 up on the
8 screen. Is that your house?

9 A. Yeah.

10 Q. And where is that at in relation to the courthouse?

11 A. You say where -- you say where is that at?

12 Q. Yeah. Like how do you get to your house from here?

13 A. It's a couple of ways you can go about it, library ---

14 Q. Just so it's -- it's that direction?

15 A. Yeah.

16 Q. Okay. That's all I'm asking. I'm just trying to ---

17 A. Okay.

18 Q. Who do you live there with?

19 A. My girl.

20 Q. Were you living there back in August of 2017?

21 A. Yes.

22 Q. And do you know Mr. Gray?

23 A. Yeah.

24 Q. You're friends with him?

25 A. Yeah.

RICKY GRANT - DIRECT EXAMINATION BY MR. THOMAS

260

1 Q. And were you hanging out with him on August 25th,
2 afternoon, to the morning of August 26th of 2017?

3 A. Yeah.

4 Q. What did y'all do that night?

5 A. Went to the club.

6 Q. Which club did you go to?

7 A. The Getaway.

8 Q. When you say the Getaway, is that the South Main Bar
9 and Grill?

10 A. Yeah, Bar and Grill.

11 Q. Okay. Where did y'all -- did y'all meet up at your
12 house or did you meet up at his house? Where did you meet
13 up?

14 A. Actually, we didn't -- he was already at my house.

15 Q. Okay. So y'all were at your ---

16 A. Yeah.

17 Q. --- house and decided to go to the club?

18 A. Yeah.

19 Q. Okay. Who all went with you to the club?

20 A. Me and Meatball. Me, Gray, and Meatball.

21 Q. Okay. So you, Zay, and Meatball?

22 A. Yeah.

23 Q. Okay. When you rode to the club together did Meatball
24 have a gun with him?

25 A. Yeah.

RICKY GRANT - DIRECT EXAMINATION BY MR. THOMAS

261

1 Q. What did you see him do with that gun?

2 A. Put it in the bushes.

3 Q. And those are the bushes where?

4 A. Like right by -- across from the club right by the Old
5 Dixie Drive-In.

6 Q. Okay. Why would -- why would he hide his gun in the
7 bushes?

8 A. To ---

9 MS. NELSON: Objection. Speculation.

10 THE COURT: All right. Sustained. Well, if you want
11 to ask him if he's familiar with the rules of the club or
12 something ---

13 MR. THOMAS: Right.

14 THE COURT: --- like that, that's fine, but, otherwise,
15 it would be speculation.

16 Q. If you were going to -- if you were going into the club
17 and you had a gun with you, and you decided to hide it in
18 the woods, why would you do that?

19 A. I don't even ride with guns.

20 Q. I'm just -- what are the rules of the club? Why would
21 someone hide a gun in the bushes? What can you take into
22 the club?

23 A. Nothing really.

24 Q. Okay. So you can't take guns into the club?

25 A. No.

RICKY GRANT - DIRECT EXAMINATION BY MR. THOMAS

262

- 1 Q. And y'all rode in your car there?
- 2 A. Yeah.
- 3 Q. Okay. Who all went in the club?
- 4 A. Just me and Meatball.
- 5 Q. Okay. Did Zay go in the club?
- 6 A. Nah. He didn't go in because he didn't have an ID.
- 7 Q. Okay. So did he just -- you just don't know what he
- 8 did? Did he -- you don't know if he hung out in the parking
- 9 lot or what?
- 10 A. Yeah, you right.
- 11 Q. Okay. When you got ready to leave the club, I guess,
- 12 how long were y'all there?
- 13 A. What, at the club?
- 14 Q. Yeah. How long were y'all there?
- 15 A. Probably about a hour. Probably wasn't that long.
- 16 Q. Okay. And when you decided to leave, who all went back
- 17 with you?
- 18 A. Just me and Zay.
- 19 Q. Okay. And what did Meatball do? Did he stay in the
- 20 club?
- 21 A. Yeah, he stayed in the club. I actually waited on him
- 22 for a little bit to see if he was going to come out, but I
- 23 ended up leaving.
- 24 Q. Okay. And where did y'all go when you left the club?
- 25 What was the plan when you left the club? Where were you

RICKY GRANT - DIRECT EXAMINATION BY MR. THOMAS

263

1 ---

2 A. Wasn't no plan. I just went back to the house.

3 Q. Okay. And he went with you?

4 A. Yeah.

5 Q. Okay. Were you supposed to take him anywhere or do

6 anything with him?

7 A. No. No.

8 Q. Y'all were just going back to your house to hang out?

9 A. Yeah.

10 Q. Do people normally sort of hang out at your house? I

11 see we've got the picnic tables and all. Is that sort of

12 ---

13 A. Nah.

14 Q. --- the hangout spot?

15 A. Nah. Nah. It's just -- the picnic tables already

16 there when I moved there.

17 Q. Okay. But were there people hanging out outside that

18 night?

19 A. No.

20 Q. Not that you know of or ---

21 A. No, not as I know of.

22 Q. Did you hang out outside a lot or did you go straight

23 inside?

24 A. Actually, I went up the street for a little while, and

25 I came back down to my house.

RICKY GRANT - DIRECT EXAMINATION BY MR. THOMAS

264

1 Q. Okay. Who all was in the house with you when you got
2 back?

3 A. Just me and -- me and Zay. And I think Meatball ended
4 up coming like a hour -- about a hour later.

5 Q. Okay.

6 A. Yeah.

7 Q. And he came back an hour later. Without telling us
8 what he said, what was his attitude? What was his -- what
9 was he acting like?

10 A. He wasn't really mad. He just kind of, you know, he
11 was kind of aggressive a little bit, you know, asking about
12 his gun, you know what I'm saying, you know.

13 Q. And what was Mr. -- what was Zay's response to
14 Meatball's questions about the gun?

15 A. I can't -- it seems like -- it kind of -- it was kind
16 of -- they was talking, but he kind of started into like a
17 argument, a argument.

18 Q. Did that start in the house or outside?

19 A. It started in the house.

20 Q. Okay. And what happened when they started arguing in
21 the house?

22 A. I told them they had to leave. They was getting too
23 loud, you know. So I just put both of them outside.

24 Q. Okay. And what happened after that?

25 A. I went back to the back room. So I didn't hear too

RICKY GRANT - DIRECT EXAMINATION BY MR. THOMAS

265

1 much of what was going on. So after that -- after about
2 probably a minute I heard a gunshot.

3 Q. Okay. And after you heard the gunshot what -- did
4 anything else happen?

5 A. No. I had ran to the front door, opened the front door
6 and I seen Meatball running down the street, you know,
7 holding his stomach.

8 Q. Okay. Did you see Zay at that point?

9 A. Yeah, I seen Zay. I seen Zay.

10 Q. What was he doing?

11 A. He was like in -- kind of like in shock, you know, of
12 what happened.

13 Q. Where did he go? Where did he end up -- what did he --
14 did he try to get in the house ---

15 A. He tried to get in -- he tried to get in the house. He
16 went next door -- I think he went next door to try to get in
17 the house. He ended up coming in, but I ended up putting
18 him back out, you know. Yeah.

19 Q. And did you see him after that?

20 A. No, I didn't see him after that. No.

21 Q. And, I guess, let me ask you this. There were people
22 outside of your house that night. Do you know anything
23 about who those people were?

24 A. No. I have -- I have no idea -- it might have been
25 somebody in the cut or kind of close by my house, but like

RICKY GRANT - CROSS-EXAMINATION BY MS. NELSON

266

1 in my yard? No.

2 Q. Okay.

3 A. Yeah.

4 Q. All right. Thank you, Mr. Grant. I'll let you answer
5 any questions Ms. Nelson has for you.

6 **Cross-examination by Ms. Nelson:**

7 Q. Hi, Mr. Grant.

8 A. How you doing?

9 Q. Good. How are you?

10 A. All right.

11 Q. So after -- when you came back to your house from the
12 club it was just you and Zay, ---

13 A. Yeah.

14 Q. --- right?

15 A. Yeah.

16 Q. And you said there was nobody at your house. There was
17 ---

18 A. No.

19 Q. --- nobody in the yard?

20 A. No.

21 Q. Nobody inside other ---

22 A. No.

23 Q. --- than your girlfriend?

24 A. Yeah.

25 Q. And nobody outside in the yard?

RICKY GRANT - CROSS-EXAMINATION BY MS. NELSON

267

- 1 A. No.
- 2 Q. Do you -- do you know Raymond Kennedy?
- 3 A. Who?
- 4 Q. They call him Kool-aid? You ---
- 5 A. Oh, yeah.
- 6 Q. --- know who Kool-aid is?
- 7 A. Yeah, I know Kool-aid. Yeah.
- 8 Q. He wasn't in your yard?
- 9 A. Nah, I didn't see him.
- 10 Q. Edie Walker wasn't in your yard?
- 11 A. No.
- 12 Q. DJ wasn't in your yard?
- 13 A. No.
- 14 Q. BJ, I mean.
- 15 A. No.
- 16 Q. Not DJ, BJ.
- 17 A. No, he wasn't.
- 18 Q. Aaron, Zay's brother, wasn't in your yard?
- 19 A. No. I didn't see -- no.
- 20 Q. So after y'all got back from the Getaway, ---
- 21 A. Um-hum (affirmative).
- 22 Q. --- you said that Meatball came over?
- 23 A. Yeah.
- 24 Q. Mr. Fuller came over?
- 25 A. Yeah.

RICKY GRANT - CROSS-EXAMINATION BY MS. NELSON

268

- 1 Q. He just came over one time?
- 2 A. Yeah, he came over one time.
- 3 Q. So he didn't -- he didn't come ---
- 4 A. You talking about after the club?
- 5 Q. Right.
- 6 A. Yeah, after the club, he came -- yeah, he came over
- 7 once. You right.
- 8 Q. He came over ---
- 9 A. Um-hum (affirmative).
- 10 Q. --- and this argument between them happened?
- 11 A. Yeah. Yeah.
- 12 Q. He didn't come over and leave and then come back, ---
- 13 A. No.
- 14 Q. --- right?
- 15 A. No.
- 16 Q. Just there once?
- 17 A. Yeah.
- 18 Q. And you -- you did not at any time see Zay with a gun,
- 19 did you?
- 20 A. No. No.
- 21 Q. Not before the club, not ---
- 22 A. No, no.
- 23 Q. --- after the club?
- 24 A. Uh-uh (negative).
- 25 Q. Was that the first time -- now you've testified today

RICKY GRANT - CROSS-EXAMINATION BY MS. NELSON

269

1 that ---

2 A. I remember -- but I remember Meatball -- I said, Zay,
3 if you've got his gun, give it to him. But as far as that,
4 no, I didn't see it with him.

5 Q. But that -- that was after ---

6 A. Yeah.

7 Q. --- Mr. Fuller came to your house?

8 A. Yeah, yeah.

9 Q. Right?

10 A. Yeah.

11 Q. So up until the time Mr. Fuller came to your house, you
12 never saw Zay with a -- with a ---

13 A. No.

14 Q. --- gun, did you?

15 A. I didn't.

16 Q. Based on what you said earlier about how you don't ride
17 with guns, you wouldn't have wanted Zay to be in your car
18 with a gun, would you?

19 A. No. No.

20 Q. You wouldn't have wanted Mr. Fuller to be in your car
21 with a gun, right?

22 A. Yeah. That's why I told him to put it outside when we
23 got to the club. I didn't even know he had it until, you
24 know, he brought it out.

25 Q. He brought it out when y'all got to the club?

RICKY GRANT - CROSS-EXAMINATION BY MS. NELSON

270

- 1 A. Yeah. Yeah.
- 2 Q. So when he got in your car, you didn't know he had it?
- 3 A. No, I didn't.
- 4 Q. And I'm talking about Mr. Fuller when I say ---
- 5 A. No, I didn't. I didn't.
- 6 Q. When you left to go to the club it was just going to be
- 7 you and Zay. And then Meatball asked if he could have a
- 8 ride to the club, too, ---
- 9 A. Yeah.
- 10 Q. --- right?
- 11 A. Yeah.
- 12 Q. Now going back to when the argument happened, you sent
- 13 them outside with it?
- 14 A. Yeah.
- 15 Q. You said, ---
- 16 A. Yeah.
- 17 Q. --- y'all too loud. Get out of the house.
- 18 A. Yeah.
- 19 Q. Go outside. And then you didn't see what happened
- 20 after that?
- 21 A. No.
- 22 Q. You were inside the house ---
- 23 A. Yes.
- 24 Q. --- when you heard a shot?
- 25 A. Yeah.

RICKY GRANT - CROSS-EXAMINATION BY MS. NELSON

271

1 Q. You heard a single shot?

2 A. Yeah.

3 Q. You have no idea who fired the shot, ---

4 A. No.

5 Q. --- right?

6 A. Yeah.

7 Q. You have no idea who brought a gun out, do you?

8 A. No.

9 Q. That night at the club with Mr. Fuller, was that the
10 first time you'd ever seen him with a gun?

11 A. First time? Well, I seen spare of the moments like,
12 you know, other days.

13 Q. Other times?

14 A. Yeah. Yeah. Yeah. But not in my car or nothing like
15 that.

16 Q. Okay. Because you wouldn't have wanted that to happen,
17 ---

18 A. No.

19 Q. --- right?

20 A. Yeah.

21 Q. When you heard the shot go off did you -- did you call
22 911?

23 A. No. I actually just -- I just ran to the door. I
24 think the police was already around when they heard the
25 shot. So it was no need me, you know, ---

RICKY GRANT - CROSS-EXAMINATION BY MS. NELSON

272

- 1 Q. It was ---
- 2 A. It kind of surprised me, you know.
- 3 Q. The police rode by pretty soon after ---
- 4 A. Yeah.
- 5 Q. --- after the shot ---
- 6 A. Yeah.
- 7 Q. --- went off, right?
- 8 A. Yeah.
- 9 Q. Did you see them ride by?
- 10 A. Yeah. Yeah.
- 11 Q. Did you go out there and talk to them and tell them
- 12 what had happened?
- 13 A. No, they just -- they just rode through. They just
- 14 rode through.
- 15 Q. They didn't stop at your house and ---
- 16 A. No.
- 17 Q. --- ask you anything ---
- 18 A. No.
- 19 Q. --- at that time?
- 20 A. No.
- 21 Q. When the police rode by there were some other people in
- 22 front of your house. Do you remember that?
- 23 (Pause)
- 24 Q. If you're not sure, it's okay.
- 25 A. I can't -- yeah, I can't remember.

RICKY GRANT - CROSS-EXAMINATION BY MS. NELSON

273

1 Q. Okay. So at that point immediately after this happened
2 you did not speak to the police at that time, ---

3 A. No.

4 Q. --- right?

5 A. No.

6 Q. You saw Mr. Fuller running down the road?

7 A. Yeah.

8 Q. Running down Gray Street?

9 A. Yeah.

10 Q. He was running down Gray toward Greene?

11 A. Yeah.

12 Q. Did you go after him ---

13 A. No, ---

14 Q. --- to see if he ---

15 A. --- I didn't.

16 Q. --- was okay?

17 A. I didn't.

18 Q. Then is it correct that the next thing that happened
19 was Detective Kay coming to see you?

20 A. Yeah.

21 Q. He came to your house?

22 A. Yeah, he came to see me.

23 Q. To see you?

24 A. Um-hum (affirmative).

25 Q. And he talked to you there at your house and asked you

RICKY GRANT - CROSS-EXAMINATION BY MS. NELSON

274

1 what you knew?

2 A. Yeah.

3 Q. Did you know he was -- that he was recording your
4 conversation that he had with you?

5 A. Yeah. Yeah.

6 Q. Now during your conversation with Detective Kay you did
7 not tell him anything about Mr. Fuller putting a gun in the
8 bushes, did you?

9 A. Yeah. At the club -- at the club? Yeah.

10 Q. You believe that you told him ---

11 A. Yeah.

12 Q. --- that on the ---

13 A. Yeah.

14 Q. --- on the audio statement?

15 A. Um-hum (affirmative).

16 Q. And if you didn't say that on the audio statement, that
17 would surprise you?

18 A. Yeah, it probably -- it probably would. It would.

19 Q. Okay. Have you had a chance to listen to that
20 statement anytime?

21 A. No.

22 Q. Since -- have you ever listened to it?

23 A. Uh-uh (negative).

24 Q. So would you agree with me that at the time you gave
25 that statement that was on August 26th, right?

RICKY GRANT - CROSS-EXAMINATION BY MS. NELSON

275

1 A. Yeah.

2 Q. What time of day was it when you gave that statement,
3 if you remember?

4 A. It was like -- I think it was like early in the
5 morning, morning time.

6 Q. Okay.

7 A. Yeah.

8 Q. It was before lunchtime?

9 A. Yeah, I think so.

10 Q. So would you agree with me that at the time you talked
11 to Detective Kay on August 26th your memory was probably a
12 little better than it is today now like a year and eight
13 months later?

14 A. Yeah. Yeah.

15 Q. So if you maybe didn't mention those bushes, if you
16 maybe didn't mention them ---

17 A. Yeah.

18 Q. --- to Detective Kay, then you think your memory's
19 better that day than it would be today?

20 A. Yeah.

21 Q. It's possible ---

22 A. Yeah, yeah.

23 Q. --- you could be confusing ---

24 A. Yeah.

25 Q. --- it with something else?

RICKY GRANT - CROSS-EXAMINATION BY MS. NELSON

276

1 A. Yeah. Yeah.

2 Q. Possible you never actually saw Mr. Fuller with a gun
3 that night?

4 A. No, I seen him with a gun. I ---

5 Q. You definitely ---

6 A. Yeah, I seen ---

7 Q. --- saw that?

8 A. Yeah. When we got -- when we got to the club.

9 Q. And that was Mr. Fuller and not Mr. Gray, ---

10 A. Yeah, Mr. Fuller.

11 Q. --- right?

12 A. Yeah. Yeah.

13 Q. Isn't it true that when you talked to Detective Kay you
14 said, I don't know if he gave him something to hold or what.

15 Do you remember that?

16 (Pause)

17 Q. It's okay if you don't. I know it's been a long time.

18 A. Yeah. Yeah. Not right off -- not right off my head I
19 can't. Yeah.

20 Q. Do you remember telling Detective Kay that Mr. Fuller
21 possibly left something in the car, I don't know?

22 A. No. No.

23 Q. Don't remember that?

24 A. No.

25 Q. But what you can tell us is that you didn't -- you

RICKY GRANT - REDIRECT EXAMINATION BY MR. THOMAS

277

1 didn't see Kool-aid in your yard when ---

2 A. No, I didn't.

3 Q. --- all this was happening?

4 A. I didn't.

5 Q. Or Edie?

6 A. No.

7 Q. Or BJ?

8 A. No.

9 Q. And you don't know who would have pulled out a gun
10 because you weren't watching any of it, right?

11 A. (Affirmative nod).

12 Q. Just one moment.

13 (Pause)

14 Q. I can't remember if I asked you this already, but when
15 the police rode by right after this happened, nobody stopped
16 and came to your door, right?

17 A. No.

18 Q. Okay. Thank you, sir. That's all I have.

19 A. Um-hum (affirmative).

20 **THE COURT:** Redirect?

21 **Redirect Examination by Mr. Thomas:**

22 Q. That statement that you gave Detective Kay that Ms.
23 Nelson keeps referencing, do you remember telling Detective
24 Kay that they were arguing, but Meatball wasn't real
25 aggressive? Do you remember telling him that?

RICKY GRANT - REDIRECT EXAMINATION BY MR. THOMAS

278

1 A. No.

2 Q. Do you remember telling Detective Kay that ---

3 A. It got -- it got aggressive. Yeah.

4 Q. But you told Detective Kay that it was not aggressive?

5 A. No, I'm not -- no.

6 Q. And you also told Detective Kay that Aaron rode back

7 from the club with y'all. Do you remember telling him that?

8 A. I can't remember. No.

9 Q. If I let you listen to your statement would that sort
10 of refresh your recollection of what ---

11 A. Yeah. It -- yeah.

12 Q. Okay.

13 MR. THOMAS: And, Your Honor, I'm just going to play
14 this out loud.

15 THE COURT: Go ahead.

16 MR. THOMAS: And I'll mark this as an exhibit.

17 THE COURT: How long is the recording about?

18 MR. THOMAS: Eleven minutes.

19 (Whereupon the statement of Ricky Grant was played for
20 the jury)

21 Q. Did that sort of refresh your recollection of the
22 conversation you had with Detective Kay?

23 A. Yeah.

24 Q. Okay. And in that conversation, I guess, you said that
25 Meatball and Zay were getting along ---

RICKY GRANT - RECROSS-EXAMINATION BY MS. NELSON

279

1 A. Yeah.

2 Q. --- earlier in the night?

3 A. Yeah.

4 Q. And the confrontation at the house later on -- I think
5 you said then it wasn't aggressive?

6 A. Yeah.

7 Q. But, I mean, but you said today it was. So I just --
8 tell us -- tell us what you remember.

9 A. Yeah. It wasn't -- it wasn't aggressive. It was a lot
10 of -- it was a lot of talking.

11 Q. Okay.

12 A. Yeah, you know. It wanted to get -- it wanted to get
13 aggressive, so I just kind of stopped it then.

14 Q. And once it went outside, you don't know what happened
15 after that?

16 A. Uh-uh (negative).

17 Q. Okay. Thank you so much, Mr. Grant. I don't know if
18 they have any recross.

19 THE COURT: Recross?

20 Recross-examination by Ms. Nelson:

21 Q. And just -- in listening to that, Mr. Grant, there
22 isn't -- there isn't any part where you told Detective Kay
23 about Mr. Fuller putting a gun in the bushes, is there?

24 A. No. No.

25 Q. Okay. So either you didn't remember that then or maybe

RICKY GRANT - RECROSS-EXAMINATION BY MS. NELSON

280

- 1 you're just confused about it today?
- 2 A. Yeah. Yeah.
- 3 Q. In fact, you told him ---
- 4 A. I was -- I was kind of confused about Aaron rode back
- 5 with me, but I know he didn't ride to the club with me.
- 6 That's kind of -- that kind of threw me off. Yeah.
- 7 Q. All right. And for the brief period of time that Mr.
- 8 Gray and Mr. Fuller were in the car together on the way to
- 9 the club, they weren't fussing?
- 10 A. No.
- 11 Q. That's what you mean about they weren't having any
- 12 confrontation ---
- 13 A. Yeah.
- 14 Q. --- in the car?
- 15 A. Right.
- 16 Q. And when Detective Kay said is it possible he left
- 17 something in the car and you said you didn't know, ---
- 18 A. Yeah.
- 19 Q. --- right?
- 20 A. Yeah.
- 21 Q. Do you remember now whether you ever actually saw a gun
- 22 that night at all?
- 23 A. When we got to the club.
- 24 Q. You still -- do you still ---
- 25 A. Yeah.

RICKY GRANT - RECROSS-EXAMINATION BY MS. NELSON

281

1 Q. --- think you saw ---

2 A. When we got to the club, yeah, of course.

3 Q. --- Mr. Fuller with a gun?

4 A. Yeah, of course. Yeah.

5 Q. But you never saw Zay with one?

6 A. No.

7 Q. And when y'all got back home after the club Zay wasn't
8 saying, hey, hey, man, I ---

9 A. No.

10 Q. --- got Meatball's gun, ---

11 A. No.

12 Q. --- nothing like that?

13 A. Uh-uh (negative).

14 Q. Okay. Thank you, sir.

15 A. Um-hum (affirmative).

16 THE COURT: All right, sir. You can step down. Thank
17 you very much for coming. Solicitor, you have a witness we
18 can knock out in about 15 ---

19 MR. THOMAS: The next one I think's going to be kind of
20 lengthy, Your Honor.

21 THE COURT: All right. Ladies and gentlemen of the
22 jury, we're going to go ahead and take a break for lunch.
23 And I'm going to ask, if you would, to please be back here
24 at, let's say, about a quarter til two, okay? So 1:45.
25 That should give everybody enough time to grab a bite and

ANTONIO NICHOLSON - DIRECT EXAMINATION BY MR. THOMAS

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1 please.

2 **MR. THOMAS:** Your Honor, the State calls Antonio
3 Nicholson. Your Honor, may we approach real quick?

4 **THE COURT:** Sure. Come on up.

5 **MR. THOMAS:** Just scheduling.

6 (Whereupon a bench conference was held off the record
7 in the presence of the jury, but out of their hearing)

8 (Whereupon the bench conference was ended)

9 **THE COURT:** Go ahead, Madam Clerk. I'm sorry.

10 **MADAM CLERK:** Raise your right hand, please.

11 **Antonio Nicholson, being**
12 duly sworn testified as follows;

13 **Direct Examination by Mr. Thomas:**

14 Q. Good afternoon, Mr. Nicholson.

15 A. Good afternoon.

16 Q. What's your name again for the record?

17 A. Antonio Nicholson.

18 Q. And, Mr. Nicholson, I see you're dressed a little
19 differently than the rest of our witnesses. Where are you
20 at right now?

21 A. Greenwood County Detention Center.

22 Q. And what are you over there for?

23 A. Armed robbery.

24 Q. And do you have any other criminal history?

25 A. Yes, sir, I have.

ANTONIO NICHOLSON - DIRECT EXAMINATION BY MR. THOMAS

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1 Q. Were you convicted back in 2004 for some sort of strong
2 arm robbery?

3 A. Yes, sir, I was.

4 Q. And a few years ago, maybe 2011, for a strong arm that
5 got pled down to a criminal conspiracy?

6 A. Yes, sir.

7 Q. And you're obviously sitting over there without bond, I
8 think?

9 A. Yes, sir, I am.

10 Q. Let me ask you, where were you living before you got
11 arrested for that?

12 A. Greenwood, South Carolina. [REDACTED] Highway 25.

13 Q. Are you from Greenwood?

14 A. Yes, sir.

15 Q. Were you living here back in August of 2017?

16 A. Yes, sir, I was.

17 Q. Do you remember the night that there was a shooting
18 over on Gray Street?

19 A. Yes, sir, I do.

20 Q. And to the best of your recollection was that August
21 26th, 2017, early morning?

22 A. Early morning. I'm not quite sure what day it was, but
23 early morning.

24 Q. And where were you at when that happened?

25 A. On Gray Street, like in front of Rick's house. I can't

ANTONIO NICHOLSON - DIRECT EXAMINATION BY MR. THOMAS

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1 remember exactly Ricky Hurley or Ricky Harrison, his house.

2 Q. Ricky Grant?

3 A. Yeah, Ricky Grant.

4 Q. Ricky Hurley's his brother?

5 A. Yes, sir.

6 Q. Who else was over there?

7 A. It was a whole lot of people over there. I'm not quite
8 sure. Rick was one of the guys. Mr. Gray was one of the
9 guys. Meatball was one of the guys.

10 Q. Did anybody leave the house and go anywhere while you
11 were over there?

12 A. Leave and go anywhere while I was there?

13 Q. Yes.

14 A. No.

15 Q. Okay. Did anybody come back from anywhere when you
16 were there?

17 A. They came back from the club.

18 Q. And who is they?

19 A. Mr. Gray was one of them that came back from the club.
20 And then it was -- Meatball came back from the club.

21 Q. Did they come back together or separate?

22 A. Separate.

23 Q. Okay. How much later did Meatball get there than Mr.
24 Gray?

25 A. I'm not quite sure of the exact right time.

ANTONIO NICHOLSON - DIRECT EXAMINATION BY MR. THOMAS

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1 Q. But was it -- was it before or after ---

2 A. It was after Mr. Gray.

3 Q. And when Meatball came back what was his demeanor?

4 What was his attitude? How was he acting?

5 A. He was upset 'cause Mr. Gray had left the club with his

6 -- with his gun.

7 Q. He was upset? And who was he upset with?

8 A. Mr. Gray.

9 Q. Okay. And did they have any -- don't tell me what they
10 said, but did they have a conversation? Mr. Gray and

11 Meatball, did they argue?

12 A. Yes, sir.

13 Q. Okay. And what were they arguing about?

14 A. A gun.

15 Q. Who allegedly had the gun?

16 A. Allegedly had it? From my understanding that Meatball
17 gave it to Mr. Gray to hold while Meatball go in the club.

18 Q. But, again, you weren't at the club with them, ---

19 A. No, I don't ---

20 Q. --- so you don't really ---

21 A. I don't know nothing about that.

22 Q. So all that's really kind of hearsay?

23 A. Yes, sir.

24 Q. But you did -- did you hear Mr. Gray say anything in
25 response to Meatball's questions?

ANTONIO NICHOLSON - DIRECT EXAMINATION BY MR. THOMAS

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- 1 A. I ain't got no mother fucking gun.
- 2 Q. Okay. Did you see Meatball with a gun?
- 3 A. No, sir.
- 4 Q. Where did they initially have this argument at?
- 5 A. The argument initially started inside Rick house.
- 6 Q. Where were you when all that was going on?
- 7 A. In the kitchen. It's right there. It's all together.
- 8 Q. Okay. And where did you -- where did you end up?
- 9 A. Outside.
- 10 Q. Okay.
- 11 A. By my truck.
- 12 Q. Okay. And did Meatball and Zay ever come outside?
- 13 A. Yes, sir, they did.
- 14 Q. What were they doing outside?
- 15 A. Arguing and fussing, getting ready to fight.
- 16 Q. Okay. Where was that happening at?
- 17 A. Like on Gray Street like in the -- in the corner. Like
- 18 they was like balled up. I'm not quite sure like to give
- 19 you the right place where it happened at.
- 20 Q. State's exhibit number 1, let me put it up here for
- 21 you. Can you see that TV from where you're sitting?
- 22 A. Yes, sir, I can.
- 23 Q. Is that Rick's house?
- 24 A. Yes, sir, right there.
- 25 Q. And where were you at outside while this was going on?

ANTONIO NICHOLSON - DIRECT EXAMINATION BY MR. THOMAS

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1 A. It's a house beside Rick house, ---

2 Q. Um-hum (affirmative).

3 A. --- like it's a boat and stuff like that in the yard.

4 I was on that side of the road right there.

5 Q. Okay. Where were Meatball and Mr. Gray?

6 A. Like in the yard about where the Mexican house is, like
7 right there in that little area right there.

8 Q. So in this -- so in this sort of gravel area right in
9 the middle of this picture?

10 A. Yes, sir.

11 Q. Okay. And you said they were arguing while they were
12 there?

13 A. (Affirmative nod).

14 Q. What happened during the course of that argument?

15 A. In the course of that argument, I guess they was like
16 fixin to get in a physical altercation or whatnot. Mr. Gray
17 turned like he was getting ready to run, but as he was
18 turning he was pulling.

19 Q. And when you say he was pulling, could you describe
20 what ---

21 A. Like he ---

22 Q. --- you mean by that?

23 A. --- pulling out a gun. You know, like when you pull --
24 pulling getting ready to shoot.

25 Q. And you're demonstrating sort of like your hand

ANTONIO NICHOLSON - DIRECT EXAMINATION BY MR. THOMAS

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1 reaching for your waist and coming up?

2 A. Coming up.

3 Q. Okay. You saw who doing that?

4 A. Mr. Gray.

5 Q. And then what happened?

6 A. That's when I heard the gunshots.

7 Q. Okay. Did you ever see anybody shooting a gun or did
8 you just hear it?

9 A. I just heard it.

10 Q. Okay. What happened after you heard the gunshot?

11 A. That's when I seen Mr. Gray running at the time, you
12 know. And he had throwed the pistol. The pistol was like
13 -- like when he took off running, he like throwed the
14 pistol.

15 Q. Okay. Let me ask you this. Let's do this one person
16 at a time. Did you see what Meatball did after the shot?

17 A. It was like kind of dark, not really. Well, you know,
18 he fell.

19 Q. Okay.

20 A. He was like falling.

21 Q. And then did you see where Mr. Gray went?

22 A. Like right up toward -- right behind Rick house.

23 Q. Okay. So behind this house?

24 A. Yes, sir.

25 Q. Okay. And you said you saw him throw something?

ANTONIO NICHOLSON - DIRECT EXAMINATION BY MR. THOMAS

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1 A. I didn't see him throw no gun. I seen him throw
2 something.

3 Q. Okay. And where did he throw that at?

4 A. Like in the bushes behind Rick house.

5 Q. Okay.

6 A. Like set off a little bit 'cause I want to say if it's
7 the next day or the day after when I pulled up I seen J-
8 baby, Jermaine, he was back there looking for something.
9 And I was like, what you looking for? He was like, that's
10 where he throwed -- that's where he throwed that gun at
11 somewhere back there or whatnot.

12 And so me and him back there looking. And I pointed --
13 I said, well, look, there it go. We was looking -- we
14 looked for about 30, 45 minutes before ...

15 Q. And you said that was -- when was that? When did you
16 go back looking for the gun?

17 A. I want to say the next day or the day after. I'm not
18 quite sure.

19 Q. Did you find the gun? Where did you find it at?

20 A. Behind Rick house in some bushes. Me and Jermaine
21 found it. And that's when he called Ms. Smith, Jean Smith.
22 And she came and got it and brought it to the authorities.

23 Q. Okay. So you and Jermaine were back there and you
24 called Jean Smith?

25 A. (Affirmative nod).

ANTONIO NICHOLSON - DIRECT EXAMINATION BY MR. THOMAS

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1 Q. Okay. And that's Wanda Jean?

2 A. Yes.

3 MR. THOMAS: I beg the Court's indulgence one moment.

4 THE COURT: Yes, sir.

5 (Pause)

6 MR. THOMAS: Your Honor, can we take a brief recess?

7 THE COURT: All right.

8 MR. THOMAS: I need to make sure this is ...

9 THE COURT: Yeah, we need to make sure that's secure.

10 Ladies and gentlemen, we're going to take a very brief five
11 minute recess. We'll be back on the record. Don't talk
12 about the case. Have you back out here ASAP, okay? Thank
13 you.

14 (Whereupon the jury exited the courtroom at 2:14 pm)

15 (Whereupon court was in recess at 2:14 pm)

16 (Whereupon State's exhibit 15 was marked for
17 identification)

18 (Whereupon court reconvened at 2:18 pm)

19 THE COURT: Clips out, it's unloaded, everything good?

20 MR. THOMAS: Bullets are all in the other room.

21 THE COURT: Let's have the jury.

22 (Whereupon the jury entered the courtroom at 2:18 pm)

23 THE COURT: All right. Sorry for the delay, ladies and
24 gentlemen. We just want to make sure that the piece of
25 evidence was properly secured. So at this point, Mr.

ANTONIO NICHOLSON - DIRECT EXAMINATION BY MR. THOMAS

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1 Thomas, you may continue.

2 Direct Examination by Mr. Thomas Continued:

3 Q. We were talking before we took that break, Mr.

4 Nicholson, about you finding a handgun behind Ricky's house?

5 A. Yes, sir.

6 Q. Do you remember what that handgun looked like?

7 A. It was a little small black handgun.

8 Q. And what did you say you did with that handgun?

9 A. I didn't -- I didn't touch it. Mr. Jermaine touched --
10 grabbed it, picked it up with a stick, paper bag or
11 something. I can't -- quite sure. That's when he called
12 Ms. -- Jean -- Wanda Jean Smith. And she came and picked it
13 up and turned it into the authorities.

14 Q. So you and this Jermaine fellow were together when Ms.
15 Jean came and got it?

16 A. Yes, sir.

17 Q. Okay. I'm going to show you what's been premarked for
18 identification only as State's 15 and ask you does that look
19 familiar to you?

20 A. Yes, sir, that's it.

21 Q. Speak up a little bit.

22 A. Yes, sir, that's it.

23 Q. What is that? What is it?

24 A. A gun.

25 Q. Is it a special gun? Is it a specific gun?

ANTONIO NICHOLSON - DIRECT EXAMINATION BY MR. THOMAS

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1 A. I don't know. That's a little small Ruger.

2 Q. Okay. Is it the gun you found is what ---

3 A. Yeah, that's the gun I found. Yes, sir.

4 Q. Okay. You sure this is it?

5 A. Yes, sir.

6 Q. Okay. And where did you find it again?

7 A. It was behind Rick house.

8 MR. THOMAS: Your Honor, at this time I would move
9 State's 15 into evidence.

10 THE COURT: No objection?

11 MS. NELSON: No objection.

12 THE COURT: Without objection, State's 15 is in.

13 (Whereupon State's exhibit 15 was admitted into
14 evidence)

15 Q. And you said you found that where -- why were y'all
16 looking in that area for it?

17 A. Because when I pulled up Mr. Jermaine was looking for
18 it. And I'm like, what you looking for? He was like, this
19 is where Mr. Gray had throwed it, that gun at. And I'm
20 like, well, it should be back here then. So that's why we
21 kept looking for it. I seen him, he had throwed something
22 that night of the incident, but I didn't know was it a gun
23 or what it was he throwed until we found it.

24 Q. Okay. Did you find anything else back there?

25 A. No, we didn't find anything else.

ANTONIO NICHOLSON - CROSS-EXAMINATION BY MS. NELSON

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1 Q. You've got those pending charges. I'm not -- am I
2 prosecuting those charges or is it another solicitor?

3 A. It's another solicitor.

4 Q. And you've got an attorney on those?

5 A. Yes, sir. Mr. Mike Gambrell.

6 Q. Have I made you any kind of promises about what's going
7 to happen to your charges because you testified here today?

8 A. No, sir. I still ain't got -- I went up for a bond
9 last month, and I ain't even got a bond. So ...

10 Q. All right, Mr. Nicholson. I'm going to let you answer
11 any questions Ms. Nelson has, okay?

12 A. Yes, sir.

13 THE COURT: Ms. Nelson.

14 MS. NELSON: Thank you, Your Honor.

15 Cross-examination by Ms. Nelson:

16 Q. Hi, Mr. Nicholson.

17 A. How you doing?

18 Q. I'm good. How are you?

19 A. Fine.

20 Q. So I think you've testified that when Mr. Gray and Mr.
21 Fuller were fighting -- did they actually have a physical
22 altercation? Did they get physical with each other?

23 A. They was standing there arguing with each other at
24 first. They wasn't -- they didn't get into no physical
25 altercation.

ANTONIO NICHOLSON - CROSS-EXAMINATION BY MS. NELSON

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1 Q. You didn't see Mr. Fuller swing at Mr. Gray?

2 A. Uh-uh (negative).

3 Q. You didn't see Mr. Fuller get knocked down on the
4 ground during the -- during a tussle?

5 A. I seen him falling as Mr. Gray pulled out and shot, but
6 I didn't see ...

7 Q. What you -- what you saw was him fall after you heard
8 the shot?

9 A. The gunshot, yes. That's what I saw.

10 Q. How many shots did you hear?

11 A. I didn't hear nothing but one shot.

12 Q. So you didn't see a tussle or a scuffle or any kind of
13 physical fight?

14 A. They was getting ready to fight or whatnot.

15 Q. Okay. And so you didn't see Mr. Gray knock Mr. Fuller
16 down to the ground, ---

17 A. No.

18 Q. --- right?

19 A. (Negative nod).

20 Q. He wasn't on the ground -- Mr. Fuller wasn't on the
21 ground until after you heard a gunshot, ---

22 A. That's what I ---

23 Q. --- is that right?

24 A. That's what I seen.

25 Q. And then you see -- then you see Mr. Gray run toward

ANTONIO NICHOLSON - CROSS-EXAMINATION BY MS. NELSON

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1 the back of the house?

2 A. Running, yeah.

3 Q. You talking about running down this side right here?

4 A. Coming from this side of the house going this way.

5 **THE COURT:** The left side of the photo?

6 Q. Coming from this ---

7 A. Yes.

8 Q. --- side?

9 A. Yes.

10 Q. Going this way toward ---

11 A. Yes.

12 Q. Did he run in front of the picnic table, or behind it,
13 or do you remember?

14 A. Like in front of it going in front of -- because he
15 couldn't go beside -- beside Rick house because that dog was
16 beside Rick house.

17 Q. A dog was beside their house?

18 A. (Affirmative nod).

19 Q. So he ran around this way and around past these steps
20 up to, I guess, a back door and went in the backyard?

21 A. (Affirmative nod). No, it's not -- he went behind the
22 other backyard. But as he was coming this way, he was
23 running towards ---

24 Q. This way?

25 A. Coming on around. And it's like a little driveway

ANTONIO NICHOLSON - CROSS-EXAMINATION BY MS. NELSON

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1 right -- a little parking spot right there where your pen
2 at.

3 Q. Right here?

4 A. Yes. And he go -- went straight on down that way.

5 Q. Straight back?

6 A. Yes.

7 Q. He didn't -- he didn't go back toward the house at all?

8 A. No.

9 Q. He -- what you saw was him go around this table and go
10 back here to the back and then you saw him throw something?

11 A. Yes, ma'am.

12 Q. Okay. And you say you were there -- you were already
13 there when Rick and Zay came back from -- you think they had
14 been at the club?

15 A. Yeah, Rick.

16 Q. You were already there?

17 A. Yeah, I was there.

18 Q. You didn't pull up later?

19 A. Uh-uh (negative).

20 Q. Okay. And you go by BJ sometimes, is that right?

21 A. BJ, White Boy.

22 Q. Okay. And you're already there when they get back from
23 -- you think they've been at the club?

24 A. (Affirmative nod).

25 Q. And this stuff about what did or didn't happen at the

ANTONIO NICHOLSON - CROSS-EXAMINATION BY MS. NELSON

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- 1 club, you don't personally know because you weren't there,
2 ---
- 3 A. Yeah, I wasn't ---
- 4 Q. --- right?
- 5 A. --- at the club. No, ma'am.
- 6 Q. People do a lot of talking, right?
- 7 A. (Affirmative nod).
- 8 Q. And ---
- 9 A. He said/she said.
- 10 Q. And you've heard some stuff about this case from people
11 on the street, is that -- is that right?
- 12 A. Not ---
- 13 Q. No?
- 14 A. Not really.
- 15 Q. Okay. So you didn't hear about this whole thing that
16 was supposed to have happened at the club?
- 17 A. No. I saw everything happen.
- 18 Q. You weren't at the club, ---
- 19 A. Oh, I thought ---
- 20 Q. --- right?
- 21 A. No, I wasn't at the club.
- 22 Q. You just ---
- 23 A. I was there when they got in a argument about why did
24 you leave the club with my gun, blasé blah, blasé blah.
- 25 Q. Okay. So you're ---

ANTONIO NICHOLSON - CROSS-EXAMINATION BY MS. NELSON

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1 A. The whole argument started inside Rick house. We in
2 Rick house chillin.

3 Q. And you were inside?

4 A. Yeah.

5 Q. You went -- you were in Rick's house when they got back
6 from the club?

7 A. Um-hum (affirmative). No, I wasn't in Rick -- I wasn't
8 in Rick house until Rick came to there. But when we got in
9 the house, that's when we was in there chillin', smokin' or
10 whatnot. So when Meatball came back, that's when he
11 confronted Mr. Gray about his gun.

12 Q. And you were actually inside Rick's house when all of
13 that was happening?

14 A. Yeah. All of us was in Rick house when that happened.

15 Q. All of us?

16 A. Yeah.

17 Q. Who's all of us?

18 A. Me, Meatball, Rick. I don't know who else was in the
19 house, but it was people outside the house, too.

20 Q. Okay. And you said you were in the kitchen, I think,
21 ---

22 A. Kitchen ---

23 Q. --- when all this was going on?

24 A. The kitchen and living room was like conjoined [sic]
25 together.

ANTONIO NICHOLSON - CROSS-EXAMINATION BY MS. NELSON

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1 Q. All right. Were you still there at Rick's house when
2 the police rode through just a couple of minutes later?

3 A. No, ma'am. After the gunshots, I had left.

4 Q. You left?

5 A. (Affirmative nod).

6 Q. Where did Meatball go? Where did Mr. Fuller go after
7 he was shot?

8 A. I didn't see where he went. Only thing I seen, he was
9 falling on the ground.

10 Q. All you saw was him falling on the ground, ---

11 A. Um-hum (affirmative).

12 Q. --- and you left?

13 A. (Affirmative nod).

14 Q. Where did you go?

15 A. I left and went home. The only thing, I heard the
16 gunshots and I left.

17 Q. You call 911?

18 A. Somebody else called -- I don't know -- somebody said,
19 call the police, they was calling the police. I did not
20 call them.

21 Q. You believe somebody called the police?

22 A. (Affirmative nod).

23 Q. Who do you believe called the police?

24 A. I'm not quite sure.

25 Q. But you didn't -- you didn't call the police?

ANTONIO NICHOLSON - CROSS-EXAMINATION BY MS. NELSON

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1 A. No, ma'am.

2 Q. And you didn't go to the police immediately after this
3 happened to let them know what you'd seen, did you?

4 A. No, ma'am.

5 Q. And you heard a shot and saw Mr. Fuller fall. You
6 didn't go check on him, right?

7 A. You're right.

8 Q. You got out of there?

9 A. (Affirmative nod).

10 Q. Didn't hang around to tell that you -- you think you
11 heard somebody calling the police, but you didn't hang
12 around to tell the police what happened, ---

13 A. Correct.

14 Q. --- right?

15 A. (Affirmative nod).

16 Q. And you didn't go to the police the next day? Is that
17 true?

18 A. We went to -- when we found -- when we found the gun,
19 that's when Ms. Smith took the gun to the police. I didn't
20 go to the police and tell the police nothing I seen.

21 Q. Right. I'm talking about you going to the police.

22 A. Yeah.

23 Q. You didn't go talk to them the next day?

24 A. (Negative nod).

25 Q. Or the next week?

ANTONIO NICHOLSON - CROSS-EXAMINATION BY MS. NELSON

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- 1 A. (Negative nod).
- 2 Q. Right?
- 3 A. Yes, ma'am.
- 4 Q. Or the next month?
- 5 A. Yes, ma'am.
- 6 Q. Is that right?
- 7 A. Yes, ma'am.
- 8 Q. You didn't talk to anybody in law enforcement until Ms.
- 9 Smith gave up your name, is that right?
- 10 A. Yes, ma'am.
- 11 Q. First time you talked to anybody, I think, was in
- 12 January of this year?
- 13 A. Probably. Yes, ma'am.
- 14 Q. Do you remember having your preliminary hearing
- 15 probably ---
- 16 A. Yeah.
- 17 Q. --- downstairs ---
- 18 A. Yeah. Yes, ma'am.
- 19 Q. --- in January, like middle of January?
- 20 A. January the 15th to be exact.
- 21 Q. January 15th. So you had your preliminary hearing
- 22 downstairs. And that's when Detective Kay, and Mr. Thomas,
- 23 and your lawyer all sat down. And that's the first time you
- 24 told this story to anybody, is that right?
- 25 A. Yes.

ANTONIO NICHOLSON - CROSS-EXAMINATION BY MS. NELSON

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1 Q. And at the time that you first told what happened back
2 in January, like five months ago or so, less than five
3 months?

4 A. (Affirmative nod).

5 Q. By that time you had new pending charges?

6 A. Yes, ma'am.

7 Q. And that's what you're in the jail for right now, ---

8 A. Yes, ma'am.

9 Q. --- is that right? So after you got those pending
10 charges and Ms. Smith gave the police your name, that's when
11 you talked, is that right?

12 A. I already had pending charges before they came and
13 questioned me, yes.

14 Q. Um-hum (affirmative). So when you -- when you and this
15 Jermaine, right?

16 A. Um-hum (affirmative).

17 Q. He goes by J-baby?

18 A. Um-hum (affirmative).

19 Q. When you came by and you see Jermaine looking for
20 something, and you go help him, and you come across this
21 small black handgun, you call Ms. Smith, right?

22 A. (Affirmative nod).

23 Q. Not the police?

24 A. (Affirmative nod).

25 Q. Is that correct?

ANTONIO NICHOLSON - CROSS-EXAMINATION BY MS. NELSON

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1 A. Yes, ma'am.

2 Q. And you're -- and J-baby didn't call the police either?

3 A. No, ma'am.

4 Q. You know Jermaine's last name?

5 A. No, ma'am, not quite sure.

6 Q. Not sure?

7 A. (No response).

8 Q. And I think you testified that Ms. Smith came over
9 there to where y'all were, ---

10 A. Um-hum (affirmative).

11 Q. --- and she took the gun with her and left, is that
12 right?

13 A. Yes.

14 Q. And this gun that you have identified does not have the
15 clip in it right now, is that right?

16 A. Yes, ma'am.

17 Q. But it did when y'all found it, right?

18 A. I didn't even get close to it or touch it. So ---

19 Q. Okay.

20 A. --- it had ---

21 Q. So you don't know?

22 A. Yeah, I don't -- I'm not quite sure. I can't tell you
23 that.

24 Q. But what you do know is that you thought the thing to
25 do was to call Ms. Wanda Jean Smith?

ANTONIO NICHOLSON - CROSS-EXAMINATION BY MS. NELSON

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1 A. No, that's what Mr. Jermaine did. He called Ms. Smith
2 and told her this -- we found that gun that Gray had and
3 threw it behind -- and that's when she came and picked it up
4 and took it to the police.

5 Q. And you said this was, you think, the day after the
6 shooting or two days after the shooting?

7 A. Yeah. I -- I'm not quite sure how many days it was
8 after the shooting, but like a day or so -- day or two
9 afterwards.

10 Q. A day or two?

11 A. (Affirmative nod).

12 Q. It wasn't a week?

13 A. It may be. I'm not quite sure. I can't give you a
14 complete answer on that.

15 Q. Okay. So it could have been a day, it could have been
16 a week, you're just not sure, ---

17 A. I'm not sure.

18 Q. --- right? When you -- when you spoke to Detective Kay
19 and Mr. Thomas back in January do you remember telling them
20 I don't know if Meatball hit him when he swung or whatnot,
21 but he took off running?

22 A. He was like getting ready to turn to run, but he didn't
23 take off running really.

24 Q. Do you remember saying, I don't know if Meatball hit
25 him when he swung or whatnot?

ANTONIO NICHOLSON - CROSS-EXAMINATION BY MS. NELSON

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1 A. Well, you know, like when you swing like trying to get
2 people out your face or whatnot, that's how it was.

3 Q. That's what ---

4 A. Yeah. Like when he swung, like ---

5 Q. And that's what you ---

6 A. That's what I saw.

7 Q. Swung with his fist? That's what you just did?

8 A. Hand like this.

9 Q. Like this or ---

10 A. Yeah.

11 Q. Okay.

12 A. Trying to like break up a altercation amongst yourself.

13 Q. All right.

14 A. Because they was in each other face like arguing fixin
15 to get ready to fight.

16 Q. Okay. But that wasn't physical?

17 A. No. I mean, yes, ma'am, you could call it physical.

18 Q. What you told them back in January was that you saw --
19 you saw Meatball swing. Is that right?

20 A. Yes, ma'am.

21 Q. And you said when you left you didn't know if he was
22 dead or not?

23 A. No, ma'am.

24 Q. And at that time would you have driven over there that
25 night over to Rick's?

ANTONIO NICHOLSON - CROSS-EXAMINATION BY MS. NELSON

308

1 A. Of course, yes, ma'am.

2 Q. And you were driving your girlfriend's silver Altima?

3 A. Or either I was in my truck. I don't -- I can't
4 remember what vehicle I was in.

5 Q. You remember when you talked to them in January you
6 told them you didn't have your truck yet at that time?

7 A. I was in a friend's truck.

8 Q. You were in a friend's truck?

9 A. Yeah. Either I was in that truck or I was in my old
10 lady Altima, 2012 Altima.

11 Q. Didn't you tell them in January that you were in a
12 silver Altima?

13 A. Yes. Then I also told them I'm not quite sure if I was
14 in the truck or the Altima.

15 Q. Not quite sure about what?

16 A. If I was in the truck or the Altima.

17 Q. But in January you were sure you were in the Altima
18 when you gave them your statement, right?

19 A. Yes.

20 Q. Okay. Just one moment, Mr. Nicholson.

21 (Pause)

22 Q. All right. So -- again, you were in Rick's house when
23 this argument first started happening inside?

24 A. (Affirmative nod).

25 Q. And you see Mr. Fuller fall after you hear a shot,

ANTONIO NICHOLSON - CROSS-EXAMINATION BY MS. NELSON

309

1 right?

2 A. Yes.

3 Q. And you see Mr. Gray run around the house after you
4 hear the shot? You see him run and throw something? You
5 don't see him go back up to the door?

6 A. No. I didn't see him go back up to the door.

7 Q. You don't see him try to go to the house next door
8 either, right?

9 A. No, I didn't.

10 Q. Mr. Thomas talked to you some about some of the
11 criminal history you have.

12 A. Yes, ma'am.

13 Q. You have a conviction from back in 2013 in Georgia for
14 aggravated assault, and false imprisonment, and terroristic
15 threats, ---

16 A. Yes, ma'am.

17 Q. --- is that right? Are you still on probation in
18 Georgia for those charges?

19 A. Yes, ma'am.

20 Q. And then he mentioned in 2004 you pled guilty to a
21 strong arm robbery?

22 A. Yes, ma'am.

23 Q. And you got an 11 year sentence for that?

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

25 Q. How long did you actually serve in prison?

ANTONIO NICHOLSON - CROSS-EXAMINATION BY MS. NELSON

310

1 A. I came home 2010, December the 1st, 2010.

2 Q. And then you were on probation after that?

3 A. Yes, ma'am.

4 Q. Then in 2016 you pled guilty to a criminal conspiracy?

5 A. Yes, ma'am.

6 Q. And you got probation for that?

7 A. Yes, ma'am.

8 Q. In 2017 you got probation on a forgery charge?

9 A. Yes, ma'am.

10 Q. Going back to that criminal conspiracy, that charge was
11 a reduced charge, wasn't it?

12 A. Yes, ma'am.

13 Q. You were actually -- you were originally charged with
14 an armed robbery?

15 A. Yes, ma'am.

16 Q. And that got reduced down to a criminal conspiracy?

17 A. Yes, ma'am.

18 Q. Which is a less serious charge, right?

19 A. Um-hum (affirmative).

20 Q. You would have been looking at prison on an armed
21 robbery, but on the criminal conspiracy you got probation?

22 A. Yes, ma'am.

23 Q. And that armed robbery charge was pending when you
24 testified at Corey Brown's trial?

25 A. Yes, ma'am, because ---

ANTONIO NICHOLSON - CROSS-EXAMINATION BY MS. NELSON

311

1 Q. Right?

2 A. --- I know about the case.

3 Q. So in this same courtroom?

4 A. Yes, ma'am, it was.

5 Q. Back in August of 2014?

6 A. Yes, ma'am.

7 Q. And after you testified in that case that's when the
8 armed robbery got reduced down to a charge you got probation
9 for?

10 A. Yes, ma'am.

11 Q. Is that right?

12 A. It was -- I didn't -- I don't think I went to court til
13 2016 or something -- I'm not quite sure what year it was.

14 Q. But it was after you testified?

15 A. Yes, ma'am.

16 Q. The charge didn't get reduced before you testified,
17 right? It was after?

18 A. Um-hum (affirmative).

19 Q. Is that right?

20 A. (Affirmative nod).

21 **THE COURT:** That's a yes?

22 A. Yes, ma'am.

23 Q. And now we're here again today and you've got another
24 armed robbery charge pending?

25 A. Yes, ma'am.

WANDA WILLIAMS - DIRECT EXAMINATION BY MR. THOMAS

312

1 Q. Right? And you're back here testifying again in
2 another case?

3 A. Yes, ma'am.

4 Q. You didn't -- you didn't enjoy that time you had to go
5 spend in prison, did you, back in 2004?

6 A. No, ma'am. I mean, nobody wouldn't -- shouldn't enjoy
7 no prison time.

8 Q. Right. That's all I have. Thank you, sir.

9 THE COURT: Any redirect?

10 MR. THOMAS: Nothing from the State, Your Honor.

11 THE COURT: All right. Sir, you can step down. Thank
12 you. Call your next witness.

13 MR. THOMAS: The State calls Wanda Jean Alexander Smith
14 Williams.

15 MADAM CLERK: Place your left hand on the Bible and
16 raise your right hand, please.

17 Wanda Williams, being
18 duly sworn testified as follows;

19 Direct Examination by Mr. Thomas:

20 Q. All right, Ms. Wanda. Everybody has called you
21 everything from Wanda Jean, Ms. Jean to Wanda Williams.
22 What's your -- tell the jury what your name is that you want
23 us to call you.

24 A. Wanda Jean Williams.

25 Q. Ms. Williams, where do you live?

WANDA WILLIAMS - DIRECT EXAMINATION BY MR. THOMAS

313

1 A. Greenwood.

2 Q. Okay. Whereabouts in Greenwood?

3 A. Milwee.

4 Q. Okay. And is that near Gray Street?

5 A. Yes, sir.

6 Q. Okay. I'm going to show you what's been entered as

7 State's number 15. Do you recognize that?

8 A. Yes, sir.

9 Q. What is that?

10 A. A gun.

11 Q. Okay. And have you seen that gun before?

12 A. Yes, sir.

13 Q. Where did you see that gun? How did we get this?

14 A. From me.

15 Q. And who gave it to you?

16 A. BJ.

17 Q. And do you know his real name?

18 A. No.

19 Q. Do you know him as White Boy?

20 A. White Boy.

21 Q. Okay. About when do you remember he gave that to you?

22 A. I think -- I'm thinking it was that day or the day

23 after I was coming through Gray Street and he stopped me.

24 And he had the gun on a stick and said that he had found a

25 gun 'cause the detectives couldn't find it, he had found a

WANDA WILLIAMS - CROSS-EXAMINATION BY MS. NELSON

314

1 gun.

2 And he asked me would I call the police. I told him to
3 put it in my backseat because I didn't want to touch it. He
4 put it in my backseat. And I went home, called 911 and the
5 McAllister came and got the gun.

6 Q. Okay. And so McAllister came and took it from your
7 car?

8 A. Yes, he did.

9 Q. And that's all you've got to do with this case?

10 A. That's it.

11 Q. All right. Thank you, Ms. Williams. I'll let you
12 answer any questions defense counsel might have.

13 THE COURT: Anything?

14 MS. NELSON: Thank you, Your Honor.

15 Cross-examination by Ms. Nelson:

16 Q. Hi, Ms. Williams.

17 A. Hey.

18 Q. You don't remember -- you remember about the time that
19 Mr. Fuller was shot on Gray Street?

20 A. No, I don't remember. I just heard he had got shot.

21 Q. You weren't there or anything?

22 A. No.

23 Q. But you remember approximately when that happened?

24 A. Yes, ma'am.

25 Q. You remember it happening, I guess?

WANDA WILLIAMS - CROSS-EXAMINATION BY MS. NELSON

315

1 A. Yes.

2 Q. And about how long was it after that happened that BJ
3 gave you this gun?

4 A. I'm not mistaken it was that same day or it was the
5 next day.

6 Q. The same day or the next day?

7 A. Um-hum (affirmative).

8 Q. So if that happened on August 26th you think you -- of
9 2017 you think you got the gun either on the 26th or the
10 27th, maybe?

11 A. Yes, ma'am.

12 Q. And BJ's the one who gave you the gun?

13 A. Yes, ma'am.

14 Q. How did you -- how did you know he had it? Did you get
15 a phone call?

16 A. No. I was coming through Gray Street and ---

17 Q. Okay.

18 A. --- he was coming around the house and flagged me down
19 and told me that he had the gun, they found the gun.

20 Q. He was coming out of this house that's on this ---

21 A. My niece ---

22 Q. Oh, that's your niece's house?

23 A. (Affirmative nod).

24 Q. Okay. Tia?

25 A. Tia my niece.

WANDA WILLIAMS - CROSS-EXAMINATION BY MS. NELSON

316

1 Q. Okay. So he was coming out from around it and you were
2 coming down the road ---

3 A. I was coming up this way. It's a road -- come off
4 Greene Street and come on Gray.

5 Q. Um-hum (affirmative).

6 A. And I was coming up and he was coming around the house.
7 And he flagged me down and told me that he had the gun, to
8 call the police. And I called 911.

9 Q. You were just driving by?

10 A. (Affirmative nod).

11 Q. Okay.

12 THE COURT: She nods.

13 Q. Was Jermaine with him when BJ gave you the gun?

14 A. Yes, ma'am.

15 Q. Okay. But BJ was the one who gave it to you and not
16 Jermaine, ---

17 A. No, ma'am.

18 Q. --- right? You said he gave it to you on a stick.
19 What did you do -- did you take it on the stick or ---

20 A. No. I told him to put it in the backseat. I don't
21 want to touch no guns.

22 Q. Okay. So you didn't touch it ---

23 A. Uh-uh (negative).

24 Q. --- at all? You just said put it in the backseat?

25 A. Um-hum (affirmative).

WANDA WILLIAMS - CROSS-EXAMINATION BY MS. NELSON

317

- 1 Q. And you -- you said you called 911?
- 2 A. Yes, ma'am.
- 3 Q. That same ---
- 4 A. Yes, ma'am.
- 5 Q. The same day?
- 6 A. Yes, ma'am.
- 7 Q. You didn't call a specific ---
- 8 A. I called as soon ---
- 9 Q. --- officer?
- 10 A. As soon as he gave it to me, I called them.
- 11 Q. And it was 911 you called and not a specific officer?
- 12 A. No, ma'am. McAllister came, though.
- 13 Q. You what now?
- 14 A. McAllister came when I called 911.
- 15 Q. Okay. How long did it take him to come?
- 16 A. Probably about two or three minutes.
- 17 Q. And when you say McAllister, you're talking about
- 18 Captain McAllister with the police department?
- 19 A. Is it captain, detective?
- 20 Q. Well, whatever -- yeah, whatever his title is. It was
- 21 an officer with the Greenwood Police Department, ---
- 22 A. Um-hum (affirmative).
- 23 Q. --- right? So he came and got it the same day ---
- 24 A. Um-hum (affirmative).
- 25 Q. --- that you called, which was the same day that BJ put

WANDA WILLIAMS - CROSS-EXAMINATION BY MS. NELSON

318

1 it in your backseat?

2 A. (Affirmative nod).

3 THE COURT: She's nodding yes.

4 A. Yes, sir.

5 Q. Did you ever speak to Detective Kay here about the gun
6 as far as you know?

7 A. Yes.

8 Q. You did?

9 A. (Affirmative nod).

10 Q. On the phone or ---

11 A. I don't know, I think I went and talked to him -- I
12 think I remember talking to him.

13 Q. When you turned over the gun to McAllister, you did not
14 tell him who had given it to you, did you?

15 A. Yes. I told him BJ.

16 Q. That day that he picked it up, that's what you told
17 him?

18 A. Um-hum (affirmative).

19 Q. You didn't tell him that you weren't going to tell him
20 that right now, but if the case went to trial you would let
21 him know?

22 A. Yes, ma'am.

23 Q. That's what you said?

24 A. (Affirmative nod). Well, I thought I had told him. I
25 thought I had told him, but it's been so long, I just can't

WANDA WILLIAMS - CROSS-EXAMINATION BY MS. NELSON

319

- 1 remember.
- 2 Q. Did you end up telling somebody at some ---
- 3 A. Um-hum (affirmative).
- 4 Q. --- point that it was BJ?
- 5 A. Um-hum (affirmative).
- 6 Q. Who'd you tell?
- 7 A. If I'm not mistaken, I think it was Kay.
- 8 Q. And you didn't actually give them BJ's name until not
- 9 very long ago, right?
- 10 A. Yeah. Last year, I think. I don't know, last year ---
- 11 Q. You're not sure?
- 12 A. No, I'm not sure.
- 13 Q. If Captain McAllister wrote it up in his report the
- 14 same day it all happened, would you have any reason to doubt
- 15 what he wrote up about getting the gun from you?
- 16 A. Say what now?
- 17 Q. Okay. If Captain McAllister, after he got the gun from
- 18 you, if he wrote up a report about it, would you have any
- 19 reason to doubt what would be in his report?
- 20 A. No.
- 21 Q. Okay. You took him out there and showed him where it
- 22 was found?
- 23 A. No.
- 24 Q. No? Where did he come get it from?
- 25 A. My house.

WANDA WILLIAMS - CROSS-EXAMINATION BY MS. NELSON

320

1 Q. Your house?

2 A. I was in the driveway waiting on him.

3 Q. And y'all didn't ever -- you didn't leave your house
4 and ---

5 A. Uh-uh (negative).

6 Q. --- go anywhere with him?

7 A. No.

8 Q. He just got the gun out of your backseat?

9 A. (Affirmative nod).

10 Q. And you just -- you just don't remember for sure when
11 you were willing to give the police BJ's name?

12 A. No. If they'd asked me, I would've. No. No. But I
13 did ---

14 Q. You don't remember?

15 A. (Negative nod).

16 Q. It seem strange to you that you got called to come get
17 this gun?

18 A. I didn't get called, ma'am.

19 Q. I'm sorry. I apologize. When BJ testified he said
20 that you got called, so I keep getting confused.

21 A. No, I didn't get called.

22 Q. When you rode by did you think it was strange that you
23 were the one who was being asked to take this gun that
24 they'd found?

25 A. I guess 'cause I know 'em, all the police. I don't

WANDA WILLIAMS - REDIRECT EXAMINATION BY MR. THOMAS

321

1 know. I was just coming through driving and they stopped
2 me.

3 Q. Okay. Just one moment.

4 (Pause)

5 Q. Thank you, ma'am.

6 **THE COURT:** Any redirect?

7 **Redirect Examination by Mr. Thomas:**

8 Q. Ms. Williams, did we give you a subpoena to be here
9 today?

10 A. Yes, sir.

11 Q. And did we do that -- did we give you a subpoena back
12 in the fall of last year?

13 A. Yes, sir.

14 Q. Do you remember if you told us who had -- who gave you
15 the gun back in the fall of last year? Is that when you
16 first told us?

17 A. Yes, sir.

18 Q. Okay. Thank you, Ms. Williams.

19 **THE COURT:** All right. Thank you, ma'am. You can step
20 down.

21 A. Thank you.

22 **THE COURT:** You're free to go. Take care. Do you have
23 another brief witness, solicitor?

24 **MR. THOMAS:** Two left for the day, Your Honor.

25 **THE COURT:** Oh, two for the day?

25 A. Okay. I got called of a decedent -- of a deceased that

SONNY COX - DIRECT EXAMINATION BY MR. THOMAS

323

1 passed away at Self Regional Healthcare in the emergency
2 call, 911 call dispatch, and I responded to Self Regional.

3 Q. And when you responded -- I'm assuming they called you
4 because he was already dead?

5 A. That's correct.

6 Q. Did you observe anything in your initial investigation
7 that led you to think what may be the cause of death?

8 A. Certainly. When I arrived at the hospital, I went into
9 the trauma room where the deceased was. He was identified
10 as Demetrius Fuller. I did see -- I pulled the sheet back.
11 I did see where he was -- looked like one single gunshot
12 wound to the abdomen.

13 Q. And did you eventually take the body for an autopsy to
14 confirm that?

15 A. I did. Yes, sir.

16 Q. And when was that?

17 A. On the -- that was the -- I got the call on the 26th.
18 I took Mr. Fuller for an autopsy on the 28th at nine --
19 9:00. I picked him up at the morgue.

20 Q. And during the -- I guess just for the record, the
21 hospital where the victim died, what county is that in?

22 A. I'm sorry?

23 Q. Where did the victim die?

24 A. At the hospital in the emergency room.

25 Q. And what county is that in?

SONNY COX - DIRECT EXAMINATION BY MR. THOMAS

324

1 A. Greenwood County.

2 Q. You took him to the autopsy. Who performed that
3 autopsy?

4 A. Dr. Brett Woodard.

5 Q. And that was in Anderson?

6 A. Anderson at AnMed.

7 Q. And during the course of that autopsy did Dr. Woodard
8 -- was he able to recover a projectile or anything of
9 evidentiary value?

10 A. Yes, sir, he did. One projectile.

11 Q. And did he take any bodily fluids from the decedent?

12 A. He did. Yes, sir.

13 Q. And what did he do with both of those?

14 A. I took them and I turned them over to the city officer
15 at the police department when I got back.

16 (Whereupon State's exhibit 16 was marked for
17 identification)

18 Q. I'm going to show you what's been premarked for ID only
19 at this time as State's exhibit 16. Would you take a look
20 at that? Does that look familiar to you?

21 A. It does. Yes, sir.

22 Q. And what is that?

23 A. It's a projectile, like a .380 projectile.

24 Q. And is that the projectile Dr. Woodard gave to you?

25 A. I would say so. Yes, sir, that's it.

SONNY COX - DIRECT EXAMINATION BY MR. THOMAS

325

1 Q. Okay. And what did you say you did with this when you
2 got it?

3 A. I brought it -- took it with me -- I took the decedent
4 by Percival-Tompkins Funeral Home and -- where we deliver --
5 they took him into their care. I immediately took that to
6 the police department.

7 Q. Okay. And ---

8 A. It stayed in my possession.

9 Q. Okay. Stayed in your possession. Do you remember who
10 at the police department helped you log that into evidence?

11 A. Yes, sir. That was a couple of officers there. I
12 think Captain Mitch McAllister was there as well.

13 Q. Very good. Did you do the same thing with the bodily
14 fluids that Dr. Woodard drew?

15 A. I did. Yes, sir.

16 MR. THOMAS: I beg the Court's indulgence one moment.

17 (Pause)

18 MR. THOMAS: Your Honor, this may be a good time for a
19 brief break.

20 THE COURT: Brief break? All right. Ladies and
21 gentlemen, we're waiting on something else. Step back
22 there. And if you need to pop outside, that's fine. We'll
23 make this a ten minute break, and then we'll go straight
24 into the next witness. I assume it's Dr. Woodard?

25 MR. THOMAS: And that'll be the last one for the day.

SONNY COX - DIRECT EXAMINATION BY MR. THOMAS

326

1 **THE COURT:** That'll be the last one for the day. Don't
2 talk about the case. Pop outside if you need to. Just let
3 them know, all right?

4 (Whereupon the jury exited the courtroom at 2:59 pm)

5 **THE COURT:** You can step down, Sonny, if you want ---

6 A. Thank you, sir.

7 **THE COURT:** --- to, just don't talk to anybody about
8 your testimony.

9 A. Okay.

10 **THE COURT:** All right. We'll be at ease.

11 (Whereupon court was in recess at 3:00 pm)

12 (Whereupon court reconvened at 3:20 pm)

13 **THE COURT:** All right. Let's go ahead and get the jury
14 moving, please.

15 (Whereupon the jury entered the courtroom at 3:20 pm)

16 **THE COURT:** All right. The jury is back and seated.

17 We're still involved in the direct examination of the
18 coroner. Solicitor, continue, please.

19 Direct Examination by Mr. Thomas Continued:

20 Q. Thank you, Coroner Cox. Just to clarify that and then
21 I'll let you answer any questions Ms. Nelson has. You said
22 you came back from the autopsy with a projectile and bodily
23 fluids?

24 A. I did, yes, sir.

25 Q. And who did you give those to?

SONNY COX - CROSS-EXAMINATION BY MR. GORANSON

327

1 A. If I recall right, I gave them to Captain Mitch
2 McAllister. And he had a couple of officers standing with
3 him.

4 Q. Okay. And was that in your office or over at ---

5 A. No, sir. That was in the back of the police
6 department.

7 Q. Okay. All right. Thank you very much, coroner. I'll
8 let you answer any questions the defense may have.

9 A. Okay.

10 THE COURT: Mr. Goranson.

11 MR. GORANSON: Thank you, Your Honor.

12 Cross-examination by Mr. Goranson:

13 Q. Good afternoon, Mr. Cox. You put together a report for
14 this death, correct, as part of your investigation?

15 A. I'm sorry, sir?

16 Q. Did you put together a report as part of your
17 investigation ---

18 A. I did. Yes, sir.

19 Q. --- in this case?

20 A. Yes, sir.

21 Q. And that includes getting documents from the police
22 department?

23 A. Yeah. I just do a summarized report as to what we do,
24 and kind of like an incident report for us.

25 Q. Correct. And you make a determination about what kind

SONNY COX - CROSS-EXAMINATION BY MR. GORANSON

328

- 1 of classification ---
- 2 A. Um-hum (affirmative).
- 3 Q. --- of death this is?
- 4 A. Homicide? Is that ---
- 5 Q. Right. There's natural, ---
- 6 A. Certainly. Natural, accidental, undetermined, and
- 7 there is suicide, and there's homicide.
- 8 Q. Okay. So homicide, that means death at the hands of
- 9 another?
- 10 A. That's correct.
- 11 Q. But it doesn't -- it doesn't tell you what type of
- 12 homicide it is, correct?
- 13 A. No.
- 14 Q. Okay. As part of your report did you review the
- 15 findings of Dr. Woodard?
- 16 A. Yes, sir. I did look over those findings.
- 17 Q. And are ---
- 18 A. And I was present at the autopsy.
- 19 Q. Okay. Great. And so in Dr. Woodard's he made some
- 20 findings about Mr. Fuller, the decedent in this case?
- 21 A. I'm sure he did. Yes, sir.
- 22 Q. And he took some basic measurements of Mr. Fuller?
- 23 A. Yes, sir, but I don't have his report before me.
- 24 Q. If I showed it to you, would that refresh ---
- 25 A. I could ---

SONNY COX - CROSS-EXAMINATION BY MR. GORANSON

329

1 Q. --- your recollection?

2 A. --- probably do that. I'm interpreting what Dr.
3 Woodard does.

4 Q. But is that something you relied on ---

5 A. No.

6 Q. --- in your investigation?

7 A. No, sir. I work off the pathology report. And I was
8 present at the autopsy. I was with Dr. Woodard when he
9 conducted it. That had nothing to do with my determining
10 the homicide.

11 Q. But -- so Dr. Woodard is the pathologist in this case,
12 correct?

13 A. That's correct.

14 Q. And Dr. Woodard performed the autopsy?

15 A. He did.

16 Q. And you attended the autopsy?

17 A. I did.

18 Q. And you made the autopsy report part of your
19 investigation?

20 A. I added it to my file. Yes, sir, I did.

21 Q. Okay. Because it supported your conclusion ---

22 A. Yes, sir.

23 Q. --- that there was a homicide?

24 A. That's right.

25 Q. Okay. And Dr. Woodard, as part of his analysis, made

BRETT WOODARD, M.D. - DIRECT EXAMINATION BY MR. THOMAS

330

1 some measurements of Mr. Fuller?

2 A. Yes, sir, he did. They do.

3 Q. He said he was five foot ten. Do you have any reason
4 to dispute that?

5 A. I know he did the measurements. Yes, sir.

6 Q. Okay. And he put in there -- tell me whether you know
7 what this -- if you don't know what this means, that's fine,
8 but he put in there that Mr. Fuller had a mesomorphic body
9 type.

10 A. I don't know, sir.

11 Q. Pardon?

12 A. I don't know what that is. No, sir.

13 Q. Okay. Okay. That's it. Thank you.

14 A. Yeah.

15 MR. THOMAS: No redirect, Your Honor.

16 THE COURT: Thanks for coming. You're free to go.

17 Take care. Call your next witness, please.

18 MR. THOMAS: Your Honor, the State calls Brett Woodard,
19 Dr. Brett Woodard.

20 MADAM CLERK: Place your left hand on the Bible and
21 raise your right hand, please.

22 Brett Woodard, M.D.,
23 being duly sworn testified as follows;

24 MADAM CLERK: Thank you.

25 (Whereupon State's exhibits 17 - 21 were marked for

BRETT WOODARD, M.D. - DIRECT EXAMINATION BY MR. THOMAS

331

1 identification)

2 **Direct Examination by Mr. Thomas:**

3 Q. Good afternoon, Dr. Woodard.

4 A. Good afternoon.

5 Q. What is it you do for a living?

6 A. I'm a medical doctor, licensed in the State of South
7 Carolina, and I'm a forensic pathologist. I work for
8 Greenwood, Abbeville, Anderson, and Oconee Counties.

9 Q. And what does a forensic pathologist do?

10 A. A forensic pathologist is a person who has special
11 training in injuries to the human body, what disabilities up
12 to the point of death those injuries might produce, and how
13 those injuries are produced.

14 Q. And what kind of training and education do you have to
15 have to be a pathologist?

16 A. I received a baccalaureate degree from the University
17 of Pittsburgh. I received a Medical Degree from Tulane
18 University School of Medicine in New Orleans. I did an
19 internship at the Charity Hospital of New Orleans. I did a
20 residency training at Duke University Medical Center. And I
21 did fellowship training at the North Carolina medical
22 examiner's office. I then stood for a national examination
23 and received board certification.

24 Q. And how long have you been a forensic pathologist?

25 A. I've been a forensic pathologist, board certified,

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1 since 1994.

2 Q. And as part of that do you perform autopsies?

3 A. Yes. That's one of my duties.

4 Q. And what is an autopsy?

5 A. An autopsy is an examination of an individual after
6 their death. It can be permitted by the family or permitted
7 by coroners under their jurisdiction and the state law.

8 Q. And how many of those would you say you've done over
9 the years?

10 A. I've done approximately 200 to 250 a year for over 20
11 years.

12 Q. And have you ever testified in court before?

13 A. Yes, I have.

14 Q. How many times?

15 A. Hundreds.

16 **MR. THOMAS:** Your Honor, at this time the State would
17 move to qualify Dr. Woodard as a forensic pathologist, an
18 expert in forensic pathology.

19 **MS. NELSON:** No objection.

20 **THE COURT:** All right. Ladies and gentlemen, in this
21 case the parties agree that Dr. Woodard is an expert in the
22 field of forensic pathology. And normally, like with the
23 previous witnesses, normally a witness is only limited to
24 something that they can testify to about something they
25 observed, heard, saw, smelled, tasted, et cetera, something

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1 limited to one of their five senses. And normally witnesses
2 are not permitted to give expert opinion or opinion
3 testimony.

4 An exception to this rule exists, though, for
5 individuals like Dr. Woodard who are specialized in fields
6 like forensic pathology. Because he's recognized as an
7 expert in this field, he can give opinion testimony in that
8 field that you can use as you deem appropriate. Solicitor,
9 go ahead.

10 **Direct Examination by Mr. Thomas Continued:**

11 Q. Dr. Woodard, did you have an opportunity to perform an
12 autopsy on a Demetrius Fuller?

13 A. Yes, I did.

14 Q. And did you do that on August 28th of 2017?

15 A. Yes, I did at approximately 11:00 in the morning.

16 Q. And what was the purpose of you performing that
17 autopsy?

18 A. I was requested to perform the autopsy by the coroner
19 of Greenwood County, Mr. Cox, in order to determine the
20 cause, manner, and mechanism of death of this individual and
21 to obtain what evidence might assist in determining who the
22 individual was that had caused his injuries.

23 Q. And when you say cause, manner, and mechanism of death,
24 those are three separate things?

25 A. That's correct.

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1 Q. Could you explain each of those to us, what you mean
2 when you say that?

3 A. The cause of death would be a blood clot in your
4 coronary arteries. A mechanism of death would be the
5 electrical activity in your heart didn't work well. In this
6 case the cause was an injury to an artery. And the
7 mechanism was what we call exsanguination or bleeding to
8 death.

9 Q. Okay. Did you -- as part of your autopsy do you
10 examine the patient's body, the decedent's body?

11 A. As I receive it.

12 Q. Okay. And in this case did you observe any notable
13 injuries to his body?

14 A. He had a gunshot wound to his right lower quadrant.
15 That's at or below the umbilicus down to the pubic hair and
16 over to the right side, in that area. And in this
17 particular case it was slightly below the umbilicus,
18 approximately an inch from the centerline in the right lower
19 quadrant.

20 Q. I'm going to show you what's been premarked as State's
21 exhibit 19. Can you tell me if you recognize that?

22 A. This is a picture that I took or caused to be taken
23 that shows an entry wound just to the right and below the
24 deceased's umbilicus.

25 Q. I'm going to show you what's been premarked as 17 and

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1 ask you if you can identify that?

2 A. This is a photograph of the x-ray that we took in order
3 to localize the position of the bullet before we did the
4 autopsy. And it shows a metallic object in the right side
5 of the pelvis which is the bullet that we ultimately
6 retrieved and placed into evidence.

7 Q. And those two pictures, would those help you explain
8 your testimony to the jury?

9 A. Yes, they do.

10 MR. THOMAS: Your Honor, I'd move State's 17 and 19
11 into evidence at this time.

12 MS. NELSON: No objection.

13 THE COURT: Without objection, 17 and 19 are in.

14 (Whereupon State's exhibits 17 and 19 were admitted
15 into evidence)

16 Q. I'm going to show you first State's number -- well, I
17 guess, in the order you went. You said you did the x-ray
18 first?

19 A. After we saw the ---

20 Q. Okay.

21 A. --- bullet hole.

22 Q. So let's start with 19. Can you tell us what we're
23 looking at here?

24 A. Yes. This is a standard ruler that we use with the
25 name of the deceased on it to identify the picture. You see

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1 the umbilicus immediately below the ruler. And off to the
2 -- as we look at the picture, the left, but that's really
3 his right lower quadrant. You see a round defect with a
4 hole in the center. That's typical, a gunshot wound or the
5 entrance.

6 Q. And did you notice anything else related to a gunshot
7 wound around that?

8 A. There was what we call an abrasion ring, which is just
9 a characteristic of a given gun and a given caliber. We did
10 not see any other elements of the discharge of the gun,
11 powder, stippling, which also come out of the end of the
12 barrel, but only go a short distance, usually less than a
13 foot.

14 Q. And could you just explain that to us a little bit
15 more, what you mean by powder and stippling and ---

16 A. When you discharge a gun, the powder that's unused in
17 the shell also is thrown out of the end of the barrel by the
18 explosion of the cartridge, but it's very fine and it's very
19 light. And it has very low, what we call mass. And so it
20 can't go very far, usually with standard length handguns
21 less than six inches. And it'll just lay on the skin and
22 can be easily wiped away.

23 Stippling is little pieces of metal that actually get
24 torn off the bullet or torn off the inside of the barrel as
25 the bullet flies down the barrel because it's being spun by

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1 what's known as rifling, little ridges that are inside the
2 barrel. And they get thrown further than the powder does.
3 But unlike the powder, which is very light, they have a
4 little more weight to them. So they actually produce
5 injuries to the skin, little tiny tears or scrapes to the
6 skin that won't be washed away. That's seen somewhere
7 between six and 12 inches with a handgun.

8 Q. So you said you observed none of those injury
9 characteristics here?

10 A. That's correct.

11 Q. So based on your medical opinion, how far away would
12 this gunshot have had to have occurred?

13 A. More than 12 inches.

14 Q. And I'm going to show you State's number 17. And that
15 is what again?

16 A. That's an x-ray. You see the bones of his pelvis and
17 at the tops of his legs, the femur -- the femoral heads
18 going into the pelvis. You see his backbone coming down.

19 And you'd see on the left side of the picture, which is
20 the right side of his body, you'd see a metallic object,
21 which is a bullet. That bullet's sitting down somewhere
22 near the sacrum, the portion of bone that makes the back
23 part of your pelvis. And we ultimately retrieved it in the
24 soft tissues of the back.

25 Q. Okay. And so that bullet went in where again?

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1 A. It went in close to where the top of the x-ray is. And
2 it went downward and pretty much stayed right and left
3 constant.

4 Q. Okay. And in the course of it traveling through his
5 body, what kind of injury did it cause?

6 A. Right there where the vertebral body is, the second one
7 that you can see or from the top, the third one down is the
8 end of the aorta. And then going off to the right and off
9 to the left are what we refer to as the iliac arteries. It
10 is the arteries that are going to take care of the organs in
11 your pelvis and ultimately take care of the legs below. So
12 they're pretty large sized arteries. It struck that artery
13 in its draining vein.

14 Q. And what did that do to the decedent?

15 A. It caused him to bleed both within his body around his
16 intestines, and it caused him to bleed behind the intestines
17 in a potential space we call the retroperitoneal.

18 Q. And what -- all of that bleeding, what did that
19 ultimately cause?

20 A. Ultimately it caused him to exsanguinate. He could no
21 longer have his heart beat. He could no longer profuse his
22 brain. And he could no longer profuse his heart in order to
23 stay alive.

24 Q. Let me show you State's number 18. Do you recognize
25 that?

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1 A. Yes. This is a picture I took or had to be taken,
2 which, again, has his name on it, our case number. And it's
3 a picture of the projectile that we retrieved.

4 MR. THOMAS: Your Honor, at this time I'd move State's
5 18 into evidence.

6 MS. NELSON: No objection.

7 THE COURT: Without objection, State's 18 is in.

8 (Whereupon State's exhibit 18 was admitted into
9 evidence)

10 Q. So you were able to remove the projectile from his
11 body?

12 A. That's correct.

13 Q. And I'm going to show you what's been marked as State's
14 exhibit 16 for ID only at this time. Will you take a look
15 in there and see if you recognize that?

16 A. This represents the projectile I removed. I placed it
17 in this plastic tube and sealed it in this envelope. It has
18 our unique identifying sticker on it.

19 Q. And that's the same projectile that's in State's 18?

20 A. That's correct.

21 Q. This is the projectile you removed from the decedent?

22 A. That's correct.

23 MR. THOMAS: Your Honor, at this time I'd move State's
24 16 into evidence.

25 MS. NELSON: No objection.

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1 **THE COURT:** 16 is in.

2 (Whereupon State's exhibit 16 was admitted into
3 evidence)

4 Q. So that's -- that's the projectile?

5 A. That's correct.

6 Q. Did you examine any other parts of Mr. Fuller's body?

7 A. We examined his entire outside of his body for any
8 acute injuries other than the gunshot wound. We found a
9 scrape on his right knee, but I found no other injuries to
10 his body.

11 Q. Let me show you State's 20 and 21 and ask if you can
12 identify those?

13 A. These are pictures that I either took or caused to be
14 taken, which show the back side of his right and left hands.
15 And they're what I call a pertinent negative picture in that
16 they don't show any acute trauma.

17 Q. Okay. So those are pictures of the decedent's hands?

18 A. That's correct.

19 **MR. THOMAS:** Your Honor, at this time I would move
20 State's number 20, which is his ---

21 Q. Is that his left or right hand?

22 A. That's his left hand.

23 Q. And 21, which is his?

24 A. Right hand.

25 **MR. THOMAS:** I'd move both of those into evidence.

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1 MS. NELSON: No objection.

2 THE COURT: 20 and 21 are in.

3 (Whereupon State's exhibits 20 and 21 were admitted
4 into evidence)

5 Q. So -- and you examined both of his hands. And you said
6 there were no injuries to that. What do you mean ---

7 A. There are no acute injuries. There's no bruising,
8 scraping, someone's fingernail marks on them like somebody
9 grabbed them or any kind of trauma to the hands that could
10 be made by acute interaction with other people.

11 Q. Okay. And in your medical opinion what does that mean?

12 A. That no punches were thrown, no one had tight control
13 over his hands, he wasn't restrained in any way.

14 Q. And did you examine his entire, I guess, upper body for
15 other injuries, bruising, anything like that?

16 A. Yes. His face, his entire body, both front and back.

17 Q. If someone were to, I guess, grab ahold of you tightly,
18 would that leave some sort of injury or mark?

19 A. It leaves what we call fingertip bruises. The pressure
20 of trying to hold somebody against their will, the pressure
21 of your fingers causes bleeding into the fatty tissues of
22 your body and produces a bruise that's approximately the
23 size of the tip of a finger. We can't relate it to
24 someone's specific finger, but we can relate it to a finger
25 gripping.

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1 Q. And did he have any types of injuries to his upper body
2 of that ---

3 A. No, he did not.

4 Q. Did he have any scratches?

5 A. No, he did not, except for the one I spoke of on his
6 right knee.

7 Q. On his knee, okay. I'll go ahead and ask you this, I
8 guess. How tall was the decedent?

9 A. He was 70 inches, five foot ten.

10 Q. And how much did he weigh?

11 A. A hundred and sixty pounds.

12 Q. And in your estimation is he average, above average,
13 below average build?

14 A. He was average build.

15 Q. Thank you, Dr. Woodard. I will let you -- well, let me
16 ask you this. We'll end on this. In your expert medical
17 opinion what was the cause of death?

18 A. Gunshot wound that resulted in the laceration of the
19 iliac artery and vein.

20 Q. Okay. And in your expert opinion what was the manner
21 of death?

22 A. Homicide.

23 Q. And when you say homicide, that's sort of a nonspecific
24 term, correct?

25 A. That's a medical term meaning another person caused

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1 your death.

2 Q. All right, Dr. Woodard. Thank you. I'll let you
3 answer any questions defense may have.

4 THE COURT: Ms. Nelson.

5 Cross-examination by Ms. Nelson:

6 Q. Good afternoon, Dr. Woodard.

7 A. Good afternoon.

8 Q. You described Mr. Fuller in your -- in your autopsy
9 report as having a mesomorphic body habitus. Does that mean
10 he's muscular?

11 A. No. That means he's average.

12 Q. That means he's average?

13 A. Right. He's not ---

14 Q. He's not ---

15 A. He's not skinny and he's not obese.

16 Q. Okay. And you said that the trajectory of the bullet
17 was downward ---

18 A. Downward and ---

19 Q. --- and toward ---

20 A. --- into his posterior.

21 Q. And that posterior is toward the back of his body?

22 A. That's correct.

23 Q. So it was down and back?

24 A. That's correct.

25 Q. Okay. And you mentioned that you would -- you didn't

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1 see any injury to his hand that you would expect to see if a
2 punch were thrown.

3 A. If he, himself, had thrown a punch or someone had
4 grabbed ahold of his hands and was holding him.

5 Q. If he had thrown a punch that didn't connect to
6 anything, ---

7 A. Obviously, it would not produce any injury.

8 Q. Yes, sir. Thank you.

9 MR. THOMAS: No redirect.

10 THE COURT: Doctor, thank you very much for coming.

11 Take care of yourself. You're free to go. All right. No
12 other witnesses for today?

13 MR. THOMAS: Not for today.

14 THE COURT: All right. Ladies and gentlemen, we're
15 actually running a little bit ahead of schedule. Moving a
16 little bit more quickly than we had anticipated or the
17 lawyers and I had anticipated. So we're going to break a
18 little bit early tonight.

19 I'm going to ask, if you would, do be back here
20 tomorrow morning, please, at 9:30. Again, don't discuss the
21 case with anyone this evening. And, otherwise, have a
22 pleasant evening. Okay. Take care of yourselves. See you
23 at 9:30. Thanks. You can just leave the pads in your
24 seats.

25 (Whereupon the jury exited the courtroom at 3:44 pm)

WILLIAM KAY - DIRECT EXAMINATION BY MR. THOMAS

1 Wednesday, May 8, 2019:

2 (Whereupon court reconvened at 9:52 am)

3 **THE COURT:** We'll go on the record. Of course, Mr.
4 Gray is present with counsel. State's ready to proceed.
5 Let's have the jury, please.

6 (Whereupon the jury entered the courtroom at 9:53 am)

7 THE COURT: All right. Jury is back. Ladies and
8 gentlemen, thank you for being here on time. I apologize
9 for the delay in getting you out here. I had a few matters
10 that I needed to take up with an attorney in chambers,
11 something unrelated to this case entirely. But, again,
12 thank you for being here on time, and I'm sorry for keeping
13 you waiting.

14 We're, of course, still in the State's case in chief.
15 So at this point, solicitor, if you'll call your next
16 witness, please.

17 MR. THOMAS: The State calls Investigator William Kay.

18 William Kay, being
19 duly sworn testified as follows;

20 Direct Examination by Mr. Thomas:

21 Q. Sergeant Kay, would you introduce yourself to the jury.

22 A. William Kay.

23 Q. And where do you work?

24 A. The Greenwood Police Department.

25 Q. How long have you worked at the police department?

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- 1 A. It'll be 12 years this month.
- 2 Q. And what's your job there currently?
- 3 A. I'm an investigator.
- 4 Q. And what did you do before you were an investigator?
- 5 A. I worked in the warrant division serving warrants.
- 6 Q. And how long have you been an investigator?
- 7 A. Almost six years.
- 8 Q. And what does that normally entail? Like, what's your
- 9 day-to-day job, I guess?
- 10 A. Investigating crimes that take place, stuff that the
- 11 shift doesn't have time to follow up on.
- 12 Q. And, I guess, were you working in investigations back
- 13 in August of 2017?
- 14 A. I was.
- 15 Q. Did you get a call out to a shooting incident on August
- 16 26th of that year?
- 17 A. I did.
- 18 Q. What's the first thing you did? Well, I guess, how did
- 19 you -- how did you get informed of that?
- 20 A. Early that morning I was sleeping, I received a call
- 21 from Lieutenant Dixon. He told me that there had been a
- 22 shooting and that the victim was deceased at the hospital.
- 23 Asked me to respond, so I went to the hospital.
- 24 Q. And what did you do at the hospital?
- 25 A. I started -- there was -- when I got there the family

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1 was outside, several -- several people outside. So I began
2 to try to talk to them to see if anybody had seen anything
3 or if anybody knew what happened.

4 Q. Did you -- were you able to get any information from
5 anybody there?

6 A. I talked to a couple of people and was eventually led
7 to or was given the name Kool-aid. And then I ended up
8 speaking with Raymond Kennedy who goes by Kool-aid.

9 Q. Okay. So you spoke to Raymond Kennedy there at the
10 hospital?

11 A. Yes, sir.

12 Q. Okay. Did you go anywhere else to talk with him?

13 A. I asked him would he ride to the office with me to
14 speak with me, and he agreed. So I took him to our office
15 to talk to him.

16 Q. Okay. And after that discussion with him, what was
17 your next step in this investigation?

18 A. After speaking with him I learned that the incident
19 took place on Gray Street. So I went to Gray Street to the
20 residence of Ricky Grant and began to look around for any
21 evidence.

22 Q. Did you locate anything there?

23 A. I did. I located a shell casing in the front yard.

24 Q. Okay. Did you take any pictures while you were there?

25 A. Yes, sir, I did.

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1 (Whereupon State's exhibits 22 - 27 were marked for
2 identification)

3 Q. I'm going to show you what's already in evidence as
4 State's number 1 and 2, or I'm sorry, 1 and 5. And then I'm
5 going to show you what's been premarked as 22, 23, 24, 25
6 and 26 and ask you if you recognize those?

7 A. I do. They're pictures of the residence as well as the
8 shell casing laying on the ground where it was located
9 before it was collected.

10 Q. And those are pictures you took?

11 A. Yes, sir, they are.

12 Q. And are those true and accurate representations of the
13 scene you found that day?

14 A. Yes, sir, they are.

15 Q. Okay.

16 **MR. THOMAS:** Your Honor, at this time I'd move State's
17 22 through 26 into evidence.

18 **MS. NELSON:** No objection.

19 **THE COURT:** Without objection, State's 22 through 26
20 are in evidence.

21 (Whereupon State's exhibits 22 - 26 were admitted into
22 evidence)

23 Q. And I'm going to get you to show these to the jury here
24 in a little bit, but let's keep moving through this. I'll
25 show you what's been marked as State's 27. Do you recognize

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1 that?

2 A. I do. It's the shell casing that I located in the
3 front yard.

4 Q. Okay. And that's the shell casing that's represented
5 on the picture, State's number 26?

6 A. Yes, sir, it is.

7 Q. And when you got that shell casing, I guess when you
8 found it, what did you do with it?

9 A. I photographed it first. And then I collected it and
10 placed it into evidence.

11 Q. And that was the evidence at the City Police
12 Department?

13 A. At the City Police Department.

14 Q. And that's the shell casing you found?

15 A. It is.

16 **MR. THOMAS:** Your Honor, at this time I'd move State's
17 27 into evidence.

18 **MS. NELSON:** No objection.

19 **THE COURT:** Without objection, 27 is in.

20 (Whereupon State's exhibit 27 was admitted into
21 evidence)

22 Q. Okay. So you went to the scene, photographed it, took
23 -- collected evidence. What was your next step out there
24 that day?

25 A. I began to just walk around, looking for anybody that

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1 was outside that would speak with me. As I was walking
2 around looking, I noticed some cameras on the house at the
3 corner of Greene and Gray. So I went and knocked on their
4 door and spoke with them.

5 Q. And whose house was that?

6 A. It was Mr. Vacquec.

7 Q. And were you able to get any evidence from him?

8 A. Yes, sir. I was able to view the video. And I got
9 surveillance video from his house that points back toward
10 the incident location.

11 Q. And that is the surveillance video that's been admitted
12 already as State's number 2?

13 A. Yes, sir, it is.

14 Q. How did you get that from him, I guess, just for the
15 record?

16 A. In his bedroom he had a small TV screen computer
17 monitor set up with a DVR below it where all of his cameras
18 were read to. And I was able to just go into it using a
19 mouse and put a thumb drive or a flash drive in the USB port
20 and download it to the thumb drive.

21 Q. And how did you know -- I think -- was the time stamp
22 accurate on it or did you have to do some math to figure out
23 ---

24 A. It was not accurate. We typically run into that.
25 Sometimes they'll be off two, three minutes. Sometimes

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1 they'll be off several hours.

2 I just looked at the time that it was on my phone and
3 then looked at the time that his camera showed, did the
4 math, and then backed up as far as I needed to, which I was
5 able to back up and -- until I seen the police cars ride
6 through, and I knew the incident would have taken place just
7 before that.

8 Q. In fact, State's number 4, I believe, is a still shot
9 from that video?

10 A. Yes, sir, it is.

11 Q. Okay. And that's a, I guess, that's what you were able
12 to see on video?

13 A. That's right.

14 Q. After you got the video from Mr. Vacquec did you talk
15 to anybody else that day?

16 A. I spoke with -- I spoke with Ricky Grant that day.

17 Q. And that's the conversation we heard yesterday?

18 A. Yes, sir, it was.

19 Q. After you got the surveillance video and spoke to Mr.
20 Grant that day, and I guess you spoke to Mr. Kennedy that
21 morning, did you do any other follow up with any of those
22 witnesses?

23 A. When I got the video -- the first time I seen the video
24 -- because in the past we've had problems when we download
25 it from their system to our thumb drive and take it back to

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1 the office sometimes it doesn't -- doesn't always download
2 properly. So I recorded it with my cell phone so I would
3 know I had a copy of it just in case anything went wrong
4 with the -- with downloading it.

5 I seen Raymond Kennedy out one day. I stopped him and
6 talked to him briefly, showed him a short segment of the
7 video when there was a white truck approaching just to ask
8 him did he know anybody in the video that I could go back
9 and speak with.

10 Q. Were you able to get any other leads ---

11 A. No, sir, I wasn't.

12 Q. What about the handgun that we've got in this case?
13 What involvement did you have with recovering the handgun?

14 A. I was off, and I received a call from somebody in
15 dispatch who told me that Wanda Jean or Wanda Williams was
16 calling asking for me saying that she had found a gun or she
17 had a gun that was involved in this case. I called Captain
18 McAllister, who was my supervisor at the time, and relayed
19 that information to him.

20 Q. And what day was that?

21 A. I believe it was September 8th.

22 Q. And the incident happened what day again?

23 A. It was toward the end of August.

24 Q. Okay. Did Ms. Williams ever tell you where she got
25 that gun from?

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1 A. She did.

2 Q. When was that?

3 A. She told me that she -- well, when I came back to work
4 I talked to her. I talk to her probably a couple of times a
5 month from either seeing her out or her calling to the
6 office.

7 I asked her a few times. She said that somebody gave
8 it to her on Gray Street. She said that they didn't want to
9 be involved, but if the case was going to go to court that
10 the person who found it and gave it to her said that they
11 would testify and that she would give me the name then.

12 Q. And when did she eventually give you the name?

13 A. It was in August of last year.

14 Q. And the name she gave you was what?

15 A. It was BJ, who is Antonio Nicholson.

16 Q. And I think we heard yesterday that he's got some
17 pending charges. When was he arrested on those charges?

18 A. I want to say -- I know it was after that. Maybe in
19 October, I believe, he was arrested.

20 Q. You went out that day, canvassed the scene, talked to
21 whoever you could. Did you eventually, I guess, -- you
22 developed suspect?

23 A. I did.

24 Q. And that was?

25 A. It was Mr. Gray.

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1 Q. And was he eventually arrested for this?

2 A. He was. I ---

3 Q. Where was he arrested at?

4 A. We tried to locate him in Greenwood and wasn't able to
5 find him, so I contacted SLED. I knew that he had some
6 family that was living in Columbia. I think he drove a
7 vehicle at one time that was registered in Columbia.

8 And I asked SLED if they would go by and check the
9 address to see if they could make contact with him or any
10 family members that lived there. They eventually found him
11 at the apartment when they went there.

12 Q. So you had to go to Columbia to pick him up?

13 A. I did. I picked him up from the detention center in
14 Columbia.

15 Q. Okay. Detective Kay, I would ask if Judge Addy would
16 let you, if you'd come down here and help the jury -- walk
17 them through some evidence and let's go over a few things.

18 A. Yes, sir.

19 Q. I'm going to hand you State's exhibit 6 and let you put
20 that up for the jury. If you would, just sort of give the
21 jury an idea of what State's exhibit 6 is and what it's -- I
22 guess the relevant landmarks are on that.

23 A. This is the -- all of this here is what we call the
24 city shop.

25 THE COURT: Mr. Kay, if you could speak up a little

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1 bit. She's having trouble hearing you.

2 A. Yes, sir. I'm sorry.

3 THE COURT: So a little bit louder.

4 A. This here is what we consider the city shop. It's
5 where our police cars are worked on, fire trucks, all that.
6 And this area here is where the gas pumps are, where Officer
7 Claphan was sitting after pumping gas. This is Gray Street.
8 This here is the incident location. This is where Ricky
9 Grant lives.

10 This house here is where Mr. Vacquec lives. And all of
11 this is his lot. He's got several outbuildings out here.
12 And the camera was on this back corner pointing down this
13 way.

14 This is Greene Street. This is Tanyard Avenue, which
15 is where Mr. Fuller was located. I believe it's one of
16 these two houses here. And this wooded area back here is
17 where the gun was believed to be found. It's where Antonio
18 Nicholson says it was found at.

19 And then if you look between these two houses, there's
20 several trees here. I think a couple of witnesses have
21 testified that they were off to the side. That's the area
22 that I believe they were in at the time.

23 Q. And then I'm going to hand you State's number 1. Just
24 tell us what we're looking at in that.

25 A. This is the incident location, Ricky Grant's house.

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1 Q. And State's number 5?

2 A. It's the same thing, just a shot from more of the
3 front.

4 Q. And State's 22?

5 A. Again, this is the front yard. This picture shows the
6 area where the shell casing was found. I started far back
7 and then worked my way into it.

8 Q. That's what, I'm assuming, 23 through 26 are?

9 A. 23, yes. I took a couple of steps forward walking
10 toward the shell casing to take that picture. And then this
11 is a picture of the shell casing from a little closer.

12 And then is the first picture that you can really start
13 to see the shell casing. It's right here. And this is a
14 little piece of plastic that's laying next to it. You can
15 see the casing there.

16 And, finally, this is a close-up of the shell casing.
17 That's the little piece of plastic I was referring to there.

18 Q. And State's 27, that's the shell casing?

19 A. That's the shell casing in the bag.

20 Q. All right, Detective Kay. And I'm going to ask you, if
21 you would, to help us walk through this surveillance
22 footage. It's a little grainy. So I would like it, if you
23 could help us, maybe, get an idea of what's going on.

24 MS. NELSON: Your Honor, may we approach?

25 THE COURT: Sure. Come on up.

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1 (Whereupon a bench conference was held off the record
2 in the presence of the jury panel, but out of their hearing)

3 (Whereupon the bench conference was ended)

4 **THE COURT:** All right. We'll put the bench conference
5 on the record at a break. You can proceed, solicitor.

6 **Direct Examination by Mr. Thomas Continued:**

7 **Q.** All right. Detective Kay, is there a point in time in
8 which you wanted to start this video?

9 **A.** If you'd start it around four minutes and thirty
10 seconds.

11 **MS. NELSON:** Your Honor, may I stand closer?

12 **THE COURT:** Sure. Go ---

13 **MS. NELSON:** Thank you.

14 **THE COURT:** If you need to move over there or if Mr.
15 Goranson needs to move, y'all go ahead.

16 **MADAM COURT REPORTER:** And please be sure to keep your
17 voice up.

18 **A.** Yes, ma'am.

19 (Whereupon the video was played for the jury)

20 **MR. THOMAS:** And I've started playing at 4:28.

21 **Q.** Just describe for us what we're looking at in terms of
22 what is this light in that corner? If you could, I think
23 you can move the mouse around, the jury may be able to see
24 it.

25 **A.** This area here is part of the city shop. It's where

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1 the fire truck, I'm sorry, it's where the garbage trucks
2 park. This is where the garbage trucks park and where
3 they're hosed off in the afternoons. This area back here
4 that you can't see is the area where the gas pumps are where
5 Officer Claphan would have been sitting.

6 This, I think it's been referred to at some point in
7 the trial, is a boat that is sitting in the side yard of
8 this house. I believe at the time of the incident this
9 house here was vacant. It's tough to see because of the
10 trees.

11 This is the area between this house and Ricky Grant's
12 house. This light that you'll see throughout the video here
13 is Ricky Grant's front door. It's pretty difficult to see a
14 whole lot going on inside this yard because it is so dark
15 there.

16 This is a vehicle that sits there. I believe it's
17 Ricky Grant's vehicle. It'll be there throughout the video.
18 And this street is Gray Street. Walking from left to right
19 would be Greene Street down here. And then to your far left
20 would be the dogleg turn that Officer Claphan spoke of. And
21 it's out of view to the left.

22 Q. And, I guess, you're familiar with this area from your
23 work with the police department?

24 A. Yes, sir, I am.

25 Q. Okay. And without telling us, I guess, without

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1 speculating as to anything, just, I guess, continue playing
2 the video and tell me what's going on on that street.

3 A. This gentleman right here that's made it half way up
4 the street, he came from Greene Street. Based off of his
5 appearance and ---

6 **MS. NELSON:** Your Honor, I've got to object to the
7 speculation about where this person came from or ...

8 **THE COURT:** Is this an individual he interviewed,
9 solicitor?

10 **MR. THOMAS:** No, Your Honor. This is just -- I'm just
11 -- he's just describing for the record what's going on on
12 the video. I'll ask him not to speculate as to who any of
13 these people may be, but to just describe what's going on on
14 the video.

15 **THE COURT:** Okay.

16 **MS. NELSON:** And I would just, again, say that the jury
17 can see if someone is walking without ---

18 **THE COURT:** Sure.

19 **MS. NELSON:** --- Detective Kay ---

20 **THE COURT:** I mean, the video speaks for itself, but if
21 he wants to describe the general direction that the person
22 is moving in as it relates to other landmarks that are not
23 in the video, that's perfectly fine.

24 **MR. THOMAS:** And I'm just trying ---

25 **THE COURT:** If he wants to say that the person is

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1 walking towards, you know, New Market or over towards -- to
2 the west, or east, or whatever direction just to give them a
3 point of reference, that's perfectly fine ---

4 MR. THOMAS: Okay.

5 THE COURT: --- because he's more familiar with the
6 area than what I think the jury or I might be.

7 MR. THOMAS: And just so the record reflects, Your
8 Honor, the time stamps on the video and things are
9 happening.

10 THE COURT: Sure. What's the current time stamp?

11 MR. THOMAS: It is currently -- the time stamp is 4:48.
12 And that's the time on the video, not the time on the system
13 camera up in the corner.

14 THE COURT: Okay. All right. You can proceed then,
15 please, solicitor.

16 **Direct Examination by Mr. Thomas Continued:**

17 Q. So at 4:48 there's an individual walking.

18 A. There's an individual walking from Greene toward the
19 residence right there. It appears that he approaches the
20 house or it appears that subject approaches the house.

21 You can see the front door's still open. And at times
22 you can see that there's people in and out.

23 MS. NELSON: I'm going to object to that, Your Honor.

24 THE COURT: All right. The video speaks for itself,
25 but if he sees people, he can indicate in the video what he

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1 thinks or who he thinks are individuals.

2 Q. And when you say you see people, what you really mean
3 is there's -- appears to be movement. It's not a clear
4 video by any means.

5 A. That's right. I can see shadows moving in front of the
6 -- I can see bodies being silhouetted in the light coming
7 out of the house in the doorway. And it appears that
8 there's a couple of people going in and out, moving in and
9 out of the house. That continues on.

10 As this truck approaches you can see there's multiple
11 people walking in the roadway in front of the house, in the
12 yard of the house. And I think we're able to see them
13 because of the headlights silhouetting, showing them.

14 You can continue to see people moving sometimes in this
15 area. Looks like there's some people coming to and from the
16 steps. There's ---

17 **MS. NELSON:** Same objection, Your Honor.

18 Q. Well, let's just say ---

19 **THE COURT:** Overruled.

20 Q. You can see all of this movement ---

21 A. That's right.

22 Q. --- in front of that car, which is right in front of
23 that house, is that what you're saying?

24 A. Yes, sir.

25 Q. Okay.

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1 **THE COURT:** What time stamp are you at?

2 A. 6:24, Your Honor.

3 **THE COURT:** Okay.

4 Q. I'm going to skip ahead to about the seven minute mark.
5 I'm going to start playing at seven minutes.

6 A. If you look right in this area there's going to be what
7 I believe is an altercation taking place.

8 **MS. NELSON:** Object to the speculation.

9 **THE COURT:** All right. Sustained. You can't see the
10 altercation, but ...

11 Q. Now back that up and tell me what time stamp we're
12 starting at.

13 A. Okay. Right now we're starting at 7:06.

14 Q. Okay. And if you'll just direct the mouse to where you
15 think -- where your ---

16 A. I'm watching in this area here.

17 Q. Thank you, detective. And what did -- what did we just
18 see? What did that appear to be?

19 A. To me it appeared to be the flash ---

20 **MS. NELSON:** Object to the speculation.

21 **THE COURT:** Overruled. It's -- the jury can draw its
22 own conclusions, but he can testify based on his
23 investigation of what he thought that flash was. Go ahead.

24 Q. And was that flash in the area where you found the
25 shell casing?

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1 A. Yes, sir, it was.

2 Q. And what happens after that?

3 A. People start moving around. A subject runs toward
4 Greene Street from in front of the residence from the area
5 where the flash was.

6 The white truck that had just pulled up immediately
7 backs out. Whoever got out of the truck got back into it.
8 It immediately backs out and then for the next minute or so
9 there's a good bit of movement in the front yard to and from
10 the house, back and forth.

11 Q. Thank you, Detective Kay. That's ...

12 THE COURT: Solicitor, you may want to replay that one
13 more time. I think a couple of the jurors looked at me like
14 they didn't see the little spark that you were talking
15 about. But I think that they may have missed it like I did
16 the first time I looked at it.

17 (Whereupon the video was played for the jury)

18 Q. Detective Kay, at what point in the video do we see
19 what appears to be a spark?

20 A. It's shortly after that truck gets there around the
21 seven -- I believe we just started it at 7:06.

22 THE COURT: And, solicitor, maybe put your cursor where
23 you think or where you believe that ...

24 Q. I believe you said it happened in front of the car?

25 A. Yes, sir.

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1 Q. I think we can cut the lights back on. And at what
2 time does that spark happen?

3 A. Around the 7:14 mark. Seven minutes and 14 seconds
4 into the video.

5 Q. I'm showing you State's exhibit number 4. What is this
6 again?

7 A. That appears to be a still shot of the video at the
8 moment that the spark is on the screen.

9 Q. And you keep saying the spark. I'm going to point my
10 pen here to this left side of the exhibit. Is that what
11 you're talking about?

12 A. Yes, sir, it is.

13 Q. Okay. And, again, based on your examination of the
14 area and -- did you take my pictures back with you?

15 A. No, sir.

16 Q. Based on your examination of the area and your viewing
17 the video and your knowledge of the area is State's exhibit
18 number 1 -- how does State's exhibit number 1 relate to what
19 we're seeing in the video?

20 A. It shows the house and it shows the area of where the
21 incident took place.

22 Q. And that's the area where you recovered the shell
23 casing?

24 A. Yes, sir, it is.

25 Q. Okay. Let me ask you, are you familiar with Edie

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1 Walker?

2 A. Yes, sir, I am.

3 Q. You've seen her out in public?

4 A. I have.

5 Q. Are you familiar with the way she walks?

6 A. I am.

7 Q. And does she regularly walk around town?

8 A. She does.

9 Q. So you've seen her out doing that several times?

10 A. I have.

11 Q. Would you say you're familiar with her gait, I guess?

12 A. I am.

13 Q. At 8:07 on the video -- I'll start playing it at eight
14 minutes here.

15 (Whereupon the video was played for the jury)

16 Q. You see someone come walking through that area.

17 A. That's correct.

18 Q. Based on your observations of this video and your
19 discussions with witnesses, who does that appear to you to
20 be?

21 A. Edie Walker.

22 MS. NELSON: Your Honor, could we get the time of the
23 -- on the video when Ms. Walker is ---

24 THE COURT: Is that at 8:07 ---

25 MS. NELSON: When he thinks Ms. Walker is going by.

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1 A. It's at 8:07.

2 THE COURT: It's at 8:07 is when it begins. When does
3 it end, solicitor?

4 MR. THOMAS: If we start playing the video at 8:07, I
5 believe it's about 8:12 when that person he's identified as
6 being her.

7 Q. And which direction is that person coming from?

8 A. It's coming from the curve on Gray Street.

9 Q. The ---

10 A. The dogleg curve.

11 Q. And then that person is headed which way?

12 A. Toward Greene Street.

13 Q. And she leaves the video at -- is that about 8:46 now?

14 A. Yes, sir.

15 Q. And then, Investigator Kay, in that video do the
16 officers drive through shortly thereafter?

17 A. It shows it.

18 Q. Did you ever go to the hospital when Mr. Fuller was
19 still there, his body was still there?

20 A. I don't believe I did.

21 Q. Okay. All right, Detective Kay. I'm going to let you
22 answer any questions Ms. Nelson may have.

23 MS. NELSON: Thank you, Your Honor.

24 Cross-examination by Ms. Nelson:

25 Q. Good morning, Detective Kay.

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1 A. Good morning.

2 Q. You were -- you were the primary detective on the case,

3 ---

4 A. Yes, ma'am.

5 Q. --- is that right?

6 A. Yes, ma'am.

7 Q. And, essentially, in large part, the work that was done
8 on the case was all done by you?

9 A. Myself and Detective Haralson did the majority of it.

10 Q. Detective Haralson went with you to Columbia to pick
11 Zay up, ---

12 A. Yes, ma'am.

13 Q. --- right? And then Captain McAllister is the one who
14 actually got the gun from Ms. Wanda Jean?

15 A. Yes, ma'am.

16 Q. Right?

17 A. Yes, ma'am.

18 Q. Other than that, you're the one who did the work?

19 A. Yes, ma'am. Detective Haralson and I spoke to a couple
20 of witnesses together, but other than that I did most
21 everything.

22 Q. Okay. Now before -- you were called by Lieutenant
23 Dixon after the police were informed that Mr. Fuller had
24 died, is ---

25 A. Yes, ma'am.

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1 Q. --- that right? You were not on the scene -- you were
2 not on the scene before he was taken away by EMS, right?

3 A. No, ma'am.

4 Q. But you did -- after Lieutenant Dixon called you, you
5 did respond over to Tanyard, didn't you?

6 A. Yes, ma'am.

7 Q. Who all was there when you got there to Tanyard as far
8 as law enforcement goes?

9 A. I can't remember right off the top of my head. I want
10 to say that Officer Pope may have been standing by until I
11 got there.

12 Q. He's actually the one who briefed you according to your
13 report, right?

14 A. Yes, ma'am.

15 Q. Anybody else?

16 A. I'm not a hundred percent sure at this time.

17 Q. You know what time you got there?

18 A. No, ma'am, not off the top of my head.

19 Q. Have you had a chance to look at your report that you
20 wrote ---

21 A. It's been a while.

22 Q. --- about the incident?

23 A. It's been a while.

24 Q. Would it help refresh your memory if you took a look at
25 it?

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1 A. Yes, ma'am.

2 MS. NELSON: May I approach, Your Honor? I do have
3 some things underlined. Is that ...

4 THE COURT: If you don't mind, I don't mind.

5 MS. NELSON: I don't mind.

6 (Pause)

7 Q. Oh, I'm sorry. Are you done?

8 A. Yes, ma'am. You need it back?

9 Q. Well, I've got another one. You can keep it. Let me
10 just swap with you.

11 A. Okay. Thank you.

12 Q. Sure. So your report doesn't detail what time you got
13 there to Tanyard ---

14 A. No, ma'am, ---

15 Q. --- Avenue, right?

16 A. --- it doesn't. No, ma'am.

17 Q. Do you know how long you were there?

18 A. I wasn't on Tanyard very long before going to the
19 hospital.

20 Q. And when you went to the hospital you tried to talk to
21 a man named Tobias Brooks?

22 A. Yes, ma'am.

23 Q. And that is Mr. Fuller's brother, right?

24 A. Yes, ma'am.

25 Q. He didn't have anything he wanted to say to you?

WILLIAM KAY - CROSS-EXAMINATION BY MS. NELSON

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- 1 A. No, ma'am. He was upset.
- 2 Q. And he wouldn't even acknowledge you at all, right?
- 3 A. No, ma'am.
- 4 Q. And you said there were a lot of family members there.
- 5 Were they outside the hospital?
- 6 A. Yes, ma'am. There was a lot of people. I'm not sure
- 7 that all of them were family.
- 8 Q. There were a lot of people. Were they all kind of
- 9 congregated together?
- 10 A. Yes, ma'am. They were all together talking.
- 11 Q. Were they outside the emergency room ---
- 12 A. Yes, ma'am.
- 13 Q. --- at Self? So they were all congregated together
- 14 kind of in a group talking?
- 15 A. Yes, ma'am.
- 16 Q. And it was -- there were at least some family members
- 17 and there may have been other people, too?
- 18 A. Yes, ma'am.
- 19 Q. You don't know exactly who was in that group, right?
- 20 A. I only know of three people that was in the group.
- 21 Q. Okay. And one of them was Mr. Raymond Kennedy who goes
- 22 by Kool-aid?
- 23 A. Yes, ma'am.
- 24 Q. So he was there in the group of people talking?
- 25 A. Yes, ma'am.

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1 Q. When you spoke to him at the hospital he believed that
2 you had already arrested somebody, didn't he?

3 A. He did.

4 Q. And he believed that somebody else must have already
5 told on him?

6 A. Yes, ma'am.

7 Q. And that wasn't actually accurate, ---

8 A. No, ma'am.

9 Q. --- right? Now I wasn't -- I'm not clear from your
10 report or your testimony, but did you get the surveillance
11 video that we saw before you spoke to Mr. Grant or did you
12 speak to Mr. Grant ---

13 A. I believe I spoke with Mr. Grant first ---

14 Q. Okay.

15 A. --- and then stayed on the scene walking around after I
16 talked to him.

17 Q. That would make sense because you were already there
18 like where you found the casing and took the photographs,
19 ---

20 A. Yes, ma'am.

21 Q. --- right? While you were there at Gray Street Ms.
22 Wanda Smith came up to you, right?

23 A. Yes, ma'am, I believe so.

24 Q. Your report says I continued to look around the area
25 for evidence and was later approached by Wanda Smith?

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1 A. Yes, ma'am, that's right.

2 Q. And that's Ms. Wanda Jean Smith or Williams who ---

3 A. Yes, ma'am.

4 Q. --- testified yesterday, ---

5 A. That's correct.

6 Q. --- right? And she brings you a phone?

7 A. Yes, ma'am.

8 Q. A cell phone? She told you somebody found it behind
9 the house?

10 A. Yes, ma'am.

11 Q. Are there any photographs behind the house that you
12 took?

13 A. No, ma'am. I don't believe so.

14 Q. Did you go back there behind the house to see where the
15 cell phone got found?

16 A. I walked back there and looked around. It was my
-17 understanding at the time that somebody had handed her the
18 phone much like the firearm.

19 Q. You know who that was that gave her the phone?

20 A. No, ma'am.

21 Q. She didn't tell you?

22 A. No, ma'am.

23 Q. Did you actually ask her?

24 A. I believe ---

25 Q. Or ---

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1 A. --- I did. I believe I did.

2 Q. Just hard to remember if it's not ---

3 A. That's right.

4 Q. --- documented, I guess? That phone was taken into
5 evidence along with the shell casing, right?

6 A. Yes, ma'am.

7 Q. There wasn't any kind of examination performed on that
8 phone, ---

9 A. No, ma'am.

10 Q. --- right? So based on what you learned, I guess, that
11 morning or whatever time it was you were over there at
12 Tanyard and Gray Street, based on that information you took
13 out the warrant for murder on Mr. Gray?

14 A. Yes, ma'am.

15 Q. And by take out a warrant, I mean you typed one up,
16 typed up a warrant?

17 A. Yes, ma'am.

18 Q. And you give it to a judge to sign or somebody gives it
19 to a judge to sign, right?

20 A. That's correct.

21 Q. And that's what you used to -- that warrant's what you
22 use to go arrest somebody?

23 A. Yes, ma'am.

24 Q. This happened on, as we all know, August 26th and it
25 was August 29th that Mr. Gray was arrested at his sister's

WILLIAM KAY - CROSS-EXAMINATION BY MS. NELSON

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1 house in Columbia?

2 A. Yes, ma'am.

3 Q. And you were essentially able to reduce everything you
4 did in the case to this, about a page and a quarter,
5 incident report?

6 A. Yes, ma'am.

7 Q. Okay. Ms. Walker, did you ever get to talk to her?
8 Edie Walker?

9 A. Yes, ma'am.

10 Q. And based on the times that we looked at at the
11 surveillance video where you talked to us about what you
12 were seeing and your ability to recognize Ms. Walker's gait
13 going down the street, that was after the time you believed
14 that the shooting occurred, right?

15 A. Yes, ma'am.

16 Q. So that was already over with when she came by?

17 A. Yes, ma'am.

18 Q. And it looks like when she goes by she's just cruising
19 down the street. She's not stopping and talking to anybody,
20 she's just walking?

21 A. Correct.

22 Q. And that's consistent with what she told officers when
23 they talked to her on Tanyard Avenue, right?

24 A. Yes, ma'am.

25 Q. That she had -- she had been somewhere else, she came

WILLIAM KAY - CROSS-EXAMINATION BY MS. NELSON

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1 down Gray, she came -- turned right up Greene, and then she
2 turned left on Tanyard Avenue, and that's where she came
3 across Mr. Fuller?

4 A. Yes, ma'am.

5 Q. All right. Have you happened to see Ms. Walker walking
6 down the street this week?

7 A. I haven't rode the area this week.

8 Q. Because we haven't gotten to see her here in court,
9 right?

10 A. No, ma'am.

11 Q. There's nothing in your investigation that you
12 uncovered that leads you to believe that Ms. Walker was
13 present when the shooting occurred, is there?

14 A. No, ma'am.

15 Q. And then the weapon that was turned in by Ms. Wanda
16 Jean -- is it Smith or Williams? I can't -- Ms. Wanda Jean.
17 I'm just going to call her Ms. Wanda Jean.

18 A. Okay.

19 Q. The weapon that she turned in, she actually called
20 asking for you?

21 A. I believe so. They called me -- I was off and dispatch
22 called me on my cell phone.

23 Q. When -- and you were off that day -- you didn't wait to
24 call Captain McAllister to tell him about it, did you?

25 A. What do you mean?

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1 Q. I mean the day you got that call from dispatch, ---

2 A. Yes, ma'am.

3 Q. --- did you -- did you pretty much immediately or
4 within a short time call Captain ---

5 A. Oh, yes, ma'am.

6 Q. --- McAllister? You didn't ---

7 A. I didn't ---

8 Q. --- wait a week ---

9 A. No, ma'am.

10 Q. --- or anything?

11 A. No, ma'am.

12 Q. So you mentioned that the gun was turned in on
13 September 8th.

14 A. I believe that's when it was.

15 Q. And you believe that because that's what's in Captain
16 McAllister's report, right?

17 A. Yes, ma'am.

18 Q. So presumably that's the same day you got the call from
19 Ms. Wanda Jean, ---

20 A. Yes, ma'am.

21 Q. --- September 8th?

22 A. Yes, ma'am.

23 Q. And then you believe that Captain McAllister
24 immediately went to get that gun from her?

25 A. Yes, ma'am.

WILLIAM KAY - CROSS-EXAMINATION BY MS. NELSON

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1 Q. And Ms. Wanda Jean did not say anything about BJ
2 approaching her on Gray Street to give her that gun, did
3 she?

4 A. I didn't talk to her that day that they got the gun
5 from her. Anytime I talked to her after that, I would just
6 ask her who gave it to her. So I -- she didn't go into
7 detail with me about how the whole gun transaction went
8 down.

9 Q. Have you had a chance to take a look at Captain
10 McAllister's report about it?

11 A. It's been a while.

12 Q. Will it help you ---

13 A. Yes, ma'am.

14 Q. --- refresh your memory if I hand it to you? I might
15 have to get it back from you.

16 A. Okay.

17 (Pause)

18 **THE COURT:** I think he's ready.

19 A. I'm ready, Ms. Nelson.

20 Q. There's nothing in there to indicate that Ms. Wanda
21 Jean said anything about BJ giving her the gun on Gray
22 Street, right?

23 A. It doesn't name him, no, ma'am.

24 Q. And even aside from naming him, it doesn't say anything
25 about anybody gave her the gun on Gray Street, right?

WILLIAM KAY - CROSS-EXAMINATION BY MS. NELSON

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1 A. It says she was contacted about the gun. Did I read it
2 right?

3 Q. Contacted by a source she did not wish to reveal and
4 told the gun would be placed in her car?

5 A. Okay. Yes, ma'am.

6 Q. Okay. And according to Captain McAllister's report she
7 also showed him where the gun had been found?

8 A. According to the report, yes, ma'am.

9 Q. If it's found behind the house on Gray Street, she
10 would -- sounds like she would have taken him there and
11 shown him where it was found?

12 A. It appears that way.

13 Q. As far as you know were there any photographs taken
14 from where she said the gun had been located?

15 A. I don't -- I don't believe so. I know I didn't take
16 any.

17 Q. You're not aware of Captain McAllister taking ---

18 A. No, ma'am.

19 Q. --- any? And you're not aware of any kind of recorded
20 statement, audio or video, that was taken of Ms. Wanda Jean
21 when all this happened, right?

22 A. No, ma'am.

23 Q. Just one second.

24 A. Yes, ma'am.

25 Q. I appreciate it, Detective Kay. That's all I have.

WILLIAM KAY - REDIRECT EXAMINATION BY MR. THOMAS

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1 A. Thank you.

2 Q. Thank you.

3 THE COURT: Any redirect?

4 Redirect Examination by Mr. Thomas:

5 Q. Ms. Wanda Jean, when you talked to her, was she, I
6 guess, was she forthcoming with telling you the names of
7 people involved?

8 A. Not originally.

9 Q. And was Raymond Kennedy forthcoming with you about the
10 names of people involved?

11 A. Not -- other than the two that he mentioned. He didn't
12 want to tell me about anybody else who was outside.

13 Q. Does their lack of willingness to put other people's
14 names in the situation surprise you?

15 A. No, sir, it doesn't.

16 Q. The area behind the house -- what am I pointing at on
17 the map here?

18 A. That's Ricky Grant's house.

19 Q. Okay. That area behind the house, you never actually
20 went back there, correct?

21 A. Not during the time. I've been back there, but not
22 during this -- the beginning stages of this case, no, sir.

23 Q. Okay. So -- but you're familiar with that area?

24 A. I am.

25 Q. Describe that for us.

WILLIAM KAY - REDIRECT EXAMINATION BY MR. THOMAS

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1 A. There's a couple of fairly large trees back there, not
2 like big oak trees, but just bigger trees. And it's almost
3 like nobody has ever cut the grass under it. It's tall with
4 weeds and small trees. And then there's a couple of larger
5 trees. And it's just -- it's just unkept.

6 Q. Okay. But in your investigation did anyone ever tell
7 you to go look back there?

8 A. No, sir.

9 Q. Okay. All of this area right here, what county is that
10 in?

11 A. It's in Greenwood County.

12 Q. And you responded out there on August -- the morning of
13 August the 26th?

14 A. Yes, sir.

15 Q. Of 2017?

16 A. Yes, sir.

17 Q. And did you get there early in the morning, late in the
18 morning?

19 A. It was early in the morning.

20 Q. And based on your review of everything what time did
21 the incident happen?

22 A. In the early morning hours. I'm not exactly sure on
23 the -- I would have to see the report with the time on it.
24 I don't have it with me.

25 Q. If I show you Officer Claphan's initial report would

WILLIAM KAY - RECROSS-EXAMINATION BY MS. NELSON

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1 that refresh your recollection?

2 A. Yes, sir. It looks like around 5:35 in the morning.

3 Q. So how long was it before you responded back to the
4 hospital?

5 A. I would be guessing to say maybe two hours.

6 Q. All right. Thank you, Detective Kay. That's all the
7 questions I have for you.

8 THE COURT: Recross?

9 Recross-examination by Ms. Nelson:

10 Q. I'm confused. So just correct me if I'm wrong. I
11 thought that on cross, when I was talking to you before when
12 we were talking about Wanda Jean bringing you the cell
13 phone, I thought that you said you did go in the backyard at
14 that point or that you thought you did.

15 A. I believe I walked back there, but I didn't dig in,
16 like search through the bushes or anything. I just kind of
17 walked the area looking from the outside, I believe.

18 Q. Okay. I just wasn't clear 'cause I thought ---

19 A. Yes, ma'am.

20 Q. --- you just told Mr. Thomas that you didn't go back
21 there at that time.

22 A. Yes, ma'am. I believe I went back there.

23 Q. Okay. And you've -- y'all talked a little bit about
24 people not really wanting to talk to you. And that's --
25 BJ's in that category, too, right? Antonio Nicholson? He

WILLIAM KAY - RECROSS-EXAMINATION BY MS. NELSON

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1 didn't talk to y'all until January, ---

2 A. That's correct.

3 Q. --- right? That was the first time he'd ever told
4 anybody anything?

5 A. Yes, ma'am.

6 Q. And would you agree with me, too, that even though
7 folks in the community sometimes don't like to talk to the
8 police, they talk a lot amongst themselves, word spreads on
9 the street pretty quickly?

10 A. You could say that.

11 Q. Thank you, sir.

12 **THE COURT:** All right, sir. Thank you. You can step
13 down. Ladies and gentlemen, we're going to take a brief ten
14 minute break while I put just a few things on the record.
15 So, if you would, adjourn to the back. Once I get done with
16 the record, if any of you want to go downstairs and have a
17 smoke, I'll let the bailiff take you down, okay? Don't talk
18 about the case yet, please.

19 (Whereupon the jury exited the courtroom at 10:52 am)

20 **THE COURT:** All right. Jury is out. The record will
21 reflect that the bench conference that I referenced earlier
22 while Officer Kay was testifying, basically Ms. Nelson came
23 forward and she interposed an objection to any narration of
24 the video by the investigator.

25 I basically told Ms. Nelson that I wasn't going to

1 allow any speculation and that if she found that he was
2 speculating on what was being shown that she should object,
3 but based on his investigation I was going to allow him to
4 offer some limited narrative about what he sees and what
5 he's perceiving in the video.

6 And, of course, that would be subject to any cross-
7 examination that Ms. Nelson may want to engage in as it
8 relates to that video. But if he got beyond anything that
9 was personal knowledge or was speculation as to what was
10 taking place on the video that I would sustain an objection.
11 Did I essentially state correctly what the gist of our bench
12 conference was?

13 MS. NELSON: Yes, sir, Your Honor.

14 THE COURT: Very good. No problems what I put on the
15 record as far as what was said up here at the bench?

16 MR. THOMAS: That pretty much covered it, Your Honor.

17 THE COURT: All right. You have additional -- did you
18 need to ---

19 MS. NELSON: I'm sorry. I would just -- just in
20 speaking to -- just for purposes of the record, I think as
21 that testimony rolled out my primary objection would be to
22 the part where Detective Kay testified about an altercation,
23 how he believed there was an altercation going on.

24 THE COURT: And I did sustain that objection, I
25 believe. So ...

KENYA GRIFFIN - DIRECT EXAMINATION BY MS. PENNEY

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1 We're at ease.

2 (Whereupon court was in recess at 10:55 am)

3 (Whereupon court reconvened at 11:12 am)

4 **THE COURT:** Solicitor, you do have your next witness
5 present in the courtroom. So let us bring the jury out,
6 please.

7 (Whereupon the jury entered the courtroom at 11:12 am)

8 **THE COURT:** All right. The jury is back and seated.
9 Solicitor, if you'll call your next witness, please.

10 **MS. PENNEY:** The State calls Sergeant Kenya Griffin.

11 **Kenya Griffin,** being duly
12 sworn testified as follows;

13 **Direct Examination by Ms. Penney:**

14 Q. Good morning, Sergeant Griffin.

15 A. Good morning.

16 Q. Will you please introduce yourself to the jury.

17 A. I'm Sergeant Kenya Griffin with the Greenwood City
18 Police Department.

19 Q. What is it that you do at the City Police Department?

20 A. I'm the crime scene and evidence technician.

21 Q. Okay. How long have you been doing that?

22 A. I've been at the police department for 16 years.
23 Eleven of those years have been as a crime scene and
24 evidence technician.

25 Q. Okay. What did you do before you were the evidence

KENYA GRIFFIN - DIRECT EXAMINATION BY MS. PENNEY

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1 technician?

2 A. I was a patrol officer.

3 Q. Okay. Did you -- have you had occasion to collect any
4 evidence in the case against Mr. Gray?

5 A. Yes.

6 Q. Have you received this gun?

7 A. Yes, I did.

8 Q. When and how did you receive the gun?

9 A. That gun was turned into our evidence locker by Captain
10 McAllister on September 8th, 2017.

11 Q. Okay. What did you do with it after that?

12 A. It was placed into our evidence room until I took it to
13 SLED for analysis on September 14th, 2017.

14 Q. Okay. Can you tell me what this is?

15 A. That's the projectile.

16 Q. I'm holding up what's been labeled as exhibit 16. And
17 this is the projectile?

18 A. That's correct.

19 Q. When did you -- when and how did you receive this?

20 A. That was placed into our evidence locker by the
21 coroner, Sonny Cox, on August 28th, 2017. And I removed it
22 from our evidence locker on August 29th, 2017. I then took
23 it to SLED on September 8th, 2017.

24 Q. I'm holding up what's marked as exhibit 27. Can you
25 tell me what that is?

KENYA GRIFFIN - DIRECT EXAMINATION BY MS. PENNEY

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1 A. It's a cartridge case.

2 Q. And what did -- how did you receive this?

3 A. That was submitted to myself on October 28th, 2017 by
4 Sergeant Kay.

5 Q. Okay. Was it October?

6 A. I'm sorry. August 28th.

7 Q. August 28th. And what did you do with it after that?

8 A. It was taken to SLED.

9 Q. When did you take it to SLED?

10 A. I believe I took it on September 8th, 2017.

11 Q. Okay. Did you receive any bodily fluids from Mr.
12 Fuller in this case?

13 A. Yes, I did.

14 Q. How did you receive those?

15 A. They were also submitted to our evidence locker by
16 Coroner Cox on August 28th, 2017.

17 Q. Okay. How -- what did you then do with those bodily
18 fluids of Mr. Fuller?

19 A. They were stored in our evidence refrigerator, again,
20 until September 8th, 2017 where I sent them to SLED for
21 analysis.

22 Q. All right. As for the gun, and the projectile, and the
23 casing, what happened to those after they were given to
24 SLED?

25 A. They remained in SLED custody until September 27th,

KENYA GRIFFIN - CROSS-EXAMINATION BY MS. NELSON

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1 2018 where they were returned to me.

2 Q. And what about those bodily fluids of Mr. Fuller?

3 A. Those bodily fluids are still currently at SLED.

4 Q. Okay. And do you know why that is?

5 A. They retain them for a certain amount of time, and then

6 they will return them to our police department.

7 Q. Thank you, Sergeant Griffin. If you will answer any

8 questions from defense counsel.

9 THE COURT: Any questions?

10 MS. NELSON: Yes, Your Honor, just briefly.

11 **Cross-examination by Ms. Nelson:**

12 Q. Good morning, Sergeant Griffin.

13 A. Good morning.

14 Q. When the -- when the gun, exhibit 15, was given to you
15 to be placed into evidence it had four unspent rounds in the
16 magazine, is that right?

17 A. That's correct.

18 Q. And it had one unspent round in the chamber?

19 A. That's correct.

20 Q. And that's how the gun was delivered to you?

21 A. Yes, ma'am.

22 Q. So there were a total of five unspent rounds in the
23 gun?

24 A. That's correct.

25 Q. And you said that the gun was -- and I guess you're

KENYA GRIFFIN - REDIRECT EXAMINATION BY MS. PENNEY

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1 referring there to some property forms that you keep to
2 document all of this, ---

3 A. That's correct.

4 Q. --- right? And you said that gun was returned to you
5 September 27th of last year from SLED? 9/27/18?

6 A. The gun was actually returned to me on June -- yes,
7 September 28th.

8 Q. September 28th of ---

9 A. 27th.

10 Q. 27th of last year?

11 A. Yes, ma'am.

12 Q. Did the gun subsequently get sent back to SLED again
13 after that?

14 A. According to my records it was only sent once.

15 Q. Okay. Thank you, Sergeant Griffin. That's all I have.

16 **THE COURT:** Thank you. You can -- hold on, one
17 question.

18 **MR. THOMAS:** Brief.

19 (Pause)

20 **Redirect Examination by Ms. Penney:**

21 Q. Sergeant Griffin, were there any DNA swabs done in this
22 case?

23 A. Yes. The gun was submitted for DNA analysis.

24 Q. Okay. Who did those swabs?

25 A. They were done at SLED.

KENYA GRIFFIN - RECROSS-EXAMINATION BY MS. NELSON

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1 Q. Okay. And then what happened to those swabs?

2 A. I believe they were sent to the DNA department and then
3 returned to -- to me.

4 Q. And then after that did you -- did you then do anything
5 else with those DNA swabs?

6 A. No. They were stored in our evidence room.

7 Q. Did you have to resend them at any point?

8 A. Yes. They were resent. I don't have the date in front
9 of me, but they were resent to SLED.

10 Q. And then ---

11 A. And they were then returned back to me.

12 Q. Returned?

13 A. Yes.

14 Q. Okay. Thanks, Sergeant Griffin.

15 **Recross-examination by Ms. Nelson:**

16 Q. Thank you, Sergeant Griffin. I think that's what I was
17 confused about. The gun went one time and came back to you?

18 A. That's correct.

19 Q. And while it was there they swabbed it for DNA, ---

20 A. Yes.

21 Q. --- right?

22 A. Yes.

23 Q. And they sent those swabs back to you?

24 A. Yes.

25 Q. And they had not been tested?

THOMAS DARNELL - DIRECT EXAMINATION BY MS. PENNEY

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1 A. That's correct.

2 Q. So you sent them back again?

3 A. Yes, that's right.

4 Q. Okay. Thank you for clearing that up.

5 THE COURT: Thanks. Solicitor, call your next witness,
6 please.

7 MS. PENNEY: The State calls Tom Darnell.

8 Thomas Darnell, being
9 duly sworn testified as follows;

10 MADAM CLERK: Thank you.

11 Direct Examination by Ms. Penney:

12 Q. Good morning, Mr. Darnell.

13 A. Good morning.

14 Q. If you would, please, introduce yourself to the jury.

15 A. My name is Thomas Edward Darnell. Last name is spelled
16 D-a-r-n-e-l-l. I am a latent print forensic examiner at the
17 State Law Enforcement Division in Columbia, South Carolina.

18 Q. Could you tell us a little bit about your education?

19 A. I have a Bachelor of Science Degree in Criminal Justice
20 from the University of South Carolina from 1982. I started
21 at Richland County Sheriff's Office that same year. Was
22 employed there for about eight years. I started working at
23 SLED in 1990 in the forensic laboratory, the Crime Scene
24 Department, it was called at that time. I process evidence
25 of various types.

THOMAS DARNELL - DIRECT EXAMINATION BY MS. PENNEY

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1 During that time I attended a number of classes, a
2 number of -- at different locations for training. I've been
3 to the State Academy for various courses in fingerprints,
4 crime scene investigations. I've also attended the FBI
5 Academy training course in Quantico, Virginia for about
6 three weeks or so. And I've also been responsible over the
7 years of training other examiners.

8 Q. About how many times have you testified in court, Mr.
9 Darnell?

10 A. I have probably -- I don't keep a specific account or
11 count, but I estimate about 140, 150 times statewide and
12 some out of state, and mostly in state court, but some
13 federal court as well. I've also had the occasion to
14 testify for defense attorneys in various cases as well.

15 **MS. PENNEY:** Your Honor, I would move that Mr. Darnell
16 be qualified as a latent prints collection and analysis
17 expert.

18 **MS. NELSON:** No objection.

19 **THE COURT:** Ladies and gentlemen, as I explained
20 yesterday with the forensic pathologist, in this case the
21 parties agree that Mr. Darnell is an expert in the field of
22 latent prints, so he's not limited to testifying about
23 things he observed with his senses. He can give opinion
24 testimony that you can use as you deem appropriate.
25 Solicitor, you may proceed.

THOMAS DARNELL - DIRECT EXAMINATION BY MS. PENNEY

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1 Q. Mr. Darnell, if you could, briefly explain to the jury
2 the process for comparing prints.

3 A. Well, comparing prints -- first of all, if I -- when I
4 process evidence, if I develop a print on a piece of
5 evidence, I would refer to that as a latent print. The word
6 latent means hidden or invisible. It has to be enhanced.
7 It has to be developed with some technique.

8 And then we would have what we call a known print from
9 an individual. In order to compare the two to determine if
10 that print was made by a certain individual, I look for
11 individual characteristics within the two prints to
12 determine if they're in the same position to each other.
13 Once I have done that, once I determine that there is a
14 sufficient amount of clarity and points in the two prints, I
15 can determine that it was made by a same or by a certain
16 person.

17 Q. Did you have occasion to examine evidence in this
18 Greenwood case against Mr. Gray?

19 A. I did.

20 Q. What did you do as your first step?

21 A. Well, I actually -- I received a sealed box containing
22 some items of evidence to include a pistol, a magazine, some
23 cartridges. And I was asked to or the request was for me to
24 examine these to determine if there was any identifiable
25 fingerprints on the surface.

THOMAS DARNELL - DIRECT EXAMINATION BY MS. PENNEY

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1 I was also -- it was also requested that I collect any
2 swabs from the evidence for touch DNA or for DNA that would
3 be transferred later to a different department for
4 examination. So basically I was asked to collect DNA
5 evidence and also process it for fingerprints to determine
6 if there were any on the surface.

7 Q. Why would you be asked to do DNA and fingerprints?

8 A. Well, we get -- in our laboratory we get all sorts of
9 evidence. And quite often we get asked to swab certain
10 areas of evidence for touch DNA. We don't do the
11 examination for the DNA in our laboratory -- the laboratory
12 that I'm in. We just simply collect it.

13 We want to collect it because we have to collect that
14 first because then once we start processing for latent
15 prints we could damage any DNA evidence that might be
16 present. So we're all -- we're all trained in how to
17 collect it.

18 And we have to take certain precautions. We wear --
19 obviously, we wear latex gloves. We have lab coats. We're
20 in a clean, safe or clean sterile environment. We're using
21 clean, sterile swabs, cotton swabs that come two to a pack.
22 And then we swab those -- the different areas for touch DNA.
23 And then that is sealed up and transferred to the DNA
24 department.

25 Q. So, again, you did swabs in this case against Mr. Gray?

THOMAS DARNELL - DIRECT EXAMINATION BY MS. PENNEY

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1 A. I did.

2 (Whereupon State's exhibit 28 was marked for
3 identification)

4 Q. Do you recognize these?

5 A. I do. This is a sealed bag. It's actually got the
6 date that I sealed it and my initials on the top. It's
7 actually got my signature as well on the front. And it has
8 four -- looks like four envelopes on the inside that also
9 has my name.

10 What these are are the envelopes that I placed the
11 swabs inside once I swab them. They were sealed up and then
12 packaged in this container, which I put it in. And then it
13 was transferred to the DNA department.

14 Q. Thank you.

15 A. Um-hum (affirmative).

16 MS. PENNEY: Your Honor, at this time I'd offer these
17 into evidence.

18 THE COURT: That's State's what? What are we up to?

19 MADAM COURT REPORTER: 28.

20 THE COURT: 28.

21 MS. PENNEY: 28.

22 MS. NELSON: No objection.

23 THE COURT: State's 28 is in evidence.

24 (Whereupon State's exhibit 28 was admitted into
25 evidence)

THOMAS DARNELL - DIRECT EXAMINATION BY MS. PENNEY

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1 Q. Mr. Darnell, can you -- can you talk to us about what
2 you found when you examined these swabs? Or, excuse me,
3 when you examined the gun?

4 A. Yes. When I -- I processed the Ruger .380 caliber
5 pistol. And it had a magazine with it. There were also
6 some cartridges. But when I processed the gun, I use
7 certain techniques, and I was actually unable to develop any
8 prints whatsoever on the pistol.

9 And I might add that the pistol, when I received it, it
10 had what appeared to be some rust on it, which tells me it
11 could have been out maybe in the weather or exposed to some
12 sort of moisture at some point that might have brought about
13 the rust. So there was some rust on the -- on the weapon
14 itself. But my result was that there was no fingerprint
15 evidence found on the pistol.

16 Q. Would you expect to find any fingerprints on something
17 that had, perhaps, been left out in the weather for more
18 than a week?

19 A. Well, you know, it's really hard to say because, you
20 know, latent prints, you know, we all watch television and
21 we always see that they always get the fingerprints. And
22 that just doesn't -- doesn't really happen.

23 Fingerprints are very fragile. And they, you know,
24 obviously, if they're out in the weather, that would
25 certainly have a negative effect on whether I could get a

THOMAS DARNELL - CROSS-EXAMINATION BY MS. NELSON

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1 print or not versus it being inside and protected and out of
2 the weather. You know, I'd probably have a better chance of
3 getting prints if it were not out in the weather for a
4 period of time, but I cannot say that that would definitely
5 prevent any print from being left.

6 Like I said, prints are fragile. It depends on the
7 weather, it depends on the condition of the person's hands
8 when they touched the surface. Just a number of things that
9 would determine whether or not a print can be found. So to
10 say that it would be out in the weather for a period of time
11 have a negative impact on being able to get prints, it
12 certainly could, but I couldn't not -- I could not say that
13 with a hundred percent certainty.

14 Q. Thank you, Mr. Darnell. Please answer any questions
15 that defense counsel may have for you.

16 A. Okay.

17 Cross-examination by Ms. Nelson:

18 Q. Good morning, Mr. Darnell.

19 A. Good morning.

20 Q. I guess the long and short of your testimony is you
21 didn't find any prints on the gun and you didn't find any
22 prints on the cartridges in the magazine?

23 A. That's correct. Our warranting in our result is that
24 no fingerprint evidence was observed after it was processed.
25 And that is correct, yes, ma'am.

THOMAS DARNELL - CROSS-EXAMINATION BY MS. NELSON

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1 Q. It'd be harder even -- I'm making an assumption, but it
2 would be harder to leave a print on a cartridge, on a -- of
3 a bullet than it would even on the surface of a gun, I would
4 assume, because it's small?

5 A. Well, you know, of course the size of the item
6 sometimes has an effect. You know, I mean, we've gotten
7 prints before on cartridges or cartridge cases. It doesn't
8 happen very often, but it is certainly possible.

9 But, obviously, if the surface was larger than a
10 cartridge, that would give me more surface to work with.
11 But the end result here was there were no fingerprint
12 evidence found.

13 Q. And a fingerprint gets left from the oil in your -- on
14 your skin ---

15 A. Right.

16 Q. --- being deposited onto a surface?

17 A. That's correct. A fingerprint is about 98 to 99
18 percent moisture. It's basically perspiration. You know,
19 we all have -- we all have fingers and we all have
20 fingerprints. And within your fingerprint is little tiny
21 pores that are always exuding perspiration.

22 So, yes, what is mostly left behind is perspiration, or
23 sweat, or whatever you want to call it. That's what is left
24 behind. That's what we're trying to develop. That's what
25 we're trying to enhance to be able to see something better.

THOMAS DARNELL - REDIRECT EXAMINATION BY MS. PENNEY

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1 Q. So in addition to something being left out in the
2 weather, and that may be destroying some prints, if you
3 wiped a surface off, that could destroy prints, too, right?

4 A. Yes, ma'am, it could.

5 Q. Thank you, sir.

6 MS. PENNEY: Briefly.

7 Redirect Examination by Ms. Penney:

8 Q. Mr. Darnell, if I may approach. When you have a rough
9 surface like the handle right there, is it easier to get a
10 print or harder to get a print than on that smooth surface?

11 A. The smoother the surface makes it a better chance to
12 get prints. I will have to say in this particular item, as
13 I've testified to about having it swabbed for DNA, and for
14 latents, and for fingerprints, I have to try to decide which
15 surface is going to give me the better chance of getting a
16 print versus touch DNA.

17 In this case I swabbed the rough area of the grip.
18 It's much more suitable for DNA evidence. So I swabbed that
19 area for DNA evidence. And then I would process the
20 smoother areas of the pistol for fingerprint evidence.

21 But to answer your question, if a surface is rough and
22 textured and so forth, that does not typically lend very
23 good results when it comes to processing for prints. The
24 surface typically needs to be smooth for the most part.

25 Q. Thank you.

JENNIFER BARTMAN - DIRECT EXAMINATION BY MS. PENNEY

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1 A. Um-hum (affirmative).

2 MS. NELSON: Nothing further, Your Honor.

3 THE COURT: All right, sir. Thank you for coming. You
4 can step down. And you're free to go.

5 A. Thank you.

6 THE COURT: Call your next witness, please.

7 MS. PENNEY: The State calls Jennifer Bartman.

8 MADAM CLERK: Place your left hand on the Bible and
9 raise your right hand, please.

10 Jennifer Bartman, being
11 duly sworn testified as follows;

12 Direct Examination by Ms. Penney:

13 Q. Good morning, Ms. Bartman.

14 A. Good morning.

15 Q. If you would, please introduce yourself to the jury.

16 A. My name is Jennifer Bartman. I am a DNA analyst at the
17 South Carolina Law Enforcement Division, which is commonly
18 known as SLED.

19 Q. What do you do at -- what specifically do you do at
20 SLED?

21 A. I am assigned to the DNA casework department, which
22 means that we receive evidence that is submitted from
23 agencies all across the State of South Carolina. I can
24 perform screening on them, looking for body fluids, such as
25 like blood, saliva, and I can generate DNA profiles or

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1 attempt to generate DNA profiles and compare them, and then
2 generate a report to my conclusions.

3 Q. Could you tell us a little bit about your education?

4 A. Yes. I have a Bachelor's Degree in Biology from Hope
5 College in Michigan. And I also have a Master's Degree in
6 Forensic Science from Virginia Commonwealth University.

7 Q. Okay. Do you have any additional training after your
8 formal education?

9 A. Yes, I do. I received approximately a year of on-the-
10 job training from a court qualified analyst at SLED on the
11 proper techniques and procedures of the SLED laboratory.
12 And I also complete a minimum of the hours of continuing
13 education every year.

14 Q. Excuse me just one minute.

15 (Pause)

16 MS. PENNEY: We would move to qualify Ms. Bartman as an
17 expert in DNA analysis.

18 MS. NELSON: No objection.

19 THE COURT: All right. Again, ladies and gentlemen,
20 the parties agree that Ms. Bartman is an expert in the field
21 of DNA analysis. So she can render opinion testimony in
22 that particular area that you can use as you deem
23 appropriate. Please continue, Ms. Penney.

24 Q. Could you please explain to the jury, Ms. Bartman, what
25 DNA is?

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1 A. DNA stands for deoxyribonucleic acid. It's a chemical
2 that is found in our body. And basically it makes us who we
3 are. You get half of your DNA from your mother and half of
4 your DNA from your father.

5 The type of testing that we do at SLED is called STR
6 testing or short tandem repeat. And basically what that
7 means is we look at short sections of DNA that repeat over
8 and over again. And the number of times that they repeat is
9 what differs between individuals.

10 Q. How do you test for it?

11 A. We -- the testing process, we start with the
12 extraction, which means that we separate the DNA from
13 whatever it's submitted on. It can be submitted on swabs,
14 or fabric, or cloth.

15 We then quantify it to determine how much DNA is
16 present. We then amplify those short sections, which I
17 spoke about, and make billions of copies. It's similar to a
18 copy machine. And then we separate them out into the
19 detected DNA profile.

20 Q. Did you -- did you have occasion to receive any items
21 in this case, this Greenwood case, against Mr. Gray?

22 A. Yes, I did.

23 Q. Can you tell us what you received in this case?

24 A. I received a blood standard from Demetrius Fuller. I
25 received pubic hair from Demetrius Fuller. I received swabs

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1 from the trigger of SLED item 8, pistol. I also received
2 swabs from the grip and slide of the SLED item 8, pistol and
3 swabs from both ends of the item 8, pistol magazine. I also
4 received swabs from the headstamps of SLED items 9 through
5 13, cartridges.

6 Q. Can you, please, walk us through the results from each
7 of those swabs?

8 A. Yes. From the swabs of the trigger of item 8, pistol,
9 no human DNA was detected. When I spoke earlier I talked
10 about the quantifications where we determined how much DNA
11 was present. And for this item there was not enough --
12 there's not any detectable DNA to continue on with the
13 process.

14 For SLED item 8.2, which is the swabs from the grip and
15 slide of the item 8, pistol, no DNA profile was developed.
16 From the swabs from both ends of the item 8, pistol
17 magazine, no human DNA was detected. And the swabs from the
18 headstamps of SLED items 9 through 13, cartridges, also no
19 human DNA was detected.

20 Q. Now what happened after you discovered that no DNA was
21 detected on those items? What did you then do with those
22 items?

23 A. When -- the quantification steps that I talked about is
24 human specific. So once I determined that there was no
25 human DNA detected, the process stopped for those specific

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1 items. For item 8.2, it continued on through that
2 amplification step and the separation and detection step.

3 Q. So what physically happened with the swabs? Did they
4 get sent back to some other place or ...

5 A. Yes. The swabs were prepared for return and then
6 returned back to the submitting agency.

7 Q. And why was that? Just -- excuse me.

8 (Pause)

9 Q. So the first time you got these items -- did you test
10 them the first time you got them from Greenwood County or
11 Greenwood City?

12 A. I can refer to my chain of custody. But I believe that
13 they were returned without analysis when they were first
14 submitted.

15 Q. And why would that be?

16 A. There are certain requirements that need to be met in
17 order for analysis to begin on this case. And at first the
18 known DNA standard was submitted, and we didn't have any
19 evidence to compare it to. And then the evidence ended up
20 being returned as well once that was submitted. I'm unsure
21 of the exact reasoning for that.

22 Q. And so you didn't have a standard to compare it to. Is
23 that something you need from us? From law enforcement?

24 A. If a DNA -- comparable DNA profile is developed we need
25 a known standard from any individual in order to determine

JENNIFER BARTMAN - DIRECT EXAMINATION BY MS. PENNEY

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1 if the DNA developed from the evidence -- the DNA profile
2 developed from the evidence matches any known standards in
3 the case.

4 Q. So when we -- when we sent it back to you, when law
5 enforcement sent it back to you we asked you to develop
6 that, is ---

7 A. Yes.

8 Q. --- that correct?

9 A. The items of evidence was resubmitted to the SLED
10 laboratory for analysis.

11 Q. And then so once something was developed, then you
12 could -- then you could move along with the steps that we
13 just talked about previously? The second time we sent it to
14 you?

15 A. Yes. When the evidence was resubmitted to SLED, that
16 is when I attempted to develop DNA profiles from the
17 evidence items and then would have compared them to the
18 known standards had comparable profiles been developed.

19 Q. And ultimately did you find any DNA?

20 A. No, I did not.

21 Q. On any of these items?

22 A. No profiles were generated, no.

23 Q. Would you have expected to find DNA on something that
24 had been left outside for a week or more?

25 A. When items are left outside, it decreases the

LINDSEY MITCHELL - DIRECT EXAMINATION BY MS. PENNEY

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1 likelihood of developing a DNA profile due to the
2 environmental conditions such as sunlight, and heat, and
3 humidity, and factors like that.

4 Q. So it makes it -- so you could say that it makes it
5 harder to develop DNA profiles, find DNA when something's
6 been outside for several days?

7 A. Yes, I can.

8 Q. Thank you, Ms. Bartman. Please answer any questions
9 defense counsel may have.

10 **MS. NELSON:** I don't have anything. Thank you.

11 **THE COURT:** Thank you for coming. Have a nice day and
12 safe travels back. Call your next witness, please.

13 **MS. PENNEY:** The State calls Lindsey Mitchell.

14 **MADAM CLERK:** Please place your left hand on the Bible
15 and raise your right hand.

16 **Lindsey Mitchell,** being
17 duly sworn testified as follows;

18 **Direct Examination by Ms. Penney:**

19 Q. Good morning, Ms. Mitchell.

20 A. Good morning.

21 Q. Would you, please, introduce yourself to the jury.

22 A. My name is Lindsey Mitchell.

23 Q. What do you do, Ms. Mitchell?

24 A. I'm a forensic toxicologist at the South Carolina Law
25 Enforcement Division.

LINDSEY MITCHELL - DIRECT EXAMINATION BY MS. PENNEY

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1 Q. How long have you done that?

2 A. I've been at SLED for about four years now. I've been
3 a toxicologist for about three now.

4 Q. Okay. Could you tell us a little bit about your
5 education for your work?

6 A. I have two bachelor's degrees from Pace University, one
7 in chemistry and one in forensic science. I also have a
8 Master's Degree in Forensic Science from Penn State.

9 Q. And then do you have any additional education after
10 your formal education?

11 A. At SLED we go through our training process and then
12 we're sent off to additional courses. So I've been to the
13 Borkenstein -- two Borkenstein courses. One's on alcohol
14 and traffic safety. And one is on, essentially, drugs and
15 driving. So they're week-long courses that are -- we sit in
16 a classroom and they give us talks from professionals in the
17 field, the people that do the studies that we, you know,
18 read to get most of our knowledge from.

19 Q. Okay.

20 MS. PENNEY: Your Honor, at this time I'd move to
21 qualify Ms. Mitchell as an expert in forensic toxicology.

22 MS. NELSON: No objection.

23 THE COURT: All right. Again, ladies and gentlemen,
24 the parties agree that Ms. Mitchell can give opinion
25 testimony in the field of forensic toxicology as she is

LINDSEY MITCHELL - DIRECT EXAMINATION BY MS. PENNEY

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1 stipulated to be an expert in that area. Continue, please.

2 Q. If you would, please, explain what forensic toxicology
3 is to the jury.

4 A. Forensic toxicology, we analyze bodily specimens like
5 blood, or ocular, or urine for the presence or absence of
6 alcohol and other drugs. And then it's our responsibility
7 to interpret that analysis for coroners, police officers,
8 courts.

9 Q. Okay. How do you do that? How do you test those
10 things?

11 A. It depends on what we're testing for, but they're all
12 different processes. In this case there was a blood
13 volatiles test and a preliminary drug screen. The blood
14 volatiles test has two parts to it.

15 One -- the first test is done on an instrument called a
16 GC-FID, gas chromatograph -- gas chromatograph-flame
17 ionization detector. And that's what gives us a value for
18 ethanol and other volatiles if it's there. So it'll tell us
19 if it's there or if it's not as well as give us that value.
20 We also confirm that what we're looking at is truly ethanol
21 because we also do look for things like methanol, isopropyl
22 alcohol, other things that could be in the body, acetone.

23 So we use the next instrument called a GC/MS, gas
24 chromatograph mass spectrometer. That essentially gives us
25 a fingerprint that we can link back to and see that what

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1 we're looking at truly is ethanol, or methanol, or isopropyl
2 alcohol.

3 And then if it's positive, it'll get a second test on
4 the GC-FID to give us a second number. And we take the
5 average of those two.

6 Q. What is ethanol?

7 A. Ethanol is the drinking alcohol. It's the alcohol
8 that's in drinking alcohol that you're most commonly
9 referring to.

10 Q. So when you test for ethanol are you testing to see if
11 someone has been drinking alcohol?

12 A. Yes.

13 Q. What items did you receive in this case, the State
14 versus Mr. Gray?

15 A. In this case I believe we received, for toxicology
16 purposes, blood, ocular, and urine.

17 Q. Okay. Where did you receive those fluids from?

18 A. So our lab will pick everything up from our girls
19 downstairs from log-in. Once it's logged in downstairs they
20 keep it in our evidence in-take until we're ready to pick it
21 up. And a technician usually will go downstairs to retrieve
22 the evidence and take it into their custody.

23 They'll either perform inventory right then and there
24 or they will place it in the refrigerator until they're
25 ready to do inventory. And what that is is just taking

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1 pictures of what's in the bag, cutting it open to see how
2 it's labeled, taking pictures, taking pictures of any other
3 type of bag that it's in and all the labels on that so that
4 we have documentation of how it was submitted to us. And
5 then they'll place that back into the refrigerator until the
6 next person is ready for it.

7 Q. And so when you're -- when you, as the analyst, are
8 ready for it ...

9 A. I retrieve it from the refrigerator.

10 Q. So did you test both the blood and the ocular fluid in
11 this case?

12 A. They were tested by technicians in our lab.

13 Q. Okay. And then you read those tests?

14 A. Yes. So all that data is given to me, and I'll review
15 the quality control and all the data before I generate the
16 report.

17 Q. What were the results of these tests?

18 A. Do you have a copy of the ---

19 Q. I do.

20 A. When we tested the blood for the first test, which was
21 blood volatiles, it was negative for all the compounds that
22 we are looking for, which is ethanol, methanol, acetone, and
23 isopropanol. The blood also received a preliminary drug
24 screen and was negative for the 12 panel drugs that we look
25 for. We did not test the urine.

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1 And then the ocular fluid was found to have ethanol in
2 it at a zero point zero six four (0.064) grams per
3 deciliter. But it was negative for methanol, acetone, and
4 isopropanol.

5 Q. Can you explain that the -- the difference between the
6 levels of ethanol you found in the blood and the levels that
7 you found in the ocular fluid in Mr. Fuller?

8 A. Yes. So ethanol likes water. That's how you can think
9 of it. So that's why we can see it in our blood. It
10 travels to -- through the watery parts of our body. So
11 blood is made up of a lot of water.

12 Your ocular fluid is also made up of a lot of water.
13 And I don't know if I said this before, but when I say
14 ocular fluid, that's your eye fluid. So they can draw that
15 at an autopsy.

16 Your ocular fluid is also comprised of a lot of water,
17 more so than the blood. So we found through studies that
18 ocular fluid will lag behind. So if you are in your
19 postabsorptive phase, so once you're done -- your body is
20 done absorbing alcohol, you'll typically see a higher
21 concentration of ethanol or volatiles in the ocular fluid
22 because it likes the water that's in there as opposed to in
23 your blood.

24 Q. So does that mean by looking at this report that there
25 is no alcohol in the blood, but there is alcohol still in

LINDSEY MITCHELL - DIRECT EXAMINATION BY MS. PENNEY

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1 the ocular fluid?

2 A. Yes.

3 Q. What would that indicate to you about what that person
4 had been doing earlier?

5 A. That they were in their postabsorptive phase of
6 consuming alcohol. So that just means that -- if you think
7 of the ethanol curve, we have an absorption phase where
8 you're going up and your blood alcohol content is still
9 increasing.

10 And then once you fully absorb and reach your
11 equilibrium, it'll go back down. And that's when it starts
12 to decrease until there's no more ethanol left in your body.
13 And they were on that decrease. And it had come out of the
14 blood, but it was still showing in their ocular.

15 Q. So this means that -- well, let me ask you this. What
16 is the legal limit of ethanol in our blood?

17 A. In blood? It's a zero point zero eight (0.08).

18 Q. Okay. And here it's negative, actually?

19 A. For blood, yes.

20 Q. For blood. Is there a legal limit of ocular fluid?

21 A. No.

22 Q. Why is that?

23 A. Well, typically if we're thinking legal limits is for
24 driving, and they don't take ocular fluid from living
25 victims. So we only get this for dead people usually.

LINDSEY MITCHELL - CROSS-EXAMINATION BY MS. NELSON

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1 Q. So analyzing these results, no ethanol in the blood,
2 but some still left in the ocular fluid, can you say whether
3 the victim was, excuse me, whether Mr. Fuller was
4 intoxicated when he died?

5 A. He was not.

6 Q. He was not. That's all I have right now. Please
7 answer any questions from defense counsel.

8 MS. NELSON: Just very brief.

9 Cross-examination by Ms. Nelson:

10 Q. Based on what you're saying, him being in the
11 postabsorptive phase, you would have expected the level to
12 be higher at some time previous to the time the ocular fluid
13 was drawn?

14 A. The level in the blood or the ocular? Or both?

15 Q. Ocular because you didn't find anything in the blood.

16 A. Yes. I would have expected it probably to have been
17 higher, - yes.

18 Q. Thank you, ma'am.

19 Redirect Examination by Ms. Penney:

20 Q. So once someone has passed away does their body
21 continue to process alcohol or does it stay the same as it
22 was when they died?

23 A. It should stay the same. There's studies that say that
24 your body might produce the tiniest of alcohol, but we
25 typically have a threshold that should account for that,

CHAD SMITH - DIRECT EXAMINATION BY MR. THOMAS

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1 anything below a point zero one (.01) we consider negative.
2 So we typically think of that as excluding the endogenous
3 alcohol that could be potentially produced post-mortem. But
4 ...

5 Q. So essentially the systems stop when someone is
6 deceased?

7 A. Yes.

8 Q. And don't continue to absorb?

9 A. Yes. There's not much post-mortem redistribution for
10 alcohol.

11 Q. Okay. Thank you, Ms. Mitchell.

12 MS. NELSON: Nothing further.

13 THE COURT: You used a word I was unfamiliar with,
14 endogenous. How do you spell that and what does that mean?

15 A. E-n-d-o-g-e-n-o-u-s. And it's like naturally
16 occurring.

17 THE COURT: Naturally occurring. Okay. Thank you.

18 You can step down. Have a safe trip back.

19 A. Thank you.

20 THE COURT: Call your next witness, please.

21 MR. THOMAS: Your Honor, the State calls Chad Smith.

22 Chad Smith, being duly
23 sworn testified as follows;

24 MADAM CLERK: Thank you.

25 Direct Examination by Mr. Thomas:

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1 Q. Agent Smith?

2 A. Yes, sir, that's fine.

3 Q. Agent? Okay. Agent Smith, what do you do for a
4 living?

5 A. I work at the South Carolina Law Enforcement Division.
6 Specifically, I work at SLED's forensic services laboratory
7 in Columbia.

8 Q. And what do you do at the forensic services laboratory?

9 A. I'm a firearms examiner or a forensic scientist in the
10 firearms department in the laboratory.

11 Q. And what typically -- when you say firearms
12 examination, what does that involve?

13 A. Well, mostly what we do is examination of firearms,
14 ammunition and ammunition components such as bullets and
15 cartridge cases. Majority of what we do on a day-to-day
16 basis is try to determine if a specific ammunition
17 component, again, such as a bullet or a cartridge case, was
18 fired by a particular firearm.

19 Q. And when you say a firearm, you're talking about like a
20 gun, a handgun, a rifle?

21 A. Correct.

22 Q. And a cartridge casing, explain to us, I guess, what
23 the components are of a handgun, and the cartridges, and the
24 projectiles, and everything.

25 A. Well, ammunition-wise you've got what's known as a

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1 cartridge. And that's basically one round of ammunition. A
2 lot of people just kind of call it a bullet, but technically
3 that's not correct. You've got multiple components that
4 make up a cartridge.

5 You've got the container, which is basically
6 cylindrical shaped. And that's the cartridge case. And
7 inside the cartridge case we'd have the gun powder. And
8 then you would have a projectile, a bullet or, you know,
9 another -- like shot shells, you'd have pellets or something
10 like that.

11 At the bottom of the cartridge case is what's known as
12 a primer. And what that does is when it's struck by the
13 firing pin of the firearm, it causes a small little
14 explosion which ignites the gun powder inside the cartridge
15 case. And that basically causes a volume of gas inside the
16 cartridge case to expand. And that expansion forces the
17 projectile or bullet out of the cartridge case and down the
18 barrel of the firearm.

19 Q. And when the projectile goes down the barrel of the
20 firearm does it leave any characteristics that you can look
21 at later?

22 A. Yes, sir. On a rifled barrel it would. And what we're
23 looking for is -- when I say rifled barrel, if you look down
24 a rifled barrel you would see a series of -- it looks like
25 spiraling grooves.

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1 And what that does is when a bullet travels down the
2 barrel it engages those grooves and causes a spin of the
3 projectile. That spinning motion causes it to -- basically
4 once it leaves the barrel to be stable.

5 And then basically as it travels towards its target it
6 makes it more accurate and gives it more velocity. So it's
7 kind of like when a professional football quarterback throws
8 a football, he wants that nice tight spiral to get his
9 target. That way it makes it more accurate.

10 Q. When you fire a gun does it leave any marks on the
11 cartridge casing, I guess, before it ejects it?

12 A. Yes, sir. There are different places we can look.
13 Basically any portion of a firearm that comes in contact
14 with a bullet or a cartridge case, it is going to leave some
15 markings.

16 And when looking for markings, they're microscopic
17 markings. Most of them are just scratches. We call them
18 striations. But they're caused, again, when it comes in
19 contact with the firearm during the firing process. And we
20 can use those markings to try to determine if it was -- the
21 cartridge case or bullet was fired by that particular gun.

22 Q. And all this sounds very -- very technical. Do you
23 have any specialized education and training that you have to
24 go through to learn how to do all of this?

25 A. I received a Bachelor's of Science Degree in Biological

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1 Sciences from Clemson University. And then when I began my
2 training at SLED in the firearms department, that training
3 program lasts between three to five years.

4 It is supervised by the court qualified examiners of
5 the firearms department. It involves extensive reading and
6 studying. And there are multiple examinations and different
7 kinds of tests given during that time.

8 I also attended various classes and seminars. And
9 later in my training I was able to help the court qualified
10 examiners prepare their casework. And at the end of the
11 training I received a comprehensive multi-part examination,
12 which I successfully completed. And then I began to receive
13 my own casework.

14 Q. And how long have you been doing this?

15 A. About ten and a half years now.

16 Q. And have you ever testified as an expert in court
17 before?

18 A. Yes, sir, I have.

19 MR. THOMAS: Your Honor, at this time the State would
20 move to qualify Agent Smith as an expert in firearm
21 identification and toolmarks.

22 MS. NELSON: No objection.

23 THE COURT: All right. Again, ladies and gentlemen,
24 the parties agree that Mr. Smith can give opinion testimony
25 in the fields of firearm identification and toolmarks,

CHAD SMITH - DIRECT EXAMINATION BY MR. THOMAS

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1 basically ballistics. He can give opinion testimony in that
2 area that you may use as you think is appropriate.

3 Continue, please.

4 Q. Agent Smith, I'm going to hand you State's exhibit 15
5 and ask you if you recognize that?

6 A. Yes, sir. This is the firearm, the Ruger semiautomatic
7 pistol which I received for examination.

8 Q. And what kind of -- what do you do when you receive it?
9 What did you do with that when you got it for examination?

10 A. Well, when I receive it I basically photograph it and
11 look and see if there's any signs of obvious damage or
12 anything. This particular firearm did have some surface
13 rust on the steel components. So prior to test firing the
14 gun I basically just kind of cleaned some of that rust off
15 using some oil and things like that and just tried to get it
16 as clean as possible.

17 But what I would do is test fire this gun and compare
18 the test fires with each other and then compare test fires
19 with the submitted evidence that I received, the bullets or
20 cartridge cases. That way I could try to determine if those
21 test fires match the submitted evidence.

22 And how we do that is we've got what's called a
23 comparison microscope. And it's basically two microscopes
24 that's connected by an optical bridge system so you can look
25 into it and you can compare two samples simultaneously be it

CHAD SMITH - DIRECT EXAMINATION BY MR. THOMAS

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1 cartridge cases or bullets. You're comparing them together.
2 And you're looking, again, for those markings, those
3 striations that's caused by the firearm and try to determine
4 if they were fired by the same gun.

5 Q. So you get the gun, you clean it up, make sure it's in
6 working order and then you test fire it so that you've got
7 something to compare something else to?

8 A. That's correct.

9 Q. I'll hand you -- let's do State's 27 first. And that
10 is -- what is that?

11 A. This is the fired .380 auto caliber cartridge case,
12 which I received for comparison with the gun.

13 Q. Okay. So you got that from Greenwood Police Department
14 to see if you could compare it to that gun?

15 A. That would be correct.

16 Q. Okay. And what did that entail? What did you do to do
17 that?

18 A. Well, again, I would test fire the gun. And how we're
19 able to test fire it, we've got a tank in our laboratory.
20 It's a water tank. And we shoot into the water tank. And
21 the water slows down the bullets and it doesn't add or take
22 away any of the markings that we'd be looking at. And then
23 also, we've got a little collection system, a little box
24 that collects that cartridge case as it ejected out of the
25 firearm.

CHAD SMITH - DIRECT EXAMINATION BY MR. THOMAS

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1 So then I've got my test bullets and my test cartridge
2 cases, which I can compare with each other and with the
3 submitted evidence. So I would compare the test cartridge
4 cases from that gun that I fired with a test fired cartridge
5 case using the comparison microscope to try to determine if
6 they were fired, again, by the same gun.

7 Q. And State's 27, did you compare that to the test
8 samples you had?

9 A. Yes, sir, I did.

10 Q. And what was your conclusion based on that?

11 A. I was able to determine that State's exhibit 27, the
12 fired cartridge case, was fired by State's exhibit 15, the
13 semiautomatic pistol that I received.

14 Q. And I'm going to hand you State's exhibit 16 and ask
15 you if you recognize that?

16 A. Yes, sir. This is the fired bullet. Again, this would
17 be the projectile that comes down the barrel and towards the
18 target. This is the fired bullet that I received for
19 examination.

20 Q. And did you compare that bullet to the test samples you
21 got?

22 A. Yes, sir, I did.

23 Q. And what was your conclusion?

24 A. Able to determine that, again, what's State's exhibit
25 17, I believe, or ---

CHAD SMITH - CROSS-EXAMINATION BY MS. NELSON

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1 Q. It's on the envelope.

2 A. State's exhibit 16, this is the fired bullet, was
3 compared with the fired bullets that I collected and was
4 able to determine that they were fired by the same gun,
5 again, State's exhibit 15.

6 Q. So your opinion -- your expert opinion is that State's
7 exhibit 15, which is the firearm in this case, fired State's
8 exhibit 16, the recovered projectile?

9 A. Correct.

10 Q. And that State's exhibit 15 fired the State's exhibit
11 27, which is the recovered shell casing?

12 A. Correct.

13 Q. Thank you very much, Agent Smith. I'll let you answer
14 any questions the defense may have.

15 A. Thank you.

16 Cross-examination by Ms. Nelson:

17 Q. Hello, Agent Smith.

18 A. Hi.

19 Q. I'm probably one of those people who calls a cartridge
20 a bullet. So just correct me if there's ---

21 A. Yes, ma'am.

22 Q. --- if there's anything I'm saying that's wrong. This
23 gun, as you received it, came with the magazine, which -- is
24 that the same thing as a clip or ---

25 A. No. A lot of people call a magazine a clip. They're

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1 actually different. In this case it is a magazine. It's
2 called a detachable box magazine, basically. So you put the
3 ammunition in the magazine and you would load the magazine
4 inside the firearm.

5 Q. And that magazine had four unfired cartridges in it?

6 A. When I received it I believe the cartridges were
7 removed from the magazine at some point. I received a total
8 of five unfired cartridges with the firearm.

9 Q. Along with that gun?

10 A. Yes, ma'am.

11 Q. And you described this as a semiautomatic pistol?

12 A. Correct.

13 Q. And is it correct that that means when you -- you've
14 got the magazine -- the loaded magazine in there, when you
15 fire a shot with that pistol, does the gun automatically
16 load another cartridge into the chamber?

17 A. Correct. If a semiautomatic pistol is in working
18 order, that would be the sequence of events. You would have
19 an unfired cartridge in the chamber, which means it would be
20 ready to fire. So with every pull of the trigger the gun
21 would fire. The bullet would go down the barrel, the
22 cartridge case would be extracted and ejected out of the
23 firearm, and then another cartridge from the magazine would
24 be chambered and ready for firing.

25 Q. And it was working that way when you test fired it?

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1 A. That's correct.

2 Q. Thank you, sir. That's all I have.

3 THE COURT: Thank you for coming.

4 A. Yes, sir.

5 THE COURT: Take care. Drive safe.

6 A. Thank you.

7 THE COURT: Call your next witness, please.

8 MR. THOMAS: Your Honor, the State rests.

9 THE COURT: All right. Ladies and gentlemen, what
10 we're going to do is I need to take up a few issues of law
11 with the attorneys. I'm going to ask that you adjourn to
12 the back. I need to have a logistical discussion with them,
13 too. So let me do that.

14 Don't talk about the case yet. I may very well bring
15 you out here in a few moments and just release you for
16 lunch. But if you would adjourn to the back for a moment,
17 and I'll have you back out here as soon as possible.

18 (Whereupon the jury exited the courtroom at 12:11 pm)

19 THE COURT: All right. Ms. Nelson, I presume that the
20 defense moves for a directed verdict and renews all prior
21 motions.

22 MS. NELSON: We do, Your Honor. And we would
23 specifically move for a directed verdict of acquittal as to
24 the murder charge based on the evidence that has been
25 presented thus far.

1 **THE COURT:** All right. The jury is back and seated.
2 Ladies and gentlemen, we're, of course, still involved in
3 the case of the State versus Mr. Gray. So at this point,
4 Ms. Nelson, your case.

5 MS. NELSON: Thank you, Your Honor. Defense calls
6 Xzariera Gray to the stand.

7 Xzariera Gray, being duly
8 sworn testified as follows;

9 Direct Examination by Ms. Nelson:

10 Q. Good afternoon, Zay.

11 A. Good afternoon.

12 Q. Will you tell the jury how you feel about what
13 happened, why we're here?

14 A. Well, you know, I feel sorry for what happened, you
15 know, how somebody had to lose their life in the process,
16 but if I wouldn't have never been at that place, I would
17 have been at home with my kids. I shouldn't even never been
18 there, period. Like, you know, that's how I feel like. And
19 I feel sorry about the situation.

20 Q. Let's talk about just some of your background. Where
21 are you from?

22 A. I'm from Greenwood.

23 Q. You lived here your whole life?

24 A. Yes, ma'am.

25 Q. Do you have family here?

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- 1 A. Yeah, I got family here, uncles, mom, sisters. Yeah, I
2 got family.
- 3 Q. What part of town did you grow up in?
- 4 A. South and east Greenwood.
- 5 Q. Where ---
- 6 A. Mostly south.
- 7 Q. Where did you go to school?
- 8 A. Emerald and Greenwood High.
- 9 Q. Did you finish school?
- 10 A. No, ma'am.
- 11 Q. How far did you go?
- 12 A. I dropped out in the ninth grade.
- 13 Q. Okay. Why did you do that?
- 14 A. Thought I was grown, just thinking I was grown at the
15 time. And turned 17 and just dropped out, like didn't
16 realize I needed a education at the time.
- 17 Q. You feel differently about that now?
- 18 A. Yes, ma'am.
- 19 Q. Are you married?
- 20 A. No, ma'am.
- 21 Q. Do you have any children?
- 22 A. I have three -- three kids.
- 23 Q. How old are they?
- 24 A. Ten, five and three.
- 25 Q. And who's their mama?

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1 A. Shanice.

2 Q. She here in the courtroom?

3 A. Yes, ma'am.

4 Q. How long you and Shanice been together?

5 A. About 12 years. I'd say 12 years.

6 Q. Okay. And dropping out of school wasn't a good
7 decision. You've had -- you've made a couple of other bad
8 decisions, haven't you?

9 A. Yeah, a lot. Yes, ma'am.

10 Q. You had -- back in 2010 you pled guilty to a burglary
11 charge?

12 A. Yes, ma'am.

13 Q. And in 2012 you made a false statement to the police
14 over something?

15 A. Yes, ma'am.

16 Q. Did you have -- did you have a trial on those charges?

17 A. Nah, I didn't take a trial because I knew I was guilty,
18 you know what I'm saying? I went ahead and pled out because
19 I know I was guilty at the time for the charges, so I went
20 ahead and pled. I didn't have to take a jury trial then.

21 Q. You accepted responsibility?

22 A. Yes, ma'am.

23 Q. Let's go back to -- you know why we're here. Let's go
24 back to August 25th of 2017 and just tell the jury kind of
25 how your day went on August 25th, which would have been a

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1 Friday.

2 A. Okay. All right. I had went to Fuji Films that day.
3 I had just passed a drug test and got the job. You know, I
4 had just passed the drug test. So I had to be down there
5 Monday. So I just got the job anyway. So I left. Me and
6 my girl, we had got the job. So we left.

7 And me and her had some kind of disagreement. We had a
8 disagreement. So I just told her like, you know, drop me
9 off, like, I'm going over to Rick house, drop me off. So
10 she ain't got no problem with it, she dropped me off.

11 Q. Are you talking about Rick Grant?

12 A. Yes, ma'am.

13 Q. Are you talking about Rick who lives at ---

14 A. Rick Grant. Yeah, [REDACTED] Gray Street.

15 Q. Okay.

16 A. So we had a disagreement or whatever. She dropped me
17 off. And, you know, I sat over there for a little while.
18 We -- we sat around and hung out and just chilled, me, him,
19 and his girl. A couple of people was in the yard.

20 But we sat out there all the way til like later on that
21 night til about 12. He asked me, like, bro, you want to --
22 you want to go out tonight? I'm like, shit, yeah, like, why
23 not, you know? So ---

24 Q. So about -- so late -- y'all just hung out all day, and
25 then ---

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1 A. Yeah.

2 Q. --- late that night y'all decided to go out?

3 A. Yes, ma'am.

4 Q. Where did y'all decide to go?

5 A. We went to the Getaway Bar and Grill. That's what they
6 called it, the Getaway. So we went -- well, we -- well --
7 okay. So me and him get in the car. So before we pull off
8 we -- I'm playing on the phone.

9 Before we pull off somebody knocked on the window, and
10 I looked. And he was like, bro, you straight with lil buddy
11 getting in the car? I'm like, bro, this your car, let him
12 in, you know, I don't care. And ---

13 Q. Wait. Now, who ---

14 A. He was saying Demetrius -- he was going to let
15 Demetrius in the car. He was like -- he was like, bro, you
16 straight? You want to let him in the car? I was like, I
17 don't care, like, you know, this your car.

18 Q. You talking about Demetrius Fuller ---

19 A. Yes, ma'am.

20 Q. --- asked to get in the car?

21 A. Yes, ma'am. So he let him in the car. He was like, I
22 don't care, bro. You straight? I was like, yeah, I'm
23 straight. So he let him in the car.

24 So we ain't said nothing to each other riding all the
25 way to the club. So we get in the parking lot fixin to pull

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1 in, he was like, are you straight? I was like, man, 'cause,
2 you know, we had a little altercation like two weeks prior
3 to this.

4 Q. Okay. Let's slow down. Rick is the one who ---

5 A. Yeah, Rick asked me like, bro, you straight, you know
6 what I'm saying? Because he seen my face expression like,
7 what's wrong? Bro, you all right?

8 Q. So why was Rick worried about whether you were okay
9 with Mr. Fuller getting in the car?

10 A. Because he knew we had prior -- we had a -- we had a
11 prior incident to this ---

12 Q. Okay. What kind of prior incident was that? Tell the
13 jury about that.

14 A. Well, one night we was at Rick house, the same house,
15 ---

16 Q. How long before?

17 A. This was like -- it was two weeks. I know two weeks.
18 No later than three. Two weeks, I know. So we at Rick
19 house. His little brother came through. He, you know,
20 talking -- talking shit, well, I mean, talking trash a
21 little bit, you know. And he was like ---

22 Q. Who -- hang on. Whose little brother?

23 A. Demetrius little brother.

24 Q. You talking about Tobias?

25 A. Yes. Yes, ma'am.

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1 Q. Okay.

2 A. So he came through and was talking. So I was like,
3 man, I said, man, bro, I'm fixin to go in the house, you
4 know what I'm saying, bro? He said, nah, you ain't got to
5 go in the house. Chill man, you straight, you at my house.
6 Everybody telling me, you ain't got to go nowhere, you at my
7 house, you straight.

8 So they came back to the yard. So he still was
9 talking. So me and him ended up getting into a altercation.
10 He pulled out the gun -- he pulled out a gun and I ain't
11 have no gun. So he really chasing me around the car ---

12 Q. And who ---

13 A. --- like pointing the gun -- Tobias pointed a gun at me
14 like, you know, chasing me around the car.

15 So I had seen a free way where I could have shot off to
16 the house. I got in the house. So Rick and them shut the
17 door and like, bro, don't even come back out of the house.
18 So they end up letting him go on about his business.

19 And I say about 20 minutes later his sister and the
20 older brother came back with some more guys from the hood,
21 like people from the neighborhood. So they came back
22 together. And when they came back he had the gun.
23 Demetrius had the gun then.

24 Q. Okay. So you had this -- you had this problem with
25 Tobias?

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1 A. Yes, ma'am.

2 Q. And that's -- that's Mr. Fuller's brother?

3 A. Yes, ma'am.

4 Q. And then he left?

5 A. Yeah, like they all left. So we came back outside
6 after that.

7 Q. And then people came ---

8 A. Yeah, and then about 20 minutes later we seen some more
9 people coming down the street. She was with them. And
10 Demetrius had the gun then at the time.

11 So he was like, what you got going on with my little
12 brother? What you got going on with my little brother? I
13 was like, man, this ain't got nothing to do with you, you
14 know what I'm saying? Tell your brother shoot one -- we can
15 shoot one, whatever.

16 So he was like, nah, ain't nobody shooting no one, I'm
17 going to kill you. So Rick like, man, bro, you go on back
18 in the house. He told me to go on back in the house. So
19 they ended up getting the man to leave. And, you know, I
20 went home that night. So ---

21 Q. So all that had happened with Mr. Fuller ---

22 A. Yes, ma'am.

23 Q. --- and his brother a few weeks before ---

24 A. Yes, ma'am.

25 Q. --- all this happened?

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1 A. Yes, ma'am.

2 Q. Okay. So that's why Rick was wondering if it was okay
3 with you ---

4 A. Yeah. He asked me like, bro, you straight, you know
5 what I'm saying? I was like, this your car.

6 So, anyway, we pull in the Getaway that night. And I
7 was like, nah, bro, he done really messed my vibe up. I
8 don't want to go in the club tonight. I'm straight.

9 It wasn't about no ID or nothing 'cause I knew the
10 owner of the Getaway. Like he's a long-time friend of my
11 mother's. Like JoJo, he grewed up. I been seeing since --
12 I knowed him since I was a baby. So it wasn't no problem me
13 getting in the club.

14 So I just like, nah, bro, I ain't going there tonight.
15 So they got out and they went in the club. And I stayed in
16 ---

17 Q. Did you ---

18 A. Ma'am?

19 Q. Did you -- that night when Mr. Fuller was in the car
20 with y'all had you seen him with a gun at all?

21 A. I ain't gonna lie. I didn't see him with the gun that
22 night. I ain't gonna lie. I didn't see him with the gun
23 that night, but ---

24 Q. And I'm talking about in the car ---

25 A. No, ma'am. No, ma'am. I didn't ---

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1 Q. All right.

2 A. --- see him with the gun that night. And so they
3 stayed in the club about three -- I stayed in the parking
4 lot. I was talking to a couple of home boys I know and
5 people I knew. So we chillin, smokin, or whatever, drinking
6 a little bit.

7 So Rick come out of the club. Rick was like, bro, you
8 straight? I'm like, yeah. He like, you ready to go home?
9 I'm like, yeah, you can take me home. He said, man, Tia
10 just called me. Let me get to the house first and let me
11 see what she wants. So ---

12 Q. So how long had -- so Rick and Mr. Fuller went in the
13 club ---

14 A. Yes, ma'am.

15 Q. --- together? You stayed outside.

16 A. Yeah.

17 Q. About how long were they in there?

18 A. I'd say about three and a half, four hours.

19 Q. It was a while?

20 A. Yeah, for a little while.

21 Q. Okay. And then when Rick came out where did y'all go?

22 A. He was asking me like, bro, you straight? You ready to
23 go home? I was like, yeah. He was like, well, first let me
24 go check on Tia 'cause she keep blowing my phone up. Let me
25 call and check on her, you know what I'm saying? Then I'll

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1 take you home. So we get back ---

2 Q. And, again, Tia's his girlfriend?

3 A. That's Rick girlfriend.

4 Q. She lived there at Gray Street with him?

5 A. Yes, ma'am.

6 Q. Okay. Go ahead. I'm sorry.

7 A. So we get back to Gray Street that night. And I'm
8 sitting in the living room. Rick went back there, talked to
9 Tia. He was trying to see was she going to work or
10 something or see what she wanted. But I guess she said she
11 wasn't going in that day.

12 So we sat in the living room for a little bit. I say
13 about 30 minutes later I hear somebody coming down the
14 street, they talking loud. So we ain't pay it no attention
15 really, though, til they stepped up on the step. And he
16 came in.

17 Rick said, he done made it back home. Look like he
18 done made it back. So we laughing. And he ---

19 Q. So hang on. You hear somebody coming up talking loud.
20 They ---

21 A. Yeah. See, the door was open. So we could see who
22 coming up the step. And we ---

23 Q. And who was it?

24 A. It was Demetrius. He was coming up the steps. So
25 Rick, you know, we laughing. Like Rick, like he made it

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1 back. So we really laughing, just playing, you know.

2 And he looking, he like, what the hell y'all laughing
3 at? He was like, nigga, I already want to get on your ass
4 anyway about fucking with my brother. Like, you know,
5 excuse my language. This is what he said. I'm just being
6 honest.

7 He was like, I already want to get on your ass about
8 fucking with my brother. So I looked at Rick. Rick said,
9 man, brother, let that go. So I was like, man, I'm fixin to
10 go. So I walked out the house.

11 So I'm fixin to get ready to walk down the street and I
12 look like out my periph (ph.) and I see him coming behind
13 me. So I'm like -- I'm like, man, I ain't fixin to go too
14 far, you know what I'm saying? I don't know what's on his
15 mind. You know, I don't know what's going on.

16 So I turned around and went back to Rick house and was
17 like, bro, you ready to take me home? I went in his house.
18 I was like, bro, you ready to take me home? He was like
19 give me a few seconds, man, I'm trying to finish this beer.
20 He had a beer. And he was like, bro, let me finish this
21 beer first. So ---

22 Q. So slow down just a little bit.

23 A. Yes, ma'am.

24 Q. Mr. Fuller comes over there, he's saying some stuff to
25 you, ---

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1 A. Yes, ma'am.

2 Q. --- and you start to leave?

3 A. Yeah. I was fixin to -- I had to walk back to the
4 house. I just walked right past him and all that, you know,
5 all that, you know, what he was talking to Rick.

6 But as soon as I get halfway down the street I look in
7 my -- I see him coming behind me. So, you know, I was like,
8 man, I ain't fixin to go too far, you know what I'm saying?
9 I'm gonna go back and get me a ride home, you know what I'm
10 saying? I ain't fixin to stay over here.

11 So I turned back around. And ---

12 Q. So you changed your mind pretty quick ---

13 A. Yeah, I changed my mind because, you know, I ain't know
14 what was on his mind, you know. Everybody had been drinking
15 that night. So I ain't know what, you know, I'm thinking
16 like I ain't, you know, but anyway.

17 So I turned around and went back to the house. I was
18 like, bro, you ready to take me home? He was like, man,
19 give me a minute. Let me finish drinking this beer.

20 So he came back to the step, you know, and he still
21 talking about, yo, mother fucker, I'm going to get on your
22 ass, duh, duh, duh. He still ---

23 Q. Okay.

24 A. --- was talking, you know, still talking. So ---

25 Q. Has ---

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1 A. --- Rick like, man, y'all -- ma'am?

2 Q. Had Mr. Fuller ever left or was he ---

3 A. Yeah. He -- when I was leaving out the first time he
4 like walked behind me. And that's when I changed my mind
5 about going where I was going.

6 So I turned around and went back to Rick's house, you
7 know, where I felt safe at, you know, it was people that I
8 knew at and I was straight there. So ---

9 Q. And Mr. Fuller was still there?

10 A. No. He had done started walking behind me.

11 Q. No. I mean, was he still at Rick's property? Was he
12 still at ---

13 A. Nah, he was really on the roadway, like on the roadway.
14 Like I was halfway down the street. He was like coming out
15 of Rick yard pretty much, yeah. And I seen him coming
16 behind me, so I turned around.

17 And when I turned around I went back in Rick house. So
18 we sit in -- I was like, bro, you ready to take me home? He
19 was like, man, let me finish this beer or whatnot.

20 So he came back to the doorstep. He was talking --
21 still talking. I couldn't really make out what he was
22 saying. But Rick was like, bro, y'all take that outside.
23 Man, my girl back there asleep. Y'all go outside, man, with
24 that.

25 So I was like, bro. He was like, man, y'all go outside

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1 with that. Man, you gonna have any business, bro, go on
2 outside, bro. I ain't got nothing to do with that. Go
3 outside.

4 So we walked outside. And I stood on the step. And he
5 was like right like a step below me or something, you know
6 what I'm saying? So ---

7 Q. So y'all were ---

8 A. --- we talked -- yes, ma'am. So we talked ---

9 Q. Y'all were right there at the front door?

10 A. Yes, ma'am, right at the front door. So right after I
11 walked out I was standing right in front of the door. He
12 was like a step below me. So we talking.

13 And -- well, really, he just, you know, talking about
14 what happened and all that. I ain't really paying that no
15 attention. I'm, you know what I'm saying, not paying
16 attention. So he swung and he like -- he missed. He swung,
17 but he really missed me. And so we get locked up and come
18 off the steps.

19 We tussling, boom, we tussling in the yard. I don't
20 know how long it took, probably like 30, 40 seconds. He
21 really let me go, had one hand like on my shirt, like one
22 hand on my shirt. He got to reaching like he was reaching
23 for his gun. I seen the gun then. That's when I seen the
24 gun.

25 Q. That was the first time you saw it?

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1 A. Yeah, that's the first time I seen the gun that night.
2 So like my eyes got big like, you know what I'm saying? So
3 I let him go completely and just grabbed the gun.

4 When I grabbed the gun, like we still was wrestling
5 over the gun, I backed up from the gun. Like when I backed
6 up, like stumbling back, he started running toward me. And
7 that's when the gun went off, like shot off.

8 Q. So when you -- when you backed up, like y'all were --
9 y'all were tussling together, ---

10 A. Yes, ma'am.

11 Q. --- and you were able to get to the gun before he did,
12 ---

13 A. Yeah, because he had -- he had one hand on my shirt and
14 he was reaching for the gun, like grabbing.

15 Q. Out of his -- out of his ---

16 A. Out of his ---

17 Q. --- waist?

18 A. --- waistband. So I let him go completely and just
19 grabbed the gun, you know what I'm saying? Like my eyes got
20 big. I'm like, damn, he got a gun. So, you know what I'm
21 saying? I'm like -- and I grabbed the gun. Like he still
22 -- so I actually wrestled it out of his hand, and I stumbled
23 back, and he started running toward me, and that's when I
24 shot.

25 Q. When you started -- when you started backing up, about

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1 how far do you think you were?

2 A. I can't even say because I really was stumbling and
3 walking back -- it was a stumble, walk back. You know, like
4 I wasn't, ---

5 Q. Okay.

6 A. --- you know what I'm saying? It was a spur of the
7 moment. And when I seen him coming at me, I shot. Like I
8 didn't know what else to do.

9 Q. So you got some distance between you, ---

10 A. Yes, ma'am, it ---

11 Q. --- but then he still ---

12 A. --- was some distance between us. Like it wasn't -- I
13 don't think it was that much, but it, you know, it was
14 enough distance, you know, I seen him coming at me, and I
15 let off the shot.

16 Q. Okay.

17 A. That's the honest truth.

18 Q. Other than -- that all happened pretty fast?

19 A. Yes, ma'am.

20 Q. Other than this kind of fight over his brother that you
21 talked about happening a few weeks before, was there
22 anything else you knew about Mr. Fuller that made you ---

23 A. Well, I always knew he, you know, he ---

24 **MR. THOMAS:** Objection, Your Honor.

25 **THE COURT:** Sustained. I think that's referencing what

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1 we were talking about. Why don't you rephrase.

2 Q. Other than that one time did y'all continue to have any
3 difficulties?

4 A. Yes.

5 Q. Okay. How did you -- how were you feeling when all of
6 that was happening? Were you ---

7 A. I really felt like I was fixin to lose -- I was fixin
8 to die. Like once I seen the gun, like my eyes got big.
9 I'm like, damn, like, you know what I'm saying? I didn't
10 know what to do.

11 Q. Were you afraid?

12 A. Yes, ma'am. I -- really I was scared. Like I didn't
13 know what to do. If somebody pull a gun out on you, you
14 know, trying to get to a gun, you know, you don't -- you
15 ain't thinking. Like you scared. Like because I know I
16 didn't have a gun at the time. So I'm just like, you know?

17 Q. Can you come down here and stand next to me? How tall
18 are you, Zay?

19 A. Five four.

20 Q. Okay. Was Mr. Fuller bigger than you?

21 A. He was taller and a little bigger than me. I just got
22 big recently, you know.

23 Q. Was he -- is he taller than I am right now standing ---

24 A. Yes, ma'am.

25 Q. --- next to you? Okay. You can go back up there. So

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1 after you -- after you fired that shot, what did you do
2 next?

3 A. It's like he took off running. I dropped the gun. I
4 dropped the gun right then, like dropped it. And I took off
5 to the door and asked brother like, you know, bro, can I
6 come in? Like, nah, bro, you can't come in.

7 So I went next door and called me a cab. And that's
8 what happening, I called me a cab 'cause at the time, like I
9 already knew his whole family stayed -- like he grew up in
10 the area. Like that's his area. Like I ain't from over
11 there. Like -- but that's his area. He got family and
12 stuff.

13 So I'm automatically like -- I'm thinking now like, oh,
14 man, he fixin to go get his people. They fixin to come
15 back. And, you know, so I was scared at the time. So I
16 called a cab. And it took the cab like 30 minutes to a hour
17 to even come. They didn't come right then. Like it took
18 them like 30 minutes to get there. So ---

19 Q. Where did you go while you were waiting?

20 A. I went next door.

21 Q. And you waited there?

22 A. Yes, ma'am.

23 Q. Okay. And you took a cab where?

24 A. I got -- to Columbia.

25 Q. You went all the way to Columbia?

XZARIERA GRAY - DIRECT EXAMINATION BY MS. NELSON

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1 A. Yes, ma'am.

2 Q. Why did you go there? Who lives there?

3 A. Because like my mom -- my mom and my sister stayed
4 there at the time, but like at the time like people, you
5 know, people getting calls then. So they was like, bro, you
6 don't need to go back to Greenwood. Bro, ---

7 MR. THOMAS: Objection, Your Honor.

8 A. --- they talkin about ---

9 THE COURT: Sustained.

10 MR. THOMAS: Hearsay.

11 THE COURT: Sustained as to any hearsay.

12 MR. THOMAS: Move to strike.

13 Q. How did you feel about -- let me ask it this way. If
14 you hadn't done anything wrong, why did you leave and go to
15 Columbia?

16 A. You said if I hadn't done ---

17 Q. If you didn't do anything wrong that night ---

18 A. 'Cause I was scared for my life.

19 Q. And why were you scared for your life?

20 A. 'Cause they -- people trying to kill me. Like ---

21 Q. You ---

22 A. --- I know this.

23 Q. You were afraid of retaliation?

24 A. Yes, ma'am.

25 Q. Were you trying to kill Mr. Fuller?

XZARIERA GRAY - DIRECT EXAMINATION BY MS. NELSON

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1 A. No. No, ma'am. Really 'cause when I -- when I shot I
2 had my eyes closed. I didn't know he was hit. I just
3 dropped the gun and ran, you know? Dropped the gun and ran
4 to Rick door. He didn't let me in. And I went next door
5 and called me a cab.

6 Q. When you found out that the police were looking for
7 you, why didn't you turn yourself in? Can you explain that
8 to the jury?

9 A. Yes. I didn't turn myself in because at the same time,
10 like I know how Greenwood work. And I done -- I done been
11 in -- I done been in trouble before. So I know they gonna
12 lock me up on this, word of mouth. You going to jail, and I
13 ain't gonna be able to say nothing. So I knew I was going
14 to jail.

15 So I just -- I wanted to see my kids again, you know.
16 Like I just kept telling them like I want to see my kids
17 again before -- I was going to turn myself in. I wasn't
18 scared to go to jail or nothing, but I had to see my kids
19 again at least one more time. And I still didn't get to see
20 them. So ...

21 Q. When the Columbia police came to your sister's house in
22 Columbia did you -- did you try to run then? What did you
23 do?

24 A. Oh, no, ma'am. I told her to let them in. Let them
25 in, you know. Like, you know, I knew they were coming

XZARIERA GRAY - DIRECT EXAMINATION BY MS. NELSON

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1 anyway. Like, you know, they go through steps. But I knew
2 they was coming.

3 I wasn't -- if I wanted to go anywhere else I could
4 have went anywhere else 'cause that's not the only place I
5 had to go in Columbia. But I knew they was coming, but I
6 just wanted to see my kids again before I really just turned
7 myself in like that.

8 Q. Okay. Before you were able to get that gun away from
9 Mr. Fuller did you ever have a gun that day ---

10 A. No, ma'am.

11 Q. --- at all?

12 A. No, ma'am. No, ma'am.

13 Q. Where did you throw it down?

14 A. It's like wherever we got to tussling at. When I stood
15 back and I shot, and I seen him run, I dropped it, you know
16 what I'm saying? I thought I missed him. I didn't -- I
17 didn't know he was hit. I didn't even know. So I ran, you
18 know what I'm saying? And went in the house and called me a
19 cab. It took them like 30 to 45 minutes to get there.

20 Q. Do you remember somebody named Quinisha Jameson?

21 A. That's my sister.

22 Q. Okay. That's whose house you went to?

23 A. Yes, sir. I mean, yes, ma'am.

24 Q. All right.

25 A. Excuse me.

XZARIERA GRAY - DIRECT EXAMINATION BY MS. NELSON

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1 Q. Tell me again when you had Mr. -- Mr. Fuller came to
2 where you were, is that right?

3 A. Yes, ma'am.

4 Q. And when you had this confrontation with him, how were
5 you feeling when that happened?

6 A. Like talking about during the confrontation?

7 Q. Um-hum (affirmative).

8 A. I was scared 'cause like once I seen the gun like I
9 automatic -- my heart start thumping, like my eyes got big
10 and I didn't know what else to do, you know what I'm saying,
11 besides wrestle for it. You know, if he shoot me then, you
12 know, who knows, you know what I'm saying?

13 But I didn't think he was hit either, you know what I'm
14 saying? I just shot. When I stumbled back, walked back, I
15 just shot. I didn't even -- I didn't know he was hit or
16 nothing. He took off running, and I dropped the gun, and I
17 ran the other way.

18 Q. Is there anything else you want to tell the jury about
19 what happened or how you feel about what happened?

20 A. I wish that night would have never happened because
21 like that was -- it really changed my life. Like I done
22 missed two years of my kids' life. And it just -- I just
23 wish that night would have never happened.

24 You know, I really regret that night like just to be
25 honest. Like I regret that night and I wish it wouldn't

XZARIERA GRAY - CROSS-EXAMINATION BY MR. THOMAS

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1 have never happened because I done missed two years of my
2 kids' life and they getting older and older and they miss
3 they daddy. So I just wish it wouldn't have never happened
4 like that that night. And nobody wouldn't have never lost
5 their life, and I wouldn't be in the predicament I'm in now.

6 Q. Zay, will you answer any questions that ---

7 A. Yes, ma'am.

8 Q. --- Mr. Thomas has for you?

9 THE COURT: Cross.

10 Cross-examination by Mr. Thomas:

11 Q. So you -- you spent all day hanging out at Rick's house

12 ---

13 A. Practically all ---

14 Q. --- after your job interview?

15 A. Yes, sir.

16 Q. And you said you hung out over there, is that right?

17 A. Yeah.

18 Q. Okay. And then at some point y'all decided to go to
19 the Getaway?

20 A. Yeah.

21 Q. And the Getaway is also called the South Main Street
22 Bar and Grill?

23 A. Yes, sir.

24 Q. Joe Cunningham -- Joe English -- Joe English runs ---

25 A. Um-hum (affirmative), Joe English.

XZARIERA GRAY - CROSS-EXAMINATION BY MR. THOMAS

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1 Q. Yeah. And that's located -- it's on Main Street?

2 A. South Main.

3 Q. Yeah. So right by the old Caravan?

4 A. Yes. Yes, sir.

5 Q. So right -- just right down the road, basically?

6 A. Um-hum (affirmative).

7 Q. Okay. So y'all go there. You're getting ready to go
8 and you said Mr. Fuller just kind of knocks on Rick's
9 window?

10 A. Um-hum (affirmative).

11 Q. Okay. And Rick asked you if you were okay with him
12 getting in the car and riding with y'all?

13 A. Bro, you straight with him getting in the car? I'm
14 like, this your car.

15 Q. Yeah.

16 A. You know, I can't tell you not to let nobody in your
17 car, which I couldn't.

18 Q. 'Cause you're just riding somewhere?

19 A. Yeah.

20 Q. I mean, nothing's going to happen in that short --
21 little ---

22 A. Right.

23 Q. --- short trip, right?

24 A. It was his car. Like if I did have a problem, it don't
25 matter what I thought, he's still going to, you know, he had

XZARIERA GRAY - CROSS-EXAMINATION BY MR. THOMAS

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1 his own mind to do what he wanted to do.

2 Q. You're pretty deferential to Rick, right, I mean, in
3 that regard?

4 A. Say what?

5 Q. You were deferring to Rick's -- what he wanted to do
6 then, right?

7 A. What you mean by that?

8 Q. If Rick wanted to let him ride, you were going to let
9 him ride?

10 A. I'm saying, that's his car, yeah.

11 Q. And you and Rick are friends. Y'all've known each
12 other a long time, right?

13 A. Nah, we ain't known each other that long, but we've
14 known each other long enough just to, you know, be cool. So
15 ...

16 Q. Okay. How old are you?

17 A. Thirty.

18 Q. Okay. So you're a lot younger than Rick then?

19 A. Um-hum (affirmative).

20 Q. Okay. I didn't know if y'all went to high school
21 together or not. That's why I was asking that. But you
22 were good enough friends that you hang out at his house,
23 y'all go to the club together, that kind of thing?

24 A. Yeah.

25 Q. Okay.

XZARIERA GRAY - CROSS-EXAMINATION BY MR. THOMAS

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1 A. Because he stay -- he stayed with like my cousin. Like
2 he go with Tia. So ...

3 Q. Okay. And then y'all go to the club, you get there and
4 you're just not feeling it, and you don't feel like going
5 in?

6 A. (No response).

7 Q. Is that right?

8 A. Yes, sir.

9 Q. But Mr. Fuller and Rick go in the club?

10 A. Yes, sir.

11 Q. How long do you think you hung out in the parking lot?
12 Guess.

13 A. Maybe three and a half hours, I think, because
14 different people was coming. I was talking. I didn't keep
15 up with time. Probably about three and a half hours,
16 something like that.

17 Q. It's one of those places, though, people come and go.
18 Y'all hang out in the parking lot. You can drink a beer out
19 there and nobody's ---

20 A. Yeah.

21 Q. --- going to bother you, that kind of thing? So y'all
22 get ready to go and, I guess, Rick comes out without Mr.
23 Fuller, right?

24 A. Um-hum (affirmative).

25 THE COURT: That's a yes.

XZARIERA GRAY - CROSS-EXAMINATION BY MR. THOMAS

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1 A. Yes, sir.

2 Q. Did your brother, Aaron, come out with him?

3 A. No.

4 Q. Was Aaron there at any point in that night?

5 A. I didn't see him.

6 Q. Okay. Was he over on Gray Street at all?

7 A. No.

8 Q. Okay. So y'all get back in the car. So it's just you
9 and Rick in the car on the way back?

10 A. Yeah.

11 Q. Okay. Go back to Rick's house, hang out for a little
12 while?

13 A. Yeah, we -- yeah. Yeah.

14 Q. Okay. And, I guess, you went back to his house first
15 'cause he -- something he needed to do there before he took
16 you home?

17 A. He said Tia -- his girl kept calling, so he had to see
18 what was wrong. I guess he -- he thought it was a
19 emergency. So we had -- we went over -- I didn't have no
20 problem with, you know, going to see what she want, you
21 know, for a minute.

22 Q. And, I guess, we've already heard Gray Street, Rick's
23 house is over behind the post office kind of?

24 A. Yeah.

25 Q. Okay. You were -- at some point you were planning on

XZARIERA GRAY - CROSS-EXAMINATION BY MR. THOMAS

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1 going back to your girlfriend's house, right?

2 A. Whenever he -- whenever he dropped me off, yeah.

3 Q. She lived over on Foundry ---

4 A. Foundry Road, yeah.

5 Q. --- Road. And Foundry Road is ---

6 A. Probably about a mile down the street from the Getaway.

7 Q. Yeah. So when I say Guy Butler over -- take a left at
8 the Health Department, basically?

9 A. Um-hum (affirmative).

10 Q. Okay. So really, probably, maybe three or four blocks
11 from the Getaway?

12 A. Um-hum (affirmative).

13 Q. Okay. But, anyway, y'all get in the car and go back to
14 Rick's house instead of dropping you off first?

15 A. Yeah. He had to see what his girl -- what was wrong
16 with his girl, I guess.

17 Q. And then you're standing -- you're hanging out at this
18 house. I guess, were you in the kitchen, the living room?

19 A. We was in the living room.

20 Q. Okay. Is it sort of like the kitchen and the living
21 room were all one thing?

22 A. Yeah. It was like the kitchen in behind the living
23 room.

24 Q. Was it -- nobody else was there with y'all other than
25 his girlfriend ---

XZARIERA GRAY - CROSS-EXAMINATION BY MR. THOMAS

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1 A. Just me and Rick. And Tia was in the back.

2 Q. Okay. Were there people hanging out outside?

3 A. I didn't see nobody out there.

4 Q. Okay. So y'all hang out for a little while and then
5 Mr. Fuller comes back up the street? About how long after
6 that was -- did y'all get back ---

7 A. Talking about -- we had -- when we first got back it
8 was like 30 -- 30 minutes probably. I didn't -- like I say,
9 I don't keep -- I didn't keep ---

10 Q. Right.

11 A. --- up with the time, you know. So it was probably
12 like 30, 45 minutes.

13 Q. And it's, I mean, at this point it's late at night,
14 early morning anyway, right?

15 A. Um-hum (affirmative).

16 Q. I mean, it's -- y'all have been out for a while?

17 A. Yes, sir.

18 Q. So he comes back -- he comes back one time or he comes
19 back twice?

20 A. When he come back the first time, you know, me and Rick
21 sitting in the living room. Like I just said, we sitting in
22 the living room, you know. I think I'm playing on my -- I
23 don't know what I was doing at the time, but we hear
24 somebody coming down the street. You know, you can hear
25 somebody coming 'cause ain't really nobody out at the time.

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1 So we hear somebody coming up the stairs.

2 And we look and we see him. But like we laughing, like
3 we really joking like, you know. And he like, what the fuck
4 y'all laughing at or something? He said, I already want to
5 get on your ass anyway. Like that was his exact statement,
6 you know what I'm saying? So I'm like, I ain't got time for
7 this.

8 Q. So does he leave the house then?

9 A. No. I left. I walked ---

10 Q. Okay.

11 A. I walked out past him, you know. And as I get probably
12 like out in the road a little farther down I look out like
13 my periph (ph.), I see him coming behind me.

14 Q. Um-hum (affirmative). And when that happened you
15 turned around and went back in the house ---

16 A. Yeah, because I felt safer that way.

17 Q. Okay.

18 A. Yeah, that's -- and then that was my ride home, too.
19 So, of course.

20 Q. Okay. So then, I guess, he comes back in the house?

21 A. Nah, he -- he walked back on the steps and he pulled
22 the door. So he still talking to me now, like, you know
23 what I'm saying? You know, saying little stuff.

24 So Rick like, y'all got to get out, get out my house,
25 bro. Like, you know Tia back there asleep. Y'all can't be

XZARIERA GRAY - CROSS-EXAMINATION BY MR. THOMAS

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1 doing this in the house. I look at him like, bro. He like,
2 man, get out the house, bro. You know you got to go outside
3 with that, bro. So I walked outside.

4 Q. Okay. And this is the second time you walked outside?
5 That's what you just described?

6 A. Yes, sir.

7 Q. Okay. How far did you walk out that time?

8 A. I stayed no farther -- I stood right there on the front
9 -- right in front of the porch.

10 Q. So if I show you State's exhibit 1, ---

11 A. Um-hum (affirmative).

12 Q. --- that's Rick's house, right?

13 A. Yeah.

14 Q. And you said you stayed on the porch?

15 A. Right there -- right in front of the door.

16 Q. Okay. So you're standing up there.

17 A. He's standing like on the second step, like, you know,
18 right ---

19 Q. Okay.

20 A. --- you step down one time, right there.

21 Q. Okay. And you said that's the point at which he took a
22 swing at you?

23 A. Yeah. We right here. So like he swung. And when he
24 swung, we tangled up and like come off the steps. We like
25 right here in the dirt area and we tussling.

XZARIERA GRAY - CROSS-EXAMINATION BY MR. THOMAS

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1 Q. Okay. So when y'all -- when you say tussling, y'all
2 tussled ---

3 A. He trying to slang me, I'm trying to slang him, but
4 ain't nobody hitting the ground.

5 Q. Okay. Out in this area right here?

6 A. Yes, sir.

7 Q. Okay. And when y'all were tussling, you said you had
8 ahold of him and he had ahold of you?

9 A. I'm saying like he had ahold of my shirt.

10 Q. Okay. And did you have ahold of him?

11 A. His shirt.

12 Q. You had his shirt?

13 A. Yes, sir.

14 Q. He had a shirt on?

15 A. No, but I think I had a tank top or something -- he had
16 something on, a tank top or something.

17 Q. Okay. So you had ahold of a shirt of his, he had ahold
18 of your shirt?

19 A. Um-hum (affirmative).

20 Q. You were trying to get him off of you?

21 A. Like -- no, we was tussling. So he like -- he trying
22 to slam me. He couldn't slam me, I couldn't slam him. So
23 he let me go, had one hand like this and he was reaching for
24 the gun.

25 Q. So y'all tussling out here in -- back and forth, I

XZARIERA GRAY - CROSS-EXAMINATION BY MR. THOMAS

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1 guess, sort of ---

2 A. That what I just said.

3 Q. Yeah. Okay. I just want to make sure I understand you
4 here. And during the course of that you're saying he lifts
5 up his shirt and reaches for the gun or ---

6 A. Listen. I said he had my shirt.

7 Q. Okay.

8 A. He grabbed the gun. I don't know if he lifted -- I
9 wasn't looking at all that, man. I'm just -- only thing I
10 seen was the gun.

11 Q. All right.

12 A. When I seen the gun, I let him go completely and
13 grabbed the gun.

14 Q. Okay. So he has on a tank top, you got ahold of his
15 shirt, and then you see him reaching for the gun and you
16 grabbed the gun?

17 A. Sir?

18 Q. You grabbed the gun?

19 A. We wrestling with the gun at first.

20 Q. Okay.

21 A. Then he -- I get it out of his hand. So I stumbled
22 back.

23 Q. Okay. So you've got control of the gun from him?

24 A. I pulled it back.

25 Q. All right. So you've got it. He doesn't have it

XZARIERA GRAY - CROSS-EXAMINATION BY MR. THOMAS

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1 anymore.

2 A. (Affirmative nod).

3 Q. All right. And you said you're falling backwards or

4 ---

5 A. Like ---

6 Q. --- or stumbling ---

7 A. Like walking back, stumbling a little bit, you know.

8 Q. Okay. And, again, all of this is going on out in front
9 of this house here?

10 A. Yes, sir.

11 Q. Okay. So you're stumbling backwards. It's just you
12 and him out there?

13 A. I didn't see nobody else. I'm focused on the situation
14 at hand. I wasn't focused on nothing around me. My ---

15 Q. Was anybody ---

16 A. --- life in jeopardy at the time.

17 Q. Was anybody standing next to you?

18 A. No.

19 Q. Nobody was next to you?

20 A. No.

21 Q. Okay. So you're stumbling backwards, by yourself, it's
22 you and him and you just -- the gun goes off?

23 A. I'm saying I pulled the trigger.

24 Q. Okay. You pulled the trigger?

25 A. 'Cause he was coming at me -- like he was coming at me.

XZARIERA GRAY - CROSS-EXAMINATION BY MR. THOMAS

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1 Q. So you meant to kill him?

2 A. No.

3 Q. You meant to shoot him?

4 A. I -- no. I was just trying to, you know, like at the
5 time I was moving back and I shot. I didn't -- you know, at
6 the time my mind was just like I didn't know what to do. I
7 didn't know what to do. To be honest with you, I didn't
8 know what to do.

9 Q. So your finger just instinctively went in there and ---

10 A. Man, ---

11 Q. --- pulled the trigger?

12 A. --- I did it just like that right there. And he --
13 when I opened my eyes he was running that way, and I dropped
14 the gun and I ran.

15 Q. Okay. You dropped the gun. Which way did you run?

16 A. I ran to Rick house first.

17 Q. Okay.

18 A. Like he wouldn't let me in, so I went next door.

19 Q. Okay. In relation to Rick's house -- where were you --
20 were you staying with your girlfriend?

21 A. Yeah.

22 Q. Okay. You weren't staying over on Baptist Court with
23 your ---

24 A. No, that's my grandma house. Nah, I wasn't staying
25 there at the time.

XZARIERA GRAY - CROSS-EXAMINATION BY MR. THOMAS

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1 Q. So you run to Rick's house and then you run next door.

2 When you say next door do you mean ---

3 A. Right next door to the next house.

4 Q. Okay. So next house back up the street? Not the ---

5 A. Nah, it's right beside it. Like you see the corner of
6 the house? There's a little house right beside there.

7 Q. Actually, it's right there.

8 A. Yeah, that house right there. It's split. It's got
9 one side, and it's a split wall and another side.

10 Q. It's a duplex, right?

11 A. Yes, sir.

12 Q. And you called a cab.

13 A. (No response).

14 Q. Is that right?

15 A. Yes, sir.

16 Q. And then you took that cab all the way to your sister's
17 house in Columbia.

18 A. (Affirmative nod). Yes, sir.

19 Q. Right then?

20 A. No. I said it took like -- I don't know how long it
21 took. It took the cab a minute to get there I know because
22 I been waiting. I been waiting on the cab.

23 Q. Um-hum (affirmative).

24 A. You know, so I waited on the cab for like -- it was
25 about 30 or 45 minutes. I say 45 minutes tops, maybe a

XZARIERA GRAY - CROSS-EXAMINATION BY MR. THOMAS

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1 hour. I'm not really sure of the time.

2 Q. And you said that's where police eventually arrested
3 you, right?

4 A. In Columbia, yeah.

5 Q. I think at some point even I was listening to some of
6 your phone calls and you were laughing with your girlfriend
7 about how you were wearing your sister's housecoat or
8 something when they came ---

9 A. I had put my mama shirt on. Like that's all I had to
10 wear.

11 Q. Yeah. You didn't even have time to take anything with
12 you, did you?

13 A. At the time, no.

14 Q. Did you drop your cell phone when you dropped the gun?

15 A. I might have dropped -- I might have dropped my phone
16 probably right there where that grill at, somewhere in there
17 in that area.

18 Q. Okay.

19 A. I know -- it was somewhere in the front yard. I'm not
20 really sure.

21 Q. And you were telling us earlier about this incident
22 where, I guess, Mr. Fuller's brother, Tobias, and you got
23 into some altercation at Rick's house?

24 A. Um-hum (affirmative).

25 Q. Tobias hangs out on this street a lot, doesn't he?

XZARIERA GRAY - CROSS-EXAMINATION BY MR. THOMAS

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1 A. I guess. Yeah.

2 Q. Okay. You think the tussling and the fighting with Mr.
3 Fuller lasted -- you don't know how long it lasted because
4 it all happened so ---

5 A. I really don't.

6 Q. --- quick, right?

7 A. I really don't.

8 Q. Could have been -- could have been minutes, could have
9 been seconds, you just don't ---

10 A. I don't know. You know, just to be honest, I don't
11 know.

12 Q. And you thought to yourself if I don't get this gun,
13 he's going to kill me?

14 A. Man, I was scared. What would you do if somebody
15 pulled a gun on you or trying to get to a gun while y'all
16 tussling? What would you do?

17 Q. Right. And I think that's what you said earlier. You
18 said, if I don't get this gun, he's gonna kill me. That's
19 what you were thinking ---

20 A. That's how I felt.

21 Q. That's how you felt.

22 A. I felt like I was going to die. I was scared, you
23 know. Put yourself in my shoes. What would you do?

24 Q. You didn't have a gun on you because you're not allowed
25 to possess a gun, ---

XZARIERA GRAY - CROSS-EXAMINATION BY MR. THOMAS

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1 A. You right.

2 Q. --- right?

3 A. You right.

4 Q. 'Cause you got that prior record and it was a felony
5 back then -- was it 2010?

6 A. '12. '12 and '10.

7 Q. That's right.

8 A. When I pled guilty to a burglary, second, charge in '10
9 and I think it was a false information to officers in '12.

10 Q. So you've lied to the police before?

11 A. Yeah, man. Nobody -- I ain't, you know, I ain't
12 perfect. Yeah, of course. Yeah.

13 Q. So you didn't feel the need to call them after this one
14 and tell them what had happened?

15 A. No, 'cause I didn't think nobody was hurt at the time.

16 Q. You didn't think anyone was hurt at the time. How long
17 did you say you stayed at the house next door?

18 A. About 30 minutes, maybe, 45 minutes.

19 Q. Thirty, 45 minutes ---

20 A. Yeah.

21 Q. --- at the house next door, and ---

22 A. See, where I'm from if you hear a gunshot you gonna
23 hear sirens.

24 Q. That's right. You didn't -- and you took a cab out of
25 there?

XZARIERA GRAY - CROSS-EXAMINATION BY MR. THOMAS

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1 A. Yeah.

2 Q. You didn't see the ambulance or the police cars down at
3 the corner?

4 A. They came up this way. We went out that way and went
5 back out.

6 Q. You didn't see any flashing lights when you walked out
7 of the house, though?

8 A. Man, I walked straight to the cab. I ain't looking at
9 nothing but the cab, just to be honest. I'm trying to, you
10 know, I'm really trying to get -- get out of the way 'cause
11 I don't know what's going on, to be honest with you.

12 Q. And you said -- the first thing you said when Ms.
13 Nelson asked you how you felt, you said you wished you'd
14 been home that night. In fact, ---

15 A. I wish I'd never got dropped off on that street. I'd
16 been at home with my kids.

17 Q. In fact, you were supposed to be home that night as a
18 part of your conditions that you were out on at the time?

19 A. No, not really 'cause I had done talked to the
20 bondsman. He was like as long as you at where you supposed
21 to be at, as long as you ain't getting in no trouble, you
22 straight. Yeah.

23 Q. Does cutting off your ankle monitor count as not
24 getting in trouble?

25 A. I cut my ankle monitor off because I was -- I had

XZARIERA GRAY - CROSS-EXAMINATION BY MR. THOMAS

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1 violated probation. They was fixin to lock me up anyway.

2 Q. At any point when Meatball was over there or when Mr.

3 Fuller was over there and y'all were, I guess, verbally

4 arguing before y'all started tussling, ---

5 A. Um-hum (affirmative).

6 Q. --- he never came at you asking about where's my gun?

7 A. Nah, I ain't hear nothing about no gun. He was talking

8 about the prior incident that happened. He wasn't talking

9 about no gun. I don't know where that come from about a

10 gun, period.

11 Q. He wasn't mad because you took a gun from him?

12 A. No. How did I get his gun?

13 Q. He was mad at you because his brother was mad at you?

14 A. Yeah. Like me and him had -- he was there -- like I

15 told you, the prior incident that happened, he came right

16 after me and his brother got into a altercation with a gun.

17 Q. At that same house?

18 A. Same house.

19 Q. So none of this would have happened had you been at

20 home, not been at that house that night?

21 A. You right. If I'd have been at home with my kids where

22 I was supposed to been at, I'd been straight.

23 Q. And if you hadn't have wrestled the gun away from him,

24 he was gonna to kill you?

25 A. (Affirmative nod).

XZARIERA GRAY - REDIRECT EXAMINATION BY MS. NELSON

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1 Q. I think that's all I have.

2 THE COURT: Redirect?

3 Redirect Examination by Ms. Nelson:

4 Q. Zay, are you trying to hide anything from this jury?

5 A. No. I gave them the honest truth. Like that's the
6 truth.

7 Q. Did you mean to kill Mr. Fuller?

8 A. No. I didn't even know he was shot to be honest. Like
9 I didn't know he was shot.

10 Q. Do you wish that you had gone straight home to Shanice
11 after the Getaway?

12 A. Every night I regret it. Every night.

13 Q. Thank you, Zay.

14 THE COURT: All right, sir. You can step down. Ms.
15 Nelson.

16 MS. NELSON: Could we approach just for a second, ---

17 THE COURT: Sure.

18 MS. NELSON: --- Your Honor?

19 (Whereupon a bench conference was held off the record
20 in the presence of the jury, but out of their hearing)

21 (Whereupon the bench conference was ended)

22 THE COURT: Ladies and gentlemen, we're moving a little
23 bit more quickly than we had anticipated. The next witness
24 is not here yet. Adjourn to the back. If you need to pop
25 outside and have a cigarette, feel free to do so, but don't

JALICIA BROOKS - DIRECT EXAMINATION BY MR. THOMAS

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1 that that's the mother of ---

2 **MR. THOMAS:** She was here some of the day Monday.

3 **THE COURT:** All right. Regardless, let's go ahead and
4 get the jury out, please.

5 (Whereupon the jury entered the courtroom at 3:03 pm)

6 **THE COURT:** All right. The jury is back and seated.

7 Ms. Nelson, any additional witnesses?

8 **MS. NELSON:** No, sir, Your Honor. Defense rests and
9 renews all prior motions.

10 **THE COURT:** All right. Same rulings as before.
11 Anything in reply, solicitor?

12 **MR. THOMAS:** Yes, Your Honor, two brief witnesses.

13 **THE COURT:** Go right ahead.

14 **MR. THOMAS:** Your Honor, the State calls Jalicia
15 Brooks.

16 **THE COURT:** Ms. Brooks, if you'll come up and be sworn,
17 please.

18 **MADAM CLERK:** Place your left hand on the Bible and
19 raise your right hand, please.

20 **MR. THOMAS:** May we approach?

21 (Whereupon a bench conference was held off the record
22 in the presence of the jury, but out of their hearing)

23 (Whereupon the bench conference was ended)

24 **Jalicia Brooks, being**
25 duly sworn testified as follows;

JALICIA BROOKS - DIRECT EXAMINATION BY MR. THOMAS

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1 Direct Examination by Mr. Thomas:

2 Q. Good afternoon, Ms. Brooks.

3 A. Good afternoon.

4 Q. If you could, could you just spell your first and last
5 name for the court reporter?

6 A. J-a-l-i-c-i-a B-r-o-o-k-s.

7 Q. And, Ms. Brooks, how are you related to the decedent in
8 this case, Mr. Fuller?

9 A. That's my brother.

10 Q. And how are you related to Tobias Brooks?

11 A. That's my brother.

12 Q. Do y'all have any other brothers and sisters?

13 A. We do.

14 Q. Do you have any other sisters?

15 A. No, sir. I'm the only sister.

16 Q. So you're the only sister?

17 A. I am.

18 Q. We've heard some testimony about an altercation between
19 your brother, Tobias, and Mr. Gray a few weeks before Mr.
20 Fuller was killed. Were you sitting in here for that, for
21 his testimony?

22 A. For my brother's murder, yes.

23 Q. Okay. And are you familiar with the incident between
24 Tobias and Mr. Gray?

25 A. I'm not. I just -- people came up there to get me.

JALICIA BROOKS - CROSS-EXAMINATION BY MS. NELSON

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1 And me and my boyfriend walked down there to go get my
2 little brother, Tobias. But he had left with somebody else
3 in the car, and I went back home, me and my boyfriend.

4 Q. Okay. So you are -- you are aware that there was some
5 sort of altercation between Tobias and Mr. Gray or ---

6 A. I don't even ---

7 Q. --- or someone?

8 A. I just know it was somebody. I don't even know who it
9 was.

10 Q. Okay. But it happened on Gray Street?

11 A. Yes, sir.

12 Q. A couple of weeks before Mr. Fuller was killed?

13 A. I don't remember when it was.

14 Q. Okay. Let me ask you -- and you said you went with
15 just your boyfriend?

16 A. Yes, sir.

17 Q. Okay. Mr. Fuller didn't go with you?

18 A. No, sir.

19 Q. Okay. Have you and Mr. Fuller ever been on Gray Street
20 because of any altercation ---

21 A. No, sir. I don't hang down there.

22 Q. Okay. Thank you so much, Ms. Brooks. I appreciate you
23 being here.

24 A. You're welcome.

25 Cross-examination by Ms. Nelson:

KENYA GRIFFIN - DIRECT EXAMINATION BY MR. THOMAS

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1 Q. Just a couple of questions, Ms. Brooks.

2 A. Yes, ma'am.

3 Q. You loved your brother?

4 A. Yes, ma'am.

5 Q. Thank you, ma'am.

6 A. Be at my house every day. Miss him.

7 THE COURT: Ma'am, thank you. You can step down.

8 A. Thank you.

9 THE COURT: You have an additional witness?

10 MR. THOMAS: Yes, Your Honor. The State calls Kenya
11 Griffin.

12 THE COURT: Ms. Griffin, you're still under oath from
13 earlier this week. So you do not need to be re-sworn.

14 (Whereupon State's exhibit 29 was marked for
15 identification)

16 Direct Examination by Mr. Thomas:

17 Q. Sergeant Griffin, just to refresh us all, what's your
18 job over at the police department?

19 A. The evidence crime scene technician.

20 Q. And as part of that job you keep all the evidence
21 that's submitted in a case?

22 A. Yes, that's correct.

23 Q. And all the evidence that was submitted in this case is
24 in your possession?

25 A. Yes.

KENYA GRIFFIN - DIRECT EXAMINATION BY MR. THOMAS

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1 Q. Except for what's already been put in ---

2 A. That's correct.

3 Q. And what's in my hand right here?

4 A. That's evidence in this case.

5 Q. Okay. And this is State's exhibit 29. And what is
6 State's exhibit 29?

7 A. This is the clothing from Mr. Fuller.

8 Q. Okay. And those were collected from him at the
9 hospital before he was taken by the coroner?

10 A. Yes.

11 Q. And then those were submitted into evidence to you?

12 A. Yes, they were.

13 Q. And there's -- it's a paper bag. There's several items
14 in that, is that correct?

15 A. That's correct.

16 Q. What's in that bag?

17 A. There's a shoe, sock, a pair of underwear, and some
18 shorts.

19 Q. Okay. And that's all that's located in that bag?

20 A. Yes.

21 Q. Is there any other evidence in your possession that
22 came from him at the hospital?

23 A. There's some miscellaneous stuff out of his pockets
24 like a cell phone charger and stuff like that.

25 Q. Is there ---

KENYA GRIFFIN - CROSS-EXAMINATION BY MS. NELSON

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1 **MR. THOMAS:** I guess at this time the State would enter
2 State's 29 as an exhibit.

3 **THE COURT:** No objection?

4 **MS. NELSON:** No objection.

5 **THE COURT:** State's 29 will be in evidence.

6 (Whereupon State's exhibit 29 was admitted into
7 evidence)

8 Q. Is there a t-shirt in evidence anywhere?

9 A. No, there's not.

10 Q. Is there a tank top in evidence anywhere?

11 A. No, there's not.

12 Q. As part of your job -- well, you know what, that's it.

13 Thank you, Sergeant Griffin. I appreciate it.

14 **Cross-examination by Ms. Nelson:**

15 Q. Sergeant Griffin, there are a lot of cases where you're
16 actually called out onto the scene to investigate, is that
17 right?

18 A. That's correct.

19 Q. And you go to a scene and you look for evidence like
20 shell casings or fingerprints or you know how to do DNA
21 swabs, ---

22 A. Yes, ma'am.

23 Q. --- all that kind of thing?

24 A. Yes.

25 Q. In this particular case that we're here for you were

KENYA GRIFFIN - REDIRECT EXAMINATION BY MR. THOMAS

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1 not called out to the scene, is that right?

2 A. I was not.

3 Q. So all of the evidence that you have handled relating
4 to this case was provided to you by somebody else?

5 A. Yes.

6 Q. Are you aware that there's -- that some of the evidence
7 in this case was not actually found by police, but was found
8 by lay witnesses?

9 A. No, ma'am, I'm not.

10 Q. Not aware?

11 A. No.

12 Q. So if there's -- if there's a t-shirt that's not in
13 that bag, you weren't there, you don't have any way of
14 knowing what could have been left behind or not found, is
15 that ---

16 A. That's correct.

17 Q. --- right?

18 Redirect Examination by Mr. Thomas:

19 Q. So you just know who turns the evidence into you,
20 that's all you know?

21 A. That's correct.

22 Q. If you don't collect it yourself you just rely on these
23 submission forms?

24 A. Yes.

25 Q. Who -- was this turned in by a civilian or by a police

KENYA GRIFFIN - REDIRECT EXAMINATION BY MR. THOMAS

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1 officer?

2 A. It was turned in by Officer Jonathan Lee.

3 Q. Thank you, Sergeant.

4 MS. NELSON: Nothing further.

5 THE COURT: All right. Thank you. You can step down.

6 Any additional ---

7 MR. THOMAS: May I ---

8 THE COURT: Yes, sir.

9 (Pause)

10 MR. THOMAS: The State rests, Your Honor.

11 THE COURT: All right. Reply?

12 MS. NELSON: No, sir, Your Honor.

13 THE COURT: All right. Would counsel approach real
14 quick, please.

15 (Whereupon a bench conference was held off the record
16 in the presence of the jury, but out of their hearing)

17 (Whereupon the bench conference was ended)

18 THE COURT: Ladies and gentlemen, I will tell you that
19 it had been my sincere hope to get this case to you today
20 for your deliberations. And please -- I hope you're not
21 overly disappointed in me for my inability to make that
22 happen for you.

23 Here's kind of where we are. I've talked to the
24 attorneys about the length of their closing arguments, and
25 most importantly the law requires that I have a discussion

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1 that you're going to have in order to render your verdict.

2 And now the attorneys are going to give you their closing
3 summation or their closing argument.

4 The order that we proceed in is that Mr. Thomas will
5 start on behalf of the State. Ms. Nelson will then give her
6 closing argument. And Mr. Thomas will be allowed to reply
7 to anything said by the defense in his final closings.

8 I just want to remind you, ladies and gentlemen, that
9 what the lawyers say during their closing argument, of
10 course, is not evidence. You have to judge the case based
11 solely on evidence from the witness stand and any exhibits
12 which were introduced or were introduced during the course
13 of the trial.

14 Even though their arguments are not evidence, of
15 course, you should pay attention to their arguments because
16 it'll help outline or help accentuate what they maintain has
17 been proven or has not been proven, okay? So with that, Mr.
18 Thomas, you're recognized for your closing, sir.

19 MR. THOMAS: Thank you. May it please the Court?

20 THE COURT: Yes, sir.

21 MR. THOMAS: On August 25th of 2017 three people got
22 into a car to drive to the Getaway, Mr. Gray, Mr. Fuller,
23 and Ricky Grant. Before the sun would come up the next
24 morning one of those people would be dead, one of them would
25 be hightailing it on the road to Columbia, and the third one

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1 would be caught up in a murder trial that he didn't want
2 anything to do with.

3 Those three gentlemen got in that car, got in Ricky's
4 car over at Ricky's house, they drove to the Getaway, they
5 hung out there. Ricky and Meatball went in the club. Zay
6 stayed outside.

7 At some point before they went in, Meatball, for
8 whatever reason, leaves a gun outside in the bushes, in the
9 car, he leaves it outside the club because he can't take it
10 in. Zay never goes in the club. He stays outside the whole
11 time.

12 They're there for a few hours. Time to go home, time
13 to go back to Rick's house to hang out. Meatball stays in
14 the club. Rick, and Zay, and his brother Aaron get in the
15 car and they go back to Rick's house,

16 A little bit later Meatball shows back up. He's left
17 the club. In the process of leaving the club he somehow
18 lost his gun. Doesn't know where it's at. Apparently he
19 thinks Zay has it.

20 So he comes back, asks for his gun, asks for it several
21 times. Zay, adamant that he doesn't have it. I don't have
22 your gun. I don't know what you're talking about. It
23 escalates.

24 Eventually it escalates to the point where Ricky said,
25 y'all get out of my house, I'm not listening to it, and he

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1 closes the door behind them, puts them on the little stoop
2 outside of his door. Argument goes back and forth.

3 At some point in that argument Zay says, I don't have
4 your mother fucking gun, and pushes Meatball off the step.
5 Meatball comes down the step, comes down the step, goes to
6 his left. Coming down the step behind Zay and going to his
7 right with Zay and his brother. They're out in the yard of
8 the house at this point.

9 A few seconds pass, Zay pulls out a gun and fires one
10 shot. Bullet hits Meatball right above his navel, travels
11 in and nicks his iliac artery, he hits the ground.
12 Everybody that's out there, there's several people out
13 there, hears the shot, tries to figure out what's going on.

14 Meatball hops up, runs down Gray Street, takes a left,
15 comes back up Tanyard and finally just can't run anymore.
16 It's like that deer that you shoot in the woods and it runs
17 for a little bit and then he collapses, collapses on the
18 steps in front of someone's house.

19 Law enforcement, they're at the city shop, literally a
20 couple of hundred yards away from where all this is going
21 on, they hear the gunshot, they start patrolling the area.
22 They find Meatball laying there, dying, call first
23 responders.

24 EMS eventually gets there, picks him up, puts him in
25 and takes him to the hospital. He dies on the -- at the

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1 entrance to the hospital. Law enforcement shows up to the
2 hospital.

3 Detective Kay gets there, tries to find anybody that
4 knows anything. The best thing he can find there is Raymond
5 Kennedy. Raymond Kennedy says, yep, we were there.
6 Meatball and Zay got into a disagreement about a gun, Zay
7 shot Meatball, they took off running.

8 They go back out the next -- they go back out a little
9 bit later that morning, talk to Ricky, get a little bit of
10 corroboration, find a shell casing in the front yard where
11 the shooting happened, find a video from the neighbor's
12 surveillance camera. It shows -- shows you what happened.

13 And what you see on that video is you see what I just
14 described to you, three people coming off the steps of that
15 house, one of them over here, two of them over here, a shot,
16 and then somebody running away. That's all it really shows
17 you. But I'm going to talk to you in a little while about
18 why that shows you enough. And where that leads us to is a
19 charge of a murder.

20 And if y'all will, so I don't have to stand in front of
21 you and y'all don't have to look at me the whole time, Judge
22 Addy is going to tell you what the law is in this case.
23 That's his job as the judge.

24 And he has, I believe, instructions for you that have
25 been printed out. But I've got a little PowerPoint here.

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1 And I'm going to walk through some of this with you just so
2 you can see it in writing before he gives it to you.

3 Mr. Gray is charged with murder. What is that? That
4 is the killing of another person with malice aforethought.
5 Killing of another person is easy. That doesn't require a
6 lot of definition.

7 That basically just means that if you inflict an injury
8 on another person, you're guilty of homicide when that
9 injury contributes to the death of the other person.
10 There's not really a lot of question about that in this
11 case. So we're probably not going to talk about that a lot
12 more.

13 Then we have malice aforethought. What is malice?
14 Malice is hatred, it is ill will, it's hostility towards
15 another person, it's the intentional doing of a wrongful act
16 without just cause or excuse and with an intent to inflict
17 an injury. Circumstances that the law would infer an evil
18 intent. It's a total disregard for human life.

19 So what is that? Well, really malice is just a term of
20 art importing wickedness and excluding a just cause or
21 excuse. It's the intentional killing of a person, knowing
22 it to be wrong, intending to do it without legal excuse.
23 Basically, did you kill someone? Did you do it in a wicked
24 way? And did you do it without a legal excuse? Without
25 provocation?

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1 And then we have some of that language that talks about
2 the evil, wicked intent to take a human life, circumstances
3 indicating it was prompted by a wicked, evil, depraved
4 heart, devoid of social duty, fatally bent on mischief.
5 That's what malice is. It is a conduct that evidences a
6 complete disregard for the well-being and safety of other
7 people without being provoked and without having any reason.

8 Malice has to be aforethought. And that's not what you
9 normally think of when you hear the word premeditation.
10 Premeditation is not lying in wait, it's not planning it out
11 for weeks.

12 Under the law malice can be formed at any time before
13 the act is committed. It just has to exist in the mind of
14 the defendant just before and at the time the act is
15 committed. It can be conceived at the very moment the fatal
16 blow was given. So that just means that at the time you
17 pull the trigger you have malice in your heart, in your
18 mind.

19 Judge Addy -- we haven't talked about this yet, but you
20 are going to get a charge from Judge Addy. He's going to
21 explain to you that voluntary manslaughter is a lesser
22 included offense of murder. And what that means is if
23 somebody kills another person, but they don't do it with
24 malice aforethought, then they could also maybe be guilty of
25 voluntary manslaughter.

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1 And voluntary manslaughter, really, the difference
2 between murder and manslaughter is the lack of malice. But
3 manslaughter has a little bit more to it. Manslaughter
4 requires that you kill someone in a sudden heat of passion,
5 and that heat of passion has to be based on a sufficient
6 legal provocation.

7 A heat of passion is a mental state where it affects a
8 person's self control. It disturbs your reason. It makes
9 an ordinary person unable to reflect coolly and calmly on his
10 actions and it leads to an uncontrollable impulse to do
11 violence.

12 It's got to be a state of mind that would naturally
13 disturb the sway of reason and render the mind of an
14 ordinary person incapable of cool reflection and produce an
15 uncontrollable impulse to do violence. An uncontrollable
16 impulse.

17 And to get into that mental state, to be in a sudden
18 heat of passion, you have to be provoked. And it's not just
19 any provocation, it has to be adequate provocation. It has
20 to be a provocation that would make a person of ordinary
21 reason and caution to become enraged and lose control
22 temporarily.

23 It doesn't mean you have to throw out all reason and be
24 completely out of control of yourself. But it means that it
25 has to produce in the mind of a person ordinarily

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1 constituted, the highest degree of exasperation, rage,
2 anger, sudden resentment, terror, that his mind is incapable
3 of cool reflection. So that's what manslaughter is.

4 That is -- I think when they teach it to you in law
5 school, the example they always give you, and it's always a
6 case from Texas for some reason, is the husband who walks in
7 from playing golf and he catches his wife in bed with
8 another man, and he takes the golf club and he hits the
9 other man and he kills him. That's what they talk about
10 being voluntary manslaughter. You're so enraged by
11 something that you just can't control yourself and you can't
12 help yourself.

13 You've also heard Mr. Gray testify that he was acting
14 in self-defense. Judge Addy is going to charge you that
15 self-defense is a defense to murder, voluntary manslaughter,
16 to everything. And really what self-defense is is -- it can
17 be summarized in one word, and that's necessity. It was
18 necessary to take a human life, and it appeared necessary to
19 take the human life at the time it was taken.

20 And to show that you're acting in self-defense you have
21 to show three things. You have to show that you're without
22 fault. You have to show some sort of imminent danger. And
23 you have to show that there was no other way to avoid that
24 danger. I'm going to try to unpack that a little bit.

25 The first part of that is without fault. What that

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1 means is the defendant's conduct has to not have been the
2 type that was reasonably calculated to provoke a deadly
3 assault. And the reason for that should be pretty clear.
4 It says it's obvious that one cannot through his own fault
5 bring on a difficulty and then claim the right to self-
6 defense.

7 And what that means is basically any act of the
8 accused, if it's in violation of the law or if it's just
9 involved in bringing on the controversy, if it's reasonably
10 calculated to produce the occasion, if it's -- if what you
11 should do to upset somebody enough to want to fight you,
12 then you have brought about the confrontation and you're not
13 without fault in bringing it on.

14 The second part of self-defense is imminent danger.
15 And that really gets sort of broken down into two different
16 types of imminent danger. And the first one is an actual
17 imminent danger of death or serious bodily injury. And what
18 that means is -- well, the second type of that is that you
19 believe, it's an honest belief that you are in imminent
20 danger of death or serious bodily injury.

21 So the first part about actual danger means that the
22 circumstances would have warranted a person of ordinary
23 firmness and courage to strike the fatal blow to prevent
24 death or serious bodily injury. Basically at the time you
25 strike the fatal blow, you, yourself are in danger of

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1 receiving some sort of death or bodily injury and it's
2 necessary at that time to take the life of your assailant to
3 save yourself. That's if you are actually in danger.

4 The law also provides that if you actually believe that
5 you are in danger, if you have an honest belief in that.
6 And that is a -- that's what I'm talking about when I say
7 belief of danger. And that is the same language about a
8 reasonably prudent person. You hear that -- you're going to
9 hear that a lot. Whether it's talking about voluntary or
10 self-defense, it's the reasonable person's standard that we
11 talk about in the law a lot.

12 And a belief of danger in self-defense means that a
13 reasonably prudent person of ordinary firmness and courage
14 would have held the same belief. And, again, the reason for
15 that is pretty self-explanatory. You have to honestly
16 believe you're in danger, otherwise, you don't want to be
17 able to subsequently decide, well, actually now that I think
18 about it, I could have been in danger, so, therefore, I
19 acted in self-defense.

20 The last part of that self-defense elements are the
21 fact that you had no other way to avoid the danger. And
22 that basically means that there's no other probable way to
23 avoid the danger of death or serious bodily injury than to
24 act as the defendant did.

25 And the reason for that is, again, sort of the sanctity

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1 of life idea. And it's one's duty to avoid taking human
2 life where it's possible to prevent it even to the extent of
3 retreating from his adversary.

4 Judge Addy is going to explain all of that to you.
5 He's going to, I believe, give you a copy of his jury
6 charge. But I wanted to sort of maybe unpack that a little
7 bit for you and tell you what I thought about it.

8 He's going to explain it in a lot more detail. He's
9 going to give you some other examples and some things you
10 can consider as far as self-defense in terms of acting on
11 appearances and history of prior difficulties and things of
12 that nature. But at the end of the day what's important to
13 remember about self-defense is that it is a necessity, you
14 had to kill the other person or you were going to get killed
15 yourself.

16 As far as the law in this case is concerned, you're
17 also going to hear about a charge for possession of a weapon
18 during the commission of a violent crime. Murder and/or
19 voluntary manslaughter, both of those are violent crimes.
20 They go hand in hand. If he's not guilty of either of
21 those, he's not guilty of the weapon charge. If he's guilty
22 of one, he's guilty of the other, the weapons charge.

23 So, really, -- and what you're looking at in this case
24 is you've got three real decisions to make when you go back
25 there into the jury room. And that is is this a case of

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1 murder? The malicious killing of someone else. Is it a
2 case of manslaughter? The killing of someone else. You're
3 adequately provoked and you're in a rage, in a heat of
4 passion. Or is it self-defense? You're not with fault --
5 you're without fault, you were actually in danger or you
6 really believed you were and you had no other way to avoid
7 it.

8 He's also going to explain to you the burden of proof
9 in this case. And I think Ms. Penney mentioned that to you
10 when she stood up here on Monday and explained to you sort
11 of what our burden was.

12 And our burden is to give you the evidence in this
13 case, to give you the testimony, to give you the
14 documentation for you to go back there and to be able to
15 make a decision. And we have to have given you enough of
16 that that you can go back into the jury room and make your
17 decision and be firmly convinced that you're making the
18 right one.

19 You just have to go back there and be firmly convinced
20 that we've satisfied our burden of showing you that he acted
21 maliciously, he took another life, and it just has to be
22 beyond a reasonable doubt. It's not beyond every doubt.
23 It's not beyond all possible doubt. It's beyond all -- it's
24 beyond any reasonable doubt. A doubt that's reasonable.

25 And the way we do that to you is we give you evidence.

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1 And that evidence is either testimony from witnesses, it's
2 pictures, it's videos, it's physical objects. And it's also
3 -- it's two types of evidence, two categories of evidence.
4 And it's direct evidence and circumstantial evidence.

5 Direct evidence is something someone sees, something
6 they hear, something they smell, senses basically, something
7 you can get up there and say I saw this happen, I heard this
8 happen, I felt this. That's direct evidence.

9 Circumstantial evidence is just as important and it's
10 just as powerful. But circumstantial evidence is something
11 that -- it's not quite direct evidence, but it's a series of
12 events. It's a chain of facts and circumstances that
13 logically lead you to a conclusion.

14 And the example I always give, and I think everybody in
15 this courtroom's probably tired of hearing it, but you 12
16 people are new, so I'll tell you.

17 If I -- if I go home and I see -- I have a dog. He's
18 an 80 pound lab. He's spoiled. But if I go home and I see
19 him on the kitchen counter taking a pack of crackers off of
20 it, then I know he's taken a pack of crackers and he's eaten
21 them.

22 But sometimes -- my dad lives out in Hodges. And he'll
23 come into town with some of his old buddies, and they'll go
24 to breakfast some mornings. And he'll swing by my house and
25 play with the dog a little bit on his way home. So

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1 sometimes he'll come by.

2 And so if I come home one day and if I know I had a
3 pack of crackers on the kitchen counter, but I come home at
4 lunch and the pack of crackers is sitting next to my easy
5 chair on the floor where the dog's bed is, and it's been
6 torn open, and it's laying there, I could maybe assume that
7 my dad came by and picked up the crackers and ate them, and
8 just accidentally dropped the wrapper on the floor.

9 But when I look at the wrapper and I see that it's not
10 torn neatly in the corner where you would tear it if a
11 person did it and it's a little wet, a little slobbery,
12 there's a little drool around it, and I look up and I see
13 down the hallway Hampton, he looks up and sees me pick it up
14 and we make eye contact, and he takes off scurrying down the
15 hall and hides in his bed -- in his crate.

16 I don't know for a fact, I didn't see him get on the
17 kitchen counter and take that pack of crackers, but I know
18 from the condition of the evidence and from his behavior of
19 running and hiding after the fact that chain of
20 circumstances reasonably leads me to believe that Hampton
21 climbed up on the counter and took the crackers.

22 That's what circumstantial evidence is. It's stuff
23 that you can just sit back there and you -- the 12 of you,
24 the 14 of you is going to go back into the jury room with
25 your common sense, your life experiences, you take all that

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1 back there with you, you take all of the testimony you've
2 seen and the evidence and you unpack it, and you're going to
3 reach a verdict in this case.

4 And it used to be when you went to law school they made
5 you take Latin classes as part of it. They didn't make us
6 do that, thankfully, because I can barely speak English some
7 days.

8 But they teach you that the word verdict comes from the
9 Latin phrase veredicto. And vere means truth. And dicto
10 means to talk. So verdict is really an English permutation
11 of the Latin phrase, speak the truth.

12 And that's what happens when you go in the jury room is
13 you're going to go back there and you're going to sit down,
14 the 12 of you, with your collective wisdom and you're going
15 to unpack all of this, and you're going to figure out what
16 really happened and what the truth is.

17 So I'm going to take this opportunity to talk to you a
18 little bit about the evidence that we have in this case, the
19 facts because ultimately it's your job to figure out what
20 the facts are. And I've sort of divided that for my
21 purposes into really three categories of facts.

22 The first category of facts is those facts that we know
23 are uncontroverted, things that nobody really disagrees
24 about. And the first of those facts is everybody that
25 testified, all the evidence shows that Mr. Gray and Mr.

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1 Fuller got in a car together and rode to the club without
2 any incident. Got in there, drove over there, everything
3 was okay. Mr. Gray stayed outside of the club, Mr. Fuller
4 went in the club.

5 The second fact that isn't in dispute is that later on
6 that night after everyone had come back from the club
7 something went on that led to Mr. Gray shooting Meatball in
8 the chest, in the stomach and killing him.

9 The third fact that we can all agree on is that after
10 that shooting Mr. Gray somehow made his way out of Greenwood
11 and down to Columbia to a hideout.

12 And what evidence do we have to show you all of those
13 facts? Well, we've got the testimony of the witnesses.
14 Ricky and Mr. Gray both agreed that they went to the club,
15 that there were no disagreements between the two of them on
16 the car ride.

17 As far as defendant shooting the victim or Mr. Fuller,
18 everybody agrees to that. We've got this evidence from --
19 that was collected that proves that there was a shooting and
20 there was a homicide, certainly a killing.

21 Dr. Woodard got up here and testified to you that Mr.
22 Fuller was shot in the stomach, that the bullet traveled and
23 was lodged right back there in his posterior. Dr. Woodard
24 was able to recover that bullet. And that's the bullet that
25 nipped Mr. Fuller's iliac artery, caused him to bleed out

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1 internally, caused his heart to stop pumping.

2 We know that that bullet came from this gun. We also
3 know that this cartridge case came from this gun. This
4 cartridge case that Detective Kay located in front of Ricky
5 Grant's residence. Let me put this up here, I think.

6 When Detective Kay was up here yesterday trying to go
7 through these photographs and show you the projectile, he --
8 I don't know if y'all could catch that, but he was
9 struggling to find it. So I sat down yesterday and looked
10 for it for you. Really hard to make out on this picture,
11 but that's it right there.

12 And you have to sort of work backwards from that rock
13 and you can sort of follow it instead of this little piece
14 of plastic and you can see the shell casing there. And
15 there's the close-up of it. And you can see from that that
16 it's located in front of the house.

17 And what does that tell us? Well, that tells us that
18 we find that shell casing in front of that house. That
19 tells us that that's where the shooting happened. Because
20 when that gun went off, the cartridge ejected out of it and
21 landed right there.

22 And that third thing about Mr. Gray going to Columbia,
23 that was -- he testified to that. And Detective Kay told
24 you that that's where we found him, that's where we went and
25 picked him up from. So that's the uncontroverted evidence.

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1 The second sort of category of evidence that I've come
2 up with is stuff that I would propose to you is reasonably
3 clear. And what I mean by that is it's stuff that everyone
4 agreed on pretty much except for Mr. Gray when he testified.

5 And the first part of that is his brother, Aaron, was
6 at the house when the shooting happened. Everybody, I
7 think, Mr. Grant testified eventually once he listened to
8 his statement and remembered it that Aaron was there. Mr.
9 Kennedy, Aaron was there, Aaron, his brother was there, they
10 were standing next to each other when it all went down.

11 So I think we can all pretty much tell from everybody
12 except for his testimony, he didn't put his brother there.
13 I have some thoughts on that that we might talk about in a
14 minute, but that's the first part of that.

15 The second thing that I think is reasonably clear from
16 all the evidence is that the argument that ensued in this
17 case was about this gun. It was not about some weeks old
18 beef between Mr. Gray and Mr. Fuller's brother or something,
19 whatever that story was. It was about a gun. Everybody
20 that testified was pretty clear, you know.

21 I'm not sure what parts of the testimony were
22 admissible as far as not being hearsay, but pretty clear
23 Ricky said, I told him if you got his gun, give it back.
24 Everybody -- Mr. Kennedy and Mr. Nicholson said I heard him
25 say, I don't have your gun. The argument's about a gun.

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1 It's not about a beef.

2 The third thing that I think is reasonably clear from
3 the evidence we've provided is that when Mr. Fuller got
4 there he wasn't coming there to pick a fight. And what I
5 mean by that is we see him walk up on the video and then
6 there's a few minutes before you really see anything
7 happening.

8 And there's certainly an argument, disagreement.
9 There's no question about that. They're arguing. It
10 probably at some point gets physical. That's reasonable to
11 assume.

12 But we also know from the testimony of the SLED
13 toxicologist that Mr. Fuller wasn't intoxicated. In fact,
14 based on her testimony it had been a while since he had been
15 drinking. He was definitely coming down from it. He wasn't
16 drunk. He was a point oh six (.06). The legal limit's a
17 point oh eight (.08). And that was in his ocular fluid,
18 which means his blood was a point zero zero zero (.000). No
19 alcohol in his blood. He's not drunk.

20 So why would somebody come over to a house and pick a
21 fight with somebody about some weeks old beef between their
22 brothers if he's sober? That doesn't make a lot of sense.
23 What is more reasonable is that it goes back to that second
24 idea that the argument's about a missing gun.

25 So those are the three things I would propose to you

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1 are pretty reasonable in this case. And that is the
2 argument's over the gun, his brother, Aaron, is there, and
3 Mr. Fuller -- and you heard Ricky said -- Ricky said
4 initially, well, he wasn't belligerent, he wasn't real
5 aggressive when he got there. It escalated, but when he got
6 there he wasn't real aggressive. So the third thing being
7 Mr. Fuller didn't come over there looking for a fight.

8 The third category that I've sort of put it into is
9 things that Mr. Gray testified to that are just demonstrably
10 false. And what I mean by that is things that he said on
11 the stand that the evidence -- no other evidence supports
12 that whatsoever, and, in fact, the evidence contradicts.

13 The first part of that is his statement that he had
14 ahold of Mr. Fuller's shirt in a scuffle and that then Mr.
15 Fuller reached under his shirt and pulled out a gun. Here's
16 how law enforcement found Mr. Fuller. He doesn't have a
17 shirt on this those pictures.

18 William Kay testified, I walked around the scene.
19 Kirby Claphan testified, I walked around the scene. At no
20 point has any shirt been recovered. In fact, they go to the
21 hospital, Mr. Fuller's property, everything that he had on
22 him when he died, a white Nike, a white sock, some black
23 underwear, camo shorts, no shirt.

24 He's not hiding his gun under his shirt 'cause he
25 doesn't have a shirt on. It's August, it's hot outside,

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1 he's been walking from wherever he was back to the house.
2 He didn't have a shirt on. He takes off running. He looks
3 exactly like he did when he comes walking up. He doesn't
4 have a shirt on. There's no shirt. So he's not hiding a
5 gun.

6 Everybody else testified, they didn't see a gun on Mr.
7 Fuller. Now, he could have -- I guess the gun could have
8 been in his pockets or something if he had one, but it
9 definitely wasn't in the waistband of those shorts because
10 you would see it if it was stuck in the waistband. Didn't
11 have a gun on him, didn't have a shirt on him.

12 The second thing there -- and I'm going to combine the
13 second and third points I have on this because we're going
14 to watch the video for me to show these to you, and that is
15 that there was a scuffle, 30 to 45 seconds in that front
16 yard. A scuffle in this front yard right here, right in
17 this area where you can see this shell casing for 30 to 45
18 seconds before the gunshot goes off. A fight between two
19 people grasping ahold of each other, trying their hardest to
20 get -- to fight for their lives.

21 Dr. Woodard told you Mr. Fuller had no defensive wounds
22 on his hands. He didn't punch anybody. He didn't have any
23 scratches or bruises on him where somebody had grabbed ahold
24 of him. There's no tussle there.

25 And the third part of that is Mr. Gray's testimony that

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1 he was standing there by himself when he had to shoot the
2 victim or when he had to shoot Mr. Fuller to save his life.
3 Those last two points -- I'm going to show you the video so
4 we can -- we're going to watch this a few times. So ...

5 So according to Mr. Gray's testimony there's a scuffle
6 in front of the house. Well, we can see right here -- and I
7 have -- the video's kind of long, so I've shortened this
8 down. You know, he says the scuffle lasted for 30 to 45
9 seconds before the shot went off.

10 Well, I'm going to represent to you, and you'll see it
11 in this video, the shot in the -- and I've clipped these
12 down so that the time stamps at the bottom aren't correct,
13 but the time stamp on the video that's in evidence, I'll
14 represent to you what we believe is the shot goes off around
15 seven minutes and fourteen seconds.

16 So I've backed this video up a full minute. This video
17 starts at six minutes and 14 seconds and runs to seven
18 minutes and 16 seconds. You can see in this video, and you
19 can see where my mouse is going, this is the light from the
20 front of Ricky's house. That's the open door to his house.

21 This area right here, this light area, I'll represent
22 to you is the front yard of that house that we see in all
23 the pictures where the shell casing was found. And if you
24 watch this area for the next 30 to 45 seconds, for the next
25 minute you can see what actually happens out there. It's

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1 not the best video in the world, but it's just clear enough
2 to show you what you need to know.

3 (Whereupon the video was shown to the jury)

4 Let me back that up ten seconds for you. Can you see
5 -- at any point when you look right here, at the end of the
6 video you can see there's clearly one person here and you'll
7 watch two people walk by here. One person, two people,
8 three people, five to six feet apart, gunshot, Mr. Fuller
9 falls down.

10 I'm going to play you from the seven minute mark to the
11 seven minute and 30 second mark of the full video because
12 that shows what happens in front of the house. There's Mr.
13 Fuller. There's Mr. Gray and Mr. Gray. There's a shot.
14 There's Mr. Fuller running down the street. And there goes
15 somebody who just pulled up hightailing it out of there.
16 I'll start that back over. Watch him.

17 They come down. It looks like they're coming off those
18 steps. They're in the front of that yard. You notice when
19 that flash goes off, the shot goes off, everybody recoils.
20 Those three or four other people back up. The brake lights
21 go on that car 'cause he puts his foot on the brakes when he
22 sees it.

23 And then those two guys on the left where the gunshot
24 is, they both look like they are kind of bewildered about
25 what's going on. Kind of walking around in circles.

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1 **THE COURT:** One second. You need -- you having trouble
2 seeing something?

3 **JUROR:** If you could, right when it passes the truck,
4 when he's running away, could you pause it there so we could
5 see ---

6 **THE COURT:** All right.

7 **JUROR:** --- him running?

8 **THE COURT:** All right. Here's how we're going to
9 handle that. If you need to see something again, what you
10 can do is once you have the deliberations, once they've
11 begun, if you need to see something else just send me a
12 note, the foreperson can send me a note, we can cue it back
13 up and, perhaps, even get you a laptop that you can use back
14 there to pause as need be, okay?

15 **JUROR:** Thank you.

16 **THE COURT:** Sorry, solicitor. Go ahead.

17 **MR. THOMAS:** I'm going to play this full 30 seconds one
18 more time, and then I've got one more video I'm going to
19 show you to help us identify, maybe, who's out there. He
20 falls down and then he gets up and runs.

21 And I'm going to tell you that it looks like -- we know
22 that has to be Meatball because he's running after a shot
23 goes off. And I'll tell you, I'll be honest with you, it
24 looks like he's wearing some sort of shirt and maybe a hat
25 on this video, but we know he doesn't have a shirt on when

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1 they find him down there. So that's got to be just the
2 light reflecting off of him.

3 But that's what happens, ladies and gentlemen, that 30
4 seconds right there is when this crime happens. It's
5 State's exhibit number 4 that you're going to have to take
6 back with you and look at because this projector is not --
7 the lighting is not very good.

8 But you can see, this is a still shot. Directly when
9 the flash goes off right here you can see Mr. Fuller
10 standing right here. You can see one individual here and
11 another individual there standing next to him. When you
12 watch that video you can see them standing there. And
13 they're in that position before that shot goes off, two or
14 three seconds.

15 The person on the left where the gunfire comes from
16 isn't falling backwards. He's not running away. He's not
17 locked up with anybody rolling, tussling, pushing, grabbing.
18 He's standing there with somebody next to him. Mr. Fuller's
19 across from him and he's pulling the trigger and that gun's
20 going off.

21 Mr. Fuller's not advancing. He's not coming at him,
22 he's not charging. He's standing there. He may be in a
23 fighting stance. He may be getting ready to throw a punch,
24 but he doesn't have a gun and he's just standing there.

25 Mr. Gray's testimony that he was standing by himself

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1 when it all happened, his brother wasn't there, is
2 demonstrably false because we know he's the one pulling the
3 trigger. We know that flash of gunfire is coming from Mr.
4 Gray. And we know somebody's standing next to him.

5 I submit to you that's his brother because the other
6 witnesses say the brother was there. And I understand Mr.
7 Gray not wanting to put his brother in it. He didn't want
8 to put his name in it. He didn't want to say he was there.

9 That was the trend amongst all of our witnesses. I
10 don't know if you noticed that. Nobody wanted to put
11 anybody else's name in it.

12 I wish I could have picked better witnesses for you. I
13 wish I could have put up some people that would have had a
14 more clear recollection and been more firm on what they
15 said. The problem is I didn't get to pick those witnesses.
16 Those are the people that were out on Gray Street at 5:45 in
17 the morning on a Saturday morning in August of 2017.

18 Mr. Gray picked those witnesses. He picked those
19 witnesses when he went over there with that stolen gun in
20 his pocket and pulled it out and shot Mr. Fuller. I would
21 have probably picked the deacons from the Baptist church or
22 a bunch of school teachers, but what I ended up with were
23 Raymond Kennedy, Ricky Grant, and Antonio Nicholson. And
24 that's because that's all law enforcement could track down.

25 You heard Detective Kay say, I went back to Raymond

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1 Kennedy, I showed him the surveillance video. I said, can
2 you tell me who any of these other people are? Nah, nah,
3 they don't want to put anybody's name in it. They don't
4 want to be a snitch. They don't want to do that.

5 I understand that. But those are the witnesses that
6 law enforcement was able to find. Those are the people that
7 Detective Kay was able to get to talk to them.

8 As far as Detective Kay's work on this, Ms. Nelson's
9 going to have a very hard time standing up here and not
10 telling you about all the things that she thinks that they
11 could have done better, and that law enforcement could have
12 done differently, and all of the other evidence that they
13 could have maybe collected and tried to get.

14 The fact of the matter is Mr. Gray says that's me
15 shooting him. We know he killed him. The only fact in
16 dispute is what Mr. Gray's state of mind was at the time he
17 pulled the trigger. That has nothing to do with anything
18 law enforcement did. That has nothing to do with anything
19 Kirby Claphan, or Jason Budreau, or anybody else did.

20 You know, we wasted 30 minutes of time, not wasted, but
21 we spent 30 minutes of time, 45 minutes with the DNA person
22 from SLED, the fingerprint person from SLED just to tell
23 you, hey, look, we tried, you know, if this was a case of
24 whodunnit, and we needed to know whodunnit, that information
25 would have been helpful, but we don't need that. We know

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1 who did it.

2 So at the end of the day we've got the three witnesses
3 that we were able to get. Raymond Kennedy did the best he
4 could. It's early in the morning after a late night, he's
5 hanging out there. He's real clear that there's an argument
6 and that there's a tussle, but, again, there's no tussle.

7 He says that Meatball was on the ground when the shot
8 was fired. We know that's not the case. He was out there,
9 he just wasn't paying as close of attention as he probably
10 could have.

11 Ricky Grant -- Ricky Grant might not have been a
12 witness but for the fact that it happened in front of his
13 house. He was in the house. You know, he -- probably never
14 would have found him except for, hey, do you know what
15 happened out here last night?

16 And then when Detective Kay talks to him, yeah, I know
17 what happened, and he tells. And he doesn't know a whole
18 lot because he says he's in the house. That's consistent
19 with the video. You can see the door, the light go off from
20 the house. He says they got into an argument, I put them
21 out, and I shut the door behind them. You can see that.

22 Ricky Grant really doesn't have a whole lot of reason
23 to lie to you. You know, he said he lives in that house
24 with Tia, his girlfriend. And Mr. Gray told you Tia's his
25 cousin. I mean, Ricky is dating Mr. Gray's cousin. I mean,

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1 he's got no real dog in the fight. He doesn't really know a
2 lot.

3 And he says, I don't know who was sitting out there.
4 We know there were people in the yard, but he doesn't name
5 any of them. But at the end of the day we know that's his
6 house, we know he went to the club.

7 And what did he tell you? He said we went to the club
8 and there was no problem. Get to the club, Meatball leaves
9 his gun outside. Can't take the gun in the club, so he
10 leaves it in a bush.

11 I think he told Detective Kay initially he left it in
12 the car, or gave it to Aaron or to Mr. Gray. Somehow the
13 gun is in Meatball's possession going to the club, it's not
14 in his possession in the club. And then clearly when he
15 gets back it's not in his possession there because he's
16 looking for it. He's asking for it. And Ricky told you, I
17 told the man, if you've got his gun, give him his gun back.
18 The argument is about a gun, that much is clear.

19 Third witness, Mr. Nicholson, probably the least
20 trustworthy of all of them. He's up there in prison garb.
21 He's got a lengthy record. He's got a history of
22 testifying, trying to save his skin, obviously.

23 But honestly with you -- to be honest with you, I think
24 his testimony is what matches the video the closest. He
25 tells you they were on the porch arguing back and forth,

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1 some sort of altercation up there happened, Mr. Gray pushes
2 Meatball off the steps and then they get out there and said
3 Gray just pulls out and shoots.

4 That's kind of what the video shows. You know, he said
5 he'd never -- I don't know if he said he'd never seen the
6 video, but, I mean, that's what it shows. It shows that
7 more than it shows what Raymond Kennedy said.

8 And Mr. Nicholson, you know, he found the gun, him and
9 somebody named J-baby found the gun apparently a week later.
10 They kept saying it was a couple of days later, but we know
11 from Detective Kay that it was September 8th when they found
12 the gun. This happened on August 26th, so it's a little
13 over -- like a week and a half later.

14 He found the gun behind the house. This is the gun he
15 found. We know it's the gun that killed Meatball. How did
16 him and J-baby know to be looking back there for the gun
17 unless they saw somebody throw it back there?

18 And he didn't come to the police with that information.
19 He goes to Wanda Jean, which you heard Detective Kay say,
20 you know, he talks to her pretty regularly. She would
21 appear to be the neighborhood liaison with the police, I
22 guess, put it that way.

23 So they find the gun, they take it to her, she gives it
24 to the police. She told you that -- she didn't give up his
25 name at first. She said she might have, but Detective Kay

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1 said she didn't. She finally told him in August of last
2 year.

3 So in August I said it was BJ that found it. Detective
4 Kay says that. She told me in August. We sent her a
5 subpoena, told her court was coming up for something, she
6 finally gave it up because she didn't want to come to court
7 herself.

8 When did Mr. Nicholson get arrested on his current
9 charges that he's sitting here trying to save himself from?
10 He got arrested on those in October. I mean, she could have
11 given us anybody else's name and they didn't have pending
12 charges at the time.

13 Now, he didn't tell anybody about the story about,
14 well, I saw where he threw it, and I saw what happened
15 beforehand until later in the year or earlier this year
16 after he'd already been charged. But at the end of the day
17 the story he tells is consistent with the video evidence.

18 They're not locked up. They're not on the ground.
19 They're not tussling. They're not standing there by
20 themselves. They're five feet apart when the gunshot goes
21 off.

22 The one thing that was consistent through all those
23 witness' testimony was that the argument was over the gun.
24 That's one of the things that Mr. Gray can't bring himself
25 to admit to you when he testifies. He can't tell you that.

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1 He can't tell you that because that puts him in the
2 wrong. That puts him doing something he's not supposed to
3 do. He's not supposed to possess the gun. You're certainly
4 not supposed to steal somebody else's gun.

5 If you take somebody else's gun you should give it back
6 to them unloaded, secure, safe, not by shooting them with
7 it. He can't agree that the argument is over the gun. He's
8 got to contradict all of those other witnesses because
9 agreeing to that takes away his self-defense story.

10 So what does he have to do? Once he tells -- once he
11 knows he's stuck with that lie, he has to expand from there.
12 So from there he's got to have a reason why he would be
13 afraid of him and why he would be wanting -- why Mr. Fuller
14 would want him to be fighting him in the first place.

15 So what do we have? Well, I had a beef with Mr.
16 Fuller's brother, Tobias, a couple of weeks ago. Tobias
17 chased me with a gun, and I ran in Rick's house where I felt
18 safe. I ran in Rick's house where I felt safe.

19 And so then Tobias left and Mr. Fuller came back with
20 his sister. And Mr. Fuller had the gun then and they were
21 saying -- he was saying he was going to kill me.

22 He sat on the stand and he pointed to her. He said his
23 sister, he came back with his sister. I don't know why he
24 felt the need to drag Ms. Brooks into this.

25 She got up there and she told you she don't know what

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1 he's talking about. She said, yeah, her brother, Mr. --
2 Tobias and Mr. Gray had something going on that day, that
3 Mr. Fuller was never out there. She went with her boyfriend
4 to look for her brother, but Mr. Fuller didn't go with her.

5 And, yes, she loved her brother, but she's not -- why
6 make that up? Why make that story up? Why did he make that
7 story up? It's just the little things like that that he
8 says when he testifies that I can't really wrap my head
9 around it. It's the things that Mr. Gray's story said that
10 just don't add up. They don't make any sense to me.

11 It doesn't make any sense in his story that he went
12 from the club that he didn't want to go to in the first
13 place, that he was going home afterwards, but Rick was his
14 ride, so he had to go to Rick's house first 'cause Rick's
15 girlfriend needed something and then he was going to take
16 him home.

17 The South Main Bar and Grill and Foundry Road are five
18 blocks from each other. They're both that way. Gray Street
19 and Ricky Grant's house are over here behind the post
20 office. If he was really going home, I'm sure Ricky --
21 'cause Ricky seemed like a nice guy, Ricky probably would
22 have just driven him by and dropped him off and then gone on
23 home.

24 What they were really doing is they were going back to
25 Rick's house to hang out. If he was -- and also he goes and

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1 he hangs out for an hour. Well, you know, Rick had to go do
2 this thing real quick and then he was taking me home, but 30
3 minutes to an hour later is when Meatball showed back up.
4 Just tell us you're going to hang out at Rick's house with
5 your buddy and y'all are going to keep hanging out,
6 partying. That's fine. That doesn't change the story at
7 all.

8 But he just -- he just can't bring himself to not say,
9 oh, I'm just an angel, I was going home, I was -- I wasn't
10 really planning on going to the club and then I was ready to
11 go home. He just can't bring himself to do it. Doesn't
12 make sense.

13 The second thing from his testimony that he's so scared
14 for his own life after the shooting that he has to go
15 straight to Columbia, that he gets a cab from the neighbor's
16 house where he hung out and didn't hear the sirens, didn't
17 see the ambulance, he hung out at the neighbor's house, and
18 then called a cab, and then went straight to Columbia
19 because Meatball's family would be looking for me, they
20 would be after me. I didn't feel safe.

21 He felt safer sitting in that house than he did going
22 back to his own house over here on Foundry Road? He's so
23 worried about seeing his kids before I went to Columbia, and
24 I didn't get to see them, but I wanted to see them one more
25 time before I was arrested. He could have gone to his house

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1 down here.

2 Meatball's family's all at the hospital because he's
3 dead. They're not going out over here to look for him at
4 that time. He could have swung by his house, seen his kids
5 -- if he really wanted to go to Columbia to be safe, he
6 could have swung by his house, seen his kids, got a change
7 of clothes and then hit the road.

8 But he didn't because he knew Detective Kay and law
9 enforcement were going to go looking for him over there.
10 That's why he didn't -- that's why he went straight to
11 Columbia. He went straight to Columbia to try and get away
12 from them. He wasn't trying to see his kids before he was
13 arrested. That's the third thing from his testimony, I
14 think, that I just can't quite wrap my head around.

15 He said -- the first thing he said when he testified, I
16 wish I'd never been there. I'm so sorry that all this
17 happened. I'm so sorry that I have missed the last couple
18 of years of my kids' lives.

19 The last thing he said before he got off the stand, I
20 wish I'd never gone out there that night. I wish this had
21 never happened. I've just missed so much time with my kids.

22 Not once did he say I'm so sorry that I shot Meatball
23 and he's dead. Not once did he say that. And he didn't say
24 it because he's not sorry. The evidence clearly shows they
25 got into an argument because he took the gun. And when

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1 Meatball wanted it back, he took it out and he shot him.

2 That's what happened.

3 You've got all of that evidence. You've got the
4 videos. You've got the pictures. You've heard the
5 testimony. You've got the physical stuff you can take back
6 there and look at.

7 But like I said earlier, the thing that you're going to
8 take back there that's most important is your common sense
9 and your ability to take all of that and to review it, and
10 to look at it, and to figure out what happened.

11 Mr. Fuller is not dead because his brother had an
12 argument a couple of weeks prior to the shooting with Mr.
13 Gray. That's what he wants you to believe. That's not the
14 case. He's dead because Mr. Gray saw Mr. Fuller stash a gun
15 somewhere at the club, put it in his pocket and went home
16 with it. And Mr. Fuller came back looking for it. That's
17 why he's dead.

18 I told you earlier this is -- the outcome in this case
19 is one of three things. It's not self-defense. Self-
20 defense requires you not be at fault in bringing on the
21 controversy. You steal someone's gun, if you illegally have
22 -- if you have a gun on you that you're not supposed to have
23 anyway, you're not without fault when somebody comes looking
24 for that gun and they want it back.

25 You're not in imminent danger of losing your life or

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1 being seriously injured if you're standing five feet away
2 from somebody, they're five ten, a hundred and sixty pounds,
3 hundred and sixty pounds, I can't even imagine that. I
4 haven't been that since I was in third grade.

5 You're five feet away from him, you're standing there
6 with your brother, and you've got a gun, you're not in
7 imminent danger of death or great bodily injury. You
8 shouldn't have any reasonable belief that you are in
9 imminent threat of death or great bodily injury.

10 He said himself on the stand, even under his theory of
11 it, I just kept saying to myself, I've got to get this gun
12 or I'm going to die. Well, then he got the gun. Even under
13 his theory, oh, I got the gun, I'm not going to die if I've
14 got the gun now, the way his mind is working. It's either
15 him or me. It's not an accurate assessment of this case.

16 The accurate assessment from State's exhibit number 4
17 and from that video that you're going to watch is that it's
18 either him or me, my brother and my stolen .380 pistol.
19 He's not in any danger. He's not without fault in bringing
20 it on.

21 And he told you once, I retreated. Even his story --
22 again, even his story, well, Meatball followed me out. And
23 I saw him and I said, I don't feel right, so I went back
24 into Rick's house. Duty to retreat. Avoid killing somebody
25 if you can. I've got the gun. I've got my brother here.

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1 I've got my gun.

2 I can go hide in the house next door that I apparently
3 can hide in after I shoot him for 30 to 45 minutes to an
4 hour, or however long. Could retreat there. Could retreat
5 back to Rick's house. Could just stand behind my brother
6 who's bigger than me, and maybe Meatball won't beat me up.
7 It's not self-defense.

8 If it's not self-defense, it's also not voluntary
9 manslaughter. And I'll tell you why. It's because of that
10 requirement that voluntary manslaughter be in the sudden
11 heat of passion.

12 The only way we know what somebody's frame of mind is
13 is from their testimony. He didn't say, I was so enraged, I
14 couldn't see straight. Couldn't control myself. Had no
15 choice but -- I just couldn't, you know, I didn't even know
16 what I was doing, I was so mad that I just had to kill him.
17 It was either him or me.

18 So I fell backwards and I said, well, -- it's not a
19 sudden heat of passion. Even if he's swinging at him, even
20 if they're tussling, even if he's provoked, he's not in such
21 a state of mind that he just completely and utterly can't
22 control himself.

23 It's murder. It's the taking of another life. It's
24 doing it with a wicked heart, fatally bent on mischief,
25 devoid of any sense of duty, wickedness, a wrongful act

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1 without any just cause or excuse. That's what's happening
2 here.

3 You get to go back in the jury room in a second and you
4 get to make a decision. Mr. Gray told you a lot of stuff
5 from that stand. Some of it was lies. He lied to you when
6 he told you the argument wasn't over a gun. He lied to you
7 when he told you I had to shoot him or I was going to die.
8 And he lied to you when he said I always take responsibility
9 for the things that I do. Lies.

10 You get to go back in that jury room in a few minutes
11 and you get to speak the truth. And the truth in this case
12 is that you need to hold him responsible for a change and
13 you need to find him guilty. Thank you.

14 **THE COURT:** Thank you, Mr. Thomas. Ladies and
15 gentlemen, I have no idea how long the rest of the argument
16 will take. Does anyone need a comfort break or think that,
17 perhaps, in the next 30 to 45 minutes you may require one?
18 Any nods? Don't be shy. Raise your hand if you need it.
19 And, yes. Okay. We have some honest people out there.
20 Very good.

21 We'll take a break for a few moments. Of course, don't
22 discuss the case yet. We'll be back on the record in about
23 ten minutes. And just make yourselves comfortable, and
24 we'll proceed with closing at that point, okay? Thank you.

25 (Whereupon the jury exited the courtroom at 10:52 am)

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1 (Whereupon court was in recess at 10:52 am)

2 (Whereupon court reconvened at 11:05 am)

3 **THE COURT:** We'll go back on the record. Ms. Nelson,
4 you ready?

5 **MS. NELSON:** Yes, sir, Your Honor.

6 **THE COURT:** Very good. Let's have the jury, please.

7 (Whereupon the jury entered the courtroom at 11:06 am)

8 **THE COURT:** All right. The jury is back again and
9 seated. At this point, Ms. Nelson, you're recognized for
10 your closing, ma'am.

11 **MS. NELSON:** Thank you, Your Honor. May it please the
12 Court?

13 **THE COURT:** Yes, ma'am.

14 **MS. NELSON:** All Zay was thinking that morning was it's
15 him or me. He was scared. He was shocked. He was
16 surprised by what was going on. His own words to you when
17 he testified were I was afraid, I thought I was going to
18 die.

19 This isn't a murder. It's not a crime. We told you
20 right from the beginning, yes, this is a homicide. Mr.
21 Fuller did die at Zay's hands. But for it to be a crime
22 it's got to be an unlawful killing. And that's not what
23 this was. This was a reaction in a moment with very little
24 time to think. And Zay did the only thing he knew to do to
25 protect himself at the time.

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1 That shot rings out on Gray Street and Officers Claphan
2 and Satterfield are right there at the city shop by those
3 pumps. And it was -- it was just minutes before they were
4 riding down Gray Street right past [REDACTED], right past it.

5 And there's four men there right in front of that
6 little house. You see them on Officer Claphan's dash-cam,
7 but we don't know who they are. Nobody stopped to talk to
8 them. They didn't wave the police down and say, hey, here's
9 our -- this guy just got murdered right here in this yard.
10 We don't even know who those men were.

11 Supposedly one of them is Raymond Kennedy, but we don't
12 know. They go right past those men. Officer Claphan turns
13 right on Greene and then left on Tanyard Avenue and that's
14 when they hear Edie Walker. They hear Edie who's not
15 present at the time of the shooting. She's not there.
16 People tell you she's there, but she's not there. You know
17 that.

18 Detective Kay's probably right about identifying her on
19 that video after everything's over and she comes -- she
20 comes down Gray Street. And what she's told the police that
21 night is that that's where she walked and then she went down
22 Greene and then she went down Tanyard and she hears -- she
23 hears Mr. Fuller.

24 So she's there when the police gets there on Tanyard.
25 But she's not an eyewitness to anything that happened other

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1 than her coming upon Mr. Fuller.

2 There are lots of police there, Officer Claphan and
3 Satterfield, Officer Durkin, who also rode by those four men
4 in the yard. Lieutenant Budreau, he gets there after some
5 of the other officers are there. There's a deputy from the
6 sheriff's office. There's Officer Pope. There's Officer
7 Jonathan Lee.

8 And they're there on Tanyard probably for about half an
9 hour or so at least because Lieutenant -- we know Lieutenant
10 Budreau's body-cam lasts about 23 minutes and he gets there
11 after some of the other ones. And there's a bunch of police
12 cars, there's a bunch of blue lights, there's fire
13 department, there's ambulance.

14 And all they know in that 30 minutes is that Edie
15 Walker came upon Mr. Fuller 'cause nobody comes to tell them
16 anything. And they don't go find anybody to tell them
17 anything. The detectives don't come during that time
18 period. They don't -- they get called, but they don't come
19 out. They don't come until they hear that Mr. Fuller has
20 died.

21 And then Detective Kay does -- he gets called, he goes
22 out there to Tanyard and he's briefed by Officer Pope. He
23 goes to the hospital. And what does he tell you is
24 happening when he gets to the hospital? There's a crowd of
25 people out congregated in front of the emergency room,

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1 family, presumably friends of family, people in the
2 community, and they're all congregated out there talking.

3 And that's when the community's story about what
4 happened is starting. And who's there listening to that
5 story? Raymond Kennedy. He's out there.

6 Detective Kay approaches Mr. Kennedy. Mr. Kennedy
7 doesn't come to him. Somebody says, hey, go talk to Kool-
8 aid. And he takes Mr. Kennedy down to the city detective's
9 office and talks to him for three and a half minutes.

10 And Mr. Kennedy says, yeah, I'll talk to you because
11 y'all already have the guy in custody. Somebody else has
12 already told you, so I'll tell. That wasn't accurate. He
13 thought that because of the talk that had been going on out
14 there at the hospital, at the emergency room. So he tells
15 what he's heard, that it was Zay. Wouldn't tell about
16 anybody else who was supposed to be there.

17 So Detective Kay then goes back over to the area, goes
18 to Gray Street and finds the shell casing. He maybe goes --
19 ventures into the backyard a little bit. He doesn't find
20 the gun.

21 We don't know when that gun gets found. Either it gets
22 found like folks told you, a day, or the next day, or the
23 day after that or it gets found 13 days later on September
24 8th. That gun's not found by the police.

25 Detective Kay talks to Ricky Grant and then he goes

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1 down and swears out a warrant against Zay for murder. And
2 he's able to document what he's done on the case in about a
3 page and a quarter of a typed up incident report.

4 You've been talked to about reasonable doubt, the
5 State's burden of proof, that they have to convince you
6 beyond a reasonable doubt. Judge Addy will talk to you more
7 about what that means and how you have to be firmly
8 convinced of what you believe happened when you go back
9 there to talk, when you issue your verdict.

10 There's a lot of reason for you to have reasonable
11 doubt in this case. The people who the State brought you to
12 testify, Mr. Kennedy. Folks, Mr. Kennedy wasn't there. How
13 do you know he wasn't?

14 You heard that he testified on Monday before the trial
15 started -- well, you guys weren't here, but he testified
16 about how he testified on Monday. And on Monday he said
17 that Edie Walker was there and that Aaron Gray was there.
18 We know where Edie was. And she wasn't at [REDACTED] Gray Street
19 when this happened.

20 We didn't get to hear from her, but you see her on the
21 video walking past afterwards. And she's walking. She
22 doesn't stop to say anything to anybody. Nobody comes up to
23 say anything to her. Mr. Kennedy says she's there, but
24 she's not.

25 He says Aaron Gray is there. And Mr. Thomas wants you

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1 to believe that Aaron was there. I'm not sure how he's
2 identifying him on that surveillance video that is so dark.
3 It's incredibly hard to tell what's going on.

4 If Aaron had been there and had seen Zay cold bloodedly
5 murder Mr. Fuller, the State would have subpoenaed him to
6 come tell you that. They've got the right to issue a
7 subpoena.

8 Now, he's Zay's brother. I'm sure he wouldn't have
9 wanted to come in here and testify against him. But if he's
10 been there and saw what we know happened, which is that Zay
11 defended himself when Mr. Fuller came there looking for him
12 and came for him, don't you know we'd have Aaron sitting
13 right here telling you that? Aaron wasn't there.

14 Then when he testifies on Tuesday Mr. Kennedy adds BJ
15 to the mix. He says BJ's there. That's White Boy, Antonio
16 Nicholson. First he says he was there the whole time, then
17 he says, well, no, he pulled up later in a truck.

18 Why is he -- why does he say that about the truck?
19 Because he's been shown that surveillance video by Detective
20 Kay where you see a truck pulling up. But Mr. Nicholson has
21 to -- he says he was in a truck, too. But first he has to
22 admit that he didn't own his truck at that time.

23 Then he says, oh, I was in a friend's truck. And then
24 he has to admit that when he finally talked to the police in
25 January of this year, January, that he'd told them that he

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1 would have been in his girlfriend's silver Altima.

2 Mr. Kennedy's putting BJ there, too, and he's not
3 there. Mr. Kennedy's testimony, and I think Mr. Thomas
4 basically admitted this to you, it's pretty much all over
5 the place about what happened. And this all happened -- you
6 can see, it happened really fast.

7 Did Zay overestimate how long it took? I guess he did.
8 I guess he messed up on the 30 to 45 seconds and maybe it
9 was -- maybe it was only 25. I don't know. It would be
10 easy to over or underestimate something when this is going
11 on. But he's all over the place.

12 He says -- I think we'd have to have the court
13 reporter's transcript to know exactly what he said at which
14 time, but it was at one point he was on the ground when he
15 was shot, Mr. Fuller. At one point he thought they were
16 both on the ground. Then he says maybe he was on the ground
17 and got up.

18 He seems to be certain that Mr. Fuller was on the
19 ground when he gets shot. Doesn't look like that on the
20 video. And that doesn't make sense with the trajectory of
21 the bullet either going in a downward -- in a downward
22 direction.

23 If somebody's on the ground you'd have to be standing
24 at their head in order to make that kind of path. He wasn't
25 on the ground. That's just something that maybe Mr. Kennedy

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1 thought sounded right or heard somewhere.

2 He says he's there when the police ride by. There was
3 at least two police cars. So maybe he's one of those guys
4 in the yard according to him, but he doesn't say a word.
5 Not a word.

6 He doesn't go after Mr. Fuller when he runs off after
7 being shot to see if he's okay. The thing he thinks is
8 important to do, he tells you, is to go talk to Mr. Fuller's
9 sister to tell her what happened. That's what he tells you
10 he does. And she's, I guess, not home at 6:00 in the
11 morning.

12 Mr. Kennedy's not there. He's telling you what he's
13 heard on the street, what he started hearing when folks were
14 all together at the hospital that morning and they started
15 talking to each other and not the police.

16 Mr. Grant, you heard from Ricky Grant, who lives there
17 at ■■■ Gray. I think Mr. Grant means well. I really do.
18 Mr. Grant tells you he hears the shot but he doesn't see
19 what -- he doesn't know what happened. He's inside.

20 He tells you after he hears that shot that Zay comes to
21 his door and tries to come back inside, and that he looked
22 shocked. And he looked shocked, y'all, because he can't
23 believe what has just happened. He's shocked because he
24 didn't have any intention of shooting Mr. Fuller that night.
25 He's shocked because Mr. Fuller came at him after he was

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1 able to get the gun away from him.

2 Mr. Grant testifies to you that he sees Mr. Fuller
3 hiding a gun in the bushes at the club. If that's what
4 happened, these folks were out in the parking lot at the
5 club, people are going in and out of the club, why is it
6 that Mr. Fuller, if he hid his gun in the bushes and then
7 it's gone, why is he assuming that Zay's the one who's got
8 it? Where is that coming from?

9 I don't know what he did with his gun, but I think
10 what's happened with Mr. Grant is that he's, over time,
11 we've got a year and eight months between when this happened
12 and when he testified to you, and I think in his mind after
13 this -- after this story has gone around about how this is
14 all over Zay taking Mr. Fuller's gun, that he's decided,
15 well, he must have put it in the bushes.

16 He was so sure of it that he told you, well, yeah,
17 that's what I told the police that day. But when he heard
18 his statement where he says I don't know if he gave him
19 something to hold or what, I don't know if he left it in the
20 car. He has to admit to you that he must be confused, that
21 he must be misremembering that.

22 One thing he's sure of is that he never at any point in
23 that evening, before the club or after the club, sees Zay
24 with a gun. Zay isn't in there up in Rick's house crowing
25 about, hey, you know how -- you know how Meatball's been

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1 giving me such a hard time, I got his Ruger, 'cause he
2 doesn't have it.

3 Mr. Kennedy, he told you that Mr. Fuller came and left
4 and came back. Rick tells you that he just came one time.
5 BJ, Antonio Nicholson, is telling you he's in the kitchen
6 when Mr. Fuller comes over. He says he's in there in Mr.
7 Grant's kitchen. Mr. Grant tells you, nobody's in there but
8 him and Zay, and Tia's somewhere in the back. She doesn't
9 know what's going on. BJ wasn't in that kitchen. He didn't
10 hear anything.

11 Does it really -- what they're -- what they're asking
12 you to believe is that Zay took this gun from somewhere or
13 was given this gun by an acquaintance to hold onto in hopes
14 somehow that Mr. Fuller was going to come back over to where
15 he was so that he could pull the gun out and murder him?
16 That doesn't make any sense.

17 Rick tells you when they get back from the club he
18 doesn't see anybody in the yard. Not Kool-aid, not BJ, not
19 Edie, not Aaron. He doesn't have any idea who brought a gun
20 out because he doesn't see what happens. And he doesn't
21 call the police. He doesn't see about Mr. Fuller. He just
22 knows that Zay's come to the door after he heard this shot
23 and Zay looked shocked and is trying to get back in.

24 Mr. Nicholson, I don't even know if I need to talk to
25 you about him. I'm somewhat surprised the State even had

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1 you hear from him. But he's not there either. He says he's
2 there when Zay and Rick get back from the club. Kennedy
3 says he pulls up later after everything was over. He says
4 lots of people were there. He can't tell you who. Says
5 he's in the kitchen. We know he's not.

6 This is a small thing, but I think it's important with
7 Mr. Nicholson's testimony. He is certain that after this is
8 over that he sees Zay run around that picnic table to the
9 back. We talked about that a little bit. And he's certain.

10 He can't go between the picnic table and the house
11 'cause the dog was there. He runs around the picnic table
12 and goes to the back. But we know that Zay went to the
13 door. He went to the door. Rick didn't let him in. And
14 then he went to the house next door.

15 The other way you know that BJ isn't there to see any
16 of this is because he doesn't see Mr. Fuller run off after
17 all this is over. That's one thing on the surveillance
18 video that's really clear, is him running down the street.

19 And it doesn't look like anything's wrong at that
20 point. But BJ says, nah, after it was over, I just left. I
21 didn't see him -- I didn't see him running. If he was there
22 to see what happened, there's no way he could have missed
23 Mr. Fuller running down the street. And, again, he just
24 leaves, doesn't call the police, doesn't go see if Mr.
25 Fuller's okay.

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1 He even lies to you about finding the gun. He wants to
2 say that Jermaine's the one who picked it up, J-baby, with a
3 stick or a paper bag or something. J-baby's the one looking
4 in that backyard. Maybe he somehow heard that maybe the
5 gun's back there.

6 And he comes up and he says J-baby finds the gun. And
7 he calls Wanda Jean and he gives it to her. Wanda Jean says
8 she's driving by and BJ gives it to -- yeah, BJ gives it to
9 her, puts it in her back seat. She tells the police that
10 somebody called her and told her they were going to come and
11 put it in the back seat. But he's not even telling you the
12 truth about something that simple.

13 Again, the gun doesn't get turned in for 13 days. So
14 either it's not found or somebody's held onto it. And by
15 the time they get it back there's no DNA, no prints. And BJ
16 doesn't want his name associated with anything.

17 Yes, Ms. Wanda Jean gives his name after the police go
18 back to her and say this case is going to trial, you've got
19 to tell us who gave you the gun. But -- and Mr. Thomas
20 wants to say, well, he wasn't charged yet then when Ms.
21 Wanda Jean tells his name, but he's absolutely charged the
22 first time he talks to the police. And it's right after his
23 preliminary hearing right downstairs on his new armed
24 robbery charge.

25 It's pretty telling that five years ago he sat right

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1 here in another trial in this courtroom when he had a
2 pending armed robbery charge, he testified, and then his
3 charge got reduced and he got probation. And now here we
4 are again, this week, he has a pending armed robbery charge.

5 People are telling you that this argument was all over
6 Zay having Mr. Fuller's gun. They're arguing about a gun.
7 One thing BJ does tell you is that that was all hearsay that
8 Meatball gave Zay his gun that night. That's something
9 people are hearing. That's something people in the
10 community have come up with to try to explain why this
11 happened.

12 Doesn't make any sense that this man who had -- who had
13 had a beef with Zay a few weeks before is going to be giving
14 him his gun to hold, but that's what people are saying. And
15 you've got -- all I can say about that is just consider who
16 is telling you this, that it's an argument over a gun.

17 You're hearing this from people who weren't there, who
18 didn't go to the police about any of this when it happened,
19 people who've had time to talk to other folks in the
20 neighborhood, to listen to rumor, to spread rumor, to
21 distort the truth about what really happened.

22 Clearly people are not talking to the police about
23 this. There's tons of officers there right there on
24 Tanyard, but they're talking to each other. The version of
25 events that we end up hearing in court from folks is borne

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1 out of rumor and speculation rather than anybody's real
2 memory or the truth.

3 Is it possible that the argument was over what these
4 guys had been fighting about a few weeks before? Would Zay
5 really have sat up here and told you about that argument and
6 told you about Ms. Brooks being there if he hadn't seen her?
7 She's sitting right here in the courtroom. And he did see
8 her that day when the beef went on. Maybe he didn't see her
9 at the same time as he saw Mr. Fuller, but she did go down
10 there.

11 What we know is the person who was definitely standing
12 right in the middle of all this happening has told you that
13 Mr. Fuller came and sought him out, that he started arguing
14 with him, that he started tussling, Mr. Fuller goes for his
15 gun, Zay is able to get it away, he backs up, yes, there's
16 distance between the two of them, but Mr. Fuller keeps
17 coming. He's coming at him. That's why there's the
18 trajectory of the bullet that there is when he gets shot
19 because he's still coming.

20 If the whole purpose of Zay getting this gun somehow
21 from Mr. Fuller -- if that's what's really going on, if he's
22 just out to get hold of somebody's gun, then all he's got to
23 do is walk off with the gun, right? If that's really what's
24 going on here, and Mr. Fuller comes looking for him, all
25 he's got to do is say, I don't have your gun, and walk off

CLOSING ARGUMENTS - MS. NELSON

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1 and leave. If Zay hadn't been able to take that gun away
2 from Mr. Fuller that night, we could very well be sitting
3 here with Mr. Fuller being the one on trial.

4 So why did he run if he didn't do anything -- if he's
5 acting in self-defense why did he go to Columbia? Why did
6 he go next door and call a cab and not just tell the police,
7 hey, he was coming at me with a gun?

8 It wasn't smart. He's done some things that aren't
9 smart. He told you he shouldn't have dropped out of school
10 when he did. He shouldn't have gotten in trouble when he's
11 been in trouble before. And he shouldn't have gone to
12 Columbia.

13 And he explained to you, I know how stuff works in
14 Greenwood. They're going -- they're going to arrest me, no
15 questions asked. So he went to his sister's. He went to a
16 family member's house where they were able to easily find
17 him a few days later. And when they did he said let them
18 in.

19 And, yeah, he -- Mr. Thomas is right, he should have
20 been with his kids that night. He should have been home
21 with his family and not out at the club and not hanging out
22 with Rick. And, yeah, he probably wanted to keep hanging
23 out rather than go home. And he wishes today that that is
24 what he had done.

25 We know it wasn't unusual for Mr. Fuller to carry a

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1 gun. The State's witnesses have told you they saw him with
2 one. When Rick Grant was asked about it, he said, of
3 course. That wasn't anything unusual.

4 He wouldn't have given Zay that gun to hold. And why,
5 if he left it in the bushes outside the club that night,
6 would he make the assumption that Zay was the person who had
7 it? Zay is sitting there in a place where he had the right
8 to be. He's sitting at Rick Grant's house. He's not
9 bothering anybody. He's just hanging out.

10 And Mr. Fuller comes in search of him. Mr. Fuller
11 comes to where he is and starts things back up again. He
12 didn't do anything to create the difficulty. The only thing
13 he did wrong was not going home earlier. He isn't out
14 looking for Mr. Fuller. He's an invited guest at Mr.
15 Grant's house, and he's got no duty to retreat from there
16 when somebody comes up and attacks him.

17 Mr. Thomas tried to tell you he wasn't -- he wasn't
18 sorry about this happening. One of the first things he said
19 to you was I'm sorry someone lost their life over this, but
20 I didn't know what else to do.

21 The shirt that Mr. Thomas is talking about, he admits
22 to you it looks like he's got one on in the video. He
23 wouldn't have been in the club without a shirt on. And
24 given that the police didn't find some of the evidence in
25 this case, isn't it possible that shirt could have been

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1 taken off between the time you see him on Gray Street and
2 the time Edie Walker sees him on Tanyard and nobody finds
3 it?

4 He had been shot. He said he was thirsty. He took his
5 shirt off after he ran away. And we just don't know where
6 it is. Not hard to believe that it could have been missed
7 by the police when they were working on this case.

8 Judge Addy will tell you that in considering self-
9 defense in this case that one of the things that Zay can do
10 is consider appearances. He can evaluate the size of the
11 person that he's defending himself against.

12 You've seen how tall this man is. I'm five eight
13 without a little bit of heel on. And he's -- and he's
14 coming up to here. You will see -- Dr. Woodard didn't want
15 to say that Mr. Fuller was muscular, but you'll -- you have
16 pictures of him. You can see his physique. They'd had
17 trouble before. Judge Addy will tell you you can consider
18 that as well. Probably that same gun had been pulled on Zay
19 a few weeks before.

20 We talked to you about Zay taking responsibility when
21 he's messed up before. And he did. And he's taking
22 responsibility for his part in what happened in this, too.
23 That gun's got no DNA on it, no fingerprints on it. That
24 wasn't something we found out this week when y'all did.
25 We've known that all along.

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1 But he didn't come in here and try to tell you that he
2 didn't touch that gun. He's coming in here being straight
3 up with you, being who he is, telling you the truth,
4 accepting responsibility for shooting Mr. Fuller.

5 He's telling you he wishes it hadn't happened that way.
6 That is not what he wanted. That is not what he set out to
7 do. He didn't have an evil, malicious heart toward this
8 man. He didn't have an intent to kill him. He was acting
9 in the moment the best way he could in that quick time.

10 You've got the video to look at. Mr. Thomas wasn't
11 there. He doesn't know who those people are in that video.
12 Maybe you can tell where Mr. Fuller is. Y'all can look at
13 it. It looks to me like the shot from the gun is going from
14 right to left on the video. Maybe I'm wrong.

15 He's got -- he's telling you that Mr. Fuller is
16 standing on the right side and that Zay's over here, but it
17 looks like the shot's coming that way. But y'all -- y'all
18 can look at that and decide what you think about it and how
19 much -- how much it affects what you believe or don't
20 believe about what the witnesses have told you.

21 What we do know about that video is people came in here
22 and talked to you about being there, but never once did they
23 say there I am on that video. That guy walking around in
24 the street, that's me.

25 I'm almost done, I promise. I know y'all've been

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1 listening for a long time.

2 What's the main way you know that this was not a murder
3 or a manslaughter, that this was self-defense? What's the
4 main way you know that? That's because he fired one shot.
5 He fired one shot.

6 There were five unspent cartridges in that gun, four in
7 the magazine, one in the chamber. The firearms guy from
8 SLED told you, he explained to you with that kind of weapon
9 that as soon as it's fired there's another cartridge
10 automatically loaded into the chamber. All he wanted to do
11 -- if he wanted to murder this man was fire that gun some
12 more, was aim at his chest, was aim at his head. He didn't
13 do any of that because he wasn't trying to kill him, he was
14 just trying to stop him.

15 I'm sure that all of you right now as you sit here have
16 an opinion about what happened, what you believe, what you
17 don't. You've had a chance to -- you bring in your life
18 experience to this, evaluating what people have told you.
19 You can believe some of it, all of it, none of it. Judge
20 Addy will tell you that.

21 But each and every one of you who goes back there to
22 deliberate this case, you've got the right to your own
23 opinions, your own beliefs about what you think happened
24 here. And if you're not sure, if you're not firmly
25 convinced one way or the other, if you don't really know

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1 what happened, if you don't know how to speak the truth,
2 then Judge Addy will tell you that the way you have to
3 resolve that is in Zay's favor. That's what our
4 Constitution gives all of us, the benefit of the doubt.

5 So if you don't know what happened, if you're not sure
6 and you can't unpack it to the point where you can give a
7 verdict that you know that you are firmly convinced it's the
8 truth, that's not guilty. Zay did not have any intent to
9 kill Mr. Fuller that night. He acted in self-defense. Find
10 him not guilty.

11 **THE COURT:** Thank you, Ms. Nelson. Mr. Thomas, any
12 reply?

13 **MR. THOMAS:** Briefly, Your Honor.

14 **THE COURT:** Go right ahead, please, sir.

15 **MR. THOMAS:** I'm going to add to my list of things we
16 all agree on from earlier, and that is Ms. Nelson stated
17 that the witnesses were all over the place. She's right
18 about that.

19 But what we've brought you are the witnesses who were
20 willing to put themselves there, who were willing --
21 somebody from the state, law enforcement officers, the
22 police department, the solicitor's office came and said,
23 what did you see that were willing to testify. That's who
24 we brought you. Again, they were the witnesses that hang
25 out on Gray Street at 5:45 in the morning going to the club.

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1 If what they've told you is the community's story and
2 the rumors that have been going around, well, then the
3 community could have done a little better job coming up with
4 a cohesive story. And if it's a giant conspiracy to send
5 him to prison for killing Mr. Fuller, for murdering him,
6 they could have come up with something a little more
7 concrete. But they didn't.

8 But that's okay because what's not a rumor is this
9 surveillance video. They say a picture is worth a thousand
10 words. A video's got to be worth something more than that.
11 You're going to get to watch the video, take it back there
12 with you. We're going to try to figure out a way for you to
13 watch it as much as you want back there.

14 You can look at this still shot from State's number 4.
15 That gunfire is not going right to left. It's going left to
16 right. And it's coming from an area where two people are
17 standing and it's going towards an area five feet away,
18 maybe four feet where a third person is standing. And when
19 you watch the video that person falls down and gets up and
20 runs. Somebody on this side shoots that way at Mr. Fuller.
21 It's Mr. Gray shooting. He's shooting this gun.

22 I got to thinking about it when Ms. Nelson was talking.
23 I actually don't know that this is Mr. Fuller's gun. We
24 don't know if this is his gun that he left at the club in
25 the bushes, in the car, wherever it was. This could

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1 actually -- Mr. Gray could have been completely right, that
2 he did not take Mr. Fuller's gun. This gun might actually
3 have belonged to Mr. Gray. It might have been in his pant's
4 pocket the whole time.

5 Might be why he didn't go in the club. He might have
6 had it with him all night long. I don't know. All I know
7 is that this is the gun that fired this projectile that
8 killed Mr. Fuller.

9 And I know that that's the gun that's used in this
10 picture. I know it's the gun that fires this flash from
11 that area where two people are standing into the direction
12 of Mr. Fuller, who's standing there by himself.

13 It's not a question of who it is firing the gun. The
14 DNA stuff, fingerprints, it doesn't matter. Don't get --
15 don't let her distract you with that. It's not a whodunnit.
16 He admits to doing it.

17 And she's right about something else. It doesn't make
18 any sense for Mr. Fuller to give Mr. Gray a gun to hold. It
19 doesn't make any sense. If that's not Mr. Gray's gun, then
20 that's Mr. Fuller's gun and Mr. Gray has it because Mr.
21 Fuller didn't give it to him.

22 I don't care where the gun came from. I don't care
23 where they found it. It doesn't matter because we know it
24 is the gun. We know it's the gun you see in the pictures.
25 We know it's the gun you see in the video.

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1 So who found it, where they found it, what condition it
2 was in when it was found isn't relevant to the question of
3 what was going on in Mr. Gray's mind when he pulled the
4 trigger. That's what you've got to figure out. That's what
5 you've got to consider.

6 If I have this gun on my person, and I get into a fight
7 with Ms. Penney, and if she takes the gun from me, and when
8 she takes it from me she's standing five feet away, to
9 Detective Kay over there, what fear am I in? I'm in a fear
10 that she's going to shoot me.

11 If, on the other hand, the roles are reversed and we
12 get in a fight, and Ms. Penney has the gun, or Mr. Kay has
13 the gun, and I'm standing over here, what fear does she have
14 of me? Is she in any actual imminent danger if I'm standing
15 here unarmed and she's got a gun, and she's got Mr. Kay
16 standing there with her? That's State's exhibit 4. It's
17 not self-defense.

18 He's afraid, he fears for his life, even if that's
19 true, it's not voluntary manslaughter. If I'm armed with a
20 gun and somebody's five or six feet away from me, and I
21 just, for whatever reason it is, I don't like them, and I'm
22 a wicked person, and my heart is fatally bent on mischief,
23 and I put my finger inside that trigger guard, and I extend
24 that gun, and I pull that trigger, it's malice, and it's
25 murder. He's guilty of that. Thank you.

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1 THE COURT: All right. Thank you, Mr. Thomas. All
2 right.

3 Now, ladies and gentlemen, it now becomes my obligation
4 to instruct you on the law in this particular case. And
5 I'll let you know that when I finish these instructions,
6 just so that -- because I'm sure your stomach is growling.
7 When I finish these instructions I'm going to let y'all go
8 back into the jury room, and the clerk is going to come back
9 there and take your lunch orders for you, okay?

10 So we're going to bring lunch in for you. But we'll do
11 that after I finish these instructions so that you can get
12 to work on this case sooner rather than later, all right?

13 Now, again, ladies and gentlemen, it's my job to
14 instruct you on the law that applies. And the way that this
15 has traditionally been done in the past is -- and it's the
16 same way that a lot of judges still do it today, judge sits
17 up here, reads to you from basically 20 plus pages of the
18 law taken from all the law books, reads it once and you're
19 supposed to get it and go back there and apply it.

20 And I've always thought that that was a little bit
21 unreasonable, okay? Because it took me three years to learn
22 the stuff I'm going to explain to you in 15 minutes.

23 So what I'm telling you, ladies and gentlemen, is,
24 first, you'll get a copy of these instructions that you can
25 refer to during the course of your deliberations, okay?

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1 Please do refer to the instructions as a whole. Don't pay
2 particular attention to one section to the detriment of some
3 other section of those instructions.

4 Additionally, should you have any questions about the
5 law that applies, simply write me a note, let me know what
6 it is that you're struggling with, and I'll try and define
7 it better for you or give you a better explanation. So if
8 you have any questions about the law, just let me know and
9 I'll try and give you a better explanation.

10 If you have any factual questions, though, fair
11 warning, at this point in time the record is closed. It's
12 not possible to reopen the record, take additional testimony
13 or do anything like that. So if you have a factual
14 question, chances are I'm not going to be able to assist
15 you.

16 You can certainly re-watch the video, look at the
17 exhibits, whatever you may need to do. But, again, it's not
18 possible for me to assist you with any factual questions
19 that you may have at this point in time.

20 Now, ladies and gentlemen, again, I instruct you that
21 the indictments in this case charge the defendant, Mr. Gray,
22 with the offenses of murder and possession of a weapon
23 during the commission of a violent crime. I'll remind you
24 that the fact that Mr. Gray was arrested, charged, and
25 indicted in this case is not evidence and cannot be

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1 considered by you as evidence of guilt. Nor do these
2 indictments create any presumption or inference of guilt.
3 Again, these are merely the formal documents that contain
4 the charges made against Mr. Gray. They're the means by
5 which this case is brought to court.

6 Now, the indictments allege two different offenses.
7 Again, the charges are murder and possession of a weapon
8 during the commission of a violent crime. Each indictment
9 charges a separate and distinct offense. So you have to
10 decide each indictment separately on the evidence and the
11 law applicable to it uninfluenced by your decision as to any
12 other charge.

13 The defendant may be convicted or acquitted on any or
14 all of the offenses charged. And you'll be asked to write a
15 separate verdict of guilt or not guilty for each of the
16 separate charges.

17 Now, in this case, ladies and gentlemen, the defendant
18 has pled not guilty to these charges. And that plea puts
19 the burden on the State to prove his guilt. I instruct you
20 that the person charged with committing a criminal offense
21 is never required to prove his innocence. It's an important
22 rule of law that the defendant in a criminal trial, no
23 matter what the seriousness of the charge may be, will
24 always be presumed to be innocent of the crime for which the
25 indictments were issued unless guilt has been proven by

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1 evidence satisfying you of that guilt beyond a reasonable
2 doubt.

3 His presumption of innocence does not end when you
4 begin your deliberations. Rather, it accompanies the
5 defendant throughout the trial until you reach a verdict of
6 guilt based on evidence satisfying you of his guilt beyond a
7 reasonable doubt.

8 The presumption of innocence is often described as
9 being like a robe of righteousness that's placed about the
10 defendant's shoulders. And it remains with him until it is
11 stripped from him by evidence satisfying you of his guilt
12 beyond a reasonable doubt.

13 Understand, ladies and gentlemen, the presumption of
14 innocence is not a mere legal theory. It's not just a legal
15 phrase. It's a substantial right to which every defendant
16 is entitled unless you, the jury, are satisfied from the
17 evidence of his guilt beyond a reasonable doubt.

18 Well, what is a reasonable doubt in the law? A
19 reasonable doubt is the kind of doubt that would make a --
20 that would cause a reasonable person to hesitate to act.
21 The State has the burden of proving the defendant guilty
22 beyond a reasonable doubt.

23 And some of you may have served as jurors in civil
24 cases where you were told that it's only necessary to prove
25 that a fact is more likely true than not true, such as by

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1 the greater weight or the preponderance of the evidence. In
2 criminal cases the State's proof must be more powerful than
3 that. It must be proof beyond a reasonable doubt.

4 Proof beyond a reasonable doubt is proof that leaves
5 you firmly convinced of the defendant's guilt. Now, there
6 are very few things in this world that we know with absolute
7 certainty. And in criminal cases the law does not require
8 proof that overcomes every possible doubt.

9 If, based on your consideration of the evidence you're
10 firmly convinced that the defendant is guilty of the crimes
11 charged, you should find him guilty. If, on the other hand,
12 you think there's a real possibility that the defendant's
13 not guilty, you should give him the benefit of the doubt and
14 find him not guilty.

15 Now, ladies and gentlemen, I remind you that during
16 this trial you and I have certain duties to perform. As the
17 trial judge it's been my responsibility to preside over the
18 trial and rule on the admissibility of evidence.

19 You're to consider only the competent evidence before
20 you. So any evidence or testimony ordered stricken from the
21 record in this case during this trial, you have to disregard
22 that testimony. You're to consider only the testimony which
23 has been presented from the witness stand as well as any
24 exhibits which have been made a part of the record in this
25 case.

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1 I also have the duty to charge the law. And as the
2 presiding judge, understand I'm the sole judge of the law.
3 It's your duty to accept and apply the law as I state it to
4 you now. So if you already have any idea as to what the law
5 is or what it should be, and that idea disagrees with what I
6 now tell you the law is, you have to abandon that idea
7 because you're sworn to accept and apply the law as I state
8 it to you.

9 Again, as I said on Monday, you are the sole and
10 exclusive judges of the facts in this case. A trial judge
11 cannot intimate, state, comment on or make any statement to
12 a trial jury about the facts in a case. Since you are the
13 sole judge of the facts, you're not to infer from what I've
14 said during the progress of this trial and ruling on the
15 admissibility of evidence, or otherwise, or anything that I
16 say to you now that I have any opinion about the facts in
17 this case.

18 Ladies and gentlemen, the law does not permit me to
19 have any opinion about the facts in this case. This is a
20 matter solely for you to determine. As jurors it's your
21 duty to determine the effect, value, weight, and truth of
22 the evidence presented during this trial.

23 Now, generally there are two types of evidence which
24 are presented during a trial, direct evidence and
25 circumstantial evidence. Direct evidence directly proves

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1 the existence of a fact and does not require deduction such
2 as testimony by an eyewitness. It's evidence which
3 immediately establishes the main fact to be proven.

4 Circumstantial evidence is proof of a chain of facts
5 and circumstances indicating the existence of a fact. I
6 instruct you that crimes may be proven by circumstantial
7 evidence.

8 And the law makes no distinction between the weight or
9 value given -- to be given to either direct or
10 circumstantial evidence. However, to the extent the State
11 relies on circumstantial evidence, all the circumstances
12 must be consistent with each other and when taken together
13 point conclusively to the guilt of the accused beyond a
14 reasonable doubt.

15 If the circumstances merely portray the defendant's
16 behavior as suspicious, then the proof has failed. Again,
17 the State has the burden of proving the defendant guilty
18 beyond a reasonable doubt. This burden rests with the State
19 regardless of whether the State relies on direct evidence,
20 circumstantial evidence or some combination of the two.

21 I also, furthermore, ladies and gentlemen, instruct you
22 that you must disregard any testimony which was stricken
23 from the record or any testimony to which an objection was
24 sustained.

25 Now, ladies and gentlemen, necessarily you must

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1 determine the credibility of witnesses who have testified in
2 this case and understand that you are the sole judges of
3 credibility in this case. Again, credibility simply means
4 believability. It becomes your duty as jurors to analyze
5 and to evaluate the evidence and determine which evidence
6 convinces you of its truth.

7 In determining the believability of witnesses who have
8 testified, you may believe one witness over several
9 witnesses or several over one witness. You may believe a
10 part of the testimony of a witness and reject the remaining
11 part of the testimony of that same witness.

12 You may believe the testimony of a witness in its
13 entirety or reject the testimony of a witness in its
14 entirety. You may consider whether any witness has
15 exhibited to you any interest, bias, prejudice or other
16 motive in this case. And you may also consider the
17 appearance and manner of a witness while on the witness
18 stand.

19 Now, ladies and gentlemen, there's been evidence
20 presented that witnesses in this case have made prior
21 statements which are not consistent with the witness'
22 present testimony. You may use this evidence to decide
23 whether or not to believe the witness. You may also use
24 evidence of the earlier contradictory statements to
25 determine the truth of those statements.

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1 It's up to you to decide whether to believe the earlier
2 statements or the testimony given at trial. If the witness
3 has shown to have knowingly testified untruthfully
4 concerning any material matter, you may consider this in
5 determining whether to trust the witness' testimony as to
6 other matters. You may reject all the testimony of that
7 witness or give all or part of the testimony the weight you
8 think it deserves.

9 I further instruct you that a person who has a past
10 criminal record is competent to testify during a trial. A
11 past record does not affect the ability of that witness to
12 testify. The past record may only be considered by you, if
13 at all, in determining the witness' believability.
14 Remember, you're the sole judges of the facts in this case
15 and of the believability of any and all of the witnesses who
16 have testified.

17 Furthermore, you've heard evidence that the defendant
18 in this case was convicted of a crime other than the one for
19 which the defendant is now on trial. This evidence may be
20 considered by you, if you conclude it's true, only in
21 deciding whether the defendant's testimony is believable and
22 for no other purpose. You must not consider the defendant's
23 prior record as any evidence of the defendant's guilt of the
24 charge which we are trying today.

25 Now, as I've explained as it relates to expert

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1 witnesses previously, ladies and gentlemen, normally the
2 Rules of Evidence do not permit witnesses to testify as to
3 opinions or conclusions. Again, an exception to this Rule
4 exists for expert witnesses, witnesses who by education and
5 experience have become experts in some art, science,
6 profession or calling may state an opinion as to relevant
7 and material matters in which the witness claims to be an
8 expert. And they may also give the reasons for their
9 opinion.

10 You should consider any expert opinion received in this
11 case in evidence in this case and like any other evidence
12 give it the weight you think it deserves. If you decide
13 that the opinion of an expert witness is not based on
14 sufficient education and experience, or if you conclude that
15 the reasons given in support of their opinion are not sound,
16 or that the opinion's outweighed by other evidence, you may
17 disregard their opinion entirely.

18 An expert witness' testimony is to be given no greater
19 weight than that of any other witness simply because the
20 witness is an expert. Further, you're not required to
21 accept an expert's opinion even though it's not
22 contradicted.

23 Now, ladies and gentlemen, the defendant in this case
24 is charged with the offense of murder. The State must,
25 therefore, prove beyond a reasonable doubt that the

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1 defendant killed another person with malice aforethought.
2 Malice is defined as hatred, ill will, or hostility towards
3 another person. It is the intentional doing of a wrongful
4 act without just cause or excuse and with an intent to
5 inflict an injury or under circumstances that the law will
6 infer an evil intent.

7 Malice aforethought does not require that malice exist
8 for any particular time before the act is committed, but
9 malice must exist in the mind of the defendant just before
10 and at the time the act is committed. Therefore, there must
11 be a combination of the previous evil intent and the act.

12 Malice aforethought may be express or inferred. These
13 terms express and inferred do not mean different kinds of
14 malice, but merely the manner in which malice may be shown
15 to exist. That is either by direct evidence or by inference
16 from the facts and circumstances which are proven.

17 Express malice is shown when a person speaks words
18 which express hatred or ill will for another or when the
19 person prepared beforehand to do the act which was later
20 accomplished, such as laying in wait or other acts of
21 preparation going to show that the deed was within the
22 defendant's mind. Those would be express malice.

23 Malice may be inferred from conduct showing a total
24 disregard for human life. If facts are proven beyond a
25 reasonable doubt sufficient to raise an inference of malice

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1 to your satisfaction, this inference would be simply an
2 evidentiary fact to be considered by you along with other
3 evidence in this case. And you can give it the weight you
4 decide it should receive.

5 Now, if you find that the State has failed to prove
6 beyond a reasonable doubt that the defendant committed
7 murder, you may consider whether the State has proven beyond
8 a reasonable doubt that the defendant committed the crime of
9 voluntary manslaughter.

10 To prove voluntary manslaughter the State must prove
11 beyond a reasonable doubt that the defendant took the life
12 of another in the sudden heat of passion based on sufficient
13 legal provocation. Both heat of passion and sufficient
14 legal provocation must be present at the time of the killing
15 to constitute voluntary manslaughter.

16 Sudden heat of passion may for a time affect a person's
17 self control and temporarily disturb a person's reason.

18 Sudden heat of passion must be the type that would make an
19 ordinary person unable to coolly reflect on his actions and
20 would produce an uncontrollable impulse to do violence.

21 Sufficient legal provocation must be the type that
22 would make a person of ordinary reason and caution become
23 enraged and lose control temporarily. Provocation needed
24 for voluntary manslaughter must come from some act of or
25 related to the decedent. Words alone, however vulgar or

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1 insulting, are not enough to be legal provocation.

2 Where death is caused by the use of a deadly weapon,
3 the words must be accompanied by some overt threatening act
4 which could have produced a heat of -- the heat of passion.
5 The exercise of a legal right, no matter how offensive it is
6 to another, is never sufficient legal provocation for
7 voluntary manslaughter.

8 If the heat of passion has cooled or if there was
9 enough time between the provocation, if any, and the killing
10 for the passion of a reasonable person to cool, then the
11 killing would not be voluntary manslaughter. In deciding
12 whether a reasonable person would have had enough time to
13 cool off you should consider all of the circumstances
14 surrounding the killing. You may consider the nature of the
15 provocation, if any, the defendant's mental and physical
16 state, and the circumstances and relationships between the
17 party -- parties.

18 Now, finally, ladies and gentlemen, the defendant's
19 charged with possession of a weapon during the commission of
20 a violent crime. In order to prove this offense the State
21 must prove beyond a reasonable doubt that the defendant was
22 in possession of a firearm or visibly displayed what
23 appeared to be a firearm during the commission of a violent
24 crime.

25 Again, technically, under the law a firearm means any

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1 machine gun, automatic rifle, revolver, pistol, or any
2 weapon which will, is designed to or may be converted to
3 expel a projectile.

4 In order to find the defendant guilty of possession of
5 a weapon during the commission of a violent crime you must
6 first find the defendant guilty of either committing a
7 violent crime or attempting to commit a violent crime. And
8 under the law of South Carolina I instruct you that murder
9 and voluntary manslaughter are defined as violent crimes.

10 The State must also prove beyond a reasonable doubt
11 that the weapon further advanced or helped in the commission
12 of the underlying violent crime.

13 Now, in this case, ladies and gentlemen, the defendant
14 has raised the defense of self-defense. I instruct you that
15 self-defense is a complete defense. And if it is
16 established, you must find the defendant not guilty.

17 The State has the burden of disproving self-defense by
18 proof beyond a reasonable doubt. If you have a reasonable
19 doubt of the defendant's guilt after considering all of the
20 evidence, including any evidence of self-defense, then you
21 must find the defendant not guilty.

22 If, on the other hand, you have no reasonable doubt of
23 the defendant's guilt after considering all the evidence,
24 including any evidence of self-defense, then you must find
25 him guilty.

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1 The following elements are required to establish self-
2 defense. First, being without fault. The defendant must be
3 without fault in bringing on the difficulty. If the
4 defendant's conduct was the type which was reasonably
5 calculated to and did provoke the deadly assault, the
6 defendant would be at fault in bringing on the difficulty
7 and would not be entitled to an acquittal based on self-
8 defense.

9 Secondly, imminent danger. The second element of self-
10 defense is that the defendant was actually in imminent
11 danger of death or serious bodily injury or that the
12 defendant actually believed he was in imminent danger of
13 death or serious bodily injury.

14 If the defendant was actually in imminent -- if the
15 defendant was actually in imminent danger it must be shown
16 that the circumstances would have warranted a person of
17 ordinary firmness and courage to strike the fatal blow to
18 prevent death or serious bodily injury. If the defendant
19 believed he was in imminent danger of death or serious
20 bodily injury, it must be shown that a reasonably prudent
21 person of ordinary firmness and courage would have had the
22 same belief.

23 A person who is not legally allowed to possess a
24 firearm is not prevented from using a firearm in self-
25 defense, however. In deciding whether the defendant

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1 actually was or believed he was in imminent danger of death
2 or serious bodily injury you should consider all of the
3 facts and circumstances surrounding the crime including the
4 physical condition and the characteristics of the defendant
5 and the decedent.

6 The defendant does not have to show that he was
7 actually in danger. It's enough if the defendant believed
8 he was in imminent danger and a reasonably prudent person of
9 ordinary firmness and courage would have had the same
10 belief. The defendant has the right to act on appearances
11 even though the defendant's beliefs may have been mistaken.
12 It's for you to decide whether the defendant's fear of
13 imminent danger of death or serious bodily injury was
14 reasonable and would have been felt by an ordinary person in
15 the same situation.

16 I instruct you that words accompanied by hostile acts
17 may, depending on the circumstances, establish self-defense.
18 Additionally, evidence of prior difficulties, threats or
19 violence between the defendant and the decedent may be
20 considered by -- may be considered in deciding whether a
21 threat existed, whether the defendant had a reason to
22 believe a threat existed and how serious that threat was.

23 The relative sizes, ages and weights of the defendant
24 and the decedent may be considered by -- may be considered
25 in deciding the apparent or actual need for force and self-

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1 defense and the amount of force needed. The intoxication of
2 the decedent may be considered in deciding whether the
3 defendant's fear of death or bodily harm was reasonable.

4 I instruct you that a person cannot be required to make
5 an exact calculation as to the degree or amount of force
6 which may be needed to avoid death or serious bodily harm.
7 Therefore, in self-defense the defendant has the right to
8 use the force needed to avoid death or serious bodily
9 injury.

10 The force used in self-defense does not have to be
11 limited to the degree or amount of force used by the
12 decedent. The defendant has the right to use so much force
13 as appeared to be necessary for complete self-protection in
14 which a person of ordinary reason and firmness would have
15 believed to be needed to prevent death or serious bodily
16 harm.

17 Finally, ladies and gentlemen, the third element of
18 self-defense is that there's no way -- no other way to avoid
19 danger. The final element, again, is that the defendant had
20 no other probable way to avoid the danger of death or
21 serious bodily injury than to act as the defendant did in
22 this particular instance.

23 I instruct you that a duty -- that a defendant has no
24 duty to retreat if by doing so the danger of being killed or
25 suffering serious bodily injury would increase.

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1 Furthermore, I instruct you that a lawful guest in another's
2 home has no duty to retreat before using deadly force in
3 self-defense against an intruder.

4 A lawful guest is a person who enters the premises of
5 another by either express or implied invitation. However, a
6 guest has a duty to retreat where possible if the attacker
7 is the owner or occupier of the property.

8 Now, ladies and gentlemen, there's several possible
9 verdicts which I have worked up which are options in this
10 case, ladies and gentlemen. And I've prepared this verdict
11 form, Mr. Foreman, to guide your deliberations. It's about
12 as simple as it can be, but I have to explain it to you
13 anyway, okay?

14 Basically the verdict form has the first option which
15 makes the following statement; We, the jury, in the above-
16 captioned case on the charge of murder unanimously find Mr.
17 Gray, and then there are two mutually exclusive options,
18 either not guilty or guilty.

19 If you find that the State has not met its burden of
20 proving the defendant's guilt beyond a reasonable doubt, and
21 all 12 of you agree, then you would initial not guilty, sign
22 the verdict form and -- sorry. You would initial not guilty
23 and then go down to the option for voluntary manslaughter.

24 If, however, you find that the State has proven the
25 defendant's guilt on the charge of murder beyond a

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1 reasonable doubt, and all 12 of you agree, then you would
2 initial guilty and then consider the third charge,
3 possession of a weapon during the commission of a violent
4 crime, skipping over the voluntary, okay? So if you find
5 him guilty of murder, then you would go to the third option
6 there skipping over voluntary manslaughter as the second.

7 If you find -- if you were to find that the State has
8 not met its burden of proving the defendant's guilt beyond a
9 reasonable doubt on the charge of murder, then you would
10 proceed to the second one allowing you to consider, if you
11 wish, the charge of voluntary manslaughter, okay? Exactly
12 same two options there, not guilty, guilty, no significance
13 in the order to which I mention those verdicts as well.

14 If you were to find Mr. Gray guilty on the offense of
15 voluntary manslaughter, you would then consider the
16 possession of a pistol charge, the third one that I was
17 telling you about. Again, same rules apply for that, beyond
18 a reasonable doubt, all 12 of you have to agree. And,
19 again, there are separate verdicts for each of those three
20 particular offenses, all right?

21 Now, Mr. Foreman, ladies and gentlemen of the jury,
22 your verdict does have to be unanimous. That means all 12
23 of you have to agree on the outcome in this case. Other
24 states have majority verdicts. South Carolina does not.
25 Other states are doing it wrong. So all 12 of you have to

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1 agree on the ultimate outcome in this case before any
2 verdict can be rendered.

3 I want to remind you that you have been selected as 12
4 impartial individuals. That means you have no interest in
5 the outcome of this action. You have no friends to reward,
6 you have no enemies to punish. Your verdict is simply to do
7 your duty under the law and the evidence as has been
8 presented in this court.

9 Now, in a moment, ladies and gentlemen, I'm going to
10 let you retire to the jury room. And the clerk will go back
11 there and pass out your sheets where you can make your lunch
12 orders or where we can take your lunch orders. We're
13 ordering, I believe, from Corley's today, right?

14 **MADAM CLERK:** Chick-fil-A.

15 **THE COURT:** Chick-fil-A. Sorry, we're Chick-fil-A
16 today. If the alternates want to stick around and grab some
17 Chick-fil-A when it comes an hour from now or whenever it
18 gets here, you're more than welcome to. If you want to hit
19 the silks, I'm going to be releasing you guys after I let
20 the jury start their deliberation, okay? So that's your
21 choice, but we're going to get Chick-fil-A for you guys.

22 A few other housekeeping matters, as I mentioned
23 earlier, if you want to watch the video again, we can either
24 maybe get you a -- or a laptop, a blank-like laptop. We can
25 get one back there that you can watch it on or if you want

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1 to watch it altogether, just let us know and we'll cue it
2 back up out here.

3 And we will watch it as many times as you feel like you
4 need to, okay? So if you need to see the video again, we
5 have those two options for you. You can watch it altogether
6 out here or we can send a laptop back there and you can
7 watch it on the laptop, all right?

8 Additionally, as it relates to the firearm and the live
9 rounds from the magazine, we have a rule that the gun and
10 the rounds are never in the same place. So we're going to
11 send, and I think you can appreciate the reason for that
12 rule, so we're going to send the gun back there with you
13 guys initially.

14 If you need to inspect the ammunition and the magazine,
15 simply knock on the door, hand the box containing the gun to
16 the bailiff, and he'll hand you the live ammo, okay? But
17 it's just a rule that we have that we never let the ammo get
18 mixed with the gun in the same place for obvious reasons,
19 all right?

20 With that, if y'all will adjourn to the back for just a
21 few moments, she'll take your order. Your cue to begin your
22 deliberations, Mr. Foreman, will be receipt of these
23 instructions, the verdict form, the evidence and my asking
24 the two alternates to come out, okay? That'll be your cue
25 to begin.

1 (Whereupon the jury exited the courtroom at 12:18 pm)

2 **THE COURT:** Additions or exceptions from the State?

3 **MR. THOMAS:** Nothing from the State, Your Honor.

4 **THE COURT:** From the defense?

5 **MS. NELSON:** No, sir.

6 **THE COURT:** All right. Let's make sure we're correct
7 in terms of the evidence, and we'll get it all back.

8 **MR. THOMAS:** The live rounds, we didn't put them in
9 evidence.

10 **THE COURT:** Oh, we never put them in evidence? Great.
11 I'll mention that to the foreman, then.

12 (Whereupon court was in recess at 12:22 pm)

13 (Whereupon the jury began deliberating at 12:40 pm)

14 (Whereupon a jury question was handled off the record
15 and Court's exhibit 1 was marked)

16 (Whereupon court reconvened at 1:32 pm)

17 (Whereupon Court's exhibit 2 was marked)

18 **THE COURT:** Ms. Nelson.

19 **MS. NELSON:** Yes, sir. The prior question about the
20 pubic hair being found on the gun, I was off running to get
21 lunch for Shane and me.

22 **THE COURT:** Okay.

23 **MS. NELSON:** And I would just want to put on the record
24 that our preference would have been for them to just -- that
25 they had to take the evidence that was before them and, you

1 know, there was not really any evidence about -- about that
2 in the record, I guess, other than ---

3 **MR. THOMAS:** And that was the -- that was certainly a
4 fact not in evidence. And I'm assuming that somebody on
5 their notepad wrote down pubic hair and somebody else wrote
6 it down, and they couldn't remember what it was about.

7 **THE COURT:** Right. I think that that was -- the note
8 referenced the DNA person who testified for SLED. And I
9 think that she made a passing reference to pubic hair and
10 ---

11 **MS. NELSON:** Not being analyzed.

12 **THE COURT:** Not being analyzed.

13 **MR. THOMAS:** Yeah, that was -- the question was, what
14 evidence did you receive in this case? And she said, blood
15 from the decedent, pubic hairs from the decedent, swab from
16 this, that and the other.

17 **THE COURT:** Right.

18 **MR. THOMAS:** The only thing she analyzed being swabs.

19 **MS. NELSON:** I just need to put our objection on the
20 record to them being -- that that question being answered, I
21 guess, for one thing. And then now that it has been
22 answered to ask if the Court would go ahead and clarify that
23 the pubic hair wasn't found anywhere, it's something that
24 was taken at autopsy, ---

25 **THE COURT:** Okay.

1 MS. NELSON: --- which is, I think, accurate.

2 MR. THOMAS: I think that's fine. And I couldn't
3 remember, you know, Dr. Woodard may have testified -- I
4 didn't have it in my notes because, again, it wasn't
5 something that was really important. He may have testified
6 that's what he does as part of it.

7 MS. NELSON: I don't remember him talking about it, but
8 he may have. And I don't think it's a giant thing, but
9 since it has been answered ---

10 THE COURT: Sure. I'll give them some additional
11 clarification on that question. And, again, the only reason
12 I sent it back there, I showed it to Mr. Goranson, and I
13 think we all kind of agreed. And so I just wrote it on the
14 note and sent it back figuring ---

15 MS. NELSON: Right.

16 THE COURT: --- it was a nothing burger. And I think
17 it largely is still exactly that, but I'll clarify that the
18 pubic hair reference in the DNA report was taken at autopsy
19 and that generally speaking if it's not in evidence, I can't
20 help you with factual questions. I'll reiterate that again.

21 MS. NELSON: Thank you.

22 THE COURT: They do, however, want to watch, according
23 to the note, the whole 19 minute video. I assume you have
24 that cued up, solicitor?

25 MR. THOMAS: I do, Your Honor. It's 19 minutes 57